



BRIEFING PAPER

Number CBP 7561, 15 April 2016

Declaring Daesh massacres 'genocide'

By Arabella Lang and Ben Smith

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Summary

There have been calls for ISIS massacres and other abuses of religious and ethnic minorities in the areas it controls to be recognised as 'genocide'. A Commons debate on 'Recognition of genocide by Daesh against Yazidis, Christians and other ethnic and religious minorities' on Wednesday 20 April 2016 calls on the Government to refer the 'genocide' to the UN Security Council, in order to give the International Criminal Court (ICC) jurisdiction.

Under the [1948 Genocide Convention](#), genocide is defined as mass killings or other acts intended to destroy a particular group of people. States must prevent or punish genocide, individually or through the UN, and the ICC can be involved if it has jurisdiction (which it has so far concluded it does not).

In the UK there is no clear process for officially recognising events as genocide, but the UK can prosecute people for genocide even if it took place outside the UK (after 1991).

There have been many instances where ISIS abuses of Yazidis, Christians and Shia Muslims may amount to genocide; indeed it may be part of the ISIS strategy to commit the most serious atrocities possible.

The US Secretary of State John Kerry, the US House of Representatives, the European Parliament and the Parliamentary Assembly of the Council of Europe have all described ISIS atrocities as 'genocide'.

1. Introduction

On Wednesday 20 April 2016 the House of Commons is due to debate a [backbench business motion](#) on the 'recognition of genocide by Daesh against Yazidis, Christians and other ethnic and religious minorities', following a bid from Fiona Bruce MP. The motion says:

That this House believes that Christians, Yazidis, and other ethnic and religious minorities in Iraq and Syria are suffering Genocide at the hands of Daesh; and calls on 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.

This briefing paper provides information on a range of subjects relating to the debate.

2. Genocide law

2.1 Overview

Under the [1948 Genocide Convention](#), genocide is defined as mass killings or other acts intended to destroy a particular group of people. States must prevent or punish genocide, individually or through the UN, and the International Criminal Court can be involved. In the UK there is no clear process for officially recognising events as genocide, but the UK can prosecute people for genocide even if it took place outside the UK (after 1991).

2.2 Definition of genocide

Although the word 'genocide' is often used colloquially, as shorthand for the deliberate mass-murder of civilians, its definition under international law is more specific. Genocide under international law requires both a material element (specific acts such as killing members of a racial group) and a mental element (those acts must have been committed with the specific intent to destroy a particular group).

Genocide is defined in the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* (often referred to as the Genocide Convention). After affirming that genocide is a crime under international law whether committed in time of peace or war, the Genocide Convention defines genocide as:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

In addition to the crime of genocide itself, the Genocide Convention outlaws conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide.

The definition in the Genocide Convention is authoritative under international law and has subsequently been adopted word-for-word by the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC).

Nevertheless, there is inevitably much scope for interpretation as to whether a set of crimes crosses the thresholds set out in this definition.

2.3 States' obligation to 'prevent or punish' genocide

Article 1 of the Genocide Convention says genocide is a crime under international law that the contracting parties must prevent or punish. Any party may call upon the UN organs to take appropriate action to suppress acts of genocide, it says, but it does not make clear what that might be. Military intervention, for example, would have to be authorised by Security Council.

The obligation to act, some have argued, has in the past made states reluctant to accept that genocide is taking place, even where the evidence is strong. Conversely, those groups which believe that they are being subjected to serious human rights abuses may, quite understandably, argue that they are being subjected to genocide. And, of course, it will sometimes be true. However, by virtue of the fact that it is the most heinous of crimes against humanity, the threshold has to be an extremely high one.

In principle, where evidence strongly suggests that genocide is taking place and such claims can be rapidly verified, a designation should be made and action to prevent and punish should then follow. Where - as may often be the case - the evidence is more ambiguous, the claims may have to be tested.

In this context, the UN Security Council, if it has become seized of the matter, may refer the situation to the International Criminal Court (ICC).¹ The ICC can independently decide to investigate too. Another option, which happened with regard to Darfur for example, is that the UN may establish an independent panel to adjudicate. The UN Darfur panel, contrary to the view expressed by the US government at the time, decided in 2005 that genocide was not taking place in Darfur. The ICC then decided that its Chief Prosecutor's request for an arrest warrant against [President al-Bashir](#) that included crimes of genocide was not justified. The arrest warrant was issued for war crimes and crimes against humanity instead (although the following year a second arrest warrant was issued covering allegations of genocide).

2.4 Crimes against humanity and war crimes

It is not a case of genocide or nothing: crimes against humanity and/or war crimes are extremely serious charges in their own right. Again, the ICC could be involved either through the UN Security Council or on its own initiative, or there could be a UN-mandated independent investigation into what has been taking place. Another route is via the Human Rights Council.

There is a degree of overlap between crimes against humanity, genocide and war crimes. The key difference between crimes against humanity and genocide is that the former do not require an intent to 'destroy in

¹ See Library Research Paper 01/39, [The International Criminal Court Bill \[HL\] Bill 70 of 2000-2001](#), 28 March 2001 and Standard Note 5042, [The International Criminal Court: Current Cases and Contemporary Debates](#), 20 April 2009

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whole or in part' but instead the targeting of a given group and carrying out a policy of 'widespread or systematic' violations. Crimes against humanity are also distinguishable from war crimes, in that they apply in times of both war and peace.

2.5 Genocide in UK law

Acts of genocide, crimes against humanity and war crimes committed by UK nationals or residents or by people subject to UK service jurisdiction are punishable in the UK, even if they were committed outside the UK.²

For these purposes the UK has adopted the definitions given in the [Rome Statute](#) of the ICC, which is taken direct from the Genocide Convention,³ and is supplemented by the ICC's '[Elements of crimes](#)' which give a (non-binding) interpretation.⁴

To be punishable in the UK, the acts must have been committed after 1 January 1991.⁵

The UK also has a wider 'universal jurisdiction' over war crimes and a limited number of other serious international crimes.⁶ This means that they are crimes under domestic law, regardless of where they are committed or by or against whom. The international crimes for which the UK has universal jurisdiction include: grave breaches of the four 1949 Geneva Conventions and its Additional Protocol I;⁷ torture by or on behalf of persons acting in an official capacity;⁸ hostage taking;⁹ and certain other terrorist offences.¹⁰

2.6 The ICC

The International Criminal Court (ICC) has jurisdiction over genocide, crimes against humanity and war crimes, when committed after 1 July 2002. But it can only exercise jurisdiction if:

- the accused is a national of a State Party to its Rome Statute, or a State otherwise accepting the jurisdiction of the Court; or
- the crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the Court; or
- the United Nations Security Council has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime.

² *International Criminal Court Act 2001 (ICCA)* and *International Criminal Court (Scotland) Act 2001* (as amended)

³ See ICCA s50

⁴ See the *International Criminal Court Act 2001 (Elements of Crimes) (No 2) Regulations 2004*, SI 2004/3239

⁵ ICCA s65A (inserted by the *Coroners and Justice Act 2009*, s70)

⁶ See Library Standard Note SN/IA/5422, [Universal jurisdiction](#), 25 March 2010

⁷ *Geneva Conventions Act 1957* and *Geneva Conventions (Amendment) Act 1995*

⁸ *Criminal Justice Act 1988* s134

⁹ *Taking of Hostages Act 1982* s1

¹⁰ For offences in England and Wales to which universal jurisdiction applies, see *Halsbury's Laws of England* vol 11 'Criminal Law and Procedure', para 1061

An ICC investigation or prosecution can be initiated in three different ways:

- States Parties to the ICC's Rome Statute can refer situations to the ICC Prosecutor; or
- the United Nations Security Council can ask the Prosecutor to launch an investigation; or
- the Office of the Prosecutor may initiate investigations *proprio motu* (on its own initiative) on the basis of information received from reliable sources. In this case, the Prosecutor must seek prior authorisation from a Pre-Trial Chamber composed of three independent judges.

2.7 ICC review of allegations against ISIS

The Prosecutor of the International Criminal Court, Fatou Bensouda, has since the summer of 2014 been reviewing allegations of atrocities (including genocide) committed by ISIS/Daesh in Syria and Iraq. In April 2015 she issued a 'clarification', saying that although 'the atrocities allegedly committed by ISIS undoubtedly constitute serious crimes of concern to the international community and threaten the peace, security and well-being of the region, and the world', she was [unable to open a preliminary examination at that stage](#).

She explained that the ICC had no territorial jurisdiction over Iraq or Syria. Most of the attacks by ISIS/Daesh have taken place in Syria or Iraq, neither of which have ratified the ICC's Rome Statute or accepted the ICC's jurisdiction. But the ICC could exercise its territorial jurisdiction over acts that took place on the territory of another country that has ratified the ICC's Rome Statute – for instance the recent Paris or Brussels attacks.

She also looked at whether the ICC had personal jurisdiction over individuals alleged to have committed crimes, but concluded at that stage that it had not: 'the prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIS, appear limited'.

She then went on to emphasise that Iraq, Syria or the UN Security Council could confer jurisdiction on the ICC:

It bears emphasising that under the Rome Statute, the primary responsibility for the investigation and prosecution of perpetrators of mass crimes rests, in the first instance, with the national authorities. I remain committed to consult with relevant States to coordinate, and possibly exchange information on crimes allegedly committed by their nationals to support domestic investigations and prosecutions, as appropriate. My Office also remains open to receive additional information which could provide further clarity on the positions occupied by State Party nationals within the ISIS organisational hierarchy.

The UN Security Council could refer a situation to the ICC if it is deemed to affect international peace and security, regardless of where it happened or the nationality of the people involved. That was done in

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the cases of Sudan and Libya. However, any of the five permanent members of the Security Council could veto this. There is also a question over whether a situation referred by the Security Council would have to be [defined by reference to a given territory](#) or whether a reference to actions by a specific group would be enough regardless of where they took place.

Even if the ICC did investigate and decide to prosecute, it would have to get the accused to The Hague (not always easy) and also complete a prosecution (again, by no means guaranteed).

However, if there was an ICC prosecution of individuals in ISIS/Daesh which resulted in a verdict of genocide, it would potentially have several implications, including:

- Imprisonment of the guilty individual(s)
- Reparations to victims or their families
- Triggering or confirming states' duties to act to prevent or punish genocide under Article 1 of the Genocide Convention
- UN organs taking 'appropriate action' to suppress acts of genocide (if they were still going on) – see Article 8 of the [1948 Genocide Convention](#)
- Increasing the likelihood of people from Iraq or Syria being granted refugee status
- Acts of retaliation by ISIS/Daesh

2.8 Recognising genocide

There are various ways in which the UK could be seen as recognising mass killings as genocide, but on the whole their effects would be political and symbolic rather than legal. For instance:

- The Government could make a statement, either written or oral or in response to a PQ.
- Parliament could pass a motion that the killings be recognised as genocide.
- A Select Committee report might conclude that the killings were genocide, in which case the Government could use its response to set out its views.
- An EDM could be laid stating that the killings amounted to genocide, or calling on the Government to recognise it as such.

The pros and cons of such recognition have been debated many times in both Houses, for instance in the House of Lords on 14 April 1999.¹¹

¹¹ HL Deb 14 April 1999 cc813-34

3. Recent documented cases of alleged genocide by ISIS/Daesh

The Office of the UN High Commissioner for Human Rights produced a report on abuses committed by ISIS/Daesh in March 2015. It highlighted attacks against people in Iraq and Syria for belonging to different religious and ethnic groups and said that some might constitute genocide: 'It is reasonable to conclude that some of these incidents, considering the overall information, may constitute genocide'.¹²

The US Holocaust Memorial Museum documents a [series of crimes against humanity](#), war crimes, and ethnic cleansing against religious minority communities across northern Iraq between June and August 2014.

However, ongoing hostilities and violence have of course had a severe impact on the ability of UN and other missions to verify allegations in areas under the control of ISIS.¹³

3.1 Yazidis

At the time of the ISIS takeover there were about 700,000 Yazidis living mainly in the Sinjar district, Nineveh governorate of northern Iraq. The religion has elements of Christianity, Judaism and Islam and they are close to the Kurds, although the Kurds are generally Muslim; they speak a northern dialect of the Kurdish language. They have been subject to violence and massacres throughout their history, during the Ottoman Empire and during the US occupation of Iraq after 2003, when a bombing campaign by Sunni militants killed hundreds of Yazidis.

The UN report said that the Yazidi community in Iraq, whose identity is based on their religion, were forced to convert to Islam or face death and that ISIS had the intention of wiping out the Yazidi community in areas it controlled. When ISIS invaded the Nineveh plains in August 2014, many men were summarily executed, including even those who agreed to convert to Islam. The report recounts how at least 700 men were killed in the village of Kocho in Sinjar governorate. When the Sinjar disaster happened, some 200,000 Yazidis were driven from their homes. At least [40,000 members of the Yazidi sect were trapped on Mount Sinjar](#), where they faced slaughter by Isis if they fled, and dehydration if they stayed. The United Nations estimated in 2015 that 5,000 Yazidi men were massacred and 7,000 women and girls were enslaved by ISIS in that period.¹⁴ The figure is likely to have grown since then. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

¹² Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, [A/HRC/28/18](#), 27 March 2015

¹³ See [Promotion and protection of human rights in Iraq - Report of the United Nations High Commissioner for Human Rights \(A/HRC/30/66\)](#), 27 July 2015

¹⁴ ['The ISIS Victims You Don't See—World Snoozes as Yazidis Massacred'](#), *Observer*, 18 November 2015

Ben Emmerson QC, said in a report in June 2015 that these acts might amount to genocide.¹⁵

3.2 Christians

Although Christians are 'People of the Book' according Islam and this means that they should be allowed to practice their religion, subject to certain constraints, ISIS has persecuted Christians. Their treatment, however, has not been as bad as that handed out to the Yazidis, who are not People of the Book.

Christians have been forced to pay a tax called *Jizya* or to convert, or be killed. Many decided to flee rather than face such treatment in Mosul in 2014; ISIS claims that it was showing mercy by allowing the Christians to flee.

In February 2015 ISIS [captured several hundred Christians](#) in the Syrian town of Al-Qaryatain. Some fled, but the rest were returned to their homes only after agreeing to pay jizya (tax) and sign a dhimma (Sharia social contract) in order to remain in the town and not face death.

Not all Christians have been shown any mercy: ISIS in Libya massacred 21 Egyptian Coptic Christians in 2015 and in April of that year released a video which the militants claimed showed them massacring 30 Ethiopian Christians.¹⁶

Recently, reports emerged of the killing of 21 Christians in Syria in a town recaptured by Syrian government forces – they had broken the terms of their restrictions or tried to escape. Warnings had also been received of Christian girls being enslaved. ISIS militants had destroyed a 1,500 year old monastery along with most of the rest of the town.¹⁷

The *Guardian* reported that on 4 March 2016 [four nuns were among 16 people killed](#) at a retirement home set up by Mother Teresa in the Yemeni port city of Aden. The victims were handcuffed before being shot in the head.

According to a US Catholic organisation, between 2003 and 2014 [at least 1,131 Christians were killed in Iraq](#), others kidnapped or raped, and 125 churches attacked there.

3.3 Turkmens and other Shia groups

The Turkmens are Turkic people who live mainly in Central Asia but who form minorities in some Middle Eastern states. They speak a language closely related to Azeri, the Turkic language spoken in Azerbaijan. In Iraq they constitute the third-largest group after Arabs and Kurds and in Syria they are one of the smallest minorities. Most of the Turkmens in

¹⁵ [Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, A/HRC/29/51, 16 June 2015](#)

¹⁶ ['Who are the Yazidis and why is Isis hunting them?', Guardian, 11 August 2014](#)

¹⁷ ['Syria war: IS group killed 21 Christians in al-Qaryatain, says patriarch', BBC News Online, 10 April 2016](#)

the Middle East live in Northern Iraq according to the most recent sources, although many will now have fled areas held by ISIS.

There are other ethnic groups who have significant Shiite elements, such as the Shabak, who speak a language related to Persian. The Shabak are also concentrated in Sinjar in the Nineveh governorate of Iraq. There are also Arab Shias in areas controlled by ISIS.

ISIS attacked Shia Turkmen villages near Kirkuk in 2014 and committed massacres: 60 people from one village – Bashir – for example.¹⁸

600 Shia inmates of Badoush prison in Nineveh were separated by ISIS fighters from the Sunni inmates and executed in June 2014.¹⁹

¹⁸ Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, [A/HRC/28/18](#), 27 March 2015

¹⁹ *Ibid*

4. ISIS strategy

ISIS is a Sunni Islamic organisation that promotes violent *jihad*. It interprets elements of the Koran and the *Sunnah*, the verbally-transmitted tradition of the teachings and practices of the Prophet Mohammed, to argue that fighting against the heresy of Shiism and against 'devil-worshippers' such as the Yazidis is a religious duty.

ISIS has also argued in its online magazine Dabiq that the enslavement of the women and children of non-Muslims as spoils of war is also set out in Sharia law,²⁰ and that it had fallen out of use because of modern deviation from Sharia.

The Sunni/Shia rift has been a potent booster of the fortunes of Al-Qaeda and ISIS. Increasing sectarian tension is therefore at the heart of their strategy, because it makes establishing order in countries where Sunnis, Shiites and other religions live together more difficult, and Sunni *takfiri* terrorism has thrived in the ensuing chaos.

But ISIS has pursued the sectarian strategy far more strongly than Al-Qaeda, which tended to avoid excessive Muslim deaths. ISIS has its roots in Iraq, where the Sunni/Shia schism has melded with the Arab/Persian schism. The recent history of Iraq – the Saddam regime, the Iran-Iraq war and Saddam's removal and the subsequent chaos – has made that country the epicentre of the Sunni/Shia earthquake that is shaking the region.

Many commentators also point out that ISIS states in its propaganda that it wants to draw the US into direct confrontation in Muslim territory in the Middle East.²¹ Committing genocide would perhaps be the most effective way of ensuring that this happens.

²⁰ ['Islamic State seeks to justify enslaving Yazidi women and girls in Iraq'](#), *Reuters*, 13 October 2014

²¹ Ali Mamouri, ['IS eager to confront US ground forces in Iraq'](#), *Al-Monitor*, 4 March 2015

5. Who has designated the atrocities as genocide?

In 2015 on a tour of South America, Pope Francis described the killing of Christians in the Middle East as genocide: "In this third world war, waged piecemeal, which we are now experiencing, a form of genocide is taking place, and it must end."²²

5.1 UK

There has been pressure inside Parliament and out for the UK Government to recognise ISIS massacres as genocide.

In February 2016, an amendment was tabled in the House of Lords to the *Immigration Bill* seeking to set up a system whereby a judge would determine whether a situation constituted genocide, and people from the genocidal situation would be able to claim asylum at a British embassy overseas and would be presumed to be eligible for asylum.²³ This was with particular reference to ISIS massacres. The government opposed the amendment because it would not be practical, it said. A similar amendment was considered at Lords Report stage, but was disagreed to on division by 148 votes to 111.²⁴

The Government's position is that it is not a political decision but largely one for the international courts, as shown in a response to a question in the House of Commons in April 2016:

Kevin Foster: I thank the Minister for his answer. As reports emerged of the genocide being committed by the Nazis, the allied Governments made a co-ordinated joint statement on 17 December 1942 to condemn those crimes and pledge to bring those responsible to justice at the end of hostilities. Does my right hon. Friend the Minister agree that co-ordinating a similar statement today would be appropriate, given the evidence of similar crimes being committed by Daesh against Christians and other religious minorities?

Mr Ellwood: My hon. Friend makes a powerful argument. The regular images on our screens confirm the scale and the barbarity of Daesh's inhumane treatment of minorities. We are now witnessing systematic and horrific attacks against Christians, Yazidis and others, based on their religious beliefs or their ethnicity. I too believe that acts of genocide have taken place but, as the Prime Minister has said, genocide is a matter of legal rather than political interpretation. We as the Government are not the prosecutor, the judge or the jury. Such matters are determined first in the international courts and in the United Nations Security Council, but we are helping to gather evidence that could be used to hold Daesh to account appropriately.²⁵

²² ['Pope Francis: End 'genocide' of Christians in the Middle East'](#), *Middle East Eye*, 10 July 2015

²³ [HL Deb 3 February 2016, c1887-8](#)

²⁴ [HL Deb 21 March 2016 c2179-2181](#)

²⁵ [HC Deb 12 April 2016, c165](#)

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The House of Commons will debate a motion on the "Recognition of genocide by Daesh against Yazidis, Christians and other ethnic and religious minorities" on Wednesday 20 April 2016.

5.2 US and Europe

In January the Parliamentary Assembly of the Council of Europe passed a resolution saying that ISIS had committed genocide.²⁶

In March 2016, both the US Secretary of State and Congress described ISIS massacres as 'genocide'.

On 14 March the House of Representatives unanimously passed the following resolution:

Expressing the sense of Congress that those who commit or support atrocities against Christians and other ethnic and religious minorities, including Yezidis, Turkmen, Sabea-Mandean, Kaka'e, and Kurds, and who target them specifically for ethnic or religious reasons, are committing, and are hereby declared to be committing, "war crimes", "crimes against humanity", and "genocide".²⁷

On 17 March Secretary of State John Kerry announced that he believed Daesh's actions were genocide:

My purpose in appearing before you today is to assert that, in my judgment, Daesh is responsible for genocide against groups in areas under its control, including Yezidis, Christians, and Shia Muslims. Daesh is genocidal by self-proclamation, by ideology, and by actions – in what it says, what it believes, and what it does. Daesh is also responsible for crimes against humanity and ethnic cleansing directed at these same groups and in some cases also against Sunni Muslims, Kurds, and other minorities.²⁸

On 2 April the European Parliament passed a motion saying that ISIS actions amounted to "genocide" according to the Rome Statute of the International Criminal Court.²⁹

²⁶ [Resolution 2091 \(2016\), Foreign fighters in Syria and Iraq](#), 27 January 2016

²⁷ [House Floor Activities, Legislative Day of March 14, 2016](#)

²⁸ ['Remarks on Daesh and Genocide'](#), US State Department, 17 March 2016

²⁹ ['MEPs call for urgent action to protect religious minorities against ISIS'](#), European Parliament press release, 2 April 2016

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