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# Intending the Worst: The Case of ISIS’s Specific Intent to Destroy the Christians of Iraq

Eric Osborne,\* Matthew Dowd\*\* & Ryan McBrearty\*\*\*

## *Abstract*

*Genocide has been called the “crime of crimes.” That superlative is well-stated. Genocide is the intentional destruction of an entire people—a worse crime is almost beyond comprehension. The very word conjures some of the most horrific images in recorded history. And yet our legal understanding of this most-important crime is limited. Because the crime of genocide requires specific intent, even horrific atrocities will not qualify as genocide as a matter of law if done for a purpose other than the intended destruction of a target group. Thus whether actions qualify as genocide and what type of evidence is sufficient to establish genocide is widely debated.*

*The question of genocide and specific intent has prompted decades of debate within the academic literature. For example, scholars debate whether the “purpose-based” or the knowledge-based” approach is best for determining if specific intent exists. Yet despite dozens of articles and books on the subject, there are so few agreed-upon actual cases of genocide that resolving academic debates or understanding what constitutes specific intent is difficult. Scholars predominately extrapolate from decisions made by international tribunals such as those established to prosecute the perpetrators of the Bosnian and Rwandan genocides. But even those decisions are limited to the actions of individuals. The nations of the world, including the United States, failed to declare that genocide was happening at the time of*

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*the Bosnian and Rwandan genocides. So what actions by a political organization constitute specific intent sufficient for the nations of the world to declare that an ongoing genocide is taking place?*

*On March 17, 2016 Secretary of State John Kerry issued a declaration that ISIS was committing genocide against certain minority groups in Iraq. This was only the second such declaration of genocide during an ongoing conflict in history. Secretary Kerry's declaration thus serves as an exceptionally rare precedent by which certain academic debates can be resolved. This Article seeks to answer what constitutes specific intent to commit genocide by thoroughly examining the evidence and arguments presented to Secretary Kerry related to the Christians of Iraq. The Article provides an overview of the academic debate regarding specific intent, details the evidence against ISIS that was presented to Secretary Kerry, and looks at the specific legal arguments that were raised to show that ISIS had the requisite specific intent. The article concludes by extrapolating what evidence and arguments may have been persuasive to secure the declaration. In doing so, the Article seeks to provide authoritative on the crucially important question of what is necessary to show specific intent and to determine that genocide is taking place.*

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## I. INTRODUCTION

Genocide—the very word conjures images of the most horrific instances in history.<sup>1</sup> Genocide has been called the “crime of crimes”<sup>2</sup> and “the largest atrocity of which we can conceive.”<sup>3</sup> Those are apt superlatives. Originally coined by the political scientist Raphael Lemkin in response to the horrors of the Holocaust,<sup>4</sup> the word at its root means the killing of an entire people.<sup>5</sup> That is a powerful idea, so much so that one scholar has called the term genocide “one of the most powerful in any language,”<sup>6</sup> and another scholar notes that the term “has in many ways transcended the legal realm and been absorbed into our popular consciousness.”<sup>7</sup>

As a purely logical matter of law, the idea of genocide as the “crime of crimes” is particularly suitable because of how genocide is defined. Murder in the first degree is the worst type of murder under the law. In the United States, it is defined with an emphasis on the specific intent to kill another human being.<sup>8</sup> Likewise, genocide under U.S. law also requires that the perpetrator act “with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such.”<sup>9</sup> Thus genocide is effectively first-degree murder but of an entire people. In that sense, it is the worst crime defined by the law.<sup>10</sup>

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1. See, e.g., Adam Taylor, *It Wasn't Just the Armenians: The Other 20th Century Massacres We Ignore*, WASH. POST (Apr. 24, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/04/24/it-wasnt-just-the-armenians-the-other-20th-century-massacres-we-ignore/> (listing the many horrific instances of genocide that took place in the twentieth century).

2. David Luban, *Calling Genocide by Its Rightful Name: Lemkin's Word, Darfur, and the UN Report*, 7 CHI. J. INT'L L. 303, 306 (2006) (quoting U.N. Secretary-General, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, ¶ 505 (Jan. 25, 2005), [http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)).

3. Joy Gordon, *When Intent Makes All the Difference in the World: Economic Sanctions on Iraq and the Accusation of Genocide*, 5 YALE HUM. RTS. & DEV. L.J. 57, 58 (2002).

4. See RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE* 79 (1944).

5. *Id.* (explaining that the word Genocide is a combination of *geno*, from the Greek word for race or tribe, and *cide*, from the Latin word for killing).

6. Luban, *supra* note 2, at 307.

7. Ryan Park, *Proving Genocidal Intent: International Precedent and ECCC Case 002*, 63 RUTGERS L. REV. 129, 133 (2010).

8. See, e.g., TENN. CODE ANN. § 39-13-202 (2018) (defining first-degree murder as “[a] premeditated and intentional killing of another”).

9. 18 U.S.C. § 1091 (2012).

10. See *The Legal Framework*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/>

And yet this “crime of crimes” may be one of the least understood of all crimes precisely because there is a specific intent requirement. That high standard means there are comparatively few instances in which genocide has been found by a competent legal tribunal, and there are even fewer instances where governments have made formal declarations.<sup>11</sup> Under Article II of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, which defined genocide under international law, genocide means any of a series of acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”<sup>12</sup> The intent requirement means that as a matter of law “there is no sheer quantity of human damage that is sufficient to show genocidal intent.”<sup>13</sup> A perpetrator can kill many people, but “[o]rganized extermination of civilian populations [without] specific intent is, under current legal definitions, a ‘crime against humanity’ . . . . [I]t isn’t genocide.”<sup>14</sup>

This has led to a decoupling of the legal definition of genocide from popular understanding, as actions that are simply horrific may not meet the legal definition of genocide.<sup>15</sup> To give just one example—in the late 1960s, during the latter stages of the Nigerian Civil War (also termed the Nigeria-Biafra War), the Nigerian government cut off food to the Igbo people, resulting in a man-made famine that, according to some estimates, killed between 8,000 and 10,000 people a day at its maximum, many of them children.<sup>16</sup> The images from that famine are famous to this day,<sup>17</sup> and the atrocity led to the formation of the famous non-government organization Médecins Sans

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confront-genocide/ferencz-international-justice-initiative/about/the-legal-framework-1 (last visited Feb. 2, 2019) (explaining that genocide is among the crimes “considered to be the most serious international crimes of concern to the entire international community”).

11. See David Kaye, *It’s Too Hard to Prove Genocide*, L.A. TIMES (Mar. 1, 2007), <http://articles.latimes.com/2007/mar/01/opinion/oe-kaye1> (“[T]he [International Court of Justice] has made it nearly impossible to hold a state accountable for genocide because it required each specific crime to be committed with genocidal intent.”).

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

13. Gordon, *supra* note 3, at 59.

14. Luban, *supra* note 2, at 308.

15. See *id.* at 307 (“The fact is that the word ‘genocide’ has come to mean something different in the public imagination than it means in the law.”).

16. See Laurie S. Wiseberg, *The Statistics Jungle: Measuring War, Plague, Fire and Famine*, SOCIETY, July–Aug. 1975, at 54–56.

17. See, e.g., Don McCullin, *Albino Boy, Biafra*; TIME 100 PHOTOS (1969), <http://100photos.time.com/photos/don-mccullin-albino-boy-biafra>.

Frontières (“Doctors Without Borders”).<sup>18</sup> Yet the death of a million or more Igbo is not generally considered genocide because the famine took place as the result of a war-induced blockade.<sup>19</sup> In other words, many people lost their lives under horrific conditions, but the purpose of that famine was for the Nigerian government to win the civil war.<sup>20</sup> Because the intent of the blockade was to win the war—not to eliminate the Igbo—there was no genocide as a matter of international law.<sup>21</sup> Specific intent was lacking.<sup>22</sup>

The question of specific intent necessarily arises repeatedly whenever the prospect of genocide is raised.<sup>23</sup> Because specific intent is so difficult to prove, the result is that “the nature of the intent requirement . . . not only exculpates certain categories of actors who have committed acts of massive human destruction but also serves to remove the acts altogether from the most important domains of moral and legal judgment.”<sup>24</sup> This can have a profound effect on public policy.<sup>25</sup> For example, when a U.N. Commission found that genocide was not taking place in Darfur, Sudan because the Janjaweed militias were not specifically intending to annihilate certain tribes, “non-specialists could only conclude that there was no wholesale ex-

18. See *Who We Are*, MÉDECINS SANS FRONTIÈRES, <http://www.msf.org/en/msf-history> (last visited Feb. 2, 2019) (“Médecins Sans Frontières (MSF) was founded in 1971 in France by a group of doctors and journalists in the wake of war and famine in Biafra, Nigeria.”).

19. See George Alfred Mudge, *Starvation as a Means of Warfare*, 4 INT’L L. 228, 231 n.13 (1970) (noting that a congressional investigation into the war-induced blockade did not turn up any evidence of intent to destroy the Biafra people); *Nigerian Civil War*, NEW WORLD ENCYC. [http://www.newworldencyclopedia.org/entry/Nigerian\\_Civil\\_War](http://www.newworldencyclopedia.org/entry/Nigerian_Civil_War) (last modified Dec. 4, 2018) (“The blockade of the surrounded Biafrans led to a humanitarian disaster when it emerged that there was widespread civilian hunger and starvation in the besieged Igbo areas.”).

20. See NEW WORLD ENCYC., *supra* note 19 (“[R]eorganization of the Nigerian forces, the reluctance of the Biafran army to attack again, and the effects of a naval, land and air blockade of Biafra led to a change in the balance of forces.”).

21. See *supra* notes 12–14 and accompanying text. But see Noo Saro-Wiwa, *There Was a Country: A Personal History of Biafra by Chinua Achebe—review*, GUARDIAN (Oct. 5, 2012, 17:55), <https://www.theguardian.com/books/2012/oct/05/chinua-achebe-there-was-a-country-review> (explaining the Igbo experience and the view that a genocide did occur).

22. See Mudge, *supra* note 19, at 231 n.13 (stating that the congressional investigation found no evidence of specific intent).

23. See Hannibal Travis, *On the Original Understanding of the Crime of Genocide*, 7 GENOCIDE STUD. & PREVENTION 30, 43 (2012) (explaining the difficulty of dealing with the issue of specific intent in the adoption of a standard of proof for genocide).

24. Gordon, *supra* note 3, at 60.

25. See *id.* (explaining that relieving these actors from judgment keeps them “from the kind of accountability that would permit evidence and reasoned debate over whether in fact such damage will with some certainty be outweighed by the harm prevented”).

termination going on in Darfur. That is not what the UN Commission found . . . . [But it] is what people thought the Commission had found and said . . . . As a result, . . . politicians suddenly find a convenient linguistic excuse for doing nothing.”<sup>26</sup>

Specific intent is therefore one of the determinative questions in assessing whether a genocide has occurred or is occurring.<sup>27</sup> But what evidence is necessary to establish the specific intent to commit genocide? Scholars have debated that important question, its application, and reasons for possibly changing the intent requirement in numerous books and articles written over a period of decades.<sup>28</sup> Legal decisions by various tribunals likewise have applied the specific intent requirement with differing outcomes.<sup>29</sup> Furthermore, the fact that specific intent can be so hard to prove has led other scholars to call for a change in the definition of genocide, or a separation of that legal definition from decisions related to humanitarian in-

26. Luban, *supra* note 2, at 308–09.

27. One other question that can be relevant to making a legal determination whether genocide is taking place is what type of group is being persecuted. *See id.* at 316–17. The Genocide Convention limits genocide to persecution of national, ethnic, racial or religious groups. Genocide Convention, *supra* note 12, art. II. This limitation was put in place to get British and Soviet support for the Convention, as those countries were concerned about political groups being included in the definition. *See* Devrim Aydin, *The Mental Element of the Crime of Genocide* 4 n.4 (2013) (unpublished manuscript), [https://works.bepress.com/devrim\\_aydin/1/](https://works.bepress.com/devrim_aydin/1/); Michael J. Kelly, “Genocide”—*The Power of a Label*, 40 CASE W. RES. J. INTL. L., 147, 158 (2008). Thus, terrible crimes, such as those of the Khmer Rouge in Cambodia, may not meet the legal definition of genocide because those crimes “were intended to destroy [the regime’s] political enemies.” Anne Heindel, *Overview of the Extraordinary Chambers*, in *ON TRIAL: THE KHMER ROUGE ACCOUNTABILITY PROCESS* 85, 90 (John D. Ciorciari & Anne Heindel eds., 2009).

28. *See generally* SAMANTHA POWER, “A PROBLEM FROM HELL”: AMERICA AND THE AGE OF GENOCIDE (2002); Kai Ambos, *What Does ‘Intent to Destroy’ in Genocide Mean?*, 91 INT’L REV. RED CROSS 833 (2009); Andrew T. Cayley, *The Prosecutor’s Strategy in Seeking the Arrest of Sudanese President Al Bashir on Charges of Genocide*, 6 J. INT’L CRIM. JUST. 829 (2008) (article by international criminal prosecutor explaining why Al Bashir is guilty of genocide, including the requisite specific intent); Gordon, *supra* note 3; Alexander K.A. Greenawalt, *Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation*, 99 COLUM. L. REV. 2259 (1999); Luban, *supra* note 2; David L. Nersessian, *The Contours of Genocidal Intent: Troubling Jurisprudence from the International Criminal Tribunals*, 37 TEX. INT’L L.J. 231 (2002); William A. Schabas, *Was Genocide Committed in Bosnia and Herzegovina? First Judgments of the International Criminal Tribunal for the Former Yugoslavia*, 25 FORDHAM INT’L L.J. 23 (2001); Jennifer Trahan, *Why the Killing in Darfur is Genocide*, 31 FORDHAM INT’L L.J. 990 (2008) (making the case that Al Bashir committed genocide with the requisite intent); Beth Van Schaack, *Darfur and the Rhetoric of Genocide*, 26 WHITTIER L. REV. 1101 (2005); Aydin, *supra* note 27.

29. *See* Ambos, *supra* note 28, at 836–39 (discussing treatment by various tribunals of “intent to destroy”).



tervention.<sup>30</sup> Simply stated, what it takes to establish specific intent to commit genocide is one of the most actively debated yet non-defined issues in the law.<sup>31</sup> How are we to determine what circumstances—and what arguments—are necessary to show specific intent?

This Article contributes to the academic discussion by analyzing the most recent, significant action by the United States regarding genocide. In particular, this Article focuses on the distinction between the purpose-based and knowledge-based approach for determining genocidal intent. Scholars have debated which approach is superior to decide if genocidal intent exists.<sup>32</sup> As the case study of ISIS's specific intent to destroy the Christians illustrates, the best approach is a combination of the two.

In the spring of 2016, the authors were engaged by clients consisting primarily of Iraqi and Assyrian aid and relief groups, and tasked with making the argument to Secretary of State John Kerry that the Islamic State of Iraq and Syria ("ISIS") had the requisite specific intent and was committing genocide against the Christians of Iraq.<sup>33</sup> On March 17, 2016, Secretary Kerry made the historic declaration that ISIS was committing genocide.<sup>34</sup> This was only the second time in United States history that such a declaration had been made during an ongoing conflict.<sup>35</sup> In an area of law with few precedents to rely on, Secretary Kerry's declaration immediately became the most-recent and highest-profile government declaration demonstrating under

30. See Greenawalt, *supra* note 28, at 2289 (calling for a knowledge-based standard); Luban, *supra* note 2, at 319 (concluding that "[i]t is high time to revisit and revise the definition of genocide, to bring it into line with its moral reality"); Van Schaack, *supra* note 28, at 1103 (arguing that the legal concept of genocide should be disentangled from the political, legal, and moral issues surrounding humanitarian intervention).

31. See *supra* notes 28–30 and accompanying text.

32. See, e.g., Ambos, *supra* note 28, at 838–58.

33. See Matthew Rosenberg, *Citing Atrocities, John Kerry Calls ISIS Actions Genocide*, N.Y. TIMES (Mar. 17, 2016), <https://www.nytimes.com/2016/03/18/world/middleeast/citing-atrocities-john-kerry-calls-isis-actions-genocide.html> (citing calls from human rights and faith groups labeling ISIS's actions as genocide).

34. John Kerry, U.S. Sec'y of State, Remarks on Daesh and Genocide (Mar. 17, 2016), <https://2009-2017.state.gov/secretary/remarks/2016/03/254782.htm> [hereinafter Kerry Declaration] ("My purpose in appearing before you today is to assert that, in my judgment, Daesh is responsible for genocide against groups in areas under its control, including Yezidis, Christians, and Shia Muslims.").

35. See Andrea Mitchell et al., *Kerry: ISIS Is Committing Genocide Against Yazidis, Christians, and Shiite Muslims*, NBC NEWS (Mar. 17, 2016, 8:26 AM), <https://www.nbcnews.com/storyline/isis-terror/john-kerry-isis-committing-genocide-n540706> (noting that Kerry's declaration was "just the second time the executive branch has used the term [Genocide] in relation to an ongoing conflict").

what conditions a finding that the specific intent to commit genocide exists can take place.<sup>36</sup>

This Article therefore provides a key case study that can help to resolve the decades of academic debate. In this Article, we focus on the case study of ISIS and the specific intent to commit genocide against Christians. This Article reiterates the arguments that were made to the State Department and demonstrates the legal arguments—and factual predicates in support of those points—that were necessary to convince the State Department that specific intent existed. In doing so, we hope to provide some concrete answers as to what is necessary to show specific intent and to provide a roadmap that future scholars and practitioners can follow to argue to foreign governments, future administrations, and tribunals that genocide is taking place.

## II. THE LAW OF GENOCIDE

The global community has recognized genocide as a crime since the adoption by the United Nations of the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) on December 9, 1948.<sup>37</sup> The Genocide Convention prohibits the intentional destruction, in whole or in part, of a national, ethnic, racial, or religious group.<sup>38</sup> Dubbed as the “crime of crimes,” genocide is distinct from “crimes against humanity.”<sup>39</sup>

Article II of the Genocide Convention defines a series of actions as genocide if those actions are “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”<sup>40</sup> Genocidal conduct includes:

- (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;

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36. See *Islamic State Committed Genocide, Says US*, BBC NEWS (Mar. 17, 2016), <https://www.bbc.com/news/world-us-canada-35831711> (highlighting Secretary Kerry’s declaration as a “powerful signal” and the most recent declaration of genocide by the United States since the Darfur crisis in 2004).

37. Genocide Convention, *supra* note 12.

38. *Id.* art. II.

39. See Luban, *supra* note 2, at 311–12 (distinguishing genocide from crimes against humanity).

40. Genocide Convention, *supra* note 12, art. II.

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>41</sup>

Article III states that the Genocide Convention is violated if a perpetrator commits genocide, conspires to commit genocide, directly and publicly incites others to commit genocide, attempts to commit genocide, or is complicit in genocide.<sup>42</sup> Notably, the Genocide Convention does not list any circumstances under which genocidal conduct is excused.<sup>43</sup>

Under Article II, one must consider the intent of the actor in order to determine whether genocide has occurred.<sup>44</sup> The proscribed conduct must be “committed with intent to destroy.”<sup>45</sup> This intent is “an ulterior intent” beyond just the immediate intent of the exact action being taken; thus, killing a person may be murder if the killer intends to kill, but it is also genocide if the murder is committed as part of an intent to destroy a group.<sup>46</sup> The intent to commit genocide is often referred to as *dolus specialis* or “genocidal intent,” although, as discussed below, the precise meaning and application of intent to commit genocide is the subject of much debate.<sup>47</sup>

Beyond the Genocide Convention itself, several other sources provide guidance on what constitutes genocide and “genocidal intent.” Several ad hoc tribunals have been established pursuant to the Genocide Convention.<sup>48</sup> In 1993, the United Nations established the International Criminal Tribunal for the former Yugoslavia (“ICTY”) to prosecute serious crimes committed during the Yugoslav Wars.<sup>49</sup> In 1994, the International Criminal Tribunal for Rwanda (“ICTR”) was established by the United Nations pursuant to the Genocide Convention.<sup>50</sup> In addition, the International Criminal Court

41. *Id.*

42. *Id.* art. III.

43. *See generally id.* (lacking any language excusing genocidal acts).

44. *Id.* art. II.

45. *Id.*

46. Ambos, *supra* note 28, at 835.

47. *Id.* at 836–42 (defining special intent and highlighting dissenting views of the doctrine); Nersessian, *supra* note 28, at 266–67 (exploring the contours of genocidal intent).

48. Guglielmo Verdirame, The Genocide Definition in the Jurisprudence of the Ad Hoc Tribunals, 49 INT’L & COMP. L.Q. 578, 578 (2000).

49. *International Criminal Tribunal for the Former Yugoslavia*, UNITED NATIONS, <http://www.icty.org/> (last visited Feb. 3, 2019).

50. *The ICTR in Brief*, UNITED NATIONS, <http://unictr.unmict.org/en/tribunal> (last visited Feb. 3, 2019). The ICTR was the first international tribunal to deliver verdicts against persons responsible for committing genocide. *Id.*

(“ICC”) was established by the Rome Statute, a treaty adopted at a diplomatic conference in Rome in 1998 and entered into force on July 1, 2002.<sup>51</sup> And not to be confused with the ICC is the International Court of Justice (“ICJ”), which is the principal judicial body of the United Nations and which decides disputes between member states.<sup>52</sup>

These tribunals have adjudicated genocide prosecutions and have produced numerous opinions providing guidance on the meaning of “genocidal intent.”<sup>53</sup> While the definitions of genocide used in the various tribunals are essentially identical, the tribunals have offered differing interpretations and applications.<sup>54</sup> Current academic thought on the subject has identified at least two distinct approaches to defining “genocidal intent:” the “purpose-based approach” (or “structure-based approach”) and the “knowledge-based approach” for specific intent.<sup>55</sup>

The purpose-based approach defines genocidal intent as “the specific intention, required as a constitutive element of the crime, which demands that

51. *About*, INT’L CRIM. CT., <https://www.icc-cpi.int/about> (last visited Feb. 3, 2019).

52. *The Court*, INT’L CT. JUST., <https://www.icj-cij.org/en/court> (last visited Feb. 3, 2019).

53. *See, e.g.*, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.), Judgment, 2015 I.C.J. Rep. ¶¶ 146, 162–63 (Feb. 3); Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 498 (Sep. 2, 1998), <http://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgements/en/980902.pdf>; Prosecutor v. Tolimir, Case No. IT-05-88/2-A, Appeals Judgment, ¶¶ 246–47 (Int’l Crim. Trib. for the Former Yugoslavia Apr. 8, 2015), [http://www.icty.org/x/cases/tolimir/acjug/en/150408\\_judgement.pdf](http://www.icty.org/x/cases/tolimir/acjug/en/150408_judgement.pdf).

54. *See* Amabelle C. Asuncion, *Pulling the Stops on Genocide: The State or the Individual?*, 20 EUR. J. INT’L L. 1195, 1212 (2009) (“Although the ICTY, the ICTR, and the ICJ all deal with genocide, the difference in appreciation of elements and principles is patent. Whereas the ICTY and ICTR tend to view these similarly, the ICJ has a different approach.”); *see generally* William A. Schabas, *The ‘Odious Scourge’: Evolving Interpretations of the Crime of Genocide*, 1 GENOCIDE STUD. & PREVENTION 93 (2006) (discussing the origin of the term genocide and how it has been interpreted); Verdirame, *supra* note 48, at 578 (“[T]he genocide definition is also characterised by a number of problematic aspects and unresolved interpretative questions, some of which have been addressed in the decisions of the *ad hoc* Tribunals for the Former Yugoslavia and for Rwanda.”).

55. For a discussion of the various approaches to specific intent, *see* Ambros, *supra* note 28, at 836–48. *See also* SANGKUL KIM, A COLLECTIVE THEORY OF GENOCIDAL INTENT 13–96 (2016) (“Critique of Individualistic Approaches to Genocidal Intent.”); Katherine Goldsmith, *The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach*, 5 GENOCIDE STUD. & PREVENTION 238, 241–55 (2010) (arguing that the knowledge-based approach should be adopted by courts); Claus Kress, *The International Court of Justice and the Elements of the Crime of Genocide*, 18 EUR. J. INT’L L. 619, 625–27 (2007); Joshua Marcus, *Intent to Destroy*, 3 UNDERGRADUATE TRANSITIONAL JUST. REV. 5, 5–15 (2012) (discussing the definition and use of the purpose-based and knowledge-based approaches to intent as it applies to genocide).

the perpetrator clearly seeks to produce the act charged.”<sup>56</sup> Stated differently, the purpose-based approach to specific intent requires that the accused have “the clear intent to cause the offence.”<sup>57</sup> This was the definition applied in the seminal *Akayesu* case and was followed by the ICTR in the Rwanda proceedings, as well as other proceedings.<sup>58</sup>

In contrast, the knowledge-based approach applies what is arguably a lower threshold for satisfying the intent element of genocide.<sup>59</sup> Under the knowledge-based approach, “culpability for genocide should extend to those who may personally lack a specific genocidal purpose, but who commit genocidal acts while understanding the destructive consequences of their actions.”<sup>60</sup> Stated differently, “the knowledge-based standard of genocidal intent is established when the perpetrator’s knowledge of the consequences of the overall conduct reaches the *level of practical certainty*.”<sup>61</sup> “Accordingly, in the ‘typical case’ of genocide[,] the low-level perpetrator must, on the one hand (drawing a parallel with crimes against humanity), act with knowledge of the collective genocidal attack, and on the other hand . . . [act] with *dolus eventualis* as to the at least partial destruction of a protected group.”<sup>62</sup>

To be clear, neither the text of the Genocide Convention nor any governing statute or treaty makes any distinction between “knowledge-based” and “purpose-based” intent to destroy.<sup>63</sup> Instead, these competing approaches are interpretative applications of the law.<sup>64</sup> Furthermore, the distinction is not always plain.<sup>65</sup> This only augments the general lack of understanding as

56. *Akayesu*, ¶ 498.

57. *Id.* ¶ 518.

58. Ambos, *supra* note 28, at 838 (“In sum, the case-law’s approach is predicated on the understanding, as originally suggested by *Akayesu*, that ‘intent to destroy’ means a special or specific intent which, in essence, expresses the volitional element in its most intensive form and is purpose-based.”).

59. See, e.g., WILLIAM SCHABAS, GENOCIDE IN INTERNATIONAL LAW 212 (2000), (“An approach to the knowledge requirement that considers recklessness about the consequences of an act to be equivalent to full knowledge provides an answer to such an argument.”); see also Ambos, *supra* note 28, at 839–42 (discussing writers who argue for a broader definition of genocidal intent).

60. Greenawalt, *supra* note 28, at 2265.

61. Hans Vest, *A Structure-Based Concept of Genocidal Intent*, 5 J. INT’L CRIM. JUST. 781, 793 (2007).

62. Ambos, *supra* note 28, at 841–42.

63. See generally Genocide Convention, *supra* note 12; see, e.g., 18 U.S.C. § 1091 (2012) (outlining the elements of genocide).

64. See Ambos, *supra* note 28, at 844 (“[I]t quite clearly follows that a literal interpretation of the term ‘intent’ does not indicate any clear preference for a purpose- or knowledge-based approach.”).

65. *Id.* at 842–43 (noting how across common law and civil jurisdictions, “the distinction be-

to what constitutes sufficient specific intent to commit genocide.<sup>66</sup>

### III. THE EVIDENCE RELATING TO ISIS'S GENOCIDAL CONDUCT

The argument presented to the State Department in the winter and early spring of 2016 centered on a series of letters submitted by churches, political leaders, and non-profit organizations.<sup>67</sup> In a widely cited earlier report, a team sent by the Holocaust Museum in Washington, D.C. had concluded that ISIS was committing genocide against the Yazidis but not against Christians or Shia Muslims.<sup>68</sup> The Holocaust Museum Report's conclusion was based on a simple premise—ISIS purportedly gave Christians the choice of whether to convert or pay a tax called *jizya*.<sup>69</sup> This meant that ISIS's intent was to collect a tax, not to destroy the Christians of Iraq, so the requisite intent to commit genocide was lacking.<sup>70</sup>

The Holocaust Museum Report prompted a sharp response from many groups active in Iraq who believed the truth of the situation was contrary to what the Holocaust Museum team had reported. The response culminated in a concerted effort among non-governmental organizations to provide letter briefing to the State Department making the case that ISIS was committing

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tween purpose and knowledge and thus the meaning of 'intention' is not always clear-cut").

66. *See id.*

67. *See Genocide Against Christians in the Middle East*, KNIGHTS COLUMBUS & DEFENSE CHRISTIANS (Mar. 9, 2016), <http://stopthechristiangenocide.org/scg/en/resources/Genocide-report.pdf> [hereinafter IDC] (report submitted on behalf of the Knights of Columbus and In Defense of Christians); Letter from Scott Brister et al., Andrews Kurth LLP, to John Kerry, U.S. Sec'y of State, U.S. Dep't of State (Mar. 8, 2016), [http://www.americanmesopotamian.org/wp-content/uploads/2016/03/Philos-Project-Letter-to-State-Department\\_03082016.pdf](http://www.americanmesopotamian.org/wp-content/uploads/2016/03/Philos-Project-Letter-to-State-Department_03082016.pdf) [hereinafter Philos] (letter written on behalf of the Philos Project, the Assyrian Aid Society of America, the Iraqi Christian Relief Council, and the American Mesopotamian Organization); Jay Sekulow, *ACLJ Sends Letter to Secretary of State Kerry on Islamic State Genocide Against Christians*, AM. CTR. FOR L. & JUST., <https://aclj.org/persecuted-church/aclj-sends-letter-to-secretary-of-state-kerry-on-islamic-state-genocide-against-christians> (last visited Feb. 5, 2019) (letter written on behalf of the American Center for Law and Justice, the European Centre for Law and Justice, the Oxford Centre for the Study of Law and Public Policy, Philos Project, the National Clergy Council, Faith and Action in the Nation's Capitol, and the Christian Defense Coalition).

68. Naomi Kikoler, "Our Generation Is Gone": *The Islamic State's Targeting of Iraqi Minorities in Ninewa*, U.S. HOLOCAUST MEM'L MUSEUM 2-3 (2015), <https://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf> [hereinafter Holocaust Museum Report].

69. *Id.* at 21 (noting that ISIS allegedly gave Christians the option to convert or pay *jizya* while "refusing Yazidis any option to avoid death or forced conversation"). The Islamic State "issued a decree saying that Christians had three options: (1) convert to Islam; (2) pay a *jizya*, a fee levied on non-Muslim residents; or (3) leave the city by noon on July 19." *Id.* at 14.

70. *Cf. id.* at 21.

genocide against Christians too. In Defense of Christians (“IDC”) and the Knights of Columbus led the effort and set out the complete, affirmative case that ISIS was committing genocide against Christians via a legal brief within the IDC report and accompanying evidence collected from within ISIS-controlled areas of Iraq.<sup>71</sup>

The IDC report addressed specific intent as one part of the overall case against ISIS, but that argument was just two pages in length and focused on ISIS’s statements as admissions that ISIS had specific intent to destroy the Christian community.<sup>72</sup> The more extensive argument related to specific intent was made via a letter (“Philos letter”) devoted exclusively to ISIS’s specific intent to destroy the Christians of Iraq submitted by the Philos Project, the Iraqi Christian Relief Council, the Assyrian Aid Society, and the American Mesopotamian Organization.<sup>73</sup> This case study on the successful argument to show specific intent therefore focuses on the arguments presented in the Philos letter as well as evidence presented in both the IDC Report and the Philos letter.

The argument regarding specific intent presented to Secretary Kerry began with a brief, selective history of Christianity under the historical Islamic caliphates and the modern nation-states of Iraq and Syria.<sup>74</sup> This history demonstrated that Christians generally lived in relative peace under prior Islamic and secular regimes.<sup>75</sup> But the self-proclaimed caliphate of ISIS marked a radical departure from those prior regimes.<sup>76</sup> Specifically, ISIS had a stated goal to eradicate Christians from the territory under its control and establish a global caliphate free of Christians and other non-Muslims.<sup>77</sup> The evidence further showed that ISIS took deliberate steps to achieve this goal including: the murder of Christian men, women, and children; the expulsion of Christian families from their ancestral homes; the enslavement,

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71. See generally IDC, *supra* note 67.

72. See *id.* at 33–35, 39 (arguing ISIS’s specific intent to destroy Christians). “ISIS readily admits that it intends to destroy Christianity—and all other non-*Wahhabi-Salafi* faiths—in the lands it controls and attacks.” *Id.* at 39.

73. See generally Philos, *supra* note 67.

74. Philos, *supra* note 67, at 4–9 (discussing the history of Christians in Iraq and Syria).

75. *Id.* (highlighting the “relative peace” by which Christians and Muslims co-existed for centuries).

76. *Id.* at 9 (“The rise of ISIS marks a radical departure from the conditions under which Assyrian Christians residing in Iraq and Syria generally lived during prior Islamic and secular regimes.”).

77. *Id.* at 11 (stating that according to ISIS’s interpretation of Islam, “its caliphate will rule the world” and there will be no place for Christians, Jews, and other non-Muslims).

rape, and forced conversion of Christian women and girls; and the systematic destruction of Christian churches and other important Christian cultural heritage sites.<sup>78</sup> Finally, the evidence showed that ISIS's claim that it was restoring historical Islamic practices, and in particular the levying of the *jizya* tax on Christians and other non-Muslim subjects, was false and a pretext for genocide.<sup>79</sup>

#### A. Historical Background

As set forth in the briefing presented to Secretary Kerry, Christians in modern-day Iraq and Syria “have a long-standing ethnic and religious identity.”<sup>80</sup> They are indigenous to the Middle East, have continually inhabited the land for millennia, and have practiced their faith for centuries.<sup>81</sup> They are among the oldest Christian communities in the world.<sup>82</sup>

Shortly after the founding of Islam, these Christians came under Muslim rule and were conferred *dhimmi* status.<sup>83</sup> Under the historical Islamic caliphates, *dhimmis* were non-Muslims, mainly Jews and Christians, with “a regulated and protected status.”<sup>84</sup> In return for protection, freedom of religious practice, and communal self-government, and as a mark of their obedience, *dhimmis* were required to pay a poll tax, called the *jizya*,<sup>85</sup> and to agree to various other stipulations.<sup>86</sup> “If the Muslim ruler failed to provide the *dhimmis* adequate security, he was obliged to return the money, as the

78. *Id.* at 9, 16, 21, 27 (reporting various forms of violence against Christians).

79. *Id.* at 2 (“The evidence . . . suggests that the *jizya* tax is not a real option and may be just a pretext to justify ISIS’s atrocities.”).

80. *Id.* at 4.

81. See SUHA RASSAM, CHRISTIANITY IN IRAQ 24–34 (2005).

82. See generally *id.*; A. LEO OPPENHEIM, ANCIENT MESOPOTAMIA: PORTRAIT OF A DEAD CIVILIZATION (Erica Reiner ed., 1977).

83. Philos, *supra* note 67, at 4.

84. JUAN E. CAMPO, ENCYCLOPEDIA OF ISLAM 194–95 (J. Gordon Melton ed., 2009).

85. See *Jizyah*, ENCYC. BRITANNICA, <http://www.britannica.com/topic/jizya> (last updated Apr. 9, 2018); THE PRINCETON ENCYCLOPEDIA OF ISLAMIC POLITICAL THOUGHT 283 (2013) (“The *jizya* was a poll tax that all non-Muslim, adult males living in territories controlled by Islamic governments were required to pay.”); Ziauddin Ahmed, *The Concept of Jizya in Early Islam*, 14 ISLAMIC STUD. (ISLAMABAD) 293, 294 (1976) (explaining how the *jizya* “was a tax through the payment of which the non-Muslim subjects were expected to pay allegiance to the political authority of Islam”).

86. NORMAN A. STILLMAN, THE JEWS OF ARAB LANDS 18 (1979) (stating that after Muhammed forced the Jews of Khaybar to surrender, the Jews agreed to pay the Muslim community one-half of their annual date harvest in return for safety and the right to keep their property); 2 THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD 71.



Egyptian Sultan Saladin did after withdrawing his army from Syria.”<sup>87</sup>

From the earliest days of Islam, Islamic leaders relegated Jewish and Christian tribes to *dhimmi* status.<sup>88</sup> Jews and Christians were required to pay *jizya* as tribute to the ruling Islamic state during Muhammad’s lifetime.<sup>89</sup> The practice of Muhammed and the agreements made during his lifetime were viewed as “significant as legal precedents for the treatment of Jews and Christians in the later Islamic state.”<sup>90</sup>

During the first two caliphates, the Rashidun Caliphate (632–661) and Umayyad Caliphate (661–750), the rate of taxation, method of collection, and rights conferred by payment varied greatly from province to province.<sup>91</sup>

. . . Despite these early variations, by the beginning of the third caliphate, the Abbasid Caliphate (750–1258, 1261–1517), the *jizya* had become more or less standard.<sup>92</sup> It assumed the form of a progressive tax payable in cash or in kind and was enforced with relative leniency.<sup>93</sup>

As an early legal text from the Abbasid caliphate explains, no *dhimmi* “should be beaten in order to exact payment of the *jizya*, nor made to stand in the hot sun, nor should hateful things be inflicted upon their bodies, or anything of that sort. Rather, they should be treated with leniency.”<sup>94</sup> “During this Islamic Golden Age of the Abbasids, Christian religious centers flourished, as the *dhimmi* agreements conferred relative freedom and self-

87. Philos, *supra* note 67, at 4 (citing 3 THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD, *supra* note 86, at 263).

88. *Id.* at 6; see also CAMPO, *supra* note 84, at 194–95.

89. Philos, *supra* note 67, at 6 (citing STILLMAN, *supra* note 86, at 19–20); Ahmed, *supra* note 85, at 296.

90. Philos, *supra* note 67, at 6 (quoting STILLMAN, *supra* note 86, at 18).

91. *Id.* at 6 (citing Ahmed, *supra* note 85, at 297–300; ENCYC. BRITANNICA, *supra* note 85; THE PRINCETON ENCYCLOPEDIA OF ISLAMIC POLITICAL THOUGHT, *supra* note 85, at 283; THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD, *supra* note 86, at 263).

92. *Id.* at 7.

93. *Id.* at 7 (citing THE PRINCETON ENCYCLOPEDIA OF ISLAMIC POLITICAL THOUGHT, *supra* note 85, at 283).

94. STILLMAN, *supra* note 86, at 160 (quoting ABU YUSUF, KITAB AL-KHARAJ 122–25 (1382/1962–63)).

autonomy to those concerned.”<sup>95</sup> With a few important exceptions,<sup>96</sup> Christians continued to live in relative peace under the fourth caliphate, the Ottoman Caliphate (1517–1924), which relied on the *jizya* as an important source of revenue.<sup>97</sup>

As a result of the collapse of the Ottoman Caliphate and “the rise of the modern nation-state,” “the imposition of *dhimmi* status and the levying of the *jizya* [went] out of practice in the first-half of the twentieth century.”<sup>98</sup> In the second-half of the century, the secular Ba’athist regime in Iraq made efforts to prevent anti-Christian violence,<sup>99</sup> while the secular Ba’athist regime in Syria ratified a constitution guaranteeing religious freedom to Christians and other religious minorities.<sup>100</sup>

### B. Evidence of ISIS’s Specific Intent to Commit Genocide

With this historical background set forth, the briefing on specific intent next turned to evidence that ISIS’s rule marked a radical departure from the historical Islamic caliphates and secular Ba’athist regimes of Iraq and Syria. The evidence showed that (1) ISIS was genocidal in its ideology—that

95. Philos, *supra* note 67, at 7 (citing Ahmed, *supra* note 85, at 298).

96. Notably, hundreds of thousands of Assyrian Christians were murdered during the First World War by the Ottoman Turks. See Uzay Bulut, *Why Does No-one Remember the Assyrian Victims of Ottoman Turkey’s Christian Holocaust?*, INT’L BUS. TIMES (Apr. 24, 2015, 12:51 PM), <http://www.ibtimes.co.uk/why-does-no-one-remember-assyrian-victims-europes-christian-holocaust-1472128>.

97. COLIN IMBER, *THE OTTOMAN EMPIRE, 1300–1650*, at 245–46, 250 (2d ed. 2009) (explaining that the Ottoman *jizya* was used to alleviate the problem of regional and national deficits).

98. Philos, *supra* note 76, at 8 (citing THE PRINCETON ENCYCLOPEDIA OF ISLAMIC POLITICAL THOUGHT, *supra* note 85, at 283–84; THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD, *supra* note 86, at 71–72).

99. *Iraqi Christians’ Long History*, BBC (Nov. 1, 2010), <http://www.bbc.com/news/world-middle-east-11669994>; P.J. Tobia, *Why Did Assad, Saddam and Mubarak Protect Christians?*, PBS (Oct. 14, 2011, 3:25 PM), <https://www.pbs.org/newshour/world/mid-east-christians-intro>.

100. See CONSTITUTION OF THE SYRIAN ARAB REPUBLIC Mar. 13, 1973, art. 35 (“(1) The freedom of faith is guaranteed. The state respects all religions. (2) The state guarantees the freedom to hold any religious rites, provided they do not disturb the public order.”). The 1973 constitution remained in effect until 2012, when a new constitution was passed by referendum amidst the protests and civil unrest which led to the current civil war. Like its predecessor, the 2012 constitution guarantees religious freedom. See CONSTITUTION OF THE SYRIAN ARAB REPUBLIC Feb. 26, 2012, art. 3 (“The State shall respect all religions, and ensure the freedom to perform all the rituals that do not prejudice public order; The personal status of religious communities shall be protected and respected.”); CONSTITUTION OF THE SYRIAN ARAB REPUBLIC Feb. 26, 2012, art. 33, cl. 3 (“Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.”).

ISIS's stated goal and specific intent was the eradication of Christians from the territory under its control and the establishment of a global caliphate free of all dhimmis, including Christians—and (2) ISIS was genocidal in its conduct—ISIS took deliberate steps in conformity with its ideology and in furtherance of its stated goals.

### 1. ISIS Explicitly Stated a Professed Ideology and Belief in Genocide

Perhaps the most important evidence of ISIS's genocidal ideology came from ISIS itself. For example, ISIS's online recruitment magazine, *Dabiq*, set forth ISIS's apocalyptic eschatology,<sup>101</sup> according to which ISIS's caliphate would eventually rule the world, leaving no place for *kufr* (i.e., Christians, Jews, and other non-Muslims) “to exist on the Earth, not even as humbled dhimmi subjects.”<sup>102</sup> Numerous excerpts from *Dabiq* indicated that it was ISIS's intent to destroy Christianity by killing Christians who will not convert to Islam and by enslaving Christian women.<sup>103</sup>

Likewise, ISIS's leader and self-proclaimed caliph, Abu Omar al-Baghdadi, was cited as claiming that Christians no longer qualify for the historical protection offered by Islamic law.<sup>104</sup> In a speech delivered in May 2015, al-Baghdadi declared:

O Muslims! Whoever thinks that it is within his capacity to conciliate with the Jews, Christians, and other disbelievers, and for them to conciliate with him, such that he coexists with them and they coexist with him while he is upon his religion and upon tawhīd (mono-

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101. See *From Hypocrisy to Apostasy: The Extinction of the Grayzone*, DABIQ, Feb. 12, 2015, at 23–24 (“Thereafter, kufr and its tyranny will be destroyed; Islam and its justice will prevail on the entire Earth.”).

102. *Id.* at 23–24, 66.

103. See, e.g., *id.* at 66; IDC, *supra* note 67, at 34; see also *Just Terror*, DABIQ, Nov. 18, 2015, at 46 (“And nothing changes for the Islamic State, as it will continue to pronounce takfir upon the Jews, the Christians, the pagans, and the apostates . . . . And it will continue to wage war against the Christians until the truce decreed sometime before the Malhamah. Thereafter, the slave markets will commence in Rome by Allah's power and might.”); *The Rafidah: From Ibn Saba' to the Dajjal*, DABIQ, Jan. 19, 2016, at 42 (“It is not possible for the Muslims to achieve victory against the hostile kuffar from the Jews and Christians except by abolishing those apostate agents . . . .” (quoting Shaykh Abū Mus'ab)).

104. See Alberto M. Fernandez, *The ISIS Caliphate and the Churches*, MIDDLE E. MEDIA RES. INST. (Aug. 27, 2015), <https://www.memri.org/reports/isis-caliphate-and-churches> (“We find that the sects of the People of the Book and others from the Sabians and so in the State of Islam today are people of war who qualify for no protection . . . .” (quoting al-Baghdadi)).

theism), then he has belied the explicit statement of his Lord (the Mighty and Majestic).<sup>105</sup>

Indeed, ISIS's public statements were so direct, and so compelling, that they constituted the foundation of the IDC Report's argument regarding specific intent.<sup>106</sup> As IDC noted, "ISIS openly declares that it intends to destroy Christianity by killing Christians who will not convert to Islam and by enslaving Christian women . . . . [W]e should take them at their word."<sup>107</sup> The IDC Report then went on to cite *Dabiq* statements such as the ones above and others such as an issue entitled "The Failed Crusade," showing the ISIS flag above the Vatican flag and promising to open a slave market in Rome,<sup>108</sup> another issue showing firefighters transporting the dead from the November 13, 2015 terrorist attacks in Paris and promising an ongoing crusade;<sup>109</sup> a third issue saying apostates such as Jews, Christians, and Shia Muslims must be "abolished;" and a statement from an ISIS leader that "I have more faith in Hitler than in anyone else. He alone has kept his promises, all his promises, to the Jewish people."<sup>110</sup>

## 2. ISIS's Conduct Confirmed Its Explicitly Stated Specific Intent

Both the Philos letter and the IDC Report implicitly recognize, however, that simple statements of genocidal intent may not be enough to prove that a group has specific intent.<sup>111</sup> The IDC Report continued its affirmative case that genocide was taking place, and the Philos letter continued its argument that ISIS had illustrated the specific intent required,<sup>112</sup> by looking at ISIS's direct actions which show "additional, compelling evidence of ISIS's admitted genocidal intent."<sup>113</sup>

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105. IDC, *supra* note 67, at 35 (quoting Abu Bakr al-Baghdadi, *March Forth Whether Light or Heavy* (May 14, 2015), <http://www.memrijttm.org/in-new-audio-speech-islamic-state-isis-leader-al-baghdadi-issues-call-to-arms-toall-muslims.html> (last accessed Feb. 9, 2016)).

106. See IDC, *supra* note 67, at 33–35.

107. *Id.* at 34.

108. *Id.*

109. *Id.*; see *Just Terror*, *supra* note 103.

110. *Id.* at 33.

111. See generally IDC, *supra* note 67; Philos, *supra* note 67.

112. See IDC, *supra* note 67, at 27–31; Philos, *supra* note 67, at 23–27 (analysis of ISIS's specific intent).

113. See IDC, *supra* note 67, at 35.

*a. ISIS Murdered Christians*

The evidence presented to Secretary Kerry showed many instances in which ISIS executed Christians in Iraq, Syria, and Libya. This included reports from non-government organizations, such as a report from Human Rights Watch, which explained how ISIS was “the latest of several armed extremist Sunni groups to have systematically killed and threatened Iraq’s Chaldo-Assyrian Christians, . . . labeling them crusaders.”<sup>114</sup>

Articles from mainstream news media, such as The New York Times, The Guardian, and CNN, covered ISIS’s executions of Christians in Libya, including, most notably, ISIS’s beheading of twenty-one Coptic Christians in Sirte, Libya.<sup>115</sup> Other news media articles, including especially newspapers covering developments in the Middle East such as The Times of Israel and The Assyrian International News Agency, showed further atrocities: (1) in December 2014, ISIS beheaded four Christian children “for refusing to convert to Islam;”<sup>116</sup> (2) in September 2015, ISIS publicly executed three Assyrian Christians as part of a demand for ransom payments;<sup>117</sup> and (3) in December 2015, ISIS attacked and “targeted Assyrian businesses in Qamishli, Syria,” killing at least sixteen people.<sup>118</sup>

Christian leaders spoke out about these murders. For example, the Syriac Catholic Patriarch of Antioch, Ignatius Youssef III Younan, stated in a cited email that ISIS had killed over 1,000 Christians in Syria and over 500 in Iraq.<sup>119</sup> And the Archbishop of the Melkite Greek Catholic Archeparchy

114. See *Iraq: ISIS Abducting, Killing, Expelling Minorities*, HUM. RTS. WATCH (July 19, 2014, 12:00 AM), <https://www.hrw.org/news/2014/07/19/iraq-isis-abducting-killing-expelling-minorities>.

115. See, e.g., David D. Kirkpatrick & Rukmini Callimachi, *Islamic State Video Shows Beheadings of Egyptian Christians in Libya*, N.Y. TIMES (Feb. 15, 2015), <https://www.nytimes.com/2015/02/16/world/middleeast/islamic-state-video-beheadings-of-21-egyptian-christians.html>; Ian Black, *ISIS Claim of Beheading Egyptian Copts in Libya Shows Group’s Spread*, GUARDIAN (Feb. 15, 2015, 6:47 PM), <https://www.theguardian.com/world/2015/feb/15/isis-21-egyptian-coptic-christians-beheading-libya>; *ISIS Video Appears to Show Beheadings of Egyptian Coptic Christians in Libya*, CNN (Feb. 16, 2015, 7:34 AM), <https://www.cnn.com/2015/02/15/middleeast/isis-video-beheadings-christians/index.html>.

116. Lazar Berman, *IS Beheaded 4 Christian Children, Says ‘Vicar of Baghdad’*, TIMES ISRAEL (Dec. 14, 2014, 2:47 AM), <https://www.timesofisrael.com/is-beheaded-4-christian-children-says-vicar-of-baghdad/>.

117. *ISIS Execute Three Assyrians in Syria*, ASSYRIAN INT’L NEWS AGENCY (Oct. 8, 2015, 6:24 AM), <http://www.aina.org/news/20151008022445.htm>.

118. *Assyrian Restaurants Bombed in Qamishli, Syria, 16 Killed*, ASSYRIAN INT’L NEWS AGENCY (Dec. 30, 2015, 11:19 PM), <http://www.aina.org/news/20151230181909.htm>.

119. IDC, *supra* note 67, at 36 (citing Email and Letter from Ignatius Youssef III Younan, Patri-

of Aleppo, Jean-Clément Jeanbart, estimated in an email that the number of Christians kidnapped or killed in Aleppo was “in the hundreds,” with as many as “‘thousands’ killed throughout Syria.”<sup>120</sup>

The IDC Report further cited a report from Shlomo, a non-governmental organization of internally displaced persons, that had catalogued a list of 1,131 Christians killed by ISIS between 2003 and 2014.<sup>121</sup> The IDC further emphasized that actually ascertaining the number of people killed in a region torn by such conflict and violence was “difficult” even in the best of times, but the IDC Report nonetheless included a chart, which provided a “snapshot” of fifteen instances of murder by ISIS resulting in at least 237 deaths.<sup>122</sup>

Additionally, the IDC Report contained previously unavailable statements of internally displaced persons, such as Yazid, an internally displaced Iraqi Christian woman, who stated in an interview in 2016 that her husband had been killed by ISIS “because he refused to become a Muslim.”<sup>123</sup> Another internally displaced Christian, Bashar, recounted how ISIS militants told him, “Today we rob[,]” and “tomorrow we slaughter by the order of the *khalifa*.”<sup>124</sup>

#### *b. ISIS Expelled Christians from Their Ancestral Homeland*

One of the clearest indications presented to Secretary Kerry of ISIS’s specific intent to destroy the Christians of Iraq was its expulsion of hundreds of thousands of Christians from their ancestral homes. The Christians of Iraq are predominately Assyrian, and they are a unique ethnic group and one of the oldest Christian communities in the world.<sup>125</sup> Assyrians have been

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arch of Antioch, to Andrew Walther, Vice President of Commc’ns & Strategic Planning, Knights of Columbus (Mar. 4, 2016) (on file with the Knights of Columbus)).

120. *Id.* at 37 (quoting Email from Jean-Clement Jeanbart, Archbishop of Aleppo, to Scott Lloyd, Sr. Policy Coordinator, Knights of Columbus (Feb. 19, 2016) (on file with the Knights of Columbus)).

121. *Id.* at 36.

122. *Id.* at 36–38.

123. *Id.* at 64–65.

124. *Id.* at 76–77 (emphasis added).

125. See Bradley Martin, *This Easter, Stop the Crucifixion of Assyrian Christians*, OBSERVER (Mar. 27, 2016, 8:30 AM), <https://observer.com/2016/03/this-easter-stop-the-crucifixion-of-assyrian-christians/> (explaining that the Assyrian Christians became the first people to convert to Christianity as a nation); *Who Are Iraqi Christians*, IRAQI CHRISTIAN RELIEF COUNCIL, <https://iraqichristianrelief.org/about-us-2/who-are-iraqi-christians/> (last visited Feb. 9, 2019) (explaining history of Assyrian

identified as a unique group in some of the earliest writings known to history.<sup>126</sup> Many first became Christians in the first century after the birth of Christ, making the Assyrian Christian community one of the oldest Christian communities in the world.<sup>127</sup> The Assyrian Christians of Iraq are a unique religious-ethnic group, indigenous to the Middle East, whose forebearers have continually inhabited the same region for over 6,700 years.<sup>128</sup>

Despite those nearly seven millennia of history, ISIS expelled the Christian community. For example, in July 2014, ISIS announced that the Christians of Mosul, Iraq had until noon the next day to either convert to Islam, flee, or face execution.<sup>129</sup> ISIS marked Christian homes and businesses with the red ن (transliterated as “noon” or “nun”) of the Arabic alphabet (the equivalent of the Roman letter N) standing for “Nasara” or “Nazarenes”—a pejorative word for Christians in Arabic.<sup>130</sup> At least 100,000 Christians fled,<sup>131</sup> and ISIS announced that the city was free of Christians for the first time in roughly 2,000 years.<sup>132</sup> Mosul was not an isolated incident: among other areas, ISIS expelled roughly 200,000 Christians from the Nineveh Plain and between 40,000 and 100,000 Christians from Qaraqosh, Iraq.<sup>133</sup> Thus, altogether, ISIS expelled at least 400,000 Christians from their ancestral homeland.

Furthermore, to the extent Christians remained in ISIS-controlled terri-

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Christians in Iraq).

126. See *The Amazing Name Asshur: Meaning and Etymology*, ABARIM PUBLICATIONS, <http://www.abarim-publications.com/Meaning/Asshur.html#.XEZwUlyQFPY> (last visited Feb. 9, 2019) (“Asshur was a son of Shem, the eldest son of Noah (Genesis 10:22), and, on the Biblical stage, from him sprang the people called the Assyrians (אשורִי), who lived in Assyria, which in the Bible is known simply as Asshur (אשור).”).

127. See Martin, *supra* note 125.

128. See generally RASSAM, *supra* note 81; OPPENHEIM, *supra* note 82.

129. Fazel Hawramy, *They Are Savages, Say Christians Forced to Flee Mosul by ISIS*, GUARDIAN (July 24, 2014, 7:45 AM), <https://www.theguardian.com/world/2014/jul/24/iraqi-christians-mosul-isis-convert-islam-or-be-executed>.

130. Christine Sisto, *A Christian Genocide Symbolized by One Letter*, NAT'L REV. (July 23, 2014, 10:31 PM), <http://www.nationalreview.com/article/383493/christian-genocide-symbolized-one-letter-christine-sisto>; see also *And Then There Were None: Fed up and Fearful, Christians Are Leaving the Middle East*, ECONOMIST (Jan. 2, 2016), <http://www.economist.com/news/middle-east-and-africa/21684795-fed-up-and-fearful-christians-are-leaving-middle-east-and-then-there-were/>.

131. *At Least 100,000 Iraqi Christians Forced to Flee ISIS Advance*, FR. 24 (July 8, 2014, 2:52), <https://www.france24.com/en/20140807-100000-christians-forced-flee-isis-advance-iraq>.

132. *And Then There Were None*, *supra* note 130.

133. See IDC, *supra* note 67, at 90, 108.

tory, ISIS made their conditions of life intolerable.<sup>134</sup> For example, ISIS would steal the Christians' food and possessions, refuse to give them food and water, snatch women from their families, and round up Christians and drop them off in the desert.<sup>135</sup>

*c. ISIS Enslaved and Raped Christian Women, Including Children*

Secretary Kerry was also presented with evidence that ISIS abducted thousands of Christian women and girls.<sup>136</sup> These women were either gifted or sold as sex slaves and were often raped in rapid succession by a number of militants in a single night.<sup>137</sup>

The evidence of the widespread enslavement and rape of Christian women included official ISIS publications, such as a price list for Christian sex slaves promulgated by ISIS's Committee of Treasury.<sup>138</sup> Confirmed as genuine by the UN,<sup>139</sup> the document set "price controls" for the sale and purchase of Christian women who were described variously as the "spoils of war" and "merchandise."<sup>140</sup> The price of the women was based on their age, with the youngest girls costing the most.<sup>141</sup> The price list included children

134. *See id.* at 42–45.

135. *Id.*

136. Press Release, Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict, Iraq: UN Officials Call for Immediate End to Sexual Violence Against Iraqi Minorities (Aug. 13, 2014), <http://www.un.org/sexualviolenceinconflict/press-release/iraq-un-officials-call-for-immediate-end-to-sexual-violence-against-iraqi-minorities/> ("'Atrocious accounts on the abduction and detention of Yazidi, Christian, as well as Turkomen and Shabak women, girls and boys, and reports of savage rapes, are reaching us in an alarming manner,' Bangura and Mladenov stated, pointing out that some 1,500 Yazidi and Christian persons may have been forced into sexual slavery.").

137. IDC, *supra* note 67, at 40 (citing 'Barbaric' Sexual Violence Perpetrated by Islamic State Militants in Iraq—UN, UN NEWS (Aug. 13, 2014), [http://www.un.org/apps/news/story.asp?NewsID=48477#.Vt\\_0r\\_krJyw](http://www.un.org/apps/news/story.asp?NewsID=48477#.Vt_0r_krJyw)).

138. *See IDC supra* note 67, at 203.

139. *See* Sarah Ann Harris, *ISIS Price List for Yazidi and Christian Females as Young as One Confirmed as Genuine by UN Official*, HUFFINGTON POST UK (May 8, 2015, 12:59 PM), [http://www.huffingtonpost.co.uk/2015/08/05/isis-slave-price-list-genuine-united-nations-official\\_n\\_7939080.html](http://www.huffingtonpost.co.uk/2015/08/05/isis-slave-price-list-genuine-united-nations-official_n_7939080.html) ("A 'price list' for Yazidi and Christian females as young as one, written by the so-called Islamic State (IS), has been confirmed as genuine by a UN official who visited Iraq. Zainab Bangura, the UN's Special Representative of the Secretary-General for Sexual Violence in Conflict, said that she had seen the list detailing amounts girls and women were worth as slaves when sold by the terrorist group . . . . [A]fter visiting the region, Bangura believes it to be genuine.").

140. IDC *supra* note 67, at 203.

141. *See id.*



as young as one year of age.<sup>142</sup>

Another document included a pamphlet issued by ISIS's Research and Fatwa Department, which further regulated the enslavement and rape of Christian and other non-Muslim women.<sup>143</sup> Among other things, the pamphlet explained that there was "no dispute" that it was "permissible to capture unbelieving women," such as Christians and Jews.<sup>144</sup> The pamphlet further explained that it was "permissible to have sexual intercourse with the female captive," including, under certain circumstances, "a female slave who has not reached puberty."<sup>145</sup> And in fact, the behavior permitted by these pamphlets came to pass. A former ISIS member admitted that the rape and enslavement of non-Muslim women is common:

[ISIS members] believe it is permissible to sleep with women prisoners even against their will if they are infidels, non-Muslims and apostate women. This happened to Christian women in Al-Raqqah after their husbands were publically [sic] beheaded . . . . [In Al-Raqqah] I saw six jihadists demanding that a Christian women [sic] and her daughter become their wives. The daughter was about 12–13 years old.<sup>146</sup>

*d. ISIS Took Measures to Separate Christian Parents from Their Children and Imposed Measures Intended to Prevent Christian Births*

The IDC Report emphasized evidence that ISIS acted to destroy the Christian community by attacking its children.<sup>147</sup> This took two primary forms: (a) the separation of husbands and wives via abductions and disappearances, and (b) the kidnapping of children either to be sex slaves (female

142. *Id.*; Harris, *supra* note 139.

143. *ISIS Pamphlet on Female Slaves*, MIDDLE E. MEDIA RES. INST. (Dec. 4, 2015), <https://www.memri.org/jttm/islamic-state-isis-releases-pamphlet-female-slaves>.

144. Kenneth Roth, *Slavery: The ISIS Rules*, HUMAN RTS. WATCH (Sept. 5, 2015, 10:14 AM), <https://www.hrw.org/news/2015/09/05/slavery-isis-rules>.

145. *Id.* The pamphlet also explained that it was "permissible" to beat female captives as a form of discipline but not for the purpose of gratification. *Id.*

146. Rozh Ahmad, *EXCLUSIVE: Q&A with Former Islamic State Member*, YOUR MIDDLE E. (Sept. 28, 2014), [http://www.yourmiddleeast.com/culture/exclusive-qa-with-former-islamic-state-member\\_26696](http://www.yourmiddleeast.com/culture/exclusive-qa-with-former-islamic-state-member_26696).

147. IDC, *supra* note 67, at 47 (sharing the story of Christina, a girl who was taken from her parents when she was three years old and was never heard from again).

children) or to train them to fight for ISIS (male children).<sup>148</sup>

*e. ISIS Destroyed Christian Churches and Other Important Religious and Cultural Sites*

The final piece of conduct confirming ISIS's specific intent to destroy the Christian community was the systematic destruction of Christian churches, monasteries, and other significant religious and cultural heritage sites.

In Syria, ISIS destroyed Christian cultural sites, including the fifth-century Monastery of Saint Elian.<sup>149</sup> ISIS also destroyed the third-century Dura-Europos Church, which was one of the world's earliest known Christian churches.<sup>150</sup>

In Iraq, the devastation was even more extensive. In June 2014, ISIS fighters were instructed to destroy all churches in Mosul.<sup>151</sup> In July 2014, ISIS captured the Chaldean Catholic archdiocese in Mosul and stole or destroyed every Christian symbol in the building.<sup>152</sup> Next, ISIS destroyed the Monastery of Behnam and the Monastery of St. Elijah, respectively founded in the fourth and sixth centuries.<sup>153</sup>

ISIS also destroyed ancient Assyrian cities, monuments, and artifacts that predated Christianity. On January 28, 2015, ISIS demolished a large portion of the ancient wall of Nineveh in Mosul considered one of the most

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148. *Id.*

149. Albert Aji & Bassem Mroue, *ISIS: Militants Destroy Ancient Monastery in Syria Founded More than 1,500 Years Ago*, INDEP. (Aug. 21, 2015, 2:42 PM), <https://www.independent.co.uk/news/world/middle-east/isis-in-syria-militants-destroy-ancient-monastery-founded-more-than-1500-years-ago-10465578.html>.

150. See Deborah Amos & Alison Meuse, *Via Satellite, Tracking the Plunder of Middle East Cultural History*, NPR (Mar. 10, 2015, 3:11 PM), <https://www.npr.org/sections/parallels/2015/03/10/392077801/via-satellite-tracking-the-plunder-of-middle-east-cultural-history>; Andrew Curry, *Here Are the Ancient Sites ISIS Has Damaged and Destroyed*, NAT'L GEOGRAPHIC (Sept. 1, 2015), <https://news.nationalgeographic.com/2015/09/150901-isis-destruction-looting-ancient-sites-iraq-syria-archaeology/>.

151. Hawar Berwani, *ISIL Orders Destruction of All Churches in Mosul*, IRAQI NEWS (June 16, 2014, 2:22 PM), <http://www.iraqnews.com/iraq-war/isil-instructs-to-destroy-churches-in-mosul/>; see also *All 45 Christian Institutions in Mosul Destroyed or Occupied By ISIS*, ASSYRIAN INT'L NEWS AGENCY (July 29, 2014, 2:05 PM), <http://www.aina.org/news/20140729100528.htm>.

152. Jacques Neria, *The Islamic State's Rules for Its Christian Subjects*, JERUSALEM CTR. FOR PUB. AFF. (Sept. 10, 2015), <http://jcpa.org/islamic-states-rules-christian-subjects/>.

153. See Curry, *supra* note 150 (Monastery of Saint Behnam); *ISIS Has Destroyed Iraq's Oldest Christian Monastery, Satellite Images Confirm*, GUARDIAN (Jan. 20, 2016, 7:16 AM), <http://www.theguardian.com/world/2016/jan/20/isis-has-destroyed-iraqs-oldest-christian-monastery-satellite-images-confirm> (Monastery of Saint Elijah).

treasured archeological sites in the Middle East.<sup>154</sup> On March 6, 2015, ISIS bulldozed the 3,300-year-old city of Nimrud.<sup>155</sup> ISIS destroyed the ancient city of Khorsabad, an Assyrian Capital where one of the best-preserved architectural treasures was located since 706 BCE.<sup>156</sup> And the foregoing are simply representative examples of an even longer list of destruction presented as evidence to Secretary Kerry.<sup>157</sup>

### 3. The Restoration of the *Jizya* was a Pretext

Finally, Secretary Kerry was presented evidence that ISIS's purported restoration of the *jizya* was a pretext for—and therefore could not preclude a finding of—genocide.<sup>158</sup> As ISIS expanded the territory under its control, reports began to surface that ISIS was offering Christians three options: (1) convert to Islam, (2) assume *dhimmi* status and pay an associated *jizya* tax, or (3) leave the territory.<sup>159</sup> For example, in September 2015:

[T]he media office of the Damascus province of the Islamic State (ISIS) published a photo report showing dozens of Christians from Al-Qaryaten city signing a Dhimma contract, requiring each of them to pay the *jizya* poll tax, abide by Islamic rules and refrain from certain activities. In return, under the 11-article contract, which was published on the leading ISIS-affiliated jihadi forum Shumoukh Al-Islam, ISIS will protect them and their property, and they will neither be forced to convert nor harmed.<sup>160</sup>

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154. Abdelhak Mamoun, *ISIS Detonates Large Parts of Nineveh Historical Wall*, IRAQI NEWS (Jan. 28, 2015, 6:00 PM), <http://www.iraqinews.com/iraq-war/isis-detonates-large-parts-nineveh-historical-wall/>.

155. Tamer El-Ghobashy, *Iraq Officials Denounce Islamic State's Destruction of Ancient Site*, WALL STREET J. (Mar. 7, 2015, 5:23 AM), <http://www.wsj.com/articles/nimrud-iraq-officials-denounce-islamic-states-destruction-of-ancient-site-1425653551>.

156. Curry, *supra* note 150.

157. See generally Nicolas Pelham, *ISIS and Iraq's Shia Revival*, COLUM. GLOBAL REP. (Apr. 26, 2016), <https://globalreports.columbia.edu/blog/2016/04/isis-and-iraqs-shia-revival/> (summarizing ISIS's destruction of significant religious and cultural monuments and landmarks in Iraq between June 2014 and March 2015).

158. Philos, *supra* note 67, at 2 (“The evidence therefore suggests that the *jizya* tax is not a real option and may be just a pretext to justify ISIS's atrocities.”).

159. Holocaust Museum Report, *supra* note 68, at 14.

160. Press Release, MEMRI, *ISIS Issues Dhimma Contract For Christians To Sign, Orders Them To Pay Jizyah* (Sept. 3, 2015), [https://www.newenglishreview.org/blog\\_direct\\_link.cfm/blog\\_id/](https://www.newenglishreview.org/blog_direct_link.cfm/blog_id/)

These reports led some commentators to conclude that ISIS could not be found guilty of genocide against Christians, as it offered Christians the option of retaining their faith and remaining on their land just as the historical Islamic caliphates had done.<sup>161</sup>

The briefing therefore presented Secretary Kerry with evidence showing that ISIS's purported method of levying the *jizya* was contrary to the practice of the historical Islamic caliphates, and in fact, a sham and pretext.<sup>162</sup>

This evidence showed that, in most cases, ISIS did not offer *dhimmi* status to Christians.<sup>163</sup> As a matter of course, ISIS executed, enslaved, or expelled Christians without first affording them the opportunity to assume *dhimmi* status and pay an associated *jizya* tax.<sup>164</sup> For example, ISIS told the Christians in Mosul that paying the *jizya* was not an option; they could convert, leave, or die.<sup>165</sup> As one displaced Christian explained, ISIS militants "told me when I was in Mosul that I must become a Muslim or leave Mosul . . . . [T]hey threatened to slaughter us if we refused to become Muslims."<sup>166</sup> Internally displaced Iraqi Christians from other towns and cities provided similar statements:

- Nidal: "Daesh gave us the choice of converting to Islam or leave the city . . . ."<sup>167</sup>
- Sanaa: "We were forced to leave . . . ."<sup>168</sup>
- Khudir: "Daesh members drove us out of our house by force."<sup>169</sup>
- Zakiya: "Yes they told him if you want to live you will need to

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62244/ISIS-Issues-Dhimma-Contract-For-Christians-To-Sign-Orders-Them-To-Pay-Jizyah.

161. See IDC, *supra* note 67, at 11–12 (calling the premise "that Christians should be excluded from a genocide declaration because ISIS supposedly allows Christians to pay *jizya*" false).

162. Philos, *supra* note 67, at 17–19.

163. *Id.* at 17 ("First, the evidence strongly suggests that *dhimmi* status is not offered to all Christians.").

164. *Id.* (describing ISIS's stated goals of murdering and enslaving Christians).

165. *Id.* at 27 ("The only options were convert, flee or be killed." (quoting U-T San Diego Editorial Board, *The Death of Christianity in Mosul*, SAN DIEGO UNION TRIB. (July 22, 2014, 4:55 PM), <http://www.sandiegouniontribune.com/news/2014/jul/22/christianity-iraq-mosul-isis-purge-arabo/>)).

166. IDC, *supra* note 67, at 66–67 (quoting Khayrira, an Iraqi Christian).

167. *Id.* at 58.

168. *Id.* at 62.

169. *Id.*

convert to Islam . . . .”<sup>170</sup>

- Habib: “They told me to embrace Islam or be killed.”<sup>171</sup>
- Yazi: “They said to my husband that he would be killed if we didn’t convert to Islam.”<sup>172</sup>
- Heba: “They said if you don’t convert to Islam you would be killed.”<sup>173</sup>

In the rare instances in which ISIS offered Christians the opportunity to enter into a *dhimmi* contract, the *jizya* tax was too expensive for the Christians to pay. For example, in June 2014, three ISIS members entered the home of an Assyrian Christian family in Mosul and demanded that the husband and father pay the *jizya*, and when he was unable to pay, they raped his wife and daughter in front of him, prompting the man to commit suicide.<sup>174</sup> This is contrary to historical practice.<sup>175</sup> In the past, the *jizya* was “so light that it did not constitute a burden . . . especially when we observe that [paying the *jizya*] exempted [the *dhimmi*] from compulsory military service.”<sup>176</sup> In many respects, the traditional *jizya* “was in number and amount far less than taxes on the Muslims of that state,”<sup>177</sup> and it was “not to be forcefully collected.”<sup>178</sup>

In the even rarer instances in which ISIS actually executed a *dhimmi* contract with a Christian community, ISIS did not fulfill its contractual duties—it did not protect the Christian community or grant it religious freedom and communal self-government.<sup>179</sup> For example, in Raqqa, Syria, ISIS offered *jizya* only after it had already closed the churches, burned Bibles, and

170. *Id.* at 54–55.

171. *Id.* at 56–57.

172. *Id.* at 64–65.

173. *Id.* at 66–67.

174. *ISIS Rape Christian Mother and Daughter, Kill 4 Christian Women for Not Wearing Veil*, ASSYRIAN INT’L NEWS AGENCY (June 23, 2014, 10:55 PM), <http://www.aina.org/news/20140623185542.htm>.

175. See IDC, *supra* note 67, at 12 (“[W]hat ISIS calls *jizya* is not comparable to the historical understanding of that term.”).

176. Saeed Akhtar & Ata ur Rahman, *A Critique of Robert Spencer’s Views Regarding Dhimmis and Jizya*, 29 AL-IDAH 107, 110 (2014) (quoting THOMAS ARNOLD, INVITATION TO ISLAM 77).

177. *Id.* at 110.

178. *Id.* at 112.

179. See IDC, *supra* note 67, at 12 (“[S]elf-styled ISIS Caliph Abu Omar al-Baghdadi has admitted for nearly a decade that Christians no longer qualify for the historical protection offered by Islamic law.”).

kidnapped the town's priests.<sup>180</sup>

#### IV. LEGAL ARGUMENTS TO SHOW SPECIFIC INTENT

Following presentation of the foregoing facts, it was essential for the non-governmental organizations to make the legal case that these facts, together, constituted the specific intent necessary to hold ISIS accountable as a perpetrator of genocide.<sup>181</sup>

Under Article 2, one must consider the intent of the actor in order to determine whether genocide has occurred.<sup>182</sup> The proscribed conduct must be “committed with intent to destroy.”<sup>183</sup> This intent is “an ulterior intent” beyond just the immediate intent of the exact action being taken; thus, killing a person may be murder if the killer intends to kill, but it is also genocide if the murder is committed as part of an intent to destroy a group.<sup>184</sup>

The various international criminal courts have offered similar definitions of the intent necessary to prove genocide.<sup>185</sup> In the leading case, the ICTR understood “intent to destroy” as “the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged” or “the clear intent to cause the offense.”<sup>186</sup> Notably, that there is an intent to kill present in ISIS's murders is beyond question.<sup>187</sup> To find the “intent to destroy” one need only refer to ISIS's publications and ideology that set out just such a specific intent.<sup>188</sup>

But much of what IDC and the Philos letter focused on is that because

180. *Id.*

181. *See id.* at 31–33 (making the argument that the crimes committed by ISIS were committed with specific intent); Philos, *supra* note 67, at 22–36 (analysis).

182. Philos, *supra* note 67, at 23.

183. *Id.* (quoting Genocide Convention, *supra* note 12, art. II).

184. *Id.* at 23 (quoting Ambos, *supra* note 28, at 835).

185. *Id.*

186. *Id.* (quoting Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgement, ¶¶ 498, 518 (Sep. 2, 1998), <http://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgements/en/980902.pdf>).

187. *Id.*

188. *Id.*

intent is an issue in establishing genocide, “the issue of pretext is a necessary consideration.”<sup>189</sup> ISIS had claimed to give Christians a choice whether to convert or die. Was this choice real?

Pretext is “a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs.”<sup>190</sup> Pretextual statements and conduct, therefore, are designed to obscure an actor’s true intent.<sup>191</sup>

In the case of genocide, if a stated policy or position is mere pretext, the actor’s real intent differs from his purportedly justifiable stated intent.<sup>192</sup> Moreover, proof that a stated intent is pretextual necessarily means that there is another, true intent.<sup>193</sup> d When that pretext is exposed for what it is, the law then looks to the actual conduct taking place to infer intent.<sup>194</sup> “A criminal intent is generally an element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does.”<sup>195</sup>

Furthermore, the issue of true intent can be illuminated by conduct amounting to “cultural genocide.”<sup>196</sup> Cultural genocide is contemplated to cover conduct that prohibits the use of local languages and schools, bans or restricts cultural and artistic activities relating to the particular culture, and destroys or confiscates “national treas-

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189. *Id.*; see also IDC, *supra* note 67, at 31–47 (expounding on ISIS’s intent to commit genocide).

190. Philos, *supra* note 67, at 23 (quoting MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 984 (11th ed. 2004)).

191. *Id.* at 23 (citing *People v. Silva*, 987 P.2d 909, 914 (Colo. App. 1999), *as modified on denial of reh’g* (May 27, 1999)); *Smith v. State*, 965 S.W.2d 509, 512 (Tex. Crim. App. 1998) (“[I]f the defendant provoked another to make an attack on him, so that the defendant would have a pretext for killing the other under the guise of self-defense, the defendant forfeits his right of self-defense.”).

192. *Id.* at 24.

193. *Id.*

194. *Id.*

195. *Id.* (quoting *Reynolds v. United States*, 98 U.S. 145, 167 (1878)).

196. *Id.* (quoting Lorie M. Graham, *Reparations, Self-Determination, and the Seventh Generation*, 21 HARV. HUM. RTS. J. 47, 67 (2008); FRANK CHALK & KURT JONASSOHN, *THE HISTORY AND SOCIOLOGY OF GENOCIDE: ANALYSES AND CASE STUDIES* 8–10 (1990)).

ures, libraries, archives, museums, artifacts, and art galleries.”<sup>197</sup>

Cultural genocide extends beyond attacks upon the physical and/or biological elements of a group and seeks to eliminate its wider institutions. This is done in a variety of ways, and often includes the abolition of a group’s language, restrictions upon its traditional practices and ways, the destruction of religious institutions and objects, the persecution of clergy members, and attacks on academics and intellectuals. Elements of cultural genocide are manifested when artistic, literary, and cultural activities are restricted or outlawed and when national treasures, libraries, archives, museums, artifacts, and art galleries are destroyed or confiscated.<sup>198</sup>

While acknowledging that “[a]ccepted interpretations of the Genocide Convention conclude that ‘cultural genocide’ is not included within the scope of proscribed actions,”<sup>199</sup> the Philos letter nevertheless encouraged Secretary Kerry to look at cultural genocide as proof of the requisite specific intent because “acts relating to cultural genocide can evince the intent of a genocide perpetrator to destroy the protected group. For example, the [ICTY] concluded that the Serbian destruction of mosques and Muslim libraries and the attacks on cultural leaders was evidence of genocidal intent against Muslims in the former Yugoslavia.”<sup>200</sup>

The Philos letter then proceeded to analyze the facts to make the systematic case that ISIS had the required specific intent.<sup>201</sup> First, the Philos letter examined the facts to show that ISIS’s so-called *jizya* was not in accordance with classical *jizya* or ISIS’s actual practices, such that the “*jizya*”

197. *Id.* at 24 (quoting David Nersessian, *Rethinking Cultural Genocide Under International Law, Human Rights Dialogue: Cultural Rights*, CARNEGIE COUNCIL (Apr. 22, 2005), [https://www.carnegiecouncil.org/publications/archive/dialogue/2\\_12/section\\_1/5139](https://www.carnegiecouncil.org/publications/archive/dialogue/2_12/section_1/5139)).

198. *Id.* at 24–25 (quoting Nersessian, *supra* note 197).

199. *Id.* at 25 (citing Daphne Anayiotos, *The Cultural Genocide Debate: Should the UN Genocide Convention Include a Provision on Cultural Genocide or Should the Phenomenon be Encompassed in a Separate International Treaty?*, 22 N.Y. INT’L L. REV. 99, 114 (2009)).

200. *Id.* (citing Robert Bevan, *As Islamic State Continues Its Destruction, There Is an Urgent Need for Cultural Vandalism to Be Reclassified As Genocidal*, ART TIMES (Apr. 14, 2015), <http://friendsofrhodes.com/as-islamic-state-continues-its-destruction-there-is-an-urgent-need-for-cultural-vandalism-to-be-reclassified-as-genocidal/>).

201. See Philos, *supra* note 67, at 25–31.



was in fact a pretext to hide ISIS's genocidal intent.<sup>202</sup> To prove this point, among other arguments, the Philos letter cited to the guidelines on enslaving women that ISIS had published and noted that:

[P]recedent from the UN's International Criminal Tribunal suggests the detailed, almost bureaucratic, guidelines on the rape and abuse of Assyrian Christian women, and its widespread practice among ISIS militants, can and should be viewed as evidence of genocidal intent. For example, in the judgment entered in the prosecution of Jean-Paul Akayesu, which found the Hutu Rwandan guilty of nine counts of genocide and other crimes against humanity, the tribunal explained that rape and other types of sexual assault constitute genocide when committed with intent to destroy the targeted group as such.<sup>203</sup>

Specifically, in *Akayesu*, the tribunal held:

measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes[,] and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group.

Furthermore, . . . rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.<sup>204</sup>

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202. *Id.* at 27 (“That stated intent runs contrary to both classical and ISIS's perverted views of *jizya* and *dhimmi*.”).

203. *Id.* at 29 (citing Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶¶ 507–508 (Sep. 2, 1998), <http://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-96-4/trial-judgements/en/980902.pdf>).

204. *Id.* at 28–29 (quoting Akayesu, ¶¶ 507–08).

V. THUS, ISIS'S SYSTEMATIC RAPE OF CHRISTIAN WOMEN WAS EVIDENCE OF ITS SPECIFIC INTENT.

Likewise, the Philos letter argued that the cultural genocide ISIS was committing was evidence of its specific intent.<sup>205</sup> As the Philos letter pointed out, it was precisely the type of cultural genocide that ISIS was committing via its destruction of churches and sacred spaces that ultimately supported a finding of genocide in Srebrenica.<sup>206</sup>

In 2001, the [ICTY] concluded that Bosnian Serbs' destruction of "the principal mosque in Srebrenica" was evidence of their genocidal intent.<sup>207</sup> The International Tribunal explained that "[i]ntent by the Bosnian Serb forces to target the Bosnian Muslims of Srebrenica as a group is further evidenced by their destroying homes of Bosnian Muslims in Srebrenica and Potoari and the principal mosque in Srebrenica soon after the attack."<sup>208</sup> The International Tribunal also noted that, "where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group."<sup>209</sup> The Tribunal thus expressly considered "as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group."<sup>210</sup>

The Philos letter thus armed the State Department with arguments that ISIS's purported *jizya* was, in fact, a pretext and that ISIS's killing, its systematic raping of women, and its destruction of the Iraqi Christians' cultural heritage were all key pieces of evidence that showed ISIS was acting with genocidal intent.<sup>211</sup> As a final argument, the Philos letter cited the historical record and several past genocides to show that perpetrators of genocide almost always have some sort of pretextual reason to explain what they are do-

205. *Id.* at 30.

206. *Id.*

207. *Id.* (citing Prosecutor v. Krstic, Case No. IT-98-33-T, Judgment, ¶ 595 (Aug. 2, 2001)).

208. *Id.* (quoting Krstic, ¶ 595).

209. *Id.* (quoting Krstic, ¶ 580).

210. *Id.* (quoting Krstic, ¶ 580).

211. *Id.* at 22–30.

ing.<sup>212</sup> Philos and IDC encouraged Secretary Kerry not to believe the pretext or make the same mistake that many of his predecessors had made.<sup>213</sup>

## VI. SECRETARY KERRY’S DECLARATION AND ITS PRECEDENT FOR THE LAW OF GENOCIDE

The overwhelming evidence demonstrates, beyond any doubt, that ISIS committed atrocities, many of which should be beyond imagination.<sup>214</sup> Based on this evidence, the State Department concluded that ISIS had the requisite intent and was committing genocide.<sup>215</sup> This conclusion was rare, and it is a welcomed and much needed development.<sup>216</sup>

Secretary Kerry’s declaration was just a critical first step.<sup>217</sup> As Kerry himself noted, “Naming these crimes is important. But what is essential is to stop them.”<sup>218</sup> And in fact, the declaration was quickly followed by decisive action by both the Obama and Trump administrations.<sup>219</sup> Within days of the declaration, the United States military took action, including additional deployments of troops and the beginning of what the military termed a “second phase” of the conflict against ISIS.<sup>220</sup> By April of 2018, the Department of Defense reported that ISIS had been defeated in Iraq and announced the return and a time of celebration by the Assyrian Christians and other groups

212. *Id.* at 31–36 (“Indeed, pretextual justifications are a recurring feature seen throughout previous genocides.”).

213. *Id.* at 32; IDC, *supra* note 67, at 17–18.

214. *See, e.g.*, Colin Dwyer, *A Window onto the ‘Shocking’ Final Days of ISIS in Mosul*, NPR (Nov. 2, 2017, 5:01 PM), <https://www.npr.org/sections/thetwo-way/2017/11/02/561537779/a-window-onto-the-shocking-final-days-of-isis-in-mosul>.

215. Kerry Declaration, *supra* note 34.

216. *See* Shannon Bream, *Kerry Declares ISIS Committing Genocide Against Christians, Others*, FOX NEWS (Apr. 28, 2016), <https://www.foxnews.com/politics/kerry-declares-isis-committing-genocide-against-christians-others> (calling the declaration of genocide a “rare designation”).

217. *See id.*; Olivia Enos, *One Year out, U.S. Has Little to Show in Preventing ISIS Genocide*, FORBES (Mar. 17, 2017, 8:49 AM), <https://www.forbes.com/sites/oliviaenos/2017/03/17/one-year-out-u-s-has-little-to-show-in-preventing-isis-genocide/#164cdae436c6>.

218. Kerry Declaration, *supra* note 34.

219. *See* Cameron Glenn, *Timeline: US Policy on ISIS*, WILSON CTR. (Apr. 27, 2016), <https://www.wilsoncenter.org/article/timeline-us-policy-isis>; *Timeline: U.S. Involvement in Syria, up Until Trump’s Surprising Decision to Withdraw*, HAARETZ (Dec. 20, 2018, 10:48 AM), <https://www.haaretz.com/us-news/timeline-u-s-involvement-in-syria-up-until-trump-s-surprising-decision-to-leave-1.6764021>.

220. Glenn, *supra* note 219.

targeted for extermination by ISIS.<sup>221</sup> On the diplomatic front, the State Department's historic declaration was joined by other countries and organizations that likewise concluded that ISIS's actions constituted genocide under international law.<sup>222</sup> Now these historic assertions and military victories, in turn, must be followed by the necessary legal proceedings to bring to justice those who committed and masterminded the genocidal acts.<sup>223</sup> Much work still needs to be done in order to obtain convictions in the appropriate tribunals.<sup>224</sup>

But beyond the historical significance and military change associated with the declarations of genocide, and in addition to the practical hurdles that lie ahead, the State Department's historic declaration provides an opportunity to examine critical issues with respect to genocide and genocidal intent. One such issue is whether the declaration provides any insight into the meaning of specific intent considered by the State Department.<sup>225</sup> In other words, does the State Department's conclusion that ISIS is committing genocide adopt the purpose-based approach or knowledge-based approach to proving specific intent? When viewed as a whole, Kerry's statement appears to reflect primarily an application of the purpose-based interpretation of genocidal intent but with hints of the knowledge-based approach.<sup>226</sup> In addition, the evidence presented to the State Department includes evidence that could support a finding of genocidal intent under either approach.<sup>227</sup>

Looking first at Kerry's statement, it includes clear invocations of evi-

221. Terry Moon Cronk, *Evidence of Normal Life Returns to Iraq, Syria, After 'Caliphate' Defeat, Official Says*, U.S. DEP'T DEF. (Apr. 24, 2018), <https://www.defense.gov/News/Article/Article/1502396/evidence-of-normal-life-returns-to-iraq-syria-after-caliphate-defeat-official-s/>.

222. See, e.g., Patrick Wintour, *MPs Unanimously Declare Yazidis and Christians Victims of ISIS Genocide*, GUARDIAN (Apr. 20, 2016, 3:59 PM), <https://www.theguardian.com/politics/2016/apr/20/mps-unanimously-declare-yazidis-victims-of-isis-genocide>; cf. UN Commission of Inquiry on Syria, *ISIS Is Committing Genocide Against the Yazidis* (June 16, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20113> (declaring that ISIS was committing genocide against Yazidis, but not discussing ISIS's treatment of Christians).

223. See Ewelina Ochab, *ISIS's Genocidal Crimes Demand Justice—But How Can It Be Done?*, INDEP. (July 15, 2018, 4:30 PM), <https://www.independent.co.uk/voices/isis-genocide-crime-atrocities-justice-council-of-europe-un-a8448146.html>.

224. See *id.*; Seth J. Frantzman, *Social Media Campaign Aims for Awareness on 4th Anniversary of Yazidi Genocide*, JERUSALEM POST (Aug. 2, 2018, 9:59 AM), <https://www.jpost.com/Middle-East/Online-social-media-campaign-on-4th-anniversary-of-Yazidi-genocide-563987>.

225. See Kerry Declaration, *supra* note 34 (arguing that ISIS has acted with intent to destroy Christians, Yazidis, and Shia Muslims).

226. See *supra* notes 55–66; Kerry Declaration, *supra* note 34.

227. See generally IDC, *supra* note 67; Philos, *supra* note 67.

dence that falls under both approaches.<sup>228</sup> At the start of his summary of the evidence, Kerry stated, “Daesh is genocidal by self-proclamation, by ideology, and by actions—in what it says, what it believes, and what it does.”<sup>229</sup> This statement relies on the “self-proclamation” of ISIS, which would be evidence of specific intent under the purpose-based approach.<sup>230</sup> In other words, Kerry adopted the purpose-based approach when he relied on what IDC called ISIS’s “admissions” that it was committing genocide.<sup>231</sup> Certainly, a party’s own statement that it intends to commit genocide is a solid ground for determining that genocide is taking place.<sup>232</sup>

Even with the very limited access non-profits, media, and other investigators had to ISIS’s territory to determine what was happening, ISIS’s genocidal purpose-based intent was evident from statements made by the organization itself.<sup>233</sup> ISIS’s public statements were described in detail by the IDC Report,<sup>234</sup> and as IDC noted, “ISIS openly declares that it intends to destroy Christianity by killing Christians who will not convert to Islam and by enslaving Christian women.”<sup>235</sup> ISIS’s statements constitute clear evidence of genocidal intent under the more demanding purpose-based interpretation.<sup>236</sup>

But Kerry’s statement also relies on ISIS’s “actions,” which, under the knowledge-based approach, could be evidence of genocidal intent.<sup>237</sup> Kerry turned to specific incidents to support his assertion that ISIS was committing genocide.<sup>238</sup> His first example was the well-known incident in which ISIS trapped and killed Yezidis on and near Mount Sinjar:

We know, for example, that in August of 2014 Daesh killed hundreds of Yezidi men and older women in the town of Kocho and trapped tens of thousands of Yezidis on Mount Sinjar without al-

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228. See Kerry Declaration, *supra* note 34.

229. *Id.*

230. See Goldsmith, *supra* note 55, at 241–42.

231. See IDC, *supra* note 67, at 25; Kerry Declaration, *supra* note 34.

232. See Goldsmith, *supra* note 55, at 240–41.

233. See Kerry Declaration, *supra* note 34 (calling ISIS “genocidal by self-proclamation”).

234. IDC, *supra* note 67, at 33–35.

235. *Id.* at 34.

236. See *id.*; *supra* text accompanying notes 55–59 (discussing the higher threshold of the purpose-based approach).

237. See Kerry Declaration, *supra* note 34; *supra* text accompanying notes 59–62 (explaining the knowledge-based approach).

238. Kerry Declaration, *supra* note 34.

lowing access to food, water, or medical care. Without our intervention, it was clear those people would have been slaughtered. Rescue efforts aided by coalition airstrikes ultimately saved many, but not before Daesh captured and enslaved thousands of Yezidi women and girls—selling them at auction, raping them at will, and destroying the communities in which they had lived for countless generations.<sup>239</sup>

This evidence, by itself, could prove genocidal intent under a knowledge-based approach but not under the purpose-based approach. Nothing in the above excerpt of Kerry's statement provides direct evidence that ISIS expressed the purpose of committing genocide against the Yezidis.<sup>240</sup> Nonetheless, the above actions can reasonably be construed as evidence that members of ISIS who committed the acts against the Yezidis understood "the destructive consequences of their actions."<sup>241</sup>

Kerry then followed up with numerous other examples that follow the knowledge-based approach.<sup>242</sup> For example, Kerry stated that "Daesh has executed Christians solely because of their faith" and reported forty-nine Coptic and Ethiopian Christians executed in Libya.<sup>243</sup> Kerry also cited the example of Christian women and girls forced into sexual slavery.<sup>244</sup> Kerry even focused on the cultural destruction aspect by noting that "Daesh has made a systematic effort to destroy the cultural heritage of ancient communities" by "blowing up monasteries and the tombs of prophets [and] desecrating cemeteries."<sup>245</sup> Kerry even used ISIS's "extreme and intolerant ideology" as a basis for his declaration, including ISIS's threat to Christians that it would "conquer your Rome, break your crosses, and enslave your women."<sup>246</sup> These facts all illustrate that the knowledge-based approach was central to Kerry.

Finally, Kerry confirmed the essential nature of the knowledge-based approach when he stated the importance of the "intent to destroy an ethnic or

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239. *Id.*

240. *See* Kerry Declaration, *supra* note 34.

241. Greenawalt, *supra* note 28, at 2265.

242. *See* Kerry Declaration, *supra* note 34.

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

religious group” in determining whether genocide is taking place and noted that:

Daesh has given some of its victims a choice between abandoning their faith or being killed, and that for many is a choice between one kind of death and another.

The fact is that Daesh kills Christians because they are Christians; Yezidis because they are Yezidis; Shia because they are Shia. This is the message it conveys to children under its control.<sup>247</sup>

Simply stated, Kerry impliedly confirmed that ISIS acted with requisite intent because its soldiers knew their intent when they gave their victims a false choice, and Kerry impliedly confirmed the purpose-based approach when he stated that the message of ISIS to the children within its power was that certain religious minorities were to be killed because of their religious status.<sup>248</sup>

All of this leads to the strong conclusion that both intent approaches were important to convincing the State Department to make its historic declaration that ISIS was committing genocide. Kerry relied in part on ISIS’s explicitly-stated purpose, but much of the evidence presented to the State Department by the non-profit groups—and ultimately relied upon in Kerry’s declaration—consisted of evidence that would support genocidal intent under a knowledge-based approach.<sup>249</sup>

In this sense, Kerry’s declaration is an important precedent for how genocide can be shown when, as is often the case, no explicit purpose is stated and the locations of the crimes are inaccessible.<sup>250</sup> With the actions of ISIS, it was not possible to have complete information about the motives of the actors, as Kerry acknowledged when he stated that “the ongoing conflict and lack of access to key areas has made it impossible to develop a fully detailed and comprehensive picture of all that Daesh is doing and all that it has

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247. Kerry Declaration, *supra* note 34.

248. *See id.*

249. *See generally* IDC, *supra* note 67; Philos, *supra* note 67.

250. *See* Goldsmith, *supra* note 55, at 242 (“In terms of preventing further atrocities and stopping genocide, proving a perpetrator’s state of mind is a massive problem. Perpetrators are fully aware that admitting what they are doing could interfere with achieving their objective. They are therefore unlikely to admit what their intentions are and thus risking possible action against them, especially if the objective of destroying the target group is still taking place.”).

done.”<sup>251</sup> But taking the knowledge-based approach for proving intent allowed reliance on a broader set of information that was ascertainable even though the locations of the crimes were inaccessible.<sup>252</sup> Thus, a knowledge-based interpretation of genocidal intent can be a necessary means to ultimately proving genocide under the more demanding purpose-based analysis.

## VII. CONCLUSION

Genocide may be the “crime of crimes,” but the types of facts necessary to find that it is taking place and the arguments required to show the requisite specific intent have been uncertain and hotly-debated. Scholars have debated whether the purpose-based or knowledge-based approach is the most appropriate basis for making such determinations. What Secretary Kerry’s declaration suggests is that the answer is both. In the case of ISIS’s specific intent to destroy the Christians of Iraq, the State Department relied upon both ISIS’s stated intention to destroy the Christian community (the purpose-based approach) and the many facts of destruction collected by non-government organizations and others (knowledge-based approach). This suggests that a synthesis of the two approaches is ultimately most compelling.

Genocidal acts continue to happen with all too much frequency. When the next such crisis occurs, legal scholars and practitioners will be armed with a new precedent thanks to Secretary Kerry’s declaration against ISIS. Even in the most remote of places, where access to information is limited, evidence of killing, raping, cultural destruction, and other facts used in a knowledge-based approach can now be synthesized with the stated purposes of the perpetrators to hopefully lead to swifter declarations of genocide, more quick and definitive action to bring such crimes against humanity to an end, and the perpetrators to justice.

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251. Kerry Declaration, *supra* note 34.

252. *Id.*



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