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Recognizing Yezidi Genocide:

Perspectives and Challenges of Initiating an (Inter)National Tribunal for the
Crimes of ISIS against Yezidi Minority

Author: Mirza ALI
Supervisor: Prof. Andre Klip

ABSTRACT:

This interdisciplinary research dissertation is based on the legal analysis about the characteristics of crimes of ISIS, possible recognition of Yezidi genocide according to the provisions of international criminal law and perspectives of initiating a special tribunal for the crimes of ISIS against Yezidi minority.

The thesis compares evidence of the incidences and atrocities of ISIS with provisions of the UN Genocide Convention and other international treaties to find out whether Yezidis belong to a protected group under international law and whether these crimes could be legally named as genocide, crimes against humanity or war crimes. Secondly, the study highlights the international reactions and symbolic political recognition of Yezidi genocide worldwide and explains the obligations of those states who recognized the genocide by taking three examples of the USA, UK and European Union to examine what they did post-recognition and whether their measures promoted the initiation of a legal entity to punish the crimes of ISIS.

Finally, this thesis analysis the perspectives and challenges of establishing a national or international tribunal for the crimes of ISIS, by highlighting the obstacles and possibilities for three roads towards bringing justice: referring the case to ICC; establishment of an Ad hoc/Hybrid tribunal; or the activation of an Iraqi national jurisdiction for international crimes. On the basis that facts are given about the current legal situation and appropriate ideas are recommended to reform Iraqi law in order to fulfil the contemporary standards of ICL and comply with the principles of international human rights.

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LIST OF ABBREVIATIONS:

ABI	Air Bridge Iraq – Luftbrücke Irak, German NGO
BW:	State Baden Württemberg
CPA	Coalition Provisional Authority / the American authority in Iraq 2003-2004
GBV:	Gender Based Violence
HRC:	Human Rights Council
HRW:	Human Rights Watch
ICC:	International Criminal Court
ICL	International Criminal Law
ICTR:	International Criminal Tribunal for Rwanda
ICTY:	International Criminal Tribunal for former Yugoslavia
IDP:	Internally Displaced Person
IGO	Inter Governmental Organisation
IHF	Iraq Humanitarian Fund
IICI:	International, Independent Commission of Inquiry (Syria)
IIIM:	International, Impartial and Independent Mechanism (Syria)
IIIT:	Independent, International Investigative Team (Iraq)
INA	Iraqi National Assembly
INGO:	International Non-Governmental Organisation
IOM:	International Organisation for Migration
ISCT	Iraqi Special Criminal Tribunal
ISIL/ISIS:	Islamic State in Iraq and Levant/ Islamic State in Iraq and Syria
KDP:	Kurdistan Democratic Party
KRG:	Kurdistan Regional Government
KRI:	Kurdistan Region of Iraq
LoN	League of Nations
MEP:	Member of European Parliament
MERI:	Middle East Research Institute in Erbil
MRGI:	Minority Rights Group International
NGO:	Non-Governmental Organisation

OHCHR:	Office of the High Commissioner on Human Rights
PMU / PMF	Popular Mobilizations Units / Popular Mobilizations Forces (Shiaa Militias in Iraq)
PTSD:	Post Traumatic Stress Disorder
PUK:	Patriotic Union of Kurdistan
SAP:	Syrian Accountability Project
SDF:	Syrian Democratic Forces
STL	Special Tribunal for Lebanon
UN:	United Nations
UNGA:	United Nations General Assembly
UNGC	UN Genocide Convention (1948)
UNHCR:	United Nations Refugee Agency
UNITAD:	United Nations Investigative Team to promote Accountability for Crimes of Daesh
UNSC:	United Nations Security Council
YPG:	People's Protection Units (Kurdish forces in Syria)

Introduction:

“I AM NOT ALLOWED TO DIE YET” was my first sentence to the German Media on the 22nd of August 2014. I had just survived a helicopter crash on Mount Sinjar while I was participating in a humanitarian mission to rescue Yezidi civilians fleeing from ISIS.¹ The pictures of the starving victims in Sinjar and the testimonies of raped women and survivors of the massacres motivated me to work as hard as I could, although the injuries from the accident forced me to be wheelchair-bound for over three months. I gave the first Yezidi testimony to the Human Rights Council’s 22nd Special Session, requested the establishment of an international court for the crimes of Islamic State and demanded the recognition of the Yezidi genocide.² After almost four and a half years of human rights activities and lobbying on behalf of the Yezidi community, activists from around the world, including myself, were immensely disappointed to find that the case of the Yezidi minority was disregarded by the ICC, as well as by international and national tribunals. Despite international solidarity, especially with the Yezidi enslaved women and children, that was demonstrated by the symbolic and political recognition of several parliaments and other institutions, and apart from some humanitarian aid for the Yezidi refugees and IDPs, nothing has happened since 2014.

This situation was the reason why I chose to write upon this topic: the recognition of the Yezidi genocide from a legal perspective. However, I must confess that this research topic has significant risk for someone working in a painful field related to his people - the risk of being affected emotionally and therefore being unable to deliver an objective analysis and a relevant academic approach. At the same time, my identity and experiences in the human rights field are also a unique advantage: it gave me access to information, sources and related people and institutions. I have also been eyewitness to some political events concerning the Yezidi Case in Europe, Iraq, and the USA. I hope that I was successful in balancing my emotions and was objective in appropriately writing on this topic in an objective manner, and was able to utilize the knowledge and opportunities that my position has afforded to me in an appropriate academic matter.

¹ Bergmann, Carsten, „Ich darf noch nicht sterben“, Helfer fotografiert tragische Fluchtszenen im Nordirak, An Interview of the Author with the German Newspaper (Die Neue Presse), Hannover, in 22.08.2014

² UN, the 22nd Special Session of the HRC on the human rights situation in Iraq in light of abuses committed by Islamic State in Iran and the Levant and associated groups- 1.September 2014: Report No. A/HRC/RES/S-22-1 <https://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session22/Pages/22ndSpecialSession.aspx>

This paper addresses three main questions: Do the atrocities committed by ISIS against the Yezidi minority amount to the crime of Genocide? Is there any legal value to the “political” and “symbolic” recognition of the state? What are the perspectives and challenges of establishing a special tribunal for the crimes of ISIS, in other words; which formation of court would be most effective at bringing justice?

The thesis is divided into four main chapters to address each of those questions. The first Chapter (Yezidi, ISIS and the atrocities) will deal with the first question. It is essential to answer: who are the Yezidis? Why has the Islamic State targeted them? What kinds of atrocities have been committed against the Yezidis in the past? Was the criminal intent of ISIS systematic Genocide, war crimes, crimes against humanity, or even collateral damages in a region saturated with multiple conflicts?

It was necessary to divide this chapter into two sub-chapters; initially, I highlight the identity of the Yezidi minority (1.1). A short view about their religion (1.1.1), society and demography (1.1.2) is provided to determine whether ISIS targeted this identity or not. The historical overview of the discrimination of this small community, especially highlighting some important Islamic Fatwas against Yezidi completes the image of their identity (1.1.3).

However, two further aspects of the current history of the Yezidi, during the time of the Saddam/Baath regime (until 2003) (1.1.4), and after 2003 are particularly helpful to understand the marginalization and isolation of the Yezidis and the increasing hatred against them among Islamic neighbours (1.1.5), which has facilitated the collaboration of Arab neighbours with the ISIS fighters against Yezidis.

In the second sub-chapter, I will explain the motivations behind the terror group: Why has ISIS attacked the Yezidis? What religious backgrounds of fundamental Islam “justify” the killing and slavery of Yezidi? (1.2.1) Moreover, which other political and geopolitical factors have enabled the attack on the Yezidi region (Sinjar)? (1.2.2.). The first chapter in whole serves to examine, whether Yezidis are one of the protected groups defined by UNGC.

The second chapter will describe the characteristics of the crimes of ISIS against the Yezidis by analysing the facts and evidence. In the first sub-chapter (2.1), I will initially define the legal term of Genocide crimes (a); then (b) the scope of the Art. II of UNGC will be highlighted and (c) the distinction between Genocide and crimes against humanity will be explained.

In the second sub-chapter (2.2.) I will systematically compare the kinds of acts committed by ISIS with the gross crimes defined according to the provisions of International Criminal Law, the Geneva Convention, Genocide Conventions and the Rome Statute in order to develop an answer to the first primary question. An excursion about the destruction of the religious and cultural heritages of Yezidis will be highlighted in (2.3.). Finally, the key question will be answered: Do the Islamic State's atrocities against the Yezidi fulfil the requirements of genocidal crimes in material, mental and special intent and contextual elements? In other words, could the Islamic State's atrocities be defined as Genocide in the scope of ICL? (2.4.)

The third chapter of this dissertation will deal primarily with the international reaction to the atrocities. An overview of three different decisions and resolutions of the USA, the UK and the European Parliament about the crimes of ISIS against the Yezidi will be analysed carefully. (3.1.). This overview will explain the political aspect of the intervention by the international community, which is necessary to understand the other sub-chapter that is based on questions about state obligations, namely: What legal value do these resolutions have? What are the obligations of these countries after their political "recognition of Yezidi Genocide"? Are these resolutions enough to oblige the states to establish a criminal court? (3.2.) As a comparison, I will review Germany's response, who did not recognise Yezidi genocide. (3.3.)

The fourth Chapter will discuss the possibilities of legal accountability. What are the facts now? Which tribunal model can bring justice and is bringing justice even a possibility?

In this context, I will discuss the legal frameworks in Iraq and its position towards the ICC. I will also consider Iraqi legal measures against international crimes: Is there an Iraqi law about such gross crimes? How would the Iraqi judicial and political systems deal with or how are they dealing with these crimes? (4.1.)

I will also highlight the character of UNITAD based on the Security Council Resolution 2379, and ask: What are the tasks of UNITAD? Is there any hope of having a successful tribunal? (4.2.)

Finally, I will try to explain, which tribunal (domestic, hybrid or international court) would be useful/possible for the Yezidi case and why? (4.3.)

METHODOLOGY

This research is based primarily on information, reports, studies, and testimonies of eyewitnesses and documentation of the competent national and international organs and authorities related to the atrocities of ISIS against Yezidi minority after August 2014. I furthermore utilized academic literature and other information sources in English, German, Arabic, and Kurdish.

An academic overview about the identity, religion and the history of discrimination of the Yezidi minority helps to understand the motivations of the ISIS attacks against them and to determine the criminal intent of the perpetrators.

Various descriptions of the inquiry commissions, international actors, relevant NGOs and reports of the United Nations official entities have been analysed from a legal perspective to understand what took place under the ISIS controlled zone in Iraq and Syria, where the Yezidi population was targeted. The evidence has been compared to the legal provisions of the ICL, Geneva Convention and Rome Statute, to define the character of these crimes. The evidence referred to in this study has been analysed and corroborated to ensure its credibility.

A study visit to Iraq, including visiting related UN agencies, the KRG High Commission for the Recognition of the Genocide Crimes against Yezidi, the Centre of the Criminal Evidence in Duhok, Meeting with Judge Ayman, Director of the Centre and studying cases and testimonies of the victims has helped to widen the knowledge about the whole criminal evidence.

A previous meeting with the German General Prosecutor Mr. Jasper Klinge during his official trip to Iraq highlighted the legal measures, scope, and steps that can be undertaken by European countries, specifically Germany. The previous visits to the UN Headquarters in Geneva, OHCHR and the ICC in The Hague were essential to enrich my knowledge about the different perspectives of international justice.

Analysis:
Recognizing Yezidi genocide, Initiating an Inter(National) Tribunal for the Crimes
of ISIS

(1) Chapter I:

Yezidi, ISIS and the Atrocities

1.1. Who are the Yezidis?

This subchapter serves to understand the identity, community, history and historical persecution of the Yezidi minority in order to understand circumstances that helped their Muslim neighbours to participate in the “justified” atrocities against an “infidel” group.

1.1.1. The Identity of Yezidis:

The Yezidis³ are “an ethno-religious minority whose existence dates back to c. 4750 BCE in the pre-Islamic Mesopotamian region”⁴. Their religion is considered to be one of the oldest monotheistic religions in Mesopotamia⁵ and their faith is based on the worship of one supreme God “Ezi”⁶ or “Khuda.” This God is very peaceful and “similar like Epicurean gods, who are not interfering with the world's matter”[sic]⁷. He is, according to Yezidism, the One who created Himself, then the universe

³ There are many different ways of writing this name: Yezidi, Yazidi, Ezidi, and Eyzidi. The correct one is Ezidi, which is a synonym to the pronunciation in the Kurdish-Kurmanji dialect, the language of the Yezidi population. In this paper I have decided to use “Yezidi” because this word is the most widespread in English language than the other terms.

⁴ Serena Arena, “Peace Profile: Vian Dakhil, in Peace Review”: A Journal of Social Justice, Vol. 29 Issue 2, 2017, P. 244–247,

⁵ Mirza Dinnayi, “Die Verfolgung der „Teufelanbeter,” Yezidi zwischen basthistischer Repression und sunnitischen Islamismus”; in *Irak von der Republik der Angst zu bürgerlichen Demokratie*, (Hg. Kreuzer & Schmidinger), Calra Verlag, 2004, pp. 197-204

⁶ “Ezi” is, according to many scholars, the word that the name of the Ezidi (Yezidi) is derived from. In one of the religious texts: (Ezi is the Lord, He named Himself with 1001 Names, His greatest name is Khuda), (Broka, Hoshang: Studies in the Mythology of Yezidi Religion (in Arabic), Germany, 1995, p. 30

⁷ Roger Lescot, *Les Yezidis De Syrie et du Gjebel Sindjar*, Translation to Arabic: Ahmad Hasan, Al-Mada Publishing Company, Damascus, 2007, p. 51

and so this God is the first source of the creation⁸. After God (Ezi) there are seven angels, who govern the universe under the Will of God. One of them is the Archangel “Tawisi Melek”⁹.

An essential characteristic of the philosophy of the Yezidi religion is based on this understanding of God and Angels. The Yezidi mythology differs from other religions, like Islam and Christianity, in the context of the unique God and Devil. According to the Yezidis, God is responsible for and is the source of "good" and "evil," and there is no "fallen angel." All the seven angels are good, and the source of evil is inside human beings, and derives from the "wills of the human instincts"¹⁰. The human being has, therefore, full responsibility for his or her behavior, and there is no evil or fallen power that encourages him or her to commit sin. Evil originates from humans' instincts and personal wishes. This is unlike most of the Abrahamic Religions who believe in a Devil power that opposes God and encourages human beings to commit sins.¹¹ “The relationship between God and the Peacock Angel in Yazidism differs from the good/evil dichotomy found in Zoroastrianism which epitomizes the struggle between Ohrmazd and Ahriman. Tawus is the alter-ego of God rather than his opponent”¹². The philosophy of the religion backs to be “one of the three branches of the so-called ‘Yazdanism, which identifies a group of native Kurdish monotheistic religions descended from an ancient religion as the ‘cult of angels’”¹³.

The religious culture of Yezidism is not only distinct from Islam, but also highlights a different perspective from very sensitive notions that have been subject to long and painful debates among Muslim scholars since the beginning of their religion. These notions are about the mythology of the Devil, God and Adam and the role of “Satan or Iblees”, whether he was an opposite to the will of God or a loyalist. The Sufis, like Imam Al Ghazali and Hussein ben Mansur Al-Hallaj, have especially raised this debate; they believed, unlike the other Islamic scholars that Iblees¹⁴ should not be punished,

⁸ Khalil Jindy, *An Approach to know the fact about the Yezidi religion*, in Arabic, translation by authors, Rabun Publishing, 1996, Sweden, P 54-65

⁹ George Habib, *The Yezidi are remains of an ancient religion*, 1st edition, Dar Al-Rashid, Baghdad, 1979, electronic version, University of Michigan, 2009, p. 36 (in the Arabic Language)

¹⁰ Bayar Faqir Haji, “Qewle Nafse”, ROJ Journal, Volume 10, EZiA Print, Germany, 2001, P. 40-70

¹¹ Prof. Wolfram Reiss, “Über Religion und Glaubensrichtung der Jeziden”, Conference der 74.Ferman, Wien, 21 March 2017

¹² Nelida Fuccaro, *The Other Kurds, Yazidis in Colonial Iraq*, I.B. Tauris Publishers, London, P. 16

¹³ Sara De Vido, “Protecting Yazidi cultural heritage through women: An international feminist law analysis”, *Journal of cultural heritage*, Vol. 22, 2018, pp. 264-270

¹⁴ According to the common Islamic version, Iblees was punished because he refused an order from Allah to prostrate before Adam. Hallaj, Ghazali and other Sufies that he confirmed his Loyalty to Allah. Al Ghazali says: “Iblees is the Lord of the Monotheists”: (And [mention] when We said to the angels, "Prostrate before Adam"; so they prostrated, except for Iblees. He refused and was arrogant and became of the disbelievers)

because he did not refuse the order of Allah, he refused to worship any other except Allah. Al-Hallaj was killed in Baghdad for his approach that, according to his contemporary scholars, was a kind of heresy (Zandaqa).¹⁵

Yezidi religion was reformed in the 13th century by Sheikh Adi ben Musafer,¹⁶ who was one of the Sufis who joined the Yezidi holiest Temple Lalish. His biography is controversial and has confused many scholars. Most Arab researchers consider him as Muslim Sufi. Other more objective researchers consider him as an ascetic, pious person from Hakari, whose family immigrated to Balbak.¹⁷ The Yezidi themselves claim that Sheikha Adi accepted their religious faith and added some Sufi versions to reform Yezidism in order to protect them from Islamic conversion¹⁸. However, as Sheikh Adi was influenced by mystical ideas he infused Yezidism with similar ideas. Therefore, it was challenging for the researchers to understand Yezidism. Most Arab writers put the Yezidis as a deviated Islamic sect, some of them as a political movement.¹⁹ Even some contemporary orientalist scholars could not gather more than superficial information about Yezidi,²⁰ besides that the community was an endogamic, closed and isolated society. This has facilitated all kinds of misinformation about the identity and faith of the Yezidi.²¹ The consequence was a further rejection of the Yezidi and their non-acceptance in their homeland and isolation from the world until the end of the last century.

On the other hand, these differences explain their being victims of hatred, persecution, and discrimination among conservative Muslim majority throughout the past. A short view in this context will be highlighted in section (1.1.3.)

¹⁵ Encyclopaedia Britannica: Al Hallaj, Islamic Mystic

¹⁶ Zuhair Kathim Abbod, *Udi Ben Musafer, Reformer of the Yezidi Religion*, in Arabic, Al Arabiya Foundation for Studies and Publishing, 2005, pp. 15-26

¹⁷ Ibid, pp. 15-34

¹⁸ Ibid,

¹⁹ Ibid, p. 60

²⁰ Nelica Fuccaro, and many other western researchers have reproduced the ideas of Arabic writers about Yezidis and did no further research on other facts beyond that.

²¹ Many Muslim neighbours of the Yezidis have believed in the past that: the Yezidis have a tail, and if someone draws a circle around him he cannot leave it until he dies. Also, they drink milk of the dog after their birth in order to grow. Most Arabic books about the Yezidis have argued such rumours in order to confuse the reader, sometimes as sarcastic jokes but also often as semi-facts.

1.1.2. The Yezidi Community:

The structure of the Yezidi community is unique. It creates its society through very complicated binding's mechanism. The caste regime within the community divides people into three main castes (Sheikh, Pir, and Murid), and six under-caste marriage groups²². This structure makes the community very close to each other. The Yezidi tribes are divided among these castes. The religious caste inter-tribal connections facilitate a stronger unit, and this makes the Yezidi tribal society different to the Kurdish or Arabic tribes within the region.²³ Marriage between castes is strictly forbidden²⁴.

The majority setting of the Yezidis is in the northern part of Iraq²⁵, where about 500,000 Yezidis live in the different regions of the northern Iraqi provinces of Nineveh and Duhok²⁶. Their estimated number worldwide is between 800,000-1,000,000, and there are communities with various population densities in Syria, Turkey and the former Soviet Union, mainly Armenia and Georgia²⁷.

Over the past few decades, many members of the community have migrated to Europe. They escaped mainly because of persecution, discrimination and war in their homelands. The largest Yezidi community in the diaspora lives in Germany. The estimated number of the population in Germany is around 200,000.²⁸ However, the non-missionary character of their faith, besides the forced Islamisation, has reduced the size of the Yezidi society over the last few centuries. In order to be a member of the community, both of one's parents should be Yezidi. On the other hand, "according to conservative estimates, some 1,8 million Yazidi have had to convert and some 1,2 million Yazidi have been killed"²⁹.

²² Mirza Dinnayi, *Standortsbetimmung und Integrationsperspektiven der Yeziden in der multikulturellen Gesellschaft in Deutschland*, Mergel-Druckerei, 2000, p. 6-7.

²³ Ibid

²⁴ Jan Ilhan Kizilhan, "The Yazidi – Religion, Culture, and Trauma", *Advances in Anthropology*, Volume 7, Scientific Research Publishing, 2017, pp. 333-339

²⁵ Nelida Fuccaro, *The Other Kurds, Yezidis in Colonial Iraq*, I.B. Tauris Publishers, London, P. 9

²⁶ The statistics are based on the documents of case law before the Iraqi Federal Court, Supreme Juristic Council, Case Law No. 11/Itihadia/2010, Ezidi Independent List vs. Iraqi Parliament.

²⁷ Birgit Ammann, *Kurden in Europa, Ethnizität und Diaspora*, *Kurdologie*, Band 4, LIT Verlag, 2001, pp 259-265

²⁸ According to the Statistics of Zentralrat der Eziden, ZED

²⁹ Kizilhan (2017), Ibid

1.1.3. History of Persecution, Discrimination and „Historical Fatwas“ against Yezidi:

Yezidis claim that they have survived 72 pogroms or Genocides during the last thousand years. The history books about this minority report evidence of dozens of campaigns of genocide against them. The Kurdish Iraqi researcher Abu Dasin Shekhani has documented more than 60 cruel pogroms and attacks on the Yezidis committed by Abbasids, Mongols, Atabeks, Galilean, Turkish Ottomans, Kurds and Arabs.³⁰ Each attack against Yezidi villages and regions has left hundreds or thousands of victims, produced slaves and the mass destruction of houses, crops, and animals. Most of these military attacks - so-called “Ferman” have been based on a religious “Fatwa.” Sadiq Al Damaluji explains in his book about the Yazidis: “The Fatwas that had been announced by Islamic scholars against those people had played an important and dangerous role in their life. They threw them into wars for more than three ages. Also, they bear all kinds of pain and suffering, but they didn’t give up”.³¹ Said Al Dewachi, one of the Arab scholars, justifies such Fatwas followed by mass killing of the Yezidis because they have retreated from Islam. He argues that the Ottoman leaders had, therefore, encouraged religious scholars to issue Fatwas denouncing the Yezidi as infidels.³²

According to Judge Zuhair Kathim Abbod, an Iraqi judge and scholar who wrote many influential books and articles about the Yezidis and other Iraqi minorities, the first Fatwa against Yezidis was issued by Al-Sheikh Ahmed ben Mustafa Abu Al-Suud Al-AMADI (1493-1574 AD). He gained the post of “Mufti of Elastane” (1545 AD) for thirty years, the longest period for being Sheikh Al-Islam.³³ He was the contemporary of Ottoman Sultan Suleiman Al-Qanuni and Sultan Selim II.³⁴ Al-Amadi legitimized his Fatwa and execution of Yezidi men, and slavery of their women and children, by announcing that their killing is “Halal” because they are more “infidel” (Kufar) than the “original infidels” and that their killing belongs to “religious Obligations” because they are “Apostates retreated

³⁰ Abu Dasin Shekhani, “Panorama of the mass destructive campaigns against Yezidis”, Roj Journal, 6 Issue, EZiA Publishing, 1998, pp. 38-59

³¹ Sadiq Al Damaluji, *Al Yazidiya*, (in Arabic), Al-Ittihad Print, 1949, p. 428, citation in Abbod, Zuhair Kathim: *Al Ayzidiya*, Al Arabiya Foundation for Researches and Publishing, 2011, p. 80.

³² Said Al Dewachi, *Al Yazidiya*, Dar Al-Kutub Foundation, Mosul, 173, p. 226

³³ Isam Muhammad A. A. Adwan, *Sheikh AL Islam Abu AL-Suud Afandi* (in Arabic), Open University of Al-Quds, 2017, pp. 261-290

³⁴ Zuhair K. Abbod, *Al-Ayzidiya* (in Arabic), Al Arabiya Foundation for Researches and Publishing, Beirut, 2011, p. 80

from Islam." He argued furthermore, that the killing of Yezidis is "halal based on the teachings of the four Islamic sects".³⁵

The Iraqi scholar Sadiq Al-Damaluji describes in his book that the Islamic scholars from different regions, including Yemen, Tatar, Qarabagh, confirmed similar Fatwas, which legitimized the killing of Yezidi men, and slavery of Yezidi women, would reward the killers in both worlds „this Life and the Hereafter“³⁶.

It is crucial to mention some of these many Fatwas, to explain the legalization of pogroms and attacks against the Yezidi people. These Fatwas played a fundamental role in all of the 72 pogroms "genocides":

- 1) Imam Ahmad bin Hanbal (164-231AH) and Imam Al-Samarqandi (373AH) „permitted to deal with them [as with the Infidel]“³⁷.
- 2) Imam Fakhradeen Al-Razi (544-606AH) „proved religious legitimacy [being Halal] of their killing, dealing with their girls, wives and children as captives [Arabic: Malak al-Yameen-making them sex slaves] and allowance of arresting of their women and descendants“³⁸.
- 3) Sheikh Abdullah bin Shaikh Ahmad bin Shaikh Hassan bin Ahmed Al-Zeezy Al-Ritbaky permitted in his Fatwa (1137AH) „seize their belongings, properties and taking their lives. He considers them as infidels, who shall be subject to the rule of apostates“³⁹.
- 4) Muhammad Amin Al-Khateen Al-Umari (1150-1203AH) issued his Fatwa in 1199AD making the Yezidis, as „Apostates, and fighting against them is an Obligation“⁴⁰.
- 5) The Kurdish Imam of Koya Abdulrahman Al-Gali considered them, as „Infidel, and they should be treated according to the rules based on this fact“⁴¹.
- 6) Al-Sheikh Abdullah Al-Ratbky Al-Mударis (1060-1159AH) issued his Fatwa in 1137 explaining that the Yezidis are the „Original Infidel“⁴².

³⁵ Ibid

³⁶ Sadiq Al-Damaluji, Ibid, pp. 428-444

³⁷ Ibid

³⁸ Zuhair K. Abbod, (2011): Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

- 7) Muhammad Thakhri bin Ahmed Al-Khayat addressed in his book to the Sultan Abdulazeez bin Sultan Mahmud (1127-1293AD) a Fatwa about the Yezidi, who refused to join the Ottoman military. He announced them as „Apostates“ and „obliged to fight them“⁴³.
- 8) The neighbours also committed many pogroms, including several attacks organised by Muslim Kurds. However, the cruellest massacre of the Yezidis was in 1832, when the Kurdish Prince of Soran (Rawanduz) called Mir Muhammad Rawanduzi, started an invasion against the Yezidi people in the northern side of Zab River until Shaikhan and Sinjar. His attack was based on a religious Fatwa from Malay Khati, the Mufti of the prince⁴⁴. According to British traveler Henry Layard, thousands of Yezidis were brutally killed. They escaped from Shaikhan to the City Mosul, but the Mosulis closed the bridge on the river to avoid the entry of the Yezidi into the city, and when the soldiers of the Kurdish prince arrived they started to kill everybody without distinction between children, women or men. All the while the people of Mosul were watching the massacre from the other side of the bridge. Sir Layard claims that the reason for the indifference of the Mosulis was also a result of their belief that the Yezidis are Infidels⁴⁵ and so they deserved to be killed.

1.1.4 Discrimination in the Time of the Iraqi Regime:

The fall of the Ottoman Empire did not stop the suffering of the Yezidi. Then the new Iraqi state did not recognize the Yezidi as an independent religion or ethnic group. The Yezidi were subject to the Personal Status Law, which is based on the Islamic Sharia Law. During this time, the government prohibited all kinds of progresses in the Yezidi regions.

In addition, the Baathification agenda of Iraqi Regime after 1968 and especially after 1975 was based on the so-called Pan-Arabism ideology⁴⁶, which means the assimilation of all identities of the small minority groups, including the Yazidi, to create one “Arabic nation.” The regime had consequently

⁴³ Ibid

⁴⁴ Arshad Miho, “Religious Faith the Kurdish Yezidis as a Model, in: In the Context of Identity, Culture and Change From the Ottomans to the Present the Kurds”, International Symposium, University of Bingol, 2013, pp 346-365

⁴⁵ Ibid, p. 359

⁴⁶ Louise Monique Janssens, *TRANSITIONAL JUSTICE IN IRAQ, Justice and reconciliation for the Yazidi minority in northern Iraq for crimes committed by ISIS*, EIUC Master Thesis, University of Vienna, 2017/2018, p. 12.

implemented a pan-Arabised education system. Yazidi regions were neglected and marginalized from economic, cultural and political development⁴⁷.

The Iraqi policy towards minorities was not distinct from the policies of the Ottoman Empire/Turkish Republic. An interesting document⁴⁸ from the League of Nations on the debates between the UK and Turkey in 1925 shows the opinions of Turkish/Ottoman politicians about the Yezidi. The British government argued that the Yezidi people have a distinctive religious identity that differed from Muslims, and therefore they had to enjoy the status of a minority. The Turkish government was against this approach. The political view of the Turkish delegation “asserts that the Yezidi are a distinct Kurdish race and have the same manners and costumes as the Kurds. They are merely a different religious sect, i. e. a Muslim sect and the Turkish government urges that “the fact that they are distinct sect cannot be taken as a ground for differentiating from the Kurds”⁴⁹. The Turkish government considered the difference between Moslems and the Yezidis like a minimal “difference between Catholicism and Protestantism”⁵⁰, merely, small deviation between the same faith. The Iraqi state, after the period of the British Mandate, adopted the same approach as the Turks to the Yezidi, who were considered a Muslim sect inside the Kurdish Minority.

However, the policy of the Ba'ath party was changed, especially during the negotiations with the Kurdish about the establishment of autonomy in Kurdistan in 1970-1974. The Iraqi government prohibited the Kurds from any demand about Sinjar and other Yezidi regions in Shaikhan, Bashiqa, and villages of Telkef district. The Baath Party claimed that the Yezidis are Umawitts, and that their name is derived from Yezid Ben Muwawoya, the second Umawite caliphate. Therefore, they are Arab and are not part of negotiations. The regime implemented extraordinary measures of Arabisation of the Yezidis between 1975 and 2003, for instance, the registration of the community in the Census of 1977 as Arabs.⁵¹

The Kurdish liberation movement in the 60s and 70s was invincible because the villages in the mount supported the Peshmarga. The villages had some economic independence because they did not need the “city” to survive. Therefore, the Iraqi authorities started the so-called (Scorched Earth Policy). The

⁴⁷ Dilshad N. Farhan, *Suffering of Yezidi Kurds during the Iraqi Governments 1921-2003, a study about the plan's measures of displacement, Immigration, Arabisation of Ezidis*, University of Duhok, 2008, p. 135.

⁴⁸ LoN, Doc. No. 400.M.147.1925 VII: Question of the Frontier between Turkey and Iraq

⁴⁹ *Ibid*,

⁵⁰ *Ibid*, p 49 (English version).

⁵¹ Dilshad N. Farhan, (2008), pp. 136-138

Yezidis were also affected by this destructive strategy of the regime, like the Kurdish population.⁵² The Iraqi government, at the beginning of the 60s, destroyed more than 61 villages and more than 60,000 hectares were confiscated and given to the Arab tribes that had been settled around Sinjar in 1961⁵³. In 1975, after the fall of the Kurdish revolution, more than 322 Yezidi villages in Sinjar were destroyed. The people were displaced to 10 “collective towns” around Mount Sinjar. These new “Towns” were administratively “huge villages,” without “Municipality character.” It means, that the inhabitants did not have any access to the facilities of a normal municipality, and at the same time they could not work as farmers and take benefit from the “farmer economy”, because they could not reach their lands and they could no longer breed their livestock inside such crowded “villages”⁵⁴. They were completely dependent on the state. Families had to move during the summer to the Arab villages in Rabia, about 50km east, as the Iraqi regime had established a successful irrigation system for all Arab farms but excluded the agricultural land of the Yezidis.⁵⁵ Yezidi families were therefore forced to leave their lands. They had to work as paid “sub-farmers” to the Arab landlords. And because the farms were far away from the Yezidi villages (Collective towns), they had to temporarily move every year during the summer and autumn with their children to live in small tents besides the Arab farms, where all family members had to work hard in order to secure enough money for the winter.⁵⁶ Consequently, their children were also unable to attend school.

This kind of policy against the Yezidi people was based on special intelligence research about the Psychology of the Yezidi people that was prepared by the General Military Intelligence Service.⁵⁷ The strategy of Iraqi intelligence was assimilation and manipulation of the Yezidi identity, not only the ethnic identity but also their religious identity.⁵⁸

1.1.5. Massacre against the Yezidis committed by Terror Organisation Al-Qaida August 2007:

In the morning of 12th August 2007, two suicide trucks entered the Yezidi towns Gir Izer and Siba Sheikh Khidire and exploded in the town markets. They killed around 350 civilians and injured 850

⁵² Mirza Dinnayi, (2004), pp. 198-201

⁵³ Ibid, p.200

⁵⁴ Ibid, p. 201

⁵⁵ The “Al-Jazeera Irrigation Project” and “Saddam DAM” is an important agriculture project that has irrigated more than 250,000 hectares in its first Stage and another 250,000 hectares in the second. Step in Rabia and Jazeera Region, Provinz Nineveh. The Iraqi master plan for this project was to include all Arab lands and to ignore all the Yezidi regions and farms, although the pipelines and waterways were passing by the Yezidi lands.

⁵⁶ Dilshad N. Farhan, (2008) ...p. ????

⁵⁷ Saad Sallom, *Ezidis in Iraq, Memory, Beliefs and Current Genocide*, Un Ponte Per, 1st Edition, 2016, p. 96

⁵⁸ Ibid

others.⁵⁹ It was the biggest terror attack committed by Islamic groups in Iraq since the fall of the Saddam Regime. The Yezidi Prince Tahseen Said beg, explained to the Guardian: “the Islamic terrorists had made it very clear that they wanted to see rivers of Yezidi blood”⁶⁰. However, the violence against the Yezidis began silently after this attack, during the 2004 civil war. The increase of terror attacks in Iraq until the Islamic violence became a phenomenon, by killing Yezidi workers, students, and passengers in different cities of Iraq or on the highways. In February 2007, large Muslim mobs attacked the home of the Yezidi prince and burned the Yezidi cultural centres in Shaikhan without justification. In April 2007, a group of Islamic terrorists stopped a bus of Yezidi workers in Mosul and executed 24 women and men brutally in the daylight.⁶¹ In response, thousands of Yezidi students at the University of Mosul escaped from their classes, and thousands of workers in different regions left their places of employment. The Yezidis have been isolated in their villages.⁶² The relationship between the Yezidis and their Arab neighbours was interrupted, and the trust between them and their neighbours was broken. The Yezidis in Sinjar became more dependent on Kurdish influence particularly in areas under the control of the KDP. As a measure to protect the Yezidi civilians, Peshmarga banned all Arab people from visiting Sinjar and many Yezidi villages unless they had a Yezidi escort. The gap between the components of the region grew and became more dangerous. The majority of the Sunni population in Nineveh Province were opposed to the Kurdish influence because they were more religious, which was another factor led them to hate the Kurdish liberal parties, and the Yezidis who welcomed the Kurdish collaboration with the US and allied forces. A new era of hatred against the Yezidis became a reality. They were seen as traitors from one side and infidels, in the view of the Islamic fundamentalists, from the other. This dynamic has deepened the sensitivity and conflict threshold between the Arabs and the Yezidis that has negatively impacted the solidarity, peaceful coexistence, neighbourhood ethics and “Kriv- Relationships”⁶³.

⁵⁹ Michael Howard, “They will not stop until we are all wiped out.’ Among the Yezidi, a people in mourning”, the Guardian: 18.08.2007: <https://www.theguardian.com/world/2007/aug/18/iraq.topstories3>, (downloaded 04.03.2019)

⁶⁰ Ibid

⁶¹ Sebastian Maisel, “Social Change Amidst Terror and Discrimination: Yezidis in the New Iraq”, The Middle East Institute Policy Brief, No. 18, August 2008,

⁶² Ibid

⁶³ The Yezidis have an interesting tradition during the ceremony of circumcision, in which they make a brother-like relationship with non-Yezidi people, which is known as a “Kriv” relationship. It is a spiritual binding relationship with the one that a Yezidi family named during the circumcision of their children. The Yezidi deal with this Kriv as a brother and as a member of their family. He is even ready to sacrifice in all Tribal conditions. Most of the Arabs in the neighborhood of Yezidis in Sinjar know the value of such a relationship, and it was respected by all parties until the ISIS attack. This relationship was broken because many of the Krivs also participated in the crimes. (Testimony of the Witness, Case of Idrees Bashar, a Survivor from Kocho massacre, personal Interview, ABI Documentation, Duhok, 2015).

1.2. Religious motivation and geopolitical backgrounds for the ISIS crimes against Yezidi:

The Islamic State had different reasons to attack Yezidi in Sinjar and other regions from Nineveh province. It is therefore crucial to explain these motivations, in order to determine the criminal intent (mens rea) behind all of the brutal violence committed by this armed group.

1.2.1. The Religious Motivation: “Sharia’s Rulings about the Infidel inside the Islamic Caliphate Territories”:

ISIS prepared the attacks against Yezidi in Sinjar on the 2nd and 3rd August 2014 very professionally, not only in terms of military strategy but also with regard to religious, social and cultural contexts. The press office of the so-called (Nineveh Wilayat) published on the 3rd of August 2014 a special declaration about the “conquest of Sinjar and the neighbourhoods of Rabia and Wana”.⁶⁴

The occupation of Sinjar was officially and proudly declared as “a continuation of the blessed conquests that began days ago” where, “the soldiers of the Islamic State opened [occupied] the district (Sinjar)”.⁶⁵

The invasion was based on the Islamic religious “Takfir” justification that ISIS had used in order to convince regular Muslims in the region to collaborate with this plan. ISIS wanted also to draw the attention of the world, especially those radical ISIS followers and the believers in these victories. The terror organization, therefore, prepared an exclusive article about the justification of slavery and published it in its official magazine (Dabiq)⁶⁶.

ISIS used the name Dabiq from a town in the northern part of Syria. In fact, this place has no military or political importance. There is only a symbolic myth or prophecy in Islamic literature related to it,

⁶⁴ ISIS Declaration: The conquest of Sinjar and the neighbourhoods of Rabia and Wana, in: Al-Sunna Forum in Iraq, Al-Khilafa Al-Rashida: a special homepage of radical Sunna groups (downloaded 08.03.2019):

<http://www.sunnti.com/vb/showthread.php?t=21052>

⁶⁵ Ibid

⁶⁶ Dabiq, 4th Issue, (11. October 2014), in Clarion project (downloaded 12.12.2018): <http://clarionproject.org/docs/islamic-state-isis-magazine-Issue-4-the-failed-crusade.pdf>

that “foretells of a cataclysmic battle at Dabiq between the Muslims and the Romans”⁶⁷ where the Muslims will defeat the Infidels and “revive” their “glory”.

The fourth Issue of the magazine published an exclusive article with the title “The Revival Of Slavery Before The Hour”.⁶⁸ This article is crucial to understanding the intent behind conquering the Yezidi homeland. The author starts with the explanation that the Islamic state is faced with a “pagan” group in Iraq and Syria. He expresses his wondering, how such infidel group could survive inside a Homeland of Islam, for which God might ask the Muslims on “Judgement Day”⁶⁹ for the reason for their inaction. The author justifies his questioning with a verse from the Quran (the verse of the sword): „{*And when the sacred months have passed, then kill the mushrikīn wherever you find them, and capture them, and besiege them, and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful.*} [At-Tawbah: 5]”⁷⁰.

The author accuses the Yezidis of “worship Devil”. He reaffirms the approach of some Arab writers, who claimed that the idea of the Yezidi about the Angels, especially the Archangel, is similar to the idea of some Muslim Sufis like Imam Al-Ghazali and Ibn Al-Arabi (see the 1.1.) who stated that Iblis is a good Angel. The author continues to argue that the “Yezidi being Infidel” and that not only Muslim writers but also others have shared the same approach to Yezidis, because “[t]heir creed is so deviant from the truth that even cross-worshipping Christians for ages considered them devil worshippers and Satanists, as is recorded in accounts of Westerners and Orientalists who encountered them or studied them”⁷¹.

Therefore, according to the author, the question faced by the Islamic State was how to deal with the Yezidi. There are two Islamic versions of how a person or group can become Infidel (Kafir). The first way is if the person or group has originally held an infidel faith “Mushrikeen”.⁷² The other version is

⁶⁷ Peter Wignel et al, “A Mixed Methods Empirical Examination of Changes in Emphasis and Style in the Extremist Magazines Dabiq and Rumiya”, Perspectives of Terrorism, Vol. 11, Issue 2, April 2017, pp. 7-8.

⁶⁸ Dabiq, 4th Issue, p 14-17.

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

⁷² Mushrekeen: is an Arabic-Islamic term for people who are not “monotheistic” and belief in more than one God.

where the person or group was originally a Muslim person or group and is now apostatized “Murtadeen”⁷³.

This kind of distinction seems to be crucial for ISIS to implement the correct provisions (Islamic Rulings) to a group, both its members, and their families. Historically, according to the Islamic Sharia the punishment of Apostasy is the death penalty⁷⁴ without mercy or exception. While the rules of dealing with an original Infidel is to offer her/him the conversion to Islam first, if she/he refuses to accept Islam, then the death penalty is applied. Nevertheless, the consequence of this forced Islamization is, once converted, to take the converted people as slaves or “Malak Al-Yameen”⁷⁵ because their agreement to change their faith was “under the power of the swords”⁷⁶.

The so-called „Sharia Students“/ISIS Scholars concluded after “further research” that the Yezidi “existed since the pre-Islamic jāhiliyyah, but became “Islamized” by the surrounding Muslim population, language, and culture, although they never accepted Islam nor claimed to have adopted it. The apparent origin of the religion is found in the Magianism of ancient Persia, but reinterpreted with elements of Sabianism, Judaism, and Christianity, and ultimately expressed in the heretical vocabulary of extreme Sufism”⁷⁷.

Applying the historical “Islamic rulings” toward the Infidels consequently followed this conclusion of the Sharia Students. These rules are unlike measures applied by the people of the Books, Christian and Jews, who have to pay taxes. But for the Yezidis “there was no room for jizyah [taxes] payment. Also, their women could be enslaved unlike female apostates”⁷⁸.

The author uses historical and religious argumentation from the core of the Islamic heritage, mostly the Salafist’s radical version:

⁷³ Murtadeen: is an Arabic-Islamic term for Muslim people, who are born as Muslims and are retreated from Islam (Apostates).

⁷⁴ Peters, Rodolph & De Vries, Gerd J. J.: Apostasy in Islam, Die Welt des Islams, New Series, Vol. 17, Issue 1/4 (1976 - 1977), pp. 1-25

⁷⁵ Malak Al-Yameen: is an Islamic religious term from the Quran that refers to slaves, especially women as sexual slaves, who have been enslaved during war (Quran, Al-Ahzab, 50) (Al-Nisaa, 3).

⁷⁶ In an interview with Yezidi teenager Sadeeq JAZZAA, who was 15 years old and spent two years in the captivity of ISIS together with his mother, he said that he had asked the ISIS leader in Raqqa, the training camp, why he was separated from his mother. “Why you are dealing with our mothers as Slaves, unlike other Muslim women, although they had accepted Islam and are already practicing it?”. The ISIS teacher answered him: “Because their Islam came under the provision of the sword, and not voluntarily. Therefore they are concubines until their master give them their liberty”. (ABI-File, Case No. 1356/16)

⁷⁷ Dabiq, 4th Edition, (2014), p 14-17

⁷⁸ Ibid

- 1) Citation from Quran: „{*You are the best nation produced for mankind*} [Āli ‘Imrān: 110]“. With the interpretation from the Islamic Commentator Al-Bukhari: “*You are the best people for people. You bring them with chains around their necks, until they enter Islam*”⁷⁹. The meaning of this verse is that God gives privilege to Muslims to enforce the other people to enter Islam, in chains, but at the same time this is their gate to the Paradise.
- 2) Using citations from Hadith⁸⁰ of Prophet Muhammad: like the famous Hadith that says “*Allah marvels at a people who enter Jannah in chains*”⁸¹. Or another citation from Hadith that claims “*one of the signs of the Hour*” is that “*the slave girl gives birth to her master*”⁸². The author refers the originality of those sayings to “*al-Bukhārī and Muslim on the authority of Abū Hurayrah and by Muslim on the authority of ‘Umar*”⁸³.
More interesting is also the way of explaining in this article, namely, what Prophet Muhammad meant by this famous sentence: Whereas the father of the newborn from a slave girl is her master, therefore is the child also Master of his mother. Such interpretation was leaning on the prophecy of Muhammad, because slavery had stopped being a regular practice for a long time, but with reliance on this interpretation the Islamic State could revive slavery for the matter of strengthening Islamic religion.⁸⁴
- 3) Using Islamic mythology about the “Day of Resurrection”: Dabiq managed to establish a sufficient propaganda for awakening the Muslim’s subconscious mind about the so-called Islamic “era” or “glory”. The professional use of words from the history of Islam; like “greatest battle before the Hour”, “defeating crusader” or “conquering Rome”, and by combining the slavery of Yezidi women and girls with these terms to convince the readers about a positive future was an effective inspiration. Finally, concluding “it is interesting to note that slavery has been mentioned as one of the signs of the Hour as well as one of the causes behind al-Malhamah al-Kubrā”⁸⁵ [the greatest legend/battle].
- 4) The Author mentions proudly all verses, stories and Hadith related to slavery and uses them in a convincing narrative, combining the names of the most important figures in Islamic literature, like Abu Huraira, Muslim, Ben Hanbal, Al-Bukhari, Omar ben Khatab, Ibn Rajab, and Al

⁷⁹ Ibid

⁸⁰ Hadith: “Record of the traditions or sayings of the Prophet Muhammad, revered and received as a major source of religious law and moral guidance, second only to the authority of the Qu.”ān“. (Definition from Encyclopaedia Britannica)

⁸¹ Ibid; *Jannah: the Arabic meaning of Paradis

⁸² Dabiq, 4th Edition, p 14

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid

Nawawi, to justify the forced Islamization of the Infidel Yezidis, and other related acts during the invasion.

- 5) And the article also describes the measures that the Islamic State utilizes to deal with the Yezidi slaves by finding strong linkages to Islamic history. According to Dabiq “the Yazidi women and children were then divided according to the Sharī’ah amongst the fighters of the Islamic State who participated in the Sinjar operations, after one fifth of the slaves were transferred to the Islamic State’s authority to be divided as khums”^{86*}. Many Yezidi survivors confirmed that the ISIS fighter had practiced the same methods with same argumentations.⁸⁷

Finally, Dabiq reminds those Muslims who “doubt” or are “weak-minded” that “enslaving the families of the kuffār [Infidels] and taking their women as concubines is a firmly established aspect of the Sharī’ah”. The Author warns the believers “that if one were to deny or mock, he would be denying or mocking the verses of the Qur’ān and the narrations of the Prophet (...) and thereby apostatizing from Islam”⁸⁸.

(See also Annex No.1: The Article published in Dabiq, 4th Edition).

1.2.2. Geopolitical Reasons – Sinjar as a Disputed Area:

Religious motivation may be the most important factor to justify the attacks against Yezidi people, including massacre, slavery and displacement of civilian, but the invasion of the district Sinjar had geopolitical reasons as well. Sinjar was strategically essential for the Caliphate for the following reasons:

- 1) As a Disputed Area between KRG (Kurds) and Iraqi Central Government (Arabs):

The background of racist mentality of the Iraqi ISIS leaders played particular role in defining the targets of an organization that become a “state” within a few weeks. It is no secret that many Baath Party members and former officers of the Saddam regime’s intelligence machinery

⁸⁶ Ibid; *Khums: a Special Islamic financial term refers to „fifth“ of the booty during the war, which has to be paid to the Beit Al-Mal (Treasury of the Islamic state).

⁸⁷ ABI File, Eye witness Sadeeq JAZZAA, Case No. 1450/16

⁸⁸ Ibid, p. 17

penetrated the leadership positions within this terror organization, and some of them planned of its policies.⁸⁹ Accordingly the ethnic conflict between Arabs and Kurds was also of relevance.

Sinjar is one of the Disputed Areas between KRG and the Iraqi government according to Art. (58) of the Transitional Administrative Law (TAL), which has been transformed to the Art. (140) of the Permanent Iraqi Constitution (2005)⁹⁰.

It is well known that these disputed areas are not part of a peaceful governmental debate between both parties, but instead they are the battlefield of many players, including the neighbouring countries of Turkey, Syria and Iran. Therefore, neither the TAL nor the constitution of 2005 could facilitate a suitable practical solution for the dispute.⁹¹

Sinjar, with the majority of Yezidi people, is essential for the KRG:

- On the one hand, the majority of electoral votes for Kurdish parties, particularly the KDP, inside the province of Nineveh are Yezidi votes. The Kurds usually have 12-14 seats in the Province Council and 6-8 seats in the Iraqi Parliament. Without Yezidis they would only earn 4-5 seats in the Provincial Council and 2-3 in the Parliament.⁹²
 - On the other hand, Sinjar is a strategic territory because it connects the KRG with the Kurdish regions in Syria. For the KRG policies, the Syrian Kurds are used as a political card for their policies with Turkey to compete with PKK and its affiliated groups inside Syria.
- 2) The District of Sinjar, especially the southern side of the mountain and Road No. 47, were strategically seen to connect (or separate) both Capitals of ISIS (Mosul and Raqqa) together (or from each other). Road 47 was the only road that can easily combine Mosul - the official capital - with Raqqa - the practical administrative capital - of the Caliphate. Otherwise, the fighters had to travel three times further through (the Al-Jazeera Desert) without infrastructure. In this case, ISIS travellers would also be out on the open field and easy targets for air strikes.

⁸⁹ Sabah Kunci, *Relationships between Baath Party and ISIS* (Research manuscript, Hamburg, viewed by the author 02.03.2019)

⁹⁰ Voting results of Province Nineveh, Homepage of the High Commission of Implementing Art. 140, Council of Minister, Iraq: www.ihec.iq

⁹¹ MERI Policy Report: *The Future of Kirkuk, A Roadmap for Resolving the Status of the Governorate*, Erbil, 2015,

⁹² The High Independent Electoral Commission, Iraq: (Comparing the Voting results; Elections of 2010, 2014, 2018 Iraqi Parliament, and the results for Province Council Nineveh, 2009, 2013): see www.ihec.iq

A fundamental question arises in this sub-chapter about the motivation behind the invasion of Sinjar and attacks against Yezidi civilians: Did the criminal intent (*mens rea*) of ISIS acts amount to Genocide?

The answer depends on understanding which background motivation was the dominant factor in the events: the “religious” motivation, the “geopolitical” motivation or both. In addition, what are the accompanying circumstances that could help the investigators to distinguish this dominant factor? This issue will be the subject of the next chapter.

Chapter II

The Characteristics of the ISIS Crimes against Yezidi according to International Criminal Law:

2.1. Genocide Crimes According to International Criminal Law:

A) The Legal Definition:

The Polish Jewish lawyer Raphael Lemkin, who managed to escape the Holocaust, created the term “Genocide”. The term is a combination of the Ancient Greek word *genos*, which means race, nation or tribe, and the Latin word *caedere*, which means kill.⁹³ Although Lemkin’s definition was concentrated on the extermination of a “national group”, rather than other groups, it was more comprehensive in the scope. Lemkin’s concept has included the offences of cultural genocide, for instance, crimes of destruction of the culture and livelihood.⁹⁴

However, when the Genocidal act was debated at the diplomatic level in order to put it into treaty framework, Genocide became a restricted definition for the practice of International Law. The UN Genocide Convention UNGC (1948) defines it as committing “*any of the following acts with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.,⁹⁵

⁹³ William Schabas, *Genocide in International Law, Crimes of Crimes*, Cambridge University Press, 2000, p. 25

⁹⁴ Ibid.

⁹⁵ UN Convention on the Prevention and Punishment of the Crimes of Genocide, Art. II

This definition was also adopted in Article (6) of the Rome Statute and is the current legally accepted definition of Genocide. However, this legal definition of Genocide is narrower than the approaches from the victim and scholar's points of view.⁹⁶

B) The Scope of the application of Art. II of the Genocide Convention (UNGC):

There are five kinds of offences named in both the UNGC and the Rome Statute and each one has two other specific elements that must be fulfilled in order to be included in the definition of a Genocidal act.

These two elements are:

- The intent or *mens rea* of the perpetrator should be *the destruction of a particular group in whole or in part*. This distinction is crucial. However, the “special intent” should be the destruction of the group, not the intent to commit the act itself. In other words, the existence of the group is the object of the Genocidal act.
- The other requirement is that the act of destruction should be addressed against one of the four groups who are protected by International Law. These groups are national, ethnical, racial and religious groups⁹⁷.

The reason as to why only those four groups are protected, not only in the UNGC but also in the other international treaties about genocide, including the Rome Statute, is due to the position of many states, especially the Soviet Union at that time, who refused to include other groups, like social or political groups.⁹⁸

C) Crimes Against Humanity and the legal distinction from Genocide:

The second subject of international criminal law is the ‘Crime against Humanity’, which differs legally from Genocide.⁹⁹ It is essential to include a description of these crimes in order to determine which legal term is closer to the ISIS offenses against the Yezidis.

⁹⁶ Martin Mennecke, “The Crime of Genocide and International Law”, NIOD, (viewed: 13.03.2019) <https://www.niod.nl/sites/niod.nl/files/International%20Law.pdf>, p. 152

⁹⁷ Ibid,

⁹⁸ Ibid

⁹⁹ Guenaël Mettraux, *Genocide and Crimes against Humanity, International Crimes and the Ad Hoc Tribunals*, Oxford University Press, Online Version, Chapter 26, pp. 1-12

The term (Crime against Humanity) is older than the term Genocide in the context of international law. The term was first used in the joint declaration of France, Great Britain and Russia after WWI, in 1915, to describe the atrocities committed by the Ottomans against Armenian population.¹⁰⁰ Later the concept was developed during the Nuremberg Tribunal, as a crime that occurs in international armed conflict. Now it has been recognized that these crimes may be committed during peacetime as well.¹⁰¹ Article 7 of the Rome Statute describes these offences as “*any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (d) Enslavement; (e) Deportation or forcible transfer of population; (f) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (g) Torture; (h) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health*”.¹⁰²

Crimes against humanity appear very similar to crimes of Genocide. Some scholars, especially in a non-legal context, consider Genocide to be a specific kind of crime against humanity, while the legal concept distinguishes between both crimes clearly. The most crucial difference between Genocide and crimes against humanity is the perpetrator’s *mens rea*. Where a protected group is intended to be destroyed in the case of Genocide, this is missed in the case of crimes against humanity¹⁰³, where any civilian group can be the victim. The perpetrator does not intend to exterminate a specific group.

The second distinction is that crimes against humanity “are only possible when there is a ,widespread or systematic attack‘ against a ,civilian population‘.”¹⁰⁴ For a Genocidal act, no widespread or systematic attack is required; it is enough to prove that the perpetrators intended to eliminate a group in

¹⁰⁰ William Schabas (2000), p. 16

¹⁰¹ Vivienne O’Connor et. Al, “Model Codes for Post-Conflict Criminal Justice”, (Vol. I), Model Criminal Code, United States Institute for Peace Press, Washington DC, 2007, pp. 195-218,

¹⁰² Rome Statute, Article 7

¹⁰³ Guenael Mettraux, *supra note* 98

¹⁰⁴ M.S. Groenhuijsen & A. Pemberton, “Genocide, Crimes against Humanity and war crimes”, published in *Victimological approaches to International crimes*, Tilburg University, 2011, pp. 9.34

whole or part.¹⁰⁵ Another characteristic of crimes against humanity is the attack can be against any civilian group, while in the case of genocide a specially protected group must be the target of the offence¹⁰⁶. Finally, the offender of a crime against humanity commits the act with knowledge of the attack.

The question that arises here is whether the atrocities against Yezidis were randomly perpetrated against “any civilian community”, which would mean what ISIS did to the Yezidis is the same as with the crimes they committed against other groups, religions or ethnicities? Or did the ISIS fighters treat the Yezidi minority completely differently?

2.2. Examining the atrocities against Yezidis in the international criminal context:

The offences of ISIS against Yezidis in Sinjar will be analysed, in this sub-chapter, systematically in accordance with the provisions of UNGC:

I) The Genocide Crimes:

(a) Killing members of a group;

The first *actus reus* in the Genocide Convention is the killing of members of a protected group. Using the term “killing“ was proposed by the KSA¹⁰⁷ delegation, while the initial draft included three offences “causing death of members of a group or injuring their health or physical integrity”¹⁰⁸. However, the jurisprudence of ICTR (in Prosecutor vs. Akayesu) defines the “killing” “not only as direct ‘murder’ but also unlawful acts that cause the death of the victims.¹⁰⁹ (See Point (4), below).

¹⁰⁵ Ibid

¹⁰⁶ Guenae Mettraux, *supra note 98*,

¹⁰⁷ KSA: Kingdom of Saudi Arabia

¹⁰⁸ Schabas, W., Ibid . p 157

¹⁰⁹ Ibid

To examine the behaviour of the terror organization ISIS toward the Yezidi minority, I will mention in the next paragraphs some incidents and offences of ISIS against Yezidis that are related to Art II (a) of UNGC¹¹⁰:

1) 2nd and 3rd August 2014:

a. Hardan Massacre:

After the fall of the Iraq defence and military system on the Syrian borders and withdrawal of Kurdish Peshmarga forces from the district of Sinjar, tens of thousands of Yezidis escaped to the mountain or to KRG territories on August 3rd 2014. The Yezidi villages, which are closer to the Arab villages or are located on the border of the district Sinjar to Arab areas were attacked earlier. It was, therefore, not possible for the villagers to escape before the arrival of ISIS fighters, particularly women, children, elderly people and poor families, who had no vehicles or transportation methods. One of those villages was Hardan. It is very close to the Arabs (see the maps).

On the morning of 3rd August, ISIS captured 517 Yezidis in the village of Hardan¹¹¹. According to eyewitnesses, ISIS killed all of the captured men in the village and threw their bodies beside the road in three sites (mass graves) and enslaved the women and children.¹¹² After the liberation of the northern side of the mount Sinjar, five mass graves of Yezidi victims were discovered in this area, compliant with witness statements.¹¹³ Three of these mass graves are beside the main road to Hardan village. The first one contains the bodies of 65 Yezidi victims.¹¹⁴ There is an unknown number of victims' bodies in the other four mass graves.¹¹⁵ Additionally, according to the OHCHR Report, 10 Yezidis were publicly beheaded, and between 200 and 300 Yezidis were executed "after they were promised

¹¹⁰ Hereby is to remind that not all crimes of ISIS against Yezidi have been documented analyzed in this dissertation, but only a few significant examples, due to the limitations of time and length of a master thesis.

¹¹¹ Al-Alalam TV: A new mass grave of Daesh Victims has been discovered in Sinjar, Breaking News of (25.12.2014), link: <https://www.alalamtv.net/news/1660523/الكشف-عن-مقبرة-جماعية-جديدة-لضحايا-داعش-في-سنجار> (last accessed: 23.03.2019)

¹¹² Ibid

¹¹³ Ibid

¹¹⁴ Yazidi Report: Yazda Documentation Project on Mass Graves of Yazidis Killed by the Islamic State Organization or Local Affiliates On or After August 3, 2014 (January 2016), p. 7

¹¹⁵ Ibid

safety"¹¹⁶ because they refused to convert to Islam. The ISIS fighters targeted those men who refused to convert.¹¹⁷

b. Qiniyeh Massacre:

Qiniyeh is a small Yezidi village surrounded by many farms and springs located 5-7km east of City Sinjar (see map 1). The civilians escaped to the mountain from villages and towns such as Tel Qasab, Tel Banat, Hamadan, Hatimiya and others, from the south side through the valleys and fields in this area. ISIS fighters occupied the road crossing over to the mountains and captured many Yezidi families in Qiniyeh. In one of the incidents on August 3rd 2014, while the escapees tried to reach the mountain “ISIL fighters arrived in several vehicles, separated men, women and children, and robbed them of their belongings. The men (70-90) were taken to a ditch, lined up and shot”.¹¹⁸ ISIS enslaved the women and children from there, and transported them forcibly on the nights of the 3rd and 4th August 2014 to Tel Afar.¹¹⁹

After the liberation of the region, the military forces found a mass grave containing bodies of 288 Yezidi victims.¹²⁰ Five mass graves containing the remains of unknown number of victims, are located in this region: Qine 1, Qine 2, Wadi Qine, Zlelia, Hamadan. (see map no. 2).

c. Khana Sor:

During the attack against Khana Sor, one of largest Yezidi settlements on the northern side of Mount Sinjar, 7km south of the Syrian border (see map 1), hundreds of civilians were captured. Approximately 100 civilians were killed¹²¹. The fighters beheaded some of the victims publicly because they refused to convert to Islam. IS published the picture of an old beheaded Yezidi man from Khana Sor¹²². Women and children were enslaved and

¹¹⁶ OHCHR: Report on the Protection of Civilians in Armed Conflict in Iraq, 6 July-10 September 2014, UNAMI/OHCHR, Baghdad, Iraq 2014, p. 14

¹¹⁷ Testimony of Shirin (Dalal), the enslaved Yezidi girl from Hardan, author of Book: „Ich bleibe die Tochter der Sonne“, n: Alexandra Cavelius & Jan I. Kizilhan, *Meine Flucht aus den Fängen der IS-Terroristen*, Europaverlag, 2016

¹¹⁸ Ibid

¹¹⁹ Daoud Khatari, *Stories [witness testimonies] from the Genocide of Shingal*, No. 109, Duhok, 2015

¹²⁰ Al-Arab News, “Biggest Mass Grave was found in the Iraqi Sinjar”, News from (Jan. 4th, 2016), Link: <https://alarab.co.uk/العثور-على-أكبر-مقبرة-جماعية-في-سنجار-العراقية/> (last accessed: 23.03.2019)

¹²¹ OHCHR Report, 2014, *Supra* 115

¹²² Mr. Mam Yousif was 67 years old when ISIS captured him in Khana Sor. After he refused to convert an ISIS fighter beheaded him in front of the rest of captured Yezidis and sent the pictures to others.

transported to the ISIS station in Syria (Al-Hol camp).¹²³ A mass grave of 68 bodies was found to the east of Khana Sor and was exhumed by KRG authorities in early 2015. Their relatives identified the remains. Another mass grave containing an unknown number of bodies was found by a shepherd, in which “clothes [were] strewn about along with some visible bones”.¹²⁴

d. Siba Shekh Khidre massacre:

As the security forces left their checkpoints in the early morning of the 3rd of August hundreds of Yazidi families “were fleeing their homes in fear and panic”.¹²⁵ Those people who had been advised by their Arab neighbours to stay were taken captive. ISIS fighters forced the captured Yazidis “into the rear ends of trucks and took them to the center of the village, near the marketplace. That is when the eyewitness saw and counted the bodies of the 52 Yazidis lying on their backs in this mass grave who were killed”.¹²⁶ There are more than ten mass graves containing the bones and remains of tens of victims in this village/compound and the surrounding fields all the way up to the neighbouring villages and the Mountain.¹²⁷

e. Til Azer Massacre and Sibaya Mahmud Khiro:

ISIS Fighters attacked the town of Til Azer and neighbouring farms such as “Siba Mahmud Khiro” after midnight on the 2./3. August. They gained control of the farm quickly, after a short resistance by the men. They captured all of the inhabitants of the farm. The women and girls were separated and 35 men and young boys were executed in front of their relatives.¹²⁸ ISIS took the women and girls into captivity, initially to Til Afer. Women were then taken to the prison Badoush and the girls to a slavery house in Mosul (Galaxy Hall).¹²⁹ Three mass graves were found close to the area, in Jidala and Wardiya, with an unknown number of bodies.¹³⁰ (See map no. 2)

¹²³ ABI, Case-File, ISIS Survivor, Mrs. Warda Haji Hamid, who was enslaved more than two years, (interviewed: 14-01-2017).

¹²⁴ Yazda Mass Grave Report, 2016, p. 7

¹²⁵ HRC: They came to destroy: ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, p. 7

¹²⁶ Yazda Mass Grave Report, 2018, p. 30.

¹²⁷ Ibid

¹²⁸ Daoud Khatari, *Stories [witness testimonies] from the Genocide of Shingal*, No. 109, Duhok, 2015

¹²⁹ OHCHR Report 2015, and Eyewitness Zaytun Jamil Jatto, ABI File, Case

¹³⁰ Yazda Mass Grave Report 2018,

In another village closer to this region some Muslims took six Yezidi women and girls to their house on the 3rd of August, while they were fleeing to the mountain. They informed the ISIS fighters about the presence of the Yezidi escapees. ISIS came and “forced the women and girls into marriage under Sharia law and raped them repeatedly until August 15, 2014. On August 15, at around 4:00 p.m., IS fighters killed the women and girls and threw them in a well close to the village”.¹³¹

2) 6th – 12th August:

a. Exploding People with disabilities inside Shekh Mand Shrine:

After the occupation of the south side of Sinjar, ISIS tried to expand toward the Mount, to attack the displaced Yezidis on the Mount and to secure road No. 47 for their transportation between Mosul and Raqqa (see map no. 1). Furthermore, ISIS destroyed all Yezidi heritage, religious places and shrines in the area, as they were supposed to be the places for worshipping the Devil. Among those holy places, ISIS occupied the region of the Sheikh Mand Shrine. On “24 and 25 August, ISIL executed 14 elderly Yezidi men in Sheikh Mand Shrine, Jidala village, western Sinjar and blew up the Yezidi shrine there. There were reports that people with disabilities were among the victims”.¹³²

3) 15th-16th August 2014

a. The massacre of Village Kocho:

Kocho is a small Yezidi village (pop. 1740) surrounded by Arab villages, 21km south of Sinjar. In the early morning of the 3rd August, 540 inhabitants of the villages escaped to the mountain¹³³ like the many other of the Yezidi people. “ISIS captured 125 of them on the way, and executed all 12 men [in the captured group] and enslaved the rest”¹³⁴.

¹³¹ Yazda Mass Grave Report, 2018

¹³² OHCHR: Report on the Protection of Civilians in Armed Conflict in Iraq, 6 July-10 September 2014, UNAMI/OHCHR, Baghdad, Iraq 2014, p. 14

¹³³ Nassir Al-Ujaili, “Story of the only Survivor of Sinjar Massacre..... I saw the death with my eye”, Alarabiya, link: <https://www.alarabiya.net/ar/arab-and-world/iraq/2019/03/21/-قصة-الناجي-الوحيد-من-مجزرة-سنجار-رأيت-الموت-بعيني-> (last accessed: 03.04.2019)

¹³⁴ Ibed

Some of the Arab tribal chiefs came to the village and told the mayor of Kocho that they should raise white flags on their houses and “nothing will happen to them”¹³⁵. According to the eyewitness Idrees Bashar Taha, one of the victims, who survived the shooting in the massacre of Kocho, a period of negotiations between ISIS and villagers began between the 3rd to the 14th of August. The Yezidi asked for the peaceful solution to join their relatives in the mountains, but ISIS pressed them to accept the ultimatum to convert to Islam first. Idrees stated “In August, 6th the local Emir [leader] of ISIS called Abu Hamza Al-Khatuni came to the village with many fighters, Arabic chiefs and a so-called (Qathi Al-Shari'a) [the Islamic Judge]. They gathered us and asked us to convert to Islam. We refused..... Then, they gave us three days to accept [or die]”¹³⁶.

On the morning of the 15th of August, hundreds of ISIS fighters came with many cars and gathered all the Yezidis in the school. They separated the women and children (about 850) from the men (about 400).¹³⁷ The ISIS Emir Abu Hamza Al-Khatuni asked the population once again to convert to Islam, but the mayor of Kocho and the rest of the men refused the offer of forcible conversion to Islam. “IS fighters started to gather people into groups of 40 to 50 people”¹³⁸ and took the groups outside of the village, “where they were shot and killed. IS fighters videotaped the killing”¹³⁹. Other survivors of the massacre “recounted how on 15 August ISIL gathered all males older than 10 years of age at the local school, took them outside the village pick up trucks, and shot them”¹⁴⁰. Seventeen men survived this massacre; some of them either escaped during the shooting, others – like Idrees - hid themselves under the dead bodies of others and escaped after ISIS left the area.¹⁴¹ According to those survivors more than 400 men and young boys were executed during this massacre.¹⁴²

The evidence of the massacre are still there. There are five mass graves in the village of Kocho, as the result of the events that happened on the 15th of August.¹⁴³ The United Nation

¹³⁵ Said Khudeda Alo, “Kocho Village, Victim of the Ideology of the Organisation Islamic State in Iraq and Levant Daesh“, in: *Shingal Disaster, 3-August-2014, a Collection of Researchs and Studies* (in Arabic language), Lalish Center, Duhok, 2016, pp. 224-234

¹³⁶ Commission for Investigation and Gathering Evidence, KRG, Case File No. 8/2014, Case of Idrees Bashar Taha,

¹³⁷ Said K. Alo, 2016, Ibid

¹³⁸ Yazda Mass Grave report 2018,

¹³⁹ Ibid

¹⁴⁰ OHCHR. Report, 2014

¹⁴¹ Said K. Alo, 2016, Ibid

¹⁴² Ibid

¹⁴³ Yazda Mass Grave Report 2018

team (UNITAD) started the exhumation of the first mass grave in Kocho on March 15th 2019.¹⁴⁴ The international investigation team has identified 28 bodies in this site.¹⁴⁵ The identification process of other mass graves is on-going at the date of writing.

According to the spokesman of Iraq's Independent High Commission for Human Rights, there are about 75 mass graves of Yazidi victims located in Sinjar region, with the estimated number of victims in these graves between 4000 and 12000.¹⁴⁶ (See map no. 2)

b. Massacre beside the Solagh Technical Institute -- The Killing of around 80 old women:

After killing all of the men in the village of Kocho, ISIS forcibly transferred the women and children from the village to a building beside the city of Sinjar in Solagh, which was used as (a Technical Institute)¹⁴⁷. "In the early hours of 16 August 2014, ISIS executed older women (who were approximately 60 years and older)".¹⁴⁸ A mass grave beside the technical institute contains the remains of around 80 of those senior women, who refused to convert to Islam. The younger women and children were forcibly transferred to Tel Afar and Mosul¹⁴⁹.

4) Starving and Death of IDPs on Mount Sinjar between 3rd August and 11th August:

The jurisprudence of the ICTR takes into account the consequences of an offense that might lead to the death of victims as a part of the Genocidal act. The trial chamber "in Akayesu identified two material elements: the victim is dead; and the death resulted from an unlawful act or omission of the accused or a subordinate".¹⁵⁰ The humanitarian crisis of the Yazidis in Sinjar was visible through the displacement of more than 325,000 civilians within one day. The Yazidi civilians who fled to (Sardashti), the upper plateau of the mountain, were, on the one hand,

¹⁴⁴ UN Team begins exhuming mass graves of Yazidi IS victims, VOANews, (15.03.2019) link: <https://www.voanews.com/a/un-team-begins-exhuming-mass-graves-of-yazidi-is-victims/4832881.html> (accessed: 4.4.2019)

¹⁴⁵ NRT News: Twenty-Eight Bodies exhumed from mass grave in Kocho, NRT TV, (21.3.2019) Link: <http://www.nrtv.com/En/News.aspx?id=11170&MapID=2> (accessed: 4.4.2019)

¹⁴⁶ Abu Zeed, Adnan: Iraq begins painful task of identifying IS victims in mass graves, Al-Monitor, (29.03.2019), Link: <https://www.al-monitor.com/pulse/originals/2019/03/iraq-yazidis-isis-genocide-cemetery.html> (Accessed: 04.04.2019)

¹⁴⁷ Said K. Aho, 2016, Ibid

¹⁴⁸ HRC: They came to destroy, p. 11, Nore 48

¹⁴⁹ Yazda Mass Grave Report, 2016

¹⁵⁰ William Schabas, Ibid, 157-158

saved from ISIS massacres but, on the other hand, were challenged by another, bigger plight. There on the mountain, tens of thousands were trapped by ISIS without having access to food, water or medical care “in temperature rising above 50 degrees Celsius”.¹⁵¹

According to the statistics of the General Directorate of the Yezidi Affairs in Iraq, more than 360,000 Yezidis escaped from Sinjar between the 2nd and 11th of August 2014. The Iraqi authorities announced that almost 1,294 Yezidi people were killed or died during the first two weeks of August 2014, mainly during this displacement process¹⁵². On August 6th 2014 a Yezidi MP “stated that seventy Yazidi children died from starvation and/or dehydration as a result of forced removal near Sinjar. UNICEF reported that forty children died from violence or dehydration caused by displacement from Sinjar”.¹⁵³ At the time of writing, more than 80% of the Yezidi community are still displaced from their homes, living in severe conditions in the IDP camps of Kurdistan. Another 100,000 have left Iraq since 2014 and became refugees elsewhere in the world, mainly in Europe¹⁵⁴.

(b) Causing serious bodily or mental harm to members of the group;

The judgment of the District Court of Jerusalem (1961) considered “enslavement, starvation, deportation and persecution” as “*serious bodily and mental harm of members of a group*”.¹⁵⁵

ISIS captured 6,417 members of the Yezidi community after killing hundreds of men.¹⁵⁶ Some of the women and children were forcibly transferred to the prison Badoush,¹⁵⁷ where they have been treated brutally. Women who have been held in the prison Badoush have stated that it was overcrowded. ISIS offered food without sufficient nutrition to the detainees and children became sick.¹⁵⁸ Hundreds of young girls were collectively transferred to an event building in Mosul called (Galaxy Hall) for the slavery market.¹⁵⁹ According to the testimonies of a significant number of young girls who survived this slavery, hundreds of girls were collected in the Hall for many days without real food, waiting to be

¹⁵¹ HRC: They came to destroy: ISIS Crimes Against the Yazidis, p. 7

¹⁵² Report of General Directorate for Yezidi Affairs Infographics p n: www.ezidi24.com

¹⁵³ Laura Smith-Spark, Iraqi Yazidi lawmaker: ‘Hundreds of my people are being slaughtered,’ CNN, 6 Aug. 2014, <http://edition.cnn.com/2014/08/06/world/meast/iraq-crisis-minority-persecution/index.html>

¹⁵⁴ Official KRG Report, General Directorate for Yezidi Affairs: March/2019

¹⁵⁵ William Schabas, p. 160

¹⁵⁶ Official KRG Report, March 2019

¹⁵⁷ OHCHR Report, They came to destroy, Note 49.

¹⁵⁸ Ibid, Note 51

¹⁵⁹ Daoud Khatari, 2015, Ibid

sold or to be given as a gift to ISIS leaders (Emirs), who divided the girls among themselves, according to the proclaimed “Islamic sharia”. A fifth of the girls were given to the Caliph and the rest was distributed among the fighters in Mosul and Raqqa¹⁶⁰.

Systematic Crimes of Sexual Violence against Yazidi girls and women aged over nine:

The criminal act of rape is widely understood in the jurisprudence of international tribunals as a measure of destruction of a targeted community, like in the Kayishema case (ICTR in 1999).¹⁶¹ Also in the Akayesu judgment, rape and sexual violence were seen as both physical and mental destruction, which “may constitute genocide”.¹⁶² In the Yazidi case, sexual abuse of a Yazidi woman committed by Muslims has another dimension, which is related to the core existence of Yazidism. As an endogamic non-missionary religious group, Yazidi individuals are not allowed to marry or have sexual relationships with non-Yezidi persons (see chapter 1). Persons who breach this tradition are no longer considered as Yazidi and will be directly excluded from the community. Leaders of the Islamic State were aware of this character of the Yazidi. Many of these leaders came from the neighbourhood. They knew that such acts would not only injure the “honor” of Yazidi men, but also destroy the entire community structure. Therefore, ISIS fighters did not commit random or accidental sexual violence or rape. Additionally, the literature and ideology of ISIS explains the intent of the terror group to commit systematic rape or sex slavery (see 1.2.). The enslaved Yazidi girls were used as “Malak alyameen” [sexual slave]¹⁶³ or (Sabaya), which means legalisation of rape and sex slavery. Systematic rape is recognized in the case law of Prosecutor v Karadzic (ICTY) as a Genocidal act, “falling under Article 2(b) and (c) of the UNCG”.¹⁶⁴

During the invasion of the Sinjar region, 6,417 Yazidi individuals (3,525 females, 2,869 males) were enslaved; 3,425 survived until March 2019, either by escaping from captivity, by being repurchased through smugglers or by being liberated during the battles against ISIS.¹⁶⁵ Survivor’s testimonies reveal the brutality of ISIS fighters. Most of the women were sold many times as slaves for sexual use. A victim named Khokhe Khalaf, who was held in captivity from the 3rd of August 2014 until the 30th of

¹⁶⁰ Daoud Khatari, 2015, Ibid

¹⁶¹ HRC: They came to destroy, p. 27

¹⁶² William Schabas, p. 161

¹⁶³ Dabiq No. 4,

¹⁶⁴ Vian Dakhil al.al: p. 16

¹⁶⁵ Iraqi Official Statistics: link: <https://ar.ezidi24.com/?p=16594> (accessed: 06.04.2019)

October 2017, was sold 21 times among ISIS fighters in Iraq and Syria. She was raped on a daily basis. Some of these “owners” had her for only a short time, a day or less.¹⁶⁶ Another victim, named Sivan Mahdi Saleh from the village of Kocho, was held for more than one year in the captivity. She was only 15 years old when ISIS attacked her village. She lost her family and was raped for the first time by an Iraqi IS fighter. Sivan witnessed not only her rape, but also the rape of others, among them the rape of a 12 years old Yezidi girl by a 55 years old Muslim man.¹⁶⁷

Lamya Haji Bashar, Sakharov Prize Laureate 2016, who has become an international women’s rights activist, was 15 when she was raped for the first time. She lost both of her parents and most of her male relatives. She spent 18 months in the captivity of ISIS. She was sold five times and forcibly transferred between Syria and Iraq. She tried to escape without success many times. After each attempt she was beaten, tortured and imprisoned for days without food or water. Her last owner was an Iraqi medical doctor, the director of the Al-Hawijja Hospital. The Doctor held two other girls as slaves in addition to Lamya: (Kathrin), an 18 years old girl and the nine years old (Almas), whom he frequently sexual abused as well.¹⁶⁸ More than 1,200 women and children, who survived Daesh captivity were interviewed by me during the processing of the German project (Special Quota for vulnerable women and children from north of Iraq, 2015).¹⁶⁹ Victims reported various kinds of rape, sexual slavery, brutality and horrible treatment by Muslim men in the Islamic State territories against Yezidi women and children.

ISIS established a Sharia court to deal with lawsuits related to sexual slavery and slaves. The slavery market became a systematic social phenomenon in Daesh occupied territories.¹⁷⁰

The OHCHR inquiry commission concluded that the ISIS’s criminal acts of sexual violence was not only a crime against each woman as an individual but that it was “a clear step in the process of

¹⁶⁶ Hussein Osman, *Daesh Hell, testimonies of ISIS victims*, (in Arabic), Dohuk, 2018, pp. 15-45

¹⁶⁷ Ibid, pp. 97-109

¹⁶⁸ Ian Birrell, “The face of raw courage: Brave Yazidi teenager was kidnapped by jihadis and sold into sexual slavery before being injured in an explosion as she made a daring dash for freedom”, Mail On Sunday, online available: <https://www.dailymail.co.uk/news/article-4098340/The-face-raw-courage-Brave-Yazidi-teenager-kidnapped-jihadis-sold-sexual-slavery-injured-explosion-daring-dash-freedom.html> (viewed: 09.04.2019)

¹⁶⁹ I was head of the receiving office and local partner of the state Baden-Württemberg in Duhok to implement a resettlement project of 1,100 women and children, who were captured by ISIS. The project started in March 2015-March 2016. see: Blume, Michael: Hilfe für verfolgte Frauen und Kinder aus dem Nordirak, link: <http://www.blume-religionswissenschaft.de/pdf/MichaelBlumeSonderkontingentNordirakSYM012016.pdf>, also see: the official documentation of the state BadWürttemberg:g : https://www.landtag-bw.de/files/live/sites/LTBW/files/dokumente/WP15/Drucksachen/7000/15_7352_D.pdf (accessed: 07.04.2019)

¹⁷⁰ HRC: They came to destroy

destruction of the ... group – destruction of spirit, of the will to live, and of life itself”.¹⁷¹ The Yezidi women and girls were held to be “doubly victimized, on basis of their religion and their sex.”¹⁷²

Systematic Enslavement / legalisation of Slavery of Infidel Yezidi

A particular document contains information in a “question-and-answer” style. ISIS issued this document about the legalisation of slavery and its rules. It states: *“It is permissible to buy, sell, or give as a gift female captives and slaves, for they are merely property, which can be disposed of... It is permissible to have intercourse with the female slave who hasn't reached puberty if she is fit for intercourse; however if she is not fit for intercourse, then it is enough to enjoy her without intercourse.... It is permissible to beat the female slave as a [form of] darb ta'deeb [disciplinary beating]”*¹⁷³.

The legal and religious background of establishing a slavery system has been highlighted in the previous chapter (see: 1.2). ISIS deals with the Yezidi hostages as “spoils of war” and goods. Gergor Stanton argues that among the chronicles of Genocide stages there is the process of “Dehumanization” of the victims. This refers to where the perpetrators put the victimized group into a “second-class”¹⁷⁴ position to others. The Daesh strategy of dehumanizing Yezidi hostages efficiently facilitated the notion of slavery within the Muslim communities while avoiding denial from civilian or more “moderate” Muslims in the occupied territories, who might ask, how it is that a human being in the 21st century can be enslaved?

Stanton explains the strategy of the perpetrator behind the dehumanization “as when a group of people is thought of as “less than human” it is easier for the group in control to murder them”.¹⁷⁵

Therefore, dealing in Yezidi slaves in Mosul and Raqqa became normal. Even civilian populations were able to buy and sell slaves, whereas initially the slavery trade was only accessible to the fighters. For these reasons, ISIS established an official system of slavery. A Sharia Court was established to handle lawsuits surrounding the slavery trade and slavery disputes. For the purpose of understanding

¹⁷¹ Akayesu Trial Judgment, Para 732, in cited in HRC Report: They came to destroy, p. 24

¹⁷² HRC: They came to destroy, p. 24

¹⁷³ HRW Report: Iraq: ISIS Escapees Describe Systematic Rape, 14.04.2015, Online (accessed: 19.03.2019): <https://www.hrw.org/print/269592>

¹⁷⁴ Gregor Stanton, *Ten stages of Genocide, The Genocide Education Project*, link: https://genocideeducation.org/wp-content/uploads/2016/03/ten_stages_of_genocide.pdf (accessed: 07.04.2019)

¹⁷⁵ Ibid

the ISIS Slavery bureaucracy, following official ISIS documents are attached in the Annex IV of this thesis:

- 1) Ownership Certificate of a Yezidi Slave. (see p. 105)
- 2) Certificate of the “Liberation of the Neck” – an Islamic terminology for the Freedom’s Status of a slave. (see p. 106)
- 3) Marriage Contract of a former slave – the price/dowry of the marriage was the liberation of the bride, a Yezidi girl, from the slavery. (see p. 107)

Furthermore, Slave traders, as well as private sellers and buyers, used Whatsapp, Telegram and other social media mobile phone applications, for sex slavery trading.¹⁷⁶ This was another method of normalization of slavery culture within the Daesh world.

Sex slavery as a genocidal act in the Yezidi case:

The ICTR, especially in the Akayesu Judgement, clarified doubt about the character of the rape as a Genocidal act, where rape is used as a weapon to destroy an entire community.¹⁷⁷

The Yezidi minority are an independent religious group, who practice endogamic marriage tradition (see Chapter 1). Any sexual relationship or marriage outside the community means that the person is no longer Yezidi. Daesh leadership was aware of this exclusion from the Yezidi community. The ISIS fighters, who were responsible for the slaves, systematically raped even the married women after they had been forced to convert to Islam. They intended to eradicate Yezidi membership and to prohibit victims from returning to the community.

Inhuman and degrading treatment:

The Israel v Eichmann judgment explains the inhumane treatment of a targeted group, when the perpetrator holds victims “*in conditions which were designed to cause their degradation, deprivation of*

¹⁷⁶ James Cockaine, “Women are Being Traded as Slaves on WhatsApp – Here’s How the UN Can Act”, UNU-PCR, Center for Research Policy, 2016, link: <https://cpr.unu.edu/women-are-being-traded-as-slaves-on-whatsapp-heres-how-the-un-can-act.html> (accessed: 10.04.2019)

¹⁷⁷ Sherri L. Rüssel-Brown, “Rape as an Act of Genocide”, Berkeley Journal of International Law, Vol. 12, Issue 2, 2003, pp. 350-374

their rights as human beings, and to suppress them and cause them inhumane suffering and torture".¹⁷⁸ Similarly, Yezidi survivors who were held as IS hostages describe the horrible conditions and treatment inside ISIS detention centres in Iraq and Syria as worse than when they were with their owners. Some former sex slaves reported that they have been held collectively in a prison near Raqqa, with little food, water, or medical care. Each day the ISIS fighters came to choose one or more of the Yezidi girls, abused them sexually, and brought them back later.¹⁷⁹ Lamyia Haji Bashar was held in this prison. One of the Saudi ISIS fighters took her and her sister one day and raped them both together. He and his fighters tortured and abused both sisters and raped them for three days on end.¹⁸⁰ Another story of horrific abuse was that of an ISIS fighter who poisoned a woman's three children in Syria, and then published their pictures on social media because she refused to have sex with him.¹⁸¹ Another victim, who was held for more than nine months in captivity, reported how she was beaten and tortured by ISIS fighters, because she refused to pray like a Muslim.¹⁸²

Dunya, another Yezidi girl who survived sex slavery has since stated: "They [ISIS] took us to Tel Afer. They separated virgin girls from married women. We refused to leave our mother. Someone tried to harass my sister; my mother attacked him trying to defend her. The ISIS fighter, therefore, became crazy after my mother's resistance. He offended my mother and killed her and my brother in front of our eyes".¹⁸³

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

Following the occupation of the Sinjar region, ISIS forcibly converted of hundreds of Yezidis in the (Nufuus) building in Sinjar. ISIS then transferred the hostages to Tilafer. According to UN reports in

¹⁷⁸ William Schabas, *Ibid*, p. 160

¹⁷⁹ Story of Lamyia Haji Bashar, Sakharov Prize Laureate 2016,

¹⁸⁰ Martha Seozean, "Kidnapped teenager escaped after five attempts and told her story of captivity", the Online citizen, Interview with Lamyia Haji Bashar, 2017 link: <https://www.theonlinecitizen.com/2017/01/11/kidnapped-teenager-escaped-after-five-attempts-and-told-her-story-of-captivity/> (accessed: 04.04.2019)

¹⁸¹ Daoud Khatari, 2015, *Ibid*

¹⁸² ABI Case File, Survivor Alya.

¹⁸³ Majid H. Ali, & Arshad H. Miho, "The captivity and slaves of Yazidi women from the Ottoman Empire in 1814 to the invasion of Sinjar by Islamic State ISIS 2014", *Mahfal* (10), Hawar Printing House, Duhok, 2018, pp. 75-107

2014, ISIS held “around 3,500 women and children in five detention centres” in the town.¹⁸⁴ The hostages lived in horrible conditions, family units were destroyed and members of each family were systematically separated and distributed among (ISIS Wilayat) [Islamic name of territories]. Men were used either as slaves in the fields or as shepherds for the sheep of the Islamic State (Bayt-al-Mal) [IS ministry of finance]. These sheep were originally stolen from Yezidi areas as “spoils of war”.¹⁸⁵

The Yezidis in Sinjar were living mainly from agricultural products. Causing a displacement of the majority of their community from their homes was a destruction of their community life. The UN inquiry team stated that “ISIS has committed, and is committing, the prohibited act [of] deliberately inflicting on captured Yazidis conditions of life calculated to bring about their physical destruction, in whole or in part”.¹⁸⁶

(d) Imposing measures intended to prevent births within the group:

Preventing birth in a targeted group is considered as Genocidal act because it aims to destroy the future of the group.¹⁸⁷ Both sterilization and forced birth control are Genocidal acts.¹⁸⁸ The IS fighters intended on prohibiting the Yezidi hostages giving birth. According to the testimonies of victims and various international reports, Yezidi women were investigated by IS gynaecologists to verify their claimed virginity and pregnancy.¹⁸⁹ Abortion was ordered for early-stage pregnancies¹⁹⁰ and for beautiful women to make them free for the next owner. UN reports state that ISIS prevented women in captivity from giving birth.¹⁹¹

Additionally, ISIS separated Yezidi family members at the beginning of occupation by killing thousands of men.¹⁹² The families who agreed to convert to Islam were held together in captivity in a

¹⁸⁴ Richard Spencer, “Isil carried out massacres and mass sexual enslavement of Yazidis, UN confirms”, the Telegraph, published in 14.10.2014, link: <https://www.telegraph.co.uk/news/worldnews/islamic-state/11160906/Isil-carried-out-massacres-and-mass-sexual-enslavement-of-Yazidis-UN-confirms.html> (accessed: 24.03.2019)

¹⁸⁵ Daoud Khatari, *ibid*

¹⁸⁶ HRC: They came to destroy. P. 27

¹⁸⁷ Vian Dakhil, Aldo Zammit Borda & Alexander Murray, “Calling ISIL Atrocities against the Yezidis by their rightful Name: Do they constitute the crime of Genocide”, Human Rights Law Review, Oxford University Press, 2017, 0, pp. 1-23,

¹⁸⁸ *Ibid*

¹⁸⁹ HRC: They came to destroy,

¹⁹⁰ SAP: Report on the Yezidi Genocide, Mapping Atrocities in Iraq and Syria, Syracuse College of Law, 2017, p. 27

¹⁹¹ HRC. They came to destroy, *Ibid*

¹⁹² *Ibid*

village near Tel Afar called Kasr Al-Mihrab.¹⁹³ According to the official Iraqi reports, there were around 3,500 Yezidi hostages held in this village, in addition to two further places in City Tel Afar, until the end of April 2015¹⁹⁴. Tens of Yezidi hostages managed to escape by foot to the safe areas by walking over 50km in the fields.¹⁹⁵ As ISIS discovered their plan, that those who converted to Islam were nevertheless fleeing back to their own community and faith and leaving the Islamic State, the leadership of the organization gathered all the hostages together before separating the men, and killed them collectively in the mass grave site called (Alo Antar). “One eyewitness who lived close to the site reported seeing IS fighters in the spring of 2015 [27.04.2015] take at least 1,000 Yazidi men, women and children, in addition to some smugglers to the site in trucks and cars, killing them by beheading, shooting, and dismembering”.¹⁹⁶ Women and children, who survived that day in Tel Afer, were distributed among the fighters and sold to different ISIS territories in Iraq and Syria.¹⁹⁷

(e) Forcibly transferring children of the group to another group.

The forcible transfer of children from one group to another is only accepted as a Genocidal act when it has “serious consequences for the future viability of a group”.¹⁹⁸ According to various international reports, ISIS committed systematic separation of Yezidi children from their mothers. Following the enslavement of women and children, Yezidi male children between eight and 15 were separated from their families and transferred to a training camps and Islamic schools in Mosul, Tel Afar and Raqqa. Here they underwent through a systematic brainwashing mechanism and “received religious and military training following their forced conversion”.¹⁹⁹ Girls over 10 and unmarried adult women were considered as sex slaves and either given as gifts or sold among ISIS fighters.²⁰⁰ Several survivors stated to the UN inquiry team that ISIS was “taking groups of children away on a daily basis to unknown locations. They also recounted how women and children who refused to convert were being allotted to ISIL fighters

¹⁹³ Ibid

¹⁹⁴ Daoud Khatari, 2015, Ibid

¹⁹⁵ Ibid

¹⁹⁶ Yazda Mass Grave Report 2018

¹⁹⁷ Daoud Khatari, 2015, Ibid

¹⁹⁸ William Schabas, p. 176

¹⁹⁹ Dakhet al. al: p. 16

²⁰⁰ OHCHR: 2014,

or were being trafficked as slaves (‘malak yamiin’) in markets in Mosul and to Raqqa in Syria”.²⁰¹

Brain Washing:

ISIS reasons for forcibly separating children from their mother was to “destroy Yazidi children’s concept of themselves as Yazidi, erasing their attachment to the Yezidi religion”.²⁰² In the Islamic schools, children were indoctrinated with ISIS ideology. Teenage survivors stated they spent the whole time in training camps, learning about the Qoran and Islamic religion, as well as taking part in military training. A group of children, who have been liberated during the final battle in Baghouz (2019),²⁰³ forgot their mother tongue and could only speak the Syrian Arabic language.²⁰⁴ Another seven year old child (Ayham) was held for more than three years in captivity. An American ISIS family held him and changed his name to Abdullah. The child could only speak English.²⁰⁵

Child Soldiers:

IS did not only brainwash the Yezidi children, but also recruited them as child soldiers. Teenagers were prepared to participate in battles and suicide acts. According to a video announcement published by ISIS media in 2017, two Yezidi brothers, aged 11 and 12, committed suicide in a mission in Mosul.²⁰⁶ Although ISIS not only killed their parents, many more family members, enslaved their female relatives and even changed their names to Islamic ones, both of those young boys were speaking proudly in front of the camera before starting their suicide mission.

²⁰¹ OHCHR: 2014, p. 15

²⁰² HRC: they came to destroy

²⁰³ TV Reportage, K24: Yezidi children released from ISIS in Baghouz Syria share tragic stories, Link: <https://m.youtube.com/watch?v=V8VvqrocqXM> (Accessed: 08.04.2019)

²⁰⁴ Interview with Khairi, a 12 years old child, who lost his parents and was kept for four and a half years in the captivity of ISIS. (in 24.march 2019),

²⁰⁵ A Yezidi child captured by IIS, is liberated and speaks English, AlNabaa, 2018, online newspaper, link: <https://n.annabaa.org/news26512>

²⁰⁶ Khaled Al-Tai, “Agitation for recruitment calls for two Yazidis to launch suicide attack in Mosul”, Diyaruna, 07.03.2017. link: http://diyaruna.com/ar/articles/cnmi_di/features/2017/03/07/feature-02 (accessed: 08.04.2019)

II) Crimes Against Humanity:

Art. 7 of the Rome Statute clarifies the criminal acts that are defined as crimes against humanity. It is clear by examining the various *actus rea* mentioned in the section (I Genocide) that such acts are generally subject to this article also. It is only important to prove whether such atrocities could be defined as crimes against humanity or not. Therefore the other elements of crimes against humanity should be proven. To fulfil the requirements pursuant to Art. 7, the crime should be in form of a “widespread or systematic” attack directed against “civilians”. The attack should be also a part of a state or an organisational agenda. In this matter, the following requirements are necessary:

1) Structure of a “State”:

Crimes against humanity differ from other crimes in that the perpetrators are not simple individuals: They should be belonging to a state or an organization.²⁰⁷ The perpetrators should have a common plan for the commission of the acts. It is obvious that the Islamic State was not only an ordinary militia or terror organisation. ISIS was evaluated from the terror organisation Al Qaeda with stronger authoritarian structure and hierarchy within the group.²⁰⁸ ISIS used the power of an organised authority, controlled certain territories, had the administrative components and infrastructure of a “state” and the governing strategy model of an Islamic Caliphate²⁰⁹.

The first requirement is therefore fulfilled.

2) Strategical Systematic and widespread policy against civilians:

By reviewing the organ of ISIS (Dabiq, 4th Edition), various videos, declarations, and Decisions of Sharia Court²¹⁰ it can be seen that ISIS established a “systematic” policy to harm the “civilian population” of the Yezidi minority and that the attacks were widespread and affected whole community, whatever this unlawful harm was.

3) The Knowledge:

Another important element of crimes against humanity is that the perpetrators are aware of the criminal acts, and that “*the conduct was part of or intended the conduct to be part of a*

²⁰⁷ David Sverdlov, “Rape in War: Prosecuting the Islamic State of Iraq and the Levant and Boko Haram for Sexual Violence Against Women”, Cornell International Law Journal, Vol. 50, (2017), pp. 333-358

²⁰⁸ Christine Fuller (ed.), *The Rise of ISIS: Backgrounds and Perspectives from the UK and USA*, Nova Publishing, NY (2015), p. 87.

²⁰⁹ Hussein Solomon, “THE EVOLUTION OF ISLAMIC STATE’S STRATEGY”, *Scientia Militaria*, South African Journal of Military Studies, Vol. 45.No. 1 (2017), pp. 21-44

²¹⁰ See Annexes I and III

*widespread or systematic attack against a civilian population*²¹¹. The ISIS fighters who attacked Yazidis in Sinjar were Iraqi citizens, with a Sunni religious background. They joined the organisation that had “recalled” building the “glory” of Sunni-Islam to defeat the Shia and the rest of infidels. They were voluntarily participating in a plan to realise this “dream” and the elimination/extermination of “others”, who were not part of this “collective” dream was a part of this plan. ISIS has also utilised a huge range of media and social media propaganda to spread its ideology. This reasonably brings us to the conclusion that every single perpetrator knew what they were doing and what result had to be reached. The third requirement is therefore fulfilled as well.

4) The widespread actus reus:

The majority of the criminal acts committed by ISIS are subject to various paragraphs of Art. 7 of the Rome Statute. For instance (references to the following acts are explained in sub-chapter 2.2.):

- a) Commission of mass murder crimes according to Art. 7(1)(a)(b) in Hardan, Qiniyeh, Khanasor, Siba Shekhre, Til Azer, Kocho, Temple of Shekh Mand²¹².
- b) Enslavement of more than 6417 Yazidis²¹³ is liable under Art. 7(1)(d) and unlawful imprisonments of the victims is liable under Art. 7(1)(f).
- c) Rape, sexual abuse and all other kinds of gender based violence were one of the many characteristics of crimes that ISIS committed against the Yazidis, and are liable under Art. 7(1)(h)²¹⁴.
- d) ISIS also caused forcible displacement of civilians from Sinjar. 80% of the entire community is now living as IDPs or Refugees in the Camps in Kurdistan or outside of the country, which is subject to Art. 7(1)(e)²¹⁵.
- e) Women survivors frequently report torture and inhumane treatment that they were exposed to during their captivity (Art. 7(1)(f); Art. 7(1)(h) and Art. 7(1)(k)²¹⁶.

²¹¹ ICC: Elements of Crimes, The Hague (2013), pp. 3-9

²¹² See Sub-Chapter 2.2., I, para 1-3

²¹³ Footnote 164

²¹⁴ Sub-Chapter 2.2., I, para (b)

²¹⁵ Sub Chapter 2.2., I, para 4

²¹⁶ Sub-Chapter 2.2., I, para c,

Therefore, the atrocities of ISIS fulfil all the requirements of the elements of crimes against humanity and could also be subject to Art. 7 of the Rome Statute

III) War Crimes:

Although the subject of this dissertation is not to examine the kind of war crimes that have been committed by ISIS or other terror groups and militias in Syria and Iraq since 2014, most international inquiry teams have reported gross violations of the Geneva Conventions and IHL in the context war crimes.

One of the most important violations of the Yezidi issue is the recruitment of Yezidi children after brainwashing them and using these children as child soldiers.²¹⁷ ISIS uses these children as suicide bombers, and has recruited them in the so-called “Inghimasi Units” (Immersing Units)²¹⁸.

2.3. Excursion - Destruction of religious and cultural heritage:

In addition to the prohibited acts that have been recognized in the UNGC, Genocide lawyer Raphael Lemkin argued that the cultural Genocide should also be considered in the convention, in order to be recognized as a prohibited act. “He insisted that a racial, national or religious group can not continue to exist unless it preserves its spiritual and moral unity”.²¹⁹ However, the convention does not include conduct against the cultural heritage of protected groups as an offence. William Schabas, however, highlights that the protection of the cultural existence of protected groups is guaranteed through “instruments of international humanitarian law, applicable in armed conflict”.²²⁰ He confirms nevertheless that “[t]he cultural component remains relevant as evidence of the intent to destroy a group”.²²¹

²¹⁷ Khaled Al-Tai, Ibid

²¹⁸ Subchapter 2.2., p. 49

²¹⁹ William Schabas, p 180

²²⁰ William Schabas, p 187

²²¹ William Schabas, p 188

It is essential with regards to this matter to mention that ISIS has destroyed all of the Yezidi temples in the Region Sinjar, Bashiqa and Nineveh plain, even before they had started to destroy the historical monuments and remains of Mesopotamian civilization in the Occupied territories. According to the official reports, the Islamic State destroyed 68 Yezidi religious temples.²²²

2.4. Interim Conclusion: Can the Islamic State's atrocities against Yezidi be defined as Genocide in the scope of ICL?

To answer this essential question, it can be seen that the Yezidi minority fulfils the criteria as a protected ethno-religious group and as an independent religion (see chapter 1 about the identity of the Yezidi minority). Here it should also be noted that Daesh itself considers the Yezidi a minority as a determined group of polytheist (mushrikeen) or (kuffar) and targeted them because of their religious identity, with a clear special intent (*mens rea*) to destroy this identity. In comparison with other groups in Sinjar, like Arab Muslims, Kurdish-Muslims, the police and military forces; ISIS offered to those Moslems a possibility to declare their "Repentance" (*Altauba*)²²³ and their loyalty to the Caliphate, then their life, property and families were safe. Daesh offered such possibility also to the few Christian families who remained in Sinjar, to pay taxes (*al-Jiziyah*) and stay,²²⁴ or alternatively to leave or to convert, because they were "people of the holy books", who are mentioned in Qoran. But, the Yezidis did not have such a privilege. The Yezidis were therefore a direct subject of extermination. The analysis of the research concludes that the ISIS crimes against the Yezidis were not only "systematic" attacks against "any" civilian group. The characters of crimes against the Yezidis differ from the other "civilians" who have been victimized by ISIS. For this reason, the crimes were not only crimes against humanity, as the conduct of ISIS perpetrators "took place in the context of a manifest pattern of similar conduct directed against that group [Yezidi] or was conduct that could itself effect such destruction".²²⁵

²²² Infographic of Yezidi Genocide, Online available in Link: <http://ar.ezidi24.com/?p=16531>

²²³ Ali Omar, "Calling for the distribution of repentance instruments to security personnel in Mosul" (in Arabic), Al Araby, 3.07.2014, link: <https://m.arabi21.com/Story/759897> (accessed: 10.04.2019)

²²⁴ Ghaith Abdul-Ahad, "The bureaucracy of evil: how Islamic State ran a city", the Guardian, link: <https://www.theguardian.com/cities/2018/jan/29/bureaucracy-evil-isis-run-city-mosul> (accessed: 10.04.2019)

²²⁵ ICC: Elements of Crimes, 2013, pp. 2-3

The Islamic State therefore committed prohibited genocidal acts, such as killing, forcible conversion to Islam, “*coupled with the systematic expulsion of Yezidis*”,²²⁶ forced abduction, enslavement, systematic rape and sexual violence, forcibly transferring the children from Yezidi group to the training camps, brainwashing them to Islam to create child soldiers and prepare them to attack their own group.

All these acts fall under the provisions of the (Art. II) of the UNGC as GENOCIDE.

²²⁶ MGRI Report 2014: Between the Millstones: The State of Iraq’s Minorities Since the Fall of Mosul, Brussels, 2015, p.14

Chapter III

International Reactions to the Yezidi (Genocide) and the Legal Value/Responsibility

3.1. Political Recognition of Yezidi Genocide:

The tragic scenes of exodus and starvation of Yezidi escapees on Mount Sinjar that were shown on the screens of the BBC, CNN and other international media shocked politicians around the world. President Obama ordered "limited airstrikes against ISIS" on August 6th 2014.²²⁷ Three days later, a group of CIA agents visited Mount Sinjar in order to report on the humanitarian situation of the refugees on the mountain. At the same time, the Syrian Kurdish fighters (YPG) opened a safe corridor between the mountain and Syrian borders in order to make a secure path for the Yezidi escapees to leave. The majority of the Sinjaris left the mountain by foot and walked hundreds of miles until they reached KRI. The CIA agents, who had only stayed for a couple of hours and had only visited a small area of the mountain, informed Washington that the Yezidis had been rescued. Following that report, President Obama declared on August 14th 2014: "the situation on Mount Sinjar had greatly improved. Many of those displaced had now left the mountain, and further rescue operations were not envisaged".²²⁸ Although he stated that the airstrikes against ISIS would continue, the Arabic and Kurdish media interpreted his speech to mean that there was "no need for more airstrikes." On the next day, August 15th, ISIS committed the massacre of Kocho.²²⁹

The international political reaction and media attention surrounding the crimes of ISIS has become a part of daily debate since 2014. The atrocities committed against the Yezidis and other Iraqi and Syrian minorities were part of this daily breaking news, especially the crimes committed against women and children such as slavery and sex slavery (GBV issues). Some scholars criticised western politicians and

²²⁷ Helene Cooper, Mark Landler & Alissa J. Rubin, "Obama Allows limited Airstrikes on ISIS", New York Time, (07.08.2014) Link: <https://www.nytimes.com/2014/08/08/world/middleeast/obama-weighs-military-strikes-to-aid-trapped-iraqis-officials-say.html> (Last access: 10.04.2019)

²²⁸ BBCNews: Iraq crisis: Obama says US 'broke Mt Sinjar siege' (14.08.2014) link: <https://www.bbc.com/news/world-middle-east-28796275> (last access: 10.04.2019)

²²⁹ Jonathan Rugman, "Iraq: IS 'killed over 350 men' in Yazidi massacre", Channel 4, (16.08.2014) Link: <https://www.channel4.com/news/yazidi-massacre-iraq-islamic-state-is-refugee-mountain> (last access: 10.04.2019)

media as exaggerating the gendering characters of the crimes on the cost of Genocide and other crimes that ISIS committed against the Yezidi population.²³⁰

Governments and parliamentary institutions in several states had, through legislative resolutions since 2014, recognized the crimes of ISIS against the Yezidis and other minorities in Iraq and Syria: for example USA,²³¹ UK,²³² France,²³³ Italy, Armenia,²³⁴ Scotland,²³⁵ Australia,²³⁶ and Canada²³⁷ as well as several resolutions from the European Parliament²³⁸ and the Council of Europe.²³⁹

I will highlight in the following section three models of recognitions adopted by the USA, the UK and the European Parliament and their consequences:

3.1.1. Recognition in the USA:

The US House of Representative passed, on March 14th 2016, Concurrent Resolution no. 75 that stated:

²³⁰ Veronica Buffon & Christina Allison, “The gendering of victimhood: Western media and the Sinjar genocide”, *Kurdish Studies*, Vol. 4 No. 2, 2016, Transitional London Press, pp. 176-196

²³¹ US Congress, 114th: Resolution 75: on March 15, 2016, Online available link:

<https://www.congress.gov/114/bills/hconres/75/BILLS-114hconres75rfs.pdf> (Last Access: 10.04.2019)

²³² House of Commons, EDM #839: January 9, 2017, online available, link: <https://edm.parliament.uk/early-day-motion/50093> (last access: 10.04.2019)

²³³ French National Assembly: Resolution No. 853, December 8, 2016, online available, link: <http://www.assemblee-nationale.fr/14/ta/ta0853.asp> (last access: 12.04.2019)

²³⁴ Rudaw: Armenian Parliament recognizes Yezidi Genocide, on January 16, 2018, link: <http://www.rudaw.net/english/world/16012018> (last access: 10.04.2019)

²³⁵ ARA News: Scottish Parliament recognizes Genocide against the Yezidi people, March 25, 2017, link: <http://aranews.net/files/2017/03/scottish-parliament-recognizes-genocide-against-the-yezidi-people/> (last access: 10.04.2019)

²³⁶ MP Chris Crewther, “Yazidi Genocide By Isil Recognised In Australian Parliament”, (February 26, 2018), link: <https://www.chriscrewther.com.au/media-releases/yazidi-genocide-by-isil-recognised-in-australian-parliament> (last access: 12.04.2019), and also in Australian Parliament recognizes sexual violence against Yazidis as a constituent of Genocide, link: <https://prosecutedontperpetrate.com/2018/03/08/australian-parliament-recognises-sexual-violence-against-yazidis-as-constituent-of-genocide/> (Last access: 12.04.2019)

²³⁷ Roderick Ramsden, “Canadian Government Acknowledges ISIS’ Genocide Against the Yazidis: Now What?”, (June 14, 2016), NATO Association of Canada, Link: <http://natoassociation.ca/canadian-government-acknowledges-isis-genocide-against-the-yazidis-now-what/> (last access: 12.04.2019)

²³⁸ EU Parliament, Resolution No. 2016/2529 (February 2, 2016), link: http://www.europarl.europa.eu/doceo/document/RC-8-2016-0149_EN.html?redirect (Accessed: 12.04.2019)

And Resolution No. 2016/2956, October 27, 2016: link: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BTA%2BP8-TA-2016-0422%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN> (last access: 12.04.2019)

²³⁹ PACE: Resolution No. 2190, Para (3): Prosecuting and punishing the crimes against humanity or even possible genocide committed by Daesh, October 12, 2017, link: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24219> (last access: 12.04.2019)

*"[T]he atrocities perpetrated by ISIL against Christians, Yezidis, and other religious and ethnic minorities in Iraq and Syria constitute war crimes, crimes against humanity, and genocide."*²⁴⁰

The Resolution was based on relevant international law references within the United States Code (section 2441/ Title 18) on war crimes. The adoption of this Concurrent Resolution was also easy to meet, because it complied with the political vision of the US administration, which concluded in early August 2014, that the atrocities of ISIS and its "targeted acts of violence bear all the warning signs and hallmarks of genocide".²⁴¹

The Congress reaffirmed various international reports relating to the atrocities of ISIS against minorities in Iraq and Syria, i.e., 1) the OHCHR report of March 13th 2015, which stated that these atrocities against a religious or ethnic group "may constitute genocide";²⁴² 2) The declaration of the US Commission on International Religious Freedom that designate the Yezidis and other minorities of Iraq and Syria "as victims of genocide by ISIL";²⁴³ 3) The report of the United States Holocaust Memorial Museum's Simon-Skjodt Center for the Prevention of Genocide, which has stated, in December 2015, that ISIS "perpetrated genocide against Yezidi People";²⁴⁴ and 4) The Resolution expressed by European Parliament, on February 3rd 2016, which recognized the ISIS crimes against the Yezidis and Christians as genocide.²⁴⁵

The Concurrent Resolution demanded all governments and international organizations to call the ISIS crimes "by their rightful names: war crimes, crimes against humanity, and genocide"²⁴⁶. The Resolution also pressed the UN to urgently coordinate measures for preventing further crimes, collecting evidence and "if necessary, the establishment and operation of appropriate tribunals".²⁴⁷

²⁴⁰ US Congress, 114th: Resolution 75: on March 15, 2016, Online available link: <https://www.congress.gov/114/bills/hconres75/BILLS-114hconres75rfs.pdf> (Last Access: 10.04.2019)

²⁴¹ Ibid

²⁴² Ibid

²⁴³ USCIRF Statement on the Designation of Victims of Genocide, Persecution, and Crimes Against Humanity in Syria and Iraq, December 2015, link: <https://www.uscifr.gov/news-room/press-releases/uscifr-statement-the-designation-victims-genocide-persecution-and-crimes> (Accessed: 14.05.2019)

²⁴⁴ US Congress, 114th: Resolution 75: in March 15, 2016, see also: link: Kikolar, Naomi: "There Is No Humanity": The Genocidal Crimes of ISIS, United State Holocaust Museum, Washington DC, 2016, link: <https://www.ushmm.org/information/about-the-museum/museum-publications/memory-and-action/there-is-no-humanity> (Accessed: 14.05.2019)

²⁴⁵ US Congress, 114th: Resolution 75: on March 15, 2016

²⁴⁶ Ibid

²⁴⁷ Ibid

3.1.2. Recognition in the UK:

The British House of Commons introduced an "Early Day Motion" (EDM No. 839), with the title "Genocide by Daesh against Yazidi People",²⁴⁸ to the national debate. The Motion was proposed by MP Fiona Bruce, and was unanimously approved by 278 MPs.²⁴⁹

The House of Common concluded that the Yezidis and other minorities "in Iraq and Syria are suffering genocide at the hands of Daesh".²⁵⁰ Additionally, this parliamentary motion defied the governmental approach²⁵¹ about the principle of recognition of Genocide crimes. The House of Commons called the government "to make an immediate referral to the UN Security Council with a view to conferring jurisdiction upon the International Criminal Court so that perpetrators can be brought to justice"²⁵². In contrast, the Governmental argument was to avoid challenges with other permanent members of SC: namely China and Russia. Both states had vetoed a previous draft Resolution about referring the Syrian case to the ICC²⁵³.

However, the unanimity of the adopted motion did not change British foreign policy toward Daesh crimes against Yazidi. The government answered similarly to a question raised by Conservative MP Robert Jenrick, eleven months later, who criticized the governments arguments, which claimed "that they would not rush to judgment" about the definition of these crimes and whether they can be considered as Genocide or not. MP Jenrick asked whether the Government "allow[s] the legal process to take its course" and if there is an "update on the process of those legal proceedings and when the Government anticipates that the genocide against the Yazidis will be recognized as such?"²⁵⁴.

²⁴⁸ House of Common: EDM No. 839, on April 20, 2016, link: <https://edm.parliament.uk/early-day-motion/50093> (accessed: 14.05.2019)

²⁴⁹ Alex Whiting, "UK parliament condemns Islamic State violence as Genocide", Reuters, 20.04.2016, link: <https://www.reuters.com/article/us-britain-parliament-genocide-islamic-s-idUSKCN0XH2EM> (accessed: 14.05.2019), see also: Scottish Catholic Observer: MPs unanimous in declaring ISIS violence genocide against Christians and Yazidis, 20.04.2016, link: <http://www.sconews.co.uk/news/50546/mps-unanimously-in-declaring-isis-actions-as-genocide-against-christians-and-yazidis/> (Accessed: 14.05.2019)

²⁵⁰ House of Common: Conversation's Debate, <https://hansard.parliament.uk/commons/2016-04-20/debates/16042036000001/DaeshGenocideOfMinorities> (Accessed: 14.05.2019)

²⁵¹ Patrick Wintour, "MPs unanimously declare Yazidis and Christians victims of Isis genocide", the Guardian, 20.04.2016 link: <https://www.theguardian.com/politics/2016/apr/20/mps-unanimously-declare-yazidis-victims-of-isis-genocide> (Last access: 14.05.2019)

²⁵² House of Common: Conversation's Debate, <https://hansard.parliament.uk/commons/2016-04-20/debates/16042036000001/DaeshGenocideOfMinorities> (Accessed: 14.05.2019)

²⁵³ Mordechai Chaziza, "Soft Balancing Strategy in the Middle East: Chinese and Russian Vetoes in the United Nations Security Council in the Syria Crisis", China Report Journal, Vol. 50, Issue 3, August 2014, pp. 243-258

²⁵⁴ House of Common, Common Chamber, Foreign and Commonwealth Office, Q&A: Yazidi Captives: Daesh, Volume 624, March 27, 2017, online available: <https://hansard.parliament.uk/Commons/2017-03-28/debates/89E4D4D4-AE03-4795-BE9D-D93166643827/YazidiCaptivesDaesh> (last access: 14.05.2019)

The Parliamentary Under-Secretary of State for Foreign Commonwealth Affairs (Mr Tobias Ellwood) brought the same British concerns about the possible veto from China and Russia if the UK were to try to bring the referral to the ICC to the SC debate.²⁵⁵ In addition, the government continues to avoid any mentioning of the term "Genocide" in the context of ISIS crimes, unlike the US Administration, who asked the world to mention the Daesh atrocities by their "rightful" names.

3.1.3 Recognition on the European Parliament Level:

The European Parliament (EP) has been seriously engaged with regards to the solidarity for Iraqi minorities affected by ISIS terrorism. In addition to seven resolutions related to Yezidi and minority issues (see below), the EP awarded two Yezidi women, Nadia Murad and Lamiya Haji Bashar, with the Sakharov Prize 2016.²⁵⁶ On the initiative of the Austrian MEP Josef Weidenholzer²⁵⁷ a parliamentary friendship group called "Ezidi Friendship Group" was established by several MEPs from all political blocs to bring awareness to the Yezidi plight, especially lobbying to bring justice.

1) Resolution No. 2014/2843: Discrimination based on ethnic or religious identity

The Parliament already passed a resolution in September 2014 calling for the Commission and EU Member States "to take specific actions to address the situation of women in Iraq and Syria and guarantee their freedom and respect for their most fundamental rights, and to adopt measures to prevent exploitation of, and abuse and violence against, women and children, in particular the early marriage of girls; is particularly concerned at the increase in all forms of violence against Yazidi women, who are imprisoned, raped, sexually abused and sold by the members of IS".²⁵⁸

The Resolution asks for accountability for crimes that target civilians "based on religious or ethnic grounds"²⁵⁹ and calls for the referral of cases to the ICC, particularly, those criminal acts related to the "crimes against humanity in Syria and Iraq" and promises to support "all initiatives in this direction".²⁶⁰

²⁵⁵ Ibid

²⁵⁶ European Parliament: Nadia Murad and Lamiya Aji Bashar winners of 2016 Sakharov Prize, 27.10.2016 Link: <http://www.europarl.europa.eu/news/en/headlines/eu-affairs/20161024STO48414/nadia-murad-and-lamiya-aji-bashar-winners-of-2016-sakharov-prize> (Last access: 15.05.2019)

²⁵⁷ Ezidi Friendship Group: link: <http://friends-of-ezidi.eu> (Last access: 15.05.2019)

²⁵⁸ European Parliament: European Parliament resolution of September 18 2014 on the situation in Iraq and Syria, and the IS offensive, including the persecution of minorities, Resolution no. 2014/2843/RSP, 18.09.2014, link:

http://www.europarl.europa.eu/doceo/document/TA-8-2014-0027_EN.html?redirect

²⁵⁹ Ibid

2) Resolution No. 2014/2971: Kidnapping and mistreatment of women:²⁶¹

The EP condemned the systematic human rights violations and "violations of international humanitarian law resulting from the acts committed by IS and associated terrorist groups, which amount to war crimes and crimes against humanity."²⁶²

This Resolution brings attention especially to the "crimes against humanity, such as abductions, rape and other forms of sexual violence, enslavement, and forced marriages and conversions" and to the violation of human rights and international humanitarian law.

The EP "[c]alls on the Iraqi Government to ratify the Rome Statute establishing the International Criminal Court (ICC) in order to allow the ICC to prosecute the war crimes and crimes against humanity committed by IS".²⁶³

3) Resolution No. 2015/2559: Humanitarian Crisis in Iraq and Syria²⁶⁴

This Resolution reaffirms that ISIS committed a cleansing of ethnic and religious minorities, "carrying out war crimes and gross violations of international humanitarian law, including mass summary killings."²⁶⁵

The EP resolution is referring to UN reports about "targeted killings, forced conversions, abductions, the rape, smuggling and kidnapping of women, the slavery of women and children, the recruitment of children for suicide bombings, and sexual and physical abuse and torture"²⁶⁶ of members belonging to minorities such as the Yezidis, Christians, and others.

²⁶⁰ European Parliament: European Parliament resolution of September 18 2014 on the situation in Iraq and Syria, and the IS offensive, including the persecution of minorities, Resolution no. 2014/2843/RSP, 18.09.2014, link:

http://www.europarl.europa.eu/doceo/document/TA-8-2014-0027_EN.html?redirect

²⁶¹ European Parliament resolution of November 27, 2014, on Iraq: kidnapping and mistreatment of women, link:

http://www.europarl.europa.eu/doceo/document/TA-8-2014-0066_EN.html?redirect

²⁶² Ibid

²⁶³ European Parliament resolution of November 27, 2014, on Iraq, Resolution No 2014/2971 RSP: kidnapping and mistreatment of women, link: http://www.europarl.europa.eu/doceo/document/TA-8-2014-0066_EN.html?redirect

²⁶⁴ European Parliament Resolution of February 12, 2015, on the humanitarian crisis in Iraq and Syria, in particular in the IS context, Resolution No. 2015/2559 RSP. Link: http://www.europarl.europa.eu/doceo/document/TA-8-2015-0040_EN.html?redirect

²⁶⁵ ibid

²⁶⁶ Ibid

4) Resolution No. 2015/2649: Destruction of the cultural heritage²⁶⁷:

The European Parliament brings particular attention to the cultural heritage in Iraq and Syria that had been massively destroyed by ISIS fighters, considering these "acts of destruction" as crimes against humanity because they are mainly "directed against members of a religious or ethnic group, they can be assimilated to the crime of persecution, as set out in Article 7(1)(h) of the Statute of the International Criminal Court".²⁶⁸

5) Resolution No. 2015/2599: the first contextual recognition of genocide²⁶⁹:

The Representative of the European citizens, after increased hostilities against Christian minorities in different Middle Eastern countries, started to be convinced that the crimes had a more serious intent, namely the extermination of those minorities. In this Resolution the EP "[s]trongly 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" and the others. The Parliament argues that such atrocities committed by ISIS are "part of its attempts to exterminate any religious minorities from the areas under its control".²⁷⁰

The Resolution also "underlines that there must be no impunity for the perpetrators of these acts and that those responsible should be referred to the ICC".²⁷¹

6) Resolution No. 2016/2529: Systematic mass murder and final recognition of the genocide²⁷²:

This Resolution might be the most significant development by way of recognition. The EP decision has also inspired the US Congress and UK House of Common to step towards a recognition of the Genocide.

²⁶⁷ European Parliament resolution of April 30, 2015, on the destruction of cultural sites perpetrated by ISIS/Da'esh, Resolution no. 2015/2649, link: http://www.europarl.europa.eu/doceo/document/TA-8-2015-0179_EN.html?redirect

²⁶⁸ Ibid

²⁶⁹ European Parliament resolution of March 12, 2015, on recent attacks and abductions by ISIS/Da'esh in the Middle East, notably of Assyrians, Resolution No. (2015/2599(RSP), link: http://www.europarl.europa.eu/doceo/document/TA-8-2015-0071_EN.html?redirect

²⁷⁰ Ibid

²⁷¹ Ibid

²⁷² European Parliament resolution of February 4, 2016, on the systematic mass murder of religious minorities by the so-called 'ISIS/Daesh,' Resolution No. (2016/2529(RSP), link: http://www.europarl.europa.eu/doceo/document/TA-8-2016-0051_EN.html?redirect

The Parliament 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 recognized as Genocide by the UN Security Council (SC); 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”.²⁷³

The Parliament considered these international crimes as war crimes and crimes against humanity and “stresse[d] that the so-called 'ISIS/Daesh' is committing genocide against Christians and Yazidis”.²⁷⁴ The Resolution argues that these atrocities are entailed action under UNGC (1948) and “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”.²⁷⁵

The EP reaffirms its call to Iraq and Syria to accept the jurisdiction of the ICC.²⁷⁶ The Resolution urges the members of SC to adopt a referral of ISIS violations against Yezidi and Christians to the ICC and “[u]rges 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”.²⁷⁷

This Resolution is therefore essential because it is not only a symbolic recognition of the genocide but it is also a strong message to the international community, especially UN Member States, who ratified the UNGC. The EP reminds them, specifically the EU Member States, to take responsibility to stop and prevent Genocide from occurring. Additionally, it puts the issue of nationals who have committed crimes by joining ISIS, whose state has ratified the relevant international agreements against

²⁷³ Ibid

²⁷⁴ Ibid

²⁷⁵ Ibid

²⁷⁶ Ibid

²⁷⁷ Ibid

international crimes on the agenda. The Resolution urges those states to take action and fulfil their legal obligations.

7) Resolution No. 2016/2956: Right of Autonomy²⁷⁸:

The Resolution expresses the right of those minorities, who have suffered as victims from international crimes, i.e., Genocide, and have been victimized by ISIS to "safety, security and regional autonomy within the federal structure of the Republic of Iraq".²⁷⁹

8) Resolution No. 2016/3028: Mass graves in Iraq²⁸⁰:

The Resolution brings particular attention to the mass graves, as evidence of ISIS crimes against Yezidis and other groups. It "appeals to the international community, in particular to the SC, to consider the reported mass graves in Iraq as further evidence of genocide and to refer ISIS/Daesh to the International Criminal Court (ICC)".²⁸¹ It also calls for the competent Iraqi authorities to "protect the gravesites around Mount Sinjar" and calls on them "to preserve the evidence of the war crimes and crimes against humanity committed by ISIS/Daesh, in order to ensure accountability".²⁸²

3.2. Legal Value/Responsibilities of the states who recognized the Yezidi Genocide:

What legal value do these resolutions have? What Obligations do these countries have, after their political "recognition of Yezidi Genocide"? Are these resolutions enough to obligate states to establish a criminal court?

²⁷⁸ European Parliament resolution of October 27, 2016, on the situation in Northern Iraq/Mosul, Resolution No. (2016/2956(RSP)), link: http://www.europarl.europa.eu/doceo/document/TA-8-2016-0422_EN.html?redirect

²⁷⁹ Ibid

²⁸⁰ European Parliament Resolution of December 15, 2016, on mass graves in Iraq, Resolution No. (2016/3028(RSP)), Link: http://www.europarl.europa.eu/doceo/document/TA-8-2016-0507_EN.html?redirect

²⁸¹ Ibid

²⁸² Ibid

These are the questions that arise after every announcement or Resolution is passed in one of the EU Member States. The answer varies from one state to another. By analysing the three examples given in this chapter, the question that arises: Which obligations have their governments after the recognition passed by their lawmakers, and which measure have been taken ?

A) US Administration:

The American recognition of the Yezidi Genocide was in the form of a "Concurrent Resolution" adopted by House of Representatives, which is a type of US legislation that is *"generally employed to address the sentiments of both chambers, to deal with issues or matters affecting both houses, or to create a temporary joint committee. Concurrent resolutions are not submitted to the president and thus do not have the force of law"*.²⁸³

Despite the lack of force of the law, the political development of American recognition had three essential features, that has led to more than just political recognition:

- 1) Leading the international coalition against ISIS, including the empowerment of the local militant partners, like Kurdish Peshmarga in Iraq and YPG/SDF in Syria²⁸⁴.
- 2) Civic engagement and advocacy on the SC level to fight sex-slavery. The US Ambassador to the SC was the first one who hosted, in a SC meeting, a Yezidi woman²⁸⁵ (Nadia Murad), to give a testimony about sex-slavery and other crimes of ISIS²⁸⁶.
- 3) **H. R. 390 -- Iraq and Syria Genocide Relief and Accountability Act of 2018**²⁸⁷:

US President Trump signed in a special ceremony the HR No. 390 in the White House.²⁸⁸ Unlike the Concurrent Resolution no. 75, this Act has been signed by president Trump, and is therefore, legally binding. The Act (HR 390) has four main effects:

²⁸³ Definition of Concurrent Resolution: Bills and Resolutions: link: <https://www.senate.gov/legislative/bills.htm> (access: 15.05.2019)

²⁸⁴ Shawn Snow, "Syrian Kurds are now armed with sensitive US weaponry, and the Pentagon denies supplying it", Military Times, May 7, 2017, link: <https://www.militarytimes.com/news/your-military/2017/05/07/syrian-kurds-are-now-armed-with-sensitive-us-weaponry-and-the-pentagon-denies-supplying-it/> (accessed: 14.05.2019)

²⁸⁵ Nadia Murad is a Yezidi girl and survivor of the ISIS slavery. She became one of the most important figures and advocates of the Yezidi issue and the voice of survivors of sex slavery over all the world. Ms. Murad won Sakharov Prize 2016, and Nobel Prize for Peace in 2018.

²⁸⁶ Security Council Report, Meeting No. 7585, on December 16, 2015: link: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7585.pdf

²⁸⁷ The 115th Congress, HR 390: Genocide Relief and Accountability Act, 2018, link: <https://www.congress.gov/bill/115th-congress/house-bill/390> (Last access: 14.04.2019)

- i. Direct humanitarian aid, relief, stabilization, recovery assistance, and empowerment of the victimized communities who suffered from Genocide, crimes against humanity and war crimes, especially Yezidis and Christians in Iraq and Syria. (Sec. 4)²⁸⁹
- ii. Providing funding, expertise, technical and legal assistance to the competent entities “with expertise in international criminal investigations and law”²⁹⁰ (Sec. 5).
- iii. The State Department has to encourage other countries to identify and prosecute ISIS fighters.
- iv. Pursuant this Act the State Department has to provide the Congress with "an assessment of the feasibility and advisability of prosecuting individuals for acts of genocide, crimes against humanity, or war crimes in Iraq since January 2014 or in Syria since March 2011".²⁹¹

The importance of this favourable American position, as satisfying as it is, is also disappointing when it comes to the legal challenges, namely case referral to the ICC or any other form of international tribunal. The Bill defines the policy, in this matter, as providing assistance for the investigations, supporting entities and NGOs as well as building capacities and encouraging other states to investigate the foreign fighters.²⁹² All of these measures could be understood as logistical support for the implementation of SC Res. 2379 (UNITAD investigation), but no more. There is - at least until now - no further American plan or strategy to take action in support of an international or a SC referral to the ICC. There is also no concrete strategy to encourage Iraq to establish a tribunal complying with international criminal standards. Nevertheless, HR 390 is full of hope. The US Congress left a gap open for the State Department (section 7), to report about the developments. This means, depending on political will, both Congress and the Administration can complete a legal agenda for an international criminal trial.

²⁸⁸: Remarks by President Trump at the Signing Ceremony for HR 390, Iraq and Syria Genocide Relief and Accountability Act of 2018, 11. December 2018, link: <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-ceremony-h-r-390-iraq-syria-genocide-relief-accountability-act-2018/>

²⁸⁹ Ibid

²⁹⁰ Ibid

²⁹¹ The 115th Congress, HR 390: Genocide Relief and Accountability Act, 2018, link: <https://www.congress.gov/bill/115th-congress/house-bill/390> (Last access: 14.04.2019)

²⁹² Ibid

B) United Kingdom: Symbolic, and that is it!

The position of the British government is obvious. There will be no declaration or using of the term Genocide before a judicial decision, and there are no plans for a new draft before the SC. The previously discussed Motion of the House of Commons is not legally binding. Despite the unanimous decision by the members of the House, the Motion has only a symbolic effect demonstrating solidarity with the victims. The British administrative measures are limited to various humanitarian programs and support of IHF, OCHA, and UKAID, as well as financial support for UNITAD.²⁹³ Additionally, an "All-Party" parliamentary group for "Yezidi People" which was initiated by Brendan O'Hara was established in the House of Commons,²⁹⁴ which follows up on demands to bring justice and lobbies for more engagement from the British government.

C) European Commission and the EU Member States:

The resolutions and decisions of the European Parliament had an important input for many states. However, the EP decisions are stuck between national interests, priorities of the MS Governments and the European Commission. The resolutions are, therefore, non-binding, and mainly exist for the purpose of "suggesting a political desire to act in a given area".²⁹⁵ They generally express the political position of the European lawmakers "without any legal obligations for the addressees - Member States and/or citizens".²⁹⁶

A quick review of the engagement of the European Commission and its delegation to Iraq shows that the activities are concentrated on humanitarian issues, including the funding of various UN agencies to support the post-ISIS stability and recovery processes. Besides the funding of ICMP and other local and international NGOs there is no crystallized European agenda for a particular judicial procedure.

3.3. A Comparative State's Position: The German Approach to the prosecution of ISIS crimes

Neither the German Parliament (Bundestag), nor Chancellor Merkel, nor the Cabinet has yet raised a question regarding the "name" of ISIS crimes against the Yezidi. The reason for this political position

²⁹³ House of Common: Written Question No. HL14578, raised by the Marquess of Lothian and answered by Lord Bates, 14.03.2019, link: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2019-03-14/HL14578/> (last access: 16.05.2019)

²⁹⁴ House of Common: All-Party Parliamentary Group on the Yazidi People, 02.01.2019, Link: <https://publications.parliament.uk/pa/cm/cmallparty/190102/yazidi-people.htm> (Last access: 16.05.2019)

²⁹⁵ Nikolas Mosulis, "The legal System of European Union", Europedia, online available:

http://europedia.moussis.eu/books/Book_2/2/3/3/?all=1 (accessed: 14.05.2019)

²⁹⁶ Ibid

may have its root in the historical background that has generally made German policies more conservative. The debate surrounding the recognition of the Armenian Genocide in the Bundestag reflects an example of what this reservation looks like.

On the other hand, Germany was highly engaged in preventing further crimes or "Genocide" against the Yezidis and other components of Iraq, and supported the military coalition and local forces in order to defeat ISIS. Furthermore, Germany offered additional intensive humanitarian aid, special programs for ISIS survivors (like the Baden Württemberg Special Quota), and training programs for the Iraqi Peshmarga forces.

From a legal perspective, the German authorities started intensive investigations of the Yezidi case, especially the case of Kocho. Based on these investigations, the General Prosecutor issued the first arrest warrant against one of the ISIS leaders, who committed international crimes against the Yezidis.

Although the German Federal Court (BGH) had decided previously that female Islamists would not be arrested automatically simply for joining ISIS,²⁹⁷ in July 2018 the Prosecutor issued an arrest warrant against former ISIS member Jennifer W.²⁹⁸ She was accused of letting a five year old Yezidi girl die of thirst.²⁹⁹ Pursuant to the letter from the prosecution, she was accused of being a member of a terrorist group, committing murder, war crimes and violations of the War Weapons Control Act.³⁰⁰

Interestingly, it is the first time that someone has been prosecuted of committing crimes against the Yezidi minority.³⁰¹ However, the outcome of this case is not yet clear, but it has the potential to be a practical step that could bring justice more simply political recognition without legal procedures.

²⁹⁷ Georg Mascolo, "Entscheidung des BGH: Straffreiheit für Viele IS-Frauen", ARD, 24-05-2018, link: https://www.tagesschau.de/inland/bgh-zu-is-101~_origin-961a85fd-113d-4e22-83f3-82fb6493f92e.html (Last access: 15.05.2019)

²⁹⁸ Tagesschau: Erstmals Haftbefehl gegen IS-Anhängerin, ARD, 2.07.2018, link: <https://www.tagesschau.de/inland/haftbefehl-is-anhaengerin-101.html> (last access: 14.05.2019)

²⁹⁹ Melissa Eddy, "German Woman Goes on Trial in Death of 5-Year-Old Girl Held as ISIS Slave", New York Times, 09.04.2019, link: <https://www.nytimes.com/2019/04/09/world/europe/germany-isis-trial.html> (last access: 15.05.2019)

³⁰⁰ ibid

³⁰¹ BR24: Kind verdursten lassen? IS-Anhängerin ohne Regelung vor Gericht, Bayern Nachrichten, 09.04.2019, link: <https://www.br.de/nachrichten/bayern/kind-verdursten-lassen-is-anhaengerin-ohne-regung-vor-gericht.RN89Fro> (last access: 15.05.2019)

Chapter IV

On the Way of Initiating an (Inter)National Tribunal

In this chapter I will discuss the legal framework in Iraq and its position with regards to the ICC; as well as Iraqi legal measures against international crimes and query whether there is an Iraqi law about such gross crimes. In addition, how would the Iraqi judicial and political systems deal or how are they dealing with these crimes? (4.1.)

I will also highlight the tasks of UNITAD based on the SC Resolution No. 2379, and whether investigations of the UN team could lead to an international tribunal. (4.2.)

Finally, I will try to explain which tribunal (domestic, hybrid, or an international court) would be useful for the Yezidi case and why?(4.3.)

4.1. Iraqi Judicial Framework and International Crimes:

The current Iraqi judicial system, especially the penal regime, does not contain any definition of international crimes. A quick review of the Iraqi constitution, which was adopted in 2005, shows that the Iraqi lawmakers did not then adopt the seven principles of international law that have been recognized by the Nuremberg Tribunal.³⁰² The constitution does not mention any kind of internationally prohibited crimes, except some phrases in the preamble about those of the Saddam regime. There is a paragraph about the prohibition of slavery (Art. 37(3)), but it is without any details or further legislation within the Penal Code.³⁰³ There are no domestic or legal instruments for preventing, prohibiting or punishing Genocide, crimes against humanity or war crimes. Although Iraq has ratified the UNGC (1948),³⁰⁴ Iraq has not fulfilled its obligations under this Convention. The Iraqi

³⁰² UN Portal: Principle of International Law, link:
http://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf

³⁰³e Iraq's 2005 Constitution, electronic version, link:
<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73414/91671/F1360573136/IRQ73414.pdf>, see also: Global Justice Center: Iraq's Criminal Laws Preclude Justice for women and girls, March 2018, link: <http://globaljusticecenter.net> (last access: 15.05.2019)

³⁰⁴ Iraq had ratified the UNGC in Jan. 1959, UN Portal, Treaty Body Documents, link:
https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=en

lawmakers have not adopted any measures in the domestic legal regime that comply with the notions of the Convention.

The only Iraqi measure adopted that complies with international standards was the establishment of a special tribunal (IHT) for the gross crimes committed by the Saddam regime. However, I will discuss this measure in section (4.3.3) as the court is currently out of service and, therefore, the Iraqi Prosecutors cannot take advantage of this dissolved institution.

How can Iraq deal with the IS perpetrators?

How Iraq can deal with IS perpetrators is a legitimate question in current national and international debate. Iraqi prosecutors and judges are forced to treat this complicated issue with domestically available and valid laws, and must ignore all international criminal principles and notions. Consequently, Iraqi prosecutors have to accuse perpetrators according to one or more of the following provisions regarding the type of offence and the circumstances that they participated in:

a) Crimes of Rape and Sex-Slavery (Chapter XI, Section I, IPC):

The offence of rape is defined in (Art. 393) as sexual intercourse with a female or male without her or his consent. The provisions relating to the prosecution of rape are: Art. 393(1), 393(2)(a),(d),(c),(f), Art. 394(1),(2),3), and Art. 396. However, there are several obstacles and gaps that allow for perpetrators to escape from conviction or sentencing:

1. The law requires two conditions: sexual intercourse/penetration of the vagina or anus of the victim and at the same time, the absence of her or his consent. No other types of sexual violations are defined within the law. Additionally, the law does not take the circumstances "consent" into consideration, such as the lack of the decision-making ability by an abducted or kidnapped victim, especially in a conflict situation³⁰⁵ such as the circumstances of the Yezidi women in captivity.
2. Art. 398 guarantees impunity "[i]f the offender mentioned in this Section then lawfully marries the victim, any action becomes voi[d], and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then

³⁰⁵ Global Justice Center: Iraq's Criminal Laws Preclude Justice for women and girls, March 2018, link: <http://globaljusticecenter.net> (last access: 15.05.2019)

the sentence will be quashed. Legal proceedings will resume, or the sentence will be reinstated”.³⁰⁶

3. There are no provisions about sexual slavery in the Iraqi law. A symbolic mention of the prohibition of sex slavery and forced prostitution in the Constitution has no reflections in the IPC and consequently neither in the practice of substantive trials.

b) Offences of Murder (Part III, Chapter I, Sec. I):

The applicable provisions within the section on murder in Iraqi criminal law are Art. 405 (individual offence), and in aggravated circumstances Art. 406/1(a),(b),(c), Art.406/1(f),(g) and Art. 406/2(b). In all of these circumstances, the Iraqi court will impose the death penalty.

c) Crimes of Kidnapping, unlawful seizure, and detention (Chapter II, Sec. I):

ISIS offenders could be prosecuted pursuant to the following provisions: Article No. 421(b)(c)(d)(e), Articles No. 422, 423, 424 and No. 426.

The Iraqi courts deal with kidnapping cases very seriously, because of the increase in quantity of such incidents after 2003 and the activities of organized crime and kidnapping gangs in Baghdad and other cities in Iraq.

However, the Iraqi legislator leaves an outlet for impunity. Article No. 427 states that if the perpetrator “lawfully marries the victim, any action becomes void, and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, the sentence will be quashed”.³⁰⁷

d) Crimes of robbery: (Chapter III, Section I)

Art. 439 (an individual act) and Articles No. 440(2), 440(3) (special circumstances like organized or armed offence) deal with offences against the property of others. ISIS fighters stole belongings of Yezidi villagers and confiscated their properties unlawfully.

e) Crimes of the destruction of the property of others (Section X, Sub-Section I):

The applicable provisions in the case of destruction of property of others are Article No. 477 (by committing single offences), and Article No. 478 (by organized groups), the latter of which was the case in Sinjar during the ISIS invasion. The ISIS fighters attacked, in an

³⁰⁶ Iraqi Penal Code, Art. 398. Online available: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=57206&p_country=IRQ&p_count=232&p_classification=01.04&p_classcount=5 (last access: 15.05.2019)

³⁰⁷ Iraqi Penal Code, Art. 427

organized form, civilians and destroyed their properties in addition to the rest of the atrocities they committed.

f) Terror Acts:

The Iraqi Anti-Terror Law no 13/2005 is generally the appropriate legislation for Iraqi courts when it comes to the terrorism. However, this law deals with counter-terrorism in a very controversial way. It is very easy to be convicted according to its provisions.³⁰⁸ The American Bar Association (ABA) highly criticizes the law and argues that the law is “vague and overly broad and thereby criminalizes otherwise lawful activities that are unrelated to deterring or punishing terrorism”.³⁰⁹ The concerns derive from the fact that the law does not give an appropriate definition of terrorism and terror acts and the death penalty is given for all related acts mentioned in the legislation. In a similar critique, a senior researcher of Human Rights Watch explains that the “Trials of ISIS [against ISIS fighters] have lasted as short as 5 minutes [sic]”.³¹⁰

The logical consequence of the application of this legislation is a quick trial for the accused person, who has joined ISIS, either actively or passively, without any further investigations surrounding the elements of international crimes that are crucial for the definition of atrocities against the Yezidis and other minorities.

It is not necessary for the judge to know the intent of the terrorist “[a]ccording to article 4 both the perpetrators of terrorist acts and those who have assisted will receive the same punishment”.³¹¹

Do the Iraqi Measures comply with International Criminal Law and International Human Rights Principles?

The answer to the question above is within the concluding review of this subchapter. None of the current Iraqi measures could comply with international standards and there are no references to

³⁰⁸ Interview with Judge Ayman Bamerny, in April 2019, see attachment No. ...

³⁰⁹ ABA Human Rights Center: Analysis of Iraqi Counter Terrorism Law, Memorandum to Iraq: June 2014, online available:

³¹⁰ Manuel Langendorf, “Lack of due process in Iraqi courts could help ISIS”, The Arab Weekly, Issue 194, Year 4, 10.03.2019

³¹¹ Tanya Mehra, *Bringing (Foreign) Terrorist Fighters to Justice in a Post-ISIS Landscape Part I: Prosecution by Iraqi and Syrian Courts*, International Centre for Counter-Terrorism, The Hague, link: <https://icct.nl/publication/bringing-foreign-terrorist-fighters-to-justice-in-a-post-isis-landscape-part-i-prosecution-by-iraqi-and-syrian-courts/> (accessed: 19.05.2019)

international crimes in the Iraqi jurisdiction. Rape and sexual slavery have no significant value in the Iraqi Penal Code, whereas these crimes are currently at the top of international interests, from different perspectives: for instance, as international standards about human rights and gender equality, and as one of the prohibited crimes against humanity and sometimes more specifically as genocidal acts,³¹² similar to the Yezidi case. There is no penalty for the slavery that ISIS committed against captured women. There are no appropriate provisions prohibiting the recruitment of child soldiers.

The other provisions of the Iraqi penal code are either not compatible with contemporary demands for human rights, or they are vague and could be misused. The death penalty is a punishment that could easily be applied for different common crimes applicable to the Yezidi case, not only within the scope of the Counter-Terrorism Law.

4.2. Task and Mandate of the UNITAD:

I would like to highlight some few points about this UN body, because it is the only international step toward any future process for accountability of the ISIS crimes. The UN Investigative Team for Accountability of Daesh (UNITAD) is a unique UN mechanism established under SC resolution no. 2379 and has the following tasks:

- 1) To support Iraqi authorities holding ISIS members accountable for crimes against humanity, war crimes, and Genocide.
- 2) To gather evidence in Iraq in line with international standards.
- 3) To promote “throughout the world, accountability for acts that may amount to war crimes, crimes against humanity or genocide committed by ISIL (Da’esh)”.³¹³

The mandate of the mission is two years with the option of extension, but it is geographically limited to Iraq only. UNITAD began the practical steps together with the Iraqi government and ICMP to exhume the mass graves in Kocho village. Exhumation of mass graves may take many months or years, but what will come after this is finished? ISIS committed many crimes on Syrian territories, especially rape, sexual slavery, recruitment of Yezidi children, murder of those who tried to escape and forced conversion.

³¹² Catherine MacKinnon, “The Recognition of Rape as an Act of Genocide – Prosecutor v. Akayesu”, ICTR Legacy on sexual Violence, *New England Journal of International and Comparative Law*, Vol. 14/2, pp. 101-110

³¹³ UNITAD Special Adviser Karim A. A. Khan briefing to the Global Coalition to Defeat ISIS, on February 6, 2019, link: <https://reliefweb.int/report/iraq/unitad-special-adviser-karim-khan-gc-addresses-global-coalition-defeat-isis-enarku>

UNITAD has no mandate to investigate outside of Iraq. There is no significant cooperation between UNITAD and the IIM, which has the mandate to “assist in investigating and prosecuting those responsible for the most serious international crimes committed in Syria since March 2011”.³¹⁴

Both UN mechanisms have no prosecution or trial functions. The logical question, therefore, is what they will do with all of the evidence. Although, assisting the Iraqi authorities is one of the main tasks of UNITAD, realization of such task might be impossible. Then, by providing of serious information about ISIS members to the Iraqi prosecutor would mean that those ISIS members will face the death penalty according to the current Iraqi penal regime. A dilemma for UNITAD, because the “UN policy rightly prohibits supporting or assisting processes that could lead to the death penalty or that deny defendants a fundamentally fair trial”.³¹⁵

Is there, nevertheless, any chance to bring justice through UN mechanisms? A question that this research could not answer, because of the absence or ambiguity of the plans for the post-UNITAD mandate.

4.3. Which Criminal Tribunal is appropriate for the Yezidi case:

The circumstances around Iraq, Syria, ISIS and its crimes and the war against ISIS terrorists are so complicated, that none of the states were able to formulate a master plan for an appropriate trial. This subchapter will try to highlight the perspectives and challenges for each tribunal.

4.3.1. Why not the ICC?

It is obvious that the ICC has no territorial jurisdiction over Iraq and Syria because they are not members of the ICC.³¹⁶ The Iraqi Government applied for accession to the ICC in 2005 but withdrew after two weeks.³¹⁷ The withdrawal was the result of the complicated security and human rights situation as well as the violation ratio based on sectarian war after 2003. Reportedly, some of the Iraqi and Syrian state actors have also committed various kinds of violations during the conflict, not only Islamic terrorists and the armed opposition.

By reviewing the Rome Statute, there are usually three means of bringing a case before the court: Referral by a Member State, the SC under Chapter VII, or the institution of a lawsuit by an initiative of

³¹⁴ Nedim Houry, “Bringing ISIS to justice: Running out of time”, HRW, February 5, 2019, link: <https://www.hrw.org/news/2019/02/05/bringing-isis-justice-running-out-time> (Last access: 10.05.2019)

³¹⁵ Ibid

³¹⁶ ICC Homepage: List of member states, <http://www.icc-cpi.int>, (last access: 14.05.2019)

³¹⁷ Coalition for the International Criminal Court: Iraq, link: <http://www.coalitionfortheicc.org/country/iraq> (last access: 14.05.2019)

the Prosecutor (Art 13), in which a decision from the Pre-Trial Chamber is required³¹⁸ Additionally, a non-Member State can also declare acceptance of ICC jurisdiction.³¹⁹ A non-state party cannot refer “particular situations” according to Art. 12(3). As a result, a non-Member State authorizes the Court to exercise its territorial and personal jurisdiction over the state and its territories. The consequence is that the state has to accept “jurisdiction for all crimes relevant to the situation. This avoids the possibility of a non-State Party consenting to the Court’s jurisdiction with regard to enemy nationals while shielding its own”.³²⁰

Considering the current situation in Iraq and Syria, neither country is prepared to authorize the ICC Prosecutor to investigate international crimes committed by ISIS. In case that the Prosecutor does accept the authority of the ICC to investigate, because it is not an obligation for ICC to practice its jurisdiction directly after an acceptance of a non-Member State,³²¹ she or he will investigate all the international criminal law violations that had happened in the particular country (here Iraq and/or Syria), including the violations committed by allies and all militias against ISIS. Such investigation may carry risks for these states, especially as many international reports have claimed that there have been different kinds of violations committed by PMU and other “good” militias during the war with ISIS.³²²

The last option for the activation of an ICC prosecution falls under the provision of Personal Jurisdiction, according to Art. 12(2)(b), if a national of one of the Member States is accused of the crimes. According to various research, more than 30,000 fighters from almost 85 countries joined ISIS.³²³ From among the Member States of ICC fighters joined from France (1,700 fighters), Jordan (2,000), Germany (760), Belgium (470), United Kingdom (760) and Tunisia has the highest number of around 6000 fighters.³²⁴ Many of those fighters either returned to their country of origin or were willing to return, especially women. Officially around 800-1,000 fighters are imprisoned by SDF in Rojava/Syria.³²⁵

³¹⁸ Robert Cryer et al, *An introduction to International Criminal Law and Procedure*, Cambridge University Press, 3th Edition, 2018, pp. 163-169

³¹⁹ Ibid

³²⁰ Ibid

³²¹ Ibid

³²² Amnesty International: IRAQ: turning a blind eye. The Arming of the Popular Mobilization Units, London, 2017, pp. 10-11

³²³ Efraim Benmelec & Esteban Klor, *What explains the flow of foreign fighters to ISIS*, National Bureau of Economic Researches, Cambridge, 2016, pp. 2-5

³²⁴ Ibid

³²⁵ Antony Dworkin, “In legal limbo: EU returnees in the post-ISIS era”, European Council on foreign relations, Feb. 2019, link: https://www.ecfr.eu/article/commentary_in_legal_limbo_eu_returnees_in_the_post_isis_era

In order to take advantage of this option, there are two essential requirements: firstly the Member State has to refer their case to the ICC. If the accused returnee is prosecuted in his homeland, then the ICC cannot try the same crime, because of the principle of complementarity.³²⁶ The second obstacle as to whether the accused foreign fighter will be prosecuted in his national court or by the ICC is whether there are enough evidence and information about her or his engagement in criminal acts within ISIS. Therefore the question most relevant to this research is: Did she or he participate in committing crimes against the Yezidis?

According to the available information, the role of European foreign fighters is not clear in the crimes against the Yezidis in Sinjar during August 2014, despite the continuation and practicing of the crimes of sexual slavery and slavery of Yezidi women and children.³²⁷ It is not easy to identify ISIS fighters personally because they usually used aliases.³²⁸

Although the ICC may be the most professional trial that can deal with examining international crimes against the Yezidi minority, it is not yet advisable to refer the individual cases of European ISIS fighters based on *ratione personae*, due to lack of evidence. However, the ongoing trial of Jennifer W. before the Munich Court could provide another dimension to this particular option.

4.3.2. Ad hoc or Hybrid?

A new independent ad hoc tribunal similar to the ICTY or ICTR would require a special resolution from the SC based on Chapter VII of the UN Charter. The SC is not ready for this task, and such a decision would be a step backwards for international criminal measures, after the ICC -which came after both international tribunals - had been institutionalized permanently. Therefore, it would be easier for the international community to refer the case to the ICC, as all legal and institutional frameworks, rules of procedures and needs already exist, as opposed to establishing a new ad-hoc tribunal, that would require starting from the beginning.

A hybrid tribunal means a mixture of both national and international officials, judges and prosecutors.³²⁹ There are various forms of such hybrid tribunals, which are mostly established either by an SC resolution under Chapter VII (such as the Special Tribunal of Lebanon),³³⁰ or based on the

³²⁶ Paul Seils, *Handbook on Complementary*, ICTJ, 2016, pp. 28-35

³²⁷ Interview with Judge Ayman, Head of the Commission for Investigations and Gathering Evidence, April 2019

³²⁸ Ibid

³²⁹ Robert Cryer, *An introduction to International Criminal Law and Procedure*, Cambridge University Press, 3th Edition, 2018, Chapter 9

³³⁰ The Security Council implemented the agreement through Res. No. 1757 in May 2007, under Chapter VII of the UN Charter. Link: <https://www.stl-tsl.org/en/documents/statute-of-the-tribunal/223-statute-of-the-special-tribunal-for-lebanon>

request of a state and an agreement between the UN and a state (such as the Special Tribunal of Sierra Leone).³³¹ Other tribunals have also been established by the UN or other international administrations, such as the cases of Kosovo and East Timor. All of these courts, with the exception of STL, deal with international crimes, however each of these tribunals has its own characteristics of jurisdiction, procedure, mandate and structure.³³² The initiators of these tribunals formulated them to be appropriate for their specific geopolitical, regional, and state conditions. Therefore, theoretically, a suitable model such as that could also be used for the Yezidi case. However, what are the obstacles and challenges of such establishment?

Over the past four years, Iraq's foreign policy was never interested in raising such question for international debate. The state's policy can be clearly seen by reviewing different Iraqi requests, appeals and messages to the UN General Assembly, SC, periodic meetings in the Human Rights Council and bi-/multilateral meetings with other states and international partners. The Iraqi Government asked each time for "military, economic, financial and humanitarian assistance" based on an agreement with the Iraqi authorities to fight the terrorists.³³³ Whenever the Iraqis asked for accountability of the crimes of ISIS, the Iraqi government emphasized that any measure or resolution must take into consideration and that Iraq must "maintain its national sovereignty and retain jurisdiction, and that its laws must be respected, both when negotiating and implementing the resolution".³³⁴ The argument for asserting the principle of state sovereignty and rule of Iraqi law is, in fact, refuted only because the government of Iraq does not want investigations and results of any trial to be out of its control and to avoid an extension of any measures outside the prosecution of ISIS fighters. A further essential problem for international engagement is the death penalty in Iraq, which was temporarily suspended by the CPA in 2003 but was reintroduced by the Government of Iraq in 2004.³³⁵ Another bitter reality is the different views of the superpowers on how to deal with the ISIS foreign fighters from western countries. As mentioned, it is here easier for the accused, in case of an international or hybrid trial, to escape punishment, mainly due to lack of evidence. A second trial is not

³³¹ On January 16, 2001, the Special Court Agreement was signed by the United Nations and the Government of Sierra Leone.

³³² Robert Cryer et. al., (2018), *Ibid*, Chapter 9

³³³ Statement of Iraqi Minister of Foreign Affairs, in the UNSC Meeting No. 7271: The situation concerning Iraq, on 19. Sep. 2014, Security Council Report, online available: http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7271.pdf (last access: 19.05.2019)

³³⁴ UNSC Report, Document No. S/2917/710: Letter from Iraqi minister of foreign affairs, dated 14 August 2017 from the Chargé d'affaires a.i. of the Permanent Mission of Iraq to the United Nations addressed to the President of the Security Council.

³³⁵ UNAMI/OHCHR: Report on the Death Penalty in Iraq, (Baghdad, Oct. 2014), pp. 1-27

possible because of the principle of “double jeopardy”. Furthermore, none of the relevant states are prepared to receive their nationals back, as they could bring potential dangers for their countries of origin.³³⁶

Critical observers might see the international demands for prosecuting ISIS fighters as a controversial “double morality”. While the world knows that almost 1,000 foreign fighters are detained by the SDF and waiting on a legal procedure thousands of other terrorists are detained in Iraq, undergoing the usual Iraqi judicial system. While international human rights organisations are criticising the absence of fair trial and the presence of the death penalty, western countries cannot formulate an appropriate idea to make the international crimes committed by Daesh accountable. It is argued that many countries are waiting until the Iraqi domestic courts have convicted as many ISIS fighters as possible, because Iraqi Anti-Terrorism Law offers an easier process for conviction.³³⁷ If so, this is a double moral and a bad pragmatic solution even for the European countries about their ISIS returnees.

4.3.3. A National or an Iraqi Special Court?

There is obviously only one domestic solution for the prosecution of international crimes, and that is the reactivation of the Iraqi Supreme Criminal Court, that tried the leaders of the Saddam regime. This is the only court in Iraq that covers genocide, crimes against humanity, and war crimes. It complies with international standards and was initially established by CPA Law No. 1 under the name the (Iraqi Special Tribunal for Crimes against Humanity).³³⁸ It was thought to be a tribunal similar some other international hybrid courts. However, the way of initiating the court has been broadly criticised.³³⁹ There has been, therefore, less international interest in participating, and Iraq has insisted on including the death penalty.

The question regarding the legitimacy of the tribunal, but not the death penalty issue, was carefully resolved after the “democratic election” and establishment of the Iraqi National Assembly (INA). In 2005 the legal provisions, name, and structure of the court were modified and adopted by the INA, which has legitimised the establishment of the ISCT, according to the Iraqi High Criminal Court Law, No 10/2005³⁴⁰, which includes in Art. 1(2):

³³⁶ Antony Dworkin (2019), *Ibid.*

³³⁷ Interview with Judge Ayman Bamerny, April 2019

³³⁸ Ilias Bantekas, “The Iraqi Special Tribunal for Crimes against Humanity, Current Developments”, *The International and Comparative Law Quarterly*, Vol. 54, No. 1, Cambridge University Press, 2005, pp. 237-253

³³⁹ Robert Cryer et al.: *Ibid.*, Subchapter 9.4.1, pp. 194-195

³⁴⁰ Law of the court: link: <http://gipi.org/wp-content/uploads/2009/02/iraqstatuteengtrans.pdf>

The Court shall have jurisdiction over every natural person whether Iraqi or Non- Iraqi resident of Iraq and accused of one of the crimes listed in Articles 11 to 14 below, committed during the period from July 17, 1968 and until May 1, 2003, in the Republic of Iraq or elsewhere, including the following crimes:

A. The crime of genocide;

B. Crimes against humanity;

C. War crimes

D. Violations of certain Iraqi laws listed in Article 14 below³⁴¹.

However, without discussing the controversial opinions about the ISCT, there are two essential obstacles in the law that prohibit its functionality for the crimes committed by ISIS.

Firstly the jurisdiction of the court has a time limitation. The *ratione temporis* is defined as between exactly July 17th 1968 until May 1st 2003.

Secondly, the Court was dissolved on June 30th 2011 in the context of the reconciliation process in Iraq, as one of the main demands of the Sunni parties. The way of dissolving the activity of the court is no less controversial than its beginning. A special commission from the Prime Minister's office and the legal department of the Council of Ministers has stated that the court finalised all duties and decided to dissolve the court. This is despite the fact that Art. 134 of the Constitution mandated the authority to dissolve the court exclusively to Parliament.³⁴²

In fact, the law of the court is still valid, because as the governmental commission, on the one hand, dissolved the court and referred the rest of the cases to the regular criminal courts, it could not suspend the law. This means that the law can be easily modified and amended.

The question as to whether any of the Iraqi government, leadership, politicians, Supreme Judicial Council or Parliament, has such an agenda for the activation or amendment of the mentioned law, can be answered with a big

NO

So, with regard to the political developments in Iraq and the region, the coming days could offer another scenario for this DILEMMA.

³⁴¹ Ibid

³⁴² BurathaNews: A Special committee of the Council of Ministers decides to dissolve the Supreme Criminal Court and refer its judges to retirement,(in Arabic), Baghdad, 11.04.2011, link: <http://burathanews.com/arabic/news/121887>

Conclusion:

This thesis focused -from international criminal law perspectives- on the atrocities of ISIS against the Yezidi minority, to find out: Primarily, whether such crimes could be legally classified as international crimes, particularly as genocide. Accordingly, the provisions of UN Genocide Convention were used as the method for the analysis. The first task of the paper was to identify the Yezidis as a minority group - an important requirement for the recognition as a protected group.

Based on the analytical description of the philosophy, history and society of the group's identity, the findings of the dissertation concluded that the Yezidis are one of the ethno-religious minorities in Mesopotamia that has been permanently suffering from persecution and discrimination, because of their religious identity. This differs from their neighbouring religious groups in its philosophy and social characters. The Yezidis have survived 72 (Farman³⁴³)s throughout their history. The majority of the Yezidis live in Iraq, where the holiest temple and religious leaderships are based. Additionally, ISIS defined this group as „Infidels“ that according to them had to be exterminated -in whole- because of their faith³⁴⁴. For these reasons, the Yezidis are in the category of one of the four protected groups mentioned within the scope of the UNGC.

Detailed research was conducted on the events and facts occurred in Sinjar after August 3, 2014, by relying on independent international reports of inquiry teams; testimonies of victims; official ISIS documents, for instance Slavery Certificates; competent and reputable IGOs and iNGOs findings; in order to determine the crimes and their elements. The researcher concluded that the ISIS attack against the Yezidi regions, especially Sinjar, had resulted in the enslavement of more than 6400 Yezidis, mainly women and children; conversion of the victims to Islam; killing of thousands of men and elderly women; and displacement of almost 400.000 civilians from their homes. Enslaved Yezidi women were used as sex-slaves. The children were brainwashed and used as child soldiers, after separating them from their families and community to erase their religious identity. The displaced Yezidis have been living in the IDP camps in Iraqi Kurdistan for five years under miserable conditions.

To distinguish between genocide and the crimes against humanity, the dissertation analyzed the intent of the perpetrators, through reviewing the behaviour and evidence related to the crimes. In this regard,

³⁴³ Ferman: is the Othman's meaning of the Administrative Order. The Yezidis used this term to describe the Orders of pogroms (genocide)s against them.

³⁴⁴ Dabiq, 4th edition, pp. 14-17

the Islamic State had declared its intent, or *mens rea*, in its official publication Dabiq, that the elimination of the Yezidi religion, using of women and children as slaves and sex slaves “SABAYA” (Odalisques - Spoils of war) and extermination of Yezidi individuals is religiously justified, dashed on the strict interpretation of certain Islamic values.

Motivated by radical ideology, with the intent and knowledge, ISIS committed genocidal crimes of (a) *Killing* thousands of Yezidi men and elderly women; (b) *Causing serious bodily or mental harm* to the Yezidis of Sinjar; (c) *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction* of the life of Yezidi civilians; (d) *Imposing measures intended to prevent births*, such as systematically using contraceptive drugs and methods; and finally (e) *Forcibly transferring Yezidi children* from their families by putting them in Islamic schools and training camps and then changing their names and identity in a systematic brainwashing procedure. According to those previous findings, the requirements of the Article II of UNGC were fulfilled.

The research had consequently dealt with the second question about the international role to recognize this genocide and the states' obligations to find legal avenue to try the perpetrators. The reactions of the international community, the states and the competent international bodies, were reviewed. Many governments, the UN Security Council, the European Parliament and other international institutions named the atrocities against Yezidi by using various “political” definitions like crimes against humanity, war crimes and even genocide. However, the thesis came to the conclusion, that this “international recognition” was mainly symbolic and has no or mild legal consequences. As a part of the international collective reaction to the crimes of ISIS and instead of referring the case to the ICC or a special tribunal, the UNSC adopted Resolution 2379 for establishing a special UN body (UNITAD), which has the mandate to investigate the crimes of ISIS and to assist and cooperate with Iraqi authorities, without possibilities of referring the cases to any further tribunals. Some countries, like the USA, turned away from the legal recognition and moved towards humanitarian engagement to support the religious and ethnic minorities in Iraq and Syria. Other countries, like the UK, recognized the crimes for political and symbolic reasons, without any initiation of a governmental act. In comparison, Germany did not recognize the Yezidi genocide, but started to investigate the crimes of ISIS against the Yezidi, especially the attack on the village of Kocho. The German prosecutor issued the first arrest warrant against an ISIS leader, who is claimed to be responsible of the massacre of Kocho. The German courts are trying some ISIS returnees, including some cases related to the Yezidi victims, for instance the case of Jennifer before Munich court.

The dissertation had thirdly researched the perspectives of establishing a criminal court for the crimes of ISIS and focused on the obstacles and advantages that might play their roles for bringing justice to the victims. Theoretically, there are three types of tribunals that can deal with the crimes of ISIS:

1. The ICC: It cannot be activated because neither Iraq nor Syria are State Parties to the court and they are not ready to ratify the Rome Statute. The other measure of referring the Yezidi case to the ICC, is namely through UNSC. But according to the findings of this thesis, this option is not a part of the current diplomatic or policy debates.

2. A hybrid or ad-hoc international tribunal: It would be the optimal kind of court for special jurisdiction. But, a hybrid tribunal needs a serious political will and consent by all permanent member states of UNSC. In the Yezidi case, this international will and consent is missing. The complicated international attitude towards the Syrian case (the approaches of the USA, UK and other European countries that differ from the agendas of Russia and China) makes it impossible for any new decision towards establishing a special international court for the crimes of ISIS. Furthermore, a tribunal model, like the Special Tribunal for Lebanon, is not on anyone's agenda.

3. Domestic legal measures in Iraq: The research analyzed and reviewed the current Iraqi Penal Code and Anti-Terrorism Law. There are no suitable provisions that deal with international crimes. The crimes of ISIS are therefore subjects of the Penal Code provisions like articles 393, 405, 406, 421, 440 and Anti-Terrorism Law No 13/2005. Whereas, on one hand, the perpetrators could be easily convicted and sentenced to death. On the other hand, the Iraqi law provides impunity for some specific crimes like rape and kidnapping, when the perpetrator delivers a lawful marriage with his victim, even in the cases of forced marriage or lack of consent.

Nevertheless, there is one controversial judicial option for dealing with international crimes in Iraq, the Law of the Special Criminal Court (No 10/2005). This law is the only measure in Iraq that deals with international crimes. The Court was established to try the crimes of the leaders of Saddam's regime. The court was based on an Iraqi law called "the law of the supreme criminal court" established by the Iraqi Parliament in 2005. For political reasons, the Iraqi Council of Ministers dissolved the court in 2009 without enacting a new law or amending the old one. This means, that the law is still valid and the revocation of the court was unlawful. The research had, therefore, concluded that there is, theoretically, a legal avenue for activating the special court for international crimes, in order to try the ISIS fighters, who had committed crimes against the Yezidi minority.

However, the jurisdiction of the court is limited to the period between 1968 and 2003, according to the Special Criminal Court Law. The activation of the court is not the best solution, but it could currently

be the most realistic measure to deal with the crimes committed against the Yezidi and other minorities.

But in order to activate the court, there are some important recommendations for modifying the law:

- Amendment of the restricted *ratione temporae* to cover crimes committed after the 10th of July 2014
- Inclusion of the crimes committed by non-state actors and terror groups, because the current law is only for the prosecution of leaderships of Saddam's regime.
- Extending the universal jurisdiction to Iraqi and non-Iraqi perpetrators, not only to the leaders and commanders.
- The inclusion of the prosecution of perpetrators who committed international crimes against Iraqi citizens in Syria or elsewhere, especially with regards to enslavement; sexual slavery; abduction and the recruitment of child soldiers that occurred in Syria; and human trafficking to countries like Turkey and the Gulf.
- Finally, it is necessary to advise the Iraqi lawmakers and courts to refrain from applying the death penalty, if there is a wish for Iraq to comply with contemporary human rights standards.

Finally, establishing a domestic tribunal, with or without international actors, depends primarily, on the Iraqi political atmosphere, which is currently in disarray. So far, no one in the political parties or the parliamentary blocs expressed interest in the topic. Therefore, an initiative for such court will depend on the pressure from the international community and partner states that helped Iraq in its war against ISIS. It is recommended that the advocacy and campaign for the Yezidi case should be continued by the Human Rights organizations, related international Associations for justice, Yezidi activists, friends of the Yezidis, ISIS survivors like Nadia Murad, Lamya Haji Bashar and other victims who became voice of the voiceless people.

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Annexes

Annex I: Dabiq, 4th Edition

THE REVIVAL OF SLAVERY BEFORE THE HOUR

Upon conquering the region of Sinjar in Wilāyat Nīnawā, the Islamic State faced a population of Yazidis, a pagan minority existent for ages in regions of Iraq and Shām. Their continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day, considering that Allah had revealed Āyat as-Sayf (the verse of the sword) over 1400 years ago. He ta'ālā said, {And when the sacred months have passed, then kill the mushrikīn wherever you find them, and capture them, and besiege them, and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful.} [At-Tawbah: 5].

The Yazidis present-day creed – as it has changed over history – entails the worship of Iblīs who they consider to be a fallen but forgiven angel amongst the angels who were ordered to prostrate to Ādam! He alone refused to prostrate to Ādam, and they consider this arrogant disobedience of Allah to be his noblest deed! They consider him to be misunderstood by mankind! They consider him to be good and enlightened, and claim that Allah will openly forgive him on

Judgment Day after already forgiving him beforehand for crying tears of piety over a period of thousands of years! So they have made Iblīs – who is the biggest tāghūt – the symbolic head of enlightenment and piety! What arrogant kufr can be greater than this?

Their creed is so deviant from the truth that even cross-worshipping Christians for ages considered them devil worshippers and Satanists, as is recorded in accounts of Westerners and Orientalists who encountered them or studied them. It is ultimately ironic that Obama sites these devil worshippers as the main cause for his intervention in Iraq and Shām, as he sides with the peshmerga – gangs of mercenaries related to the Marxist PUK and allied with the Marxist PKK – a “terrorist” organization according to the tāghūt laws the West “believes” in.

Prior to the taking of Sinjar, Sharī'ah students in the Islamic State were tasked to research the Yazidis to determine if they should be treated as an originally mushrik group or one that originated as Muslims and then apostatized, due to many of the related Islamic rulings that would apply to the group, its individuals, and their fam-



AN ISLAMIC STATE CONVOY PARADES IN NINAWĀ

ilies. Because of the Arabic terminologies used by this group either to describe themselves or their beliefs, some contemporary Muslim scholars have classified them as possibly an apostate sect, not an originally mushrik religion, but upon further research, it was determined that this group is one that existed since the pre-Islamic jāhiliyyah, but became “Islamized” by the surrounding Muslim population, language, and culture, although they never accepted Islam nor claimed to have adopted it. The apparent origin of the religion is found in the Magianism of ancient Persia, but reinterpreted with elements of Sabianism, Judaism, and Christianity, and ultimately expressed in the heretical vocabulary of extreme Sufism.

Accordingly, the Islamic State dealt with this group as the majority of fuqahā’ have indicated how mushrikīn should be dealt with. Unlike the Jews and Christians, there was no room for jizyah payment. Also, their women could be enslaved unlike female apostates who the majority of the fuqahā’ say cannot be enslaved¹ and can only be given an ultimatum to repent or face the sword. After capture, the Yazidi women and children were then divided according to the Sharī’ah amongst the fighters of the Islamic State who participated in the Sinjar operations, after one fifth of the slaves were transferred to the Islamic State’s authority to be divided as khums.

This large-scale enslavement of mushrik families is probably the first since the abandonment of this Sharī’ah law. The only other known case – albeit much smaller – is that of the enslavement of Christian women and children in the Philippines and Nigeria by the mujāhidīn there.

The enslaved Yazidi families are now sold by the Islamic State soldiers as the mushrikīn were sold by the Companions (radiyallāhu ‘anhum) before

¹ The enslavement of the apostate women belonging to apostate groups such as the rāfidah, nusayriyyah, durūz, and ismā’īliyyah is one that the fuqahā’ differ over. The majority of the scholars say that their women are not to be enslaved and only ordered to repent because of the hadīth, “Kill whoever changes his religion” [Sahīh al-Bukhārī]. But some of the scholars including Shaykhul-Islām Ibn Taymiyyah and the Ahnāf (Hanafis) say they may be enslaved due to the actions of the Companions during the Wars of Apostasy where they enslaved the apostate women. This opinion is one also supported by evidence, wallāhu a’lam.

them. Many well-known rulings are observed, including the prohibition of separating a mother from her young children. Many of the mushrik women and children have willingly accepted Islam and now race to practice it with evident sincerity after their exit from the darkness of shirk.

Rasūlullāh (sallallāhu ‘alayhi wa sallam) said, “Allah marvels at a people who enter Jannah in chains” [reported by al-Bukhārī on the authority of Abū Hurayrah]. The hadīth commentators mentioned that this refers to people entering Islam as slaves and then entering Jannah.

Abū Hurayrah (radiyallāhu ‘anh) said while commenting on Allah’s words, {You are the best nation produced for mankind} [Āli ‘Imrān: 110], “You are the best people for people. You bring them with chains around their necks, until they enter Islam” [Sahīh al-Bukhārī].



After this discussion and as we approach al-Malhamah al-Kubrā (the greatest battle before the Hour) – whenever its time comes by Allah’s decree – it is interesting to note that slavery has been mentioned as one of the signs of the Hour as well as one of the causes behind al-Malhamah al-Kubrā.

Rasūlullāh (sallallāhu ‘alayhi wa sallam) mentioned that one of the signs of the Hour was that “the slave girl gives birth to her master.” This was reported by al-Bukhārī and Muslim on the authority of Abū Hurayrah and by Muslim on the authority of ‘Umar.

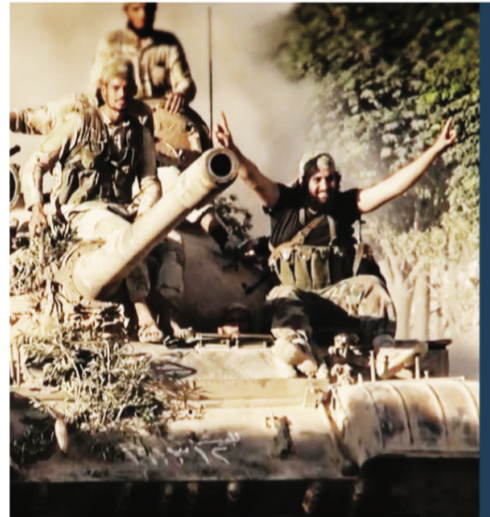
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The scholars mention a number of interpretations for this, some of them drifting away from actual slavery because it already was existent and common in their eras. The following excerpts are from commentaries indicating that actual slavery is a likely interpretation. This becomes more so the case after the abandonment of slavery since the rise of tāghūt law and the desertion of jihād.

Ibn Rajab al-Hanbalī said while explaining this hadīth, “The scholars differed over what is meant by this. It has been stated that the conquests of the lands of kufr multiply as well as enslavement, and thereby concubines increase in numbers, until the slave women give birth to their masters, this is because the child of the master has the status of the master [meaning he is a free man like his father], and thereby she has given birth to her master from this angle. [...] It has also been stated that ‘the slave girl gives birth to her master’ indicated the increased conquests of the lands of kufr and the taking of slaves, until a girl is taken from the land of kufr at a young age, then she is freed in the land of Islam, then her mother is brought in as a slave after her, and this girl buys her mother and uses her in her service, ignorant of the fact that the slave is her mother. This has occurred in the Islamic era. This interpretation is like the one before it, indicating that one of the signs of the Hour is the increased conquests and bringing in of slaves from the lands of kufr. [...] It has also been stated that the meaning of the slave girl giving birth to her master is that people turn away from marriage sufficing with concubines alone. And Allah knows best” [Fathul-Bārī].

Ibn Rajab also said, “This indicates the conquest of lands and the high occurrence of taking slaves until concubines and their children increase in numbers. The slave girl becomes a slave to her master while his children have the status of her master over herself. This is because the child of the master has the rank of the master, and thereby the child of the slave girl has the

status of her owner and master” [Jāmi’ al-Ulūm wal-Hikam].



An-Nawawī explained the hadīth by saying, “The majority of scholars say that this foretells the increase of concubines and their children in numbers, because the child of a concubine has the status of her master” [Sharh Sahīh Muslim].

Ibn Hajar commented on this interpretation saying, “But this suggested interpretation is questionable, because a slave girl giving birth was an occurrence that existed in the era when the statement was made. Also, most of the conquests of the lands of shirk, the enslavement of their families, and the taking of their women as concubines, occurred at the beginning of the Islamic era” [Fathul-Bārī].

Again, it appears that those who drift away from the literal interpretation of slavery do so because it was already existent and common in their era in such a manner that they found it hard to understand it as referring to actual slavery. But after the abandonment of slavery by Muslims and its subsequent revival, this literal interpretation becomes much more plausible.

Additionally, a hadīth that one should reflect over is the long hadīth of Dābiq reported by Muslim on the authority of Abū Hurayrah. In the hadīth it is mentioned that the Romans say to the Muslims after the Romans have lined up in ranks near Dābiq, “Leave us and those who were enslaved from amongst us so we can fight them.” The Muslims then respond, “Nay, by Allah, we will not abandon our brothers to you.” The bloody, final battle begins after this short discussion.

An-Nawawī commented on this hadīth saying, “It was reported in two forms, ‘those who enslaved some of us’ and ‘those who were enslaved from amongst us.’ Al-Qādī said in ‘Al-Mashāriq,’ ‘Those who were enslaved from amongst us’ is the report of the majority and it is the correct one.’ I [an-Nawawī] say that both of them are correct, because they are enslaved first [as kuffār] and then enslave the kuffār thereafter. This occurrence exists in our times. Rather the majority of the Islamic armies in Shām and Egypt were originally enslaved [as kuffār] and now they enslave the kuffār, walhamdulillah. They have enslaved them numerous times in our era. They enslave in just one occasion thousands of the kuffār. All praise is due to Allah for having strengthened and honored Islam” [Sharh Sahīh Muslim].

After this, it becomes clear where Shaykh Abū Muhammad al-Adnānī ash-Shāmī (hafidhullah) gets his inspiration from when saying, “And so we promise you [O crusaders] by Allah’s permission that this campaign will be your final campaign. It will be broken and defeated, just as all your previous campaigns were broken and defeated, except that this time we will raid you thereafter, and you will never raid us. We will conquer your Rome, break your crosses, and enslave your women, by the permission of Allah, the Exalted. This is His promise to us; He is glorified and He does not fail in His promise. If we do not reach that time, then our children and grandchildren will reach it, and they will sell

your sons as slaves at the slave market” [Indeed Your Lord Is Ever Watchful].

Before Shaytān reveals his doubts to the weak-minded and weak hearted, one should remember that enslaving the families of the kuffār and taking their women as concubines is a firmly established aspect of the Sharī’ah that if one were to deny or mock, he would be denying or mocking the verses of the Qur’ān and the narrations of the Prophet (sallallahu ‘alayhi wa salam), and thereby apostatizing from Islam.

Allah ta’āla said, {Successful indeed are the believers who are humble in their prayers, and who shun vain conversation, and who are payers of the zakāh, and who guard their modesty except from their wives or the [female slaves] that their right hands possess, for then they are not blameworthy, but whoever craves beyond that, such are transgressors}
[Al-Mu’minūn: 1-7].

Finally, a number of contemporary scholars have mentioned that the desertion of slavery had led to an increase in fāhishah (adultery, fornication, etc.), because the shar’ī alternative to marriage is not available, so a man who cannot afford marriage to a free woman finds himself surrounded by temptation towards sin. In addition, many Muslim families who have hired maids to work at their homes, face the fitnah of prohibited khalwah (seclusion) and resultant zinā occurring between the man and the maid, whereas if she were his concubine, this relationship would be legal. This again is from the consequences of abandoning jihād and chasing after the dunyā, wallāhul-musta’ān.

May Allah bless this Islamic State with the revival of further aspects of the religion occurring at its hands.

And all praise is due to Allah, the Lord of the worlds.

Annex II:

Interview with Judge Ayman Bamerny, Head of the Commission for Investigation and Gathering Evidence (CIGE), Iraq, Kurdistan Region

I would like to thank you Sir, for giving me the opportunity to interview you about the crimes of ISIS against the Yezidis and the mandate of your commission.

I am a master student in the European Centre for Human Rights and Democratisation, with the second semester in the School of Law at Maastricht University. My topic, as I explained to you in my previous letter, is about recognising the Yezidi Genocide and the perspectives of initiating a Tribunal for the crimes of ISIS against this minority group.

I would like to inform you, that I am going to record the interview and will translate it into English later for the purpose of this research. I may add this interview as an attachment to my thesis, if you agree with it?

Judge Ayman: Yes, no problem.

Q1) What is the applicable law for your commission? Does the CIGE have legal personality?

Judge Ayman:

The legal principle of the commission has a judicial character, despite that people might think that we are one of the ministerial [executive] organs belonging to the KRG Ministry of Martyrs and Anfal (MMA). No; we have a legal organ based on the Law of the Judicial Authority, No. 23/2007. According to this law, the Supreme Judicial council [in Kurdistan] can establish a special commission to investigate “unusual crimes”, which are unlike ordinary crimes, which are usually subjects of the ordinary criminal courts. The commission has no trial power: it is only investigative. I am the investigative judge. We have investigators; and to facilitate our work, we cooperate through a/the council of ministers [in KRG] with MOI, MMA, Labor Ministry. We have staff from all these ministries.

Q2) What is the mandate you have? Is it only based on collecting evidence, as the name suggests, or do you have the power to refer the cases to other institutions, such as judicial or executive?

Judge Ayman:

No, our mandate is clearly defined and is only investigation and gathering evidence. We cannot even interrogate accused individuals or perpetrators, because if you want to interrogate someone who has been accused, you need to issue an arrest warrant first, and this has to be based on a legal provision.

Q3) In which case why was it not possible to include such a provision in the mandate of the CIGE?

Judge Ayman:

The background of this limitation is the intention of the KRG to bring those crimes to the level of international crimes rather than accusing the perpetrators under pre-existing terror law, penal law or other sections of the Iraqi Penal Code. The target was to recognise these crimes as international crimes, whether Genocide, crimes against humanity or war crimes. However, we have no definition of these international crimes in our judicial regime now. We had a legal framework before, which was the in the law of Supreme Iraqi Criminal Tribunal (SICT). This tribunal was limited for a defined period of time namely from 1968-2003 [Crimes of Saddam regime from 1968 until 2003]. This law is no longer valid.

Q4) So you are concentrating on gathering evidence on crimes that have the characteristics of the international crimes?

Judge Ayman:

Exactly, also when we investigate we don't examine the elements of ordinary crimes defined in the Iraqi Penal Code or terror law, such as unlawful detention, torture or sexual abuse. We examine the elements comparing the demands of international criminal law. For example in the case of the forced displacement, we examine all elements of the crime: the criminal act, the criminal intent and the special intent, to find out whether the incident has more than an ordinary

criminal character, such as the intent of systematic extermination of a group, either ethnical, religious, national... In this case, the details about the incident should to be explained more than the scope of the Iraqi penal code.

Q5) How many cases have you investigated since 2014?

Judge Ayman:

About 2500

Q6) What legal procedure do you think would be useful to be implemented in order to examine whether these crimes were Genocide or not? Do you think that the documents and evidence you collected are enough to define the crimes against Yezidi minority as a Genocide?

Judge Ayman:

The decision as to whether it was genocide or not, is not our duty to make. We collect evidence. The substantive court can express such decisions. I think, it is clear from the evidence we have, if a substantive court examines the case; they will confirm it [to be an incident of Genocide]. Some of these incidents have a Genocidal character; others are like crimes against humanity or war crimes. But until now, we have had no special court to deal with these cases. Currently, the Iraqi courts try the accused according to the terror law. This law is vague. The conviction of the accused person is easy and the trial doesn't look deeply into the details, in contrast to international criminal trials, which delve deeper into details of the elements of the crime.

Q7) What is the appropriate court that you believe would be compliant with the standards of international conventions, such as the UNGC and the Rome Statute, and can realise justice?

Judge Ayman:

I do believe, that in order to bring justice, we need a special tribunal. Unlike Saddam's Trial, that only prosecuted the leaders, this Court should include other perpetrators at lower positions. The court should also be established with the participation of international actors, such as:

international judges, advisors and investigators. If we compare the current situation to Saddam's trial, we didn't have international resonance and acceptance during Saddam's trial, because of the absence of international and UN participation.

The useful tribunal would be either a domestic court with international engagement, or a Hybrid Tribunal with both Iraqi and international judges, such as in Cambodia.

Q8) Are there any Iraqi plans or measures for such establishment?

Judge Ayman:

I haven't heard anything officially [from the Iraqi side]. Unofficially, CIJA had a suggestion for Iraq, however whether they could convince the Iraqis or not, is not clear. Similar ideas have been suggested by GIZ and ZFD, but there is no project, it is mainly brainstorming on a personal level.

Q9) On the level of Iraqi judicial Institutions?

Judge Ayman:

I haven't heard any real plans. As I said, there is no crystallised project idea on this subject yet.

Q10) UNITAD? What can they do? As I understand from Res. 2379 and the current activities of UNITAD, they have a similar task to your commission and a similar mandate. What can they do with that, more than your commission can, as it is a UN organ?

Judge Ayman:

It is clear from the terms of reference that UNITAD has that their mandate is like ours, for two years initially with the option of extension. Their working field is, however, wider than ours, because it includes the entire Iraqi territory. They also gather evidence and investigate like us. And if any Member State [of the UN] shows interest in their information, they will deliver the results to them, for example if a Member State would like to use them for their own trials or prosecutions [against the ISIS fighters in their countries].

Q11) May I ask you, Sir, about the role of foreign fighters in the crimes against the Yezidi, according to the evidence you have gathered, especially those citizens whose countries are members of ICC? I am asking to find out whether there will be a chance to prosecute them in front of the ICC?

Judge Ayman:

The foreign fighters were mainly in Syria and not in Iraq according to our information - maybe because of the limitation of our investigations. We do have evidence about some foreign perpetrators who committed crimes in Iraq as well. But generally they were in Syria and the victims were Iraqis, who were forcibly transferred to Syria.

Q12) So, at the beginning they didn't participate in the invasion of Sinjar or the fall of Mosul?

Judge Ayman:

Exactly, they took part in the continuation of the crimes, such as slavery and sex slavery.

Q13) Are these crimes enough to prosecute them in The Hague?

Judge Ayman:

This depends on their states actually. If they want, they can refer the cases to the ICC. But the accused should be a position of leadership. In our investigation, we didn't find foreign fighters in a leading role. Most of them were in the lower structures of ISIS. The majority of the commandants were Iraqi, Syrian, Saudi or other Arabs.

Q14) And what about the Tunisian IS-Fighters?

Judge Ayman:

Well, we didn't find any of them in positions of leadership within the ISIS hierarchy. Again, our investigations are limited and couldn't cover all incidents that happened in Syria and Iraq.

Q15) But what about those fighters, who enslaved and raped Yezidi victims?

Judge Ayman:

Yes. Exactly, and there are many of them. We don't have the exact names, because they used aliases (pseudonyms), but we have some of their personal characteristics, that can lead to them. However, what I understand from the criteria in the Rome Statute, in the case of the personal jurisdiction of the ICC, the accused should have been in a position of leadership or a commando role, in order to be referred by the state to the ICC.

Thank you very much for this fruitful interview.

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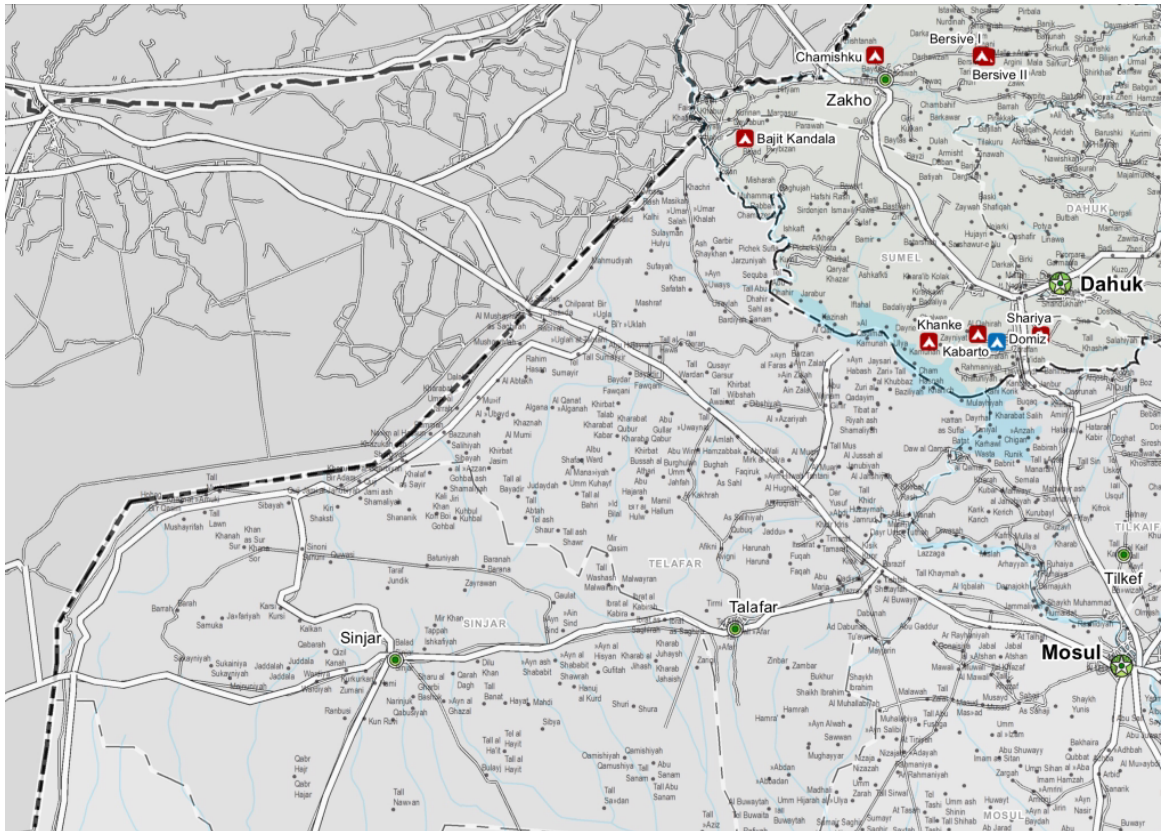
Duration of the Interview: 17:13 minutes

Language of the Interview: Kurdish

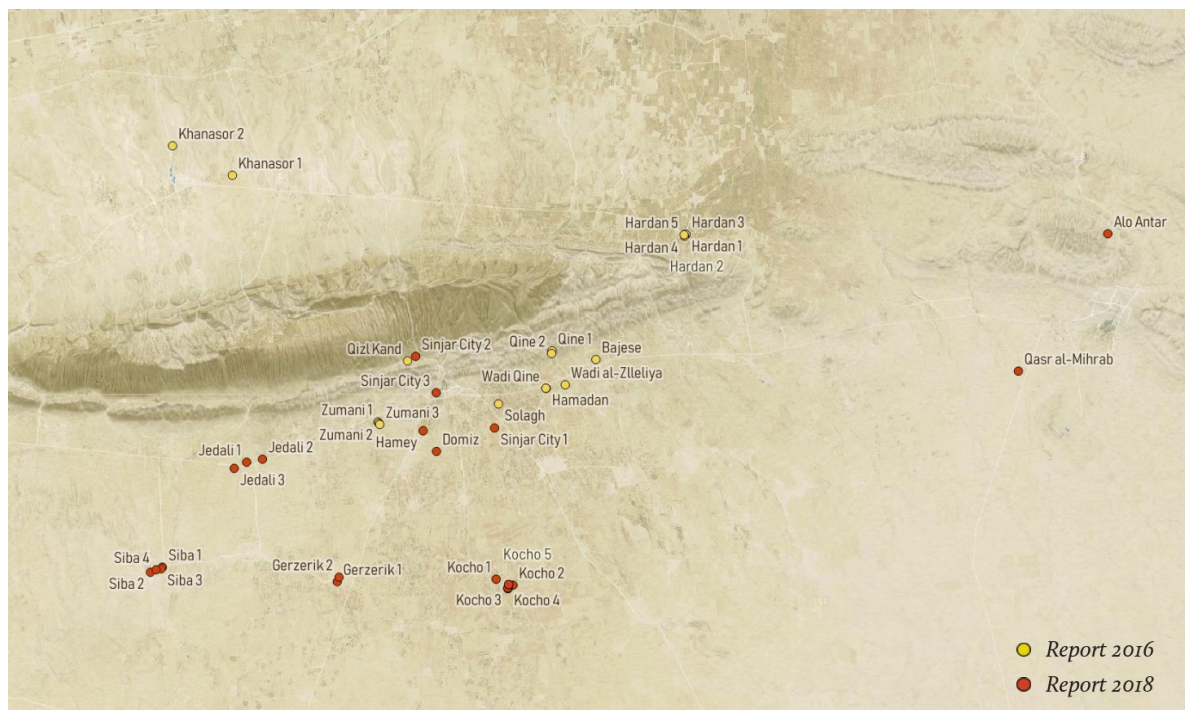
Duhok, 27.03.2019

Annex III: Maps

Map 1: Sinjar Region (Source: REACH 2014)



Map 2: Mass graves in der Region Sinjar (Source: Yazda NGO Report, 2018)



Annex IV

ISIS Documents about the slavery

1) Certificate of Ownership of the Slave:

The Islamic State

Al Jazeera Welayat / Islamic Court

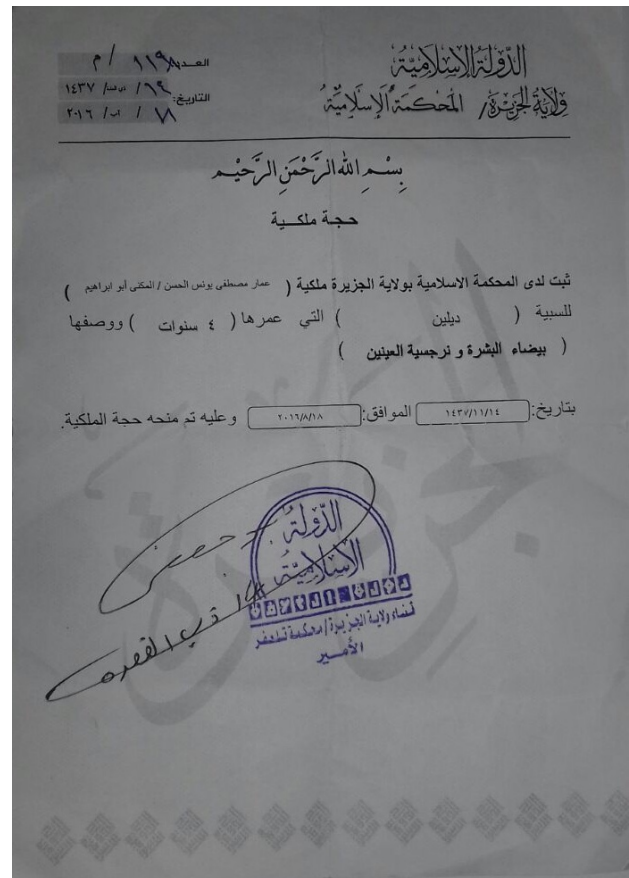
No. 119/M

Date 18 August 2016

Certificate of Ownership

It is proven by the Islamic Court in Al Jazeera Wilayat that (Ammar Mustafa Yunis ALHassan, known as Abu Ibrahim) is the owner of the slave (Deleen) who is (4 years old) and has the following characters (white skin and braun eyes).

This Ownership Certificate has been issued for him [the owner] in 14.11.1437AH equal to 18.08.2016.



(Stamp and signature)

Abu Jaafar

The Islamic state,

Judge of Wilayat Al/Jazeera,

the Court Tilafer

The Prince

2) Certificate of the liberation from Slavery:

The Islamic State

Al Jazeera Welayat / Islamic Court

No. 1223/M

Date 28 August 2016

Certificate of the liberation of the “Neck”

It is to certify that Brother (Sufian Ahmad Yunis Al-Qassab / Abu Muawiya) has liberated the neck of the concubine (Deleen), her age is (four years), since 24 Thul Qiida 1437 AH, corresponding to 28/08/2016.

Therefore, she is free, has her ownership. She has all the rights and all obligations of the free Muslim women that are mentioned in the Islamic Sharia.

(Stamp and signature)

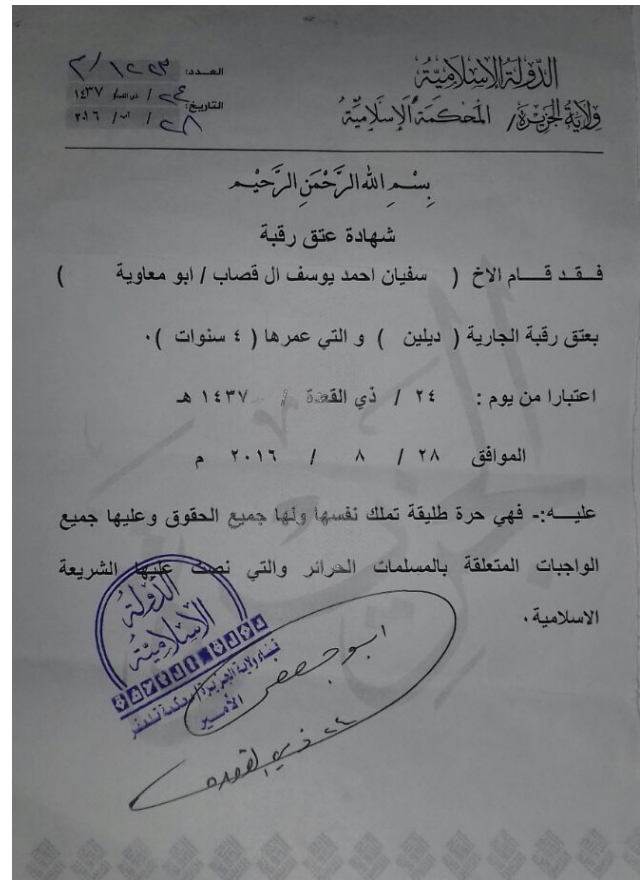
Abu Jaafar

The Islamic state,

Judge of Wilayat Al/Jazeera,

the Court Tilafer

The Prince



3) Marriage Contract with a former Yezidi slave:

This marriage contract is issued by the Sharia Court in Til Afer, and hold No. 270.

The contract is generally similar to the ordinary Sharia Marriage Contracts for the Muslims in Iraq.

The interesting issue in the contract is the Dowry, which is usually a certain amount of money or gold that the groom has to pay to the bride.

In this contract the dowry is the liberation of the slave /the bride, who was a Yezidi slave. The contract includes the certificate of the Liberation of her “Neck” according to a certificate number 189.

الرقم: ٢٧٠
رقم الصفحة:
رقم السجل:

٢٠١٥/١٢/٢٩

إعلان القضاء والمظالم
المحكمة الشرعية في ربيع جزيرف

عقد نكاح

الحمد لله، والصلاة والسلام على رسول الله، أما بعد:
فبعد ثبوت اهلية الزوجين - للدرجة معلوماتهما أدناه - للتعاقد، والتأكد من خلوهما من الموانع الشرعية، اتفقا أمام الكاتب بالعدل وولي الأمر والشهود على ما يلي:-

أولاً: إقرار الطرف الأول (الزوج) بعد إيجاب وقبول صريحين بأنه قد قبِلَ النكاح من الطرف الثاني (الزوجة) نكاحاً شرعياً، وإقرار الطرف الثاني بعد إيجاب وقبول صريحين بأنها قد قبلت النكاح من الطرف الأول بموافقة وليها. ثانياً: قدر المصداق المعلن: مهرها عنقاً ليهب لها رقم ١٨٩ من تاريخ ١٩/١٢/٢٠١٥
دفع من الطرف الأول للطرف الثاني مقبوضاً/ غير مقبوض.

وقد قرأ المؤجل:

يُستحق عند أقرب الأجلين: الموت أو الطلاق، ولا يستقبل إلا بوفائه أو الإعفاء منه.

الزوج:	محمد مصطفى يوسف	الزوجة:	مها محمد يوسف
اسم الأم:	مها محمد يوسف	اسم الأم:	مها محمد يوسف
الحالة الاجتماعية:	متزوج	الحالة الاجتماعية:	متزوج
محل وتاريخ الولادة:	الربيع صبي ١٩٦٨	محل وتاريخ الولادة:	١٩٩١
رقم الهوية:	رقم الهاتف:	رقم الهوية:	رقم الهاتف:
العنوان التفصيلي:	العنوان التفصيلي:	العنوان التفصيلي:	العنوان التفصيلي:
ولي الزوجة أو الوكيل:	رقم الهوية:	محل وتاريخ الولادة:	
صلة القربى:	سبب الولاية:		
العنوان التفصيلي:			
الشاهد الأول:	اسم الأم:	اسم الأم:	اسم الأم:
محل وتاريخ الولادة:	العنوان التفصيلي:	العنوان التفصيلي:	العنوان التفصيلي:
شاهد الثاني:	اسم الأم:	اسم الأم:	اسم الأم:
محل وتاريخ الولادة:	العنوان التفصيلي:	العنوان التفصيلي:	العنوان التفصيلي:

رر بتاريخ: ١٧ / ١٢ / ٢٠١٥ الموافق: ٢٩ / ١٢ / ٢٠١٥

الزوج: الزوجة: ولي الزوجة: الشاهد الأول: الشاهد الثاني:

محمد مصطفى يوسف / مها محمد يوسف / محمد مصطفى يوسف / قاطع محمد صالح / قاطع محمد صالح

سجل محكمة تلعفر
الكتابة بالمعدن
١٧ / ١٢ / ٢٠١٥

- The Source of these three documents is the case files of the victims, by Air Bridge Iraq, 2017