



**The Restitution and Compensation of Properties during Armed Conflicts through the Lens
of International Humanitarian Law: The Syrian Case**

**By
Ibrahim Mohamad Al Kasem**

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Supervisor: Professor Karoly Bard

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Abstract

Concerns about development, security, and stability are often used to push victims' demands and needs to the back of the line in any peace-building or development process. Although restitution and compensation for grave breaches of human rights have been established by conflict parties and those responsible for these breaches, as well as by organizations and UN mechanisms, they are frequently insufficient to address the massive scale of damage. This thesis examines the legal rules governing the restitution and compensation for property under international humanitarian law. This thesis investigates the legal terminology applied in the legal classification of armed conflicts, grave breaches of property, and international mechanisms for restituting or compensating property to its original owners. Finally, as a case study, this thesis will analyze the legal rules of property in the Syrian armed conflict as well as the potential for restituting property to owners and compensating them. Property rights have been violated by all parties to the Syrian conflict, but the Syrian government and its allies hold the most responsibility for the massive material losses inflicted by property breaches. Property restitution and compensation in Syria are facing significant hurdles, such as property laws. A hybrid mechanism with flexibility must be established to achieve justice in Syrian society and ensure that breaches are not repeated.

Acknowledgment

My home is more than just walls and furniture. My home is my private box, where I keep all of the emotions and memories that I lived with my family.

This thesis is dedicated to my family, whom I haven't seen since my home in Syria was occupied 9 years ago.

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Chapter 1: Introduction

Destruction, theft, and looting of public, private, and cultural property in international armed conflicts (hereinafter IAC) or non-international armed conflicts (hereinafter NIAC) are grave breaches of international humanitarian law (hereinafter IHL).¹ The main challenges are the restitution of looted or damaged property and obtaining compensation for its loss, total or partial damage. The right to restitution or compensation applies to both private and public property, whether it is moveable or not. The absence of regulations in this area and the victims' inability to establish the appropriate tactics to secure their rights are obstacles to comprehensive restitution or adequate compensation of these properties.

The international community has stressed the importance of the rights to restitution and compensation for victims and nations experiencing IAC or NIAC. Furthermore, several international treaties, including the Hague Convention of 1907,² the Geneva Conventions of 1949 (hereinafter GC.1949), and international conventions concerning the protection and restoration of cultural property, as well as the Hague Convention on the Protection of Cultural Property in Armed Conflicts of 1954,³ have emphasized the importance of restitution and compensation rights in their text.

¹ See: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) 75 UNTS 31 Art 50; See also: Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949) 75 UNTS 85 Art 51; See also: Convention (IV) Relative to the Protection of Civilian Persons in Time of War (1949) 75 UNTS 287 Art 147.

² Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (1907).

³ UN Educational, Scientific and Cultural Organization (UNESCO), Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954).

The Fourth Hague Convention, concluded in 1899,⁴ focused on how to control the behavior of the occupier as a result of the use of public and private property within the occupying country, whether movable or immovable, and it has controlled this behavior through the provisions of its articles. The Hague Convention authorized enemy forces to use vehicles and transport equipment, all state funds and ammunition stores, even if they belong to ordinary individuals. However, the Hague convention stipulated that it must be returned to its original owners or compensated for in the event of peace or independence. In the case of IAC, international law also emphasized the restitution of cultural and historical property belonging to the occupying country, but the UNESCO Convention concentrated on protecting property and prohibiting its unlawful trafficking.⁵ However, victims' claims are often pushed to the back of the line in any peace building process, despite the fact that parties, who are responsible for grave breaches, as well as UN bodies and international treaties, consider restitution and compensation for property.

The Syrian armed conflict caused extensive damage to public, private, and cultural properties. It deprived Syrians of one of their most constitutional rights: the right to possess and dispose of property. The property dilemma in Syria is not a consequence of the Syrian armed conflict, but rather it is rooted in the Syrian legislation before the armed conflict.⁶ Thus, it is one of the contributing factors to the uprising in 2011, especially in light of the many laws that include gender-discriminatory legal articles.⁷ Aside from the various types of property and forms of ownership evidence, there are numerous parties to the Syrian conflict, such as Russia and the

⁴ *Supra Note 2* (Hague Convention (IV)).

⁵ UN Educational, Scientific and Cultural Organisation (UNESCO) Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).

⁶ Martin Clutterbuck, 'Property restitution in post-conflict Syria.' (2018) 57 *Forced Migration Review* 66.

⁷ Women International league for Human Rights (WILPF), 'The human rights of women in Syria: Between discriminatory law, patriarchal culture, and the exclusionary politics of the regime' (2020) <<https://www.wilpf.org/wp-content/uploads/2021/02/The-human-rights-of-women-in-Syria-single-pages.pdf>>accessed 26 June 2022.

United States, who participated directly or indirectly on Syrian territory. Many different types of weapons were used, resulting in massive destruction in cities and villages across Syria. Looting of public, private, and cultural properties followed the damage. As a consequence, approximately 13 million Syrians have been forced to flee their homes as refugees or displaced.⁸

The extensive loss of property and the expensive of reconstructing the nation, the question of retrieving property or receiving recompense for the harm inflicted on it would be laden with numerous barriers and challenges. This necessitated a study of international law relating to property restitution and compensation in order to comprehend how these rules operate in practice, learn from previous lessons, and propose solutions that provide justice to victims.

The thesis is divided into two chapters. After the introduction, *Chapter 2* examines property restitution and compensation for losses sustained during armed conflicts in conformity with IHL. This chapter sets the legal framework for property restitution and compensation for losses experienced during armed conflicts in light of jurisprudential judgments and international treaties and defines a number of essential legal terms, including property, victims, restitution and compensation rights, and grave breaches of human rights. Then, this chapter lists the provisions of IHL applicable to IAC and NIAC, as well as their classification under IHL. Last but not least, this chapter looks at the current problems that international law faces in the areas of restituting property and compensation for damage. *Chapter 3* analyzes the subject of property and the significant abuses committed by all sides in the Syrian armed conflict after 2011. This chapter examines the classification of the Syrian armed conflict and the Syrian property laws that lack a gender perspective. This chapter analyzes how the armed conflict caused widespread devastation,

⁸ World Vision, ‘Syrian refugee crisis: Facts, FAQs, and how to help’ (World Vision, 2022)<<https://www.worldvision.org/refugees-news-stories/syrian-refugee-crisis-facts>>accessed 13 June 2022.

looting, and plundering of public, private, and cultural property across Syrian territory, owing to the Syrian government's and its allies' employment of modern weaponry as well as the participation of armed groups in this destruction. Moreover, this chapter looks into how different obstacles exist in the way of property recovery in Syria, including property rules, the variety of warring parties, the scope of violations, and the existence of many categories of victims. The chapter also investigates the procedures available to return and recompense lost property. Lastly, the chapter looks at the ability to achieve justice for victims by establishing a hybrid mechanism for restitution and compensating property.

Chapter 2: Property Restitution and Compensation in Through the Lens of IHL

2.1 Introduction

In order to understand the right to retribute and compensate for property damaged or looted during armed conflict, it is vital to comprehend the grave breaches and identify the victims in accordance with international humanitarian law. This chapter first defines a variety of terms related to armed conflicts in line with international laws and treaties. Furthermore, the chapter discusses the concept of victims as well as property restitution and compensation. The main objective is to analyze international laws and treaties related to the restitution and compensation processes, as well as the challenges that these processes face.

2.2 Grave Breaches and Serious Violations in International Law

Grave breaches of human rights continue to be perpetrated in societies all throughout the globe, and the cycle of severe violence continues unabated. A cursory examination of the gravest breaches of human rights reveals that their shapes and patterns vary rapidly over time. Furthermore, laws have always been limited to what is written and stated. As a result, there are no standards for determining the severity of human rights breaches, but rather a precise list of infractions that may constitute "grave breaches" of human rights.

It was George Washington Williams ⁹ who used the term "crimes against humanity" for the first time in 1890 when he denounced the Kingdom of Belgium's abuses perpetrated in the Congo, the slave trade, and other human rights infractions. This provision of "crimes against

⁹ Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford, 2015)

humanity" was enacted so that European nations are not held accountable for atrocities that occur in their colonies or the USA.¹⁰ The primary difficulty is that IHL has identified specific acts as comprising specific international crimes, and has not given criminal courts that investigate international crimes a broader discretion to consider the gravity of other criminal acts that were not mentioned in IHL, particularly given the change in the identity of crimes' perpetrators, or how were these crimes committed,¹¹ and the context in which they were committed.¹² For example, regarding the siege of Leningrad in World War II, German Marshal "Wilhelm von Lieb", and the Nuremberg Trials acquitted him since the law at the time did not make siege and starvation of civilians a crime. The court stated:

A belligerent commander may lawfully lay siege to a place controlled by the enemy and endeavor by a process of isolation to cause its surrender. The propriety of attempting to reduce it by starvation is not questioned. Hence, the cutting off of every source of sustenance from without is deemed legitimate. It is said that if the commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back so as to hasten the surrender.

The court added:

We might wish the law were otherwise but we must administer it as we find it.¹³

However, Only Common Article 3 of the GC.1949¹⁴ applies to NIAC, which led to the creation of the Additional Protocol II of 1977 (hereinafter APII)¹⁵ on NIAC. This makes it more difficult for the court to determine the extent of property loss and how to recover it.

¹⁰ *Ibid.*

¹¹ Employees of private military and security companies such as Blackwater and Wagner Group are treated as civilians under IHL unless they are directly involved in combat operations, joined a state's army, or are assigned a combat mission for the benefit of this army or armed group.

¹² Although Common Article 3 of the GC.1949 is seen as a significant advance in the regulation of armed conflicts, the article's stipulations remain essentially generic. In addition, Common Article 3 could not organize the national liberation wars in the former colonies, which escalated in the 1950s and 1960s. This was one of the motivations for adopting the API.

¹³ Judgment of the US Military Tribunal Nuremberg (1948) 11 TWC 462.

Prior to the GC.1949, there was no mention of grave breaches, since the Geneva Conventions of 1864,¹⁶ 1906,¹⁷ and 1929¹⁸ missed codification of such violations within their texts. The GC.1949 and the First Additional Protocol of 1977¹⁹ (hereinafter API) distinguished between two types of violations, with the first being "Grave Breaches," which it specified exclusively and for which states were required to inflict criminal penalties. The second type is "Serious Violations", which are violations of rules other than war crimes. In this case, GC.1949 demands that states halt these violations, but does not specify how. Instead, it simply states that states must take administrative and disciplinary proceedings against these violations.

The terms "Grave breaches" and "war crimes" were fundamentally separate, but time has blurred the line.²⁰ Grave breaches have become associated with war crimes, although they were primarily used in IACs, excluding NIACs. Considering the regulations pertaining to NIACs, both Article 3 of the GC.1949 and the APII lacked provisions specifying war crimes that may be committed during NIAC. However, this inconsistency in legal texts rendered the use of rules impossible. The Customary International Law²¹ (hereinafter CIL) serves as a basis for evaluating criminal responsibility for acts committed during a NIAC, and this approach has been adopted by several international and national tribunals, as expressed in the national laws of numerous nations.

¹⁴ M Gandhi, 'Common Article 3 Of Geneva Conventions, 1949 In The Era Of International Criminal Tribunals.' (2001) 1 ISIL YB Int'l Human. & Refugee L. 207.

¹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (1977) 1125 UNTS 609.

¹⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention) (1949) 75 UNTS 31.

¹⁷ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. Geneva (1906).

¹⁸ Convention relative to the Treatment of Prisoners of War. Geneva (1929).

¹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977) 1125 UNTS 3.

²⁰ Marko Divac Öberg, 'The absorption of grave breaches into war crimes law.' (2009) 873 International Review of the Red Cross 91 163 P163.

²¹ International Committee of the Red Cross (ICRC) 'Customary International Humanitarian Law' (Volume I, 2005).

However, the first cases of grave violations during NIAC were brought before justice in the 1990s, with the establishment of ad hoc tribunals, such as those in the former Yugoslavia and Rwanda,²² and with the few domestic initiatives to implement this approach of IHL.²³

These grave breaches represent severe crimes of a vital rule, namely the protection of human values,²⁴ particularly when it has huge consequences for the victims. Consequently, the purpose of this term shared by the GC.1949 was to prevent these types of violations. The term "grave breaches" indicates the gravity of the situation that is being investigated or researched. However, the reality of the situation, at least for the victims, does not allow considering one crime less serious than another in case of using a phrase that connotes more severity and gravity than the serious violations. Moreover, grave breaches are major violations of the GC.1949 and API-II, in contrast to the so-called other acts of these conventions. According to GC.1949,²⁵ the grave breaches are any of the following acts performed against individuals or property covered by the Convention:

Willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

²² UN Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), 8 November 1994. *See also*: UN Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002), 25 May 1993.

²³ Sonja Boelaert-Suominen, 'Grave breaches, universal jurisdiction and internal armed conflict: Is customary law moving towards a uniform enforcement mechanism for all armed conflicts?' (2000) 5(1) *Journal of Conflict & Security Law* 63.

²⁴ Rachel Lopez, 'The Law of Gravity.' (2019) 58 *Colum. J. Transnat'l L.* 565 p.618.

²⁵ *Supra Note 1.*

The second term, "serious violations," establishes a low threshold and involves violations of social, economic, and cultural rights in addition to violations of civil and political rights.²⁶ In terms of criteria, serious violations relate to a variety of human rights violations and consider the nature of the commitments made, the severity and scope of the violations, victim status (in certain circumstances) and violation consequences.²⁷ According to international practice, human rights violations "seriousness" is determined by a number of variables rather than a single criterion, since the context must be considered.

2.3 Armed Conflict Classifications

Classifying the existence of armed conflict is important, as this entails determining whether IHL applies or not.²⁸ Thus, enabling the lawful killing of some individuals, like combatants,²⁹ and the destruction of certain property, like military objectives,³⁰ requires protecting others, like civilians³¹ and civilian objects.³² This would determine the law governing individuals' rights and treatment.

²⁶ United Nations Commission on Human Rights (UNCHR) (Sub-Commission) Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff (09 August 2012) UN Doc A/HRC/21/46 Paras 13-14.

²⁷ Karimova, Takhmina. What amounts to a serious violation of international human rights law? No. BOOK. Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), 2014. P.15

²⁸ Gertrude C Chelimo, 'Defining Armed Conflict in International Humanitarian Law.' (2014) 3(04) *Inquiries Journal*.

²⁹ Antonio Cassese on the use of the term war by the US Administration after the 11 September 2001 terrorist attacks See: Antonio Cassese, 'Terrorism is Also Disrupting Some Crucial Legal Categories of International Law' (2001) 12 *European Journal of International Law* 993. See also: David Kennedy, *Of war and law* (Princeton University Press, 2009)

³⁰ International Committee of the Red Cross (ICRC), 'Practice Relating to Rule 50. Destruction and Seizure of Property of an Adversary.' (ICRC) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_us_rule50> accessed 19 June 2022.

³¹ ICRC, '27th International Conference of the Red Cross and Red Crescent, Protection of victims of armed conflict through respect of International Humanitarian Law' (1991) <<https://www.icrc.org/en/doc/resources/documents/misc/57jpzn.htm>> accessed 19 Jun 2022.

³² ICRC, 'Rule 9. Definition of Civilian Objects, Civilian objects are all objects that are not military objectives.' (ICRC) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule9>

Even GC.1949 and the API-II 1977 do not provide a clear definition of the term "armed conflict," however, they identify two categories of armed conflict: Firstly, IAC between two or more states;³³ for example, the ICTY confirmed in the *Tadic case* that "an armed conflict exists whenever there is a resort to armed force between States."³⁴ Secondly, NIAC is between governmental and non-state armed groups or just between armed groups.³⁵ Sometimes, the classification of a conflict varies based on the surrounding circumstances. For instance, in 2001, Afghanistan's conflict was classified as IAC; however, after the establishment and international recognition of the Karzai government, the armed conflict became NIAC.³⁶

The scope of protection for individuals and property in IHL over IAC is broad in GC.1949.³⁷ However, in NIAC, only the common Article 3 of GC.1949 is applied. Common Article 3 states that all parties must respect the IHL and ensure that those under their command or supervision do the same.³⁸ This holds true even if the opposing party does not adhere to IHL. With time, the increase of the NIAC was one of the reasons for issuing the API-II,³⁹ in order to develop, supplement, and expand the scope of protection in Common Article 3. Several categories come to the forefront of the categories protected by the provisions of IHL according to the provisions of the APII: civilians, such as children and women, and relief work; in addition to

³³ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (1949) 75 UNTS 287 Art 2(1).

³⁴ Prosecutor v. Tadić (Judgment in Sentencing Appeals) IT-94-1-AR72 (02 October 1995) P70.

³⁵ Sandesh Sivakumaran, *The law of non-international armed conflict* (OUP Oxford, 2012).

³⁶ Daniel Bethlehem and Sandesh Sivakumaran, 'Classification of Conflicts: The Way Forward' (Chatham House ,2012)<https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/011012summary.pdf> accessed 12 June 2022.

³⁷ *Supra Note 14* (Gandhi).

³⁸ ICRC, 'COMMENTARY OF 2020 ARTICLE 3: CONFLICTS NOT OF AN INTERNATIONAL CHARACTER'<
<https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=31FCB9705FF00261C1258585002FB096>>accessed 19 June 2022.

³⁹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague (1907) Art 1.

the existence of special provisions for the protection of objects indispensable to the survival of the civilian population, cultural objects and places of worship.⁴⁰

2.4 International Protection of Property

IHL guarantees the general protection of public, private, and cultural property. This protection prohibits certain acts against property, such as attacks and reprisals, in both IAC and NIAC.

2.4.1 Distinguishing between Public and Private Property:

The Fourth Hague Convention, concluded in 1899,⁴¹ was concerned with controlling the enemy's behavior regarding the ownership of public⁴² and private property⁴³ within the occupied territory.⁴⁴ Moreover, the Hague Convention differentiated between public and private property. With regard to public property, the Convention prohibited the destruction or seizure of enemy property, except for the necessities of war.⁴⁵ The agreement also distinguishes public properties that are not used for military purposes, such as places of worship and hospitals.⁴⁶ With regard to private property, it is prohibited to attack or bombard cities, villages, dwellings, and unprotected buildings by any means,⁴⁷ and it has also prohibited the looting of cities.⁴⁸

Later, The Hague Regulations of 1907⁴⁹ and the GC.1949⁵⁰ governed private property under military occupation by using two primary criteria to determine the appropriation and use of

⁴⁰ *Supra* Note 15 (Protocol II).

⁴¹ *Supra* Note 2 (IV the Hague).

⁴² *Ibid* Art 53.

⁴³ *Ibid* Arts 4-23-46-56.

⁴⁴ *Ibid* Arts 48-49-54.

⁴⁵ *Ibid* Art 23.

⁴⁶ *Ibid* Art 27.

⁴⁷ *Ibid* Art 25.

⁴⁸ *Ibid* Art 28.

⁴⁹ *Ibid*.

property: a) the character of the property -public or private-.⁵¹ and b) the military necessity of the military coup of property.⁵² This means that it does not see the expropriation of private property for the purpose of enriching the occupant as justified.⁵³ In addition, an individual deprived of his property under these conditions is entitled to compensation from the occupant.⁵⁴ However, The Fourth G.C.1949⁵⁵ states that destroying private property is a "grave breach" unless it is strictly necessary for military operations and meets the proportionality criteria.⁵⁶

The approach taken by the Nuremberg Military Tribunal⁵⁷ in the *USA v. List case*,⁵⁸ when considering the charge of destruction of property in occupied territory not justified by military necessity, indicated that the destruction could be accepted under the express exceptions of Article 23 of the Hague Convention.⁵⁹ However, in the *USA v. Krupp case*, the court reached a different decision. In this instance, the court determined that the confiscation, looting, and destruction of public and private property constituted a breach of the law of belligerent occupation since the actions exceeded the demands of the German occupation and were carried out without regard for the local populace. It is clear that the court applied the principle of military necessity in these cases as a principle that restricts the commander's ability to act and does not unleash it, and it was

⁵⁰ICRC, 'The Geneva Conventions of 1949 and their Additional Protocols' (ICRC, 2010)<<https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>> accessed 19 June 2022.

⁵¹ Lea Brilmayer and Geoffrey Chepiga, 'Ownership or Use-Civilian Property Interests in International Humanitarian Law.'(2008) 49 *Harv. Int'l LJ* 413 P 427.

⁵² Maheta M Molango, 'Property Right during Armed Conflict: Application of Adopting Principles of International Humanitarian Law by the European Court of Human Rights.' *ILSP Law Journal* 69 p.74.

⁵³ Philip C Jessup, 'A Belligerent Occupant's Power over Property.' (1944) 38(4) *American Journal of International Law* 457.

⁵⁴ Laws and Customs of War on Land (Hague II) (1899) Art 53 para 2.

⁵⁵ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (1949) 75 UNTS 287 Art 147.

⁵⁶ See: *Supra Note 19* (API) Art 5.

⁵⁷ Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement") (1945).

⁵⁸ International Military Tribunal, Nuremberg Military Tribunal (Trial Judgment) Case No 7, (1948) 11 TWC 757, (1950) 11 TWC 1230, (1948) 8 LRTWC 34, ICL 491 (US 1948), (1948) 15 ILR 632, (1948) Hostage Case, *United States v List (Wilhelm)* and ors.

⁵⁹ *Supra Note 2* (Hague Convention IV).

strict in allowing the use of this concept as an exceptional circumstance in which IHL permitted this classification.⁶⁰

Regarding the NIAC, the API⁶¹ prohibits attacks or reprisals against civilian objects. Attacks are restricted to military targets that contribute effectively to military action and whose entire or partial destruction, capture, or neutralization confers a clear military advantage. When it is uncertain whether a civilian object, such as a house of worship, a residence, or a school, is being utilized to contribute effectively to military operations, it should be inferred that the item is not being used for military objectives. Therefore, the military advantage cannot be "hypothetical and speculative,"⁶² but it is concrete and perceptible under the circumstances existing at the time of the attack. However, there are two factors for deciding whether an objective is military or not. First, the desired target must provide an "effective contribution to military action." In this case, it is sufficient that the destruction of this objective contributes effectively to the enemy's overall war effort; a direct link to the hostilities is not necessary. Second, the elimination of this military objective would present the attackers with a "defining" military advantage.⁶³ Identifying that the intended target is a military target is insufficient for determining whether it may be attacked legally. Where it is necessary to prevent collateral damage to civilian objects, attackers must take precautions to avoid "anticipated" rather than "actual" civilian casualties.⁶⁴ It is crucial to emphasize that the obligation to provide this protection⁶⁵ rests on both parties to the hostilities — the party that began the assault and the party that was attacked. Several indictments before the

⁶⁰ Judgment of the US Military Tribunal Nuremberg (1948) KRUPP et al.

⁶¹ Supra Note (Protocol I) Art 52.

⁶² ICRC, 'Practice Relating to Rule 8. Definition of Military Objectives,(ICRC)< https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule8> accessed 19 June 2022.

⁶³ *Ibid.*

⁶⁴ ICRC, 'Practice Relating to Rule 15. The Principle of Precautions in Attack' (ICRC)< https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule15_sectionb> accessed 27 June 2022.

⁶⁵ Supra Note 19 (API) Arts 57-58.

International Criminal Tribunal for the former Yugoslavia, such as the *Blaskić*, *Kordić and Cerkez case*,⁶⁶ have been based on this rule.

2.4.2 Public and Private Property Protection

IHL ensures that civilian objects and property are generally protected. Attacks, reprisals, or any other acts of violence against such things are prohibited in IAC and NIAC.⁶⁷ However, the occupation army can take cash, capital, weapons stores, transportation means, and military ammunition, even if they belong to individuals, as long as they are returned to the owners or compensation is made when peace is reached between the warring nations.⁶⁸

Public property can be defined as assets owned by public authorities and governments and used for public purposes, such as public schools, universities, and land. However, private property means that this property belongs to individuals, companies, or organizations and not to the state. It is clear that the specific protection of private property is not absolute.⁶⁹ The Hague Convention established two exceptions to the principle of private property protection: in the case of forcible confiscation of supplies⁷⁰ and in the case of seizure of military-usable supplies.⁷¹

2.4.3 Cultural Property's Protection

Cultural property can be defined as immovable or movable property of significant importance to the heritage of peoples, buildings primarily and effectively designated for the protection and display of movable cultural property; and so-called centers of memorial buildings,

⁶⁶ Prosecutor v. Dario Kordić, Mario Cerkez (Appeal Judgement) IT-95-14/2-A (17 December 2004).

⁶⁷ Nils Melzer, *International humanitarian law: A comprehensive introduction* (International Committee of the Red Cross, 2016) P 244.

⁶⁸ ICRC, 'HANDBOOK ON INTERNATIONAL RULES GOVERNING MILITARY OPERATIONS' (ICRC, December 2013) <https://www.icrc.org/sites/default/files/topic/file_plus_list/0431-> accessed 22 June 2022 P.376.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Babalola Cole, 'Property and the law of belligerent occupation: a reexamination.' (1974) 137 *World Affs* 66 Pp69-70.

regardless of their origin or owner.⁷² In 1970, UNESCO concluded the Convention on the Prohibition and Prevention of the Illicit Import and Export of Cultural Property.⁷³ However, even these properties lose the protection provided for in international agreements in several cases: a) if it is used for military or commercial purposes; or b) Exemplified by unavoidable military necessity.⁷⁴

2.5 Victim Definition

The phrase "victims" was not even used directly in certain international accords; rather, it was used tacitly and presumptuously to refer to everyone whose rights had been infringed. As stated in Article 6 of the Convention on the Elimination of All Forms of Racial Discrimination⁷⁵ and Article 13 of the Convention against Torture.⁷⁶ The same was true of the regional human rights conventions, which were devoid of the phrase "victims" and focused instead on rights breaches rather than on victims, according to article 13 of the European Convention on Human Rights.⁷⁷

Furthermore, although the "Vienna Declaration and Program of Action-1993"⁷⁸ emphasized universal human rights, the declaration mentioned the term "victims" without providing any

⁷² *Supra* Note 3 (UNESCO).

⁷³ UNESCO, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 24 April 1972.

⁷⁴ *Ibid* Art13.

⁷⁵ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

⁷⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment(adopted 10 December 1984, entered into force 24 June 1987)1465 INTS 85.

⁷⁷ "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity" See: European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, (1950), Art 13: Right to an effective remedy.

⁷⁸ United Nations General Assembly (UNGA) Vienna Declaration and Programme of Action (1993) UN Doc A/CONF.157/23.

definition.⁷⁹ The term "victims" started to be more specific with the establishment of several international treaties, such as the two International Covenants on Civil and Political Rights and socio-economic rights, and the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHRL and Serious Violations of IHL". The following definition of victim was approved by these basic principles:

are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.⁸⁰

In addition, one of the principles' distinguishing characteristics is the expansion of the term to include the victim's family and those who need assistance, as well as all those who have been affected as a consequence of assisting the victims. Even if the abuser is unknown or if the abuser and victim are related, no one loses his or her rights as a victim, including the right to compensation.⁸¹ These compensations may include any harm that can be quantified monetarily or commercially, and they are calculated in accordance with the severity of the damage and the degree of the breach in each instance on an individualized basis. Furthermore, grave breaches of IHRL as well as major violations of IHL were responsible for the devastation wrought, such as bodily, mental, psychological, and moral harm; loss of advantage; monetary harm; expert fees;

⁷⁹ Joseph Dellapenna, Anthony D'Amato and Bilahari Kausikan, 'An Asian Approach to Human Rights, Proceedings of the Annual Meeting' (1995) 89 American Society of International Law 146.

⁸⁰ United Nations General Assembly (UNGA), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) UN Doc A/RES/60/147.

⁸¹ *Ibid.* principle 8.

legal, medical, psychiatric, and social help; and other damages.⁸² Even while these principles advocate nondiscrimination in general, they are often criticized for not expressly and clearly addressing the gender component of victims' rights.

The absence of clear definitions of grave breaches makes it difficult to determine who is accountable for these breaches and what sort of responsibility they bear, which makes it more difficult for victims to get compensation as a result of the lack of definitions.

2.6 Restitution Right

Regarding the definition of restitution right in international law, there are two primary schools of thought. The first school, advocated by jurists of Allied nations during World War II, is founded on the notion of regionalism. This school of thought observed that the concept of restitution is conflated with the restitution of property, which is part of the in-kind compensation.⁸³ Notably, there is no distinction made between compensation and restitution to the original situation, and there are no consequences for the distinction between these two terms. The jurists of allies also believed that the right of restitution was founded on the international breach resulting from the expropriation and violent theft of property from the occupied area. Therefore, ally jurists stated that the right to restitution was one of the affected state's rights and that the victims seeking this right were not always the owners of the properties that were seized. The Jurists further stated that the objective of restitution was not just to return the properties to their owners but also to safeguard the state's economy. In other words, the right

⁸² *Ibid.*

⁸³ Husam Rahman Hatem Al-Julehawi, and Osama Sabri Muhammed, 'International legal regime for the recovery of cultural property.' (2019) *Journal of Kufa legal and political science* 1.

of restitution can be defined as "allowing the state to restitution all property that was taken from its territory during the military occupation in violation of the rules of international law, and the state that has these properties must return them regardless of the nature of possession and the person holding them; this includes both private and public property; this is a right based on the principle of common law."⁸⁴

The second school of thought is founded on the defense of private property and was mainly espoused by German Jurists. This school of thought holds that the property should not be restituted while the original owner is still in the territory of the expropriating state.⁸⁵ Consequently, the restitution right might be defined as "the right of the original owner of property that was taken from him by force and compulsion to restitute it when the claimant has shown its ownership." The Germans backed this school of thought because they wanted to retain the items looted during World War II from the nations they conquered.⁸⁶

2.6.1 The Legal Definition of Restitution' Right

Several international treaties stipulate the restitution of property, such as the 1648 Treaty of Westphalia, which provides that property, archives, works of art, and archaeological artefacts must be restituted to their original locations without defining the right of restitution.⁸⁷ Also the Hague Convention of 1907 further stipulates that stolen cultural property from occupied countries must be retrieved.⁸⁸ The First Additional Protocol of 1954,⁸⁹ which was annexed to the Hague Convention for the Protection of Cultural Property in Armed Conflict of 1954,⁹⁰ referred to the

⁸⁴ *Ibid.*

⁸⁵ Salah Abdel Badie Shalaby, *The right of restitution in international law* (1983)[Author's Own Translation}.

⁸⁶ *Ibid.*

⁸⁷ Westphalia, Peace of (1648).

⁸⁸ *Supra note 2* (Hague Convention) Art 35.

⁸⁹ Protocol for the Protection of Cultural Property in the Event of Armed Conflict The Hague (1954).

⁹⁰ *Supra Note 3* (UNESCO).

contracting parties' commitment to return all property on their territories to the competent authorities in the occupied territories at the end of hostilities and that such property could not be seized as war reparations. In addition, the peace treaties that ended World War I emphasized the restitution right. For instance, Germany was required to quickly restitute the trophies, archives, historical souvenirs that it had confiscated from the occupying nations.⁹¹ In World War II, in 1943, the Allies issued a declaration in which they reaffirmed their resolve to oppose the Axis Powers' methods of plundering and destroying property, rights, and interests in territories under their control and cautioned all individuals against acquiring such property.⁹² Later, the peace treaties that ended World War II confirmed the prompt restitution right of property. Regarding these treaties, the term "property" includes moveable and immovable, as well as physical and intangible property, for both states and individuals.⁹³

Moreover, regarding CIL,⁹⁴ the property rights of IDPs and refugees must be respected. This was clear in armed conflicts such as in the former Yugoslavia, where UN resolutions about the peace treaty made it clear that any statements or agreements about property rights that were made under duress were null and void.⁹⁵

⁹¹ Treaty of Peace With Germany (Treaty OF Versailles) (1919) Annex VII- ART 245.

⁹² Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control (1943) Miscellaneous No. I.

⁹³ Daniela L Caglioti, 'Property rights in time of war: sequestration and liquidation of enemy aliens' assets in western Europe during the First World War.' (2014) 12(4) *Journal of Modern European History* 523.

⁹⁴ ICRC, 'Rule 133 Property Rights for Displaced Persons.' (ICRC) < https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule133#:~:text=international%20armed%20conflicts-,Rule%20133.,displaced%20persons%20must%20be%20respected.&text=Volume%20II%2C%20Chapter%2038%2C%20Section,and%20non%2Dinternational%20armed%20conflicts> accessed 19 June 2022.

⁹⁵ United Nations Security Council (UNSC) Res 724 (15 December 1991) UN Doc S_RES_724.

2.7 Compensation's Right

In international law, compensation for victims of grave breaches of IHL is a relatively new concept.⁹⁶ In addition, victims of these breaches have the right to obtain legal remedies. Initially, the compensation was accessible via national law; but, in IAC, compensation systems may be included into peace treaties.⁹⁷ In both instances, compensation is allocated either individually or collectively.⁹⁸

Compensation may be considered as a result of the possibility of completing the process of restituting the properties or failing to do so. Due to the rising frequency of armed conflicts, especially non-international ones, compensation is an important concern at present. Typically, this is because the victims are unaware of who is authorized to make the claim, how the claim is made, or who it is delivered to. In addition, the victims cannot get compensation for the physical, moral, and material damage caused to their property.⁹⁹

2.7.1 Compensation Definition

From my point of view, the compensation that this research is looking at is the amount of money that is decided by the person who hurt someone else's property, whether it was public or private, and is proportional to the amount of damage. The substance of a responsibility placed on a state in the aftermath of a war to give appropriate compensation for the harm inflicted on

⁹⁶ ICRC, 'Rule 150 Reparation.' (ICRC) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule150> accessed 19 June 2022.

⁹⁷ Dustin A Lewis, Gabriella Blum, and Naz K. Modirzadeh, 'Indefinite War: Unsettled International Law on the End of Armed Conflict- Section 4- Overview International Humanitarian Law Provisions Concerning the End of International Armed Conflict.' (2017) *Harvard Law School Program on International Law and Armed Conflict, Legal Briefing* 17.

⁹⁸ Elizabeth Salmón and Juan-Pablo Pérez-León-Acevedo, 'Reparation for victims of serious violations of international humanitarian law: New developments.' (2022) 104 *International Review of the Red Cross* 1.

⁹⁹ Amanda Carroll and Marcus Schulzke, 'Compensating civilians during war: a place for individuals in international law.' (2013) 9(4) *Democracy and Security* 398 P 415.

another state or its people as a consequence of the conflict may be said to be the content of an obligation to provide adequate compensation. In this meaning, "compensation" was employed in the 1919 Treaty of Versailles¹⁰⁰ and the same in GC.1949. When states or armed contending parties violate one of the commitments outlined and stipulated therein, they incur the international obligation to recompense, rapier, or reform.¹⁰¹

In *Chorzow Factory Case* of 1927, the Permanent Court of International Justice confirmed these obligations:

It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation .therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself. Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application.¹⁰²

Also, in 1930, the Third Committee's draft of international responsibility to the Conference for the Codification of International Law, which confirmed that it is a state's international duty to fix any state's damage caused by not meeting an international obligation.¹⁰³

The GC.1949 and the Responsibility of States for Internationally Unlawful Acts¹⁰⁴ require international responsibility when their terms are violated. Moreover, according to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHRL and Serious Violations of IHL, any damage that can be measured financially

¹⁰⁰ International Commission of Jurists (ICJ), 'The Right to a Remedy and Reparation for Gross Human Rights Violations. A Practitioners' Guide Revised Edition.' (2018) P 21.

¹⁰¹ *Supra* note 93.

¹⁰² *Factory at Chorzów (Judgment)* [1927] PCIJ Series A. No 17 P21.

¹⁰³ Miller H, "The Hague Codification Conference" (1930) 24 *American Journal of International Law* 674.

¹⁰⁴ International Law Commission, 'Responsibility of States for Internationally Wrongful Acts 2001' (2001)< (https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)> accessed 20 June 2022 Art 1.

should be compensated.¹⁰⁵ In addition, the Customary International Law (hereinafter ICL) addresses compensation.¹⁰⁶ Furthermore, The Rome Statute of the International Criminal Court (hereinafter ICC) also laid down principles regarding compensation for victims of violations of IHL. Article 75-2 states:

The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.¹⁰⁷

However, according to IHL and ICL, when a state breaks a law, it must compensate for the damage it causes. This applies to both the IAC and NIAC.¹⁰⁸

2.7.2 Compensation Purpose

The objective of compensation is to redress the damage caused by violations of IHL.¹⁰⁹ However, compensation is not a singular concept, but rather takes numerous forms. It can take the form of compensation in kind, that is, to return the situation to what it was before the illegal act was committed; this is the original form of repairing the damage. If this is not possible, compensation in return for compensation or monetary compensation may be used; the final form of compensation is consensual compensation (appropriate satisfaction).¹¹⁰

¹⁰⁵ United Nation General Assembly (UNGA), Resolution adopted by the General Assembly on 16 December 2005 (2005) UN Doc A/RES/60/147 Principle 23.

¹⁰⁶ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Volume I: Rules, ICRC 2005).

¹⁰⁷ UN General Assembly (UNGA), Rome Statute of the International Criminal Court (1998) UN Doc 92-9227-227-6 Article 75(2).

¹⁰⁸ Supra Note 96 (ICRC).

¹⁰⁹ Elizabeth Salmón and Juan-Pablo Pérez-León-Acevedo, 'Reparation for victims of serious violations of international humanitarian law: New developments.' (2022) *International Review of the Red Cross* 1.

¹¹⁰ *Ibid* 104.

2.7.3 Compensation Types

There are several types of compensation. The core principle is that compensation must be fair, and restitution to the original state prior to the unlawful act may constitute reasonable compensation in such cases. If this isn't possible, you might be able to offer money to make up for the losses and damage that have happened, or you might be able to find satisfaction.¹¹¹

Regarding the property damage that should be compensated, a difference may be established between direct such as targeting a building and indirect property damage resulting from its targeting and destruction in whole or in part, and damage resulting from consumption during its usage by fighters who do not own these properties.¹¹² The compensation process has several challenges, including determining who is entitled to compensation, who is accountable for payment, and what constitutes a reasonable compensation sum, for example, the situation of compensation after the armed conflict in Iraq.¹¹³

Obviously, states whose property has been damaged during IAC are entitled to compensation. Therefore, the aggrieved state might file a responsibility claim or seek other means of demanding compensation for property damage, including diplomatic, legal, and democratic purposes. Likewise, states have the right to adopt the demands of their nationals, whether individuals or legal entities, in accordance with their responsibilities for the diplomatic protection of their national's *vis-à-vis* others, using whatever means they deem appropriate under

¹¹¹ *Supra* Note 98 (Salmón).

¹¹² ACAPS, 'Disaster Summary Sheet Armed Conflict' (2012) <https://www.acaps.org/sites/acaps/files/resources/files/disaster_summary_sheet-armed_conflict_november_2012.pdf> accessed 22 June 2022.

¹¹³ Protection Cluster, 'Advocacy Note on Property Compensation Scheme in Iraq: Challenges and Recommendations' <https://www.sheltercluster.org/sites/default/files/docs/advocacy_note_on_property_compensation.pdf> accessed 23 June 2022.

the rules of public international law.¹¹⁴ For instance, in *Democratic Republic of the Congo (DRC) v. Uganda Case*, the International Court of Justice (hereinafter ICJ) ordered Uganda to pay \$325 million in reparations to the DRC for damages to persons, property and natural resources resulting from Uganda's military intervention in the wars in the DRC between 1998 and 2003. Judge Joan Donoghue, the ICJ President, said:

The Court notes that the reparation awarded to the DRC for damage to persons and to property reflects the harm suffered by individuals and communities as a result of Uganda's breach of its international obligations.¹¹⁵

As a basis, diplomatic protection is seen as a state right rather than a right of the individual who has been wronged under international law.

It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of International law.¹¹⁶

The ICJ affirmed this in many cases, such as the *Nottebom case* in 1955¹¹⁷ and the *Barcelona Traction case* in 1970.¹¹⁸

¹¹⁴ John Dugard, 'Articles on diplomatic protection.' (2013) United Nations Audiovisual Library of International Law.

¹¹⁵ *Armed Activities on the Territory of the Congo, Democratic Republic of the Congo v. Uganda (Judgment) [2022] ICJ Rep 116.*

¹¹⁶ *The Mavrommatis Palestine Concessions (Greece v. Britain) (1924) Permanent Court of International Justice Series A No. 2. p. 12.*

¹¹⁷ *Nottebohm (Liechtenstein v. Guatemala) [1955] ICJ Rep 18.*

¹¹⁸ *Barcelona Traction, Light and Power Company, Limited, Belgium v. Spain (Judgment) [1970] ICJ Rep 3.*

2.7.4 Compensation Obstacles

There are several obstacles for victims to directly claim their rights. Although the Fourth Hague Convention¹¹⁹ and the API¹²⁰ stipulated that the parties to armed conflicts are obligated to pay compensation, they did not impose any restrictions or limitations on the right to compensation. In practice, victims have encountered a lot of barriers when attempting to enforce their right to reparation directly before national courts.¹²¹ Individual claims have been impeded by the negotiation of a reasonable settlement between the parties to a dispute or under the excuse of the sovereign immunity of nations. For instance, the *Shimoda et al. v. The State case* compensation claims against Japan 1963. The Court said that, notwithstanding the presence of a breach of IHL, persons are regarded as subjects of rights under international law only to the degree that they are recognized as such in particular situations-mixed arbitration court proceedings-. Accordingly, the Court determined that no person who has suffered injury as a consequence of an act of hostility in violation of international law may seek compensation under international law. Also, the court decided that plaintiffs couldn't get money from municipal courts in the USA or Japan because of sovereign immunity.¹²²

2.7.5 Compensation Mechanisms

There are obstacles that hinder individual victims of infringement from immediately exercising their entitlement to seek compensation. For that, typically, states form specific authorities or committees to account for the various losses that befall the state and its citizens, and then adopt and organize an international claim for compensation. For example, the Prince of

¹¹⁹ *Supra Note 2* (Hague convention IV) Art 03.

¹²⁰ *Supra Note 19* (API) Art 91.

¹²¹ Cristián Correa, Shuichi Furuya, and Clara Sandoval, *Reparation for Victims of Armed Conflict* (Vol. 3. Cambridge University Press, 2020) p.529.

¹²² Shimoda case (Compensation claim against Japan brought by the residents of Hiroshmina & Nagasaki), Tokyo District Court, 7 December 1963.

the State of Kuwait issued Decree No. 6 of 1991, which established the Public Authority for Compensation Assessment.¹²³ In light of the preceding, the state has entire authority to select the time and possibility of using this privilege or not exercising it at all, depending on whether the public interest outweighs the private interests of those affected. However, the state may deny the claims of its citizens seeking compensation for harm they have personally sustained.

I believe it is preferable for compensation rights to be granted to people in the first place, rather than for the state to back their petitions at the international level. Or, at least, it is important to compel the states whose nationals were injured by a breach of IHL by another state to compensate them for their suffering. For instance, the Greek victims of the Nazi regime gained a 1997 court judgment that was affirmed in April 2000 by the Greek Supreme Court.¹²⁴ As a result of Berlin's refusal to pay any portion of the compensation ordered to be paid to the victims, an order was issued mandating the forced auction sale of official German property situated on German land to execute this judgment. However, since Greek law needed a government's consent to execute such a judgment by seizing a foreign country's assets, the Greek government refused to offer the requisite assent to such a ruling by seizing a foreign country's assets. The Greek government declined to provide the required authorization.¹²⁵ Subsequently, when the plaintiffs attempted to enforce this ruling before the German courts based on a bilateral agreement to enforce and uphold the sentences, the German Supreme Court refused to recognize the ruling in

¹²³ Public Authority for assessment of compensation for Damage Resulting from Iraqi Aggression (PAAC), History, role and Structure of PAAC' <<http://www.paac.org/About%20Usen.htm>> accessed 23 June 2022.

¹²⁴ Andy Niklaus, 'Greek Victim of Nazi Rule win a case against Berlin' (World Socialist Web Site, 2000) <https://www.wsws.org/en/articles/2000/08/gree-a08.html> accessed 10 June 2022.

¹²⁵ The German Supreme Court reviewed a 1990 agreement between Greece and Germany, which represents the final settlement of claims for reparations stemming from the Second World War, and issued a ruling that does not preclude legal claims by individual citizens. However, the court determined that the consideration of these claims is in accordance with international law as it existed in 1944, and it concluded that the plaintiffs have no reason to claim the damages resulting from the war. This is due to the fact that the international law of 1944 did not give people with grounds for a lawsuit, but rather only allowed nations the right to protection via diplomacy. See: BBC News, 'Greece Threaten to Seize German Property as Compensation' (BBC, 2015) <<https://www.bbc.com/news/world-europe-31831694>> accessed 13 June 2022.

Greece on the grounds that the Greek courts did not have jurisdiction. This is because the act committed—reprisals against civilians during the Nazi occupation of Greece—was a sovereign act, and thus it was protected by sovereign immunity.¹²⁶

Considering these obstacles to victims' access to their entitlement to compensation, whether at the domestic or international level, other options were sought. The establishment of "mixed claims commissions,"¹²⁷ which are special arbitration courts set up by international treaties to enable victims of these horrible crimes to file a claim and obtain compensation, is one example. In specific instances, such as litigation involving personal injury and property loss as a result of plunder or unlawful damage of civilian objects, individuals or institutions may file cases directly, participate to varying degrees in the evaluation process, and get compensation. The 1981 Algiers Agreement between Iran and the USA set up a commission that could hear claims made by the US against Iran and by Iranian citizens against the US, as well as claims made by the two governments against each other and about property.¹²⁸

There are additional UN's bodies where individuals and organizations, as well as governments, have the right to bring direct lawsuits and collect compensation without traversing the route of diplomatic protection by their country of nationality. Nonetheless, people prefer to submit their claims to their own nations, which subsequently submit them to UN bodies. Here, the function of the state, whose citizens are the victims, is strictly administrative. For example, the UN Committee on Compensation for the Second Gulf War is a quasi-judicial body that was

¹²⁶ Elena Vornaus, 'Prefecture of V Ture of Tue of Voiotia V.Federal Republic of Germany: Sovereign Immunity and the Exception for Jus Gogens Violations' (2002) 21 NYLS Journal of International and Comparative Law 630.

¹²⁷ Algiers Declaration (Claims Settlement) (1981).

¹²⁸ The New York Times, 'Text of Agreement Between Iran and the U.S. to resolve the Hostage Situation' (Nytimes, 1981)<<https://www.nytimes.com/1981/01/20/world/text-of-agreement-between-iran-and-the-us-to-resolve-the-hostage-situation.html>>accesed 09 June 2022.

set up by the Security Council under Resolutions 687¹²⁹ -692¹³⁰/1991 to decide legal cases against Iraq. Its main job is to pay for damages caused by the Iraqi invasion of Kuwait.

In addition to the previous obstacles in the compensation case, the issue of determining which party is obligated to pay compensation for the commission of serious violations is another challenge when it comes to breaches committed by non-governmental actors. Especially since most of the IHL covenants refer to the responsibility of states to compensate the victims and not the responsibility of individuals, which must be addressed.¹³¹

Not to mention that the first request for compensation was often filed via national rather than international courts. Even though he is a citizen of a different country, any injured individual may seek compensation via the national court by following one of two scenarios. The first scenario is for the victim, as a civil party, to pursue legal proceedings; this right must be founded on the conviction of a violation of IHL. In the case filed by journalist Marie Colvin in the United States, the United States District Court in Washington¹³² ordered the Syrian government to pay the Colvin family more than \$300 million in compensation. In her decision, Judge Amy Berman Jackson stated:

The defendant, the Syrian Arab Republic, engaged in an act of extrajudicial killing of a United States national by planning and executing an attack on the Baba Amr Media Center, and is liable to plaintiffs for the resulting injuries.

Judge Jackson also stated in her ruling:

¹²⁹ United Nations Security Council (UNSC) Res 687 (30 April 1991) UN Doc S/RES/687.

¹³⁰ United Nations Security Council (UNSC) Res 692 (20 May 1991) UN Doc S/RES/692.

¹³¹ *Supra Note 96* (ICRC).

¹³² Anne Barnard, 'Syria Ordered to Pay 308, 05 Million to Family of Marie Claven', (The New York Times, 2019)< <https://www.nytimes.com/2019/01/31/world/middleeast/syria-marie-colvin-court-judgment.html>>accessed 12 June 2022.

Syria's longstanding policy of violence" aimed "to intimidate journalists and suppress dissent."¹³³

The second scenario for obtaining compensation for those who have been harmed involves the enactment of legislation granting national courts the authority to award compensation to individuals of foreign nationality who file private civil lawsuits¹³⁴ to recover damages incurred as a result of violations of international law standards.¹³⁵ *Dianna Ortiz*, for example, was the first person to file a civil suit against former Guatemalan general and Defense Minister *Héctor Gramajo* in 1992. She complied with the "Torture Victim Protection Act of 1991," or "Alien Tort Act."¹³⁶ In November 1989, Guatemalan soldiers under this minister's command took Dianna Ortiz hostage, raped her, and beat her. As a result, they sought compensation from him. In 1995, a Massachusetts federal court decided in her favor and ordered them to pay \$5 million in damages.¹³⁷

The establishment of the Yugoslavia and Rwanda tribunals, as well as the ICC, plainly reflected the development of mechanisms that provided a greater ability for individuals to obtain compensation. The statutes of Yugoslavia¹³⁸ and Rwanda¹³⁹ tribunals provide the courts with the

¹³³ Cathleen Colvin, et al. V Syria Arab Republic, (Amended Memorandum Opinion , 2019) United States District Court for The District OF Columbia Civil Action No. 16-1423.

¹³⁴ This act grants the courts of the USA the authority to consider civil cases filed by individuals from foreign nations. These cases concern the entitlement to compensation for damages caused by the United States' breach of international law or a treaty to which it is a party. See: Duane Windsor, 'Alien Tort Claims Act: United States 1789' (Britannica, 2014) <<https://www.britannica.com/topic/Alien-Tort-Claims-Act>> accessed 12 June 2022.

S. Kadic et al. v. Radovan Kardazic is one of the most well-known instances in which this act was relied upon. Former Bosnian Serb wartime leader Radovan Karadzic was sentenced by a Manhattan federal jury to pay \$4.5 billion in reparations to victims of rape, torture, and genocide, See: The Guardian, 'War Rape Victims Sue Karadzic for damage in the US' (The Guardian, 2000) <<https://www.theguardian.com/world/2000/aug/06/warcrimes.theobserver>> accessed 12 June 2022.

¹³⁵ Public Law 102-256 102d Congress (12 March 1992) 106 STAT. 73. See also: (TVPA; Pub.L. 102-256, H.R. 2092, 106 Stat. 73, enacted March 12, 1992).

¹³⁶ *Ibid.*

¹³⁷ Ratner, Michael. "Civil Remedies for Gross Human Rights Violations". Justice and the Generals: US Law. PBS. Archived from the original on January 21, 2015. Retrieved 2007-07-09.

¹³⁸ Article 24 of Updated Statute of the International Criminal Tribunal for the Former Yugoslavia: Penalties 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts

authority to order the restitution to their lawful owners of property or its revenues confiscated as a result of criminal activity. Even if neither tribunal has the power to compensate the victims, they may still send them to the national courts where they can file a claim for compensation.¹⁴⁰

The same is true for the Special Court for Sierra Leone, which may order the confiscation of any illegally obtained property, money, or assets and their restitution to their rightful owner or the State of Sierra Leone.¹⁴¹ However, the ICC¹⁴² has chosen a different approach,¹⁴³ with the court itself having the authority to make a compensation judgement.¹⁴⁴

The ICC's rules of procedure and evidence address the question of compensation in detail, victims of breaches may ask for compensation directly to the court, and the court has the ability to launch its own compensation procedures on its own initiative.¹⁴⁵ Additionally, the court may

of the former Yugoslavia. 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. 3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners. See: *Supra Note 22* (Yugoslavia Statue).

¹³⁹ Article 23: Penalties “1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda. 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. 3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners. Statut du Tribunal pénal international pour le Rwanda 78 4. Toute personne contre laquelle une accusation est portée en vertu du présent Statut a droit, en pleine égalité, au moins aux garanties suivantes..” See : *Supra Note 22* (Rwanda Statue).

¹⁴⁰ Dagmar Stroh, ‘State cooperation with the international Criminal Tribunals for the Former Yugoslavia and for Rwanda.’ (2001) 5 Max Planck Yearbook of United Nations Law 249.

¹⁴¹ UNSC, Res 1315 (14 August 2000) UN Doc S/RES/1315.

¹⁴² United Nation General Assembly (UNGA) Rome Statute of the International Criminal Court (1998) UN Doc 92-9227-227-6.

¹⁴³ International Criminal Court (ICC), ‘Understanding the International Criminal Court.’ (2020) ISBN No. 92-9227-365-5 <<https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>> accessed 12 June 2022.

¹⁴³ Hossein Jafari Taheri and Seyed Hesamodin Lesani, ‘International Criminal Law Strategic Policies in Compensation with an Emphasis on International Judicial procedure’ (2019) 105.

¹⁴⁴ *Ibid.*

¹⁴⁵ Article 75: Reparations to victims: 1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting. 2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79. See: International Criminal Court (ICC),

assess restitution individually or collectively, taking into consideration the breadth and magnitude of any loss, damage, or harm.¹⁴⁶ For example, in the *Katanga case*, individual and collective compensation are provided to the victims of crimes committed by Germaine Katanga on 2003 in DRC.¹⁴⁷ Furthermore, such compensation may be ordered by the court to be paid from the Trust Fund for Victims.¹⁴⁸

2.8 Conclusion

Violations of public, private, and cultural property during IAC and NIAC are grave breaches of human rights. The GC.1949 that regulates IAC identifies conduct that constitutes war crimes and grave breaches that do not apply to NIAC, impacting how states react to these breaches. The variety of victims causes the claim for property restitution to take many forms, but it must always be made through the states that have the legal right to seek property restitution under international law. There are many ways to get compensation, such as through international and domestic courts, international treaties and treaties, and UN resolutions, but it usually takes a long time.

‘Understanding the International Criminal Court.’(2020) ISBN No. 92-9227-365-5(< <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>>accessed 12 June 2022.

¹⁴⁶ International Criminal Court (ICC), ‘Victims’ <https://www.icc-cpi.int/about/victims> accessed 12 June 2022.

¹⁴⁷ The Prosecutor v. Germain Katanga (Judgment) ICC-01/04-01/07 (18 December 2012).

¹⁴⁸ Edda Kristjánsdóttir, ‘International mass claims processes and the ICC Trust Fund for Victims.’ (Brill Nijhoff, 2009).

Chapter 3: Case Study- Property Restitution and Compensation in Syria

3.1 Introduction

Property violations have accounted for a considerable part of Syria's grave breaches since 2011. It is critical to understand the challenges to property restitution and compensation in the case of property destruction and looting in Syria to figure out how to restitute property to its owners or compensate them for damage to their property. This chapter starts by outlining the Syrian conflict's roots and classification under IHL in order to identify the rules applicable to the Syrian conflict. The chapter then looks into the various types of property in Syria, as well as the laws that regulate them. The chapter continues by describing the difficulties connected with property restitution, obtaining compensation for property damage, and the impact of gender aspects on these issues. This chapter reviews the legal status of property in Syria to figure out an appropriate mechanism to restitute and compensate property and to avoid future property breaches.

3.2 Syria's Armed Conflict: Background, Classification and Property Types in Syrian Law

3.2.1 Background

Since the beginning of the uprising against the government in 2011, Syria has seen grave human rights breaches that cannot be enumerated nor identified, such as torture, the use of chemical weapons,¹⁴⁹ and destruction or looting of civilian property.¹⁵⁰ Despite the presence of

¹⁴⁹ Arms Control Association, 'Timeline of Syrian Chemical Weapons Activity, 2012-2022' <<https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-Weapons-Activity>> accessed 12 June 2022.

several foreign forces on Syrian territory, including regular Russian and American forces and militias, the Syrian conflict has been classified as NIAC, which complicates things further.¹⁵¹

Grave breaches in Syria still leave a large number of victims, especially civilians and their property, as these properties are subjected to total or relative destruction and looting that cannot be accurately documented or enumerated.¹⁵² This complicates the process of restitution, or compensation for damages, which will be explored in this chapter.

3.2.2 Syrian Armed Conflict Classification

Since the start of the popular uprising in March 2011, the Syrian government has committed severe violations including as extrajudicial killings, torture, and property destruction.¹⁵³ According to the Independent International Commission of Inquiry on the Syrian Arab Republic (hereinafter COI),¹⁵⁴ government forces and their affiliated militias continued their military operations, which were accompanied by the looting, destruction, and burning of property, including cash, cars, jewelers, and electronic goods.¹⁵⁵ On June 26, 2012, Syrian President Bashar al-Assad declared that "the Syrian Arab Republic is at war".¹⁵⁶ As for the International Committee of the International Red Cross on August 15, 2012 to declare that "the

¹⁵⁰ UNGA, Report of the independent international commission of inquiry on the Syrian Arab Republic*(2011) UN Doc A/HRC/S-17/2/Add.1.

¹⁵¹ *Supra Note* (149).

¹⁵² UN News, 'Statement by Mr. Paulo Sérgio Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic, at the 45th Human Rights Council session' (2020) <<https://www.ohchr.org/en/taxonomy/term/1211?page=3>>accessed 23 June 2022.

¹⁵³ *Supra Note* I50 (UNGA).

¹⁵⁴ "The Independent International Commission of Inquiry on the Syrian Arab Republic was established on 22 August 2011 by the Human Rights Council through resolution S-17/1." See: United Nation Human Rights Council(HRC), Res A/HRC/S-17/1 (22 August 2011)

¹⁵⁵ <https://daccess-ods.un.org/tmp/388415.977358818.html>

¹⁵⁶ BBC News, 'Syria in state of war, says Bashar al-Assad' (BBC, 27 June 2012) <https://www.bbc.com/news/world-middle-east-18598533> > accessed 13 June 2022.

Syrian Arab Republic is in a civil war."¹⁵⁷ This was verified in Annex II of the third report issued by the ICO on August 16, 2012, which said that the conflict in Syria is a NIAC governed by Article 3 of all GC.1949.¹⁵⁸ As a result, besides the IHRL requirements already in existence,¹⁵⁹ the conflicting parties must now follow IHL rules, and if these rules cannot be used consistently, the *lex specialis* principle¹⁶⁰ must be implemented. This implies that the parties must adhere to the law that is most applicable to the circumstances.¹⁶¹

The Syrian armed conflict has evolved over time into a complex set of conflicts involving a variety of Syrian and foreign parties, many of whom are fighting on the side of the Syrian government and with its approval, others on the side of non-state actors, and still others on the side of foreign forces.¹⁶²

¹⁵⁷ Ibid.

¹⁵⁸ Open Element During the period covered by this third report, the commission has determined that the intensity and duration of the conflict, combined with the increased organizational capabilities of the FSA, do, in fact, meet the legal threshold for a non-international armed conflict.³ With this determination, the commission applied IHL, including Common Article 3, in its assessment of the actions of the parties during hostilities.' See: UNGA, Report of the independent international commission of inquiry on the Syrian Arab Republic* (2012) UN Doc A/HRC/21/50.

¹⁵⁹ Syria is a party to the fundamental human rights treaties, the GC.1949 and API but Syria is not a party to the APII. See: OHCHR, 'Ratification Status for Syrian Arab Republic' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=170&Lang=EN> accessed 25 June 2022. The government also lifted the state of emergency at the beginning of the conflict on April 21, 2011, See also: BBC News, 'Syria protests: Assad to lift state of emergency' (BBC, 20 April 2011) <<https://www.bbc.com/news/world-middle-east-13134322>> accessed 13 June 2022.

¹⁶⁰ Silvia Borelli, 'The (mis)-use of general principles of law: *lex specialis* and the relationship between international human rights law and the laws of armed conflict.' (Springer, Cham, 2015) *General Principles of Law-The Role of the Judiciary* 265.

¹⁶¹ Advisory opinion of the ICJ:

"The protection of the [ICCPR] does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself." See: Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Advisory Opinion) [1996] ICJ Rep 227

¹⁶² Geneva Academy, 'Non-international armed conflicts in Syria' <<https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-syria>> accessed 27 June 2022.

Despite the large number of conflicting parties, Article 3 common to the GC.1949, as well as several norms of ICL law, are still applicable to the situation in Syria. However, concerning the legal effects of the Syrian government's objection to foreign intervention against a group operating on or from Syria's territory,¹⁶³ two perspectives can be differentiated. The first view holds that any intervention by a state on the territory of another state without the authority's permission would constitute an IAC,¹⁶⁴ particularly if the foreign intervention had a legal basis, such as authorization from the Security Council, self-defense, or "humanitarian intervention" or a "state of necessity."¹⁶⁵ The second opinion holds that the conflict will still be considered a NIAC, even if the state does not agree to foreign intervention, as long as the intervention is mostly aimed at an armed group and does not directly target territorial state body parts or state property, vital infrastructure, or the population under its control.¹⁶⁶

In Syria's case, one can argue that there should be more flexibility in selecting the legal categorization that affords the most protection to individuals and property, regardless of whether a clear potential breach of sovereignty exists. Under the guise of fighting terrorism, the Security Council specifically authorized foreign intervention in Syria. So, instead of concentrating on the identities of those who violate their rights, it should make this demand the standard for protecting civilians and property. In addition, the state of necessity exists due to the duration of the conflict, its severity, the large number of victims, and the extensive destruction of property. Moreover, the foreign intervention of states in other states has expanded via genuine state practices focused only

¹⁶³ Ibid.

¹⁶⁴ Malcolm N Shaw, *International law* (Cambridge university press, 2017).

¹⁶⁵ For example, in 1999, NATO intervened in Kosovo. See: Konstantin Obradović, 'International humanitarian law and the Kosovo crisis.' (2000) 82 (839) *International Review of the Red Cross* 699.

¹⁶⁶ European Union for Asylum, 'Country Guidance: Syria' (Last Update 2020) <<https://euaa.europa.eu/country-guidance-syria/332-armed-conflict-international-or-internal#:~:text=The%20US%2Dled%20coalition%20against,the%20consent%20of%20the%20GoS>> accessed 27 June 2022.

on an armed group that operates from another state. For instance, US drones mostly attack armed Islamist groups, and Turkish forces in northern Syria mostly attack PKK basis.¹⁶⁷

3.2.3 Property Types in Syrian Law

Taking into account both the law and the reality of property in Syria, one could conclude that property and its administration system are complicated. This is especially true since 2011, when property destruction and theft increased, as did the government's seizure of assets as a way to punish opponents and the building of random houses in many areas.

However, the Syrian Constitution of 2012 defines public ownership as including:

Natural resources, facilities, institutions and public utilities shall be publicly owned, and the state shall invest and oversee their management for the benefit of all people, and the citizens' duty is to protect them.¹⁶⁸

Regarding the Syrian Civil Code No. 84/1949 (hereinafter SCC.1949), private property may be owned by one or more people or nongovernmental groups and includes both immovable and movable property. The rightful owners have the exclusive legal right to use, exploit, and dispose of it,¹⁶⁹ as well as all of its fruits, products,¹⁷⁰ and accessories.¹⁷¹ Moreover, no one may be deprived of their property unless the law permits it, in the manner specified by the law, and in return for fair compensation.¹⁷² All of the above was also confirmed by the 2012 Syrian Constitution.¹⁷³ Despite that, after 2011, the Syrian government employed expropriation and cash seizures to punish its critics. According to Counter-Terrorism Law No. 19 of 2012,¹⁷⁴ people

¹⁶⁷ *Ibid.*

¹⁶⁸ Syrian Arab Republic' Constitution dated 2012, Art 14.

¹⁶⁹ Syrian Civil Code dated 1949, Art 768.

¹⁷⁰ Syrian Civil Code dated 1949, Art 769.

¹⁷¹ Syrian Civil Code dated 1949, Art 770.

¹⁷² Syrian Civil Code dated 1949, Art 771.

¹⁷³ Syrian Arab Republic' Constitution dated 2012, Art 15.

¹⁷⁴ Counter-Terrorism Law, Law No. 19 dated 2012 Arts 11-12.

suspected of committing one of the terrorism crimes may have their moveable and immovable money, as well as their proceeds, frozen or taken. Moreover, according to Legislative Decree 63 of 2012, security services, police, public prosecutors, and judges can request the Minister of Finance to seize the accused person's movable and immovable assets for crimes against internal and external state security and terrorism crimes.¹⁷⁵

However, the SCC.1949 defines real estate but not movable property.¹⁷⁶ This term covers land, homes, and buildings. It differs from real estate by allocation, which refers to any movable item whose function is to service real estate and be used by its owner "Appurtenances", such as harvesters.¹⁷⁷ Moreover, the SCC.1949 recognizes rights like ownership, transfer, and usufruct as if the property itself were the subject of the rights.¹⁷⁸

Furthermore, Syrian law classifies real estate into five separate types:

- Owned Real Estate (Mulk): They are freehold real estate, which are located within areas the perimeter of administratively determined built-up areas.
- State-owned Real Estate (Amiri): Real estate is owned by the state, but individuals have the right to use it.
- Community property: They are real estate owned by the state but a group has the right to use it according to the administrative regulations, for example, pastures for sheep.¹⁷⁹
- Protected Abandoned Real Estate: They are owned by the state, a governorate, or a municipality and are part of public property, such as streets. The official real estate

¹⁷⁵ Legislative Decree No. 63 dated 2012.

¹⁷⁶ Article 84\1 "everything stable, fixed and unmovable without damage" (Author's own translation) See: Syrian Civil Code dated 1949, Art 84(1).

¹⁷⁷ Article 84\2 "the owner as real property if they are used to improve or utilize real property" (Author's own translation) Se: Syrian Civil Code dated 1949, Art 84(2).

¹⁷⁸ Syrian Civil Code dated 1949, Art 85.

¹⁷⁹ Syria Land Registry Law 188 dated 1926.

registration does not list these properties, and there are no property numbers to go with them.¹⁸⁰

- The unspecified and unidentified lands controlled by the state. The first occupant of a property may be granted the authority to dispose of it by getting a license or governmental permission.¹⁸¹

In addition to the aforementioned types of real estate, civil life and urban development have imposed other classifications of real estate, where there is real estate within the town's organizational plan and others outside it, meaning that real estate included within the organizational chart is real estate designated for residential communities based on urban planning principles.¹⁸²

3.2.4 Certifying property in Syria

The Syrian legal system provides several methods for proving property ownership, including:

- The Boundary Marking and Registration Report: This is a document that includes the property description and owners after the boundary marking and registration. Boundary markings and registrations are carried out in accordance with Resolution 186 of 1926,¹⁸³ with the assistance of one or more engineers and a clerk. All litigants with a right, even those who were not present during this process, have two years after the decision in this process is given to object to this method.
- Cadaster: A series of documents that describe each real estate, its legal status, the rights that flow from and on it, as well as the transactions and revisions that pertain to it. In the ownership register, each real estate has one real estate paper, and each owner obtains a

¹⁸⁰ Syrian civil code dated 1949, Art 926.

¹⁸¹ Syrian civil code dated 1949, Art 833.

¹⁸² Legislative Decree No. 5 dated 1982 (revised by Law No. 41 dated 2002).

¹⁸³ Resolution No. 186 dated 1926 (Editing and Selection System).

copy of the real estate paper for his property, which is the so-called title deed (Green Taboo), which is the most secure form of ownership document, since the statute of limitations does not apply to real estate registry rights.¹⁸⁴

- Power of Attorney by the Notary Public: A contract whereby the agent is obligated to do a legal act on behalf of the owner, and the notary public organizes this administration.¹⁸⁵
- An unofficial contract of sale: A contract wherein the seller agrees to transfer ownership of a property or other financial right to the buyer in exchange for a cash payment. However, it has not been documented anywhere officially, such as in a cadaster, or with a notary public.

3.3 Challenges to Property Restitution and Compensation

A rise in property breaches during armed conflict prompts stakeholders and governments to protect victims' rights. However, restitution, or compensation, has contributed to building peace in conflicts such as in Bosnia.¹⁸⁶ These remedies may not be complete since they only handle property concerns after conflict. These methods do not view property breaches as one of the causes of conflict. Moreover, these remedies ignore the fact that many individuals have grown rich by breaching others' properties, resulting in deeper class division in countries such as Syria than before the conflict.

Destruction and looting caused the world's worst refugee and displacement crisis due to the Syrian conflict.¹⁸⁷ Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and

¹⁸⁴ *Ibid.*

¹⁸⁵ Law No.15 dated 2014 (Notary Public Law in Syria).

¹⁸⁶ Williams, Rhodri C, 'Post-conflict property restitution and refugee return in Bosnia and Herzegovina: Implications for international standard-setting and practice.' (2004) 37 *NYUJ Int'l. L. & Pol.* 441.

¹⁸⁷ *Supra Note 8* (World Vision).

Emergency Relief Coordinator, confirmed this during the 9003 session of the UN Security Council:

This month marks 11 years of humanitarian crisis in Syria. The devastation finds few parallels in recent history.¹⁸⁸

The breach of public and private property, culture, and infrastructure led to the loss of property and has hindered Syrians' capacity to exercise property rights. This resulted in the prolongation of the conflict and has hindered Syria's and the region's sustainable growth.¹⁸⁹

One may argue that, in response to the 2011 popular uprising, the Syrian government tightened security processes in rebellious areas by besieging them and implementing a "scorched earth" strategy in opposition cities and villages.¹⁹⁰ However, due to a power imbalance between the government and armed groups, the conflict parties used guerrilla and city warfare tactics. As a result, government buildings, military bases, agricultural districts, and individual property were all demolished as part of this strategy, leaving urban areas and towns in ruins. All of these occurred while fighting, protecting individuals' property, or controlling government buildings.

It is difficult to determine the extent of the massive destruction of property in Syria owing to a lack of data, survey, and assessment processes for the destruction's extent. This is due to a number of factors, the most significant of which are the persistence of the conflict, the variety of conflicting parties, and the Syrian government's rejection of resolutions issued by UN bodies. In

¹⁸⁸ United Nation Media, 'The situation in the Middle East: Security Council' (United Nation Media, 24 March 2022) < <https://media.un.org/en/asset/k1d/k1dwqs0rgy> > accessed 13 June 2022.

¹⁸⁹ Laura Cunial, 'Briefing Note: Housing, Land and Property in the Syrian Arab Republic.' (Norwegian Refugee Council , 2016)< <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf>> accessed 20 June 2022.

¹⁹⁰ Siege Watch 'Final Report: Out of Sight, Out of Mind: The Aftermath of Syria's Sieges' (2018) <<https://paxforpeace.nl/media/download/pax-siege-watch-final-report.pdf>> accessed 27 June 2022.

addition, the Syrian government has prevented fact-finding commissions from investigating breaches on the ground by entering Syrian territory.¹⁹¹

3.3.1 Law No. 10 of 2018

Since 2011, the Syrian government has been systematically restructuring the administration of property rights in Syria; at least 40 laws relating to housing, land, and property have been issued.¹⁹² However, this legal expansion has followed the Syrian government's policies and practices, which have resulted in the insecurity of millions of Syrians' property, land, and property rights. As a result, concerns have also been expressed about the ability of all Syrian property owners to maintain their rights, since the sheer number of displaced or refugees. In addition, the armed conflict has deprived many families of their property or formal title documents in both rural and urban areas.¹⁹³

In this regard, the most serious threat to property rights is Law No. 10 of 2018,¹⁹⁴ which permitted the establishment of rehabilitation zones across Syria without any criteria or timetable for establishing regulatory zones. In addition, the administrative decrees refer to the areas as "organizational regions." However, local authorities must seek a list of property owners from government real estate institutions operating in the region within one week of the issue of the order to rebuild the area, and a government agency must provide lists within 45 days after

¹⁹¹ The COI repeatedly requested the Syrian government to allow it to visit Syria on both official and unofficial occasions, but the Syrian government has always refused. See:

United Nations General Assembly (UNGA) Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, (2021) UN Doc A/HRC/46/54.

¹⁹² United Nations General Assembly (UNGA) Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, (2021) UN Doc A/HRC/46/54.

¹⁹³ Human Rights Watch (HRW), 'Q&A Syria New Property Law' (HRW, 29 May 2018)https://www.hrw.org/news/2018/05/29/qa-syrias-new-property-law#_How_do_property accessed 12 June 2022.

¹⁹⁴ Law No. 10 dated 2018.

receiving a request from local authorities. If owners' property does not appear on the list, they will be notified and given 30 days to provide evidence of ownership,¹⁹⁵ and if they do not comply, they will get no compensation and the property will be returned to the municipality, district, or governorate where it is located. Moreover, property owners who demonstrate evidence of ownership in the regulatory area will get shares in the region.¹⁹⁶

3.3.2 The Scale of the Damage and its High Cost

Although the map of property destruction and looting spans Syria, certain areas suffer more than others, depending on who perpetrated the breach or the type of weaponry used.¹⁹⁷ The bulk of the destruction has been occurring in areas of combat between Syrian government forces, its allies, and opposition armed groups.¹⁹⁸ Furthermore, the damage spreads to areas controlled by the Islamic State and certain Kurdish groups. Several cities, such as Qusayr near the Lebanese border, were practically entirely destroyed.¹⁹⁹ According to a study by UNRWA, more than half of the survey participants' residences in Damascus and Aleppo were destroyed in June 2013, with 14% completely demolished. In 2013, 60% of hospitals, 38% of basic healthcare facilities, and an estimated 18% of schools (4,072), as well as four bakeries, four mosques, four churches, and four

¹⁹⁵ Supra Note (HRW)Q&A.

¹⁹⁶ The Tahrir Institute for Middle East Policy, 'Time Brief: Law No 10 of 2018: Housing, Land, and property' (2018)<https://timep.org/reports-briefings/timep-brief-law-no-10-of-2018-housing-land-and-property/> accessed 13 June 2022

¹⁹⁷ The Tahrir Institute for Middle East Policy, 'Time Brief: Law No 10 of 2018: Housing, Land, and property' (2018)<https://timep.org/reports-briefings/timep-brief-law-no-10-of-2018-housing-land-and-property/> accessed 13 June 2022.

¹⁹⁸ International Crisis Group, 'Syria: Ruling over Aleppo Ruins' (9 May 2022)<<https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/syria/234-syria-ruling-over-aleppo-ruins>> accessed 27 June 2022.

¹⁹⁹ Human Rights Watch, 'Syria: Government uses Homs tactics on Border Town' (HRW, 2012)<<https://www.hrw.org/news/2012/03/22/syria-government-uses-homs-tactics-border-town>> accessed 22 June 2022.

districts, were damaged or destroyed.²⁰⁰ Furthermore, the World Bank Group estimated the housing sector's losses to be between \$4.5 and \$5.5 billion by the end of 2017.²⁰¹ In addition, the ESCWA states that after 11 years, the conflict in Syria has cost more than \$442 billion.²⁰²

3.3.3 Conflict Multiple Parties

Numerous parties are involved in the Syrian conflict, making it difficult to retribute or get compensation for damaged property. This is exacerbated by the fact that different parties to the conflict control different regions of the country at various periods. This makes it difficult to determine who is responsible for all property breaches.²⁰³ Although the Syrian government and its allies were and remain primarily responsible for these breaches, the existence of multiple parties in the Syrian conflict led to a division of responsibility. In general, it can be said that these conflicting parties are:

- The Syrian government and its allies: the government is supported by militias known as the National Defense Forces.²⁰⁴ In collaboration with government forces, the NDF engages in both defensive and offensive operations against the opposition. There are also a large number of foreigners fighting on the side of the government, including Palestinian

²⁰⁰ UNRWA, 'Survey of Business in Syria: Overwhelming Destruction and Displacement' (2014) <<https://www.unrwa.org/newsroom/press-releases/survey-businesses-syria-overwhelming-destruction-and-displacement>>accessed 12 June 2022.

²⁰¹ World Bank Group, 'Syria Damage Assessment' (World Bank Group, March 2017) <<https://documents1.worldbank.org/curated/en/530541512657033401/pdf/121943-WP-P161647-PUBLIC-Syria-Damage-Assessment.pdf>> accessed 12 June 2022.

²⁰² UNESCWA, 'Losses exceeding \$442 billion and millions in need of humanitarian assistance: the catastrophic repercussions of 8 years of war in Syria' (2020) <<https://www.unescwa.org/news/losses-exceeding-442-billion-and-millions-need-humanitarian-assistance-catastrophic>> accessed 15 June 2022.

²⁰³ Global Center for Responsibility to Protect, 'Syria' (2022) <<https://www.globalr2p.org/countries/syria/>>accessed 12 June 2022.

²⁰⁴ Sirwan Kajjo, 'Who Are Syria's National Defense Forces?' (Extremism Watch, 2020) <https://www.voanews.com/a/extremism-watch_who-are-syrias-national-defense-forces/6195035.html>accessed 27 June 2022.

armed groups²⁰⁵ and Lebanese militia Hezbollah,²⁰⁶ Iraqi²⁰⁷ and Iranian and Afghan militias,²⁰⁸ and the Wagner Group.²⁰⁹ In addition, the Syrian government is supported by the regular Iranian military (the Iranian Revolutionary Guards Groups)²¹⁰ and the regular land, naval, and air forces of the Russian Federation.²¹¹

- Alliances of armed opposition groups, such as the Free Syrian Army, which arose in 2011 at the beginning of the anti-government uprising. It received international aid from several states, such as the U.S.²¹²
- Several armed jihadist groups connected with al-Qaeda. The most powerful are the Al-Nusra Front and its partners.²¹³
- The Islamic State of Iraq and Syria (ISIS) founded as a branch of Al-Qaeda in Iraq. In 2014, it broke ties with Al-Qaeda.²¹⁴
- The area of northern Syria bordering Turkey governed by Kurdish militants.²¹⁵

²⁰⁵ Ömer Behram Özdemir, 'Pro-Regime Palestinian Militias in Syria' (ORSAM, 2021) <<https://www.orsam.org.tr/en/pro-regime-palestinian-militias-in-syria/>> accessed 27 June 2022.

²⁰⁶ Marisa Sullivan, 'Hezbollah in Syria' (2014).

²⁰⁷ Phillip Smyth, 'From Karbala to Sayyida Zaynab: Iraqi Fighters in Syria's Shi'a Militias.' (CTC Sentinel, 2013) <[https://ctc.westpoint.edu/from-karbala-to-sayyida-zaynab-iraqi-fighters-in-syrias-shia-militias/#:~:text=The%20key%20Iraqi%20Shi%60a,Haq%2C%20and%20the%20Badr%20Organization](https://ctc.westpoint.edu/from-karbala-to-sayyida-zaynab-iraqi-fighters-in-syrias-shia-militias/#:~:text=The%20key%20Iraqi%20Shi%60a,Haq%2C%20and%20the%20Badr%20Organization>)> accessed 23 June 2022.

²⁰⁸ Navvar Saban, 'Factbox: Iranian influence and presence in Syria' (Atlantic Council, 2020) <<https://www.atlanticcouncil.org/blogs/menasource/factbox-iranian-influence-and-presence-in-syria/>> accessed 12 June 2022.

²⁰⁹ Andrew Linder, 'Russian Private Military Companies in Syria and Beyond' (CSIS) <<https://www.csis.org/nppf/russian-private-military-companies-syria-and-beyond>> accessed 23 June 2022.

²¹⁰ Sirwan Kajjo, 'Iran Strengthen Military Presence Eastern Syria' (Extremism Watch, 2020) <<https://www.voanews.com/a/extremism-watch-iran-strengthens-military-presence-eastern-syria/6198733.html>> accessed 10 June 2022.

²¹¹ UNGA, Report of the independent international commission of inquiry on the Syrian Arab Republic*(2020) UN Doc A/HRC/44/61.

²¹² Dilara Hamit and Erogan Cagtay Zontur, 'Free Syrian Army transforms into Syrian National Army.' (Anadolu Agency, 2019) <<https://www.aa.com.tr/en/middle-east/free-syrian-army-transforms-into-syrian-national-army/1607384>> accessed 16 June 2022.

²¹³ CIASC, 'hayat Tahrir Alsham' <<https://cisac.fsi.stanford.edu/mappingmilitants/profiles/hayat-tahrir-al-sham>> accessed 22 June 2022.

²¹⁴ Wilson Center, 'Timeline: the Rise, Spread, and Fall of the Islamic State'(2019) <<https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state>> accessed 16 June 2022.

- The Anti-ISIS Coalition: This alliance is comprised of Western and regional states, including Turkey and Saudi Arabia. However, despite the fact that the Syrian government disapproved of the coalition's activities inside its territory and considered them illegitimate and a breach of its sovereignty, it did not respond to them militarily.²¹⁶
- The Turkish army is engaged in a variety of northern Syrian regions.²¹⁷

3.3.4 Various Victims Groups

As has been the case with all other breaches committed in Syria, which impacted all age and gender grouping, the breaches of property also affected each of these groups. However, when it comes to damage done to public and cultural property by other parties to the conflict, like foreign countries fighting in Syria, the Syrian government, will be able to seek the restitution of cultural property and compensation for destruction or damages to public or cultural property caused by foreign attacks on Syrian territory.²¹⁸

Regarding the restitution of private property or compensation for its destruction or damage, the legally recognized primary owners or their families must have the right to do so. In this instance, however, this claim will be contingent on various conditions²¹⁹. In addition to the loss of many property owners' title deeds as a result of conflict and the destruction, destruction, or manipulation of official records by the Syrian government, the first factor is the difficulty of

²¹⁵ Zachary Laub, 'Syria Civil War : The descent into Horror' (CFR 2021) <<https://www.cfr.org/article/syrias-civil-war>> accessed 27 June 2022.

²¹⁶ Cind Du Bois and Caroline Buts, 'Participation in the international coalition against Daesh and the rise of foreign fighters.' (2019) 14(1) *The Economics of Peace and Security Journal*.

²¹⁷ Salim Çevik, 'Turkey Military Operations in Syria and Iraq' (SWP, 2022) < <https://www.swp-berlin.org/en/publication/turkeys-military-operations-in-syria-and-iraq>> accessed 22 June 2022.

²¹⁸ *Supra Note 96*(ICRC).

²¹⁹ UN Human Rights Council, "'They have erased the dreams of my children': children's rights in the Syrian Arab Republic*" (13 January 2020) UN Doc A/HRC/43/CRP.6 Para 76.

proving ownership in light of the reality of real estate types and forms of ownership in Syria.²²⁰ The second factor is the high number of refugees and displaced individuals, as well as their inability to return to their destroyed or damaged homes. In the absence of any information regarding the tens of thousands of enforced disappeared persons, the third factor will make it impossible for their successors to establish ownership.²²¹ The fourth factor is the lack of official documentation of marriage, divorce, and lineage in many areas, particularly those that have been and continue to be outside the control of the official government.²²² The fifth factor is the absence of official documents proving ownership of movables within destroyed or looted homes, as it is customary for the majority of Syrians not to keep official documents proving the purchase or sale of movables. Moreover, the looting included electrical wires, lighting, water pipes, doors, and windows.²²³

3.3.5 The Gender Dimension of Property in Syria

Restituting the pattern of property ownership that existed prior to the conflict may in itself be unfair and unequal. This highlights the challenge of the gender dimension of property in Syria, because there is rooted gender inequality in property distribution between males and females. Although the Syrian constitution stipulates equality before the law and equal opportunities for all citizens with regard to work and personal status, the Syrian laws don't provide equality.²²⁴ The Syrian laws relating to property have many provisions that discriminate against women. The

²²⁰ The Day After, 'The Property Issue and its Implications for Ownership Rights in Syria' (2019) <<https://tda-sy.org/2019/07/01/the-property-issue-and-its-implications-for-ownership-rights-in-syria/>> accessed 27 June 2022.

²²¹ *Ibid.*

²²² Marika Sosnowski and Noor Hamadeh, 'The Right to Have Rights': Legal Identity Documentation in the Syrian Civil War.' (GIGA, 2021) <<https://www.giga-hamburg.de/en/publications/giga-focus/the-rights-legal-identity-documentation-syrian-civil-war>> accessed 12 June 2022.

²²³ UN Human Rights Council, "'I lost my dignity': Sexual and gender-based violence in the Syrian Arab Republic*" (8 March 2018) UN Doc A/HRC/37/CRP.3 Paras 10 -14. See also; A al-Zien, 'Legal Obstacles to Housing, Land and Property Rights in Syria.' (Pax, 2019) <<https://paxforpeace.nl/media/download/legal-obstacles-policy-brief-pax.pdf>> accessed 27 June 2022.

²²⁴ *Supra* Note 7 (WILPF).

effect of discriminatory legal provisions increases due to the persistence of patriarchal and structural practices that prevent women's equal access to property and other economic assets.²²⁵ The matter goes beyond legal texts to societal norms, customs, and traditions, whereby women are not often allowed to own real estate and land, while they are allowed more broadly to own jewelry and money. Even after getting married, the situation doesn't change because both the wife and the husband may be looked down upon if any property is legally registered in the wife's name instead of the husband's.²²⁶

All these cases increased after 2011 in Syria as a result of the killing, disappearing, and giving refuge to hundreds of thousands of men. Thus, women who lose their fathers, brothers, husbands, and children often lose their rights to property because they can't prove they were married, had a child, or were divorced.

3.3.6 Techniques and Mechanisms for Restituting Property or Obtaining Compensation

On the one hand, the scale and severity of the breaches, as well as the number of participants in the conflict and its duration, exacerbated the issue of responsibility in general and the restoration of property or compensation for its damage or looting in particular.²²⁷ On the other hand, the lack of national or international effective mechanisms capable of carrying out the process of restoration and compensation makes this procedure ambiguous. The responsibility for grave breaches against property, such as entire or partial damage, plundering, looting, or seizure,

²²⁵ *Supra* Note 7 (WILPF).

²²⁶ Daniel Hilton, 'the Shifting Role of Women in Syria's Economy' (the Tahrir Institute) <<https://timep.org/syrias-women/economy/the-shifting-role-of-women-in-syrias-economy/>>accessed 25 June 2022.

²²⁷ *Supra* Note 198 (International Crisis Group).

rests with all parties to the armed conflict. Therefore, it is responsible for restoring the property or paying for the property and material damage it caused.²²⁸

Nevertheless, establishing a framework for restitution, development, and the protection of property rights is not just the right of Syrian governments but also a responsibility.²²⁹

Notable is that, despite its involvement in this armed conflict, the Syrian government did not prohibit it from preparing for the next stage of the fight or even after its completion. In 2011, the Syrian government established its own independent legal committee to investigate all cases related to the incidents that have transpired in Syria since March 2011. The committee has not yet published a report on its findings or determined whether or not its work is complete.²³⁰

However, according to Government Resolution No. 13387/AD dated September 23, 2012, about one year after the outbreak of the 2011 Syrian uprising, the Syrian government established the "Reconstruction Committee." To get compensation for property damage, the property owner must organize a police report based on a complaint from the public prosecutor, information given by the owner, and his own personal responsibility, since the police department does not conduct sensory detection.²³¹ In reality, these compensations do not correspond to the value of the property or its losses, since the applicant for compensation is awarded symbolic amounts. For instance, in the "Marota City" project in the capital, Damascus, which will be constructed in one of the fully demolished neighborhoods, the compensation for the people of the region was insufficient and delayed in reaching its beneficiaries. Furthermore, rent subsidies for previous owners, residents of irregular structures on public or private land, and renters were limited to 5%

²²⁸ ICRC, 'Rule 149:Responsibility for violations of International Humanitarian Law' (ICRC) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule149> accessed 12 June 2022.

²²⁹ Simon Bagshaw, 'Property restitution and the development of a normative framework for the internally displaced.' (2000) 19(3) *Refugee Survey Quarterly* 209 P 212.

²³⁰ United Nations General Assembly (UNGA) Report of the independent international commission of inquiry on the Syrian Arab Republic* (2011) UN Doc A/HRC/S-17/2/Add.1.

²³¹ Syrian Arab Republic Ministry of Local administration and Enviroment, 'Reconstruction Committee'<<http://www.mola.gov.sy/mola/index.php/2018-04-19-13-25-36>>accessed 21 June 2022.

of the property value. This is a small portion of Damascus' inflated rental market, where rental prices were 300 percent higher in 2016 than in 2010.²³²

Regarding the Syrian domestic courts, it is not sufficient to rely on them to administer justice in connection to property breaches or any other breaches, such as murder or torture. These courts lack the willingness and capacity to fulfil international obligations for the prosecution of grave international crimes and property issues, particularly with the subject of restitution or compensation. For example, the security and intelligence services enjoy immunity from prosecution under many laws; the most notable of them are Legislative Decrees 1969/14 and 69/2008.²³³ This exemption was given to the Russian soldiers, who are fighting on the Syrian territory in accordance with the unannounced 2015 path between the two countries.²³⁴ Also, it is clear that when it comes to crimes and violations committed by non-state armed groups, the Syrian national courts, such as the Terrorism Court and the Military Field Courts, act arbitrarily based on orders from the security services.²³⁵

Despite multiple worldwide demands for justice for all crimes committed in Syria and the UN Security Council's declaration in resolution 2139 (2014) of the need to eliminate impunity and prosecute those responsible for breaches, impunity continues at the international level.²³⁶ However, in 2016, American court authorities started investigating the subject of compensation

²³² Sawsan Abou Zaindin and Hani Fakhani, 'Syria's Reconstruction Between Discriminatory Implementation and Circumscribed Resistance' (Garnegie Middle East Center, 15 May 2020) <https://carnegie-mec.org/2020/05/15/syria-s-reconstruction-between-discriminatory-implementation-and-circumscribed-resistance-pub-81803> accessed 10 June 2022.

²³³ Legislative Degree No.14 dated 1969. See also: legislative Degree No.69 dated 2008.

²³⁴ Michael Birnbaum, 'The secret pact between Russia and Syria that gives Moscow carte blanche' (The Washington Post, 2016) <

<https://www.washingtonpost.com/news/worldviews/wp/2016/01/15/the-secret-pact-between-russia-and-syria-that-gives-moscow-carte-blanche/>> accessed 27 June 2022.

²³⁵ SNHR, 'At Least 10,767 Persons Still Face Trial in Counter-Terrorism Court, nearly 91,000 Cases Heard by the Court - A Political / Security Court Which Aims at Eliminating Those Calling for Political Change for Democracy and Human Rights' (SNHR, 2020) < <https://reliefweb.int/report/syrian-arab-republic/least-10767-persons-still-face-trial-counter-terrorism-court-nearly>> accessed 25 June 2022.

²³⁶ UNSC, Res 2139 (22 February 2014) UN Doc S/RES/2139.

for the death of American journalist Marie Colvin, which culminated in a 2019 judgement compelling the Syrian government to pay compensation in excess of \$300 million.²³⁷

3.3.7 Funding Compensation

Compensation for breaches of international law is a basic aspect, but its implementation in the Syrian context will be very challenging. It will depend on the quantity and severity of property damage and the number of parties involved as to how compensation is acquired. In accordance with the premise that the states responsible for property destruction must pay compensation, the Syrian government and its allies, Russia and Iran, the U.S government and its friends in the coalition against ISIS, as well as the Turkish government, must pay compensation. Because it is the responsibility of these states to make full restitution for the damage their unlawful acts in Syria have caused. Regarding armed groups, they are entitled to provide sufficient restitution for the injury caused by breaches of IHL if it is impossible to restitute the property.²³⁸ An example is the Comprehensive Agreement on Respect for Human Rights and IHL in the Philippines, which states that "parties to armed conflict must adhere to generally accepted principles and standards" and "provide compensation to victims of violations of IHL."²³⁹ In addition, UN policy supports the obligation of armed opposition organizations to make reparations. In a 1996 resolution pertaining to Liberia, the UN Security Council urged "leaders of various parties" to recover stolen property.²⁴⁰

²³⁷ CJA, 'WAR CRIMES AGAINST JOURNALISTS Colvin v. Syria' (CJA)<<https://cja.org/what-we-do/litigation/colvin-v-syria/>>accessed 27 June 2022.

²³⁸ *Supra Note 96* (ICRC).

²³⁹ Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines (1998).

²⁴⁰ UNSC, Res 1071 (30 August 1996) UN Doc S_RES_1071.

Since the cost of the Syrian war is very significant, particularly in terms of property destruction, the first step will be to confiscate all the finances of the Syrian president, his advisors, and his administration until a portion of the compensation for their destroyed property is recovered. The nations that have taken Syrian government money must turn them over to an organization specializing in compensating people whose private property has been destroyed. Regarding public property, it is crucial that countries. This is especially true when you think about how their businesses would benefit from rebuilding in Syria.

3.4 Hybrid Mechanism as a Solution

The justice process must be assessed inside Syria due to the challenging circumstances on the ground, particularly after the forced relocation that occurred in Syria in a number of unambiguous situations, such as the Four Towns Evacuations of 2017.²⁴¹ At this time, recourse to the court in the four-towns agreement is not anticipated. This agreement led to people being displaced in a way that led to a demographic change in these four cities without clarifying the fate of their property, which is sufficient to comprehend the complexity of the situation on the ground. Not to mention that victims' access to the legal system is frequently ambiguous or imposes restrictions or criteria for determining compensation eligibility that they cannot meet. As stated before, with regards to property in Syria, the victims may be family members of the forcefully disappeared rather than the direct victims. In Syria, for instance, the property of those who were enforced disappeared. Not to mention the issue of inequality in inheritance between women and men according to Syrian laws.

²⁴¹ OCHA, 'Turkey | Syria: Four Towns Evacuations (as of 20 April 2017)' (2017)< <https://reliefweb.int/report/syrian-arab-republic/turkey-syria-four-towns-evacuations-20-april-2017-enar>> accessed 26 June 2022.

The diversity of property types and official documentation of property in Syria impacts the right to restitution and compensation, particularly in light of the loss of proof of this property, the death of the direct victims, and the incapacity of the indirect victims to prove their right to the property. Not to mention the multiplicity of property types in Syria, the procedures of proving it, its location, its area, and the purpose for which it is used, such as housing, business, or agriculture, all play a role in the possibility of restoring it or determining its material value and the extent of the damage it sustained. In addition, there is a huge amount of legislation regulating property, which includes discriminating aspects where it does not account for gender sensitivity. In the event of the impossibility of restituting the property, fair compensation shall be the alternative in accordance with the criteria mentioned previously. However, if the material compensation based on the value of a person's property isn't fair, there must be other options, such as giving people benefits like alternative housing that meets all the basic housing requirements, giving them chances to learn and work, and making it easier for them to get bank loans to build their houses or start commercial or industrial projects.

In addition, the length of litigation, the scarcity of resources, and the exclusive emphasis on certain offences, such as extrajudicial death and torture, make it difficult for justice to be served. In addition, the process of property rehabilitation is sometimes carried out at the cost of the victims, who get symbolic compensation that is insufficient to cover the harm done to their property. On the other hand, there are no solutions to property disputes, which is one of the reasons for hostilities, as in the case of Syria.

Despite the convergence of the legal systems ruling IAC and NIAC, there are still significant disparities. NIAC are governed by fewer precise regulations than international armed conflicts. This shows that calling the fighting in Syria an "IAC" will have effects from two

different points of view. First, classifying the Syrian conflict as an international armed conflict may result in the implementation of the Law of Neutrality and have an impact on the enforcement of international treaties. Therefore, it will be closely related to the parties' arms control treaties. This may restrict the flow of weapons entering Syria and change the types of weaponry used in the conflict, which was a major contributor to the widespread destruction in Syria. For instance, the Syrian government and its ally, Russia, have used several new weapons, such as barrel bombs and new missiles, to strike cities and neighborhoods. Second, classifying the armed conflict in Syria as an international armed conflict would affect the conditions of combatants, civilians, and individuals hors de combat, such as the wounded, sick, shipwrecked, and prisoners of war. Under Geneva law, the protection granted to these categories improves, not to mention the international humanitarian law-compliant immunity of fighters from criminal prosecution for hostilities they conduct. War crimes committed during international armed conflicts will be distinguished from those perpetrated during non-international armed conflicts. There is much overlap between the two, yet there are also distinctions. For instance, starvation as a technique of conflict is only considered a war crime during an international armed conflict. During times of armed conflict, states have an obligation to bring offenders to justice as war criminals. However, when it comes to property, it will be more important and helpful for states involved in the conflict in Syria to take the responsibility to restitute property and pay compensation.

The violation of the victims' property rights, which was one of the causes of the 2011 Syrian uprising, necessitates radical measures capable of compensating the victims. In addition to the complications that resulted from the armed conflict with regard to property, and because the situation in Syria is so precarious due to the large scale of destruction and the multiplicity of those responsible for these property violations, this is accomplished through the establishment of a mixed mechanism comprised of judges and experts in real estate and compensation, who can

figure out the value of property and the damage done to it based on reality and not on rigid templates that apply to all cases. Moreover, this hybrid mechanism works to award compensation by facilitating the process of proving ownership, with the goal of resolving property disputes as expeditiously as possible. When restitution is not feasible, compensation must be provided proportionally to the property damage. In all circumstances, whether restoring property or awarding appropriate compensation, it is vital to adhere to the principles of social justice so that we do not revert to the pre-conflict status quo. This promotes a balance in wealth and the elimination of class distinctions in society.

3.5 Conclusion

The scale and gravity of property breaches are defining characteristics of the Syrian conflict. These breaches occurred before the Syrian conflict of 2011, not only because of it. Classifying the conflict in Syria as a NIAC does not provide the required and effective protection for property. Furthermore, the laws governing property in Syria, particularly after 2011, hampered the ability of victims to reclaim and be compensated for their property damages. In addition, the severity of the breaches perpetrated by a number of Syrian war parties made it difficult to identify those responsible for these property breaches. In addition, the lack of resources to cover these compensations and the absence of effective judicial mechanisms to protect victims' rights made it difficult for them to access their rights. Returning the situation to how it was prior to the outbreak of the conflict in Syria will not lead to justice for the victims because property claims date back to before the conflict. Especially since this will not achieve property equality based on gender.

It is very important to set up a mixed mechanism that works to achieve social justice, equal property rights, and make sure that breaches are not repeated.

Chapter 4: Conclusion

This thesis first aimed to discuss the right to restitution property and compensation for damages caused to it due to total or partial destruction and looting during armed conflicts. Secondly, the thesis discussed the international laws and treaties that regulate the provisions and mechanisms of restitution and compensation for property. Finally, the thesis dealt with the Syrian armed conflict as a case study, in order to examine the possibility of restituting property and compensating for the damage caused to property in Syria, in light of the obstacles and challenges.

Despite the existence of various international mechanisms and treaties for property compensation and restitution following the end of armed conflicts, the main challenge remains finding practical solutions to the numerous obstacles that prevent this restitution and compensation in a fair way with victims' participation. The various parties to the Syrian armed conflict have destroyed a large part of Syrian property. Restituting the property of over 12 million displaced Syrians and refugees remains a serious concern in Syria, particularly given the diversity of victims and property types, the financing of compensation, and the existence of many laws containing discriminatory legal articles.

Failure to respect the rules of international law to protect these properties constitutes a violation of this law, for which states and individuals must bear the responsibility. The state must return the cultural property that it acquired during the armed conflict and occupation, as well as pay compensation to those affected, whether states in international armed conflicts or individuals in non-international armed conflicts. It is necessary to search for mechanisms that guarantee fairly the return of property or compensation for damage caused to the property to its original owners.

Lastly, despite the grave breaches of human rights committed during armed conflicts and the resulting tragedies and uncountable damage, however, it can be a real opportunity to achieve social justice and equality among all individuals in countries experiencing NIAC such as Syria.

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