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TREATMENT GIVEN TO DESTRUCTION OF PROPERTY UNDER INTERNATIONAL LAW

AUTHORED BY - SWETHA SREE MURIKIPUDI

ABSTRACT

It is a fact, that every creature on earth, has a family and their families nurtured “culture” which raised and guided them. Be it microscopic organisms, or that of whale families, they all had culture. But it is the human being that fostered it and gave new dimensions as the world evolved. Soon, we started to write books, paint and construct our shared history together. Any culture across the world, had documented it in their works like in monuments, architectures, or even on their pots and utensils. Properties which resemble a culture’s symbols or traditions no matter how small they are like coins or big they are like monuments; we call them Cultural Property. And this cultural property, doesn’t belong to one nation or one region, it belongs to all of us collectively. All of mankind’s history had flourished, lived and continues to live collectively and so did their cultures, though modern man has been able to draw up boundaries, cultural heritage and law proved as an exception which knew no borders.

Destroying a cultural property, is no less than killing a culture, a civilisation, in fact a part of human history into ashes. Soon a body of law developed in the field of armed conflicts (International Humanitarian Law) to protect cultural property, both from its destruction & damage on one hand and its “misappropriation”, to keep it simple its plunder and theft. In this, we shall focus on the kind of treatment which cultural property gets after its destruction.

The two types of law i.e, the customary law and the Treaty law its implications, the UNSC and UNESCO’s protective stance which is vigorously aiming to protect cultural property by the 1954 Hague Convention and UNESCO 1970 Convention. We shall also throw some light on the destruction of Cultural heritage in Syria and Iraq and the course of law. As an end note, what more has to be done, the role, of individuals, communities, governments and collectively the international society’s role to preserve and protect our collective living heritage.

Keywords: Cultural Property, destruction and treatment, Hague Convention 1954, UNESCO Convention 1970, UNSC, The International Humanitarian Law, Role of Law

INTRODUCTION

Culture is an attribute of one's customs, traditions and beliefs. It is integral to every individual and every community as it resembles their identity. It is very close to one's heart and memory. Ask anyone who visits Taj Mahal, though they all come from different backgrounds, religions and places, their hearts swell with pride and joy. In every eye there is a sparkle that connects all of us with our shared history. Some may say, it is just another marble stone, but for many it is much more than that, can't put it in few words, it tells to everyone of a tale of love and memory. Whether, it's Taj Mahal in India, or Bamiyan Buddha in Afghan, or be it Palmyra in Syria or let it be Nimrud in Iraq, whenever we see them, some reminiscence of past flash in our minds. Though at first it may be regional, but history is unique and cultural heritage is human world's heritage it knew no borders, no regions and no nationalities, all it has is the power to connect and fill every heart with pride.

Sadly, except for the Taj Mahal, which I referred all the others where blasted and made into pieces. In a lot armed conflicts and wars, whether victory can sustain peace or not cannot be answered, but war sustains destruction of lives, and property. And when it destroys a cultural property, it kills a culture, their rich history and tradition, it leaves a void which cannot be filled. Many may ask, in wars or any such armed conflicts, there is no guarantee of people's lives, and the world is trying to figure out some measures to protect cultural property, how can it be done, why is it so important. In this piece of paper, I've made an attempt to understand, many such related questions.

TREATMENT GIVEN TO DESTRUCTION OF PROPERTY

UNDER INTERNATIONAL LAW

Destruction of property under international law, in this context interpreted to be "Cultural Property" and international law, which deals with this, is International Humanitarian Law, and International Criminal Law supplements along with it.

DEFINING CULTURAL PROPERTY

The preamble of the 1954 Hague Convention states “*any damage to cultural property, irrespective of the people it belongs to, is a damage to the cultural heritage of all humanity, because every people contributes to the world's culture*”. The term Cultural Property as in Hague Convention is defined as “*'cultural property' shall cover, irrespective of origin or ownership movable or immovable property of **great importance** to the cultural heritage of every people, such as monuments of architecture art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interests; as well as scientific collections and important books or archives or of reproductions of the property.*¹

It also includes museums, huge libraries, archives, and refuges, as well as centres having a large amount of cultural property as specified above, as well as buildings whose major and effective purpose is to conserve or show movable cultural property. The concept is broad enough to encompass all properties that each individual considers to be vital to their cultural heritage. As a result, *a restrictive interpretation that limits 'great importance'* to only world-famous objects like the Coliseum, the Sphinx, the Taj Mahal, or the Mona Lisa will be insufficient. In the Legality of Nuclear Weapons case, Judge Weeramantry favoured the position that all property classified or scheduled by high contracting parties constitutes a significant portion of cultural heritage². “The cultural artefacts and properties that make up one state's national heritage are, therefore, the world's heritage,” observed Judge Nagendra Singh in an extrajudicial observation. According to Niec, the concept that humanity's cultural history is a collection of varied particularisms is the “practical realisation of the principle that individual nations' cultures are equal in international relations”³.

Whereas, the UNESCO Convention of 1970, defines cultural property as, term ‘cultural property’ means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs

¹ Convention for the Protection of Cultural Property in the Event of Armed Conflicts (Hague, 14 May.1954) 240 U.N.T.S, entered into force 7 Aug. 1956, art 1.

² P. Ishwara Bhat, 'Protection of Cultural Property under International Humanitarian Law: Some Emerging Trends' (2001) 1 ISIL YB Int'l Human & Refugee L 47.

³ Ibid.

to the following categories: *a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance (c) products of archaeological excavations (including regular and clandestine or of archaeological discoveries (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest.*⁴

CULTURAL INTERNATIONALISM THE HAGUE CONVENTION 1954

The roots of protecting Cultural Property was laid down by Francis Lieber, e. Lieber created a proposed "code of conduct by belligerent forces in war" to apply to the conduct of Union forces in the American Civil War at Halleck's request.

The Instructions for the Governance of United States Armies in the Field, also known as the Lieber Code, was issued by the Union command on April 24, 1863 as General Orders No. 100. Articles 34-36 are concerned with cultural property protection and include the following provisions: 35. *Classical works of art, libraries, scientific collections, or precise instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.*

36. *If such works of art, libraries, collections, or instruments belonging to a hostile nation or government can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.*

In no case shall they be sold or given away, if captured by the armies of the United States, nor shall

⁴ Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property (Paris, 14 Nov.1970) U.N.T.S 11802, entered into force 24 Apr.1972, art 1.

they ever be privately appropriated, or wantonly destroyed or injured.⁵

Of course, Lieber was not the first to urge that cultural property should be protected from harm or confiscation by belligerents. **Polybius of Athens**, a Greek historian who lived in the third and second centuries B.C., is often cited as the first such proponent. The Lieber Code was the first attempt to state a comprehensive body of principles governing the conduct of belligerents in enemy territory.

However, by the 1930s, worldwide attention had shifted to the creation of a convention devoted only to the protection of cultural property during wartime. The Treaty on the Protection of Artistic and Scientific Institutions and Monuments, commonly known as the Roerich Pact, was signed in 1935 by twenty-one American nations. This agreement is historically significant as the first international convention solely dedicated to the protection of cultural property, but it has now been largely superseded. Later, the Second World War broke out and all the efforts took a seat back, by the changes in technology, nuclear armaments, and total war. The planned manner in which the allies, especially by the Nazi Germany, when three of its high command officers namely, Alfred Rosenberg, Ribbentrop, Borman had their own units and also for their personal collection plundered cultural property of Soviet Union and it is said these also had demarcation dispute as to who should plunder to what extent, later after the end of second world war, two important aspects took place: the Nuremberg Trials and the promulgation, under the auspices of the United Nations Educational, Scientific and Cultural Organization, of Hague 1954. One of the main accused Nazis at the Nuremberg Trials, Alfred Rosenberg, was the commander of the infamous Einsatzstab (Special Staff) Rosenberg, among other things. The Einsatzstab was tasked with robbing cultural property from German-occupied countries, which it accomplished with ruthlessness, zeal, and efficiency. Rosenberg's indictment and trial evidence detailed his (and the Einsatzstab's) cultural property crimes. Rosenberg was convicted of these (and many other) crimes and sentenced to death by hanging⁶. The innovation here, as elsewhere in the Nuremberg Trials, was that other nations-imposed responsibility on an individual official of the offending belligerent power for acts against cultural property committed in its name. The Lieber Code and its progeny had a different basis: such offenses violated international law, but offending personnel were to be disciplined, if at all, by their own governments. The Hague 1954, states that the

⁵ John Henry Merryman, 'Two Ways of Thinking About Cultural Property' (1986) 80 (4) The American Journal of International Law 831,833.

persons accused of destructing cultural property be acknowledged by the origin countries and be tried as per their domestic law, and try them for disciplinary actions.

In today's conventions one element stands in between as imperative in the context of protection to cultural property. And that is "military necessity" Art 4(2) of the Hague Convention provides that obligation to respect cultural property may be waived, where military necessity is imperative. In other words, military necessity can justify the destruction of cultural property that would otherwise be protected under the Convention.⁷ This concept owes its origin to Prussian military "*la celebre conception prussienne de la Kriegs*". Well, what constitutes a military necessity cannot be standardized as war field and strategies evolve every day. An important criticism is this term "military necessity" is so ambiguous, and the circumstances of its application in the field are so flexible, "necessity" can easily change into "convenience". General Eisenhower foresaw the problem in a December 29, 1943 statement to the Allies: The phrase 'military necessity' is sometimes used where it would be more truthful to speak of military convenience or even of personal convenience. I do not want it to cloak slackness or indifference.⁸ After World Wars I and II, one of the typical defences used by accused war criminals was "military necessary," although in fact, field commanders are likely to prioritise other goals over cultural preservation and convert them into "military necessity." Most of the armies, across the world face with the dilemma of choosing their men's lives or respecting monuments. The choice is no easy one, suppose let's assume you're in charge of a company of soldiers stationed near Chartres Cathedral. An enemy artillery spotter in one of the towers is firing at you and your guys and needs to be removed. You can bomb the church without putting your men in danger, or you can send some of them inside to find and eliminate the spotter. In that situation, one or more of the men would very certainly be killed. Do you intend to detonate a bomb near the cathedral? Is this a "military necessity" situation? We prefer to avoid the topic, but if forced to make a decision, we usually say that human lives are more essential.⁹ Despite its deference to military necessity, the Hague Convention of 1954 expresses a number of concerns.

⁷ Convention for the Protection of Cultural Property in the Event of Armed Conflicts (Hague, 14 May.1954) 240 U.N.T.S, entered into force 7 Aug. 1956, art 4(2).

⁸ Dunbar, Military Necessity in War Crimes Trials, 29 BRIT. Y.B. INT'L L. 44

⁹ Marina Lostal, 'Prosecuting the Destruction of Cultural Property in International Criminal Law: With a Case Study on the Khmer Rouge's Destruction of Cambodia's Heritage ' (2015) 15 Int'l Crim L Rev 587

Propositions that have a significant impact on the international law of cultural property. The first is the cosmopolitan concept of a shared interest in cultural property apart from any national interest, ("the cultural inheritance of all mankind"). Second, it exclusively protects cultural property by its legal trials, third is the individual responsibility of the offence. Fourth, is the trials are not limited to domestic consideration only. All of this exemplify the principle of "Cultural Internationalism".

CULTURAL NATIONALISM: THE UNESCO CONVENTION 1970

As the name implies, the primary goal of UNESCO 1970 is to prevent "illicit" international trading in cultural property. The parties agree to fight "impoverishment of a nation's cultural heritage" through "illicit import, export, and transfer of ownership" of cultural property (Article 2), to recognise that trade in cultural objects exported in violation of the law of the country of origin is "illicit" (Article 3), and to prevent the importation of such objects and facilitate their return to source countries (Articles 7, 9 and 13). As of this writing 143 nations have ratified this convention. By ratifying UNESCO 1970, a market nation pledges to refrain from importing certain types of cultural property from the parties' source countries. Why would it want to do that? "Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can only be appreciated in relation to the fullest possible information regarding its origin, history, and traditional setting," as stated in the Preamble¹⁰. A Mayan stele carried to Switzerland and sold becomes anonymous after being stolen from an underdeveloped, undocumented site in Belize's rainforest. Both it and the site have lost vital archaeological and ethnological data that would have been saved if the removal had been carefully monitored and documented, or if the stele had remained in place. For example, another clause of the Preamble states: "Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illegal export." One way to read this language is that it imposes an obligation on source nations to care for cultural property in their national territories.

¹⁰ Stanislaw E. Nahlik, 'International Law and the Protection of Cultural Property in Armed Conflicts' (1976) 27 (5) Hastings Law Journal 1069,1072,1075.

Thus, UNESCO 1970 is primarily concerned with national cultural property retention, but the phrase "retention" is rarely used. Instead, the discourse is about cultural property "protection," or protection from removal. "Considering that every State has the right to keep cultural property on its soil and to prohibit its theft, illegal excavation, and export." "The States Parties to this Convention recognise that the illicit import, export, and transfer of ownership of cultural property is one of the principal causes of the poverty of the cultural heritage of the countries of origin of such property."¹¹

CULTURAL NATIONALISM OR CULTURAL INTERNATIONALISM:

The Hague 1954 Preamble mentions "the Cultural Heritage of All Mankind," as we've seen. UNESCO 1970, on the other hand, highlights the interests of states in "national cultural heritage" in its Preamble and throughout the document. The Hague Convention of 1954 aims to protect cultural property from harm or destruction. The UNESCO Convention of 1970 encourages source countries to keep and retain cultural property. Two methods of thinking about cultural property are characterised by these divergent emphases—one global, the other nationalist; one protective, the other retentive. "Culture internationalism" and "cultural nationalism" are terms we use to describe them. Cultural nationalism currently dominates the field; it offers the dominant assumptions and frames of debate in UNESCO and other international bodies, national forums, and the literature on cultural property. In circumstances of "destructive retention" or "materialistic neglect," the distinctions between cultural nationalism and internationalism become more salient. Peru, for example, preserves works from older cultures that it does not appropriately conserve or display, according to newspaper reports. If endangered artwork were transferred to another country, they may be better protected, studied, and shown, as well as seen and appreciated by a wider audience. The destruction of national cultural property due to poor maintenance is regrettable to the cultural nationalist, yet it may be better than its "loss" through export. The export of threatened antiques from Peru to a safer setting, according to a cultural internationalist, is definitely preferable to their destruction via neglect if they are kept¹².

¹¹ John Henry Merryman, 'Two Ways of Thinking About Cultural Property' (1986) 80 (4) *The American Journal of International Law* 831,833, 835,836.

¹² Compare Peru Wages Campaign to Halt Trade in Stolen Treasures, *N.Y. Times*, Oct. 4, 1991,

Cultural nationalism has no problem with a country hoarding unwanted things despite the fact that there are outside markets for them. Cultural internationalism, on the other hand, advocates for the sale, exchange, or lending of such things overseas. In this way, the achievements of the source nation's earlier cultures could be displayed to a wider audience, foreigners' interest in seeing and studying such works (their "common cultural heritage") could be accommodated, and the demand for cultural property that is currently met through the illicit market could be partially met by an open and legitimate trade in cultural property.

It is widely assumed that a number of source countries keep copies of artefacts beyond any conceivable domestic necessity, refusing to sell them to museums, collectors, and dealers in other countries. They prohibit export yet do not utilise much of what they keep. They fail to propagate their culture, fail to exploit such things as a valuable trading resource, and contribute to the cultural poverty of people in other areas of the world in this way¹³.

Both perspectives on cultural property are valid in various ways. They work together to reinforce each other's ideals in a variety of ways. Those are the simple situations. When the two methods of thinking lead in opposite directions, the different ones emerge. Then distinctions must be formed, issues must be refined, and a decision must be made. As a result, any cultural internationalist would oppose the removal of massive sculptures from Mayan locations where physical harm, loss of artistic integrity, or cultural information would almost certainly occur, whether the removal was unlawful or done incompetently. The establishment of international laws and organisations protecting human rights is compatible with a concern for humanity's cultural heritage.' With the relative erosion of national sovereignty that characterises modern international law, a lighter emphasis on cultural nationalism is appropriate. Both perspectives on cultural property have genuine positions in the modern world. Both have a significant role to play in shaping policies addressing parts of humanity's material culture on a local, national, and international level. However, when choosing between the two ways of thinking, cultural internationalism's principles of preservation, integrity, and distribution, as well as access, appear to be more important¹⁴.

¹³ Yehuda Z. Blum, 'On the Restitution of Cultural Property' (2000) 98(4) American Society of International Law 88,90,91,92.

¹⁴ Merryman, 'International Art Law: From Cultural Nationalism to a Common Cultural Heritage', (1983) 15 N.Y.U.J. INT'L L. & POL. 757.

CHAPTER 5: THE CULTURAL DESTRUCTION IN IRAQ:

The Islamic State, commonly known as ISIS or ISIL, or by its Arabic name Da'esh, is an Islamic terrorist group linked to al Qaeda in Iraq that has taken control of vast swaths of territory in Iraq. The goal of ISIS in the Middle East has been to build an autonomous Islamic state founded on radical anti-Western ideals. The Islamic State has become infamous for its ruthless tactics, and al Qaeda renounced it in early 2014¹⁵. The Islamic State, known for their film recordings showing their atrocities, employs cultural heritage destruction as a form of cultural cleansing, wiping the culture and history of Iraq and declaring all religious monuments and historical sites to be blasphemous. According to one commentator, the Islamic State is attempting to establish the legitimacy of its caliphate by demolishing idols: Initially, it appears that ISIS' motivation was to raise their status among Muslims and other Jihadist groups by establishing a link between themselves and Muhammad. It didn't matter that almost none of the statues in the Mosul Museum were cultic images. ISIS wanted to identify some idols to destroy in order to validate their claim to the caliphate as Muhammad's successors.¹⁶

In the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, "intentional destruction" is defined as "an act intended to destroy in whole or in part cultural heritage, thus jeopardising its integrity, in a manner that is a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience, in the latter case insofar as such acts are not already governed by fundamental human rights." The Islamic State has published several videos depicting their systematic destruction of cultural assets, demonstrating that the devastation is intentional in accordance with the 2003 Declaration. Each of these places has enormous cultural and historical value, and their destruction would be a huge loss to humanity.¹⁷

Mosul, Iraq's second-largest city, has been under the Islamic State's authority since June 2014. A video depicting the destruction of Jonah's Tomb, which was located inside a Sunni Mosque in Mosul,

¹⁵ Tim Lister, What does ISIS Really Want, CNN (Dec. 11, 2015) < <http://www.cnn.com/2015/12/11/middleeast/isis-syria-iraq-caliphate> > accessed on 01 Jan 2022.

¹⁶ Richard Greene & Nick Thompson, ISIS: Everything you need to know, CNN NEWS (Aug. 11, 2016), < <http://www.cnn.com/2015/01/14/world/isis-everything-you-need-to-know/> > accessed on 01 Jan 2022.

¹⁷ Kareem Shaheen, Isis attacks on ancient sites erasing history of humanity, says Iraq, THE GUARDIAN (Mar. 9, 2015), < <http://www.theguardian.com/world/2015/mar/09/iraq-condemns-isis-destruction-ancient-sites> > accessed on 01 Jan 2022.

was released in July 2014. According to Islamic and Judeo-Christian traditions, the sacred location is where the Prophet Jonah was buried. The Islamic State then posted films in February 2015 showing them smashing exhibits in the Mosul Museum with sledgehammers, as well as burning volumes and manuscripts from the Mosul Library. This is a significant loss of cultural heritage, as both of these museums housed irreplaceable treasures.¹⁸

In March 2015, the Islamic State destroyed and bombed Nimrud, an Iraqi historic heritage site. The site, which dates from the thirteenth century B.C., was the Assyrian Empire's second capital and was located on the Tigris River. In the same month, the Islamic State claimed responsibility for the destruction of Hatra, an Iraqi World Heritage Site. Hatra, which originates from 330 B.C., was founded by Alexander the Great's successors and became the capital of the first Arab Kingdom. The demolition of Hatra is a pivotal event in Iraq's horrific cultural cleansing strategy... This is a blatant attack on the history of Islamic Arab cities, and it underscores the importance of cultural destruction in extremist groups' propaganda.¹⁹

THE CULTURAL DESTRUCTION IN SYRIA

Cultural heritage destruction and protection has been a part of war for thousands of years, and has gotten more worldwide attention in the last two decades. While cultural heritage is threatened even in times of peace, the most serious damage occurs during times of social disorder and conflict, not only resulting in the loss of something unique and irreplaceable, but also having a psychological impact on the communities affected and possibly leading to increased violence. It's also tied to cultural cleansing, which involves removing groups from the landscape and leaving them with no "home" to return to if such an event occurs. However, those involved in a conflict are obligated to respect cultural property and promote its protection under international humanitarian law (IHL), which is a body of international law that regulates the conduct of armed conflict and seeks to limit its effects by protecting people who are not parties to the conflict. According to the International Criminal Tribunal for the Former Yugoslavia, violating this essential commitment is a war crime, and its destruction

¹⁸ Press Release, UNESCO, UNESCO alarmed by news of mass destruction of books in Mosul, UNESCO Office for Iraq (Feb. 3, 2015), < http://www.unesco.org/new/en/iraq-office/about-this-office/single-view/news/unesco_alarmed_by_news_of_mass_destruction_of_books_i_n_mosul/#.Vil4NYQk_ww.> accessed on 01 Jan 2022.

¹⁹ UNESCO Director-General condemns destruction at Nimrud, UNESCO: WORLD HERITAGE CENTRE (Apr. 13, 2015), <http://whc.unesco.org/en/news/1244/>. > accessed on 01 Jan 2022.

may even amount to crimes against humanity in some circumstances. When perpetrated with the requisite discriminatory intent, [destruction] amounts to an attack on the very religious identity of the people. As such it manifests a nearly pure expression of the notion of “crimes against humanity” for all of humanity is indeed injured by the destruction²⁰.

The Islamic State demolished the almost 2,000-year-old Temple of Baalshamin, as well as several other historic structures, at the ruins of Palmyra in August 2015. When the Islamic State took control of Palmyra, experts and the international world were concerned that the terrorist group would destroy the archaeological monument. The Islamic State targeted Khaled al-Assad, the head of antiquities at Palmyra, in an attempt to locate the site's most important archaeological relics. Al-Assad, on the other hand, refused to direct the Islamic State to the many antiques that had been hidden, and as a result, he was publicly beheaded.²¹

The Islamic State encircled the temple with explosives and detonated them shortly after. Palmyra is a UNESCO World Heritage Site with significant historical significance in Syria. The site was described by UNESCO as "an oasis in the Syrian desert," with "monumental ruins of a magnificent city that was one of the world's most important cultural centres." Palmyra's art and architecture, which stood at the crossroads of multiple civilizations from the first to second centuries, combined Graeco-Roman techniques with local customs and Persian influences." Furthermore, the Temple of Baalshamin in Palmyra, also known as the Temple of Ba'al, "is considered one of the most important religious buildings of the first century A.D. in the East and of unique architecture."²²

INTERNATIONAL ORGANISATIONS AND THEIR ROLE:

On July 27, 1874, fifteen European powers met in Brussels (Belgium) to study a proposed international agreement addressing the Laws and Customs of War. A month later, the Brussels Declaration's Article 8 stated that "any seizure or destruction of, or deliberate damage to Cultural Property historic sites, works of art, and science should be made the subject of legal procedures by

²⁰ Emma Cunliffe et.al 'The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations' (2016) International Journal of Cultural Property 1,2.

²¹ Jethro Mullen et al., ISIS reported to have blown up ancient temple in Palmyra, CNN WORLD (Sept. 8, 2015), <<http://www.cnn.com/2015/08/24/middleeast/syria-isis-palmyra-ruins-temple/>> accessed on 01 Jan 2022.

²² Director-General Irina Bokova expresses consternation at the destruction of the Temple of Bel in Palmyra, UNESCO (Sept. 1, 2015), <<http://whc.unesco.org/en/news/1341/>> accessed on 01 Jan 2022.

the competent authorities" during times of conflict. Twenty-five years later, in 1899, an international peace conference was organised in the Netherlands on the initiative of Tsar Nicholas II of Russia, with the goal of rewriting the Declaration (which was never accepted) and drafting a Convention with Respect to the Laws and Customs of War on Land. Three decades later, in 1935, the preamble of the Treaty on the Protection of Artistic and Scientific Institutions known as the Roerich Pact, a Pan-American initiative, formulated the idea that cultural property, which "form the cultural treasure of peoples," must "be respected and protected in time of war and peace. As already stated after the end of Second World War, in 1948 Netherlands, proposed an international text on cultural property came to be known as Hague 1954. The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols are guided by the principles of safeguard and respect (1954 and 1999). "Harm to the cultural heritage of all mankind" is defined as "damage to cultural property belonging to any people whatsoever. A restricted number of refuges intended to shelter moveable cultural property in the event of armed conflict, of centres comprising monuments and other immovable cultural property of very significant importance".

The UN International Criminal Tribunal for the former Yugoslavia was able to sentence former Yugoslav navy officer Miodrag Joki to seven years in jail in 2004 largely because of these texts and collaboration with UNESCO. This was the first conviction for destroying cultural assets on purpose. Hundreds of mortars were fired on the old town of Dubrovnik, which was inscribed on the List of World Heritage in Danger the same year, under Joki's leadership, between the beginning of October and the end of December 1991²³. More recently, in 2016, the International Criminal Court (ICC) found the Malian jihadist, Ahmad Al Faqi Al Mahdi, guilty of war crimes for the destruction in 2012 of ten religious sites in Timbuktu while the city was under the control of Ansar Dine, a group suspected to have ties to al Qaeda. He was sentenced to nine years' imprisonment. This was a historic judgement, as the destruction of cultural heritage had never before been considered a war crime. In March 2017, the United Nations Security Council unanimously endorsed Resolution 2347. It is the first Resolution to focus solely on cultural heritage, and it recognises UNESCO's pivotal role in safeguarding cultural heritage and promoting culture as a means of bringing people together and fostering discourse²⁴.

²³ Catherine Fiankan-Bokonga, 'A historic resolution to protect cultural heritage' UNESCO Courier Nov-Dec 2017 <<https://en.unesco.org/courier/2017nian-di-3qi/historic-resolution-protect-cultural-heritage>> accessed on 01 Jan 2022.

²⁴ Ibid.

CONCLUSION

Culture is a way of life, it is where civilisation started, it is where law saw it's first ray into human mind. We navigated through, indeed a very long journey into the definition of what is a cultural property and the different legislations protecting cultural property recognising it's significance. The analysis of the Hague Convention 1954 and the UNESCO Convention 1970, one advocating for cultural amalgamation and spread and the other focusing on retention of the national heritage. If, collective action is the requisite in the fight to protect cultural property, then collective vision and imagination is the pre-requisite to consider that culture and heritage transcends national settings.

It is unlawful in international conflicts and non-state armed (civil wars) to destroy Cultural Property for no military reason, it can be only justified by an absolute and imperative Military necessity and that property has to become a Military Objective, nothing less or nothing more. If there is a military objective established, then the Rule of Proportionality shall prevail where in simple words, the commander outweighs the military need to hit the target against the risk and damage to the property. Like in many cases, there is no need of targeting monuments like in the Iraq Invasion of 1991 by the USA, it is said the Saddam Hussein ordered to park a lot of fighter jets, next to the Great Ziggurats, but the USA troops didn't hit as they were not on runway and no fuel and so they didn't target them. The International Law, didn't act like silent spectators but it's main theme and focus had been adequate, like after the II World War, the defeated allies were made to hand back the property which they plundered. The Iraqi troops collection taken during the Invasion of Kuwait was subjected to reparation order. The law did do it's work as they were numerous war crime trials like Nuremberg Trial, the International Criminal Tribunal conviction for the bombardment of Dubrovnik for former Yugoslavia and all these actions were supplemented the historic resolutions and conventions adopted by the UNSC, whenever it got involved it imposed obligations on member states as in 2003, when states were obliged to report to the committee on measures taken on preventing illicit trade, terror financing and curbing transnational organized crime. Indeed, the role of civil societies like the Geneva Way, which discusses with the non-state parties to not to attack property, building capacity programmes and training them, as very often, people are fighting for their identity and culture and the very last thing to do is to destroy the living records of their memory.