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Measuring the Protection of Cultural Property Under International Humanitarian Laws: Analysis of Russia-Ukraine Conflict

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Abstract

The debate on the topic of rules regarding the cultural property's protection under International Humanitarian Law has renewed its significance in modern day armed conflicts. Since the latest technological and other advancements in the field of warfare the complexities regarding application of laws in warzone has also increased. Specifically, protection of cultural property during an armed conflict has posed serious challenges to both International Humanitarian Laws and International Criminal laws. Undoubtedly, United Nations does provide a multilayered model for protecting the property holding cultural value for states, however, the gaps in implementation makes it challenging for the parties to comply fully. This article undertakes an analysis of laws related to cultural property focusing principally on IHL particularly with the reference of current conflict between Ukraine and Russia. Furthermore, it provides certain recommendations that may be adopted to protect property holding cultural importance and value while addressing the present gaps.

Keywords: Armed Conflicts, Cultural Property, International Criminal Laws, International Humanitarian laws, -Russia- Ukraine Conflict.

Introduction

Beginning of the year 2022 was not as expected: world on 24th February 2022 saw the very established norm of prohibition of use of force violated, when Russia launched a special military operation on Ukraine. However, this operation was the outcome of ongoing and escalated tensions between Russia and Ukraine named as Russo-Ukrainian conflict, which started in 2014 with the Russian annexation of Crimea, multiple navel incidents, political tensions and the war in Donbass. Russia has always been alleged by the international community and Ukraine itself of covertly supporting the separatists against Ukrainian Government in the Donbass long before 2014. Though this conflict was not new, however, world did not expect this converting into a full-fledged war. Apparently, this invasion was the consequence of Ukrainian desire of joining NATO forces which was termed by Putin as USA's attempt to come closer to Russia. Moreover, this is an ongoing invasion till date bringing a lot of destruction, devastation and desolation not only on Ukrainians but at the whole international community as well.

While considering war as an unpleasant reality, international community established a robust regime to monitor war activities from waging war to the rehabilitation of the defeated state. Nevertheless, it is challenging when the established norm of respect for sovereignty and internal matters of the states' interplays with the application of international law. In order to bring states into strict adherence of laws, international community has drafted sturdy and powerful International Human Rights Law (IHRL) regime which protects the rights of people during peacetime, along with the International Humanitarian Laws (IHL), also known as Laws of Armed Conflict (LOAC), that triggers in war times to protect the rights of civilians and combatants. IHL or LOAC is a comprehensive body of rules that: (i) intends to limit the effect of war, (ii) also aims to protect all those who are participating in war or no longer participating along with the protected persons under IHL, (iii) restricts the means and methods of warfare (ICRC, 2022). Moreover, 1949 Geneva Conventions are the principal instruments for LOAC, and states are obliged by the rules set forth in these Conventions either through ratification or by them being *Jus Cogens*.

Nevertheless, the much celebrated and accepted principle of distinction which makes the cornerstone of IHL does permit attacks but only on military objectives, facilities and personnel and extends an extensive protection to civilians thus, by prohibiting all attacks on civilians, civilian facilities and objects.

Cultural property may undoubtedly be at jeopardy in several ways. During an armed conflict, unintentional damage can occur occasionally (collateral damage). Sometimes properties are intentionally targeted and at times looted by the civilians. Along with the violations carried out by the attacking force, states under attack also becomes liable for neglecting their cultural properties and leaving them without any protection during an armed conflict. The obligation of protection of archeological sites is on the parties of armed conflict as per the established international law norms. Moreover, efforts were made at the international level by The United Nations Educational, Scientific and Cultural Organization (UNESCO) by passing three conventions post World War II to recognize and stop the war crimes and prosecute the perpetrators. Regrettably, these conventions such as the Protection of Cultural Property in the Event of Armed Conflict (1954) (Hague Convention); UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970); and Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), have not been properly implemented making them ineffective on their own as a dependable method of deterrence or prosecution.

Notwithstanding, the AP II (Additional Protocol II) to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which went into effect in 1999, was an attempt by UNESCO to address these shortcomings which will discuss later. AP II was drafted by keeping in view precedents such as Lieber Code, 1863 stating "classical works of art, libraries, scientific collections, or precious instruments ... must be secured against all avoidable injury" (Article 35, Lieber Code). Likewise, Brussels Declaration of 1874 states "all seizure or destruction of, or willful damage to, institutions of this character ..." cannot be made without any legal justification. (Article 8, Brussels Declaration, 1874). Later, the Hague Conventions of 1899 extending responsibility to respect laws of war to belligerents as well by stating that whoever does damage to the any institution having historical value or work of art with intention of destroying such buildings will be prosecuted. (Article 56, Hague Conventions 1899). Moreover, Hague Conventions 1907 in Article 27 goes little further and along with prohibiting attacking state to protect the cultural property makes besieged state responsible for identifying the presence of such buildings which comes under protection. (Article 27, Hague Convention, 1907). Furthermore, the International Tribunal for the Former Yugoslavia (ICTY) that has successfully prosecuted several accused with reference to crimes against cultural property during an armed conflict sets a high bar of accountability for the violating party to the conflict. These precedents allowed the Second Protocol and the Rome Statute of the International Criminal Court (ICC) to work together to increase the protections for cultural property on a worldwide scale.

In the wake of the wars in Iraq and Syria in 2003 and 2011, respectively, concern over the protection of cultural property has once again surfaced. Incidents of cultural property being deliberately destroyed, as reported pertaining strong symbolic, traditional and religious significance shook the international community. Intentional attacks on mausoleums of saints, mosques led the community to deal with this issue pragmatically. Al Mahdi, a landmark case of 2016, who was found guilty of intentionally destroying religious and historic buildings in Timbuktu, was tried by ICC. ICC for the first time gave the ruling that any intentional attack on cultural property will be treated as a war crime (Wierczyńska & Jakubowski, 2017). Al Mahdi case sent a symbolic, strong and an authentic message to the international community that any intentional attack on property possessing cultural significance is a crime of serious nature and will be dealt as per the international criminal laws' regime.

Before analyzing the laws and current trends about the topic under discussion, it is imperative to comprehend the concept and features of a cultural property as defined by international law.

Defining Cultural Property?

The term "cultural property" was given its first official legal definition and an elaborated one in Article 1 of the "1954 Hague Convention for the Protection of Cultural Property". It defines Cultural Property as:

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

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

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monument’.” (Article 1, Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954)

For the purpose of this paper, the above-mentioned definition is taken in consideration.

Importance of Culture

Notwithstanding, the debate around the world over what constitutes cultural property, historians and jurists unanimously agreed on the importance of preservation of cultural property in war times. Historical sites and artifacts are significant to promote cultural diversity and access to them is an important feature of right to enjoyment and sense of belonging as explained in the UNESCO report. (Cultural Heritage,” UNESCO (UNESCO, February 11, 2022). Preservation of culture is significant not only for the identification of any community but also for the remembrance and recognition of the past. Societies remember and celebrate their past through memories which they create through constructing monuments, curating museums and preserving buildings.

Anthropologist Clifford Geertz gave a comprehensive meaning of culture as a pattern of meanings historically transmitted through symbols which can be used for communication. (Qodim, 2009). It

can be concluded that culture is shared values, beliefs, attitudes of life which society itself feels associated with and transmit to their next generations in symbolic form which must be protected and respected by the communities.

IHL and Cultural Property

Armed conflict can endanger cultural property of the parties in multiple ways. IHL successfully attempts to cover the main aspects of protection however, it remains short when it comes to implementation and accountability of the responsible party. By probing into legal history, Lieber Code of 1863 leading to The Brussels Declaration in 1974 along with the Oxford Manual 1880 as discussed above makes significant part of the current laws of IHL. Recent treaties such as the 1899 and 1907 Hague Accords, modeled after the laws clearly prohibits destruction and seizure of cultural property. (The Hague Conventions Respecting the Laws and Customs of War on Land, 1899 & 1907).

Likewise, sponsored by the New York Roerich Museum “Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments”, 1935 with only ten state parties, and limited jurisdiction, continues to be unique as the first document to achieve unanimity on the idea “that the treasures of culture [ought to] be respected and protected in time of war and in peace.” (Preamble, Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, 1945).

The groundbreaking, “Convention on the Protection of Cultural Property during Armed conflict” adopted by UNESCO in 1954 (Hague Convention, 1954) was followed by the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970). These conventions altogether presented a comprehensive, robust and far-reaching legal regime for the protection of cultural property in war times.

It was not until the Hague Convention 1954 that a vast and exhaustive definition of cultural property was embraced. Convention 1954 has widely defined the concepts of cultural property in Article 1 as explained above. This definition followed by asserting obligations on state parties to respect the property of the besieged state in Article 3 of the same. Moreover, Article 3 obligates the parties to respect the property both within and outside their territory. (Article 3, Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954).

Furthermore, the Convention 1954 extensively explain the notion of cultural property and for the first-time cultural property envisages the following features to qualify for the protection under an armed conflict:

- Property that is extremely significant to the people and state due to its cultural legacy.
- Property includes moveable or immovable:

Article 4 of the Convention identifies that any such use of the property which might destroy or damage the property of cultural significance during an armed conflict is prohibited. This Article additionally protects cultural property from any kind of hostility such as pillage, misappropriation and theft, (Article 4, Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954).

In both internal and external armed conflicts, warring parties are under a stringent obligation under the Hague Convention of 1954 to respect each other's cultural property. Additionally, two protocols were adopted to Hague Convention 1954 in 1954 and 1999 respectively. Both the protocols reinforce the rules of Hague Convention 1954, however Additional Protocol II (AP II) took a leap in this manner and envisages a comprehensive mechanism while focusing on military necessity which will be discussed later in this paper.

In addition, the Hague Convention of 1954 was the first comprehensive treaty on the protection of cultural property which urges states to provide protection to the property holding significant cultural value to them during peace times while foreseeing the possible effects of wars and taking appropriate measures. Also, it further pushes states to respect the property envisaging cultural value even beyond their territories. Furthermore, convention discourages states to use such valuable property for hostilities.

Interestingly, despite such a comprehensive explanation by the Convention, religious buildings are not included in cultural property on its own but can qualify for protection if they are already declared as “monuments of architecture, art or history” (Article 1, Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954).

Additionally, with the above-mentioned regulations and responsibilities, Convention 1954 places the obligation on states to identify and clearly mark the cultural properties for them to be easily distinguished. “The blue shield” emblem: a protective symbol identified in Article 6 of the Convention 1954 to classify cultural property has been declared as a mandatory step for states in order to receive protection for the said property. (Article 6, Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954). “The blue shield” is cultural equivalent to Red Cross and enjoys status of protection as per laws of war. Furthermore, Article 17 of the Convention 1954 elaborated on the use of the emblem for the protection such as for the identification and transport of the cultural property as explained in the Article 12 & 13 respectively.

Additionally, along with the above-mentioned protection, any other use of emblem is forbidden. Moreover, the usage of the emblem needs to be authorized by the competent authority as stated in Article 17 of the Hague Convention.

It is also commendable that the Convention 1954, equates “damage to cultural property” with “damage to the cultural heritage of all mankind,” demonstrating right away that it gives cultural property significance that goes beyond material value” (Frigo,2004).

Though the Convention 1954 has given an exhaustive narrative over the protection of cultural property, however, Article 4(2) of the very Convention complicates the matter in terms of “Military necessity”- that is, cultural property can be targeted, damaged, or ruined, conditioned the necessity to advance a military objective. (Article 4(2), Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954). By providing states with the waiver in case of “imperative military necessity” and leaving it open for subjective interpretation has made the implementation of rules of IHL mores complex, confusing and challenging, though taken care later in AP II of the Convention 1954 yet, leaving many complexities in implementation.

Enhanced Protection

AP II established ‘enhanced protection’ mechanism which to some extent brings cultural property under protection and parties under scrutiny and accountability. Article 6 of the AP II enjoys the status of a milestone for protection of cultural properties as it guarantees that demolition of any protected property can never be justified under the well-established notion of military necessity. Article 6, further defines “military necessity” where it might be “imperatively required” in following situations:

“(a) a waiver based on imperative military necessity . . . may only be invoked to direct an act of hostility against cultural property when and for as long as:

i. that cultural property has, by its function, been made into a military objective; and

ii. there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective". (Article 6(a), Additional Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1999)

AP II with its clarification and definition of 'military necessity' has gone little further and established a committee (hereinafter, The Committee) to ensure its compliance. Furthermore, in case of any violation AP II contains various sanctions. The Committee is composed of 12 state parties as executive members and is authorized to deeply scrutinize property that is proposed by the states or any organization to be under cultural protection as per its mandate.

AP II also sets the procedure in Article 11 through which states can submit their application for their properties to come under the ambit of enhanced protection. This protocol set and established a foundation on which further legal regime was built on such as working of ICC in this respect is worth mentioning.

ICC and Cultural Protection

Cultural protection in International Criminal law is not a new phenomenon and has been incorporated in statute of International Criminal Tribunal of Yugoslavia (Statute ICTY). Article 3(d) of the ICTY statute incorporates any act will be counted as violation of war laws if it includes or related to seizure, destruction or any willful damage to the buildings which possess any of the religious, educational or charitable purpose. (Article 3(d), Statute ICTY). Tracing its origin to the Hague Regulations of 1907, this article protects the culture of the conflicting parties. With the expansion and progress of international regime in criminal laws, protection of cultural property during conflicts started taking the front seat during debates at international forums. Drafting of Rome Statute is one of the examples.

Adopted in July 1998, The Rome Statute (Rome Statute) confers the powers and jurisdiction to the Court to deal with crimes against or effecting cultural property (Articles. 8(2)(b)(ix), 8(2)(e)(iv), Rome Statute). Significance of the cultures in order to unite people of "common bond" found its place in the preamble of the Statute. (Preamble, para 1, Rome Statute).

Additionally, Article 8 of the Statute clearly states that any intentional attack on any building holding values to religion, arts, education, charity, history etc. will be considered as war crime as they do not constitute part of military objective. This article further establishes the jurisdiction of the ICC for international and non-international armed conflict at national level. (Article. 8, para. 2(b)(ix) and (e)(iv), Rome Statute).

However, ICC's supplementary jurisdiction only permits the court to act when a state is unable to pursue alleged crimes. Furthermore, according to international law, states must pass laws that allow them to prosecute those who commit such crimes.

When taken together one can clearly observe that all these treaties, conventions, regulations and statutes contain minimum standard of protection for cultural property during an armed conflict. Furthermore, this legal regime seems to put limits on the states' acts during an armed conflict. Moreover, basic instruments drafted and implemented for guarding cultural property such as 1949 Geneva Conventions, 1954 Hague Convention, Additional protocols of 1954 and 1999, Rome Statute, all require ratification from the states in order to be fully applicable and implemented.

Therefore, it is vital that treaties be broadly approved and generally accepted to provide a reliable compliance mechanism.

Legal and Practical Challenges faced by Contracting States for the implementation of the Hague Convention

After analyzing the present regime which has been set up for protecting property of cultural significance, during conflicts it is pertinent to understand and analyze how these treaties and regulations have responded to all the challenges as discussed during armed conflicts. In order to understand the unique challenges regarding cultural protection, this paper discusses the example of Iraq invasion by the coalition forces in 2003. Iraq bearing a rich cultural and religious history makes it a unique and powerful example for this paper. Preceding attack on Iraq by the coalition forces, world witnessed one of the worst damages to cultural heritage within days. Baghdad National Museum was attacked on April 10th, 2003 resulting in disappearance of thousands of objects. Few days later, the National Library was set on fire. (Palumbo, 2005). Reportedly, thousands of volumes and historical documents were destroyed, and many sites were looted. Nevertheless, the collapse of a system gave passage to many gangs and groups to indulge in these crimes. International community showed grave concerns over converting the archeological sites into military base such as at UR, a third-millennium BC site in Southern Iraq, and at Babylon, near Hilla, a second and first-millennium BC site of great historical importance by the US led coalition.

However, establishment of Iraqi Special Tribunal (IST), in order to manage the post Iraq invasion crimes somehow failed to approach the matter of cultural property protection due to the IST statute which did not categorically include and link cultural property protection with war crimes or crimes against humanity. (Ralby, 2005). Later, with the ISIS forces taking over Iraq in 2014 many sites were declared in danger by UNESCO such as Hatra. (UNESCO World Heritage Convention, 2015). Such instances showed the International community that just drafting legislation is not enough as its not successful unless and until accepted, recognized and adopted by states at large.

As discussed, the international law became more clear, robust and structured with reference to the protection of property envisaging cultural significance during an armed conflict in recent times. However, though the law became extensive over the said issue, yet it proved not to be so effective due to certain lacunas. Primarily, Cultural property is defined differently in each document as discussed above, which do not give a clear picture. According to The Hague Rules, any structures used for benevolent, scientific, artistic, or religious purposes, as well as all historically significant structures and individual works of art, are protected property during times of armed conflict. To offer an advanced level of protection while keeping in view the subjective character of the terms “historic” and “artistic” drafters of the Convention employed the term “Cultural Property”. Following 1954, UNESCO adopted two further conventions that are relevant in this case (1970 and 1972), and they do so by employing definitions that use meanings that are noticeably different. The Convention 1970 mentioned movable objects and has included the objects of paleontological interest such as rare specimens and collection of flora, fauna, minerals and anatomy. However, the Convention of 1972 talked about cultural heritage of immovable nature, once again broadening the concept by embracing landscapes. Nine recommendations, each defining cultural property differently, were adopted by UNESCO between 1956 and 1980. Therefore, relatively ambiguous definitions can lead to omissions, and a more consistent definition is needed.

As far as the applicability of the law is concerned some scholars such as Gerstenblith are of the view that Article 4 of the Convention 1954 must also include civilian looters vandalizing the cultural property (Gerstenblith, 2010). However, the matter of concern is the notion of “imperative military necessity”. Given the ambiguous definition of an imperative military action, it seems that states can get away with each of their act under this excuse. According to Forrest (2007, p.186), commanders, aware of this uncertainty, can exploit it to excuse assaults against cultural property rather than to restrict their options. Although “imperative” is more accurately defined in AP II, however, there are no guidelines for rationalization of decision making. Moreover, it is the need of the time that this

value concept of military necessity needs to be investigated and explained in most coherent, elaborative and transparent manner.

Another challenge to the workability of these rules comes from states themselves. According to Convention of 1954 and its Protocol II, states have the power to determine and decide their cultural property and is authorized to assign the protective emblem to the site. States, in order to call for enhanced protection, are supposed to identify the sites and bring them under protection. In states where cultural property creates conflict, certain properties will be protected while others will be neglected such as states with rich sectarian differences. Legal regime also brings states under obligation to register their sites as cultural property at UNESCO and failure of states to register their sites under enhanced protection may create legal challenges for the states later.

In addition, the current form of the two-level protection system is controversial. The Hague Convention of 1954 established a general and special protection mechanism, but with limited success, probably due to a very rigorous process associated with requesting special protection. A new mechanism with better and general protection was developed by the AP II, with more flexibility and clarity however still the success of the procedure is not guaranteed. Some of the scholars believe that identified properties pose bigger threat as identification and intentional targeting can become easier. (Van der Auwera, 2012a).

Without a doubt, armed warfare inevitably involves the destruction at large scale and cultural property becomes one of the easy targets to harm the enemy's pride hence, making it an immediate requirement for the peacekeeping missions to include the protection of such property in their missions.

Lack of a coherent framework is mandatory which should be applied to peacekeeping troops by giving them mandate to deal with this violation. However, technically United Nations cannot bring the peacekeepers under international treaties because peacekeepers are multinational and not all have ratified relevant instruments. Several attempts have been made by the United Nations to fix this problem, but it has not yet been fully resolved.

Moreover, regarding the protection of property having cultural importance one cannot ignore the cost which comes with the protection such as identifying and registering the property along with the establishment and construction of shelters and professional services etc. However, the challenge faced by many member states to the Convention and the Second Protocol is lack of such services along with the infrastructural problems which can only be taken care with the support of international agencies. Along with the laws cases such as Al Mahdi has also set the precedent for dealing with intentional damage to cultural heritage as crime of war. However, to investigate such crimes which affect the cultural heritage may encounter difficulties such as access to evidence, assessment in relation to the precise condition of the said property.

Case study of Ukraine and Russia

Ukraine and Russia are both members of the Convention 1954 which talks specifically about protected cultural properties and through its protocol II provided an elaborated mechanism as explained above. Seven registered sites of designated cultural heritage, falling under the international protection in Ukraine have been listed by UNESCO (UNESCO World Heritage Centre, n.d.). Ukraine has all these kinds of cultural properties, including the UNESCO World Heritage Sites, religious and secular sites, libraries, art collections, Holocaust monuments, and Stalin's famine, Holodomor. According to a UNESCO report, Russia has been charged with the allegations of war crimes pertaining cultural property damage by the Culture and Information Ministry of Ukraine following the confirmation of damage by the UNESCO (UNESCO World Heritage Centre, n.d.). Debates have generated at international forums over the efficacy of the convention in wake of this war.

As reported in "Endangered heritage in Ukraine: UNESCO reinforces protective measures", 2022, UNESCO Director General, Audrey Azoulay clearly stated that the attacks on Ukrainian properties possessing the cultural and historical importance should be stopped. She also reiterated that buildings and structures of cultural heritage must not be targeted, let alone any circumstances.

Furthermore, authorities confirm that around 70 structures of religious importance, museums, and around 12 in numbers along with libraries and several monuments have sustained damage. (Endangered heritage in Ukraine: UNESCO reinforces protective measures, 2022). Undoubtedly, Russian military constant bombing has brought horrific suffering to not only humans but to the cultural heritage of Ukrainians.

Donetsk Academic Regional Drama theatre in Mariupol converted and identified into civilian shelter was bombed by the Russian forces on 16th March 2022, killing around 600 people (Italy, 2022) and such act is a sheer violation of not only Convention 1954 but also of Geneva Convention's rule of distinction. The cultural and religious relationship between Ukraine and Russia is said to be the justification of Vladimir Putin's attack on Ukraine. A lot of his speeches emphasize that the Ukrainians are trying to assimilate and destroy the Russian culture and religion and forge it into Ukrainian culture. This war is seen as war against identity and culture and not as fulfilling political goals, hence, the demands for stringent rules is increasing. Moreover, damage to sites such as Ivankiv Museum, Museum of local history in Okhtyrka, monument in Borodyanka, are among the damaged sites. Moreover, in Ivankiv, near Kyiv, a local history and art museum was bombed which burnt many rare and expensive paintings. (Olivier Pauchard, 2022). Nevertheless, with the Convention 1954 in place, States do not always feel obliged to respect the law. As it is noted time and again, states shell the cultural property of the other states in order to shake their identity, morale and a dent to their heritage.

Way Forward

Even after decades states have been guilty of damaging cultural property of the other states during an armed conflict and legal regime seems not more than a piece of regulations which states often ignore.

Additionally, in the wake of war's objective, this war of aggression is an attack on Ukrainian's culture. Putin since beginning of his office has adopted a policy towards Ukraine and Belarus which clearly indicates that Russia does not accept the 'artificial' identities these states have conferred on themselves. (Mankoff, 2022). This strategy was clearly seen in 2014 when Crimea was annexed by Russia. Many have called this strategy as "Russia's imperial strategy". Russia's track record of attacking Syrian hospitals and major cultural sites suggests that Russia pays little attention to international norms.

The question remains whether Russian troops committed war crimes in Ukraine in connection with destruction of cultural properties? The jury certainly is still out on this issue, as the "situation at the time" has not yet been determined. Each prosecutor would need to prove that the perpetrator has deliberately targeted a protected cultural property, or that the destruction of that property is widespread and unnecessary and is gross negligence. The ad hoc acceptance of Ukraine to the jurisdiction of the ICC in 2014 and the opening of an inquiry by the ICC prosecutor will result in the provisions of Article 2(a)(iv) of Roman law (a serious breach of the Geneva Convention and 2(b)(ix) (intentionally instructing an attack on property having cultural value) triggered and working. Moreover, Yugoslavia International Criminal Court regarding the case of Dubrovnik and the ICC in the case of Mali has established jurisprudence in this area. Therefore, Russia and Ukraine need to establish sanctions against this illegal activity, and if the state adopts this approach, crime will be subject to universal jurisdiction.

US President Joe Biden announced in March 2022 that a conflict observatory will be established in Ukraine. This observatory collects documents aimed at holding Russia responsible for its actions. Investigations into war crimes have also begun in several European countries, and this case has also been addressed by ICC. As of today, UNESCO is in constant contact with all relevant agencies and Ukrainian national, social personnel to analyze the condition and bolster the safeguards for cultural assets. All sites and monuments are being identified and demonstrated and their unique status as protected places under transnational law is being recalled.

UNESCO, along with UNITAR (United Nations Institute for Training and Research), its partner has evaluated images of satellite regarding the endangered or already affected priority sites to assess damage. To date, 12 priority sites, including World Heritage Sites, have been covered by this surveillance system.

Conclusion

The cultural property destruction highlighted above leads to the conclusion that international law makers should mandate states through motivating them to ratify, implement and sanction instruments for the guarding of cultural assets to avoid any inconsistencies present and highlighted. Many times, debate at international level has taken place for a new instrument however, a new instrument may bring more transparency and clarity, yet it still will be contingent on ratification and implementation by the states.

Based on the above discussion few recommendations have been chalked out to give more pragmatic answers to the complications and challenges attached to the cultural property with reference to its protection. First and the foremost need of the hour is that states should strive for more robust protection of civilians and civilian objects during an armed conflict which automatically strengthen the protection around cultural property. Secondly, States should act vigilantly and apply for protection emblem and register their properties as cultural heritage, Thirdly, in light of recent conflicts in Syria, Iraq and Afghanistan it becomes a need of an hour that donors/ stakeholders should support heritage professionals, integrate local volunteers, and recognize new local networks that can act quickly when frontline changes or new needs arise. As the repercussion of failing the protection of cultural property are felt long after the fighting has ceased, hence, need of a proactive comprehensive protection plan is much required. At this moment, Low cost and influential projects are the best opportunity to protect Ukrainian heritage from further damage. The “Prince Claus Foundation's Cultural Emergency Response Program” and the “International Alliance for the Protection of Heritage in Conflict Areas” have already responded to the current conflict. However, we need more donor organizations, especially those that can reach the local network.

Fourthly, with reference to Ukraine-Russia war, whether it closes rapidly or delays into an impasse, there will be a monetary necessity to support cultural institutions and that requires long term commitment from the “friendly” International organizations for support. Ukraine, along with monetary assistance, requires experts’ assistance as well which should be provided by the international community to rectify the damage already done and to protect from the further destruction.

Fifthly, as much of the important work done in Ukraine so far to protect existing cultural sites and collections focus has been on emergency measures rather than devising any long-term policy for a protracted conflict. It is now imperative for policy makers and cultural institutions to prepare for long-term conflicts such as the one taking place right now. With the current damage to the cultural property recovery and documentation of damaged sites and collections will make a larger part of rehabilitation process in Ukraine.

Lastly, given the ability of AP 1 of Geneva Convention 1977 which establishes damage to cultural property as grave breach and thus punishable under war crime, ICC can also be a significant key player in prosecuting and punishing the responsible. ICC can also cover the existing gap regarding the term “military necessity” along with precise and streamlines consequences for states deliberately targeting the cultural property.

To implement the existing regime robustly, it is highly recommended that states make better use of the regime already in place by strictly adhere to them, showing greater participation, more compliance and establishing a strong compliant mechanism.

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