



**CONTEMPORARY ISSUES UNDER
INTERNATIONAL HUMANITARIAN
LAW: WITH SPECIAL REFERENCE
TO INCOMPETENCE OF
INTERNATIONAL LAWS TO
PROTECT THE ENVIRONMENT AND
CULTURAL HERITAGE IN TIMES OF
ARMED CONFLICT**

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Abstract:

The environment and cultural heritage play an important role in the survival of humans on this earth. Over a period, the earth has witnessed the use of the environment and cultural property as a weapon against other persons and in doing so, has damaged it to a greater extent. The world began to take notice of this and enacted various laws to prevent the environment and cultural property from being damaged in the times of armed conflict. This paper discusses the various laws which are enacted to protect the environment and cultural property. This paper mentions the laws starting from the Liber code to the most recent Protocol II to the Hague convention. This covers almost all the laws enacted for the protection. This paper also gives instances where the law has failed to protect the environment and cultural property. This paper gives both past and present scenarios to demonstrate the incompetence of international laws. This paper cites the example of a world heritage site in former Yugoslavia which was destroyed in the armed conflict. The more recent examples are the destruction of the environment and cultural property in Iraq and Afghanistan in the hands of the Islamic State. This paper tries to highlight the shortcomings of international laws in protecting. This paper

also tries to provide suggestions that could be implemented by the international community for the better protection of the environment and cultural property. The international community by implementing stricter laws that are strictly enforced can help in saving the environment and cultural property for future generations.

1. Introduction

1.1. Background

The environment plays a crucial role in maintaining the delicate balance between humans and the earth. The environment allows the earth to remain habitable in the times of pollution and overutilization of resources. While the environment maintains a balance between humans and earth, cultural heritage maintains a balance between humans. Cultural heritage allows humans to have a sense of belonging and existence, it is a reflection of their religious or cultural beliefs. Both environment and cultural heritage are essential for the well-being of an individual. However, there are times when the environment and cultural heritage sites are being targeted by a group of people to advance their self-interest and while doing so, they are destroying it. To prevent this from happening, various states came together to draft laws and regulations which govern the environment and cultural heritage during the times of armed conflict.

1.2. Literature Review

- 1) **Rosemay Rayfuse, "War and the Environment: New Approaches to Protecting the Environment in Relation to Armed Conflict" ISBN 9789004270657**

This book presents the study of experts from Europe, the United States and Australia, members of the ICRC have also presented



papers on the topic of War and the Environment. This book contains detailed research on this subject. The book starts with the existing laws for the protection of the environment and goes on to suggest various mechanisms to safeguard the environment. The chapters in this book represent the paper of individuals, the flow of information is very easy to understand. This book has adequately aided in the research of this paper. It contains all the information required for this project.

- 2) **Hans-Peter Gasser, “For Better Protection of the Natural Environment in Armed Conflict: A Proposal for Action”** *The American Journal of International Law*, Vol. 89, No. 3 (July 1995).

This article is written by a renowned author in the field of international law. HP Gasser's article gives a brief introduction about the existing international standards on the protection of the environment in armed conflict. The author then proceeds with the measures which are required to be taken to strengthen the compliance of international obligations. The author suggests the mechanism in which the natural environment can be protected in times of conflict. The author calls for actions that are required to be taken by the international community at large for the larger good of society. This article has helped in understanding the functioning and legality of various international obligations in safeguarding the natural environment.

- 3) **Katerina Papaioannou, “The International Law on the Protection of Cultural Heritage”** *The University of Patras, Greece.*

This article gives a comprehensive analysis of international law and its use for protection of the cultural heritage. This

article provides for the operation of international law in the different times of armed conflict, social or political conflict, and peace times. The articles analyze the role of different players at the local, national, and international levels for the protection of the environment. The article also analyses the course of action available to each of them. The article also suggests the role which international organizations should play to safeguard cultural heritage. This article has helped in understating the various aspects of international law while protecting the international organization.

- 4) **Nat Van Woudenberg and Lebeth Lijnzaad, “Protecting Cultural Heritage in Armed Conflict”** ISBN 978900418377

This book was published to mark the ten years since the adaptation of the second protocol to the 1954 Hague convention for the protection of cultural heritage in the event of armed conflict. The authors have presented a wide variety of contributions that have been focused on the legal as well as cultural aspects of the Second Protocol. Some of the contributions like enhanced protection, criminal responsibility, and jurisdiction have been useful in understanding the complexities present at the international level. The book has helped in suggesting the suggestions mentioned in this paper. The contributions made by the author have influenced and helped this paper significantly.

1.3. Research Problem

International laws are in place to protect the environment and the cultural heritage for decades. The effectiveness of the implementation of these rules has been questioned on several occasions as they have



failed to prevent attack or damage to the environment or cultural heritage. Even though the laws are in force they are not able to protect the environment or cultural heritage when a conflict arises. To support this stance historical events as well as ongoing events have been discussed in this paper. This paper revolves around the problem of the ineffectiveness of the existing international law.

1.4. Existing Legal Situation

The existing legal situation is covered by a vast number of international treaties and convention which have been entered to safeguard the environment and cultural heritage at the international level. Some of these treaties and convention are:

- Hague Convention for the Protection of Cultural Property
- Hague Protocol or the Protection of Cultural Property
- Second Hague Protocol for the Protection of Cultural Property
- The Rome Statute of 1998
- Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques of 1976
- Berne Convention of 1976 and 1995
- Cartagena Convention of 1983
- World Heritage Convention of 1972
- Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment of 1993

These are just some of the existing legal laws which govern the environment and cultural heritage, there are many more such international laws.

1.5. Scope and Objective

This research paper tries to highlight the ineffectiveness of the existing legal

international laws created to safeguard the environment and cultural heritage during the times of armed conflict. This paper gives instances where the laws failed to protect the environment and cultural heritage. This paper attempts to suggest a way in which international laws will have complied in a strict sense to deter persons or groups of persons from destroying the environment or cultural heritage.

1.6. Hypothesis

Ensuring the compliance of international laws during the times of armed conflict in a strict and deterrent manner will protect the environment and cultural heritage most positively.

1.7. Research Question

Whether ensuring strict and deterrent implementation of international law during the times of armed conflict will protect the environment and the cultural heritage most effectively?

1.8. Methodology

The research methodology used in this paper is a descriptive and analytical nature. The research is based on the incidents which have occurred in the past. This paper places a great emphasis on the nature of the events and repercussions caused because of such incidents. This paper analyses the incident which has happened in the past and the impact of it in the present and future world. The data has been collected from different legal journals, which is used to compare the data from other countries. A three-way data gathering and analysis was the main component of this methodology as given in books, articles, and case laws.



2. The present laws to protect the Environment and the Cultural heritage at the times of armed conflict.

a) The Environment

International humanitarian law understood the role played by the environment and its importance to protect it as early as 1868, in the St. Petersburg Declaration, it stated that “the only legitimate object which states should endeavor to accomplish during war is to weaken the military force of the enemy.”¹ The Hague regulation of 1907² added a restraint on the use of force by the belligerents to cause unnecessary damage. It added that “the right of belligerent to adapt means of injury is not unlimited.” In addition to this the Geneva Convention³ defined the ‘military necessity’ and ‘proportionality’, these reduced the use of force by the belligerents to a greater extent. These laws were a part and parcel of customary international law, and therefore, were binding on the international community at larger irrespective of them being rectified or annexed. The Hague regulation of 1907 interpreted the environment as the property of the enemy’s state, and it was not sought to be destroyed except for the military necessity. These laws helped in maintaining and protecting the environment for a long duration.

However, “environment” was not expressly mentioned in these laws, it was interpreted and derived from the interpretation of the above laws. It was in the year 1977 in the Additional Protocol I⁴ to the Geneva Convention that the law expressly mentioned the environment. Over time, the laws developed for the better protection of the environment. In the same year, the ENMOD Convention prohibited the use of technology that modifies the environment with widespread, long-lasting, or severe effects.⁵

In May 1972 the United Nations Environment Programme (hereinafter referred to as UNEP) was created as a dedicated and specialized organ of the United Nation for the protection and preservation of the environment around the world both at the times of peace and armed conflict. The UNEP in May 1991 made a recommendation regarding action to be taken to prohibit weapons that cause particularly serious effects on the environment⁶. This recommendation led to the United Nations Conference on Environment and Development held in Rio de Janeiro in June 1992. Principle 24 of the Rio declaration is directly influenced by this recommendation. It states that “Warfare is inherently

¹ Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868.

² Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

³ Protocol I Additional to the Geneva Conventions (1949) and Relating to the Protection of Victims of International Armed Conflicts (1977), opened for signature 12 December 1977, in force 7 December 1978, 16 ILM 1391-1441. Protocol II Additional to the

Geneva Conventions (1949) and Relating to the Protection of Victims of Non-International Armed Conflicts (1977) opened for signature 12 December 1977, in force 7 December 1978, 16 ILM 1442-9.

⁴ Ibid.

⁵ Convention on the Prohibition of Military and Other Hostile Use of Environmental Modification Techniques, opened for signature May 18, 1977, 1108 UNTS 151, reprinted in 16 ILM 88 (1977).

⁶ UNEP, Governing Council, 16th Sess., Resolution 16/11 on Military Conflicts and the Environment (May 31, 1991), reprinted in UN Doc. A/46/25 (1991).



destructive of sustainable development. States shall, therefore, respect international law protecting the environment in times of armed conflict and cooperate in its further development, as necessary.”⁷ In 1993, the UN General Assembly passed a resolution that directly addressed the issue of protection of the environment during armed conflict⁸.

b) The Cultural Heritage

It was in the nineteenth century that the world first witnessed the documentation of contemporary international laws. The first instance of such codification was the Lieber Code⁹ in the United States of America (hereinafter referred to as the USA). Articles 35 of the code provided for the protection of cultural property in the form of classical works of art, libraries, scientific collections, etc. from places that have been besieged or bombarded. Article 36 provided for ownership, transportation, and dispute settlement of the cultural property taken by the nation. The influence of the Lieber code can be felt in various other international laws.

The most important and significant international law for the protection of cultural heritage during the times of armed conflict is the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 1954¹⁰, it is commonly referred to

as the Hague Convention 1954. Hague Convention along with its Protocols¹¹ and the Geneva Convention¹² provides for the framework of protection of Cultural Property. These laws initially were not perfect and we're not able to protect the cultural heritage from being damaged. This required for strengthening of these laws, over the time as when a conflict had arisen and the failure of laws to protect it, they made amendments to these laws, the most recent developments had occurred in 2003 by way of a UNSECO Declaration¹³.

Cultural property or heritage includes moveable and immovable, tangible, and intangible objects such as buildings and monuments, works and collection of art, books and manuscripts, relics, and many other items. The Hague Convention of 1954 represents a comprehensive legal framework for the protection of cultural property during hostilities. In nutshell, it provided for the protection at the times of international or domestic (civil) wars including the times of occupation¹⁴, and covered both types of property¹⁵. Obligations were imposed on both states in which the property is situated and the attacking or occupying state to safeguard the cultural property¹⁶. After the failure of the Hague Convention to protect the cultural property in the former

⁷ Rio Declaration on Environment and Development, UN Doc. A/CONF.151/5/Rev.1 reprinted in 31 ILM 874 (1992).

⁸ Protection of the environment in times of armed conflict, UNGA Resolution 47/37, UN Document A/RES/47/37, 9 February 1993.

⁹ Lieber Code – Instructions for the Government of Armies of the United States in the Field, prepared by Francis Lieber, promulgated as General Orders No 100 by President Lincoln, 24 April 1863.

¹⁰ Opened for signature 9 May 1954, in force 7 August 1956, 249 UNTS 240.

¹¹ First Hague Protocol for the Protection of Cultural Property in the Even of Armed Conflict (1954) opened for signature 14 May 1954, in force 7 August 1956, 249 UNTS 358.

¹²Supra 3.

¹³ UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, Paris, 17 October 2003.

¹⁴ Article 5 Of Hague Convention of 1954.

¹⁵ Article 1 of Hague Convention of 1954

¹⁶ Article 4 of Hague Convention of 1954



Yugoslavia, the nations decided to implement new laws that are better equipped to deal with the protection. This led to the development of the Lauswolt Document, which later became the Second Protocol to the Hague Convention of 1954¹⁷. Under this protocol, the 'special protection' regime was replaced by 'enhanced protection'. A committee for the protection of Cultural Property in the Event of Armed Conflict was established which granted such 'enhanced protection' to property.

3. Scenarios where the laws failed to protect

3.1. The Environment

The Aftermath of the use of Agent Orange by the US military in the Vietnamese war in huge quantities drew the attention of the world to the damage caused by the use of chemical weapons in war both on humans and the environment alike. Agent Orange was an herbicide and defoliant which was spread over Vietnam in millions of liters. The chemical was used for clearing the vast patches of forest to avoid guerrilla warfare. This chemical caused dioxin poisoning to around 3 million people and the forest was permanently damaged¹⁸.

In the Democratic Republic of Congo, a series of armed conflicts are going on since the mid-1990s. these armed conflicts

have a devastating effect on the wildlife population and environment. One of the reasons for the conflicts is the income derived from the use of these resources. The war has put a strain on these resources and the environment is not able to cope up with it. The stress on mining by the belligerents has increased deforestation in the country¹⁹.

In the Gulf war, the troops of Saddam Hussein's troops drained the Mesopotamian marshes which are the largest wetland ecosystem in the Middle East²⁰. In addition to this, his troops set fire on oil wells while retreating causing severe damage to the environment. More recently, the Islamic State in 2017, set fire on oil wells in the Mosul which released a toxic cocktail of chemicals into the air, water, and land. In Afghanistan, decades of conflict have destroyed most of the forest present in the country. The deforestation rate is a staggering high of 95%. Islamic State can be held responsible to a certain extent for deforestation in Afghanistan at present times²¹.

In Colombia, decades of unregulated gold mining in the country by the Revolutionary Armed Forces of Colombia rebels witnessed a huge toll on the environment. The mining resulted in the pollution of rivers and land with poisonous

¹⁷ Second Hague Protocol for the Protection of Cultural Property in the Even of Armed Conflict (1999) opened for signature 17 May 1999, in force 9 March 2004, 38 ILM 769.

¹⁸ Cain W. Crouse, "The Use and Effects of Agent Orange in Vietnam", Pressbooks <<https://ohiostate.pressbooks.pub/sciencebites/chapter/the-use-and-effects-of-agent-orange-in-vietnam/>> accessed on 8 April 2020.

¹⁹ ICRC, Armed conflict and violence in Democratic Republic of the Congo <

<https://www.icrc.org/en/where-we-work/africa/democratic-republic-congo/congo-civil-war>> accessed on 8 April 2020.

²⁰ Interim report, The Environmental Impacts of the Gulf War 1991, IR-04-019, International Institute for Applied Systems Analysis Schlossplatz.

²¹ Natural Resource Management and Peacebuilding in Afghanistan, first published in May 2013 by the United Nations Environment Programme



mercury. The armed conflict in the region has destroyed the environment of the country significantly²². These are just some of the examples in which the environment is destroyed because of armed conflict. There are many more such examples like the damage to Nepal's ecosystem during the armed conflict between 1996 and 2006²³.

3.2. The Cultural Heritage

The Hague Convention of 1954 was created by the international community after witnessing the widespread damage caused to the cultural heritage during World War II. The international community realized the need for conserving and protecting the cultural heritage for future generations. However, the initial protocol was a stepping-stone towards achieving the goal of preserving the cultural heritage for future generations. The first protocol to the convention was entered because of the devastating damage to the cultural heritage during World War II.

The second protocol to the convention was recently rectified by the majority of states in the year of 1999. This was because of the failure to protect the cultural heritage of the former Yugoslavia²⁴. The city of Dubrovnik dates back to the 7th century when the Romans and Slavs decided to settle on the coast of the Adriatic Sea. It

soon grew to become a major trading power and was recognized as the "Pearl of the Adriatic". It was a UNESCO designated World Heritage site. In the year of 1991 and 1992, the country witnessed severe damage to the site in the Yugoslav Wars. The inability to protect the cultural heritage of former Yugoslavia, the second protocol brought in significant changes in the law like defining the term 'military necessity', 'proportionality', adding a special designation for better preservation, and creating specialized committees for the better protection of heritage.

However, the measures taken by the international community at large have been not completely successful in preserving the cultural heritage of a nation. In the year of 2015, during the war in Mali, there was the destruction of the world heritage site of religious and historic importance in Timbuktu, Mali²⁵. In the same year of 2015, the Islamic state systematically destroyed Hatra, a 2000-year-old fortified city near Mosul, Iraq, it was bulldozed, looted, and destroyed. The cultural artifacts housed inside including gold and silver objects were looted by the Islamic state²⁶. The Great Mosque of Aleppo, Syria was destroyed amid civil war in Syria in the year of 2013. It was built in the 8th and 13th centuries²⁷. Both sides of the war blamed each other for the damage

²² Simon Romero, In Colombia, New Gold Rush Fuels Old Conflict, The New York Times <<https://www.nytimes.com/2011/03/04/world/americas/04colombia.html>> accessed on 8 April 2020.

²³ Adhikari, Jay Ram & Adhikari, Conflicts and Community Forestry: Understanding the Impact of the Decade-Long Armed Conflicts on Environment and Livelihood Security in Rural Nepal (2010).

²⁴ Patrick Boylan 'Implementing the 1954 Hague Convention and its Protocols: Legal and Practical Implications' (paper presented at the Conference

'Protecting Cultural Heritage: International Law after the War in Iraq, University of Chicago, 3 February 2006).

²⁵ The Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15.

²⁶ Security Council Press Statement on ISIL's Destruction of Religious and Cultural Artefacts in Mosul, SC/11804-IK/700, 27 February 2015.

²⁷ Marina Lostal, "Syria's world cultural heritage and individual criminal responsibility", International Review of Law 2015.



to the world heritage site. These are just some of the examples in which the international community failed to preserve the cultural heritage, there are any more such instances where the cultural heritage is lost forever like the Buddhas of Bamiyan in Afghanistan²⁸.

4. The need for more stringent rules and regulations.

The laws have been implemented to safeguard the environment and cultural heritage either directly or indirectly for almost two centuries now. These laws have been amended or new laws have been enacted for better protection as and when the need arises. Historically speaking, the laws have been not able to serve its purpose, as a conflict arises, and the damage is caused to the environment or cultural heritage, which is lost forever. The laws are amended after a conflict has arisen; the laws were not able to completely serve their purpose while the conflict was going on. The laws are generally enforced after the conflict has been resolved. The damage caused to the environment or cultural heritage while the conflict is going on is not stopped or reduced, the laws are not enforced to a greater extent. This causes significant damage to both environment and cultural heritage alike. This damage could have been easily prevented or averted.

The second protocol to the Hague Convention was agreed by the international community only after the damage caused in the former Yugoslavia. The shortcomings of

the first protocol were witnessed after the failure to mitigate the damage caused in the former Yugoslavia. The laws have been amended many times but yet in the recent scenarios mentioned above where the laws have failed to protect whether it be in Afghanistan, Iraq, Democratic Republic of Congo, or Nepal, have showcased the point that the international laws yet are not fully sufficient to protect the damage caused to the environment and cultural heritage. Present laws through the International Criminal Court²⁹ can hold the perpetrators accountable for the crime they have committed, which is necessary. But the damage caused to the environment and cultural heritage which are centuries old cannot be restored to its original glory.

The international community recognizes the shortcomings of international law only after a particular event has happened. The international community is not well equipped to avoid the damage to the environment and cultural heritage which is going on or is about to happen. For instance, the Islamic State had destroyed most of the environment and cultural heritage of Iraq and Afghanistan over the years, the international community was not able to stop this damage. The same can be said to be true for almost all the conflicts going on at this very time. It is because of this that we need more stringent laws to protect the environment and cultural heritage.

The enactment of more stringent laws will ensure strict compliance of all the

Court statute or the Rome Statute) is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome, Italy on 17 July 1998 and it entered into force on 1 July 2002.

²⁸ Luke Harding, south Asia correspondent, The Guardian, "Taliban blow apart 2,000 years of Buddhist history", <https://www.theguardian.com/world/2001/mar/03/afghanistan.lukeharding> last accessed on 7 April 2020.

²⁹ The Rome Statute of the International Criminal Court (often referred to as the International Criminal



international laws which are in force currently. This will also deter individuals from destroying the environment and cultural heritage. Mere enactment of strict laws will not be enough, a strict and rigid enforcement of these laws will be very important to abide by the individuals in following these laws. The string enforcement of laws will ensure that no one breaches the law and are aware of the consequences of breaching the law.

5. Conclusion

The environment and cultural heritage play a crucial role in the lives of humans. The environment supports the livelihood of the human while the cultural heritage provides an identity and sense of belongingness to the human. Both environment and cultural heritage have been used as a weapon in the armed conflict with the objective of defeating the enemy by any means. The destruction of the environment and cultural heritage is of long-lasting nature whose effect can be felt by the future generations as well. This prompted the international community to enact laws at the international level with the objective of protecting the environment and cultural heritage.

The international community enacted several laws which are directed towards protecting the environment and cultural property. These laws were tested from time to time on their ability to protect the environment and cultural property. In many instances, these laws failed to achieve their objectives, this required new laws to be adapted which were more sufficiently able to protect. However, as mentioned earlier, even these laws are not able to protect the environment and cultural property completely in times of armed conflict.

It is because if this inability to protect completely, the world needs strict and deterrent laws that should be enforced strictly. By following this approach, the environment and cultural property will be saved from witnessing another damage to itself. This could be very essential in preserving the delicate balance of the earth in the times of global warming and ever-increasing armed conflict which challenges the very existence of the environment and cultural property.

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