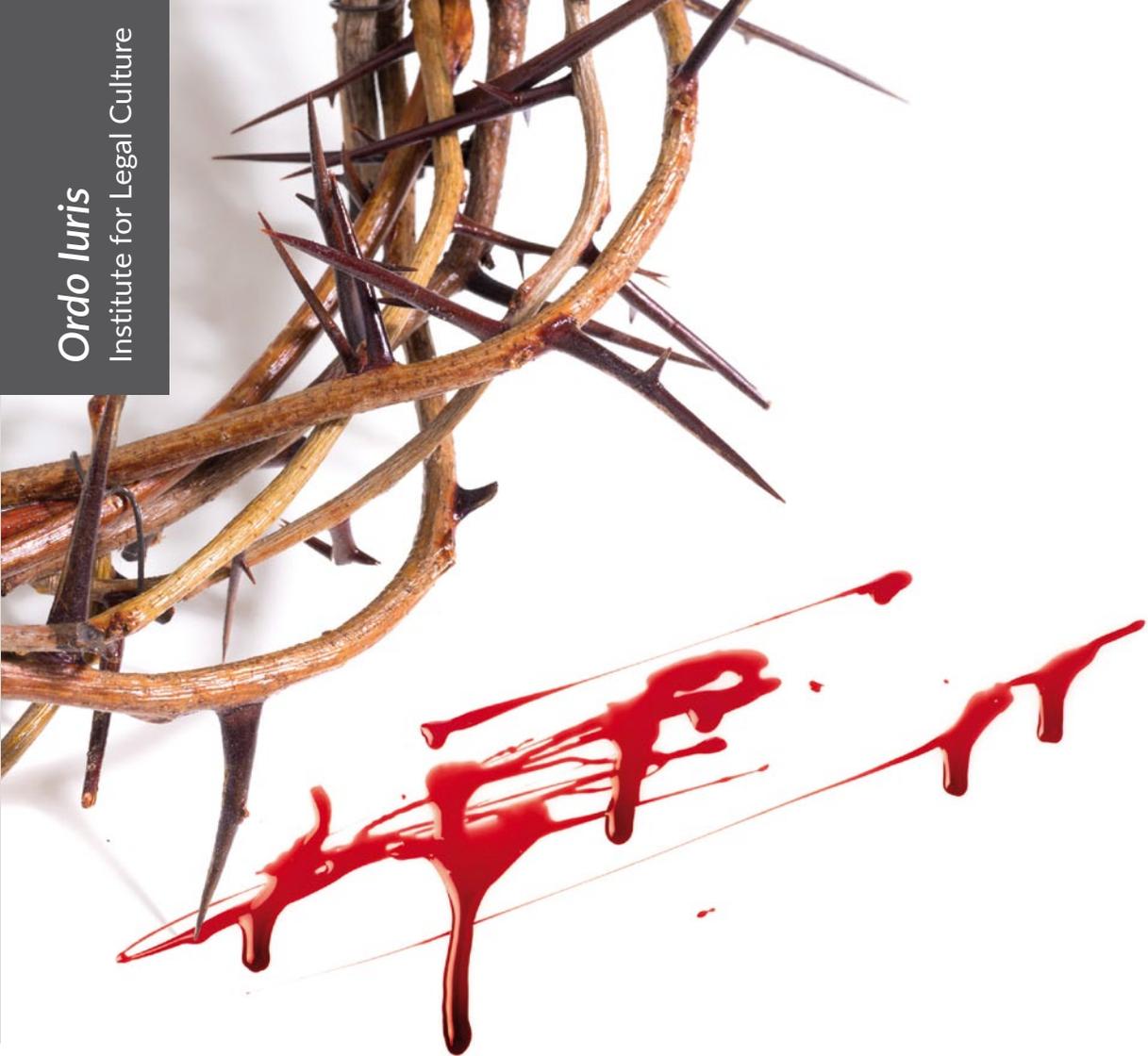


**Ordo Iuris**

Institute for Legal Culture



edited by A. Stępkowski and J. Banasiuk

# Persecution of Christians

*Time to React to Genocide*





**PERSECUTION OF  
CHRISTIANS:  
TIME TO REACT  
TO GENOCIDE**



# **PERSECUTION OF CHRISTIANS: TIME TO REACT TO GENOCIDE**

EDITED BY  
ALEKSANDER STĘPKOWSKI  
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WARSAW, MAY 2017



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# FOREWORD



Studies show that Christians continue to be the most persecuted group across the globe. In 2015, approximately 105,000 Christians were killed because of their faith. One year later, approximately 90,000 Christians lost their lives because they confess Jesus Christ as God and the Savior. Not a day goes by without news about the dramatic situation of Christians worldwide. This phenomenon, which could be rightly called Christianophobia, takes different forms, including acts of genocide.

Persecution of Christians has been recognized at many national and international fora and organizations. However, one can still notice the lack of comprehensive legal analysis of the situation of that particular religious group.

This report aims at filling in this gap by providing a systematic legal study both at the EU and at the international level. Ordo Iuris Institute for Legal Culture believes that the outcomes of the report will contribute to a better legal understanding of the actual situation and will help highlight real legal measures that can be taken in order to improve the lot of persecuted Christians.

JOANNA BANASIUK

ALEKSANDER STĘPKOWSKI



# INTRODUCTION



**I**t is beyond reasonable doubt that Christians are being persecuted today<sup>1</sup>. This persecution might take different forms, but mass murder is always the most serious and deserves special attention. Torture, ritual decapitation, as well as mass rape, have become an everyday reality. This applies in particular to the region of Syria, Levant, Lebanon and Iraq. According to some estimations, over the last decade the Christian community of almost 1.5 million in Iraq has been reduced to less than 0.1 million<sup>2</sup>. The local Christian community has virtually vanished. At the same time, numerous testimonies and evidence have been delivered to international organizations, pointing out the alarming number of acts of violence, intimidation and terror: ‘In both Iraq and Syria, no religious group has been free of ISIL’s depredations in areas it has conquered. ISIL has unleashed waves of terror upon Yazidis and Christians, Shia and Sunnis, as well as others who have dared to oppose its extremist views. When ISIL overtook Mosul, Iraq’s second largest city, it immediately murdered 12 dissenting Sunni clerics, kidnapped Christian priests and nuns, and levelled ancient houses of worship. A recent discovery of mass graves underscores the extent of the atrocities ISIL has perpetrated on foes of its ‘reign’<sup>3</sup>.

At the same time, the statement delivered by Bayan Sami Abdul Rahman, Kurdistan Regional Government Representative to the United States, should be regarded as symptomatic, as it declares that ‘what we are seeing today under ISIS is genocide. We should not be afraid of using that word. Politicians world-

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1 <http://www.skynews.com.au/news/politics/federal/2017/04/10/christians-most-persecuted-in-the-world--sukkarO.html> (access: 12 April 2017).  
2 Polish Bishops’ Pastoral Letter on the persecution of Christians, signed on 7 October 2015, read on 8 November 2015.  
3 United States Commission on International Religious Freedom. Annual Report 2015, p. 2.

wide, unfortunately, are afraid of this because genocide has legal implications for governments, for all of us. But we should call a spade a spade. When genocide is committed, we are obliged to take steps to prevent it and to help the victims and the survivors<sup>4</sup>.

This report is primarily focused on legal and extralegal action that should be undertaken in order to prevent the genocide of Christians that is being performed by ISIS activists. Moreover, it seems necessary to combine the legal means that are at the disposal of particular countries and international institutions, as well as the International Criminal Court and organizations such as the European Union. In order to discuss the above-mentioned issues, selected facts need to be provided and general causes of persecution of Christians need to be explained, enabling the legal qualification of ISIS' activity. Also, the complex issue of legal and diplomatic responses to ISIS activities needs to be analyzed both at the national and international level.

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4 *Women as Victims of Terrorism*, <http://www1.heritage.org/events/2015/09/women-as-victims-of-terrorism> (access: 12 April 2017); O. Enos, *State Department Finds ISIS Guilty of Genocide. What's Next*, <http://dailysignal.com/2016/03/17/state-department-finds-isis-guilty-of-genocide-whats-next/> (access:12 April 2017).



# THE PERSECUTION OF CHRISTIANS – GENERAL CAUSES, SELECTED FACTS, LEGAL QUALIFICATION

I.

Ordo Iuris

KARINA WALINOWICZ  
JANUSZ ROSZKIEWICZ  
OLAF SZCZYPIŃSKI

Nowadays, persecution based on religious affiliation or manifestation of faith is occurring in an increasing number of regions. **According to research that was published in 2015 by the Pew Research Center, Christians continue to be the most persecuted faith, and Christians were harassed, either by government or social groups, in 128 of the 198 countries included in the study (65%)<sup>5</sup>.** From verbal harassment and hostile feelings, to assaults and other unlawful actions, Christians in the areas with severe religious restrictions pay a heavy price for their faith. Battery, physical torture, confinement, rape, imprisonment, slavery, and even death, are only some examples of the persecution they experience on a daily basis<sup>6</sup>. The most severe acts of persecution are brutal physical attacks, like the anti-Christian riots in 2009 in the villages of Gojra and Korian in Pakistan, or persecution of Baha'i communities in Iran<sup>7</sup>. However, persecution does not necessarily only take physical form. It also includes isolation and discrimination in education and employment. Moreover, public authorities tend to use their criminal law to accuse Christians or other religious minorities of committing certain offences, including theft, adultery and gambling, ultimately imposing sentences as severe as the death penalty<sup>8</sup>. The above-mentioned facts clearly show that Christians are being harassed both by governments and by social groups.

#### Number of countries where Christians were harassed, by year

	2007	2008	2009	2010	2011	2012	2013	2014	2015
	107	95	96	111	105	110	102	108	128

Source: Pew Research Center analysis of external data. "Global Restrictions on Religion Rise Modestly in 2015, Reversing Downward Trend", <http://assets.pewresearch.org/wp-content/uploads/sites/11/2017/04/11091703/Pew-Research-Center-Religious-Restrictions-2017-FULL-REPORT.pdf>, p. 21.

- 5 Pew Research Center, 26 February 2015, *Latest Trends in Religious Restrictions and Hostilities*.
- 6 <https://www.opendoorsusa.org/christian-persecution/> (access: 12 April 2017).
- 7 *Religious Freedom. Pillar of the human rights policy in the external relations of the European Union*, a report to the Bishops of COMECE, p. 20.
- 8 *Ibidem*.

In Africa, the growing pressure of islamisation in a large number of states has resulted in increasing persecution of Christians. Asia and North Korea, as reported in the World Watch List 2016, remain the world's toughest states to practice Christianity.

According to the Open Doors report, in total, there were well over **7,000** Christians killed for faith-related reasons in 2016. That is a rise of almost **3,000** in comparison to conservative figures from 2015. According to the Center for the Study of Global Christianity there were over

**100,000**

Christians killed for faith-related reasons in 2016.

It must be highlighted, that number from Open Doors is an extremely conservative estimate. Firstly, Open Doors only track those casualties whose details about name and location has been confirmed. Secondly, this data does not include North Korea, and does not give the full picture for Syria and Iraq, since accurate records do not exist there.

Alternative data, which is better known in media, comes from the Center for the Study of Global Christianity. According to it's last report there was 90, 000 Christians killed for their faith in 2016<sup>9</sup>. These divergences stem from different methodology<sup>10</sup>.

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9 *Status of Global Christianity, 2017, in the Context of 1900–2050*, <http://www.gordonconwell.edu/ockenga/research/documents/StatusofGlobalChristianity2017.pdf> (access: 26 May 2017).

10 The CSGC estimated that there have been over 70 million Christians martyred in history. For a quantitative analysis of martyrdom it uses broad definition of Christian martyrs: "believers in Christ who have lost their lives prematurely, in situations of witness, as a result of human hostility". The work of counting Christian martyrs has continued into the twenty-first century because the phenomenon itself has persisted. From the 10-year period 2000–10, The Centre estimates that one million Christians were killed in martyrdom situations, an average of approximately 100,000 Christian martyrs each year. The vast majority of these were in the Democratic Republic of Congo. According to the International Rescue Committee, from 1998 to 2007 approximately 5.4 million excess deaths occurred in the DRC. While some deaths are directly related to violence, most victims died from indirect causes, such as disease or starvation. See: T. M. Johnson, G. A. Zurlo, *Christian Martyrdom as a Pervasive Phenomenon*, <http://www.gordonconwell.edu/ockenga/research/documents/2Countingmartyrsmethodology.pdf> (access: 26 May 2017) and also T. M. Johnson, *The case for higher numbers of Christian martyrs*, [http://www.gordonconwell.edu/resources/documents/csgc\\_Christian\\_martyrs.pdf](http://www.gordonconwell.edu/resources/documents/csgc_Christian_martyrs.pdf) (access: 26 May 2017).

**A ranking of the top 50 countries in which the persecution of Christians is most severe**

	COUNTRY	2017	2016		COUNTRY	2017	2016	
01.	North Korea	92/100	92/100		26.	Bangladesh	63/100	57/100
02.	Somalia	91/100	87/100		27.	Jordan	63/100	59/100
03.	Afghanistan	89/100	88/100		28.	Myanmar	62/100	62/100
04.	Pakistan	88/100	87/100		29.	Tunisia	61/100	58/100
05.	Sudan	87/100	84/100		30.	Bhutan	61/100	56/100
06.	Syria	86/100	87/100		31.	Malaysia	60/100	58/100
07.	Iraq	86/100	89/100		32.	Mali	59/100	55/100
08.	Iran	85/100	83/100		33.	Tanzania	59/100	57/100
09.	Yemen	85/100	78/100		34.	Cen. Afr. Rep.	58/100	59/100
10.	Eritrea	82/100	89/100		35.	Tajikistan	58/100	58/100
11.	Libya	78/100	79/100		36.	Turkey	58/100	56/100
12.	Nigeria	78/100	78/100		37.	Algeria	57/100	55/100
13.	Maldives	76/100	76/100		38.	Kuwait	57/100	56/100
14.	Saudi Arabia	76/100	76/100		39.	China	57/100	57/100
15.	India	73/100	68/100		40.	Djibouti	57/100	58/100
16.	Uzbekistan	71/100	70/100		41.	Mexico	57/100	56/100
17.	Vietnam	71/100	66/100		42.	Comoros	56/100	56/100
18.	Kenya	68/100	68/100		43.	Kazakhstan	56/100	55/100
19.	Turkmenistan	66/100	66/100		44.	United Arab Em.	55/100	55/100
20.	Qatar	65/100	65/100		45.	Sri Lanka	55/100	-
21.	Egypt	65/100	64/100		46.	Indonesia	55/100	55/100
22.	Ethiopia	64/100	67/100		47.	Mauritania	55/100	-
23.	Palestinian Terr.	64/100	62/100		48.	Bahrain	54/100	54/100
24.	Laos	64/100	58/100		49.	Oman	53/100	53/100
25.	Brunei	64/100	61/100		50.	Colombia	53/100	55/100

■ Increase in rank    
 ■ Decrease in rank    
 ■ Rank stayed the same    
 ■ New country

Source: World Watch List 2017, <https://www.opendoorsusa.org/christian-persecution/world-watch-list/> (access: 12 April 2017)

Statistics also show that more than 2,400 churches were attacked or damaged, which is over double the number seen last year<sup>11</sup>. According to other studies, in China alone, the number of cross removals and church demolitions totaled at least 1,500<sup>12</sup>. In general, the countries in which Christians face the biggest pressure and violence are North Korea, Iraq, Eritrea, Afghanistan, Syria, Pakistan, Somalia, Sudan, Iran, Libya and Nigeria<sup>13</sup>.

## 1. THE GENERAL CAUSES OF PERSECUTION OF CHRISTIANS

The persecution of religious communities can be analyzed from the perspective of its primary origin, known as the ‘**persecution engines**’<sup>14</sup>. As presented in the World Watch List 2016 report, there are various sources of persecution that Christians experience. However, according to their nature and their collective appearance, it is not uncommon.

According to the research, **the main persecution engines** are:

- **Islamic extremism** – an organized attempt to make the world Islamic; religious minorities may be tolerated, but only as second-class citizens;
- **religious nominalism** – making a territory or a state the province of a particular religion;
- **tribal antagonism** – an attempt to force the continuing influence of norms and values shaped in a tribal context (mainly in Africa);
- **organized corruption** – an attempt to create a climate of impunity, anarchy and corruption.

11 World Watch Research, *WWL 2016 Compilation 3 – All WWL documents (not including country persecution dynamic)*, January 2016, p. 7, <http://theanalytical.org/wp-content/uploads/2014/10/WWL-2016-Compilation-3-All-WWL-documents-not-including-Country-persecution-dynamics-Edition-2016-01-28.pdf> (access: 12 April 2017).

12 USCIRF 2016 Annual Report. p. 35, <http://www.uscirf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf> (access: 12 April 2017).

13 World Watch Research, *WWL 2016 Compilation 1 – Short version of all 50 country persecution dynamics*, January 2016, pp. 3-12, <http://theanalytical.org/wp-content/uploads/2014/10/WWL-2016-Compilation-1-Short-profiles-Edition-2016-02-01.pdf> (access: 12 April 2017).

14 *Ibidem*, p. 9 (they are most likely to occur in the Middle East and Africa).

**Other indicated persecution engines are:**

- **ecclesiastical arrogance** – imposition by one church of its own version of Christianity on the others and at the same time refusing to accept the validity of other traditions;
- **communist oppression** – an attempt to maintain communism as a prescriptive ideology and control the church through a system of registration;
- **dictatorial paranoia** – an attempt by a political leader and his clique to dominate every aspect of society. Christians are a threat to any totalitarian regime if they refuse to be dominated;
- **secular intolerance** – an attempt to eradicate religion from the public domain.

According to World Watch List 2016, **no less than 18 of the top 20 countries have ‘Islamic extremism’ as a main Christian persecution engine. Islamic extremism is at the same time a persecution engine used by ISIS**<sup>15</sup>. According to the State Department’s Country Report on Human Rights Practices, the brutality of ISIS was one of the most notable trends in human rights abuses in 2014<sup>16</sup>. Often, ISIS sought to eliminate those who did not conform to their extreme views on Islam, including other Sunni Muslims<sup>17</sup>. However, the anti-Christian motivation of the perpetrators of the Islamic State is a typical fundamentalist feature that allows it to be considered in terms of irrational and counterfactual prejudice against Christianity. In their statements, ISIS often declare the necessity of annihilating ‘crusaders’, who combine the decadent and hedonistic lifestyle prevalent in the West with Christianity, even though such a lifestyle is clearly contrary to the principles of Christianity. A spectacular expression of this fact is ISIS statement claiming responsibility for the attacks in Paris on 13 November 2015, in which ISIS describes Paris as ‘the capital of prostitution and crime’ and at the

15 Ibidem, p. 13.

16 <https://www.wilsoncenter.org/article/report-isis-human-rights-abuses-2014#sthash.P76o4nsl.dpuf>; <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (access: 12 April 2017).

17 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (access: 12 April 2017).

same time recognizes it as a modern leader of the Christian world. However, this latter argument cannot be considered to even be partially true. This world view of the supporters of the 'Caliphate' clearly shows that their intention of religious persecution is connected with the crimes committed by the members of ISIS, also when some of the victims, coming from the Western cultural circle, are not necessarily Christian, or, may even be hostile to Christianity for reasons which differ from those presented by ISIS<sup>18</sup>.

**As the most severe examples of persecution of Christians are taking place in the Middle East, this report presents selected data on persecution of Christians in connection with Islamic extremism as one of the main causes of severe attacks on Christian communities.** As background information, a short historical analysis of the evolution of the Islamic State will also be provided for a better understanding of current events.

## 2. SELECTED FACTS ON THE PERSECUTION OF CHRISTIANS IN CONNECTION WITH ISLAMIC EXTREMISM AS ONE OF THE MAIN CAUSES OF SEVERE ATTACKS ON CHRISTIANS

At the end of June 2014, the Sunni militant group declared the establishment of the Islamic State (IS) and implemented a strict version of Sharia law in large parts of Syria and Iraq, announcing the Caliphate (strict Islamic leadership). **ISIS is responsible for systematic and widespread violations, including targeting civilians, kidnappings, and executions<sup>19</sup>. ISIS also presented its vision of expansion into Europe.** In 2010, ISIS was still an Al Qaeda affiliate based in Iraq. Currently, the Caliphate is an Islamic state ruled by a 'caliph', Abu Bakr al-Baghdadi, who took up the reins of ISIS in 2010 and probably was killed in 2017 (latter information has not yet been confirmed). , seen by those swearing allegiance as the successor of the Prophet Muhammad. ISIS has already transformed from an umbrella organization focused mainly on Iraq and Syria into a transnational military force<sup>20</sup>.

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18 'In a blessed battle whose causes of success were enabled by Allah, a group of believers from the soldiers of the Caliphate (may Allah strengthen and support it) set out targeting the capital of prostitution and vice, the lead carrier of the cross in Europe – Paris.' <http://www.vox.com/2015/11/14/9734794/isis-claim-paris-statement> (access: 12 April 2017).

19 <https://www.hrw.org/world-report/2015/country-chapters/syria> (access: 12 April 2017).

20 <http://www.dailymail.co.uk/news/article-2674736/ISIS-militants-declare-formation-caliphate-Syria-Iraq-demand-Muslims-world-swear-allegiance.html> (access: 12 April 2017).



Source: <http://www.dailymail.co.uk/news/article-2674736/ISIS-militants-declare-formation-caliphate-Syria-Iraq-demand-Muslims-world-swear-allegiance.html> (access: 20 November 2015)<sup>21</sup>.

**Since June 2014, most Christians have fled areas already controlled by ISIS, thus becoming permanently displaced.**

It has been reported that **140,000** Christians have fled either to the Kurdish region or abroad, and those who stayed were forced to convert to Islam. Also, many Christians have been kidnapped, abducted and physically harmed or killed<sup>22</sup>. Importantly, since the beginning of the civil war in 2011, **700,000** Christians have fled from this area, with **200,000** leaving it in 2014. As a result, there are now 1.1 million Christians in this region, out of the 1.8 million present there before

<sup>21</sup> A map officially published by ISIS in June 2014, together with a five-year plan for global domination. 'As well as the Middle East, North Africa and large areas of Asia, it also reveals ISIS' ambition to extend into Europe. Spain, which was Muslim-ruled until the late 15th Century, would form part of the Caliphate, as would the Balkan states and eastern Europe, up to and including Austria.'

<sup>22</sup> <https://www.opendoorsusa.org/christian-persecution/world-watch-list/syria/> (access: 12 April 2017).

2011<sup>23</sup>. In the city of Raqqa, in 2014, Christians were forced to sign a 'dhimmi contract'<sup>24</sup> violating their religious freedom. Moreover, it has been documented that IS fighters abducted Yazidi and Christian women and children, and held them as sex slaves.

However, Muslims are also in danger. Historically, in the early centuries of the religion, many Christians, Jews, and Zoroastrians who converted to Islam chose to become Shia rather than Sunni as a protest against the ethnic Arab empires that treated non-Arabs as second-class citizens. Their religions influenced the evolution of Shia Islam as distinct from Sunni Islam in rituals and beliefs<sup>25</sup>. ISIS believes that the Shias are apostates and must die in order to forge the pure form of Islam. These two main branches of Islam (Sunnis and Shias) differ in their beliefs over who is the true inheritor of the mantle of the Prophet Muhammad. The Shias believe that Islam was transmitted through the household of the Prophet Muhammad. The Sunnis, on the other hand, believe that it comes down through the followers of the Prophet Muhammad, who, they say, are his chosen people<sup>26</sup>. **ISIS extremists hold themselves charged with the task of establishing the policy – strictly based on the Quran – for all Muslims and all the territories they occupy. One of the first things ISIS did after announcing a Caliphate was to declare all emirates and sultanates illegal.** Therefore, anybody who pledges allegiance to the Islamic State thereby agrees to no further recognition of either

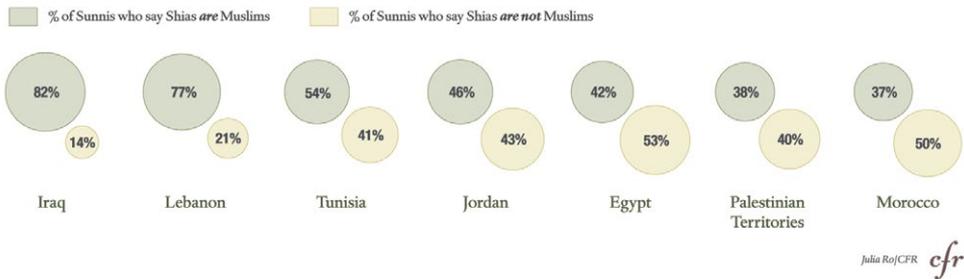
23 World Watch List 2015 – Part 1, World Watch Research, p. 14.

24 'Dhimma' literally means 'promise, protection and security', which will be received by non-Muslims as long as they agree to pay exemption tax. 'Dhimma contract' is an agreement between the Muslims and non-Muslims to allow the latter to stay in 'dār al-Islam', keeping their faith and enjoying the protection of the Muslims providing they also commit themselves to pay 'jizya' and accept the general rulings of the Muslims. See more: *Refugee status in Islam, Concepts of protection in Islamic tradition and international law*, Arafat Shoukri, 2011. They were otherwise equal under the laws of property, contract, and obligation.

25 [http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=otr-marketing\\_url-sunni\\_shia\\_infoguide](http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=otr-marketing_url-sunni_shia_infoguide) (access: 12 April 2017).

26 <http://timesofindia.indiatimes.com/world/middle-east/4-questions-ISIS-rebels-use-to-tell-Sunni-from-Shia/articleshow/37257563.cms>, Read more: [http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=otr-marketing\\_url-sunni\\_shia\\_infoguide](http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=otr-marketing_url-sunni_shia_infoguide) (access: 12 April 2017).

the borders, laws or authority of current Muslim-led states<sup>27</sup>. There have been frequent accounts of ISIS fighters capturing groups of people and then releasing the Sunnis while the Shias have been singled out for execution<sup>28</sup>.



Source: Pew Research Center, 9 August 2012, 'The World's Muslims: Unity and Diversity'.

**As ISIS continues to control other territories, the concern about violence and aggression in the neighboring countries is increasing rapidly. As a result, not only Christians or other Non-Muslim minorities are in danger – the concern is high also among other Muslims, especially among Muslims in Lebanon (90% of Sunnis and 87% of Shia), in Jordan (62%), and in Palestinian territories (54%). Muslims who live in those countries are deeply worried about ISIS<sup>29</sup>.**

**THERE IS NO DOUBT** that today the world is facing again the crime of genocide and crimes against humanity for which the perpetrators need to be brought to justice. Several international reports have estimated the scale of those crimes based on the following facts concerning the most serious perpetrators, i.e. Iran, Iraq, Syria, Saudi Arabia, Libya, Sudan, and Eritrea.

27 <http://www.dailymail.co.uk/news/article-2674736/ISIS-militants-declare-formation-caliphate-Syria-Iraq-demand-Muslims-world-swear-allegiance.html> (access: 12 April 2017).

28 <http://timesofindia.indiatimes.com/world/middle-east/4-questions-ISIS-rebels-use-to-tell-Sunni-from-Shia/articleshow/37257563.cms> (access: 20 November 2015).

29 World Watch List 2015 – Part 1, World Watch Research, p. 13.

In **Iran**, the constitution guarantees the right of protection of religious minorities to exercise their freedom, but in reality the law is discriminatory, in particular against non-Muslims. Conversion from Islam to any other religion in Iran is punished by death or imprisonment. Countrywide surveillance and arrests of the Christian minority have caused many of them to attend unregistered house churches. According to the United States Commission on International Religious Freedom, **since 2010, authorities have arbitrarily arrested and detained more than 550 Christians throughout the country**. Iranian authorities have targeted official churches in Iran, demanding that they provide a list of names and IDs of the worshipers. As indicated in the UN's Special Rapporteur on Human Rights in Iran March 2014 Report: 'In recent years, Christians, many of whom are converts from Muslim backgrounds, have faced a (...) persecution. At least 49 Christians were reportedly being detained in the Islamic Republic of Iran as of January 2014. In 2013 alone, the authorities reportedly arrested at least 42 Christians, of whom 35 were convicted for participation in informal "house churches", associated with churches outside the Islamic Republic of Iran, perceived or real evangelical activity, and other standard Christian activities. Sentences range from one to 10 years of imprisonment. The Christians most commonly prosecuted appear to be converts from Muslim backgrounds or those that proselytize or minister to Iranian Muslims. Iranian authorities at the highest levels have designated house churches and evangelical Christians as threats to national security'<sup>30</sup>. There was also a case of imprisonment of an American pastor, Saeed Abedini, who was convicted in 2013 and sentenced to eight years in prison for 'threatening national security in Iran' due to his activity in the Christian house church movement. He was released in January 2016 in the prisoner swap between the United States and Iran<sup>31</sup>. **Moreover, the US Commission on International Religious Freedom reported a significant increase in the number of physical assaults and beatings of Christians in prisons. Following the accounts of some human rights activists, the Commission believes that the assaults against converts who are the leaders of underground house churches, are meant to intimidate others who may wish to convert to Christianity**. In December 2015, a number of private

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30 <http://www.iranhrdc.org/english/human-rights-documents/united-nations-reports/un-reports/1000000443-special-rapporteurs-march-2014-report-on-the-situation-of-human-rights-in-the-islamic-republic-of-iran.html>, points 39-40 (access: 12 April 2017).

31 USCIRF, *op. cit.*, p. 47.

Christmas services were raided by authorities and nearly a dozen church members in Tehran were arrested. In April 2015, a revolutionary court upheld a one-year prison sentence and two-year travel bans on 13 Christian converts arrested in 2013<sup>32</sup>. Apart from Christians, another large religious group discriminated against in Iran is Baha'i. The members of Baha'i have no civil rights, are banned from universities, and are excluded from the social pension system. Jews and Zoroastrians<sup>33</sup> are also victims of intolerance and discrimination against minorities.

For many, Iraq has become a symbol of a war against Christians in the whole Middle East. In 2003, the size of the Christian population was estimated at 1,000,000. A decade later, it dwindled to 500,000. Today, the number seems to be as low as 250,000 to 300,000<sup>34</sup>. The situation with respect to religious freedom, especially for Christians, has seriously deteriorated under the influence of the establishment of ISIS in large parts of Iraq. 'Islamic extremism' is considered to be the main persecution engine<sup>35</sup>.

Without a doubt, the current situation in Iraq is extremely serious and also the reasons for it are exceptionally complex. Nevertheless, the constitution formally guarantees full freedom of religion or belief, but the law in Iraq is subordinate to the rules of Islam and since the Sharia law was implemented, Christians have been forced to convert to Islam, flee, or pay toleration and protection taxes for religious minorities. Failure to do this can mean death. In Iraq, Christians are victims of large-scale kidnappings and murders. Many Christian holy cities with a rich tradition and history have been destroyed. **Also, a religious group of Yazidis is facing discrimination and genocide. Besides the thousands of Yazidis who were killed, thousands of women and children were enslaved by ISIS and given as rewards to their fighters, or sold as sex slaves. Also, according to the UN report from 2010, ISIS 'directly and systematically targets Iraq's various diverse ethnic and religious communities, subjecting them to a range**

32 *Ibidem*.

33 World Watch List 2015 – Part 1, World Watch Research, p. 27.

34 USCIRF, *op. cit.*, p. 100.

35 World Watch Research, *WWL 2016 Compilation 3, op. cit.*, pp. 12-13.

*of gross human rights abuses' and these acts 'amount to war crimes and crimes against humanity'*<sup>36</sup>. In turn, the US Commission on International Religious Freedom is convinced that *ISIL threatens the region, Iraq's stability, and human rights and religious freedom for all Iraqis. ISIL's violent religious and political ideology leaves no room for religious diversity or freedom of thought or expression. The group has deliberately expelled minority communities from their historic homelands, forced them to convert to ISIL's version of Islam, raped and enslaved women and children, and tortured and killed community members, including by stoning, electrocution, and beheading*<sup>37</sup>. As the main report indicates, the establishment of IS influenced even more significantly various aspects of Christians' lives (private, family, community, national and church). Of the five aspects, pressure is focused in particular on three of them: community, national and church. In areas under the control of ISIS, churches and monasteries are in general either demolished or used for other non-religious purposes<sup>38</sup>. Iraq's Ministry of Human Rights announced that the jihadist fighters of the Islamic State committed at least four million human rights abuses in 2014, inter alia child recruitment, abductions, rapes, and killing of civilians. Since 2014, when ISIS took control over Iraq, approximately 3,000 people have been reported missing. ISIS has no regard for human rights and barbarically kills and beheads civilians in the areas they control. The evidence gathered by Iraq's ministry shows that during the ISIS surge in Iraq in 2014, there were 4 million human rights violations against civilians committed by ISIS<sup>39</sup>.

In August 2015, Iraq's Ministry of Defence reported that ISIS had killed 2,000 Iraqis in the largely Christian Nineveh Plains between January and August 2015, and that more than 125,000 Christians had fled to Kurdistan for protection. In Kirkuk, ISIS used churches as bases, desecrated cemeteries and demolished Assyrian monasteries. In late January 2016, it was reported that ISIS had destroyed the oldest

36 Report on the Protection of Civilians in Armed Conflict in Iraq July–September 2014, p. 25.

37 USCIRF, *op. cit.*, p. 100.

38 Report on the Protection of Civilians in Armed Conflict in Iraq July–September 2014, *op. cit.*

39 <http://rudaw.net/english/middleeast/iraq/040720151> (access: 12 April 2017).

Christian monastery in Iraq, St. Elijah's Monastery in Erbil, which had been a place of worship for more than 1,400 years. The destruction probably occurred between August and September 2014<sup>40</sup>.

Nowadays, as reports show, there is nearly a complete lack of freedom of religion or belief in all aspects of individual and communal life, in both the public and private spheres. ISIS has introduced the caliphate in large parts of **Syria**, where it is responsible for many brutal atrocities. For instance, a crucifixion of a 17-year-old boy for apostasy and decapitation of four men for blasphemy are only a few examples. ISIS is also reported to be holding hundreds of Assyrian Christians as hostages<sup>41</sup>. Also, public expressions of Christian faith are prohibited and church buildings or monasteries cannot be repaired or restored<sup>42</sup>. The main reason for Syria's high rate of Christian persecution is the increasing influence of radical Islamic groups, reaching an all-time high with the establishment of the Islamic State. The main persecution engine in Syria is 'Islamic extremism.' **In Syria, ISIS extremists have seized control of a third of its territory since 2014, and have been routinely carrying out large-scale kidnappings, suicide bombings, executions, and beheadings**<sup>43</sup>. According to the US Commission on International Religious Freedom, the death toll in the conflict has reached more than 250,000<sup>44</sup>. The spread and intensification of fighting has led to a dire humanitarian crisis with millions internally displaced or seeking refuge in neighboring countries<sup>45</sup>. This situation has been also recognized and confirmed by the ICC Prosecutor in his statement<sup>46</sup>:

<sup>40</sup> USCIRF, *op. cit.*, p. 101.

<sup>41</sup> 2013 Annual Report and 2014 Annual Report, *The state of Freedom of Religion or Belief in the World*, European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance.

<sup>42</sup> World Watch Research, *WWL 2016 Compilation 2 - Long version of all 50 country persecution dynamics*, January 2016, p. 30.

<sup>43</sup> <http://rudaw.net/english/middleeast/iraq/040720151> (access: 12 April 2017).

<sup>44</sup> USCIRF, *op. cit.*, p. 120.

<sup>45</sup> <https://www.hrw.org/world-report/2015/country-chapters/syria> (access: 12 April 2017).

<sup>46</sup> [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx) (access: 12 April 2017).

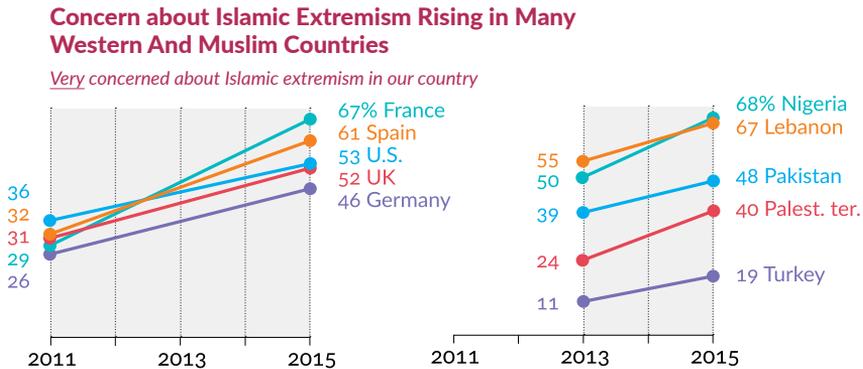
Since the summer of 2014, my Office has been receiving and reviewing disturbing allegations of widespread atrocities committed in Syria and Iraq by the so-called Islamic State of Iraq and al-Sham/Greater Syria ('ISIS' aka 'ISIL', 'Daesh' or 'IS'). Crimes of unspeakable cruelty have been reported, such as mass executions, sexual slavery, rape and other forms of sexual and gender-based violence, torture, mutilation, enlistment and forced recruitment of children and the persecution of ethnic and religious minorities, not to mention the wanton destruction of cultural property. The commission of the crime of genocide has also been alleged (...) The information gathered indicates that several thousand foreign fighters have joined the ranks of ISIS in the past months alone, including significant numbers of State Party nationals from, (inter alia) Tunisia, Jordan, France, the United Kingdom, Germany, Belgium, the Netherlands and Australia. Some of these individuals may have been involved in the commission of crimes against humanity and war crimes. A few have published their heinous acts through social media. The information available to the Office also indicates that ISIS is a military and political organization primarily led by nationals of Iraq and Syria. Thus, at this stage, the prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIS, appear limited (...) It bears emphasizing that under the Rome Statute, the primary responsibility for the investigation and prosecution of perpetrators of mass crimes rests, in the first instance, with the **national authorities**. I remain committed to consulting with the relevant States to coordinate, and possibly exchange information on crimes allegedly committed by their nationals to support domestic investigations and prosecutions, as appropriate. My Office also remains open to receiving additional information which could provide further clarity on the positions occupied by State Party nationals within the ISIS organizational hierarchy.

In December 2015, the USCIRF concluded that ISIL was committing genocide against the Christian, Yazidi, Shia, Turkmen, and Shabak communities in the areas it controls in Iraq and Syria, and crimes against humanity against these and other groups<sup>47</sup>. Also, the US Secretary of State, John Kerry, in his press state-

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<sup>47</sup> USCIRF, *op. cit.*, pp. 121-122.

ment of 17 March 2016, said that ISIS is responsible for genocide against groups in areas under its control, including Yazidis, Christians, and Shia Muslims. Daesh is genocidal by self-proclamation, by ideology, and by actions – in what it says, what it believes, and what it does<sup>48</sup>.



Note: Question was last asked in Western countries in 2011. In countries with significant Muslim populations, 2013 is used as a reference point because it was the last time the question was asked prior to ISIS becoming a widely known terrorist organization.

Source: Spring 2015 Global Attitudes survey, Q23

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According to several reports released recently, Saudi Arabia is one of the worst violators of freedom of religion and belief in the world<sup>49</sup>. Islam is named in the constitution as the official and the only religion of Saudi Arabia. The country's legal system is based on a particular school of Sunni Islamic jurisprudence. The state religion cannot be criticized, abandoned, or insulted in any other way. Non-Muslim clergy cannot enter the country for the purpose of conducting religious services such as sacraments in the Catholic religion<sup>50</sup>. **Saudi Arabia has also passed a law which defines atheism as an act of terrorism.** Moreover, Saudi Arabia spends enormous sums of public and private money on promoting a particularly extremist interpretation of Islam. Also, the zeal of religious police often leads to summary arrests and torture in prison. The police often imprisons

- 48 Secretary's of State statement Remarks on Daesh and Genocide, 17 March 2016, <http://www.state.gov/secretary/remarks/2016/03/254782.htm> (access: 12 April 2017).
- 49 2013 Annual Report and 2014 Annual Report, *The state of Freedom of Religion or Belief in the World*, European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance.
- 50 United States Department of State, *Saudi Arabia*, [in:] *International Religious Freedom Report for 2015*, p. 15, <http://www.state.gov/documents/organization/256499.pdf> (see: 12 April 2017).

members of minority religious groups – such as Christians and Shia Muslims – and only release them if they agree to sign a document attesting to the renunciation of their faith<sup>51</sup>.

**Concern about Extremism Rising in West, but Falling in Russia**

*Very concerned about Islamic extremism in our country*

	2005	2006	2011	2015	11-15
	%	%	%	%	Change
France	32	30	29	67	+38
Spain	43	35	32	61	+29
UK	34	42	31	52	+21
Germany	35	40	26	46	+20
U.S.	31	38	36	53	+17
Italy	-	-	-	53	-
Australia	-	-	-	48	-
Canada	22	-	-	33	-
Poland	7	-	-	22	-
Russia	52	40	35	23	-12

Source: Spring 2015 Global Attitudes survey, Q23

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In **Libya**, Christian immigrants and workers from Egypt are considered to be the main target of religious violence. Islamic extremism is considered to be the main persecution engine in that area. In this state, complete chaos and impunity prevail, leading to numerous abductions and decapitations of Christian men throughout the region. The violence also targets shrines and cemeteries<sup>52</sup>. Within the context of anarchy and absent rule of law, Christians are squeezed between fanatical religious groups and criminal gangs. **Most Libyan Christians are afraid to hold meetings with other believers, as any kind of religious gathering other than those Islamic in character is forbidden.** Migrant Christians are allowed to have their own churches, but Libyans are not allowed to attend. Currently, fanati-

51 *Religious Freedom. Pillar of the human rights policy in the external relations of the European Union*, a report to the Bishops of COMECE, p. 17.

52 2013 Annual Report and 2014 Annual Report, *The state of Freedom of Religion or Belief in the World*, Europea Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance.

cal movements such as the Salafists are responsible for most of the pressure on and violent incidents against Christians<sup>53</sup>.

In **Sudan**, radical Islamic tendencies have been increasing since the Christian majority in South Sudan broke away from Sudan. As of July 2014, the government stopped issuing permits for building new churches, claiming that the current number of churches is sufficient for the Christians remaining in Sudan after South Sudan's 2011 secession. In 2015, government officials stiffened penalties for apostasy and blasphemy, and continued to arrest those accused of apostasy, and Christians. According to Article 126 of the Criminal Code, conversion from Islam is a crime punishable by death<sup>54</sup>. The widely-known story of Meriam Ibrahim is a clear example of existing Islamic pressure and human rights violation. She married a Christian man, was imprisoned on charges of adultery, and sentenced to death for allegedly committing apostasy from Islam. Violence against Christians in Sudan has shifted from targeting individuals to indiscriminate attacks against Christians. There have been numerous faith-related killings, and attacks on at least ten Christian properties. More than thirty Christians have been killed as a result of a targeted government ordered bombing<sup>55</sup>. Since 2011, Sudan's Christian community has been facing arrests for proselytization, attacks on religious buildings, closure of churches and Christian educational institutions, and confiscation of religious literature. Recently, Telahoon Nogosi Kassa Rata, a leader of the Fellowship of University Christian Students and a leader of the Khartoum North Evangelical Church, was held in detention by Sudan's National Intelligence and Security Service. Since December 2015, he has neither been charged with an offence nor granted access to a lawyer or his family<sup>56</sup>.

**Eritrea** has remained under the repressive regime of Isaias Afewerki. The Eritrean government puts massive pressure on Christians and continuously targets individuals in all spheres of life. Eritrean Christians face a lot of pressure and violence, especially those who used to be Muslims and subsequently converted to Christianity.

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53 World Watch List 2015 – Part 1, World Watch Research, p. 31.

54 USCIRF, *op. cit.*, pp. 64-65.

55 *Ibidem*, p. 14.

56 USCIRF, *op. cit.*, p. 67.

The government has intensified its violations against Christians and their freedom, arresting more than 138 believers and church leaders without due process of law. There are only four officially recognized religions, which are the Coptic Orthodox Church of Eritrea, Sunni Islam, the Roman Catholic Church, and the Evangelical Church of Eritrea. Although the Baha'i community, the Presbyterian Church, the Methodist Church, and the Seventh-day Adventists submitted the required applications, they still lack a legal basis on which they can practice their faiths, which includes holding services or other religious ceremonies. Leaders and members of unregistered communities that continue to practice their faith are punished by imprisonment and fines. Currently, 1,200 to 3,000 persons are imprisoned on religious grounds in Eritrea<sup>57</sup>. In June 2014, The UN Human Rights Commission established a Commission of Inquiry to investigate human rights abuses in Eritrea<sup>58</sup>.

**Concerns about Islamic extremism are still growing. The awareness of ISIS' expansion and concerns related to it are increasing within the European community.** According to the 2011 Pew's poll, Europeans are very concerned about Islamic extremism in their countries. Comparing to the previous poll, indicators increased by 38 percentage points in France, 29 points in Spain, 21 points in the United Kingdom, 20 points in Germany, and 17 points in the United States<sup>59</sup>. The following diagram shows the concern about Islamic Extremism rising in Western and Muslim countries.

According to the Pew Research Center, '**general concern about extremism in these countries is closely associated with worries about the international reach of ISIS.** In 20 out of the 21 countries surveyed, people who are very concerned about the ISIS threat in Iraq and Syria are significantly more worried about the extremist threat in general.'

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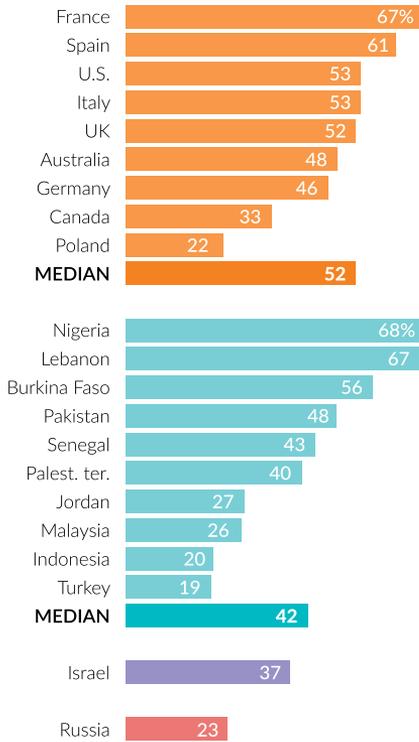
<sup>57</sup> *Ibidem*, pp. 39-40.

<sup>58</sup> *Ibidem*, p. 29.

<sup>59</sup> <http://www.pewglobal.org/2015/07/16/extremism-concerns-growing-in-west-and-predominantly-muslim-countries/> (access: 12 April 2017).

### Western Nations More Worried about Extremism than Countries with Significant Muslim Populations

*Very concerned about Islamic extremism in our country*



Question wording "How concerned, if at all, are you about Islamic extremism in our country these days? Are you very concerned, somewhat concerned, not too concerned, or not at all concerned about Islamic extremism in our country these days?"

Source: Spring 2015 Global Attitudes survey. Q23.

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## 3. HUMAN RIGHTS GUARANTEES AND LEGAL QUALIFICATION

It is hard to talk about genocide without serious consideration of the importance of the natural right to life that is inherent for every human being. Denying this right to a specific group of people because of a particular trait held by that group has always led to barbarism and injustice. Importantly, recognition of the right to life is therefore the key point in talking about human rights and fundamental freedoms. **Protection of life is universally recognized at the international level, starting with the Universal Declaration of Human Rights (UDHR)<sup>60</sup>, European**

<sup>60</sup> Article 3 UDHR.

**Convention on Human Rights (ECHR)<sup>61</sup> and the Charter of Fundamental Rights of the EU (CFREU)<sup>62</sup>.** These legal acts provide protection against actions infringing this fundamental right of the whole of humanity. Moreover, protection of human life is also widely recognized by Islamic countries as being firmly grounded in the Quran<sup>63</sup> and declared in the Arab Charter of Human Rights<sup>64</sup> as well as in the Cairo Declaration of Human Rights in Islam<sup>65</sup>.

The very essence of human rights is an assumption, therefore, that the fundamental right to life includes a number of freedoms, which constitute guarantees for the preservation of inalienable and inherent human dignity. In the first place,

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61 Article 2 ECHR.

62 Article 2 CFREU.

63 Protecting life against all possible dangers and keeping it safe is an issue agreed upon by all religions and is clearly stipulated in verse 4/29 of the Holy Quran: 'Do not kill yourselves or one another. Indeed, Allah is to you ever Merciful'.

64 Article 5

1. Every human being has the inherent right to life.

2. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 3

1. Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.

2. The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter in order to ensure protection against all forms of discrimination based on any of the grounds mentioned in the preceding paragraph.

65 Cairo Declaration on Human Rights in Islam, Aug. 5, 1990 <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf> (access: 12 April 2017)

Article 2:

(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except for a shari'ah prescribed reason.

(b) It is forbidden to resort to any means which could result in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari'ah.

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

Article 3:

(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate or dismember dead bodies. It is required to exchange prisoners of war and to arrange visits or reunions of families separated by circumstances of war.

(b) It is prohibited to cut down trees, to destroy crops or livestock, to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

a catalogue of human rights should provide the right to preserve life. **That is why declarations about human rights state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 5 UDHR, ECHR article 3, article 4 CFREU). Moreover, every human being is endowed with reason and conscience (conf. article 1 UDHR).** Acting in accordance with those two natural orders constitutes the foundation of humanity itself. Preservation of this right is guaranteed by the right to freedom of thought, conscience and religion. **This right includes freedom to change one's religion or beliefs, and freedom, either alone or in a community with others and in public or private, to manifest one's religion or belief in teaching, practice, worship and observance (article 18 UDHR, article 9 of the ECHR, article 10 CFREU).** Taking into account the subject of this study, we also have to bear these rights in mind when we wish to analyze the situation of Christians and genocide carried out on them.

It is beyond doubt that in each EU Member State ritual murder of Christians meets the criteria for classification as the crime of homicide. However, it should be noted that this fact, in and of itself, does not ensure the effectiveness of prosecution of the perpetrators, especially since it is difficult to expect the involvement and cooperation of the countries where murders occur. Moreover, even if such involvement exists, they are often not able to take the necessary steps to properly address the problem. It is difficult to talk about exercising sovereign power in a country part of which is occupied by an armed criminal group, which ISIS certainly is. This happens in many areas that had formerly been the part of Syria, the Levant, Lebanon or Iraq. So, there is a need to determine 1) which types of offences of this sort are prosecuted in different national legal systems and whether such offences were committed outside the country in question, and 2) which offences are eligible for consideration by the International Criminal Court.

**With regard to the national legal systems of the EU Member States, the subject for this study of ISIS' action can be described as crimes against humanity, for which there are appropriate sections of the penal codes or specific laws regulating the issue identified in most European countries. The most serious crimes committed by ISIS activists amount to ethnic cleansing and genocide, the definition of which has been<sup>66</sup> introduced in all EU Member States<sup>66</sup>.**

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66 The Council of the European Union, *Strategy for the EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States*, 20 November 2014, p. 14.

There is no formal legal definition of ethnic cleansing, however, in the broad sense, it is defined as a systematic forced removal of ethnic or religious groups from a given territory by a more powerful ethnic group, with the intent of making it ethnically homogeneous<sup>67</sup>. The force applied might be various forms of forced migration (forcible deportation), intimidation, as well as mass murder.

Ethnic cleansing is usually accompanied by efforts to remove physical and cultural evidence of the targeted group in the territory through the destruction of homes and social centers, and by the desecration of monuments, cemeteries, and places of worship. While the term 'ethnic cleansing' within the meaning of international law concerns the expulsion of a group of people from a particular territory, the term '**genocide**' means the total extermination of this population.

As the International Court of Justice declared in its advisory opinion of 28 May 1951 on Reservations to the UN Convention on Prevention and Punishment of the Crime of Genocide as adopted on 9 December 1948, 'the principles underlying the Convention are recognized by civilized nations as binding on States even without any conventional obligation'<sup>68</sup>. Therefore, the conventional prohibition of the crime of genocide, as expressed in article II of that Convention, is only declaration and confirmation in writing of previously existing international customary law. Article II describes genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, by means of: (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.

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67 W. Ferdinandusse, *The Interaction of National and International Approaches in the Repression of International Crimes*, *The European Journal of International Law* Vol. 15 No.5 (2004), pp. 1041-1053.

68 Advisory Opinion of May 28th 1951. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. ICJ Reports 1951, s. 23.

According to Raphael Lemkin, genocide was defined as a coordinated strategy to destroy a group of people, a process that could be accomplished through total annihilation as well as strategies that eliminate key elements of the group's basic existence, including the language, culture, and economic infrastructure<sup>69</sup>. His view was reflected in the text of the Rome Statute of the International Criminal Court, signed in Rome on 17 July 1998. According to Article 6, the crime of genocide consists *inter alia* of the killing of members of a religious group with the intent to destroy the group in whole or in part.

Undisputedly, ISIS members declare their intent of killing people belonging to different religious groups, especially Christians. A report submitted to the 28th session of the UN Human Rights Council clearly calls such actions 'genocide':

***Members of ISIS may have perpetrated genocide against the Yazidi community<sup>70</sup>. The intention of annihilating Christians is also shown by the drastic reduction of the number of Christians in Iraq. The need to prosecute the perpetrators responsible for genocide has been pointed out by the Council of the European Union in the Strategy network of EU contact points<sup>71</sup>.***

Persecution of Christians can take a variety of forms, however mass murder is always the most significant one. Most crimes against Christians are committed with the intention of annihilating them. For this reason, they can without doubt be described as ethnic cleansing or genocide. Therefore, these acts require more attention from countries which call themselves defenders and propagators of human rights. Without their strong reaction, there will be no room to discuss the future of Christians and the future of human rights. A question that should be asked is: Is there any legal basis for effective criminal prosecution?

69 *Coining a Word and Championing a Cause: The Story of Raphael Lemkin*, <http://www.ushmm.org/wlc/en/article.php?ModuleId=10007050> (access: 10 April 2017).

70 *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 so-called Islamic State in Iraq and the Levant and associated groups*, 13 March 2015, point 78.

71 The Council of the European Union, *Strategy for the EU Genocide...*, p. 8.

# CHANCES FOR EFFECTIVE CRIMINAL PROSECUTION



Ordo Iuris

KARINA WALINOWICZ  
MARCIN RAU

If the nature of crimes committed by ISIS activists is determined, prospects for the efficient prosecution of individual perpetrators of murder must be addressed. The vast majority of the EU's activities aimed at combating the crime of genocide are focused on cooperation with the International Criminal Court (ICC), particularly by supporting the activities of the Criminal Court and prosecuting perpetrators of international crimes by using national legal institutions of the EU Member States. In this context, we need to analyze:

- 1) Prospects for the involvement of the International Criminal Court
- 2) The possible actions within the scope of the competences of the European Union
- 3) Means at the disposal of the EU Member States

## 1. PROSPECTS FOR THE INVOLVEMENT OF THE INTERNATIONAL CRIMINAL COURT

### 1.1. General remarks

**The International Criminal Court<sup>70</sup>, established by adoption of the Rome Statute on 17 July 1998 by 120 States, is an independent, permanent court founded to prosecute individuals accused of the most serious crimes that cause the most international concern, namely genocide, crimes against humanity, and**

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<sup>70</sup> [http://www.icc-cpi.int/en\\_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx) (access: 20 November 2015); [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en) (access: 12 April 2017).

'The Statute was adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. In accordance with its article 125, the Statute was opened for signature by all States in Rome at the Headquarters of the Food and Agriculture Organization of the United Nations on 17 July 1998. Thereafter, it was opened for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute was opened for signature in New York, at United Nations Headquarters, where it will be until 31 December 2000.'

**war crimes<sup>71</sup>. The Rome Statute entered into force on 1 July 2002, after ratification by 60 countries.** The system of cooperation under the Rome Statute may be regarded as a compromise and as a hybrid system. It contains a combination of elements of vertical and horizontal cooperation in criminal matters of both the supra-national and inter-state model of cooperation<sup>72</sup>. **The principles of the Rome Statute of the ICC, as well as those governing its functioning, are fully in line with the principles and objectives of the European Union.** The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights; it is deemed to contribute to peace, security, mutual respect among people and the protection of human rights, as well as to the strict observance and the development of international law<sup>73</sup>. **In its international policy, the European Union is committed to cooperation to prevent serious crimes and to end impunity for the perpetrators under the jurisdiction of the ICC<sup>74</sup>.**

The scope of jurisdiction of the International Criminal Court is defined in the previously mentioned Rome Statute. According to Article 5 par. 1 of the Rome Statute, the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole, including those directly indicated just for the crime of **genocide**, which means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group: killing the members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group (Article 6 Statute of Rome). **The term ‘genocide’ was primarily introduced into legal language by the UN Convention on the Prevention and Punishment of the Crime of Genocide on 9 December 1948. In international law, genocide is defined as the intent to destroy one of four protected types of groups: racial, national, ethnic, or reli-**

71 [http://www.icc-cpi.int/en\\_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx) (access: 12 April 2017).

72 *The International Criminal Court and national jurisdictions*, Mauro Politi; Federica Gioia, 2009.

73 [http://www.icc-cpi.int/en\\_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx) (access: 12 April 2017).

74 [http://www.consilium.europa.eu/uedocs/cmsUpload/ICC\\_may%2010\\_internet.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/ICC_may%2010_internet.pdf) (access: 12 April 2017).

**gious, and is considered morally unique as a wrong, and as the most serious of all international crimes.** It is worth mentioning that international law has undergone some major changes over recent years. Rather than being primarily concerned with the relations of States, now international criminal law also concerns individuals<sup>75</sup>, justifying international prosecution of individuals for crimes against humanity, such as murder, rape, torture and other crimes that domestic courts have traditionally handled. In international law, to get around this problem, crimes against humanity were defined as attacks constituted by otherwise garden-variety domestic crimes, directed against a population in a systematic and widespread manner<sup>76</sup>.

It must be emphasized that the **ICC is a court of last resort, and the scope of its powers is significantly limited.** Action is taken only when all of the other options for prosecution will objectively fail<sup>77</sup>.

According to Article 12 of the Rome Statute, the Court may exercise its jurisdiction only if:

- a state on whose territory an offence was committed (including the registration state of the vessel or aircraft, on board which the crime was committed), or
- a state whose national is accused of committing such crime, is a State Party to the statute or recognizes the jurisdiction of the tribunal.

Moreover, the ICC jurisdiction is **complementary and not competitive with respect to the courts of the Member States – Parties to the Rome Statute** (See preamble, Art. 1 and Art. 17). The complementarity of ICC jurisdiction to national criminal jurisdictions means that **the case is admissible before the ICC only when a state is unwilling or unable genuinely to carry out the investigation**

<sup>75</sup> Larry May, *Genocide – a normative account*, Cambridge University Press 2010 , p. 99.

<sup>76</sup> Ibidem.

<sup>77</sup> *Joint Staff working document on advancing the principle of complementarity, Toolkit for bridging the gap between international and national justice*, 2013, p. 7, [http://ec.europa.eu/europeaid/sites/devco/files/joint-staff-working-document-on-advancing-the-principle-of-complementarity-2013\\_en\\_12.pdf](http://ec.europa.eu/europeaid/sites/devco/files/joint-staff-working-document-on-advancing-the-principle-of-complementarity-2013_en_12.pdf) (access: 12 April 2017).

**or prosecution of the crimes**<sup>78</sup>. In such cases the ICC takes over the investigation and the prosecution of individual perpetrators. This may occur in cases of a collapsed or dysfunctional state, as well as cases in which the government ignores or even takes part in the offences, or law enforcement authorities avoid prosecuting particular cases. According to Art. 17 of the Rome Statute, the lack of will of the state is determined through the analysis of the reasons for which a person escapes liability (is it the state's authorities protection, unjustified delay or a procedure of dubious independence?). Consequently, the complementarity principle is one of admissibility criteria and it is looked upon as an empirical question related to specific cases.

In deciding admissibility, the ICC considers whether:

- the State is unable to obtain the accused,
- the State is unable to obtain the necessary evidence and testimony,
- the State is unable to otherwise carry out its proceedings (taking into account unforeseen circumstances which may obstruct national proceedings) (Article 17.3 of the Rome Statute).

In other words, the ICC is entitled to affirm its jurisdiction in those cases in which it identifies a gap in State jurisdiction, a gap created by the lack of repression or a gap created by impunity – which might be the result of a breakdown of the institutions of a State or of widespread anarchy<sup>79</sup>.

**In line with the principle of complementarity, national States bear the primary responsibility for investigating, prosecuting and bringing to justice the perpetrators of genocide, crimes against humanity and war crimes.** In this respect, the Rome Statute provides that it is a duty of every State to exercise its criminal jurisdiction over those individuals responsible for the gravest international crimes. **The effective persecution of those persons must be ensured by taking measures at the national level and by enhancing international**

<sup>78</sup> Ibidem, p. 2.

<sup>79</sup> Benvenuti, P. *Complementarity of the International Criminal Court to National Criminal Jurisdictions*, in Lattanzi, F. and Schabas, W. 'Essays on the Rome Statute of the International Criminal Court'.

**cooperation<sup>80</sup>. The ICC cannot deal with all cases of those crimes, therefore it is crucial to strengthen domestic prosecution of the most serious crimes<sup>81</sup>.**

Putting the principle of complementarity into practice through the investigation, prosecution of and bringing to justice perpetrators of genocide, crimes against humanity and war crimes on a national level would magnify the reach and impact of the Rome Statute, and is essential to bridge the impunity gap. The success of the Rome Statute system should not be judged by the proceedings taking place at the ICC alone<sup>82</sup>.

Part IX of the Rome Statute on international cooperation and judicial assistance seeks to ensure the functioning of the Court through the following elements<sup>83</sup>:

- States Parties have a general obligation to cooperate fully with the Court with respect to its investigations and prosecutions (article 86),
- States Parties shall ensure that procedures are available under national law for all forms of cooperation specified in part 9 (article 88),
- States Parties shall consult with the Court without delay in order to resolve any problems which may impede or prevent the execution of the request (article 97).

**When the ICC decides to prosecute a person suspected of an international crime, the Parties to the Rome Statute have to cooperate with the Court to ensure the effectiveness of the legal proceedings. EU Member States have to harmonize their legal systems with the Rome Statute so that their national courts and criminal police may aid the ICC (Article 88 Rome Statute). Moreover, under Articles 58 and 59 of the Roman Statute, the Court (Pre-Trial Chamber) may at any time issue an arrest warrant and transmit it to any State Party on the territory of which the person to be arrested may be found. However, Article 98 of the Statute reintroduces an element of caution, and requires States**

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80 *Joint Staff working document on advancing the principle of complementarity...*, p. 2.

81 *Ibidem*, p. 2.

82 *Ibidem*, p. 8.

83 *The International Criminal Court...*, p. 86.

Parties thereto which are requested to comply with an arrest warrant issued by ICC not to violate their obligations under international law. **The EU may play an important role in ensuring an average level of cooperation between the Member State and the ICC.** States are not under any strict obligation to give priority to the Court's request for surrender or assistance. Instead, the Statute foresees consultations in cases of problems arising in the context of a cooperation request from the Court<sup>84</sup>. Assistance to countries which suffer from genocide, crimes against humanity and war crimes should always be combined with more long-term efforts aimed at building up and consolidating the justice system as a whole – for example by implementing prosecution strategies with other initiatives, such as reparations programs for victims, reconciliation, and institutional reforms<sup>85</sup>.

According to some scholars, the ICC also has jurisdiction over nationals of non-parties under the following circumstances:

- 1) The ICC has jurisdiction over nationals of non-parties in situations referred to the ICC Prosecutor by the UN Security Council (Article 13 Rome Statute), non-party nationals are subject to ICC jurisdiction when they have committed a crime on the territory of a state that is a party to the ICC Statute or has otherwise accepted the jurisdiction of the Court with respect to a crime (Article 12 Rome Statute),
- 2) ICC jurisdiction may be also exercised over the nationals of a non-party where the non-party has consented to the exercise of jurisdiction with respect to a particular crime<sup>86</sup>.

<sup>84</sup> Art. 97 and art. 72 (7a), art. 89(2) and (4), art. 91(4), art. 93(3) and (9), art. 96 (3), art. 99 (4), art. 100 (1f).

<sup>85</sup> *Joint staff working document on advancing the principle of complementarity...*, p. 12.

<sup>86</sup> D. Akande, *The jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits*, *Journal of International Criminal Justice* 1 (2003), pp. 618-619.

According to doctrine, *in cases in which the ICC exercises jurisdiction over individuals acting pursuant to the official policy on non-parties, it will not need to rule as a prerequisite on the responsibility of that non-party. In fact, the very purpose of international criminal responsibility is to separate the responsibility of individuals from that of the state and to focus on the personal responsibility of those who order, direct, or commit those crimes. (...) In cases of genocide (which require the intent to destroy a group) and crimes against humanity (which require a wide-spread or systematic attack), there will usually be a need for evidence of planning and preparation by a collective body which will often, though not always, be the state.*

Nevertheless, the definition of those crimes does not make the individual's criminal responsibility dependent on the responsibility of the state<sup>87</sup>.

**The ICC's jurisdiction over nationals of non-parties is criticized by some scholars and states and there is no international consensus in this respect<sup>88</sup>.**

## 1.2. ISIS crimes and ICC jurisdiction

In most cases, acts committed by the members of ISIS do not fulfil the conditions specified in Art. 12 of the Rome Statute. **The majority of bloody offences take place on the territory of states which are not parties to the Rome Statute (primarily Syria, Iraq or Lebanon). Only the State of Palestine (since 2015) and Jordan are parties to the statute. Moreover, in most cases, the perpetrators seem not to be the citizens of those countries.** Jurisdiction of the ICC extends only to those offenders who joined ISIS while remaining citizens of the countries which are parties to the Statute. However, it appears that they are only a small percentage of all members of this criminal organization.

<sup>87</sup> Ibidem, pp. 636-637.

<sup>88</sup> See: M.Scharf, 'The ICC's Jurisdiction over the Nationals of Non-Party States: A Critique of the U.S. Position', *64 Law & Contemporary Problems* (2001) 67, 98; D. Arnaut, 'When in Rome... The International Criminal Court and the Avenues for U.S. Participation', *43 VJIL* (2003) 525, 541-542; Johnson, *supra note 5*, at 444.

Therefore, ICC jurisdiction is very limited if not excluded in relation to ISIS crimes for two reasons:

- most of the ISIS activists (perpetrators) are citizens of countries which are not parties to the Rome Statute,
- those perpetrators of ISIS crimes who are citizens of countries being parties to the Rome Statute seem to be excluded from the jurisdiction of ICC on the grounds of the complementarity principle.

There are also members of ISIS who are citizens of states being subject to the jurisdiction of the ICC (often European countries being EU Member States). However, these are countries with functioning state institutions and the judiciary, and as such cannot be qualified as dysfunctional or unable to provide impartial justice for offenders.

Therefore, the question arises whether states demonstrate unwillingness to act efficiently in this respect? This seems to be very unlikely. Such a case might arise only if it is possible to prove that there is a specific political commitment resulting in such unwillingness to act or due to absence of appropriate legal instruments and change of will in this regard<sup>89</sup>. In such a case, one might speak only of indifference, which is obviously undesirable, but it is difficult to establish with sufficient certainty that it enables proceedings before the ICC.

The conclusion is that the **International Criminal Court is not the appropriate instrument to fight efficiently crimes committed by ISIS**. Even if the complementarity condition is deemed to be satisfied, ICC jurisdiction would still extend to a very small number of the ISIS members being citizens of States Parties to the Rome Statute (in general, these are European States, the State of Palestine and Jordan).

## 2. THE EUROPEAN UNION AND COMBATING GENOCIDE

**Cooperation with the International Criminal Court is by far the most important EU activity aimed at combating the crime of genocide. It supports the**

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<sup>89</sup> Joint Staff working document on advancing the principle of complementarity..., pp. 10–11.

**activities of the Court and the prosecution of perpetrators of international crimes, by using national legal institutions of the EU Member States.** The indicated direction is supported by several documents adopted by the EU bodies. Taking into consideration the necessity to increase international cooperation, the EU has prepared and adopted both binding and non-binding legal provisions relating directly to the ICC or international cooperation as such.

**On the international scene, the legal basis used by the European Union to enter into the recent Agreement on Cooperation and Assistance with the ICC is outlined, and the opportunities the European Union Treaty offers to establish a stronger role for the EU in support of international criminal jurisdiction are underlined**<sup>90</sup>. Under the Agreement, the European Union undertakes to ensure the regular exchange of information and documents of mutual interest as well as to provide various facilities and services required by the Court for its purposes. The European Union seeks to advance the principle of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity and also respect for the principles of the United Nations Charter and international law<sup>91</sup>. **All Member States of the EU ratified the Rome Statute and the EU was the first regional organization to sign an agreement on cooperation and assistance with the ICC in 2006.** Moreover, the EU seeks the inclusion of a clause supporting the ICC in negotiating framework agreements with third countries, for example the Cotonou Agreement, Partnership and Cooperation Agreements, Trade Development and Cooperation Agreements and Association Agreements. The EU is also a provider of official development assistance. A considerable amount of development funds are allocated to strengthen the rule of law and to support national justice systems<sup>92</sup>.

**The most important single measure is the Council's Action Plan (2004), which sets out a framework for EU activity in supporting the International Criminal Court and supports the effective functioning of the Court and to advance universal support for the Court by promoting the widest possible participation in the Statute**<sup>93</sup>. This plan covers three areas, namely: 1) coordinat-

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90 R. Varga, *Challenges of domestic prosecution of war crimes with special attention to criminal justice guarantees*, Pázmány Press, Budapest 2014.

91 *Joint Staff working document on advancing the principle of complementarity...*, p. 3.

92 *Ibidem*.

93 *Ibidem*.

ing the activities of the Union, 2) the universality and integrity of the Rome Statute, and 3) independence and effective functioning of the ICC<sup>94</sup>. It provides concrete measures to achieve the objective of universal ratification and implementation of the Rome Statute and the independence and effective functioning of the ICC<sup>95</sup>. On 30 September 2002, the Council of the European Union adopted the Conclusions and Guiding Principles<sup>96</sup> concerning arrangements or agreements between a State Party to the Rome Statute of the ICC and the United States of America, regarding the conditions to surrender persons to the Court<sup>97</sup>. **These principles set the minimum benchmarks to be respected by ICC State Parties if entering into bilateral non-surrender agreements. Further, according to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, crimes under the jurisdiction of the ICC are not the double criminality requirement to turn over a suspect.** A judicial authority of any Member State is assisted in prosecuting a person suspected of international crimes who has moved into the territory of another Member State. This can foster better cooperation with the EU Member State which is requested by the Court to surrender a person under a European arrest warrant or to place such a person in arrest, especially that in the area of free movement of people the suspect may have already moved to another Member State<sup>98</sup>. Moreover, the Council has also adopted several Decisions<sup>99</sup> in the sphere of Justice Freedom and Security, with a view to strengthening cooperation among Member States in the investigations and prosecutions of Rome Statute crimes at national level<sup>100</sup>. The following legal acts should be taken into consideration while discussing the possibility of involving the ICC at EU level: On 6 December 2005, the EU concluded an Agreement with the

94 The European Union adopted, on 11 June 2001, Common Position 2001/443/CFSP on the International Criminal Court, which has been reviewed and reinforced on 20 June 2002 by Common Position 2002/474/CFSP, and on 16 June 2003 by Common Position 2003/444/CFSP, source: [http://www.coe.int/t/dlapil/cahdi/Source/ICC/4th%20Consult%20ICC%20\(2006\)%2002%20E%20EU%20texts.pdf](http://www.coe.int/t/dlapil/cahdi/Source/ICC/4th%20Consult%20ICC%20(2006)%2002%20E%20EU%20texts.pdf) (access: 12 April 2017).

95 <http://www.iccnw.org/?mod=eu> (access: 12 April 2017).

96 <https://www.consilium.europa.eu/uedocs/cmsUpload/ICC34EN.pdf> (access: 12 April 2017).

97 <http://www.iccnw.org/?mod=eu> (access: 12 April 2017).

98 *The International Criminal Court...*, p. 126.

99 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002D0494:EN:HTML> (access: 12 April 2017).

100 [http://www.consilium.europa.eu/uedocs/cmsUpload/ICC\\_may%2010\\_internet.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/ICC_may%2010_internet.pdf) (access: 12 April 2017).

International Criminal Court on cooperation and assistance; on 15 April 2008, the Council of the European Union agreed on security arrangements for the protection of classified information exchanged between the EU and the ICC<sup>101</sup>. In terms of implementation of the Rome Statute, in December 2009 the European Council adopted the Stockholm Programme (2010–2014)<sup>102</sup>, which invites EU institutions to support and promote EU and Member State activities against impunity and against crimes of genocide, crimes against humanity and war crimes, and to promote cooperation between the Member States and the ICC. **The Stockholm Programme encouraged Member States to develop the exchange of judicial information and best practices in relation to the prosecution of such crimes through the European Network of Contact Points.** Particular attention should be given to Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court, repealing Common Position 2003/444/CFSP. It was pointed out that the aim of the EU is stronger commitment in cooperation with the ICC and the implementation of the principle of complementarity. **Therefore, the Union and its Member States are obligated to increase participation in the application of the Rome Statute. This process should be accelerated in the context of negotiations and political dialogue with third countries or regional organizations.** Also, it has been suggested that initiatives to support the dissemination of the values, principles and provisions of the Statute should be undertaken, and it has been stressed that in order to implement the decision, the EU and its Member States must work with other countries, international institutions and some NGOs<sup>103</sup>. **Cooperation would take the form of sharing experiences as well as providing Member States with introductory provisions of the Rome Statute, as well as technical or financial assistance, which is intended to facilitate participation in its application of the statute and implementation**<sup>104</sup>. Finally, considering the necessity to ensure the independence of the ICC, the Council stated that the desired practice would be to transfer contributions to the budget of the Court, supporting the development assistance and training for judges,

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101 <http://www.iccnw.org/?mod=eu> (access: 12 April 2017).

102 [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XX0204\(03\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XX0204(03)&from=EN), [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/111877.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111877.pdf) (access: 12 April 2017).

103 Council Decision on the International Criminal Court of 21 March 2011 2011/168 / CFSP.

104 Ibidem.

prosecutors, officials and counsels in work related to the ICC, the accession to the Agreement on the privileges and immunities of the ICC, and its ratification. Taking into consideration the necessity of enhancing international cooperation, the EU has prepared and adopted further binding and non-binding legal provisions. In March 2011, the Council of the EU adopted the **Decision on the International Criminal Court**<sup>105</sup>. The document aims to advance universal support for the Rome Statute, preserve the independence and effective functioning of the ICC, and support cooperation and complementarity<sup>106</sup>. On 17 November 2011, following the drafting of an own-initiative report on the same subject, the European Parliament adopted a resolution on EU support for the International Criminal Court (ICC): Facing challenges and overcoming difficulties, committing the Parliament to play an active role in promoting the fight against impunity and the ICC in all EU policies. The EU-ICC Co-operation and Assistance Agreement was adopted on 10 April 2006. It places an obligation of cooperation and assistance on the EU and the ICC, with particular emphasis on the exchange of classified information<sup>107</sup>.

**Moreover, EU legislators have adopted several legal instruments in the area of Justice and Home Affairs, with a view to strengthening cooperation among Member States on the fight against impunity of those individuals accused of crimes of genocide and crimes against humanity.** In order to improve cooperation in combating genocide, crimes against humanity and war crimes, a European network of EU Member States contact points has been established within Eurojust<sup>108</sup>. The network, as described in Council Decision 2002/494/JHA, seems to be of particular importance.

Council Decision 2002/494/JHA (13 June 2002) establishing a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes, sets up a 'European network of contact points with respect to persons responsible for genocide, crimes against humanity and war crimes', that is a net-

<sup>105</sup> It has replaced the Common Position which had guided EU and its Member States' activities on the ICC over the past decade.

<sup>106</sup> Also, in July 2011 the EU revised and finalised the Action Plan.

<sup>107</sup> [http://www.consilium.europa.eu/uedocs/cmsUpload/ICC\\_en\\_intenet.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/ICC_en_intenet.pdf), p. 21 (access: 12 April 2017).

<sup>108</sup> *Joint Staff working document on advancing the principle of complementarity...*, p. 4.

work of contact points for exchange of information concerning people suspected of international crimes to support national authorities holding investigations<sup>109</sup>. It was established to ensure closer cooperation between national authorities in investigating and prosecuting genocide, crimes against humanity and war crimes.

Currently, there is only one constituted EU body that has the mandate to support the efforts of Member States and facilitate the coordination of their action in the fight against impunity for the most serious crimes of international importance. As a result, this network is an important factor in ensuring the EU's commitment to the fight against impunity in this dimension<sup>110</sup>. Further, Council Framework Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes relates to the issues of investigation and prosecution of genocide, crimes against humanity, and war crimes, and promotes cooperation among competent authorities to prosecute international criminals, focusing on cases of people requesting a residence permit in one of the Member States who are also suspected of genocide or other international crimes. **According to its provisions, the EU should adopt measures to inform competent authorities about facts leading to the suspicion that an applicant for a residence permit has committed international crimes as well as to establish closer cooperation between national law enforcement and immigration authorities<sup>111</sup>.** Beside the aforementioned legal provisions of significant importance, several instruments under the Justice, Freedom and Security Policy (formerly Justice and Home Affairs – JHA) have been adopted, whereby Member States are called on, by different means, to assist one another in the investigation and prosecution of genocide, crimes against humanity and war crimes<sup>112</sup>. **However, the primary importance of the Member States' own actions in prosecuting such crimes is always stressed<sup>113</sup>.**

<sup>109</sup> *The International Criminal Court...*, p. 126.

<sup>110</sup> The Council of the European Union, *Strategy for the EU Genocide...*, p. 24.

<sup>111</sup> *The International Criminal Court...*, p. 126.

<sup>112</sup> <http://www.iccnw.org/?mod=eu> (access: 12 April 2017).

<sup>113</sup> The Council of the European Union, *Strategy for the EU Genocide...*, p. 11.

### 3. NATIONAL LEGAL SYSTEMS OF THE EU MEMBER STATES: PRINCIPLE OF UNIVERSAL JURISDICTION

It seems that still the most efficient means for prosecuting the perpetrators of mass slaughter against Christians is contained within the domestic legal systems of each Member State. There is, however, an important obstacle to this end in the standard limitation of the domestic courts' jurisdiction to its territory, whereas the crimes to be prosecuted are carried out in Syria, Libya, Iraq and other countries of the Middle East. It is possible to seek the appropriate means to bring to justice the perpetrators of mass slaughter against Christians in the domestic legal systems of each Member State. The only obstacle could be the principle according to which, for most countries, the jurisdiction of their courts is limited to their borders, and yet these murders are carried out in Syria, Libya, Iraq and other countries of the Middle East.

Consequently, the possibility of prosecution of the indicated category of offenders should be sought in the regulations that constitute the **principle of universal jurisdiction**. Unlike the aforementioned principles, universal jurisdiction does not require any connection between the prosecuting state and the crime. Universal jurisdiction allows states to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the nationality of the accused, their country of residence, or any other relationship with the prosecuting entity. Crimes prosecuted under universal jurisdiction are considered crimes against all, too serious to tolerate jurisdictional arbitrage. Universal jurisdiction is a basis for seeking the extradition of a person accused or convicted of committing a serious crime under international law. It seems that the essence of universal jurisdiction is that national courts should prosecute alleged criminals absent any connecting factors.

This principle was originally applied to the crime of piracy – the pirate traditionally being held as *hostis humani generis*, or the enemy of humankind. According to Amnesty International (a proponent of universal jurisdiction), certain crimes pose so serious a threat to the international community as a whole, that states have a moral duty to prosecute an individual responsible. As stated by AI, 'no place should be a safe haven for those who have committed **genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances**'<sup>114</sup>. These crimes could be prosecuted in a foreign court under the

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114 Universal jurisdiction: Questions and answers concerning universal jurisdiction. <http://www.amnesty.org/en/documents/IOR53/020/2001/en/> (access: 12 April 2017).

principle of universal jurisdiction even if neither the victim nor the perpetrator is connected to the forum state. In fact, Sweden recently applied universal jurisdiction to the Syrian conflict, convicting a Syrian rebel fighter of war crimes<sup>115</sup>.

**The efficiency of this method depends however on the regulations of each country.** It is worth pointing out some of them.

**AUSTRIA** – the Austrian Penal Code (Strafgesetzbuch, Jan. 24, 1974, BGBl no. 60/1974, as amended) contains no provisions on crimes against humanity, although it does contain a provision on genocide. The Austrian Penal Code does not list either genocide or crimes against humanity as offences over which Austria would exercise jurisdiction if committed abroad without any relation to Austria. However, for the crime of genocide, the Austrian Supreme Court found criminal jurisdiction to exist within Austria’s criminal jurisdiction over acts committed abroad by perpetrators who were apprehended in Austria and who, due to existing circumstances, cannot be prosecuted in the place of commission.

**BELGIUM** – In 1993, Belgium’s Parliament passed a ‘law of universal jurisdiction’ (sometimes referred to as ‘Belgium’s genocide law’), allowing it to put on trial. People accused of war crimes, crimes against humanity or genocide. In 2001, four Rwandan citizens were convicted and given sentences from 12 to 20 years’ imprisonment for their involvement in the 1994 Rwandan genocide<sup>116</sup>. On 1 August 2003, Belgium repealed the law on universal jurisdiction and introduced a new law on extraterritorial jurisdiction. However, some cases that had already started continued. These included those concerning the Rwandan genocide and complaints filed against the Chadian ex-President Hissène. In September 2005, Habré was indicted for crimes against humanity, torture, war crimes and other human rights violations by a Belgian court<sup>117</sup>.

<sup>115</sup> M. Lattimer, S. Mojtahedi, L. A. Tucker, A Step towards Justice: Current accountability options for crimes under international law committed in Syria (2015), p. 19.

<sup>116</sup> Belgium: Universal Jurisdiction Law Repealed, Humans Right Watch, <https://www.hrw.org/news/2003/08/01/belgium-universal-jurisdiction-law-repealed> (access: 12 April 2017).

<sup>117</sup> Crimes Against Humanity Statutes and Criminal Code Provisions in Selected Jurisdictions <http://www.loc.gov/law/help/crimes-against-humanity> (access: 12 April 2017).

**DENMARK** – the Danish Penal Code provides for universal jurisdiction over crimes that Denmark has an obligation to prosecute under an international convention. Danish courts exercise universal jurisdiction over any crime with a sentence of more than one year's imprisonment, where the crime is also a crime in the territorial state and the suspect cannot be extradited to the territorial state. Due to lack of implementing legislation, all complaints are investigated, prosecuted and eventually punished on the basis of crimes as defined in the Danish Penal Code<sup>118</sup>.

**FINLAND** – Chapter 11 of the Finnish Penal Code covers war crimes and crimes against humanity. Under section 7 of Chapter 1 of the Code, the Finnish law applies to international crimes if they are acts that contravene agreements to which Finland is a party. For instance, in 2010, a Finnish court sentenced a Rwandan preacher, Francois Bazaramba, to life imprisonment for his participation in Rwanda's genocide. In 2009, Finland declined a request by Rwanda to extradite Bazaramba, saying he might not receive a fair trial at home<sup>119</sup>. Recently, two Iraqi men were arrested after arriving in Finland in 2015, and eventually were charged with war crimes for posting on Facebook images of themselves holding severed heads of ISIS' enemies. The charges against them involved desecration of bodies in incidents in 2014 and 2015 in Iraq. Importantly, there is no former history of such prosecution in Finland and, therefore, it could be the first to set a necessary precedent for the future, the court said<sup>120</sup>.

**FRANCE** – crimes against humanity are punishable by life imprisonment. They are not subject to any statute of limitations. French law also recognizes the criminal liability of legal entities in a large number

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118 Ibidem.

119 Finland sentences Rwanda preacher to life for genocide, BBC News, <http://www.bbc.com/news/10294529> (access: 12 April 2017).

120 [http://www.dailymail.co.uk/wires/reuters/article-3505927/Two-Iraqis-sentenced-Finland-posting-severed-head-images-online.html?ito=social-twitter\\_mailonline](http://www.dailymail.co.uk/wires/reuters/article-3505927/Two-Iraqis-sentenced-Finland-posting-severed-head-images-online.html?ito=social-twitter_mailonline) (access: 12 April 2017).

of offences including crimes against humanity. France extends the reach of French criminal law to offences committed outside its territory by a French or foreign national when the victim is a French national<sup>121</sup>.

**GERMANY** – Germany has implemented the principle of universal jurisdiction for genocide, crimes against humanity and war crimes into its criminal law through the ‘Völkerstrafgesetzbuch’ or VStGB (‘international criminal code’), which implemented the treaty creating the International Criminal Court into domestic law. The law was passed in 2002 and up to 2014 it was used once, in the trial of Rwandan rebel leader Ignace Murwanashyaka. As of 2015, the trial was ongoing<sup>122</sup>. Subsequently, Germany exercised criminal jurisdiction over the offences described in the Code irrespective of whether the offence was committed in Germany or anywhere else, and irrespective of whether an act committed abroad has any relation to Germany. The principle of universal jurisdiction in German legal doctrines applies to all the offences listed in the Code, with the exception of some supervisory conduct, to the extent that it is a misdemeanor. In any event, universal jurisdiction applies to crimes against humanity, as defined by the Act<sup>123</sup>.

**NETHERLANDS** – Dutch courts can exercise universal jurisdiction over genocide, war crimes, crimes against humanity and torture provided that the perpetrator is present in the Netherlands and that the crimes were committed after the act entered into force on 1 October 2003. Dutch criminal law applies to anyone who commits any of the crimes defined in this Act outside the Netherlands, if the suspect is present in the Netherlands, anyone who commits any of the crimes defined in this Act outside the Netherlands, if the crime is commit-

121 Crimes Against Humanity..., *ibidem*.

122 *US tells armed group in DRC to surrender or face military option*, The Guardian, <http://www.theguardian.com/world/2014/aug/05/us-tells-armed-group-drc-surrender-military-option> (access: 12 April 2017).

123 Crimes Against Humanity..., *ibidem*.

ted against a Dutch national, or a Dutch national who commits any of the crimes defined in this Act outside the Netherlands<sup>124</sup>.

**POLAND** – The Polish Criminal Code is applied to a foreigner who commits an offence abroad directed against the interests of a Polish citizen. Polish penal law also applies in the case of a foreigner who has committed an offence abroad and the offence is a criminal act under the Polish Criminal Code, punishable by at least 2 years' imprisonment, the offender is present on Polish territory, and there has been no decision to release that person. The prerequisite for such responsibility is that the act is considered a criminal offence also under the law in force in the place in which the offence is committed. Regardless of the regulations in force in the place in which the offence is committed, the Polish Criminal Code applies to a Polish citizen or a foreigner, who is not to be extradited, in the case of an offence that person commits abroad, an offence which Poland is required to prosecute under an international treaty, or an offence on the grounds of the Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998. (Journal of Laws of 2003. No. 78, item 708)<sup>125</sup>.

**SPAIN** – Spanish law recognizes the principle of universal jurisdiction. Spain exercises jurisdiction over crimes when crimes can be described according to Spanish criminal law as genocide or terrorism. However, the competence of the court is limited to cases in which Spaniards are victims, there is a relevant link to Spain, or the alleged perpetrators are in Spain<sup>126</sup>.

**SWEDEN** – Swedish courts directly apply international law, so that treaties and customary international law on humanitarian issues are used to determine whether a crime against international law has been committed. In general, the Code applies to crimes committed in Sweden and to those outside the country under a number of cir-

124 Ibidem.

125 Ibidem.

126 Ibidem.



cumstances, including when the minimum punishment for the crime under Swedish law is imprisonment for four years<sup>127</sup>.

Moreover, **investigating and prosecuting crimes of genocide, crimes against humanity and war crimes at national level**<sup>128</sup> requires:

- bi- or multilateral agreements on mutual legal assistance,
- national substantive criminal law to have definitions of genocide, crimes against humanity and war crimes; even when these crimes are defined in the national law, these definitions need to be updated through properly drafted implementing legislation, ensuring that they cover at least the conduct described in the provisions of the Rome Statute,
- that national procedural criminal law outlines the different competences of the civilian and possibly even military courts of criminal justice, protection of witnesses and victims, and possible participation of victims in criminal proceedings.

The greatest impact would be achieved if several jurisdictions worked in coordination while also making public efforts at connecting Syrians with the process<sup>129</sup>. Even if the scope of prosecutions was limited, they would provide a low-cost method of accountability that could be readily implemented.

<sup>127</sup> Ibidem.

<sup>128</sup> *Joint Staff working document on advancing the principle of complementarity*, p. 19.

<sup>129</sup> M. Lattimer, S. Mojtahedi, L. A. Tucker, *A Step towards Justice...*, p. 6

# POSSIBLE ACTION TOWARDS ENABLING MORE EFFICIENT PROSECUTION OF 'ISIS' CRIMES



Ordo Iuris

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**T**here are neither international regulations nor international institutions that allow the effective prosecution of perpetrators of genocide crimes as committed against Christians in the Middle East. **The only realistic way to prosecute these crimes is through national legislation. However, it seems desirable to indicate some areas in which EU institutions may act to strengthen efforts to protect Christians against ISIS crimes.**

According to Art. 3 par. 2 of the Treaty on European Union, the Union is committed to providing its citizens with *inter alia* security and justice, which should also be achieved by combating crime.

There are several areas where the EU could and should undertake such activity:

- 1) legislative action aimed at approximation of norms of criminal law of the Member States in such a way that the prosecution of the perpetrators of attacks against Christians could be effectively pursued as a result of applying to them the principle of universal jurisdiction;
- 2) measures promoting and supporting the activities of Member States in the field of protection against these types of crimes;
- 3) evaluation of the effectiveness of current actions within the field of police cooperation and police operations aimed at preventing and prosecuting those types of offences;
- 4) diplomatic action allowing for more efficient use of existing international law tools as well as creating new instruments.

## 1. LEGISLATIVE ACTION

Art. 82 and Art. 83 of the Treaty on the Functioning of the European Union imply commitment of the Union to harmonizing laws and regulations of the Member States, including substantive criminal law. Undertaking this activity is even more justified in the context of changes that occurred after the Treaty of Lisbon entered

into force. At that time, the procedure for adopting various EU legal acts was reformed with a view of fostering the adoption of directives or regulations to the detriment of framework decisions or conventions<sup>130</sup>.

Nevertheless, the suggested solution may raise some doubts.

Firstly, it is difficult to be positive about creating the standards when generally applicable rules are created *ad hoc*, without reflecting on whether other measures can be applied and the intended goals are to be achieved. **This is important, in particular, if such activity leads to the creation of standards that would be binding for each Member State. In the future, such a practice could lead to various abuses where national authorities, led by emotion, precipitously introduce legal solutions and address the interests of a particular group – which raises reasonable doubts, especially in the area of criminal law – which so far used to be independent for each Member State.**

Secondly, Art. 83 constructs this ability and makes fulfilment subject to three conditions:

- established standards have to be the minimum standards;
- indicated rules should apply to the definitions of criminal offences and penalties;
- offences and the penalties must relate to particularly serious crimes with a transnational dimension resulting from such offences, or flowing from a special need for joint prevention.

Insofar as the fulfilment of the latter condition appears to be undisputed, the question of whether the types of acts of universal jurisdiction remain in the establishment of ‘minimum standards’ should be carefully considered. It seems that such an assumption also may raise reasonable doubt.

Moreover, the assignment of the principle of universal jurisdiction to the connotation of the term ‘definitions of criminal offences’ should be assessed with great caution. **This principle is, in fact, on the borderline of the substantive legal sphere (in terms of the offence being exceptionally serious and the capac-**

<sup>130</sup> A. Grzelak, T. Ostropolski, *Współpraca policyjna i sądowa w sprawach karnych*, Warsaw 2011, p. 17.

**ity of criminal prosecution) and the sphere of the prosecuting procedure (by pointing out the situations in which the state can prosecute this or that type of a criminal act).** It seems that unless the grounds of this principle determine the ability to assign perpetration of the act, this relates to the aspect of defining crimes and it would mean the need to recognize it as the sign of an offence, which sometimes could be considered at least questionable.

Finally, the potential scope of EU activity raises legitimate doubts about compatibility with Art. 5 of the Treaty on European Union – containing the principle of subsidiarity. It appears that by performing a classical test for subsidiarity, the answer to the first question: ‘Does the present action have any international dimension or can it be regulated by the EU Member State alone?’ should be yes. Any attempt to introduce a different position would probably have the side effect of undermining the subsidiarity principle.

**Accordingly, the implementation of this idea is not recommended.**

## **2. MEASURES PROMOTING/SUPPORTING ACTIVITIES BY THE EU MEMBER STATES**

According to Art. 84 of the Treaty on the Functioning of the European Union, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to promote and support the efforts of Member States in the field of crime prevention. However, any actions that involve the harmonization of the laws and regulations of the Member States have been excluded from its scope. Those measures might be of legal, structural and financial nature. It seems that the creation of a specific program, including the allocation of the budget of the European Union on the fight against the perpetrators of this type of crime, would be desirable.

## **3. EFFICIENCY EVALUATION AND POSSIBLE AMELIORATION OF ACTIVITY WITHIN THE FIELD OF POLICE COOPERATION**

According to Art. 87 of the Treaty on the Functioning of the European Union, the EU should establish police cooperation involving all Member States’ competent authorities, including police, customs and other specialized law enforcement services in relation to prevention, detection and investigation of criminal

offences. This involves *inter alia* establishing measures for the collection, storage, processing, analysis and exchange of relevant information and data.

Also, Europol needs to be mentioned, whose mission is to support Member States in preventing all forms of crime, including combating international terrorism. Nevertheless, certain steps should be taken to verify whether any part of this organization fulfils its task in relation to these attacks for this study, particularly in terms of exchange of information on criminal offences or individual perpetrators. Also, it is worth considering whether the current formula of the Europol Information System, and Application Secure Information Exchange Network, are adequate and effective tools to improve the prosecution of individual crimes. Finally, another aspect of Europol's activities is to equip the various bodies with an adequate supply of expertise, depending on the needs arising from the particular circumstances. It is important to undertake an analysis of how frequently such knowledge was used, as well as assess the effectiveness and usefulness of the information that was provided. Analysis of these spheres of activity of Europol will involve a discussion about the need to modify the scope of the various aspects of the activity and indicated tools held by the institution, particularly of an operational nature, that can be used to prosecute the perpetrators of these types of crimes.

#### **4. INTENSIFICATION OF THE EUROPEAN COUNCIL'S ACTIVITY WITHIN THE SPECIFIED AREA**

The shape of the cooperation of law enforcement agencies and courts also influences the action of the European Council. In accordance with Art. 15 of the Treaty on European Union, the EC holds no legislative functions, but its task is to identify appropriate courses of action. In this respect, it is worth considering the adoption of an appropriate program of action (referring to earlier programs, such as Stockholm or the Hague), which would constitute a plan for the development of cooperation between Member States, using the structures of the European Union in the field of law enforcement and of bringing to justice the perpetrators of massacres carried out against Christians with respect to the national legal systems of the Member States. Such an undertaking would be something new, because so far the EU has focused its activities on a limited territorial scope. In this case, we should take action to protect the EU citizen, regardless of his or her whereabouts.

## 5. EU DIPLOMATIC ACTION

Diplomatic action, if taken by the EU, might significantly increase the efficiency of existing international law tools, as well as initiate the creation of new instruments. First of all, it seems desirable to extend the group of states being parties to the Rome Statute to include countries on the territory of which ISIS is operating, which might allow an extension of the ICC jurisdiction over the crimes committed against Christians also on those crucial territories.

On the other hand, the EU might be willing to consider some initiatives at the UN level. One of them might be creation of an Ad Hoc Tribunal for ISIS crimes, analogous to the tribunals created by the UN Security Council for Yugoslavia, Rwanda, and Sierra Leone. This direction seems to be worth considering, especially in the context of limitations on the jurisdiction of the ICC.

Another direction for diplomatic action seems to be initiation of a UN convention providing for appropriate means allowing efficient protection of religious freedom and preventing religious persecution. Such an initiative seems to fit in very well with the scope of the UN activities. The starting point for such an initiative might be the EU Guidelines on the promotion and protection of freedom of religion or belief, as adopted on 24 June 2013 during the Foreign Affairs Council meeting in Luxembourg.

We can observe such diplomatic action in the latest resolution on the systematic mass murder of religious minorities by the so-called ISIS/Daesh adopted by the EP dated 4 February 2016 (2016/2529(RSP)). It recalls ‘so-called ISIS/Daesh and its egregious human rights abuses, which amount to crimes against humanity and war crimes, within the meaning of the Rome Statute of the International Criminal Court (ICC), and that action should be taken for it to be recognized as genocide by the UN Security Council’. The European Parliament also ‘urges Syria and Iraq to accept the jurisdiction of the International Criminal Court’. According to another one among many of its diplomatic statements, it *urges all the countries of the international community, including the EU Member States, to work actively on fighting radicalization and to improve their legal and jurisdictional systems in order to avoid their nationals and citizens being able to travel to join the so-called ISIS/Daesh and participate in violations of human rights and international humanitarian law, and to ensure that, should they do so, they are criminally prosecuted as soon as possible, including for online incitement and support to commit those crimes.*

## 6. OTHER MEASURES

The EU has offered valuable political and technical support to states worldwide, including those that are not yet a party to the Rome Statute. **The EU supports many statements delivered by the High Representative of the Union for Foreign Affairs and Security Policy, as well as the inclusion of the ICC-related language in agreements with third countries.** In the EP, there is an informal group of the Friends of the ICC – an Action Group of Parliamentarians, who take a proactive role in favor of the ICC<sup>131</sup>. Through the European Instrument for Democracy and Human Rights (EIDHR), the EU has contributed significantly to the justice initiatives of non-governmental organizations, as well as of the ICC and the ad hoc Tribunals<sup>132</sup>. Also, the EU continues to make every effort to further this process with third States, in particular during its regular human rights dialogues with some 40 countries, through<sup>133</sup>:

- systematic *démarche* campaigns worldwide,
- organization of dedicated local or regional seminars,
- systematic inclusion of an ICC clause into agreements with third countries,
- financial support to civil society organizations lobbying for the universality of the Rome Statute<sup>134</sup>.

The EU has also various financial instruments and aid modalities at its disposal, which are: budget support, the sector-wide approach, and the project-based approach<sup>135</sup> (e.g. Communication from the European Commission on the *Future approach to EU budget support to Third Countries* which underlines that commitment to the fundamental values of human rights, democracy and

<sup>131</sup> Ibidem. The Friends of the ICC group is not an inter-group and operates along very flexible modalities. Moreover, the CICC Europe Office in Brussels works closely with the Council of the EU, the European Commission, the European External Action Service, and the European Parliament, as well as with EU Member States to strengthen EU support for the ICC.

<sup>132</sup> <http://www.iccnw.org/?mod=eu> (access: 12 April 2017).

<sup>133</sup> [http://eeas.europa.eu/human\\_rights/icc/index\\_en.htm](http://eeas.europa.eu/human_rights/icc/index_en.htm) (access: 12 April 2017).

<sup>134</sup> Ibidem.

<sup>135</sup> Ibidem.

rule of law is essential for the establishment of any partnership and cooperation between the EU and third countries)<sup>136</sup>. Finally, attention must be drawn to an important document, namely a document prepared by the Council, the Strategy of the **EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States from 20 November 2014**. This document states that **the obligation to prosecute crimes of genocide is primarily within the jurisdiction of the Member States, which results from international obligations and customary law**<sup>137</sup>. Also, it underlines the need to update the national rules of criminal law in the field of international agreements binding the countries, which facilitate conducting the investigation, prosecution, and finally cooperation and mutual assistance by Member States for prosecution of the crime of genocide<sup>138</sup>.

Without political will, fighting genocide, crimes against humanity or war crimes is bound to fail<sup>139</sup>. These types of crimes often involve state authorities and rebel groups and have a profound effect on the entire functioning of the state system and imply an underlying political dimension<sup>140</sup>. Lack of political will hamper genuine investigations, prosecutions and fair trials. An independent justice system is unlikely to exist in a country which has been confronted with large-scale violence. **Rapid assistance to countries which suffered from genocide, crimes against humanity and war crimes, and which are genuinely willing to carry out an investigation and prosecutions, should always be combined with more long-term efforts aimed at building up and consolidating the justice system as a whole**<sup>141</sup>. The large-scale nature of these crimes means that they often cannot be processed through the ordinary criminal system, generating an impunity gap. Therefore, prosecution cannot achieve meaningful justice in isolation. Implementing prosecution strategies with other initiatives, such as reparations programs for victims, reconciliation and institutional reforms, can help fill the impunity gap by

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136 <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0638&from=EN> (access: 12 April 2017).

137 The Council of the European Union, *Strategy for the EU Genocide...*, p. 11.

138 *Ibidem*.

139 *Joint Staff working document on advancing the principle of complementarity...*, p. 10.

140 *Ibidem*.

141 *Ibidem*, p. 12.

addressing crimes with large numbers of victims and perpetrators<sup>142</sup>. Investigating crimes of genocide and crimes against humanity might be difficult because of the length of time that passes between the time of commission and opening of the investigation. Prosecuting those crimes might be also difficult because many elements need to be proven (genocidal intent – genocide, widespread and systematic crimes – crimes against humanity). Police reform might be needed. Countries do not always express a need for specific training of police officers – but a bigger program needs to be built up.

Efforts to fight impunity for genocide, war crimes and crimes against humanity can be developed into general programs, but very few results will be obtained without specifically dedicated efforts to work on these crimes specifically, mainly because it is a highly complex matter at all levels, in particular<sup>143</sup>:

- legal framework,
- investigation,
- prosecution,
- judges,
- court management,
- management of detention and prison facilities,
- rights of victims and witness protection,
- outreach,
- defense counsel.

## 7. UN ACTION

An alternative response to persecution of Christians may be provided by the United Nations, which may establish measures of both preventative (military

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<sup>142</sup> Joint Staff working document on advancing the principle of complementarity, *Toolkit for bridging the gap between international and national justice*, 2013, p. 12.

<sup>143</sup> Joint Staff working document on advancing the principle of complementarity, *Toolkit for bridging the gap between international and national justice*, 2013, p. 17.

peacekeeping operations in war zones) and *post factum* nature (ICC involvement or establishment of a new Ad Hoc Tribunal for ISIS crimes).

### 7.1. Military peacekeeping operations

Since 1948, United Nations peacekeeping operations have included a wide range of tasks such as supporting the political process, organizing elections, protection of civilians, providing humanitarian aid, disarmament, demobilization and reintegration of warring parties, administration of a particular territory, or maintaining public order. In resolution No. 1674 (2006) on the protection of civilians in armed conflict, the Security Council reaffirmed its practice of ensuring that the mandates of the United Nations and its peacekeeping, political and peacebuilding missions include, i.a., the protection of civilians, particularly those under an imminent threat of physical danger within their zones of operations. An operation established for protection of Christian civilians would not be an unprecedented initiative, but could be a natural reaction to violations of fundamental human rights which occurred during armed conflicts.

Depending on the specifics of the situation, the UN Security Council, the General Assembly or the Secretary-General of the United Nations may establish a:

- 1) peacemaking operation,
- 2) peace enforcement operation,
- 3) peacebuilding operation,
- 4) peacekeeping operation.

Only the first two categories of operations are carried out under conditions of an ongoing armed conflict, while the last two can be introduced in order to sustain a ceasefire and support reconstruction where there is damage attributable to war.

According to UN nomenclature, peacemaking generally includes measures to address ongoing conflicts and usually involves diplomatic action to bring

hostile parties to a negotiated agreement<sup>144</sup>. Considering failed attempts by the international community (especially the US and Russian Federation) to declare a ceasefire in Syria, where thousands of civilians are persecuted because of their religion, a purely diplomatic response by UN would probably be inadequate.

A better solution could be a peace enforcement operation, which involves the application of a range of coercive measures, including the use of military force. Such actions are authorised to restore international peace and security in situations where the Security Council has determined the existence of a threat to the peace, breach of the peace or an act of aggression. The Security Council may utilize, where appropriate, regional organizations and agencies for enforcement action under its authority<sup>145</sup>.

A peacebuilding operation involves a range of measures aimed at reducing the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and at laying the foundation for sustainable peace and development. **Peacebuilding is a complex, long-term process of creating the necessary conditions for a sustainable peace.** It works by addressing the deep-rooted, structural causes of violent conflicts in a comprehensive manner. **Peacebuilding measures address core issues that affect the functioning of the society and the State, and seek to enhance the capacity of the State to effectively and legitimately carry out its core functions**<sup>146</sup>. Operations of this kind could be established only to help countries make the transition from war to peace after a ceasefire.

Peacekeeping is a technique, though fragile, designed to preserve the peace once fighting has been halted, and to assist in implementing agreements achieved by the peacemakers<sup>147</sup>. It could be established after signing a peace treaty.

The provisions of the UN Charter do not expressly provide for the competence of any of the bodies of the United Nations to carry out peace operations. For many years of practice, since the UNTSO mission in 1948, such competence has been considered to derive from the basic objective of the United Nations, which is the maintenance of international peace and security.

The Security Council need not refer to a specific Chapter of the Charter when passing a resolution authorizing the deployment of a United Nations peace opera-

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144 *United Nations Peacekeeping Operations. Principles and Guidelines*, United Nations 2008, p. 17.

145 *Ibidem*, p. 18.

146 *Ibidem*.

147 *Ibidem*.

tion and has never invoked Chapter VI. In recent years, the Security Council has adopted the practice of invoking Chapter VII of the Charter when authorizing the deployment of United Nations peacekeeping operations into volatile post-conflict settings, where the State is unable to maintain security and public order<sup>148</sup>. According to Article 39 of the UN Charter (Chapter VII), the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations, or decide what measures shall be taken to maintain or restore international peace and security.

For the above reasons, it would be acceptable to establish, on the basis of Chapter VII of the Charter of the UN, peace operations in countries where Christians are victims of armed conflict, e.g. in Syria. In view of the ongoing hostilities in the regions that are experiencing persecution, the formula of peacebuilding or peacekeeping operations would be inadequate. In turn, peacemaking operations could prove to be insufficient, because previous diplomatic activities such as the efforts of the US and Russia to announce a ceasefire in Syria did not produce satisfactory results. **The best means of protection of life, health and freedom of Christians seems to be, therefore, establishing peace enforcement operations, allowing the use of military means to restore the security of the affected population and the demarcation of the warring parties.** This kind of operation was carried out in 1993 by establishing six safe zones for the affected civilian population during the civil war in Bosnia and Herzegovina (Operation Deliberate Force). In all zones, military action was prohibited and the territory was placed under the supervision of a United Nations Protection Force.

## 7.2. Ad Hoc Tribunal for ISIS crimes

As already demonstrated (pp. 43-44), it is very unlikely if the ICC might be considered as relevant court for prosecuting ISIS crimes. Therefore it is highly desirable to establish an Ad Hoc Tribunal for ISIS crimes, analogous to the tribunals, created by the UN Security Council, for Yugoslavia or Rwanda. In contrast to the European Union, which has very limited competences in the area of justice, the United Nations employs a proven and reliable tool enabling action against lawlessness such as crimes against humanity: measures taken by the Security Council

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<sup>148</sup> *Ibidem*, pp. 13-14.

in order to restore international peace and security. This measure may constitute an ad hoc tribunal, which can be established in a Security Council resolution on the same basis as peace operations, i.e. Article 39 of the Charter<sup>149</sup>.

Ad hoc tribunals have concurrent jurisdiction to prosecute persons for serious violations of international law, which means that they are entitled to undertake legal proceedings, even if national law sets forth jurisdiction of a national court. In cases of conflict, such as where both a tribunal and a national court seek to exercise jurisdiction, the statute of such a tribunal gives primacy to it<sup>150</sup>. Judges, prosecutors and tribunal personnel are appointed by the United Nations General Assembly from among candidates nominated by the UN Security Council. The activities of these Tribunals are financed entirely from the budget of the United Nations.

Establishment of an Ad Hoc Tribunal for ISIS crimes is justified in light of case law of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). In a judgment of 2 September 1998 (*The Prosecutor v. Jean Paul-Akayesu*) the ICTR stated: *Contrary to popular belief, the crime of genocide does not imply the actual extermination of a group in its entirety, but is understood as such once any one of the acts mentioned in Article 2(2)(a) through 2(2)e is committed with the specific intent to destroy 'in whole or in part' a national, ethnical or religious group*<sup>151</sup>. *In the same case, the Tribunal also expressed the opinion that 'the means of deliberately inflicting on the group conditions of life calculated to bring about physical destruction, in whole or in part, include, inter alia, subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below the minimum requirement*<sup>152</sup>.

In a judgment of 17 January 2005 (*The Prosecutor v. Vidoje Blagojević and Dragan Jokić*) the ICTY underlined that *the physical or biological destruction of a group is not necessarily the death of the group members. While killing large numbers of a*

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149 See Prijedor, *Prosecutor v Tadić (Dusko)*, Decision of Appeals Chamber of International Criminal Tribunal for the former Yugoslavia, 2 October 1995.

150 P. Webb, M. Bergsmo, *International Criminal Courts and Tribunals, Complementarity and Jurisdiction*, [in:] *Oxford Public International Law*, November 2010, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1381> (13 October 2016).

151 Chamber 1 of ICTR, 2 September 1998, Case No. ICTR-96-4-T (*The Prosecutor v. Jean Paul-Akayesu*), §497.

152 §506 of abovementioned judgment.

group may be the most direct means of destroying a group, other acts or series of acts can also lead to the destruction of the group. A group is comprised of its individuals, but also of its history, traditions, the relationship between its members, the relationship with other groups, the relationship with the land. A group may be eradicated not only by direct killings of its members, but also by indirect methods such as deportation. **According to the Tribunal, the physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members**<sup>153</sup>.

There are strong arguments in favor of establishing an Ad Hoc Tribunal for ISIS crimes. Although Christian minorities in Africa and the Middle East have not yet been entirely eradicated, ISIS definitely intends to destroy this group in whole or in part, which in light of the case law quoted above constitutes genocide. The factual situation of religious minorities described in Chapter I clearly indicates that Islamic fundamentalists are determined to take all radical steps to eliminate Christians, including killings and forcible transfer of the population.

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<sup>153</sup> Trial Chamber of ICTY, 17 January 2005, Case No. IT-02-60-T (*The Prosecutor v. Vidoje Blagojević and Dragan Jokić*), §666.



# CONCLUSIONS



- 1) State Parties to the Rome Statute and the EU Member States can, under universal jurisdiction, prosecute a person – a citizen of those states – accused or convicted of genocide. The lack of a uniform policy regarding egregious human rights abuses against Christians is a separate issue.
- 2) Unlike the European Union, which holds very limited competences in the area of justice, the United Nations employ a proven and reliable tool of action against such acts of lawlessness as crimes against humanity: measures taken by the Security Council in order to restore international peace and security. The UN may provide an optimal response to the persecution of Christians by establishing measures of both preventative (military peacekeeping operations in war zones) and *post factum* nature (Ad Hoc Tribunal for ISIS crimes).
- 3) Establishing peace enforcement operations seems to be the best means to protect the life, health and freedom of Christians, as it allows for the use of military means to restore the security of the concerned population and to demarcate the warring parties.

It is highly desirable to establish an Ad Hoc Tribunal for ISIS crimes. The establishment of such Ad Hoc Tribunal for ISIS crimes is justified in the light of case law of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). A proposed draft resolution establishing the above mentioned Ad Hoc Tribunal is attached in the Appendix to this report.

PROPOSED DRAFT  
RESOLUTION  
OF THE SECURITY  
COUNCIL ON CHRISTIAN  
PERSECUTION

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Distr.  
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S/RES/..... (2017)  
.... 2017

RESOLUTION ... (2017)  
Adopted by the Security Council at its ... meeting,  
on ... 2017

The Security Council,

Recalling all its previous resolutions concerning terrorism and minorities persecuted in the Middle East and in North Africa,

Recalling the statements made by the President of the Security Council on the persecution of religious minorities, especially the Statement on Persecution of Minorities in Mosul dated 21 July 2014 (SC/11484-IK/679), on the Abduction of Hundreds of Assyrians by ISIS dated 25 January 2015 (SC/11799) and on Murder of Over 30 Ethiopian Christians dated 20 April 2015 (SC/11867-AFR/3118),

Reaffirming that terrorism, in all its forms, constitutes one of the most serious threats to peace and security and that all acts

of terrorism are criminal and unjustifiable, regardless of their motivations, whenever and by whomsoever committed, and reiterating its unanimous condemnation of the Islamic State, Al-Qaida and all other individuals, groups, undertakings and entities associated with them as well as multiple terrorist acts aimed at innocent and defenceless civilians, in particular at religious minorities of Christians and Yazidis;

Noting the report of the Office of the United Nations High Commissioner for Human Rights dated 15 March 2015 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, in accordance with the resolution of the Human Rights Council A/HRC/RES/S-22/1, and also the report of the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI) in accordance with para. 2(c) of the resolution 1770 (2006) as well as the statement made by the Prosecutor of the International Criminal Court dated 8 April 2015,

Expressing serious concerns over continuing reports of widespread and flagrant violations of international humanitarian law, in particular reports of genocide, mass killings, expulsions, mass, organised and systematic cases of enslavement and rape of women,

Expressing deep concerns over the spread of extremist Islamist ideology as seen in the actions of ISIS, Al-Qaida and organisations from the Middle East and North Africa connected with them,

Having determined that Islamist terrorism constitutes a threat to international peace and security,

Expressing its determination to put an end to this type of crimes and to undertake effective measures aiming at administering justice to those who are responsible for those crimes,

Convinced that the establishment of an international court and the prosecution of individuals responsible for the above mentioned violations of international humanitarian law will help prevent such violations and repair effectively the damage caused, Stressing the need for international cooperation in order to strengthen courts of law and administration of justice in ...., taking into account the necessity to interrogate a large number of suspects,

Acting on the basis of Chapter VII of the United Nations Charter,

1. Decides hereby to institute an international court, the sole aim of which will be to bring to justice individuals responsible for genocide and other serious violations of international humanitarian law on the territory of Iraq and Syria and .... from ... up to the date established by the Security Council once the peace has been restored, and to this end adopts the Statute of the International Court included as an annex to this resolution;
2. Decides that all States are obliged to cooperate with the International Court and its bodies in accordance with this resolution and the Statute of the International Court and that, consequently, all States are obliged to undertake within the framework of their national legal order all necessary measures to implement the provisions of this resolution and the Statute, including the commitment of the States to follow the requests for assistance or orders issued by the Court,

and asks the States to keep the Secretary General informed of undertaken measures;

3. Calls upon the States, intergovernmental and non-governmental organizations to grant funding, equipment and services necessary for the International Court, including expert staff resources;
4. Requests the Secretary General to implement this resolution immediately, and in particular to undertake practical arrangements to guarantee effective functioning of the International Court, including the preparation, as soon as possible, of recommendations for the Council concerning the potential location of the headquarters of the International Court and to present periodic reports to the Council;
5. Decides that the Council shall establish the headquarters of the International Court taking into account the aspect of justice, integrity and effectiveness in administration, including access to witnesses and services as well as the outcomes of different consultations between the United Nations Organization and the State of the headquarters to be approved by the Council, noting that the International Court may hold its sessions outside its headquarters if this is necessary for smooth performance of its functions; and decides that the office shall be located in Iraq and/or Syria, where proceedings will also be held, should this turn out to be expedient, appropriate and consistent with the conclusions of similar consultations;
6. Decides to remain actively seized of the matter.



# ANNEX



## So far adopted legal measures in the field of Christian persecution

### EU POLITICAL STATEMENT RELATING TO PERSECUTION OF CHRISTIANS IN CHRONOLOGICAL ORDER



#### COUNCIL OF THE EUROPEAN UNION CONCLUSIONS ON SYRIA FOREIGN AFFAIRS COUNCIL MEETING LUXEMBOURG, 14 APRIL 2014<sup>154</sup>

*The EU is increasingly concerned about the worsening plight of all vulnerable groups, and ethnic and religious minorities, noting that Christians are increasingly targeted by extremist groups.*

#### COUNCIL OF THE EUROPEAN UNION CONCLUSIONS ON IRAQ FOREIGN AFFAIRS COUNCIL MEETING BRUSSELS, 15 AUGUST 2014<sup>155</sup>

*The EU remains seriously concerned about the deterioration of the security situation in Iraq and condemns in the strongest terms the attacks perpetrated by ISIL and other associated armed groups. The EU also condemns the atrocities*

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<sup>154</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/142212.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142212.pdf) (access: 12 April 2017).

<sup>155</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/144311.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/144311.pdf) (access: 12 April 2017).

*and abuses of basic human rights, in particular when committed against targeted religious minorities and most vulnerable groups. Some of these acts, committed in Iraq and Syria, may constitute crimes against humanity and must be investigated swiftly so that the perpetrators are held accountable. The EU welcomes the US efforts to support the Iraqi national and local authorities in their fight against ISIL and recognises international and European responsibility to cooperate with Iraq in our common fight against terrorism.*

**EUROPEAN PARLIAMENT RESOLUTION OF 18 SEPTEMBER  
2014 ON THE SITUATION IN IRAQ AND SYRIA, AND  
THE IS OFFENSIVE, INCLUDING THE PERSECUTION OF  
MINORITIES<sup>156</sup>**

*Whereas the promotion of democracy and respect for human rights, including the right to freedom of religion and belief, are fundamental principles and aims of the EU and constitute common ground for its relations with third countries;*

*Is extremely concerned at the deterioration of the security and humanitarian situation in Iraq and in Syria as a result of the occupation of parts of their territory by IS; firmly condemns the indiscriminate killings and human rights violations perpetrated by this and other terrorist organisations against religious and ethnic minorities and the most vulnerable groups; strongly condemns attacks directed at civilian targets, including hospitals, schools and places of worship, and the use of executions and sexual violence by IS in Iraq and Syria; underlines the fact that there should be no impunity for the perpetrators of these acts;*

*Emphasises that widespread or systematic attacks directed against civilians because of their ethnic or political background, religion, belief or gender may constitute a crime against humanity; strongly condemns all forms of persecution, discrimination and intolerance based on religion and belief, and acts of violence against all religious communities; stresses once again that the right to freedom of thought, conscience and religion is a fundamental human right;*

*Expresses its support for all victims of religious intolerance and hatred; expresses its solidarity with the members of the Christian communities being persecuted*

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<sup>156</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2014-0027+0+DOC+XML+Vo//EN> (access: 12 April 2017).

*and facing the danger of extinction in their motherlands, Iraq and Syria, as well as with other persecuted religious minorities; confirms and supports the inalienable right of all religious and ethnic minorities living in Iraq and Syria, including Christians, to continue to live in their historical and traditional homelands in dignity, equality and safety, and to practise their religion freely; stresses that the crimes committed against Christian minorities such as Assyrians, Syriacs and Chaldeans, as well as Yazidis and Shia Muslims, represent a final push by IS for a complete religious cleansing in the region; notes that for centuries members of different religious groups coexisted peacefully in the region;*

*Calls on the international community to assist the Iraqi authorities – including by providing military protection to particularly vulnerable groups – in ensuring protection of, and assistance to, those fleeing the areas affected by terrorism, in particular members of vulnerable groups and of ethnic and religious communities.*

**EPWG ON FORB CO-PRESIDENT PETER VAN DALEN AND  
AMBASSADOR OF PAKISTAN DISCUSS FREEDOM OF RELIGION  
OR BELIEF<sup>157</sup>**

*The European Parliament Working Group on Freedom of Religion or Belief (EPWG on FoRB) was concerned by the ruling in the case of Asia Bibi and had a requested a meeting with the Ambassador of Pakistan to the EU to speak about her case.*

*In our 2013 annual report the EPWG on FoRB made recommendations to the Pakistani government to ‘reform the way it deals with the blasphemy laws and its frequent abuse, with a view to a future repeal of the most dangerous sections including Article 295 (B) and 295 (C) of the Pakistani Penal Code.’*

*The EPWG on FoRB has also been undertaking advocacy work to pressure European Union (EU) leaders to raise the subject of blasphemy laws with the Pakistani government especially after the EU decided to grant Pakistan GSP+ trade status which is conditional on the Pakistani government protecting and promoting human rights.*

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**157** <http://www.religiousfreedom.eu/2016/06/30/annual-report-on-the-state-of-freedom-of-religion-or-belief-in-the-world-2015-2016/> (access: 12 April 2017).

EUROPEAN PARLIAMENT RESOLUTION OF 12 FEBRUARY 2015  
ON THE HUMANITARIAN CRISIS IN IRAQ AND SYRIA, IN  
PARTICULAR IN THE IS CONTEXT<sup>158</sup>

*Strongly condemns the gruesome, systematic and widespread human rights abuses and violations committed by the Assad regime, the terrorists of ISIL/Daesh and other jihadi groups in Iraq and Syria, including the killing of hostages, all forms of violence against people on the basis of their religious or ethnic affiliation, and violence against women and LGBTI people;*

*(...) stresses once again that the right to freedom of thought, conscience and religion is a fundamental human right; deplores the establishment of unlawful so-called 'sharia courts' in the territory under ISIL/Daesh control; recalls its absolute condemnation of torture;*

*expresses its deep sympathy to the victims of the atrocities committed by the Assad regime, the terrorists of ISIL/Daesh and other jihadi groups, and calls for the immediate release of all hostages; strongly condemns ISIL/Daesh abuses against children.*

EUROPEAN PARLIAMENT INTERGROUP ON FREEDOM OF  
RELIGION OR BELIEF AND RELIGIOUS TOLERANCE (FORB  
& RT) STRONGLY CONDEMNS THE MURDER OF 21 COPTIC  
CHRISTIANS IN LIBYA BY ISIS LINKED EXTREMISTS<sup>159</sup>

*The Intergroup condemned killing of 21 Egyptian Copts in Libya and stressed that the stride of violence and hatred of ISIS against religious and ethnic minorities has increased.*

*The Intergroup called on the EU to take steps to protect the minorities in compliance with EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief.*

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<sup>158</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0040&language=EN> (access: 12 April 2017).

<sup>159</sup> <http://www.religiousfreedom.eu/2016/06/30/annual-report-on-the-state-of-freedom-of-religion-or-belief-in-the-world-2015-2016/> (access: 12 April 2017).

INTERGROUP CALLS ON THE EUROPEAN UNION TO FOCUS  
ON PROTECTING RELIGIOUS OR BELIEF MINORITIES IN THE  
MENA REGION AS ISIS ATTACKS CHRISTIAN VILLAGES IN  
SYRIA (25 FEBRUARY 2015)<sup>160</sup>

*Intergroup condemns the attacks on the Christian villages, during which ISIS massacred civilian people, burned dozens of houses and churches and abducted many people.*

*The Intergroup calls on the EU to increase political pressure in order to protect religious or belief minorities in the region.*

EUROPEAN PARLIAMENT RESOLUTION OF 12 MARCH 2015 ON  
RECENT ATTACKS AND ABDUCTIONS BY ISIS/DA'ESH IN THE  
MIDDLE EAST, NOTABLY OF ASSYRIANS<sup>161</sup>

*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; is extremely concerned at this terrorist group's deliberate targeting of Christians, Yezidis, Turkmen, Shi'ites, Shabak, Sabean, Kaka'è and Sunnis who do not agree with their interpretation of Islam, as part of its attempts to exterminate any religious minorities from the areas under its control; underlines that there must be no impunity for the perpetrators of these acts and that those responsible should be referred to the ICC; recalls, in this context, the unresolved kidnapping of Bishops Yohanna Ibrahim and Paul Yazigi by armed rebels in Aleppo Province, Syria, on 22 April 2013.*

*Urges the EU and its Member States to cooperate with international and local partners to safeguard as much Assyrian and other cultural and religious heritage as possible from the territories occupied by ISIS/Da'esh; furthermore, urges the Council to take action against the illicit trade in ancient artefacts coming from these territories;*

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<sup>160</sup> <http://www.religiousfreedom.eu/2016/06/30/annual-report-on-the-state-of-freedom-of-religion-or-belief-in-the-world-2015-2016/> (access: 12 April 2017).

<sup>161</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0071&language=EN&ring=B8-2015-0253> (access: 12 April 2017).

*Confirms and supports the inalienable right of all religious and ethnic minorities living in Iraq and Syria to continue to live in their historical and traditional homelands in dignity, equality and safety, and to practice their religion freely; in this light, urges all UN member states to clearly speak out against the violence and in particular in favour of the rights of minorities; believes that in order to stem the suffering and the mass exodus of Christians and other indigenous populations of the region, a clear and unequivocal statement by regional political and religious leaders, in support of their continued presence and full and equal rights as citizens of their countries, is necessary;*

*Rejects without reservation and considers illegitimate the announcement by ISIS/Daesh leadership that it has established a caliphate in the areas it now controls; emphasises that the creation and expansion of the 'Islamic caliphate', and the activities of other extremist groups in the Middle East, is a direct threat to the security of the region, as well as European countries.*

*Confirms its commitment to freedom of thought, conscience and religion or belief as a fundamental human right guaranteed by international legal instruments to which most countries in the world have committed and which are recognised as holding universal value.*

**COUNCIL CONCLUSIONS ON THE EU REGIONAL STRATEGY  
FOR SYRIA AND IRAQ AS WELL AS THE ISIL/DA'ESH THREAT,  
FOREIGN AFFAIRS COUNCIL, 16 MARCH 2015<sup>162</sup>**

*The EU condemns unreservedly the indiscriminate attacks, atrocities, killings and abuses of human rights which are perpetrated by ISIL/Daesh and other terrorist groups, in particular against Christians and other religious and ethnic groups. The EU underlines the importance of preserving the multi-ethnic, multi-religious and multi-confessional character of the Syrian and Iraqi societies. The EU supports international efforts and initiatives to address these issues and welcomes in this regard the Ministerial meeting that will take place at the UN Security Council on 27 March on the victims of attacks and abuses on ethnic or religious ground in the Middle East.*

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<sup>162</sup> <http://www.consilium.europa.eu/en/press/press-releases/2015/03/16-council-conclusions-eu-regional-strategy-for-syria-and-iraq-as-well-as-the-isil-daesh-threat> (access: 12 April 2017).

*The EU encourages all relevant authorities to reinforce current IDPs' registration efforts and offer equal protection to all ethnic and religious communities that are part of Iraqi society, as well as Syrian refugees.*

EUROPEAN PARLIAMENT RESOLUTION OF 27 APRIL 2015  
ON THE PERSECUTION OF CHRISTIANS IN THE WORLD, IN  
RELATION TO THE KILLING OF STUDENTS IN KENYA BY  
TERROR GROUP AL-SHABAAB

*Recalls that freedom of religion is a fundamental right and strongly condemns any violence or discrimination on the basis of religion;*

*Calls for a thorough investigation to be carried out following the attacks, to identify those responsible and bring them to justice.*

EUROPEAN PARLIAMENT RESOLUTION OF 4 FEBRUARY  
2016 ON THE SYSTEMATIC MASS MURDER OF RELIGIOUS  
MINORITIES BY THE SO-CALLED 'ISIS/DAESH'<sup>163</sup>

*Recalls its strong condemnation of the so-called 'ISIS/Daesh' and its egregious human rights abuses, which amount to crimes against humanity and war crimes, within the meaning of the Rome Statute of the International Criminal Court (ICC), and that action should be taken for it to be recognised as genocide by the UN Security Council; is extremely concerned at this terrorist group's deliberate targeting of Christians (Chaldeans/Syriacs/Assyrians, Melkites, Armenians), Yazidis, Turkmens, Shi'ites, Shabaks, Sabeans, Kaka'i and Sunnis who do not agree with their interpretation of Islam, as part of its attempts to exterminate any religious and ethnic minorities from the areas under its control;*

*Expresses its view that the persecution, atrocities and international crimes amount to war crimes and crimes against humanity; stresses that the so-called 'ISIS/Daesh' is committing genocide against Christians and Yazidis, and other religious and ethnic minorities, who do not agree with the so-called 'ISIS/Daesh' interpreta-*

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<sup>163</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0051+0+DOC+XML+Vo//EN> (access: 12 April 2017).

*tion of Islam, and that this therefore entails action under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide; underlines the fact that those who intentionally, for ethnic or religious reasons, conspire in, plan, incite, commit or attempt to commit, are complicit in or support atrocities should be brought to justice and prosecuted for violations of international law, notably war crimes, crimes against humanity and genocide;*

*Urges each of the Contracting Parties to the UN Convention on the Prevention and Punishment of the Crime of Genocide, signed at Paris on 9 December 1948, and to other relevant international agreements, in particular the EU Member States, to prevent war crimes, crimes against humanity and genocide within their territory; urges Syria and Iraq to accept the jurisdiction of the International Criminal Court;*

*Urges the members of the UN Security Council to support a referral by the Security Council to the International Criminal Court in order to investigate violations committed in Iraq and Syria by the so-called 'SIS/Daesh' against Christians, Yazidis and religious and ethnic minorities;*

*Urges each of the Contracting Parties to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, of 1948, and to other international agreements for the prevention and punishment of war crimes, crimes against humanity and genocide, and in particular the competent authorities of countries – and their nationals – which are in any way supporting, cooperating in or funding, or are complicit in, these crimes, to wholly fulfil their legal obligations under the convention and such other international agreements;*

*Urges the competent authorities of those countries which are in any way directly or indirectly supporting, cooperating in or funding, or are complicit in, these war crimes, crimes against humanity and genocide, to wholly fulfil their legal obligations under international law and to stop these unacceptable behaviours, which are causing enormous damage to the Iraqi and Syrian societies and are seriously destabilising neighbouring countries and international peace and security;*

*Recalls that UN Security Council Resolution 2253 (2015) imposed a legal duty on UN member states to prohibit any kind of assistance to the so-called 'ISIS/Daesh' and other terrorist organisations, notably supplying arms and financial assistance, including the illegal oil trade, and urges them to make this kind of assistance a crime under domestic law; recalls that failure to act in consequence by some member states would constitute a violation of international law and endow other member states with a legal duty to implement the UN Security Council resolution by acting to bring the responsible individuals and entities to justice;*

*Denounces in the strongest terms the destruction of religious and cultural sites and artefacts by the so-called 'ISIS/Daesh', which constitutes an attack against the cultural heritage of all inhabitants of Syria and Iraq and of humanity at large; calls on all states to step up their criminal investigations and judicial cooperation with a view to identifying all groups responsible for illicit trafficking in cultural goods and for damaging or destroying cultural heritage that belongs to all of humanity in Syria, Iraq and the broader Middle East and North African regions;*

*Urges all the countries of the international community, including the EU Member States, to work actively on fighting radicalisation and to improve their legal and jurisdictional systems in order to avoid their nationals and citizens being able to travel to join the so-called 'ISIS/Daesh' and participate in violations of human rights and international humanitarian law, and to ensure that, should they do so, they are criminally prosecuted as soon as possible, including for online incitement and support to commit those crimes;*

*Calls for the EU to establish a permanent Special Representative for Freedom of Religion and Belief;*

*Recognises, supports and demands respect by all for the inalienable right of all ethnic and religious minorities, and others, living in Iraq and Syria, to continue to live in their historical and traditional homelands in dignity, equality and safety, and to fully practice their religion and beliefs freely without being subject to any kind of coercion, violence or discrimination; believes that, in order to stem the suffering and the mass exodus of Christians, Yazidis and other communities of the region, a clear and unequivocal statement by all regional political and religious leaders in support of their continued presence and full and equal rights as citizens of their home countries is imperative;*

*Requests the international community and its member states, including the EU and its Member States, to ensure the necessary security conditions and prospects for all those who have been forced to leave their homeland or have been forcibly displaced, to make effective as soon as possible their right to return to their homelands, to preserve their homes, land, property and belongings, as well as their churches and religious and cultural sites, and to be able to have a dignified life and future;*

*Recognises that the ongoing persecution of religious and ethnic groups in the Middle East is a factor that contributes to mass migration and internal displacement;*

*Stresses the importance of the international community providing protection and aid, including military protection and aid, in accordance with international law, to all those targeted by the so-called 'ISIS/Daesh' and other terrorist organisations in the*

*Middle East, such as ethnic and religious minorities, and of such people's participation in future political lasting solutions; calls on all parties involved in the conflict to respect universal human rights and to facilitate the provision of humanitarian aid and assistance through all possible channels; calls for the creation of humanitarian corridors; considers that safe havens, protected by UN-mandated forces, could be part of the answer to the massive challenge of providing temporary protection for millions of refugees from the conflict in Syria and Iraq.*



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