

**The Violation of Protection of Religious Properties in an Armed Conflict in
Syria under Islamic Law and International Humanitarian Law: A Critical
Analysis**



(Thesis for the Award of LL.M. (International Law))

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

شروع اللہ کے پاک نام سے جو بڑا مہربان نہایت رحم والا ہے۔

In the name of ALLAH, The most Gracious, The most Merciful.

Dedication

I dedicate this research work to my Late Father and my mother who gave me the courage all along and supported me in achieving this significant milestone of my educational career.

Approval Sheet

This is to affirm that we have evaluated and gone through the dissertation titled “The Violation of Protection of Religious Properties in an Armed Conflict in Syria under Islamic Law and International Humanitarian Law: A Critical Analysis” submitted by Mr. Sheikh Muhammad Hamza, a student of LLM International Law under University Registration No. 444-FSL/LLMIL/S21 in satisfaction of the honor of the level of LLM in International Law. This thesis meets the requirements in its center and quality for the degree's honor.

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Declaration

I Mr. Sheikh Muhammad Hamza hereby unequivocally affirm that; I have completed the work introduced in the thesis during the planned time of study. I likewise announce that I have not taken any material from any source, have produced the work presented in thesis, during the scheduled period of study. I also declare that I have not taken any material from any source, and it has no concern with other institutions whatever. It is also declared that any secondary source used in this work has been fully acknowledged.

Certificate

It is certified that Mr. Sheikh Muhammad Hamza has conducted practically everything connected with this thesis under my watch at the department of Law, Staff of Shariah and Law, International Islamic University, Islamabad, and the work satisfies the necessity for the award of a LLM degree in International Law.

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Abstract

This research work examines the violation of the protection of religious properties during an armed conflict in Syria while analyzing the issue in the light of both the Islamic law and International Humanitarian Law (IHL). The Syrian civil war which is marked as an extensive violence and destruction has led to significant damage to the religious properties and sites including the mosques, churches and other sacred sites. This research examines the legal frameworks which are designed to safeguard these properties with a focus on the rights of the religious communities and the obligations of parties involved in a conflict to respect the religious heritage. The thesis investigates the relevant provisions of the Islamic law which includes the principles of protection of the religious sites and civilians in a situation of an armed conflict. It also examines how these principles are reflected in IHL including the 1949 Geneva Conventions and Additional Protocols which provide protection to the religious properties from destruction and damage during an armed conflict. Furthermore, it examines the gaps and challenges in the enforcement of these protections in the context of the Syrian conflict in which multiple parties have disregarded the international norms of protection. The research work argues for a stronger mechanism of accountability and the need of a coordinated approach for the purpose of protecting the religious heritage in future conflicts in both the Islamic legal traditions and the international legal norms. Therefore, the religious institutions as well as the international and local actors are required to work together in order to ensure that the religious properties are protected. A collective commitment is required to be made for the purpose of the preservation and protection of the religious properties/heritage which will be essential in the rebuilding of the fractured society of Syria and promoting long term peace and reconciliation in the country.

Abbreviations

ICC	International Criminal Court
ICCPR	International Covenant for Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ISIS	Islamic State of Iraq and Syria
OCHA	Office for the Coordination of Humanitarian Affairs
OIC	Organization of Islamic Cooperation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSC	United Nations Security Council

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Chapter 01 Introduction to Research

Whenever the single or multiple parties, usually states or organized groups, use their military forces or weapons in the violent conflict, it is commonly referred as an armed conflict. The use of the force to achieve political, territorial, ideological, or other goals is what distinguishes these armed conflicts, even they might differ in their scope, length, intensity, and quantum. An armed conflict usually arises whenever there is a difference of approach and opinion between the conflicting parties. International humanitarian law, referred to as IHL, is a law which comes into implementation during the times of the wars between the states, which is also called as an international armed conflict, in which the parties are under an obligation to protect the religious and cultural sites from the war attacks they do on each other¹. There are basically two types of armed conflicts existing generally. First one is the international armed conflict in which the armed conflict exists between two or more states, and that specific conflict includes the state machinery and all the armed resources of the state. The armed conflict which is international one arises when a state uses its armed forces against the other state and in response the other state also uses its armed forces which ultimately creates an international armed conflict between the states. In other words, it is a war between states which is termed as an international armed conflict². Second one is the non-international armed conflict in which the conflict is between any government authority and an organized armed group of the country, or in other terms generally, it is a conflict between two organs of the State, and it can also be termed as domestic armed conflict. The protection of religious properties in an armed conflict is an obligation on the conflicting states engaged within that armed conflict between them

¹ Tom Farer, "Humanitarian Law and Armed Conflicts: Toward the Definition of International Armed Conflict", *Colum. L. Rev.* 71 (1971), 37.

² David Kretzmer, "Rethinking the Application of IHL in Non-International Armed Conflicts", *Israel Law Review* 42: 1 (2009), 8-45.

according to Islamic law and IHL. It is also an obligation on the conflicting states that during the armed conflict, they should have to protect the religious sites of the country, but this above-mentioned obligation is not followed in the case of an armed conflict in Syria at all. International humanitarian law bars that the parties not to target religious sites of each other during the armed conflict as it is considered as the violation of IHL.

1.1 Thesis Statement

The protection of religious sites in an armed conflict is a commitment by the clashing states engaged within that armed conflict according to Islamic law and international humanitarian law but the rule is violated in case of Syria, hence the violation needs to be analyzed in the light of UN reports and its perspective in Islamic law and international humanitarian law needs to be addressed appropriately.

1.2 Introduction

This chapter of the thesis is aimed to discuss that, in order to protect individuals not directly involved in the armed conflict (such as civilians, healthcare providers, and prisoners of war), limit the effects of the armed conflict, and to control the means and approaches of the armed conflict, IHL regulates the conduct of the parties during these armed conflicts. An international armed conflict occurs when two or more states utilize their armed forces against one another. The examples include international disputes or wars in which one state invades another states territory. Non-international armed conflicts are those conflicts that take place within a single state, usually between organized non-state armed groups or between the

government of that state and one or more of these organized non-state armed groups³. Other states do not directly participate in non-international armed conflicts that take place within a single state. To be considered as an armed conflict under IHL, there must be a specific level of violence, including armed conflicts or hostilities. This barrier is usually not met by individual criminal activities or occasional violent episodes. The conflicting parties need to be well-organized in order to conduct lengthy military operations. This frequently means that in non-international armed conflicts, the non-state armed organizations need to be set up to be able to carry out military operations⁴. This could require having a command structure, the capacity to coordinate and carry out operations, as well as the territorial control. Although there is not a set amount of the time needed to be considered as an armed conflict, but it must be extensive enough for the rules of IHL to be applied.

The Islamic law truly recognizes the importance of protection of religious properties/sites during an armed conflict between the states which is also termed as an international armed conflict. But the rule is severely violated in the case of Syria where there are several attacks on religious sites in an armed conflict. According to Islamic law, the reason for protection of these religious sites is that the war is not permanent, and it will be ended one day, and these religious sites are the identity of the community living in that particular country/state. After the end of the war, if these religious sites are destroyed, it shall be an irreparable loss for the community and the country/state. Therefore, in Islamic law, the protection of religious sites during an armed conflict is a commitment by the conflicting states as the religious heritage is a very important component and is a fundamental element which

³ Michael N. Schmitt, Yoram Dinstein, and Charles HB Garraway, "International Institute of Humanitarian Law", *The Manual on the law of Non-international Armed Conflict, with commentary*. San Remo: International Institute of Humanitarian Law (2006), 1-66.

⁴ Sandesh Sivakumaran, "Re-envisioning the International Law of Internal Armed Conflict.", *European Journal of International Law* 22: 1 (2011), 219-264.

defines the identity of a community being religious. The importance of the protection of religious properties is more because in many countries Islam is the legal source of the protection of religious sites and according to Islamic law, the religious properties must be protected to save the religious future of the country for the generations to come. It is pertinent to mention here that the protection of religious properties is established under the principles of Islamic law and the principles of Islamic law are as vital as the teachings of Islam. Therefore, it can easily be said that an armed conflict whether it is international or non-international, does not allow the conflicting parties to attack on the religious properties of that country/state as it is an obligation on all the conflicting parties involved in an armed conflict to protect the religious properties under the Islamic law⁵. Syria is under a severe violation of the rule of protection of religious sites in an armed conflict in the light of the reports of United Nations and it is a violation under Islamic law and IHL as well. The Events which occurred in Syria in 2019 enforced the conclusion that the atrocities and the violation of rights in continuance of a conflict is the violation of the basic rule of protection of religious properties. In the same year, UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that around 11.7 million people in Syria are affected and are in need of humanitarian protection and assistance. Apart from that, the religious properties/sites in Syria are also under attacks in the violation of the rule of protection of religious properties in an armed conflict. Some non-states groups which are armed are also opposing the government creating an internal armed conflict and resulting in attacks on religious properties and civilians causing destruction⁶. These groups include the US-led coalition and its local ally which is the Syrian Democratic Forces and an

⁵ Sylvia Garry and Francesco Checchi, "Armed conflict and Public Health: Into the 21st century", *Journal of Public Health* 42: 3 (2020), e287-e298.

⁶ Therese Pettersson, Shawn Davies, Amber Deniz, Garoun Engstrom, Nanar Hawach, Stina Hogbladh, Margareta Sollenberg and Magnus Oberg, "Organized Violence 1989–2020, with a Special Emphasis on Syria", *Journal of Peace Research* 58: 4 (2021), 809-825.

extremist group called ISIS which results in the failure of safeguarding the rule regarding the protection of religious properties in an armed conflict. Today, the violations are still going on and the reports of the United Nations speak about it. Recently on 12th July 2022, a resolution was passed authorizing the cross-border humanitarian mechanism aid in Syria till 10th January 2023, and an accompanied resolution which extends the existing resolution for six months till 10th July 2023⁷.

1.3 Literature Review

A thorough review of an article “Targeting Worship Places: A Comparative Study on International Humanitarian Law and Islamic Law” by Syed Raza Shah Gillani, Muhammad Haroon Khan and Muhammad Haseeb, in which the writers have critically discussed the comparison of targeting of worship places in the light of Islamic law and IHL. The atrocities and war are not new to the world as both the Islamic law and IHL have addressed the issue and explained the fundamentals of warfare which includes that the obligation of aggressors is to reduce incidental harm to civilians and civilian properties, including places of worship, and how they have to limit their options during times of the war. Although such rules and principles are not codified in Islamic law but certain traditions and occurrences provide the fundamental principle of protection of religious places in times of an armed conflict, which has been discussed in detail by the writers in this research article⁸.

The review of an article “The Protection of Places of Worship in Armed Conflicts in the Viewpoints of Islamic and International Law” by Gholamali Ghasemi in which the writer

⁷ Lotta Harbom and Peter Wallensteen, "Armed Conflict and its International Dimensions, 1946-2004", *Journal of Peace Research* 42: 5 (2005), 623-635.

⁸ Syed Raza Shah Gilani, Muhammad Haroon Khan, and Muhammad Haseeb, "Targeting Worship Places: A Comparative Study on International Humanitarian Law and Islamic Law", *Al-Idah* 39: 2 (2021), 12-20.

has discussed the protection of religious properties in the light of Islamic law and IHL respectively. The protection provided to the places of worship includes ban on any kind of attack or destruction against these places as mentioned above. It also includes the prohibition of using these places for the purposes of military objectives and military necessity during times of an armed conflict. The Holy Quran has also mentioned the prohibition of destruction of such places in times of the war. Hence, the writer in this article has discussed the protection of places of worship which is applicable in both laws and the protection is not subject to any kind of violation in view of Islamic law and IHL as well⁹.

A detailed review of an article "The Destruction of Churches and Mosques in Bosnia-Herzegovina: Seeking a Rights-Based Approach to the Protection of Religious Cultural Property." by Gregory M. Mose in which the writer has discussed that the article 18 of the Fourth Geneva Convention (1977) of the Geneva Convention (1949) protects religious practices and the places of the worship. It states that the religious properties of the civilians which includes synagogues, churches and mosques should not be targeted unless they are being used for military objectives/ purposes. In addition, Article 53 of the Fourth Geneva Convention (1977) of the Geneva Convention (1949) prohibits the destruction of religious properties unless and until they are being used for the military objectives/purposes. For example, during the Bosnian War (1992-1995), the damage and destruction of religious properties which includes the Gazi Husrev-beg Mosque in Sarajevo, capital of Bosnia and Herzegovina raised significant concerns about the violation of these protections¹⁰. Likewise, many places of worship are

⁹ Gholamali Ghasemi, "The Protection of Places of Worship in Armed Conflicts in the Viewpoints of Islamic and International Law", *Comparative Studies on Islamic and Western Law* 1: 2 (2015), 79-104.

¹⁰ Gregory M. Mose, "The Destruction of Churches and Mosques in Bosnia-Herzegovina: Seeking a Rights-Based Approach to the Protection of Religious Cultural Property", *Buff. J. Int'l L* 3 (1996), 180.

targeted, which led to widespread condemnation under IHL principles of the protection of the religious and cultural properties.

A thorough review of the research paper “How does Law Protect Religion in War?” by Monika De Silva in which the writer has discussed in detail the protection of religion during times of an armed conflict in view of Islamic Law and has also discussed the concept and value of freedom of religion which is often threatened during times of the war. The writer has also discussed the fact that war is a conflict between two or more distinct and unknown perspectives, including religious ones, which must be respected and accepted by the parties to a conflict despite their enmity, resentment, and general ignorance of the other, the relationship between religion and war can occasionally be challenging for some insignificant reasons. Recent worldwide events indicate that the issue of preserving religious freedom in times of conflict is still relevant today. The Syrian Civil War is now the most disastrous example, raising concerns about the extent and methods of protecting religious communities, places of worship, and religious expressions under IHL¹¹.

A thorough review of the article “Islam in Syrian War” by Maximillian Lakitsch in which the writer has discussed the perspective of Islam in the current Syrian war in which the places of worships of Muslims and the shrines of the holy caliphs of Islam are attacked in the name of an armed conflict between the states. The attacks are external and internal as well. The militant groups in Syria are also involved in the attacks on the religious properties/sites because there is difference of believes in the country. The rule of protection of religious properties in an armed conflict is severely violated in Syria under Islamic law, IHL and also in the light of

¹¹ Monika de Silva, "How Does Law Protect Religion in War? International Protection of Freedom of Religion in Armed Conflicts", PhD diss., University of Warsaw, (2019).

the resolutions passed by the United Nations (UN). Hence, the writer has discussed the Syrian war in the perspective of Islam and its impact and consequences¹².

A thorough review of the article "Environmental Destruction and Armed Conflict: Protecting the Vulnerable through Islamic Law." by Shebanee Devadasan in which the author has discussed that there is a fundamental principle of Islamic law, the protection of religious property in times of the war is followed by the teachings of the Quran, prophetic traditions, and traditional legal theory. In order to promote a culture of harmony and co-existence, these values demand that all places of worship be respected and protected. These teachings are still essential for understanding and defending the rights of all religious communities in the times of the war around the globe. One important component of Islamic law (Sharia), which has its roots and origins in both the Quran and the Hadith, is the protection of the religious properties during times of the war¹³. This principle places a strong emphasis on the sacredness of places of worship and the obligations of Muslims to keep them safe, even during times of the war. Numerous verses in the Quran highlight the sacredness of places of worship or the religious properties.

The review of an article "Protection of Religious Heritage in Times of Armed Conflict: The International Legal Framework Revisited" by Erika Techera in which she has revisited the entire legislative process and system with regard to the protection of an international armed conflict between the states. In this article, the writer has tried to explain the laws and the need of time to introduce new laws and improve the existing laws in order to prevent and protect the armed forces of the countries engaged in an armed conflict to attack the religious properties

¹² Maximilian Lakitsch, "Islam in the Syrian war: Spotting the Various Dimensions of Religion in Conflict", *Religions* 9: 8 (2018), 236.

¹³ Shebanee, Devadasan, "Environmental Destruction and Armed Conflict: Protecting the Vulnerable through Islamic Law", *J. Int'l L. Islamic L.* 18 (2022), 175.

and heritage during times of the war. She has tried to revisit the entire legislation done on the subject till date and also tried her best to suggest new legislation and the improvement in the existing legislation to make the protection of the religious properties more effective and secure so that the countries involved in attacks on such religious properties be punished accordingly if they are found involved in the attacks while the prohibition is active through legislation in that territory¹⁴.

A detailed review of a research paper “Protection of Places of Worship during Armed Conflict” by Isuru Liyanage and Thilini Galappaththige in which the writers have expressed the details regarding the protection of places of worship which is also known as religious places during an armed conflict in the light of IHL. The writers in the research paper have defined and explained that what are the places of worship in a country which are prohibited to attack in an armed conflict keeping in mind the principles of IHL. The writers have also explained the protection of places of worship during an armed conflict with the perspective of Buddhism and philosophical underpinnings for IHL. The correspondence between Buddhism and IHL regarding the protection of places of worship is also explained in this research paper. In the end, both the writers have provided their findings on the subject and a way forward which should be kept in mind while protecting the places of worship or the religious properties/sites in an armed conflict between the states¹⁵.

Moving further, a detailed review of an article “Destructive trends in contemporary armed conflicts and the overlooked aspect of intangible religious heritage: A critical

¹⁴ Erika J Techera, "Protection of Cultural Heritage Times of Armed Conflict: The International Legal Framework Revisited", *Macquarie J. Int'l & Comp. Envtl. L.* 4 (2007), 1.

¹⁵ Isuru Liyanage and Thilini R. Galappaththige, "Protection of Places of Worship during Armed Conflicts: The Enrichment of International Humanitarian Law through Buddhism", *Beijing L. Rev.* 13 (2022), 401.

comparison of the protection of religious heritage under IHL and the Islamic law of armed conflict” by Victoria Arnal in which she has explained in detail the protection of religious sites/properties in an armed conflict in contemporary IHL and Islamic law. She has also stated the destructive trend in armed conflicts in which everything comes under the attacks irrespective of what is prohibited and what is not. She has also explained in the article, the misplaced stress on world heritage sites in which she has explained the value of religious properties all around the world including the Muslims and non-Muslim countries. She has also given the reference of the Hague regime in this article and how contemporary IHL has evolved in this regard. Further, she has given the reference of the Additional Protocol II to the 1949 Geneva Convention. In the end she explained the protection of the intangible religious properties/heritage and the need of the hour to concentrate on the matter in the light of IHL¹⁶.

A detailed review of a research paper “Is there an Islamic Practice for the preservation of Religious Heritage?” by Trinidad Rico in which the writer has tried to answer the question that whether there is an Islamic Practice for the preservation of Religious Heritage or not. The writer has compared the Islamic and international law perspectives to answer this question. He has explained the grounds and reasons based on which the Islamic law permits the prohibition of attacks on the religious and cultural heritage/properties during an armed conflict between the states whether such conflict is international or on-international. There are Islamic traditions on the subject which prohibits the conflicting states not to attack the religious properties of the other country and the evidence of such prohibition is also established in contemporary IHL. The writer has drawn a comparison in this regard and reached a conclusion that in both

¹⁶ Victoria Arnal, "Destructive Trends in Contemporary Armed Conflicts and the Overlooked Aspect of Intangible Cultural Heritage: A Critical Comparison of the Protection of Cultural Heritage under IHL and the Islamic law of Armed Conflict", *International Review of the Red Cross* 102: 914 (2020), 539-558.

circumstances the conflicting states are not allowed to attack the religious properties of each other in an armed conflict between them, whether such conflict is international armed conflict or non-international armed conflict¹⁷.

A detailed review of an article “Protection of non-Muslim houses of worship in Islam” by Abu Amina Elias in which the writer explains the translation of the Quranic verses related to the protection of the places of worship of the non-Muslims. The point to be noted here is that, in Islam there is protection of the places of worship of non-Muslims which means that in any case these places of worship shall not be attacked, accordingly, during an armed conflict between the states, states are not allowed to attack the religious properties of other state in any situation except it is a military necessity and the armed conflict can be of international or non-international nature¹⁸. The writer in this article has further explained the grounds and reasons on the basis of which Islam prohibits the attacks on the places of worship of non-Muslims as well as Muslims. Therefore, it can be said that the religious places/properties are the places of sanctity whether they are of Muslims or Non-Muslims. In any case these properties should not be attacked in an armed conflict between the states whether the armed conflict is international or non-international in nature¹⁹.

A detailed review of the article "Sectarian Violence in Syria's Civil War: Causes, Consequences, and Recommendations for Mitigation." by Alex Simon in which the writer has discussed the regarding the attacks on the religious and cultural sites/properties which

¹⁷ Trinidad Rico, “Is There an ‘Islamic’ Practice for the Preservation of Cultural Heritage?”, *Oxford University Press EBooks* November (2020), 690–705.

¹⁸ Abu Amina Elias, *Protection of non-Muslim houses of worship in Islam*. 2015.

¹⁹ *ibid*

contribute to the displacement of the civilians including the religious minorities such as of the Muslims and non-Muslims which includes Christians and Alawites and as a result, they are being forced to flee the areas where their religious sites/properties have been targeted, damaged or destroyed during an armed conflict as the case in Syria. The damage and destruction of the sacred places deeply affects the psychological well-being of communities whether Muslims or non-Muslim as these religious and cultural sites/properties serve as symbols of identity and the cultural continuity of the communities. The destruction and targeting of the religious sites/properties exaggerated the sectarian tensions in Syria, where the population is divided religiously on the basis of sectarianism as the damage and destruction of the places of worship can further create the divisions and trigger violence during the armed conflict in the state²⁰.

A thorough review of an article "Genocide in Syria: International Legal Options, International Legal Limits, and the Serious Problem of Political Will." by Leila Nadya Sadat in which the writer has discussed that the attacks on the religious sites/properties in Syria is a direct violation of the resolutions and conventions that demand the protection and preservation of the cultural heritage and also the violation of the principles of protection provided by the Islamic law and IHL. The United Nations has also highlighted that the damage and destruction of the religious sites/properties and the persecution of the religious communities directly affects the broader peace efforts in the region. The role of the United Nations in promoting peace and security through such resolutions has been severely challenged by the acts of violence/aggression as they directly are at a conflict with the principles of the Charter of the

²⁰ Frederic C. Hof and Alex Simon, "Sectarian Violence in Syria's Civil War: Causes, Consequences, and Recommendations for Mitigation", *The Center for the Prevention of Genocide, United States Holocaust Memorial Museum* (2013), 1-46.

United Nations of non-aggression which includes respect for the human rights, and the religious and cultural diversity.²¹

A review of an article "Accountability for Syria: Is the International Criminal Court now a Realistic Option?" by Caroline Sweeney in which the writer has discussed that during the armed conflict in Syria, the opposition forces as well as the government forces are reported to have been used religious sites/properties, including mosques and shrines as military bases and headquarters. The use of religious properties/sites for the military objectives is the violation of IHL, which provides protection and preservation of the religious properties/sites in an armed conflict. In 2012, the rebel groups are reported to have used the mosques in Homs (Syria) as the shelters and effectively turned the religious properties/sites into the military targets. The forces of the government of Syria have used mosques to launch the attacks which itself is the violation of the sanctity/sacredness and the protection available to such properties/sites under the Islamic law and IHL. Therefore, the need of the hour is that there should be international accountability for the violations committed against the protection provided to the religious sites/properties by the Islamic law and IHL during an armed conflict. The International Criminal Court (ICC) can play a vital role in this regard for the purpose of prosecuting the individuals/groups responsible for the war crimes which includes the damage and destruction of religious sites/properties in times of the war especially in the case of the Syrian Civil War²².

A detailed review of an article "Property, Right and Contract in Muslim Law" by Saba Habachy in which the writer has explained the point of view of Islam in the matters related to

²¹ Leila Nadya Sadat, "Genocide in Syria: International Legal Options, International Legal Limits, and the Serious Problem of Political Will", *Impunity Watch LJ* 5 (2014), 1.

²² Caroline Sweeney, "Accountability for Syria: Is the International Criminal Court now a Realistic Option?", *Journal of International Criminal Justice* 17: 5 (2019), 1083-1115.

property, rights and contracts. Muslim law also means Islamic law, it is also called Muslim law because it is implemented or followed by Muslims that's why Islamic law is also called Muslim law. The protection of cultural and religious properties is recognized and established in Islamic law and there are traditions in which these properties have shown their importance which means that during an armed conflict between states the fighting countries should prohibit to attack the religious and cultural properties of the other country because these have nothing to do with the war and the people who are not involved in any situation must be allowed to use these places even in the times of the war²³. Therefore, this article also depicts the situation that Muslim Law clearly protects the rights of Muslims whether they are related to property or contract and the protection of religious places or the places of worship comes within the ambit of property in Muslim law.

1.4 Research Gap

The past research on the subject of protection of religious properties in an armed conflict till now just laid emphasis on the reasons in general, the research did not talk about the violations and its consequences as comparison between Islamic law and IHL in the light of the reports and resolutions passed by the United Nations. The past research also came up short on point of view of Islam and IHL regarding the violation of rule of protection regarding religious properties, which is additionally huge in deciding the general morals and ethics of the people of the states/countries involved in an armed conflict, which additionally assume an important part in deciding the level of protection of these religious properties. Notwithstanding, the research on the violation of the rule of religious properties till now just examined the grounds

²³ Saba Habachy, "Property, Right, and Contract is Muslim law", *Colum. L. Rev.* 62 (1962), 450.

and reasons, however, neither assessed the degree of protection and the consequences of violation in the light of the reports and resolutions passed by the United Nations on this subject nor gave any research as comparison between Islamic law and IHL on the subject. The past research has not disclosed any gaps between the international standards and ground situation in Syria pertaining to the protection of religious properties and its response in the light of the reports and resolutions passed by the United Nations.

1.5 Significance of the Study

The primary point of the thesis is to propose a perspective that investigates what are the contemporary standings regarding the protection of religious properties in an armed conflict in presence of any international conflict between the states, to discover the extent of protection of religious properties in Islamic laws as well as in IHL. The study is significant to the extent of comparison between Islamic law and international humanitarian law regarding the degree of protection related to the religious properties and the consequences of the violation of the rules related to the religious properties allowed in an armed conflict between the conflicting states. The comparison will show the differences enumerated on the grounds provided in Islamic law and IHL regarding the protection of the religious properties in an armed conflict whether it is international or non-international. The study will elaborate the perspective of Islamic law and IHL in the light of the reports and resolutions passed by the United Nations on the subject of protection of religious properties in an armed conflict between the states.

1.6 Research Objectives

1. To analyze the legal status of the protection of religious sites/properties in an armed conflict in Islamic law and international humanitarian law

2. To find out the protection of religious sites established in the light of the reports and resolutions passed by the United Nations or not
3. To determine that what are the consequences of violations that are committed during the attacks in Syria on the religious sites in the light of United Nations reports and resolutions
4. To examine that whether the militant groups such as ISIS and US-led Syrian Democratic Forces involved in the attacks be prosecuted for the atrocities or not
5. To look at the grounds on which the comparison of degree of protection of religious sites is based in an armed conflict in Islamic law and international humanitarian law

1.7 Research Questions

1. What is the legal status of the protection of religious sites in an armed conflict in Islamic law and international humanitarian law?
2. Whether the protection of religious sites/properties is established in the light of the reports and resolutions passed by the United Nations?
3. What are the consequences of violations that are committed during the attacks in Syria on the religious sites in the light of United Nations reports and resolutions?
4. What is the impact of the resolutions passed in favor of Syria and against the attacks on its religious sites in terms of contributing in stopping the attacks?
5. Whether the militant groups such as ISIS and US-led Syrian Democratic Forces involved in the attacks be prosecuted for the atrocities or not?

1.8 Research Methodology

The research methodology adopted for the above-mentioned research would be a combination of descriptive, critical, qualitative, comparative, non-doctrinal and analytical research techniques. For that matter, the primary resources would be consulted including legal instruments, research articles, books, case laws and online available resources. The research is descriptive because it is aimed to provide detailed and systematic description of the issue in question. The research is qualitative because it is a legal issue and a subject matter of social sciences. The research is comparative because it compares the two laws which includes the Islamic law and IHL. The research is analytical because it is a critical analysis of the issue in question. The style which is used for citation in this research is Chicago style. The exploration would be for the most part dependent on the investigation of various significant writings under the title as mentioned above.

Chapter 02 Protection of Religious Properties in an Armed Conflict

2.1 Introduction

This chapter of the research work is the answer of first research question which is aimed to discuss the protection of religious properties during an armed conflict in the light of the Islamic law and the IHL. In an armed conflict whether it is international or non-international armed conflict, the protection of religious properties/sites is a fundamental principle which is required to be observed and the states involved in the conflict need to establish that the religious properties should not be used for the purposes of the military assistance or they should never be targeted for the destruction purposes during the subsistence of an armed conflict. In IHL, the places of worship and other religious properties are protected from the destruction during an armed conflict unless the strict conditions laid down in the precautionary principle, distinction principle and the proportionality principle are fulfilled. Despite the protections provided to the religious properties in IHL, the properties are continuously targeted for destruction around the world during the armed conflicts which is a violation of the protections provided to them. The protections established for the religious properties under IHL are applicable in all cases of international armed conflict and non-international armed conflict. The Geneva Convention (1949) through its Common Article No. 2 defines the international armed conflict as those cases in which between two or more states, a war is declared or any other armed conflict similar to it²⁴. Common Article No. 3 of the Geneva Convention (1949) introduces armed conflict, but it does not clearly define its concept²⁵.

This chapter of the research work is divided into three sections. The first section describes the protection of religious properties in an armed conflict in the light of IHL. The

²⁴ Pictet, Jean S. "Geneva convention." *International Committee of the red cross* (1952), 19-26

²⁵ Ibid

second section is the discussion of the general principles of the protection of religious properties under IHL and the case studies. The third section describes the protection of religious properties under the Islamic law and a comparative analysis of both laws. However, a non-international armed conflict exists when two or more non-governmental armed groups are under a conflicting position with each other or when a singular state is under a conflicting position with more than one non-governmental armed groups²⁶. The law of war or the law of armed conflict protects religious properties during an armed conflict whether it is international armed conflict or non-international armed conflict, the parties to conflict are never permitted to target such properties neither religious site/properties can be used for any kind of assistance to the militant groups during the conflict. In Islamic law, the protection of religious properties is termed as necessary while two or more Islamic states engage themselves in an armed conflict of any nature as the rule is derived from Islamic traditions and principles laid down by Quran and Sunnah. The armed groups tend to invoke Islamic law and principles to legitimize their illegal acts but the fact of the matter is that the Islamic law never permits the destruction of religious properties in an armed conflict whether international or non-international. The sacredness of mosques, churches, and other places of worship is emphasized in the Islamic teachings and the prohibition against injuring non-combatants and sacred property is one of the rules of jihad²⁷.

²⁶ William A. Schabas, "Punishment of Non-State Actors in Non-International Armed Conflict", *Fordham Int'l LJ* 26 (2002), 907.

²⁷ Gholamali Ghasemi, "The Protection of Places of Worship in Armed Conflicts in the Viewpoints of Islamic and International Law", *Comparative Studies on Islamic and Western Law* 1: 2 (2015), 79-104

2.2 Background and Development

The protection of religious properties during an armed conflict has been around for centuries and has been influenced by a variety of ethical, legal, and cultural factors. The Provisions that refer to the safeguarding of sacred/religious properties were found in some of the oldest known laws, such as the Code of Hammurabi (c. 1754 BCE)²⁸. The sacredness of temples and other places of worship was also acknowledged by ancient Greek and Roman customs. The idea of a "sanctuary" first appeared during the Middle Ages, when places of worship such as churches provided safety to people, particularly those escaping wars²⁹. Numerous societies have acknowledged the sacredness/sanctity of the places of the worship throughout history. Due to their spiritual importance, ancient societies frequently established traditions for safeguarding temples and other places of worship. The several international legal frameworks and humanitarian standards have developed the protection of religious properties during times of the war. The concept of the protection of religious properties in an armed conflict developed at the end of the nineteenth century and at the start of twentieth century, when IHL started to develop and recognized the need of safeguarding the religious properties which were often targeted in an armed conflict referring it to be against the true spirit and the true essence of IHL and international law as well. The international peace conferences in the Hague, Netherlands, resulted in the negotiation of a number of treaties and declarations known as the Hague Conventions of 1899 and 1907. One of the earliest official declarations of the rules of war and war crimes in the context of modern international law was found in the Hague Conventions of 1899 and 1907³⁰. The violations of protection provided to the religious

²⁸ Robert Francis Harper, ed. *The code of Hammurabi, King of Babylon, about 2250 BC: autographed text, transliteration, translation, glossary, index of subjects, lists of proper names, signs, numerals, corrections and erasures, with map, frontispiece and photograph of text*. University of Chicago Press, Callaghan (1904), 1-109

²⁹ Karl Shoemaker, *Sanctuary and crime in the Middle Ages, 400-1500*. Fordham Univ Press (2011), 1-76

³⁰ Adam Roberts, "Documents on the Laws of War", (2000), 1095.

properties lead to the need for its development and the first-time early models for safeguarding cultural property which includes places of worship in times of conflict were established by the Hague Convention of 1899 and later in the Hague Convention of 1907 in which Convention No. IV (Regulations Concerning the Laws and Customs of War on Land) through its Article No. 27 expressly demands that religious sites be respected in the times of the war.

The Geneva Conventions are a set of international agreements reached in Geneva between 1864 and 1949 with the aim of lessening the harm which the conflict causes to both troops and civilians. The people and civilian property, including places of worship, are protected during times of conflict by the Geneva Conventions (1949), especially by the Fourth Geneva Convention. In the event of an armed conflict, the United Nations Educational, Scientific and Cultural Organization and the Hague Convention for the Protection of Cultural Property (1954) provides the protection of cultural heritage, particularly places of worship, during times of conflict is further emphasized³¹. It forbids the exploitation of religious properties for military objectives and requires its protection and observance. IHL, moral reasons, and the constant need to preserve cultural heritage, all have an impact on how religious properties are protected during an armed conflict. The difficulty still exists, particularly in view of current conflicts in which places of worship frequently turn into hotspots for violence. In times of conflict, efforts to strengthen legal safeguards and encourage recognition for religious properties are essential for maintaining religious and cultural identity and heritage.

³¹ Jan Hladik, "The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Notion of Military Necessity", *International Review of the Red Cross* 81: 835 (1999), 621-635.

2.3 Protection of Religious Properties in International Humanitarian Law

IHL which is also known as the law of the war provides protection for religious properties in conflicting areas and its violations are considered as a war crime. Unless the strict requirements outlined in the distinction principle, proportionality principle, and precautionary principle are fulfilled, state or nonstate actors are prohibited by IHL from targeting civilian sites and cultural property, including places of worship and other religious properties, for destruction or using them for military purposes during an armed conflict. Despite these safeguards, religious places are nonetheless unlawfully targeted for destruction in wars all throughout the world³². Both international and non-international armed conflicts are covered by the protections provided by IHL for places of worship and other religious properties. The unlawful targeting of places of worship and religious properties has led to their destruction as well as the death and disfigurement of innocent people in an armed conflicts all over the world. By restricting the capacity of people to worship and exercise their faith, the destruction of places of worship, even when legal, limits the freedom of religion or belief. The parties to an armed conflicts are required to respect IHL and refrain from destroying places of worship or other religious properties. Under IHL, safeguarding religious places and properties during an armed conflict is a crucial concern. This safeguard is derived from a number of legal frameworks and rules intended to protect religious properties as well as cultural heritage and guarantee the security of people and communities engaged in or impacted by an armed conflict³³.

³² Francesco Francioni and Federico Lenzerini, "The Destruction of the Buddhas of Bamiyan and International Law", *European Journal of International Law* 14: 4 (2003), 619-651.

³³ Sigrid Van der Auwera, "International Law and the Protection of Cultural Property in the Event of Armed Conflict: Actual Problems and Challenges." *The Journal of Arts Management, Law and Society* 43: 4 (2013), 175-190.

2.3.1 Geneva Convention & Additional Protocols:

The protection of civilians during times of war is expressly covered under the Fourth Geneva Convention (1949). Adopted in 12 August 1949, the Fourth Geneva Convention regulates how civilians are treated during times of the war. It addresses the defence of people, including hostages, diplomats, spies, and spectators, in areas occupied by the military. The deportations and forced transfers of protected individuals from occupied territory are prohibited by the Fourth Geneva Convention (1949). It is one of the four Geneva Conventions that cover different aspects of humanitarian law in times of the war. In order to address the humanitarian concerns that emerged after World War II, the Geneva Conventions were created in the years following the war. The more civilian populations were involved in the wars, the more crucial it became to defend civilian life, especially religious properties and practices. The destruction of property, including places of worship, is forbidden by Article 53 unless it is absolutely necessary for military purposes. Formally titled as the "Geneva Convention Relative to the Protection of Civilian Persons in Time of War," the Fourth Geneva Convention which was ratified in 1949, addresses the protection of civilians during the times of the war. Although it does not specifically address religious places, its principles include preserving religious and cultural assets as a means of preserving the dignity and lives of civilians. Under Article 27, "General Protections of Civilians" of the Fourth Geneva Convention (1949), religious activities and places of worship are also protected from violence, intimidation, and public humiliation and it mandates that people must receive decent treatment without discrimination³⁴. Article 27 of the Additional Protocol I (1977) adds to the Geneva Conventions (1949), but is not a part of the Fourth Geneva Convention itself. The Article 33 of the Fourth Geneva Convention, prohibits collective punishments and retaliation against individuals who are protected. The

³⁴ Lorenzo Veracini, "The Fourth Geneva Convention", *Arena Journal* 24 (2005), 101-114.

protection of religious properties/sites is essential for preserving religious and social identity since they frequently act as centers of culture and community.

According to Article 53, property damage is forbidden unless military actions make it absolutely necessary. Among these are places of worship, which are regarded as important pieces of cultural heritage³⁵. The Article 55 requires occupying forces to protect religious properties and institutions in order to guarantee the welfare of the people living in occupied areas. The significance of safeguarding religious and cultural properties during times of the war is particularly emphasized in Additional Protocol I (1977) to the Geneva Conventions. "It is forbidden to destroy or seize the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of the war," according to Article 53 of the Additional Protocol I. In particular, Article 53 demands that religious sites and other cultural properties be shielded from acts of violence and devastation³⁶.

2.3.2 The Hague Convention:

Hague Convention is a series of international treaties that were issued from international conferences held at The Hague in the Netherlands in the years 1899 and 1907. A thorough legal foundation for safeguarding cultural heritage including places of worship during the times of the war is provided by Hague Convention. It guarantees that religious and cultural properties are not used for military objectives/purposes and highlights the duty of states to protect it. These safeguards provided for the protections of cultural properties including the

³⁵ Joyce AC Gutteridge, "The Geneva Conventions of 1949", *Brit. YB Int'l L.* 26 (1949), 294.

³⁶ Claude Pilloud, Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, eds. *Commentary on the Additional Protocols: of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Martinus Nijhoff Publishers, (1987), 639-650.

places of worship, which are established by the Second Protocol to the Hague Convention³⁷. Article 1 of the Hague Convention specifically defines the cultural properties which includes religious buildings, monuments and the places of worship. It also established the responsibility of states to take the required precautions against the destruction of cultural properties during an armed conflict, both by their own forces and by those of the opponent groups. The states are also obligated to designate and protect the cultural properties which includes the places of worship during an armed conflict.

2.4 General Principles of Religious Properties Protection

2.4.1 Distinction Principle

The parties to a conflict are barred by the distinction principle from targeting any civilian targets, including places of worship and religious sites. However, if they become military targets, places of worship and other religious sites risk losing their status as civilian objects and becoming lawfully targeted. A military objective is defined as "those 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" in the light of Article 52(2) of the First Additional Protocol (1977) to the Geneva Conventions. Importantly, Article 52(3) of the First Additional Protocol (1977) to the Geneva Conventions states that a place of worship or religious site "shall be presumed not to be used to make an effective contribution to military action" when there is uncertainty about its purposes and missions. The places of worship and religious properties

³⁷ Detlev F. Vagts, "The Hague Conventions and Arms Control", *American Journal of International Law* 94: 1 (2000), 31-41.

that fit the concept of "cultural property" are given more protection under IHL. The cultural property is defined as "property of great importance to the cultural heritage of every person, such as monuments of architecture, art, or history, whether religious or secular" under Article 1 of the Hague Convention for the Protection of Cultural Property in an Armed Conflict (1954). The states engaged in an armed conflict have the authority to designate religious sites/properties and places of worship on their own soil as cultural property and to notify other states of this information by any reasonable means. However, the "responsibility to define which objects are protected will also fall in practice on the shoulders of the opposing party" if the governments fail to exchange such information or knowledge³⁸.

2.4.2 Proportionality Principle

The proportionality principle must be followed by armed forces involved in an armed conflict contemplating an attack on a place of worship or another religious property that has turned into a military target. The attacks that "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" are prohibited by Article 57(2)(a)(iii) of the First Additional Protocol to the Geneva Conventions (1977)³⁹.

³⁸ Gabriel Sweney, "Saving lives: the Principle of Distinction and the Realities of Modern War", *Int'l Law*. 39 (2005), 733.

³⁹ Eric Engle, "The History of the General Principle of Proportionality: An overview", *Dartmouth LJ* 10 (2012), 1.

2.4.3 Precautionary Principle

The armed forces of states are required to take "all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event minimizing, incidental loss of civilian life, injury to civilians, and damage to civilian objects," according to Article 57(2)(a)(ii) of the First Additional Protocol to the Geneva Conventions (1977). The military must take extra precautions to prevent and reduce incidental loss even when they conclude that a place of worship or religious site has turned into a military target and that attacking that target would be proportionate to the expected military advantage or gain⁴⁰. The religious properties and places of worship that have been declared as cultural property need to be protected with extra care. All the parties to a conflict must take "all feasible precautions" to prevent or minimize damage to cultural property, do "everything feasible" to ensure that the target of an attack is not cultural property or a religious property, and refrain from launching attacks that are likely to cause excessive incidental damage to such properties in relation to the anticipated concrete and direct military advantage, in the light of the Article 7 (a), (b) and (c) of the Second Additional Protocol to the Hague Convention (1999).

2.5 The Violations of Religious Properties Protection: A Case Study

There are several cases which highlight the challenges faced during the protection of religious properties in an armed conflict. Some of the case studies of severe violations of IHL regarding the religious properties protection is as follows:

⁴⁰ Michael Bothe, "Precaution in International Environmental Law and Precautions in the Law of Armed Conflict", *Goettingen J. Int'l L.* 10 (2020), 267.

2.5.1 The Yugoslav Wars

A series of targeted attacks on the religious properties occurred especially in Bosnia and Herzegovina, during the Yugoslav Wars in 1990s. The mosques, churches and synagogues were willfully targeted and destroyed as part of the efforts to erase the cultural and religious heritage of the ethnic groups of the opponents. The bombing of the mosques, the damage and destruction of the Mostar bridge and the attacks on Catholic churches in Kosovo are among the notable examples of the attacks on religious properties⁴¹. The attacks were condemned by the international organizations/bodies such as the United Nations and the attackers were later prosecuted for the war crimes at the International Criminal Tribunal for the former Yugoslavia (ICTY).

2.5.2 The Iraq and Syria War

The rise of the Islamic State of Iraq and Syria (ISIS) led to the damage and destruction of the religious properties in Iraq and Syria⁴². The militants of ISIS deliberately targeted the mosques, churches and other religious properties/sites as part of their mission to eliminate the religious and cultural diversity of the region. The destruction of the ancient Syrian city of Palmyra which includes its temples, the demolition of the mosques and the destruction of churches in Mosul (Iraq) and Raqqa (Syria), are the notable examples of the deliberate attacking of the religious heritage in the countries. The destruction was condemned and was termed as a violation of IHL by the international organizations and it was declared as cultural genocide. The international efforts were made in response in order to protect these sites from further destruction and to restore the damaged properties/sites in the region⁴³.

⁴¹ Gale Stokes, John Lampe, Dennison Rusinow, and Julie Mostov, "Instant History: Understanding the Wars of Yugoslav Succession", *Slavic Review* 55: 1 (1996), 136-160.

⁴² Eyal Zisser, "Syria and the War in Iraq," *Middle East* 7: 2 (2003), 45.

⁴³ Kasturi Sen, Hamid Hussain and Waleed Al-Faisal, "Ethics in Times of Conflict: Some Reflections on Syria, in the Backdrop of Iraq", *BMJ global health* 1: 3 (2016), e000149.

2.5.3 The Recent Israel and Palestine War

The recent armed conflict between the armed groups of Israel and Palestine has also observed the destruction of the religious properties which includes the mosques and churches during times of the conflict. For instance, in the year 2021 during the conflict of Gaza and Israel, the attack in the shape of airstrikes by Israel led to the destruction of the Al-Jalaa building in Gaza (Palestine) which had media offices but also had the offices of religious organizations as well⁴⁴. Although, the attack was not specifically on the religious property but the destruction of a property having offices of religious organizations depicts the challenges of preserving the sanctity of religious institutions in the era of modern warfare.

2.6 Comparative Analysis

The protection of religious properties and places of worship is emphasized by both the Islamic law and IHL, highlighting their significance as representations of community and faith. While Islamic law offers a stronger moral and ethical framework, IHL expressly codifies the protection of sacred places in the context of international and non-international armed conflicts. The Islamic Law approach is more principles-based and depends on community enforcement and interpretation, IHL offers precise legal definitions and accountability procedures. While Islamic law may rely more on local interpretations of religious authorities, in IHL, the Geneva Conventions provide explicit penalties for violations. IHL is applied consistently by all of its signatories, although Islamic law can be applied quite differently depending on political, cultural, and sectarian needs. In reality, political motivations may impact both frameworks, resulting in selective adherence or exploitation during conflicts which may affect the

⁴⁴ Ibrahim Khatib, Daphna Canetti and Aviad Rubin, "Conflict Perception: A New Scale with Evidence from Israel and Palestine", *International Journal of Conflict Management* 29: 3 (2018), 376-397.

prevention of violations of protection of religious properties in an armed conflicts between the states. The problems over the protection of religious properties may occur when the laws of the states based on IHL conflict with national level interpretations of Sharia or Islamic Law. Both the concepts are frequently used in cases of an armed conflict, which might result in divergent opinions about whether it is acceptable to target the places of worship or not. In IHL, religious property protection is mostly governed by the 1949 Geneva Conventions and the Additional Protocols of 1977 and 2005 of the 1949 Geneva Conventions⁴⁵. The principles of precautionary, proportionality, and distinction are important concepts related to the attacks on places of worship during an armed conflict. The conflicting parties have to make a distinction between civilian and military targets, including places of worship. The attacks against places of worship, including churches, mosques, and temples, are prohibited under Article 53 of Additional Protocol I (1977) of the 1949 Geneva Conventions, unless they are being used for military objectives or are against the use of force⁴⁶. The preservation of the religious and cultural heritage is further emphasized by the 1954 Hague Convention for the Protection of cultural property in the event of an armed conflict, which calls for the preservation and respect of such properties.

IHL is upheld by international tribunals, national legal systems, and organizations like the International Committee of the Red Cross (ICRC) and the International Criminal Court (ICC). IHL violations, including assaults on the religious places, may result in the charges of the war crimes which results in the facing of the prosecution of the criminal cases in the International Criminal Court (ICC). In Islamic law, the concept of the protection of the religious properties or places of worship is based on the Quran, Hadith (sayings of Prophet

⁴⁵ Borhan Uddin Khan and Mohammad Nazmuzzaman Bhuian, "The Development of the Geneva Conventions", In *Revisiting the Geneva Conventions: 1949-2019* Brill Nijhoff (2019), 12-39.

⁴⁶ Antonio Cassese, "The Geneva protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law", *UCLA Pac. Basin LJ* 3 (1984), 55.

Muhammad PBUH) and the academic interpretations (Fiqh). The Islamic doctrine places a strong emphasis on the protection of places of worship⁴⁷. The significance of preserving holy places is mentioned in the Quran. The destruction of synagogues and churches is prohibited in historical Islamic teachings. The religious minorities and their worship places were protected under the covenant of Medina by the Prophet Muhammad (PBUH). While classical Islamic jurisprudence permits the wars, it places a strong emphasis on protecting non-combatants and holy places of Muslims and Non-Muslims. The respect for places of worship is emphasized in the laws of the war as well. The Sharia implementation might differ greatly among cultures and situations but the concept is the same. The religious properties may be protected by strict rules in some of the states, but these rules may be interpreted and applied differently in others. The local authorities or Shariat courts may handle violations of Islamic law, such as damage to places of worship, however enforcement may not always be consistent but there is a mechanism to enforce the violations committed under the Islamic law⁴⁸. Despite having distinctive foundations and methods of enforcement, Islamic law and IHL both support the preservation of religious properties during times of the war. The Islamic law places more emphasis on moral concerns and communal duties than IHL, which offers a structured legal system with particular penalties for violations⁴⁹. In order to preserve religious history and the purity of places of worship, it is necessary to have a complete understanding of both systems because of their interaction, which can affect how military conflicts are conducted in times of the war.

⁴⁷ Musferah Mehfooz, "Safeguarding Places of Worship during the Prophetic Era: Assessment of Early Islamic Covenants and Their Impacts on Early Muslim Polities", *Religions* 13: 9 (2022), 799.

⁴⁸ David A Funk, "Traditional Islamic Jurisprudence: Justifying Islamic law and Government", *SUL Rev.* 20 (1993), 213.

⁴⁹ Ahmed Al-Dawoody and Alexandra Ortiz Signoret, "Respect for the Dead Under International Law and Islamic Law in Armed Conflicts", *Anthropology of Violent Death: Theoretical Foundations for Forensic Humanitarian Action* (2023), 219-249.

2.7 Regulatory Framework

Both the Islamic law and IHL places a high priority on protecting religious properties and places of worship during violent situations in an armed conflict. Although both frameworks offer strong protections, putting these standards into practice can be difficult and complicated. The protection of the religious properties during times of the war requires strengthening compliance, improving accountability, and encouraging education on these concepts.

International Humanitarian Law (IHL) regulatory framework includes key treaties and principles which are as follow:

1. Geneva Convention 1949
2. Additional Protocols 1977 of Geneva Convention 1949
3. The Hague Conventions 1899 and 1907
4. The International Committee of the Red Cross (ICRC)
5. The International Criminal Court (ICC)

Particularly, during an armed conflict, civilians and their properties including places of worship are protected by the Fourth Geneva Convention of the Geneva Conventions (1949)⁵⁰. The destruction of the property is prohibited under Articles 53 and 54 of the Fourth Geneva Convention of the Geneva Conventions (1949), unless it is absolutely required for military operations. This includes places of worship, which are frequently regarded as civilian property during an armed conflict. The cultural property which includes places of worship is strengthened by Additional Protocol I (1977) of the Geneva Conventions (1949). Article 53 of the Additional Protocol I (1977) of the Geneva Conventions (1949) expressly prohibits

⁵⁰ David G. Burwell, "Civilian Protection in Modern Warfare: A Critical Analysis of the Geneva Civilian Convention of 1949", *Va. J. Int'l L.* 14 (1973), 123.

attacking, demolishing, or willfully causing damage to places of worship, including synagogues, mosques, and churches⁵¹. The significance of safeguarding religious properties during an armed conflict is acknowledged by customary international law, which emphasizes that armed actions should not target them. According to the International Committee of the Red Cross (ICRC), these sites are safeguarded by the customary laws of IHL. Another important tool that emphasizes the need to protect cultural assets, including religious structures and sites, is the Hague Convention of the 1954 for the protection of the cultural property in the event of armed conflict between the states.

Islamic Law regulatory framework regarding the protection of religious properties in an armed conflict includes the following:

1. Quran
2. Hadith (Sayings of Prophet Muhammad PBUH)
3. Academic Interpretations (Fiqh)
4. Contemporary Interpretations of Shariah
5. Shariat Courts

Historically, Islamic law has placed a strong emphasis on safeguarding places of worship, religious and sacred properties. The sanctity of these sites is supported by the teachings of the Prophet Muhammad (PBUH) and other Islamic scholars, especially during the times of the war⁵². The respect for religious diversity and the preservation of places of worship is encouraged by the Quran. This also holds correct for the places of the worship that are related

⁵¹ Howard S. Levie, "Pros and Cons of the 1977 Protocol I", *Akron L. Rev.* 19 (1985), 537.

⁵² Spahic Omer, "Some Lessons from Prophet Muhammad (SAW) in Architecture: The Prophet's Mosque in Madinah", *Intellectual Discourse* 18: 1 (2010).

to non-Muslim. The Islamic law prohibits the destruction of places of worship and religious properties in an armed conflict⁵³. The respect for pre-existing places of worship was a common practice during the early Islamic wars, with certain safeguards in place to ensure their subsistence. The damaging or causing of harm to the religious properties is considered a grave violation and is frequently considered immoral (haram) in Islamic teachings and law. The Islamic Law or Sharia interpretations in the modern era still emphasize the value of safeguarding places of worship, which is in line with IHL and international law as well.

2.8 Conclusion

To conclude we can say that both the Islamic law and IHL has laid down emphasis on the need of the protection of the religious properties in an armed conflict and their violations are prohibited in the light of both laws respectively. Both systems demand that religious properties should be protected from deliberate damage, with an emphasis on preventing injury to non-combatants, both highlight the difference between civilians and combatants. Both permit some exceptions, such as the military usage of places of worship, but they both call for caution and proportionality to reduce damage. When it comes to safeguarding religious properties, Islamic law and IHL have a lot in common, especially when it comes to the sacredness of places of worship and the prohibition against useless destruction. While IHL concentrates on state accountability and the formulation of international laws, Islamic law is more concerned with the moral and religious obligations of Muslims during times of the war. Nevertheless, both frameworks emphasize the significance of preserving religious and cultural heritage during an armed conflict. Since religious places are vital to the spirits of the humanity

⁵³ Derek H. Davis, "Destruction and Desecration of Sacred Sites during Wars and Conflicts: A Neglected Travesty," *J. Church & St.* 44 (2002), 417.

and cultural heritage, their protection during an armed conflict is a top priority for both Islamic law and IHL⁵⁴. It is prohibited to purposefully destroy such sites and properties, unless they are being exploited for military objectives, in such cases precaution, proportionality, and distinction should be followed. Although both systems offer procedures for accountability and justice, the application of these rights may differ based on the circumstances and the parties to the dispute. The evolution of IHL reflect the significance of the protection of cultural and religious properties but the practical implementation of these laws requires the international cooperation, commitment and accountability in order to ensure the protection of religious and cultural properties during an armed conflict. Therefore, protecting the religious properties within the ambit of IHL not only contributes to the preservation of the cultural heritage but also contributes in promoting respect for human dignity and peace which are an essential element of the humanitarian principles guided by the international law.

⁵⁴ Omar Yousaf, "Ihl as Islamic Humanitarian Law: A Comparative Analysis of International Humanitarian Law & Islamic Military Jurisprudence Amidst Changing Historical Contexts", *Fla. J. Int'l L.* 24 (2012), 439.

Chapter 03 Difference in Degree of Protection in Islamic Law and IHL

3.1 Introduction

This chapter is aimed to answer the second and third research question regarding the difference in the degree of protections provided by the Islamic Law and IHL. The protection of religious properties during an armed conflict is an important concern for both the Islamic law and IHL. The IHL has a more formal international framework that provides adequate protections for civilians and civilian objects, including places of worship with focus to create a balance between humanitarian concerns and military intervention. A more religion-based approach is offered by the Islamic law regarding the sanctity of places of worship and is based on more ethical and theological precepts which emphasizes on justice, mercy, and the preservation of religious diversity even during the times of the war⁵⁵. Although the degrees of protection and the methods of enforcement of the protections may vary depending on the circumstances, but both the systems acknowledge the significance of protection of religious properties during the times of the war. The upholding of the human dignity and protecting each community's cultural and religious heritage/properties during an armed conflict are the main objectives in both of the systems. The Islamic law and IHL have different degrees of protection regarding religious properties in an armed conflict, as mainly the concept is derived from Islamic law and IHL recognized it later in the end of nineteenth century⁵⁶. The protection of religious and cultural assets during the times of war is the common objective of both the legal systems, but there are several areas where their methods and frameworks differ from each other, on the basis of historical and theological foundations.

⁵⁵ Amikam Elad, *Medieval Jerusalem and Islamic Worship: Holy places, Ceremonies, Pilgrimage*. Vol. 8. Brill, (1995).

⁵⁶ Frits Kalshoven, "The Protection of Cultural Property in the Event of Armed Conflict within the Framework of International Humanitarian Law", *Museum international* 57: 4 (2005), 61-70.

In this Chapter, the difference in the degree or level of protection of religious properties in an armed conflict will be discussed in detail in the light of both the Islamic law and IHL.

The chapter will focus on the details of the degree of protections provided by both the Islamic Law and IHL. The chapter has three sections, the first section describes the degree of protections provided in the Islamic law, the second section describes the degree of protection in IHL and the third section is a comparative analysis of both laws including the legal and regulatory framework of protections. The protections provided in IHL are subject to the certain limitations, for example, the religious properties can lose the protected status if they are being used for the military objectives/purposes or if they are located in such areas which are deemed to be contributing towards the military objectives⁵⁷. Thus, the religious properties may be damaged or destroyed if they are observed to support the wars, even if their primary function is religious. On the other hand, the Islamic law offers a different but strong regulatory framework for the protection of the religious properties during the times of the war. The Islamic law provides prohibition against the intentional destruction of the religious properties which includes churches, synagogues, and mosques, during an armed conflict. This principle is stressed upon by the teachings of the Quran and the Hadith, which emphasize the sanctity of the places of the worship as sacred places that should not be attacked or destroyed. The instructions of Prophet Muhammad (PBUH) during his military expeditions, including his treatment of religious properties in occupied territories, establishes a strong tradition of the protection of the religious properties regardless of the faith practiced within them whether by Muslims or non-Muslim⁵⁸.

⁵⁷ Michael N. Schmitt, "Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance", *Essays on law and war at the fault lines* (2012), 89-129.

⁵⁸ Sohail Akhtar Khattak, Naseem Akhter, and Yasir Munir, "The Outstanding Military Command of Prophet Muhammad PBUH and Role of His War Strategies & Tactics in The Success of Early Islamic Expeditions (Historical Analysis)", *Al-Azva* 36: 56 (2021), 13-27.

3.2 The Framework of Protection in Islamic Law

The Islamic law is specifically derived from the Quran, the Hadith which are the sayings and actions of the Prophet Muhammad (PBUH), the consensus of the Islamic scholars which is commonly known as ijma and the analogical reasoning which is also known as qiyas. The protection of religious properties is derived from some key concepts in the Islamic jurisprudence such as justice, the prohibition of harm and respect for sacredness. The Islamic law has emphasized the sanctity of both the human lives and their properties as this principle extends to religious properties. The Quran and the Hadith both have clearly established a framework for the protection of religious properties and sites for both the Muslims and the non-Muslims⁵⁹. The religious properties of Muslims and non-Muslims which include the mosques, churches, temples and synagogues are considered sacred and they are protected from the attacks during an armed conflict. The Islamic law acknowledges the legitimacy of the worship of the non-Muslims and the protection of their religious properties. The non-Muslim places of worship including churches, temples and synagogues are granted a similar degree of protection and respect as of the places of worship of the Muslims. The treaty of Madina by the Prophet Muhammad (PBUH) and other documents including the Pact of Umar provides an example of the protections provided to the religious properties. In the light of these documents, the non-Muslim communities were granted the freedom to practice their religion which includes the protection of their places of worship on the condition that they follow certain social and political responsibilities in a society of Muslim majority. The principle of 'do not harm' is a fundamental principle in the Islamic law and the principle also extends to the religious properties and the sacred sites⁶⁰. In the light of the principle the damage caused to the

⁵⁹ Syed Jamal Uddin, "Understanding the Framework of Business in Islam in an Era of Globalization: A Review", *Business ethics: a European review* 12: 1 (2003), 23-32.

⁶⁰ Nils Holtug, "The Harm Principle", *Ethical Theory and Moral Practice* 5 (2002), 357-389.

religious properties must be minimized in times of the war. It means that on one hand the Islamic law permits the conquering of the territories of the enemy while it prohibits the destruction of the religious properties or the violation of religious sanctities of the enemy. The Prophet Muhammad (PBUH) is reported to have said:

"Do not destroy a monastery, and do not destroy a church, and do not destroy a temple"
(Sahih Muslim)

The hadith has led emphasis that the destruction of the religious properties is prohibited under the Islamic law and it is never allowed to attack and damage the religious properties during an armed conflict.

3.3 The Degree of Protection of Religious Properties in Islamic Law

The religious properties are protected whether they belong to Muslims or non-Muslims by Islamic law, which offers a fundamentally religious and moral basis. The general ideas of the justice and kindness are connected to the defense of holy sites during an armed conflict. Furthermore, with an emphasis on guaranteeing religious freedom and safety, the protection is not restricted to Muslim religious properties but also includes places of worship belonging to non-Muslims as well. It is evident from Islamic law that places of the worship and religious properties are protected during the times of the war⁶¹. The Islamic law places a strong emphasis on the obligation to respect all religious communities, the sacredness of holy places, and the prohibition against destroying them. Although there are few exceptions such as, if these

⁶¹ Joshua E. Kastenber, "The Legal Regime for Protecting Cultural Property during Armed Conflict", *AFL Rev.* 42 (1997), 277.

locations are utilized for the military objectives, it is generally advised to keep them safe as it is considered as consistent with Islamic values of justice and religious tolerance⁶².

3.3.1 Islamic Law Regarding Warfare

The ethical principles known as the "rules of engagement" (Ahkam al-Qital) regulate combat (jihad) in Islamic jurisprudence. These principles place a strong emphasis on protecting the innocent lives as well as preserving religious properties. The behavior of the Islamic armed forces reflects the unambiguous teachings of the Quran and Hadith regarding the defense of the religious properties. The Islamic international law which is also known as Fiqh al-Siyar, states that the sacredness of religious properties is preserved throughout the times of the war⁶³. Although, a place of worship may be targeted if the enemy utilizes it for military objectives but the general rule is to prevent the destruction of places of worship as it is not permitted under the Islamic law. While conducting military operations against non-Muslim groups, Caliphs such as Umar ibn al-Khattab gave instructions to his army not to destroy places of worship during the early Islamic conquests. The protection of Jewish and Christian holy places by Caliph Umar ibn al-Khattab following the Muslim capture of Jerusalem in the siege of Jerusalem (636-637 CE) is a well-known example of the protection of the religious properties in the times of the war.

⁶² Mohammad Sahaf Kashani, "A Comparative Study of Islamic and Christian Approaches Towards Protecting Cultural Heritage and Holy Antiquities in Armed Conflicts", (2024), 24-42.

⁶³ Shaheen Sardar Ali and Javaid Rehman, "The Concept of Jihad in Islamic International Law", *Journal of Conflict and Security Law* 10: 3 (2005), 321-343.

3.3.2 Prohibition of Harming Non-Combatants

In Islamic law, the protection of the lives of the people, especially women, children, and the elderly, is of paramount importance during the times of the war⁶⁴. Additionally, regarding the perspective of the religious properties, unless they are being used as military bases or for other purposes that endanger the safety of the Muslim community, combatants are not allowed to attack places of worship, such as mosques, churches, synagogues, and other places of the worship. The Prophet Muhammad (PBUH) said:

“Do not kill the old man, the child, or the woman, and do not destroy a religious structure⁶⁵” (Sunan Abu Dawood, Hadith 2365)

3.3.3 Prohibition of Attacking Places of Worship

The damage or destruction of the places of the worship is strictly prohibited by the Islamic law. During his farewell speech, the Prophet Muhammad (PBUH) has declared that, "Do not destroy churches or synagogues, for they are places of worship". Islam mandates the protection of the places of the worship and non-combatants, especially religious individuals, during an armed conflict as it is reflected by both the Quran⁶⁶ and the Hadith. Surah Al-Baqarah (2:190)⁶⁷ states:

"Fight in the way of Allah those who fight you, but do not transgress"

⁶⁴ Abdul Sattar Almani, Abdul Qayoom Channa, Hafiz Ahmed Saeed Rana, Muhammad Junaid, and Masooma Batool, "Protection of Human Life in Islamic Law", *Kurdish Studies* 12: 4 (2024), 92-99.

⁶⁵ Sunan Abu Dawood, Hadith no. 2365

⁶⁶ Putri Maydi Arofatur Anhar, "Messages of Peace in The Verses of The Sword", In *Proceeding: Faqih Asy'ari Islamic Institute International Conference (FAI3C)* vol. 1. (2019), 1-19.

⁶⁷ Surah-Al-Baqarah, Surah no. 2, Ayat no 190.

Indeed, transgressors are disliked by Allah Almighty. Many people take the term "do not transgress" as an instruction to prevent violence and protect the civilians and their places of the worship.

3.3.4 The Sanctity of Religious Properties

The religious properties which include mosques, churches, synagogues, and temples, are considered extremely valuable under Islamic law. The destruction of such places is seen as a violation, which is strictly prohibited. The preservation of Jewish and Christian places of worship was authorized by the Prophet Muhammad (PBUH). The "Covenant of Umar" known as a protection treaty granted to Christians in the Levant, is the most well-known example from the early Islamic era⁶⁸. The treaty guaranteed the safety of Christian churches and the maintenance of their places of the worship under Islamic rule. The places of the worship are regarded as sanctuaries or safe houses under Islamic law. Regardless of the religious affiliation of the individuals, these sanctuaries are safe from any kind of attack. The destruction of such sites is strictly prohibited during an armed conflict. A place may be declared as a sanctuary for a number of reasons, but in general, any religious place that serves as a place of the worship is included⁶⁹.

The protection of the religious properties is becoming more complex during the modern conflicts, especially those in the Middle East. The religious properties have occasionally been used as bases or targets by non-state actors, including terrorist groups. On the other hand, the

⁶⁸ Arthur Stanley Tritton, "*Caliphs and their Non-Muslim Subjects: A Critical Study of the Covenant of Umar*", Routledge (2013), 1-256.

⁶⁹ Richard H. Jackson and Roger Henrie, "Perception of Sacred Space", *Journal of Cultural Geography* 3: 2 (1983), 94-107.

forces from the other state potentially target such religious sites/properties as a representation of a specific armed group. The Islamic laws are also applied in these situations, even though it could be more challenging to implement them in practice. In Islamic law, it is a serious crime to violate the protection of the places of the worship during an armed conflict⁷⁰. In the framework of Islamic governance, those who damage or destroy the places of the worship, whether they are Muslims or non-Muslims, are subject to severe punishment and accountability. The Islamic scholars have always emphasized on the moral and legal need to refrain from attacking the places of the worship during an armed conflict. The Islamic law reflects the wider moral principles of equality, respect for human dignity, protection of the places of the worship and offers strong protection for religious properties and sites during an armed conflict. In addition, protecting the places of the worship reflects the larger commitment of Islam towards the tolerance and peace during an armed conflict⁷¹. These concepts continue to be an essential component of Islamic law, even though their implementation may differ based on the political and military circumstances of an armed conflict.

3.3.5 The Role of Islamic Scholars

The Islamic scholars (Ulama) have historically issued fatwas (the legal opinions) which clarify the responsibilities of Muslim rulers and the military commanders in the protection of religious properties during times of peace and during times of war. The Islamic jurisprudence plays a vital role in the interpretation of the Islamic principles during an armed conflict. In the historical context, the Islamic scholars have issued fatwas which emphasize the ethical

⁷⁰ Noel Villaroman, "Places of Worship: Understanding the Structural Aspect of Religious Freedom", *Journal of Law, Religion and State* 3: 3 (2014), 276-310.

⁷¹ Alejandro Gonzalez-Varas Ibanez, "Religious Freedom and International Protection of Places of Worship", In *Freedom of Religion and Religious Diversity*, Routledge (2024), 63-79.

treatment of the religious properties and sites during times of the war⁷². The fatwas often highlight the prohibition of attacking and damaging the places of worship even of the enemies. The fatwas are based on the teachings of the Quran, Hadith and the established principles of the Islamic jurisprudence. In Islamic law, there is a difference between two types of non-Muslims, one is the 'harbi' who are in a state of active war with Muslims in a conflict and the other is 'dhimmi' who lives under the protection of Muslims. The treatment of harbi is different as compared to the dhimmi as the protection of the religious properties which belong to dhimmi populations are a concern because these individuals are granted the protection of their life, religion and properties under the Islamic law.

3.3.6 The Protection in Modern Armed Conflict

In the modern armed conflicts, the protection of the religious properties remains a significant challenge. The conflicts in the Middle East, Africa, and other regions of the World involves the damage and destruction of the religious properties and sites whether the destruction is intentional or a result of a collateral damage. In the light of the modern warfare, the Islamic law continues to offer guidelines which emphasize the protection of the religious properties in times of the war. The rise of the extremist group like the ISIS has created significant challenge to the protection of the religious properties. The ISIS has intentionally destroyed the churches of Christians, the temples of Hindus and the mosques of Shias and justified these actions as jihad⁷³. The acts of ISIS are a direct violation of the Islamic principles regarding the protection of religious properties in an armed conflict. In response to the actions

⁷² Fatimah Alshehaby, "Cultural Heritage Protection in Islamic Tradition", *International Journal of Cultural Property* 27: 3 (2020), 291-322.

⁷³ Sarah Myers Raben, "The ISIS Eradication of Christians and Yazidis: Human Trafficking, Genocide, and the Missing International Efforts to Stop it", *Braz. J. Int'l L.* 15 (2018), 239.

of the extremist groups like ISIS many contemporary Islamic scholars and leaders have condemned the destruction of the religious properties and called for the upholding of the Islamic principles of war⁷⁴. The Islamic scholars have emphasized that the protection of the religious properties is a significant part of the Islamic law irrespective of the religious identity of the people.

3.4 The Degree of Protection of Religious Properties in International Humanitarian Law

In an armed conflict, the protection of the religious properties is governed by a set of rules within IHL which primarily focus on minimizing the damage to civilian objects and ensuring the respect and protection of religious and cultural properties. This protection is vital for maintaining the principles of humanity, dignity, and respect for the religious and cultural diversity. The protection of the religious properties in an armed conflict is not absolute, but it is subject to the several important provisions within IHL, particularly in relation to the international treaties, the laws of war and customary international law respectively. IHL aims to reduce how an armed conflict affects individuals and properties such as religious or cultural ones. The various international treaties, including the 1977 Additional Protocols to the Geneva Conventions 1949 and the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, provide specific protection for the cultural property, including religious properties and the places of the worship⁷⁵. These above-mentioned documents create a legal framework to guarantee the preservation of the places of the worship, particularly when

⁷⁴ Hannah G He, "Protecting Ancient Heritage in Armed Conflict: New Rules for Targeting Cultural Property during Conflict with ISIS", *Md. J. Int'l L.* 30 (2015), 168.

⁷⁵ Marina Lostal Becerril, "The Meaning and Protection of 'Cultural Objects and Places of Worship' under the 1977 Additional Protocols", *Netherlands International Law Review* 59: 3 (2012), 455-472.

those places are essential to the identity and history of a community/society. The protection of the religious and cultural properties is greatly supported by UNESCO as well. It is by the way of recognizing them as World Heritage Sites, the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage expressly aims to protect the heritage sites/properties, which may include the places of the worship as well⁷⁶. This indicates organized worldwide actions to protect these religious properties and give them a higher degree of the international protection. During an armed conflict, the religious properties are also significantly protected by the customary international law in addition to the above-mentioned convention. Even the lack of explicit treaty restrictions, targeting the places of the worship, religious properties, and holy places is prohibited by customary law, which develops from consistent governmental conduct and a belief in the legal responsibility (*Opinio Juris*). During an armed conflict, combatants are also required by the customary law to safeguard and protect religious and cultural properties. The deliberate attacks on religious properties may constitute the war crimes under IHL, particularly if the religious property is specifically targeted for its religious significance. For example, Rome Statute of the International Criminal Court (ICC), includes destruction of the religious properties as a potential war crime. This provision aims to prohibit and prevent the targeting of the places of the worship as part of a broader strategy to protect religious and cultural places in the conflicting states. The armed groups are increasingly targeting the religious properties in modern conflicts, particularly in the Middle East and Africa. The religious and cultural properties are being intentionally destroyed by non-state armed groups, such as ISIS in Syria and Iraq, and claim that their actions are justified on the

⁷⁶ Stefan Gruber, "Convention Concerning the Protection of the World Cultural and Natural Heritage 1972", In *Stefan Gruber, 'Convention Concerning the Protection of the World Cultural and Natural Heritage'*, (1972), 60-66.

basis of their ideology⁷⁷. These issues demonstrate that how difficult it is to implement the provisions of IHL in the situations involving the non-state actors.

The prosecution of the violations of the provisions of IHL related to the destruction of the religious and cultural properties is significantly assisted by international courts, such as the International Criminal Court (ICC), International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). There is a precedent for holding offenders accountable for the war crimes involving attacks on the religious properties, is the conviction of Radovan Karadzic for the destruction of the religious properties during the Bosnian War. IHL works in the cooperation with International Human Rights Legislation (IHRL), which safeguards the religious properties and cultural heritages. IHRL provides more comprehensive protections for the religious properties and ability to engage in the protections related to the cultural heritage, whereas IHL regulates the behaviour of the parties during an armed conflict. The international armed conflicts have received a lot of attention when it comes to the protection of religious properties under IHL, however certain protections also apply to non-international armed conflicts. The religious properties are protected even in internal wars by Common Article 3 of the Geneva Conventions (1949) and Article 4 of Additional Protocol II of the Geneva Conventions (1949), which provides protection against attacks and violence in non-international armed conflicts⁷⁸.

The precautionary steps must be taken to avoid or minimize damage to the religious properties under IHL. This involves implementing practical measures to protect the religious properties from the impacts of military operations and for avoiding the placing of the military targets on or next to the places of the worship. While targeting nearby military sites, combatants

⁷⁷ Louise Arimatsu and Mohbuba Choudhury, "Protecting Cultural Property in Non-International Armed Conflicts: Syria and Iraq", *International Law Studies* 91: 1 (2015), 19.

⁷⁸ William A Schabas, "Punishment of Non-State Actors in Non-International Armed Conflict", *Fordham Int'l LJ* 26 (2002), 907.

must also take steps to prevent damage as much as they possibly can in the light of the precautionary principle. Despite the evident legal protections, it is always extremely challenging to enforce rules of IHL related to the protection of the religious properties⁷⁹. These laws are frequently disregarded by the states and non-state actors, and the international community/society lacks effective mechanisms to guarantee compliance of these rules. Despite their importance, the accountability measures of international tribunals are not often enough to stop abuses during an armed conflict between the states.

3.5 A Comparative Analysis of Both Laws

The protection of the religious properties or the places of worship during an armed conflict is a significant aspect of both the Islamic law and IHL. Both the legal and regulatory frameworks aim to safeguard the religious properties from any kind of destruction and harm during warfare for the purpose of recognizing their sanctity and the essential role they play in the society and for the betterment of the different communities/societies. These legal systems share certain principles regarding the protection of religious sites which are distinct in approach, scope, application and implementation⁸⁰. The analysis shall provide a detailed comparative study of Islamic law and IHL in particular the jurisprudence which is mainly related to the warfare in classical Islamic thought and additionally with the focus on the Islamic principles of jihad and other practices regarding the protection of the places of the worship during an armed conflict.⁸¹

⁷⁹ Ibid

⁸⁰ Ilyas Khan and Sobia Bashir, "A Comparative Analysis of International Humanitarian Law and Islamic Law on Targeting Places of Worship", *Pakistan Journal of Social Research* 3: 1 (2021), 98-101.

⁸¹ Humna Sohail, "Compatibility Between Modern IHL and Principles of Islamic Law of Conduct of War: A Comparative Analysis", *Islamabad Law Review* 5: 1 (2021).

In IHL, the protection of the places of the worship or religious properties is preserved in various legal instruments. The fundamental and primary principles governing the protection of the places of the worship during an armed conflict includes the Fourth Geneva Convention (1949) which is specifically related to the protection of civilian persons in the times of the war. Article 27 of the Fourth Geneva Convention (1977) expressly prohibits any sort of attack on the civilian properties which includes the religious properties, unless they are being used for military objectives. The Additional Protocol I (1977) to the Geneva Conventions (1949) strengthens the protections for religious and cultural property in an armed conflict. Article 53 of the Additional Protocol I (1977) to the Geneva Conventions (1949), categorically prohibits the attacks against religious, historical and cultural monuments, unless they are used for military objectives/purposes. The Hague Convention (1907)⁸² and its regulation stress upon the need to protect cultural property including the places of the worship during hostilities. Article 56 of the Hague Convention (1907) prohibits the destruction of the places of the worship or cultural property, unless they are used for military objectives or purposes respectively. A core principle of IHL is that the destruction and damage to the places of worship is prohibited unless they are used for military objectives. This principle is also related in the wider senses of the doctrines of proportionality and military necessity. Firstly, the doctrine of military necessity allows for the actions that are significant to the achievements of a legitimate military purpose/objective. The doctrine of proportionality significantly limits the use of force to what is termed as necessary to achieve the objective, and the damage occurred to the religious property or places of the worship must not be disproportionate to the military success gained. Therefore, according to IHL, religious properties which includes churches, temples,

⁸² Erazak Manapovich Tileubergenov, Sergei Igorevich Pelevin, Anatoliy Anatolievich Vasiliev, and Eduard Igorevich Danilyanc, "Political and Legal Defining the Regulations of War in the Hague Convention of 1907," *Journal of Advanced Research in Law and Economics* 7: 3 (17) (2016), 672-677.

synagogues and mosques are considered civilian objects and they are protected from any kind of the military attacks. The destruction or damage of religious properties amount to violations of IHL, which constitutes the war crimes.

The Islamic law emphasizes on the protection of religious properties in the times of the war. The principles of the protection are directly derived from both the Quran and Hadith and also from the practices of the Prophet Muhammad (PBUH) during his military expeditions. The Islamic law stresses on the sanctity of the places of the worship and prohibits their destruction. The Quran refers to the sacredness of the religious freedom and protection of the churches and by expanding, other religious properties, in times of the conflict as well as in times of the peace. The Sahih al-Bukhari compiled by Islamic scholar al-Bukhari and Sahih Muslim compiled by Islamic scholar Muslim ibn al-Hajjaj collections of Hadith provide various examples of the Prophet Muhammad (PBUH) actions and statements that highlight the importance of the protection of the religious properties in the times of the war⁸³. Although, the Quran may not specifically provide the protection of the places of worship during the times of the war, but it greatly emphasizes on the importance of the religious tolerance and respect for the places of the worship. For example, Surah Al-Hajj (22:40) states the protection of synagogues, mosques and churches from any kind of the harm in the following manner

Had it not been that God repels some people by means of others, there would surely have been demolished monasteries, churches, synagogues, and mosques, in which the name of God is much mentioned." (Qur'an 22:40)

⁸³ Muhamad Rozaimi Ramle and Fathullah Asni, "Assessing the Methodology of Hadith Criticism on The Book of Al-Bukhari and Muslim," *Journal of Namibian Studies: History Politics Culture* 35 (2023), 2929-2949.

The Prophet Muhammad (PBUH) also during his military expeditions, on the number of occasions, is recorded to have taken definite/explicit measures to protect the religious properties and the places of the worship such as when the Prophet Muhammad (PBUH) ordered the preservation of the Kaaba and instructed that no damage should be done to the religious properties, at the time of entering Mecca in 630 CE after conquering it. On another occasion, the Prophet Muhammad (PBUH) instructions to the military commanders included the protection of Christian churches and other religious properties during the campaign against the Byzantine Empire⁸⁴ as it was in accordance with the general principles of Islamic law which prohibits the damage and destruction of non-Muslim places of the worship unless they are being used for military objectives/purposes. The Islamic law emphasizes on the protection of non-Muslim religious minorities and their places of the worship during the times of the war. The principle of dhimma (the protection of non-Muslim subjects) demonstrates that the non-Muslim communities/societies under the Muslim rule must be protected and their religious properties should not be damaged unless and until they are engaged in the acts of violence/hostility⁸⁵. This is also reflected in the treatment of Christian and Jewish places of worship in Islamic law and history. The Islamic scholars such as Al-Mawardi and Ibn Taymiyyah have also discussed the protection of the places of the worship as part of the wider Islamic principles of the justice and principles related to the treatment towards non-Muslims. They have also emphasized on the protection of religious properties that they should not be targeted unless they are used for military objective/purpose. The Islamic law only permits the destruction of religious properties if they are directly being involved in any kind of military activity or if such place of the worship is being used for the military objective/purposes. In this

⁸⁴ Dionysios Stathakopoulos, "A Short History of the Byzantine Empire", (2023), 1-256

⁸⁵ Sarah Mirza, "Dhimma Agreements and Sanctuary Systems at Islamic Origins", *Journal of Near Eastern Studies* 77: 1 (2018), 99-117.

case, its destruction would be allowed under Islamic law⁸⁶, as it would become a legitimate military target without committing any violation of the Islamic law.

3.6 Legal and Regulatory Mechanism for Protection

The legal and regulatory mechanism for the protection of the places of the worship during the times of the war involves a combination of IHL, international criminal law, human rights law and the conventions on the cultural property protection which includes the places of the worship. These frameworks are regulated for the purpose of the protecting religious properties from damage, destruction and any kind of their misuse during the times of the war, although their violations are still committed. The international organizations which include the UN and the International Criminal Court play a crucial role in the enforcement and accountability of such regulatory and legal mechanisms. Although, the challenge regarding the compliance is faced by such organizations and also the challenge regarding the prohibition of the use of religious properties for the military objective/purposes or their intentional destruction during the times of the war. In IHL, specifically the Geneva Conventions of 1949 along with their Additional Protocols⁸⁷ provide the primary legal mechanism for protecting civilian objects including the places of the worship during the times of the war. Article 18 of the Fourth Geneva Convention (1977) of the Geneva Convention (1949) protects religious practices and the places of the worship. It states that the religious properties of the civilians which includes synagogues, churches and mosques should not be targeted unless they are being used for military objectives/ purposes. In addition, Article 53 of the Fourth Geneva Convention

⁸⁶ Johan Brosche, Mattias Legner, Joakim Kreutz and Akram Ijla, "Heritage Under Attack: Motives for Targeting Cultural Property during Armed Conflict", *International Journal of Heritage Studies* 23: 3 (2017), 248-260.

⁸⁷ Christopher Greenwood, "A Critique of the Additional Protocols to the Geneva Conventions of 1949", In *the Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Brill Nijhoff, (1999), 3-20.

(1977) of the Geneva Convention (1949) prohibits the destruction of religious properties unless and until they are being used for the military objectives/purposes. For example, during the Bosnian War (1992-1995), the damage and destruction of religious properties which includes the Gazi Husrev-beg Mosque in Sarajevo, capital of Bosnia and Herzegovina raised significant concerns about the violation of these protections⁸⁸. Likewise, many places of worship are targeted, which led to widespread condemnation under IHL principles of the protection of the religious and cultural properties.

The International Criminal Law, referred to as ICL, is specifically enforced by the International Criminal Court (ICC) and the ad hoc tribunals such as International Criminal Tribunal for Rwanda (ICTR), and International Criminal Tribunal for the Former Yugoslavia (ICTY), hold criminals individually accountable for the violations of IHL. The destruction or targeting of the places of the worship is qualified as a war crime if it occurs without any military justification/reasoning. For example, the International Criminal Tribunal for the former Yugoslavia (ICTY) has convicted individuals responsible for the deliberate attack and destruction of cultural and religious properties during the Balkan Wars and also during Srebrenica massacre which included the destruction of the religious properties as part of a broader campaign to eliminate religious and cultural identity, were also convicted by the above-mentioned tribunal⁸⁹. The international human rights law (IHRL) also protects the practice of the religion and religious freedom which specifically includes the protection of the places of the worship. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are key legal instruments related

⁸⁸ Gregory M. Mose, "The Destruction of Churches and Mosques in Bosnia-Herzegovina: Seeking a Rights-Based Approach to the Protection of Religious Cultural Property", *Buff. J. Int'l L.* 3 (1996), 180.

⁸⁹ Serge Brammertz, Kevin C. Hughes, Alison Kipp and William B. Tomljanovich, "Attacks Against Cultural Heritage as a Weapon of War: Prosecutions at the ICTY", *Journal of International Criminal Justice* 14: 5 (2016), 1143-1174.

to it. Article 18 of the UDHR guarantees the freedom of the religion such as the right to exhibit religion in the form of the worshipping and teaching. In the times of the war, the destruction of the places of the worship may violate this right guaranteed by UDHR. Article 18 of ICCPR also guarantees the protection of freedom of religious practices, including the right to build and maintain the places of worship⁹⁰. However, these rights are under threat in the times of the war and are often violated which comes within the ambit of the war crime. In recent times, the bombing by the Israeli's military in Gaza led to the destruction of the numerous religious properties which including mosques which is seen as a violation of both IHL and international human rights law. The United Nations Security Council (UNSC) has also played a vital role in the protection of the religious and cultural properties in the conflicting zones as the United Nations Security Council Resolution 2347 (2017) explicitly condemns the destruction of cultural heritage which includes the religious properties during the times of the war⁹¹. The resolution calls on states to ensure accountability for such crimes and to take steps to prevent the targeting of these properties especially religious ones. For example, in Syria, the UN has repeatedly condemned the destruction of the places of the worship, especially in the context of the Syrian Civil War. The ancient Umayyad Mosque in Damascus, Syria and the Great Mosque of al-Nuri in Mosul, Iraq were severely damaged or destroyed during war between conflicting states. The UN and other international organizations have worked to document these crimes and have also pushed for the restoration and the protection of these sites⁹².

⁹⁰ Yuval Shany, "The Road Taken: ICCPR and Discriminatory Restrictions on Religious Freedom," *Harv. Hum. Rts. J.* 34 (2021), 305.

⁹¹ Patty Gerstenblith, "United Nations Security Council Resolution 2347", *International Legal Materials* 57: 1 (2018), 155-162.

⁹² Anne Stensvold, "Religion, State and the United Nations", *Value politics, London New York* (2017).

3.7 Conclusion

The protection of the religious properties during an armed conflict and its violations is a significant issue in both the Islamic law and IHL. Both the legal systems strive to protect the religious and cultural properties during the times of the war, but they approach the issue from different legal frameworks either historical or cultural thus resulting in various differences in the degree and scope of the protection granted to the religious properties in the times of the war. The protections provided in IHL are subject to the certain limitations, for example, the religious properties can lose the protected status if they are being used for the military objectives/purposes or if they are located in such areas which are deemed to be contributing towards the military objectives. Thus, the religious properties may be damaged or destroyed if they are observed to support the wars, even if their primary function is religious⁹³. Whereas, the Islamic law offers a different but strong regulatory framework for the protection of the religious properties during the times of the war. The Islamic law provides prohibition against the intentional destruction of the religious properties which includes churches, synagogues, and mosques, during an armed conflict. This principle is stressed upon by the teachings of the Quran and the Hadith, which emphasize the sanctity of the places of the worship as sacred places that should not be attacked or destroyed. The instructions of Prophet Muhammad (PBUH) during his military expeditions, including his treatment of religious properties in occupied territories, establishes a strong tradition of the protection of the religious properties regardless of the faith practiced within them whether by Muslims or non-Muslim. Therefore, both IHL and the Islamic law recognizes the significance of the protection of the religious properties during an armed conflict and prevention of its violation. The Islamic law generally

⁹³ Derek H. Davis, "Destruction and Desecration of Sacred Sites during Wars and Conflicts: A Neglected Travesty", *J. Church & St.* 44 (2002), 417.

provides a deeper and higher level of the protection with less exceptions than IHL⁹⁴. The connection of Islamic law to religious principles ensures that the protection of religious properties is an essential part of the legal and moral code of life. On the other hand, IHL provides significant protection which is more precise but have exceptions in certain situations, such as when religious properties are being used for the military objectives/purposes but both the frameworks provide a common commitment regarding the minimization of the damage to civilian objects and religious properties⁹⁵ and preserving religious and cultural places of the worship during the times of the war.

⁹⁴ James Cockayne, "Islam and International Humanitarian Law: From a Clash to a Conversation Between Civilizations", *International Review of the Red Cross* 84: 847 (2002), 597-626.

⁹⁵ Sophie Timmermans, "The Use of Weapons of Mass Destruction: A Comparison of the Restrictions and Justifications in Islamic Law of Armed Conflict and International Humanitarian Law", *J. Int'l L. Islamic L.* 18 (2022), 188.

Chapter 04 Attacks in Syria on the Religious Sites: A Violation

4.1 Introduction

This chapter of the thesis is aimed to answer fourth and fifth research question and is aimed to discuss Syria who is under a severe violation of the rule of the protection of the religious sites/properties in an armed conflict in the light of the reports of United Nations and it is a severe violation of the protection provided to them under Islamic law and IHL. The armed conflict in Syria, which began in 2011 has led to one of the most disastrous humanitarian crises of the 21st century⁹⁶. The Syrian armed conflict which started as a nonviolent protest against the government of president Bashar al-Assad and his cabinet, which began in 2011. The government of Syria, Kurdish forces, Islamic organizations, rebel groups and foreign actors were among the many parties involved in the deadly civil war which rapidly escalated from what started as calls for democratic reforms. During the armed conflict in Syria, over half of a million people have been killed and millions more have been displaced as a result of the war, resulting in an unprecedented humanitarian disaster. The government in Syria at the beginning of the conflict was dominated by the Shia sectarians which were at a clash with Sunni rebel groups which has led the conflict to complex sectarian dimensions. The participation of foreign countries such as the support of Russia for the regime of president Bashar al-Assad and the assistance of the United States of America (USA) for different rebel groups, has made this sectarian division even worse⁹⁷. The violence and destruction which includes the intentional targeting of holy places was further encouraged by the growth of extremist groups such as the ISIS (Islamic State of Iraq and Syria). The ISIS which is also known as the Islamic State of Iraq and Syria, is a militant organization which

⁹⁶ Elizabeth Ferris and Kemal Kirisci, *The Consequences of Chaos: Syria's Humanitarian Crisis and the Failure to Protect*. Brookings Institution Press, (2016).

⁹⁷ Saidbek Mamasoliev, "The United States in Syria. Why it still matters?" *Periodica Journal of Modern Philosophy, Social Sciences and Humanities* 31 (2024), 47-53.

emerged as an alternate of al-Qaeda in 2014. The organization took control of the majority areas of Iraq and Syria with in no time by raising its black flag in victory and declared the creation of a caliphate regime resulting in imposing strict Islamic laws.

This chapter of the research work has three sections. The first section describes the safeguarding of the religious properties of Muslims and non-Muslims in Syria. The second section describes the violations of the protections provided to the religious properties of Muslims and non-Muslims during the armed conflict in Syria. The third section explains the resolutions passed by the UN in favor of Syria and against the violations committed by the armed groups in Syria. However, during the conflict in Syria, the political and military chaos, religious sites/properties which includes mosques, synagogues, churches and other places of worship, have become targets of attacks very often⁹⁸. The attacks on these religious sites/properties are not only a breach of Islamic laws which uphold the sanctity of such places but it is a violation of the laws of the war under IHL. The targeting of the religious sites/properties is executed by the groups involved in the conflict and highlights the serious ethical, legal, and spiritual violations by the combatants during the ongoing armed conflict. There is a long history of the religious diversity in Syria. The Shias, Christians, Sunni Muslims, Alawites, also known as Nusayrites and other religious minorities all are found in Syria. The holy sites in Syria have served as centers of religion, culture, and history for centuries. The religious and cultural identity of the people of Syria greatly depends on the protection and preservation of these sacred sites/places. The attacks on the religious sites/properties and continuous demolition of the places of the worship during the ongoing conflict in Syria are a serious violation of both the Islamic law and IHL. These attacks/assaults help to eradicate the

⁹⁸ Sajid Karim and Nazmul Md Islam, "Syrian Crisis: Geopolitics and Implications." *Biiss Journal* 37: 2 (2016), 107-132.

religious and cultural legacy of people in addition to undermining the sacredness of holy places. The international community must reaffirm its commitment to protecting the religious sites/properties in the areas of conflicts either armed or not and holding those accountable who are responsible for such atrocities in the light of these violations⁹⁹. In regards to the betterment and future of Syria as well as the larger objective of regional peace and reconciliation, it is essential that religious diversity and cultural heritage be protected during the times of the war.

4.2 Safeguard of the places of worship of Muslims and non-Muslims in Syria

The Islamic law and IHL both uphold the principle of the protection of the places of worship of Muslims and non-Muslims in times of the conflict where IHL dominates and in times of the peace where international human rights law prevails but in Syria, the places of worship have been attacked and destructed during the conflicts¹⁰⁰. The civil war in Syria which started in 2011 has been one of the most damaging conflicts in the modern era. It has involved an exhibition of the local, regional and the international actors with several groups fighting for the control of a territory, political influence and the ideological dominance. One of the most devastating factors of the war has been the deliberate targeting of the places of worship of the Muslims and also of the non-Muslim communities such as Christians, Alawites and Kurdish. It is a direct violation of both the national and the international law and also the religious freedoms which should be granted to all the religious communities. The protection of religious sites and properties is preserved under the international conventions which includes the Hague Convention (1954) and the Geneva Conventions (1949). The conventions expressly prohibit

⁹⁹ Elizabeth Ferris, Kemal Kirisci and Salman Shaikh, “*Syrian Crisis: Massive Displacement, Dire Needs and a Shortage of Solutions*”, Brookings Institution, (2013).

¹⁰⁰ Manahil Yaqoob and Farhana Mehmood, "Debate on Status of Existing Non-Muslim's Worship Places in Multi-faith Society", *International Research Journal on Islamic Studies (IRJIS)* 3: 2 (2021), 11-21.

the targeting of the places of worship during an armed conflict as it is a principle which has been severely violated during the civil war in Syria. In 2013, Syrian rebels damaged the shrine of Hojar Ibn Oday, a close supporter of Hazrat Ali (A.S) and the first Shia leader. The al Nusra Front known as the associates of al Qaeda took the sole responsibility of the attacks. The al Nusra Front which is also known as the 'Front Known for the Conquest of the Levant' is a Salafi jihadist organization which are fighting against the government of Syria in the Syrian Civil war and their purpose is to end the regime of President Assad and establish an Islamic state which will be ruled by the laws of sharia in Syria¹⁰¹. In 2019, pro-government forces attacked 124 Christian places of worship, and 11 were turned into the administrative headquarters. The constitution of Syria guarantees religious freedom in its Article 3, which states that the state must respect all the religions and ensure the freedom to perform the religious practices. However, this right has been restricted by the government, especially against the organizations which in their view are extremist organizations. The safeguarding of the places of worship of both the Muslims and non-Muslim has been a major concern for the international organizations, local communities, and governments, hence its violation is a severe concern under the Islamic law and IHL¹⁰².

4.3 The Destruction of Muslim and Non-Muslims Religious Sites

The conflict in Syria has resulted in the damage and destruction of the mosques, shrines, and other Muslim religious sites/properties as well as the non-Muslim religious sites such as the Churches and Temples. The various groups in the war which includes the Syrian

¹⁰¹ Azzam Al Kassir, "“Intentionality” in Radical Flank Effects: Reflections on Al-Nusra Front’s Discourse of Moderation Between 2012–2017", *British Journal of Middle Eastern Studies* (2024), 1-21.

¹⁰² Anita Sylwia Adamczyk and Fuad Jomma, "Religious Minorities in the Ideology and Politics of Syria", *International Journal on Minority and Group Rights* 29: 2 (2021), 298-315.

government, opposition forces, and extremist groups like ISIS have intentionally targeted the places of worship either for military reasons or for sectarian and ideological reasons. The Omari Mosque in Daraa (City of Syria) which was the symbol of the beginning of the Syrian uprising, was severely damaged in 2011 during the military operations by ISIS. One of the most significant and oldest mosques in Syria, the Grand Mosque of Aleppo (Syria) was also heavily attacked and damaged in 2013 in the ongoing fighting between the rebel groups and the government forces of Syria¹⁰³. The religious sites/properties which belonged to Shia Muslims have also been targeted by the radical Sunni groups, such as the ISIS and al Nusra Front. The Sayyida Zaynab Mosque in Damascus (Capital of Syria) which is a key pilgrimage site for the Shia Muslims, has been attacked and damaged multiple times by the extremist groups due to its religious significance¹⁰⁴. Apart from the religious properties/sites of Muslims, the religious sites/properties of non-Muslims such as the churches of Christians, including some of which are also UNESCO 'World Heritage Sites', have also suffered damage and destruction during the conflict in Syria. The Saint George's Church in Aleppo (Syria) which is one of the oldest Churches from the 12th century, was badly attacked and damaged due to the armed conflict in Syria. In addition to that, the Church of the Virgin Mary in Homs (Syria) was also severely damaged during the armed conflict in Syria. The damaging of the Syriac Orthodox Church of Saint George in Aleppo (Syria) which was the result of heavy bombing and shelling in the areas which were occupied by the opposition groups, is another example of non-Muslim religious sites/properties being damaged and destroyed during the armed conflict in Syria¹⁰⁵.

¹⁰³ Nour A. Munawar, "Destruction of Cultural Heritage in Times of Conflict: The Case of Syria", In *the Routledge Handbook of Heritage Destruction*, Routledge, (2023), 301-312.

¹⁰⁴ Adnan Almohamad, "The Destruction and Looting of Cultural Heritage Sites by ISIS in Syria: The Case of Manbij and its Countryside", *International Journal of Cultural Property* 28: 2 (2021), 221-260.

¹⁰⁵ Ibid

The destruction of the religious properties in Syria has resulted in the displacement of millions of people which includes both the Muslims and the non-Muslims. The Christian community who was united in the areas like Aleppo, Homs, and Maaloula and the destruction of their places of worship was seen as a threat to their existence. The attacks in these areas led to the migration of the Christian population which created a significant refugee crisis in the country. Likewise, the Sunni Muslims in the areas occupied by the opposition, were displaced as their neighborhoods were destroyed by both the regime of Asad and the extremist groups such as the ISIS. The Druze people were also forced to migrate due to the targeted attacks and the destruction of their places of worship in the region. The destruction of the religious properties also symbolizes as an irreparable loss of the cultural heritage of Syria¹⁰⁶. The destroyed sites/properties were centuries old which represented the architectural, artistic and historical richness of the country. The destruction of these properties has taken away the opportunity from the future generations to know about the important link to their history and also damaged the diversity of the cultural identity of the country. The wilful targeting of the religious properties has triggered the sectarian division in Syria¹⁰⁷. The destruction of the places of worship is not only seen as an attack on the religion but as an attack on the identity of a community as well. The attacks have created deep sectarian division between the Sunni, Shia, Alawite and the Christian communities. The attacks have further triggered violence and made it more difficult for the religious groups to live together.

¹⁰⁶ Mark V. Vlastic and Helga Turku, "Protecting Cultural Heritage as a Means for International Peace, Security and Stability: The Case of ISIS, Syria and Iraq", *Vand. J. Transnat'l L.* 49 (2016), 1371.

¹⁰⁷ Dina Elrashidy, "The Construction of Sectarianism: How Intermestics Shaped "Other" Ing in Iraq and Syria." (2016), 1-120.

4.4 Efforts to Protection and Safeguarding of Religious Sites

There have been efforts by the government of Syria to protect and safeguard the religious sites/properties which are under their control, although they have been accused/blamed of the selective protection of the religious sites/properties and are also accused of neglecting certain areas under the control of the opposition. The government of Syria as part of the efforts, has attempted to rebuild or repair churches and mosques that were destroyed or damaged during the armed conflict. For instance, in 2018, the government of Syria started efforts to rebuild and restore the parts of the Umayyad Mosque in Damascus (Capital of Syria), which sustained severe damage during the armed conflict in Syria. The international organizations which include UNESCO and other humanitarian organizations has also worked to protect and preserve the religious and cultural heritage in Syria during the armed conflict. The UNESCO has made significant efforts to document the destruction and damage to the religious and cultural sites/properties and raised their voice for the protection of the religious and cultural sites/properties and against the violations committed during the war¹⁰⁸. In reply of the destruction of religious sites/properties in Palmyra (Syria) by the ISIS, the UNESCO has launched initiatives in order to raise awareness about the damage and destruction of the religious and cultural heritage sites/properties and sought the cooperation of the international organizations for the restoration of these religious and cultural landmarks, but the protection on ground remains challenging due to the conditions of the armed conflict in the country. The religious leaders, community members, and organizations have also played a role in protecting and safeguarding the places of worship in Syria. The local Christian and Muslim leaders have raised significant voice for the protection of the religious sites/properties and asked for

¹⁰⁸ Stefan Disko, Helen Tugendhat and Lola Garcia-Alix, "World Heritage Sites and Indigenous Peoples' Rights: An Introduction", *World heritage Sites and Indigenous Peoples' Rights. International Work Group for Indigenous Affairs, Copenhagen* (2014), 3-37.

cooperation from all communities to protect and preserve the places of worship of Muslims and non-Muslims which are known as symbols of the diverse religious society of Syria¹⁰⁹. Therefore, during the armed conflict in Syria, the protection of the places of worship has proven to be a complicated and multi-dimensional challenge¹¹⁰. The military forces of the government, extremists and the rebel groups have all contributed to the damage and destruction of the religious sites/properties whether they belong to Muslim or non-Muslims during the conflict in Syria, even if some preservation and restoration measures have been made, the extent of the devastation presents serious difficulties for both the international and national communities. In the future, safeguarding the religious and cultural heritage/properties in Syria will require both the domestic efforts and the international cooperation¹¹¹, with a focus on the peace and the restoration of mutual trust among the religious communities in the country.

4.5 The Violations of the Protection of the Places of Worship of Muslims in Syria

The Syrian Civil War has seriously endangered the protection of the places of worship in Syria particularly those which belonged to the Muslims. The legal frameworks and guidelines have been provided for the protection of religious/ sacred places by both the Islamic law and IHL, but still throughout during the armed conflict in Syria, the violations have been commonly committed. Out of all the violations committed during the conflict in Syria, one of the most severe violations during the Syrian conflict is the deliberate targeting of the mosques

¹⁰⁹ Andrew WH Ashdown, *Christian–Muslim Relations in Syria: Historic and Contemporary Religious Dynamics in a Changing Context*. Routledge, (2020).

¹¹⁰ Emiliano Stornelli–Sihem Djebbi, "Religion, Peace, And Security: Challenges and Prospects in the Mena Region", In *Proceedings of the Study Seminar held in Rome on* vol. 5 (2022), 6.

¹¹¹ Emma Cunliffe, Nibal Muhesen and Marina Lostal", The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations", *International Journal of Cultural Property* 23: 1 (2016), 1-31.

and religious sites/properties of Muslims¹¹². In IHL, the Geneva Conventions (1949), the places of worship enjoy protection from being attacked or targeted in an armed conflict. Articles 53 and 56 of Additional Protocol I (1977) to the Geneva Conventions (1949) which states that the religious properties/sites should not be used for military objectives or purposes and their targeting is prohibited unless and until they are being used for military activities. However, various reports indicate that both the rebel forces and the government have targeted mosques, religious shrines, and other places of worship of Muslims during the conflict in Syria. For example, The Great Mosque of Aleppo which was damaged during the armed conflict which was reported to have been deliberately attacked through shelling by both the government forces of Syria and the opposition groups. The mosque which is a religious and historical landmark was severely damaged and destroyed in 2013 and its minaret was brought down as the result of the attack. The destruction of the mosque was not the result of incidental damage, but the result of the direct attacks of the forces which is the severe violation of the laws and rules laid down by the Islamic law and IHL¹¹³.

In Syria, there have been reports of the damage and destruction of the religious sites/properties which is the direct violation of both the Islamic law and IHL. For example, the various historical shrines and mosques which have been damaged and willfully destroyed by the different groups in order to erase the religious and cultural history from the country such as the Omari Mosque in Daraa (Syria) which is one of the oldest mosques in Syria, was not only destroyed but reportedly dishonored/desecrated during the above-mentioned armed conflict. Similarly, in many situations, the militant groups have demolished Islamic religious

¹¹² Frederic C. Hof and Alex Simon, "Sectarian Violence in Syria's Civil War: Causes, Consequences, and Recommendations for Mitigation", *The Center for the Prevention of Genocide, United States Holocaust Memorial Museum* (2013).

¹¹³ Francesco Bandarin, "The Destruction of Aleppo: The Impact of the Syrian War on a World Heritage City", *Cuno, J., Weiss, TG (szerk.), Cultural heritage and Mass Atrocities. Los Angeles: Getty Publications* (2022).

properties/sites, including the tombs of the respectable Islamic figures, which is the violation of both the Islamic law and IHL. These violations are considered as the war crimes under Article 8 of the Rome Statute (1988) of the International Criminal Court (ICC), defining the deliberate destruction of the cultural property which includes the places of worship as a war crime and crimes against humanity¹¹⁴. During the conflict in Syria, the opposition forces as well as the government forces are reported to have been used religious sites/properties, including mosques and shrines as military bases and headquarters during the armed conflict. The use of religious properties/sites for the military objectives is the violation of IHL, which provides protection and preservation of the religious properties/sites in an armed conflict. In 2012, the rebel groups are reported to have used the mosques in Homs (Syria) as the shelters and effectively turned the religious properties/sites into the military targets. The forces of the government of Syria have used mosques to launch the attacks which itself is the violation of the sanctity/sacredness and the protection available to such properties/sites under the Islamic law and IHL. Therefore, the need of the hour is that there should be international accountability for the violations committed against the protection provided to the religious sites/properties by the Islamic law and IHL during an armed conflict. The International Criminal Court (ICC) can play a vital role in this regard for the purpose of prosecuting the individuals/groups responsible for the war crimes which includes the damage and destruction of religious sites/properties in times of the war especially in the case of the Syrian Civil War¹¹⁵.

One of the main reasons of the destruction of religious properties in Syria are the airstrikes and the artillery shelling. The government of Syria and the Russian forces both have been accused of carrying out bombing without any discrimination which have targeted cities

¹¹⁴ Phyllis Hwang, "Defining Crimes Against Humanity in the Rome Statute of the International Criminal Court", *Fordham Int'l LJ* 22 (1998), 457.

¹¹⁵ Caroline Sweeney, "Accountability for Syria: Is the International Criminal Court now a Realistic Option?", *Journal of International Criminal Justice* 17: 5 (2019), 1083-1115.

and villages with high concentrations of religious properties¹¹⁶. The attacks are justified as military tactics against the rebel forces but they have resulted in significant collateral damage which includes the destruction of mosques and other places of worship of Muslims. For the people of Syria, the damage and destruction of mosques and other religious properties have a significant psychological and emotional impact on them. The properties are not only places of worship but they are also community centers, places of education and centers of cultural and religious history. The loss of a mosque is viewed as the loss of a community space and its destruction is very traumatic for the population of Syria.

4.6 The Violations of the Protection of the Places of Worship of non-Muslims in Syria

The religious minorities became very vulnerable during the armed conflict in Syria as the armed groups which includes those which were aligned with the regime of Asad and which were aligned with the opposition forces were responsible for the attacks on the religious properties of non-Muslims. The armed groups such as the ISIS and many other parties which includes the rebel and Kurdish forces are also implicated in such violations of the protection of religious properties. The ISIS who gained significant holding in Syria between 2013 and 2015 was particularly prominent for its attacks on the religious properties¹¹⁷. The group followed an extreme interpretation of Islam which demonstrates that the non-Sunni Muslim places of worship are worthy of destruction and are blasphemous. The ISIS destroyed the churches of Christians, monasteries and shrines in the areas which were under their control.

¹¹⁶ Scott Lucas, "The Effects of Russian Intervention in the Syria Crisis", *Birmingham, UK: GSDRC, University of Birmingham* (2015), 3-16.

¹¹⁷ Lee-Ann Louw and Hendrik Johannes Lubbe, "Threats to Security Posed by ISIS in Syria: A Human Security Approach." *Journal of Human Security* 13: 1 (2017), 16-21.

The ancient town of Maaloula (Syria) which is the home to one of the oldest Christian communities in the world was attacked in 2013. The two iconic Christian monasteries of the town, one is of the Saint Sergius of Radonezh and other is Saint Bacchus were severely damaged by the ISIS. They also destroyed the religious icons and threatened to kill the population of Christians unless they convert themselves to Islam or pay the tax (jizya), which is a tax levied on the non-Muslims under some Islamic regimes. Apart from the churches of Christians, the ISIS attempted to destroy religious and cultural heritage of the non-Muslims. One of the examples is the destruction of a 2000-year-old Temple of Bel in Palmyra (Syria) in 2015¹¹⁸. The destruction symbolized the broader agenda of the ISIS to destroy the pre-Islamic religious symbols. The destruction and loss of such a heritage was damaging to both the non-Muslim population of Syria and to the world heritage as well. The ISIS also targeted the Kurdish community which is a religious minority who follows an ancient faith which is different from both the Islam and Christianity. In 2014, the ISIS captured the Kurdish town of Sinjar (Iraq) and carried out mass enslavements, executions and forced conversions¹¹⁹. The atrocities committed against the Kurdish community which included the destruction of Kurdish religious properties which were later recognized as genocide by the United Nations.

The Syrian conflict which turned into a sectarian conflict in which the regime of Asad drew support from the Alawites as many Sunni rebel groups targeted the shrines and places of worship of Alawites. The Alawites which were closely linked to the regime of Asad and their religious sites/properties became symbolic targets for the opposition. In 2012, the rebel forces attacked the village of Al-Qusayr (Syria) which had a significant population of Alawites and

¹¹⁸ Helga Turku and Helga Turku, "Cultural Property Destruction in History and in the Present." *The Destruction of Cultural Property as a Weapon of War: ISIS in Syria and Iraq* (2018), 27-66.

¹¹⁹ Vicken Cheterian, "ISIS Genocide Against the Yazidis and Mass Violence in the Middle East", *British Journal of Middle Eastern Studies* 48: 4 (2021), 629-641.

destroyed their mosques and religious shrines¹²⁰. The Christian community which was not the primary target of the rebel groups still faced attacks. In 2012, the ‘Syrian Observatory for Human Rights’ reported that the several Christian churches in Homs (Syria) were damaged and destroyed during fights between the forces of government and the rebel groups. The attacks were conducted by the extremist groups within the opposition while others were the result of collateral damage during the ongoing warfare in the region. The Syrian Democratic Forces (SDF) led by the Kurdish, who controlled the areas in the northern Syria have been more protective of the Christian and other minority places of worship but there are reports of demolition and damage to the religious properties as the region became a battleground for control between the various groups¹²¹. The violations of the protection of religious properties during the Syrian civil war represents one of the darkest aspects of the conflict. The non-Muslim places of worship have been targeted and destroyed by multiple armed groups during the conflict such as the ISIS, Sunni rebels and even the group associated with the regime of Asad. The attacks are a violation of the international law and inflict significant damage on the religious minorities in Syria¹²². The protection of the religious properties and sites is basically the preservation of the cultural heritage of the country which should be a priority for both the national and the international actors. The ones who are responsible should be held accountable for the violations in order to ensure that the religious diversity and cultural richness of Syria may not be completely erased from the history of the world.

¹²⁰ Elizabeth O’Bagy, "The Fall of Al-Qusayr", *Institute for the Study of War* 6 (2013), 1-6.

¹²¹ Genevieve Casagrande, "The Road to Ar-Raqqah: Background on the Syrian Democratic Forces", *Institute for the Study of War* (2016), 1-4.

¹²² Peter G Danchin, "Of Prophets and Proselytes: Freedom of Religion and the Conflict of Rights in International Law", *Harv. Int'l LJ* 49 (2008), 249.

4.7 The Resolutions and Reports Passed by the United Nations in Favor of Syria

Regarding the violence in Syria, the United Nations (UN) has passed a number of resolutions and published reports especially related to the destruction of religious sites and properties. The concern has grown for the historical, religious, and cultural heritage that has been threatened throughout the Syrian civil war which is addressed by these resolutions and the reports passed by the United Nations. During the armed conflict in Syria, the damage and destruction of the religious properties, such as mosques, churches, synagogues, and other places of worship has grown to a significant level of concern. The scale of the damage has been documented in numerous reports of the United Nations bodies and organizations. The armed conflict in Syria, which began in 2011 has led to one of the most disastrous humanitarian crises of the 21st century¹²³. The United Nations Security Council (UNSC) since 2012 has passed a total of 31 resolutions on different issues related to the Syrian civil war which raised concerns for the international community due to the violations committed during an armed conflict which began in 2011 in Syria¹²⁴. Not all, but most of the resolutions were in favor of Syria and against the violations of the protections provided to the religious and cultural properties/sites and other war crimes committed during the armed conflict which are prohibited under IHL and in the light of the resolutions passed by the United Nations Security Council.

The UN Security Council Resolution 2139 (2014) addressed the humanitarian crisis in Syria during the armed conflict and called for the need to stop/cease the use of heavy weaponry in the populated areas and to stop the destruction and damage of the religious and cultural heritage properties/sites in Syria. The resolution primarily focused on the humanitarian issues

¹²³ Mediel Hove and Darlington Mutanda, "The Syrian Conflict 2011 to the Present: Challenges and Prospects", *Journal of Asian and African studies* 50: 5 (2015), 559-570.

¹²⁴ Narine Gabrielyan, "The Role of the UN Security Council in Syrian Crisis (2011-2016)", PhD diss., (2017).

and it emphasized the need to protect the infrastructure of the country which includes the religious and cultural sites/properties in Syria¹²⁵. The UN Security Council Resolution 2165 (2014) allowed for the cross-border delivery of the humanitarian aid into Syria from the neighboring countries which was without the consent of the government of Syria as it was the direct response against the inability of the government of Syria to allow aid to reach the regions which are under siege or controlled by the opposition armed groups during the armed conflict. The resolution authorized the delivery of humanitarian aid/assistance across the borders of Syria from Turkey, Iraq and Jordan without requiring the approval of the government of Syria and also the resolution emphasized the need for all the parties to facilitate the safe delivery of aid during times of the conflict¹²⁶. The UN Security Council Resolution 2254 (2015) which is termed as a landmark resolution which aimed to facilitate a political transition in Syria and the establishment of a political process in order to end the conflict. The resolution called for a nationwide ceasefire as the start of the peace talks between the government of Syria and the opposition groups under the supervision of the United Nations¹²⁷.

The UN Security Council Resolution 2347 (2017) is one of the most specific resolutions which addressed the protection of the cultural heritage which includes the places of worship during an armed conflict. The resolution condemned the damage and destruction of religious and cultural properties/sites during an armed conflict in Syria and termed it as a war crime. The resolution called upon all the parties to the conflict to respect and follow the international law, particularly the Hague Convention which calls for the Protection of Cultural Property in the

¹²⁵ Phoebe Wynn-Pope, "Humanitarian Access in International Humanitarian Law: The Case of Syria and Security Council Resolution 2139 (2014)", In *Accountability for Violations of International Humanitarian Law*, Routledge, (2015), 117-135.

¹²⁶ Andreas Zimmermann, "Humanitarian Assistance and the Security Council", *Israel Law Review* 50: 1 (2017), 3-23.

¹²⁷ Yearbook of Islamic and Middle Eastern Law Online, Editors. "UN Security Council Resolution 2254. Regarding the Syrian Arab Republic", *Yearbook of Islamic and Middle Eastern Law Online* 20: 1 (2015), 297-303.

Event of an Armed Conflict (1954). The resolution urged the member states of the United Nations to cooperate with regard to stop the destruction and illegal trafficking of the cultural property looted from Syria which includes the remains of the religious sites as well as to take effective steps to protect such sites/properties from further damage and destruction¹²⁸. The UN General Assembly Resolution 71/20 (2016) expressed concerns about the deliberate and willful damage and destruction of cultural heritage which includes the places of worship in the conflicting zones internationally. The resolution emphasized the significance of the protection and preservation of the religious and cultural heritage as part of the reconciliation and peacebuilding process and highlights the role of UNESCO in the protection of the religious cultural sites/properties during an armed conflict¹²⁹.

The United Nations organizations such as OHCHR (Office of the High Commissioner for Human Rights) and UNESCO (United Nations Educational, Scientific and Cultural Organization) have issued/published reports regarding the damage and destruction of the religious and cultural properties/sites in Syria during the armed conflict. UNESCO has been at the front-foot in monitoring the armed conflict in Syria regarding the damage and destruction of the cultural heritage which includes the places of worship. The United Nations organization UNESCO has issued numerous reports regarding the damage caused to the religious sites/properties during the ongoing armed conflict in Syria and highlighted the need of the protection of such sites¹³⁰. Out of the various losses to religious sites/properties during an armed conflict in Syria, one of the most significant losses was the destruction of the historical/ancient monuments in the ancient city of Palmyra (Ancient City of Syria), which was

¹²⁸ Giulia Baj, "Beyond Resolution 2347 (2017): The Search for Protection of Cultural Heritage from Armed Non-State Groups", *Const. Rev.* 7 (2021), 153.

¹²⁹ Ardi Imseis, "United Nations General Assembly Resolution A/RES/72/13 (Dec. 6, 2017)." *The Palestine Yearbook of International Law Online* 20: 1 (2019), 334-338.

¹³⁰ Joanne Dingwall McCafferty, "UNESCO Emergency Response "First-Aid" Heritage Interventions in Syria During Armed Conflict", In *Art Crime in Context*, Cham: Springer International Publishing (2022), 197-213.

seized by the ISIS in 2015. The damage and destruction of the Temple of Bel in Palmyra (Ancient City of Syria) was seen as part of the broader campaign of ISIS against the cultural heritage as well. The other religious sites/properties which includes churches in Aleppo, and mosques in Idlib and Homs, have also been severely damaged and destroyed in the armed conflict in Syria. In 2016, UNESCO named the city of Aleppo as a ‘World Heritage Site in Danger’ due to the severe destruction and damage sustained by the City of Aleppo during the armed conflict. UNESCO has also worked to conduct a dialogue between the different religious and cultural groups in Syria for the purpose of recognizing the importance of the protection and preservation of the religious and cultural diversity of the country¹³¹. OHCHR has also reported on the violations of the human rights in Syria including the damage and destruction of the religious sites/properties as part of the wider war crimes being committed by the parties/groups involved in the armed conflict in Syria. OHCHR has emphasized that the damage and destruction of the religious properties/sites constitutes the violation of the international law, particularly the customary international humanitarian law and the Geneva Conventions (1949)¹³². The willful and deliberate targeting of the religious properties especially those which belong to the religious minorities such as the Christians and Alawites has raised significant concerns during the armed conflict in Syria.

4.8 The Implications and Challenges of Protection of Religious Sites in Syria

The protection of the religious sites/properties during an armed conflict in Syria carries significant implications both internationally and nationally. The attacks on the religious and

¹³¹ Artemis Papathanassiou, "Protecting Cultural Property in the Event of Armed Conflict: New Challenges and Recent Developments in the Context of UNESCO", *Art Antiquity & L.* 22 (2017), 257.

¹³² Helen Canton, "Office of the United Nations High Commissioner for Human Rights (OHCHR)", In *the Europa Directory of International Organizations 2021*, Routledge (2021), 155-159.

cultural sites/properties contribute to the displacement of the civilians including the religious minorities such as of the Muslims and non-Muslims which includes Christians and Alawites and as a result, they are being forced to flee the areas where their religious sites/properties have been targeted, damaged or destroyed during an armed conflict as the case in Syria. The damage and destruction of the sacred places deeply affects the psychological well-being of communities whether Muslims or non-Muslim as these religious and cultural sites/properties serve as symbols of identity and the cultural continuity of the communities. The destruction and targeting of the religious sites/properties exaggerated the sectarian tensions in Syria, where the population is divided religiously on the basis of sectarianism as the damage and destruction of the places of worship can further create the divisions and trigger violence during the armed conflict in the state¹³³. This is unfortunately true when it involves the attacks on the sacred sites/properties of the minority religious groups. The damage and destruction of the religious sites/ properties is an attack on the rich religious and cultural heritage of Syria. Most of the places of worship in Syria are ancient, and their damage is not only a loss to the religious communities but to the international cultural heritage as well. The international organizations such as the UNESCO and the human rights groups have condemned the targeting of the religious sites/properties in Syria and highlighted their significance and importance towards the international identity and history and called upon for its protection and preservation during the times of the war. The damage and destruction of the religious sites/properties especially when it is deliberate are considered as the war crimes under the international law. The international organizations and bodies such as the International Criminal Court (ICC) can investigate and prosecute those individuals/groups who are responsible for the acts of the

¹³³ Frederic C. Hof and Alex Simon, "Sectarian Violence in Syria's Civil War: Causes, Consequences, and Recommendations for Mitigation", *The Center for the Prevention of Genocide, United States Holocaust Memorial Museum* (2013).

violence¹³⁴. However, the armed conflict in Syria lacks a unified international response which has created complications in order to hold the perpetrators of the armed conflict accountable.

There are several factors which challenge the effective protection of the religious sites/properties in Syria during the armed conflict. The challenges include the control of multiple actors of the different parts of Syria which includes the government of Syria, the opposition groups, the Kurdish forces and the terrorist organizations such as the ISIS¹³⁵. This fragmentation makes it very difficult to enforce the mechanism of protection and accountability against those individuals/groups who are responsible for the acts of the violence. The international law provides a framework for the protection of religious and cultural heritage, but the lack of the effective enforcement mechanisms during the conflict and violence in Syria create hindrance for the implementation of the laws of the protection of religious sites/properties during the armed conflict. Therefore, the protection of the places of worship in Syria during the armed conflict is a matter of significant humanitarian, legal, and political importance. IHL, human rights law, and the cultural heritage protections which includes the places of worship provide a legal basis for safeguarding the religious sites/properties during an armed conflict, but there are violations of the protections available to these religious sites/properties and the lack of effective enforcement mechanisms make the situation even worse. The damage and destruction of these religious sites/properties has serious consequences for the religious communities, the population of Syria and the international religious and cultural heritage as well.

¹³⁴ Eric Engle, "The International Criminal Court, the United States, and the Domestic Armed Conflict in Syria", *Chi.-Kent J. Int'l & Comp. L.* 14 (2014), 146.

¹³⁵ Chanchal Kumar, "Islamic State of Iraq and Syria (ISIS) a Global Threat: International Strategy to Counter the Threat", *Journal of Social Sciences and Humanities* 1: 4 (2015), 345-353.

4.9 Conclusion

The attacks on the religious sites/properties in Syria are basically a violation of the protections provided to them as the attacks have raised tensions in the region, resulting in severe humanitarian crisis during the armed conflict. These attacks not only violate the principles of the Islamic law, but also violate the core principles of the protection provided to the religious sites/properties by IHL and also violate the resolutions of the United Nations which are aimed to protect and preserve the religious and cultural heritage and promote the peace in the conflicting zones. The United Nations through its bodies which includes the Security Council and UNESCO has passed various resolutions which are aimed to protect the religious and cultural sites/properties during times of an armed conflict. The UN Security Council Resolution 2347 (2017) condemned the damage and destruction of the religious and cultural heritage/sites in Syria and termed it as a war crime. These above-mentioned resolutions highlighted the need to protect the religious and cultural sites/properties which are the identity of the national religious communities in specific and the population of Syria in general. The attacks on the religious sites/properties in Syria is a direct violation of the resolutions and conventions that demand the protection and preservation of the cultural heritage and also the violation of the principles of protection provided by the Islamic law and IHL¹³⁶. The United Nations has also highlighted that the damage and destruction of the religious sites/properties and the persecution of the religious communities directly affects the broader peace efforts in the region. The role of the United Nations in promoting peace and security through such resolutions has been severely challenged by the acts of violence/aggression as they directly are at a conflict with the principles of the Charter of the United Nations of non-aggression which

¹³⁶ Leila Nadya Sadat, "Genocide in Syria: International Legal Options, International Legal Limits, and the Serious Problem of Political Will", *Impunity Watch LJ* 5 (2014), 1.

includes respect for the human rights, and the religious and cultural diversity¹³⁷. Therefore, the violations of the protections provided to the religious sites/properties in an armed conflict by the Islamic law and IHL requires a multidimensional approach in case of Syria. The international organizations/bodies must hold accountable those individuals/groups responsible for the attacks on the religious sites/properties ensuring that they are prosecuted and convicted for committing the war crimes and crimes against humanity in Syria¹³⁸ but it requires the cooperation of the international bodies/organizations, the states, and the government of Syria in order to pursue justice through the International Criminal Court (ICC). Additionally, the international community must continue the efforts to uphold the principles of the UN Security Council Resolutions and the Geneva Conventions (1949) by ensuring that the protection of the religious sites/properties and cultural heritage is given priority in the reconstruction and peace-building process and to prevent further damage and destruction of the religious sites/properties as a way forward of healing the wounds already inflicted on the people of Syria.

¹³⁷ Andy Knight and Mari Yamashita, "The United Nations' Contribution to International Peace and Security", *Building a New Global Order-Emerging Trends in International Security*, (Ed. David Dewitt, David Haglunu ve John Kirton), Oxford University Press, Canada (1993).

¹³⁸ Yavuz Gucturk, "War Crimes and Crimes Against Humanity in Syria", *Insight Turkey* 17: 1 (2015).

Chapter 05 Conclusion, Findings and Recommendations

Conclusion

The attacks on the religious sites/properties in Syria are basically a violation of the protections provided to them as the attacks have raised tensions in the region, resulting in severe humanitarian crisis during the armed conflict. These attacks not only violate the principles of the Islamic law, but also violate the core principles of the protection provided to the religious sites/properties by IHL and also violate the resolutions of the United Nations which are aimed to protect and preserve the religious and cultural heritage and promote peace in the conflicting zones. During the ongoing civil war in Syria, the violation of the religious properties has been a critical issue which raised important questions about the protection of the religious properties, cultural heritage and the sanctity of the places of worship in the light of both the Islamic law and international humanitarian law. The destruction of the religious properties in Syria is reported on a large scale, with mosques, churches and other religious sites being subject to direct attacks by various armed groups. The destruction of religious properties in Syria represents a severe violation of the fundamental legal principles adapted to protect the human dignity, religious freedoms, religious and cultural heritage. Both the Islamic law and IHL provide frameworks for the protection of the religious properties but their implementation has been hindered by the realities of the conflict. The ongoing violations highlight the need for greater international cooperation, the need of accountability and the prioritization of the protection of religious and cultural heritage in the conflicting zones. It is significant to address these concerns and start building the peace processes and introduce legal reforms in order to ensure that the sanctity of the religious properties is respected and to safeguard the rich cultural and religious diversity in Syria.

The conflict in Syria which has led to widespread displacement, destruction, and loss of life is deeply affecting the religious and cultural heritage of the country. The most destructive consequence of the war is the violation of the protections provided to the religious properties which has been committed by the various parties which includes the government of Syria, the opposition forces and the extremist groups such as the ISIS. The violations challenges both the Islamic law and the IHL which provide frameworks for the protection of the religious properties during an armed conflict. The religious properties and sites which includes the churches, mosques, and shrines have been intentionally targeted and destroyed by the multiple armed groups which have caused irreparable harm to the cultural and religious heritage of Syria. The enforcement and implementation of the legal frameworks provided by the Islamic Law and the IHL have proven to be inadequate in preventing the violations. For this purpose, the international community is required to strengthen the enforcement mechanisms, to ensure greater accountability for the violators/perpetrators and to support the protection and reconstruction of the religious properties and sites. The Islamic law which provides significant guidance on the sanctity of the religious properties which must be upheld through education, awareness, and stronger involvement of the religious authorities and communities. The protections provided in IHL are subject to certain limitations, for example, the religious properties can lose the protected status if they are being used for the military objectives/purposes or if they are located in such areas which are deemed to be contributing towards the military objectives. Thus, the religious properties may be damaged or destroyed if they are observed to support the wars, even if their primary function is religious. Whereas, the Islamic law offers a different but strong regulatory framework for the protection of the religious properties during times of the war.

The Islamic law provides prohibition against the intentional destruction of the religious properties which includes churches, synagogues, and mosques, during an armed conflict. This principle is stressed upon by the teachings of the Quran and the Hadith, which emphasize the sanctity of the places of the worship as sacred places that should not be attacked or destroyed. The instructions of Prophet Muhammad (PBUH) during his military expeditions, including his treatment of religious properties in occupied territories, establishes a strong tradition of the protection of the religious properties regardless of the faith practiced within them whether by Muslims or non-Muslim. Therefore, both IHL and the Islamic law recognizes the significance of the protection of the religious properties during an armed conflict and prevention of its violation.

The Islamic law provides a comprehensive framework for the protection of places of worship and religious properties which is based on the concept of ‘haram’ which is known as ‘sacred places’, and the moral principles governing the conflict. Under the classical Islamic jurisprudence, the protection of religious properties and sites is compulsory during times of peace and during times of conflict as well. The core principles are derived from the primary sources of the Islamic law such as the Quran and the Hadith and also from the consensus of Islamic scholars (ijma), which is one of the secondary sources of Islamic law. During an armed conflict, the Islamic law prohibits the attacks on religious properties and the targeting of civilian objects. The principles of Islamic law of war (Fiqh al-Siyar) defines the moral conduct during warfare including the provisions for the protection of religious properties. Additionally, the instructions of Prophet Muhammad (PBUH) during the early Islamic conquests are an example for safeguarding and protecting the religious properties in times of war. In His treaty with the Christians of Najran, the Prophet Muhammad (PBUH) guaranteed that the churches of the Christians would not be damaged which demonstrates that the religious freedom and the

protection of sacred places was essential to the Islamic governance. Although, the traditional Islamic jurisprudence led emphasis on the protection of religious properties but certain contemporary interpretations from the extremist groups such as the ISIS have altered these principles for the purpose of justifying their acts of the destruction of religious properties. The ISIS claims to clean the region by destroying the so-called idols which were false in their view, which includes the religious monuments and churches with the intention of enforcing a pure interpretation of Islam. This extremist interpretation of the Islamic law denies the broader approach which is found in the classical Islamic teachings which ensures the protection of diverse faiths within a community.

The IHL which is codified in the form of the Geneva Conventions of 1949 and their Additional Protocols (1977) sets out explicit provisions for the protection of cultural heritage which includes religious properties and places of worship during an armed conflict. The IHL is intended to limit the effects of an armed conflict on the civilians and their properties by ensuring that the parties to any conflict show respect to the cultural and religious importance of certain properties. The Fourth Geneva Convention (1949) and its Additional Protocols (1977) led emphasis on the protection of civilian objects which includes the religious properties and sites during an international and non-international armed conflict. Article 53 of the Additional Protocol I (1977) expressly prohibits the destruction of cultural properties which includes the religious properties unless and until such destruction is required by the concept of military necessity. The Hague Convention (1954) also provides specific protections for the cultural properties as it also prohibits the acts of violence and destruction against religious properties as well. IHL is regulated by the principle of distinction which means that during an armed conflict, the combatants must differentiate between the civilians and the military targets because religious properties fall within the ambit of civilian property. The willful and deliberate

targeting of the religious properties which is witnessed in Syria, violates the fundamental principle regulated by the IHL. The destruction and damage of the places of worship without any clear military necessity is a breach of IHL which makes it a war crime under the Rome Statute of the International Criminal Court (ICC). The parties which are at a conflict in Syria whether the government forces, the opposition groups, or the foreign actors all are bound by the IHL to avoid attacking the religious properties and other civilian objects during times of war.

The destruction of the religious properties by all parties of the conflict which includes the use of religious buildings for military purposes is considered a violation of the IHL. The use of mosques as military object or for the placement of weapons is also a violation and an attack on their sanctity. The violations of the protection of religious properties during an armed conflict in Syria have led to calls for the accountability. The International legal frameworks which include the International Criminal Court (ICC) and the International Court of Justice (ICJ) provides mechanisms for prosecuting the war crimes which are related to the destruction of the cultural heritage which includes the places of worship. The political realities of conflict in Syria complicates pursuing justice as many of the responsible parties are not subject to the international scrutiny by the above-mentioned international courts. The UNESCO has also played a critical role in upholding the preservation of the cultural heritage in Syria and urges international action to safeguard the religious properties and hold the responsible accountable. But these efforts are limited by the ongoing nature of the conflict and the challenge of ensuring enforcement of the principles of the IHL.

Lastly, we can say that both the Islamic law and IHL has laid down emphasis on the need of the protection of the religious properties in an armed conflict and their violations are prohibited in the light of both laws respectively. Both systems demand that religious properties

should be protected from deliberate damage, with an emphasis on preventing injury to non-combatants, both highlight the difference between civilians and combatants. Both permit some exceptions, such as the military usage of places of worship, but they both call for caution and proportionality to reduce damage. When it comes to safeguarding religious properties, Islamic law and IHL have a lot in common, especially when it comes to the sacredness of places of worship and the prohibition against useless destruction. While IHL concentrates on state accountability and the formulation of international laws, Islamic law is more concerned with the moral and religious obligations of Muslims during times of the war. Nevertheless, both frameworks emphasize the significance of preserving religious and cultural heritage during an armed conflict. Since religious places are vital to the spirits of the humanity and cultural heritage, their protection during an armed conflict is a top priority for both Islamic law and IHL. In order to move forward, a multi-dimensional approach is required which involves the international collaboration, the local civil society involvement and the post-conflict justice mechanisms for the purpose of preventing the destruction of the religious properties in an armed conflict. The religious institutions as well as the international and local actors are required to work together in order to ensure that the religious properties are protected. A collective commitment is required to be made for the purpose of the preservation and protection of the religious properties/heritage which will be essential in the rebuilding of the fractured society of Syria and promoting long term peace and reconciliation in the country.

Findings

In the research findings, the protection of religious properties is clearly provided in Islamic Law and the IHL as the Islamic Law offers specific guidelines regarding the treatment of religious properties in an armed conflict and the mechanism of protection of

religious properties is also provided in the IHL through the Geneva Conventions (1949) and its Additional Protocols (1977) along with the Hague Convention (1907). The protection of religious properties in an armed conflict is not restricted to Muslim properties but extends to non-Muslim religious properties as well. It has been recognized by both the Islamic Law and IHL that the religious properties of Muslims and non-Muslims both are subject to protection in an event of an armed conflict between states. The degree of protection is also explained in this research work in the light of the Islamic Law and IHL and also in the light of the reports and resolutions passed by the United Nations in favor of Syria in the Syrian armed conflict. The United Nations through its bodies which includes the Security Council and UNESCO has passed various resolutions which are aimed to protect the religious and cultural sites/properties during times of an armed conflict. In order to move forward, a multi-dimensional approach is required which involves the international collaboration, the local civil society involvement and the post-conflict justice mechanisms for the purpose of preventing the destruction of the religious properties in an armed conflict. The religious institutions as well as the international and local actors are required to work together in order to ensure that the religious properties are protected. A collective commitment is required to be made for the purpose of the preservation and protection of the religious properties/heritage which will be essential in the rebuilding of the fractured society of Syria and promoting long term peace and reconciliation in the country.

Recommendations

1. There is need to develop stronger national and international legal frameworks in order to protect the religious properties/ sites from attacks during an armed conflict. It should involve the efforts for both the national and the international legislative actions in order to close the

gaps in the protection mechanisms. In case of Syria, all the parties involved in the conflict must strictly follow to the provisions of the Geneva Conventions and their Additional Protocols which provides explicit prohibition of the destruction of religious properties/sites in an armed conflict unless and until they are used for military purposes/objectives. The government of Syria and the armed groups involved in the conflict must ensure the compliance with the above-mentioned conventions which set clear standards for the protection of cultural and religious properties/sites in the conflicting zones. The United Nations (UN), the International Criminal Court (ICC), and the International Committee of the Red Cross (ICRC) which are the key international bodies are required to enhance their efforts in order to enforce IHL in the conflicting zones. The mechanisms which include the sanctions, the international tribunals, and diplomatic pressure should be used for the purpose of holding the perpetrators accountable for the violations they commit against the protection of religious properties/sites. A specialized convention or treaty on the protection of religious properties/sites in an armed conflicts can be introduced and developed within the legal framework of IHL which can result in explicit provisions of protections beyond those which are currently provided by IHL, offering a stronger and more specific framework for the protection of religious properties/sites in an armed conflict.

2. There is need to introduce humanitarian organizations and military cooperation for the protection of religious properties/sites during an armed conflict. The humanitarian organizations which include the International Committee of the Red Cross (ICRC) should work more closely with the military forces such as national and international in order to create safe corridors for the protection of the religious properties. The humanitarian and peacekeeping forces should be deployed for the purpose of safeguarding the religious properties from deliberate destruction during an armed conflicts while ensuring that the

military operations avoid targeting such properties/sites. The states and armed groups involved in conflicts should develop and implement clear rules of engagement which prioritize the protection of religious properties. Furthermore, any military use of the religious properties should be strictly monitored in order to avoid violating the principles of proportionality and necessity under the IHL.

3. There is need of strengthening the application of Customary International Law which provides the protection of religious properties in an armed conflict. There must be a global consensus that the intentional destruction of the religious properties constitutes a war crime, regardless of the religious or political affiliation of the parties involved in the conflict. This would create greater international pressure to prevent such acts and ensure that the states and non-state actors understand the legal consequences of such actions. The military personnel should be regularly trained regarding understanding the importance of safeguarding religious properties in accordance with IHL and Islamic Law. furthermore, to create a greater awareness of the legal and ethical standards involved in protecting the religious properties can help reduce violations during an armed conflict.

4. There is need of utilization of technology for the protection of religious properties in an event of an armed conflict. The use of satellite technology and drones can be employed in order to monitor and document the destruction of the religious properties in real time. The International organizations and governments can use this data to identify the potential violations and provide immediate interventions for the purpose of reconstruction or legal accountability. In the areas where the religious properties have been destroyed, the digital platforms should be used in order to document and archive these structures for future generations. The digital reconstructions, online databases, and 3D models can help preserve the memory of cultural and religious properties/heritage even if the physical structures are

lost.

5. The religious leaders and scholars in Syria are required to reaffirm the Islamic prohibitions against the destruction of religious properties/sites by emphasizing that such attacks are considered a violation of the protection provided to the religious sites in Islamic Law. The legal opinions (Fatwas) and the public declarations condemning the attacks on the religious properties and sites are powerful tools in discouraging such violations of the protection provided to the religious properties and sites. The Islamic law has a strong tradition of regulating the warfare and any armed group involved in the conflict must be educated regarding the implementation of the existing laws. There must be special training programs for the military personnel and the rebel forces in order to ensure that the protection of religious sites and properties is followed in accordance with both the Islamic law and the principles of IHL. The Islamic scholars and the jurists must also be actively involved in mediating the conflicts between the conflicting states as their involvement in interpreting and applying the Islamic law regarding the protection of religious properties and sites can contribute in reducing the violence and protection of religious heritage in the country.

6. There is a need of a specialized and dedicated body within the ambit of the United Nations must be established in order to monitor the status of the religious properties and sites in the conflicting zones and this body must have the authority to take effective action when the violations occur during an armed conflict between states. The International non-governmental organizations (NGOs) and the cultural institutions such as the UNESCO must also collaborate more effectively for the purpose of providing emergency relief for the religious properties in Syria. The collaborations are required to ensure that the religious heritage is not only physically protected and restored but also that its historical and spiritual significance is also respected and protected. The states and the international organizations are also required to work together in order to create rules which are binding against the intentional

destruction of the religious properties and sites. The strengthening of the international treaties such as the Hague Convention for the protection of the cultural properties which includes places of worship in the event of an armed conflict can also be a significant step in ensuring the protection in the future conflicts in the region.

7. There is need of humanitarian aid for the displaced religious communities which are affected during an armed conflict in Syria. The humanitarian aid should prioritize the protection and support of the displaced religious communities, ensuring that the religious minorities such as the Christians, Alawites and Druze who have been disproportionately affected by the violations of religious property have access to resources, safe spaces, and support for the reconstruction of their places of worship. The International and local organizations should create programs which are aimed at restoring the religious properties to displaced communities and facilitating their safe return to areas where their religious heritage was previously destroyed. This would involve not only the rebuilding of physical structures but also the restoration of cultural and spiritual life in these communities as well.

8. The efforts which are made locally in Syria in order to protect the religious properties should not be underestimated. The groups of Syrian civil society have shown incredible resilience in the face of violence and the initiatives taken by them must be supported. The training and support of the local communities in the protection and restoration of the religious properties can be highly effective in this regard. The empowerment of the local communities can ensure that the protection and reconstruction of the religious properties/sites is culturally sensitive and significant matter for the people of Syria. The initiatives taken by the civil society can encourage the cooperation between the different religious communities in order to jointly protect the religious properties during times of the conflict and in the future as well.

9. The International bodies which include the United Nations are required to increase their efforts in order to monitor and respond to the violations of the protections provided to the religious properties during an armed conflict. The Humanitarian aid and cultural preservation programs should be improved in order to help regarding the rebuilding of the religious properties which have been destroyed during the conflict. Furthermore, the states must enhance their cooperation for the purpose of prosecuting the individuals who destroy the religious properties regardless of their affiliation to any group or nationality of any country.

10. There is need of a specialized monitoring and reporting mechanism which will be essential to track the violations timely and ensure speedy accountability. A specialized agency or a body under the UN or an International non-governmental organization is required to be established in order to monitor the status of the religious properties during an armed conflict. The body should be authorized to deploy teams in the field for the purpose of documenting and assessing the status of the religious properties on ground in the areas where the conflict is going on. The body should be authorized to compile the evidence of violations related to the destruction of religious properties and assist in gathering materials for the legal proceedings in the international courts. The body should also be authorized to report the violations regularly to the international bodies such as the UN Security Council (UNSC), the ICC and the regional human rights organizations in order to ensure that the religious sites and properties are merged into larger humanitarian efforts.

11. There is need of promotion of Islamic law's protection of the religious properties in an armed conflict. A more profound and public engagement with the Islamic scholars is crucial for interpreting and promoting the Islamic legal framework which prohibits the destruction of religious properties. Furthermore, by providing more contemporary interpretations of Islamic

law which emphasize the protection of sacred places for all the religious groups, Islamic authorities can influence behavior on the ground, particularly within Muslim-majority regions. Additionally, by launching educational initiatives in Muslim communities to reaffirm the importance of respecting religious properties, not only for the Muslims but also for non-Muslim communities. Also, by emphasizing the teachings of Prophet Muhammad (PBUH) regarding the protection of all places of worship could help counteract radical interpretations and promote a culture of respect for the religious diversity in Syria.

12. There is need of promoting reconciliation and the interfaith dialogue between the groups involved in the conflict which is vital for the long-term stability in the region. The religious leaders from all regions and faith in Syria are required to come together for the dialogue during and after the conflict as well. The religious communities can cooperate on rebuilding efforts both physically and socially by promoting understanding and mutual respect among each other. It can also provide space for the religious leaders and members of the communities to discuss issues which are related to the protection of the religious properties, the religious freedoms and the role of the religious institutions in post-conflict rebuilding process. They can also serve the purpose of collective advocacy for the protection of religious properties under both the national law and international humanitarian law.

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