



EXECUTIVE SUMMARY

This report urges immediate international recognition of the suffering of the Yazidi people in light of the genocide perpetrated by ISIS. Under the Genocide Convention and the ICC Rome Statute, ISIS genocidaires are guilty by the commission, in a systematic manner, of all five enumerated acts of genocide: 1) killing, primarily of Yazidi men by targeted execution; 2) causing serious bodily or mental harm, primarily to Yazidi women by sexual violence and enslavement; 3) deliberately inflicting conditions of life calculated to bring about physical destruction, primarily by besieging trapped Yazidi civilians; 4) imposing measures to prevent births, primarily by forced abortions and the separation of Yazidi men and women; and 5) forcible transfer of children, primarily by abduction. Sufficient evidentiary findings support the legal inference of a requisite specific intent “to destroy, in whole or in part,” the Yazidis as a protected group. Therefore, the Kurdish Regional Government should exercise its jurisdictional authority to establish a fully hybrid tribunal, supported with international resources and legal expertise, to enable proper prosecution of the crimes perpetrated by ISIS genocidaires within its territory. Pursuant to the authority conferred to domestic enforcement by the Genocide Convention, Article 6, the Kurdish Regional Government has and should exercise such authority to prosecute the genocide of the Yazidi people. The Kurdish Regional Government deserves international financial, technical, professional, and logistical assistance in pursuit of justice for the Yazidi, Kurdish, and Iraqi peoples against the gross atrocities of ISIS genocidaires.

INTRODUCTION

The rapid spread of ISIS (Islamic State of Iraq and al Sham) over northern Iraq since June 2014 has caused the displacement of more than 2 million people and resulted in severe human rights abuses, imperiling local minority groups in particular. Atrocities committed by ISIS terrorists have included targeted execution, forced conversion, rape, sexual enslavement, child abduction, and destruction of locations of religious and cultural significance. The full weight of these atrocities is increasingly well documented in authoritative reports, even though their full scope remains unknown as investigation is continuing. This report documents the legal conclusion that this plan of violence by ISIS militants has constituted a systematic pattern to destroy, in whole or in part, the Yazidis as an Iraqi group. As such, members of ISIS stand guilty not only of innumerable war crimes and crimes against humanity, but of a manifest pattern of genocide.

The Yazidis are a minority group of northern Iraq, centered on Sinjar within Nineveh Province. As a group, Yazidis have been specifically targeted by ISIS members and have suffered some of the worst of its atrocities. ISIS genocidaires have systematically executed Yazidi men and abducted Yazidi women and children *en masse*. They have implemented a brutal policy of 'death or conversion' against the Yazidis, destroying much unique culture and forcing Yazidis away from their cultural homelands. These Yazidis suffering at the hands of ISIS terrorists implicate the international law on genocide.

Genocide is defined in Article 2 of the United Nations Genocide Convention, and Article 6 authorizes enforcement by domestic legislation as well as *ad hoc* tribunals. The International Criminal Court Rome Statute expressly incorporates genocide as a crime under Article 6. The

crime is carefully defined as the commission of some enumerated act, such as killing, joined with a specific intent "to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such."

Under the Genocide Convention and the ICC Rome Statute, the Yazidis are a protected group, both ethnic and religious.

Under the Genocide Convention and the standards of the Rome Statute, ISIS genocidaires have formed the requisite intent to destroy, in whole or in part, the Yazidis as a group. Evidence establishes this legal inference from the general context of planned violence: the specific, discriminatory nature of the attacks against the Yazidis, the targeted destruction of Yazidi cultural and religious sites, a motive to wage jihad against the Yazidis, a plausible premeditation of such a campaign against the Yazidis, statements by ISIS propaganda calling for extermination of the Yazidi people, and finally a widespread and systematic pattern to its organized violence.

Under the Genocide Convention and the Rome Statute, ISIS genocidaires are guilty of commission, in systematic manner, of all five enumerated acts of genocide: 1) killing, primarily of Yazidi men by targeted execution; 2) causing serious bodily or mental harm, primarily to Yazidi women by sexual violence and enslavement; 3) deliberately inflicting conditions of life calculated to bring about physical destruction, primarily by besieging trapped Yazidi civilians; 4) imposing measures to prevent births, primarily by separation of Yazidi men and women; and 5) forcible transfer of children, primarily by abduction.

This report demands international recognition of the suffering of the Yazidis at the hands of ISIS genocidaires. Further, the Kurdish Regional Government should exercise its jurisdictional authority to enable a fully hybrid tribunal, supported with international resources and legal expertise,

pursuant to the authority conferred to such domestic enforcement under the Genocide Convention, Article 6, and in pursuit of justice for the Yazidi, Kurdish, and Iraqi peoples.

WHAT HAPPENED?

ISIS forces stormed the mostly Yazidi city of Sinjar on August 2 2014, capturing it in one day due to the defensive retreat of the KRG Peshmerga forces. This precipitated the forced flight of over 200,000 civilians, mostly Yazidis, who were caught unaware by the rapid advance and forced to escape into the desert and mountains near Sinjar. ISIS fighters threatened to kill all Yazidis who did not convert to Islam, besieging almost 50,000 civilians trapped on Mt. Sinjar without access to food or water. These victims were mostly rescued by coordinated US and Peshmerga forces by August 14. Yet, ISIS fighters still executed around 1,000 captives, including captured Yazidis who had refused conversion.

WHO ARE THE YAZIDIS?

The Yazidis form an ethno-religious group centered on the Kurdish region of Nineveh and Dohuk Governorates of north-western Iraq. The majority of Yazidis reside in Iraqi Kurdistan, with diaspora in other Middle-Eastern and Western countries. While the main religion within Kurdistan is Sunni Islam, the Kurdish people represent a more diverse minority linked by common ties of ethnicity, geography, and Kurdish language. Within this diverse yet related ethnic group, the Yazidis are unique as a monotheistic people whose beliefs blend elements of Christianity, Islam, Zoroastrianism, and pre-Abrahamic Mesopotamian religions.

The Yazidi belief system includes angels, with a main figure named “Melek Taus.” Portrayed in peacock traits, Melek Taus is benevolent and intrinsically good, following a reconciliation with God that reflects on the mortal condition of sin. Yet in mainstream Islam, a similar theological narrative (without reconciliation) represents the evil “devil” figure. Further, the Yazidi dualism has been misunderstood as *mushrik* (polytheistic). Thus, the Yazidis have been

persecuted as heretical at numerous times throughout their difficult history as a group. In reaction, they have developed a closed and tight-knit community that accepts no religious converts and forbids any marriage outside of their ethnic and religious group.

ISIS propaganda has exploited these misinterpretations of Yazidi beliefs to plan a campaign of *jihad* and brutal treatment of Yazidis in particular. In the published views of ISIS on Qur’anic “orthodoxy,” Yazidis are distinct from other Kurdish groups, in that Yazidis are *kufr* (apostates). Whereas Abrahamic individuals (Christians, Jews, and Sunni and Shiite Muslims) have a purported right to live under the *jizya* (tax), ISIS policy claims Yazidis do not have any rights, only a choice of ‘conversion or death.’ Enacting this policy, ISIS fighters have committed gross atrocities against the Yazidis, on a size and scale that threatens their continued viability as an Iraqi group.

“Prior to the taking of Sinjar, *Shari’ah* students in the Islamic State were tasked to research the Yazidi to determine if they should be treated as an originally *mushrik* group or one that originated as Muslims and then apostatized ... [T]he apparent origin of the religion is found in the Magianism of ancient Persia, but reinterpreted with elements of Sabianism, Judaism, and Christianity, and ultimately expressed in the heretical vocabulary of extreme Sufism. Accordingly, the Islamic State dealt with this group as the majority of *fuqahā’* have indicated how *mushrikīn* should be dealt with. Unlike the Jews and Christians, there was no room for *jizyah* payment. Also, their women could be enslaved unlike female apostates who the majority of the *fuqahā’* say cannot be enslaved and can only be given an ultimatum to repent or face the sword.”

[-- Dabiq, Issue 4]

WHAT IS GENOCIDE?

The ICC Rome Statute incorporates the text of the Genocide Convention in specifying the legal elements that establish genocide.¹ The enumerated acts must be committed with a specific intent “to destroy, in part or in whole, a national, ethnic, racial, or religious group, as such.”² The five enumerated acts are:

- (a) killing members of group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group.³

Finally, the acts must occur “in the context of a manifest pattern of similar conduct directed against [the group] or was conduct that could itself effect such destruction.”⁴

While both the Genocide Convention and the ICC Rome Statute state the same act and intent elements,⁵ the Genocide Convention does not *expressly* state the contextual element of a “manifest pattern” which is included in the ICC Rome Statute.⁶ This report assesses the

crime of genocide under the more explicit ICC Rome Statute, which satisfies the Genocide Convention.

The unique requirement of the specific intent “to destroy, in whole or in part” distinguishes genocide from other atrocities (crimes against humanity and war crimes).⁷ This proof of intent is required for both the enumerated acts and all contextual elements (the targeted group and a manifest pattern).

WHAT IS THE HISTORY OF GENOCIDE?

The term “genocide” did not exist prior to 1944. To describe the Nazi’s organized and systematic murders during the Holocaust, Raphael Lemkin, a Polish-Jewish lawyer, combined *geno*, Greek for “race or tribe,” with *cide*, Latin for “killing,” as a legal term.

Thus for most of human history, genocide has gone unpunished and often unacknowledged. Only in rare instances, such as regime changes, were state powers held accountable for their past atrocities. Otherwise, victims of a state regime simply had no recourse for accountability. It was not until the early twentieth century that the international views began to shift. After World War I, the non-interventionist view began to give way to new ideas about international human rights law. In 1948, in the aftermath of World War II, the UN

conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population) *with* Genocide Convention, art. II (simply requiring that the acts be committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such).

⁷ Compare Rome Statute, art. 6 (defining genocide with a special intent requirement that the underlying act be committed with the intent to destroy the target group, in whole or in part) *with* Rome Statute, art. 7 (defining crimes against humanity without a special intent requirement) *and* Rome Statute, art. 8 (defining war crimes without a special intent requirement).

¹ Convention on the Prevention and Punishment of the Crime of Genocide, art. II, 9 Dec. 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

² Rome Statute of the International Criminal Court, art. 6, U.N. Doc. A/CONF.183/9 (1998) [hereinafter Rome Statute].

³ Rome Statute, art. 6; *see also* ICC Elements of Crimes, art. 6 (adopting the structure of the elements of genocide from the Rome Statute).

⁴ ICC Elements of Crimes, art. 6.

⁵ Compare ICC Elements of Crimes, art. 6 *with* Genocide Convention, art. II.

⁶ *See infra*, III. “Manifest Pattern.” Compare ICC Elements of Crimes, art. 6 (containing the requirement that “the perpetrator knew that the

General Assembly (GA) adopted the Genocide Convention. In full force by 1951, the Genocide Convention established not only a definition for the great crime of genocide but mandated that signatories take steps to prevent and punish genocide itself.

In the Genocide Convention, the UN also recognized a need for an enforcement mechanism to prosecute those who committed its new, enumerated crimes – genocide, war crimes, and crimes against humanity. But relevant preparations for an international court were sidelined during the Cold War. The ICC Rome Statute, finally adopted in 1998 and entered into force in 2002, established the first permanent international criminal court. Within a year, the ICC was operational. In 2005, it issued its first arrest warrant, and as recently as 2009, its first trial began.

While negotiations on establishing the ICC were taking place, the simultaneous atrocities in Yugoslavia and Rwanda rattled the international community. For the first time, the systematic human destruction was broadcast around the world. Global actors and audiences demanded accountability. To deal more proactively with these crimes, the UN Security Council established *ad hoc* tribunals for both Yugoslavia and Rwanda. These *ad hoc* tribunals have helped refine and elaborate upon the law of genocide.

ISIS GENOCIDAIRES COMMITTED GENOCIDE AGAINST THE YAZIDIS

Application of the Elements

I. THE YAZIDIS ARE AN ETHNO-RELIGIOUS GROUP

The genocide jurisprudence first requires that the Yazidis be positively defined as a group protected under statute. A thorough study of the case law establishes that the Yazidis are an ethnic and religious group.

Thus, the enumerated acts committed by ISIS genocidaires properly imply an analysis of genocide under the Rome Statute, Article 6.

A. ETHNIC GROUP

Under the ICC Rome Statute, an ethnic group must either have its own language, maintain its own tribal customs, or have its own traditional ties to the land on which it is located. The subsequent case law has further broadened the definition of the "group" by inclusively defining an ethnic group through "common language or culture." This inclusive "group" definition would allow many communities of Iraqi Kurdistan, not only Yazidis, to seek legal protection from persecution by ISIS forces.

While the Yazidi community speaks the same Kurdish language as other Kurds, the group has distinct tribal customs that differ from its surrounding communities. More importantly, the Yazidi culture has a centuries-old connection (as far back as the twelfth or thirteenth century) to the Sinjar Mountains and the Nineveh-Dohuk region. The region is home to the holiest of Yazidi locations and ancestral lands. This rich and intimate connection with land is inherently part of the story of the Yazidis as a people.

B. RELIGIOUS GROUP

Under the ICC Rome Statute, a religious group must either share the same religion or mode of worship. The type of evidence considered to show similarity of religion includes both subjective and objective criteria. Objective criteria center on the standard religious practices and dogma within the community. Subjective criteria include both how the specific community views itself and how external communities view it in the greater regional, national, and international context. Such criteria often implicate other areas of the Rome Statute Article 6 protection, drawing on these

ethnic, racial, and national contexts so as to determine whether a community constitutes a statutorily protected religious group.

The Yazidis constitute a protected religious group by both objective and subjective standards. The Yazidis devoutly practice a distinct religion. The veneration of Melek Taus (a peacock angel) as a proxy for singular monotheistic worship of God, multi-daily prayer, and pilgrimages to holy sites north of Mosul are – in combination – unique facets of the Yazidi religion and wholly distinct from neighboring religions. The dominant religion in Kurdistan is Sunni Islam, while the majority of all Iraqis practice Shia Islam. Further, the Yazidis are forbidden to convert or marry into other religions. Similarly, the Yazidis do not accept converts into their faith. This total exclusion of outside religions distinguishes their religious community from all others. While Yazidis and Kurdish-Iraqi Muslims have often existed peacefully, there have been historical incidents where the Yazidis have been singled out as a separate religious entity.⁸ This provides an explicit, external recognition of their unique belief system.

II. ISIS GENOCIDAIRES FORMED A SPECIFIC INTENT TO DESTROY

For the crime of genocide to be complete, both mental (*mens rea*) and physical (*actus reus*) elements must be present. Under the *mens rea* component, Article 30 of the ICC Rome Statute has two components: (1) knowledge threshold; and (2) specific intent. Both elements are integral in the determination of whether legal genocide

has been committed and set it apart from other international crimes.

Mens rea is not readily susceptible to direct proof. “Only the accused himself has first-hand knowledge of his own mental state, and he is unlikely to testify to his own genocidal intent.”⁹ Criminal law generally presumes that an individual intends the consequences of his or her actions. Thus, proof of intent is inferred indirectly from the logical deduction based on the evidence of the material acts.

In application to genocide, such logical inferences have been drawn from the wide-ranging general context. In *Kayishema*, the ICTR included, “general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.”¹⁰ Similarly in *Akayesu*, the ICTR’s holding specified that relevant factors include the “general context” of the acts, such as: their scale, nature, location, plan or system, and manner of exclusion.¹¹ ICTY jurisprudence also permits the inference of genocidal intent based on an overall assessment of the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, and the repetition of destructive and discriminatory acts.¹²

⁸ Local sources have recorded as many as 72 separate instances of historical persecution.

⁹ *Prosecutor v. Popovic*, (Case No. IT-05-88-T), Judgment, 10 June 2010, para. 823.

¹⁰ *Prosecutor v. Kayishema*, (Case No. ICTR-95-1-T), Judgment, 21 May 1999, para. 93.

¹¹ *Prosecutor v. Akayesu*, (Case No. ICTR-96-4-T), para. 523-24.

¹² *Prosecutor v. Jelacic*, (Case No. IT-95-10-A), Judgment, July 5, 2001, para. 47. See also *Prosecutor v. Stakic*, (Case No. IT-97-24-T), Judgment, 31 July 2003, para. 526 (“It is generally accepted, particularly in jurisprudence of both this Tribunal and the Rwanda Tribunal, that genocidal *dolus specialis* can be inferred either from the facts, the concrete

A. KNOWLEDGE

Knowledge means awareness that circumstances exist or consequences will occur in the ordinary course of the actions taken by the defendant.¹³

Negligence or the “should have had knowledge” standard is inappropriate for the crime of genocide.¹⁴ However, recklessness, the “knowledge of risk” standard, may amount to knowledge in certain cases with respect to an act’s consequences.¹⁵ This is measured on a sliding scale, in which *dolus eventualis*¹⁶ would represent an insufficient threshold. But because recklessness is a measure of risk, past a certain threshold of likelihood, such a risk can be held to amount to a certainty.

In application to the broad scale of the crime of genocide, the knowledge threshold for specific intent immediately implies a requirement for organization, bureaucracy, or systematic planning against the protected group, in whole or in part. Genocide can hardly be committed by an individual acting alone. Yet the requisite knowledge can be inferred from the nature of the order to commit the prohibited acts given to a subordinate who lacks full knowledge of a systematic plan.¹⁷ Finally, constructive knowledge is a judicial doctrine that accepts proof of a “willful

blindness” to constitute sufficient knowledge.¹⁸

B. SPECIFIC INTENT

What separates genocide from other international crimes (such as crimes against humanity and war crimes), however, is the second *mens rea* component of intent. The requisite intent is to “destroy the group, in whole or in part, as such.”¹⁹

Specific intent goes beyond the *mere performance* of the *actus reus* (i.e., a general intent). This means, as the ICTR elaborated in *Akayesu*, “it is necessary [that the act] ... be committed against a *specifically targeted* group.”²⁰

The assessment of genocidal intent should not be compartmentalized by separate genocidal acts, but rather based on all available evidence.

1. “To Destroy”

In contrast to genocide, ethnic cleansing²¹ refers to a specific intent *to displace* a group, rather than *to destroy* it. Thus, while the material acts may be similar between the two crimes, it would be incorrect to assert ethnic cleansing as a form of genocide, even though the two may share the same goal – the removal of a population from a given area.²² Thus, ethnic cleansing amounts to either a crime against humanity or war crime, but not genocide. In terms of policy, however, it is a warning sign of

circumstances, or a pattern of purposeful action.”(citations omitted).

¹³ William A. Schabas, GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES 188, (2nd ed. 2009)

¹⁴ This is distinct from mistake of law, however, which is no defense.

¹⁵ See *Prosecutor v. Delalic*, (Case No. IT-96-21-T), Judgment, para. 439 (concerning the genocidal act of killing).

¹⁶ Where a perpetrator foresees indirect consequences as a likely possibility.

¹⁷ See *Prosecutor v. Tadic*, (Case No. IT-94-1T), Judgment, 7 May 1997, para. 199-201, 206.

¹⁸ *Id.*, para. 202-05.

¹⁹ Rome Statute, art. 6.

²⁰ *Prosecutor v. Akayesu*, (Case No. ICTR-96-4-T), Judgment, 2 September 1998, para. 499.

²¹ There is no authoritative definition of ethnic cleansing and it a relatively new term, first appearing only in 1981 in the Yugoslav media to describe events unfolding in Kosovo.

²² With respect to intent, “it is logically inconceivable that the two agendas coexist.”

impending genocide, which is a logical result when ethnic cleansing attempts are frustrated.

2. “In Whole or in Part”

To find legal genocide, the acts committed must be intended to destroy a specific group, “in whole or part.” This element is satisfied if a substantial part of the group is targeted and destroyed, such as in a specific geographically limited area.²³ The portion targeted must be “significant enough to have an impact on the whole.”²⁴

The numeric size of the part of the targeted group in both absolute terms and relative to the overall group size, “is the necessary and important starting point in assessing whether the part targeted is substantial enough - but is not in all cases the ending point of the inquiry.”²⁵ Other considerations include “prominence within the group of the targeted part, whether the targeted part of the group is emblematic of the overall group, or is essential to its survival, and the area of the malefactors’ activity and control and limitations on the possible extent of their reach.”²⁶ The relative weight of each factor will vary depending on the circumstances of the case.²⁷

In application, this inference requires more proof when there have been fewer victims, based on a proportion of the targeted group. This is because of an intent to destroy an individual member of the group, rather than the group itself, constitutes a hate crime (racially motivated

murder), rather than genocide. However, “No acceptable rationale can justify why an individual murder [with the requisite intent] ... should not be ... genocide.”²⁸

3. No Premeditation Required

Premeditation means a plan or preparation prior to the commission of the crime. In domestic criminal law, many penal systems consider it an aggravating factor, especially with respect to sentencing. However, the *travaux préparatoires* establish that the Genocide Convention did not extend this concept to the crime of genocide. Nevertheless, premeditation must be distinguished from proof of a *systematic* plan, without which a conviction of genocide would be extremely unlikely.²⁹

In application, this allows for the guilt of an individual who acts without premeditation, but with full knowledge of a systematic plan, especially in a capacity of an inferior subordinate. However, the ICTR’s decision in *Kayishema* has in effect required premeditation for the “intent to destroy,” element, but not for the individual *actus reus*.³⁰

C. MOTIVE

Unlike intent, motive is not a required element, although evidence of it can be relevant to trial and sentencing. Specifically, a complete lack of any motive can suggest lack of the requisite intent. As in domestic criminal laws, proof of motive is not required, as it could unnecessarily narrow the scope of offense, even when the

²³ Claus Kress, *The Int’l Court of Justice and the Elements of the Crime of Genocide*, 18 EUR. J. INT’L L. 619, 627 (2007).

²⁴ *Prosecutor v. Krstic*, (Case No. IT-98-33-A), Appeal Judgment, 10 Apr. 2004, para. 8.

²⁵ *Prosecutor v. Popovic*, (Case No. IT-05-88-T), Judgment, 10 June 2010, para. 832.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See G.A Res. 37/123, ¶ 2, U.N. Doc.

A/RES/37/123/D (16 Dec. 1982) (declaring the massacre of hundreds of Palestinian refugees an “act of genocide”).

²⁹ See *infra* Section III.E, Implied Elements of a Plan.

³⁰ See *Kayishema* (“The *mens rea* must be formed prior to the commission of the [*actus reus*].”)

requisite *mens rea* and *actus reus* are present. In the Genocide Convention, the concept of motive is referenced only implicitly through the words “as such.” Yet, the *travaux préparatoires* reveal that the proposal to omit motive entirely was ultimately rejected, as was the proposal for an enumerated motive. Thus, the “as such” consensus included a *nonenumerated* motive.³¹

In application, the international tribunals have variously avoided or hedged on the issue of Motive as an independent element. The ICTR’s opinion in *Akeyasu* only referred to motive once (“ulterior motive”) without elaboration. Similarly, in *Kayishema*, the ICTR’s holding only referred to “grounds” without elaboration. The ICTFY once held that a “purely personal” motive was insufficient for crimes against humanity, but this was overturned by the Appeals Chamber. Also, in the case of the Australian Human Rights Commission, investigating child transfers from aboriginal peoples, the ruling held that a “mixed motive” (e.g., to educate the children) was no defense if it included elements of genocide.

In conclusion, while the role of motive is somewhat ambiguous in the proof of genocide, it seems unreasonable to dismiss its role entirely.

D. CULTURAL GENOCIDE

Cultural genocide refers to the destruction of “specific characteristics” of a group, such as culture, language, history, or works. Acts of cultural genocide, or ethnocide, do not constitute genocide, as they are not among the punishable acts enumerated by the Genocide Convention.³² However, the targeting of a culture remains relevant as evidence of the specific intent to destroy.

In application, the ICTFY has held that proof of a defendant involved in the destruction of cultural monuments or similar acts directed against the culture of a group will aid the court in assessing intent and motive. In *Karadzic* and *Mladic*, the court concluded that the destruction of mosques, Catholic churches, and libraries in Bosnia was “designed to annihilate the centuries-long presence of the group or groups” and “intended to annihilate a culture.”

III. “Manifest Pattern”

In preparing the Genocide Convention, the US first proposed a “plan to destroy” element, but later amended it to “widespread or systematic policy or practice.” This wording itself was criticized as unnecessary, due to the requisite massive scale of the crime, until Israel noted that “it is hard to conceive of a genocide without it.” The consensus text suggests acceptance of a “plan” element, in a cautious form.

In contrast, the ICC Rome Statute explicitly requires a “manifest pattern” as a contextual element for genocide. This requirement is derived from the Genocide Convention’s implied element of a plan, or systematic pattern. By making the “manifest pattern” a formal element, the ICC Rome Statute requires that each of the *actus rei* align with this plan or “manifest pattern,” to ensure that it meets the high standard of the specific intent “to destroy.” This showing is often proven in context, as *mens rea* and *acti rei* elements are considered by the court.

In application, this “manifest pattern,” requires an individual have knowledge of a plan or the surrounding circumstances to establish guilt, although

³¹ The interpretation of motive was understood to be non-limitative and subject to judicial interpretation.

³² See *infra*, Sec. III.E.

the individual need not have taken part in developing the plan itself. Knowledge must be “of the ultimate objective.” On an individual level, this implies that proving knowledge of a plan is likely easier for a leader than for an inferior subordinate. However, in *Tadic*, the ICTFY accepted evidence that the individual defendant was an “earnest party member” to establish intent regarding its unlawful platform.

In *Akeyasu*, the ICTR held that “massive and/or systematic nature” implies “preconceived plan or policy.” Similarly in *Kayishema*, the ICTR observed that “it would appear that it is not easy to carry out a genocide without a plan or organization.” Further, “the existence of such a plan would be strong evidence of the specific intent requirement.”

Furthermore, the coercive dislocation of civilians signals a “manifest pattern.” In Judge Muhammad ‘Traybi Majid Al-Khalifah’s opinion in the *Al-Anfal* decision, convicting ‘Ali Hasan Al-Majid of genocide, he stressed the “coerce dislocation of civil inhabitants” to illustrate “a provisional plan or policy to commit genocide.”³³ Similarly, the ISIS terrorists displaced several thousands of Yazidi women, men, and children, indicating a similar “manifest pattern” or plan to destroy the Yazidis.

E. APPLICATION: THE GENOCIDAL INTENT OF ISIS GENOCIDAIRES

The numerous atrocities committed by ISIS forces have been documented foremost by Kurdish officials. Yazidi men were systematically executed, and Yazidi women and children were systematically sold into slavery. Since the retreat of ISIS forces from certain areas, mass graves have been

reported, with excavations underway to document their full scope. Such systematic abuses, committed simultaneously throughout the Yazidi region of Sinjar and coordinated within a short time frame, strongly support the argument that ISIS genocidaires acted on a specific intent to destroy the Yazidis as such.

Evidence shows that ISIS forces not only had knowledge of the Yazidis as a religious and ethnic group, but also collected detailed research on the Yazidis’ culture and geography in the pre-offensive phase. In Issue 4 of the ISIS propaganda magazine, *Dabiq*, the feature article specifically highlights the Yazidi people at length.

³³ BEHZAD ALI ADAM, *AL-ANFAL COURT DECISION: A JUDICIAL, POLITICAL, AND HISTORICAL DOCUMENT* 401 (2014).

ISIS participants wage a war of propaganda for establishing the legitimacy of its self-proclaimed “caliphate” and for motivating jihadist fighters, especially foreigners, to rally their violent cause. Its extremist interpretations of the Quran and Shari’a law are key to its Islamic claims, as it claims it is under an obligation to wage jihad against “apostates.” Thus, waging war against the Yazidis adds to the successful conversion, displacement, or destruction of the Yazidi people, while adding weight to ISIS members’ extremist interpretation of establishing Islamic “caliphate.” Such actions serve as powerful recruitment tools for the Islamic state. The call to arms against non-Muslim “infidels” can also serve as a rallying standard for new jihadists. Given carefully constructed ideology of ISIS genocidaires, evidence suggests a strong motive for the destruction, displacement, or conversion of Yazidis – a motive for genocide.

In terms of cultural destruction, it is important to recognize that the destruction of the Yazidis’ culture highlights that the group was targeted due to their beliefs. The Yazidis have witnessed devastating losses of cultural heritage as well as physical displacement from their ancestral and spiritual homeland around Sinjar. The full extent of this destruction remains unclear due to the continuing occupation by ISIS members in the Sinjar area. Nevertheless, there is evidence that Yazidi religious sites have been purposefully targeted by ISIS terrorists. For example, photographic and testimonial evidence suggests that the temples of Sheikh Sin, Sheikh Mikhfiya, and the Shrine of Shaqsebat in Babire have been destroyed as of late August 2014. ISIS genocidaires have widely publicized their destruction of such “polytheistic” shrines. The holiest Yazidi site, the temple complex of Lalish, has become a threatened place of refuge for over 2000 Yazidi families.

In a propaganda video released by ISIS militants, which was translated into English by the Middle East Media Research Institute (MEMRI), an unnamed ISIS commander justified the massacre of Yazidi stating that, “We have been fighting for no other reason than to extract people from their *kufir* and to usher them into the fold of Islam. But the Yazidi refused, and insisted on fighting us. So we fought them, with the grace of Allah, and the city of Sinjar was conquered.” The commander then goes on to state that, “...before the conquest of Sinjar and of Tel Afar, we were willing to guarantee their safety and to provide for their needs to be the best of our ability, but they insisted on fighting us.” The propaganda video then provides footage of ISIS participants welcoming their “Yazidi brothers who have converted to Islam.” A bus pulls up, dozens of Yazidi men exit, in a long line, hug their ISIS captors and then are ushered into a mass conversion ceremony.

[--Lauretta Brown, *ISIS Commander Justifies Massacre: 'We Had Called Upon the Yazidis to Convert'*, CNS NEWS (AUG 21, 2014)]

Given planned destruction, evidence suggests the logical inference that the Yazidis were targeted due to their religion, with genocidal intent.

IV. ISIS COMMITTED EACH OF THE PUNISHABLE ACTS OF GENOCIDE

The *mens rea* or “intent” elements were previously discussed. This analysis will now concentrate on whether ISIS members performed the requisite physical acts against the Yazidis to constitute legal genocide.

Both the Genocide Convention and Rome Statute outline five specific acts that will individually establish legal genocide. Each act under the Rome Statute repeats the *mens rea* (intent to destroy a particular national, ethnical, racial or religious group, in whole or in part) and manifest pattern elements discussed above. The *mens rea*, therefore, applies to all of the Rome Statute's *acti rei*.

The five specific acts are:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

A. KILLING MEMBERS OF THE GROUP

Killing or causing the death of one or more person of a statutorily protected group constitutes legal genocide under Article 6(a) of the ICC Rome Statute. The element is satisfied as long as the genocidaire intended to kill the person. While there has been some debate among scholars about this specific intent element, it is generally accepted that the genocidaire must intend the person's death. This is a separate but closely related showing of intent.³⁴

³⁴The Court in *Akayesu* noted that the French version of the Statute employed the term "meurtre." Unlike the English word, "killed," which could cover both intentional and unintentional killings, "meurtre" signifies that the individual actually intended the person's death.

³⁵Lauretta Brown, *ISIS Commander Justifies Massacre: 'We Had Called Upon the Yazidis to Convert'*, CNS NEWS (Aug. 21, 2014),

The ISIS militants massacre of the Yazidi people, which began in Sinjar on August 2, 2014, is genocide under the Rome State, Article 6(a), genocide by killing members of a group, in whole or in part. From this time through the present, ISIS terrorists have systematically targeted and killed the Yazidis, considering them heretics, devil worshippers, and incompatible with their extremist beliefs. Witnesses report that Islamic State fighters spent approximately five days trying to persuade Yazidi villagers to convert to Islam.³⁵ After these five days, ISIS members stormed Sinjar.

During the ISIS militants' takeover of Sinjar, men and boys were segregated from women and children. The Yazidi men and boys were further segregated by religious identity and then slaughtered wholesale. Meanwhile, Yazidi girls and women were taken prisoner and later sold into sexual slavery. An estimated several thousand Yazidi – including the elderly and disabled – were kidnapped and taken prisoner during the storming of Sinjar.³⁶

Such methodical separation and subsequent massacre of people has been found by international courts to constitute legal genocide. During the Yugoslav Wars, Bosnian-Serb forces often separated Bosnian Muslims from other Bosnians and further segregated these people based on gender and age. In Srebrenica, Bosnian Muslims aged 16 through 65 were separated from their communities and either killed on sight or bused to isolated mass killing locations. The ICTY has ruled that these

<http://www.cnsnews.com/news/article/lauretta-brown/isis-commander-justifies-massacre-we-had-called-upon-yazidis-convert>.

³⁶Fazel Hawramy, *Freed Yazidi: I was beaten by Isis because I refused to say the Shahada*, THE GUARDIAN (Jan. 19, 2015), <http://www.theguardian.com/world/2015/jan/19/freed-yazidi-shepherd-i-was-beaten-by-isis-shahada>.

actions committed in Srebrenica constituted legal genocide by killing.

ISIS terrorists' August 2nd, 2014 attacks on the Yazidi in Sinjar and elsewhere mirror those in Srebrenica. They conducted a planned and organized paramilitary strike on Sinjar and the Yazidi people residing there. Yazidi boys and men were separated and killed and women and children were sold into slavery. Local officials estimate that during these attacks, at least 500 Yazidis, including 40 children, were massacred by ISIS militants.³⁷ ISIS genocidaires' systematic and deliberate slaughter of Yazidis in Sinjar constitutes legal genocide by killing. Furthermore, an array of individuals can be held liable for the genocidal killing. From the foot-soldiers who conducted mass killing and kidnappings to the ISIS organization's leadership that planned the large scale attacks, all can be held culpable.

B. CAUSING SERIOUS BODILY OR MENTAL HARM TO MEMBERS OF THE GROUP

Causing serious bodily or mental harm to members of a statutorily protected group constitutes genocide under Article 6(b) of the ICC Rome Statute. The element is satisfied as long as the genocidaire intended to cause serious bodily or mental harm to members of the group. Serious bodily or mental harm is committed when the genocidaire engages in "torture, rape, sexual violence or inhuman or degrading

treatment" of group members.³⁸ Given the innumerable reports that thousands of Yazidi females have been kidnapped, raped, and sold at slave markets to ISIS fighters, ISIS militants are guilty of genocide by causing serious bodily or mental harm under Article 6(b). Girls as young as 10 years old have been found in slave markets in Mosul and Tal Afar.³⁹

Tribunals have found systemized rape and sexual violence to be legal genocide under Article 6(b). During the Rwandan genocide, females were raped and sexually assaulted due to gender and ethnicity. The ICTR judges have ruled that these acts committed in Rwanda amounted to genocide through causing serious bodily or emotional harm. Here, ISIS participants raped and sexually assaulted Yazidi females because of their religion, causing serious bodily and mental harm. This qualifies as a genocidal act under Article 6(b) due to their intent to destroy the Yazidis as a group, in whole or in part

Such sexually violent tactics are performed to intimidate, scare, and control a local community. However, to the Yazidis, it is religion that ultimately decides their fates. Often, these rapes occur with forced conversions. Those Yazidis who convert are sold as brides to ISIS fighters while those that choose not to are kept as sex slaves. The Yazidi women who are kept as sex slaves "face daily rape and a slow death."⁴⁰

³⁷Raya Jalabi, *Who are the Yazidis and why is Isis hunting them?*, THE GUARDIAN (Aug. 11, 2014), <http://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains>.

³⁸ In addition, it is important to note that in order to prove genocide under the 6(b) prong that the prosecution does not need to demonstrate an explicit relationship between the act and how it was meant to destroy group. William A. Schabas,

GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES 188, (2nd Ed. 2009).

³⁹ AMNESTY INTERNATIONAL, IRAQ: YEZIDI WOMEN AND GIRLS FACE HARROWING SEXUAL VIOLENCE (2014) *available at* <https://www.amnesty.org/en/articles/news/2014/12/iraq-yezidi-women-and-girls-face-harrowing-sexual-violence/>.

⁴⁰ Ford Sypher, *Rape and Sexual Slavery Inside an ISIS Prison*, THE DAILY BEAST (Aug. 28, 2014),

The degree of sexual trauma is so severe within the Yazidi community that numerous suicides have been reported by Amnesty International and other NGOs.

The ICTR's judgments stated that "rape and sexual violence ... [are] one of the worst ways of inflict[ing] harm on a victim as he or she suffers both bodily and mental harm."⁴¹ Yazidi women have been subject to such suffering, and ISIS genocidaires continue to commit these genocidal acts.

C. DELIBERATLY INFLICTING CONDITIONS OF LIFE CALCULATED TO BRING ABOUT PHYSICAL DESTRUCTION

Deliberately inflicting conditions of life calculated to destroy members of a statutorily protected group constitutes legal genocide under Article 6(c) of the ICC Rome Statute. The element is satisfied as long as the genocidaire intends to inflict conditions calculated to destroy members of the group, including actions aimed at

causing death. This can include forced starvation or malnutrition, systematic expulsion from homes and shelters, the reduction of essential medical services, and rape. The success of the

act is not necessary for the finding of genocide.

For example, in the *Al-Anfal* court decision, Judge Muhammad 'Iraybi Majid Al-Khalifah provided an explanation of particular facts depicting such a deliberate infliction. He noted, "[t]here are countless documents which confirm orders to demolish villages, carry out chemical attacks, handing families [women, children, and elders] to detention centers . . . All of them were exposed to harsh inhumanity, torture, humiliation, famine, and lack of appropriated hygiene and medical care."⁴² These actions factored into Judge Al-Khalifah's conviction of 'Ali Hasan Al-Majid.

ISIS militants have systematically expelled Yazidis from their homes and have forced those seeking shelter to flee into the wilderness surrounding their villages. During their attacks on Sinjar in August 2014, ISIS militants trapped Yazidi refugees on Mount Sinjar. By surrounding and blockading these refugees in the mountains above Sinjar, ISIS members have caused the starvation and malnutrition of women, children, and elderly within the community. The Yazidis seeking refuge on Mount Sinjar were forced from their homes by ISIS militants. Fifty thousand Yazidis sought refuge on the mountain, surrounded by ISIS soldiers threatening to kill them, similar to the situation in the *Al-Anfal* case.⁴³ Without water and food, many within the community have fallen ill and perished. These actions constitute a deliberate infliction of conditions calculated to destroy the Yazidis and are thus

"We were 21 girls in one room, two of them were very young, 10-12 years. One day we were given clothes that looked like dance costumes and were told to bathe and wear those clothes. Jilan killed herself in the bathroom. She cut her wrists and hanged herself. She was very beautiful. I think she knew she was going to be taken away by a man and that is why she killed herself."

[--Mary Chastain, Amnesty International: ISIS Driving Yazidi Women to Suicide through Rape, Sex Slavery, BREITBART (Dec. 23, 2014).]

<http://www.thedailybeast.com/articles/2014/08/28/rape-and-sexual-slavery-inside-an-isis-prison.html>.

⁴¹ *Prosecutor v. Akayesu*, (Case No. ICTR-96-4-T), Judgment, 2 September 1998, para. 731.

⁴² BEHZAD ALI ADAM, *AL-ANFAL COURT DECISION: A JUDICIAL, POLITICAL, AND HISTORICAL DOCUMENT* 400 (2014).

⁴³ U.N. Report, *Between the Millstones: The State of Iraq's Minorities Since the Fall of Mosul*, 13 (Feb. 2015).

genocide under Article 6(c) of the ICC Rome Statute.

D. GENOCIDE BY IMPOSING MEASURES INTENDED TO PREVENT BIRTHS

Imposing measures intended to prevent births on a statutorily protected group constitutes genocide under Article 6(d) of the ICC Rome Statute. This *actus reus* is satisfied through direct measures to prevent births such as sterilization, castration and forced abortions qualify under Article 6(d). In addition, indirect measures – such as rape and sexual assault – also may constitute genocide under Article 6(d) of the ICC Rome Statute. Furthermore, this *actus reus* is satisfied as long as the genocidaire intended to impose measures intended to prevent births on a group, in whole or in part. The genocidaire does not have to be successful at preventing birth, only that actions taken by him could have and were intended to affect that result.⁴⁴

Reports indicate that ISIS doctors performed abortions on women who were previously pregnant with “infidel” children.⁴⁵ One woman described how an ISIS doctor sat on her stomach, aiming to kill her unborn child.⁴⁶ Two other women detailed how they were also forced to

undergo abortions, being first injected and then forced to take pills. Prior to the procedure, one witness heard an ISIS fighter state: “we do not want more Yazidis to be born.”⁴⁷ One week after their abortions, the two women were sold.⁴⁸

Rape and sexual assault can also qualify under Article 6(d) of the ICC Rome Statute. The physical trauma of rape and sexual assault can destroy reproductive functions, and in some cases lead to infertility. Such an argument was introduced during the Bosnian case heard before the ICJ. However, there has not been a successful, definitive ruling on this argument.⁴⁹ With a strong showing of declining birthrates among Yazidi women due to sexual violence, such an argument could be upheld.

Rape can also constitute legal genocide under Article 6(d) due to the destruction of Yazidi ethnicity through impregnation. The ICTY judges’ decisions have acknowledged that rape, in some circumstances, can be used as birth prevention tactic.⁵⁰ Since the Yazidis are a closed ethno-religious group, marrying and procreating only within their own community, rape and impregnation by non-Yazidi ISIS militants can be seen as preventing the birth of fully Yazidi offspring.⁵¹ By forcing Yazidi women to

traumatized, which compromised their reproductive functions leading to infertility. Unfortunately, the prosecution only brought forth one witness who could no longer bear children due to her injuries. Further, the accused died, and therefore the case was halted.

⁵⁰ The Trial Chamber of the Yugoslavia Tribunal found that “[t]he systematic rape of women... is in some cases intended to transmit a new ethnic identity to the child.”

⁵¹ The Daily Mail recently quoted Adnan Kochar, chairman of the Kurdish Cultural Centre in London, stating that, “The Kurds and Yazidis are originally Aryans. But because the Yazidis are such a closed community they have retained a fairer complexion,

⁴⁴ William A. Schabas, *GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES* 198, (2nd Ed. 2009).

⁴⁵ United Nations High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, ¶ 39, U.N. Doc. A/HRC/28/18 (March 13, 2015).

⁴⁶ *Id.*

⁴⁷ *Id.*, para 41

⁴⁸ *Id.*

⁴⁹ In that case, it was argued that rape and sexual assault resulted in women being physically

birth non-Yazidi offspring, ISIS terrorists are necessarily preventing the birth of legitimate Yazidi community members. The more forced rape and impregnation ISIS fighters subject Yazidi women to, the lower the birth-rate of legitimate Yazidis becomes. These results, coupled with the intention of boosting their caliphate's birth rates, appears to be the direct goal of ISIS extremists: "It has been stated that the conquests of the lands of *kufr* multiply as well as enslavement, and thereby concubines increase in numbers, until the slave women give birth to their masters, this is because the child of the master has the status of the master [meaning he is a free man like his father], and thereby she has given birth to her master from this angle."⁵²

The forced segregation of sexes by ISIS militants could qualify as legal genocide under Article 6(d). International trial court judgments in *ad hoc* tribunals have found that measures intended to prevent births include forced separation of males and females. By separating and then murdering Yazidi men and boys while simultaneously forcing Yazidi women and girls into sex slavery or marriage, ISIS genocidaires may have caused dramatic decline in birthrates within the Yazidi community. While separation and extermination of sexes is not as straightforward as sterilization or castration, the result is essentially the same.

E. GENOCIDE BY FORCIBLY TRANSFERRING CHILDREN

blonder hair and bluer eyes. They don't marry non-Yazidis." The article also included speculation that ISIS was indeed trying to smash the Yazidi bloodline.

Forcibly transferring children belonging to a statutorily protected group constitutes legal genocide under Article 6(e) of the ICC Rome Statute. The element is satisfied as long as the genocidaire intended to forcibly transfer children belonging to the protected group. Children are defined as those who are under the age of eighteen. The genocidaire either has to know, or should have known, that the children were under eighteen and that their transfer was from one group to another. This transfer can be done either by "threat or force or coercion, such as that caused by fear, violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment."⁵³

Direct evidence of child kidnappings and forced transfer to ISIS military bases is abundant. In some instances, Yazidi boys as young as eight have been forced into becoming child soldiers. Those deemed inadequate for fighting are subjected to ideological indoctrination of radical Islam. Often times, both the child soldiers and those subject to intense Islamic radicalization were severely beaten when ISIS instructors found their performance subpar. ISIS propaganda publicized child soldiers in videos, sometimes with children carrying AK-47s and grenades.

The systematic and organized policy of child recruitment is demonstrated not only in the existence of camps with large number of child soldiers being trained, but also the creation of literature on the subject. In January, ISIS members released a book titled the *Sister's Role in Jihad* which outlines

⁵² *The Revival of Slavery Before the Hour*, DABIQ, iss. 4, at 14, 16.

⁵³ Elements of Crimes, ICC-ASP/1/3, p. 114.

that the “most important” role a woman can play in the Jihad is to raise children who are not only Jihadists in spirit but also in ability. The “Cubs of the Caliphate” must be indoctrinated early; “*Don't wait until they are seven to start, for it may be too late by then!*”⁵⁴ As ISIS grows in strength, these children are the foundation for the ISIS organization.

The elements of genocide under Article 6(e) are fulfilled by ISIS participants' actions against the Yazidis. Given that ISIS fighters have kidnapped children as young as ten and have advocated for indoctrination before the age of seven, they have direct knowledge and intention that these children are under the age of eighteen. Through the forcible abductions stemming from the August attack on Sinjar, ISIS terrorists have committed genocide under Article 6(e). They have attempted to destroy the Yazidis by kidnapping the young within the community and molding them into future jihadis. Forcibly indoctrinating Yazidi boys and using them as child soldiers not only destroys the community on an ethno-religious level, but also leads to an immense loss of life as these children are sent by ISIS leadership into firefights with and attacks on their own people and other Kurds.

The removal of children from one group to another – causing them to lose their identity – has been considered to be genocide by forcible transfer by governmental bodies faced with the issue on the national level. In the case of Australia transferring indigenous children to non-indigenous institutions and families, the Australian Human Rights and Equal

Opportunities Commission report concluded that, the “[r]emoval of children with this objective [to absorb or assimilate indigenous children into the larger Australian society] was genocidal because it aims to destroy the ‘cultural unit,’ which the Convention is concerned to preserve.”⁵⁵

Therefore, the forcible transfer of Yazidi children from their homes and communities through kidnapping and other means by ISIS forces is genocide under Article 6(e) of the Rome Statute. This forced transfer by ISIS forces not only destroys the Yazidi ethnicity and religion, it indoctrinates a new belief system on those children taken from their families. This intended destruction of the Yazidi community through forcible transfer of their children is genocide.

F. NOTE ON ACTS OF CULTURAL GENOCIDE

Acts of cultural genocide include 1) forced exile of culture-representative individuals, 2) prohibition of the national language in private usage, 3) destruction of books or prohibition of publication in the language, 4) destruction or desecration of historical or religious monuments, and 5) destruction or dispersion of documents and objects having historical, artistic, or religious value or usage.

Acts of cultural genocide represent human rights issues governed by other international legal instruments, such as the International Covenant on Civil and Political Rights (1976), which provides for the protection of the rights of minorities with respect to their language and culture. It seems impossible to consider acts of

⁵⁴ *ISIS Releases Moms' Guidebook to Raising Jihadi Babies*, RT (Jan. 1 2015), <http://rt.com/news/219127-isis-jihadi-baby-guidebook/> (quoting “Sister’s Role in Jihad”).

⁵⁵ Australian Human Rights and Equal Opportunity Commission, ‘Bringing Them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Straight Islander Children from Their Families’, pp. 270-5.

cultural genocide to be punishable crimes insofar as they are unrelated to physical or biological genocide. In light of the *travaux préparatoires*, it would be implausible to argue a customary norm of international law can bridge this intentional omission.

Thus, the many acts of cultural destruction perpetrated by ISIS fighters can constitute additional evidence of a specific intent to destroy the Yazidis as a group, in whole or in part.⁵⁶

V. RECOMMENDATIONS

The Kurdish Regional Government should exercise its jurisdictional authority to establish a fully hybrid tribunal that complies with international laws and due process norms to enable proper prosecution of the crimes perpetrated by ISIS genocidaires within its territory. Pursuant to the authority conferred to domestic enforcement by the Genocide Convention, Article 6, the Kurdish Regional Government has and should exercise such authority to prosecute the genocide of the Yazidi people in absence of international judicial intervention. The Kurdish Regional Government deserves international assistance and funding in order to continue the documentation of genocide within Kurdistan. Financial, technical, professional, and logistical support to pursue justice for the Yazidi, Kurdish, and Iraqi peoples against the gross atrocity of ISIS genocidaires is needed. Direct participation from neighboring countries in the at-large international community to help establish a prosecutorial tribunal and lend necessary assistance assures the continued ability of the Kurdish and Yazidi people to exist without the threat of wholesale genocide within their towns and villages. Brave local individuals have risked their lives – just like after the

Iraqi government's oppression in Al-Anfal – to document these atrocities committed by ISIS. It is now the obligation of international state actors to provide both logistical and financial support so that the perpetrators of this genocide can be brought to justice.

⁵⁶ See *supra* Sec. II.E.