

“THE CRIME OF ALL CRIMES” OF THE TERRORIST ORGANIZATION “ISLAMIC STATE”: THE YAZIDIS GENOCIDE¹



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Abstract

In the Legal Science the materials of the United Nations Special Commission that acknowledged the crimes committed by the terrorist organization “Islamic State” (ISIS) against the Yazidis of Iraq as genocide are analyzed for the first time. The necessity of an affirmative response from the UN Security Council to the appeal of the Commission for the referral of the Yazidis case to the International Criminal Court or establishment, in this regard, of the Special Tribunal is examined. The international solidarity towards the question concerning the combat against the ISIS must be fortified by the same solidarity towards the question concerning protection of the ISIS’ victims. The military and diplomatic relief executed by Russia and the antiterrorist coalition of states led by the USA to support the Yazidis paramilitary groups that fight

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against the ISIS is offered as the most effective means of restraint on continuing genocide of the Yazidis, and, on the whole, on carving up an ethno-religious map of the region.

Keywords

Iraq, Russia, Yazidis, Christians, Kurds, Crime of Genocide, terrorist organization "Islamic State" (ISIS)

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I. INTRODUCTION

In Geneva the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (further, UN Commission) "They came to destroy": ISIS³ Crimes Against the Yazidis"⁴ was published on June 16, 2016, at the 32nd session of the Human Rights Council. As it is stated in the Report, the UN Commission came to the conclusion that "ISIS has committed the crime of genocide⁵ as well as multiple crimes against humanity and war crimes against the Yazidis, thousands

³ ISIS (or IS) an abbreviation of an organization recognized as terrorist and banned in many countries of the world, including in Russia, called "Islamic State of Iraq and the Levant" (or "Islamic State").

⁴ They came to destroy: ISIS Crimes Against the Yazidis. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf

⁵ With the helping hand from American Professor the definition of genocide as the "crime of crimes" came into science. See this: United Nations Audiovisual Library of International Law // William A. Schabas. Convention on the Prevention of Genocide and Punishment for it. Available at: http://legal.un.org/avl/pdf/ha/cppcg/cppcg_r.pdf. See also: The Crime of all Crimes: Toward a Criminology of Genocide. By Nicole Rafter (New York University Press), 2016. P. 297.

of whom are held captive in the Syrian Arab Republic where they are subjected to almost unimaginable horrors.”

According to the data of the UN Commission, over 3,200 Yazidi women and children are still held by the ISIS.⁶ Yazidi females are sexually enslaved and Yazidi children are trained and used in hostilities. Thousands of Yazidi men and boys are missing.

The UN Commission makes a conclusion that “*The genocide of the Yazidis is on-going*”. That means that the largest non-Muslim ethnodenominational group of Iraq – the Yazidis, whose history dates back to some millennia, is under threat of obliteration.

II. THE YAZIDIS AS THE OBJECT OF THE CRIME OF GENOCIDE

Before the genocide (mainly, in the north – in Ninawa Province, and in the north-west – in Iraqi Kurdistan) 800 thousand Yazidis lived in Iraq. Here we should remind that the Iraqi Constitution (2005) “guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandaean Sabians” (Art. 2, p. 2).⁷ Along with that, the Iraqi Constitution proclaims Islam as “the official religion of the State and a foundation source of legislation.” “No law may be enacted that contradicts the established provisions of Islam” (Art. 2, p. 1, par. A).⁸

⁶ These data differ from the data of the Yazidis and Iraq organizations, according to which 3700 Yazidis women are still captured by ISIS and, in addition, 1914 people are missing. Stellungnahme der Gesellschaft Ezidischer Akademiker Innen (GEA). Available at: <https://www.facebook.com/gea.ev/posts/1009339692511960>

⁷ The text of the Constitution available at: http://www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf

⁸ The Constitution of Iraqi Kurdistan (2009) also contains similar rules: “This Constitution confirms and respects the Islamic identity of the majority of the people of Iraqi Kurdistan. It considers the principles of Islamic Sharia as one of the main sources of legislation. Likewise, this Constitution upholds and respects all the religious rights of Christians, Yazidis, and others, and it guarantees to every individual in the Region freedom of belief and freedom to practice their religious rites and rituals.” (Art. 6). Draft Constitution of Kurdistan Region – Iraq. Approved by Kurdistan Parliament – Iraq, 24th June 2009. Available at: <http://kurdistantribune.com/wp-content/uploads/2012/08/Kurdistan-Draft-Constitution-2009.doc>. The Russian version available at: <http://worldconstitutions.ru/?p=1010>.

In fact, despite all mentioned constitutional guarantees, the Yazidis are the most vulnerable ethnic minority of Iraq in comparison with other communities. They have neither an international support (as opposed to the Christians who are protected by the states of the West, or the Turkmen who are patronized by Turkey), nor the territories for refuge (as opposed to the Muslim Kurds or the Shiite Arabs). We suppose that the ISIS leaders also took into account this circumstance, when they launched a campaign of the Yazidis massacre.⁹

The question 'whether the Yazidis are an ethnic or religious group stirs up disputes. On the whole, in science the Yazidis are considered to be an ethno-denominational group of the Kurds.¹⁰ But, along with that, we should admit that a growing number of the Yazidis began to consider themselves a separate ethnic group in recent years distancing themselves from other ethnic groups of the region.¹¹ They are not Muslims, as opposed to the Kurds, the Turks, the Arabs or the Persians. The Yazidis are monotheists, followers of the Oneness of God, and after the reform of the XII century their religion became syncretic, the elements of Christianity, Judaism, etc. appeared in it.¹²

All the same, for radical Islamists¹³ the Yazidis are "pagans," "followers of the Devil," "disbelievers" that must be killed or converted to

⁹ Genocide watch: the Iraqi communities most endangered by the rise of ISIL. Available at: <http://qz.com/245569/genocide-watch-the-communities-most-endangered-by-the-rise-of-isis/>

¹⁰ Ref., e.g.: Encyclopedia Iranica. Yazidis i. General. Available at: <http://www.iranicaonline.org/articles/yazidis-i-general-1>; The Encyclopaedic dictionary. M., 2009. Available at: <http://dic.academic.ru/dic.nsf/es/20492>

¹¹ Such tendencies especially intensified after 03.08.2014 — the day that is considered to be the beginning of the genocide of the Yazidis of Iraq. Ref. about it: Şefik Tagay, Serhat Ortaç. Die Eziden und das Ezidentum. Geschichte und Gegenwart einer vom Untergang bedrohten Religion. Hamburg. 2016. P. 123–137.

¹² Ref.: Pirbari D. V., Shchedrovitkiy D. V. The secret of the pearl: Yazidi theosophy and cosmogony. Moscow — Tbilisi: TAUS. 2016. P. 13–22.

¹³ There are a lot of foreign citizens among them. At that, as criminologists notice, the number of radical Islamists has been mushrooming because of the persons imprisoned in these states. For example, after the terrorist attack of 11.09.2001 about 240 000 people converted to Islam in the USA prisons for 8 years. This circumstance allows us to talk about the fact that "Islam is the most rapidly increasing religion among prisoners in Western countries". See: Mark S. Hamm. Islam Prison in the Age of Sacred Terror. British Journal of Criminology (2009) 49 (5): 667–685 first published online June 9, 2009. DOI:10.1093/bjc/azp035

Islam. They consider that if they kill a Yazidi, “they will automatically go to Heaven.”¹⁴ For centuries the Yazidis have been eradicated spiritually and physically because of their faith. Millions of them were converted to Islam by force or eliminated just because they refused to betray their faith.

However, the Islamists of the XXI century trumped their predecessors by their ferocity and bloodthirstiness. For example, having burst into the Yazidi village Kocho outside Mosul, they executed 600 men on the very first day.¹⁵ The overall number of Yazidis killed by Islamists exceeded 5 000 people, however, nobody knows their exact number, because executions were and are carried out on the vast territory that is under the control of jihadists. Thus, 72 areas have been already uncovered in different places of Iraq and Syria where terrorists buried more than 15 thousand of their victims. Undoubtedly, the majority of them are the Yazidis.¹⁶

Almost 7 000 “kafirs” (“unbelievers”) – Yazidi women and girls were forced into slavery by Islamists. They, including 12 year old girls, were turned into sex-slaves. Those, who did not fulfill jihadists’ orders, were killed. One of such barbaric and brutal crimes became the slaughter of 19 Yazidi girls in Mosul, who were burnt alive because they had refused to fulfill terrorists’ order – to accept Islam.¹⁷

A lot of girls were sold for \$20 in the markets in Mosul and Raqqa. Some of them managed to escape captivity afterwards. In February 2016 Nadia Murad, a well-known former Yazidi captive of Islamists,

¹⁴ Human Rights Office of the High Commissioner for Human Rights. United Nations Assistance Mission for Iraq (UNAMI) Human Rights Office. Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July – 10 September 2014. Available at: http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC_Report_FINAL_6July_10September2014.pdf

¹⁵ Ref.: Amal Clooney Denounces ISIS ‘Genocide’ in Emotional Speech While Introducing Yazidi Survivor at UN. Available at: <http://www.people.com/article/amal-clooney-nadia-murad-united-nations-goodwill-ambassador>

¹⁶ More than 15 thousand of ISIS victims were found in mass graves in Syria and Iraq. Available at: <http://news-hl-cm.newsrep.net/h5/nrshar>

¹⁷ Ref.: ISIS burns 19 Yazidi girls to death in Mosul. Available at: <http://en.abna24.com/service/middle-east-west-asia/archive/2016/06/04/758133/story.html>

who survived trafficking, was nominated for the Nobel Peace Prize by the Government of Iraq for her intense activity to protect the rights of female slaves, and in September 2016 the UN appointed her the Goodwill Ambassador for the Dignity of Survivors of Human Trafficking.¹⁸

Some Yazidi boys suffered not a less tragic fate. Thousands of them are missing. Some Yazidi organizations have the data that jihadists, having converted the boys into Islam, are preparing "living bombs" from them — "shahids" (terrorist self-murderers; Muslim martyrs).

Finally, atrocities of Islamists became the reason of the fact that, according to the estimates of official authorities, not fewer than 450 000 Yazidis, became refugees. They have not been able to return to their homes for more than 2 years already, being at the bottom of the heap in temporary camps on the territory of Turkey, Syria and Iraq.

It should be noted that the analyzed Report was prepared by the Independent International Commission of Inquiry on the Syrian Arab Republic, although, the Yazidis genocide has been committed mainly on the territory of Iraq, in the north-western district Sinjar (in Yazidi, Shingal). In August 2014 having captured Sinjar and massacred men,¹⁹ jihadists took thousands of Yazidi women and children into the "capital" of caliphate — Raqqa, which is located in Syria. Thus, the UN Report only partially reproduces the Yazidis horrors, but inherently it refers only to those Yazidis that are captives, in slavery or camps for refugees in Syria.

All things considered, the Report of the UN Commission is very significant both for better understanding the tragic events happening in the enclave (the Nineveh Plains) that is inhabited by the Yazidis and Christians, and for discussion and elaboration of measures aimed at prosecution and punishment of the Crime of Genocide.

¹⁸ Ref.: United Nations Office on Drugs and Crime. Human Trafficking survivor Nadia Murad named UNODC Goodwill Ambassador. Available at: <https://www.unodc.org/unodc/en/frontpage/2016/September/human-trafficking-survivor-nadia-murad-named-unodc-goodwill-ambassador.html?ref=fs1>

¹⁹ Ref., e.g.: "The Islamic State" is accused of ethnic cleansing. Available at: www.bbc.co.uk/russian/rolling.../140902_rn_iraq_amnesty_report.shtml; Report: ISIS Puts Literal Price Tags on Abducted Girls. Available at: <http://news.yahoo.com/report-isis-puts-literal-price-tags-abducted-girls-164302036--abc-news-topstories.html>

III. RECOMMENDATIONS OF THE UNITED NATIONS COMMISSION

Above all things, assessing the importance of the Report of the UN Commission on the whole, in our opinion, it is necessary to highlight the following recommendations.

First, the UN Commission called on the UN Security Council to **urgently** refer proceedings concerning the situation in Syria to the International Criminal Court (ICC), or to establish the Special Tribunal with the corresponding geographical and temporal jurisdiction.

It is necessary to explain that the ICC can hear the cases of genocide (and also of crimes against humanity and war crimes) that were committed only on the territory of a member-state or committed by a citizen of such a state. Iraq is not a member state of the ICC, because in 1998 Saddam Hussein refused to sign the Rome Statute related to the ICC establishment.

As for the view of modern Iraq concerning the question of the Yazidis genocide, it deserves criticism. If the current Iraqi Parliament signed and ratified the Rome Statute, it is Iraq that could specifically, and, therefore, promptly, initiate the transfer of the case concerning the Crime of Genocide of the Yazidis committed on its territory to the ICC. However, Iraq has neither recognized nor condemned the genocide of the Yazidis so far, although other states have already done it, in particular, the USA and Great Britain, as well as the European Parliament.

Thus, as Iraq is a the member state of the ICC, in the Report dated June 16, 2016, the UN Commission suggests acting without regard to the view of Iraq, that is, it offers the UN Security Council to refer the case directly to the ICC or establish the Special Tribunal.

Will the UN Security Council support the opinion of the UN Commission? We would like to hope that it will give an affirmative. At least, some precedents have already been set. In particular, in 2004 the UN Security Council referred the situation of the Sudanese province of Darfur (Sudan is also not a member state of the ICC) to the ICC, and before this it had established the Special Tribunals for the former Yugoslavia and Rwanda.

It is obvious that the states of the world, that are, primarily, the members of the UN Security Council, must assume some responsibility for ongoing genocide of the Yazidis. In fact, the UN Commission appeals to the UN Security Council not for the first (!) time. Further failure of member states of the UN Security Council to act with regard to the issue of those responsible for the Yazidis genocide makes them accomplices of the situation.²⁰

If the case results in the establishment of the Special Tribunal or referral of the Yazidis case to the ICC, the collection of the documents that shed light on the causes and conditions that led to the Yazidis genocide will become an important component of the work of international justice bodies. In particular, this includes examination of the Yazidis position in Iraq before and during the ISIS, interrogations of senior officials and military leaders of Iraq, the Ninawa Province (which includes Sinjar) and, of course, Iraqi Kurdistan. In particular, the main question that is being asked by the Yazid's all over the world today, is not only why 8 thousand Peshmerga (the military forces of the autonomous region of Iraqi Kurdistan) positioned in Sinjar did not resist terrorists, but also why before the terrorists' attack Peshmerga disarmed the Yazidi self-defense groups in some areas. Is this circumstance a coincidence or does it indicate a possible collusion between the authorities of Kurdistan and the jihadists?

It goes without saying that besides this, perpetrators and accomplices of the genocide, including the ISIS field commanders,

²⁰ It is interesting that Amal Clooney, a spouse of the Hollywood star George Clooney and a famous British-Lebanese lawyer specialising in public international law, international criminal law and human rights, announced her desire to represent victims of the genocide before the ICC. She declared the following at the press-conference in Greece: "How can it be that the most serious crimes known to humanity are being carried out before our eyes but are not being prosecuted by the International Criminal Court in The Hague?" Available at: <http://nytlive.nytimes.com/womenintheworld/2016/06/09/amal-clooney-to-represent-isis-survivor-nadiamurad-and-victims-of-yazidi-genocide/>; Amal Clooney visited the Yazidis refugees camp. Available at: <http://ezidi.news/ru/archives/1086>. Ref. also: Amal Clooney 'will represent Yazidi survivor and ISIL genocide victims'. Available at: <http://www.telegraph.co.uk/news/2016/06/09/amal-clooney-will-represent-yazidi-survivor-and-isil-genocide-vi/>

should be identified. Also, an important work is to be done by the secret services of many states, because the ISIS is a throng of terrorists from almost 100 countries including the Russian Federation.

The second most important recommendation of the UN Commission should be considered as an appeal to the international community “to recognize the Yazidis genocide and make greater efforts to save them.”

It is necessary to emphasize that there is no ethnic or religious group in Iraq or Syria that faces a choice: either death, or Islam. **Jihadists demand only from the Yazidis to become a Muslim or to die for their faith.** Hereby, the Report of the UN Commission dated June 16, 2016 definitely clarifies the actual victims of the crime of genocide. It seems that they are only (or mainly) the Yazidis.

IV. RECOGNITION AND CONDEMNATION OF THE CRIME OF THE YAZIDIS GENOCIDE

In connection with the foregoing, the attempts of some states authorities to reckon Christians and even Muslims (Shiites and Kurds) as the groups of the population subjected to genocide by the Islamic radicals cannot be considered fair. Indeed, the Draft of the White House Statement concerning recognition of atrocities of ISIS committed against the Yazidis as the genocide caused an unexpected reaction of American conservatives. “We are gravely concerned by persistent press reports that the administration is preparing a genocide finding that would apply only to Yazidis, and may avoid judgment about whether the ISIL is also committing genocide against Christians and the other minorities it is eliminating,”²¹ — the online edition “Hill” cited the message of 30 Congressmen headed by Ed Royce, the Chairman of the House Foreign Affairs Committee of the United States Congress.”²² After such a demarche the USA administration recognized not only the

²¹ Available at: <http://thehill.com/policy/defense/264189-lawmakers-urge-inclusion-of-christians-in-genocide-designation>

²² The U.S. Congressmen appealed for recognizing Christians as the victims of the genocide in Syria. RIA News. Available at: <http://ria.ru/syria/20151225/1348528136.html#ixzz4CiElTFiS>

Yazidis genocide, but other ethnic groups: both Christians, and Muslims (Shiites).²³

Something similar took place in Russia, with the only difference that the main victims of terrorists, the Yazidis, were buried in oblivion. On November 14, 2014 the State Duma adopted the Statement of the Federal Assembly of the Russian Federation "On gross and massive violations of the rights of religious and ethnic minorities in connection with the escalation of the situation in Syria and Iraq."²⁴ This document stated intensification of terrorist actions that lead "to the cruel and massive eradication of religious and ethnic minorities," oppression of thousands of people just because they want to preserve "their religion and customs." However, the Yazidis were not even mentioned in this document. It seems to be the result of lobbying Kurdish parties that consider the Yazidis to be ethnic Kurds; with regard to this the following sentence appeared in the mentioned document: "The terrorists' extreme cruelty is evinced towards the Kurds and other ethnic-denominational minorities that live in the North of Syria and some areas of Iraq that testifies a deliberate striving for their complete physical elimination."²⁵

²³ Ref., e.g.: The USA accused the "Islamic state" of the genocide. Available at: http://www.bbc.com/russian/news/2016/03/160317_usa_isis_genocide. House to Obama: Label ISIS attacks against Christians 'genocide'. Available at: <http://edition.cnn.com/2016/03/14/politics/isis-house-obama-genocide/index.html>; Islamic State committed genocide against Christians, Shi'ites: U.S. Available at: http://www.reuters.com/article/us-mideast-crisis-usa-genocide-idUSKCN0WJ1OL?utm_source=twitter. Ref. also: British parliamentarians demand to recognize the ISIS crimes as the genocide. Available at: http://www.bbc.com/russian/news/2015/12/151221_isis_genocide_britain

²⁴ The Statement of the Federal Assembly of the Russian Federation "On gross and massive violations of the rights of religious and ethnic minorities in connection with the escalation of the situation in Syria and Iraq of November 14, 2014 No. 5376-6 GDSPS (SPS "ConsultantPlus"). For the adoption of the decision 442 MPs. Voted. See: Duma declared gross and massive violations of the rights of religious and ethnic minorities in Syria and Iraq. Available at: http://www.duma.gov.ru/news/273/851,209/?sphrase_id=2295927

²⁵ The official site of the Political party "Spravedlivaya Rossia" ("SR"). Available at: http://www.spravedlivo.ru/5_63887.html. It is interesting that in the draft of the Regulation the following was stated after the mentioned words: "The State Duma considers that the terrorists' actions contain all the characteristics which allow us to qualify them as the genocide in accordance with article II of the Convention on the Prevention and Punishment of the Crime of Genocide 1948". However, the genocide was not named in the Resolution adopted by the State Duma, although, the mentioned phrase "complete physical eradication" of ethnic-denominational minorities is specifically the genocide.

We suppose that the motives of political correctness, which the lawmakers of different States follow in such cases, lead to distorted results when the true victims of terrorists are left without protection by the international community. And this may be another factor that is likely to induce terrorists to commit a new crime of genocide.

(For the foregoing reasons we cannot agree with the proposal of the faction of the political party “A Just Russia” with regard to imposing criminal liability for public denial of the facts of “Kurds-Yazidis” genocide (as well as the Greeks and the Assyrians) “in Ottoman Turkey in the period of 1915–1922, as well as the approval of the crimes committed against them.”²⁶ The issue is not that we do not support the initiative to add Article 354³ that deals with the denial of the facts of genocide of certain peoples to the Criminal Code of the RF. On the contrary, strongly supporting this initiative, we propose to draw attention to the fact that genocide in the Ottoman Empire had a religious character because it was directed against the non-Muslim population, including the Yazidis. Meanwhile, armed groups that inhabit the former Empire of the Muslim peoples, including the Kurds (by the way, modern Kurdish politicians apologized for this historical fact time and again), were directly involved in its perpetration. Therefore, the wording contained in the draft law causes a misperception of real executioners and their victims. Bringing the text of the document into line with the facts of the past by replacing the words “Yazidi-Kurds” into “Yazidis in the draft Article” is crucial for the restoration of historical justice.

V. CONCLUSION

Evidently, the current position of the whole non-Muslim population of Iraq,²⁷ and, primarily, of the Yazidis, makes the perspective of its Exodus from the “cradle of civilization” (as Mesopotamia is often called)

²⁶ In the State Duma the deputies of the “SR” faction offer to establish criminal liability for the public denial of the facts of the genocide of the Greeks, the Assyrians and the Kurds-Yazidis. Available at: http://www.spravedlivo.ru/5_73369.htm

²⁷ Ref., e.g.: Will the Christians be forced out from the Middle East? Available at: http://www.bbc.com/russian/international/2015/04/150415_middle_east_christians

quite real. It is possible to stop the Yazidis genocide, prevent new crimes of genocide against non-Muslims and, therefore, redraw the ethno-religious map of Iraq, as it seems to us, only by the creation of an Autonomous administrative-territorial unit in the area inhabited by the Yazidis and Christian minorities who are on friendly terms with them (the Assyrians and the Chaldeans) – in the Nineveh Plains near Mosul.

According to the Iraqi Constitution, the Republic of Iraq is a Federal state (Art. 1). The Constitution refers to the territorial entities of the Federation as "regions." The only territorial entity of the Federation at the time of adoption of the Constitution (2005) was Iraqi Kurdistan ("the Federal region of Kurdistan"). However, the Constitution (Part 2 Art. 117) admits the possibility of formation of new "regions."²⁸ That is why the Yazidis and Christians, in our opinion, must profit by this rule (the right to self-determination within a united, democratic, secular and federal state) and, after creation of their own Autonomous territorial entity, become a new territorial entity of the Iraqi Federation. At the same time, the government of Iraq and Iraqi Kurdistan must abandon attempts of implementation of Article 140 (Part 2) of the Iraqi Constitution that qualifies Sinjar, along with some other settlements, as "disputed territories," and that allows the Kurds and Arabs to challenge its membership by means of a referendum. In conditions when the Yazidis do not trust the authorities of Iraqi Kurdistan accusing them, at least, of failure to act during the ISIS invasion of Sinjar, the annexation of this region to Iraqi Kurdistan could blow up the region, and become the source of new conflict.

...The international uniformity concerning the fight against the ISIS must be supported by the same uniformity concerning the protection of the ISIS victims. The efforts of the West and Russia, as we think, must be aimed not only at punishing terrorists and those who committed genocide, but also at diplomatic and military support of the Yazidis. Such support can be an effective means of suppression of the crime of genocide. Moreover, only with the support and guarantees of the Russian Federation, the USA, and other leading powers (along with the

²⁸ Iraqi Constitution. Final Version. Available at: http://www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf

guarantees of the Central Government of Iraq and the authorities of Iraqi Kurdistan) the right of the Yazidis and Christians to the autonomy, that means the right to existence, can be exercised.

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