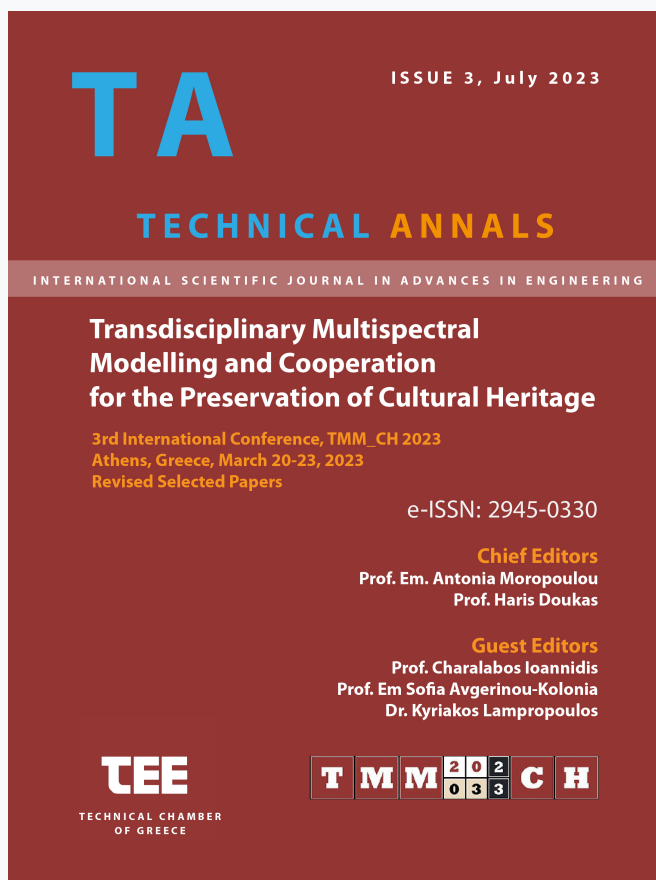


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### International Law on Cultural Heritage: The Benefit of Updating the International Community's Classification of Perpetrators of Cultural Heritage Looting and Destruction

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# International Law on Cultural Heritage: The Benefit of Updating the International Community's Classification of Perpetrators of Cultural Heritage Looting and Destruction

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**Abstract.** Since the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (Hague Convention), the international community has committed to the protection and preservation of cultural heritage. Remaining one of the most central dedicated pieces of International Law on cultural heritage, the lack of updated International Law on the concept finding similar levels of success in obligating states and generating new norms regarding cultural heritage has exposed the age of the convention. Absent from the Hague Convention is a proper classification of perpetrators of cultural heritage crimes. In the past, perpetrators have been convicted of war crimes and crimes against humanity, yet convictions were linked with other egregious acts. The 2016 International Criminal Court Al-Mahdi Case and United Nations Security Council Resolution 2347 both declaring perpetrators of cultural heritage crimes are war criminals was a significant advancement, yet limited, particularly as war crimes cannot occur during times of peace and the difficulty of International Law's application of rules of war during non-international conflict. This research project argues that purposeful looting and destruction of cultural heritage can and ought to be considered a crime against humanity. Through this approach, a greater number of cultural heritage crime perpetrators can be held accountable. By educating civilians on the importance of cultural heritage and previous state commitments, increased pressure can be placed on governments to abide by previous international commitments, hold states accountable for actions or inactions, and facilitate further transdisciplinary efforts for cultural heritage protection and preservation.

**Keywords:** International Law, Cultural Heritage Protection, Cultural Heritage Crimes, War Crimes, Crimes Against Humanity, Amending International Law

## 1 Introduction

Molded by and ever influencing the practices of local, cultural, and global populations, cultural heritage is as much a part of humanity as it is an extension of it. Defined by the United Nations Educational, Scientific, and Cultural Organization (UNESCO),

cultural heritage is both tangible and intangible, ranging from skeletal remains in museums and archaeological sites, artifacts, architectural and natural marvels, to language, oral history, rituals, song, dance, or anything with “outstanding value” to individual and shared histories, the arts and sciences, and anthropology [1]. Left behind by ancestral generations, cultural heritage is to be appreciated by present and future, local and global populations for socioeconomic, educational, and even political purposes. Without question, cultural heritage is an essential part of not just the originating culture, but to humanity itself, aspects of cultural heritage which are at times vital to the survival of cultural and ethnic groups socioeconomically and in providing “lessons from the past” for people around the world to learn from and appreciate.

Cultural heritage is a part of humanity, yet, unfortunately, just as people may lose their lives or homelands, they may lose part of their humanity and identity through the destruction and defilement of their cultural heritage. As such, the international community in seeking to show their general acknowledgment and agreement over the importance of cultural heritage on both the local and global scales have committed themselves through international conventions and treaties –International Law – over the protection and preservation of cultural heritage. While first mentioned in the Hague Convention With Respect to the Law and Customs of War on Land in 1899 as being afforded some protections as the property of a state [2], The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (referred to as the Hague Convention henceforth) was the first dedicated, monumental piece of International Law over the protection and preservation of cultural heritage, declaring that states are to provide safeguards to cultural properties, including archiving materials and increasing the presence of personnel to defend cultural properties when there is an apparent risk of war, and even outlining what obligations states have as occupying powers towards the cultural heritage of the occupied people [3].

## **2 Cracks in the Hague Convention**

While the Hague Convention was groundbreaking for its time in delineating the necessity of protecting and preserving cultural heritage in a general manner with 133 states ratifying the convention, in the present day the Hague Convention has remained as the single most influential convention on cultural heritage with few other pieces of International Law finding the same level of success in generating norms and regulating the practices of states in the international community on this topic. New pieces of International Law on cultural heritage do not get the same level of support from states in the international community, even the Hague Convention’s own protocols; the first which was created the same year as the original convention, 1954, and the second in 1999, both updating aspects of the original convention finding fewer and fewer state parties, 110 and 86 respectively [4]. Later attempts in International Law, in a similar manner, update aspects of the Hague Convention, notable pieces being: The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 (referred to as the Convention on Illicit Cultural Property Trade); The Convention Concerning the Protection of the World

Cultural and Natural Heritage of 1972; and The Convention for the Safeguarding of the Intangible Cultural Heritage of 2003.

Yet, as the Hague Convention of 1954 has remained the most substantial piece of International Law regulating and obligating state action on cultural heritage, the flaws, cracks, and age of the convention have started to show as the dynamics of International Law, International Relations, war and conflict, and the human condition have evolved over the near 70 years since the original convention's inception. For one, the Hague Convention is focused on cultural "properties," that of tangible heritage rather than the intangible; although addressed in the Convention for the Safeguarding of the Intangible Cultural Heritage, its provisions are rather vague in the level of effort states must put in for means of safeguarding intangible heritage through educational, community fostering, or archiving means, likewise these being disconnected from other general provisions and obligations of states in the Hague Convention which focus on tangible heritage. Further, the convention is primarily concerned with how to handle cultural heritage during times of war with very little reference for how to secure and preserve cultural heritage during times of peace, only what states must do during peace time to prepare for situations that could lead to cultural heritage destruction during war. Furthermore, while there is consideration of non-international conflict, stating that parties involved in the war must be bound to some degree to the convention and its amendments, there is great difficulty when considering non-state actors and their potential abuse and destruction of cultural heritage outside contexts of war, non-state actors being a complex concept in International Law that cannot be adequately comprehended as non-state actors were not as prominent in the past as they are today. To rephrase, as International Law cannot properly define conflict between a state and non-state actors as a proper "war," International Law will subsequently not be able to easily obligate states to abide by their commitments for the protection and preservation of cultural heritage during times of war, especially when states may choose not to recognize or legitimize violence perpetrated by groups within their borders as an "armed conflict" as to not subject themselves to the rules of International Law during war, International Humanitarian Law (IHL), *jus in bello*, rather than their own criminal procedures [5].<sup>1</sup>

The cracks of the Hague Convention are not the fault of the convention itself so to say, but states in the international community that do not put in much effort to keep their commitments in line with the changing dynamics of International Relations, sometimes even completely violating their commitments and International Law itself, as has and continues to occur in occupied Cyprus by Turkey for a near half century, for example [6]. More often than not, it is the International Organizations (IOs) and Non-Governmental Organizations (NGOs) that pick up the lacking efforts of states, acting as 'norm entrepreneurs,' the term coined by Cass Sunstein, in generating new norms and acting on their own to preserve and protect cultural heritage and act as disseminators.

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<sup>1</sup>International Human Rights Law and International Criminal Law somewhat picks up where International Law on IHL lacks in handling non-international conflict between state and non-state actors, yet it is not nearly as strong and influential of actions and norms as IHL. This is likewise dependent on whether the state wishes to hold an individual or group accountable for their actions in an international body which would bring recognition and some sort of legitimacy to the groups involved in the conflict rather than through local criminal procedure.

Despite the endeavors of the IOs and NGOs, however, without the involvement of states themselves, efforts will always be limited.

### **3 Classifying Perpetrators of Cultural Heritage Crimes Under International Law: Notable Attempts and Current Policy**

Another flaw of the Hague Convention is that, while it does dictate those who breach the convention must find some sort of penal or disciplinary sanctions imposed upon them, there is no further mention of accountability present within the treaty, nor any means to classify perpetrators of cultural heritage looting and/or destruction; persecution of individuals is left to the criminal jurisdiction of the state. While individuals have been held as having engaged in crimes against humanity during the Nuremburg Trials or the International Criminal Tribunal of the Former Yugoslavia (ICTY), convictions including cultural heritage crimes<sup>2</sup> were always in conjunction with, an aside to, already egregious crimes including mass murder, ethnic, and religious cleansing [7,8]. Otherwise, attempts in the past to provide a proper legal classification for perpetrators of cultural heritage looting and destruction under International Law had been less than fruitful.

There have been multiple attempts to consider the destruction of cultural heritage as “cultural genocide,” however this endeavor too has not been successful. Having originally coined the term “genocide” in 1944, prominent lawyer Raphael Lemkin had always considered the destruction of a people to be multifaceted, encapsulating both physical and cultural destruction, both intermingled and interdependent; emphasizing the integral role of the abuse of culture in acts of genocide [9,10]. Introduced into the drafting of the Convention on Genocide in 1948, however, the concept of cultural genocide was promptly pushed to the side with a significant split between the Western and Soviet Blocs. A quick summary of the opposition to the term is adequately represented by the Danish delegation’s declaration at the time, stating that “It would show a lack of logic and of a sense of proportion to include in the same convention both mass murders in gas chambers and the closing of libraries” [11]. At a tense time during decolonization, Western states chose to leave the concept of cultural genocide for another time, possibly another convention, wanting to avoid any significant backlash considering their own difficult histories with the destruction of cultural heritage of indigenous groups in colonies or their own territories. This future deliberation of cultural genocide did not occur until 1993 with the Draft Report of the Working Group of the UN on Indigenous Populations where cultural genocide was again included in the draft but removed from the final work in 2007 with push back from a number of the same states that opposed the term’s inclusion in the Genocide Convention, namely the United States (US), Canada, New Zealand, and Australia, those sharing poor history with their indigenous populations [12,13].

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<sup>2</sup> For the purposes of this paper, cultural heritage crimes include tangible and intangible cultural heritage destruction, it is not simply limited to the looting and illicit trade of cultural resources and their removal from site contexts.

To say the least, the international community has shown that the protection and preservation of cultural heritage is not their priority, nor finding a proper classification for perpetrators of cultural heritage crimes. These endeavors, as mentioned earlier, have typically been propelled by IOs and NGOs, and while there have been a number of small scale resolutions within states, including one by the Swedish Central Board of National Antiquities along with the Swedish Branches of both UNESCO and the NGO International Council on Monuments and Sites (ICOMOS) which states concretely that the deliberate destruction of cultural heritage must be considered a war crime and in cases of excelsis like in the Former Yugoslavia 'ethnocide,' previously mentioned in the same Rights of the Indigenous working paper yet was removed along with 'cultural genocide' [14], an additional case involving the North Atlantic Treaty Organization (NATO) is of interest. The Final Communiqué of a NATO conference in Kraków, Poland in 1996 declares that the willful destruction of cultural heritage during military operations ought to be considered a war crime, and that the term "armed conflict" should be extended to include internal civil and armed conflicts for such provisions of cultural heritage protection, and provisions of other topics involving armed conflict, to apply [15,16].<sup>3</sup>

With the NATO declaration as well as resolutions by individual states, IOs, and NGOs acting as potential precedents and pushing norms as to how perpetrators of cultural heritage destruction ought to be considered, the Rome Statute in 1998 of the International Criminal Court (ICC) seems to further solidify that the deliberate destruction of cultural heritage during armed conflict, insofar as is under the ICC's authority, is to be considered a war crime. Specifically, Article 8(2)(e)(iv) dictates that "intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments..." is to be considered a war crime; again there is a primary focus on tangible cultural heritage [17]. It was not until 2016, however, that this article of the Rome Statute was truly brought to light through the successful conviction of Ahmad Al-Faqi Al-Mahdi through the ICC for his role in directing cultural heritage destruction operations by the Ansar Dine militia during their conflict against the government in Mali in 2012. Convicted for war crimes in attacking historical and religious sites in Timbuktu, the international community has set a new precedent by convicting someone in an international court solely for cultural heritage crimes, clearly and officially declaring what perpetrators of cultural heritage destruction ought to be classified as: war criminals [18,19].

It must be noted, however, that while the Rome Statute has many state parties, 123, the decision by the ICC that the destruction of cultural heritage is to be considered a

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<sup>3</sup>While the Final Communiqué of NATO on this topic in 1996 could be found, it should be noted that any official release of the document is nowhere to be found, neither in NATO's press releases, nor in that of any other involved organization at the time. Though there was a press release of NATO indicating that they would indeed be discussing this topic in Kraków, and while many organization websites and publications reference this document, their source to the ICOMOS page, ICOMOS having been involved in the NATO conference, is likewise unavailable and could not be found in internet archives. This could possibly have to do with the declaration that the definition of "armed conflict" be extended, something that would implicate obligations of states in International Law on a number of subjects not exclusive to matters of cultural heritage.

war crime is only binding on those ratifying states, not other non-party states in the international community. Yet, following the conviction of Al-Mahdi, the United Nations Security Council (UNSC) in 2017 adopted UNSC Resolution 2347 dictating that those responsible for the intentional destruction of cultural heritage must, circumstantially, be treated as war criminals [20]. It should be noted that unlike other pieces of International Law usually formed through multilateral treaties, conventions, and resolutions, International Law formed by the resolutions of the UNSC are binding on all states regardless of state consent; as a sovereign state, becoming a member of the UN and thus subscribing to the UN Charter obligates states to abide by the resolutions of the UNSC. As such, while the conviction of Al-Mahdi in the ICC concretely declaring deliberate cultural heritage destruction a war crime would not mean much for states not ratifying the Rome Statute, the resolution of the UNSC is not up to be questioned by states: the deliberate destruction of cultural heritage is a war crime.

While a tremendous step forward for the protection and preservation of cultural heritage, there are inherent and legal limitation in considering perpetrators of cultural heritage destruction as war criminals. For someone to be convicted as a war criminal, crimes must have been in violation of IHL, IHL only in effect during a state of war. Once again, the international community puts its emphasis on the protection and preservation of cultural heritage, and specifically the persecution of perpetrators of cultural heritage destruction, during times of war. As mentioned previously, armed conflict over the years has shifted away from interstate conflicts to primarily that of non-international conflict. The codification of IHL is most strongly defined in the four Geneva Conventions and its subsequent protocols, and while Common Article 3 and the Second Protocol of 1977 of the conventions focus on the role of non-international armed conflict, specifically how the parties involved in non-state conflict are subject to certain rules of war and IHL, there is a complicated threshold in order for the conflict to be deemed 'war' [21,22]. Article 1(2) of the Second Protocol of the Conventions states with clarity that the provisions involving non-international armed conflict shall not apply in a situation of "internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature" [22]. Likewise, considering issues of sovereignty and intervention as expanded upon in Article 3(1) and Article 3(2), Médecins Sans Frontières describes that it may be in the interest of states to never classify their internal conflict as non-international armed conflict as to not give sovereignty to the groups fighting within their borders in order to retain their authority as a state and their jurisdiction over criminal procedures [23,5]. The central figures that have the greatest authority over declaring when a state is and is not in an armed conflict, a war, and when IHL applies, are the UN General Assembly and the UNSC, both of which would require adequate time to deliberate each situation.

Indeed, Al-Mahdi's conviction was through his involvement in a non-international conflict between a state and non-state actors, and thus while this would have been a case in which there would be difficulty in considering, under International Law, Mali having been at war, the situation in Mali near the start of conflict in 2012 was already internationally recognized as a proper armed conflict as opposed to simple "internal strife." With the eruption of internal conflict in Mali in January of 2012, two months later in March the government of Mali was overthrown by the armed forces of the

country which suspended the constitution. Having condemned through multiple Presidential Speeches and Press Statements the forcible seizure of power in the country, the UNSC in its 2056th resolution on July 5th, 2012, declared that the parties involved in Mali must abide by IHL, IHL which is only applicable during times of war, *jus in bello* [24]. Following sanctions and threats of stronger sanctions by neighboring countries in the Economic Community of West African States, the Junta had stepped down leading to the election of Diouncounda Traoré, who in his inauguration stated he would “not hesitate to wage a total and relentless war” against non-state adversaries [25]. Furthermore, in January of 2013 the government of Mali had requested aid from foreign militaries to fight against rebels, including the French who had engaged in a military intervention for up until August 2022, solidifying the idea that there was no control of the rule of law in Mali at the time [26,27]. There is no question that at the time of Al-Mahdi’s actions and conviction Mali was in a state of war, internationally recognized including by the UNSC, therefore in this case it would have been simple to consider an individual’s or a group’s egregious actions violating IHL as war crimes.

In other situations, however, how then can the international community hold perpetrators of cultural heritage looting and destruction accountable in a more adequate and potentially timely fashion, under International Law, in cases that are inside, outside, and sometimes in the grey zone of contexts of war and peace? It is argued that the only classification that holds the same if not more weight than war crimes would be “crimes against humanity,” the term itself ever evolving along with International Law over time.<sup>4</sup> The term “crimes against humanity” has never been definitively defined in a dedicated piece of International Law, yet the Rome Statute of 1998 of the ICC has a rather robust definition. What is and is not a crime against humanity is ambiguous, again it is not definitively defined, yet a crime against humanity is nonetheless a widespread and systemic attack on a civilian population, either in times of peace or war. Specifically under the Rome Statute, crimes against humanity include but are not limited to: murder and extermination; enslavement; torture; rape and forced pregnancies (to dilute genetic pools); persecution against identifiable groups; as well as other inhumane acts meant to cause great suffering or serious injury to physical and/or mental health [17]. To commit a crime against humanity is to forcibly subjugate a people to the deprivation of their identity and/or humanity.

#### **4 How and Why Cultural Heritage Crimes Can and Should be Considered Crimes Against Humanity**

Cultural heritage crimes fit quite well under two of the outlined ways in which crimes against humanity can be committed, as described in the Rome Statute: Article 7(1)(h) “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender... or other grounds that are universally recognized as impermissible under International Law;” and Article 7(1)(k) “other

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<sup>4</sup>“Crimes against peace” could also be a potential classification, yet those are only applicable during times of peace



inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” [17]. Quickly considering the role of cultural heritage, the loss and deprivation of cultural heritage which may be vital to a group of people will subsequently lead to the loss of the socioeconomic and educational value of that cultural heritage which would have been appreciated by both local and global groups, potentially leading to the victimization and marginalization of cultural, minority, and tribal groups. While this was most definitely the case in Mali by the Ansar Dine militia, this was also common practice of the Islamic State (ISIS) which had destroyed cultural grounds to displace populations in Iraq and Syria, and additionally desecrated such sites and their cultural significance without physically “destroying” them, like the executions held in the ancient ruins of Palmyra in Syria [28]. Likewise, from a mental state alone, the destruction of cultural heritage, aside from marginalizing groups, through the purpose of victimization causes significant anguish and demoralization, as occurred with the destruction of the Bamiyan Buddha statues in Afghanistan in 2001 by the Taliban, subjugating by force local civilians to destroy their own heritage, their history, facing death or otherwise [29]. Even in Al-Mahdi’s ICC case was the concept pushed that the destruction of cultural heritage causes “irreparable damage to the human persons in his or her body, mind, soul and identity” [30].

As what constitutes a crime against humanity has been left somewhat ambiguous, it is not outlandish, on the contrary entirely possible and feasible for the destruction and mass looting of cultural heritage to fit under the phrase. The destruction of cultural heritage has already in the past been considered a crime against humanity in the Nuremberg Trials or the ICTY, although as mentioned this was typically in conjunction with other crimes. Even the ICC in its releasing of the July 2021 policy on cultural heritage states that “crimes against or affecting cultural heritage are often committed in the context of an attack against a civilian population,” and that “they may themselves amount to crimes against humanity” [31].

The ICC’s description of what constitutes a crime against humanity in regards to cultural heritage destruction is dense and complicated, referring to multiple case precedents where the International Law on the subject of crimes against humanity, under the court’s authority and jurisdiction, portrays its ambiguous nature. Considering the contextual elements of crimes against humanity, for example, an attack must have been committed against a civilian population and in furtherance of a state or organization policy, the attack being widespread or systemic [32]. The court has specified in the past that if an attack “is planned, directed or organized – as opposed to spontaneous or isolated acts of violence,” the state or organization policy criteria will be satisfied, and that likewise a “systemic” attack is one that refers to a certain level of planning [33]. Further, the “policy” of an attack refers simply to the intent of a state or organization to either take or deliberately forgo action against or protecting a population; “policy” need not be a formal plan [34]. Furthermore, the term “widespread” refers to the “large-scale nature” of an attack; an attack need not be both widespread and systemic [35,36]. Likewise of note is how the ICC observes a “civilian population,” the term also ambiguous in International Law, in the context of crimes against humanity, whereby they declare a civilian population does not specify any nationality, ethnicity, or distinguishing features; crimes against humanity are able to be conducted against people of the same

nationality as the perpetrators, the stateless, or those of other affiliations [37]. Attacks on civilian populations in the context of cultural heritage crimes, however, in order to constitute a crime against humanity must show that the civilian population was the primary, as opposed to incidental, target of an attack [38].<sup>5</sup> The ICC in its policy description additionally outlines how cultural heritage crimes easily fit in the context of other ways in which crimes against humanity can be committed, vis-à-vis their connection with other crimes [31].

What is vital in considering cultural heritage destruction and looting as a crime against humanity rather than a war crime is, again, its greater applicability in being able to convict perpetrators for actions regardless of whether in a state of peace or war. A hypothetical example of where this would be of use is, say, a group having staged a large-scale attack on the Metropolitan Museum in New York City, leading to the destruction and/or theft of multiple exhibits or the museum itself. In such a case, it would be near impossible to consider perpetrators as war criminals, as there is no state of war in New York, but it would be possible to consider the event a crime against humanity. Even if there is no focus on a specific culture or exhibit, the contents of the museum are a part of the cultural heritage of humanity. Such an attack would be targeting the history and the cultural heritage of humanity's ancestors, but furthermore would be targeting the civilian population of New York which holds the Metropolitan Museum as a large part of the cultural heritage of the city, removing a valuable socioeconomic resource for New York and blocking educational research efforts using such cultural resources from both the city and the entire world; even if the primary purpose is for profit of perpetrators, the target of such a widescale attack, the victims, are the civilian population.

Leaving aside hopefully inconceivable hypotheticals and moving to actual examples of cultural heritage destruction, the Istanbul Pogrom in the 1950s is most certainly a relevant case between the destruction of tangible and intangible cultural heritage and crimes against humanity, with specific emphasis on the ICC's observation of the term. The bombing of a Turkish consulate in Thessaloniki, Greece, falsely and purposefully blaming the Greeks despite having been a conspiracy of the Turkish government at the time [39], led to the series of state sponsored riots against the Greek ethnic minority seeking to have them ousted from their places of heritage. While the number of deaths is not in the thousands as one might associate when thinking of crimes against humanity, amidst the chaos, it is believed roughly 37 Greeks were killed, their homes raided and businesses ransacked, Greeks, as well as some Armenians and Jews, chased through the streets beaten and/or raped, churches destroyed, and Christians "Islamized" by subjecting men and priests to genital mutilation and torture [39]. Although already considered by some another Greek Genocide, Turkey at the time could not have been considered to be in a state of war and thus having conducted war crimes when systematically attacking and forcing the exodus of the Greek ethnic minority, yet it could

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<sup>5</sup>A distinction should be noted between the *target* of an attack and the *purpose* of an attack. The purpose of such an attack may be for a multitude of reasons not delineated by the court, but could conceivably include personal profit or victimization, as a few examples. Further, the ICC states that in targeting a civilian population, the "sufficient amount" of civilian targets to deem an attack a crime against humanity will be deemed appropriate by the court in each case.

easily be considered a crime against humanity. All the crimes committed against the Greek ethnic minority during the pogrom is most definitely associated with the destruction of the intangible cultural heritage of the minority in Turkey following their exodus as refugees, studying and education in the Greek language and the practice of their faith, beliefs, rituals, and traditions slowly but surely dying out in the country as the population of the ethnic minority had declined from 110,000 as of the signing of the Treaty of Lausanne in 1923 to roughly 2,500 people as of 2006 [40].<sup>6</sup>

Looking at another example, the large-scale raid on the Mallawi Museum in Minya Egypt in August 2013 accused by the Ministry of Antiquities to have been conducted by the supporters of the ousted former president Morsi of the Muslim Brotherhood led to the destruction and theft of over 1,000 cultural resources [41,42,43]. Amidst the chaos following the coup d'état in July of 2013, it is difficult to claim there was a state of war in Egypt at the time, but equally difficult in calling it a time of peace. By considering cultural heritage destruction and theft a crime against humanity, it is reiterated that there would be no need for extensive deliberation over whether there is a state of war or peace when seeking to convict perpetrators for their cultural heritage crimes, in this case where it was certainly targeted against the Egyptian people and robbing them, quite literally, of their heritage as well as socioeconomically damaging the city of Minya and its people; the only pieces to this case up for debate and questioning is whether to accept the Egyptian government's accusation at the time that this was an orchestrated event by political opponents, as well as one's definition of how large-scale the attack was and its symbolic magnitude.

It is believed that the above properly illustrates how crimes against cultural heritage can properly fit under the umbrella of "crimes against humanity." Aside from the potential of holding additional people accountable for their actions under International Law, one may ask what the point is of changing the classification of perpetrators of cultural heritage looting and destruction from the term war crimes, especially to a different term that many states may be unlikely to support. It is argued that, even if state governments would not support the use of the term crime against humanity when referencing cultural heritage looting and destruction, the recognition as such by individual people, activist groups, NGOs, and IOs can push norms for something that is already agreed upon by the ICC. The beliefs of the Danish delegation when discussing the Genocide Convention shows that some state governments in the international community do not place as much emphasis on their past commitments to the protection and preservation of cultural heritage. This can be illustrated easily when looking at the UK's policy on the illicit trade of stolen cultural properties, where after having left the European Union and no longer being subject to the supranational organization's policies and regulations on cultural resource trade the government had decided there should be no

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<sup>6</sup>It is acknowledged that the Istanbul Pogrom is another situation in which cultural heritage crimes are committed alongside other egregious actions, thus such cultural heritage crimes would not have alone been considered cases of crimes against humanity or war crimes, it would be part of a collective of other crimes. Yet, this case exemplifies that even state governments can target a civilian population be it their own citizens or otherwise and destroy both their tangible and intangible cultural heritage, even while not in a state of war, such actions befitting the definition of crimes against humanity.

licensing requirements for the trade of cultural materials, and that anyone caught with stolen materials cannot be convicted if they are, or claim to be, ignorant of the fact they are in possession of stolen resources [44,45]. A second illustration is Turkey's violations of various pieces of International Law despite their commitments to the Hague Convention, for example, detailing their obligations as an occupying power, considering their occupation of Cyprus for the past near half century, and various resolutions by the UNSC, as was mentioned earlier [6].

By acting as norm entrepreneurs, pushing norms that the theft and destruction of cultural heritage can and should be considered, circumstantially,<sup>7</sup> a crime against humanity, citizens can pressure their respective governments to have greater accountability for their actions or lack thereof. A potential case where one could have been, under International Law, fitting the criteria of having committed a crime against humanity through the destruction of cultural heritage site contexts and looting is that of Aydın Dikmen, the "official" archaeologist of the occupied territory of Northern Cyprus by the Turkish government. Warned of whenever the military planned to blow up any cultural sites and monuments so he may take "things which matter," through Dikmen's efforts in his large scale, occupied-territory wide looting operations in Northern Cyprus, an unknown but certainly countless amount of stolen Cypriot cultural materials have been found all over the world, from the US, UK, Netherlands, to even Japan, some worth tens of millions of dollars [46,47,48]. With an unknown amount of cultural properties removed from their sites of contexts, the Greek Cypriot population clearly having been targeted through the looting and destruction of Orthodox Churches, Dikmen is a case of one who could have been convicted of crimes against humanity for destruction and looting of cultural heritage. Dikmen would have been subject to International Law had Germany ratified the Convention on Illicit Cultural Property Trade, as Dikmen was living in Germany, which would have obligated Germany to extradite him and subject him to Cypriot Courts. Instead, Dikmen was sued by the Cypriot government through German courts and was fined a measly €266 thousand, pennies compared to his millions in profit through illicit art and cultural resource trade, if the fine was ever paid, never even facing jail time [48,49].

## 5 Conclusion

Although it may have been unlikely to convict someone like Dikmen of having committed a crime against humanity for his role in directing cultural heritage looting campaigns in occupied Cyprus, or even a war criminal as the UNSC still deems the Cyprus situation an occupation which under International Law is considered armed conflict, if

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<sup>7</sup>It is improper, and to an extent unethical, to consider all destruction of cultural heritage as a crime against humanity. If a researcher studying an artifact were to break the piece through their carelessness, such an event cannot hold weight to the scale of a crime against humanity. The same can be said about someone who takes a piece of pottery from a burial ground. When saying "circumstantially," there is meant to be some sense of scale and intent as described by the ICC's policy on cultural heritage, likewise in the same fashion the UNSC states perpetrators of cultural heritage crimes must "circumstantially" be deemed war criminals.

citizens, NGOs, IOs, and even some states were to recognize that such actions fit under the umbrella “crime against humanity,” at the very least conversations would garner. By considering such actions as just relating to war crimes and leaving the rest to local criminal procedure when at a time of peace, where as shown even in western democracies such laws on cultural heritage are lacking, there is little room for states at peace to have any accountability for failing to hold perpetrators accountable or harboring such criminals within their borders. Take the case of Dikmen, if the destruction and looting of cultural heritage is considered a crime against humanity, as is circumstantially already recognized as such in International Law through the ICC and previous convictions through the Nuremburg Trials or the ICTY, would the German people easily accept that their government is allowing such a perpetrator to essentially walk off with his profits, without even having been extradited to the courts of the country he committed his crimes? Would the people accept that their country, such as the UK or the Netherlands which have become hubs for the illicit art and cultural heritage theft trade where neither of which have ratified the Convention on Illicit Cultural Property Trade, is indifferent to and at times facilitates such crimes against cultural heritage, crimes against humanity? It is believed that, no, some citizens may be indifferent, but others will not accept such actions or inaction of their democratic governments, nor want one having conducted crimes against humanity within their borders unpunished. If they do not accept such actions or lack thereof, they would be able to apply greater pressure on their representatives as well as potentially work with NGOs, IOs, and those in different states to bring about a real normative and legal change for the betterment of cultural heritage protection and preservation, that which is humanity’s cultural heritage.

Considering cultural heritage looting and destruction as a crime against humanity would be, more than anything else, an educational approach to the preservation and protection of cultural heritage. By being classified as a crime against humanity, people around the world would come to a mutual understanding, not only of situations of cultural heritage looting and destruction and their own governments’ actions or indifference to International Law and international commitments and obligations – forcing people to pay attention to what is occurring both around them and the world, – but of the global significance of cultural heritage; its uniqueness and non-renewability, how people benefit from it and how it offers the entire world lessons from the past, as well as the obligations of the people of today to provide safeguards and ensure generations are able to appreciate humanity’s cultural heritage in the future. Through greater education and educational opportunities on the importance of cultural heritage as well as the violations of International Law by some governments around the world and their lacking efforts to protect and preserve cultural heritage in line with previously made international commitments, it can be hoped that transdisciplinary efforts at the local, national, regional, and international levels can find new vigor for the betterment of cultural heritage. Such efforts, of course, would find benefit by having a global, common, mutual understanding of how to classify perpetrators of cultural heritage crimes in a manner that in a more widespread fashion can hold such individuals accountable, potentially deter further crimes, and pressure governments to engage in further efforts for the protection and preservation of cultural heritage, the term that seems to be the most feasible being “crimes against humanity.”

## References

1. UNESCO. (n.d.). *Heritage: Index of development of a multidimensional framework for heritage sustainability*. Retrieved from [https://en.unesco.org/creativity/sites/creativity/files/cdis/heritage\\_dimension.pdf](https://en.unesco.org/creativity/sites/creativity/files/cdis/heritage_dimension.pdf)
2. *The Hague Convention with Respect to the Law and Customs of War on Land (Hague II)*. (1899, July 29). Retrieved from [https://avalon.law.yale.edu/19th\\_century/hague02.asp](https://avalon.law.yale.edu/19th_century/hague02.asp)
3. *The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*. (1954). Retrieved from <https://unesdoc.unesco.org/ark:/48223/pf0000082464.locale=en>
4. UNESCO. (2022, September 13). *States Parties to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Hague Convention)*. Retrieved from <https://en.unesco.org/protecting-heritage/convention-and-protocols/states-parties>
5. Sivakumaran, Sandesh. (2012). *The Law of Non-International Armed Conflict*. Oxford University Press. Pages 2-3, 9-16.
6. Agelarakis, Panayotis G. (2022). International Law and Cultural Heritage Looting and Destruction in Cyprus. *American Journal for Contemporary Hellenic Issues*.
7. International Military Tribunal of Nuremberg. (1947). *Trial of The Major War Criminals Before the International Military Tribunal: Nuremberg – 14 November 1945 – 1 October*. Retrieved from [https://www.loc.gov/frd/Military\\_Law/pdf/NT\\_Vol-I.pdf](https://www.loc.gov/frd/Military_Law/pdf/NT_Vol-I.pdf)
8. International Criminal Tribunal for the Former Yugoslavia. (n.d.). *Dubrovnik and Crimes Against Cultural Heritage*. Retrieved from <https://www.icty.org/en/outreach/documentaries/dubrovnik-and-crimes-against-cultural-heritage>
9. Lemkin, Raphaël. (1944). In *Axis rule in occupied Europe: Laws of occupation, analysis of government, proposals for redress*. Chapter IX: Genocide.
10. Luck, Edward C. (2018). *Cultural Genocide and the Protection of Cultural Heritage*. J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy, Number 2 (2018). Retrieved from [https://www.getty.edu/publications/pdfs/CulturalGenocide\\_Luck.pdf](https://www.getty.edu/publications/pdfs/CulturalGenocide_Luck.pdf)
11. United Nations General Assembly 6<sup>th</sup> Committee. (1948, October 25). *Eighty-Third Meeting on the Continuation of the Consideration of the Draft Convention on Genocide*. Retrieved from <https://digitallibrary.un.org/record/604635?ln=en>
12. Commission on Human Rights – Sub-Commission on Prevention of Discrimination and Protection of Minorities. (1993, August 23). *Report of the Working Group on Indigenous Populations on its eleventh session*. Retrieved from <https://www.refworld.org/pdfid/3b00f49e4.pdf>
13. United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved from [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)
14. UNESCO, & ICOMOS. (1994). *Resolution on Information as an Instrument for Protection against War Damages to the Cultural Heritage*. Retrieved from [https://www.getty.edu/conservation/publications\\_resources/research\\_resources/charters/charter56.html](https://www.getty.edu/conservation/publications_resources/research_resources/charters/charter56.html)
15. NATO & ICOMOS. (1996, June). *Final Communiqué: NATO – Partnership for Peace Conference on Cultural Heritage Protection in Wartime and in State of Emergency*. Retrieved from <https://conservacion.inah.gob.mx/normativa/wp-content/uploads/Documento111.pdf>

16. NATO. (1996, June 17). *Civil Emergency Planning Conference with Cooperation Partners: in Cracow, Poland, 18<sup>th</sup>-21<sup>st</sup> June 1996*. Retrieved from <https://www.nato.int/docu/pr/1996/p96-095e.htm>
17. *Rome Statute of the International Criminal Court*. (1998). Retrieved from <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>
18. International Criminal Court. (2013, January 16). *ICC prosecutor opens investigation into war crimes IN Mali: "the legal requirements have been met. we will investigate"*. Retrieved from <https://www.icc-cpi.int/Pages/item.aspx?name=pr869&ln=en>
19. International Criminal Court. (2015, September 26). *Situation in Mali: Ahmad Al Faqi Al Mahdi surrendered to the ICC on charges of war crimes regarding the destruction of historical and religious monuments in Timbuktu*. Retrieved from <https://www.icc-cpi.int/Pages/item.aspx?name=pr1154>
20. United Nations Security Council. (2017, March 24). *Resolution 2347 Adopted by the Security Council at its 7907<sup>th</sup> Meeting*. Retrieved from [https://www.undocs.org/S/RES/2347%20\(2017\)](https://www.undocs.org/S/RES/2347%20(2017))
21. *The Geneva Conventions of 12 August 1949*. (1949, August 12). Retrieved from <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>
22. *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*. (1977, June 8). Retrieved from [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.35\\_AP-II-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.35_AP-II-EN.pdf)
23. Medecins Sans Frontieres. (n.d.) *Noninternational Armed Conflict (NIAC)*. The Practical Guide to Humanitarian Law. Retrieved from <https://guide-humanitarian-law.org/content/article/3/non-international-armed-conflict-niac/>
24. United Nations Security Council. (2012, July 5). *Resolution 2056 Adopted by the Security Council at its 6798<sup>th</sup> Meeting*. Retrieved from <https://digitallibrary.un.org/record/730360?ln=en>
25. BBC. (2012, April 12). *New Mali leader Dioncounda Traore warns rebels of War*. Retrieved from <https://www.bbc.com/news/world-africa-17686468>
26. France 24. (2013, January 11). *Mali asks France for help as Islamist militants advance*. Retrieved from <https://www.france24.com/en/20130111-mali-asks-france-military-help-islamists-seize-konna-militants>
27. Al Jazeera. (2013, January 11). *France launches Mali Military Intervention*. Retrieved from <https://www.aljazeera.com/news/2013/1/11/france-launches-mali-military-intervention>
28. Dearden, Lizzie. (2017, January 19). *ISIS execute teachers in front of children after retaking the city of Palmyra*. Retrieved from <https://www.independent.co.uk/news/world/middle-east/isis-palmyra-syria-executions-islamic-state-retake-city-russia-assad-ruins-roman-theatre-civilians-teachers-a7535026.html>
29. *Local people regret Taliban destroyed buddha statues*. (2002). Retrieved from <https://web.archive.org/web/20210309015104/https://www.voanews.com/archive/local-people-regret-taliban-destroyed-buddha-statues-2002-02-11>
30. International Criminal Court. (2016, March 1). *The Prosecutor v. Ahmad Al Faqi Al Mahdi: Pre-Trial Chamber I | Transcript*. Page 12. Retrieved from <https://www.icc-cpi.int/court-record/icc-01/12-01/15-t-2-red2-eng>
31. International Criminal Court. (2021, June). *Policy on Cultural Heritage*. Paragraph 61. Retrieved from <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>
32. *Ibid*. Paragraph 62.

33. International Criminal Court. (2014, June 12). *The Prosecutor v. Laurent Gbagbo: Pre-Trial Chamber I*. Paragraphs 215, 216. Retrieved from <https://www.legal-tools.org/doc/5b41bc/pdf/>
34. International Criminal Court. (2014, March 7). *The Prosecutor v. Germain Katanga: Trial Chamber II*. Paragraph 1108. Retrieved from <https://www.legal-tools.org/doc/f74b4f/pdf/>
35. International Criminal Court. (2008, September 30). *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui: Pre-Trial Chamber I*. Paragraph 394. Retrieved from <https://www.legal-tools.org/doc/67a9ec/pdf/>
36. International Criminal Court. (2009, June 15). *The Prosecutor v. Jean-Pierre Bemba Gombo: Pre-Trial Chamber II*. Paragraph 82. Retrieved from <https://www.legal-tools.org/doc/07965c/pdf/>
37. See Reference 35. Paragraph 399.
38. See Reference 31. Paragraphs 63, 64.
39. Alfred de Zayas. (2007, August). 'The Istanbul Pogrom of 6-7 September 1955 in the Light of International Law'. *Genocide Studies and Prevention*, Volume 2 Issue 2 Article 4. Pages 137-138. Retrieved from <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1206&context=gsp>
40. Human Rights Watch. (2006). *Denying Human Rights and Ethnic Identity: The Greeks of Turkey*. Retrieved from <https://www.hrw.org/sites/default/files/reports/TURKEY923.PDF>
41. Egyptian Streets. (2013, August 20). *The Allegory of the Mallawi Museum: History Lost*. Retrieved from <https://egyptianstreets.com/2013/08/20/the-allegory-of-the-mallawi-museum-history-lost/>
42. Blue Shield International. (n.d.) *Mallawi Museum Catalogue Red List*. Retrieved from [https://blueshield.dk/wp-content/uploads/2016/08/Mallawi\\_Museum\\_Catalogue\\_REDLIST.pdf](https://blueshield.dk/wp-content/uploads/2016/08/Mallawi_Museum_Catalogue_REDLIST.pdf)
43. UNESCO. (2013, September 17). *UNESCO Mission Confirms Plunder of Mallawi Museum*. Retrieved from <https://www.unesco.org/en/articles/unesco-mission-confirms-plunder-mallawi-museum>
44. Liscia, Valentina D. (2021, January 12). *UK rejects European Union Regulations to Reduce Illegal Antiquity Trafficking*. *Hyperallergic*. Retrieved from <https://hyperallergic.com/613855/uk-rejects-european-union-regulations-to-reduce-illegal-antiquity-trafficking/>
45. Beard, Stephen. (2021, December 28). *Will Brexit Turn the U.K. Into a Hub for the Trade in Looted Antiquities?* Marketplace. Retrieved from <https://www.marketplace.org/2021/12/28/will-brex-it-urn-u-k-into-hub-looted-antiquities>
46. See Reference 6. Page 7.
47. Rijn, M. van. (1994). *Hot Art, Cold Cash*. Little Brown & Co. Pages 61-64.
48. O'Connell-Schizas, C. (2014). 'The Dikmen Conspiracy: The Illicit Removal, Journey and Trade of Looted Ecclesiastical Antiquities from Occupied Cyprus'. *The Journal of Art Crime*, Spring 2014(11).
49. Munich, Germany Higher Regional Court. (2013, March 18). *Republic of Cyprus and ors v Dikmen, Appeal Judgment*, 19 U 4878/10, ILDC 2236 (DE 2013).