

# **Application of International Humanitarian Law in protection of Cultural Heritage during Armed Conflict**

**Ruba Farooq**

Advocate, Law Graduate at Bahria University, Islamabad

**Maimna Riaz**

Advocate, Law Graduate at Bahria University, Islamabad

## **ABSTRACT**

During times of war, cultural heritage has always been jeopardised. UNESCO attempted to address the issue for the first time shortly after World War II, in 1954, when it passed the first of three signature conventions to protect cultural property from damage, destruction, and pillage during times of armed conflict. However, gaps and other flaws in their frameworks made these conventions difficult to enforce and, as a result, largely ineffective. The purpose of this study is to assess the strengths and limitations of the UNESCO system of cultural-heritage protection, with a particular emphasis on the 1954 Hague Convention. It is argued that the International Criminal Tribunal for the Former Yugoslavia, the Second Protocol to the 1954 Hague Convention, and the Rome Statute of the International Criminal Court (ICC) were especially influential in shaping more effective legal frameworks for protecting cultural heritage, as evidenced by subsequent measures taken by UNESCO, the ICC, and the Security Council. The question of whether and to what extent the imperative to safeguard cultural heritage has achieved widespread normative status is also addressed. The study concludes with a brief assessment of recent cultural crimes around the world, followed by a discussion of potential new frameworks for protecting cultural heritage that seek to improve on the limitations of existing systems while also responding to the unique risks that currently threaten culture in conflict zones.

**Key Word:** *International Heritage, Cultural Heritage, Armed Conflict, International Humanitarian Law, Cultural Property*

### **The Purpose of International Humanitarian Law**

War is governed by humanitarian law, which is part of international law. It is not the goal of humanitarian law to prevent war; rather, since war cannot be avoided, it establishes the limits of what is permissible and what is prohibited during a fight. Mohammed Bedjaoui believes that humanitarian law aims to make fighting more humane<sup>1</sup>.

There are several goals of humanitarian law, as follows:

Assist combatants and civilians in avoiding needless suffering; • Protect the human rights of those living in dangerous environments. Enemies must be protected and respected; they have a right to be treated like prisoners of war. Prevent a barbaric conflict that is directed at everyone. Humanity is the primary assumption.

### **Type of Armed Conflict**

Throughout history, the word "armed conflict" has been used to refer to the commencement of hostilities between countries. These conflicts have traditionally been distinguished by the distinction between interstate relations and intrastate cases, which traditionally fall under state jurisdiction and are thus largely immune to international legal rules. International and non-interstate armed conflicts have traditionally been distinguished by this distinction. This distinction has been made in the past. Humanitarian law has progressively grown to cover non-international<sup>2</sup> armed conflict, which is worth emphasizing.

The notion of armed conflict arose as a basis for humanitarian law throughout time. Both international and non-international conflicts are covered under international humanitarian law. When it comes to international armed conflict and non-international armed conflict, international humanitarian law distinguishes between them<sup>3</sup>. There are proven methods for settling issues amicably after a major international war. In today's world, fighting is one of the most common ways to solve problems.

International and non-international armed conflicts are treated differently under international humanitarian law. Each kind of armed conflict will be defined in further depth by the author.

### **International Armed Conflict**

According to Draer's definition<sup>4</sup>, an international armed conflict occurs when two military forces from different nations engage in combat.

As stated in Article 1 paragraphs (3) and (4) of Protocol I: Armed confrontations fall into two categories: those between states and those between groups of people opposing colonial dominance, foreign colonialism, and racist regimes (the CAR Conflict).

Due to their status as governments or countries, both sides in an international conflict have the same legal standing. International armed conflict is defined in Article 2 of the 1949 Geneva Conventions as a conflict involving more than two nations<sup>5</sup>.

### **Non-International Armed Conflict**

International and non-international armed conflict are distinguished in the historical record. Internal state transactions have generally been subject to domestic law and hence do not fall within the purview of international law. The distinction is based on this duality. This disparity, on the other hand, has narrowed during the last several decades. International law has controlled non-international armed conflict for some time now<sup>6</sup>. Additional Protocol II was signed in 1977 and international customary law developed in this area since then, therefore the normative framework controlling non-international armed conflict has undergone significant transformations throughout that time period. More crimes committed in non-international armed conflict might be prosecuted as international criminal law evolved and the International Criminal

Court was founded (ICC). There has also been an upsurge in the number of research studies on non-international armed conflict<sup>7</sup>.

Rebel forces or other organized military groups under responsible command that control enough territory to allow for continuous military operations while adhering to international humanitarian law are considered to be in non-international armed conflict, as defined in A. of the Additional Protocol II of 1997.

Conflict between the military of one country against its own citizens or rebel groups is known as "non-international armed conflict." Non-international armed conflict may be defined as a war between two ethnic groups in a specific region of a country provided certain characteristics are satisfied, such as intensity, length, or age, and public involvement<sup>8</sup>.

### **Principles of International Humanitarian Law**

Taking action in times of conflict is prohibited under the norms of humanitarian law. In accordance with international humanitarian law, these principles must be adhered to by all governments involved. These fundamental ideas are as follows:

#### **Humanity Principle**

Humanity considers weapons and fighting strategies that are not absolutely required for obtaining a true military advantage to be prohibited. Jean Pictet defines humanity as follows in his book, *The Development and Principles of International Humanitarian Law: Non-combatants should be kept away from the battlefield as much as possible, and injuries to victims should be kept to a minimum to allow for treatment and recovery; multi-injuries should be avoided.*

To retain a feeling of humanity, people engaging in a battle must be courteous to one another. This implies that even if the two parties are at war, they cannot engage in activity that would be detrimental to the other. Humanitarian law, based on the concept of humanity, prohibits war while safeguarding human values<sup>9</sup>.

The humanity principle is used to demonstrate respect for the protection of human life.

#### **Military Necessity Principle**

In order to attain the aims and success of the conflict, parties might use violence to subjugate their opponents. The use of civilian objects as military targets is not outlawed under international humanitarian law, which stipulates that only military objectives may be attacked. Military necessity is defined as criteria that must be met in order for a civilian item to be utilized in military operations as a target<sup>10</sup>.

#### **Chivalry Principle**

At any scenario, honesty is critical, but it is more critical in a time of conflict. This chivalrous concept suggests that in times of conflict, it is forbidden to employ instruments that have not been respected, to deceive in different ways, or to utilize sly means.

As stated by Kunz, the three concepts above should be executed in a balanced manner in the execution of the strategy:

*"Law of war, to be accepted and to be applied in practice, must strike the correct balance between, on the hand the humanity principle, and chivalry, and on the other hand, military interest (necessity)"*


#### **Proportional Principle**

Assaulting or enforcing must be done within the means and tactics available, and each party must use a proportional approach. Prior to any violent military action, every effort must be made to minimize civilian deaths, injuries, and property damage, in line with the proportionate principle<sup>11</sup>.

The International Court of Justice considers this proportional approach when determining whether the threat or use of nuclear weapons is legitimate<sup>12</sup>. To avoid breaking the proportionality principle, any country considering the use of weapons for self-defense must first ensure that the weapons in issue do not violate an International Court of Justice judgement. The 1996 ruling and its accompanying reasons regarding the use of nuclear weapons as a threat to inflict excessive incidental damage deemed the proportionality approach inadequate<sup>13</sup>.

The principle of proportionality is expressed in the Al-Qur'an in Surah Al-Baqarah verse 190:

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقْتُلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ



Which mean:

And fight in the way of Allah to those who fight you, (but) you do not over or exceed the limits, because verily Allah does not love those who exceed the limits. || (Al-Baqarah:190)

### **Distinction Principle**

In this study, the distinction principle is an important principle to be authors describe in full, based on this principle the author tries to analyze it to distinguish combatants from civilians

### **The Background of Distinction Principle**

The law of war is a well-established and basic component of international law. You may be unaware of this fact since the laws of war were the first to be written in modern international law. Similarly, to how international law was formed and established in the West, the laws of war were developed and established in the West. As the law of war is considered to be rooted on war practices, it is therefore based on the western habit of war<sup>14</sup>.

Separating civilians from military personnel is a fundamental principle of international humanitarian law. In every scenario involving violence, determining who should be protected and who should not be a critical first step. One may distinguish between individuals who are authorized to engage in hostilities to the point of being a target for violence (dead) and others who should be protected since they do not engage in combat<sup>15</sup>. The issue is whether you are a civilian or a combatant. On the other side, civilians are persons who do not take an active role in conflicts<sup>16</sup>.

This distinction is made to ascertain which organizations have been engaged in hostilities and which may be protected as a group that was not involved in hostilities.

According to Draper's reference to the Manual of Military Law, warriors and civilians share the same rights, duties, and limits. Additionally, the handbook indicated that concurrent enrollment in several courses was not authorized<sup>17</sup>. It is critical to remember that each group, including military and civilians, has rights and duties, as described above.

"To ensure the respect for and protection of people and civilian objects, the disputing parties shall always distinguish civilians from combatants and civilian objects from military objectives," Protocol I, Article 48 states. "Their operations must be limited to military objectives."

According to the text, civilians and cultural property cannot be used as weapons in a combat. Soldiers are the only ones who may be used as weapons. Given the increasing number of civilian fatalities in war, it is critical that these prohibitions be more strictly implemented<sup>18</sup>.

After clarifying the class division in the previous explanation, the author will go into further depth regarding the two classes that are also associated with cultural property.

## **The Protection of Cultural Property in the Perspective of International Humanitarian Law**

When discussing a battle, it is hard to avoid discussing the protection afforded to cultural property, which is essentially unsuitable for use as a military object. International humanitarian law, which is a subset of international human rights law, seeks to restrict, regulate, and explain how objects should be protected under international humanitarian law.

If we adopt a legal approach to valuing cultural artefacts, we are reminded of the criteria of the 1977 Additional Protocol I. As specified in Protocol I's Article 52 paragraph (1), civilian items include any thing that is not a military object. This regulation seems to be basic and unambiguous. However, clarification of the criteria of paragraph (1) in regard to the provisions of paragraph 2 is essential. According to Section 2, a military target is defined as any object that, by virtue of its nature (location), purpose, or usefulness, can make a significant contribution to military operations; and if (the object) is destroyed in its entirety, partially controlled, or neutralized, it can provide a significant military advantage<sup>19</sup>.

Assaults on cultural property are addressed in Rule 38 of the ICRC's research on international customary law in the field of humanitarian law. When it comes to military activity, the parties must follow two guidelines established in this treaty. As a precautionary measure rather than an attack on cultural property directly. When conducting military operations, military troops must take extraordinary care not to damage religious, artistic, scientific, or philanthropic establishments, unless they are military objectives.

International Humanitarian Law Rule 38, which deals with the concepts of distinction and prudence. International law requires a distinction between military and civilian objectives, and attacks may only be directed at military targets<sup>20</sup>. This has been regarded as international customary law. Attacking parties must take steps to safeguard civilian property, such as cultural artefacts. The Hague Regulations of 1907 provided a framework for the protection of cultural property in times of conflict, both international and domestic. This article demands governments to recognize the critical nature of taking special care of cultural property during military operations in order to minimize harm. Several governments' military guidelines highlight this requirement<sup>21</sup>.

As is the case with other non-military assets, cultural property protection will lose its distinctive character if it is exploited to further military objectives<sup>22</sup>. In military manual training, the loss of protection for cultural property in the context of military action is referred to as "things used for military purposes"<sup>23</sup>.

It is stipulated in Rule 38-part B that no property of significant cultural importance to any group shall ever be targeted for destruction unless it is absolutely essential for military purposes.

Given that cultural assets may be attacked only if they have been designated as military targets, it is obvious that assaults on them are permissible only when they are directly tied to military aims.

The 1954 Hague Convention contains a few exceptions to this norm. Despite the fact that not all governments have signed the convention, its fundamental principles for the protection and preservation of cultural property are regarded to be a reflection of international customary law<sup>24</sup>.

Cultural property attacks are one of these fundamental concepts. Along with international treaties, international organizations prohibit hostile acts against cultural property. Numerous governments, even those that are not signatories to the 1954 Hague Convention, have military manuals that outline prohibited behavior during warfare, and attacks against cultural property without a compelling military reason are punishable offences<sup>25</sup>.

### **Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)**

It was 1946 that the United Nations Educational, Scientific, and Cultural Organization (UNESCO) was established, and its primary mission was to conserve and disseminate knowledge while also advising governments on the relevance of international treaties<sup>26</sup>. Therefore, it is scarcely remarkable that UNESCO resurrected the concept of an international treaty to preserve cultural property during a period of conflict in its publications. This was a resurrected project that had been put on hold when World War II broke out. The Intergovernmental Conference on Cultural Property in Armed Conflict approved it on March 14, 1954, and it became effective the following day. Together with the original Hague Treaty on the Protection of Cultural Property in the Event of Armed Conflict, this convention was ratified in 1954 and became effective the following year. (The "Hague Regulations" or "Hague Regulations of 1954" are two names for the same set of rules. (Members of the Committee on the First Protocol to the 1954 Hague Convention are developing a vision that strikes a balance between participation and protection while being realistic and fair<sup>27</sup>.

The 1954 Hague Convention was a watershed moment in cultural property protection legislation at the time of its ratification since it combined all previously existing laws and principles. Historically, safeguards for cultural property during armed conflict have been centralized in a single legislation rather than dispersed among many legal instruments. Prior international treaties referred to protected items without using the term "cultural property"<sup>28</sup>, but the 1954 Hague Treaty is the first to do so. The Hague Convention, which was ratified in 1954<sup>29</sup>, is one of the most important international agreements in terms of safeguarding humanity's cultural heritage from armed conflict.

The Hague Convention of 1954 protects artefacts by establishing four interrelated government responsibilities. The state has many obligations, including the obligation to conserve cultural property, the obligation to occupy, and the obligation to assist the military forces. The 1954 Hague Treaty created a framework for cultural property transfer in order to safeguard it from the ravages of war and to penalize those who breach the convention.

#### **Enforceability Convention for the Protection of Cultural Property in the Event of Armed Conflict**

Hague Convention of 1954 Articles 18 and 19 establish the treaty's legality. Article 18 of the 12 August 1949 Geneva Conventions was almost similar to Article 2 of the 12 August 1949 Geneva Convention. While the 1954 Hague Convention's limitations are applicable in times of peace between member states, they are also applicable in times of war. To implement the rules of armed conflict, no official declaration of war or admission of a conflict is necessary. In 1954, in the wake of World War II, The Hague Convention was established. It doesn't matter how hostile the occupying force is toward the occupied zone, the 1954 Hague Convention is still in effect<sup>30</sup>. Signatories to the 1954 Hague Convention who are also engaged in armed combat are nevertheless bound by the convention's terms, even if one of their rivals is not a signatory. Participants in the Hague Convention will be held responsible if a non-participating country ratifies and applies its 1954 articles<sup>31</sup>.

The 1954 Hague Convention on the Law of Armed Conflicts also covers armed conflicts that are not international in scope. As stated in Article 19 of the 1954 Hague Convention, non-international armed conflicts are subject to the Hague Convention's cultural property protection provisions<sup>32</sup>.

### **State's Obligation to Respect for Cultural Objects**

At wartime, member nations are obligated to protect four types of cultural property in accordance with Article 4 of the 1954 Hague Convention on Cultural Property. Refusing to use cultural property and the surrounding area for purposes that could result in the destruction or damage of cultural objects; refraining from acts of hostility toward cultural property; prohibiting theft, looting, and vandalism against cultural property; and refraining from making cultural objects the target of retaliation are all examples of fourth-level disrespect<sup>33</sup>.

Using cultural property and its surroundings for purposes that might lead to its destruction or harm, as specified in Article 4(1) of the 1954 Hague Convention, is prohibited under the first section of that article. Cultural property may not be used in any way that might lead to its degradation or damage under these guidelines. Using cultural artefacts in a manner that might cause harm to the property, whether passively or indirectly, is banned<sup>34</sup>.

The use of cultural items as a defense line, the parking of military aircraft near cultural artefacts, or using cultural objects as a military camp or barracks is also forbidden. Cultural property cannot be used for destructive purposes just during times of armed conflict; it may also be used in times of peace if it jeopardizes its preservation<sup>35</sup>.

Article 4 of the 1954 Hague Convention mandates that hostile activity against cultural property be avoided. The destruction of cultural property by use of explosives or a condemning machine is part of any act of hostility<sup>36</sup>.

Participating nations must sustain the two types of respect indicated above, with one exception. Only in the case of an urgent military need may this rule be broken. According to Article 115 of the Hague Convention of 1954, "the notion of urgent military need is never inferred and may only be established in codified law"<sup>37</sup>. Article 4(1) and Article 4 of the 1954 Hague Convention establish the connection between the duty to preserve cultural property and the rationale for employing critical military demands<sup>38</sup>. Cultural property and its surroundings may now be used for military objectives that might risk cultural artefacts because of the first category of cultural property respect, which has a stringent exemption. The utilization of cultural property for military reasons must, however, be very unusual<sup>39</sup>.

Even if cultural property is used for military goals, the opponent is still responsible for avoiding harming the item. In order to protect cultural property, it is necessary to abstain from hostile activities against him, most notably assault. This exemption satisfies that military necessity. In accordance with customary international law on the targeting of objects as military objectives, it is only possible to attack cultural property if it is being used for purposes prohibited under Article 4(1) as a consequence of the illegal use<sup>40</sup>.

A third kind of protection for cultural property is described in The Hague Convention of 1954, in Article 4. (3). Stopping, preventing, and putting an end to the destruction and looting of cultural property are all part of this article's directives to member states. Commitment extends beyond national defense to include the acts of the local population and any remaining armed forces of an adversary<sup>41</sup>.

Article 4(4) also prohibits the retaliatory use of cultural property (reprisal). There is no exception for the fourth or third types of respecting cultural property, in contrast to the first two kinds. Therefore, the argument of "urgent military requirement"<sup>42</sup> cannot be used since its rules are absolute.

If an object falls within Article 1 of the 1954 Hague Convention's definition of cultural property, it is covered by the fourth category of cultural property protection stated above and does not need registration by the state in which it is situated. Particularly valuable cultural assets (cultural

property of exceptionally great worth) are guaranteed special protection in addition to the basic protection provided by Article 4 of the 1954 Hague Convention. "Extreme protection" is the term for this. Article 8 of the 1954 Hague Convention stipulates that a sanctuary meant to store transportable things, such as historical monuments or other immovable cultural artefacts, may only be awarded special protection provided it meets two strict requirements. When both requirements are satisfied and adhered to, the protection is delivered. To begin, cultural treasures that are situated far from large industrial centers or military objectives are at risk<sup>43</sup>. The second requirement is that the cultural property cannot be utilized for military operations. The International Register of Cultural Property Under Special Protection<sup>44</sup> must include any cultural property that satisfies the aforementioned criteria.

To preserve cultural property's immunity, the 1954 Hague Convention's Article 9 governs how it should be treated. If a cultural asset is "immune," it means that it is not at risk of being misappropriated or subjected to hostile acts. Anyone violating immunity cannot claim ignorance of this specific protection for cultural property, as it was widely publicized and protected<sup>45</sup> both the protected cultural property and its accompanying identifying mark.

When it comes to cultural property, it's not always guaranteed. Cultural property designated for special protection is exempt from the state's responsibility to safeguard it in the case of an urgent military requirement. Cultural property classified as special protection has stricter military necessity exclusions than cultural property designated as general protection. There are two paragraphs in Article 11 that detail the expiry of special protection for protected cultural property. In rare circumstances, the Convention allows immunity to be waived, so long as military necessity cannot be avoided (unavoidable military necessity). Exemptions for urgent military requirements may be granted only by the commander of a division of the army<sup>46</sup>.

The first paragraph of Article 11 of the 1954 Hague Convention addresses another situation that might jeopardize the protection of cultural property. Article 8 relieves a party of its duty to safeguard cultural property if the other party breaks the immunity first. The concept of *inadimplenti non est adimplendum* will be used since these parts discuss the reciprocity of special protection. However, Article 4 of the 1954 Hague Convention, which mandates the preservation of cultural property, is not abolished by the loss of the duty to ensure its protection. According to Article 11(1)'s official meaning, the lesser threshold of military necessity given in Article 4(2) may be used rather than the greater requirement established in Article 11(2). Since an adversary might still breach cultural property's special protection without a government violating Article 4 of the 1954 Hague Convention, the government was still required to safeguard cultural property<sup>47</sup>.

### **The Distinction Principle for Protection of Civilian and Cultural Property in Islam**

Humanitarian law known as one of the branches of international law governing the procedures for fighting to keep it protected the dignity and pay tribute to the man. In this case, the protection afforded not only to the parties to the dispute, but also for the civilian population. Has been discussed above, that international humanitarian law recognized the distinction principle. From this principle, it must distinguish between combatants and the civilian population which aims to protect civilians so that can be targeted only military combat and military objects<sup>48</sup>.

Not only in international humanitarian law are known about the distinction between combatant and civilians, but Islam has much in advance governing the distinction principle and the protection of civilians in Al-Qur'an. Prophet also prohibits to attack the children, the women, but if women are directly involved in a war, then she is allowed to be targeted, as well as the elderly<sup>49</sup>. There is a note that there is classification of old people, they are those that govern



warfare with views and planning. They should be killed on the battlefield because it was considered as a soldier with the opinions and plans. For example, the Prophet had ordered killed Duraid bin Shammah in Hunain War, although he was very old, but he has opinions and conscious. Then the second group it is prohibited to attack, namely those who do not have the idea or opinion of the war, therefore, should not be killed [129]. In the battle, the Muslims should not make war target is not focused directly involved in the war. Among the hadith narrated by Imam Ahmad, Muslim, Ibn Majah and AlTirmidzi from Sulaiman bin Buraidah path of his father. The Prophet said:

Go travel in the name of Allah, you fight in fi sabilil-lah (in the way of Allah) against those who disbelieve in Allah, do you betray the agreement, do you cheat (take the spoils before distribution), do not you undermine the bodies, don't you kill children and the people who inhabit the place of worship. ||

In a hadith narrated by experts of hadith that six in addition to Imam al-Nasa'i reported that Ibn' Umar used to say:

In the battle, the Prophet ever found a woman who was killed, the Prophet forbids killing women and children<sup>50</sup>.

Thus, Islam has been set regarding the protection of civilians during the war with the aim of giving respect, especially for women to be protected from their abusive actions. Islam also prohibits civilian objects for attack.

In line with the nature of Islam as a religion that teaches that human beings socially created an atmosphere of peace. Therefore, Islam obliges Muslims to spread to anyone in a peaceful way. In the case of Muslims preach Islam but f faced with hostility and resistance weapons, then Muslims justified break resistance and hostility it by force of arms as well, because a believer cannot justify destroying what has been built by Allah SWT. But Islam also seem to justify the war after the real symptoms of slander or assault had actually occurred<sup>51</sup>. It is also arranged on the prohibition of all forms of military action that could undermine cultural objects and worship places. In the Islamic perspective, damaging these objects is considered as a form of mischief which is prohibited by religion. The leader Abu Bakar al-Shiddiq RA been give an advice to Yazid bin Abi Sufyan, among others, in order not to damage the building. The word building|| is meant includes cultural objects and places of worship and buildings alike<sup>52</sup>.

Islamic Sharia also regulates the protection of cultural property. The Islamic Shari'ah is a code of behaviour that emanates from Allah SWT, the supreme ruler of all humanity. He serves a vital duty as a universally accepted life guide. The Islamic Shari'a was established for the welfare of mankind as a whole. In the context of ushul fiqh, this aim is referred to as maqashid as-syari'ah, which refers to the purpose and goal of lowering Islamic Shari'a.

Maqashid syari'ah is a compound word composed of the terms maqashid and syari'ah. Maqashid is the plural form of jama', which is derived from the term maqsud, which is derived from the term Qashada, which means desire or meaning. Maqashid<sup>53</sup> refers to desired and intended outcomes.

On the basis of Allah's and His Messenger's provisions in the Qur'an and trustworthy books of hadith, we may readily understand the purpose of Islamic law. The purpose of Islamic law is sometimes said to be the pleasure of human existence in this world and the next, via the acquisition of (all) that is beneficial to life and the avoidance or rejection of that which is detrimental<sup>54</sup>.

In other words, Islamic law seeks to promote human life on all levels, spiritual and physical, individual and community. This benefit is applicable not only to this life but also to eternal life in the afterlife<sup>55</sup>.

Primary necessities are the most basic requirements that must be protected and maintained to the maximum extent possible under Islamic law in order for human life to flourish. Secondary needs are those that are necessary for the fulfilment of basic life objectives, such as independence and equality, and are necessary for the existence of primary needs. Clothes, food, and shelter, as well as other tertiary demands of human existence that must be held and maintained for the wellbeing of human life in society, such as clothing, food, and housing, are all instances of tertiary needs<sup>56</sup>. At this point, we may conclude that cultural development is a primary prerequisite, since it provides a lot of background material that can be used for research and educational reasons. Additionally, it is because knowledge benefits people's lives.

According to Islam, all of the world's wealth belongs to Allah SWT, and man has the right to exploit them. Islam, on the other hand, upholds an individual's right to privacy. Because people have an insatiable need for material goods and would go to any extent to get them, Islam has instituted precautions to prevent them from colliding. As a result, Islam provides laws governing muamalah, such as buying and selling, leasing, mortgage pawn, and so on, and prohibits fraud and usury, as well as requiring those who cause damage to another's property to compensate for it, even if the property was wrecked by his children or pets<sup>57</sup>.

The protection of Islam over one's possessions is reflected in His word:

أَذِّنْ لِلنَّاسِ أَن يَأْكُلُوا مِنْ ثَمَرِهِمْ مَا أَنتَ بَاطِلٌ إِذْ لَمْ يَكُنْ لَهُمْ جَزَاءٌ مِنْهُ بِشَيْءٍ قَدْ أَفْلَحَ الْيَوْمَ الَّذِينَ هَدَى اللَّهُ سَبِيلَهُمْ إِنَّ اللَّهَ لَطِيفٌ خَبِيرٌ

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

“O believer, do not eat one another's treasures in a vanity way, except by way of commerce that applies equally among you, and do not suicide. Allah is Most Merciful to you.” Q.S. An-Nisa: 29-32.

Prohibition also mentioned destruction is not allowed to perform the cutting of the trees have fruits and palm trees, firmly in the messages of the Prophet, but if such destruction is an interest in the war, for example is that place is used for enemy as a hiding place or assault or defense against the Muslims, in a case like this, it is allowed to cut the trees and the destruction of buildings<sup>58</sup>.

Thus, we can know that Islam also has set up concerning the protection of the civilian population with the prohibition against military action that could undermine civilian objects and civilians, including children, women, religious leaders and the elders. Murder can only be committed against people who actually participate in the war<sup>59</sup>.

#### **Courts on Cultural Heritage during War:**

##### **The Prosecutor v. Ahmad Al Faqi Al Mahdi**

##### **Ahmad Al Faqi Al Mahdi**

He was sentenced to nine years in jail after being proven guilty. Mr. Al Mahdi was convicted of war crimes in June and July 2012 for his participation in the attack on historical landmarks and religious institutions in Timbuktu, Mali. The sentence will be lowered by the amount of time spent in detention after the arrest. The sentence was commuted to two years' probation on November 25, 2021. On August 17th, 2017, a monetary prize was presented. It was affirmed on appeal on March 8, 2018.

### **Charges**

Al Mahdi was charged with war crimes in connection with intentionally targeted attacks on the following buildings in Timbuktu between June 30 and July 11, 2012. The targeted buildings were not considered military objectives but rather were recognized and conserved as significant components of Mali's cultural heritage. These individuals were deliberately sought for due to their religious and historical importance. They were either completely destroyed or received significant damage as a consequence of the bombardment.

### **Confirmation of Charges**

On March 24, 2016, the International Criminal Court's Pre-Trial Chamber I authorized Ahmad Al Faqi Al Mahdi's war crime charge for the destruction of Timbuktu's historical and religious sites. The claims were formally verified on March 1, 2016. On May 2, 2016, the Court's Presidency constituted Trial Chamber VIII, which is presently in charge of the case.

### **Verdict and Sentence**

Mr. Al Mahdi was convicted of war crimes in Timbuktu, Mali, in June and July 2012 for coordinating attacks on historic buildings and religious organizations. The Chamber sentenced Mr. Al Mahdi to nine years in prison. His sentence will be reduced by the time he has spent in detention since his arrest on the 18 September 2015 ICC warrant. On November 25, 2021, three judges of the Appeals Chamber reduced Mr. Al Mahdi's nine-year sentence to eight years. He will be freed from jail on September 18, 2022.

### **Reparations**

Mr. Al Mahdi is compelled to compensate the citizens of Timbuktu with 2.7 million euros for the city's purposeful targeting of religious and historic monuments. According to Trial Chamber VIII, a draught implementation plan outlining the order's objectives, outcomes, and measures must be given to the Trust Fund for Victims by 16 February 2018. Following Chamber acceptance, the TFV will nominate projects and particular implementation partners for final approval

### **The Destruction of the Buddhas of Bamiyan**

The destruction of the Bamiyan Buddhas in March 2001 by the Taliban regime's military and paramilitary forces in Afghanistan may be seen as an unremarkable episode in this history of cultural infamy. When studied more deeply, the violent actions themselves, as well as the twisted means used to carry them out, reveal a number of distinct aspects of the state's sickness toward cultural assets.

When it comes to conflict-related damage to cultural assets, it's critical to remember that the destruction of the Buddhas of Bamiyan jeopardizes the Afghan nation's heritage. Additionally, they are pre-Islamic in origin and were unearthed on the site.

Second, the devastation was motivated by a determination to destroy any religious or spiritual expression that did not conform to the Taliban's definition of religion and culture.

Finally, the execution procedures are markedly different from those used in previous armed wars. In the 1980s Iraq–Iran war and the Balkan wars of the 1990s, there was severe damage to cultural property caused by wanton bombardment or ethnic hate. Consider Dubrovnik. The destruction of the Afghan Buddhas was well planned, publicly publicized in the media, and meticulously documented throughout the bombing and final annihilation stages.

This is the first time, to their knowledge, that culturally important artefacts have been purposefully destroyed in violation of the United Nations and the world community. The Taliban decided to destroy the Buddhas of Bamiyan after the Afghan government was sanctioned in 1999 and 2000 for continuing to conceal, train, and plan terrorist activities.

Additionally, despite appeals from UNESCO Director General Ambassador Matsuura, his special envoy to Kabul, Ambassador LaFranché, and UN Secretary General Kofi Annan, the Taliban destroyed the Buddhas and other key collections of pre-Islamic Afghan art.

### **Legal Protection Toward Cultural Property in Syria War Under International Humanitarian Law**

The Hague Convention II of 1899 defined the first genuine global effort to safeguard all nations' cultural property. According to the preamble of the 1899 Hague Convention II, the global community's objective is to manage international disputes, which is reflected in the treaty's provisions. When it comes to resolving disagreement, the preamble emphasizes that the terms of the agreement are intended to alleviate as much suffering as possible<sup>60</sup>. In this context, the ugly aspect of conflict reveals itself via seizures, damage, and willful destruction of cultural property. Numerous clauses of The Hague Conventions II and IV, signed in 1899 and 1907, reveal this goal.

#### **Convention IV respecting the Laws and Customs of War on Land (1907)**

The Hague Convention for the Protection of Cultural Property in Armed Conflict, which was signed in 1907, is divided into two parts (specifically the 1907 Hague Regulations, which are annexed to the 1907 Hague Convention). Those who engage in hostilities are controlled by the Hague Provisions on Hostilities (1907), which were included into Part III of Military Authority over the Territories of a hostile state in 2009<sup>61</sup>.

#### **Hostility**

Clauses 23 and 27 of Part II of the 1907 Hague Regulations are pertinent. It is expressly banned by Article 23. Only damage or seize enemy property when absolutely essential to accomplish military goals.

This clause, in conformity with the 1907 Hague Regulations, prohibits the destruction of any hostile property. In addition to the broad prohibition in Article 23, Article 27 of The Hague Regulations of 1907 outlines in further detail how cultural property should be preserved. The two essays on assault and bombing are particularly noteworthy.

Article 27 begins by stating that measures must be made to protect as much cultural property as feasible in the event of an attack or bombing. The word "as far as practical" is used in these lines, implying that the imperative of military action may outweigh the need to protect people. To qualify for protection under Article 27's first paragraph, a property must not be used for military purposes. If the conditions are not met, Article 23 protection is ruled ineffectual<sup>62</sup>.

If cultural property is existent and at risk of being attacked or bombed, as indicated in the second paragraph of the article, it should be safeguarded. This is stated in the opening paragraph of the adversary's Article 27 before to an attack or bombardment. The practice of designating property as protected, which continues to be utilized today, is noted in the second paragraph of Article 27<sup>63</sup>.

#### **Military Authority over the Territory of the State Hostility**

Part III, Military Control Over the Territories of Belligerent Nations, contains Articles 46, 47, and 56 of The Hague Provisions of 1907, which deal with military control over the territory of belligerent nations. Several pieces in this collection examine the looting and destruction of cultural property in politically vulnerable situations.

Unlike Article 46(2), which forbids the seizure of private property, Article 56(1) stipulates that cultural property is private property and hence cannot be taken away. Additionally, Article 47 expressly outlaws looting of any types of property, including cultural property. As a consequence of the occurrence, property damage occurs. Article 56 protects cultural heritage by stating that it

may not be destroyed<sup>64</sup>. Seizing, damaging, or inflicting deliberate harm to religious, educational, artistic, or scientific organizations, historical places, works of art, or scientific research is prohibited and should be punished.

Rather than limiting protection to transportable cultural property in the form of artworks, Articles 27 and 56 of the 1907 Hague Regulations provide extensive protection for museums and other cultural organizations. Article 27 demands the safeguarding of cultural property in its original state, both mobile and immovable<sup>65</sup>.

#### **Convention IV relative to the Protection of Civilian Persons in Time of War (1949)**

The 1949 Geneva Convention protects individuals involved in armed combat. Articles 27 and 53 of this treaty are especially pertinent when it comes to the preservation of cultural property during times of conflict. In all circumstances, those who are legally protected by Article 27 of the Convention have the right to be treated with decency, honor, and respect.

A gunfight could be a good time to use this article to protect religious or cultural icons (like artefacts). The 1949 Geneva Convention IV Article 53 governs the protection of cultural property during armed conflict. The Occupying Power may not harm private or public property, including state, municipal, or non-profit property, unless compelled to do so by military operations.

Similar to the Hague Conventions, Article 53 of the Convention on the International Criminal Court reiterates the prohibition on targeting individuals and property under Articles 46 and 56<sup>66</sup>. Article 53 of the 1949 Geneva Conventions prohibits the destruction of an enemy's property. There are exclusions in the case of a military emergency under both articles. If an occupying force has to destroy property in order to achieve its military objectives, it may do so under Article 53 of the 1949 Geneva Convention. Article 53 of The Hague Regulations lays forth the regulations' scope, which may be found here. Article 53 of the Geneva Convention IV holds the occupying force liable for any harm that is caused on its territory. There is a general rule in Article 23 of the Hague Regulations of 1907 that applies to all property involved in hostilities<sup>67</sup>.

The present restrictions on the protection of cultural property in times of war are preserved by the Geneva Convention IV of 1949. An opponent of the Fourth Geneva Convention on Cultural Protection in Time of War, which came into effect in 1949, claims that<sup>68</sup>.

#### **Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)**

Since 1949, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has sought to preserve and disseminate knowledge on the world's cultural history, as well as pressing member nations to ratify suitable international treaties<sup>69</sup>. The international Conference on the Protection of Cultural Property in the Event of Armed Conflict, conducted on March 14, 1954, brought an end to attempts to form a multilateral agreement to safeguard cultural property during times of armed conflict soon after UNESCO was founded (Hague Conference of 1954). It also adopted laws to implement the 1954 Hague Convention's Protocol on Cultural Property Protection in Armed Conflict. 1954 Protocol No. 1 The Hague Convention's text-writing group made an attempt in 1954 to create a model that was both practicable and balanced between broad participation and maximum protection.

The 1954 Hague Convention consolidated cultural property protection measures under one roof, codifying them all into a single statute. Historically, safeguards for cultural property during armed conflict were spread among a range of legal instruments dealing with armed conflict. Additionally, the 1954 Hague Treaty is the first international treaty to use the word "cultural property," 219 in contrast to other accords that list items to be protected but do not use the term.

After the 1954 Hague Convention was enacted, it was recognized as critical for saving humanity's cultural heritage from the ravages of armed conflict around the globe<sup>70</sup>.

Among the 1954 Hague Convention's four principles governing the state's responsibilities for cultural property are the following: Along with these commitments, the state owes a responsibility to preserve cultural property, a promise to protect cultural property, and a duty to its armed forces when invading another state. This implies, for the most part, that cultural property may be transferred without fear of consequences from conflict or breaches of international conventions as a result of war.

#### **Protocols Additional to the Geneva Conventions of 12 August 1949 (1977)**

Armed conflict was discussed at length in a conference on international humanitarian law that took place in 1971. Governments from across the world have submitted ideas for the November meeting on cultural property protection during armed conflict. The Protocol to the 1974-1977 Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law in Armed Conflicts<sup>71</sup> did not have a section on cultural property since it was judged superfluous.

The final protocol for the meeting may contain a section on cultural property. Everything that has come before has led to this point. A Supplementary Protocol to the Geneva Convention for Victims of International Armed Conflicts" (Protocol I, a Supplementary Protocol to the Geneva Convention for the Protection of Victims of International Armed Conflicts) (Additional Protocol of 1977").

Updated to reflect current developments, this piece was originally prepared in response to the 1974-1977 diplomatic conference on cultural property. The Second Protocol (Protocol No. 2, 1977) The Hague Convention on Cultural Property Protection in Armed Conflict (Hague Convention) prohibits damage to artefacts protected by the 1977 Additional Protocol I, although it is still prohibited to destroy or exploit them for military reasons.

Anyone who breaches a provision of the Additional Protocol by participating in any unlawful action is described as a "infringing party" under Additional Protocol II.

Historic monuments, works of art, and places of religion may not be used in the execution of a war effort, and violence against such monuments or works of art is banned.

This article is quite similar in substance to Article 16 of Article AP II (1980) in terms of AP I (1977). There will be a simultaneous debate on all four parts of the measure. The protection and prohibition of cultural property attacks, the use of cultural property in conflict, and the exclusion of cultural property from the Convention's reach were all agreed upon on August 12, 1949, as part of the additional protocols.

#### **Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999)**

As stated in a 1992 UNESCO Director General report<sup>72</sup>, the 1954 Hague Convention on the Protection of Cultural Property does not require the preservation of cultural property during armed conflict. He argues that there are errors in the International Register of Cultural Property Under Special Protection, including a 228-step system that necessitated UNESCO involvement, as well as clearance delays caused by a lack of available cultural property. It consists of a protocol, a protocol modification, and a collection of practical solutions<sup>73</sup>. The Director-Recommendations General's for Action

As a result of the Director General's pronouncements and punitive measures, the governments of the Netherlands and UNESCO ordered Professor Patrick Boylan to investigate the language of the 1954 Hague Convention. The intentions, repercussions, and prospective improvements of the

1954 Hague Convention are examined in a new research study. The views of Professor Patrick Boylan are included in the Second Protocol<sup>74</sup>. Between March 15 and March 26, 1999, this protocol was approved by the U.S. government.

The Second Protocol was meant to be an addendum to the 1954 Hague Convention. The Hague Convention of 1954 must be followed by all parties<sup>75</sup>.

### **Obligations of the Parties to the Conflict: A Case Study of Syria War**

Under international and customary law, the parties to a dispute owe each other obligations. The 1954 Convention on Cultural Property<sup>76</sup> was designed to protect cultural property and requires the signature and adherence of all parties involved in a conflict zone. Only the United Kingdom and the United Arab Emirates have ratified the Convention on the Prohibition of the Use of Military Force in Iraq and Syria. Both non-international and international conflicts are covered under the Convention's basic principles for cultural property protection, as stated in Article 19. (1). The Second Protocol to the Cultural Property Convention, which applies globally<sup>77</sup>, addresses armed conflicts.

Convention mandates countries to protect cultural property during times of peace. All residents of the region under their jurisdiction are expected to protect their cultural heritage during times of war, but governments must also respect the cultural heritage of other High Contracting Parties<sup>78</sup>.

International law mandates that states have a public duty to protect cultural property on their own territory throughout times of peace and non-international armed conflict.

Peacetime enforcement of wartime obligations was left to countries by the Convention. An overly simplified view of the problem is to point the blame at the Syrian authorities in charge of cultural preservation for not adequately preparing for the conflict. Precautionary measures were taken in the region before to the start of hostilities, according to UNESCO research and statements from the Director-General of Antiquities and Museums<sup>79</sup>.

### **The State's Obligation to Security of Cultural Objects**

Second Protocol to 1954 Hague Convention on Preservation of Cultural Property defines the procedures to be followed in times of peace to conserve cultural property. There are many steps involved in cultural property preservation, including taking inventory, creating emergency action plans for disasters like fires or structure collapse, safeguarding existing cultural property and establishing agencies to handle protection of cultural property.

It remains unchanged that Article 3 of the 1954 Hague Convention, which allows parties to determine how cultural property is protected on their own territory, remains in effect. As stated under Article 5 of the Second Protocol, the goal of Article 5 is to assist parties in developing appropriate protections for cultural artefacts. Disagreements should be resolved in a way that preserves cultural artefacts as much as possible. Participants may benefit from both the experiences of others and their own<sup>80</sup>. They are allowed to do anything they want, but they are bound to maintain cultural property as part of the Second Protocol.

### **The State's Obligation to Respect for Cultural Objects**

Art. 6 of the Second Protocol to The Hague Convention, approved in 1999, extends protections for cultural property from the original Hague Convention of 1954. Specifically, Article 6 of the 1954 Hague Convention's Second Protocol governs Article 2 of the 1954 Hague Convention's cultural criteria. There are two distinct "imperative military interests" that are referred to by the term "imperative military interests." Among other things, the 1954 Hague Convention protects cultural artefacts by prohibiting the creation of hate for them and prohibiting their use for reasons that harm them. When it comes to military-related constraints, Article 6 (limitations) and Article

6 (limitations) are distinct. For military objectives, Article 6 (limitations) establishes restrictions (b).

Article 6 (a) of the 1999 Second Protocol makes it a crime to damage cultural property. An assault on a cultural asset is only permitted if two conditions are met, as laid forth in Article 6. There must be no alternative method that can provide the same military advantage as the cultural artefact picked by the military.

The Second Protocol to The Hague Convention, approved in 1999, codified the 1954 Hague Convention's specific standard for some cultural artefacts. Protocol II, signed into law in 1999, speaks of a "extraordinary" system that must be in place<sup>81</sup>. The archive, library, and museum all have safeguards in place to prevent its contents from being lost or stolen. Two conditions must be met in order to be considered for inclusion.

The first legal and administrative procedures are rather simple. If the country wants to grow on a national basis, these features must fit in with the culture. No state has the authority to control or use a cultural artefact for military purposes or to conceal anything<sup>82</sup>.

### **The State's Obligation of Protection of Cultural Property during the Occupation**

Article 9 of the Second Protocol outlines the responsibilities of non-nationals. Exports, transfers, and the transfer of ownership are all illegal and should be prevented at all costs. Artifacts that were found<sup>83</sup>. Before beginning an archaeological dig, it is necessary to safeguard, document, or conserve a cultural artefact. The occupying party must prohibit and prevent such alterations in order to conceal or destroy historical, scientific, or cultural evidence<sup>84</sup>.

Excavation of archaeological sites and the alteration of cultural artefacts by invading forces is not authorized except under certain circumstances<sup>85</sup>. Occupying parties have responsibilities similar to those of 1954 Hague Convention under the 1999 second protocol. An occupying party must fully support the occupied national agency in accordance with Hague Convention Article 5. According to a statement from the occupying party, "limited and discretionary assistance is available" Article 5 of the 1954 Hague Convention is reaffirmed in Article 9 of the Second Protocol of 1999<sup>86</sup>.

### **The Sanctions Towards Against Cultural Property According to International Humanitarian Law**

Penalties for violating The Hague Convention's Article 28: Article 28 of The Hague Convention requires signatories to sanction those who violate or order violations. Article 28<sup>87</sup> of the Hague Convention penalizes a violation.

A study was done to improve the protection of cultural property under Article 28 of the 1954 Hague Convention. As a result, the Second Protocol's 1999 penalty provisions were renewed. There are two sets of requirements and punishments in the 1999 Second Protocol. It's clear which is a severe breach of the Second Protocol's duties.

Member states should take all necessary steps to prosecute and convict those who engage in severe criminal activity. Cultural property is one of the five components of a grave breach, demanding special safeguards. Each of these serious offences targeted a cultural asset or the surrounding environment. Theft, looting, or damage of cultural property are three more severe offences<sup>88</sup>.

The Second Protocol mandates that states establish laws, legal proceedings, or other means to prevent infringement. Cultural property consumption and exports, relocations, and ownership changes are all violations of the 1954 Hague Convention on Cultural Property and its Second Protocol. A substantial infringement must be committed by one of the member states. Participating countries may, but are not compelled to, make significant offences criminal<sup>89</sup>.



### **Conclusion**

Protecting cultural property during armed conflict is made possible by a variety of treaties and agreements, including the 1949 Geneva Conventions, the 1954 Hague Convention, the Additional Protocol (1977), and the Second Protocol (1980). (1999). However, it is rarely completely used in practice since law enforcement is regulated by national legislation. Despite the fact that international humanitarian law requires governments to adopt and implement domestic laws, few individuals are aware of this need. Accepting these international accords, the state enacted the Cultural Heritage Law of 1963 as a safeguard in the event of a disagreement. This legislation safeguards cultural property.

International Humanitarian Law deems individuals responsible for cultural property destruction or violations of international humanitarian standards criminally accountable for war crimes. As a consequence of these monetary penalties

- Imprisonment and fine
- Termination of diplomatic relations
- Reduced or Termination of economic aid
- Reduced or Termination levels of cooperation
- Economic Embargo

On other hand Pakistan legal body do not prompt prominently regarding protection of cultural heritage properties and there is a lot of work needed in this regard. Cultural properties inside Pakistan has only been damaged because there is no proper body available from legal side to protect them. Federal government have taken steps to protect some of cultural properties during armed operation in Swat and Waziristan against Taliban.

### **Recommendation**

Based on the conclusions that have been described, the author can give advice as follows:

- Nations that breach international law by committing war crimes must be held responsible. If international protective power cannot be applied to military conflicts, the UN should authorize humanitarian intervention based on human values and historic building preservation, as well as the cessation of hostilities. This would contribute to the prevention of infractions and deaths.
- Each state government should support the national law emphasizing the need of community education on conscious culture via local government agencies. As a consequence, individuals will have a greater awareness of the cultural artefacts they possess and a sense of duty to maintain them in excellent shape. Individuals who cause damage to cultural property are subject to the consequences and penalties outlined in their state's National Law.
- War crimes against cultural property may be prosecuted only if an international tribunal is formed during the conflict. The author proposes that the international court's understanding and authority regarding crimes against cultural property be expanded so that crimes against cultural property committed during armed conflict can be prosecuted as crimes or violations of international law, even if only with a fine or penalty, and that rebuilding of cultural sites is required or enforced as a result of the destruction.
- Pakistan legal framework should add the value of cultural heritage in its legal body.
- As far Pakistan is concerned there is no general legal body available for protection of cultural heritage properties, most of steps has been taken from federal government if we look into history, Pakistan legal law body needs to take it into consideration regarding a proper framework for protection law related to cultural heritage properties inside country.

## References

- <sup>1</sup> Gerstenblith, Patty. 2006. 'From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century', Georgetown Journal of International Law 37(2), pp. 245–351
- <sup>2</sup> Schabas, William A. 'Mens-rea and the International Criminal Tribunal for the former Yugoslavia. New Eng. L. Rev. 37 (2002)': 1015
- <sup>3</sup> International Criminal Tribunal for the Former Yugoslavia (ICTY). 1993. Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International
- <sup>4</sup> Bassiouni, M. Cherif. 'Former Yugoslavia: Investigating Violations of International Humanitarian Law and Establishing an International Criminal Trl'. Security Dialogue 25, no. 4 (1994): 409-423.
- <sup>5</sup> Muscat, Marcie M. 'Legal Frameworks for Protecting Cultural Heritage in Conflict Zones'. (2020).
- <sup>6</sup> Graditzky, Thomas. 'The Law of Military Occupation from the 1907 Hague Peace Conference to the Outbreak of World War II: Was Further Codification Unnecessary or Impossible?' European Journal of International Law 29, no. 4 (2018): 1305-1326
- <sup>7</sup> Kaldor, Mary. 'New and Old Wars: Organized violence in a global era Stanford University Press'. Palo Alto, CA (1999)
- <sup>8</sup> Kaldor, Mary. 'New and old wars: Organised violence in a global era'. John Wiley & Sons, 2013
- <sup>9</sup> Lane, David C., David G. Bromley, Robert D. Hicks, and John S. Mahoney. 'Time crime: The transnational organization of art and antiquities theft'. Journal of Contemporary Criminal Justice 24, no. 3 (2008): 243-262
- <sup>10</sup> Lostal, Marina. 'Syria's world cultural heritage and individual criminal responsibility'. International Review of Law 2015, no. 1 (2015)
- <sup>11</sup> Luck, Edward C. 'Cultural genocide and the protection of cultural heritage'. Getty Publications, 2020
- <sup>12</sup> Muscat, Marcie M. 'Legal Frameworks for Protecting Cultural Heritage in Conflict Zones'. (2020).
- <sup>13</sup> Merryman, John Henry. 'Two ways of thinking about cultural property'. American journal of international law 80, no. 4 (1986): 831-853
- <sup>14</sup> Merryman, John Henry. 'Thinking About the Elgin Marbles: Critical Essays on Cultural Property, Art and Law'. Kluwer Law International BV, 2009
- <sup>15</sup> Nafziger, James A. R., and Mark W. Janis. 2006. 'The Development of International Cultural Law, American Society of International Law, Proceedings of the Annual Meeting (March 29–April 1) 100', pp. 317–323.73
- <sup>16</sup> Valdi, Valentina. 'Cultural Wealth of Nations in International Law'. Tul. J. Int'l & Comp. L. 21 (2012): 87
- <sup>17</sup> O'Keefe, Roger. 'The protection of cultural property in armed conflict'. Vol. 50. Cambridge University Press, 2006
- <sup>18</sup> Aouadi, Leila. 'Remembering the Lost Eden in Marina Benjamin's Last Days in Babylon: The Story of the Jews of Baghdad'. Moveable Type 12 (2020): 38-56
- <sup>19</sup> Rakate, Phenyio Keiseng. 'The Characterisation of Conflicts in International Law: Applying TADIC to the Kosovo Crisis'. Stellenbosch L. Rev. 11 (2000): 276
- <sup>20</sup> May, Richard, and Marieke Wierda. 'Trends in International Criminal Evidence: Nuremberg, Tokyo, The Hague, and Arusha.' Colum. J. Transnat'l L. 37 (1998): 7250
- <sup>21</sup> Walasek, Helen. 'Cultural Heritage, the Search for Justice and Human Rights.' Bosnia and the Destruction of Cultural Heritage (2016): 337-352.
- <sup>22</sup> Wald, Patricia M. 'To Establish Incredible Events by Credible Evidence: The Use of Affidavit Testimony in Yugoslavia War Crimes Tribunal Proceedings.' Harv. Int'l LJ 42 (2001): 535
- <sup>23</sup> Ibid
- <sup>24</sup> Trial Chamber, I. I. 'Prosecutor v. Pavle Strugar,' Case No. IT-01-42-T, Judgment of 31 January, 2005
- <sup>25</sup> Ibid
- <sup>26</sup> Muscat, Marcie M. 'Legal Frameworks for Protecting Cultural Heritage in Conflict Zones.' (2020)
- <sup>27</sup> 'Prosecutor v. Radoslav Brdjanin / Momir Talic', Case no. IT-99-36, Amended Indictment, ICTY Trial Chamber (December 16, 1999), <<https://www.icty.org/x/cases/brdanin/ind/en/brd1ai991216e.pdf>. Accessed April 17, 2020

- <sup>28</sup> Brdjanin, Radoslav, Momir Talic, and Donmtose Aside. 'In Trial Chamber II Before: Judge Carmel Agius, Presiding Judge Ivana Janu Judge Chikako Taya.' Prosecutor (2002).
- <sup>29</sup> Muscat, Marcie M. 'Legal Frameworks for Protecting Cultural Heritage in Conflict Zones.' (2020)
- <sup>30</sup> Ralby, Ian M. 'Prosecuting cultural property crimes in Iraq'. Geo. J. Int'l L. 37 (2005): 165
- <sup>31</sup> Bauwens, Hélène. 'The culture of power versus the power of culture. How the paradigm of cultural protection is deteriorated by the Islamic State's social media propaganda?' PhD diss., 2021
- <sup>32</sup> Elekyabi, Salwa Youssef. 'Enhancing International Law with Respect to The Protection of Cultural Property in Times of Armed Conflict: A Comparative Analysis.' 10, no. 8 (2021): 2515-2594
- <sup>33</sup> Sandholtz, Wayne. 'The Iraqi National Museum and International Law: A Duty to Protect.' Colum. J. Transnat'l L. 44 (2005): 185
- <sup>34</sup> BACHICH, MARIAM. 'Can Heritage Objects Represent a Home? A Participatory Project in the Ethnological Museum Berlin'. Baessler-Archiv 66 (2020).
- <sup>35</sup> Muscat, Marcie M. 'Legal Frameworks for Protecting Cultural Heritage in Conflict Zones'. (2020).
- <sup>36</sup> Thakur, Ramesh. 'The responsibility to protect at 15'. International Affairs 92, no. 2 (2016): 415-434.
- <sup>37</sup> Muscat, Marcie M. 'Legal Frameworks for Protecting Cultural Heritage in Conflict Zones.' (2020).
- <sup>38</sup> Room, I. X. 'Convention concerning the protection of the world cultural and natural heritage'. (1972).
- <sup>39</sup> Muscat, Marcie M. 'Legal Frameworks for Protecting Cultural Heritage in Conflict Zones'. (2020)
- <sup>40</sup> Hladik, Jan. 'Document. Diplomatic conference on the Second Protocol to The Hague Convention for the protection of cultural property in the event of armed conflict, The Hague, Netherlands (March 15-26, 1999)'. International journal of cultural property 8, no. 2 (1999): 526-529
- <sup>41</sup> Van Woudenberg, N., and L. Lijnzaad. 'Second Protocol to The Hague Convention of 1954 For The Protection of Cultural Property in The Event of Armed Conflict.' In Protecting Cultural Property in Armed Conflict, pp. 185-201. Brill Nijhoff, 2010
- <sup>42</sup> Uddin, Md Riyaz, and Fazilatun Nesa. 'Rohingya crisis is genocide or ethnic cleansing? The Role of the International Community to define this issue'.
- <sup>43</sup> Assembly, UN General. 'Universal declaration of human rights.' UN General Assembly 302, no. 2 (1948): 14-25
- <sup>44</sup> Newton, Michael A. 'Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court'. Mil. L. Rev. 167 (2001): 2
- <sup>45</sup> United Nations Secretariat. 'United Nations Convention Against Transnational Organized Crime and the Protocols Thereto'. (2005).
- <sup>46</sup> Jaganathan, Madhan Mohan, and Gerrit Kurtz. 'Singing the tune of sovereignty? India and the responsibility to protect'. Conflict, Security & Development 14, no. 4 (2014): 461-487
- <sup>47</sup> Shraga, Daphna, and Ralph Zacklin. 'The international criminal tribunal for the former Yugoslavia.' Eur. J. Int'l L. 5 (1994): 360
- <sup>48</sup> Stec, Piotr, and Alicja Jagielska-Burduk. 'EU Cultural Security Law in an Educational Context.' Sustainability 13, no. 7 (2021): 3947
- <sup>49</sup> Walsh, Lauren. 'The Destruction of Cultural Property in the Former Yugoslavia as a War Crime.' Willamette Bull. Int'l L. & Pol'y 4 (1996): 59
- <sup>50</sup> Weiss, Thomas G., and Nina Connelly. 'Cultural Cleansing and Mass Atrocities: Protecting Cultural Heritage in Armed Conflict Zones.' Getty Publications, 2020
- <sup>51</sup> Woodward, Susan L. Balkan tragedy: 'Chaos and dissolution after the Cold War'. Brookings Institution Press, 1995.
- <sup>52</sup> Blake, Jillian, and Aqsa Mahmud. 'A legal red line: Syria and the use of chemical weapons in civil conflict.' UCLA L. Rev. Discourse 61 (2013): 244
- <sup>53</sup> Ibid
- <sup>54</sup> Cunliffe, Emma, Wendi Pederson, Manuel Fiol, Traci Jellison, Caryn Saslow, Einar Bjørge, and Giovanni Boccardi. 'Satellite-based damage assessment to cultural heritage sites in Syria.' (2014).

- 
- <sup>55</sup>Sitanggang, Dyan. *Pengrusakan Tempat Bersejarah Dalam Perang Antarnegara Sebagai Pelanggaran Hukum Humaniter Internasional*. Lex et Societatis 1, no. 2 (2013).
- <sup>56</sup>Ruys, Tom. 'The Syrian Civil War and the Achilles' heel of the law of non-international armed conflict.' *Stan. J. Int'l L.* 50 (2014): 247
- <sup>57</sup>Ibid
- <sup>58</sup>Sefriani, 'Hukum International Suatu Pengantar.' Jakarta:Rajawali Pers. 2011.
- <sup>59</sup>Gerstenblith, Patty. 'From Bamiyan to Baghdad: Warfare and the preservation of cultural heritage at the beginning of the 21st century.' *Geo. J. Int'l L.* 37 (2005): 245
- <sup>60</sup>Kalshoven, Frits, and Liesbeth Zegveld. 'Constraints on the waging of war: An introduction to international humanitarian law'. Cambridge University Press, 2011
- <sup>61</sup>Mitchell, Andrew D. 'Does One Illegality Merit Another, The Law of Belligerent Reprisals in International Law.' *Mil. L. Rev.* 170 (2001): 155
- <sup>62</sup>Mitchell, Andrew D. 'Does One Illegality Merit Another--The Law of Belligerent Reprisals in International Law.' *Mil. L. Rev.* 170 (2001): 155
- <sup>63</sup>Permanasari, Arlina, Aji Wibowo, Fadillah Agus, and Achmad Romsan. *Pengantar hukum humaniter*. (1999).
- <sup>64</sup>Kusumaatmadja, Mochtar. 'Hukum International Humaniter dalam Pelaksanaan dan Penerapannya di Indonesia'. Bandung: Bina Cipta (1980).
- <sup>65</sup>Rover, C. De. 'To Serve & To Protect Acuan Universal Penegakan HAM'. (2000).
- <sup>66</sup>Angga Visca, N. A. 'Legal protection towards cultural property in armed conflict in the event of Syria war'. (2018)
- <sup>67</sup>Gasser, Hans-Peter. 'International Humanitarian Law an Introduction'. *International Review of the Red Cross Archive* 34, no. 298 (1994): 88-88
- <sup>68</sup>Angga Visca, N. A. 'Legal protection towards cultural property in armed conflict in the event of Syria war'. (2018)
- <sup>69</sup>Frits Kalshoven, 'Constraints on the Waging of War, ICRC, 2nd Edition', 1987
- <sup>70</sup>Angga Visca, N. A. 'Legal protection towards cultural property in armed conflict in the event of Syria war'. (2018).
- <sup>71</sup>Tsani, Mohd. Burhan, 'Hukum Organisasi Internasional, Yogyakarta: Universitas Gadjah Mada', 2012
- <sup>72</sup>Ibid
- <sup>73</sup>Mohd, Akram, 'International Humanitarian Law. Malaysia: International Law Book Services'. 2005
- <sup>74</sup>Ibid
- <sup>75</sup>Permanasari, Arlina, Pengantar Hukum Humaniter International, Jakarta: 'International Committee of the Red Cross'. 2000
- <sup>76</sup>Kusumaatmadja, Mochtar. *Hukum International Humaniter dalam Pelaksanaan dan Penerapannya di Indonesia*, 1980
- <sup>77</sup>Rover, C. de. 'To Serve & To Protect Acuan Universal Penegakan HAM, Geneve': ICRC, 1998
- <sup>78</sup>Nussbaum, Arthur. *Sejarah Hukum International*, Jilid I, Bandung: Bina Cipta, 1970
- <sup>79</sup>Gasser, Hans Peter. 'International Humanitarian Law,' Henry Dunant Institute, 1993
- <sup>80</sup>Mataram, Haryo. *Refleksi dan Kompleksitas Hukum Humaniter*, Pusat Studi Hukum Humaniter dan HAM, Jakarta: FH Usakti, 2012
- <sup>81</sup>Shaw, Malcolm N. *Hukum Internasional*, Leicester: Fakultas Hukum Universitas Leicester, 2008
- <sup>82</sup>O'Keefe, Roger. 'Protection of Cultural Property.' New York: Oxford University Press, 2008
- <sup>83</sup>Henckaerts, Jean-Marie. 'Customary International Humanitarian Law' Volume I: Rules, 2006
- <sup>84</sup>Toman, Jiri. 'The Protection of Cultural Property in the Event of Armed Conflict,' Brookfield: Dartmouth Publishing Company, 1996
- <sup>85</sup>Ibid
- <sup>86</sup>Rogers, A.P.V. 'Law on the Battlefield,' Edition 2. Manchester: Manchester University Press 2004
- <sup>87</sup>Basyir, Ahmad Azhar. *Ihtisar Hukum Internasional Islam*. Yogyakarta: UII Press. 1981

<sup>88</sup>Mahmud, Abdul Ghani Abdul Hamid. *Perlindungan Korban Konflik Bersenjata Dalam Perspektif Hukum Humaniter dan Hukum Islam*. Jakarta:ICRC. 2008

<sup>89</sup> Henckaerts, Jean-Marie. '*Customary international humanitarian law*.' Volume 1, Rules. Vol. 1. Cambridge University Press, 2005