Freedom of Religion and Belief Under Fire: Protection and Practice in Jeopardy?

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Abstract:
This article examines how freedom of religion or belief (FoRB) is protected during armed conflict through the interaction of international humanitarian law (IHL), international human rights law (IHRL), and international criminal law (ICL). It argues that, although FoRB is not explicitly recognized as a standalone category within IHL, several of its core elements—including protection of religious practice, places of worship, detainees, and religious groups—are indirectly safeguarded across different legal regimes. Through selected case studies from the Levant region, the article demonstrates that these protections remain fragmented and insufficient, particularly regarding the collective and community dimensions of religious life, thereby requiring a stronger and more integrated legal protection framework.

Introduction

Freedom of Religion and Belief (FoRB) is a core pillar of human rights, both for the human rights system and for all people around the world, as it embodies the respect for human dignity and is fundamental to plurality and equality.[1] To that end, there are robust international legal

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frameworks for the protection of FoRB, particularly within International Human Rights Law (IHRL). Yet in recent years, especially amid the numerous conflicts around the world in general and in the Levant region in particular, an important dimension of FoRB has remained underexplored, namely, how it is protected during armed conflict beyond IHRL, but rather in additional regimes that apply to conflict, especially International Humanitarian Law (IHL) and International Criminal Law (ICL), particularly the Genocide Convention and the Rome Statute, as well as relevant customary norms.

Indeed, the persistence of armed conflict and its impact on FoRB have underscored the importance of analyzing how international law, which primarily regulates conduct during armed conflict (IHL), may shape our analysis of the protection of FoRB during armed conflicts, and how it interacts with, and at times diverges from, IHRL in its conceptualization and protection of religion and belief. Existing scholarship has predominantly approached FoRB through IHRL, often overlooking both the cumulative effect of these parallel legal regimes and how armed hostilities reshape the ability of individuals and communities to exercise the external dimension of FoRB, particularly in regions such as the Levant, where religious identity is closely intertwined with social and political structures.[2] This indicates a growing gap in the literature and in international law

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[1] General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18), UN Doc. CCPR/C/21/Rev.1/Add.4, 30 July 1993, available at: https://www.refworld.org/legal/general/hrc/1993/13375.

[2] Dylan O'Driscoll and Bahar Baser, *Intersecting Identities and the Need for Reconciliation in the Levant and Iraq*, Report, Middle East Research Institute, Erbil, 22 May 2019, available at: https://www.meri-k.org/publication/intersecting-identities-and-the-need-for-reconciliation-in-the-levant-and-iraq/.

regarding how FoRB may be protected, even when not explicitly mentioned under IHL, in international and non-international armed conflicts (IAC and NIAC). Indeed, existing scholarship has addressed religion in armed conflict from distinct perspectives, with Eric David examining the protection of cultural and religious property,[3] Marco Sassòli exploring the place of religion within detention regimes and the relationship between IHL and IHRL, and David Llewellyn focusing on operational and targeting frameworks. Yet no literature has yet developed a comprehensive analysis of freedom of religion or belief across these intersecting legal regimes.

For instance, the Levant region has witnessed targeted attacks on individuals during prayers and religious holidays, as well as the deliberate or indiscriminate striking of religious buildings, targeting groups because of their beliefs, and prohibiting the practice of certain rights, demonstrating the persistent pressure placed on FoRB. Numerous examples illustrate this pattern, including concrete and recent incidents that illustrate the vulnerability of religious practice and identity during armed conflict. In southern Syria, for example, the 2025 attacks in Suwayda targeting Druze communities were accompanied by violence that directly intersected with religious identity, highlighting how religious belonging can become a basis for targeting in conflict, especially non-international ones.[4] Similarly, in Palestine, restrictions imposed during the holy month of Ramadan, both in Gaza and at the Al-Aqsa Mosque, have limited access to religious observance, raising serious concerns regarding the protection of the external dimension of FoRB under conditions of

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[3] Eric David, *Principes de Droit des Conflits Armés*, 4th ed., Bruylant, Bruxelles, 2008, p. 325.

[4] Human Rights Watch, *Syria: Abuses, Humanitarian Emergency amid Sweida Clashes*, New York, 22 July 2025, available at: https://www.hrw.org/news/2025/07/22/syria-abuses-humanitarian-emergency-amid-sweida-clashes.

occupation and hostilities, in addition to explicit targeting of Palestinians from the Muslim community, labeling them as terrorists and extremists in public statements.[5] In Lebanon, the 2023–2024 escalation saw unprecedented damage and destruction inflicted upon mosques and other religious structures. Reports suggest that more than 25 mosques and churches were partially or fully destroyed in 2024.[6]

Taken together, these examples illustrate not only the physical destruction of religious sites, but also the disruption of religious life itself, whether through preventing access to places of worship, targeting communities along religious lines, or undermining the conditions necessary for collective religious practice. These practices, therefore, demonstrate why examining FoRB through the lens of IHL and related legal regimes that regulate times of war is both timely and necessary.

Therefore, the central question this research addresses is: how is FoRB protected under international law in situations of armed conflict, and what are the limits of such protection? This article argues that, although IHL does not articulate a comprehensive or standalone regime for the protection of FoRB, it nonetheless provides a set of partial and fragmented safeguards across different provisions. In addition to its interaction with IHRL, IHL explicitly guarantees FoRB for civilians affected by IACs and NIACs, for prisoners and detainees of war, and for their right to manifest or exercise their religion, including through the protection of religious buildings and spaces.

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[5] "Rights Group: Palestinian Prisoners Face Harshest Ramadan in over 40 Years", *Palestinian Information Center*, 18 March 2026, available at: https://english.palinfo.com/news/2026/03/18/359785/.

[6] F. Hachem and K. Al Mufti, *IHL and IHRL Violations in Lebanon: 2023–2024 War*, Unpublished report, ALEF – Act for Human Rights, Beirut, 2024.

However, this protection remains structurally limited. First, the application of IHL as *lex specialis*, combined with broad exceptions such as military necessity (when they are used for military purposes or fall within highly important military targets), constrains the scope of protection afforded to religious practice.[7] Second, IHL tends to reduce FoRB to derivative protections, namely dignity, property, and access, rather than recognizing it as a unified right encompassing belief, manifestation, and communal religious life. In contrast, international criminal law, particularly genocide law, more explicitly recognizes religion as a protected marker of group identity, thereby offering a more direct engagement with the collective dimension of FoRB. Moreover, the gap between normative protection and practical implementation is particularly visible in the Levant, where recurrent violations expose the limits of existing legal frameworks, compounded by non-respect for them by various stakeholders. This article, therefore, adopts a multi-regime approach, examining how IHL, alongside ICL and IHRL, and related norms, engage with FoRB during armed conflict. It also calls for IHL to become more receptive to the normative content developed under IHRL, particularly by using FoRB standards to inform the interpretation of humane treatment, non-discrimination, detention, occupation, and the protection of religious sites and communities. Finally, it analyzes both the scope and limitations of these protections and situates the discussion within a case study of the Levant, providing critical context for understanding the interaction among religion, identity, and conflict.

[7] Marco Sassòli, Antoine A. Bouvier and Anne Quintin, "Military Necessity", in *How Does Law Protect in War?*, ICRC, Geneva, available at: https://casebook.icrc.org/a_to_z/glossary/military-necessity.

Defining Freedom of Religion and Belief under International Human Rights Law

IHRL continues to apply during armed conflict, subject to state jurisdiction, and therefore remains a primary legal framework for understanding the scope and content of freedom of religion or belief (FoRB) even in wartime contexts. Cross-national survey evidence indicates that FoRB is considered a core value across societies, as the majority of populations worldwide affirm that they value living in a society where religion can be freely practiced.[8] Under the Universal Declaration of Human Rights (UDHR) and in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), FoRB is an internationally recognized human right which protects the freedom to hold, adopt, change, or reject a religion or belief, and the freedom to manifest a religion or belief at the level of the individual or the community, in public or in private.[9] Perhaps Article 18 of the ICCPR presents one of the most innovative legal protections of FoRB: its second clause prohibits coercion to change one's belief or religion, while clause number three addresses the limitation of manifesting one's religion to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

Furthermore, regional human rights frameworks in the Levant region, such as the Arab Charter on Human Rights, provide similar protection of FoRB, subject to limits necessary to protect public safety, health, or morals, and prescribed exclusively by law, aligning with

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[8] Richard Wike, *et al., Global Support for Principle of Free Expression, but Opposition to Some Forms of Speech*, Pew Research Center, Washington, DC, 18 November 2015, p. 11.
[9] Universal Declaration of Human Rights, UNGA Res. 217A (III), 10 December 1948, Art. 18: "Everyone has the right to freedom of thought, conscience and religion."

international legal traditions.[10] Similarly, the Cairo Declaration on Human Rights in Islam affirms principles such as dignity, equality, and the protection of religion, but situates all rights and freedoms within the framework of Islamic Shari'a. This reflects a distinct normative approach in which FoRB is recognized but interpreted through specific legal and cultural paradigms[11]. Taken together, these frameworks demonstrate that, despite variations in scope and interpretation, FoRB remains a central normative principle across different legal systems. Indeed, its consistent recognition, whether grounded in IHRL or regional normative orders, underscores its universal significance, including in contexts of armed conflict.

On one hand, FoRB encompasses two dimensions: internal and external. The internal dimension (*forum internum*) is the absolute right to hold, change, or reject a belief.[12] It includes elements that cannot be overridden or restricted, no matter the circumstances,[13] such as one's right to adopt or change a belief without any form of intervention or coercion. Even in situations of public emergency threatening the life of the nation, states may not interfere with the freedom of conscience itself. This protection reflects the understanding that freedom of belief is intimately connected to human dignity and moral agency.

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[10] *Arab Charter on Human Rights*, 22 May 2004 (entered into force 15 March 2008), Art. 30, available at: https://hrlibrary.umn.edu/instree/loas2005.html. Art. 32(2) provides that the exercise of freedom to manifest one's religion hall be subject only to such limitations as are prescribed by law and are necessary in a tolerant society that respects human rights and freedoms for the protection of public safety, public order, public health or morals or the fundamental rights and freedoms of other, reflecting a broader normative framework within which freedom of religion or belief may be interpreted in the region.

[11] *Cairo Declaration on Human Rights in Islam*, 5 August 1990, Arts 10, 24–25, available at: https://hrlibrary.umn.edu/instree/cairodeclaration.html.

[12] *General Comment No. 22*, above note 1, para. 3.

[13] Heiner Bielefeldt, "How to Preserve the Substance of Religious Freedom in Times of Crisis", *Religion & Human Rights*, Vol. 15, 2020, pp. 3–6.

More specifically, the external dimension (*forum externum*) is the freedom to manifest that right through practice, observance, worship, or teaching, which, contrary to the internal dimension, is a dimension of the right that could legally be subject to limitations, as it is not absolute. However, limitations are permitted only when prescribed by law and necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.[14] It follows that the public manifestation of one's faith can be restricted for reasons associated with the security and order of a country, provided that these restrictions are temporary, exceptional, and align with the emergency unfolding.[15] These limitations are interpreted narrowly, but they acknowledge that religious practice takes place within social and institutional contexts that may require regulation.

Finally, an important conceptual framework of FoRB concerns its dual character as both an individual freedom and a collective communal practice. IHRL frames freedom of religion primarily as an individual entitlement. Individuals possess the right to believe, change religion, and express their faith. Yet, it recognizes that the practice of religion, especially in its external dimension, is rarely purely individual, as it often takes place through collective structures such as congregations, rituals, celebrations, institutions, and shared identities.

This means that FoRB operates simultaneously across several interconnected levels: First, it protects individual belief, ensuring that individuals may hold or change their religious convictions without

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[14] International Covenant on Civil and Political Rights, 999 UNTS 171, 16 December 1966 (entered into force 23 March 1976), Art. 18(3).
[15] H. Bielefeldt, above note 13, p. 8.

coercion. Second, it protects collective worship, including communal prayers, rituals, religious gatherings, and observance of sacred holidays. Third, it encompasses religious institutions, such as churches, mosques, temples, religious schools, and clergy structures that sustain religious communities over time. Fourth, religion frequently functions as a group marker of identity, shaping how communities define themselves and how they are perceived by others, which becomes more relevant in conflict settings, as we will see in the following sections.

Conceptualizing Obligations of Parties Related to Religious Duties in Conflict Settings

After defining FoRB in IHRL and looking at the application, one must recognize that neither the legal formulation of Article 18 of the UDHR and the ICCPR, nor any other general comment or IHRL treaty adequately explains how FoRB is protected during armed conflict. This gap necessitates conceptual clarification of the right's core components (belief, manifestation, and religious community) to assess how each is affected in conflict settings. Such an approach allows for a more precise evaluation of both the impact of armed conflict on FoRB and the extent to which existing legal frameworks, including IHL and ICL, address these dimensions. It is therefore essential to build a theoretical framework for understanding FoRB in conflict settings. It starts by revisiting the two dimensions outlined above regarding the internal and external dimensions of the freedom and by examining its dual individual and collective nature. This analysis reveals a structural tension: while IHRL conceptualizes FoRB as a unified right, IHL and Customary International Law (CIL), and ICL protect only certain elements of that freedom, and even when they do so, they do it in an indirect way. However, during armed conflict, the application of IHRL must be understood alongside IHL, which

operates as the *lex specialis* governing the conduct of hostilities and may shape how certain rights, including the external manifestation of religion, are interpreted and applied in practice.[16]

First, revisiting the internal and external dimensions, while this distinction is well established within IHRL, especially in Article 18 of the UDHR and ICCPR, as well as the Human Rights Committee's General Comment No. 22, no other relevant legal regimes that apply to armed conflicts recognize this conceptual structure. Indeed, IHL does not systematically distinguish between internal belief and external manifestation. The Geneva Conventions and their Additional Protocols[17] and customary humanitarian law[18] rarely, if ever, refer explicitly to "freedom of religion or belief" as a comprehensive right. Instead, they address religion in fragmented ways, primarily through provisions on humane treatment, detention conditions, and protection of religious personnel or places of worship.[19] Even with indirect protection, dimensions must be deduced rather than explicitly cited, as we will develop in the following section. In IHL, the internal freedom of religion or belief is largely assumed rather than explicitly protected, while the external manifestation of religion is safeguarded only in specific contexts such as detention regimes or protection of cultural property. This difference reveals an important structural shift: IHL does not regulate FoRB as a holistic right but

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[16] International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports 1996*, 8 July 1996, p. 226, para. 25; General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004.

[17] Christian Walter, "Religion or Belief, Freedom of, International Protection", in Anne Peters and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, Oxford, 2021, para. 3, available at: http://opil.ouplaw.com.

[18] *Ibid.*, para. 8.

[19] Heiner Bielefeldt, Thiago Alves Pinto and Marie Juul Petersen, "Introduction: Freedom of Religion or Belief as a Human Right", *The Review of Faith & International Affairs*, Vol. 20, No. 2, 2022, pp. 1–12, at p. 6, available at: https://doi.org/10.1080/15570274.2022.2065799.

rather incorporates aspects of it within broader humanitarian protections related to dignity, humane treatment, and cultural heritage.

Second, in many conflicts, religious identity becomes intertwined with ethnicity, culture, or political affiliation, turning religion into a primary axis of group targeting and making the fragmentation between individual and collective identities more pronounced. While IHRL clearly recognizes these two dimensions, as previously stated, other legal regimes, especially those relevant to armed conflicts, engage with them in a more limited and differentiated way. Instead of protecting FoRB as an integrated right encompassing these dimensions, IHL safeguards certain fragments of religious life through different legal regimes. For example:

- The protection of detainees' ability to practice religion is set out in rules governing humane treatment and respect for religious convictions.[20]
- The prohibition of discrimination on the basis of religion, grounded in IHRL, operates across conflict settings, prohibiting adverse distinction and targeting based on

[20] Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287, 12 August 1949 (entered into force 21 October 1950), Art. 27; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 75(1); Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978), Art. 4(1). International Committee of the Red Cross, *Customary International Humanitarian Law*, Vol. I: Rules (Cambridge University Press, 2005), Rule 87.

religious identity, including under both IHRL[21] and relevant principles of IHL[22].

- The humane treatment and protection of religious rights of persons deprived of their liberty.[23]
- The protection of places of worship arises through cultural property law[24] and rules governing attacks on civilian objects.
- The protection of religious groups as collective entities appears primarily within international criminal law, particularly in the prohibition of genocide and persecution against religious groups.[25]

These protections do not operate as a unified legal framework for FoRB. Rather, they protect discrete elements of religious existence: belief, ritual, property, or group survival. This fragmentation can be understood as reflecting different legal logics through which religion is engaged in armed conflict: a humanitarian logic focused on the protection of persons (humane treatment and dignity),[26] an object-based logic centered on the protection of cultural and religious

[21]ICCPR, above note 14, Arts 26 and 27.

[22] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: Rules, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 88.

[23] Geneva Convention (III) relative to the Treatment of Prisoners of War, 75 UNTS 135, 12 August 1949 (entered into force 21 October 1950), Arts 13 and 34–37; Geneva Convention (IV), above note 20, Arts 58 and 96; Additional Protocol II, above note 20, Art. 5(1)(b).

[24] Geneva Convention (IV), above note 20, Art. 53; Protocol Additional (I), above note 22, Art. 53; J.-M. Henckaerts and L. Doswald-Beck (eds), above note 22, Rule 38.

[25] Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002), Arts 6 and 7.

[26] Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar Publishing, Cheltenham, 2019.

property,[27] and a criminal law logic addressing identity-based violence against religious groups.[28]

Seen through this lens, the absence of a unified FoRB framework in IHL is not merely a gap, but the result of the way international law distributes the protection of religion across distinct regimes, each capturing only a partial dimension of the right. While IHRL recognizes FoRB as a comprehensive right encompassing belief, practice, and community life, IHL does not treat FoRB as a standalone legal category nor does it open. Instead, elements of FoRB are protected through other humanitarian protections concerned with dignity, humane treatment, and cultural heritage.

International Criminal Law and the Protection of Religious Groups

While IHL engages with religion indirectly and in a fragmented manner, ICL constitutes a distinct legal regime that more explicitly addresses religion as a protected ground, particularly where violations reach the threshold of international crimes, including genocide and crimes against humanity, within which persecution on religious grounds is recognized as a distinct form of discriminatory conduct targeting protected groups. By contrast to other regimes, ICL more directly engages with the collective and institutional dimension of religion, particularly through the prohibition of genocide against religious groups and the recognition of persecution on religious grounds as a crime against humanity.[29] Under instruments such as the

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[27]Theodor Meron, "The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the former Yugoslavia", *Harvard Human Rights Journal*, Vol. 14, 2001.

[28] Kai Ambos, "What Does 'Intent to Destroy' in Genocide Mean?", *International Review of the Red Cross*, Vol. 91, No. 876, 2009

[29] Rome Statute, above note 25, Arts 6 and 7.

Rome Statute of the International Criminal Court, religion is explicitly recognized as a protected group category, thereby acknowledging that religious identity can form the basis of collective targeting. In the context of genocide, this protection is triggered where acts are committed with the intent to destroy, in whole or in part, a religious group as such, thus elevating religion from an individual belief system to a legally protected collective identity. Similarly, the crime of persecution encompasses severe deprivations of fundamental rights[30] on discriminatory grounds, including religion, thereby capturing patterns of systematic targeting of religious communities. [31] Additionally, the Rome Statute explicitly addresses religious buildings, specifically their use for sheltering, highlighting that any targeting of such monuments constitutes a breach of international humanitarian law and customary law. [32]

However, this recognition is both conditional and limited in scope. ICL intervenes only in situations that meet high thresholds of gravity[33] and intent,[34] such as widespread or systematic attacks against civilian populations[35] or the specific intent required for genocide.[36] As a result, while ICL explicitly acknowledges the collective dimension of religion, it does so only in extreme circumstances of mass violence. As for the protection of religious buildings, ICL's provisions remain conditional and limited, solely covering the case of their use for

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[30] Lovell Fernandez, "Religious Persecution as a Crime against Humanity: Ending Impunity", *International Journal for Religious Freedom*, Vol. 6, No. 1/2, 2013, p. 158, para. 4.
[31] Rome Statute of the International Criminal Court, above note 25, Art. 7(1)(h).
[32] *Ibid.*, Arts 8(2)(b)(ix) and 8(2)(e)(iv).
[33] *Ibid.*, Art. 17(1)(d).
[34] *Ibid.*, Art.30.
[35] International Criminal Tribunal for Rwanda, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Joseph Ngeze*, Case No. ICTR-99-52-A, Judgment (Appeals Chamber), 28 November 2007, para. 920, available at: https://cld.irmct.org/notions/show/1015/widespread-or-systematic-attack.
[36] K. Ambos, above note 30, para. 1.

sheltering, and omitting the aspect of religious services and practice during an armed conflict. This means that many forms of interference with religious life in conflict, particularly those affecting everyday practices, community cohesion, or non-lethal forms of discrimination, remain outside its reach. Consequently, ICL complements but does not fully bridge the gap left by the absence of comprehensive, continuous protection for FoRB as a unified right in armed conflict.

This insight is fundamental to the main argument that this article aims to present: while various aspects of international law in armed conflicts address religion, none fully mirror the structure of FoRB as outlined in IHRL, which is applicable in such conflicts. Additionally, the lack of protection under IHL represents a significant gap. As a result, the system offers religious protection based on function rather than conceptual clarity. Therefore, recognizing this difference is essential before analyzing how these legal frameworks function in real-world contexts, as discussed in the upcoming sections.

The Architecture of Protection of FoRB Under IHL

Applicability and Interrelationship of IHRL and IHL in Armed Conflict

The first question, then, concerns the protection of human rights during armed conflicts: the applicability of IHRL in such situations. Indeed, human rights treaties generally continue to apply during armed conflicts, subject to the jurisdiction criterion, as reflected, for example, in Article 2(1) of the ICCPR:

> "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and

subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

This jurisdictional requirement has been interpreted by international bodies to extend beyond a State's territorial boundaries in certain circumstances, particularly where a State exercises effective control over territory or authority over individuals abroad. For instance, the Human Rights Committee has affirmed in General Comment No. 31 that States must respect and ensure Covenant rights to anyone within their power or effective control, even if not situated within the territory of the State.[37] Similarly, regional jurisprudence has reinforced this interpretation: the European Court of Human Rights, in cases such as Al-Skeini v. United Kingdom, [38] recognized that jurisdiction may arise when a State exercises effective control over an area or authority over individuals in the context of military operations abroad.

Additionally, the interrelationship between IHL and IHRL is, in principle, shaped by a logic of harmonious interpretation rather than strict separation. This approach finds its legal basis in Article 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT), which requires that treaties be interpreted in light of "any relevant rules of international law applicable in the relations between the parties."[39] Accordingly, IHL and IHRL are not to be applied in isolation, but rather

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[37] General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, available at: https://www.refworld.org/docid/478b26ae2.html.

[38] European Court of Human Rights, *Al-Skeini and Others v. the United Kingdom*, Application No. 55721/07, Judgment, 7 July 2011, available at: https://hudoc.echr.coe.int.

[39] Vienna Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969 (entered into force 27 January 1980), available at: https://treaties.un.org.

as part of a coherent body of international law, where each regime informs and complements the interpretation of the other. In practice, this means that IHRL continues to provide interpretive guidance and normative standards in areas where IHL may be silent, ambiguous, or limited in scope, while IHL offers more specific rules governing the conduct of hostilities and the realities of armed conflict. This interpretive interaction has been affirmed in international jurisprudence, notably by the International Court of Justice in the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, where the Court confirmed that human rights law continues to apply in situations of armed conflict alongside IHL.[40] This is particularly relevant for rights such as FoRB, whose protection may not be explicitly articulated within IHL but can be derived and reinforced through an integrated reading of both legal regimes.[41]

In situations where norms of IHL and IHRL appear to conflict, the principle of *lex specialis* is often invoked to determine which rule takes precedence. In effect, academic theory[42] treats the relationship between IHL and IHRL as context-dependent, with IHL often

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[40] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 9 July 2004, paras 106–108, available at: https://www.icj-cij.org.

[41] Sassòli, M. (2019). *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*. Edward Elgar, pp. 578–586 (discussion of the complementary interpretation of IHL and IHRL).

[42] Cordula Droege, "The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict", *Israel Law Review*, Vol. 40, No. 2, 2007, pp. 310–355; Marco Sassòli and Laura M. Olson, "The Relationship between International Humanitarian and Human Rights Law Where It Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts", *International Review of the Red Cross*, Vol. 90, No. 871, 2008, pp. 599–627; Alexander Orakhelashvili, "The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?", *European Journal of International Law*, Vol. 19, No. 1, 2008, pp. 161–182.

providing the more specific rules on conduct and detention in armed conflict, while IHRL continues to supply broader normative guarantees and interpretive standards. This approach has been affirmed in international jurisprudence, particularly by the International Court of Justice (ICJ) in cases such as the Nuclear Weapons Advisory Opinion and the Wall Advisory Opinion,[43] where the ICJ recognized that the right to life continues to apply during armed conflict but must be interpreted in light of IHL as the *lex specialis* governing the use of force.

Similarly, the Human Rights Committee (HRCttee) has clarified in General Comment No. 36 on the right to life that, in situations of armed conflict, the assessment of arbitrary deprivation of life must take into account the rules of IHL, thereby reinforcing the complementary and interpretive relationship between the two bodies of law rather than a strict hierarchy.[44] This suggests that *lex specialis* does not imply the displacement of IHRL by IHL, but rather a contextual determination of which rule is more specifically applicable to the situation at hand.

In practice, however, this interaction remains complex. The reliance on IHL as the governing framework in specific contexts—particularly through concepts such as military necessity and proportionality—may narrow the scope of protection otherwise afforded under IHRL. This creates a risk that exception mechanisms like derogations, while legally grounded, may be interpreted expansively, thereby weakening the effective protection of certain rights, including aspects of FoRB. Nevertheless, while not explicitly

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[43] ICJ, *Legality of the Threat or Use of Nuclear Weapons*, above note 16, Para.25.

[44] General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, UN Doc. CCPR/C/GC/36, 30 October 2018, Art. 7, available at: https://docs.un.org/en/CCPR/C/GC/36.

articulated as a standalone right within IHL, Customary IHL, the Geneva Conventions and their Additional Protocols contain a range of provisions that directly protect elements of FoRB, while not mentioning it explicitly, particularly through guarantees of humane treatment, non-discrimination, and the protection of religious practices and sites. Additionally, Article 85 of the First Additional Protocol to the Geneva Conventions highlights the punitive dimension of IHL, establishing a "grave breaches" reference that could be translated into enforcement of its provisions. [45]

Protection Through Humane Treatment

Customary IHL is often overlooked due to limited consolidation in multilateral treaties. However, CIHL served as a basis for jurisdiction in war crimes trials for both World Wars and several subsequent cases, thus providing a solid legal basis for analyzing FoRB during conflicts, even with partial codification.[46] Indeed, the ICRC has tried to identify the customary rules of IHL. These were set out in its customary law study, and much of it is accepted by others as reflecting Customary IHL. One of these customary standards is Rule 104, which mandates respect for the religious convictions of both civilians and soldiers out of combat (*hors de combat*).[47] This rule reflects the broader principle that FoRB continues to apply during armed conflict, irrespective of the status of the subjects of belief, thereby supporting the fact that FoRB is a basic human right guaranteed to all protected persons, not only prisoners of war and persons taking part in war. Similarly, Rule 127 of

[45] AP I, above note 21, Art. 85.
[46] International Humanitarian Law Database, "International Humanitarian Law Databases", ICRC, Geneva, 2026, available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/in.
[47] J.-M. Henckaerts and L. Doswald-Beck, ICRC Customary Law Study, above note 22, Rule 104.

CIHL extends respect for freedom of religion and belief to all detainees, irrespective of their role in armed conflict,[48] and to all those whose freedom is denied.[49]

One instance where these customary rules of IHL—especially the ones reflected in Rule 104 of the ICRC Customary Law Study—were used in a case without reference to treaty codification was the 'Eritrea–Ethiopia Claims Commission' (2004). [50] The conflict was considered an international armed conflict, and the articles of the four Geneva Conventions were considered CIHL even before Ethiopia became a party to the Conventions in 2000.[51] In this instance, Rule 104 was applied to affirm that civilians' religious rights must be respected during conflict, demonstrating that such protection forms part of customary international law applicable not only to international armed conflicts but also to non-international armed conflicts. The Claims Commission explicitly indicated that "the Geneva Conventions have largely become expressions of customary international humanitarian law," and the law applicable is "customary international humanitarian law as exemplified by the relevant parts of those Conventions."[52] In addition, the case demonstrates that "Protected persons are entitled, in all circumstances, to respect for their ... religious convictions and practices, and their manners and customs."[53] This confirms that respect for FoRB is a minimum, non-derogable humanitarian guarantee according to IHL, which binds all parties to a conflict regardless of treaty ratification, the classification of the conflict, or the legal status of affected persons.

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[48] Eritrea–Ethiopia Claims Commission (EECC), *Partial Award: Central Front – Ethiopia's Claim 2*, 28 April 2004, RIAA Vol. XXVI, p. 165, para. 14.
[49] J.-M Henckaerts and L. Doswald-Beck, above note 22, Rule 127.
[50] EECC, *Central Front*, above note 51, p. 165, para. 14.
[51] *Ibid.*, p. 166.
[52] *Ibid.,* p. 166, para. 15; pp. 192–193.
[53] *Ibid.,* p. 172, para. 35 (quoting Art. 27 GC IV).

Protection Through Detention Regimes

The Third Geneva Convention grants protection for the enjoyment of religious rights of prisoners of war. Article 34 provides full latitude for the exercise of religious rights by prisoners of war, including not only the internal freedom of belief but also participation in religious services. Further, Article 35 of the Third Geneva Convention requires the detaining power to provide chaplains to provide religious services to prisoners, each according to their own faith. It also indicates that:

> They [chaplains] shall be allocated among the various camps and labor detachments containing prisoners of war belonging to the same forces, speaking the same language or practicing the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp.[54]

The text provides clear protection for the right to the enjoyment of religious rights during detention for prisoners of war. This is also reflected in State practice. For example, in United States v. Noriega (1992), the U.S. District Court for the Southern District of Florida held that Noriega is a prisoner of war [55] and therefore recognized that he enjoys his right to religious practice in accordance with the provisions of these articles.

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[54] Geneva Convention (III) relative to the Treatment of Prisoners of War, 75 UNTS 135, 12 August 1949 (entered into force 21 October 1950), Art. 35.

[55] United States District Court for the Southern District of Florida, *United States v. Manuel Antonio Noriega*, 808 F. Supp. 791 (S.D. Fla.), 8 December 1992, available at: https://law.justia.com/cases/federal/district-courts/FSupp/808/791/1478219/.

In a similar fashion, Article 86 of the Fourth Geneva Convention[56] stipulates that the detaining power must provide the necessary premises for the exercise of the freedom of religion and belief for the interned persons by way of enabling suitable religious services.[57] The practical implementation of the article is measured through the ICRC's records of state practices in places of detention. The updated ICRC commentary on the Fourth Geneva Convention sets out the records of states' practice under the Convention.[58] The commentary indicates that, for the most part, the article has been interpreted to encompass the provision of premises for the practice of religion, even if they were not used for that purpose, without discrimination.[59]

In practice, the obligation that the detaining power must provide premises for religious practice is considered fulfilled where the premises were made available in a non-discriminatory manner, even if the premises are not used for that purpose. For instance, the Commentary suggests that a premise may not inherently be established for a unique use of religious service, but must be capable of making the necessary modifications to enable the provision of such service.[60] This means that the premises can be used for several other functions, but should be sufficiently capable of accommodating all

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[56] Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287, 12 August 1949 (entered into force 21 October 1950). This Convention is dedicated to the protection of civilians in armed conflict and applies in particular to situations of occupation, where it regulates the treatment of protected persons under the authority of a Detaining or Occupying Power, including guarantees related to religious practice.

[57] *Ibid.,* Art. 86.

[58] International Committee of the Red Cross (ICRC), *Commentary on the Fourth Geneva Convention: Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, 2nd ed., Cambridge University Press, Cambridge, 2020, commentary on Art. 86.

[59] *Ibid.*

[60] ICRC, above note 61, Art. 93.

detained religious practitioners and provide a minimal basis for physical suitability, cleanliness, spaciousness, and ability to withstand weather, whether the premises be a room or a large tent.

Indeed, this article has often been interpreted to recognize the inherent constraints of detention settings and to emphasize the provision of opportunities for religious observance, rather than mandating its actual observance. For example, compromises on the lack of premises were found whereby detaining powers would supply captives with the essential materials to construct or modify existing sites for religious exercise or alternatively seek material or construction assistance from relief organizations. In this light, pursuing active preventive measures to allow detainees to practice FoRB is not a severe breach of the Fourth Convention. However, in combination with adverse effects on a detainee's spiritual, physical, or mental wellbeing, a violation of Article 86 may amount to an 'inhuman treatment' breach under Article 147, and relevant aspects of an internee's cultural background according to the 2002 ICC 'Elements of Crimes' may be used in assessing such failure to abide by Article 86 as a war crime.[61]

A parallel logic underlies other sources on detention under IHL: Article 93 of the Fourth Geneva Convention accords internees the right to exercise religious rites, including attendance at religious services, provided compliance with the disciplinary routine set by the detaining authorities is maintained.[62] This, alongside the rules set out in the ICRC Customary Law Study Rules 104 and 127, which mandate respect for religious beliefs and practices and persons *hors de combat*

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[61] *Ibid.*, Art. 86.
[62] Geneva Convention IV, above note 59, Art. 93.

and detainees,[63] affirms that FoRB is protected under the premises of access, non-discrimination, and humane treatment, not the actual realization of the right. As a result, it can be said that the external dimension of FoRB—or alternatively, the manifestation of religion in places of internment—is inherently linked to several provisions of protection under IHL.

Protection Through Cultural and Religious Property Regulations

IHL not only provides protection for individuals but also for cultural and religious property, where protection is afforded in text, and religious property is defined as cultural property in practice. This protection has deep roots in the law of armed conflict, notably in Article 27 of the 1907 Hague Regulations, which requires parties during sieges and bombardments to take all necessary steps to spare buildings dedicated to religion, charity, education, the arts and sciences, as well as historic monuments and hospitals, provided they are not used for military purposes. This early provision establishes both a principle of distinction and a conditional immunity, whereby protection is contingent upon the civilian character of such sites.[64] Moreover, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict indicates that "cultural property" in Article 1 also includes property of a religious nature. In practice, this provision was clearly affirmed in the ICTY Prosecutor v. Miodrag Jokić and Prosecutor v. Pavle Strugar cases on the bombardment of Dubrovnik's Old Town, where religious monuments were recognized as "cultural property" under Article 1 and thus protected by Article 3(d) of the ICTY Statute, which stipulates that the

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[63] J.-M. Henckaerts and L. Doswald-Beck, above note 22, Rules 104 and 127.
[64] Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907 (entered into force 26 January 1910), Art. 27.

International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include but not be limited to: [...] (d) seizure or destruction, or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science. [65]

Similarly, the Prosecutor v. Prlić *et al.* case affirms that the Old Bridge of Mostar, due to the value accorded to it by the Muslim community,[66] along with other religious sites, is afforded the same protection. [67] Moreover, the Additional Protocol to the Geneva Conventions provides substantial grounds to study the extent to which IHL protects FoRB. Article 53 addresses the protection of cultural objects and places of worship.[68] It prohibits all acts of hostility against historic monuments and places of worship that constitute cultural heritage, the use of such objects for military purposes, or their use as objects of reprisals.[69] Article 3 of Additional Protocol I was used in the ICC – Prosecutor v. Al Mahdi for the destruction of mausoleums and mosques in Timbuktu. Indeed, the perpetrator was found guilty of intentionally attacking religious and cultural sites in Timbuktu.[70] The sentence issued in the case aligns with the provisions of Rule 38 of the ICRC Customary Law Study [71], as well as the 1954 Hague Convention for the Protection of Cultural Property in the Event of

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[65] Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, UN Doc. S/RES/827, 25 May 1993 (as amended to 29 September 2008), Art. 3(d), available at: https://ihl-databases.icrc.org/en/ihl-treaties/icty-statute-1993/article-3.
[66] ICRC Casebook, *"ICTY, The Prosecutor v. Prlić et al."*, ICRC, Geneva, 2024, available at: https://casebook.icrc.org/case-study/icty-prosecutor-v-prlic-et-al.
[67] *Ibid.*
[68] Geneva Convention IV, above note 59, Art. 53.
[69] *Ibid.*
[70] ICJ, *Prosecutor v Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15, Judgment and Sentence, 27 September 2016, paras 30–46, 99–109.
[71] J-M. Henckaerts and L. Doswald-Beck (eds), above note 22, Rule 38.

Armed Conflict.[72] Together, these cases serve as an effective institutionalization of the use of CIHL and the Hague Convention as a basis for legal action against the desecration of religious sites and, by extension, FoRB.[73]

Structural Limits of Protection of FoRB: Derogations and Military Use

Legality of Derogations on FoRB

Article 4 of the ICCPR stipulates that in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.[74] Therefore, international law does provide grounds for suspending some human rights obligations during emergencies, such as health emergencies, security crises, or war.

It is also clear that the state's power to declare a state of emergency and adopt exceptional measures is not absolute but is restricted by several conditions and standards. First, the standards of

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[72] Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 240, 14 May 1954 (entered into force 7 August 1956), available at: https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention.
[73] J.-M. Henckaerts and L. Doswald-Beck, above note 22, Rule 38.
[74] ICCPR, above note 14, Art. 4.

necessity and proportionality [75] are essential, as these restricting measures are limited to those necessary to face impending danger and cannot extend beyond this condition. Second, the covenant affirms that these measures are temporary and must end when the threat that warrants them ends, and that these measures cannot become a reality that consolidates the restriction of rights and freedoms.[76] Third, the covenant requires the state to publicly announce the state of emergency and inform the UN Secretary-General of the measures adopted, thereby providing grounds for establishing an international monitoring mechanism and enhancing transparency regarding government measures.[77] Hence, this practice remains highly limited and strictly exceptional, as the Human Rights Committee emphasizes that derogations are exceptional and temporary. They are measures strictly required by the prevailing situation and cannot be used to justify violations of peremptory norms or humanitarian law.[78]

More importantly, Article 4 explicitly defines the rights that cannot be restricted. This includes the right to life; the prohibition of torture or cruel, inhuman or degrading treatment or punishment; the principle of criminal legality (the non-retroactivity of criminal laws); in addition to freedom of thought, conscience and religion in its internal dimension, that is, the right to adopt or change one's belief

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[75] Human Rights Committee, General Comment No. 29: States of Emergency (Article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 4, available at: https://digitallibrary.un.org/record/451555?v=pdf#files.

[76] ICCPR, above note 14, Art. 4 (1). Measures must be "strictly required by the exigencies of the situation" and temporary; *see also* UN Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 2 (derogations must not become permanent).

[77] *Ibid.,* Art. 4 (3). This provision specifies the obligation to proclaim an emergency and notify the UN Secretary-General; *see also* UN Human Rights Committee, *General Comment No. 29*, above note 78, para. 17 (noting that notification ensures international scrutiny).

[78] ICCPR, above note 14, Art. 4(2).

without any external interference.[79] Several of these non-derogable guarantees correspond to *jus cogens* norms, or peremptory norms, whereby non-derogability and jus cogens have different implications.[80]

The Human Rights Committee has clarified that Article 18 is included among non-derogable rights partly because it can never be necessary to derogate from it, not because it is peremptory by necessity. Therefore, the internal dimension of FoRB is considered a non-derogable right under the ICCPR, though not identified as *jus cogens*.[81] These guarantees highlight that the covenant aims to strike a delicate balance between protecting the state and society from exceptional dangers and safeguarding fundamental freedoms, which are the essence of human dignity.

Therefore, FoRB, especially in its internal dimension, has an exceptional position that protects it from even the most threatening conditions. This principle reflects a much deeper legal understanding that freedom of conscience is the building block of one's identity and dignity and cannot be subject to state-imposed restrictions or pressures, even in exceptional circumstances.[82]

Legality of Targeting of Religious Buildings Used for Military Purposes

The legality of targeting religious buildings under IHL must be assessed through its core principles (distinction, proportionality, imperative military necessity, precautions in attack and humanity)

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[79] General Comment No. 29, above note 78, para. 11.
[80] *Ibid.,* Art. 4 (3).
[81] General Comment No. 29, above note 78, para. 11.
[82] General Comment No. 22, above note 1, para. 1.

which together structure how protection is afforded to objects of religious significance in armed conflict. The principle of distinction requires that places of worship, as civilian objects, be protected from attack unless and for such time as they are used for military purposes.[83] Proportionality further constrains attacks by prohibiting those expected to cause excessive incidental harm to civilian objects, including religious sites, in relation to the anticipated military advantage. [84] Imperative military necessity permits only those measures required to achieve a legitimate military objective but does not override the obligation to respect protected objects where feasible alternatives exist.[85] Finally, the principle of humanity imposes overarching limits aimed at reducing suffering [86] and preserving

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[83] Additional Protocol I, above note 20, Arts 48, 52(1)–(2) and 53Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Arts 48, 52(1) –(– (2) and 53; J.-M. Henckaerts and L. Doswald-Beck, above note 22,Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: Rules, Cambridge University Press, Cambridge, 2005, Rules 8, 9 and 38.

[84] Additional Protocol I, above note 20, Art. 51(5)(b)Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 51(5)(b); J.-M. Henckaerts and L. Doswald-Beck, above note 22,Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: Rules, Cambridge University Press, Cambridge, 2005, Rule 14.

[85] Convention for the Protection of Cultural Property, above note 75, Art. 4(2)Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 240, 14 May 1954 (entered into force 7 August 1956), Art. 4(2); Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 2253 UNTS 172, 26 March 1999 (entered into force 9 March 2004), Art. 6(a); J.-M. Henckaerts and L. Doswald-Beck, above note 22, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: Rules, Cambridge University Press, Cambridge, 2005, Rule 38.

[86] Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, "Resolution 22: Follow-up Regarding Prohibition or Restriction of Use of Certain Conventional Weapons", 9 June 1977, in *Protocols Additional to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 2010, p. 108, available at: https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0321.pdf (accessed in May 2026).

cultural and religious life.[87] As noted in the literature, these principles do not create absolute protection for religious sites; rather, they condition their protection on their civilian character and use, thereby embedding religion within broader regulatory frameworks governing hostilities rather than recognizing it as a standalone protected interest.[88]

Along similar lines, there is a body of literature that goes a step further in defining cultural and religious property. The study of Abtahi, "The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia" (2001), emphasizes the tension among imperative military necessity, the targeting of a militarily important and effective site, and the duty to protect cultural property.[89] This is important as military commanders often justify targeting cultural property on the basis of mere military necessity or by justifying (most of the time without viable proof) that the buildings were used for military purposes, which is mostly hard to prove after the building itself has been targeted. Even if treaty law explicitly states that they should not be attacked except when it is an imperative of the army, which is clearly the exception, not the first choice when other routes are available.[90] This does not constitute a direct limitation on FoRB as a standalone right but rather reflects the conditional nature of protection afforded to religious sites under IHL, which depends on their civilian character. Once such sites are used for military purposes, they may lose their protected status and become lawful military objectives.

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[87] J-M. Henckaerts and L. Doswald-Beck (eds), above note 22, Rule 38.
[88] Marco Sassòli, above note 28; Hirad Abtahi, above note 29, pp. 1–32; J.-M. Henckaerts and L. Doswald-Beck (eds), above note 20, Rules 9 and 38.
[89] Hirad Abtahi, above note 29, pp. 1–32.
[90] *Ibid.*

Indeed, the sole legal basis for a strike on a religious site is embedded in its justification under IHL as a legitimate military goal. According to Rule 38 (B) of CIHL, "imperative military necessity" is the only exception as to when cultural heritage (including religious heritage) may be subject to an attack, which was codified by the 'Hague Convention for the Protection of Cultural Property' ratified by 111 States.[91] Indeed, the Second Protocol to the Convention includes imperative military necessity as a legitimate basis for waiving the prohibition on using cultural property as a military objective, provided that no feasible alternatives to achieve an equivalent advantage are available and that advance warnings are provided when possible.[92]

Nonetheless, this language leaves room for interpretation regarding what constitutes military necessity, and places states and armed groups as the actors expected to exercise agency in assessing the necessary precautions and proportionality. Still, these obligations are often not prioritized in states' calculations when engaging in a full-scale armed conflict. However, the relevant standard is not ordinary or "mere" military necessity, understood broadly as the usefulness of a measure in advancing military operations. The requirement of imperative military necessity establishes a substantially higher threshold: the cultural property must, by its function, have become a military objective, the waiver may operate only for as long as that status persists, and no feasible alternative must exist for obtaining a similar military advantage. [93] Accordingly, the term "imperative"

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[91] J.-M. Henckaerts and L. Doswald-Beck, above note 22, Rule 88.
[92] *Ibid., Rule 88*; Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 240, 14 May 1954, Arts. 4 (Para.2), 6 (entered into force 7 August 1956).
[93] Convention for the Protection of Cultural Property, above note 75, Art. 4(2); Second Protocol to the Hague Convention, above note 88, Art. 6(a); Jean-Marie Henckaerts, "New Rules for the Protection of Cultural Property in Armed Conflict", *International Review of the Red Cross*, Vol. 81, No. 835, 1999, pp. 593–620; J.-M. Henckaerts and L. Doswald-Beck

narrows commanders' discretion and makes attack an exceptional measure of last resort rather than one justified by general operational convenience.

Protection of Religious Sites by Parties and Occupying Powers

The protection of religious and cultural sites also imposes obligations on the party controlling them.[94] Such parties must take feasible measures to safeguard cultural property against the foreseeable effects of hostilities and must refrain from using the property or its immediate surroundings in ways likely to expose it to destruction or damage.[95] More specifically, the Second Protocol requires parties, to the maximum extent feasible, to remove movable cultural property from the vicinity of military objectives or provide adequate in situ protection, and to avoid locating military objectives near cultural property.[96] These obligations clarify that the protective regime is not limited to restraining the attacker: the party controlling the site must also reduce the risk that religious property will become exposed to

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(eds), above note 22, Rule 38. Convention for the Protection of Cultural Property, above note 75, Art. 4(2),Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: Rules, Cambridge University Press, Cambridge, 2005, Rule 38.

[94] Convention for the Protection of Cultural Property, above note 75, Art. 3.

[95] Second Protocol to the Hague Convention, above note 88, Art. 5; Convention for the Protection of Cultural Property, above note 754, Art. 4(1). Second Protocol to the Hague Convention of 1954, above note 96, Art. 5 and Convention for the Protection of Cultural Property, above note 75, Art. 4(1).

[96] Second Protocol to the Hague Convention, above note 88, Art. 5(a); Additional Protocol I, above note 20, Art. 58(a)–(b); J.-M. Henckaerts and L. Doswald-Beck (eds), above note 22, Rules 22–23.Second Protocol to the Hague Convention, above note 88, Art. 5(a) and Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 58(a)–(b); J.-M. Henckaerts and L. Doswald-Beck, above note 22, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), above note 96, Rules 22–23.

attack through the placement or continued presence of military objectives nearby.[97]

Additional obligations arise in occupied territory. The Occupying Power must support the competent national authorities in safeguarding and preserving cultural property and, where those authorities cannot act, take the necessary protective measures in close cooperation with them.[98] It must also prohibit, prevent and, where necessary, stop theft, pillage, misappropriation and vandalism directed against cultural property. [99] The applicable occupation regime further prohibits the seizure, destruction or willful damage of institutions dedicated to religion and requires the Occupying Power to prevent illicit export, removal, transfer of ownership, unauthorized archaeological excavation, and alterations intended to conceal or destroy cultural, historical or scientific evidence. [100] These rules therefore protect religious sites not only against military attack, but also against appropriation, looting, physical alteration and the erosion of their religious and cultural identity during occupation. [101] Nonetheless, the upcoming case study on the Levant region will illustrate how the destruction of cultural property often goes unchecked.

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[97] J.-M. Henckaerts and L. Doswald-Beck, above note 22, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), above note 96, Rule 38.
[98] Convention for the Protection of Cultural Property, above note 75, Art. 5; Second Protocol to the Hague Convention, above note 88, Art. 9.
[99] Convention for the Protection of Cultural Property, above note 75, Art. 5(1).
[100] Ibid, Art. 5(2) and 4(3);
[101] Convention for the Protection of Cultural, Arts 4(3) and 5; Second Protocol to the Hague Convention, above note 88, Art. 9.

When Religion Becomes the Target: Genocide and Identity Destruction

While the targeting of religious buildings may be justified under IHL when they lose their civilian character, such acts may also fall within international criminal law when they form part of a broader pattern of targeting directed against a religious group. In such cases, the destruction of religious sites may contribute to the crime of persecution, [102] which encompasses severe deprivations of fundamental rights on discriminatory grounds, including religion, or, in more extreme circumstances, may be indicative of genocidal intent when aimed at the destruction of a religious group as such. [103] As Antonio Cassese explains, persecution "consists of a gross or blatant denial of fundamental rights reaching the same level of gravity as other crimes against humanity," thereby capturing patterns of identity-based violence that may not always involve direct physical destruction but nonetheless aim at the marginalization or exclusion of a protected group and their identity.[104] Identity-based persecution and crimes against humanity in general can also occur in a peaceful context, extending their criminality beyond the landscape of armed conflict. [105] This highlights that, beyond the legality of individual attacks under IHL, the broader context and intent behind such acts are central in determining their qualification under international criminal law.

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[102] Rome Statute, above note 25, Arts. 6, 7. Persecution is defined as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group, including on religious grounds.
[103] *Ibid.,* Art. 6; *see also* "They came to destroy": ISIS crimes against the Yazidis, UN Doc. A/HRC/32/CRP.2, 15 June 2016,
[104] Antonio Cassese, *International Criminal Law*, 2nd ed., Oxford University Press, Oxford, 2008.
[105] Elements of Crimes, UN Doc. PCNICC/2000/1/Add.2, 9 September 2002, para. 3, available at: https://www.un.org/fr/node/218413; and Rome Statute, above note 25, Art. 7.

The most extreme manifestation of violations against FoRB in armed conflict is the targeting of religious identity itself through genocide (while genocide can be committed in peaceful contexts) and identity destruction. While the preceding sections demonstrated how IHL provides fragmented and indirect protection for elements of FoRB through humane treatment, detention regimes, and protection of cultural property, this section shifts the focus to situations in which religion is not merely affected by conflict but becomes the very basis of violence. This reading starts by engaging with ICL, particularly the Genocide Convention and the Rome Statute, to illustrate how religion is explicitly recognized as a protected group marker, thereby addressing a dimension of FoRB that IHL alone does not fully capture. In doing so, it complements the broader argument of this article: that the protection of FoRB in armed conflict emerges from the interaction of multiple legal regimes, each addressing different facets of the right, with ICL playing a critical role in safeguarding its collective and identity-based dimensions.

The Religious Group as a Protected Category

The Genocide Convention does not mention FoRB, but it is possible to deduce provisions within the convention that could be applied to FoRB. The Genocide Convention established that the most extreme cases of the violation of religious freedom during armed conflict are manifest in the act of genocide, especially that which is perpetrated with the intention of destroying a religious group as such. Indeed, as mentioned by the special rapporteur on FoRB, targeting a religious group during conflict is also part of systematic discriminatory efforts to destroy that specific group, removing any individual feature specific to religion and belief, transforming belief into a stamp by

which human rights are either granted or withheld.[106] In this regard, FoRB is not protected as an autonomous right, but rather through the protection of religious groups as collective entities whose existence is threatened. The protection of civilian religious groups and individuals includes access to medical assistance and attendance on the battlefield as postulated in Article 15 of the First Additional Protocol to the Geneva Conventions, extending the inclusion of religious groups to medical care.[107] Accordingly, international criminal law captures dimensions of religious destruction that extend beyond individual harm, addressing situations in which violence is directed against the continued existence of a religious group as a collective entity.

Another legal route is Article 6 of the Rome Statute, which defines genocide to include acts intended to destroy, in whole or in part, a religious group. This definition is also set out in Article 2 of the Genocide Convention.[108] For example, the ICTY Prosecutor v. Radislav Krstić (2004) case recognized the Bosnian Muslims of Srebrenica as a protected religious group targeted for partial destruction.[109] Another instance is that of the German conviction for the Yazidi genocide, a case that was brought before the Higher Regional Court in Frankfurt[110] on the case of the ISIS campaign against the Yazidi population. Prosecution reiterated the position on

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[106] Report of the Special Rapporteur on Freedom of Religion or Belief on the Relationship between Freedom of Religion or Belief and Discrimination, UN Doc. A/HRC/40/58, 2019, paras 9–14.
[107] AP I, above note 22, Art. 15(5).
[108] Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, 9 December 1948 (entered into force 12 January 1951), Art. 2, available at: https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948/article-2.
[109] International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgment (Appeals Chamber), 19 April 2004, paras 6–23.
[110] Amnesty International, "Germany/Iraq: World's first judgment on crime of genocide against the Yazidis", 30 November 2021, available at: https://www.amnesty.org/en/latest/news/2021/11/germany-iraq-worlds-first-judgment-on-crime-of-genocide-against-the-yazidis/.

destruction just as strongly, arguing that the intention was to eliminate the religious memory of these people. Similarly, the Human Rights Council's 2016 report "They Came to Destroy" concluded that the campaign pursued by ISIS intended to destroy the Yazidi based on their religious identity.[111]

Indeed, in accordance with the analysis provided by Ambos (2009), and based on the Court's qualification of the case as one of genocide and crimes against humanity,[112] ISIS intended to destroy the spiritual and religious existence of the Yazidis, and not only to destroy the people physically.[113] This broader understanding of genocidal intent (encompassing both physical, biological, and cultural destruction)[114] reveals a direct intersection between genocide law and the protection of the collective dimension of FoRB. In this sense, these instances illustrate the ultimate violation of FoRB in armed conflict. While genocide law does not explicitly regulate FoRB as a standalone right, genocidal acts inherently entail the destruction of both the internal and external dimensions of belief, including the ability to hold, practice, and transmit religion across generations. Accordingly, FoRB emerges here as a protected interest embedded within the prohibition of genocide, rather than as an independently articulated norm under IHL. This demonstrates that, in the most extreme cases, the protection of FoRB is subsumed within broader prohibitions against the destruction of protected groups, making religion a central factor in both the targeting of victims and the legal characterization of the crime.

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[111] Human Rights Council, *"They Came to Destroy": ISIS Crimes against the Yazidis*, above note 106, paras 202–209.

[112] Higher Regional Court of Frankfurt am Main (Germany), *Taha Al-J.*, Case No. 5-3 StE 1/20 - 4 - 1/20, 30 November 2021, available at: https://interlinkagesdatabase.icct.nl/case/taha-al-j-5-3-ste-1-20-4-1-20-3-str-230-22.

[113] Human Rights Council, above note 106.

[114] *The Prosecutor v. Radislav Krstić*, above note 112, paras. 3

Destruction of Religious Memory

These instances show that religion is still a fundamental factor in identifying the groups targeted during armed conflicts in the region and that "religious othering" is still used as an umbrella to legitimize systemic violence. This dynamic reflects the transformation of religion from a protected belief system into a marker of vulnerability, where identity itself becomes the basis for targeting.[115] The danger of this pattern lies not only in the fact that it targets individuals but also in its aim to erase an entire group by destroying its religious institutions, scattering its members, and removing their historic legacy from their region. Religious genocide, therefore, becomes both a mass murder crime and a crime of erasing culture and religion at the same time. In this sense, the destruction of religious sites, symbols, and practices operates as a deliberate strategy of identity erasure, directly undermining the collective dimension of FoRB. Killing in this case is therefore a particularly important aspect when committed on the basis of religion, as it constitutes the most extreme violation of FoRB, representing the ultimate form of coercion against belief and identity. Article 18 of the ICCPR prohibits any form of coercion that impairs the freedom to have or adopt a religion or belief, a protection that the Human Rights Committee has indicated includes threats or acts of physical force intended to compel individuals to abandon, change, or conceal their beliefs.[116]

When religious groups are subject to such violence, international criminal law affords an additional layer of protection through the prohibition of genocide, defined as acts committed with

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[115] Report of the Special Rapporteur on freedom of religion or belief, above note 91, Section V. A.
[116] General Comment No. 22, above note 1, Art. 18.

the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.[117] This legal framework captures not only physical destruction, but also patterns of persecution that aim to dismantle the social and spiritual fabric of the group. In this sense, religiously motivated killing functions simultaneously as a mass atrocity crime and as an instrument to erase religious identity and collective memory. Criminalizing persecution and genocide based on religious grounds protects individuals as well as religious communities, safeguarding FoRB in both its individual and communal dimensions.[118] Accordingly, the protection of FoRB in such contexts is realized not through the direct articulation of the right itself, but through the prohibition of acts that seek to annihilate the very conditions that make its exercise possible.

FoRB in Times of Conflict in Iraq, Lebanon, Syria, and Palestine: Case Study

This section situates the theoretical and legal analysis developed above within concrete conflict settings in the Levantine region to examine how, in practice, FoRB is affected and protected (or not) during armed conflict. While the preceding sections established that FoRB is only partially and indirectly protected under IHL and, more explicitly, under ICL in extreme cases, this section evaluates how these fragmented protections operate in practice when confronted with real patterns of violence. For that reason, the Levantine region provides a particularly revealing context for such an inquiry, as religious identity frequently operates not only as a matter of personal belief but also as a central marker of collective belonging, social

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[117] Genocide Convention, above note 93, Art. II.
[118] Rome Statute, above note 25, Art. 7(1)(h); *see also* H. Bielefeldt, above note 13, pp. 262–266; Genocide Convention, above note 111, Art. II.

organization, and political positioning. In such contexts, religion is often intertwined with ethnicity, territory, and power structures, making it a recurring basis for both targeting and exclusion during armed conflict.

This section, therefore, does not aim to provide an exhaustive overview but rather to illustrate recurring patterns through selected case studies, including Iraq, Syria, Lebanon, and Palestine. In doing so, the section reinforces the central argument of this article: that while international law offers multiple entry points for the protection of FoRB during armed conflict, these protections remain fragmented, context-dependent, and often insufficient in the face of the realities of contemporary warfare.

Destruction of Religious Property and Cultural Heritage

Because of the religious diversity in the Levant region, it acts as an important area for studying violations against minorities during times of conflict, particularly because of the threat patterns posed by to religious groups who, in many cases, are minorities within a region of other minorities. One of the most common examples is the Yazidis, whose rites and social cohesion, for example, are often linked to their ability to express their religious freedom through practices associated with their shrines.[119] This means that the destruction of a religious site constitutes more than property destruction; it is a structural violation of the conditions that enable FoRB.

[119] Melissa Gronlund, "Ancient Yazidi Heritage Still Under Threat after ISIS Genocide", *The Art Newspaper*, 5 September 2023, available at: https://www.theartnewspaper.com/2023/09/05/ancient-yazidi-heritage-still-under-threat-after-isis-genocide.

For instance, the 2014 Islamic State of Iraq and the Levant (ISIL) attacks on Yazidis in Northern Iraq constituted a systematic aggression, demolishing 68 shrines and several sacred tombs.[120] This constitutes a deliberate campaign not only to eradicate Yazidi religious property and limit the exercise of FoRB by use of means that cannot be justified under broader standards of military necessity and in complete opposition to IHL, war crimes, genocide, and crimes against humanity laws. Nonetheless, Iraq is not a party to the Rome Statute of the ICC, yet individuals responsible for such crimes may still be prosecuted, including through domestic proceedings or by third states exercising extraterritorial jurisdiction. Therefore, the universal jurisdiction aspect of IHL can still be applied to uphold FoRB in this scenario, since other ICC member states may prosecute offenders who are nationals of those states for crimes committed.[121] In this sense, while legal routes still exist for upholding IHL in the interest of safeguarding FoRB in times of conflict, some constraints remain despite the case's inherent normative aspects.

More recent cases can also be found in the Syrian conflict. Effectively, the siege and indiscriminate bombing campaigns enforced by the pro-government forces and Syrian allies in 2026-2017, during the civil war, resulted in extensive damage to and destruction of several religious sites, including several Mosques and Churches, including the 'Great Umayyad Mosque'. According to the UNESCO preliminary assessment, around 60% of Aleppo had experienced

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[120] Global Centre for the Responsibility to Protect, *Cultural Heritage and Mass Atrocities: Crimes Against Yazidis and Uyghurs*, New York, 2021, https://www.globalr2p.org/resources/cultural-heritage-and-mass-atrocities-crimes-against-yazidis-and-uyghurs/.
[121] Antonio Cassese, above note 107; *see also* Cedric Ryngaert, *Jurisdiction in International Law*, 2nd ed., Oxford University Press, Oxford, 2015, pp. 120–129.

severe damage, and 30% was completely destroyed.[122] As a result, an 'Independent International Commission of Inquiry' was tasked with investigating crimes under IHL and IHRL and submitted a report to the Human Rights Council.[123] While the Commission was established to investigate a broad range of violations committed during the conflict, its findings included extensive documentation of the destruction of religious sites by aerial bombardment. The report validated the destruction of religious sites by aerial bombardment and noted the complete destruction of the Salah al-Din district mosque,[124] while noting that no military presence existed in the majority of reviewed cases[125], which annuls claims of military necessity. Also, it concluded that the Syrian Arab Republic, not having ratified the Second Additional Protocol to the Geneva Conventions of 1977, which applies to armed conflicts in non-international settings, was still responsible for upholding Customary IHL, which applied in this case.[126] This means that, once again, while the Geneva Conventions and their Additional Protocols cannot be referred to, IHL can still be implicitly invoked to protect FoRB in internal conflict.

Another important example is the 2023–2024 Israeli war on Lebanon, which resulted in the severe damage or destruction of more than 30 religious buildings. A statement by the UN Human Rights Office stressed that military proportionality and special care to protect religious sites must be observed in the absence of a context of military

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[122] UNESCO World Heritage Centre, "UNESCO reports on extensive damage in first emergency assessment mission to Aleppo ", UNESCO, Paris, 2017, available at: https://whc.unesco.org/en/news/1619.
[123] UNHRC Res. 36/20, 29 September 2017, p. 4.
[124] *Ibid.*, p. 11.
[125] *Ibid.*, p. 20.
[126] *Ibid.,* p. 25.

necessity.[127] Yet, a report by Amnesty International found explicit Israeli bulldozing of Mosques following the end of combat, and in the absence of military targets or viable proof that these buildings were used for military purposes, even if they have been accused as such for the legitimization of their targeting. This would therefore constitute a violation of IHL rules against the destruction of cultural property, which could amount to a war crime if recklessly or intentionally performed. Yet this case illustrates that those religious protections and, by extension, FoRB can be overridden and diluted in light of state forces acting under ambiguous terms in the name of military objectives.

Violations of FoRB under Occupation: Access, Worship, and Control

Perhaps, more poignant cases at the intersection of IHL and FoRB have been recorded in Palestine, particularly in Gaza and East Jerusalem. In a 2025 Commission of Inquiry report on 'Occupied Palestinian Territory, including East Jerusalem, and Israel', it was found that more than 50% of all cultural and religious sites in Gaza were damaged through shelling and airstrikes, while Israel had targeted places of worship used to serve refugees, including women and children.[128] According to the report, the attacks extended over several buildings and heritage sites across Palestinian territories, including in the West

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[127] United Nations Lebanon, "Lebanon: UN Human Rights Office alarmed by damage and destruction of buildings dedicated to religion", Beirut, 2024, available at: https://lebanon.un.org/en/282565-lebanon-un-human-rights-office-alarmed-damage-and-destruction-buildings-dedicated-religion.

[128] UN Geneva, "Israeli actions in Palestinian territories constitute war crimes, human rights violations - UN commission", Geneva, 2025, available at: https://www.ungeneva.org/en/news-media/news/2025/06/107472/israeli-actions-palestinian-territories-constitute-war-crimes-human; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/59/26, 6 May 2025, paras 42–60.

Bank and East Jerusalem, whereby "The sheer number of attacked sites indicates a clear disregard for the Palestinian people's religious belief." The report also found that all 10 religious sites in the strip constituted civilian objects under IHL, more specifically the 'Convention for the Protection of Cultural Property in the Event of Armed Conflict', which Israel was a member of. It noted that the 'Great Omari Mosque,' the 'Church of Saint Porphyrius,' the 'Saad al-Ghafari Mosque,' and the 'Ihya al-Sunna Mosque' were unjustifiably destroyed due to the absence of a clear military use, with the last 3 strikes resulting in the killing of 200 internally displaced people who used the sites for shelter, thus constituting a war crime, and by extension a major attack on FoRB. Similarly, the commission relayed that in cases where bulldozers and explosive demolitions were undertaken by security forces, the state was liable for committing war crimes implicitly against FoRB due to the deliberate and intentional targeting of historical and religious buildings.[129]

Other forms of hostilities taken against FoRB were also recorded in East Jerusalem and the West Bank, where Palestinians were severely restricted or completely blocked from accessing religious and cultural sites, which the commission noted as a violation of both IHL and IHRL, and explicitly mentions "the right of the Palestinian people to enjoy their own culture and the freedom of religion and belief." [130] Additionally, it was documented that militarized incursions were often employed in 'Haram al-Sharif/Temple Mount' in East Jerusalem with the aim to harass both religious figures and worshippers, which "resulted in severe restrictions of freedom of religion". These instances were also identified by the commission as breaches of IHL and IHRL, given that

[129] *Ibid.*
[130] *Ibid.*

the occupying power fell short in its obligations to respect religious sites and safeguard the religious beliefs, customs, and practices of protected persons.

Additionally, reports provided in prisons in the OPT have shown that the captives have not been allowed to know the timing of *Fajr* and *Maghreb* during Ramadan, prohibiting them from proper fasting.[131] In addition, on his Twitter, a lawyer said that when he was attending a court session for a prisoner from inside the OPT, held in Gilboa Prison, before an Israeli court, he asked a detainee, "How's fasting going for you?"; he looked at him and said, "Today is Ramadan? No one told us it started!"[132]

Finally, for the first time in the history of Christianity, Israel has closed the Tomb of Christ indefinitely. They have prohibited Holy Week and Easter services and canceled Sunday services. [133] Such measures amount to a serious interference with the external and collective dimensions of FoRB, as they prevent Christians from accessing one of the holiest sites in Christianity during the most sacred period of the liturgical calendar. The closure is particularly significant for Christians worldwide who await the Holy Fire ceremony on Easter Saturday, not only as an act of worship, but as a

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[131] Commission of Detainees and Ex-Detainees Affairs, "Ofer Prison administration deprives Palestinian detainees of properly observing fasting during Ramadan", *Instagram*, 6 March 2026, available at: https://www.instagram.com/p/DVEtn7oD5Bu/; *see also* Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/59/26, 6 May 2025, paras 42–60.

[132] Khaled Mahajna, "[Post about restrictions on Palestinian detainees' religious practices during Ramadan]", *X*, March 2026, available at: https://x.com/KhaledMahajna/status/2024257055591174196.

[133] Stacy Liberatore, "Site of 'Jesus' crucifixion' forced to shut for Holy Week in unprecedented move tied to biblical prophecies of the Antichrist", *Daily Mail*, 18 March 2026, available at: https://www.dailymail.com/sciencetech/article-15657581/jesus-crucifixion-site-holy-sepulchre-closure.html.

ritual of deep communal and spiritual importance linked to the celebration of the Resurrection. In this sense, restricting access to the Church of the Holy Sepulcher during Holy Week affects not only local worshippers but also the broader global Christian community whose religious observance is symbolically and liturgically tied to that site.

Considering these violations, the investigation thus concluded that the conduct of Israeli authorities was indicative of intent to prevent Palestinian communities from practicing their freedom of religion.[134] This case thus supports this research paper's primary claim by identifying FoRB as a key element protected under IHL obligations. What this case further demonstrates is that, in situations of occupation, the regulation of movement and access becomes a central mechanism through which FoRB is effectively shaped or restricted. Rather than direct destruction alone, control over entry to religious sites and interference with worship practices operate as forms of indirect limitation on religious life, raising questions about how far security-based measures may extend without undermining the substance of the right. In this respect, the case highlights a tension not only between legal frameworks, but between formal protection and administrative practices on the ground, where restrictions justified under security or public order considerations may, in effect, result in sustained interference with religious practice.

Similar instances were reported in more recent 2026 media content, where reports show that Palestinians were blocked from accessing the Al-Aqsa Mosque during the holy month of Ramadan

[134] Written Statement Submitted by Al Mezan Centre for Human Rights, a Non-Governmental Organization in Special Consultative Status, UN Doc. A/HRC/59/NGO/286, May 2025, p. 17, available at: https://docs.un.org/en/A/HRC/59/NGO/286.

prayers by security forces[135], with internal and external checkpoints being set up. The Mosque, being considered the third-holiest site of Islam, was forcibly closed along with "All holy sites in the Old City of Jerusalem" on March 6th[136] in light of the exchange of fire between Iran, the United States, and Israel, effectively forcing believers to perform prayers on the streets. Moreover, several records indicated that Palestinian Muslim detainees in Israeli prisons were not allowed the freedom to practice their religious beliefs in observance of the holy Ramadan prayers, as they were not informed of the appropriate timings for fasting or fast-breaking meals, and were instead forced to eat "food scraps".[137] The intersection between FoRB and IHL in this instance becomes clear, as such an act directly contradicts Common Article 3 of the Geneva Conventions and Rules 104 and 127 of Customary IHL previously mentioned.

Targeting of Religious Groups and Identity-Based Killings

The targeting of religious groups during armed conflict represents one of the clearest points at which FoRB intersects with identity-based violence. In such cases, religion is not merely affected as a consequence of hostilities; rather, it becomes the very basis upon which civilians are selected, attacked, displaced, or killed. This is

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[135] Euro-Med Human Rights Monitor, *Israel exploits State of Emergency to Dismantle Jerusalem's Religious Status Quo, Imposing a Discriminatory Reality*, Press Release, Geneva, 5 April 2026, available at: https://euromedmonitor.org/en/article/7016/Israel-exploits-state-of-emergency-to-dismantle-Jerusalem%E2%80%99s-religious-status-quo,-imposing-a-discriminatory-reality.

[136] "Israel cancels Friday prayers at Al-Aqsa Mosque amid Iran conflict", *Al Jazeera*, 5 March 2026, available at: https://www.aljazeera.com/news/2026/3/5/israel-cancels-friday-prayers-at-al-aqsa-mosque-amid-iran-conflict.

[137] Aysar Alais, "Israeli Prison Authorities Prevent Palestinian Prisoners from Ramadan Fasting at Right Time: Commission," *Anadolu Agency*, 12 March 2024, available at: https://www.aa.com.tr/en/middle-east/israeli-prison-authorities-prevent-palestinian-prisoners-from-ramadan-fasting-at-right-time-commission/3837079.

especially significant in the Levant region, where religious affiliation often overlaps with communal belonging, territorial presence, and political vulnerability. As a result, attacks directed at religious groups frequently affect both the individual and collective dimensions of FoRB, undermining not only the right to believe and worship, but also the continued existence of communities organized around shared religious identity.

One recent example is the violence against Druze communities in Suwayda, Syria, where armed clashes and abuses were accompanied by sectarian incitement and attacks specifically affecting Druze civilians. Human Rights Watch documented that the July 2025 violence triggered a humanitarian crisis and heightened the risk of reprisals against Druze communities, while UN experts later warned of attacks on Druze communities, including grave abuses against women and girls. [138] These patterns are relevant not only as violations of civilian protection, but also because they show how religious belonging may itself become a basis for targeting in conflict settings. In such circumstances, FoRB is affected not only through restrictions on worship, but through the use of religion as a marker of vulnerability and exposure to violence.[139]

A second illustration is the June 2025 bombing of Mar Elias Church in Damascus, in which at least 20 worshippers were killed and dozens more injured when a suicide attacker detonated explosives inside the church during prayer. Reuters reported that Syrian authorities attributed the attack to Islamic State, and that Christian

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[138] Office of the United Nations High Commissioner for Human Rights, "Syria: UN experts Alarmed by Attacks on Druze Communities, Including Sexual Violence against Women and Girls", Geneva, 2025, available at: https://www.ohchr.org/en/press-releases/2025/08/syria-un-experts-alarmed-attacks-druze-communities-including-sexual-violence.
[139] Human Rights Watch, above note 4.

leaders described it as a serious blow to minorities' sense of security.[140] The significance of this incident lies not only in the attack on a place of worship, but in the direct targeting of worshippers assembled as a religious community. In legal terms, such violence implicates both the protection of civilians under international humanitarian law and the protection of religious communities from identity-based attacks more generally. It thus demonstrates how FoRB violations may arise through the intentional targeting of persons on account of the setting, symbolism, and communal character of their worship.[141]

A more recent example remains the Yazidi genocide in Iraq and Syria. The UN Commission of Inquiry concluded in 2016 that ISIS had committed genocide, crimes against humanity, and war crimes against the Yazidis, specifically because of their religious identity.[142] The report made clear that ISIS sought not only to kill Yazidis, but to destroy them as a religious group.[143] Similarly, later assessments have continued to stress that ISIS systematically targeted Yazidis, Christians, and other religious minorities through killing, forced conversion, enslavement, and the destruction of religious life.[144] These examples show that where religion becomes the ground upon which a group is marked for destruction, FoRB is no longer only a

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[140] "Syrian Christian Leader Chides President over Deadly Church Bombing", *Reuters*, 24 June 2025, available at: https://www.reuters.com/world/europe/syrian-christian-leader-chides-president-over-deadly-church-bombing-2025-06-24/.

[141] "Twenty Killed in Suicide Bombing at Damascus Church", *Reuters*, 22 June 2025, available at: https://www.reuters.com/world/middle-east/blast-rocks-church-syrias-damascus-witnesses-say-2025-06-22/.

[142] Human Rights Watch, above note 106.

[143] United States Commission on International Religious Freedom, *Religious Freedom Challenges in Iraq: 10 Years After ISIS's Genocide*, Issue Brief, Washington, DC, September 2024, available at: https://www.uscirf.gov/sites/default/files/2024-09/2024%20Iraq%20Genocide%20Issue%20Brief.pdf.

[144] United Nations, "ISIL/Da'esh Committed Genocide of Yazidi, War Crimes against Unarmed Cadets, Military Personnel in Iraq, Investigative Team Head Tells Security Council", New York, 2021, available at: https://press.un.org/en/2021/sc14514.doc.htm.

matter of individual belief or access to worship, but of group survival itself. In such contexts, international criminal law becomes particularly significant because it recognizes religion as a protected group marker in the law of genocide and persecution.

Indeed, these cases demonstrate that identity-based killings in the region expose a dimension of FoRB that cannot be captured fully through rules on access, property, or humane treatment alone. They reveal that, in certain conflicts, religion operates as a basis for selection, stigmatization, and elimination. This is precisely where the relationship between FoRB and international criminal law becomes most visible: not because FoRB is expressly codified as a separate offense, but because the destruction of religious communities may amount to persecution, crimes against humanity, or genocide when belief is transformed into a ground for collective targeting.

Summary of Case Studies

Taken together, these cases demonstrate that the interaction between IHRL, IHL, and ICL is not merely cumulative, but structurally differentiated in how each regime engages with FoRB in practice. While IHRL conceptualizes FoRB as a unified right encompassing belief, manifestation, and community life, the case studies illustrate how IHL engages with religion in a fragmented and situational manner, protecting only specific aspects of religious existence through rules on humane treatment, cultural property, and detention. At the same time, ICL becomes relevant where violations reach the level of identity-based targeting, recognizing religion as a protected group marker in the context of genocide and persecution.

In this sense, the patterns observed are not simply parallel violations of multiple legal frameworks but reflect how each regime

captures a different dimension of the same right when applied to concrete situations of conflict. IHRL provides the normative baseline against which restrictions are assessed; IHL governs the conduct of hostilities and imposes context-specific limits; and ICL addresses the most extreme manifestations of violence where religion becomes a basis for collective destruction. However, the case studies also reveal that these regimes do not operate as a fully integrated system in practice. Rather, their interaction produces gaps, particularly in the protection of everyday religious practice and communal life, which often fall below the thresholds of international criminal law while remaining insufficiently addressed under IHL.

Conclusion

This article has demonstrated that FoRB is protected during armed conflict not through a single coherent legal regime, but through a combination of IHRL, IHL, and ICL, each addressing different dimensions of the right, sometimes—if not most of the time—not concurrently. Sufficient evidence exists to suggest that the Geneva Conventions and their Additional Protocols, Customary International Law, the Rome Statute, and the broader body of international legal frameworks provide avenues for the protection of elements of the external dimension of FoRB during armed conflict. Legal protections, including normative rules and principles of CIHL, as well as robust legal frameworks such as those governing detainees and genocide, constitute partial but enforceable safeguards across different aspects of what it means to enjoy that freedom.

Moreover, Article 15 of the First Additional Protocol to the Geneva Conventions extends this protection to the field of battle, including religious personnel. This paper finds that the scope can then be widened to include sacred places and places of worship

recognized as cultural heritage. Humans, ideas, beliefs, places of worship, and significant heritage have all been within the scope of IHL and its umbrella of protection. However, these protections do not operate as a unified system of FoRB protection, but rather as functionally distinct and scattered rules addressing specific manifestations of religion, such as access, dignity, or property.

The theoretical scope of protection is enforced in the ICC system, where instances of punishment have been duly recorded to highlight the extent of its protection. In this regard, ICL plays a complementary role by addressing the most extreme violations, particularly where religion becomes a basis for persecution or genocide, thereby engaging with the collective and identity-based dimension of FoRB that IHL does not fully capture. Punitive measures have been prescribed under the authority of Article 85 of Protocol I, where humanitarian protections are often subject to due ambiguities in the process of turning investigations into mechanisms for legal accountability. Indeed, while legal paths to protect FoRB under IHL during conflict are usually more implicit, they exist and can be made accessible. Yet, the full enforcement of FoRB also rests on deterrence rather than exclusive punishment in some cases, as the available mechanisms rest on overlooked grounds. As such, the protection of FoRB relies not only on the existence of legal norms, but on their interpretation, coordination, and effective implementation across different branches of international law.

In practice, experiences in the Levant region illustrate that FoRB remains one of the most vulnerable rights during wars and crises, as religious individuals and groups continue to be targeted due to their religious group and identity. Despite IHL and IHRL establishing an indirect system and provisions that protect FoRB elements, on-the-ground practices reveal a gap between the text and

reality. From Iraq and Syria, where minority religions were targeted and religious sites destroyed, in addition to Lebanon, to Palestine, where basic principles of freedom of religion and belief, such as access to prayer both in detention and occupied areas, are constrained, religion remained at the heart of conflicts. These patterns confirm that the fragmentation identified at the normative level is reflected in practice, where different dimensions of FoRB, including belief, practice, and communal life, are unevenly protected and often left vulnerable.

Ultimately, this article argues that understanding the protection of FoRB in armed conflict requires moving beyond a single-regime perspective and instead recognizing the fragmented architecture through which international law engages with religion. While this architecture provides multiple entry points for protection, it also generates gaps, inconsistencies, and limitations that become particularly visible in contemporary conflict settings. This requires IHL to remain more receptive to the normative content developed under IHRL, particularly by using FoRB standards to inform the interpretation of humane treatment, non-discrimination, detention, occupation, and the protection of religious sites and communities. Such interpretive openness would not displace IHL's specialized rules but would allow them to protect religious life more coherently and comprehensively. Addressing these challenges requires not only strengthening legal enforcement mechanisms but also rethinking how FoRB is conceptualized and integrated across the different regimes of international law that govern situations of armed conflict. This requires all practitioners and states to recognize a broader principle: if religion is so often invoked as a resource for peace, reconciliation, and social cohesion, international law must be equally committed to protecting religious life when conflict places it most at risk.