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Military chaplains and equivalent religious personnel under international humanitarian law

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Abstract

This article explores the implications of attaching military chaplains and similar religious personnel to State and non-State fighting forces, and what this means for international humanitarian law (IHL). IHL assigns religious personnel a non-combatant humanitarian function equivalent to medical personnel, stipulating that they should perform exclusively religious duties. This underestimates the scope of "religious" activity, however, particularly the moral dimension of their ministry and the force-multiplying and restraining effects that this has on combatant

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behaviour. As representatives of non-State institutions embedded within military structures, many religious personnel also enjoy a unique degree of access to – and separation from – the chain of command, and can leverage this autonomy to influence the conduct of hostilities. The more that religious personnel are invested in the achievement of a fighting force's military objectives and are involved in its military operations, the likelier it is that they will test the parameters of their humanitarian function, and the protections they enjoy, under IHL. Moreover, some clerics associated with fighting forces do not aspire to non-combatant or exclusively humanitarian status, and should not be considered religious personnel. It is in the midst of armed conflict that religious personnel are most needed, however, and the tensions and ambiguities between their religious and military support functions are integral to their cross-cutting role. The contribution that religious personnel can make to humanizing war, and socializing IHL or corresponding religious principles, depends on them being present to support combatants and not confining themselves to a separate, but less effectual, humanitarian space. Criteria for their humanitarian exclusivity, attachment to fighting forces and protections under IHL therefore require some clarification.

Keywords: military chaplains, religious personnel, international humanitarian law, law of armed conflict, pastoral care, military ethics, religion, war, non-State armed groups.

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> I can't, because of my faith, pick up a gun but I'm there in every other way.
>
> Ukrainian Army chaplain Lt Dmytro Povorotnyi[1]

> I would as soon think of going into battle without my artillery as without my chaplains.
>
> Field Marshal Bernard Law Montgomery[2]

Introduction

Religious leaders have long accompanied military campaigns to provide "spiritual support, pastoral care, and moral guidance" to combatants, and in most modern militaries this role is carried out by military chaplains.[3] Though the term "chaplain" has a Christian etymology, reflecting the development of this role in

1 Quoted in Daniel Boffey, "'I Can't Pick Up a Gun': A Ukrainian Army Chaplain on War, Bandits and Russian 'Sadism'", *The Guardian*, 1 July 2023, available at: www.theguardian.com/world/2023/jul/01/i-cant-pick-up-a-gun-a-ukrainian-army-chaplain-on-war-bandits-and-russian-sadism (all internet references were accessed in February 2025).

2 Quoted in Bernard Palmer, "Was it the Padres' Finest Hour? Review of *Chaplains at War: the Role of Clergymen During World War II* by Alan Robinson", *Church Times*, 4 December 2008, available at: www.churchtimes.co.uk/articles/2008/5-december/books-arts/book-reviews/was-it-the-padres-finest-hour.

3 Catholic Church Bishop's Conference of England and Wales, "Military Chaplains", available at: www.cbcew.org.uk/home/the-bishops/bishopric-of-the-forces/military-chaplains/. See also Doris L. Bergen,

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the Christian West, it describes remarkably similar functions in other traditions, suggesting that they meet a common human need in times of war.[4] While chaplaincy in the twenty-first century has therefore shed its exclusively Christian connotations, such that chaplains of many traditions are attached to militaries around the world, some fighting forces use different appellations to describe similar roles, and international humanitarian law (IHL) has adopted the term "religious personnel" to encompass them all.[5]

The ramifications of attaching chaplains or similar religious personnel to parties to armed conflict, and the challenges and opportunities that this poses for IHL, are underappreciated. IHL states that religious personnel should be respected and protected on condition that they are non-combatants and are exclusively engaged in religious duties, the stated assumption being that they therefore fulfil a humanitarian role.[6] According to IHL, religious personnel are equivalent to medical personnel in this respect, administering spiritual rather than physical care to combatants.[7] However, this underestimates the scope of "religious" activity and the degree to which religious personnel are variously involved in military operations, especially given that their spiritual care extends to able-bodied fighters.[8] It also overlooks the essentially moral nature of their work, and the force-multiplying and restraining effects that it has on combatant behaviour.[9] Studies have shown that religion has a positive effect on the will to fight, and religious personnel play an important role in motivating and raising the morale of combatants, as well as encouraging them to adhere to religious or humanitarian norms.[10] Military commanders value religious personnel precisely because of their contribution to the discipline, well-being and operational

The Sword of the Lord: Military Chaplains from the First to the Twenty-First Century, University of Notre Dame Press, Notre Dame, IL, 2004.

4 Andrew Totten, "Moral Soldiering and Soldiers' Morale", in Andrew Todd (ed.), *Military Chaplaincy in Contention: Chaplains, Churches, and the Morality of Conflict*, 2nd ed., Routledge, Abingdon, 2016, pp. 21–22; Ron Eduard Hassner, "Religion in the Military Worldwide: Challenges and Opportunities", in Ron Eduard Hassner (ed.), *Religion in the Military Worldwide*, Cambridge University Press, Cambridge, 2014.

5 The 2016 International Committee of the Red Cross (ICRC) Commentary on Geneva Convention I (GC I) is therefore incorrect to state that the term "chaplain" is dated, since its meaning and application have evolved. Unfortunately, the term "religious personnel" is also commonly misunderstood to mean all military personnel who are religious. ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed. Geneva, 2016 (ICRC Commentary on GC I), Art. 24, para. 1967; A. Totten, above note 4, pp. 21–22; R. E. Hassner, above note 4.

6 ICRC Commentary on GC I, above note 5, Art. 24.

7 *Ibid*., para. 1966.

8 Stacey Gutkowski and George Wilkes, "Changing Chaplaincy: A Contribution to Debate over the Roles of US and British Military Chaplains in Afghanistan", *Religion, State and Society*, Vol. 39, No. 1, 2011.

9 Grace Davie, "The Military Chaplain: A Study in Ambiguity", *International Journal for the Study of the Christian Church*, Vol. 15, No. 1, 2015, pp. 50–51.

10 Koon Leong Joshua Goh, "Faith and the Will to Fight: A Study of Religion in Secular Militaries", MA diss., US Command and General Staff College, Leavenworth, KS, 2022; Chad C. Tossell *et al.*, "Spiritual over Physical Formidability Determines Willingness to Fight and Sacrifice through Loyalty in Cross-Cultural Populations", *Proceedings of the National Academy of Sciences*, Vol. 119, No. 6, 2022; Ben Connable *et al.*, *Will to Fight: Analyzing, Modeling, and Simulating the Will to Fight of Military Units*, RAND Corporation, Santa Monica, CA, 2018, p. 54; Ioana Cismas *et al.*, *Considerations and Guidance*

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effectiveness of fighting forces, especially when embedded with front-line units under extreme combat stress.[11] Religious personnel are in demand even in highly secular militaries.[12] Confronted by the horrors of war, and searching for meaning in the death and destruction that it entails, many non-believing combatants are drawn to the pastoral care that religious personnel provide, just as some believers wrestle with their faith.[13]

The fact that IHL does not specify the content of religious personnel's ministry or the qualifications they require, leaving these factors to the discretion of State or non-State parties, is generally an advantage in this respect, allowing such personnel the flexibility to develop a broad spectrum of support activities in accordance with the religious and military cultures they represent.[14] However, this lack of definition also means that there is significant scope for religious personnel to perform tasks which test the parameters of their humanitarian function, drawing them into military support activities which might jeopardize the special IHL protections they enjoy. Military and religious actors might have different ideas about the role of religious personnel, and expect them to be more or less involved in military operations.[15] Though IHL states that religious personnel lose their special protections if they commit acts "harmful" or "hostile" to the enemy outside their "humanitarian function", it fails to describe these acts or delineate what this humanitarian function should be.[16] Direct participation in hostilities – which applies to civilians – is therefore a clearer, more cautious criterion for the targeting of religious personnel, but this risks undermining their special protections and the requirement of humanitarian exclusivity that inhibits them from mobilizing religion for military purposes, whether as ideologues, recruiters or indoctrinators of fighting forces.[17]

on the Humanitarian Engagement with Religious Leaders, Generating Respect Project Report, University of York, 2023, available at: https://eprints.whiterose.ac.uk/195405/

11 G. Davie, above note 9, p. 43.

12 *Ibid.*; Erwin A. Kamp, "Sixty Years of Humanist Chaplaincy in the Dutch Armed Forces", *Medium*, 11 June 2023, available at: https://medium.com/@erwin.kamp/sixty-years-humanist-chaplaincy-in-the-dutch-armed-forces-907ec28686b4; interview with Chaplain Col. r.e.t. Drs. Erwin A. Kamp, Chief of Humanist Chaplaincy, Dutch Armed Forces, March 2024; interview with Chaplain Col. (ret.) Charles Reynolds, US Army, March 2024.

13 See above note 12; Ezzy Morgenstern, "A Chaplain's Gaza Notebook", *Chabad.org*, available at: www.chabad.org/library/article_cdo/aid/6187949/jewish/A-Chaplains-Gaza-Notebook.htm.

14 ICRC Commentary on GC I, above note 5, Art. 24, paras 1968, 1975, 1981, 1977, 1998.

15 Jacqueline E. Whitt, *Bringing God to Men: American Military Chaplains and the Vietnam War*, University of North Carolina Press, Chapel Hill, NC, 2014 (Kindle ed.), loc. 137, 259; Ron Eduard Hassner, *Religion on the Battlefield*, Cornell University Press, Ithaca, NY, 2016, pp. 87–97.

16 The ICRC Commentaries do provide some suggestions in this regard, however, as discussed further below. ICRC Commentary on GC I, above note 5, Art. 24.

17 Ioana Cismas, "The Relevance of International Law Standards to Religious Leaders", in Morten Bergsmo and Kishan Manocha (eds), *Religion, Hateful Expression and Violence*, Torkel Opsahl Academic EPublisher, 2023, p. 533; Till Patrik Holterhus, "Targeting the Islamic State's Religious Personnel Under International Humanitarian Law", *Yearbook of International Humanitarian Law*, Vol. 20, 2017, pp. 202–203; Stefan Lunze, "Serving God and Caesar: Religious Personnel and Their Protection in Armed Conflict", *International Review of the Red Cross*, Vol. 86, No. 853, 2004, pp. 80–81; Mark Juergensmeyer, Margo Kitts and Michael Jerryson, "Introduction: The Enduring Relationship of Religion and Violence", in Mark Juergensmeyer, Margo Kitts and Michael Jerryson (eds), *Violence and the World's Religious Traditions*, Oxford University Press, Oxford, 2017 (Kindle ed.), p. 6.

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Most religious personnel also have a dual allegiance to religious and secular military authority, occupying a liminal space between the two.[18] Despite their attachment to State militaries or non-State armed groups (NSAGs), religious personnel usually remain under the influence or authority of the religious organizations that have trained and endorsed them for military service, as well as being accountable to their respective religious communities.[19] As such they are in the military but not necessarily of it, and have varying levels of access to – and separation from – the chain of command.[20] While this autonomy is constrained by entanglements between religious and secular authority, and the degree to which religious actors are involved in the achievement of a State or NSAG's military objectives, most religious personnel are nevertheless well positioned to influence the conduct of military operations and to prevent or report IHL violations, especially when compared to combatants without the same religious prerogatives.[21] Just because a military action has legal IHL cover does not mean that it is ethically or politically acceptable, and religious personnel can encourage commanders to look at the bigger moral picture and avoid strategic mistakes.[22]

Religious personnel often fail, however, to leverage the influence that they possess, identifying too closely with comrades and military goals or lacking the moral courage or opportunity to challenge the military hierarchy when required.[23] In order for their interventions to be effective, and to avoid censure or retaliation themselves, they must also find a balance between criticizing military behaviour and maintaining the trust of the combatants they support.[24] Importantly, some clerics and similar actors associated with fighting forces do not aspire to non-combatant or exclusively humanitarian status, and should not be considered religious personnel. Radicalized clerics furthermore weaponize religion in order to actively incite military excesses, overriding religious and humanitarian norms.[25]

18 J. E. Whitt, above note 15, loc. 137; S. Gutkowski and G. Wilkes, above note 8, p. 112.
19 Andrew Todd, "Chaplaincy in Contention", in A. Todd (ed.), above note 4, pp. 4–5.
20 G. Davie, above note 9.
21 *Ibid.*; A. Todd, above note 19, pp. 4–8; Jeroen Temperman, *State–Religion Relationships and Human Rights Law: Towards a Right to Religiously Neutral Governance*, Studies in Religion, Secular Beliefs and Human Rights, Vol. 8, Brill, Leiden, 2010, pp. 11–63.
22 Philip McCormack, "'You've Been Silent, Padre'", in A. Todd (ed.), above note 4.
23 J. E. Whitt, above note 15, loc. 194–259; R. E. Hassner, above note 15, pp. 97–98; interview with C. Reynolds, above note 12.
24 Doris L. Bergen, "Totalitarianism: German Military Chaplains in World War II and the Dilemmas of Legitimacy", *Church History*, Vol. 70, No. 2, 2001, p. 236; R. E. Hassner, above note 15, pp. 91–92; Claudia von Planta, "Commando Chaplains", Darlow Smithson Production for Channel 4, 2009, available at: https://vimeo.com/4673301; interview with E. A. Kamp, above note 12.
25 Annyssa Bellal, "Beyond the Pale? Engaging the Islamic State on International Humanitarian Law", *Yearbook of International Humanitarian Law*, Vol. 18, 2015, p. 16; Christopher Hitchens, "An Army of Extremists: How Some Military Rabbis are Trying to Radicalize Israeli Soldiers", *The Slate*, 23 March 2009, available at: https://slate.com/news-and-politics/2009/03/how-some-military-rabbis-are-trying-to-radicalize-israeli-soldiers.html; US Senate, "Terrorism: Radical Islamic Influence of Chaplaincy of the U.S. Military and Prisons", Senate Hearing 108-443 before the Sub-Committee on Terrorism, Technology and Homeland Security of the Committee on the Judiciary, US Government Printing Office, Washington, DC, 14 October 2003, available at: www.govinfo.gov/content/pkg/CHRG-108shrg93254/html/CHRG-108shrg93254.htm; Richard Nielsen, "Why Clerics Turn Deadly", MIT

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This article describes the multifarious roles of military and civilian religious personnel associated with State and non-State fighting forces, and how they intersect with IHL. It argues that the moral foundations of religious personnel's ministry – and the resulting tensions and ambiguities between their religious and military support functions – are integral to their cross-cutting role, and can help them to respond flexibly and pragmatically to the ethical and humanitarian challenges thrown up by war.[26] Religious personnel sometimes test the guard-rails of IHL, since their religious or spiritual calling is generally more expansive than the role envisioned for them in IHL, and military demands can intrude into their humanitarian function, especially in forward roles. Nevertheless, the contributions that religious personnel can make to humanizing war, and socializing IHL within the religious, ethical and military cultures which they inhabit, depend on them being present to support combatants and not confining themselves to a separate, but less effectual, humanitarian space. More needs to be done, therefore, to clarify the parameters of their role – and the protections they enjoy – under IHL, especially criteria relating to their humanitarian exclusivity and attachment to fighting forces, which can sometimes be difficult to apply.

The article examines the organization of long-standing chaplaincy divisions in secular State militaries and compares them to generally less formal arrangements in and around NSAGs, where the role of religious personnel is less established and their fulfilment of IHL requirements is often unclear.[27] Expectations for clerics or similar actors in armed conflict vary across cultures and religious traditions, and do not necessarily map onto the IHL conception of religious personnel.[28] Clerics in some traditions can legitimately take up arms, and fighting forces might therefore be unconcerned about involving them in military operations.[29] In more legalistic traditions, notably Islam, many clerics are also jurists, and are responsible for enforcing religious laws of war as judges or legal advisers.[30] While

Centre of International Studies, 2017, available at: https://cis.mit.edu/publications/magazine/why-clerics-turn-deadly.

26 G. Davie, above note 9, p. 43; J. E. Whitt, above note 15.

27 Little detail is available in the relevant literature or in the Codes of Conduct of NSAGs on the exact roles of clerics who might correspond to religious personnel under IHL, and more research needs to be done on this. I. Cismas *et al.*, above note 10; T. P. Holterhus, above note 17, pp. 202–203; Geneva Call, "Their Words: Directory of Armed Non-State Actor Humanitarian Commitments", available at: www.genevacall.org/resources/their-words/.

28 Michael Bryant, *A World History of War Crimes: From Antiquity to the Present*, 2nd ed., Bloomsbury, London, 2021 (Kindle ed.); Martin Bock, *Religion within the Armed Forces: Military Chaplaincy in an International Comparison*, Sozialwissenschaftliches Institut der Bundeswehr, Strausberg, 1998; D. L. Bergen, above note 3.

29 See above note 28; James M. Hegarty, "The Predicament of the Sant-Sipahi (Saint-Soldier): Sanctioned Violence and Martyrdom in the Sikh Tradition", in Maria Power and Helen Paynter (eds), *Violence and Peace in Sacred Texts: Interreligious Perspectives*, Springer Nature, Berlin, 2023; Richard A. Gabriel, *Muhammad: Islam's First Great General*, Campaigns and Commanders, Vol. 11, University of Oklahoma Press, Norman, OK, 2011.

30 Ahmed Al-Dawoody, "Islamic Laws of War", in Samuel C. Duckett White (ed.), *The Laws of Yesterday's Wars*, Vol. 2: *From Ancient India to East Africa*, Brill Nijhoff, Leiden, 2022; Andrew Feinstein, "Islamic Law, International Humanitarian Law, and the Creation of Courts by Non-State Armed Groups in Non-international Armed Conflicts", *Manchester Journal of Transnational Islamic Law and Practice*, Vol. 20, No. 1, 2024.

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clerics play a prominent role in many religious or religionist fighting forces, they often do so not as religious personnel but in positions of political, military and legal authority.[31]

As Noel Trew highlights, Article 47 of Geneva Convention I (GC I) and Article 48 of Geneva Convention II (GC II) cite chaplains alongside armed fighting forces and medical personnel as a key audience for the dissemination of their provisions, primarily to ensure that these individuals are cognizant of their own responsibilities and protections under IHL.[32] Despite religious personnel's role as moral advisers and trusted confidantes of the fighters with whom they are embedded, however, many religious personnel in even advanced State militaries receive only basic training in IHL, and their potential to support it is commonly neglected.[33] While a number of contemporary fighting forces appreciate the important contribution that religious personnel can make to improving the conduct of war, seeing them as allies in the teaching of military ethics in particular, religious personnel remain an under-used resource for the promotion of IHL, and opportunities for them to bridge IHL with the religious and cultural identities of combatants, and with their core values and motivations, are being missed.[34]

The first part of the article contextualizes the ministry of religious personnel under IHL within the intersecting religious, political and military environments that they inhabit. It begins by providing a summary of current IHL provisions for religious personnel, noting some of their limitations, and goes on to give an historical overview of the emergence and development of religious personnel, illustrating some of the similarities and differences in the roles of clerics across various traditions. The following subsections then investigate the tensions between religious and secular authority that characterize the work of many religious personnel, and how the nature of the relationship between religions and State militaries or NSAGs might affect their ability to fulfil an exclusively humanitarian function.

The second part of the article concentrates on the functioning of religious personnel within military organizations themselves, examining how various aspects of their ministry relate to military activity and to IHL. It opens with a review of the different ways in which, and the degrees to which, religious personnel are integrated into military organizations. The following two subsections study the implications of

31 See above note 30.

32 See the article by Noel Maurer Trew in this issue of the *Review*: Noel Maurer Trew, "This Is Who We Are: The Role of Culture, Military Ethics and Religion in Disseminating International Humanitarian Law to the Armed Forces", *International Review of the Red Cross*, Vol. 107, No. 928, 2025.

33 There are exceptions to this. IHL training for Dutch chaplains, for example, appears to be quite comprehensive. Interview with C. Reynolds, above note 12; interview with Chaplain Col. (ret.) Jeffrey Zust, US Army, March 2024.

34 Interview with C. Reynolds, above note 12; interview with J. Zust, above note 33; Mathew Knight, "Making Military Chaplains Better Moral Advisors", PhD diss., Biola University, La Mirada, CA, 2019; Paul Robinson, "Ethics Training and Development in the Military", *US Army War College Quarterly: Parameters*, Vol. 37, No. 1, 2007, p. 8; Rives M. Duncan, "What Went Right at My Lai: An Analysis of the Roles of 'Habitus' and Character in Lawful Disobedience", PhD diss., Temple University, Philadelphia, PA, 1997.

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involving religious personnel in military operations and deploying them in forward roles, both for their protections under IHL and for their ability to support or possibly undermine it. The article then considers the influence of religious personnel's moral and morale-boosting function on force multiplication and restraint, including the upholding of military ethics and IHL, before examining the importance of their counselling and pastoral support for the spiritual and psychological well-being of individual combatants, and their capacity to fight within the rules. The final subsection offers suggestions as to how religious personnel might be better mobilized together with legal and humanitarian teams in support of IHL.

In addition to reviewing the relevant legal, religious and war studies texts, and bridging IHL with an extensive military chaplaincy literature, the article draws upon interviews with active and retired religious personnel, guidance from military and religious experts, and the author's own experience of engaging with clerics and religious personnel linked to State militaries and NSAGs.

Contextualizing the ministry of religious personnel under IHL

Current IHL provisions for religious personnel

Religious or spiritual functionaries must fulfil two key conditions to qualify as military or civilian religious personnel under IHL. Firstly, they must be officially attached to the armed forces, civil defence organizations or medical units or transports of parties to armed conflict (including medical units and transports of civilian relief societies recognized and authorized by those parties, and therefore under their competent authority).[35] Secondly, religious personnel must be exclusively assigned to religious duties, the stated assumption being that they therefore fulfil a humanitarian role.[36] Religious personnel are thereby accorded an equivalent non-combatant humanitarian status to medical personnel, entitling

35 Religious personnel can be attached to both military and civilian medical units and transports of parties to armed conflict, or civilian relief societies "recognized" and "authorized" by them, over which they therefore have a certain degree of control, as outlined in Article 12 of Additional Protocol I (AP I) and its Commentaries. According to Article 27 of GC I and its Commentaries, such medical units and transports might also include those of recognized societies of neutral countries which are placed under the control of parties to armed conflict. See Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Arts 24, 27; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Arts 8, 12, 15; Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987 (ICRC Commentary on the APs), AP I Art. 8, Art. 12(2), paras 522–526, and Art. 15(5), and AP II Art. 9(1), paras 4670–4671, and Art. 11; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 27, available at: https://ihl-databases.icrc.org/en/customary-ihl/rules.

36 GC I, Art. 24; AP I, Arts 8, 15; ICRC Commentary on the APs, above note 35, AP I Arts 8, 15; ICRC Customary Law Study, above note 35, Rule 27.

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them to the same special protections and use of the distinctive red cross, red crescent and red crystal emblems.[37] Other religious or similar actors, including those who informally attach themselves to a party to armed conflict, do not qualify as religious personnel and are protected as civilians under IHL unless they directly participate in hostilities.[38]

While Article 24 of GC I states that religious personnel must be permanently assigned to the military, Articles 8 and 15 of Additional Protocol I (AP I) expand this definition to include civilian and temporary religious personnel.[39] Customary IHL establishes, furthermore, that military or civilian religious personnel can be attached to NSAGs, specifically to their armed wings, civil defence organizations and medical units or transports.[40] Religious personnel lose their special protections if they carry out acts harmful or hostile to the enemy outside of their religious and humanitarian functions, though neither the nature of these harmful acts nor the scope of these functions are described.[41]

Because of their neutral humanitarian status, religious personnel captured by the enemy in international armed conflicts are not deemed prisoners of war (PoWs); rather, they are considered to be "retained" personnel who must be returned to their home State unless their spiritual services are indispensable to PoWs.[42] While retained, religious personnel benefit from the same treatment as PoWs as a minimum, and can be allocated by the detaining authorities to different camps and labour detachments in order to attend to PoWs' spiritual needs.[43] The detaining authorities are required to facilitate religious personnel to exercise their ministry freely among PoWs of the same religion, and cannot require them to do any other work.[44]

37 The red sun and lion emblem is also recognized under IHL, though it has fallen into desuetude: ICRC Commentary on GC I, above note 5, Art. 24, para 1964; AP I, Art. 8(l).
38 ICRC Commentary on GC I, above note 5, Art. 24, para. 1974.
39 *Ibid*., para. 1964; AP I, Arts 8(d), 15.
40 This conclusion is based on Article 9 of Additional Protocol II (AP II), Article 8(2)(e)(ii) of the Rome Statute of the International Criminal Court, and relevant State practice. Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 9; Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002), Art. 8(2)(e)(ii). According to the ICRC's *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, for the purposes of targeting, the term "organized armed group" should refer only to the armed wing of a non-State party, as discussed later in this article. Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, May 2009, pp. 32–33, available at: www.icrc.org/en/publication/0990-interpretive-guidance-notion-direct-participation-hostilities-under-international; I. Cismas, above note 17, pp. 528–529; ICRC, Commentary on the APs, above note 35, AP I Art. 12(2), paras 522–526, and AP II Art. 9(1), paras 4670–4671; ICRC Customary Law Study, above note 35, Rule 27.
41 ICRC Commentary on GC I, above note 5, Art. 24(F); ICRC Customary Law Study, above note 35, Rule 27.
42 GC I, Arts 28, 30; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II), Art. 37; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Arts 4(C), 33, 35.
43 See above note 42.
44 See above note 42.

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IHL contains considerably more detail on the protections and responsibilities of medical personnel than on those of their religious counterparts. Provisions for religious personnel are generally inserted into articles concerning medical personnel, and this sometimes gives the impression that religious personnel are an adjunct to medical services.[45] While the International Committee of the Red Cross (ICRC) Commentaries state that many provisions for medical units and personnel are to be applied *mutatis mutandis* to religious personnel, it is not always fully clear how this should be accomplished, especially when no religious equivalents of medical units or transports are acknowledged or described.[46] Article 24 of GC I and its Commentaries differentiate between different types of medical activity, acknowledging that some of them are not humanitarian in nature and might constitute acts harmful to the enemy:[47] medical or psychological specialists might "enhance the combat-related performance of able-bodied combatants", for example, or develop military interrogation techniques.[48] However, less consideration is given to religious functionaries who might carry out similarly harmful actions, despite a long history of religious mobilization for war.[49] While the ICRC Commentaries do much to compensate for the lack of detail in relevant IHL provisions, more attention needs to be paid to the particular characteristics of clerics and similar actors, the content of their ministries, and the implications of attaching them to fighting forces as religious personnel.

The historical emergence and development of religious personnel in different traditions

Understanding the roles of religious personnel today, and how they intersect with IHL, requires some historical appreciation for how these personnel's core functions have developed in various cultures, informing the development of military ethics and ultimately IHL itself. While history contains many accounts of fighting clerics, religious specialists since at least the Axial Age (c. 800 BCE–200 CE) have been primarily non-combatants, and prohibitions on attacking them are among the oldest restrictions on war.[50] Though clerical involvement in physical hostilities was frequently limited, however, clergy often played a central role in

45 Notably Articles 24, 28 and 30 of GC I, Articles 8, 13 and 15 of AP I and Article 9 of AP II. Articles 35–37 of GC III (concerning PoWs) and Rule 27 of the ICRC Customary Law Study are unusual in that they are exclusively concerned with religious personnel. Early IHL instruments appear to have assumed that religious personnel would be primarily attached to hospitals and other medical establishments, as discussed later in the article.

46 ICRC Commentary on GC I, above note 5, Art. 24, para. 1997; ICRC Customary Law Study, above note 35, Rule 27.

47 ICRC Commentary on GC I, above note 5, Art. 24(C), paras 1953–1963.

48 *Ibid*., para. 1954.

49 *Ibid*., paras 1966–1968.

50 As in Homeric Greece and ancient India, for example. See Adriaan Lanni, "The Laws of War in Ancient Greece", *Law and History Review*, Vol. 26, No. 3, 2008, p. 477; Raj Balkaran and A. Walter Dorn, "Charting Hinduism's Rules of Armed Conflict: Indian Sacred Texts and International Humanitarian Law", *International Review of the Red Cross*, Vol. 104, No. 920–921, 2022, p. 1790.

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spiritual and psychological warfare against enemy armies and their gods, summoning divine forces through prayer, the chanting of mantras and the carrying of holy relics onto the battlefield, for example.[51] Old Testament or Hebrew Bible precedents are commonly cited for the origins of religious personnel in the West.[52] Deuteronomy 20:1–4 describes, for example, how Israelite priests accompanied armies to battle, reassuring soldiers that God would grant them victory and exhorting them not to be afraid.[53] Such morale-boosting mobilization of divine support and protection remains an important function of many religious personnel today.

Restrictions on clerical participation in war were particularly strong in Buddhism and Christianity, both of which contain important pacifist or non-violent streams.[54] Many Buddhists and Christians regarded war as unwholesome or sinful, even when fought justly and in a good cause, and some saw the very existence of military chaplains as an aberration, as they still do today.[55] Forms of pastoral care developed in these traditions as a response to the belief that war was spiritually harmful for its participants, especially should they be killed in a state of sin or negative karma.[56] Aside from providing spiritual support to combatants and administering their last rites, a central role of clergy prior to battle was therefore to help purify the intentions of combatants or absolve them of their sins, thereby easing their passage into the next life.[57] Nevertheless, some Old Testament and Mahāyāna Buddhist scriptures in particular have encouraged a more permissive attitude to clerical involvement in war, and a minority of Christian and Buddhist clergy have taken up arms themselves, as well as contributing to the development of medieval chivalry and the martial arts.[58] The military monks of the Knights Templar were active participants in the Crusades,

51 David S. Bachrach, *Religion and the Conduct of War, c. 300–1215*, Warfare in History, Vol. 16, Boydell Press, Woodbridge, 2003; Ian Sinclair, "War Magic and Just War in Indian Tantric Buddhism", in Douglas S. Farrer (ed.), *War Magic: Religion, Sorcery and Performance*, Berghahn, New York, 2014.

52 David S. Bachrach, "The Friars Go to War: Mendicant Military Chaplains, 1216–c. 1300", *Catholic Historical Review*, Vol. 90, No. 4, 2004, pp. 621–622; Steven A. Schaick, *Examining the Role of Chaplains as Non-Combatants while Involved in Religious Leader Engagement/Liaison*, Air War College, 2009, p. 1.

53 See above note 52.

54 David S. Bachrach, "Military Chaplains and the Religion of War in Ottonian Germany, 919–1024", *Religion, State and Society*, Vol. 39, No. 1, 2011, pp. 14–15; Andrew Bartles-Smith *et al.* (eds), *Buddhism and International Humanitarian Law*, Routledge, London, 2023.

55 See above note 54; Tom Cornell, "The Chaplain's Dilemma: Can Pastors in the Military Serve God and Government?", *America: The Jesuit Review*, 17 November 2008, available at: www.americamagazine.org/issue/676/article/chaplains-dilemma.

56 A. Totten, above note 4, p. 22; D. S. Bachrach, above note 54, pp. 14–15; Stephen Jenkins, "Once the Buddha Was a Warrior: Buddhist Pragmatism in the Ethics of Peace and Armed Conflict", in Florian Demont-Biaggi (ed.), *The Nature of Peace and the Morality of Armed Conflict*, Palgrave Macmillan, London, 2017.

57 See above note 56.

58 S. Jenkins, above note 56; Andrew Bartles-Smith, "How Does Buddhism Compare with International Humanitarian Law, and Can It Contribute to Humanising War?", in A. Bartles-Smith *et al.* (eds), above note 54, pp. 25–27, 34–36; Nicholas Morton, "The Defence of the Holy Land and the Memory of the Maccabees", *Journal of Medieval History*, Vol. 36, No. 3, 2010.

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for example, and Buddhist Shaolin monks fought to help establish the Tang dynasty in seventh-century China.[59]

In Europe, Christian military chaplaincy emerged from pre-battle rituals in the early medieval period, when theologians were also developing just war rules.[60] Christian clergy had ministered to troops as early as the mid-330s CE, when they accompanied Emperor Constantine's armies to Persia.[61] The institution of penance had developed in such a way, however, that confession was a once-in-a-lifetime act, and soldiers were expected to leave the military after receiving absolution.[62] This meant that soldiers were faced with the prospect of either ending their military careers or risking the possibility of dying on the battlefield in a state of sin.[63] The Concilium Germanicum presided over by St Boniface in 742 or 743 CE changed this.[64] Apart from formalizing canon law prohibitions on clergy bearing arms, this council also introduced the innovation of repeated private confession.[65] This allowed individual soldiers to confess their sins before (and after) each battle, enabling them to fight and die with greater peace of mind.[66] Commanders of military units were thereby obliged to have priests on their staff, leading to a dramatic increase in the number of clergy accompanying armed forces.[67] Since another of their clerical functions was to carry holy relics into battle, including the famous torn half-cloak, or *cappa*, given by St Martin of Tours to a freezing beggar, these priests came to be known as *cappellanis*, from which the modern designation "chaplain" is derived.[68] Non-combatant military chaplaincy was thereby institutionalized in the Christian West, combining the traditional clerical role of divine protection and force multiplication with a degree of pastoral care that enabled combatants to confide their thoughts and emotions, the most pervasive being fear.[69] Confession remains an important function of Catholic military chaplains to this day, and has evolved into the individual counselling that is such a fundamental part of chaplains' work in many traditions.[70]

59 Helen J. Nicholson, *The Knights Templar*, Amsterdam University Press, Amsterdam, 2021; Joseph Friedman, "Pistol-Packing Padres: Rethinking Regulations Prohibiting Armed Military Chaplains", *Military Review*, September–October 2023, p. 121, available at: www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/September-October-2023/Pistol-Packing-Padres/; Barend Ter Haar, "Religion and War in Traditional China", in Margo Kitts (ed.), *The Cambridge Companion to Religion and War*, Cambridge University Press, Cambridge, 2023, p. 164; Jonathan Carl Feuer, "The South Korean Buddhist Military Chaplaincy: Buddhist Militarism, Violence, and Religious Freedom", PhD diss., University of California, Los Angeles, CA, 2023, p. 3.

60 A. Totten, above note 4, p. 22.

61 Christopher Holdsworth, "'An Airier Aristocracy': The Saints at War (The Prothero Lecture)", *Transactions of the Royal Historical Society*, Vol. 6, 1996, p. 110.

62 D. S. Bachrach, above note 54, pp. 13–15; A. Totten, above note 4, p. 22.

63 See above note 62.

64 See above note 62.

65 See above note 62.

66 See above note 62.

67 See above note 62.

68 See above note 62.

69 See above note 62.

70 Duane Larson and Jeffrey Zust, *Care for the Sorrowing Soul: Healing Moral Injuries from Military Service and Implications for the Rest of Us*, Wipf and Stock, Eugene, OR, 2017, pp. 195–197; interview with J. Zust, above note 33.

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Canon law protections for clergy during wartime were reinforced by the Peace of God and Truce of God movements in the tenth and eleventh centuries, and military chaplaincy continued to develop over the Crusades and the religious wars of the sixteenth and seventeenth centuries.[71] As the power of the Catholic Church receded, and law moved into the secular domain, the role that some clergy had played as canon law authorities on the conduct of war also gradually fell away.[72] The development of professional standing armies over this period meant that the incorporation of chaplains became more formalized, and the First Geneva Convention of 1864 consolidated the protected status of non-combatant chaplains, granting them the same benefit of neutrality as medical personnel.[73] In recent years the pastoral care model of Christian chaplaincy, which bridges religion with secular institutions such as hospitals, prisons, universities and the armed forces, has become an increasingly widespread vocation, inspiring the development of chaplaincy services in many other traditions.[74] Although some scholars have claimed on this basis that military chaplaincy is essentially Christian in origin, however, other religions have developed similar resources.[75]

There are numerous accounts of Mahāyāna Buddhist monks accompanying armies as chaplains and military advisers in medieval China, for example, one of the earliest being the Central Asian monk Fotudeng (fl. 310–348 CE).[76] Among other tasks, Buddhist monks instructed soldiers on morals and the transience of life, trained them in the chanting of protective mantras, and performed esoteric rituals to effect victories.[77] In Korea, the Buddhist monk Wŏn'gwang (542–640 CE) developed five precepts for elite soldiers, including "Never retreat in battle" and "Be selective in the taking of life" – succinct encapsulations of religious personnel's force-multiplying and restraining functions.[78] Buddhist chaplains or "military monks" from the

71 D. S. Bachrach, above note 51; Chris Mann and Richard Holmes, "Chaplains, Military", in Richard Holmes (ed.), *The Oxford Companion to Military History*, Oxford University Press, Oxford, 2001, available at: https://tinyurl.com/yc6en652.

72 Michał Tomaszek, "Between Sword and Prayer: Warfare and Medieval Clergy in Cultural Perspective", *Historical Review/Przeglad Historyczny*, Vol. 111, No. 3, 2020.

73 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 August 1864 (1864 Geneva Convention), Art. 2, available at: https://ihl-databases.icrc.org/en/ihl-treaties/gc-1864/article-2?activeTab=historical.

74 Kristina Stoeckl and Olivier Roy, "Muslim Soldiers, Muslim Chaplains: The Accommodation of Islam in Western Militaries", *Religion, State and Society*, Vol. 43, No. 1, 2015, pp. 35–36; Ibrahim J. Long and Bilal Ansari, "Islamic Pastoral Care and the Development of Muslim Chaplaincy", *Journal of Muslim Mental Health*, Vol. 12, No. 1, 2018, pp. 109–111; Wendy Cadge and Michael Skaggs, "How the Role and Visibility of Chaplains Changed over the Past Century", *The Conversation*, 1 June 2022, available at https://theconversation.com/how-the-role-and-visibility-of-chaplains-changed-over-the-past-century-182211.

75 See above note 74.

76 B. Ter Haar, above note 59, p. 179.

77 Jinhua Chen, "A 'Villain-Monk' Brought Down by a Villein-General", in Harry N. Rothschild and Leslie V. Wallace (eds), *Behaving Badly in Early and Medieval China*, University of Hawaii Press, Honolulu, HI, 2017, p. 218.

78 J. C. Feuer, above note 59, p. 3.

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Chogye and Wŏn Buddhist orders serve in the South Korean military to this day.[79]

Striking Buddhist parallels to Christian military chaplaincy can be traced back as far as the Japanese civil war in 1331–33.[80] Itinerant Jishū monks of the Pure Land School were embedded within military units to ensure that warriors performed the ten invocations of the name of Amida Buddha (*nembutsu*) before death, thereby ensuring their rebirth in the Pure Land.[81] Jishū monks were unarmed, and explicitly instructed to remain neutral on the battlefield (not to transmit military instructions or intelligence, for example), anticipating contemporary IHL provisions for religious personnel.[82] In addition to performing funerals and prayers for fallen warriors and informing their families of their deaths, Jishū monks protected non-combatants and the defeated, provided first aid and medical care, and carried out humanitarian relief.[83] Failure of Jishū monks to act in a strictly neutral religious capacity, even inadvertently, led to sanctions from the heads of the order, up to and including cancellation of their rebirth in the Pure Land.[84] Some Jishū monks were seconded into providing paramilitary support for the warriors to which they were attached, for example, thereby violating their neutrality.[85] In a 1399 letter, Jikū, the 11th head of the order, admonished monks for these failures, reiterating that they should never touch weapons, since these were used to kill, though permitting them to touch helmets and body armour due to the protective function of those objects.[86]

Sometimes the recruitment of religious personnel is prevented by religiously mandated separations of the clerical and military domains. The Theravāda Buddhist tradition in Sri Lanka and Southeast Asia, for example, does not permit any monastic involvement in military activity.[87] Monastics are prohibited from even observing battles or military exercises, and from residing in military bases, except under exceptional circumstances.[88] Most fighting forces in Theravāda Buddhist countries do not therefore recruit religious personnel, although this does not prevent monks from providing pastoral care to combatants and fighters outside of military settings, and a number of monastics are staunch military or armed group supporters.[89] The Royal Thai military skirts

79 *Ibid.*, pp. 1–2; Hyein Lee, "Between Common Humanity and Partiality: The Chogye Buddhist Chaplaincy Manual of the South Korean Military and Its Relevance to International Humanitarian Law", in A. Bartles-Smith *et al.* (eds), above note 54.

80 Brian Victoria, "The Emperor's New Clothes: The Buddhist Military Chaplaincy in Imperial Japan and Contemporary America", *Journal of the Oxford Centre for Buddhist Studies*, Vol. 11, 2016, p. 160.

81 Sybil Thornton, "Buddhist Chaplains in the Field of Battle", in Donald S. Lopez Jr. (ed.), *Buddhism in Practice*, abridged ed., Princeton University Press, Princeton, NJ, 2007, p. 441.

82 *Ibid.*, pp. 442–443.

83 *Ibid.*, pp. 441–442.

84 *Ibid.*, pp. 443–444.

85 *Ibid.*

86 *Ibid.*

87 Peter Harvey, *An Introduction to Buddhist Ethics: Foundations, Values and Issues*, Cambridge University Press, Cambridge, 2000, pp. 105–107.

88 *Ibid.*

89 Daniel Webster Kent, "Shelter for You, Nirvana for Our Sons: Buddhist Belief and Practice in the Sri Lankan Army", PhD diss., University of Virginia, Charlottesville, VA, 2008, available

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this religious prohibition by recruiting highly qualified Buddhist monks who defrock upon becoming military chaplains and henceforth wear military uniform with a saffron armband to distinguish them from other troops.[90] While these Buddhist chaplains provide close pastoral and ethical support to soldiers, including counselling and meditation training, they are no longer permitted, as non-monks, to preside over certain Buddhist ceremonies.[91]

Other traditions have been generally less detached from the conduct of armed conflict. Wars are at the core of Hindu scriptures such as the Mahābhārata and Bhagavad Gita (both of which are set on the battlefield of Kurukshetra), and as such, these scriptures are key resources for Hindu religious personnel.[92] In the Bhagavad Gita, for example, Lord Krishna provides spiritual support and ethical guidance to the warrior prince Arjuna as his charioteer.[93] Krishna counsels Arjuna with regard to his doubts about the war and the suffering it causes, ultimately convincing him to commit to his warrior duties.[94] Hinduism contains remarkably detailed rules of war, including protections for clergy and other non-combatants.[95] Though Hindu clerics do not generally take up arms themselves, there have been exceptions, including a number of warrior ascetic orders.[96]

Religious leaders in some traditions have played more prominent and religiously mandated roles in military action.[97] The Prophet Muhammad and the early caliphs were religious leaders and highly successful military commanders who led by example, providing spiritual support and moral guidance to their troops.[98] Though Islamic laws of war include rules to protect clergy and other

at: http://thecarthaginiansolution.files.wordpress.com/2011/08/buddhist-belief-practise-in-sl-army.pdf; Iselin Frydenlund, "'Operation Dhamma': The Sri Lankan Armed Forces as an Instrument of Buddhist Nationalism", in Torkel Brekke and Vladimir Tikhonov (eds), *Military Chaplaincy in an Era of Religious Pluralism: Military-Religious Nexus in Asia, Europe, and USA*, Oxford University Press, New Delhi, 2017.

90 Michael Jerryson, *If You Meet the Buddha on the Road: Buddhism, Politics and Violence*, Oxford University Press, Oxford, 2018, p. 111.

91 *Ibid*., pp. 118–119.

92 The Bhagavad Gita is itself part of the Mahābhārata. R. Balkaran and A. W. Dorn, above note 50, pp. 1780–1781; Raj Balkaran and A. Walter Dorn, "Exploring Hindu Ethics of Warfare: The Purāṇas", *International Review of the Red Cross*, Vol. 106, No. 926, 2024; Carla Powers, "Krishna's Advice to the Hero Arjuna: The Army's First Hindu Chaplain Explains How the Mahabharata Can Comfort Soldiers", *Pluralism Project Archive*, Harvard University, 5 April 2008, available at: https://hwpi.harvard.edu/pluralismarchive/news/krishna%E2%80%99s-advice-hero-arjuna-army%E2%80%99s-first-hindu-chaplain-explains-how. The author is also grateful for feedback from Dr Raj Balkaran on this matter.

93 See above note 92.

94 See above note 92.

95 See above note 92.

96 William R. Pinch, *Warrior Ascetics and Indian Empires*, Cambridge Studies in Indian History and Society, Series No. 12, Cambridge University Press, Cambridge, 2006.

97 Interview with Imam Asim Hafiz OBE, Muslim Chaplain to the British Armed Forces, March 2024; Khaled Ramadan Bashir, *Islamic International Law: Historical Foundations and Al-Shaybani's Siyar*, Edward Elgar, Cheltenham, 2018; Aharon (roni) Kampinsky, "The IDF Military Rabbi: Between a 'Kohen Anointed for War' and a 'Religious Services Provider'", *Religions*, Vol. 11, No. 4, 2020, p. 2; A. Walter Dorn and Stephen Gucciardi, "The Sword and the Turban: Armed Force in Sikh Thought", *Journal of Military Ethics*, Vol. 10, No. 1, 2011.

98 Interview with A. Hafiz, above note 97; R. A. Gabriel, above note 29; Hugh Kennedy, *The Prophet and the Age of the Caliphates: The Islamic Near East from the Sixth to the Eleventh Century*, Routledge, Abingdon, 2022.

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non-combatants during wartime, there is less insistence on Muslim clerics being non-combatants themselves.[99] This, together with the absence of formal ordination for Muslim clergy, means that the distinction between clerics and combatants in Islam is not always clear-cut, even though most of the scholars, jurists, teachers and community leaders who fulfil the role of Muslim clerics are not generally considered combatants or expected to fight themselves.[100] Being a cleric does not exempt individuals from the personal duty to fight when required, since it is incumbent on all able-bodied Muslims to participate in defensive war (*jihād al-daf'*) should Muslim territory be invaded.[101] As jurists, another key function of Islamic scholars is to provide legal guidance on the conduct of hostilities, by issuing fatwas (Islamic legal rulings) for example, and some clerics are therefore more akin to judges or legal advisers, who do not enjoy the special protections of religious personnel under IHL.[102] Muslim clerics serve as religious personnel in many fighting forces nonetheless. The pastoral duty of Muslims is illustrated, as in Christianity, by the metaphor of the shepherd (*ra'i*), and the Prophet is recorded as saying that "[a]ll of you are shepherds and each of you are responsible for his flock".[103] The foundations of pastoral care are therefore intrinsically Islamic, and it is a sacred duty for Muslims to support combatants and others in spiritual, psychological and physical distress.[104]

Traditionally, many Sikh clerics have also taken up arms, though a number of their modern counterparts serve as religious personnel.[105] Religious leaders such as Guru Gobind Singh (1666–1708), the tenth Sikh guru or spiritual master of Sikhism, were revered warriors who led Sikh forces into battle.[106] The Khalsa order which Gobind Singh founded teaches a balance between spiritual and martial readiness to defend the oppressed, and the exemplar of the *sant-sipāhī* (saint-soldier) that he embodied combines spiritual enlightenment with military prowess.[107] As in Islam, Sikh clerics are not formally ordained, since both religions believe in a personal connection with God and are less reliant on a separate class of

99 See above note 98; Ahmed Al-Dawoody, "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles", *International Review of the Red Cross*, Vol. 99, No. 906, 2017, p. 1002.

100 Interview with A. Hafiz, above note 97; T. P. Holterhus, above note 19, p. 203; Sophie Gilliat-Ray, Mansur Ali and Stephen Pattison, *Understanding Muslim Chaplaincy*, Ashgate, Farnham, 2013, pp. 44–45.

101 Matthias Vanhullebusch, *War and Law in the Islamic World*, Brill, 2015, pp. 25–26; Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, p. 76.

102 Sam Heller, "Islam's Lawyers in Arms", *Foreign Policy*, 6 June 2014, available at: https://foreignpolicy.com/2014/06/06/islams-lawyers-in-arms/; Sohail H. Hashmi, "The Islamic Law of War and Peace and the International Legal Order: Convergence or Dissonance?", in Lothar Brock and Hendrik Simon (eds), *The Justification of War and International Order: From Past to Present*, History and Theory of International Law, Oxford University Press, Oxford, 2021.

103 I. J. Long and B. Ansari, above note 74, pp. 109–111.

104 *Ibid.*; interview with A. Hafiz, above note 97; Levent Tezcan, "Sophie Gilliat-Ray, Mansur Ali and Stephen Pattison: Understanding Muslim Chaplaincy", *Entangled Religions*, Vol. 2, 2015, p. XLIX.

105 "Mandeep Kaur: First Sikh Chaplain in British Royal Air Force", *SikhNet*, available at: www.sikhnet.com/news/mandeep-kaur-first-sikh-chaplain-british-royal-air-force.

106 A. W. Dorn and S. Gucciardi, above note 97.

107 Sangeeta Taak, Sugandha Sawhney and Madeeha Majid, "Sikhism and International Humanitarian Law", *ISIL Yearbook of International Humanitarian and Refugee Law*, Vol. 18, 2018; J. M. Hegarty, above note 29.

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priests or ascetics to mediate between the human and divine.[108] While no religion is a monolith, and similar egalitarian attitudes pervade reformist streams in other religions, this does suggest that Islam and Sikhism are less concerned than some other traditions with differentiating clerics from the laity – including combatants – and with separating them from the conduct of war.[109] Many clerics can therefore legitimately take up arms, although they are not then protected under IHL.

These and many other religious and philosophical traditions provide a wealth of spiritual resources for combatants to draw upon, and are represented by religious personnel in armed forces across the world. Since 1964, the Netherlands has pioneered the creation of humanist military chaplaincy, which distils many of the chaplain's essential pastoral functions minus the religious trappings, and the Belgian, Norwegian and Canadian armed forces have since followed suit.[110] The ICRC Commentaries maintain that the word "religious" need not be interpreted literally, and that the spiritual support provided by religious personnel is broadly applicable to a variety of life stances.[111] Nevertheless, the text of Additional Protocol II (AP II) was tweaked from "religious convictions and practices" to "convictions and religious practices" in order to encompass non-religious beliefs.[112]

Between religious and State authority

The recruitment of religious personnel to State militaries generally involves cooperation with religious organizations that can credibly represent their respective traditions, such as the Military Ordinariates of the Catholic Church, the Buddhist Military Ordinariate of the Chogye Order of Korean Buddhism, and the Dutch Humanist Association.[113] These organizations endorse, and often train, candidates for military service, and many religious personnel continue to report to them throughout their military careers.[114] As representatives of non-State institutions within armed forces, most religious personnel are therefore dually accountable to both the religious and military authorities, and enjoy an important degree of autonomy in this liminal space.[115]

108 S. Gilliat-Ray, M. Ali and S. Pattison, above note 100, pp. 44–45; Gurmukh Singh, "Sikh Religious Titles, Duties and Related Skills", Sikh Missionary Society (UK), available at: www.sikhmissionarysociety.org/sms/smsarticles/advisorypanel/gurmukhsinghsewauk/sikhreligioustitlesdutiesandrelatedskills/.

109 A. Kampinsky, above note 97, p. 2.

110 These chaplains are described as "humanist, non-confessional counsellors" in the ICRC Commentary on GC I, above note 5, Art. 24, para. 1968; interview with E. A. Kamp, above note 12.

111 ICRC Commentary on GC I, above note 5, Art. 24, para. 1968.

112 AP II, Art. 4; S. Lunze, above note 17, pp. 88–89.

113 S. Lunze, above note 17, p. 71; Andrew Todd and Colin Butler, "Moral Engagements: Morality, Mission and Military Chaplaincy", in A. Todd (ed.), above note 4, pp. 152–153; interview with E. A. Kamp, above note 12; H. Lee, above note 79; Susanne Kappler, "Chaplain Recalls Path to Making History", US Army, 12 June 2009, available at: www.army.mil/article/22584/chaplain_recalls_path_to_making_history.

114 Ines Michalowski, "What is at Stake When Muslims Join the Ranks? An International Comparison of Military Chaplaincy", *Religion, State and Society*, Vol. 43, No. 1, 2015; interview with E. A. Kamp, above note 12.

115 A. Todd and C. Butler, above note 113, pp. 152–153; Richard Gribble, "'Am I on God's Side?' US Military Chaplains and the Dilemma of the Vietnam War", *US Catholic Historian*, Vol. 37, No. 1, 2019, p. 86.

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In many contexts the intrusion of religion into the secular sphere is fiercely, if sometimes unsuccessfully, resisted in the face of powerful religious lobbies.[116] In the United States and the Russian Federation, for example, the creation of military chaplains has raised constitutional issues related to the separation of church and State, and the equality of different religions and beliefs before the law.[117] Founding Father James Madison (1751–1836) was the first of a number of lawmakers who attempted to disband the US Chaplains' Corps because of concerns that it violated the First Amendment, and similar concerns were raised when President Dmitry Medvedev re-established the Russian military chaplaincy service in 2009, since this was thought to conflict with Article 14 of the Russian Constitution.[118] In both cases these objections were overridden by the need to facilitate free expression of religion in the armed forces, and because lawmakers recognized the important contribution that chaplains make to improving troop motivation, discipline and morale.[119]

Conversely, some military chaplains still hesitate to swear military oaths of allegiance, or find it difficult to reconcile their religious calling with military cultures that can be inconducive to religious practice.[120] Religious organizations might also have reservations about the State's military actions, and this can generate friction between religious personnel and their respective hierarchies.[121] Tensions arose, for example, from the 2003 invasion of Iraq by the US-led coalition.[122] While many religious organizations, including the Vatican and the Anglican Church, questioned the legitimacy and conduct of the war, some chaplains on the ground felt that their ecclesiastical superiors had failed to listen to them or properly engage with the complex realities of modern conflict, and that they therefore lacked their superiors' support to tackle ethical issues more effectively.[123] The support of the Russian Orthodox Church under Patriarch Kirill for the Russian invasions of Crimea in 2014 and east Ukraine in 2022 has contributed to more serious upheaval, precipitating a schism in the Orthodox Church worldwide.[124] In

116 J. Temperman, above note 21, p. 112.
117 R. E. Hassner, above note 4, p. 10; Philip McCormack, "Religion in the Public Sphere: The Role and Function of Military Chaplains", *Semănătorul (The Sower)*, Vol. 16, No. 1, 2022, p. 113.
118 Article 14(2) of the Russian Constitution states that "[r]eligious associations shall be separated from the State and shall be equal before the law". K. L. J. Goh, above note 10, p. 100; Pär Gustafsson Kurki, *Apostles of Violence: The Russian Orthodox Church's Role in Russian Militarism*, Swedish Defence Research Agency, FOI-R 5514 SE, February 2024, p. 41.
119 K. L. J. Goh, above note 10, p. 100; Steven K. Green, "Reconciling the Irreconcilable: Military Chaplains and the First Amendment", *West Virginia Law Review*, Vol. 110, 2006.
120 Interview with Rev. Canon Donald Lawton, former Canadian military chaplain, May 2024.
121 R. Gribble, above note 115, pp. 73–74, 88; G. Davie, above note 9, p. 39; A. Todd, above note 19, p. 4.
122 A. Todd above note 19, pp. 4–5.
123 *Ibid.*; P. McCormack, above note 22, p. 41.
124 In 2019, the Ecumenical Patriarchate in Constantinople also granted autocephaly (self-governance) to the newly established Orthodox Church of Ukraine, thereby severing the traditional canonical ties of the Ukrainian Orthodox Church to Moscow. P. G. Kurki, above note 118, pp. 54–55; Andrzej Szabaciuk, "Patriarch Kirill's Holy War", Institute of Central Europe, 23 March 2022, available at: https://ies.lublin.pl/en/comments/patriarch-kirills-holy-war/; Zacarias Negron, "To Whom Much Is Given: The Russian Orthodox Church's Role in the Russo-Ukrainian War", *Journal of Church and State*, Vol. 67, No. 1, 2024.

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a decree issued in March 2024, the World Russian People's Council, a body affiliated with the Moscow Patriarchate, stated that "[f]rom a spiritual and moral point of view", the military operation in Ukraine is a "Holy War".[125]

Whatever religious actors' position on the justness or legality of a State's military action, there is usually an understanding that religious personnel should be present in the midst of armed conflict to support combatants.[126] Indeed, the risk of moral injury[127] appears to be particularly acute in wars whose justness is questionable, and combatants in such wars might therefore be in greater need of pastoral care. Though religious–military tensions complicate the picture, and religion is frequently weaponized in service of State and non-State actors, religious personnel are often well positioned to positively influence behaviour, and some armed forces actively encourage them to speak out.[128] Guidelines for chaplains in the US military, for example, expect them to hold commanders morally accountable, to call out poor leadership and bad decision-making, and to report unethical practices.[129] In a similar vein, British military chaplains have discussed how they have permission to be subversive in order to uphold their moral responsibilities.[130]

Religious organizations have long been among the most powerful allies and adversaries of the State, not least because of the impetus and legitimacy they provide to governments and rebel groups.[131] Tensions between clerics more or less aligned with the State are not a new or specifically Western phenomenon. The ancient Indian treatise on statecraft, the *Arthaśāstra*, for example, discusses the role of a king's *mantripurohita* (chaplain-counsellor) at some length, and explicitly addresses conflicts of interest between religious and secular duty.[132] While relations between religious actors and the State can be fraught, however, they tend in most contexts towards some degree of separation from – and accommodation between – State and religious actors and institutions that

125 See above note 124; "Order of the XXV World Russian People's Council 'The Present and Future of the Russian World'", Moscow Patriarchate of the Russian Orthodox Church, 27 March 2004, available at: https://tinyurl.com/3tcp5e7c; Brian Mefford, "Russian Orthodox Church Declares 'Holy War' against Ukraine and West", *Atlantic Council*, 9 April 2024, available at: www.atlanticcouncil.org/blogs/ukrainealert/russian-orthodox-church-declares-holy-war-against-ukraine-and-west/.

126 R. Gribble, above note 115, p. 81; A. Todd, above note 19; interview with E. A. Kamp, above note 12.

127 Moral injury is a "strong cognitive and emotional response that can occur following events that violate a person's moral or ethical code", as explained in Victoria Williamson, Dominic Murphy, Andrea Phelps, David Forbes and Neil Greenberg, "Moral Injury: The Effect on Mental Health and Implications for Treatment", *The Lancet Psychiatry*, Vol. 8, No. 6, 2021. See also Jeffrey Zust and Stephen Krauss, "Force Protection from Moral Injury", *Joint Force Quarterly*, Vol. 92, No. 1, 2019; Stephen W. Krauss *et al.*, "The Impact of Just and Unjust War Events on Mental Health Need and Utilization within US Service Members", *Psychiatry*, Vol. 86, No. 1, 2023.

128 A. Todd and C. Butler, above note 113, p. 159; R. E. Hassner, above note 15, p. 98.

129 See above note 128.

130 See above note 128.

131 J. Temperman, above note 21; Tanisha M. Fazal, "Religionist Rebels and the Sovereignty of the Divine", *Dædalus*, Vol. 147, No. 1, 2018; Mark Juergensmeyer, *Global Rebellion: Religious Challenges to the Secular State, from Christian Militias to Al Qaeda*, Comparative Studies in Religion and Society, Vol. 16, University of California Press, Berkeley, CA, 2008.

132 Patrick Olivelle and Mark McClish, *The Arthasastra: Selections from the Classic Indian Work on Statecraft*, Hackett, Indianapolis, IN, 2012 (Kindle ed.), p. 42.

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allows religious personnel to fulfil their mission without unduly compromising (in the minds of those involved, at least) their religious and humanitarian functions.[133] The more that State and religious ends are conflated, however, or State and religious actors and institutions exercise centralized control over one another, the greater the likelihood that State-supported religions will intrude into military organization, and the less able or incentivized some religious personnel might be to separate their religious and humanitarian calling from the State's military goals.[134]

State–religion relationships extend across a spectrum from militantly anti-religious States, notably a number of communist regimes, which aim to repress or eradicate religions, through to theocracies such as Iran and the Vatican City State, where the State and a religious tradition merge, and clerics hold power over all branches of government.[135] Though religious personnel are sometimes compared to political commissars or political officers in armed forces of communist States, political commissars are solely State representatives and generally therefore lack the same degree of independence and commitment to a higher power.[136] While religious personnel are non-combatants who are relatively insulated from the chain of command, providing a safe space for combatants to confide their innermost thoughts and emotions, political commissars are an integral part of the State and military command structure, constituting a parallel hierarchy that enforces communist party lines.[137] Such dual command arrangements are still a feature of the Chinese military, for example, where political commissars are responsible, among other tasks, for propaganda, indoctrination, peacetime operations security, counter-intelligence, psychological warfare, and co-signing orders with military commanders, playing an increasingly important role in military decision-making.[138]

Similar arrangements can be found at the religious end of the spectrum. Iranian leader Ayatollah Ruhollah Khomeini created the Islamic Revolutionary Guard Corps (IRGC) and the Basij volunteer militia in 1979 to help transform the hitherto secular Iranian military into an Islamic army, and uphold and defend the Shia ideology of the Islamic revolution.[139] There are dual leadership arrangements at all levels of the Iranian Army and IRGC, with one position filled by a military officer and the other by a cleric from the Ideological-Political Department (IPD).[140] Though IPD clerics are not required to undergo military training, they enjoy the same benefits and authority as military officers and are in

133 J. Temperman, above note 21; M. Albert Figinski, "Military Chaplains – A Constitutionally Permissible Accommodation between Church and State", *Maryland Law Review*, Vol. 24, No. 4, 1964; M. Bock, above note 28.

134 See above note 133; R. E. Hassner, above note 15, pp. 96–98.

135 J. Temperman, above note 21, pp. 17–18, 55–56, 140–141.

136 Dale R. Herspring and Roger N. McDermott, "Chaplains, Political Officers, and the Russian Armed Forces", *Problems of Post-Communism*, Vol. 57, No. 4, 2010, p. 52; R. E. Hassner, above note 15, p. 87.

137 See above note 136.

138 Jeff W. Benson and Zi Yang, *Party on the Bridge: Political Commissars in the Chinese Navy*, Center for Strategic and International Studies, June 2020, pp. 10, 17.

139 Mahsa Rouhi, "Iran", in R. E. Hassner (ed.), above note 4, p. 143; M. Bock, above note 28, p. 123.

140 M. Rouhi, above note 139, p. 153.

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charge of recruitment, staff evaluations and promotions, as well as being fully involved in operational and strategic decision-making.[141] Far from being subordinate to military command, Iranian military clerics therefore serve a religious policing and ideological enforcement function.[142] The saying "Al-Islam din wa dawla" ("Islam is religion and State") is commonly used to describe their idealized union in a number of Islamic States whose laws and regulations must be in conformity with Sharia law or Islamic criteria, Saudi Arabia being another State that is notably strict in this regard.[143] To be "religious" in some contexts does not therefore imply the same separation between religion and State or military activity that it might elsewhere.

Most States fall between these poles, and are more or less open/closed and secular/religious.[144] Some forms of secularism are harder than others, containing an ideological component that curtails religious freedom – Attatürk's Kemalism in Turkey, for example, or the milder *laïcité* of modern France, which limits religion in the military to the private sphere, restricting the support of military chaplains to those who request it.[145] However, most iterations of secularism as a legal-political system are not anti-religious *per se*, and are designed to give enough autonomy to religious organizations to manage their own affairs so as to buffer the State from unwarranted religious influence.[146] Many militaries therefore allow some form of public religious practice within the bounds of their organization, and institutionalize it to varying degrees.[147]

Few States are completely impartial in this regard, and many establish the dominant religious tradition as a State or official religion, or otherwise privilege it over other faiths.[148] The greater the positive identification between the State and a religion, the more likely it is that religious actors and institutions will impinge upon the State's legislative, executive and judicial functions, and therefore the functioning of the armed forces.[149] Tensions between religious and secular forces also play out within militaries themselves, often when they attempt to instrumentalize and control religion in order to consolidate their power over the State, as in Pakistan and Myanmar, for example.[150] In Israel, an influx of recruits from the national-religious community in particular has contributed to increased religionization of the Israel Defense Forces (IDF), impinging upon its secular

141 *Ibid*.
142 *Ibid*., pp. 143, 153; M. Bock, above note 28, pp. 269, 294.
143 J. Temperman, above note 21, pp. 49–53.
144 *Ibid*., pp. 11–63.
145 *Ibid*., pp. 6, 112–115; M. Bock, above note 28, p. 268; I. Michalowski, above note 114, p. 4; Xavier De Woillemont, "L'Aumônerie Militaire", *Inflexions*, Vol. 2009/1, No. 10, 2009.
146 J. Temperman, above note 21, pp. 6, 140–141.
147 M. Bock, above note 28, p. 273; I. Michalowski, above note 114, pp. 4–6.
148 See above note 147; J. Temperman, above note 21, pp. 11–63.
149 M. Bock, above note 28; J. Temperman, above note 21, p. 49.
150 Andrew Selth, "Myanmar's Military Mindset: An Exploratory Survey", Griffith Asia Institute, Griffith University, 2021; C. Christine Fair, "Is Pakistan's Army as Islamist as We Think?", *Foreign Policy*, 15 September 2011, available at: https://foreignpolicy.com/2011/09/15/is-pakistans-army-as-islamist-as-we-think/; Sharif Shuja, "Pakistan: Islam, Radicalism and the Army", *International Journal on World Peace*, Vol. 24, No. 2, 2007.

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ethos and military ethics.[151] Inspired by Biblical precedent, efforts have been made, for example, to transform military rabbis from religious service providers into "priests anointed for war", thereby strengthening the spirit of soldiers before battle.[152] Constitutional and legislative arrangements do not necessarily reflect the power of religion in the public sphere, and religious traditions often have outsized influence in countries which are constitutionally secular, such as the United States and India, both of whose militaries contain large contingents of religious personnel.[153] Moreover, the State and/or nation often has a religious or transcendent quality in itself, expressed in forms of nationalism and civil religion which celebrate its imagined community and are institutionalized within military organizations.[154] The fact that the king is also the supreme governor of the Church of England, for example, and that the Thai monarch is "The Defender of the Faith", means that military chaplains are drawn into forms of State worship in these countries.[155]

Religious authority and non-State armed groups

Similar dynamics affect clerics and religious personnel linked to NSAGs, many of which are proto-State claimants to secular and/or religious authority.[156] Armed groups are usually weaker than established States, however, and are therefore often more reliant on religious actors and institutions for legitimacy and support.[157] Some groups adopt a religious tradition, or some interpretation of it, as the basis of their guiding ideology, and NSAGs tend to conflate religious,

151 Peter Beaumont and Quique Kierszenbaum, "National Religious Recruits Challenge Values of IDF Once Dominated by Secular Elite", *The Guardian*, 18 July 2024, available at: www.theguardian.com/world/article/2024/jul/18/national-religious-recruits-challenge-values-of-idf-secular-elite; Yagil Levy, "Religious Authorities in the Military and Civilian Control: The Case of the Israeli Defense Forces", *Politics and Society*, Vol. 44, No. 2, 2016, pp. 314–319; Tamir Libel and Reuven Gal, "Between Military–Society and Religion–Military Relations: Different Aspects of the Growing Religiosity in the Israeli Defense Forces", *Defense and Security Analysis*, Vol. 31, No. 3, 2015.

152 See above note 151; A. Kampinsky, above note 97.

153 J. Temperman, above note 21, pp. 113–114; Rajeev Bhargava, "States, Religious Diversity, and the Crisis of Secularism", *Open Democracy*, 22 March 2011, available at: www.opendemocracy.net/en/states-religious-diversity-and-crisis-of-secularism-0/.

154 M. Bock, above note 28, pp. 269–270; Robert N. Bellah and Phillip E. Hammond, *Varieties of Civil Religion*, Wipf and Stock, Eugene, OR, 2013; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, revised ed., Verso, London, 1991.

155 J. Temperman, above note 21, p. 60; British Army, "A New Relationship Formed with Her Majesty the Queen", 22 October 2023, available at: www.army.mod.uk/news-and-events/news/2023/10/a-new-relationship-formed-with-her-majesty-the-queen/; Yoneo Ishii, "Two Phases of 'Sāsanūpathamphok,' Defender of the Faith", *Japanese Journal of Southeast Asian Studies*, Vol. 7, No. 4, 1969.

156 "Syria's Dissolving Line between State and Nonstate Actors", Brookings Institution, 27 January 2023, available at: www.brookings.edu/articles/syrias-dissolving-line-between-state-and-nonstate-actors/; Charles C. Caris and Samuel Reynolds, *ISIS Governance in Syria*, Middle East Security Report No. 22, Institute for the Study of War, Washington, DC, 2014.

157 See above note 156; Will Jamison Wright, *Norm Clusters of Non-State Armed Groups: Mapping and Understanding the Limits of Warfare as Understood by Non-State Armed Groups*, Springer, Cham, 2023, pp. 141–147; Andrew Bartles-Smith, "Religion and International Humanitarian Law", *International Review of the Red Cross*, Vol. 104, No. 920–921, 2022, pp. 1743–1744; T. M. Fazal, above note 131.

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political and military goals, such that there is little or no separation between religious and secular powers.[158] Clerics in and around such groups often take up religious, political and military roles, and the frequent overlap between the various wings of a group, and the functions of its individual members, can blur the boundaries between religious and military affairs.[159] Many clerics associated with NSAGs do not therefore aspire to be religious personnel, even though they might also perform some of the functions of such personnel.

As is the case with State militaries, the more that the religious ideology and political and military ends of an NSAG converge, the more difficult it might become for clerics and religious personnel to compartmentalize themselves from military involvement and safeguard their neutral humanitarian ministry.[160] Many Islamist armed groups, for example, put Islam at the core of their intertwined political and military objectives, and military necessity is closely associated with religious obligation.[161] Islamic precedents give modern-day clerics license for military involvement which is in accordance with Islamic law (though its interpretation and application to particular contexts might be disputed), and powerful clerics such as Hassan Nasrallah, the former secretary-general of Hezbollah, hold authority over entire organizations.[162]

The leadership of the Afghan Taliban, for example, is dominated by madrassah-educated Deobandi clerics, while a significant number of the group's fighters are former madrassah students.[163] In the group's insurgent phase, there was little clear separation of clerics within the military organization into non-combatant units or functions corresponding to religious personnel, and even clerical members of its shadow government structure, courts and commissions also sometimes had military functions.[164] Clerics attached to Islamist armed groups in Syria have had similarly influential and expansive roles, ranging from political and military leaders through to religious and legal advisers, and the frequent merging of their religious and military functions can compromise the humanitarian autonomy required of religious personnel.[165] Rival or outside

158 See above note 157.
159 See above note 157; T. P. Holterhus, above note 17, p. 223.
160 See above note 159.
161 Ashley Jackson, Rahmatullah Amiri, Annyssa Bellal, Pascal Bongard and Ezequiel Heffes, "From Words to Deeds: A Study of Armed Non-State Actors, Practice and Interpretation of International Humanitarian and Human Rights Norms: The Taliban-Afghanistan", UK Research and Innovation *et al.*, 2022, p. 25; T. M. Fazal, above note 131.
162 Marco Nilsson, "Hezbollah and the Framing of Resistance", *Third World Quarterly*, Vol. 41, No. 9, 2020; Marta Furlan and Omar Ahmed Abenza, "Armed Groups, Religious Leaders, and Humanitarian Norms: Reflecting on Hayat Tahrir Al-Sham in Syria and Ansar Allah in Yemen", *Armed Groups and International Law*, 12 September 2024, available at: www.armedgroups-internationallaw.org/2024/09/12/armed-groups-religious-leaders-and-humanitarian-norms-reflecting-on-hayat-tahrir-al-sham-in-syria-and-ansar-allah-in-yemen/.
163 Michael Semple, "Rhetoric, Ideology, and Organizational Structure of the Taliban Movement", United States Institute of Peace, Washington, DC, 2014, pp. 18, 21; Borhan Osman, "Taleban in Transition 2: Who Is in Charge Now?", Afghanistan Analysts Network, 22 June 2016, available at: www.afghanistan-analysts.org/en/reports/war-and-peace/taleban-in-transition-2-who-is-in-charge-of-the-taleban/.
164 See above note 163; A. Jackson *et al.*, above note 161, p. 13.
165 S. Heller, above note 102; M. Furlan and O. A. Abenza, above note 162; T. P. Holterhus, above note 17.

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clerics risk retribution if they oppose or question the conduct of some groups, or the religious authority they claim for themselves, and the benefit of neutrality for religious personnel is sometimes little in evidence.[166] Though clerics of some Islamist groups regard IHL principles as broadly compatible with Islamic law and comply with the Muslim obligation to respect treaties, clerics linked to other groups are uncomfortable about any accommodation with secular authority and regard international institutions as illegitimate.[167]

Ethnonationalist armed groups have a more secular orientation, though religion is often an important part of their political or cultural identity, and there is therefore greater separation between religious and political or military authority than in groups where religious law or ideology trumps other considerations.[168] Catholic priests have fulfilled some of the functions of religious personnel for various incarnations of the Irish Republican Army (IRA);[169] as early as 1920, a small number of priests acted as brigade, battalion or "column" chaplains for IRA military units, celebrating mass, officiating at funerals and hearing confessions before and after IRA ambushes.[170] The support of a few priests has tipped into IRA military involvement, however, including the storing and supplying of weapons, and informing on enemy activity.[171] Even some leftist groups are influenced by religion to some degree. The National Liberation Army (Ejército de Liberación Nacional, ELN) in Colombia, for example, has been led by a number of revolutionary Catholic priests, and its Marxism is tinged by aspects of Catholic liberation theology that appear to have contributed to moderating its behaviour.[172]

The relative religious and humanitarian autonomy of clerics, and the ways in which they may or may not function as religious personnel, also depend upon an

166 M. Furlan and O. A. Abenza, above note 162; Abubakar Siddique, "Senior Clerics Caught in the Crossfire of the Taliban's Intensifying War with IS-K", *RadioFreeEurope*, 24 August 2022, available at: www.rferl.org/a/afghanistan-taliban-islamic-state-khorasan-clerics/32003122.html; Dawood Azimi, "The 'Dissenting' Clerics Killed in Afghanistan", *BBC News*, 19 November 2013, available at: www.bbc.com/news/world-asia-22885170; A. Bellal, above note 25; S. Heller, above note 102.

167 The Moro Islamic Liberation Front (MILF) in the southern Philippines is an example of the former. See Datuan Magon and Dominic Earnshaw, "Engaging *Ulama* in the Promotion of International Humanitarian Law: A Case Study from Mindanao", *Journal of Human Rights Practice*, 2024, available at: https://academic.oup.com/jhrp/advance-article/doi/10.1093/jhuman/huad072/7603875; Ahmed Al-Dawoody, "GCIII Commentary: An Islamic Perspective on the Treatment of Prisoners of War", *Humanitarian Law and Policy Blog*, 26 January 2021, available at: https://blogs.icrc.org/law-and-policy/2021/01/26/gciii-commentary-islamic/; M. Furlan and O. A. Abenza, above note 162; A. Bellal, above note 25.

168 See above note 167.

169 Brian Heffernan, *Freedom and the Fifth Commandment: Catholic Priests and Political Violence in Ireland, 1919–21*, Manchester University Press, Manchester, 2014, pp. 123–128, 148; Nick Baker and Andrew West, "Patrick Ryan: The Irish Catholic Priest Who Worked with the IRA", *ABC News*, 17 January 2024, available at: www.abc.net.au/news/2024-01-17/patrick-ryan-ira-priest-the-troubles-bombs/103305598; Shane Paul O'Doherty, "Catholic Priests and the IRA", *The Irish Peace Process*, 2 November 2017, available at: https://irishpeaceprocess.blog/2017/11/02/catholic-priests-and-the-ira/

170 See above note 169.

171 See above note 169.

172 Fiona Terry and Brian McQuinn, *The Roots of Restraint in War*, ICRC, Geneva, 2018, p. 39; Colombia Informa, "Camilo Torres Restrepo: Priest, Revolutionary, and Guerrilla Fighter", *Peoples' Dispatch*, 16 February 2024, available at: https://peoplesdispatch.org/2024/02/16/camilo-torres-restrepo-priest-revolutionary-and-guerrilla-fighter/.

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armed group's structure.[173] While centralized armed groups such as the Liberation Tigers of Tamil Eelam and Hezbollah resemble the total institutions of State militaries in that they are regulated, self-contained worlds relatively insulated from outside influence, the majority of contemporary NSAGs are more decentralized and embedded in local communities.[174] Clerics associated with these latter groups, therefore, often have greater autonomy and are more engaged with – and representative of – the wider community, and there is less need to carve out exclusively religious roles for them in rigid military hierarchies.[175] Local clerics are more likely to act as religious advisers to such groups, and might also function as *ad hoc* religious personnel.[176] The ICRC's *Roots of Restraint in War* study indicates that decentralized groups are more likely to be influenced by community and religious leaders than more centralized and ideologically motivated groups that have less investment in local issues and norms.[177] When NSAG clerics indoctrinate their members with religious ideologies that include messianic or apocalyptic elements, discounting the value of this life in readiness for the next, they can become even further removed from secular and humanitarian concerns, and more inclined to encourage combatants to sacrifice themselves and others for divine *post mortem* rewards.[178] At its height, the so-called Islamic State of Iraq and Syria was a striking recent example of this, combining a high level of centralization with the promotion of a powerful eschatological ideology explicitly promoting savagery, and it is questionable whether many of its clerics qualified as religious personnel at all.[179]

The roles and effectiveness of religious personnel ultimately depend upon the specificities of the particular State or non-State organization, religious tradition and military culture, and the motivations of the individual commanders and religious personnel concerned. All other things being equal, religious personnel will generally possess the greatest autonomy in open, secular societies and organizations which safeguard religious freedom. They will tend to have the greatest power or influence where they represent the dominant religious tradition or ideology of the majority of the population, the government and the fighting force to which they are attached, embodying their shared values, goals and ideas, and/or reflecting their ethnicity or socio-cultural background.[180] A balance between these two scenarios might therefore be optimal for maximizing the influence and effectiveness of religious personnel, whereby they represent dominant traditions in otherwise open, secular societies, combining influence

173 F. Terry and B. McQuinn, above note 172.
174 *Ibid.*, pp. 38–43; M. Bock, above note 28, p. 20; I. Michalowski, above note 114, p. 16.
175 F. Terry and B. McQuinn, above note 172, pp. 46–51: I. Cismas *et al.*, above note 10, pp. 26–29.
176 See above note 175.
177 F. Terry and B. McQuinn, above note 172, pp. 42, 46–60.
178 Mark Juergensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence*, University of California Press, Berkeley, CA, 2017; Vera Mironova, *From Freedom Fighters to Jihadists: Human Resources of Non-State Armed Groups*, Oxford University Press, Oxford, 2019, pp. 209–228.
179 Bronislav Ostransky, *Jihadist Preachers of the End Times: ISIS Apocalyptic Propaganda*, Edinburgh University Press, Edinburgh, 2019; T. P. Holterhus, above note 17.
180 I. Cismas *et al.*, above note 10, pp. 22–24.

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over the fighting force with the autonomy to defend their religious and humanitarian functions and IHL. This assumes that religious personnel and their hierarchies are invested in upholding humanitarian or equivalent religious principles, however, and are vetted to prevent the recruitment of religious extremists who might undermine them.[181]

The functioning of religious personnel within contemporary fighting forces

The integration of religious personnel into military organizations

The roles of present-day religious personnel are most developed in secular State militaries, and converge upon the following core functions:

- ministering to military personnel through the facilitation of religious worship, including services, prayers, sermons and last rites for the dead;
- pastoral care and social support for military personnel and their family members, including confidential counselling, advocacy and support to counter spiritual and psychological distress;
- spiritual support for wounded and sick combatants and civilians, as well as first aid and limited medical care;
- spiritual and humanitarian support for civilians caught up in armed conflict, and outreach to religious and community leaders;
- teaching on religion and military ethics, sometimes including IHL;
- advising commanders on religious and ethical issues, and acting as a moral compass for fighting forces; and
- ministering to PoWs and detainees, also as retained personnel.

While military chaplains are typically trained full-time exponents of the vocation of chaplaincy, some religious personnel perform only a fraction of these functions, often confined to the facilitation of religious worship and limited pastoral care.[182] Though more research needs to be done, the relative under-development in a number of NSAGs of the counselling and pastoral care functions that are so integral to the work of religious personnel in many State armed forces, for example, goes some way to explaining the lack of definition of the role among those groups' clerics.[183] While many clergy associated with armed groups perform some of the functions of religious personnel some of the time, often on a temporary or *ad hoc* basis, formal arrangements for dedicated religious personnel are less common.[184]

181 Jonathan Fox (ed.), *The Correlates of Religion and State*, Routledge, London, 2019, p. 4; US Senate, above note 25.
182 M. Bock, above note 28, p. 267.
183 T. P. Holterhus, above note 17; S. Heller, above note 102; M. Semple, above note 163.
184 See above note 183.

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National armed forces' arrangements vary significantly depending on their respective religious traditions, military cultures and legal status.[185] No two militaries are the same in this regard, and there are even sometimes differences between their respective branches.[186] Though religious personnel minister primarily to adherents of their own tradition, in many secular militaries – the US, Indian and South Korean armed forces, for example – they are also responsible for supporting non-believers or people of other faiths.[187] Depending on their degree of integration into the military, religious personnel might receive some limited military training, generally adapted to their non-combatant role. While IDF rabbis undergo basic military training like IDF soldiers, for example, US Army chaplains take military chaplaincy courses that focus on non-combatant skills instead.[188]

Much depends on whether religious personnel are commissioned or non-commissioned officers, whether they are civilians or volunteers, and whether they are recruited on a permanent or temporary basis. US military chaplains, for example, are commissioned officers who are integrated into military operations so far as their non-combatant status will permit, whereas Muslim and Buddhist chaplains in the British military are civilian employees and therefore do not play such a forward role.[189] In many war zones, especially where military personnel are conscripted at short notice or fight for NSAGs, professional military chaplaincy and informal arrangements with local religious leaders exist side by side, as has been the case in Ukraine.[190]

In secular State militaries it is generally considered essential by the military and chaplaincy hierarchies that chaplains have both access to and separation from the chain of command, and this is enshrined in their doctrines.[191] Chaplains do not therefore possess command authority, except so far as their religious duties are concerned.[192] Many military chaplains are commissioned officers whose rank enables them to talk directly to commanders, while civilian religious personnel are sometimes assigned rank equivalence so that they can operate effectively within the military system.[193] In contrast, British Royal Navy chaplains are simply given the designation "chaplain", enabling them to provide pastoral support without hierarchical constraint, and are otherwise said to assume the

185 S. Lunze, above note 17, p. 71.
186 *Ibid.*, p. 75.
187 Amit Ahuja, "India", in R. E. Hassner (ed.), above note 4, p. 159; US Army, "Army Chaplain", available at: www.goarmy.com/careers-and-jobs/specialty-careers/chaplain.
188 US Army, above note 187; J. Friedman, above note 59, p. 121.
189 Interview with A. Hafiz, above note 97; ICRC, "Interview with the Buddhist Chaplain to Her Majesty's (British) Armed Forces", *Religion and Humanitarian Principles Blog*, 5 April 2021, available at: https://blogs.icrc.org/religion-humanitarianprinciples/interview-with-the-first-buddhist-chaplain-to-the-her-majesty-s-british-armed-forces/.
190 P. G. Kurki, above note 118, p. 46; "Who Are Chaplains of [the] Ukrainian Army?", *Espreso*, 25 October 2023, available at: https://global.espreso.tv/who-are-chaplains-of-ukrainian-army.
191 See for example, Canadian Land Forces, *The Chaplain's Manual*, B-GL-346-001/PT-001, 2005, pp. 7–12; K. Stoeckl and O. Roy, above note 74, p. 36; R. Gribble, above note 115, pp. 86–88; interview with C. Reynolds, above note 12.
192 See above note 191; interview with D. Lawton, above note 120.
193 Interview with E. A. Kamp, above note 12; interview with C. Reynolds, above note 12; ICRC, above note 189.

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rank of whoever they are addressing.[194] In some militaries, or in armed groups with looser and more informal arrangements, religious personnel might rely more on their religious status or charisma than any assigned rank, and this is often more effective in securing the respect of military personnel.[195] Junior non-commissioned chaplains in Nigeria, for example, have sometimes been advised to dress in religious rather than military attire, thereby compensating for a rank deficit that might diminish their status.[196] Indeed, some clerics and military commanders – US General John Pershing (1860–1948), for example – have argued that religious personnel should have no military rank, since this confuses religious and military authority and undermines rather than enhances their credibility.[197]

US military chaplains are highly integrated into the workings of the military.[198] As specialist officers, they are often privy to military planning and operations, and are expected to provide religious and ethical guidance on them.[199] In recent years, this role has been extended to liaison with local religious leaders in theatres such as Iraq and Afghanistan, a dual "religious support" and "religious advisement" role that was formalized in the FM 1-05 manual which guides the Army's Chaplain Corps.[200] This degree of involvement with military operations, and proximity to troops and commanders, arguably makes military chaplains more relevant and effective, since they are better apprised of what is going on around them and can respond accordingly.[201] On the other hand, some are concerned that this might compromise their position as religious leaders and their humanitarian function under IHL, and many of the tasks on which chaplains are assessed by commanders, and on the basis of which they are promoted, are unconnected with their ministry.[202]

Integration of chaplains into the US military is reinforced by the fact that chaplains of all religions and denominations are absorbed within a single chaplaincy corps in each service.[203] Since no major separate faith-specific

194 Church of England, "Presentation on Military Chaplaincy", GS 1776, available at: www.churchofengland.org/sites/default/files/2018-10/gs1776-military-chaplaincy.pdf; Royal Navy, "Job Role: Chaplain", available at: https://www.royalnavy.mod.uk/careers/roles/chaplain.

195 R. E. Hassner, above note 15, pp. 101–102.

196 Olufikayo Kunle Oyelade and Ayokunle Olumuyiwa Omobowale, "The Structure of the Chaplaincy of the Nigerian Army", *Journal of Sociology and Christianity*, Vol. 12, No. 2, 2022, p. 39.

197 Adam Tietje, "A Seductive Confusion of Authority: Military Chaplains and the Wearing of Rank", *Journal of Church and State*, Vol. 62, No. 3, 2020, pp. 507–509; R. Gribble, above note 115, p. 87.

198 Interview with C. Reynolds, above note 12.

199 *Ibid*.; K. Benson, "The Chaplaincy Exception in International Humanitarian Law: American-Born Cleric Anwar Awlaki and the Global War on Terror", *Buffalo Human Rights Law Review*, Vol. 20, No. 1, 2013, p. 28.

200 US Department of the Army, *Religious Support*, FM 1-05, January 2019, available at: https://tinyurl.com/57yknbdu; interview with C. Reynolds, above note 12; S. Gutkowski and G. Wilkes, above note 8, pp. 113–115.

201 Interview with C. Reynolds, above note 12.

202 Josphat Kimanthi, "Interview with Steve Foster", *Medium*, 12 October 2023, available at: https://medium.com/@kimnjeru1/an-interview-with-steve-foster-a-military-chaplains-calling-challenges-and-opportunities-931d82dcdc01; S. Gutkowski and G. Wilkes, above note 8.

203 J. Kimanthi, above note 202; I. Michalowski, above note 114, pp. 11–12.

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arrangements exist, religious sending organizations simply register as "endorsing agencies" to bid for vacant chaplaincy posts, greatly facilitating the recruitment and management of chaplains from diverse groups.[204] While chaplains minister primarily to adherents of their own faith, they are responsible for supporting all soldiers as required and promoting a pluralistic environment.[205] However, this lack of faith or denomination-specific chaplaincy corps also means that religious sending organizations might have less input into the ministry of their clergy.[206] While chaplains from the same denomination can mobilize informally among themselves, some chaplains can feel isolated from their religious peers and sending organizations, and might lack the requisite level of support when dealing with difficult religious issues.[207]

In contrast, a number of European military chaplaincy divisions are more strongly denominational, such that each religion is served by specific chaplaincy arrangements.[208] Religious organizations therefore have more scope to negotiate the mandate of their chaplains with the armed forces, and possibly to retain a higher degree of control over them, giving chaplains greater autonomy within the military system.[209] While Dutch military chaplains enjoy similar physical access and privileges of rank as their US counterparts, military commanders are not allowed to define tasks for them.[210] Such is their independence that they are subject to civilian rather than military law and are not required to follow military orders.[211] Dutch chaplains therefore have a more informal pastoral presence and are perhaps better insulated from the military hierarchy.[212] One downside of some of these separate denominational arrangements might be that they are more unwieldy to manage within multi-religious armed forces, taking more time to negotiate the integration of new faiths.[213]

The front-line role of religious personnel

Religious personnel can achieve little without gaining the trust and respect of the combatants they work with.[214] This is generally achieved in State militaries by embedding them in units with which they live and train, and which they accompany to war.[215] Like commanders, religious personnel often lead by

204 See above note 203; interview with C. Reynolds, above note 12.
205 See above note 204; A. Kampinsky, above note 97, p. 2.
206 J. Kimanthi, above note 202; I. Michalowski, above note 114, pp. 11–12.
207 See above note 206.
208 I. Michalowski, above note 114, pp. 2–3, 11–12.
209 *Ibid*.
210 Interview with E. A. Kamp, above note 12; A. J. H. van Vilsteren, "Military Chaplaincy in the Netherlands", speech on the occasion of the AMI Conference, Vught, 2016, available at: www.apostolatmilitaire.com/wp-content/uploads/2018/08/25Presentation-of-Tom-van-Vilsteren-AMI-2016.pdf.
211 See above note 210.
212 See above note 210.
213 I. Michalowski, above note 114, pp. 2–3, 11–12.
214 Interview with E. A. Kamp, above note 12; D. L. Bergen, above note 24, p. 236; R. E. Hassner, above note 15, pp. 91–92; C. von Planta, above note 24.
215 R. E. Hassner, above note 15, pp. 91–92; A. Kampinsky, above note 97.

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example, demonstrating that they are willing and able to take the same risks as front-line troops and to be present where they are needed most.[216] In the Christian tradition, this "ministry of presence" is inspired by the idea that God, in the person of Jesus Christ, is present in the midst of suffering humanity, and it was exhibited, for example, by British Catholic chaplains during World War I.[217] The Catholic Military Ordinariate insisted that its chaplains should be present on the front lines to give the last rites to dying soldiers, contravening military orders that they should not advance with the troops and should only take up positions with medical units.[218] Though the Catholic chaplains therefore suffered proportionately higher casualties than their Anglican peers, they gained greater respect from the troops they supported, and the expectation that chaplains should be prepared to risk or sacrifice their lives in forward roles, despite generally being unarmed, has persisted.[219]

The Canadian Land Forces *Chaplain's Manual*, for example, states explicitly that "[t]he chaplain shall be located as far forward as possible in order to provide: spiritual encouragement and support to combatants; spiritual care to the wounded and dying; and spiritual advice to the commanding officer".[220] In general, troops are highly appreciative of religious personnel's presence, which can sometimes have a totemic quality, and often request them to join forward patrols.[221] A few front-line soldiers perceive religious personnel as a burden, however, since these troops are thereby saddled with the protection of unarmed non-combatants who are unable to defend themselves.[222] To alleviate this problem, some armed forces – the US and British militaries, for example – employ chaplains' assistants or religious affairs specialists as combat bodyguards to protect their chaplains.[223]

According to IHL, religious personnel, like medical personnel, are permitted to carry light individual weapons to defend themselves, and the wounded and sick, from unlawful attack.[224] While the ICRC Commentaries note that pistols are sufficient for this purpose, permitted weapons might include any weapon that can be transported by an individual, including rifles and submachine guns.[225] There were objections to the decision to allow medical and religious

216 A. Todd, above note 19, pp. 9–10; R. E. Hassner, above note 15, pp. 11, 87.
217 See above note 216.
218 R. E. Hassner, above note 15, pp. 11–12; G. Davie, above note 9, pp. 46–47.
219 See above note 218.
220 Canadian Land Forces, above note 191, p. 53.
221 G. Davie, above note 9, pp. 48–49; interview with J. Zust, above note 33; interview with E. A. Kamp, above note 12; A. Todd and C. Butler, above note 113, p. 157.
222 A. Todd and C. Butler, above note 113, p. 157; J. Friedman, above note 59, p. 122.
223 These combat bodyguards are instructed not to look for trouble or initiate contact with the enemy; their primary function is to protect religious personnel. Jonathan G. Odom, "Beyond Arm Bands and Arms Banned: Chaplains, Armed Conflict, and the Law", *Naval Law Review*, Vol. 49, No. 1, 2002, p. 23; interview with J. Zust, above note 33.
224 ICRC Commentary on GC I, above note 5, Art. 22; ICRC Commentary on the APs, above note 35, AP I Art. 13.
225 ICRC Commentary on the APs, above note 35, AP I Art. 13, para. 563. These debates are not new. According to early Buddhist texts, monastics were permitted to carry sticks for self-defence, for example, and provisions for the self-defence of Christian priests were incorporated into canon law in

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personnel to bear arms during the negotiation of the 1949 Geneva Conventions, and the issue was hotly debated in Committee II of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH), which finalized the text of the Additional Protocols.[226] It is still not entirely clear, furthermore, how provisions for the arming of medical personnel can be applied *mutatis mutandis* to religious personnel. The Canadian Land Forces *Chaplain's Manual*, for example, expresses doubt as to whether chaplains "would be accorded the same rights as medical personnel with regard to defending the sick and wounded, as chaplains are not in charge of the sick and wounded".[227] Similarly, while the latest ICRC Commentary on GC I suggests that religious personnel are permitted, by extension, to defend those in their spiritual charge, Sassòli states that they cannot, since this includes active combatants who can lawfully be attacked.[228] Based on the above, it would appear reasonable to conclude that religious personnel are permitted to defend wounded and sick combatants who are under their spiritual charge – and if they are in a position to defend those combatants, it can probably be assumed that they are. It should also be borne in mind that the category of wounded and sick is not limited to those so physically incapacitated as to be unable to fight, and includes those suffering from mental disorders, some of which might be considered to have a spiritual component.[229]

Some militaries, including the armed forces of Switzerland, Austria and some Scandinavian States, allow their religious personnel to carry arms according to the above-mentioned IHL provisions.[230] However, many other armed forces insist that religious personnel should remain unarmed so as not to compromise their non-combatant status, and because this is incorporated into their regulations, military personnel often assume that it is an IHL rule.[231] The US *Fleet Marine Force Manual* notes, for example, that "[t]he simple act of bearing a weapon could identify the chaplain as a combatant".[232] Interestingly, these same armed forces *do* generally allow medical personnel to carry light individual weapons, despite the fact that they have equivalent status to religious personnel

the medieval period. See Daniel Ratheiser and Sunil Kariyakarawana, "The Paradox of the Buddhist Soldier", in A. Bartles-Smith *et al.* (eds), above note 54, pp. 114–115; Lawrence G. Duggan, "The Evolution of Latin Canon Law on the Clergy and Armsbearing to the Thirteenth Century", in Radosław Kotecki, Jacek Maciejewski and John S. Ott (eds), *Between Sword and Prayer: Warfare and Medieval Clergy in Cultural Perspective*, Brill, Leiden, 2018, pp. 510–512.

226 ICRC Commentary on the APs, above note 35, AP I Art. 13, paras 559–560.

227 Canadian Land Forces, above note 191, p. 117; ICRC Commentary on GC I, above note 5, Art. 22, para 1863.

228 ICRC Commentary on GC I, above note 5, Art. 22, para.1863; Marco Sassòli, "When Do Medical and Religious Personnel Lose What Protection?", *Vulnerabilities in Armed Conflicts: Selected Issues: Proceedings of the Bruges Colloquium*, 2014, p. 55.

229 ICRC Commentary on GC I, above note 5, Art. 12, paras 1343–1344.

230 Sven-Åke Haglund, "Army Chaplain for Christians, Muslims and Non-believers", Swedish Armed Forces, 10 December 2007, available at: www.forsvarsmakten.se/en/news/2007/12/army-chaplain-for-christians-muslims-and-non-believers/; J. Friedman, above note 59, p. 122.

231 J. Friedman, above note 59; interview with C. Reynolds, above note 12.

232 J. G. Odom, above note 223, p. 18.

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under IHL.[233] Apart from the very real risk of misidentification as combatants, this suggests that religious personnel are held to a higher moral standard than medical personnel, and the real reason that they are prevented from bearing arms is that this would taint the aura of sanctity on which their religious credibility depends, at least in some traditions.[234] Religious considerations would therefore appear to override IHL in this regard.

Like medical personnel, religious personnel are entitled to wear the distinctive emblems on armlets, headgear and clothing for their protection, and to carry a special identification card.[235] While religious personnel might therefore be expected to wear a prominent red cross or red crescent emblem to distinguish them from combatants at a distance (and some still do), this often risks breaking the camouflage of the fighters they accompany.[236] In practice, therefore, many religious personnel wear only small, camouflaged religious insignia (not the distinctive emblems) on their uniforms, and are otherwise indistinguishable from combatants, apart from the fact that they are generally unarmed.[237] Some combatants are thus unaware that religious personnel have the right to wear the distinctive emblems, since they are generally less visible in and around medical and Red Cross or Red Crescent facilities where their use is predominant.[238] Moreover, significant numbers of military and religious personnel lack confidence that the emblems will be respected, perceiving that IHL is little known or ignored by the enemies they confront.[239] Some see wearing a red cross as analogous to painting a target on themselves, especially where it might be perceived as a Christian or Crusader symbol.[240] The degree to which the distinctive emblems are used to protect religious personnel in practice is therefore questionable.

Indeed, the drafters of the First Geneva Convention of 1864 and other early IHL instruments appear to have envisioned military chaplains as being attached primarily to medical units set apart from the fighting, in order to provide comfort and support to wounded and dying men.[241] In *A Memory of Solferino*,

233 J. Friedman, above note 59, p. 116.
234 J. G. Odom, above note 223, p. 19.
235 *Ibid.*, pp. 14–15; GC I, Art. 40; AP I, Annex I: Regulations Concerning Identification, as Amended on 30 November 1993, Art. 5, available at: https://ihl-databases.icrc.org/en/ihl-treaties/api-amended-annex-i-1993/article-5?activeTab=1949GCs-APs-and-commentaries.
236 J. G. Odom, above note 223, p. 11; interview with C. Reynolds, above note 12; interview with E. A. Kamp, above note 12.
237 In the US Army, for example, these insignia include a Christian Latin cross, Jewish double tablet and Star of David, Muslim crescent, Buddhist dharmachakra and Hindu Sanskrit "Om" symbol. US Army, *US Army Chaplaincy Corps Brand Guidelines*, 2024, p. 21, available at: https://api.army.mil/e2/c/downloads/2024/05/09/62b0afbb/army-chaplain-corps-brand-guidelines-february-2024.pdf; interview with C. Reynolds, above note 12.
238 Charles Vesely, "Lessons in Conventions: Protecting Symbols and International Humanitarian Law", *Australian Army Chaplaincy Journal*, Royal Australian Army Chaplaincy Department, 2023, pp. 24–25; James M. Childs Jr, "Military Chaplains and the Law", in Ronald W. Duty and Marie A. Failinger (eds), *On Secular Governance: Lutheran Perspectives on Contemporary Legal Issues*, Eerdmans, Grand Rapids, MI, 2016.
239 J. Friedman, above note 59, pp. 119, 121; interview with C. Reynolds, above note 12.
240 See above note 239.
241 1864 Geneva Convention, above note 73, Art. 2.

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for example, Henry Dunant recorded that the Abbé Laine, Napoleon's chaplain, "went from one field hospital to the next bringing consolation and empathy to the dying".[242] Wearing a prominent red cross emblem in such situations would have been relatively unproblematic, since it distinguished chaplains and medical personnel from active combatants who were usually some distance away, except when conveying the wounded from the front lines. Nor were armed forces at that time generally camouflaged, and a red cross emblem worn by a chaplain was unlikely to betray the position of troops who were often dressed in colourful uniforms.[243] Traditionally, religious personnel have also been identified by religious markers. Christian military chaplains during World War I, for example, could sometimes be picked out by the prominent white clerical collar they wore.[244] Though civilian religious personnel do not play such a forward role as many military chaplains, the fact that they do not generally wear military uniform does distinguish them more clearly from military personnel, though this is not necessarily the case for NSAGs in civilian attire.[245]

The relative protective value of IHL emblems, religious markers and the unarmed status of religious personnel depends on the particular circumstances of combat, and the degree to which parties to conflict are knowledgeable and respectful of IHL or religious norms. Many militaries and religious personnel regard being unarmed as generally the best protection for religious personnel, despite the fact that IHL permits them to carry certain weapons for self-defence etc.[246] Indeed, carrying arms confuses the enemy, diminishes the plausibility of religious personnel and signals that they might pose a lethal threat.[247] Assuming that religious personnel can be identified, Hassner suggests that enduring respect for the normative foundations of their religious calling is often their best protection, and that combatants generally intuit that they serve a higher cause.[248] When religious personnel are targeted, moreover, this can tend to provoke a disproportionate response from morally outraged combatants, acting as a strategic deterrent to further attacks.[249]

There have nevertheless been instances where religious personnel have been specifically targeted, while conducting religious services during World I, for example, because of the concentration of combatants in one place.[250] British chaplains carried weapons in the Pacific War because of the impression that the Japanese would not respect chaplain immunity, reinforced by the treatment to

242 Henry Dunant, *A Memory of Solferino*, ICRC, Geneva, 1986, p. 31.
243 Army Cadets, "Army Cadets Experts Explain the History of Camouflage", 14 June 2022, available at: https://armycadets.com/features/army-cadets-experts-explain-the-history-of-camouflage/.
244 D. Lawton, above note 120; "Chaplains and D-Day", The D-Day Story Portsmouth, 2024, available at: https://theddaystory.com/discover/about-us/working-with-others/chaplains-and-d-day/.
245 Interview with A. Hafiz, above note 97.
246 J. Friedman, above note 59, p. 116; interview with C. Reynolds, above note 12; interview with E. A. Kamp, above note 12.
247 R. E. Hassner, above note 15, pp. 101–103; ICRC Commentary on the APs, above note 35, AP I Art. 13, para. 560.
248 R. E. Hassner, above note 15, pp. 101–103.
249 *Ibid.*
250 *Ibid.*

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which they were subjected in Japanese PoW camps, and US chaplains harboured similar fears about being targeted by the Viet Cong in Vietnam, and groups like Al-Qaeda in Iraq and Afghanistan.[251] While religious personnel are not therefore universally respected, the dominant impression is nonetheless akin to the enduring reverence in which clergy are often held.[252]

"Acts harmful to the enemy"

The point at which the work of religious personnel might shift from humanitarian into hostile activity is hard to gauge. While IHL states that religious personnel lose their special protections if they commit, outside of their humanitarian function, acts harmful to the enemy, there is no definition of this function, or of these harmful acts, in treaty law.[253] Short of direct participation in hostilities (DPH), there is therefore considerable latitude for militaries, armed groups and religious organizations to decide what this humanitarian function should encompass, and the boundaries between the humanitarian and military functions of religious personnel are sometimes blurred.[254] Given these lacunae, the ICRC states that acts harmful to the enemy need to be "measured in a nuanced way" and do not automatically signal that religious personnel become lawful targets of attack.[255] The enemy side might instead cease to facilitate their work, or might interfere with it, by detaining them, for example, should the opportunity arise.[256] When it is unclear that religious personnel have carried out acts harmful to the enemy, they must also be given the benefit of the doubt.[257]

Potentially force-multiplying religious activities such as preaching sermons to raise morale or counselling combatants to strengthen their resilience are not generally classified as harmful acts because they are seen as integral to religious personnel's humanitarian function.[258] This will also depend upon what they communicate, however, and the assessment will presumably change if they are involved in military indoctrination, war propaganda or recruitment.[259] Things get more complicated the more religious personnel are variously involved in military operations. During negotiations for the Geneva Conventions, the ICRC proposed a very broad definition of harmful acts as "acts the purpose or the

251 *Ibid.*; J. Friedman, above note 59, p. 121.
252 See above note 251; interview with C. Reynolds, above note 12.
253 ICRC Commentary on GC I, above note 5, Art. 24, para. 1998.
254 T. P. Holterhus, above note 17.
255 The ICRC Commentary on GC I notes, nevertheless, that it is "hard to conceive of circumstances" where medical or religious personnel who carry out acts harmful to the enemy would not become lawful targets in practice (as is the case for military medical establishments and units), though it probably overreaches in this regard. ICRC Commentary on GC I, above note 5, Art. 24, para. 2008, and Art. 21, para. 1847.
256 This conclusion is extrapolated from Article 21 of GC I concerning the loss of protection of fixed establishments and mobile units of the medical service. *Ibid.*, Art. 21, para. 1847.
257 *Ibid.*, Art. 24, para. 1998.
258 I. Cismas, above note 17, p. 530; Carmen Schuhmann, Theo Pleizier, Martin Walton and Jacques Körver, "How Military Chaplains Strengthen the Moral Resilience of Soldiers and Veterans: Results from a Case Studies Project in the Netherlands", *Pastoral Psychology*, Vol. 72, No. 5, 2023.
259 I. Cismas, above note 17, p. 530.

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effect of which is to harm the adverse Party, by facilitating or impeding military operations".[260] Although this ICRC proposal was not incorporated into the text of the Conventions, it has nevertheless acted as guide for a number of armed forces.[261] Other than taking up arms against the enemy, the recent ICRC Commentary on GC I suggests, for example, that such acts include assistance in the planning of military operations, and the transmission of intelligence of military value.[262] Confusingly, such acts might be construed as DPH if carried out by civilians, as discussed below.

One pertinent question, therefore, is whether religious personnel's religious or humanitarian input into military operations counts as military planning, or participation in military operations, such that their protected status might be jeopardized. Military chaplains in the British and US militaries, for example, sit in on various military planning meetings and are invited to contribute their religious and ethical expertise.[263] Does this fall inside or outside their humanitarian function? Similarly, the US Army's FM 1-05 manual on religious support does much to enhance chaplains' advisory role to commanders and outreach to religious leaders and non-governmental organizations in combat zones, especially in connection with humanitarian assistance and civilian–military cooperation (the British and Canadian militaries, for example, have undertaken similar initiatives).[264] This enables chaplains to establish one-to-one relations with locals in a way that regular military personnel cannot, contributing to "hearts and minds" operations and Track II diplomacy in aid of the war effort.[265] Though chaplains are restricted from performing intelligence collection, they might therefore have considerable leeway with regard to handling information that might come their way, potentially involving them in acts harmful to the enemy.[266]

The consequences, if any, for religious personnel who commit acts harmful to the enemy are equally unclear. According to the recent ICRC Commentary on GC I, religious personnel must first be forewarned to cease the harmful acts and be given a reasonable period of time to comply, and only lose their special protections if they continue to commit those harmful acts thereafter.[267] Kolb and Nakashima maintain,

260 ICRC Commentary on GC I, above note 5, Art. 24, paras 1999, 2004; M. Sassòli, above note 228, pp. 53–54.
261 See above note 260.
262 ICRC Commentary on GC I, above note 5, Art. 24, para. 2000.
263 Interview with C. Reynolds, above note 12; S. Gutkowski and G. Wilkes, above note 8.
264 US Department of the Army, above note 200; Canadian Land Forces, above note 191, pp. 59–60; S. Gutkowski and G. Wilkes, above note 8, pp. 112–113.
265 K. Benson, above note 199, p. 30.
266 *Ibid*.; David R. Leonard, "Peacemakers: Chaplains as Vital Links in the Peace Chain", *Joint Force Quarterly* 96, 1st Quarter 2020, p. 66, available at: https://ndupress.ndu.edu/Media/News/News-Article-View/Article/2076112/peacemakers-chaplains-as-vital-links-in-the-peace-chain/.
267 ICRC Commentary on GC I, above note 5, Art. 24, paras 2008, 1997, and Art. 21, paras 1847–1859. This warning requirement and the setting of a reasonable time limit for religious personnel to desist from acts harmful to the enemy is extrapolated from Article 21 of GC I concerning the loss of protection of fixed establishments and mobile units of the medical service, and is reiterated in Article 13 of AP I, and Article 11 of AP II. Since this warning requirement is not obligatory in non-international armed conflicts for States Parties which have not ratified AP II, it is uncertain whether it constitutes part of customary IHL in non-international armed conflicts. Robert Kolb and Fumiko Nakashima, "The

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however, that if civilian (as opposed to military) religious personnel commit acts harmful to the enemy – thereby losing their special protections – they revert to civilian rather than military status and cannot be targeted unless they meet the threshold of DPH.[268] It is also important to note that the loss of protection entailed by committing acts harmful to the enemy, as for DPH, might be temporary, lasting only as long as the immediate execution of the act and any preparatory measures for it, and protection is restored once such acts cease.[269]

The ICRC Commentaries state that acts harmful to the enemy and DPH should not be conflated, since the latter applies to civilians, is narrower in scope and engenders different consequences.[270] However, Sassòli suggests that the only meaningful distinction between the two is that the notion of acts harmful to the enemy was elaborated for medical units and establishments (which as objects cannot "participate" in hostilities), whereas DPH refers to persons and is therefore the appropriate criterion for establishing the loss of protection for both military and civilian religious personnel.[271] Cismas asserts that DPH is also a clearer and more cautious criterion than acts harmful to the enemy, and is somewhat easier to apply in real-life scenarios.[272] Following this logic, some harmful acts, such as assistance in the operation of a weapon system or certain planning activities of military operations, would meet the threshold of DPH, according to which religious personnel, like civilians, might be directly targeted. Other harmful acts with a less direct causal link to military actions, such as military indoctrination, war propaganda or recruitment, would not reach this threshold and might be addressed by non-lethal means.[273]

While DPH is a clearer and more practicable criterion for the targeting of religious personnel than the more expansive and indeterminate concept of acts harmful to the enemy, and might reduce the possibility of religious personnel being targeted for under-defined harmful actions which fall short of this threshold, there are potential drawbacks to applying it.[274] Firstly, it might risk exposing religious personnel to automatic attack for actions amounting to DPH which would otherwise have been construed as acts harmful to the enemy, requiring a warning to be given in advance.[275] Secondly, it might undermine the requirement of humanitarian exclusivity that inhibits religious personnel from mobilizing religion for military purposes short of DPH, whether as ideologues,

Notion of 'Acts Harmful to the Enemy' under International Humanitarian Law", *International Review of the Red Cross*, Vol. 101, No. 912, 2019, pp. 1183–1184; AP I, Arts 13, 21; AP II, Art. 11; I. Cismas, above note 17, p. 530; M. Sassòli, above note 228, pp. 53–54.

268 R. Kolb and F. Nakashima, above note 267, pp. 1178, 1185–1186, 1192–1193, 1194–1196.

269 K. Benson, above note 199, p. 16; ICRC Commentary on GC I, above note 5, Art. 24, para. 2009.

270 ICRC Commentary on GC I, above note 5, Art. 24, para. 2003.

271 The ICRC Commentary on GC I states that though Article 21 of GC I and similar provisions "have been written from the perspective of the loss of protection of medical establishments and units, the same criteria should be applied *mutatis mutandis* to persons providing medical or religious services". *Ibid.*, Art. 24, para. 1997; M. Sassòli, above note 228, pp. 53–55; I. Cismas, above note 17, pp. 532–534.

272 I. Cismas, above note 17, pp. 532–534.

273 *Ibid.*, p. 533.

274 *Ibid.*, p. 532.

275 ICRC Commentary on GC I, above note 5, Art. 24, para. 2008.

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recruiters or indoctrinators of fighting forces.[276] However, the special protections for religious personnel linked to acts harmful to the enemy and the general protections against attack linked to DPH need not be mutually exclusive. Should rules of engagement equate religious personnel with civilians for the purpose of targeting, for example, they might nevertheless insist on a warning prong when religious personnel carry out acts harmful to the enemy which reach the threshold of DPH.

This is clearly an area of law which is under-developed, and the balance between holding religious personnel to high humanitarian standards and laying down practicable rules for their protection has not yet been achieved.[277] For the time being it remains difficult to disentangle religious personnel from military support functions which may or may not be construed as acts harmful to the enemy, and – short of DPH – it remains unclear what might constitute such acts and what the consequences should be, if any, for carrying them out.[278] This lack of clarity risks making the notion of acts harmful to the enemy somewhat redundant, or providing specious legal cover for the targeting of loosely identified "religious personnel" for actions below the threshold of direct participation which are arbitrarily considered harmful.[279] While the warning requirement mitigates this danger by alerting religious personnel that their actions have been determined harmful by the enemy, the solution to this problem will ultimately require clearer definitions of religious personnel's humanitarian functions, acts harmful to the enemy (also in relation to DPH), and the exact consequences engendered by the latter. Questions related to the extension of special protections for medical units and transports to individual medical and religious personnel might also then be re-addressed.

As alluded to by Cismas, actual State practice appears to reflect this legal situation, allowing rather loose interpretations of IHL rules and their commentaries that are comfortable with religious personnel's overlapping humanitarian and military support functions.[280] While some humanitarian actors might balk at this fusing of military and humanitarian activities, their aims are not mutually exclusive, and religious personnel are an embodiment of this double role. On the whole, religious personnel's humanitarian input into military operations is surely something to be encouraged, not least to question military actions which are legally justifiable but morally wrong. Nevertheless, most armed forces are acutely aware of the perils of involving religious personnel too deeply at the sharp end of military operations, particularly where there is a religious dimension to the conflicts in which they are involved. Following the 9/11 attacks, for example, the US Navy sent a letter to all of its chaplains stating that they should "do more than simply refrain from carrying or using weapons; [the situation] requires a non-combatant state-of-mind".[281]

276 *Ibid*., Art. 24, para. 2002; I. Cismas, above note 17, p. 533.
277 I. Cismas, above note 17, pp. 532–533.
278 ICRC Commentary on GC I, above note 5, Art. 24, para. 2008.
279 I. Cismas, above note 17, pp. 532–533.
280 *Ibid*.
281 J. G. Odom, above note 223, p. 19.

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Similar questions arise with regard to clerical involvement with NSAGs; however, there is also the additional difficulty of determining the attachment of religious personnel since, unlike State militaries, NSAGs are often insufficiently or unclearly organized, composed as many of them are of amorphous or segmented networks and overlapping military, political, humanitarian and other wings.[282] According to the ICRC's *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, for targeting purposes the term "organized armed group" should refer only to the armed wing of a non-State party.[283] Clergy associated with the political, humanitarian and other wings of armed groups should therefore be classified as civilians, unless they are attached exclusively as religious personnel to their armed wings, civil defence organizations or medical units or transports.[284] As is the case with State militaries, individual clerics cannot, furthermore, attach *themselves* to an armed group, since attachment can only be carried out by a competent authority within that group.[285] It is therefore less common to find examples of military and civilian religious personnel who are formally attached to the relevant units of organized armed groups, as opposed to civilian clergy who are otherwise associated with them. The Department of Islamic Call and Guidance of the Bangsamoro Islamic Armed Forces (BIAF), the armed wing of the Moro Islamic Liberation Front (MILF), is an exception in this regard in that it formally embeds a *murshid* (spiritual guide or teacher) in every BIAF unit to support and advise combatants on spiritual and ethical issues, and to train them in Islamic law and IHL.[286] While most of these *murshideen* are MILF combat veterans, theirs is primarily a non-combatant role, and few armed group clerics clearly fulfil so many religious personnel criteria.[287]

Since it is complicated to ascertain exactly how, and the degree to which, clerics are attached to NSAGs or involved in acts harmful to the enemy, the argument that the criterion of DPH should be applied to establish NSAG religious personnel's loss of protection is especially compelling, though with the same caveats as for State militaries.[288] Indeed, this same criterion applies to civilian clergy who are more commonly associated with NSAGs, though not formally attached.[289] Whereas State militaries allow their religious personnel significant latitude with regard to involvement in, or proximity to, military activities, however, there is reason to question whether they grant similar license to religious leaders attached to or associated with NSAGs and refrain from

282 S. Lunze, above note 17, p. 79; I. Cismas, above note 17, p. 533.
283 N. Melzer, above note 40, pp. 32–33.
284 Such medical units and transports might include those of an armed group's armed, medical or humanitarian wings, as well as those of civilian relief societies recognized and authorized by the group. I. Cismas, above note 17, p. 534; ICRC Commentary on the APs, above note 35, AP I Art. 9, Art. 12(2), paras 522–526, and Art. 15(5), para. 638, and AP II Art. 9(1), paras 4670–4671.
285 ICRC Commentary on GC I, above note 5, Art. 24, para. 1974.
286 D. Magon and D. Earnshaw, above note 167, pp. 3, 8–9.
287 Feedback from Datuan Magon and Dominic Earnshaw.
288 I. Cismas, above note 17, pp. 531–534; S. Lunze, above note 17, p. 79.
289 I. Cismas, above note 17, pp. 530–531, 534.

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targeting them when their military involvement is unclear.[290] This was a concern, for example, with regard to the killing of Muslim clerics by the Bush and Obama administrations, notably the 2011 assassination of Anwar Al-Awlaki, a US citizen, Muslim cleric and Al-Qaeda propagandist.[291] Benson suggests that a double standard might apply here, with ramifications for the protection of all religious personnel, as well as for civilian religious leaders who are close to State militaries and NSAGs.[292]

Nevertheless, the fact that there is sometimes no clear separation between the religious and military objectives of more religionist or religiously motivated fighting forces, as discussed above, and between their clerics and fighters, can tend to blur the boundaries between clerics involved in military operations and religious personnel.[293] IHL criteria for religious personnel do not always map cleanly onto conceptions of the role of clerics in other traditions.[294] While clerics in many religious NSAGs serve some of the functions of religious personnel, for example, fewer of them fulfil the full package of IHL requirements, and rules stipulating their non-combatant or exclusively humanitarian status are not apparent in the doctrines or codes of conduct that are available.[295] Though this might be attributed to more informal arrangements in NSAGs, or lack of knowledge of the relevant IHL provisions, it also suggests that criteria for attachment and humanitarian exclusivity might be inappropriate or impracticable for some armed groups to apply. While many religious armed group members are aware of IHL prohibitions on targeting non-combatant clerics, often because of similar prohibitions in their own traditions, they might therefore be less heedful of the need to differentiate their own clerics or religious personnel from religious fighters, potentially putting those personnel at greater risk of being targeted for real or perceived military involvement.[296]

Muslim clerics in Syria, for example, have played prominent roles as *shar'is*, Islamic jurists and advisers attached to the military units of Islamist armed groups such as Ahrar Al-Sham, Jabhat Al-Nusra, the Islamic Front and the so-called Islamic State group, and have also sat on their Sharia councils or committees.[297] These

290 K. Benson, above note 199; R. Kolb and F. Nakashima, above note 267, p. 1194.
291 K. Benson, above note 199, p. 4.
292 *Ibid.*
293 R. Nielsen, above note 25; T. P. Holterhus, above note 17.
294 Reut Yael Paz, "Religion, Secularism, and International Law", in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law*, Oxford University Press, Oxford, 2016; Cédric Cotter, "The Religious Convictions of Henri Dunant, Founder of the ICRC", *Religion and Humanitarian Principles Blog*, 11 August 2021, available at: https://blogs.icrc.org/religion-humanitarianprinciples/the-religious-convictions-of-henri-dunant-founder-of-the-icrc/.
295 Geneva Call, above note 27.
296 K. Benson, above note 199.
297 *Shar'is* are in some respects non-State equivalents to Muslim States' muftis or religious institutions. Their involvement and influence over armed groups in Syria has reportedly declined because of the greater centralization and professionalization of newer formations such as Hayat Tahrir Al-Sham. S. Heller, above note 102; Thomas Pierret and Laila Alrefaai, "Religious Governance in Syria Amid Territorial Fragmentation", in Frederic Wehrey (ed.), *Islamic Institutions in Arab States: Mapping the Dynamics of Control, Co-option, and Contention*, Carnegie Endowment for International Peace, Washington, DC, 2021, p. 11; Hassan Hassan, "The Secret World of Isis Training Camps – Ruled by Sacred Texts and

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shar'is have been religious references for military units, whether acting as religious advisers, judges or even military commanders, and some of them have therefore been involved in the planning, approval and execution of military operations.[298] A number of *shar'is* have also become prominent spokesmen and ideologues for their groups, and have been involved in religious and military training and indoctrination.[299] Their primary function appears to be closer to that of operational legal authorities or advisers than religious personnel, including the issuing of fatwas related to military action.[300] Aside from the combat-related activities in which *shar'is* have been involved, it is therefore important to recall that legal advisers do not benefit from the same special protections as religious personnel under IHL, nor are they expected to fulfil a non-combatant and exclusively humanitarian function. While the role of some *shar'is* has been limited to preaching – a more limited spiritual support function akin to that of religious personnel – the degree to which many *shar'is* might qualify as religious personnel is therefore open to question.[301]

More research needs to be done on clerics in and around religious and non-State fighting forces who might function as religious personnel, not least to review whether IHL rules need to be clarified or adapted in this respect. While religious actors often exert important influence over NSAGs in particular, and can have both positive and negative effects on their military conduct, they often do so not as religious personnel but as religious actors whose role is less circumscribed. Whereas model military religious personnel under IHL are detached, almost by definition, from political and military command hierarchies, influencing and persuading combatants through a process of horizontal socialization, many clerics in religious State and non-State fighting forces exert religious, political and/or military authority over combatants, and socialize them vertically through training and indoctrination.[302]

Force multiplication and restraint

The ministry of religious personnel has a moral dimension which taps deeply into the identities and motivations of combatants, and can have both force-multiplying and restraining effects on their behaviour.[303] An appreciation of the importance of moral psychology is a key factor in military success. According to Field Marshal Bernard Law Montgomery, "[m]oral purpose is most powerful single factor in war" and "[t]he moral brief must come from the Church", and the British military still describes "the moral" as one of the three components of fighting

the Sword", *The Guardian*, 25 January 2015, available at: www.theguardian.com/world/2015/jan/25/inside-isis-training-camps.

298 S. Heller, above note 102; T. Pierret and L. Alrefaai, above note 297, p. 11; H. Hassan, above note 297.

299 See above note 298.

300 See above note 298.

301 See above note 298.

302 I. Cismas *et al.*, above note 10, pp. 5, 27.

303 F. Terry and B. McQuinn, above note 172; R. E. Hassner, above note 15, pp. 89–90, 135; M. Juergensmeyer *et al.*, above note 17.

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power alongside "the physical" and "the conceptual".[304] Religious personnel can legitimize and give meaning to military action, boost the morale and resilience of combatants, and increase their fighting capacity.[305] In the words of one senior commander, the role of a military chaplain or "padre" during operations is

> a moral component force multiplier. In times of extreme stress, anxiety and grief, having a Padre allows soldiers and officers the opportunity to deal with these emotions. … Bottom line I would not want to deploy on combat Operations without a Padre.[306]

Though religious personnel often maintain that their motivation is not to win wars but to provide spiritual support to those who need it, these two objectives are not easily separated, particularly when religion is instrumentalized as a tool of holy or hybrid war.[307] The mobilization of Iran's IRGC and Basij volunteer force during the Iran–Iraq war provides a particularly striking illustration of this, overriding conventional secular war thinking to implement a "human wave" strategy based on religious enthusiasm and martyrdom, albeit at massive human cost.[308] Over 72,000 clerics participated in the war at a casualty rate three times higher than that of non-clerics, as well as recruiting soldiers and boosting troop morale.[309] Even Stalin appreciated the force-multiplying power of religion, relaxing Soviet persecution of the Orthodox Church during World War II to boost the fighting spirit of the Red Army and the population, and to consolidate control over the Soviet Republics.[310] Orthodox priests released from the Gulag served in the Red Army with distinction, preached sermons in defence of the Motherland, fundraised for weaponry and provided humanitarian support for the sick, wounded and bereaved.[311] Though the Soviet Union remained atheist, the Orthodox Church's patriotic wartime contributions were recognized, paving the way for its post-war revival.[312]

304 R. E. Hassner, above note 15, pp. 87–88, 108, citing Michael Francis Snape, *The Royal Army Chaplains' Department, 1796–1953: Clergy under Fire*, Studies in Modern British Religious History, Vol. 18, Boydell Press, Woodbridge, 2008; A. Todd and C. Butler, above note 113, pp. 153, 168.

305 See above note 10; C. Schuhmann *et al.*, above note 258.

306 G. Davie, above note 9, p. 43.

307 I. Michalowski, above note 114, p. 6; Riley Bailey, Christina Harward, Angelica Evans and George Barros, "The Russian Orthodox Church Declares 'Holy War' against Ukraine and Articulates Tenets of Russia's Emerging Official Nationalist Ideology", Institute for the Study of War, 30 March 2024, available at: www.understandingwar.org/backgrounder/russian-orthodox-church-declares-%E2%80%9Choly-war%E2%80%9D-against-ukraine-and-articulates-tenets.

308 M. Rouhi, above note 139, pp. 152–153; R. E. Hassner, above note 4, pp. 13–14.

309 See above note 308.

310 D. R. Herspring and R. N. McDermott, above note 136, p. 52; K. L. J. Goh, above note 10, pp. 116–117; Victoria Smolkin, "The Religious Front: Militant Atheism under Lenin and Stalin", in Victoria Smolkin, *A Sacred Space Is Never Empty: A History of Soviet Atheism*, Princeton University Press, Princeton, NJ, 2018, pp. 50–51; Boris Egorov, "How the Russian Orthodox Church Helped the Red Army Defeat the Nazis", *Russia Beyond*, 29 March 2021, available at: www.rbth.com/history/333593-how-russian-orthodox-church-helped.

311 See above note 310.

312 Daniela Kalkandjieva, *The Russian Orthodox Church, 1917–1948: From Decline to Resurrection*, Routledge, London, 2014, p. 181.

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Crucially, the morale-boosting and ethical dimensions of religious personnel's work are linked. As the etymology of the term suggests, morale has a moral component, and it is a prerequisite for a fighting force which has appropriate self-regard and honour for its professionalism and core values.[313] Raising the morale of troops both contributes to and depends upon their fighting effectiveness and moral discipline, whereas de-moral-ized troops, all other things being equal, are more likely to suffer defeat and misbehave.[314] Improving the mental resilience of combatants, for example, can also have a beneficial effect on adherence to IHL, since more robust and capable soldiers are better able to fight with precision and self-control.[315] Further, putting military restraint into practice often requires courage, since combatants must put the protection of civilians above force protection and military advantage.[316] In order to reduce the backlash from the civilian death toll in Afghanistan, for example, General Stanley McCrystal introduced a policy of "courageous restraint" in 2009, which limited the firepower used to cover US troops.[317] This triggered intense opposition from US personnel on the ground, however, and General Petraeus lifted these restrictions when he took command.[318]

The mainstream teachings of most religions converge on just war and humanitarian principles which resonate with IHL and have contributed to its development.[319] The majority of religious personnel are therefore allies in IHL promotion and make an important contribution to military discipline, cohesion and the promotion of humanitarian norms.[320] Religious personnel must nevertheless chart a careful course in order to maintain the trust and support of combatants, and therefore their ability to influence behaviour, without succumbing to pressure from peers or the military hierarchy and potentially becoming complicit in toxic military cultures which undermine humanitarian norms.[321] While many religious personnel are inspiring exemplars of physical and moral courage, a criticism of some is that they abdicate their moral responsibilities or over-identify with military comrades and objectives, becoming more akin to indoctrination agents than genuine clergy.[322] Religious personnel also hesitate to raise concerns for fear of rocking the boat or jeopardizing their

313 G. Davie, above note 9, pp. 50–51.
314 *Ibid.*
315 Elizabeth A. Stanley, John M. Schaldach, Anastasia Kiyonaga and Amishi P. Jha, "Mindfulness-Based Mind Fitness Training: A Case Study of a High-Stress Pre-Deployment Military Cohort", *Cognitive and Behavioral Practice*, Vol. 18, No. 4, 2011; Amishi P. Jha *et al.*, "Minds 'At Attention': Mindfulness Training Curbs Attentional Lapses in Military Cohorts", *PloS One*, Vol. 10, No. 2, 2015.
316 Andrew Bell, "Combatant Socialization and Norms of Restraint: Examining Officer Training at the US Military Academy and Army ROTC", *Journal of Peace Research*, Vol. 59, No. 2, 2022, p. 184.
317 A. Totten, above note 4, p. 29.
318 A. Bell, above note 316, p. 184.
319 M. Bryant, above note 28; A. Bartles-Smith, above note 157, p. 1754.
320 See above note 319; I. Cismas, above note 17, p. 545.
321 Interview with C. Reynolds, above note 12; interview with J. Zust, above note 33; G. Davie, above note 9, p. 43; A. Totten, above note 4, p. 20.
322 R. E. Hassner, above note 15, pp. 97–98; K. L. J. Goh, above note 10, p. 101; J. E. Whitt, above note 15; Peter Sedgwick, "Terrorism and Interrogation, as an Issue for Chaplains on Operations", in A. Todd (ed.), above note 4.

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careers, and religious leaders outside military organizations are often more vocal in criticizing bad military behaviour.[323] The deputy command chaplain of the US Army in Vietnam stated, for example, that "[w]e do not debate the morality of the war in general or the morality of any particular war. Our job is to look after the spiritual welfare of the men."[324] This propensity of some religious personnel to subordinate their moral obligations towards outsiders to the comfort and camaraderie of the combatants they support is part of the reason why there are relatively few reports of religious personnel intervening to restrain the conduct of hostilities or report abuses.[325] The failure of Christian military chaplains in the German Wehrmacht to oppose, and thereby their enabling of, the latter's atrocities during World War II, including the genocidal murder of Jewish men, women and children, was particularly egregious in this regard.[326]

Nonetheless, while religious personnel are the first to admit that some of their number are ineffectual or overly invested in military objectives *per se*, the effectiveness of their ministry is often under-appreciated.[327] Embedded as they are in military units, religious personnel's role is by nature discreet, particularly given their role as confidantes. Their advice to combatants is not generally broadcast, nor is the impact of their counselling easily measured, and the contribution they make to improving combat behaviour is not always obvious to outsiders, except when studies or investigations bring their work to light.[328]

Such was the case following the My Lai massacre of villagers by US troops during the Vietnam War, for example. Chief Warrant Officer Hugh Thompson, the helicopter pilot who stopped the attack, reported the incident to his commander and to the battalion chaplain, Captain Carl Cresswell, who repeatedly raised it with his chaplaincy superiors at division level, threatening like Thompson to leave the Army if there was no investigation.[329] In the event, no action was taken by the chain of command, and these crimes only came out when another soldier, Ronald Ridenhour, bypassed the chain of command completely.[330] Cresswell and others

323 R. E. Hassner, above note 15, pp. 97–99; interview with C. Reynolds, above note 12; P. Sedgewick, above note 322, p. 77.

324 R. E. Hassner, above note 15, pp. 87–88.

325 *Ibid*., pp. 97–98; K. L. J. Goh, above note 10, p. 101; J. E. Whitt, above note 15; P. Sedgwick, above note 322.

326 Doris L. Bergen identifies four factors that contributed to this moral failure: the institutional structure of the Wehrmacht's military chaplaincy, which incentivized caution and weeded out "troublemakers"; chaplains' defensive stance towards the Nazi regime, as well as a general crisis of church relevance, such that chaplains overcompensated to prove their worth; the nature of war, notably the confusion and "numbing" of moral faculties that it engendered; and the habituation of the Wehrmacht's military chaplaincy to the Nazi regime over time. Some chaplains were also committed Nazis, mobilizing their Christian faith in service of National Socialism. Doris L. Bergen, *Between God and Hitler: Military Chaplains in Nazi Germany*, Cambridge University Press, Cambridge, 2023, pp. 10–16.

327 J. E. Whitt, above note 15, loc. 257; interview with C. Reynolds, above note 12; interview with J. Zust, above note 33.

328 See above note 327; Christopher James Levesque, "Not Just Following Orders: Avoiding and Reporting Atrocities during the Vietnam War", PhD diss., University of Alabama, Tuscaloosa, AL, 2014.

329 C. J. Levesque, above note 328, pp. 49–50.

330 *Ibid*.; John H. Cushman Jr, "Ronald Ridenhour, 52, Veteran Who Reported My Lai Massacre", *New York Times*, 11 May 1998, available at: www.nytimes.com/1998/05/11/us/ronald-ridenhour-52-veteran-who-reported-my-lai-massacre.html.

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were later criticized by the Peers Commission for failing to do enough to bring the incident to light.[331] Research on Vietnam has shown that US soldiers like Thompson, with a strong religious faith, had deeply rooted moral ideas that made them less susceptible to committing IHL abuses and more likely to resist illegal orders, thereby compensating for the inadequacy of ethical and IHL content in US military training at the time.[332]

In recent years, abuses have sometimes taken place where chaplains and other specialists have been deliberately sidelined by commanders, or were unable to properly engage with close-knit service personnel.[333] This occurred in the Abu Ghraib detention facility in Iraq, for example, and among Australian Special Forces in Afghanistan.[334] Among NSAGs, Abu Hafs Al-Mauritani, the former mufti of Al-Qaeda, advised Osama bin Laden that attacks on civilian targets were un-Islamic.[335] According to the 9/11 Commission, he opposed the idea of a 9/11-type attack, laying out his Quran-based objections in a message to bin Laden before resigning from Al-Qaeda in August 2001.[336] It should be noted, however, that Al-Mauritani's role as head of Al-Qaeda's Sharia Committee and a member of its Advisory Council mean that he was apparently more akin to a legal adviser than religious personnel, and may well have been more involved in military activity.[337]

Though religious belief can increase respect for the innocent, religious *identity* can serve to sow division and devalue members of other groups, and a minority of religious personnel can use this to undermine military discipline and adherence to humanitarian norms.[338] Some evangelical Christian chaplains in the US military have interpreted their pastoral role as that of Christian evangelists, for example, proselytizing and leading inappropriate religious worship while refusing to support service members of other faiths.[339] The US military authorities have taken a hard line against such activities, and most of these agitators are weeded out, rarely if ever rising beyond the rank of captain.[340] A number of IDF military rabbis, and rabbis involved in their training and the

331 See above note 330; Jacqueline E. Whitt, "Faith under Fire: Military Chaplains and the Morality of War", *HistoryNet*, 22 March 2017, available at: www.historynet.com/faith-fire-military-chaplains-morality-war/.
332 C. J. Levesque, above note 328, pp. 10–11; R. M. Duncan, above note 34, p. 151.
333 Interview with C. Reynolds, above note 12; interview with J. Zust, above note 33.
334 Stephen Mansfield, "'Ministry by Presence' and the Difference It Made at Abu Ghraib", *HuffPost*, 10 October 2012, available at: www.huffpost.com/entry/ministry-by-presence-and_b_1912398; Chaplain R., "Don't Drink the Kool-Aid: Chaplaincy within Special Operations Command – Australia", *Australian Army Chaplaincy Journal*, 2023; Chris Masters, "Australia's Ugly Turn in Afghanistan", *Sydney Morning Herald*, 8 June 2018, available at: www.smh.com.au/politics/federal/australia-s-ugly-turn-in-afghanistan-20180605-p4zjmv.html.
335 Thomas Joscelyn, "Senior Al Qaeda Ideologue Leaves Iran for Mauritania", *Long War Journal*, 11 April 2012, available at: www.longwarjournal.org/archives/2012/04/senior_al_qaeda_ideo.php; "Former Al-Qaeda Mufti: I Condemn ISIL attacks", *Al Jazeera*, video report, 21 November 2015, available at: www.aljazeera.com/program/talk-to-al-jazeera/2015/11/21/former-al-qaeda-mufti-i-condemn-isil-attacks.
336 See above note 335.
337 See above note 335.
338 A. Bell, above note 316, p. 187; S. Lunze, above note 17, p. 80.
339 Kristen J. Leslie, "Pastoral Care in a New Public: Lessons Learned in the Public Square", *Journal of Pastoral Theology*, Vol. 18, No. 2, 2008, p. 87; K. L. J. Goh, above note 10, pp. 108–109; interview with C. Reynolds, above note 12.
340 See above note 339.

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Hesder Yeshiva education programme for religious recruits, have cited *Halakhah* (Jewish law) to communicate ideas which contradict IDF values and rules of engagement, including protections for civilians.[341] Taken to extremes, some clerics and religious personnel embody and feed religious radicalism, inciting actions which violate even basic humanitarian norms.[342] Clerics attached to the Islamic State in Iraq and Syria have been accused of encouraging inhumane behaviour, for example, also by excommunicating members of rival groups, with particularly terrifying consequences for the treatment of religious out-groups such as the Yazidis.[343] Similarly, the International Criminal Tribunal for Rwanda convicted Emmanuel Rukundo, the former military chaplain of the Rwandan armed forces, for involvement in the Rwandan genocide and crimes against humanity.[344]

Such incidents flag the potential of some clerics and religious personnel to incite extremely harmful acts, including war crimes, without necessarily carrying arms or inflicting physical violence themselves.[345] Religious actors are also among the most popular and effective users of communication media, the speed and scope of which have been exponentially increased by the proliferation of social media platforms and the advent of generative artificial intelligence.[346] While most of this religious messaging is positive, the power of some clerics associated with State and non-State fighting forces to transmit harmful information that spreads fear, encourages unlawful violence and undermines humanitarian action has already been demonstrated in a number of armed conflicts.[347] Benson points out that there is no category of "ideologue" in IHL, and therefore no way to describe such actors other than as religious personnel, assuming that they meet the definitional requirements.[348]

Most militaries are cognizant of the threat posed to discipline, cohesion and military values by religious radicalism in the ranks, particularly in pluralist contexts where they recruit from multiple religions. Despite comprising overwhelmingly religious service members, the Indian military is proudly secular.[349] Religious

341 Y. Levy, above note 151, pp. 314–319; "Gaza War Rabbinical Edict Draws Protest in Israel", *Reuters*, 26 January 2009, available at: www.reuters.com/article/idUSTRE50P2SZ/; Yehuda Shohat and Kobi Nachshoni, "Rabbis Inciting against Women, Non-Jewish Soldiers at IDF Course", *Ynetnews.com*, 25 January 2017, available at: www.ynetnews.com/articles/0,7340,L-4912189,00.html.

342 T. P. Holterhus, above note 17; M. Juergensmeyer, above note 178.

343 UN Human Rights Council, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, UN Doc. A/HRC/32/CRP.2, 15 June 2016; K. Benson, above note 199, pp. 35–36; S. Heller, above note 102.

344 I. Cismas, above note 17, p. 527; S. Lunze, above note 17, p. 80.

345 T. P. Holterhus, above note 17.

346 Tilman Rodenhäuser and Samit D'Cunha, "Foghorns of War: IHL and Information Operations during Armed Conflict", *Humanitarian Law and Policy Blog*, 12 October 2023, available at: https://blogs.icrc.org/law-and-policy/2023/10/12/foghorns-of-war-ihl-and-information-operations-during-armed-conflict/.

347 See above note 346; Morten Bergsmo and Kishan Manocha (eds), *Religion, Hateful Expression and Violence*, Torkel Opsahl Academic EPublisher, 2023; Laura Wakeford and Laura Smith, "Islamic State's Propaganda and Social Media: Dissemination, Support, and Resilience", in Stephane J. Baele, Katharine A. Boyd and Travis G. Coan (eds), *ISIS Propaganda: A Full-Spectrum Extremist Message*, Oxford University Press, New York, 2020.

348 K. Benson, above note 199, p. 36.

349 Some are concerned that this position might be undermined due to a surge in Hindu nationalism, however. A. Ahuja, above note 187, p. 159; Lt General Prakash Menon, "Army Caught between Religious and Constitutional Values. Defend Secular, Apolitical Nature", *ThePrint*, 21 May 2024,

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teachers in the Indian Army are recruited as junior commissioned officers from a variety of traditions – including Hindu pandits, Sikh granthis, Muslim maulvis, Christian priests and Buddhist monks – and perform a similar role to religious personnel in other militaries.[350] These religious teachers are encouraged to promote religious harmony and support soldiers of all faiths while catering to the specific needs of their coreligionists, and multi-religious spaces (*sarvdharmstals*) on military bases facilitate worship.[351] The Indian military thereby draws upon the spiritual support and force-multiplying power of these religious traditions – including folk tales, stories from holy texts, religiously inspired battle cries and rituals for the worship of weapons – while curtailing inter-religious tensions within its ranks.[352]

Confidential counselling and support

Combatants often suffer spiritual and psychological consequences for their actions in war, especially when those actions conflict with deeply held moral principles, and religious personnel play a vital supportive role in these testing circumstances, helping them to find comfort and meaning when they are spiritually or psychologically bereft.[353] Many combatants also need to be reassured that someone will be on hand to counsel and support them in their final moments, as well as arranging their funerals and supporting family members in the event of their death.[354]

Whatever faith or life stance religious personnel represent, they are a spiritual and psychological safety valve that enables combatants to express pent-up emotions and concerns. Many religious personnel work with medical and social support teams to help military service members with mental health problems such as trauma, grief and depression.[355] Religiosity and spirituality have been shown to positively affect the mental health of trauma survivors, and the faith-based support that religious personnel provide is regarded as an important component in the treatment of moral injury and the mitigation of post-traumatic stress disorder (PTSD) and suicides.[356] Deaths from suicide of active and retired US service personnel involved in the post-9/11 wars are at least four times higher than the number of personnel killed during operations, for example, and such

available at: https://theprint.in/opinion/army-caught-between-religious-constitutional-values-defend-secular-apolitical-nature/2094273/.

350 A. Ahuja, above note 187, p. 161; Torkel Brekke, "Religious Teachers in the Indian Army", in T. Brekke and V. Mikhaĭlovich Tikhonov (eds), above note 89, pp. 25, 35.

351 A. Ahuja, above note 187, p. 161; T. Brekke, above note 350, pp. 15, 18, 28, 35.

352 See above note 351.

353 D. Larson and J. Zust, above note 70; Sheila Frankfurt and Patricia Frazier, "A Review of Research on Moral Injury in Combat Veterans",<***bi***> </***bi***>*Military Psychology*, Vol. 28, No. 5, 2016.

354 R. E. Hassner, above note 4, pp. 11–12; interview with J. Zust, above note 33.

355 Mark Layson, Lindsay B. Carey and Megan C. Best, "Now More than Ever: 'Fit for Purpose'", *Australian Army Chaplaincy Journal*, 2023, p. 16.

356 See above note 355; R. E. Hassner, above note 15, pp. 93–94, 123–124; Giovanna Dell'Orto, "US Navy Deploys More Chaplains for Suicide Prevention", *AP News*, 1 April 2023, available at: https://apnews.com/article/navy-suicide-prevention-chaplains-norfolk-74910c421b5c2404db87c1d8fc6dd4c6.

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support constitutes a major part of US military chaplains' work.[357] Suicides and hazing are a similar concern in the Russian military, where their prevention is part of military chaplains' job description.[358]

While the fighters of NSAGs are often remarkably resilient, not least due to their religious faith, less attention has been paid to the extreme stress that they undergo, often at the receiving end of highly asymmetric warfare. Years of deadly fighting in Afghanistan, for example, have left many veteran mujahideen and Taliban fighters suffering from PTSD and other mental disorders, usually with minimal psychological support, and the impact that religious personnel trained in pastoral care might have on the well-being and behaviour of non-State combatants is rarely considered.[359] The behaviour of combatants frequently reflects the way they are treated themselves, not least during often dehumanizing military training, and the support of religious personnel can help to mitigate its most negative effects.[360]

The confessional legacy endures in the form of confidential one-to-one counselling by religious personnel, especially in State militaries. The privileged confidential relationship between a cleric and a penitent is protected like that between doctor and patient, or attorney and client, in international criminal courts, although this is sometimes complicated to apply in national military contexts.[361] Since most religious personnel are relatively autonomous and separated from the chain of command, military personnel from the lowest to the highest ranks are free to confide in them, insulated from censure by their peers or superiors.[362] While the level of confidentiality varies to some degree across armed forces, and from faith to faith, confidentiality can be absolute, as in the US Army, for example, and the Catholic seal of confession remains inviolable.[363] Religious personnel are generally prohibited from disclosing confidences without the express permission of the concerned service member, though there are sometimes exceptions if the service member poses a threat to others or themselves.[364]

Military personnel might also confide to chaplains about criminal behaviour, or the intent to carry it out.[365] When chaplains cannot break confidence, they might advise the commander that a particular service member

357 Thomas Howard Suitt III, "High Suicide Rates among United States Service Members and Veterans of the Post 9/11 Wars", Costs of War Project, Brown University, Providence, RI, 21 June 2021, available at: https://watson.brown.edu/costsofwar/papers/2021/Suicides; interview with J. Zust, above note 33.

358 P. G. Kurki, above note 118, pp. 47, 49.

359 Tahir Qadiry, "The Taliban's Psychiatrist", *BBC News*, 26 November 2014, available at: www.bbc.com/news/magazine-29944329.

360 Dave Grossman, "On Killing: The Psychological Cost of Learning to Kill in War and Society", in Roderick Tweedy (ed.), *The Political Self: Understanding the Social Context for Mental Illness*, Routledge, 2018.

361 See, for example, International Criminal Court, Rules of Procedure and Evidence, ICCASP/1/3, 3–10 September 2002, Rule 73, available at: www.icc-cpi.int/sites/default/files/RulesProcedureEvidenceEng.pdf, cited in I. Cismas, above note 17, p. 527; J. G. Odom, above note 223, pp. 54, 57–58, 62.

362 Interview with J. Zust, above note 33; interview with E. A. Kamp, above note 12; C. Schuhmann *et al.*, above note 258, p. 617.

363 Interview with C. Reynolds, above note 12; J. G. Odom, above note 223, pp. 57–58, 62; Paul Stamps, "Chaplain Confidentiality: 'Go Tell It to the Chaplain'", US Army, 15 March 2024, available at: www.army.mil/article/274584/chaplain_confidentiality_go_tell_it_to_the_chaplain.

364 See above note 363; interview with E. A. Kamp, above note 12; interview with C. Reynolds, above note 12.

365 See above note 364.

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should not be deployed, for example, or ask the service member for permission to refer them to a psychologist.[366] One example of the pressures under which religious personnel sometimes operate is that of the Muslim US chaplain Saif-ul-Islam, who was deployed to the detention facility at Guantanamo Bay in Cuba. He said that he would only reveal detainees' confidences in the hypothetical scenario that they had knowledge of a future terrorist attack, and that he had to make judgement calls on a case-by-case basis.[367] Another Muslim chaplain deployed to Guantanamo, Captain James Yee, was wrongly accused of sedition by the Pentagon, spending seventy-six days in solitary confinement. The Army eventually wiped his record clean after the case against him collapsed, giving him an honourable discharge.[368]

Mobilizing religious personnel in support of IHL

British military chaplain Mark Grant-Jones observes that

> we have seen the increasing secularization of just war theory and a movement away from a moral and theological foundation towards a strictly legal and diplomatic base. … [W]here theology has been replaced with law so has the chaplain by the lawyer at the commander's table.[369]

While commanders in many militaries now make no targeting decision without consulting their legal teams, and this is surely a positive development, there is sometimes a disconnect between the application of legal rules, moral values and the wider human context.[370] Expedient and permissive interpretations of IHL by armed forces are often intended to expand rather than reduce their scope for killing, making a mockery of IHL's protective function.[371] Though religious personnel retain an important position as moral advisers and might also liaise with military lawyers, religious and legal personnel often tend to work parallel to one another, or in separate silos, and opportunities to reconnect IHL to its moral foundations, and to ethical, religious and cultural considerations in different traditions, are often missed.[372]

Legal advisers are increasingly involved in forward operations, and are sometimes called upon to assess the legality of military actions in close to real time.[373] As commanders become increasingly reliant on lawyers for legal cover,

366 See above note 364.
367 J. G. Odom, above note 223, p. 63.
368 Ray Rivera, "Inside the Spy Investigation of Capt. James Yee", *Seattle Times*, 9–16 January 2005, available at: https://special.seattletimes.com/o/news/nation-world/jamesyee/index.html.
369 A. Todd, above note 19, p. 8.
370 *Ibid.*, p. 16; P. McCormack, above note 22, pp. 39–41.
371 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 2024, p. 7, available at: www.icrc.org/en/report/2024-icrc-report-ihl-challenges.
372 *Ibid.*; interview with C. Reynolds, above note 12; interview with J. Zust, above note 33.
373 Craig Jones, "'Almost Divine Power': The Lawyers Who Sign Off Who Lives and Who Dies in Modern War Zones", *The Conversation*, 12 May 2021, available at: https://theconversation.com/almost-divine-power-the-lawyers-who-sign-off-who-lives-and-who-dies-in-modern-war-zones-154608.

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and sometimes for moral and psychological support, the stress of wielding this "divine power" over life and death has caused some lawyers to suffer from moral injury themselves.[374] Indeed, one military lawyer said he sometimes felt more like a chaplain, since commanders relied on him for moral absolution as well as legal advice, a role for which he was neither trained nor prepared.[375]

Conversely, religious personnel are often experts in pastoral care and military ethics, including conceptions of just or righteous war, but often receive only basic training in IHL.[376] They might therefore lack knowledge of the legal considerations behind some targeting decisions, and the confidence to promote IHL themselves.[377] Indeed, religious and ethical resources are an important second language that can make IHL more accessible to combatants in the cultures they inhabit.[378] Greater knowledge of IHL among the religious organizations that send religious personnel to fighting forces would also enable those organizations to better support religious personnel and would increase ownership of IHL among such personnel and the congregations they represent, especially when it is seen to align with religious teachings.

In militaries or NSAGs where legal checks are less meticulous or IHL rules are commonly disregarded, the moral guidance of religious personnel is even more important, and will certainly be enhanced if religious personnel are knowledgeable about IHL. Indeed, many NSAGs have few if any legal personnel (other than experts in religious law), and NSAGs are often dependent on religious leaders for guidance on their conduct, or the sanctioning of offenders in religious courts.[379] The law is weak without incentives to comply with it, and in the absence of a strong enforcement regime, normative frameworks which encourage voluntary compliance are particularly important.[380] To whatever degree fighting forces actually implement IHL in practice, religious personnel can therefore play an important complementary role in promoting IHL and connecting it to the religious and cultural identities of combatants, and to their core values and motivations.[381] As trusted comrades in the midst of hostilities, the pastoral care of religious personnel can help combatants to be the best versions of themselves in the worst circumstances and to convey humanitarian values to where they are needed most.

Given these considerations, more should be done to ensure that religious personnel in State and non-State fighting forces, as well as clerics otherwise associated with them, collaborate with legal and humanitarian experts to promote practical adherence to IHL and to better advise commanders on the moral and strategic impact of their military actions. The Catholic Military Ordinariate, for

374 *Ibid.*
375 *Ibid.*
376 Interview with J. Zust, above note 33; interview with C. Reynolds, above note 12; interview with A. Hafiz, above note 97; M. Layson, L. B. Carey and M. C. Best, above note 355, p. 16.
377 See above note 376.
378 A. Todd, above note 19, p. 8.
379 A. Feinstein, above note 30.
380 F. Terry and B. McQuinn, above note 172.
381 *Ibid.*; M. Knight, above note 34; P. McCormack, above note 22, p. 40.

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example, has arranged IHL training for military chaplains at the Vatican, where Pope Francis urged them "to spare no effort to enable the norms of international humanitarian law to be accepted in the hearts of those entrusted to your pastoral care".[382] Similarly, the Ukrainian Red Cross has helped to organize training in IHL for Ukrainian military chaplains, perceiving them to be one of the most effective vectors for internalizing this knowledge in freshly recruited front-line troops.[383] Organizations such as the ICRC are also increasingly reaching out to Christian, Muslim and Buddhist religious personnel, for example, as well as to clerics who fulfil other relevant functions in State and non-State fighting forces.[384]

Conclusion

While IHL is commonly detached from its moral and religious underpinnings, practitioners would be well advised to engage the religious traditions from which IHL rules have developed and to mobilize religious personnel in its service.[385] Pioneers of international law such as Muhammad Al-Shaybani (749–805 CE), Fransciso de Vitoria (1483–1546) and Hugo Grotius (1583–1645) were also religious experts, and as such they pose a challenge to modern-day legal, religious and military specialists to work together towards more holistic understandings of – and comprehensive solutions to – the conduct of contemporary wars.[386] Moral or religious rather than legal arguments are still used by State and non-State actors to justify military campaigns and their conduct, as well as to mobilize combatants and the public at large, and religious personnel can help to contextualize IHL in diverse military cultures and to bridge it with the moral psychology and motivations of combatants.[387]

The enduring relevance of religious personnel is illustrated by their re-emergence in a number of post-communist contexts. The Russian Federation re-established its military chaplaincy service in 2009 after a ninety-year hiatus, in the hope that this would support increasing numbers of religious military personnel in particular, and would contribute to raising morale and reinforcing

382 "Address of His Holiness Pope Francis to the Fifth International Course of Formation of Catholic Military Chaplains on International Humanitarian Law", Holy See Press Office, 31 October 2019, available at: www.vatican.va/content/francesco/en/speeches/2019/october/documents/papa-francesco_20191031_cappellani-militari.html. See also I. Cismas, above note 17, p. 530.

383 Tymur Korotkyi and Viacheslav Maievskyi, "United in the Name of Humanity: The Experience of Teaching International Humanitarian Law to Military Chaplains", *Religion and Humanitarian Principles Blog*, 20 July 2021, available at: https://blogs.icrc.org/religion-humanitarianprinciples/eng-russian-ukrainian-teaching-international-humanitarian-law-to-military-chaplains/.

384 Examples of these initiatives can be found on the ICRC's *Religion and Humanitarian Principles Blog*, available at: https://blogs.icrc.org/religion-humanitarianprinciples/.

385 M. Bryant, above note 28; P. McCormack, above note 22.

386 P. McCormak, above note 22, p. 60; K. R. Bashir, above note 97; Alex J. Bellamy, "Francisco de Vitoria (1492–1546)", in Daniel R. Brunstetter and Cian O'Driscoll (eds), *Just War Thinkers: Heretics, Humanists and Radicals*, Routledge, Abingdon, 2017.

387 P. McCormack, above note 22, p. 40.

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discipline in the ranks.[388] Following the Russian invasion of Crimea in 2014, the Ukrainian armed forces rapidly transitioned from informal chaplain arrangements with volunteer clergy to the establishment of a fully fledged military chaplaincy service in 2021, with the majority of chaplains being from the newly established Orthodox Church of Ukraine.[389] The fact that this military and grassroots response to the spiritual needs of Ukrainian soldiers has been institutionalized so quickly illustrates the important contribution that religious personnel make to supporting combatants. While much has been made of the technological improvisation of the Ukrainian military in particular, chaplaincy is also "a critical capability for Ukrainian commanders", as the chaplain general of the British Army has pointed out, and the humanitarian and military support functions of religious personnel often go hand in hand.[390]

It is precisely this dual function of religious personnel, along with their proximity to fighters and the suffering of war, that makes them such an important group for IHL practitioners to encompass. Religious personnel's work, by its very nature, poses questions for IHL, and in the midst of hostilities religious personnel sometimes operate in a grey area where their religious, humanitarian and military functions overlap. While more research needs to be done to understand the religious dimensions of armed conflict in relation to IHL, and to clarify protections and responsibilities for religious personnel, this is also the "sweet spot" where religious personnel can most effectively humanize the experience and conduct of war, and contemporary challenges to IHL are too grave for them not to be enlisted in its defence.

388 D. R. Herspring and R. N. McDermott, above note 136, p. 57; Marco Tosatti, "Chaplains Return to the Former Red Army", *La Stampa*, 16 July 2011, available at: www.lastampa.it/vatican-insider/en/2011/07/16/news/chaplains-return-to-the-former-red-army-1.36950891/.

389 Bogdan Synchak, Petro Livak and Mykhailo Fedorenko, "Training of Military Chaplains for the Armed Forces of Ukraine in Conditions of the Invasion by the Russian Federation", *Occasional Papers on Religion in Eastern Europe*, Vol. 42, No. 3, 2022, pp. 81–82; Kateryna Vovk, "'A Chaplain is a Part of the Soul in the Great Army Mechanism': The Value and Role of Chaplains at the Front", trans. Taisiia Blinova, 12 February 2024, available at: https://war.ukraine.ua/articles/and-role-of-chaplains-in-the-armed-forces-of-ukraine/.

390 UK Government, "Ukrainian Military Chaplains Receive Training from British Army", press release, 5 June 2023, available at: www.gov.uk/government/news/ukrainian-military-chaplains-receive-training-from-british-army.

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