

114TH CONGRESS
1ST SESSION

S. RES. 340

Expressing the sense of Congress that the so-called Islamic State in Iraq and al-Sham (ISIS or Da'esh) is committing genocide, crimes against humanity, and war crimes, and calling upon the President to work with foreign governments and the United Nations to provide physical protection for ISIS' targets, to support the creation of an international criminal tribunal with jurisdiction to punish these crimes, and to use every reasonable means, including sanctions, to destroy ISIS and disrupt its support networks.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2015

Mr. CASSIDY (for himself, Mr. MANCHIN, Mr. RUBIO, Mr. KIRK, and Mr. WICKER) submitted the following resolution; which was referred to the Committee on Foreign Relations

RESOLUTION

Expressing the sense of Congress that the so-called Islamic State in Iraq and al-Sham (ISIS or Da'esh) is committing genocide, crimes against humanity, and war crimes, and calling upon the President to work with foreign governments and the United Nations to provide physical protection for ISIS' targets, to support the creation of an international criminal tribunal with jurisdiction to punish these crimes, and to use every reasonable means, including sanctions, to destroy ISIS and disrupt its support networks.

Whereas communities of Assyrian Chaldean Syriac, Armenian, Evangelical, and Melkite Christians; Kurds; Yezidis; Shia and Sunni Muslims; Turkmen; Sabea-Mandean; Kaka'e; and Shabaks have been an integral part of the cultural fabric of the Middle East for millennia;

Whereas Article I of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, signed at Paris December 9, 1948 (in this resolution referred to as the "Convention") states that "the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish";

Whereas Article II of the Convention declares, "In the present Convention, genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.";

Whereas Article III of the Convention affirms, "The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.";

Whereas section 1091 of title 18, United States Code, declares that "genocide" occurs when any person "whether in time of peace or in time of war and with the specific

intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such (1) kills members of that group; (2) causes serious bodily injury to members of that group; (3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques; (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part; (5) imposes measures intended to prevent births within the group; or (6) transfers by force children of the group to another group”;

Whereas subsection (c) of section 2441 of title 18, United States Code, defines a “war crime” as conduct “(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party; (2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907; (3) which constitutes a grave breach of common Article 3 [defined in subsection (d) of such section as torture, cruel or inhuman treatment, performing biological experiments, murder, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, or taking hostages] when committed in the context of and in association with an armed conflict not of an international character; or (4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such

Protocol, willfully kills or causes serious injury to civilians”;

Whereas the United States has ratified the United Nations Convention Against Transnational Organized Crime of 2000, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which defines “trafficking in persons” to mean “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” and defines exploitation as including, “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”;

Whereas section 2331 of title 18, United States Code, defines “international terrorism activities” as “activities that (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily outside the territorial jurisdiction of the United States, or

transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum”;

Whereas section 2332b of title 18, United States Code, defines “terrorism transcending national boundaries” to include “(A) kill[ings], kidnap[ing]s, maim[ing]s, commit[ing] an assault resulting in serious bodily injury, or assaults with a dangerous weapon [of or on] any person within the United States; or (B) creat[ing] a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States; in violation of the laws of any State, or the United States,”;

Whereas the President, with the assistance of the Secretary of State and the Ambassador at Large for War Crimes Issues, is obligated under section 2113(b) of the ADVANCE Democracy Act of 2007 (22 U.S.C. 8213(b)) to “collect information regarding incidents that may constitute crimes against humanity, genocide, slavery, or other violations of international humanitarian law” and “shall consider what actions can be taken to ensure that any government of a country or the leaders or senior officials of such government who are responsible for crimes against humanity, genocide, slavery, or other violations of international humanitarian law identified [pursuant to such collection of information] are brought to account for such crimes in an appropriately constituted tribunal”;

Whereas Article I of the Convention and the law of nations confirm that government authorities are obligated to prevent and punish acts constituting genocide, crimes against humanity, and war crimes;

Whereas, on July 10, 2015, Pope Francis, Supreme Pontiff of the Catholic Church, declared that the pattern of crimes committed by ISIS and its affiliates against Christians are part of a “third world war, waged piecemeal, which we are now experiencing,” and that “a form of genocide is taking place, and it must end”;

Whereas the 2011 Presidential Study Directive on Mass Atrocities declares, “Preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States . . . [and that] our options are never limited to either sending in the military or standing by and doing nothing . . . The actions that can be taken are many—they range from economic to diplomatic interventions, and from non-combat military actions to outright intervention.”;

Whereas, on August 7, 2014, President Barak Obama authorized military action to stop ISIS’ advance in northern Iraq, and “to prevent a potential act of genocide” against Yazidis stranded on Mount Sinjar;

Whereas, on August 7, 2014, Secretary of State John Kerry, stated that ISIS’ “campaign of terror against the innocent, including Yezedi and Christian minorities, and its grotesque and targeted acts of violence bear all the warning signs and hallmarks of genocide”;

Whereas, on March 27, 2015, the Office of the United Nations High Commissioner for Human Rights reported that its mission to Iraq had “gathered reliable informa-

tion about acts of violence perpetrated against civilians because of their affiliation or perceived affiliation to an ethnic or religious group,” that the “[e]thnic and religious groups targeted by ISIL include Yezidis, Christians, Turkmen, Sabea-Mandeans, Kaka’e, Kurds and Shia,” and stated, “It is reasonable to conclude, in the light of the information gathered overall, that some of those incidents may constitute genocide. Other incidents may amount to crimes against humanity or war crimes.”;

Whereas the United States Commission on International Religious Freedom (USCIRF) has “called on the U.S. government to designate the Christian, Yazidi, Shi’a, Turkmen, and Shabak communities of Iraq and Syria as victims of genocide by ISIL” and USCIRF Chairman Robert P. George has observed that “ISIL’s intent to destroy religious groups that do not subscribe to its extremist ideology in the areas of Iraq and Syria that it controls, or seeks to control, is evident in, not only its barbarous acts, but also its own propaganda”; and

Whereas members of the International Association of Genocide Scholars, in their Appeal to Congress of September 9, 2015, stated, “ISIS’s mass murders of Chaldean, Assyrian, Melkite Greek, and Coptic Christians, Yazidis, Shi’a Muslims, Sunni Kurds and other religious groups meet even the strictest definition of genocide.”: Now, therefore, be it

1 *Resolved*, That the Senate—

2 (1) finds that ISIS, its affiliated organizations,
3 and supporters are parts of an expanding, worldwide
4 criminal network, the members of which have
5 pledged allegiance to its leaders, support its actions,

1 act in concert with them, claim credit for targeted
2 killings, and are “fully aware that [their] participa-
3 tion” and support will “assist [in] the commission”
4 of its crimes;

5 (2) finds that ISIS and its affiliated organiza-
6 tions maintain sophisticated publishing and social
7 media networks that seek to attract others to join
8 their efforts and seek to incite the murder of Chris-
9 tians, Shia and Sunni Muslims, Jews, and any reli-
10 gious believers who refuse to convert to their
11 Wahhabi-Salafist jihadist ideology;

12 (3) declares that ISIS and its leaders should be
13 charged with genocide, crimes against humanity, and
14 war crimes;

15 (4) calls upon on the Attorney General to inves-
16 tigate and prosecute any United States citizens or
17 residents alleged to be perpetrators of or complicit
18 in these crimes and to report back to Congress re-
19 garding what steps are being taken to investigate
20 and prosecute those involved;

21 (5) calls upon the Secretary of the Treasury to
22 investigate and sanction any person, organization,
23 business, or financial institution alleged to be per-
24 petrators of or complicit in these crimes, and to re-
25 port back to Congress regarding what additional au-

1 thority, if any, is needed to disrupt ISIS financial
2 support networks;

3 (6) calls upon the President to authorize the
4 Secretary of State, the Under Secretary of State for
5 Democracy and Global Affairs, and the Ambassador-
6 at-Large for War Crimes Issues to cooperate in the
7 collection of forensic evidence of crimes against hu-
8 manity, genocide, war crimes, slavery, or other viola-
9 tions of international humanitarian law;

10 (7) calls on the President, the Secretary of
11 State, and the United States Permanent Representa-
12 tive to the United Nations, working through the
13 United Nations Security Council and its member
14 states as appropriate, to accelerate the implementa-
15 tion of an immediate, coordinated, and sustained re-
16 sponse to provide humanitarian assistance, protect
17 civilians, build resilience, and help reestablish liveli-
18 hoods for displaced and persecuted persons in their
19 communities of origin;

20 (8) calls upon the contracting parties to the
21 United Nations Convention on the Prevention and
22 Punishment of the Crime of Genocide, signed at
23 Paris December 9, 1948, and other international
24 agreements forbidding war crimes and crimes
25 against humanity, to join with the United States in

1 an effort to investigate, arrest, and prosecute indi-
2 vidual and organizational perpetrators responsible
3 for these crimes;

4 (9) calls upon the United Nations Secretary-
5 General to urge all United Nations member states to
6 cooperate in an international effort to investigate,
7 try, and prosecute all cases in which prosecutors can
8 prove that the accused have committed crimes
9 against humanity, war crimes, and genocide;

10 (10) makes an urgent appeal to the Cooperation
11 Council for the Arab States of the Gulf to collabo-
12 rate on the establishment and operation of domestic,
13 regional, and hybrid international tribunals with ju-
14 risdiction to punish the individuals and organiza-
15 tions responsible for or complicit in actions that con-
16 stitute war crimes, crimes against humanity, and
17 genocide; and

18 (11) commends the Governments of the
19 Kurdistan Region of Iraq, Jordan, Lebanon, Turkey,
20 and every other country sheltering and protecting in-
21 dividuals fleeing the violence of ISIS.

○