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State Responsibility for the Protection of the Cultural Heritage During Wartime Before the International Court of Justice (ICJ)

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Abstract

Armed conflict against any state can result in devastating consequences—not only for human lives but also for the preservation of cultural property. Such conflicts often lead to the destruction of monuments, the erasure of cultural identities, and, in some cases, the obliteration of entire cultural groups. This paper examines the role of the International Court of Justice (ICJ) in the protection of cultural heritage. It begins by outlining the sources and legal status of international obligations related to cultural heritage during armed conflict, with reference to key international instruments. The analysis then turns to the ICJ's evolving jurisprudence on cultural heritage, highlighting how the Court interprets existing legal frameworks and contributes to the development of customary international law in this area. Furthermore, the paper discusses the consequences of violations of these obligations and critically assesses the limitations of international law in offering comprehensive protection. It also considers the challenges in establishing State responsibility for breaches of cultural heritage obligations, particularly with respect to attributing wrongful conduct to a specific State.

Keywords: *Responsibility, State, Protection, Heritage, Cultural, Property, Wartime, ICJ.*

Introduction

The war against any state may have disastrous effects and consequences not only on humans but will certainly have devastating effects on the state's cultural property, the eradication of people's identities, the annihilation of cultural groups, and the loss of monuments (Albakjaji, 2023). No war has been waged without causing collateral property damage (Albakjaji & El Baroudy, 2024). Consequently, the destruction of cultural heritage has played a basic role in the ongoing conflicts in Ukraine, Lebanon, Syria and Iraq for various reasons.

Cultural heritage obligations are mostly created through multilateral treaties and, to some extent, through bilateral treaties and agreements focused on the protection, preservation, and cooperation in cultural matters. Both humanitarian and cultural property treaties cannot be considered examples of the 'self-contained' system which may be implemented only according to its own rules in protecting the cultural heritage during wartime (Lixinski & Tzevelekos.2017). The lack of specific rules leads to the question of whether general international rules on State responsibility can be applied to violations of these treaties before the International Court of Justice (ICJ). The ICJ confirms that if the conduct of the 'state is contrary to an international obligation of the State, then the state is responsible for this violation (ICJ, 1986). Under Article 1 of the International Law Commission's (ILC) Articles on State Responsibility (Vigni 2019), if cultural property treaties do not have specific rules for State responsibility, the ILC still applies

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to wrongful acts that violate these treaties. Additionally, if some norms related to cultural property are recognized as customary international law, their violation also falls under the general principles of State responsibility outlined in the Draft Articles (Vigni, 2019). In this regard, during armed conflicts, two broad sets of obligations apply to cultural heritage: The first group refers to obligations established by substantive "primary" international law governing hostilities and occupation of cultural property, while the second refers to "secondary" obligations resulting from State breaches of cultural heritage obligations (Jakubowski, 2015).

This paper explores the relationship between the ICJ and cultural heritage protection. First, it briefly discusses the sources and status of international cultural heritage obligations in the situation of military conflict, examining key international agreements. The paper delves into the ICJ's evolving case law on cultural heritage which provides an essential perspective for evaluating the court's interpretation of current legal frameworks and its advancement of customary international law principles on cultural heritage protection law principles specific to cultural heritage protection Second, it deals with the consequences of their violation in international practice discusses their limitations in offering complete legal protection for cultural heritage (Agarwal, 2024). However, the establishment of State responsibility for the breach of a cultural heritage obligation may also encounter serious practical difficulties in terms of attributing a course of conduct to a given State (Jakubowski, 2015).

Destruction of Culture heritage within the international legal Framework of State Responsibility during armed conflict

Within the framework of international law, international cultural heritage law and international cultural property law are the main sets of legal provisions that mandate the protection of cultural heritage and cultural property in times of peace and conflict (Qureshi, 2017). Multiple treaties, norms, and customary aim to protect against cultural heritage destruction during armed conflicts (Jakubowski, 2015).

Legal Framework for the Protection of Cultural Heritage in Wartime Before ICJ

Where appropriate, the ICJ can draw on treaties, international laws, and the international law of armed conflict (Albakjaji, 2025). However, any violation should be assessed on their grounds, as international law rules and treaties related to cultural heritage might help including those set out in the 1954 Hague Convention, the 1954 First Protocol, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1972 World Heritage Convention, the 1999 Second Protocol, the 2003 UNESCO Convention, the Convention for the Safeguarding of Intangible Cultural Heritage, and principally the 1899 and 1907 Hague Regulations, the 1949 Geneva Conventions, and the 1977 Additional Protocols. Below are details of these conventions' protections (Qureshi, 2017).

The 1954 Hague Convention, the cornerstone of cultural property protection, requires High Contracting Parties to protect and respect cultural property during peacetime, armed conflict, and belligerent occupation. Therefore, the contracting state is obligated to refrain from causing any damage to cultural heritage. The duty to respect encompasses the safeguarding of cultural property located within one's territory and that of other High Contracting Parties, prohibiting the utilization of such property and its immediate vicinity for purposes that may lead to its destruction or damage (Vrdoljak, 2016). The Hague Convention provides specific protection for cultural property in armed conflict zones when the cultural property is situated at a location that is in danger of being damaged by armed attacks (Qureshi, 2017). The Hague Convention has

also established two further protocols: the First Protocol was developed in 1954 and the Second Protocol was resolved in 1999. These Protocols prohibit military use of "historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples".

Some attention is paid to the fact that the prohibition of acts of hostility is not absolute, as it is possible to waive them in situations when there is an "imperative military necessity." Furthermore, the assertion is brought about by the lack of a definition for the notion of "military necessity" in 1954 (G He, 2015). As a result, this concept can be exploited as a means of justifying any offence committed against cultural property based on subjective evaluations of military convenience (Chechi & Romani, 2023). Thus, a serious analysis of this principle proves that the special protection for the cultural heritage sites from any army attacks during armed conflict will comply with the principle of military necessity (Qureshi, 2017 & Henkin, 1987) . Although the four Geneva Conventions do not have any specific provisions for protecting cultural heritage and cultural property, the Additional Protocols I and II were able to integrate such measures in 1977. Also, Additional Protocol I of 1977 to the Geneva Convention can be applied to all international armed conflicts. However, Additional Protocol II of 1977 to the Geneva Convention can only applied to non-international armed situations (Qureshi, 2017). The focus of Articles 53 and 85, Paragraph 4 of the First Additional Protocol 1977 is the protection of cultural property. The parties cannot harm any historic site, cultural property, monument, religious place, artistic place, or cultural heritage object under Article 53. Moreover, paragraph 4 of Article 85 of Additional Protocol I additionally recognizes that causing deliberate damage to historic monuments, cultural heritage sites, places of worship, and any cultural property will be considered a grave breach of Protocol I and a violation of the Geneva Conventions. It also prohibits any military use of cultural property sites and objects (Papaioannou, 2017). A similar provision is included in Article 16 of Additional Protocol II to the Geneva Conventions of 1949 (Drazewska, 2015; Naganand & Madhusudhan, 2024) . Since Article 1 of the 1954 Convention and Article 53 of Protocol I of 1977 define cultural property, they are commonly used to show disparities in cultural property laws. Article 53 also differs from Article 4 of the 1954 Convention in terms of cultural property immunity. The latter recognizes the belligerent's right to deviate from its commitment to protect 'in circumstances where military necessity imperatively justifies such derogation' but article 53 remains silent on the existence of such a privilege for the conflicting parties (Tigroudja, 2008). Thus, international law conflicts are inevitable, but at least one judgment might interpret the silence. In the judgment in the Strugar case, it has bridged the distinction, noted above, between Article 4 of the 1954 Convention and Article 53 of Protocol I of 1977 concerning military necessity, but it has also noted that the existing difference was not decisive insofar as the two provisions pursued a common objective is to protect cultural property as well as possible in times of conflict. Thus, without undermining the integrity of Protocol I of 1977, it is preferred to reference the 1954 Convention and the military necessity clause which reflects customary law (Tigroudja, 2008). It shows that, although Article 53 of Protocol I of 1977 is silent for military necessity like the 1954 Hague Convention, the ICTY has recognized the customary norms of military necessity (Tigroudja, 2016). and states that the attack on the Old Town of Dubrovnik was 'not justified by any military necessity'. This implicit representation of use for military purposes is also seen in Brđanin where it states that the prosecutor must establish that the destruction in question is not justified by military necessity'. Consequently, cultural property can be a military objective in many ways, but only if its 'total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage". Finally, neither customary nor conventional law provides a sufficient concept of how to assess military necessity in such cases to protect the

history (Ryška, 2021).

Among the various treaties, UNESCO contributed to safeguarding cultural heritage and property by setting up two conventions, the first in 1970 and the second in 1972. According to its preamble, a breach of obligations towards cultural property protected under the 1972 UNESCO regime in one State's territory is "an offence against all the State Parties to the Convention" regardless of whether it injures another State or not (Francioni & Lenzerini, 2003) . Article 6 of this treaty advises States not to harm cultural property in another State's territory. Crucially, the treaty also requires every state to guarantee the preservation of cultural assets that are found inside its borders. The 1970 UNESCO Convention has a special clause that includes a state's flora and fauna as part of its cultural heritage. Moreover, section III of the UNESCO Convention 1972 establishes the World Heritage Committee to conserve cultural property and heritage in peace and war (Qureshi, 2017). UNESCO 1972 does not address cultural crimes or propose a prosecution, unlike its predecessors. Instead, it administers international aid to heritage-vulnerable states. It also allows World Heritage designation of cultural sites. Though the designation is honorific—it gives a site prestige and helps preserve it, it does not carry specific penalties if it is damaged or destroyed—it has been used in legal cases to determine the punishment for crimes against culture (Muscat, 2020, Kirchmair, 2022). Therefore, while remaining within their purview, the UNESCO Conventions of 1970 and 1972 protect cultural property and heritage. While the latter forbids states from destroying cultural property and legacy during times of peace and conflict, the former forbids the illicit trafficking of cultural property (Qureshi, 2017). As a result, these regulations are inefficient in fulfilling their function as a deterrent and preventive mechanism.

Identifying Customary Cultural Heritage Law by ICJ

The obligations mentioned above are mainly based on treaties, meaning they only apply to the states that have agreed to them and do not affect others. Here, the gap stretches for the state, not parties to these treaties. The following discussion first looks at the existence of customary international law norms to have a slight divergence. Similarly, it will highlight the importance of the Contribution of the ICJ in identifying Customary Cultural Heritage Law.

The fact remains that the ICJ and the ILC have required customary international law to be a widespread practice and a sense of legal obligation (Murphy, 2015). This makes it challenging to establish binding rules, especially in cultural heritage, where examples of state behavior and legal commitments are rare (Francioni, 2022 & Henkin, 1987) .

As a preliminary hypothesis, the high rate of ratification of the World Heritage Convention and the authoritative nature of UNESCO recommendations (Mrljic,2009), which represent the near totality of the states, shows that the international community has a general opinio juris on the binding nature of principles prohibiting willful and systematic destruction of cultural heritage (Francioni, 2022 & Henkin, 1987). Firstly, the obligation is uncritically accepted because cultural heritage protection is considered a shared interest (O'Keefe, 2010). More precisely, the duty to protect cultural property is just a manifestation of an erga omnes obligation (Jakubowski, 2015; Francioni, 2022; Henkin, 1987; Francioni & Lenzerini, 2003) that the ICJ set up in the Barcelona Traction case. Later, the erga omnes obligation was confirmed by ICJ, in its Wall Advisory Opinion, that it is for all States can be held to have a legal interest in their protection. Although erga omnes obligations under the World Heritage Convention are referred by ICJ and by Scholars (O'Keefe, 2010) with more assurance than justified. Secondly, the existence of international obligations concerning cultural heritage are sometimes seen as effective erga

omnes. The prohibition of the threat or use of force in Article 2.4 of the UN charter can be used to evaluate the illegality of attacks on historical and cultural sites, as recognized by the ICJ in the Nicaragua case. Admittedly, its relevance is enhanced by the Security Council's recognition of cultural heritage attacks as threats to peace and international security under Article 39 of the UN Charter (O'Connell, 2004; Francioni & Lenzerini, 2003). Coherently, the ICJ has supported the principle of self-determination in its advisory opinions on South West Africa, Western Sahara, The Wall in Occupied Palestinian Territories, the 2019 opinion on the Chagos Archipelago which it can be related to the destruction of cultural heritage to the extent that participation of people in cultural life, in the enjoyment and enactment of their cultural heritage (Francioni & Lenzerini, 2003). Finally, having regard to all these cases by ICJ, it is plausible to conclude that the obligation to protect world heritage sites under Article 4 of the World Heritage Convention could be taken as an obligation erga omnes that, consequently, all States would be entitled to submit claims for its violation before the ICJ, assuming the parties accept its jurisdiction (Martínez, 2013).

Interestingly, the ICJ has always been involved with other issues related to cultural heritage, such as national interests, historic rights, and cultural diversity "rights." These issues have grown and changed until they were officially recognized in the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. This way is also appeared in some cases before ICJ which the Court has dealt with a wide range of situations where cultural heritage related rights have emerged in connection with, or in opposition to, national interests and historic rights (Gagliani, 2022) . In sum, the ICJ has rarely addressed cultural heritage issues under general international law (Gagliani, 2022) which includes customary international law and general principles (Gagliani, 2022). Later international conventions shifted from a pure a State-sovereignty approach, and the Court emphasized cooperation and negotiated solutions for cultural heritage (Gagliani, 2022) in its case concerning The Temple of Preah Vihear case between Cambodia and Thailand. The ICJ made it clear that Thailand must respect Cambodia's sovereignty over the temple area, return cultural heritage items taken during military occupation, cooperate to protect the temple's cultural and religious value, and avoid actions that could harm the heritage. In several contexts, the Court pointing to the Article 6 WHC, has upheld that the prohibition of the destruction of cultural property is an erga omnes obligation that does not only bind the State under the jurisdiction of which the injured cultural property is located, but it also affects other States acting in the proximity of this property. Moreover, the ICJ recognizes the importance of this site at the local and universal levels (Chechi, 2016). These statements imply a general sense of duty to respect cultural heritage of great importance, but fall short of a specific recognition of a customary norm prohibiting the intentional destruction of cultural heritage (Francioni & Lenzerini, 2003). Unfortunately, the ICJ did not clearly identify a customary norm against the intentional destruction of cultural heritage. The court showed its willingness to hear international cultural heritage law cases for the first time. Another case, brought by Liechtenstein against Germany in 2004 for the return of certain works of art confiscated after World War II in a third country, never moved beyond the preliminary objection phase when the Court declined to ex¬ercise jurisdiction.

Another significant aspect of international practice supports the existence of such a customary norm. In the Genocide Convention cases, the ICJ frequently cited the ICTY's jurisprudence, undoubtedly the first field of international law recognizing a special status for cultural heritage dedicated to religion (Francioni & Lenzerini, 2003) during armed conflicts in a judgment, in which both defendants, Dario Kordic and Mario Cerkez, in Article 3(d) of the Statute of (ICTY)

(Francioni & Lenzerini, 2003). In the Tadić case (Abtahi) the ICTY would confirm the customary law character of the prohibition to destroy cultural heritage in armed conflict, including non-international conflict (Francioni & Lenzerini, 2003) . In its recent jurisprudence, the ICJ in two cases has also had occasion to address the obligation of states to respect and protect forms of cultural heritage related to ways of life, social structures, and socioeconomic processes, which today fall within the broad category of "intangible cultural heritage." (Francioni & Lenzerini, 2003). The jurisprudence of the ICJ shows a clear tendency to take into account the value of cultural heritage for the purpose of interpreting other norms or principles of international law applicable to the case. However, we cannot say that such jurisprudence offers conclusive evidence of the existence of a customary norm prohibiting the destruction of cultural heritage even in the limited context of armed conflict. We need to look at other manifestations of the practice to establish the existence of customary norms (Francioni & Lenzerini, 2003).

Fascinatingly, the Claims Commission was formed by the peace accords to end the 1998–2000 war between Eritrea and Ethiopia found Ethiopia responsible for the deliberate destruction of the Stela of Matara, an Eritrean artefact of considerable historical and cultural value. Though Eritrea and Ethiopia were not parties to the 1954 Hague Convention on the Protection of Cultural Property, the Commission claims the stela collapsing violated customary international humanitarian law (Francioni, 2011; Daly, 2005). This is a notable case of abstracting from well-settled treaty rules concepts to determine the existence of customary international law. However, the commission in this case did not go beyond treaty practice to identify a customary legal basis for the necessity to prevent damage to cultural property. In the cases of a major transgression of international cultural property law, emerging customary rules acknowledging the obligation to protect cultural property in the interest of mankind seem to admit State responsibility independent of time and place. State responsibility is recognized in emerging customary norms to respect the obligation to protect cultural property for the benefit of humanity, regardless of time or location, particularly where the violation constitutes a serious breach of international cultural property law (Vigni, 2019; Francioni, 2004).

Based on the research presented above, it has been determined that there are basic principles of international law and customary norms that provide general obligations to protect and avoid the intentional destruction of cultural assets. Despite not endorsing the views of certain authors who assert that the regulations safeguarding cultural property during conflicts are mandatory, it is believed that the rationale for the extraordinary significance of such property to humanity, which underlies various conventions, including the 1972 World Heritage Convention, necessitates a coherent extension in the conventional assertion that any deliberate harm to this unique category of property constitutes an offence against humanity. All states are obligated to fulfil these commitments, which extend beyond the narrow scope of the applicable treaties.

Consequences Arising from State Responsibility Reparation for Damage to the Cultural Property

All the elements examined above concur in forming a solid legal basis that Every breach of a primary obligation by a State to abstain from and prevent the intentional destruction of cultural heritage in the context of armed conflict, (Francioni & Lenzerini, 2003) as ruled in Stela of Matara, (Francioni & Lenzerini, 2003). Regardless of the origin of the obligation (treaty or customary law) or its character, entails the international responsibility of that State.

Invocation of Responsibility of the Responsible State by the Injured State before ICJ

Regarding the violations of cultural heritage obligations, Article 42 Draft Articles recognizes the right of the injured State or States to invoke the responsibility of the wrongdoer State.

Firstly, identifying the wrongdoer state, according to the ILC, "every internationally wrongful act of a State entails the international responsibility of that State." Under Article 2 of the responsibility of states for internationally wrongful acts (ARSIWA), the ICJ explicitly links the creation of international responsibility with the existence of an "act being attributable to the State and described as contrary to the treaty rights of another State." As mentioned earlier, The ICJ confirms that if the conduct of the 'state is contrary to an international obligation of the State, then the state is responsible for this violation.' Moreover, the ICJ notes that a State must exercise due diligence to prevent actions that violate international law and to take appropriate measures to prosecute and penalize such actions if they do happen. In its judgment of the Threat or Use of Nuclear Weapons , the ICJ highlights this rule by noting that the parties intend to "limit the potential danger to mankind from new means of warfare."(El Baroudy,et al 2024) Two elements have been confirmed regarding the attribution. Firstly, the conduct being examined must be attributed to the State according to international law. Objectively, for the State to be held responsible, the conduct must violate an applicable international legal obligation. Secondly, the attribution has been characterized as "subjective" concerning the intention or knowledge of State organs or agents. The determination of whether responsibility is considered "objective" or "subjective" in this context relies on several factors, such as the content of the primary obligation being addressed. Thus, when a domestic organ, whether legislative, judicial or administrative, whether central or local, does not adopt preventative measures required under international law for the protection and conservation of cultural property, this may generate the responsibility of the State to which this organ belongs for the damage of such property, (Ruiz, 2017) as the ICJ expressly stated in its 1962 judgment of the Temple case.

Another Relevant Piece of Practice is the Decision By the Eritrea-Ethiopia Claims Commission

(EECC) concerning the Stela of Matara, The EECC affirmed the liability of Ethiopia, as the then Occupying Power of the region, for the unlawful damage inflicted on it. As the Occupying Power of the region where the stela was damaged, Ethiopia could be held responsible even if (as the EECC acknowledges) it was not certain whether the destruction was authorized or condoned by the government or it was the result of the autonomous decision of some soldiers.

In sum, international practice has so far provided enough evidence to support the view that a State cannot escape the attribution of an illicit conduct that one of its organs has perpetrated against cultural property (Vigni, 2019).

The three conventions that comprise UNESCO's original system of cultural protection are in many ways laudable and exceptional. They speak to a recognition at the international level that cultural heritage is of distinct character and value, and therefore deserving of distinct protections. Inherent weaknesses in their frameworks, however, particularly in the 1954 Hague Convention, rendered these treaties ineffectual on their own as either a preventative or a punitive measure against cultural crimes (Muscat, 2020).

Secondly, the status of the injured State can be easily identified in the case of the breach of bilateral obligations. If the obligation breached is owed to a group of States or to the international community as a whole, only specially affected States may invoke it unless the breach "is of such

a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation. However, the responsibility affecting bilateral relationships also occurs when the violation concerns a norm of a multilateral treaty or of customary nature the compliance with which may also involve the interest of the international community. In fact, the right to invoke responsibility does not have to be assimilated to the interest in the achievement of the aim for which an obligation was established. For example, although the preservation of underwater cultural heritage must be ensured "for the benefit of humanity" according to Article 2(3) UHC, the right to invoke the responsibility for the damage to cultural objects that are located in the territorial sea of a State belongs to the latter State, which, in this context, has the role of the 'injured State' (Vigni, 2019). In addition, the invocation by a single State of the responsibility of another State may also involve collective obligations. In these circumstances, the single State may only invoke responsibility in two specific cases: when it has been specially affected by the breach of a collective obligation or when the obligation is of such a character that its breach "radically changes the position of all the other States to which the obligation is owed", as established by Article 42(b)(ii) Draft Articles. Article 42 Draft Articles appears to be strongly based on the bilateral approach that traditionally applies in international law and identifies two essential actors, namely the wrongdoer and injured State. The only attempt at recognizing collective rights corresponding to collective interests, such as those safeguarded in cultural property conventions, may be acknowledged in paragraph (b)(ii) of this article (Vigni, 2019; Gray, 2020).

Notwithstanding the high stakes, reparations for the destruction of cultural property were neglected as an approach in international law and practice, since destroying or looting cultural property were often treated as legitimate reprisals1 or spoils of war (Moffett et al, 2020). Moreover, such treaties emphasize the physical and proprietary manifestations of heritage, neglecting its more intangible manifestations that are equally destroyed – such as language, traditions, oral history, songs and dance (Blake, 2017). As a result, there is a vast gap when addressing the real impact of war on communities whose cultural heritage, and, through it, the cultural bonds between individuals and across generations are destroyed (Moffett et al, 2020).

Making Appropriate Forms of Reparations for the Destruction of Cultural Heritage Before ICJ

First, it is important to accept that reparations for the destruction of cultural property are overlooked, as such acts are frequently regarded as justified reprisals or spoils of war (Moffett et al, 2020).

Furthermore, these treaties prioritize the tangible and proprietary aspects of heritage, overlooking its equally intangible heritage (Blake, 2017) Consequently, there exists a significant gap in addressing the actual effects of war on communities, when cultural heritage are destroyed (Moffett et al, 2020).

Restitution has traditionally been seen as a way to deal with illegal appropriation of cultural items and buildings. As part of the Treaty of Versailles, Germany was ordered to return property taken from France and Belgium (Moffett et al, 2020). Based on this practice, the assessment of the measures was set up to give property looted by the Nazis back to Jewish Holocaust victims. But there is still controversy about how to judge the elements taken between 1944 and 1945 in relation to German cultural property in cultural relations between Russia and Germany (Jakubowski, 2015).

The First Protocol of the 1954 Convention confirmed the duty of the contracting States to take all possible measures to prevent the theft, robbery, looting or misappropriation of cultural property during international armed conflicts. This implies that cultural property cannot be held as war spoils and the State must return the cultural object to the formerly occupied authorities (Caligiuri, 2024). Moreover, Article 38 of the 1999 Second Protocol to the Hague Convention for the Protection of Cultural Property specifies that the Convention does not alter state responsibilities, particularly with the obligation to provide reparation (Jakubowski, 2015).

Thus, the lack of reparation does not imply that reparations cannot arise from a state's failure to fulfil its obligations (Caligiuri, 2024), resulting in the evolution of soft law approaches via resolutions from international organizations and professional entities with mandates to protect cultural heritage and prevent its intentional destruction (Caligiuri, 2024). As for objects, The 1973 Resolution on the Restitution of Works of Art to Countries Victims of Expropriation and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property states that the restitution of cultural property taken from former colonies or occupied territories was necessary for the cultural development of the new States and 'a just reparation for the damage suffered' (Jakubowski, 2014). Since they only cover circumstances involving stolen or unlawfully exported cultural property, all these treaties have a restricted scope; they cannot be enforced retroactively and their effective application may depend on the consensus of and cooperation among the countries included. Consequently, the probability of cultural property taken from colonial settings being restored inside these convention systems is rather low (Caligiuri, 2024). Still, some academics have noted that other ideas of international law—such as the principle of cultural self-determination—may guide problems of restitution of cultural property taken during armed conflict (Nafziger, 2008). Among these treaties, it also can be observed the UN Security Council Resolution 1483, After the 2003 military action in Iraq, urged the Member States to return cultural objects illicitly removed from Iraq.

According to Article 35 of ILC, restitution means "to reestablish the situation which existed before the wrongful act was committed." Article 36(1) confirms that restitution serves as the primary remedy of reparation while state responsibility for compensation would be made only if "such damage is not made good by restitution." The obligation to perform restitution could be precluded if the objects that would be subject to restitution are materially impossible to return (Zhang,2021).

Due to the unique nature of the cultural properties and their inherent connection to a State's historical, spiritual, or religious heritage, the assessment of this proportion should prioritize restitution over compensation. International practice favors the return of illicitly removed cultural property as recompense (O'Keefe, 2010).

Because international norms on State responsibility have reparatory nature, the ICJ has rarely been able to resolve this problem. The most egregious breaches of cultural property responsibilities, especially an intentional action, permit a punitive consequence. With the exception of the Convention on the Prevention and Punishment of the Crime of Genocide, it allows sentencing States parties for breaching its substantive norms, and apart from treaties that States may adopt an agreement to resolve specific disputes, such as the Eritrea-Ethiopia agreement establishing the Claims Commission that handled the Stela of Matara case.

The Temple case has illustrated that the ICJ affirmed Cambodia's sovereignty over the territory housing the Temple, which implicitly included the right to the restitution of the cultural artifacts that Thailand may have removed during its military occupation of the region (Vigni, 2019).

In fact, "the international community has approved restitution-in-kind or compensation where the item cannot be returned, because it has been destroyed, lost, or it its return may impact negatively on the cultural or religious heritage of the group against whom the restitution order is made". In the case of Banja Luka, on the site of a damaged mosque, restitution can also include restoring land sites and titles to communities where new structures have been destroyed over culturally significant property (Moffett et al, 2020). The Human Rights Chamber for Bosnia and Herzegovina (HRCBiH), for example, did not have the ability to implement restitution as a preferred remedy since it was not practical. It was decided not to order the removal of the church but instead it ordered restitution-in-kind by requiring Republika Srpska to offer a parcel of land available to the Islamic Community and enable for the (re)construction of a new mosque on this alternative site (Jakubowski, 2015).

The State responsible for the property destruction is obligated to compensate for the resulting damage, provided that the damage is not restored by restitution. Compensation ought to be evaluated according to relevant interests, similar to the stringent methodology employed in cultural property restitution (Vigni, 2019).

Compensation has been provided for historic and religious sites that were damaged during the armed conflict. In the Eritrea-Ethiopia Claims Commission dispute, the responsible State identified for unlawful destruction to cultural property was mandated to issue an apology and provide compensation for the restoration of these damaged sites (Jakubowski, 2015).

Ethiopia was granted $4,500,000 by the Eritrea-Ethiopia Claims Commission for looting and shelling Ethiopian churches, mosques, and other properties. Additionally, Ethiopia was awarded $50,000 for blowing up the Stela of Matara obelisk in Eritrea, which is 2,500 years old . Insofar as it is established, compensation shall encompass any financially assessable damage, including loss of profits.

Compensation can also be used to support culturally and religiously appropriate tributes or funerals for those who are killed. Compensation can cover moral damages from damage to holy or religious sites a group’s cultural identity, and discrimination for cultural destruction. Compensation is contentious since it is impossible to accurately estimate the economic loss that might result from damage to cultural heritage. International administrative claims commissions seldom compensate for tourism effects since they are speculative and unproven (Moffett et al, 2020). Cultural property and heritage injury victims may choose compensation over restoration. Compensation alone cannot reduce cultural property damage pain's extent and societal impact. Cultural property and heritage harm victims may prefer compensation over restitution. This shows that compensation alone cannot ameliorate the size and social nature of cultural property damage pain.

Under general international law, the sole consequence for state responsibility is satisfaction, necessitating an apology from the responsible state. The State responsible for the destruction of cultural heritage is obligated to give satisfaction for the harm inflicted by that act, to the extent that it cannot be remedied through restitution or compensation. In its order establishing reparation in the Al Madhi case, the ICC recognizes moral damage to emphasize the human aspect of cultural property protection and classify the destruction of Timbuktu's historic buildings as a crime against humanity rather than a crime against property (Vigni, 2019). Nevertheless, satisfaction cannot be deemed an adequate remedy for violations of obligations pertaining to cultural property. Initially, as per Article 37 of the Draft Articles, satisfaction consists just of an expression of regret, which the ICJ determined in the LaGrand decision is

inadequate in instances of violation of fundamental interests. Satisfaction represents a result of residual character regarding restitution and reparation. In the Stela of Matara case, Eritrea sought formal apologies following Ethiopia's accountability for the obelisk's destruction; however, the Eritrea-Ethiopia Claims Commission deemed apologies inadequate and mandated monetary compensation (Vigni, 2019). In this instance, compensation encompassed the expenses for Stela reconstruction. Consequently, some scholars argue that this monetary compensation should be regarded as a type of restitution. This concept of restitution argues that the legitimacy of cultural legacy is contingent exclusively upon its material existence. Consequently, the emphasis on prosecution and punishment aims to deter future abusers, however this approach affords victims little possibilities for redress (Moffett, et al. 2020).

Conclusion

In conclusion, the ICJ's contribution to international cultural heritage law is vague and often ineffective due to the varied spectrum of cultural heritage issues, and a gap is left by cultural property treaties and international criminal and humanitarian conventions regarding state responsibility for their violations of their obligations to conserve cultural heritage during armed conflict. While international law requires states to preserve, protect and prosecute the destruction of cultural property, the ILC can fill the gap existing in the legal framework and might determine the conducts attributed by a state and might identify the legal consequences. having regard to all these considerations. The ICJ's contribution shows the complex nature of international heritage law. Consequently, the ICJ refers to other international instruments like conventions and resolution of security council because the courts confirm that cultural heritage is a part of also part of the common concern of all humanity. no international legal instruments have been so far provided to hold States accountable in the same manner in which individuals are prosecuted before international criminal tribunals. This punitive task has been left to the Charter of the UN and, particularly, to Chapter VII the application of which is notoriously not very effective (Vigni, 2019).

Finally, because every conflict is unique, and every past is different, but justice is challenging. Along the same lines, because the safeguarding of intangible cultural heritage can amount to an erga omnes obligation, today, the states and the UN are encouraged to collaborate to better protect and preserve cultural heritage outside the states by making this fragmented legal framework and complex case law enforceable by states and the ICJ.

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