



LAW, ETHICS, AND ARMED CONFLICT

An International Law Reader

Edited by Frank G. Lumpkin IV



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Edited by: Frank G. Lumpkin IV

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Dedication

to

Benjamin B. Ferencz
(1920–2023)

By Federica D'Alessandra

Benjamin B. Ferencz was known to the world as the last surviving prosecutor of the Nuremberg trials, a key figure in the establishment of the International Criminal Court, and one of the most enduring advocates for international justice of the modern era.

Over more than eight decades, his lifelong commitment to the prevention of atrocity crimes and the advancement of legal accountability made him one of the defining legal voices of the postwar international order. His extraordinary life and work demand renewed reflection at a moment marked by geopolitical instability, institutional strain, and renewed challenges to the international rule of law.

Born in 1920 to a Hungarian-Jewish family that fled rising antisemitism in Europe to seek refuge in the United States, Ferencz came to embody the resilience, moral clarity, and public spirit of what became known as the Greatest Generation. Raised in poverty in New York City, he graduated from Harvard Law School before enlisting in the United States Army following Japan's attack on Pearl Harbor.

He served as an infantryman in the European Theater, landing in Normandy and participating in some of the fiercest campaigns of the Western Front. In April 1945, while attached to advancing Allied forces, he was among the first Americans to enter Nazi concentration camps including Buchenwald concentration camp and Mauthausen concentration camp. These experiences would shape the course of his life.

Later that year, he was transferred from the 115th Anti-Aircraft Artillery Gun Battalion to the War Crimes Branch of the Judge Advocate General's Department, where he began collecting evidence of Nazi atrocities. In 1946, he was recruited by Brigadier General Telford Taylor to join the prosecution team for the subsequent Nuremberg proceedings.

In 1947, at just twenty-seven years old, Ferencz was appointed Chief Prosecutor in *The United States of America v. Otto Ohlendorf et al.*, better known as the Einsatzgruppen Trial. There, he prosecuted twenty-two senior members of the SS mobile killing units responsible for the murder of more than one million civilians.

Having witnessed the systematic dehumanization of the concentration camps firsthand, Ferencz brought one of history's earliest comprehensive prosecutions of genocidal violence. His work at Nuremberg helped establish enduring principles of accountability for crimes against humanity and demonstrated that law could answer even the gravest abuses of state power.

After the trials, he remained in Germany to administer one of the first victim-centered restitution and compensation programs for survivors of Nazi persecution. He successfully pursued compensation claims against German state entities and industrial firms that had profited from forced labor and helped negotiate reparative measures that contributed to postwar justice efforts.

His greatest contribution may have been the decades he devoted thereafter to building legal institutions capable of preventing future atrocities. Throughout the remainder of his life, Ferencz advanced a simple but profound proposition: international law must regulate state conduct and serve as a practical instrument for preserving peace. Having witnessed the catastrophic consequences of unrestrained power, he believed that legal accountability was not merely an aspirational ideal but an operational necessity for international stability.

For Ferencz, international law existed not only to facilitate relations among states, but also to protect human dignity against the arbitrary

exercise of power. This conviction animated his decades-long advocacy for the criminalization of aggression and the peaceful resolution of disputes through law rather than force.

In recognition of these efforts, he received numerous honors, including the posthumous award of the Congressional Gold Medal, one of the highest civilian distinctions bestowed by the United States.¹

At the time of this publication, the international legal order again faces profound tests. Armed conflict, institutional paralysis, and growing challenges to legal norms have placed renewed pressure on the framework Ferencz spent his life defending. It is precisely moments like these that make his message most urgent.

Ferencz reminded generations of lawyers, policymakers, and citizens that the alternative to law is not order, but force; not justice, but domination. His enduring challenge to us is the same one he articulated throughout his life: to insist that humanity's collective future be governed not by power alone, but by principle.

Today, more than ever, it is time to recommit to the values and principles that have secured the longest period of global peace and prosperity known to humanity, and to insist on "Law, Not War."

¹ S. 4587, 117th Cong. (2022).

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Foreword

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It is my pleasure to offer these introductory reflections in connection with this volume on law, ethics, and armed conflict. The questions explored in this collection echo long-standing efforts within international law to restrain violence, to preserve the principle of humanity in armed conflict, and to promote justice and accountability during and in the aftermath of armed conflict.

What is the promise and premise of the peaceful settlement of disputes through international law? The most pertinent regime for this preventive purpose of the law is the *jus ad bellum* – a set of international legal norms regulating the conditions under which States may lawfully resort to force. These challenges – both enduring and contemporary – form an essential backdrop to the themes examined in this volume. There are also two other prisms through which international law has a relationship with war. The *jus in bello*, or international humanitarian law (IHL), addresses how warfare is to be conducted. This body of norms regulates the conduct of hostilities within war, with the humanitarian aim of limiting the suffering caused. Another prism is the *jus post bellum*, which is less well-established as a matter of positive law, but denotes a body of norms applicable during the transition to sustainable peace after the end of conflict.

It would be almost hackneyed to highlight that conflict, unfortunately, remains a reality of our times, whether in Iran, Donbas, Gaza, Sudan, or elsewhere in the world. However, it is still useful to step back and acknowledge the recency of the legal prohibition on wars. The concept of a “just war” serves to illustrate this point. Before the

twentieth century, many classical thinkers emphasized how war, though lamentable, could serve a variety of causes in the name of justice. This translated into discourse centered around permissive doctrines which sought not to outlaw war, but to define just wars. It was only in 1928, just about a century ago with the Kellogg-Briand Pact, that a significant number of States agreed to renounce war as an instrument of national policy. Of course, the Second World War, which followed not long after, showed the fragility of this nascent change in legal thought. In 1945, the United Nations Charter was adopted, which concretely stated in its Preamble the intention of Member States to “save succeeding generations from the scourge of war.” Article 2, paragraph 4 of the Charter became the cornerstone of the *jus ad bellum*, recognizing the obligation to “refrain” from the “threat or use of force” against other States. The Charter recognized only two exceptional circumstances in which a State may resort to force—in self-defense, as per Article 51, or under authorization from the Security Council. Indeed, Article 24, paragraph 1 of the Charter conferred upon the Security Council the “primary responsibility” for maintaining international peace and security.

The universal adoption of the Charter, and this system of collective security established by it, marked a revolution in international relations. Conquest and the resort to war would no longer be the norm. Rather, as per Article 2, paragraph 3, every Member State “shall settle their international disputes by peaceful means.” Moreover, the Statute of the International Court of Justice was annexed to the Charter, forming an “integral part” of it, as per Article 92 of the Charter. An example of the success of the Court is its resolution of a number of sovereignty disputes between States from many regions of the world, disputes that could otherwise have become a tense cause for conflict. This year historically marks the eightieth anniversary of the United Nations. In a way, the fact that the organization managed to endure for this long is an achievement in itself, signaling that States continue to believe in an order of international relations that prefers multilateralism, not unilateralism.

But underneath the surface of this optimism and the success stories lie many complexities. The *jus ad bellum*, the body of norms regulating the resort to armed force, and the collective security system with the Security Council at the center, have been, and continue to remain under controversy.

One of these challenges is the recurring debate about the scope and limits of the prohibition on the use of force and its exceptions. Perhaps divergent meanings of a norm are only natural to expect in an order with so many diverse States. Or perhaps, this debate can be attributed to the creativity of lawyers like the contributors to this volume! Some illustrations would help serve the point.

As an example, consider the right of self-defense, recognized under Article 51 of the Charter. While self-defense may indeed be exercised in response to an ongoing armed attack, can force in the exercise of self-defense be used in a pre-emptive or anticipatory fashion? Or, for that matter, can self-defense be invoked in response to “armed attacks” launched not by States, but by non-State actors? In specific terms, can force be used in the territory of a State, if that State is “unable or unwilling” to act against a non-State actor launching attacks on the State claiming self-defense? Those who answer such questions in the negative believe that interpreting the exceptions to the prohibition too widely and liberally could flip the regime on its head. As recognized in Article 2, paragraph 1 of the Charter, the international order is premised on “sovereign equality,” meaning that the prohibition on force should be understood in such a way that does not incentivize unilateral armed force by powerful States. By contrast, for those who answer in the affirmative, it is necessary to insist on rigidity to ensure the continuing relevance of the *jus ad bellum* against contemporary security threats and developments not foreseen by the drafters of the Charter. For them, to deny States the fullest remit of their “inherent” right to self-defense would affect the legitimacy of the *jus ad bellum* regime.

Here we are, then, eighty years since the adoption of the Charter, yet unable to agree still on certain fundamental assumptions and positions about the conditions under which States may lawfully resort

to war. The challenge for us as lawyers is not merely to describe these disagreements, but to bring clarity and coherence to the meaning of the *jus ad bellum*, perhaps in such a way that meaningfully balances the priority of keeping the *jus ad bellum* representative and respectful of sovereign equality, whilst also being responsive to contemporary developments. Setting the law clearly, and unambiguously, is essential to its credibility and authority in practice as well as situating the law as an alternative to war

But suppose that we secure clarity on whether the use of armed force in a given situation is, or is not, prohibited. What then? What about the effectiveness of the norms, once a breach is determined? If, in practice, some States have preferred war over the law, can we seriously maintain the view that the *jus ad bellum* remains effective? The debate about the effectiveness of the *jus ad bellum* is far from recent. As early as the 1970s, scholars lamented the frequent uses of force during the Cold War, going to the extent of announcing the death of Article 2(4). Others replied that the announcement of the death of Article 2(4) was premature; this norm was indeed not in the best condition, but there was still time to recover. I believe that holds true today. In its judgments, the International Court of Justice has observed that for every resort to armed force, we would see tenfold reactions from States condemning the aggressor State for breaching the prohibition on the use of force. States that indeed breached the prohibition, no matter how flagrantly, would never admit to that breach. Rather, they would find a way to appeal to one or more exceptions to the prohibition, with varying degrees of legal validity. In this sense, the Court reasoned that the normative status of the prohibition on the use of force can survive some breaches. The question is: how many? And we may well ask whether it is still always the case that truly legal justifications always accompany uses of force today.

The real issue is how we can build resilient institutions and processes to actualize the peaceful settlement of disputes and to provide lawful avenues for addressing the use of force. Under the schema of the Charter, the “primary” responsibility for maintaining peace and

security is entrusted to the Security Council and concretized via Chapter VII. The problem, as is widely known, however, is that Article 27, paragraph 3 of the Charter, requires the “affirmative vote” of all five Permanent Members on all decisions of the Council, other than merely procedural matters. In other words, as you will know, the Permanent Members exclusively possess the veto power within the Council. What happens, then, when the Security Council is paralyzed by a veto, unable to fulfil its responsibility to maintain international peace and security in the face of atrocities or breaches of *jus cogens* norms, which should protect the fundamental values of the international community?

In that scenario, we must remember that the Security Council has the primary, but not exclusive responsibility for maintaining international peace and security. In 1950, the General Assembly of the United Nations, which consists of all Member States, adopted resolution 377 A (V) titled “Uniting for Peace”, following a deadlock within the Security Council on the armed force used by North Korea against South Korea. Through the resolution, the General Assembly assumed a subsidiary role in the maintenance of international peace and security, affirming its competence to make “recommendations” for collective action, in case the Council fails to reach decisions on the matter. Indeed, the Uniting for Peace resolution was invoked most recently following Israel’s military escalations in Palestine and in the wake of Russia’s invasion of Ukraine in the Donbas. Yet, the General Assembly is not a substitute for the Council, considering that its recommendations do not have binding force. Therefore, Member States are not obligated to follow these recommendations, unlike the “decisions” of the Council, which have binding effect as per Article 25 of the Charter.

Where else could an aggrieved State go, then, for relief from armed force? One possibility would be to institute proceedings at the International Court of Justice. Any decision of the Court would be binding as between the Parties, as per Article 59 of the Statute of the Court. The Court itself also has a subsidiary responsibility towards the maintenance of international peace and security, achieved through its

role in the peaceful settlement of disputes between States. There are, however, some challenges in anticipating the peaceful resolution of such a dispute through the Court. Firstly, there has to be a basis of jurisdiction, that is, a way to show that the other party consented in some form to the Court's adjudication of the case, since international dispute settlement is based on the principle of consent. This, however, is difficult to demonstrate in most cases. Secondly, assuming an aggrieved State obtains a favorable judgment from the Court, what if the opposing party refuses to comply? In case of non-compliance, the aggrieved State may have recourse to the Security Council, as per Article 94, paragraph 2 of the Charter. However, this brings us back to square one!

This is not to say that the findings of the Court and the recommendations of the General Assembly are without value. Indeed, they provide a clear message and legal impetus to the aggrieved States and the international community. The point I am seeking to make, and it is far from being a novel one, is that the collective security system envisaged under the Charter, including in particular the role of the Security Council, needs reform. International law, unlike national legal systems, is a decentralized order. It is a system of mutually co-existing sovereigns, lacking a central enforcement authority. Perhaps, this is for good reason; after all, there could be concerns about democratic deficits or threats to sovereignty if such a central power existed. Yet, if we are to defend the legitimacy of this system, we need to find a way to ensure our legal institutions provide clear and effective alternatives to and recourse against the resort to force. This is no easy task. It is one that has challenged those who came before us and will continue to challenge future generations. There are, indeed, some examples of movements towards reforms to this end. For instance, it has been argued that Permanent Members of the Security Council are obligated not to exercise their veto powers, when the Council is seized of a situation implicating mass atrocities of the kind witnessed in the former Yugoslavia and Rwanda. If successful, such initiatives would incrementally strengthen the authority and credibility of the collective security system.

When prevention fails and conflict erupts, does law fall silent? The *jus in bello*, or IHL, ensures that it does not. The 1949 Geneva Conventions and their Protocols codify the principle that even in war, humanity must not perish. They limit the means and methods of warfare, protect civilians, and guarantee humane treatment of those who have laid down their arms. Compliance with these rules is not optional. A State acting in self-defense under the *jus ad bellum* is still bound by the *jus in bello*. Military necessity does not erase human dignity. Violations of humanitarian law—targeting civilians, mistreating prisoners, employing indiscriminate weapons—are war crimes that engage individual criminal responsibility.

The creation of international criminal tribunals for the former Yugoslavia and Rwanda, and the establishment of the International Criminal Court, along with other ad hoc hybrid judicial bodies, demonstrate that accountability is possible even in the aftermath of atrocity. They also remind us that law in wartime is not only about restraint but about preserving the possibility of peace. Persistent violations of IHL feed cycles of vengeance that undermine the very order the *jus ad bellum* seeks to protect. We have also noticed an unwillingness in current times to establish adjudicatory bodies to deal with issues arising from the conduct of hostilities; what we see instead is a deferral, without specificity, of legal scrutiny – deferral to an unknown time and unspecified mechanisms – exemplified by the commendable work of the International, Impartial and Independent Mechanism established by the U.N. General Assembly.

When the guns fall silent, the work of law continues. The *jus post bellum*—literally “law after war”—addresses the transition from conflict to sustainable peace. Though less codified, it encompasses principles of accountability, reconstruction, reparations, and reconciliation. It embodies the conviction that peace is not simply the absence of fighting but the presence of justice. Post-conflict tribunals and truth commissions—from Nuremberg to Sierra Leone to South Africa—have shown that justice, however delayed, restores moral order. The ICC’s

recognition of aggression as a crime reaffirms that waging an unlawful war itself violates the law.

At the heart of the *jus post bellum* lies inclusion. Durable peace requires that those who suffered most are part of rebuilding. Processes that exclude victims or marginalized groups may end the violence but not the conflict. The law after war must therefore be both juridical and humane, combining accountability with restoration.

We must ask whether the legal regimes and institutions remain fit for purpose. The U.N. Charter system, built for 1945, now operates in a world of multipolar power and digital interdependence. The failures we witness are real: paralysis in the Security Council, selective compliance with ICJ judgments in certain high-profile instances, growing skepticism toward global governance. These failings may be viewed as indicating the irrelevance of international law; but they may also be viewed as underscoring its necessity. To reflect seriously on law, ethics, and armed conflict is not to indulge in utopia. It is to affirm a disciplined hope: that reason, not violence, can guide international relations; that humanity can choose law as the first, not the last, resort. Every treaty respected, every judgment complied with, every war crime prosecuted is an act of faith in that vision.

I am honored to present this distinguished collection of essays authored by leading experts in the law of armed conflict, human rights law, international criminal law, military operational law, and public international law. This volume assembles an exceptional group of contributors to examine the enduring principle that even in times of war, the law does not fall silent. At a moment when armed conflicts across the globe challenge and destabilize the international order, these contributions reaffirm the resilience and adaptability of international law. They offer rigorous analysis and critical insights into how legal norms constrain violence, strengthen institutions of peace, uphold the principle of humanity, and lay the foundations for a just and sustainable post-war order.

The chapters in this volume do more than describe the law; they interrogate its capacity to respond to contemporary threats and its role

in shaping a just post-conflict order. In doing so, they illuminate pathways for strengthening institutions of peace and reinforcing the normative foundations of international relations. I have no doubt that this work will constitute a significant contribution to scholarly discourse and to the continuing project of reinforcing law, rather than war, as the primary framework for the governance of international relations. May this work contribute meaningfully to that endeavor.

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Introduction

The study of war, law, and ethics calls to mind places such as The Hague, Geneva, London, and New York. Perhaps Nuremberg and Tokyo also come to mind. At first glance, Columbus, Georgia, seems an unlikely place from which to edit a scholarly volume on international humanitarian law and armed conflict. I would suggest otherwise.

I was born and raised in Columbus, home to Fort Benning, one of the world's most significant military installations. For generations, Soldiers from across the United States – and from many of our closest allies – have passed through its gates, as I did during my own military training. Countless military officers received their commissions at Fort Benning, the “Home of the Infantry,” and Soldiers from over one hundred nations travel to Benning, which houses the Western Hemisphere Institute for Security Cooperation (WHINSEC), to train alongside their American counterparts.

Fort Benning is more than a military installation. It is a place where young men and women begin careers of service, where leaders are formed, and where decisions made in classrooms and on training fields shape conduct on battlefields across the globe. It is where many Soldiers first encounter the principles of international humanitarian law – distinction, proportionality, military necessity, humanity, and honor – and the enduring tension between military necessity and humanitarian imperative that the law of armed conflict seeks to balance.

The questions this volume explores are therefore not distant – not geographically, from a place like Columbus, and not intellectually, as academic abstractions. They affect soldiers, commanders, policymakers, diplomats, lawyers, and civilians alike. They concern the difficult choices that arise when nations employ force, the legal frameworks that seek to regulate armed conflict, and the ethical principles that preserve our humanity amid violence.

My interest in these subjects springs from both professional and personal experience. As an attorney and Judge Advocate in the United States Army Reserve, I have taken part in military decision-making processes where the law of armed conflict serves not as a topic of scholarly discussion but as a practical guide to action. Legal advisors help commanders navigate uncertainty, assess risk, and apply legal principles in environments where information is incomplete and the consequences are profound.

Yet the duty to uphold the law of armed conflict rests not with lawyers or senior leaders alone. It belongs to every soldier, down to the lowest levels. Military professionals are often reminded that whatever their branch, specialty, or rank, they remain “Soldiers first,” entrusted with the responsibilities that military service entails. Distinction, proportionality, necessity, humanity, and honor are not concepts confined to conference rooms or legal memoranda; they take form through the actions of individual warfighters. The character and judgment of those individuals remain among the strongest safeguards against unnecessary suffering in war.

The importance of this responsibility is only increasing. For much of its history, the United States has enjoyed the advantages of geography: peaceful neighbors to the north and south, vast oceans to the east and west. Advances in military technology, cyber capabilities, space operations, autonomous systems, and information warfare now steadily erode the significance of distance. We cannot take the future security of our communities for granted. If coming generations are to enjoy the freedoms and peace that so many Americans have sacrificed to preserve, then each of us must contribute, however modestly, to a stable international order, credible deterrence, and collective self-defense.

At its core, the law of armed conflict reflects a simple but timeless truth: even in war, there must be limits. The Geneva Conventions and their related frameworks embody the principle that military necessity and human dignity are not mutually exclusive. As one introduction to the Geneva Conventions explains, “we obey [the Law of Armed

Conflict] because we cannot allow ourselves to become what we are fighting and because we cannot be heard to say that we fight for the right while we are seen to commit wrongs.”¹ The law does not end war, but it preserves a measure of humanity within it.

This commitment to human dignity is no modern invention. Across cultures, religions, and philosophical traditions, societies have recognized some version of the principle often called the Golden Rule: “do to others what you would have them do to you.”² The contemporary law of armed conflict rests on treaties, custom, and state practice, yet its enduring appeal springs from a broader recognition that human beings possess inherent worth – a conviction Christianity expresses through the doctrine of the *Imago Dei*, the belief that human beings are created in the image of God – even amid conflict.

The chapters that follow do not speak with a single voice, nor should they. The contributors form a diverse group of practitioners, scholars, military officers, professionals in humanitarian assistance and protection, and advocates who approach hard questions from different vantage points. Readers will agree with some arguments and reject others. I do myself. Meaningful progress demands serious engagement with competing ideas. This volume does not aim to answer every challenge confronting modern warfare; it aims to foster thoughtful examination of the most pressing legal and ethical questions of our time.

The subjects explored in this volume range from accountability for aggression and atrocities to gray-zone conflict; the protection of civilians in armed conflict; information operations and an emerging customary law of cyber warfare; due diligence obligations of corporate actors operating in combat zones; state obligations to prevent genocide; the special legal protections afforded to children in armed conflict; the evolving application of international humanitarian law to emerging challenges; and many others. Together, these chapters reflect the complexity of contemporary armed conflict and

¹ GARY SOLIS, *THE LAW OF ARMED CONFLICT* 7 (2010).

² *Matthew* 7:12.

the continuing effort of scholars and practitioners to understand, refine, and strengthen the rules that govern it.

Every contributor devoted substantial time and effort to these questions because they matter. The stakes are measured not in legal doctrine or academic debate but in human lives, national security, and the preservation of peace. Each contributor writes from a shared desire to leave the world safer, more stable, and more just than they found it.

Calvin Smyre, a Columbus friend of mine, former Dean of the Georgia House of Representatives, and former United States Delegate to the United Nations, often quotes an ancient Greek proverb: "Society grows great when old men plant trees whose shade they know they may never sit in." In many respects, scholarship on armed conflict is an exercise in planting such trees. The benefits may not be immediate, and the authors may never witness the full impact of their efforts. Yet the pursuit remains worthwhile if it helps future generations navigate conflict with greater wisdom, restraint, and humanity.

It is in that spirit that this volume is offered.

Frank G. Lumpkin IV

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Chapter 1. The Continuum of Prevention: Germany's Obligations Under the Genocide Convention and the Ethics of Yazidi Deportation

Naomi Prodeau and Marissa Kardon Weber¹

I. Introduction

On November 30, 2021, a German court became the first worldwide to convict a member of the Islamic State of Iraq and the Levant (ISIL)² for committing genocide against members of the Yazidi community.³ In January 2023, the German Bundestag⁴ institutionalized the recognition of crimes perpetrated by ISIL against the Yazidis, passing a

¹ The authors are international criminal and human rights lawyers and members of the Persecution Prevention Project (PPP), a pro bono initiative supported by Yale University's Genocide Studies Program and the International Bar Association's Human Rights Law Committee. They are deeply grateful for significant contributions from Project members, as well as Sophie Foster for her research assistance. Additional experts significantly contributed to this chapter on condition of anonymity in order to safely and securely continue working directly with the Yazidi community in Iraq and Europe. Some of the information relied on in this chapter is derived from firsthand experience or on-the-ground interviews and testimonies carried out by Project members, and referenced throughout as PPP Reporting). Project members can be contacted for bilateral requests for information. The authors would like to thank Frank G. Lumpkin IV, attorney at Hall Booth Smith, P.C. and U.S. Army Judge Advocate, and Justus Armstrong, criminal defense attorney at the Armstrong Justice League, P.C. in Phenix City, Alabama, for their review.

² This chapter uses ISIL instead of ISIS to maintain consistency with official U.N. documentation.

³ Oberlandesgericht [OLG] Frankfurt am Main [Higher Regional Court] Nov. 30, 2021, 5-3 StE 1/20-4-1/20 (Ger.).

⁴ This is the German title of the German lower body of parliament.

parliamentary resolution expressly classifying the 2014 atrocities as genocide under the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (hereafter “Genocide Convention”).⁵ Then-Foreign Minister Annalena Baerbock stated that “Germany, as a society, recognizes the genocide against the Yazidis.”⁶ The same resolution called upon the Federal Government to “continue

⁵ Antrag der Fraktionen SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN und FDP, Anerkennung und Gedenken an den Völkermord an den Êzîdinnen und Êzîden 2014 [Motion of the Parliamentary Groups SPD, CDU/CSU, Alliance 90/The Greens, and FDP, Recognition and Remembrance of the Genocide against the Êzîdî Women and Men in 2014], Deutscher Bundestag: Drucksache [BT] 20/5228, Jan. 18, 2023, 1, <https://dserver.bundestag.de/btd/20/052/2005228.pdf> (Ger.).

⁶ Deutscher Bundestag, *Bundestag Erkennt IS-Verbrechen an Jesiden als Völkermord an* [Bundestag Recognizes IS Crimes against Yazidis as Genocide] (Jan. 19, 2023), <https://www.bundestag.de/dokumente/textarchiv/2023/kw03-de-jesiden-927032> (Ger.).

granting protection to Yazidis, taking into account their ongoing persecution⁷ and discrimination within the asylum procedure.”⁸

⁷ Under European law,

[an] act shall be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention where it is: (a) sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the ECHR; or (b) an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner to an act referred to in point (a).

See Regulation 2024/1347, of the European Parliament and of the Council of 14 May 2024 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection and for the Content of the Protection Granted, art. 9(1), 2024 O.J. (L 1347) 1 (EU). Under international law, there is no universally accepted definition of “persecution.” As per the U.N. High Commissioner for Refugees, a threat to life or freedom, or other serious violations of human rights on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other prejudicial actions or threats can amount to persecution depending on case-specific circumstances, including the subjective fear of persecution. The High Commissioner also supports a finding of persecution based on cumulative factors:

[a]n applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on “cumulative grounds.

See U.N. High Comm’r for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV. 2, ¶¶ 51-53, (Feb. 2019), <https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfc47.pdf>.

⁸Antrag der Fraktionen SPD, *supra* note 5.

The same year that it recognized the genocide, reports emerged of Germany deporting members of the Yazidi community back to Iraq.⁹ In September 2023, the German Bundestag¹⁰ raised concerns regarding the “above-average number of revocations of protected status . . . for Yazidi refugees from Iraq, many of whom are survivors of the genocide perpetrated by the Islamic State (IS) in 2014.”¹¹ According to the Bundestag, the Federal Office for Migration had ceased to consider Yazidis from northern Iraq subject to group persecution from the then-ongoing genocide as early as the end of 2017,¹² at least two years before what is considered the defeat of ISIL in 2019 in Baghouz, Syria. The adjusted protection rate of the Federal Office for Yazidi refugees from Iraq fell from nearly 100 percent in 2015 to just 48.6 percent in 2022.¹³

⁹ Press Release, PRO ASYL, Innenministerkonferenz: PRO ASYL Fordert Sofortigen Abschiebestopp für Jesidinnen und Jesiden [Conference of Interior Ministers: PRO ASYL Demands an Immediate Moratorium on Deportations of Yazidis] (Dec. 2, 2023), <https://www.proasyl.de/pressemitteilung/innenministerkonferenz-pro-asyl-fordert-sofortigen-abschiebestopp-fuer-jesidinnen-und-jesiden>; Press Release, PRO ASYL, Bundesregierung Forciert Heimlich Abschiebungen in den Irak [The German Government is Secretly Pushing Ahead with Deportations to Iraq] (Oct. 9, 2023), <https://www.proasyl.de/news/bundesregierung-forciert-heimlich-abschiebungen-in-den-irak/>; Press Release, PRO ASYL & WADI, The Yazidis: There Is No Going Back to the Time Before the Genocide (Apr. 2024), <https://wadi-online.org/2024/04/24/report-ten-years-after-the-genocide-on-the-situation-of-the-yazidis-and-yazidis-in-iraq-pro-asyl-and-wadi>.

¹⁰ The Bundestag is the lower house of the German legislature or parliament.

¹¹ Antwort der Bundesregierung [Answer of the Federal Government], Deutscher Bundestag: Drucksache [BT] 20/8592, Sept. 29, 2023, 2, <https://dserver.bundestag.de/btd/20/085/2008592.pdf> (Ger.). Under German asylum law, protected status may be revoked if the conditions for prohibiting deportation are considered to no longer apply. See Asylgesetz [Asylum Act], § 73b(1) (Ger.), https://www.gesetze-im-internet.de/asylvfg_1992/BJNR111260992.html.

¹² According to the Bundestag, the Federal Office for Migration and Refugees (BAMF) ceased to assume Yazidis from northern Iraq were subject to group persecution by virtue of the ongoing genocide as early as the end of 2017. From then on, decisions regarding Yazidi refugees were made on a case-by-case basis, taking into account the prevailing situation in Iraq and the available information about the individual. See Bundesregierung, *supra* note 11, at 14.

¹³ Kleine Anfrage: Jesidische Geflüchtete in Deutschland [Minor Interpellation: Yazidi Refugees in Germany], Deutscher Bundestag: Drucksache 21/3188, ¶ 2 (Dec. 10, 2025), <https://dserver.bundestag.de/btd/21/031/2103188.pdf>. Schriftliche

Within that timeframe, the Federal Office revoked the protected status of 1475 Yazidi refugees.¹⁴ Media reports from April 2026 estimate that the overall protection rate for Iraqi Yazidis had fallen from eighty-three percent in 2014 to around twenty-three percent in 2025.¹⁵

In parallel, publicly available figures show that removals from Germany to Iraq increased markedly in the immediate years following the recognition of the genocide: 300 people were deported to Iraq in 2023,¹⁶ 699 in 2024,¹⁷ 793 in 2025,¹⁸ and 135 by the end of March 2026.¹⁹ While the Federal Government does not systematically record the religious affiliation of persons removed to Iraq, members of the Bundestag have expressly stated that these deportations frequently affect survivors of the genocide.²⁰ Civil society organizations, media reports, and Bundestag committee testimony indicate that Yazidis have been among those removed or threatened with removal, with specific deportations confirmed in 2024 and 2025.²¹ In February 2026,

Fragen mit den in der Woche vom 23. Jan. 2023 eingegangenen Antworten der Bundesregierung [Written Questions with the Federal Government's Answers Received During the Week of January 23, 2023], Deutscher Bundestag: Drucksache 20/5426, Antwort auf Frage 44, Jan. 27, 2023, <https://dserver.bundestag.de/btd/20/054/2005426.pdf>.

¹⁴ Bundesregierung, *supra* note 11, at 2.

¹⁵ Sulaiman Tadmory et al., *Migration Turnaround: Resistance from Within the CDU/CSU*, NDR (Apr. 16, 2026), <https://www.ndr.de/fernsehen/sendungen/panorama/archiv/2026/migrationswende-widerstand-aus-der-union%2Cmigrationswende-widerstand-union-100.html>.

¹⁶ Antwort: Abschiebungen in den Irak [Answer: Deportations to Iraq], Deutscher Bundestag, Drucksache 21/1416, 2 (Aug. 29, 2025), <https://dserver.bundestag.de/btd/21/014/2101416.pdf>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Germany Departs 135 Iraqi Migrants in First Three Months of 2026: Ministry*, RUDAW (May 7, 2026), <https://www.rudaw.net/english/categories/world/956759>.

²⁰ Antwort: Abschiebungen und Ausreisen im Jahr 2025 [Answer: Deportations and Departures in 2025], Deutscher Bundestag, Drucksache 21/4103, 1 (Feb. 11, 2026), <https://dserver.bundestag.de/btd/21/014/2101416.pdf>.

²¹ Wortprotokoll: Tagesordnung - Öffentliche Anhörung [Verbatim Transcript: Agenda - Public Hearing], Deutscher Bundestag: Drucksache 21/3601, 6 (Feb. 23, 2026), <https://www.bundestag.de/resource/blob/1162094/25-Sitzung-23-02-2026.pdf>. See OLIVER M. PIECHA, ZEHN JAHRE NACH DEM VOLKERMORD: ZUR LAGE DER

experts testifying before the Bundestag estimated that between 5000 and 10,000 Yazidis in Germany remained at risk of deportation.²²

German courts also ceased to presume protected status as early as 2019.²³ Higher administrative courts came to reject claims that Yazidis remained exposed to group persecution in Iraq following the defeat of ISIL as a territorial actor.²⁴ The latest iteration of this restrictive

JESIDINNEN UND JESIDEN IM IRAK [TEN YEARS AFTER THE GENOCIDE: ON THE SITUATION OF THE YAZIDIS IN IRAQ] (Apr. 2024), https://www.proasyl.de/wp-content/uploads/2024_04_23_Zur-Lage-der-Jesidinnen-und-Jesiden-im-Irak.pdf (not all administrative decisions are made available to the public). See, e.g., Verwaltungsgericht Potsdam [Potsdam Administrative Court], *Antrag der am 22. Juli 2025 in den Irak Abgeschobenen Jesidischen Familie auf Rückabwicklung der Abschiebung Erfolglos* [Application of the Yazidi Family Deported to Iraq on July 22, 2025, for the Reversal of the Unsuccessful Deportation], VG 16 L 866/25.A (Aug. 7, 2025), <https://verwaltungsgerichtsbarkeit.brandenburg.de/sixcms/media.php/9/PE-07-08-2025-1.pdf> (Ger.); Thüringer Ministerium für Justiz, Migration und Verbraucherschutz [Thuringian Ministry of Justice, Migration and Consumer Protection], *Abschiebung von Vollziehbar Ausreisepflichtigen Personen in den Irak* [Deportation of persons subject to enforceable deportation orders to Iraq] (July 22, 2025), <https://justiz.thueringen.de/aktuelles/medieninformationen/detailseite/31-2025> (Ger.); ZDFHeute, *Flug von Hannover nach Bagdad: 47 Personen in den Irak Abgeschoben* [Flight from Hanover to Baghdad: 47 People Deported to Iraq] (Feb. 17, 2025) <https://www.zdfheute.de/politik/deutschland/hannover-abschiebeflug-migration-irak-proteste-100.html> (Ger.); Die Ziet, *47 Menschen in den Irak abgeschoben* [47 People Deported to Iraq] (Feb. 17, 2025), <https://www.zeit.de/gesellschaft/2025-02/abschiebung-irak-hannover-flug-jeside-demonstration> (Ger.). 50 Personen nach Bagdad Abgeschoben – Auch Jesiden an Bord [50 People Deported to Baghdad – Yazidis Also on Board], WELT (Sept. 30, 2025), <https://www.welt.de/regionales/nrw/article68dba6c69207ead1797a320a/50-Personen-nach-Bagdad-abgeschoben-Auch-Jesiden-an-Bord.html>.

²² Wortprotokoll: Tagesordnung - Öffentliche Anhörung [Verbatim Transcript: Agenda - Public Hearing], Deutscher Bundestag: Drucksache 21/3601, 7 (Feb. 23, 2026), <https://www.bundestag.de/resource/blob/1162094/25-Sitzung-23-02-2026.pdf>.

²³ Niedersächsisches Oberverwaltungsgericht [OVG Lüneburg] [Higher Administrative Court of Lower Saxony] July 30, 2019, 9 LB 133/19; Niedersächsisches Oberverwaltungsgericht [OVG Lüneburg] [Higher Administrative Court of Lower Saxony] Sept. 24, 2019, 9 LB 136/19; Niedersächsisches Oberverwaltungsgericht [OVG Lüneburg] [Higher Administrative Court of Lower Saxony] Oct. 22, 2019, 9 LB 130/19.

²⁴ Oberverwaltungsgericht für das Land Nordrhein-Westfalen [OVG NRW] [Higher Administrative Court of North Rhine-Westphalia], July 31, 2024, 9 A 1591/20.A (Ger.).

practice, and an example of the reasoning now used to deny group-based protection to Yazidi applicants, is the March 2025 decision of the Higher Administrative Court of Saxony-Anhalt.²⁵ Affirming judicial precedent and the German government's position, the Court determined that members of the Yazidi community are no longer at "significant" risk of persecution as a group based on their religious affiliation, either by the so-called Islamic State or by other non-state third parties.²⁶ This judicial reasoning rests on a narrow premise: that with the territorial defeat of the Islamic State as the principal perpetrator of the 2014 genocide, the "current danger of being personally affected"²⁷ required to constitute group persecution under German Law has been eliminated. This narrow interpretation of risk was subsequently adopted by lower courts adjudicating claims of asylum or subsidiary protection of Yazidi plaintiffs.²⁸

The dissonance between Germany's recognition of and pioneering accountability efforts for the 2014 genocide and its deportations of Yazidis back to Iraq, where the genocide occurred and they face ongoing risks, requires an evaluation of Germany's obligations to the Yazidi community as the subject of a recent genocidal campaign and ongoing acts of persecution. This contradiction raises questions about

Verwaltungsgerichtshof Baden-Württemberg [VGH Baden-Württemberg] [Higher Administrative Court of Baden-Württemberg], July 12, 2023, A 10 S 400/23 (Ger.).

²⁵ Oberverwaltungsgericht des Landes Sachsen-Anhalt [Higher Administrative Court of Saxony-Anhalt, 2d Senate] Mar. 13, 2025, 2 L 2/25.Z. A decision from the Bavarian Administrative Court of Appeal later adopted the same position, citing to this March 13, 2025, decision for its detailed reasoning. VGH Bayern, Aug. 27, 2025, 5 ZB 23.30936 ("The plaintiffs have failed to provide the required analysis of the higher court rulings issued in the interim regarding the situation of the Yazidis in Iraq").

²⁶ *Id.* (The Court considers that the living conditions and humanitarian circumstances in the province of Nineveh do not constitute, with the required substantial probability, a serious risk of a violation of Article 3 of the ECHR (prohibition of torture and CIDT) for every Yazidi returning there.).

²⁷ *Id.*

²⁸ See, e.g., VG Hannover, Apr. 10, 2025, 3 A 140/25, Keine Beachtliche Wahrscheinlichkeit der Gruppenverfolgung der Yeziden im Irak [No Substantial Probability of Group Persecution of Yazidis in Iraq]; VG Potsdam, Apr. 10, 2025, 16 K 616/23.A (Ger.); VG Hannover, Aug. 14, 2025, 3 A 4909/22.

Germany's legal compliance and challenges its credibility as a global advocate of accountability for mass atrocities.

Germany is bound under several international legal frameworks and principles to protect populations at risk of genocide, both individually and collectively. This includes the foundational obligations under the Genocide Convention to prevent and punish genocide, incumbent upon both territorial and third States,²⁹ and the attendant principle of *non-refoulement* of persons having sought refuge in the latter.³⁰

International law does not exhaustively detail the content of the Genocide Convention's obligations. However, U.N. protection frameworks provide guidance to support their operationalization. In 2014, the year ISIL invaded Sinjar district and began its genocidal campaign against the Yazidis, the United Nations released the "Framework of Analysis for Atrocity Crimes: A Tool for Prevention" (hereafter "the U.N. Framework"),³¹ designed to assist States in fulfilling their obligations to prevent atrocity crimes by assessing fourteen risk factors considered predictors of occurrence or recurrence. Founded on the moral obligation to protect populations at risk, this Framework illustrates the need to associate legal and ethical considerations when assessing risks faced by a community.

Contrary to German courts' determinations, this chapter contends that Yazidis remain at a real risk of group persecution by civil, non-State, and State groups in Iraq. In reaching this conclusion, this chapter analyzes both the continued presence of the same risks to the Yazidi community that led to the 2014 genocide and ongoing risks of recurrence through the prism of the aforementioned U.N. Framework. Several of its risk factors can still be characterized as present for the Yazidi in Iraq.

²⁹ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

³⁰ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

³¹ U.N. OFF. ON GENOCIDE PREVENTION & THE RESPONSIBILITY TO PROTECT, FRAMEWORK OF ANALYSIS FOR ATROCITY CRIMES: A TOOL FOR PREVENTION (2014).

Where a narrow interpretation of international legal obligations places those they are meant to protect at risk, European States like Germany should reexamine their approach and act in the spirit of protection frameworks to proactively protect populations at risk of mass atrocities. This chapter will seek to demonstrate that the present risk factors for Yazidis in Iraq legally and ethically support Germany's reassessment of risks of group persecution of Yazidis in Iraq. Section II of this chapter summarizes the historical and factual context of the Yazidi genocide. Section III details specific elements of States' ongoing legal obligations to prevent genocide. Section IV analyzes the present situation of Yazidis in Iraq under the U.N. Framework's Risk Factors relevant to genocide. In conclusion, this chapter supports Germany's integration of the U.N. Framework as a complementary ethics-based instrument to operationalize its legal duty to prevent genocide and apply this Framework to the Yazidi situation.

II. Contextual Background

Yazidism is considered both an ethnicity and a religion. Its present configuration dates to the turn of the eleventh and twelfth centuries.³² As an endogamous community, children can only be Yazidi by having two Yazidi parents. With conversion into the faith impossible, the survival of the community has historically relied on marriages within the Yazidi religious group.

The central tenet of the Yazidi religion is the belief in one God as the creator of the world, who upon creation entrusted its care to seven Holy Angels, the head of whom is Taus Malek, the Peacock Angel.³³ Honoring these figures, along with the figure of God, is the motivation of the Islamic State and other ethno-religious communities for

³² Christine Allison, *The Yazidis*, OXFORD RESEARCH ENCYCLOPEDIA OF RELIGION (2017).

³³ *Id.*

perceiving Yazidis as *mushrikin*,³⁴ going against the command of monotheism in Islam.³⁵ An additional narrative around Taus Malek is his refusal to worship humans despite their divine creation. While Yazidis view this as an expression of fidelity to God, other communities mistakenly identify Taus Malek as an evil or fallen being, thus viewing the Yazidis as “devil-worshippers” (Abd-al-Shaytan).³⁶

This wholly unjust yet pervasive view of the Yazidi has resulted in cycles of religiously motivated persecutions dating as far back as the Ottoman Empire.³⁷ The Islamic State weaponized this ideology and used it as the foundation of its 2014 campaign of extermination of the community. On August 3, 2014, ISIL fighters attacked and encircled Sinjar, Yazidis’ homeland in Iraq. The fighters faced little to no resistance; the Kurdish Peshmerga, principally made up of Kurdistan Democratic Party (KDP)-affiliated forces,³⁸ in control of Sinjar district before the advance, withdrew without effectively communicating this

³⁴ *The Revival of Slavery Before the Hour*, DABIQ (2014), at 14-16 (Notably, “[p]rior to the taking of Sinjar, Shari’ah students in the Islamic State were tasked to research the Yazidi group to see if they should be treated as an originally mushrik group or one that originated as Muslims and then apostatized . . .”). The term “*mushrikūn*” is translated as “polytheists,” referring to individuals committing “*shirk*,” defined in Islam as “idolatry, polytheism, and the association of God with other deities.”). See *Shirk*, ENCYCLOPEDIA BRITANNICA (2026), <https://www.britannica.com/topic/shirk>.

³⁵ QUR’AN 4:48 (“Allah does not forgive associating others with Him ‘in worship’ And whoever associates others with Allah has indeed committed a grave sin”; QUR’AN 4:76 (“Believers fight for the cause of Allah, whereas disbelievers fight for the cause of the Devil. So fight against Satan’s evil forces.”) The literal interpretation of this Surah represents a highly conservative and minority branch of Sunni Islam, but does not represent the view of a majority of the Sunni Muslim community.

³⁶ U.N. Hum. Rts. Council, “*They came to destroy*”: ISIS Crimes Against the Yazidis, ¶ 19, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016).

³⁷ A/HRC/32/CRP.2, *supra* note 36, ¶ 19.

³⁸ Formally, the Peshmerga are under the command of the Ministry of Peshmerga Affairs (MoPA) of the KRG. In practice, however, the Peshmerga’s structure is largely divided and controlled separately by the two Iraqi Kurdish political parties: the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK); see, e.g., Wladimir van Wilgenburg & Mario Fumerton, *Kurdistan’s Political Armies: The Challenge of Unifying the Peshmerga Forces*, CARNEGIE MIDDLE EAST CTR. (Dec. 16, 2015), https://carnegieendowment.org/files/ACMR_WilgenburgFumerton_Kurdistan_English_final.pdf. In this report, we refer to the Peshmerga under KDP control, who were present in Sinjar in summer 2014.

decision to the local civilian population.³⁹ No official evacuation orders were issued, leaving most unaware of ISIL's encirclement and lack of defenses.⁴⁰

The withdrawal occurred against a broader security context. After the collapse of the Iraqi army in Nineveh in June 2014, the Peshmerga moved to take fuller control of Sinjar district.⁴¹ Thousands of Yazidis serving in the Iraqi army then returned to Sinjar with weapons, but KDP Peshmerga forces and secret police systematically disarmed them and collected their weapons across the district's villages.⁴² This significantly weakened Yazidis' ability to defend themselves when ISIL attacked.

Yet, the August 3 attack had been preceded by clear, observable warning signs. By late June 2014, Sinjar was nearly surrounded by ISIL-held territory. In the weeks before August 3, ISIL fighters already conducted medium-range missile attacks on Yazidi villages; attacked and took over Yazidi farmland where they flew their own flags; and carried out shootings and kidnappings near Yazidi towns.⁴³ On August 2, reliable information of an impending ISIL attack circulated, of which KDP intelligence could not have been unaware.⁴⁴ Local Yazidi town and village leaders contacted KDP security officials to inquire about an evacuation plan, but Peshmerga commanders and high-level party and security officials provided assurances that the

³⁹ A/HRC/32/CRP.2, *supra* note 36, ¶ 24. The KDP and affiliated Peshmerga forces had exercised de facto control over Sinjar's security architecture since 2003. The KDP had established a party-security structure in Sinjar through which local administration, intelligence, and armed security were closely integrated; see Matthew Barber, *A Survey Political History of the First Year of the Yazidi Genocide*, in YEZIDISM: BETWEEN CONTINUITY AND NATION-BUILDING 7-8 (Carina Jahani & Dashni Morad eds., 2022).

⁴⁰ A/HRC/32/CRP.2, *supra* note 36, ¶¶ 24-25.

⁴¹ Matthew Barber, *A Survey Political History of the First Year of the Yazidi Genocide*, in *Yezidism: Between Continuity and Nation-Building* 8-9 (Carina Jahani & Dashni Morad eds., 2022).

⁴² *Id.* at 9.

⁴³ *Id.* at 11-12.

⁴⁴ *Id.* at 12.

population would be protected and instructed civilians to remain in their villages.⁴⁵

Yazidi movement before the attack was also restricted. As early as July 2014, Yazidi families attempting to relocate temporarily to the Kurdistan Region (KRI) were refused passage at the checkpoint controlling all movement between Sinjar and Dohuk Governorate in the KRI and for the KDP, save for individuals working in the KRI.⁴⁶ This policy reportedly intensified on August 2, 2014, when families attempting to evacuate were prevented from leaving. Intelligence officers stationed at town entrances stopped vehicles carrying children and possessions and instructed them to return home.⁴⁷

The failure of the formal security structure was an enabling factor in the subsequent atrocities. ISIL fighters proceeded to capture all Yazidis who had been unable to escape their villages and intercept others on escape routes leading to neighboring Mount Sinjar. Upon capture, fighters methodically sorted Yazidis into three separate groups.⁴⁸ Yazidi men and boys above the age of puberty within the first group were immediately isolated and forced to convert or be summarily executed, often within eyesight or earshot of their families.⁴⁹ ISIL fighters subsequently transferred women, girls, and non-pubescent boys to holding sites, where they were registered and sold into sexual slavery and forced labor.⁵⁰ Upon reaching the age of seven, boys were separated from their mothers and forcibly transferred to training centers or military camps to be subjected to an intense program of indoctrination and military training and serve as recruits in ISIL's war against 'un-believers.'⁵¹ ISIL fighters utilized the practice of forced marriage outside the faith and rape as tools to

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Matthew Barber, *supra* note 47, ¶ 12.

⁴⁸ A/HRC/32/CRP.2, *supra* note 36, ¶ 31.

⁴⁹ *Id.* ¶ 33.

⁵⁰ *Id.* ¶¶ 42, 44, 55.

⁵¹ *Id.* ¶¶ 92, 95-96.

destroy the endogamous Yazidi community.⁵² As a result, an unknown but likely significant number of children were born as a result of wartime rape.⁵³ Both religiously and legally, the children born as a result of wartime rape are still considered Muslim.⁵⁴ Ultimately, ISIL killed approximately 5000 Yazidis, enslaved 6000 women and girls,⁵⁵ displaced 400,000,⁵⁶ and destroyed Sinjar.⁵⁷ As of February 2026, approximately 190,000 Yazidis remained displaced, with more than half living in camps, principally located in Duhok and Nineveh Governorates.⁵⁸

⁵² *Id.* ¶ 19.

⁵³ SEED FOUND., CHILDREN BORN OF THE ISIS WAR 4, 12-13 (2000), https://www.seedkurdistan.org/Downloads/Reports/201223-Children_Born_of_the_ISIS_War.pdf. U.N. Secretary-General, *Women and Girls Who Become Pregnant as a Result of Sexual Violence in Conflict and Children Born of Sexual Violence in Conflict*, U.N. Doc. S/2022/77, ¶ 8 (Jan. 31, 2022), <https://digitallibrary.un.org/record/3957087?ln=en&v=pdf> (“Hawl camp in the Syrian Arab Republic, where security and humanitarian conditions remain deplorable, hosts close to 57,600 people, 94 per cent of them women and children (S/2021/1029), a number of whom arrived pregnant, in 2019, as a result of systemic sexual violence perpetrated by Da’esh and other parties to the conflict.”).

⁵⁴ SEED FOUND., *supra* note 59.

⁵⁵ In August 2016, the United Nations estimated that between 2000 and 5500 Yazidi had been killed and approximately 6386 abducted by ISIL members on or after August 3, 2014. See U.N. High Comm’r for Human Rights & U.N. Assistance Mission for Iraq, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL* (Aug. 2016), https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMIRreport12Aug2016_en.pdf. This was consistent with independent demographic analysis of mortality and kidnapping estimates. See Valeria Cetorelli et al., *Mortality and Kidnapping Estimates for the Yazidi Population in the Area of Mount Sinjar, Iraq, in August 2014: A Retrospective Household Survey*, PLOS MED. (May 2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5423550/>.

⁵⁶ See INT’L ORG. FOR MIGRATION, YAZIDI DISPLACEMENT AND MIGRATION FROM IRAQ: TRENDS, DRIVERS, AND VULNERABILITIES, 3 (2024), https://iraqdtm.iom.int/files/BorderMonitoring/20244304316478_iom_iraq_protection_yazidipaper_digital.pdf.

⁵⁷ See YALE UNIV. GENOCIDE STUD. PROGRAM & THE INT’L BAR ASS’N HUM. RTS. L. COMM., *PATHWAYS TO PROTECTION: A REPORT CALLING FOR IMMEDIATE SOLUTIONS TO THE ONGOING DESTRUCTION OF THE YAZIDI COMMUNITY OF SINJAR* 2, 6 (November 2024), <https://macmillan.yale.edu/sites/default/files/2024-11/Pathways%20to%20Protection.pdf>.

⁵⁸ See Section IV.D. (Humanitarian and Security Crisis) below.

The genocide has received worldwide recognition. U.N. mechanisms, including the Security-Council-created Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant ("UNITAD"),⁵⁹ have repeatedly recognized and detailed the genocidal character of ISIL's crimes against the Yazidi.⁶⁰ Regional institutions, including the European Parliament and the Parliamentary Assembly of the Council of Europe, have likewise recognized ISIL's crimes against Yazidis and other targeted minorities as genocide.⁶¹ Individual States and national parliaments independently began to recognize the genocide as early

⁵⁹ The U.N. Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant was created to support Iraq-based efforts to hold ISIL accountable by collecting, preserving, and storing evidence of acts that may have amounted to war crimes, crimes against humanity, and genocide. Its mandate ceased in September 2024. See S.C. Res. 2379 (Sept. 21, 2017), [https://docs.un.org/en/S/RES/2379\(2017\)](https://docs.un.org/en/S/RES/2379(2017)).

⁶⁰ U.N. Security Council, Letter dated May 12, 2021, from President addressed to the Secretary-General and Permanent Representatives of the members of the Security Council, U.N. Doc. S/2021/460, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2021_460.pdf. The Independent International Commission of Inquiry on the Syrian Arab Republic released its first official report in 2016, in which it concluded to the U.N. Human Rights Council that ISIL was committing genocide against Yazidis. See A/HRC/32/CRP.2, *supra* note 36.

⁶¹ EUR. PARL. DOC. (SEC 14402) (2017). European Parliament Resolution of 4 February 2016 on the Systematic Mass Murder of Religious Minorities by the So-Called 'ISIS/Daesh', 2018 O.J. (C 35) 77, https://www.europarl.europa.eu/doceo/document/TA-8-2016-0051_EN.html?redirect.

as 2016, including Iraq,⁶² the United States,⁶³ the United Kingdom,⁶⁴ Canada,⁶⁵ and, critically, Germany.⁶⁶

Even so, twelve years later, neither the structural causes that led to the creation of ISIL nor the combination of factors that enabled ISIL to carry out the Yazidi genocide have been adequately addressed. The continuing violence,⁶⁷ persistent discrimination, and credible threats

⁶² Iraq Law No. 8 of 2021 - Yazidi Female Survivors Law, Art. 2, https://www.refworld.org/legal/legislation/natlegbod/2021/124274?__cf_chl_f_tk=f7ieCfVEnEuZ1Vyu28FGgJGwh0uXX9V7W5xI5W6M0wo-1782833222-1.0.1.1-bsuutdde9UZ2knjfNz6rXklsj60.CNiNN_wBHGmM5lg.

⁶³ S. Res. 340, 114th Cong. (2016), <https://www.congress.gov/bill/114th-congress/senate-resolution/340>.

⁶⁴ Philip Loft, *UK Acknowledges Yazidi Genocide by Daesh/Islamic State* (Aug. 9, 2023), <https://commonslibrary.parliament.uk/uk-acknowledges-yazidi-genocide-by-daesh-islamic-state/>.

⁶⁵ Standing Comm. on Citizenship and Immigr., House of Commons, *Road to Recovery: Resettlement Issues of Yazidi Women and Children in Canada*, 42d Parl., 1st Sess., 18th Rep. 7 (Mar. 2018) (Can.).

⁶⁶ Antrag der Fraktionen SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN und FDP, *Anerkennung und Gedenken an den Völkermord an den Êzîdinnen und Êzîden 2014* [Motion of the Parliamentary Groups SPD, CDU/CSU, Alliance 90/The Greens, and FDP, Recognition and Remembrance of the Genocide Against the Êzîdi Women and Men in 2014], BT-Drucksache 20/5228, at 1 (Jan. 18, 2023), <https://dserver.bundestag.de/btd/20/052/2005228.pdf> (Ger.) Other States include Armenia, the Netherlands, Belgium, and Luxembourg. *See Armenia Recognizes Genocide Against Iraq's Yazidis*, Azatutyun (Jan. 16, 2018), <https://www.azatutyun.am/a/28978565.html>; Tweede Kamer Der Staten-Generaal, *Motion by member Kuik et al. regarding declaring that IS has committed genocide against the Yazidi population*, 29754-610 (July 1, 2021), <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2021D26770&did=2021D26770>; Chamber of Representatives of Belgium, *Resolution aimed at recognizing and prosecuting crime of genocide against the Yazidis as well as providing them with assistance*, Doc. 55 1766/008 (July 15, 2021), <https://www.lachambre.be/FLWB/PDF/55/1766/55K1766008.pdf>; Chambre des Députés Grand-Duché de Luxembourg, *Regarding the case: Massacres and persecutions suffered by the Yazidis in Iraq and Syria at the hands of the terrorist group "Islamic State in Iraq and in the Levant" (ISIL)*, 4009 (Nov. 9, 2022), https://www.chd.lu/fr/motion_resolution/4009.

⁶⁷ *See* YALE UNIV. GENOCIDE STUD. PROGRAM, *supra* note 57, at 6, 26, (citing U.S. Comm'n on Int'l Religious Freedom, *Country Update: Iraq* (Mar. 2022), <https://www.uscirf.gov/sites/default/files/2022-03/2022%20Iraq%20Country%20Update.pdf>. *See also* *Fire Burns Five Caravans in*

against the Yazidi by various groups together instill a reasonable fear in many Yazidis that their lives are at risk in Iraq, notably in their homeland of Sinjar district. A severe lack of basic infrastructure and security⁶⁸ and lack of prospects for Sinjar's reconstruction severely restrict Yazidis' ability to sustainably and safely return to their homeland. Displacement in the Kurdistan Region of Iraq presents separate and additional risks. The continued, harmful impact of these systemic issues, including the failure to bring criminals, some of whom are known, to justice enable this ongoing insecurity. The failure to investigate allegations against parties not directly associated with ISIL also leaves the Yazidi vulnerable.

Governmental and non-governmental reports confirm the Yazidi's sustained need for refuge amidst continuing threats in Iraq. Despite Germany's diplomatic mission in Iraq acknowledging that it is too dangerous for their representatives to go to Sinjar to assess the situation for themselves,⁶⁹ Germany's protection policies do not reflect this reality. Rather, Germany has pursued its deportations of Yazidis to Iraq, where they continue to face a founded risk of future harm (*see* Section IV).⁷⁰

Yazidi IDP Camp in Duhok Province, RUDAW (Jan. 9, 2024), <https://www.rudaw.net/english/kurdistan/090120242>.

⁶⁸ See Zeynep Kaya, *Iraq's Yazidis and ISIS: The Causes and Consequences of Sexual Violence in Conflict* (Nov. 2019), https://eprints.lse.ac.uk/102617/1/Kaya_yazidis_and_isis_published.pdf.

⁶⁹ OVG Sachsen-Anhalt [Higher Administrative Court of Saxony-Anhalt, Second Senate], Mar. 13, 2025, 2 L 2/25.Z, ¶ 44 (Ger.) ("The Federal Foreign Office also explicitly points out that the situation report must remain general and cursory due to the lack of an empirical basis . . . from media reports or statements by human rights organizations cannot be verified in many areas due to the precarious security situation in Iraq."). Auswärtigen Amt vom [Federal Foreign Office], Lagebericht: Bericht über die asyl- und abschiebungsrelevante Lage in der Republik Irak [Situation Report on the asylum and deportation-relevant situation in the Republic of Iraq] (Apr. 2024), <https://fragdenstaat.de/dokumente/248197-lagebericht-irak-04-2024/>.

⁷⁰ Deutscher Bundestag, *Kritik an Abschiebungen von Jesiden in den Irak* [Criticism of Deportations of Yazidis to Iraq], hib 871/2023 (Nov. 16, 2023), <https://www.bundestag.de/presse/hib/kurzmeldungen-978206>.