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THE LEGAL ROLE OF GOVERNMENT IN PROTECTING CULTURAL HERITAGE AND ARCHAEOLOGICAL SITES IN THE WAR-AFFECTED COUNTRIES: THE CASE OF IRAQ AND SYRIA

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Abstract: Conserving cultural heritage and archaeological sites have become a serious national concern in the Middle East for the war-affected countries, including Iraq and Syria. Because looting and violence have caused massive destruction of cultural heritage and archaeological sites, this study aimed to analyze the legal background concerning the protection of cultural heritage and archaeological sites in the context of Iraq and Syria during 2014 with the rise of the Islamic State of Iraq and Syria (ISIS). This study used the content analysis method and cross-country analyses for Iraq and Syria. The study is guided by two main questions: What is the government's legal role in protecting cultural heritage and archaeological sites? Are there any legal authorities in Iraq and Syria to protect cultural heritage and archaeological sites during war and conflict? In the end, this paper suggests that protecting cultural heritage is the legal responsibility of government which is supposed to be enforced in the legal foundation of the state as a national sovereign power.

Keywords: Legal Role of Government; Cultural Heritage; Archaeological Sites; Iraq; Syria; War

INTRODUCTION

In the last decades, cultural heritage and archaeological sites have been under various attacks during wars and conflicts that have been vivid in the cases of Iraq and Syria, particularly since the rise of the Islamic State of Iraq and Syria in 2014. In essence, considering the protection of cultural property during the armed conflict is mainly based on the mechanisms and available means of international cultural heritage protection and international humanitarian law (Red Cross 2010). The cultural heritage and property range in scope and time from ancient human remains and subtle traces of early human occupation to spectacular rock art and major iconic monuments of the entire civilization. Protecting the cultural heritage and archaeological sites is the shared responsibility of the people and government in power in each country. Enforcing a legal framework should be for protecting cultural heritage during armed conflict. However, the existing international bodies and their instruments have failed to facilitate an effective response (Higgins 2020). In the case of Iraq and Syria, the Islamic State of Iraq and Syria

(ISIS) has destroyed cultural heritage, archeological sites, and smuggled artifacts first to erase the civilization and national identity of diverse ethnic and religious groups and spread compassion for its beliefs among its followers. Since the early attacks, ISIS has publicly shown the organized and targeted destruction at two promenade sites first Palmyra in Syria and Nabi Younis Shrine (Jonah's tomb) in 2014. As a terrorist group, ISIS has destroyed the religious symbol of coexistence and tolerance.¹ In addition, religious identity is associated with cultural property that ISIS targeted in Iraq and Syria (Arimatsu and Choudhury 2018).

Valuing cultural heritage and the historical remaining of the previous generations should be protected by law. In the case of Iraq and Syria, conflict and war have caused massive destruction. Based on the evidence in the literature, when the United States military took control of Baghdad, soon the Iraq Museum, the world's largest repository of ancient Mesopotamian art and artifacts, was looted. For the looting of archaeological sites, museums, and heritage goods, the United States has been blamed for allowing the looting to occur (Rush 2010). Similarly, in 2014, ISIS conducted cultural terrorism by destroying and looting cultural heritage, sites, and antiquities in Iraq and Syria. Concerning 2014 and the organized attacks of ISIS is against art. 18 of the International Covenant on Civil and Political Rights (ICCPR), which stipulated the right of religious freedom. The occupied areas by ISIS in Iraq and Syria were the locations most imminent to destruction and threat of looting and demolishing like Hatra and Nineveh (Curry 2015).

In the XXI century, many archaeological sites and ancient architectures, including monuments, have been at risk of destruction in Iraq and Syria. Promoting awareness has been the duty of civil society organizations, the public, and academic institutions. In contrast, many challenges have weakened the government's responsibility as a legal guardian. While finding and understanding archaeological sites have led to a desire to preserve them (Sullivan and Mackay 2012). Many factors affect the survival and maintaining archaeological sites and heritage in any country. According to Teutonico (2002), various sources threaten the survival of heritage while modern society's development is a significant factor among the many.

Moreover, threats can be identified only by observing the patterns of destruction affecting the cultural heritage and archaeological sites. There is also a distinction, which is required between artificial and natural threats. Naturals are generally associated with the environment and natural phenomena that affect it. Cultural cleansing creates fear during armed conflict. While governments cannot protect those national assets without government, cultural heritage is protected under the 1954 Hague Convention for the Protection of Cultural Property in armed conflict events (Cuno and Weiss 2020). In principle, Archaeological heritage sites should be under a clear management guide to even protect them from private interest as the private sector exploits the sites to make the desired profit (Comer 2003).

In Syria, the escalation of violence during the civil war has had a devastating effect on the country's cultural heritage sites. These cities continue to be casualties of the ongoing Syrian civil war, resulting in damage and looting of cultural heritage (Seyfi and Hall 2021). Globally, introducing heritage protection has been processed; thus, some countries train their peacekeepers to protect heritage during peace missions, such as Italy. It is crucial to engage communities to learn about heritage protection, looting, and trafficking (Cuno and Weiss 2020).

¹See more at UNESCO: <https://en.unesco.org/fieldoffice/baghdad/revivemosul/heritage>

LITERATURE REVIEW

Archeological site conservation and management is a dual responsibility of the government and the people. This field is still a relatively young field of study and has less been discovered by scholars. Thus a limited number of resources are available for protecting the archaeological sites from wars and man-made crises. Developing policies and the legal foundation for protecting cultural heritage and archaeological sites requires the government's commitment. The modern archaeological conservations are met in appreciating the antiquities, ancient architecture, and monuments, especially in Egypt, Greece, and Rome (Sullivan and Mackay 2012).

Furthermore, Teutonico (2002) has addressed the effect of man-made factors that affect the archaeological heritage, such as Beirut and other places where development, pollution, and poor planning have left negative influences on the sites. Besides, mass tourism also has a negative effect regardless of the profit tourism accumulates, such as in the case of Volubilis, Morocco, where tourists climb the walls to take better pictures of the mosaic floor. Along with other factors, vandalism as a tourist attitude and behavior has been experienced in many archaeological sites, including the Iraqi Kurdistan region, where tourists used to write their names and memories on the walls and rocks in the destinations they often visit. However, what has been mentioned and experienced in the literature is far less influential than the impact of wars and conflicts on cultural heritage and archaeological sites. There are various reasons for destruction and a lack of care for archaeological sites and cultural heritage. Among those is the lack of interpretation and representation of archaeological sites to the public as they are underdeveloped in theory and practice (La Torre 1997).

Wars and conflicts have two different effects; the first is that the destruction made during the war period, like the Second Gulf War, has been enormous. The civil wars have been destructive in many ways, such as accidents of looting, in which Teutonico (2002) highlighted the case of Lebanon during the Civil war between 1975-1992, where the sites in the Biqqa Valley were exposed to looting and the artifacts were sold on the antiquities market for financing the war. In the case of Lebanon Anjar, a World Heritage site, it is used for military purposes, which has damaged many of its monuments. In the same vein, wars in countries including Bosnia, similar to Iraq, have affected religious heritage where civil wars and ethnic conflict have destroyed the mosques, churches, and temples.

War is a negative factor in Iraq. Thus, there is a necessity to address cultural heritage values from the point of view of the people and government. Terrorist groups have been a critical player in the deliberate destruction of religious places, such as the Taliban destruction of the Buddhas of Bamiyan in Afghanistan. In contrast, the same story has been repeated in Syria by the Islamic States terrorists in the temples of Palmyra (Newson and Young 2018). The Middle East region is featured various religions, including Islam, Judaism, Christianity, and other faiths, sects, and denominations all together have enriched the archaeological circumstance of the countries, especially Iraq and Syria. Therefore, archaeological sites and cultural heritage are at the heart of the conflicts (Seyfi and Hall 2021). Notably, the Gulf Wars have harmed Iraq's cultural heritage, internal insecurities, and civil wars, especially the rise of the Islamic State of Iraq and Syria 2014 (Rush 2010). Increasing attention has been paid to collateral damage during

the war. The Iraqi National Museum in Baghdad was looted, and the media and the public have ignored cultural property protection (CPP).

Furthermore, the ongoing looting of archaeological sites in Iraq has been due to sustained security and unrest (Stone 2011). Due to the severity of the situation and extent of looting at archaeological sites in Iraq, it has been difficult even to document as the Iraqi State Board of Antiquities is limited (Stone 2011). Considering the circumstance in Iraq, terrorist groups target buildings, including mosques, to control areas and cities, besides looting archaeological sites. In the different phases of war and conflicts in Iraq since the 1990s majority of the sites have confronted collateral damage (Stone and Bajjaly 2008). Likewise, as home to many of the oldest and culturally rich archaeological sites, Syria has witnessed damage to much of its heritage (Seyfi and Hall 2021). At a glance, in Syria, 290 locations were affected in the 2011-2014 period, in which 24 were destroyed, 104 severely damaged, and 85 relatively damaged (Karim and Islam 2016).

LACK OF LEGAL PROTECTION AND LEGISLATION AS THE PROTECTING FACTORS IN LOSING ARCHAEOLOGICAL SITES AND HERITAGE IN IRAQ AND SYRIA

The main principle for protecting archaeological sites and cultural heritage in many countries worldwide depends on the administrative and legislative frameworks regulating the conservation process from excavation to preservation. A legislative framework is required for protecting the sites and heritage from any common threats and risks, either man-made or natural. It is crucial to remember that the surviving remains of the past are finite and vulnerable. However, if the archaeological sites and heritage are destroyed or their authenticity is compromised, they cannot be reinstated (La Torre 1997). In line with this, preservation is all actions that are directly or indirectly aimed at preventing the perpetuation of heritage assets, such as protective legislation, land-use planning, and the creation of positive attitudes and educational programs that serve to provide the context for management activities and deflect the impact of widespread menaces (Darvill and Antonio 2014). Considering the protection of archaeological sites and heritage, there are various legal aspects and strategies, including legal architecture, administrative environment, threats to sites, conditions of the remains, number of tourists, and available resources (La Torre 1997). In many countries, laws are enforced to protect the sites, buildings, and heritage (Toniolo *et al.* 2015). The primary purpose of enforcing laws was to protect pedestrians, but eventually, it protected the buildings. Indeed, legislative authorities and laws can protect archaeological sites, heritage, and artifacts lost during wars and looted, such as in the case of Iraq (Stone 2011).

While dealing with the legislative framework for cultural heritage, an essential question is asked by Stone and Bajjaly (2008): Why, after millennia of human conflict, has the protection of the cultural heritage did not get better? Can it get better? As far as national identity, state sovereignty and political advantage are associated with cultural heritage; thus, avoiding 'collateral damage' is complex, and only law can assure it.

The only approach to assure the survival of archaeological sites and heritage is to devise and employ ways and strategies of caring for them, which avoid their depletion. The legal protection is not just necessary for the discovered sites and heritage but for the unexcavated

ancient artifacts and sites that have cultural significance and have not yet been discovered and damaged. Everything in archaeology has its specific value, including cultural, aesthetic, educational, and religious; therefore, the archaeological sites and heritage are valuable to different segments of society for the mentioned reasons (La Torre 1997). Bearing in mind that enforced national laws alongside international law can prevent illegal trading of antiquities because many wealthy individuals desire to possess antiquities as private property. Thus only strong laws can combat illegal trading. This can only be possible if the international community supports combating this trade; through increasing policies, strengthening legislation, and creating public awareness that private ownership of illicit antiquities is a violation of public good (Stone and Bajjaly 2008). Furthermore, the attacks on the cultural property are attacks on people, identities, nations, and states (Turku 2018).

DESTRUCTION OF CULTURAL HERITAGE AND ARCHAEOLOGICAL SITES IN IRAQ AND SYRIA

To assure sustainability of archaeological sites and cultural heritage, the legal architecture and management policy for archaeology are to be incorporated as main principles for conservation of nonrenewable sources in the long term (La Torre 1997). The preservation of cultural diversity is a recognized human right, and states are responsible for safeguarding cultural heritage (Turku 2018). From a glance, the deliberate show and display of religious and cultural sites, buildings, monuments, and ancient artifacts by ISIS have again shown the importance of protecting cultural property for people and governments (Arimatsu and Choudhury 2015). As already noted, legal principles for protecting archaeological sites and cultural heritage should also aim at educating the locals and all stakeholders to enforce the preservation and conservation of the assets (Comer 2003). In essence, a highly desirable objective related to conflict is preventing it first and, if not possible, then protecting all heritage in times of conflict to prevent any deliberate or collateral damage (Newson and Young 2018). The legislative framework can define the basis for protecting, preserving, and conserving archaeological sites, artifacts, and cultural heritage. There is a crucial motive behind enforcing a legal monetary system that can protect archaeological sites and avoid selling antiquities. Regulating archaeological sites, cultural heritage, and all artifacts should be under specific laws, as protecting and safeguarding are assured because a legal foundation can be diverse. It can even repatriate claims for cultural heritage that a country has lost during wars or conflicts (Kono 2010).

From this end, codification for the protection of the cultural heritage is crucial, which began under the auspices of the League of Nations and fell after 1945 to UNESCO.

A further developed means is the provisions of the Convention signed in The Hague on 14 May 1954 regarding the protection of cultural property in the event of armed conflict and the regulations for its execution and the related Protocol (Toman 2018).

Besides the UNESCO Convention, the Hague Convention specifies a Blue Shield as the symbol for making cultural sites to protect them from attack in the armed conflict. Thus, the International Committee of the Blue Shield (ICBS) should have been the coordinating body for identifying and protecting the cultural heritage in Iraq (Stone and Bajjaly 2008). Aligned with this, UNESCO adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import,

Export, and Transfer of Ownership of Cultural Property for the sake of preventing trafficking of cultural and artifact goods from the sources nation (country of origin) to the rich market nations (destination countries) (Hoffman 2006). The UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects and the other Conventions aim to form a required legal regime to protect moveable and immovable cultural property (Hoffman 2006).

There is a need for a focused and sustained protection policy based on the law since archaeological sites throughout Iraq, and Mesopotamian history in the country, particularly in the South, is hit the hardest (Stone 2011). On a broad base, Iraq and Syria need to consider combining both international and national cultural heritage protection since the region has global importance in global heritage history (Cuno and Weiss 2020). The destruction made to the Iraqi and Syrian cultural heritage and archaeological sites is due to fighting and conflict. The so-called 'collateral damage' is similar to that in ex-Yugoslavia and other countries, as purposeful destruction, plunder, and looting are elements of the planned destruction of a country's civilization (Stone and Bajjaly 2008). Whistle, collateral damage is not the only threat after the military operations and hostilities in Iraq, but the civil disorder and ensuring looting and destruction of museums, monuments, and sites (Hoffman 2006). In Iraq and Syria, deliberate and systematic destruction of cultural properties of the pre-Islamic period, including artifacts of Sumerian, Akkadian, Babylonian, Assyrian, Arab Art, and Ur, have been affected by the phases of wars and conflicts (Hoffman 2006). They are considering the Islamic State attacks and destruction of cultural property, including looting and trafficking of antiquities since ISIS took control of large areas of Iraq and Syria in 2014. It is vital to recall that ISIS targeted cultural property to dominate, break and erase the region's history and destroy civilization (Turku 2018). The ISIS attacks against cultural heritage and property in the region are used as weapons of war, which has gone far more than expected, as ISIS even started illegal excavations (Arimatsu and Choudhury 2018).

At a glance, many factors influence the protection of cultural heritage. Prioritizing cultural heritage in conflict times must be engulfed in military planning as top priority agenda for decision-makers, not the last thing (Stone and Bajjaly 2008). Unfortunately, collateral damage to archaeological sites is not restricted to Babylon and Ur. At the same time, due to multi-threats, UNESCO inscribed the ancient city of Samarra in 2007 on the World Heritage list and World Heritage in Danger List. So far, Iraq's cultural heritage law and cultural heritage policy are underdeveloped. That is why the protection of cultural heritage is not a common issue in practice and theory. At the same time, the core legal problem in the case of devastating the Iraqi cultural heritage is asserting whether just the occupying military forces are responsible for the rest of the crises and challenges (Hoffman 2006). Likewise, prior to the Second Gulf War, the cultural property has been illegally excavated from the archaeological site, which endangers the increase of illegal trade and smuggling of the items outside Iraq (Woudenberg and Lijnzaad 2010) as ISIS has made trafficking and looting antiquities in Iraq and Syria a source of finance and making a profit.

Likewise, the main objective of ISIS in demolishing cultural heritage in Iraq and Syria is to destroy the multicultural rich history of the countries. Furthermore, the attacks aim to undermine national identity and erase it. More importantly, ISIS has purposefully wanted to destroy the traces of religious existence and destroyed the Muslim, Christian, and Jewish sites

and shrines, including the burial place of Prophet Jonah in Mosul. The Tomb of Jonah symbolized tolerance and shared traditions (Turku 2018). Based on the existing literature, deliberate destruction is referred to as place-based destruction, a deliberate tactic for attacking the enemies and getting territorial control, and displaced ideology of ISIS (Shahab 2021). It is time for governments in Iraq and Syria to consider the application of 1970 UNESCO to comply with the Convention for seizing cultural property stolen and ensure protection and prevent the destruction of cultural goods and heritage. Besides the request for the return or repatriation of cultural property in the post-conflict era. In discussing the protection of culturally significant property during conflict and wars, a question is who safeguards the content of The Hague Convention and the 1970 UNESCO? In addition, the legal regime of public or private ownership under domestic legislation for the protection of cultural property is governed by the rules laid down in the aforesaid international agreements and conventions. That is to say that the legal foundation for cultural heritage and archaeological prosperity seems reliable if it is built on International Art Law (Hoffman 2006). To this end, concerning Iraq and Syria and preventing what may come next as a threat of war or conflict, we need to remember that ISIS has used cultural property as part of its warfare in Syria and Iraq (Turku 2018).

CONCLUSION

Considering the deliberate destructions made against cultural heritage and archaeological sites in Iraq and Syria, it is vital to consider the role of government, legal authorities, laws, and all stakeholders involved in assuring better protection. As Stone and Bajjaly (2008) emphasized, the government must take 'collateral damage seriously. In Iraq and Syria, the deliberate destruction of cultural heritage and archaeological sites has caused significant damage to human civilization in the region. Therefore, increased cooperation between the cultural heritage community and law enforcement agencies is required for protecting cultural heritage in Iraq and Syria.

At this point, UNESCO's Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted on 16 November 1972, emphasized the role of state governments in protecting cultural heritage by providing full support to protect cultural heritage from dangers caused by natural disasters and terrorist attacks (2017). Regarding cultural heritage protection, Iraq and Syria need international support, especially from international organizations such as UNESCO.

In the light of legal concerns, governments in Iraq and Syria should consider deliberate vandalism a war crime that can be dealt with based on laws and regulations associated with cultural heritage protection. As terrorist groups such as ISIS target cultural property to dominate, break and erase the 'others', such attacks can be prevented based on Iraq and Syria's current and past experiences (Turku 2018). Specific actions have supported archaeology protection, including July 2003 EU Regulation No. 1210/2003, which prohibited import, export, or dealing in Iraqi cultural property and archaeological, historical, cultural, rare scientific, and religious artifacts (unless exported prior to 1990). There are limited actions against illegal export and prohibited the trade of artifacts and archeological property, such as in December 2013, the UN Resolution 2199, and the Council adopted Decision 2013/760/CFSP and Regulation (EU) No.

1332/2013. Thus, altogether assure prohibiting the import, transfer or export of Syrian cultural property or artifacts of cultural, scientific, artistic or religious heritage (unless exported prior to 9 May).

Similarly, in 2015 the EU Member States Culture Ministers discussed taking relevant measures (Pasikowska 2016). It is important to stress the importance of heritage protection as it contributes to the long-term improvement of heritage management and protection. To acknowledge, heritage serves as a scarce resource (Pollock 2016). Therefore, the protection of cultural heritage and archaeological sites is a prerequisite for protecting the history of the human race. There should be national and global procedures based on the legal foundation to prevent the future destruction of cultural heritage in Iraq and Syria and prevent the tragic destructions that have already occurred in 2003 and 2014 in Iraq and 2011 in Syria. There is a dire need to deploy specific laws and strategic policies to protect cultural heritage from destruction. The legal foundation capacity is enriched by boosting the knowledge and skills of professionals involved in managing cultural heritage. The training initiatives of UNESCO and the International Council on Monuments and Sites (ICOMOS) since 2013 should be sustained to provide more support to professionals in the area of cultural heritage in Iraq and Syria, similar to the other countries in the region and globally.

Unfortunately, governmental and professional capacities for preserving cultural heritage during crises are still poor in Iraq and Syria. Another serious issue is the importance of cultural heritage in the eyes of citizens, as the public has a crucial role in protecting cultural heritage. Based on the frequent experiences in Iraq and Syria, most communities are less effective during conflicts and wars. It is essential to note the role of arm forces and military personnel responsible for abiding by the rules of LOAC and adopting best practices for protecting cultural property in armed conflicts (O'Keefe *et al.* 2016). In many countries worldwide, especially in Europe, heritage protection is an important component of city planning and land use. It is important to consider archaeology and heritage in policy-making and plan to ensure archeological and cultural heritage protection. Public support is vital for protecting heritage and creating an effective heritage protection system based on a fair balance between protecting critical and enabling appropriate change (CMS 2007).

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