

## **Intentional Destruction of Cultural Heritage of Mankind as a War Crime and the Effectiveness of the Current Legal Framework**

Few events have caused more shock and condemnation in recent years than the images of the destruction of UNESCO World Heritage sites in Syria. International law expressed since the early times a great concern for preservation of cultural heritage in conflict scenarios, including effective tool to prosecute the most responsible. The necessity to provide protection for cultural heritage sites during armed conflicts and accountability for the perpetrators of crimes against cultural heritage led to the development of a framework that could be considered quite strong.

The focal point of this work is to provide an analysis of the legal framework governing the international war crime of intentional destruction of cultural heritage of mankind to assess the actual level of protection accorded to CHM by international criminal law. To reach the goal, after a necessary preliminary but accurate analysis of the customary international provisions criminalising the IDCHM in wartime and the most relevant international humanitarian law norms, the case law of international criminal tribunal on point will be examined with a view to understand the similarities and differences in the approach taken by different institutions and the possible way forward.

Indeed, starting from Nuremberg, international criminal courts have secured convictions for intentional destruction of cultural heritage occurred during armed conflicts. The strongest and most convincing framework, in the view of the author, was developed by the International Criminal Tribunal for former-Yugoslavia, whilst the still underdeveloped judicial practice of the ICC offers interesting insights and already some room for early criticism.

The most relevant element to consider is that international criminal statutes do not pose any distinction between cultural property in general and the so called *cultural heritage of mankind*, criminalising under the same provisions both kind of attacks and basically entrusting the competent chamber with the issuance of an eventual harsher sentence whenever the cultural property destroyed might be considered *of mankind* during the assessment of the circumstances of the case— arising at the same time additional issues with regard to what should be considered as “cultural heritage of mankind” and of the opportunity of such an evaluation. As convincingly sustained by Frulli, such lack of distinction in the Rome Statute, the latest international criminal law instrument, can be considered as a retrograde attitude towards the war crime under examination, potentially able to leave open gaps. This point is strictly connected to the exception for military necessity that in customary international humanitarian law, as consistently interpreted by international criminal courts, permits to intentionally destruct sites considered as *cultural heritage of mankind* if imperatively required by military necessity.

These elements represent the major drawbacks of the current framework criminalising intentional destruction of cultural heritage of mankind, potentially mining the primary objective of international criminal law itself, the avoidance of impunity.