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International Criminal Law and Cultural Property: a Source of Inspiration for European Union Law?

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towards Global Action against Cross-border Threats to
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Introduction

1. A universally agreed-upon definition of «cultural property»?
2. Individual criminal liability in international criminal law (ICL) regarding cultural property
3. The International criminal court (ICC): Al Mahdi case law



1. A universally agreed-upon definition of «cultural property»?

Article 1, 1954 Hague Convention : “For the purposes of the present Convention, the term **"cultural property"** shall cover, irrespective of origin or ownership:

(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 sites; 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 monuments".



1. A universally agreed-upon definition of «cultural property»?

Article 1, 1970 UNESCO Convention: “For the purposes of this Convention, the term **"cultural property"** means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) (...)
 - (ii) (...)
 - (iii) (...)
 - (iv) (...)
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.”



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2. Individual criminal liability in International criminal law (ICL) regarding cultural property

A. Article 28 of the 1954 Hague Convention

*«The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, **all necessary steps** to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention»*



2. Individual criminal liability in International criminal law (ICL) regarding cultural property

B. Article 15 of the 1999 Second Protocol of the 1954 Hague Convention

*“1. Any person commits an offence within the meaning of this Protocol if that **person intentionally** and in violation of the Convention or this Protocol commits any of the following acts:*

(a) making cultural property under enhanced protection the object of attack;
(b) using cultural property under enhanced protection or its immediate surroundings in support of military action;

***(c)** extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;*

(d) making cultural property protected under the Convention and this Protocol the object of attack;

***(e)** theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.”*



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2. Individual criminal liability in International criminal law (ICL) regarding cultural property

§2, article 15 of the 1999 Protocol: “2. Each Party shall adopt such measures as may be necessary to establish as **criminal offences** under its domestic law the offences set forth in this Article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, **including the rules extending individual criminal responsibility to persons other than those who directly commit the act.**”



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2. Individual criminal liability in International criminal law (ICL) regarding cultural property

C. The 1954 First Protocol of the 1954 Hague Convention

A relevant legal instrument regarding the fight against illicit trafficking of cultural property.

- Resonance with European union law



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3. The International criminal court (ICC): Al Mahdi case law

A. Facts and decision of the court

Between 30 June 2012 and around 11 July 2012, Al Mahdi, with other members of Ansar Dine and AQIM, intentionally attacked, in Timbuktu, **nine mausoleums and the door of a mosque**, which did not constitute military objectives and were under UNESCO protection.

On 27 September 2016, he is convicted of **war crime under article 8 (2) (e) (iv)** of the **Rome statute**, as a co-perpetrator.



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3. The International criminal court (ICC): Al Mahdi case law

A. Facts and decision of the court

Article 8 (2) (e) (iv) Rome Statute punishes the following act: “*intentionally directing attacks* against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives”



3. The International criminal court (ICC): Al Mahdi case law

A. Facts and decision of the court

Article 25 (3) (a) Rome Statute : “3. *In accordance with this Statute, a person shall be **criminally responsible** and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, **jointly with another** or through another person, regardless of whether that other person is criminally responsible; (...)*”

- Crime against persons vs crime against property : the assessment of the **gravity of the crime**



3. The International criminal court (ICC): Al Mahdi case law

B. Critics: destruction of cultural property as a crime against humanity ?

An **historic case** that increased public consciousness regarding the gravity and the severity of offenses committed towards cultural property.

However, it raised many **critics**, including that it didn't address the question of recognition of these acts as **crime against humanity of persecution**.

- **Kordic/Cerkez**, International Criminal Tribunal for the former Yugoslavia (ICTY): the destruction of cultural property committed with the requisite **discriminatory intent** could be considered as a crime against humanity of persecution



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Conclusion

- The international community is **actively concerned** with the protection of cultural property
- Existing «vulnerabilities» and **shortcomings** of international criminal law regarding cultural properties
 - The restitution of colonial property issue
- International criminal law as a **source of inspiration** and **line of thought** for European Union law



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Thank you !

“damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”

Second recital of the 1954 Hague Convention preamble

If you have further question, please write at this email:

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