



ADF INTERNATIONAL

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**Re: War crimes, crimes against humanity and genocide against Christians, Yazidis and other religious minorities in the Middle East: Questions and Answers**

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### **(a) Introduction**

Genocide is a word that is not and should not be used lightly, but requires thorough and strict analysis. News reports around the world and increasingly in Western countries show horrific images of mass killings, beheadings, gang rapes, crucifixions, hangings, burnings inside locked caskets and endless torture of Christians and other religious minorities in the Middle East at the hands of the so-called Islamic State, ISIS.

The question therefore arises; do the actions of ISIS against Christians and other religious minorities in the region rise to the level of genocide?

The following document is intended to shed some light on the factual and legal aspects of calling the actions of ISIS genocide, war crimes or crimes against humanity, while also showing why the European Parliament should promptly and efficiently react to the ongoing atrocities in Syria and Iraq.

### **(b) Does the European Parliament have competence to tackle the issue?**

Genocide is one of the most severe and horrific violations of human rights, leading to the total or partial destruction of a national, ethnical, racial or religious group. The European Parliament is both entitled and obliged to react in the face of the ongoing atrocities in Syria and Iraq.

Firstly, the European Parliament is entitled to react as the matter falls within the human rights mainstreaming to which the Parliament committed itself. The Parliament constantly stresses “its long-term commitment to promoting human rights and advancing democratic values”,<sup>1</sup> outlining that “respect for and the promotion, indivisibility and safeguarding of the universality of human rights must be the cornerstones of the EU’s external action” and “increased consistency should enable the EU to respond more rapidly in the early stages of human rights violations.”<sup>2</sup>

Secondly, the European Parliament is obliged to react, by virtue of the responsibility to protect principle, which means that when a state (or non state actor) manifestly fails to protect its population or is in fact a perpetrator of these crimes, the international community has a responsibility to take collective action to protect populations, in accordance with the

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<sup>1</sup> Report on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union’s policy on the matter (2015/2229(INI)) of 30 November 2015, para 10.

<sup>2</sup> Id, C and D.

UN Charter. This collective action can take different forms, which would include a Resolution.

Finally, in the aftermath of the atrocities in Rwanda, when the international community was too late to react and to recognize that genocide was ongoing, countries collectively said “never again”, thus paving the way to a commitment to prevent atrocities.<sup>3</sup> The European Parliament should actualize this promise, by taking action, before it is too late.

**(c) What would be the added value if the European Parliament recognizes that the acts perpetrated in the Middle East amount to genocide?**

By recognizing that the ongoing atrocities in the Middle East amount to genocide, the European Parliament would be in line with recent developments at the UN level, which recognized in a number of recent reports that the acts in question in the Middle East amount to genocide (see below Question 6).

A Resolution stating that the acts in the Middle East amount to genocide against Christians, Yazidis and other religious minorities would carry a great value for all the persecuted religious minorities, and would not be merely a symbolic act. It would also encourage states to take the matter more seriously and to take further active steps.

**(d) What is the definition of genocide and what is the difference between genocide, war crimes and crimes against humanity?**

Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention):

(...) 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.

**Crimes against humanity** are the murdering, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhumane acts when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. The intent of destroying the group differentiates this from the ‘crime of all crimes’, genocide.

**War crimes** refer more to stand-alone or less severe incidents of violence that must be perpetrated during war time. They are not as widespread or systematic as genocide / crimes against humanity (the threshold is much lower).

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<sup>3</sup> Justin Forsyth, After the Rwandan genocide 20 years ago, we said “Never Again”. Did we mean it? (The Telegraph 5 April 2014), available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/centralafricanrepublic/10744412/After-the-Rwandan-genocide-20-years-ago-we-said-Never-Again.-Did-we-mean-it.html>.

War crimes, crimes against humanity and genocide can refer then to the same acts of persecution. However, war crimes are acts committed during war and are not necessarily part of a widespread or systematic attack. While crimes against humanity do require the threshold of widespread or systematization to be met, they lack the intent of destroying, in part or in total, a national, ethnical, racial or religious group.

**(e) Why is it insufficient to speak of “mass murder” and “persecution”?**

The title of the Statement by the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy speaks about **systematic mass murder of religious minorities by ISIS**. Such an approach is less impactful and effective than the proposed name of the Resolution (which speaks about war crimes, crimes against humanity and genocide against Christians, Yazidis and other religious minorities) for the following reasons:

- a) “systematic mass murder” is not a legal term and it is thus prone to confusion,
- b) it obscures the specific crimes and the victims, making it difficult to find and design a tailored response to the situation in the Middle East
- c) such a general approach would only give weak moral redress to the victims and persecuted religious minorities on the ground, which they need urgently.

Likewise, it would be insufficient to speak about **persecution**, which is a form of discrimination on ethnic, racial or religious grounds, **without the element of intent to destroy**. The atrocities committed against Christians and other religious minorities in Syria and Iraq are undoubtedly crimes of persecution. 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, the persecution of Christians in Syria and Iraq has reached the threshold of genocide and should be recognized as such.

**(f) Are Christians, in fact, the victims of international crimes in the Middle East?**

Christians are the most persecuted religious group in the world. The number of Christians killed every year is more than 150,000, as recognised by the European Parliament in its resolution of 30 April 2015 on the persecution of Christians around the world.<sup>4</sup> **Vice-President of the European Parliament Antonio Tajani**, as responsible for the European Parliament Dialogue with Churches and religious communities under Article 17 TFEU, stated during the Ad Hoc High Level Meeting on “The persecution of Christians in the world: A call for action” on 1 December 2015 that: *“No religious community is as subject to hatred, violence and systematic aggression as the Christians.”* The **President of the European Parliament, Martin Schulz**, stated during the same meeting that the persecution of Christians *“hasn’t been properly addressed.”*

Extremism and on-going persecution against Christians is resulting in mass migration and internal displacement. In **Iraq** the number of Christians dropped from 1,400,000 in 2003 to about 275,000 at present; and in Syria, from 1.25 million in 2011 to as few as 500,000 today

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<sup>4</sup> European Parliament Resolution of 30 April 2015 on the persecution of Christians around the world, in relation to the killing of students in Kenya by terror group Al-Shabaab (2015/2661(RSP)), C.

according to data provided by the Pontifical Foundation Aid to the Church in Need (ACN). In some regions the number of Christians dropped by 80% or even more.

**(g) Has the number of the targeted group reached the threshold necessary for genocide?**

On 19 April 2004 in the case *Prosecutor v. Radislav Krstic on the Srebrenica genocide*, the Appeals Chamber of the International Tribunal for the Former Yugoslavia considered that:

The numeric size of the targeted part of the group is the necessary and important starting point, though not in all cases the ending point of the inquiry. The number of individuals targeted should be evaluated not only in absolute terms, but also in relation to the overall size of the entire group. In addition to the numeric size of the targeted portion, its prominence within the group can be a useful consideration. If a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning of Article 4.

The total Muslim population killed in Srebrenica was 7 to 8,000 (out of a total of approx. 40,000), meaning **20%** and the International Tribunal found this to be genocide.

In Iraq as many as **81%** of the Christian population disappeared either by killings or forced migration because of the ongoing persecution.<sup>5</sup>

**(h) Are there other examples within the international fora of calling the actions of ISIS in the Middle East genocide?**

The **European Parliament Resolution** of 12 March 2015 on recent attacks and abductions by ISIS/Da'esh in the Middle East, notably of Assyrians stated in its paragraph 2:

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;

The **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, of 27 March 2015 states in its paragraph 16:

Violations Perpetrated by ISIL: attacks against religious and ethnic groups” that some of “the acts of violence perpetrated against civilians because of their affiliation or perceived affiliation to an ethnic or religious group (...) in the light of the information gathered overall (...) may constitute genocide.

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<sup>5</sup> Aid to the Church in Need, 'Persecuted and Forgotten? A report on Christian oppressed for their faith' 2013-2015, available at <<http://www.acnuk.org/persecuted#countries>>.

The **Report on the Protection of Civilians in the Armed Conflict** in Iraq (11 December 2014 – 30 April 2015) by the UN Assistance Mission for Iraq states 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.

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”, of 27 July 2015 describes in its paragraph 18 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.

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 its paragraph 11 that:

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 **Iraqi delegation in the Human Rights Council** on its twenty-eighth session, 8 July 2015 affirmed that:

Daesh committed barbaric crimes that could amount to genocide, crimes against humanity and war crimes in the form of massacres and mass executions of prisoners and unarmed prisoner soldiers, clergies, children and women who rejected their ideology.

#### **(i) Can these acts be called genocide, since ISIS is not a State?**

The fact that ISIS is not a State does not change the fact that the acts they commit amount to genocide.

Article 4 of the Genocide Convention clearly states that: “Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”

Even if the Iraqi and Syrian governments are not responsible for committing genocide against Christians in their territories, they are still arguably in breach of the Genocide Convention in failing to prevent the genocide of Christians from occurring. Under Article 1 of the Geneva Convention: “The Contracting Parties confirm 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.”<sup>6</sup>

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<sup>6</sup> Emphasis added.

It is erroneous to conclude that ISIS members are just criminals and nothing can be done against them. The role of the criminal justice system is to prosecute and punish criminals. Iraqi and Syrian governments are under an obligation to prosecute and punish ISIS members for their crimes (even more so since they have reached the threshold of genocide).

**(j) Is ISIS acting *intentionally to destroy* Christians and other religious minorities?**

The crime of genocide requires proof that the perpetrator committed the crimes with an intent to destroy the group, in whole or in part. This is easily demonstrable in the case of ISIS as ISIS has expressed this on a number of occasions.

**In October 2014, IS published the 4<sup>th</sup> issue of Dabiq with a cover photo showing a black IS flag flying over the Vatican. The magazine confirmed IS' desire 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. This is His promise to us; He is glorified and He does not fail in His promise. 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].

Finally, this certainty is the one that should pulse in the heart of every mujāhid from the Islamic State and every supporter outside until he **fighters the Roman crusaders** near Dābiq.

O Americans, and O Europeans, the Islamic State did not initiate a war against you, as your governments and media try to make you believe. It is you who started the transgression against us, and thus you deserve blame and you will pay a great price. You will pay the price when your economies collapse. You will pay the price when your sons are sent to wage war against us, and they return to you as disabled amputees, or inside coffins, or mentally ill. You will pay the price as you are afraid of travelling to any land. Rather you will pay the price as you walk on your streets, turning right and left, fearing the Muslims. You will not feel secure even in your bedrooms. You will pay the price when this crusade of yours collapses, and thereafter we will strike you in your homeland, and you will never be able to harm anyone afterwards. You will pay the price, and we have prepared for you what will pain you.<sup>7</sup>

In February 2015, the magazine published an article on IS capturing 21 Coptic Christians:

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<sup>7</sup> Dabiq 'The Failed Crusade' (2014), 1435 Dhul-Hijjah, 4<sup>th</sup> Issue, 5-8.

This month, the soldiers of the Khilāfah in Wilāyat Tarābulus **captured 21 Coptic crusaders**, almost five years after the blessed 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. The operation was planned by Hudhayfah al-Battāwī (rahimahullāh), wālī of Wilāyat Baghdad at the time, alongside the senior military commander, Abū Ibrāhīm az- Zaydī (rahimahullāh), both of whom played a crucial role.

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...

And the deaths did not begin until after the crusaders had expressed their arrogance and refusal to execute the righteous demands of the mujāhidīn. So more than one hundred crusaders were killed and injured by just five brave istishhādiyyīn from the Islamic State. And the different Christian churches had no one to truly blame but Shenouda for the deaths of their brethren in kufr.

So while **the Islamic State targeted the Catholics** in revenge for the sisters imprisoned by the Copts, ‘Azzām al-Amrīkī’s commander was wooing the war-waging Copts themselves with feeble words, forgetting, {Muhammad is the Messenger of Allah; and those with him are harsh against the disbelievers, merciful among themselves} [Al-Fath: 29], and {O you who have believed, whoever of you should (...)

And so, five years after the blessed operation in Iraq, Allah (ta’ālā) granted the Islamic State expansion to Libya, Sinai, and elsewhere, allowing it to easily capture the Coptic crusaders – the followers of the dead Shenouda and the supporters of the tāghūt Sisi – as the Salaf said, “The reward for a good deed is another good deed.” And thus, the Islamic State **strikes terror directly in the hearts of the Copts after striking terror in the hearts of their Catholic allies** before, while the jihād claimants and hizbiyyīn sit back and deliberate – in vain – on what they can do to prevent the further expansion of the Khilāfah...

Finally, it is important for Muslims everywhere to know that there is no doubt in the great reward to be found on Judgment Day for those **who spill the blood of these Coptic crusaders** wherever they may be found.<sup>8</sup>

**This statement confirms that the attacks on the crusaders (Christians) in Iraq (as well as Egypt) were coordinated acts of systematic pattern specifically intended against Christians.**

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<sup>8</sup> Dabiq, ‘From Hypocrisy to Apostasy. The Extinction of the Grayzone’ (2015), Rabi’Al-Akhir 1436, 7<sup>th</sup> Issue, 30-32.

Furthermore, the magazine called 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] ... Go forth for jihād and defend your Islam wherever you may be.<sup>9</sup>

In November 2015, the IS magazine restated the intention of IS 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.

And the Islamic State will continue to strike Russia until Sharī'ah returns to all the lands of the Muslims usurped by the crusader Russians and until Russia pays the jizyah in humiliation. (You think they are together but their hearts are divided.

And nothing changes for the Islamic State, as it will continue to pronounce takfīr upon the Jews, the Christians, the pagans, and the apostates from the Rāfidah, the Nusayriyyah, the Sahwah, and the tawāghīt. It will continue to wage war against the apostates until they repent from apostasy. It will continue to wage war against the pagans until they accept Islam. It will continue to wage war against the Jewish state until the Jews hide behind their gharqad trees. And **it will continue to wage war against the Christians** until the truce decreed sometime before the Malhamah. Thereafter, the slave markets will commence in Rome by Allah's power and might.

This month, the soldiers of the Khilāfah in Wilāyat Tarābulus captured **21 Coptic crusaders**, almost five years after the blessed 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. The operation was planned by Hudhayfah al-Battāwī (rahimahullāh), wālī of Wilāyat Baghdad at the time, alongside the senior military commander, Abū Ibrāhīm az-Zaydī (rahimahullāh), both of whom played a crucial role – through their passion and zealotry – in preserving the morale of the.<sup>10</sup>

There is no evidence to suggest that Christian groups took part in the fights with ISIS or other extremist groups. On the other hand, there is overwhelming evidence which confirms

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<sup>9</sup> Ibid., 70-75.

<sup>10</sup> Dabiq, 'Just Terror', (2015), 1437 Safar, 12<sup>th</sup> Issue, 43-46.

that Christian civilians were attacked, raped, tortured, murdered by ISIS (including children, women and elderly) and were targeted *because* they were the “non-believers” or “cross-worshippers.”

### **Addressing the objections**

#### **(k) Syria and Iraq are not signatories to the International Criminal Court (ICC).**

Syria signed the Rome Statute but did not ratify it. Iraq did not sign it. However, the UN Security Council has a power to refer the situation in Iraq and Syria to the ICC. This means that the ICC can investigate the situation in Syria and Iraq despite the fact that neither country is party to Rome Statute.

The UN Security Council has made an attempt to refer the situation in Syria to the ICC back in 2014<sup>1</sup> which was objected to by China and Russia.

#### **(l) The Iraqi government will oppose any such definition of genocide, because they would be obliged to pay retributions.**

Iraq and Syria may deny the existence of genocide but this does not mean that genocide is not taking place. Christian minorities in Syria and Iraq are being specifically targeted by ISIS and other extremist groups because of being Christians and are at the verge of extinction in Syria and Iraq. This is the deciding consideration: the crimes committed and their effect on the Christian population in Iraq and Syria.

#### **(m) Muslims are merely using their freedom of religion to apply sharia law, it is Christians who do not want it.**

Under Article 2(1) of the Constitution of **Iraq**, Islam is proclaimed to be the official religion of the State. However, Article 2(2) clearly states that:

[the] Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandaean Sabians.

The Constitution of Iraq confirms that “Iraq is a country of multiple nationalities, religions, and sects.” (Article 3 of the Constitution)

Freedom of belief is protected in Article 42 of the Constitution of **Syria**, stating,

1. Freedom of belief shall be protected in accordance with the law;
2. Every citizen shall have the right to freely and openly express his views whether in writing or orally or by all other means of expression.

Additionally, Article 33(3) of the Constitution guarantees that: “Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.” There is no official state religion.

## **(n) Conclusion**

In view of the foregoing, it is clear that what is happening in the Middle East crosses the admittedly high threshold for 'genocide'. This is the 'crime of all crimes' and nation states are under an obligation to prevent it. Given that neither Syria nor Iraq have demonstrated a concrete willingness or ability to so do, it is incumbent upon the European Parliament, and other international actors, to use its influence to improve the terrible situation on the ground for Christians, and other religious minorities, in these countries.