

ISIS' NEW CALIPHATE SELLS AND ENSLAVES WOMEN IN THE NAME OF ISLAM

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In Qudiya, Iraq, an Islamic State of Iraq and al-Sham [Greater Syria] (ISIS) fighter carefully explains to a twelve-year-old girl that her imminent rape is not a sin.¹ He tells her that not only does the Quran permit such an action against an unbeliever, but by raping her, he is drawing near to God.² After kneeling to pray, the ISIS fighter rapes the child, ignoring her cries that “it hurts,” then kneels again to pray.³ While the exploitation of girls and young women is a cross-cultural atrocity, the horrors ISIS commits carry an especially egregious devastation — the rape and trafficking of thousands of young girls and women is divinely sanctioned based on ISIS’ interpretation of Islamic law.⁴ With over 3,000 women still being held captive by ISIS, either awaiting rape, sex slavery, or sex trafficking, ending ISIS’ reign of terror must be a multi-national priority.⁵

This paper argues that because ISIS’ long-term goal is the creation of a global Islamic state, it has no interest in being recognized as a state with borders which must abide by international law. Thus, in order to stop ISIS’ blatant violation of women’s human rights through rape, sex trafficking, and sex slavery, there must be a coordinated, multi-national effort to combat ISIS. Part I explains the nature of the problem by providing background information on the rise of the terrorist group, ISIS, and its desire to establish a religious state. Part II explains the extent of ISIS’ rape, sex trafficking, and sex slavery of women and young girls. Part III explains ISIS’ religious justification for such atrocities against women. Part IV explains the difficulty in holding ISIS responsible for the rape, sex

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¹ Rukmini Callimachi, *ISIS Enshrines a Theology of Rape: Claiming the Quran’s Support, the Islamic State Codifies Sex Slavery in Conquered Regions of Iraq and Syria and Uses the Practice as a Recruiting Tool*, THE NEW YORK TIMES (Aug. 13, 2015), <http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html>.

² *Id.*

³ *Id.*

⁴ Robert Spencer, “*He Said that Raping Me is His Prayer to God*”, JIHAD WATCH (Aug. 13, 2015), <http://www.jihadwatch.org/2015/08/he-said-that-raping-me-is-his-prayer-to-god>.

⁵ Rick Moran, *Female U.S. Hostage was Repeatedly Raped by ISIS Leader While in Captivity*, AMERICAN THINKER (Aug. 15, 2015), http://www.americanthinker.com/blog/2015/08/female_us_hostage_was_repeatedly_raped_by_isis_leader_while_in_captivity.html.

slavery, and sex trafficking of women and young girls because it is not a nation state subject to international law. Part V discusses what actions should be taken to stop ISIS' blatant disregard for women and children's human rights by demonstrating the importance of a multi-national effort to combat the organization.

I. BACKGROUND: THE HISTORY OF THE RISE OF THE RELIGIOUS TERRORIST GROUP ISIS

A. *History of the Rise of ISIS*

ISIS is a religious terrorist organization that is notorious for its brutality: beheadings, destruction of churches, mass executions,⁶ as well as its violence against women.⁷ ISIS currently controls territory in Syria and Iraq, extending from the city of Aleppo in Syria to the province of Diyala in Iraq.⁸ ISIS has "made a bid" to establish control over territories that would include six and a half million residents.⁹

ISIS' lineage can be traced back to the United States' 2003 invasion of Iraq.¹⁰ Shortly after the United States invaded Iraq, the militant Jihadist group, Jama'at al-Tawhidw'al-Jihad, joined forces with al-Qaeda¹¹ in 2004,¹² creating the group al-Qaeda in Iraq (AQI).¹³ From 2004 to 2006, AQI fought against U.S. forces and its international and local allies in Iraq.¹⁴ AQI mobilized after being prompted by the al-Qaeda call for Muslims from all around the world to travel to Iraq to fight the U.S. invasion.¹⁵ The leader of AQI was killed in 2006 by an U.S. airstrike,¹⁶ and AQI was subsequently renamed the Islamic State of Iraq, and later the Islamic State of Iraq and al-Sham (ISIS) under the leadership of Abu Bakr al-Baghdadi.¹⁷ In early 2014,

⁶ Timothy R. Furnish, *The Hour of ISIS Power: How Did it Come to This?*, GEORGE MASON UNIVERSITY: HISTORY NEWS NETWORK (June 17, 2014), <http://historynewsnetwork.org/article/156035>.

⁷ T.J. Raphael, *ISIS Uses Rape and Sexual Violence Against Women to Consolidate its Power*, PRI (Aug. 14, 2015), <http://www.pri.org/stories/2015-08-14/isis-uses-rape-and-sexual-violence-against-women-consolidate-its-power>.

⁸ *Battle for Iraq and Syria in Maps*, BBC (Nov. 6, 2015), <http://www.bbc.com/news/world-middle-east-27838034>.

⁹ Zachary Laub & Jonathan Masters, *The Islamic State*, COUNCIL ON FOREIGN RELATIONS (May 18, 2015), <http://www.cfr.org/iraq/islamic-state/p14811>.

¹⁰ *Id.*

¹¹ Laub, *supra* note 9.

¹² Nick Thompson, Richard Greene, & Sarah-Grace Mankarious, *ISIS: Everything You Need to Know About the Rise of the Militant Group*, CNN (Feb. 10, 2015, 11:59 AM), <http://www.cnn.com/2015/01/14/world/isis-everything-you-need-to-know/>.

¹³ Laub, *supra* note 9.

¹⁴ M.J. Kirdar, *Al Qaeda in Iraq*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (June 2011), http://csis.org/files/publication/110614_Kirdar_AlQaedaIraq_Web.pdf.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Thompson, *supra* note 12; Laub, *supra* note 9.

al-Qaeda disowned ISIS due to conflicts between the al-Qaeda and the AQI leadership.¹⁸ The al-Qaeda leader had become agitated with ISIS since the leader of AQI, al-Baghdadi, moved into Syria and tried to bring a local al-Qaeda franchise, the Nursa Front, under his control.¹⁹ The al-Qaeda leader urged al-Baghdadi to return to Iraq but he refused, stating, “I have to choose between the rule of God and the rule of [al-Qaeda leader] Zawahiri, and I choose the rule of God.”²⁰

B. ISIS’ Religious Influence and Goals

ISIS is not just a terrorist organization.²¹ ISIS, under the leadership of Abu Bakr al-Baghdadi, is a religious militant group that is seeking to create a new Caliphate, or Islamic state²² which is led by a supreme religious and political leader.²³ Many Muslims consider the early leadership of Islam, particularly the leadership of Prophet Muhammad, to be a “golden age,” where “the realm of Islam spread like spilled ink to the farthest corners of modern-day Iran and coastal Libya, despite small and humble origins.”²⁴ The establishment of the new Caliphate, which logically follows ISIS’ acquisition of territory, is religiously motivated by Islam, which claims to be a universal religion with its ultimate goal being the establishment of a global Islamic state.²⁵ The Islam concept of *ummah*, or community, “is the idea that all Muslims, wherever they reside, are bound together through a common faith that transcends all geographical, political, or national boundaries.”²⁶ Muslims believe that their god, Allah, revealed all religious and secular matters through the Prophet Muhammad.²⁷ As such, the entire *ummah* is governed by Sharia, the divine Islamic law, which “transcends geographical boundaries and supersedes all other laws.”²⁸

According to Islam, the world is divided into the house of Islam, territories that are under control of Sharia law, and the house of war,

¹⁸ Aryn Baker, *Why Al-Qaeda Kicked Out its Deadly Syria Franchise*, TIME (Feb. 3, 2014), <http://time.com/3469/why-al-qaeda-kicked-out-its-deadly-syria-franchise/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Furnish, *supra* note 6.

²² Graeme Wood, *What ISIS’s Leader Really Wants*, NEW REPUBLIC (Sept. 1, 2014), <https://newrepublic.com/article/119259/isis-history-islamic-states-new-caliphate-syria-and-iraq>.

²³ Greg Myre, *What’s a Caliphate?*, NPR (JULY 1, 2014), <http://www.npr.org/sections/parallels/2014/06/30/326916530/whats-a-caliphate>.

²⁴ Wood, *supra* note 22.

²⁵ JAY SEKULOW, RISE OF ISIS: A THREAT WE CAN’T IGNORE 16 (2014).

²⁶ *Id.* at 16-17.

²⁷ *Id.* at 17.

²⁸ *Id.*

territories that do not submit to Sharia law.²⁹ Jihadists believe that there will be a constant state of jihad, of holy war, between the two houses until all land is conquered for Allah, creating “a single, global, Islamic State, also known as the Caliphate.”³⁰ An Islamic Caliphate would do away with borders among Islamic countries and there would be a single Islamic economic system, currency, and army.³¹

At the head of an Islamic Caliphate, is a supreme leader, the caliph.³² The caliph is to govern according to Sharia law.³³ After becoming leader of ISIS in 2010,³⁴ Abu Bakr al-Baghdadi proclaimed himself as “Caliph Ibrahim” on June 29, 2014.³⁵ Historically, the caliph has been appointed to lead an Islamic state by one of three methods: (1) election by Islamic decision makers, (2) appointment by the previous caliph, or (3) by force.³⁶

A caliphate has not existed since March 3, 1924, when the last caliph was exiled from Turkey.³⁷ Present-day Turkey was the home of the last caliph.³⁸ Turkey’s origin as a country can be traced back to its beginning as the Ottoman Empire, a political and geographical entity created by Turkish nomadic tribes of the Islam faith.³⁹ During the 15th and 16th centuries, the Ottoman Empire grew to be one of the most powerful states in the world.⁴⁰ During World War I, the Ottoman Empire fought for the Central Powers.⁴¹ After the Allies defeated the Central Powers, a peace treaty between the Allies and the Ottoman Empire, the Treaty of Sevres, “liquidated the Ottoman Empire and virtually abolished Turkish sovereignty.”⁴² With

²⁹ *Islam: House of Islam and House of War*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/jsourc/History/daralislam.html> (last visited Dec. 3, 2015).

³⁰ SECKULOW, *supra* note 25, at 17.

³¹ Radwan Mortada, *What Does ISIS’ Declaration of a Caliphate Mean?*, ALAKHBAR ENGLISH (June 30, 2014), <http://english.al-akhbar.com/node/20378>.

³² *Caliph*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/caliph> (last visited Dec. 3, 2015).

³³ SECKULOW, *supra* note 25, at 17.

³⁴ *Id.* at 22.

³⁵ *Id.* at 20, 25.

³⁶ Shaykh Muhammad Sallih al-Munajjid, *111836: How the Caliph of the Muslims is Appointed*, ISLAM QUESTION AND ANSWER (Dec. 4, 2015), <http://islamqa.info/en/111836>.

³⁷ Paul Crompton, *The Rise of the New ‘Caliph,’ ISIS Chief Abu Bakr al-Bahdadi*, AL ARABIYA NEWS (June 30, 2014), <http://english.alarabiya.net/en/perspective/profiles/2014/06/30/The-rise-of-the-new-caliph-ISIS-chief-Abu-Bakr-al-Baghdadi.html>.

³⁸ Burak Sansal, *The Ottoman Empire*, ALL ABOUT TURKEY, <http://www.allaboutturkey.com/ottoman.htm> (last visited Dec. 11, 2015).

³⁹ *Id.*

⁴⁰ Stanford Jay Shaw, *Ottoman Empire*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/place/Ottoman-Empire> (last visited Dec. 11, 2015).

⁴¹ Burak Sansal, *The Ottoman Empire*, TREATY OF SEVRES AND LAUSANNE, <http://www.allaboutturkey.com/antlasma.htm#sevr> (last visited Dec. 11, 2015).

⁴² *Id.*

Ottoman lands shared among the Allies and Turkish sovereignty destroyed, the Turkish people looked to Mustafa Kemal to oversee the Turkish War of Independence.⁴³ Kemal refused to recognize the Treaty of Sevres,⁴⁴ and after a series of military victories, against what Kemal viewed as occupation forces, Kemal requested a new peace treaty, the Treaty of Lausanne.⁴⁵ The Treaty of Lausanne significantly defined the borders of present-day Turkey,⁴⁶ and on October 29, 1923, the Republic of Turkey was formed with Kemal as President.⁴⁷ In 1924, Kemal's government abolished the Caliphate after leaders of a pro-Caliphate group distributed pamphlets calling the Turkish people to preserve the Ottoman Caliphate.⁴⁸ Under Turkey's new government, this action was viewed as a threat to State security and Kemal promptly abolished the Caliphate,⁴⁹ ending 1,342 years of the Ottoman Caliphate.⁵⁰

Ninety years later, in a July 2014 speech delivered at the Grand Mosque in Mosul, al-Baghdadi declared himself as a new caliph and called on all Muslims to obey him as they would Allah and Prophet Muhammad.⁵¹ ISIS affirms that is the duty of every Muslim to pledge allegiance to Caliph Ibrahim and those who refuse to do so are to be killed.⁵² Under the leadership of "Caliph Ibrahim," ISIS has become a radical force in the Middle East, waging jihad on the house of war and exploiting thousands of unbelieving women and girls as spoils of war.

II. THE PROBLEM

A. *Trafficking by ISIS*

The United States Department of State's 2015 Trafficking in Persons Report called ISIS' use of modern slavery as a tactic in armed conflicts "alarming."⁵³ ISIS' use of modern slavery has targeted women and children

⁴³ *The National War of Independence*, TURKISH PRESS, <http://www.historyofturkey.com/independence/> (last visited Dec. 11, 2015).

⁴⁴ *Id.*

⁴⁵ Sansal, *supra* note 41.

⁴⁶ *The National War of Independence*, TURKISH WAR OF INDEPENDENCE, <http://www.allaboutturkey.com/kurtulus.htm> (last visited Dec. 11, 2015).

⁴⁷ *Id.*

⁴⁸ Naqash Bukhari, *Who Gave a Reason to Abolish the Caliphate*, MUSLIM FOR POLITICS (April 14, 2012), <https://politicallymuslim.wordpress.com/2012/04/14/who-gave-a-reason-to-abolish-the-caliphate/>.

⁴⁹ *Id.*

⁵⁰ Abdul-Karem, *European Colonialists Conspired to Destroy the Khilafah State*, THE KHILAFAH (March 3, 2007), <http://www.khilafah.com/european-colonialists-conspired-to-destroy-the-khilafah-state/>.

⁵¹ SEKULOW, *supra* note 25, at 20.

⁵² Mortada, *supra* note 31.

⁵³ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 37 (2015), <http://www.state.gov/documents/organization/245365.pdf>.

as they are sold and enslaved, distributed to ISIS fighters as “spoils of war, forced into marriage and domestic servitude, or subjected to sexual abuse.”⁵⁴

B. ISIS’ Trafficking Market and Wide Ranging Price for Women

United States intelligence officials and private experts have estimated that ISIS makes \$3 million a day from “oil smuggling, human trafficking, theft and extortion,” which exceeds that “of any other terrorist group in history.”⁵⁵ ISIS has taken over approximately eleven oil fields in Syria and Iraq and sells “oil and other goods through generations-old smuggling networks.”⁵⁶ Luay al-Khateeb, visiting fellow at the Brookings Institution’s Doha Center in Qatar, states that ISIS has “earned millions of dollars from smuggling antiquities out of Iraq to be sold in Turkey and millions more from human trafficking by selling women and children as sex slaves.”⁵⁷

The “going rate” for ISIS’ trafficked women varies significantly. Some reports state that women are sold for up to \$20,000 outside of Iraq, and within the country, virgins are sold for \$200 to \$500 a night.⁵⁸ In some instances, girls have been forced to undergo hymen reconstruction surgery so they can be resold as virgins.⁵⁹ One Yazidi girl from Iraq described that she, along with 350 other girls, were taken to Syria and sold in the streets “as if in a chicken market.”⁶⁰ United Nations envoy, Zainab Bangura, explained that abducted girls are assigned a monetary value by a group of ISIS fighters before being sold.⁶¹ Some teenage girls are sold in ISIS slave markets for “as little as a pack of cigarettes.”⁶² One father recounts that a week after ISIS overran his hometown in Iraq and kidnapped his daughter, his daughter called him, stating that she would be sold for \$10 that day.⁶³

⁵⁴ *Id.*

⁵⁵ Associated Press, *ISIS Makes \$3M Per Day from Oil Smuggling, Human Trafficking*, THE NEW YORK POST (Sept. 15, 2014), <http://nypost.com/2014/09/15/isis-makes-3m-per-day-from-oil-smuggling-human-trafficking/>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Emma Bartha, *Iraqi Women Trafficked Into Sexual Slavery - Rights Group*, REUTERS (Feb. 17, 2015, 1:35 PM), <http://www.reuters.com/article/2015/02/17/us-iraq-trafficking-women-idUSKBN0LL1U220150217>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Nick Robins-Early, *ISIS Sells Women and Girls Into Sexual Slavery For ‘As Little as a Pack of Cigarettes’*, HUFFINGTON POST (June 9, 2015), http://www.huffingtonpost.com/2015/06/09/isis-sex-slaves-un_n_7545344.html.

⁶² *Id.*

⁶³ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 37.

ISIS distributed a price list in Iraq on October 16, 2014 for those interested in purchasing Yazidi and Christian slaves.⁶⁴ Humanitarian and peace prize winner Dr. Widad Akrawi shared a translated version of the document online.⁶⁵ The document states:

We have received news that the demand in Women and **Cattle market** has sharply decreased and that will affect Islamic State revenues as well as the funding of mujahideen in the battlefield, therefore we have made some changes. Below are the prices for Yazidi and Christian women.

The price for Yazidi or Christian women between the age of 40 - 50 is \$43 (£27)

\$75 (48) for 30 to 40-year-olds

\$86 (£55) for 20 to 30-year-olds

\$130 (£83) for ten to 20-year-olds

\$172 (£110) for one to nine-year-olds

Customers are allowed to purchase only three items with the exception of customers from Turkey, Syria and Gulf countries.⁶⁶

It is appalling that women and children are being priced, sold, and grouped together with the “Cattle market.” Even more alarming is that the most expensive and desired age group of Yazidi and Christian women is the group of one to nine-year-olds. This price list sheds light on the extent of the market as this advertisement is directed at “customers” in Iraq, Syria, Iran, and other countries along the Persian Gulf.⁶⁷

C. *Trafficking in Syria*

The United States Department of State places countries into tiers based on their compliance with the Trafficking Victims Protection Act (TVPA),⁶⁸ a United States federal law designed to combat trafficking in persons.⁶⁹ Tier 1 countries fully comply with TVPA; Tier 2 countries “do not fully comply with the TVPA’s minimum standards but are making significant efforts” to do so;

⁶⁴ Hannah Parry, *Yazidi Sex Slave Claims She Was Raped By ‘White American ISIS Jihadi’ In Syria*, DAILYMAIL.COM (Sept. 24, 2015, 6:11 PM), <http://www.dailymail.co.uk/news/article-3248173/Yazidi-sex-slave-claims-raped-American-teacher-turned-ISIS-jihadi-testify-Congress.html>.

⁶⁵ *Id.*

⁶⁶ *Id.* (emphasis added).

⁶⁷ *See id.* (an advertisement disbursed in Iraq explaining that “Customers are allowed to purchase only three items with the exception of customers from Turkey, Syria and Gulf countries.”).

⁶⁸ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 47.

⁶⁹ Trafficking Victims Protection Act of 2000, Publ. L. No. 106-386, 114 Stat. 1464 (2000).

and finally, Tier 3 countries are those that “do not fully comply with the TVPA’s minimum standards and are not making significant efforts to do so.”⁷⁰

As of July 2015, Syria was ranked a Tier 3 country, due in part to the turmoil the Syrian Civil War has created and as a result of ISIS’ control of large areas of territory within the country.⁷¹ Due to the Syrian Civil War, approximately half of Syria’s pre-war population has been displaced; four million have fled to other countries, and 7.6 million are internally displaced.⁷² As Syria’s civil war has been called the “worst humanitarian crisis of our time,”⁷³ the Syrian refugee population is “highly vulnerable to trafficking.”⁷⁴

Syrian refugees have been forced into marriages for the purpose of prostitution and other exploitation.⁷⁵ In one such case, Jordanian government officials reported that a seventeen-year-old Syrian female refugee was forced into twenty-one temporary marriages over two years and was forced to undergo seven hymen reconstruction surgeries.⁷⁶ Prostitution rings are reported in Turkey and Lebanon where Syrian refugee women are sold.⁷⁷ As Syrian women beg in the streets in Yemen, they become “highly vulnerable to forced labor and sex trafficking.”⁷⁸

In another horrific case of sexual slavery in Syria, an American twenty-six-year-old humanitarian aid worker from Prescott, Arizona was held as a sex slave by ISIS leader al-Baghdadi after being abducted from a hospital in Syria.⁷⁹ “Zeinat,” a sixteen-year-old Iraqi teenager who shared a cell with Mueller in Syria, reports that Mueller was forced to marry al-Baghdadi.⁸⁰

⁷⁰ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 47.

⁷¹ *Id.* at 324.

⁷² *Quick Facts: What You Need to Know About the Syria Crisis*, MERCYCORPS (Sept. 2, 2015), <https://www.mercycorps.org/articles/iraq-jordan-lebanon-syria-turkey/quick-facts-what-you-need-know-about-syria-crisis>.

⁷³ *UNHCR: Syrian War Unleashed Worst Humanitarian Crisis of Our Time*, MEMO MIDDLE EAST MONITOR (Feb. 27, 2015), <https://www.middleeastmonitor.com/news/middle-east/17219-unhcr-syrian-war-unleashed-worst-humanitarian-crisis-of-our-time>.

⁷⁴ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 325.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ James Gordon Meek, *ISIS Leader Abu Bakr Al-Baghdadi Sexually Abused American Hostage Kayla Mueller, Officials Say*, ABC NEWS (Aug. 14, 2015), <http://abcnews.go.com/International/isis-leader-abu-bakr-al-baghdadi-sexually-abused/story?id=33085923>.

⁸⁰ Joel Landau, *American Kayla Mueller Was Forced to Marry ISIS leader Abu Bakr al-Baghdadi, Subjected to Rape, Torture: Fellow Captive*, DAILY NEWS (Sept. 9, 2015), <http://www.nydailynews.com/news/world/kay-mueller-forced-marry-isis-leader-report-article-1.2353510>.

Mueller died in a coalition air strike in Syria on February 2015.⁸¹ Zeinat escaped from the ISIS leader's home and two men from a nearby village took her home to her family in Iraq.⁸² Zeinat reports that upon arriving home, she learned that three of her sisters had been captured by ISIS and her father was presumed to be dead.⁸³ In speaking of al-Baghdadi, Zeinat said, "I hope they kill him. Soon. He murdered people. He forced people to convert. He raped girls. He killed families, separating mothers from their children. I want the world to know how evil he is."⁸⁴

ISIS isn't the sole source of human right violations in Syria. The government of Syria itself engages in heinous behavior that is plaguing its citizens. Since the onslaught of the Syrian Civil War, pro-government forces have recruited and trained children as soldiers.⁸⁵ As for the Syrian government's anti-trafficking efforts, the government has not reported any anti-trafficking enforcement efforts, has not investigated or punished trafficking offenders, has not protected the victims of human trafficking, nor has it prevented children from being recruited by ISIS or the government armed opposition forces, but how can the Syrian government be expected to protect these children when it too uses child soldiers?⁸⁶

D. *Trafficking in Iraq*

The United States Department of State has labeled Iraq a Tier 2 country, meaning it does "not fully comply with the TVPA's minimum standards but [is] making significant efforts" to do so.⁸⁷ As in Syria, the report indicates that the Iraqi conflict with ISIS has "gravely increased the vulnerability of the population to trafficking, in particular women and children."⁸⁸ Here, women are also highly subject to "forced marriage, sexual slavery, rape, and domestic servitude."⁸⁹ Captives that refuse to marry ISIS fighters are executed and those that do escape from ISIS remain vulnerable to re-trafficking.⁹⁰

In February of 2015, rights groups estimated that 10,000 women and girls in Iraq had "been abducted or trafficked for sexual slavery, prostitution, or ransom."⁹¹ It is estimated that 14,000 women have been killed since the

⁸¹ Meek, *supra* note 79.

⁸² Landau, *supra* note 80.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 325.

⁸⁶ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 325; *Syrian Arab Republic, OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT* (June 5, 2015), <https://childrenandarmedconflict.un.org/countries/syria/>.

⁸⁷ TRAFFICKING IN PERSONS REPORT, *supra* note 53 at 47, 190.

⁸⁸ *Id.* at 190.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Bartha, *supra* note 58.

U.S. invaded Iraq in 2003 and some children as young as four-years-old have been raped.⁹² The Minority Rights Group International and the Ceasefire Centre of Civilian Rights indicated that some women have committed suicide as a result of the atrocities committed against them.⁹³

Even without the influence of ISIS in the region, Iraqi women are forced into prostitution by trafficking networks in hotels and brothels in Baghdad, Basrah, and other southern Iraqi cities.⁹⁴ In Iraq, women and young girls are sold into temporary marriages and forced into prostitution or domestic servitude; women are trafficked from Iran, China, and the Philippines and forced into prostitution in Iraq; and Iraqi women and girls are trafficked as sex slaves and for labor to the Middle East and Turkey.⁹⁵ In a recent UN report, it is stated that 150 girls and women were transported from Iraq to Syria and given to ISIS fighters “as rewards.”⁹⁶

Domestic servitude is also a significant problem in Iraq.⁹⁷ Men and women who migrate to Iraq from Asia and East Africa “are forced to work as construction workers, security guards, cleaners, handymen, and domestic workers.”⁹⁸ Some foreign migrants are recruited for work in other countries in the region but are forced, coerced, or deceived into traveling to Iraq.⁹⁹

One of the most horrendous examples of ISIS’ human rights abuses is its abduction of thousands of Yazidi women and girls for the purpose of trafficking them across national borders. ISIS has abducted thousands of Yazidi women and girls from Iraq and brought them to Syria and various parts of Iraq to sell in human trafficking rings or to give to fighters for “marriage, domestic servitude, systematic rape, and sexual violence.”¹⁰⁰ The Yazidi population is a religious minority in the Middle East living in small communities across northwest Iraq, northwest Syria, and southeast Turkey.¹⁰¹ It is estimated that 500,000 Yazidis live in Iraq,¹⁰² and 70,000 Yazidi (about fifteen percent of the Iraq Yazidi population) have fled the

⁹² *Id.*

⁹³ *Id.*

⁹⁴ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 190.

⁹⁵ *Id.*

⁹⁶ *Id.* at 37.

⁹⁷ *Id.* at 190.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 190, 324.

¹⁰¹ Diana Darke, *Who, What, Why: Who are the Yazidis?*, BBC NEWS (Aug. 8, 2014), <http://www.bbc.com/news/blogs-magazine-monitor-28686607>.

¹⁰² Avi Asher-Schapiro, *Who are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?*, NATIONAL GEOGRAPHIC NEWS (Aug. 11, 2015), <http://news.nationalgeographic.com/news/2014/08/140809-iraq-yazidis-minority-isis-religion-history/>.

country as a result of ISIS' persecution of their people.¹⁰³ Individuals who practice Yazidism cannot convert into the religion but only can be born into it.¹⁰⁴ Yazidis revere the Bible and the Quaran.¹⁰⁵ Their supreme god is Yasdan who has seven great spirits that radiate from him.¹⁰⁶ The greatest spirit of Yasdan is the Peacock Angel, or Malak Taus.¹⁰⁷ The spirit is also known as Shayton, which is Arabic for devil.¹⁰⁸ This is why Yazidis are often mislabeled as "devil-worshippers."¹⁰⁹ Yazidis have experienced centuries of persecution; yet, they have never abandoned their faith, even in the face of the recent cruel persecution by ISIS.¹¹⁰

ISIS has created a "persistent infrastructure" in the trade of Yazidi women, which dates to August 3, 2014, when ISIS invaded the Iraqi villages of Mount Sinjar and abducted 5,270 Yazidis.¹¹¹ The trade of Yazidi women includes "a network of warehouses where the victims are held, viewing rooms where they are inspected and marketed, and a dedicated fleet of buses used to transport them."¹¹² ISIS' "detailed bureaucracy of sex slavery" is used as a recruiting tool.¹¹³

Similar to the story of the twelve-year-old Yazidi girl narrated in the beginning of this paper, a fifteen-year-old recounts how she was captured in Iraq, sold to an ISIS fighter in his twenties, and every time he raped her, he would pray, describing it as "ibadah," or the Islamic meaning for worship.¹¹⁴ The all too numerous stories of ISIS' rape of Yazidi women and the organization's carefully designed trafficking network for the Yazidi population, suggests that ISIS had more than territory on its mind when it attacked the Yazidi Iraqi villages of Mount Sinjar.

In describing the motivation for ISIS' invasion of the Yazidi villages of Mount Sinjar, a University of Chicago expert on the Yazidi minority stated, "The offensive on the mountain was as much a sexual conquest as it was for territorial gain."¹¹⁵ Men and women were immediately separated from each other, the men were taken to nearby fields and shot, while the women, girls,

¹⁰³ Raya Jalabi, *Who Are the Yazidis and Why is ISIS Hunting Them?*, THE GUARDIAN (Aug. 11, 2014), <http://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains>.

¹⁰⁴ Darke, *supra* note 101.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Asher-Schapiro, *supra* note 102.

¹¹⁰ Darke, *supra* note 101.

¹¹¹ Callimachi, *supra* note 1.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

and children were taken away in trucks.¹¹⁶ After being abducted from their homes, the Yazidi were bussed to various locations, held in confinement for days or months, then bussed to Syria or Iraq where they were bought and sold for sex.¹¹⁷

Some girls were taken to an army base in Iraq where one girl recounts learning what the word “sabaya” meant.¹¹⁸ A local ISIS leader explained that the term meant slave and that Taus Malik was not God, but the devil, and because the women worshiped the devil, they belonged to the ISIS fighters who could sell and use them as they saw fit.¹¹⁹ In one instance, an ISIS fighter strapped an eleven-year-old Yazidi sex slave to his car as a human shield while driving into battle,¹²⁰ using the child to protect the captor from enemy gunfire.¹²¹ When not being used as a human shield, the child was repeatedly raped by the ISIS fighter.¹²² ISIS’ careful selection of Yazidi women and girls for their sexual conquest is likely motivated by religious principles.

In preparation for the attack on the village of Mount Sinjar, Sharia students of ISIS were told to research the Yazidi population to determine whether they were Kafir or Mushrik.¹²³ This is an important distinction as the two groups of people may be treated differently under Islam.¹²⁴ In a translated pamphlet released by ISIS clarifying whether all unbelieving women may be taken captive, ISIS states,

There is no dispute among the scholars that it is permissible to capture unbelieving women [who are characterized by] original unbelief [kufr asli [also known as Kafir]], 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...¹²⁵

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Parry, *supra* note 64.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *The Revival of Slavery Before the Hour*, DABIQ 14, <http://www.danielpipes.org/rr/2014-10-dabiq.228.pdf>.

¹²⁴ *Islamic State (ISIS) Releases Pamphlet on Female Slaves*, MEMRI: JIHAD AND TERRORISM THREAT MONITOR (Dec. 4, 2014), <http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html> [hereinafter *Pamphlet*].

¹²⁵ *Id.*

In Islam, Kafir are individuals who do not believe in Islam and the Prophet Muhammad.¹²⁶ Kafir are divided into the Kafir Asli (the originally Kafir) and Kafir Murtad (apostates).¹²⁷ A type of Kafir Asli is the mushrikin¹²⁸ (singular form mushrik), such as Jews, Christians, Hindus, and atheists, who are considered to be polytheists (those who “share[] the exclusive attributes of Allah with those other than Allah”).¹²⁹ On the other hand, the Kaafir Murtad (apostates) are people who were once Muslim but have since renounced their belief in Islam.¹³⁰ Thus, ISIS believes that the Kafir Asli, such as Jews, Christians, and Yazidis, may be taken as sex slaves, while apostates may not.¹³¹

After careful research, ISIS’ Sharia students determined that the Yazidi population could be treated as mushrikin, or as polytheists, because the Yazidi population existed “pre-Islamic jāhiliyyah,”¹³² or prior to the revelation of the Quran to the Prophet Muhammad, and thus could not have been apostates.¹³³ As such, ISIS could lawfully capture and hold as sex slaves the Yazidi unbelievers.¹³⁴ Additionally, as mushrikin under Islamic law, the Yazidis would not be permitted to make a jizyah payment,¹³⁵ which is a payment of a tax that requires that slave owners set their slaves free.¹³⁶ The Yazidi women of Mount Sinjar were divided amongst the ISIS fighters who participated in the operation.¹³⁷

The Yazidis are being sold as the mushrikīn were sold by followers of Prophet Muhammad before them.¹³⁸ Many mushrik women and children have accepted Islam willingly, which is to be honored under the hadiths, or record of the sayings of Prophet Muhammad.¹³⁹ One such hadith honors forced conversion to Islam, stating, “You are the best people for people. You bring them with chains around their necks, until they enter Islam.”¹⁴⁰

¹²⁶ *Defining Kafir*, ISLAMIC THINKERS SOCIETY, <http://islamicthinkers.com/welcome/?p=184> (last visited Dec. 5, 2015).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Trevor Stanley, *Definition: Sharak – Shirk – Mushrik*, PERSPECTIVES ON WORLD HISTORY AND CURRENT EVENTS, <http://www.pwhce.org/shirk.html> (last visited Dec. 5, 2015).

¹³⁰ *Defining Kafir*, *supra* note 126.

¹³¹ *Pamphlet*, *supra* note 124.

¹³² *Id.*

¹³³ Laurel Fraser, *Jāhiliyyah and Dante*, LAUREL’S REFLECTIONS ON ISLAMIC HISTORY (Feb. 5, 2014), <http://blogs.cornellcollege.edu/laurelstudiesislam/tag/jahiliyyah/>.

¹³⁴ *See Pamphlet*, *supra* note 124.

¹³⁵ Callimachi, *supra* note 1.

¹³⁶ *The Revival of Slavery Before the Hour*, *supra* note 123, at 15.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Hadith*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/Hadith> (last visited Nov. 15, 2015.)

¹⁴⁰ *The Revival of Slavery Before the Hour*, *supra* note 123, at 15.

It is interesting to note that slavery is considered one of the signs of the Hour,¹⁴¹ or the Day of Judgment.¹⁴² Slavery was long abandoned by Muslims, but is being revived by ISIS.¹⁴³ One author of an article entitled *The Revival of Slavery Before the Hour* praises ISIS' revival of slavery, "May Allah bless this Islamic State [also known as ISIS] with the revival of further aspects of the [Islam] religion occurring at its hands."¹⁴⁴ One reason the author praises the revival of slavery is that the desertion of slavery has led to adultery and fornication because the alternative to marriage, legal sexual slavery under Islam, is not available, and many men are tempted to sin as a result.¹⁴⁵ Like ISIS, this Islamic author not only believes that the rape and trafficking of non-Muslim women and young girls is not sinful, but he even praises it as the work of Allah.

III. THE JUSTIFICATION

A. *The ISIS Pamphlet Defining the Rules of Sexual Abuse of Women and Children*

As briefly discussed above, in December 2014, ISIS "publicly released guidelines on how to capture, forcibly hold, and sexually abuse female slaves, including girls."¹⁴⁶ The Research and Fatwa Department of the Islamic State's (ISIS) pamphlet is titled *Su'al wa-Jawab fi al-Sabi wa-Riqab* ("Questions and Answers on Taking Captives and Slaves").¹⁴⁷ It is written in a "questions and answers" form, clarifying Islamic law in regards to rape, sex slavery, and sex trafficking as ISIS interprets it.¹⁴⁸ It states that it is permissible to have sexual intercourse with non-Muslim slaves, including young girls, and that it is also permissible to beat and trade them.¹⁴⁹ Al-Sabi are women from the house of war,¹⁵⁰ territories that do not submit to Sharia law, and as such, the pamphlet explains that it is acceptable to take these women captive due to their unbelief.¹⁵¹ The pamphlet continues to verify that it is acceptable under Islam to have sex with female captives as Allah said, "[Successful are the believers] who guard their chastity, except from their

¹⁴¹ *Id.*

¹⁴² *50 Signs of the Day of Judgment*, UMMAH.COM: THE ONLINE MUSLIM COMMUNITY (Apr. 21, 2002, 10:43 PM), <http://www.ummah.com/forum/showthread.php?1651-50-Signs-of-the-Day-of-Judgment>.

¹⁴³ *The Revival of Slavery Before the Hour*, *supra* note 123, at 16.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *TRAFFICKING IN PERSONS REPORT*, *supra* note 53, at 324.

¹⁴⁷ *Pamphlet*, *supra* note 124.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Islam: House of Islam and House of War*, *supra* note 29.

¹⁵¹ *Pamphlet*, *supra* note 124.

wives or (the captives and slaves) that their right hands possess, for then they are free from blame [Koran 23:5-6].”¹⁵²

Additional guidelines permit ISIS to immediately have intercourse with a virgin female captive upon capture, but if she is not a virgin, “her uterus must be purified [first].”¹⁵³ Female captives may be bought, sold, and given as gifts, “for they are merely property, which can be disposed of as long as that doesn’t cause [the Muslim *ummah*] any harm or damage.”¹⁵⁴ In addition, ISIS fighters may have intercourse with a female slave who has not reached puberty.¹⁵⁵

Violence against female slaves is permissible as follows: “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.”¹⁵⁶ A runaway slave “is among the gravest of sins” and “is [to be] reprimanded [in such a way that] deters others like her from escaping.”¹⁵⁷

Slavery is deeply engrained in Islam and its history. Historically, Muslim slavery was not just economic.¹⁵⁸ Some slaves were used as labor for small “agricultural enterprises, workshops, building, mining and transport.”¹⁵⁹ Slaves were also used for military service and for sexual gratification, as a result of which women were forced into prostitution.¹⁶⁰

B. *The History of Slavery in Islam Repeats Itself Through ISIS*

ISIS finds further justification for sex slavery in the practices of the Prophet Muhammad. The Prophet Muhammad himself “did not try to abolish slavery, and bought, sold, captured, and owned slaves.”¹⁶¹ During Prophet Muhammad’s jihad on a Saudi Arabian town, he took a young teenager, Safiya bint Huyay, to be his wife after he killed her husband, father, and brothers.¹⁶² The young girl had previously been given to another

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Slavery in Islam*, BBC, http://www.bbc.co.uk/religion/religions/islam/history/slavery_1.shtml (last updated Sept, 7, 2009).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Raymond Ibrahim, *Muhammad and Islam’s Sex Slaves*, FRONTPAGE MAG (Oct 15, 2014), <http://www.frontpagemag.com/fpm/243167/muhammad-and-islams-sex-slaves-raymond-ibrahim>.

Muslim, but when the Prophet heard of her beauty, he took her for himself.¹⁶³ Many Muslims try to justify Prophet Muhammad's action saying he honored her with marriage and that she chose to convert to Islam.¹⁶⁴ However, after the death of Prophet Muhammad, Safiya confessed, "Of all men, I hated the prophet the most—for he killed my husband, my brother, and my father."¹⁶⁵

Although Prophet Muhammad had slaves, he insisted that owners treat their slaves well and stated that freeing slaves was a virtuous act.¹⁶⁶ Prophet Muhammad also stated that one could gain forgiveness for certain sins by freeing a slave, that slaves should be able to purchase their freedom, that contracts should be interpreted in favor of slaves, and that the duty of kindness towards family and neighbors was the same owed to slaves.¹⁶⁷

Islamic law, like Prophet Muhammad, mandates that slaves are not mistreated or overworked, they are to be treated well, properly maintained, slaves can take legal action against their owners for violations of these rules, slaves may own property, and female slaves cannot be forced into prostitution.¹⁶⁸ Additionally, Islamic law grants slaves the ability to gain their freedom in certain circumstances.¹⁶⁹ While female slaves cannot be forced into prostitution, Islamic law does permit owners to have sex with their female slaves.¹⁷⁰ Under Islamic law, people can be enslaved either as the result of being defeated in a war that was legal according to Sharia or if they are born of two slave parents.¹⁷¹

ISIS is not fully following Islamic law in regards to its treatment of female slaves. ISIS has sold slaves into prostitution,¹⁷² the Yazidi population has been denied its right to make payment for its release,¹⁷³ and there are no reports that ISIS allows its slaves to take legal action against the organization for violations of these rules, and there are no reports that ISIS' slaves may own property. Instead, ISIS' slaves are treated like cattle, sold in the streets like chicken, and forced into prostitution. ISIS has chosen which parts of Islamic law it wishes to follow in regards to slavery, and is particularly zealous to follow the Quran's guidance in accepting the rape and slavery of women and young girls.

¹⁶³ Ibn Kammuna, *How Muhammad Married Enslaved Safiya Bint Huyay*, JIHADWATCH.ORG (Aug. 26, 2010), <http://www.islam-watch.org/home/59-kammuna/524-how-muhammad-married-enslaved-safiya-bint-huyay.html>.

¹⁶⁴ *Id.*

¹⁶⁵ Raymond Ibrahim, *The Islamic State and Islam*, HUMAN EVENTS (Oct. 21, 2014), <http://humanevents.com/2014/10/21/the-islamic-state-and-islam/>.

¹⁶⁶ *Slavery in Islam*, *supra* note 158.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *See* Bartha, *supra* note 58.

¹⁷³ Callimachi, *supra* note 1.

C. *The Quran Justifies Sexual Slavery*

The Quran, the last revealed word of God made known through the Prophet Muhammad and the primary source of the Muslim faith,¹⁷⁴ validates ISIS' use of slaves.¹⁷⁵ The verse found in Quran 33:50 states, "O Prophet! We have made lawful to thee thy wives to whom thou hast paid their dowers; and those (slaves) whom thy right hand possesses out of the prisoners of war whom Allah has assigned to thee."¹⁷⁶ This is a message from Allah as narrated by the Prophet Muhammad, permitting Muslims to have sex with slaves.¹⁷⁷ The Quran also permits sex with married slaves in Quran 4:24: "And all married women (are forbidden unto you) save those (captives) whom your right hands possess."¹⁷⁸ Slaves were historically an acceptable spoil of war in the Islam religion.¹⁷⁹ The Quran validates the enjoyment of "what ye took in war" as it is "lawful and good" (Quran 8:69) because "Allah gave you mastery over them" (Quran 8:71).¹⁸⁰

IV. ISIS IS NOT A NATION STATE THAT CAN BE HELD RESPONSIBLE FOR ITS ACTIONS UNDER INTERNATIONAL LAW

Numerous national and international laws have been enacted to combat trafficking and other human rights atrocities across the globe. The development of international law is a primary goal of the United Nations with the objective "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."¹⁸¹ It "defines the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries."¹⁸² Some of the international laws that ISIS' actions violate are: the United Nations Convention Against Transnational Organized Crime;¹⁸³ the United Nations Protocol to Prevent, Suppress and

¹⁷⁴ *What is the Quran About?*, ISLAM GUIDE, <http://www.islam-guide.com/ch3-7.htm> (last visited Dec. 5, 2015).

¹⁷⁵ *What Does the Religion of Peace Teach About Slavery and Sex Slavery*, THE RELIGION OF PEACE.COM, <http://www.thereligionofpeace.com/quran/015-slavery.htm> (last visited Dec. 5, 2015).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *International Law*, UNITED NATIONS: GLOBAL ISSUES, <http://www.un.org/en/globalissues/internationallaw/> (last visited Dec. 5, 2015).

¹⁸² *Id.*

¹⁸³ Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf.

Punish Trafficking in Persons, Especially Women and Children;¹⁸⁴ the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air;¹⁸⁵ and the Rome Statute.¹⁸⁶ ISIS also violates the United States Trafficking Victims Protection Act.¹⁸⁷ Although ISIS' rape, sex slavery, and sex trafficking of women violate both national and international laws, it is unclear whether the new Caliphate should be identified as a state subject to such laws.

Only states are full subjects of international law.¹⁸⁸ In defining statehood, one commentator on international law argues that it is a two-step process: 1) meeting the Montevideo Convention of 1933 on the Right and Duties of States criteria for statehood and 2) determining whether the state was created legally.¹⁸⁹ Under the Montevideo Convention, the criteria for statehood includes: a permanent population, a defined territory, a government, and capacity to enter into relations with other states.¹⁹⁰ Additionally, the United Nations Charter prevents the creation of illegal states.¹⁹¹ The charter prevents states from using the "threat or use of force against the territorial integrity or political independence of any state."¹⁹²

As ISIS has declared itself a new Caliphate, questions arise as to whether ISIS should be recognized as a state.¹⁹³ Is a Caliphate a state or a different category of a state?¹⁹⁴ International treaties have long acknowledged the importance of the link between recognition and statehood.¹⁹⁵ Dr. Andrew Coleman of Monash University in Australia, questions how a Caliphate fits within the existing definition of

¹⁸⁴ G.A. Res. 55/25 (II) A, United Nations Convention Against Transnational Organized Crime (Jan. 8, 2001).

¹⁸⁵ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, Doc. A/55/383, Chapter XVII (status as of Sept. 26, 2008).

¹⁸⁶ The Rome Statute for the International Criminal Court, July 17, 1998, U.N. Doc. A/Conf.183/9.

¹⁸⁷ Trafficking Victims Protection Act of 2000, Publ. L. No. 106-386, 114 Stat. 1464 (2000).

¹⁸⁸ Amrei Muller, *Subjects of International Law*, PUBLIC INTERNATIONAL LAW, UNIVERSITY OF OSLO (Sept. 2, 2013), http://www.uio.no/studier/emner/jus/jus/JUS5540/h13/undervisningsmateriale/subjects-of-intlaw_2sept2013.pdf.

¹⁸⁹ Dr. Andrew Coleman, *The Islamic State and International Law: An Ideological Rollercoaster?*, SOCIAL SCIENCE RESEARCH NETWORK (Oct. 29, 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2516605.

¹⁹⁰ Muller, *supra* note 188.

¹⁹¹ *Id.*

¹⁹² U.N. Charter art. 2 ¶ 4.

¹⁹³ Coleman, *supra* note 189.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

statehood.¹⁹⁶ Dr. Coleman suggests that there may be another step in the process to statehood: a “third ‘*post facto*’ requirement that States after their ‘creation’ comply with human rights instruments and accepted norms in order to remain States.”¹⁹⁷

While ISIS’ crimes violate a number of international laws, the facts seem to suggest that ISIS is not a nation state and therefore, cannot be held to such laws. First, as a religious state seeking to declare a new Caliphate, it has no borders.¹⁹⁸ Second, ISIS has clearly acquired its territory by force and with a complete disregard for the integrity of Iran and Syria’s territorial integrity.¹⁹⁹ Third, it is unlikely that ISIS has any intention of following human rights instruments or international law.

ISIS’ claim to be a religious state, yet refusal to abide by any law other than Sharia, creates a contradiction. The terrorist group cannot be allowed to claim the status of a religious state and not be held accountable under international law; however, to hold ISIS accountable to international law would recognize ISIS as a valid nation state. Recognizing ISIS as a valid state could send the wrong message to extremists in other states who seek to overthrow the current regime.²⁰⁰ In addition, recognizing the state could have a major effect on the power balance in the Middle East.²⁰¹ On the other hand, it is important that the international community retain its credibility and not let such flagrant human rights violations go unchecked and hold ISIS accountable for its war crimes and violations of human rights.²⁰² Regardless of whether ISIS is recognized as a nation state, it remains clear that this force must be destroyed by a multi-national effort and held accountable for its actions.

V. THE SOLUTION: A MULTINATIONAL EFFORT

Because the nation states ISIS has invaded, specifically Syria and Iran, do not appear to have the capacity to address ISIS’ human rights violations, there must be a coordinated multi-national effort to combat ISIS. In addition, border states (Iraq, Syria, Turkey, and Iran) must commit to international law regarding trafficking. A multi-national effort would also decrease the risk of harm to civilians.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ SEKULOW, *supra* note 25 at 16-17.

¹⁹⁹ See Kathy Gilsinan, *How ISIS Territory Has Changed Since the U.S. Bombing Campaign Began*, THE ATLANTIC (Sept. 11, 2015), <http://www.theatlantic.com/international/archive/2015/09/isis-territory-map-us-campaign/404776/>.

²⁰⁰ Coleman, *supra* note 193.

²⁰¹ *Id.*

²⁰² *See id.*

A. *Creating Stability by Ending the Syrian Civil War*

A major focus in combating ISIS and its human rights violations must be on Syria and on ending the Syrian Civil War. In the United States Department of State's 2015 Trafficking in Persons Report, the report indicated that "women and children in armed conflicts are particularly vulnerable to multiple abuses, including those involving human trafficking and sexual and gender-based violence."²⁰³

The Syrian Civil War grew out of protests in Deraa City in March 2011.²⁰⁴ The government arrested and tortured teenagers who painted revolutionary slogans on a school wall.²⁰⁵ Angered by the government's use of lethal force to dispel pro-democracy demonstrations, opposition supporters began to take up arms to defend themselves and expel security forces from their localities.²⁰⁶

Human rights atrocities at the hands of Syrian President, Bashar al-Assad, were not limited to this incident and have been revealed by a photographer named "Caesar."²⁰⁷ For two years during the beginning of the Syrian War, Caesar worked as a crime-scene photographer for the Syrian government by day and as an opposition spy by night.²⁰⁸ In 2013, Caesar smuggled out thousands of photographs implicating Assad's minions in war crimes.²⁰⁹ The pictures were mostly taken at Syrian military hospitals, showing corpses of tortured individuals with "gouged eyes; mangled genitals; bruises and dried blood from beatings; acid and electric burns; emaciation; and marks from strangulation."²¹⁰ When bodies of the deceased were brought to Syrian hospitals, "[e]ven if the dead guy was missing his head . . . [Syrian doctors were required to] write that he died of 'sudden death.'"²¹¹ One doctor noted that he generated about seven to eight death reports a day.²¹²

In light of the atrocity against the Syrian people at the hands of Syrian President al-Assad, the United States and Russia have embarked on an uncoordinated effort to defeat ISIS in Syria.²¹³ The United States supports

²⁰³ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 48.

²⁰⁴ *Syria: Mapping the Conflict*, BBC NEWS (July 10, 2015), <http://www.bbc.com/news/world-middle-east-22798391>.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Adam Ciralsky, *Documenting Evil: Inside Assad's Hospitals of Horror*, VFNEWS (June 11, 2015), <http://www.vanityfair.com/news/2015/06/assad-war-crimes-syria-torture-caesar-hospital>.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Syria Crisis: Where Key Countries Stand*, BBC NEWS (Oct. 2, 2015), <http://www.bbc.com/news/world-middle-east-23849587>.

Syria's main opposition alliance, the National Coalition, and provides military assistance to moderate rebels, in an effort to oust President Assad from power.²¹⁴ The National Coalition was formed in November 2012 as a response to increasing pressure from the United States and other countries for a more diverse and inclusive opposition coalition than the Syrian National Council.²¹⁵ The coalition includes representation from the Local Coordination Committees of Syria, 70 tansiqiya (coordination) groups, and local councils in the National Coalition.²¹⁶ The coalition aims to remove the current Bashar al-Assad regime, hold his regime accountable for killing and displacing Syrians, and unifying the Free Syrian Army.²¹⁷

Russia, on the other hand has key interests in Syria that must be maintained by President Assad, and as such, Russian President Vladimir Putin,²¹⁸ who was asked for military aid by the Syrian President,²¹⁹ has begun a military campaign in Syria.²²⁰ While Putin claims his purpose in Syria is to prevent the spread of ISIS, many of Russia's airstrikes have mainly targeted rebels.²²¹

The uncoordinated effort to end the conflict in Syria is costing Syrian civilians their lives.²²² The Syrian Observatory for Human Rights estimates that Russian strikes in October alone killed 185 civilians and only 131 ISIS fighters.²²³ On the other hand, the United States has killed 3,726 ISIS fighters (252 a month) and 225 civilians since it began its operations in Syria.²²⁴

Airstrikes are not enough to eliminate the threat of ISIS in Syria and Iraq.²²⁵ The Center for American Progress noted in a June 2015 report that

²¹⁴ *Id.*

²¹⁵ *National Coalition for Syrian Revolutionary and Opposition Forces*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, <http://carnegieendowment.org/syriaincrisis/?fa=50628> (last visited Dec. 5, 2015).

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Syria Crisis: Where Key Countries Stand*, *supra* note 213.

²¹⁹ *A Timeline of Russia Air Strikes on Syria*, YAHOO! NEWS (Oct. 5, 2015, 3:12 PM), <http://news.yahoo.com/timeline-russian-air-strikes-syria-191250623.html>.

²²⁰ *Id.*

²²¹ Robin Emmott, *Russia Has Ground Troop Battalion, Advanced Tanks in Syria – US Nato Envoy*, REUTERS (Oct. 7, 2015, 11:09 AM), <http://www.reuters.com/article/2015/10/07/mideast-crisis-syria-nato-idUSL8N12731120151007>.

²²² Bassem Mroue, *Russian Strikes Take Toll Among Syrian Civilians*, ASSOCIATED PRESS (Nov. 3, 2015, 6:59 PM), <http://bigstory.ap.org/article/b54b1051c29a4a7697c4fdb5653ae7da/russian-strikes-take-toll-among-syrian-civilians>.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Brian Katulis, Hardin Lang, and Vikram Singh, *Defeating ISIS: An Integrated Strategy to Advance Middle East Stability*, CENTER FOR AMERICAN PROGRESS (Sept. 10, 2014), <https://www.americanprogress.org/issues/security/report/2014/09/10/96739/defeating-isis-an-integrated-strategy-to-advance-middle-east-stability/>.

there must be “a long-term multinational political and security strategy in the region.”²²⁶ The strategy should include “intelligence cooperation, security support, vigorous regional and international diplomacy, strategic communications and public diplomacy, and political engagement.”²²⁷ Three goals are of significant importance: “[b]uilding and managing an international coalition to defeat ISIS and stabilize the region . . . [i]ncreasing support for Iraq’s political, economic, and security transitions. . . [and [i]]nitiating a more concerted effort to end Syria’s civil war and support the creation of a transitional government.”²²⁸

B. Nations Can Reduce Trafficking of ISIS’ Victims by Upholding International Trafficking Laws

In upholding anti-trafficking laws, border states can reduce the trafficking of ISIS victims into their countries. Such international anti-trafficking laws include the United Nations Convention Against Transnational Organized Crime; the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Rome Statute. In upholding the United States Trafficking Victims Protection Act, border states can also reduce trafficking. Iraq and Syria, as well as the border states of Iran and Turkey, are signatories to several international anti-trafficking laws. As these nations have committed themselves to anti-trafficking international laws, it is essential that their conduct matches their words.

The Convention Against Transnational Organized Crime was adopted in November of 2000 and is designed to “promote cooperation to prevent and combat transnational organized crime more efficiently.”²²⁹ It is supplemented by three protocols, two of which address trafficking.²³⁰ Border nation states to Syria and Iraq that are party to the United Nations Convention Against Transnational Organized Crime are Iran, Iraq (accession), Syria, and Turkey.²³¹ These nations must actively enforce the Convention Against Transnational Organized Crime to which they are party to.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ G.A. Res. 55/25 (I), United Nations Convention Against Transnational Organized Crime (Jan. 8, 2001).

²³⁰ *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/unodc/treaties/CTOC/> (last visited Dec. 6, 2015) [hereinafter UNCACTOC].

²³¹ United Nations Convention against Transnational Organized Crime, Doc. A/55/383, Chapter XVIII (status as of Nov. 15, 2000).

Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.²³²

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is “the first global legally binding instrument with an agreed definition on trafficking in persons.”²³³ It is an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children.²³⁴ Countries that are party to this protocol include Iraq (accession), Iran, Syria, and Turkey.²³⁵ These countries must make it a priority to follow this protocol’s call to cooperate with other State Parties and to “adopt such legislative and other measures as may be necessary to establish as criminal offenses” trafficking in persons.²³⁶

The Protocol against the Smuggling of Migrants by Land, Sea and Air deals with the organized criminal groups who smuggle migrants for profit, while at great risk to the migrants.²³⁷ This protocol established a definition of smuggling of migrants for the first time.²³⁸ The Protocol aims “to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.”²³⁹ Countries that are party to this protocol include Syria and Turkey.²⁴⁰ It is essential that Syria and Turkey actively uphold this protocol’s requirements for strengthened border controls, denying entrance into their country of individuals implicated in committing the offense of sex trafficking, ensuring the validity of travel documents, among other things.²⁴¹

²³² *Id.*

²³³ UNCAGTOC, *supra* note 230.

²³⁴ G.A. Res. 55/25 (II) A, United Nations Convention Against Transnational Organized Crime (Jan. 8, 2001).

²³⁵ United Nations Convention against Transnational Organized Crime, Doc. A/55/383, Chapter XVIII (status as of Nov. 15, 2000).

²³⁶ *Id.*

²³⁷ UNCAGTOC, *supra* note 230.

²³⁸ *Id.*

²³⁹ Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, art. 2, https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf.

²⁴⁰ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, Doc. A/55/383, Chapter XVII (status as of Sept. 26, 2008).

²⁴¹ *Id.*

The Trafficking Victims Protection Act (TVPA) is a federal law passed by the United States.²⁴² A government that is labeled as a Tier 3 country is subject to restriction on bilateral assistance, “whereby the U.S. government can withhold or withdraw non-humanitarian, non-trade-related foreign assistance.”²⁴³ Iraq and Turkey are labeled as Tier 2 countries and Turkey and Iran are Tier 3 countries.²⁴⁴ If these countries do not wish to be subject to restrictions on certain foreign assistance, they must continually increase their efforts to combat trafficking.

The Rome Statute of the International Criminal Court defines “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” as a war crime against humanity.²⁴⁵ The statute establishes the International Criminal Court that has the “power to exercise its jurisdiction over persons for the most serious crimes of international concern.”²⁴⁶ Interestingly, Iraq, Iran, Turkey, and Syria are not parties to this statute.²⁴⁷ As Iraq, Iran, Turkey, and Syria are not parties to the International Criminal Court, these nation states must be prepared to prosecute ISIS fighters and leaders in the event that they are captured.

In the event that ISIS fighters and leaders are captured, they should be held accountable for their crimes against humanity in the nation state where they committed the offence. One such example of allowing a nation to prosecute a leader who has violated the people’s human rights is the trial of Saddam Hussein.²⁴⁸ As president of Iraq for over two decades, Hussein committed numerous human rights violations against his people, including murder, torture, and forced deportation.²⁴⁹ Shortly after the beginning of Operation Iraqi Freedom, Saddam Hussein was captured by U.S. forces.²⁵⁰ Hussein and eleven other former top Iraqi officials were turned over to the interim Iraqi government for prosecution.²⁵¹ Hussein

²⁴² Trafficking Victims Protection Act of 2000, Publ. L. No. 106-386, 114 Stat. 1464 (2000).

²⁴³ TRAFFICKING IN PERSONS REPORT, *supra* note 53, at 48.

²⁴⁴ *Id.* at 54.

²⁴⁵ The Rome Statute for the International Criminal Court, July 17, 1998, U.N. Doc. A/Conf.183/9.

²⁴⁶ *Id.* at art. I.

²⁴⁷ *The State Parties to the Rome Statute*, INTERNATIONAL CRIMINAL COURT, https://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (last visited Dec. 6, 2015).

²⁴⁸ *Saddam Hussein Biography*, BIO, <http://www.biography.com/people/saddam-hussein-9347918> (last visited Dec. 11, 2015).

²⁴⁹ *Saddam Hussein Biography*, *supra* note 248; *Saddam Hussein Trial Fast Facts*, CNN (March 12, 2015), <http://www.cnn.com/2013/10/30/world/meast/saddam-hussein-trial-fast-facts/>.

²⁵⁰ *Saddam Hussein Trial Fast Facts*, *supra* note 249.

²⁵¹ *Id.*

was sentenced to death for his crimes on December 26, 2006 and was hung on December 30, 2006.²⁵² The trial and conviction of Hussein was praised as “a major achievement for Iraq’s young democracy,” “a milestone in the Iraqi people’s efforts to replace the rule of a tyrant with the rule of law,” and as “a hopeful reminder to all Iraqis that the rule of law can triumph over the rule of fear and that the peaceful pursuit of justice is preferable to the pursuit of vengeance.”²⁵³ The nations that have been torn apart by ISIS must have the opportunity to seek justice according to their own laws and customs as they rebuild their war torn country.

CONCLUSION

Rape, sex slavery, and trafficking are engrained in the religion of Islam, and as such, ISIS justifies its abuse of women and young children through Islam’s history, the actions of the Prophet Muhammad, and through the Quran. Although ISIS has declared itself a new Caliphate, questions arise as to whether or not ISIS is a state to be held accountable under international law. Regardless of this distinction, ISIS must be combated through a multi-national, coordinated effort. In addition, if border states to ISIS’ stronghold strengthen their adherence to international laws on trafficking, they can reduce the demand for trafficked women. The countries in which ISIS has committed numerous crimes should be prepared to prosecute ISIS fighters and leaders for their human rights violations.

²⁵² *Id.*

²⁵³ *Mixed World Reaction to Death Penalty for Hussein*, CNN (Nov. 5, 2006), <http://www.cnn.com/2006/WORLD/meast/11/05/saddam.world.reax/>.