



ISIL: Nationals of ICC states parties committing genocide and other crimes against the Yazidis

Requesting the commencement of a preliminary examination in the situation involving genocide and other crimes committed against the Yazidis in Sinjar and Nineveh Plains since August 2014

Submitted by Yazda and the Free Yezidi Foundation

Supported by the Kurdistan Regional Government of Iraq

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Yazda is a global Yazidi organization. It is registered as a nonprofit corporation in State of Texas, United States under filing number 802053471 with Secretary of State of Texas on 28 August 2014. Yazda is registered for Tax-Exempt status with Internal Revenue Service under Section 501 c3 and EIN number 47-1722806. Yazda's mission is to support the Yazidi religious minority worldwide and represent their interests in the aftermath of August 2014 genocidal campaign committed by the so-called "Islamic State".

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I. Introduction

Yazda (Yazda) and the Free Yezidi Foundation (FYF) with the support of Kurdistan Regional Government of Iraq (KRG), hereby request the Prosecutor of the ICC to formally commence a preliminary examination on the alleged crimes of genocide¹, sexual slavery² and other crimes committed by nationals of states parties to the Rome Statute acting as members of the Islamic State in Iraq and the Levant (ISIL)³ against the Yazidis (also referred to as Yezidi/s or Ezidi/s). The crimes have been committed in a confined territory: the Sinjar district and Nineveh Plains of Northern Iraq since the August 2014.⁴

In 2014, the Head of the High Committee of the Kurdistan Regional Government for the Recognition of Genocide against Kurdish Yazidis and other Nationalities and Religious Minorities, supported by the Kurdish Regional Government and the KRG Ministry of Martyrs and Anfal Affairs, submitted an Article 15 communication to the Office of the Prosecutor. In April 2015, the Prosecutor declined to formally open a preliminary examination into the situation citing a “too narrow [jurisdictional basis] at this stage.”⁵

The Prosecutor however remained open to receiving additional information, more specifically information “which could provide further clarity on the position occupied by State Party Nationals within the ISIS organizational hierarchy.”⁶

Out of a serious concern for the grave crimes committed against the Yazidi victims, many of whom are now internally displaced persons (IDP's) and for the impunity with which ISIL, including an estimated 5,000 to 7,500 members nationals of states parties, continue to commit crimes against the Yazidi population still under their control, Yazda and the FYF with the support of the KRG request the OTP to take into consideration the additional information presented in this report and to formally commence a

¹ Article 6 (a), (b) (c) and (e) of the Rome Statute.

² As body and moral harm pursuant to Article 6 (b) and as sexual slavery pursuant to Article 7(1)(g) of the Rome Statute.

³ The Islamic State of Iraq and al-Sham (otherwise known as ISIS or ISIL) adopted formally the name of Islamic State (IS) and is identified by the witness as Daesh. The four acronyms identify the same organization. Al-Sham is the Levant, the land at the eastern end of the Mediterranean, hence ISIL. Some anti-ISIS Arabic-speakers reject the name ISIS, ISIL, and IS, because they do not accept that the group represents Islam. They prefer to call the group Daesh, derived from the equivalent acronym to ISIS but from the Arabic. In Arabic ‘daesh’ has pejorative connotations; the French government and some other Western leaders, including the House of Commons Defense Committee, have adopted the term.

⁴ In accordance with Article 12(2)(b) and Article 15 (6) of the Rome Statute.

⁵ Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS, 8 March 2015. Available at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-stat-08-04-2015-1.aspx.

⁶ Ibid.

preliminary examination in the situation involving the commission of crimes against the Yazidi population in Northern Iraq since August 2014.

This submission:

(a) proposes to focus the situation on a specific geographic area: the Sinjar district and the Nineveh Plains, and a specific time period: since August 2014. This limited temporal and geographic jurisdiction will facilitate the analysis of the role of the nationals of states parties involved in the crimes;

b) supplements the document previously submitted with additional information in relation to:

- (i) the significant presence of foreign fighters including nationals of states parties operating in various capacities within ISIL including in mid to high level command positions within ISIL;
- (ii) the presence of foreign fighters including national of states parties during the attack on the Sinjar district and Nineveh Plains targeting the Yazidi population;
- (iii) the role of foreign fighters including nationals of states parties in the subsequent and ongoing sexual trade and abuse of Yazidi women in the areas controlled by ISIL; and

c) makes submissions on the assessment applicable at this stage of the process.

Overall, although the exact number and position of nationals of states parties within the ranks of ISIL involved in the genocide against the Yazidis is difficult to establish, there is considerable evidence from various reliable sources confirming that there are between 5000 (2000 Europeans, 1500 Jordanians and at least 1500 Tunisians) and 7,500 nationals of states parties in the ranks of ISIL and that they constitute a sizeable and operationally significant proportion of the ISIL forces. There is also reliable corroborated evidence demonstrating that these foreign fighters including nationals of states parties to the Rome Statute are used in various capacities including in some cases as mid to high-level leaders responsible for specific issues. Several sources also confirm that foreigners are involved in the trade and abuse of Yazidi women as sex slaves resulting from their genocidal policy throughout the areas controlled by ISIL.

The Yazda, the FYF and the KRG understand that the process of preliminary examination as well as the standards applicable for review are spread over different phases and as such that further information may be required in due course should the Office of the Prosecutor (OTP) decide to formally commence a preliminary examination. As such Yazda, the FYF and the KRG undertake to provide full cooperation, as and when required, to facilitate the OTP's access to further information available to it, in particular to facilitate access to IDP camps where more than 400,000

Yazidis are living and other local governmental organizations as well as through Yazda and its contacts with other local NGOs and other UN agencies operating in the areas administered by the KRG.

In due course, should the OTP decide to proceed with the opening of an investigation on the situation, Yazda, the FYF and the KRG are also amenable to facilitating the OTP's visit on site including access to mass graves and hundreds of victims and witnesses currently known to have relevant information. In addition, if arrest warrants are issued KRG authorities are willing to participate in the planning and execution of operations to enforce them.

II. The situation is within the material and temporal jurisdiction

A. The alleged crimes

The information available shows that there are serious indications that the following crimes under the jurisdiction of the International Criminal Court were committed against the Yazidi population since August 2014:

(a) genocide pursuant to Article 6 (a), (b), (c) and (e) of the Rome Statute;

ISIL considers the Yazidis as infidels – so called *mushrikiin*, and on this basis, attacked them in their houses in Sinjar, killing men and elders. ISIL then abducted the women and children. The females including young girls were trafficked sex slaves or gifted to ISIL commanders, while young males were sent to camps being forced to convert to Islam, indoctrinated with ISIL's extremist views and given military training. Those who refused or resisted were killed. By removing the entire Yazidi population from their homeland, inflicting the mental and bodily harm of sexual violence to the women and young girls ISIL ensured that they would not be able to go back to their communities. By forcing the young males to change their religion and to become ISIL fighters, ISIL sought to annihilate the religious identity, traditions and the very existence of the Yazidis. During the attack on the Nineveh Plains, ISIL also destroyed 19 religious shrines.

(b) further and alternatively the incidents described could also be considered to constitute the crimes against humanity of:

- (i) extermination pursuant to Article 7(1)(b),
- (ii) murder pursuant to Article 7 (1)(a),
- (iii) persecution pursuant to Article 7 (1)(h),
- (iv) rape pursuant to Article 7(1)(g)-1,
- (v) sexual slavery pursuant to Article 7(1)(g)-2;
- (vi) sexual violence pursuant to Article 7 (1)(g)-6, and

(vii) forcible transfer pursuant to Article 7(1)(d) of the Rome Statute;

(c) further and alternatively, the war crime of conscription and enlistment of child soldiers pursuant to Article 8 (2) (e) (vii) of the Rome Statute in the context of an armed conflict between ISIL and the Iraq and KRG troops.

It is important to highlight that while most of the murders were committed during and in the immediate aftermath of the attack on Sinjar in August 2014, thousands of Yazidi young girls and women are still in the hands of ISIL, being traded as sex slaves and 85% of Yazidis are still forcibly displaced.

The United Nations Assistance Mission for Iraq (UNAMI) and the Office of the High Commissioner for Human Rights reported on October 2, 2014 that, based on “local sources,” Islamic State was holding up to 2,500 Yezidi civilians, mostly women and children. Iraqi human rights activists gave Human Rights Watch similar estimates.⁷ In October 2014, ISIL's English-language online magazine Dabiq confirmed rumors that "thousands" of Yazidi woman and girls had been kidnapped and kept as sex slaves after its fighters stormed towns and villages in Sinjar province.⁸

Members of one Yazidi group documenting violations gave Human Rights Watch a database with 3,133 names and ages of Yazidis they said Islamic State had kidnapped or killed, or who had been missing since the Islamic State assaults of early August, based on interviews with displaced Yazidis in Iraqi Kurdistan.⁹ The list included 2,305 people believed to have been as abducted – 412 of them children. Of these children, the boys have been converted to Islam by force, indoctrinated with ISIL's extremist beliefs and have received military training to join ISIL forces. The sexual and gender based crimes, which as recognized in the OTP Policy paper on Sexual and Gender based crimes are “amongst the gravest under the Statute”,¹⁰ were inflicted on those most vulnerable, the women and children, testify to the ruthless nature of ISIL's ongoing crimes.

⁷ Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July – 10 September 2014, Human Rights Office of the High Commissioner for Human Rights and United Nations Assistance Mission for Iraq (UNAMI) Human Rights Office. Available at http://reliefweb.int/sites/reliefweb.int/files/resources/UNAMI_OHCHR_POC_Report_FINAL_6July_10September2014.pdf.

⁸ The Telegraph, Islamic State commanders 'using Yazidi virgins for sex', 18 October 2014. Available at <http://www.telegraph.co.uk/news/worldnews/islamic-state/11171874/Islamic-State-commanders-using-Yazidi-virgins-for-sex.html>.

⁹ HRW, Iraq: Forced Marriage, Conversion for Yezidis, 11 October 2014. Available at <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>. Thirty-one of these people were also on the lists given to Human Rights Watch by relatives of the detained.

¹⁰ OTP, Policy Paper on Sexual and Gender-Based Crimes, June 2014. Available at <http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>

B. The geographic area: the Yazidi homeland in the Sinjar district and Nineveh Plains

The crimes were committed in the Sinjar district of the Northern Iraq.¹¹ After taking control of Fallujah and Mosul in January and June 2014 respectively,¹² ISIL troops, crossing the border from Syria, conducted a planned and coordinated attack on the Sinjar district in August 2015 using modern weaponry taken from Iraqi forces took control of Al-Adnaniya, Al-Qahtaniyah, Barah, Bazwaya, Dogore, Gogjali, Hardan, Khanasor, Kocho, Qani, Sharaf ad-Din, Sinjar city, Solagh, Tel Banat, Tel Qasab and Zummar¹³ after the state's forces were unable to confront them. During and in the immediate aftermath of the attack the ISIL fighters intentionally and systematically targeted the Yazidis perceived to be infidels.

Separate incidents and attacks in several areas following the same pattern point to “the intent of ISIL to destroy the Yazidi as a group when perpetrating those acts and to the existence of a manifest pattern of attacks against that community, whose identity is based on its religious beliefs” as confirmed by the Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq.¹⁴

C. The attack against a religious group

Estimates put the global number of Yazidis at around 700,000 people, with the vast majority of them concentrated in northern Iraq, in and around Sinjar and in the Nineveh Plains.¹⁵

Their ancient religion has common elements from both Christianity and Islam, and at the core of their marginalization is their worship of the angel Melek Tawwus, or Peacock Angel, one of the seven angels that take primacy in their beliefs. Melek Tawwus descended from heaven upon instructions from God and returned to heaven upon

¹¹ Currently part of a territory disputed by the Iraqi Kurdistan which maintains it is part of the federally recognized Kurdistan Region of Iraq; and Baghdad, which argues that it is part of Nineveh province, in Iraq proper. The Kurdistan Regional Government (KRG) has assumed governmental responsibility in Sinjar pursuant to Article 140 of the Iraqi Constitution, which provides that Iraq can be composed of federal regions that will handle internal affairs while the Baghdad federal government will deal with international affairs.

¹² The Guardian, Isis insurgents seize control of Iraqi city of Mosul, 10 June 2014. Available at <http://www.theguardian.com/world/2014/jun/10/iraq-sunni-insurgents-islamic-militants-seize-control-mosul>. Washington Post, Al-Qaeda force captures Fallujah amid rise in violence in Iraq, 3 January 2014. Available at https://www.washingtonpost.com/world/al-qaeda-force-captures-fallujah-amid-rise-in-violence-in-iraq/2014/01/03/8abaeb2a-74aa-11e3-8def-a33011492df2_story.html.

¹³ 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, 27 March 2015, A/HRC/28/18, p. 6. Available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>

¹⁴ Ibid. p.5

¹⁵ The Guardian, Who are the Yazidis and why is Isis hunting them? , 11 August 2014. Available at <http://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains>

completing his task. The importance of Melek Tawwus to the Yazidis has given them an undeserved reputation for being devil-worshippers – a notoriety that, in the climate of extremism gripping Iraq, has turned life threatening.

ISIL has an open and clear-cut policy to destroy Yazidis because their religion. In its English newsletter *Dabiq*, a periodical magazine containing photo reports, current events, and informative articles on matters relating to the Islamic State, ISIL expresses their view about the Yazidis:

“Upon conquering the region of Sinjar in Wilāyat Nīnawā, the Islamic State faced a population of Yazidis, a pagan minority existent for ages in regions of Iraq and Shām. Their continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day, considering that Allah had revealed Āyat as-Sayf (the verse of the sword) over 1400 years ago. He ta’ālā said, And when the sacred months have passed, then kill the mushrikīn wherever you find them, and capture them, and besiege them, and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful. [At-Tawbah: 5].”¹⁶

It clarifies that “Accordingly, the Islamic State dealt with this group as the majority of fuqahā’ have indicated how mushrikīn should be dealt with. Unlike the Jews and Christians, there was no room for jizyah payment. Also, their women could be enslaved unlike female apostates who the majority of the fuqahā’ say cannot be enslaved and can only be given an ultimatum to repent or face the sword. After capture, the Yazidi women and children were then divided according to the Sharī’ah amongst the fighters of the Islamic State who participated in the Sinjar operations, after one fifth of the slaves were transferred to the Islamic State’s authority to be divided as khums (‘spoils of war’ tribute to Islamic military leadership). The enslaved Yazidi families are now sold by the Islamic State soldiers as the mushrikīn were sold them.”¹⁷

Victims stated that they had been asked to convert to Islam and that the men who refused were killed, while in other instances even the men who converted were summarily executed. When attacking Yazidi villages, ISIL systematically separated the men from the women and young children. ISIL troops engaged in the systematic and widespread killing of men, including boys who they estimated were too old to be converted. In the process they checked the armpits of the young boys where the presence of hair would indicate that they were too old to be successfully enlisted. The men and those too old to be converted were taken away in several locations to nearby

¹⁶ *Dabiq*, 1435, The Failed Crusade, Issue 14, p. 14 Available at <http://media.clarionproject.org/files/islamic-state/islamic-state-isis-magazine-Issue-4-the-failed-crusade.pdf>

¹⁷ *Ibid.*

ditches and summarily executed. In reported incidents in the Qani village (Sinjar) at least 80 men were killed in on 3 August 2014; in Kocho (Sinjar), at least 700 men were killed throughout August 2014. The precise number of those who continue to be held by ISIL members including nationals of states parties and the numbers killed, are estimated by the Office of the United Nations High Commissioner for Human Rights to be in the thousands.¹⁸

The KRG regained some ISIL-controlled areas and discovered mass graves. The KRG Committee on Mass Graves informed the UN mission that seven mass graves had been discovered in Hardan, Khanasor, Sinone and Zummar. Four mass graves were also discovered in Khanaqin, Diyala province. A further 12 mass graves are reportedly located in areas that remain under ISIL control.

ISIL fighters including nationals of states parties also abducted Yazidis on a mass scale and detained many for months. For instance, a group of 196 disabled Yazidis, including elderly and ill persons and children, were held captive in Mosul and Tel Afar and only released in January 2015. In some locations, the elderly and disabled Yazidis were summarily executed. Several incidents of disabled Yazidis being burned alive were reported to Yazda including one during which 15 Yazidi elderly and disabled were burned inside a temple on the southern side of Mount Sinjar. Many victims were forced to convert to Islam during their captivity. Around 3,000 persons, mainly Yazidis, allegedly remain in ISIL captivity.

D. The attacks against women, girls and boys

Following the systematic separation of men, women and children were subjected to different violations including widespread and systematic enslavement, including selling of women, rape, and sexual slavery, the forced transfer of women and children, and inhuman and degrading treatment. According to the Office of the United Nations High Commissioner for Human Rights, “[a]ccounts indicate that ISIL views captured women and children as spoils of war which it owns”.¹⁹

Numerous Yazidi women and girls who fled ISIL captivity between November 2014 and January 2015, and were interviewed by the Yazda, the KRG and investigators of the Office of the United Nations High Commissioner for Human Rights, provide reliable information which indicate that Yazidi women were processed differently depending on their age and marital status. They were divided into three groups: married women with children, married women without children, and unmarried women and young girls.

¹⁸ Supra footnote 13, p. 6.

¹⁹ Supra footnote 13, p.7.

ISIL members numbered them or recorded their names on lists, and inspected them to evaluate their beauty. Each of those groups was transferred to different locations in ISIL-controlled territory, some being transferred to more than 10 different locations during a four-month period.²⁰ “While some were given as “gifts”, others were sold to local or foreign ISIL fighters. Some victims were privy to price negotiations between “vendors” and “buyers.” (...) Girls would then be prepared for “marriage” (rape), involving, in some cases, full body searches. (...) Then they were forced to smile while ISIL fighters took photographs.”

Investigators from the Office of the United Nations High Commissioner for Human Rights reported meeting with victims as young as 11 years of age.²¹ The mission also obtained credible reports about the rape of young girls, including a 9-year-old and 6-year-old: “The former was raped for three days by an ISIL fighter in Tel Qaseb, Ninewa governorate. A witness stated that she could clearly hear the girl being assaulted and screaming out her name for help. The girl told the witness that she was blindfolded, handcuffed, beaten and repeatedly raped. Eventually, her “owner” sold her to another ISIL fighter from the Syrian Arab Republic. In the same house, a 6-year-old girl was raped by another ISIL fighter. A witness heard the child screaming. She was reportedly sold to an ISIL fighter in the Syrian Arab Republic.”²² Forcible abortions of pregnant women were also reported.

Many of the women interviewed were able to identify the origins of their ISIL captors, who were nationals from a wide range of countries including some who were nationals of states parties to the Rome Statute.

Male children aged between 8 and 15 were separated from their mothers and transferred to different locations in Iraq and the Syrian Arab Republic, to receive religious and military indoctrination following their forced conversion. Yazidi children related being taught how to load and unload guns, shoot using live bullets and launch small and medium-sized rockets and forced to watch videos of beheadings several times. When they refused, they were severely beaten. A child was told: “this is your initiation into jihad, you have to be strong, because you will do this when you will go to jihad for the Islamic State; you are an Islamic State boy now”.²³ ISIL videos confirm the existence of a training camp near Mosul, where children receive Koranic education and are trained to use weapons.

The facts presented above are extensively corroborated by victims and witnesses.

²⁰ Ibid.

²¹ Supra footnote 13, p. 7. The pattern described by numerous witnesses is corroborated by an ISIL pamphlet on female slaves released in October/November 2014, entitled, “Questions and answers on taking captives and slaves”. It outlines ISIL regulations on the treatment of “slaves”, including young girls.

²² Supra footnote 13, p.7.

²³ Supra footnote 13, p.11.

Extracts of the interviews of 10 witnesses are attached as annexes to this communication. An additional transcript of a witness will be subsequently submitted to the OTP confidentially.

III. The Court has personal jurisdiction over the situation

The allegations presented in the section below are based on a systematic analysis of both first-hand information obtained by the Yazda, The FYF and the KRG through interviews conducted with victims and reports of local agencies on their interviews with hundreds of victims as well as a systematic review of open source local NGO reports, reports of the UN High Commissioner for Human Rights, publicized reports by state parties and press releases describing the relevant incidents in the Sinjar district and Nineveh Plains since August 2014.

The credibility of the information was assessed on the basis of consistency among witness accounts and the existence of other corroborative information. While in some cases the identity of the witnesses is not disclosed, the Yazda, the FYF and the KRG is committed to provide further information and full access to their records, in-depth interviews and disclosure with the consent of witnesses, in due course. Similarly, different local and international agencies cooperating with the Yazda, the FYF and the KRG have confirmed their willingness to cooperate and provide additional information should the OTP require the same.

A. The creation of ISIL

The Islamic State in Iraq and the Levant (ISIL) is an international military and political organization with the ambitions to establish an Islamic state all over the world aiming to elicit support from citizens from different countries including nationals of states parties.

ISIL seeks to impose its radical understanding of Islam and on building a “state” based on religion – an Islamic caliphate across the Eastern Mediterranean, land which had for centuries been controlled by the Ottoman Empire.²⁴ Their strategy aims at controlling territory, holding the allegiance of the Sunni Muslims in that territory and ending the rule over them of governments which it sees as non-Muslim, such as the Iraqi government in Bagdad.

ISIL is designated as a terrorist organization by several states including the United States, the United Kingdom, Australia, Canada, Indonesia, Israel, the Philippines, and

²⁴ Briefing to the House of Commons, Islamic State of Iraq and the Levant (ISIS) and the takeover of Mosul, 20 June 2014, Ben Smith, Louisa Brook-Holland and Rob Page, International Affairs and Defence Section, SNIA 6915, p. 3. Available at <http://www.parliament.uk/topics/Iraq.htm>

Saudi Arabia²⁵ and included on the Al-Qaida Sanctions List established pursuant to Security Council resolutions 1267 (1999) and 1989 (2011).

1. The roots

While about 80 per cent of Muslims around the world are Sunnis and 15- 20 per cent are Shiites,²⁶ in Iraq, the Shia Muslims have often been the majority of the population. However, Iraq's rulers including Saddam Hussein have mostly been Sunnis.²⁷ Saddam Hussein's regime treated the Shia brutally and committed genocide against the Kurdish population. It was only after his demise and the first democratic elections that Shia political leaders began to dominate Iraqi politics, beginning with former Prime Minister Nouri al-Maliki. He excluded the Sunnis from power and many Sunni leaders were incarcerated. ISIL offered its support to the Sunni communities, including to former Saddam-era generals, to take control of the country.

ISIL surfaced in 2006 from what used to be Al-Qaeda in Iraq (AQI), a Sunni insurgent group that fought against US and Iraqi government forces and carried out attacks against Shiite targets after the downfall of Saddam Hussein.²⁸

AQI's center of gravity was in the Sunni-majority areas of Iraq, particularly Anbar province. It became known as the Islamic State of Iraq in 2006. Already, foreign fighters were present in the ranks of AQI. In November 2007, the Combating Terrorism Center at West Point received nearly 700 records of foreign nationals that entered Iraq between August 2006 and August 2007. "The records were captured by coalition forces in October 2007 in a raid near Sinjar, along Iraq's Syrian border. Although there is some ambiguity in the data, it is likely that all of the fighters listed in the Sinjar Records crossed into Iraq from Syria."²⁹

During the peak of the previous Sunni insurgency, from 2006 to 2010, the ISI's policy was to overthrow the Iraqi government and establish an Islamic state, but it was

²⁵Wikimedia Foundation, Foreign Affairs Committee, U.S. Congress, U.S. Senate, Bureau of Counterterrorism, Australian National Security, The Rise of the Islamic State and their Dangerous, Potential Providence Research Publishing, 25 September 2014, Background section..

²⁶ The historic background of the Sunni-Shia split lies in the schism that occurred when the Islamic prophet Muhammad died in the year 632, leading to a dispute over succession to Muhammad as a caliph of the Islamic community spread across various parts of the world, which led to the Battle of Siffin. Although all Muslim groups consider the Quran to be divine, Sunni and Shia have different opinions on hadith.

²⁷ The Globe and Mail, Explainer: Shia-Sunni divide and Iraq's deadly sectarian war, 25 June 2014. Available at <http://www.theglobeandmail.com/news/world/sunni---shia-divide-explained/article19337058/>

²⁸ Supra, footnote 24, p. 2.

²⁹ NYT, Foreign Fighters in Iraq Are Tied to Allies of U.S., 22 November 2007. Available at <http://www.nytimes.com/2007/11/22/world/middleeast/22fighters.html?ref=todayspaper> See also Joseph Felter and Brian Fishman, Al Qaida's Foreign Fighters, A first look at the Sinjar Records, <http://tarpley.net/docs/CTCForeignFighter.19.Dec07.pdf>.

apparently controlled when Iraqi and US military attacks led to the killing or capture of some 80% of ISIL's leaders, often led by Anbar's Sunni tribal leaders and their Sahwa (Awakening)³⁰ movement to remove Al-Qaeda influence from their lands.

2. The leadership of Al-Baghdadi

The killings removed an older generation of leaders and opened the way for Abu Bakr al-Baghdadi, also known as Ibrahim Awwad Ibrahim Ali al-Badri, an Iraqi, designated a terrorist by the US government in 2011³¹, to take control of the group. The group grew significantly gaining support in Iraq partly as a result of the economic and political discrimination against the Iraqi Sunni.

ISIL attempted to merge with Jabhat al-Nusrah operating in Syria in 2013,³² forming the Islamic State of Iraq and al-Sham. As reported by the British International Affairs and Defence Section to the House of Commons in June 2014:

“Al-Nusrah never appears to have accepted the merger and, after a struggle and a period of confusion, al-Qaeda's central leadership cut ties with ISIS and al-Baghdadi in February 2014, calling for ISIS to withdraw from Syria. (...) Jabhat al-Nusrah and ISIS have fought in recent months, leading to thousands of deaths. (...) Al-Nusrah had been one of the biggest groups fighting the Syrian government but reports suggest that it lost most of its foreign fighters to ISIS after the two groups started fighting. The extremism of ISIS is thought to appeal to foreign jihadis.”³³

B. The presence of foreign fighters in ISIL

While the popular image of ISIS is one of a modern jihadi group, a metamorphosis of al-Qaeda, fighting against the state, the group is composed of powerful insurgent forces³⁴ using the radical Islamic ISIS 'branding' to which the foreign fighters are key not only “as symbols of global support for ISIS (Masi 2014)”³⁵ but also for their skills.

³⁰ Ahmed S Hashim, 'The Islamic State: from Al-Qaeda affiliate to caliphate', Middle East Policy Council Journal, Winter 2014, Volume XXI, Number 4 . Available at <http://onlinelibrary.wiley.com/doi/10.1111/mepo.12096/epdf>

³¹ US Department of State, 'Terrorist Designation of Ibrahim Awwad Ibrahim Ali al-Badri', 4 October 2011. Available at <http://www.state.gov/r/pa/prs/ps/2011/10/174971.htm>

³² Supra, footnote 24, p. 2.

³³ Supra, footnote 24, p. 2-3, citing Daily Telegraph, Iraq crisis Q & A: Who or what is ISIS? Is it part of al-Qaeda?, 11 June 2014 and Asharq al-Awsat, Syria: Al-Nusra Front agrees to end fighting with ISIS, 5 May 2014.

³⁴ Among the main insurgency forces at play are the General Military Council for Iraqi Revolutionaries, former Ba'athist commanders of the Iraqi army under Saddam Hussein; the Naqshbandi order, a Sufi grouping with powerful connections in the region including the Muslim Brotherhood fighters and Iraqi Sunni communities;³⁴ and Ansar al-Islam, a jihadi group originating in Iraqi Kurdistan and which imposed sharia law on the small amount of territory it controlled.

³⁵ Katherine Leggiero, Countering ISIS Recruitment in Western Nations, Journal of Political Risk, Vol. 3,

“While these ideas had already been present in its propaganda, the declaration of the caliphate had a dimension that went beyond simply showing ISIS in its best light. The new focus reflected a mandate given by Abu Bakr al Baghdadi in his first speech as putative caliph:

“O Muslims everywhere, whoever is capable of performing hijrah (emigration) to the Islamic State, then let him do so, because hijrah to the land of Islam is *obligatory*,” Baghdadi said. “We make a special call to the scholars, [Islamic legal experts] and callers, especially the judges, as well as people with military, administrative, and service expertise, and medical doctors and engineers of all different specializations and fields.” For these professionals, as well as for fighters, emigration was a *religious obligation* he said.”(emphasis added)³⁶

In July 2014, ISIS’s Al Hayat Media Center released an eleven-minute video that drove this point home. Titled “The Chosen Few”, the video showed Poulin, a Canadian fighter, saying that ISIS needed more than just fighters. “We need engineers, we need doctors, we need professionals,” he said. “We need volunteers, we need fund-raisers.” They needed people who could build houses and work with technology. “There is a role for everybody.”³⁷

ISIS has therefore created a recruitment mechanism using local networks of trusted members for recommendation to provide a steady supply of loyalists while avoiding infiltration which has resulted in “an estimated 16,000, nearly half of the Islamic State’s fighting force”³⁸ being of foreign origin. While these individuals originate from both states parties and non-parties to the Rome Statute, there is reliable and corroborated information indicating that large numbers of nationals of state parties are operating in the ranks of ISIL in various capacities and committing crimes with impunity.

1. The policy of recruitment of foreigners

The objective of Muslim unity has a long history and significant support in the Muslim world and as such has attracted much support from Muslim communities isolated as

No. 1, January 2015. Available at http://www.jpolrisk.com/countering-western-recruitment-of-isis-fighters/#_ftnref34. Citing International Business Times, Alessandria Masi, ISIS Recruiting Westerners: How The 'Islamic State' Goes After Non-Muslims And Recent Converts In The West, 8 September 2014. Available at <http://www.ibtimes.com/isis-recruiting-westerners-how-islamic-state-goes-after-non-muslims-recent-converts-west-1680076>

³⁶ Jessica Stern, J. M. Benger, ISIS: The State of Terror, p. 74.

³⁷ Al-Ghuraba, The Chosen Few of Different Lands: Ab? Muslim from Canada , 11 July 2014. Available at https://archive.org/details/abu_muslim

³⁸ Subcommittee on Terrorism, Nonproliferation and trade and the Subcommittee on the Middle East and North Africa of the Committee on Foreign Affairs House of Representatives, ISIS and the Threat from Foreign Fighters, Serial, 113-232, US Government Printing Office, Washington 2014, p. 9.

minorities in Western countries in Europe and the Middle East. In 2007, for instance, a poll was conducted in Egypt, Morocco, Indonesia and Pakistan that suggested that 65% of those interviewed supported the idea of uniting all Muslim countries in a single state.³⁹

“[A]fter the peaceful revolutions in Egypt and Tunisia, Western hopes for a new era of democracy and change in the Arab world have faded. Nowhere have they been shattered so profoundly as in Syria, where a peaceful uprising has turned into a protracted civil war.”⁴⁰

“ISIS employs a discursive strategy that embraces risk and even encourages recruits to seek out death. Not only is the concept of martyrdom emphasized; it is used to explicitly contrast Muslims with those in the West who avoid death. A natural progression from jihad to martyrdom is thus outlined, with the willingness to die portrayed as a form of strength, an advantage possessed by Muslim warriors.

“ISIS propaganda and messaging is disproportionately slanted toward foreign fighters, both in its content and its target audience. Important ISIS messages are commonly released simultaneously in English, French, and German, then later translated into other languages, such as Russian, Indonesian, and Urdu.”⁴¹ “The process through which these narratives are circulated enhances their power. Traditional media sources are producers of information that provide their product to consumers. In contrast, social media uses a much more informal, network-based approach.”⁴²

“ISIS’s deliberately crafted public relations campaign has made social media sites—especially Facebook—a minefield for young, marginalized Western Muslims, some of whom may be vulnerable to indoctrination through exposure to the graphic imagery of ISIS’s “pure” Islam. Continued exposure to this extreme “theater,”—such as posted pictures or videos of actual Muslim Australian citizens beheading “infidels” in Iraq (or Australian children posing with severed heads), even while claiming to be living under “righteous Islamic rule”—encourages vulnerable, marginalized Muslims living in the West to redefine “righteous rule” in terms dictated by ISIS. Recent YouTube videos even show ISIS training young children to fight to defend the newly built “Islamic

³⁹ Owen Bennett-Jones, ‘When Jihadis Win Power’, 4 December 2014.

⁴⁰ The International Center for the Study of Radicalization and Political Violence, #Greenbirds: Measuring Importance and Influence in Syrian Foreign Fighter Networks, p. 7. Available at <http://icsr.info/wp-content/uploads/2014/04/ICSR-Report-Greenbirds-Measuring-Importance-and-Influence-in-Syrian-Foreign-Fighter-Networks.pdf>

⁴¹ Supra, footnote 37, p. 78.

⁴² Yoram Schweitzer and Sari Goldstein Ferber, “Al-Qaeda and the Internationalization of Suicide Terrorism,” The Jaffee Center for Strategic Studies, Tel Aviv, 2005, <http://ics-www.leeds.ac.uk/papers/pmt/exhibits/2809/memo78.pdf>; http://www.mei.edu/content/map/isis-and-institution-online-terrorist-recruitment#_ftn16

State.””⁴³

“(…) ISIS encourage[d] its Western members to use their smartphones to instruct, guide and recruit other Westerners on their social media accounts (e.g. Twitter, Facebook, Tumblr, Kik, Ask.fm, Skype, and blogs). ISIS facilitators recruit at community events (religious seminars and community activities) and schools (e.g. high schools and colleges), but require an ISIS sheikh recommendation and “jihad mentor” for Western recruits to be selected and to prevent US intelligence collection. ISIS keeps its messaging simple (“join the Caliphate”) within its branding and recruitment campaign on its Google Play App, The Dawn of Glad Tidings and its monthly electronic magazine, Dabiq.”⁴⁴

“When dispersed via interactive social media, the imagery and ideology contained in this “theater” implicitly “normalizes” extreme attitudes toward concepts such as “jihad” and “martyrdom” by permitting the audience members to feel included in virtual groups of like-minded individuals. (...) ISIS’s success at recruiting Western fighters is particularly unexpected and illustrates, in part, the potency of its online “theater.””⁴⁵

ISIS also attributes particular attention to the recruits it targets: “Jihadi *dawa* or “calls to war” made by ISIS invites “young Muslim” Western recruits to join the Caliphate and remove apostates (Banco 2014, Masi 2014). Western recruits tend to be recent converts to Islam and ignorant of Islamic views and values (Banco 2014, Masi 2014). ISIS also tends to heavily target estranged or dissatisfied teenagers who utilize social media (Banco 2014). A Western recruit’s dissatisfaction may be due to social, economic, or political disenfranchisement within his own society (Masi 2014, Mezzofiore 2014). This dissatisfaction prompts Western recruits to seek alternative means to address their frustration (Mezzofiore 2014). ISIS provides Western recruits with an alternative, such as shared experience (Masi 2014), group identity, purpose to life (Banco 2014), and recognition, as well as basic needs (Mezzofiore 2014, Watts 2014). Once ISIS obtains a Western recruit, it encourages the recruit to reach out to his sphere of influence, like family and friends, to draw more recruits to populate the Caliphate (Banco 2014, De la Corte 2007, Masi 2014).”⁴⁶

The foreign recruits include women, including nationals of states parties such as Aqsa Mahmood from Scotland⁴⁷ and two teenage girls from Austria.⁴⁸ “Many of ISIS’s most vocal and visible supporters online are women. Analysis of social networks linked to ISIS on Twitter found hundreds of users identifying themselves as women and actively

⁴³ Robyn Torok, ISIS and the Institution of Online Terrorist Recruitment. Available at http://www.mei.edu/content/map/isis-and-institution-online-terrorist-recruitment#_ftn3

⁴⁴ Supra, footnote 36.

⁴⁵ Supra, footnote 44.

⁴⁶ Supra, footnote 36.

⁴⁷ Supra, footnote 37, p. 76.

⁴⁸ Ibid, p. 77.

spreading the organization's message(...)"⁴⁹ "Most foreign girls will be married off to foreign fighters upon their arrival," wrote Mia Bloom, a leading expert in the role of women in jihadist movements. "In fact, many are offered up as a form of compensation to the men fighting for al Baghdadi."⁵⁰

In addition, "[t]he Syrian conflict has produced a set of new spiritual authorities to whom Western and European foreign fighters are looking for guidance and inspiration. The most prominent ones are the American-based cleric Ahmad Musa Jibril and the Australian preacher Musa Cerantonio whose eloquent speeches about the Syrian conflict has gained them a large following."⁵¹

That added to the growing network of "so-called 'disseminator' accounts [on social networks], which are run by sympathetic individuals who sometimes lend moral and political support to those in the conflict"⁵² and "spread information from the battlefield in real-time, publishing links to new videos and official statements, spreading photographs of battles, equipment, meetings, and 'martyrs.'"⁵³

It is worth noting that while their deployments once they have joined the ranks of ISIL vary the foreign recruits usually start by "[t]ravelling to Syria via Antakya, Turkey is the preferred route because portions of the border are unmonitored by Turkish security (Abdulrahim 2014, Al-Shafey 2014, Brown 2014, Masi 2014). Facilitators are present on both sides of the border to coordinate ground travel (Masi 2014)."⁵⁴

Due to the fact that ISIL forces control significant areas of the border between Syria and Iraq, the movements of troops is fluid between the two states and the units are not divided on the basis of territory. ISIL does not make a distinction between the states of Syria and Iraq and uses its units all over what they consider to be part of their "state". The ISIL has divided its territories in Iraq and Syria into several provinces, which it calls 'wilayat'.⁵⁵ These are largely based on pre-existing provinces. ISIS has also announced a new cross-border province between Iraq and Syria named Al-Furat, which spans areas of Eastern Syria and Western Anbar Province in Iraq.⁵⁶ As such the recruitment of foreign fighters into ISIL in Syria is relevant to crimes committed by

⁴⁹ Ibid.

⁵⁰ Mia Bloom, "How the Islamic State Is Recruiting Western Teen Girls," Washington Post, Post Everything blog, October 9, 2014, <http://www.washingtonpost.com/posteverything/wp/2014/10/09/how-the-islamic-state-is-recruiting-western-teen-girls/>

⁵¹ Supra, footnote 41, p. 8.

⁵² Ibid, p. 15.

⁵³ Longer statements are no longer published on Internet forums either, but are instead published through the 'JustPaste.It' website.

⁵⁴ Supra, footnote 37, p. 36. See also supra, footnote 36.

⁵⁵ The Washington Post, The Islamic State's Model, 28 January 2015. Available at <http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/01/28/the-islamic-states-model/>

⁵⁶ Ibid.

ISIL troops on the Iraqi territory. In this particular situation, the units which launched an attack on the Sinjar district and the Nineveh Plains were deployed from Syria.



2. The foreign fighters in ISIL

This section will present the open source material referencing the presence of foreign fighters including nationals of states parties in the ranks of ISIL to demonstrate that they amount to a significant and critical proportion of the ISIL forces.

“[D]ue to the dangers that ISIS presents for journalists and intelligence operatives on the ground, it’s difficult enough to accurately assess the total size of ISIS’s fighting force, let alone break it down into demographic components.”⁵⁷ It has been reported that “the number of journalists executed in Mosul since ISIS took over the city in June 2014 has increased to 46.”⁵⁸

(a) Open source information on the number of foreign fighters

The following facts extracted from the UN reports, the press, experts and other individuals monitoring the ongoing conflict provide an insight into the scope of ISIL’s reliance on foreign fighters on or about August 2014. Reading them in context sheds light on the extent to which foreigners are embedded in the ranks of ISIL.⁵⁹

⁵⁷ Supra, footnote 37.

⁵⁸ Rudaw, ISIS kills Mosul's Rasheed Radio director, 13 September 2015. Available at <http://rudaw.net/english/middleeast/iraq/130920151>

⁵⁹ See Adil Rasheed, ISIS : Race to Armageddon, citing Cockburn Patrick. “War with ISIS: Islamic Militants have Army of 200,000, claims senior Kurdish Leader,” The Independent, 16 November 2014

The information below has been categorized in relation to the relevant dates to illustrate that the numbers of foreign fighters, including nationals of states parties at August 2014, constituted a significant proportion of the ISIL force and that the recruitment of foreign fighters is consistently increasing, which is particularly relevant for the ongoing crimes being committed against the Yazidi children and women.

As at December 2013:

“As of June 2012, an estimated 700 to 1,400 foreign fighters were in Syria, mostly from neighboring countries and North Africa. By December 2013, the number of foreign fighters in Syria was estimated to have increased to more than 8,500 from 74 countries. The number of Western Europeans more than tripled from 600 in April 2013 to 1,900 in December 2013. Western Europeans represented almost one-fifth of the total number of foreign fighters in Syria. The largest contingents come from France, the United Kingdom, Belgium, Germany, and the Netherlands.”⁶⁰

Experts from the International Center for the Study of Radicalisation and Political Violence have stated that “One of the conflict’s defining features has been the presence of foreign fighters.”⁶¹ It is estimated that “In December 2013, (...) up to 11,000 fighters from 74 nations had gone to Syria (...) – up to 2,800 – are European or Western.”⁶²

In early 2014:

ISIS grew in numbers by integrating 80% of the foreign fighters in Syria in 2014, who sometimes left Al-Nusrah to join them, according to Peter Neumann, director of the International Centre for the Study of Radicalisation and Political Violence (ICSR), King’s College London.⁶³

“[T]he al-Nusra-ISIS rupture led directly to yet another transformation in the ranks of the regional, not to say global jihadism. The majority of foreign fighter

⁶⁰ Angel Rabasa, Cheryl Benard, Eurojihad p. 150 citing Aaron Y. Zelin, “Foreign Fighters Trickle into the Syrian Rebellion,” The Washington Institute for Near East Policy, June 11, 2012. Available at <http://www.washingtoninstitute.org/policy-analysis/view/foreign-fighters-trickle-into-the-syrian-rebellion> and Aaron Y. Zelin, “Up to 11,000 Foreign Fighters in Syria; Steep Rise among Western Europeans,” International Centre for the Study of Radicalization and Political Violence, King’s College London, December 17, 2013, at <http://icsr.info/2013/12/icsr-insight-11000-foreign-fighters-syria-steep-rise-among-western-europeans>

⁶¹ Supra, footnote 41, p. 7.

⁶² Supra, footnote 42.

⁶³ BBC, Syria Iraq: The Islamic State militant group, 2 August 2014. Available at <http://www.bbc.co.uk/news/world-middle-east-24179084> Prof Peter Neumann of King's College London estimates that about 80% of Western fighters in Syria have joined the group.

in al-Nusra's ranks went over to ISIS, leaving the rump organization under al-Jolani heavily Syrian in constitution.”⁶⁴ “A March 2014 ICSR study found that 55 percent of the Western foreign fighters in its sample were affiliated with ISIS, while just under 14 percent were believed to belong to Jabhat al- Nusra.”⁶⁵

In June 2014:

The Economist reported that "ISIS may have up to 6,000 fighters in Iraq and 3,000–5,000 in Syria, including perhaps 3,000 foreigners; nearly a thousand are reported to hail from Chechnya and perhaps 500 or so more from France, Britain and elsewhere in Europe.”⁶⁶

Shortly after the attack in September 2014, low range estimates from several sources put the number of ISIL fighters between 20,000 according to the CIA and 200,000 according to local sources engaged in the fighting against the ISIL brigades:

“The ISIS ranks swelled rapidly after the group’s speedy territorial expansion in 2014. The total size of this terror legion has been estimated to range between the tens of thousands to over 200,000, (...) the CIA estimated the ISIS fighters to be merely about 20,000 to 30,000 in number. Russian military sources had estimated them to be in the range of 70,000, while Kurdish fighters claim their strength to be as high as 200,000”⁶⁷

“The Islamic State "can muster between 20,000 and 31,500 fighters across Iraq and Syria," a CIA spokesman told CNN.⁶⁸ Also in September, according to the NYT “more than 2,000 Europeans and 100 Americans who have traveled to Syria to fight alongside extremist groups, nearly all of them crossing over its unprotected borders.”⁶⁹

Of these fighters, estimates published in November 2014 put the total number of foreign fighters with Sunni extremist groups in Iraq and Syria to over 15,000 from 80 countries

⁶⁴ Supra, footnote 37, p. 186.

⁶⁵ Supra, footnote 62, p. 149 citing Joseph A. Carter, Shiraz Maher, and Peter R. Neumann, “#Greenbirds: Measuring Importance and Influence in Syrian Foreign Fighter Networks,” International Centre for the Study of Radicalization and Political Violence (ICSR), King’s College London, 2014, p. 11, at <http://icsr.info/wp-content/uploads/2014/04/ICSR-Report-Greenbirds-Measuring-Importance-and-Influence-in-Syrian-Foreign-Fighter-Networks.pdf>

⁶⁶ The Economist, Two Arab countries fall apart, 14 June 2014. Available at <http://www.economist.com/news/middle-east-and-africa/21604230-extreme-islamist-group-seeks-create-caliphate-and-spread-jihad-across>

⁶⁷ Adil Rasheed, ISIS : Race to Armageddon, p. 42.

⁶⁸ CNN, ISIS can 'muster' between 20,000 and 31,500 fighters, CIA says, 12 September 2014. Available at <http://edition.cnn.com/2014/09/11/world/meast/isis-syria-iraq/>

⁶⁹ NYT, U.S. Pushes Back Against Warnings That ISIS Plans to Enter From Mexico, 16 September 2014. Available at <http://www.nytimes.com/2014/09/16/us/us-pushes-back-against-warnings-that-isis-plans-to-enter-from-mexico.html>

according to the UN Security Council.⁷⁰ The foreign fighters amounted to “an estimated 16,000, nearly half of the Islamic States’ fighting force”⁷¹ in December 2014, according to the official sources from the US House of Representatives Subcommittee on Terrorism, Nonproliferation and trade and the Subcommittee on the Middle East and North Africa Committee on Foreign Affairs.

The origin of these foreign fighters is very diverse. “The majority of foreign fighters are from nations in the Middle East”⁷² About 8000 of them originate from neighboring Arab countries with the highest proportional representation from Jordan with 1500⁷³ and between 1500-3000 from Tunisia,⁷⁴ two states parties to the ICC.⁷⁵ “[D]espite Tunisia’s success and post-Arab Spring transition, the country with the largest number of foreign fighter in Syria and Iraq is now Tunisia.”⁷⁶

In October 2013, Radio Free Liberty/Radio Europe produced a compilation of data on all foreign fighters in Iraq and Syria drawn from multiple sources, including the French Interior Ministry, British government, Belgian government, Austrian Interior Ministry, US government, Australian government, the International Center for study of Radicalisation and Political Violence, Reuters, France 24, Deutsche Welle, the Local Sweden and Sveriges Radio showing the number of fighters per head of population.

While the fighters referenced came from all the jihadi groups in the region, ISIS was the largest of them with particular attractiveness for foreigners. The figures per million of population illustrated below clearly demonstrate that among the Arab states a relatively large proportional number of Jordanians and Tunisians, under the jurisdiction of the Court, have joined the ranks of ISIL committing crimes with impunity. Similarly other individuals from state parties in the west have geographically relocated their activities to commit crimes under the banner of ISIL.

⁷⁰ UN press release, ‘At high-level debate, UN, Security Council renew pledge to counter foreign terrorist fighters’, 19 November 2014. Available at <http://www.un.org/apps/news/story.asp?NewsID=49381>

⁷¹ Subcommittee on Terrorism, Nonproliferation and trade and the Subcommittee on the Middle East and North Africa of the Committee on Foreign Affairs House of Representatives, *ISIS and the Threat from Foreign Fighters*, Serial, 113-232, US Government Printing Office, Washington 2014, p. 9.

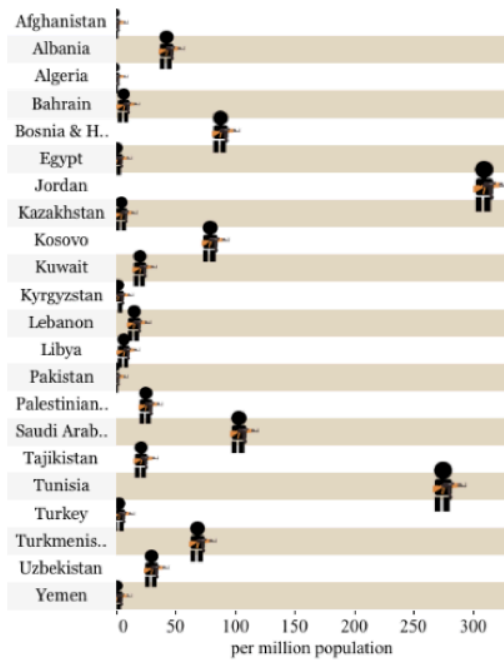
⁷² *Ibid.*, p.5.

⁷³ *Supra* footnote 41.

⁷⁴ *Ibid.*

⁷⁵ House of Commons Research Paper, *ISIS and the sectarian conflict in the Middle East*, 19 March 2015, p. 26. Available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP15-16>. See also Joshua Sinai, ‘Assessing The Threat Of Westerners Who Become Fighters On Behalf Of Al Qaeda Insurgents In Syria’, *Journal of Counterterrorism and Homeland Security International*, Fall 2014, Vol. 20 Issue 3, p.16.

⁷⁶ *Supra*, footnote 73, p. 6.



However, “there is a significant number, over 2,700 (...) that come from western countries (...)”⁷⁷ About 3,000 come from Western countries,⁷⁸ including ‘up to’ 2,000 national from the EU states⁷⁹ which are all states parties to the Rome Statute.

“Accounts of the number of ISIS fighters operating in Syria and Iraq vary widely—estimates range from 20,000 (White 2014) to 40,000 (Branco 2014). Of that total, there are approximately 12,000–15,000 foreign fighters from approximately 74–81 countries worldwide fighting in Syria and Iraq (Breslow 2014, Mullen 2014, The Economic Times 2014). It is estimated that 2,000--2,500 of the foreign fighters are from Western countries such as France, Germany, Great Britain, Canada, Australia, and the United States (Branco 2014, Breslow 2014, Mullen 2014, The Economic Times 2014). ”⁸⁰

In the same compilation by Radio Free Liberty/Radio Europe in December 2013 including information from the French Interior Ministry, British government, Belgian government, Austrian Interior Ministry, US government, Australian government, the International Center for study of Radicalisation and Political Violence, Reuters, France 24, Deutsche Welle, the Local Sweden and Sveriges Radio, the distribution from Western countries was as shown below. Their findings concluded that between 17,000 and 19,000 fighters, about 32 percent (32 percent of ISIL forces), originated from Europe in December 2013 (including Turkey).

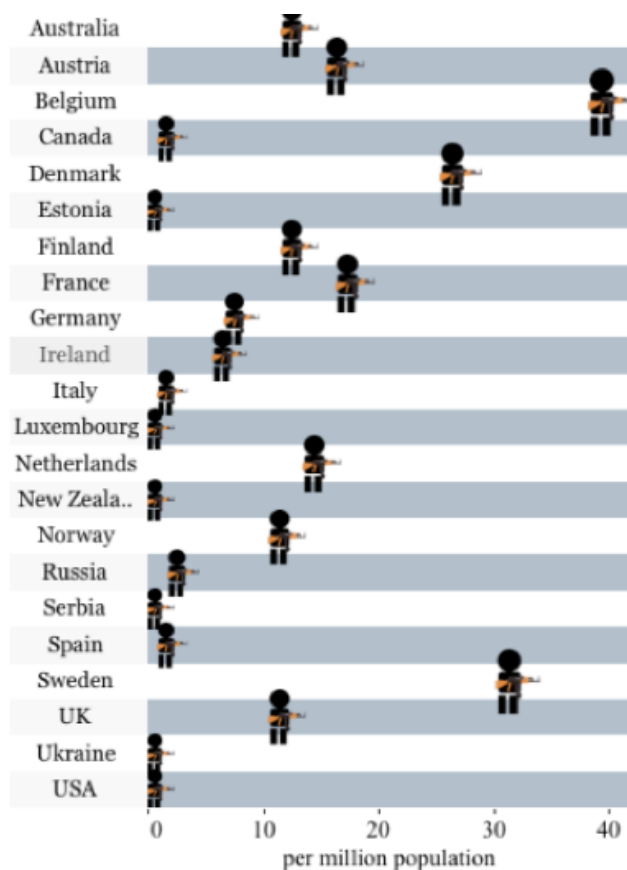
⁷⁷ Supra, footnote 73, p. 5.

⁷⁸ Supra, footnote 77, p. 26. Available at

<<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP15-16>>

⁷⁹ Ibid. See also Michael Plathta, ‘European Ministers Adopt a New Action Plan to Conquer Syria-bound EU National Fighters’, *International Enforcement Law Reporter*; Oct 2014, Vol. 30 Issue 10, p. 389.

⁸⁰ Supra, footnote 36.



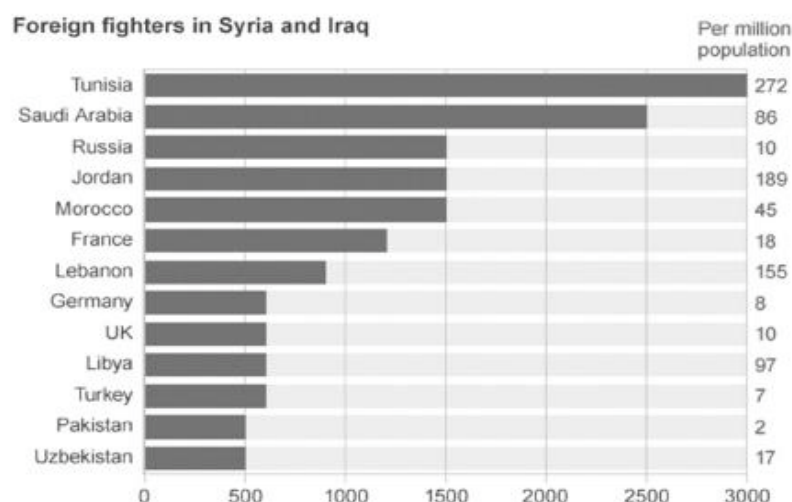
The Journal of Political Risk put forward the following table collating the data about the origin of foreign fighters:⁸¹

Table 2: Number of Known Fighters in Syria

Country	Number of Known ISIS Followers	Source
Egypt	8,000	Fighters (<i>Al Arabyia</i> 2014)
Tunisia	3,000	Fighters (<i>The Economic Times</i> 2014)
Saudi Arabia	2,500	Fighters (<i>The Economic Times</i> 2014)
Morocco	1,500	Fighters (<i>The Economic Times</i> 2014)
Jordan	1,500	Fighters (<i>The Economic Times</i> 2014)
France	700	Fighters and suicide bomber (Breslow 2014, <i>The Economic Times</i> 2014)
Britain	500	Fighters (Breslow 2014, Masi 2014, <i>The Economic Times</i> 2014) and 60 women (Brown 2014)
Germany	300	Fighters (Breslow 2014, <i>The Economic Times</i> 2014)
Canada	130	Fighters (Breslow 2014, Masi 2014)
United States	100	Fighters (Breslow 2014, Masi 2014, <i>The Economic Times</i> 2014)
Australia	60	Fighters (Breslow 2014)
Bosnia	50	Fighters, financiers, organizers, recruiters (Mezzofiore 2014), and 32 returned
Switzerland	15	Fighters, financiers, logistics, propaganda (Kern 2014)
Belgium	Unknown	Fighters (Breslow 2014)
Macedonia	Unknown	Fighters (Mezzofiore 2014)
Kosovo	Unknown	Fighters (Mezzofiore 2014)
Albania	Unknown	Fighters (Mezzofiore 2014)
Denmark	Unknown	Suicide bomber (Breslow 2014)

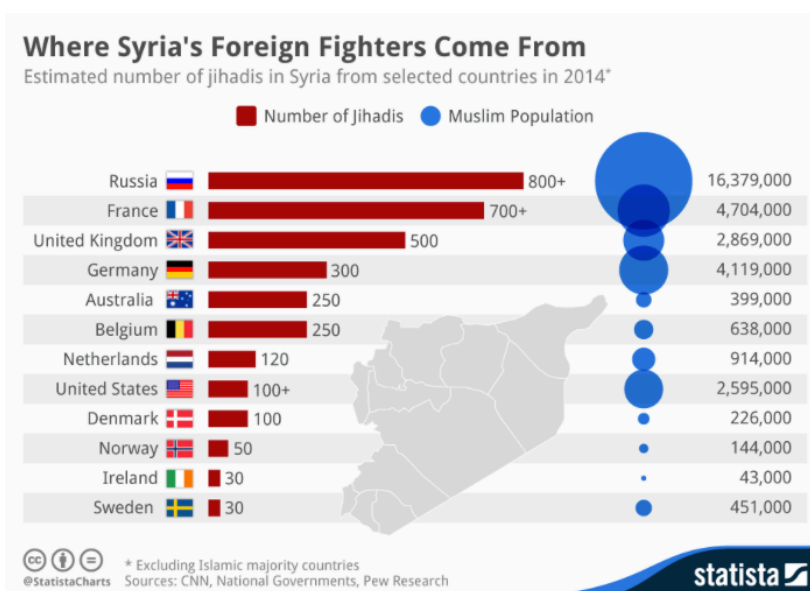
⁸¹ Ibid.

Another scholar compiling information from the ICSR and the CIA produced the figures below:⁸²



Note: Upper estimates used. Countries with fewer than 500 fighters not included Source: ICSR. CIA World Factbook

Different sources figures show the distribution per nationality as follows:⁸³



⁸² Adil Rasheed, *ISIS : Race to Armageddon*, p. 56.

⁸³ Niall McCarthy, *Where Syria's Foreign Fighters Come From*, Statista, 3 September 2014. Available at <http://www.statista.com/chart/2658/where-syrias-foreign-fighters-come-from/>

Among the nationalities the most represented, according to official sources from the relevant states, are the following individuals deployed in Iraq and Syria:

a) 500 British citizens⁸⁴

It is widely estimated that there are about 500 UK nationals fighting with extremist groups in Iraq and Syria.⁸⁵ “The head of MI-5, the British domestic intelligence service, told a parliamentary committee in November 2013 that the number of British militants who had gone to fight in Syria was in the low hundreds.”⁸⁶ In 2014, “[a]t least one in four of the estimated 2,000 foreigners fighting for ISIS in Syria and Iraq is British(...)Irish police also believe that 30 jihadists are using the country as a base while travelling to and from Syria and Iraq.”⁸⁷

b) 900 French citizens⁸⁸

The French Interior ministry says that around 900 French nationals are fighting in the region.⁸⁹ “A careful estimate of European fighters in Syria by the International Centre for the Study of Radicalisation and Political Violence, King’s College London, put the number of French fighters in Syria at between 63 and 413 as of December 2013.”⁹⁰ “According to French press reports, the security services had identified about 440 persons who had gone or wanted to go to Syria to fight against the Assad regime.”⁹¹

c) 220 from Germany (of which more than half hold nationality)⁹²

According to the German National Security Agency, the Bundesverfassungsschutz, “at least 220 prospective fighters departed Germany for Syria in 2012; more than half of these held German citizenship.”⁹³ “The largest number of recruits comes from North

⁸⁴ Bloomberg, ‘Europe Struggles to Control a Rising Tide of Homegrown Jihadists’, 2 September 2014. Available at <http://www.bloomberg.com/bw/articles/2014-09-02/europe-struggles-to-control-a-rising-tide-of-homegrown-jihadists>

⁸⁵ Ibid,

⁸⁶ BBC Hundreds of Britons fighting in Syria – MI-5 chief, 7 November 2013. Available at <http://www.bbc.co.uk/news/world-middle-east-24856553>

⁸⁷ Daily Mail, The homegrown jihadists fighting for ISIS: How one in four foreigners who have signed up for Islamic State is British - and how half of them are ALREADY back in the UK., 21 August 2014. Available at <http://www.dailymail.co.uk/news/article-2730602/The-homegrown-jihadists-fighting-ISIS-How-one-four-foreigners-signed-Islamic-State-British-half-ALREADY-UK.html#ixzz3lRgCor9b>

⁸⁸ Supra, footnote 86.

⁸⁹ Ibid.

⁹⁰ Supra, footnote 62, p. 151.

⁹¹ Supra, footnote 62, citing Le Monde, Une filière djihadiste vers la Syrie 26, November 2013. Available at http://www.lemonde.fr/societe/article/2013/11/26/filiere-djihadiste-vers-la-syrie-une-arrestation-dans-le-nord-de-la-france_3520789_3224.html

⁹² Hans Georg Maassen, head of the Bundesverfassungsschutz, in an interview cited in Reuters, “Syria conflict draws rising numbers of German jihadists,” Reuters, Berlin, 13 November 2013. Available at <http://uk.reuters.com/article/2013/11/13/uk-syria-crisis-germany-idUKBRE9AC0NA20131113>

⁹³ Ibid.

Rhine–Westphalia, followed by Hesse, Berlin, Bavaria, and Hamburg. Apparently, the German recruits live together in a dedicated “German camp” for German recruits.”⁹⁴

d) 200 Dutch citizens

“Dutch militants from different backgrounds – Moroccans, Turks, Kurds [let’s be careful here – many of the Kurds went to Syria to fight with the YPG against Assad and/or against Daesh], Somalis, and converts – have traveled to Syria since mid-2012. According to an analysis of Dutch fighters in Syria, it would be reasonable to expect to find up to 200 Dutch volunteers fighting in Syria. The fighters were recruited by preachers associated with radical groups such as Sharia4Holland, Behind Bars, Straat Dawah (Dawah Street), and Waarheid (the Truth). The first Dutch volunteers traveled to Syria by way of Egypt until other routes by way of Germany and Turkey opened up. Most of the volunteers receive their basic training in Syria before they are deployed to the battlefield. If they do well, they may be picked to join Jabhat al-Nusra. If they do not do well enough to join al-Nusra, they are handed to other Islamist groups fighting in Syria. They are fighting in the north of Syria, in Aleppo, Idlib, and Latakia province. Based on their own postings on social media, it appears that some of them have been involved in the execution of prisoners.”⁹⁵

e) 75 Swedish citizens

Sweden’s secret police service Säpo considers “Swedes traveling abroad, especially to Syria, to take part in military training the greatest potential threat. The Säpo estimates that at least 75 people have traveled from Sweden to Syria.”⁹⁶

f) 150 Norwegian citizens

Similarly there are extensive reports of “(...) Islamist fighters from Norway [who] are believed to have taken leading positions within Islamic State, according to the Norwegian Intelligence Service chief. A hundred and fifty Norwegians are thought to be fighting along terrorists in Syria and Iraq.(...) “We believe that some of the Norwegians in Isil [Isis] have risen to middle-management functions,” said Kjell Grandhagen, the head of the Norwegian Intelligence Service.”⁹⁷ “*There are still several Norwegians who hold leadership positions in Isil,*” Grandhagen told a newspaper, giving the example of “ISIS

⁹⁴ DW.DE, Jihad and back: German fighters in Syria, 22 October 2013. Available at <http://www.dw.de/jihad-and-back-german-fighters-in-syria/a-17174394>

⁹⁵ Supra, footnote 62, p. 151. See also Kronos, Inside the Jihad: Dutch Fighters in Syria, 24 October 2013. Available at http://www.kronosadvisory.com/Kronos_DUTCH.FIGHTERS.IN.SYRIA.pdf

⁹⁶ Supra, footnote 62, p. 152 citing The Local, Islamic extremism on the rise in Sweden: Study, 1, February 2014. Available at <http://www.thelocal.se/20140131/sweden-sees-increased-threat-from-islamic-extremists>

⁹⁷ RT, Norwegians take command in ISIS, pose threat to Norway – security official, 12 February 2015. Available at <http://www.rt.com/news/231751-norwegians-isis-command-threat/>

commander Bastian Vasquez, a Norwegian of Chilean extraction who was reportedly killed in the fall, and an unnamed Norwegian of Eritrean parentage also known as an ISIS commander.”⁹⁸

g) 60 Australian citizens

“Australian intelligence sources revealed that about 60 Australians were fighting for ISIS (...).”⁹⁹ Unofficial sources put this number at 250 in 2014.¹⁰⁰

Unofficial sources also include reports of Belgians present in ISIL: “Belgium also provides one of the largest numbers of European recruits. According to the Belgian daily *De Standaard*, the Sharia4Belgium group, which was officially disbanded at the end of 2012, played an important role in the recruitment of young militants in Belgium to fight in Syria.”¹⁰¹ This amounted to 40 individuals per million Belgians as at December 2013. Unofficial sources put the number of Belgians in Syria at 250 in 2014.¹⁰²

Unofficial researchers estimate that 100 Danish citizens were in Syria in 2014 and confirm the presence of 30 Irish citizens.¹⁰³

The *Journal of Political Risk* puts the number of Canadians at 130 while the number of Spaniards are unknown: “Most of the Spaniards are Muslims from the city of Ceuta, the Spanish enclave in North Africa across the Strait of Gibraltar. Except for three, or perhaps four cases, none of the Spanish fighters had any significant jihadist record predating the Syrian conflict. At least two of them, however, were already taking part in extremist proselytizing meetings that had been held regularly since 2008 in Ceuta and in the southern province of Cádiz.”¹⁰⁴

Although there is a significant number of Georgians including brigades composed of Chechens, the exact numbers are unknown. “Jaish al-Muhajireen wal-Ansar (the Army of the Emigrants and Helpers), also known as the Foreigners’ Brigade, (...) is headed by a Chechen and contains many Turkish and Chechen fighters, in addition to

⁹⁸ Ibid.

⁹⁹ Supra, footnote 44, citing Sydney Morning Herald, Timeline: How the Islamic State Grew to Be a Local Threat, 18 September 2014. Available at <http://www.smh.com.au/national/timeline-how-the-islamic-state-grew-to-be-a-local-threat-20140918-10itfz.html>

¹⁰⁰ Supra, footnote 85.

¹⁰¹ Supra, footnote 62, p. 151 citing VOXeurop, Syria: A training ground for European jihadists, 25 March 2013. Available at <http://www.voxeurop.eu/en/content/news-brief/3587521-training-ground-european-jihadists>

¹⁰² Supra, footnote 85.

¹⁰³ Ibid.

¹⁰⁴ Fernando Reinares and Carola García-Calvo, Jihadists from Spain in Syria: Facts and Figures, Real Instituto Elcano, 12 December 2013, . Available at http://www.realinstitutoelcano.org/wps/portal/rielcano/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/international+terrorism/reinares-garcia-calvo-jihadists-from-spain-in-syria

Europeans.”¹⁰⁵

It is also often the case that information comes to light about foreign fighters once they are deceased. The list below for instance refers to evidence of foreign fighters whose identities have been revealed after their death or due to the public nature of their actions within ISIL as shown below:¹⁰⁶

Table 3: Select Dossiers of Western Recruits

Name	Age	Country / State	Capacity	Reason for Joining	Personality Attributes/Actions	Outcome	Exploitation by ISIS
Douglas McCain (Masi 2014)	33	United States (CA)	ISIS fighter	Looking for a purpose; classmate and neighbor joined al-Shabab ⁴¹	Quiet; befriended younger people; Facebooked ISIS-sympathetic postings; college-educated; Tweeted “Pray for ISIS;” plead guilty to marijuana possession; disorderly conduct; Muslim	Killed in action in Syria by rebels of Free Syrian Army; had \$800 in his pocket with his US passport	Unknown
Abdirahmaan Muhumed (Bloom 2014, Ibrahim 2014, Wagner 2014)	29	United States (MN)	ISIS fighter, informal recruiter on Facebook	“A Muslim must stand up for [what’s] right...I gave up the worldly life for Allah”; American-born with Somali heritage	Father of nine children from three wives; “trying to make it [in his own life]”; interested in Somali politics; Muslim	Killed in action in Syria	Abdirahmaan Muhumed informed MPR News via Facebook that he was an ISIS fighter; wrote on Facebook “Allah loves those who fight for his cause”
Andre Poulin/Abu Muslim (Banco 2014)	24	Canada	Informal recruiter on social media	“Allah pulled him to Syria.”	Converted to Islam after threatening the husband (with a box cutter) of woman he had an affair with; had money, family and “good” friends; did not want to “only destroy the world and kill everybody”; didn’t care if he went to jail for reading about bomb-making in the <i>Anarchist Cookbook</i> ⁴²	His family did not understand why he wanted to fight against Pres. Assad	ISIS published his video on YouTube
Bilal Bosnic (Mezzofiore 2014)	42	Bosnia	“called young Muslims to join the ranks of ISIS”	Unknown	Salafist Movement leader	Unknown	Unknown
Mehdi Nemmouche (Breslow 2014)	29	France	Unknown	Unknown	Travelled to Syria to join ISIS	Shot and killed three people in Jewish Museum in Brussels	Unknown
(Breslow 2014)	-	France	Twin suicide attack	Seeking martyrdom in the cause of Allah	Migrated to Syria days after converting to Islam	suicide	ISIS released a statement regarding reason for martyrdom

¹⁰⁵ Supra, footnote 62, p. 149 citing Sueddeutsche Zeitung, Per Billigflug in den ‘Heiligen Krieg,’ 17 December 2013. Available at <http://www.sueddeutsche.de/politik/deutsche-dschihadisten-per-billigflug-in-den-heiligen-krieg-1.1845516>; The Long War Journal, Chechen-led group swears allegiance to head of Islamic State of Iraq and Sham, 27 November 2013. Available at http://www.longwarjournal.org/archives/2013/11/muhajireen_army_swea.php

¹⁰⁶ Supra, footnote 36.

Table 3 (Continued): Select Dossiers of Western Recruits

Name	Age	Country / State	Capacity	Reason for Joining	Personality Attributes/Actions	Outcome	Exploitation by ISIS
Abu Bakr (Brown 2014)	-	Sweden	ISIS fighter	Unknown	Entered into arranged marriage with Khadijah Dare coordinated by ISIS	Unknown	Unknown
Abu Ibrahim al-Suedi/Taha Shade (CBSNews.CA 2014)	29	Sweden	ISIS fighter/ Suicide bomber	Palestinian heritage	Married Umm Haritha	suicide	Umm Haritha Tweeted about Abu's death and blamed Al-Nusra
Umm Ubaydah (Adulrahim 2014, Zavadski 2014)	Teen or in early 20s	Sweden (?)	Recruiter on Twitter and Kik in Manbij, Syria	Somali heritage	Attempted to be an ISIS fighter; posted on Kik how a journalist wanted her opinion on Nutella	Unknown	Unknown
Umm Layth/ Aqsa Mahmood (Abdulrahim 2014, Brown 2014, Zavadski 2014)	20	Scotland	Leader of Al-Khanssa (ISIS female brigade) in Raqqa, Syria	Travelled to and returned from Syria	College-educated; complained on Tumblr that there was not enough fighting for women	Unknown	ISIS created a video Al-Khanssaa members wearing <i>niqabs</i> firing AK47 making threats against Syrian President Bashar Assad, former Iraqi Prime Minister Maliki, Iran and Russia.
Umm Haritha (CBSNews.CA 2014, Dailyrecord.co.uk 2014, Zavadski 2014)	20	Canada	Informal recruiter on Twitter; blogs guidance to female recruits	"[joined ISIS to] live a life of honor"; "Life was degrading and an embarrassment and nothing like the multicultural freedom of expression and religion they make it out to be, and when I heard that the Islamic State had sharia... it became an automatic obligation upon me since I was able to come here."	Went to Turkey with \$1,500 against parents' wishes; college-educated	Married Abu Ibrahim al-Suedi, ISIS fighter who died; mentors other ISIS women; assisted building a police station in ISIS's capital	ISIS provides her a monthly stipend and education
Khadijah Dare (Brown 2014)	22	England/ Netherlands	Unknown	"I always wanted to live under Shari'a. In Europe, this will never happen." (she reports to US-based website)	Tweeted "she wanted to be the first female jihad to kill Western hostage"; moved to Syria and married Swedish ISIS fighter Abu Bakr	Unknown	Unknown

Among the notorious Britons who have travelled to join ISIS are:

- i) " Abu Abdullah Al Brittani [who] gave detailed information on how Iraq-bound Westerners can exchange currencies to an Ask.Fm user."¹⁰⁷

¹⁰⁷ Supra, footnote 89.

- ii) Muhammad Hamidur Rahman “A former supervisor at Primark who wanted to join the world’s most feared terrorist group, only to be killed in Syria.” ¹⁰⁸
- iii) Mashudur Choudhury who “became the first Briton to be found guilty of travelling to Syria to fight in the civil war.” ¹⁰⁹
- iv) Ifthekar Jaman who “died in 2013 in a battlefield clash 2,000 miles from his Hampshire home last December.” ¹¹⁰
- v) Salma and Zahra Halane “Schoolgirl sisters [who] fled Britain to join ISIS and marry warlords and admitted their pride at being known as 'Terror Twins' and 'loves' living in Syria.” ¹¹¹
- vi) Jaffah, Amer and Abdullah Deghayes “Brighton University student Abdullah Deghayes, 18, was killed in a gunfight in Kassab in Latakia. His two brothers, Jaffar, 16, and Amer, 20, remain in Syria.” ¹¹²
- vii) Nasser and Aseel Muthana “Aseel Muthana, 17, left, followed his older sibling Nasser, 20, right, from Cardiff to join Isis in Syria, who became a poster boy for ISIS as they attempt to recruit more Britons” ¹¹³
- viii) Reyaad Khan “also from Cardiff, appeared in a shocking recruitment video aimed at luring jihadists to Syria” ¹¹⁴
- ix) Aine Davis “is fighting with ISIS in Syria, and has swapped family portraits for poses in combat fatigues, surrounded by rebel soldiers holding AK47s.” ¹¹⁵
- x) Abdul Waheed Majeed “father-of-three was the first Briton to blow himself up” ¹¹⁶

More recent figures of foreign fighters including nationals of states parties within the ranks of ISIL, which are relevant for the ongoing crimes, demonstrate that the numbers are still increasing:¹¹⁷ “the estimate of 20,000 foreign fighters from 90 countries is up from an earlier estimate of 19,000 fighters. The number of Americans who have gone or

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ The Daily Stormer, ISIS’ Foreign Fighters by Country, 10 June 2015. Available at <http://www.dailystormer.com/isis-foreign-fighters-by-country/>

tried to go to Syria and Iraq is up from 50 a year ago and 100 by the fall of 2014”¹¹⁸

“[A] new research by International Center for the Study of Radicalization and Political Violence (ICSR) reveals that up to 20,730 people have travelled to Syria and Iraq to fight for Sunni militant groups, mainly the ISIS/Jabhat Al Nusrah. The low end of the estimate puts the figure at 16,700. It is averred that no conflict since World War II has drawn so many foreign fighters, coming from as many as 90 countries.”¹¹⁹

“In interviews conducted in Turkish towns along the Syrian border the ICSR researchers found that the foreign composition of ISIS was so acute that many referred to the group as “the foreigners.””¹²⁰

Overall, although the exact number of foreign fighters including nationals of states parties within the ranks of ISIL is difficult to establish, there is considerable evidence from various reliable sources confirming that there are between 5000 (2000 Europeans, 1500 Jordanians and at least 1500 Tunisians) and 7,500 nationals of states parties in ISIL and they constitute a sizeable and significant proportion of the ISIL force used in various capacities.

As demonstrated above and confirmed by witness statements, they often hold trusted and strategic positions in the ISIL hierarchical structure showing that they are not only trusted members of ISIL but also specifically relied on for their contribution to ISIL’s criminal activities. In addition, the information above confirms that ISIL members have been involved during and in the immediate aftermath of the attack on Sinjar and thereafter in the crimes perpetrated against the Yazidi women and children held captive and traded as sex slaves or servants by ISIL.

(b) Information on the presence of foreign fighters from victims

Attached as annexes to this communication are extracts from witness interviews made by the KRG, its advisors and local organizations, such as Yazda, which refer to the presence of foreigners including nationals of states parties including in high level positions within ISIL.

¹¹⁸ Washington Post, The Islamic State’s model, 28 January 2015. Available at <http://www.ibtimes.com/isis-continues-steady-recruitment-20000-foreign-fighters-join-extremist-groups-syria-1812440>

¹¹⁹ Supra, footnote 84, citing International Center for the Study of Radicalization and Political Violence, “Foreign fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s”, 26 January 2015. Available at <http://icsr.info/2015/01/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/>

¹²⁰ Supra, footnote 62, p. 149 citing Joseph A. Carter, Shiraz Maher, and Peter R. Neumann, “#Greenbirds: Measuring Importance and Influence in Syrian Foreign Fighter Networks,” International Centre for the Study of Radicalisation and Political Violence (ICSR), King’s College London, 2014, p. 11, at <http://icsr.info/wp-content/uploads/2014/04/ICSR-Report-Greenbirds-Measuring-Importance-and-Influence-in-Syrian-Foreign-Fighter-Networks.pdf>

(i) Witness 1

[REDACTED]

(ii) Witness 2

[REDACTED]

(iii) Witness 3

[REDACTED]

(iv) Witness 4

[REDACTED]

(v) Witness 5

[REDACTED]

3. The role of foreign fighters

The foreign fighters including nationals of states parties are used in a variety of ways by ISIL and some are mid and high level commanders of ISIL. As confirmed by Abu Bakr al Baghdadi, the top leader of ISIL, in his first speech as caliph: “We make a special call to the scholars, [Islamic legal experts] and callers, especially the judges, as well as people with military, administrative, and service expertise, and medical doctors and engineers of all different specializations and fields.” For these professionals, as well as for fighters, emigration was a religious obligation he said.”¹²¹

Defectors have observed that “[l]ocal fighters play a large role in maintaining territory ISIS controls within Iraq and Syria, while the constant influx of foreign fighters allows it to expand to new areas.”¹²² The foreign fighters have a different status from local or regional ones.” “After the take over of Mosul, ISIS came up with a new system of membership for existing local forces that it still does not trust. It called them *munasir* (“supporter”)- to be distinguished from *ansar*, a term jihadist use to refer to local members of a group as opposed to muhajirin or foreign fighters. A munasir has to pledge allegiance to ISIS without having access to its structure. These second-tier members receive salaries and mostly work to fill low-level municipality and police roles

¹²¹ Supra, footnote 37, p. 74.

¹²² International Business Times, Inside 'The Caliphate Army': ISIS's Special Forces Military Unit Of Foreign Fighters, 3 July 2015. Available at <http://www.ibtimes.com/inside-caliphate-army-isis-special-forces-military-unit-foreign-fighters-1995134>

in their areas, tasks ISIS often refers to as khidmat at-muslimeen.”¹²³ This distinction clearly demonstrates that foreign fighters are integrated within the structure of ISIL and have specifically assigned roles.

“[M]any foreign fighters, especially Westerners, join ISIS without prior military experience (Barrett 2014)”¹²⁴ as such even though they receive training “focus[ed] on indoctrination and military skills (Masi 2014)”¹²⁵ they are specially valued in strategic positions where they can make use of their relatively higher level of education and mediatic value. They are also perceived as being “on average, more ideological, than the typical Syrian rebel”¹²⁶ and as such as explained by a spokesperson for an activist group in Syria foreign fighters “(...) are considered the strongest in ISIS.”¹²⁷ Others experts observed that “[f]oreign fighters are overrepresented, it seems, among the perpetrators of the Islamic State’s worst acts.”¹²⁸

The number of foreign fighters within ISIL ranks are so high that in enforcing its own discipline within the troops by December 2014 “Isis has executed at least 120 of its own militants in the past three months, the majority of whom were foreign fighters.(...) 116 are believed to be foreign fighters who wanted to return home.”¹²⁹

One of the top ISIL commanders is from a state party: Georgia. Tarkhan Tayumurazovich Batirashvili, known as Abu Omar al-Shishani, is a former sergeant in the Georgian Army¹³⁰ who currently serves as a commander for ISIL in Syria. In May 2013, Batirashvili was appointed northern commander of ISIL and as of mid-2014, Batirashvili was a senior ISIS commander and Shura Council member.¹³¹ There have been reports associating Al-Shishani to the Caliphate Army as a fighter, while “Abu Mohammed and several other Syrian activists claimed Shishani is the Caliphate Army’s leader.”¹³²

¹²³ Michael Weiss and Hassan Hassan, *ISIS: Inside the army of terror*, p. 229.

¹²⁴ Supra, footnote 36.

¹²⁵ Ibid.

¹²⁶ Supra, footnote 62, p. 69. See also Joshua Holland, *Why Have a Record Number of Westerners Joined the Islamic State?*, BillMoyers.com, 10 October 2014. Available at <http://billmoyers.com/2014/10/10/record-number-westerners-joined-islamic-state-great-threat/>

¹²⁷ Supra, footnote 136

¹²⁸ Thomas Hegghammer, a leading scholar of jihadist history, in an interview with *The Atlantic*, *ISIS and the Foreign-Fighter Phenomenon*, 8 March 2015. Available at <http://www.theatlantic.com/international/archive/2015/03/isis-and-the-foreign-fighter-problem/387166/>

¹²⁹ *The Independent*, *Isis 'executes up to 200 fighters' for trying to flee jihad and return home*, 29 December 2014, Available at <http://www.independent.co.uk/news/world/middle-east/isis-executes-at-least-120-fighters-for-trying-to-flee-and-go-home-9947805.html>

¹³⁰ Associated Press, *Chechen in Syria a rising star in extremist group*, 2 July 2014. Available at <http://www.thenational.ae/world/middle-east/chechen-in-syria-a-rising-star-in-extremist-group>

¹³¹ US Department of Treasury, *Treasury Designates Twelve Foreign Terrorist Fighter Facilitators*, 24 September 2014, Available at <http://www.treasury.gov/press-center/press-releases/Pages/jl2651.aspx>

¹³² Supra, footnote 136

Similarly there are extensive reports of “(...) Islamist fighters from Norway are believed to have taken leading positions within Islamic States, according to the Norwegian Intelligence Service chief. (...) “We believe that some of the Norwegians in Isil [Isis] have risen to middle-management functions,” said Kjell Grandhagen, the head of the Norwegian Intelligence Service”¹³³ “There are still several Norwegians who hold leadership positions in Isil,” Grandhagen told a newspaper giving the example of “ISIS commander Bastian Vasquez, a Norwegian of Chilean extraction who was reportedly killed in the fall, and an unnamed Norwegian of Eritrean parentage also known as an ISIS commander.”¹³⁴

“Another destination of European fighters is Jaish al-Muhajireen wal-Ansar (the Army of the Emigrants and Helpers), also known as the Foreigners’ Brigade, which has sworn allegiance to al-Baghdadi. The group is headed by a Chechen and contains many Turkish and Chechen fighters, in addition to Europeans. The most prominent German jihadist, the rapper Denis Cuspert, aka Deso Dogg and Abou Maleeq, belonged to this brigade; he was recently injured and there were reports that he was killed, though denials later appeared on the social media.”¹³⁵

When used in combat as a matter of strategy “Local fighters play a large role in maintaining territory ISIS controls within Iraq and Syria, while the constant influx of foreign fighters allows it to expand to new areas”¹³⁶

“Operating parallel to the provincial military structure is the Caliphate Army, which acts as a special forces unit for ISIS as a whole. They are deployed to important battles, are not tied to a particular location and can take on the role of fighter, strategist and even help the group with expanding ISIS’s territory.”¹³⁷

“British and Dutch journalists who had been held by a group of militants in Syria reported on their release that almost a dozen British jihadists were in the group, nine of whom had “London accents,” including a National Health Service trainee doctor. The trainee doctor in question, Shajul Islam, was arrested on his return to the UK and, together with an accomplice, charged for his role in kidnapping the journalists.”¹³⁸

IV. The legal requirements to open a preliminary examination are met

The ICC Office of the Prosecutor (OTP) issued a policy paper on preliminary

¹³³ Supra, footnote 99

¹³⁴ Ibid.

¹³⁵ Supra, footnote 62, p. 149

¹³⁶ Supra, footnote 99.

¹³⁷ Ibid.

¹³⁸ Supra, footnote 62, p. 150. See also CTC Sentinel, British Fighters Joining the War in Syria,” Vol. 6 , Issue 2, February 2013. Available at <http://www.ctc.usma.edu/wp-content/uploads/2013/02/CTCSentinel-Vol6Iss22.pdf> .

examinations defining it as a filtering process to review the information available on a given situation and to assess whether the preconditions to the exercise of jurisdiction under Article 12 and each of the factors set out in Article 53(1)(a)-(c) of the Rome Statute – jurisdiction, admissibility and interest of justice, are met.

This process, as the name suggests, is a preliminary assessment and does not guarantee that an investigation will be open. The preliminary examination is intended to review plausible hypothesis, collect information and to assess at the end of such analysis if the “reasonable basis” standard prescribed by the Statute for the opening of an investigation is reached.¹³⁹

The practice of the OTP and the Policy paper on Preliminary examinations clarify that this filtering process of the preliminary examination is carried out in a phased approach¹⁴⁰ during which the OTP will conduct a “critical analysis and independent evaluation”¹⁴¹ of the information which is subject to review by the Court.¹⁴²

It appears that part of this phased approach is an internal review of the information that is not publicized – so called Phase 1, and that the rest of the process – Phases 2, 3 and 4 are publicly conducted with the “formal commencement” of a preliminary examination situation being started at the end of the Phase 1 for the situations that constitute a plausible hypothesis. It is only “the [A]rticle 15 communications not rejected in Phase 1”¹⁴³ that will proceed to the Phase 2-analysis stage.

The Policy paper on Preliminary examinations stipulates that the purpose of the Phase 1 is to “analyse and verify the seriousness of information received, filter out information on crimes that are outside the jurisdiction of the Court and identify those that appear to fall within the jurisdiction of the Court.”¹⁴⁴

Other than excluding situations already being considered by the OTP in an existing preliminary examination in more advanced phases or in an ongoing investigation, the OTP seeks to use the process to distinguish between those communications which are “manifestly outside the jurisdiction of the Court” which will be rejected and those which constitute plausible hypothesis will proceed to Phase 2.

It is therefore clear that the standard of review applied by the OTP at this stage of the process which is relevant to this particular communication is whether the information

¹³⁹ Article 15 (3) of the Rome Statute.

¹⁴⁰ Supra, footnote 10, p. 17.

¹⁴¹ Ibid, p.18, para. 76.

¹⁴² Pre-Trial Chamber I, Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, 16 July 2015, ICC-01/13-34

¹⁴³ Ibid, p. 19, para. 80.

¹⁴⁴ Ibid, p. 18, para. 78.

presented shows that the situation is manifestly outside the jurisdiction of the Court.

While the criteria which set out the jurisdiction of the Court are defined by the Statute, the term “manifestly” set out in the policy paper of the OTP was defined as a matter of internal policy of the OTP pursuant to the *proprio motu* powers of the Prosecutor under Article 15 to screen situations before the opening of an investigation¹⁴⁵ and is not present in the Statute, Elements of Crimes, Rules of Procedure and Evidence.¹⁴⁶ Furthermore, as the process of a preliminary examination is unique to the ICC, there are neither “applicable treaties, established principles and rules of international law”, nor national laws that are relevant to the interpretation of the term.¹⁴⁷

However, the ordinary meaning of the word according to the Oxford dictionary points to the adverb “manifestly” being defined as “clear or obvious.”¹⁴⁸ In this case, it is apparent that if a communication is not clearly outside the jurisdiction of the Court, meaning constitute a plausible hypothesis a preliminary examination should formally be started.

Excluding the decision’s timing, the policy provides no discretionary margin to the OTP at this phase. If a situation is not manifestly outside of the Court’s jurisdiction, the OTP has no discretion to ignore it.

Therefore, it is submitted that rather than demonstrating that a communication is clearly within the jurisdiction of the Court, a party submitting an Article 15 communication merely has to provide a plausible hypothesis supported by serious information pointing to the fact that the alleged crimes are not clearly outside the jurisdiction of the Court.

A. The standard of assessment of the seriousness of the information

The OTP should make an “independent and objective”¹⁴⁹ “analysis of information (...) to weigh and to evaluate the content and reliability of the information available to it.”¹⁵⁰ In light of the Prosecution’s submission made on a review of information in the same preliminary examination process in the situation in Cote d’Ivoire it is apparent that:

¹⁴⁵ Ibid, p. 2, para. 2.

¹⁴⁶ Article 21(1)(a) of the Rome Statute.

¹⁴⁷ Article 21(1)(b) and (c) of the Rome Statute.

¹⁴⁸ Oxford Dictionaries online, word adjective. “manifest”. Available at <http://www.oxforddictionaries.com/definition/english/manifest>

¹⁴⁹ Supra, footnote 10, p. 15, para. 23.

¹⁵⁰ OTP, Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Public Redacted Version of Prosecution Response to the Application for Review of its Determination under article 53(1)(b) of the Rome Statute, 30 March 2015, ICC-01/13-14-Red, p. 13, para. 18.

“the evaluation of sources [follows a] consistent methodology based on criteria such as relevance (usefulness of the information to determine the elements of a possible future case), reliability (refers to the trustworthiness of the provider of the information as such), credibility (refers to the quality of the information in itself, to be evaluated by criteria of immediacy internal consistency and external verification), and completeness (the extent of the source’s knowledge or coverage vis-à-vis the whole scope of relevant facts).”¹⁵¹

As set out in the Policy paper on Preliminary examinations: “[s]uch communications shall be analysed in combination with open source information such as reports from the United Nations, nongovernmental organisations and other reliable sources for corroboration purposes”¹⁵² and should be considered “in context and not in isolation.”¹⁵³

“[A] preliminary examination is an analysis of information made available by multiple reliable sources, and not an investigation in which active measures are undertaken to obtain primary evidence to determine the truth.”¹⁵⁴

Furthermore, “[t]he Prosecution recognize[d] that there may be aspects of its analysis where it is appropriate to consider extra-jurisdictional circumstances, (...) when the facts of the situation show a rational link with those broader circumstances.”¹⁵⁵ In this case in analyzing the scope of liability of individuals who are national of states parties to the ICC, the OTP will be able to take into account the acts of other nationals of non-state parties as otherwise “the personal jurisdiction of the Court could be avoided by embedding State Party nationals into units comprised of other nationalities.”¹⁵⁶ It therefore is submitted that the Prosecution should consider information available about the activities of ISIS as a whole even though some of them may have been executed by nationals of non state-parties.

B. The legal requirements for personal jurisdiction

According to Article 12(2)(b) of the Rome Statute, the Court has jurisdiction over alleged

¹⁵¹ OTP, Situation in the Republic of Cote d’Ivoire, Request for authorisation of an investigation pursuant to article 15, 23 June 2011, ICC-02/11, p. 10, para. 24.

¹⁵² Supra, footnote 10, p. 19, para. 79.

¹⁵³ OTP, Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Notice of Appeal of “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation” (ICC-01/13-34), 27 July 2015, ICC-01/13-35, p. 9, para. 20.

¹⁵⁴ OTP, Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Public Redacted Version of Prosecution Response to the Application for Review of its Determination under article 53(1)(b) of the Rome Statute, 30 March 2015, ICC-01/13-14-Red, p. 12, para. 18.

¹⁵⁵ Ibid. p. 29, para. 53.

¹⁵⁶ Rod Rastan, Jurisdiction, The Law and Practice of the International Criminal Court, Edited by Carsten Stahn, Oxford University Press, p.152.

crimes committed by nationals of State Parties to the Statute who are natural persons and at least 18 years old at the time of the alleged conduct.

Both the wording of Article 12(2) RS, scholarly work and precedents confirm the alternative nature of the territoriality and active personality principles for establishing jurisdiction.

Pursuant to Article 22, the individual perpetrator needs to have the nationality of a state party at the time of the commission of a crime within the material jurisdiction of the court for the criminal responsibility to arise. The active personality extends to alleged crimes committed anywhere by the national of the state party and “in the context of multinational deployments, such as Iraq (...) The Court’s personal jurisdiction would persist irrespective of whether the State Party national is the commander or the subordinate.”¹⁵⁷

The OTP Strategic Plan of June 2012-2015 confirms that the OTP would consider bringing cases both against those most responsible and “mid- and high-level perpetrators in order to ultimately have a reasonable prospect of conviction for those most responsible (...) [as well as] lower level perpetrators where their conduct has been particularly grave and has acquired extensive notoriety.”

It is submitted, considering the fact that the Court’s jurisdiction legally and as a matter of policy of the OTP extends to all nationals of states parties to the Rome Statute irrespective of their roles¹⁵⁸ within the organizational structure of ISIL, that even though the basis of jurisdiction is personal, in a Phase 1 preliminary examination, the plausible hypothesis presented in an Article 15 communication does not need to refer to specific individuals or to their role within the organization.

The assessment as to the role and positions of specific perpetrators forms part of the admissibility analysis and evaluation of gravity conducted in Phase 3¹⁵⁹ as confirmed by the Policy paper on Preliminary examinations: “Phase 3 focuses on the admissibility of potential *cases* in terms of complementarity and gravity pursuant to article 17. In this phase, the Office will also continue to collect information on subject-matter jurisdiction, in particular when new or ongoing crimes are alleged to have been committed within the situation.”(emphasis added)¹⁶⁰

As confirmed by the Appeal Chamber in the Kenya appeal on the decision challenging

¹⁵⁷ Ibid.

¹⁵⁸ See also Fabricio Guariglia and Emeric Rogier, Selection of Situations and Cases by the OTP of the ICC, *The Law and Practice of the International Criminal Court*, Edited by Carsten Stahn, Oxford University Press, p. 361

¹⁵⁹ Supra, footnote 10, p. 19, para. 82.

¹⁶⁰ Supra, footnote 10, p. 19, para. 82.

admissibility, it is at the admissibility stage that the assessment in relation to a particular case involving particular suspects will be made: “This case is only inadmissible before the Court if the same suspects are being investigated by Kenya for substantially the same conduct. The words 'is being investigated', in this context, signify the taking of steps directed at ascertaining whether those suspects are responsible for that conduct, for instance by interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses.”¹⁶¹

The existence of specific suspects and their roles will be further assessed during the gravity evaluation as submitted by Prosecutor in the Comoros’ request to review the Prosecutor’s decision not to initiate an investigation and accepted by the PTC I, recalling decisions PTC II and PTC II in the situations in Kenya and Cote d’Ivoire respectively.¹⁶²

“The Chamber is attentive to the Court’s previous decisions in relation to the interpretation of the requirement of “sufficient gravity” within the meaning of article 17(1)(d) of the Statute, in particular with respect to the assessment of the gravity of the “potential cases” at the pre-investigative stage. More specifically, the Chamber recalls that: (i) a gravity determination involves a generic assessment (general in nature and compatible with the fact that an investigation is yet to be opened) of whether the groups of persons that are likely to form the object of the investigation capture those who may bear the greatest responsibility for the alleged crimes committed (...).”¹⁶³

The lack of specificity required as to the identity of the individuals at phase 1 is also confirmed by the fact that at this stage the incidents of crimes pertain to a “situation” as

¹⁶¹ Appeals Chamber, *The Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute, 30 August 2011, ICC-01/09-02/11 OA, p. 15, para. 40. See also J. Stigen, *The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity*, Martinus Nijhoff Publishers, p. 203. Stigen notes that "there must be an examination of some detail reflecting a sufficient measure of thoroughness. Otherwise it will be considered as inaction". See also C. Cardenas, *Die Zulässigkeitsprüfung vor dem Internationalen Strafgerichtshof*, *Btüntr Wissenschafts-Verlag*, p. 58.

¹⁶² *Supra*, footnote 169, para. 135. See also Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09-19-Corr, paras 60-62; Pre-Trial Chamber III, *Situation in the Republic of Cote d’Ivoire*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire, 15 November 2011, ICC-02/11-14-Corr, paras 203-205.

¹⁶³ Pre-Trial Chamber I, *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, 16 July 2015, ICC-01/13-34, p. 11, para. 21.

used in Article 13 in the context of referrals and distinguished from a “case”¹⁶⁴: “the prosecutions proceed in stages that ‘begin with a “situation” and end with a concrete “case” where one or more suspects have been identified for the purpose of prosecution”¹⁶⁵ It is submitted that at this stage despite the personal basis for jurisdiction, the threshold of the Phase 1 assessment remains the same – a *situation* not manifestly outside the jurisdiction of the court, and does not specifically require the identification of perpetrators.

As such it is sufficient at this stage that the communication presents serious information demonstrating that incidents of crimes committed are within the material jurisdiction of the Court and were committed by a group including individuals who were nationals of State Parties - irrespective of the capacity in which they were acting.

The particulars of the incidents including the number of alleged perpetrators who are nationals of states parties to the Rome Statute, the number of victims, type and spectrum of criminality, as well as would be variables which would assist the OTP in its determination to evaluate whether the incident is clearly outside the jurisdiction of the Court.

It is submitted, in light of the additional information submitted above, that the situation is not manifestly outside the jurisdiction of the Court and that the OTP should formally commence a preliminary examination in the situation involving crimes committed against the Yazidi in Sinjar since August 2014.

¹⁶⁴ William Schabas, *Selecting Situations and Cases*, *The Law and Practice of the International Criminal Court*, Edited by Carsten Stahn, p. 367.

¹⁶⁵ Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 on the authorisation of an investigation decision, 31 March 2010, ICC-01/09-19-Corr, para. 41.

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