

Destruction of cultural property as a war crime: Breaking new ground in the quest for accountability

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Abstract

Destruction of cultural objects had been an attribute of war for centuries. International law frowned at this repulsive behaviour and developed rules proscribing it. The legal framework proved inadequate as looting and vandalism continued. Deliberate devastation of cultural objects during the Balkan war caused global outrage. In response, the ICTY was created to prosecute individuals implicated in the acts for war crimes. The 1998 Rome Statute of the ICC declared destruction of cultural heritage a war crime. In 1999, the Second Protocol to the 1954 Hague Convention criminalised attacks on cultural relics. These instruments render an individual liable to prosecution before a criminal court. In 2015, a jihadist, Ahmad Al Faqi, was charged before the ICC with the war crime of destruction of cultural heritage in Mali. His conviction and sentencing was a watershed. However, there is no sustained effort to prosecute persons who continue to perpetrate such crimes. This paper advocates regular referrals, trials and convictions as the surest measure to secure cultural heritage, enthrone accountability and curb impunity by terrorists and traffickers.

Keywords: cultural heritage, conflict, accountability, protection, prosecution

Introduction

The Law of Armed Conflict has over the years placed high premium on the protection of victims of armed conflict and their property. The victims are civilians, non-combatants, protected persons and injured members of the armed forces. Arising from war-time experiences, and in order to preserve the cultural heritage of mankind, international humanitarian law was extended to protect cultural relics which over the years had been “victims” of intentional destruction, pillage and sacrilege.

Destruction of cultural property is one of the by-products of armed conflict, and this has occurred since antiquity (Cunliffe and Lostal, 2016: 2) ^[7]. Property often ravaged during such conflict includes works of art, religious sites, ancient monuments and historical documents. Current international law prohibits destruction of property except those used in the prosecution and furtherance of armed conflicts and those described as military objectives. Thus civilian property and objects in support of the civilian population must be spared.

Cultural property suffered great devastation during World War II (Carnegie Council, 2013) ^[5]. Arising from the horrors of that war the Hague Convention for the Protection of Cultural Property in Times of armed Conflict 1954 was adopted. It provides the legal basis for the protection of cultural property. This instrument, however, did not prevent such destruction and looting in subsequent conflicts. There was massive destruction and looting of cultural property during the Balkan conflict. International law responded by criminalising such conduct through the adoption of a supplementary instrument.

In 1999, the Second Protocol to the 1954 Hague Convention was adopted which enhances protection of cultural property and renders individuals who destroy them criminally responsible. In 2012, a Malian jihadist was prosecuted at the International Criminal Court (ICC) for destruction and

looting of cultural property in Timbuktu, north of the country. This was the first of its kind.

This article examines the legal framework for the protection of cultural property and argues that similar prosecution should be carried out in respect of conflicts in Syria, Yemen, Iraq, Libya, Egypt, Nigeria and other conflict zones. This would strengthen the concept of individual criminal responsibility and the machinery of accountability as well as rein in the culture of impunity prevalent in the theatres of war.

Nature of cultural property and the need for protection

Cultural property relates to the inheritance of a people or a society consisting of monuments, arts, archeological sites, scientific collections manuscripts and books. Others include items of artistic, historical and archeological attraction. Cultural property tells stories of the ways of life of a population. It recounts the history and depicts the traditions, values and identity of the people (Eichberger, 2010) ^[9]. In addition, it is also regarded as important common heritage for the whole of humanity which also stands to suffer from its loss or damage (Blake, 2000) ^[3]. According to the 1954 Convention “cultural property” refers to movable or immovable property of great importance to the cultural heritage of every such as monuments, works of art, manuscripts, books and scientific collections, libraries and museums (Article 1).

Cultural property stands out uniquely as common heritage of humanity. The significance of protecting cultural property is rooted in their historical and artistic importance and often such property holds enormous economic, political and social worth for nations, peoples and societies (Carnegie Council, 2013) ^[5]. It is also treated as the common heritage of mankind held in trust for future generations. Cultural heritage represents collective memory, pride of place and sense of identity, all of which are important factors in any

future efforts to reconstruct a peaceful and prosperous life with a shared sense of purpose. In this regard, Zelig has asserted that “Cultural heritage is the hallmark of humanity, the identity of civilization and the thing common to all peoples” (Zelig, 2005:322) [24].

Destruction of cultural property from past to present

In the past, it was common for victors in battle to take important cultural property as spoils of war or symbols of victory (Boylan, 1993:23). It was also prevalent for cultural property to be lost through pillage, misapplication, desecration, vandalism and acts of savagery (Cunliffe and Lostal, 2016: 2) [7]. Deliberate destruction of such property was also perpetrated as an instrument of war in order to extirpate the identity of a people and demoralize the enemy (Turku, Helga). Places of worship were not spared as some were converted from a particular type of religion to another. Some Hindu temples and churches were forcibly converted into mosques after conquest (Boylan 1993). The looting of the golden horses of Saint Mark by Napoleon in 1797 was quite instructive (O’Keefe, 2009:13) [20]. The war of French Revolution (1792-1801) witnessed systematic looting (Sandholtz, 2005: 205) [21]. War was merciless and barbaric in ancient Greece and Rome. It was fought with great intensity, the primary objective being the utter destruction of the enemy. Massive looting and vandalism trailed the conquest.

Destruction of cultural property during the World Wars

There was massive destruction of cultural property during the First World War. France and Belgium took the brunt of the war in relation to the carnage meted out to cultural property. As observed by Sandholtz, several historic buildings and churches suffered from bombardment. Significant havoc was wreaked on the medieval university library in Louvain and the great cathedral at Rheims, among other acts of destruction (Sandholtz, 2005: 209-210) [21].

One of the major casualties of World War II was cultural property (Moustafa, 2016:323) [18]. Its destruction and looting was widespread across the continent of Europe (Sandholtz, 2005: 211) [21]. Adolf Hitler’s Nazis targeted important cultural objects for destruction and pillage, impounding a high percentage of works of art of several European countries. Acting under the illusion that the Aryan race to which Hitler belonged was superior to other races, in particular the Jews, the Nazis sought to annihilate other cultures. Works of art and other cultural objects not of German inheritance were confiscated, plundered and damaged. The Nazi plunder of cultural objects was felt in Eastern Europe and the occupied part of the former Soviet Union. This was demonstrated by the ransacking of the Catherine Palace and Amber Room among others. Acting under the illusion that the Aryan race to which Adolf Hitler belonged was superior to other races, in particular the Jews, the Nazis sought to annihilate other cultures. Works of art and other cultural objects not of German inheritance were confiscated, plundered and damaged. The Nazi plunder of cultural objects was felt in Eastern Europe and the occupied part of the former Soviet Union. This was demonstrated by the ransacking of the Catherine Palace and Amber Room among others.

The Nazis embarked on a systematic campaign to destroy and steal important artifacts and works of art millions of which were quite famous across Europe (Carnegie Council,

2013) [5]. Historic monuments destroyed included Coventry Cathedral; the monastery at Monte Cassino, and the Old Town of Warsaw. The Germans adopted laws and policies which empowered them to confiscate works of art belonging to people not of German extraction. Such art works were considered derogatory. Thus Jewish works of art, collections and galleries were earmarked for confiscation and destruction. Many of them were compelled to sell their works. Attempts were made to save paintings, other works of art and cultural objects. One measure was the establishment by the Allies of the Monuments, Fine Arts, and Archives section.

The Balkan war and devastation of cultural property

The eruption of civil war in the former Yugoslavia put the legal regime for protection of cultural property to a serious test. The existence of the 1954 Convention and its First Protocol did not prevent acts of criminality against cultural objects in the 1990s. The conflict took a great toll on cultural property. The warring parties defied all extant laws and customs of war and wreaked carnage on lives and property (Brammertz *et al*, 2016) [4]. In the course of the conflict the historic Croatian city of Dubrovnik was largely destroyed by Serb dominated Yugoslav People’s Army

The city of Dubrovnik is described as historic and adorned with medieval ornaments, constructions and fortifications. It houses medieval churches, Cathedrals, palaces, museums, libraries and archives which earned the old city enlistment by UNESCO as a world heritage site in 1972. Dubrovnik was besieged by the Yugoslav people’s Army and wrecked along with its historic sites through deliberate and indiscriminate bombardment. Another town that suffered devastation, along with its historic site was Mostar. One of the notable towns in Europe, Mostar is home to old Turkish architecture and significantly the Old Bridge. There was a systematic and deliberate destruction of most of Mostar and the Old Bridge.

Protection of cultural heritage through law

Attempts to protect cultural property date back several centuries. The loss and destruction of cultural property in both international and non-international armed conflicts had been of grave concern to individuals, governments and the international community. Religious and political leaders took centre-stage in the campaign against destruction, pillage and desecration of cultural property. The ‘Truce of God’ was the platform employed by St Augustine when he counseled against plundering and defiling of places of worship. Cicero joined in the condemnation of the destruction of cultural property especially those dedicated to religion and places of worship. The concept of Just War required parties to a conflict to exclude temples and places of worship when carrying out attacks.

Frederick 1 in (1158) AD through an edict proscribed acts of looting in the course of armed conflict. The Lieber Code outlawed the seizure or destruction of private property as well as offered protection to works of art, scientific collections, libraries and hospitals (Articles 34-36)(Article 44). The Code which provided for the protection of cultural property was specifically made for the good governance of the armies of the United States (Zelig, 2005: 292) [24].

The Brussels Declaration of 1874 provided the platform for the transformation of Lieber Code into an international agreement. Article 27 of the Hague Convention of 1899

stated that In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals (O'Keefe, 2009:18). The Oxford Manual 1880 (Article 53) offered protection to cultural heritage. The provision was repeated in the Hague Convention of 1907 (Sandholtz, 2005: 207) ^[21]. The Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, also known as the Roerich Pact of 1935 declared that cultural property must be respected and protected in time of war and peace (Frank and Schipper, 2010:26) ^[10].

Aftermaths of the Second World War

The appalling events and atrocities of the Second World War shocked the conscience of humanity. The carnage and wanton destruction of lives and property necessitated new measures and strategies to protect lives and property in the events of armed conflicts. New legal framework and institutional mechanisms were needed to usher in a new era of respect for human lives and property.

In response to the widespread, systematic and deliberate campaign of destruction and pillage of cultural objects during War II, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) was established in 1945 (Moustafa, 2016:329) ^[18]. The General Conference of UNESCO convened a committee of experts in 1951 to draft a convention that will be entrusted with the protection of cultural property. This initiative culminated in the adoption of the 1954 Hague Convention. UNESCO works with governments, national and international organizations such as INTERPOL and World Customs Organization to stop trafficking in cultural objects (Kalman, 2017) ^[13].

A significant upshot of the Second World War was the adoption of the Universal Declaration of Human Rights (UDHR) by the UN General Assembly in 1948. The Declaration provides that "Everyone has the right freely to participate in the Cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits". Closely following the UDHR were the Geneva Conventions of 1949. The Fourth Geneva Convention states that "Protected persons are entitled, in all circumstances, to respect for their honour, their family rights, their religious convictions and practices, and their manners and customs" (Fourth GC 1949, Art. 27).

Adoption of the Hague Convention 1954

The Convention was embraced following the enormous devastation and pillage of cultural property in the course of the Second World War (Zelig,2005: 296) ^[24]. Article 4 obliges Contracting States "to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against cultural property. It also prohibits "any act directed by way of reprisal" against such property. Article 19 provides that in a non-international armed conflict as well, "each party to the conflict shall be bound to apply, as a minimum, the provisions of the present convention which relate to respect for cultural property."

The Convention provides protection to cultural property in peacetime and during armed conflict. Parties to the Convention assume the responsibility of ensuring respect for cultural property in their territory and in the territory of other states. They are to institute mechanism of protection

both in peacetime and in time of war. Special units should be set up in the armed forces to ensure protection of cultural property. In addition to the afore-said legal instrument, the Convention on Illicit Traffic of Cultural Property 1970 and the World Heritage Convention 1972 were adopted to strengthen the legal regime and avert further acts of cultural vandalism and trafficking.

Statutes of the ICTY and ICC: Instruments of accountability
The Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) conferred jurisdiction on the Tribunal to adjudicate on "seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences" (Article 3(d). The Rome Statute of the International Criminal Court (ICC) regards as war crime and bestows on the Court, whether in international or non-international armed conflicts, competence to try persons for "intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes and historic monuments" (Articles 8(2)(b)(ix) and 8(2)(e)(iv).

A norm of customary international law

Customary international law provides for the protection of cultural property. Each party to an armed conflict must avoid damage to property of great importance to cultural heritage unless they are military objectives, (Article 38). In addition, Rule 40 prohibits acts of seizure or damages to institutions dedicated to cultural property. The Rule also prohibits any form of theft, misappropriation or vandalism directed against property of great importance to cultural heritage. This has been established as a norm of customary international law in both international and non-international armed conflicts (Sandholtz, 2017:188) ^[21]. It has also been asserted that the basic principles of the 1954 Convention have acquired the character of customary international law applicable in non-international armed conflict (Cunliffe and Lostal, 2016: 8) ^[7].

Military manuals of states

States are required to domestic laws on the protection of cultural property. Several states have set out in their military manuals the obligation to spare property dedicated to religion, art, science, education, charity and historic monuments which are not used for military purposes. Some states have made it a crime to launch attack on such property (O'Keefe *et al*, 2016) ^[20].

Developments after the conflict in the former Yugoslavia

Cultural objects such as art, architecture or antiquities remain endangered and exposed to destruction or plundering in wartime despite the existence of the 1954 Hague Convention and the First Protocol. The experiences garnered in the conflicts in Cambodia, the Middle-east and the Balkans exposed the shortcomings in the existing laws and provided the impetus for the adoption of the Second Protocol in 1999 (Desch, 1999) ^[8].

The 1999 Second Protocol and criminalization of violations

The law relating to protection of cultural property was enlarged in 1999 following the conflict in the former Yugoslavia. The Second Protocol supplements the 1954 Convention and calls for enhanced protection status for cultural property.

It enlarges the scope of the law by providing for criminal responsibility and jurisdictional procedures in the event of violations (Desch, 1999) ^[8]. It introduces the concept of “serious violations” where any of the following acts are committed intentionally: Making cultural property under enhanced protection the object of attack; Using such property or its immediate surroundings in support of military actions; Extensive destruction or appropriation of cultural property protected under the Convention and the Protocol; Making such property the object of attack; Theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention (Article 15). Parties are also expected to criminalize these acts in their municipal law in a manner consistent with the general principles of international law (Zelig, 2005: 300) ^[24].

Cultural vandalism since the adoption of the Second Protocol regime

The adoption of the Second Protocol to the 1954 Hague Convention in 1999 did not deter individuals, groups or governments determined to destroy cultural objects during armed conflict or in time of peace. In fact since its adoption, destruction of cultural property has escalated. The endeavour notwithstanding, disturbing and distressing developments relating to cultural vandalism have persisted. The media has been awash with reports of plundering, destruction and sacrilege of cultural property in several countries, among them, Afghanistan, Iraq, Egypt, Yemen, Syria and Mali.

Afghanistan: cultural vandalism under the Taliban

When the Taliban took over power in Afghanistan, it ordered the destruction of the 1,700 years old statue of Buddha located at the foot of the Hindu Kush Mountains Central Afghanistan in 2001 (O’Keefe). This took place amidst entreaties by world leaders and then Secretary-General of the United Nations, Kofi Annan, to spare the ancient statues. Those pleas fell on deaf ears and were rebuffed by the Taliban government. This was denounced as a crime against the common heritage of humanity (Zelig, 2005: 308) ^[24]. In response, UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage was adopted in 2003 reaffirming existing rules on destruction of cultural property and enjoining states to take all appropriate measures to protect them.

Systematic destruction and looting of cultural property in Iraq

Systematic destruction of cultural property started in Iraq when the Islamic State occupied a large territory in that country. Iraq’s cultural heritage, including museums, historic buildings, artifacts, libraries, archeological sites and other valuable storehouses were razed or looted (Moustafa, 2016:331) ^[18]. Several historical religious buildings were plundered and destroyed, and their contents smuggled and sold to finance the war efforts of the terrorists.

Mosul is home to important religious sites and served as the cradle of civilization. Famous mosques, tombs and shrines of great cultural heritage were ravaged, including the tombs of Prophet Daniel; the tomb of and mosque of Prophet Jonah was destroyed; the tomb of prophet Jirjis; and A 4,000 year-old Ziggurat in the Iraqi City of Ur. Islamic State destroyed Hatra, a 2000 year fortified city, declared world

heritage site, bulldozed the site and looted cultural artifacts house, including gold and silver objects in an operation described as cultural cleansing.

Destruction and theft of cultural property in Syria

Syria is greatly endowed with rich, ancient cultural sites (Moustafa, 2016: 333) ^[18]. Six UNESCO World Heritage Sites are located in Syria. Since the outbreak of the civil war in 2011, the country has witnessed massive destruction and looting of its cultural heritage. The Islamic State orchestrated deliberate destruction and theft of cultural heritage of great importance in Syria. (Cunliffe and Lostal, 2016: 8 14) ^[7].

Great sites wrecked in Syria include archeological villages of Northern Syria; Bosra; Palmyra; and Old City of Damascus. The great Temple of Baalshamin in Palmyra was damaged by Islamic State in 2015. Medieval buildings in the Ancient City of Aleppo, along with great mosques, famous temples and monasteries were utterly destroyed and looted (Lostal, 2015) ^[15]. The Syrian government warned of an increase in trafficking of antiquities looted from archaeological sites.

The Arab Spring and looting of cultural property in Egypt

In the wake of the Arab Spring in 2011, Egypt was one of the states beset by unrests and militancy (Ikram, 2013). The revolution which toppled the administration of President Hosni Mubarak ushered in a period of instability and anarchy. In the ensuing chaos, archeological sites were attacked and looted. The Cairo Museum of antiquity was not spared the destruction; it was severely damaged by explosion (aljazeera). The archaeological museum in Mallawi was attacked, disfigured and looted, leading to the loss of about 1000 objects of antiquity. The Islamic Art Museum in Cairo was damaged by explosion. The statue of Tutankhamun’s sister, along with about 1000 objects of antiquity was looted.

Looting and destruction of cultural goods in Libya

Libya descended into anarchy following the Arab Spring and the demise Muammar Gaddafi and his regime in 2011. The Islamic State terrorists took advantage of the chaos and rift between rival governments to loot and destroy cultural relics in that country. The militants profited a lot through theft, pillaging and trafficking. Over 7,700 ancient coins were stolen in Benghazi. The Sabha caste and numerous sufi shrines have been destroyed (Mallonee, 2015).

Yemeni civil war and the devastation of cultural property

In Yemen, a dispute between the current government and a Houthi armed group degenerated into civil war in 2015. UNESCO World Heritage Sites are located in the war-torn country. The conflict has exacted terrible damage on cultural relics such as archeological sites, mosques, churches, monuments and tombs. Historic cities of Sanaa, Zabid and Shibam have suffered serious damage from the huge arsenal of the warring parties (Khalidi, 2017).

Destruction of ancient monuments in Mali

Mali is one of the countries besieged by armed conflict. Events took a dramatic turn in 2012 when the insurgents captured a large portion of territory in the north of the country. The rebels embarked on widespread devastation of famous monuments in Timbuktu. Timbuktu was founded in

about the 5th century AD and became outstanding in 15th and 16 centuries as the citadel of spiritual, intellectual, cultural and commercial activities in Africa. A remarkable commercial centre, Timbuktu is endowed with a rich history spanning more than one thousand years. Adorned with magnificent architecture, ancient mosques, houses and shrines erected with mud and limestone bricks, the historic city also harboured thousands of ancient manuscripts, as well as served as an important caravan route. It was a bastion of learning and academic excellence, where scholars, students and researchers visited regularly. The famous Koranic Sankore University attests to this assertion. The uniqueness of sections of Timbuktu was acknowledged by UNESCO and was consequently accorded the status of a World Heritage Site. UNESCO designated most part of Timbuktu as World Heritage Site in 1988 in acknowledgement of its outstanding historical accomplishments (news24, 2012). The insurgents mobilized men, bulldozers, sledgehammers and picks for the demolition of the ancient objects. In the list of objects destroyed were several mausoleums and the Ahmed Baba institute, home to more than 24,000 ancient manuscripts. A significant number of the manuscripts were burnt by the militants. Malian and French forces drove the Islamists out of Timbuktu in early 2013.

Response by international organizations through Resolutions and Declarations

In addition to the 1999 supplementary Protocol, there are numerous resolutions and declarations issued by international organizations calling for respect for cultural relics and condemning devastation in conflict zones. Such declarations have been issued by the UN Security Council, UN General Assembly and UNESCO. In February 2015, the UN Security Council issued Resolution 2199 (2015) prohibiting trade with Syrian cultural goods looted from the country since 6 August 1990 (Lostal, 2015) [15].

In the quest for sustained protection of cultural heritage, the UN Security Council in agreement adopted Resolution 2347 on 24th March, 2017. This Resolution has been described as historic (Fianka-Bokonga, 2017). It condemns destruction and smuggling of cultural heritage by terrorist groups

Attacks on cultural property as a punishable crime

At the end of the First World War, Sub-Commission III of the Commission on Responsibility submitted a reported that comprised a catalogue of war crimes, among them, “wanton destruction of religious, charitable, educational and historic buildings and monuments”. The proposed trial by an inter-Allied criminal tribunal never occurred (O’keefe).

In the post Second World War II trials, the Charter of the International Military Tribunal at Nuremberg provided in Article 6(b) that the “plunder of public or property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity” constitutes a war crime. Attacks on cultural property carried out wantonly amount to crimes against the very foundation and identity of a society. The war in the former Yugoslavia witnesses massive destruction of religious and cultural property. The International Criminal tribunal for the Former Yugoslavia (ICTY) stated that such devastation may constitute persecution and crime against humanity (Brammertz *et al*, 2016) [4]. The ICTY also dealt with individual criminal

responsibility for destruction of cultural property. In the case of *Prosecutor v Pavle Strugar* Case No IT-01-42-T, the accused was charged with destruction or willful damage done to institutions dedicated to religions, charity and education, the arts and sciences, historic monuments and works of art and sciences, a violation of the laws or customs of war, under Article 3 of the Statute.

The charge arose from the involvement of the accused in the bombardment of the Old Town of Dubrovnik which in its entirety was included in the World Heritage List in 1979. The implication is that buildings in the Old Town, along with its walls are designed cultural property (Sandholtz, 2005: 226) [21]. In its judgment, the ICTY held that individuals are accountable for the destruction or damage done to institution devoted to religious, artistic, scientific, or historic monuments. The accused was found guilty of war crime of “destruction or willful damage to cultural property as provided for in Article 3(d) of the ICTY Statute. The Tribunal also asserted that the rules on protection of cultural property during armed conflict now form part of customary international law and sentenced the accused to eight years’ imprisonment.

In another landmark prosecution, the ICTY tried and convicted Miodrag Jokic for the crime of destruction of cultural heritage (*Prosecutor v Jokic* Case No. IT-01-42/I-S). He was a former Yugoslav naval officer who superintended over the shelling of the Old Town of Dubrovnik. The attack resulted in huge destruction of cultural property. In 2004, the ICTY sentenced Jokic to seven years imprisonment.

The ICC breaking new ground in the quest for accountability

There was outrage across the globe when Islamists invaded the northern part of Mali and took control of Timbuktu in 2012, a territory declared by UNESCO as an endangered heritage site. The apprehension materialized when the Islamists commenced the destruction of those historic monuments. They demolished several of the legendary Sufi Mausoleums, shrines and the great Sidi Yahya Mosque in a matter of days. The swift and universal condemnation of their action did not deter them. The appeal of various governments, among them the US, UK, France and Russia to the Ansar Dine militants to halt the devastation met a brick wall.

The investigation of cultural crimes in Mali commenced following a referral by the government of the destruction and looting in Timbuktu to the ICC (Collins, 2016). The first criminal case instituted by the ICC relating to the destruction of cultural property commenced in The Hague in February 2016 with IA Mahdi also known as Abu Tairab as the defendant (*The Prosecutor v Ahmad Al Faqi Al Mahdi* ICC-01/12-01/15). He was accused of direct participation in the destruction of mausoleums in Timbuktu and handed over to the ICC by Niger.

He accepted responsibility and pleaded guilty (Barrak, 2017). His conviction by the ICC for destruction of cultural goods is the cornerstone for international jurisprudence and provides the basis for more complex forms of protection of artistic heritage. His conviction is a watershed which will enrich international jurisprudence on protection of cultural heritage.

Conviction of Ahmad Al Mahdi Al Faqi: Dawn of a new era?

The arraignment of Al Faqi at the ICC for destruction of cultural relics is instructive and novel. Indeed a milestone, it signaled the dawn of a new era in the application of the doctrine of individual criminal responsibility to destruction of cultural heritage (Sterio, 2017) [22]. However, after his trial and imprisonment, no other individual has been prosecuted for similar crimes. Yet the destruction and trafficking continues unabated, tenaciously and with impunity. Al Mahdi's case was referred to the ICC by the Malian government, thus setting a precedent. No other state has followed this track with regard to destruction of cultural property.

In spite of the plethora of laws, resolutions and declarations contrived to protect such property, destroyers, looters and traffickers are not deterred. Trade in cultural artifacts continues to flourish in the black market and provide steady funding for terrorist operations. What is required to save cultural heritage is not mere condemnation, rhetoric or lip service by the international community. The mechanism for prosecution should be activated against culprits. Unless the laws are enforced, and individuals sent to jail, the campaign to curb destruction and looting of such property will be a mirage.

The ICC can initiate proceedings *proprio motu* and extend its jurisdiction to culprits in Syria, Libya, Yemen, Afghanistan and other places where national trials cannot hold. The UN Security Council can also refer individuals to the Court as it did concerning Sudan and Libya. This means the Council has to overcome its internal wrangling, politics, ideological idiosyncrasies and rivalry for such to succeed.

The lesson from the Al Mahdi trial and conviction is that under contemporary international law, it is actually possible to hold such individuals accountable for their actions. His conviction discloses that where there is a will, there is always a way. The apparatus of accountability should be reinforced to engender respect for the law and guarantee justice to the victims at the national and international levels.

Conclusion

In relation to destruction of cultural property in Timbuktu, anybody that assumed that the law existed only on paper had made a serious mistake and should have a rethink. The case of Ahmad al-Faqi al-Mahdi is novel and exemplary. His prosecution by the ICC has taken the issue of accountability in humanitarian law to the next level. What was inconceivable during World War II and the Yugoslav conflict is now possible and real. Destruction of cultural property has been taken from the realm of rhetoric, propaganda and impurity to that criminality, responsibility and justice. Never again will individuals or groups treat humanity's common with such contempt. But it is not yet *uhuru*: it is not yet time to celebrate victory, for other threats, real threats exist. Until perpetrators in Iraq, Syria, Egypt, Afghanistan and other places of conflict are brought to justice the journey has only begun.

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