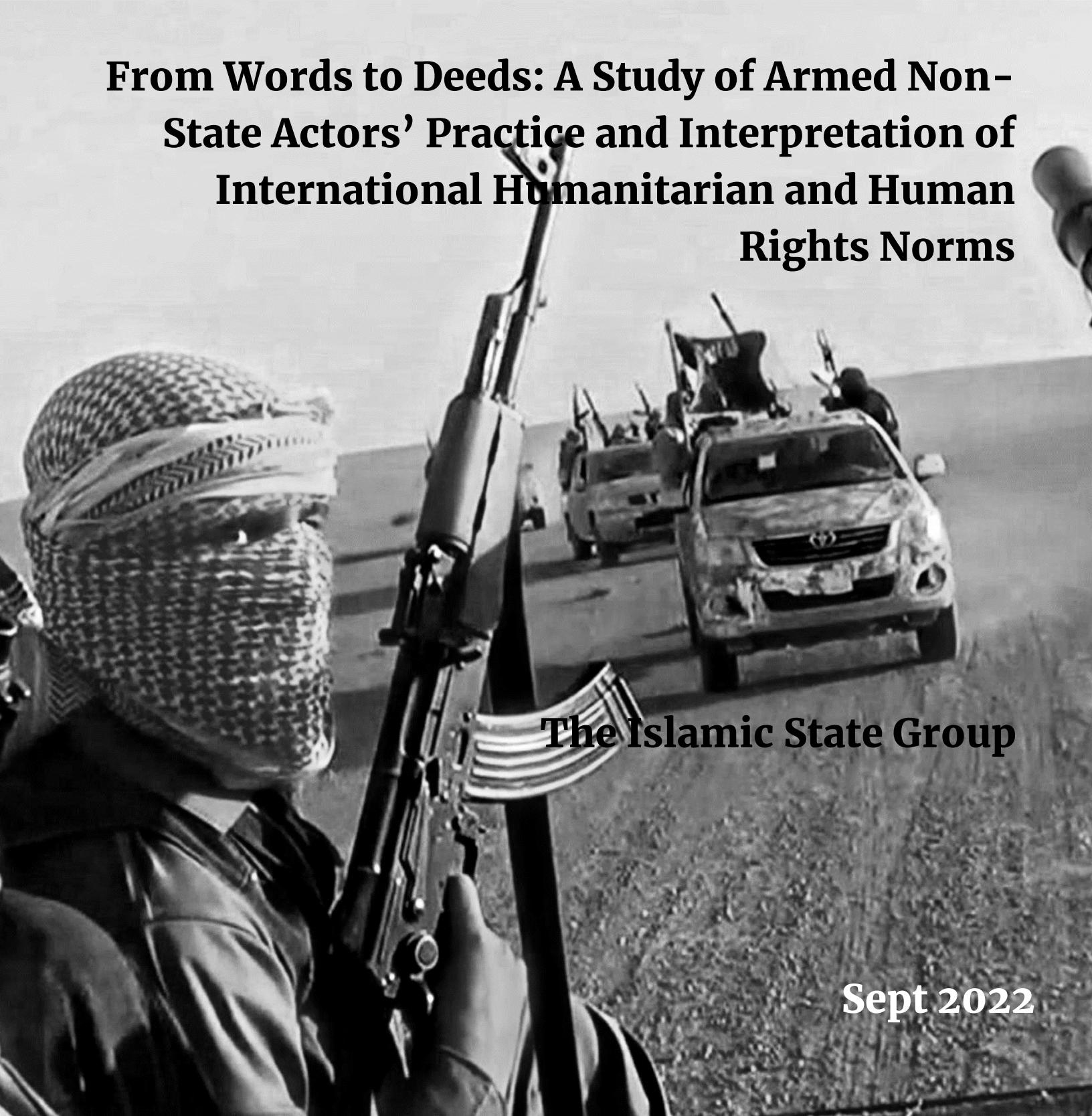


From Words to Deeds: A Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms



The Islamic State Group

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The CCDP is the Graduate Institute's focal point for research in the areas of conflict analysis, peacebuilding and the complex relationships between security and development (<https://www.graduateinstitute.ch/ccdp>). It hosts the principal investigator of the project, Dr Annyssa Bellal as well as the project's Co-investigator, Pascal Bongard.



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Established in 2007 by the Faculty of Law of the University of Geneva and the Graduate Institute, the Geneva Academy of IHL and Human Rights ([geneva-academy.ch](https://www.geneva-academy.ch)) is a research and teaching center which focuses on clarifying IHL, strengthening human rights protection, and developing the areas of complementarity between IHL and international human rights law. It hosted the principal investigator until December 2021.



Geneva Call is an NGO partner of the project. Geneva Call has a leading position in the field of humanitarian engagement with armed non-state actors (ANSAs). A neutral, impartial and independent humanitarian organization dedicated at promoting respect for IHL, Geneva Call has engaged more than 150 ANSAs worldwide since its establishment in 2000. It hosts the Co-investigator Dr Ezequiel Heffes.



The Norwegian Refugee Council ([nrc.org](https://www.nrc.org)) is an independent humanitarian organization working to protect the rights of displaced and vulnerable people during crises. It is widely recognised as a leading field-based displacement agency within the international humanitarian community and it also plays a leading role in protection coordination. Since 2018, NRC is committed to working in hard-to-reach contexts, a strategic ambition which in part requires engagement with ANSAs. NRC is an NGO partner of the project.

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LIST OF ACRONYMS AND ABBREVIATIONS

ANSA	Armed non-state actor
AQI	Al-Qaeda in Iraq (Al-Qaeda in Mesopotamia)
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
IHRL	International human rights law
ISg	Islamic State group
ISI	Islamic State of Iraq
ISIL	Islamic State in Iraq and the Levant
ISIS	Islamic State in Iraq and al-Sham
OIC	Organisation of Islamic Cooperation

GLOSSARY OF TERMS

Aman: A safety pledge made by Muslims to non-Muslims ensuring safe temporary residence in the Muslim world. Also, a safety pledge made by non-Muslims to Muslims in non-Muslim territory.

Baghy: Rebellion against a Muslim ruler.

Dhimma: Contract under which non-Muslims resided in Muslim territory in early Muslim societies.

Dhimmi: A non-Muslim person who possesses a *dhimma* contract.

Hakimiyya: Divine sovereignty – adherence to Islamic law as the primary tenet of governance.

Hiraba: The crime of highway robbery in the classical jurisprudential tradition, extended by modern Muslim scholars to include conflicts with terrorists.

Hudud (sing. Hadd): A category of crimes in Islamic law that are sanctioned with particular punishments.

Jahiliyya: the age of ignorance, referring to the period before Prophet Muhammad's message in the Arabian Peninsula. Often used in modern contexts to describe societies perceived as straying from the message of Islam.

Jihad: Literally, the exertion of one's best effort (in the path of God), but legally, conflicts with non-Muslims.

Jizya: Poll tax paid by non-Muslims who lived in Muslim territory under a *dhimma* contract.

Ridda: Renunciation of the Muslim faith. Conflicts with those who commit *ridda* are treated by some scholars as coming under a separate legal regime.

Takfir: A declaration that someone has committed *ridda*.

Tatarus: Often referred to situations where the Muslim army was besieging a non-Muslim city and the non-Muslim army used untargetable categories such as women, children and Muslims as shields.

EXECUTIVE SUMMARY

This case study has been conducted as part of the research project as part of the research project ‘From Words to Deeds: A research Study of Armed Non-State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms’, which aims at providing tools for an effective engagement of armed non-State actors to improve humanitarian protection.

From a legal perspective, while ANSAs are bound by IHL, how they actually perceive, understand and act upon their obligations has remained insufficiently explored. Through a comparative analysis of selected norms, the research project aims to advance understanding of ANSAs’ perspectives and behaviour, enhance strategies to promote their compliance with IHL as well as inform future international law-making processes.

Because the research project aims to offer an analysis of ANSAs’ claims about law and the legitimacy of their actions, and due to the rejectionist position taken by the Islamic State group (ISg) towards the international global order, including international law, the research team has decided to focus its legal analysis on Islamic laws of war. Considering the fluidity and diversity of views in Islamic law, examined in Section 4 on applicable law, the case study offers an overview of ISg’s ideological positions on the norms examined and contrasts them with the classical jurisprudential tradition and mainstream Muslim institutions and scholars.

Key findings include:

ISg belongs to militant groups often identified as Salafi-jihadist groups. To varying degrees, these groups reject the application of secular laws and state their aim as being to re-establish an Islamic regime adherent to their interpretation of Islamic law. ISg not only rejects the application of secular laws, including international law, but also deems reliance on secular laws heresy and argues that Muslims who adhere to those legal systems are unbelievers. It therefore takes a *takfiri* (claims of other Muslims' apostasy) position towards believers in democracies and under forms of secular governance, including both Muslim governments that rely on secular laws and the subjects who accept those governments and their secular governance. This allows it to suspend protections offered by Islamic law to Muslims and non-Muslims residing in or visiting Muslim territories. On one hand, the claim of apostasy allows the group to adopt interpretations that deem apostates targets and, on the other hand, claims of the apostasy of Muslim governments create the space for the group to deny protections traditionally offered by Islamic law to non-Muslims in Muslim lands.

- Even with regard to protected categories, the group adopts an expansive interpretation of targeting by stretching the limits of the Islamic regime of *tatarus*, which traditionally dealt with unintentional damage to untargetable human shields, to allow it to resort to indiscriminate tactics. Moreover, the group also adopts an interpretation of Islamic law that allows resort to impermissible tactics on the basis of retaliation and reciprocity.
- Despite modern Muslim assertions of the prohibition of slavery, the group’s interpretation of Islamic law justifies the enslavement of war captives and legitimizes sexual slavery.

- Unlike modern Muslim jurists who reject the destruction of cultural and religious sites, the group argues that sites of cultural heritage and religious sites are either idolatry or representative of sects deviant from Islam and must be destroyed. This has led to an active policy of destruction of religious and cultural heritage sites by the group.
- The ISg's resort to the least restrictive interpretations of Islamic law, even when compared to other Islamist militant groups, and its attempt to revive practices such as enslavement, albeit in a distorted manner, are in our view an attempt to stand out as the most puritan and formidable Islamist militant alternative. Hence, it uses *takfir* to discredit the claims of key militant ideologues and al-Qaeda figures to a more restrained approach to Islamic militancy.

INTRODUCTION

This case study has been conducted as part of the research project ‘From Words to Deeds: A research Study of Armed Non-State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms’,¹ which aims at providing tools for an effective engagement of armed non-State actors to improve humanitarian protection. During the life of the project, funds were received from UK Research and Innovation, the UK Foreign, Commonwealth and Development Office, the Swiss Department of Foreign Affairs and the Humanitarian Aid Department of the European Commission.²

The research builds on three interrelated trends. First, as most armed conflicts today are non-international,³ ANSAs tend to play prominent roles, exerting a growing influence over the lives of individuals worldwide. Because of the humanitarian consequences their actions entail, especially for the civilian population, the international community has called for a more sustained engagement with ANSAs toward IHL compliance.⁴ Second, from a legal perspective, though it is undisputed that ANSAs are bound by IHL, how they view, interpret or implement

¹ The issue of human rights obligations of armed non-state actors (ANSAs) under international law remains controversial both at the theoretical and policy levels. Therefore, the present research project focuses on collecting and analysing ANSAs’ practice and interpretation of international humanitarian law (IHL) rules. Nevertheless, norms related to human rights, such as gender equality or the 18-year age limit for recruitment and participation of children in hostilities have been included in the interviews. Indeed, even if the issue of human rights obligations of ANSAs is controversial, ANSAs themselves often refer to human rights in their policies and regulations. This is a good indication of what some ANSAs feel bound by and deserves to be considered in the analysis, notably because it can be indicative of what could be included in future law-making processes.

² For further information on the project, see A. Bellal, P. Bongard and E. Heffes, From Words to Deeds: A Research of Armed Non-State Actors’ Practice and Interpretation of International Humanitarian and Human Rights Norms, Research Brief, Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), December 2019, <https://www.geneva-academy.ch/joomlatools-files/docman-files/From%20Words%20to%20Deeds%20A%20Research%20of%20Armed%20Non-State%20Actors%20Practice%20and%20Inter.pdf> (last accessed 8 September 2022).

³ Despite widespread recognition that the majority of armed conflicts today are non-international in nature, there are divergent views on the precise number. See A. Bellal, *The War Report: Armed Conflicts in 2018*, Geneva Academy, 2019, p 19, <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202018.pdf> (last accessed 8 September 2022); International Committee of the Red Cross (ICRC), *The Roots of Restraint in War*, 2018, pp 13–14.

⁴ United Nations Security Council, Protection of Civilians in Armed Conflict: Report of the Secretary-General, UN doc S/2019/373, 7 May 2019, §66 (affirming that ‘[e]nhancing respect for the law requires changing the behaviour and improving the practices of non-State armed groups. Key to this is principled and sustained engagement by humanitarian and other relevant actors that is, moreover, strategic and based on a thorough analysis of the group(s) concerned’).

their international obligations has remained insufficiently explored.⁵ While a number of studies have analysed states' practice, notably the 2005 International Committee of the Red Cross (ICRC) study on customary IHL,⁶ a comprehensive analysis of existing humanitarian norms from the perspective of ANSAs has yet to be made.⁷ Finally, the state-centric approach to ANSAs' international obligations may explain to some extent the lack of ownership of, and compliance with, international law by these actors. Indeed, there is an increasing sense that ANSAs' compliance with international law is likely to improve if they are consulted about the development and implementation of the rules that are binding upon them.

This research aims to increase our knowledge of ANSAs' practice and interpretation of selected international norms, anchored notably in IHL.⁸ It focuses on the following main questions:

- Are ANSAs familiar with these norms and how do they understand them?
- Do they agree with their content?
- What factors influence their policy and practice?
- Are there new issues that ANSAs would be willing to regulate in the future?

⁵ Several authors have referred to this knowledge gap. See, among others, M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar Publishing, 2019; J. Hyeran, *Compliant Rebels: Rebel Groups and International Law in World Politics*, Cambridge University Press, 2015; D. Petrasek, *Ends & Means: Human Rights Approaches to Armed Groups*, International Council on Human Rights Policy, 2000, <https://reliefweb.int/attachments/2d260b8d-64fa-32ce-97ad-3d639c95f777/3DCC2D9C95FC0BCFC1256C14004E55A1-EndsandMeans.pdf> (last accessed 8 September 2022).

⁶ J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Cambridge University Press, 2005. See also the ICRC Customary IHL Database (ICRC CIHL Database), <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> (last accessed 8 September 2022).

⁷ M. Sassòli, 'Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law', 1 *Journal of International Humanitarian Legal Studies* 1 (2010); S. Sivakumaran, 'Implementing Humanitarian Norms Through Non-State Armed Groups', in H. Krieger (ed), *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*, Cambridge University Press, 2015, p 125; S. Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012.

⁸ The research examines ANSAs' perspectives on the following core norms: i) protection of civilians from attacks;

ii) the prohibition of sexual violence and gender discrimination; iii) the prohibition of using and recruiting children

in hostilities; iv) the protection of education; v) humanitarian access; vi) protection of health care; vii) the prohibition of forced displacement; viii) use of landmines and other explosive devices; ix) detention, fair trial and administration of justice; x) the special protection of certain objects, such as cultural property and the environment. The choice of these norms has been dictated by three factors: First, the violation of these rules represents a current challenge identified by various humanitarian actors when dealing with ANSAs. The second factor is related to ANSAs' perceptions of these norms, as some of them represent the most contentious and challenging humanitarian provisions from their perspective. Finally, some of the selected norms, such as the protection of the environment, may be part of future legal developments.

By compiling and analysing ANSAs' views and interpretation on a comparative basis, the research will provide a better sense of how ANSAs perceive IHL, which norms are the more accepted or disputed and why. It also sheds light on the causes of violations or, *a contrario*, the factors that are conducive to compliance or restraint. Altogether, it is expected that the results of the research will advance our understanding of ANSAs' behaviours during armed conflicts and inform strategies to promote their compliance with IHL as well as future international law-making processes. The research entails a global analysis of various sources used by ANSAs that reflect their position on international law, as well as a number of case studies.⁹

METHODOLOGY

A. ISLAMIC LAWS OF WAR

Because the research project aims to offer an analysis of ANSAs' claims about law and the legitimacy of their actions, and due to the rejectionist position taken by the ISg towards the international global order, including international law, the research team has decided to focus its legal analysis on Islamic laws of war. Considering the fluidity and diversity of views in Islamic law, examined in Section 4 on applicable law, the case study offers an overview of al-Qaeda's ideological positions on the norms examined and contrasts them with the classical jurisprudential tradition and mainstream Muslim institutions and scholars.

Both the classical and modern interpretations of Islamic law reflect great diversity, deeming it impossible to offer an exhaustive overview of these traditions within the confines of this case study. Thus, in reference to the classical tradition, the study mostly relies on classical works that offer an overview of different juristic positions, such as Al-Tabari's *Kitab al-Jihad*, Ibn Qudama's *Al-Mughni* and Ibn Rushd's *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*.

To give the reader a sense of some of the modern views of Islamic laws of war that contradict the group's position, the study refers to certain statements made by al-Azhar or key Islamic scholars or research conducted by prominent modern Muslim scholars such as Muhammad Abu Zahra, Wahbah al-Zuhayli and Yusuf al-Qaradawi. It should be noted that the mainstream literature examined in the case study is not meant to provide an exhaustive overview of the modern Islamic interpretation of the laws of war, but rather to offer the reader a glimpse of how the modern mainstream tradition contradicts the group's views of Islamic law.

Reference is also sometimes made to the Cairo Declaration on Human Rights in Islam, an international legal document arrived at under the auspices of the Organisation of Islamic Cooperation (OIC). This source is relevant to the debate on human rights norms in Islam for two reasons. First, as clarified later in this study, Muslim states' positions on the role of human rights

⁹ The sources include unilateral declarations, public statements, codes of conduct, command orders, penal codes, 'legislations', decrees, memoranda of understanding, special agreements, as well as peace and ceasefire agreements. For more information, see the website of the project: words2deeds.org.

may be utilized to determine a modern position on the Islamic interpretation of human rights issues. Second, the Cairo Declaration, in addition to having been arrived at under the auspices of the OIC, asserts that ‘The Islamic Shari'a is the only source of reference for the explanation or clarification of any of the articles of this Declaration.’¹⁰

The following key intellectual mainstream figures/works have been relied on in the study:

1. Works published under the auspices of al-Azhar, one of the most renowned Sunni institutions in the Muslim world.
2. A collective letter from Muslim scholars to Abu Bakr al-Baghdadi.¹¹ While the letter is directed at the Islamic State in Iraq and al-Sham (ISIS), it is key to highlighting the general agreement of prominent Muslim scholars on issues of Islamic law pertaining to armed conflict.
3. Muhammad Abu Zahra (1898–1974): an Egyptian scholar who worked extensively on Islamic laws of war.
4. Wahbah al-Zuhayli (1932–2015): a prominent Syrian jurist and professor of jurisprudence at Damascus University, who wrote extensively on Islamic laws of war.
5. Yusuf al-Qaradawi: a prominent Muslim jurist who has written on Islamic laws of war. Al-Qaradawi, who is Chair of the International Union of Muslim Scholars, maintains a strong relationship with the Muslim Brotherhood.

B. ISG VIEWS AND PRACTICE

The case study focuses on ISg publications and practice relating to the group’s activities in Iraq and Syria. Views and practices of ISg affiliate groups are not examined in this research. The research relies on ISg publications and internal documents. There is a focus on ISg’s two English propaganda magazines, *Dabiq* and *Rumiyah*, and its Arabic publication, *Al-Nabaa’*. With regard to ISg internal documents, the study relies on documents published by websites that trace jihadist publications such as *Aymenn Jawad al-Tamimi’s Blog* and Aaron Zelin’s *Jihadology*. The study also relies on United Nations and human rights organizations’ reports and secondary literature authored by experts on the group.

The key militant figures mentioned in the study are:

1. Abu Bakr al-Baghdadi: leader of ISg since 2010 and self-declared caliph of ISg since 2014. Died in 2019.

¹⁰ Art 25, Cairo Declaration on Human Rights in Islam, 5 August 1990, <https://www.refworld.org/docid/3ae6b3822c.html> (last accessed 8 September 2022).

¹¹ ‘Open Letter To Dr. Ibrahim Awwad al-Badri, Alias “Abu Bakr al-Baghdadi”’ and ‘To the Fighters and Followers of the Self-Declared “Islamic State”’ (Letter to Baghdadi), 19 September 2014, <http://www.lettertobaghdadi.com/14/english-v14.pdf> (last accessed 8 September 2022).

2. Turki al-Bin'ali: a key ISg religious advisor who headed the Office of Research and Studies (Maktab al-Buhuth wa'l-Dirasat).¹² Died in 2016.
3. Abu Hamza al-Muhajir (Abu Ayub al-Masri): Abu Musab al-Zarqawi's successor and later deputy to Abu Omar al-Baghdadi. Died in 2010 with Abu Omar al-Baghdadi.
4. Abu Omar al-Baghdadi (Hamid Dawud Khalil al-Zawi): a former police officer who was the emir of the Islamic State of Iraq. Died in 2010.
5. Abu Muhammad al-Adnani: official spokesperson of ISg. Died in 2016.

ISG PROFILE

The Islamic State¹³ is a Salafi-jihadist non-state actor that has undergone several mutations since its emergence after the United States' invasion of Iraq in 2003. While there are various differences among Salafi-jihadist groups, they are committed to 'physical struggle in the cause of God as the pinnacle of Islam, its zenith and apex'.¹⁴ As products of the modern world order, Salafi-jihadist groups use notions such as *tawhid* (monotheism), *al-wala' wa-l-baraa* (loyalty to God and disavowal of his enemies) and *hakimiyya* (supremacy of God's laws) to employ *takfir* to justify their pursuit of jihad.¹⁵ Throughout its history, ISg has had convergences with and divergences from al-Qaeda, operating as an affiliate of al-Qaeda until 2014. However, ever since its inception, it has followed a distinctively different strategy and conduct to al-Qaeda, which severed the relationship between the two groups in the early stages (2004–2006), igniting a final rift and rivalry from 2014 until the present.

The group emerged after the US invasion of Iraq and expanded in the context of the region's civil wars and popular uprisings (after the US withdrawal from Iraq in 2011) and in Syria (2012 onwards). This section traces ISg's history and evolution from a subsidiary of al-Qaeda to its relative demise after the loss of territories it once controlled.

In 2004, Ahmad Fadl al-Nazal al-Khalayleh, Abu Musab al-Zarqawi, the leader and godfather of Jama'at al-Tawhid wa al-Jihad, pledged allegiance to Osama bin Laden's al-Qaeda.¹⁶ Forced underground after the US-led invasion of Afghanistan, al-Qaeda welcomed a nascent arm to operate and expand in Iraq after its invasion by the US-led coalition in 2003. By as early as 2002, al-Zarqawi had embarked on building a jihadi infrastructure in Iraq to counter the looming US

¹² C. Bunzel, 'Caliphate in Disarray: Theological Turmoil in the Islamic State', *Jihadica*, 3 October 2017, <https://www.jihadica.com/caliphate-in-disarray/> (last accessed 8 September 2022).

¹³ The Islamic State (IS), the Islamic State in Iraq and Syria/the Levant (ISIS/ISIL), the Islamic State in Iraq (ISI) and al-Qaeda in Iraq (AQI) are all names of IS at different stages of its history. In general, this work refers to the group in its latest name, i.e. the Islamic State group (ISg), while using the other names in time-specific references.

¹⁴ S. Maher, *Salafi-Jihadism: The History of an Idea*, Oxford University Press, 2016, p 33.

¹⁵ For a full discussion of Salafi-jihadism and the modern utilization of the abovementioned concepts, see *ibid*.

¹⁶ J. Pool, 'Zarqawi's Pledge of Allegiance to al-Qaeda: From Mu'asker al-Battar', 2 *Terrorism Monitor* 24 (16 December 2004), <https://jamestown.org/program/zarqawis-pledge-of-allegiance-to-al-qaeda-from-muasker-al-battar-issue-21-2/> (last accessed 8 September 2022).

invasion. When, in 2002, bin Laden called upon Iraqis to be prepared for jihad and martyrdom in the face of the US invasion,¹⁷ al-Zarqawi and his group were prepared.¹⁸

Yet, al-Qaeda's focus on the 'far enemy' (non-Muslim regimes that oppress Muslims and aid non-Muslim governments, mainly the US) had no place in al-Zarqawi's strategy; the Shiites, according to him, embodied a threat to Sunnis.¹⁹ This position was not endorsed by al-Qaeda. In 2005, al-Zawahiri, the then second-in-command of al-Qaeda, sent al-Zarqawi a letter advising against the killing of Shiites and the indiscriminate use of violence against civilians.²⁰ Al-Zawahiri argued that Muslims' mass support is the most important factor in the establishment of an Islamic caliphate, and hence, he warned that al-Zarqawi's doctrine could endanger that whole project.²¹

Beside the targeting of Shiites, Al-Qaeda in Iraq's (AQI's) suicide bombings, taking the lives of hundreds of civilians including Sunni Muslims and children, became daily news. In May 2005, in a tape released by CNN Arabic, al-Zarqawi, named 'Sheikh of the Slaughterers',²² defended AQI's killings of civilians saying, 'the shedding of Muslim blood ... is allowed in order to avoid the greater evil of disrupting Jihad'.²³

This ultraviolence of AQI was not a mere improvisation by al-Zarqawi and his followers. On a doctrinal level, AQI adhered to an ideology of extreme violence. In 2004, Abu Bakr Naji (Muhammad Hassan Khalil al-Hakim), an Egyptian jihadist from al-Jama'a al-Islamiyya, published *Idaret al-Tawhhush* (The Management of Savagery), which became a seminal work in the literature of AQI and its successor, ISg. The book envisions the jihadi struggle in three stages: disruption and exhaustion through terrorist attacks; management of savagery through

¹⁷ O. bin Laden, *Messages to the World: The Statements of Osama Bin Laden*, ed by B. Lawrence, trans. J. Howarth, Verso, 2005. pp 180–185.

¹⁸ B. O. Riedel, *The Search for Al Qaeda: Its Leadership, Ideology, and Future*, Brookings Institution Press, 2008, p 88.

¹⁹ 'Zarqawi Letter', February 2004, U.S. Department of State Archive, <https://2001-2009.state.gov/p/nea/rls/31694.htm> (last accessed 8 September 2022).

²⁰ See the case study on al-Qaeda for a detailed analysis of al-Zawahiri's position on targeting.

²¹ 'Zawahiri's Letter to Zarqawi', Combating Terrorism Center at West Point, 2005, <https://ctc.usma.edu/harmony-program/zawahiris-letter-to-zarqawi-original-language-2/> (last accessed 8 September 2022); 'Atiyah Abdal-Rahman, known as 'Atiyatullah al-Libi, a senior member of al-Qaeda, sent al-Zarqawi a letter as well, in which he criticizes the latter for losing sight of al-Qaeda's goal of establishing a caliphate. He warns al-Zarqawi of obscuring al-Qaeda's project by alienating Muslims as a result of his indiscriminate attacks, "Atiyah's Letter to Zarqawi", Combating Terrorism Center at West Point, 2005, <https://ctc.usma.edu/harmony-program/atiyahs-letter-to-zarqawi-original-language-2/> (last accessed 8 September 2022).

²² H. Hassan and M. Weiss, *ISIS: Inside the Army of Terror*, Simon and Schuster, 2015, pp 95–97.

²³ Al-Zarqawi, quoted in M.-M. Ould Mohamedou, *Understanding Al Qaeda: The Transformation of War*, Pluto Press, 2007, p 61.

employing highly visible violence to deter the enemy; and empowerment through territorial gains that unite under an Islamic caliphate.²⁴

In the aftermath of the US invasion of Iraq, sectarianism was on the rise, which provided an opportune moment to entrench AQI even deeper in the Iraqi scene. By January 2006, in an attempt to further ‘Iraqize’ AQI and unite the Sunni insurgencies, AQI formed Majlis Shura al-Mujahideen (the Mujahideen Advisory Council) after a merger with five jihadi groups.²⁵ In February 2006, when AQI attacked al-Askari Mosque in Samarra – the third holiest of Shia shrines in Iraq and a mausoleum of two of the twelve imams of Twelver Shiites²⁶ – a wave of sectarian violence unfolded, ushering in a full-fledged civil war in Iraq.²⁷



²⁴ H. Hassan, *The Sectarianism of the Islamic State: Ideological Roots and Political Context*, Carnegie Endowment for International Peace, June 2016, p 17, https://carnegieendowment.org/files/CP_253_Hassan_Islamic_State.pdf (last accessed 8 September 2022); J. Stern and J. M. Berger, *ISIS: The State of Terror*, HarperCollins, 2015, pp 63–64; ‘New Online Book Lays Out al-Qaeda’s Military Strategy’, 2 *Terrorism Focus* 6 (March 2005), <https://jamestown.org/program/new-online-book-lays-out-al-qaedas-military-strategy/> (last accessed 8 September 2022).

²⁵ C. Lister, *Profiling the Islamic State*, Brookings Doha Center, November 2014, p 8, https://www.brookings.edu/wp-content/uploads/2014/12/en_web_listner-1.pdf (last accessed 8 September 2022).

²⁶ Twelver Shiites constitute the largest sect of Shiite Islam. They believe in twelve sacred imams, of whom the last lives in occultation and will appear at the end of time as the awaited Mahdi.

²⁷ Stern and Berger, *ISIS*, supra fn 24, p 67; P. Boghani, ‘David Petraeus: ISIS’s Rise in Iraq Isn’t a Surprise’, *Frontline*, 29 July 2014, <https://www.pbs.org/wgbh/frontline/article/david-petraeus-isiss-rise-in-iraq-isnt-a-surprise/>.

In June 2006, a US strike killed Abu Musab al-Zarqawi along with his confidant Sheikh Abdulrahman in Baquba.²⁸ The Mujahideen Advisory Council appointed Abu-Ayub al-Masri, known as Abu Hamza al-Muhajir, as al-Zarqawi's successor. In October, al-Muhajir declared AQI a part of a larger Iraqi Sunni resistance and called it the Islamic State of Iraq (ISI). Abu Omar al-Baghdadi, a senior Iraqi jihadist, was appointed its head.²⁹

The new name reflected the organization's efforts to establish state-like institutions, install a bureaucracy and guarantee some degree of financial sustainability in areas under its control. Thus, ISI under al-Muhajir's leadership installed ministries of agriculture, health and oil. It also managed to extract money from a range of sources, including taking ransoms for hostages and kidnappings, trading seized US weapons and selling off antiques and oil. In a striking difference to al-Qaeda, the external funding of ISI accounted for less than 5 percent of the organization's income.³⁰

However, ISI's indiscriminate violence, its attacks against Sunni tribe leaders, its *takfiri* practices and abuses against the Sunni population gave rise to a Sunni movement targeting ISI itself in Ramadi.³¹ Against the backdrop of the civil war engulfing the country since the al-Askari Mosque attacks, the US deployed an additional 30,000 troops in different Iraqi neighborhoods in what came to be known as 'the Surge'.³² US troops capitalized on the Sunni insurgency against ISI, offering the insurgents a window of collaboration against ISI in return for an employment arrangement with small salaries and promises to include them in the Iraqi police forces or the army later. Around 103,000 Sunnis joined what came to be known as al-Sahwa, the 'Awakening' or 'Sons of Iraq'.³³ From 2007 until 2009, Iraq witnessed a phase of decreased violence; ISI seemed to have suffered a defeat. However, when US troops began their withdrawal from Iraq in 2009, ISI embarked on a restructuring process that revived the organization.³⁴

As US troops were withdrawing from Iraq, the Iraqi Prime Minister, Nuri al-Maliki, turned his back on the al-Sahwa troops.³⁵ Undermining them was the first link in a long chain to be broken by al-Maliki over 2010–2011 that effectively aborted the chances of reconciliation in Iraq. In the meantime, ISI reverted to its old tactics as a terrorist group. It moved its headquarters to Mosul, northern Iraq, to make use of rising tensions between the Arabs and the Kurds. In Mosul, the organization enacted its structure with Abu Omar al-Baghdadi.³⁶ By 2010, it had lost most of its

²⁸ Lister, *Profiling the Islamic State*, supra fn 25, p 8.

²⁹ Hassan and Weiss, *ISIS*, supra fn 22, pp 166–167.

³⁰ The process of kidnappings and collecting ransoms was carried out by ISI rather systematically, becoming a sustainable source of income for the organization. See *ibid*, pp 156–157.

³¹ *Ibid*, pp 179–188; Stern and Berger, *ISIS*, supra fn 24, p 71.

³² Boghani, 'David Petraeus', supra fn 27.

³³ *Ibid*.

³⁴ Lister, *Profiling the Islamic State*, supra fn 25, p 9.

³⁵ Stern and Berger, *ISIS*, supra fn 24, pp 74–75; Lister, *Profiling the Islamic State*, supra fn 25, p 10. For a longer discussion on al-Maliki's policies, see: Z. al-Ali, 'How Maliki Ruined Iraq', *Foreign Policy*, 19 June 2014, <https://foreignpolicy.com/2014/06/19/how-maliki-ruined-iraq/>.

³⁶ Stern and Berger, *ISIS*, supra fn 24, p. 62.

senior leadership – 34 out of 42 senior leaders of AQI were either killed or imprisoned.³⁷ Unlike al-Qaeda, AQI’s ability to replace its leadership was limited. Hence, it undertook a series of attacks on different prisons to free its detained senior leaders.³⁸ For its recruitment, ISI targeted al-Sahwa members, including them in the organization’s ranks. Mullah Nadim Jibouri, an al-Sahwa leader, estimated that 40 percent of ISI’s forces were former al-Sahwa members.³⁹ Amidst these shifting grounds and the revival of ISI, the organization’s leaders, Abu Omar al-Baghdadi and Abu Hamza al-Muhajir, were killed in a joint US-Iraqi operation. In May 2010, Abu Bakr al-Baghdadi ascended to power as the leader of ISI.⁴⁰

³⁷ Hassan and Weiss, *ISIS*, supra fn 22, p 203. The use of AQI here refers to AQI specifically, not the wider coalition emerging as ISI; however, ISI, as the group referred to itself, is used later in this section.

³⁸ Lister, *Profiling the Islamic State*, supra fn 25, p 10.

³⁹ Hassan and Weiss, *ISIS*, supra fn 22, p 233.

⁴⁰ Information about Abu Bakr al-Baghdadi is contested in several sources. According to Hassan and Weiss’s *ISIS*, supra fn 22, pp 296–299, al-Baghdadi was an Iraqi native. He held a PhD in Sharia from the Islamic University, Baghdad and his jihadist activity started from 2003 when he founded his own jihadist group: Jama‘at Jaysh Ahl al-Sunna wa al-Jama‘ah (The Army of the Sunni People Group). In 2003, he was detained in Camp Bucca prison until late 2004. In 2007, al-Baghdadi joined the Mujahideen Shura Council. His selection as the emir in 2010 was by a majority of 9 votes from a total of 11 of the Shura Council.

A. THE ISLAMIC STATE'S ASCENSION (2011–2014)

In 2010–2011, al-Baghdadi embarked on rebuilding ISI, recruiting from his former fellow inmates at Camp Bucca including several Ba'athist leaders, who provided the group with ample military and governance experience.⁴¹ At the same time, in addition to eroding al-Sahwa, al-Maliki cracked down on Sunni protests that took to the streets starting from February 2011, opposing corruption and the socio-economic situation.⁴²



In 2012, Al-Baghdadi announced a year-long operation, 'Breaking the Walls', to free ISI's cadres from their detention. From July 2012 to July 2013, ISI attacked eight prisons, including the notorious Abu Ghraib. In 2013, al-Baghdadi followed with another year-long operation named 'Soldiers' Harvest' targeting security-force members everywhere.⁴³ Beside its military capabilities, ISI managed to manipulate a far-reaching web of intelligence that placed it ahead of local authorities.⁴⁴

⁴¹ Stern and Berger, *ISIS*, supra fn 24, 84–87.

⁴² Al-Ali, 'How Maliki Ruined Iraq', supra fn 35.

⁴³ M. Knights, 'ISIL's Political-Military Power in Iraq', 7 CTC Sentinel 8 (August 2014), 1–3, <https://ctc.westpoint.edu/wp-content/uploads/2014/09/CTCSentinel-Vol7Iss85.pdf> (last accessed 8 September 2022).

⁴⁴ Lister, *Profiling the Islamic State*, supra fn 25, p 12.

On the Syrian front, the aftermath of the uprisings of 2011 against Bashar al-Assad's regime was pushing the country into a civil war. Given Syria's significance to ISI since its very inception, through which recruits, weapons and reinforcements passed to Iraq, the chaos and instability in the country provided a ripe pretext for ISI to expand there.⁴⁵ In August 2011, al-Baghdadi sent a group of seven ISI operatives to Syria headed by Abu Muhammad al-Julani, a Syrian jihadist who joined ISI in Iraq and was detained with al-Baghdadi in Camp Bucca.⁴⁶ The goal of the dispatched group was to start a new jihadist group in Syria: Jabhat al-Nusra.⁴⁷ Initially, al-Julani maintained a façade of independence for his movement from both ISI and al-Qaeda. Covertly, however, Jabhat al-Nusra depended on funds and weapons from ISI. By 2013, Jabhat al-Nusra had already established itself as the leader of insurgent groups in Syria.⁴⁸

Seizing on this success, in April 2013, al-Baghdadi decided unilaterally to proclaim Jabhat al-Nusra's relationship to ISI, subsuming it into his project of a wider Islamic State in Iraq and al-Sham (ISIS).⁴⁹ Al-Baghdadi's decision uncovered the tensions embedded in the jihadi scene and the possibly competing agendas of the original jihadi groups and their affiliates/offshoots. In response to al-Baghdadi's declaration, al-Julani affirmed the original link between the two groups but rejected the planned merger, using this chance to assert his group's allegiance to al-Zawahiri and al-Qaeda.⁵⁰ To prevent a looming infight between ISI and Jabhat al-Nusra, al-Zawahiri appointed Abu Khalid al-Suri, a veteran al-Qaeda member in Syria, as arbitrator between the two groups. Al-Suri denounced the moves of both al-Baghdadi and al-Julani, ruling that each group should function in their spheres independently.⁵¹ Al-Baghdadi rejected the ruling

⁴⁵ Since the US invasion of Iraq, Syria served as a gateway for weapons, funds and foreign fighters for AQI through an unspoken agreement with the al-Assad regime. A vast network of jihadists-smugglers operated along the borders between Syria and Iraq. In 2007, it was estimated that 85–90 percent of the foreign fighters in Iraq came from Syria. See P. Neumann, 'Suspects into Collaborators: Assad and the Jihadists', 36 *London Review of Books* 7 (3 April 2014) <https://www.lrb.co.uk/the-paper/v36/n07/peter-neumann/suspects-into-collaborators> (last accessed 8 September 2022).

⁴⁶ C. Lister, *Profiling Jabhat al-Nusra*, Center for Middle East Policy at Brookings, 2016, p 5. https://www.brookings.edu/wp-content/uploads/2016/07/iwr_20160728_profiling_nusra.pdf (last accessed 8 September 2022).

⁴⁷ Hassan and Weiss, *ISIS*, supra fn 22, pp 366–367.

⁴⁸ Lister, *Profiling Jabhat al-Nusra*, supra fn 46, p 5.

⁴⁹ Abu Bakr al-Baghdadi, 'Wa Bashir al-Mu'mineen', cited in C. Bunzel, 'From Paper State to Caliphate: The Ideology of the Islamic State', Center for Middle East Policy at Brookings, March 2015, <https://www.brookings.edu/wp-content/uploads/2016/06/the-ideology-of-the-islamic-state.pdf> (last accessed 8 September 2022).

⁵⁰ Abu Muhammad al-Julani, 'About the Fields of al-Sham', Arabic audio message, available in A. Y. Zelin, 'Al-Manarah al-Bayda' Foundation for Media Production Presents a New Audio Message from Jabhat al-Nusra's Abu Muhammad al-Jawlani (al-Golani): "About the Fields of al-Sham"', *Jihadology*, 10 April 2013, <https://jihadology.net/2013/04/10/al-manarah-al-bayda-foundation-for-media-production-presents-a-new-audio-message-from-jabhat-al-nusra-abu-muhammad-al-jawlani-about-the-fields-of-al-sham/> (last accessed 8 September 2022).

⁵¹ A. al-Zawahiri, Letter to the Leaders of the Two Jihadi Groups, 1434 H.

and questioned al-Zawahiri's authority to arbitrate.⁵² In reality, al-Qaeda for al-Baghdadi represented a mere shadow of the al-Qaeda in the 2000s, after long years of laying low in the face of international counterterrorism campaigns.⁵³ In February 2014, in a suicide bomb attack in Aleppo, Abu Khalid al-Suri was assassinated; ISIS was suspected to be sending a stronger message to al-Qaeda in Afghanistan.⁵⁴ Al-Qaeda's response to ISIS was a public disavowal of the group, cutting off all relations with the organization and starting a rift between the two groups that persists today.⁵⁵

B. TERRITORIAL CONTROL (2014–2019)

Al-Baghdadi retaliated on the ground with a swift move by ISIS into Syria. Throughout 2014, ISIS advanced in northern Syria, taking over Raqqa and the surrounding areas, and declaring Raqqa the capital of its Syrian wing. In parallel, ISIS capitalized on the Sunnis' situation in Anbar, Iraq, advancing into Falluja and Ramadi (prominent Sunni-dominated cities of Anbar Province). Consolidating these territories on the Iraqi side, ISIS launched a series of attacks along the shared borders with Syria, pushing Jabhat al-Nusra and other insurgent groups inwards and capturing their territories, most notably Deir ez-Zor.⁵⁶ In June 2014, ISIS captured Mosul, Iraq's third most populated city, housing the country's largest dam, with little resistance from the Iraqi army.⁵⁷ By the end of June, ISIS announced the establishment of the caliphate, with Abu Bakr al-Baghdadi as its first caliph under the name Caliph Ibrahim. ISIS also erased the Iraq and al-Sham part of its name, changing it to the Islamic State group (ISg), emphasizing a more global outlook.⁵⁸ By November 2015, ISg expanded internationally in 18 provinces (*wilayat*) in Egypt, Libya, Algeria,

⁵² 'Iraqi al-Qaeda Chief Rejects Zawahiri Orders', *Al Jazeera*, 15 June 2013. <https://www.aljazeera.com/news/2013/6/15/iraqi-al-qaeda-chief-rejects-zawahiri-orders>.

⁵³ This previously unspoken position became clearer after ISIS's spokesperson, Abu Muhammad al-Adnani, publicly mocked al-Zawahiri's weakness. See Abu Muhammad al-Adnani, 'Sorry, Amir of-Qa'idah', Arabic audio message, available in A. Y. Zelin, 'Al-Furqan Media Presents a New Audio Message from the Islamic State of Iraq and al-Sham's Sheikh Abu Muhammad al-Adnani al-Shami: "Sorry Amir of al-Qa'ida"', *Jihadology*, 11 May 2014. <https://jihadology.net/2014/05/11/al-furqan-media-presents-a-new-audio-message-from-the-islamic-state-of-iraq-and-al-shams-shaykh-abu-mu%e1%b8%a5ammad-al-adnani-al-shami-sorry-amir-of-al-qaidah/> (last accessed 8 September 2022).

⁵⁴ Stern and Berger, *ISIS*, supra fn 24, p 93; Hassan and Weiss, *ISIS*, supra fn 22, p 444.

⁵⁵ A. Y. Zelin, 'Al-Qaeda Disaffiliates with the Islamic State of Iraq and al-Sham', The Washington Institute for Near East Policy, 3 February 2014, <https://www.washingtoninstitute.org/policy-analysis/al-qaeda-disaffiliates-islamic-state-iraq-and-al-sham> (last accessed 8 September 2022).

⁵⁶ Lister, *Profiling the Islamic State*, supra fn 25, pp 13–14.

⁵⁷ Stern and Berger, *ISIS*, supra fn 24, pp 95–96. Mitchell Prothero provides a detailed account of the battle of Mosul on 9 June 2014, M. Prothero, 'How 2 Shadowy ISIS Commanders Designed Their Iraq Campaign', *The Sacramento Bee*, 30 June 2014, <https://www.sacbee.com/news/nation-world/article2602586.html>.

⁵⁸ Lister, *Profiling the Islamic State*, supra fn 25, p 14; Stern and Berger, *ISIS*, supra fn 24, p 98.

Nigeria, Yemen, Bahrain, Saudi Arabia, Afghanistan-Pakistan and the Russian North Caucasus (see Appendix 1).⁵⁹



ISg put this international dimension into action when faced with the anti-ISg international coalition. In September, the group addressed jihadists everywhere in the world, urging them to ‘kill a disbelieving American or European – especially the spiteful and filthy French – or an Australian, or a Canadian, or any other disbeliever from the disbelievers waging war, including the citizens of the countries that entered into a coalition against the Islamic State ...in any manner or way however it may be’.⁶⁰ The message reverberated. During 2015, ISg was linked to 80 percent of the terrorist attacks in Europe, with large attacks in Egypt, France, Brussels and the United Kingdom over the following two years.⁶¹

C. GOVERNANCE

ISg’s vast territorial expansion should not eclipse the fact that it was gradual. ISg captured a province, established its offices and eliminated its rivals, seizing the resources. In doing so, it

⁵⁹ C. Lister, *Jihadi Rivalry: The Islamic State Challenges al-Qaida*, Brookings Doha Center, January 2016, p 16, <https://www.brookings.edu/wp-content/uploads/2016/07/en-jihadi-rivalry-2.pdf> (last accessed 8 September 2022). IS coordinated its groups’ pledges to take place on the same day, after which the caliph announced the acceptance of the new *wilayat*.

⁶⁰ Abu Muhammad al-Adnani, ‘Indeed Your Lord is Ever Watchful’, cited in Lister, *Jihadi Rivalry*, supra fn 59, p 22.

⁶¹ Ibid, p 23; M. Chulov, ‘The Rise and Fall of the Isis “Caliphate”’, *The Guardian*, 24 March 2019, <https://www.theguardian.com/world/2019/mar/23/the-rise-and-fall-of-the-isis-caliphate>; Since 9/11, ‘History of ISIS’, https://since911.com/explore/history-isis#jump_time_item_522 (last accessed 8 September 2022).

built an equally impressive bureaucratic machine and grew to be the wealthiest terrorist organization in the world, with assets totaling 2 billion US dollars in 2015.⁶² In territories under ISg control, the organization erected its bureaucracy with offices of *da'wa* (for recruitment and social outreach), intelligence bases and Islamic courts,⁶³ and embarked on a strict application of its understanding of Sharia law, introducing a list of *hudud* (punishments).⁶⁴ However, ISg control over and services in the seized regions remained uneven. A centralized, well-coordinated and fully functioning bureaucracy did not exist until the fall of Mosul in June 2014, after which ISg divided its territories into 20 administrative units (local *wilayat*), extending over Iraq and Syria, and developed 15 *diwans* (ministries) and supervisory committees, including *diwans* for education, health, finances, services, resource management, *da'wa* and mosque activities, tribal relations and outreach, public morality, public relations, agriculture, fatwas, judiciary, security and defence.⁶⁵ ISg also solidified its financial capacity through a process of diversification of revenue sources to include taxes as well as oil returns, lootings and human trafficking. Thus, ISg was even less vulnerable to the financial dry-up enacted by the international coalition in its war against the group and the targeting of its oil refineries.⁶⁶

At its height, ISg controlled more than 280,000 kilometres in Iraq and Syria – extending to the Syrian-Turkish border in Kobane, Syria, and stopping at the gates of Baghdad, Iraq (see Map 1 below) – and reigned over 10 million people with a standing army larger than that of some states.⁶⁷ In August 2014, ISg captured the Yazidi-dominated Sinjar city in the Nineveh Governorate of Iraq, forcing more than 50,000 Yazidis to flee the city to Mount Sinjar without any access to food or water.

Amid this humanitarian crisis and ISg's threats to advance to Erbil, the capital and most populated city of the Kurdistan region in Iraq, US President Barack Obama announced a series of airstrikes by the US over Mount Sinjar to provide the necessary protection and humanitarian relief.⁶⁸ Even with the coordinated aerial intervention by the US, the UK and the Iraqi Air Forces, along with the on-the-ground intervention by the Kurdish militias, ISg massacred more than 5,000 men and boys and captured between 5,000 and 7,000 Yazidi women, committing a range

⁶² Charles Lister, quoted in Prothero, 'How 2 Shadowy ISIS Commanders Designed Their Iraq Campaign', *supra* fn 57; J. Pagliery, 'Inside the \$2 billion ISIS war machine', *CNN Money*, 11 December 2015, 2021. <https://money.cnn.com/2015/12/06/news/isis-funding/index.html>.

⁶³ The plan for ISIS's sophisticated bureaucracy is believed to have been drawn up by Hajj Bakr. See A. al-Tamimi, 'The Evolution in Islamic State Administration: The Documentary Evidence', 9 *Perspectives on Terrorism* 4 (August 2015), <http://www.jstor.org/stable/26297420> (last accessed 8 September 2022). Hajj Bakr (a pseudonym) was a leading Ba'athist leader who allied with al-Baghdadi and is believed to have been the mastermind of ISIS's military and governance strategies ever since. See Prothero, 'How 2 Shadowy ISIS Commanders Designed Their Iraq Campaign', *supra* fn 57.

⁶⁴ Al-Tamimi, 'The Evolution in Islamic State Administration', *supra* fn 63, 122–123.

⁶⁵ *Ibid.*, 123–124.

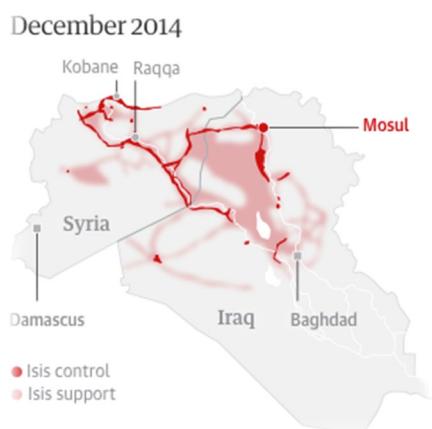
⁶⁶ *Ibid.*, 125.

⁶⁷ C. Lister, 'Its Root Causes Unaddressed, ISIS Looks Set for a Steady Recovery', Middle East Institute, 29 June 2020, <https://www.mei.edu/blog/its-root-causes-unaddressed-isis-looks-set-steady-recovery> (last accessed 8 September 2022).

⁶⁸ 'Obama Says U.S. Will Bomb ISIS in Syria, Train Rebels', video, *Time*, 10 September 2014, <https://time.com/3319658/obama-isis-speech-iraq-syria/>.

of abuses against them, from rape to slavery and human trafficking.⁶⁹ By September, President Obama upgraded this mission to leading a broad international coalition aiming to ‘degrade and ultimately destroy ISIL’⁷⁰ in both Iraq and Syria.⁷¹ Through a sustained counterterrorism strategy, Map 1. Source: *The Guardian*, from the Institute for the Study of War.

coordinated with the Kurdish and Iraqi forces, it took five years to completely overthrow ISg’s physical presence.⁷² In March 2019, after the fall of the city of Baghuz, located on the Syrian-Iraqi



border, ISg was declared defeated.⁷³ Later, in October of the same year, Abu Bakr al-Baghdadi was killed by US Special Operations Forces.⁷⁴

D. ISIS IN THE 2020S

In terms of on-the-ground territorial advances, ISg’s defeat cannot completely erase the danger of the group; a steady recovery is indeed expected. In Iraq, under the conditions of Covid-19 and the ensuing reduction in US and Iraqi forces, ISg has been operating more freely, carrying out sophisticated attacks, prison breaks and weapons/fighter-smuggling operations across the

⁶⁹ Since 9/11, ‘History of ISIS’, *supra* fn 61.

⁷⁰ ISIL is usually used interchangeably with ISIS.

⁷¹ ‘Obama Says U.S. Will Bomb ISIS in Syria, Train Rebels’, *supra* fn 68.

⁷² Through 2015, ISg mostly held its caliphate intact with only tactical territorial retreats. In 2016, it retreated from Falluja to western Iraq and, throughout the year, the Kurdish and Iraqi forces succeeded in liberating Mosul. By the end of 2017, ISg lost its last centre of gravity, Raqqa, holding on to small pockets until March 2019, when it lost its last standing city, Baghuz. See Chulov, ‘The Rise and Fall of the Isis “Caliphate”’, *supra* fn 61.

⁷³ *Ibid.*

⁷⁴ R. Callimachi and F. Hassan, ‘Abu Bakr al-Baghdadi, ISIS Leader Known for His Brutality, Is Dead at 48’, *The New York Times*, 27 October 2019, <https://www.nytimes.com/2019/10/27/world/middleeast/al-baghdadi-dead.html>.

Iraqi–Syrian border, using advanced intelligence.⁷⁵ In Syria, the persistence of the al-Assad regime’s brutality, the diminishing prospects of reconciliation, along with Kurdish tensions (both on the Arab and Turkish fronts) provide the perfect context for an ISg resurgence.⁷⁶

What is left of ISg in Iraq and Syria poses greater risks when compared to its earlier temporary defeat in 2010. More than 40,000 ISg affiliates are left in prisons and more than 100,000 have been displaced since the group’s reign.⁷⁷ Beyond the Syrian–Iraqi region, foreign fighters are still joining the ranks of the organization in growing bases in Africa, and ISg is heightening its activities in Afghanistan.⁷⁸ ISg’s online outreach is currently more dangerous than its limited physical existence. With deteriorating conditions during the Covid-19 pandemic, people have been left more frustrated by socio-economic challenges and more prone to radicalization.⁷⁹

APPLICABLE LAW

BOX 1: IHL APPLICABLE TO ISG

The study relies on Common Article 3 of the Geneva Conventions and customary rules of IHL as summarized by the ICRC study. No reliance is made on the 1977 Additional Protocol to the Geneva Conventions because Syria and Iraq are not parties to it.

Considering ISg’s claim of adherence to Islamic law and rejection of the applicability of international law and international norms to its practices, this case study focuses on offering an analysis of the group’s practice from an Islamic legal perspective. As frequently asserted by scholars of Islamic law, the Islamic legal tradition has evolved as a legal system that prescribes the behaviour of the political authority rather than reflecting its sovereign will, thereby producing a jurist-centric field, with a decentralized structure of authority.⁸⁰ Difference and diversity of interpretation are key features of Islamic law to the present day, even with the

⁷⁵ C. Lister, ‘ISIS’s Dramatic Escalation in Syria and Iraq’, Middle East Institute, 4 May 2020, <https://www.mei.edu/blog/isiss-dramatic-escalation-syria-and-iraq> (last accessed 8 September 2022); E. Dent, ‘US Policy and the Resurgence of ISIS in Iraq and Syria’, Middle East Institute, 21 October 2020, <https://www.mei.edu/publications/us-policy-and-resurgence-isis-iraq-and-syria> (last accessed 8 September 2022).

⁷⁶ Lister, ‘Its Root Causes Unaddressed, ISIS Looks Set for a Steady Recovery’, *supra* fn 67.

⁷⁷ C. Lister, ‘The End of the ISIS Caliphate’, Middle East Institute, June 2018, <https://www.mei.edu/multimedia/video/end-isis-caliphate> (last accessed 8 September 2022).

⁷⁸ Vladimir Voronkov, Under-Secretary-General of the UN Counter-Terrorism Office, has stated that the Islamic State’s West Africa Province (ISWAP) is particularly alarming with regard to the rate of foreign fighters joining. See I. Berman, ‘ISIS Is Using the COVID Distraction to Rerarm and Regroup’, *USA Today*, 28 August 2020, <https://www.usatoday.com/story/opinion/2020/08/28/isis-did-not-disappear-and-now-its-poised-rise-again-amidst-instability-column/5644397002/>; ‘With Spate of Attacks, ISIS Begins Bloody New Chapter in Afghanistan’, *The New York Times*, 1 May 2022, <https://www.nytimes.com/2022/05/01/world/asia/afghanistan-isis-attacks.html>.

⁷⁹ Berman, ‘ISIS Is Using the COVID Distraction to Rerarm and Regroup’, *supra* fn 78.

⁸⁰ W. B. Hallaq, *The Origins and Evolution of Islamic Law*, Cambridge University Press, 2004, p 193.

emergence of the modern nation state and its more centralized, hierarchical approach to legal norms. There is no doubt that within this structure, formative and classic jurisprudential texts have over the years maintained more authority than modern interpretations due to factors that extend beyond the scope of this study.⁸¹ However, even within revered and authoritative sources, juristic views often offer diverse interpretations of the law, including this study's subject matter – the regulation of armed conflict.

Determining the applicable regime is also a complicated task because Islamic jurisprudence articulates the legal system along thematic lines, dividing it into different branches of law that are closely connected and difficult to separate. The isolated study of the branches of law regulating armed conflict disregards this connectedness and the fact that the legal system was practised within a different political reality that predates the modern nation state and its state-centric understanding of sovereignty and legal authority.⁸² In other words, to examine applicable rules in Islamic law, two primary questions need to be asked: Who has the authority to articulate the law? And, what type of conflict is at hand?

A. LEGAL AUTHORITY IN ISLAMIC LAW: ANSWERING THE ‘WHO?’ QUESTION

The pluralism of the Islamic legal tradition makes it difficult for us to pinpoint a singular ruling on a particular issue from classical jurisprudence. For example, jurists offer a wide variety of positions on questions relating to targeting, with some advocating targeting all adult men, others adult able men and others who limit targeting to those who participate in fighting.⁸³ Such contestation may be seen as enabling militant groups to adopt and select views that allow them to manoeuvre the tradition to adopt permissive tactics, but at the same time, it also enables critics to pinpoint their deviation from authoritative rulings by prominent classical jurists.

The modern era is equally complicated when it comes to the question of authority in interpreting Islamic law. Scholars may disagree over the timeframe and the factors that have contributed to the rise of codification in the modern Muslim world,⁸⁴ but it is widely established that sovereignty is manifested in the state’s assumption of control over law. Hence, we witness a shift in many states to codification of a singular interpretation of Sharia, selected differently in each polity. In parallel, we also witness state control over religious institutions. This phenomenon of cooptation of religious institutions by the state, often by autocratic regimes, particularly in the Middle East,

⁸¹ See A. Shalakany, ‘Islamic Legal Histories’, 1 *Berkeley Journal of Middle Eastern Islamic Law* 1 (April 2008).

⁸² See N. Badawi, ‘Regulation of Armed Conflict: Critical Comparativism’, 37 *Third World Quarterly* 11 (2016).

⁸³ Ali ibn Hazm, *Kitab al-Muhalla bi-l-Athar*, vol 7, ed by A. M. Shakir, Al-Maktab al-Tijari li-l-Tiba'a wa-l-Nashr, 1969, p 296; Muhammad ibn Jarir al-Tabari, *Kitab al-Jihad wa Kitab al-Jizya wa Ahkam al-Muharibin min Kitab Ikhtilaf al-Fuqaha*’, ed by J. Schacht, Brill, 1933, pp 8–12.

⁸⁴ K. Fahmy, ‘Justice, Law and Pain’, in B. Dupret (ed), *Standing Trial: Law and the Person in the Modern Middle East*, I. B. Tauris, 2005; W. Hallaq, ‘What is Shari’ā?’, 12 *Yearbook of Islamic and Middle Eastern Law* (2007); Shalakany, ‘Islamic Legal Histories’, *supra* fn 81.

has eroded those institutions' legitimacy.⁸⁵ Meanwhile, independent scholars with varying degrees of distance from the political authority have gained momentum to fill the legitimacy gap created by this modern relationship between the state and state-coopted religious scholars. At the other end of the spectrum, militant groups and their religious experts assert the illegitimacy of their detractors and offer a different interpretation of Islamic law.

The situation is particularly complex when examining Islamic laws of war because many Muslim states claim adherence to the principles of conflict in Islamic law, yet the Islamic legal regime is not directly incorporated in their legal systems. Unlike, for example, personal status law, where the modern state incorporates this branch of Islamic law into the state legal system, Islamic laws of war veer towards moral rather than legal obligations.

B. REGIMES GOVERNING ARMED CONFLICT: ANSWERING THE 'WHAT?' QUESTION

1. Determining the Relevant Legal Regime

One of the key challenges in assessing actions of militant groups is the determination of applicable legal regimes. Under classical Islamic law, one can discern four primary types of armed conflict with governing legal regimes: wars with non-Muslims (*jihad*), inter-Muslim war (*baghy*), apostasy (*ridda*) and battles with highway robbers/bandits (*hiraba*):

Wars with non-Muslims (*jihad*): This is the primary branch of armed conflict examined by classical jurists and addresses conflict with non-Muslims. The regulations governing armed conflict with non-Muslims include targeting, permissible war tactics, treatment of captives and acquisition of enemy property.

Wars with Muslims (*baghy*): The legal regime governing *baghy* examines the possibility and legitimacy of rebellion against the Muslim political authority. In some classical works, *baghy* regulations are deemed more restrictive in regards to permitted war tactics than those concerning *jihad*, particularly in terms of the treatment of the wounded and those fleeing the battlefield, and acquisition of rebel property. Many scholars prohibit killing wounded and fleeing Muslim rebels, with some exceptions, and deem Muslim rebel property inviolable, i.e. not to be confiscated by the political authority.⁸⁶

Apostasy wars (*ridda*): The regulations concerning *ridda* are closer to those for *jihad*, but the most significant distinction for the purpose of this study is that apostasy terminates the inviolability of Muslim life and property, thereby legitimizing the resort to violence against such groups. It is noteworthy, however, that unlike militant interpretations, classical approaches to *ridda* mostly refrain from deeming a self-declared Muslim an apostate.

⁸⁵ Abu Muhammad al-Maqdisi, 'Millat Ibrahim', Minbar al-Tawhid w al-Jihad, 2010, p 66, http://www.ilmway.com/site/maqdis/MS_20383.html, (last accessed January 20, 2021, site inactive).

⁸⁶ Ibn Qudama, *Al-Mughni*, ed by A. ibn Abdul Muhsin al-Turki and A. F. Muhammad al-Hulw, Dar 'Alam al-Kutub, 1997, 12:252.

Wars with highway robbers and bandits (*hiraba*): While the Quranic source on *hiraba* does not limit itself to criminal activity, classical jurists mostly restrict the regime to battles with highway robbers and bandits. The regime is more permissible than that of *baghy* in terms of tactics employed in battles with those who fall under this category, particularly in terms of punishment and acquisition of property.

Despite the recurrence of inter-Muslim violence in the confrontations between Muslim regimes and militant groups, most mainstream scholars and militant groups do not rely on the regulations concerning *baghy* as the applicable legal regime. Arguably, mainstream scholars minimize its application because of its restriction of permissible tactics for the political authority, while militant groups reject its recognition of the political authority's legitimacy. Thus, many modern scholars prefer to place militant groups under the banner of *hiraba* due to the groups' resorts to terrorizing tactics that disrupt public peace.⁸⁷ On the other hand, al-Qaeda, ISIS and other groups engaged in violent activities with the state who claim an Islamic reference rely, with varying degrees, on the notions of *jahiliyya* and *hakimiyya*,⁸⁸ to argue the apostasy of the targeted group.

2. The Place of International Agreements Within This System

One other issue in identifying the applicable legal regime is determining where international legal obligations fit into the Islamic conception of law. On the one hand, jurists have often asserted the need for respect for pacts and treaties, with many modern jurists arguing that IHL is binding due to its acceptance by modern Muslim states as a binding legal regime.⁸⁹ This assertion has been plausibly relied upon by modern mainstream jurists to maintain its binding nature. Yet, militant groups, to varying degrees, have asserted the illegitimacy of the modern state and rejected its reliance on codified law rather than Sharia law, arguing that international treaties contravene Sharia and were entered into by illegitimate authorities. ISIS, for example, considers accession to the UN Charter a form of disbelief because it entails the acceptance of positive law and placing it on an equal footing with Sharia law.⁹⁰

BOX 2: KEY ISG DOCUMENTS RELATED TO IHL AND HUMAN RIGHTS NORMS

- ISg Publications:
 - Hadhihi Aqidatuna wa Hadha Manhajuna (The Islamic State Manifesto)⁹¹
 - *Dabiq* and *Rumiyyah*, English newsletters.
 - *Al-Nabaa*, Arabic newsletter.
- Works by key figures like Turki al-Bin’ali.

⁸⁷ I. Ahmad Khan, ‘Mawqif al-Adiyan Tijah al-Irhab wa-l-Taṣruf’, in *al-Majlis al-‘Ala li-l-Shu‘un al-Islamiyya Eighth Conference: al-Islam wa Mustaqbal al-Hiwar al-Hadari*, Cairo, July 1996, pp 24–26. http://elazhar.com/conf_au/8/23.asp, (last accessed 6 June 2011, site deactivated since.)

⁸⁸ See glossary.

⁸⁹ W. al-Zuhayli, *Athar al-Harb Fi l-Fiqh al-Islami*, 3rd edn, Dar al-Fikr, 1998, pp 354–355.

⁹⁰ *Al-Nabaa* 14, p 2.

⁹¹ Islamic State group (ISg), Hadhihi Aqidatuna wa Hadha Manhajuna (The Islamic State Manifesto), 2014, 1, <https://archive.org/details/3Qidatona-002> (last accessed 8 September 2022).

ISG VIEWS AND PRACTICE WITH REGARD TO SELECTED IHL NORMS

1. PROTECTION OF CIVILIANS FROM ATTACK

A. Principle of Distinction

Under customary IHL, the parties to a conflict must at all times distinguish between civilians and combatants.⁹² Attacks may only be directed against combatants; they must not be directed against civilians. Civilian objects are also protected against attacks.⁹³ Indiscriminate attacks are prohibited.⁹⁴

While IHL prohibits targeting civilians and defines a civilian as a person not participating in hostilities, the classical Islamic legal tradition predates the modern distinction between the military and the population under its protection/control, leading to varied and diverse interpretations of who may be targeted. Some classical jurists have prohibited targeting those who cannot participate in fighting, others have singled out vulnerable groups such as the blind and the elderly as impermissible targets, whereas a few have asserted that all adult men may be targeted.⁹⁵ Four categories, however, are consistently treated as impermissible targets by early jurisprudence: women, children,⁹⁶ Muslims in non-Muslim territories and non-Muslims in Muslim territories, the latter two under the regimes of *dhimma*⁹⁷ and *aman*.⁹⁸

Dhimma refers to a regime prevalent in early Muslim communities, where non-Muslims residing in the territory were guaranteed protection of life and property and were expected to pay a tax in return for protection. Jurists disagreed over those entitled to such protections. Some argued that only Christians, Jews and ‘Magians’⁹⁹ were entitled to this status,¹⁰⁰ some that all non-Muslim,

⁹² See Rule 1, ICRC CIHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul (last accessed: 8 September 2022)

⁹³ Rule 7, *ibid.*

⁹⁴ Rule 11, *ibid.*

⁹⁵ Abu al-Walid Muhammad ibn Ahmad ibn Muhammad ibn Ahmad Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, Dar al-Hadith, 2004, 2:147–148; Ibn Qudama, *Al-Mughni*, supra fn 86, 13:177–179; Ibn Hazm, *Kitab Al-Muhalla bi-l-Athar*, supra fn 83, 7:296; Al-Tabari, *Kitab al-Jihad*, supra fn 83, pp 8–12.

⁹⁶ *Ibid.*

⁹⁷ Shams al-Din ibn Qayyim, *Ahkam Ahl al-Dhimma*, Turath For Solutions, 2013, 1:109.

⁹⁸ Al-Tabari, *Kitab al-Jihad*, supra fn 83, p 34.

⁹⁹ The term used for Zoroastrians in classical jurisprudence.

¹⁰⁰ Ibn Hazm, *Kitab al-Muhalla bi-l-Athar*, supra fn 83, 7:345–346; M. al-Shafi'i, *Al-Umm*, Dar al-Wafaa, 2001, 4:246.

non-Arab and Arab monotheists may fall under the regime of *dhimma*,¹⁰¹ and others that any non-Muslim may fall under the regime.¹⁰²

Aman refers to safety pledges to non-Muslims who are temporarily in Muslim lands and to Muslims in non-Muslim territories. In Muslim lands, individual members of the Muslim community may make a safety pledge and it is to be respected by the community.¹⁰³ Generally speaking, if the caliph wished to revoke *aman* granted to a non-Muslim, he was expected to escort the non-Muslim safely outside Muslim territories.¹⁰⁴ If a Muslim entered non-Muslim lands under a safety pledge, they were expected to adhere to this pledge and refrain from inflicting harm on the non-Muslim communities.¹⁰⁵ As noted by al-Shaybani, even if this Muslim found abducted Muslim women and children in the hands of the non-Muslim community, they would be expected to not attempt to rescue the captives before notifying the *aman* grantor that they no longer wished to enjoy it,¹⁰⁶ indicating a general inclination to reject treachery.

In conclusion, the classical tradition varies in its determination of impermissible targets. Scholars who argue that disbelief is a basis for the permissibility of killing exclude only women and children, whereas those who argue that the basis is the ability to fight exclude those who cannot fight such as the elderly and the mentally and physically disabled, or those who are not ready to participate in combat such as farmers and hired labourers.¹⁰⁷ It should be noted that the wounded are mostly only referred to as impermissible targets in combat with Muslims.¹⁰⁸

Modern mainstream scholars of Islamic law interpret the sources of Islamic law to assert that those who do not participate in fighting may not be targeted¹⁰⁹ and that Muslims who enter non-Muslim territory are obligated by virtue of the visa they are granted to uphold the restrictions of *aman* and refrain from harming to the territory they visit and its inhabitants.¹¹⁰ As a result, the majority of mainstream Muslim scholars and institutions have condemned ISg's military tactics.

¹⁰¹ Ibn Qayyim, *Ahkam Ahl al-Dhimma*, supra fn 97, 1:87.

¹⁰² Ibid, 1:89.

¹⁰³ Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, supra fn 95, 2:145–146; Muhammad ibn al-Hasan al-Shaybani, *Sharh al-Siyar*, Dar Ehya' al-Turath al-'Araby 158–1, 2004, p 61; Al-Shafi'i, *Al-Umm*, supra fn 100, 7:405; Ibn Qudama, *Al-Mughni*, supra fn 86, 13:80.

¹⁰⁴ Al-Tabari, *Kitab al-Jihad*, supra fn 83, p 34.

¹⁰⁵ Al-Shafi'i, *Al-Umm*, supra fn 100, 7:405; Ibn Qudama, *Al-Mughni*, supra fn 86, 13:152–153.

¹⁰⁶ Al-Shaybani, *Sharh al-Siyar*, supra fn 103, 2:66–67. See also, al-Shafi'i, *Al-Umm*, supra fn 100, 7:405.

¹⁰⁷ Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, supra fn 95, 2:148.

¹⁰⁸ Ibn Qudama, *Al-Mughni*, supra fn 86, 12:252.

¹⁰⁹ Al-Zu‘ayli, *Athar al-Harb Fi l-Fiqh al-Islami*, supra fn 89, p 500; Abu Zahra, *Al-Ilaqat al-Dawliya fi l-Islam*, p 109; Letter to Baghdadi, supra fn 11, p 6; Yusuf al-Qaradawi, *Fiqh al-Jihad: Dirasah Muqaranah li-kamih wa-Falsafatih fijl-Dawlat al-Qur'aan wa-al-Sunnah*, Maktabat Wahbah, 2009, 1:395.

¹¹⁰ Y. al-Qaradawi, *Al-Jihad*, 2:1320–1321; al-Qaradawi, *Fiqh al-Jihad*, supra fn 109, pp 1320–1321; Al-Zuhayli, *Athar al-Harb Fi l-Fiqh al-Islami*, supra fn 89, p 508; Abu Zahra, *Al-Ilaqat al-Dawliya fi l-Islam*, supra fn 109, p 72. Abu Zahra and al-Zuhayli assert the principle of *aman* without specific reference to the visa system.

Perhaps the most prominent condemnation can be seen in the collective letter to al-Baghdadi authored by key and renowned Muslim scholars, urging the group to reconsider its tactics.¹¹¹

Interpretations adopted by the group, on the other hand, legitimize killing captives and those wounded in combat.¹¹² Moreover, ISg collapses traditional categories of protection in Islamic law to undermine the protection of civilians. It suspends classical Islamic law's protection through the employment of an expansive doctrine of *takfir*. While trends within the movement have applied *takfir* to varying degrees, particularly with regard to competing militant figures such as al-Zawahiri,¹¹³ approaches seen within the movement as moderate in their application of the doctrine, such as al-Bin'ali's,¹¹⁴ still create space for the extensive suspension of Islamic legal protections, thereby eroding the impermissibility of targeting Muslims and non-Muslims who reside in Muslim territory. For example, Muslims who believe in democracy¹¹⁵ or what the group sees as secular ideologies like nationalism, communism and Ba'athism,¹¹⁶ or who resort to the modern positive law-based courts are deemed apostates,¹¹⁷ as are those who assist non-Muslims against Muslims.¹¹⁸ Moreover, all Shiites are deemed non-Muslims/apostates.¹¹⁹ As for Christians, their 'failure' to pay *jizya* (tax) to a 'Muslim' government erodes their protection under the *dhimma* regime.¹²⁰ Finally, given that *aman* is granted by Muslims, *takfir* ends up limiting the import of this legal regime. On top of this limitation, the group goes further to assert that only the leader (*amir al-mu'minin*) can grant *aman* in the current context, thereby denying avenues for protection by ISg fighters and residents of the territory the group controls.¹²¹

a. Groups Intentionally Targeted by ISg

Police and government: ISg does not consider the police or government a specially protected group. It has not only targeted police and government, but views civilian government supporters as legitimate targets as well. In 2015, a UN report pointed out that in some instances violations were not based on ethnic or religious identities but rather targeted Iraqis, often even Sunni Muslims, who were deemed to be linked to the Iraqi or Syrian Governments, or individuals who refused to

¹¹¹ Letter to Baghdadi, supra fn 11, p 16.

¹¹² Al-Battar Media Foundation, 'Ruling on the Killing of Muslims and Unbelievers in Conditions of Captivity' (in Arabic), December 2014, p 29, https://archive.org/details/hokm_qtl (last accessed 8 September 2022); T. al-Bin'ali, *Sharh Shurut wa Mawani' al-Takfir*, Al-Ghuraba' lil-l'lam, 2014, p 13.

¹¹³ Al-Dawla al-Islamiya: al-Maktab al-Markazi l-Mutaba'at al-Dawawin al-Shari'ya, 2016. On file.

¹¹⁴ C. Bunzel, 'Bin'ali Leaks: Revelations of a Silent Mufti', *Jihadica*, 15 June 2015, <https://www.jihadica.com/binali-leaks/> (last accessed 8 September 2022).

¹¹⁵ *Rumiyyah* 1, p 6.

¹¹⁶ ISg, Hadhihi Aqidatuna wa Hadha Manhajuna, supra fn 91, p 1.

¹¹⁷ T. al-Bin'ali, *Al-Tahakum lil-Mahakim al-Wad'iya*, Mu'sasat al-Turath al-Ilmi, 2018, p 15.

¹¹⁸ Al-Bin'ali, *Sharh Shurut wa Mawani' al-Takfir*, supra fn 112, p 25.

¹¹⁹ *Dabiq* 6, p 21; *Dabiq* 13, p 38; ISg, Hadhihi Aqidatuna wa Hadha Manhajuna, supra fn 91, p 1.

¹²⁰ See N. Badawi, *Islamic Laws of war: Text and Context*, Brill, 2019, pp 226–227; *Dabiq* 15, p 19.

¹²¹ *Dabiq* 5, p 7.

pledge allegiance to ISg.¹²² Other evidence points to the targeting of police personnel, vehicles and stations or headquarters. A former state police officer recounted an event in mid-2014 where an ISg fighter asked him for his police ID and when he showed them the card the fighter took a knife and killed his family including his five-year-old and five-month-old children.¹²³ Attacks on police checkpoints were frequent.¹²⁴ In one particular attack, the head of the Falluja Police Directorate reported the death of 8 civilians, including a 13-year-old boy.¹²⁵ *Dabiq* also provided photographic evidence of border police stations being struck by explosive devices.¹²⁶

Other religious and ethnic groups: ISg has provided justifications for killing and targeting the Yazidi population in Iraq, with crimes amounting to genocide. An ISg video released in July 2015 presented a number of killings and executions, which a UN report deemed to constitute ‘a direct and public incitement to commit genocide against Shia Muslims’.¹²⁷ Attacks against Kurds or the Kurdish Democratic Party were seen as justifiable under the general *takfir* of those who support a Kurdish state or democratic ideals.¹²⁸ Attacks on both Catholic and Coptic Christian minorities, especially in Egypt and Iraq, were carried out in retribution for actions committed by Coptic groups or individuals in Egypt, and included summary killings of Coptic Christians in Sinai¹²⁹ and attacks on Catholic churches and individuals in Baghdad.¹³⁰ Attacks specifically targeting Sunni supporters of governments and political groups were frequently propagated by ISg, as well as justifications for attacking Sunni mosques seen as ‘gray’ or considered a ‘hideout of the hypocrites’, potentially including all non-ISg affiliated mosques.¹³¹

Other civilian groups: Entire villages that were seen as affiliated or having any relations with states or other groups were seen as targetable. Witnesses from more than 10 different towns and villages in Diyala and Ninevah Governorates reported very similar patterns of events when ISg entered their villages: ISg surrounded the village, killed the inhabitants who were unable to flee, ‘burned and destroyed houses and businesses, destroyed Shia places of worship, and pillaged private and public properties’.¹³² Attacks were also carried out and justified against any individuals, groups or neighborhoods that demonstrated any allegiance or political ties to states or other groups,

¹²² Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq in the Light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups, UN doc A/HRC/28/18, 27 March 2015, §29.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Amnesty International, ‘Iraq: Deadly Suicide Attacks Claim Civilian Lives’, 15 Nov 2016, p 1, <https://www.amnesty.org/fr/documents/mde14/5142/2016/en/> (last accessed 8 September 2022).

¹²⁶ *Dabiq* 1, p 45.

¹²⁷ UN Security Council (UNSC), ‘ISIL/Da’esh Committed Genocide of Yazidi, War Crimes Against Unarmed Cadets, Military Personnel in Iraq, Investigative Team Head Tells Security Council’, 10 May 2021, <https://www.un.org/press/en/2021/sc14514.doc.htm> (last accessed 8 September 2022).

¹²⁸ *Dabiq* 5, p 12.

¹²⁹ *Dabiq* 7, p 30.

¹³⁰ *Dabiq* 7, p 31.

¹³¹ *Dabiq* 7, p 55.

¹³² Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, supra fn 122, §24.

including citizens of nations who carried passports, national ID cards, etc.¹³³ The same reasoning was applied to tribes: those who refused to pledge their allegiance to ISg and retained their loyalty to the government were regarded as targetable. This was, for instance, the case with the al-Shaitat (al-Shu'aytat) tribe in Syria's Deir ez-Zor and the Albu Nimr tribe in Iraq's Anbar.¹³⁴

B. Principles of Proportionality and Precautions

Under customary IHL, it is prohibited to carry out an attack that may be expected to cause excessive harm to civilians and civilian property compared to the anticipated military advantage (principle of proportionality).¹³⁵ In addition, in the planning and conduct of military operations, the parties to the conflict must do everything feasible to avoid or minimize collateral damage (principle of precautions). Constant care must be taken to spare civilians and civilian objects.¹³⁶

Classical Muslim jurisprudence often addresses the question of proportionality in the context of legal questions relating to *tatarus*. *Tatarus*, or shielding, often refers to situations where the Muslim army was besieging a non-Muslim city and the non-Muslim army used untargetable categories such as women, children and Muslims as shields. With varying degrees of the assumption of necessity and acceptable collateral damage, many classical jurists allowed attacking the non-Muslim army with the knowledge that such attacks may inflict damage on the individuals used as shields.¹³⁷

Mainstream scholars again reject the expansive interpretation of *tatarus* and rely on the classical jurists' requirements that the Muslim army resort to those tactics only in situations when harm is necessary, unavoidable and unintentional.¹³⁸ Arguably, the shielding situations examined in the jurisprudence and the inclination to avoidance of harm is an indication that the weapons and tools referred to in situations of *tatarus* are envisioned to be somehow discriminate (like hurling machines and lances) and are thus incomparable to suicide bombing and the use of explosives in civilian areas. As noted by prominent contemporary Muslim jurists, *tatarus* 'refers to the killing of innocents by accident and in no way indicates that the intentional killing of innocents – such as in bombings – is permitted'.¹³⁹

¹³³ *Dabiq* 8, p 17.

¹³⁴ L. Sly, 'Syria Tribal Revolt Against Islamic State Ignored, Fueling Resentment', *The Washington Post*, 20 October 2014, https://www.washingtonpost.com/world/syria-tribal-revolt-against-islamic-state-ignored-fueling-resentment/2014/10/20/25401beb-8de8-49f2-8e64-c1cfbee45232_story.html; P. Cockburn, 'For This Iraqi Tribe Massacred by Isis, Fear of the Group's Return is a Constant Reality', *The Independent*, 4 July 2018, <https://www.independent.co.uk/news/world/middle-east/iraq-tribe-isis-massacre-war-hit-albu-nimr-baghdad-sunni-a8431466.html>.

¹³⁵ Rule 14, ICRC CIHL Database, supra fn 92.

¹³⁶ Rule 15, *ibid.*

¹³⁷ Al-Tabari, *Kitab al-Jihad*, supra fn 83, p 6; Ibn Hazm, *Kitab al-Muhalla bi-l-Athar*, supra fn 83, 7:296; al-Shaybani, *Sharh al-Siyar*, supra fn 103, p 102; al-Shafi'i, *Al-Umm*, supra fn 100, 4:348.

¹³⁸ Al-Zuhaylī Athar al-Harb Fi l-Fiqh al-Islami, supra fn 89, p 506; Letter to Baghdadi, supra fn 11, p 9; Al-Qaradawi, *Al-Jihad*, supra fn 110, p 619; Abu Zahra, *Al-Ilaqat al-Dawliya fi l-Islam*, supra fn 109, p 108.

¹³⁹ Letter to Baghdadi, supra fn 11, p 9.

In addition to stretching targetable categories to practically include almost anyone residing in territories not under ISg's control, the group, like other militant groups, offers an expansive interpretation of the doctrine of *tatarus* to allow for suicide attacks and the targeting of areas populated by civilians.¹⁴⁰ It also argues that retaliation allows for tactics that may not be perceived as permissible in Islamic law, such as the burning of the Jordanian pilot Moaz al-Kasasbeh.¹⁴¹



ISg consistently used a strategy of laying siege to cities and villages before capturing or raiding them, especially those inhabited by minority groups.¹⁴² It besieged a city in the Salah ad-Din Governorate for four months in the summer of 2014, from mid-June to September. Twenty days into the siege, ISg fighters disabled water and electricity supplies to the city. As a result, more than 15,000 people suffered from the resultant 'lack of power, food, drinking water, medical services and medicine'.¹⁴³ Residents were forced to drink contaminated water, causing many to fall ill; for example, a woman and her newborn died as a result of a lack of medical services. The city was consistently shelled with mortar rounds on a daily basis causing the death of at least one

¹⁴⁰ Turki al-Bin'ali, 'Al-Aqwal al-Mahdiya ila al-'Amaliyat al-Istishhadiya', *Nur al-Khilafa*, 2012, p 27.

¹⁴¹ *Dabiq* 6, pp 7–8.

¹⁴² Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, *supra* fn 122.

¹⁴³ *Ibid*, §27.

child, four men and a woman. A witness also detailed how ISg used civilians as human shields: ‘We were brought as human shields. They brought us to stand between them and the missiles’.¹⁴⁴

The group also used indiscriminate methods of attack including explosive devices, mortars and the shelling of densely populated areas, as well as using chemical and biological weapons including nerve agents. Amnesty International reported in 2016 that throughout its reign ‘ISg has carried out several bombings that have deliberately targeted civilians or that were indiscriminate’.¹⁴⁵ During ISg’s siege of numerous cities and villages before their capture, reports consistently indicate that targets were ‘shelled daily with mortar rounds’, killing men, women and children.¹⁴⁶ A UN Security Council report points to evidence that details how ISg used Mosul University laboratories ‘as the epicenter of its chemical weapons programme’, utilizing the expertise of Iraqi as well as international scientists and medical professionals.¹⁴⁷ The report indicates that the group initially weaponized chlorine from water treatment plants taken over in 2014.¹⁴⁸ It also points to evidence that ISg subsequently developed toxic lethal compounds including thallium and nicotine and tested them on live prisoners, leading to their death. As the programme’s capacity grew, the group was able to develop a sulfur mustard production system and successfully deployed it in March 2016, firing at least 40 rockets at the Turkmen Shia town of Taza Khurmatu.¹⁴⁹ Chemical attacks resulted in numerous civilian deaths and injuries, ‘including by asphyxiation and other chemical and biological weapons-related symptoms, affecting minority communities in particular’.¹⁵⁰ The use of ‘weaponized vesicants, nerve agents and toxic industrial compounds’ has also been recorded to have been considered by the programme.¹⁵¹

On the other hand, the group’s online magazine *Dabiq* has produced numerous articles condemning violence against Muslim prisoners or Muslim civilians. For example, ISg has condemned violence against Muslim prisoners by Safawi forces during ISg’s raid and capture of Tal Afar.¹⁵² Other articles condemn violence propagated by the Syrian regime in Raqqa.¹⁵³ Another article condemns the use of airstrikes by the western coalition against Muslim civilians, deeming the pretence of ‘collateral damage’ of civilians as synonymous with ‘terrorism’.¹⁵⁴

¹⁴⁴ Amnesty International, *At any Cost: The Civilian Catastrophe in West Mosul, Iraq*, p 16, <https://www.amnesty.org/en/documents/mde14/6610/2017/en/> (last accessed 8 September 2022).

¹⁴⁵ Amnesty International, ‘Iraq: Deadly Suicide Attacks Claim Civilian Lives’, *supra* fn 125, p 1.

¹⁴⁶ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, *supra* fn 122, §27.

¹⁴⁷ UNSC, ‘ISIL/Da’esh Committed Genocide of Yazidi’, *supra* fn 127, p 2.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ Letter Dated 1 May 2021 from the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant Addressed to the President of the Security Council, UN doc S/2021/419, 3 May 2021, §31.

¹⁵¹ *Ibid.*

¹⁵² *Dabiq* 1, p 16.

¹⁵³ *Ibid.*, pp 42–43.

¹⁵⁴ *Dabiq* 4, p 49.

2. THE PROHIBITION OF SEXUAL VIOLENCE AND GENDER DISCRIMINATION¹⁵⁵

Under customary IHL, ‘rape and other forms of sexual violence are prohibited’. ¹⁵⁶ While Common Article 3 of the 1949 Geneva Conventions does not explicitly refer to this terminology, it prohibits ‘outrages upon personal dignity, in particular humiliating and degrading treatment’.

From an Islamic perspective, militant groups are faced with the particular challenge of the early Islamic legal system’s consensus on designating women a special protected category. Women, along with children, may not be targeted unless they participate in combat.¹⁵⁷ However, many scholars assert they may be killed during combat if they are indistinguishable from the enemy on the basis of the prophetic tradition stipulating that night raids are permissible despite the difficulty of distinguishing women and children.¹⁵⁸ Modern scholars have, on the other hand, asserted that this prophetic tradition ‘refers to the killing of innocents by accident and in no way, indicates that the intentional killing of innocents – such as in bombings – is permitted’.¹⁵⁹

Sexual violence is also prohibited in Islamic law. With the exception of slavery, which was a pre-Islamic practice that was narrowed down during the early stages of development of Islamic law,¹⁶⁰ sexual intercourse outside of wedlock is impermissible and the consent of women and/or their guardians is a condition for the validity of the marital contract,¹⁶¹ deeming forced marriages also impermissible.

¹⁵⁵ In its General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, of 18 October 2013, the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) states: ‘Under international human rights law, although non-State actors cannot become parties to the Convention, the Committee notes that under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights’. The Committee goes on to urge ‘non-State actors such as armed groups: (a) to respect women’s rights in conflict and post-conflict situations, in line with the Convention; (b) to commit themselves to abide by codes of conduct on human rights and the prohibition of all forms of gender-based violence’. UN doc CEDAW/C/GC/30, 18 October 2013, §§16 and 18.

¹⁵⁶ Rule 93, ICRC CIHL Database, supra fn 92.

¹⁵⁷ Al-Tabari, *Kitab al-Jihad*, supra fn 83, p 9; Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, supra fn 95, 2:148; Ibn Qudama, *Al-Mughni*, supra fn 86, 13:177–179; Malik, *Al-Mudawanna*, 1:92; Al-Shaybani, *Sharh al-Siyar*, supra fn 103, p 101; Al-Shafi’i, *Al-Umm*, supra fn 100, 4:247–248; Ibn Hazm, *Kitab al-Muhalla bi-l-Athar*, supra fn 83, 7:296.

¹⁵⁸ Ibn Hazm, *Kitab al-Muhalla bi-l-Athar*, supra fn 83, 7:296; Al-Shaybani, *Sharh al-Siyar*, supra fn 103, pp 101–102; Al-Shafi’i, *Al-Umm*, supra fn 100, 4:337–338, 347, 409; Ibn Qudama, *Al-Mughni*, supra fn 86, 13:138–140.

¹⁵⁹ Letter to Baghdadi, supra fn 11, p 9.

¹⁶⁰ Ibid, p 12.

¹⁶¹ J. E. Tucker, *Women, Family and Gender in Islamic Law*, Cambridge University Pres, 2008, p 42.

In the modern context, Muslim legislations require the woman's consent to marriage and all Muslims states have acceded to treaties prohibiting slavery. Modern scholars have accordingly rejected the revival of the institution of slavery and the acquisition of women as concubines by ISg. In the letter to al-Baghdadi, they state, '[a]fter a century of Muslim consensus on the prohibition of slavery, you have violated this; you have taken women as concubines and thus revived strife and sedition (*fitnah*), and corruption and lewdness on the earth. You have resuscitated something that the *Shari'ah* has worked tirelessly to undo and has been considered forbidden by consensus for over a century.'¹⁶² In the following sections, we examine the group's practice with regard to sexual slavery, forced marriages, rape and abortions.

A. Enslavement of Women

ISg distinguishes between women who are originally non-Muslim (*Mushrikun*, sing: *Mushrik(a)*) and those deemed apostates, arguing that non-Muslims may be targeted and 'their women could be enslaved unlike female apostates'.¹⁶³ Thus, those non-Muslim women 'become lawful for the ones who end up possessing them',¹⁶⁴ even if they are married. Whereas this policy was mainly adopted with Yazidi women,¹⁶⁵ who are argued by ISg to be deprived of the *jizya* privilege, UN investigations have identified evidence concerning the rape and enslavement of members of the Christian community.¹⁶⁶ *Dabiq* articles praise the 'large-scale enslavement of *mushrik* families' as the first return to Sharia since its 'abandonment'.¹⁶⁷ The group claims, however, that its enslavement policies adhere to Islamic jurisprudential laws including 'the prohibition of separating a mother from her young children'.¹⁶⁸ It should be noted, however, that girls above nine years old were separated from their mothers and sold as slaves and boys above the age of seven separated from their mothers 'to teach them to be Muslims and to train them to fight'.¹⁶⁹

Slave markets were established to sell enslaved women and young girls and the price appears to have been 'between USD 200 and USD 1,500, depending on marital status, age, number of children, and beauty'.¹⁷⁰ Many UN and human rights reports point to first-hand accounts of instances of enslavement. A survivor recounts: 'I saw them take all of them, about 10 young women and girls [on different days]. Some were as young as 12 or 13, and up to age 20'.¹⁷¹ Others recount stories of the slave market; a young girl in Mosul explains: 'I was cowering in a woman's

¹⁶² Letter to Baghdadi, *supra* fn 11, p 12.

¹⁶³ *Ibid.*

¹⁶⁴ *Dabiq* 9, p 44.

¹⁶⁵ *Dabiq* 4, p 15.

¹⁶⁶ Letter Dated 1 May 2021 from the Special Adviser and Head of the United Nations Investigative Team, *supra* fn 150, §25.

¹⁶⁷ *Dabiq* 4, p 15.

¹⁶⁸ *Ibid.*

¹⁶⁹ 'They Came to Destroy': ISIS Crimes Against the Yazidis, UN doc A/HRC/32/CRP.2, 15 June 2016, §§82, 92–93.

¹⁷⁰ *Ibid.*, §60.

¹⁷¹ Human Rights Watch (HRW), 'Iraq: Forced Marriage, Conversion for Yezidis', 19 July 2014, <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis> (last accessed 8 September 2022).

lap. She spoke to me as if I were her daughter, telling me, “Don’t be scared; I won’t let them take you.” But the man looked at me and said, “You are mine,” and he quickly took me to his big military vehicle ...They were hitting us and slapping us to make us surrender’. Two days later, she and the two girls managed to escape: ‘we didn’t let them touch our bodies ...Everything they did, they did by force’.¹⁷² UN reports describe how ISg members numbered the women ‘or recorded their names on lists, and inspected them to evaluate their beauty. While some were given as “gifts”, others were sold to local or foreign ISIL fighters.’¹⁷³ Women who claimed they were married so as not to be sold faced forced doctor examinations and were threatened with death if they were lying.¹⁷⁴ However, married women with children are not necessarily spared rape and forced marriage. Nineteen-year-old Abla, who was pregnant with her second child when she was abducted, said: ‘I had my little boy with me and my pregnancy was very visible already but one of the guards chose me to be his wife.’¹⁷⁵ Other accounts detail how ‘[m]en came several times to take away some of the girls. Those who resisted were beaten and pulled away by the hair. Some were beaten with electrical cables’.¹⁷⁶

B. Forced Marriage

Despite the general consensus in Islamic law that consent is a fundamental condition of marriage, forced marriages were utilized by ISg. Whereas the group did not officially endorse forced marriage, it was widely practised with women across different religious convictions. The group systematically separated ‘young women and teenage girls from their families and ...forced some of them to marry its fighters’.¹⁷⁷

Accounts in UN reports describe how an ‘emir’ would instruct ISg fighters to inspect and choose girls for ‘marriage’. Girls would have to endure humiliating processes to be prepared for ‘marriage’ (rape), including full body searches. UN mission investigators met with victims as young as 11 years old.¹⁷⁸ Other UN reports indicate a pattern of how, when ISg fighters arrived, ‘women and girls were locked in “women’s houses,” before they were forced into marriage,

¹⁷² Ibid.

¹⁷³ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, supra fn 122, §37.

¹⁷⁴ Amnesty International, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, 23 December 2014, pp 6–7, <https://www.amnesty.org/en/documents/mde14/021/2014/en/> (last accessed 8 September 2022).

¹⁷⁵ Ibid, p 7.

¹⁷⁶ Ibid, p 6.

¹⁷⁷ HRW, ‘Iraq: Forced Marriage, Conversion for Yezidis’, supra fn 171.

¹⁷⁸ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, supra fn 122, §37.

domestic servitude and sexually exploited'.¹⁷⁹ A young girl recounts how she was repeatedly raped and later forced to marry at the age 14, conceiving her first child at the age of 15.¹⁸⁰

C. Rape and Sexual Violence

UN reports list many instances of child and adult rape. They highlight how thousands of women and children, sometimes as young as 9 or 6 years old,¹⁸¹ were abducted from their families and subjected to serious abuses, including serial rape and other forms of unendurable sexual violence. The intent of these acts, as understood from quoted ISg fighters and officials, was to permanently destroy the capacity of these women and children to reproduce and build families within the Yazidi community.¹⁸² Yet, there are also numerous cases of ISg members being convicted by ISg Sharia courts of the rape of Muslim civilians. In Deir ez-Zor, for example, ISg sentenced one of its Tunisian foreign fighters to death by stoning for raping a female internally displaced person.¹⁸³

Accounts by women who were victims of ISg's sexual violence also suggest that rape was justified by some members as an act of religious devotion. A Yazidi girl who managed to survive the violence inflicted upon her reported that 'he [the IS member who claimed her as a *sabaya*, slave] told me that according to Islam he is allowed to rape an unbeliever. He said that by raping me, he is drawing closer to God'.¹⁸⁴ Another Yazidi girl similarly recalled that her IS captor used to pray before raping her, considering the act of sexual violence an act of *ibada* (worship) toward God.¹⁸⁵

D. Forced Abortions and Birth Control

Despite the Islamic treatment of abortion carried out by others as a violation against the woman and her unborn fetus,¹⁸⁶ there are reports of forced abortions of pregnant Yazidi women.¹⁸⁷ The

¹⁷⁹ Reprieve, Submission to the United Nations Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences in Response to Call for Inputs on 'The Nexus between Forced Displacement and Contemporary Forms of Slavery', p 2, <https://www.ohchr.org/en/special-procedures/sr-slavery/call-input-nexus-between-forced-displacement-and-contemporary-forms-slavery> (last accessed 8 September 2022).

¹⁸⁰ Ibid.

¹⁸¹ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, supra fn 122, §40.

¹⁸² M. Redlich Revkin and E. J. Wood, 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices', 6 *Journal of Global Security Studies* 2 (June 2021) 14, <https://doi.org/10.1093/jogss/ogaa038>.

¹⁸³ Ibid, 14–15.

¹⁸⁴ R. Callimachi, 'ISIS Enshrines a Theology of Rape', *The New York Times*, 13 August 2015, <https://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html>.

¹⁸⁵ Ibid.

¹⁸⁶ M. Holmes Katz and G. Outka, 'The Problem of Abortion in Classical Sunni Fiqh', in J. E. Brockopp (ed), *Islamic Ethics of Life: Abortion, War, and Euthanasia*, University of South Carolina Press, 2003, p 27.

¹⁸⁷ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, supra fn 122, §41.

Office of the UN High Commissioner for Human Rights notes that '[w]itnesses reported that a doctor conducted abortions on two women in a school in Ba'aj, Ninewa; they were two and three months pregnant, respectively. Prior to the abortion, one witness reportedly heard an ISIL fighter stating: "we do not want more Yezidis to be born". Both women received an injection and were made to take pills. A week after the abortions, both women were sold.'¹⁸⁸

In addition to forced abortions, Yazidi women report being given birth-control pills, perhaps to prevent the enslaved woman from becoming an *umm walad*, which would prevent her sale and separation from her child.¹⁸⁹ 'One Yazidi girl, aged 18 and unmarried at the time of capture, was bought by a Libyan fighter and held in an oil field compound in Dayr Az-Zawr. She was raped daily throughout her time with this fighter, and described being forced to take pills every day. Held in ISIS captivity for over a year, she was sold eight times and raped hundreds of times, before being sold back to her family for over 20,000 US dollars.'¹⁹⁰

¹⁸⁸ Ibid.

¹⁸⁹ Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, supra fn 95, 4:175

¹⁹⁰ 'They Came to Destroy', supra fn 169, §69.

3. THE PROHIBITION OF USING AND RECRUITING CHILDREN IN HOSTILITIES

IHL and IHRL prohibit the recruitment of children into armed forces or armed groups and their participation in hostilities.¹⁹¹ ‘Although there is not, as yet, a uniform practice with respect to the minimum age for recruitment, there is agreement that it should not be below 15 years of age.’¹⁹² Additionally, Article 4(1) of the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires that ‘[a]rmed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.’¹⁹³

The definition of the child has often reflected varying societal norms, including varying assumptions of agency, marriageability and legal competency. However, it is clear from the classical Islamic legal tradition’s prohibition of the targeting of children that the legal system is designed around the non-participation of children in armed conflict. While the age of majority is often established at puberty in Islamic law, there is a widespread prophetic narration that indicates that the prophet refused to allow one of the companions to participate in battle at the age of fourteen and only allowed him to participate the following year at the age of fifteen.¹⁹⁴ It should be noted, however, that some juristic views allow the participation of children in armed conflict in situations of defensive jihad, if there is an imperative and they are capable of fighting.¹⁹⁵

¹⁹¹ Rules 136 and 137, ICRC CIHL Database, *supra* fn 92; Art 4(1) of Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC). In the Commentary on Rule 137, the ICRC notes:

In the framework of the war crime of ‘using children to participate actively in hostilities’ contained in the Statute of the International Criminal Court, the words ‘using’ and ‘participate’ have been adopted in order to: cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer’s married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology. (ICRC CIHL Database, *supra* fn 92).

¹⁹² Rules 136 and 137, ICRC CIHL Database, *supra* fn 92.

¹⁹³ Art 8(b)(xxvi) of the Rome Statute lists as a war crime ‘conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities’. Although there is a growing trend towards a prohibition of any form of military recruitment or use in hostilities of persons under the age of 18 years, for the purpose of this research, we consider ANSAs to be bound by the 15-years standard and that any commitment to the 18-years limit for recruitment of children in their armed forces goes beyond their strict obligations under international law.

¹⁹⁴ A. al-Dawoodi and V. Murphy, ‘International Humanitarian Law, Islamic Law and the Protection of Children in Armed Conflict’, 101 *International Review of the Red Cross* 911 (2019).

¹⁹⁵ Muhammad Amin ibn Abdin, *Kitab al-Dur al-Mukhtar wa Hashiyat Ibn Abdin*, vol 4, Dar al-Fikr, 1992, p 127.

There is little research on the question of recruitment of children in armed conflict in modern Muslim scholarship, but within this literature, there is a rejection of the practice. For example, in the Muslim scholars' letter to al-Baghdadi, it is asserted that throwing children 'into the fray of combat' to either kill or get killed constitutes 'crimes against innocents'.¹⁹⁶ Moreover, al-Azhar's Observatory for Combating Extremism condemns the recruitment of children by ISIS and asserts that there is 'no Islamic jurisprudential basis for the recruitment of children and training them to shoot innocent people'.¹⁹⁷

ISg, on the other hand, argues that that prophetic tradition indicates that Prophet Muhammad allowed children to participate in his battles against unbelievers, if they were capable of fighting.¹⁹⁸ The group also relies on the general classical Islamic tradition of assuming the age of majority at puberty to argue that the obligation to participate in combat is established once boys reach puberty.¹⁹⁹

UN reports indicate that ISg has 'used, conscripted or enlisted children between the ages of 8 and 18 to participate in the armed conflict'.²⁰⁰ UN mission investigators presented interviews of Yazidi children, aged between 8 and 15, who were separated from their parents and transferred to different locations in Iraq and Syria. The children, who were forcefully converted to Islam, recounted receiving religious and military training, which included the use of live bullets, different types of guns, as well as the use of small and medium-sized rockets.²⁰¹ They reported that they had been forced to watch videos of beheadings and were severely beaten if they refused.²⁰² First-hand reports to Human Rights Watch (HRW) also indicate that Yazidi women dressed their male children up as girls to prevent them being conscripted as ISg fighters.²⁰³

Images in *Dabiq* depict very young children²⁰⁴ holding firearms and receiving military and religious education,²⁰⁵ with a number of articles referring to the child soldiers as the 'lion cubs' of the caliphate.²⁰⁶ Other articles such as 'A Jihad Without Fighting' are targeted at the women of ISg, especially mothers, encouraging them to raise their children to pursue jihad and join ISg military ranks at the age of puberty as an obligatory duty and receive training at an even younger age.²⁰⁷

¹⁹⁶ Letter to Baghdadi, *supra* fn 11, p 13.

¹⁹⁷ "Istratijiyyat Da'ish fi-Istiqtab wa Tajnid al-Shabab", *Al-Azhar Observatory for Combating Terrorism*, 2017, <https://www.azhar.eg/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=4&moduleid=7554&articleid=20139&documentid=3657>, (last accessed 29 January 2022, site deactivated since).

¹⁹⁸ *Dabiq* 8, p 21.

¹⁹⁹ *Dabiq* 10, p 15.

²⁰⁰ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, *supra* fn 122, §44.

²⁰¹ *Ibid*, §45.

²⁰² *Ibid*.

²⁰³ HRW, 'Iraq: Forced Marriage, Conversion for Yezidis', *supra* fn 171.

²⁰⁴ *Dabiq* 10, p 14.

²⁰⁵ *Dabiq* 12, p 35.

²⁰⁶ *Dabiq* 8, p 20.

²⁰⁷ *Dabiq* 14, pp 40–45.

4. PROTECTION OF EDUCATION

Under customary IHL, children affected by armed conflict are entitled to ‘special respect and protection’.²⁰⁸ The ICRC interprets special protection to include protection against sexual violence and separation from adults and ‘access to education, food and health care’.²⁰⁹ In addition, schools are considered to be civilian objects and are thus protected against attacks, unless they are used for military purposes and become lawful military objectives. Under the principle of precautions, parties to armed conflict, including ANSAs must take constant care, in the conduct of military operations, to spare civilian objects, including schools. In addition, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to schools. In light of this principle, the use of functioning schools for military purposes must be avoided unless it is done for imperative military reasons.²¹⁰

As clarified earlier, classic and modern Islamic scholars assert the impermissibility of targeting children, deeming the targeting of schools prohibited. Moreover, pursuit of knowledge is treated as an obligation in Quranic and Sunna traditions.²¹¹ As argued by Mohammad Hashim Kamali, the obligation to pursue education establishes it as an individual right and places a collective responsibility on the community to fulfil this right for both genders.²¹²

ISg’s activities in Iraq and Syria have directly and indirectly created a hazardous situation for the pursuit of education. ‘In one incident in the Syrian Arab Republic, ISIL abducted approximately 150 young boys on their way home from having taken school exams in Aleppo. They were released from captivity after a few months, during which they were physically abused, indoctrinated and made to observe violent practices’.²¹³ The UN has also documented several incidents of attacks on educational facilities by the group.²¹⁴

From the group’s practice, it is clear that ISg considered itself responsible for the provision of education in territories under its control, with a strong emphasis on the propagation of its brand of religious education and segregation of the sexes. In a treatise on the education system under the al-Assad regime, the group asserts that ‘it is not hidden from anyone of how important a part education plays in every state, for the education system is considered among the most important

²⁰⁸ Rule 135, ICRC CIHL Database, *supra* fn 92.

²⁰⁹ *Ibid.*

²¹⁰ Rules 7 and 15, *ibid.*

²¹¹ M. H. Kamali, ‘Classical and Contemporary Approaches to Education: An Islamic Perspective’, 2 *Islam and Civilisational Renewal* 3 (2011) 448–449.

²¹² *Ibid.*, 450–451.

²¹³ Children and Armed Conflict: Report of the Secretary-General, UN doc A/69/926-S/2015/409, 5 June 2015, §7.

²¹⁴ Children and Armed Conflict: Report of the Secretary-General, UN doc A/70/836-S/2016/360, 20 April 2016, §157; Children and Armed Conflict: Report of the Secretary-General, UN doc A/72/361-S/2017/821, 24 August 2017, §180; Children and Armed Conflict: Report of the Secretary-General, UN doc A/72/865-S/2018/465, 16 May 2018, §192.

pillars of the states'.²¹⁵ However, it asserts that the group has an obligation to rid the educational system of the heretic influences of the al-Assad regime and to ensure its compliance with the principles of monotheism. This objective is to be achieved through a policy of subjecting teachers to an opportunity to repent their apostasy, educating them in the perceived true messages of religion and the introduction of curricular changes.²¹⁶ *Al-Nabaa* explains that over 100,000 students of both sexes were enrolled in ISg-affiliated schools in 1437–1438 H (2016–2017 AD) alone.²¹⁷ However, whereas ISg continued to provide female students with education, studies show that the number of girls enrolled in schools was significantly less than the number of boys, possibly because parents feared that their daughters would be targeted as brides of combatants or because the group encouraged girls to stay home and marry early.²¹⁸

5. HUMANITARIAN ACCESS

Common Article 3, Paragraph 2 of the 1949 Geneva Conventions provides that 'an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict'. This provision has been considered to be one of the legal bases on which humanitarian organizations, other than the ICRC, may provide humanitarian relief and protection to people in need. Under customary IHL, the parties to an armed conflict 'must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control'.²¹⁹ Humanitarian relief personnel and objects must be respected and protected.²²⁰

As stated previously, one of the most clearly articulated principles of Islamic law asserted in the classical tradition is the principle of *aman*, which stipulates that a non-Muslim entering Muslim territory must be granted protection of life and property for the duration of their stay.²²¹ More significantly, *aman* may be granted by any Muslim residing in the territory and is not exclusive to the political authority.²²² If the Muslim political authority wishes to revoke the *aman* granted to a non-Muslim, then the person must be escorted safely outside Muslim territory.²²³

²¹⁵ A. J. al-Tamimi, 'Islamic State Treatise on the Syrian Education System: Full Text, Translation & Analysis', <https://www.aymennjawad.org/18600/islamic-state-treatise-on-the-syrian-education> (last accessed 8 September 2022).

²¹⁶ Ibid.

²¹⁷ *Al-Nabaa* 79, p 2.

²¹⁸ O. Arvisais and M. Guidère, 'Education in Conflict: How Islamic State Established its Curriculum', 52 *Journal of Curriculum Studies* 4 (2020) 510.

²¹⁹ Rule 55, ICRC CIHL Database, supra fn 92.

²²⁰ Rules 31 and 32, ibid.

²²¹ Al-Tabari, *Kitab al-Jihad*, supra fn 83, p 34; Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, supra fn 95, 2:145–146; al-Shaybani, *Sharh al-Siyar*, supra fn 103, pp 158–161; al-Shafi'i, *Al-Umm*, supra fn 100, 7:405; Ibn Qudama, *Al-Mughni*, supra fn 86, 13:80.

²²² Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, supra fn 95, 2:145–146; Al-Shaybani, *Sharh al-Siyar*, supra fn 103, pp 158–161; Al-Shafi'i, *Al-Umm*, supra fn 100, 7:405; Ibn Qudama, *Al-Mughni*, supra fn 86, 13:80. Note that there is a juristic debate over *aman* granted by *dhimmis*, minors and slaves.

²²³ Al-Tabari, *Kitab al-Jihad*, supra fn 83, 34.

Mainstream modern scholars have also asserted the principle and its continued applicability in the modern Muslim world.²²⁴

While ISg acknowledges the legality of *aman* as a legal concept, as evident from its granting it in the early stages of its territorial control, it has gradually grown wary of espionage by foreigners.²²⁵ In an article in *Al-Nabaa*, the group considers humanitarian aid workers as a ‘party to the conflict even if they do not carry arms or partake in battles’, since their activities act as a ‘distortion to religion, because their purpose is to protect the blood of the [apostate] warriors, and to nullify the fight of the apostates’.²²⁶ Moreover, the article claims that the employment of humanitarian workers is a method of ‘concealing crusader spies in Islamic countries’,²²⁷ or that these workers propagate ‘the infidel religion of Christianity’ as well as ‘other infidel beliefs, such as secularism, democracy, socialism, and others, in addition to their activities of spreading ideas that contradict Islam and are hostile to the arbitration of God’s law’.²²⁸ This view been reflected in several incidents of the kidnapping and killing of humanitarian aid workers by the group, like the beheading of Alan Henning and David Haines,²²⁹ which made humanitarian access difficult due to the severe challenges for humanitarian organizations trying to work in ISg-controlled areas.²³⁰

ISg has, however, shown evidence of providing humanitarian aid to Muslims, with articles from *Dabiq* highlighting the handing out of foodstuffs to the needy in the month of Ramadan.²³¹ Other articles indicate the redistribution of spoils of war to orphans and other underprivileged groups based on Islamic teachings.²³²

6. PROTECTION OF HEALTH CARE

Under Common Article 3(2) of the 1949 Geneva Conventions, the ‘wounded and sick’ shall be collected and cared for and they must receive ‘to the fullest extent practicable and with the least

²²⁴ Al-Qaradawi, *Fiqh al-Jihad*, supra fn 109, pp 1320–1321; Al-Zuhayli, *Athar al-Harb Fi l-Fiqh al-Islami*, supra fn 89, p 508; Abu Zahra, *Al-Ilaqat al-Dawliya fi l-Islam*, supra fn 109, p 72.

²²⁵ M. Revkin, *The Legal Foundations of the Islamic State*, Center for Middle East Policy at Brookings, July 2016, p 23, https://www.brookings.edu/wp-content/uploads/2016/07/Brookings-Analysis-Paper_Mara-Revkin_Web.pdf (last accessed 8 September 2022).

²²⁶ *Al-Nabaa* 247, p 3.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ I. Cobain, S. Laville and R. Jalabi, ‘Isis Video Shows Murder of British Hostage Alan Henning’, *The Guardian*, 4 October 2014, <https://www.theguardian.com/uk-news/2014/oct/03/alan-henning-isis-syria-video-murder>. For a compilation of ISIS attacks against humanitarian aid workers, see Aid Worker Security Database, <https://aidworkersecurity.org/incidents/search?detail=1&country=IQ%2CSY> (last accessed 8 September 2022).

²³⁰ E. Svoboda and L. Redvers, ‘Aid and the Islamic State’, IRIN/HPG Crisis Brief, Overseas Development Institute and IRIN News, December 2014, p 3, <https://cdn.odi.org/media/documents/9390.pdf> (last accessed 8 September 2022).

²³¹ *Dabiq* 2, p 35.

²³² Ibid, p 38.

possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones'.²³³

Medical personnel, facilities and transports that are exclusively assigned to medical purposes must be respected and protected in all circumstances, although they lose such protection if they carry out or are used to commit acts harmful to the enemy.²³⁴ Attacks directed against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.²³⁵

While numerous Islamic legal sources instruct Muslims to pursue a healthy life, it is difficult to discern from such instructions an obligation that is comparable to a modern understanding of the right to health, but Muslim states consider themselves bound by Islamic law to provide medical care as evident from Article 17 of the Cairo Declaration on Human Rights in Islam, which stipulates: 'b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resource.'²³⁶ It should be noted, however, that most classic interpretations of Islamic law make no reference to the impermissibility of killing the wounded among non-Muslims but explicitly state that wounded Muslims in a war of rebellion may not be killed.²³⁷ Modern mainstream interpretations, on the other hand, have shifted towards prohibiting the killing of anyone who is not actually participating in combat,²³⁸ thereby deeming those incapable of fighting, including the wounded, impermissible targets.

ISg asserts that, unlike Muslim rebels, wounded non-Muslims may be killed,²³⁹ which must be read in light of their previously highlighted expansion of the category of non-Muslim. The group dealt with health care as part of the services it offered civilians and residents under its control, and considers it a duty that the group/caliphate is required to provide.²⁴⁰ In April 2015, it released a video announcing its 'Islamic Health Services'.²⁴¹ An article in *Dabiq* describes modern equipment and the adoption of the latest technological advancements in the medical field in ISg-affiliated hospitals and medical centres, and presents the latest statistics in terms of the number and types of surgical and medical procedures conducted.²⁴² Evidence also points to ISg-created videos boasting about the health-care services in territories under ISg control.²⁴³ To enable the

²³³ Rule 110, ICRC CIHL Database, *supra* fn 92.

²³⁴ Rules 25, 28 and 29, *ibid*.

²³⁵ Rule 129, *Ibid*.

²³⁶ Art 17, Cairo Declaration, *supra* fn 10.

²³⁷ Ibn Qudama, *Al-Mughni*, *supra* fn 86, 12:252. See discussion in Section 5A on targeting in Islamic law.

²³⁸ Abu Zahra, *Al-Ilaqat al-Dawliya fi l-Islam*, *supra* fn 109, p 103.

²³⁹ Al-Bin'ali, *Sharh Shurut wa Mawani' al-Takfir*, *supra* fn 112.

²⁴⁰ Islamic State, 'Wathiqat al-Madinah', issued in Raqqa, September 13, 2014.

<https://web.archive.org/web/20160530071604/http://1.bp.blogspot.com/->

Tv8Nm1G1VxM/VBXdeYnHvpI/AAAAAAAJo/TltohnwgVXE/s1600/proxy.jpg (last accessed 8 September 2002

²⁴¹ 'Islamic State NHS-Style Hospital Video Posted', *BBC News*, 24 May 2015, <https://www.bbc.com/news/world-middle-east-32456789>.

²⁴² *Dabiq* 9, pp 24–26.

²⁴³ *Ibid*, p 33.

provision of medical services, the group launched campaigns to train new doctors, possibly to compensate those lost due to the conflict.²⁴⁴

Civilians from west Mosul provided statements to Amnesty International describing a very different reality, with one civilian reporting that ISg routinely denied medical care to civilians, which escalated after the beginning of the battle of west Mosul in February 2017.²⁴⁵ Other statements from civilians report being denied both routine and urgent care during the battle when they or their families were injured as a result of ground or aerial attacks.²⁴⁶ A young mechanic recounted to Amnesty International the events following a mortar attack when he was taken to an IS hospital: ‘My family put me in a car and drove me to al-Jamhouri hospital in west Mosul. There were two doctors still at the hospital but they said the hospital was only for IS. They sent me home.’²⁴⁷ This was also affirmed by a study of health-care workers in Mosul who reported that ISg fighters had priority in treatment.²⁴⁸ Residents also reported the use of hospitals by IS fighters: ‘[M]any of the foreign fighters stayed in the hospital, with their families. They stayed there because it was safer there, because they knew it wouldn’t be targeted by the air strikes.’²⁴⁹

Moreover, strict enforcement of ISg’s moral and religious code and the subjection of health-care workers to possible punishments for infractions, such as failure to respect the dress code, female and male workers being alone together or provision of medical services to patients of the opposite sex, put those workers under significant pressure.²⁵⁰

7. THE PROHIBITION OF FORCED DISPLACEMENT

IHL prohibits the forced displacement of civilians ‘unless the security of the civilians is involved or imperative military reasons so demand’.²⁵¹ It also provides that in case of displacement, all possible measures shall be taken to ensure that displaced persons are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.²⁵² Displaced persons have a right to return to their homes as soon as the reason for their displacement ceases to exist and security allows.²⁵³

In classical Islamic law, which predates the modern nation-state apparatus, Muslims enjoyed mobility within Muslim territories and non-Muslims were guaranteed protection under the

²⁴⁴ “ISIS Steps Up Recruitment Drive for Medical Students,” *Newsweek*, 07 July 2015, <https://www.newsweek.com/isis-steps-recruitment-drive-medical-students-329505>, accessed 08 September 2022.

²⁴⁵ Amnesty International, *At any Cost*, supra fn 144, p 21.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ G. J. Michlig, R. Lafta, M. al-Nuaimi and G. Burnham, ‘Providing Healthcare Under ISIS: A Qualitative Analysis of Healthcare Worker Experiences in Mosul, Iraq Between June 2014 and June 2017’, *14 Global Public Health* 10 (2019) 1422.

²⁴⁹ Amnesty International, *At any Cost*, supra fn 144, p 21.

²⁵⁰ Michlig et al, ‘Providing Healthcare Under ISIS’, supra fn 248, 1417–1420.

²⁵¹ Rule 129, ICRC CIHL Database, supra fn 92.

²⁵² Rule 131, ibid.

²⁵³ Rule 132, ibid.

regime of *aman*. *Aman* was devised to provide safe refuge for non-Muslims in Muslim territories, regardless of whether or not they were forcibly displaced. It offered significant guarantees to life and property for those temporarily seeking refuge in or visiting Muslim lands.²⁵⁴ As stated earlier, the right to grant *aman* was accorded to members of the Muslim community and not just the state. However, with the move towards the modern nation-state system and its exclusive control over territorial borders, individual rights to grant *aman* are difficult to maintain, leading to a shift closer to modern international law's assertion of freedom of movement and protection of refugees. For example, Article 12 of the Cairo Declaration on Human Rights in Islam stipulates that '[e]very man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.'²⁵⁵ Modern Muslim scholars have also asserted the rejection of forced displacement on numerous occasions. For example, more than 1,000 Muslim scholars rejected compulsory forced sectarian displacement in the concluding remarks of the International Conference for Islamic Unity held in Saudi Arabia in 2018.²⁵⁶

There is no clear indication of ISg's jurisprudential position on displacement, but its expansion of targetable categories triggers systematic displacement. *Dabiq* reports the evacuation of the al-Shaitat villages as a result of their refusal to hand over alleged perpetrators of crimes, effectively classifying them as *tawa'if* (seditious groups). ISg allowed 24 hours for uninvolved parties to evacuate before they attacked the villages.²⁵⁷ Displacement and destruction of property were used as punishment and it was noted that anyone affiliated to any government body or confirmed guilty of espionage would not only be executed but 'his house also will be destroyed and burnt, after the removal of the women and children'²⁵⁸ as retribution for his actions.

²⁵⁴ Al-Tabari, *Kitab al-Jihad*, supra fn 83, p 34. See discussion of *aman* in Section 5A1.

²⁵⁵ Art 12, Cairo Declaration, supra fn 10. It is noteworthy that the Declaration was revised by the OIC for approval by states in 2020 but the review process was halted due to the Covid-19 pandemic.

²⁵⁶ A. S. Ahmed, 'Al-Tataruf w al-Iksa' w-al-Irhab: Muthalib al-Khatar Amam al-Alam al-Islamy, Wathikat Makah al-Mukaramah, Mithak Islamy Shamil Yahkom Qawaid al-Khilaf Bayn al-Muslimin', *Al-Ahram*, 17 December 2018, <https://gate.ahram.org.eg/daily/News/202864/115/686091/> %D8%AA%D8%AD%D9%82%D9%8A%D9%82%D8%

%A7%D8%AA-%D9%88-%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%AE%D8%A7%D8%B1/%D8%A7%D9%84%D8%AA%D8%B7%D8%B1%D9%81-%D9%88%D8%A7%D9%84%D8%A5%D9%82%D8%B5%D8%A7%D8%A1-%D9%88%D8%A7%D9%84%D8%A5%D8%B1%D9%87%D8%A7%D8%A8-%D9%85%D8%AB%D9%84%D8%AB-%D8%A7%D9%84%D8%AE%D8%B7%D8%B1-%D8%A3%D9%85%D8%A7%D9%85-%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85-%D8%A7%D9%84.aspx.

²⁵⁷ *Dabiq* 3, p 14.

²⁵⁸ Ibid, p 12.

Details from UN reports indicate systematic violence against the Yazidi community where, '[i]n some instances, villages were entirely emptied of their Yezidi population'.²⁵⁹ Other reports refer to the systematic grouping of Yazidi men, women and young children, with each of those groups being transferred to different locations and some victims being displaced to more than 10 different locations during a four-month period, which was intended to reinforce control by instilling 'fear, insecurity and disorientation'.²⁶⁰

UN documents also report that 'Christians suffered forced displacement and deprivation of property',²⁶¹ with approximately '200,000 Christians and members of other ethnic and religious groups' fleeing their towns and villages in fear of ISg threats.²⁶² They also point to the seizure of property that was found to be owned by Christians in Mosul by ISg as spoils of war.²⁶³

The vast majority of those who fled their homes did so in fear of ISg and attacks on their towns or cities. An Amnesty International report claims that 'IS crimes and the ongoing armed conflict have led to mass internal displacement', amounting to over 4.2 million Iraqis displaced since 2014.²⁶⁴ Interviews with victims of ISg provided first-hand accounts of ISg violations: 'IS said that we had to leave our houses. We heard that some people tried to escape, but they threatened us with death if we did that ...They moved us in buses. We moved in cycles, so one group would leave, and then the bus would take the next group'.²⁶⁵ First-hand accounts also indicate that civilians were moved into ISg-controlled cities 'as human shields ...to stand between them and the missiles'.²⁶⁶ Moreover, to prevent people from fleeing ISg-controlled territories, the group rigged the exits to their homes and streets with mines or IEDs.²⁶⁷

8. USE OF LANDMINES AND OTHER EXPLOSIVE DEVICES

The use of landmines – both anti-personnel (AP) and anti-vehicle – is not prohibited per se under customary IHL. However, when landmines are used, particular care must be taken to minimize their indiscriminate effects.²⁶⁸ In addition, parties to the conflict using landmines must record their placement, as far as possible.²⁶⁹ At the end of active hostilities, they must also remove or otherwise render them harmless to civilians or facilitate their removal.²⁷⁰ Although the

²⁵⁹ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, supra fn 122, §18.

²⁶⁰ Ibid, §36.

²⁶¹ Ibid, §21.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Amnesty International, '*Punished for Daesh's Crimes': Displaced Iraqis Abused by Militias and Government Forces*', 2016, p 17, <https://www.amnesty.org/en/documents/mde14/4962/2016/en/> (last accessed 8 September 2022).

²⁶⁵ Amnesty International, *At any Cost*, supra fn 144, p 16.

²⁶⁶ Ibid.

²⁶⁷ Ibid, p 17.

²⁶⁸ Rule 81, ICRC CIHL Database, supra fn 92.

²⁶⁹ Rule 82, ibid.

²⁷⁰ Rule 83, ibid.

elimination of AP landmines is not considered customary law yet, more than three-quarters of states today are parties to the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.



Naturally, classical jurisprudence does not address the use of landmines and other explosive devices due to the modernity of such weapons. However, as explained earlier, Muslim jurists have accepted with varying limitations collateral damage under the regime of *tatarus*. In discussing permissible attacks against besieged cities, jurists acknowledge the use of potentially indiscriminate weapons such as rock-hurling machines, lances and fire. While they assert that untargetable groups should be avoided, they accept the permissibility of killing those groups if their death is unavoidable.²⁷¹ Modern mainstream scholars also assert the duty to refrain from killing non-combatants unless it is necessary and unavoidable.²⁷² This interpretation is in line with the customary rules of IHL: ‘When landmines are used, particular care must be taken to minimize their indiscriminate effects’,²⁷³ and booby traps must not be attached to objects enjoying special protection or objects likely to attract civilians.²⁷⁴

ISg’s expansive interpretation of who is targetable paves the way for reliance on indiscriminate explosive devices. ISg has generally relied on explosive devices to cause the largest amount of infrastructural damage and loss of life, as well as induce fear amongst the general population. The most commonly implemented methods of deploying such explosive devices are suicide

²⁷¹ al-~~Kabari~~, *Kitab al-Jihad*, supra fn 83, pp 4–5; al-Shaybani, *Sharh al-Siyar*, supra fn 103, p 102; Al-Shafi’i, *Al-Umm*, supra fn 100, 4:348.

²⁷² Al-Zuhayli, *Athar al-Harb Fi l-Fiqh al-Islami*, supra fn 89, p 506.

²⁷³ Rule 81, ICRC CIHL Database, supra fn 92.

²⁷⁴ Rule 80, *ibid*.

attacks, rigging of homes and residential areas, vehicle-borne improvised explosive devices (VBIEDs), and victim-activated improvised explosive devices (IEDs).

A. Suicide Attacks

Probably the most employed method of attack by ISg, especially against civilian targets, is suicide bombings. These typically, yet not exclusively, utilize a wearable belt or vest armed with one or more explosive devices, which the wearer detonates usually in a crowded or strategic area to cause the most damage. *Dabiq* and *Al-Nabaa* have reported hundreds of suicide attacks as well as containing articles urging the use of suicide attacks on civilian and military targets and objects.²⁷⁵ They report major operations including those in Libya and Sinai, but also refer to smaller-scale operations such as attacks on Ismailis in the Mashhad temple using an explosive belt.²⁷⁶ Suicide attacks also targeted government officials, such as the attacks in Sinai that killed judges and advisors.²⁷⁷ *Al-Nabaa* reported that in just one week in 2016, ISg conducted no less than 41 suicide attacks, killing hundreds.²⁷⁸

B. VBIEDs and IEDs

Dabiq has urged its readers to utilize car bombs against its enemies. In an article aimed at its readers in Yemen, the magazine urged attacks on Houthis, who are seen as *Rafidis*, saying ‘car bombs have not [yet] roasted their skin, nor have the explosive belts and IEDs severed their joints’.²⁷⁹ *Dabiq* mentions numerous operations that include the use of VBIEDs.²⁸⁰ In a particularly deadly attack targeting the Shia in Diyala, eastern Iraq, a vehicle carrying three tons of explosives was detonated, killing and wounding more than 180 people with extensive damage to the area.²⁸¹ Another car bomb was detonated in a residential area in Baghdad, killing 90 and wounding 200 more.²⁸² Double bombings were also utilized with car bombs; for example, in Falluja, ISg fighters detonated an explosive-laden car at a busy checkpoint and another car bomb shortly afterwards as people and police gathered.²⁸³

In addition to its endorsement of use of IEDs in lone-wolf operations around the world,²⁸⁴ ISg has also used them to target civilians in Syria and Iraq. Amnesty International reported the heavy use of IEDs in a series of attacks on busy markets and Shia neighbourhoods in Baghdad in May

²⁷⁵ *Al-Nabaa* 53, p 2.

²⁷⁶ *Al-Nabaa* 12, p 27.

²⁷⁷ *Al-Nabaa* 7, p 1.

²⁷⁸ *Al-Nabaa* 23, p 2.

²⁷⁹ *Dabiq* 5, p 28.

²⁸⁰ *Dabiq* 9, p 29; *Dabiq* 11, p 28.

²⁸¹ *Dabiq* 11, p 28.

²⁸² Ibid, p 29.

²⁸³ Amnesty International, ‘Iraq: Deadly Suicide Attacks Claim Civilian Lives’, *supra* fn 125, p 1.

²⁸⁴ *Dabiq* 13, p 19.

2016. Officials and media sources state that those attacks claimed more than 150 lives and injured more than 240 people.²⁸⁵

C. Rigging Homes and Residential Areas

While not reported in ISg media, possibly indicating that the group does not condone this practice, the rigging of homes and residential locations in ISg-controlled areas was practised in many instances.²⁸⁶ Generally, the aim was to achieve two opposing goals: keeping the civilian residents in and keeping the attacking parties out. ISg routinely prevented the evacuation of civilians from west Mosul. Amnesty International reported that the group used explosive devices to trap people in their homes or welded their doors shut.²⁸⁷ On the other hand, residential areas were rigged with IEDs to cause harm to attacking parties.²⁸⁸ Several residents told Amnesty International that ISg had forced them to leave their homes so that it could rig them with IEDs.²⁸⁹

9. DETENTION, FAIR TRIAL AND ADMINISTRATION OF JUSTICE

ISg has been committed to portraying itself as a revival of the Islamic caliphate and is thus heavily invested in governance, order and its notion of the ‘rule of law’. After asserting its exclusive jurisdiction over tribal disputes in 2013,²⁹⁰ ISg issued the *Wathiqa*,²⁹¹ a constitution-like document that portrays itself as emulating the early document issued by Prophet Muhammad in Medina. The document and other ISg publications assert that ISg police are recruited from ‘among God-fearing men who show no favoritism, such that he who has committed a *hadd* [crime] will receive the full punishment without any mitigation.’²⁹² ISg also claims that its fighters and personnel, including governing individuals, are not above the law and do not have immunity,²⁹³ which is reflected in a number of legal cases among the group’s own ranks for crimes committed against civilians. As part of ISg’s social contract, the group established a legal framework for resolving disputes amongst civilians under ISg governance.²⁹⁴ While these mechanisms were available, the extent to which they were utilized by civilians is difficult to ascertain.²⁹⁵

²⁸⁵ Amnesty International, ‘Punished for Daesh’s Crimes’, supra fn 264, p 15.

²⁸⁶ Amnesty International, *At any Cost*, supra fn 144, p 17.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ M. Redlich Revkin and A. I. Ahram, ‘Perspectives on the Rebel Social Contract: Exit, Voice, and Loyalty in the Islamic State in Iraq and Syria’, 132 *World Development* (2020) 4, https://www.mararevkin.com/uploads/1/2/3/2/123214819/world_development.pdf (last accessed 8 September 2022).

²⁹¹ Ibid, 5

²⁹² Islamic State, ‘Wathiqat al-Madinah’, supra fn 240. See Redlich Revkin and Ahram, ‘Perspectives’, supra fn 290, 5.

²⁹³ Redlich Revkin and Ahram, ‘Perspectives on the Rebel Social Contract’, supra fn 290, 5.

²⁹⁴ Ibid, 5.

²⁹⁵ Ibid, 6.

A. Treatment of Persons in Detention

Common Article 3 of the 1949 Geneva Conventions and customary IHL provide numerous rules concerning the treatment of persons in detention, notably the prohibition of ill-treatment, the provision of food and water and of safeguards with regards to health and hygiene. Generally, persons deprived of their liberty ‘must be treated humanely’²⁹⁶ and distinction ‘based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited’.²⁹⁷ ICRC access to persons deprived of their liberty is mandatory only in the context of international armed conflicts and, as such, is not an obligation for ANSAs. In the context of a non-international armed conflict (NIAC), and according to Common Article 3, the ICRC ‘may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order to verify the conditions of their detention and to restore contacts between those persons and their families’.²⁹⁸ According to the ICRC study on customary IHL, persons deprived of their liberty in relation to a NIAC must be released as soon as the reasons for their detention cease to exist.²⁹⁹

But aside from guarantees of fair trial within the court system, a significant issue arises regarding the legitimacy and enforceability of decisions issued by rebel courts. Most classical jurists acknowledge the decisions issued by rebel courts according to the concept of *baghy*. However, the question is rather moot in the modern context, considering the modern mainstream institutions’ perceptions of terrorist militant groups as more suited to *hiraba*. Arguably, even the consideration of whether decisions issued by a group that falls under the concept of *hiraba* are enforceable is of a rather limited import given the groups’ perception of modern Muslim governments as infidels, hence deeming their own governance the legitimate (*hakim ‘adl*) one, rather than a rebellious or seditious regime.

With regards to war captives, the Quran gives wide discretion to the political authority, as is evident in the Quranic verse: ‘When you meet the disbelievers in battle, strike them in the neck, and once they are defeated, bind any captives firmly – later you can release them by grace or by ransom – until the toils of war have ended.’³⁰⁰ Aside from the question of legitimization of slavery in this verse, the issue of killing captives also arises. Whereas the verse may be interpreted to permit killing a person only before they are taken into captivity, classical jurists have disagreed on the matter, with some accepting the possibility of killing captives as an alternative to releasing or ransoming them, and others rejecting the permissibility of killing captives.³⁰¹ Modern views have either rejected the permissibility on the basis of its absence in Quranic instructions,³⁰² or ‘argued that international treaties that bind Muslim states and prohibit killing captives should

²⁹⁶ Rule 87, ICRC CIHL Database, supra fn 92.

²⁹⁷ Rule 88, ibid.,

²⁹⁸ Rule 124, ibid.

²⁹⁹ Rule 128, ibid.

³⁰⁰ *The Qur'an*, trans. M. A. S. Abdel Haleem, Oxford University Press, 2005, Surah 47, Verse 4.

³⁰¹ Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, supra fn 95, 2:144–145; Malik, *Al-Mudawanna*, supra fn 157, 1:501; al-Shaybani, *Sharh al-Siyar*, supra fn 103, pp 98–101; al-Shafi‘i, *Al-Umm*, supra fn 100, 7:335; Ibn Qudama, *Al-Mughni*, supra fn 86, 13:44–46.

³⁰² Al-Zuhayli, *Athar al-Harb Fi l-Fiqh al-Islami*, supra fn 89, p 435.

be upheld by the political authority as a reciprocal obligation vis-à-vis other members of the international community'.³⁰³

On the question of torture during detention, Islamic scholars initially perceived evidence procured by torture as inadmissible, with some later classical scholars arguing for admissibility (including Ibn Taymiyya, a key influence on Salafi-jihadist groups).³⁰⁴ Later modern scholars, such as the Grand Imam of al-Azhar, renounce torture as an interrogation tactic.³⁰⁵ Moreover, Article 20 of the Cairo Declaration on Human Rights in Islam prohibits subjecting individuals 'to physical or psychological torture or to any form of maltreatment, cruelty or indignity'.

ISg deems the killing of captives permissible on the basis of some classical views that accept it without a clear distinction between combatants and civilians.³⁰⁶ While the group generally rejects mutilation of the corpses of captives, it is deemed legitimate in retaliation.³⁰⁷ Available evidence indicates that the prevalence of mass detention was typically followed by either summary executions or enslavement.³⁰⁸ The detention of an individual Muslim was more likely to result in release than that of western or Christian individuals.³⁰⁹ In mid-2014, *Dabiq* reported that ISg soldiers had overrun the al-Shu'aytayt clans after the group considered their acts 'treacherous' and hence falling under the laws of *ridda*. Their villages were hence besieged and designated traitors were captured and summarily executed.³¹⁰ *Dabiq* also included photos of ISg soldiers waving combat knives and shouting at a number of prisoners with a caption commanding the 'humiliation' of prisoners before their ultimate execution.³¹¹ *Dabiq* also advertised two foreign prisoners for sale if their government 'did not do its utmost to purchase his freedom'.³¹² The prisoners are shown dead in the following issue after their ransom had not been paid.³¹³ *Al-Naba* published an article about an 'innovative way to hunt' apostates who would later be executed.³¹⁴

³⁰³ Al-Qaradawi, *Al-Jihad*, supra fn 85, 2:978–979.

³⁰⁴ B. Johansen, 'Signs as Evidence: The Doctrine of Ibn Taymiyya (1263–1328) and Ibn Qayyim al-Jawziyya (d. 1351) on Proof', 9 *Islamic Law and Society* 2 (2002).

³⁰⁵ Ahmad al-Tayyib, 'Khuturat al-Takfir', in *Al-Azhar fi Muwajahat al-Fikr al-Irhabi Conference*, 3–4 December 2014, Dar al-Quds al-Arabi, 2016, p 73.

³⁰⁶ Al-Battar Media Foundation, 'Ruling on the Killing of Muslims and Unbelievers in Conditions of Captivity', supra fn 112, p 29.

³⁰⁷ Abu Bakr al-Mudari, 'Mashru'iyat al-Nahr wa-l-Tamthil bi-Juthath al-Kuffar', 9 May 2014, <https://justpaste.it/gz3j> (last accessed 8 September 2022).

³⁰⁸ Letter Dated 15 November 2018 from the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant Addressed to the President of the Security Council, UN doc S/2018/1031, 16 November 2018, §9; *Dabiq* 3 p 12; *Dabiq* 4, p 24.

³⁰⁹ *Dabiq* 5, p 32; Amnesty International, 'Syria/Iraq: Amnesty International Condemns the Summary Killing of David Haines by Islamic State', <https://www.amnesty.org/es/wp-content/uploads/2021/06/act240012014en.pdf> (last accessed 8 September 2022);

³¹⁰ *Dabiq* 3, pp 12–14.

³¹¹ *Dabiq* 4, p 6.

³¹² *Dabiq* 11, pp 64–65.

³¹³ *Dabiq* 12, p 64.

³¹⁴ *Al-Naba* 49, p 7.

Reports to HRW state that ISg held hundreds of Yazidi men, women and children captive in formal and makeshift detention facilities in Iraq and Syria, under the pretext of their religious affiliation.³¹⁵ Many reports also confirm that prisoners were forced to convert to Islam.³¹⁶ Prisoners also recounted the conditions in which they were held, explaining that they were typically held in schools, prisons, military bases, government offices or private homes, and many complained of the scarcity of food and water, while others complained of very tight spaces.³¹⁷ To escape detection and airstrikes, ISg moved its captives from one place to another, packing and often overpacking prisoners into trucks or buses, with victims stating ‘we were sitting on top of each other’ during one trip.³¹⁸ Some prisoners were used as domestic servants, a young woman explaining that ISg locked them in a house to clean and cook for two fighters.³¹⁹ Other witnesses stated that ISg fighters relied on lists of individuals inspected through house-to-house and checkpoint searches, after which numerous men allegedly disappeared after being taken into ISg custody.³²⁰ ISg also held entire neighborhoods captive during times of battle to prevent civilians from leaving: ‘IS wouldn’t let us go. They welded the front door of our house shut ...They came to us in a pick-up truck, with a generator in the back, and then they welded shut the gap between the two doors.’³²¹ If anyone was caught trying to flee, they were killed and their bodies hung ‘from the electricity pylon as a warning’.³²² Neighborhoods became sites of mass detention where ‘[ISg] would disguise themselves as civilians ... and they would ask you where you were going. If you said you were trying to escape, they would kill you.’³²³ HRW has highlighted 27 cases of individuals or groups of persons apprehended by and last heard of in ISg custody. The apprehended individuals include journalists, anti-ISg fighters from a range of groups, government and anti-government, as well as residents living under ISg control.³²⁴

ISg practice reflects grave violations against persons rendered hors de combat. ISg media publications reflect instances in which ISg fighters executed fighters from other sides, such as a militia commander whose corpse was then dragged through the streets by an ISg car.³²⁵ Photographic evidence also demonstrates the summary execution of a number of government soldiers by ISg fighters after they were caught.³²⁶ Possibly one of the most infamous and cruel deaths was the burning of a Jordanian pilot whose plane had fallen during an airstrike.³²⁷ While

³¹⁵ HRW, ‘Iraq: Forced Marriage, Conversion for Yezidis’, *supra* fn 171.

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, *supra* fn 122, §30.

³²¹ Amnesty International, *At any Cost*, *supra* fn 144, p 18.

³²² Ibid.

³²³ Ibid, p 19.

³²⁴ HRW, *Kidnapped by ISIS: Failure to Uncover the Fate of Syria’s Missing*, 11 February 2020, <https://www.hrw.org/report/2020/02/11/kidnapped-isis/failure-uncover-fate-syrias-missing> (last accessed 8 September 2022).

³²⁵ *Dabiq* 2, p 34.

³²⁶ *Dabiq* 3, pp 20– 21.

³²⁷ *Dabiq* 7, p 6.

ISg acknowledges that the jurisprudence denies the validity of punishment by burning, it utilizes the principles of *qisas* (retribution) and *maslaha*³²⁸ as well as the principle of reciprocity, equating the killing of Muslims by missiles to burning and burying the pilot under the rubble.³²⁹ Peshmerga prisoners of war were also slaughtered on video as a warning to other Peshmerga fighters joining the war against ISg.³³⁰ UN reports also point to witness reports of the summary execution of approximately 1,500 to 1,700 members of the Iraqi Armed Forces from Camp Speicher in Salah ad-Din Governorate.³³¹

There are also numerous cases of executions of activists, journalists, humanitarian aid workers and other civilians. The justification for all executions was retaliation against the individual's state, religious group, ethnicity or creed.³³² James Foley and Steven Sotloff, for example, were both executed with photographic and video evidence depicting both executions under the pretext of revenge for American airstrikes against ISg and general US indifference.³³³ Photographic and video evidence as well as articles in ISg publications point to French nationals being executed in retaliation for French military aggression,³³⁴ Japanese civilians being executed in response to Japan's involvement in the coalition against ISg.³³⁵ Norwegian and Chinese prisoners were also advertised as being 'for sale'³³⁶ and later killed when their ransom was not paid.³³⁷

Amnesty International also reported the execution of aid workers including David Haines, and two US journalists, as well as hundreds of captured members of army and security forces.³³⁸ UN reports point to the extrajudicial execution of hundreds, including summary killing in villages and of families at ISg checkpoints.³³⁹

B. Fair Trial and Administration of Justice

Under customary IHL, '[n]o one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees.'³⁴⁰

³²⁸ A jurisprudential term akin to public interest.

³²⁹ *Dabiq* 7, pp 6–8.

³³⁰ *Dabiq* 12, p 42.

³³¹ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, *supra* fn 122, §32.

³³² *Dabiq* 7, pp 3–5, 31; *Dabiq* 5, p 32; *Dabiq* 4, p 51.

³³³ *Dabiq* 4, p 51; *Dabiq* 3, pp 37–40.

³³⁴ *Dabiq* 5, p 32.

³³⁵ *Dabiq* 7, pp 3–4.

³³⁶ *Dabiq* 11, pp 64–65.

³³⁷ *Dabiq* 12, p 64.

³³⁸ Amnesty International, 'Syria/Iraq: Amnesty International Condemns the Summary Killing of David Haines by Islamic State', *supra* fn 312, p 1.

³³⁹ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, *supra* fn 122, §31.

³⁴⁰ Rule 100, ICRC CIHL Database, *supra* fn 92.

It is often argued that the Islamic legal culture exhibits revolutionary understandings of the rule of law through its assertion of the primacy of Sharia.³⁴¹ The centrality of law and order is perhaps most evident in classical scholars' assertion that the application of Islamic law is the primary determinant of the territory being deemed Islamic land (*dar al-Islam*).³⁴² Modern interpretations, however, have reformulated this notion of *hakimiyya* to assert compatibility between modern law and Islamic law if there is no clear and evident violation of Islamic tenets. When it comes to the question of guarantees of fair trial, there are numerous classical examinations of judicial qualifications, manifestations of justice and guarantees of what might be referred to as rule of law, including veneration of the notion of independence of the jurisprudential sciences and the judiciary from political control.³⁴³ It would, nevertheless, be anachronistic to assess a millennium-old legal system's adherence to modern notions of rule of law and fair-trial guarantees.

ISg has stated that the independence of the judiciary is reflective of heretic western norms of law.³⁴⁴ It has, nevertheless, often positioned its legal system as just, impartial and swift.³⁴⁵ In numerous incidents, the group has indicated a commitment to accountability within its own ranks in order to eliminate corruption and deviation from Islamic law. An article in *Dabiq* asserts that '[t]he leader is required to ensure that he and his soldiers are held responsible for the rights that Allah has made obligatory and the limits that He has set.'³⁴⁶ This assertion was, however, utilized to discipline members of the judiciary who espoused an alternative view of Islamic law.³⁴⁷

a. Hudud and Punishments

ISg established numerous Sharia courts,³⁴⁸ 'enforced prayer, collected zakah, and commanded the Hisbah³⁴⁹ to command good and forbid evil. They executed the hudud,³⁵⁰ judged in their courts by what Allah revealed, returned the rights of the oppressed, fought the kuffar and apostates, and enforced the jizyah upon Ahlul-Kitab.'³⁵¹ *Al-Nabaa* reports that ISg's department of *hisbah* dealt with 68,984 cases, in the first half of 1437 H (2015 AD) alone.³⁵² ISg magazines and newsletters depict instances of the public implementation of *hudud* and other punishments, including the

³⁴¹ W. Hallaq, *The Impossible State: Islam, Politics and Modernity's Moral Predicament*, Kindle edn, Cambridge University Press, 2013, p 71.

³⁴² Ibid, p 49.

³⁴³ Ibid, p 60.

³⁴⁴ Islamic State Committee of Research and Fatwas, *Clarifying Statement on the Ruling on the Educational System of the Nusayri [Alawite] Government [of Syria]* (in Arabic), November 2014, <http://drsc-sy.org/wp-content/uploads/2015/06/ALRAQA1.pdf> (last accessed 8 September 2022), cited in Revkin, *The Legal Foundations of the Islamic State*, supra fn 225, p 13.

³⁴⁵ Revkin, *The Legal Foundations of the Islamic State*, supra fn 225, p 11.

³⁴⁶ *Dabiq* 7, pp 11– 12.

³⁴⁷ Revkin, *The Legal Foundations of the Islamic State*, supra fn 225, p 26.

³⁴⁸ *Dabiq* 10, p 51.

³⁴⁹ An Islamic term that is used in this context to refer to Muslims' obligation to promote good and forbid evil.

³⁵⁰ A category of crimes in Islamic law that are sanctioned with particular punishments.

³⁵¹ *Dabiq* 10, p 52.

³⁵² *Al-Nabaa* 30, p 2.

execution of two highway robbers for the *hadd* of *hiraba*.³⁵³ ISg police and Sharia courts executed individuals for apostasy³⁵⁴ and for supporting the al-Assad regime.³⁵⁵ ISg has routinely implemented the *hadud* of public stoning to death for committing adultery while married,³⁵⁶ and public lashing for unmarried violators.³⁵⁷ The *hadd* of ‘sexual deviance’ including homosexuality met with the death penalty of being thrown off high buildings,³⁵⁸ and theft with the amputation of the thieves’ hands.³⁵⁹ UN reports confirm such punishments.³⁶⁰ Amnesty International has also reported that those who strayed from the group’s interpretation of religious edicts were tortured for ‘offences’ such as smoking or not wearing ISg-sanctioned attire.³⁶¹

b. Trials of ISg Personnel and Fighters

Despite serious due process issues in the ISg legal system, its efficiency and ability to maintain order appealed to many residents who had struggled with the lack of order during the civil war. For example, ‘[o]ne interviewee from Aleppo reported that his cousin joined ISg after he was impressed by its speedy resolution of a decades-old land dispute for his aunt. Even though the ISg court ultimately ruled against his aunt, the efficiency and procedural fairness of the process was more important to him than the outcome, consistent with other research on the procedural foundations of legitimacy.’³⁶² Thus, at times, civilians resorted to the ISg legal system and filed formal complaints regarding abuses by ISg administrators or fighters who violated the group’s rules.³⁶³ Other legal mechanisms were also in place to appeal ISg court decisions.³⁶⁴

Witness reports describe several complaints against an ISg traffic police officer who ‘was harassing and extorting civilians’.³⁶⁵ After ISg police investigated the officer, he was found guilty and later crucified in a public square, in line with punishments for *hiraba*. Next to him, a sign stated: ‘This was one of our officers. Because of his corruption, he has been punished according to sharia.’³⁶⁶ Another altercation recalled by a witness took place when an ISg fighter cut to the front of the line of a bakery: ‘When the owner asked the fighter to go to the back of the line, the fighter kicked him in the face and ran away with a bag full of bread.’³⁶⁷ The baker complained to

³⁵³ *Dabiq* 1, p 45.

³⁵⁴ *Dabiq* 14, p 9.

³⁵⁵ *Dabiq* 2, p 33.

³⁵⁶ *Ibid.*, p 36; *Dabiq* 7, p 43.

³⁵⁷ *Dabiq* 10, p 61.

³⁵⁸ *Dabiq* 7, p 42; *Dabiq* 15, p 79.

³⁵⁹ *Dabiq* 10, p 60.

³⁶⁰ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, *supra* fn 122, §49.

³⁶¹ Amnesty International, ‘Punished for Daesh’s Crimes’, *supra* fn 264, p 15.

³⁶² Redlich Revkin and Ahram, ‘Perspectives on the Rebel Social Contract’, *supra* fn 290, 6.

³⁶³ *Ibid.*

³⁶⁴ *Ibid.*

³⁶⁵ Redlich Revkin and Ahram, ‘Perspectives on the Rebel Social Contract’, *supra* fn 290, 6.

³⁶⁶ *Ibid.*

³⁶⁷ M. Redlich Revkin, ‘Competitive Governance and Displacement Decisions Under Rebel Rule: Evidence from the Islamic State in Iraq’, 65 *Journal of Conflict Resolution* 1 (2021), 67.

an ISg Sharia court, investigations and witness interviews were carried out by ISg police and the court ruled in favor of the owner, ordering the fighter to apologize publicly.³⁶⁸

10. THE SPECIAL PROTECTION OF CERTAIN OBJECTS, SUCH AS CULTURAL PROPERTY

Under customary IHL, each party to the conflict must respect cultural property. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity.³⁶⁹ In addition, the use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity.³⁷⁰ All seizure or destruction of or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited.³⁷¹ The international legal framework also protects intangible heritage. The 2003 UNESCO Convention defines ‘intangible cultural heritage’ as ‘[t]he practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage’. Although the obligations enshrined in this Convention are binding upon states, they can serve as guidelines for ANSAs willing to take safeguarding measures.

It is understandable that classical Islamic scholars have not dedicated significant attention to the treatment of cultural heritage sites, considering the relative novelty of the concept. Yet, some modern writings rely on the prohibition of wanton destruction and the prophetic instruction to preserve a Christian church as a basis for the preservation of cultural heritage sites.³⁷² Moreover, the survival of many pre-Islamic cultural heritage sites provides ample evidence of early Islamic tolerance towards them. While Muslim scholars do not normally address the issue as one of the main topics of the conduct of war, there are numerous assertions by modern scholars that the destruction of religious mausoleums and cultural heritage sites is prohibited.³⁷³

³⁶⁸ Ibid.

³⁶⁹ Rule 38, ICRC CIHL Database, supra fn 92.

³⁷⁰ Rule 39, ibid.

³⁷¹ Rule 40, ibid.

³⁷² V. Arnal, ‘Destructive Trends in Contemporary Armed Conflicts and the Overlooked Aspect of Intangible Cultural Heritage: A Critical Comparison of the Protection of Cultural Heritage Under IHL and the Islamic Law of Armed Conflict’, 102 *International Review of the Red Cross* 914 (2020) 550–551.

³⁷³ Marwa al-Bashir, ‘Ba’d Tafjir Qabr al-Naby Yunis w Adrhat al-Sufiya w al-Kana’is b-il-Iraq .. Ulama al-Azhar:

ISg has openly expressed its intention to and practice of destroying cultural heritage sites. In the ‘Wathiqat al-Madina’ document, it relies on a purported prophetic tradition of destruction of tombs and statues.³⁷⁴ These sites can be divided into two categories: religious and nationalistic/historic. While it is difficult to differentiate between these since, more often than not, they can be classified as both, the justifications for destroying them are different. Religious monuments are destroyed either because they are viewed as symbols of *kufr* or paganism, or in retaliation, especially against the Christian community in response to ‘Crusader’ coalition³⁷⁵ attacks. Historic heritage sites such as Assyrian statues, monuments and engravings are seen by ISg as serving ‘a nationalist agenda that severely dilutes the *wala*’ (loyalty or allegiance) that is required’ to Islam and the Islamic State.³⁷⁶ A report by the American Schools of Oriental Research collects evidence of at least 36 verified large-scale intentional destructions of cultural heritage, with Shia heritage making up 54 percent of the destroyed sites and ancient monuments amounting to 6 percent.³⁷⁷

A. Tombs

ISg focused heavily on the destruction of tombs since the group viewed them as a form of idolization or deification. Images in ISg publications depict ISg personnel clarifying to civilians and ISg fighters in a mosque ‘the obligation to demolish tombs’.³⁷⁸ A number of reports, including some in ISg’s own magazine *Dabiq*, point to a number of operations intended to destroy tombs, especially, although not exclusively, Shia shrines. Particularly important shrines that have been destroyed include the shrine and tomb of Ahmed Ar-Rifai,³⁷⁹ the founder of the Rifai Sufi order. The tomb of Arnaut inside the Shia mosque of Sayyid Ar-Mahmoud was also detonated and the explosion damaged several graves in the cemetery alongside the tomb.³⁸⁰ Other incidents include

Hadimu Qubuwwr al-Anbiya' w al-Awlia' .. Khawarij al-'Asr,' Al-Ahram, 24 July 2014,
<https://gate.ahram.org.eg/daily/News/31259/41/309267/> %D9% 81% D9% 83% D8% B1-% D8% AF% D9% 8A% D9% 86% D9% 89/% D8% A8% D8% B9% D8% AF-% D8% AA% D9% 81% D8% AC% D9% 8A% D8% B1-% D9% 82% D8% A8% D8% B1-% D8% A7% D9% 84% D9% 86% D8% A8% D9% 8A-% D9% 8A% D9% 88% D9% 86% D8% B3-% D9% 88% D8% A3% D8% B6% D8% B1% D8% AD% D8% A9-% D8% A7% D9% 84% D8% B5% D9% 88% D9% 81% D9% 8A% D8% A9-% D9% 88% D8% A7% D9% 84% D9% 83% D9% 86% D8% A7% D8% A6% D8% B3-% D8% A8.aspx.

³⁷⁴ Islamic State, ‘Wathiqat al-Madīnah’, supra fn 240.

³⁷⁵ In reference to the western coalition headed by the US.

³⁷⁶ *Dabiq* 8, p 22.

³⁷⁷ M. Danti, *Heritage in Peril: Syria and Iraq*, American Schools of Oriental Research, https://eca.state.gov/files/bureau/heritage_in_peril_syria_and_iraq_slideshow.pdf (last accessed 8 September 2022).

³⁷⁸ *Dabiq* 2, p 15.

³⁷⁹ Ibid, p 16.

³⁸⁰ Y. Hafiz, 'ISIS Destroys Shiite Mosques And Shrines In Iraq, Dangerously Fracturing Country', *The Huffington Post*, last modified 7 July 2014, https://www.huffingtonpost.com/2014/07/07/isis-destroys-shiite-mosque_n_5564373.html.

the destruction of the tombs of Imam Yahya Abul-Qasim,³⁸¹ Muhammad Ibn Ali al-Hadi³⁸² and the mosque and shrine of Prophet Yunis.³⁸³

B. Other Religious Heritage Sites

Under ISg rule, attacks on religious sites were numerous and far-reaching. For example, Mosul suffered heavy losses of religious sites, especially Shia mosques and religious shrines. *Dabiq* contains numerous photos and reports of IEDs, bulldozers and sledgehammers being utilized to detonate or completely annihilate Shia mosques including the Husiniyyat Jawwad Mosque, the Al-Qubba Husseiniya Mosque,³⁸⁴ the Nebi Yunis Mosque and the Imam Yahya Ibn Qasim Mosque in Mosul.³⁸⁵ UN reports indicate that ISg attacked a Shia majority village surrounding Mosul, and committed a number of crimes including the destruction of ‘at least two Shia religious places known as Husseiniyas’.³⁸⁶ Attacks on and the looting of Christian churches and cathedrals have also taken place even though some Christian communities were given *dhimma* under ISg.³⁸⁷ Acts of aggression include the destruction of crosses and vandalizing churches in retaliation against Christian nations’ actions.³⁸⁸ This is also confirmed by UN reports which provide evidence that ISg destroyed and pillaged ‘historic Christian cathedrals and churches’.³⁸⁹

C. Historic Heritage Sites

Attacks on and the destruction of historic heritage sites are justified by the claim of following the path of Prophet Ibrahim (biblically Abraham), who is reported to have destroyed statues as signs and symbols of pagan gods.³⁹⁰ The second justification is that historic monuments serve a nationalist agenda that defies the teachings of Islam.³⁹¹ An article in *Dabiq*, entitled ‘Erasing the Legacy of a Ruined Nation’, details how ISg fighters used IEDs and sledgehammers to destroy historic monuments belonging to ancient civilizations, especially Assyrian monuments, describing how ISg fighters ‘entered the ruins of the ancient Assyrians in Wilayat Ninawa and demolished their statues, sculptures, and engravings of idols and kings’.³⁹² Photographs depict ISg fighters climbing the walls of ancient buildings, destroying sculptures and pushing over

³⁸¹ *Dabiq* 3, p 17.

³⁸² *Dabiq* 15, pp 44–45.

³⁸³ Danti, *Heritage in Peril*, supra fn 381, p 6.

³⁸⁴ *Dabiq* 2, p 17.

³⁸⁵ Danti, *Heritage in Peril*, supra fn 381, pp 7–8.

³⁸⁶ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, supra fn 122, §25.

³⁸⁷ Amnesty International, ‘Punished for Daesh’s Crimes’, supra fn 267, p 15; Redlich Revkin and Ahram, ‘Perspectives on the Rebel Social Contract’, 5.

³⁸⁸ *Dabiq* 7, p 31.

³⁸⁹ Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq, supra fn 122, §22.

³⁹⁰ *Dabiq* 8, pp 22–24.

³⁹¹ Ibid, p 22.

³⁹² Ibid.

statues in museums, UNESCO-protected areas and temples.³⁹³ There is also photographic evidence of the use of IEDs to destroy the ancient Temple of Baalshamin.³⁹⁴ The group widely publicized its destruction of cultural heritage sites, such as through the widespread images of its destruction of the Mosul Museum, ‘the walls of Nimrud, the second capital of the ancient Assyrian empire, and its Northwest Palace ...several temples of the ancient city of Palmyra, as well as the Arch of Triumph, the tetrapylon and part of the Roman theatre’.³⁹⁵ It also resorted to the systematic looting and trafficking of antiquities as a source of revenue.³⁹⁶

³⁹³ *Dabiq* 10, p 54.

³⁹⁴ *Dabiq* 11, pp 32–33.

³⁹⁵ Geneva Call, *Culture Under Fire: Armed Non-State Actors and Cultural Heritage in Wartime*, 2017, p 31, https://genevacall.org/wp-content/uploads/2017/10/Cultural_Heritage_Study_Final.pdf (last accessed 8 September 2022).

³⁹⁶ Ibid, p 33.

CONCLUSIONS

- ISg rejects the application of secular laws, including international law. But its interpretation of Islamic law relies on an expansive application of *takfir* regarding Muslim governments and their subjects, allowing it to suspend protections offered by the law to Muslims and non-Muslims residing in or visiting Muslim territories.
- Even with protected groups, ISg adopts an expansive interpretation of targeting by stretching the limits of the Islamic concept of *tatarus* to allow it to resort to indiscriminate tactics. Moreover, the group also adopts an interpretation of Islamic law that allows it to use impermissible tactics on the basis of retaliation and reciprocity.
- Despite modern Muslim assertions of the prohibition of slavery, the group offers an interpretation of Islamic law that claims to rely on Islamic laws on enslavement of war captives and to legitimize sexual slavery.
- Unlike modern Muslim jurists who reject the destruction of cultural and religious sites, the group argues that sites of cultural heritage and religious sites are either idolatry or representative of sects deviant from Islam and must be destroyed. This led to an active policy of destruction of religious and cultural heritage sites by the group.
- ISg's use of the least restrictive interpretations of Islamic law, even when compared to other Islamist militant groups like al-Qaeda, and its attempt to revive practices such as enslavement, albeit in a distorted manner, is in our view an attempt to stand out as the most puritan and formidable Islamist militant alternative. Hence, it uses *takfir* to discredit the claims of key militant ideologues and al-Qaeda figures to a more restrained approach to Islamic militancy.

APPENDIX 1

GROUP	DATE OF EMERGENCE/PLEDGING ALLEGIANCE	SPHERE OF ACTIVITY
Isil In Sinai Province (Ansar Bayt Al-Maqdis)	9 April 2014	Sinai, Egypt
Isil – Libya	19 May 2016	Libya
Jund Al-Khilafah – Algeria	29 September 2015	Algeria
Jund Al-Khilafah – Tunisia	27 February 2018	Tunisia
Isis – Somalia	27 February 2018	Somalia
Isis – West Africa	27 February 2018	Nigeria
Isis – Egypt	27 February 2018	Egypt
Isis – Yemen	19 May 2016	Yemen
Isis – Saudi Arabia	19 May 2016	Saudi Arabia
Isil – Caucasus Province	29 September 2015	Russian Federation
Islamic State's Khorasan Province	29 September 2015	Afghanistan-Pakistan
Isis – Bangladesh	27 February 2018	Bangladesh
Isis – Philippines and Maute Group	February 27, 2018	Philippines

ISIS-related groups

GROUP	DATE
Jama‘A Anshorut Daulah (Jad)	10 January 2017
Yarmouk Martyrs Brigade	9 June, 2016
Santoso (Mit)	22 March 2016
Mujahidin Indonesian Timur (Mit)	29 September 2015
Jaish Rijal Al-Tariq Al-Naqshabandi (Jrtn)	29 September 2015

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Al-Nabaa

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