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THE PROTECTION OF CIVILIANS IN NORTHWEST SYRIA

HOW IS THE RESPONSIBILITY TO PROTECT REFLECTED IN THE KNOWLEDGE, ATTITUDES AND BEHAVIOURS OF NON-STATE ARMED GROUPS?

YÜKSEK LİSANS TEZİ

HAZIRLAYAN

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TEZ DANIŞMANI
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ÖZET

Suriye'deki ihtilafın başlamasından bu yana geçen 11 yıldan uzun bir süre içinde 350,000'den fazla kişi hayatını kaybetti, sığınma ülkelerinde sığınak arayan 5.7 milyon kişi ve ülke içinde 6.7 milyon kişi daha yerlerinden edildi (BM, 2021). Ülke ekonomik açıdan çöktü, hukukun üstünlüğü ve ülke kesinlikle hiç olmadığı kadar parçalanmış durumda. Beşar El Esad hükümeti altındaki Şam rejimi devrilmeye çalışan ülkenin büyük bir bölümünü yeniden ele geçirse de, direniş cepleri hala duruyor. Bunlar arasında en çok, Suriye'nin kuzeybatısındaki gruplar arasında yer alan, Suriye topraklarının geri kalan hükümetini kontrol etmek için savaşmaya devam eden, Rus ordusu ve Rus destekli Suriyeli askerler tarafından yeniden yakalama girişimlerini önlemek için Suriye'nin geri kalan toprakları üzerinde savaşmaya devam eden Ha'at Tahrir A-Sham (HTS) ve Suriye Ulusal Ordusu (SNA) yer alıyor. Bu, ABD'nin Suriye'nin kuzeydoğusundaki kuzey kesimlerinde Al-Hasakeh, Deir Ezzor, AR-Rakka ve Halep vilayetleri ve Türk askeri harekat alanları üzerindeki YPG/SDF kontrolünü destekleyen varlığına ek bir durum.

Çatışmalarla ilgili şiddetin sivil nüfus üzerindeki etkisi, özellikle Ukrayna ve Afganistan'da yaşanan gibi acil insani krizlerin Suriye'deki uzun süren çatışmalara göre önceliği olduğundan uluslararası radardan düştü. Ancak ihlaller devam ediyor. Suriye İnsan Hakları Ağı, 2022'ün ilk çeyreğinde ihtilafın doğrudan bir sonucu olarak 297 sivilin öldürüldüğünü ve bu süre içinde okullar ve hastaneler de dahil olmak üzere sivil altyapıyı doğrudan hedef alan 18 durumun yaşandığını bildirdi. Özgürlükten mahrum kalma, aile bağlantılarının yok edilmesi, ortadan kaybolma, özel ihtiyaçları olan insanlara yönelik ihlalleri, silahların yaygın olarak bulunurluğu ve devlet ve fiilen devlet yapılarının çökmesi, insanların korunması için kötü bir duruma yol açmaktadır; yasal çerçevelerin olmaması değil, daha çok denetim eksikliği nedeniyle.

Teoride ve pratikte sivillerin korunması, Suriye'nin kuzeybatısında başarısız oldu. Uluslararası insani hukukun (UİH) uygulanmasıyla ilgili silahlı grupların ve insani yardım aktörlerinin motivasyonları, daha sonra devlet dışı beş silahlı grup ve bölgede faaliyet gösteren beş insani yardım örgütüyle yapılan kapsamlı bir dizi röportajın ve karşılaştırmalı literatür incelemesi ve sistematik ikincil kaynak analizi yoluyla incelenmiştir. Buna paralel olarak ve bu grupların faaliyet gösterdiği bağlamda, UİH ve İslam hukukunun alaka düzeyi ve bunun da sivillerin korunmasına ilişkin bir tutumu ile ilgili araştırma yapıldı. Bulgular, Suriye'nin kuzeybatısında faaliyet gösteren devlet dışı silahlı gruplar da dahil olmak üzere ancak bunlarla sınırlı olmamak üzere, ihtilafın tüm

tarafları için insani varyanların sivillerin korunmasına yönelik rolünün ayrıntılı bir şekilde yeniden incelenmesi gerektiğini gösteriyor.

Anahtar Kelimeler: Uluslararası İnsancıl Hukuk, İslam Hukuku, Sivillerin Korunması, İnsan Hakları, Suriye, Sivil-Asker İlişkileri, İnsani Erişim, Devlet dışı silahlı gruplarla angajman.

ABSTRACT

Over 11 years since the onset of the conflict in Syria has seen more than 350,000 people killed, 5.7 million people seeking sanctuary in countries of asylum and a further 6.7 million people are displaced within the country itself (Nations, United Nations, 2021). The country has seen economic collapse, the rule of law has all but evaporated and the country is arguably more fragmented than ever before. While the Damascus regime, under the government of Bashar Al Assad, has recaptured much of the country that sought its overthrow, pockets of resistance remain. Most notable amongst these are the groups in northwest Syria including Hayat Tahrir A-Sham (HTS) and the Syrian National Army (SNA) supported by Turkish military operations in the north of the country, who continue to vie for control over remaining non-Government of Syria territory, thwarting attempts at recapture by the Russian military and Russian-supported Syrian troops. This is in addition to the US presence in northeast Syria supporting the Kurdish forces of the People's Protection Units (Yekîneyên Parastina Gel, or YPG)- Syrian Democratic Forces (SDF) control over parts of Al-Hasakeh, Deir Ezzor, Ar-Raqqah and Aleppo governorates.

The deleterious impact of conflict-related violence on the civilian population has dropped off the international radar, particularly since recent emergent humanitarian crises, such as that in Ukraine and Afghanistan, take precedence over the protracted conflict in Syria. Yet violations continue. The Syrian Network for Human Rights report that in the first quarter of 2022, 297 civilians were killed as a direct result of the conflict, and there were 18 instances of direct targeting of civilian infrastructure, including schools and hospitals, during this time. Deprivation of liberty, destruction of family linkages, disappearances, targeted violations against people with specific needs, the widespread availability of arms and the collapse of state and de facto state structures all contribute to a dire situation for protection persons; not due to lack of legal frameworks but more so lack of compliance.

Protection of civilians (PoC) in theory and in practice has been a failure in northwest Syria. The motivations of armed groups and humanitarian actors in the upholding of international humanitarian law (IHL) is examined through a comparative literature review and systematic analysis of secondary resources, which then informed a series of in-depth interviews with five non state armed groups and five humanitarian agencies operational in the area. In parallel - and given the context in which these groups are operating - investigation was made regarding the relevance of IHL and Islamic law and adherence thereto vis a vis the protection of civilians. Findings suggest that a thorough re-examination of the role of humanitarians in the promotion of protection of civilians is badly needed to all parties to the conflict, including but not limited to non-state armed groups active in northwest Syria.

Keywords: International Humanitarian Law, Islamic Law, Protection of Civilians, Human Rights, Syria, Civilian-Military Relations, Humanitarian Access, Engagement with non-state armed groups.

TEZ ETİK VE BİLDİRİM SAYFASI

Yüksek Lisans Tezi olarak sunduğum "**THE PROTECTION OF CIVILIANS IN NORTHWEST SYRIA; HOW IS THE RESPONSIBILITY TO PROTECT REFLECTED IN THE KNOWLEDGE, ATTITUDES AND BEHAVIOURS OF NON-STATE ARMED GROUPS?**" başlıklı çalışmanın tarafımca, bilimsel ahlak ve geleneklere aykırı düşecek bir yardıma başvurmaksızın yazıldığını ve yararlandığım eserlerin kaynakçada gösterilenlerden oluştuğunu ve bunlara atıf yapılarak yararlanmış olduğumu belirtir ve onurumla doğrularım. 25/05/2022.

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LIST OF ABBREVIATIONS

UN	United Nations
POC	Protection of Civilians
OCHA	(UN) Office for the Coordination of Humanitarian Affairs
UNSC	United Nations Security Council
RHC	Regional Humanitarian Coordinator
DRHC	Deputy Reginal Humanitarian Coordinator
HLG	Humanitarian Liaising Group
ICRC	International Committee of the Red Cross/Crescent
INGO	International Non-Governmental Organisation
NGOs	Non-Governmental Organisations
IOM	International Organisation for Migration
DoCs	Deeds of Commitment
DoC	Declaration of Commitment
JoPs	Joint Operational Principles
IHL	International Humanitarian Law
IHRL	International Human Rights Law
CIHL	Customary International Humanitarian Law
IL	Islamic Law
NWS	Northwest Syria
NES	Northeast Syria
GoS	Government of Syria
GoT	Government of Turkey

NSAG	Non state armed group
MGD	Moral Guidance Department
MoD	Ministry of Defense
SIC	Syrian Islamic Council
SIG	Syrian Interim Government
SNA	Syrian National Army
FSA	Free Syria Army
GRC	Grievance Redress Committee
HTS	Haiyat Tahrir al-Sham
ISIL	Islamic State in Iraq and Levant
SAA	Syrian Arab Army
SDF	Syrian Democratic Forces
TIP	Turkistan Islamic Party
YPG	Yekîneyên Parastina Gel (People's Defense Units)
PKK	Kurdistan Workers' Party

CHAPTER 1

INTRODUCTION

1.1 The Research Problem and Problem Statement

The fundamental imperative to protect civilians from the devastating impact of wars, outlined in both Islamic and international humanitarian laws, has been a failure in Syria. All warring parties are accused of gross violations of IHL and IHRL, including the direct targeting of civilians and civilian infrastructure (Protect, 2022). Non state armed actors in northwest Syria are not exempt from this allegation. Indeed, OHCHR accuses HTS, controlling the Idleb enclave, of continuing to commit abuses, including arbitrary detentions of activists and journalists. Furthermore, elsewhere in northern Syria, the SNA and other groups have perpetrated torture, confiscated property, looted systematically and detained arbitrarily. Fighting, shooting, and explosions are frequently reported in heavily populated areas, and have killed and wounded hundreds of civilians over the past year (OHCHR, 2021). The protection of civilians appears to be low down the list of priorities of state and non-state entities alike.

The problem this research discusses is the responsibility of NSAGs in NW Syria to respect the principle of the protection of civilians considering IHL and Islamic Law.

- To which extent the NSAGs are committed to protect civilians in NW Syria?
- Is the respect of the POC by NSAGs in NW Syria correlated with their level of knowledge of the IHL, Islamic Law?
- What are the linkages between NSAGs' behaviour and attitude towards the POC in NW of Syria?
- How can a comparative approach between IHL and Islamic Law be applied on the case of POC in NW of Syria?
- What are the motives of NSAGs that enhance their compliance and commitment to the protection of civilians?
- What are the recommendations and requirements from involved stakeholders to improve the PoC by NSAGs?

1.2 Purpose of the Study

The paper begins with an overview of the Syrian conflict, including the armed actors vying for control over territories and their communities. After that it gives an overview of the humanitarian response including the main players and the strategic direction of the response. International humanitarian law (IHL) and Islamic Law (IL) regarding the protection of civilians (PoC) is then discussed. The methodological approach is outlined, together with detailed findings and their implications. The paper ends with conclusions and recommendations the author hopes will be taken forward by humanitarians in order to support non state armed groups (NSAGs) in the protection of civilians in this protracted conflict.

The thesis asserts that the protection of civilians has been a failure in northwest Syria, on the part of all parties to the conflict. It further asserts that what was once a largely non-violent, civil uprising was gradually usurped by ideologically driven groups influenced by external actors with little interest in the protection and promotion of the rights of Syrian civilians. Strategic and military advance is prioritized over faith- or rights-based intention and as such, the protection of civilians is at best an afterthought and at worst, a neglected inconvenience.

Further lacking is any meaningful insight into the attitude, knowledge and practices of non-state armed groups regarding the protection of civilians. In the Syrian conflict, which has to date taken more than 350,000 lives and driven 5.7 million people to seek refuge in countries of asylum, and a further about 6.7 million displaced within Syria's national boundaries, this oversight is profound and concerning, and demonstrates an ethical and practical failure on the part of the humanitarian response and so-called international community as a whole. With little hope for a peaceful conclusion or just a durable solution to the conflict, this paper seeks to contribute to a growing pool of knowledge regarding the most effective ways to encourage and facilitate adherence to international legal standards on the protection of civilians amongst non-state armed groups, including in Muslim-majority societies.

Comparative research into the protection of civilians during armed conflicts in Islamic law and international humanitarian law is found wanting.

1.3 Importance of the Research

Protection of civilians (PoC) in theory and in practice has been a failure in northwest Syria. The motivations of armed groups and humanitarian actors in the upholding of international humanitarian law (IHL) is examined through a comparative literature review and systematic analysis of secondary resources, which then informed a series of in-depth interviews with five non state armed groups and five humanitarian agencies operational in the area. In parallel - and given the context in which these groups are operating - investigation was made regarding the relevance of IHL and Islamic law and adherence thereto vis a vis the protection of civilians. Findings suggest that a thorough re-examination of the role of humanitarians in the promotion of protection of civilians is badly needed to all parties to the conflict, including but not limited to non-state armed groups active in northwest Syria.

This research will provide first-hand information and analysis on the role of the NSAGs and the humanitarian community to ensure protection of civilians in NW Syria. A list of recommendations following the analysis of the secondary and primary researches will be shared with the top leadership of the NSAGs and the humanitarian community represented by the United Nations.

1.4 Assumptions, Limitations and Sampling of the Research

The argument is that the concept of the protection of civilians is respected by the NSAGs in NW Syria, and to what extent and on which basis, NSAGs adhere to the PoC in northwest Syria, will be explored through qualitative primary and secondary research methods.

Given the scale of the humanitarian response and the geographical reach of its operations, the selection of humanitarian agencies to interview was limited to five agencies that have a clear mandate regarding the protection of civilians, a diverse combination of UNOCHA with its unique mandate of coordination and engagement with NSAGs on behalf of the humanitarian community, IOM with migration, camps and protection mandate, the ICRC as the guardian of IHL with global lead on IHL and Islamic Law studies and engagement with NSAGs, the Swiss International Organization Geneva Call with its unique mandate of engagement and training to NSAGs on IHL, IHRL and IL, and Bahar a local Syrian organization reflecting local norms and traditions with expertise in protection and engagement with local communities.

Similarly, the selection of NSAGs to include in the primary research collection was based on geographical location, background and history of each group together with ideological foundations and areas of control, Jaysh Al-Islam with Islamic background from Eastern Ghouta in Damascus, Al-Jabha Al-Shamiyah Islamic background as the biggest armed group in northern Aleppo countryside, Ahrar Al-Sharqiyah from Deir Ezzor with tribal background, Failaq Al-Sham with Islamic background from west Aleppo countryside and Idleb, and Al-Mutasim Division with more FSA secular background from north Aleppo. More details explained in their profiles in the next section.

In a context in which tens of NSAGs are active, a small sample that could represent the varied interests and agendas of this wide range of actors was selected based on the criteria outlined above. This limited sample, together with the specific focus of the research, somewhat limits the ability to analyse critically. While this implies a lack of general explanatory power, the research findings still provide unique empirical insights and help fill existing research gaps.

1.5 Research Methodology

In order to undertake exploratory research into whether, to what extent and on which basis, NSAGs adhere to the PoC in northwest Syria, qualitative primary and secondary research methods were deployed. A qualitative approach is recommended for use in contexts that have not been or have barely been explored by researchers thus far (K. Hammarberg, M. Kirkman, S. de Lacey, 2016). Although Syria was mentioned in various publications as one of the countries that is unable or unwilling to ensure protection of civilians, no specific literature could be found during the secondary research stage related to NSAGs. This implies that the chosen case of northwest Syria and the research question constitute an unexplored field of research and thus the use of a qualitative approach is appropriate.

The objective of qualitative research is to explore a phenomenon and develop an empirically based theory of which the interpretation of the researcher is an integral component (Flick, 2016). In contrast to quantitative methods, which aim to cover a representative sample of the population and finding generalisable answers on social phenomena (McDowell, The SAGE Handbook of Qualitative Geography, 2010)a qualitative approach allows in-depth insights and follows subjective individual experiences and detailed descriptions on social processes (Starman,

2013). The use of qualitative methods is not a linear process (Flick, 2016: 123). It is crucial for the researcher to remain open regarding the approach, to constantly reflect on the research process, and to modify and adapt it if necessary.

A significant aspect of qualitative research is the interpretation of data which needs to follow a coherent argumentation line and also points out alternatives (Mayring, 2000). Another criterion for qualitative research is the proximity of the researcher to the field. If possible, interviews and observations should be conducted in the actors' environment (ibid.).

1.5.1 Secondary Research

For the purposes of familiarisation with the topic, a systematic review of available secondary data was undertaken. This included intentional inclusion and exclusion criteria in order to best filter the available data. While secondary analysis is flexible and can be handled in multiple ways, it is also an empirical exercise and a systematic method with procedural and evaluative steps, just like collecting and evaluating the primary data (Johnstone, 2013). Successful secondary analysis of data requires a systematic process that acknowledges challenges of utilising existing data and addresses the distinct characteristics of secondary analysis. Krippendorf described such content analysis as *"the use of a replicable and valid method for making specific inferences from text to other states or properties of its source"* (Krippendorff, 2004). In this case both a traditional literature review and a systematic review took place.

The literature review helped to identify the gaps in the existing research and develop questions for the primary data collection stage. It explored the interplay between IHL and Islamic law in general, and then searched for examples of the motivations for adherence or non-adherence to international legal standards by NSAGs in northwest Syria. This latter search uncovered zero available research, whether in academic journals and papers, statements or papers issued by humanitarian agencies, or through the local, regional or international media. Literature was then examined regarding the extent of compliance of NSAGs to international legal standards in general and went on to explore ways in which engagement with such groups on adherence can be further explored.

A systematic review of secondary resources pertaining to both international humanitarian law and Islamic law and their respective positions on the protection of civilians was undertaken.

This involved extensive review of key instruments of international law, including treaty law, customary law and the role and jurisdiction of global legal institutions. Similarly, examination was made of critical texts pertaining to Islamic Sharia Law and its application by NSAGs. This included aspects of Quran and Hadith, and for the purposes of interpretation and application, seminal works by the traditional custodians of international law the ICRC and other mandated and self-mandated protection agencies.

1.5.2 Primary Research

Comparative qualitative primary research methods were deployed to examine the main themes of the thesis. To this end, a semi-structured interview approach was selected to allow the interviewees the space to discuss often complex issues freely within a coherent and logical structure. The latter was particularly important given that access to key respondents was difficult to secure and resulted in a one-off opportunity for interview. Indeed, such a methodology is known for its effectiveness when the researcher has limited interaction with the subject (Bernard, 2006). Interviewing was chosen as a key method since it *"provides access to the context of people's behaviour and thereby provides a way for researchers to understand the meaning of that behaviour"* and allows for a deeper understanding of contexts in which little is known (Seidman, 2006). Interviews took place with representatives of NSAGs in northwest Syria as well as with humanitarian actors engaged in the crisis response. For the former group, the researcher took guidance from the work of (McDowell, Masculine identities and low-paid work: young men in urban labour markets, 2010) and their work with disaffected young men in longitudinal research. This helped provide structure to the interviews and frame the questions in a way in which the privacy and confidentiality of the informant was assured, considerations regarding issues of power were made and consent and respect were of prime concern.

In framing the discussion, the researcher took guidance from previous work by Geneva Call, documented by the Geneva Academy (2021). In researching similar issues with NSAGs in different locations, they recommend structuring the interview process on the basis of 5 key components: knowledge and understanding (familiarity of groups with legal standards); ownership and internalization (what is the level of convergence with international standards and what influences this); capacity (to adhere to standards); situational (what factors influence following certain rules and not others); and reflective (what aspects would they be willing to compromise on

and how?). While the researcher attempted to guide the interview process in the recommended way, the free-flowing discussion that tended to emerge provided sufficient information for critical analysis.

Discussions with humanitarian agencies were framed around their interactions with NSAGs with specific reference to any work done to improve adherence to IHL vis a vis the protection of civilians. A combination of semi-structured and unstructured interview techniques was deployed with discussion framed around key questions (see Appendix 2) pertaining to each agencies' professional mandate, area of operation response to violations of protection of civilians and engagement with NSAGs on adherence IHL. The researcher's previous professional engagement with NSAGs as a representative of the humanitarian community in the locality helped greatly in the easing of access to and establishing of rapport with both groups and agencies.

1.6 Literature Review

Literature on this subject directly related to the NSAGs in northwest Syria is found lacking. The only reference specifically to Syria is made by Saul in his examination of compliance (or not) of NSAGs to IHL, arguing that it is difficult for such groups to respect IHL when their adversary acts with total impunity (Saul, 2016). Widening the literature search beyond the confines of Syria, more comprehensive analyses can be found. Much of this relates to the role of NSAGs in the protection of civilians in general and their human rights obligations in particular. Further research illuminated methods to engage with NSAGs on international law and compliance thereof. Other scholars and commentators reviewed the perceived conflict between interpretations of international and Islamic law and make recommendations as to how humanitarians and others can better engage with NSAGs on these issues.

In November 2010, in a Statement to the UNSC, Yves Daccord, the Director-General of the ICRC noted that *"while there may still be divergent views as to what protection actually is, there can be little doubt about what happens when there is no protection"* (ICRC, 2010). While this statement was made before the onset of the Syrian conflict, its words remain as relevant to Syria at the start of the now decade-long war as they do in the present day.

The early work of Bruderlein provides an interesting insight into the confluence of developments in international law with the emergence of NSAGs involved in non-international

armed conflict onto the global arena (Bruderlein, 2000). Bruderlein argues that the expectation of NSAGs to adhere to legal instruments that they were not party to, or even consulted in, the formation of. The Rome conference on the establishment of the international criminal court, for example, is a prime example of states' reluctance to recognise the role of NSAGs in the implementation of international standards. The resultant Rome Statute included very few provisions for engaging armed groups, imposing obligations only on states and individuals. It furthermore confers no legal authority on non-state actors for the prosecution of war crimes, despite the fact often only the leaders of armed groups can exert control over non state combatants. Indeed, despite the critical role of armed groups in internal conflicts, human rights law is *de jure* applicable only to state entities, and humanitarian law offers only general principles of protection under common Article 3 of the four Geneva Conventions and some rules of engagement in Additional Protocol II.

This argument is supported by Bellal and Casey-Maslen (Bellal, A., Bongard, P. & Heffes, E., 2011) who state that since non state armed groups are not entitled to assent the relevant international treaties, so by definition, they are not a state or any other entity with the necessary international legal personality, and are generally prevented from participating in full membership of a treaty drafting body, they could (and in fact do) argue that they should *"not be bound to respect rules that they have neither put forward nor formally adhered to".* In addition to rejecting laws, they had no role in adopting, NSAGs may further claim that they reject the legitimacy of states against which they are fighting, and which are parties to those treaties. This argument is supported by Bangerter (Bangerter, 2011) in his assessment of patterns of compliance of armed groups with IHL. Bangerter argues that tenets of IHL, and in fact IHL in its entirety, may be rejected simply because of what IHL – a western creation, formulated in western courts to which groups are not a party and which in no way reflect the reality of their situations. As succinctly put by Saul (ibid), *"NSAGs are typically denied the legal personality, political legitimacy and global institutional participation enjoyed by states".*

How, therefore, can a NSAG be obligated to fulfil certain commitments when they are enacted by states whose authority they do not recognise, supported by states or entities they are at conflict with, and whose drafting and ratification they were excluded from?

A further complication, as outlined by Clapham (Clapham, 2006), is that states and state-like entities are extremely hesitant to admit that certain conditions have been met for the application of international law to be pertinent. While IHL imposes obligations on specific parties to a non-international armed conflict irrespective of any recognition given by the state they are fighting against or by any other party, any admission that thresholds of gravity have been met is considered as an acceptance that the government has lost a degree of control and as an *'elevation'* of the status of the armed group they are at conflict with. These thresholds, outlined by Bellal and Casey-Maslen (ibid.), include the existence of an ongoing armed conflict as defined by IHL, and the conflicting parties (including the NSAGs) must possess a sufficiently sophisticated structure and chain of command. By meeting these thresholds, states are at risk of losing the legitimacy of their oft-cited rhetoric of NSAGs as *'terrorists'*. Indeed, the designation of certain groups as terrorists may well encourage the violation of international law on both sides.

Much debate can be found on the adherence of NSAGs to international law, with particular reference to the protection of civilians. Regardless of whether those groups consider such legal obligations as having any legitimacy or not, adherence lends credence to NSAGs who tend to otherwise struggle for credibility, recognition and support. An interesting development, as cited by Clapham (ibid.) is that NSAGs' adoption of unilateral declarations, codes of conduct, or signing commitments, and memoranda of understanding committing themselves to international standards. Such texts are referring more and more to international laws and human rights standards and tend to be context specific. The initial empirical efforts done in this area suggest that when NSAGs are self-binding themselves to written commitments, codes of conduct, this actually encourages them to be more aligned with international standards and respect human rights and PoC. Indeed, NSAGs are considered a cause of threat to civilians, however, they can be considered key interlocutors to reaching peace and stability and reducing violence in some areas. (Mamyia, 2018). The adoption of key commitments demonstrates groups' need for legitimacy in an era in which competition for moral authority tends to be a race to the bottom. Indeed, this desire for legitimacy, to engender a positive public image, and in some cases, to fulfil groups' own self-image as *'of the people'* is mentioned in Bangerter (ibid) as one of the key driving forces for groups' adherence to (whether perceived or actual) the protection of civilians.

Although naming and shaming of parties to conflicts, including NSAGs, in violation of international humanitarian law, is considered by some scholars as unhelpful and *"serving no purpose"* Bruderlein, (2000), can be argued this is no longer the case. Bruderlein was writing before the advent of the Monitoring and Reporting Mechanism (MRM) on grave violations against children in armed conflict in 2005. The public listing of grave violators prompts groups and states alike to make concerted efforts towards improvements in adherence to international law protecting, in this case, children. This desire for political legitimacy, and often conditional in-flows of aid and other financial support that comes with steps towards adherence, is rarely derived from a sincere commitment to child rights. But it can and does have benefits for children. NSAGs can sign official agreements under humanitarian law with international actors, such as the ICRC, Geneva Call or UN agencies, and acknowledge their responsibility under IHL on humanitarian issues, are granted a degree of international legitimacy on humanitarian issues. Bruderlein cites examples including a memorandum of understanding between ICRC and Bosnia-Herzegovina in 1992, UNICEF developed Ground Rules in Sudan in 1995, UNOCHA developed MoU in Afghanistan in 1998, and OCHA developed Principles of Engagement in DRC the Democratic Republic of Congo in 1998.

Such agreements, including DoCs between armed groups and organisations including Geneva Call, are not necessarily straight-forward. As Saul (ibid) points out, NSAGs must have the willingness to communicate, engage and cooperate with humanitarian actors and not all the groups are, *"specifically where the NSAGs aim or ideology are incompatible with IHL."*

The availability, high quality, and impartiality of third-party information, particularly for monitoring and verification purposes, can raise issues. Indeed, Geneva Call is one of few organisations providing oversight of groups' adherence to DoCs but tend to lack the access and operational capacity to do so effectively.

In a landmark publication in 2004, Daniel Muñoz-Rojas and Jean-Jacques Frésard examine the motivations of behaviour of armed groups in conflict situations (Fresard, 2004). In their analysis of the determining factors influencing the behaviour of combatants, they adapted a conceptual framework of Alebert Bandura's work on *Moral Disengagement in the Perpetration of Inhumanities* (Bandura, 1999). In this framework they balance the influencing factors of obedience to authority with the idea of group conformity. These two factors enable one of two outcomes –

either the shifting, or the diluting of responsibility. The evidence of these outcomes can be found in the behaviour of combatants, ranging from the perpetrator viewing themselves as victims, justifying illegal acts as *'necessary'* action, to minimising or ignoring the impact of actions and eventually dehumanising the victim entirely. This framework helps explain well the different attitudes and resultant behaviour of armed groups, including in northwest Syria.

In the intervening years since Burderlein's and Muñoz-Rojas and Frésard's seminal publications, the monitoring and oversight of commitments made by parties to conflicts, including NSAGs, has an additional component for consideration, particularly in Muslim-majority countries such as Syria.

Human rights standards and Islamic legal narrative are powerful forces in the Muslim world today. Whether considered incompatible or complementary, these two driving forces are component parts of the ideologies of political movements, including armed resistance, in Syria. According to Modirzadeh (Modirzadeh, 2014), Islamic leaders more openly acknowledge the often-dichotomous nature of the interplay between the two jurisdictions than humanitarians and human rights advocates. The latter remaining wary of stepping into terrain that is beset by a history of colonial imposition of rules and norms overriding the social and cultural context of Muslim-majority countries. Indeed, as Modirzadeh argues, that Muslims are fully aware of the discrepancies between the two legal regimes. This is less controversial by far than most humanitarians, including international non-governmental organisations (INGOs), seem to believe. The question, Modirzadeh asserts, *"how this conflict is articulated, and what options are offered for its resolution*"?

In their examination of the efforts of human rights organisations to work in concert with Islamic legal principles, Modirzadeh states that agencies are still uncertain how to address questions related to Islamic law with international human rights law regarding conflicts. Taking Amnesty International and Human Rights Watch as examples, Modirzadeh notes the unease with which the organisations verge into this territory. Islamic leaders, on the other hand, are often explicit in their belief that particular areas of constant Islamic law remain in contradiction with some aspects of human rights law, and that Shari'a law should govern in such cases.

There is scant evidence in the literature on the regard and legitimacy that non state armed groups in Syria pay to international legal instruments including IHL and IHRL, hence the

motivation behind this thesis. However, investigations into the subject in non-academic literature point to disparity between the stated belief and practice of NSAGs and their regard for Islamic law. In their article entitled *Can Islamic law be an answer for humanitarians?* for The New Humanitarian, (ibid) interviewed a Palestinian international humanitarian law expert who trained armed groups across the Middle East. Of groups in Syria, the expert reported that many of the fighters for purportedly Islamic groups were in fact new to Islam. *"They know nothing about Islam except what they were told. Fighter's smoke and tell me about their wild experiences on [downtown Beirut's] Hamra Street."*

Others however report strict adherence to Islam throughout the ranks of armed groups and the precedence of Islamic law over international legal frameworks. Francoise Bouchet-Saulnier, Legal Director of prominent humanitarian agency Medicine Sans Frontiers (MSF), wrote in 2015 about interactions with Islamist armed groups in northwest Syria.

Bouchet-Saulnier went on to mention a case in which MSF negotiated the respect for their hospitals in NSAGs controlled areas in NW Syria, and discussed many issues related to the treatment of the wounded with armed groups, including the ones with strong Islamic ideology and Showra council and Shaira courts, during these discussions they referred to the humanitarian principles (derived from IHL) and Islamic teachings and narrative. This appears to support the arguments of Bruderlein (2000), Mamiya (2018) and Bellal & Casey-Maslen (2011) that what is needed is more engagement on different levels with NSAGs, not less.

There is more in-depth analysis in literature relating to the wider motivations of armed groups regarding PoC. As Slim and Mancini-Griffoli (Slim, H. & Mancini-Griffoli, D., 2007) point out, adherence to IHL by armed groups can be influenced by appealing to their convictions. This is supported by research by Bangerter (ibid) who asserts that IHL is based on norms that are, by their very nature, extensions of social and cultural norms in many societies and as such are well aligned. Many armed groups have emerged from a desire and will fight for the freedom of their people and, as such, the imperative to protect in IHL aligns well with groups' stated convictions. This is certainly the case in Syria, where groups overwhelmingly emerged with the stated aim of freeing the Syrian people from an oppressive regime. It is hard to then turn this claim on its head and fight in anything but the interests of the people. This will however be examined further in later stages of this paper.

The motivations for and adherence to IHL, principally the PoC, cannot be found in an existing literature related to Syria itself. This underscores the importance of further investigation of the subject, to which the author hopes this paper will positively contribute. The juxtaposition of both IHL and IL together to enforce the application of civilians' protection principles by the NSAGs in northwest Syria was not so far tackled by former academic studies so far.

Theories closely match the topic of this research, under the general concept of PoC in armed conflict situations, and in the case of Syrian NSAGs controlled areas in specific, are very few. However, three theories need mentioning in regard to PoC, all were used and integrated in this research, the human security theory, the human rights theory and the IHL theoretical framework. IHL and IHRL form the backbone of this research, in addition to Islamic Law, the level of adherence and commitment to protection of civilians was measured through three main provisions of IHL and Islamic Law. The three theories have been effectively employed in all aspects of research, with measurement and projections on reality. Regarding knowledge, attitude, behavior and challenges facing NSAGs and humanitarian organizations in regard to PoC.

CHAPTER 2

SYRIA CONFLICT HISTORY AND NON-STATE ARMED GROUPS

2.1 Syrian Conflict Between 2011 – 2022

The much-documented "*Arab Spring* or *Arab Awakening"* that emerged in 2010-2011 represented the rapid and widespread dissemination of ideas and practices, manifesting in protests that spread from one country to another. Motivated by-and-large from long-suppressed popular demands for political and social inclusion and economic justice, where some movements were considered initial successes (e.g Egypt), others spiralled into civil war, in the case of Yemen, Libya and Syria. The fall from high expectations for democratization has led some commentators to conclude these uprisings as failures as authoritarian regimes became increasing grounded in policy and practice of repression and subjugation (Heydemann, S., & Leenders, R. , 2011). There are few better examples of this than the uprisings in Syria in March 2011.

"Do not humiliate the Syrian people!" was the first slogan of the Syrian uprising, coined by tradespeople in the Old City of Damascus (Hugo Slim and Lorenzo Trombetta, 2014). A month later, a number of young people in the southern city of Daraa were arrested for making anti-government graffiti. After these people were subjected to torture and other inhumane treatment, anti-government sentiment was galvanized and larger groups carried out demonstrations, demanding the release of the detained young people, wider calls for freedom and justice and the removal of the governor, Faisal Khalthoum. In order to quell the protests, the government did respond by firing Khalthoum and making a number of other minor concessions. Activists formed local coordination committees to decentralize the protest movement for risk mitigation purposes and to coordinate the protest activities and document what is happening in Syria and share it with the international community. (Keil, S. . Samer N. Abboud, 2021).

The rapid dissemination of evidence of state violence and abuse towards unarmed protests galvanized support and protests soon spread to other areas of the country. What began as a non-violent movement for peace and justice however eventually descended into a militarized uprising, largely due to the disproportionately violent response of the state. Some areas did however remain committed to their non-violent origins. For those who took up arms, support was offered by

deserters from the Government's Syrian Arab Army (SAA), who helped the protest groups establish defence units to protect the demonstrators and resist the security forces (Holliday, 2011).

The strategic location of Homs in central Syria, historically beset by sectarian violence, soon became the epicentre of the conflict, following the violent suppression of Daraa. Again, what started out as a peaceful movement for freedom and democracy soon descended into armed resistance. While the government continued to conduct clearance operations to quash popular uprisings and armed resistance in vast swathes of western Syria, direct confrontations with the Sunni tribes in the east were avoided and the polyethnic region of northeast Syria was widely untouched in the early stages of the conflict. However, while the protests were at first unified and non-sectarian, deep-rooted sectarian divisions emerged and began to play a significant role in support for, or opposition to, the push for regime change (Rafizadeh, 2014). Preying on the fear of minorities, particularly Shia, Alawite and Christian denominations, the regime of Bashar Al-Assad galvanized support in opposition to what was portrayed as an uprising of distinctly Islamist motivations. Indeed, Assad took the critical decision to enable and help the emergence and successes of the Islamic State group in Syria in an effort to paint all of the Syrian political and armed opposition as '*terrorists'* (Levitt, 2021). By 2012, Levitt argues, the Islamic State in Iraq and the Levant (ISIL) was flourishing in Syria in a way in which it could never have done without Syrian state facilitation. This can be exemplified by the state's efforts to quash the non-Islamic groups, such as the then-fledgling Free Syria Army (FSA), rather than the growing number of Islamist groups. Indeed, it is no coincidence that one of the key pro-Assad slogans chanted by supporters in the regime heartlands of Damascus and Lattakia was *"Assad or we burn the country"* (Weiss, M. & Hassan, H., 2015). This began with another strategic move by Assad to enact the first in a series of amnesties that facilitated the release of members of the Muslim Brotherhood and other detainees (Khatib, 2018). What this meant in reality is that thousands of prisoners with Islamist political ideologies and links with extremist groups were released, while thousands more of protestors, young people and human rights advocates were simultaneously imprisoned. Several of those released went on to head Islamist military extremist groups. It is thought that *"the fear of a continued peaceful revolution is why these Islamists groups were released within the country"* (Abi-Habib, 2014).

Late 2011, and early 2012, opposition armed groups emerged first in Idleb, then in Homs and other parts of Syria. Small armed opposition groups under the name of the Free Syrian Army (FSA) worked in alliance supported by the Syrian diaspora as well as neighbouring and Gulf countries, many of these groups adopted a Jihadist ideology. By mid-2012, Al-Qaida started operating in Syria, and expanded its influence in opposition held areas.

Simultaneously, in mid-2012, pockets of control established by armed or '*rebel*' groups in urban centres of Aleppo and Homs, as well as rural areas of northern Hama, outer Damascus and Daraa. There ensued two years of relentless fighting and the proliferation of numerous armed groups of differing ideological and political foundations. By the end of 2012 the Assad regime had allegedly resorted to the use of chemical weapons to thwart the efforts of rebel groups in Homs (Kimball, 2021). Further evidence of the use of illegal weapons was reported throughout 2013, culminating in the widely reported attack on Ghouta in Damascus in August 2013 (Lewis, J. & Tertrais, B., 2017). 2012 and 2013 saw the highest number of civilian casualties during the Syrian civil war, with 60,873 and 58,532 deaths respectively (OHCHR U. , 2021), indicating a clear and knowing violation of the principles of the rules of war by all parties to the conflict from an early stage.

In 2012 the Syrian regime took the step of withdrawing all troops out of the Kurdish-dominated parts of northeast Syria and Afrin in order to consolidate military resources to fight the ongoing rebel offensive elsewhere (Yasin, 2017). With military and financial support provided by the United States, United Kingdom and other countries, and with the declaration of autonomous rule in 2014, the People's Protection Units (Yekîneyên Parastina Gel, or YPG) went on to defeat the ISIL group in Syria. Further external players began to exert themselves, beginning in 2012 and early 2013 which saw the Lebanese Hezbollah movement actively supporting the Assad Government Syrian Arab Army (SAA). Its support started with fighting against opposition armed groups in Qusair near Homs, the Qalamoun mountains in rural Damascus then expanded to different parts of the country alongside Shia Iraqi and Iranian-backed militias.

Meanwhile, urban warfare was hitting a peak with parts of Aleppo and Homs effectively under siege. The emergence of a distinctly more Islamist nature of the opposition occurred from 2013 onwards, for reasons outlined above (Rosen, 2012). With the dissipation of the FSA and

other secular groups, the more ideologically driven groups consolidated power and continued to resist the Assad offensives against both urban and rural locations.

Outside influences were always at play during this period, evidenced by the formation of the Friends of Syria which was created in response to repeated Russian and Chinese vetoes on UN Security Council (UNSC) resolutions. Opposition groups remained dependent on the financial, military and organisational support by external states, which is also reflected in the constant formation of new groups and the marginalization of experienced politicians. This enabled the opposition to cling on to control of key strategic locations, pushing the government of Assad to call for outside support of their own.

September 2014 marked the American intervention in Syria, in airstrikes against ISIL in Ar-Raqqa governorate and Ain Alarab/Kobane. In early 2015, the US-led Coalition operations in partnership with YPG/YPJ units and some Syrian Arab armed groups announced the formation of the Syrian Democratic Forces (SDF) to fight against ISIL in northeast Syria. In July 2015, SDF supported by the US-led coalition controlled Tell Abiad in north Ar-Raqqa governorate, linking SDF controlled areas in Al-Hasakeh governorate with Ain Alarab and Kobane for the first time. Defeating ISIL in Kobane and Tell Abiad opened the door for further operations by SDF supported by the coalition in Menbij and Ar-Raqqa and Deir Ezzor governorates.

The US continued supporting the Syrian armed opposition groups in the north and south of Syria, through special operations rooms in Jordan and Turkey. From early 2015, cooperation between Jordan and Turkey increased, with Gulf countries supporting the armed groups agree to unify them against the Assad regime. (Solomon, E. & Simeon, K., 2015).

Early 2015, the opposition non state armed actors launched an offensive in Idleb, after a new alliance by many opposition armed groups called Jaish Al-Fatih (*Army of Conquest*) capturing Jisr al-Shughur town, Al-Mastumah military base, Ariha town and eventually Idleb city, becoming the second governorate capital in the hands of the opposition groups following Ar-Raqqa (Lister, 2015). These GoS losses in NW Syria were countered by a wide scale offensive led by Hezbollah in north rural Damascus Qalamoun mountains, near the border with Lebanon, which linked Hezbollah controlled areas in Lebanon with this pocket and further to rural Homs. (David Schenker, Oula A. Alrifai, 2015).

Russian intervention in Syria started in late 2015, at the official request of the Assad regime in Damascus (Manal, 2015). Russian armed forces started using Khmeimim airbase in Lattakia, launching airstrikes targeting both FSA groups in northwest Syria and ISIL in north and northeast Syria.

Late 2015, the government of Syria forces supported by Iran, Hezbullah and Russia, launched a military operation against rebel groups in Dara'a governorate in the south of Syria, resulting in control of Al-Shaykh Maskin town, opening the way for further advances in the governorate, 70% of which was at some point under the FSA control (Reuters S. , 2016).

Late December of the same year, the SDF supported by the US led coalition, captured the Tishrin Dam and crossed the Euphrates River paving the way for a further offensive against ISIL in Menbij province east Aleppo. In August 2016, the YPG/SDF announced their full control over Menbij town after 70 days of fighting against ISIL. The SDF then made advances against ISIL in north and south Menbij countryside, and in north Menbij crossing the Sajur river into Jarablus sub-district bordering Turkey. These SDF advances supported by the US were a red line to Turkey, since SDF/PKK aimed to link northeast Syria to Afrin and seal the border with Turkey. PKK is classified as a terrorist organisation not only in Turkey but in Europe and the US, and Turkey consider the YPG/SDF as the Syrian wing of the PKK.

Racing to gain control, in August 2016, Turkish armed forces alongside FSA groups started a military operation against ISIL groups in Jarablus town, resulting in quick control over Jarablus town within days. Clashes later started between SDF/YPG and SNA near Jarablus and Menbij (Reuters, 2016).

In tandem, in 2016 Russia and the SAA launched a wide scale military operation on the rebel held eastern Aleppo city. By December 2016, SAA forces supported by Russian forces and Iranian-backed militias retook control of Aleppo city and more than 150,000 people were either displaced to areas near the border with Turkey or other parts of the country (REACH, 2016).

In addition to the United Nations peace process for Syria ongoing in Geneva, December 2016 saw the resumption of previously attempted peace talks in Astana, with the agreement of all main players including Russia, Iran, Turkey and Syria (Novosti, 2016). A Syria nationwide ceasefire was agreed by Turkey and Russia. However, ISIL, the Islamist group the Al Nusra Front,

and the YPG were not included in the ceasefire. Groups under the FSA umbrella including Failaq Al Sham, Ahrar Al Sham, Jaysh Al-Islam, Free Idleb Army, Al Jabha Al Shamiyah, and Jabhat Ahl Al Sham, signed up for the truce following motivation by Turkey (BBC S. , 2016).

Early 2017 saw advances by the Turkish army and FSA groups who gained full control over Al-Bab town in east Aleppo, after about three months of fighting against ISIL groups supported by both Turkish and Russian airstrikes (News A.-M. , 2016). Meanwhile, SAA forces advanced south of Al-Bab town, controlling Tadaf town and villages around. During March 2017 clashes erupted between SNA forces and YPG/SDF in Arema sub-district east of Al-Bab town and along the Sajur River in the area between Jarablus and Menbij. Turkish officials repeatedly asked the US for YPG to withdraw east of the Euphrates River as per previous agreements before the Menbij military operation against ISIL. A solution was reached by the end of March 2017 by having Russian ground troops spread along the frontline in Arima sub-district and US army units spread along the frontline between Jarablus and Menbij to avoid any clashes between SDF/YPG and the Turkish army and SNA. (Şafak, 2016).

During the fourth round of the Astana talks on Syria, in May 2017, Turkey, Iran and Russia signed a memorandum to de-escalate conflict and created four (de-escalation zones) in Syria. These were:

- Zone 1: Idleb, northeast of Lattakia, northern Hama, and western and southern Aleppo, areas controlled by Hayat Tahrir Alsham (HTS) and other former FSA groups.
- Zone 2: Northern Homs countryside in central Syria controlled by FSA affiliates.
- Zone 3: Eastern Ghouta in rural Damascus controlled by FSA affiliates.
- Zone 4: Dara'a, Quneitra, and parts of western As-Sweida, controlled by FSA affiliates.

In these areas, fighting ceased in May 2017 but within months resumed once again. SAA forces supported by Russian forces launched military operations against FSA groups in northern Homs, followed by Ghouta early 2018, then Dara'a, until ultimately all three areas fell under the full control of the Assad Regime. Reconciliations were arranged locally by Russia under hard conditions, some civilians and armed actors remained in situ with Russian guarantees not to be arrested by SAA forces, however, many were reported to be detained or disappeared. Similarly, many of the FSA armed combatants, their families and alleged supporters were forcibly displaced

to northwest Syria including to Jarablus, Albab, Afrin and Idleb (Baresh, 2019). Russia and Iran supported the Assad regime to maintain control of zones 2, 3 and 4, and control of part of zone 1 through a combination of military operations, siege tactics, and local ceasefires. Meanwhile, Turkey maintained its presence and influence in some remaining parts of zone 1 in Idleb and established 12 military observation points.

In late January 2018, Turkey announced a military operation against YPG and PKK groups in Afrin district in north Aleppo. The US-led coalition did not support the YPG/PKK since Afrin was not part of the coalition operations area against ISIL. The Afrin military operations came in tandem with the Government of Syria and Russian offensive against the rebel groups in Eastern Ghouta. This was a critical moment, after 6 years of siege on Ghouta, which saw more than 125,000 people displaced to northwest Syria and over 100,000 remaining in situ and accepting reconciliation deals mediated by Russia. The United Nations Security Council adopted the UNSCR 2401 which called for an immediate cease fire in Syria. Eventually, Turkish army and SNA forces managed to control Afrin, and the Assad Regime supported by Russia and Hezbollah controlled Ghouta in late March 2018.

In late 2019 and 2020, the SAA and its allies supported by Russian forces made significant advances in northwest Syria, against Haiyat Tahrir Al-Sham (HTS) and other rebel armed groups (Kajjo, 2019) controlling the M5 highway linking Aleppo with Homs to Damascus, and spreading control over Khan Shaiykhun, Mara't An'Numa'an and Saraqib towns. These advances resulted in the displacement of about 1 million civilians from southern Aleppo and Idleb countryside into areas in Idleb, Afrin, and Azaz near the border with Turkey (UNHCR, UNHCR appeals for safety for civilians trapped in Idleb, 2020).

Turkish armed forces had to relocate many of their observation points after they been encircled by the SAA forces. On 5 March 2020, in a meeting between the Russian and Turkish Presidents, a ceasefire was agreed, and joint Russian-Turkish patrols started along the M4 highway, linking Aleppo to Lattakia. The frontlines have remained thus since this time and the agreement is generally considered more or less valid despite repeated violations.

Following a decision by the Trump administration to withdraw US troops from northeast Syria (BBC, 2019) on 09 October, Turkish army and SNA forces launched a military operation against YPG/PKK in Tell Abiad and Ras Alain areas in northern Ar-Raqqa governorate and west

Al-Hasakeh governorate. The operation resulted in a quick control over Tell Abiad and Ras Alain towns. An agreement was reached to halt operations after a further meeting between the Russian and Turkish Presidents later the same month (Al-Jazeera, 2019) who agreed on joint Turkish-Russian patrols in wide parts in northeast Syria along the Turkey-Syria borders.

Since January 2020, the military landscape in Syria tended to be more stable within a political consensus from all the parties to the conflict and their backers to keep the status quo in its prefinal image. Thus, Turkey and Russia seemed more politically coherent over Idleb which is overcrowded with around ten thousand Turkish troops, which is a deterrence for any future military offensive (Dalay, 2021). Turkey played important role in deconflicting the area in Idleb to avoid an influx of refugees to its own land or to other already crowded areas in Afrin, Azaz and Jarablus.

Similarly, in northeast Syria, Turkish and Russian joint military patrols continued in harmony and proved to be an effective mechanism to prevent any military incursion to come. Over the past two and half years, the Syrian military landscape was quieter. This moved the crisis in Syria to another stage which is economic recovery turmoil by all the parties of Syria to provide better services for the already suffering populations.

Many Syrians, especially in northwest Syria, believe that the intervention of armed groups in civil administration has increased in the recent area which witnessed a recession in military operations across the north of Syria. Therefore, the amount of violations by NSAGs towards civilians has increased gradually regarding housing and land property, child recruitment, arbitrarily detention, and so on (Department, 2020).

This research discusses further in detail violations of the NSAGs to the protection of civilians under three main provisions of IHL which are: property rights, child protection, and recruitment, and the proportionality of the application of civilians' protection. Moreover, these same three provisions will be also projected in the intersects of Islamic Sharia Law.

2.2 Non state Armed Actors Surveyed

Given the carving up of Syria into competing territories and areas of control, a plethora of NSAGs emerged. Once representing a somewhat united front, they have since dissipated and become fragmented to the point whereby little unity of purpose or ideology remain. For the purposes of this research, attention is given to the those with the most influence on the conflict dynamics internally in northwest Syria.

The following section provides an overview over these five key groups, all of whom fall under the Syrian National Army umbrella (SNA). This is a coalition of former FSA groups, who were supported at some point in 2013-2014 by the US and gulf countries and officially established by Turkey in 2017 (Haid, 2019). The SNA was trained and supported by Turkey and participated in the different military operations led by Turkey in north Syria against ISIL, YPG/PKK and SAA forces. SNA is in control of wide areas in northern Aleppo governorate (Afrin, Azaz, Albab and Jarablus districts) and in northeast Syria in Tell Abiad and Ras Alin districts. The main SNA groups are the subject of this research and are outlined below.

The below structure of the SNA main hierarchy under the leadership of Syrian Interim Government's ministry of defence, shows the positioning of these groups under three main legions that include all SNA groups on the ground in northwest Syria. This structure does not reflect the later merges of groups or movements between different legions and alliances that happened later after 2020.

Figure1: Syrian National Army Structure Under Ministry Defense in Syrian Interim Government

2.2.1 Jaysh Al-Islam (The Islam Army, The Islam Brigade)

Jaysh Al-Islam is one of the Syrian armed opposition groups that aims to depose the Assad Regime (CISAC, 2019). It was established in 2013 in rural Damascus through a merge of multiple small groups, led by Al-Islam Brigade leader Zahran Alloush. The group then expanded and merged with many other groups in Hama, Homs, Idleb, Aleppo, Daraa, and Quneitra governorates. Jaysh Al-Islam fought against ISIL in Eastern Ghouta, Dara'a and Deir Ezzor. It had a strained relationship with Hayat Tahrir Al-Sham (HTS), the predominant armed group in Idleb now, known before as Jabhat Al-Nusra (Al-Qaida in Syria). It adopted the Jihadi Salafist ideology and was supported financially by Saudi Arabia. It engaged in heavy clashes and fighting with Failaq Al-Rahman, the second most powerful group in Eastern Ghouta. Jaysh Al-Islam participated in the Astana talks, and in 2017 accepted Egyptian mediated for a ceasefire after discussions in Cairo between Jaysh Al-Islam and Russian representatives (ibid). After years of siege imposed by the Assad regime on Eastern Ghouta and following a tense military operation, Jaysh Al-Islam surrendered and its combatants, their families and suspected supporters were forced to northern Aleppo areas, as part of the deal that led to full control of the SAA forces (with Russian support) over eastern Ghouta.

Jaysh Al-Islam joined the SNA in north Aleppo and participated in the military operations led by Turkey in northeast Syria. Jaysh Al-Islam is one of the more organized non state armed groups, they have a clear command structure, and many of its ranks are defected officers from the SAA. The group has been listed by the United Nations as grave violators of child rights. (Nations, Children and armed conflict, 2018)

2.2.2 Al-Jabha Al-Shamiyah (Levant Front)

Al-Jabha al-Shamiyah is one of the first NSAGs that emerged in the northern Aleppo countryside and has since engaged in fighting against the Syrian regime forces (Young, 2016). It was established first as Liwa Al-Tawheed or *Tawheed Brigade* in 2012, supported by Qatar, and the group controlled wide areas in Northern Aleppo, south and east Aleppo and Ar-Raqqa governorate (Pannell, 2012). The Netherlands' public prosecutor classified it to be a terrorist organisation in 2018, despite the Dutch government provided them support earlier (News D. , 2018). Al-Jabha Al-Shamiyah is the largest group in the northern Aleppo countryside, with a Sunni Salafist ideology, the group is open to alliances to unify the rebel armed groups in north Syria. It

joined the Syrian Islamic Liberation Front in 2013 and then the Islamic Front. These alliances did not survive for long and the group kept the Al-Jabaha Al-Shamiyah name in a later merge with some local groups from northern Aleppo.

The group leads the third legion in the SNA, under the Syrian Interim Government (SIG) Ministry of Defense. They participated in different military operations led by Turkey against ISIL in Jarablus and Albab, and against YPG/PKK in Afrin and northeast Syria. Since Al-Tawheed Brigade was formed in 2012, the group has been in control of Bab Al-Salameh border crossing between Turkey and Syria, the second largest border crossing between the two countries after Bab Al-Hawa border crossing in Idleb, and one of two border crossings permitted for humanitarian assistance under UNSCR 2165/2014. The group has been engaging with the UN and other international organisations including Geneva Call and ICRC on issues related to the PoC and humanitarian operations in north Aleppo. Al-Shamiyah has a clear command structure, and they are considered one of the most supportive groups to the SIG. The group signed up to the Joint Operational Procedures (JoPs) and Declaration of Commitment (DoC) documents proposed by UN OCHA in 2018. These documents seek to limit the effect of conflict on the civilian population and will be explored further in this research. In March 2021, the group signed further DoCs with Swiss-based organisation Geneva Call on the protection of health care and the protection of children in armed conflict.

2.2.3 Ahrar al-Sharqiya

Emerging in Deir Ezzor governorate as an armed opposition group, Ahrar al-Sharqia adopted an Islamic Salafist ideology, and were initially part of Ahrar Al-Sham in east Syria. They fought against the SAA forces in Deir Ezzor and later fought against ISIL, eventually lost and left the governorate. In addition to their Salafist ideology, the group has tribal affiliations in east Syria. The group was restructured in 2016, enlisted within SNA and joined the Turkish military operations in Jarablus, Albab, Afrin and Tell Abiad/Ras Alain.

In October 2019, during the military operations in Tell Abiad the group claimed responsibility for the killing of the YPG politician Hevrin Khalaf, which was described as a war crime by the UN (Nebehay, 2019). The group is part of the SNA, and has a presence in northern Aleppo, Afrin, Albab, Alrae and Tell Abiad areas. The group signed up to the JoPs and DoCs

proposed by OCHA in 2018. The group further signed a memorandum with the Geneva Call in July 2020, to begin training to enhance their compliance to IHL.

2.2.4 Failaq Al-sham (Al-Sham Legion)

One of the largest Syrian armed opposition groups, Failaq Al-sham was formed in March 2014 in an alliance of 19 armed groups from Aleppo, Hama, Homs and Damascus governorates, with a Sunni ideology closely aligned with the Muslim brotherhood movement (Syria360, 2014). Failaq Al-Sham took an important role in battles against the SAA forces in Homs, Aleppo and Idleb governorates. In May 2018, Failaq led the formation of a new wider umbrella called the National Liberation Front (NLF), with 11 opposition armed groups (Qaddour, 2018). The new alliance received support from Turkey and played a key role in solving problems between the larger more dominant Hay'at Tahrir al-Sham (HTS) and other smaller groups in Idleb, when HTS started attacking many of the FSA groups, who in turn joined the NLF umbrella to protect themselves. NLF announced its decision to join forces with the SNA in October 2019 (al-Khatieb, 2019).

Despite the merger, Failaq Al-Sham and NLF have their own leadership, military council, command structure and different legal and political offices independent from SNA. Failaq participated in the different rounds of the Astana talks and other political fora and have engaged actively in discussions with the UN and other international organisations. The group signed up to the JoPs and DoCs proposed by OHCA in 2018. As recently as March 2021, the group signed further DoCs with Geneva Call on the protection of health care and the protection of children in armed conflict.

2.2.5 Al-Mutasim Division

Emerging in northern Aleppo in 2014, Al Mutasim started out as Al-Mutasim Brigade and developed over the years through direct support from the US. The group adopted a secular ideology and engaged in disputes with Jabhat Al-Nusra and fighting against ISIL in northern Aleppo during 2015-2016 (Mahmoud, 2016). The group participated in fighting against the SAA forces in northern Aleppo, and against YPG/PKK in 2016. With the beginning of the Turkish support to the SNA, Al-Mutasim was supported by Turkey, and participated in the Turkish military operations in Jarablus, Albab, Afrin and Northeast Syria (Tell Abiad and Ras Alain). In 2017 Al-Mutasim,

encouraged by the US, signed three DoCs on the protection of civilians in armed conflict with Geneva Call, on the protection of children, the prohibition of sexual violence in situations, and total ban on anti-personnel (Geneva-Call, 2020).

2.3 Humanitarian Response into NW Syria

Since the beginning of the Syria conflict in 2011, more than 350,000 civilians, including more than 40,000 children, have been killed in the conflict, with more than 87% percent killed by the Assad regime forces and its allies (SNHR, 2022). More than 6.7 million Syrians are internally displaced within different parts of the country, and more than 5.7 million others are registered as refugees in neighbouring countries and Europe (UNHCR, 2022). Turkey hosts the biggest number of Syrian refugees followed by Lebanon, Jordan and Germany. The humanitarian needs in Syria are severe across the country in all sectors including food, health, education, infrastructure, shelter, water, sanitation and hygiene and, of course, protection. 13.4 million people in need have been identified by the humanitarian community across the country, of which 2.2 million are in Idleb governorate and 2.7 million people are in Aleppo governorate (OCHA, Humanitarian Needs Overview: Syrian Arab Republic 2021, 2021).

The humanitarian situation began to deteriorate in different parts of the country right at the onset of the conflict, yet by the end of 2012 many areas in north and northwest Syria fell to the armed opposition groups. Since government services stopped in these areas, and displaced people arrived in camps inside opposition-controlled territory, many international humanitarian organisations began responding to the increased needs from Turkey. Cross-border humanitarian operations were facilitated through Öncüpınar/Bab Alsalameh, Cilvegözü/Bab Al-Hawa, Akcakale/Tell Abiad and other smaller border crossings, facilitated by the Turkish Red Crescent.

In July 2014, the UN Security Council adopted UNSCR 2165 permitting UN humanitarian assistance to northwest Syria through Turkey, Iraq and Jordan without the permission of the Government of Syria, rather only notifying it (United-Nations, 2014). Humanitarian assistance continued to be run from inside the country from Damascus (to and within territory under the control of the Government) as well as cross-border. Meanwhile, the UN developed a mechanism to coordinate humanitarian assistance across Syria, referred to as the Whole of Syria (WoS) approach, to bring both operations under one umbrella (OCHA, 2022).

United Nations agencies started working in Turkey in 2012, responding to the increased needs of the Syrian refugees in Turkey and later the internally displaced persons (IDPs) inside Syria, in areas controlled by NSAGs, as permitted by the UNSCR 2165/2014.

The coordination system for the cross-border operations from Turkey to Syria started in 2013. The UN OCHA started working in Turkey in Hatay and later in Gaziantep. It is one of three OCHA offices coordinating the Syria humanitarian response along with Damascus and Amman. OCHA Turkey coordinates cross-border humanitarian operations delivered from Turkey to Syria as mandated by the UNSCR 2449 (2018, formerly 2165 in 2014). Coordination has been managed under the cluster system, with the participation of UN agencies, and international and national non-governmental organisations (NGOs), organized under the Inter-Cluster Coordination Group (ICCG). There are nine clusters, other coordination forums and the Humanitarian Liaison Group (HLG) all of which fall under the leadership of the Deputy Regional Humanitarian Coordinator (DRHC). OCHA Turkey manages the Syria Cross-border Humanitarian Fund (SCHF), which provides funds for programming in northwest Syria, in areas controlled by NSAGs. This is the second largest pooled funds programme in the world, after Yemen (ibid).

At the time of writing there are an estimated 2.8 million internally displaced people in northwest Syria in areas controlled by armed opposition groups, of which there are 1.7 million living in camps. Approximately 1,000 trucks carrying humanitarian assistances cross the border from Turkey to northwest Syria every month (ibid).

The cross-border operations from Turkey to Syria are complex, mainly due to their dependence on the UNSCR renewal every six months to one year, and due to the remote management required from Turkey (since agencies are not based in northwest Syria itself). OCHA has been engaged in the political and humanitarian space in northwest Syria since the outset, to ensure the protection of civilians, humanitarian access and operational space on behalf of the humanitarian community. This engagement has included meetings, workshops, awareness sessions and negotiations with both non state armed groups and local civilian authorities including local councils, technical directorates and different ministries of the Syrian Interim Government (SIG) in northern Aleppo and the HTS-formed Idleb Salvation Government.

CHAPTER 3

PROTECTION OF CIVILIANS UNDER IHL AND ISLAMIC LAW

In this section the research discusses the notion of POC under IHL and Islamic law, illustrating the provisions from both IHL and IL regarding PoC during armed conflicts, with projection on the case of NW Syria.

3.1 Protection of Civilians – IHL.

3.1.1 What is IHL and the Protection of Civilians?

The protection of civilians during armed conflict is a basic tenet of IHL. Limiting the effects of conflict on the civilian population is the foundation of IHL; a principle affirmed and underscored by IHRL, treaty law, customary law and, in various parts of the world, religious doctrine including Islamic law.

The rules of war and the obligation of parties to conflicts to protect the lives of civilians has long been debated in terms of relevance, applicability, and avenues for redress. An entire industry has emerged to respond to violations of IHL, to attempt to hold those responsible to account, and to prevent the repetition of incidents that inevitably lead to the killing and injury of civilians, devastate public infrastructure, and destroy the social fabric of communities.

The UN Security Council can and has intervened to compel conflicting parties to adhere to their obligations through resolutions and multiple action mechanisms to emphasise the protection of civilians in situations of war and armed conflict. When successful, this can result in the deployment of international peacekeeping forces led by the UN, albeit with varying degrees of success. The ICRC, UN agencies and other international and local NGOs also conduct operations and maintain dialogue with parties to conflict to advance the protection and promotion of civilian rights. Legislators from the days of Henry Dunant onwards (Dunant, 1998) have worked to formulate and strengthen legal instruments limiting the deleterious impact of conflict on civilian populations, with debates ongoing regarding the new challenges that contemporary conflict presents to IHL in maintaining its integrity and relevance.

As defined by the Global Protection Cluster (Cluster, 2022) protection of civilians refers to a situation whereby

"All parties to armed conflicts are responsible for ensuring that the civilian population is protected. Guaranteeing compliance with and promoting accountability for violations of international humanitarian and human rights law; ensuring protection through UN peacekeeping and other missions; providing humanitarian access; and delivering protection specifically to those who are most vulnerable, such as women and children during armed conflicts are essential elements of effective protection of civilians."

Protection of civilians is rooted in IHL, which according to the ICRC is defined as:

"…a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. International humanitarian law is part of international law, which is the body of rules governing relations between States." (ICRC, 2004).

IHL is therefore premised on two foundational purposes; protecting civilians and restricting conflict. Protection of civilians focuses on the lives of non-or ex-combatants, civilian facilities and property. It is extended to include medical, religious and relief teams that protect the wounded and civilians, including prisoners. This aspect of IHL is called *Geneva Law*, since most of its conventions were formulated in Geneva, Switzerland from 1864 onwards with the adoption of the First Geneva Convention on the sick and wounded. The *Law of the Hague*, on the other hand, is the second component part of IHL and is intended to restrict the right of combatants to use certain fighting methods. Its name is derived from the Hague Conventions of 1899 and 1907 upon which rules protecting persons not in the power of a party to the conflict. With the adoption of Additional Protocols to the 1949 Geneva Conventions that codify and develop rules on conduct of hostilities, the difference between the terms *'Geneva Law'* and *'Law of the Hague'* has largely lost its relevance (ICRC I. , 1977).

3.1.2 How did IHL and the Protection of Civilians Emerge?

Following the adoption of the ideas of Henry Dunant in his reflections of war in the seminal publication 'A Memory of Solferino'(ibid), a number of relatively small Geneva-based charities

merged to form what later became the ICRC. In order to formalize the protection of medical services on the battlefield and to obtain international recognition of the Red Cross and its humanitarian principles of neutrality, the Swiss government held a diplomatic conference in Geneva in 1864, in which representatives of twelve European kingdoms participated and collectively ratified a treaty entitled '*The Geneva Convention for the Amelioration of the Condition of the Wounded Armies in the Field*', which became the first treaties of modern international humanitarian law. Subsequently, in the decades that followed, the ICRC held several conferences with the aim of expanding the scope of the international law of armed conflict to include and impose the protection of other categories of war victims, such as the sick, shipwrecked and prisoners of war, as well as to develop articles of international humanitarian law to suit the development of war methods and the new weapons used.

In the aftermath of the Second World War, a diplomatic conference was held in Geneva under the auspices of the ICRC, following which the four Geneva Conventions of 1949 were adopted, which strengthened the protection of the wounded, sick and prisoners, and in particular the protection of civilians in times of war.

3.1.3 The 1949 Geneva Conventions and the 1977 Additional Protocols.

In 1977, states adopted two additional protocols to the Geneva Conventions related to the protection of victims of both international and non-international armed conflicts respectively. Today, the four Geneva Conventions of 1949 and the two protocols annexed to them in 1977 form the basis and essence of international humanitarian law, sometimes referred to as the *Law or Rules of War*. The main tenets of international humanitarian law related to the protection of civilians are contained within the Fourth Geneva Convention as well as Part 4 of both the First and Second Additional Protocols. In summary, they stipulate the obligation of parties to conflicts to the following:

1. Prevent deliberate targeting and reduce exposure to all forms of violence, revenge, torture, persecution and cruel, discriminatory, inhumane or degrading treatment of all protected persons.
2. Protection of civilian infrastructure including schools, hospitals, places of worship and historical objects.

3. Non-recruitment of children and special protection for those involuntarily recruited into military ranks.
4. Prohibition of pillage, reprisals and indiscriminate destruction of property.
5. Prevention of disproportionate attacks against civilians and civilian property for military gain.

3.1.4 The Interplay Between International Humanitarian and Human Rights Law

While IHL and aspects of international human rights law (IHRL) are often conflated, they key distinguishing factor is that IHL is applicable to both state and non-state actors, whereas IHRL tends to lay down rules binding governments in their relations with individuals (ICRC, 2003). Furthermore, IHL is only applicable in times of conflict and given the exceptional nature of such situations, its provisions are non-derogable. Theoretically, IHRL is applicable at all times. However, some situations allow for derogation, such as the declaration of a state of emergency. That said, instruments of wider international law are particularly relevant in times of conflict. The protection of vulnerable persons, particularly women at risk and children, protection of housing, land and property, and frameworks related to displaced persons are highly applicable during conflict. For the purposes of this thesis, focus shall remain on IHL.

3.2 Protection of Civilians – Islamic Law

With the emergence of Islam more than 1400 years ago, the economic, social and religious systems in the Arab world were threatened. Hostilities started between the existing powers and the followers of the new religion and its state in the Arabian Peninsula. The followers of Islam were displaced twice from Mecca, first to present day Ethiopia and then internally to the town of Yathrib known now as Al-Madina. Hostilities continued for many years between Muslims and the Arab non-Muslim tribes in the Arab Peninsula before expanding north to the Levant and Iraq.

The rules of war as dictated by Islam are derived from the Qur'an, Hadith, Sirah and Tafsir. These are the Qur'an, the teaching of the Prophet, early Islamic history and interpretive text of the Qur'an, respectively. The sources since used by Muslim legislators to develop the law of war in Islam include the Qur'an, the Sunnah (actions of prophet), actions of companions of the Prophet and his direct successors, consensus among Muslim legislators and public interest bodies (Al-Dawoody, IHL and Islam: An overview. ICRC, 2017).

In early Islamic teachings Muslims were commanded to refrain from responding with violence to those who oppressed them. After Muslims fell under the threat of war and eradication, Islam permitted those oppressed Muslims - who were harmed, killed and expelled from their homes – to fight defensively, to repel aggression, repel injustice, remove sedition and coercion against Muslims, their children, and their homes, end persecution and torture because of religion, and secure religious freedom.

Protection of civilians in Islam was given propriety during engagement in hostilities. During the early age of Islam, known as the time of "Futuhat" openings where the Muslin armies were expanding the area of the Islamic state and spreading the new religion, clear and strong instructions were given to the Muslim army to protect and preserve civilians, as it came in Abu Bakir's (first Muslim Caliph) commandment to the army: "***you shall kill neither a young child nor an old man nor a woman" …. "You will pass people who occupy themselves in monks' cells; leave them alone and leave alone what they busy themselves with."*** Islamic law stresses avoiding causing any damage to civilians who are not engaged in the hostilities or participating in the fighting, such as women, children, the elderly, and monks (Ahmed Al-Dawoody, Vanessa Murphy, 2019).

Islam legislated fighting for the sake of protecting vulnerable minorities and saving them from persecution, injustice and torture inflicted on them. The fight was also legislated to fight the transgressive group against the Muslim nation, even if that group was from the same nation. Islamic law authorised the Muslim leadership to fight those groups and stop their oppression and aggression. War is therefore not legal except when there is aggression from others, injustice, and coercion. If there is no threat and other non-Muslim nations or countries are peaceful, it is not legal to fight them in any way. Islam commands the peace of those who are at peace with Muslims and to fight those who fight them and expel Muslims from their homes. Islam considers fighting those who do not fight Muslims as aggression and a forbidden sin (Rostem, 2015).

Citations from the Qur'anic verses demonstrate this principle. For example:

> "***O, people! We created you from a male and a female, and We made you races and tribes, so that you may come to know one another. The best among you before Allah is the most righteous. Allah is Knowing and Aware."*** (Al-Hujurat 13)

This verse shows that all people - meaning the human race - are created from one father and mother, so they are brothers in creation, and their division into people, tribes and nations is only in order for them to become acquainted and deal with each other in a spirit of brotherhood and cooperation. Parties warring on an ethnic basis distorted the innate nature as Allah intended, making the difference of peoples and tribes a reason for quarrels, strife, tribal fanaticism, and ethnic wars, rather than a reason for acquaintance and cooperation.

> "***And fight in Allah's way those who fight you, but do not commit aggression— Allah does not love the aggressors."*** (Al-Baqarah 190)

This indicates that Islam permits fighting only against those who fight against Muslims and as such warfare and acts of violence are only permitted against military entities. It is said that this can be interpreted as prohibition against the killing of women, children and those not participating in hostilities. This verse is explicit in considering that the Muslims action against those who did not fight them and did not set up war for them is an aggression which Islamic law does not approve. The verse highlights the prohibition of fighting aggressively rather than defensively.

> "***If they withdraw from you, and do not fight you, and offer you peace, then Allah assigns no excuse for you against them."*** (Al-Nisa'a 90)

This verse is one of the clearest verses indicating the preclusion of acting in aggression.

> "***But if they incline towards peace, then incline towards it, and put your trust in Allah. He is the Hearer, the Knower."*** (Al-Anfal 61)

This verse also highlights the peaceful basis upon which Muslims should interact with one another and with non-Muslims. It appears to indicate the same can be said for former combatants who have since ceased participating in hostilities.

> "***And fight them until there is no more oppression, and all worship is devoted to Allah. But if they cease, then let there be no hostility, except against the oppressors."*** [Al-Baqarah193]

This verse indicates that the order to fight depends on the existence of oppression, which is the persecution, torture and war on Muslims to turn them away from their religion. If the oppression ceases, then the condition that permits fighting also ceases. Islamic law therefore

restricts the permissibility of war in the presence of injustice and prohibits it when the injustice ends.

Islamic law is in general agreement with the general goals and objectives pursued by IHL, since the basic purposes of these tenets of Islamic law are the preservation and protection of the human soul, religion, money, property, and offspring. In addition, mercy, humanity, human dignity, and equality among human beings are authentic Islamic principles required in all situations including during war and combat.

All Islamic countries – that is, those in the Arab world and Muslim-majority countries in Asia - ratified the four Geneva Conventions of 1949, since humanitarian principles and rules contained therein regarding the protection of the wounded, sick, shipwrecked, prisoners and civilians and civilian objects are in accordance with the teachings and morals of Islam in war and conflict.

3.2.1 Non-International Conflict (Internal Wars) In Islamic Law

Early Islamic wars began with fighting against non-Muslim tribes within their area and expanded to fighting the states of Persia and Romans in the Levant, Iraq, and Egypt. Early Islamic literature does not clearly distinguish between international or non-international armed conflicts. It was all referred to as Jihad. During the first 50 years of the call of Islam (610 to 660 C.E.), it dealt with four types of what can be called non-international armed conflict or (internal wars), as follows:

- Fighting against apostates who left Islam after the Prophet died, called ‘Murtadeen’.
- Fighting against armed rebels or separatists, called ‘Bughat’ or ‘*aggressors’*.
- Fighting against roughly, violent religious fanatics, called ‘Khawarij’.
- Fighting against robbers, bandits, pirates, terrorists, called ‘Mufsidoun’ or *‘corrupters on earth’*.

The first three categories of conflicts can be considered as non-international armed conflicts and fall under what is known today as IHL, while the fourth is treated differently, and it may fall under same classification if it includes the above requirements. (Gray, 2018)

Islamic law prohibits the taking up of arms to enact regime change or reform the corrupt political powerbrokers and instead calls for advising governments if they deviate from the above-mentioned principles. Islamic law calls for speaking truth to power and for the Muslims to be unafraid of speaking the truth, just as the Qur'an calls the believers to command what is right and prevent what is wrong. In short, Islam calls for reforming corrupt conditions and eliminating oppression by peaceful means and methods. But if a group of Muslims chooses to rebel against the existing authority by force and use of arms, and the society is divided into warring sects, here they are treated as transgressors, and the fight against them has special legal rulings that differ from fighting the non-Muslim enemy states.

Early Islamic law jurists gave a detailed description of the Islamic rulings related to the situation of those who disobeyed the existing order with weapons. In this, they distinguished between those who have political opinion and power, and those who establish a group with the aim of theft and stealing (criminal gangs). The former group were referred to as '*aggressors'*, and restricted the fight against them to some rules, the most important of which is not to subject them to the rule of the internal criminal law of the state, not to kill their captives, not to kill their wounded, not to kill those fleeing battle, not to confiscate their money and property, and to use their judicial rulings if in agreement with the provisions of Islamic law. This applies even if punitive measures are taken against them for disturbing civil peace. The latter groups, referred to as theft gangs were considered *'corrupters on earth'*, and the most severe punishments, or '*enmity'*, were applied against them. (ibid).

Recognising and distinguishing *'aggression or armed rebellion'* from *'enmity'* is conditional upon whether or not those bearing arms against the government or powerholders are challenging the legitimacy of the ruling power or not. While the '*enmity'* practitioners do not deny the legitimacy of the regime, the *'aggressors'* consider themselves advocates of justice and claim that they strive to remove the existing regime that is illegal and unjust in their view and replace it with a legitimate and just one. Technically, it is said that the rebels have a legal justification for their struggle. Therefore, there are two components to *'aggressors':* powerful group extends its authority on a territory in defiance of the government, and they have the ability or power to resist, and this same group challenges the legitimacy of the government. (Shah N. A., 2013)

3.2.2 The Legal Basis for The Provisions on Fighting Aggressors in Islamic Law:

In regard to fighting aggressors, Islamic law prefers to find a peaceful solution, mediation between the two warring parties, and in the end, if one of them refuses to resort to Sharia and refused reconciliation, fighting is permitted.

> "***And if two groups of believers fight each other, reconcile between them. But if one group aggresses against the other, fight the aggressing group until it complies. Once it has complied, reconcile between them with justice, and be equitable. Allah loves the equitable.''*** (Hujurat 9)

This verse provides a possible illustration of the basis and justification for fighting and as such, reconciliation is dependent upon behaviour change on the part of the aggressor.

Other legal basis found in Hadiths came from the Prophet Muhammad and the fourth Caliph, the Imam Ali ibn Abi Taleb, and his attitude towards the fighting against aggressors and Khawarij during his time.

3.2.3 Rights of The Prisoners of Aggressors

The four Islamic schools of jurisprudence (Hanafi, Maliki, Shafi'i and Hanbali) detail rules regarding the rights of captives, including prohibition on enslavement, imprisonment of children, and release upon sentence completion. This aligns with IHL and its provisions for prisoners of war (Shah N. A., 2013).

The Islamic law on rebellion provides criteria if they are "aggressors" with a political project (rebels) or just gang of robbers and criminals, Islamic law recognizes the rights of rebel combatants and their areas of control and consider their controlled territory still part of the mother state. (Tabassum, 2011)

CHAPTER 4

FINDINGS OF PROTECTION OF CIVILIANS IN IHL AND ISLAMIC LAW: THREE KEY PROVISIONS

This section will outline the findings from both primary and secondary stages of the research process in examination of the core research question: what are the main provisions in IHL and Islamic law related to key aspects of the protection of civilians, and how do these influence the knowledge, attitudes and behaviour of NSAGs in northwest Syria? It begins with an analysis of the legal frameworks related to the three key aspects of the protection of civilians under IHL and Islamic law, respectively.

These are the principle of proportionality, the recruitment of children into military ranks, and property rights in times of conflict. Following this, the chapter details the findings of five semi-structured interviews with representatives of NSAGs active in northwest Syria, as well as a further five semi-structured interviews with senior figures in the humanitarian response in the area.

Despite the widespread violations against civilians seen in many conflicts around the world, the provisions for the protection of civilians in the legal framework are far-reaching. To focus on those of most relevance to the question under discussion – adherence to protection of civilians by NSAGs in northwest Syria – the paper focuses on three key aspects: recruitment of children into military ranks, property rights, and the principle of proportionality. A comparative analysis will follow, detailing how these three areas of protection are catered for within both IHL and Islamic law.

4.1 Property Rights and Protection of Property Under IHL

Protection of both public and private property is established in IHL under both treaty law and rules of customary international humanitarian law (CIHL). This section describes the key sources and types of protection of property rights. Given that they are strongly established under CIHL as well as in treaty, the protections described generally apply in the context of both international and non-international armed conflicts.

4.1.1 Destruction and Pillage of Property

Article 53 of the 4th Geneva Convention of 1949 prohibits the destruction by an occupying power of property belonging to individual persons as well as collectively owned, State or other public property, except where destruction is absolutely necessary for military operations. This is also established as a rule of CIHL (Rule 50: Destruction and Seizure of Property of an Adversary). Pillage of places taken by assault is prohibited under Articles 28 and 47 of the Annex to the 4th Hague Convention of 1949. Pillage or reprisals against protected persons or their property are also prohibited under Article 33 of the 4th Geneva Convention of 1949. Pillage is furthermore prohibited under CIHL (Rule 52: Pillage is Prohibited), and explicitly so in cases of non-international armed conflicts under the second additional Protocol to the Geneva Conventions, 1977.

4.1.2 Confiscation and Administration of Property

Confiscation of private property is prohibited under Article 46 of the 4th Geneva Convention of 1949 and also under Criminal International Humanitarian Law. Under CIHL, movable public property that can be used for military purposes may be confiscated. The administration of public property by occupying forces is governed by Article 55 of the 4th Hague Convention of 1907 and under CIHL. Immovable public property must be administered according to the rule of *'usufruct'*, which means it may be used but not damaged or destroyed and its capital must be safeguarded. The occupying State is regarded only as the administrator of such property (for example, buildings, real estate, forests, agricultural estates).

4.1.3 Requisitions and Property Rights of Displaced Persons

In limited cases items of property may be requisitioned from authorities or persons for the needs of an army of occupation. In such cases, any requisitions must be proportionate and paid for in cash, immediately or as soon as possible. Rule 133 of CIHL establishes that the property rights of displaced person must be protected. The applicability of these protections to property left behind is strongly supported by a range of agreements and treaties of IHRL, including the Guiding Principles on Internal Displacement.

4.1.4 Property Rights in Islamic Law

Islamic law prohibits theft and looting of civilian property during wars and armed conflicts. The Prophet emphasised on more than one occasion the prohibition of robbery and looting. The Prophet said:

> *"Whoever plunders is not one of us,"* …"*plunder is not permissible"*…"*Plunder is more unlawful than carrion*" (Alsandi, 2015).

The Prophet furthermore commanded on the day entered Mecca after conquest "***not a wounded man should be killed, and a fugitive should not be followed, and a prisoner should not be killed, and whoever closes his door is safe."*** This indicates the sanctity of human life has been interpreted by scholars as extended to private properties of civilians who do not participate in war or fighting, such as civilian homes, farms, furniture, and places of worship).

Further examples in the Hadith and Sunnah, derived from event occurring under the leadership of the Prophet or his successors during, clearly illustrate the prohibition of looting and property annexation. The first caliph Abu Bakr al-Sidik gave firm and clear instructions to the Muslim army leader, saying:

> *"Oh army, stop and I will order you to do ten things; learn them from me by heart. You shall not engage in treachery; you shall not act unfaithfully; you shall not engage in deception; you shall not indulge in mutilation; you shall kill neither a young child nor an old man nor a woman; you shall not fell palm trees or burn them, you shall not cut down any fruit-bearing tree; you shall not slaughter a sheep or a cow or a camel except for food. You will pass people who occupy themselves in monks' cells; leave them alone and leave alone what they busy themselves with."*

Islamic law therefore prohibits Muslim fighters to commit any kind of destruction during fighting, or looting any property, nor to take any available food or other resources from the civilian population (Al-Dawoody, IHL and Islam: An overview, 2017).

4.2 Recruitment of Children in Military Activities Under IHL

Children are the most vulnerable to the effects of war and conflict. They may be killed, maimed, abducted, raped, recruited, and used in hostilities. The education process may be interrupted or prevented from commencing, and schools occupied. Of the parties that are listed as perpetrators of grave violations against children in the last report of the UN Secretary-General on Children and Armed Conflict, most are NSAGs (although this list, established under the MRM, is arguably highly politicised with notable omissions of alleged grave violators (Watchlist, 2020). Many children involved in armed conflict are to be found among the ranks of NSAGs. Schools have also been targeted or used for military purposes by NSAGs and states themselves respectively.

4.2.1 Legal Definition of a Child

In defining what is a child, IHL is inconsistent and depending upon the instrument being consulted, where age is mentioned varies between 15 and 18 years of age. The 2010 Deed of Commitment raised by Geneva Call (2010) calls for a global norm of 18 years old amongst a strengthening of the detail of current IHL and covers all rights of children in conflict and not just the issue of child soldiers. Some 26 non state armed groups have already committed to this standard, but violations are rife.

4.2.2 Prohibition of Recruitment

IHL prohibits the recruitment and use of children in hostilities by parties to conflict (AP I & 11, 1977). In all cases neither the consent nor the desire of the child to participate is deemed relevant. The phrase" use *in hostilities"* covers far more than simply combat duties, but also activities in support. The particular issue with engaging children in all these activities is that their protection under current IHL disappears if they are deemed to be directly participating in hostilities The use of children in these roles, since they may not be discernible as such, risks all children becoming suspected as directly participating in hostilities and therefore legitimate targets of military action.

4.2.3 Recruitment of Children in Military Activities Under Islamic Law

Islamic law confirms the importance of respecting the human soul and dignity and makes reference to the lives of children. Islamic law draws clear lines on the age of child recruitment into

the army or their participation in fighting, through a Hadith attributed to Abdullah Ibn Omar (the son of the second Caliph, Omar Ibn Alkhatab) collected in Sahih Al-Bukhari.

> Abdullah Ibn Omar narrated that: *"I presented myself in front of the Prophet in the day of the battle of Uhud, while I was fourteen years old at that time, and he did not approve me to take part in that battle, but I presented myself in front of him on the day of the battle of the Trench when I was fifteen years old, and he approved me to join the battle"* . This was narrated by one of the prophet's companions who said, *"I went to Omar Ibn Abdulaziz who was the Khalifa at that time and discussed the above-mentioned Haith, and he said this age (15) is the limit between childhood and manhood".* This Hadith has been used by Muslim jurists to define the age of children joining the armed forces or fighting (ibid).

Islamic law also places some conditions on the limits of legal responsibility, including puberty and reason, with many examples in Islam, the most explicit of which is a Hadith narrated by Ali Ibn Abi Taleb who said:

> *"The pen is lifted from three people: a sleeping person until he awakens, a child until he becomes an adult, and an insane person until he regains his sanity."*

This is interpreted to mean that children cannot be responsible until they reach the age of legal responsibility, and as such cannot fight nor be recruited to fight on behalf of any group. It is worth mentioning here that this differs greatly from the legal definition of a child or childhood, which is anyone aged 17 and under. A threshold at age 15 is anomalous with international law.

Further evidence of the prohibition of recruiting children, is mentioned in the Quran:

> ***"And test the orphans until they reach the age of marriage. If you find them to be mature enough, hand over their wealth to them. And do not consume it wastefully or recklessly before they grow up. The rich should not receive compensation, but the poor may charge fairly. When you hand over their wealth to them, have it witnessed for them. Allah suffices as a Reckoner."*** (An-Nisa',6).

This has been interpreted by some as indicating the level of responsibility that can be ascribed to a child and as such, wealth in the form of weapons and dispossession of another's property or life, are beyond the reasonable responsibility of a child.

Since the recruitment of children inevitably results in family separation, several Hadiths strongly forbid separating a mother from her child. "The Prophet said, *"Whoever separates a mother from her child, Allah will separate him from his loved ones on the Day of Resurrection."* (Elias, 2019).

4.3 Principle of Proportionality Under IHL

Proportionality is one of the fundamental principles of IHL to be applied during conflict, whether international or non-international, because it aims to reduce or minimize loss and suffering due to military operations, whether for people or objects. Proportionality relies upon the key concepts of military advantage, incidental harm and excessiveness (Gisel, 2016). The principle is codified in Article 51(5)(b) of Protocol I of 8 June 1977 Additional to the Geneva Conventions (AP I). It prohibits attacks *"which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated".* Applicable in both international and non-international armed conflicts, it has been identified as a rule of customary international law (Jean-Marie Henckaerts, Louise Doswald-Beck, 2005) and parties to conflict must take all and any reasonable steps to refrain from disproportionate attacks (Articles 57(2)(a)(iii) and 57(2)(b) of AP I; Rules 18 and 19). Violation of the rules of proportionality constitutes a war crime and can be subject to prosecution under the Rome Statute (Article 8(2)(b)(iv) of the Rome Statute of the ICC).

One of the main challenges to civilian rights in a conflict is the deliberately arbitrary definitions of collateral risk. It is left to the commander on the ground, often in a fast-moving situation, to determine whether a planned action is lawful or not.

4.3.1 Collateral Damage and Incidental Harm

Incidental harm to civilians can be lawful or unlawful. It can be lawful where the warring party has taken all possible feasible precautions to avoid or at least minimize the harm, and where the warring party did not expect the level of damage and harm to be excessive compared to the

concrete and direct military advantage anticipated. It can only be lawful if these two conditions are fulfilled (Gisel, 2016). There are a number of types of incidental harm covered under the principle of proportionality – including damage to physical and mental health, displacement, economic loss, civilian fatalities, damage to civilian objects and displacement.

In some attacks, it is clear that it results from deliberate targeting operations, the incidental damage can be easily expected and assessed. While in other incidents it depends on the dynamic targeting during the fight. The resources and capabilities of the warring parties to gather, arrange, and analyze intelligence and battlefield information also vary widely. Despite these differences, the rule of proportionality and the warring parties' obligation to take all possible precautions apply to all attacks. what governs the situation here is how this is applied in practice on the ground (Gillard, 2018).

Every military action in a conflict must pass the *'proportionality test'.* Is the military action expected to cause incidental damage which would be immoderate in relation to the concrete and direct military advantage expected? This test, and indeed IHL, is constantly challenged in a conflict where the civilian population (if seen as enemy by combatants - as is the case in almost every non-international armed conflict) is deliberately the centre of targeting and direct or indirect action. The argument that injury or death of civilians who are direct participants in hostilities, or destruction or damage of civilian objects being used for military purposes is not an offence under IHL, is used as a catch-all to excuse such attacks.

4.3.2 Proportionality and The Use of Weaponry

The principle of proportionality in attack is also contained in Protocol II and Amended Protocol II to the Convention on Certain Conventional Weapons. In addition, under the Statute of the International Criminal Court, *"intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects … which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated"* constitutes a war crime in international armed conflicts.

Article 3(8)(c) of the 1996 Amended Protocol II to the Convention on Certain Conventional Weapons prohibit any placement of mines, booby-traps and other devices "*which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a*

combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated".

This restriction on the indiscriminate use of weapons has been used effectively to seek banishment of weapon classes whose use is indiscriminate by design. This resultant humanitarian arms control led to the 1997 Ban on Anti-Personnel Mines, the 2001 Programme of Action on Small Arms and Light Weapons (PoA) and the 2008 Convention on Cluster Munitions. These all set out to introduce arms control instruments to regulate not only uncontrolled transfers of arms, but also to end or to limit the indiscriminate use of weapons, and to deal with the long-term effects following intra-state conflicts (Wisotzki, 2009).

A key element of these initiatives was a comprehensive application of the principles of proportionality, need and compensation. For example, the costs-by-cause principle applies to the clearance of cluster munitions. Those states which are particularly affected can rely on technical as well as financial support under the Ban on Anti-Personnel Mines and the Programme of Action on Small Arms and Light Weapons.

NGOs have fuelled doubts about the proportionality of anti-personnel mines or cluster munitions and their use in wars. They especially pointed to their inability to discriminate between combatants and non-combatants in order to achieve a total ban on these categories of weapons, the proportionality of war within the framework of IHL and the indiscriminate effect of the weapons, the suffering of the civilian population and the socio-economic consequences of the misuse of weapons.

4.3.3 Principle of Proportionality Under Islamic Law

Islamic law gives a priority to the safety of civilians during hostilities, proportionality between the military gains and the possible damage on civilians was clearly present in the Islamic teachings. A number of examples exist in Islamic law regarding the concept of proportionality. Most are derived from the story of the conquest of Mecca by the Prophet and his actions in this regard. Several mitigation measures were taken to avoid incidental damage to civilians, for example. The first was an effective advance warning. The Prophet informed the head of Quraish Tribe in Mecca to announce that any person who entered the Mosque or entered Abu Sufyan's house (Chief of Mecca), or shut his doors, or went unarmed, would be safe (Kamal, 2019).

Another example is from the Qur'an: ***"As for those who retaliate after being wronged: there is no blame on them. Blame is only on those who wrong people, and unjustifiably commit injustice on earth. These will have a painful punishment."*** (Al-Shura 41-42).

The verse shows that while it is permissible for Muslims to confront the aggressor and respond if they are attacked or their rights are violated, this response must be appropriate without wrongdoing or transgression, that the response should achieve the required military goal without causing extensive collateral damage. Further citations include:

> ***"And do not kill the soul which Allah has made sacred, except in the pursuit of justice. If someone is killed unjustly, we have given his next of kin authority. But he should not be excessive in taking life, for he will be supported."*** (Al-Isra,33).

It could be interpreted that, in responding to injustice and criminality, action taken should be proportionate and not have any deleterious impact on any other individual or community. Furthermore, historians refer to a story in which the fourth Caliph Ali bin Abi Talib was attacked, where he said:

> *"No, I don't find you wading in the blood of Muslims…if I am killed from his strike, strike him, a strike for strike, and do not imitate the man, because I heard the Messenger say: Beware of imitation, even with a ferocious dog."*

Here the fourth Caliph Ali is giving an example that it is only the killer to be held accountable and not his wider sect or community, and not to cause harm or damage to other civilians.

It could therefore be argued that some alignment exists between Islamic teachings and international humanitarian law in the principle of proportionality during war, where Islam urges caution during military operations and to preserve human life. Islam furthermore stipulates the need for accountability on the part of the aggressor particularly when innocent civilians are directly and indirectly impacted.

Table: Comparison between IHL and Islamic Law view to PoC and the three provisions:

Issue at Stake	IHL	Islamic Law	Status
Protection of Civilians	PoC during armed conflict is a basic tenet of (IHL). Limiting the effects of conflict on the civilian population is the foundation of IHL; All parties to the conflict are responsible to ensure PoC during armed conflict. Protection of civilians focuses on the lives of non- or ex-combatants, civilian facilities and property. It is extended to include medical, religious and relief teams that protect the wounded and civilians, including prisoners. IHL intends to restrict the right of combatants to use certain fighting methods.	PoC is a religious doctrine in Islamic law. Protection of civilians in Islam was given propriety during engagement in hostilities. Islamic law stresses avoiding causing any damage to civilians who are not engaged in the hostilities or participating in the fighting, such as women, children, the elderly, and monks. Islam considers fighting those who do not fight Muslims as aggression and a forbidden sin.	IHL and Islamic Law are in full agreement regarding PoC. Both confirm on the importance of PoC during armed conflict, Islamic Law brings punishment measures on perpetrators
Recruitment of children into military ranks	IHL prohibits the recruitment and use of children in hostilities. Non-recruitment of children and special	Recruitment of children is prohibited and rejected in Islamic Law. Islamic law draws clear lines on the age of child	Both IHL and Islamic law are in full agreement to protect children and not allow the recruitment of

	protection for those involuntarily recruited into military ranks. IHL is inconsistent and depending upon the instrument being consulted, where age is mentioned varies between 15 and 18 years of age.	recruitment into the army or their participation in fighting, 15 is the age of recruitment mentioned in some Hadith.	children in fighting during wars. Islamic law rejects recruitment of children under 15 years old while IHL advocates for 18 years.
Property rights in times of conflict	Protection of both public and private property is established in IHL under both treaty law and rules of customary international humanitarian law (CIHL). Protection of civilian infrastructure including schools, hospitals, places of worship and historical objects. IHL prohibits the destruction by an occupying power of property belonging to individual persons as well as collectively owned, State or other public property.	Islamic law prohibits theft and looting of civilian property during wars and armed conflicts. Islamic law prohibits Muslim fighters to commit any kind of destruction during fighting, or looting any property, nor to take any available food or other resources from the civilian population. Islamic Law prohibits looting of public or private properties.	Both Islamic law and IHL prohibit looting, pillage, confiscation of public and private properties during armed conflict activities and wars, Islamic law brings further divine punishments to perpetrators and consider looting and theft as a big sin.

	Prohibition of pillage, reprisals and indiscriminate destruction of property.		
Proportionality	Proportionality is one of the fundamental principles of IHL to be applied during conflict. Proportionality relies upon the key concepts of military advantage, incidental harm and excessiveness. Parties to conflict must take all and any reasonable steps to refrain from disproportionate attacks. Violation of the rules of proportionality constitutes a war crime and can be subject to prosecution under the Rome Statute.	Islam rejects random attacks that cause damage to civilians. Islam urges caution during military operations and to preserve human life. Islam furthermore stipulates the need for accountability on the part of the aggressor particularly when innocent civilians are directly and indirectly impacted.	It could therefore be argued that some alignment exists between Islamic teachings and international humanitarian law in the principle of proportionality during war.

CHAPTER 5

FINDINGS FROM KEY INFORMANTS' INTERVIEWS

This section discusses the findings of the key informants' interviews with the five NSAGs and the five humanitarian agencies, reflecting their views, with further discussion on their roles and responsibilities toward the protection of civilians in the NW Syria case.

5.1 Findings of Interviews with Non-State Armed Groups

This section discusses the findings of the NSAGs' key informants' interviews, regarding their knowledge, behaviour, admission of violations, and resolution mechanisms regarding PoC in their area of control in NW Syria.

5.1.1Armed Groups' Knowledge, Attitudes and Behaviour Regarding IHL

Interviews with representatives of the five NSAGs highlighted the organic nature of their emergence based on their imperative to protect civilians and peaceful demonstrators who rose to demand their rights and demonstrated against the Assad regime. As the scale of the military offensive by the Assad regime grew exponentially, so did the geographical areas controlled by the NSAGs, and as such their responsibilities towards protection of civilians in the areas they control increased.

The interviews found that not all the groups are on the same level of understanding in relation to the protection of civilians during armed conflict. And even within the same group, different ranks are not aware of their obligations to protect civilians under IHL. Many of them further lack the proper Islamic education to be aware of their obligations to protect civilians under Islamic law. That said, many armed groups referred to their own lawyers and former SAA generals and officers amongst their ranks who are well versed in the law and have a sound knowledge of IHL and Islamic law.

> An armed group leader said: *"many of our regular fighters are not educated, they have no knowledge about IHL, many of them didn't pass the high school education, that's why they don't even have enough Islamic religion education".*

All those interviewed claimed they did their best to protect their communities and provide services to civilians, largely based on local traditions and norms which is aligned with Islamic law rather than IHL. Indeed, all those interviewed indicated that the motive to protect civilians is not premised on IHL or other international rules, but rather religion, traditions, morals, and the sense of responsibility towards *'their own'* communities.

> An armed group representative said: *"we emerged from the Syrian rebel communities, we carried weapons to defend the peaceful demonstrators in our communities, then we had to organize ourselves when the Assad regime army and intelligence started using force against our communities. It is our duty and our responsibility to protect our people".*

Few armed groups proffered details on what these traditional norms consist of, nor who decides when they should be enacted or by whom. But all consistently referred to the underlying motive for all action, based on the initial premise of their formation, as fighting for the rights of the oppressed Syrian population and, as such, the imperative to protect, regardless of what framework is or is not referred to. While these motives tend to remain consistent across all armed groups, levels of awareness and understanding of IHL vary.

For example, one group representative explained that their leaders in general have sufficient knowledge of their responsibilities towards protecting civilians, and this is what prompted their early engagement in political work and communication with international bodies and organisations, primarily Geneva Call, in order to better align with IHL.

> He said: *"Our leadership ranks have sufficient knowledge, we are aware of our responsibilities, that's why we engaged since 2014 -2015 with some international organizations like Geneva Call, and we had political and legal representatives outside Syria to engage with the international community".*

On the other hand, a second armed group admitted to having very limited knowledge about IHL and had never received training or awareness raising from their initial supporters (in this case, the US). Only recently they were approached by INGOs offering to support in this regard. The knock-on effect of this was highlighted by the group itself, which admitted that many violations

committed by their ranks derived from ignorance of what is or is not permitted during armed conflict, both in IHL and Islamic law.

> The armed group leader said: *"We didn't receive any official awareness or training on IHL from the countries supported and trained us, not even from the SNA leadership, until recently, maybe two years ago, some international NGOs like OCHA and Geneva Call approached us, after that SNA started some activities through the Moral Guidance Department".*

Indeed, given that all the five armed groups studied in this thesis have received extensive training from Geneva Call, awareness sessions by OCHA, and engaged with advocacy by ICRC, knowledge cannot be said to be lacking at least at the leadership level. The gap between knowledge on the one hand and attitudes and behaviour on the other, warrants further discussion and shall be examined in the next section.

5.1.2 Armed Groups' Admission of Violations

Interview findings suggest that admissions of violations by armed groups were limited and generally referred to in the past tense as having occurred at the onset of the conflict when knowledge of IHL was limited. The *'bad apple'* argument is used numerous times, whereby violations are attributed to one or two individuals of their own accord without consent from the hierarchy. Those interviewed were quick to distance themselves from such individuals and hastily made claims they had been *'dealt with'*.

The violations most commonly admitted to by groups themselves were confiscation of property and child recruitment.

Violations of property rights were mentioned in reference to the case of Afrin by numerous interviewees. One group explained that, with the influx of IDPs from Damascus, Homs and Daraa in 2018, and a lack of shelter available or humanitarian support, groups were 'forced' to take properties from the host (Kurdish) communities to house IDPs. The interviewee was quick to mention that these properties have since been returned to their original owners but stressed there was no other option at the time.

> The armed group representative said: *"In 2018, we received tens of thousands of civilians displaced from Eastern Ghouta, Homs and Dara'a, they*

arrived to the north and no shelter or camps were ready or prepared to host them, the UN and the humanitarian community was aware of their displacement, but still no proper response was prepared. They waited for days under trees or in Mosques, and at the end some of them took shelter in empty houses in Afrin. As an armed group we couldn't prevent them, though we know it not allowed to take a property of somebody else and give it to them, but we had no other option. Here the humanitarian community shares responsibility."

A similar example was given by another armed group, stating it did not approve the confiscation and annexation of civilian properties in Afrin, but admitted some violations took place by individuals within its ranks. Again, the interviewee stressed the remedial measures taken by the leadership. A representative from a third armed group confirmed these findings, again using Afrin as an example. In this instance, reference was made to the grievance redress committee of the SNA as the mechanism used for redress. The group was again quick to point out that these were the actions of a few recruits and not representative of the leadership.

The armed group leader said: *"We cooperated with the Grievance Redress Committee to return property rights in Afrin, there was 100 cases raised against us, our legal office cooperated and worked with the committee, at the end 60 out of the 100 cases appeared to be committed by individuals don't belong to our group, while 40 cases were true and we returned them to their owners, I have the documents stamped by the committee proving this and I can share with you."*

Recruitment of children into military ranks was the second most commonly cited violation by groups themselves. In all cases, it was referred to as an old practice in the early days of the conflict in which children were used in non-combat roles. One group admitted however that recruiting children was the only option to prevent them being recruited by radical armed groups including ISIL. The armed group representative said:

"In the early days of the revolution we accepted some under age, though they looked physically older, we had them helping in non-combatant activities, we had to do it sometimes, we had no option, if we don't accept them, they will be recruited by ISIL and Al-Qaida affiliated groups."

Just one group admitted to excessive use of force against civilians, apparently outside the parameters of the conflict and centred on a family dispute concerned one individual combatant. The case was reportedly used as an example to underscore the prohibition of the use of weapons in civilian areas. However, the same group claimed responsibility for the killing of a well-known and highly regarded female politician in 2019, although they claimed it was the result of engagement in fighting and within the confines of IHL. The group did admit to regret at publishing videos of the killing.

The above-mentioned cases were cited by armed groups also with reference to the conflict resolution measures deployed. These were highlighted as examples of how groups use local traditions and legal systems to hold themselves, and others, to account, often in the absence of a functional state judiciary. Furthermore, the groups cite such examples to highlight their sense of responsibility, regardless of whether or not such measures align with IHL.

5.1.3 Dispute Resolution Mechanisms

A number of measures for dispute resolution were raised by interviewees, with commonalities across different armed groups. They tended to fall into two categories: internal measures and external procedures.

Most armed groups sought redress for violations by their ranks through internal mechanisms including disciplinary judicial committees, legal offices and public relations offices. There is little elaboration on the details of these mechanisms, other than those complaints are investigated and both sides examined, with suggested resolution. This is usually done in participation with community leaders. If a solution is not reached or the complainant is not happy with the proposed solution, a case can be made according to the de facto judicial system. Again, no further details were proffered, including after probing, on the nature of such procedures and resolutions, beyond the fact they align with local norms.

> An armed group commander said: *"When a dispute happens between civilians and armed members from our group, we try to solve it locally, through our legal office or public relations, if a solution is reached disciplinary measures are taken internally against our group members who committed violations, including jail sometimes. In case the complainant was not happy with*

our solution or prefer to resort to the court in first place, the military court contact our group and we cooperate through our legal office to present the defendant to the court. We comply with court decisions."

One example was cited by all groups, however. With the increase in the number of complaints related to the groups' seizure of real estate properties from the people of Afrin and the imposition of royalties on the crops on their lands, the Grievances Redress Committee of the SNA was established in September 2020, with the aim of restoring rights that had been violated by armed groups. The committee has membership including three of the five armed groups interviewed and includes lawyers, administrators and military commanders, from all the represented factions, to follow up on cases brought to it. Interviewees suggest that the committee has filed more than 1,000 cases and resolved more than 600 of them, while the remaining cases are still under process or referred to other specialized bodies. Interviewees were eager to point out that the work of the committee has been heavily criticised by the SIGs Ministry of Justice and its court system, because it is outside the regular court system and does not operate according to the Syrian National Law.

The de facto judicial system comprises referral to the military court, under the auspices of the wider umbrella of the SNA, where the case is assessed on the basis of the Syrian National Law of 1953. The armed groups tend to comply with the decisions of the military court, and in the event that the armed group member or faction refuses to comply, the military police will intervene by force to implement the decision. Again, the nature and extent of such force was not elaborated upon.

5.1.4 Armed Groups' Views of Engagement Efforts

Most of the non-state armed groups in northwest Syria interviewed for this research welcomed international efforts to improve adherence to IHL. They refer to early efforts which began in 2014 by OCHA in engagement to encourage adherence to the protection of civilians and facilitate humanitarian access in Syria. Of the groups interviewed, four of the five signed a DoC Commitment on Compliance with IHL and Facilitation of Humanitarian Assistance, which was then updated by OCHA in 2018. All the five armed groups referred to cooperation with Geneva Call in relation to training and capacity building to ensure better understanding of and compliance

with IHL. Groups singled out Geneva Call for its inclusion of local partners and reference to both IHL and Islamic law to help draw parallels with the protection of civilians.

> An armed group representative said: *"We have been cooperating with UN OCHA for years, we signed some documents with them back in 2014 and again in 2018. We were a mong a delegation of 4 other armed groups, we met with OCHA and the DRHC multiple times during the siege on Aleppo in 2016, we hosted in Syria a training of trainers on IHL and Islamic law organized by Geneva Call early 202, which included about 25 participants from 5 different armed groups."*

However, all those interviewed criticized both OCHA and Geneva Call for not being systematic in their communication and engagement, not including all military factions and not effectively engaging with key stakeholders in northwest Syria. They went further to criticize the level of efforts of engagement and pointed out that the remote nature of the UN effort (from Gaziantep in Turkey) precludes both effective engagement and programming. A common perception was that the UN and international NGOs were *'removed from reality'*, were modest in their efforts and lack any long-term sustainable strategy for the humanitarian response in the region.

> An armed group commander said: *"The humanitarian community engagement is not stable and sustainable, the call us only when they have problems or issues to criticize us, their communication is ad-hoc and not only to solve single problems."*

All interviewees highlighted the importance of engagement at the highest level, rather than usurping the hierarchy of the structures in place, including the SIG and its de facto ministries. An example was cited regarding stabilization efforts that bypassed the Ministry of Interior and focused on local level governance systems that were not effective or supported by the armed groups. As such, groups stressed the imperative of inclusion of existing structures including the Syrian Islamic Council, Department of Moral Guidance and Military Police – all component parts of the SNA/SIG.

Aside from capacity building efforts, all interviewees claimed, to differing degrees, that UN agencies and international organisations have double standards when it comes to reciprocity

of adherence to IHL. Numerous references were made to perceptions of impunity by forces loyal to the Assad regime and non-involvement by the UN and others in efforts of redress or statements of condemnation. This criticism was not limited to pro-Assad forces but also alleged violations committed by the (YPG) supported by the US.

5.2 Findings from Interviews with Humanitarian Actors

This section discusses the findings of the interviews with key practitioners from five main effective humanitarian agencies with protection mandates in the northwest of Syria response. The UN OCHA, ICRC, IOM, the Swiss organization Geneva Call, and Bahar a local Syrian humanitarian organization operating from Turkey.

5.2.1 Opinions on Groups' Adherence to Protection of Civilians

Representatives from humanitarian organisations interviewed confirmed that protection of civilians in northwest Syria is one of the most complex issues, due to the security and military challenges, and the excessive use of force by all parties to the conflict. Specific reference was made, however, to methods deployed by the Assad regime forces and its allies, with mentioned made of apparent indiscriminate bombing, alleged use of prohibited weapons, targeting of civil infrastructure and destruction of civilian neighbourhoods.

> One NGO representative said: *"The biggest protection violation was the Assad regime airstrikes, shelling and the use of barrel bombs against civilian populated areas, and the repeated targeting of hospitals in areas controlled by opposition armed groups."*

Furthermore, interviewees cited the complexity of dealing with parties to a conflict that is, by definition, a non-international armed conflict, onto which a specific set of legal instruments is conferred, but which has the backing (and, according to at least two interviewees) and influential force of other states, notably Russia, Lebanon, Iraq and Iran (for the Government of Syria), and Turkey, the US and allies (for NSAGs). This makes analysis of the applicability of legal frameworks difficult and, as such, leads to criticism by armed groups towards international efforts at engagement. The sentiment of *'it's them, not us'* is common. The apparent lack of reciprocity by the Assad regime and indeed by international organisations promoting the protection of civilians to hold the regime to account or engage in parallel efforts to encourage adherence, was

felt by four of the five organisations interviewed to be a major obstacle to improvement of the situation for civilians in the area.

> An NGO representative said: *"It is very difficult and challenging to address protection of civilians issues with armed groups in NW Syria, they always bring violations committed by the Assad regime and his allies to the discussion, and say: you in the humanitarian community only look to our violations, don't you see what the Assad regime is doing?"*

The humanitarian organisations interviewed suggest that, although the armed groups in northwest Syria have shown good cooperation in terms of protecting civilians, violations continue, albeit varying in nature and extent from one group to another. The most commonly cited violations by NSAGs, according to the interviewees, are confiscation and annexation of private property, abuse of prisoners, arbitrary detention of civilians (and aid workers), torture, killings, misuse of civil infrastructure (for military purposes), sexual abuse and exploitation, and recruitment of children into military ranks, including offshoring to foreign conflicts.

> A humanitarian access specialist said: *"Main violations committed by some armed groups observed are, confiscation and annexation of private property and asking civilians to pay part of their harvest season up to 20% of the olive oil in Afrin for example, arbitrary detention of civilians and aid workers where armed groups they have their own prisons and detention centres, abuse, torture and even killing in those prisons, occupation of public facilities such as schools, sexual abuse and exploitation mainly in camps, and recruitment of children into military ranks, including offshoring to foreign conflicts like Libya and Azerbaijan."*

There was a degree of variability across the humanitarian agencies interviewed on the nature of violations. Interestingly, one focused on the interference with humanitarian aid and obstruction of delivery of assistance as the prime protection concern for civilians in northwest Syria. Whereas all four others mentioned violations against civilians irrespective of the impact on the humanitarian response. These same four noted an increase in the frequency and number of abuses observed in Afrin after the SNA took control of the area in 2018, and in the areas of Tell Abiad and Ras al-Ain after its control in 2020. When pressed on the issue, two of the four interviewees attributed this to the fact that the armed groups are not the original inhabitants of the

areas and consider the host community as disloyal or ideologically aligned to other parties to the conflict.

> A protection and access specialist said: *"The level of violations committed by SNA armed groups is higher in Tell Abiad, Ras Alain and Afrin areas, since armed groups are not originally from these areas, they consider civilians affiliated with the previous controlling power, and in some cases, they consider their properties as spoils of war and should be confiscated."*

5.2.2 Level of Engagement with Armed Groups

Interview findings indicate a significant amount of engagement between humanitarian actors and NSAGs, which takes place at multiple levels, often online between representatives of the organisations located in Turkey and leaders of NSAGs who are located in northwest Syria. Engagement is also done through the local staff of the organisations located in north west of Syria, or through local implementing partners. This is the case with many UN agencies who operate remotely from Turkey.

Engagement on the protection of civilians and adherence to IHL and other international standards tends to be one of two types: engagement on specific cases, and issues of more general concern to the humanitarian response. A number of factors seem to influence the success or failure of engagement. These include the background of the armed groups, and the extent of its interaction with humanitarian organisations. Groups' openness to dialogue on sensitive issues, often contrary to internationally agreed positions, is also key. The nature of the problem being discussed adds another dimension to the interaction, with of course the more delicate matters often being deferred to a higher level and often arbitrarily cut from the discussions. Inclusion of local norms and traditions adds credence to the dialogue and respect for the agencies involved, according to one organisation that claims to take a proactive approach to inclusion and localization.

The involvement of influential actors from clans, religious groups, and tribes, is key to successful engagement, since they hold far more sway than any international agency does. The sustainability of engagement, including with local leaders and not just military groups, is key to success. One interviewee cited examples of organisations jumping into issues without sufficient knowledge or preparedness, and then abandoning issues abruptly. The same organisation criticized

itself and others for focusing on meeting their own aims, and delivery of their own projects, rather than concentrating on civilians and affected communities. This aligns with interviews with armed groups who expressed dismay at the priorities of some organisations.

> A protection specialist said: *"Our main focus is always on our delivery, and solve our problems, we don't usually pay enough attention to the affected civilians and their needs, we rarely consult the affected communities before or during our negotiations and engagement with armed groups."*

Of the organisations interviewed, three are actively engaged in advocacy, awareness building and training on the protection of civilians under either IHL or Islamic law, or both, on an ongoing basis. Though this began late in the day, with the region having endured 5 years of conflict before any engagement on the issue began, it has been met with what interviewees describe as *'varying success'*. Interview findings suggest that groups' level of interest in engagement on training and capacity building, in some instances leading to the signing of DoCs and other agreements, tends to derive from the level of sophistication of the leadership structure, and the importance the same leadership put on public perceptions of legitimacy.

Organisations more directly involved in delivery of IHL training, for example, stated that groups more concerned with their public image, including a stated desire to differentiate themselves from the state forces in regard to civilian protection, were more likely to engage. Those with weaker leadership structure, with less apparent skills in dialogue and discourse, and with less concern for legitimacy, were less keen on engagement. This extends to their general view of IHL itself, of which international agencies are regarded as a *'policing'* force rather than independent supporters.

> An access manager said: *"Armed groups show willingness to engage in dialogue, trainings and awareness raising activities on IHL and PoC, they always link their cooperation with benefits they try to make on media showing cooperation or ask us how this will reflect on their image with our HQ in Geneva, they also fear and suspect we document their violations."*

Some humanitarian agencies were self-reflective in the interviews and findings suggest a level of criticism for not engaging more with State Parties, particularly the Government of Turkey,

given the level of influence they have on the armed groups in northwest Syria. Recent efforts to do so, cited by one interviewee, have reaped benefits on specific issues and this avenue should be further exploited.

> A regional advisor said: *"We need to increase the level of engagement with NW Syria armed actors, what is being done now is not enough, most of the agencies engaging with NSAGs are just ticking the box, what's reported and published in media is less than the real work done on the ground. Multi-level coordinated engagement is needed with the hierarchy and supporters of the NSAGs."*

5.3 Summary of Findings of Interviews

Findings from both the examination of instruments of IHL and Islamic law, as well as interview results from NSAGs representatives and humanitarian practitioners, suggest that alignment does exist between IHL and Islamic Law on some aspects of protection of civilians, including child recruitment, property rights and the principle of proportionality. However, this link at best tacit - it is not sufficiently clear in order to adequately motivate non state armed groups to meet their responsibilities towards protected persons.

Most NSAGs have little regard for IHL nor the sanctions that may following from violations. The main stated motivation for protecting civilians and property is rooted in social norms and local traditions, which is more strongly connected to Islamic teachings than any other school of thought. The Islamic religious teachings also act as a standalone motivation. Likewise, humanitarian organisations appear to have an overly negative impression of armed groups' knowledge, behaviour and attitudes towards the protection of civilians. However, opinions differed greatly across the sample regarding the situation for protected persons and the best ways to be engaged with armed groups to enhance the protection of civilians. The rules of war regarding child recruitment, property rights and proportionality are self-reportedly adhered to at the present time by the armed groups questioned. However, humanitarians did not agree and pointed to numerous examples of ongoing violations in all three areas. The gulf between groups' stated claims and humanitarian reflections is one of the key aspects for discussion in the next section.

Table: Findings Comparison Between NSAGs and Humanitarian Actors Views

Issues at Stake	**NSAGs View**	**Humanitarian agencies' view**	**Discussion**
Armed Groups' Knowledge, Attitudes and Behaviour Regarding IHL	The interviews found that not all the groups are on the same level of understanding in relation to PoC in wars. And even within the same group, different ranks are not aware of their obligations to protect civilians under IHL. Many of them further lack the proper Islamic education to be aware of their obligations to protect civilians under Islamic law.	There is a lack of knowledge among the NSAGs ranks regarding IHL and PoC. Current humanitarian efforts cannot cover all NSAGs in NW Syria, there are over 60 NSAGs with tens of thousands of combatants. Lack of knowledge is not an excuse to commit violations, NSAGs leadership need to have stronger measures to ensure controlling the behavior of their members.	All the five armed groups studied in this thesis have received extensive training from Geneva Call, awareness sessions by OCHA, and engaged with advocacy by ICRC, knowledge cannot be said to be lacking at least at the leadership level.
Armed Groups' Admission of Violations	Interview findings suggest that admissions of violations by armed groups were limited and generally referred to in the past tense as having occurred at the onset of the conflict when knowledge of IHL was limited.	The most commonly cited violations by NSAGs according to the humanitarian interviewees, are confiscation and annexation of private property, abuse of prisoners, arbitrary detention of civilians (and	The level of violations is clearly higher than what is admitted by NSAGs themselves and higher than what's been documented and reported by

	The violations most commonly admitted to by groups themselves were confiscation of property and child recruitment.	aid workers), torture, killings, misuse of civil infrastructure (for military purposes), sexual abuse and exploitation, and recruitment of children into military ranks, including offshoring to foreign conflicts.	the different human rights observatories and humanitarian PoC agencies.
Dispute Resolution Mechanisms	A number of measures for dispute resolution were raised by interviewees, with commonalities across different armed groups. They tended to fall into two categories: internal measures and external procedures. Most armed groups sought redress for violations by their ranks through internal mechanisms including disciplinary judicial committees, legal offices and public relations offices. This is usually done in participation with community leaders. If a solution is not reached or	Humanitarian actors highlighted that NSAGs prefer to resort to reconciliatory solutions, outside the judiciary system. This practice leaves a space for pressure applied by NSAGs on civilians. Different methods are applied by different NSAGs, civilians and humanitarian agencies are confused, most of the time asked to pay money for issues to be resolved.	Armed groups do make efforts to seek conciliatory solutions to disputes, including alleged violations against civilians. However, they do so initially without involving the competent judiciary. There are many flaws in this internal conciliatory process including putting undue pressure on civilians to accept the solution

	the complainant is not happy with the proposed solution, a case can be made according to the de facto judicial system. Again, no further details were proffered, including after probing, on the nature of such procedures and resolutions, beyond the fact they align with local norms.		proposed by the military group, and the fact that the decision is not issued by an independent, neutral arbiter. This internal process also undermines the authority of the official judicial system.
Armed Groups' Views of Engagement Efforts	Most of the non state armed groups in northwest Syria interviewed for this research welcomed international efforts to improve adherence to IHL. all those interviewed criticized both OCHA and Geneva Call for not being systematic in their communication and engagement, not including all military factions and not effectively engaging with key stakeholders in northwest Syria. They went further to criticize the	significant amount of engagement between humanitarian actors and NSAGs, which takes place at multiple levels. Engagement on the protection of civilians and adherence to IHL and other international standards tends to be one of two types: engagement on specific cases, and issues of more general concern to the humanitarian response. groups more concerned with their public image,	International organisations and the humanitarian leadership working on northwest Syria file must work through a coordinated approach to include all effective stakeholders, design and implement long-term, proactive and effective

	level of efforts of engagement and pointed out that the remote nature of the UN effort (from Gaziantep in Turkey) precludes both effective engagement and programming.	including a stated desire to differentiate themselves from the state forces in regard to civilian protection.	programs in line with NSAGs motivations highlighted earlier.
Adherence to Protection of Civilians	NSAGs claim adherence to protection of civilians to their best, starting the discussion from them emerge to defend and protect their communities against the Assad forces attacks. They didn't deny violations taking place, they claim it is individual behavior does not reflect a wider policy. Highlighted positive examples like the work of the GRC in Afrin.	Although the armed groups in northwest Syria have shown good cooperation in terms of protecting civilians, violations continue, albeit varying in nature and extent from one group to another.	Despite some positive efforts undertaken by NSAGs to prevent violations, as well as attempts at redress, such as the work of the GRC in Afrin, monitoring from a wide range of actors indicates that violations have continued. Efforts by armed groups to adhere to PoC has been largely confined to violations related to property confiscation and annexation.

CHAPTER 6

DISCUSSION, CONCLUSION AND RECOMMENDATIONS

6.1 Discussion

The findings from both the extensive review of secondary sources and the analysis of interview results, considered in light of existing literature, highlight a number of interesting points that are analysed in this chapter.

It is important to note that this research included five NSAGs from northwest Syria, while there are more than forty NSAGs active in the area sharing control and influence, with more than a hundred smaller groups of militants with connections to the larger armed group. All of them are nominally affiliated with the SNA, although there are no clear lines of control by the SNA leadership over all of them. This adds another degree of complexity when it comes to tracking abuses and violations against the protection of civilians. The opinions of the five military groups included in this study speak of the forces under their command, and do not include all other factions, some of which may be involved in violations to a greater extent.

Findings suggest that there is little regard for the PoC amongst NSAGs in Syria – despite what groups claim, the evidence suggests otherwise. Groups' claims to be in adherence to IHL and Islamic Law can be seen as a real effort by a few key actors, but when viewed with a wider lens such efforts appear to be an attempt at improving their image and legitimizing their actions to both the international community and to the populations under their control. Military advantage, economic reasons, internal power struggles, and political influence are more important and the justification of 'any means necessary' in order to gain the necessary advantage is the ultimately deployed to avoid proper adherence to the legal instruments to protect civilians.

While it is understandable that armed groups are mistrustful of legal instruments the formation of which they have no part in, and indeed are not state parties to, this is also a convenient way to avoid responsibilities that might provide a basis to establish real legitimacy. Groups claim that their compliance with local customs and traditions are aligned with Islamic law. However, little elaboration is offered as evidence and the 'local' norms tend to relate to the areas and communities the groups originate from, and not necessarily from the areas under their control. It

can be said, therefore, that this argument itself undermines the protection of civilians since it relates to some people and not all.

Islamic teachings are clear regarding the PoC during conflicts and wars, and many armed groups admitted their knowledge of this. They also claim that the Islamic religion is superior to IHL in many areas related to the laws of war. They cite examples including the rights of prisoners, the protection of civilians not participating in hostilities, the protection of public and private properties, the non-recruitment of children under the legal age and others. With many armed groups adopting Islamic ideology and following Islamic teachings during armed conflict, this does not necessarily contradict IHL because the two appear well aligned. However, the issue of compliance and monitoring remains controversial and unregulated.

Similarly, the armed groups' claims of motivation being rooted in Islamic teaching appear to have little supportive evidence. All interviewees from the humanitarian sector and armed groups confirmed that Islamic teachings guide many of the armed groups' behaviour and are reflected in their practices on the ground despite challenges. However, this varies from one armed group to another and very much depends on the armed group's internal command and accountability mechanisms. Many of the armed groups have little adherence to Islamic teachings and adopt a behaviour closer to that of criminal gangs rather than liberation movements fighting for a just cause.

Armed groups do make efforts to seek conciliatory solutions to disputes, including alleged violations against civilians. However, they do so initially without involving the competent judiciary. There are many flaws in this internal conciliatory process including putting undue pressure on civilians to accept the solution proposed by the military group, and the fact that the decision is not issued by an independent, neutral arbiter. This internal process also undermines the authority of the official judicial system.

When issues are referred externally to the official judicial system, the judiciary do not have the necessary executive power to enforce their decisions and therefore powerful groups refuse to submit to judicial rulings if they contradict their interests. This has happened on numerous occasions in Jarablus, Albab and Afrin, which has resulted in the SNA hierarchy launching vehement public campaigns against the *"corrupt factions"*.

The rights of indigenous communities, for example, those in Afrin, Tell Abiad and Ras Alain appear to have been violated without a second thought and then later attempts at redress have been made through norms that are not satisfactory to or accepted by the host community, or victims of violations. Most of these cases were dealt with therefore on the basis of a legal process that was not approved by a transparent and independent judiciary.

Despite some positive efforts undertaken by armed groups to prevent violations, as well as attempts at redress, such as the work of the grievances redress committee in Afrin, monitoring from a wide range of actors indicates that violations have continued. The efforts by armed groups to adhere to frameworks providing protection for civilians has been largely confined to violations related to property confiscation and annexation. While these constitute a significant number of violations, other violations against civilians have continued with apparent impunity and little or no redress. These include indiscriminate fighting within densely populated areas, arbitrary arrests of civilians, the existence of detention facilities of military groups outside the official judicial authority, torture, killing, and the recruitment of children into military ranks, including offshoring to foreign conflicts (Libya and Azerbaijan).

Despite the positive behaviour and commitment of many armed groups, as fighters for the people, and with the emergence of most armed groups emanating from their opposition to a ruthless dictator who does not respect the protection of civilians, the imperative to protect and promote the rights of the Syrian still rings true for many. However, some of the armed groups have clearly deviated from their original stated aim and have moved from the position of abused to abuser.

There is a gulf between the knowledge of armed groups regarding their responsibilities to protect, and their attitudes and behaviours. There is a widespread denial of violations, whether conscious or unconscious, and weak justification for their occurrence in the *"early days"* of the conflict or claiming that other factions have done it. The fact that awareness exists, and violations continue, is evidence of the disregard for civilians and the responsibility armed groups have towards them. It is difficult to be certain that the military leadership is aware of the violations committed by their ranks. Indeed, the situation does vary across the different armed groups, with some leaders appearing ignorant as to the reality of the actions of their fighters, and others in denial but tacitly aware.

The continued denial of violations by the armed groups interviewed may be attributed to the fact that the five interviewed factions are among those most publicly committed to protecting civilians. They have all signed DoCs, for example, and opened themselves up to scrutiny by cooperating on Action Plans under the UN-MRM. It would therefore be reasonable to claim progress in these areas, particularly given the context of the interview and the fact the interviewer was a known humanitarian from the area. Denial of violations is common practice among all parties to the conflict in Syria, as it is in most non-international and international armed conflicts. Denial and justification are routinely deployed when state or NSAGs are questioned, and here the issue of reciprocity plays a hugely significant role. The fact that parties including the Assad regime, Russia, and YPG forces, appear to violate IHL and claim no responsibility for the protection of civilians on a frequent basis is a fairly easy justification for non-adherence. While such violations are not the subject of this research, they do warrant further investigation and until such a time as this is conducted on an international official level, justification on the basis of lack of reciprocity will continue.

There is a further gulf between what armed groups say will encourage adherence and what humanitarian are doing or appear willing to do. There is widespread belief that the programmes of international organisations do not align well with the realities of northwest Syria, and challenges faced by the civilian population. Most of these programmes are considered as short sighted, unsustainable and not relevant to the context. The humanitarian community's engagement with armed groups, for example, is criticized for exclusion of key stakeholders, including parties who commit the most violations on the ground. Since armed groups consider their prime motivations as being rooted in religion, tradition and social norms, then the only meaningful or sustainable way to engage and encourage adherence to protection is to root any behaviour change activity in these same norms. With suspicion and mistrust of the *'western'* import of IHL a prevailing attitude, the relevance of local values is never more important. Therefore, international organisations and the humanitarian leadership working on northwest Syria file must work through a coordinated approach to include all effective stakeholders, design and implement long-term, proactive and effective programs in this regard.

Despite claiming not to be concerned about international sanctions for violations, nevertheless, armed groups are seeking to agree commitments with international organisations

such as signing the DoCs with Geneva Call. Dialogue with the UN regarding accountability measures is also ongoing. While the motive for this collaboration is stated as genuine intent at change, it is likely due to concern for reputation and image in front of the regional and international communities. Fears around the targeting of some members by international courts is also likely to play a key role here. This need for legitimacy is also felt on the ground, where support from local communities is key to retain control of people and territory, and to continue to be seen in a favourable light by external supporters, particularly when in comparison to the actions and behaviour of other parties to the conflict.

6.2 Conclusion

The primary and secondary research results found that IHL and Islamic law are well aligned in the case of Northwest Syria armed groups. Both are clear regarding the protection of civilians during armed conflict; however, armed groups claim that the Islamic religion is preferable and indeed superior to IHL in many areas related to the laws of war, despite many gaps in compliance and adherence to both. Armed groups vary in their understanding of protection of civilians, IHL knowledge and degrees of Islamic education, which reflects different practices on the ground. Some have developed stronger internal command and accountability mechanisms, while many others have not, despite claiming to have a strong and serious imperative to protect civilians. This necessitates the need for effective internal training within armed groups' hierarchy, and externally delivered by the humanitarian community to secure for real progress towards better protection of civilians.

All interviewed armed groups stated that their motivation to protect civilians is rooted in social norms and local traditions, which is more strongly connected to Islamic teachings than any other school of thought, as well as the Islamic religious teachings as a standalone motivation. IHL and other international standards come as a secondary motivation. This stems from the nature of the Muslim community now resident in northwest Syria, with high levels of education within the ranks and leaders of armed groups, including specialists in legal studies and Islamic law. There is a clear connection between the basis of many societal norms with the teachings of the Islamic religion, some of which align well with IHL.

Despite armed groups' claims to be in adherence to IHL and Islamic law, it remains controversial, with evidence suggesting the contrary. It seems many armed groups' claims are false and self-serving, with manipulation of both IHL and IL in order to justify actions. However, this varies according to the armed groups' ideology, the level of discipline within the ranks and oversight of the leadership, deterrent penalties and accountability mechanisms. That being said, regular and continuous engagement by the humanitarian community on issues directly related to the protection of civilians, including advice and advocacy with armed groups, is necessary at all times, even if only applied or sold on the basis of armed groups' self-interest. It is a responsibility that cannot be evaded, even if the groups are difficult to work with or fail to initially comply. It appears to be the only action taken thus far that has reaped any dividends in this respect.

On the whole, however, humanitarian attempts to enhance the protection of civilians through engagement with NSAGs have been limited and have had little effect. Engagement has too often been focused on humanitarian access discussions and reactive problem solving on individual standalone issues, largely focused on groups' attempts at aid interference and diversion. While what is needed is a comprehensive long term proactive approach based on protection principles and centred on the affected population, rather than the agencies' programmes delivery that are in themselves of questionable principled quality.

The humanitarian response coordinated by the OCHA Gaziantep office has played a key role in building relations with the influential stakeholders in northwest Syria, resulting in the development of the JOPs document and armed groups' signature on the DoC on Compliance with IHL and Facilitation of Humanitarian Assistance in 2014. These efforts were followed by signatures of reaffirmation on both JoPs and DoCs in 2018 by 39 NSAGs. With a focus on troubleshooting with the different groups, mainly on humanitarian access, two documents were premised on humanitarian principles, rooted in IHL and represented a legal framework for effective engagement with NSAGs. However, the implementation and operationalization of both remains lacking with no clear monitoring and follow up mechanisms to ensure adherence and accountability. The documents are criticized of offering armed groups an opportunity to engage and sign documents with the UN for the sake of signing, with no proper orientation, awareness-raising sessions, training, or consequences for non-compliance. This represents a real missed

opportunity, when groups' willingness to engage could have been purposefully and meaningfully exploited for improved outcomes for civilians.

The humanitarian response has similarly failed to take advantage of groups' willingness to engage on difficult and sensitive issues. While the UN Special Representative of the Secretary-General for Children and Armed Conflict (CAAC), signed an Action Alan to end the use of child soldiers with SDF/YPG in 2019, no efforts have been carried out in this regard by the UN in towards armed groups in northwest Syria, despite groups' stated efforts at engagement in this regard. Furthermore, the benefits of having the ICRC in situ in northwest Syria have been acutely felt. As many humanitarian agencies took the position at the outset to not work cross-border and operate only from Damascus, serving Government of Syria controlled areas, the northwest lost out on crucial assistance. The failure to protect civilians can therefore be seen as a failure on all sides.

The little engagement has that been conducted is largely focused on a small number of agencies, notably including Geneva Call. While laudable efforts have been made to achieve signing of DoCs and other agreements, the organisation has been criticized for engaging with smaller armed groups and favouring their adversaries in northeast Syria. It also lacks the resources and capacity to conduct engagement at scale, again failing to effectively monitor and follow up. The signing of DoCs and other agreements is a step in the right direction. However, after 10 years of conflict, it risks being an empty gesture without any clear consequences for inaction.

It is somewhat imbalanced for humanitarians to point the finger at non state armed groups' violations against civilians when state parties to international treaties and other legal instruments act in clear and knowing violation of IHL on an almost daily basis. Indeed, groups' constantly raise the issue of reciprocity when engaging in discussions on their own violations of IHL. While this clearly not does let armed groups 'off the hook' it is somewhat understandable why armed groups have little regard for an international legal structure that continually fails to hold state parties to account.

Despite armed groups' continued violations against civilians, set in an environment with a multitude of armed groups with competing agendas, ideologies and interests, as well as an unclear and non-unified command structure under the SNA, many do appear open to dialogue. This

presents an opportunity for engagement with humanitarians that may lead reducing or at least mitigating the impact of violations against civilians.

6.3 Recommendations

The following recommendations are made based on the findings and conclusion of the research, to encouraging NSAGs to better protect civilians and ultimately limit the effects of the conflict on the entire civilian population in northwest Syria.

6.3.1 Recommendations to Armed Groups:

- The SNA leadership represented by the SIG MoD and the SNA legions' leaders should circulate clear instructions prohibiting and criminalizing violations against civilians and enact more stringent internal accountability and follow-up mechanisms to ensure violations are stopped, and perpetrators are held to account.
- The SIG and SNA leadership should build internal capacities with regard to the protection of civilians, recruit legal and protection experts, and open themselves up to an impartial and independent judiciary, led by the SIG Ministry of Justice.
- The SNA leadership must work to better control the factions' committing violations, hold them to account and ensure correction measures are in place according to the law.
- A unified and hierarchical structure with clear lines of command is essential. The fragmented and chaotic factional system should be phased out.
- The Syrian Islamic Council should adopt a more assertive discourse regarding violations against civilians and work more effectively with military groups and other stakeholders.
- The Ministry of Interior, under the authority of the judiciary, should work with humanitarians to ensure clear and transparent procedures, according to IHL, regarding detention and imprisoners, including the just and decent treatment of prisoners. All de facto prisons and detention sites should be closed with immediate effect.
- The SIG should support the efforts of the Moral Guidance Department, which should work more openly with the United Nations and international organisations to ensure real awareness and change in thought, behaviour and practice of SNA factions on the ground.
- Build upon the positive impact effected by the Grievances Redress Committee in regard to property rights, however, integrate the GRC work under the judiciary system.

- The SNA leadership must establish an effective and independent complaints and feedback mechanism to receive complaints from civilians, while ensuring the confidentiality of information and protecting civilians from any retaliatory responses.

6.3.2 Recommendations to the Humanitarian Community:

- Mandated protection agencies should begin effective and meaningful engagement with armed groups, to ensure complementarity and alignment on key issues related to protection violations.
- Further engagement is needed with the religious leadership represented by the Syrian Islamic Council, with a focus on violations committed under the wider SNA umbrella, as well as the Moral Guidance Department. This should be at the highest level with representation from both the UN and the SIG.
- Inclusion of local tribal leaders and notable community heads is essential in the design and delivery of any and all efforts to capacity build on IHL and protection of civilians. If not rooted in community values, the likelihood of effecting long term change is severely limited.
- Serious consideration is needed with regards to moving the response from Gaziantep to northwest Syria itself, particularly considering the unpredictability of cross-border operations.
- High level UN engagement should be enacted with the Government of Turkey, to influence armed groups' behaviour, and indeed to address violations within their own ranks.
- A coordinated approach is required under the clear leadership of OCHA, the UN Regional Humanitarian Coordinator, the Deputy Regional Humanitarian Coordinator and Humanitarian Liaising Group to ensure the centrality of protection is mainstreamed across the whole humanitarian response. This should include meaningful participation of affected communities for inclusion and advocacy purposes, as well as a conduit for programme delivery and consultation.

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Appendices

Appendix 1: Geneva Call Deeds of Commitment

DEED OF COMMITMENT UNDER GENEVA CALL
FOR THE PROTECTION OF CHILDREN
FROM THE EFFECTS OF ARMED CONFLICT

WE, (name of signatory), through our duly authorized representative(s),

Concerned with the harmful and widespread impact of armed conflict on the physical and mental development of children and the long-term consequences this has for human security, durable peace, and development;

Affirming our determination to protect the civilian population, in particular children, from the effects or dangers of military actions, and to respect their right to life, to human dignity, to education and to development, with the best interest of the child as a primary consideration;

Recognizing that children associated with armed forces are at particular risk of exposure to attacks by opposing forces; *Taking due account* of the varying standards within international law instruments providing special protection for children affected by armed conflict, in particular the Geneva Conventions and their Additional Protocols, and the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict, and *determined* to clarify our responsibilities on the recruitment and use in hostilities of persons under 18 years of age; *Mindful* that the Statute of the International Criminal Court criminalizes the act of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities; *Rejecting* the notion that any cause, for whatever reason, may justify unlawful treatment of children in armed conflict; *Accepting* that international humanitarian norms apply to and oblige all parties to armed conflict; Stressing that the present Commitment protects all children, both girls and boys; And understanding that for the purposes of this Deed of Commitment: "children" are defined as persons under the age of 18, and where there is doubt as to whether a person has reached the age of 18, (s)/he will be treated as a child;

HEREBY solemnly commit ourselves to the following terms:

1. TO ADHERE to a total ban on the use of children in hostilities.

2. TO ENSURE that children are not recruited into our armed forces, whether voluntarily or non-voluntarily. Children will not be allowed to join or remain in our armed forces.

3. TO NEVER COMPEL children to associate with, or remain associated with, our armed forces. By associate, we mean any type of direct or supporting activity whether combat related or otherwise. In the event that children have been compelled to do so, they will be released at the earliest possible opportunity in accordance with Article 6 of this *Deed of Commitment*.

4. TO ENSURE that children do not accompany our armed forces during our military operations and to take all feasible measures so that children in areas where we exercise control are not present during military operations.

5. TO TREAT humanely children who are detained or imprisoned for reasons related to the armed conflict, in accordance with their age and gender specific needs, recognizing that deprivation of liberty may be used only as a measure of last resort and for the shortest appropriate period of time. The death penalty will not be pronounced or executed on a person for any offense committed while a child.

6. The release or disassociation of children from our armed forces must be done in safety and security, and whenever possible, in cooperation with specialized child protection actors.

7. TO FURTHER ENDEAVOUR TO PROVIDE children in areas where we exercise authority with the aid and care they require, in cooperation with humanitarian or development organizations where appropriate. Towards these ends, and among other things, we will:

i) take concrete measures towards ensuring that children have access to adequate food, health care (including psycho-social support), education, and where possible, leisure and cultural activities;

ii) protect children against sexual and other forms of violence;

iii) facilitate the provision of impartial humanitarian assistance to children in need;

iv) facilitate efforts by impartial humanitarian organizations to reunite children with their families;

v) avoid using for military purposes schools or premises primarily used by children.

8. TO ISSUE the necessary orders and directives to our political and military organs, commanders and fighters for the implementation and enforcement of our commitment, including measures for information dissemination and training. Commanders and superiors are responsible for their subordinates. In case of non-compliance, we will take all necessary measures to cease violations

immediately, initiate appropriate investigations and impose sanctions in accordance with international standards.

9. TO ALLOW AND COOPERATE in the monitoring and verification of our present commitment by Geneva Call and other independent international and national organizations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where we operate, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

10. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflict.

11. This *Deed of Commitment* shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of August 12, 1949.

12. We understand that Geneva Call may publicize our compliance or non-compliance with this *Deed of Commitment*.

13. We see the desirability of attracting the adherence of other such armed actors to this *Deed of Commitment* and will do our part to promote it.

14. This *Deed of Commitment* complements, or supersedes, as the case may be, any existing unilateral declaration of ours on children and armed conflict.

15. Any reservation to this *Deed of Commitment* must be consistent with its object and purpose, international humanitarian law, and the minimum obligations of State parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It must be expressed in writing upon signature and will be periodically reviewed towards attaining the highest possible respect for the rights of children. Geneva Call will be the final arbiter on the permissibility of any reservation.

16. This *Deed of Commitment* shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such deeds. Done this (Day Month Year), in (City)

For the (NAME OF THE SIGNATORY) (Name) (Name) (Title) (Title) For GENEVA CALL (Name) (Name) (Title) (Title) For the GOVERNMENT OF THE REPUBLIC AND CANTON OF GENEVA (Name) (title)

DEED OF COMMITMENT UNDER GENEVA CALL FOR THE PROHIBITION OF SEXUAL VIOLENCE IN SITUATIONS OF ARMED CONFLICT AND TOWARDS THE ELIMINATION OF GENDER DISCRIMINATION

We, (name of signatory), through our duly authorized representative(s),

Concerned with the life-long physical, psychological and social impact that sexual violence has on victims, their families and communities, especially in situations of armed conflict, and the threat that it presents to human security and sustainable peace;

Affirming our determination to protect the civilian population and other persons no longer taking part in hostilities from the effects or dangers of military operations, and to respect their fundamental rights;

Confirming our obligation to treat all persons taking no active part in hostilities humanely and without adverse distinction*;*

Mindful that women, men, girls and boys can be perpetrators as well as victims of sexual violence, and *recognizing* that women and girls are particularly targeted and face additional risks;

Taking due account that international law prohibits all forms of sexual violence, and *recognizing* that acts of sexual violence may amount to war crimes, crimes against humanity and genocide;

Resolved to play a role in ending impunity for sexual violence;

Recognizing that sexual violence is a form of cruel, inhumane and degrading treatment or punishment, and *accepting* that such treatment or punishment of any person cannot be justified under any circumstance;

Recognizing that international law requires respect for the principles of equality and non-discrimination;

Bearing in mind that policies and practices that discriminate on the grounds of gender, in particular those against women and girls, are conducive to other forms of violence;

Acknowledging the importance of participation and involvement of both women and men in decision-making processes at all levels;

Reiterating that international humanitarian norms apply to and oblige all parties to armed conflict;

HEREBY solemnly commit ourselves to the following terms:

1. TO ADHERE to an absolute prohibition of sexual violence against any person, whether civilian, member of State armed forces or member of an armed non-State actor.

2. TO TAKE all feasible measures towards effectively preventing and responding to acts of sexual violence committed by any person, in areas where we exercise authority.

3. TO ENSURE that persons deprived of their liberty are protected from sexual violence.

4. TO FURTHER ENDEAVOUR to provide victims of sexual violence with the assistance and support they require in order to address the impact of such violence. Towards this end, and among other things, we will encourage and facilitate:

- access to services, including medical, psychological, social and legal services, in cooperation with humanitarian and development organizations where appropriate;
- rehabilitation programmes and actions that facilitate social reintegration of victims;
- the provision of reparations to victims.

Confidentiality of the victim(s) of sexual violence will be ensured, to the extent possible and at every stage, including in the process of reporting, making investigations, taking disciplinary measures and providing assistance to victims.

5. TO FURTHER ENDEAVOUR, in addition to our obligation to treat all persons taking no active part in hostilities humanely and without adverse distinction, to eliminate any act or practice of discrimination between men and women in our policies and processes. Towards this end, we will take concrete measures to ensure, among other things, equal protection before the law, equal enjoyment of rights and remedies, equal access to health care and services and equal access to education.

6. TO FURTHER ENDEAVOUR to ensure increased participation and involvement of women in our decision-making processes at all levels.

7. TO ISSUE the necessary orders and directives to our political and military organs, commanders and fighters for the implementation and enforcement of our commitment embodied in the present Deed, including measures for information dissemination and training. Commanders and superiors are responsible for their subordinates. In case of non-compliance, we will take all necessary measures for the immediate cessation of violations, initiate appropriate and swift investigations and impose sanctions that reflect the severity of the violation, in accordance with international standards, with a view to preventing their recurrence.

8. TO ALLOW AND COOPERATE in the monitoring and verification of our present commitment by Geneva Call and/or other independent international and national organizations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where we operate, the right to interview our members, possible victims and their family members without witnesses, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

9. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflict.

10. This Deed of Commitment shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of August 12, 1949.

11. We understand that Geneva Call may publicize our compliance or non-compliance with this Deed of Commitment.

12. We see the desirability of attracting the adherence of other armed actors to this Deed of Commitment and will do our part to promote it.

13. This Deed of Commitment complements, or supersedes, as the case may be, any existing unilateral declaration of ours on the prohibition of sexual violence and on the elimination of gender discrimination.

14. This Deed of Commitment shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such Deeds.

Done this (Day Month Year), in (City)

For the (NAME OF THE SIGNATORY) (Name) (Name) (Title) (Title)

For GENEVA CALL (Name) (Name) (Title) (Title)

For the GOVERNMENT OF THE REPUBLIC AND CANTON OF GENEVA (Name) (Title)

DEED OF COMMITMENT UNDER GENEVA CALL

FOR ADHERENCE TO A TOTAL BAN ON ANTI-PERSONNEL MINES AND FOR COOPERATION IN MINE ACTION

WE, the (NAME OF THE NON-STATE ACTOR), through our duly authorized representative(s),

Recognising the global scourge of anti-personnel mines which indiscriminately and inhumanely kill and maim combatants and civilians, mostly innocent and defenceless people, especially women and children, even after the armed conflict is over;

Realising that the limited military utility of anti-personnel mines is far outweighed by their appalling humanitarian, socio-economic and environmental consequences, including on post-conflict reconciliation and reconstruction;

Rejecting the notion that revolutionary ends or just causes justify inhumane means and methods of warfare of a nature to cause unnecessary suffering;

Reaffirming our determination to protect the civilian population from the effects or dangers of military actions, and to respect their rights to life, to human dignity, and to development;

Resolved to play our role not only as actors in armed conflicts but also as participants in the practice and development of legal and normative standards for such conflicts, starting with a contribution to the overall humanitarian effort to solve the global landmine problem for the sake of its victims;

Accepting that international humanitarian law and human rights apply to and oblige all parties to armed conflicts;

Acknowledging the norm of a total ban on anti-personnel mines established by the 1997 Ottawa Treaty, which is an important step toward the total eradication of landmines;

NOW, THEREFORE, hereby solemnly commit ourselves to the following terms:

1. TO ADHERE to a total ban on anti-personnel mines. By anti-personnel mines, we refer to those devices which effectively explode by the presence, proximity or contact of a person, including other victim-activated explosive devices and anti-vehicle mines with the same effect whether with or without anti-handling devices. By total ban, we refer to a complete prohibition on all use, development, production, acquisition, stockpiling, retention, and transfer of such mines, under any circumstances. This includes an undertaking on the destruction of all such mines.

2. TO COOPERATE IN AND UNDERTAKE stockpile destruction, mine clearance, victim assistance, mine awareness, and various other forms of mine action, especially where these programs are being implemented by independent international and national organizations.

3. TO ALLOW AND COOPERATE in the monitoring and verification of our commitment to a total ban on anti-personnel mines by Geneva Call and other independent international and national organizations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where anti-personnel mines may be present, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

4. TO ISSUE the necessary orders and directives to our commanders and fighters for the implementation and enforcement of our commitment under the foregoing paragraphs, including measures for information dissemination and training, as well as disciplinary sanctions in case of non-compliance.

5. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflicts.

6. This Deed of Commitment shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of August 12, 1949.

7. We understand that Geneva Call may publicize our compliance or non-compliance with this Deed of Commitment.

8. We see the desirability of attracting the adherence of other armed groups to this Deed of Commitment and will do our part to promote it.

9. This Deed of Commitment complements or supercedes, as the case may be, any existing unilateral declaration of ours on anti-personnel mines.

10. This Deed of Commitment shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such deeds and similar unilateral declarations.

Done this (Day Month Year), in (City)

DEED OF COMMITMENT UNDER GENEVA CALL FOR THE PROTECTION OF HEALTH CARE IN ARMED CONFLICT

We, (name of signatory), through our duly authorized representative(s),

Concerned with the immediate and long-term impact that attacks against health care personnel, facilities and medical transports have on the wounded and sick, the civilian population and health services at large, and the threat that they present for the right of everyone to enjoy the highest attainable standard of physical and mental health;

Affirming our determination to protect the civilian population and other persons no longer taking part in hostilities from the effects or dangers of military actions, and to respect their fundamental rights;

Reaffirming our obligation to collect and care for the wounded and sick, and to treat all of them humanely and without distinction on any grounds other than medical ones;

Recognizing the importance of the neutrality and inviolability of health care personnel, facilities and medical transports to ensure the security and continuity of health care services to all, without discrimination;

Rejecting the notion that any cause, for whatever reason, may justify the unlawful treatment of the wounded and sick and attacks against health care personnel, facilities and medical transports;

Accepting that international humanitarian norms apply to and oblige all parties to armed conflict;

Taking due account of our international legal obligations with regards to the respect and protection of health care personnel, facilities and medical transports, and the wounded and sick, in particular those enshrined in International Humanitarian Law and International Human Rights Law, as well as in the principles of medical ethics;

Mindful that the Statute of the International Criminal Court criminalizes violence to life and person of the wounded and sick and the acts of intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law, as well as against hospitals and places where the sick and wounded are collected, provided they are not military objectives;

Hereby solemnly commit ourselves to the following terms:

1. TO RESPECT AND PROTECT the wounded and sick, whether civilian or military, friend or enemy, in all circumstances. This includes not attacking, harming or killing them, protecting them from unlawful treatment and pillage of their personal property, and providing them with the health care and attention required by their condition, based solely on medical grounds with the least possible delay.

2. TO TAKE all possible measures to search for, collect and evacuate the wounded and sick without delay or adverse distinction, including by allowing civilians and impartial humanitarian organizations to assist in these tasks.

3. TO RESPECT AND PROTECT health care personnel engaged in the provision of health care. This includes not attacking, threatening or pressuring those who provide health care, respecting the obligation of health care personnel to treat all wounded and sick persons without distinction on any grounds other than medical ones, and not otherwise unduly interfering with the work of health care personnel. It includes also not punishing health care personnel for performing medical duties, not compelling them to perform acts contrary to their medical ethics or to disclose information covered by medical confidentiality.

4. TO RESPECT AND PROTECT health care facilities. This includes not attacking health care facilities performing medical functions, taking all feasible measures to spare health care facilities from the effects of attacks, and not depriving them from the vital resources needed for their functioning. It also includes facilitating the work carried out in health care facilities; refraining from any behaviour that disrupts the functioning of health care facilities, in particular not using them for military or other non-medical purposes, and respecting the no weapon policy inside health care facilities.

5. TO RESPECT AND PROTECT medical transports. This includes not attacking them, facilitating the medical evacuation of the wounded and sick, and allowing for the unimpeded and fast passage of all vehicles used for health care. It also includes not interfering with the functioning of medical transports, in particular not using them for military or other non-medical purposes, and respecting the no weapon policy inside medical transports.

6. TO GIVE due warning in the case that health care personnel, facilities or medical transports are used outside their humanitarian functions to commit harmful acts, allowing them necessary time to remedy the situation or to safely evacuate.

7. TO RESPECT the distinctive emblems of the red cross, red crescent and red crystal and not to use them for purposes not related to the provision of health care.

8. TO FURTHER ENDEAVOUR, in areas where we exercise authority, to:

i) Ensure, maintain and provide access for affected populations to essential health care facilities, goods and services, without adverse distinction;

ii) Facilitate the provision of health care by impartial humanitarian organizations.

9. TO ISSUE the necessary orders and directives to our political and military organs, commanders and fighters for the implementation and enforcement of our commitment, including measures for information, dissemination and training. Commanders and superiors are responsible for their subordinates. In case of non-compliance, we will take all necessary measures to cease violations immediately, initiate appropriate investigations and impose sanctions in accordance with international standards.

10. TO ALLOW AND COOPERATE in the monitoring and verification of our present commitment by Geneva Call and other independent international and national organizations and associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where we operate, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

11. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in the field practice as well to the further development of humanitarian norms in armed conflict.

12. This *Deed of Commitment* shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of 1949.

13. We understand that Geneva Call may publicize our compliance or non-compliance with this *Deed of Commitment*.

14. We see the desirability of attracting the adherence of other such armed actors to this *Deed of Commitment* and will do our part to promote it.

15. This *Deed of Commitment* complements, or supersedes, as the case may be, any existing unilateral declaration of ours on the protection of health care in armed conflict.

16. This *Deed of Commitment* shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such *Deeds*

Appendix 2: UN OCHA Declaration of Commitment

UNITED NATIOINS

Declaration of Commitment

Background

This Declaration of Commitment is intended as an affirmation, on the part of all parties to the conflict, of their core responsibilities under IHL and of their commitment to facilitate action to meet the needs of civilians on the basis of need alone. All parties to the conflict would be invited to associate themselves with the Declaration. Association with the Declaration would not confer any legal or political status upon any party, nor would it be linked to participation in any political process. All stakeholders with influence in the Syrian conflict should use their relationships and good offices, both within and outside any political process, to encourage parties to the conflict to associate themselves with the Declaration and to immediately implement its commitments. This must include immediate engagement, through empowered interlocutors, with humanitarian actors to negotiate detailed modalities for humanitarian assistance in their areas of influence.

Declaration of Commitment on Compliance with IHL and Humanitarian Assistance

We *agree* that the interests and well-being of the Syrian people are our top priority, and affirm our commitment to ensure that civilians are protected and assisted henceforth and at all times;

We *affirm* our responsibility to respect International Humanitarian Law at all times including, without prejudice to the ongoing application of the rules not enumerated here, the responsibilities to:

Distinguish at all times between the civilian population and combatants and between civilian objects and military objectives, and direct attacks solely against military objectives,

Respect and protect schools and hospitals, and refrain from using in them in support of the military effort, including by locating military objectives within or near them;

Refrain from the recruitment of children and the use of children in hostilities;

Refrain from any form of torture or other cruel, inhuman or degrading treatment, including sexual violence of all kinds;

Respect the wounded and sick, including combatants, and allow them to receive, to the fullest extent practicable and with the least possible delay, the medical care required by their condition, without discrimination;

Respect and protect relief workers, allow and facilitate the rapid and unimpeded passage of relief including medical and surgical equipment, and grant authorized relief personnel freedom of movement to reach to people in need on the basis of need alone, unless imperative military necessity requires their movements to be temporarily restricted;

Allow all civilians safe evacuation from, and allow the rapid and unimpeded passage of relief consignments into, all besieged areas;

Treat all persons deprived of their liberty humanely and provide an impartial, neutral and independent organization with regular access to persons in detention;

In addition to these responsibilities, we agree to:

Refrain from the use of heavy weapons in population centres;

Respect and uphold the fundamental humanitarian principles of humanity, neutrality, impartiality and independence;

Immediately agree upon and facilitate arrangements to undertake essential immunization campaigns in the entirely of the Syrian territory;

Adopt simple and expedited procedures for all logistical and administrative arrangements necessary for humanitarian relief operations;

Work immediately and in good faith with representatives of humanitarian agencies to agree practical arrangements for the provision of assistance to meet the needs of all civilians, including through the rapid authorization of humanitarian convoys, and the implementation of regular humanitarian pauses, local deconfliction arrangements and days of tranquility;

Take all necessary measures to ensure that all elements acting on our instructions or under our direction or control abide by the commitments of International Humanitarian Law and of this Declaration, and investigate all allegations of violations hold accountable those responsible.

We invite all parties to the Syrian conflict to associate themselves with this Declaration of Commitment. Association with the Declaration shall not in any way affect the legal status of any party to the conflict.

Ends.

Name: Date: Signature:

Appendix 3: Key Informants Interview Forms

NSAGs Representatives:

1- Please provide me with an introduction to your ANSA, origin, Ideology, and current areas of control?
2- To which extent are you aware of your responsibilities towards the protection of civilians under your control within the IHL framework? are you aware of consequences in cases of grave violations?
3- In case of a dispute between civilians and armed members of your group, what is the approach of settlement taken? is it more under standard laws and IHL or Islamic Sharia law? Give me an example of a case in which your group provided protection to civilians in areas under your control.
4- What are the key motives for bearing responsibility for the protection of civilians? Is it more Islamic Sharia law-driven, more IHL manners? or your fear of international sanctions?
5- What are the current key challenges to your group to ensure the protection of civilians? And how to address those challenges and gaps? is it through IHL awareness or Islamic Sharia Law education? and who should take lead in this; UN agencies and the humanitarian community? ANSAs leaderships and ministry of defense? Local communities' leaderships and civil governance bodies?
6- What is the level of influence of the religious leaders in building the thinking of the ANSAs behavior towards the protection of civilians, if you think they have a strong role, what should be the steps taken by the humanitarian community to dialogue with those leaderships as the gate to the ANSAs to ensure the protection of civilians?
7- What incentive is there for participation in IHL trainings?
8- What incentive is there for signing of DoC etc?

Follow up questions:

1- Who decides what is a dispute and what isn't? On what basis is one dispute 'acted upon' and another not?
2- You mentioned social and tribal norms are mentioned, can you explain what these are or how they align with (or not) IHL or IL. Is this a convenient backstop to avoid the 'inconvenience' of obligations under IHL?
3- You mentioned 'internal procedures' and 'protection measures' can you elaboration what these are? whether they are written down, who carries them out and who decides when an issue is resolved? Can you explain more?

Humanitarian Actors:

1- Please provide a general introduction to your humanitarian agency mandate and scope of work, projects, sectors, and geography.
2- As a humanitarian agency working on the protection of civilians, to which extent are you aware of the IHL and Islamic Sharia Law principles and standards? Have you ever used them in advocacy with ANSAs? Please provide examples.

3- What are the main incidents your organization faced or violations recorded in regards to the protection of civilians with ANSAs? Was it at static centers or mobile/distribution cites? Or others, please explain.
4- How do you deal with those incidents/violations? What are the mitigation measures you have taken with ANSAs to ensure the protection of civilians? Is it IHL or Islamic Sharia Law based?
5- What are your recommendations for better protection of civilians in NW Syria and better adherence/compliance of ANSAs with IHL and Islamic law?
6- What do you think the role of the religious leadership can be, if any? Is it useful to engage them in advocacy and dialogue in relation to the protection of civilians? How can they influence armed groups?
7- What do you think are the main motives for non-state armed groups' attitude, knowledge, behavior regarding protection of civilians?

Appendix 4: Interviewees' Profiles

NSAGs Representatives

1. A.D Head of the legal office in the Sham Legion faction, a former lawyer, and an activist in the legal work in northwest Syria, a member of the Aleppo Bar Association, he has extensive work in the approaches between international humanitarian law and Islamic law, certified trainer on international humanitarian law.
2. A.A Head of the legal and political office in the Jaysh al-Islam faction, a former lawyer, and an activist in legal work in northwestern Syria. Legal advisor to the leadership of the Jaysh al-Islam and the Syrian National Army.
3. A.H. Commander-in-Chief of the Ahrar al-Sharqiya faction.
4. F.A.B Commander in Al-Mutasim brigade.
5. A.H. Member of the Shura Council and the Military Council of the Al-Jabha Al-Shamiyah and the leadership of the Third Battalion in the SNA.

Humanitarian Actors:

1- M.B International Expert with UNOCHA, experienced in humanitarian access engagement and negotiations with armed groups.

2- A.K National Expert with IOM, experienced in protection of civilians and humanitarian access engagement with armed groups.

3- A.S International Expert with ICRC regional office in Amman, experienced IHL and Islamic Law.

4- S.R International Expert with Geneva Call, experienced in IHL and Islamic Sharia Law, with PhD in Islamic studies. A practitioner and a trainer on IHL and IL with NW Syria armed groups.

5- J.Q National Expert with Bahar Organization, experienced in protection, humanitarian access and engagement with armed groups.