

The (Lack of) Responsibility of the Islamic State for the Destruction of Humanity's Intangible Heritage

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Abstract: The intentional destruction of cultural heritage undermines human dignity, identity, and intergenerational continuity and, when committed in armed conflict, constitutes a serious violation of international law. Between 2013 and 2019, the so-called Islamic State (Daesh) conducted a systematic campaign of cultural destruction in Iraq and Syria, targeting monuments, religious sites, museums, and archaeological remains while simultaneously exploiting antiquities trafficking to finance its operations. This article examines how international law responds to such acts when perpetrated by a non-state armed group lacking international legal personality. Drawing on the doctrine of the Common Heritage of Humanity, UNESCO's prohibition of intentional destruction, and developments in international criminal law, the paper analyses the allocation of responsibility between states and individuals for heritage crimes committed by Daesh. Using a doctrinal and case-law-based methodology, it assesses state obligations to prevent, protect, and repair cultural damage, alongside the emergence of individual criminal responsibility under the Rome Statute and domestic jurisdictions. The article argues that, notwithstanding Daesh's non-state character, contemporary international law provides a coherent accountability framework that integrates state responsibility, individual criminal liability, and post-conflict restorative measures, reaffirming cultural heritage as a collective interest of humanity and a core component of international legal protection.

Keywords: common heritage of mankind; cultural heritage; Islamic State; Daesh; state responsibility; individual criminal responsibility; International Criminal Court.

1. Introduction

Since cultural heritage belongs to humanity, its destruction impoverishes not only local communities, but also global society. From Palmyra and Aleppo to Mosul, heritage crimes demonstrate a deliberate and systematic effort to annihilate identities and interrupt the transmission

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of cultural knowledge across generations. Such acts are to be understood not as mere collateral damage in armed conflict, but as targeted assaults on the very fabric of civilisation, situating cultural heritage within the frameworks of human rights protection and atrocity-crime prevention.

Although international law has long recognized obligations to safeguard cultural property, enforcement has often lagged behind normative commitments. The territorial defeat of the so-called Islamic State at Baghuz in 2019 marked a significant turning point, shifting global attention toward the mechanisms of investigation and prosecution. Yet the threat persists, manifested through insurgent networks, transnational criminal trafficking, and the illicit antiquities market, highlighting the continuing urgency of robust state and individual accountability measures under international law.

This paper examines the destruction of cultural heritage by the Islamic State in Iraq and Syria and the interplay between non-state actors, state obligations, and international criminal responsibility. It employs a doctrinal and case-law-based methodology to assess how international law addresses the protection of cultural property and the prosecution of heritage crimes.

2. The Common Heritage of Mankind and the Prohibition of Intentional Destruction of Cultural Property

Contemporary protection of cultural heritage is grounded in the convergence of two mutually reinforcing frameworks: (2.1) the evolving doctrine of the Common Heritage of Mankind¹ and (2.2) UNESCO's normative articulation of the prohibition of intentional destruction of cultural property. Together, they provide the ethical justification and the legal architecture through which attacks on cultural heritage are understood not merely as property damage, but as violations of human dignity, identity, and the collective interests of humankind.

2.1. The Common Heritage of Mankind: An Evolving Doctrine

The concept of the Common Heritage of Mankind first emerged in international law during the mid-1960s and 1970s, initially in relation to the law of the sea and outer space². Articulated most prominently by Arvid Pardo, the doctrine sought to regulate areas beyond national jurisdiction through a set of core principles³, often described as non-appropriation, peaceful use, international cooperation, and equitable sharing of benefits. These principles were designed to prevent unilateral exploitation of shared resources, particularly underwater cultural artefacts, and to establish an international regime governing exploration and stewardship.

¹ On the concept of common heritage of mankind, see, more generally: MV WHITE, 'The common heritage of mankind: an assessment' (1982) 14 *Case Western Reserve Journal of International Law* 509-542; B LARSCHAN and BC BRENNAN, 'The common heritage of mankind principle in international law' (1983) 21 *Columbia Journal of Transnational Law* 305-337; R WOLFRUM, 'The Principle of the Common Heritage of Mankind' (1983) 43 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 312-337; CC JOYNER, 'Legal implications of the concept of the common heritage of mankind' (1986) *International and Comparative Law Quarterly* 190-199; AC KISS, 'Conserving the common heritage of mankind' (1990) 59 *Revista Jurídica de la Universidad de Puerto Rico* 773-777.

² ED BROWN, 'Freedom of the high seas versus the common heritage of mankind: fundamental principles in conflict' (1983) 20 *San Diego Law Review* 521; MH NORDQUIST (ed), *United Nations Convention on the Law of the Sea 1982. A Commentary*, vol. 1 (Martinus Nijhoff 1985); G KNIGHT & H CHIU, *The International Law of the Sea: Cases, Documents, and Readings* (Elsevier 1991).

³ EB WEISS, In *Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (Transnational Publishers 1989) 191.

Initially concerned with the sea and outer space, the doctrine gradually expanded into other domains, including the moon⁴, intergalactic space⁵, Antarctica⁶, environmental protection⁷, technology⁸, and ultimately cultural heritage. Cultural heritage, in particular, came to be described as an “archetypal” expression of the common heritage of humanity, transcending state boundaries and embodying the cumulative achievements of human creativity, knowledge, and identity across generations⁹. Yet this expansion was neither linear nor uncontested. The doctrine developed against the backdrop of the Cold War and the debates surrounding the so-called “New International Economic Order”, resulting in conceptual ambiguity and fragmented application.

By the mid-1980s, commentators such as Joyner acknowledged both the promise and the limits of the doctrine, characterising it as a philosophical notion rather than a binding rule of international law¹⁰. It lacked *erga omnes* status, had not crystallised into customary international law, and did not constitute *jus cogens*:

“[as] to date, the common heritage of mankind is not a principle of international law ‘erga omnes’. The common heritage of mankind today is neither the product of ‘instant custom’ nor ‘jus cogens’. On the contrary, it is merely a philosophical notion with the potential to emerge and crystallise as a legal norm”¹¹.

Nevertheless, its normative influence persisted, particularly in shaping expectations of collective responsibility and in framing cultural heritage as a shared concern of humanity rather than an exclusively sovereign asset.

The Common Heritage of Humanity concept remains contested¹², but recent work aligns heritage protection with broader human rights concerns and international criminal law. Authors argue for a more capacious articulation of cultural heritage within atrocity frameworks, enabling prosecutors and judges to link attacks on heritage with persecution, identity destruction, and intergenerational harm. This development complements earlier debates concerning heritage as collective patrimony and reinforces the legal foundations of accountability¹³.

⁴ Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (opened for signature 27 January 1967, entered into force 10 October 1967) 610 UNTS 205 art I: “[t]he exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries ... and shall be the province of all mankind”.

⁵ UNGA Res 1962 (XVIII) Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (13 December 1963) Principle I: “The exploration and use of outer space shall be carried out for the benefit of and in the interests of all mankind”.

⁶ See R LEFEBER, ‘The Exercise of Jurisdiction in the Antarctic Region and the Changing Structure of International Law: The International Community and Common Interests’ (1990) 21 *Netherlands Yearbook of International Law* 81–137.

⁷ UN Conference on the Human Environment, Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972) UN Doc A/CONF.48/14/Rev.1, Principle 5: “[t]he non-renewable resources of the earth must be employed in such a way as to guard against the dangers of their future exhaustion and to ensure that the benefits from such employment are shared by all mankind”.

⁸ JOYNER, ‘Legal implications of the concept of the common heritage of mankind’ (n 2) 190.

⁹ C FORREST, ‘Cultural heritage as the common heritage of humankind: a critical re-evaluation’ (2007) 40 *The Comparative and International Law Journal of Southern Africa* 124–151.

¹⁰ S ERVIN, ‘Law in vacuum: the common heritage doctrine in outer space law’ (1984) 7 *Boston College International and Comparative Law Review* 424; K SUTER, *Antarctica: private property or public heritage?* (Zed Books 1991).

¹¹ JOYNER, ‘Legal implications of the concept of the common heritage of mankind’ (n 2) 199.

¹² *Ibid.*

¹³ S WHITE, ‘Heritage in War: International Criminal Responsibility for the Destruction of Cultural Heritage in Armed Conflict’, in G MASTANDREA BONAVIRI, MM SADOWSKI (eds), *Heritage in War and Peace. Legal and Political Perspectives for Future Protection*, Springer, Cham, 2024, 267–285.

2.2. The Declaration on the Intentional Destruction of Cultural Property

This philosophical foundation was operationalised most clearly in UNESCO's 2003 Declaration on the Intentional Destruction of Cultural Property¹⁴. Adopted in the aftermath of the destruction of the Buddhas of Bamiyan, the Declaration marked a decisive shift from preservation-focused instruments toward accountability for deliberate acts of cultural eradication. It explicitly recognises that intentional destruction of cultural heritage undermines human dignity, social cohesion, and the identity of societies, groups, and individuals. In doing so, it bridges the conceptual gap between heritage protection and human rights law.

The Declaration further underscores the interdependence of tangible and intangible heritage, situating cultural destruction within broader processes of globalisation, social transformation, and intolerance. In its preamble, the Declaration states:

“Considering the importance of intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development, as underscored in the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, in the UNESCO Universal Declaration on Cultural Diversity of 2001, and in the Istanbul Declaration of 2002 adopted by the Third Round Table of Ministers of Culture,
Considering the deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage,
Recognising that the processes of globalisation and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage”¹⁵.

This statement brings acts of destruction into the international sphere, emphasising the importance of awareness, education, and collective condemnation. In the case of the Buddhas of Bamiyan, non-governmental organisations, states and civil society all spoke out against the Taliban government's position, affirming that it violated the principles of international law and humanity. Although formal enforcement mechanisms failed and the destruction was not prevented, the global reaction to the Bamiyan case demonstrated that such acts are perceived as affronts to humanity as a whole.

The Declaration also contains measures designed to fight the intentional destruction of cultural property, which is unprecedented for an international instrument dedicated to cultural heritage protection. Normatively, the Declaration imposes affirmative obligations on states to prevent, avoid, stop, and suppress intentional destruction of cultural property through legislative, administrative, technical, and educational measures.

In turn, states that are responsible for ordering destruction may incur international

¹⁴ UNESCO, *Declaration on the Intentional Destruction of Cultural Property* (Paris, 17 October 2003), available from <https://unesdoc.unesco.org/ark:/48223/pf0000140289> accessed 14 November 2025.

¹⁵ Ibid.

responsibility, irrespective of whether the affected property is inscribed on the World Heritage List¹⁶. Still, a loophole remains for states which have not accepted the optional clause of compulsory jurisdiction. In such cases, accountability has increasingly shifted from state responsibility to individual criminal liability.

This shift aligns with broader developments in international criminal law, including the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, which held that deliberate attacks on cultural and religious sites (i.e., the monasteries of Bosnia and Herzegovina) may constitute acts of persecution and crimes against humanity when carried out with discriminatory intent¹⁷. In fact, some authors argued that this rationale also applies to the Taliban crimes:

“[...] this crime may constitute an act of persecution included in the concept of crimes against humanity [and] should also apply to the situation of the destruction of Afghan cultural heritage perpetrated by the Taliban. In this case, the discriminatory intention to destroy all signs of religions other than Islam was declared by the Taliban itself”¹⁸.

The Rome Statute of the International Criminal Court, which was adopted in 1998 and came into force in 2002, subsequently codified intentional attacks against cultural and religious buildings as war crimes in both international and non-international armed conflicts, reinforcing the notion that cultural destruction is not legally neutral collateral damage but a prosecutable international crime.

The combined effect of the Common Heritage of Mankind doctrine and the UNESCO Declaration is therefore not the creation of a single, unified legal rule, but the consolidation of a powerful normative narrative. Cultural heritage is framed as a collective interest of humankind, while its intentional destruction is understood as an assault on identity, memory, and intergenerational continuity. This framing has strengthened the legal basis for individual accountability, even as state responsibility remains unevenly enforced.

Recent UNESCO initiatives further reflect this convergence. High-level dialogues with counter-terrorism bodies and member states have emphasised the persistent accountability gap in cases of terrorism-linked destruction, looting, and trafficking. Similarly, MONDIACULT 2022 and subsequent regional dialogues have linked restitution, ethical stewardship, and cooperative governance to deterrence and post-conflict repair. These developments signal an ongoing effort to translate the philosophical foundations of common heritage into operational mechanisms capable of addressing contemporary patterns of world-destruction.

In sum, while the Common Heritage of Humanity remains conceptually fluid and legally contested, its integration with UNESCO's prohibition of intentional destruction has significantly reshaped how international law understands and responds to cultural heritage crimes.

¹⁶ However, as mentioned above, the State can only be tried in the context of civil liability, with criminal liability reserved for the individuals responsible for committing the act.

¹⁷ *Prosecutor v Dario Kordić and Mario Čerkez* (Judgment) IT-95-14/2-T, International Criminal Tribunal for the former Yugoslavia, 26 February 2001, paras 422-431.

¹⁸ F FRANCIONI and F LENZERINI, 'The Destruction of the Buddhas of Bamiyan and International Law' (2003) 14(4) *European Journal of International Law* 637.

Together, they anchor accountability not only in treaty obligations and criminal statutes, but in the shared responsibility of humanity to safeguard the cultural foundations of civilisation itself.

3. Daesh in Context: Emergence, Cultural Destruction, and Legal Status

The Middle East has historically functioned as a nexus of civilisation. It occupies a singular position in global history as the cradle of Judaism, Christianity, and Islam, a hub of transcontinental trade routes, as well as a recurring theatre of military and geopolitical conflict. While such factors continue to shape its centrality in international relations, the discovery of vast oil reserves further intensified its strategic and economic significance, transforming arid and desert territories into focal points of global energy markets and international investment.

The persistence of regional conflict, coupled with the erosion of state authority, has repeatedly facilitated the rise of organised non-state armed groups. Against this backdrop, the insurgent organisation known as the “Islamic State” emerged as a particularly violent manifestation of these dynamics, capitalising on instability to assert territorial control and advance an extremist ideological project. Originating from the remnants of al-Qaeda in Iraq, the group expanded into Syria during the civil war and declared itself a “caliphate” in 2014. The group has been designated under various names, including the Islamic State in Iraq and the Levant (ISIL) and the Islamic State in Iraq and Syria (ISIS). Nevertheless, the Arabic acronym of its original name (*Daesh*) has been widely and deliberately adopted by the international community to deny its claims to religious authority and statehood.

3.1. Systematic Destruction and Exploitation of Cultural Heritage

Daesh waged a systematic and well-documented campaign of cultural destruction during its rule in Iraq and Syria from 2013 to 2019. The group deliberately demolished historic shrines, religious sites, libraries, museums, and archaeological monuments. UNESCO and other observers reported the “systematic destruction of ancient religious and cultural artefacts and manuscripts” in Mosul, as well as the bombing of Assyrian sites at Nimrud¹⁹. Daesh famously destroyed the Roman-era temples of Baalshamin and Bel at Palmyra, executed archaeologists who resisted its rule, and razed mausoleums and mosques it deemed heretical. Overall, this iconoclastic campaign extended across Syria and Iraq²⁰. Concurrently, the group organised the looting and illicit sale of antiquities to finance its operations. Following coalition air strikes against its oil revenues in 2014, reports indicate that the group increased its trafficking of cultural property, with museum pieces and temple reliefs cut up and smuggled abroad²¹. German UNESCO officials highlighted in 2015 that ISIS’s illegal trade in cultural property “must be

¹⁹ UNESCO World Heritage Centre, Minister of State Böhmer condemns destruction of Iraqi cultural sites in Nimrud by the ISIS terrorist group and calls for peace in Iraq (UNESCO World Heritage Centre, 9 March 2015) <https://whc.unesco.org/en/news/1246> accessed 14 November 2025.

²⁰ T G WEISS and N CONNELLY, *Cultural Cleansing and Mass Atrocities: Protecting Cultural Heritage in Armed Conflict Zones* (Getty Publications 2017) <https://www.getty.edu/publications/occasional-papers-1/> accessed 14 November 2025.

²¹ A HOFFMAN and P STOKES, ‘Digging In and Trafficking Out: How the Destruction of Cultural Heritage Funds Terrorism’ (Combating Terrorism Center at West Point, 29 January 2016) <https://ctc.westpoint.edu> accessed 14 November 2025.

prevented and stopped,” given its role in funding terrorism²².

The heritage attacks of Daesh were never random; they served intertwined aims of religious iconoclasm, military control, and financial gain. On the one hand, such acts were part of a coherent politico-religious strategy, a form of “cultural genocide” aligned with the group’s puritanical Salafi ideology²³. This campaign “was integrated into a system combining religious ideology, political agenda and extreme violence”²⁴. On the other hand, targeting cultural heritage demoralised local populations, erased markers of rival identity, and generated revenue through looting²⁵.

These realities situate the heritage crimes of Daesh squarely within the framework of international law. The deliberate destruction of monuments and cultural property at Palmyra, Mosul, and elsewhere constitutes precisely the type of offence prohibited under the 1954 Hague Convention, its Second Protocol, and condemned by the UN Security Council. While Daesh itself lacks legal personality and cannot be treated as a state under international law, individual fighters and organisers can be prosecuted under war-crime statutes. At the same time, states are under the obligation to safeguard cultural property and to investigate, prosecute, and punish violations.

3.2. The (Lack of) International Legal Personality

No state or international organisation has ever recognised Daesh as a state, while its designation as a terrorist organisation has been nearly universal. The group has never satisfied the Montevideo criteria of statehood: a permanent population, a defined territory, an effective government, and the capacity to enter into foreign relations²⁶. In practice, its purported population was subjected to coercive rule, its borders were unstable, and its authority remained fragmented and persistently contested. These faults were stressed by the collapse of the “caliphate” in March 2019, when the fall of its final territorial enclave in Baghuz, Syria, marked the end of its claims to effective territorial control. Following this defeat, Daesh reverted to a pattern of low-intensity insurgency, operating through dispersed guerilla cells and transnational criminal networks. Although affiliated groups, also known as “provinces” (*wilayat*) remain active in parts of Iraq, Syria, and beyond, including Sinai, Sahel, and Libya, none has been successful in reestablishing a centralised state structure²⁷.

Consequently, the “Islamic State” cannot be regarded as a subject of international law, as it lacks the factual or legal standing to exercise state rights or assume treaty duties. While the absence of international legal personality might appear, at first glance, to risk displacing responsibility for cultural heritage protection onto territorial states alone, this does not create

²² UNESCO World Heritage Centre, Minister of State Böhmer condemns destruction of Iraqi cultural sites in Nimrud (n 29).

²³ G J STEIN, ‘Performative Destruction: Da’esh (ISIS) Ideology and the War on Heritage in Iraq’ in J CUNO and T G WEISS (eds), *Cultural Heritage and Mass Atrocities* (Getty Publications 2022) <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-2/09-stein/> accessed 14 November 2025.

²⁴ Ibid.

²⁵ HOFFMAN and STOKES, ‘Digging In and Trafficking Out’ (n 21).

²⁶ For a general overview of the statehood requirements, see A MURPHY and V STĂNCESCU, ‘State formation and recognition in international law’ (2017) 7(1) *Juridical Tribune* 7.

²⁷ C BUNZEL, ‘Explainer: The Islamic State in 2021’ (Wilson Center, 10 December 2021), available from <https://www.wilsoncenter.org/article/explainer-islamic-state-2021> accessed 14 November 2025.

an accountability vacuum. Rather, responsibility of the crimes perpetrated by Daesh ought to be pursued through alternative and long-established legal mechanisms: the obligations of states to prevent, repress, and repair harm to cultural heritage, and the individual criminal liability of those who directly perpetrate such acts.

4. Responsibility for Cultural Destruction: State Duty and Individual Liability

Even where cultural destruction is perpetrated by non-state armed groups such as Daesh, international law does not suspend responsibility. Instead, it operates through two interrelated regimes: (4.1) the states' obligations to prevent, mitigate, and respond to such violations and (4.2) the individual criminal liability.

4.1. State Duties to Prevent, Protect, and Repair Cultural Heritage

International responsibility derives from customary law and, inevitably, from the jurisprudence of international courts, recognising state liability as a general principle of international law²⁸. When a state breaches its international obligations, including the duty to protect cultural heritage, it incurs an obligation to provide reparation. As noted in the literature,

“State responsibility has been consolidated in international law thanks to a series of international cases that have attested to the existence of a principle of international law recognised by States of accountability and reparation for internationally wrongful acts”²⁹.

International courts, recognising the general concept that the party responsible for breach of contract assumes the obligation to repair the damage caused, adopted by almost all national legal systems, have decided that the responsible state is subject to the same obligation to provide reparation³⁰:

“The international responsibility of the State is, as a rule, presented as an international obligation to make reparation for a prior violation of international law. In this sense, international responsibility is a genuine obligation to repair the damage caused by a violation of international law”³¹.

This responsibility is objective: intention or motivation of state agents is irrelevant, as international accountability focuses on the causal link between the act or omission and the resulting harm³². International courts have consistently held that failure to prevent, repress, or punish unlawful acts, including those by private individuals operating within the state's jurisdiction, triggers state liability. This principle has been affirmed across legislative, administrative,

²⁸ PG FERREIRA, ‘Responsabilidade Internacional do Estado’ in JB Lima Jr (ed), *Direitos Humanos Internacionais: avanços e desafios no início do século XXI* (MNDH/GAJOP 2001) 22; F BRAȘOVEANU, ‘Considerations on Cultural and Natural Heritage and the Universal Obligation to Protect and Transmit It to Future Generations’ (2024) 26(1) *Ovidius University Annals – Series: Civil Engineering* 111-118.

²⁹ AC RAMOS, *Responsabilidade internacional por violação de direitos humanos: seus elementos, a reparação devida e sanções possíveis: teoria e prática do direito internacional* (Rio de Janeiro: Renovar 2004) 71.

³⁰ FERREIRA, ‘Responsabilidade Internacional do Estado’ (n 28) 22.

³¹ AC RAMOS, *Teoria geral dos direitos humanos na ordem internacional* (Rio de Janeiro: Renovar 2005).

³² RAMOS, *Responsabilidade internacional* (n 29) 90.

and judicial spheres.

For example, the Inter-American Court in *La Última Tentación de Cristo* held that:

“any act or omission by the State, on the part of any of the Powers – Executive, Legislative or Judicial – or agents of the State, regardless of their hierarchy, in violation of a human rights treaty, generates international responsibility for the State Party in question”³³.

Similarly, the International Court of Justice in the *Corfu Channel* case established state responsibility where Albania failed to disclose information about mined waters, leading to the destruction of a British ship³⁴. Under these doctrines, a state’s obligation to protect cultural property encompasses prevention, investigation, prosecution, and repair of damage caused by breaches of international norms.

Thus, even though Daesh cannot itself be held as a legal person under international law, the duty of states to safeguard heritage and provide reparation where harm occurs remains fully operative. Indeed, all states are bound under international law to prevent and punish the intentional destruction of cultural heritage. Treaty regimes, notably the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols³⁵, and UN resolutions, including Security Council Resolution 2347 (2017)³⁶, require States to respect protected cultural property and to prosecute or extradite persons responsible for such crimes. This framework ensures that the destruction of cultural property does not escape legal scrutiny and aligns individual criminal accountability with the broader architecture of state responsibility.

4.2. Individual Criminal Responsibility for Cultural Heritage

The development of international law and the regulation of armed conflicts have progressively established the principle of individual criminal responsibility, defining both the scope of prohibited conduct and the mechanisms through which offenders may be held accountable. In the twentieth century, this trajectory began at the Versailles peace settlement³⁷ and culminated in Rome with the adoption of the Rome Statute, which established the Permanent International Criminal Court (ICC). The Statute emerged after decades of scholarly debate and diplomatic negotiation, shaped by successive waves of global conflict and atrocity that underscored the necessity of universal accountability.

The Second World War marked a watershed in this evolution, with military tribunals instituted to prosecute war crimes, crimes against humanity, and other egregious violations³⁸. These

³³ *La Última Tentación de Cristo (Olmedo Bustos y otros) v Chile* (Inter-American Court of Human Rights, Judgment of 5 February 2001) Serie C No 73.

³⁴ *Corfu Channel (UK v Albania)* (Merits) [1949] ICJ Rep 4, 22-23.

³⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956, UNTS No 3511); Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 26 March 1999, entered into force 9 March 2004).

³⁶ UN Security Council Resolution 2347 (24 March 2017) UNSC Doc S/RES/2347 (2017).

³⁷ Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles) (signed 28 June 1919, entered into force 10 January 1920) 225 CTS 188.

³⁸ See FM BUSCHER, *The U.S. War Crimes Trial Program in Germany, 1946-1955* (Greenwood Press 1989) (Contributions in Military Studies, No 86).

tribunals reinforced the principle that perpetrators could be charged regardless of nationality or domestic law, laying the groundwork for the modern international criminal justice system. In Germany, for example, Article 4 of the Weimar Constitution³⁹ recognized that generally accepted rules of international law were binding within domestic law.

From Versailles through the ad hoc tribunals for the former Yugoslavia and Rwanda, culminating in the Rome Statute, scholars and practitioners laboured over three-quarters of a century to construct a coherent international criminal justice framework. This system seeks to ensure that perpetrators of mass atrocities are held accountable while advancing the broader goals of justice, deterrence, and the preservation of peace. Today, the ICC and complementary domestic jurisdictions stand as the institutional embodiment of this long and arduous effort, providing mechanisms to prosecute offenders who commit crimes that shock the conscience of humanity.

Consequently, Daesh fighters and leaders can be prosecuted for international crimes (e.g., war crimes, crimes against humanity) before international or domestic courts. For example, the ICC and special tribunals have recognized the destruction of cultural heritage as a prosecutable war crime. The 2016 ICC conviction of Ahmad Al Mahdi for razing Timbuktu's mausoleums⁴⁰ served "as a warning to potential perpetrators that a reckoning may be at hand"⁴¹. Likewise, many states have since used their national courts to try returning ISIS members for war crimes and terrorism.

5. Conclusion

The destruction of cultural property that forms part of humanity's shared heritage constitutes a serious international crime. Deliberate attacks on monuments, religious sites, libraries, and archaeological treasures are recognized under international law as war crimes and, in some cases, as crimes against humanity. The campaign of destruction carried out by the so-called Islamic State in Iraq and Syria exemplifies the extreme consequences of such acts, combining ideological iconoclasm, military strategy, and illicit financial gain.

While international human rights organizations and UNESCO have condemned these acts, accountability has been complicated by the fact that Daesh is not recognized as a state or a subject of international law. Its non-state character means that responsibility cannot be assigned to it in the same manner as a sovereign state. However, international legal frameworks, including the Rome Statute, customary law, and UNESCO's normative instruments, allow for the

³⁹ Constitution of the German Reich (11 August 1919) art 4.

⁴⁰ ICC, Office of the Prosecutor, 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, Following the Transfer of the First Suspect in the Mali Investigation', 26 September 2015, available from <https://www.icc-cpi.int/pages/item.aspx?name=otp-stat-26-09-2015> accessed 14 November 2025. Chief Prosecutor Bensouda remarked that: "Let there be no mistake: the charges we have brought against Ahmad Al Faqi Al Mahdi involve the most serious crimes; they are about the destruction of irreplaceable historic monuments, and they are about a callous assault on the dignity and identity of entire populations and their religious and historical roots. [...] It is rightly said that 'cultural heritage is the mirror of humanity.' Such attacks affect humanity as a whole. We must stand up to the destruction and defacing of our common heritage".

⁴¹ J POWDERLY, 'Prosecuting Heritage Destruction' in J CUNO, T G WEISS (eds), *Cultural Heritage and Mass Atrocities* (n 23) 442, <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-4/25-powderly/> accessed 14 November 2025.

prosecution of individual perpetrators and the imposition of state obligations to prevent, investigate, and punish heritage crimes.

The case of Daesh underscores the dual nature of accountability in international law: states retain a duty to safeguard cultural heritage and to ensure effective domestic prosecution, while individuals who plan, execute, or direct attacks on heritage sites can be held criminally responsible through domestic courts or the International Criminal Court. In this way, even when non-state actors commit widespread cultural destruction, the architecture of international law provides mechanisms to pursue justice, protect vulnerable heritage, and reaffirm the principle that cultural property is a collective patrimony of all humanity.

Ultimately, the ongoing struggle against the destruction of cultural heritage illustrates both the vulnerabilities of humanity's shared patrimony and the resilience of international legal norms. It demonstrates that, while non-state actors may exploit instability to commit egregious crimes, the combination of state responsibility, individual criminal liability, and cooperative international frameworks provides a pathway to accountability, deterrence, and the restoration of cultural memory.

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