

CULTURAL PROPERTY

Building the Case for Prosecuting the Destruction of Cultural Property in Yemen



YEMEN
ACCOUNTABILITY
PROJECT



GLOBAL
ACCOUNTABILITY
NETWORK



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The Yemen Accountability Project (“YAP”) is a student organization based at Case Western Reserve University School of Law and affiliated with the Global Accountability Network (“GAN”). The opinions, conclusions, and recommendations contained in this report do not necessarily reflect the views of Case Western Reserve University or its School of Law.

GAN is a collective of international criminal prosecutors and practitioners who supervise and work with law students on specific atrocity projects for Syria, Yemen, Venezuela, Ukraine, and the Pacific Rim region. YAP’s student researchers and analysts gather open-source evidence of potential war crimes and crimes against humanity committed during the Yemen Civil War to assist with future prosecutions under the relevant international legal standards.

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<https://www.nationsonline.org/oneworld/map/Political-Map-of-Countries-of-Western-Asia.htm>



<https://www.nationsonline.org/oneworld/map/yemen-map.htm>

EXECUTIVE SUMMARY

This white paper examines the protections provided to cultural heritage sites under international law and considers limitations to those protections in the context of armed conflict.¹ Cultural heritage can be defined as “the physical and intangible elements associated with a group of individuals which are created and passed from generation to generation.”² In addition to the broader protections for cultural heritage sites under international law, this white paper also addresses the application of military necessity, proportionality, and distinction to the destruction of cultural heritage sites. Although many parties to the conflict in Yemen have attacked cultural heritage sites, the majority of these attacks have been attributed to the Saudi-led Coalition.

Based on this evidence, the Yemen Accountability Project concludes that the Saudi-led Coalition and other actors, including the Houthi rebels, targeted cultural property. These attacks constitute unlawful destruction of cultural heritage as a method of warfare, which must not go unpunished. The purpose of this white paper is to provide evidence of the crimes and offer potential avenues for accountability.

INTRODUCTION

This white paper explores the destruction of cultural property in Yemen and identifies the perpetrators of attacks on cultural property to help build cases to prosecute them for war crimes and crimes against humanity. Part I provides a synopsis of the Yemen Civil War, including the relevant parties to the conflict and the reasoning behind its inception. Part II examines the history of the protection of cultural property in armed conflict and Yemen’s cultural history. Part III sets forth legal standards for the destruction of cultural property under the Geneva Conventions and the Rome Statute. Part IV presents evidence of the destruction of cultural property from 2015-2019 and analyzes these crimes under the legal standards in Part III. Part V explores avenues for accountability for war crimes and crimes against humanity. Finally, Part VI provides several recommendations for how stakeholders may address the ongoing threat to cultural property in Yemen and aid future prosecutions.

I. THE YEMEN CIVIL WAR

The Yemen conflict is arguably the worst humanitarian crisis in the world, having caused the deaths of at least 17,700 civilians and displaced an estimated 3.3 million people.³ The ongoing civil war is predominately between the Iranian-supported Houthi rebels (“Houthis”), which overthrew the Yemeni government, and the Saudi Arabia-led Coalition (“Coalition”), which

¹ Two conventions, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage both outline general obligations of states to safeguard cultural heritage; however, neither directly address cultural heritage in armed conflict and are, as such, not addressed here.

² Derek Finchamf, *The Distinctiveness of Property and Heritage*, 115 PA. ST. L. REV. 641, 642 (2011).

³ *Humanitarian crisis in Yemen remains the worst in the world, warns UN*, UN NEWS (Feb. 14, 2019), <https://news.un.org/en/story/2019/02/1032811>.

supports ousted Yemeni President Abdrabbuh Mansour Hadi.⁴ Both the Islamic State (“ISIS”) and Al-Qaeda of the Arabian Peninsula (“AQAP”) have also participated in the conflict.⁵

The conflict arose from long-standing tensions between the Houthis, a Zaydi Shia group from northern Yemen,⁶ and Hadi’s dictatorial precursor, President Ali Abdulla Saleh.⁷ Although Saleh transferred power to then Vice-President Hadi in 2012 following Arab Spring protests in 2011, a lack of consensus on a new constitution created widespread instability.⁸ The conflict escalated in 2014, and the Houthis captured Sana’a, the capital, in September of 2014.⁹ By January of 2015, the Houthis had effectively ousted Hadi.¹⁰ Although Hadi fled to Saudi Arabia, his government is still generally recognized internationally as the official government of Yemen.¹¹

On March 26, 2015, the Coalition began an air strike campaign against Houthi forces with the intent to reinstate Hadi’s government.¹² Since 2015, alongside attacks on cultural heritage sites, the conflict has seen significant civilian casualties and other acts hindering the civilian population, including a *de facto* blockade on Yemeni seaports and the closure of Sana’a International Airport.¹³ Attacks claimed by ISIS and AQAP have only exacerbated the impact on the civilian population.¹⁴ The conflict has devastated civilians in numerous ways—undermining health, food, housing, sanitation, and protective resources—but the destruction of Yemen’s cultural heritage sites has likewise damaged Yemen’s cultural identity.¹⁵

A. CLASSIFYING THE ARMED CONFLICT IN YEMEN

⁴ The Saudi-led Coalition includes support from the United States, France, Germany, and the United Kingdom. Kali Robertson, *Yemen’s Tragedy: War, Stalemate, and Suffering*, COUNCIL ON FOREIGN RELATIONS (Feb. 5, 2021), <https://www.cfr.org/backgrounder/yemen-crisis>.

⁵ Kali Robertson, *Yemen’s Tragedy: War, Stalemate, and Suffering*, COUNCIL ON FOREIGN REL. (Feb. 5, 2021), <https://www.cfr.org/backgrounder/yemen-crisis>.

⁶ *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS. WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

⁷ *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS. WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

⁸ Kali Robertson, *Yemen’s Tragedy: War, Stalemate, and Suffering*, COUNCIL ON FOREIGN REL. (Feb. 5, 2021), <https://www.cfr.org/backgrounder/yemen-crisis>.

⁹ *How Yemen’s capital Sanaa was seized by Houthi rebels*, BBC (Sept. 27, 2014), <https://www.bbc.com/news/world-29380668>.

¹⁰ *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS. WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

¹¹ See S.C. Res. 2216 (April 14, 2015); *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS. WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

¹² *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS. WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

¹³ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 18, U.N. Doc. A/HRC/39/43 (2018).

¹⁴ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 18, U.N. Doc. A/HRC/39/43 (2018).

¹⁵ Lamya Khalidi, *The Destruction of Yemen and Its Cultural Heritage*, 49 INT’L J. MIDDLE EAST STUD. 735, 735 (2017).

The Yemen Civil War has been classified as a non-international armed conflict (“NIAC”) by the Group of Eminent International and Regional Experts on Yemen (“Group of Experts”).¹⁶ A NIAC involves a conflict between a State and a non-State armed group.¹⁷ In NIACs, international humanitarian law (“IHL”) obligations arise under customary international law and treaty law.¹⁸ All parties to the Yemen conflict, including Yemen, the Coalition, and non-State actors, are bound by customary international law, including the customary principles of necessity, distinction, and proportionality.¹⁹ Even in areas where Hadi’s government has lost control, it still retains positive obligations under customary international law.²⁰ Additionally, Yemen is a party to and bound by the Geneva Conventions of 1949, including Additional Protocol II.²¹ Since the Geneva Conventions reflect customary international law, the Coalition is likewise bound by them.²²

NIACs are regulated by Common Article 3 and Additional Protocol II to the Geneva Conventions. Common Article 3 applies to an “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.”²³ Additional Protocol II narrows this definition to apply to conflicts that:

[take] place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups, which exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations.²⁴

The Group of Experts has concluded that the Yemen conflict fulfills the threshold tests for a NIAC under both Common Article 3 and Additional Protocol II.²⁵

As a party to the conflict and a *de facto* authority²⁶ in Yemen, the Houthis are also bound by IHL, including Common Article 3, Additional Protocol II, and customary IHL.²⁷ These

¹⁶ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 35, U.N. Doc. A/HRC/45/CRP.7 (2020).

¹⁷ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 15, U.N. Doc. A/HRC/39/43 (2018).

¹⁸ *Sources of IHL: Treaties and Customary Law*, INT’L COMM. RED CROSS, <http://ir.icrc.org/en/international-humanitarian-law/sources-ihl-treaties-customary-law/> (last visited Jun. 15, 2022).

¹⁹ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 15, U.N. Doc. A/HRC/39/43 (2018).

²⁰ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 13, U.N. Doc. A/HRC/39/43 (2018).

²¹ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 35, U.N. Doc. A/HRC/45/CRP.7 (2020).

²² U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 31, U.N. Doc. A/HRC/45/CRP.7 (2020).

²³ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, Aug. 12, 1949.

²⁴ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict, art. 1, June 8, 1977, 1125 U.N.T.S. 609.

²⁵ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 31, U.N. Doc. A/HRC/45/CRP.7 (2020).

²⁶ Here, Houthi *de facto* authority means that, although the Houthis do not have legal authority, the group has actual authority and control of Yemen presently.

²⁷ U.N. High Comm’r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 32, U.N. Doc. A/HRC/45/CRP.7 (2020).

provisions also bind the Coalition because it has entered the conflict on behalf of Hadi's government.²⁸ The Coalition's involvement does not change the character of the conflict from a NIAC to an international armed conflict ("IAC"), as it does not create a conflict between two States; thus, the core conflict remains between Yemen and a non-State actor.²⁹ The Group of Experts also considers AQAP and ISIS to be bound by IHL because they have engaged in parallel NIACs with Yemen's armed forces.³⁰ For the purposes of IHL, it should be noted that any act that could be legally classified as a terrorist act within an armed conflict can never be lawful.³¹

II. CULTURAL PROPERTY

A. HISTORY OF THE PROTECTION OF CULTURAL HERITAGE IN ARMED CONFLICT

Looting historic sites has occurred in conflicts as early as Ancient Roman wars, but with the general understanding that such looting has limitations for sacred sites and religious works.³² Throughout the Middle Ages and the Enlightenment, although no distinction had been drawn between military and civilian property under a permissible concept of total war (including the destruction of cultural heritage sites), there was a growing condemnation for the destruction of cultural heritage sites, except in pursuit of a lawful end.³³

A codification of protections for cultural heritage sites in armed conflict is seen in the Lieber Code, which established the modern principles of warfare.³⁴ The Lieber Code specified that "property belonging to churches...to establishments of education, or foundations for the promotion of knowledge" could not be traditional spoils of war.³⁵

The 1899 and 1907 Hague Conventions on the Laws and Customs of War on Land further protected cultural heritage sites. Article 17 of the Annex to the Convention Regulations obligates parties to "spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments...provided they are not being used at the time for military purposes."³⁶ Article 27 of the Convention also requires that the besieged "indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy

²⁸ U.N. High Comm'r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, ¶ 33, U.N. Doc. A/HRC/45/CRP.7 (2020).

²⁹ U.N. High Comm'r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, ¶ 33, U.N. Doc. A/HRC/45/CRP.7 (2020).

³⁰ U.N. High Comm'r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, ¶ 34, U.N. Doc. A/HRC/45/CRP.7 (2020).

³¹ International Humanitarian Law and the Challenges of Contemporary Armed Conflicts in 2015, INT'L COMM. RED CROSS, ¶ 74 (2015), <https://casebook.icrc.org/case-study/icrc-international-humanitarian-law-and-challenges-contemporary-armed-conflicts-2015>.

³² 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, 249 (2006).

³³ ROGER O'KEEFE THE PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICT 10 (2006).

³⁴ 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, 253 (2006).

³⁵ General's Orders No. 100, *The Lieber Code: Instructions for the Government of Armies of the United States in the Field*, Sec. II, art. 34, Apr. 24, 1863, https://avalon.law.yale.edu/19th_century/lieber.asp.

³⁶ Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 27, Oct. 18, 1907.

beforehand.”³⁷ Article 56 of the Convention specifies that “institutions dedicated to religion, charity, and education, the arts and sciences, even when State property shall be treated as private property” and forbids the “seizure of, destruction, or wilful damage to, these institutions, historic monuments, works of art and science.”³⁸

The 1899 and the 1907 Hague Conventions gained relevance during and following World War II. Although the Allied Powers publicly condemned the looting and destruction of cultural property,³⁹ both the German forces and the Allied Powers engaged in intensive aerial bombing that devastated both civilians and cultural heritage sites.⁴⁰ Following the war, the Nuremberg International Military Tribunal recognized the destruction of cultural heritage sites as war crimes under the 1899 and 1907 Hague Conventions and customary international law.⁴¹ For instance, Article 6 of the Nuremberg Charter criminalizes plunder of property and wanton destruction of towns or villages as war crimes.⁴² The Nuremberg Tribunal indicted and convicted individuals for the confiscation of art and cultural objects, but the later *Ohlendorf* case before the U.S. Military Tribunal at Nuremberg characterized the total destruction of cities as “an act of legitimate warfare,” irrespective of their contents.⁴³ This clearly conflicts with the Charter’s intent to criminalize destruction of towns and villages and the 1899 and 1907 Hague Conventions’ intent to protect cultural heritage sites.

B. YEMEN’S CULTURAL HERITAGE

Yemen’s cultural heritage stretches back to human migration out of Africa, including the Golden Age of the Sabaean Kingdoms, which dispersed across incense caravan routes and built the Great Marib Dam over 2,500 years ago.⁴⁴ Yemen’s geographic position between Egypt, India, and the South Seas allowed Yemen and its people to prosper, preserving and documenting their rich history.⁴⁵ The spread of Islam throughout Yemen led to the creation and preservation of Islamic manuscripts, including in the libraries of the Grand Mosque of Sana’a and the National

³⁷ Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 27, Oct. 18, 1907.

³⁸ Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 56, Oct. 18, 1907.

³⁹ 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, 256 (2006).

⁴⁰ ROGER O’KEEFE, THE PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICT 67 (2006).

⁴¹ ROGER O’KEEFE, THE PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICT 88 (2006); 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, 257 (2006).

⁴² Charter of the International Military Tribunal, art. 6(b), Aug. 8, 1945, 82 U.N.T.S. 280.

⁴³ See *U.S. v. Ohlendorf et al.*, 4 Trials of War Criminals Before the Nuremberg Military Tribunal 467 (1948) (Einsatzgruppen Case).

⁴⁴ Lamya Khalidi, *The Destruction of Yemen and Its Cultural Heritage*, 49 INT’L J. MIDDLE EAST STUD. 735, 736 (2017).

⁴⁵ MWATANA, THE DEGRADATION OF HISTORY: VIOLATIONS COMMITTED BY THE WARRING PARTIES AGAINST YEMEN’S CULTURAL PROPERTY 7 (2018), <https://mwatana.org/wp-content/uploads/2018/12/The-Degradation-of-History-English.pdf>.

Museum of Taiz.⁴⁶ Over the years, different architectural styles flourished, as seen in the traditional houses of the Old City of Sana'a and the walled city of Shibam.⁴⁷

As of 2017, over 78 identified cultural heritage sites have been destroyed or damaged, including archeological sites, museums, mosques, and United Nations Educational, Scientific, and Cultural Organization (“UNESCO”) World Heritage Sites.⁴⁸ Coalition airstrikes damaged or destroyed 59 of these sites, despite their presence on UNESCO “no fly” lists.⁴⁹ Although Yemen’s cultural heritage sites has suffered damage since the 1970s, the ongoing conflict’s larger-scale destruction threatens to cause irreplaceable loss to Yemen’s cultural history.⁵⁰

III. LEGAL STANDARD

A. COMMON ARTICLE 3 OF THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II TO THE GENEVA CONVENTIONS OF 1949

Common Article 3 of the Geneva Conventions prescribes the legal provisions that apply in a NIAC taking place in a State party’s territory.⁵¹ To ensure protection for persons taking no active part in hostilities, Common Article 3 prohibits violence (including torture), hostage-taking, and humiliating and degrading treatment.⁵² Article 3(3) allows for special agreements beyond the provisions of IHL, including the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (“1954 Hague Convention”).⁵³ However, Common Article 3 provides the core treaty law for NIACs and remains the only worldwide binding provision.⁵⁴

⁴⁶ MWATANA, THE DEGRADATION OF HISTORY: VIOLATIONS COMMITTED BY THE WARRING PARTIES AGAINST YEMEN’S CULTURAL PROPERTY 8 (2018), <https://mwatana.org/wp-content/uploads/2018/12/The-Degradation-of-History-English.pdf>.

⁴⁷ Robert F. Worth, *Yemen Finds Dreamland of Architecture*, NEW YORK TIMES (Nov. 15, 2009), <https://www.nytimes.com/2009/11/16/world/middleeast/16yemen.html>.

⁴⁸ Lamy Khalidi, *The Destruction of Yemen and Its Cultural Heritage*, 49 INT’L J. MIDDLE EAST STUD. 735, 736 (2017).

⁴⁹ Lamy Khalidi, *The Destruction of Yemen and Its Cultural Heritage*, 49 INT’L J. MIDDLE EAST STUD. 735, 736 (2017). This has also been confirmed by UNESCO briefings, and the lack of regard for protected sites is reflected in the Saudi Coalition bombings of MSF clinics and hospitals, who also share location coordinates with the Coalition.

⁵⁰ Lamy Khalidi, *The Destruction of Yemen and Its Cultural Heritage*, 49 INT’L J. MIDDLE EAST STUD. 735, 738 (2017).

⁵¹ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, Aug. 12, 1949, 75 U.N.T.S. 31.

⁵² Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3(1)(a-c), Aug. 12, 1949, 75 U.N.T.S. 31.

⁵³ INT’L COMM. RED CROSS, COMMENTARY TO THE CONVENTION (I) FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD ¶¶ 843, 846 (2d. ed. 2016), <https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt3>.

⁵⁴ INT’L COMM. RED CROSS, COMMENTARY TO THE CONVENTION (I) FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD ¶ 354 (2d. ed. 2016), <https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt3>.

Additional Protocol II⁵⁵ further specifies protections for people affected by NIACs.⁵⁶ Article 13 provides that “the civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”⁵⁷ Although this article does not specifically refer to cultural heritage sites, the presence of civilian populations in many cultural heritage sites should provide additional protection to the site, unless those individuals “take a direct part in hostilities.”⁵⁸ This article also requires that all parties to a conflict take precautions to ensure that civilian populations are not used as human shields, such as by intentionally placing military installations in concentrated civilian areas.⁵⁹ Article 16 further prohibits “acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples” or “[using] them in support of the military effort.”⁶⁰ This article is without prejudice to the 1954 Hague Convention, so as not to modify the Convention.⁶¹ The prohibition against utilizing cultural heritage sites in support of the military effort attempts to ensure that the objects are not used as military objectives and that “all possible measures should be taken to put a stop to any use in support of military effort... [as] an invitation to safeguard the heritage of mankind.”⁶²

⁵⁵ Additional Protocol I applies to international armed conflicts. Although this memorandum proceeds under the characterization by the Group of Experts that the Yemen conflict is a NIAC, the classification of an armed conflict is more complex when foreign States are involved in the conflict. The classification is distinguished by whether an outside State is fighting in support of the State Party to the conflict (NIAC) or in support of the armed group (international armed conflict). As such, the Yemen conflict is subject to change in classification. INT’L COMM. RED CROSS, COMMENTARY TO THE CONVENTION (I) FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD ¶ 404 (2d. ed. 2016), <https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt3>.

⁵⁶ See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609.

⁵⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 13(2), June 8, 1977, 1125 U.N.T.S. 609.

⁵⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 13(3), June 8, 1977, 1125 U.N.T.S. 609.

⁵⁹ INT’L COMM. RED CROSS, COMMENTARY TO THE PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS ¶ 4772 (1987), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=AA0C5BCBAB5C4A85C12563CD002D6D09>.

⁶⁰ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 16, June 8, 1977, 1125 U.N.T.S. 609.

⁶¹ INT’L COMM. RED CROSS, COMMENTARY TO THE PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS ¶ 4832 (1987), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=AA0C5BCBAB5C4A85C12563CD002D6D09>.

⁶² INT’L COMM. RED CROSS, COMMENTARY TO THE PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS ¶ 4846 (1987), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=AA0C5BCBAB5C4A85C12563CD002D6D09>.

B. THE 1954 HAGUE CONVENTION OF THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

Following the massive destruction of World War II, the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict was created to address protections for cultural property during times of war.⁶³ Article 1 broadly defines cultural property as “moveable or immovable property of great importance to the cultural heritage of every people.”⁶⁴ Article 1 also provides a non-exhaustive list of examples of cultural property, including “monuments of architecture, art or history... groups of buildings which, as a whole, are of historical or artistic interest,”⁶⁵ and “buildings whose main and effective purpose is to preserve or exhibit... moveable cultural property.”⁶⁶

Article 2 uses the elements of safeguarding and respect to define the “protection of cultural property.”⁶⁷ Safeguarding is framed as the peacetime actions of the parties to protect their cultural property “against the foreseeable effects of an armed conflict.”⁶⁸ Respect is defined as the obligation to refrain from use that is “likely to expose [the property] to destruction or damage in the event of armed conflict” and “any act of hostility directed against such property,” whether that property is within the party’s own territory or that of another party.⁶⁹

Articles 4 and 5 obligate parties to the 1954 Hague Convention to avoid exposing cultural property to damage or destruction within their own territories, while also “refraining from any act of hostility” against cultural property in another territory.⁷⁰ Article 4(2) does, however, allow for the waiver of such obligations “in cases where military necessity imperatively requires such a waiver.”⁷¹

The principles set forth in the 1954 Hague Convention have been accepted as customary international law based on the historical understanding that cultural property sites should be protected during war.⁷² In addition, the International Criminal Tribunal for the former Yugoslavia

⁶³ Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240.

⁶⁴ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 1(a), May 14, 1954, 249 U.N.T.S. 240.

⁶⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 1(a), May 14, 1954, 249 U.N.T.S. 240.

⁶⁶ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 1(b), May 14, 1954, 249 U.N.T.S. 240.

⁶⁷ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 2, May 14, 1954, 249 U.N.T.S. 240.

⁶⁸ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 3, May 14, 1954, 249 U.N.T.S. 240.

⁶⁹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4(1), May 14, 1954, 249 U.N.T.S. 240.

⁷⁰ Convention for the Protection of Cultural Property in the Event of Armed Conflict, arts. 4, 5, May 14, 1954, 249 U.N.T.S. 240.

⁷¹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4(2), May 14, 1954, 249 U.N.T.S. 240.

⁷² 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, 335 (2006).

(“ICTY”) and the International Criminal Court (“ICC”) have recognized their jurisdiction over crimes against cultural property.⁷³

The 1954 Hague Convention contains two Additional Protocols, which achieved lower rates of ratification than the original 1954 Hague Convention.⁷⁴ The First Additional Protocol focuses exclusively on moveable cultural objects.⁷⁵ The Second Additional Protocol limits waiver of the obligations of the 1954 Hague Convention to instances where “cultural property has been made into a military objective,” and “there is no feasible alternative available to obtain a similar military advantage.”⁷⁶ The Second Additional Protocol further confines this waiver to “purposes which are likely to expose [cultural property] to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage.”⁷⁷ The Second Additional Protocol establishes that it is the responsibility of the parties to the Convention to establish criminal offenses under their domestic laws for violations of the Protocol.⁷⁸ Finally, the Second Additional Protocol clarifies that the Protocol applies to NIACs but not “internal disturbances and tensions, such as riots.”⁷⁹

C. THE ROME STATUTE AND DESTRUCTION OF CULTURAL PROPERTY

Article 8(2)(c) of the Rome Statute of the ICC criminalizes violations of Common Article 3 in NIACs,⁸⁰ as well as “[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.”⁸¹ The war crime of attacking protected objects contains five elements:

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.

⁷³ See Rome Statute of the International Criminal Court, art. 8(2), U.N. Doc. A/CONF.183/9 (1998) [hereinafter Rome Statute] (listing “intentionally directing attacks” against protected sites as a war crime); International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, art. 3, U.N. Doc. S/25704 (1993) (finding the “destruction or willful damage” to churches and libraries in Yugoslavia to be a war crime).

⁷⁴ In total, 133 States have ratified the 1954 Hague Convention, 110 are parties to the First Protocol, and 84 are party to the Second Protocol. See *1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two (1954 and 1999) Protocols, Status of Ratification*, UNESCO (last updated Nov. 2020), <https://en.unesco.org/protecting-heritage/convention-and-protocols/states-parties>.

⁷⁵ First Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 215.

⁷⁶ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, art. 6(a), Mar. 26, 1999, 2253 U.N.T.S. 172.

⁷⁷ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, art. 6(b), Mar. 26, 1999, 2253 U.N.T.S. 172.

⁷⁸ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, art. 15(2), Mar. 26, 1999, 2253 U.N.T.S. 172.

⁷⁹ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, art. 22(2), Mar. 26, 1999, 2253 U.N.T.S. 172.

⁸⁰ Rome Statute of the International Criminal Court, art. 8(2)(c), July 17, 1998, 2187 U.N.T.S. 38544.

⁸¹ Rome Statute of the International Criminal Court, art. 8(2)(e)(iv), July 17, 1998, 2187 U.N.T.S. 38544.

3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.⁸²

The first element establishes the perpetrator's conduct. Under the second element, the object must be specially protected as part of the enumerated list. The third element makes clear that cultural heritage sites may be destroyed if they are valid military objectives. However, for an attack to be considered a war crime, the perpetrator must have known that the site was protected and that it failed to qualify as a military objective.⁸³ Further, although the perpetrator must intentionally direct the attack, it does not need to result in actual damage.⁸⁴

One hindrance to applying the Rome Statute to the Yemen conflict is that, although Yemen is signatory to the Rome Statute, it is not a party to the Rome Statute.⁸⁵ Similarly, Saudi Arabia and other Coalition members are not parties to the Rome Statute, which ultimately limits the available jurisdictions for violations of the Statute.⁸⁶ However, referral to the International Criminal Court ("ICC") by the Security Council or individual third States is not precluded.⁸⁷ If such a referral occurred, then the Rome Statute could provide a useful framework for assessing war crimes in Yemen.⁸⁸ Additionally, if a special court were to be created to prosecute war crimes and crimes against humanity committed during the Yemen Civil War, the Rome Statute's provisions may provide a helpful guide for that court's statute.

D. CUSTOMARY PRINCIPLES OF DISTINCTION, PROPORTIONALITY, AND MILITARY NECESSITY

⁸² *Elements of Crimes*, INT'L CRIM. CT. (2011), at art.8(2)(e)(iv), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

⁸³ Caroline Ehlert, *Commentary Rome Statute Article 8(2)(e)(iv)*, CASE MATRIX NETWORK (June 30, 2016), <https://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute/commentary-rome-statute-part-2-articles-5-10/#c1951>.

⁸⁴ Caroline Ehlert, *Commentary Rome Statute Article 8(2)(e)(iv)*, CASE MATRIX NETWORK (June 30, 2016), <https://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute/commentary-rome-statute-part-2-articles-5-10/#c1951>.

⁸⁵ U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 35, U.N. Doc. A/HRC/45/CRP.7 (Sep. 29, 2020).

⁸⁶ U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 35, U.N. Doc. A/HRC/45/CRP.7 (Sep. 29, 2020).

⁸⁷ *How the ICC Works*, ABA-ICC PROJECT (last visited Apr. 8, 2021), <https://how-the-icc-works.aba-icc.org/>.

⁸⁸ U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 35, U.N. Doc. A/HRC/45/CRP.7 (Sep. 29, 2020).

Under customary IHL, parties to an armed conflict must always abide by the principles of distinction,⁸⁹ proportionality,⁹⁰ and military necessity.⁹¹

a. Distinction

The principle of distinction requires that parties to an armed conflict “distinguish between civilians and combatants. Attacks may only be directed against combatants.”⁹² Under Article 8(2)(e)(i) of the Rome Statute, “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a war crime.⁹³ But, any civilian who takes part in direct hostilities is not protected by this principle and becomes a legitimate target for the duration of their participation in hostilities.⁹⁴ The International Court of Justice (“ICJ”) stated in an advisory opinion that “the principle of distinction was one of the ‘cardinal principles’ of international humanitarian law and one of the ‘intransgressible principles of international customary law.’”⁹⁵

Civilian objects are protected by the principle of distinction, as outlined in Article 52 of Additional Protocol I to the Geneva Conventions.⁹⁶ Civilian objects include anything that is not a military objective as defined in Article 52(2), including infrastructure, dwellings, schools,

⁸⁹ Distinction requires that parties to an armed conflict distinguish between civilians and combatants. *See* Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3, at art. 57(1); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict, June 8, 1977, 1125 U.N.T.S. 609, at art. 13(1)-(2); *see also* Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), 1996 I.C.J. 226, ¶ 78 (July 8) (declaring the principle of distinction is one of the “cardinal principles contained in the texts constituting the fabric of humanitarian law.”).

⁹⁰ An attack is proportional if the incidental loss of civilian life is not excessive in proportion with the anticipated military advantage. *See* Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 51(5)(b), 85(3)(b), June 8, 1977, 1125 U.N.T.S. 3; Additional Protocol II, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict, arts. 26(3)(b), 3(3)(c), June 8, 1977, 1125 U.N.T.S. 609.

⁹¹ Military necessity allows parties to an armed conflict to undertake an attack when it is necessary to accomplish a legitimate military purpose. It must be balanced with the principles of distinction and proportionality to minimize civilian harm. *See* Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 90, June 8, 1977, 1125 U.N.T.S. 3; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion), 2004 I.C.J. 136, ¶ 105, 140 (July 9).

⁹² *Customary IHL – Rule 1. The Principle of Distinction between Civilians and Combatants*, INT’L COMM. RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1 (last visited Nov. 29, 2021).

⁹³ Rome Statute of the International Criminal Court, art. 8(2)(e)(i), July 17, 1998, 2187 U.N.T.S. 38544.

⁹⁴ *What is International Humanitarian Law?*, ICRC (July 2004), https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.

⁹⁵ ICRC, Customary IHL Database, Volume II, Chapter 1, Section A., Rule 1. The Principle of Distinction between Civilians and Combatants, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1#refFn_D70F41D7_00016, (last visited June 15, 2022).

⁹⁶ ICRC, *Treaties, States Parties and Commentaries, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, General Protection of Civilian Objects, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F08A9BC78AE360B3C12563CD0051DCD4>, (last visited June 16, 2022).

hospitals, churches, equipment, supplies, and more.⁹⁷ Article 52(2) defines military objectives as “objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”⁹⁸ Accordingly, certain civilian objects can be considered legitimate military objectives under specific circumstances. Regarding cultural property more specifically, Article 27 of the 1907 Hague Regulations provides that such institutions can be attacked “when being used at the time for military purposes.”⁹⁹ However, if it is unknown whether a civilian object is being used in a way that would render it a military objective, IHL mandates that it must be considered a civilian object and spared from attack.¹⁰⁰

The ICTY Appeals Chamber has relied on Article 52(1) of Additional Protocol I to the Geneva Conventions for the proposition that civilian objects may be attacked when they are “military objectives,” as defined by Article 52(2).¹⁰¹ Courts have established that attacks against cultural property are only lawful when the object is used for military purposes—a standard that is derived from Article 27 of the 1907 Hague Regulations and similar to Article 6(a) of the Second Additional Protocol to the 1954 Hague Convention, which provide greater protection to cultural property than the “military objective” standard.¹⁰² This standard applies to all cultural property, not simply cultural property of “great importance,” and, therefore, includes religious and educational institutions.¹⁰³ Moreover, courts have held that “it is the use of cultural property and not its location that determines whether and when the cultural property would lose its protection.”¹⁰⁴

⁹⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 52, June 8, 1977, U.N. O.H.C.H.R.

⁹⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 52(1), June 8, 1977, U.N. O.H.C.H.R.

⁹⁹ ICRC, *Treaties, States Parties and Commentaries, Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899*, Art. 52(2), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C50B4EE486305FF5C12563CD00515E60#:~:text=27.,same%20time%20for%20military%20purposes>, (last visited June 16, 2022).

¹⁰⁰ ICRC, *Treaties, States Parties and Commentaries, Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899.*, art. 52(3), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C50B4EE486305FF5C12563CD00515E60#:~:text=27.,same%20time%20for%20military%20purposes>, (last visited June 16, 2022).

¹⁰¹ Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1143, 1156, 1160 (2016).

¹⁰² Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1143, 1156, 1160 (2016).

¹⁰³ See e.g., Hadzihasanovic and Kubura Trial Judgment, at 58; Brdanin Trial Judgment, §§ 594, 598; Blaskic Trial Judgment, at 362; Naletilic and Martinovic Trial Judgment, § 605. In contrast, the ICTY Appeals Chamber initially suggested that general educational and religious institutions would only be entitled to the protection provided in Art. 52 of AP I and thus could be lawfully attacked if a “military objective.” Kordic and Cerkez Appeal Judgment, § 89; see also Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1143, 1156, 1156 (2016).

¹⁰⁴ Strugar Trial Judgment, § 310; Natetilic and Martinovic Trial Judgment, § 604.

If armed force is utilized by a party to an armed conflict, IHL “dictates that the weapon of choice should not create unnecessary suffering for civilians, nature, or the environment.”¹⁰⁵ The ICTY has already confirmed the validity of property-related charges against several accused individuals, in part, due to an absence of military necessity.¹⁰⁶

b. Proportionality

The principle of proportionality requires that an action or response be commensurate in scope to the goal of such action or response.¹⁰⁷ Under Article 51(5)(b) of Additional Protocol I, the principle of proportionality prohibits attacks “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”¹⁰⁸ Article 7 of Protocol II to the 1954 Hague Convention codifies this requirement, as well.¹⁰⁹ Therefore, even if a target meets the requirements for military objectives under the principle of distinction, under the principle of proportionality, the action may be still be illegal if it is expected to cause damage that is excessive compared to the intended military advantages.

Further guidance regarding proportionality can be found in Article 57 of Additional Protocol I, which delineates precautions that an armed force should take prior to an attack. The attacking party must “do everything feasible” to confirm that planned objectives are military objectives and not civilian objects or civilians themselves.¹¹⁰ The party must also “take all feasible precautions” to choose methods and means of attack designed to avoid incidental civilian casualties and damage to civilian objects.¹¹¹ The attacking party must also refrain from launching an attack that may be expected to cause incidental civilian casualties or damage to civilian objects that would be excessive compared to the direct military advantage it expects.¹¹²

Destroying cultural property during armed conflict can violate the principle of proportionality. Specifically, it is a war crime when a party:

¹⁰⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I), art. 51(4), June 8, 1977, 1125 U.N.T.S. 3.

¹⁰⁶ Nobuo Hayashi, *Requirements of Military Necessity in International Humanitarian and International Criminal Law*, 28 BOS. U. INT'L L. J. 39, 116-17 (2010).

¹⁰⁷ MICHAEL NEWTON & LARRY MAY, *PROPORTIONALITY IN INTERNATIONAL LAW* 15 (2014).

¹⁰⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I), art. 51(5)(b), 1125 U.N.T.S. 3.

¹⁰⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 7, 1125 U.N.T.S. 609.

¹¹⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I), art. 57, 1125 U.N.T.S. 3.

¹¹¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I), art. 57(2)(a)(i), 1125 U.N.T.S. 3.

¹¹² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I), art. 57(2)(a)(ii), 1125 U.N.T.S. 3.

intentionally launch[es] an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects [such as cultural property] ... which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.¹¹³

The Rome Statute codifies the violation of the principle of proportionality as:

intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.¹¹⁴

Thus, where the destruction of a cultural heritage site is “disproportionate to the concrete and direct military advantage anticipated, it becomes unlawful and, accordingly, without military necessity.”¹¹⁵

c. Military Necessity

The principle of necessity allows a military to use any legal measures “which are indispensable for securing the complete submission of the enemy as soon as possible.”¹¹⁶ To this end, the Rome Statute excuses criminal responsibility for attacks that would otherwise be considered war crimes on the following:

property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected.¹¹⁷

In other words, during armed conflicts, the only legitimate military necessity is “to weaken the military capacity of the other parties to the conflict.”¹¹⁸

The 1954 Hague Convention likewise provides in Article 4(2) that the obligation to not attack cultural property may be waived “where military necessity imperatively requires such a waiver.”¹¹⁹ Article 6(a) of Protocol II clarifies that imperative military necessity would apply only when the cultural property has been made into a military objective, and “there is no feasible alternative available to obtain a similar military advantage.”¹²⁰ The use of cultural property for purposes that are likely to expose it to harm or destruction is excused “when and for as long as no

¹¹³ ICRC, Customary IHL Database, Volume II, Chapter 1, Section A., Practice Relating to Rule 14. Proportionality in Attack, Section A(I) (ICC Statute), https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule14, (last visited June 16, 2022).

¹¹⁴ Rome Statute of the International Criminal Court, art. 8(2)(c), July 17, 1998, 2187 U.N.T.S. 38544.

¹¹⁵ Nobuo Hayashi, *Requirements of Military Necessity in International Humanitarian and International Criminal Law*, 28 BOS. U. INT’L L. J. 39, 116 (2010).

¹¹⁶ LAURIE R. BLANK & GREGORY P. NOONE, INTERNATIONAL LAW AND ARMED CONFLICT 40 (2019).

¹¹⁷ Rome Statute of the International Criminal Court, art. 31(1)(c), July 17, 1998, 2187 U.N.T.S. 38544.

¹¹⁸ *Military Necessity*, ICRC, <https://casebook.icrc.org/glossary/military-necessity> (last visited June 16, 2022).

¹¹⁹ Serge Brammertz et al, Attacks against Cultural Heritage as a Weapon of War, 14 J. INT’L CRIM. JUST. 1143, 1156, 1160 (2016).

¹²⁰ Patty Gerstenblith, *The Destruction of Cultural Heritage: A Crime Against Property Or A Crime Against People?*, 15 J. MARSHALL REV. INTEL. PROP. L. 336, 369 (2016).

choice is possible between such use . . . and another feasible method for obtaining a similar military advantage.”¹²¹ Thus, destroying cultural property for reasons other than weakening the capacity of other parties to a conflict violates the principle of necessity.

E. PROSECUTING DESTRUCTION OF CULTURAL PROPERTY AS A WAR CRIME OR CRIME AGAINST HUMANITY

The Rome Statute provides that “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” is a war crime.¹²² Further, “intentional” destruction of “buildings dedicated to religion, education, art, science or charitable purposes” and “historic monuments” are war crimes, “provided they are not military objectives.”¹²³ Examining prior cases before the ICTY and the ICC may aid in the application of these provisions to future criminal prosecution.

a. International Criminal Tribunal for the former Yugoslavia

The conflict in the Balkans gave rise to the most substantial case law addressing attacks against cultural heritage sites. Between 1992 and 1995 in Bosnia and Herzegovina, 1,200 mosques, 150 churches, four synagogues, and over 1,000 other cultural institutions (including museums, libraries, and archives) were targeted and severely damaged or destroyed.¹²⁴ In Kosovo, between 1998 and 1999, approximately 225 mosques and three of four Ottoman historic centers were destroyed or damaged.¹²⁵ In a particularly egregious attack, the old town of Dubrovnik in Croatia, an UNESCO World Heritage site, was deliberately targeted by shelling, destroying, and damaging over 100 buildings.¹²⁶ Given the egregious nature of the attacks against cultural heritage sites, the ICTY developed two approaches to prosecuting destruction of cultural heritage sites: (1) as a war crime and (2) as the crime against humanity of persecution.¹²⁷

Article 3 of the ICTY Statute provides jurisdiction to prosecute violations of the laws or customs of war.¹²⁸ Article 3(d) criminalizes the “seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments

¹²¹ Second Protocol, Article 6(b) (“Other provisions of Article 6 require that the decision to invoke military necessity shall be taken only by the commander of a force the size of a battalion or larger, unless circumstances do not allow, and advance warning of an attack should be given when possible. A higher standard of military necessity applies in cases of cultural property under enhanced protection.”); see Patty Gerstenblith, *The Destruction Of Cultural Heritage: A Crime Against Property Or A Crime Against People?*, 15 J. MARSHALL REV. INTEL PROP. L. 336, 369 (2016).

¹²² Rome Statute of the International Criminal Court, art. 8(2)(a)-(iv), July 17, 1998, 2187 U.N.T.S. 38544.

¹²³ Rome Statute of the International Criminal Court, art. 8(2)(e)(iv), July 17, 1998, 2187 U.N.T.S. 38544.

¹²⁴ Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1143, 1149 (2016).

¹²⁵ Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1143, 1150 (2016).

¹²⁶ Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1143, 1150 (2016).

¹²⁷ This memorandum focuses solely on war crimes, as there is no evidence that there are facts to establish the crime against humanity of persecution occurring in the Yemen conflict. See *id.* for a detailed description of ICTY prosecutions as a crime against humanity.

¹²⁸ S.C. Res. 827 III (May 25, 1993).

and works of art and science.”¹²⁹ When prosecuting perpetrators of the destruction of cultural heritage sites, the ICTY did not apply the 1954 Hague Convention, even though Yugoslavia and its successor states of Croatia, Bosnia-Herzegovina, and Serbia and Montenegro were parties to the Convention.¹³⁰ Instead, the prosecution used international law provisions that protect people as a means to protect cultural property, equating a crime against property to a grave breach of the Geneva Conventions of 1949.¹³¹

Following other codifications of IHL, it was determined that the “devastation of property is prohibited except where it may be justified by military necessity.”¹³² In *Kordić & Čerkez*, the ICTY Trial Chamber examined the application of military necessity and held that any protections afforded to cultural property are lost when that property is used for military purposes.¹³³ The Appeals Chamber upheld the Trial Chamber’s ruling that military necessity did not justify the property destruction in Novi Travnik, as there was a considerable distance between the properties, the nearest military objective (approximately 200 meters), and the front line (700-800 meters).¹³⁴

Contrary to Article 16 of Additional Protocol II, the Appeals Chamber held that Article 3(d) of the Statute does not require “that the cultural property be of great importance” and encompasses all attacks against cultural heritage sites or other cultural property, such as schools, that may be considered criminal under customary international law.¹³⁵ For an act to breach customary international law and Article 3, the attack must cause grave consequences for the victim and result in actual damage or destruction.¹³⁶ This latter point was examined in *Hadžihasanović & Kubura*, where the ICTY Trial Chamber determined that, while it is prohibited to direct an attack against cultural property, it is only criminal when actual destruction or damage results.¹³⁷ The ICTY Trial Chamber also gave weight to the spiritual value of religious institutions beyond material damage or destruction.¹³⁸ However, in its examination of the attacks on Bosnian Croat religious institutions, including a monastery and a church, the ICTY Trial Chamber held that, although the attacks definitively occurred, they were perpetrated by the mujahideen who were not under Hadžihasanović’s effective control.¹³⁹ Therefore, Hadžihasanović could not be held responsible for the attacks.¹⁴⁰

¹²⁹ S.C. Res. 827 III(d) (May 25, 1993).

¹³⁰ 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, 270 fn. 100 (2006).

¹³¹ 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, 272 (2006).

¹³² Prosecutor v. Blaškić, Case No. IT-95-14-T, Judgment, ¶ 183 (Mar. 3, 2000).

¹³³ Prosecutor v. Kordić & Čerkez, Case No. IT-95-14/2-T, Judgment, ¶ 362 (Feb. 26, 2001).

¹³⁴ Prosecutor v. Kordić & Čerkez, Case No. IT-95-14/2-A, Appeal Judgment, ¶ 391 (Dec. 17, 2004).

¹³⁵ Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1143, 1153 (2016).

¹³⁶ Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1143, 1154 (2016).

¹³⁷ Prosecutor v. Hadžihasanović, Case No. IT-01-47-T, Judgment, ¶¶ 63 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 15, 2006).

¹³⁸ Prosecutor v. Hadžihasanović, Case No. IT-01-47-T, Judgment, ¶¶ 63 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 15, 2006).

¹³⁹ Prosecutor v. Hadžihasanović, Case No. IT-01-47-T, Judgment, ¶¶ 2016 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 15, 2006).

¹⁴⁰ Prosecutor v. Hadžihasanović, Case No. IT-01-47-T, Judgment, ¶¶ 2017 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 15, 2006).

Concerning the December 1991 attack on Dubrovnik, Strugar, the commander of forces around Dubrovnik, was convicted of attacks against cultural property, as well as devastation not justified by military necessity, unlawful attacks against civilian objects, and attacks against civilians.¹⁴¹ In this case, the Old Town of Dubrovnik was substantially civilian, with no military firing points or objectives targeted.¹⁴² The ICTY Trial Chamber subsequently found that the intent was “to target civilians and civilian objects in the Old Town.”¹⁴³ Notably, the ICTY Trial Chamber also found that the UNESCO status of Dubrovnik put both military and civilian authorities on notice of the value of the site, especially given the protective UNESCO emblems on flags around the town and on buildings.¹⁴⁴ The ICTY Trial Chamber reinforced the principle of military necessity when holding that attacks against cultural property are lawful only when the object is being used for military purposes.¹⁴⁵

In *Blaškić*, the ICTY Trial Chamber also examined the military purpose of a site, holding that it was implausible that the mosque in Donji Ahmići was used as a military refuge, as it was “impossible to defend,” and, therefore, the destruction of the mosque “could not be justified by any military purpose.”¹⁴⁶ When the ICTY Appeals Chamber later overturned the ICTY Trial Chamber’s judgment, it never directly discussed responsibility for the destruction of the Donji Ahmici mosque,¹⁴⁷ but it did hold that a military presence in Ahmici and neighboring villages justified Blaškić ordering an attack on Ahmici.¹⁴⁸ The *Blaškić* Appeals Judgment reveals the limitations of civilian presence in determining the military purpose for the destruction of a cultural heritage site.

b. The International Criminal Court

The first ICC case focusing on cultural destruction was the *Al Mahdi* case in 2016.¹⁴⁹ Applying Article 8(2)(e)(iv) of the Rome Statute, the ICC Trial Chamber held that Al Mahdi, a member of Ansar Dine, was responsible as a co-perpetrator for the war crime of “intentionally directing attacks against 10 buildings of a religious and historical character in Timbuktu.”¹⁵⁰ The

¹⁴¹ See Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment (Int’l Crim. Trib. for the Former Yugoslavia Jan. 31, 2005).

¹⁴² Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment, ¶ 288 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 31, 2005).

¹⁴³ Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment, ¶¶ 288, 295 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 31, 2005).

¹⁴⁴ Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment, ¶ 329 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 31, 2005).

¹⁴⁵ Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment, ¶ 310 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 31, 2005).

¹⁴⁶ Prosecutor v. Blaškić, Case No. IT-95-14-T, Judgment, ¶ 421 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000).

¹⁴⁷ See Prosecutor v. Blaškić, Case No. IT-95-14-A, Appeals Judgment (Int’l Crim. Trib. for the Former Yugoslavia Jul. 29, 2004).

¹⁴⁸ Prosecutor v. Blaškić, Case No. IT-95-14-A, Appeals Judgment, ¶ 333 (Int’l Crim. Trib. for the Former Yugoslavia Jul. 29, 2004).

¹⁴⁹ *ICC Opens Trial Against Mali National over Timbuktu Destruction*, AL JAZEERA (Jul. 14, 2020), <https://www.aljazeera.com/news/2020/7/14/icc-opens-trial-against-mali-national-over-timbuktu-destruction>.

¹⁵⁰ Prosecutor v. Al Mahdi, ICC-01/12-01/15, Judgment & Sentence, ¶ 10 (Sept. 27, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF.

targeted buildings included mausoleums, which had clear cultural and religious value, and all but one were protected UNESCO World Heritage sites.¹⁵¹ The ICC Trial Chamber noted that the element of directing an attack “encompasses any acts of violence against protected objects” and refrained from distinguishing whether the attack occurred as part of the conduct of hostilities or after the object was under the control of an armed group.¹⁵² This decision followed from IHL’s purpose to protect cultural objects from crimes committed both in and out of battle.¹⁵³ While the *Al Mahdi* case is significant as the first prosecution for destruction of cultural heritage sites, the decision has been criticized as failing to establish a broad interpretation of Article 8(2)(e)(iv) and provide a stronger model for future prosecutions of cultural heritage attacks.¹⁵⁴

In March of 2021, the Office of the Prosecutor of the ICC published a Draft Policy on Cultural Heritage as part of a plan to pay particular attention to crimes against cultural heritage sites.¹⁵⁵ As noted in the draft, under the Rome Statute Articles 8(2)(a)(iv), 8(2)(b)(xiii), and 8(2)(e)(xii), it is “necessary to prove that the destruction was not justified by military necessity” and ensure that there was no other option than destruction.¹⁵⁶ According to the Draft Policy, these Articles also serve to impose limits on destruction during hostilities.¹⁵⁷ When analyzing crimes against cultural heritage, the Office of the Prosecutor proposed examining the “broad and severe impact that these crimes may have on individuals, communities and humanity as a whole,” including the “loss... terror... or the social, economic and environmental damage.”¹⁵⁸ Although awaiting comments and finalization, this Draft Policy offers guidance for prosecuting crimes against cultural heritage that was otherwise missing from the *Al Mahdi* decision.

IV. EVIDENCE OF THE DESTRUCTION OF CULTURAL PROPERTY IN YEMEN

A. GENERAL TRENDS

In the conflict’s first year, Yemen endured attacks on numerous cultural heritage sites, including religious sites, educational institutions, markets, hospitals, centers of science, athletics complexes, architectural sites, and the UNESCO World Heritage Sites in Sana’a, Zabid, and Shibam. For instance, there were at least 22 recorded attacks on religious sites—attacks on

¹⁵¹ Prosecutor v. Al Mahdi, ICC-01/12-01/15, Judgment & Sentence, ¶¶ 39, 46 (Sept. 27, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF.

¹⁵² Prosecutor v. Al Mahdi, ICC-01/12-01/15, Judgment & Sentence, ¶ 15 (Sept. 27, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF.

¹⁵³ Prosecutor v. Al Mahdi, ICC-01/12-01/15, Judgment & Sentence, ¶ 15 (Sept. 27, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF.

¹⁵⁴ See *Prosecutor v. Ahmad Al Faqi Al Mahdi, International Criminal Court Imposes First Sentence for War Crime of Attacking Cultural Heritage*, 130 HARV. L. REV. 1978 (2017).

¹⁵⁵ Office of the Prosecutor, Draft Policy on Cultural Heritage (Mar. 22, 2021), <https://www.icc-cpi.int/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf>. The Draft Policy addresses both war crimes under Article 8, crimes against humanity under Article 7, and genocide under Article 6.

¹⁵⁶ Office of the Prosecutor, Draft Policy on Cultural Heritage (Mar. 22, 2021), ¶ 54 <https://www.icc-cpi.int/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf>.

¹⁵⁷ Office of the Prosecutor, Draft Policy on Cultural Heritage (Mar. 22, 2021), ¶ 55 <https://www.icc-cpi.int/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf>.

¹⁵⁸ Office of the Prosecutor, Draft Policy on Cultural Heritage (Mar. 22, 2021), ¶ 93 <https://www.icc-cpi.int/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf>.

mosques, churches, and a religious school and attacks during prayer times.¹⁵⁹ At least 19 attacks targeted schools providing education from kindergarten to the university level.¹⁶⁰ There were also at least 19 recorded attacks on markets, which included attacks on markets in Old Sana'a, an UNESCO World Heritage Site.¹⁶¹ Hospitals and scientific centers were also attacked.¹⁶² In May of 2015, the Coalition also struck a Football Association building in Sana'a and targeted a number of historically significant architectural sites, like the Ma'ain historical area in Al Jawf, the Sharaf fortress, the al-Ameen fortress, the al-Homati fortress, a museum and historic castle in Taiz, and the ancient Dam of Marib.¹⁶³

With respect to Yemen's World Heritage Sites, in 2015, the city of Sana'a was targeted at least 40 times by Coalition, Houthi, and Islamic State forces.¹⁶⁴ Within the first few months of the conflict, a Coalition airstrike had struck a market in Zabid.¹⁶⁵ Additionally, in November of 2015, terrorist attacks struck Shibam, another UNESCO-protected site in Yemen.¹⁶⁶

In 2016, there were more concentrated attacks on schools and religious sites. There were at least 22 recorded attacks on schools or other educational institutions, several of which include efforts by the Houthis to abduct and detain teachers and students who opposed Houthi practices.¹⁶⁷ Further, there were over 10 attacks on religious institutions or religiously motivated attacks. These included airstrikes on mosques, cemeteries, mausoleums, and funeral homes.¹⁶⁸ Additionally, in March of 2016, Houthis reportedly held a Jewish civilian hostage for allegedly smuggling a Torah, and, in April of 2016, Houthi forces raided the home of a dignitary for refusing to appoint a new Iman to a mosque in Ibb.¹⁶⁹ During 2016, in addition to numerous attacks on Sana'a, there were also at least 13 attacks on markets and five airstrikes on castles, including Alqashla Castle, Harib Castle, and Bani Castle.¹⁷⁰

In 2017, the Coalition continued to target Sana'a despite its UNESCO protected status.¹⁷¹ There were also at least three recorded attacks on schools and teachers, four attacks on religious sites and ceremonies, and 11 attacks on markets.¹⁷² All of the attacks on markets and religious sites were attributed to the Coalition, while both the Coalition and Houthis were allegedly responsible for the attacks on educational sites and personnel.¹⁷³

¹⁵⁹ See, e.g., YAP 2015 Matrix #YSD15040501, #YSN15061701.

¹⁶⁰ See e.g., YAP 2015 Matrix #YAD15070401, #YHA15080801.

¹⁶¹ See e.g., YAP 2015 Matrix #YMR15083101, #YSN15070501.

¹⁶² See e.g., YAP 2015 Matrix #YSD15090401, #YSD15102702.

¹⁶³ See YAP 2015 Matrix, #YSN15053106, #YJA15062401, #YHJ15062602, #YHJ15062603, #YAB15072901, #YTZ15102202, #YTZ15102203, #YMR15072101.

¹⁶⁴ See e.g., YAP 2015 Matrix #YSN15032601, #YSN15040301, #YSN15052201.

¹⁶⁵ YAP 2015 Matrix, #YHU15051202.

¹⁶⁶ YAP 2015 Matrix, #YHA15112008.

¹⁶⁷ See e.g., YAP 2016 Matrix #YSN16012401, #YSN160524, #YSN16112101.

¹⁶⁸ See e.g., YAP 2016 Matrix #YMR16030601, #YSN16032002, #YHA16041801.

¹⁶⁹ YAP 2016 Matrix, #YSN16032001; YAP 2016 Matrix, #YIB16041402.

¹⁷⁰ See e.g., YAP 2016 Matrix, #YMA16021409, #YMR16031701, #YSN17031901, #YJA16032001, #YTZ16062501.

¹⁷¹ See e.g., YAP 2017 Matrix, #YSN17010401, #YSN17021601.

¹⁷² See e.g., YAP 2017 Matrix, #SNA17101001, #YSN17112501, #YSD17012302.

¹⁷³ See e.g., YAP 2017 Matrix, #YSN17112501, #YSD17012302, #SNA17101001, #SNA17101001, #YSN17010402, #YSN17122501, #YSN17101101.

Reports of attacks decreased somewhat in 2018; however, there were still at least six attacks on or near marketplaces, at least one attack on a school, and four attacks during religious ceremonies, including funerals and weddings.¹⁷⁴ The Coalition continued to strike UNESCO protected sites, including locations in Sana'a and a location in Zabid.¹⁷⁵ Similarly, in 2019, there were multiple reported Coalition attacks in Sana'a, one attack on a school, one attack on a mosque, and four attacks on markets.¹⁷⁶

B. CITIES PROTECTED AS UNESCO WORLD HERITAGE SITES

The number of cultural heritage sites in Yemen is extensive given its rich and diverse history; however, perhaps the most internationally recognized of these sites are Yemen's UNESCO World Heritage Sites.¹⁷⁷ Indeed, UNESCO has given the Coalition notice of cultural heritage sites to avoid because of their protected status.¹⁷⁸ As the following sections will detail, these sites include the Old City of Sana'a, the Historic Town of Zabid, and Shibam.

a. The Old City of Sana'a

The Old City of Sana'a, a city with over 2,500 years of history, was declared a UNESCO World Heritage site in 1986.¹⁷⁹ Sana'a has over 6,000 pre-11th Century houses, 103 mosques, 14 hammams, and a commercial center with traditional markets.¹⁸⁰ The Coalition first struck the city in early 2015.¹⁸¹ By June of 2015, the Al-Owrdhi historical compound and other "[h]istorical residential buildings, monuments, museums, archeological sites and places of worship" had been severely damaged or destroyed.¹⁸²

One notable attack occurred in June of 2015 when the Coalition attacked the Miqshamat al-Qasimi urban garden¹⁸³ and Ministry of Defense and National Security buildings, which subsequently damaged the surrounding buildings near the Old City.¹⁸⁴ In evidence of the lack of necessity for the attack, the Ministry of Defense—the nearest military site to location of the

¹⁷⁴ See e.g., YAP 2018 Matrix, #YSD18010901, #YHJ18042001, #SNA17101001.

¹⁷⁵ See e.g., YAP 2018 Matrix, #YSN18011101, #YHU18030801.

¹⁷⁶ See e.g., YAP 2019 Matrix, #YSN190409, #YDH19060701, #YSD19112001.

¹⁷⁷ This draws from the ICTY's discussion of UNESCO World Heritage Sites, as discussed above regarding Dubrovnik.

¹⁷⁸ Lamya Khalidi, *The Destruction of Yemen and Its Cultural Heritage*, 49 INT'L J. MIDDLE EAST STUD. 736 (2017).

¹⁷⁹ *Old City of Sana'a*, UNESCO, <https://whc.unesco.org/en/list/385/> (last visited Mar. 4, 2021).

¹⁸⁰ Ahmed Nagi, *Yemen's Old City of Sana'a*, CARNEGIE MIDDLE EAST CENTER, <https://carnegie-mec.org/2020/09/14/yemen-s-old-city-of-sana-stripped-of-its-identity-pub-82687> (last visited Mar. 10, 2021).

¹⁸¹ Lamya Khalidi, *The Destruction of Yemen and Its Cultural Heritage*, 49 INT'L J. MIDDLE EAST STUD. 736 (2017).

¹⁸² *The Director General of UNESCO Condemns the Destruction of Historic Buildings in the Old City of Sana'a, Yemen*, UNESCO (Jun. 12, 2015), <http://whc.unesco.org/en/news/1295/>.

¹⁸³ Ahmed Nagi, *Yemen's Old City of Sana'a*, CARNEGIE MIDDLE EAST CENTER, <https://carnegie-mec.org/2020/09/14/yemen-s-old-city-of-sana-stripped-of-its-identity-pub-82687> (last visited Mar. 10, 2021).

¹⁸⁴ Ahmed Nagi, *Yemen's Old City of Sana'a*, CARNEGIE MIDDLE EAST CENTER, <https://carnegie-mec.org/2020/09/14/yemen-s-old-city-of-sana-stripped-of-its-identity-pub-82687> (last visited Mar. 10, 2021).

strike—was approximately 300–400 meters away.¹⁸⁵ The Coalition publicly denied its involvement in this attack, instead blaming it on a rebel ammunition cache that allegedly exploded and killed five civilians.¹⁸⁶

Under the first element of Article 8(2)(e)(iv) of the Rome Statute, a perpetrator must have directed an attack.¹⁸⁷ News reports make clear that the June 2015 attack occurred, satisfying the first element of Article 8(2)(e)(iv).¹⁸⁸ The second element of Article 8(2)(e)(iv) also requires that the targeted object be a building dedicated to religion, education, art, science or charitable purposes, or a historic monument, and not a military objective.¹⁸⁹ The strike in question damaged civilian houses and an urban garden forming part of the Old City of Sana'a.¹⁹⁰ Given the city's designation as a UNESCO World Heritage site, these sites should be considered historic monuments. The Ministry of Defense's proximity to the targeted location raises some questions concerning the attack's military objective.¹⁹¹ In *Kordić & Čerkez*, the ICTY Appeals Chamber held that 200–300 meters between the nearest military objective and a targeted site is too far to justify targeting that site as a military objective.¹⁹² Accordingly, the Ministry of Defense's even farther distance from the targeted homes and garden preclude those sites from falling within the military objective definition. Moreover, the Old City did not house combatants or possess any other qualities that would make it a legitimate military target.¹⁹³

The Coalition likely intended to attack the Old City—this is evidenced by family members of the former president of Yemen getting targeted, and the historic value of the sites that were damaged, in the attack.¹⁹⁴ Additionally, modern targeting systems and precision-guided munitions are incredibly sophisticated. Indeed, the Group of Experts has noted that these munitions “normally

¹⁸⁵ MWATANA BLIND AIR STRIKES: CIVILIAN VICTIMS OF SAUDI ARABIA-LED COALITION AIR STRIKES IN YEMEN 21 (2015), https://mwatana.org/wp-content/uploads/2017/10/Blind-Airstrikes-Report_En.pdf.

¹⁸⁶ Agence France-Presse, *'Air strike' Kills Five in Historic District of Sana'a*, GUARDIAN (Jun. 12, 2015), <https://www.theguardian.com/world/2015/jun/12/air-strike-kills-five-sanaa-old-city-yemen>; YAP 2015 Matrix, #YSN15061306.

¹⁸⁷ *Elements of Crimes*, INT'L CRIM. CT. (2011), at art.8(2)(e)(iv), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

¹⁸⁸ *Yemen: Airstrike and Weapon Analysis Shows Saudi Arabia-led Forces Killed Scores of Civilians*, AMNESTY INTERNATIONAL (Jul. 2, 2015), <https://www.amnesty.org/en/latest/news/2015/07/yemen-airstrike-analysis-shows-saudi-arabia-killed-scores-of-civilians/>.

¹⁸⁹ *Elements of Crimes*, INT'L CRIM. CT. (2011), at art.8(2)(e)(iv), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

¹⁹⁰ Agence France-Presse, *'Air Strike' Kills Five in Historic District of Sana'a*, GUARDIAN (Jun. 12, 2015), <https://www.theguardian.com/world/2015/jun/12/air-strike-kills-five-sanaa-old-city-yemen>.

¹⁹¹ MWATANA, BLIND AIR STRIKES: CIVILIAN VICTIMS OF SAUDI ARABIA-LED COALITION AIR STRIKES IN YEMEN 21 (2015), https://mwatana.org/wp-content/uploads/2017/10/Blind-Airstrikes-Report_En.pdf.

¹⁹² Prosecutor v. Kordić, Case No. IT-95-14/2-A, Appeal Judgment, ¶ 391 (Dec. 17, 2004).

¹⁹³ *Yemen: Airstrike and Weapon Analysis Shows Saudi Arabia-led Forces Killed Scores of Civilians*, AMNESTY INTERNATIONAL (Jul. 2, 2015), <https://www.amnesty.org/en/latest/news/2015/07/yemen-airstrike-analysis-shows-saudi-arabia-killed-scores-of-civilians/>.

¹⁹⁴ *Yemen: Airstrike and Weapon Analysis Shows Saudi Arabia-led Forces Killed Scores of Civilians*, AMNESTY INTERNATIONAL (Jul. 2, 2015), <https://www.amnesty.org/en/latest/news/2015/07/yemen-airstrike-analysis-shows-saudi-arabia-killed-scores-of-civilians/>; Agence France-Presse, *'Air Strike' Kills Five in Historic District of Sana'a*, GUARDIAN (Jun. 12, 2015), <https://www.theguardian.com/world/2015/jun/12/air-strike-kills-five-sanaa-old-city-yemen>.

indicate that the object struck was the target.”¹⁹⁵ And, given that the strike occurred in the early morning,¹⁹⁶ which can render precautionary measures for civilians as ineffective,¹⁹⁷ the timing of this attack indicates intent to harm civilian locations. Further, since the Coalition is an active party to the Yemen conflict and is aware of the factual circumstances giving rise to the existence of an armed conflict, the final two elements of Article 8(2)(e)(iv) are fulfilled.¹⁹⁸ Thus, the June 2015 attack in the Old City of Sana’a was likely a war crime.

b. The Historic Town of Zabid

The Historic Town of Zabid, located in the Al Hudaydah governorate, was designated as a UNESCO World Heritage Site in 1993.¹⁹⁹ The town served as Yemen’s capital between the 13th and 15th centuries and contains an Islamic university, which has great religious importance in the Arab and Muslim world.²⁰⁰ Additionally, Zabid contains 86 mosques.²⁰¹ Among the reasons for Zabid meeting UNESCO’s criteria is its “urban plan [as] the only city in Yemen to be built harmonizing the typical Islamic town’s layout with the central mosque and souq, together with houses providing privacy.”²⁰² For much of the Yemen conflict, the Houthi rebels have controlled Zabid.

One significant attack occurred on May 12, 2015, when Coalition aircraft dropped five bombs over Zabid, killing at least 60 civilians and wounding at least 155 more.²⁰³ Three bombs hit Shagia Market, destroying three buildings, including a restaurant and grocery store.²⁰⁴ Although a textile mill producing military garments was one kilometer away, and some mid-level Houthi commanders dined in the market on May 11th, there were no valid military targets in the market at the time of the attack.²⁰⁵

¹⁹⁵ U.N. High Comm’r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, ¶ 38, U.N. Doc. A/HRC/39/43 (Aug. 17, 2018).

¹⁹⁶ *The Director General of UNESCO Condemns the Destruction of Historic Buildings in the Old City of Sana’a, Yemen*, UNESCO (Jun. 12, 2015), <http://whc.unesco.org/en/news/1295/>.

¹⁹⁷ U.N. High Comm’r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, ¶ 38, U.N. Doc. A/HRC/39/43 (Aug. 17, 2018).

¹⁹⁸ *Elements of Crimes*, INT’L CRIM. CT. (2011), at art.8(2)(e)(iv), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

¹⁹⁹ World Heritage Committee, 17th Sess., CONF 002 XI (1993); *Historic Town of Zabid*, UNESCO, <https://whc.unesco.org/en/list/611> (last visited Mar. 9, 2021).

²⁰⁰ *Historic Town of Zabid*, UNESCO, <https://whc.unesco.org/en/list/611> (last visited Mar. 9, 2021).

²⁰¹ *Historic Town of Zabid*, UNESCO, <https://whc.unesco.org/en/list/611> (last visited Mar. 9, 2021).

²⁰² *Historic Town of Zabid*, UNESCO, <https://whc.unesco.org/en/list/611> (last visited Mar. 9, 2021).

²⁰³ *What Military Target Was in My Brothers House: Unlawful Coalition Airstrikes*, HUMAN RTS. WATCH (Nov. 26, 2015), <https://www.hrw.org/report/2015/11/26/what-military-target-was-my-brothers-house/unlawful-coalition-airstrikes-yemen>; see also *HOD10006 – The Zabid Market Strike*, *Bellingcat* (June 5, 2019), <https://yemen.bellingcat.com/investigations/hod10006-the-zabid-market-strike>; YAP 2015 Matrix, #YHU15051202.

²⁰⁴ *What Military Target Was in My Brothers House: Unlawful Coalition Airstrikes*, HUMAN RTS. WATCH (Nov. 26, 2015), <https://www.hrw.org/report/2015/11/26/what-military-target-was-my-brothers-house/unlawful-coalition-airstrikes-yemen>.

²⁰⁵ *What Military Target Was in My Brothers House: Unlawful Coalition Airstrikes*, HUMAN RTS. WATCH (Nov. 26, 2015), <https://www.hrw.org/report/2015/11/26/what-military-target-was-my-brothers-house/unlawful-coalition-airstrikes-yemen>.

First, with respect to attribution, although the Coalition has denied launching air missions within Zabid on this date, and it is possible that another party to the conflict perpetrated the attack, verified reports state that the most likely perpetrator is the Coalition.²⁰⁶ Second, to classify this attack as a war crime, it must have been done intentionally. The Coalition undoubtedly knew that Zabid was a protected cultural site because UNESCO informed the Saudis of what sites were culturally significant and provided them with coordinates of the sites.²⁰⁷ Further, under Article 8(2)(e)(iv), the object of attack must be a building dedicated to religion, education, art, science or charitable purposes, or a historic monument and not be a military objective.²⁰⁸ Although the textile mill may qualify as a legitimate military target if unoccupied, the possible presence of mid-level commanders in the market the day before the attack does not necessarily render Shagia Market a valid military target on the following day.²⁰⁹ Additionally, under the *Kordić & Čerkez* standard, the textile mill was far enough away from the targeted location to preclude that location from being considered a legitimate military target.²¹⁰

This incident also raises issues regarding proportionality because it occurred in the afternoon in an area highly concentrated with civilians. As such, even if the market were to be considered a legitimate military target, attacking the civilian-dense market and causing hundreds of casualties could violate the principles of proportionality and distinction.²¹¹ Since the Coalition is a party to the Yemen conflict and was, therefore, aware of the factual circumstances establishing the conflict, the final two elements of Article 8(2)(e)(iv) are fulfilled.²¹² Thus, the May 2015 attack on the Shagia Market in Zabid was likely a war crime.

c. The Old Walled City of Shibam

The Old Walled City of Shibam, a city located in the Hadramawt Governorate of Yemen, has been a UNESCO World Heritage Site since 1982.²¹³ The Old City dates back to the 16th century, when it served as a stop along an old caravan route. Shibam also contains a 9-10th-century

²⁰⁶ *HOD10006 – The Zabid Market Strike*, BELLINGCAT (Jun. 5, 2019), <https://yemen.bellingcat.com/investigations/hod10006-the-zabid-market-strike>.

²⁰⁷ Andrew Lawler, *War Savages Ancient Sites in Yemen and Iraq, Destroying Archaeological Record*, AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE (Apr. 10, 2018), <https://www.science.org/content/article/war-savages-ancient-sites-yemen-and-iraq-destroying-archaeological-record>.

²⁰⁸ *Elements of Crimes*, INT'L CRIM. CT. (2011), art.8(2)(e)(iv), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

²⁰⁹ *What Military Target Was in My Brothers House: Unlawful Coalition Airstrikes*, HUMAN RTS. WATCH (Nov. 26, 2015), <https://www.hrw.org/report/2015/11/26/what-military-target-was-my-brothers-house/unlawful-coalition-airstrikes-yemen>.

²¹⁰ *Prosecutor v. Kordić*, Case No. IT-95-14/2-A, Appeal Judgment, ¶ 391 (Dec. 17, 2004).

²¹¹ See U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, U.N. Doc. A/HRC/45/CRP.7 (Sep. 29, 2020).

²¹² *Elements of Crimes*, INT'L CRIM. CT. (2011), at art.8(2)(e)(iv), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

²¹³ World Heritage Committee, 6th Sess., CONF 015 VIII.20 (1982).

mosque and a 14th-century castle.²¹⁴ The city also has notable architecture using vertical construction, which earned it the nickname, the “Manhattan of the Desert.”²¹⁵

For the bulk of the conflict, Shibam has remained under Hadi government control, despite significant AQAP activity in the area. For example, in 2014, AQAP captured and paraded Yemeni military members through the central market in Shibam, telling the assembled city-dwellers that the soldiers would be executed.²¹⁶ In 2015, AQAP launched attacks against Yemen military positions near the western entrance to Shibam.²¹⁷ AQAP used roadside bombs to target a Yemen patrol, and used suicide tactics to target the city’s outpost.²¹⁸ The attack damaged several homes,²¹⁹ but, because AQAP’s purpose was to attack members of the Yemeni military, who would qualify as valid military targets, these attacks may not qualify as war crimes.

However, a November 2015 car bombing attributed to ISIS or AQAP, which damaged over 200 homes and killed 30 people, may be considered a war crime.²²⁰ With respect to attribution, it is largely undisputed that either ISIS or AQAP perpetrated this attack.²²¹ Further, under Article 8(2)(e)(iv), the object of the attack must be a building dedicated to religion, education, art, science or charitable purposes, or a historic monument and not a legitimate military target.²²² In this instance, the car bomb exploded at an army post.²²³ Although the post would likely be considered a legitimate military target, the explosion also damaged surrounding civilian buildings.²²⁴ Given the targeted location’s proximity to civilian homes, the attack may fail to satisfy the principle of proportionality.²²⁵ Additionally, the harm caused to civilians likely outweighs the need to secure the area in the indiscriminate manner undertaken, thus failing the military necessity requirement.²²⁶

²¹⁴ *Old Walled City of Shibam*, UNESCO, <https://whc.unesco.org/en/list/192/> (last visited Mar. 9, 2021).

²¹⁵ *Old Walled City of Shibam*, UNESCO, <https://whc.unesco.org/en/list/192/> (last visited Mar. 9, 2021).

²¹⁶ Ahmed Al-Haj, *Yemen: Airstrike Kills 3 al-Qaida Suspects*, ASSOCIATED PRESS (Aug. 9, 2014), <https://apnews.com/article/dc8dff3f6b44c88bea8d51b5ec3b736>.

²¹⁷ *Islamic State Claims Deadly Yemen Attacks on Army*: SITE, MIDDLE EAST EYE (Nov. 20, 2015, 1:39 PM), <https://www.middleeasteye.net/fr/news/al-qaeda-attack-yemen-leaves-15-soldiers-19-militants-dead-1023687560>.

²¹⁸ *Islamic State Claims Deadly Yemen Attacks on Army*: SITE, MIDDLE EAST EYE (Nov. 20, 2015, 1:39 PM), <https://www.middleeasteye.net/fr/news/al-qaeda-attack-yemen-leaves-15-soldiers-19-militants-dead-1023687560>.

²¹⁹ *Islamic State Claims Deadly Yemen Attacks on Army*: SITE, MIDDLE EAST EYE (Nov. 20, 2015, 1:39 PM), <https://www.middleeasteye.net/fr/news/al-qaeda-attack-yemen-leaves-15-soldiers-19-militants-dead-1023687560>.

²²⁰ *Islamic State claims deadly Yemen attacks on Army*, MIDDLE EAST EYE (Nov. 20, 2015), <https://www.middleeasteye.net/fr/news/al-qaeda-attack-yemen-leaves-15-soldiers-19-militants-dead-1023687560>; See also Press Release, Government of Brazil, Attacks in Yemen (Nov. 20, 2015), <https://www.gov.br/mre/en/contact-us/press-area/press-releases/atentadosiemenovembro2015-2>.

²²¹ *Islamic State claims deadly Yemen attacks on Army*, MIDDLE EAST EYE (Nov. 20, 2015), <https://www.middleeasteye.net/fr/news/al-qaeda-attack-yemen-leaves-15-soldiers-19-militants-dead-1023687560>.

²²² *Elements of Crimes*, INT’L CRIM. CT. (2011), art.8(2)(e)(iv), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

²²³ *Islamic State claims deadly Yemen attacks on Army*, MIDDLE EAST EYE (Nov. 20, 2015), <https://www.middleeasteye.net/fr/news/al-qaeda-attack-yemen-leaves-15-soldiers-19-militants-dead-1023687560>.

²²⁴ *Islamic State claims deadly Yemen attacks on Army*, MIDDLE EAST EYE (Nov. 20, 2015), <https://www.middleeasteye.net/fr/news/al-qaeda-attack-yemen-leaves-15-soldiers-19-militants-dead-1023687560>.

²²⁵ See U.N. High Comm’r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, U.N. Doc. A/HRC/45/CRP.7 (Sep. 29, 2020).

²²⁶ See U.N. High Comm’r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, U.N. Doc. A/HRC/39/43 (Aug. 17, 2018).

With respect to intent, the perpetrator must have intended the object of the attack to be a protected site, and the site must not have been a valid military target.²²⁷ It is not unreasonable to believe that Shibam, a location recognized for decades as a UNESCO World Heritage site, would be generally known as a culturally significant city. Also, both parties potentially responsible for this attack are members of the ongoing conflict in Yemen, and, as such, they are aware of the existence of the conflict and satisfy the final two elements of Article 8(2)(e)(iv).²²⁸

The 1954 Hague Convention imposes additional responsibility for the Coalition since it has effective control over the city. Namely, the Coalition must “take the most necessary measures of preservation” of cultural property damaged by military operations.²²⁹ Accordingly, the Coalition must take steps to protect the city, such as by establishing military checkpoints at safe distances from the cultural heritage site to prevent collateral damage following attacks on the military. The Coalition also has a duty to refrain from using the Walled City for military purposes.²³⁰ Thus, not only ISIS and AQAP, but also the Coalition, could be in violation of IHL for their activities in Shibam.

d. Analysis of Additional Evidence

All parties to the Yemen conflict have attacked cultural heritage sites in violation of IHL. For instance, Coalition attacks have damaged or destroyed at least 80 sites that could be considered cultural heritage sites, including three UNESCO sites, likely in violation of customary international law. These attacks are also unlikely to be upheld under the principles of necessity and proportionality. As such, the Coalition is likely the party who has committed the most illegal attacks against cultural heritage sites.

The locations most often targeted varied each year of Yemen’s armed conflict. In 2015, there were 40 attacks on Sana’a, making these attacks the most prevalent that year. There were also 22 attacks on religious sites, 20 attacks on educational sites, 20 attacks on markets, 9 attacks on hospitals/scientific institutions, and 8 attacks on historic sites, museums, or athletic facilities. In 2016, educational facilities were attacked the most (22 attacks), followed by attacks on Sana’a and attacks on markets (13 attacks), and attacks on religious sites (10 attacks). In 2017, although the attacks lessened overall, there were 11 attacks on markets and 10 attacks on Sana’a. There is likely not sufficient data to presently determine if there are significant differences in the locations of attacks in 2018 and 2019.

Attacks against religious and educational sites, markets, hospitals, scientific institutions, historic sites, museums, and athletic facilities likely violate the Rome Statute so long as the attacks

²²⁷ *Elements of Crimes*, INT’L CRIM. CT. (2011), art.8(2)(b)(ix), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

²²⁸ U.N. High Comm’r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, ¶ 34, U.N. Doc. A/HRC/45/CRP.7 (Sep. 29, 2020); *Elements of Crimes*, INT’L CRIM. CT. (2011), at art.8(2)(e)(iv), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

²²⁹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 5(2), May 14, 1954, 249 U.N.T.S. 240.

²³⁰ See Emma Cunliffe et al., *The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations*, 23 INT’L J. CULTURAL PROP. 1, 15 (2016).

were intentional and were not legitimate military objectives.²³¹ The following table illustrates how one major event from each of the categories of attacks listed above may satisfy the elements of Article 8(2)(e)(iv) and, therefore, constitute a war crime:

Category of Attack	Description of Event	Rome Statute Analysis
Religious Site	Sept. 2, 2015: ISIS claimed responsibility for two bombings at the Houthi-run al-Mo'ayyad mosque in al-Jarraf. ²³²	Art. 8(2)(e)(iv): ISIS asserted via Twitter that they were responsible for these bombings. There is no indication that this was a military objective. These attacks were also intentional, as ISIS claimed responsibility and these attacks killed at least 28 civilians and wounded 75 more.
Educational Site	May 11, 2015: the Saudi-led Coalition airstrike targeted al-Munadil Hussein Fayed School. Another strike hit an open area approximately 200 meters away from the school, followed by a third strike a few minutes later. ²³³	Art. 8(2)(e)(iv): no one was in school at the time of the airstrike (all education in Yemen was suspended since the Coalition air campaign began on March 26, 2015). However, there was no evidence that there were any military installations or Houthi fighters at or near the school.
Market	July 5, 2015: the Saudi-led Coalition airstrike targeted the Aahem Market in Hajjah Province, killing 30 civilians. ²³⁴	Art. 8(2)(e)(iv): the Coalition targeted civilians while they were shopping in the market. There was no evidence of any military installations or Houthi fighters at or near the market.
Hospitals/Scientific Institutions	Aug. 15, 2016: the Saudi-led Coalition airstrike targeted a hospital in the Abs District of Hajjah Governorate supported by Médecins Sans Frontières, killing 11 and injuring at least 19 others. ²³⁵	Art. 8(2)(e)(iv): the Médecins Sans Frontières desk manager for the Emergency Unit in Yemen said that this attack was the fourth attack against a Médecins Sans Frontières facility in less than 12 months, making clear that this attack was intentional. There was no evidence of any military installations or Houthi fighters at or near the hospital.
Historic Sites, Museums, or Athletic Facilities	Feb. 14, 2016: the Saudi-led Coalition airstrike targeted the historic city of Kawkaban, killing seven civilians and destroying the town's ancient gateway. 700-year-	Art. 8(2)(e)(iv): a spokesman for the Coalition declined to comment on the attack, while also denying that the Coalition was targeting historic sites. This statement might be interpreted to mean that, even if the Coalition did not intend to target historic sites, it nonetheless does not deny launching an attack in the area. Additionally, there was no evidence of any military installations or Houthi fighters near the targets of this attack.

²³¹ Rome Statute of the International Criminal Court, art. 8(2)(e)(iv), July 17, 1998, 2187 U.N.T.S. 38544.

²³² See e.g., YAP 2015 Matrix, #YSN15090201.

²³³ See e.g., YAP 2015 Matrix, #YSD15051101.

²³⁴ See e.g., YAP 2015 Matrix, #YSN15070501.

²³⁵ See e.g., YAP 2016 Matrix, #YHJ16081502.

	old houses in the city were also demolished. ²³⁶	
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V. Accountability

A. Jurisdictional and Equitable Challenges to Existing Accountability Mechanisms

The irreparable destruction to Yemen’s cultural heritage throughout the Yemen Civil War has motivated various international bodies, human rights organizations, and other interested parties to call for accountability for these attacks.²³⁷ However, jurisdictional and equitable challenges to existing accountability mechanisms render them unavailable or impractical.

a. International Criminal Court

First, some may call for the International Criminal Court (“ICC”) to prosecute perpetrators of attacks on cultural property in Yemen. This is because Article 8(2)(e)(iv) of the Rome Statute designates “[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives,” as a war crime.²³⁸ This signifies that the ICC could prosecute such an attack, provided that it has jurisdiction.

The ICC has jurisdiction to prosecute four categories of crimes: (1) genocide, (2) crimes against humanity, (3) war crimes, and (4) the crime of aggression.²³⁹ Additionally, these crimes must be committed by the national of a State Party to the Rome Statute, committed in the territory of a State Party to the Rome Statute, or committed in the territory of a State not party to the Rome Statute who has accepted the ICC’s jurisdiction.²⁴⁰ With regards to the latter option, the ICC has asserted jurisdiction over crimes committed by Russia during its invasion of Ukraine, despite the fact that neither Russia nor Ukraine are parties to the Rome Statute, because Ukraine submitted a declaration to the Registrar of the ICC in accordance with Article 12(3) of the Rome Statute to accept the ICC’s jurisdiction over these crimes.²⁴¹ Alternatively, the ICC can

²³⁶ See e.g., YAP 2016 Matrix, #YMA16021409.

²³⁷ *Ensure Accountability for Yemen at the UN Security Council*, MWATANA FOR HUM. RTS. (Feb. 17, 2021), <https://mwatana.org/en/ensure-accountability-for-yemen-2/>.

²³⁸ Rome Statute of the International Criminal Court, art. 8(2)(e)(iv), July 17, 1998, 2187 U.N.T.S. 38544.

²³⁹ Rome Statute of the International Criminal Court, art. 5, July 17, 1998, 2187 U.N.T.S. 38544.

²⁴⁰ *How the Court Works*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works> (last visited Dec. 5, 2022).

²⁴¹ *Ukraine*, INT’L CRIM. CT., <https://www.icc-cpi.int/ukraine> (last visited Dec. 5, 2022); Letter from Pavlo Klimkin, Minister for Foreign Affairs of Ukraine, to Herman von Hebel, Registrar for the International Criminal Court (Sept. 8, 2015), https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf.

gain jurisdiction following a referral by the United Nations (“UN”) Security Council,²⁴² as occurred in Darfur and Libya.²⁴³ Further, even if one of these conditions applies, under the principle of complementarity, the ICC will not have jurisdiction unless the State Party with original jurisdiction (usually, the State in whose territory the crime occurred), is unwilling or unable to prosecute perpetrators of the crimes at issue.²⁴⁴

The Rome Statute does not confer jurisdiction to the ICC over crimes committed during the Yemen Civil War because neither Yemen, Saudi Arabia, States in the Saudi-led Coalition, nor Iran are party to the Rome Statute.²⁴⁵ Additionally, it is highly unlikely that the UN Security Council will refer the situation in Yemen to the ICC because multiple permanent members of the Security Council (the United States, the United Kingdom, and France), who possess veto power against Security Council action,²⁴⁶ have supplied the Saudi-led Coalition with weapons and logistical, intelligence, and targeting support.²⁴⁷ Russia, another permanent Security Council member, would also likely veto a referral because of its historical alliance with Iran, which has provided the Houthis with some military support.²⁴⁸ Thus, even though Article 8(2)(e)(iv) of the Rome Statute provides a useful legal model for another potential court to prosecute perpetrators for the destruction of Yemen’s cultural property, the ICC, itself, lacks jurisdiction to do so.

b. Yemeni Domestic Courts and Potential Hybrid Tribunals

Others may call for Yemeni domestic courts or future hybrid tribunals to prosecute perpetrators of the destruction of Yemen’s cultural property. Yemen’s judicial branch is composed of several courts: (1) the Supreme Court, (2) appeals courts, (3) district or first instance courts, and (4) commercial courts.²⁴⁹ Judges in each court are appointed permanently by

²⁴² Rome Statute of the International Criminal Court, art. 13(b), July 17, 1998, 2187 U.N.T.S. 38544; *How the Court Works*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works> (last visited Dec. 5, 2022).

²⁴³ See S.C. Res. 1593 (Mar. 31, 2005) (referring the situation in Darfur to the ICC); S.C. Res.1970 (Feb. 26, 2011) (referring the situation in Libya to the ICC).

²⁴⁴ YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN 33 (2021), <https://case.edu/law/sites/case.edu.law/files/2021-04/Starvation%20White%20Paper%20Final%20Draft%20%282%29.pdf>; Rome Statute of the International Criminal Court, art. 1, July 17, 1998, 2187 U.N.T.S. 38544.

²⁴⁵ See *The States Parties to the Rome Statute*, INT’L CRIM. CT., <https://asp.icc-cpi.int/states-parties> (last visited Dec. 5, 2022).

²⁴⁶ Michael Scharf & Laura Graham, *Bridging the Divide between the ICC and UN Security Council*, 52 GEO. J. INT’L L. 977, 1000-01 (2021).

²⁴⁷ YEMEN ACCOUNTABILITY PROJECT, AIDING & ABETTING: HOLDING STATES, CORPORATIONS, AND INDIVIDUALS ACCOUNTABLE FOR WAR CRIMES IN YEMEN 8-9 (2020), <https://case.edu/law/sites/case.edu.law/files/2020-10/FINAL%20YAP%20AIDING%20ABETTING%20WHITE%20PAPER%20%20%282%29.pdf>; YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN 34 (2021), <https://case.edu/law/sites/case.edu.law/files/2021-04/Starvation%20White%20Paper%20Final%20Draft%20%282%29.pdf>.

²⁴⁸ *Final Report of the Panel of Experts Established Pursuant to Resolution 1929 (2010)*, U.N. SEC. COUNCIL (June 2, 2015), https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_401.pdf.

²⁴⁹ *Yemen*, WORLD FACTBOOK (Oct. 29, 2022), <https://www.cia.gov/the-world-factbook/countries/yemen/>.

the Supreme Judicial Council, which is chaired by the country's President and includes 10 additional high-ranking judicial officers.²⁵⁰

In addition to ordinary criminal courts, Yemen also has Specialized Criminal Courts: four courts of first instance and four appeals chambers.²⁵¹ These courts have jurisdiction over the crimes of (1) highway robbery, (2) kidnapping, (3) piracy, (4) drug trafficking, (5) damage or destruction of oil pipelines and economic facilities, (6) theft by force of means of transport by organized gangs, (7) gangs attacking lands and property of the Yemeni State or private citizens, and (8) crimes related to State security, (9) assaulting members of the judiciary, and (10) assaulting witnesses.²⁵² For these courts to have jurisdiction, the crimes listed above must have occurred in Yemen's territory, airspace, or territorial waters.²⁵³ Accordingly, it would appear that Yemen's Specialized Criminal Courts could assert jurisdiction over destruction of Yemen's cultural heritage as attacks on the Yemeni State's or private citizens' land or property that occur within Yemen's territory.²⁵⁴

However, since its conception, the Specialized Criminal Court's impartiality and fairness has been questioned.²⁵⁵ For instance, many believe that the court was created for the Yemeni government to target its political opponents.²⁵⁶ Indeed, the court's Public Prosecution Office has prosecuted government officials' "political opponents, many journalists, opinion makers, and followers of religious minorities" and subjected many of the accused to "arbitrary detention, enforced disappearance, torture, and other forms of inhumane abuses" to "[extract] 'confessions' from them" for later use as evidence against them.²⁵⁷ Additionally, a study published by Mwatana for Human Rights highlighted the courts' failure to respect judicial independence and the rule of law.²⁵⁸ More specifically, during the Yemen conflict, Specialized Criminal Courts in areas controlled by the Hadi Government and areas controlled by the Houthis have violated individuals' right to fair trial.²⁵⁹

²⁵⁰ *Yemen*, WORLD FACTBOOK (Oct. 29, 2022), <https://www.cia.gov/the-world-factbook/countries/yemen/>.

²⁵¹ MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 70 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

²⁵² MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 71-73 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

²⁵³ MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 68, 73 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

²⁵⁴ MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 68, 71-73 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

²⁵⁵ *See, e.g.*, MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 67 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

²⁵⁶ MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 67 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

²⁵⁷ MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 67 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

²⁵⁸ MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 113 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

²⁵⁹ MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 113-14 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

Challenges to judicial independence have drawn criticism to and challenged the legitimacy of other criminal tribunals.²⁶⁰ The Extraordinary Chambers in the Courts of Cambodia (“ECCC”) was a criminal tribunal created jointly by the Cambodian government and the United Nations to prosecute senior leaders of the Khmer Rouge regime for crimes committed between 1975-1979²⁶¹ that used a combination of domestic and international judges.²⁶² Because of this, the ECCC is considered a hybrid tribunal, rather than a domestic tribunal; however, its international component did not shield the court from significant criticism for its lack of judicial independence.²⁶³ This is, in part, because the ECCC could only take on cases sanctioned by Cambodia and its prime minister, who was a former Khmer Rouge commander.²⁶⁴ The ECCC’s judges were also accused of succumbing to government pressure following decisions to drop investigations into and dismiss charges against certain military leaders.²⁶⁵

In order to ensure judicial independence, where a tribunal bases its judgments on the merits of the case, not ulterior motives or political pressure or interests,²⁶⁶ most courts that adjudicate war crimes have international judges.²⁶⁷ This is because, to ensure a fair trial for the accused, judges must be independent from parties to the present case, their States of nationality or residence, the host countries that they serve in, and any international organizations that have helped establish the court that they serve in.²⁶⁸ The threat of political interference and lack of

²⁶⁰ See, e.g., *Cambodia: Khmer Rouge Convictions “Too Little, Too Late”*, HUM. RTS. WATCH (Aug. 8, 2014), <https://www.hrw.org/news/2014/08/08/cambodia-khmer-rouge-convictions-too-little-too-late>.

²⁶¹ *About ECCC*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA, <https://www.eccc.gov.kh/en/about-eccc> (last visited Dec. 5, 2022).

²⁶² *Judicial Chambers*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA, <https://www.eccc.gov.kh/en/organs/judicial-chambers> (last visited Dec. 5, 2022).

²⁶³ See, e.g., *Cambodia: Khmer Rouge Convictions “Too Little, Too Late”*, HUM. RTS. WATCH (Aug. 8, 2014), <https://www.hrw.org/news/2014/08/08/cambodia-khmer-rouge-convictions-too-little-too-late>.

²⁶⁴ Lindsey Kennedy & Nathan Southern, *Khmer Rouge Tribunal, Helping Cambodians Heal, Nears End*, ALJAZEERA (Apr. 28, 2022), <https://www.aljazeera.com/features/2022/4/28/khmer-rouge-tribunal-nears-end-in-cambodia#:~:text=Khmer%20Rouge%20Tribunal%2C%20helping%20Cambodians%20heal%2C%20nears%20end,remembrance%20of%20the%20victims%20of%20the%20Khmer%20Rouge>.

²⁶⁵ Lindsey Kennedy & Nathan Southern, *Khmer Rouge Tribunal, Helping Cambodians Heal, Nears End*, ALJAZEERA (Apr. 28, 2022), <https://www.aljazeera.com/features/2022/4/28/khmer-rouge-tribunal-nears-end-in-cambodia#:~:text=Khmer%20Rouge%20Tribunal%2C%20helping%20Cambodians%20heal%2C%20nears%20end,remembrance%20of%20the%20victims%20of%20the%20Khmer%20Rouge;Cambodia's%20Khmer%20Rouge%20Tribunal%20Draws%20New%20Criticisms>, VOA (Sept. 26, 2011), <https://www.voacambodia.com/a/cambodias-khmer-rouge-tribunal-draws-new-criticisms-130574593/1357252.html>.

²⁶⁶ Rishi Gulati, *Judicial Independence at International Courts and Tribunals: Lessons drawn from the Experiences of the International Court of Justice and the Appellate Body of the World Trade Organisation?*, KFG WORKING PAPER SERIES NO. 41, at 5 (2020), <https://deliverypdf.ssrn.com/delivery.php?ID=526026122121112002073064030067001004021019084010061003029097009119084101094125104098117019034042056022028000092066065009016114105078049036082098029105015080018084011024058017110087087094027094118121099000117008071090094106101101117126068031025125020020&EXT=pdf&INDEX=TRUE>.

²⁶⁷ See, e.g., *Chambers*, INT’L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/sid/141> (last visited Dec. 5, 2022).

²⁶⁸ See generally, Study Group of the International Law Association on Practice and Procedure of International Courts and Tribunals, and the Project on International Courts and Tribunals, *The Burgh House Principles on the Independence of the International Judiciary* (2004), https://www.ucl.ac.uk/international-courts/sites/international-courts/files/burgh_final_21204.pdf; see also Rishi Gulati, *Judicial Independence at International Courts and Tribunals: Lessons drawn from the Experiences of the International Court of Justice and the Appellate Body of the*

judicial independence is likely even higher in a domestic courts, where the government with authority to appoint or control judges may also be a party to the conflict.²⁶⁹ This is the case in Yemen.²⁷⁰

For these reasons, even if Yemen's domestic criminal courts have jurisdiction over crimes associated with the destruction of Yemen's cultural property, it is not recommended that Yemen's domestic courts prosecute these crimes until judicial independence and the right to a fair trial can be assured. Further, if a new tribunal is created to adjudicate these crimes, the court should appoint international judges insulated from political pressure from parties to the conflict.

B. Potential Avenues for Accountability for Destruction of Yemen's Cultural Property

Although the ICC and Yemeni domestic courts do not provide viable mechanisms for accountability, interested parties may seek justice for the destruction of Yemen's cultural property in a future ad hoc tribunal created by or in cooperation with the United Nations or in third-party States' domestic courts under universal jurisdiction. Additionally, until these mechanisms become available, non-judicial efforts, such as the creation of an Investigative Mechanism for Yemen and support for local efforts to rehabilitate Yemen's cultural sites, may alleviate some of the damage.

a. Ad Hoc Tribunal Created by or in Cooperation with the United Nations

The United Nations has been involved in the creation of several ad hoc criminal tribunals to bring perpetrators to justice for crimes committed during armed conflicts in areas beyond the jurisdictional reach of pre-existing courts.²⁷¹ One avenue for the creation of ad hoc tribunals is through Article 41 of the UN Charter, which grants the UN Security Council the authority to enforce its decisions.²⁷² The UN Security Council first used this option in 1993, when it issued Security Council Resolution 827 to create the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), which adjudicated cases of war crimes, crimes against humanity, and

World Trade Organisation?, KFG WORKING PAPER SERIES NO. 41, at 5 (2020), <https://deliverypdf.ssrn.com/delivery.php?ID=526026122121112002073064030067001004021019084010061003029097009119084101094125104098117019034042056022028000092066065009016114105078049036082098029105015080018084011024058017110087087094027094118121099000117008071090094106101101117126068031025125020020&EXT=pdf&INDEX=TRUE>.

²⁶⁹ See *Yemen: Jailed Journalists Face Abuse, Death Penalty*, HUM. RTS. WATCH (Nov. 6, 2020),

<https://www.hrw.org/news/2020/11/06/yemen-jailed-journalists-face-abuse-death-penalty#:~:text=The%20United%20Nations%20Group%20of%20Eminent%20Experts%20for,develop%20political%20capital%20to%20be%20used%20in%20negotiations.%E2%80%9D>.

²⁷⁰ *Yemen: Jailed Journalists Face Abuse, Death Penalty*, HUM. RTS. WATCH (Nov. 6, 2020),

<https://www.hrw.org/news/2020/11/06/yemen-jailed-journalists-face-abuse-death-penalty#:~:text=The%20United%20Nations%20Group%20of%20Eminent%20Experts%20for,develop%20political%20capital%20to%20be%20used%20in%20negotiations.%E2%80%9D>.

²⁷¹ See, e.g., *About the ICTY*, U.N INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about> (last visited Dec. 5, 2022).

²⁷² See U.N. Charter art. 41; *International Tribunals*, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/content/repertoire/international-tribunals> (last visited Dec. 5, 2022).

genocide committed during the 1990's conflict in the Balkans.²⁷³ In 1994, through Security Council Resolution 955, the UN Security Council also established the International Criminal Tribunal for Rwanda ("ICTR") to try perpetrators of genocide and other serious international humanitarian law violations in Rwanda and surrounding States.²⁷⁴ However, for the same reasons why permanent members of the UN Security Council would likely veto a referral to the ICC for crimes committed during the Yemen Civil War, the likelihood of the Security Council establishing an ad hoc tribunal with jurisdiction over these crimes is slim.²⁷⁵

A second possibility for the creation of a new ad hoc tribunal is to establish a treaty-based court following an agreement between the United Nations and the Government of the State in whose territory the crimes occurred.²⁷⁶ For example, the Special Court for Sierra Leone ("SCSL") was created in 2002 after the Government of Sierra Leone requested that the UN assist with the creation of a specialized court to try perpetrators of serious crimes committed during Sierra Leone's 1991-2002 Civil War.²⁷⁷ Because of the treaty-based model, SCSL could issue binding orders on the Government of Sierra Leone, but, unlike the ICTY and ICTR, not over third-party States.²⁷⁸ This limited scope may increase the likelihood that the UN Security Council would approve the establishment of such a court for Yemen.

However, this model would still need to contend with several obstacles. First, since allies of the internationally recognized Hadi Government and the Houthis have been tied to the destruction of cultural property and other war crimes,²⁷⁹ if either party gains control of the Yemeni government after the close of the conflict, they are unlikely to request that the UN create a court to try those crimes. Additionally, these tribunals can be very expensive; SCSL, for example, spent an estimated \$300 million between 2002 and 2013²⁸⁰ and relied on voluntary donations from UN Member States.²⁸¹ Accordingly, if a similar ad hoc tribunal were created for Yemen, it would likely need to be created after a more impartial Yemeni Government came to power and with the support of other UN Member States.

Given the evidence of attacks on Yemen's UNESCO World Heritage Sites, such support may come from UNESCO's Member States, or even UNESCO itself. UNESCO is a specialized

²⁷³ S.C. Res. 827 (May 25, 1993); *About the ICTY*, U.N. INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about> (last visited Dec. 5, 2022).

²⁷⁴ S.C. Res. 955 (Nov. 8, 1994).

²⁷⁵ See *supra* notes 247-251 and corresponding text.

²⁷⁶ See Michael Scharf, *The Special Court for Sierra Leone*, INSIGHTS (2000), <https://www.asil.org/insights/volume/5/issue/14/special-court-sierra-leone>.

²⁷⁷ *The Special Court for Sierra Leone: Its History and Jurisprudence*, SPECIAL CT. FOR SIERRA LEONE RESIDUAL SPECIAL CT. FOR SIERRA LEONE, <http://www.rscsl.org/> (last visited Dec. 5, 2022); Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 137.

²⁷⁸ Michael Scharf, *The Special Court for Sierra Leone*, INSIGHTS (2000), <https://www.asil.org/insights/volume/5/issue/14/special-court-sierra-leone>.

²⁷⁹ See generally YAP 2015-2019 Matrices.

²⁸⁰ Lansana Gberie, *The Special Court for Sierra Leone Rests—For Good*, AFRICA RENEWAL (APR. 2014), <https://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests-%E2%80%93-good>.

²⁸¹ *Special Court for Sierra Leone Faces Funding Crisis, as Charles Taylor Trial Gets Under Way*, Security Council Told Today in Briefing By Court's Senior Officials, U.N. MEETING COVERAGE & PRESS RELEASES (Jun. 8, 2007), <https://press.un.org/en/2007/sc9037.doc.htm>.

agency within the United Nations system²⁸² that was created in the wake of World War II to further international peace by promoting cooperation between States in culture, education, the natural sciences, social and human sciences, and communication and information.²⁸³ UNESCO is composed of 193 Member States and 11 Associate Members (territories that are not responsible for their international relations),²⁸⁴ which establish national commissions to liaise with UNESCO, hold a General Conference every two years to determine UNESCO's policies, programs, and budget, and assign tasks to UNESCO's Executive Board.²⁸⁵ Yemen has been a UNESCO Member State since 1962.²⁸⁶ UNESCO's Director-General, the Head of its Secretariat, also serves on the UN Chief Executive Board ("CEB"),²⁸⁷ a gathering of executive heads of UN organizations chaired by the UN Secretary-General that "serve[s] as an internal coordination mechanism that provides high-level system-wide strategic guidance, promotes coherent leadership, shared vision and enhanced cooperation, and considers forward-looking solutions in response to mandates stemming from the governing bodies of its member organizations."²⁸⁸ The CEB also reviews international political issues and major concerns to the UN system and approves policy statements issued on behalf of the UN.²⁸⁹

Throughout the Yemen conflict, UNESCO has expressed concern regarding the destruction of Yemen's cultural property by publicly condemning and calling for a cessation of attacks on Yemen's cultural heritage sites by all parties to the conflict.²⁹⁰ Given its concern with the destruction of Yemen's cultural property and its Director-General's role on the CEB, UNESCO could initiate discussions on the creation of an ad hoc tribunal for Yemen and encourage the CEB to draft a roadmap for the Court's structure. The Secretary-General could then raise the matter with the UN Security Council,²⁹¹ who could authorize an agreement between the UN and the future Government of Yemen for the creation of an ad hoc tribunal.²⁹²

b. Universal Jurisdiction

²⁸² See Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), art. X, [²⁸³ *UNESCO in Brief*, UNESCO, <https://www.unesco.org/en/brief> \(last visited Dec. 5, 2022\).](https://www.unesco.org/jp/meguro/unesco/charter-e.htm#:~:text=Constitution%20of%20the%20UNESCO%20Constitution%20of%20the%20United,the%20defences%20of%20peace%20must%20be%20constructed%3B%20; Charter of the United Nations, art. 57, June 26, 1945, 1 U.N.T.S. XVI.</p>
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²⁸⁴ *Member States List*, UNESCO, <https://en.unesco.org/countries> (last visited Dec. 5, 2022).

²⁸⁵ *Member States List*, UNESCO, <https://en.unesco.org/countries> (last visited Dec. 5, 2022); *Governance*, UNESCO, <https://en.unesco.org/about-us/governance> (last visited Dec. 5, 2022).

²⁸⁶ *Yemen*, UNESCO, <https://www.unesco.org/en/countries/ye> (last visited Dec. 5, 2022).

²⁸⁷ *UNESCO and the UN System*, UNESCO, <https://en.unesco.org/strategic-planning/UN> (last visited Dec. 5, 2022).

²⁸⁸ *About*, U.N. SYSTEM CHIEF EXEC. BD. FOR COORDINATION, <https://unsceb.org/about#:~:text=The%20UN%20System%20Chief%20Executives%20Board%20for%20Coordination,and%20considers%20forward-looking%20solutions%20in%20response%20to%20> (last visited Dec. 5, 2022).

²⁸⁹ *UNESCO and the UN System*, UNESCO, <https://en.unesco.org/strategic-planning/UN> (last visited Dec. 5, 2022).

²⁹⁰ *UNESCO Calls for the Protection of Cultural Heritage in Yemen*, U.N. NEWS (Mar. 27, 2015), <https://news.un.org/en/story/2015/03/494572-unesco-calls-protection-cultural-heritage-yemen>.

²⁹¹ *The Role of the Secretary-General*, U.N., <https://www.un.org/sg/en/content/the-role-of-the-secretary-general> (last visited Dec. 30, 2022).

²⁹² See Michael Scharf, *The Special Court for Sierra Leone*, INSIGHTS (2000), <https://www.asil.org/insights/volume/5/issue/14/special-court-sierra-leone>.

Another possible avenue for accountability is prosecution in the domestic courts of States not party to the conflict under universal jurisdiction. Universal jurisdiction stems from the 1949 Geneva Conventions and customary international law and allows a national court to prosecute a perpetrator charged with war crimes, genocide, torture, crimes against humanity, piracy, hijacking, terrorism, or attacks on United Nations personnel, regardless of whether the suspect or their victims were citizens of that State or whether the crimes were committed in that State's territory.²⁹³ For a State's domestic court to exercise universal jurisdiction, the State must have adopted legislation authorizing prosecution of the aforementioned crimes.²⁹⁴ As of 2012, at least 166 countries had incorporated at least one of the relevant crimes into their domestic legislation, and at least 147 countries granted their courts jurisdiction over at least one of these crimes using international law standards.²⁹⁵ Domestic courts in numerous countries, including Argentina, Austria, Belgium, Finland, France, Germany, Ghana, Hungary, Israel, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom, and the United States, have relied on universal jurisdiction to adjudicate alleged international crimes.²⁹⁶ In 2020, an Argentinian court even initiated a case assessing the Saudi Crown Prince's individual criminal liability for the Saudi-led Coalition's bombings in Yemen in early 2015.²⁹⁷

Universal jurisdiction provides one of few potential solutions to impunity for perpetrators of international crimes, but it is highly controversial for its impact on diplomatic and sovereign immunity, potential to expand the reach of the Rome Statute, and lack of effect on international "superpower[s]."²⁹⁸ In response to such criticism, several States have amended their universal jurisdiction statutes to limit their applicability. For example, Spain amended its statute to limit its courts' jurisdiction to only cover "cases that are not already before another competent jurisdiction... that involve Spanish victims, perpetrators located in Spain, or Spanish

²⁹³ *Basic Facts on Universal Jurisdiction*, HUM. RTS WATCH (Oct. 19, 2009), <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction>; Amal Najem Alselmi, *A Preview on the Extent of Universal Jurisdiction Application*, 120 J.L. POL'Y & GLOBALIZATION 24, 25 (2022); see also Angela Mudukuti, *Universal Jurisdiction—Opportunities and Hurdles*, OPINIOJURIS (Sept. 4, 2019), <http://opiniojuris.org/2019/04/09/universal-jurisdiction-opportunities-and-hurdles/>.

²⁹⁴ *Universal Jurisdiction*, INT'L JUST. RES. CTR., <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> (last visited Dec. 5, 2022).

²⁹⁵ *Universal Jurisdiction*, INT'L JUST. RES. CTR., <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> (last visited Dec. 5, 2022) (citing *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World—2012 Update*, AMNESTY INT'L (Oct. 9, 2012), <https://www.amnesty.org/en/documents/ior53/019/2012/en/>).

²⁹⁶ *Universal Jurisdiction*, INT'L JUST. RES. CTR., <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> (last visited Dec. 5, 2022); Angela Mudukuti, *Universal Jurisdiction—Opportunities and Hurdles*, OPINIOJURIS (Sept. 4, 2019), <http://opiniojuris.org/2019/04/09/universal-jurisdiction-opportunities-and-hurdles/>; *Basic Facts on Universal Jurisdiction*, HUM. RTS WATCH (Oct. 19, 2009), <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction>; *Universal Jurisdiction Annual Review (UJAR) 2020: Atrocities Must Be Prosecuted Soundly and Rigorously*, TRIAL INT'L (Nov. 5, 2022), <https://trialinternational.org/latest-post/universal-jurisdiction-annual-review-2020-atrocities-must-be-prosecuted-soundly-and-rigorously>.

²⁹⁷ *Universal Jurisdiction Annual Review (UJAR) 2020: Atrocities Must Be Prosecuted Soundly and Rigorously*, TRIAL INT'L, at 20 (Nov. 5, 2022), <https://trialinternational.org/latest-post/universal-jurisdiction-annual-review-2020-atrocities-must-be-prosecuted-soundly-and-rigorously>.

²⁹⁸ See Amal Najem Alselmi, *A Preview on the Extent of Universal Jurisdiction Application*, 120 J.L. POL'Y & GLOBALIZATION 24, 24-28 (2022); Reed Brody, *Universal Jurisdiction—Practical Implications of Universal Jurisdiction*, 8 UCLA J. INT'L L. & FOREIGN AFF. 71, 72 (2003); *Basic Facts on Universal Jurisdiction*, HUM. RTS. WATCH (Oct. 19, 2009), <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction>.

interests.”²⁹⁹ Belgium also amended its statute to restrict its courts’ jurisdiction to cases with a direct nexus to Belgium.³⁰⁰

Due to these restraints, universal jurisdiction should only be used to prosecute the destruction of Yemen’s cultural property as a secondary method of accountability in the domestic courts of a State with an expansive universal jurisdiction statute. The domestic courts of States with more restrictive statutes could be pursued for cases involving a perpetrator located in that State or a perpetrator or victim of that State’s nationality.

c. Non-Judicial Efforts

Prosecution of the destruction of Yemen’s cultural property is essential to prevent impunity for these crimes. However, in the meantime, several non-judicial actions can help gather evidence and mitigate the damage to Yemen’s cultural property. First, parties interested in seeking accountability for crimes committed during the Yemen conflict should push for the creation of an Independent Investigative Mechanism,³⁰¹ as have been created for other conflicts.³⁰² For example, in 2016, the UN General Assembly created the International, Impartial and Independent Mechanism (“IIIM”) to “collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses” committed in Syria since 2011 and “prepare files in order to facilitate and expedite fair and independent criminal proceedings.”³⁰³ Additionally, in 2018, the Human Rights Council created the Independent Investigative Mechanism for Myanmar (“IIMM”) to collect evidence of international crimes committed in Myanmar and provide its findings to the Independent International Fact-Finding Mission on Myanmar.³⁰⁴ Although these mechanisms are not tribunals and lack prosecutorial authority, they can assist with the collection of evidence that could be used when a future tribunal becomes available.³⁰⁵

²⁹⁹ *Universal Jurisdiction*, INT’L JUST. RES. CTR., <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> (last visited Dec. 5, 2022).

³⁰⁰ Angela Mudukuti, *Universal Jurisdiction—Opportunities and Hurdles*, OPINIOJURIS (Sept. 4, 2019), <http://opiniojuris.org/2019/04/09/universal-jurisdiction-opportunities-and-hurdles/>.

³⁰¹ See *Ensure Accountability for Yemen at the UN Security Council*, MWATANA FOR HUM. RTS. (Feb. 17, 2021), <https://mwatana.org/en/ensure-accountability-for-yemen-2/>; YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN 35-36 (2021), <https://case.edu/law/sites/case.edu.law/files/2021-04/Starvation%20White%20Paper%20Final%20Draft%20%282%29.pdf>; *Yemen: ICJ urges the UN to Support Accountability by Establishing an International Independent Mechanism*, ADVOCS. FOR JUST. & HUM. RTS. (Jun. 10, 2022), <https://www.icj.org/yemen-icj-urges-the-un-to-support-accountability-by-establishing-an-international-independent-mechanism/>.

³⁰² See, e.g., G.A. Res. 71/248 (Dec. 21, 2016); Hum. Rts. Council Res. 39/2 (Sep. 27, 2018).

³⁰³ G.A. Res. 71/248, ¶ 4 (Dec. 21, 2016).

³⁰⁴ YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN 36 (2021), <https://case.edu/law/sites/case.edu.law/files/2021-04/Starvation%20White%20Paper%20Final%20Draft%20%282%29.pdf>; Hum. Rts. Council Res. 39/2 (Sep. 27, 2018); *Mandate and Establishment*, INDEP. INVESTIGATIVE MECHANISM FOR MYAN., <https://iimm.un.org/mandate-and-establishment/> (last visited Dec. 5, 2022).

³⁰⁵ YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN 35-36 (2021), <https://case.edu/law/sites/case.edu.law/files/2021-04/Starvation%20White%20Paper%20Final%20Draft%20%282%29.pdf>.

Thus, the creation of such a mechanism for Yemen could assist with building cases for prosecution in either a future ad hoc tribunal or in a domestic court asserting universal jurisdiction over crimes committed during the conflict. An investigative mechanism for Yemen could also work in partnership with local organizations, such as the Yemeni General Organization of Antiquities and Museums, which has documented a list of damaged and destroyed cultural sites, and worked with UNESCO and the Endangered Archaeology in the Middle East & North Africa Project in Oxford to create a database to monitor the impact of the conflict on Yemen’s cultural heritage.³⁰⁶ For more information on investigative mechanisms and their challenges, please see STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN at pages 35-36.³⁰⁷

Second, UNESCO and the European Union should continue supporting local efforts to restore cultural sites that have suffered damage. For example, in 2018 UNESCO and the European Union partnered to launch a project, called, “Cash for Work: Promoting Livelihood Opportunities for Urban Youth in Yemen” (“Cash for Work Project”).³⁰⁸ With the support of the Yemeni Social Fund for Development, the General Organization for the Preservation of Historic Cities in Yemen, and the General Organization of Antiques and Museums, and specialized local authorities,³⁰⁹ the Cash for Work Project has hired and trained young locals in Sana’a, Shibam, Zabid, and Aden to restore private homes, public spaces, and commercial areas in those cities.³¹⁰ As of August 2021, the project had employed an estimated 2,993 Yemenis and rehabilitated 161 buildings.³¹¹ These efforts should continue to mitigate the harm to Yemen’s cultural sites, ease rehabilitation of Yemen’s infrastructure following the close of the conflict, and empower the next generation of Yemenis to restore and safeguard their cultural heritage.

VI. RECOMMENDATIONS

The Yemen Accountability Project recommends the following actions for bringing accountability to perpetrators of the destruction of cultural property in Yemen:

³⁰⁶ UNITED NATIONS OFFICE AT GENEVA MEETING OF SEPTEMBER 18, 2018 (statement of Kristin Hausler), at 2, https://www.biiicl.org/documents/10106_cultural_heritage_in_yemen_-_kristin_hausler_-_hrc_gva_sep_2018.pdf.

³⁰⁷ YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN 35-36 (2021), <https://case.edu/law/sites/case.edu.law/files/2021-04/Starvation%20White%20Paper%20Final%20Draft%20%282%29.pdf>.

³⁰⁸ *Jobs for Young People to Restore Heritage in Yemen*, UNESCO (Jan. 19, 2022), <https://www.unesco.org/en/articles/jobs-young-people-restore-heritage-yemen>.

³⁰⁹ *Jobs for Young People to Restore Heritage in Yemen*, UNESCO (Jan. 19, 2022), <https://www.unesco.org/en/articles/jobs-young-people-restore-heritage-yemen>; *Yemen: Cash for Work*, UNESCO (Nov. 3, 2022), <https://www.unesco.org/en/articles/yemen-cash-work>.

³¹⁰ *Jobs for Young People to Restore Heritage in Yemen*, UNESCO (Jan. 19, 2022), <https://www.unesco.org/en/articles/jobs-young-people-restore-heritage-yemen>; *Women at the Forefront of Preserving Culture Heritage in Yemen*, UNESCO (Nov. 28, 2021), <https://www.unesco.org/en/articles/women-forefront-preserving-culture-heritage-yemen>; *Safeguarding Historic Houses and Their Inhabitants in Shiabm*, UNESCO (May 20, 2021), <https://www.unesco.org/en/articles/safeguarding-historic-houses-and-their-inhabitants-shiabm>; *Unemployed University Graduate Finds Hope in Cultural Heritage*, UNESCO (June 20, 2021), <https://www.unesco.org/en/articles/unemployed-university-graduate-finds-hope-cultural-heritage>.

³¹¹ *Unemployed University Graduate Finds Hope in Cultural Heritage*, UNESCO (June 20, 2021), <https://www.unesco.org/en/articles/unemployed-university-graduate-finds-hope-cultural-heritage>.

INVESTIGATIONS

- Criminal investigators and groups, like the Yemen Accountability Project, Yemen Data Project, and ACLED, should continue to document and investigate evidence of attacks on cultural property, making their open-source databases widely available to relevant stakeholders.
- These groups should continue to present their collected evidence and databases to stakeholders at the ICC, UN Security Council, UN Human Rights Council, US Department of State War Crimes Office, and others.
- Groups documenting evidence of war crimes and crimes against humanity should share their investigative strategies and best practices with each other and develop working partnerships to build capacity for larger and more thorough investigations in Yemen.

ACCOUNTABILITY MECHANISMS

- Diplomats at the UN should engage in advocacy with members of the Security Council to support an accountability mechanism and build consensus among permanent members to prevent them from blocking an accountability measure through veto. They should also advocate to the UN Security Council to create an ad hoc tribunal for Yemen, similar to the SCSL's model.
- Alternatively, stakeholders should file cases in the domestic courts of third-party States with applicable universal jurisdiction statutes.
- If action in the Security Council is blocked by veto, then the General Assembly should establish an accountability mechanism, like the IIIM and IIMM, to collect and archive evidence before it is lost and to share it with States pursuing national prosecutions using universal jurisdiction.

REVIEW TARGETED SANCTIONS REGIME

- Targeted sanctions are problematic because effectiveness is low, and they can worsen a humanitarian crisis. Therefore, the UN and countries should reexamine their targeted sanctions programs to ensure that measures are placing pressure on the Saudi and Iranian governments and not straining or worsening the humanitarian crisis in Yemen.

NAMING AND SHAMING

- More naming and shaming from powerful States and regional and international bodies would help build support for an end to the Yemen Civil War and an accountability mechanism or mechanism for investigating atrocities.

SUPPORTING AND ENGAGING CIVIL SOCIETY ACTORS

- States and international groups need to assist in developing capacities for Yemen's local civil society to collect evidence of and document attacks on cultural property.

- Global civil society, including UNESCO, the International Committee of the Red Cross, and other NGOs, should assist in protecting cultural property sites and collecting evidence of and documenting attacks on cultural property.
- UNESCO and the European Union should continue supporting local efforts, such as the Cash for Work Project, that engage Yemenis in the restoration of their cultural heritage sites.

TRANSITIONAL JUSTICE

- Transitional justice processes such as truth commissions, memorialization initiatives, and community restoration projects should be explored as avenues of restorative justice.

Conclusion

The prevalence of attacks targeting Yemen’s rich cultural history throughout the course of the Yemen Civil War give rise to a need for accountability mechanisms to hold perpetrators responsible for these crimes.³¹² Although the ICC lacks jurisdiction over the situation in Yemen,³¹³ and pursuing accountability through Yemeni domestic courts risks biased and unjust proceedings,³¹⁴ interested parties could pursue accountability following the creation of an ad hoc tribunal, similar to the SCSL’s model,³¹⁵ or by filing cases in the domestic courts of third-party States with applicable universal jurisdiction statutes.³¹⁶ In the meantime, the UN should create an Independent Investigative Mechanism to gather evidence of crimes committed in Yemen to assist with future prosecutions, and UNESCO and the European Union should continue supporting local efforts, such as the Cash for Work Project, that engage Yemenis in the restoration of their cultural heritage sites.³¹⁷

³¹² *Ensure Accountability for Yemen at the UN Security Council*, MWATANA FOR HUM. RTS. (Feb. 17, 2021), <https://mwatana.org/en/ensure-accountability-for-yemen-2/>.

³¹³ *How the Court Works*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works> (last visited Dec. 5, 2022); *The States Parties to the Rome Statute*, INT’L CRIM. CT., <https://asp.icc-cpi.int/states-parties> (last visited Dec. 5, 2022).

³¹⁴ *See* MWATANA FOR HUMAN RIGHTS, *COURTS FOR ABUSE: A CASE STUDY OF YEMEN’S SPECIALIZED CRIMINAL COURTS: 2015-2020* 113-14 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

³¹⁵ *See* Michael Scharf, *The Special Court for Sierra Leone*, INSIGHTS (2000), <https://www.asil.org/insights/volume/5/issue/14/special-court-sierra-leone>; *International Tribunals*, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/content/repertoire/international-tribunals> (last visited Dec. 5, 2022).

³¹⁶ *See, e.g., Universal Jurisdiction Annual Review (UJAR) 2020: Atrocities Must Be Prosecuted Soundly and Rigorously*, TRIAL INT’L (Nov. 5, 2022), at 20, <https://trialinternational.org/latest-post/universal-jurisdiction-annual-review-2020-atrocities-must-be-prosecuted-soundly-and-rigorously>.

³¹⁷ *Jobs for Young People to Restore Heritage in Yemen*, UNESCO (Jan. 19, 2022), <https://www.unesco.org/en/articles/jobs-young-people-restore-heritage-yemen>.

APPENDIX – TARGETED STRIKES AGAINST CULTURAL PROPERTY, 2015 - 2019

Attacks on Educational Facilities (47)

1. 5/11/2015, Nahran, Saudi Arabia, mortars and rockets fired at a school
2. 5/11/2015, Sadah, airstrikes bomb Al-Munadil Hussein Fayed School
3. 6/6/2015, Hajjah, shelling and air strikes hit a camp for displaced people, a medical center, and a school, killing 28
4. 6/8/2015, Sana'a, airstrike damaged school
5. 6/24/2015, Sadah, airstrikes targeted Al Salam School
6. 6/26/2015, Hajjah, airstrikes targeted school Al Mhab
7. 7/4/2015, Aden, rocket blasted a kindergarten classroom, killing 12 refugees
8. 7/16/2015, Sana'a, fighter jets attacked mosque, a school
9. 7/20/2015, Sana'a, school struck by airstrike
10. 7/25/2015, Abyan, Lawder, school and vocational institute struck by artillery fire
11. 7/26/2015, Taiz, airstrikes targeted Al-Hayah school
12. 7/29/2015, Al Bayda Mukayras, airstrikes targeted Thurrah School
13. 7/29/2015, Abyan, Lawder, airstrikes targeted Al-Ain School
14. 8/8/2015, Hadramaut, university students detained by al Qaeda because their university was coeducational
15. 9/2/2015, Taiz, airstrikes targeted Al-Nasr School
16. 9/3/2015, Sadah, airstrikes targeted Om Kolthoum School
17. 9/3/2015, Marib, airstrikes targeted Adhban School
18. 9/4/2015, Ibb, airstrikes targeted Al-Amal School
19. 10/27/2015, Sana'a, the Science and Faith school was struck by several airstrikes over the course of two days
20. 10/28/2015, Aden, bomb detonated on the University of Aden campus, causing minor damage to buildings
21. 1/4/2016, Taiz-Sabir, airstrike hit a school
22. 1/5/2016, Taiz-Dhubab, airstrike hit a school
23. 1/7/2016, Sana'a, air strikes hit city, children and teachers in several schools were forced to flee
24. 1/24/2016, Sana'a, airstrike hit university
25. 1/27/2016, Sadah-Sihar, airstrike hit a school
26. 3/21/2016, Al Maton, Al Jawf, airstrikes hit Al Dahouq Educational Institute
27. 3/24/2016, Taiz, airstrikes target al Omary schools
28. 3/27/2016, Taiz, airstrikes target al Omary schools
29. 4/7/2016, Al Masroohi valley, airstrike targeted residential homes and a school
30. 4/8/2016, Taiz, airstrikes hit Sakinah School
31. 4/16/2016, Al Jawf, artillery strike on houses, shops, and a school
32. 4/18/2016, Sadaa, school bombing during air raids
33. 5/24/2016, Sana'a, explosion near university killed two and injured two
34. 8/8/2016, Taiz, airstrikes on a school
35. 8/14/2016, Saada, airstrikes hit two schools

36. 8/22/2016, Taiz, airstrike on a school
37. 9/8/2016, Sana'a, airstrikes hit school
38. 9/14/2016, Saada, airstrike hit school
39. 10/18/2016, Aden, IED detonated in front of Aden University
40. 11/21&22/2016, Sana'a, Houthi militia detain and abduct teachers, students, and activists who opposed Houthi practices
41. 11/21&22/2016, Al-Hudaydah, Houthi militia detained and abducted teachers, students, and activists who opposed Houthi practices
42. 11/21&22/2016, Ibb, Houthi militia detained and abducted teachers, students, and activists who opposed Houthi practices
43. 1/4/2017, Sana'a, airstrikes targeted school in Nihm
44. 10/10/2017, Jizan, Saudi Arabia, missiles hit school
45. 10/11/2017, Madhbah District, Sana'a, Houthis attacked protest of teachers demanding salaries
46. 8/9/2018, Dahyan, airstrike targeted a school
47. 4/9/2019, Sana'a, explosion near two schools killed 14 children

Attacks on Historic Sites, Museums, and Athletic Facilities (13)

1. 5/31/2015, Sana'a, airstrikes damaged Yemeni Football Association building
2. 6/24/2015, Al Jawf, airstrikes targeted Ma'ain historical area
3. 6/26/2015, Hajjah, airstrikes targeted Al Sharaf Fortress
4. 6/26/2015, Hajjah, airstrikes hit Al-Ameen Fortress
5. 7/21/2015, Marib, airstrikes damaged the ancient Dam of Marib
6. 7/29/2015, Abyan, Lawder, airstrikes targeted Al-Homanti Fortress
7. 10/22/2015, Taiz, airstrike damaged museum
8. 10/22/2015, Taiz, airstrikes began targeting historic castle that the Houthis had set up as a command post
9. 2/14/2016, Al-Mahwit-Kawkaban, airstrikes damaged Alqashlah Castle and a number of homes
10. 3/6/2016, Marib, airstrikes targeted Barakish Cemetery, castle
11. 3/17/2016, Marib, airstrikes targeted Harib Castle
12. 3/19/2016, Sana'a, airstrike targeted Bani Castle
13. 3/19/2016, Marib, airstrikes targeted Harib Castle

Attacks on Hospitals and Scientific Institutions (11)

1. 4/1/2015, Sana'a, science and technical hospital hit by shrapnel
2. 5/11/2015, Najran, Saudi Arabia, mortars and rockets fired on a school and a hospital
3. 6/6/2015, Hajjah, shelling and air strikes hit a camp for displaced people, a medical center, and a school, killing 28
4. 9/4/2015, Sadah, airstrikes target Shia'arah Hospital

5. 10/9/2015, Al Hudaydah, airstrikes damaged the Al-Thawra Hospital
6. 10/25/2015, Taiz, Houthis indiscriminately shelled Thawra Hospital
7. 10/27/2015, Sana'a, The Science and Faith School was struck by several airstrikes over the course of two days
8. 11/8/2015, Taiz, 13 rockets hit the main al-Thawra hospital
9. 11/11/2015, Taiz, two mortars hit the main al-Thawra hospital gates
10. 8/15/2016, Hajjah, hospital bombed
11. 8/3/2018, Hudaydah, airstrike hit a fish market and the entrance to a hospital, killing at least 20 and injuring at least 60

Attacks on Markets (54)

1. 3/30/2015, Al Mazraq, Harad, Hajjah, airstrike on a residence camp for internationally displaced civilians, medical facilities, and a local food market
2. 4/27/2015, Saada, cluster munitions dropped over a crowded village
3. 5/10/2015, Al Hudaydah, Port Hodeida, market bombed
4. 5/12/2015, Zabid, airstrike hit market
5. 6/11/2015, Aden, boy shot and killed waiting in line for ice with om at Souq al-Taweel Market
6. 6/24/2015, Saada, airstrikes target market at Al-Anad
7. 6/24/2015, Al-Jawf, airstrikes hit marketplace, killing five
8. 7/1/2015, Aden, Houthis fired shells indiscriminately and killed 7 civilians sheltering in a hotel and 11 civilians at a market
9. 7/5/2015, Sana'a, airstrike hit market and killed 30 civilians
10. 7/6/2015, Amran, airstrike killed 63 (mix of fighters and civilians), including 30 at a market
11. 7/6/2015, al-Foyoush, airstrike killed approximately 60 at a livestock market
12. 7/20/2015, Sana'a, airstrike destroyed shops in a marketplace
13. 7/26/2015, Sadah, airstrikes target Al Khamees Market
14. 8/31/2015, Marib, airstrikes target marketplace
15. 9/5/2015, Hajjah, airstrikes target civilian al-Khamees Market
16. 9/5/2015, Sana'a, airstrikes target Shagia Marketplace
17. 9/11/2015, Marib, Houthis forces fire rockets at market
18. 11/24/2015, Hajjah, airstrikes target civilian residences near Aahim Market
19. 11/27/2015, Marib, airstrikes target marketplace
20. 12/13/2015, Qabatiya, airstrike killed 7 civilians in a market
21. 1/26/2016, Sihar, Sadah, airstrikes target marketplace
22. 2/27/2016, Sana'a, airstrikes hit market, killing at least 30 people
23. 3/1/2016, Marib, airstrikes target Sirwah Marketplace
24. 3/2/2016, Hajjah, airstrikes target Hayran Marketplace
25. 3/15/2016, Hajjah, airstrike on marketplace and restaurant kills dozens
26. 3/20/2016, Al Jawf, airstrikes targeted Al Ithnin Marketplace
27. 3/23/2016, Marib, airstrikes targeted Sirwah Marketplace
28. 3/28/2016, Al Jawf, airstrikes target Al Ithnin Marketplace

29. 4/10/2016, Marib, airstrikes hit Sirwah Market
30. 6/25/2016, Taiz, airstrikes target marketplace
31. 7/27/2016, Marib, IED detonated at market
32. 9/30/2016, Saada, airstrikes hit private vehicle near Razah Market
33. 11/17/2016, Taiz, artillery shelling hit market in Taiz
34. 1/4/2017, Sana'a, airstrikes target market in Nihm
35. 1/23/2017, Saada, airstrike hit market in Kitaf wa Al Boqee killing 3 civilians
36. 3/10/2017, Al Hudaydah, airstrike hits market, killing 26
37. 5/19/2017, Taiz, drone fires on al-Barh Market, killing 4 civilians
38. 6/17/2017, Saada, aircraft struck market, killing at least 25
39. 7/29/2017, Saada, airstrike on al-Thabet Market
40. 8/31/2017, Sana'a, airstrike hits market, killing at least 25 and wounding at least 9 others
41. 11/1/2017, Sana'a, air raid, killing 29
42. 12/9/2017, Marib, airstrikes hit Khalaqa Market, killing 5 civilians
43. 12/9/2017, Sana'a, airstrike hits market, killing 5 civilians
44. 12/26/2017, Taiz, airstrike hits crowded Al Hayma Market
45. 1/9/2018, Saada, airstrikes hit market
46. 1/11/2018, Sana'a, airstrikes on a marketplace and house
47. 5/28/2018, Saada, airstrike hits marketplace, killing 5 civilians and injuring 18
48. 8/3/2018, Hudaydah, airstrike hit a fish market and the entrance to a hospital, killing at least 20 and injuring at least 60
49. 8/9/2018, Saada, airstrike targeted school outside of a busy market in Dahyan
50. 11/25/2018, Hajjah, air raids on civilians near al-Hayjah Market entrance
51. 6/1/2019, Taiz, Al Jumlah Market shelled, injuring 6 children
52. 7/29/2019, Saada, airstrikes killed 13 civilians at a market in Qatabir District
53. 11/20/2019, Saada, shelling attack on Al-Raqw Market that killed and wounded civilians
54. 12/24/2019, Saada, shelling of al-Raqw Market killed 17 and wounded 12 others

Attacks on Religious Sites (41)

1. 4/5/2015, Sadah, Rezin, airstrike targets mosque
2. 5/22/2015, Sana'a, bomb exploded in a mosque
3. 5/22/2015, Al Qadaih, Saudi Arabia, suicide bomber detonated explosives at a mosque
4. 6/8/2015, Sana'a, airstrike damaged school, mosque
5. 6/8/2015, Sana'a, airstrike damaged mosque
6. 6/10/2015, Aden, three year old girl cut in half by mortar that landed near al-Rahma mosque, unclear if mosque was damaged
7. 6/17/2015, Sana'a, series of car bombings outside of Shiite mosques during prayer times
8. 6/26/2015, Hajjah, Al Mahab, airstrikes target mosque in Al Mahab
9. 7/2/2015, Sana'a, car bomb exploded near a mosque after evening prayer, injuring two
10. 7/16/2015, Sana'a, jets bombarded al-Zahra Mosque
11. 7/16/2015, fighter jets attacked mosque
12. 7/20/2015, Sana'a, car bomb detonated outside of a mosque frequented by Houthis
13. 7/29/2015, Sana'a, car bomb detonated next to mosque

14. 8/5/2015, Aden, Christian graves and religious structures destroyed
15. 8/5/2015, Al Wahat, Lahij, Sufi mosque destroyed
16. 9/2/2015, Sana'a, two bombings at Houthi mosque kill 28 and targeted medics
17. 9/24/2015, Sana'a, suicide bomber killed at least 25 in a mosque during Eid al-Adha prayers
18. 10/4/2015, Sana'a, suicide bombing attack against a Houthi mosque
19. 10/21/2015, Sana'a, multiple airstrikes struck civilian objects including the Hadhran Mosque and a home
20. 10/27/2015, Magreesh, Sana'a, the Science and Faith school was struck by several airstrikes over the course of two days
21. 11/23/2015, Majzar, Marib, airstrikes target mosque
22. 12/9/2015, Aden, abandoned catholic church was blown up by unknown attackers
23. 3/6/2016, Barakish, Majzar, Marib, airstrikes target Barakish cemetery
24. 3/20/2016, Sana'a, Houthis held Jewish individual hostage over allegations of smuggled Torah
25. 3/20/2016, Sana'a, suicide bombings on mosques kill 137
26. 4/14/2016, Al Mashannah, Ibb, Houthi forces raid home of dignitary for refusing to appoint new Iman to mosque
27. 4/18/2016, Al Mashhad, Al Mukall, Hadramut, militants blew up mausoleums
28. 7/22/2016, Sana'a, car bomb exploded near Bilal Mosque
29. 7/16/2016, overview of all attacks on mosques until July 2016
30. 7/30/2016, Taiz, 16th century Sufi mosque destroyed
31. 8/9/2016, Taiz, airstrikes on a mosque
32. 10/8/2016, Sana'a, airstrike on funeral home
33. 2/16/2017, Sana'a, airstrike hits funeral gathering
34. 2/16/2016, Sana'a, second airstrike struck aid workers who arrived to assist those wounded at the earlier funeral airstrike
35. 3/2/2017, Al-Bayda, a number of airstrikes targeted an area near a cemetery
36. 11/25/2017, Sana'a, air raids hit a mosque
37. 4/20/2018, Bani Qis District, Hajjah, airstrike hit wedding, injuring and killing dozens
38. 4/22/2018, Hajjah, airstrike hit wedding, killing dozens
39. 4/28/2018, Sana'a, airstrikes targeted Houthi official's funeral, killing at least 1
40. 7/3/2018, Saada, airstrike killed eight wedding attendees
41. 6/7/2019, Dhale, Security Belt Forces open fire on mosque, killing 5 civilians

Attacks on Sana'a (68)

1. 3/26/2015, Bani Hawat neighborhood, Sana'a, targeting a predominately Houthi neighborhood
2. 3/26/2015, Sana'a, targeting civilian houses near an international airport
3. 3/31/2015, Sana'a, targeting five additional civilian houses near an international airport
4. 4/1/2015, Sana'a, science and technical hospital hit by shrapnel
5. 4/3/2015, Sana'a, Ethiopian Embassy shelled during fighting
6. 5/1/2015, Sana'a, airstrikes kill 8-10 civilians

7. 5/1/2015, Sana'a, bomb hit residential housing complex
8. 5/1/2015, Sana'a, airstrikes destroyed civilian homes
9. 5/10/2015, Sana'a, ex-president's house bombed
10. 5/22/2015, Sana'a, bomb exploded in mosque
11. 5/31/2015, Sana'a, airstrikes damage Yemeni Football Association building
12. 6/8/2015, Sana'a, airstrike damaged school, mosque
13. 6/8/2015, Sana'a, airstrike damaged mosque
14. 6/12/2015, Old City, Sana'a, airstrike destroyed four houses
15. 6/13/2015, al-Qasimi neighborhood, Old City, Sana'a, airstrike damaged four houses despite bomb failing to detonate
16. 6/17/2015, Sana'a, series of car bombings outside of Shiite mosques during prayer times
17. 7/2/2015, Sana'a, car bomb exploded near a mosque after evening prayer, injuring two
18. 7/3/2015, al-Jaraf neighborhood, Sana'a, six people killed and six injured in an air strike
19. 7/5/2015, Sana'a, airstrike hits market and kills 30 civilians
20. 7/16/2015, Sana'a, airstrikes hit government buildings
21. 7/16/2015, Sana'a, jets bombarded al-Zahra mosque, Yemen's Foreign Ministry also attacked
22. 7/16/2015, Sana'a, fighter jets attack mosque, school
23. 7/20/2015, Sana'a, school struck by airstrike
24. 7/20/2015, Sana'a, car bomb detonated outside of a mosque frequented by Houthis
25. 7/20/2015, Sana'a, airstrike destroyed shops in a market
26. 7/25/2015, Sana'a, airstrike injured a child
27. 7/29/2015, Sana'a, car bomb detonated next to mosque
28. 8/9/2015, Sana'a, airstrike in the old quarter
29. 8/26/2015, Sana'a, airstrike damaged a house
30. 9/2/2015, Sana'a, two bombings at a Houthi mosque kills 28, medics targeted in second bombing
31. 9/5/2015, Sana'a, airstrikes target Shagia Marketplace
32. 9/5/2015, Sana'a, airstrikes target orphanage, killing at least eight
33. 9/19/2015, Sana'a, airstrikes killed approximately 30 in two residential neighborhoods in the Old City, destroying houses, shops, and public properties
34. 9/21/2015, Sana'a, airstrikes killed 20 civilians and destroyed or damaged 15 houses
35. 9/22/2015, Sana'a, airstrikes killed at least 18 people and struck houses
36. 9/23/2015, Sana'a, airstrikes killed 19 civilians, destroyed three homes, and damaged apartment buildings
37. 9/24/2015, Sana'a, suicide bomber killed at least 25 in mosque during Eid al-Adha prayers
38. 10/4/2015, Sana'a, suicide bombing against a Houthi mosque
39. 10/21/2015, Sana'a, multiple airstrikes struck civilian objects including the Hadhran mosque and a home
40. 11/5/2015, Sana'a, airstrike on civilian residence
41. 1/5/2016, Sana'a, airstrike hit Chamber of Commerce
42. 1/7/2016, Sana'a, airstrikes hit the city, children and teachers in several schools forced to flee
43. 1/24/2016, Sana'a, airstrikes hit university
44. 1/28/2016, Sana'a, airstrike hits civilian home, killing six

45. 2/27/2016, Sana'a, air strikes hit market killing at least 30
46. 3/20/2016, Sana'a, suicide bombings on mosques, killing 137
47. 4/18/2016, Sada'a, Sana'a, bombing of al-Munadjil school for girls during air raids
48. 5/24/2016, Sana'a, explosion near Sana'a university killed at least two and injured two
49. 7/22/2016, Sana'a, car bomb exploded near Bilal Mosque
50. 8/16/2016, Sana'a, airstrike on a residential area kills 17 civilians
51. 8/16/2016, Sana'a, air strike destroys home, kills nine
52. 9/8/2016, Sana'a, airstrikes hit a school
53. 10/8/2016, Sana'a, air strike on funeral home killed 140, wounded 525. Funeral was for Sheikh Ali al-Rawishan who is the father of the Interior Minister of the Houthis
54. 1/4/2017, Sana'a, airstrikes target market in Nihm
55. 1/4/2017, Sana'a, airstrikes target school in Nihm
56. 1/21/2017, Sana'a, airstrike injures three
57. 6/9/2017, al-Qoubari neighborhood, Sana'a, aircraft struck the home of Tawfeeq al-Sa'adi, killing four civilians and wounding eight
58. 8/25/2017, Faj Attan neighborhood, Sana'a, air strikes hit civilian neighborhood (claimed "technical error")
59. 8/31/2017, Sana'a, airstrike hits market, killing at least 25 and wounding at least nine others
60. 11/1/2017, Sahar, Sana'a, air raid killed 29
61. 11/5/2017, Sana'a, 15 air raids
62. 12/25/2017, Sana'a, airstrikes kill 60 fighters and some civilians
63. 1/11/2018, Sana'a, airstrikes on a marketplace and house
64. 6/6/2018, Hadda District, Sana'a, aircraft bombing injured seven civilians
65. 1/19/2019, Sana'a, overnight airstrikes
66. 4/9/2019, Sana'a, explosion near two schools killed 14 children
67. 4/7/2019, Sawan neighborhood, Sana'a, airstrikes hit a residential area, killing nine, wounding 34 others, and causing destruction and damages in dozens of neighboring homes
68. 5/16/2019, Sana'a, airstrike killed at least six

Attacks on Zabid and Shibam (2)

1. 11/20/2015, Shibam, two terrorist attacks
2. 3/8/2018, Zabid, airstrikes killed six civilians