

# CULTURAL HERITAGE IN CONFLICT & POST-CONFLICT SETTINGS: A WEAPON FOR WAR & A TOOL FOR PEACE

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## Introduction

*“It was a place to connect to your history, to your identity and to tell others, who were not from Aleppo: ‘This is where we are from. This is who we are.’ This is where you come to face your roots. It was a place that existed forever, a place we thought would exist long after we were gone. But we were wrong.”<sup>1</sup>*

The treatment of cultural heritage<sup>2</sup> during and after conflict has consequences that reverberate far beyond a popular desire to preserve history or specific antiquities. The protection of cultural objects and sites can serve as an anchor from which a society can rebuild itself, and the creation or rebuilding of important heritage can help a post-conflict society move forward. Ties to a way of life before conflict can help a society remember its roots and carry itself back to that way of life as a way to understand a conflict and begin the healing process. Conversely, when a site or object is destroyed by an oppressing party, it furthers the erasure of a culture, further cementing the power of the oppressor. In addition, the protection of cultural heritage by actors interested in retaining a community’s values and history can have significant security impacts. Allowing militant players access to valuable artifacts allows those groups to receive significant revenue to fund their militant campaigns, sometimes into the millions of dollars.

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<sup>1</sup> Marina Lostal & Emma Cunliffe, Submission to *Study on Intention Destruction of Cultural Heritage: The Aftermath of Destruction of Cultural Heritage: Factoring in Cultural Rights in Post-Conflict Recovery Processes*, UN Human Rights Office of the High Commissioner, Jun. 9, 2016, available at [https://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/M.Lostal\\_E.Cunliffe.pdf](https://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/M.Lostal_E.Cunliffe.pdf).

<sup>2</sup> There is a lot of debate over the terminology of cultural heritage. See, e.g., Lyndel V. Prott; Patrick J. O’Keefe, *Cultural Heritage or Cultural Property*, 1 Int’l J. Cultural Pop. 307 (1992). For the purposes of this paper, the term cultural heritage should be understood to include tangible heritage such as statues, monuments, religious sites, and artwork, and also intangible heritage such as storytelling, ritual, language, or song.

This Paper considers the ongoing, but dwindling, crisis in Syria and Iraq where the Islamic State of Iraq and Syria (ISIS)<sup>3</sup> has been looting and destroying sites and objects of cultural importance. With the outbreak of civil war within Syria, there were no proactive measures taken by major actors to protect this heritage. Although this seems a mere consequence of military necessity—the security of human lives, after all, is always given priority over inanimate objects or even ancient ways of life—this oversight has contributed to a deeper and more prolonged conflict from which the affected states are struggling to rebuild. This Paper will discuss the impact cultural heritage has on prolonging conflict and the nation building efforts thereafter. It considers both preemptive and redemptive measures the international and local communities can take when it comes to protecting and rebuilding communities through cultural heritage.

Part I of this Paper provides a brief overview of the history of ISIS and its destruction of cultural heritage throughout its once-claimed territory. Part II discusses how cultural heritage can be used by combatants as a weapon of war, and how the protection of cultural heritage can serve to counteract the negative effects of those efforts. Part III then explores how cultural heritage can be used as a positive tool for peacebuilding by examining the different protections offered as an avenue for prosecution and retribution, and how engaging with cultural heritage can help a community to heal in a positive, constructive way.

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<sup>3</sup> The group is also known as the Islamic State in Iraq and the Levant (ISIL), the Islamic State (IS), Da'ish or Daesh, the latter two of which have no direct translation. *See, e.g.,* Faisal Irshaid, *Isis, Isil, IS, or Daesh? One Group, Many Names*, BBC, Dec. 2, 2015, available at <https://www.bbc.com/news/world-middle-east-27994277>. Because ISIS is used so widely in news media and is the most well known moniker, this paper will use ISIS to refer to the group.

## Part I: A Brief History of ISIS & Cultural Heritage

ISIS is a self-proclaimed Islamic Sunni caliphate whose roots date back to 2003 when the United States invaded Iraq.<sup>4</sup> Abu Musab al-Zarqawi, a Jordanian and leader of a militant group, allied with Al-Qaeda and began to target Shia Muslims and Shia holy sites, as well as United States troops and local allies.<sup>5</sup> After Zarqawi was killed, Abu Bakr al-Baghdadi became the leader of the group, which had by then taken on the name ISIS to reflect its ambitions to form a caliphate.<sup>6</sup> Baghdadi used the United States involvement in Iraq as propaganda to recruit and organize, including the recruitment of members of Saddam Hussein's Ba'ath party, who he met while in a U.S. run prison in Iraq.<sup>7</sup> Per U.S. order, the Ba'ath party members were barred from ever serving in government again, and thus held resentment toward the U.S. occupiers.<sup>8</sup> ISIS exploited this sense of discrimination to recruit followers and gain material support, not only from former Ba'ath members, but also from other Sunni Muslims, who had also been politically excluded by the Shia majority government.<sup>9</sup> The civil war outbreak in Syria in 2011 and the subsequent unrest gave the group further opportunity to expand its military, social, and geographic scope.<sup>10</sup>

The group began to attract attention in 2014, both from the international community aimed at stopping the group and from individuals looking to join its cause.<sup>11</sup> Several major

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<sup>4</sup> Zachary Laub, *The Islamic State*, COUNCIL ON FOREIGN RELATIONS, Aug. 10, 2016, <https://www.cfr.org/backgrounder/islamic-state>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

military successes allowed ISIS to expand its physical territory and recruit more members.<sup>12</sup> When it took over the city of Raqqa, the city became its de facto capital. It was there that ISIS established a smattering of government structures, including administrative agencies and police forces, while taking over others, like education and infrastructure.<sup>13</sup> ISIS remained powerful through 2016, when U.S. and local troops began to take back some of the territory.<sup>14</sup> Today, although the group still exists, its power is certainly dwindling, and it has been forced from most of its once-claimed territory.<sup>15</sup>

Throughout its military campaign, ISIS swept through some of the oldest and most culturally rich areas in the world.<sup>16</sup> As it did so, it made concerted and public efforts to destroy much of the cultural heritage of the region.<sup>17</sup> In Syria, there were a total of six certified cultural heritage sites, all of which have been damaged to some extent by ISIS.<sup>18</sup> Many more sites not recognized by UNESCO but with great archaeological, religious, or cultural value have also been looted, damaged, or destroyed.<sup>19</sup>

In Syria, for example, the city of Aleppo was occupied by ISIS from 2012 until 2016, resulting in several destructive battles within the city during that time period.<sup>20</sup> Aleppo, before ISIS' invasion, had archaeological and architectural materials dating from Greco-Roman times,

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> As recently as August 23, 2018 Baghdadi, the ISIS leader, released a tape in which he admits that the group is losing, but encourages his followers to continue fighting for the cause. See *ISIS Fast Facts*, CNN, (Sep. 3, 2018, 11:18 AM), <https://www.cnn.com/2014/08/08/world/isis-fast-facts/index.html>; see also Laub, *supra* note 4.

<sup>16</sup> Alyssa Buffenstein, *A Monumental Loss: Here Are the Most Significant Cultural Heritage Sites That ISIS Has Destroyed to Date*, ARTNET NEWS (May 30, 2017), <https://news.artnet.com/art-world/isis-cultural-heritage-sites-destroyed-950060>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* See also *Syrian Arab Republic*, UNESCO, available at <http://whc.unesco.org/en/statesparties/sy/>.

<sup>19</sup> Buffenstein, *supra* note 15.

<sup>20</sup> *Id.*

and included mosques, churches, and palaces from many distinct periods of history.<sup>21</sup> The widespread destruction of the city was devastating, both for the individuals living there, and for the international community as a whole.

One of the most widely publicized destructions of cultural heritage occurred in Palmyra, a UNESCO World Heritage Site and once the site of outstanding architectural and archeological remains of a city dating back to the first century.<sup>22</sup> Though individuals had made efforts to remove many artifacts from the Palmyra Museum before ISIS arrived, the invading force still managed to destroy immovable sites and defaced much of what remained in the museum.<sup>23</sup> ISIS bombed the Monumental Arch, the Temples of Bel and Baalshamin, and the Roman theater, and, when the museum's head of antiquities, Khaled Al-Asaad, refused to disclose the location of more items, the group executed him for idolatry.<sup>24</sup>

This type of behavior was not limited to these two cities. Throughout Syria and Iraq, ISIS destroyed priceless artifacts and looted many more.<sup>25</sup> The members often did so with the express intention of propaganda and terrorism, creating videos of their destruction and making them publicly available, sparking outcry from around the world.<sup>26</sup> As this paper will discuss, ISIS' actions were calculated to not only fulfill its religious aims, but also to further its military strategy by funding its campaign and dealing a blow to both its opposition and those it wished to rule.

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<sup>21</sup> *Id.*

<sup>22</sup> *Site of Palmyra, Description*, UNESCO, available at [whc.unesco.org/en/list/23](http://whc.unesco.org/en/list/23).

<sup>23</sup> Often, this defacing was quite literal, as ISIS removed the faces of any individuals featured in artwork on friezes or monuments as they were considered signs of idolatry. Buffenstein, *supra* note 15.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See, e.g., Robert Mackey, *Historians Pore Over ISIS Video of Smashed Statues for Clues to What's Been Lost*, N.Y. TIMES, Feb. 26, 2015, available at <https://www.nytimes.com/2015/02/27/world/middleeast/historians-pore-over-isis-video-of-smashed-statues-for-clues-to-whats-been-lost.html>

## Part II: A Weapon of War

### *A. How ISIS Uses Cultural Heritage to Further Its Aims Monetarily*

In early 2015, ISIS released a video of its own militants destroying artifacts within the Mosul Museum, ostensibly to show its commitment against idolatrous images.<sup>27</sup> Though several major artworks were found later to have been replicas, many more authentic pieces were indeed destroyed, and several other pieces from the museum appeared on the European market several weeks later.<sup>28</sup> Not long after, more stories appeared of ISIS-looted antiquities finding their way to Turkey, Bulgaria, and even as far as London.<sup>29</sup> Although the ISIS militants decried much of the artwork found within the area, it is clear that, in certain instances, the group did not just destroy certain works, but instead sold them on the black market for a profit.<sup>30</sup>

ISIS was successful in its campaigns largely due to its incredible wealth.<sup>31</sup> In 2014, near the height of ISIS' power, the black market sale of antiquities was estimated to be the terrorist group's second largest revenue stream,<sup>32</sup> with some estimates putting that number at over \$100

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<sup>27</sup> *Destruction of Antiquities by ISIS Militants is Denounced*, N.Y. TIMES (Feb. 27, 2015), <https://www.nytimes.com/2015/02/28/world/middleeast/destruction-of-antiquities-by-militants-is-denounced.html>; see also Mark Vlasic; Helga Turku, *Protecting Cultural Heritage as a Means for International Peace, Security and Stability: The Case of ISIS, Syria, and Iraq*, 49 Vand. J. Transnat'l L. 1371, 1375 (2016) ("ISIS uses distorted readings of the Quran to explain its organized destruction of cultural property, claiming that it represents sacrilegious vestiges.").

<sup>28</sup> *Statues Destroyed by Islamic State in Mosul Were Fakes with Originals Safely in Baghdad*, TELEGRAPH (Mar. 15, 2015), <https://www.telegraph.co.uk/news/worldnews/islamic-state/11473515/Statues-destroyed-by-Islamic-State-in-Mosul-were-fakes-with-originals-safely-in-Baghdad.html>.

<sup>29</sup> See *'Broken System' Allows ISIS to Profit from Looted Antiquities*, N.Y. Times (Jan. 9, 2016), <https://www.nytimes.com/2016/01/10/world/europe/iraq-syria-antiquities-islamic-state.html>.

<sup>30</sup> Vlasic & Turku, *supra* note 27 at 1378.

<sup>31</sup> Graciela Gestoso Singer, *ISIS's War on Cultural Heritage and Memory*, May 9, 2015, available at [http://ukblueshield.org.uk/wp-content/uploads/2015/06/Singer-Isis\\_Against\\_World\\_Heritage.pdf](http://ukblueshield.org.uk/wp-content/uploads/2015/06/Singer-Isis_Against_World_Heritage.pdf)

<sup>32</sup> *Terrorism Financing and the Islamic State: Hearing Before House Financial Services Committee*, Nov. 13, 2014 (Testimony of Dr. Matthew Levitt, Fromer-Wexler fellow and director of the Stein Program on Counterterrorism and Intelligence at The Washington Institute for Near East Policy), available at

million.<sup>33</sup> To capitalize on this prosperous market sector, ISIS used a combination of direct black market sales and manipulation of various regulatory regimes and used the cultural heritage of a region to fund its campaigns.<sup>34</sup>

As previously stated, ISIS has organized itself into a government-like entity, and like other governments, uses governmental agencies to regulate those areas in which it can make a profit. One such governmental agency under ISIS, the Natural Resources Department, requires a permit to anyone wishing to excavate within the territory, which allows ISIS leaders to keep watch over any sites with potential value.<sup>35</sup> Additionally, in granting these licenses, the agency requires the permitted individual to give a sizeable share of his or her profits to the government.<sup>36</sup> ISIS also places heavy taxes and fines on any individuals it finds dealing in valuable antiquities.<sup>37</sup> These taxes can be as high as fifty percent, which provides no small revenue for the organization, particularly when there are items being sold throughout the region for hundreds of thousands or even millions of dollars.<sup>38</sup>

ISIS is also directly involved in the excavation, looting, and sale of the antiquities. It is clear that ISIS did not leave the sale and profits from the illicit trade of antiquities to those licensees granted permits. For example, when the United States raided the compound of ISIS' chief financial officer, troops found antiquities that had been kept in good condition and

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<https://financialservices.house.gov/uploadedfiles/hhrg-113-ba00-wstate-mlevitt-20141113.pdf> ; *see also* Micah Zenko, *Guest Post: Preventing Cultural Destruction by ISIS*, COUNCIL ON FOREIGN RELATIONS, Mar. 6, 2015, <https://www.cfr.org/blog/guest-post-preventing-cultural-destruction-isis>.

<sup>33</sup> Micah Zenko, *Guest Post: Preventing Cultural Destruction by ISIS*, COUNCIL ON FOREIGN RELATIONS, Mar. 6, 2015, <https://www.cfr.org/blog/guest-post-preventing-cultural-destruction-isis>.

<sup>34</sup> Vlasic & Turku, *supra* note 27 at 1374-75.

<sup>35</sup> Vlasic & Turku, *supra* note 27 at 1376.

<sup>36</sup> *Id.* at 1377 (describing a report in which a local excavator was required to give sixty percent of his proceeds to ISIS).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

photographed, presumably for sale.<sup>39</sup> According to Russian officials, antiquities from ISIS have been found for sale on various online auction websites and social media sites as well.<sup>40</sup> In some places, ISIS seems to be taking a direct part in ordering the machinery and staff required for large-scale excavations.<sup>41</sup> Given that there seems to be a high level of knowledge regarding the antiquities' value—particularly from the same group who did not realize it was destroying replica artifacts<sup>42</sup>—some have speculated that there are likely skilled archaeologists working within ISIS' ranks.<sup>43</sup>

### *B. The Destruction & Theft of Cultural Heritage as a Social & Economic Weapon*

ISIS was not, however, only attacking cultural heritage sites to fund its campaign. The destruction of these sites, which mean so much to the people living in the region, was a calculated military move. Destroying cultural heritage, which can include tangible sites and objects, but also language, religion, or rituals, is a tactic that gives permanence to an individual's plight.<sup>44</sup> The Secretariat General for UNESCO, Irina Bokova, speaking on the destruction in Aleppo, said “to destroy Syria's heritage is to kill the Syrian people a second time.”<sup>45</sup> The terrorism ISIS carried out throughout the region destroyed populations, and the destruction of

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<sup>39</sup> Helga Turku, *When Cultural Property Becomes a Tool of Warfare: Law, Politics, and International Security*, 1 *Inter Gentes* 3 (2017), available at <https://intergentes.com/cultural-property-becomes-tool-warfare-law-politics-international-security/>.

<sup>40</sup> *Id.*

<sup>41</sup> Vlastic & Turku, *supra* note 27 at 1376. *See also* XXXXXXXX

<sup>42</sup> *Statues Destroyed by Islamic State in Mosul Were Fakes with Originals Safely in Baghdad*, TELEGRAPH (Mar. 15, 2015), <https://www.telegraph.co.uk/news/worldnews/islamic-state/11473515/Statues-destroyed-by-Islamic-State-in-Mosul-were-fakes-with-originals-safely-in-Baghdad.html>.

<sup>43</sup> Vlastic & Turku, *supra* note 27 at 1376 (noting, importantly, that these individuals could be working for ISIS “willingly or unwillingly”).

<sup>44</sup> *Id.*

<sup>45</sup> *See UNESCO Reports on Extensive Damage in First Emergency Assessment Mission to Aleppo*, UNESCO (Jan. 19, 2017), <https://whc.unesco.org/en/news/1619/>.

cultural heritage made it that much harder for those people to rebuild themselves. In 2014, while visiting northern Iraq where Yazidi temples were destroyed by ISIS, Bokova said the following regarding the actions taken by ISIS:

You destroy the temples, you take away what they have, you enslave half of them, you push them somewhere else. It's really more than ethnic cleansing, because you deprive them of their identity. You just want to destroy them totally, you don't want anything from their culture left there for humanity. It's as if they never existed.<sup>46</sup>

This phenomenon, of taking persecution one step further to completely eliminate a culture from existence by destroying their cultural heritage, is what Bokova, and now many others, refers to as “cultural cleansing.”<sup>47</sup>

This concept is not a new idea. In Nazi Germany, for example, synagogues were burned down in order to eliminate symbols of Judaism.<sup>48</sup> The conflict in the former Yugoslavia presents another good example. From 1991 until 1995, widespread ethnic cleansing took place throughout Yugoslavia, directed at Bosnian Muslims.<sup>49</sup> The Bosnian Muslims were brutally killed and attacked throughout the country, and “their places of worship, museums, libraries and archives” were destroyed.<sup>50</sup> When the Bosnian-Serb Army came through Sarajevo in Bosnia-Herzegovina, it specifically targeted mosques, Catholic churches, the National Library, and the

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<sup>46</sup> Charlie English, *Irina Bokova: The Woman Standing Between Isis and World Heritage*, THE GUARDIAN (Jun. 3, 2016, 10:00 AM), <https://www.theguardian.com/culture/2016/jun/03/irina-bokova-un-unesco-world-heritage-palmyra-isis>.

<sup>47</sup> See, e.g., *id.*; Alexander Smith, *UNESCO's Irina Bokova Laments ISIS' 'Cultural Cleansing' of Antiquities*, NBC NEWS, (Jul. 3, 2015), <https://www.nbcnews.com/storyline/isis-terror/unesco-boss-irina-bokova-laments-isis-cultural-cleansing-antiquities-n386291>; *The Struggle Against Cultural Cleansing is a Security Imperative*, UNESCO.INT (Jul. 2, 2015), [http://www.unesco.org/new/en/member-states/single-view/news/the\\_struggle\\_against\\_cultural\\_cleansing\\_is\\_a\\_security\\_impera/](http://www.unesco.org/new/en/member-states/single-view/news/the_struggle_against_cultural_cleansing_is_a_security_impera/).

<sup>48</sup> See, e.g., David Cesarani, *From Persecution to Genocide*, BBC HISTORY, Feb. 17, 2011, [http://www.bbc.co.uk/history/worldwars/genocide/radicalisation\\_01.shtml](http://www.bbc.co.uk/history/worldwars/genocide/radicalisation_01.shtml).

<sup>49</sup> Adam Lindhagen, *War on Memory: International Law and the Destruction of Cultural Property in Armed Conflict 1979-2018*, University of Oslo, 17 (2018), available at [https://www.duo.uio.no/bitstream/handle/10852/64519/kandidat\\_219.pdf?sequence=5&isAllowed=y](https://www.duo.uio.no/bitstream/handle/10852/64519/kandidat_219.pdf?sequence=5&isAllowed=y)

<sup>50</sup> *Id.* at 63.

Oriental Institute.<sup>51</sup> An important point to note in these attacks is that there was often no fighting or military action in these areas aside from the destruction of the cultural sites, and thus the destruction cannot be attributed to collateral damage.<sup>52</sup> The attacks were planned and coordinated with the intention of defeating and eliminating a particular group within the society, effectively cleansing that society of that group forever.<sup>53</sup> In other words “by inflicting cultural damage on present generations, the enemy seeks to orphan future generations and destroy their understanding of who they are and from where they come.”<sup>54</sup> Furthermore, the destruction of cultural heritage of a particular group lowers the worldwide visibility of that group, which strikes yet another blow to their identity.<sup>55</sup> Because these attacks were carried out exclusively in the context of ethnic cleansing, and often directly alongside such cleansing, the specific attacks on cultural heritage were never independently and exclusively studied by courts.<sup>56</sup>

Similarly, the attacks carried out by ISIS, taking place in territories under its military control, often did not have any battles taking place nearby, and thus cannot be written off as collateral damage or military necessity.<sup>57</sup> Instead, the attacks were used as a simultaneous push for propaganda and a tactic for intimidation. One of the sites destroyed by ISIS in Iraq, for example, was the temple of the prophet Jonah, best known from the tale of his whale

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<sup>51</sup> *Id.* at 64.

<sup>52</sup> *Id.* at 65.

<sup>53</sup> *Id.*

<sup>54</sup> Hiram Abtahi, *Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia*, 14 Harv. Hum. Rts. J. 1, 2 (2001).

<sup>55</sup> *Id.*

<sup>56</sup> Though the ICTY did examine the destruction of cultural property as an additional crime during ethnic cleansing, no case focuses only on that issue. See Lindhagen, *supra* note 49 at 65.

<sup>57</sup> Filippo Ristoldo, *Attacks Against Cultural Property as a Weapon of War: An Exploratory Case Study*, Institut Barcelona Estudia Internacionals, 19 (2017), available at [https://www.ibe.org/ibe\\_studentpaper34\\_105354.pdf](https://www.ibe.org/ibe_studentpaper34_105354.pdf)

encounter.<sup>58</sup> Because Jonah is mentioned in the Bible, the Torah, and the Qur'an, the site had the unique quality of being a shared place of reverence for three different religions.<sup>59</sup> By destroying this temple, not only did ISIS destroy the right to freely reflect upon the religious significance of such a prophet, but also destroyed a symbol of unity across several different religions.<sup>60</sup> Though the destruction of specific religious sites was not uncommon, many of the sites were not directly linked to a specific culture, but rather were considered a cultural heritage for a wider segment of people.<sup>61</sup> ISIS specifically targeted sites that were UNESCO World Heritage Sites, and also those on the tentative list to be approved as a World Heritage Site.<sup>62</sup> According to ISIS' extremist ideologies, these sites and artifacts represented a connection to the Western, colonial world, and are set apart from their idea of a purist, enclosed society.<sup>63</sup> In destroying these sites, ISIS attempted to erase the part of society that was connected with those other cultures, in an effort to ensure it would be the only connection the community had.<sup>64</sup> In other words ISIS used the destruction of cultural heritage "in order to erase any symbol of the 'other' . . . that differed and/or were in contrast with ISI[S] ideology and narrative; and, at the same time, to deny possible future attempt to reconstruct the former history of the community . . . ."<sup>65</sup>

ISIS itself has described its destruction of cultural heritage as a concerted effort to destroy what it deemed "nationalist."<sup>66</sup> Palmyra, for example, was a site that the Syrian

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<sup>58</sup> Lindhagen, *supra* note 49 at 61.

<sup>59</sup> Turku, *supra* note 39.

<sup>60</sup> *See id.*; Lindhagen, *supra* note 49 at 61.

<sup>61</sup> Ristoldo, *supra* note 57 at 15.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 11.

<sup>65</sup> *Id.*

<sup>66</sup> Turku, *supra* note 39.

government historically used as a national symbol for the country.<sup>67</sup> By destroying the city so thoroughly, ISIS essentially eliminated the symbol with which Syrians, regardless of their ethnicity or religion, found a common cultural connection.<sup>68</sup> Furthermore, Palmyra was an ancient crossroads, where cultures from all over the region and beyond met, and such cultural interaction was reflected in the tangible heritage at the site.<sup>69</sup> By destroying a site that had ties not only to the ruling Syrian government, but also to leaders as far back as the Roman Empire, ISIS could use the destruction as both a symbol and an intimidation tactic.<sup>70</sup> ISIS endeavored to establish itself as a caliphate, and by destroying a tool the Syrian government used for unity, ISIS was able to strike a blow to the morale of the Syrian people, making them less likely to push back against ISIS invaders.<sup>71</sup>

These destructive methods did more than just strike a symbolic blow to Syria and the world at large. Palmyra was not simply an archaeological site; people lived within its streets, often using the ancient ruins for their own modern day purposes.<sup>72</sup> One Syrian archaeologist, Salam al-Kuntar, described the personal connection he had to Palmyra, a city that was beloved worldwide:

I have a special love for Palmyra because the Temple of Bel is where my mother was born . . . I hear many stories about the building, how people used the space, how children played around, including my mum. So that's what it means to me.

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<sup>67</sup> *Id.*

<sup>68</sup> See, e.g., *Stones That Speak: The Multiple Symbolisms of Palmyra*, *The Economist* (May 30, 2015), <https://www.economist.com/books-and-arts/2015/05/30/stones-that-speak>,

<sup>69</sup> *Id.*

<sup>70</sup> Marina Lostal & Emma Cunliffe, *Submission to Study on Intention Destruction of Cultural Heritage: The Aftermath of Destruction of Cultural Heritage: Factoring in Cultural Rights in Post-Conflict Recovery Processes*, UN Human Rights Office of the High Commissioner, Jun. 9, 2016, available at [https://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/M.Lostal\\_E.Cunliffe.pdf](https://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/M.Lostal_E.Cunliffe.pdf).

<sup>71</sup> Ristoldo, *supra* note 57 at 15.

<sup>72</sup> Kanishk Tharoor & Maryam Maruf, *Museum of Lost Objects: The Temple of Bel*, *BBC NEWS* (Mar. 1, 2016), <https://www.bbc.com/news/magazine-35688943>.

This is the meaning of heritage—it's not only architecture or artifacts that are representing history, it's these memories and ancestral connection to the place.<sup>73</sup>

This quote provides a beautiful depiction of what these sites mean not only to those who feel an abstract, universal connection to the place, but also to those who will be directly affected by ISIS' control. By destroying the physical connections one has to ancestors and community, ISIS lowered morale and made it much more difficult for individuals to want to fight back.

Economic reliance can create an additional disincentive to fight back. Even when the sites being destroyed do not have a direct cultural link to a community, their destruction can still deal a hard economic blow to the area.<sup>74</sup> Sites like Palmyra or the Mosul Museum provided revenue for the communities around them, both for the employees of these sites and also for the community members who benefited from increased tourism in the area.<sup>75</sup> Before the 2011 civil war, tourism accounted for almost twenty percent of Syria's GDP, and employed about eighteen percent of the population.<sup>76</sup> By eliminating these sources of income for the community, ISIS further eliminated individual or community autonomy, creating an environment of intimidation and reliance on the only group that could now provide for these people. Furthermore, economic instability makes the area less desirable, and that, combined with the destruction of community identity, makes it less likely that those who have fled will return.<sup>77</sup> This in turn slows the reconstruction process, allowing opportunity for new terrorist organizations to grow.<sup>78</sup>

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<sup>73</sup> *Id.*

<sup>74</sup> Adam Lindhagen, *War on Memory: International Law and the Destruction of Cultural Property in Armed Conflict 1979-2018*, University of Oslo, 17 (2018), available at [https://www.duo.uio.no/bitstream/handle/10852/64519/kandidat\\_219.pdf?sequence=5&isAllowed=y](https://www.duo.uio.no/bitstream/handle/10852/64519/kandidat_219.pdf?sequence=5&isAllowed=y)

<sup>75</sup> *Id.*

<sup>76</sup> Marina Lostal & Emma Cunliffe, *supra* note 70.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

Finally, many of these attacks have a direct effect on a people's ability to freely practice their religion, and are often carried out with that express intent. ISIS bases its ideology in Islamic teachings, however corrupt their interpretation may be, and is centered on a desire for religious purity.<sup>79</sup> Many of the sites ISIS destroyed were religious sites, and the express intent of destroying them was to prevent the practice of religions other than Islam.<sup>80</sup> In other words, ISIS is attempting to achieve religious purity through brute force, by forcibly eliminating any other options.<sup>81</sup> This has the effect, of course, of eliminating an important aspect to many people's lives, one that provides comfort during periods of crisis and conflict.

### *C. How the Protection of Cultural Heritage Contributes to Greater Peace*

The proactive protection of cultural heritage, and the retroactive restoration, can help to counter the negative impacts discussed above. Because there are laws in place for the protection of cultural heritage,<sup>82</sup> the framework has already been created to actively protect against the destruction of cultural heritage taking place in Syria and Iraq. Cultural heritage, if it is protected or restored, gives the victims of conflict an anchor to their past, and helps communities to conceptualize their past.<sup>83</sup> Furthermore, having access to tangible cultural heritage "plays a role in legitimizing or delegitimizing interests" in post-conflict settings, particularly when a state is attempting to create a new national narrative.<sup>84</sup> By protecting cultural heritage, a community has

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<sup>79</sup> Zachary Laub, *The Islamic State*, COUNCIL ON FOREIGN RELATIONS, Aug. 10, 2016, <https://www.cfr.org/backgrounder/islamic-state>.

<sup>80</sup> Turku, *supra* note 39.

<sup>81</sup> *Id.*

<sup>82</sup> *See infra* Part III.A.

<sup>83</sup> Vlastic & Turku, *supra* note 27 at 1381.

<sup>84</sup> *Id.*

further access to the story of who they are, where they came from, and what values have shaped their culture thus far.<sup>85</sup>

Cultural heritage, in other words, helps to create a narrative, from which self-identity can be better shaped.<sup>86</sup> In the context of reconstruction, this narrative helps leaders to engage with the community.<sup>87</sup> A common narrative identifies the values of a group of people, and when leaders in reconstruction can use those values to shape the direction of a state, they are perceived as having a more legitimate right to rule.<sup>88</sup> Cultural heritage acts as a symbol of this narrative, and of the victory of perseverance.<sup>89</sup> Storytelling and memory, either through tangible objects or through experiential activities, allow for a group to feel secure in their identity, which in turn can serve to make them secure in their peacebuilding efforts.<sup>90</sup>

Protecting cultural heritage also has the added benefit of eliminating the illegitimate sources of income previously discussed from ever accruing.<sup>91</sup> If the antiquities or other tangible heritage is protected in the first place, they can never be used to finance terrorist regimes in the way ISIS has proceeded.

Although it is too late to protect much of Iraq and Syria's cultural heritage, reconstruction of the sites remains an option, and one that some consider will contribute to the peacebuilding process of the nation.<sup>92</sup> Although the idea of reconstructing ancient ruins poses problems of

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 1385.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 1386.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 1415. *See also supra* Part II A.

<sup>92</sup> Marina Lostal & Emma Cunliffe, *supra* note 70.

authenticity,<sup>93</sup> the process of rebuilding previously destroyed structures allows for a local population to engage with its culture, and feel purpose and connection with these sites.<sup>94</sup> Additionally, it allows for experts in archaeology and preservation to conduct new and unique research on the preservation of destroyed sites and monuments.<sup>95</sup> This symbiotic relationship could also foster education for the local people, as well as training in the craftsmanship required to undertake such work.<sup>96</sup> This type of approach has already been effective in Mali with the reconstruction of several sites in Timbuktu, and similar projects are in the works to be conducted in Syria.<sup>97</sup>

There have also been efforts within Syria to preserve and restore what has been left after the destruction by ISIS. One organization, the Safeguarding the Heritage of Syria and Iraq Project (SHOSI) has been working with archaeologists in Syria, some of whom must sneak out of ISIS-controlled territory for meetings, only to sneak back in once the conferences are over.<sup>98</sup> This organization teaches locals how to preserve and protect their cultural heritage with the limited tools they often have.<sup>99</sup> This can mean anything from restoring antiquities with common

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<sup>93</sup> Authenticity is one of the essential requirements for acceptance into the list of UNESCO World Heritage Sites, and lack of authenticity can result in removal from the list. *See The Criteria for Selection*, UNESCO, available at <https://whc.unesco.org/en/criteria/>. *See also* Jennifer Abramsohn, *Dresden Loses UNESCO World Heritage Status*, DW.com (Jun. 25, 2009), <https://www.dw.com/en/dresden-loses-unesco-world-heritage-status/a-4415238>.

<sup>94</sup> Marina Lostal & Emma Cunliffe, *supra* note 70.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Brian I. Daniels, Director of Research and Programs for the Penn Cultural Heritage Center, Address at the William & Mary Law School Cultural Heritage Symposium (Oct. 19, 2018). *See also* Safeguarding the Heritage of Syria and Iraq (SHOSI), SMITHSONIAN GLOBAL, <https://global.si.edu/projects/safeguarding-heritage-syria-and-iraq-shosi>.

<sup>99</sup> Brian I. Daniels Director of Research and Programs for the Penn Cultural Heritage Center, Address at the William & Mary Law School Cultural Heritage Symposium (Oct. 19, 2018).

kitchen supplies to exploring the best way to smuggle valuable heritage out of ISIS territory without being caught.<sup>100</sup>

### **Part III: Tool for Peace**

Despite its historical and widespread use as a weapon of conflict, cultural heritage can be used as a tool for peace. First, it can be used in the reparations context, for which there are many avenues for legal action in the international community to prosecute intentional destruction of cultural heritage. Additionally, it can be used in the social context, as a way for people to continue through their healing process by both reclaiming past traditions and culture, and by accepting the conflict as an aspect of the future culture, and using that to heal.

#### **A. The Laws Protecting Cultural Heritage and Their Use in Post-Conflict Justice**

##### **i. Legal Background**

There are already several laws in place for the protection of cultural heritage, many of which have been in place for decades.<sup>101</sup> World War II saw massive destruction of cultural property throughout Europe. As a result, on May 14, 1954, the Convention for the Protection of Cultural Property in the Event of Armed Conflict, otherwise known as the 1954 Hague Convention, was signed.<sup>102</sup> The 1954 Hague Convention defined cultural property as buildings, significant movable or immovable objects, and cultural centers.<sup>103</sup> This convention describes

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<sup>100</sup> *Id.*

<sup>101</sup> Hiram Abtahi, *Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia*, 14 Harv. Hum. Rts. J. 1, 7 (2001).

<sup>102</sup> *Id.*

<sup>103</sup> Convention for the Protection of Cultural Property in the Even of Armed Conflict art. 1, May 14, 1954, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8D9D50C4F877EB43C12563CD0051CA1A> [hereinafter 1954 Hague Convention]; Abtahi, *supra* note 101.

damage to cultural property as a crime specifically against mankind as a whole.<sup>104</sup> This distinction—cultural heritage of great importance to mankind—has incited debate over what cultural heritage may be considered for protection.<sup>105</sup> Each state is required to protect its own cultural property, and such property is given particular protections during conflict.<sup>106</sup> Additionally, it provides for protection against looting and trafficking during conflict.<sup>107</sup> These protections may be waived, however, in any case of military necessity.<sup>108</sup> Furthermore, there is some debate over whether these standards apply differently, or even at all, to national or internal conflicts as opposed to international conflicts.<sup>109</sup> Additionally, there is the issue of sanctions or other punishments, as it is up to the state parties to impose such sanctions, rather than an objective international body.<sup>110</sup>

In 1970, the UNESCO Convention was signed.<sup>111</sup> It was created and promulgated in response to widespread looting of cultural heritage throughout African nations in the 1960s.<sup>112</sup> This convention is much more nationally focused than the 1954 Hague Convention, and concentrated more on the impact that trafficking and looting has on a state's heritage.<sup>113</sup> As a result, member states who are signatories to the convention are required to prevent the trade of

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<sup>104</sup> *Id.*

<sup>105</sup> Adam Lindhagen, *War on Memory: International Law and the Destruction of Cultural Property in Armed Conflict 1979-2018*, University of Oslo, 17 (2018), available at [https://www.duo.uio.no/bitstream/handle/10852/64519/kandidat\\_219.pdf?sequence=5&isAllowed=y](https://www.duo.uio.no/bitstream/handle/10852/64519/kandidat_219.pdf?sequence=5&isAllowed=y)

<sup>106</sup> Vlastic & Turku, *supra* note 27 at 1392.

<sup>107</sup> *Id.*

<sup>108</sup> 1954 Hague Convention at art. 7; see also Lindhagen, *supra* note 39.

<sup>109</sup> Lindhagen, *supra* note 39.

<sup>110</sup> *Id.*

<sup>111</sup> Vlastic & Turku, *supra* note 27 at 1392.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

looted cultural heritage by prohibiting the importation of such objects and encouraging the subsequent return.<sup>114</sup>

Following the signing of the 1970 Convention, the member states passed the 1972 UNESCO Convention, or World Heritage Convention, which established the Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, also known as the World Heritage Committee.<sup>115</sup> This is the committee that decides and establishes which sites are included on the World Heritage List, on which Iraq and Syria have ten sites.<sup>116</sup> It is in this Convention that the transition occurs from “cultural property” to “cultural heritage.”<sup>117</sup> This term broadens the definition to potentially include more than tangible property, and also extends the protections to peacetime.<sup>118</sup> In this way, the UNESCO Convention complements the 1954 Hague Convention, rather than superseding it.<sup>119</sup>

In 1977, the Additional Protocols to the 1954 Hague Convention was signed.<sup>120</sup> Article 53 defines cultural property as “historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.”<sup>121</sup> That article prohibits individuals from directing attacks against cultural heritage or using cultural objects in support of any military endeavors.<sup>122</sup> Article 16 of the Additional Protocol stipulates that the document only adds upon

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<sup>114</sup> *Id.* at 1393.

<sup>115</sup> *Id.*; Lindhagen, *supra* note 39.

<sup>116</sup> Vlasic & Turku, *supra* note 27 at 1393.

<sup>117</sup> Lindhagen, *supra* note 39.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Abtahi, *supra* note 101.

<sup>121</sup> Abtahi, *supra* note 101.

<sup>122</sup> Lindhagen, *supra* note 39.

the protections of the 1954 Hague Convention, without taking away any protection, but applies regardless of whether the parties are signatories to the original 1954 Hague Convention.<sup>123</sup>

In 1995, the UNIDROIT Convention was signed, and required signatory members to return cultural property in its possession to its rightful state.<sup>124</sup> This allows states from which cultural heritage is taken to demand its return.<sup>125</sup> More recently, the UN General Assembly passed a resolution entitled “Saving the Cultural Heritage of Iraq” in which it states that the intentional destruction of cultural property could amount to a war crime.<sup>126</sup>

Most recently, in 1999, the Second Protocol to the 1954 Hague Convention was signed.<sup>127</sup> In essence, the 1999 Protocol aimed to bring together the previously promulgated international agreements to ensure the universal and comprehensive protection of cultural heritage, both in peacetime and conflict.<sup>128</sup> As with any international agreement, however, the list of signatories presents a limitation: Iraq and Syria are not members, and thus not protected.<sup>129</sup>

All of these international agreements provide grounds for international action against actors who destroy cultural heritage. Whether the party states follow through on their obligations and impose sanctions in support of these agreements is a perennial question in international law.

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<sup>123</sup> *Id.*

<sup>124</sup> Vlastic & Turku, *supra* note 27 at 1394.

<sup>125</sup> *Id.* See also John H. Merryman, *Two Ways of Thinking About Cultural Property*, 80 Am. Jur. Int'l L. 831, 832 (1986) (discussing the distinction between “source” nations, from which the majority of cultural property comes from, and “market” states that buy the most of the cultural property).

<sup>126</sup> Vlastic & Turku, *supra* note 27 at 1394.

<sup>127</sup> Cody Corliss, *Prosecuting Members of ISIS For the Destruction of Cultural Property*, 45 Fla. St. U. L. Rev. 183, 199 (2017).

<sup>128</sup> *Id.* at 200

<sup>129</sup> *Id.*

There is also judicial precedent that allows for the protection of cultural heritage.<sup>130</sup> In 2016, the International Criminal Court (ICC) prosecuted Ahmad al-Faqi Al-Mahdi for intentional destruction of cultural property.<sup>131</sup> Al-Mahdi was a member of the radical Islamic group Ansar Dine, and directed a group of extremists to destroy several important sites in Timbuktu, Mali, including a mosque.<sup>132</sup> The attack directly targeted those who did not follow Islam in the same way that Ansar Dine supported.<sup>133</sup> Al-Mahdi admitted guilt, and was found guilty of war crimes.<sup>134</sup> This case gives several important precedents for the ISIS case study. First, Al-Mahdi did not have any other charges brought against him—he was only convicted for destruction of cultural property.<sup>135</sup> Second, though it occurred within the context of armed conflict, the conflict was internal, and did not involve international actors, in contrast to most cases of traditional war.<sup>136</sup>

The International Criminal Tribunal of the Former Yugoslavia (ICTY), created through unanimous Security Council resolution in 1993,<sup>137</sup> developed several pieces of important case law regarding cultural heritage.<sup>138</sup> In *Prosecutors v. Strugar*, the ICTY found that the destruction of cultural heritage, as defined in Article 3 of the ICTY Statute,<sup>139</sup> was a violation of

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<sup>130</sup> Vlastic & Turku, *supra* note 27 at 1395.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> UN Security Council, *Security Council resolution 827 (1993) [International Criminal Tribunal for the former Yugoslavia (ICTY)]*, 25 May 1993, S/RES/827 (1993), available at: <https://www.refworld.org/docid/3b00f21b1c.html>

<sup>138</sup> Lindhagen, *supra* note 39.

<sup>139</sup> UN Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002)*, 25 May 1993, available at: <https://www.refworld.org/docid/3dda28414.html>; *Prosecutor v. Pavle Strugar (Appeal Judgment)*, IT-01-42-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 17 July 2008.

the customs of war.<sup>140</sup> A later case reached a similar conclusion, though it used the 1954 Hague Convention to supplement the ICTY statute.<sup>141</sup> Although these cases brought charges regarding cultural heritage alongside other charges, they nonetheless underscored the prominence and importance of cultural heritage in the international legal sphere.<sup>142</sup>

## ii. Applying This Legal Framework in Syria and Iraq

There are, generally speaking, three possibilities for the prosecution of ISIS members as it pertains to cultural heritage.<sup>143</sup> First, the domestic courts of Iraq or Syria, or else the jurisdictions from which the individual members come, could serve as the home for prosecutions. Second, an independent tribunal established by the United Nation Security Council, like the ICTY, could hear cases.<sup>144</sup> Third, the ICC could hear the cases, much like it did in the Al-Mahdi case.<sup>145</sup>

The prosecution of ISIS members on Syrian or Iraqi soil presents obvious issues. The conflict, though dwindling, has not been entirely eliminated,<sup>146</sup> and the governments of Syria and Iraq have not shown themselves particularly capable of arresting and trying ISIS members for other crimes.<sup>147</sup> If this avenue were explored, both countries would require immense support from the international community in its peacebuilding process. If international actors are able

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<sup>140</sup> Lindhagen, *supra* note 39.

<sup>141</sup> *Prosecutor v. Blagojevic and Jokic (Trial Judgment)*, IT-02-60-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 17 January 2005

<sup>142</sup> Lindhagen, *supra* note 39.

<sup>143</sup> Corliss, *supra* note 127.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *See ISIS Fast Facts*, CNN, (Sep. 3, 2018, 11:18 AM), <https://www.cnn.com/2014/08/08/world/isis-fast-facts/index.html>

<sup>147</sup> Corliss, *supra* note 127 at 205.

and willing, expertise and funds could go towards establishing a strong judiciary within these states, with the intention of building the capability to try these individuals.<sup>148</sup>

The next option for prosecution is an ad hoc tribunal like that seen in the ICTY.<sup>149</sup> This approach has been supported by a number of international actors in direct reference to the crisis in Syria.<sup>150</sup> This type of tribunal would present the same benefits and disadvantages as those found in the ICTY.<sup>151</sup> Allowing a tribunal, particularly if it is located in the Middle East, would enable greater participation from victims and local experts. This would then contribute more to the healing process as a whole, though this may be less effective if the tribunal is more distant.<sup>152</sup> Conversely, the cost and time of these types of tribunals is no small matter, and may adversely affect the healing process.<sup>153</sup> Applying the premises found in both the ICTY and the Al-Mahdi cases, the destruction of cultural heritage can be used as the basis for criminal charges. This would allow for the prosecution of war criminals for which there are more witnesses thanks to the propaganda videos. Furthermore, in these instances, victims may be more willing to face the court to provide testimony. An obstacle to this avenue is the requirement of a unanimous vote of the UN Security Council, something that is no easy task.

Another major hurdle to the prosecution of these crimes is the question of jurisdiction.<sup>154</sup>

Neither Syria nor Iraq are parties to the ICC, and because the ICC's jurisdiction is treaty based,

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<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at 206 (describing support for the U.N. Commission of Inquiry in Syria, the U.S. House of Representatives, and an ICC Prosecutor).

<sup>151</sup> *Id.*

<sup>152</sup> JANE STROMSETH, DAVID WIPPMAN & ROSA BROOKS, CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS 264 (2006).

<sup>153</sup> *Id.* See also *The Cost of Justice*, UNITED NATIONS INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, <http://www.icty.org/en/about/tribunal/the-cost-of-justice>.

<sup>154</sup> Lindhagen, *supra* note 39.

citizens of Iraq and Syria who have committed these crimes are not within its jurisdiction.<sup>155</sup> Furthermore, the Rome Statute,<sup>156</sup> from which the ICC gets its power, states that it only has jurisdiction over natural persons, and thus cannot exercise jurisdiction to try an entire group like ISIS.<sup>157</sup> If a unanimous vote of the Security Council refers the matter to the ICC, then the court would have jurisdiction regardless of the stance of Iraq or Syria.<sup>158</sup> Otherwise, Iraq and Syria would have to consent to the jurisdiction of the court, after which the court could try ISIS members.<sup>159</sup> Thus far, there have been no indications from either state of willingness to take this step.<sup>160</sup>

## B. Cultural Heritage as a Social Tool in Post-Conflict Healing

Cultural heritage, both in the legal context and in the media, often refers to tangible items that reflect a society's culture.<sup>161</sup> In a post-conflict setting, however, cultural heritage can be understood as a much broader concept, and includes intangible traditions like rituals or religion.<sup>162</sup> The benefits of using cultural heritage, both tangible and intangible, as part of post-conflict reconstruction have been discussed widely by a range of international actors.<sup>163</sup> For example, the World Bank has said that retaining cultural heritage is “integral to the transition

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<sup>155</sup> *Id.*

<sup>156</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6.

<sup>157</sup> Corliss, *supra* note 127.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *See supra* Part II.

<sup>162</sup> John Daniel Giblin, *Post-Conflict Heritage: Symbolic Healing and Cultural Renewal*, 20 Int'l J. of Heritage Studies 500, 501 (2014).

<sup>163</sup> *Id.* at 504.

from war to sustainable peace and as a prerequisite for economic and social development.”<sup>164</sup>

Similarly, UNESCO describes cultural heritage as “a ‘vehicle’ for reconciliation” in scenarios of conflict or post-conflict.<sup>165</sup> In this way, cultural heritage can be used as a safe way for people to rediscover what was lost in the conflict, and to work through the conflict in new ways.

One example of a post-conflict nation that used cultural heritage to its benefit is Rwanda.<sup>166</sup> From 1990 until 1994 Rwanda experienced a civil war between the Hutu and Tutsi ethnic groups, and in 1994 groups of Hutu extremists committed genocide against the Tutsi people.<sup>167</sup> Since the 1994 genocide, Rwanda has seen a “national heritage boom.”<sup>168</sup> Five museums have opened in the years since, including museums dedicated to natural history, art, and ancient history.<sup>169</sup> These new sites, separate entirely from the genocidal past of Rwanda, aim to “create post-conflict social cohesion” and attract revenue from tourism, thus supporting further economic development.<sup>170</sup> In this way, the effects of conflict, like economic instability and the underlying social tension that was leftover from colonial rule, can be reduced.

Rwanda has also used cultural heritage to directly address the conflict. The Institute of National Museums of Rwanda has begun the alteration of pre-conflict heritage sites by eliminating ethnic identity terms, frequently used to incite violence, when such terms serve no educational or instructive purpose for the site.<sup>171</sup> There have also been several memorials

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<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> See *Rwanda: How the Genocide Happened*, BBC NEWS, May 17, 2011, <https://www.bbc.com/news/world-africa-13431486>.

<sup>168</sup> Giblin, *supra* note 162 at 506.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Giblin, *supra* note 162 at 506.

erected to serve as places of mourning and narrative building for the people of Rwanda.<sup>172</sup> More directly, Rwanda has implemented several pre-colonial cultural rituals in an effort to restore harmony.<sup>173</sup> One such measure is the gacaca courts that take place around the country.<sup>174</sup> These gacaca courts serve two purposes: they serve as a truth-finding commission to bring peace to the families of victims of the genocide, and they help the Rwandan people connect to their past before conflict.<sup>175</sup> Rwanda has also implemented abunzi, another system of justice, wherein venerated members of the community solve conflicts between residents.<sup>176</sup> There is also imihigo, which is used to avoid conflict in work settings and is performance based, and iterero, which is a kind of retreat used to educate a range of people, from school children to soldiers, on cultural traditions that defy divisiveness.<sup>177</sup>

Using cultural heritage in this way, the victims are determining their own reconstruction, using ideas and narratives that are familiar and welcome, instead of being told how they should be running and working. This type of bottom-up approach to reconstruction and peacebuilding uses a community's cultural heritage as the catalyst for peace, and in some instances the starting point for the entire reconstruction process.<sup>178</sup>

When cultural heritage plays a continual role in the peacebuilding process, it often has the effect of better efficacy for the entire process.<sup>179</sup> When a group or community has

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 507

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Gustav Rudd, *Cultural heritage as a Peacemaker*, Peace Insight, Jan. 8, 2015, <https://www.peaceinsight.org/blog/2015/01/cultural-heritage-peacemaker/>

<sup>179</sup> *Cultural Heritage in Postwar Recovery*, Papers from the ICCROM Forum, 6-7, available at [https://www.iccrom.org/sites/default/files/ICCROM\\_ICSO6\\_CulturalHeritagePostwar\\_en\\_0.pdf](https://www.iccrom.org/sites/default/files/ICCROM_ICSO6_CulturalHeritagePostwar_en_0.pdf).

experienced the ultimate destruction and disruption in the lives of its members, cultural heritage provides continuity that allows for further and deeper healing.<sup>180</sup> Particularly when cultural heritage has been used as a weapon to completely eliminate a group, it can be an extremely powerful tool in empowering the targeted group and making them feel safe again.<sup>181</sup>

## **Conclusion**

Cultural heritage is a way for communities and individuals to connect to their past, and to create consistency and unity throughout generations and across religious, ethnic, and cultural divides. The protection of cultural heritage before, during, and after conflict helps to lend support to these efforts, and make them that much more successful.

Advocates for cultural heritage in times of conflict are often seen as callous and uncaring, not focused on the preservation of human lives. Though there is no question over the priority of human lives, this paper has addressed the impact cultural heritage can have, both on preventing the loss of human life in conflict, and on helping to rebuild lives in a post-conflict setting.

Though seemingly coming to an end, the conflict in Iraq and Syria, and the widespread destruction by ISIS, is still too fresh for many peacebuilding efforts to really be underway. For Syria and Iraq, one obstacle of reconstruction is the sheer number of displaced people created by the refugee crisis.<sup>182</sup> Refugees, however, often create a new chapter of heritage, and Syrian refugees in particular have already been recorded as taking part in their own cultural preservation

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *See, e.g., Syria Emergency*, UNHCR, <https://www.unhcr.org/syria-emergency.html>.

within the refugee camps.<sup>183</sup> These stories and efforts show promise for the future of reconstruction in Syria and Iraq, and demonstrate how a shared heritage and shared love of place can help a people unify and heal together.

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<sup>183</sup>Charlie Dunmore, *How Art is Helping Syrian Refugees Keep Their Culture Alive*, THE GUARDIAN, Mar. 2, 2016, <https://www.theguardian.com/global-development-professionals-network/2016/mar/02/art-helping-syrian-refugees-keep-culture-alive>