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Political Science

Chair of International Law

Case study about the Yazidi genocide committed by ISIL  
started in 2014 from an international law perspective

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# 1. Introduction

## 1.1 Description and Historical Context of the Yazidi Population

### 1.1.1 Yazidis' Religion and Beliefs

The Yazidis, also called Yezidis or Ezidis, are members of a Kurdish minority. They established mainly in the Northern part of Iraq, but also in the Southeast of Turkey, in Northern Syria and in a small part of Iran. The religion of these people is not similar to any of the other monotheistic religions such as the Judaist, Christian or Islamic one. It is more a mix of them. The Yazidi community is not very numerous and there are different ideas about their size. Nevertheless, it is thought that they are around 700.000. Even so, they have a highly organized society, with a Sheikh as religious leader and an emir, or prince, as secular leader.<sup>1</sup>

The origin of the name “Yazidi” is another controversial subject where there are still doubts. Some scholars think that it comes from an old divine creature: *yazata*; while others think that it takes its provenance from one of the caliphs of the Umayyad Caliphate, Yazid I, who is also one of the people/creatures in which they believe in.

The beginning of the Yazidi religion can be related to the fall of the last caliph of the Umayyad Caliphate: the half Kurdish Marwan II, in 750 A.D. After the fall of the Caliphate, some people established in the mountains in the north of Iraq continuing in the beliefs of the Umayyads. But a real Yazidi civilization didn't appear until the twelfth century, when Sheikh Adi ibn Musafir, a Sufi and a descendent of the Umayyad, started an order called '*Adwiyah* in the northern part of the city of Mosul. This community then got mixed with the local traditions. This might have been the real origin of this civilization as in the historical sources it is told about a Yazidi community from the twelfth century that established and lived close to Mosul.

The issues between the Yazidi and the Islamic population started in the fifteenth century, when the latter started to see the Yazidis as enemies, both geographically and politically. Therefore, the governors of the Muslims started to attack them and the Yazidis by so doing were massacred and converted, thus its population decreased severely.

The massacres carried out by the Muslims against the Yazidis started for the reason that the Yazidis were not seen in a positive manner because of their religion. In fact, in the Yazidi literature it is written that their faith was created differently from any other religion, since their community was created only by Adam and not by Eve. This belief that the Yazidi's faith was created differently is what brings them to not want to live together with other people. Furthermore, marrying someone not of their religion is prohibited. Also their cosmogony is different from the one of the other religions.

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<sup>1</sup> Britannica, The Editors of Encyclopaedia. “Yazīdī.” *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 22 Feb. 2018, [www.britannica.com/topic/Yazidi](http://www.britannica.com/topic/Yazidi).

The Yazidis believe that the creator of the world created it and then left it in the hands of seven divine creatures. The most important divinity for them is *Malak Taus* (the Peacock Angel). This creature is also the one that brings the other faiths to believe that Yazidism is a religion which adores the “evil”.<sup>2</sup> Another aspect that differentiates this religion from others is that when someone goes against the divine law there is a transmission of the soul called metempsychosis (reincarnation after death), which compensates for your actions. It is believed that the most important saint for the Yazidis, the Sheikh Adi, became a divinity after this process.

The believing religious system of the Yazidis is also very focused on the purity of the religion. This is widely reflected in the everyday life of these people: they cannot eat a variety of foods, they cannot pronounce the word *Shaytan* (Satan) and words with a similar sound, and they also need to minimize the contact with people who are not Yazidis. This is why they try to not have an army and to not have a complete education: with an army you get in touch, voluntarily or involuntarily, with other people, and education brings you to have effects on your purity by widening your knowledge about the outside world.

The Yazidi’s religion has two sacred books, *Kitab al-jilwah* (Book of Revelation) and *Mashafrash* (Black Book). It is not sure that these books were written by Yazidis, in fact many scholars think the opposite. They think that non-Yazidis wrote in in the fourteenth century and then were passed as old books that incorporated the real oral tradition of the Yazidis.<sup>3</sup>

These books emphasize the importance of the religious life for this community that thus puts a lot of importance on endogamy (as also said above) and respect for the religious authorities. The superiority of these authorities is reflected also in the caste system of the Yazidis. The first two castes are respectively occupied by *sheiks* and *pir*. The first one is subdivided in three sub-castes, or tribes, from which the three leaders of the community are taken. One produces the Prince which has representative functions; the second one gives rise to the spiritual leader called *Baba Sheik* (shows the unity of the community); the third tribe instead generates the *Pesh Imam*, which is closest to the Islamic tradition and it differentiates from the others as it has less importance and it is not hereditary elected. The second caste, *pir*, is the merely religious caste with less of a political meaning than the *sheik* one. In

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<sup>2</sup> Jalabi, Raya. “Who Are the Yazidis and Why Is Isis Hunting Them?” *The Guardian*, Guardian News and Media, 11 Aug. 2014, [www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains](http://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains).

<sup>3</sup> Britannica, The Editors of Encyclopaedia. “Yazīdī.” *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 22 Feb. 2018, [www.britannica.com/topic/Yazidi](http://www.britannica.com/topic/Yazidi).

fact, it is composed of the clerical part of the Yazidis. They carry out the religious ceremonies and preserve all the religious places.<sup>4 5</sup>

The third and last caste group of the Yazidi is called *mirids*. They are the ones that attend the different religious ceremonies and that commemorate the religious festivities. They have to be related to one *sheik* and one *mirid* family. It is not right though to call this caste the lowest as, even if they do not have religious and political power, and they have mentors in the upper castes, also the top two castes need to have a guide from the other respective caste.<sup>6</sup>

If we compare Yazidism with Islam, we can see many differences. Foremost, the widest difference between the Yazidis and the Muslims are that the latter believe in the *Quran* which they believe it to be the word of God. On the other hand, the Yazidis don't believe in the Quran and, as I already mentioned, they have other sacred books that tell about the long oral tradition of the Yazidis' beliefs. Of course, also the five principles of Islam enclose another difference between the two religions. They provide the basic rules to follow to carry out an exemplary Muslim life. They are not written in the Quran but enlisted in the *Hadith* which are anecdotes and teachings from the life of the Prophet Muhammad that serve as moral and juridical inspiration for the Muslims. These five pillars are: faith in one God Allah, pray five times a day, do charity to the neediest, fasting during the month of the Ramadan, and travel to the Mecca as a pilgrimage.<sup>7</sup> The Yazidis only follow, or better practice, the five prayers per day. The other big difference is the caste system that, as I have described above, it is an important characterization of the Yazidi life. Muslims do not have a caste system. They used to respect the societies that had such system when Islam expanded as one of the main teachings of Muhammad was to not force Islam on people. Therefore, people had to convert only if they wanted to become Muslim, autonomously. In addition, there is a direct treaty done with the Christians by Muhammad that granted religious freedom and all that it entails. There is an article of the Time that clearly shows this and says: "Islam believes in a God of mercy, a scripture of mercy and a Prophet sent as a mercy to all the worlds".<sup>8</sup>

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<sup>4</sup> "Yezidi Castes, Culture, and the Big Elephant in the Room." *Servant Group International*, 16 May 2017, [servantgroup.org/yezidi-castes-culture/](http://servantgroup.org/yezidi-castes-culture/).

<sup>5</sup> Kubalek, Petr. "End of Islam, End of Time. An Eschatological Reading of Yezidism." *Death, Graves and the Hereafter in Islam: Muslim Perceptions of the Last Things During the Middle Ages and Today*, John Benjamins Publishing Company, 2015, pp. 569–598.

<sup>6</sup> MAISEL, SEBASTIAN. *YEZIDIS IN SYRIA: Identity Building among a Double Minority*. LEXINGTON BOOKS, 2018, pp. 46-49

<sup>7</sup> "Religions - Islam: Five Pillars of Islam." *BBC*, BBC, 8 Sept. 2009, [www.bbc.co.uk/religion/religions/islam/practices/fivepillars.shtml](http://www.bbc.co.uk/religion/religions/islam/practices/fivepillars.shtml).

<sup>8</sup> Sultan, Sohaib N. "ISIS Is Ignoring Islam's Teachings on Yazidis and Christians." *Time*, Time, 8 Aug. 2014, [time.com/3093732/isis-iraq-yazidis-and-christians/](http://time.com/3093732/isis-iraq-yazidis-and-christians/).

The only Muslims that have a caste system are the ones in India and Pakistan, even if they go against the Islamic principles of equality. The reason is that they are and were mainly Muslim converts that were used to a society divided in castes.<sup>9 10</sup>

The Yazidi religion has identifiable differences also with Christianity. There is the caste system that is not part of the Christian culture, but there is also the fact that Yazidis pray five times a day while for Christians it is not as such. Another huge discrepancy between the two religions is that the Yazidis do not believe in sin nor devil and also don't think that non-believers end up in hell.<sup>11</sup>

Despite the differences between Yazidism and other major religions there is one similarity above all that stands out: Yazidism is a monotheistic religion. Another curious similarity, that in this case Yazidism has with Christianity, is that the Yazidi literature talks about Jesus. The literature says that he is the one that kills *Tarjal* (the same is said also in the Islamic literature regarding the end of the world), who is a character that “*embodies fallacy, temptation, and feuds, and it is to be defeated before the End of Time*”.<sup>12</sup> Thus, the Yazidis believe that Jesus was one of the Sheiks that ruled the world. In addition, the Yazidis also think that Jesus was crucified and that he resurrected but, differently from Christianity, thanks to the God they worship: Mala Tawus.<sup>13</sup>

### **1.1.3 Previous Persecutions suffered by the Yazidis**

The Yazidi people, throughout their history, has been widely subjected to persecutions which were carried out by people from other religions. The majority of them were done by Muslims which occupied most of the territory where the Yazidis established. Regarding these persecutions, a member of the Yazidi parliament, Haji Ghandour, said in an interview for the “Washington Post” that the Yazidis in their history were massacred more than 72 times.<sup>14</sup>

We can already hear of these massacres from the Ottoman Empire in the eighteenth and nineteenth century, where the ottomans together with Kurdish leaders led a religious persecution against them. The Yazidis were also oppressed, but not massacred, by the Iraqi forces of Saddam Hussein in the seventies. This happened because Hussein started a “Campaign of Arabization” against the Kurdish

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<sup>9</sup> Britannica, The Editors of Encyclopaedia. “Islamic Caste.” *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 13 Jan. 2015, [www.britannica.com/topic/Islamic-caste](http://www.britannica.com/topic/Islamic-caste).

<sup>10</sup> “Does Islam Follow a Cast System Like Hinduism?” *About Islam*, 16 Sept. 2016, [aboutislam.net/counseling/ask-about-islam/does-islam-follow-a-cast-system-like-hinduism/](http://aboutislam.net/counseling/ask-about-islam/does-islam-follow-a-cast-system-like-hinduism/).

<sup>11</sup> “Who Are the Yazidis, and Why Does ISIS Want to Kill Them?” *CNN*, Cable News Network, 8 Aug. 2014, [religion.blogs.cnn.com/2014/08/08/who-are-the-yazidis-and-why-does-isis-want-to-kill-them/](http://religion.blogs.cnn.com/2014/08/08/who-are-the-yazidis-and-why-does-isis-want-to-kill-them/).

<sup>12</sup> Kubalek Petr. “End of Islam, End of Time. An Eschatological Reading of Yezidism.” *Death, Graves and the Hereafter in Islam: Muslim Perceptions of the Last Things During the Middle Ages and Today*, John Benjamins Publishing Company, 2015, pp. 569–598.

<sup>13</sup> *Ibid.*

<sup>14</sup> Hafiz, Yasmine. “No, They Aren't Devil Worshipers: The Yazidi's Misunderstood Religious Beliefs.” *The Huffington Post*, TheHuffingtonPost.com, 6 Sept. 2016, [www.huffingtonpost.com/2014/08/13/yazidi-religious-beliefs\\_n\\_5671903.html?guccounter=2](http://www.huffingtonpost.com/2014/08/13/yazidi-religious-beliefs_n_5671903.html?guccounter=2)

which also affected the Yazidis as they speak Kurdish. What Hussein wanted was to change the lifestyle of the Iraqi people, including the Yazidis. Therefore, he obliged them to live in urban areas and for that reason he built the city of Sinjar for them, in the northwestern part of Iraq. This Campaign only ended when the United States entered in Iraq in 2003 and the Kurdish moved to northeast Iraq.<sup>15</sup> Also in the recent August 14, 2007, something happened in the north of Iraq. For Iraq Red Crescent, around 800 Yazidis were killed with four car bombs which exploded at the same time in the city where they lived in the north of Iraq. This is considered one of the events with most deaths in Iraq and it is confirmed also by different sources like Aljazeera. The gravity of this attack can be understood also by a US general who understood the attack as an “*act of ethnic cleansing*”. For this attack, the Muslim terrorist group of al-Qaeda was blamed.<sup>16</sup>

## **1.2 An Account of the Massacre of the Yazidis by ISIL in 2014**

In the interview cited above done by the “Washington Post”, Haji Ghandour added also that the Yazidis were preoccupied that the Sinjar Mount could have been the 73<sup>rd</sup> massacre the population would have suffered. He was right. The 2014 massacre committed by ISIL, or genocide as we will see later, was the biggest one suffered by Yazidis.

ISIL, or the Islamic State of Iraq and the Levant, is a military and political group mainly based in Syria and Iraq. ISIL is an extremist Islamic group, that imposes, with violence, its believes and the Islamic law on the people living in the territories they control. It has also revendicated numerous terrorist attacks around the world.

Before ISIL though, also another group of extreme Muslim terrorists, al-Qaeda, as said before, attacked the Yazidi community. In the case of al-Qaeda though, what triggered the act never came to be understood clearly. It is said that there were tensions for months before the attack against the Yazidi by the al-Qaeda terrorists. Even though, it is thought that the stoning of a 17-year Yazidi girl that wanted to convert to Islam to marry a Sunni is in some kind of way connected to the attack.<sup>17</sup>

The Yazidis always lived around the Sinjar area, in the northwestern part of Iraq. In fact, the close Sinjar Mount is where the Yazidis went to look for safety from the persecution of the Islamic State of Iraq and the Levant (ISIL). But at the same time, it was not the safest place because they did not only have to worry about the fighters of ISIL, but they also had to stay hydrated. They were going to

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<sup>15</sup> “Who Are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?” *National Geographic*, National Geographic Society, 11 Aug. 2014, [news.nationalgeographic.com/news/2014/08/140809-iraq-yazidis-minority-isil-religion-history/](http://news.nationalgeographic.com/news/2014/08/140809-iraq-yazidis-minority-isil-religion-history/).

<sup>16</sup> Al Jazeera. “How Suicide Bombings Shattered Iraq.” *GCC News | Al Jazeera*, Al Jazeera, 24 Oct. 2010, [www.aljazeera.com/secreтираfiles/2010/10/20101022161025428625.html](http://www.aljazeera.com/secreтираfiles/2010/10/20101022161025428625.html).

<sup>17</sup> *Ibid.*

be unable to stay hydrated for a very long time as on the Mount there was basically no water. This scarcity of water was why they wanted to move from the Mount entering the Turkish territory, more precisely the northeastern part of the country. This option was wisely taken away by the ISIL fighters as they girdled the Mount. Therefore, the only way to get to Turkey was by getting the help from the Kurdish. But this did not happen. This lack of help from the Kurdish community can be seen from different point of views: first, they did not want to have any problem with ISIL; second they didn't want to break the Muslim fraternity they have; or third, that also the Kurdish wanted this elimination of Yazidis as they were in the area where they wanted to install their independent Kurdish State, Kurdistan.<sup>18 19</sup> The only help from the Kurdish that the Yazidis received was from the PKK, or the Kurdistan Worker Party who wants the Kurdish independence. To achieve this objective though, they need to not let ISIL get into their territory where they want to build the Independent State of Kurdistan. For this intent, they tried to block the advance of ISIL on and beyond the Sinjar Mount, as part of "their state", freeing the Yazidi and maintain the control of Sinjar for their own interest.

Important evidence for this Kurdish lack of help is shown by the fact that, even if the Yazidis are often wrongly identified as Kurdish, they are just Kurdish speakers. In fact, also the Yazidis themselves dislike being identified as Kurdish. This was also confirmed by a Human Rights Watch senior Iraq researcher Belkis Wille in an interview to the Special Broadcasting Service (SBS).<sup>20</sup> This Yazidi detestation of being identified as Kurdish might have been the trigger that led the Kurdish to not help the Yazidis. But also, this division and this aversion by the Kurdish community towards the Yazidis, was also shown by the withdrawal of the Peshmerga - Kurdish military forces – during the night before ISIL came to attack the Yazidis. They left without saying anything, leaving the community to its own destiny. This fact was even aggravated when the Kurdish said that the attack of ISIL was against the *Yazidi Kurdish* and thus against the Kurdish community. Such statement frustrated the Yazidi community that were left alone by the Peshmerga when they most needed their help.

Going back to the massacre, the fact that most stands out from this massacre is the number of people involved, whether killed, raped, enslaved or imprisoned by ISIL. The victims arrived to be more than 3100 and the ones that were kidnapped (for any purpose) were more than double this, 6800.<sup>21</sup> Therefore, the people affected in any way by this massacre were about ten thousand. But the truth is

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<sup>18</sup> Cetorelli, Valeria, et al. "ISIS' Yazidi Genocide." *Foreign Affairs*, Foreign Affairs Magazine, 8 June 2017, [www.foreignaffairs.com/articles/syria/2017-06-08/isis-yazidi-genocide](http://www.foreignaffairs.com/articles/syria/2017-06-08/isis-yazidi-genocide).

<sup>19</sup> Afp. "Los Yazidies, Una Minoría Perseguida En Irak." *El Universal*, El Universal, 5 Oct. 2018, [www.eluniversal.com/internacional/22458/los-yazidies-una-minoria-perseguida-en-irak](http://www.eluniversal.com/internacional/22458/los-yazidies-una-minoria-perseguida-en-irak).

<sup>20</sup> Kerrie Armstrong 22 Aug 2017. "The Yazidi People: Who Are They and Why Are They on the Run?" *SBS News*, SBS News, 22 Aug. 2017, [www.sbs.com.au/news/explainer/yazidi-people-who-are-they-and-why-are-they-run](http://www.sbs.com.au/news/explainer/yazidi-people-who-are-they-and-why-are-they-run).

<sup>21</sup> *The numbers vary depending on the articles as the actual number of deaths or kidnapped cannot be arrived to.*



that the number augmented even more as only during the first days the jihadists killed about two thousand people. A lot of those two thousand people were cold blooded killed, executed. Other people might have been killed the days and the weeks after, but it is impossible to be sure about their deaths as we have no exact evidence, except the one of finding them anymore. Also old people and children who died for the lack of water or of adequate drugs or medicaments need to be added to this number. By other means, the majority of the kidnapped were women or girls who were enslaved, and at the time they were captured they were also hit or raped. Many of them were sent to the training camps of the fighters of ISIL to be sex slaves.

In total, the people massacred were almost 5000 based on a report of the UN. The ones who were not killed, enslaved, or were not subject to any type of violence, were the ones that converted to the “true Islam”. Others instead were kept alive because they were considered useful or were too old to be considered a threat. Another important factor is that the children that were less than twelve years old were obliged to fight as jihadist, and there are videos that confirm this. The ones older than twelve, if they refused to convert, were killed. But, again, the right number of deaths will never be known with certainty. This is emphasized also by an article from the “Independent” which is titled “*Almost 10,000 Yazidis ‘killed or kidnapped in Isis genocide but true scale of horror may never be known’*”.<sup>22</sup> This is mainly because one of the members of the family needs to have survived the attack to confirm how many members of the family are truly dead, as many of the dead people cannot be found or are not able to be recognized.

The worst thing of this massacre is that it has not ended and will not end, as a lot of Yazidis are still kept kidnapped, still abused, still obliged to fight for ISIL and for things that they do not believe in, and keep being in captivity. But the Yazidis are still suffering both because they are still scared that if they go back to Sinjar ISIL will come back, but also because there is instability on the Sinjar Mount.<sup>23</sup> Indeed, this area is now occupied by four different forces that want to take the power of the Mount and the city of Sinjar, namely: the “Iraqi government forces, the predominantly Syrian Kurdish People’s Protection Units; the Popular Mobilization Units (PMU), an Iraqi government-sanctioned

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<sup>22</sup> Lizzie Dearden. “Three Years on, Isis Genocide against Yazidis Continues.” *The Independent*, Independent Digital News and Media, 9 May 2017, [www.independent.co.uk/news/world/middle-east/isis-islamic-state-yazidi-sex-slaves-genocide-sinjar-death-toll-number-kidnapped-study-un-lse-a7726991.html](http://www.independent.co.uk/news/world/middle-east/isis-islamic-state-yazidi-sex-slaves-genocide-sinjar-death-toll-number-kidnapped-study-un-lse-a7726991.html).

<sup>23</sup> Morris, Loveday. “Yazidis Who Suffered Genocide Are Fleeing Again, but This Time Not from the Islamic State.” *The Washington Post*, WP Company, 21 Mar. 2017, [www.washingtonpost.com/world/middle\\_east/yazidis-who-suffered-genocide-are-fleeing-again-but-this-time-not-from-the-islamic-state/2017/03/21/6392fe26-0353-11e7-9d14-9724d48f5666\\_story.html?noredirect=on&utm\\_term=.779d11ac31e9](http://www.washingtonpost.com/world/middle_east/yazidis-who-suffered-genocide-are-fleeing-again-but-this-time-not-from-the-islamic-state/2017/03/21/6392fe26-0353-11e7-9d14-9724d48f5666_story.html?noredirect=on&utm_term=.779d11ac31e9).

paramilitary force backed by Iran; and the Ezidixan Protection Force, a local Yazidi militia of 3,000 troops”.<sup>24</sup>

### 1.3 Iraq Constitution regarding minorities’ rights and inclusion

The Constitution of Iraq was drafted in 2005 and approved with a referendum the same year.

In the Preamble, we can already see how the US led Coalition played an important role in drafting the Constitution electing the Committee that wrote it. In the Preamble, characteristics that were never part of Iraq before can be seen, for example when it says that Iraq looks at the future with confidence *“through a republican, federal, democratic, pluralistic system ... to respect the rule of law, to establish justice and equality, to cast aside the politics of aggression, to pay attention to women and their rights, the elderly and their concerns, and children and their affairs, to spread the culture of diversity, and to defuse terrorism”*.<sup>25</sup> This is a radical change as Hussein’s Iraq did not show to be republican, federal, democratic and pluralistic at all. Instead, from 2005, one of the primary focuses of the country is to enclose such characteristics in its system. In the Constitution it was even added that they want to create an Iraq free from *“sectarianism, racism, complex of regional attachment, discrimination, and exclusion”*.<sup>26</sup> From these two symbolic sentences we can understand that Iraq wants to protect the diversity, and thus also the different people that live within the Iraq land. Furthermore, they also aim deserting acts of aggression following racist or discriminating beliefs. By this saying, Iraq protects minorities and therefore also the Yazidi community from any point of view.

This will by Iraq to protect the different communities can be seen also by Article 2 of the Constitution. This article states, based on the freedom of religious beliefs and practice, that it guarantees such freedom to *“all individuals such as Christians, Yazidis, and Mandeans Sabians”*.<sup>27</sup> Interestingly, the Yazidis are also explicitly mentioned as one of the protected ethnicities for the enjoyment of this right. Related to the freedom of religion, also Article 43 adds to the provision of such right stating that: *“followers of all religions and sects are free in the: Practice of religious rites ... Management of religious endowments”* and that *“The State shall guarantee freedom of worship and the protection of places of worship”*.<sup>28</sup>

The Constitution of Iraq mentions the Yazidis, even if implicitly, also in other articles. Article 14, for example, clearly states that all Iraqis are equal before the law no matter what, therefore granting the

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<sup>24</sup> Mednick, Sam. “ISIS May Be Gone, But Iraq's Yazidis Are Still Suffering.” *Foreign Policy*, Foreign Policy, 23 Nov. 2018, [foreignpolicy.com/2018/11/23/isis-may-be-gone-but-iraqs-yazidis-are-still-suffering-sinjar-ezidixan-pmu-nadia-murad/](https://foreignpolicy.com/2018/11/23/isis-may-be-gone-but-iraqs-yazidis-are-still-suffering-sinjar-ezidixan-pmu-nadia-murad/).

<sup>25</sup> Constitution of Iraq, 2005, Preamble, pp. 3

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

Iraqi Yazidis all the rights provided by the constitution. Article 4 talks about the official language of Iraq and states that there are two official languages: Arab and Kurdish. This means that also from this perspective, the Yazidis are protected as they are a Kurdish speaking community. The Constitution furtherly says that every person owns the right to enjoy life, to be secure, free, and that the restriction of such right will be punished by the law (Article 15).<sup>29</sup>

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<sup>29</sup> Constitution of Iraq, 2005, Preamble, pp. 3

## 2. The Yazidi Genocide: Reactions of the International Bodies and Community

### 2.1 Considerations on the Yazidi genocide based on Article 2 of the Genocide Convention of 1948

The question for many years has been if the massacre carried out by ISIL against the Yazidis from 2014 could be considered a genocide against an ethnicity or not.

The definition of genocide is present in Article 2 of the “*Convention on the Prevention and Punishment of the Crime of Genocide*”<sup>30</sup> which states:

*“In the present Convention, genocide means 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.”*

This definition was given in 1948 and was widely criticized by many countries, organizations and people. At the same time, it is the only one until now that is considered legitimate, as being part of the Convention.

Concurrently, the Convention has two factors that restrict what can be considered as an act of genocide. This is the reason that drives the majority of people to want a wider and more permissive definition than the current one of the United Nations, that would include more acts in the group of actions that amount to genocide. These two factors are one mental and one physical. The former one is that it needs to include an “*intent to destroy, in whole or in part, a national, ethnical, racial or religious group...*”. While the latter one includes the five actions enlisted in the definition of genocide in Article 2 of the Convention. The problem of these two factors is that we need to encounter an “*intent*” for the mental factor, which is really difficult to find above all because there are no criteria to recognize it. The other issue is the one of the groups not enlisted in the definition (national, ethnical, racial and religious). This meaning that also alternative groups, like a political one, could be attacked with the purpose of eliminating it, but it would not be considered a genocide as it is not a group of the four of the definition of genocide.

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<sup>30</sup> Convention on the Prevention and Punishment of the Crime of Genocide, *United Nations* <https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx>, Art. 2.

After giving an explanation of what genocide is and what are the criteria to define it, we can clearly identify the massacre of ISIL against the Yazidi population as a genocide for all intents and purposes. They wanted to persecute or enslave, and if necessary, even kill them to try to convert them to the “real and right” Islam that is the one in which ISIL believes in. So, we can find the intent to destroy a protected group. For the jihadists, the Yazidis believe in the Islam “of the devil” because of the divinity “Peacock Angel” in which they believe in which is considered as very similar to Satan for the Christians and the Jews with the only difference that he was forgiven by God and went back to the paradise. This is the reason that brought them to be persecuted for all their history and for which they always sought refuge far away from other population that lived around them.

This genocide continued for a long time and keeps continuing. This because, a lot of people keep being enslaved, others keep being missing, above all children and women, and still a lot of men keep being in the ISIL’s training camps to fight for them.

The Yazidi genocide is really serious, and it deserves more knowing and consideration by the international community also because it is not only a genocide, but it also includes crimes against children and women that go against two United Nations Conventions: “*Convention on the Rights of the Child*” and “*Convention on the Elimination of All Forms of Discrimination Against Women*”.

Syria is also a signatory of the two Conventions and for this it should respect its obligations to defend the right of the children and try to eliminate the discrimination of women. A lot of the crimes that ISIL has committed are not only punished by these Conventions, but also by the Rome Statute and thus are considered as crimes against humanity. One of these is the sex enslavement that ISIL fighters committed and commits against women and girls as young as nine. This happens because they were brought in the concentration camps and then bought by the fighters. Once they were bought, they were completely deprived of their liberty, which is a fundamental human right that all human beings enjoy following the Declaration of Human Rights for all . There are videos and interviews that these actions done by the ISIL fighters produce grave psychological effects that often seem irremediable. All these actions which were undertaken by ISIL can be included for the argumentation of the “*intent*” to destroy the Yazidi population, and so attribute even more the character of genocide to this massacre.

Another big issue is the torture and the degrading treatments of the Yazidis by ISIL. These atrocities, differing from the sexual enslavement, are not done only to women, but also to children and men. Also for this reason the Syrian and Iraqi government and Al-Assad, being a signatory of the

“*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*”, was entitled to do something to eliminate any form of torture against this minority by ISIL.<sup>31</sup>

## **2.2 Reactions to the genocide by the International Community**

### **2.2.1 The Commission of Inquiry on Syria**

The Commission of Inquiry on Syria is one of the few authorities that talked about what happened in Sinjar in 2014, which then protracted for many more years. This Independent International Commission of Inquiry on the Syrian Arab Republic was created with a resolution of the Human Rights Council (HRC) on the 22<sup>nd</sup> of August of 2011. The mandate of such Commission focuses on the violations of international human rights law starting from the ones committed in March 2011, which is when the Syrian conflict started. The mandate also specifies that the Commission should also “*establish the facts and circumstances that may amount to such violations and of the crimes perpetrated. And, where possible, to identify those responsible*”.<sup>32</sup>

The Commission remembered the 2<sup>nd</sup> Anniversary of August 3<sup>rd</sup> 2014 attack against the Yazidis by ISIL with a statement. In this statement the Commission stressed how the act of genocide committed by ISIL, as determined then in their report on June 2016 “*They Came to Destroy: ISIS crimes against the Yazidis*”, and all the other crimes are still ongoing. This report contains the finding of the Commission gathered through interviews with survivors, religious leaders, smugglers, activists, lawyers, medical staff, and journalists. The Commission finished the statement by calling on the United Nations and on the international actors to undertake actions recommended, as described earlier, to stop the continuing atrocities in a very symbolic way. As a matter of fact, the Commission repeated the words of the Nobel Prize winner Nadia Murad, who survived the attack of ISIL, said in an event in Geneva in June 2016: “*We don’t need more speeches, we need justice*”.<sup>33</sup> This statement underlines even more how important it was and it is to give justice to the Yazidis that suffered such deprivation of their right.

Nadia Murad, was also heard by the Foreign and Communitarian Affairs Committee of the Italian Chamber of Deputies, presided by Pia Elda Locatelli. After Murad’s testimony and ones of Sulaiman Luba Elias, a doctor and activist for Yazidi rights, and Murad Ismael, executive director of the Association called YAZDA, the President of the Commission spoke too inviting the Italian

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<sup>31</sup> ““They came to destroy”: ISIS crime against the Yazidis”, *United Nations, Human Rights Council*, 15 June 2016, [https://www.peacewomen.org/sites/default/files/A\\_HRC\\_32\\_CRP.2\\_en%20\(2\).pdf](https://www.peacewomen.org/sites/default/files/A_HRC_32_CRP.2_en%20(2).pdf)

<sup>32</sup> “Independent International Commission of Inquiry on the Syrian Arab Republic.” *OHCHR*, [www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/ColMandate.aspx](http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/ColMandate.aspx).

<sup>33</sup> “Statement by the Commission of Inquiry on Syria on the Second Anniversary of 3 August 2014 Attack by ISIS of the Yazidis.” *OHCHR*, [www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=20330&LangID=E](http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=20330&LangID=E).

government to recognize the Yazidi genocide. Following this, on the 15<sup>th</sup> of March 2019, under the 18<sup>th</sup> Italian Legislature, the permanent III Commission on Foreign and Communitarian Affairs asks the Govern to focus on sensitizing *“the international community on the crimes committed and to officially recognize the Yazidi genocide; to be a promoter in the Human Rights Council and in the European scope for the institutionalization of an ad hoc tribunal to do justice for the Yazidi; to take initiative, as far as it is allowed by the international community, to recognize the sexual violence perpetrated during the conflict as a war crime; to acquire elements about the status of the Investigative Team activated with the Security Council Resolution number 2379; to take the initiative competent to accelerate the procedure for the recognition of the corps and for the census of the people in camps to count the survived; to take initiative for the intervention of international observers in the Sinjar area to create the necessary humanitarian and security condition for the re-installment of the exiled Yazidi”*.<sup>34</sup>

The Report of the Commission, *“They Came to Destroy: ISIL crimes against the Yazidis”*,<sup>35</sup> brought the public to be more aware on what happened also by recognizing how the actions undertaken by ISIL against the Yazidis amounted to a genocide. In fact, after this report, it was sure that the Human Rights Council would recognize the genocide, but it did not. This misrecognition led to many criticisms to some UN Bodies. The one criticism that probably stands out the most, is the one done by Carla del Ponte, now member of the Commission of Inquiry on Syria and former Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia. She underlined the disappointment towards the Human Rights Council that, based on her words, did not support the Commission’s work enough to lead the Security Council of the UN to bring the case of the Yazidi Genocide to the Permanent Court of International Justice. The Commission needed the support of the Council because they are unable to start an investigation themselves, as the mandate of the Commission only enables them to do *“reports on the human rights violations and on the war crimes committed during the conflict”*. In addition to this, Carla del Ponte adds on calling the States for the recognition of the genocide and for the undertaking of actions to make the work of the international justice begin.<sup>36</sup>

The Commission of Inquiry on Syria also touched, even if indirectly, on the Yazidi massacre in another precedent document published in November 2014, even if it was not specifically on the

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<sup>34</sup> “ATTO CAMERA, RISOLUZIONE IN COMMISSIONE 7/00209.” CAMERA, [aic.camera.it/aic/scheda.html?numero=7-00209&ramo=C&leg=18.4](http://aic.camera.it/aic/scheda.html?numero=7-00209&ramo=C&leg=18.4)

<sup>35</sup> ““They came to destroy”: ISIS crime against the Yazidis”, *United Nations, Human Rights Council, the Commission of Inquiry on Syria*, 15 June 2016, [https://www.peacewomen.org/sites/default/files/A\\_HRC\\_32\\_CRP.2\\_en%20\(2\).pdf](https://www.peacewomen.org/sites/default/files/A_HRC_32_CRP.2_en%20(2).pdf)

<sup>36</sup> “Genocidio Degli Yazidi: ‘Le Prove Ci Sono, Gli Stati Agiscano.’”, Gianni Elisa, *Festival Dei Diritti Umani*, 22 Giugno 2016, [festivaldirittiumani.it/genocidio-degli-yazidi-le-prove-ci-gli-stati-agiscano/](http://festivaldirittiumani.it/genocidio-degli-yazidi-le-prove-ci-gli-stati-agiscano/).

genocide itself. The document is a Report of the Commission to the HRC called “*Rule of Terror: Living under ISIS in Syria*”. This Report gives a brief introduction on how ISIL rose in Syria and how it changed people’s life, and then goes on listing and explaining all the acts of violence it carried out, to then conclude with recommendations. The acts of violence are divided in sections and they are: violence on the civilian population, violence against women, violence against children, and violations committed during ISIS military assaults. In the conclusion, the Commission condemns the acts of ISIL as amounted to war crimes, and they were all calculated and done with purpose. But what stands out is the absence of a statement directly involving the Yazidi population. In fact, in the recommendations the Commission only calls for the various states involved on the international actors to undertake the actions they should, and for Syria to “*honor its binding legal obligation to protect its citizens from crimes against humanity and other grave violations*”, but nothing on the Yazidi specifically.<sup>37</sup>

Furthermore, the Commission met in Geneva the third of August 2017, three years after the beginning of the attacks against the Yazidis. On that day, the commission called the attention of the international community to “*recognize the crime of genocide*” suffered by the Yazidi population. Additionally, the Commission of Inquiry on Syria even talked about what it wanted from the international community, namely that they would start to think on doing justice for what happened. This justice had to be brought through recommendation to the ones that fight ISIL and by freeing the Yazidis that are still held as prisoners. The suggestion made by the Commission was to go in front of the International Criminal Court. Another recommendation provided by the Commission of Inquiry on Syria, was the one of establishing an *ad hoc* tribunal with a “*temporal and geographic jurisdiction*”, like the ones that were created for Yugoslavia in 1993, and for Rwanda in 1994.<sup>38</sup> The temporal characteristic would ensure the retroactivity of the tribunal’s jurisdiction. On the other hand, the geographic one is important to render the tribunal responsible for any crime committed in the area where the jurisdiction is active.

### **2.2.2 The United Nations High Commissioner for Human Rights**

Another interesting fact about the reactions of the international actors to the Yazidi genocide is the lack of an immediate reaction by the United Nations High Commissioner for Human Rights. This is also proven by the fact that only in the annual report of the High Commissioner at the

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<sup>37</sup> “Report of the Independent International Commission of Inquiry on the Syrian Arab Republic. Rule of Terror: Living under ISIS in Syria”, *United Nations, Human Rights Council*, 19 November 2014, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/HRC\\_CRP\\_ISIS\\_14Nov2014.doc](https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/HRC_CRP_ISIS_14Nov2014.doc)

<sup>38</sup> “Commission of Inquiry on Syria Calls for Justice on the Occasion of the Third Anniversary of ISIL’s Attack on the Yazidis”, *OHCHR*, 3 Aug. 2017.



end of March 2015 to the Human Rights Council titled “*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*”<sup>39</sup>, something about the Yazidi was said, even if the genocide was already started from more than 6 months and the atrocities that the Yazidis suffered were already widely evident. What it said was that ISIL committed various war crimes and that the crimes committed against the Yazidis may have amounted to genocide. The Office of the High Commissioner for Human Rights published then after two years from the start of the genocide, August 2016, a report called “*A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL*” through the UNAMI mission. The UNAMI Mission is the United Nations Assistance Mission for Iraq started in 2003 with the UN Resolution n. 1500 after the request of the Government of Iraq. The mandate of the Mission is centered on advising and assisting Iraq and its government to be a democratic country which respects and promotes human rights. The mandate also allows the Mission to help the Iraqi CSOs and Government to get the help of UN expertise for development and humanitarian issues. This UNAMI Report, shows the gravity of the actions of ISIL from Sinjar until 2016, as it recommends to the international community to hold accountable the people who committed the various crimes described in the fifth section of the document: “*Human Rights Abuses by ISIL against the Yezidi between August 2014 and June 2016*”. For the protection instead, the report mostly makes recommendations to the Iraqi Government pushing them to respect their obligations at the international level but also to respect to work on their own State. This means: first of all by amending its Criminal Code or enact legislation to allow the domestic courts to work on international crimes cases; then also to respect the rights of the people who suffered the atrocities in the genocide and help them to voluntarily want to return to their place; to prevent the same things from happening in the future; and most importantly to accede to the Rome Statute of the International Criminal Court to then refer the situation to the Court’s jurisdiction.<sup>40</sup>

### **2.2.3 The United Nations Refugee Agency**

Worth of mentioning regarding the international actors is also the UN Refugee Agency under the lead of the United Nations High Commissioner for Refugees (UNHCR), who until 2015 was Antonio Guterres, now Secretary General of the UN, that worked a lot on the ground to help the Yazidi since the beginning. In fact, their first article related to the Yazidi crisis was the 14<sup>th</sup> of August

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<sup>39</sup> “*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*” UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, 13 Marzo 2015.

<sup>40</sup> “*A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL.*” United Nations High Commissioner for Human Rights, UNAMI, Aug. 2016.

2014, just after the start of the massacres. They were the first ones to provide aid to the Yazidis also by transporting them to the Newroz camp, installed by them and the closest to Sinjar. This was not the only help though, as a lot of Yazidis escaped also to the nearly safe Kurdistan area and to Syria, where the UNHCR was engaged in helping the Yazidis mediating with local NGOs and the other UN associates in these areas. The above-mentioned camp some days after bringing the first Yazidis, was hosting about 15000 of them, number which then decreased because, as they restored health, some reached their families already gone in Iraq's Kurdistan. Something else that is emphasized by the article, is the kind help that the Yazidi people received from the Syrian nationals. Furthermore, a joint UN mission, composed of the UNHCR, the World Food Program and the UN Children's Fund (UNICEF), was also set up to get to Syria and help the national staff in providing the Yazidis with shelter, household items, food, clothes and soap. <sup>41</sup>

The UN Refugee Agency in its report "Iraq Situation: Emergency Response" <sup>42</sup> of March 2015 talks about the unstable situation of Turkey because of the huge problem of the refugees incoming in the country. The Agency also underlines how in 2014 the biggest percentage is represented by the Yazidi Iraqis. This was a huge problem for Erdoğan's Turkey, as it was said by Francesco D'Alema in its paper for *Istituto Affari internazionali* titled "The Evolution of Turkey's Syria Policy". <sup>43</sup> D'Alema describes the immigrant crisis as a threat from Turkey not only from the financial side, but also from the security perspective as it created tensions in the south-east part of the country where the migrants from Syria crossed the borders. As a matter of fact, the numbers speak clearly. The UN Refugee Agency counted more than 3.5 million refugees that entered into the Turkish territory from Syria from 2013 to 2019. <sup>44</sup>

Of course, this immigration problem that in 2014 reached the peak for the Yazidi, was something that didn't help the relations that already tense between the Yazidi and Turkish as the Turkish see them in a negative way. This is because they consider the Yazidis as Kurdish, but more precisely because Erdoğan regards the Yazidi self-defense force as a terrorist group. Following this believes, Turkey bombed from aircrafts a convoy of Yazidis that were returning from the commemoration of the Yazidis dead in an attack by ISIL done in the city of Kocho in 2014. Between the casualties, there was a Yazidi PKK leader who saved thousands of Yazidis from ISIL when the PKK intervened

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<sup>41</sup> "UNHCR Steps up Aid as Yazidis Stream into Syria from Iraq's Mount Sinjar.", *UNHCR*, United Nations, 14 Aug. 2014, [www.unhcr.org/news/latest/2014/8/53ecb7a29/unhcr-steps-aid-yazidis-stream-syria-iraqs-mount-sinjar.html](http://www.unhcr.org/news/latest/2014/8/53ecb7a29/unhcr-steps-aid-yazidis-stream-syria-iraqs-mount-sinjar.html)

<sup>42</sup> "Iraq Situation Emergency Response: UNHCR Supplementary Appeal 2015 (Revised 17 March 2015)." *UNHCR*, United Nations, [www.unhcr.org/partners/donors/54f8592ef93/iraq-situation-emergency-response-unhcr-supplementary-appeal-2015-revised.html?query=yazidi](http://www.unhcr.org/partners/donors/54f8592ef93/iraq-situation-emergency-response-unhcr-supplementary-appeal-2015-revised.html?query=yazidi).

<sup>43</sup> "The Evolution of Turkey's Syria Policy", *Francesco D'Alema*, Istituto Affari Internazionali, October 2017

<sup>44</sup> "Operational Portal." *Situation Syria Regional Refugee Response*, [data2.unhcr.org/en/situations/syria](http://data2.unhcr.org/en/situations/syria).

against it.<sup>45</sup> This better explains the Turkish bombing as the tensions between the PKK and Turkey have been getting worse from 2015 when the first PKK terrorist attack since many years happened, in the Turkish capital of Ankara.

#### **2.2.4 The United States**

The only country that has done something explicitly during the genocide was the United States of Barack Obama. The seventh of August of 2014 Obama said that, following a request by the Iraqi government, he gave the order to start help actions for the “*Yazidis trapped on the Mount*” opening an exit way for them with plane bombs. Obama even added that the US was undertaking such action to “*prevent a potential attack of genocide*”.<sup>46</sup> The US even combined air strikes with the saving mission of the PKK.

Regarding the United States, it is inevitable to mention the pivotal position that the American country had on rebuilding the post Saddam Hussein Iraq, and how this role differs from the one it has now. The first thing US did in 2003 when Saddam Hussein was defeated, was installing a US-led Coalition to drive the country. Above all, as an occupying country, the US was the one in charge of the Iraqi national security. The most important role the US played in this context is the one of mediator between the Kurdish and the Arabs to reach peace. This was accomplished through making the Iraqi recognize the Kurdistan Regional Government as autonomous in the Constitution of 2005. But then the US started to want to be less present in Iraq and diminished its forces there, and this is when the so strong influence of US in national Iraqi affairs started to lower until 2011, where the US decided to withdraw completely. At that point, what the US was afraid that could happen, happened. Internal issues started over again between the Shia government and the Sunni, as the government did not pay the Sunni that participated in the war against the jihadist that rose in the country after the decision of withdrawal of the US. These tensions led to the rise of ISIL that started to gain always more territory in the country until it controlled one third of the country, created even more issues dividing in factions the society even more. This rise of ISIL led to another US led intervention which created “*The Global Coalition to Defeat ISIL*”.<sup>47</sup> From when the Iraqi government started regaining full control of its territories thanks to the help of the Coalition, the US also changed its tactic of action in the country. In fact, it started to focus more on keeping the influence of Iraq away from the Shia government, as

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<sup>45</sup> “Turkey Attacked Yazidi Forces Convoy Returning from Commemoration of IS Genocide.”, Bodette Meghan, *The Region*, 16 Aug. 2018, [theregion.org/article/12988-turkey-attacked-yazidi-forces-convoy-returning-from-commemoration-of-is-genocide](http://theregion.org/article/12988-turkey-attacked-yazidi-forces-convoy-returning-from-commemoration-of-is-genocide).

<sup>46</sup> ““They came to destroy”: ISIS crime against the Yazidis”, *United Nations, Human Rights Council*, 15 June 2016, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A\\_HRC\\_32\\_CRP.2\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf)

<sup>47</sup> “Iraq Timeline: Since the 2003 War.” *United States Institute of Peace*, 14 Feb. 2019, [www.usip.org/publications/2019/02/iraq-timeline-2003-war](http://www.usip.org/publications/2019/02/iraq-timeline-2003-war).

the Iran's influence started to increase when it intervened against ISIL as it was getting too close to the Iran borders. What the US should do to limit the vulnerability to Iran's influence on the reinstalled Iraqi government following *the Washington Institute*, is to show that the Iraqi government can rely on US's help, also by applying the existing Iraqi-American agreements. This has to be done also because the Iraqi government needs to follow the western values written in the Constitution as a political line, and they should not therefore be driven by religion, as Iran pushes it to be. <sup>48</sup>

What is even more interesting to see, is how the United States Commission on International Religious Freedom (USCIRF) acted following those acts of genocide by ISIL against the Yazidis. In fact, this US Commission supported Obama in its aid actions towards the Yazidis through a testimony done by the Chairman Robert George in 2016. In its testimony, speaking on behalf of the whole Commission, he said that the Commission "*called on the US government to declare that ISIL was committing genocide*" in 2015. Robert George goes on calling for the actions of the world leaders to denounce ISIL's actions against these groups, "*including the persecutions and crimes against humanity*" against the ones who did not accept to convert to the "right Islam". <sup>49</sup>

The United States Commission on International Religious Freedom did not only react to the genocide, but he also tried to advise the US, and Iraq, that something could have happened since the government was not doing enough against the minorities' discrimination. Actually, a Commission Chair in 2011, Leonard Leo, wrote a letter that was sent to President Obama. In this Letter, Leonard Leo wrote on behalf of the Commission regarding religious freedoms in Iraq. He wrote it on December 7, 2011 because he wanted the president to raise the religious freedom issue in the nearing meeting with the Iraqi Prime Minister. Leonardo Leo emphasizes on the idea that Iraq is a "*country of particular concern*" following the USCIRF idea, above all from 2011. Above all he says that the minorities are still suffering a lot from the attacks and violence to them directed. The biggest problem for the Commission, was the inability of the government to effectively respond to these acts of racism against minorities. Adding to this, the USCIRF also went back to the reconstruction of Iraq that has started with the Constitution of 2005. In fact, the latter says that "*for Iraq to become a secure and stable*

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<sup>48</sup> "The U.S. Role in the Future of Iraq." *The U.S. Role in the Future of Iraq - The Washington Institute for Near East Policy*, Sept. 2018, [www.washingtoninstitute.org/fikraforum/view/the-united-states-role-in-the-future-of-iraq](http://www.washingtoninstitute.org/fikraforum/view/the-united-states-role-in-the-future-of-iraq).

<sup>49</sup> "Testimony of USCIRF Chairman Robert P. George on 'Confronting the Genocide of Religious Minorities: A Way Forward.'" *United States Commission on International Religious Freedom*, 21 Apr. 2016, [www.uscifr.gov/advising-government/congressional-testimony/testimony-uscifr-chairman-robert-p-george-confronting](http://www.uscifr.gov/advising-government/congressional-testimony/testimony-uscifr-chairman-robert-p-george-confronting).

*democracy, it must guarantee and enforce the human rights of all Iraqis, both in law and in practice”.*

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Furthermore, also the Iraqi, Australians, French, and English have helped the trapped Yazidis by providing them with food and water. But this wasn't enough. In fact, ISIL attacks started to increase.

### **2.2.5 Russia and China, where interests play a crucial role**

In September 2015, a “*joint information center*” was formed in Baghdad between the Russians, Iraqi, Iranians and Syrians to “*coordinate anti-ISIL operations*”.<sup>51</sup> As emphasized also by the international television network Russia Today, this center created by Russia along with the other three countries is to cooperation in a better manner with the Middle East and Syria in the fight against terrorism. The Syrian Foreign Minister even added that Russia was respecting the important international aspect of state sovereignty closely cooperating with Syria.<sup>52</sup> The joint information center also worked to realize specific tasks and achieve particular objectives. Its main objective is to “*gather, process and analyze all current information about the situation in the Middle East*” to get a better understanding on how to counterforce ISIL.<sup>53</sup> This objective has to be reached through three main tasks that are: “*monitoring the politico-military situation in the Middle East, planning and coordinating of the direct military actions in the Syria-Iraq battlespace, liaison with the authorities of the states participating in the joint information center*”.<sup>54</sup>

The biggest problem was that no one of these countries that take action in Syria or Iraq, or both of them, except for the United States as described above, has recognized to undertake any actions to specifically protect the Yazidis from the genocide, or prevent it. This is really grave because these countries have not respected “*their obligations under the Genocide Conventions*”.<sup>55</sup>

The only solution that would be possible is the one of the national tribunals because the only resolution, or better its draft, to bring the case of Syria to the ICC adopted by the Security Council of

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<sup>50</sup> “USCIRF Letter to President Obama on Iraq.” *United States Commission on International Religious Freedom*, 18 Feb. 2014, [www.uscifr.gov/advising-government/government-correspondence/uscifr-letter-president-obama-iraq](http://www.uscifr.gov/advising-government/government-correspondence/uscifr-letter-president-obama-iraq).

<sup>51</sup> *Ibid.*

<sup>52</sup> “Russia, Iran, Iraq & Syria Setting up 'Joint Information Center' to Coordinate Anti-ISIS Operations.” *RT International*, 2015, [www.rt.com/news/316592-russia-syria-islamic-state/](http://www.rt.com/news/316592-russia-syria-islamic-state/)

<sup>53</sup> “The Russia-Iran-Iraq-Syria Joint ‘Information Center’ against America’s ISIS Foot Soldiers.” *Global Research*, 29 Sept. 2015, [www.globalresearch.ca/the-russia-iran-iraq-syria-coalition-against-americas-isis-foot-soldiers/5478696](http://www.globalresearch.ca/the-russia-iran-iraq-syria-coalition-against-americas-isis-foot-soldiers/5478696)

<sup>54</sup> “Tasks and Objectives of the Joint Information Center - Russia, Iran, Iraq, Syria - in Baghdad.” *FRONT PAGE*, 5 Oct. 2015, [southfront.org/tasks-and-objectives-of-the-joint-information-center-russia-iran-iraq-syria-in-baghdad/](http://southfront.org/tasks-and-objectives-of-the-joint-information-center-russia-iran-iraq-syria-in-baghdad/)

<sup>55</sup> ““They came to destroy”: ISIS crime against the Yazidis”, *United Nations, Human Rights Council*, 15 June 2016, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A\\_HRC\\_32\\_CRP.2\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf)

the United States has been vetoed by Russia and China. Indeed, the interests of both countries played a crucial role in their reason for vetoing against such resolution of the Security Council.

Russia has big interests, above all geopolitical. The first, and from my point of view the most important, is the one of keeping active the naval base of Tartus, which is on the Syrian coast wet from the Mediterranean Sea. The reason for this is that this base is the only way Russia has to enter the Mediterranean Sea for its troops, and thus of vital importance. The second greatest interest is the one of blocking the advance of ISIL, and thus of the radical jihadism that if it would win the war in Syria would get a lot closer to Russia. Another interest worth of mentioning, even if of less importance, is the one of trying the armaments and so showing off the Russian strength to the other countries with an international importance and power. Those three main interests are the reasons for which Putin is helping Al-Assad in his war. The worst factor of this help was that a lot of innocent people are getting killed. People that have nothing to do with the conflict in Syria. Syria is very important for Russia for their coast on the Mediterranean Sea and to not let ISIL get more power (that, however, was entering countries like Turkey, Egypt, and Libya with its radical Islam). For Putin, the regime of Al-Assad is considered "*the lesser evil*".<sup>56</sup>

On the other hand, the interests of China focus on the prosperity of the country. In fact, the active foreign policy of the President Xi Jinping which is due to the important economic growth of the country, faces a huge energetic necessity. Its interest in the energy necessary to get China to be present in continents like Africa and Latin America for its new Silk Road, is on Syria. This is the reason for which he wants to keep the country in Assad's hands and the most stable possible. Another interest is instead closer to the ones of Russia as it has a geopolitical identity. Beijing is worried that the jihadists movements, if they had more power, could arrive to its country, mainly in the Turkish-islamic region of Xinjiang where the Uyghurs live. They are an ethnic minority that practice Islam and which lives for the most part in this region of China. These are the reasons that brought China to be present in the civil war which is taking place in Syria from 2011 and which still goes on. From 2016, its presence was limited only in training the troops of Al-Assad and taking care of some strategic problems. Now though, from 2017, China sent also one of its best units of the Chinese special forces called the "*Night tigers*".<sup>57</sup>

Going back to the joint information center set up by Russia ally with Iraq, Iran and Syria, there is the interesting question about the involvement of China. China is the only country of the Great Powers that does not stand neither on the United States side nor on the Russian side, and of course their respective allies. China, as said above, favors Al-Assad's government but autonomously, thus

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<sup>56</sup> "Rusia y China En Oriente Medio.", Jos, and Villanueva Herrero, *El Peri*, El Periodico De Aragon, 3 Mar. 2018, [www.elperiodicodearagon.com/noticias/opinion/rusia-china-orient-medio\\_1268516.html](http://www.elperiodicodearagon.com/noticias/opinion/rusia-china-orient-medio_1268516.html).

<sup>57</sup> *Ibid.*

not by the side of Russia. Also, seeing China in the US ally is quite impossible as the interest of the two countries, and above all the ones of the two leaders, namely Xi Jinping and Trump are conflicting. In fact, Xi Jinping has always been involving his country in the Middle East only to stabilize situation for China's economic interest, as it is well explained by the article of *The Diplomat: China in the Middle East: Past, Present, and Future*.<sup>58</sup> What will be interesting to see from this perspective, is how the economical participation of China in the region will lead to its inevitable political involvement in the Middle East, and above all whether it will keep its neutral characteristic from an international allies' outlook or not.

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<sup>58</sup> "China in the Middle East: Past, Present, and Future.", Lyall Nicholas, *The Diplomat*, 16 Feb. 2019, [thediplomat.com/2019/02/china-in-the-middle-east-past-present-and-future/](https://thediplomat.com/2019/02/china-in-the-middle-east-past-present-and-future/).

### **3. In-depth analysis of the genocide from an international law perspective**

#### **3.1 Close scrutiny of the Yazidi massacre based on the factors that make up a genocide**

The United Nations Security Council made a Report in 2016 regarding the threat that ISIL was posing to the international community, both regarding peace and security. This report was pursuant to the Security Council Resolution 2253 of 2015, where the Security Council recognized the gravity of the rise of ISIL by writing an “initial strategic-level report”. The Yazidis in this Report were only mentioned in one section, the one of how ISIL is financed. Between the various ways in which ISIL gets money to fund its wars, there is the one of the ransom payments from the families of hostages, and many of these families are of Yazidi hostages. In this case, the Yazidi families try to get back their relatives kidnapped by ISIL paying the amount that is requested by the jihadists.<sup>59</sup> This is only to better show how grave the actions undertaken by ISIL are, and how the Security Council recognized them and tries to act to stop them. What it did not do is to intervene with a resolution regarding the Yazidi genocide to protect the minority that was so furiously attacked by ISIL, as also states by Marina Mancini in its paper “*La Furia dell’ISIS contro le minoranze etniche e religiose: il genocidio degli Yazidi*”.<sup>60</sup> The biggest doubt remains if the conditions to amount to a genocide are actually met in the case of the Yazidis too. Of course, for this analysis we have to recall to the definition of genocide already given in the second chapter of this paper.

##### **3.1.1 The Yazidi as a protected group**

Regarding the classification of the Yazidi as a protected group, we need to see the first element of the definition of genocide of Article 2 of the “*Convention on the Prevention and Punishment of the Crime of Genocide*” of 1948.<sup>61</sup> This first element is also described as the mental factor. In fact, the first thing to do is to see how the Yazidi came to be identified as a protected group. It is undoubtful that the Yazidi have the characteristics and thus can be considered a religious group. The definition of a religious group was given in the sentence of the 2<sup>nd</sup> September 1998, in the *Akayesu* case of the International Criminal Tribunal for Rwanda. In this case, Akayesu was accused of being responsible for the genocide for helping the Hutus to locate and kill many Tutsis in 1994, in the district in which he was he was the mayor. Therefore, following the judgement of this case, the definition of religious

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<sup>59</sup> “Report of the Secretary-General on the threat posed by ISIL (Da’esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat”, *United Nations, Security Council*, 29 Jan 2016, <https://undocs.org/S/2016/92>.

<sup>60</sup> “La furia dell’ISIS contro le minoranze etniche e religiose: il genocidio degli Yazidi”, Marina Mancini, *Diritti umani e diritto internazionale, Rivista quadrimestrale* March 2016, pp. 621.

<sup>61</sup> “Prevention and Punishment of the Crime of Genocide.” *OHCHR*, 1948, [www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx](http://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx).



group was given: “*The religious group is one whose members share the same religion, denomination or mode of worship*”.<sup>62</sup> Following this definition and the description of the Yazidi community present in the first chapter, we can say that the Yazidis can be considered a religious group. Adding to this evidence, we also have an article on the *Dabiq*, which is where ISIL publishes articles, brought out after the attack by ISIL on the Sinjar Mount. In this article, ISIL makes public the fact that they attacked the Yazidis because of their religion by calling them “infidels” and to whom it is only given the choice of conversion or death.<sup>63</sup>

The question arises on whether the Yazidis can be identified as an ethnic group or not. The International Law definition of such group was given again in the judgement of the *Akayesu* case of the 2<sup>nd</sup> September 1998: “*an ethnic group is generally defined as a group whose members share a common language or culture*”.<sup>64</sup> Even if it is irrelevant for the classification of the atrocities suffered by the Yazidis as genocide, since they are already classified as a religious group, the discussion about their nature as an ethnic group is really interesting. As we have seen before, the Yazidi themselves do not like to be called Kurdish. Even though, the majority of the Yazidis speak a Kurdish dialect and for this reason many consider them as Kurdish. Therefore, from the international law point of view their categorization of the Yazidis as an ethnic group is doubtful.

### **3.1.2 Physical factor for the classification of genocide**

To categorize the acts of ISIL against the Yazidis as a genocide we also have to consider the second element of the definition of genocide given by Article 2 of the UN Genocide Convention of 1948. This element is the physical factor. As we can see from the description of what ISIL did to the Yazidis in the first chapter, a lot was carried out to try to convert them to the “right Islam”, starting from the division of the families. The men were asked to convert, and if they would not accept, they would get killed. On the other hand, the children and the girls were transferred, and in fact in a matter of days all the Sinjar area was basically uninhabited. This process or routine, if so can be called, was also done later in Kocho right after the Sinjar Mount was emptied, the last village of the Sinjar area where almost 1200 Yazidis lived. The treatment for the Yazidis transferred was different. The children of 12 years old or more were obliged to fight for ISIL, while the women were for the majority sold to the jihadists fighters and a small part was collectively owned by ISIL and distributed to the ISIL’s basis in Syria and Iraq, as also described the Article of the *Dabiq* “The Revival of Slavery Before the

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<sup>62</sup> “The Prosecutor versus Jean-Paul Akayesu”, *ICTR*, 2 Sep 1998, pp. 132

<sup>63</sup> “The Revival of Slavery Before the Hour”, *Dabiq* 2014, n. 4, p. 14, <https://clarionproject.org/docs/islamic-state-isis-magazine-issue-4-the-failed-crusade.pdf>.

<sup>64</sup> “The Prosecutor versus Jean-Paul Akayesu”, *ICTR*, 2 Sep 1998, pp. 132

Hour”.<sup>65</sup> Following this, it can be said that all the acts of Article 2 of the Convention of 1948 were undertaken. A lot of the members of the Yazidi community were killed or were brought to death by making them live with no water, food, and with no medicines. The latter also is considered as killing, as in the “Elements of Crime” of the International Criminal Court on the second page we find a note that says: “*The term “killed” is interchangeable with the term “caused death”*”.<sup>66</sup> Based on what the jihadists did to the Yazidis, also the “*serious bodily or mental harm to members of the group*” described in Article 2 of the Convention were inflicted to them. To satisfy this requirement the harms do not necessarily have to be permanent, but the causes of the harm need to lead to a long-term inability, for the people who suffered it, to live a normal life, as found in the jurisprudence of the ICTY and ICTR. Already the enslavement, and sexual enslavement, of many of the Yazidis women and the treatment and violence they suffered can be considered as a serious bodily and mental harm that causes grave long-term effects.

This degrading treatment suffered by the Yazidi women throughout their enslavement also includes the third action that can amount to genocide, of Article 2 of the Convention of 1948: “*Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*”. The reason for such inclusion is that the situation of sexual slavery added to the negation of any medicine and the small quantity of food given to them lead to conditions that bring the person to be destructed in a physical but also mental way. Also what happened on the Mount can be considered as part of this category of crime of genocide. The fact that ISIL trapped many Yazidis on the Mount, without letting them come down from the Mount to get water, food, medicine and medicaments needed, leads the trapped people to mental and physical destruction.

The division to which the Yazidi families were subjected was also pursued for the purpose of preventing new births of Yazidis. The fact that ISIL wanted to convert the Yazidi men was done because a Yazidi has to be born from two Yazidi parents. Also rape and sexual violence of the women is an intent to control the births of new Yazidis. Both because the father of a child born from a raped Yazidi woman would be a jihadist and thus the son could not be a Yazidi. But also because rape can mentally affect woman to not procreate anymore as it was confirmed by the ICTR in the judgment for the *Akayesu* case, in the section that explains the letter “d” of Article 2 of the Genocide Convention.<sup>67</sup>

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<sup>65</sup> “The Revival of Slavery Before the Hour”, *Dabiq* 2014, n. 4, p. 14, <https://clarionproject.org/docs/islamic-state-isis-magazine-issue-4-the-failed-crusade.pdf>.

<sup>66</sup> “Elements of Crimes”, *International Criminal Court*, 2013, <https://www.icc-cpi.int/resource-library/Documents/ElementsOfCrimesEng.pdf>

<sup>67</sup> “The Prosecutor versus Jean-Paul Akayesu”, *ICTR*, 2 Sep 1998, pp. 131

About the “*Forcibly transferring children of the group to another group*”, it is easy to understand how ISIL undertook such action with Yazidis children by subtracting them from their families to be sold or be trained as ISIL fighters and thus forcing them to stay with a group different from the Yazidi one.

### **3.1.3. The Intent to destroy the Yazidi**

All the factors listed above would not amount to genocide without the *intent* of ISIL to destroy the Yazidis as a religious group, or even ethnic group if we classify it as such. This *intent* can be described as the intent to remove biologically and physically the Yazidi group. This specific intent is also defined as *dolus specialis* and it is what differentiates the crime of genocide from the other crimes internationally recognized. In the case of genocide therefore, the intent means that the aggressor knows that his actions may lead to the annihilation of a group, but it still carries them on.<sup>68</sup> As chosen in the judgement of the *Karadžić* case of the ICTY, and as then confirmed by the ICTR, the intent cannot usually be proven and for this reason, in absence of any proof, “*genocidal intent may be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, or the existence of a plan or policy*”.<sup>69</sup> Of course, this totally reflects what ISIL’s thought was: to physically eliminate the Yazidis. They carried out this intent explicitly, by killing the men who did not want to convert and by transferring the women and children. They knew these actions would make the Yazidi disappear physically. Above all the condition of life under ISIL for boys and girls is aimed at the non-regeneration of the Yazidis and thus at the prevention of the group’s life in a medium-long-term perspective.

Something else that shows this intent to destroy the Yazidi population, is the demolish of their places of worship. The fact that the places of worship of a certain religion are destroyed after the mass killing of the people of such religion, demonstrates the intent to eliminate a religious group. This was stated in the judgment of the *Krstić* case, where the ICTY confirmed this fact and even added that another proof of the intent to get rid of a religious group was the burying of the bodies of the killed people in mass graves, which happened in the case of the Yazidis too. All this required a huge antecedent organization of ISIL to be carried on in such way. Of this huge organization was again

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<sup>68</sup> “The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge Based Approach”, Katherine Goldsmith, *Genocide Studies and Prevention: An International Journal*, International Association of Genocide Scholars, 2010

<sup>69</sup> “Requirements for Inference of Genocidal Intent.” *United Nations / International Residual Mechanism for Criminal Tribunals*, 2013, [cld.irmct.org/notions/show/793/requirements-for-inference-of-genocidal-intent](http://cld.irmct.org/notions/show/793/requirements-for-inference-of-genocidal-intent).

written about in the jihadists' magazine *Dabiq*, in the Article cited above. In the Article it is said that before the attack, the Yazidis were seen as a religious group to be eliminated after a long study of the *Quran* that led to this extreme interpretation. This proof of the huge organization behind such actions, confirm the prior intent to destroy the religious group of the Yazidis.

This intent is also shown quantitatively, by the number of Yazidis targeted by ISIL. In fact, as said also in the first chapter, the Yazidi population present in the aimed Sinjar area was the largest in the world.

### 3.2 The states' obligation of prevention of genocide

As already briefly discussed in the first chapter, the signatories of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 have also the obligation to prevent genocide from happening. This is the first Article of the Genocide Convention that says: "*The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish*".<sup>70</sup> About the geographical area that needs to be considered for the prevention we do not only have Iraq as Sinjar is there, but also Syria, as most of the Yazidi women and children were transferred there.

The biggest debate about the prevention of genocide is whether the obligation to prevent was only for the state in which the genocide happened or for all the signatories of the Convention above cited. The last view of course seems better as it is more inclusive and reflects more the intent of the signatories of the Convention to stop the grave crime of genocide from happening. This view was confirmed by the International Court of Justice in the case of *Bosnia Erzegovina vs. Serbia Montenegro* in 2007, where the Court said: "*Each State thus has to prevent and to punish the crime of genocide is not territorially limited by the Convention*".<sup>71</sup> In the same case, the Court also added something about the success of such prevention. The Court stated that the success is not an obligation, the obligation is that the states need to use all the means possible, necessary, and available to prevent the genocide.

The obligation to prevent genocide arises in a certain period for the states that signed the Genocide Convention. As it is, again, said by the jurisprudence of the ICJ cited above, "*a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed*".

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<sup>70</sup> "Prevention and Punishment of the Crime of Genocide." *OHCHR*, 1948, [www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx](http://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx).

<sup>71</sup> "Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Erzegovina vs. Serbia Montenegro)." *International Court of Justice*, 2007, [www.icj-cij.org/files/case-related/91/091-20070226-JUD-01-00-EN.pdf](http://www.icj-cij.org/files/case-related/91/091-20070226-JUD-01-00-EN.pdf).

<sup>72</sup> The obligation for the prevention of genocide starts not only because of the existence of a serious risk as said above, but also when one or more acts of genocide start. This obligation endures for the whole duration of the genocide. This is stated in Article 14 paragraph 3 of the “*Responsibility of States for Internationally Wrongful Acts*”.<sup>73</sup> Therefore, the State liability for a non-prevention of the crime of genocide starts when, first of all, there is no prevention at all; when the prevention does not last for the whole duration of the genocide; but also when not all means available to the state are used to prevent the genocide. The means have to be also calculated based on the level of influence that the State can pose on the genocide committer/s. The larger such level the wider the action that the State can undertake. The influence level is based on the geographical distance from the State and the committers, and on the relationship level, of any type, that the State that wants to intervene has with the committers.

After this explanation of what prevention of genocide comprehends, and how the State becomes liable for the non-prevention of genocide, we arrive at analyzing the specific case of the Yazidi genocide. The two States that were and are geographically able firstly to do “prevention”, are Iraq and Syria.

Iraq is a signatory of the Genocide Convention of 1948, from 1959. The tensions between ISIL and the Iraqi government started from 2012, when the conflicts on the ground started between the two forces. But got even more tense when ISIL occupied the Governorate of Ninawa in June 2014, the second biggest province of Iraq that include the area of Sinjar. It is interesting to examine this occupation as ISIL was positively welcomed in the province mostly occupied by Sunnis. For this reason, ISIL, for almost one year, had no problems in the area also because the Iraqi government was unable to get the province back. Only at the beginning of 2016 ISIL started to have some issues because of the successful intervention of the Iraqi government backed up by its international alliances. Furthermore, the occupation of such province led to the occupation of its capital of it some days later: the city of Mosul, which is also Iraq’s second largest city.<sup>74</sup> The occupation of Mosul is a famous episode of the rise of ISIL in Iraq as it caused a “*mass exodus of as many as 500000 people*”, as said by the UNAMI Report of August 2016. In addition, the Report added that after Mosul the fight between ISIL and the Iraqi with the Kurdish Peshmerga forces continued. These facts should have been enough to forecast ISIL’s arrival in the area of Sinjar and the consequent abuses and rapes. Above all because is what happened after all the conquests of cities by the jihadist fighters. This

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<sup>72</sup> *Ibid.* par. 431

<sup>73</sup> “Responsibility of States for Internationally Wrongful Acts”, *United Nations*, 2001, [http://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)

<sup>74</sup> “Iraq Current Political Situation and the Possibility of ISIS Reappearance”, Munqith Dagher, *ISPI*, Sep 2018, [https://www.ispionline.it/sites/default/files/eu-18-sept.final\\_.pdf](https://www.ispionline.it/sites/default/files/eu-18-sept.final_.pdf)

situation was also aggravated by the Peshmerga forces that left the Sinjar Mount when they noticed that ISIL was coming the night of the 2<sup>nd</sup> of August, without even advising the Yazidis. This last detail is the detail that actually condemns the Kurdish forces of non-prevention of the act of genocide: they did not give notice to the Yazidi minority of anything that could have happened, not even of the imminent arrival of ISIL. But we cannot retain liable the State of Kurdistan as it is not yet considered a State under International Law, and thus we need to analyze only how the two countries of Iraq and Syria reacted.

After some days from the take of Sinjar by ISIL, the Iraqi government, having seen that the situation was worsening, sent a letter to the UN Security Council calling for international help. And as already stated in the second chapter, the only country that helped the Yazidis trapped on the Sinjar Mount was the United States.

On the other side of the west border of Iraq, also the Syrian government has been directly involved in a conflict against ISIL. The clashes between the jihadists and the Syrian government started because of the civil war that plagues Syria since 2011, where al-Assad's government is attacked by various insurrectional groups and thus also ISIL.<sup>75</sup>

In the case of Syria, the signature of the Genocide Convention of 1948 came even before the one of Iraq, namely in 1955. Therefore, also Syria had the duty to prevent the act of genocide from happening but again, as is the case for Iraq, we cannot retain the State liable for the non-intervention and thus the non-prevention. Above all because in this specific case, the intervention to prevent the genocide from happening might have led to a real war between ISIL and the two states, creating more casualties than there were after the genocide. Furthermore, the Syrian government's choice was also driven by the fact that they were very militarily busy on the national front. In fact, they were already fighting a civil war in their country, concentrating all their soldiers there, and did not have the means available to support another war on the Iraq border against ISIL.

As largely spoken about previously, the only country that actively did something is the United States. The US fully adopted the Genocide Convention only in 1988 after a long discussion with the Senate about the ratification of the Convention. This debate ended in 1986, when the Senate accepted to ratify the Convention. The Convention was implemented in 1988 as the Genocide convention is a non-self-executing treaty and thus needs an implementation act, that in the case of the US is the "*Proxmire Act*" signed by Reagan in 1988.<sup>76</sup>

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<sup>75</sup> "La furia dell'ISIS contro le minoranze etniche e religiose: il genocidio degli Yazidi", Marina Mancini, *Diritti umani e diritto internazionale, Rivista quadrimestrale* March 2016, pp. 638.

<sup>76</sup> "On This Day: U.S. Fully Adopts Genocide Convention." Backes Emily, *The Enough Project*, 4 Nov. 2010, [enoughproject.org/blog/day-us-ratifies-genocide-convention](http://enoughproject.org/blog/day-us-ratifies-genocide-convention).

The US was actively involved in the prevention of genocide of the Yazidis basically from the beginning. As was said before, Obama was very keen to prevent such genocide from happening, as the words used in his Statement at the White House the 7<sup>th</sup> of August 2014 after the request of help by Iraq show: *“I believe the United States of America cannot turn a blind eye. We can act, carefully and responsibly, to prevent a potential act of genocide. That’s what we’re doing on that mountain”*.

<sup>77</sup> For this purpose, the US was very important for the humanitarian aid from the planes that was offered to the Yazidis trapped on the Mount. Also the UK, France and Australia took part in the aids, even though this always after the US.

But Obama was not only very keen to prevent genocide from happening, but also to eliminate ISIL. In fact, the US, as previously said, created a coalition on the 10<sup>th</sup> of September of 2014, that called “the Global Coalition to defeat ISIL”. The strategy of the Coalition to defeat ISIL was made of various aims, as Obama clearly defines in its statement the 10<sup>th</sup> September of 2014: *“First, we will conduct a systematic campaign of airstrikes against these terrorists; Second, we will increase our support to forces fighting these terrorists on the ground; Third, we will continue to draw on our substantial counterterrorism capabilities to prevent ISIL attacks ... and stem the flow of foreign fighters into and out of the Middle East; Fourth, we will continue to provide humanitarian assistance to innocent civilians who have been displaced by this terrorist organization”*.<sup>78</sup>

As of now, the Coalition is made of 79 member States, and Italy is one of them. This US led coalition, was and is very important to limit the rise of ISIL in Iraq and Syria and prevent it from happening again. This because the Coalition did not only attack ISIL physically (militarily), but also economically aiming at its “financing and economic infrastructure”, as the Coalition’s website mentions.<sup>79</sup> Worth of stating is the efficiency of the coalition in the aerial support to the Kurdish forces of the PKK, YPG and Peshmerga to gain back the area of Sinjar in 2015.

The biggest issue of this coalition was and is the delicate position of one of its member States: Turkey, who is a signatory of the Genocide Convention from 1950. As described before, its relationship with the Kurds started to worsen again from 2015 when there was the PKK’s first terroristic attack in the capital Ankara in many years. From then onwards, the attacks started to increase amounting to three only in Ankara in one-year time. These tensions got then reflected also in the actions that the country undertook to limit ISIL’s advance. In fact, Turkey used its militarily forces against the ISIL forces that were in Syria closed to the Turkish borders. It acted this way both for a national security reason

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<sup>77</sup> “Statement by the President.” National Archives and Records Administration, 7<sup>th</sup> Aug 2014, [obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president](http://obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president).

<sup>78</sup> “Statement by the President on ISIL.” *National Archives and Records Administration*, 10<sup>th</sup> Sep 2014, [obamawhitehouse.archives.gov/the-press-office/2014/09/10/statement-president-isil-1](http://obamawhitehouse.archives.gov/the-press-office/2014/09/10/statement-president-isil-1).

<sup>79</sup> “The Global Coalition Against Daesh”, *The Global Coalition*, Sep 2014, <https://theglobalcoalition.org/en/>

and for the objective of the Coalition of which it is part. But also because if Turkey would not have done it, the Kurdish forces would have, gaining more force and credibility, and also getting closer to Turkey.

From the 30<sup>th</sup> of September of 2015, as also emphasized by the above-cited article of Roberta Mancini,<sup>80</sup> Russia has been fighting alongside al-Assad's government. Also Russia has the obligation of prevention of genocide, as it has accessed the Genocide Convention in 1954. But Putin's country is not part of the US led Coalition for obvious political reasons. To this withstanding, it has its kind of Coalition as mentioned before, since it created a *joint information center*, with basis in Baghdad to "*coordinate anti-ISIL operations*". Russia's main aid was through aerial bombardments with the aim of counterattacking all the forces fighting against the Assad's regime, primarily ISIL. The interests behind such help of Russia to al-Assad to keep the power were widely explained in chapter two. Nevertheless, the Russian intervention helped to free a lot of cities occupied by ISIL, like the historic city of Palmira at the beginning of 2016.

### **3.3 The United Nations Security Council Resolutions passed to stop the rise of ISIL**

Always regarding the duty to prevent genocide, the Security Council, led by its member states, carried out some actions to respect such obligation through its Resolutions. These Resolutions aimed above all at preventing ISIL to commit any action that would violate international human rights law, but also to block ISIL from functioning correctly. The first Resolution, n. 2170, adopted by the Security Council against them was on August 15<sup>th</sup> 2014, just some days after ISIL took Sinjar. This Resolution condemns ISIL for its terroristic actions and for its violations of international human rights law and international law in general.<sup>81</sup> This is the Resolution that sets the general aim of the Security Council that then gets more specific over this topic in successive Resolutions. Furthermore, in the case of the Resolution n. 2170, we can see how the US led Global Coalition to defeat ISIL is keen in respecting what the Resolution said on how to act. In fact, this Resolution states that one way to stop them is by hitting its economy, restricting its funds by freezing any of them or that may be related to them. On the other hand, from the physical point of view instead, the Resolution focuses on hitting them on their moving abilities from a state to another. This has to be carried out by the UN Member States, following the Security Council, by banning their members' ability to enter and flow, above all the foreign fighters. But also by preventing "*the supply of weapons for terrorists and financing that*

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<sup>80</sup> La furia dell'ISIS contro le minoranze etniche e religiose: il genocidio degli Yazidi", Marina Mancini, Diritti umani e diritto internazionale, Rivista quadrimestrale" March 2016, pp. 640.

<sup>81</sup> "Resolution 2170", Security Council, United Nations, 15th Aug 2014, <http://unscr.com/en/resolutions/doc/2170>



would support terrorists”.<sup>82</sup> Therefore, the Security Council recalls on the obligation of the Member States to respect the arms embargo imposed to ISIL with the previous Resolution n. 2161.<sup>83</sup>

But the Resolution n. 2170 only set the stage for successive Resolutions that not only reinforced the means to stop ISIL enlisted in it, but which even added on them.

The first Resolution that focused on a specific intent of the Resolution n. 2170, is the n. 2178. The latter was done just after some days from the former: the 24<sup>th</sup> of September of 2014. The Resolution n. 2178 focused on the foreign fighters, which make up a big part of the jihadist fighters of ISIL, and the terrorists’ movement between the countries in general. Paragraph 5 of the cited Resolution is the one that “*decides*” that the Member States need to “*prevent and suppress the recruiting, organizing, transporting or equipping*” of the foreign fighters. It also “*urges*” the sharing of information between the Member States regarding the movements of the terrorists, as said in paragraph 3. In the second paragraph instead, the Resolution “*reaffirms*” what was already said in the Resolution n. 2170: “*all States shall prevent the movement of terrorists or terrorist groups by effective border control*”.<sup>84</sup>

On the other hand, Resolution n. 2199 of the 12<sup>th</sup> of February of 2015 took care of adding on the focus of the Resolution n. 2170 on limiting ISIL also from the economic side. In fact, the first paragraph of the Resolution n. 2199 “*condemns*” the trading, even of indirect, of oil to any terrorist group, specifically ISIL, ANF (al-Nusra Front), and al-Qaida associates. The following paragraphs also talk about the assets of such terroristic groups that need to be freezed and above all that they do not have to be made available to the individuals affiliated with them. In this Resolution, Paragraph 12 also refers to the 1267/1989 Committee. This Security Council Committee regards ISIL, al-Qaida and all individuals, entities or undertakings related to them. In particular, the Committee supervises the Security Council measures taken against the terrorist organizations and associates. In paragraph 12 of the Resolution, the Committee is cited because it must be informed within 30 days by the Member States about the entrance in the territory of the Member State of any material transferred to those terrorist organizations. In addition, paragraph 12 also “*calls upon*” the Member States to present to the Committee any result of the cases against the people or undertakings liable for such actions. It is interesting to notice that in this Resolution a small section is present regarding the Cultural Heritage (paragraph 15, 16, 17). Since ISIL and the al-Nusra Front are famous for destroying a lot of cultural sites, the Security Council with the Resolution n. 2199 wanted to “*condemn*” such actions too. This measure was undertaken also because these terrorist organizations are profiting by raiding these sites

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<sup>82</sup> *Ibid*, par. 8

<sup>83</sup> “Resolution 2161”, *Security Council, United Nations*, 17 Jun 2014, [https://undocs.org/S/RES/2161\(2014\)](https://undocs.org/S/RES/2161(2014)), par. 1c.

<sup>84</sup> “Resolution 2178”, *Security Council, United Nations*, 24 Sep 2014, [https://undocs.org/S/RES/2178\(2014\)](https://undocs.org/S/RES/2178(2014)), par. 2, 3, 5.

and then selling a lot of the objects taken. Thus, the Resolution confirms the obligation to prevent these raids from happening and take the appropriate measures against them, as they may be considered as actions that may show the intent to eliminate a national, racial, ethnical or religious group and thus may refer to acts of genocide.<sup>85</sup>

On the 21<sup>st</sup> September of 2017, the Security Council reaches an important landmark to give justice to the victims of ISIL's atrocities with the Resolution n. 2379. As also the United States Ambassador to the United Nations, Nikki Haley, mentioned, the Investigative Team created by the Resolution, as briefly said in the second chapter, is of pivotal importance.<sup>86</sup> Above all because it contributes substantially to hold accountable ISIL for the violations that it committed against the Iraqi people, and thus the Yazidis too as mentioned by the Ambassador herself. The Team provides an "*indispensable record of the scope and scale of its (ISIL's) criminality*", collaborating with its partners and the Iraqi people.<sup>87</sup> This Investigative Team, as written in paragraph 2 of the Resolution, has been created by the Secretary-General following the request of the Security Council, and it is headed by a Special Adviser. This Adviser also fosters the liability of ISIL for the crimes against humanity, war crimes and even genocide committed (paragraph 3). The Resolution also emphasizes on the fact that the expertise of the Investigative Team should provide appropriate aid to the Iraqi authorities by sharing knowledge, and technical or judicial assistance where needed. The work of this Team may be also requested by other States as stated in paragraph 11 of the Resolution. In fact, if another Member State has been the site for crimes against humanity, war crimes or genocide, this State may request the Team's help to find proves of these acts, after the approval of such request by the Security Council.<sup>88</sup>

### **3.4. The United Nations Committees observations**

#### **3.4.1 The Human Rights Committee**

The *Human Rights Committee* was established in 1976 and checks the implementation of the "*International Covenant on Civil and Political Rights*" of 1966. This Committee wrote observations on the fifth periodic report of Iraq and these concluding observations were published on the 3<sup>rd</sup> December of 2015, a few months after the start of the genocide. In this document, there is a small,

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<sup>85</sup> "Resolution 2199", *Security Council, United Nations*, 12 Feb 2015, [https://undocs.org/S/RES/2199\(2015\)](https://undocs.org/S/RES/2199(2015)), par. 12, 15, 16, 17.

<sup>86</sup> "Explanation of Vote Following the Adoption of UN Security Council Resolution 2379 on Accountability for ISIS Atrocities." *U.S. Department of State*, 21 Sept. 2017, <https://usun.state.gov/remarks/7988>.

<sup>87</sup> *Ibid.*

<sup>88</sup> "Resolution 2379", *Security Council, United Nations*, 21 Sep 2017, <http://unscr.com/en/resolutions/doc/2379>, par. 2, 3, 8, 9, 11.

but very significant, section that is dedicated to “counter-terrorism measures”.<sup>89</sup> In this section the Human Rights Committee wants the government of Iraq to adopt new counter-terrorism measures (paragraph 10). These new measures should not include the “*mandatory imposition of the death penalty*” and should be totally in line with the obligations that the Covenant obliges the Member States to follow. The Committee says this above all because the Iraqi government still made use of the Counter-Terrorism Act of 2005, as emphasized in paragraph 9. This Act still considered a very broad definition of terrorism and imposed the mandatory imposition of death penalty on many actions that were considered as terrorism. Adding to these, the Committee was also worried about the wide use of this Act for children, and wives who did not report the acts of terrorism committed by their husbands.<sup>90</sup>

These observations by the Human Rights Committee also include a section titled “*Allegations of human rights violations in the context of the ongoing armed conflict*”, which refers to the violation of international law done by ISIL and its affiliates.<sup>91</sup> In paragraph 19, it says that part of these violations are also genocide, of the Yazidis in 2014 following the report of the Office of the United Nations High Commissioner for Human Rights,<sup>92</sup> war crimes and crime against humanity. The Committee in this case asks to the State of Iraq to make sure that who commits the violations are adequately sentenced. But also that the State should try to prevent this from happening and should give the appropriate support above all to the children and women released by ISIL. Of course, many of these women and children would be Yazidi kidnapped by ISIL after it took Sinjar.

### **3.4.2 The Committee on the Convention on the Elimination of Discrimination against Women**

The *Committee on the Convention on the Elimination of Discrimination against Women* checks the implementation of the “*Convention on the Elimination of All Forms of Discrimination against Women*” of 1979. This Committee is very important for the aftermath of the Yazidi Genocide as many of the victims that are still victim of it or have been freed by ISIL are women. In fact, The Committee made some concluding observations in June 2016 on the combined fourth and sixth Iraqi periodic reports to the Human Right Council. In this document, under the “*Protection of women’s physical health and economic security, and respect for their human rights*” section,<sup>93</sup> it is said that

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<sup>89</sup> “Concluding observations on the fifth periodic report of Iraq”, *Human Rights Committee, United Nations*, 3 Dec 2015, p. 2,3.

<sup>90</sup> *Ibid*, par. 9,10.

<sup>91</sup> *Ibid*, p. 4, 5.

<sup>92</sup> “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” *UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS*, 13 Marzo 2015.

<sup>93</sup> “Concluding observations on the combined fourth and sixth periodic reports of Iraq”, *Committee on the Convention on the Elimination of Discrimination against Women, United Nations*, 1<sup>st</sup> Jun 2016, p. 3, 4.

*“transitional justice institutions have been established to address the effects of wars, terrorist acts and military errors”*. In this way, also the Yazidi women should be protected, and in fact in the following point they are addressed explicitly. It is said that the Yazidi women who were freed after having suffered sexual violence by the jihadist fighters of ISIL, could be aided by a social protection network free from controls.

### **3.4.3 Committee on the Rights of the Child**

The *Committee on the Rights of the Child* notes how the conflictual situation in Iraq for children was not congenial, and how it was even aggravated with the rise of terroristic attacks by ISIL. This Committee has been created to control the application of the “*Convention on the Rights of the Child*” of 1989. The Committee wrote this in the “*Concluding observations on the combined second to fourth periodic reports of Iraq*” of March 2015, just after some months from the start of the genocide. In the documents, it is also emphasized how the situation for children has been worsened by committing various violations of children’s rights that prevent the obligations of the convention to be applied correctly.<sup>94</sup>

ISIL is considered widely responsible for many of the violations of the principles of the Convention on the Rights of the Child and the Committee recognizes this recalling to ISIL’s actions to explain the violations. For example, in the section of the document dedicated to the “*Right to life, survival and development*” in paragraph 23, the Committee lists violations done by ISIL against these rights.<sup>95</sup> The mass killings of Yazidi children, the killings of children because of ISIL’s fights, children forced to fight for ISIL, children dead because of their induced dehydration by ISIL, and children victims of abuses, are all huge violations of the three rights above and General Principles, enlisted in Article 6 of the already cited Convention.

Another set of Rights for which the Committee on the Rights of the child makes some observations is the one of “*freedom of thought, conscience, and religion*” which refers back to Article 14 of the Convention on the Rights of the Child. In paragraph 34, it is said that the children that are from a religious minority often face discriminations. Of course, of this category are a part also the Yazidi children that were captured by ISIL who to who was banned to worship their religion and to believe in what they wanted to. Another point worrying the Committee is how the children of parents

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<sup>94</sup> “Concluding observations on the combined second to fourth periodic reports of Iraq”, *Committee on the Rights of the Child, United Nations*, 3<sup>rd</sup> Mar 2015, p. 2, par. 6.

<sup>95</sup> *Ibid*, p. 5, par. 24.

who converted to Islam were unable to then convert back to their own religion. Of course, this also works for the Yazidi children.<sup>96</sup>

In addition to these rights, there is also the wide (physical) violence done by ISIL against the Yazidi children. The Commission does not talk about it explicitly in the section dedicated to “*torture and other cruel or degrading treatment or punishment*” and talks only about the violence committed by the police against children. But at the same time in paragraph 37, it gives some recommendation to the government of Iraq that can apply also to the children that were subject to violence from ISIL. For example, the one of carrying out investigations for all cases of violence that comprehend the matter of the section. The Commission also suggested to install a complaint mechanism for children and to provide child victims with the adequate help, both psychological and physical.<sup>97</sup>

In the “*Concluding observations on the combined second to fourth periodic reports of Iraq*” of March 2015, ISIL’s grave violations are also mentioned in the section regarding the sexual slavery. As described in the first chapter, ISIL took the Yazidi girls, but also boys, and sold them to its fighters who then used them as sexual slaves and that might have also been sold again. The Committee here stresses the importance for Iraq to rescue these children and to provide them with the adequate help.<sup>98</sup>

ISIL is also responsible for not letting the children living in their family environment. This has been also one of the signs of ISIL’s intent to eliminate the Yazidi, as they made the children live in an environment different from the one of their real culture. Of course, this can also be the cause of the death of the parents as a manner to let them grow differently and not following their culture.<sup>99</sup> Furthermore, these children that ISIL obliged to live in a different family environment from theirs, which is strongly related to the fact that they are children from a specific minority which wants to be eliminated. The Committee on the Rights of the Child talks about this and urges for Iraq to take measures to solve this in the section “*Children belonging to minority or indigenous groups*”. In paragraph 76, the Commission talks on how ISIL through torture, rape or slavery forced children to convert to the “right Islam” and explaining how the target of the jihadists were in fact children from minorities.<sup>100</sup>

Problems related to children have also been seen from a more specific point of view by the Committee on the Rights of the Child as it also wrote concluding observations on the report of Iraq “*under Article 8, paragraph 1, of the Optional Protocol to the Conventions on the Rights of the Child*

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<sup>96</sup> “Concluding observations on the combined second to fourth periodic reports of Iraq”, *Committee on the Rights of the Child, United Nations*, 3<sup>rd</sup> Mar 2015, p. 8, par. 34.

<sup>97</sup> *Ibid*, p. 9, par. 37.

<sup>98</sup> *Ibid*, p. 10, par. 44, 45.

<sup>99</sup> *Ibid*, p. 12, par. 52, 53.

<sup>100</sup> *Ibid*, p. 18, par. 76.

*on the involvement of children in armed conflicts*” adopted in January 2015 by the Committee.<sup>101</sup> In this document, the Committee speaks again about the sexual violence carried out by ISIL against children, but also talks about the “*Recruitment and use of children by non-State armed groups*”, like ISIL. This paragraph, 31, also focus on the point that children as young as 12 are trained to fight for ISIL, but also that some are used as informants, human shields, or suicide bombers. Of course, the Committee wants Iraq to “*eliminate all forms of recruitment*” of children and try to not make any attacks when they are used as shield.<sup>102</sup>

About the child recruitment, there is a specific section that talks about the prevention for such recruitment. The Committee created this as the Iraqi government does not have any protection mechanism against it. The commission wants the Iraqi government to focus more on this problem and to do more campaigns on it to inform the general public about this danger. But also to accept technical assistance from “Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children’s Fund (UNICEF)” to help Iraq to get on the right track to solve this problem.<sup>103</sup>

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<sup>101</sup> “Concluding observations on the report submitted by Iraq under Article 8, paragraph 1, of the Optional Protocol to the Conventions on the Rights of the Child on the involvement of children in armed conflicts”, *Committee on the Rights of the Child, United Nations*, 5 March 2015.

<sup>102</sup> *Ibid*, p. 6, par. 31, 32.

<sup>103</sup> *Ibid*, p. 4, par 25, 26.

## 4. Conclusion

The Yazidi community is a Kurdish minority that established itself mainly on the Syrian-Kurdish border. Even if they are considered to be Kurdish for the language they speak, the Yazidi people do not like to be identified as such and feel independent from them, both culturally and politically.

As I explained in the first chapter, the history of these people is characterized by the many persecutions that they have been subjected to. Most of them have been done because of religion. In fact, they are known from the Islamic side, to believe in the “evil Islam”. They are accused for such “wrong” belief because the main divinity the Yazidis believe in, *Malak Taus*, is considered to be very similar to the conception of Satan, with the only difference that he was forgiven by God and thus in paradise now.

The firsts persecutions can be traced back to the Ottoman Empire two or three centuries ago. Then, they were also one of the populations hit by the “Campaign of Arabization” done by Saddam Hussein who wanted to change the lifestyle of the Iraqi people. But of course, the gravest massacre against the Yazidis is the one of ISIL, which started in 2014. In fact, the number of people massacred, killed, or enslaved is what stands out the most from it.

The main reason for this genocide committed by ISIL that prolonged in time from 2014, is the one to converting the Yazidis to the “true Islam”, but also to increase their power, gaining more territory in Iraq, and thus influence on the Iraqi people.

The international actors have had a variety of different reactions, as I analyzed in the second chapter. The first body of the United Nations which provided the Yazidis with help is the UN Refugee Agency. The Agency, led by the High Commissioner for Refugees, helped the Yazidis which arrived in Syria and in Kurdistan. Surprisingly, the immediate reaction of the High Commissioner for Refugees, was not replicated by the UN High Commissioner for Human Rights.

After the Agency, the help of the United States was also very important through aerial aid (food and water) and bombardments, which arrived after the call for help from the Iraqi government which was unable to safeguard and to then defend its citizens. The Yazidis in fact are protected by Iraq and enjoy the safe rights of the other Iraqi people, as stated in the analysis of the Iraqi Constitution of the first chapter. Together with the US, also other countries participated in the aerial aid such as, Iraq, Australia, France, and England.

The other countries like Russia for example, who have a huge geopolitical interest in the area (as China does too), did not take immediate actions to prevent the genocide from happening. But it only formed a *joint information group* in Baghdad in 2015 with Iraq, Iran and Syria.

The most important opinion and answer on and to the genocide is the one of the Commission of Inquiry on Syria. To prove this, there is the Report written by the Commission entirely dedicated to ISIL's atrocities suffered by the Yazidis titled: "*They Came to Destroy: ISIL crimes against the Yazidis*". This Report recognized how the ISIL's actions amounted to genocide, but it was still not enough for the Commission to receive the help of the Human Rights Council. In this case, the help of the Council is needed by the Commission as its statute does not allow it to start the investigation needed to see if ISIL's acts can concretely be defined as acts of genocide, as strongly underlined by the words of the Commission's member Carla del Ponte.

The Nobel Peace Prize winner Nadia Murad said: "*Isis's terror rained down on all of us. It was not a slow drizzle but a thunderous storm that moved through my community, destroying everything. Make no mistake: Isis planned to exterminate the Yazidis. Isis planned a genocide.*"<sup>104</sup>

Following her words, throughout the chapters and the conclusion of this thesis, the term *genocide* has not been used unreasonably. In fact, as showed briefly in the second chapter, and then in a more detailed way in the third chapter, the actions undertaken by ISIL against the Yazidis may not only be classified as crimes against humanity or war crimes, but even amount to a crime of genocide. And what I wanted to try to provide with the in-depth analysis of the case of the Yazidi massacre by ISIL, was just this: that the massacre can be considered a genocide from an international law perspective. The requirements for an action, or actions, to be classifiable as genocide are many and the included in the definition of genocide present in Article 2 of the Genocide Convention of 1948. The *dolus specialis* is the determining one, for which the killing of people has to be the effect of an intent to destroy, even partially, the members of one of the groups enlisted in Article 2. From this point of view, the Yazidis can definitely be considered a religious group, as they meet the definition of such group written in the *Akayesu* case by the International Criminal Tribunal of Rwanda. The Yazidis may also meet the definition of ethnic group, but the issue is whether or not they are considered Kurdish or an independent ethnicity, as described before.

Meeting the definition of religion group, the other criteria is the one of the ISIL's *intent* to destroy the Yazidis. As the intent cannot be proven, the actions undertaken by ISIL in this case need to be put under study to find the intent (*Karadžić* case). And the investigation, left no doubt that what ISIL did was the result of a very well-planned tactic, and that was aimed at removing the believers of the "evil Islam" through killing, forced conversion, or preventing their reproduction, and thus proved that there was defined intent.

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<sup>104</sup> "Nadia Murad: I Survived Isis. Now I Want to Rebuild the Yazidi Homeland." *Financial Times*, 6 Dec. 2018, <https://www.ft.com/content/f28c4184-f823-11e8-af46-2022a0b02a6c>.



Other than this, according to the definition of genocide of Article 2 of the Genocide Convention, also a physical factor should be satisfied to categorize the atrocities suffered by the Yazidis as a genocide by ISIL. The physical factor is based on the actions that are recognized by the definition to prove and meet the conditions of genocide. Of course, this factor is undoubtedly satisfied in this case, where the many actions to prevent the new born of Yazidis and their widespread, and in some cases the systematic, killing, prove this.

After this brief recap of the findings of the analysis, the Yazidi massacre by ISIL can be considered a genocide in all respects. Thus, the obligation to prevent the genocide rises and continues for the whole duration of such crime against the population who suffers it. From this point of view, the ones who cannot be blamed for the non-prevention are Iraq, Syria and the United States. Other states can be retained liable, based on the geographical and relationship factor explained in the third chapter, for their non-intervention. For example, one of these countries is Turkey which, even if being part of the US-led Coalition to defeat ISIL, it has not taken part of any actions to defend the Yazidis but only to fight ISIL based on its interests to not give more power to the Kurdish forces.

Nonetheless, even if only few states have intervened to prevent the genocide from happening or continuing, the genocide has been recognized by many states. Surprisingly though, the UN Security Council has not yet recognized ISIL's attack on the Yazidi people as a genocide. The investigation team instituted and approved by the Security Council in September 2017 in fact, started its work only one year after, in August 2018, even if it is getting "*into full gear*" <sup>105</sup> in 2019. The investigation team was set up following the Resolution n. 2379 of the 21<sup>st</sup> September 2017 after a yearlong negotiation with the Iraqi government, the most hit by ISIL's atrocities. This team aims at collecting data and information regarding the actions undertaken by ISIL that show how they committed crimes against humanity, war crimes, but also genocide. Therefore, the main aim of the investigative team is to provide the apposite information to make the people who committed the atrocities subjected to law. For this reason, the gathered material is primarily used by the Iraqi authorities who subsequently choose, on a case-by-case basis together with the UN, as the agreement states, if they want to share the evidence with international courts.

The Yazidis, and the ones who supported them for their cause, have requested an investigation regarding the atrocities committed by ISIL against them for a long time. In fact, many of them were even bothered by the delay of the international authorities to provide an answer to their request and

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<sup>105</sup> "U.N. Investigation Delves into Islamic State's Crimes against Yazidis." *Thomson Reuters Foundation, News.trust.org*, [news.trust.org/item/20181212233733-etcx4](https://news.trust.org/item/20181212233733-etcx4).

to create an investigative team that could give the Yazidis the justice they deserve for what ISIL did to them.

## **5. Bibliography, Index of Documents and Sitography**

### **5.1 Bibliography**

Goldsmith Katherine, "*The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach*," *Genocide Studies and Prevention: An International Journal*: Vol. 5: Iss. 3: Article 3, 2010

Kubalek Petr, "*End of Islam, End of Time. An Eschatological Reading of Yezidism, Death, Graves and the Hereafter in Islam: Muslim Perceptions of the Last Things During the Middle Ages and Today*", John Benjamins Publishing Company, 2015

Maisel Sebastian. "*Yezidis in Syria: Identity Building among a Double Minority*". Lexington Books, 2018

Francesco D'Alema, "*The Evolution of Turkey's Syria Policy*", Istituto Affari Internazionali, October 2017

### **5.2 Index of the Documents**

Convention on the Prevention and Punishment of the Crime of Genocide, *OHCHR, United Nations*, 1948

"The Prosecutor versus Jean-Paul Akayesu", *International Criminal Tribunal for Rwanda*, 2 September 1998

"Responsibility of States for Internationally Wrongful Acts", *United Nations*, 2001

Constitution of Iraq, 2005

"Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Erzegovina vs. Serbia Montenegro)." *International Court of Justice*, 26 February 2007

Mandate of the "Independent International Commission of Inquiry on the Syrian Arab Republic." *OHCHR*, 22 August 2011

"Requirements for Inference of Genocidal Intent." *United Nations | International Residual Mechanism for Criminal Tribunals*, 11 July 2013

"Elements of Crimes", *International Criminal Court*, 2013

"USCIRF Letter to President Obama on Iraq." *United States Commission on International Religious Freedom*, 18 February 2014

"Resolution 2161", *Security Council, United Nations*, 17 June 2014

“Statement by the President.” *National Archives and Records Administration*, 7 August 2014

“UNHCR Steps up Aid as Yazidis Stream into Syria from Iraq's Mount Sinjar.” *UNHCR*, United Nations, 14 August 2014

“Resolution 2170”, *Security Council*, United Nations, 15 August 2014

“Statement by the President on ISIL.” *National Archives and Records Administration*, 10 September 2014

“Resolution 2178”, *Security Council*, United Nations, 24 September 2014

“Report of the Independent International Commission of Inquiry on the Syrian Arab Republic. Rule of Terror: Living under ISIS in Syria”, *United Nations, Human Rights Council*, 19 November 2014

“The Revival of Slavery Before the Hour”, *Dabiq* 2014

“Resolution 2199”, *Security Council*, United Nations, 12 February 2015

“Concluding observations on the combined second to fourth periodic reports of Iraq”, *Committee on the Rights of the Child*, United Nations, 3 March 2015

“Concluding observations on the report submitted by Iraq under Article 8, paragraph 1, of the Optional Protocol to the Conventions on the Rights of the Child on the involvement of children in armed conflicts”, *Committee on the Rights of the Child*, United Nations, 5 March 2015

“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” *UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS*, 13 March 2015

<sup>1</sup> “Iraq Situation Emergency Response: UNHCR Supplementary Appeal 2015 (Revised 17 March 2015).” *UNHCR*, United Nations, 17 March 2015

“Concluding observations on the fifth periodic report of Iraq”, *Human Rights Committee*, United Nations, 3 December 2015

“Report of the Secretary-General on the threat posed by ISIL (Da’esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat”, *United Nations, Security Council*, 29 January 2016

“La furia dell'ISIS contro le minoranze etniche e religiose: il genocidio degli Yazidi”, Marina Mancini, *Diritti umani e diritto internazionale*, Rivista quadrimestrale" March 2016

“Testimony of USCIRF Chairman Robert P. George on ‘Confronting the Genocide of Religious Minorities: A Way Forward.’” *United States Commission on International Religious Freedom*, 21 April 2016

“Concluding observations on the combined fourth and sixth periodic reports of Iraq”, *Committee on the Convention on the Elimination of Discrimination against Women, United Nations*, 1 June 2016

“‘They came to destroy’: ISIS crime against the Yazidis”, *United Nations, Human Rights Council*, 15 June 2016

“Genocidio Degli Yazidi: ‘Le Prove Ci Sono, Gli Stati Agiscano.’” Gianni, Elisa, *Festival Dei Diritti Umani*, 22 June 2016

“Statement by the Commission of Inquiry on Syria on the Second Anniversary of 3 August 2014 Attack by ISIS of the Yazidis.” *OHCHR*, 3 August 2016

“A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL.” *United Nations High Commissioner for Human Rights, UNAMI*, 15 August 2016.

“Commission of Inquiry on Syria Calls for Justice on the Occasion of the Third Anniversary of ISIL’s Attack on the Yazidis”, *OHCHR*, 3 August 2017

“Explanation of Vote Following the Adoption of UN Security Council Resolution 2379 on Accountability for ISIS Atrocities.” *U.S. Department of State*, 21 September 2017

“Resolution 2379”, *Security Council, United Nations*, 21 September 2017

“Iraq Timeline: Since the 2003 War.” *United States Institute of Peace*, 14 February 2019

“ATTO CAMERA, RISOLUZIONE IN COMMISSIONE 7/00209.” *Camera*, 15<sup>th</sup> March 2019

### 5.3 Sitography

*About Islam*, “Does Islam Follow a Cast System Like Hinduism?”, 16 Sept. 2016

*Al Jazeera*, “How Suicide Bombings Shattered Iraq.”, 24 October 2010

*Encyclopædia Britannica*, “Islamic Caste.”, 13 January 2015

*Encyclopædia Britannica*, “Yazīdī.”, 22 February 2018

*BBC*, “Religions - Islam: Five Pillars of Islam.”, 8 September 2009

*CNN*, Cable News Network, “Who Are the Yazidis, and Why Does ISIS Want to Kill Them?”, 8 August 2014

*El Peri*, El Periodico De Aragon, “Rusia y China En Oriente Medio.”, Jos, and Villanueva Herrero, 3 March 2018

*El Universal*, “Los Yazidíes, Una Minoría Perseguida En Irak.”, 5 October 2018

*Foreign Affairs*, “ISIS' Yazidi Genocide.”, Cetorelli, Valeria, et al., 8 June 2017

*Foreign Policy*, “ISIS May Be Gone, But Iraq's Yazidis Are Still Suffering.”, Mednick Sam, 23 November 2018

*Global Research*, “The Russia-Iran-Iraq-Syria Joint ‘Information Center’ against America's ISIS Foot Soldiers.” 29 September 2015

*ISPI*, “Iraq Current Political Situation and the Possibility of ISIS Reappearance”, Munqith Dagher, September 2018

*National Geographic*, “Who Are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?”, 11 August 2014

*Operational Portal, Refugee Situations*, “Situation Syria Regional Refugee Response”, UNHCR

*RT International*, “Russia, Iran, Iraq & Syria Setting up 'Joint Information Center' to Coordinate Anti-ISIS Operations”, 26 September 2015

*SBS News*, “The Yazidi People: Who Are They and Why Are They on the Run?”, Kerrie Armstrong, 22 August 2017

*Servant Group International*, “Yezidi Castes, Culture, and the Big Elephant in the Room.”, 16 May 2017

*South Front*, “Tasks and Objectives of the Joint Information Center - Russia, Iran, Iraq, Syria - in Baghdad.”, 5 October 2015

*The Diplomat*, “China in the Middle East: Past, Present, and Future.”, Lyall Nicholas, 16 February 2019

*The Enough Project*, “On This Day: U.S. Fully Adopts Genocide Convention.”, Backes Emily, 4 November 2010

*The Global Coalition*, “The Global Coalition Against Daesh”, Sep 2014

*The Guardian*, “Who Are the Yazidis and Why Is Isis Hunting Them?” Jalabi, Raya, 11 August 2014

*The Huffington Post*, “No, They Aren't Devil Worshipers: The Yazidi's Misunderstood Religious Beliefs.” Hafiz Yasmine, 6 September 2016

*The Independent*, “Three Years on, Isis Genocide against Yazidis Continues.”, Lizzie Dearden, 9 May 2017

*The Region*, “Turkey Attacked Yazidi Forces Convoy Returning from Commemoration of IS Genocide.” Bodette Meghan, 16 August 2018

*The Washington Institute for Near East Policy*, “The U.S. Role in the Future of Iraq.”, Sept. 2018

*The Washington Post*, “Yazidis Who Suffered Genocide Are Fleeing Again, but This Time Not from the Islamic State.”, Morris Loveday, 21 Mar. 2017,

*Time*, “ISIS Is Ignoring Islam's Teachings on Yazidis and Christians.” Sultan, Sohaib N., 8 August 2014

## Riassunto in Lingua Italiana

Gli Yazidi sono un popolo spesso riconosciuto come una minoranza curda, soprattutto per la lingua che parlano. Tuttavia, questo non è accettato dagli Yazidi, che si sentono culturalmente indipendenti dai curdi.

La comunità Yazida non è molto numerosa, dal momento che conta circa 700.000 persone in tutto il mondo, con una maggiore concentrazione nel nord Iraq sul confine con la Siria, ma anche nel sud-est della Turchia.

Come discusso nel primo capitolo, la popolazione Yazida è stata spesso soggetta a persecuzioni, soprattutto da parte dei popoli islamici. Si ritiene che le persecuzioni possano ammontare anche a 72 (73 con quella dell'ISIL) nel corso della loro storia, a partire da quelle perpetrate dagli Ottomani. In tempi recenti, è famosa la persecuzione da parte di Saddam Hussein, durante la sua "Campagna di Arabizzazione" contro i curdi, dove egli obbligò la popolazione Yazida a vivere nelle zone urbane per cambiare il loro stile di vita e renderlo più conforme a quello che lui voleva dal suo popolo. Tuttavia, la persecuzione di età moderna considerata come la più grave è certamente il massacro da parte dello Stato Islamico. Infatti, il numero delle persone massacrate, uccise, o schiavizzate è il fattore che la contraddistingue, indubbiamente in modo negativo.

Il motivo per il quale ISIL ha voluto commettere questo genocidio è senza dubbio l'obiettivo di convertire il popolo Yazida al "right Islam". Di fatto, la ragione per cui gli Yazidi sono spesso stati perseguitati nella loro storia, è quella di credere nell' "evil Islam", dal momento che credono, tra altre, nella divinità chiamata *Malak Taus*, che viene spesso accostata alla figura di Satana nelle altre religioni. L'unica differenza è che questa divinità viene perdonata da Dio e quindi torna in paradiso. Quindi, il motivo più grande per cui ISIL ha attaccato gli Yazidi è religioso; tuttavia ad esso si aggiunge l'obiettivo strategico di incrementare il loro potere in Iraq conquistando un'altra città importante come quella di Sinjar, ottenendo così una maggiore influenza sugli iracheni.

Le reazioni da parte degli attori e degli enti internazionali sono state diverse.

Un'azione immediata sul campo è stata fornita dagli Stati Uniti, andando incontro ad una richiesta d'aiuto del governo iracheno. Questo fu provato da Obama il sette Agosto del 2014, quando disse che, in seguito ad una richiesta da parte del governo iracheno, avrebbe iniziato ad aiutare gli Yazidi bloccati sul Monte Sinjar aprendo un'uscita per loro tramite bombardamenti aerei. Nonostante quest'azione sia frutto degli interessi geopolitici statunitensi, Obama l'ha giustificata anche come un tentativo di evitare che l'attacco dell'ISIL si trasformasse in un genocidio, dunque rispettando il dovere del paese di prevenire il genocidio.

Altro fatto interessante sugli Stati Uniti è stato il grande interesse riguardo al genocidio degli Yazidi da parte della Commissione degli Stati Uniti sulla libertà religiosa internazionale. La Commissione



non solo si concentrò sullo spingere il proprio paese e gli altri leader internazionali a denunciare le atrocità commesse dallo Stato Islamico, ma anche a dare dei consigli agli Stati Uniti e all'Iraq, sia prima che dopo il genocidio.

Per quanto riguarda invece Russia e Cina, gli interessi geopolitici hanno giocato un ruolo molto importante soprattutto nel non dare il via libera per creare un tribunale *ad hoc* per la Siria. Infatti, questo tribunale non solo avrebbe portato alla denuncia di molti atti commessi da ISIL, ma anche di quelli commessi da al-Assad durante la guerra civile che è in atto in Siria dal 2011. Per questo motivo, istituire un tribunale sarebbe andato contro gli interessi dei due paesi, che di conseguenza hanno usato il loro potere di veto nel Consiglio di Sicurezza delle Nazioni Unite per non istituirlo.

Ciò nonostante, la Russia, sempre con l'intento di salvaguardare il suo interesse nel far restare il governo siriano nelle mani di al-Assad, ha creato un "joint information center" con sede a Baghdad. Questo centro ha come scopo il coordinamento delle operazioni anti-ISIL tra Russia, Iraq, Iran e Siria tramite lo studio approfondito di come combattere e sconfiggere lo Stato Islamico.

Altro aiuto immediato ricevuto dagli Yazidi dopo essere stati attaccati, è stato da parte di un ente che fa parte delle Nazioni Unite: l'Agenzia delle Nazioni Unite per i rifugiati. La prima cosa che hanno fatto, è stata quella di trasportare gli Yazidi al campo per rifugiati di Newroz che era il più vicino a Sinjar, luogo dove è stato commesso il genocidio. Però, visto che molti Yazidi sono scappati anche nella zona sicura del Kurdistan, l'Alto Commissariato delle Nazioni Unite per i rifugiati ha preso le funzioni di mediatore tra le ONG locali e gli altri associati delle Nazioni Unite per facilitare la convivenza degli Yazidi nello "stato". Inoltre, l'Agenzia si è impegnata, insieme al Programma alimentare mondiale e all'UNICEF, nel fornire ai siriani l'adeguato aiuto per offrire agli Yazidi cibo, vestiti e alloggio.

Per quanto riguarda gli enti però, la Commissione Internazionale d'inchiesta indipendente sulla Repubblica Araba di Siria, è stato l'ente che ha avuto la risposta più completa e che si è concentrata di più sull'atto di genocidio commesso da parte di ISIL. La Commissione ha difatti dedicato un intero report sul genocidio degli Yazidi, intitolato "*They Came to Destroy: ISIS crimes against the Yazidis*". In questo report ci sono i risultati trovati dalla Commissione grazie a delle interviste fatte a dei sopravvissuti, leader religiosi, attivisti, ma anche medici, giornalisti e avvocati. Questo report è importante perché ha reso le persone consapevoli di quello che gli Yazidi hanno subito e stavano subendo riconoscendo come le azioni dello Stato Islamico potevano ammontare a un genocidio. Per questo, la Commissione pensava che questo sarebbe stato abbastanza per convincere il Consiglio dei Diritti Umani a riconoscere il genocidio. Tuttavia, ciò non si è verificato, e per questo sono state avanzate molte critiche al Consiglio, come per esempio quella di Carla del Ponte. L'ex

procuratore capo del Tribunale penale internazionale per l'ex Jugoslavia e ora membro della Commissione d'inchiesta sulla Siria, sottolinea il disappunto nei confronti del Consiglio dei Diritti Umani. Questo tramite l'accusa di non aver supportato a dovere il lavoro della Commissione per inviare il caso degli Yazidi al Consiglio di Sicurezza per, a sua volta, essere inviato al una Corte Permanente di Giustizia Internazionale. Questo supporto era cruciale per la Commissione vista la sua inabilità di iniziare delle investigazioni per portare un caso davanti al Consiglio di Sicurezza poiché il mandato l'autorizza solamente a scrivere dei report.

Altro supporto che non è arrivato immediatamente per la causa degli Yazidi, è quello dell'Alto Commissariato delle Nazioni Unite per i diritti umani. Il supporto è stato dimostrato per la prima volta tramite un report della Missione iniziata dal Commissariato in Iraq nel 2003 a seguito della Risoluzione numero 1500: la Missione di Assistenza delle Nazioni Unite per Iraq. Il report mostra la gravità delle azioni dello Stato Islamico da Sinjar fino al 2016 e raccomanda alla comunità internazionale di ritenere responsabili le persone che hanno commesso i crimini descritti nello stesso report, e quindi dare agli Yazidi la giustizia che si meritano. Inoltre, suggerisce al governo dell'Iraq di emendare il proprio Codice Penale o di redigere delle legislazioni per permettere alle corti del paese di lavorare su casi di crimini internazionali, e di quindi rispettare le obbligazioni che il paese ha a livello internazionale. Ma cosa più importante, di ratificare lo Statuto di Roma così che il caso del genocidio degli Yazidi possa essere mandato alla giurisdizione della Corte penale internazionale.

Nonostante le azioni dello Stato Islamico contro gli Yazidi siano state esplicite e senza dubbio mirate, l'atto di genocidio non è stato riconosciuto a livello internazionale (Nazioni Unite) ma solo da molti singoli paesi. Di conseguenza, ciò che intendevo fornire con un'analisi dettagliata del caso degli Yazidi come genocidio era proprio che il massacro di questo popolo non era solo classificabile come crimine contro l'umanità o come crimine di guerra, ma soprattutto come genocidio. E l'analisi iniziata brevemente nel secondo capitolo e poi conclusa in modo più dettagliato nel terzo tenta di dimostrare proprio la classificabilità, da un punto di vista del diritto internazionale, delle azioni intraprese da ISIL come genocidio.

I requisiti perché un'azione, o delle azioni, siano identificate come genocidio sono molti e si basano sulla definizione di genocidio data dall'Articolo 2 della Convenzione per la prevenzione sul delitto di genocidio del 1948. Alla base di questi requisiti c'è quello del *dolus specialis* che è il fattore determinante per il quale il genocidio non deve essere solamente l'uccisione di persone, ma queste devono essere commesse “*con l'intenzione di distruggere, in tutto o in parte, un gruppo nazionale, etnico, razziale o religioso*”, come citato dall'Articolo 2. Come spiegato nel terzo capitolo, gli Yazidi possono essere definitivamente considerati come un gruppo religioso, visto che rispecchia la definizione di tale gruppo data dal giudizio dal Tribunale penale internazionale per il Rwanda nel

caso *Akayesu*. Gli Yazidi potrebbero anche riflettere la definizione di gruppo etnico data nello stesso caso però, come descritto in precedenza, c'è la questione se gli Yazidi sono considerati curdi oppure un'etnia differente.

Dal momento che gli Yazidi possono essere riconosciuti come un gruppo religioso, la seconda caratteristica di un genocidio è quella dell'intenzione di distruggere, totalmente o parzialmente, un gruppo. Visto che l'intenzione non può essere provata, i crimini commessi da ISIL devono essere studiati per trovare l'intento (*Karadžić case*). L'investigazione portata avanti nel terzo capitolo non lascia alcun dubbio riguardo al fatto se il massacro che ISIL ha compiuto era frutto di una tattica ben organizzata e mirata ad eliminare i credenti dell'"evil Islam" attraverso uccisioni, conversione forzata, o prevenendo la riproduzione del gruppo. Questo prova che le azioni commesse dallo Stato Islamico seguivano un intento ben preciso.

Ulteriormente, sempre seguendo la definizione di genocidio dell'Articolo 2 della Convenzione sul Genocidio, anche un "physical factor" deve essere soddisfatto per categorizzare le atrocità commesse da ISIL contro gli Yazidi come un genocidio. Certamente, questo fattore è soddisfatto pienamente in questo caso con le varie azioni commesse dallo Stato Islamico per prevenire nuove nascite Yazide, con le uccisioni, a volte anche sistematiche, e con la morte indotta dalle condizioni di vita a cui ISIL sottoponeva gli Yazidi. Queste azioni infatti, sono tutte elencate nella seconda parte dell'Articolo 2.

Dal momento che il massacro degli Yazidi da parte di ISIL può essere considerato un genocidio a tutti gli effetti, automaticamente sussiste l'obbligo di prevenire a priori, e il continuo svolgimento, del genocidio da parte dei paesi circostanti e della comunità internazionale che ha ratificato la Convenzione sul Genocidio. L'obbligo di prevenzione, quindi, sussiste per tutta la durata del genocidio sulla base di due criteri fondamentali che mostrano l'intensità dell'aiuto che un paese può e deve dare: geografico e relazionale. Quello geografico si basa sulla distanza geografica: più sei vicino al luogo del genocidio, più intensa è la tua azione. Quello relazionale invece si basa sulle relazioni che tu hai con il paese dove ha luogo il genocidio: più stretta è la tua relazione con il paese, più intensa dovrebbe essere il tuo aiuto. A seguito di questo, e della breve analisi fornita in questo sommario e in modo più dettagliato nel secondo capitolo, gli Stati Uniti, l'Iraq e la Syria hanno rispettato il loro dovere. Mentre, per esempio, la Turchia potrebbe essere considerata condannabile per il suo mancato intervento: infatti, nonostante la sua vicinanza geografica e la sua relazione con l'Iraq, non è intervenuta. Questo perché, anche se Erdoğan ha scelto di far parte della Coalizione per sconfiggere ISIL capitanata dagli Stati Uniti, c'è la faida sempre aperta con il Partito dei Lavoratori del Kurdistan che dal 2015, con il primo attentato dopo molti anni, continua a farsi sempre più critica. Per questo, l'intervento per neutralizzare l'avanzata dello Stato Islamico non è stato realizzato, seguendo gli interessi del proprio paese nel non dare più potere al PKK.

Ciononostante, anche se alcuni stati sono intervenuti rispettando il loro obbligo di prevenire l'atto di genocidio dal nascere o dal continuare, il Consiglio di sicurezza delle Nazioni Unite non ha ancora riconosciuto quest'attacco di ISIL agli Yazidi come un genocidio. Tuttavia, il 21 Settembre 2017, dopo un anno di negoziazione con il governo iracheno, il Consiglio di Sicurezza ha passato la Risoluzione n. 2379. Questa Risoluzione ha dato origine una squadra investigativa con l'obbiettivo di raccogliere dati e informazioni sulle azioni dello Stato Islamico che mostrino come abbia commesso crimini contro l'umanità, crimini di guerra, ma anche genocidio. Pertanto, la finalità è di raccogliere tali informazioni e di portare le persone che hanno commesso queste atrocità davanti alla legge. Infatti, il materiale raccolto è usato in primis dalle autorità irachene che poi in seguito scelgono, caso per caso insieme all'ONU come dice la Risoluzione, se condividere le evidenze con le corti internazionali.

Anche se il team investigativo è stato creato nel 2017, ha iniziato il proprio lavoro solo un anno dopo, nell'Agosto del 2018, ma in realtà raggiungerà la sua funzione completa nell'anno corrente.

Gli Yazidi, e i sostenitori della loro causa, hanno a lungo richiesto un'investigazione sulle atrocità commesse dallo Stato Islamico contro di loro. Infatti, molti di loro sono rimasti infastiditi dal ritardo di una risposta concreta delle autorità internazionali alla loro richiesta e nel creare un gruppo investigativo che avrebbe potuto dare agli Yazidi la giustizia che si meritano per quello che hanno sofferto a causa di ISIL.