Genocide in Disguise: The Islamic State’s Persecution of Shi’a Muslims and the International Community’s Failure to Prevent and Punish Genocide by Non-State Actors

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Abstract
The international community remains unwilling to protect vulnerable populations against genocide, ethnic cleansing, and crimes against humanity, as evidenced by international oversight of the Bosnian and Rwandan genocides. This paper will examine this issue through a case study of the Islamic State’s (IS) persecution, ethnic cleansing, and unrecognized genocide of Shi’a Muslims in Afghanistan, Iraq, and Syria. While the United Nations Security Council has labeled IS’ attempts to exterminate Iraq’s Christian and Yazidi populations as genocide, little effort has been made to recognize, investigate, or prosecute IS’ crimes against the Shi’a. As I argue, the Islamic State’s systematic killing and cultural destruction of Shi’a Muslims in Afghanistan, Iraq, and Syria constitutes genocidal conduct under the Genocide Convention. As such, the International Criminal Court (ICC) has an obligation to recognize and investigate such activities through the creation of an international crim-

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inal tribunal dedicated to prosecuting members of IS for atrocities committed against the Shi'a. I further argue that use of veto power by permanent members of the Security Council should be restricted in the face of genocide, crimes against humanity, and war crimes to ensure that the UN fulfills its guiding principles to prevent and punish atrocity crimes. I will also explain the legal significance of prosecuting a non-state actor for genocide at the ICC and the impact that this recognition would have on humanitarian policy, the integrity of early warning models for genocide, and justice for the Shi'a victims of the Islamic State’s brutality.

Introduction

In June 2014, over 1,000 Iraqi soldiers were captured by the Islamic State, taken to the grounds of a palace complex in Tikrit, and divided into their respective religious sects. The Sunnis were allowed to repent for their service to the Iraqi government while the Shi’as were denied this opportunity for redemption; instead, they were lined up for execution. Renowned as the Camp Speicher massacre, approximately 1,700 unarmed Shi'a Iraqi soldiers were murdered by IS in one of the deadliest acts of terrorism in recent history. Attacks like these have grown increasingly widespread. After capturing Mosul in June 2014, IS has amplified their campaign against Shi’as in Afghanistan, Iraq, and Syria, carrying out hundreds of attacks. IS has been brazenly transparent about its intention to destroy the Shi’a. Such objectives are evidenced by their highly polemic propaganda campaign. Issue 11 of Rumiyah, one of the Islamic State’s online magazines, states “either we exterminate the mushrikin [polytheists] or die trying.”

Within the public sphere, much of the media coverage and scholarly literature detailing IS’ human rights abuses and genocide activity focuses on the organization’s crimes against smaller ethnic and religious minori-


ties. Unlike the Shi’a Muslims, vulnerable Christian minorities attract international, particularly Western, attention. Since Shi‘ism is a sect of Islam, the religious group is not an obvious target for IS’ crimes. A content analysis of Western news outlets by the Doha Institute for Graduate Studies in 2020 revealed that Western news outlets are more likely to portray non-Muslims as victims of terrorist attacks than Muslims. In the event that attacks against Muslims occur, they are more likely to be framed as internal conflicts.\(^4\) While the Islamic State’s actions against Iraq’s Yazidi and Christian populations warranted an international response, their slaughter of Shi’a Muslims—who comprise a significant portion of IS targets\(^5\)—has been neglected. When calling for intervention in 2014, the UN cited concern over the Islamic State’s persecution of the Yazidi and in 2018, the US directed $25 million in foreign aid to Iraqi Christians on the Nineveh Plains and Yazidis in Sinjar.\(^6\)

In order to combat atrocity crimes, the Genocide Convention was adopted by the United Nations General Assembly in 1948, which signaled the international community’s dedication to prevent and punish the crime of genocide and marked a pivotal development in international human rights law.\(^7\) Since the end of the Cold War, the international legal system has revived the idea that prosecution on the basis of individual criminal responsibility for atrocities should occur before international courts if municipal judicial systems are unable to prosecute the


\(^{[5]}\) Emily Hawley, “ISIS Crimes Against the Shia: The Islamic State’s Genocide Against Shia Muslims,” *Genocide Studies International* 11.2 (2017): 160, https://doi.org/10.3138/gsi.11.2.02


offenders, a principle that drove the Nuremberg and Tokyo trials from 1945-1948. Ad hoc international criminal tribunals were established for the former Yugoslavia (ICTY) and Rwanda (ICTR) by the UN Security Council, culminating in the creation of the ICC. Although the Genocide Convention applies to members of non-state actors, charges of genocide have never been brought before the ICC against individual members of a non-state actor.

The argument I advance is two-fold: first and foremost, the Islamic State’s persecution of Shi’ a Muslims in Afghanistan, Iraq, and Syria constitutes genocide. Secondly, the ICC should investigate by convening an international criminal tribunal dedicated to prosecuting individual members of IS for atrocities committed against the Shi’ a. Properly labeling genocide and prosecuting individual members of IS for its crimes would have significant legal and policy ramifications. Not only would recognition influence refugee resettlement and humanitarian policy at the state level, but it would also improve early warning system models for genocide by monitoring signs of genocide at subnational levels. By moving beyond state-level factors, policymakers can more accurately detect situations where genocide is impending and take swift action to deter the actors responsible or mitigate its deadly effects. Thus, the recognition and investigation of the genocide committed by a non-state actor against the Shi’a would improve humanitarian policy and the integrity of genocide prevention efforts. This paper will affirm the international obligation of justice commitments by prosecuting a non-state actor for the first time in ICC history, and argues that there is no excuse for the international community to abandon its responsibility to hold non-state actors accountable for their actions.

**History and Background**

This first section contextualizes the sectarian conflict in the Middle East

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that led to the development of the Islamic State. Additionally, it explores applicable international law, such as the legal precedents set by international criminal courts on the prevention and punishment of genocide.

**Understanding Sectarianism in the Middle East**

As of 2021, Sunnism remains Islam’s dominant sect, comprising approximately ninety percent of Islam’s 1.6 billion followers. This divide dates back to when the Ottomans (Sunni dominant) and Safavids (Shi’a dominant) competed for domination of the Muslim world in the seventeenth century. The Safavids propagating Shi’ism and attracted the religious minority to Iran which led to the creation of a homogeneous Shi’a state. In contrast, the Ottoman empire conquered the rest of the Muslim world, making it predominately Sunni. While every country had its own Shi’a minority population, Iran was the only country with a Shi’a majority. Over time, Sunni bias against the Shi’a became a central component of Arab nationalism due to perceived association with Iranian interests. The prominent Sunni jurist, Ibn Taymiya, gave religious legitimacy to popular social prejudices against Shi’as, advocating a refutation of Shi’ism and sanctioning violence against its followers. His work preceded other fundamentalist interpretations of Islam. For example, Muhammad Abdul Wahhab founded a movement known as Wahhabism which condemns the reverence of Shi’a saints, admonishes their shrines as polytheism, and rejects anything other than a literal interpretation of the Qur’an. In the wake of this, Arab authoritarian regimes, influenced by Wahhabism, began repressing their Shi’a populations through restrictions on religious expression or state-sanctioned violence. In 1913, Abdul-Aziz Ibn Saud invaded the Shi’a dominated region of al-Hasa and imposed Wahhabism on the population. As the Saudi state began to form in the 1930s, the Shi’a population was systematically marginalized and deprived of rights in comparison to their Sunni counterparts.

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[12] Ibid., 74.
[13] Ibid., 75.
Many Shi‘a welcomed the 1979 Shi‘a-led revolution in Iran, as it elevated the stature of Shi‘ism in the Muslim world. However, it was met with backlash by Iraq, a Shi‘a-majority state with Sunni rulers. Saddam Hussein’s regime feared that Khomeini’s rise would threaten his power in a Shi‘a-majority country and invaded Iran which resulted in the Iran-Iraq War (1980-1988).14 The Sunni-dominated Saudi Arabia financed Iraq’s war effort against Iran, offering tens of billions of dollars to defeat their Shi‘a enemy. Saudi propaganda weaponized Iran’s Shi‘a identity to galvanize support from surrounding Muslim countries to side with Iraq.15 Sunni radicalism spread through South and Central Asia in the 1990s following the Saudis’ policy of containing Iran and established a new radical branch of anti-Shi‘a rhetoric. This radicalism spread first to extremist organizations, such as Sipah-i-Sahaba, Lashkar-i-Jhangvi, and Jaish-i-Muhammad in Pakistan, then to the Taliban in Afghanistan, and finally across Central Asia.16 Anti-Shi‘a activism aided in the recruitment of fighters for the war in Afghanistan and the Kashmir campaign and sowed the seeds for extremist sectarian violence in major Afghan and Pakistani cities.17 Intense hatred of Shi‘ism was an important motive for mobilizing Sunni terrorist organizations. Ultimately, the fall of Saddam’s regime escalated sectarian conflict and served as a turning point for the balance of power between Shi‘a and Sunni.

When the US invaded Iraq in March 2003, Saddam Hussein’s Sunni-minority regime was replaced by a democratic Shi‘a majority, becoming the first Arab state ruled by Shi‘a interests. For the first time in decades, Shi‘a Muslims commemorated Ashoura publicly, and visited Iraq’s Shi‘a holy cities such as Najaf and Karbala.18 Sunni Arabs decided to boycott the January 2005 elections in order to make a statement, believing that a legitimate election could not occur while Iraq was occupied by a US-backed Shi‘a regime. As a result, the Shi‘a and Kurds won the elections

[14] Ibid., 105.
[15] Ibid., 118.
[16] Ibid., 125.
[17] Ibid., 75.
[18] Ibid., 129.
and Sunnis came to recognize their mistake.\textsuperscript{19} A Sunni-led insurgency began in Iraq shortly after, as armed Sunni opposition groups carried out attacks against their Shi‘a rivals not only to challenge the US-led occupation but to prevent the creation of a Shi‘a dominated nation.\textsuperscript{20} Throughout 2005, suicide bombings and random acts of violence targeted Iraqi Shi‘as at their places of work, mosques, schools, markets, hospitals, on the streets, and in their own homes. The situation in Iraq consisted of large numbers of decentralized insurgency groups engaging in violence to remove the US presence while preventing the Shi‘a from inheriting it.\textsuperscript{21} After American and Iraqi troops attacked insurgent forces along the Iraq-Syria border, Jordanian-born jihadi Abu Musab al-Zarqa‘wi—leader of the Iraqi branch of Al Qaeda (AQI)—retaliated by killing hundreds of Shi‘as through suicide bombings and assassinations. As Vali Nasr argues, “the deaths were a testament to the Sunni resistance against the Shi‘a revival and the deepening of the sectarian divide.”\textsuperscript{22}

While ideology and politics were the key causes of the sectarian violence in Iraq, the country also faced extraordinary social and economic challenges. Directed by the U.S. Coalition Provisional Authority (CPA), de-Ba‘athification removed Ba‘ath party members from public sector jobs and the Iraqi military, leaving over 350,000 Iraqis without jobs.\textsuperscript{23} Many of these men were driven to join militant groups, including IS, due to their inability to find employment. Iraq had also been at war or in crisis for decades, with the Iran-Iraq War from 1980-1988, the invasion of Kuwait and the Gulf War in 1990 and 1991, and under UN sanctions from 1992-2003.\textsuperscript{24} The compounding of these factors restricted development and divided the country’s economy along sectarian and


\textsuperscript{20} Nasr, \textit{The Shia Revival: How Conflicts Within Islam Will Shape the Future}, 158.

\textsuperscript{21} Ibid., 156.

\textsuperscript{22} Ibid., 159.


ethnic lines. Iraqi civilians suffered from poor and corrupt governance, repression, and violence from the Ba’ath Party’s authoritarian regime.\(^{25}\) All of these factors made Iraqi youth highly susceptible to extremist terrorist recruitment.

Similar to Iraq, Syria has a long history of sectarian identity, which served as the primary factor in the initial revolt against Syrian president Bashar al-Assad in March 2011. While the government’s response to peaceful protests was violent, it similarly exploited sectarian identity in an effort to avoid regime collapse. The al-Assad regime portrayed the Sunni-dominated opposition as presenting a severe threat to Syria’s ethnic and religious minorities, mobilizing sectarian fears among Alawis, Christians, Shi’a and Druze to promote government unity.\(^{26}\) The regime enlisted Iran’s military and financial support to create state-sponsored militias, the Shabiha, to instigate targeted attacks against Sunni civilians.\(^{27}\) This violent response to initially nonviolent and non-sectarian protests in Syria fostered the conditions for sectarian violence and the rise of non-state armed opposition groups, including the Islamic State.

**The Islamic State and Sectarian Violence**

The concept of ‘global jihad’ constructed by AQI and Osama bin Laden in the second half of the 20th century against Western civilization morphed into the blueprint for other jihadist organizations, including the Islamic State (IS).\(^{28}\) In 2012, IS launched campaign ‘Operation Breaking the Walls,’ wherein major raids were conducted on Iraqi prisons to free hundreds of AQI fighters, including most-wanted criminals and terrorists, to bolster IS’ military capabilities.\(^{29}\) By 2014, IS had captured large swaths of Iraq and Syria, carried out mass killings against religious mi-

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\(^{25}\) Ibid., 3.
\(^{26}\) Ibid., 84.
\(^{27}\) Ibid., 94.
norities, and officially declared a new Islamic caliphate. While it is true that there are theological and political similarities between AQI and IS, salient differences persist. Branching off the AQI, IS’ leader, Abu Mussab al-Zarqawi, disagreed with the broader Al Qaeda leadership about its goals. For instance, Bin Laden wanted to target US opponents while Zarqawi favored attacks fueled by sectarianism. This ideological divide forced Al Qaeda to sever ties with its Iraqi branch. Employing a new Salafi-jihadi ideology to recruit fighters, IS rebranded its own wing of extremism and proclaimed itself as a worldwide caliphate and proto-state. With an expansionist agenda, the Caliphate imposed its harsh version of law and order upon the territories it occupied.

In 2015, the Islamic State announced its expansion to the Khorasan region, which encompasses parts of Iran, Afghanistan, and Pakistan. Since its creation, the Islamic State Khorasan Province (ISKP) has claimed over 100 attacks against civilians in Afghanistan and Pakistan and has received support from the Islamic State’s leadership in Iraq and Syria. ISKP has competed against the Taliban for control of Eastern Afghanistan. In addition to executing attacks against civilians, ISKP has been responsible for approximately 250 confrontations with the US, Afghan, and Pakistani security forces. With the collapse of the Afghan government and subsequent Taliban takeover of Afghanistan in August 2021, ISKP is vying for power and has ramped up its attacks against Afghanistan’s Shi’a minorities, notably the Hazara. In response to IS’ rise to power, the United States and a handful of Western countries carried out thousands of bombing and cruise missile attacks in Iraq and Syria in 2014. Initially, the US utilized a variety of legal arguments to justify its

airstrikes, such as the right of humanitarian intervention and the right to use force in a failed state.\textsuperscript{34} Specifically, the US advocated for the use of force for humanitarian purposes to save Yazidis trapped on Mount Sinjar by IS.\textsuperscript{35}

Ultimately, the Americans’ R2P justification was not well-received by the international community; instead, they proposed the principle of self-defense. The international community viewed IS as a threat to peace and security in the West but not as an enabler of genocide. While the US expressed initial concern over IS’ persecution of Yazidis in calling for intervention, nothing was mentioned pertaining to the Islamic State’s ongoing genocide of the Shi’a. Russia and China were initially hesitant to extend the use of force to a non-state actor, but IS attacks on October 31 and November 13 escalated the situation, which killed and injured over 824 nationals of Russia, France, and twenty-two other countries.\textsuperscript{36} This culminated in the United Nations Security Council unanimously adopting Resolution 2249 in 2015, which called on states to use all necessary measures to defeat IS without offering a legal basis for military action. A few days afterward, the United Kingdom joined the US in bombing IS targets throughout Syria.\textsuperscript{37} In November 2015, France ramped up airstrikes on IS targets in Raqqa and in December 2016, Russian air force planes carried out 64 airstrikes against IS when its fighters regained control of the city of Palmyra in Syria.\textsuperscript{38} Despite being in favor of Resolution 2249, China did not join the rest of the Security Council in their bombing campaigns against IS.

In regard to verbal recognition, the UN-mandated Independent International Commission of Inquiry on Syria released a report concluding

\begin{footnotes}
\item[35] Ibid., 41.
\item[36] Ibid., 50.
\item[37] Ibid., 51.
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that IS was committing genocide against the Yazidi.\textsuperscript{39} Christian minorities also attract international sympathy, as was demonstrated when former US Vice President Mike Pence directed the State Department and United States Agency for International Development to send millions in aid to Iraqi Christians.\textsuperscript{40} In March of 2016, the United States’ Secretary of State, John Kerry, declared that IS’ crimes against ethnic and religious minorities—including Christians, Yazidis, and Shi’a Muslims—in Iraq and Syria amount to genocide. He said the full facts must be confirmed through an independent investigation and justice should be sought through a court or tribunal, but no comments were made regarding which actions the US would take in response to genocide.\textsuperscript{41} Despite Kerry’s declaration, it remains unclear whether the US will effectuate its obligations to prevent and punish genocide under the Genocide Convention through a relevant international legal forum.\textsuperscript{42}

**International Law and the Genocide Convention**

In 1948, the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide, signaling the international community’s commitment to prevent and punish the crime of genocide. Article II of the Convention defines genocide as “any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group,” including:


(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.43

The specific intent to destroy is important, as it draws the distinction between genocide and crimes against humanity. Murder and extermination are crimes against humanity, only amounting to genocide when committed “with the intention of physically or biologically destroying a protected group, in whole or in part.”44

This definition was not met with unanimous agreement. Founder of the term “genocide”, Polish-Jewish lawyer and activist Raphael Lemkin argued that “cultural genocide”, the deliberate destruction of traditions, language and other elements that make one group of people distinct from another, should be included in the definition of the international crime of genocide. The United States, France, and the Netherlands disagreed, asserting that cultural genocide was a matter of minority rights and thus beyond the purview of the Genocide Convention.45 Lemkin argued, conversely, that cultural genocide differed from violations of the rights of minorities, it was “a policy of drastic methods, aimed at the rapid and complete disappearance of the cultural, moral, and religious life of a group of human beings.”46 According to Lemkin, the essence of genocide was cultural. Yet the final text of the Genocide Convention

[44] Ibid., 558.
[46] Ibid., 160.
does not prohibit cultural genocide as such, limiting genocide to physical or biological extermination.\textsuperscript{47}

Despite the conscientious debates encapsulating conceptions of genocide, cultural genocide, “a policy of drastic methods, aimed at the rapid and complete disappearance of the cultural, moral, and religious life of a group of human beings”, is not recognized under the Genocide Convention.\textsuperscript{48} Nevertheless, the International Criminal Court (ICC) rendered its first verdict on cultural destruction in \textit{Prosecutor v. Ahmad Al Faqi Al Mahdi}. The ICC convicted a member of Malian jihadist organization Ansar Dine, a militant Islamist group that enforced Sharia law in Mali, for the war crime of destroying religious and historical buildings in Timbuktu.\textsuperscript{49} This decision was the first time an international court recognized the link between an attack on a group’s cultural heritage and the eventual destruction of this heritage, condemning the incident as a crime against humanity.\textsuperscript{50} As the ICC did not interpret these occurrences as genocide, the question as to whether cultural destruction necessarily constitutes a form of genocide per international law remains unsettled. However, as this paper will explore, cultural genocide served as a precursor for physical genocide in the case of IS and the Shi’a.

\textit{International Criminal Tribunals}

Upon its creation, the Genocide Convention purposefully defined what constitutes being a member of one of the four protected groups of genocide—which includes national, ethnic, racial, and religious groups—but the interpretation of these terms was up to the jurisdiction of the courts. The Nuremberg tribunal was the first instance in which individuals were prosecuted for international crimes in a court of law. Yet by the 1990s, progress in developing international criminal law had stagnated. Acts of mass violence occurred and perpetrators escaped punishment.\textsuperscript{51}

\textsuperscript{48} Ibid., 160.
\textsuperscript{49} Ibid.
\textsuperscript{51} Tove Rosen, “The Influence of the Nuremberg Trial on International Criminal
It was not until ethnic cleansing in the former Yugoslavia and the genocide in Rwanda that the United Nations took action. For the first time since Nuremberg, international criminal tribunals were established for the former Yugoslavia in 1993 (ICTY) and Rwanda in 1994 (ICTY) by the UN Security Council in accordance with Chapter VII of the UN Charter. These international criminal tribunals clarified definitional difficulties underpinning Article II of the Convention with regard to identifying what constitutes being a member of the protected victim groups of genocide.52

The 1998 trial in which the ICTR ruled against Jean-Paul Akayesu, the former mayor of Taba, Rwanda, for his part in inciting and facilitating genocide and crimes against humanity set a number of important legal precedents that helped to define the four protected groups listed in the Genocide Convention. The ICTR defined a religious group as “one whose members share the same religion, denomination or mode of worship.”53 While Akayesu used an objective approach in defining the protected groups, nearly all later judgments by international criminal tribunals employed subjective elements which relied on the perpetrator’s perception of a group. In the case of Jelisić, the ICTY said that “to attempt to define a national, ethnic, racial or religious group today using objective and scientifically irreproachable criteria would be a perilous exercise whose result would not necessarily correspond to the perception of the persons concerned by such categorization.”54 This progressive shift towards a subjective approach rests upon a judgment of how perpetrators define their victims and aligns with the idea that every genocidal act relies on the perpetrator’s prejudice towards a group other than his or her own. This shift is relevant to how genocide is viewed today in relation to the Islamic State, as IS commits crimes against the

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[53] Ibid., 7.
[54] Ibid., 9.
Shi’ā due to its perception that they are an apostate sect of Islam.

*International Criminal Court*

Following fifty years of discussion about the need for an international judicial organ to enforce international law, the UN General Assembly created the International Criminal Court (ICC) and drafted the Rome Statute in 1998. The UN set up the ICC as an independent body that had jurisdiction over serious crimes of concern to the international community such as genocide and war crimes. 55 Through the ratification of the Rome Statute, states bind themselves to enforce international law within their borders and agree that if they fail to do so, the ICC may intervene by constructing a prosecutorial body.56 This also applies to non-state actors, as Article 25(2) of the Rome Statute of the ICC “provides for individual criminal responsibility of perpetrators without any reference to state affiliation.”57 Individuals, organizations, and states themselves can refer cases to the ICC, which means the Court receives thousands of referrals about alleged atrocities committed around the world.58 While the ICC reviews each of these referrals, it can only investigate under certain circumstances. Most frequently, the ICC takes on cases by referral from the United Nations Security Council through Chapter VII of the UN Charter. The ICC also has the jurisdiction to investigate crimes committed by individuals within the borders of Member States who have ratified the Rome Statute.

As I argue in this paper, the UNSC should refer the Islamic State’s case to the ICC, as it is the best forum to investigate and prosecute IS due to its deterrence capabilities and jurisdiction over international crimes. While no institution can deter all actors, the ICC contributes to prosecutorial deterrence by investigating and prosecuting international crimes on its own authority and requiring member states to punish crimes domesti-

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[56] Ibid., 229.
[58] Ibid., 231.
cally. The ICC also deters international crimes by mobilizing the international community and civil society to demand justice for mass atrocities.59

**Literature Review**

This literature review aims to examine scholarship on the Islamic State’s genocide of the Shi’a and other ethnic and religious minorities, as well as legal scholarship regarding state responsibility for genocide and the human rights obligations of non-state actors. In the academic context, IS’ acts of genocide are well-documented and well-founded. The organization is notorious for its brutality against religious and ethnic minorities that do not follow the Sunni Jihadist faith. There are three common perspectives that push for the genocide label in relation to Christians and Yazidis in existing scholarship. Firstly, the Independent International Commission of Inquiry on the Syrian Arab Republic’s 2016 report notes that IS has demonstrated genocidal intent to destroy the minority group(s), specifically the Yazidis, an ethno-religious minority which resides primarily in northern Iraq. The report determined that IS’ treatment of Yazidis—which included killings, sexual slavery, torture, birth control measures, and forced conversions—amounted to crimes against humanity, war crimes, and genocide.60 Similarly, in Cheterian’s case study, he deconstructed IS’ mass violence against the Yazidi population of Sinjar region, and found that IS’ violence was widespread and included the mass killings of Yazidi men, sexual slavery of women and girls, forced conversions to Sunni Islam, and destruction of Yazidi cultural and religious sites. He went further to argue that this constituted genocide, and that “the lack of recognition…has prevented the development of mechanism[s] to prevent future mass violence.”61 Although Ameri-

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[61] Vicken Cheterian, “ISIS Genocide Against the Yazidis and Mass Violence in the
can, British, Australian, and Iraqi forces intervened to rescue Yazidis besieged on Mount Sinjar in August 2014, no international military action was taken to defend IS’ Shi’a Muslim victims.\textsuperscript{62} This, coupled with the lack of genocide recognition for the Shi’a, has implications for the future of genocide prevention efforts. Not only does the absence of formal genocide recognition prevent scholars from developing accurate early warning models to prevent future atrocity against Muslim minority groups such as the Shi’a, it also underplays the threat posed by extremist organizations to the Islamic world.

The second is the perspective that sexual and gender-based crimes committed by IS against Yazidis amount to genocide. As argued by Hassen, sexual and gender-based violence was used by IS as a tool of ethnic cleansing and genocide against Yazidi women and girls.\textsuperscript{63} Hassen analyzes how IS used multiple forms of sexual and gender-based violence such as abduction, slavery, systemic rape, and the massacre of men, babies, and disabled women to achieve its strategic goals. In articles seven and eight of the Rome Statute, rape is designated both as a crime against humanity and a war crime. While rape is not explicitly labeled as a form of genocide, article six recognizes rape as a marker to commit genocide by causing serious bodily and mental harm.\textsuperscript{64} Chertoff goes further to make the case that the ICC should prosecute members of IS for gender-based persecution of Yazidi women, arguing that doing so would solidify an international norm against gender-based persecution in armed
conflict. Since the Islamic State’s genocide against the Yazidis is intertwined with sexual and gender-based violence, it differs from its genocide of the Shi’a, which is largely carried out by standard guerrilla terror attacks. As Hawley explains, IS’ genocide against the Yazidi reflects its formal state structure, which encompasses “the heavily regimented process of separating sexes and keeping women in ‘secure’ condition until sold into slavery.” The structured nature of IS’ treatment of the Yazidi may have contributed to the amount of attention given to the genocide by scholars and policymakers. IS’ treatment of the Shi’a has varied, as attacks have been sporadic and indiscriminate.

Hawley has also analyzed the Islamic State’s systematic killing of the Shi’a and drawn parallels to IS’ genocide of Iraq’s Yazidis, highlighting IS’ dehumanization of the Shi’a through propaganda that encourages the indiscriminate killing of the Shi’a, which was similarly done to Yazidis. She makes the case that the Islamic State’s violence against Shi’a Muslims in Iraq and Syria qualifies as genocidal conduct under the Genocide Convention and that such crimes should be recognized by the international community. She also makes note of IS’ adherence to the principle that Christians may live peacefully under the Caliphate as long as they pay the jizyah tax or convert to Sunni Islam, which makes genocidal intent difficult to prove in the context of IS’ conduct against Christians. The Islamic State’s treatment of the Shi’a, as this paper explores, was indiscriminate in nature as Shi’ites were shown no mercy during the massacres and not given the chance to repent or convert to Sunnism. In comparing IS’ treatment of the Shi’a to that of Yazidis and Christians, Hawley brings attention to a key point: despite ample evi-

[67] Ibid., 172.
[68] Ibid., 173.
[69] Ibid., 171.
dence that IS’ crimes against the Shi’a constitute genocide, scholars and policymakers have sidestepped acknowledging the Shi’a genocide while demanding justice for Yazidi and Christian victims, despite a weaker legal claim for genocide.

A third line of scholarship examines the relationship between the Islamic State’s destruction of cultural heritage and genocide. Benjamin Isakhan and Sofya Shahab, for instance, argue that IS carried out a genocidal campaign against the Yazidi through the deliberate destruction of the group’s cultural and religious rituals and customs. Isakhan also explores IS’ destruction of several Shi’a mosques and shrines, however, he stops short of labeling this as genocide and instead attributes it to sectarianism. He argues instead that IS’ destruction of sacred Shi’a sites was part of its “aggressive iconoclasm” strategy that not only promoted the belief that apostate sects have no place in Islam but was a proxy for the fight against the Shi’a-Alawite government in Syria and the Shi’a government in Baghdad. While sectarianism undoubtedly plays a role in explaining the Islamic State’s treatment of the Shi’a, this reductionist view ignores that IS’ genocidal intent coupled with the destruction of sites deemed sacred to the Shi’a amount to genocide, not just sectarianism. Despite one of the indicators of genocidal intent being the elimination of a group’s culture, the genocide label is inconsistently applied when it comes to the Yazidi and the Shi’a despite clear parallels in IS’ treatment of both groups.

Scholarship regarding the Islamic State’s genocide of Shi’a Muslims is less abundant in comparison to that of the Yazidi, but still present. Mohamed Elewa Badar has explored the way IS used print and radio media to disseminate hate propaganda. Badar’s research concluded that this propaganda strategy—which entails the dissemination of lethal ideas

[71] Ibid., 725.
to mobilize the population to act in accordance with IS’ ideology—amounts to direct and public incitement of others to commit genocide against the Shi’a.\footnote{Mohamed E. Badar, “The Road to Genocide: The Propaganda Machine of the Self-Declared Islamic State (IS),” \textit{International Criminal Law Review} 16.3 (2016): 361-411, https://doi.org/10.1163/15718123-01603004} Similarly, Daniel Rickenbacher has analyzed IS’ propaganda against the Shi’a by comparing it to that of the Jews, arguing that IS’ anti-Shiism and anti-Semitism are intertwined.\footnote{Daniel Rickenbacher, “The Centrality of Anti-Semitism in the Islamic State’s Ideology and Its Connection to Anti-Shiism,” \textit{Religions} 10.8 (2019): 10, https://doi.org/10.3390/rel10080483} Rickenbacher explains that in its propaganda, IS contends that Shi’ism is a Jewish invention created to divide Muslims and that the Shi’a and Jews are collaborating to destroy Islam. These scholars’ analyses of the Islamic State’s propaganda strategy against the Shi’a provide support for my argument that IS’ intent to destroy the Shi’a was clear and the attacks were calculated.

As for the persecution and violence faced by Hazara Shi’as in Afghanistan due to the Islamic State Khorasan Province (ISKP), violence is often attributed to the Taliban since both organizations target the Hazara primarily because of their Shi’a faith. In a report for the Office of the United Nations High Commissioner for Human Rights, Mohammad Hussain Hasrat labeled both the Taliban and ISKP’s targeted killings of the Hazara as genocide and urged the involvement of the International Criminal Court. He argues that the severity of the Taliban and ISKP’s human rights violations—which include crimes against humanity, war crimes, and ethnic cleansing—justify the ICC’s involvement, as it is the only permanent international court with jurisdiction to prosecute individuals for such crimes.\footnote{Hasrat, “Over a Century of Persecution,” 38.} While Hasrat is correct in labeling these crimes, the actions of ISKP and the Taliban should not be lumped together, as each organization has its own motivations and objectives for targeting the Hazara and other Shi’a minority groups in Afghanistan. This paper will explore how ISKP uniquely carried out its own genocide of Shi’a minority groups in Afghanistan, notably the Hazara.
Legal scholarship explores the purpose and function of the ICC, which was created to demonstrate the importance of establishing individual responsibility for war crimes, crimes against humanity, and genocide. Yet this development dealt with individual and not state responsibility for international crimes. So, what does international law have to say about state responsibility for genocide? Article IX of the Genocide Convention explicitly grants jurisdiction to the International Court of Justice (ICJ) for adjudication of “[d]isputes between the Contracting parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III.”76 A significant point of contention revolves around whether the Genocide Convention imposes an affirmative obligation upon states themselves not to engage in genocide and if so, how far that obligation goes.77

Marko Milanovic explores the concept of state responsibility for genocide and finds that a state can be held responsible for the commission of or complicity in genocide under international law,78 but it cannot commit genocide as such; only individuals can do so, though their actions can be attributed to a state. Similarly, Berglind Birkland analyzes the 2007 judgment in Bosnia and Herzegovina v. Serbia and Montenegro, which was the first time the International Court of Justice defined the scope of state responsibility under the Genocide Convention.79 The Court decided that Serbia had not committed genocide, despite its role in the Srebrenica massacre, but rather, failed to prevent genocide. In doing so, the Court created high evidentiary standards for establishing state responsibility for genocide but also assigned an obligation upon states to restrain

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genocidal actors including as non-state actors under their influence. This case expanded states’ obligations under the Genocide Convention—and subsequently international courts such as the ICC—by imposing an affirmative obligation upon states to rein in non-state actors over whom they have influence.

The standard of proof to demonstrate state responsibility for genocide varies from one international court and tribunal to another. The ICJ followed its reasoning in an earlier case when it relied on a three-pronged test established in the 1949 Corfu Channel case. This test requires that the standard of proof must be decisive, conclusive, and well beyond reasonable doubt. Birkland argues that the ICJ’s reference to the 1949 precedent imposed an onerous evidentiary burden which makes attributing state responsibility for the direct commission of genocide virtually impossible. Given the high evidentiary standards of proof required to establish state responsibility for genocide at the ICJ, the ICC should investigate and prosecute the Islamic State’s atrocity crimes against the Shi’a. Although ample evidence indicates that countries such as Turkey have provided IS with weapons, military cooperation, and financial assistance via illegal oil trade, IS’ crimes against the Shi’a cannot be attributed to a state, making it difficult to bring such a case to the ICJ.

Legal scholarship also explores the human rights obligations of non-state actors. Article IV of the Genocide Convention confirms that individuals who commit acts of genocide shall be punished “whether they are constitutionally responsible rulers, public officials or private individuals.” Andrew Clapham explains that the Trial Chamber of the Inter-

[80] Ibid., 1626.
[81] Ibid., 1646.
national Criminal Tribunal for the former Yugoslavia reached the conclusion that “non-state actors are also possible perpetrators of crimes against humanity.”

Non-state actors have been increasingly exposed to the threat that they will be held accountable and subject to punishment for violations of human rights. William A. Schabas, an international criminal and human rights law scholar, finds that the expansion of the definition of crimes against humanity to include acts committed during armed conflict is illustrative of this development. Although non-state actors are not parties to international human rights treaties, there are international obligations outlined in the Convention that apply to every individual.

There has also been debate over the extent to which the Responsibility to Protect (R2P) principle—which was developed following the failure of the international community to respond to mass atrocities committed in the 1990s and which reflects a commitment by all UN member states to prevent and halt genocide, war crimes, ethnic cleansing, and crimes against humanity—addresses non-state actors. A policy brief released by the Stanley Center on non-state actors and atrocity crimes finds that although R2P is viewed as state-centric, the language of the document indicates that non-state actors share an affirmative obligation to protect populations that may be affected by their operations. While member states have never disputed the application of R2P to non-state actors, they also have not explicitly addressed the roles and responsibilities of non-state actors in accordance with the principle. The challenge for the international community, then, is ensuring that the Genocide

U.N.T.S. at 280.

[89] Ibid.
Convention and R2P apply equally to non-state actors. States should respond to atrocities committed by non-state actors just as they would prevent and halt those committed by states. Otherwise, the future efficacy of international humanitarian law will be jeopardized. Recognition, investigation, and prosecution of the Islamic State’s crimes against the Shi’a at the ICC would set the precedent that members of non-state actors must adhere to human rights law or will be held accountable for their violations.

Academic scholarship highlights the Islamic State’s ethnic cleansing and genocide of the Christian and Yazidi populations in the Middle East but the recognition of Shi’a persecution as genocide is lacking, despite clear evidence of IS’ atrocity crimes against the minority group. There is still a substantial gap in scholarship regarding IS’ genocide of Shi’a Muslims and the international community’s failure to prevent and punish the crime of genocide, especially when it comes to non-state actors. This thesis is distinct in making a case for why the International Criminal Court is the best forum to prosecute individual members of IS for atrocities committed against the Shi’a and how properly labeling genocide as such and prosecuting members of IS for their crimes against the Shi’a would have significant legal and policy ramifications.

Methodology
The purpose of my research is to determine whether the Islamic State’s persecution of Shi’a Muslims constitutes genocide per the United Nations Genocide Convention, as well as to explore the optimal method of prosecuting IS for its crimes. Employing a qualitative methodological approach, this study combines academic research and media analysis.

Data Collection
In studying the Islamic State’s persecution of the Shi’a, I first identify preconditions and early warning signs of genocide that were present in IS’ case, per the United Nations Office of Genocide Prevention’s (OSAPG) Framework of Analysis for Atrocity Crimes, the official framework used by the UN to assess the risks of genocide, crimes against hu-
manity, and war crimes. Then, I reference reports from news sources, human rights organizations, and think tanks regarding separate attacks carried out by IS against the Shi’a in Afghanistan, Iraq, and Syria, all of which signal genocide. News articles were selected from the *New York Times*, the *Guardian*, the *Washington Post*, *National Public Radio*, *Reuters*, and *Al Jazeera*, as well as independent journalists that reported on small-scale attacks in English. Reports were drawn from UN agencies such as the Office of the High Commissioner for Human Rights (UN OHCHR) and the Assistance Mission for Iraq (UNAMI), the Human Rights Watch, the Afghanistan Analysts Network, and the Center for Strategic and International Studies. Approximately 70 percent of the reports I reference are from news sources, while the remaining 30 percent come from UN agencies, human rights organizations, and think tanks. In all databases, their respective coverages of the Middle East and North Africa consistently monitors and documents crimes against the Shi’a.

Finally, I explore the Islamic State’s propaganda strategy and incitement of genocide through its social media presence and online English-language magazines released between June 2014 and September 2017, *Dabiq* and *Rumiyah*, in order to demonstrate the organization’s genocidal intent to destroy the Shi’a. IS had a strong online presence that bolstered the group’s international visibility and these magazines were chosen because they compile IS propaganda for readers across the globe. *Dabiq* and *Rumiyah* were originally published in English and translated to other languages by IS. The magazines were analyzed (issues 1-15 of *Dabiq* and issues 1-13 of *Rumiyah*) to determine whether they included anti-Shi’a rhetoric and if so, whether such rhetoric amounted to direct and public incitement of others to commit genocide.

**Data Analysis**

Since the goal of my research is to determine whether the Islamic State’s crimes constitute genocide per the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, I analyzed my

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data in accordance with the framework outlined in the Convention, which is also utilized by the International Criminal Court. My analysis focuses on Articles II and III of the Convention, which define genocide and outline which acts are punishable by international law.

Using the data collected from the case study, I examined the two major early warning signs identified by the OSAPG framework that were present in the case of IS: hate propaganda and intergroup tensions. Hate propaganda is a standard feature of genocidal mobilization and intergroup tensions consist of conflicts involving different types of groups along national, ethnic, racial or religious lines; both warning signs have been a trend in the history of atrocity crimes. Preconditions identified in the case study revealed that the risk for genocide in the case of IS was high and the organization expressed intent to destroy the Shi'a, which qualifies as genocide per Article II of the Convention. I also analyzed findings from a case study by determining whether the Islamic State's conduct detailed in the 19 reports qualifies as genocide per Articles II and III of the Convention. Findings from the case study also pointed to IS’ cultural genocide of the Shi'a through the destruction of mosques and shrines. Deliberate attempts to eliminate a group’s culture is a key indicator of genocidal intent, so my analysis affirmed that IS’ crimes amount to genocide.

Finally, my media analysis examined whether the Islamic State’s online magazines, *Dabiq* and *Rumiyah*, qualified as direct and public incitement to commit genocide, a crime punishable per Article III of the Genocide Convention. Through a content analysis of the messaging strategy of the two magazines, I identified anti-Shi'a propaganda which amounted to incitement to commit genocide and also demonstrated IS’ intent to destroy, which is integral to the definition of genocide per Article II of the Genocide Convention. I used findings from the case study and media analysis to determine whether IS’ crimes against the Shi'a constitute genocide per the Genocide Convention and subsequently, whether the crimes should be prosecuted at the ICC. The ICC is the only international legal forum to prosecute individuals for war crimes, crimes against humanity, and genocide, and new Chief Prosecutor
Karim Khan recently led a special UN investigation into the Islamic State's crimes against the Yazidi and Shi’a, indicating organizational willingness to investigate and prosecute.

Research Limitations
My research faced a few major limitations. First, a majority of the reports I reference through my case study on IS’ genocidal conduct are from Western news outlets and organizations. Due to research limitations and translation barriers, I did not analyze sources from the countries in which the attacks occurred. Thus, I was unable to reference all of the literature regarding IS’ crimes against the Shi’a, presenting a potential sampling bias. Second, I was unable to name specific members of IS who should be prosecuted at the ICC due to a lack of research on the topic. The research I conducted did not reveal which members of the organization carried out each attack and due to the overwhelming number of attacks carried out against the Shi’a, it was impossible to determine which individuals should be held culpable. Instead, I recommended the ICC carry out their own investigation using the Court’s resources to determine which individuals should be held responsible and prosecute them accordingly.

Making the Case for Shi’a Genocide

Early Warning Signs
In 2014, the United Nations Office of Genocide Prevention (OSAGP) created a core document to be employed as an “integrated analysis and risk assessment tool”: the Framework of Analysis for Atrocity Crimes.91 The OSAGP framework identifies factors that underly genocide in order to identify early warning signs and improve prevention efforts. It includes eight “common” (structural) risk factors and six “specific” (situational) risk factors, each with a set of onset “indicators.”92

of structural risk factors are situations of armed conflict, a record of human rights violations, and weakness of state structures. On the other hand, situational risk factors include intergroup tensions, intent to destroy, and signs of a plan to attack any population. Early warning signs identified by other scholars also include hate propaganda, “unjust discriminatory legislation,” and “severe and systematic state repression.”

In the case of IS, the most prominent early warning signs were pre-existing religious divisions and intent to destroy. Although these factors were present, the international community still failed to predict or prevent the mass atrocities committed by IS. The US invasion of Iraq dramatically transformed the country and in its wake Iraq’s new leaders attempted to chart a Shia-led democratic path after decades of Sunni dictatorship. Sectarian tensions were exacerbated by Zarqawi, who was set on cleansing Iraq of its ethnic and religious minorities. He was linked to bombings, kidnappings, and beheadings of religious minorities, particularly the Shia. In August 2003, a car bombing killed 95 people at Najaf’s Imam Ali Mosque, the holiest Shia shrine in Iraq. In February 2004, Zarqawi wrote a letter detailing his view of the conflict during the Iraqi insurgency. Unsurprisingly, he voiced anti-American sentiment and calls to jihad, similar to other extremist propaganda released by AQI. What was shocking, however, was that Zarqawi did not discuss elements of the conflict such as power sharing or democracy, but rather focused on fueling a sectarian divide by degrading the Shia. The letter includes the following:

[The Shia are] the insurmountable obstacle, the lurking snake, the crafty and malicious scorpion, the spying enemy, and the penetrating venom. We here are entering a battle on two levels. One, evident and open, is with an attacking infidel enemy and patent infidelity. [Another is] a difficult, fierce battle with a crafty enemy who wears the garb of a friend...but harbors ill will... These are a people who added to their infideli-

[93] Ibid., 864.
[94] Ibid.
[95] Nance, Defeating ISIS, 156.
ty and augmented their atheism with political cunning and a feverish effort to seize upon the crisis of governance...whose features they are trying to draw...in cooperation with their hidden allies the Americans.\footnote{Zarqawi Letter: February 2004 Coalition Provisional Authority English Translation of Terrorist Musab al Zarqawi Letter Obtained by United States Government in Iraq, \url{https://2001-2009.state.gov/p/nea/rls/31694.htm}}

Zarqawi’s letter coincided with a new wave of sectarian violence in the region.\footnote{Bruce Riedel, “Zarqawi’s Legacy Continues: Rising Sectarianism in Islamic World,” \url{https://www.brookings.edu/opinions/zarqawis-legacy-continues-rising-sectarianism-in-islamic-world/}} Known for his extremist views, Zarqawi escalated violence against Shi’ites to an unprecedented level beginning in 2003, targeting Shi’ite leaders, mosques, and shrines.\footnote{Ibid.} In 2005, AQI escalated its suicide bombing campaign. Iraq suffered 135 car bombings in April alone. In August 2005, rumors of another suicide bomber sowed panic among thousands of Shi’a pilgrims and provoked a stampede of approximately 100 people who jumped over a bridge into the Tigris River in Baghdad.\footnote{Hamasaeed and Nada, “Iraq Timeline: Since the 2003 War.”} On September 14, AQI killed more than 150 people in a series of attacks on Baghdad’s Shi’a population, and Zarqawi declared an “all-out war” on Iraq’s Shi’a Muslims.\footnote{“Al-Zarqawi Declares War on Iraqi Shia,” \url{https://www.aljazeera.com/news/2005/9/14/al-zarqawi-declares-war-on-iraqi-shia}} Twin suicide bombings at Shi’a mosques in Khanaqin followed in November, killing 90 Iraqi civilians. After a Shi’a majority claimed the prime minister’s slot and other levers of the state for the first time in history in early 2006, another AQI bombing destroyed the al Askari Shrine in Samarra, “one of the holiest Shi’a shrines.”\footnote{Ibid.} Shi’a leaders and ayatollahs called for peace, but Shi’as responded with violence against Sunni insurgents, exacerbating sectarian violence. In April, a triple suicide bombing at the Shi’a Buratha mosque in Baghdad killed 85 and wounded 160.\footnote{Ibid.} In July, a massacre of unarmed civilians in Mahmudiya, a predominantly Shi’ite city, killed...
at least 40 people.\textsuperscript{103} Zarqawi was killed in a US airstrike in mid-2006, but Ibrahim Awad Ibrahim al-Badri (known as al-Baghdadi) became the new leader of the group.\textsuperscript{104} In October of the same year, the group rebranded as an Islamic State and violence only intensified under this new leadership.\textsuperscript{105}

Pre-existing religious divisions and intent to destroy are “specific” risk factors that indicated the risk for genocide was high in the case of IS and the Shi’a. Despite the creation of the OSAGP \textit{Framework of Analysis for Atrocity Crimes} to identify early warning signs and improve prevention efforts, the international community still failed to recognize the risk factors and take action to prevent the signs from escalating to genocide.

\textbf{The Shi’a As a Protected Religious Group}

The Genocide Convention protects four exclusive groups: national, ethnic, racial, and religious groups. Shi’a Muslims qualify as a protected religious group under the Genocide Convention. The group is recognized in legal and religious scholarship as Shi’a and comprises approximately 10 percent of Muslims around the world, meeting the objective definition established in \textit{Akayesu}, which defined a religious group as “one whose members share the same religion, denomination or mode of worship.”\textsuperscript{106} Shi’ism is a denomination of Islam that has existed for centuries and can be distinguished from Sunnism due to its adherents’ belief in the guidance of Ali and his descendants, commemoration of the death of Husayn and his family during Muharram, and subtle difer-
ences in prayer. Furthermore, Shi’as are perceived as an apostate sect by IS, subsequently also meeting the subjective definition established in Jelisić, which states that the way perpetrators define and perceive their victims is sufficient to establish status as a protected group. Since Shi’as are legally, politically, and religiously recognized as the minority sect of Islam, and IS carries out mass killings of the Shi’a on the basis of their religious beliefs, Shi’as are targeted by IS “as such,” meeting both subjective and objective criteria.

**Intent to Destroy**

Delineating this crime as a genocide, the Islamic State’s intent to destroy the Shi’a has been widely reported, so much so that anti-Shi’a rhetoric dominates its propaganda. The organization has successfully used print, radio, and social media to disseminate lethal ideas and mobilize the masses to actualize these ideas. The International Criminal Tribunal for the former Yugoslavia defined intent to destroy as committing the underlying crime with an aim to destroy a human group; thus, there is no such thing as “reckless genocide.” Further, the second aspect of intent demonstrates that victims must be chosen due to their membership in the group whose destruction was sought. Through its social media campaign and professional online magazines, *Dabiq* and *Rumiyah*, IS embeds genocidal propaganda into its recruitment strategies that reached audiences across the globe in an effort to commit genocide against the Shi’a. The magazines serve different roles, as *Dabiq* focuses on justifying the Islamic State’s actions while *Rumiyah* persuades people to join IS’ movement. The magazines label Shia Muslims as enemies of IS, calling them “rejecters” (*raḍidah* in Arabic), “apostates” (*murtad-din*), and “infidels” (*kafr*). IS also employs an obligation strategy to convey that true Muslims are obliged to fight the Shi’a because they commit

polytheism (*shirk*).

Anti-Shi’a rhetoric is embedded throughout IS propaganda, but issues 13-15 of *Dabiq* in particular justify and propagate waging all-out war on Shias.\[111\] Titled “The Rāfidah: From Ibn Saba’ [alleged founder of Shi’ism] to the Dajjāl [anti-Christ],” the 13th issue lists specific reasons for renouncing Shi’a status as Muslims, including their “grave worship” and “fanatical love” of the twelve imāms, *takfīr* [excommunication] of the Sahābah [companions of the Prophet], and for allegedly defaming the Prophet’s wife Aisha by questioning her chastity.\[112\] The issue goes on to state that the Shi’a are “an apostate sect drowning in worship of the dead” and “must be killed wherever they are to be found, until no rāfidi [rejecter] walks on the face of the earth.” IS condemns the Shi’a for their belief in the twelve imams and, in doing so, propagates mass killings to destroy the group. This hate propaganda amounts to the direct and public incitement of others to commit genocide. IS could be prosecuted at international courts on this basis alone per Article III of the Genocide Convention.

*Cultural Destruction: The Precursor to Genocide*

Although IS’ main crime against Shi’a Muslims is murder, the group is similarly responsible for cultural genocide through its deliberate destruction of Shi’a mosques and shrines. One of the indicators of genocidal intent is the elimination of a group’s culture.\[113\] After conquering large swaths of land in Iraq and Syria, IS went to great lengths to destroy sites of religious significance that contradicted its extremist Wahhabi and Salafi beliefs. The group undertook a systematic campaign targeting cultural heritage sites, including Shi’a mosques, shrines, artifacts, and ancient cities significant to Shi’ite history, signifying the precursor to genocide.

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\[113\] Nance, *Defeating ISIS*, 338.
In June 2014, IS destroyed a prominent Shi’a mosque in Raqqa housing the shrines of two companions of the Prophet in March 2014 and attacked Samarra’s Askariya shrine in Baghdad. The group similarly destroyed a shrine in Balad dedicated to Sheikh Mohammed bin Ali, a revered Shi’a figure, in July 2016. The Sayyida Zaynab shrine in Damascus, which housed the remains of Zaynab, a significant female figure for Shi’a Muslims, was then attacked by IS in both January and February 2016. Zaynab bint Ali played a central role in shaping Shi’a memory and identity as the granddaughter of Prophet Mohammad, the daughter of Imam Ali and the sister of the third Shi’a Imam, Husayn ibn Ali. Her shrine is one of the most important holy Shi’a sites in Syria, with pilgrims visiting annually from across the world to commemorate her memory. These sites were all deliberately targeted as a form of “symbolic sectarianism” because they housed Shi’a artifacts. IS’ continued attacks on sects of Islam that did not conform to the Salafi and Wahhabi ideology, simultaneously spreading the message that Shiism is an apostate sect.

Genocidal Conduct

The Islamic State’s premeditated violence against the Shi’a amounts to genocidal conduct per the Genocide Convention. This section will explore attacks carried out by IS and its affiliate groups against Shi’as in Iraq, Syria, Afghanistan, and Pakistan. Since 2014, IS forces have committed human rights abuses, war crimes and crimes against humanity against the Shi’a. After IS captured the city of Mosul in June 2014, the militant group carried out a range of documented massacres. On June 10, IS gunmen arrived at Mosul’s Badoush prison and sorted prisoners.


[116] Ibid.

into two groups: Sunni and Shi’a. IS members interrogated the prisoners about their family backgrounds and prayer recitations in order to determine to which sect each prisoner belonged. An estimated 670 Shi’as were loaded into trucks, transported to a “desert-like location,” and executed.118 Two days later, on June 12, IS captured hundreds of Iraqi military recruits in Tikrit and divided the prisoners by sect, allowing the Sunnis to repent for their government service while the Shi’as were lined up to be executed. Approximately 1,700 unarmed Shi’a Iraqi soldiers were killed by IS in what is now known as the Camp Speicher massacre.119 Images and videos of the massacre circulated online after being uploaded by IS militants. Ali Hussein Kadhim, a former Iraqi soldier and Shi’a Muslim, is the only known survivor of this massacre. After miraculously escaping Camp Speicher, the story that he shared with media outlets was corroborated by several sources. Kadhim’s recounting of the massacre indicates that it was driven by sectarianism, making it “the deadliest sectarian atrocity in Iraq’s recent history.”120

Over the next three days, IS militants carried out waves of mass executions around Tikrit, bringing the total number of massacres to five. The Human Rights Watch discovered information from Kadhim and analysis of videos and satellite imagery that confirmed that there were at least three other execution sites. The largest was within Tikrit’s presidential palace compound on the north side of the Saladdin Al Ayubi building, where 250 to 400 men are estimated to have been executed on either June 12 or 13.121 Analysis done by the Human Rights Watch identified a mass grave next to the site. The second identified execution site was at the Water Police building, where IS carried out at least four mass executions. Video footage of one of the executions released by IS from this

[120] Ibid.
site depicted militants using pistols to execute at least 25 to 30 men on June 12 before dumping their bodies into the Tigris River. The rest of the executions, based on the Islamic State’s video footage and another mass grave identified by the Human Rights Watch, bring the estimated death toll from this site to between 235 and 285. More video footage released by IS indicates that the group used a bulldozer to cover up bodies after each execution before bringing the next group of men to the site. IS’ use of a bulldozer indicates that these mass killings were deliberate, systematic, and planned as opposed to sporadic acts of terror, pointing to a genocidal intent in IS’ crimes against the Shi’a.

In Syria, major IS attacks against the Shi’a were carried out through bombings rather than mass executions. In February 2016, ISIS claimed responsibility for a triple bombing outside the shrine of Sayyida Zaynab, in a predominantly Shi’a area in Damascus, said it was targeting “a den of the Rafidha polytheists.” The attack was intended to cause maximum damage and resulted in 71 casualties. In March 2017, another IS bombing near Shi’a shrines in Damascus killed at least 40 and wounded 120.

Genocidal acts against the Shi’a spread beyond Iraq and Syria, with IS affiliates carrying out attacks in South and Central Asia. The Islamic State Khorasan Province (ISKP) has claimed over 100 attacks against civilians in Afghanistan and Pakistan and has received support from IS’ leadership in Iraq and Syria. A substantial number of attacks have targeted the Hazaras, an ethno-religious minority group in Afghanistan and Pakistan. Hazaras, a majority of whom are Shi’a, have faced a long history of marginalization, political repression, and persecution. They

[122] Ibid.
have also been subject to attacks by the Taliban, Al Qaeda, Lashkar-e-Jhangvi, and more recently, ISKP which has explicitly declared war on Afghanistan’s minority Shi’a Muslims. In November 2015, Afghan militants claiming loyalty to IS beheaded seven ethnic Hazaras who were abducted in the Zabul Province of Afghanistan. In July 2016, a double suicide attack during a peaceful protest in Kabul killed at least 80 people and wounded over 230. In October 2016, ISKP attackers equipped with machine guns opened fire on Ashura mourners in Kabul’s Kartaye Sakhi shrine and, the next day, set off an explosion which targeted Shi’a mourners in the Balkh province, killing 14 and wounding 28. A suicide bomb attack on a Shi’a mosque in Kabul killed dozens and injured more than 80 in November 2016. Another suicide bombing in December 2017 at a Shi’ite cultural center in Kabul killed at least 41 and wounded 84. In March 2018, a suicide bomber attacked a police checkpoint in Kabul near a gathering commemorating the death of Abdul Ali Mazari, a leader of the Hazara community, killing at least 9 people and wounding 18. Later that month, another suicide bombing killed at least 30 people near the Sakhi shrine in west Kabul, where wor-

shippers gathered to celebrate the Persian new year. In July 2019, IS fighters claimed responsibility for an attack in the Mohammadiya Shi’ite mosque in Afghanistan’s central province of Ghazni which killed at least two and wounded over 20. Another attack was carried out in southwestern Kabul on a crowd paying tribute to a revered Shi’ite martyr in March 2020, resulting in 32 deaths and dozens of casualties. In October 2020, a suicide bomb attack on an education center in Dasht-e-Bar-chi, a Shi’a neighborhood, killed at least 18 and injured at least 57, many of whom were children. In January 2021, IS claimed responsibility for an attack that killed 11 Hazara coal miners in the southwestern Baluchistan province of Pakistan.

The indiscriminate and premeditated attacks carried out by IS and its affiliate groups against Shi’a Muslims in Afghanistan, Iraq, and Syria constitute genocide per the United Nations Genocide Convention. Early warning signs identified through the OSAGP framework demonstrate that despite the high risk of genocide, policymakers and the international community failed to predict or prevent the Islamic State’s crimes against the Shi’a. IS’ propaganda strategy—which amounts to the direct and public incitement of others to commit genocide—and deliberate destruction of sacred cultural and religious sites demonstrate intent to destroy. However, simply recognizing IS’ genocide of the Shi’a is not

enough; the International Criminal Court must investigate these crimes and prosecute individual members of IS accordingly.

**Prosecuting IS at the ICC**

Ample evidence indicates that the Islamic State’s persecution of Shi’a Muslims in Iraq, Syria, Afghanistan, and Pakistan constitutes genocide and that its media propaganda campaign amounts to direct and public incitement to commit genocide. Due to the ICC’s focus on individual criminal responsibility and IS’ nature as a proto-state, the ICC is the best forum through which to launch an investigation. IS’ crimes against the Shi’a cannot be attributed to a state, making it impossible to bring such a case to another legal forum such as the ICJ. The ICC should try specific leaders of IS who were responsible for organizing, executing, and participating in crimes committed against the Shi’a. The ICC was hesitant to get involved for years, as former Chief Prosecutor Fatou Bensouda cited a lack of jurisdiction as the reason for not launching an investigation into the atrocities committed by IS in March 2015. However, the ICC is evolving and the new Chief Prosecutor Karim Khan was sworn in on June 16, 2021, presenting a fresh opportunity to prosecute IS fighters and get justice for Shi’a victims.

Khan recently led a special UN investigation into crimes committed by IS against the Yazidi and Shi’a, making it likely he would disagree with Bensouda’s previous stance and be willing to take on this case at the ICC. The UN has also expressed interest in promoting accountability for IS’ crimes, as the UN-mandated Independent International Commission of Inquiry on Syria concluded that IS was committing genocide against

the Yazidi.\textsuperscript{140} Further, in September 2017, the UN unanimously voted to establish an investigative team to preserve evidence in relation to possible war crimes, crimes against humanity, and genocide committed by IS in Iraq and Syria. The head of this investigative team announced in May 2021 that it found “clear and compelling evidence that IS extremists committed a genocide against the Yazidis, and that videos released by IS during the Tikrit massacre also “constitutes a direct and public incitement to commit genocide against Shia Muslims.”\textsuperscript{141} Given that the investigative team established by the UN found sufficient evidence indicating that war crimes, crimes against humanity, and genocide may have occurred, the UN would likely refer this case to the ICC.

The ICC is supposed to be a “court of last resort” for crimes against humanity and generally recommends national courts as the traditional avenue for prosecuting acts of genocide. However, Syria has a fractured justice system, Iraq’s highest judicial body rejected a request by the Kurdistan Regional Government to create a special court for trying IS fighters,\textsuperscript{142} and the Taliban recently took control of Afghanistan, limiting any form of litigation on the transnational level. Given these jurisdictional hurdles, the UN Security Council should refer the matter to the ICC Prosecutor. Although neither Iraq nor Syria are parties to the Rome Statute, the magnitude of the Islamic State’s crimes—which include genocide, mass killings, sexual violence, torture, ethnic cleansing, and cultural destruction—justify ICC involvement and a referral from the UN Security Council to launch an investigation. This is particularly warranted given the failure of Saudi Arabia, Qatar, and Turkey to cease their provision of financial support to IS. The UNSC has declared that IS constitutes a threat to international peace and security, raising the expectations for an international legal response. Although the UNSC is


\textsuperscript{[141]} Ibid.

unlikely to convene an *ad hoc* tribunal to adjudicate these crimes,143 it could refer this case to the ICC, granting the ICC jurisdiction over IS’ crimes. With the absence of prosecutions in Syria, Iraq, and Afghanistan, the ICC should step in to investigate the Islamic State’s atrocities against religious minorities, with “temporal and geographic limitations.”144

The ICC can deter actors from committing human rights violations by imposing a variety of costs that decrease the payoffs for engaging in human rights abuses.145 The Court has been successful in prosecuting major leaders of genocide and deterring other crimes against humanity by systematically reviewing allegations of mass atrocities to identify situations for investigation and prosecution.146 For example, in Uganda, the ICC issued warrants of arrest for top leaders of the Lord’s Resistance Army, an extremist armed group, which successfully pressured its leaders to negotiate with the Ugandan government.147 The Islamic State poses a transnational criminal threat to international and humanitarian law, and since domestic prosecution is both unsuitable and unlikely, a tribunal is necessary—both for justice and for the prevention of future atrocities and human rights violations.

Opponents who specifically oppose the creation of a tribunal to prosecute IS-affiliated perpetrators of international crimes argue that such an approach would serve as a form of politically motivated justice that protects other actors responsible for committing atrocities in the region, such as the Assad regime.148 Although IS was clearly the main perpetra-

[144] Ibid., 124.
[147] Ibid., 233.
tor of atrocities in Iraq, the situation was more complicated in Syria, as multiple actors were responsible for violence. The Assad regime and its allied militias tortures, murders, and systematically persecutes its opponents and its actions have been labeled by scholars as genocide.\[149\] While the Assad regime should be prosecuted to the fullest extent of the law, the presence of other actors responsible for committing atrocities in the region is not an excuse to abdicate international responsibility for IS’ Shi’a victims, nor does it preclude future attempts to ensure accountability in Syria for atrocities committed by the state.

Another question is the potential effectiveness of an IS tribunal. A tribunal may be limited to prosecuting a minority of European foreign fighters, since apprehending IS members in states which are not parties to the Rome Statute would be difficult. Some argue that this would fail to address the needs of wider victim communities.\[150\] The significance of convening an international criminal tribunal for IS, however, goes beyond individual justice. Rather, convening a tribunal would affirm the international community’s commitment to justice by prosecuting a non-state actor for the first time in ICC history, and setting the precedent that terrorist organizations can commit genocide. Recognition in and of itself would have significant humanitarian, legal, and policy implications.

International criminal law has arguably been unprepared to handle genocide, crimes against humanity, and war crimes committed by non-state actors and specifically terrorist organizations. Some domestic prosecutions of IS members have taken place in the jurisdiction of ICC States Parties, but these cases tend to involve breaches of domestic anti-terror laws as opposed to atrocities committed by IS members.\[151\] There is a gap in accountability for IS members responsible for committing genocide against Shi’a Muslims in Iraq, Syria, and Afghanistan, as differences in legal systems and the inability of States to conduct thorough inves-


\[150\] “Selective, Politicised Justice Will Do More Harm Than Good,” 5.

\[151\] Ibid.
tigations have prevented domestic prosecutions. The ICC should seek to assert jurisdiction over IS, as it is the last forum of resort in which IS members could stand trial.

Conclusion

The Islamic State’s ethnic cleansing, cultural destruction, and systematic killing of Shi’a Muslims in Afghanistan, Iraq, and Syria amounts to genocide per the definition outlined in the United Nations Genocide Convention. The International Criminal Court should seek jurisdiction over IS and restrictions should be placed on permanent members of the Security Council’s veto power in the face of atrocity crimes. Convening an international criminal tribunal against IS at the ICC would set a legal precedent by prosecuting a non-state actor for the first time in history. Properly labeling genocide as such and prosecuting IS for its crimes against the Shi’a would also have significant humanitarian, legal, and policy ramifications. Although ongoing military efforts to destroy IS exist, this response alone does not address IS’ genocide of the Shi’a, as it fails to provide justice for the victims of such atrocities. Western politicians and media which are focused on the danger IS poses to their own nations, often ignore the threat posed by IS to ethnic and religious minorities in Muslim countries.152 Further, although the US and international organizations have knowledge of the Islamic State’s actions, they have yet to act on their obligations under the Genocide Convention. No international action has been taken to defend IS’ Shi’a victims and yet, policies actively prevent Muslims fleeing violence from resettling safely. Neighboring states such as Turkey, Jordan, and Lebanon bear the brunt of the Afghan and Syrian refugee crises while European states have implemented policies making it difficult for asylum seekers from Middle Eastern countries, notably Syria and Afghanistan, to find refuge in Europe.153 Recognizing that IS’ ideology uniquely targets the Shi’a, which they deem the apostate sect of Islam, it is necessary to alleviate security concerns for refugee resettlement in the West.

The “Muslim Ban” implemented by the Trump administration was an attempt by the US government to bar Muslims from entering the country in 2017. The executive order halted asylum admissions for citizens of “countries of particular concern,” including Syria and Iraq, where many of the Islamic State’s victims are from. It also called for the prioritization of asylum claims by Christians due to their status as religious minorities in the region, despite Shi’a Muslims comprising the majority of victims of terrorism. Central and Eastern European countries have followed a similar trend by showing political reluctance to accept refugees and asylum seekers from Muslim countries. Recognition of IS’ genocide of the Shi’a would impact refugee resettlement and humanitarian policy greatly. Asylum officers often resort to a consensus view to determine whether an asylum seeker’s fear is justified, which can make or break the decision between resettlement and refoulement. Documentation and analysis of atrocities would help those fleeing violence have an easier process with asylum applications and successful resettlement.

In addition to shaping refugee and humanitarian policies at the state level, a tribunal would have far-reaching implications by improving early warning system models for genocide. Although Article 6 of the Rome Statute holds that the Genocide Convention applies to non-state actors, charges of genocide have never been brought before the ICC against members of a non-state actor. The focus of international humanitarian law and international criminal law have long been on state actors,

especially when it comes to genocide.\textsuperscript{158} Existing early warning models are not designed to alert policy makers about genocides committed by non-state actors. IS' genocide of religious minorities demonstrates that existing studies that inform genocide prevention are flawed due to their focus on state-level factors.\textsuperscript{159} Genocide prevention efforts must move beyond the state by examining the early warning signs of genocide at subnational levels.\textsuperscript{160} A focus on armed non-state actors would have identified how the Islamic State's ideology, escalation in violence, and the broader situation in Iraq and Syria placed the group at a higher risk for committing genocide. Thus, recognition and investigation of genocides committed by non-state actors would help improve the integrity and accuracy of early warning models and prevention efforts.

Coverage of IS' actions in Western media and scholarly literature emphasize its status as a terrorist group that stokes fear among Western nations, but little attention is paid to its role as a genocidal organization that disproportionately targets ethnic and religious minorities in the Muslim world. Although IS' actions against Iraq's Yazidi and Christian populations warrants attention from human rights organizations and political leaders, Shī'a Muslims—one of the largest groups of IS' victims—have been abandoned by the international community. The failure of the United Nations Security Council to act on its legal obligations under the Genocide Convention served as a “green light” that could implicitly be interpreted by genocidal actors as permission to commit atrocity crimes. It also prevents Shī'a Muslims fleeing violence from resettling safely and receiving justice for atrocity crimes committed against them as a group.

This article explores a substantial gap in legal scholarship: the Islamic State's unrecognized genocide of Shī'a Muslims and the international community's failure to act on its legal obligations to “prevent and punish” the crime of genocide, especially when it comes to non-state actors.

\textsuperscript{158} Ibid., 1.
\textsuperscript{159} Nyseth Brehm, “Moving Beyond the State,” 66.
\textsuperscript{160} Ibid., 67.
Future research on this topic should explore ethnic cleansing and genocide committed against Hazaras, an ethnoreligious minority group in Afghanistan. Not only is violence committed against this group due to their Shi’ite religious identity, but also their status as an ethnic minority. More research is also necessary on the efficacy of the United Nations as an international institution to “prevent and punish” genocide, as well as the ICC’s ability to deter non-state actors, such as terrorist groups, that commit atrocity crimes.

Recognizing the Islamic State’s Shi’a victims of genocide is the first step towards broader efforts for justice. Moving beyond recognition, the UN must fulfill its legal obligations under the Genocide Convention and the ICC should affirm the international commitment to justice by prosecuting members of IS. States should offer safe havens to Shi’a asylum seekers and refugees by strengthening refugee resettlement systems to accommodate for those fleeing genocide, war crimes, and crimes against humanity. Failure to do so would enable future atrocities and human rights violations.

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