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THE ROLE OF INTERNATIONAL HUMANITARIAN W IN THE PROTECTION OF PLACES OF WORSHIP AND ELIGIOUS OBJECTS IN ARMED CONFLICT: LESSONS FOR NIGERIA

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Abstract

This paper analyzes the role of International Humanitarian Law (IHL) in the protection of places of worship and religious objects in armed conflict with particular reference to its domestic application in Nigeria. While the international community today inclusive of Nigeria witnesses recurrent instances of attacks on places of worship and religious objects thereby killing worshippers in their performance of congregations, destroying Churches, Mosques, Synagogues, etc, terrifying the minds of believers, nevertheless International Humanitarian Law [IHL] under the 1949 Geneva Conventions recognizes religious freedom, preserves the rights of religious practice and grants religious personnel and places of worship special protection. Accordingly, the main objective of this paper is to examine the legal regime under IHL and the role it provides in the protection of places of worship and religious objects during armed conflict. In doing so, the writer examines the current legal framework on the subject in the light of some available State practices in armed conflict relevant to the discussion. It is observed that much of the current legal problems associated with violations of the rules of IHL regarding places of worship as indicated by the State practices examined, stems from willful neglect and disrespect of legal obligations imposed in IHL by States engaged in armed conflict rather than inadequacies in the IHL regime. It is thus recommended that, it is for the UN, ICRC and other relevant intergovernmental organizations to strive more to ensure that States are encouraged to increase commitment to their obligations under IHL in the event of armed conflict.

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1.1 Introduction

It would be much ironical if not illusory to contemplate enforcement of aspects of freedom of religion or belief regarding places of worship and religious objects in armed conflict situation when religious anxieties are often many times the very causes of a war or conflict. Nevertheless, freedom of thought, conscience, religion or belief are fundamental freedoms which may not be suspended or derogated from even in states of emergency or armed conflict[1]. Religions and other beliefs bring hope and consolation to billions of people, and hold great potential for peace and reconciliation. They have also, however, been the source of tension and conflict.[2]Mainstreaming religious customs and practices strengthen cultural and religious identities that coheres communities, often providing a means of coping with the trauma and stress of armed conflict.[3]

It is a general rule in International Human Rights Law [IHRL] that everyone is entitled to freely practice his/her religion and observe his/her religious and cultural practices without coercion or interference from the State and non-State actors as well[4]. In addition, International Humanitarian Law [IHL] under the 1949 Geneva Conventions recognizes religious freedom, preserves the rights of religious practice and grants religious personnel and places of worship special protection. IHL also recognizes the liberty of protected persons to the enjoyment of their religious freedom and of their access to places of worship.

In most instances, including when a war or armed conflict is triggered by religious causes, the international community wage concern over indiscriminate attack on non-combatants and civilian persons; targeting and destruction of civilian objects, desecration of religious sites, objects and places of worship;

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[1] Art. 4, International Covenant on Civil and Political Rights [ICCPR]; Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, (UN Doc. E/CN.4/1984/4 (1984), para. 58; Ladan, M. T., *Materials and Cases on Public International Law*,Ahmadu Bello University Press Ltd., ABU Zaria, Nigeria (2008) p. 261

[2] STUDY GUIDE: Freedom of Religion or Belief (2003) University of Minnesota Human Rights Center available online at http://www1.umn.edu/humanrts/hrcentre.htm (accessed on the 15/3/2012 by 10:45 AM)

[3]Charlotee, L. C. *et al. Addressing the Needs of Women Affected by Armed Conflict*, An ICRC Guidance Document, (March 2004) p. 99 available online at www.icrc.org retrieved on the 4/26/2012 by 11:38 AM

[4] See Article 18,Universal Declaration of Human Rights (UDIIR) of 1948; Article 18, 4(2) of the International Covenant on Civil and Political Rights (ICCPR) of 1966; Article 13 (3) & (4) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; 1981 UN Declaration on the Elimination of All Forms of Religious Intolerance and Discrimination; Article 9, European Convention on Human Rights;12 & 13, American Convention on Human Rights; Article 2 & 8, African Charter on Human and Peoples' Rights of 1981

unjustifiable constrains on the observance of religious practices and of access to places of worship by civilians and protected persons; etc. These are, to mention but few, some of the key legal issues of concern for protection while considering religious freedom in armed conflict situation.

The extent of the problem is that, the international community today witnesses recurrent instances of attacks on places of worship and religious objects thereby killing worshippers in their performance of congregations, destroying Churches, Mosques, Synagogues, etc, terrifying the minds of believers, killing and maiming humanitarian aid workers - religious personnel inclusive, etc.[5]

However, the main objective of this paper is to highlight the legal regime under IHL in providing protection to places of worship and religious objects during armed conflict. In doing so, the writer examines the current legal framework on the subject in the light of some available State practices in armed conflict relevant to the discussion.

1.2 Overview of International Humanitarian Law [IHL]

International humanitarian law [IHL] is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. This law protects persons who are not or are no longer participating in the hostilities and it restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.[6] The 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field laid the foundations for contemporary humanitarian law. The 1874 Diplomatic Conference and the Hague Peace Conferences of 1899 and 1907 constitute important milestones. Modern international humanitarian law is mainly embodied in the four Geneva Conventions of 1949.Some of the principal sources of international humanitarian law are:

a) the four Geneva Conventions of 1949;[7]
b) the two Additional Protocols[8] of 1977 and the Additional Protocol III of 2005;

[5]See sub-section 1.5 below on State practice for authoritative statements about these issues.
[6]International Committee of the Red Cross, "What is international humanitarian law?" 31 July 2004, available on-line at http://www.icrc.org/web/eng/siteeng0.nsf/html/humanitarian-law-factsheet
[7]Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of the Armed Forces at Sea: Geneva Convention relative to the Treatment of Prisoners of War; Geneva Convention relative to the Protection of Civilian Persons in Time of War.
[8]Additional Protocol I relative to the Protection of victims of international armed conflicts; Additional Protocol II relative to the Protection of victims of non-international armed conflicts.

c) a number of treaties prohibiting or restricting the use of specific weapons, for example, the 1980 Convention on Certain Conventional Weapons and its Protocols;
d) the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols; and
e) A body of customary law.[9]

These major instruments were developed under the efforts of International Committee of the Red Cross. The General Assembly has created some other important instruments dealing with genocide, war crimes, crimes against humanity, and the use of certain Conventional weapons.

International humanitarian law applies to armed conflicts; however, it does not regulate whether a State may actually use force, as this is governed by an important, but distinct, part of international law, set out in the United Nations Charter.

The major instruments in this field regulate the means and methods of warfare, along with protection of civilian population, the sick, wounded, shipwrecked and prisoners of war. Thus the codification of humanitarian law (*jus in Bello*) sought to mitigate the effects of war on combatants and civilians.

Given the above background, the discussion proper on the context in which the two systems of laws have provided for the protection of places of worship and religious objects are considered in the subsequent sub-section of this paper.

1.3 Places of Worship under IHL

The practice of respecting places of worship and religious objects is a long historical tradition that cut across different past civilizations. It has been known that in the Indian civilization, the Edict of Asoka (300 B.C.) had guaranteed religious freedom among other rights and that the Indian customary laws developed humanitarian laws of war protecting all places of worship, civilian houses and property against attack.[10]

[9]ICRC, "Humanitarian Law, Human Rights and Refugee Law – Three Pillars", 23 April 2004, available on-line at http://www.icrc.org/web/eng/siteeng0.nsf/html/6T7G86

[10]Dinah Shelton, *An Introduction to the History of International Human Rights Law*, The George Washington University Law School Working Paper No. 346 (August, 2007) p.3 available online at https://papers.ssrn.com/sol3/Data_Integrity_Notice.cfm?abid=1010489 visited on 9/06/2012; See also Nirmal, Chiranjivi. *Human Rights in India: Historical, Social and Political Perspective*, Oxford University Press (1999), p. 2

The right to freedom of thought, conscience, religion or belief includes the freedom;"To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes"[11]The concept of worship extends to the building of places of worship.[12] Places of worship are an essential element of the manifestation of the right to freedom of religion or belief to the extent that the great majority of religious communities or communities of belief need the existence of a place of worship where their members can manifest their faith.[13]In addition to places of worship, different types of buildings or properties have more than a material signification for religious community that is attached to it, such as cemeteries, monasteries or community headquarters.[14]

Regarding, in particular, attacks on places of worship, the UN Special Rapporteur on freedom of religion or belief pointed out that special protection was further granted to religious places, sites and shrines by Commission on Human Rights Resolution 2004/36,[15] and in addition, to the members of religious communities or communities of belief, whenever they find themselves in places of worship, as they are in a situation of special vulnerability given the nature of their activity.

The role of IHL in the protection of places of worship and religious objects stems from the basic principle of IHL on the distinction between civilian and military objectives and the rules regarding these objects could be located within the larger context of the IHL framework on the protection of cultural property set out below. Each party to a conflict (of both national and of international character) must respect cultural property and a 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.

As Places of worship are protection in IHL within the scope of the general protection accorded to cultural property in the event of armed conflict, the legality of the protection of places of worship in IHL is therefore as set down in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict,[16] including the Regulations[17] for the Execution of that Convention, and

[11]1981 General Assembly **"Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief"**, Art. 6(a)

[12] See Human Rights Committee general comment 22, Para. 4

[13] Ibid

[14] See UN Doc. No. E/CN.4/2005/61, paras. 48-52

[15] Ibid

[16]This Convention is the first universal instrument establishing a system for the protection of cultural property in the event of armed conflict. It remains the cornerstone of the law in this field to date. The other listed treaties above confirm the principles it lays down, extend its scope or enhance the protection system it establishes.

its two Protocols, i.e., that of 1954[18]and 1999[19].These instruments apply in situations of international armed conflict[20]. In the event of non-international armed conflict within the territory of a State Party to the Convention, "... each Party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property"; the other provisions can be brought into force by means of special agreements.[21]

Other instruments also contain provisions relating to the protection of places of worship during armed conflict, in particular: the two Additional Protocols of 1977 to the Geneva Conventions of 1949 for the protection of war victims; and the 1998 Rome Statute of the International Criminal Court. The provisions in these instruments supplement those in the Regulations respecting the Laws and Customs of War on Land, which are annexed to the Hague Convention of 18 October 1907 (Convention No. IV).They contains fundamental principles which are recognized as being principles of customary law.

IHL provides for the protection of cultural property in general to the extent that cultural property is civilian, and it is within the scope of this rule that places of worship and religious objects are inclusive. The legality of the protection of cultural property including places of worship and religious objects are therefore provided by IHL under the legal protection accorded to cultural property in the event of armed conflict. Thus, Article 1 of the 1954 Hague Convention[22] defines cultural property, for the purposes of the Convention, irrespective of origin or ownership, as "movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether **religious** or secular ..."

[17]The Regulations which form an integral part of the Convention supplements and provides practical means for its execution and their purpose is to determine the practical measures through which observance of the protection recognized by the Convention can be ensured.

[18]The 1954 Protocol thus provides for a system of protection specifically adapted to situations in which the territory of one State is occupied by another State. The purpose of this instrument is to prevent the exportation of cultural property from a territory which is occupied partially or entirely by a State party to the Convention.

[19]The 1999 Protocol enables the States party to supplement and reinforce the protection system established in 1954. It clarifies the concepts of safeguarding and respect for cultural property which form the core of the Convention, lays down new precautions in attack and against the effects of attack, institutes a system of enhanced protection for property of the greatest importance for humanity, makes provision for individual criminal responsibility and establishes new institutions to monitor and supervise application of the rules protecting cultural property. it, applies to situations of international and non-international armed conflict (Arts. 3 and 22).

[20] See Article. 18. 1954 Hague Convention

[21]See Article 19,1954 Hague Convention

[22] Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954

This definition help promote understanding of the scope of the concept of cultural property, since it lists typical examples of cultural property worthy of protection. Similarly, Article 1(b) of the 1999 Second Protocol to the 1954 Hague Convention[23] adopts the same definition as Article 1 of the 1954 Hague Convention. There are other treaties of international law which are applicable in peace time and in armed conflict situations that also protect cultural property and the world heritage that contains broader definitions of cultural property, for example, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[24] which makes provisions defining cultural property as that "property which, on **religious** or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science".

IHL places 'state obligation' on High Contracting parties to ensure observance of the legal rules on the protection of cultural property (inclusive of places of worship).Article 27 of the Hague Regulations stipulates that "all necessary steps must be taken to spare, as far as possible, **buildings dedicated to religion** ... provided they are not being used at the time for military purposes".

Article 4 of the 1954 Hague Convention provides that:

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties ... by refraining from any act of hostility directed against such property.
2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.[25]

Article 19(1) of the 1954 Hague Convention provides that:

In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.[26]

Article 28 of the 1954 Hague Convention provides that:

[23] *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, in *ILM* (1999), at 769

[24] adopted in Paris on 14 November 1970 and entering into force on 24 April 1972

[25] Article 4 of the 1954 Hague Convention

[26] Article 19(1) of the 1954 Hague Convention

> The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.[27]

Additional Protocol I to the Geneva Convention prohibits the commission of any acts of hostility against **places of worship** which constitute the cultural or spiritual heritage of peoples.[28]

Article 85(4) (d) AP I considers the following acts a grave breach of the Protocol:

> making the clearly-recognized historic monuments, works of art or **places of worship** which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, sub-paragraph *b)*, and when such historic monuments, works of art and **places of worship** are not located in the immediate proximity of military objectives.[29]

Article 16 AP II provides that:

> Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or **places of worship** which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.[30]

Article 25 of the 1923 Hague Rules of Air Warfare provides that:

[27]Article 28 of the 1954 Hague Convention
[28] Article 53, Additional Protocol I
[29]Article 85(4)(d), Additional Protocol I to the Geneva Convention
[30]Article 16, Additional Protocol I to the Geneva Convention

In bombardment by aircraft, all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to **public worship**, art, science, or charitable purposes, historic monuments ... provided such buildings, objects or places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft...

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.[31]

:le 26 of the 1923 Hague Rules of Air Warfare provides that:

The following special rules are adopted for the purpose of enabling States to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special regime for their inspection.

1) A State shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall, in time of war, enjoy immunity from bombardment.
2) The monuments round which a zone is to be established shall be notified to other Powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.
3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 metres in width, measured from the circumference of the said area.
4) Marks clearly visible from aircraft either by day or by night will be employed for the purpose of

he 1923 Hague Rules of Air Warfare

ensuring the identification by belligerent airmen of the limits of the zones.[32]

The purpose of the legal provisions considered above was to confirm that the rules for the protection of cultural property and in particular, places of worship in situations of armed conflict are an integral part of the law governing the conduct of hostilities. Places of worship are protected under IHL not as traditional shelters but only if they also form parts of a peoples' cultural or spiritual heritage.[33] Ordinarily, religious buildings are protected by their civilian nature and, in case of doubt, are presumed not to be used for military purposes[34]. State practice considers places of worship and cultural property, as *prima facie* civilian objects, provided, in the final analysis; they have not become military objectives.[35]Acts of reprisal directed against cultural property are also prohibited and this prohibition does not allow of any exception whatsoever.[36]

Respect for places of worship implies refraining from committing any hostile act against it, and prohibiting, preventing and if necessary stopping any form of theft, pillage or misappropriation and any acts of vandalism. It also means that use of that property, of the appliances in use for its protection, or of its immediate surroundings for military purposes or to support military action is prohibited.[37]Also, there exists an obligation to allow personnel engaged in the protection of cultural property, if captured, to continue to carry out their duties whenever the property for which they are responsible has also fallen into the hands of the opposing party.[38]

However, the scope of the protection accorded to places of worship as discussed above is hinged upon three possible limitations. The rules of IHL provide three potential instances wherein places of worship may lose protection in armed conflict. First, places of worship are essentially protected in IHL by virtue of being civilian objects and when used for military purposes, they lose legal protection as an explicit prohibition exist against its use or support for military

[32]Article 26 of the 1923 Hague Rules of Air Warfare

[33]See Art. 27 of the 1907 Hague Regulations; Art. 5 of the Convention (IX) concerning Bombardment by Naval Forces in Time of War, The Hague, 18 October 1907; Art. 1(a) of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954; AP I, Art. 53; Additional Protocol II, Art. 16.

[34] See Additional Protocol I, Art. 52.

[35]Additional Protocol I, Art. 52; see also ICRC, Customary International Humanitarian Law: Rules, Volume I, Cambridge University Press (2005) p. 34

[36] See Article 4(4), 1954 Hague Convention; Article 53(c) of Additional Protocol I

[37] See Article 4, 1954 Hague Convention

[38] See Article 15, 1954 Hague Convention

purposes or effort.[39]Secondly, places of worship may lose protection in armed conflict if they are located in the immediate proximity to military objective. Thirdly, places of worship may lose protection in circumstances where imperative military necessity so dictates that attack be levied on them.

Now, while in every general rule there may be an exception, the second and third instances as to when places of worship may lose protection in armed conflict if viewed critically would suggest that these exceptions has the tendency or legal implication of defeating the ultimate objective behind the principle that affords protection to places of worship in IHL.

1.3 Religious Objects in IHL

Article 33 and 72 of the Third Geneva Convention and Article 58 of the Fourth Geneva Convention refers to religious objects to mean objects and articles of a religious character (e.g. books, devotional articles, etc) and objects exclusively used by military religious personnel (e.g. means of transport). Article 53 of Additional Protocol applies to objects with an important religious dedication independent of any cultural value. As a rule, places of worship, historic monuments and works of arts which constitutes the cultural or spiritual heritage of people enjoy full protection. Their immunity may not be withdrawn contrary to that of marked cultural objects as their value is generally self-evident and does not require special identification means.[40]

Religious items are included in the supplies which must be granted free passage through the territories of parties to Geneva Convention IV or which can be provided in relief consignments by humanitarian organizations.[41] Individual and collective relief shipments for prisoners of war and civilian internees may include articles of a religious character.[42]

Similarly, Chapter III of Additional Protocol I regulate the targeting of civilian objects and of recent, the Rome Statute of the International Criminal Court [ICC]prohibits attacks directed against civilians and it is a principle of IHL that direct targeting of civilians (including civilian objects) is a breach of customary international humanitarian law binding on all belligerents.[43]

[39]See Article 16, Additional Protocol II to the Geneva Conventions
[40]Ladan, M. T. , Op. Cit., note 1, at p. 261
[41]Geneva Convention IV, Art. 23; 108; 142; Additional Protocol I, Art. 70
[42]Geneva Convention III. Art. 72: Geneva Convention IV. Art. 108; Additional Protocol II, Art. 5(1)(c)
[43] ICC Statute. Article 8(2)(b)(i)

1.4 An Examination of State Practice

1.4.1 International Perspective

The concepts of **state practice** together with ***opinion juris*** are the two vital elements that make up customary international law.[44]State practice is the existence of a consistent general practice in the relations between States which can be found in both bilateral and multilateral relations among States. For state practice to be an element of custom in international law, it must be common, consistent and concordant although the practice need not encompass all States or be completely uniform given the size of the international community.[45] Proof on the existence of state practice can be inferred from the activities of the organs and officials of States that relates to a particular purpose or issue. It can be found in the acts and declarations of heads of States, opinion of legal advisers to governments, bilateral treaties, press releases, official statements of government spokespersons, national legislations, decisions of national courts/tribunals, military and administrative practices, etc, etc.

There has been massive arbitrary destruction of historic, religious and archaeological sites regardless of the enormous international efforts prohibiting these sorts of acts under IHL regime. In a resolution adopted in 1992, the UN General Assembly expressed alarm that: "although the conflict in Bosnia and Herzegovina is not a religious conflict, it has been characterized by the systematic destruction and profanation of mosques, churches and other places of worship, as well as other sites of cultural heritage, in particular areas currently or previously under Serbian control".[46]

According to the Report on the Practice of Iran, Iran accused Iraq of bombarding cultural and historical property on many occasions during the Iran–Iraq War, including museums, ancient hills and places, mosques and schools,

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[44] Article 38(1)(b) of the International Court of Justice [ICJ] refers to international custom *"as evidence of general practice accepted as law"*.

[45] D'Amato, A. *The Concept of Custom in International Law*, Cornell University Press, Ithaca, New York (1971), p. 88; Thirlway, H. *International Customary Law and Its Codification*, A. W. Sijthof, Leiden (1972), p. 58; Also see Fisheries Jurisdiction Case (UK v. Iceland) (Merits) [1974] ICJ Reports, 3 at 5. Similarly, for **state practice** to relied upon as evidence of international custom, there has to be a sufficient degree of participation on the parts of States whose interests are likely to be most affected as well as an absent of substantial dissent, see North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark and Federal Republic of Germany v. Netherlands) [1969] ICJ Reports, 4 at 42; Nicaragua v. USA (Merits) [1986] ICJ Reports, 14. The ICJ has on a number of occasions rejected the claim that a customary rule existed because of lack of consistency in the practice brought to its attention, see the Asylum Case (Columbia v. Peru) [1950] ICJ Reports, 226 at 227; Advisory Opinion on the Legality of the Threat or Use by a State of Nuclear Weapons in Armed Conflict [1996] ICJ Reports, 226

[46] UN General Assembly, Res. 47/147, 18 December 1992, preamble

while Iran committed itself *vis-a-vis* UNESCO[47] not to attack such property and accorded "special protection" to four holy cities in Iraq. The report concludes that Iran's *opiniojuris*is that cultural property is immune from attack.[48] The report further states that an attack on a historic building can be considered a war crime.[49] In 1992, during a debate in the UN Security Council on the situation in the former Yugoslavia, Iran qualified the destruction of cultural property in times of armed conflict as a violation of human rights and deplored "gross violations of the human rights of the people of Bosnia and Herzegovina, including ... wanton destruction of historical monuments, houses of worship and property".[50]

In 1992, during the conflict in the former Yugoslavia, the Socialist Federal Republic of Yugoslavia [SFRY] denounced the destruction of churches, icons and religious books by Croatia.[51] In 1993, during a debate in the UN Security Council, the SFRY (or Federal Republic of Yugoslavia [FRY]) strongly opposed "the shelling of cities, especially Sarajevo, and the destruction of villages, infrastructure, churches and cultural monuments".[52] The Report on the Practice of the SFRY (FRY) describes the armed conflict in Croatia as being characterized by the mass destruction of cultural, historical and religious objects and by violations of existing norms by both sides. According to the report, the Yugoslav People's Army [YPA] Chief of General Staff insisted that attacks on cultural and other protected property such as churches and historical monuments were prohibited. Furthermore, the report asserts the SFRY's view that Article 16 Additional Protocol II already enjoys customary law status. It maintains that, for this reason, the parties to the conflict between the SFRY and Croatia did not deal with the question of cultural property in their agreements on the application of IHL as they deemed it to be superfluous.[53]

The Report on the Practice of Jordan notes that Islamic law lays down the principle of the inviolability of places of worship and states that Jordan has always respected this principle and has always protested against any violations of this principle by its adversaries.[54] In 1993, during a debate in the UN Security Council, Libya requested that the people of Bosnia and Herzegovina "be supported and assisted in the exercise of its right of self-defence against ... the

[47] United Nations Educational, Scientific and Cultural Organization [UNESCO] is a subsidiary organ of United Nations that is in charge of cultural property that sees to the implementation of the Hague Convention on the protection of cultural property in the event of armed conflict

[48] Report on the Practice of Iran, 1997, Chapter 4.3.

[49] Report on the Practice of Iran, 1997, Chapter 6.5.

[50] Iran, Statement before the UN Security Council, UN Doc. S/PV.3136, 16 November 1992, § 68

[51] SFRY, Memorandum on Genocide in Croatia, 3 February 1992, p. 3.

[52] SFRY, Statement before the UN Security Council, UN Doc. S/PV.3203, 20 April 1993, § 28

[53] Report on the Practice of the SFRY (FRY), 1997, Chapter 4.3.

[54] Report on the Practice of Jordan, 1997, Chapter 4.3.

destruction of its places of worship".[55] In 1994, during a debate in the UN Security Council, Pakistan considered the destruction of mosques and other Islamic structures in the former Yugoslavia as "inhuman behaviour".[56]

According to the Report on the Practice of Rwanda, most cultural and religious objects were not damaged by the belligerents during the non-international armed conflict which took place before 1994. Any damage which did occur was found to have been caused unintentionally. The report maintains, however, that during the "genocide in 1994", cultural and religious objects were no longer respected.[57]

According to the Report on the Practice of Zimbabwe, Zimbabwe believes that "an armed conflict should not be allowed to destroy the people's heritage".[58] In 1993, during a conflict, a government justified the destruction of a church on the grounds that it was being used by an armed opposition group for storing weapons.[59]

In 1989, in a report on violations of the laws of war in Angola, Africa Watch considered that cultural property as defined by the 1954 Hague Convention must be considered as civilian objects.[60]In 1993, following the bombing of a church by governmental forces during an internal conflict, the parish priest sent a letter to the International Committee of the Red Cross [ICRC], on behalf of his parishioners, in which he expressed their "vehement protest against this unprovoked and totally inhumane act, which destroyed a place of worship and killed the worshipping devotees". He argued that the action was "totally indefensible", given that the church was easy to locate and identify and that there was no military camp in its surroundings.[61]

In 1991, during a debate in the UN Security Council concerning the Gulf War, the United Kingdom [UK] asserted its compliance with the principle of avoiding damage to sites of religious and cultural significance.[62]In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK stated that "British commanders have also been briefed on the locations and significance of sites of religious and cultural importance in Iraq, and operations

[55] Libya, Statement before the UN Security Council, UN Doc. S/PV.3247, 29 June 1993, § 101
[56]Pakistan, Statement before the UN Security Council, UN Doc. S/PV.3370, 27 April 1994, p. 427.
[57] Report on the Practice of Rwanda, 1997, Chapter 4.3.
[58] Report on the Practice of Zimbabwe, 1998, Chapter 4.3.
[59] ICRC archive document.
[60]Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, pp. 144–147.
[61] ICRC archive document.
[62] UK, Statement before the UN Security Council, UN Doc. S/PV.2977, 14 February 1991, § 72

will take account of this".[63] In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the US stated that "despite false reports by Iraqi authorities there is no evidence of damage caused by coalition forces to the four main Shiah holy sites in Iraq".[64] In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK government stated that:

> Pilots have clear instructions to minimize civilian casualties and to avoid damage to sites of religious and cultural significance. Indeed, on a number of occasions, attacks have not been pressed home because pilots were not completely satisfied they could meet these conditions.[65]

In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the US stated that the coalition air sorties were not flown against "religious targets".[66] The Report on United States [US] Practice states that "it is the *opiniojuris* of the United States that cultural and religious objects should be respected to the extent permitted by military necessity".[67]

The Report on the Practice of Algeria asserts the "principle of inviolability of places of worship".[68] The Report on the Practice of Chile states that it is Chile's *opinion juris* that "the general principle of protecting cultural and religious objects is an integral part of customary international law".[69] At the 18th International Conference of the Red Cross in Toronto in 1952, China labeled the accusation at the US that "in Korea ... cultural, religious and charitable installations were willfully destroyed".[70] Colombia's National Plan for the Dissemination of IHL states that the immunity of the spiritual and cultural heritage is absolute, and that the destruction of religious and cultural objects can neither serve any military need whatsoever nor provide any military advantage.[71]

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[63]UK, Letter dated 21 January 1991 to the President of the UN Security Council, UN Doc. S/22215, 21 January 1991.

[64]US, Letter dated 30 January 1991 to the President of the UN Security Council, UN Doc. S/22173, 30 January 1991, p.1

[65]UK, Letter dated 13 February 1991 to the President of the UN Security Council, UN Doc. S/22218, 13 February 1991, p.1

[66]US, Letter dated 8 February 1991 to the President of the UN Security Council, UN Doc. S/22216, 13 February 1991, p. 1.

[67] Report on US Practice, 1997, Chapter 4.3.

[68] Report on the Practice of Algeria, 1998, Chapter 4.3.

[69] Report on the Practice of Chile, 1997, Chapter 4.3.

[70] China, Statement of 30 July 1952 at the 18th International Conference of the Red Cross, Toronto, 26 July–7 August 1952, reprinted in *Documents on Foreign Affairs of the People's Republic of China*, World Knowledge Press, Beijing, Vol. 2, pp. 82–83.

[71] Colombia, Presidency, Office of the High Commission for Peace, National Plan for the Dissemination of IHL, 1994, p. 7.

In 1991, during the conflict in the former Yugoslavia, Croatia reported and condemned the destruction of and damage to cultural, historical and religious monuments by the Yugoslav army.[72] In its written comments on other written statements submitted to the International Court of Justice [ICJ] in the *Nuclear Weapons case* in 1995, Egypt stated that "in bombardments all necessary precautions must be taken to spare buildings dedicated to religion, art, science, or charitable purposes [and] historic monuments".[73]

1.4.2 Nigerian Perspective

During the past decades since the attainment of independence by Nigeria and at present, places of worship in Nigeria are becoming under the threat of persistent and systematic pattern of extensive destruction at the hands of State and non-State actors arising out of various conflicts and tensions of religious, ethno-religious as well as politico-religious character. Ethno-religious violence particularly in Northern Nigeria often includes the razing of Churches and Mosques by rival factions. To examine few of such incidences starting with the most recent, dozens of places of worship representing sectarian identity of Muslims and Christians were destroyed during the April 2011 Post-election violence in some States in Nigeria. In February 2011, the Niger State authorities of armed police allegedly dislodged the Islamic group called *Islahuddeen* from the Mashegu, Mariga and Kontagora Local Government Areas bulldozing the group's central mosque.[74] On November 24, 2011 consequent upon suspected *Boko Haram* attack, six churches were destroyed in Yobe town of Yobe State.[75] On December 25, 2011 a car detonated at St. Theresa Catholic Church in Madalla killing at least 37 persons and wounding about 60 persons.[76]

Indeed, certain States or localities in Nigeria such as Zangon-Kataf in Kaduna State, Tafawa-Balewa in Bauchi State have become vulnerable and fertile grounds for generalized conflicts that always results in deadly encounter between Muslims and Christians with countless bloodshed and eventual destruction of places of worship by adherents of one sect against another.

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[72] Croatia, Ministry of Information, Report on the War against Croatia, August 1991, pp. 1–2; Ministry of Education and Culture, Report on cultural monuments, historic centres and sites damaged and destroyed during the war in Croatia, Institute for Protection of Cultural Monuments, 30 October 1991.

[73] Egypt, Written comments on other written statements submitted to the ICJ, *Nuclear Weapons case*, September 1995, § 50.

[74] See *International Religious Freedom Report* of 2011 on Nigeria by US Department of State available online at www.state.gov/ (last visited on the 23/09/2012)

[75] Ibid

[76] Ibid

In Damboa, Borno State, one person was killed and five Churches were burned in a dispute concerning the location of a Christian Church in a predominantly Muslim neighbourhood. In September, 2000 Christians attacked Muslims in the Bambam community in southern Gombe State killing 18 persons and burned places of worship for both Muslims and Christians.[77] On December 18 & 19, 1999 Muslim youths attacked and looted 16 Christian Churches in Ilorin, Kwara State.[78]

The home and mosque of Muslim Brotherhood Leader Ibrahim El-Zakzaky were razed by law enforcement officers in 1997 and in the February and May 2000 rioting between Muslims and Christian groups over the proposed introduction of Sharia in Kaduna State, the violence that ensured between these sectarian factions resulted in deaths of more than 1500 persons with Mosques and Muslims being attacked and the Baptist theological Seminary destroyed.[79] In the same year 2000, one Christian church was destroyed and two others vandalized in Sokoto when area boys attacked and loot the Church and its rectory during the March 27, 2000 pro-Sharia students rally.[80]

1.5 Criminality of Attack on Places of Worship in Nigeria

In most national jurisdictions, crimes under international law are already punishable under national law. In Nigeria, for example, the Geneva Conventions Act[81]; the Armed forces Act[82]; the Penal Code Act[83]; the Criminal Code Act[84] and the Sharia Penal Codes Laws[85] (of various States in the North that have adopted the Sharia) have accordingly provided for the prosecution and punishment of persons found guilty of committing certain religious offences inclusive of destruction and desecration of places of worship. These laws have adequately captured the legal protection of places of worship and religious objects as the laws has prohibited any form of insult, desecration, defilement, destruction, willful damage, etc of places of worship and religious objects. A violation of the rule on

[77] Ibid

[78] See the Country Report on Human Rights Practices of Nigeria of 1999 by US Department of State available online at www.state.gov/global/hu...ights/1999_hrp_report/Nigeria.htm (last visited on the 23/09/2012)

[79] See the Country Report on Human Rights Practices of Nigeria of 2000 by US Department of State available online at www.state.gov/g/drl/hrrpt/2000/af/index/cmf?docid=700 (last visited on the 23/09/2012)

[80] Ibid

[81] Cap 162, LFN, 1990; Cap G3, LFN, 2004

[82] Cap A20, LFN, 2004

[83] Cap 345, LFN, 1990; Cap P3, LFN, 2004

[84] Cap 77, LFN, 1990; Cap C38, LFN, 2004

[85] Zamfara State Sharia Penal Code, No. 10 of 2000, Sections 400-406,

respect to places of worship and religious objects is a punishable crime if committed by either the members of the Nigerian armed forces or civilian persons.

The Nigerian Operational Code of Conduct for the Military provides that, during military operations, all officers and men of the armed forces shall observe the rules whereby "no property, building, place of worship, etc. will be destroyed maliciously".[86] So also, the Nigerian Manual on the Laws of War states that "in an attack, steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science or charitable purposes and historic monuments".[87] The manual qualifies "bombardment of . . . privileged buildings" as a war crime.[88]

However, as the tune and cyclic nature of the destruction and desecration of places of worship in Nigeria illustrates, the penal attempts to protect places of worship have not immunized Mosques and Churches from bombardment and bulldozing in Nigeria. This may largely stem from rare or lack of criminal prosecution of perpetrators of such crimes by the law enforcement agencies in Nigeria. The response by the government in Nigeria most often than not is identified with pleas for calm and understanding among religious groups and the government usually fails to act swiftly to quell violence nor to investigate and prosecute those responsible for such violence. Although arrests are sometimes immediately carried out and panels or commissions of inquiry established to investigate such conflicts, suspects are usually released upon short detention.[89] For example, the Federal Government of Nigeria and the Plateau State have established numerous panels and submitted series of reports since the ethno-religious disputes in 2008 but none of the recommendations are yet to be implemented. Thus, a climate of impunity exists in Nigeria as authorities not only rarely prosecute and punish those responsible for violent attack on places of worship but that they too are also involved in such unwholesome criminal acts.

1.6 Conclusion

Some states fail to address forces of intolerance against certain religious groups which eventually manifests in times of armed conflict. In these countries, laws may discourage religious discrimination or persecution, but officials fail to prevent attacks, harassment, or other harmful acts against certain individuals or

[86] See Nigerian *Operational Code of Conduct for the Military* (1967), p. 4
[87] See Nigerian *Manual on the Laws of War* (undated), p. 13
[88] See Nigerian *Manual on the Laws of War* (undated), p. 6
[89] See the Country Report on Human Rights Practices of Nigeria of 1999 by US Department of State available online at www.state.gov/global/hu...ights/1999_hrp_report/Nigeria.htm (last visited on the 23/09/2012)

religious groups. Protecting religious freedom requires more than having good laws and policies in place. Governments also have the responsibility to work at all levels to prevent abuses, to bring abusers to justice, to provide redress to victims when appropriate, and to proactively foster an environment of respect and tolerance for all people.

This paper has reviewed the role of IHL in protecting places of worship and religious objects in armed conflict and the extent of State obligations regarding respect to these civilian objects. These system of law explicitly accords legal and judicial protection to places of worship in armed conflict situation. But our examination of State practices indicates both compliance as well as violation by States of their obligations under IHL treaties. It is observed that much of the current legal problems associated with violations of rules of IHL regarding places of worship as indicated by the State practices examined, stems from willful neglect and disrespect of legal obligations imposed in IHL by States engaged in armed conflict rather than inadequacies in the IHL regime respectively. It is thus recommended that, it is for the UN, ICRCand other relevant intergovernmental organizations to strive more to ensure that States are encouraged to increase commitment to their obligations under IHL in the event of armed conflict.

Pertinently, it is also observed that unlike other forms of violations of the right to freedom of religion or belief, attacks or other forms of restriction on places of worship or other religious sites and shrines in many cases violate the right not only of a single individual, but the rights of a group of individuals forming the community that is attached to the place in question. Reports on what happened in Yugoslavia, Bosnia and Herzegovina, the 1994 Rwandan genocide to mention but few are cases at point. It is further recommended that States should strive more to keep to their international treaty obligation in good faith under Article 53 of the Additional Protocol I and Article 16 of the Additional Protocol II to the Geneva Conventions of 12 August 1949, which protect places of worship in times of armed conflict. States should pay increased attention to prevention of attacks on places of worship and ensure that all perpetrators of such attacks are properly tried and prosecuted and that reparation is provided to victims of such violations.

In the Nigerian context, there was no attempt to prosecute and punish perpetrators and that governmental response is tilted towards promoting the culture of impunity as the Government itself through the instrumentality of law enforcement agencies also commits excesses in bulldozing places of worship. And as religious crises in Nigeria are mostly between Muslims and Christians, it has to be admitted that the extent of animosity and violence portrayed by the adherents of these two religions is quite contrary to the basic teachings of their

religions. This indicates that the adherents of these two religions do not appreciate the teachings of their religion but took unto themselves the task of acting upon their whims and caprices in the name of religion. To curtail these inimical attitudes, the writer recommends the establishment of a Ministry of Religious Affairs at both the Federal, State and Local Government levels in Nigeria to coordinate periodic public awareness and re-orientation campaigns; provision of ongoing interfaith dialogue; monitoring and addressing of early warning signs etc. Finally, holding unto the tenets of IHL by State actors regarding the inviolability of places of worship and religious objects as discussed above would eventually further the attainment of global peace and security necessary for people of faith to worship, observe or practice their own religion. For this, the security of places of worship is indispensable that it be provided for in any State if freedom of religion is really and positively proclaimed in that country as a basic human right that permit no derogation.