

Remarks by Amal Clooney
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In 2015 a 23 year-old woman travelled to Iraq to join the so-called Islamic State. Prosecutors have evidence that she joined the ISIS ‘morality police’, patrolled parks carrying a Kalashnikov, and dispensed punishments for violations of the group’s twisted laws. That summer, she and her husband enslaved a 5-year-old Yazidi girl who was part of a group of prisoners of war. They held the child and her mother as captives at their home in Fallujah. And one day, in scorching summer temperatures, the child was chained outdoors and left to die.

Earlier this month, my client, the child’s mother, sat in a witness box and carefully told a panel of 5 judges every detail of the murder. “It is very difficult to see your own daughter die in front of your eyes”, she told the Court, through a Kurmanji interpreter. “I want the whole world to know what they have done”.

We are five months into this trial in Munich, Germany, where the defendant, a woman named Jennifer, was born, raised and radicalized. She is charged with crimes against humanity and faces life imprisonment.

Excellencies, the crimes committed by ISIS are unlike anything we have witnessed in modern times. This brutal group ruled over 8 million people and recruited more than 40,000 foreign fighters from 110 countries, including many who are, today, detained in Iraq and Syria. Some of ISIS’ most brutal acts were reserved for Yazidis: the group that, according to the UN, was singled out for mass rape and genocide. Yet this case in Munich is thought to be the only prosecution for international crimes committed by ISIS against Yazidis anywhere in the world.

This has to change.

I believe that senior ISIS commanders belong in the dock at the International Criminal Court alongside other notorious war criminals. I believe that a highly-publicised international trial exposing ISIS’ horrific offences would help to counter the propaganda that has made their recruitment effort so successful. And I believe that their victims deserve nothing less.

But, so far, a global military response to ISIS has not been matched by any concerted plan to bring the perpetrators to justice. The Security Council is deadlocked. The International Criminal Court is sidelined. Many European states are neither repatriating their nationals nor have a plan to ensure that they can be given a fair trial or be detained in humane conditions. And in Iraq trials that the UN says are lacking due process simply charge fighters with membership of ISIS and swiftly result in a death sentence. This denies victims the measure of justice they deserve.

Excellencies, the status quo is not sustainable.

The UK has not sought to prosecute El Shafee Elsheikh and Alexandra Kotey, ISIS fighters who were British citizens at the time they allegedly beheaded two British aid workers and at least 25 other Western hostages in Syria.

The US has not sought the transfer of Umm Sayyaf, who enslaved Yazidi women in her home along with an American hostage named Kayla Mueller, who was held there in horrific conditions and raped repeatedly by the head of ISIS, Abu Bakr Al Baghdadi. Umm Sayyaf instigated beatings and put make up on her victims to ‘prepare’ them for rape. But at her trial in the Kurdish Region of Iraq, sexual violence was not alleged, discussed, or put to proof. Genocide was not mentioned. None of the victims appeared as witnesses, and even after the trial concluded, they did not know it had taken place. When I questioned US officials about why they did not seek her transfer to stand trial in the United States, I was told that this measure of justice was good enough.

I beg to differ.

Excellencies my message to you is that the survivors of such atrocities – whether Yazidi, Muslim, Christian, Kurd, Turkmen or any other religion or ethnicity – deserve better. ISIS is a global threat – to this day. And it requires a global response.

So let us at least agree on three things today.

First, any trial that takes place in Iraq must comply with international standards of justice. Survivors deserve trials that charge individuals with specific criminal acts, that do not rely on forced confessions, that apply international fair trial rights, and that allow victims to have their day in court. UN Security Council Resolution 2379 contemplates international assistance to allow for such trials in Iraq, and it was adopted with Iraq’s consent. This should now be put into action.

Second, trials should take place in national courts outside Iraq that respect international standards of due process and have jurisdiction over ISIS’ crimes. This means that there must be a coordinated effort to analyse the evidence against foreign fighters and build cases against them. If Iraq were to allow access to its evidence, a working group that includes European prosecutors and others could be set up to identify what evidence there is against foreign fighters, what role they played within ISIS, what charges the evidence could sustain, and which courts have jurisdiction and adequate procedures to deal with them. This means providing access to statements, DNA databases, phone records and the mass of documents that ISIS left behind. And UNITAD – a UN team created with Iraq’s agreement – is mandated and ideally placed to assist with this.

Third, states should agree on an appropriate way to hold senior ISIS fighters accountable in an international court. During discussions this week with ISIS survivors and various Foreign Ministers, a number of options for an international court were raised: most prominently the idea of a hybrid court, sitting in Iraq, that could be created by treaty between Iraq and the United Nations. This would have a mix of Iraqi and international judges, apply international fair trial standards and comply with the UN’s anti-death-penalty stance. A court could also be created through a treaty between European states and others and be based outside of Iraq. Finally, even assuming that the Security Council remains blocked, the International Criminal Court could be provided with evidence to prosecute senior commanders who are nationals of State Parties to the Court. I hope that these discussions can now be carried forward with the seriousness and urgency that they deserve.

Excellencies: I know that there is no solution that comes without complication. Worthwhile international efforts rarely do.

But so long as states continue to have inconclusive conferences and circular debates, the only beneficiary is ISIS itself.

I am grateful to the governments of the Netherlands and Iraq for inviting me to chair this important discussion and I hope that we will have something of value to report. The victims have already waited too long.