

# ILLEGAL TRADING OF CULTURAL PROPERTY BY ISIS – THE NEED FOR DEEP WEB MONITORING WITH PEACEKEEPING OPERATIONS

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## ABSTRACT

*An extremist organisation, claiming to represent Muslims worldwide, has taken over Syria, with the consuming aim to establish an Islamist ‘Caliphate’. Called the Islamic State of Iraq and Syria (‘ISIS’), the group’s emergence into the international media fora was marked by gruesome video-recorded beheadings of journalists, and massacres such as killing, bombing, pillaging, and looting. This article discusses their targeting of cultural property in the Syrian context specifically. The aspect forming the primary focus here is their organized criminal network, created from illegally trading valuable cultural artefacts and antiquities. The article gives a brief outline of the ISIS ideology, the deplorable situation of cultural heritage in the country, the existing national and international regime, their defects and practical solutions for solving the same. By elaborating upon the existing legislations, measures and their failure to dent the ISIS capital accumulated from online activities, the article brings to light, an unconventional, alternative measure of Deep Web monitoring. In a nutshell, the contention here is that factors, such as the shift in recruitment operations from mainstream web to the Deep Web, the increasing Bitcoin wallet, reports of illicit trade occurring through this channel, point out that the option of Deep Web monitoring deserves attention, especially in a time when strong laws merely exist on paper. Over the course of the article, the author aims at expanding upon these contentions, which will lead one to conclude the importance of pre-existing peacekeeping measures and Deep Web monitoring, working in tandem for curbing this menace.*

## INTRODUCTION

Home to innumerable sites of cultural and archaeological importance, the Syrian region in Middle East has been rightly christened the ‘cradle of civilization’.<sup>2</sup> For a long time, this region has been the converging point for most religion-based conflicts. From the clashing of

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<sup>2</sup> Hannah G. He, *Protecting Ancient Heritage in Armed Conflict: New Rules for Targeting Cultural Property during Conflict with ISIS*, 30 MD. J. INT’L L. 168 (2015).

tribes to the marching of Crusaders into the Holy Land, culminating into a three-way battle for its possession, this region has intermittently been at the forefront of disputes.<sup>3</sup>

Cultural property is testament to human plurality, diversity and coexistence among different groups.<sup>4</sup> It is accorded protection owing to its symbolism and its function as a representative of shared social identity.<sup>5</sup> The irony is that the very value that makes such property merit special protection is often the basis upon which it is specifically targeted in war. Attacking cultural property for the purpose of propaganda, or by reason of its affiliation with the identity of the adversary, or smuggling the goods in exchange for blood money, remains a frequent feature of war waged by violent extremists.<sup>6</sup>

A notable example is the 1974 Turkish military invasion in the Republic of Cyprus, which had led to vast destruction, and pillage of religious sites and objects, during the armed conflict and continuing occupation. Moreover, a large number of religious and archaeological objects had been illegally exported and sold in art markets.<sup>7</sup> Another key event is the Taliban's destruction of two Buddha statues in the Bamiyan Valley in Afghanistan, in 2001.<sup>8</sup> After the permanent alteration of these statues in the Valley, other radical groups also had continued to destroy historic sites throughout the Middle East and Africa. A shrine in Lahore, Pakistan, was bombed in 2010.<sup>9</sup> The year 2012 witnessed the annihilation of the shrine of Abdel Salam al-Asmar in Zlitan, Libya, following the overthrow of Muammar Gaddafi.<sup>10</sup> The

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<sup>3</sup> *Id.*

<sup>4</sup> UNESCO, Background Note to the International Conference, on Heritage and Cultural Diversity: A Humanitarian and Security Imperative in the Conflicts "*Heritage and Cultural Diversity at Risk in Iraq and Syria*," The Protection of the 21st Century (Dec. 3, 2014), <http://en.unesco.org/system/files/iraqsyriaeventbackgroundnoteeng.pdf>.

<sup>5</sup> Benjamin Isakhan, *Targeting the Symbolic Dimension of Baathist Iraq: Cultural Destruction, Historical Memory, and National Identity*, 4 MIDDLE EAST JOURNAL OF CULTURE AND COMMUNICATION 257–81 (2011).

<sup>6</sup> UNESCO, Background Note to the International Conference, *supra* 4.

<sup>7</sup> The Law Library of Congress, Cyprus: Destruction of Cultural Property, <http://www.loc.gov/law/help/cultural-property-destruction/cyprus.php> (last accessed Dec. 18, 2015).

<sup>8</sup> David Bosco, *Waking the Buddha*, 58 ARCHAEOLOGY 118 (2005); Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT'L L. 245, 246 (2006).

<sup>9</sup> Sabrina Tavernise and Waqar Gillani, *Suicide Bombers Strike Sufi Shrine in Pakistan*, N.Y. TIMES, July 1, 2010, <http://nyti.ms/1yHEDs8>.

<sup>10</sup> David Kilpatrick, *Libya Officials Seem Helpless as Sufi Shrines Are Vandalized*, N.Y. TIMES, Aug. 28, 2012, <http://nyti.ms/1Gdv1WL>.

World Heritage Site of Timbuktu also faced the brunt of several such attacks.<sup>11</sup> In 2013, over 40 sacred sites in Tunisia were attacked by militant Islamists.<sup>12</sup>

The ISIS is the latest to join the ranks of the extremists who indulge in this perversion. With the advent of 2014, alarming reports from the archaeological community drew the world's attention towards the group's attempts of imposing their twisted ideology by demolishing, bombing cultural sites in Northern Iraq,<sup>13</sup> such as the Mosul Museum, Hatra, and numerous Assyrian capitals.<sup>14</sup> In addition to bombing sites for propaganda, the ISIS jihadists are stealing and smuggling priceless cultural artefacts to the highest bidders, for financing their brutal, mindless acts in Syria.<sup>15</sup> The sale of these artefacts has led to a flourishing black market, spanning countries such as Jordan, Turkey, Iraq, and United Kingdom.<sup>16</sup>

Transcending the Middle Eastern boundaries, the ISIS caliphate is undergoing an exponential growth globally. However, as an aftermath of the deadly Paris attacks, it was revealed by law enforcement agencies and online vigilantes that the ISIS militants have also embarked on a new campaign in the realm of cyber crime and subsequent warfare.<sup>17</sup> Going beyond the conventional means of trading and traditional channels, this terrorist organization is increasingly penetrating the dark, hidden underbelly of the online world, termed the 'Deep Web',<sup>18</sup> to sell stolen antiquities from the war-torn Syria and other regions under its control.<sup>19</sup>

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<sup>11</sup> Lydia Polgreen, *As Extremists Invaded, Timbuktu Hid Artifacts of a Golden Age*, N.Y. TIMES, Feb. 3, 2013, <http://nyti.ms/18SAuVz>.

<sup>12</sup> Tunisia's Shrines, *Puritans on the Attack*, THE ECONOMIST POMEGRANATE BLOG (Feb. 6, 2013, 4:32 PM), <http://www.economist.com/node/21571376>.

<sup>13</sup> Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC, Mar. 1, 2015, <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980>.

<sup>14</sup> Hannah G. He, *supra* 2.

<sup>15</sup> Deborah Amos, *Via Satellite, Tracking the Plunder of Middle East Cultural History*, NPR, Mar. 10, 2015, <http://www.npr.org/blogs/parallels/2015/03/10/392077801/via-satellite-tracking-the-plunder-of-middle-east-cultural-history>.

<sup>15</sup> Paul Schemm, *ISIS destroys ancient artefacts in Iraq as a cover for an even more sinister activity*, BUSINESS INSIDER, May 12, 2015, <http://www.businessinsider.com/isis-destroys-ancient-artifacts-in-iraq-as-a-cover-for-an-even-more-sinister-activity-2015-5?IR=T>.

<sup>17</sup> Joseph Cox, *ISIS now has a propaganda site on the Dark Web*, MOTHERBOARD, Nov. 16, 2015, <http://motherboard.vice.com/read/isis-now-has-a-propaganda-site-on-the-dark-web>.

<sup>18</sup> *Id.*

This article stresses upon stringent protection of cultural property solely for the purpose of preventing ISIS's organised crime networks from trading such property for arms. It aims at illustrating the need for conventional peacekeeping measures, to operate in tandem with the unconventional method of Deep Web monitoring, for effectively curbing ISIS's illegal trading activities, territorially as well as virtually. Part A paints a morbid image of the attacks on cultural heritage conducted by the ISIS so far, and the ideological, financial motivation behind them. It discusses their illicit actions of trafficking of cultural artefacts and the organized crime network accruing from the same. Part B focuses on the existing legal framework, domestic legislations as well as international conventions to combat the problems illustrated in the previous section. It scrutinizes the status of the existing framework and reveals disconnect between the legal regime and the enforcement issues present in the current scenario. Part C aims at bridging the gap between the existing framework and practical difficulties by discussing international efforts and methods that ensure the protection of cultural property through peacekeeping. Part D delves into the unknown territory of the 'Deep Web' and exposes ISIS's allegedly flourishing criminal network established from the sale of Syria's cultural property. It aims at identifying measures that will be instrumental in monitoring and preventing this underworld activity. It points out the pros and cons of Deep Web surveillance and finally concludes by proposing the hand-in-hand working of peacekeeping and online monitoring.

#### A. ACTIVITIES OF ISIS IN SYRIA

The militants have inflicted brutal, countless atrocities upon the Syrian population. The lives of citizens have been blown to dust, like the entire body of cultural heritage the nation cherishes and calls its own.

Since declaring a caliphate, the ISIS has targeted every ethno-sectarian group and even punished Sunnis who do not conform to its version of Islam. The group has been trying to make permanent archaeological and demographic changes in the country, by embarking upon an ethnic cleansing campaign that has resulted in the forced exodus of minority groups from their towns.<sup>20</sup>

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<sup>19</sup> Annelies Pauwels, *ISIS and illicit trafficking in cultural property: Funding terrorism through art*, FREEDOM FROM FEAR MAGAZINE, UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE, Nov. 1, 2015, <http://f3magazine.unicri.it/?p=1098>.

Notwithstanding the civil war and emigrant crisis, the group in furtherance of its ingrained intolerance carries out systematic, deliberate destruction of cultural property, to campaign against ‘idolatry’.<sup>21</sup> The destruction caused is not just a display of mindless barbarity<sup>22</sup>, but it also constitutes ‘cultural nihilism’ or ‘religious iconoclasm’<sup>23</sup> which is reminiscent of the Taliban’s demolition of the Buddhas of Bamiyan.<sup>24</sup>

A significant proportion of destroyed property has been targeted on the basis of constructed Shia-Sunni divides; this in turn has often played a substantial part in their decision to specifically target religious and cultural property associated with groups other than the Sunni community.<sup>25</sup>

*i. ATTACKS ON CULTURAL PROPERTY*

Syria is graced with thousands of archaeological sites and magnificent historic monuments, including UNESCO World Heritage Sites. However, the conflict has rendered it a helpless witness to their vandalism, pilfer, and devastation.<sup>26</sup> Incalculable museums and libraries are endangered; the looting and illicit trade in artefacts has reached an unprecedented scale. Whole urban arenas and some of humankind’s great architectural and cultural heritage now lie in ruins.<sup>27</sup>

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<sup>20</sup> Graciela Gestoso Singer, *ISIS’s War on Cultural Heritage and Memory*, CENTRO DE ESTUDIOS DE HISTORIA DEL ANTIGUO ORIENTE (CEHAO), [http://ukblueshield.org.uk/wp-content/uploads/2015/06/Singer-Isis\\_Against\\_World\\_Heritage.pdf](http://ukblueshield.org.uk/wp-content/uploads/2015/06/Singer-Isis_Against_World_Heritage.pdf) (last accessed Dec. 18, 2015).

<sup>21</sup> Hannah G. He, *supra* 2.

<sup>22</sup> Michael Wilner, *Obama Condemns “Viciousness and Barbarity” of ISIS Burning*, THE JERUSALEM POST (Mar. 2, 2015), <http://www.jpost.com/Middle-East/Obama-condemns-viciousness-and-barbarity-of-ISIS-burning-389892>.

<sup>23</sup> Lana Asfour & Matthew Scott, *ISIL and the History of Destroying History*, AL JAZEERA (Mar. 3, 2015), <http://www.aljazeera.com/indepth/opinion/2015/03/isil-history-destroying-history-150302122351267.html>.

<sup>24</sup> UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, October 17, 2003.

<sup>25</sup> Liz Sly, *Syria Tribal Revolt against Islamic State Ignored, Fueling Resentment*, THE WASHINGTON POST (Oct. 20, 2014), [https://www.washingtonpost.com/world/syria-tribal-revolt-against-islamic-state-ignored-fueling-resentment/2014/10/20/25401beb-8de8-49f2-8e64-c1cfbee45232\\_story.html](https://www.washingtonpost.com/world/syria-tribal-revolt-against-islamic-state-ignored-fueling-resentment/2014/10/20/25401beb-8de8-49f2-8e64-c1cfbee45232_story.html); Martin Chulov, *ISIS Kills Hundreds of Sunnis from Albu Nimr Tribe in Anbar Province*, THE GUARDIAN (Oct. 30, 2014), <http://www.theguardian.com/world/2014/oct/30/mass-graves-hundreds-iraqi-sunnis-killed-isis-albu-nimr>.

<sup>26</sup> JADRANKA PETROVIC, ACCOUNTABILITY FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW ESSAYS IN HONOUR OF TIM MCCORMACK 160-180 (2015).

<sup>27</sup> Ban Ki-moon, United Nations Secretary-General, *‘Crisis in Syria: Civil War, Global Threat’*, HUFFINGTON POST (June 25, 2014).

Currently, all layers of Syrian culture property – pre-Christian, Christian, and Muslim – continue to remain under attack.<sup>28</sup> According to the UNITAR’s Operational Satellite Applications Programme Report, titled *Satellite-Based Damage Assessment to Cultural Heritage Sites in Syria*, this conflict has created a cultural catastrophe.<sup>29</sup>

In 2013, all six of Syria’s World Heritage-listed sites were categorised by UNESCO as sites of ‘World Heritage in Danger’,<sup>30</sup> by reason of the destruction they were subject to, in form of annihilation, looting and pillaging.<sup>31</sup>

Furthermore, Syria’s other cultural sites have also been damaged and are threatened by continued fighting. For instance, in Aleppo, the Umayyad mosque came under artillery fire, which destroyed its ancient minarets; the heavy fighting to dislodge rebel fighters also damaged the Crusader castle Crac des Chevaliers; the museums at Apamea, Aleppo and Raqqa have experienced thefts; and the archaeological sites of Mari, Dura Europos, Halbia and Buseria have been damaged by illegal excavations.<sup>32</sup> As an instance of callous modification of sites, a newly constructed fortified vehicle track through the archaeological area of the Ancient City of Bosra, a World Heritage Site, has been observed.<sup>33</sup>

The World Heritage site of Palmyra has also been substantially impacted by being used for military purposes.<sup>34</sup> The militants have also shattered a hidden 2,000-year-old Allat lion statue, and a 13th-century tomb near the northern Iraqi city of Kirkuk. The statue, first discovered in 1977, had been hidden inside an iron box in a Palmyra museum garden for protection<sup>35</sup> but that militants had discovered the hideaway. However, it was speculated that

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<sup>28</sup> JADRANKA PETROVIC, *supra* 26.

<sup>29</sup> UNITAR, UNOSAT Report on Damage to Cultural Heritage Sites in Syria calls for Scaled up Protection Efforts, <https://www.unitar.org/unosat-report-damage-cultural-heritage-sites-syria-calls-scaled-protection-efforts> (last accessed on Dec. 18, 2015).

<sup>30</sup> UNESCO World Heritage Centre, *Syria’s Six World Heritage Sites Placed on List of World Heritage in Danger* (June 20, 2013), <http://whc.unesco.org/en/news/1038>.

<sup>31</sup> Sandra Roorda, *Syria’s Cultural Heritage in Danger: What Can We Do?*, CULTURAL HERITAGE – SAVING ANTIQUITIES FOR EVERYONE (Oct. 21, 2013), [www.savingantiquities.org/tag/cultural-heritage-3](http://www.savingantiquities.org/tag/cultural-heritage-3).

<sup>32</sup> JADRANKA PETROVIC, *supra* 26.

<sup>33</sup> UNITAR, *supra* 29.

<sup>34</sup> Rick Gladstone and Maher Samaan, *ISIS destroys more artefacts in Syria and Iraq*, N.Y. TIMES, July 3, 2015, [http://www.nytimes.com/2015/07/04/world/middleeast/isis-destroys-artifacts-palmyra-syria-iraq.html?\\_r=0](http://www.nytimes.com/2015/07/04/world/middleeast/isis-destroys-artifacts-palmyra-syria-iraq.html?_r=0).

ISIS fighters might have posted photographs of fake statue remnants and had smuggled the real ones themselves.<sup>36</sup>

Since early 2014, the ISIS has intensified its destruction of historical sites throughout the country. Not only has it been targeting more Islamic sites, the group has also attacked the St. Ephrem's Cathedral, and the Eliyahu Hanhavi Synagogue in Damascus, in an effort to 'purify' the region.<sup>37</sup>

In February 2015, following the beheading of 21 Coptic Christians by ISIS fighters in Libya, the Church of the Virgin Mary was destroyed with improvised explosive devices in Mosul.<sup>38</sup> Such events are highlights in their grand scheme to spread terror, indifference and establish religious supremacy.

A jarring fact that stands out here is the impunity of ISIS militants to indulge in public displays of artefact destruction. Videos and photographs, showing their apathetic actions of sledge-hammering more than half-dozen stolen statues, have repeatedly surfaced on social media.<sup>39</sup> However, it is to be remembered that their actions are those of visual terrorism at its worst. Such videos are released with the sole purpose of propaganda and power demonstration. The militants want to show the world that not only can they occupy, command, and govern a particular territory, but are also capable of destroying valuable cultural heritage.<sup>40</sup>

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<sup>35</sup> Lydia Polgreen, *supra* 11.

<sup>36</sup> Rick Gladstone and Maher Samaan, *supra* 34.

<sup>37</sup> Graham Bowley, *Antiquities Lost, Casualties of War: In Syria and Iraq, Trying to Protect a Heritage at Risk*, N.Y. TIMES (Oct. 3, 2014), <http://www.nytimes.com/2014/10/05/arts/design/in-syria-and-iraq-trying-to-protect-a-heritage-at-risk.html>; see also Joe Parkinson, *Syrian 'Monuments Men' Race to Protect Antiquities as Looting Bankrolls Terror*, WALL ST. J. (Feb. 10, 2015), <http://www.wsj.com/articles/syrian-monuments-men-race-to-protect-antiquities-aslooting-bankrolls-terror-1423615241>.

<sup>38</sup> Jack Phillips, *ISIS Blows up Church of the Virgin Mary in Iraq: Reports*, EPOCH TIMES, Feb. 24, 2015, <http://www.theepochtimes.com/n3/1260590-isis-blows-up-church-of-the-virgin-mary-in-iraq-reports/>.

<sup>39</sup> Rick Gladstone and Maher Samaan, *supra* 34.

<sup>40</sup> Kate Wilkinson, *Why ISIS is destroying artefacts across Middle East*, WBGH NEWS, July 22, 2015, <http://wgbhnews.org/post/attack-culture-why-isis-destroying-artifacts-across-middle-east>.

Most importantly, the Syrian cultural property has been severely misused by militants to establish illegal trade networks for financing their caliphate operations in Syria, and other Middle Eastern regions.<sup>41</sup>

ii. *THE ORGANIZED CRIME NETWORK OF THE ISIS*

The different groups involved in the Syrian civil war have engaged in illicit trafficking in order to acquire their weapons. It has been reported that barring the rebel groups, Syrian regime soldiers have also taken advantage of the trafficking in looted artefacts.<sup>42</sup> Intensifying and accelerating this dire pre-existing situation, the ISIS has smuggled the region's cultural goods by means of massive and unprecedented looting.<sup>43</sup>

In February 2015, the UNSC adopted its Resolution 2199(2015) for Syria, as an addendum to the pre-existing prohibition of trade in cultural objects for Iraq, under Resolution 1483(2003).<sup>44</sup> In its resolution, the UNSC expressed concern that the ISIS was generating income from direct or indirect engagement with looting and smuggling of cultural heritage items to support its recruitment efforts and strengthen operational capability for organizing and conducting terrorist attacks.<sup>45</sup>

Despite oil revenues generating the majority of ISIS's income, systematic extortion in the 'caliphate area', private foreign donations, kidnap ransoms, looting of banks, and stealing from the local population also contribute significantly to its coffers. Its involvement in illicit trafficking in cultural goods allows ISIS to diversify their financing<sup>46</sup> and earn revenue independently, following its split with al-Qaeda in February 2014.<sup>47</sup> As an evidence of its

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<sup>41</sup> Paul Schemm, *supra* 16.

<sup>42</sup> Peter B. Campbell, *The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage*, INTERNATIONAL JOURNAL OF CULTURAL PROPERTY (2013).

<sup>43</sup> Deborah Amos, *supra* 15.

<sup>44</sup> Annelies Pauwels, *supra* 19.

<sup>45</sup> S.C. Res 2199, U.N. Doc. S/RES/2199 (Feb. 12, 2015).

<sup>46</sup> Janine di Giovanni, Leah McGrath Goodman, Damien Sharkov, *How does ISIS fund its reign of terror?*, NEWSWEEK, Nov. 6, 2014, <http://www.newsweek.com/2014/11/14/how-does-isis-fund-its-reign-terror-282607.html>.

<sup>47</sup> Marina Lostal, *Syria's world cultural heritage and individual criminal responsibility*, INTERNATIONAL REVIEW OF LAW (2015), <http://www.qscience.com/doi/pdf/10.5339/irl.2015.3>.

highly pragmatic and prolific criminal expertise, the UNESCO estimated that the black market for such blood antiquities is worth billions of US dollars.<sup>48</sup>

Between the late 2012 and June 2014, the al-Nabuk region of Syria alone is claimed to have added \$36 million to ISIS coffers through antiquities trafficking. Anecdotal evidence has also indicated the presence of a well-established organized crime network extending to countries such as Lebanon, Jordan and Turkey. The items are exchanged for cash and weapons before being sold to international buyers. In Lebanon, ISIS takes requests for specific types of antiquities that are then looted and delivered.<sup>49</sup> In the United States alone, there has been a 133% increase in imports of Syrian works of art in the past year, with some stolen items reportedly seen on eBay.<sup>50</sup>

The ISIS plays an active role in controlling the trade; not only is it in charge of the looting by providing permissions and levying taxes to looters, but it also monitors the artefacts and decides which objects are to be sold or destroyed.<sup>51</sup>

Large antiquities, that cannot be transported easily and have the potential to attract the attention of law enforcement agencies, are destroyed in a propaganda-film format, to create an international spectacle.<sup>52</sup> An important criterion for transportable artefacts is their inconspicuous ‘middle-value’.<sup>53</sup> Intermediaries smuggle these smaller, transportable antiquities to raise money to neighbouring countries like Turkey, Jordan, and Iran through traditional smuggling routes, which in turn are facilitated by extensive, uncontrollable open

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<sup>48</sup> Mark V. Vlasic and Helga Turku, *How can we stop ISIS and trafficking of our cultural heritage*, WORLD ECONOMIC FORUM, AGENDA, Aug 31, 2015, <https://agenda.weforum.org/2015/08/isis-trafficking-cultural-heritage>.

<sup>49</sup> Brig. Gen. Russell D. Howard, Jonathan Prohov, and Marc Elliott, *How ISIS Funds Terror Through Black Market Antiquities Trade*, USNI NEWS, Oct. 27, 2014, <http://news.usni.org/2014/10/27/isis-funds-terror-black-market-antiquities-trade>.

<sup>50</sup> Al Arabiya News, *UK MP laments ISIS ‘large scale’ artefacts looting*, Dec. 18, 2015, <http://english.alarabiya.net/en/life-style/art-and-culture/2015/01/30/UK-MP-laments-ISIS-massive-scale-artifacts-looting-.html>.

<sup>51</sup> Annelies Pauwels, *supra* 19.

<sup>52</sup> Mark V. Vlasic and Helga Turku, *supra* 48.

<sup>53</sup> *Id.*; Rachel Shabi, *Looted in Syria – and sold in London: the British antiques shops dealing in artefacts smuggled by ISIS*, THE GUARDIAN, July 3, 2015, <http://www.theguardian.com/world/2015/jul/03/antiquities-looted-by-isis-end-up-in-london-shops>.

borders surrounding Syria. At this point, internationally connected antiquities dealers and collectors allegedly act as the nexus between the illegal and legal trade.<sup>54</sup>

A large number of these artefacts end up in antiquities markets in Jordan, where they are sold to tourists. Even certain auction houses have been reported to openly sell illegal artefacts from ISIS controlled regions, accompanied by false documentation.<sup>55</sup> Such antiquities appear to be particularly desired by private buyers in Europe and the United States, and also in the Gulf countries and China.<sup>56</sup> In fact, various stolen artefacts end up being displayed as status symbols in private buildings. Moreover, a majority of the stolen cultural goods are being held in storage rooms for future sale.<sup>57</sup>

Prima facie, ISIS is a fanatic group; however, its funding operations resemble those of an ordinary organised criminal network. By raising money through a highly organized trafficking network, ISIS has gained prominence as a self-sustaining organisation relying on money made from the territory under its control. It is thus imperative to curb the flow of money accruing from illicit art trade, which constitutes one of their main sources of income.

## B. LEGAL FRAMEWORK AND ANALYSIS

The author contends that enforcement and compliance issues impede the effectiveness of domestic as well as rigorous UN legislations in Syria. This section will elaborate on the primary factors that make it extremely difficult to enforce such laws in uncontrolled war-torn areas.

Firstly, the given issues can be attributed to the ongoing civil war, refugee crisis, and a non-cooperating Syrian government<sup>58</sup>; a lack in definite political consensus, manpower, strict border control does not leave much room for fool-proof monitoring over stolen or transported antiquities. For instance, illicit excavations occurring in small, non-descript, ancient villages,

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<sup>54</sup> Annelies Pauwels, *supra* 19.

<sup>55</sup> Philipp Jedicke, *Germany attracts trade in looted artefacts*, DEUTSCHE WELLE, Oct. 24, 2014, <http://www.dw.de/germany-attracts-trade-in-looted-artifacts/a-18019083>.

<sup>56</sup> Rachel Shabi, *supra* 53.

<sup>57</sup> Annelies Pauwels, *supra* 19.

<sup>58</sup> Press Release, Security Council, In Presidential Statement, Security Council Calls for Redoubling Efforts to Target Root Causes of Terrorism as Threat Expands, Intensifies, U.N. Press Release SC/11656 (Nov. 19, 2014).

termed ‘Dead Cities’<sup>59</sup>, are so scattered that they can be effectively guarded only at a high cost, or a strong sense of awareness prevailing amongst the State and citizens.<sup>60</sup> The current scenario is such that implementation faces enormous hurdles, and it is a fact that no law, however strict, can be completely effective, without the willing cooperation of everyone involved.<sup>61</sup>

Also, after the outbreak of hostilities, the Syrian Prime Minister had issued a recommendation to take additional measures such as the placing of alarm systems and surveillance cameras, to secure sites from extensive looting; unfortunately, these precautions were not fully implemented due to the slow pace of bureaucracy.<sup>62</sup> Additionally, the gaps in the Syrian domestic law are also factors in non-attribution of absolute accountability to all parties involved in the illicit trade of antiquities.

Secondly, Syria is not a party to certain UN, and ICC statutes which results in the imposition of non-binding obligations. Notwithstanding this, the country is party to some other relevant treaties protecting cultural heritage. However, it is evident from the current scenario that the rampant violations have not reduced, even by an iota. The current situation clearly reiterates that the problem lies with compliance and enforcement, rather than with inadequacy of legislations, which therefore remain confined to paper.<sup>63</sup>

To weigh in on this contention further, UNESCO believes that there are enough legal instruments to be able to counter illicit trafficking of cultural heritage. However, what the world presently needs is using the existing framework to fight ISIS, their crimes, as well as undertake proactive measures and spread awareness.<sup>64</sup>

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<sup>59</sup> AMMAR ABDULRAHMAN, THE NEW SYRIAN LAW ON ANTIQUITIES, IN TRADE IN ILLICIT ANTIQUITIES: THE DESTRUCTION OF THE WORLD’S ARCHAEOLOGICAL HERITAGE 111 (Neil Brodie, et al., eds., 2001).

<sup>60</sup> *Id.*

<sup>61</sup> AMMAR ABDULRAHMAN, *supra* 59, at 113.

<sup>62</sup> Cheikhmous Ali, *Syrian Heritage Under Threat*, 1 JOURNAL OF EASTERN MEDITERRANEAN ARCHAEOLOGY & HERITAGE STUDIES 351 (2013).

<sup>63</sup> Dr. Agnieszka Jachec-Neale, *Protecting cultural heritage after Palmyra*, CHATHAM HOUSE, Sep. 2, 2015, <https://www.chathamhouse.org/expert/comment/protecting-cultural-heritage-after-palmyra>.

<sup>64</sup> UN News Centre, *UN anti-crime meeting highlights measures to curb illicit trade in cultural property*, Apr. 16, 2015, <http://www.un.org/apps/news/story.asp?NewsID=50600#.VnMN1Up97IU>.

i. *DOMESTIC LEGISLATION*

The Syrian Antiquities Law, 1999, which is applicable in the current conflict, bans the general export of antiquities,<sup>65</sup> with an exception under Article 69, providing for grant of export licenses for exchanges with museums and other scientific institutions. As per Article 33, this general ban extends to cultural objects that have been imported into the country. Moreover, as per Article 40, any relocation of antiquities within Syria's borders requires the permission of the pertinent authorities. Articles 57 and 58 forbid trade in antiquities.<sup>66</sup>

As mentioned before, there exist gaps in this legislation that prevent effective application. For instance, the concept of 'trade' is nowhere defined in the law. This leaves open the question if the crime would encompass, for example, selling unimportant items which are nonetheless antiquities, as given under Article 32. It is ambiguous if 'trade' constitutes the sale of the object to a foreigner, or its removal from the national territory, or its sale within the national territory to Syrian nationals. It is also unclear if the sanctions on trade are imposed on the seller, purchaser, or both. It is to be considered that none of the above situations are minor details, in light of the 10-15 years of imprisonment, and a fine of 100,000-500,000 Syrian Pounds, that 'trade in antiquities' carries under Article 57(c).<sup>67</sup> Moreover, it becomes necessary to impart clear definitions to such open-ended terms and situations, in light of the methodologies used by ISIS to further its illicit trade operations.

In December 2013, a new draft bill on antiquities was scheduled to be presented to the Parliament, before the outbreak of the conflict.<sup>68</sup> In line with the growing international concern over world cultural heritage properties, the new draft proposed a higher degree of legal protection for the UNESCO World Heritage sites,<sup>69</sup> as opposed to the uniform treatment

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<sup>65</sup> AMMAR ABDULRAHMAN, *supra* 59.

<sup>66</sup> Syrian Arab Republic, Ministry of Culture, DGAM, *Antiquities Law*, LEGISLATIVE DECREE n. 222 (Oct. 26, 1963) [http://portal.unesco.org/culture/fr/files/30606/11438206173Antiquities\\_Law.pdf/Antiquities%2BLaw.pdf](http://portal.unesco.org/culture/fr/files/30606/11438206173Antiquities_Law.pdf/Antiquities%2BLaw.pdf) (last accessed on Dec. 18, 2015).

<sup>67</sup> Marina Lostal, *supra* 47.

<sup>68</sup> DGAM, *Completing new draft law on protection of Syrian archaeological heritage* (Dec. 22, 2013), <http://www.dgam.gov.sy/index.php?id%4314&id%41114> (last accessed on Dec. 18, 2015).

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

these sites received earlier. However, the requisite changes are yet to be made, considering the volatile political situation in the country.<sup>70</sup>

*ii. INTERNATIONAL LAW*

It took centuries for international law to formally recognize a duty to protect sites of cultural importance from the ravages of war and plundering. As the world united to heal in the aftermath of World War II, one of the new international agreements created to prevent future destruction was the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict ('the 1954 Convention').<sup>71</sup> This was a turning point for advocates vying for safeguarding of cultural property as its protection was beautifully and effectively codified for global application.

The Convention was developed by UNESCO to supplement and build upon the diverse international agreements already in place regarding cultural property protection, including the prior Hague Conventions and the Roerich Pact.<sup>72</sup> In addition to highlighting safeguarding property as one of its core responsibilities, it also requires parties to respect cultural property by refraining from, hostile actions, or exposing it to situations that might cause destruction or damage in the event of armed conflict.<sup>73</sup>

Moreover, an updated version of the 1954 Convention, i.e. the Second Protocol for the Protection of Cultural Property in the Event of Armed Conflict, 1999 ('Second Protocol'), was formulated to address new issues relating to the problems arising at the turn of the twentieth century.<sup>74</sup>

As per Article 19(1) of the 1954 Convention, core rules on respect for cultural property are equally applicable for States and organized armed groups such as the ISIS, in non-international armed conflicts ('NIAC').<sup>75</sup> Additionally, the Second Protocol is applicable in

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<sup>70</sup> AMMAR ABDULRAHMAN, *supra* 59.

<sup>71</sup> The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 215 [hereinafter 1954 Convention].

<sup>72</sup> *Id.*

<sup>73</sup> Article 2, *id.*

<sup>74</sup> The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, March 26, 1999, 2253 U.N.T.S. 212 [hereinafter Second Protocol].

its entirety to both international armed conflicts ('IAC') and NIAC, and it introduces a comprehensive protection framework, with a detailed, developed criminal sanction regime.<sup>76</sup>

Despite these conventions providing adequate measures for the protection of cultural heritage, armies are at liberty to exercise the exception of 'military necessity' to occupy zones containing cultural heritage.<sup>77</sup> This severely endangers such sites, subsequently reducing their status to mere collateral damage, if the opposing side targets the occupying armies.

The 1954 Convention mandates punishment<sup>78</sup> and obliges signatories to undertake all necessary steps, within the framework of their ordinary criminal jurisdiction, to prosecute and impose penal or disciplinary sanctions upon those who breached the Convention, irrespective of their nationality.<sup>79</sup>

Due to the poor implementation of this provision owing to lacunae in the Syrian domestic law, the prospects of holding ISIS for its acts against world cultural heritage are far from realisable.<sup>80</sup> Despite the reform in Syrian criminal laws in 1996, the last implementation report concluded that the Syrian Criminal Code, 1949 lacks criminal sanctions in this regard.<sup>81</sup> Thus, the country is not ready to prosecute suspected perpetrators on the basis of the 1954 Convention.

The problem is not limited to Syrian inadequacy of properly implementing or ratifying the 1954 Convention and its Protocol. Countries, such as United Kingdom, that receive the

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<sup>75</sup>1954 Convention, *supra* 71.

<sup>76</sup> Second Protocol, *supra* 74.

<sup>77</sup> UNESCO, *Enforcing The Protection Of Cultural Property In The Event Of Armed Conflict*, <http://asp-edu.net/pamun/pamun2013/wp-content/uploads/2015/09/UNESCO-CulturalPropety-PAMUNXv.pdf> (last accessed on Dec.18, 2015).

<sup>78</sup> Roger O'Keefe, *Protection of Cultural Property under International Criminal Law*, 11 MELBOURNE JOURNAL OF INTERNATIONAL LAW 339, 359 (2010).

<sup>79</sup> Article 28 of the 1954 Hague Convention, *supra* 71.

<sup>80</sup> UNESCO *Report on the implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two 1954 and 1999 Protocols, Report on the Activities from 1995 to 2004*, 20 (Paris: UNESCO Doc. CLT-2005/WS/6), <http://unesdoc.unesco.org/images/0014/001407/140792e.pdf>.

<sup>81</sup> UNESCO *Report on the implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two 1954 and 1999 Protocols, Report on the Activities from 1995 to 2004*, <http://unesdoc.unesco.org/images/0014/001407/140792e.pdf>.

smuggled Syrian artefacts and consequently contribute to the ISIS wallet, have not ratified the 1954 Convention. This non-ratification leads to the dearth in legal position by preventing the creation of binding obligations.<sup>82</sup> Thus, trade and abuse of cultural property continues to remain rampant on the consumer side, which in turn facilitates the demand-supply conditions of this illicit market.

In addition to The Hague Conventions, umpteen treaties and statutes have been conducive in building up the overall relevance, and jurisprudence relating to the protection of cultural property. For example, the 91st meeting of the Sixty Ninth General Assembly,<sup>83</sup> the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 ('1970 Convention'), and the Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972<sup>84</sup> ('1972 Convention') are also causes behind stringent measures protecting humanity's shared heritage. There also exists a prohibition on pillage and it constitutes a war crime under the 1998 Rome Statute of the International Criminal Court ('ICC Statute'), both in IAC and NIAC.<sup>85</sup>

Syria is a party to the 1970 Convention<sup>86</sup> and the 1972 Convention.<sup>87</sup> However, it has neither ratified the Second Protocol,<sup>88</sup> nor is a party to the ICC Statute;<sup>89</sup> hence the provisions contained therein are not, as a matter of treaty law, binding upon the country.<sup>90</sup>

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<sup>82</sup> Dalya Alberge, *Peer furious at UK 'dithering' over treaty to protect cultural heritage*, THE GUARDIAN, Apr. 18, 2015, <http://www.theguardian.com/science/2015/apr/18/lord-renfrew-iraq-nimrud-hague-isis-islamic-state>

<sup>83</sup> G.A. Res. 11646, U.N. Doc. A/RES/69/281 (May 28, 2015).

<sup>84</sup> UNESCO, *supra* 77.

<sup>85</sup> 1954 Convention, *supra* 71; Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statue].

<sup>86</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231.

<sup>87</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 1037 U.N.T.S. 151.

<sup>88</sup> UNESCO, *Statement of the Chairperson on behalf of the Committee for the Protection of Cultural Property in the Event of an Armed Conflict* (May 21, 2015), [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement\\_FIN\\_AL\\_ENG.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement_FIN_AL_ENG.pdf).

<sup>89</sup> Rome Statute, *supra* 85.

<sup>90</sup> UNESCO, *supra* 88.

In response to ISIS's heinous activities, especially after the destruction in Palmyra, the UNESCO categorized the destruction of historical sites as 'cultural cleansing' and a 'war crime'.<sup>91</sup> In May 2015, the UN General Assembly, representing the world's governments, unanimously adopted a resolution to combat the cultural threat to Iraq.<sup>92</sup> From a legal standpoint, this resolution is non-binding; however, it demonstrates a broad international condemnation against cultural cleansing and is a significant turning point in global efforts to combat the massacre.<sup>93</sup>

### C. PRACTICAL METHODS OF PROTECTING CULTURAL PROPERTY

As discussed before, enforcement and compliance issues, rising from a difficult political environment and incomplete legal provisions, continue to resist swift action required for punishing perpetrators. In such a situation, the focus of the Syrian authorities as well as the international community should not only lie on promoting adherence to, and implementation of the relevant international legal framework, but also on rigorous local as well as international policing, peacekeeping, and campaigning for awareness for preventing illegal trade.

Regional cooperation and coordination are key aspects in strengthening policing; it is thus essential to enhance border controls and custom operations, in particular with the neighbouring states.<sup>94</sup> A specialized segment of the Syrian local authorities should endeavour to cooperate with their neighbours to monitor the trade route flourishing through Turkey, Jordan and Iraq. Strict border control, coupled with an effective criminal justice system will cease illicit trade operations in the region gradually.

As an instance of a specialised unit protecting cultural property, it would be imperative to mention the Swiss Armed Forces. The unit has adopted the Protection of Cultural Property (PCP) model, on the basis of suggestion in the 1954 Convention; a convention that has also been ratified by Syria. The military personnel receive requisite training on knowledge of basic legal texts, law of armed conflict, and technical expertise for property conservation.

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<sup>91</sup> UNESCO, *Director-General Irina Bokova firmly condemns the destruction of Palmyra's ancient temple of Baalshamin, Syria*, <http://en.unesco.org/news/director-general-irina-bokova-firmly-condemns-destruction-palmyra-s-ancient-temple-baalshamin> (last accessed on Dec.18, 2015).

<sup>92</sup> Mark V. Vlastic and Helga Turku, *supra* 48.

<sup>93</sup> *Id.*

<sup>94</sup> Annelies Pauwels, *supra* 19.

They are provided with mission-specific training and resources such as inventories, data mapping or GIS tools.<sup>95</sup>

However, it is to be remembered that Syria is in the throes of a volatile political and administrative struggle, a heart-wrenching refugee crisis and a violent ISIS wreaking havoc in its territory. In a time as this, it is nearly impossible to ensure an uncompromising clampdown on illicit trading of ancient artefacts. Moreover, the Syrian exchequer will have to bear a substantial financial burden, to develop a unit that is satisfactorily empowered to conserve cultural heritage.

To combat problems that plague the regional level, countries have proposed numerous practical ideas, at the international level. For instance, Italy had proposed a specialized international rapid response force, instead of a local one, which is tasked specifically with defending cultural property from any abuse.<sup>96</sup>

The 'Blue Helmets of Culture' group ensures that defence of monuments and archaeological sites in conflict zones would not be left to an individual state.<sup>97</sup> The objective is to have a trained separate unit, charged with the responsibility of protecting war-hit areas. The Italian Corps has experience of more than 40 years in protecting cultural heritage, along with the world's largest database of stolen artefacts. Drawing inspiration and methodologies from the Corps, the Blue Helmets will make inquiries and recover artefacts coming from trade networks diverging from Syria.<sup>98</sup>

In addition to the Blue Helmets, suggestions have been made on assimilating cultural property specialist officers, akin to the World War II 'Monuments Men', alongside the deployed military forces participating in hostilities. In the 1940s, a group of about 400 service members and civilians had worked with military forces to safeguard historic and cultural monuments from war damage. With the end of the conflict, they found and returned works of

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<sup>95</sup>LAURIE RUSH, *ARCHAEOLOGY, CULTURAL PROPERTY, AND THE MILITARY*, 169 (2010).

<sup>96</sup> Agencies, *UN to deploy peacekeepers to protect World Heritage Sites*, THE GUARDIAN, Oct. 17, 2015, <http://www.theguardian.com/world/2015/oct/17/un-peacekeepers-protect-world-heritage-sites-isis>.

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

<sup>98</sup> Chiara Boracchi, *Why cultural blue helmets are necessary*, LIFEGATE, Nov. 2, 2015, <http://www.lifegate.com/people/news/blue-helmets-of-culture>.

art and other items of cultural significance, which had been stolen by the Nazis or hidden for safekeeping.<sup>99</sup>

The modern officers could be trained on preservation techniques, as well as be supplied with requisite resources for safeguarding and recording priceless objects. Cutting-edge technology such as 3D imagery and printing can be used for replacing originals removed for safekeeping or for re-creation in case of their destruction.<sup>100</sup>

It is also necessary to document data on archaeological sites, artefacts' origin, as well as to insert the corresponding information into inventories, both at a national and international level.<sup>101</sup> Such databases will assist the Blue Helmets, and modern 'Monuments Men' during investigations of artefact trafficking, as well as guide various auction houses in conducting checks before putting the objects for sale. A notable example of such a database is INTERPOL's Stolen Works of Art Database and the so-called 'red lists', issued by the International Council of Museums.<sup>102</sup>

Additionally, the Louvre in Paris has formulated a fifty-point plan to protect the cultural treasures around the world. The French President has mandated the creation of laws offering asylum for artefacts. This mandate also includes the formation of a database of stolen cultural property, a monitoring centre to scrutinise the illicit art trade, the creation of a special fund to preserve and reconstruct imperilled antiquities, and a programme to train more archaeologists in Iraq and Syria.<sup>103</sup>

Notwithstanding these measures, it is equally necessary to raise awareness on safeguarding cultural heritage; therefore, its protection should be mandated by international peacekeeping missions. In April, the UNESCO Director-General, Irina Bokova, urged the United Nations

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<sup>99</sup> ROBERT M. EDSSEL, *THE MONUMENTS MEN: ALLIED HEROES, NAZI THIEVES, AND THE GREATEST TREASURE HUNT IN HISTORY*, 284–6 (New York: Center Street, 2009).

<sup>100</sup> Dr. Agnieszka Jachec-Neale, *After Palmyra, what can the world do to protect cultural treasures?*, THE CONVERSATION, Sep. 3, 2015, <https://theconversation.com/after-palmyra-what-can-the-world-do-to-protect-cultural-treasures-46839>.

<sup>101</sup> Annelies Pauwels, *supra* 19.

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

<sup>103</sup> Jonathan Jones, *Asylum for artefacts: Paris' plan to protect cultural treasures from terrorists*, THE GUARDIAN, Nov. 20, 2015, [http://www.theguardian.com/artanddesign/jonathanjonesblog/2015/nov/20/asylum-artefacts-paris-terrorists-louvre-isis?CMP=fb\\_gu](http://www.theguardian.com/artanddesign/jonathanjonesblog/2015/nov/20/asylum-artefacts-paris-terrorists-louvre-isis?CMP=fb_gu).

Security Council ('UNSC') to include protection of cultural sites to the list of tasks for UN peacekeeping forces. Such missions ideally aim at protecting important sites from risks associated with terrorist attacks, war conditions, or natural disasters, where the international community will be empowered to send Blue Helmets to defend them before their ruin.<sup>104</sup>

Moreover, greater public awareness, pertaining to the criminal nature of collecting looted antiquities and its direct contribution to the financing of terrorism, should be encouraged. There has to be a strict crackdown upon the receivers or customers of this property. In March 2014, three UN agencies started such an awareness-raising initiative, aimed at travellers and the tourism industry.<sup>105</sup> Such campaigns will shift the focus from sole reliance on criminal law, the general response used for punishing wrongdoers, to stopping the demand for this sort of crime.<sup>106</sup>

The aforementioned practices have proven to be effective previously, as illustrated. However, these measures fall short of protecting artefacts from being traded by the ISIS, lurking in the opaque online world.

#### D. ISIS AND THE DEEP WEB

The ISIS first used, and to an extent still uses, social media to reach out to potential jihadists. Sophisticated use of social media has become a hallmark of the conflict in Syria, as insurgents use Facebook, Twitter, and YouTube to recruit fighters and promote messages of violence.<sup>107</sup>

As discussed before, law enforcement agencies affiliated to a number of governments, as well as online activists or vigilantes under the banners of Anonymous and GhostSec began to closely monitor ISIS's activities online.<sup>108</sup> They are in the process of tackling ISIS's

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<sup>104</sup> Agencies, *UN peacekeepers to protect world heritage sites from ISIS attacks*, RT NEWS, Oct. 17, 2015, <https://www.rt.com/news/318965-un-protect-heritage-sites>.

<sup>105</sup> UN News Centre, *New UN-led anti-trafficking campaign to help raise tourists' awareness*, Mar. 5, 2014, <http://www.un.org/apps/news/story.asp?NewsID=47286#.VT-hJyGqqko>.

<sup>106</sup> UN News Centre, *supra* 64.

<sup>107</sup> Deborah Richards, *The Twitter jihad: ISIS insurgents in Iraq, Syria using social media to recruit fighters, promote violence*, ABC NEWS, June 20, 2014, <http://www.abc.net.au/news/2014-06-20/isis-using-social-media-to-recruit-fighters-promote-violence/5540474>.

propaganda, training programmes and recruitment drives on the mainstream web. Their actions in furtherance of taking down or filtering extremist content have prompted the jihadists to look for new safe havens online. Hence, this terrorist organization is gradually shifting its operations to the unknown, anonymous virtual sphere termed the 'Deep Web'.<sup>109</sup>

The mainstream web the world knows and uses every time – Surface Web – consists of websites accessible through conventional search engines such as Google. Few web users are aware that there exists a five hundred times larger section, consisting of websites, networks, and online content which are not indexed by search engines. This un-indexed entity protects the identities of visitors to a site, as well as the site owner's, by shielding them from view; thus, rendering them anonymous. It is within this unregulated environment that a variety of criminal organisations openly trade drugs, firearms, child pornography and other illicit materials.<sup>110</sup> Hence, the Deep Web has become a perfect alternative to the ISIS owing to its anonymity and inaccessibility.

Employing the benefits of this perfect alternative, the ISIS has left no stone unturned in enlarging the possibilities of an illicit market in cultural artefacts. It has firmly latched its tentacles on the Deep Web to recruit and search for donations anonymously.<sup>111</sup> As a result, dealers are selling stolen antiquities from these war-torn regions not just through the traditional channels as mentioned before, but also through the Deep Web.<sup>112</sup>

Cultural objects are traded in exchange for the digital currency 'Bitcoin'. A continuous flow of a small amount of money, in form of digital currency, is instantaneously transferred to numerous accounts used by ISIS members worldwide.<sup>113</sup> The supporters of ISIS deploy this method as it swiftly transfers money to militant-held accounts with minimum risk of

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<sup>108</sup> David Gilbert, *ISIS Moves to the Dark Web to spread its message and avoid detection*, INTERNATIONAL BUSINESS TIMES, Nov. 19, 2015, <http://www.ibtimes.com/isis-moves-dark-web-spread-its-message-avoid-detection-2191593>.

<sup>109</sup> Joseph Cox, *supra* 17.

<sup>110</sup> Beatrice Berton, *The dark side of the web: ISIL's one-stop shop?*, ALERT ISSUE, [http://www.iss.europa.eu/uploads/media/Alert\\_30\\_The\\_Dark\\_Web.pdf](http://www.iss.europa.eu/uploads/media/Alert_30_The_Dark_Web.pdf).

<sup>111</sup> Dark Web News, *Fighting ISIS on the Dark Web*, Dec. 17, 2015, <http://darkwebnews.com/news/fighting-isis-on-the-deep-web>.

<sup>112</sup> Annelies Pauwels, *supra* 19.

<sup>113</sup> Pierluigi Paganini, *The ISIS advances in the DeepWeb among Bitcoin and darknets*, SECURITY AFFAIRS, May 22, 2015, <http://securityaffairs.co/wordpress/36961/intelligence/isis-in-the-deepweb.html>.

detection. Clearly, the untraceable nature of ‘cryptocurrency’ (digital equivalent of cash) makes it a preferred option in payments relating to illegal trade, extortion or money laundering.<sup>114</sup> These clandestine dealings have resulted in ISIS having a Bitcoin wallet worth \$3 million.<sup>115</sup>

Currently, law enforcement agencies worldwide lack the requisite tools, framework and resources which are instrumental in protecting citizens from the evils of misusing the Deep Web. In addition to this, tracing the illicit trade network of ISIS online is similar to searching for a needle in a haystack. Owing to the anonymity provided to Deep Web users, it can be logically inferred that it is extremely difficult to attribute an action to any such user in particular. Therefore, it seems virtually impossible to pinpoint the source or the extent of trading activities flourishing using this medium.

*i. EXISTING LEGAL FRAMEWORK AND POSSIBLE SOLUTIONS*

In the world of legislature, the Deep Web can be visualized as a gaping hole, owing to the lacuna in definite governing regime.<sup>116</sup> The international regulatory environment regarding illicit cyber activity is at an early stage of development. There exists no treaty that comprehensively deals with the insecurity created by the availability of services provided via the Deep Web. However, law enforcement and cooperation had been facilitated by the cyber crime focused, the Council of Europe Convention on Cybercrime (‘2001 Budapest Convention’).<sup>117</sup> This treaty endeavours to harmonize criminal laws, improve trans-boundary investigation and cooperation among law enforcement agencies internationally.<sup>118</sup>

However, most nations, including Syria, are yet to align their legislative settings with those in the convention. Also, despite ratification by certain nations, others continue to have inadequate laws, or ineffective law enforcement, or both, and thus risk becoming safe havens

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<sup>114</sup> Beatrice Berton, *supra* 110.

<sup>115</sup> P.H. Madore, *GhostSec: ISIS has a Bitcoin wallet worth \$3 million*, CRYPTOCOIN NEWS, Nov. 16, 2015, <https://www.cryptocoinsnews.com/ghostsec-isis-bitcoin-wallet-worth-3-million>.

<sup>116</sup> Beatrice Berton, *supra* 110.

<sup>117</sup> DANIEL SUI, JAMES CAVERLEE, DAKOTA RUDESILL, *THE DEEP WEB AND THE DARKNET: A LOOK INSIDE THE INTERNET’S MASSIVE BLACK BOX* (2015).

<sup>118</sup> Council of Europe Convention on Cybercrime, October, 23, 2001,

for cyber criminals or sites for infrastructure used for cyber crime.<sup>119</sup> Unfortunately, Syria falls into the latter category.

Additionally, the International Committee of Red Cross ('ICRC') declared the Tallinn Manual, a non-binding document commissioned by the NATO, as an important step towards underscoring the relevance of international humanitarian law ('IHL') in the realm of cyber crime and subsequent attacks or warfare.<sup>120</sup> As per the Manual, the use of cyber operations, in IAC and NIAC, can potentially have devastating consequences, thus making it crucial to identify ways of limiting the humanitarian cost of cyber operations.<sup>121</sup>

At the 28th International Conference of the Red Cross and Red Crescent, 2003, ('2003 Conference') the States that were party to the Geneva Conventions concluded that despite the means and methods of war evolving over time, IHL must be respected and remain applicable to all activities conducted by parties, in the course of armed conflict. The member States called for a 'rigorous and multidisciplinary review' of new means and methods of cyber crime and warfare, for ensuring that legal protection is not overtaken by the development of technology.<sup>122</sup> The use of Deep Web by ISIS is a perfect example of such rapid technological development.

As discussed before, the ISIS is similar to any other crime syndicate, in terms of the illegal trading, clandestine method of working, and its financial dealings using blood money. To deprive them of a huge fraction of their contraband, it becomes imperative for authorities to aim at striking at the core of their financial capital; a substantial amount of which accrues from, not only through traditional channels, but also via Bitcoin transactions in the Deep Web.

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<sup>119</sup> Calum Jeffray and Tobias Feakin, *Underground web – The cybercrime challenge*, AUSTRALIAN STRATEGIC POLICY INSTITUTE, INTERNATIONAL CYBER POLICY CENTRE, Mar. 2015, [https://www.aspi.org.au/publications/underground-web-the-cybercrime-challenge/SR77\\_Underground\\_web\\_cybercrime.pdf](https://www.aspi.org.au/publications/underground-web-the-cybercrime-challenge/SR77_Underground_web_cybercrime.pdf).

<sup>120</sup> International Committee of Red Cross, *Cyber warfare and international humanitarian law: The ICRC's position*, <https://www.icrc.org/eng/assets/files/2013/130621-cyber-warfare-q-and-a-eng.pdf> (last accessed on Dec. 18, 2015).

<sup>121</sup> TALLIN MANUAL ON INTERNATIONAL LAW APPLICABLE TO CYBER WARFARE: PREPARED BY THE INTERNATIONAL GROUP OF EXPERTS AT THE INVITATION OF THE NATO CENTRE FOR CYBER DEFENCE CENTRE OF EXCELLENCE 45 (2013).

<sup>122</sup> International Committee of Red Cross, *supra* 120.

A variety of measures can be adopted for curtailing the ISIS grip on Deep Web networks. One of them, as suggested by the Defence Advanced Research Projects Agency ('DARPA') involves using MEMEX software.<sup>123</sup> Originally developed for monitoring human trafficking on the Deep Web, this software allows for better cataloguing of Deep Web sites, thus facilitating the monitoring of almost any illicit Deep Web activity. MEMEX eases discovery and characterization of content, and its analysis, making it instrumental in preventing ISIS from having an uninhibited rein over the Deep Web.<sup>124</sup> Thus, the software substantially reduces problems accruing from the anonymity of a Deep Web user, by filtering and tracing inflammatory, illegal content.

ii. *DEEP WEB MONITORING – PROS AND CONS*

The author believes that monitoring the Deep Web, for locating ISIS's artefact trade network, is a credible idea. The group has already shifted its recruitment operations to the Deep Web;<sup>125</sup> hence, it is not impractical to deduce the inevitability of it shifting a majority of trade operations to an untraceable medium. Moreover, ISIS makes a handsome fortune from Bitcoin transactions; by intercepting the transaction networks, the ever-increasing fraction of funding will gradually dwindle. This would go a long way in protecting artefacts that are traded so callously. Additionally, this is a much peaceful, proactive method which will help in sending a message to the militants, and future extremists that global authorities are tailing them closely.

It is true that there are a plethora of conventional, legislative measures available to hit out at the core of funding. However, as elaborated before, the aforementioned laws have been reduced to non-enforceable measures on paper. Even if Syria consents to or ratifies the aforementioned conventions, makes requisite changes to its domestic regime, the conditions, political or otherwise, are so tumultuous that practical implementation is logistically arduous. Moreover, the effectiveness of strict on-ground policing, deployment of personnel for catching smugglers, increasing awareness, and crackdown on buyers may not necessarily translate to an absolute embargo on online and Deep Web trading. It is because of these

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<sup>123</sup> Wade Shen, *MEMEX*, DEFENCE ADVANCED RESEARCH PROJECTS AGENCY, <http://www.darpa.mil/program/memex> (last accessed on Dec. 18, 2015).

<sup>124</sup> Dark Web News, *supra* 111.

<sup>125</sup> Barbara Starr and Jamie Crawford, *Pentagon hunts for ISIS on the secret internet*, CNN POLITICS, May 12, 2015, <http://edition.cnn.com/2015/05/12/politics/pentagon-isis-dark-web-google-internet>.

reasons that the author believes in the necessity of virtual sphere monitoring and peacekeeping measures to work in tandem, for effectively curbing ISIS activities on all platforms.

The 2003 Conference had realized this need and emphasized on developing the law further, for ensuring sufficient protection to the civilian population, or the humanitarian impact, with the evolution of cyber technologies. It was thus decided that individual States were to determine laws, which were in sync with the existent technology, and realistically helped in safeguarding interests of the stakeholders.<sup>126</sup>

Following from this, the official sanctioning of Deep Web monitoring globally will not only legitimize this unconventional measure, but also provide ample freedom to the concerned authorities for taking tough, necessary measures. Thus, global authorities, as well as governments must aim at developing legislations that empower various investigative agencies to use the Deep Web for tracing illicit networks. Such form of statutory sanction will also be instrumental in developing technology, as well as authorities who will identify the organized crime network of ISIS.

However, it is to be kept in mind that the complete extent of ISIS online operation is still unknown.<sup>127</sup> There are slight chances that Deep Web monitoring, for tracing artefact trading networks, might turn out to be a wild goose chase. Despite this minimal possibility, a formal surveillance might also help in conclusively determining ISIS penetration in this unknown territory.

As contended before, ISIS's ability to generate funds online has allowed it to evolve from a regular terrorist group to a rich, highly functioning organisation. The anonymity of Deep Web boosts its capacity to sustain itself financially, as well as improve its operational effectiveness on the ground.<sup>128</sup> Hence, its recent military successes will likely put more pressure on governments to grant law enforcement agencies access to encrypted

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<sup>126</sup> International Committee of Red Cross, *supra* 120.

<sup>127</sup> Zubair Muhad, *ISIS Supprter: Islamic State does not use Bitcoin*, DEEP DOT WEB, Sep. 22, 2014, <https://www.deepdotweb.com/2014/09/22/bitcoin-is-not-being-used-by-the-islamic-state>.

<sup>128</sup> Beatrice Berton, *supra* 110.

communications.<sup>129</sup> However, such proposals have the potential to fuel pre-existing raging debates about citizens' privacy and civil liberties.<sup>130</sup>

The online anonymity of an internet user is widely regarded as a basic right. It is argued that encryption is an essential tool for dissidents and activists living in countries ruled by oppressive regimes.<sup>131</sup> Therefore, it is quite apparent that the striking of a balance between protecting civil liberties and maintaining security will be a herculean task for governments worldwide. Thus, to draw the line between anonymity and surveillance, the proposed legislations should ideally aim at conciliating between privacy of users and requisite investigation.<sup>132</sup> It is supremely vital to draw a line between privacy of citizens and corresponding civil liberties and immoral intrusion for the sake of investigation.

## CONCLUSION

A long list of war crimes, crimes against humanity, serious human rights violations, not to mention the traumatising ordeal faced by Syrians owing to a possible genocide, is undoubtedly attributable to ISIS.<sup>133</sup>

According to some, there exists no plausible incentive to protect ancient, decrepit structures in a troubled time such as this, where human life and loss, and increased exodus naturally assumes precedence. In their view, it is difficult to talk about Syria's cultural heritage and discuss preservation of history when the country's future looks bleak and uncertain.<sup>134</sup>

However, the plausible incentive derived from safeguarding cultural property is preventing the ISIS trading operations which reduces their capital substantially, which in turn helps in reducing the casualties and damage the group is presently inflicting. As elaborated before, there exists a direct nexus between illicit trading and obtaining funds for purchasing ammunition or artillery.

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

<sup>130</sup> *Id.*

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

<sup>132</sup> Agencies, *FBI says privacy must take backseat to national security in online fight against ISIS*, RT NEWS, Jun 3, 2015, <https://www.rt.com/usa/264709-steinbach-mccaul-dark-web>.

<sup>133</sup> Rep. of the Int'l Law Comm'n, 27th Sess, Aug. 13, 2014, U.N. Doc. A/HRC/27/60.

<sup>134</sup> Alice Speri, *Syria's Cultural Heritage Is a Major Victim of the Country's Civil War*, VICE NEWS, Mar 15, 2014, <https://news.vice.com/article/syria-s-cultural-heritage-is-a-major-victim-of-the-country-s-civil-war>.

Additionally, the potential of economic opportunities accruing from tourism should not be ignored, once the region stabilises. For instance, prior to the inception of the uprising in 2011, tourism in Syria accounted for an estimated 5% of its GDP.<sup>135</sup>

Keeping these in mind, peacekeeping initiatives occupy a special place in the Syrian situation, where pillage of cultural heritage and antiquities has reached an unprecedented scale, fuelling the conflict by providing revenues for armed groups and terrorists. It is of utmost importance to have forces that work at the grassroots level to actively save the property from damage and trading. Moreover, peacekeeping operations are also reflective of wide international cooperation and empathy – the foundation of the pillars of humanity.

For absolute efficacy, the on-field missions must work in collaboration with online operations, especially those occurring in the Deep Web sphere. Currently, the transnationality of the Deep Web network frustrates eradication, regulatory, and prosecution efforts of any one state. As contended before, policymakers and state actors must focus systematically on negative characters such as the ISIS, and their bad patterns; they must strive to anticipate and favourably shape evolution of the Deep Web.<sup>136</sup> At times such efforts may seem isolated and dangerously toeing the line separating privacy violation and investigation. But, it is to be remembered that success is guaranteed over time, if a broader strategy including prevention, detection, and response is developed, as well as followed with broad international participation and support.

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<sup>135</sup> MapAction, *Impact of the conflict on Syrian economy and livelihoods Syria Needs Analysis Project, Syria Needs Analysis Report – July 2013*, July 29, 2013, <http://www.mapaction.org/component/mapcat/download/2960.html?fmt=pdf>.

<sup>136</sup> DANIEL SUI, JAMES CAVERLEE, DAKOTA RUDESILL, *supra* 117.