

Special event: Accountability for crimes committed by Isil in Iraq

Intervention of
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Your Excellency, dear colleagues, ladies and gentlemen,

Accountability from crimes is an essential part of the moral reconstruction of a country in a post -conflict situation, and, even more after having counter a terrorist organization such as Daesch. It is essential also for the victims of that terrorist organization that the perpetrators are brought to justice in addition to compassion and retribution. It should be underlined that Iraq has firmly taken this way and should be supported in its efforts, especially from the UNODC which is in charge in the UN system of all issues related to crime prevention and Criminal Justice. Special thanks should be addressed to the Terrorism Prevention Branch which is fully involved in supporting Iraq in its efforts to reinforce its Criminal Justice System. But Iraq alone cannot achieve all its goals for bringing all the terrorists of Daesch to justice; many of the evidences and even the individuals involved in those crimes may be found outside of its territory or are related to nationals of foreign countries who can, of course be judged in Iraq, based on the territorial jurisdiction when there are in Iraq but not when they escaped from Iraq or whenever there is a need of collecting evidence concerning those people in their country of origin, for example. These elements, essential for a fair trial, shall be properly provided to the Iraqi Criminal Justice System along the principles of international cooperation in criminal matters. That way is the only one which will provide the most secure evidences to Iraqi courts while, at the same time, protecting the fundamental rights of the individuals concerned. Mr. Ambassador, Chief Justice, for that type of actions and support, here at UNODC, you are at the right place, since UNODC has the most advanced tools to assist you in this endeavor.

We all know that the Secretary General has already started to take action on the basis of the SC resolution 2379 in close cooperation with your government to support Iraqi domestic efforts to hold ISIL members accountable by collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group ISIL in Iraq, to the highest possible standards. It would ensure the broadest possible use before national courts, and complementing investigations being carried out by the Iraqi authorities, or investigations carried out by authorities in third countries at their request

This action would allow the Iraqi criminal justice systems to make use of those evidences in such a way that those involved in committing such atrocities, such horrors, can be tried and sentenced with no possibility of any dispute over the procedure used or the sentences handed down. Even in ordinary criminal cases there are a wide range of reasons making it difficult to ensure fairness in the proceedings, such as a lack of equipment for the investigators or even a shortage of forensic police teams, and such cases cannot be compared with those you are dealing with, which involve exceptionally serious crimes committed by members of and their associates, crimes which must not go unpunished. The extent of the massacres on the one hand,

and on the other the factors that must be taken into account in order to prove what has taken place, mean that national judicial systems have a pressing need to seek international support.

International support in the collection of evidence has multiple objectives, one of which is to improve the capacity to obtain evidence and UNODC is extremely well placed to appropriate legal assistance and capacity building to the Government of Iraq in order to strengthen its courts and judicial system;

In the case of Iraq, another of the objectives is to show the world that justice is not about revenge, and in fact that the best means of ensuring that justice is fair is to establish close cooperation between international and regional organizations, as well as with specialist international bodies such as UNODC and , obviously Interpol. With that in place, the Iraqi judicial system will significantly increase its chances of obtaining solid evidence corroborated by forensic evidence collected either on the battlefield or other locations thanks to the highly skilled members of these specialist organizations and of their very extensive networks.

In the case of crimes committed by members of Daesh and their associates, we are confronted with terrorist crimes of great magnitude, but also with war crimes, crimes against humanity and genocide. The principles of international cooperation in criminal matters must therefore be applied with the utmost rigor.

There are three kinds of situation which require particular attention with regard to the taking of evidence and its admissibility in legal proceedings before the competent courts, either at national level or at international level.

The first situation involves foreign national authorities requesting mutual legal assistance, extradition, or asset freezes or confiscations following the arrest of a member of Daesh in their country, or at least for proceedings brought against a member of Daesh in their country. Unless they wish to challenge that country's jurisdiction over that particular offence, the Iraqi authorities may submit the information requested and/or extradite the accused person after trying them for acts committed in Iraq. While the Iraqi authorities may be tempted to believe that they have jurisdiction over all crimes committed by Daesh, in our opinion, this cannot be the case if it means that these criminals go unpunished in cases where it is not possible for proceedings to be transferred by the requesting State on legal grounds or grounds of expediency, for example when the person in question has also committed serious crimes in the requesting country, or when that country cannot hand over proceedings to the Iraqi authorities because of the existence of the death penalty in the Iraqi Penal Code.

The second situation pertains to cases for which the International Criminal Court assumes jurisdiction because the perpetrator is not Iraqi but a citizen of a country which is a party to the Rome Statute, and has committed crimes under the subsidiary jurisdiction of the Court. A request for extradition or mutual legal existence may be met by the national authorities, as in this scenario the Iraqi authorities would only have limited jurisdiction, and the nature of the offence may motivate the national authorities to leave the case to the ICC, which is highly qualified to deal with this kind of crime.

The third, final and most important situation relates to the direct support that third countries and international organizations can provide to national bodies.

Authorities of the countries which already have or may have evidence against members of Daesh or their associates, and which will have to respond to requests for mutual legal assistance from the Iraqi authorities, may not, in the light of the principles of international law, submit the evidence in their possession without being assured that the death penalty will not be imposed on the perpetrators of international crimes committed in that context; still, it must also be borne in mind that such crimes must not go unpunished, as impunity is, in all cases, the worst possible solution.

The main principle that should be applied to cooperation in criminal matters, encompassing all cooperation mechanisms including extradition, mutual legal aid, transferring proceedings and freezing assets of criminals and their associates, is to consider on a case-by-case basis what form that cooperation should take. We must refrain from laying down general rules for cooperation as part of specific procedures, while keeping in mind the objective: to prevent impunity and, at the same time, to respect the general principles of international criminal law.

For this reason, individual agreements to transfer proceedings would enable practical solutions to the difficulties with which we are confronted to be found. The name(s) of the individuals who could be subject to legal proceedings would have to be included in agreements to transfer proceedings, thereby guaranteeing their rights under international law. It was confirmed by the Iraqi delegation when we participate to a workshop which occurred in Brussels that under the Iraqi Constitution, the legal value of international treaties was equal to that of national law. This principle should be used in the context of requests for mutual legal assistance in criminal matters, and even requests for extradition.

However, it should also be borne in mind that, in order to apply any international treaty, including bilateral agreements, it is necessary that the requested or requesting country's definition of the criminal offence be compatible with the definitions of crimes contained in the Iraqi Criminal Code or legislation be compatible with those set out in the conventions against acts of terrorism adopted by the UN, the most important of which have been ratified by Iraq. This involves meeting the requirements of the principle of dual criminality, which includes the principle that offences and penalties must be defined by law. Therefore, for example, the definitions of terrorist crimes that constitute the basis of international cooperation in criminal matters in Iraq and which are currently set out in Iraqi legislation, will have to be revised in light of the UN conventions that Iraq has already ratified in order to ensure compliance with the principle of dual criminality, ensuring that definitions of criminal offences of other states are compatible with those of Iraq and enabling bilateral agreements to be applied on the basis of that principle.

The question of international crimes

It is clear that international crimes will account for an extensive part of international cooperation in criminal matters in relation to the crimes committed by members of Daesh and their associates. Iraq is not a State Party to the Rome Statute of the International Criminal Court. However, Iraq is party to the Geneva Conventions and the great majority of the other instruments of international humanitarian law (14 February 1956). As a consequence, even if these crimes are not classified as criminal acts under the Criminal Code or specific Iraqi laws, they form an integral part of customary international law and should therefore be the subject of proceedings for infringements thereof. A specific law on this subject is, according to my sources, to be passed in Iraq.

In any event, there is nothing to prevent Iraq offering to cooperate via the international cooperation mechanisms in criminal matters in the event that proceedings concerning offences of this nature are pursued in another country. Indeed, the following is stated in the International Review of the Red Cross, Volume 87, No 857,2005; in practice, the drafting of treaty norms helps to focus world legal opinion and has an undeniable influence on the subsequent behavior and legal conviction of States. The Court confirmed that treaties may codify pre-existing customary international law but may also lay the foundation for the development of new customs based on the norms contained in those treaties. The Court has even gone so far as to state that; it might be that ... a very widespread and representative participation in [a] convention might suffice of itself, provided it included that of States whose interests were specially affected.

Conclusion

First, by means of the mechanisms for international cooperation in criminal matters and of agreements on a case-by- case basis which can result from them, Iraq could, through the dialogue established with other countries in which evidences or individuals are located, obtain solid evidences for initiating trials against Daesch Terrorist members.

Second the framework of the UN Conventions against acts of terrorism that have been ratified by Iraq and in respect of which it would be extremely beneficial when they are incorporated into national legislation in order to satisfy the requirements of the principle of dual criminality.

Lastly, with regard to international crimes that must be tried before a court in this context, the use of jurisdictions such as hybrid courts, or even the International Criminal Court, should be considered, while always bearing in mind that even if the overarching principle is such that the Iraqi authorities have jurisdiction, a pragmatic approach means that these different types of jurisdiction can be considered in specific cases.

Let's work together in order to ensure that the memory of the Iraqi people does not lose the sense of the horror they suffered at the hands of Daesch. We – UN members States N and the Iraqi authorities – must keep in mind that the most important task entrusted to us is to fight together against impunity using the practical cooperation mechanisms that, at the same time, also hold up the values of international law and international humanitarian law to which we all subscribe and which can be held up as an example by future generations.