



PANTEION UNIVERSITY ATHENS

European Master's Programme in Human Rights and Democratisation

A.Y. 2020/2021

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.

Author: **Hélène Bauwens**
Supervisor: Professor M.D MAROUDA

Abstract

*"Daesh wants people with no memory, with no history, with no culture, no past, no future."
-Mohammad Rabia Chaar*

The destruction of cultural heritage is not just about bricks and stones; it is about an important message and the way we see human civilization evolving and developing. Centuries and millennia-old monuments that have survived natural disasters, the ravages of men are destroyed through combat, looting or wanton destruction. While cultural heritage has always been at risk during times of war, the Islamic State's recent attacks included the intentional destruction of cultural heritage as part of a larger strategy. The Islamic State is using cultural property to advance their extremist and fundamentalist agenda, to destroy local communities and as propaganda to disseminate their worldview. Regarding the latter, the Islamic State's actions did not only include the wanton destruction of cultural heritage all over Iraq and Syria. It also included the dissemination of their acts on social media as a propaganda tool. On the one hand, to shock the international community with their worldview and, on the other hand, to recruit fighters from all over the world. The protection of cultural heritage has been the subject of several international instruments, which have formed different paradigms of cultural protection. Unfortunately, these paradigms are not adapted to the wanton destruction of cultural heritage by ISIS and the accompanying dissemination on social media. As the title of this master thesis reveals, these recent destructions even deteriorate the existing paradigm of cultural protection.

In the past decade, there has been a war against culture. How can we save the story of who we are?

Note to the reader

For the purpose of this master thesis, the Islamic State— a group once named the Islamic State of Iraq and Islamic State of Iraq and Sham - will be referred to as 'Daesh', 'IS' or 'ISIS'.

Acknowledgements

Throughout the writing of this thesis, I have received a great deal of support and assistance. I would first like to thank my supervisor, Professor M-D Marouda, whose expertise was invaluable in helping me formulate my research question. I would like to extend my sincere thanks to all the staff and my fellow colleagues in Venice. The E.MA program has been a wonderful experience in every aspect, and all your help throughout both semesters was highly appreciated. Finally, I could not have completed this thesis without the support of the friends I met in Athens, who provided stimulating discussions as well as happy distractions to rest my mind outside of my research.

Thank you!

Athens, 15/7/2021

List of abbreviations

| | |
|---------------|---|
| ICC | International Criminal Court |
| ICCROM | International Centre for the Study of the Preservation and Restoration of Cultural Property |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICTY | International Criminal Tribunal for the former Yugoslavia |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |

TABLE OF CONTENT

| | | |
|------------|---|-----------|
| 1 | INTRODUCTION | 1 |
| 1.1 | PRESENTATION AND PRAGMATIC ACKNOWLEDGEMENT | 1 |
| 1.2 | METHODOLOGY OF THIS MASTER THESIS | 2 |
| 2 | CONTEXTUAL AND CONCEPTUAL REPRESENTATION | 3 |
| 2.1 | STATE OF THE ART | 3 |
| 2.2 | HISTORICAL BACKGROUND | 3 |
| 2.3 | INTERNATIONAL LAW OF THE PROTECTION OF CULTURAL HERITAGE | 3 |
| 2.4 | THE ISLAMIC STATE IN SYRIA AND IRAQ | 7 |
| 2.4.1 | THE ORIGIN: BRIEF HISTORY OF DAESH..... | 7 |
| 2.4.2 | RECENT DEVELOPMENTS..... | 8 |
| 2.5 | ISIS AND THE DESTRUCTION OF CULTURAL HERITAGE | 9 |
| 2.5.1 | CULTURAL HERITAGE IN IRAQ | 9 |
| 2.5.2 | DESTRUCTION OF CULTURAL HERITAGE BY DAESH IN IRAQ..... | 9 |
| 2.5.3 | CULTURAL HERITAGE IN SYRIA | 10 |
| 2.5.4 | DESTRUCTION OF CULTURAL HERITAGE BY DAESH IN SYRIA..... | 11 |
| 3 | ONLINE TERRORISM | 12 |
| 3.1 | STATE OF THE ART | 12 |
| 3.2 | THE UPRISE OF THE INTERNET | 12 |
| 3.3 | THE USE OF THE INTERNET BY TERRORIST ORGANIZATIONS | 13 |
| 4 | ISIS AND ITS MEDIATIC REPRESENTATION | 15 |
| 4.1 | STATE OF THE ART | 15 |
| 4.2 | MEDIATIC REPRESENTATION | 15 |
| 4.3 | DAESH' SOCIAL MEDIA CAMPAIGN | 16 |

| | | |
|------------|--|-----------|
| 4.4 | EXTREMIST USE OF CULTURAL HERITAGE DURING WAR..... | 17 |
| 4.4.1 | THE INTENTIONAL DESTRUCTION OF DAESH | 17 |
| 4.4.2 | MOTIVATIONS..... | 19 |
| 4.5 | DAESH’S VISUAL REPRESENTATIONS | 20 |
| 4.6 | DESTRUCTION OF CULTURAL HERITAGE ON SOCIAL MEDIA BY DAESH21 | |
| 5 | THE PARADIGM OF CULTURAL PROTECTION | 22 |
| 5.1 | STATE OF THE ART..... | 22 |
| 5.2 | INTRODUCTION | 22 |
| 5.3 | TRADITIONAL PARADIGMS..... | 23 |
| 5.4 | THE INTERNATIONAL LEGAL CONVENTIONS..... | 24 |
| 5.4.1 | INTRODUCTION | 24 |
| 5.4.2 | CULTURAL VALUE PARADIGM..... | 24 |
| 5.4.3 | PREVENTION, PROTECTION AND PROSECUTION PARADIGM..... | 25 |
| 5.4.4 | THE 1954 HAGUE CONVENTION | 25 |
| 5.4.4.1 | <i>Content of the Convention</i> | 25 |
| 5.4.4.2 | <i>Paradigm</i> | 26 |
| 5.4.5 | THE 1970 UNESCO CONVENTION | 27 |
| 5.4.5.1 | <i>Content of the Convention</i> | 27 |
| 5.4.5.2 | <i>Paradigm</i> | 27 |
| 5.4.6 | THE 1972 WORLD HERITAGE CONVENTION | 28 |
| 5.4.6.1 | <i>Content of the Convention</i> | 28 |
| 5.4.6.2 | <i>Paradigm</i> | 29 |
| 5.5 | INTERNATIONAL CRIMINAL LAW | 30 |
| 5.5.1 | INTRODUCTION | 30 |
| 5.5.2 | PARADIGM | 30 |
| 5.5.3 | DRAFT POLICY ON CULTURAL HERITAGE | 31 |
| 5.5.3.1 | <i>Introduction</i> | 31 |
| 5.5.3.2 | <i>Paradigm</i> | 32 |
| 5.5.4 | THE CONSTITUTION OF A WAR CRIME | 32 |
| 5.5.5 | THE CONSTITUTION OF A CRIME AGAINST HUMANITY | 33 |

| | | |
|------------|--|-----------|
| 5.5.6 | INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE AS EVIDENCE OF THE INTENT TO COMMIT GENOCIDE | 34 |
| 5.5.7 | CASE LAW: INTERNATIONAL CRIMINAL LAW | 35 |
| 5.5.7.1 | <i>THE ICTY</i> | 35 |
| 5.5.7.2 | <i>The Prosecutor v. Payle Strugar</i> | 35 |
| 5.5.7.3 | <i>Prosecutor v. Miodrag Jokic</i> | 36 |
| 5.5.8 | THE ICC | 37 |
| 5.5.8.1 | <i>The Prosecutor v. Ahmad Al Faqi Al- Mahdi</i> | 37 |
| 5.5.8.2 | <i>Consequences of the Al-Mahdi destruction</i> | 38 |
| 5.5.9 | COMPARISON ICTY AND ICC | 39 |
| 5.6 | INTERNATIONAL HUMAN RIGHTS LAW | 40 |
| 5.6.1 | THE NEED FOR A HUMAN RIGHTS APPROACH | 40 |
| 5.6.2 | PARADIGM | 42 |
| 5.7 | CASE STUDY: COULD THE INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE BY ISIS BE PROSECUTED UNDER INTERNATIONAL LAW? | 42 |
| 5.7.1 | INTRODUCTION | 42 |
| 5.7.2 | THE INTERNATIONAL LEGAL CONVENTIONS | 43 |
| 5.7.3 | THE INTERNATIONAL CRIMINAL COURT | 43 |
| 5.7.4 | INTERNATIONAL HUMAN RIGHTS LAW | 45 |
| 6 | CONCLUSION: A NEED FOR A NEW CONCEPTUAL FRAMEWORK | 47 |
| 6.1 | STATE OF THE ART..... | 47 |
| 6.2 | PRESENTATION: A NEW CONCEPTUAL FRAMEWORK | 47 |
| 6.3 | CULTURAL CLEANSING | 47 |
| 6.4 | GOING BEYOND THE EXISTING PARADIGMS..... | 48 |
| 6.5 | GOING BEYOND THE EXISTING LEGAL CONCEPTS..... | 49 |
| 6.6 | LONG-TERM SOLUTIONS..... | 50 |
| 7 | BIBLIOGRAPHY | 52 |
| 7.1 | ACADEMIC SOURCES | 52 |
| 7.2 | CASE LAW | 59 |

7.3 LEGISLATION 59

1 INTRODUCTION

1.1 PRESENTATION AND PRAGMATIC ACKNOWLEDGEMENT

While cultural heritage has always been at risk during times of war, the Islamic State's recent attacks included the intentional destruction of cultural heritage as part of a larger strategy. ISIS is using cultural property to advance their extremist and fundamentalist agenda, to destroy local communities and as propaganda to disseminate their worldview. Regarding the latter, the Islamic State's actions did not only include the wanton destruction of cultural heritage all over Iraq and Syria. It also included the dissemination of their acts on social media as a propaganda tool. On the one hand, to shock the international community with their worldview and, on the other hand, to recruit fighters from all over the world. The protection of cultural heritage has been the subject of several international instruments, which have formed different paradigms of cultural protection. Unfortunately, these paradigms are not adapted to the wanton destruction of cultural heritage by ISIS and the accompanying dissemination on social media. As the title of this master thesis reveals, these recent destructions even deteriorate the existing paradigm of cultural protection.

From a pragmatic point of view, the targeting of cultural heritage could appear insignificant compared to the myriad of human rights violations that occur in an armed conflict and cost the life and suffering of innocent civilians. In recent years, in Iraq and Syria, more than 750.000 people have died, and more than fifteen million people have been displaced due to ongoing conflicts.¹ These numbers demonstrate that far-reaching efforts need to be taken by the global community to protect civilians from the effects of war substantially.² However, the need for safeguarding civilians does not imply that protecting cultural property must be neglected. It means that they should be interpreted as two independently exclusive objectives in the same violent process of ethnic cleansing and genocide.³

¹ Louise Arimatsu and Mohbuba Choudhury, 'Protecting Cultural Property in Non-International Armed Conflicts: Syria and Iraq' (2015) 91 INT'L L. STUD 59, 645.

² *ibid* 646.

³ *ibid*.

1.2 METHODOLOGY OF THIS MASTER THESIS

This thesis is going to look into the paradigm of cultural protection. It will assess how the intentional destruction of cultural heritage on social media by ISIS is deteriorating this paradigm. Therefore, this research will try to confront the existing legal paradigms in cultural protection with the legislation in force at the international level. The thesis is predominantly written from a legal point of view.

To gain a better insight into the paradigm of cultural protection, this master thesis utilizes a qualitative method using existing data, namely study materials ranging from existing legislation, case law and doctrine.

The first chapter discusses the contextual and conceptual background of the intentional destruction of cultural heritage. In the first place, this will be done by giving a concise historical overview of the international law of the protection of cultural heritage. After, this thesis will delineate the origin of the Islamic State in Syria and Iraq and their destruction of cultural heritage in both countries, respectively. The third chapter will look into online terrorism and explore how the uprise of the internet helped develop terrorist organizations in general. After, the specific propaganda tools and the mediatic representation of ISIS will be outlined. The last chapter before the conclusion will set out the traditional paradigms of cultural protection in the international legal sphere. Namely, in the international legal conventions, international criminal law and international human rights. Subsequently, this master thesis contains a small case study that assesses whether and how the intentional destruction of cultural heritage by ISIS could be prosecuted under international law. The last concluding chapter will discuss the need for a new conceptual framework. The chapter will describe what such framework should consider legally regarding the cultural protection paradigm and the long-term solutions.

2 CONTEXTUAL AND CONCEPTUAL REPRESENTATION

2.1 STATE OF THE ART

This chapter will set out the contextual and conceptual representation. To begin with, it will clear out the evolution of international law regarding the protection of cultural heritage. This is of great importance for the research since it paints a picture of how the international community's perception regarding cultural protection has evolved and how they started to address greater significance to the intrinsic value of cultural heritage. After, this chapter will set out the history of the Islamic State and the development of their cultural heritage destruction campaign. This is necessary in order to depict the gravity and the progression of their actions

2.2 HISTORICAL BACKGROUND

2.3 INTERNATIONAL LAW OF THE PROTECTION OF CULTURAL HERITAGE

For thousands of years, the intentional destruction of cultural heritage with the accompanying damage has been a feature of social disorder, conflict and war.⁴ It has always been an essential part of warfare since the destruction of cultural heritage touches upon the very foundations of human society. It entails to demolish the existence of entire civilizations.⁵ The violence against the estate entails monuments and artefacts, and it also encompasses movable items, traditions and ways of life.⁶ The physical destruction can have diverse forms “from the obliteration of a site to more symbolic gestures of decapitating statues depicting political, religious or cultural leaders. Terrorist organizations can also carry out the physical destruction of a site in a way that targets the intangible heritage of communities – for instance, mosques being used as pig corals by the Khmer Rouge – causing moral harm and damaging social cohesion; by erasing communal meeting spaces.”⁷ The destruction of the other’s religious and political symbols and institutions has the ultimate goal of demonstrating to the defeated that they have lost the conflict and their religious, cultural, and political freedom. Victors now have complete dominance over every aspect of the population, including cultural and historical memory.

⁴ Emma Cunliffe, Nibal Muhesen and Marina Lostal, ‘The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations’ (2016) 23 *International Journal of Cultural Property* 31, 1.

⁵ Irina Bokova, ‘Fighting Cultural Cleansing’ (2015) 36 *Harvard International Review* 6, 6.

⁶ Luke Moffett, Dacia Viejo Rose and Robin Hickey, ‘Shifting the Paradigm on Cultural Property and Heritage in International Law and Armed Conflict: Time to Talk about Reparations?’ (2020) 26 *International Journal of Heritage Studies* 619, 622.

⁷ *ibid.*

Moreover, the destruction of cultural heritage does not only entail the loss of something irreplaceable and unparalleled. It also implies potential increased violence and psychological consequences for the communities linked to the cultural heritage in question.⁸ Additionally, the destruction of cultural heritage is linked to cultural cleansing, which indicates the destruction of communities by removing everything connected to them and leaving them without a home in case of an eventual return.⁹

It is a well-established principle in international law that the intentional targeting and plundering of religious, historical and cultural patrimony are forbidden.¹⁰ Initial evidence has demonstrated that rules regarding the respect for cultural heritage in armed conflicts were already present in Antiquity. However, the principle was solidified in 1863 during the American Civil War. In the *apogee* of the battle, Abraham Lincoln ordered a German-American legal theorist Francis Lieber to draft a codification of the laws of war. Regarding what we call today ‘cultural heritage’, the Lieber Code stipulated for the first time that religious and cultural structures should not be destroyed during an armed conflict. This principle was incorporated in the Brussel Declaration of 1874 and the Hague Conventions of 1899 and 1907.¹¹ At the end of the First World War, the Victoria’s allies created a Commission investigating the allegations of criminality during the First World War. They came up with a list of 32 criminal acts, including the shooting of hostages, sinking of civilian ships... One of them was the wanton destruction of cultural property. Despite that, the leaders of the accessed powers were not prosecuted, and the perpetrators are getting away without proper retribution.

At the same time, a young Polish lawyer – Raphael Lemkin – became aware of the failure of the prosecution of the perpetrators in the Armenian Genocide.¹² After the assassination of Talaat Pasja, one of the Ottoman Leaders during the Armenian Genocide, Raphael Lemkin pleaded for an international system to bring accountability to everyone who committed such atrocities. In 1933, Raphael Lemkin proposed at the League of Nations to prosecute two new international crimes: vandalism and barbarism.¹³ Vandalism referring to what we call today attacks on

⁸ Cunliffe, Muhesen and Lostal (n 4) 2.

⁹ *ibid.*

¹⁰ Brian I Daniels, ‘Should Acts of Cultural Destruction Be Prosecuted as War Crimes?’ *Apollo: The International Art Magazine* 3, 1.

¹¹ *ibid.*

¹² Tim Slade, *The Destruction of Memory: The War Against Culture and the Battle to Save It*. (2020) <<https://destructionofmemoryfilm.com/about>> accessed 12 April 2021.

¹³ *ibid.*

cultural property. Yet, the states in the League of Nations declined to criminalize these kinds of acts.

When the Nazi conquest of Europe began and at the start of the Second World War, the German army took cultural items, library materials and artworks and destroyed what the regime – according to them - didn't need. Many libraries and museums were destroyed and their content stolen.¹⁴ In 1946 the United Nations General Assembly ordered a committee to divide the Genocide Convention. In early drafts, Genocide could have three forms: physical, biological and cultural. Regarding the latter, it was eventually excluded in 1948. The entire cultural component was omitted and argued out.

The need for an instrument to protect cultural heritage remained evident, resulting in the 1954 Hague Convention and its First Protocol.¹⁵ Signatories of the 1954 Hague Convention are required in both international and non-international conflicts to protect cultural property in the event of declared war or armed conflict by safeguarding and respecting it both within their state and on the territory of the signatory parties.¹⁶ That said, the Convention stipulates that cultural objects must not be used for a military purpose and uses thus “the principle of distinction between civilian objects and military objectives, where the latter can be legitimately targeted if their partial or total destruction would offer a definite military advantage as their current nature, location, purpose or use make an effective contribution to military action.”¹⁷

By the 1990s, after the damage to and pillaging of cultural property during the Second Gulf War and the Balkans Wars, it had once more been proven that the protection of cultural heritage needed an enhanced system of prevention and sanctioning.¹⁸ With the instauration of the Second Protocol in 1999, they improved some aspects, for instance, by clarifying and narrowing down the definition of ‘military necessity’ and determining the criminal responsibility and jurisdiction as it applies to the Convention.¹⁹ Yet, the Second Protocol was merely a refinement of the 1954 Hague Convention and still didn't carry enough obstruction to be effective.²⁰

¹⁴ Laila Hussein Moustafa, ‘Cultural Heritage and Preservation: Lessons from World War II and the Contemporary Conflict in the Middle East’ (2016) 79 *The American Archivist* 320, 322.

¹⁵ Caitlin V Hill, ‘Killing a Culture: The Intentional Destruction of Cultural Heritage in Iraq and Syria under International Law’ (2016) 45 *Georgia journal of international and comparative Law* 31, 202.

¹⁶ *ibid* 203.

¹⁷ Kristin Hausler, ‘Culture under Attack: The Destruction of Cultural Heritage by Non-State Armed Groups’ [2015] *Santander Art and Culture Law Review* 117, 124.

¹⁸ Hill (n 15) 203.

¹⁹ *ibid* 205.

²⁰ *ibid* 206.

In 1999 the first permanent treaty-based International Criminal Court (Hereinafter ICC) was established by the Rome Statute to “investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.”²¹ In order to be enforceable and binding, State Parties have to sign and ratify the Convention. The destruction of cultural heritage of sufficient gravity could be admissible at the ICC and falls under the jurisdiction of a war crime or a crime against humanity.²² However, as previously mentioned, due to the lack of universal jurisdiction, the Rome Statute and ICC are not effective for states not signatory to the Statute such as Iraq and Syria.²³

In 2003, after the wanton destruction of the Buddhas at Bamiyan in Afghanistan by the Taliban, the UN Security Council adopted the United Nations Education, Scientific and Cultural Organization (Hereinafter UNESCO) Declaration Concerning the Intentional Destruction of Cultural Heritage, as a non-binding instrument to highlight the universal value of cultural heritage.²⁴ The Declaration is a step forward as it has shed light on the issue again. Still, considering the gravity of the event that caused the Declaration, it is regretted that the Declaration does not have any legal binding force. That said, the Declaration relies on the State in question to take measures to protect their cultural heritage and to prevent the intentional destruction of cultural heritage on their territory by adopting judicial and legislative actions.²⁵ In 2015 – shortly after the bombing by Daesh of the Mosul Museum - another important Resolution was passed by the General Assembly entitled “Saving the Culture Heritage of Iraq”.²⁶ Even though the title is focused on the destruction in Iraq, the Resolution condemns all the destructions committed by the Islamic State. It expresses concerns about the fact “that barbaric and senseless attacks on irreplaceable [artifacts] of humanity's shared cultural heritage were taking place with alarming frequency not only in Iraq but also in Afghanistan, Syria, Mali and elsewhere.”²⁷ As mentioned before, both Resolutions do not have any legal binding force. They show a willingness of the International Community to prevent intentional destruction and

²¹ Rome Statute of the International Criminal Court A/CONF.183/9 of 17 July 1998.

²² Paige Casaly, ‘Al Mahdi before the ICC: Cultural Property and World Heritage in International Criminal Law Symposium: Culture at the Frontline: Addressing Attacks on Cultural Heritage’ (2016) 14 *Journal of International Criminal Justice* 1199, 1203.

²³ Hill (n 15) 209.

²⁴ UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage of 17 October 2003.

²⁵ Hill (n 15) 210.

²⁶ *ibid.*

²⁷ UNITED NATIONS, ‘Expressing Outrage over Attacks on Cultural Heritage of Iraq, General Assembly Unanimously Adopts Resolution Calling for Urgent Action | Meetings Coverage and Press Releases’ <<https://www.un.org/press/en/2015/ga11646.doc.htm>> accessed 11 May 2021.

protection of cultural heritage, but due to the lack of enforcement mechanisms, those destructions remain unpunished.²⁸

2.4 THE ISLAMIC STATE IN SYRIA AND IRAQ

2.4.1 The origin: brief history of Daesh

The origin of ISIS (the Islamic State of Iraq and Syria) can be detected in the Sunni/Baathist-dominated Iraqi army of the Saddam Hussein regime, which was one of the largest armies in the world before the invasion of Iraq by the US army.²⁹ After the debacle of Baathist rule, members of the Baathist party could not join the “army and government positions under the United-States-backed Iraqi government of Shi’ite Prime Minister Nouri al-Maliki.”³⁰ The previous Sunni members of the Iraqi military initiated a rebellion group against the Iraqi government in power and named the group the Islamic State of Iraq.³¹ In Syria, almost simultaneously with the initiation of the Islamic State in Iraq, the protests that began in 2011 against the Bashar al-Assad regime became more acute when the Syrian government authorities tried to suppress them.³² Due to the instability – when in 2014 the civil war broke out in Syria – the Islamic State of Iraq crossed the Syrian border and claims its capital in al-Raqqah and changed its name to the Islamic State of Iraq and Syria (ISIS).³³ ISIS was initially associated with al-Qaeda – a jihadist group attacking Western interests with the use of terror. This association was often associated because ISIS was and still uses terror to attack countries worldwide, “most notably in the bombing of a Russian jetliner over Egypt on October 31, 2015, and the Paris attacks on *Stade de France* and *Bataclan* on November 13, 2015.”³⁴ However, ISIS differs from al-Qaeda because they have control over territory in Iraq and Syria with the ultimate purpose to create a caliphate across the Eastern Mediterranean.³⁵ To generate the caliphate, they do not only destroy archeological sites, monuments and religious structures. They have killed thousands of Shi’ites, Christians and Kurds and imposed restrictive living conditions on the populations living on their seized territory.³⁶ Although experts are convinced about the fact that the majority

²⁸ Hill (n 15) 210.

²⁹ Cody Corliss, ‘Prosecuting Members of ISIS for Destruction of Cultural Property’ (2017) 45 Florida State University Law Review 43, 201.

³⁰ *ibid.*

³¹ *ibid* 202.

³² *ibid* 201.

³³ *ibid* 202.

³⁴ *ibid.*

³⁵ Michael P Scharf, ‘How the War Against ISIS Changed International Law’ [2016] Case Western Reserve Journal of International Law 55, 3.

³⁶ Corliss (n 30) 202.

of the governing body of ISIS consists of former members of Saddam Hussein's army, ISIS's ranks are made up of "27,000 foreign fighters who have traveled to the region from other parts of the Middle East, Western Europe and North America after being drawn to ISIS's extremist ideology."³⁷

2.4.2 Recent developments

Since the summer of 2014, Daesh has made operational use of cultural property both in Syria and Iraq. Some of their key ambitions related to culture and identity in their heavily mediated campaign are; first, eliminating all manifestations of idolatry by deliberately destroying cultural heritage to achieve ideological, tactical and strategic objectives. This took the form of demolishing artifacts in archeological museums, bulldozing sites, blowing up shrines, tombs and other holy sites and burning libraries and archives.³⁸ All of this is done to gain media exposure. Second, to raise financial means to fund their terrorist activities by the theft and the sale of looted cultural objects.

In terms of Islamic states' heritage objectives, it seemed in the Western media that the majority of what was being attacked was ancient and pre-Islamic cultural heritage or Christian sites.³⁹ However, a closer examination reveals that the assaults were primarily directed towards Shia heritage in Northern Iraq and Syria to incite a more important ongoing conflict. They were attempting to start retaliatory bloodshed between Sunnis and Shias to destabilize Iraq's government and peace. Because they seek to pit Kurds against Arabs, Shia against Sunni and Sufi and Turkey and Iran against Iraq and Syria, the metaphor of hexagonal chess is frequently used to depict the conflict's intricacy. Regarding the Christian cultural heritage, they repurpose churches and monasteries for their purposes.⁴⁰ They will store weapons and utilize them for administrative purposes, believing that the West will be less inclined to target it if they choose a historic church. In other words, they are using some of the Christian cultural heritage as a bulwark

³⁷ *ibid* 203.

³⁸ Helga Turku, *The Destruction of Cultural Property as a Weapon of War: Isis in Syria and Iraq* (Springer Berlin Heidelberg 2017) 37; Ömür Harmanşah, 'ISIS, Heritage, and the Spectacles of Destruction in the Global Media' (2015) 78 *Near Eastern Archaeology* 170, 170.

³⁹ UMBCtube, *MEMS Colloquium Lecture: Michael Danti - ISIS and Cultural Cleansing* <<https://www.youtube.com/watch?v=ms1rqYH7goI>> accessed 9 July 2021.

⁴⁰ *ibid*.

2.5 ISIS AND THE DESTRUCTION OF CULTURAL HERITAGE

2.5.1 Cultural heritage in Iraq

Significant parts of human history can be understood through the archeological and historical heritage of Iraq. That is to say that Iraq was the cradle of worldwide developments such as writing, mathematics, empires and many other socio-cultural attributes of human societies.⁴¹ Iraq's cultural heritage has been affected to a great extent by destructive acts that have received widespread international media exposure.⁴² The past 40 years, these violent acts were caused by a course of geopolitical events including the Iran-Iraq War (1980-1988), the Kuwait War (1990-1991), the spring 1991 insurgencies in Iraq, the imposed stringed sanctions by the UN Security Council on Iraq (1990-2003), the 2003 US/UK invasion, the Daesh occupation of parts of north and west Iraq (2014-2017) and the removal by force of Daesh all over Iraq in 2017.⁴³ Furthermore, the destruction of cultural heritage over time concurs with the development of an illegal trade network of antiquities.⁴⁴

2.5.2 Destruction of cultural heritage by Daesh in Iraq

In June 2014, Abu Bakr al-Baghdadi declared the creation of the Islamic State at the Great Mosque of al-Nuri in Mosul and designated himself as the Caliph Ibrahim, leader of the Muslims.⁴⁵ After taking over the control of the city of Mosul, Daesh discharged a devastating series of human suffering and heritage destruction across the territories they controlled.⁴⁶ Regarding cultural heritage destruction, the occupation of Mosul was the catalysator of a structured and organized iconoclastic plan of action, which included the razing of an uncountable amount of religious and cultural heritage sites.⁴⁷ The most infamous being the destruction by Daesh of the Mosul Museum that was accompanied by heavily distributed videos of Daesh's members destroying statues and blowing up neighboring archeological sites such as Nineveh and Nimrud.⁴⁸ The people of Mosul tried to prevent this from happening, but the Islamic State threatened to kill them all. In some cases, the people of Mosul have managed to save mosques by forming human chains around them to prevent the Islamic State from using

⁴¹ Roger Matthews and others, 'Heritage and Cultural Healing: Iraq in a Post-Daesh Era' (2020) 26 *International Journal of Heritage Studies* 120, 121.

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.* 122.

⁴⁵ Benjamin Isakhan, 'UNESCO's Project to "Revive the Spirit of Mosul": Iraqi and Syrian Opinion on Heritage Reconstruction' (2019) 25 *International Journal of Heritage Studies* 1189, 1190.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*

bulldozers and other machinery. After that, before removing the precious movable items and loaded them into trucks, Daesh destroyed and blew up the Nebi Yunus Mosque in July 2014. Three years later, in June 2017, Mosul was at the heart of the confrontation between Daesh and the Iraqi Security forces. Daesh, facing an impendent resistance, exploded the Great Mosque of al-Nuri.⁴⁹ The explosion of the Mosque, wherein 2014 the Caliphate was launched in, marked the defeat of Daesh in Mosul. The majestic city of Mosul was reduced to a pile of smoldering stones and lost memories.

2.5.3 Cultural Heritage in Syria

The cultural heritage in Syria has been constituted by the legacy of the several civilizations that have occupied the territory. Among them were the Arameans, the Phoenicians and the Romans.⁵⁰ Especially in nations with a background of different ethnic and religious communities, the need for “a collective memory and identity to create a feeling of unity, national pride and belongingness” is ubiquitous.⁵¹ The Syrian population discovered these collective memories and identity in some ancient cultural heritage sites, also called *lieux de mémoires*, places of memory.⁵² Since 1946 – when Syria became independent from France – the country is depleted of political unrest originating from several coups and the Six-Day War. Syria lost part of its territory to Israel.⁵³ The current civil war, which began in March 2011 inspired by the Arab Spring uprisings in Tunisia and Egypt, incited the Syrian population to demonstrate against the high unemployment rate, the corruption and the lack of political freedom under President Bashar al-Assad.⁵⁴ The uprising rapidly escalated in a full-scale non-international armed conflict.⁵⁵ The rapidity at which the conflict had emerged caused fear to the local population that their cultural heritage would suffer the same fate as Iraq's.⁵⁶ Moreover, the fact that the built heritage is scattered throughout its territory made it even more challenging to protect the sites and prevent intentional destruction.⁵⁷

⁴⁹ *ibid.*

⁵⁰ Marina Lostal, ‘Syria’s World Cultural Heritage and Individual Criminal Responsibility’ [2015] *International Review of Law* 3.

⁵¹ Christoph Doppelhofer, ‘Will Palmyra Rise Again? - War Crimes against Cultural Heritage and Post-War Reconstruction’ (2016) 3 <<http://www.ohchr.org/EN/Issues/CulturalRights/Pages/IntentionalDestruction.aspx>>.

⁵² *ibid.*

⁵³ Lostal (n 51).

⁵⁴ BBC NEWS, ‘Why Has the Syrian War Lasted 10 Years?’ *BBC News* (12 March 2021) <<https://www.bbc.com/news/world-middle-east-35806229>> accessed 12 May 2021.

⁵⁵ Lostal (n 51).

⁵⁶ *ibid.*

⁵⁷ *ibid.*

2.5.4 Destruction of cultural heritage by Daesh in Syria

In May 2015, the ancient city of Palmyra in Syria was captured by Daesh.⁵⁸ Like an oasis in the Syrian desert, the city is well known for being an important trade route connecting the Eastern Mediterranean to Asia. In the architecture of the ancient site of Palmyra, influences of the different cultures that have shaped the area can be retrieved, and the city stands at the crossroads of different civilizations combining Graeco-Roman techniques with local traditions and Persian influences.⁵⁹ It was a fusion in the Classical era. Over the past 2000 years, the unique cultural heritage survived a myriad of conflicts and the ravages of time.⁶⁰ In 1980, UNESCO recognized the splendor of the ruins, and they were declared as a World Heritage Site. When Daesh started occupying Palmyra, they guaranteed that the historic buildings of the ancient site would be preserved and that they would “exclusively destroy the idols that the infidels used to worship.”⁶¹ Unfortunately, this promise was just a castle in the air. In August 2015, they publicly broadcasted how Khaled al-Asaad – a Syrian archeologist responsible for preserving and preventing excavations of the site – was hung from a column in Palmyra.⁶² This can also be seen as an erasure of cultural memory and identity. Besides that, ISIS released imagery on how the 1,900-year-old best-preserved temple of Baalshamin was blown up. A few days later, the Temple of Baal, a nearby structure, was demolished as well. Regrettably, it did not stop there, and ISIS continued its wanton destructions all over Syria. The walls of the Mar Elian Monastery – which was a Christian Monastery near Palmyra were razed to the ground by a bulldozer, and the footage was posted on Twitter.⁶³ Also, Apamea – a Roman-era trading city- has been excavated and removed sales, the yields being used to fund their operations.⁶⁴ The aforementioned archaeological sites are just a few examples of a panoply of destruction committed by ISIS across Syrian territory.

⁵⁸ Turku (n 39) 1.

⁵⁹ UN NEWS, ‘As Thousands Flee Syria’s Besieged Historic City of Palmyra, UN Refugee Agency Readies Response Plan’ (*UN News*, 22 May 2015) <<https://news.un.org/en/story/2015/05/499502-thousands-flee-syrias-besieged-historic-city-palmyra-un-refugee-agency-readies>> accessed 26 April 2021.

⁶⁰ Turku (n 39) 1.

⁶¹ *ibid* 2.

⁶² National Geographic, ‘Here Are the Ancient Sites ISIS Has Damaged and Destroyed’ (*History*, 9 January 2015) <<https://www.nationalgeographic.com/history/article/150901-isis-destruction-looting-ancient-sites-iraq-syria-archaeology>> accessed 19 June 2021.

⁶³ *ibid*.

⁶⁴ *ibid*.

3 ONLINE TERRORISM

3.1 STATE OF THE ART

This chapter will set out how the uprise of the internet has changed our human behavior and why social media is the ultimate propaganda tool for terrorist organizations in general. This chapter is significant for the research question since it illustrates to what extent the impact of social media is omnipresent. Hence, to what extent the dissemination of ISIS' acts of destruction is influential.

3.2 THE UPRISE OF THE INTERNET

The entrance of the Internet into our society in the mid- 1990s has changed our human behavior profoundly. Never before had there been a medium that made the exchange of information so quick, so easy and with such a wide reach possible.⁶⁵ Gradually, the Internet transformed from a static information medium, where users are passive recipients (Web 1.0), to an interactive communication platform where users themselves co-determine the content of the web (web 2.0).⁶⁶ This transformation is characterized by the emergence of interactive platforms such as Facebook, WhatsApp, Twitter and YouTube. Those network sites are now estimated to have more than 3.6 billion users, and those numbers are expected to have an exponential rise.⁶⁷ Considering the substantial number of users, the Internet and social media are a phenomenon that is impossible to imagine a society without and impact all aspects of our lives. While the Internet was one of the nominees for the Nobel Peace in 2010 because it promotes 'dialogue, debate and consensus' globally through communication, it cannot be denied that it also has drawbacks.⁶⁸ After all, the Internet is also used as a platform for illegal activities, including the distribution of child pornography, hate speech, copyright infringements, fraud and terrorism.

Regarding the latter, terrorist organizations also benefit from the developments in information and communication technology. Over the past three decades, the presence of terrorist organizations has increased dramatically on the internet and social media. Whereas in the 1990s there were only about a dozen terrorist websites could be found, the number has grown tremendously over the years to almost ten thousand. Moreover, terrorist organizations have

⁶⁵ Weimann, Gabriel, *Terrorism in Cyberspace: The Next Generation* (Columbia University Press 2015) 3.

⁶⁶ Professor Yaman Akdeniz, and others, 'Media Freedom on the Internet: An OSCE Guidebook' 11 <<https://www.osce.org/files/f/documents/3/c/226526.pdf>> accessed 16 June 2021.

⁶⁷ Statista, 'Most Used Social Media 2021' <<https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>> accessed 16 June 2021.

⁶⁸ 'Internet up for Nobel Peace Prize' (10 March 2010) <<http://news.bbc.co.uk/2/hi/technology/8560469.stm>> accessed 16 June 2021.

adapted their *modus operandi* to technological developments. They are also taking advantage of the new opportunities that the Internet offers, such as the interactive platforms Facebook, TikTok, Twitter and YouTube.⁶⁹

3.3 THE USE OF THE INTERNET BY TERRORIST ORGANIZATIONS

The uprising of the internet has been a bestowal for terrorist organizations. In the early 2000s, Al Qaeda already recognized the Internet's potential for forming a worldwide movement.⁷⁰ In 2002, Osama bin Laden wrote in a letter to Taliban commander Mullah Muhammad Omar: "It is obvious that the media war in this century is one of the strongest methods; in fact, its ratio may reach 90 percent of the total preparation for the battles."⁷¹ The reasons why the internet and social media are the ultimate propaganda tool for terrorist organizations are myriad. To begin with, social media is very accessible and low-cost. Most of the social media networks have free registration and are accessible on any inexpensive smartphone. Another reason is that the internet allows spreading messages from a combination of text, images, audio, and video, making it an easy-to-digest format compared to traditional media.

Moreover, there is a possibility of being completely anonymous on the internet, making it more difficult to intercept messages that spread extremist and fundamentalist ideas. Moreover, social media platforms offer the advantage to terrorist organizations of deciding to whom they address their message, thereby increasing the reach and the impact of the message. Whereas they previously had to wait until the internet user reached their respective website. In addition, social media can be used by terrorist organizations to create the illusion that the group is much more potent than it appears to be. The most significant problem is that the social media landscape is impenetrable to policing for a more considerable part.⁷² Control strategies that worked in a vertically controlled Internet environment don't function in the new social networking environment. The extensive sharing of the same content creates redundancy and "resilience against disruption and suppression by governments and Internet service providers."⁷³

Twitter is undoubtedly the most prominent social media platform for ISIS propaganda. It is designed specifically for cell phones and is affordable and straightforward to use. Images and

⁶⁹ Gabriel Weimann, 'Terror on Facebook, Twitter, and Youtube The Internet and the State' (2009) 16 *Brown Journal of World Affairs* 45, 45.

⁷⁰ Jytte Klausen, 'Tweeting the Jihad: Social Media Networks of Western Foreign Fighters in Syria and Iraq' (2015) 38 *Studies in Conflict & Terrorism* 1, 2.

⁷¹ *ibid* 3.

⁷² *ibid*.

⁷³ *ibid* 4.

texts may be used in posts (tweets), and connections and links to others platforms can be included. An incoming tweet can also be forwarded to everyone in an address list with ease.⁷⁴ On Twitter, journalists, academics, and militants communicate and follow each other. Slow media – TV, newspapers and radio – regularly cite Twitter as a reliable source of information regarding the insurgency’s development.⁷⁵ While Twitter may offer the impression of authenticity as a spontaneous activity of a generation used to sharing about their own experiences via their mobile phones, the sharing of photos and information on Twitter is more carefully controlled than is often known. There is evidence that ISIS combatants’ communications are limited and that only a few trusted militants engage in their high-volume social media activity.⁷⁶ A few militants update their Facebook account, and Twitter feeds on the battlefield on a regular basis, while the majority of them do not interact.⁷⁷ This illustrates that ISIS has a particular strategy in their social media activity and that posting is not reserved to all and sundry.

⁷⁴ *ibid* 1.

⁷⁵ *ibid*.

⁷⁶ *ibid*.

⁷⁷ *ibid*.

4 ISIS AND ITS MEDIATIC REPRESENTATION

4.1 STATE OF THE ART

This chapter will discuss ISIS and its mediatic representation. In the first place, this chapter sets out what the social mediatic representation by ISIS is. In the second place, it establishes the impact of the dissemination of the destruction of cultural heritage. This chapter is at the core of the research because it illustrates to what extent this dissemination is a new kind of propaganda with motivations that differ from the traditional ones concerning the destruction of cultural heritage.

4.2 MEDIATIC REPRESENTATION

Social mediated terrorism is defined as “the use of social and networked media to increase the impact of violent acts undertaken to further a social, political and religious cause with the aim of creating physical, emotional or psychological suffering that extends beyond the immediate audience.”⁷⁸ Media-oriented terrorism consists of different features. The first one being independence from the traditional and mainstream media platforms. Before the emergence of social media, terrorist groups had to depend on journalists to spread violent messages and gain attention from the international community. Now, they can freely spread their propaganda without any form of involvement of a third party.

Furthermore, they can reach a broader range of individuals, which means their target audiences and potential supporters and even enemies. One of the main goals of terrorism is to deliberately exploit psychological fear, violence or the threat of violence in order to achieve political change.⁷⁹ The tools terrorists use to propagate their will of political change vary from “torture, mass murders and rape, to the destruction of cultural monuments and arts.”⁸⁰ Technology and social networks play an indispensable role in transmitting this message in an easy-to-digest format and increasing the target audience of the terrorists’ actions.⁸¹

⁷⁸ Claire Smith and others, ‘The Islamic State’s Symbolic War: Da’esh’s Socially Mediated Terrorism as a Threat to Cultural Heritage’ (2016) 16 *Journal of Social Archaeology* 164, 164.

⁷⁹ Turku (n 39) 27.

⁸⁰ *ibid.*

⁸¹ *ibid.*

4.3 DAESH' SOCIAL MEDIA CAMPAIGN

The use of social media by Daesh has been an essential element of their recruitment and supporting campaign to spread its message. Social media has proven to be a very effective tool for terrorists since almost 90% of their targeted audience – adults between 18 and 29 years old across the globe– is using it.⁸²

In 2014, Daesh started using social media to disseminate their specific type of propaganda, which consolidated Jihadist symbolism with the same images and the same violence used in video games of younger generations. This created a Jihadist subculture and anti-culture, which appealed to Europe's youth searching for meaning.⁸³84 “Portraying a glamorized and ‘cool’ image, ISIS fighters were beginning to act as the new rock stars of global cyber jihad.”⁸⁵ In other words, to promote a political goal founded on anti-modern principles, the terrorist organization employs a cultural representation of modernity.

With social media platforms such as Facebook, Twitter, and YouTube, ISIS is in a real-time and convenient, accessible, and affordable way, able to post their very sophisticated, high-tech Jihadi propaganda. Moreover, ISIS has its own media channel *Alhayat*, which distributes magazines and creates videos, using drones and go-pros in order to appeal as much as possible to potential fighters. One of the magazines was called *Dabiq*. It was available online in multiple languages – mainly in English – and used as a recruiting device. In the magazine, they explained what the reasons for their destruction were. “Erasing the legacy of a ruined nation” is how they presented their destruction of sculptures in the Mosul Museum. In other words, they tell the international community how they are erasing inappropriate cultural memory and that they're involved in cultural cleansing.

The message of the effective social media radicalization campaign of Daesh contained a global call to arms to fighters living in their most active areas in Syria and Northern Iraq.⁸⁶ Initially, their social media strategy was installed in order to motivate foreign fighters living in the West

⁸² Lisa Blaker, ‘The Islamic State’s Use of Online Social Media’ (2015) 1 *Military Cyber Affairs* 10, 1.

⁸³ Asiem El Difraoui, ‘EJihad: Behind the Use of Social Media by ISIS’ in Oliver Hahn and Florian Stalph (eds), *Digital Investigative Journalism: Data, Visual Analytics and Innovative Methodologies in International Reporting* (Springer International Publishing 2018) 2.

⁸⁴ Difraoui (n 85).

⁸⁵ Imran Awan, ‘Cyber-Extremism: Isis and the Power of Social Media’ (2017) 54 *Society* 138, 138.

⁸⁶ Matthew C Benigni, Kenneth Joseph and Kathleen M Carley, ‘Online Extremism and the Communities That Sustain It: Detecting the ISIS Supporting Community on Twitter’ (2017) 12 *PLOS ONE* 2 <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0181405>> accessed 27 May 2021.

to join Daesh in Syria and Iraq. Still, it proved to be one of the most fundamental reasons why ‘decentralized attacks’ in the Western world were committed.⁸⁷ Important to note is that these ‘lone wolf’s attacks’ are achieved mainly by people in vulnerable situations, that are being discriminated against in Western countries because of far-right policies. They are attracted to the messages ISIS is spreading because it gives them a sense of belonging, which they are usually unable to feel in their countries of residence. They get emotionally involved in conflicts and war in their countries of origin. They are often confronted with discrimination, marginalization, humiliation within the family, school, neighborhood and society in general, which leads to a break with their past which has been experienced as excruciating for them. In combination with religious and ideological doctrine, these shocking images lead to the embracement of militaristic messages. Resulting in the fact that looking up websites and following social media accounts containing such ideologically extremist and radical messages is among the core local indications of radicalization.⁸⁸

4.4 EXTREMIST USE OF CULTURAL HERITAGE DURING WAR

4.4.1 The intentional destruction of Daesh

As discussed above, military destruction has always been an essential element of warfare. The 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage defines “intentional destruction” as:

“An act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or unjustifiable offence to the principles of humanity and dictates of public conscience, in the latter case in so far as such acts are not already governed by fundamental principles of international law.”⁸⁹

The Islamic State has produced many clips documenting their systematic destruction of cultural assets, demonstrating that the damage is deliberate following the 2003 UNESCO Declaration.⁹⁰ However, it seems that extremists’ use of cultural property -in particular Daesh - somehow varies from the historical examples.⁹¹ The intentional destructions differ in the sense of their

⁸⁷ *ibid.*

⁸⁸ Alex Schmid, ‘Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review’ [2013] *Terrorism and Counter-Terrorism Studies* 33.

⁸⁹ UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage of 17 October 2003.

⁹⁰ Hill (n 15) 196.

⁹¹ Turku (n 39) 37.

purpose and their audience. In the case of Daesh, the systematic destruction of cultural heritage in Iraq and Syria is primarily for extremist ideological and propagandistic purposes.⁹² Daesh does not only want to implement a misrepresented image of religion by removing all symbols of idolatry, “they are targeting culture and any expression of it as the enemy.”⁹³ The intentional destruction of ISIS has been used as a part of the “cultural engineering” desired by various fundamentalist groups who, rather than conserving tradition, seek to drastically change it, eliminating what does not align with their vision.⁹⁴ They want to end customs and obliterate memories to establish new historical narratives that provide no other perspective but their own.

Regarding the audience, they do not only want to target the communities directly affected by the destruction. They want to spread a message of fear to the whole international community in order to shock and provoke. Regarding the latter, it is interesting to note that if you were to watch the news channels in the West in 2014 and 2015, you would have thought that all the Islamic State was doing was destroying ancient archeological sites.⁹⁵ It seemed as if the Islamic State was only targeting pre-Islamic heritage. In reality, from the very start of the conflict, they were focused on more modern, religious heritage, the pieces of heritage that are a part of living, vibrant communities: cemeteries, mosques, churches, shrines..., it was only in a secondary sense that the Islamic State was destroying ancient sites like Palmyra or Nineveh. They often destroyed these ancient sites to get the West’s attention as a click-bait type on the internet. They would post videos and pictures of the destruction of these ancient sites. They realized it would increase the number of hits on their social media and that people in the West were outraged that someone had destroyed a classical heritage site.⁹⁶ The IS used this as propaganda in the Middle East by claiming that people in the West did not care about people in Iraq and Syria but only about their ancient sites.

As previously noted, the dissemination of the intentional destruction of social media is also utilized as propaganda for their young followers and would-be recruits to justify and encourage the destruction. A video showing a young Northern-Western recruit damaging Sufi shrines, for example, went viral. Sufism is a mystical and ascetic branch of Islam that emphasizes the worship of saints.⁹⁷ The Islamic State considers this to be heresy and has destroyed the shrines

⁹² Russell D Howard and others, ‘IS and Cultural Genocide: Antiquities Trafficking in the Terrorist State’ Joint Special Operations University 112, 1.

⁹³ Turku (n 39) 37.

⁹⁴ Report of the Special Rapporteur in the field of cultural and rights, ‘A/HRC/31/59’.

⁹⁵ UMBCtube (n 40).

⁹⁶ *ibid.*

⁹⁷ *ibid.*

and movable material cultural heritage items. This is a typical example of what the Islamic State posts on social media to legitimize its doctrine as a necessary step towards establishing a caliphate within its interpretation of Islamic law. Moreover, the posts depict ISIS apocalyptic metanarrative of a coming battle between East and West followed by a zero-year. They want these young recruits to think that they are a historical force to be reckoned with and will be the catalyst for this apocalyptic battle in Syria and Iraq.⁹⁸

4.4.2 Motivations

While ISIS states that the motivation for the intentional destruction of cultural heritage is merely religious and based on the Quran Islamic aniconism and laws against idolatry, it is interesting to look more closely into the motivations.⁹⁹ The strategy of ISIS is to use the cultural heritage of their self-proclaimed enemies and to orchestrate grand highly-mediatised destruction ‘shows’.¹⁰⁰ The broadcasting of these images has multi-layered purposes. The first layer being “to shock and demoralize their enemies, demonstrate power and to distract from their weaknesses” an example of this is that the destruction of Nimrud and the temples of Baal’Shamin and Bel in Palmyra were committed after a time of significant military losses.”¹⁰¹ This is called performative deliberate destruction. The same goes for the release of the videos on the Internet. The IS will wait for a particular date when it will have maximum impact or have suffered a political or military setback. They use it as a smokescreen to hide what is happening and divert attention from a setback. Another layer is the humiliation of local communities.¹⁰² Local communities often have a religious, cultural or spiritual connection with the cultural heritage in question. The destruction of their cultural heritage violates their human right to freely participate in cultural life and the connecting human right to have access to cultural heritage, but the broadcasting even aggravates the transgression. The third layer is “broadcasting a radical ideology of religious fanaticism to recruit new transnational militants.” With the spectacular broadcasting of their actions, ISIS wants to attract and recruit young militants to join their mission. The last layer being the disregard towards the West of their perspective of common values attached to cultural heritage in a globalized world.¹⁰³

⁹⁸ *ibid.*

⁹⁹ Doppelhofer (n 52) 1.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.* 2.

¹⁰² Ömür Harmanşah, ‘ISIS, Heritage, and the Spectacles of Destruction in the Global Media’ (2015) 78 *Near Eastern Archaeology* 170, 171.

¹⁰³ *ibid.*

4.5 DAESH'S VISUAL REPRESENTATIONS

Whether we have in mind the ghastly beheadings of foreign journalists, deliberate targeting of innocent civilians, the intentional destruction of monuments in Mosul and Nimrud, the visual representation has been one of the most critical features of ISIS' propaganda and advertising.¹⁰⁴ Daesh is making use of graphical representations featuring singing, recitation, and drama in order to disseminate their actions. Using professional filming equipment, Daesh reported how their militants were blowing up major archeological sites such as Nineveh, Nimrud and Hatra and how ancient sculptures in the Mosul Museum were sledgehammered. The images that ISIS is spreading regarding the destruction of cultural heritage on social media are reproduced by different cameras and from different angles with special visual effects, sounds and smoke effects.¹⁰⁵ The fact that those professional effects are used is essential, because at a certain point, the images of war and destruction become desensitizing in a way that "the more such images are shown, the higher the threshold to create sensationalism becomes, or that audiences simply are overwhelmed by constant news of death and destruction."¹⁰⁶

ISIS has not only disseminated shocking videos which picture the atrocities and destruction, but they have also disseminated aestheticized images that can be broadcasted on Western media platforms.¹⁰⁷ A number of these videos is also depicting another story. They show pictures and videos of ISIS fighters as 'local heroes', helping and protecting civilians.¹⁰⁸ A couple of videos show how ISIS members pay visits to wounded fighters in hospitals in the region.¹⁰⁹ Those types of clips are parts of a series called '*Mujaweets*' and are accompanied by podcasts made by British ISIS fighters such as Abu Summayah in Northwest Syria.

Moreover, ISIS developed a mobile application entitled 'The Dawn of Glad Tiding', which allowed "users to see and monitor tweets, links, hashtags, images videos and comments posted on their specific accounts. Most of the content was regulated by ISIS's social media arm."¹¹⁰ This application has been reported and is no longer available.

¹⁰⁴ Turku (n 39) 68.

¹⁰⁵ *ibid* 69.

¹⁰⁶ *ibid*.

¹⁰⁷ *ibid* 68.

¹⁰⁸ Awan (n 87) 139.

¹⁰⁹ *ibid*.

¹¹⁰ *ibid*.

4.6 DESTRUCTION OF CULTURAL HERITAGE ON SOCIAL MEDIA BY DAESH

While it is not the first time that the destruction of cultural heritage is filmed and made public to put political pressure or reach an extensive goal (f.e., the filmed destruction of the Bamiyan Buddhas), the destruction of cultural heritage by Daesh is considered as the first one being shared extensively on social media.¹¹¹ The disseminated images depict a story. Because of their shocking nature, they also haunt and affect the viewer on a significant level.¹¹² Several authors have attempted to discover the reasoning and motivation behind the social mediatization of the destruction. They reach from a “thought-through purpose” to “deliberately increasing political-sectarian tensions to inciting conflict”.¹¹³ Daesh themselves point to a religious and proselytizing motivation, have a testimony of their mark in history, and have evidence of their triumph.¹¹⁴

Any event of social mediatization of the destruction of cultural heritage can be used for propaganda, which may sometimes be detected as its sole purpose.¹¹⁵ However, only the destruction of concrete monuments and places get mediatized, which *a fortiori* coincidence, with important days of the Islamic calendar or military operations.¹¹⁶ As mentioned above, many believe that the primary targeted audience of social media propaganda is people living in the West. However, the more significant part of the captions and voice-overs in Arabic.¹¹⁷ The other ISIS’ messages are segmented by the languages they employ, which varies depending on the people they hope to target with each message. ISIS has published 120 advertisement campaigns targeting Western countries, featuring 27% of them in English, 15% in Russian, 13% in French, and 3% in German.¹¹⁸

¹¹¹ Smith and others (n 80).

¹¹² Turku (n 39) 68.

¹¹³ Cunliffe and Curini (n 113) 1095.

¹¹⁴ Turku (n 39) 68.

¹¹⁵ Cunliffe and Curini (n 113) 1095.

¹¹⁶ Cunliffe, Muhesen and Lostal (n 4) 1095.

¹¹⁷ Cunliffe and Curini (n 113) 1095.

¹¹⁸ Javier Lesaca, ‘On Social Media, ISIS Uses Modern Cultural Images to Spread Anti-Modern Values’ (24 September 2015) <<https://www.brookings.edu/blog/techtank/2015/09/24/on-social-media-isis-uses-modern-cultural-images-to-spread-anti-modern-values/>> accessed 6 July 2021.

5 THE PARADIGM OF CULTURAL PROTECTION

5.1 STATE OF THE ART

This chapter is subdivided into four parts to find the existing cultural protection paradigm—the first three parts will attempt to delineate the paradigm in the international legal conventions, international criminal law and international human rights law. After, this chapter will assess whether the Islamic State could be held accountable for its acts of intentional destruction under international law. This chapter is indispensable for the research since it demonstrates to what extent the existing cultural protection paradigm is not compatible with the ongoing attacks on cultural heritage.

5.2 INTRODUCTION

As mentioned in the introduction, cultural heritage has always been a victim of armed conflict. For centuries, monuments and artefacts were destroyed as collateral damage to the battle.¹¹⁹ Moreover, as an aftereffect of war, moveable cultural heritage was used as booty of war and stolen to end up in a circuit of illegal trafficking. Though, also deliberate destruction of cultural heritage has taken place during history. In the aftermath of the Cold War, there have been intentional destructions of cultural heritage in Yugoslavia and more recent conflicts in the Middle East and North Africa.¹²⁰ With the uprising of extremist and fundamentalist groups such as Daesh and Ansar Dine, there has been an augmentation of “acts of iconoclasm, deliberately destroying heritage sites and looting valuable artefacts symbolic minority cultures.”¹²¹ These destructions should be of great concern for the international community since it is about taking away any memory (*damnatio memoriae*), any heritage and knowledge and, by doing so, imposing a different vision on the world that seeks to wipe out any form of cultural diversity. Those attacks have resulted in “the displacement of peoples and groups, and thus have contributed to the dilution or erosion of their cultural heritage and expressions.”¹²² Those displacements have irrevocable consequences for the social structure and cohesion of the

¹¹⁹ Noelle Higgins, *The Protection of Cultural Heritage During Armed Conflict: The Changing Paradigms* (Routledge 2020) 1.

¹²⁰ *ibid.*

¹²¹ *ibid.*

¹²² *ibid.* 2.

countries in question, with extensive repercussions for the cultural diversity and the stability in the region.¹²³

The release of several videos depicting the destruction of cultural heritage in Iraq and Syria has been defined as the unprecedented phenomena of ‘cultural cleansing’ by Irina Bokova, the former director-general of UNESCO. Cultural cleansing was described in a UNESCO International Conference in 2014 as “an intentional strategy that seeks to destroy cultural diversity through the deliberate targeting of individuals identified based on their cultural, ethnic or religious background, combined with deliberate attacks on their places of worship, memory and learning.”¹²⁴ Additionally, all of this is part of a deliberate communication discussed above, including the clever use of mainstream and social media. As a result, cultural cleansing is a weapon of war “what military strategists conceive of as humanity.”¹²⁵ However, the crime of cultural cleansing through the use of the destruction of cultural legacy is not yet considered a humanitarian crime, nor is it incorporated in the body of international law that governs and protects cultural assets

5.3 TRADITIONAL PARADIGMS

This section is going to set out the paradigms on the protection of cultural heritage during wartime. The first section will look into the international legal conventions, particularly the 1954 Hague Convention, the 1970 UNESCO Convention, and the 1972 World Heritage Convention. The 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage will not be discussed. This is due to its provisions' lower and inconsequential content, which does not add substantially to the paradigm debate.¹²⁶ The second section will set out the International Criminal Law response by analyzing both the jurisprudence of the ICC and the International Criminal Tribunal for the former Yugoslavia (Hereinafter. ICTY). The third section will discuss the protection of cultural heritage from an international human rights law perspective.

¹²³ UNESCO, ‘The Protection of Heritage and Cultural Diversity: A Humanitarian and Security Imperative in the Conflicts of the 21st Century. Background Note to the International Conference “Heritage and Cultural Diversity at Risk in Iraq and Syria”’ 7 <<https://en.unesco.org/system/files/iraqsyriaeventbackgroundnoteeng.pdf>> accessed 6 June 2021.

¹²⁴ UNESCO, “‘Heritage and Cultural Diversity at Risk in Iraq and Syria’ International Conference UNESCO Headquarters, Paris’ <<http://www.unesco.org/culture/pdf/iraq-syria/IraqSyriaReport-en.pdf>> accessed 30 June 2021.

¹²⁵ UNESCO (n 126).

¹²⁶ Federico Lenzerini, ‘Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage’ (2016) 51 *The International Spectator* 70, 74.

5.4 THE INTERNATIONAL LEGAL CONVENTIONS

5.4.1 Introduction

This section is going to discuss the different legal bodies that exist and how those texts form the paradigm of cultural protection in the international community. As highlighted in the conceptual and contextual representation of this master thesis, the end of the 19th Century and the beginning of the 20th was equivalent to introducing a legal framework setting in motion the prohibition of attacks on cultural heritage during armed conflict.¹²⁷ This early framework was based on one of the essential principles of international humanitarian law, namely, distinction.¹²⁸ This principle prescribes that civilian objects cannot be the object of attack in armed conflicts.¹²⁹ The majority of the early international law instruments such as the Lieber Code, the 1874 Brussels Declaration, the 1880 Oxford Manual and the 1899 Hague Conventions conceived the protection of cultural heritage as “paralleled with the protection of other civilian objects, including hospitals and religious sites, and its importance to humanity is not acknowledged as a reason for its protection.”¹³⁰ However, this so-called ‘civilian use’ paradigm will be replaced by a new paradigm of protection of cultural heritage in armed conflicts, which will take into account the value to humanity of the cultural heritage in question. In other words, ‘the civilian use’ paradigm is no longer relevant and will therefore not further be discussed in this master thesis.

5.4.2 Cultural value paradigm

With the growing awareness that cultural heritage is a prominent aspect of the preservation of cultural identity, the cultural value paradigm was introduced in the 1954 Hague Convention. According to the paradigm, the protection of cultural heritage is necessary because the heritage contains an intrinsic value to humankind.¹³¹ Moreover, having an adequate legal framework that protects cultural heritage will benefit the cultural heritage in question and the human communities' conditions.¹³²

¹²⁷ Higgins (n 122) 11.

¹²⁸ *ibid* 15.

¹²⁹ *ibid*.

¹³⁰ *ibid*.

¹³¹ *ibid* 19.

¹³² Lenzerini (n 129) 71.

5.4.3 Prevention, protection and prosecution paradigm

On the other hand, the existing legal context and the paradigm of cultural protection focalize as well to a great extent on the prevention, protection and prosecution approach, which is a property law response “to the mass looting of art and other cultural property during the Second World War and neglecting the destruction of immovable and intangible cultural heritage and its impact on communities, groups and peoples.”¹³³

5.4.4 The 1954 Hague Convention

5.4.4.1 Content of the Convention

As discussed briefly in the introduction, the Hague Convention of 14 May 1954 was created out of the need to protect cultural heritage on the basis that its destruction leads to a loss for all humankind.¹³⁴ Presently the Convention counts 133 Contracting State Parties and was followed by two protocols. Parties to the Convention need to take the responsibility to protect cultural property in times of war or internal armed conflict.¹³⁵ Besides that, the Convention extends its scope to the peacetime sale of cultural goods looted during the armed conflict.¹³⁶ Signatory states commit to abstain “from any act of hostility directed against cultural property.”¹³⁷ Interesting to note is that the Convention both applies in armed conflict between two or more of the High Contracting Parties, as in non-international armed conflicts.¹³⁸ The Convention does not delineate what a non-international armed conflict, nor how violent the conflict has to be for the Convention to apply.¹³⁹ The Convention is mainly built upon the connection between the cultural heritage and its materiality, which means that cultural heritage is perceived as something unchanging and fixed in a historical moment of time.¹⁴⁰ Since the Convention sees the destruction of cultural heritage as something irreversible, it is not focusing to a great extent on its civil reparations. Apart from the fact that the Convention is one of the most significant and signed International Conventions regarding protecting cultural heritage in armed conflict, it has some considerable drawbacks. The most important is its lack of enforcement, which means that there are no sanctions for non-compliance and no central enforcement body of the

¹³³ Moffett, Viejo Rose and Hickey (n 6) 620.

¹³⁴ Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954).

¹³⁵ Turku (n 39) 101.

¹³⁶ *ibid.*

¹³⁷ Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954) Art 4 (1).

¹³⁸ *ibid* Art 18 & 19(1) .

¹³⁹ Turku (n 39) 102.

¹⁴⁰ Moffett, Viejo Rose and Hickey (n 6) 620.

Convention, which leaves it up to the States to prosecute in case of transgression.¹⁴¹ The Convention gives the responsibility to prosecute individuals, thus to national tribunals or even to ad hoc criminal tribunals for the destruction of cultural heritage.¹⁴²

5.4.4.2 Paradigm

It is clear that the primary purpose of the Convention is “to protect the cultural heritage of all people for future generations.”¹⁴³ Each signatory state is responsible for the cultural heritage on its territory. Still, they also the duty to prevent and protect the legacy of humankind to ensure that future generations will be able to behold it.¹⁴⁴ Although the prosecution and thus reparation part of the ‘protect, preserve and prosecute approach’ is rather vague in the Convention, it is apparent that the 1954 Convention follows the classic cultural protection paradigm. This vagueness has led to several soft law initiatives “through resolutions of international organizations and professional bodies with mandates for the protection of cultural heritage.”¹⁴⁵ Beholding intentional destruction of cultural heritage, those organizations mainly focus on the preservation and protection part. An example of one of the initiatives is ‘First Aid to Cultural Heritage in Times of crimes’ from the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM). This publication is created for the various actors (humanitarian professionals, Community-based organizations, civil protection personnel...) involved in securing endangered cultural heritage.¹⁴⁶

As stated *supra*, the 1954 Convention was the first international instrument based on the cultural value paradigm, and this can already be retrieved in the Preamble, which states:

*“Considering that the preservation of the cultural heritage is of great importance for all people of the world and that it is important that this heritage should receive international protection.”*¹⁴⁷

The Preamble makes it clear that the Convention follows the opinions of early writers and believers of the cultural value paradigm such as Cicero and de Vattel, who proclaimed “that

¹⁴¹ Zoe Howe, ‘Can the 1954 Hague Convention Apply to Non-State Actors: A Study of Iraq and Libya Note’ (2011) 47 Texas International Law Journal 403, 413.

¹⁴² *ibid* 414.

¹⁴³ Turku (n 39) 103.

¹⁴⁴ *ibid*.

¹⁴⁵ Moffett, Viejo Rose and Hickey (n 6) 621.

¹⁴⁶ ICCROM, ‘First Aid to Cultural Heritage in Times of Crisis - Handbook’ <<https://www.iccrom.org/publication/first-aid-cultural-heritage-times-crisis-handbook>> accessed 18 June 2021.

¹⁴⁷ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970).

cultural heritage should be protected during armed conflict, not merely because its destruction can provide no military advantage, but also because of its inherent value to humanity.”¹⁴⁸

5.4.5 The 1970 UNESCO CONVENTION

5.4.5.1 Content of the Convention

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was adopted in 1970. The main focus of the Convention is combatting looting and illegal trade of moveable cultural heritage.¹⁴⁹ The Convention implements a multilateral system that controls the imports and exports of cultural goods based on fair exchange and international cooperation.¹⁵⁰ An essential feature of the Convention is that it sets the condition for “an appropriate certification in which the exporting State would specify that the export of the cultural property in question is authorized.”¹⁵¹ However, due to a lack of direct effect in domestic laws and the existence of the territoriality principle of laws (*lex rei sitae*), the Convention is weakened in its applicability.¹⁵²

5.4.5.2 Paradigm

Even though the Convention is not focalizing on the intentional destruction of cultural heritage during armed conflict, it is essential to mention it in order to get an all-encompassing overview of the paradigm of cultural protection in force.¹⁵³ The preamble of the Convention states that ‘cultural property constitutes one of the basic elements of civilization and national culture.’¹⁵⁴ Moreover, the Convention is the first of its kind to approach the protection of cultural heritage through the principle of cultural equity and collective responsibility, which contributed to the development of the right of peoples to enjoy their own culture.¹⁵⁵ An example of the collective responsibility is that the Convention allows state parties “whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological material to call upon other State Parties to participate in a concerted international effort and carry out the necessary concrete measure

¹⁴⁸ Higgins (n 122) 16.

¹⁴⁹ *ibid* 17.

¹⁵⁰ *ibid*.

¹⁵¹ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970).

¹⁵² UNESCO, ‘The 1970 Convention: Cultural Diversity before the Letter of the Law’ (*UNESCO*, 8 October 2020) <<https://en.unesco.org/courier/2020-4/1970-convention-cultural-diversity-letter-law>> accessed 18 June 2021.

¹⁵³ Higgins (n 122) 17.

¹⁵⁴ Art 6 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970).

¹⁵⁵ UNESCO (n 155).

to fight the illicit plundering of cultural property in affected zones.”¹⁵⁶ The approach of the Convention is rather holistic and focuses on the inherent value of cultural heritage, which is a clear example of the cultural value paradigm. However, it follows the classical cultural protection paradigm as well based on its preventing, protecting and prosecuting nature.

5.4.6 The 1972 World Heritage Convention

5.4.6.1 Content of the Convention

The Convention on the Protection of the World Cultural and Natural Heritage is the primary international instrument for safeguarding the world’s heritage. It, therefore, stipulates “that sites of outstanding universal value to the common culture and heritage of humanity from the point of view of history, art or science” should be awarded a place on the World Heritage List.¹⁵⁷ State parties commit “to integrate the protection of the cultural and natural heritage into regional planning programs, set up staff and services at their sites, undertake scientific and technical conservation research and adopt measures which give this heritage a function in the day-to-day life of the community.”¹⁵⁸ The Convention is the result of a compromise between the sovereignty of the State Parties and “the recognition that certain structures, sites and areas constitute the heritage not just of individual nations, but of humankind.”¹⁵⁹ In other words, by signing the Convention, State Parties are committing not only to conserve World Heritage sites on the territory under its sovereignty but also to participate in “an international community of concern for global sites that embody cultural diversity and natural wealth.”¹⁶⁰ States Parties benefit in many ways from having sites on their territory that make it to the list. Firstly, having a place on the list gives the State Party international prestige. Another benefit is access to the World Heritage Monetary Fund. Annually, around 4 million dollars is provided “to assist State Parties in identifying, preserving and promoting World Heritage sites.”

On top of that, the Convention provides emergency support in case of human-made or natural disasters. Lastly, listed cultural heritage could increase public awareness through education and information programs for the preservation and importance of the site and boost the tourist

¹⁵⁶ Art 9. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970).

¹⁵⁷ Isakhan (n 46) 1192.

¹⁵⁸ UNESCO World Heritage Centre, ‘The World Heritage Convention’ (*UNESCO World Heritage Centre*) <<https://whc.unesco.org/en/convention/>> accessed 20 June 2021.

¹⁵⁹ Natasha Affolder, ‘Democratising or Demonising the World Heritage Convention’ (2007) 38 *Victoria University of Wellington Law Review* 341, 342.

¹⁶⁰ Lynn Meskell, ‘UNESCO’s World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation’ (2013) 54 *Current Anthropology* 483, 483.

influx and economic development by elaborating a management plan.¹⁶¹ The Convention is accompanied by Operational Guidelines, which contain most of the normative content created by a World Heritage Committee consisting of 21 elected States Parties.¹⁶² The Committee decides whether and which cultural sites should be included on the World Heritage List or the List of World Heritage in Danger.

5.4.6.2 Paradigm

The classical prevention, protection and prosecution paradigm is reflected in this Convention. The most significant facet of the Convention is undoubtedly protection. The Operational Guidelines refer to it no less than 103 times. The Operational guidelines stipulate that the protection of World Heritage “should ensure that their Outstanding Universal Value, including the conditions of integrity and authenticity at the time of inscription, are sustained or enhanced over time.”¹⁶³ The guidelines also specify that State Parties must provide their properties on the World Heritage list with entirely sufficient and permanent legislative, regulatory and institutional and traditional protection and management guaranteeing their security. Although the 1972 Convention is not directly referring to international destruction of cultural heritage, article 6(2) of the Convention stipulates, “Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory other States Parties to this Convention.”¹⁶⁴ The above clarifies that the Convention puts everything in place to provide a framework to prevent and protect the listed cultural heritage sites.

The cultural value paradigm is not apparent in the 1972 Convention but has been further developed in two conventions in 2003 and 2005 by UNESCO. The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.¹⁶⁵ Both of the Conventions emphasize the “crucial importance that culture has for its creators and bearers, irrespective of its apparent values as perceived by external observers.”¹⁶⁶

¹⁶¹ Meskell (n 163) 483.

¹⁶² Affolder (n 162) 343.

¹⁶³ UNESCO World Heritage Centre, ‘The Operational Guidelines for the Implementation of the World Heritage Convention’ <<https://whc.unesco.org/en/guidelines/>> accessed 21 June 2021.

¹⁶⁴ Centre (n 161).

¹⁶⁵ Higgins (n 122) 18.

¹⁶⁶ Lenzerini (n 129) 71.

5.5 INTERNATIONAL CRIMINAL LAW

5.5.1 Introduction

International criminal law is a branch of law that manages “the individual criminal responsibility and the rights and obligations of states to protect cultural property in an armed conflict.”¹⁶⁷ Regarding the destruction of cultural property, this vital area of law applies in most cases when the following two conditions are met—first, the existence of an international or non-international armed conflict.¹⁶⁸ Second, the destruction of the cultural heritage has to be in close connection to the armed conflict.¹⁶⁹ This means that the conflict must, at the very least, have a significant role in the perpetrator’s capacity to conduct the crime, his choice to commit it, how it was performed or the reason for which it was committed.¹⁷⁰ For this reason, with the destruction of the Bamiyan Buddhas, for example, international criminal law did not apply. Even though the sporadic non-international armed conflict continued in Afghanistan’s far northeast at the time of their destruction, the Buddhas were not destroyed in the course of the fighting, the Bamiyan Valley and the rest of the country being free of hostilities and ‘securely’ under the Taliban governments’ control. The conflict had no influence or motivation for their destruction and was primarily an act of extreme religious iconoclasm.¹⁷¹ According to the Rome Statute, the intentional destruction of cultural heritage may be – depending on the circumstances – defined as a war crime or a crime against humanity.¹⁷²

5.5.2 Paradigm

While in the past, intentional destruction of cultural heritage was considered as merely collateral damage of the conflict, today, it is regarded as a violation of international criminal law in different ways that go far beyond the material damage that occurred.¹⁷³ The criminalization of the destruction of cultural heritage in international law has as an intention “to capture the criminal intent to wipe out the shared heritage and existence of minority groups, as seen with the attacks against the Yazidi by Isis in Iraq or desecration and destruction of Cham mosques in Cambodia during the Khmer Rouge regime.”¹⁷⁴ After examining some of the leading cases

¹⁶⁷ Turku (n 39) 107.

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid.*

¹⁷⁰ Roger O’Keefe, ‘Cultural Heritage and International Criminal Law’ in Sebastien Jodoin and Marie-Claire Cordonier Segger (eds), *Sustainable Development, International Criminal Justice, and Treaty Implementation* (Cambridge University Press 2013) 122.

¹⁷¹ *ibid.*

¹⁷² Lenzerini (n 129) 70.

¹⁷³ *ibid.* 72.

¹⁷⁴ Moffett, Viejo Rose and Hickey (n 6) 623.

of both the ICC and the ICTY, two different approaches can be found: the universalist and the relativist. The universalist paradigm sets out that the widespread dissemination of culture and humanity's education for justice, liberty, and peace are essential to man's dignity and represent a sacred obligation that all countries must accomplish in a spirit of mutual help and solidarity.¹⁷⁵ This paradigm is, for example, instrumentalized when in case law, "the analysis of the scale of destruction was conducted not in reference to the city's cultural heritage per se, but instead as a proportion of the buildings that had been designated World Heritage sites."¹⁷⁶ On the other hand, international criminal law is increasingly outlawing the destruction of cultural heritage in order to reflect the more anthropocentric and relativist interpretation of harm, which recognizes harm to communities and individuals tied to it in addition to property.¹⁷⁷ Summarized, this international criminal law paradigm for the intentional destruction is one based on the idea that the destruction of cultural goods equals the destruction of parts of society and thus not only taking into account the tangible, but also the intangible nature of cultural heritage of the group of people that most identify with it.

5.5.3 Draft Policy on Cultural Heritage

5.5.3.1 Introduction

In a recent press release of 23 March 2021, the ICC announced the publication of a Draft Policy on Cultural Heritage "for consultation and comments by States Parties to the Rome State, civil society, and the wider community of stakeholders."¹⁷⁸ The initiative for the Policy came from the Office of the Prosecutor of the ICC, who already previously manifested his intentions to pay particular attention to the destruction of cultural heritage and consistently investigate and prosecute those crimes.¹⁷⁹ For the policy formulation process, there has been a close collaboration with UNESCO. On the day of writing, the Draft Policy is still in a review and revision process of comments. The ICC prosecutor Fatou Bensouda stated: "Cultural heritage is the embodiment of the continuity of the human story, a celebration of identity, our commonality and the richness of our diversity. We all have the duty to protect cultural heritage"¹⁸⁰ The conceived policy will be used as a guideline for future international crimes against cultural heritage and is based on "the Rome Statute and other regulatory instruments of

¹⁷⁵ Casaly (n 23) 1214.

¹⁷⁶ *ibid* 1215.

¹⁷⁷ Moffett, Viejo Rose and Hickey (n 6) 623.

¹⁷⁸ ICC, 'The Office of the Prosecutor Publishes Draft Policy on Cultural Heritage for Consultation' <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1579>> accessed 21 June 2021.

¹⁷⁹ *ibid*.

¹⁸⁰ *ibid*.

the Court, as well as applicable treaties, and the principles and rules of international law. It also draws on relevant international jurisprudence.”¹⁸¹ The most important and relevant case law being the *Al-Mahdi* case before the ICC, which will be discussed *infra*. The Draft Policy is subdivided into four different frameworks of the Rome Statute: War Crimes (Art. 8), Crimes Against Humanity (Art 7), Genocide (Art. 6) and Crimes of Aggression (Art. 8bis). All of these frameworks have different conditions and effects and will be further explained below.

5.5.3.2 Paradigm

In its Executive Summary, the Draft Policy states that cultural heritage is a broad term that includes physical and intangible representations of human existence, according to the Office of the Prosecutor.¹⁸² Moreover, cultural heritage crimes influence our shared sense of humanity and the daily lives of residents. Crimes against or harming cultural heritage can be complex in character and motivated by a variety of factors; they can have a spiritual, economic, or educational impact on victims or groups of victims.¹⁸³ When these offenses fall under the Court’s jurisdiction, the Office is dedicated to prosecuting them.¹⁸⁴ The office points out that people’s cultural legacy is a unique and essential testament to their culture and identities. The deterioration and destruction of cultural heritage, whether material or intangible, is a loss to the international community as a whole that should be duly punished. The Draft Policy reflects both the collectivist and relativist paradigm since its referring to the importance of cultural heritage both on a collective and individual level and in line with the existing paradigm in international criminal law.¹⁸⁵

5.5.4 The Constitution of a war crime

With the damage of the Balkan Wars in mind, the Statute of the International Criminal Court was written in such a way that it explicitly states that it will try war crimes against cultural property.¹⁸⁶ As stated in the ICC Statute’s Preamble, all peoples are bound together by standard links; their traditions are woven together in a shared history.¹⁸⁷At present, the identification of the crime of the destruction against or involving cultural heritage as a war crime is the most

¹⁸¹ *ibid.*

¹⁸² *ibid.*

¹⁸³ ‘Draft Policy on Cultural Heritage’ 43.

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid* 9.

¹⁸⁶ Musab Talha Günay, ‘Looking Humanity in the Eye and Seeing its Loss in the Eyes of the ICC: An Evaluation of Daesh’s Destruction of Palmyra using the Gravity Assessment Made by the ICC Prosecutor in the Al Mahdi Case’ [2019] *Santander Art and Culture Law Review* 245, 250.

¹⁸⁷ *ibid.*

unequivocal, since article 8 of the Rome Statute stipulates that extensive destruction of property “carried out unlawfully and wantonly” and intentionally directing attacks against civilian objects are considered war crimes for the purpose of the Statute.¹⁸⁸

In both international and non-international armed conflict, international criminal law accepts individual criminal culpability for unlawfully directing attacks against cultural property. The material and mental elements of attacks on civilian objects are the same; however, offenses against cultural property are distinct in a sense “that the crime of destruction or willful damage of cultural property Article 3(d) of the Statute is *lex specialis* with respect to the offence of unlawful attacks on civilian objects.”¹⁸⁹ If the shelling of the object in question has a military purpose, a strike on cultural property can be justifiable.¹⁹⁰

5.5.5 The Constitution of a crime against humanity

Intentional destruction of cultural heritage can also – in minimal cases - be considered as a crime against humanity. As stated before, the aim of offenders in most cases of intentional destruction of cultural heritage is not the heritage itself but rather the communities and individuals for whom the heritage holds particular importance.¹⁹¹ This indicates a clear discriminatory and persecutory intent against the targeted cultural groups and the civilization as a whole (except those who share the perpetrators’ iconoclastic beliefs).¹⁹² Synagogue demolition was consistently classified as persecution, amounting to a crime against humanity, by the International Military Tribunal at the Nuremberg Trials, even as early as the conclusion of World War II.¹⁹³ Following that, the International Law Commission stated in the early 1990s that “persecution may take many different forms, for example, the systematic destruction of structures or monuments representative of a particular social, religious, cultural or other groups.”¹⁹⁴ In practice, the crime in question is clearly not really – or only – a crime against property, but rather and principally a crime against people.¹⁹⁵ This classification should have significant legal ramifications, and it does, particularly in terms of defining a crime and prosecuting the offenders.¹⁹⁶ In this regard, the ICTY has evolved a very sound methodology,

¹⁸⁸ Rome Statute of the International Criminal Court A/CONF.183/9 of 17 July 1998.

¹⁸⁹ Turku (n 39) 107.

¹⁹⁰ *ibid.*

¹⁹¹ Federico Lenzerini, ‘Intentional Destruction of Cultural Heritage’, *The Oxford Handbook of International Cultural Heritage Law* (Oxford Handbooks 2020) 82.

¹⁹² *ibid.*

¹⁹³ *ibid.*

¹⁹⁴ *ibid.*

¹⁹⁵ *ibid.*

¹⁹⁶ *ibid.*

extending beyond the classification of intentional destruction of cultural heritage as a war crime and concluding that: “When perpetrated with the requisite discriminatory intent, [intentional destruction of religious, cultural heritage] amounts to an attack on the very religious identity of a people. As such, it manifests a nearly pure expression of the notion of ‘crimes against humanity, for all humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects [...] Therefore [...] destruction and willful damage of institutions dedicated to [...] religion or education, coupled with the requisite discriminatory intent, may amount to an act of persecution,”¹⁹⁷ “which is included among crimes against humanity”¹⁹⁸.

5.5.6 Intentional destruction of Cultural Heritage as Evidence of the Intent to Commit Genocide

In some restricted cases, the intentional destruction of cultural heritage can be considered evidence of the intent to commit genocide. Both genocide and cultural genocide have evolved as legal notions in the sense that they were first defined and provisionally addressed in the international law realm.¹⁹⁹ While cultural genocide has developed due to allegations, genocide has remained a legal fixed-term since its 1948 definition, codified by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Genocide is defined as the physical or biological destruction – in whole or in part – of ‘national, ethnical, racial or religious group’. It necessitates the perpetrators having the explicit intent (*dolus specialis*) to destroy the targeted group.²⁰⁰ When attacks on cultural property are carried out with a discriminatory purpose, as the ICTY’s jurisprudence reveals, this evidence can be used to prove genocide intent.²⁰¹

International law presently restricts genocide to physical or biological annihilation and thus not encompasses a ubiquitous legal definition for cultural genocide. Cultural genocide has, however, been *among other things* defined according to the legal literature as: “*The destruction by the State or State organs of the culture of a community in its broad sense of the term, including the distinctive spiritual material, intellectual and emotional features of society or a social group, encompassing in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.*”²⁰²

¹⁹⁷ *Prosecutor v Kordić & Cerkez, Case IT-95-14/2-T, Trial Chamber (26 February 2001) para 207.*

¹⁹⁸ Lenzerini (n 195) 82.

¹⁹⁹ Elisa Novic, *The Concept of Cultural Genocide: An International Law Perspective* (Oxford University Press 2016) 3.

²⁰⁰ Lenzerini (n 195) 82.

²⁰¹ Turku (n 39) 186.

²⁰² Novic (n 203) 3.

In other words, the deliberate destruction of cultural heritage can only be legally referred to as the intent to commit genocide when it is accompanied by the physical or biological destruction of the targeted group.²⁰³

5.5.7 Case law: international Criminal Law

5.5.7.1 THE ICTY

In order to determine the paradigm of cultural protection in international criminal law, the jurisprudence regarding the intentional destruction of cultural heritage as a war crime is the most compelling. The characterization can be deduced from the legal rules of international criminal law, especially from the jurisprudence of the ICTY that addressed the atrocities committed during the Yugoslav Wars in 1993. The ICTY has been highly strong on the topic of cultural heritage, prosecuting persons who damaged cultural property in eleven significant proceedings.²⁰⁴ The destruction of enemy communities characterized the Yugoslav conflicts.²⁰⁵ Dubrovnik's Old Town raids, Sarajevo's National Library and the Mostar Bridge, caused irreparable historical and cultural damage. When the drafters of the ICTY statute included a clause involving the destruction of cultural heritage as a subcategory of war crimes (Article 3(d)), the cultural disaster that occurred was undoubtedly a motivating element.²⁰⁶ Below two essential cases will be discussed that paint a good picture of the ICTY's paradigm on cultural protection.

5.5.7.2 The Prosecutor v. Pavle Strugar

One of the leading cases was *The Prosecutor v. Pavle Strugar*. In brief, the facts are the following: in the early morning of the 6th of December 1991, soldiers bombarded the UNESCO World Heritage Site since 1979 of Dubrovnik's Old Town.²⁰⁷ That day Dubrovnik had been under artillery assaults for over ten and half hours, by the end of the day resulting in several civilian fatalities, including two deaths and two cases of serious injury, according to the charge

²⁰³ Lenzerini (n 195) 85.

²⁰⁴ Mark S Ellis, 'The ICC's Role in Combatting the Destruction of Cultural Heritage' [2017] Case Western Reserve Journal of International Law 41, 41.

²⁰⁵ *ibid.*

²⁰⁶ *ibid.*

²⁰⁷ Turku (n 39) 108.

sheet.²⁰⁸ Regarding the destruction of the Old Town and the attack launched by the JNA, there was no indication that any of the 52 structures burned or damaged were being used for military reasons at the time. Therefore it was determined to be a cultural property attack.

Furthermore, the trial chamber determined that the offenders' purpose of destroying and harming this property was clear and deliberate.²⁰⁹ In this case, the retired Lieutenant-General of the then Yugoslav Peoples' Army (JNA) was convicted of the war crime of "destruction or willful damage done to an institution dedicated to religion, charity and education, the arts and sciences"²¹⁰, as defined by Article 3(d) of the ICTY Statute. The Court stated that cultural property is crucially significant to every people's cultural history. The court did so by referring to Article 1 of the 1954 Hague Convention.²¹¹ To put it another way, the focus was moved away from individual victims and toward the region's shared history.²¹² It is important to note that the purposeful destruction of part of the cultural legacy of Dubrovnik was one of the two offenses for which Lt. Gen. Pavle Strugar was sentenced to eight years in jail – a verdict that reflects the importance to all those devoted to the conservation of cultural property.²¹³ The Tribunal's Trial Chamber, in particular, used Dubrovnik's World Heritage designation as grounds to deny any justification for the conduct.²¹⁴ It even considered the classification as an aggravating element that fell under the Tribunal's broad jurisdiction as defined in Article 3(d) of the ICTY Statute.²¹⁵

5.5.7.3 Prosecutor v. Miodrag Jokic

The facts of the *Prosecutor v. Miodrag* case are identical to the *Prosecutor v. Pavle* case. Jokic was a subordinate of Pavle Strugar at the time of the attack in Dubrovnik. The decision is particularly interesting because, in its judgment, the Trial Chamber focused on the crime of destruction or intentional harm to religious, charitable, educational, and artistic and scientific organizations, as well as historical monuments and works of art and science. The Jokic case highlighted the intrinsic value and the irreplaceability of cultural assets.²¹⁶ The Trial Chamber

²⁰⁸ Silva Hinek, 'The Judgment of the International Criminal Tribunal for the Former Yugoslavia in Prosecutor v. Pavle Strugar' (2006) 19 *Leiden Journal of International Law* 477, 480.

²⁰⁹ *ibid.*

²¹⁰ Updated Statute of the International Criminal Tribunal for the Former (adopted 25 May 1993).

²¹¹ Nout Van Woudenberg and Liesbet Lijnzaad, *Protecting Cultural Property in Armed Conflict: An Insight into the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict* (Brill Nijhoff 2010) 65.

²¹² Günay (n 190) 252.

²¹³ *Van Woudenberg and Lijnzaad* (n 216) 65.

²¹⁴ *ibid.*

²¹⁵ *ibid.*

²¹⁶ Ellis (n 208) 45.

has determined that this is a crime that violates a particularly protected value.²¹⁷ The violation was particularly serious since the entire Old Town of Dubrovnik was designated as a UNESCO World Heritage Site which was judged as particularly unlawful behavior.²¹⁸ Considering both the *Strugar* and *Jokic* case, it is clear that the Court has adopted an anthropocentric point of view, which constitutes the paradigm of cultural protection in international criminal law discussed *supra*. However, this is somewhat at an embryonic level, and further jurisprudence will show that the paradigm will evolve.

5.5.8 THE ICC

5.5.8.1 The Prosecutor v. Ahmad Al Faqi Al- Mahdi

In 2013, the ICC Prosecutor conducted an inquiry into the war crimes committed in the Ancient City of Timbuktu, Mali. In the report of the office of the Prosecutor, they found that the deliberate destruction per their ideology of iconoclasm of the shrines of Muslim saints may constitute a war crime under Article 8 of the Statute of Rome. Subsequently, the First Chamber of the ICC in September 2015 started criminal proceedings against Ahmad Al Faqi Al Mahdi for having individually and jointly participated in the commission of war crimes by conducting attacks against cultural heritage sites in Timbuktu.²¹⁹ On September 27th 2016, the International Criminal court found Ahmad Al Faqi guilty of the war crime of intentionally directing attacks against historic buildings that were not military objectives, including nine mausoleums and one mosque in Timbuktu in 2012.²²⁰ Ahmad al Faqi is an alleged member of Ansar Dine, a Touareg movement associated with Al Qaeda whose aim is to impose a Sharia Law in Mali.²²¹²²² The significance of the case is twofold. In the first place, the pioneering prosecution and conviction before the ICC principally for acts of destruction against cultural heritage.²²³ Charges for the destruction of cultural heritage had already been brought before the ICC, though they were only auxiliary to the principal charges for other war crimes.²²⁴ It acknowledges the unique nature of

²¹⁷ ICTY, 'Judgement in the Case the Prosecutor v. Miodrag Jokic: Miodrag Jokic Sentenced to 7 Years' Imprisonment | International Criminal Tribunal for the Former Yugoslavia' <<https://www.icty.org/en/press/judgement-case-prosecutor-v-miodrag-jokic-miodrag-jokic-sentenced-7-years-imprisonment>> accessed 28 June 2021.

²¹⁸ *ibid.*

²¹⁹ ICC, 'Confirmation of Charges Hearing in the Case of The Prosecutor v. Ahmad Al Faqi Al Mahdi: Audio-Visual Materials and Photographs' <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1195&ln=en>> accessed 8 June 2021.

²²⁰ *The Prosecutor v Ahmad Al Faqi Al Mahdi ICC-01/12-01/15 (27 September 2016) 2.*

²²¹ Casaly (n 23) 1210.

²²² *The Prosecutor v. Ahmad Al Faqi Al Mahdi ICC-01/12-01/15 (27 September 2016)* (n 225).

²²³ Haydee J Dijkstal, 'Destruction of Cultural Heritage before the ICC: The Influence of Human Rights on Reparations Proceedings for Victims and the Accused' (2019) 17 *Journal of International Criminal Justice* 391.

²²⁴ Casaly (n 23) 1200.

cultural heritage crimes and marks a significant step forward in the severity with which such crimes would be treated under international law.²²⁵

In the second place, the case is considered a case of first because he pleaded guilty, and this was the first time that a perpetrator pleaded guilty before the ICC. It was also the first time that the court prosecuted a member of a terrorist organization. One might think that the ICC is only competent to charge states, which is quite evident because such international crimes require structure, power and means. However, terrorist groups nowadays have the same power as states. It was time for the ICC to discuss cases committed by terrorist groups or, in this case, terrorists that were connected to a particular group. Al-Mahdi made an apology which was considered by the Court as a moderating circumstance when decided penalty. He was given a nine-year sentence, which was on the lower end of the scale proposed by the prosecution.²²⁶ Even though the defendant's guilty plea avoided a full-fledged criminal trial, the successful prosecution for the destruction of religious and cultural sites enhances the significance of the crime. Furthermore, Al-Mahdi's conviction established a precedent for ISIS militants to be prosecuted for their participation in the destruction of historic and sacred monuments across Syria and Iraq.²²⁷

In 2017, the trial Chamber issued a reparation order which became final in March 2018. The conclusion was that Al-Mahdi was liable for 2.7 million euros in expenses for individual and collective reparations for the community. In the case of Al-Mahdi, who could not compensate this amount, it was at the discretion of the Chamber of the ICC to request the assistance of a trust fund for victims that can accept to undertake the administration of the payment of the compensation. The trust receives funds from private individuals, states, organizations, and the fund is able to compensate the victims. It has been considered a leading case that must be taken into account while discussing the destruction of cultural heritage.

5.5.8.2 Consequences of the Al-Mahdi destruction

In the prosecution of the *Al Mahdi* case, it has been proven that even if there are no casualties, crimes against cultural property involve the most severe crimes. ICC Prosecutor Fatou Bensouda emphasized the importance of such landmarks and monuments to the community's

²²⁵ Patty Gerstenblith, 'The Destruction of Cultural Heritage: A Crime Against Property or a Crime Against People?' [2016] *The John Marshall Review of Intellectual Property Law* 59, 387.

²²⁶ Corliss (n 30) 216.

²²⁷ *ibid.*

identity in initiating this case. She made a point saying that: “the charges we have brought against Ahmad al-Faqi al-Mahdi involve most serious crimes. They are about the destruction of the irreplaceable historical monuments, and they are about a callous assault on the dignity and identity of entire populations and their religious roots.”²²⁸ Ms Bensouda added that: “Such an attack against buildings dedicated to religion and historic monuments destroys the roots of an entire people and profoundly and irremediably affects its social practices and structures.”²²⁹ The ancient mausoleums in Timbuktu destroyed by Ansar Dine were of great importance for the communities since they believed that the mausoleums were spiritually protecting them from bad fortune.²³⁰ The destruction left the communities in distress because they weren’t protected anymore, which caused “psychological and moral harm to the community in terms of their spiritual world view.”²³¹

5.5.9 Comparison ICTY and ICC

To begin with, the ICC clearly noted in the *Al Mahdi* case that the ICTY’s jurisprudence was of little use in the matter at hand because the ICTY Statute did not include “attacks” on cultural artifacts, only “destruction or willful damage” and therefore the legal contexts were distinct.²³² For example, a striking distinction is that, unlike the prosecutor’s evaluation in the *Al-Mahdi* case, the ICTY made no mention of the offenders’ purpose, motive, or methods of executions and did not describe the manner of the crimes committed in those cases.²³³ However, there are some remarkable parallels. The World Heritage status of the Old Town of Dubrovnik and thus the significance for humanity’s common heritage in the *Strugar* and the *Jokic* case was deemed to be a significant element in determining whether or not the place should be protected under Article 3(d) and assessing the severity of the offense.²³⁴ This universalist paradigm was followed by the ICC Prosecutor in the *Al-Mahdi* case as well. The Prosecutor noted that that the mausoleums were historically and culturally significant for the whole globe, stating that all of the structures in Timbuktu had been declared by UNESCO as World Heritage Sites because they constituted a chapter in the history of humanity.²³⁵ Important to note is that in the *Al Mahdi*

²²⁸ ICC, ‘Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Opening of the Confirmation of Charges Hearing in the Case against Mr Ahmad Al-Faqi Al Mahdi’ <<https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-01-03-16>> accessed 29 June 2021.

²²⁹ *ibid.*

²³⁰ Moffett, Viejo Rose and Hickey (n 6) 624.

²³¹ *ibid.*

²³² Günay (n 190) 256.

²³³ *ibid.*

²³⁴ Casaly (n 23) 1208.

²³⁵ *ibid* 1212.

case, the Pre-Trial Chamber seemed to link the sites' international significance with their importance to the local community, stating that "the unanimous outcry of the international community and individuals concerned substantiates the Prosecutor's allegation as to the seriousness of the acts."²³⁶ This recognition of the viewpoint of the local community denotes a probable departure from the general universalist paradigm adopted in international criminal law to safeguard cultural property to a more relativist paradigm.²³⁷

5.6 INTERNATIONAL HUMAN RIGHTS LAW

5.6.1 The need for a human rights approach

Before the creation of UNESCO, cultural property and heritage were perceived as mere objects of historical, monumental or humanitarian interest that should not be involved in acts of war.²³⁸ However, it has been proven to be much more than that. Cultural heritage – tangible and intangible – tells us the interconnected stories of who we are today, who we were in the past and who we could become in the future. There is a substantial overlap between material and intangible heritage, according to experts. Attacks on both tangible and intangible cultural property are linked. Making these linkages is more accessible from a human rights perspective.²³⁹ For example, when armed groups in Northern Mali destroyed mausoleums and old Islamic texts, different types of cultural activities such as religious practices, singing, and music were also targeted.²⁴⁰ Assaults on both types of cultural heritage have a significant impact on local communities in a holistic sense.

This is why the intentional destruction of cultural heritage is a Human Rights issue because when cultural heritage is attacked or destroyed, our heritage is destroyed. These destructions undermine our human right to know our history and the history of other civilizations and seek to erase our collective memory as human beings. The use of the language of human rights can constitute a powerful tool to establish a connection between cultural heritage and social healing and cultural renewal in a post-conflict environment.²⁴¹ The UNESCO's Medium-Term Strategy for 2008-2013 identifies that to achieve a culture of peace: "UNESCO will continue to highlight

²³⁶ ICRC Law & Policy, 'Mali, Accountability for the Destruction of Cultural Heritage | How Does Law Protect in War? - Online Casebook' <<https://casebook.icrc.org/case-study/mali-accountability-destruction-cultural-heritage>> accessed 29 June 2021.

²³⁷ Casaly (n 23) 1213.

²³⁸ F Francioni, 'The Human Dimension of International Cultural Heritage Law: An Introduction' (2011) 22 *European Journal of International Law* 9, 10.

²³⁹ Report of the Special Rapporteur in the field of cultural and rights (n 96).

²⁴⁰ *ibid.*

²⁴¹ Matthews and others (n 42) 122.

the role that can be played by culture in situations of conflict or post-conflict as a ‘vehicle’ for reconciliation through cultural heritage. The intercultural roads offering common spaces for dialogue and exchange, and reflecting shared values, will thus be pursued.”²⁴² Very recently – in June 2021 – the Foreign Affairs Council of the EU adopted their conclusions on the EU strategic approach to cultural heritage in conflicts and crises, establishing a new political and practical framework for the protection of cultural assets for the sake of peace.²⁴³ The EU recognizes cultural heritage as a vehicle for peace, reconciliation, mutual understanding, intercultural discussion and long-term development.²⁴⁴ Those developments show the intention both on an international and European level to adopt a human rights approach to the intentional destruction of cultural heritage.

The right of access to and enjoyment of cultural heritage signifies that individuals and collectivities have the right to know, understand, enter, visit, utilize, maintain, trade and develop cultural heritage, as well as to benefit from the cultural legacy and creations of others. It also involves the right to take part in the identification, interpretation, and development of cultural heritage and the formulation and execution of policies and programs for the preservation and safeguarding of it.²⁴⁵ Also, other human rights rely on cultural heritage, such as the right to freedom of speech, thinking, conscience and religion, as well as the economic rights of the many people who make a living from tourism connected to the cultural heritage, the right to education and the right to development.²⁴⁶

To summarize, international law recognizes a right to culture and cultural heritage today – if not officially recognized by applicable treaties, at least in the form of an inferred right derived from the total of the rights enumerated above.²⁴⁷ In situations of deliberate destruction of cultural heritage, this right may be protected indirectly by enforcing the rights mentioned earlier in the appropriate (domestic and international) treaties and the degree to which they are enforceable. Without question, the more cultural property is recognized as a human rights

²⁴² UNESCO Institute of Statistics, ‘Medium-Term Strategy 2008-2013’ 27 <http://uis.unesco.org/sites/default/files/documents/uis-medium-term-strategy-2008-2013-en_0.pdf> accessed 20 April 2021.

²⁴³ European Union External Service, ‘Building Peace by Cultural Heritage – a New EU Approach in Conflicts and Crises’ (*EEAS - European External Action Service - European Commission*) <https://eeas.europa.eu/regions/asia/100345/building-peace-cultural-heritage-%E2%80%93-new-eu-approach-conflicts-and-crises_en> accessed 3 July 2021.

²⁴⁴ *ibid.*

²⁴⁵ Report of the Special Rapporteur in the field of cultural and rights (n 96).

²⁴⁶ *ibid.*

²⁴⁷ Lenzerini (n 195) 89.

problem rather than a property one, the greater the duties that governments have toward it.²⁴⁸ Treating intentional destruction of cultural heritage as a human rights issue will allow for far more effective protection against hostile activities. There are more options for obtaining protection from human rights abuses than for transgressions against cultural heritage.²⁴⁹

5.6.2 Paradigm

From all of the above, it is clear that International Human Rights law has a holistic approach to cultural protection encompassing both tangible and intangible heritage. The system looks beyond inter-state claims and recognizes the right to individuals and communities to seek compensation for the damage.²⁵⁰ “Human Rights courts have also recognized the individual and collective, moral and pecuniary, physical and psychological dimensions of harm caused to attacks on cultural heritage.”²⁵¹

5.7 CASE STUDY: COULD THE INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE BY ISIS BE PROSECUTED UNDER INTERNATIONAL LAW?

5.7.1 Introduction

The international community could not prevent the destruction by ISIS of some of Iraq’s cultural legacy in places like Nimrud, Nineveh and Palmyra, and the 3,000-year-old Mesopotamian sculptures previously housed in the Mosul Museum.²⁵² The heinous destruction of Palmyra and other historical monuments in Syria serves as a sobering reminder of their fragility.²⁵³ Cultural heritage attacks should not be viewed as anecdotal and single events but as acts of violence with a broader impact on shared history and values.²⁵⁴ It’s a crime that targets the wealth of whole communities, and as a result, impoverishes us all and harms universal ideals we are obligated to safeguard.²⁵⁵ The international community must protect those cultural artifacts, and international courts can play a role in this area if there is robust jurisprudence.²⁵⁶

²⁴⁸ *ibid.*

²⁴⁹ *ibid.*

²⁵⁰ Moffett, Viejo Rose and Hickey (n 6) 622.

²⁵¹ *ibid.*

²⁵² Ellis (n 208) 61.

²⁵³ *ibid.* 63.

²⁵⁴ *ibid.*

²⁵⁵ Nakasis, Athanasios and Lainos, Nikolaos, ‘The Impact of the Civil War on the Cultural Heritage.’ <<https://journals.ub.uni-heidelberg.de/index.php/heritage/article/viewFile/20046/13838>>.

²⁵⁶ Ellis (n 208) 61.

Therefore it is interesting to assess whether the cultural protection framework in international law would prosecute ISIS' Crimes against cultural heritage.

5.7.2 The international legal Conventions

Both Iraq and Syria are state parties to the 1954 Hague Convention, 1970 UNESCO Convention and 1972 World Heritage Convention discussed *supra*, but neither has signed the Second Protocol to the 1954 Hague Convention. In this specific case, however, the crimes are not committed by a state but by the Islamic State. None of the treaties mentioned above binds states that are not parties, nor do they bind groups like the Islamic State. As a result, the Islamic State's actions in Iraq and Syria are unquestionably illegal under international law. Yet, ISIS cannot be held criminally responsible at a group level for having violated those treaties.²⁵⁷

5.7.3 The International Criminal Court

The ICC, founded by the Rome State, established a permanent court to punish the most serious international law breaches: genocide, crimes against humanity, war crimes and aggression. The ICC Court is a court of the last appeal, and grants *ratione personae* jurisdiction over natural persons above the age of eighteen *ergo* excludes authority over states and organizations like ISIS in general.²⁵⁸ There are three possibilities for the ICC to pursue a case (1) a state party's referral, (2) an investigation launched by the ICC prosecutor or (3) a referral from the United Nations Security Council.²⁵⁹ The geographical extent of the ICC's jurisdiction changes depending on how the matter is brought to the court. Only in the case of referral by the United Nations Security Council, there's universal jurisdiction which means that every national of a state or every act committed on the territory of a state – signatory of the Rome Statute or not – can be prosecuted.

In April 2015, Fatou Bensouda - the ICC Prosecutor – has released a statement where she states that a lack of jurisdiction constrains the international prosecution of ISIS.²⁶⁰ This statement

²⁵⁷ Hill (n 15) 213.

²⁵⁸ Corliss (n 30) 216.

²⁵⁹ *ibid* 217.

²⁶⁰ ICC, 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Alleged Crimes Committed by ISIS' <<https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>> accessed 2 July 2021.

could be considered an attempt by the Prosecutor to persuade the Security Council to assume their abetment for the crisis and delegate authority to the ICC.²⁶¹

Because Syria and Iraq are not signatories to the Rome Statute, the ICC could only prosecute in minimal cases.²⁶² One possibility would be that Syria and Iraq would accept the ICC's jurisdiction as stipulated by Article 12(3) of the Rome Statute, without actually ratifying or acceding it.²⁶³ However, both states did -until now -not accept ICC jurisdiction.²⁶⁴

Another possibility would be the initiation of an investigation by the ICC Prosecutor - but due to a lack of territorial jurisdiction - only against ISIS members who are nationals of the signatory parties of the Rome Statute such as Tunisia, Jordan, the United Kingdom, Belgium, France, The Netherlands, Germany and Australia. However, according to many scholars, this would be highly disturbing since the *raison d'être* of the ICC is "placing State and non-State actors side-by-side in the international arena."²⁶⁵

The last possibility for the ICC exercising jurisdiction would be— as stated before — by the referral to the Prosecutor by the Security Council of the United Nations.²⁶⁶ Regarding Syria, the Security Council has already rejected referring the situation to the International Criminal Court. The current stance of permanent members of the Security Council is the most critical barrier to the referral. The claim by France that Russia committed war crimes in Syria, for example, complicates any prospective Security Council referral.²⁶⁷ However, the United Nations Security Council has carried on expressing its worry over the events in Syria and Iraq, especially the region's ongoing destruction of cultural property. In February 2015, the Security Council adopted a resolution condemning the destruction of cultural heritage, including legally binding measures to counter illicit trafficking of antiquities and cultural objects from Iraq and Syria.²⁶⁸ In addition to this, members of the Security Council released a statement in January 2017. They reiterated their condemnation of ISIS' destruction of cultural heritage and

²⁶¹ Alexandre Skander Galand, 'The Situation Concerning the Islamic State: Carte Blanche for the ICC If the Security Council Refers?' (*EJIL: Talk!*, 27 May 2015) <<https://www.ejiltalk.org/the-situation-concerning-isis-carte-blanche-for-the-icc-if-the-security-council-refers/>> accessed 2 July 2021.

²⁶² Corliss (n 30) 218.

²⁶³ *ibid.*

²⁶⁴ *ibid.*

²⁶⁵ *ibid.* 219.

²⁶⁶ *ibid.* 220.

²⁶⁷ *ibid.*

²⁶⁸ United Nations Security Council Res. 2199 (12 February 2015) UN Doc S/RES/2199 (2015).

underlined the need to bring perpetrators of these atrocities to justice. Still, since the release, no meaningful actions have been implemented.²⁶⁹

5.7.4 International Human Rights Law

As the United Nations Special Rapporteur in the field of cultural rights, Karima Bennouna, stated: ‘The destruction of cultural heritage is a violation of Human Rights.’ The International Court of Justice has confirmed that international human rights law applies during the occupation, though determining whether a state has met its obligations toward cultural property during armed conflict must be done in accordance with relevant provisions of international humanitarian law.²⁷⁰ The 1949 Geneva Convention and its three protocols, which form the bedrock of international humanitarian law, prohibit the “pillaging of cultural property and prohibit acts of hostility directed against historic monuments, works of art or places of worship which constitute cultural peoples’ cultural or spiritual heritage, and their use in support of military efforts.”²⁷¹ International human rights law and international humanitarian law assist in strengthening the protection of cultural rights in armed conflicts. In addition, a breach of applicable international humanitarian law might also constitute a violation of international human rights law. Human rights legislation may also be better adapted to safeguard intangible aspects of cultural property in some circumstances.²⁷²

International human rights law encompasses the destruction of cultural heritage as a Human Rights violation, and both Syria and Iraq have ratified and acceded to the international conventions and are thus bound to comply.²⁷³ Article 27 of the Universal Declaration of Human Rights (ratified by both Syria and Iraq) states that “everyone has the right to freely participate in the cultural life of the community, to enjoy the arts.” Although it is not legally enforceable as a declaration (as opposed to a Convention, for example), the 1966 International Convention on Economic, Social and Cultural Rights (Hereinafter ICESCR) secures certain of its rights (ratified by both Syria and Iraq). It obligates the protection and display of humankind’s cultural legacy, according to the ICESCR Committee General Comment n°21 and Article 15(1)a of the ICESCR. The UN Human Rights Council also recognizes that this provision applies during times of peace and armed conflicts.²⁷⁴

²⁶⁹ Corliss (n 30) 220.

²⁷⁰ Turku (n 39) 6.

²⁷¹ *ibid.*

²⁷² *ibid.*

²⁷³ Cunliffe, Muhesen and Lostal (n 4) 5.

²⁷⁴ Turku (n 39) 6.

However, even though ISIS recognizes itself as a state, it lacks formal recognition in order to sign and ratify international instruments such as the Universal Declaration of Human Rights or the ICESCR. Hence, it is complex to hold them accountable for the destructions based on international human rights law.

6 CONCLUSION: A NEED FOR A NEW CONCEPTUAL FRAMEWORK

6.1 STATE OF THE ART

This chapter will conclude that there's a need for a new conceptual framework going beyond the existing paradigms and existing legal concepts and explains briefly what the international community should take into account while drafting this framework. Avenues for further research could include how this framework should look like and which norms it should exclude.

6.2 PRESENTATION: A NEW CONCEPTUAL FRAMEWORK

The Islamic State commits a war crime every time it destroys cultural heritage sites or items. The ongoing and systematic destruction, on the other hand, appears to be considerably more.²⁷⁵ The attacks and their disseminations that Daesh carries out have multiple dimensions. The conventional mechanisms and paradigms provided by the international community are not sufficient to prevent, protect and prosecute these attacks. The virulent propaganda, which orchestrates the violence generating messages containing discriminating narratives, establishing new standards and redrawing, makes cultural heritage extremely vulnerable to attacks.²⁷⁶ New media is a game-changer in the destruction and protection of heritage, capable of amplifying the impact of the original destructive acts.²⁷⁷

6.3 CULTURAL CLEANSING

The deliberate destruction, looting, and theft of cultural property by ISIS has attracted international attention and is probably one of the most brutal acts of cultural cleansing in recent history. When the former US Secretary of State John Kerry was denouncing the acts of intentional destruction of cultural heritage in a speech at the Metropolitan Museum of Art, he condemned the act of vandalism of ISIS 'against 'the cradle of our civilization' adding that 'the civilized world must take a stand' because 'the fight to protect the cultural heritage of Iraq and Syria isn't just about shared values, it is about shared legacy.'²⁷⁸ Secretary Kerry also added

²⁷⁵ Hill (n 15) 215.

²⁷⁶ Moffett, Viejo Rose and Hickey (n 6) 622.

²⁷⁷ Report of the Special Rapporteur in the field of cultural and rights (n 96).

²⁷⁸ UNESCO, 'State Secretary Kerry and Director-General Bokova Call for End to Cultural Destruction in Iraq and Syria | United Nations Educational, Scientific and Cultural Organization' <http://www.unesco.org/new/en/media-services/single-view/news/state_secretary_kerry_and_director_general_bokova_call_for_e/> accessed 15 June 2021.; Turku (n 39) 106.

that it is necessary to name these crimes as crimes against humanity and acts of cultural cleansing and hold the perpetrators accountable.²⁷⁹ Cultural cleansing has long-term and far-reaching repercussions. In Iraq and Syria, obliterating cultural legacy helps terrorists orphan future generations' concept of what they represent as people and nation.²⁸⁰ As stated before, it is not for the more significant part about the monuments themselves. It is about the brutal manipulation of cultural identity and the erasure of cultural memory.

6.4 GOING BEYOND THE EXISTING PARADIGMS

Chapter five of this Master thesis has set out the different existing paradigms of cultural protection during wartime. In the international legal conventions, two paradigms are apparent. In the first place, the cultural value paradigm according to which the protection and preservation of cultural heritage are necessary because of its intrinsic value to humanity. In the second, place the prevention, protection and paradigm, a property law response to the destruction and looting of cultural heritage. In international criminal law, one can detect two different paradigms: the universalist and the relativist. The universalist focalizes on the value of cultural heritage as something belonging to humanity as a whole. The relativist focuses on the harm that intentional destruction causes to the communities directly affected. Finally, International human rights law has a holistic approach to cultural heritage protection and considers different dimensions.

Those paradigms have been of significant importance in developing the role of cultural heritage in international law. Nevertheless, they are not adapted to the current threats cultural heritage faces, namely the wanton destruction of cultural heritage by ISIS in Syria and Iraq and the accompanying dissemination on social media. In particular, the prevention, protection and prosecution paradigm. This paradigm concentrates for the more significant part on the extent of the damage without taking into account the causes or motivations of the intentional destruction.²⁸¹ There is a need for a new cultural protection paradigm considering the different aspects of the destruction of cultural heritage by ISIS. There has to be given greater importance to the ideological component. ISIS wants to remove anything that is not in line with their beliefs and consider being the 'right' Islam. They want to create new facts on the ground. Ending these acts of destruction necessitates a cultural protection paradigm confronting the fundamentalist

²⁷⁹ Turku (n 39) 106.

²⁸⁰ Mark V Vlasic and Helga Turku, 'Blood Antiquities: Protecting Cultural Heritage beyond Criminalization Symposium: Culture at the Frontline: Addressing Attacks on Cultural Heritage' (2016) 14 *Journal of International Criminal Justice* 1175, 1176.

²⁸¹ Cunliffe, Muhesen and Lostal (n 4) 1096.

mindset that drives them in conformity with international standards, mainly via cultural rights, diversity and heritage education.²⁸²

6.5 GOING BEYOND THE EXISTING LEGAL CONCEPTS

The early rulings of the ICTY, such as *Strugar* and *Jokic*, were a significant step towards eradicating impunity. Even though the ICC cannot prevent cultural assets from being destroyed during armed conflict, it can demand responsibility. These crimes should not be allowed to go unpunished, and prosecution is required by the Court. While with the *Al Mahdi* case, the ICC demonstrated the gravity of the offense of intentional destruction of cultural heritage, there are still some substantial practical obstacles to overcome.²⁸³ In other words, there's a legal framework and jurisprudence in order to protect cultural heritage during the conflict. Still, it is not sufficient and even ineffective for the recent attacks on cultural heritage and the associated sharing on social media that the international community has witnessed in the past decade. The cataclysm of existing legal instruments does not facilitate to answer to the increasing threats to cultural heritage.

In order to fight the intentional destruction of cultural heritage, the existing legal tools specifically designed to protect cultural heritage in times of conflict, such as the 1954 Convention, can be used as a building block for a new legal framework, on the condition that more states ratify the Convention and implement the Convention in national law.

As stated before, cultural cleansing and cultural genocide are not yet incorporated in the international legal sphere. The proclaimed goal of ISIS is to “purify” the region of false idols. Removing Yazidis, Christians, or Shiites, for example, entails eradicating all traces of them, including their cultural history, depriving the communities of their fundamental rights. Furthermore, cultural property destruction and the dissemination of that destruction on social media have become frightening to populations both close and distant and increasing their popularity for recruiting foreign fighters. When a single group's culture is targeted as part of a more extensive operation to “purify” an area, citizens try to escape their residence, enabling the “cleansing” of people, culture, and faiths to continue.²⁸⁴ According to some scholars, to prevent and prosecute the intentional destruction of cultural heritage, the international community will

²⁸² Report of the Special Rapporteur in the field of cultural and rights (n 96).

²⁸³ Ellis (n 208) 61.

²⁸⁴ Turku (n 39) 119.

have to include the cultural component in the Genocide Convention or create a binding Convention that fights cultural cleansing.

6.6 LONG-TERM SOLUTIONS.

ISIS has disseminated proof through its propaganda machine that demonstrates its desire to eliminate anybody or everything that does not agree with their worldview. As a result, future indictments should portray such attacks as a whole, namely as a campaign to wipe out groups of people and nations and their traditions and cultural property, rather than as individual war crimes.²⁸⁵ Simultaneous attacks on individuals and their cultural property require special attention. At the present moment, effective international collaboration, coordination and research, which should drive interdisciplinary, transnational, interagency, and emergency efforts, are nearly non-existent.²⁸⁶ There is a need for complete cooperation and support (both administrative and financial) of individual governments to collect evidence and extradite culprits.

In the evolving military operational environment and political spectrum, research – and therefore expertise on new developments related to the changing status of cultural heritage, its connection with identity, and its position – is rare and only pushed by a few private efforts.²⁸⁷ Natural stakeholders such as the military, police, customs, diplomats, global security and religious experts are not yet recognized as such, nor are they sufficiently involved or aware of their responsibilities to do so.²⁸⁸ Only with advanced expertise, the international community will be able to combat the harm that both archaeological sites and the social cohesiveness of the region that produced them face. These concerns will only grow more pressing if other organizations adopt ISIS' methods.²⁸⁹

To protect cultural heritage, we must go beyond the structures themselves and interact with the people who utilize them. We should seek local relevance in global ideals and evaluate cultural heritage, not just from our perspective but also from locals, Arabs and Muslims. Education is a powerful tool for imposing identity and fostering a culture of inclusion and empathy through

²⁸⁵ *ibid* 186.

²⁸⁶ Joris D Kila, 'Iconoclasm and Cultural Heritage Destruction During Contemporary Armed Conflicts' in Saskia Hufnagel and Duncan Chappell (eds), *The Palgrave Handbook on Art Crime* (Palgrave Macmillan UK 2019) 665 <http://link.springer.com/10.1057/978-1-137-54405-6_30> accessed 30 May 2021.

²⁸⁷ *ibid*.

²⁸⁸ *ibid*.

²⁸⁹ Cunliffe and Curini (n 113) 1107.

institutions and the media.²⁹⁰ Iraq and Syria, and other war-torn countries face a daunting task in bringing their severely divided societies together, and rebuilding a state after a protracted struggle necessitates the participation of intellectuals, historians, civil society and politicians in a complex process that can lead to a more peaceful existence.²⁹¹ Additionally, the process of reinforcement of social values may be fostered by cultural heritage. It can be effective when combined with larger political and structural forces that aid in the process of peacebuilding and national reconciliation in disrupted states such as Iraq and Syria.²⁹²

²⁹⁰ Turku (n 39) 187.

²⁹¹ *ibid.*

²⁹² *ibid.*

7 BIBLIOGRAPHY

7.1 ACADEMIC SOURCES

Affolder N, 'Democratising or Demonising the World Heritage Convention' (2007) 38 Victoria University of Wellington Law Review 341

Arimatsu L and Choudhury M, 'Protecting Cultural Property in Non-International Armed Conflicts: Syria and Iraq' (2015) 91 INT'L L. STUD 59

Awan I, 'Cyber-Extremism: Isis and the Power of Social Media (2017) 54 Society 138

Badawy A and Ferrara E, 'The Rise of Jihadist Propaganda on Social Networks' (2018) 1 Journal of Computational Social Science 453

Bahar HM, 'Social Media and Disinformation in War Propaganda: How Afghan Government and the Taliban Use Twitter' (2020) 47 Media Asia 34

BBC NEWS, 'Why Has the Syrian War Lasted 10 Years?' *BBC News* (12 March 2021) <<https://www.bbc.com/news/world-middle-east-35806229>> accessed 12 May 2021

BBC NEWS 'Internet up for Nobel Peace Prize' (10 March 2010) <<http://news.bbc.co.uk/2/hi/technology/8560469.stm>> accessed 16 June 2021

Benigni MC, Joseph K and Carley KM, 'Online Extremism and the Communities That Sustain It: Detecting the ISIS Supporting Community on Twitter (2017) 12 PLOS ONE <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0181405>> accessed 27 May 2021

Bevan, Robert, *The Destruction of Memory Architecture at War*

Bishop-Burney US, 'Prosecutor v. Ahmad Al Faqi Al Mahdi' (2017) 111 American Journal of International Law 126

Blaker L, 'The Islamic State's Use of Online Social Media (2015) 1 Military Cyber Affairs 10
Bokova I, 'Fighting Cultural Cleansing' (2015) 36 Harvard International Review 6

Bunzel C, 'From Paper State to Caliphate: The Ideology of the Islamic State' 48

Casaly P, 'Al Mahdi before the ICC: Cultural Property and World Heritage in International Criminal Law Symposium: Culture at the Frontline: Addressing Attacks on Cultural Heritage' (2016) 14 Journal of International Criminal Justice 1199

Centre UWH, 'The Operational Guidelines for the Implementation of the World Heritage Convention' (*UNESCO World Heritage Centre*) <<https://whc.unesco.org/en/guidelines/>> accessed 21 June 2021

Chang KS, 'Enemy Status and Military Detention: Neutrality Law and Non-International Armed Conflict, Municipal Neutrality Statutes, the U.N. Charter, and Hostile Intent Rejoinder' (2011) 47 *Texas International Law Journal* 381

Clapperton M, Jones DM and Smith MLR, 'Iconoclasm and Strategic Thought: Islamic State and Cultural Heritage in Iraq and Syria' (2017) 93 *International Affairs* 1205

Corliss C, 'Prosecuting Members of ISIS for Destruction of Cultural Property' (2017) 45 *Florida State University Law Review* 43

Council of Europe and Commissioner for Human Rights, 'The Rule of Law on the Internet and in the Wider Digital World' <<https://www.statewatch.org/media/documents/news/2014/dec/coe-hr-comm-rule-of-law-on-the%20internet-summary.pdf>> accessed 16 June 2021

Cunliffe E and Curini L, 'ISIS and Heritage Destruction: A Sentiment Analysis' (2018) 92 *Antiquity* 1094

Cunliffe E, Muhesen N and Lostal M, 'The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations' (2016) 23 *International Journal of Cultural Property* 31

Cunliffe, Emma, Muhesen, Nibal, and Lostal, Marina, 'The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations' (2016) 23 *International Journal of Cultural Property* 31

Daniels BI, 'Should Acts of Cultural Destruction Be Prosecuted as War Crimes?' *Apollo: The International Art Magazine* 3

Difraoui AE, 'EJihad: Behind the Use of Social Media by ISIS' in Oliver Hahn and Florian Stalsh (eds), *Digital Investigative Journalism: Data, Visual Analytics and Innovative Methodologies in International Reporting* (Springer International Publishing 2018)

Dijkstal HJ, 'Destruction of Cultural Heritage before the ICC: The Influence of Human Rights on Reparations Proceedings for Victims and the Accused' (2019) 17 *Journal of International Criminal Justice* 391

Doppelhofer C, 'Will Palmyra Rise Again? - War Crimes against Cultural Heritage and Post-War Reconstruction' (2016) <<http://www.ohchr.org/EN/Issues/CulturalRights/Pages/IntentionalDestruction.aspx>>

Drazewska B, 'The Human Dimension of the Protection of the Cultural Heritage from Destruction during Armed Conflicts' (2015) 22 *International Journal of Cultural Property* 205

Dries MH van den and Castillo Mena A, 'Social Involvement as a Buzz Word in World Heritage Nominations. La "Inclusión Social" Como Palabra de Moda En Las Candidaturas a Patrimonio Mundial'

Elina N. Moustaira, 'International Protection of Cultural Property in the Event Of Armed Conflict'

Ellis MS, 'The ICC's Role in Combatting the Destruction of Cultural Heritage' [2017] Case Western Reserve Journal of International Law 41

European Union External Service, 'Building Peace by Cultural Heritage – a New EU Approach in Conflicts and Crises' (*EEAS - European External Action Service - European Commission*) <https://eeas.europa.eu/regions/asia/100345/building-peace-cultural-heritage-%E2%80%93-new-eu-approach-conflicts-and-crises_en> accessed 3 July 2021

Francioni F, 'The Human Dimension of International Cultural Heritage Law: An Introduction' (2011) 22 *European Journal of International Law* 9

Galand AS, 'The Situation Concerning the Islamic State: Carte Blanche for the ICC If the Security Council Refers?' (*EJIL: Talk!*, 27 May 2015) <<https://www.ejiltalk.org/the-situation-concerning-isis-carte-blanche-for-the-icc-if-the-security-council-refers/>> accessed 2 July 2021

Gerstenblith P, 'The Destruction of Cultural Heritage: A Crime Against Property or a Crime Against People?' [2016] *The John Marshall Review of Intellectual Property Law* 59

Gestoso Singer G, 'ISIS's War on Cultural Heritage and Memory.' [2015] *Museodata – Heritage*

Gonzalez Zarandona J, Albarrán-Torres C and Isakhan B, 'Digitally Mediated Iconoclasm: The Islamic State and the War on Cultural Heritage' (2017) 24 *International Journal of Heritage Studies* 1

Günay MT, 'Looking Humanity in the Eye and Seeing its Loss in the Eyes of the ICC: An Evaluation of Daesh's Destruction of Palmyra using the Gravity Assessment Made by the ICC Prosecutor in the Al Mahdi Case' [2019] *Santander Art and Culture Law Review* 245

Harmanşah Ö, 'ISIS, Heritage, and the Spectacles of Destruction in the Global Media' (2015) 78 *Near Eastern Archaeology* 170

Hausler K, 'Culture under Attack: The Destruction of Cultural Heritage by Non-State Armed Groups' [2015] *Santander Art and Culture Law Review* 117

Higgins N, *The Protection of Cultural Heritage During Armed Conflict: The Changing Paradigms* (Routledge 2020)

Hill CV, 'Killing a Culture: The Intentional Destruction of Cultural Heritage in Iraq and Syria under International Law' (2016) 45 *Georgia journal of international and comparative Law* 31

Hinek S, 'The Judgment of the International Criminal Tribunal for the Former Yugoslavia in Prosecutor v. Pavle Strugar' (2006) 19 *Leiden Journal of International Law* 477

Hladik J, 'The UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage' (2004) 9 *Art Antiquity and Law* 215

Howard RD and others, 'IS and Cultural Genocide: Antiquities Trafficking in the Terrorist State' Joint Special Operations University 112

Howe Z, 'Can the 1954 Hague Convention Apply to Non-State Actors: A Study of Iraq and Libya Note' (2011) 47 Texas International Law Journal 403

ICC, 'Confirmation of Charges Hearing in the Case of The Prosecutor v. Ahmad Al Faqi Al Mahdi: Audio-Visual Materials and Photographs' <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1195&ln=en>> accessed 8 June 2021

ICC, 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Opening of the Confirmation of Charges Hearing in the Case against Mr Ahmad Al-Faqi Al Mahdi' <<https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-01-03-16>> accessed 29 June 2021

ICC, 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Alleged Crimes Committed by ISIS' <<https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>> accessed 2 July 2021

ICC, 'The Office of the Prosecutor Publishes Draft Policy on Cultural Heritage for Consultation' <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1579>> accessed 21 June 2021

'ICC Prosecutor Fatou Bensouda on the Malian State Referral of the Situation in Mali since January 2012' <<https://www.icc-cpi.int/Pages/item.aspx?name=pr829>> accessed 8 June 2021
ICCROM, 'First Aid to Cultural Heritage in Times of Crisis - Handbook' <<https://www.iccrom.org/publication/first-aid-cultural-heritage-times-crisis-handbook>> accessed 18 June 2021

ICOMOS 14th General Assembly and Scientific Symposium and 14e Assemblée Générale et Symposium Scientifique de l'ICOMOS, 'THE INTERDEPENDENCY OF THE TANGIBLE AND INTANGIBLE CULTURAL HERITAGE Communication Inaugurale/Keynote Address Par Mounir BOUCHENAKI' <http://openarchive.icomos.org/id/eprint/468/1/2_-_Allocution_Bouchenaki.pdf> accessed 11 May 2021

ICRC Law & Policy, 'Mali, Accountability for the Destruction of Cultural Heritage | How Does Law Protect in War? - Online Casebook' <<https://casebook.icrc.org/case-study/mali-accountability-destruction-cultural-heritage>> accessed 29 June 2021

ICTY, 'Judgement in the Case the Prosecutor v. Miodrag Jokic: Miodrag Jokic Sentenced to 7 Years' Imprisonment | International Criminal Tribunal for the Former Yugoslavia' <<https://www.icty.org/en/press/judgement-case-prosecutor-v-miodrag-jokic-miodrag-jokic-sentenced-7-years-imprisonment>> accessed 28 June 2021

Isakhan B, 'UNESCO's Project to "Revive the Spirit of Mosul": Iraqi and Syrian Opinion on Heritage Reconstruction' (2019) 25 International Journal of Heritage Studies 1189

Kila JD, 'Inactive, Reactive, or Pro-Active?: Cultural Property Crimes in the Context of Contemporary Armed Conflicts' (2013) 1 Journal of Eastern Mediterranean Archaeology & Heritage Studies 319

Klausen J, 'Tweeting the Jihad: Social Media Networks of Western Foreign Fighters in Syria and Iraq' (2015) 38 *Studies in Conflict & Terrorism* 1

Lenzerini F, 'Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage' (2016) 51 *The International Spectator* 70

Lenzerini F, 'Intentional Destruction of Cultural Heritage', *The Oxford Handbook of International Cultural Heritage Law* (Oxford Handbooks 2020)

Lesaca J, 'On Social Media, ISIS Uses Modern Cultural Images to Spread Anti-Modern Values' (24 September 2015) <<https://www.brookings.edu/blog/techtank/2015/09/24/on-social-media-isis-uses-modern-cultural-images-to-spread-anti-modern-values/>> accessed 6 July 2021

Lostal M, 'Syria's World Cultural Heritage and Individual Criminal Responsibility' [2015] *International Review of Law* 3

Martinez SAG, 'Destruction of Cultural Heritage in Northern Mali Cases before International Courts and Tribunals' (2015) 13 *Journal of International Criminal Justice* 1073

Matthews R and others, 'Heritage and Cultural Healing: Iraq in a Post-Daesh Era' (2020) 26 *International Journal of Heritage Studies* 120

Meskill L, 'UNESCO's World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation' (2013) 54 *Current Anthropology* 483

Moffett L, Viejo Rose D and Hickey R, 'Shifting the Paradigm on Cultural Property and Heritage in International Law and Armed Conflict: Time to Talk about Reparations?' (2020) 26 *International Journal of Heritage Studies* 619

Moustafa LH, 'Cultural Heritage and Preservation: Lessons from World War II and the Contemporary Conflict in the Middle East' (2016) 79 *The American Archivist* 320

Nakasis, Athanasios and Lainos, Nikolaos, 'The Impact of the Civil War on the Cultural Heritage.' <<https://journals.ub.uni-heidelberg.de/index.php/heritage/article/viewFile/20046/13838>>

National Geographic, 'Here Are the Ancient Sites ISIS Has Damaged and Destroyed' (*History*, 9 January 2015) <<https://www.nationalgeographic.com/history/article/150901-isis-destruction-looting-ancient-sites-iraq-syria-archaeology>> accessed 19 June 2021

Nemeth E, 'Cultural Security: The Evolving Role of Art in International Security' (2007) 19 *Terrorism and Political Violence* 19

Novic E, *The Concept of Cultural Genocide: An International Law Perspective* (Oxford University Press 2016)

O'Keefe R, 'Cultural Heritage and International Criminal Law' in Sebastien Jodoin and Marie-Claire Cordonier Segger (eds), *Sustainable Development, International Criminal Justice, and Treaty Implementation* (Cambridge University Press 2013)

Professor Yaman Akdeniz, and others, 'Media Freedom on the Internet: An OSCE Guidebook' <<https://www.osce.org/files/f/documents/3/c/226526.pdf>> accessed 16 June 2021

R. M. Organ and Noblecourt A, 'Protection of Cultural Property in the Event of Armed Conflict' (1958) 3 *Studies in Conservation* 194

RASHID International e.V., 'The Intentional Destruction of Cultural Heritage in Iraq as a Violation of Human Rights: Submission for the United Nations Special Rapporteur in the Field of Cultural Rights' <<https://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/RASHID.pdf>> accessed 25 March 2021

Report of the Special Rapporteur in the field of cultural and rights, 'A/HRC/31/59'
Scharf MP, 'How the War Against ISIS Changed International Law' [2016] *Case Western Reserve Journal of International Law* 55

Schmid A, 'Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review' [2013] *Terrorism and Counter-Terrorism Studies*

Silverman H and Ruggles DF, 'Cultural Heritage and Human Rights' *Cultural Heritage and Human Rights* 27

Slade T, *The Destruction of Memory: The War Against Culture and the Battle to Save It*. (2020) <<https://destructionofmemoryfilm.com/about>> accessed 12 April 2021

Smith C and others, 'The Islamic State's Symbolic War: Da'esh's Socially Mediated Terrorism as a Threat to Cultural Heritage' (2016) 16 *Journal of Social Archaeology* 164

Statista, 'Most Used Social Media 2021' <<https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>> accessed 16 June 2021

Turku H, *The Destruction of Cultural Property as a Weapon of War: Isis in Syria and Iraq* (Springer Berlin Heidelberg 2017)

UMBCtube, *MEMS Colloquium Lecture: Michael Danti - ISIS and Cultural Cleansing* <<https://www.youtube.com/watch?v=ms1rqYH7goI>> accessed 9 July 2021

UN NEWS, 'As Thousands Flee Syria's Besieged Historic City of Palmyra, UN Refugee Agency Readies Response Plan' (*UN News*, 22 May 2015) <<https://news.un.org/en/story/2015/05/499502-thousands-flee-syrias-besieged-historic-city-palmyra-un-refugee-agency-readies>> accessed 26 April 2021

UNESCO, 'The 1970 Convention: Cultural Diversity before the Letter of the Law' (*UNESCO*, 8 October 2020) <<https://en.unesco.org/courier/2020-4/1970-convention-cultural-diversity-letter-law>> accessed 18 June 2021

UNESCO, "'Heritage and Cultural Diversity at Risk in Iraq and Syria' International Conference UNESCO Headquarters, Paris' <<http://www.unesco.org/culture/pdf/iraq-syria/IraqSyriaReport-en.pdf>> accessed 30 June 2021

UNESCO, 'State Secretary Kerry and Director-General Bokova Call for End to Cultural Destruction in Iraq and Syria | United Nations Educational, Scientific and Cultural Organization' <http://www.unesco.org/new/en/media-services/single-view/news/state_secretary_kerry_and_director_general_bokova_call_for_e/> accessed 15 June 2021

UNESCO, 'The Protection of Heritage and Cultural Diversity: A Humanitarian and Security Imperative in the Conflicts of the 21st Century. Background Note to the International Conference "Heritage and Cultural Diversity at Risk in Iraq and Syria"' <<https://en.unesco.org/system/files/iraqsyriaeventbackgroundnoteeng.pdf>> accessed 6 June 2021

UNESCO Institute of Statistics, 'Medium-Term Strategy 2008-2013' <http://uis.unesco.org/sites/default/files/documents/uis-medium-term-strategy-2008-2013-en_0.pdf> accessed 20 April 2021

UNESCO World Heritage Centre, 'The Operational Guidelines for the Implementation of the World Heritage Convention' <<https://whc.unesco.org/en/guidelines/>> accessed 21 June 2021
United Nations, *Irina Bokova (UNESCO) on 'Cultural Cleansing' of Iraq and Syria - Interview* (2015) <<https://www.youtube.com/watch?v=kRxcfcL8Xs>> accessed 6 June 2021

UNESCO, 'General Assembly Meeting A/71/317. Promotion and Protection of Human Rights: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms.'

UNESCO, 'The World Heritage Convention' (*UNESCO World Heritage Centre*) <<https://whc.unesco.org/en/convention/>> accessed 20 June 2021

UNITED NATIONS, 'Expressing Outrage over Attacks on Cultural Heritage of Iraq, General Assembly Unanimously Adopts Resolution Calling for Urgent Action | Meetings Coverage and Press Releases' <<https://www.un.org/press/en/2015/ga11646.doc.htm>> accessed 11 May 2021

Van Woudenberg N and Lijnzaad L, *Protecting Cultural Property in Armed Conflict: An Insight into the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict* (Brill Nijhoff 2010)

Vlasic MV and Turku H, 'Blood Antiquities: Protecting Cultural Heritage beyond Criminalization Symposium: Culture at the Frontline: Addressing Attacks on Cultural Heritage' (2016) 14 *Journal of International Criminal Justice* 1175

Vrdoljak AF, 'Intentional Destruction of Cultural Heritage and International Law' 21

Weimann G, 'Terror on Facebook, Twitter, and Youtube The Internet and the State' (2009) 16 *Brown Journal of World Affairs* 45

Weimann, Gabriel, *Terrorism in Cyberspace: The Next Generation* (Columbia University Press 2015)

7.2 CASE LAW

Prosecutor v Kordić & Cerkez, Case IT-95–14/2-T, Trial Chamber (26 February 2001) para 207

The Prosecutor v Ahmad Al Faqi Al Mahdi ICC-01/12-01/15 (27 September 2016) 2

7.3 LEGISLATION

Convention concerning the protection of the world cultural and natural heritage (adopted by the General Conference at its seventeenth session Paris, 16 November 1972). 17

Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954)

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970)

Rome Statute of the International Criminal Court A/CONF.183/9 of 17 July 1998

UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage of 17 October 2003

United Nations Security Council Res. 2199 (12 February 2015) UN Doc S/RES/2199 (2015)

Updated Statute of the International Criminal Tribunal for the Former (adopted 25 May 1993)