Cultural Heritage in Iraq and Afghanistan: A Comparative Analysis of the Failures of Cultural Property Law
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Introduction
At the intersection of art and international affairs lies a small, yet very important set of rules that determine the integrity, nationality, and treatment of cultural property. The foundation for the protection of cultural heritage is embedded in international law with treaties that date back to the 1954 Convention for the Protection of Cultural Heritage in Event of Armed Conflict. Since then the international community has strove for the protection of all monuments, museums, art facts known and unknown, and any other property that is sacred to the cultural heritage of a nation or people. Relative to other international treaties, cultural heritage laws are still very young and do not address several gaps that have allowed it to become a criminal activities. With the wars in Afghanistan and Iraq, cultural heritage has suffered tremendously. From the pillage of museums, to the looting of unknown excavated items, western art markets are starting to see an gradual increase in artifacts from these regions. These activities not only destroy archeological evidence, but they are also proving to be a profitable source of revenue for extremist groups that endanger regional and international security. In these circumstances, international law has failed because of its theoretical nature and the conventions' lack of “catch-all” clauses. Because of this, the solutions must look beyond legal theories.

Ancient and Modern History

Ancient History:

Afghanistan

• “Crossroads of Culture”
• Achaemenids Persians, Greeks, Sassanian, Mughals

Iraq

• “Cradle of Civilizations”
• Mesopotamia: Sumerians, Akkadim, Babylonians, Hittites.
• Linked to Western cultures: Origin of several current social rules, structures and Abrahamic religions.

Modern History

Iraq

Since the late 90s, the U.S. has had concerns regarding the political stability of Iraq. Around the same time that the Taliban rose to power in 1994, Saddam Hussein, the Ba’thist party leader, became the President of Iraq. The United States invaded Iraq in 2003 and quickly attributed their actions to their belief that Iraq was developing nuclear weapons. The Museum of Iraq in Baghdad was almost immediately sucked after the U.S. invaded on April 10, 2003. Over 15,000 artifacts were stolen and a large part of the museum’s records were destroyed. Today, over half of those items have been retrieved; more than 7,000 were retrieved within a year. The international community often blames American troops for these events. In 2004, several museums officials prepared themselves by vowing some of their most valuable artifacts. It took the U.S. army three days to move into position, by then the museum was in critical condition. Immediately after, this American teams of scholars were set up to work with the museum staff in order to restore the state of the museum. They worked quickly, but this could have been avoided if the U.S. military had moved into place at the right time. Almost twelve years after the sack, the Baghdad Museum was re-opened in 2017 with new exhibitions, renovated galleries, and digitized records. Amid this success, Iraq’s UNESCO World Heritage sites are still in serious danger of destruction. This is partly because the U.S. military has position their bases near ancient sites, such as the Ziggurat of Ur.

Afghanistan

With the rise of the mujahedin and the fall of the Soviet Empire in 1989, Afghanistan was left to patch up its politics and economy after the unsuccessful 1979 invasion. Only three years later, amidst the violence, in-fighting and terror, the National Museum of Afghanistan (NMA) in Kabul was sacked in 1992 and over 140,000 objects were destroyed and looted. This museum had been created in 1919 and housed only those items which were excavated in Afghanistan. Today, the location of the majority of these items is unknown. Some, however, have been returned; recently, the United Kingdom repatriated 1,500 Afghan artifacts seized from Heathrow airport that may have come from the NMA. Because the majority of the museum’s hard copies archives were destroyed during the plague, we have not been able to track and publicize the stolen items. Unlike the aftermath of the sack of the Baghdad Museum, there were no coalitions or teams that were set up to mitigate damages and help track the stolen items. However, when the United States invaded Afghanistan in 2001, the international community donated funds that would help the NMA re-open to the public in 2004, twelve years after it’s destruction. At this point, the museum still needed a lot of attention. In 2012, 20 years after the plunder, the US Embassy in Kabul made efforts to partner the Oriental Institute at the University of Chicago with the NMA. From this coalition, the parties hope to restore the museum’s artifacts, preservation and other destroyed items. Progress has been made and it is much too late for scholars to trace the stolen artifacts. Still, the NMA has seen much improvement since the early 2000s.

International Laws

• The 1907 Hague Conventions respecting the Laws and Customs of War on Land
• The 1944 Convention for the Protection of Cultural Property in Event of Armed Conflict
• The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
• The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage
• The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
• National Laws in Afghanistan, Iraq, the United States and the United Kingdom

Effects

• The layers of strata, which provide extremely valuable historical evidence, cannot be properly examined.
• Groups that engage in these activities are usually terrorist cells that sell these items to fund their activities and recruitment.
• For museums, invoices of exhibit and storage items in their possession were destroyed and has posed a challenge to their recovery.
• These items are indirectly funded into Western markets, through technological outlets, online sales, auction houses...
• Continued looting undermines the ability and integrity of the international laws in place to prevent these acts from occurring.
• The valuation of these goods do not seem to take into account the provenance.

If we compared our knowledge of Afghan antiques to our knowledge of Iraqi artifacts, we know much more about Iraq and Near Eastern cultures. There was an abundance of cultural property. The foundation for the protection of cultural heritage is embedded in international law with treaties that date back to the 1954 Convention for the Protection of Cultural Heritage in Event of Armed Conflict. Since then the international community has strove for the protection of all monuments, museums, art facts known and unknown, and any other property that is sacred to the cultural heritage of a nation or people. Relative to other international treaties, cultural heritage laws are still very young and do not address several gaps that have allowed it to become a criminal activities. With the wars in Afghanistan and Iraq, cultural heritage has suffered tremendously. From the pillage of museums, to the looting of unknown excavated items, western art markets are starting to see an gradual increase in artifacts from these regions. These activities not only destroy archeological evidence, but they are also proving to be a profitable source of revenue for extremist groups that endanger regional and international security. In these circumstances, international law has failed because of its theoretical nature and the conventions’ lack of “catch-all” clauses. Because of this, the solutions must look beyond legal theories.

Solutions

• “Military Objective” has long impeded the application of certain conventions for the protection of cultural heritage. The international community must establish clear principles against the use of ancient sites for military purposes. It must intervene directly in military actions and enact specific codes of conduct that prevent direct or collateral damage to cultural heritage. This could be in the form of a protocol under the 1954 Convention or a completely separate document, which could allow for more flexibility in the rigidity of the Iraq and Afghanistan situation. The current circumstances that allowed for the 1992 and 2003 sack should and set up a methodical and malleable system that will mitigate the effects of such events.

References


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