

**WARS AND ARMED CONFLICTS: DESTRUCTION AND LOOTING OF HERITAGE
AND CULTURAL SITES*****ANKITA PARASHAR¹**

Famous Orator of ancient Rome – Cicero thought, “Laws are silent amidst the clash of arms”. In other words, war by its very nature is beyond the law. Wars break out when the rule of law breaks down, so there are no longer any rules.² The Statute of the International Criminal Court defines war crimes as, inter alia, “serious violations of the laws and customs applicable in international armed conflict” and “serious violations of the laws and customs applicable in an armed conflict not of an international character”.² Serious violations of the law of armed conflict are considered war crimes that can be prosecuted in national courts or in international tribunals / courts.

An armed conflict arises whenever there is fighting between States or protracted armed violence between government authorities and organized armed groups or just between organized armed groups.

An international armed conflict arises when one State uses armed force against another State or States. The term also applies to all cases of total or partial military occupation, even if the occupation meets with no armed resistance. It is now irrelevant whether the States concerned consider themselves to be at war with each other or how they describe the conflict.³

Non-international armed conflicts, also known as internal armed conflicts,

It takes place within the territory of a State and do not involve the armed forces of any other State. One example is the use of the State’s armed forces against dissident, rebel or insurgent groups. Another is two or more armed groups fighting within a State, but not necessarily with the involvement of government troops. According to H.-P. Gasser, it is generally admitted that "non-international armed conflicts are armed confrontations that take place within the territory of a State between the government on the one hand and armed insurgent groups on the other hand. [...] Another case is the crumbling of all government authority in the country, as a result of which various groups fight each other in the struggle for power"⁴

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² The law of armed conflict, basic knowledge, ICRC, JUNE 2002

³ Article 8 of Rome Statute of the International Criminal Court explains war crimes

⁴ Supra note 1

D. Schindler also proposes a detailed definition: "The hostilities have to be conducted by force of arms and exhibit such intensity that, as a rule, the government is compelled to employ its armed forces against the insurgents instead of mere police forces. Secondly, as to the insurgents, the hostilities are meant to be of a collective character, [i.e.] they have to be carried out not only by single groups. In addition, the insurgents have to exhibit a minimum amount of organisation. Their armed forces should be under a responsible command and be capable of meeting minimal humanitarian requirements".⁵

CULTURAL PROPERTY AND HERITAGE

Cultural property is the common heritage of a group or a society living together since time immemorial. It exhibits the ways of living developed by a community and passed it on from generations, including customs, practices, places, objects, artistic expressions and values. The protection of the inherited property of nations and the groups and societies that inhabit them are of great importance because of the significance which is associated with these items to humanity as a whole. Article 1. For the purposes of the present Convention (Hague convention), the term "cultural property" shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a);

(c) centres containing large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments".

⁵ H.P. Gasser, *International Humanitarian Law: an Introduction*, in: *Humanity for All: the International Red Cross and Red Crescent Movement*, H. Haug (ed.), Paul Haupt Publishers, Beme, 1993, p. 555.

The States that are party to the Convention benefit from the mutual commitment of more than 115 States with a view to sparing cultural heritage from consequences of possible armed conflicts through the implementation of the following measures:

PEACE TIME PROTOCOL

During peace, the States that are party to the Convention and the two Protocols should:

- prepare for the safeguarding of cultural property situated within their own territory, including preparation of inventories; the planning of emergency measures for protection against fire or structural collapse; the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property; and the designation of competent authorities responsible for the safeguarding of cultural property.
- consider placing the most important immovable cultural properties on the “International Register of Cultural Property under Special Protection” meriting “enhanced protection” as per the Second Protocol, assuming it meets the Convention conditions.
- consider the use of the distinctive Blue Shield emblem to facilitate identification of cultural property.
- plan or establish services or specialist personnel within their armed forces whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities.
- remove, as far as possible, movable cultural property from the vicinity of military objectives, and avoid locating military objectives near cultural property⁶.

WAR TIME PROTOCOL

During armed conflict, the States that are party to the Convention and the two Protocols should:

- respect cultural property situated within their own territory and the respective territories of other Parties by refraining from directing any act of hostility directed against such property.
- protect cultural property situated in occupied territory and, particularly, as far as possible, take the necessary measures for its preservation, including prohibiting and preventing all theft, pillage, illicit export, removal or transfer of cultural property as well as any misappropriation or acts of vandalism directed against cultural property.
- refrain from directing any act of reprisals against cultural property.

⁶ D. Schindler, *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, Vol. 163, 1979-II, p. 147.

- take all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons who commit or order to be committed a breach of the Convention.

AFTER HOSTILITIES,

signatory States will:

- at the close of hostilities, return exported cultural property which is in its territory to the competent authorities of the territory previously occupied.
- prohibit the retention of cultural property as war reparations.

PROPERTIES DESTROYED DUE TO ARMED CONFLICTS AND WARS

Cultural properties are the ultimate sufferers in any kind of conflict and war. War took the toll on heritage of that respective place. Some of those sites are:

1) Bamiyan Valley

The cultural landscape and archaeological remains of the Bamiyan Valley represent the artistic and religious developments which from the 1st to the 13th centuries characterized ancient Bakhtria, integrating various cultural influences into the Gandhara school of Buddhist art. The site is also testimony to the tragic destruction by the Taliban of the two standing Buddha statues, which shook the world in March 2001. The State Law on the Protection of Historical and Cultural Properties (Ministry of Justice, May 21st 2004) is in force and provides the basis for financial and technical resources.

2) The National Parks of Garamba , Kahuzi-Biega , Salonga , Virunga and the Okapi Wildlife Reserve in the Democratic Republic of the Congo :

Since 1994, all five World Heritage sites of the DRC were inscribed on the List of World Heritage in Danger as a result of the impact of the war and civil conflicts in the Great Lakes region.

3) Assyrian archaeological site of Nimrud in Iraq,

Activists, officials and historians have condemned Islamic State (Isis) for the destruction of the ancient Assyrian archaeological site of Nimrud in Iraq, with UNESCO describing the act as a

war crime. “They are not destroying our present life, or only taking the villages, churches, and homes, or erasing our future – they want to erase our culture, past and civilisation,” said Habib Afram, the president of the Syrian League of Lebanon. The site also contains the palace of Ashurnasirpal, the king of Assyria. Many of the site’s relics are in the British Museum and the Metropolitan Museum in New York, and other reliefs, wall paintings, clay tablets and ivory furniture recovered in the 1950s and 60s are in Iraq’s national museum in Baghdad. The winged bull statues in particular were probably targeted by the militants. A tribal source told Reuters that Isis members had come “to the Nimrud archaeological city and looted the valuables in it and then they proceeded to level the site to the ground.

4) The Prophet Jirjis mosque and shrine in Mosul

It was destroyed on 27 July, according to unconfirmed press reports. The 14th-century mosque was the latest in a series of holy sites targeted by the jihadist group. On 24 July; Isis blew up the Mosque of the Prophet Younis in Mosul. Among the crimes Iraqis have witnessed in more than a decade of chaos is the use of ancient heritage sites as U.S. bases. Historical artefacts are now sold in international markets: Political corruption in Iraq has left nothing for cultural protection and development.

5) Apamea, the ancient “Treasure City,” sits on the bank of Syria’s Orontes River.

It was once home to the kings of the Seleucid Empire, and it later housed the Romans, growing to a population of 500,000. Its long history made it one of the Middle East’s most important archaeological sites. During the conflict in Syria, Apamea has been devastated by bombing, ancient city has been ransacked and treasures were looted. The site now lies ravaged, its columns broken and its mosaics smashed.

6) Ancient Shrines and Mausoleums, Mali

Timbuktu, known as the “City of 333 Saints” for its religious history, is located in Mali, on the edge of the Sahara desert. Timbuktu has become a target for extremist Islamist factions. In 2012, members of a group with links to Al-Qaeda began destroying the famed ancient sites. More than half of the town’s centuries-old shrines and mausoleums were torn down and reduced to rubble, including that of revered Muslim scholar Sidi Mahmoud. Aleppo’s Great Mosque is located within the city’s historic Al-Jalloum district. The mosque supposedly houses the remains of

Zechariah, father of John the Baptist. Because of its historical importance, the complex is recognized as being a UNESCO World Heritage site. After enduring earthquakes and numerous conflicts, the mosque eventually met its end in April 2013.

7) Pyongyang's Yongmyong Buddhist Temple

It was built over 1,500 years ago and was named for an ancient king, Dongmyeong of Goguryeo. The US destroyed the Yongmyong Temple in a carpet bombing attack during the Korean War. One area of the temple, the Pubyok pavilion, was rebuilt shortly after the war and is now registered as a national treasure of North Korea.

8) National Library and Archives Iraq

Housed within Baghdad's National Library was an immense collection of 12 million books, manuscripts, and carved stone tablets detailing the nation's long history. In 2003, the Library and Archive came under attack by Saddam Hussein's loyalists, who were intent on destroying records of the Ba'athist regime. They deployed petrol bombs and other incendiary devices throughout the building. The fire consumed much of the library's collection, and then looters had their way with what remained.

Irina Bokova, the head of UNESCO, said in a statement "The deliberate destruction of cultural heritage constitutes a war crime. I call on all political and religious leaders in the region to stand up and remind everyone that there is absolutely no political or religious justification for the destruction of humanity's cultural heritage."

Above are few of the examples, there are numerous sites which stand destroyed in wake of war.

CONVENTIONS AND COMMITTEE

"To the victor go the spoils" was the attitude up until the end of the Napoleonic Wars. By World War II, there were internationally accepted norms prohibiting the looting of cultural property during war. However, under Hitler, the Nazis devised the most organized art looting operation ever, stealing cultural treasures from museums, churches, and private individuals in every country they occupied.⁷

⁷Anna Sansom,"Islamic militants destroy Muslim shrine in Mosul", 18 august 2017 at www.theartnewspaper.com

While both sides in this war were responsible for the destruction of countless historic buildings, monuments, and cultural heritage sites during military operations, many Allied nations also mounted some of the most comprehensive efforts ever attempted for the protection of cultural heritage during war.

The Hague Convention

Following the signature of the Roerich Pact by the American States in 1935 attempts were made to draft a more comprehensive convention for the protection of monuments and works of art in time of war. In 1939, a draft convention, elaborated under the auspices of the International Museums Office, was presented to governments by the Netherlands. After the war, a new proposal was submitted to UNESCO by the Netherlands in 1948. The General Conference of UNESCO in 1951 decided to convene a committee of government experts to draft a convention. This committee met in 1952 and submitted its drafts to the General Conference. The intergovernmental Conference which drew up and adopted the Convention and the further Acts took place at The Hague from 21 April to 14 May 1954. 56 states were represented.⁸ The Convention was adopted together with a Protocol in order to prevent the export of cultural property from occupied territory, requiring the return of such property to the territory of the State from which it was removed. It covers immovable and movable cultural heritage, including monuments of architecture, art or history, archaeological sites, works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections of all kinds regardless of their origin or ownership.⁸

The destruction of cultural property in the course of the conflicts that took place at the end of the 1980s and the beginning of the 1990s, highlighted the necessity for a number of improvements to be addressed in the implementation of the Hague Convention. A review of the Convention was initiated in 1991, resulting in the adoption of a Second Protocol to the Hague Convention in March 1999. The Hague Convention and its 1999 Protocol clearly define under which circumstances their provisions are violated⁹. The Second Protocol defines five intentional acts that are considered as serious violations and entail individual criminal responsibility:

⁸ Cultural Property at War: Protecting Heritage during Armed Conflict By Corine Wegener and Marjan Otter, The Getty Conservation Institute, Newsletter 23.1 Spring 2008

⁹ D. Schindler and J. Toman, The Laws of Armed Conflicts, Martinus Nijhoff Publishers, 1988, pp.747-768.

Regarding Cultural Property Under Enhanced Protection

- 1) Making cultural property under enhanced protection the object of attack, i.e. your responsibility in attack
- 2) Using cultural property under enhanced protection or its immediate surroundings in support of military action, i.e. your responsibility in defense.

Regarding All Cultural Property

- 3) Extensive destruction or appropriation of cultural property
- 4) Making cultural property the object of attack
- 5) Theft, pillage or misappropriation of, acts of vandalism directed against cultural property¹⁰.

The Blue Shield

In order to protect endangered cultural heritage, The International Committee of the Blue Shield was created in 1996 by the four non-governmental organisations, which represent professionals active in the fields of archives, libraries, monuments and sites, and museums :

- ICA: International Council on Archives
- ICOM: International Council of Museums
- IFLA: International Federation of Library Associations and Institutions
- ICOMOS: International Council on Monuments and Sites¹⁰

By the time the Second Protocol to the Hague Convention was written in 1999, the ICBS was a recognised advisory body to the Inter-Governmental Committee for cultural property protection in armed conflict. In order to recognise cultural property, the Hague Convention provides a distinctive emblem, commonly called the “Blue Shield”, which may be displayed.

¹⁰ Hague Convention, available at <http://www.unesco.org> (last visited on February 18, 2020)

The Hague Convention prohibits the use of the emblem in any other cases than those mentioned in the Convention as well as the use of any other sign resembling the distinctive sign of the Convention for any other purpose. It should be repeated three times in a triangular formation for sites needing “special protection”: this is obligatory for State Parties. There is no specific emblem for “enhanced protection”¹¹



Blue Shield Emblem – General Protection



Blue Shield Emblem – Special Protection

Under the umbrella of the protective Hague Convention emblem the Blue Shield network unites several organizations dealing with museums, archives, audio-visual supports, libraries, monuments and sites. It is the cultural equivalent of the Red Cross. The objective is to protect, safeguard, secure and preserve cultural heritage in times of emergencies, including armed conflict. The Association of National Committees of the Blue Shield (ANCBS), founded in December 2008, is the coordinating body and strengthens the international efforts to protect cultural property at risk of destruction in armed conflicts or natural disasters.¹² In 2016, ICBS and ANCBS amalgamated to become simply “The Blue Shield”. Karl Von Hapsburg was appointed as the first president of the blue shield at 2017 General Assembly.¹³

¹¹ The International Committee of the Blue Shield available at <https://theblueshield.org/about-us/history>

¹² Blue shield committee available at [://www.heritageforpeace.org](http://www.heritageforpeace.org)

¹³ <https://en.m.wikipedia.org>

CONCLUSION

Cultural properties are heritage and proof of existence of a community and society living together from ages. It is their inheritance and of the state they are living in. they have a complete right over its protection and enjoyment. Any type of attack and crime against such property is a direct attack on that community and state as a whole. Looting of artefacts and valuables from destructed sites and exporting them through black market had been developed as a business. It's a popular belief that unrest is created in such areas and an environment of war is created, so that under the veil of war and unrest, artefacts can be stolen and monuments be razed.

No doubt that conventions and committees have been made, but they are not ratified or acknowledged by all the states. Enforcement of the principles of the Convention is based on states having ratified the Convention and then adhering to its ideology during war. Unfortunately, as Starzmann mentions, many of the key players involved in current on-going areas of strife have not ratified the convention (the US, UK and Israel have not ratified the Second Protocol, which specifically addresses the issue of the protection of cultural heritage by an occupying nation), or cannot ratify as in the case of Palestine.¹³

If we had more military education programs for other parts of the world where cultural heritage is at risk, would an army helicopter pilot be arrested for smuggling Egyptian antiquities into the US as was reported (Associated Press 2008)? It will be a while before we know whether or not future smuggling attempts are thwarted, but there was, and continues to be, a need for cultural heritage awareness on the part of military personnel deployed to the Middle East.

In war affected areas, the damaging of archaeological sites and the looting of artifacts by both military and civil populations have occurred and are often still ongoing. Due to the fact that governmental as well as non governmental institutions worldwide turn a blind eye toward the illicit trade in antiquities has led to its enormous growth. The illicit trade in antiquities is supposed to be one of the largest illegal businesses in the world, the third-largest type of black market trafficking behind the illicit drugs and weapons trading.
