



KADIR BARIS / REUTERS

*A displaced wo...*

SNAPSHOT March 29, 2016

# Yezidis vs. ISIS at the ICC

## Why the Fight for Genocide Charges Is an Uphill Battle

*By Timothy William Waters*



huddled above the killing plains, in a place of refuge. Thousands died below, while those on the mountain were besieged: only when U.S. planes began to bomb ISIS and [Kurdish Peshmerga](#) pushed ISIS troops back did the Yezidi escape, joining hundreds of thousands who had fled for the refugee camps of Iraqi Kurdistan.

The mountain has been liberated, but in its shadow, ISIS still builds its unyielding theocracy. Its rule is especially harsh for religious minorities—the remaining Yezidis, Christians and Shi'ites—subjected to forced conversion and beheadings. Thousands of women are in slavery, handed from fighter to fighter in sexual bondage.

What should we call this darkness? The Yezidis call it genocide, the intentional destruction of a religious, racial or national group, and have called for it to be named as such. Here, the Yezidi have had some success: Recently, the U.S. House of Representatives passed a resolution that “the atrocities perpetrated by [ISIS] against religious and ethnic minorities in Iraq and Syria include [. . .] genocide.” Two weeks ago, U.S. Secretary of State John Kerry said ISIS is committing genocide and demanded independent investigations.

Calling the [ISIS massacre of Yezidi](#) genocide is sensible and humane, but troubling for two reasons: Expectations for what this will achieve wildly overstate what the law can do; and the grim apotheosis of genocide actually debases our willingness to act in the shadow of evil.

The Yezidis think naming these acts will have real consequences. In Iraqi Kurdistan last month, I heard Yezidis call for trials at the International Criminal Court in The Hague. They also believe the label “genocide” will move that mythic beast, the international community, to offer them a military protection force. That belief is mistaken, and their hopes for justice doubly so: The obstacles to prosecution are daunting, the outcomes

certain to leave a bitter taste to mix with the ashes of those who will be long dead when judgment comes.

Finding a venue for trial is difficult. There is no prospect for domestic proceedings, but that doesn't make international trials any more promising. The ICC has no jurisdiction within Iraq, to begin with. Baghdad could request an investigation, but that would put its own leaders in jeopardy. The UN Security Council could refer the case—as it did for Libya and Sudan—but it is divided on ISIS, and unlikely to go against Iraq's wishes. The ICC could prosecute individual fighters from countries that are parties to its statute, but this would exclude ISIS' senior leadership. After all, ISIS leader Abu Bakr al-Baghdadi is, as his name implies, Iraqi.

Second, the pace of international law is glacial: It could take years to approve charges, and a decade before judgment day. The former leader of the Serb Republic in Bosnia, [Radovan Karadžić](#), was found guilty of genocide and other crimes this past week—21 years after first being charged. A conviction would not bring Yezidis' daughters back, but it would draw their supporters' attention away from the pressing problems of security and a return to their homeland, and direct it toward an abstract procedure at The Hague.

Third, genocide is hard to prove. Instances of forced religious conversion suggest that the Yezidi have a strong case, but other aspects are marginal: Compared to successful prosecutions elsewhere, the number of victims is small, and the harsh conditions Yezidis suffered while fleeing from may not help prove ISIS' special intent to destroy the group. And the important issue is not the killing, but the chain of command to those un-prosecutable leaders.

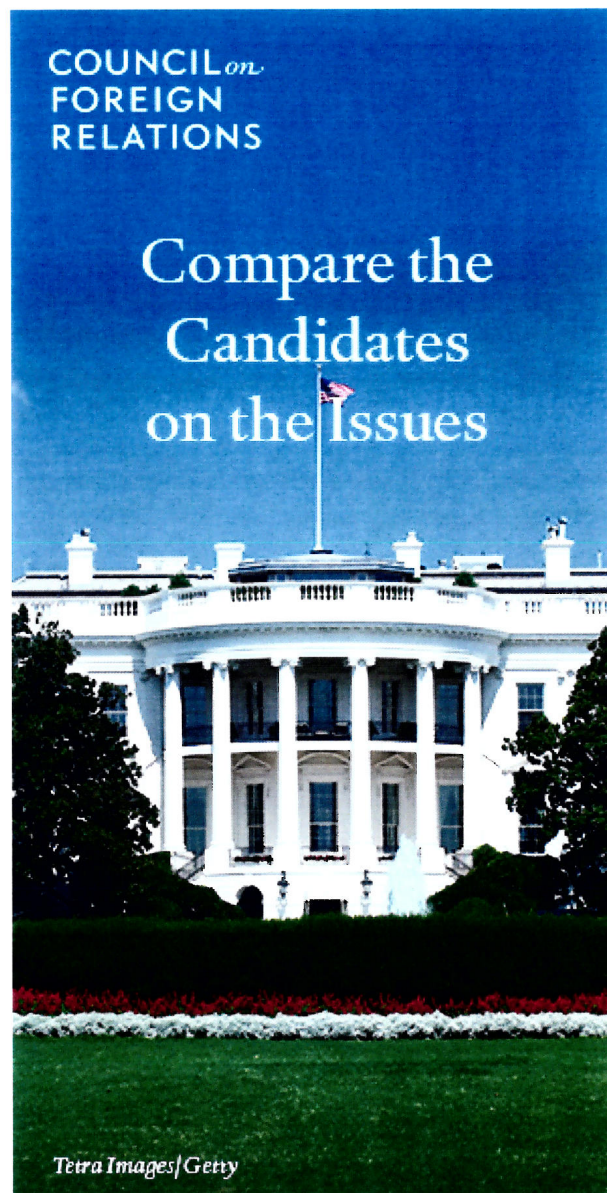


*Members of the minority Yazidi sect who were newly released hug each other on the out...*

So when it comes to genocide convictions against ISIS, there is a real possibility of acquittals. Although the evidence may seem indisputable, similar cases have failed. The ICC prosecutor's first attempt to charge genocide in Darfur was rejected. All genocide indictments before the Yugoslav war crimes tribunal for places other than Srebrenica have led to acquittals as well. The Yazidis want their story told, but what if that story ends "We find the defendant not guilty?"

The Yazidis told me this is the 73<sup>rd</sup> or 74<sup>th</sup> genocide they have suffered—a curiously precise accounting. They didn't used to describe their history this way, and it was pathetic and instructional to watch people who had lost families and fled homes grasp at the promise of this word like a talisman of salvation. Because mistaken as they are about geopolitics, the Yazidis understand the rhetorical landscape: They know their suffering will only be validated if it rises to the level of genocide; victimhood depends on mobilizing this name.

Beyond practical obstacles to a legal case, this is the moral problem with genocide's heightened status. Victims seek its high ground, yet the more who do, the lower and more commonplace genocide becomes. This robs genocide of its distinctiveness, so we withhold the name to preserve its power, even as men make of their fellows a fire sacrifice.



Genocide is too elevated to encompass our evil. Perched atop a pyramid of opprobrium, the supreme crime huddles on a cramped and narrow pinnacle. Far from mobilizing action, genocide's technicality, its legalism and formalism create a stultifying, distracting simulacrum—a set-piece of condemnatory theater.

In constructing a moral universe in which suffering must be genocide to be real, we have gravely limited our capacity to convey, and act upon, that most human of emotions: outrage. Earlier this month, Kerry said that “naming these crimes is important. But what is essential is to stop them.”

But what if the naming them becomes what we do instead of stopping them? In 1994, the United States refused to call Rwanda a genocide, fearing that might compel military intervention; in 2004, the United States declared Darfur a genocide and referred the case to the ICC; this month, the United States condemned genocide in Iraq while admitting this would not alter its policy. Once we thought the word could compel action; now, we have so debased it, it is simply what we say to hear ourselves speaking with moral authority.

U.S. planes still fly above the caliphate—and Washington's policy remains unaltered. Meanwhile, on the plains below, enslavement, rape, and extermination continue. From their exile, their place of sanctuary, those who fled name an unspeakable crime. We intone it too, but this word has lost its power. Something dark is unfolding, in the shadow of the mountain, and we need other words—more than words—to say what we must do. 🌍

FOREIGN AFFAIRS

Graduate School Forum Showcase:  
**Adapting to a Changing Global Landscape**

learn from **29** top  
IR and public policy  
institutions

read now >

- SPONSOR CONTENT -

Get the best of *Foreign Affairs* delivered to you every day.

Enter Your Email

**SIGN UP**

---

## Browse Related Articles on Iraq

214 Articles Found

**1922** **2016**



AUG 8, 2016

SNAPSHOT

# The Kurds of ISIS

Why Some Join the Terrorist Group

*Alexander Meleagrou-Hitchens and Ranj Alaaldin*

SEP 26, 2016

SNAPSHOT

# The Downfall of ISIS

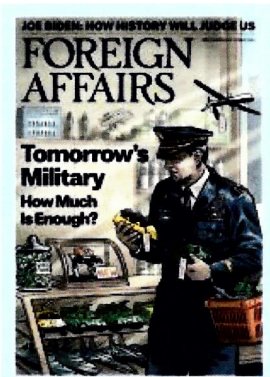
Why Foreign Fighters Have Become a Liability

*Vera Mironova and Mohammed Hussein*



Published by the Council on Foreign Relations

## THE MAGAZINE



## REGIONS

- Africa
- Americas
- Asia
- Europe
- Middle East
- Russia & FSU
- Global Commons

## TOPICS

- Economics
- Environment
- Security
- Law & Institutions
- Politics & Society
- U.S. Policy

## FEATURES

- Articles
- Anthologies
- Reviews
- Interviews
- Videos
- Maps
- Galleries
- Infographics

### The Most:

#### Recent

Global Conflict Tracker  
by Center for Preventive Action

#### Shared

#### Viewed

NAFTA's Economic Impact  
by James McBride and Mohammed Aly Sergie

From the publishers of *Foreign Affairs*

**The Sunni-Shia Divide**  
by Mohammed Aly Sergie, Robert McMahon, Jeremy Sherlick,  
and Hagit Ariav

**U.S.-Cuba Relations**  
by Danielle Renwick, Brianna Lee, and James McBride



**Read *Foreign Affairs* in your inbox.**

Enter your email

**SIGN UP**

## More from *Foreign Affairs*

**PRESS CENTER**

**JOB BOARD**

**EVENTS**

**CUSTOMER SERVICE**

**REGISTER**

**ADVERTISING**

**ABOUT US**

**SUBSCRIPTIONS**

**MY ACCOUNT**

**GROUP SUBSCRIPTIONS**

**COUNTRY FOCUS**

**GRADUATE SCHOOL  
FORUM**

**Subscribe  
now and  
save 55%!**



**SIGN IN**

**SUBSCRIBE**

Gift Subscriptions Available

©2016 Council on Foreign Relations, Inc. All Rights Reserved.

[Contact Us](#) [Privacy Policy](#) [Terms of Use](#)