

March 8, 2016

VIA EMAIL

The Honorable John F. Kerry
Secretary of State
U.S. Department of State
Washington, D.C. 20520

Re: Genocide Against Assyrian Christians in ISIS-Controlled Territory

Dear Secretary Kerry:

Andrews Kurth LLP writes on behalf of the Philos Project, the American Mesopotamian Organization, the Assyrian Aid Society of America, and the Iraqi Christian Relief Council (collectively “Interested Organizations”). These organizations have important ties to and vested interests in the current situation in regions in the Middle East currently under the control of, or threatened by, the so-called Islamic State (“IS,” “ISIS,” “ISIL,” or “Daesh”). We understand that the Department of State is currently examining whether ISIS’s treatment of Assyrian and other Iraqi and Syrian Christians (“Assyrian Christians¹”) within its territory constitutes genocide.

Interested Organizations submit this letter in support of the Department of State’s current investigation. We commend the State Department for undertaking this grave and important review. As many governments, legislative bodies, non-governmental organizations, and world leaders have already concluded, the available evidence demonstrates that ISIS’s actions rise to the level of genocide. Furthermore, we understand that recent information received from on-the-ground

¹ As discussed *infra* at 4, Assyrian Christians are an ethno-religious group of Christians who have practiced their faith for centuries in the region of ancient Assyria in present-day Syria and Iraq. Many of ISIS’s actions in Iraq and Syria target Assyrian Christians, but ISIS is indiscriminate in its treatment of Christians. Other Christian groups are present in Iraq and Syria and are suffering nearly identical atrocities. As groups that represent primarily the Assyrian community, Interested Organizations focus on Assyrian Christians, but this letter is on behalf of both Assyrian and other Iraqi and Syrian Christians. Interested Organizations are not aware of sectarian differences in how ISIS treats Christians. Hereinafter, “Assyrian Christians” is shorthand for “Assyrian and other Iraqi and Syrian Christians.”

interviews in the region and other sources establishes without question that ISIS is committing genocide and makes clear that claims that it is offering *jizya* or *dhimmi* status are a publicity stunt or extortion payments that pervert these classical terms. Nothing akin to the classic *jizya* discussed herein is being offered to the Assyrian and other Iraqi and Syrian Christians. This newly gathered information will be presented shortly in a letter to be filed by In Defense of Christians and the Knights of Columbus. While the lack of *jizya* or *dhimmi* leaves ISIS's actions without any excuse, this letter focuses on the equally important legal and factual reality, detailed herein, that any so-called *dhimmi* contract and *jizya* tax ISIS purportedly offers Christians cannot preclude a finding of genocide.

We are acutely aware of the obligations and implications that attach to an assertion of genocide against ISIS. That concern must not, however, control the analysis. To permit such an approach would produce a results-driven analysis, letting the tail wag the dog. If no action is taken, the United States and other nations now run the risk of becoming, yet again, "bystanders to genocide."²

I. Executive Summary

The Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention") prohibits the intentional destruction, in whole or in part, of an ethnic or religious group by, *inter alia*, killing members of the group, causing serious bodily or mental harm to members of the group, or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.³

Publicly available information strongly suggests that ISIS is subjecting Assyrian and other Iraqi and Syrian Christians living in areas under the control of ISIS to genocidal conditions. ISIS purportedly offers the Assyrian Christians three options: (1) convert to Islam, (2) assume *dhimmi* status and pay an associated *jizya* tax, or (3) leave the territory.⁴ The facts suggest that, in reality, there is no choice. Those who refuse or are otherwise unable to comply are executed, and in many instances the option of paying the *jizya* tax is not made available. The evidence therefore suggests that the *jizya* tax is not a real option and may be just a pretext to justify ISIS's atrocities. That ISIS purports to permit Assyrian Christians to pay a *jizya* tax to avoid conversion, execution, or displacement does not preclude a finding that ISIS's persecution of such Christians violates the Genocide Convention.

² Samantha Power, *Bystanders to Genocide*, The Atlantic Monthly, Sept. 2001, available at <http://www.theatlantic.com/magazine/archive/2001/09/bystanders-to-genocide/304571/>

³ United Nations Convention for the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 ("Genocide Convention").

⁴ Naomi Kikoler, *Bearing Witness Trip Report: The Islamic State's Targeting of Iraqi Minorities in Ninewa*, U.S. Holocaust Memorial Museum, Sept. 2015, at 14 (hereinafter "Holocaust Museum Report").

II. Interested Organizations

The Philos Project is a non-profit organization that seeks to promote positive Christian engagement in the Middle East by proclaiming friendship with those in the region who support liberty and justice for all peoples; reviving an intellectually rigorous Christian approach to foreign policy, especially as it relates to the Middle East; educating Christians on the theological, historical, and political issues surrounding Israel and the Jewish people; and empowering the church to advocate for real peace in tangible ways.

The American Mesopotamian Organization (“AMO”), through a series of public events and lobbying activities, informs and guides U.S. and international policy on matters of interest to the Assyrian American community. AMO believes that the Assyrian American community can be instrumental in bringing about change to U.S. policy towards the Assyrians of the Middle East. AMO strives to be part of this change and part of the solution in defending Assyrian political, human, and civil rights throughout the Near East. While AMO represents the collective Assyrian American viewpoint on matters of public policy, AMO also serves as liaison between the community and their elected leaders.

The Assyrian Aid Society of America (“AASA”), founded in 1991, is a charitable 501(c)(3) organization dedicated to helping Assyrians in need, promoting Assyrian culture and heritage, and focusing American and international attention on the needs and humanitarian concerns of the Assyrian people, particularly in the ancestral homeland of Assyria. Since the ISIS invasion of Mosul in June 2014, the AASA has raised over \$2 million in donations and grants to assist families who have been displaced. AASA has provided humanitarian aid to those who are facing unbearable living conditions in their shattered homeland.

The Iraqi Christian Relief Council (“ICRC”) is a 501(c)(3) non-profit organization created to support and protect persecuted Assyrian Christians in Iraq, Syria, Lebanon, Europe, and the United States. Founded in 2007 by Juliana Taimoorazy, the Iraqi Christian Relief Council focuses on humanitarian efforts, advocacy, prayer support, and education. The group advocates extensively throughout the United States on behalf of the indigenous people of Iraq. During the past year, the Iraqi Christian Relief Council has helped over 150,000 Christians by providing emergency humanitarian aid and prayer support and by raising public awareness.

III. Relevant Factual Background

A. Until ISIS's Rise, Assyrian Christians and Muslims Coexisted in Relative Peace

One of the oldest ethnicities in the world, Assyrians are a Semitic people from ancient Mesopotamia, one of the cradles of civilization. Assyrians identify as their own unique ethnic group, and they have been identified as a unique group in some of the earliest writings known to history.⁵ Many Assyrians first became Christians in the first century after the birth of Christ, making the Assyrian Christian community one of the oldest Christian communities in the world. Assyrian Christians therefore have a long-standing ethnic and religious identity. They are a unique religious-ethnic group, indigenous to the Middle East, whose forebearers have continually inhabited the same region for over four millennia.⁶

Shortly after the founding of Islam, the Assyrian Christians came under Muslim rule. They were relegated to *dhimmi* status, and were required to pay the *jizya*. Under the historical Islamic caliphates, the *jizya* was a tax levied on their non-Muslim subjects, referred to as *dhimmis*.⁷ Historically, *dhimmis* were “the non-Muslims who live within Islamdom [that] have a regulated and protected status.”⁸ In return for protection and the right to continue practicing their religion, and as a mark of their obedience, *dhimmis* were required to pay the *jizya*.⁹ If the Muslim ruler failed to provide the *dhimmis* adequate security, he was obliged to return the money, as the Egyptian sultan Saladin did after withdrawing his army from Syria.¹⁰

Under Islamic Law, a *dhimmi* is a non-Muslim who has entered into a covenant of protection with the ruling Islamic state.¹¹ The terms of the covenant require the *dhimmi* to pay special taxes and agree to various stipulations, and require the Muslim ruler to provide “security of life and property, defense against

⁵ See *Genesis* 25:3 (identifying the “Asshurim” as descendants of Abraham).

⁶ See generally Suha Rassam, *Christianity in Iraq: Its Origins and Development to the Present Day* (2005); A. Leo Oppenheim, *Ancient Mesopotamia: Portrait of a Dead Civilization* (1977).

⁷ See, e.g., *Jizya*, *Encyclopædia Britannica Online*, <http://www.britannica.com/topic/jizya>; *The Princeton Encyclopedia of Islamic Political Thought* 283 (2013) (“The *jizya* was a poll tax that all non-Muslim adult males living in territories controlled by Islamic governments were required to pay.”); Ziauddin Ahmed, *The Concept of Jizya in Early Islam*, 14 *Islamic Studies* (Islamabad) 294 (1976) (explaining how the *jizya* “was a tax through the payment of which the non-Muslim subjects were expected to pay allegiance to the political authority of Islam”).

⁸ *Dhimmi*, *Encyclopedia of Islam*, 194-95 (Juan Campo, ed., 2010).

⁹ Norman A. Stillman, *The Jews of Arab Lands: A History and Source Book* 18 (1979) (“Once subdued and made tribute bearers, they were shown tolerance.”).

¹⁰ 3 *The Oxford Encyclopedia of the Islamic World* 263 (John L. Esposito et al. eds., 1st ed. 2009).

¹¹ 2 *The Oxford Encyclopedia of the Islamic World* 71.

enemies, communal self-government, and freedom of religious practice.”¹² Throughout the history of Islam, the stipulations of the covenant have varied considerably:

Restrictions and regulations in dress, occupation, and residence were often applied to *dhimmis*. The legal status of *dhimmis* was in many aspects unequal to that of Muslims. *Dhimmis* were obliged to comport themselves in a self-effacing and inoffensive manner and were not permitted to publicize or proselytize their faiths.¹³

In principle, *dhimmi* status may extend to any non-Muslim subjects, including those conquered by Muslim forces.¹⁴ Historically, however, the covenant was usually only made with so-called People of the Book, primarily Jews and Christians.¹⁵

The *jizya* has its genesis in the Koran in 630, which instructs Muslims to fight until Jews and Christians pay the *jizya*.¹⁶ The actual amount of the *jizya* was not set out in the Koran, however, and in practice the amount varied according to the time and place. That there should be a “poll tax” was not, however, an innovation of early Islam.¹⁷ Greeks, Romans, and Persians levied similar poll

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Stillman, *supra* note 9, at 19-20 (“The payment of the *jizya* tribute by Jews and Christians received divine sanction in the autumn of 630, when the koranic verse was revealed that enjoined the Muslims to fight against the peoples of the Book ‘until they pay the *jizya* out of hand, and have been humbled’ (Sura 9:29).”); *The Princeton Encyclopedia of Islamic Political Thought* 283 (2013) (“The term appears in the Qur’an (9:29), meaning tax or tribute, and refers to the tribute owed by ‘the People of the Book’ (*ahl al-kitab*), specifically Jews and Christians.”)

¹⁷ Ahmed, *supra*, note 7, at 302; *The Princeton Encyclopedia of Islamic Political Thought* at 283 (“The *jizya* became one of the most public stipulations of a pact between the People of the Book and the Muslim ruler, under which they were accorded the protection of the state and the freedom to practice their religion in return for abiding by public Islamic law and adhering to a number of restrictions regulating their behavior. In recognition of their protection under this pact, they became termed *dhimmis*.”).

taxes,¹⁸ and local pre-Islamic customs “greatly influenced” how the *jizya* was levied and collected by Muhammed and his immediate successors.¹⁹

From the earliest days of Islam, Islamic leaders relegated Jewish and Christian tribes to *dhimmi* status. Jews and Christians were required to pay *jizya* as tribute to the ruling Islamic state during Muhammad’s lifetime.²⁰ The practice of Muhammed and the agreements made during his lifetime were viewed as “significant as legal precedents for the treatment of Jews and Christians in the later Islamic state.”²¹

During the first two Caliphates, the Rashidun Caliphate (632–661) and the Umayyad Caliphate (661-750), the rate of taxation, method of collection, and rights conferred by payment varied greatly from province to province:²²

Prior to the Abbasid epoch, the *jizya* was not strictly defined or applied, which frustrated the efforts of later scholars attempting to understand the early Islamic tax system. The *jizya* during the early centuries of Islam was used interchangeably with another term for tax, *kharaj*. Lack of clarity regarding the categories of people to which *jizya* was applied further convoluted matters. In some instances *jizya* was applied to individuals; in other cases

¹⁸ *Id.* at 294; Stillman, *supra* note 9, at 18 (“Oasis dwellers customarily paid . . . ‘protection money’ in the form of a share of their produce to neighboring Bedouin. . . . [T]his practice, far from being considered at that time a sign of political weakness, was freely indulged in also by the great Byzantine and Persian Empires to secure peace from many unruly neighboring tribes.”).

¹⁹ *Jizya*, *Encyclopædia Britannica Online*, <http://www.britannica.com/topic/jizya>; *The Princeton Encyclopedia of Islamic Political Thought* at 283 (“The Persian and Byzantine empires and pre-Islamic Arab tribes had already established systems of taxation and tribute. As Islam spread, previous structures of taxation were replaced by the Islamic system, but Muslim leaders often adopted practices of the previous regimes in the application and collection of taxes.”).

²⁰ Stillman, *supra* note 9, at 17-18 (“In return for their personal safety and the right to retain their homes and property, the Khaybaris [Jews] agreed to pay the Umma one-half of their annual date harvest. The terms were burdensome, but not unusually harsh. . . . The settlement made with the Jews of Khaybar was repeated with those of Fadak and the oases of the Wadi ‘l-Qura.”); Ahmed, *supra* note 7, at 296 (“The Christian principalities bordering the Syrian regions were now compelled to think in arriving at some political settlement with the undisputed authority of the Prophet. They agreed to pay *Jizya* and were granted complete protection of their life, property and religion.”).

²¹ Stillman, *supra* note 9, at 18.

²² Ahmed, *supra* note 7, at 297-300; *Jizya*, *Encyclopædia Britannica Online*, <http://www.britannica.com/topic/jizya>; *The Princeton Encyclopedia of Islamic Political Thought* at 283 (“Prior to the Abbasid epoch, the *jizya* was not strictly defined or applied, which frustrated the efforts of later scholars attempting to understand the early Islamic tax system.”).

jizya was applied to entire communities or provinces. Sometimes the *jizya* meant a land tax.²³

Despite these early variations, by the beginning of the third caliphate, the Abbasid Caliphate (750-1258, 1261-1517), the *jizya* had become more or less standard. It assumed the form of a progressive tax payable in cash or in kind and was enforced with relative leniency.²⁴ As an early legal text from the Abbasid caliphate explains:

The *jizya* is required of all the [*dhimmi*]. . . . The *jizya* is incumbent upon all adult males, but not upon women and children. For the wealthy the tax is forty-eight dirhams, for those of medium income twenty-four, and for the poor, the agricultural workers and manual laborers, twelve dirhams. It is to be collected from them each year. It may be paid in kind, for example, beasts of burden, goods, and other such things. The *jizya* is not to be collected from the indigent who receives alms, nor from a blind man who has no craft and no work, nor from any invalid receiving alms, nor from any cripple. However, it is to be collected from any invalid, cripple, or blind man with means.... No one of the [*dhimmi*] should be beaten in order to exact payment of the *jizya*, nor made to stand in the hot sun, nor should hateful things be inflicted upon their bodies, or anything of that sort. Rather, they should be treated with leniency.²⁵

During this Islamic Golden Age of the Abbasids, Assyrian Christian religious centers flourished, as the *dhimmi* agreements conferred relative freedom and self-autonomy to those concerned.²⁶ With a few exceptions,²⁷ this trend of toleration for

²³ *Id.*; see also 3 *The Oxford Encyclopedia of the Islamic World* at 263 (“In the early caliphal period *jizya* was often confused with *kharaj*, a tax on land that was paid in kind. In the Abbasid era (749-1258), *jizya* was formally defined as a head tax, specific to the *dhimmi*s, and was paid in specie.”).

²⁴ *The Princeton Encyclopedia of Islamic Political Thought* at 283 (“Under the Abbasids, the *jizya* was delineated as a poll tax all *dhimmi*s were required to pay. Rules for the application of the *jizya* were devised. Free, adult males who were not afflicted by any physical or mental illness were required to pay the *jizya*. Women, children, handicapped, the mentally ill, the elderly, and slaves were exempt, as were all travelers and foreigners who did not settle in Muslim lands. In exchange for paying the *jizya*, *dhimmi*s were permitted to practice their religion, were not obligated to serve in the military, and were offered protection by Muslim rulers. Collected yearly, the *jizya* was used to pay salaries, pensions, and charities.”).

²⁵ Stillman, *supra* note 9, at 159-60.

²⁶ Ahmed, *supra* note 7, at 298.

the Assyrian Christians continued up to and through the fourth caliphate, the Ottoman Caliphate (1517-1924), which relied on the *jizya* tax as an important source of revenue.²⁸ During the Ottoman rule, however, “religious clerics and people of certain provinces, such as Serbia and Bosnia,” were not subjected to the taxation or were subjected at a lower rate.²⁹ Under the Ottoman caliphate:

The three leading non-Muslim monotheistic religious communities—the Jewish, the Greek Orthodox, and the Armenian—were established as recognized [*dhimmi*] communities, known as millets . . . and led by their proper religious dignitary. Within each millet communities were responsible for educational and fiscal issues, as well internal personal legal matters (marriage, divorce, inheritance, etc.).³⁰

Times changed. The collapse of the Ottoman caliphate, coupled with the rise of the modern nation-state, caused the imposition of *dhimmi* status and the levying of *jizya* to go out of practice in the first-half of the twentieth century.³¹ In the second-half of the century, the governments of both Iraq and Syria did not impose these limitations on Assyrian Christians. The secular Ba’athist regime in Iraq generally did not engage in the persecution of the Christian community, and at least one Assyrian Christian—Tariq Aziz, one of Saddam Hussein’s closest

²⁷ Notably, and of particular relevance to this letter and the current situation, hundreds-of-thousands of Assyrian Christians were murdered during the First World War by the Ottoman Turks. See, e.g., Uzeyir Bulut, *Why Does No-one Remember the Assyrian Victims of Ottoman Turkey’s Christian Holocaust?*, Int’l Bus. Times (Oct. 28, 2014), <http://www.ibtimes.co.uk/why-does-no-one-remember-assyrian-victims-europes-christian-holocaust-1472128>.

²⁸ Colin Imber, *The Ottoman Empire, 1300-1650: The Structure of Power* 245, 250 (2d ed. 2009) (explaining that the Ottoman *jizya* was used to alleviate the problem of regional and national deficits).

²⁹ *The Princeton Encyclopedia of Islamic Political Thought* at 283.

³⁰ 1 *The Oxford Encyclopedia of Islam and Politics* 51 (Emad El-Din Shahin et al. eds., 1st ed. 2014).

³¹ See *The Princeton Encyclopedia of Islamic Political Thought* at 283-84 (“With the disappearance of Islamic states and the spread of religious tolerance, the *jizya* nearly vanished in the 20th century. . . . The imposition is seen to be at odds with modern secular conceptions of citizenship in the nation-state, which entail the equality of citizens who adhere to different religions.”); 2 *The Oxford Encyclopedia of the Islamic World* at 71-72 (“In the modern period, the *dhimmi* status has in practice become quite meaningless in most Muslim countries. This is a result of the creation of nation-states throughout the Islamic world and the consequent adoption of Western and quasi-Western legal and political systems. Although Islamic law in most instances played some role in the formation of the new sociopolitical order, the *dhimmah* in a traditional sense was usually not represented. This is because former *dhimmis* became citizens of modern states, in which modern conceptions and institutions of nationality and citizenship were more relevant to the nation-state than religious affiliation.”).

advisors—rose to prominence within the regime.³² Likewise, in 1973, the Ba’athist government of Syria ratified a constitution guaranteeing religious freedom to Assyrian Christians and other religious minorities.³³ The 1973 constitution remained in effect until 2012, when a new constitution was passed by referendum amidst the protests and civil unrest which led to the current civil war. The 2012 (*i.e.* current) constitution, like its predecessor, also guarantees religious freedom.³⁴

Indeed, in modern times, almost all Muslim countries have rejected the constructs of *dhimmi* status and *jizya* tax. Such concepts are foreign to secular human rights—for example the Universal Declaration of Human Rights lists religious freedom as a universal right and declares any discrimination based on religion to be contrary to its precepts.³⁵ Modern scholars, therefore, have written that the concepts of *dhimmi* and *jizya* have no place in modern society. As noted scholar and prominent public intellectual Professor Khaled M. Abou El Fadl has explained, “the overwhelming majority of moderate Muslims reject the *dhimma* system as ahistorical, in the sense that it is inappropriate for the age of nation-states and democracies.”³⁶

B. ISIS Represents a Marked Departure From the Recent Islamic Regimes

The rise of ISIS marks a radical departure from the conditions under which Assyrian Christians residing in Iraq and Syria generally lived during prior Islamic and secular regimes. At the hands of ISIS, non-Muslims, in particular Assyrian Christians, have been subjected to horrific instances of murder, burning, decapitation, torture, rape, slavery, kidnapping, and other depraved acts of wanton violence. ISIS has committed these heinous and inexcusable crimes in the name of ISIS’s brand of Islam.

³² See *Tariq Aziz Obituary*, The Guardian (June 5, 2012), <http://www.theguardian.com/world/2015/jun/05/tariq-aziz>.

³³ Const. of Syrian Arab Republic (1973) art. 35 (“(1) The freedom of faith is guaranteed. The state respects all religions. (2) The state guarantees the freedom to hold any religious rites, provided they do not disturb the public order.”), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=44d8a4e84>.

³⁴ Const. of Syrian Arab Republic (2012) art. 3, cls. 3-4 (“The State shall respect all religions, and ensure the freedom to perform all the rituals that do not prejudice public order; The personal status of religious communities shall be protected and respected.”), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5100f02a2>; *id.* art. 33(3) (“Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed . . .”), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5100f02a2>.

³⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), Arts. 7, 18.

³⁶ Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists* 214 (2007).

1. ISIS Has Implemented An Ultraconservative and Ultraviolent Form of Islam

ISIS is a jihadist militant group which follows a fundamentalist, Wahhabi form of Sunni Islam.³⁷ ISIS adheres to a “hardline” version of “Jihadi-Salafism, . . . a distinct ideological movement in Sunni Islam . . . concerned with purifying the faith.”³⁸ ISIS’s ideology is influenced in part by the political thought of the Muslim Brotherhood in Egypt, which “championed the restoration of the caliphate . . . in the earlier 20th century.”³⁹ In contrast with other extremist groups, like al-Qaeda, ISIS “is absolutely uncompromising on doctrinal matters, prioritizing the promotion of [its] unforgiving strain of Salafi thought.”⁴⁰

In October 2006, the Islamic State of Iraq, the predecessor of ISIS, embarked on “an ambitious political project: the founding of a state in Iraq—a proto-caliphate—that would ultimately expand across the region, proclaim itself the full-fledged caliphate, and go on to conquer the rest of the world.”⁴¹ In June 2014, ISIS finally declared a worldwide caliphate, naming Ibrahim Awad Ibrahim al-Badri al-Samarrai (better known as Abu Bakr al-Baghdadi) as its caliph.⁴²

Among other things, ISIS espouses an apocalyptic eschatology, believing in a final Day of Judgment following the defeat of the army of “Rome.”⁴³ This emphasis

³⁷ See, e.g., Cole Bunzel, *From Paper State to Caliphate: The Ideology of the Islamic State*, Mar. 2015, at 7, <http://www.brookings.edu/~media/Research/Files/Papers/2015/03/ideology-of-islamic-state-bunzel/The-ideology-of-the-Islamic-State.pdf?la=en>; Graeme Wood, *What ISIS Really Wants*, *The Atlantic* (Mar. 2015), <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/>; *What is 'Islamic State'?*, BBC News (Dec. 2, 2015), <http://www.bbc.com/news/world-middle-east-29052144>; David Kirkpatrick, *ISIS' Harsh Brand of Islam Is Rooted in Austere Saudi Creed*, *N.Y. Times* (Sept. 24, 2014), http://www.nytimes.com/2014/09/25/world/middleeast/isis-abu-bakr-baghdadi-caliph-wahhabi.html?_r=0.

³⁸ Cole Bunzel, The Brookings Project on U.S. Relations with the Islamic World, *From Paper State to Caliphate: The Ideology of the Islamic State*, Mar. 2015, at 7-8, at <http://www.brookings.edu/~media/research/files/papers/2015/03/ideology-of-islamic-state-bunzel/the-ideology-of-the-islamic-state.pdf>.

³⁹ *Id.* at 7-8.

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 4.

⁴² A caliphate is a state governed in accordance with Islamic law, or Sharia, by God’s deputy on Earth, or caliph. See *Caliphate*, *Encyclopædia Britannica Online*, <http://www.britannica.com/place/Caliphate>; Heather N. Keaney, *Encyclopedia of Islam* 126 (Juan E. Campo et al. eds., 1st ed. 2009).

⁴³ See, e.g., *Dabiq, Issue 1*, at p. 4 (“As for the name of the magazine, then it is taken from the area named Dabiq in the northern countryside of Halab (Aleppo) in Sham. This place was mentioned in a hadith describing some of the events of the Malahim (what is sometimes referred to as Armageddon in English). One of the greatest battles between the Muslims and the crusaders will take place near Dabiq.”); *Dabiq, Issue 1*, at p. 5 (“According to the hadith, the area will play

on eschatology is unique, distinguishing ISIS's theology and worldview from that of other radical forms of Sunni Islam. As Graeme Wood explains:

[ISIS] considers itself a harbinger of—and headline player in—the imminent end of the world. . . . [ISIS] follows a distinctive variety of Islam whose beliefs about the path to the Day of Judgment matter to its strategy . . . All Muslims acknowledge that God is the only one who knows the future. But they also agree that he has offered us a peek at it, in the Koran and in narrations of the Prophet. [ISIS] differs from nearly every other current jihadist movement in believing that it is written into God's script as a central character. It is in this casting that [ISIS] is most boldly distinctive from its predecessors, and clearest in the religious nature of its mission. . . . [ISIS] has its share of worldly concerns (including, in the places it controls, collecting garbage and keeping the water running), but the End of Days is a leitmotif of its propaganda. . . . Now that it has taken Dabiq, [ISIS] awaits the arrival of an enemy army there, whose defeat will initiate the countdown to the apocalypse.⁴⁴

According to certain Islamic teachings adopted by ISIS, after the Day of Judgment, its caliphate will rule the world, and “there will not be any place left for the camp of *kufr* [*i.e.*, Christians, Jews, and other non-Muslims] to exist on the Earth, not even as humbled *dhimmi* subjects living amongst the Muslims in the camp of truth.”⁴⁵

ISIS's actions indicate that ISIS intends to live out the specific intent of destruction of Christians set out in ISIS's violent ideology. Numerous examples exist of ISIS committing violence against Christians,⁴⁶ and on a broad scale, ISIS's brutality towards humanity is of a magnitude not experienced outside the context of genocide.⁴⁷ ISIS has trained children to execute prisoners by gunshot to the head.⁴⁸

a historical role in the battles leading up to the conquests of Constantinople, then Rome.”); *Dabiq*, Issue 2, at p. 3, 6 (referencing Judgment Day); *Dabiq*, Issue 6, at p. 6, 40, 44 (same); *Dabiq*, Issue 7, at p. 10, 15, 32 (same); *Dabiq*, Issue 12, at p. 19, 22, 33 (same); Graeme Wood, *What ISIS Really Wants*, The Atlantic, Mar. 2015, <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/>.

⁴⁴ Wood, *supra* note 37.

⁴⁵ *Dabiq*, Issue 7, at 66; *see also* *Dabiq*, Issue 7, at 23-24 (“Thereafter, *kufr* and its tyranny will be destroyed; Islam and its justice will prevail on the entire Earth.”).

⁴⁶ *See infra* at 13-16.

⁴⁷ *See Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July - 10 September 2014*, Human Rights Office of the High Comm’r for Human Rights et al. 1, at

ISIS has immolated innocent individuals, including the highly publicized burning of a Jordanian pilot.⁴⁹ ISIS has produced numerous propaganda films recording the brutal decapitation of men and women.⁵⁰ This conduct defies comprehension on many levels and by itself demonstrates violations of multiple norms of international law.

In a particularly unimaginable display, ISIS fighters filmed the drowning death of five caged men:

[In June 2015], ISIS released harrowing footage appearing to show caged prisoners being lowered into a swimming pool to drown alongside other horrific executions.

The vile group claimed that 16 men were killed in Nineveh, Iraq, after being accused of spying in a set of horrifying killings.

In the first round of executions, five terrified men can be seen being lowered into the water while locked in a cage together.

http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC_Report_FINAL_6July_10_September2014.pdf.

⁴⁸ See Corey Charlton, *ISIS Child Executioner Ignores Prisoners' Pleas to Spare Them... Then Shoots Them in the Head Without Hesitating: Shocking Footage Shows How Islamic State's Evil Has Spread to the Next Generation*, Daily Mail Online, (July 15, 2015), <http://www.dailymail.co.uk/news/article-3162110/ISIS-child-executioner-ignores-prisoners-pleas-spare-shoots-head-without-hesitating-Shocking-footage-shows-Islamic-State-s-evil-spread-generation.html>; see also, *WATCH: ISIS Child Executioner Kills 'Coalition Spy'*, Heavy (August 3, 2015), <http://heavy.com/news/2015/08/new-isis-video-child-boy-terrorist-soldier-executions-coalition-spy-al-jazira-syria-full-uncensored-youtube-sendvid-video-screengrabs-screenshots-stills/>.

⁴⁹ Brandon Darby, *WARNING GRAPHIC: Complete ISIS Video of Pilot Burned to Death*, Breitbart (Feb. 4, 2015), <http://www.breitbart.com/big-government/2015/02/04/warning-graphic-complete-isis-video-of-pilot-burned-to-death/>.

⁵⁰ See *NEW - ISIS Russian Militant Beheading FSB Agent - Video*, Zero Censorship (Dec. 2, 2015), <http://www.zerocensorship.com/t/uncensored-isis-execution/198315-new-isis-russian-militant-beheading-fsb-agent-video#axzz41gUY2nCP>; *ISIS Child Soldier Beheading Syrian Soldier - Graphic Video*, Zero Censorship (July 17, 2015), <http://www.zerocensorship.com/t/uncensored-isis-execution/140758-isis-child-soldier-beheading-syrian-soldier-graphic-video#axzz41cjcbI5C>.

Minutes later, the cage is lifted, which shows the men lying motionless on the cage floor.⁵¹

The barbaric footage even included underwater scenes from cameras fitted around the swimming pool to capture the view from below water.⁵²

2. ISIS Has Attempted to Eliminate Christians From Its Territory

Not only is ISIS explicit in its specific intent to eradicate all Christians living within the caliphate, its actions are consistent with its ideology. According to noted *jihadi* intellectual, Abu Bakr Naji, for *jihadis* to cleanse the land of infidels requires a *jihad*, which Naji describes as “nothing but violence, crudeness, terrorism, [deterrence], and massacring.”⁵³ ISIS has employed Naji’s work to craft its ideology.⁵⁴ To that end, ISIS has murdered, immolated, kidnapped, and raped an untold number of Assyrian and other Iraqi and Syrian Christians. Our short letter can in no way comprehensively summarize the scope of ISIS’s atrocities. It is no understatement to say that ISIS’s crimes are on the scale of what was done by the Nazis or the Khmer Rouge. Nonetheless, the examples provided herein demonstrate the core contention—to determine whether genocide is taking place the State Department must look past any pretext offered by ISIS and examine the actual facts on the ground.

ISIS has specifically targeted Assyrian Christians for death.⁵⁵ In October 2015, ISIS publicly executed three Assyrians as part of a demand for ransom payments.⁵⁶ In late December 2015, ISIS attacked and “targeted Assyrian businesses in Qamishli, Syria,” killing over 16 people.⁵⁷ ISIS’s murders have even

⁵¹ John Shammas, *ISIS Brutally Execute Prisoners by Drowning in Cage and Blowing Them Up With Grenade Launchers*, Mirror Online (June 23, 2015), <http://www.mirror.co.uk/news/world-news/isis-brutally-execute-prisoners-drowning-5934470>.

⁵² Tom Cleary, *WATCH: New ISIS Video Shows ‘Spies’ Drowned in Cage, Blown Up*, Heavy (June 23, 2015), <http://heavy.com/news/2015/06/isis-islamic-state-executes-drowns-in-cage-blows-up-spies-brutal-video-propaganda-uncensored-youtube-iraqi-espionage-men-killed/>.

⁵³ Hassan Hassan, *Isis Has Reached New Depths of Depravity. But there is a brutal logic behind it*, The Guardian (Feb. 7, 2015), <http://www.theguardian.com/world/2015/feb/08/isis-islamic-state-ideology-sharia-syria-iraq-jordan-pilot>.

⁵⁴ *Id.*

⁵⁵ *Iraq: ISIS Abducting, Killing, Expelling Minorities*, Human Rights Watch (July 19, 2014), <https://www.hrw.org/news/2014/07/19/iraq-isis-abducting-killing-expelling-minorities>.

⁵⁶ *ISIS Execute Three Assyrians in Syria*, Assyrian Int’l News Agency (October 8, 2015), <http://www.aina.org/news/20151008022445.htm>.

⁵⁷ *Assyrian Restaurants Bombed in Qamishli, Syria, 16 Killed*, Assyrian Int’l News Agency (Dec. 30, 2015), <http://www.aina.org/news/20151230181909.htm>.

included children: ISIS militants beheaded four children when they refused to renounce Christianity on the spot.⁵⁸

Second, ISIS fighters have raped and enslaved Assyrian Christians, leading to horrific trauma for the families. One key, relevant example is a family that could not pay the *jizya* because the amount demanded was too high. The family therefore did not have a real choice to pay the *jizya*, and the father had to watch while his wife and daughter were raped in front of him.⁵⁹ Ultimately, after exclaiming that he had been put into an impossible situation, the father committed suicide.⁶⁰ This is typical of ISIS's perverted understanding of *jizya* and does not reflect classical *jizya*. Likewise, in a combination of murder and rape, ISIS fighters beheaded a group of Assyrian Christian men and proceeded to rape their wives and a twelve-year-old daughter.⁶¹ ISIS boasts how it has driven Assyrian Christian women into sexual slavery,⁶² including the publication of a price list for enslaved Yazidi and Christian women as young as one year old.⁶³

⁵⁸ Lazar Berman, *IS Beheaded 4 Christian Children, Says 'Vicar of Baghdad,'* The Times of Israel (Dec. 14, 2014), <http://www.timesofisrael.com/is-beheaded-4-christian-children-says-vicar-of-baghdad/>.

⁵⁹ Leonardo Blair, *Christian Father Commits Suicide After ISIS Members Rape Wife and Daughter in Front of Him Because He Couldn't Pay Poll Tax*, CP World (June 25, 2014), <http://www.christianpost.com/news/christian-father-commits-suicide-after-isis-members-rape-wife-and-daughter-in-front-of-him-because-he-couldnt-pay-poll-tax-122220/>.

⁶⁰ *ISIS Rape Christian Mother and Daughter, Kill 4 Christian Women for Not Wearing Veil*, Assyrian Int'l News Agency (June 23, 2014), <http://www.aina.org/news/20140623185542.htm> ("Dr. Sallama Al Khafaji, a member of the Iraq High Commission for Human Rights, told AINA that on Saturday, June 21 ISIS began demanding a poll tax (*jizya*) from Christians in Mosul (AINA 2014-06-21). In one instance, ISIS members entered the home of an Assyrian family in Mosul and demanded the poll tax (*jizya*). When the Assyrian family said they did not have the money, three ISIS members raped the mother and daughter in front of the husband and father. The husband and father was so traumatized that he committed suicide. "The Christians have told me that they cannot pay this tax," said Dr. Al-Khafaji, "and they say 'what am I to do, shall I kill myself?").

⁶¹ Leonardo Blair, *Inside ISIS: Fighters Promised '72 Eternal Virgins in Heaven' While Christian Women Raped as Husbands Beheaded, Says Ex-Member*, CP World (Sept. 19, 2014), <http://www.christianpost.com/news/inside-isis-fighters-promised-72-eternal-virgins-in-heaven-while-christian-women-raped-as-husbands-beheaded-says-ex-member-126710/>.

⁶² Press Release, Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict, *UN Officials Call for Immediate End to Sexual Violence Against Iraqi Minorities* (Aug. 13, 2014) <http://www.un.org/sexualviolenceinconflict/press-release/iraq-un-officials-call-for-immediate-end-to-sexual-violence-against-iraqi-minorities/> ("'Atrocious accounts on the abduction and detention of Yazidi, Christian, as well as Turkomen and Shabak women, girls and boys, and reports of savage rapes, are reaching us in an alarming manner,' Bangura and Mladenov stated, pointing out that some 1,500 Yazidi and Christian persons may have been forced into sexual slavery.").

⁶³ Sarah Ann Harris, *Isis Price List For Yazidi And Christian Females As Young As One Confirmed As Genuine By UN Official*, The Huffington Post UK (May 8, 2015),

According to another report based on an interview with a former ISIS member, the rape and enslavement of non-Muslim women is common:

[ISIS members] believe it is permissible to sleep with women prisoners even against their will if they are infidels, non-Muslims and apostate women. This happened to Christian women in Al-Raqqa after their husbands were publically beheaded [an ISIS fighter reported]. . . . [In Al-Raqqa] I saw six jihadists demanding that a Christian wom[a]n and her daughter become their wives. The daughter was about 12-13-years-old.⁶⁴

As if to remove any doubt of ISIS's intention with regard to the world's entire Christian community, ISIS has publicly announced its aspiration to open a slave market in "Rome."⁶⁵

ISIS's atrocities against the Assyrian Christians include more than just murder and sexual savagery. Abductions have been common.⁶⁶ To this day, the whereabouts of many Assyrian Christians abducted by ISIS remain unknown.⁶⁷

http://www.huffingtonpost.co.uk/2015/08/05/isis-slave-price-list-genuine-united-nations-official_n_7939080.html ("A 'price list' for Yazidi and Christian females as young as one, written by the so-called Islamic State (IS), has been confirmed as genuine by a UN official who visited Iraq. Zainab Bangura, the UN's Special Representative of the Secretary-General for Sexual Violence in Conflict, said that she had seen the list detailing amounts girls and women were worth as slaves when sold by the terrorist group. . . . [A]fter visiting the region, Bangura believes it to be genuine.").

⁶⁴ Rozh Ahmad, *EXCLUSIVE: Q&A with Former Islamic State Member* (Sept. 28, 2014), http://www.yourmiddleeast.com/culture/exclusive-qa-with-former-islamic-state-member_26696.

⁶⁵ ISIS may interpret "Rome" to mean modern-day Rome or, possibly, Istanbul. Wood, *supra* note 37 ("We will conquer your Rome, break your crosses, and enslave your women," Adnani, the spokesman, promised in one of his periodic valentines to the West. 'If we do not reach that time, then our children and grandchildren will reach it, and they will sell your sons as slaves at the slave market.'").

⁶⁶ *ISIS Captures 250 Assyrians in Syria*, Assyrian Int'l News Agency (Aug. 7, 2015), <http://www.aina.org/news/20150807164958.htm> ("According to reports from human rights groups and observers, ISIS has abducted between 150 and 250 Assyrians from the town of Qaryatain, which fell to ISIS yesterday. Qaryatain is near Homs. According to a press statement from the Syrian Orthodox Archdiocese of Homs, 250 Assyrians were captured by ISIS, including women and children. A number of them were captured at the Syriac Catholic Mar Elian monastery.").

⁶⁷ *4 Assyrians Killed in Hasaka Car Bombing*, Assyrian Int'l News Agency (Sept. 16, 2015), <http://www.aina.org/news/20150916021245.htm> ("Assyrians in Syria have been come under attack since the civil war began. ISIS and other Muslim groups have targeted Assyrians and driven them from their homes and villages. On February 23 ISIS attacked the 35 Assyrian villages on the Khabur river in the Hasaka province. ISIS captured 253 in the initial attack and drove 3,000 Assyrians from their villages. Most have not returned. ISIS subsequently released

Just as devastating has been ISIS's actions in driving Assyrian Christians from their homes.⁶⁸ The Christians in Mosul, for example, were not given the option of staying in their ancestral home.⁶⁹ ISIS fighters stripped the Christians of all their belongings before expelling them, leaving them with only the clothes on their backs.⁷⁰

The situation is so bad that many Assyrian Christians believe "it is no longer possible for Christians to live in Iraq."⁷¹ One refugee reported, for example, that there "is not a single Christian family left in Mosul" and that the last Christian who had stayed—a disabled woman—was told "if you don't [get out] we will cut off your head with a sword."⁷² Similar to how the Nazis forced Jews to wear the Star of David, ISIS has marked Christian homes and businesses with the red ن (transliterated as 'noon' or 'nun') of the Arabic alphabet (the equivalent of the Roman letter N) standing for "Nasara" or 'Nazarenes'—a pejorative Arabic word for Christians.⁷³

Again, the above represents just a small sampling of the transpiring events. Together, these and other actions constitute reprehensible behavior completely distinct from that which came before.⁷⁴

48 of the hostages but is still holding 205. On August 6 the town of Qaryatain, Syria fell to ISIS, who captured up to 250 Assyrians.”).

⁶⁸ *Id.*

⁶⁹ Hamdi Alkhshali & Joshua Berlinger, *Facing Fines, Conversion or Death, Christian Families Flee Mosul*, CNN (July 20, 2014), <http://www.cnn.com/2014/07/19/world/meast/christians-flee-mosul-iraq/>.

⁷⁰ *Id.*

⁷¹ Fazel Hawramy, *'They are savages,' say Christians forced to flee Mosul by Isis*, The Guardian (July 24, 2014), <http://www.theguardian.com/world/2014/jul/24/iraqi-christians-mosul-isis-convert-islam-or-be-executed>.

⁷² *Id.*

⁷³ Christine Sisto, *A Christian Genocide Symbolized by One Letter*, Nat'l Review Online (July 23, 2014), <http://www.nationalreview.com/article/383493/christian-genocide-symbolized-one-letter-christine-sisto>; see also *And Then There Were None: Fed Up and Fearful, Christians are Leaving the Middle East*, The Economist (Jan. 2, 2016), <http://www.economist.com/news/middle-east-and-africa/21684795-fed-up-and-fearful-christians-are-leaving-middle-east-and-then-there-were/> (“Mosul, in northern Iraq, was once home to tens of thousands of Christians. Perceived as supporting the Americans, they were targeted by insurgents after the invasion. A wave of killings in 2008, including that of the local Chaldean archbishop, seemed to mark the low point for the community. Then came IS. When the jihadists entered the city in 2014, they reportedly tagged Christian houses with an “N” for “Nazarene”, and gave their occupants a choice: convert, pay the *jizya*, a tax on non-Muslims, or face possible death. Most fled. In July 2014 IS announced that the city was free of Christians.”).

⁷⁴ 1 *The Oxford Encyclopedia of Islam and Politics* at 50 (“Prevailing classic Islamic thought of pluralism is inclusive, and recognizes religious minorities which enjoy [Koranic] protection with

3. ISIS's Unique and Perverted "Application" of *Dhimmi* Status and the *Jizya*

In no uncertain terms, ISIS's conduct towards Christians is nothing less than savagery.⁷⁵ Some Muslim scholars have denounced ISIS for its actions as contrary to traditional Muslim teaching.⁷⁶ For example, recently 120 Sunni scholars penned an open letter to Abu Bakr al-Baghdadi criticizing how ISIS interprets Islam.⁷⁷

Incredibly, despite these criticisms coming from throughout the Muslim community worldwide, some in the United States have contended, and ISIS purports, that ISIS is simply reinstating traditional *dhimmi* status and *jizya* taxes.⁷⁸ The evidence, however, indicates that ISIS's application of those historical Islamic practices is unique, at best, and is contrary to traditional practice.

First, the evidence strongly suggests that *dhimmi* status is not offered to all Christians. To the contrary, Christians are regularly murdered or enslaved without ever having the opportunity to assume *dhimmi* status. Indeed, ISIS's stated aims of enslaving Christians in the city of "Rome" indicates that ISIS does not intend an honorable co-existence for Christian communities. This could not be more contrary to much of historical Islamic practice. Rather than enslave conquered populations, historically Muslims generally "abolished such cruel practice by awarding all non-Muslim subjects the significant *dhimmi* status," a "special and significant" status derived from Muhammed's teachings that any Muslim who wrongs a *dhimmi* will be against God on the Day of Resurrection.⁷⁹ In this regard, *dhimmi* status during the beginning of Islam could be viewed as being progressive for its time.⁸⁰ But ISIS fails to offer *dhimmi* status to "all" (or, perhaps, any) Assyrian Christians, and ISIS has restored sexual slavery and other "cruel practices" that *dhimmi* status, historically, was designed to replace.

a secondary status. Islam has traditionally been tolerant of religious differences within the Islamic community (ummah) and to a certain extent even encouraged them . . .").

⁷⁵ Hawramy, *supra* note 71.

⁷⁶ Sami Aboudi, *Islamic Scholars Condemn Expulsion of Iraq's 'Christian Brothers'*, Reuters (July 23, 2014), <http://www.reuters.com/article/us-iraq-security-christians-scholars-idUSKBN0FS17Z20140723>.

⁷⁷ Balsam Mustafa, *We Need to Talk About How Islamic State Interprets Islam*, The Conversation (Nov. 30, 2015), <https://theconversation.com/we-need-to-talk-about-how-islamic-state-interprets-islam-51142>; see also Letter from Sultan Muhammad Sa'ad Ababakar et al., to Dr. Ibrahim Awwad Al-Badri et al. (Sept. 19, 2014), <http://www.lettertobaghdadi.com/14/english-v14.pdf>.

⁷⁸ Holocaust Museum Report at 14.

⁷⁹ Saeed Akhtar & Ata ur Rahman, *A Critique of Robert Spencer's Views Regarding Dhimmis and Jizya*, 29 *Al-Idah* 107, 108 (2014).

⁸⁰ Abdelwahab Meddeb, *Islam and the Challenge of Civilization* 18 (2013) (noting that *dhimmi* status was "at the time . . . a liberal, progressive move, for it granted a place to the believers of another faith living in a city ruled over by an Islamic authority.").

Second, the *dhimmi* contracts which ISIS has offered are illusory. On September 3, 2015, ISIS published a *dhimmi* contract that Christians in Al-Qaryaten were forced to sign.⁸¹ ISIS purports to protect the Christians and their property if they abide by the contract, but “anyone [who] violat[es] any of the articles will be treated as a combatant.”⁸² Among the contract’s eleven articles are that Christians may not “make Muslims hear” any recitation of Christian scripture, must “respect Muslims,” and must “abide by ISIS[’s] dress code[.]”⁸³ The contract also sets out the amount of *jizya*—ranging from one to four gold dinars⁸⁴—but there is no provision for a Christian who cannot pay the amount demanded.⁸⁵ Under the plain terms of the contract, something as minor as reciting a Christian scripture loud enough for a Muslim to hear could lead to a Christian being declared a combatant, which in the middle of an ISIS-controlled town is a certain death sentence.

Third, even where it is offered, the *jizya* is frequently too expensive for Assyrian Christians. Consider again the example of the father who could not afford to pay the *jizya*, had to watch his wife and daughter be raped before his eyes, and ultimately committed suicide.⁸⁶ As one observer noted, “The Christians have told me that they cannot pay this tax[,] . . . and they say ‘what am I to do, shall I kill myself?’”⁸⁷ This too is generally contrary to historical practice. In the past, the *jizya* was “so light that it did not constitute a burden . . . especially when we observe that [paying the *jizya*] exempted [the *dhimmi*] from compulsory military service.”⁸⁸ In many respects, the traditional *jizya* “was in number and amount far less than taxes on the Muslims of that state,”⁸⁹ and it was “not to be forcefully collected.”⁹⁰ At a minimum, charging a Christian man more than he can pay is not “so light [as to] not constitute a burden[;]” nor can it be said that ISIS does not “forcefully collect” the *jizya* when it makes a man watch his wife and daughter be raped in front of him

⁸¹ *ISIS Issues Dhimma Contract For Christians To Sign, Orders Them To Pay Jizyah*, Sept. 3, 2015, http://www.memrijttm.org/content/view_print/blog/8704.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ An ISIS gold dinar is 4.25 grams or 21 karat gold. See Rami Galal, *ISIS Has Big Plans for Gold Currency*, U.S. News & World Report, Sept. 18 2015, <http://www.usnews.com/news/articles/2015/09/18/isis-has-big-plans-for-gold-currency>.

⁸⁵ *Supra* note 81.

⁸⁶ See *supra* notes 59-60.

⁸⁷ *Supra* note 59.

⁸⁸ Ahktar & Rahman, *supra* note 79, at 110.

⁸⁹ *Id.*

⁹⁰ *Id.* at 112.

if he is unable to pay. These actions violate basic human rights and are an affront to the traditional Islamic practice.⁹¹

Finally, ISIS has explicitly stated that it applies the *jizya* in large measure to degrade, humiliate, and destroy subject populations. For example, upon bombing a Russian plane and killing 224 civilians, ISIS announced that it would continue its war with Russia until Russia “pays the *jizya* in humiliation.”⁹² This also is against the general Islamic practice. Although there is some debate on the subject, as the recent letter to Baghdadi illustrates,⁹³ most scholars agree that “non-Muslims who were to pay the *jizya* were [not] burdened with any humiliating provisions.”⁹⁴

To recapitulate, *dhimmi* status and the *jizya* are typically not offered to Assyrian Christians, even though it is supposed to be offered to all. Where it is offered, the *jizya* is too high for many Assyrian Christians to pay, meaning it is not actually a choice, when in fact the *jizya* is supposed to be less than what Muslims pay. And to the extent the *jizya* option is offered, ISIS intends for *jizya* to be a humiliation rather than a peaceful co-existence acknowledging Islam’s traditional tolerance for the *dhimmi*.⁹⁵

4. ISIS Has Systematically Destroyed Christian Symbols, Buildings, and Other Aspects of Christian Culture

ISIS has not limited its actions to killing or imposing exorbitant taxes. ISIS has also undertaken a comprehensive effort to eradicate Assyrian Christians from its territory through a full-scale destruction of archeological and historical objects of

⁹¹ See Thomas Arnold, *The Preaching of Islam: A History of the Propagation of the Muslim Faith* 61-62 (1913) (“The collectors of the *jizya* were particularly instructed to show leniency, and refrain from all harsh treatment or the infliction of corporal punishment in the case of non-payment.”).

⁹² *Dabiq*, Issue 12 “(Just Terror), You Think They Are Together, But Their Hearts are Divided”, at 43.

⁹³ See Letter from Sultan Muhammad Sa’ad Ababakar et al., to Dr. Ibrahim Awwad Al-Badri et al., supra note 76, at ¶ 10 (explaining that there are two types of *jizya*, one for those who preemptively attack Muslims, and another for those who don’t wage war on Islam that is levied “without harshness” and is a lower percentage than the tax on Muslims).

⁹⁴ Ziauddin Ahmed, *The Concept of Jizya in Early Islam*, 14 Islamic Studies (Islamabad) 296 (1975); see also Ahktar & Rahman, supra note 79 at 113 (collecting quotation from scholars stating there is “no sound support” for the contention that the *jizya* was made to be paid in humiliation).

⁹⁵ Although it is not the focus of this letter, a word is in order about ISIS’s plan to humiliate Assyrian Christians. Article II(b) of the Genocide Convention includes, among the activities that constitute genocide, “causing serious . . . mental harm to members of the group.” Subjecting all Christians to the *jizya* with the intent of humiliating them could be considered as part of a policy aimed at causing such serious mental harm. One could therefore argue that this use of the *jizya*, in itself, constitutes genocide per the Genocide Convention.

the utmost importance to the Assyrian Christians.⁹⁶ ISIS's actions again contrast sharply with historical Islamic regimes, which generally tolerated and even took steps to preserve and protect the heritage of Christians and other religious minorities. ISIS's destruction of the Assyrian Christians' cultural patrimony demonstrates its intent is to eliminate them from its territory, rather than merely enforce the collection of a *jizya*.

ISIS's campaign against Iraq and Syria's ancient Christian heritage has included the widespread destruction of churches, monasteries, iconography, relics, and historical artifacts. Furthermore, the systematic destruction of Assyrian Christians' unique culture is permanent, and it is compelling evidence of an effort to eliminate the religious-ethnic group itself.

In Syria, ISIS's destruction of Assyrian Christianity's architecture has included the well-documented demolition of the fifth-century Monastery of Saint Elian.⁹⁷ Dedicated to a fourth-century saint, the Monastery was an important pilgrimage site and sheltered hundreds of Syrian Christians. ISIS reportedly used bulldozers to topple its walls and posted pictures of the destruction on Twitter. ISIS also likely destroyed the third-century Dura-Europos Church, which was one of the world's earliest known Christian churches.⁹⁸ Satellite imagery shows a cratered landscape inside the city's mud-brick walls, evidence of widespread destruction by looters.⁹⁹

In Iraq, the devastation has been even more extensive, and the intent to eliminate Christianity equally clear. In June 2014, ISIS fighters were reported to have been instructed to destroy all churches in Mosul.¹⁰⁰ In July 2014, ISIS captured the Chaldean Catholic archdiocese in Mosul and stole or destroyed every

⁹⁶ See, e.g., Wikipedia, *Destruction of Cultural Heritage by ISIL*, https://en.wikipedia.org/wiki/Destruction_of_cultural_heritage_by_ISIL

⁹⁷ See Andrew Curry, *Here Are the Ancient Sites ISIS Has Damaged and Destroyed*, National Geographic (Sept. 1, 2015), <http://news.nationalgeographic.com/2015/09/150901-isis-destruction-looting-ancient-sites-iraq-syria-archaeology/>; see also Jacques Neriah, *The Islamic State's Rules for its Christian Subjects*, Jerusalem Ctr. for Pub. Affairs (Sept. 10, 2015), <http://jcpa.org/islamic-states-rules-christian-subjects/> ("In August 2015, the Islamic State destroyed the Mar Elyan Monastery in the Syrian town of Alkaryatayn, one of the oldest Christian historical shrines in the Middle East, in its bid to eradicate all signs of worship contrary to the Salafist creed.").

⁹⁸ See Curry, *supra* note 97; Deborah Amos & Alison Meuse, *Via Satellite, Tracking the Plunder of Middle East Cultural History* (Mar. 11, 2015), <http://www.npr.org/sections/parallels/2015/03/10/392077801/via-satellite-tracking-the-plunder-of-middle-east-cultural-history/>.

⁹⁹ *Id.*

¹⁰⁰ Hawar Berwani, *ISIL Orders Destruction of All Churches in Mosul*, Iraqi News (June 16, 2014), <http://www.iraqinews.com/iraq-war/isil-instructs-to-destroy-churches-in-mosul/>; see also *All 45 Christian Institutions in Mosul Destroyed or Occupied By ISIS*, Assyrian Int'l News Agency (July 29, 2014), <http://www.aina.org/news/20140729100528.htm>.

Christian symbol in the building.¹⁰¹ To make clear their relationship with and view of the Assyrian Christians, ISIS militants then proclaimed, “There is no bishop nor Church in the Islamic State.” ISIS also destroyed the Monastery of Benham and the Monastery of St. Elijah, respectively founded in the fourth and sixth centuries.¹⁰² As a result, as the Rev. Emanuel Youkhana, the head of Christian Aid Program Northern Iraq, commented last year, “For the first time in 2,000 years, there are no church services in Mosul.”¹⁰³

Finally, ISIS is even systematically destroying ancient Assyrian cities, monuments, and artifacts that predate Christianity, a destruction that attests to Assyrian indigeneity in Nineveh. ISIS is denying Assyrians their future and their past. On January 28, 2015, ISIS demolished a large portion of the ancient wall of Nineveh in Mosul considered one of the most treasured archeological sites in the Middle East.¹⁰⁴ On March 6, 2015, ISIS literally bulldozed the 3,300-year-old city of Nimrod. Mr. Qassim al-Sudani, an Iraqi ministry spokesman said “What ISIS did in Nimrud city is considered as a big loss to humanity in general. It is the loss of a national treasure.”¹⁰⁵ On March 11, 2015, ISIS destroyed the ancient city of Khorsabad, an Assyrian Capital where one of the best preserved architectural treasures was located since 700 BCE.¹⁰⁶ All of this illustrates ISIS’s decision to annihilate the culture of an entire people in their land.

The list goes on.¹⁰⁷

¹⁰¹ Jacques Neriah, *The Islamic State’s Rules for its Christian Subjects*, Jerusalem Ctr. for Pub. Affairs (Sept. 10, 2015), <http://jcpa.org/islamic-states-rules-christian-subjects/>.

¹⁰² *Isis Has Destroyed Iraq’s Oldest Christian Monastery, Satellite Images Confirm*, The Guardian (Jan. 20, 2016), <http://www.theguardian.com/world/2016/jan/20/isis-has-destroyed-iraqs-oldest-christian-monastery-satellite-images-confirm> (Monastery of Saint Benham); Andrew Curry, *Here Are the Ancient Sites ISIS Has Damaged and Destroyed*, National Geographic (Sept. 1, 2015), <http://news.nationalgeographic.com/2015/09/150901-isis-destruction-looting-ancient-sites-iraq-syria-archaeology/> (Monastery of Saint Elijah).

¹⁰³ Eliza Griswold, *Is This the End of Christianity in the Middle East?*, N.Y. Times (July 22, 2015), <http://www.nytimes.com/2015/07/26/magazine/is-this-the-end-of-christianity-in-the-middle-east.html>.

¹⁰⁴ Abdelhak Mamoun, *ISIS Detonates Large Parts of Nineveh Historical Wall*, Iraqi News (Jan. 28, 2015), <http://www.iraqinews.com/iraq-war/isis-detonates-large-parts-nineveh-historical-wall/>.

¹⁰⁵ Tamer El-Ghobashy, *Iraq Officials Denounce Islamic State’s Destruction of Ancient Site*, Wall Street J. (Mar. 7, 2015), <http://www.wsj.com/articles/nimrud-iraq-officials-denounce-islamic-states-destruction-of-ancient-site-1425653551>.

¹⁰⁶ Curry, *supra* note 97.

¹⁰⁷ See generally Amer Abdullah al-Jumaili, *Destruction of the Cultural, Archaeological and Religious Monuments by Terrorists of ISIS* (June 20, 2015) (summarizing ISIS’s destruction of the churches, monasteries, and other significant religious and cultural monuments and landmarks in Mosul and the Nineveh Plain between December 2014 and March 2015).

IV. Analysis

Our analysis focuses on two salient points. First, under the law of genocide, one must look past any stated pretext and examine the actual facts. The question of whether there is intent to commit genocide cannot be answered simply by accepting at face-value statements of the accused perpetrators. This is a simple but crucial point, particularly in the context of genocide where history shows that those who commit genocide almost always offer some sort of pretext for their behavior.

Second, ISIS's purported practice of *dhimmi* and *jizya*—to the extent they are in fact offered to Assyrians—cannot by themselves preclude a finding that ISIS has the specific intent necessary to commit genocide. ISIS's specific intent is clear, for ISIS has stated its intent in its publications and ideology. Moreover, ISIS has made that intent manifest by the repeated actions it has taken to destroy the Assyrian Christian community.

A. The Applicable Law of Genocide

The world has recognized genocide as a crime against humanity since the adoption by the United Nations of the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) on December 9, 1948. The Genocide Convention prohibits the intentional destruction, in whole or in part, of a national, ethnic, racial, or religious group.

Article 2 of the Genocide Convention defines a series of actions as genocide if those actions are “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”¹⁰⁸ Genocidal conduct includes:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.¹⁰⁹

¹⁰⁸ Genocide Convention, Art. II.

Article 3 states that the Convention is violated if a perpetrator commits genocide, conspires to commit genocide, directly and publicly incites others to commit genocide, attempts to commit genocide, or is complicit in genocide.¹¹⁰ Notably, the Genocide Convention does not list any circumstances under which genocidal conduct is excused.¹¹¹

Under Article 2, one must consider the intent of the actor in order to determine whether genocide has occurred. The proscribed conduct must be “committed with intent to destroy.”¹¹² This intent is “an ulterior intent” beyond just the immediate intent of the exact action being taken; thus, killing a person may be murder, if the killer intends to kill, but it is also genocide if the murder is committed as part of an intent to destroy a group.¹¹³

The various international criminal courts have offered similar definitions of the intent necessary to prove genocide. In the leading case, the International Criminal Tribunal for Rwanda understood “intent to destroy” as “the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged” or “the clear intent to cause the offense.”¹¹⁴ Notably, that there is an intent to kill present in ISIS’s murders is beyond question. To find the “intent to destroy” one need only refer to ISIS’s publications and ideology that set out just such a specific intent.

Because intent is an issue in establishing genocide, the issue of pretext is a necessary consideration. Pretext is “a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs.”¹¹⁵ Pretextual statements and conduct, therefore, are designed to obscure an actor’s true intent.¹¹⁶

¹⁰⁹ *Id.*

¹¹⁰ *Id.*, Art. III.

¹¹¹ The United States implemented the Genocide Convention as a matter of U.S. law in the Genocide Convention Implementation Act of 1987. 18 U.S.C. § 1091 *et seq.* The U.S. statute defines genocide in a manner similar to the Genocide Convention but expressly recites “specific intent” to destroy the national, ethnic, racial, or religious group. 18 U.S.C. § 1091(a). However, Congress provided that the Genocide Convention Implementation Act shall not “be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.” 18 U.S.C. § 1092; *see also Kadic v. Karadzic*, 70 F.3d 232, 242 (2d Cir. 1995).

¹¹² Genocide Convention, Art. II.

¹¹³ Kai Ambos, *What Does Intent to Destroy in Genocide Mean?*, 91 Int’l Rev. of the Red Cross 833, 835 (2009).

¹¹⁴ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, ¶ 498 (Sept. 2, 1998).

¹¹⁵ *Merriam-Webster’s Collegiate Dictionary* 984 (11th ed. 2004).

¹¹⁶ *See, e.g., Smith v. State*, 965 S.W.2d 509, 512 (Tex. Crim. App. 1998) (“[I]f the defendant provoked another to make an attack on him, so that the defendant would have a pretext for killing the other under the guise of self-defense, the defendant forfeits his right of self-defense.”); *People v. Silva*, 987 P.2d 909, 914 (Colo. App. 1999), as modified on denial of reh’g (May 27, 1999)

In the case of genocide, if a stated policy or position is mere pretext, the actor's real intent differs from his purportedly justifiable stated intent. Moreover, proof that a stated intent is pretextual necessarily means that there is another, true intent. When that pretext is exposed for what it is, the law then looks to the actual conduct taking place to infer intent. "A criminal intent is generally an element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does."¹¹⁷

Furthermore, the issue of true intent can be illuminated by conduct amounting to "cultural genocide."¹¹⁸ Accepted interpretations of the Genocide Convention conclude that "cultural genocide" is not included within the scope of proscribed actions.¹¹⁹ Cultural genocide is contemplated to cover conduct that prohibits the use of local languages and schools, bans or restricts cultural and artistic activities relating to the particular culture, and destroys or confiscates "national treasures, libraries, archives, museums, artifacts, and art galleries."¹²⁰

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

("[A] defendant's assertion of self-defense is lost if he or she acted with intent to provoke the victim into attacking first in order to provide the defendant with the excuse to injure or kill the victim.").

¹¹⁷ *Reynolds v. United States*, 98 U.S. 145, 167 (1879).

¹¹⁸ The term "cultural genocide" is generally, although not universally, defined to mean "the [systematic] destruction of a culture without the killing of its bearers." Lorie M. Graham, *Reparations, Self-Determination, and the Seventh Generation*, 21 Harv. Hum. Rights 1. 47, 67 (2008) (quoting Frank Chalk & Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* 8-10 (1990)).

¹¹⁹ See Daphne Anayiotos, *The Cultural Genocide Debate: Should the UN Genocide Convention Include a Provision on Cultural Genocide or Should the Phenomenon be Encompassed in a Separate International Treaty?*, 22 N.Y. Int'l L. Rev. 99, 114 (2009).

¹²⁰ See, e.g., Raphael Lemkin, *Axis Rule in Occupied Europe* 84 (1944); see also David Nersessian, *Rethinking Cultural Genocide Under International Law*, *Human Rights Dialogue: Cultural Rights*, Carnegie Council (Apr. 22, 2005) http://www.carnegiecouncil.org/en_US/publications/archive/dialogue/2_12/section_1/5139.html.

museums, artifacts, and art galleries are destroyed or confiscated.¹²¹

Accepted interpretations of the Genocide Convention conclude that “cultural genocide” is not included within the scope of proscribed actions.¹²² “[C]ustomary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of a group. [A]n enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide.”¹²³ Early drafts of the Genocide Convention prohibited cultural genocide, but those provisions were dropped in the text of the final Convention.¹²⁴ Thus, cultural genocide by itself is not a violation of the Genocide Convention.¹²⁵ Nevertheless, acts relating to cultural genocide can evince the intent of a genocide perpetrator to destroy the protected group. For example, the International Tribunal for the Former Yugoslavia concluded that the Serbian destruction of mosques and Muslim libraries and the attacks on cultural leaders was evidence of genocidal intent against Muslims in the former Yugoslavia.¹²⁶

B. ISIS’s Perverted Application of the *Dhimmi* Contract and *Jizya* Tax Appears to Be a Pretext for Genocide

There can be little doubt that ISIS is committing genocide against certain religious minority groups within its territory. The most apparent is ISIS’s attempt to exterminate the Yazidis. The Holocaust Museum’s report concluded that ISIS committed genocide against the Yazidis.¹²⁷ Furthermore, the report concluded that ISIS committed crimes against humanity against all Christians in ISIS-controlled territory.¹²⁸

At the same time, there has been some suggestion that ISIS’s actions against Assyrian Christians cannot constitute genocide because ISIS offers *dhimmi* status

¹²¹ Nersessian *supra* note 120.

¹²² Anayiotos *supra* note 119.

¹²³ *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-T, ¶ 580 (Aug. 2, 2001) (quoted with approval by Appeals Chamber, *Prosecutor v. Krstic*, No. IT-98-33-A, ¶ 25 (Apr. 19, 2004)); *see also* William A. Schabas, *Genocide in International Law* 229 (2000).

¹²⁴ Anayiotos, *supra* note 119, at 113-14.

¹²⁵ *Id.* at 114-15.

¹²⁶ Robert Bevan, *As Islamic State Continues its Destruction, There Is An Urgent Need For Cultural Vandalism To Be Reclassified As Genocidal*, The Art Newspaper (Apr. 1, 2015), <http://theartnewspaper.com/comment/comment/as-islamic-state-continues-its-destruction-there-is-an-urgent-need-for-cultural-vandalism-to-be-recl/>.

¹²⁷ *Holocaust Museum Report* at 18.

¹²⁸ *Id.*

and *jizya* tax as an alternative to execution.¹²⁹ Possibly due in part to this contention, “administration officials and State Department lawyers have weighed labeling [ISIS’s] acts ‘crimes against humanity.’”¹³⁰ Our review of the law and facts identifies the flaws in the argument that ISIS’s institution of *dhimmi* and *jizya* can preclude a finding of genocide.

ISIS’s purported practice of offering a *dhimmi* contract and *jizya* tax does not preclude a finding that ISIS’s persecution of Assyrian Christians constitutes genocide. The most reasonable conclusion, based on the totality of facts available for review, is that ISIS’s implementation of *dhimmi* and *jizya* is mere pretext. Interested Organizations assert that the State Department, too, must determine if ISIS’s policies are a pretext and, if so, look past them to determine the true facts and intent behind ISIS’s activities. When critically reviewed, the facts and law reveal a number of clear observations that warrant, at a minimum, an investigation into ISIS’s likely genocidal conduct.

First, the imposition of *jizya* and *dhimmi* in their classic sense violates some of the most basic, fundamental tenets of international human rights. In the century that followed the Ottoman Turks’ abolition of *dhimmi* and *jizya*, the entire world recognized the right to practice one’s religious faith in Article 18 of the Universal Declaration of Human Rights.¹³¹ That substantive right, moreover, is protected by the procedural right in Article 7 which grants all “equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”¹³² Many countries, including Arab countries, therefore enshrine freedom of religion in their constitutions.¹³³ The imposition of the *jizya* is “at odds with modern secular conceptions in the nation-state, which entail the equality of citizens who adhere to different religions.”¹³⁴ Indeed, it is difficult to imagine that any modern regime respectful of basic human rights would permit the subjugation of a class of people simply because that class did not believe in a particular religion.

For good reason, concepts such as *jizya* and *dhimmi* have no place in civilized modern nations. *Jizya* and *dhimmi* were last employed by a recognized state when

¹²⁹ *Id.* at 21.

¹³⁰ Michael Isikoff, *Kerry Weighs ‘Genocide’ Label for Islamic State*, Yahoo (Feb. 24, 2016), <https://www.yahoo.com/politics/kerry-weighs-genocide-label-for-islamic-state-014813753.html>.

¹³¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights U. N. Doc. A/810 (Dec. 10, 1948), Art. 18. (“Everyone has the right to freedom of . . . religion; this right includes freedom to change his religion or belief . . .”).

¹³² *Id.*, Art 7.

¹³³ See U.S. Const. amend I; Syrian Const. of 1973 Art. 35, *supra* note 33; Syrian Const. of 2012 Art.3, *supra* note 34.

¹³⁴ *The Princeton Encyclopedia of Islamic Political Thought* at 283-84..

the Ottomans enforced them prior to the First World War.¹³⁵ *Jizya* is basically extinct. In the 21st century, only the Taliban and ISIS have attempted to levy it.¹³⁶

If classical *jizya* contravenes human rights, then ISIS's perverted application, in which even children are forced to choose between conversion and death, is a complete abomination. ISIS has no respect for the Assyrian Christians' freedom of religion and certainly does not recognize their "right . . . to change [their] religion or belief[s]"—unless that change is a forced conversion to Islam. There is no freedom at all when the only alternative for most is death or, in the best of cases, an onerous tax. Thus, a so-called alternative to death that grossly violates international norms cannot excuse ISIS's genocidal activities.¹³⁷

Second, there have been reports that, in certain areas of ISIS-controlled territories, it is no longer the policy of ISIS to offer the *jizya* as an alternative to death or forced-conversion to Islam. For instance, one editorial by The San Diego Union-Tribune stated that, in June 2014, "little more than a day before the deadline, ISIS revoked the option of paying the *jizya*."¹³⁸ After the revocation, "[t]he only options were convert, flee or be killed."¹³⁹

Third, ISIS's professed ideology and goals state a specific intent of ultimately destroying the Assyrian Christian community in Iraq and Syria. ISIS seeks to establish a global Islamic Caliphate from which all religious minorities—including Assyrian Christians—are eliminated.¹⁴⁰ There is no reason or evidence to dispute that ISIS's stated intent accurately reflects its true intent. ISIS has the intent of destroying the Assyrian Christian community. That stated intent runs contrary to both classical and ISIS's perverted views of *jizya* and *dhimmi*. It is necessarily true that *jizya* cannot be a possibility if those who would take *dhimmi* status are eliminated.

Fourth, ISIS's stated policy towards non-Muslim women again reveals its true intent towards Assyrian Christians. In a pamphlet issued by the Research and Fatwa Department of the Islamic State (ISIS), ISIS explained its philosophy towards capturing and raping non-Muslim captured women.¹⁴¹

¹³⁵ See *id.*; 2 *The Oxford Encyclopedia of the Islamic World* at 71-72.

¹³⁶ *The Princeton Encyclopedia of Islamic Political Thought* at 283-84.

¹³⁷ *Supra* at 122-25.

¹³⁸ U-T San Diego Editorial Board, *The Death of Christianity in Mosul*, San Diego Union Trib. (July 22, 2014), <http://www.sandiegouniontribune.com/news/2014/jul/22/christianity-iraq-mosul-isis-purge-arabo/>.

¹³⁹ *Id.*

¹⁴⁰ *Supra* note 45.

¹⁴¹ ISIS Pamphlet on Female Slaves (Dec. 4, 2015) available at <http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html>.

Question 3: Can all unbelieving women be taken captive?

There is no dispute among the scholars that it is permissible to capture unbelieving women [who are characterized by] original unbelief [kufr asli], such as the kitabiyat [women from among the People of the Book, i.e. Jews and Christians] and polytheists. However, [the scholars] are disputed over [the issue of] capturing apostate women. The consensus leans towards forbidding it, though some people of knowledge think it permissible. We [ISIS] lean towards accepting the consensus...

Question 4: Is it permissible to have intercourse with a female captive?

It is permissible to have sexual intercourse with the female captive. Allah the almighty said: “[Successful are the believers] who guard their chastity, except from their wives or (the captives and slaves) that their right hands possess, for then they are free from blame [Koran 23:5-6]”...

Question 13: Is it permissible to have intercourse with a female slave who has not reached puberty?

It is permissible to have intercourse with the female slave who hasn't reached puberty if she is fit for intercourse; however if she is not fit for intercourse, then it is enough to enjoy her without intercourse.

Question 17: What is al-'azl?

Al-'azl is refraining from ejaculating on a woman's pudendum [*i.e.* coitus interruptus].

Question 18: May a man use the al-'azl [technique] with his female slave?

A man is allowed [to use] al-'azl during intercourse with his female slave with or without her consent.

Question 19: Is it permissible to beat a female slave?

It is permissible to beat the female slave as a [form of] *darb ta'deeb* [disciplinary beating], [but] it is forbidden to [use] *darb al-takseer* [literally, breaking beating], [darb] *al-tashaffi* [beating for the purpose of achieving gratification], or [darb] *al-ta'dheeb* [torture beating]. Further, it is forbidden to hit the face.¹⁴²

ISIS's apparently detailed and twisted rules for treating captured women directly contradict any purported tolerance that is allegedly embodied by *dhimmi* status and the *jizya* tax. All of these so-called "unbelieving women" should be offered the respite of *dhimmi* and *jizya*, yet ISIS has expressly stated that it is permissible for ISIS militants to rape captured Assyrian Christian women.

Indeed, precedent from the UN's International Criminal Tribunal suggests the detailed, almost bureaucratic, guidelines on the rape and abuse of Assyrian Christian women, and its widespread practice among ISIS militants, can and should be viewed as evidence of genocidal intent. For example, in the judgment entered in the prosecution of Jean-Paul Akayesu, which found the Hutu Rwandan guilty of nine counts of genocide and other crimes against humanity, the tribunal explained that rape and other types of sexual assault constitute genocide when committed with intent to destroy the targeted group as such.¹⁴³

[T]he Chamber holds that the measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group. Furthermore, . . . rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members

¹⁴² *Islamic State (ISI) Releases Pamphlet on Female Slaves*, Memri (Dec. 4, 2014), <http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html>.

¹⁴³ *Akayesu*, *supra* note 114, at ¶¶ 507-08.

of a group can be led, through threats or trauma, not to procreate.¹⁴⁴

At the very least, it shows ISIS's imposition of *dhimmi* and levying of *jizya* is pretextual, as its faithful application would require ISIS to protect, rather than abuse, Christian minorities.

Fourth, ISIS is implementing its stated goals by, *inter alia*, destroying all of the Christian churches and monasteries within its territory.¹⁴⁵ The deliberate "destruction of religious institutions" is a form of "cultural genocide."¹⁴⁶ Although "cultural genocide" is not among the conduct proscribed by the Genocide Convention,¹⁴⁷ it may nevertheless show an "intent to destroy" the targeted group "as such."

It was precisely this type of cultural genocide that supported a finding of genocide in Srebrenica. In 2001, the International Tribunal for the Former Yugoslavia concluded that Bosnian Serbs' destruction of "the principal mosque in Srebrenica" was evidence of their genocidal intent.¹⁴⁸ The International Tribunal explained that "[i]ntent by the Bosnian Serb forces to target the Bosnian Muslims of Srebrenica as a group is further evidenced by their destroying homes of Bosnian Muslims in Srebrenica and Potoari and the principal mosque in Srebrenica soon after the attack."¹⁴⁹ The International Tribunal also noted that, "where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group."¹⁵⁰ The Tribunal thus expressly considered "as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group."¹⁵¹

Fifth, even if traditional *dhimmi* and *jizya* were acceptable practices in modern societies, ISIS does not impose *dhimmi* status and levy *jizya* as written or as generally practiced in historical Islam. To the contrary, ISIS imposes a perverted type of *dhimmi* status and levies *jizya* in an arbitrary and capricious

¹⁴⁴ *Id.*

¹⁴⁵ *Supra* at 19-21.

¹⁴⁶ *See* Nersessian, *supra* note 120.

¹⁴⁷ *See* Anayiotos, *supra* note 119.

¹⁴⁸ *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-T, Judgment, ¶ 595 (Aug. 2, 2001).

¹⁴⁹ *Id.* at ¶ 580.

¹⁵⁰ *Id.* at ¶ 580.

¹⁵¹ *Id.*

manner;¹⁵² furthermore, it does not make those options available to many Assyrian Christians.¹⁵³

Nor is there any evidence that ISIS applies *jizya* and *dhimmi* as they are supposed to applied. There is no evidence that ISIS abides by traditional limitations on *jizya*. If, for example, “The *jizya* is not to be collected from the indigent who receives alms, nor from a blind man who has no craft and no work, nor from any invalid receiving alms, nor from any cripple,”¹⁵⁴ then how does one explain ISIS’s action in forcing the last Christian in Mosul, a disabled woman, from her home?¹⁵⁵ Likewise, there is no evidence that ISIS is able to or intends to protect Christians from attackers; to the contrary, the evidence thus far suggests ISIS is the group that is attacking Christians.¹⁵⁶

News reports show that the *jizya* is often excessive, such that Assyrian Christians do not in fact have the choice to pay it.¹⁵⁷ If the average Assyrian Christian cannot pay the tax, it is reasonable to believe the tax is intended to “inflict[] on [Assyrian Christians] conditions of life calculated to bring about [their] physical destruction in whole or in part” or that the tax is part of a broader strategy “inten[ded] to destroy, in whole or in part,” the Assyrian Christian community in Iraq and Syria.¹⁵⁸

C. Similar to ISIS’s Conduct, Many Past Perpetrators of Genocide Have Employed Pretexts to Obscure the True Intent

It should come as no surprise that ISIS’s application of *dhimmi* and *jizya* are mere pretexts to ISIS’s true intention of annihilating Christians within its territory. Those who commit such horrendous crimes often, for various reasons, attempt to offer justifications for their actions. Indeed, pretextual justifications are a recurring feature seen throughout previous genocides. As scholar René Lemarchand has noted, “[e]very genocide is unique . . . but the deliberate concealment or

¹⁵² *Supra* at 17-19.

¹⁵³ *Supra* at 17.

¹⁵⁴ Stillman, *supra* note 9, at 159-60.

¹⁵⁵ Hawramy, *supra* note 71.

¹⁵⁶ See Laretta Brown, *Congressmen Seek Declaration: Slaughter of Middle Eastern Christians is Genocide*, CNS News (Dec. 17, 2015), at <http://www.cnsnews.com/news/article/lauretta-brown/members-congress-push-recognition-isis-genocide-middle-east-christians> (“‘This tax contract is to provide protection and the right to worship in exchange,’ Shea said. ‘In fact, ISIS provides neither, and we know this, because the tax has been applied both in Raqqa and in Mosul. There is no evidence of any Christian, of any open Christian activity in either of those cities today. All of the churches are closed or destroyed or have been converted to mosques in those two cities.’”).

¹⁵⁷ *Supra* notes 59-60.

¹⁵⁸ See Genocide Convention, Art. II.

manipulation of the facts by the perpetrators is more often the rule than the exception.”¹⁵⁹

History confirms Lemarchand’s pronouncement, as illustrated by the following brief examples. The objective here is not to provide detailed accounts of prior genocide. Rather, the brief discussion underscores the common approach of those who commit genocide and how every group oppressor will offer a justification for its conduct which turns out to be mere pretext for the oppressor’s true intent. Pretexts have been at the core of past genocides; the State Department must scrutinize ISIS’s current pretext or risk a repeat of the tragedies of history.

In 1972, the Hutus started an insurgency against the Tutsi-controlled government of Burundi. It was, without question, a violent insurgency in which the Hutus killed two to three thousand Tutsis.¹⁶⁰ But the ruling Tutsi party took the opportunity of putting down the insurgency as a pretext to kill about 150,000 Hutus. The ruling officials “used the ‘clear and present danger’ posed by the Hutu insurgency as a pretext to go far beyond the immediate exigency of restoring peace and order.”¹⁶¹ “[T]he ultimate objective was to systematically kill all educated Hutu elements, including civil servants, university students, and school children, and in doing so eliminate for the foreseeable future any serious threat of Hutu rebellion.”¹⁶²

Moreover, the Burundi genocide against the Hutus—and the fact that nothing was done to punish the perpetrators¹⁶³—had stark consequences: “[T]he long-term effects of the genocide have enormously complicated the quest for a peaceful solution of the Hutu-Tutsi question.”¹⁶⁴ That complication became a tangible reality twenty-two years later in neighboring Rwanda when the Hutu majority in that country began a much-larger genocide against the Tutsis.¹⁶⁵ The event that triggered the genocide was the shooting down of Hutu President Juvénal Habyarimana’s plane. To this day, no one knows precisely who shot the plane down, but some scholars claim it was Hutus that did it to give them a pretext for

¹⁵⁹ René Lemarchand, *Forgotten Genocides: Oblivion, Denial, and Memory* viii (2011).

¹⁶⁰ René Lemarchand, *The Burundi Genocide, in Century of Genocide: Eyewitness Accounts and Critical Views* 322 (Samuel Totten, William S. Parsons, Israel W. Charny eds., 1997).

¹⁶¹ *Id.* at 323 (emphasis added).

¹⁶² *Id.* at 323 (emphasis added).

¹⁶³ The U.S.’s response to the Burundi genocide was described by the Carnegie Endowment for International Peace as a combination of “indifference, inertia, and irresponsibility.” International reaction in general was “low-key. *Century of Genocide*, at 317-18.

¹⁶⁴ *Id.* at 326.

¹⁶⁵ René Lemarchand, *Burundi Genocide, in 4 Modern Genocide 1710, 1712* (Paul Bartrop and Steven Jacobs eds., 2015).

the slaughter than ensued.¹⁶⁶ Regardless, like the Hutu insurgency in Burundi, the incident offered a pretext for genocide.

Pretext then was used to hide what was happening on the ground. Media reports described the events in Rwanda as “tribal bloodlust” or a reflection of “age-old animosity,” and the U.S. ambassador initially agreed with this assessment.¹⁶⁷ “The Hutu government itself fostered this image of spontaneous mob violence in an effort to allay international concern.”¹⁶⁸ But this was only a pretext, as Hutu hardliners heading various militia groups led, organized, and encouraged the genocide itself.¹⁶⁹ “[T]he Rwandan genocide is another example of a planned and deliberate attempt to exterminate a population[.]”¹⁷⁰ Senior U.S. officials believed that a genocide was taking place but unfortunately took no action, quite possibly due to the pretextual obfuscation.¹⁷¹

Another example is the first recognized genocide of the 20th century against the Herero people in Southwest Africa.¹⁷² In 1904, the German authorities in present-day Namibia killed an estimated 81 percent of the Herero tribe, totaling tens of thousands of people.¹⁷³ The slaughter began after a Herero uprising, following years of tension over cattle and grazing lands; but from the very outset, local commentators recognized that the uprising would give the German authorities the pretext needed to eradicate the Herero. “[A] number of settlers voiced the opinion that the uprising was a positive advantage because it gave the Germans the chance to annihilate the natives.”¹⁷⁴ As one missionary reported, “The Germans are consumed with inexpiable hatred and a terrible thirst for revenge, one might even say they are thirsting for the blood of the Herero. All you hear these days is . . . ‘make a clean sweep, hang them, shoot them all to the last man, give no quarter.’”¹⁷⁵

¹⁶⁶ René Lemarchand, *Rwandan Genocide Causes*, in 4 *Modern Genocide* 1674, 1674 (Paul Bartrop and Steven Jacobs eds., 2015).

¹⁶⁷ Alex Alvarez, *Governments, Citizens, and Genocide: A Comparative Interdisciplinary Approach*, 82 (2001).

¹⁶⁸ *Id.*

¹⁶⁹ René Lemarchand, *Rwandan Genocide Perpetrators*, in 4 *Modern Genocide* 1676, 1677 (Paul Bartrop and Steven Jacobs eds., 2015).

¹⁷⁰ Alvarez, *supra* note 167, at 82.

¹⁷¹ Paul Pierpaoli Jr., *U.S. Response to the Rwandan Genocide*, in 4 *Modern Genocide* 1803, 1803-04 (Paul Bartrop and Steven Jacobs eds., 2015).

¹⁷² Steven Leonard Jacobs, *Herero Genocide Overview*, in 2 *Modern Genocide* 999, 999 (Paul Bartrop and Steven Jacobs eds., 2015).

¹⁷³ Jon Bridgman & Leslie J. Worley, *Genocide of the Hereros*, in *Century of Genocide: Eyewitness Accounts and Critical Views* 19 (Samuel Totten, William S. Parsons, Israel W. Charny eds., 1997).

¹⁷⁴ *Id.* at 8.

¹⁷⁵ *Id.*

Using the uprising as a pretext for reprisals, German general Lothar von Trotha set out to destroy the Herero people. And here another pretext arose. After a battlefield victory, von Trotha forced the Herero into the desert then prevented the Herero from accessing any of the water wells in the region. Notably, von Trotha defended his actions to the German press, saying he could not give water to women and children for fear of his own men lacking water.¹⁷⁶ This was a pretext; in fact the Germans did not need the wells and had poisoned them, forcing the Herero into an impossible choice.¹⁷⁷

Even after the rebellion was put down further pretexts emerged. From 1905 to 1908, on the pretext of placing the Herero into work camps, the Germans forced the Herero into one of the earliest historical instances of concentration camps. As with von Trotha's earlier actions, the punitive "work camps" were a pretext for genocide; over 70 percent of the Herero in the camps died within three years.

Perhaps the most salient and directly relevant historical example of all, however, is a series of genocides that scholars recognize, even though the U.S. government has declined to do so. The death of one and a half million Armenians at the hands of the Ottoman Turks between 1915 and 1923 has been recognized by scholars as "one of the largest [genocides] in world history"¹⁷⁸ and, along with the Holocaust, as one of the "quintessential instances of total genocide in the modern era."¹⁷⁹

The Armenian Genocide is important to consider in the present circumstances for several reasons. First, it took place in the same general region that ISIS is operating in and also involved a Muslim government committing atrocities against a Christian minority during a time of war. Second, and of particular relevance, a second genocide against the Assyrian Christians occurred concomitantly and as part of the same overall Turkish strategy.¹⁸⁰ The Assyrian

¹⁷⁶ *Id.* at 14.

¹⁷⁷ *Id.*

¹⁷⁸ Alan Whitehorn, *Armenian Genocide Overview*, in 1 *Modern Genocide* 3, 5 (Paul Bartrop and Steven Jacobs eds., 2015).

¹⁷⁹ Robert Melson, *Armenian Genocide and Holocaust Compared*, in 1 *Modern Genocide* 47, 47 (Paul Bartrop and Steven Jacobs eds., 2015); see also B. Whitaker, U.N. Economic and Social Council Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, ¶ 24, E/CN.4/Sub.2/1985/6 (July 2, 1985) ("The Nazi aberration has unfortunately not been the only case of genocide in the twentieth century. Among other examples which can be cited as qualifying are . . . the Ottoman massacre of Armenians in 1915-1916[.]").

¹⁸⁰ The Assyrian Genocide has been the subject of comparatively little formal scholarship or international recognition. Many scholarly studies group it into the larger genocide against the Armenians, even though the Assyrians are a distinct people. The Assyrian Genocide was also conducted by the Ottoman Turks using the same methods as those used against the Armenians.

Genocide of 1915 to 1918 involved the same ethnic and religious group being slaughtered by ISIS today.¹⁸¹ Unfortunately, there has been very little historical research into or international recognition of the prior Assyrian Genocide.¹⁸² But Interested Organizations write in the hope that the Assyrian Christians of today will not be forgotten or ignored as their forefathers were. If “history repeats itself,” then the strongest historical analogy to ISIS’s current actions is the genocides committed during the First World War.

Pretext was again at the foundation and root of the Armenian and Assyrian Genocides. Following a defeat in the Caucasus at the hands of the Russians in the winter of 1914-15, Turkish general Ismail Enver put the blame on the Armenians and charged the entire population with treason.¹⁸³ The genocide therefore had its origin in the pretext that the Armenians were disloyal.¹⁸⁴ Then, pretext was central to the operation of the genocide as many Armenians and Assyrians starved or died of thirst (or were massacred by marauding bands) under the pretext that they were being deported and resettled.¹⁸⁵ For example, the Ottoman government set up the Commission on Immigrants to facilitate the “resettlement” process, when in fact the Commission “served as an on-site committee to report on the progress of the disposal of the Armenians as they were further and further removed from the inhabitable regions[.]”¹⁸⁶

U.S. and other international officials recognized the pretexts and the reality of the situation immediately. For example, Ambassador Henry Morgenthau wrote a

This letter focuses on the well-documented pretexts at the heart of the Armenian Genocide precisely because the Assyrian Genocide is seen as a continuation of that against the Armenians. See Hannibal Travis, “The Assyrian Genocide: A Tale of Oblivion and Denial,” in *Forgotten Genocides* at 127 (“[F]ew if any of the books and articles on the Armenian genocide ever mentioned the fact that Assyrians, Greeks, and Yezidis were killed in similar ways and for similar reasons, and often in the very same communities and time periods.”).

¹⁸¹ Paul Pierpaoli Jr., *Assyrian Genocide*, in 1 *Modern Genocide* 50, 50 (Paul Bartrop and Steven Jacobs eds., 2015) (noting that over 250,000 Assyrian Christians were killed under circumstances similar to the Armenians, but the event “has been largely ignored by historians and other scholars.”).

¹⁸² *Id.*

¹⁸³ Rouben P. Adalian, *The Armenian Genocide*, in *Century of Genocide: Eyewitness Accounts and Critical Views* 47 (Samuel Totten, William S. Parsons, Israel W. Charny eds., 1997); see also Margaret Sankey, *Ismail Enver*, in 1 *Modern Genocide* 67, 67 (Paul Bartrop and Steven Jacobs eds., 2015).

¹⁸⁴ To the contrary, the historical record shows that the Armenians serving in the army were loyal and effective. Enver himself initially praised the Armenians for their bravery against the Russians. See Alexander Mikaberidze, *Battle of Sarikamish*, in 1 *Modern Genocide* 99, 100 (Paul Bartrop and Steven Jacobs eds., 2015) (noting that Enver praised the Armenians in February of 1915).

¹⁸⁵ See Whitehorn, *supra* note 178, at 6-7; Pierpaoli Jr., *supra* note 181, at 50.

¹⁸⁶ See Adalian, *supra* note 183, at 51.

letter on July 16, 1915 noting “that a campaign of race extermination is in progress under a pretext of reprisal against rebellion.”¹⁸⁷ Likewise, Russia, Britain, and France issued a formal warning to Turkey on May 24, 1915 regarding the “crimes against humanity” that were taking place.¹⁸⁸ Ultimately, however, the international community never held the perpetrators to account.¹⁸⁹

The failure of the international community to stop the genocide or punish the perpetrators had severe repercussions. On the eve of World War II, Adolf Hitler declared, “Who today, after all, speaks about the annihilation of the Armenians?”¹⁹⁰ Indeed, Hitler may have believed he could get away with mass killing precisely because others had done so before.¹⁹¹ That must not be allowed to happen here. Interested Organizations urge the State Department to stop a repeat of history. Once again, the Assyrian community is facing genocide, this time at the hands of an organization that has an explicit, stated intent of destroying the Assyrian Christians. Once again, the worldwide community has evidence that the justifications given are false or mere pretexts for genocidal conduct. This time, the State Department should hold the perpetrators to account for their crimes against humanity.

V. Conclusion

Once again, the United States is at a crossroads of history. The Philos Project, AMO, ICRC, and AASA entreat the State Department to look past ISIS’s pretext and recognize the genocide occurring in Iraq. The U.S. should not allow history to repeat itself when by all accounts another genocide appears to be happening. At the very least, the State Department must not accept ISIS’s purported justification at face value. International and domestic law commands authorities to look past pretexts, and history demonstrates that pretexts are at the foundation of almost every genocide that has ever taken place. The State Department should closely examine the evidence of what is actually happening on the ground and ignore every sort of pretext offered by ISIS. The current administration has done a great deal of good in this world; it would be a shame for that legacy to be stained in the eyes of history by inaction here.

¹⁸⁷ *Report that Ottoman Turkey is Seeking to Exterminate the Armenian Nation* (July 16, 1915), available at <http://www.armenian-genocide.org/us-7-16-15-text.html>.

¹⁸⁸ Alan Whitehorn, *Armenian Genocide International Reaction*, in 1 *Modern Genocide* 15, 15 (Paul Bartrop and Steven Jacobs eds., 2015).

¹⁸⁹ See Michael S. Neiberg, *Treaty of Sevres*, in 1 *Modern Genocide* 100, 100-01 (Paul Bartrop and Steven Jacobs eds., 2015) (noting that the Treaty of Sevres set up tribunals but was quickly superseded by the Treaty of Lausanne following the rise of Turkish nationalism).

¹⁹⁰ See Whitehorn, *supra* note 188, at 16.

¹⁹¹ *Id.*

Our review and analysis of the available facts and applicable law strongly suggest that ISIS's alleged tolerance in the form of *dhimmi* status and the *jizya* tax is simply a pretext to commit genocide. Numerous other governments and world leaders have concluded that the Assyrian Christians are suffering a genocide. Interested Organizations urge the State Department to reach the same conclusion and join the chorus calling for an end to ISIS's crimes against humanity.

Respectfully submitted,

Hon. Scott Brister
Richard Deutsch
Matthew J. Dowd
Ryan McBrearty
Eric G. Osborne
Austin Priddy
Jared Weir
Patrick Yarborough

Andrews Kurth LLP
1350 I Street, NW
Washington, D.C. 20005
(202) 662-2700

Counsel for
The Philos Project
The American Mesopotamian Organization
The Assyrian Aid Society of America
The Iraqi Christian Relief Council

cc: Ambassador David N. Saperstein