

Cultural Destruction as a War Crime: A Critical Analysis of AL-Mahdicase

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Abstract

Cultural Heritage is the mirror of Humanity”

Cultural Destruction in the simplest sense refers to the destruction of structures and objects of cultural significance, i.e. structures which is made up of tradition and backed up by historical events which identify with the people of particular culture. In ancient times, the destruction of cultural heritage during armed conflict was taken to be a crime but in modern times, military powers have determined that the destruction of cultural heritage is an attack on people of an entire culture and makes the recovery of the attacked population much more difficult.

However, with the evolving time, cultural heritage is not recognized as of importance to a particular group but belongs collectively to humanity. There have been various instances of destruction of cultural heritage especially in Palmyra (Syria), Afghanistan & Iraq, but these were not taken up by International Criminal Court until the case of Prosecutor v. Al Ahmad alFaqi Al Mahdi.

International Criminal Court delivered its first verdict where it pronounced Cultural heritage as a war crime. Al Mahdi case was the first trial conducted by ICC which solely focused upon the destruction of “irreplaceable assets” of cultural heritage. The case ignited from destruction of ten sites in the ancient city of Timbuktu during its capture by Islamic militant groups. Out of those ten sites, nine were recognized as “World Heritage Sites” by UNESCO which indicated its extraordinary significance to the whole of humanity. These sites comprised of more than 1% of the total World Heritage sites and thus their destruction was marked as a great loss to the humanity. The important question which shall be discussed in the paper is “What incited ICC to interfere in the incident of cultural destruction of sites in Timbuktu as to its prior indifference towards previous such incidents?” This became a

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landmark case and a step forward for ICC as it declared Cultural destruction to be a War Crime for the very first time.

Keywords – cultural destruction, cultural heritage, humanity, international crime.

Evolution of legal instruments prior to AL- MAHDI case

When we refer to something as “cultural property,” we mean that it has taken on some special meaning, whether religious or secular, beyond its monetary or artistic value. The term is well defined in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which states that: “the 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.”

Cultural heritage has always been placed on higher pedestal as they are not just the property but more than that. Cultural heritage shows and establishes the identity of communities. And it has always been an easy target to bring uproar in the society. Thus there has been different legal instrument from before world war till today. The major step towards protection of these properties was taken after horrific experiences of World War II. This led to the establishment of intergovernmental organization mainly United Nations and the United Nations Economic, Scientific and Cultural Organization (UNESCO), and adoption of several international conventions focused on humanitarian issue.

Though protection of cultural property is a lesser known but established tenet of international law can be traced back to Articles 27 and 56 of the 1907 Hague Regulations concerning the Laws and Customs of War on Land. The 1907 Hague Regulations identify “wanton destruction of religious, charitable, education, and historic buildings and monuments” as a war crime. The 1946 Nuremberg Tribunal stated that “The rules laid down in the Convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war.” Accordingly, these provisions are binding on all nations as customary international law, which are binding international obligations not derived from treaties that exist because state practice demonstrates that the international community accepts the obligation as law.

In 1954, 127 States ratified The Hague Convention for Protection of Cultural Property in event of armed forces which equivocates the view that “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each person makes its contribution to the culture of the world.” Subsequent international instruments reflect the enhanced protection of cultural property including Additional protections regarding cultural property include Protocols I and II to the Geneva Conventions and the Second Protocol to the Hague Convention of 1954.³

However, the problem still lies on the fact that many countries are not part of ICC or UNESCO, which makes it difficult to provide justice to such countries. Like in Syria, it being not a party to ICC has become difficult to interfere in the atrocities happening in the country. It’s sad to just be a meek spectator of the just atrocities and leave civilians to face such crisis, which is against humanity.

The possible way ICC can play its role in Syria is referral by UNSCR but there is inner conflict in members of UNSCR and there isn’t any agreement forthcoming. As Syria is not a state party to the ICC. The Court therefore has no jurisdiction to indict its citizens without referral from the Security Council. Russian and Chinese support for Damascus means that the Security Council will not authorize such a referral. The ICC, therefore, cannot play a role and an ultimatum would be an empty bluff.

Preservation of cultural heritage: Role of UNESCO, UNSC & ICC

Immediately after the destruction in 2012, UNESCO alerted the international community and seized the International Criminal Court to ensure such crimes do not go unpunished, explained Irina Bokova, Director-General of UNESCO. The Organization undertook a series of measures, ranging from providing the armed forces with topographical details, to the reconstruction of mausoleums. For the first time in history, safeguarding the cultural heritage of a country was written into the mandate of a United Nations Mission (Resolution 2100). MINUSMA, the UN peacekeeping mission in Mali, was entrusted with “protecting from attack the cultural and historical sites in Mali, in collaboration with UNESCO.

Further in February 2015, with the backing of UNESCO, some fifty countries adopted UN Security Council Resolution 2199, prohibiting trade in cultural property coming from Iraq

³ March Lynch, *Can the ICC Take on Syria*, FOREIGNPOLICY (Mar. 2, 2012.), <http://foreignpolicy.com/2012/03/04/can-the-icc-take-on-syria/>.

and Syria. “This resolution acknowledges that cultural heritage stands on the frontline of conflicts today, and it should be placed at the frontline of security and political response to the crisis,” said Irina Bokova, at the time.⁴

The Security Council adopted Resolution 2056(2012) under Chapter VII of the UN Charter which: “Condemned strongly the desecration, damage and destruction of sites of holy, historic and cultural significance, especially but not exclusively those designated UNESCO World Heritage sites, including the city of Timbuktu.”⁵ It stressed that such attacks violated Additional Protocol II of the 1949 Geneva Conventions and the Rome Statute and that the perpetrators would be brought to justice.⁶ The UN Secretary-General called on the Security Council to impose sanctions on the perpetrators of attacks on sites that are designated as ‘part of the indivisible heritage of humanity’.⁷

Apart from these the main legal instrument is Rome statute which with influence of The Yugoslav wars and the ICTY Statute included provisions relating to the war crime against cultural property under article 8⁸. The Preamble of the 1998 Rome Statute of the ICC declares that “the most serious crimes of concern to the international community as a whole must not go unpunished.” In establishing the ICC, the State Parties were “determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.” Under Article 8(2) (e) (iv) the Rome Statute, which defines war crime as “intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purpose, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives” is a war crime. Thus, because the Rome Statute lists offenses pertaining to the protection of cultural property as a war crime and these protections are also customs of international law, the ICC can prosecute those States or individuals. The first indictment by the ICC under these provisions arose in respect of the situation in Mali during 2012, under a warrant issued in September 2015.

⁴Catherine Fiankan-Bokonga, ‘A historic resolution to protect cultural heritage’,

UNESCO <https://en.unesco.org/courier/2017-october-december/historic-resolution-protect-cultural-heritage>.

⁵ SC Res.2056 on Peace and Security in Africa, 5 July 2012, UN Doc.S/RES/2056 (2012), This was reaffirmed in SC Res.2071 of 12 October 2012, UN Doc.S/RES/2071 (2012) and SC Res.2085 of 20 December 2012, UN Doc.S/RES/2085 (2012).

⁶SC Res.2056(2012), paras 13 and 16.

⁷ B. Ki-Moon, Secretary-General’s Remarks to the Security Council on Mali. Speech delivered at the UN Security Council, 8 August 2012, (viewed May 12, 2018). B. Ki-moon, Report of the Secretary-General on the situation in Mali, UN Doc. S/2012/894 (28 November 2012)

⁸Rome Statute of the International Criminal Court (Rome Statute), art.8, cl.(2)(b)(ix) (international armed conflict) and art.8, cl.(2)(e)(iv) (non-international).

Prosecutor v. Ahmad al faqi al mahdi: A Critical Analysis

Factual circumstances of the case

International Criminal Court (ICC), on 27th September, found accused Ahmed al- Mahdi guilty under Article 25(3) (a) of Rome Statute as perpetrator and co-perpetrator for war crime, beyond reasonable doubt. He was further accused under Article 25(3) (b) for soliciting, under Article 25(3) (c) for aiding, abetting or otherwise assisting as well as Article 25(3) (d) for contributing in any other way, in the commission of war crime by conducting direct attacks upon the following buildings:

- i. The mausoleum SidiMahamoud Ben Omar Mohamed Aquit,
- ii. The mausoleum Sheikh Mohamed Mahmoud Al Arawani,
- iii. The mausoleum Sheikh SidiMokhtar Ben Sidi Muhammad Ben Sheikh Alkabir,
- iv. The mausoleum Alpha Moya,
- v. The mausoleum Sheikh Sidi Ahmed Ben Amar Arragadi,
- vi. The mausoleum Sheikh Muhammad El Mikki,
- vii. The mausoleum Sheikh AbdoulKassimAttouaty,
- viii. The mausoleum Ahmed Fulane,
- ix. The mausoleum BahaberBabadié, and
- x. SidiYahia mosque (the door)

These crimes were allegedly committed by the accused in Timbuktu between the duration of 30 June 2012 to 11 July 2012. It was indicated by the Chambers that the buildings which were targeted by the accused were constituted as part of cultural heritage of Timbuktu and were of great significance to Mali. It was contended that the buildings did not hold any military objective and were specifically chosen because of the fact they hold religious importance and had historical character. The attack rendered these buildings damaged, either completely destroyed or severely damaged. The accused, Al- Mahdi was alleged to be an active personality in commission of these offences. He was supposedly a member of a movement associated with Al-Qaeda in Islamic Maghreb (AQIM). He was allegedly the head of Hisbah and associated with the work of Islamic Court of Timbuktu and was also responsible for execution of their decisions.

The case was tried between 22nd- 24th August 2016 and the accused Al- Mahdi made an informed and voluntary admission of guilt. On the basis of certain mitigating factors, ICC sentenced him for nine years of imprisonment.

Chamber's Analysis

Crime charged

The charge confirmed in this case is that of 'war crimes' under Article 8(2)(e)(iv) of the Statute which reads as: "Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives."⁹

It was noted by the Chamber that the Prosecution did not charge the accused under Article 8(2)(e)(xii)¹⁰ which entails more general crime of destruction of civilian property. The following points necessarily need to be proved in order to prove the crime with which the accused is charged.¹¹

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.¹²

Since this was the first case where Article 8(2) (e) (iv) was applied by the Court, the Chamber interpreted the crime along with its elements. Cultural Property has been granted special

⁹Article 8 (2) (e) (iv) of the Statute.

¹⁰Article 8 (2) (e) (xii)- Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

¹¹ Regulation 55 of the Regulations ('Authority of the Chamber to modify the legal characterization of facts')

¹²Rome Statute, art. 8, cl.(2)(e)(iv) Elements of Crimes.

protection in the International Law under Article 27 and 56 of the Hague Regulation, 1907.¹³ Further, it was identified by 1919 Commission on Responsibility that “wanton destruction of religious, charitable, educational, and historic buildings and monuments is a war crime.”¹⁴ Subsequently, protection of cultural property gained importance under the international instruments, including Additional Protocols I and II to the Geneva Convention¹⁵ as well as Second protocol to Hague Convention, 1954¹⁶.

It was further discussed that although Article 8(2) (e) (iv) and Article 8(2) (e) (ix) pose certain similarities and have identical elements but where the former is applicable in cases of non-international armed conflict, the latter is applied in International armed conflict cases. It was jointly submitted by the parties along with evidences presented before the Chamber, that during the relevant period, situation of non-international armed conflict was prevalent and was opined by the Chamber that the ‘conduct’ was attacking the cultural objects and the only link required was an association with non-international armed conflict in a general sense.

Conclusion of chamber

Chamber was satisfied with the fact that the accused had knowledge and understood the nature and consequences of admission of guilt after sufficient consultation with the Defense Council. The admission of guilt coupled with the evidences presented proves beyond reasonable doubt, the crime of attacks on projected objects under Article 8(2) (e) (iv). It was found by the Chambers that contributions made by Al-Mahdi were qualified as of significance for the commission of the crime. Mr. Al- Mahdi, being the head of Hesbah had the overall responsibility for the execution of the attack, deciding the progression of targeted buildings to be destroyed, justifying the attacks through media interviews.¹⁷ The Chamber was satisfied that Mr Al- Mahdi had direct participation in the attacks and the fact that he justified the attacks as media spokesperson met the subjective element of crime and that the

¹³Convention (IV) respecting the Laws and Customs of War on Land and its annex.

¹⁴Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, 14 The American Journal of International Law 95 (No. 1-2, 1920), p.115.

¹⁵ Protocol Additional to the Geneva Conventions of Aug12 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8 1977, art.53; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8,1977, art.16.

¹⁶Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, art.15, Mar.26, 1999.

¹⁷Statement by Mr Al Mahdi, MLI-OTP-0033-4645, 4660; See also, Defence Sentencing Observations, ICC-01/12-01/15-141-Corr-Red, para 164.

elements of Article 25(3) (a) were met and co-perpetration was established. The Chamber unanimously held Al-Mahdi guilty under Article 25(3) (a) as well as Article 8(2) (e) (iv).

The pre-trial chamber confirmed other modes of liability namely:

- i. Article 25(3)(b) (soliciting and inducing);
- ii. Article 25(3)(c) (aiding and abetting) and
- iii. Article 25(3)(d) (contributing in any other way)

All the modes of liability were accepted by Mr Al- Mahdi and following conclusions were made by the Chambers:

It was noted by the Appeals Chamber that there was a distinction made by Statute between Principal liability under Article 25(3) (a) and accessorial liability under Article 25(3) (b)-(d). The Chamber held that since the elements of co-perpetration were proved beyond reasonable doubt, there was no need to look into accessorial liability since the former bore more blameworthiness. It was further opined by the Pre-Trial Chambers that Mr Al- Mahdi indeed personally participated and was a direct perpetrator in the destruction of targeted buildings, which was confirmed by the Chambers.

Based on the discussions, the Chambers held Mr. Al- Mahdi satisfied elements for both perpetration and co-perpetration.

Gravity

In respect to gravity, it was noted by the Chamber that Mr. Al- Mahdi was charged with ‘Crime against Property’, unlike most accused who are generally convicted for ‘Crime against persons’. Even if the former is inherently grave, it has a lesser gravity as compared to the latter.

In respect to extent of damage, it was recalled by the Chamber that most of the targeted sites were completely destroyed. Furthermore, they were carefully planned for almost 10 days and to top it all off, the attacks were relayed in the media.¹⁸ It was evident that the targeted sites were not merely religious buildings but had a symbolic and emotional value for inhabitants of Timbuktu. This was taken as a relevant consideration in assessment of gravity of crime.

¹⁸ Bemba Sentencing Decision, ICC-01/05-01/08-3399, para 18, Katanga Sentencing Decision, ICC-01/04-01/07-3484-tENG, para 34; Lubanga Sentencing Decision, ICC-01/04-01/06- 2901, para 33

Chambers also took into account the fact that all the targeted buildings were UNESCO World Heritage sites except for one and their destruction did not merely affect the direct victims but the entire international community at large. Further, it was observed that the accused had religious motives behind commission of crime which was evident from the fact that they had previously taken measures to impose their religious edicts on the population.¹⁹ Such discriminatory religious motive was noted by Chamber to be the reason behind destruction of sites and thus was a relevant factor in assessing the gravity of crime. Therefore, it was concluded by the Chamber that the crimes for which accused Al- Mahdi is convicted has significant gravity.

Determination of sentence

Chamber took into consideration the mitigating circumstances and further circumstances of both convicted person as well crime was also taken into account. The Chamber had to impose a sentence following the principle of proportionality keeping in mind the gravity of crime and individual circumstances. It was further opined that the moral and economic harm cause to victims must be reflected and fulfilled by the sentencing. It was submitted by the Prosecution that the term of sentence should be between nine to eleven years. The accused, Al-Mahdi was convicted of the crime of significant gravity, but the Chambers could not find any aggravating factors but found five mitigating factors²⁰ which are as follows:

- i. The admission of guilt by the accused;
- ii. Cooperation of accused with the Prosecution;
- iii. The remorse and the empathy expressed by the accused for the victims;
- iv. The initial reluctance to commit the crime and the steps taken by the accused to limit the damage caused; and
- v. Even though this factor is of limited importance, the accused maintained a good behavior in detention despite of his family situation.

Thus, all the factors were taken into account and the Chamber, unanimously decided the sentence to be 9 years of imprisonment.

Genocide & Crime against humanity

¹⁹ Bemba Sentencing Decision, ICC-01/05-01/08-3399, para 19, in particular: Katanga Sentencing Decision, ICC-01/04-01/07-3484-tENG, paras. 32 and 34; Lubanga Sentencing Decision, ICC-01/04-01/06-2901, para 34.

²⁰ Bemba Sentencing Decision, ICC-01/05-01/08-3399, para 91.

Two categories of International Crimes were proposed by Raphael Lemkin in 1930, barbarity and vandalism which later corresponded to the idea of Genocide. The basic idea which was addressed by the crimes was “actions aiming at the destruction and oppression of population.”²¹ However, a draft genocide convention was produced by Lemkin and two consultants of the United Nations Secretariat in 1947 which included “systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.”²² This was referred to as cultural genocide and was made punishable by the draft but was later removed from subsequent drafts of Convention on Prevention and Punishment of Crime of Genocide²³ and not made punishable under the 1948 Genocide Convention. However, evidence of cultural genocide helps in supporting the allegation of the act of Genocide as mentioned in the convention. In *Bosnia v. Serbia*, it was observed by International Court of Justice, with reference to the Convention that “although such destruction may be highly significant inasmuch as it is directed to the elimination of all traces of the cultural or religious presence of a group, and contrary to other legal norms, it does not fall within the categories of acts of genocide set out in Article II of the Convention.”²⁴

There have been various case laws where ICTY held that under special circumstances, the destruction of property may constitute Crime against Humanity.²⁵ The Trial Chamber concluded in the *Karadžić* judgment that mosques and Catholic churches as well as cultural monuments and sites were heavily damaged by the Serb forces with discriminatory intent against Bosnian Muslims and Bosnian Croats. The Tribunal opined that “these incidents of wanton destruction of private and public property, including cultural monuments and sacred sites, constitute acts of persecution as a crime against humanity.”²⁶

In the present case at hand, the Prosecutor proceeded with the preliminary assessment and concluded that “the information available does not provide a reasonable basis to believe that

²¹ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, Washington: Carnegie Endowment for World Peace, 1944, p. 91; Raphael Lemkin, ‘Genocide as a Crime Under International Law’, (1947) 41 *American Journal of International Law* 145, at pp. 146-147, Mark Lewis, *The Birth of the New Justice*, New York: Oxford University Press, 2014, p. 188; Philippe Sands, *East West Street, On the Origins of Genocide and Crimes against Humanity*, London: Weidenfeld and Nicolson, 2016, p. 157.

²² UN Doc. E/447, p. 17, art. I (3)(e)

²³ UN Doc. A/C.6/SR.83.

²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 344.

²⁵ *Blaškić (IT-95-14-A)*, Judgment, July 29, 2004, para 149.

²⁶ *Karadžić (IT-95-5/18-T)*, Mar.24,2016, para 2548-2559.

crimes against humanity under Article 7 have been committed in the Situation in Mali.” However, the right to revisit the issue was reserved by the Prosecutor.²⁷ Here, the question of Prohibition against analogy arises which is present under Article 22 (2) of the Rome Statute. This basically means that a gap in Criminal Law must not be filled by applying a Statute beyond its wording or by extending a precedent through the creation of a new unwritten crime.²⁸

Previously, destruction of monuments and religious buildings has been considered to constitute the act of persecution as crime against humanity. However, the definition of persecution under the Rome Statute does not include the crime of destruction of property rather is defined as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group.”²⁹ The tribunal extended the meaning of persecution to include the crimes of destruction of property. This is however not prohibited by law and is covered by the exception of interpretation, where the tribunal has the power to interpret in case of any lacunae. Judges are required to interpret the law which includes giving content in good faith to the text in the light of its ordinary or special meaning, context, object, and purpose, as well as subsequent practice, subsequent agreements, and applicable law.³⁰ This interpretive exercise is not considered to undermine the notion of fair warning or separation of powers concerns so long as the Court’s reasoning does not yield a new crime not contemplated by states parties.³¹ The ban on analogy is also intended to discourage the creation of substantially new crimes.

Criticisms of the case

1. In its analysis of the nature of the destruction, the Office specifically analogizes the objects covered under Article 8(2) (e) (iv) of the Rome Statute to the “cultural or spiritual heritage” that is afforded special protection under Additional Protocol I to the 1949 Geneva Conventions. Without specifically discussing any other indicators of cultural, religious or historical significance of the sites to Timbuktu, the Office of the Prosecutor concludes that they “undoubtedly” meet these criteria since they have been on the World Heritage list since 1988.

²⁷Office of the Prosecutor, Situation in Mali (art. 53(1) Report, January 16, 2013, para. 128.

²⁸Kokkinakis v Greece (Judgment) (ECtHR) Series A No 260 A.

²⁹Art.7 (2) (g) of the Rome Statute.

³⁰US v. Davis, 576 F2d 1065, at 1069 (3d Cir. 1978) (Aldisert, J. concurring), cited in Paust, ‘Nullum Crimen and Related Claims’, 25 Denver J Int’l L & Policy (1997) 321, at 325; Delalic’, supra note 8, at para. 413.

³¹On fair warning and the surreptitious broadening of crimes see Case, supra note 32.

2. The Prosecutor's analysis in the Al Mahdi case clearly signifies that international criminal law has used World Heritage status as a proxy for gravity in the commission of the war crime of intentionally directing attacks against cultural heritage. In other words, the "gravity threshold" for future ICC cases based on the destruction of cultural property would clearly be met by the "outstanding universal value" of a World Heritage Site.

Recommendations & Conclusion

1. One of the legal argument for involving the ICC even if the Security Council stays blocked, which rests on the fact that Syria, unlike Libya, is a signatory to the Treaty of Rome even if it has not acceded to the Court. Its 2000 signature does create some obligations. The Vienna Convention on the Law of Treaties (VCLT) governs the obligations of states that have signed but not ratified a treaty. Article 18 says they must "refrain from acts which would defeat the object and purpose of a treaty", that would seem to be the legal obligation on Syria at this point.
2. There is need of States to cooperate to ensure that perpetrators are held criminally responsible for such crimes. The 2003 UNESCO Declaration is an important reference point towards it, as it provides for State and individual responsibility for intentional destruction of cultural heritage (Articles VI and VII). It also calls on States to establish jurisdiction and effective criminal sanctions against individuals who commit or order others to commit such acts. It requests States to cooperate with one another and UNESCO including through information sharing; consultation in cases of actual or impending destruction; assist in respect of educational, awareness-raising and capacity-building programs for prevention and repression; and assist judicial and administrative processes.
3. As highlighted by the Human Rights Council in 2007³², 'intentional destruction of cultural heritage may constitute advocacy and incitement to national, racial or religious hatred and thereby violates fundamental principles of international human

³²HRC Res.6/11 on Protection of cultural heritage as an important component of the promotion and protection of cultural rights, Sept.28, 2007.

rights law’ and thus States bore primary responsibility to ‘prohibit, prevent, stop and punish’ such acts.³³

4. The requirement of intentionality for the commission of an attack against cultural property to be considered criminal should incorporate underlying principles of reckless disregard or extreme negligence thereby giving them broader applicability. And these principles should be understood in light of principles of proportionality and distinction.
5. Having tag of world heritage site should not be the only criteria to be prosecuted by ICC, principle of gravity and humanity through relative perspective to local community should be the prima facie criteria’s.
6. Instead of reframing laws of destruction of cultural heritage under crime against humanity it should be bend towards more effective cultural heritage preservation by suggesting that viewing existing international law through the lens of human rights offers a more flexible and nuanced approach to existing law.

Conclusion

The destruction of cultural property has been carried out many time in the past were the world stood helpless. Be it destruction of Buddhas of Bamiyan, statues which stood for more than 1,500 years by Taliban in Afghanistan³⁴ or the recent destruction of Iraq’s cultural heritage in Nimrud by Islamic State (ISIS)³⁵, the international community has stood powerless and failed to prevent such incidents. Moreover, despite of previous destructions, the international realm has still been unable to prevent such incidents from happening. Destruction of 3,000 year old Mesopotamian sculptures in Mosul Museum³⁶ and the brutal demolition of Palmyra and other heritage sites in Syria³⁷ and failure of the world to protect the same is a reminder of the vulnerability of such sites.

These attacks on religious buildings and monuments and cultural heritage prove to be act of aggression creating a widespread impact over the shared history and cultural values and are

³³*Ibid.*

³⁴Abbas Naderi&FarangisNajibulla, Haunted by the BamiyanBuddhas, GANDHARA (Mar. 13, 2015), <http://gandhara.rferl.org/a/afghanistanbamiyan-buddhas/26898975.html>.

³⁵ Susannah Cullinane, HamdiAlkhshali, & Mohammed Tawfeeq, Tracking a trail of historical obliteration: ISIS trumpets destruction of Nimrud, CNN (Apr. 13, 2015, 8:43 PM), <http://www.cnn.com/2015/03/09/world/iraq-isisheritage/>. [https://perma.cc/K9G3-4DY5]

³⁶*Ibid.*

³⁷AthanasiosNakasis&NikolaosLianos, Syria: *The Impact of the Civil War on the Cultural Heritage*, ICOMOS, Available at: <https://journals.ub.uniheidelberg.de/index.php/heritage/article/download/20046/13838>.

not deemed as isolated incidents. Such crimes are meant to target “the richness of wholecommunity”³⁸ and thereby “impoverishes and damages the universal values which are meant to be protected and we are bound to protect.”³⁹ It is the duty of the international community to protect and safeguard the objects, buildings and monuments of cultural importance which are indeed more than just stones.⁴⁰ These monuments, buildings are not mere objects of religious significance but identify the people for all humanity.

Although ICTY has taken important decisions as a step forward towards preventing such incidents, it has still not ended the impunity. In cases of armed conflict, such destructions could not be prevented but can be accounted for. These crimes must also be prosecuted and no impunity be given.

The crime of cultural destruction has been given clear recognition in Al- Mahdi case where its severity has been accounted for but there is still a long way to go. Such cultural destruction of property is pointed towards creating an eternal void and is aimed at attacking the spirit and soul of humanity which has to be protected. Thus, international justice must stand for the protection of the same and protect the souls of such vulnerable groups.⁴¹

³⁸Prosecutor v. Al Mahdi, Case No ICC-01/12-01/15, Statement of the Prosecutor of the International Criminal Court, (Aug. 22, 2016), <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-al-mahdi-160822>. [<https://perma.cc/7MUL-G7NP>]

³⁹*Ibid.*

⁴⁰Alissa Rubin, Among the Wounded in Syria’s War: Ancient History, N.Y. TIMES (Mar. 7, 2014), <http://www.nytimes.com/2014/03/08/world/middleeast/among-thewounded-in-syrias-war-ancient-history.html>.

⁴¹Marks Ellis, *The ICC’s role in Combating destruction of Cultural heritage*, Case Western Reserve Journal of International Law, Volume 49, Issue I, 2017.