THE INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE AS A TOOL FOR ETHNOCIDE: THE CASE OF KUWAIT

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“A nation stays alive when its culture stays alive.”
- Motto of the National Museum of Afghanistan
# Table of Contents

ABSTRACT .................................................................................................................................................. 2  
INTRODUCTION ........................................................................................................................................ 3  
METHODOLOGY ...................................................................................................................................... 3  
LITERATURE REVIEW .......................................................................................................................... 5  
  Cultural Heritage ............................................................................................................................. 5  
  Identity and Ethnicity ....................................................................................................................... 6  
  Intentional Destruction .................................................................................................................... 8  
  War Crime ......................................................................................................................................... 8  
  Genocide and Ethnocide ................................................................................................................... 9  
IDENTITY CONSTRUCTION AND CULTURAL HERITAGE ............................................................. 10  
LEGAL PRECEDENT .......................................................................................................................... 13  
  International Legal Instruments ....................................................................................................... 13  
  Yugoslavia and the Trials of the International Criminal Tribunal for the Former Republic of  
  Yugoslavia ......................................................................................................................................... 15  
  Mali and the Trial of Ahmad al-Faqi al-Mahdi .............................................................................. 17  
DISCUSSION ......................................................................................................................................... 18  
  The Invasion of Kuwait .................................................................................................................... 20  
CONCLUSION ...................................................................................................................................... 25  
BIBLIOGRAPHY ................................................................................................................................... 27
ABSTRACT

Following the horrors of the Holocaust, psychological genocide became a new technique for destroying a group of people. Since cultural heritage greatly contributes to a group’s sense of belonging and recognition, it becomes an easy target for uprooting and eliminating the group’s identity. Elements of both tangible and intangible culture underpin the group; members pass their sites, practices, and values through generations. By attacking the material cultural heritage of a group, such as a building or sacred object, part of the identity of the group is also attacked. This action requires no physical violence, but is more than a mere material loss, and so the effect of such an act can be just as devastating as murder. People rely heavily on their identity to define themselves, their lifestyle, and their place in the world. Erasing that identity similarly erases a part of that person. In effect, a piece of them has died. Thus, this thesis argues that ethnocide, or the targeted destruction of a group of people, is committed not just through physical violence, but also through the deliberate targeting of a group’s heritage. Applying this argument to the Iraqi invasion of Kuwait in 1990, this thesis further asserts that the actions of Iraqi forces constituted ethnocide. When Saddam Hussein’s forces entered Kuwait, they looted the cities and destroyed the cultural heritage of Kuwait’s museums and archives in order to destroy the Kuwaiti identity and re-establish Kuwait as a part of Iraq rather than a distinct ethnic group. Considering the devastation wrought upon the Kuwaiti community, it is clear that the efforts of Iraq to eliminate all vestiges of a distinct Kuwaiti identity equaled ethnocide.
INTRODUCTION

This thesis intends to demonstrate that the intentional destruction of cultural heritage is a form of ethnocide, also known as cultural genocide. Following the Holocaust, widespread stigma quickly developed surrounding the mass extinction of a group of people using physical violence, an act which has since been termed ‘genocide.’ The world had witnessed malicious prejudice and civilian deaths on a previously unimaginable level, but rather than discouraging group violence altogether, public disgust with the Holocaust only instigated a new form of psychological genocide that attacked the core of a group: its culture.¹ As a main source of group pride and sense of belonging, cultural heritage has become an easy target for this new type of genocidal attack. Consequently, both the number of incidents of cultural warfare involving heritage as well as the number of international conventions attempting to protect cultural heritage have risen.² This thesis argues that, according to theoretical paradigms and international legal standards, the intentional destruction of cultural heritage constitutes ethnocide, a more specific form of genocide. I employ this supposition to further demonstrate that the Iraqi invasion of Kuwait in which museums, archives, and historic sites were demolished, was an episode of state-sponsored ethnocide.

I begin my analysis with a thorough literature review, relying on theories from nearly every sub-field of social science. In my literature review, I discuss definitions and concepts, such as cultural heritage, identity, and genocide, that underpin the argument of my thesis. I have also conducted a summary review of relevant legal precedent including international legal mechanisms and two illustrative criminal cases. Using this foundation, I propose that the intentional destruction of cultural heritage must be considered a specialty form of war crime: ethnocide. The act attempts to dismantle a population by eliminating that which holds their group together and defines their identity. It is a form of emotional and psychological violence that can do just as much damage as a knife or a gun. Kuwait, a case I will explore in my final section, is among one of many populations that have suffered from this genocidal tactic. A summary of the literature and past trial decisions prove that international law has finally developed to a point where it could prosecute the perpetrators for their crimes as acts of ethnocide. The first would be a groundbreaking case, but not in contradiction with developing legal standards. The gravity of purposefully destroying a group’s heritage is extremely serious and the criminal charge must reflect the severity of the action.

METHODOLOGY

In order to more fully explore the theoretical and legal relationship between the intentional destruction of cultural heritage and ethnocide, I employed a case study methodology by synthesizing principles derived from theory, as well as actual legal decisions, in order to offer a conclusion on the case of Kuwait. I first completed an extensive literature review on presently accepted theories regarding identity, cultural heritage, genocide, and ethnocide, gathering information from both primary and secondary documents on these topics. I further examined literature discussing previous instances of cultural destruction – such as World War II, the Balkan Wars, terrorist attacks in the Middle East, and the invasion of Kuwait – in order to connect theoretical postulations with actual occurrences. In my research, I included a wide range of academic fields: politics, archaeology,

anthropology, sociology, psychology, and law. Most of the literature followed a typical narrative or explanatory format, and these sources included both non-fiction books and legal textbooks on both international war crimes, crimes against humanity, and heritage law. For reviewing legal precedent, I primarily relied on primary sources, examining trial decisions and international agreements, though I also paired these documents with opinions and analyses written by legal practitioners. In particular, I analyzed trial proceedings from the International Criminal Tribunal for the Former Republic of Yugoslavia and the International Criminal Court’s prosecution of Ahamd al-Faqi al-Mahdi. Using the decisions in these cases, I demonstrate that international legal norms have expanded beyond strict treaty protocols in recent decades, and I also apply the courts’ findings to the invasion of Kuwait. Furthermore, I used news articles announcing updates of the Iraqi invasion and international response, as well as speeches made by Iraqi and Kuwaiti leaders in order to supplement and corroborate the second-hand sources. I collected the literature used in this study from library catalogs and online research.

After establishing the current theoretical and legal framework, I selected the case of Kuwait in order to explore and evaluate an instance in which extensive cultural destruction had occurred without formal response at the international level. The purpose of the case study is to apply the argument I developed from the literature and examine its implications. Case studies are useful in examining a particular instance in depth and allows researchers to draw useful conclusions and highlight certain patterns. For my case study I have chosen the Iraqi invasion of Kuwait in 1990. While I reviewed many cases before settling on the 1990 invasion, Kuwait is the most appropriate for my purposes and is most directly related to the conditions I will lay out my argument below. Alternative illustrations of destruction of cultural heritage included the Bamiyan Buddhas, Balkan Wars, and Gulf War with Iraq. For reasons outlined below, I did not select these cases. The Bamiyan Buddhas in Afghanistan, which were annihilated by the Taliban, represent an element of universal cultural heritage and do not hold special significance for any existing groups today. My analysis relates to identity destruction which requires one specific identity to be presently linked to the sites or objects under attack. In addition, I explored the destruction of mosques, libraries, and other cultural sites which occurred during the Bosnian War. After review, I chose to include these acts in my legal precedent section as the cases of the International Criminal Tribunal for the Former Republic of Yugoslavia represented one of the first shifts in which an international judiciary recognized property destruction as a war crime. By including this in the legal precedent section, I was able to build a stronger position and apply the decisions of the Balkan cases to an incident which was ignored by international bodies. I further considered the destruction that was wrought during the Gulf War in Iraq as a potential case study; however, the situation was extremely complex. Any case study with relevance for this thesis must include isolated acts of intentional destruction – as opposed to looting or collateral damage – and must have clear actors to whom certain examples of destruction can be attributed. With the multitude of forces engaged in combat in Iraq and the competing claims of military necessity versus cultural attack, the case study of Iraq would be too complicated to clearly demonstrate the argument of this thesis. Thus, I determined that Kuwait is the best case study for my research. The invasion of Kuwait was a contained incident with a direct impact on the present community. As an invasion, there was clearly demonstrated intent on the part of one group to overtake the other group. Also, there were two primary actors in the conflict – Iraq and Kuwait – whose actions can be neatly separated. Overall, it

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4 Ibid., 3.
presents the clearest picture of the elimination of cultural heritage and best illustrates the potential impact.

The greatest difficulty of the Kuwait case study will be separating looting from intentional destruction, though this complication would present itself with any case. I attempted to overcome this obstacle by examining the language used in reference to the invasion, reviewing speeches made by Iraqi leaders, radio broadcasts announcing the progression of the invasion and annexation, as well as news articles from within and outside of Kuwait, documenting the Iraqi actions and Kuwaiti reaction.

**LITERATURE REVIEW**

Many of the terminologies central to this thesis are debated amongst practitioners in the legal and anthropological fields. Thus, it will be important to clarify the use of these terms and their interrelations for the purposes of this thesis.

**Cultural Heritage**

Integral to the topic of this thesis is the concept of cultural heritage, an increasingly difficult term to define. Firstly, ‘cultural heritage’ can be contrasted with ‘cultural property’ which is, in fact, a subsection of heritage more broadly. Within this context, ‘cultural property’ refers to a “specific form of property that enhances identity, understanding, and appreciation for the culture that produced that particular property.”5 Historically, cultural property was the most commonly used term in legal documents and was developed as a response to the destruction of material objects and places that had occurred during armed conflicts such as World War I.6 However, the term soon became too limiting as it failed to incorporate the non-material value of culture and too narrowly focused on possession. In recent decades, cultural heritage has become the traditional term, though this phrase is not without its difficulties as well. The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage first defined cultural heritage as monuments, buildings, and sites “of outstanding universal value from the historical, aesthetic, ethnological, anthropological, artistic or scientific point of view.”7 Our understanding of heritage has grown even further since this definition because heritage now has universal significance, as well as important value for specific cultural groups. Heritage refers more broadly to those sites and objects of value which are incorporated into present beliefs and practices and are intended for use by future generations.8 Thus, cultural heritage is comprised of those sites and items that have been given their value by their significance to particular groups of peoples. In 2005, the Council of Europe officially gave a name to these groups: heritage communities.9

It is important to also highlight the dual nature of cultural heritage. Social scientists often classify cultural heritage as either ‘tangible’ or ‘intangible.’ Tangible cultural heritage has come to refer to the cultural property outlined above; comprising physical or movable aspects of cultural heritage.

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7 UNESCO, *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 2.
Conversely, intangible cultural heritage is the set of customs, beliefs, rituals, and values associated with a particular group. Strictly speaking, one can witness or practice intangible cultural heritage but cannot feel it in their hands. In practice, however, the two concepts are inseparable; Laurajane Smith and Natsuko Akagawa write that “[h]eritage only becomes ‘heritage’ when it becomes recognizable within a particular set of cultural or social values, which are themselves ‘intangible’.”10 Thus, the dual sides of cultural heritage — the tangible and the intangible — are inextricably linked as they mutually feed into one another. Archaeologist Caleb (Bayo) Folorunso even asserts that material heritage means nothing without also considering the associated cultural customs.11 The tangible is given significance through the intangible while the intangible acts as a material representation of the intangible.

Since this thesis focuses on the physical destruction of cultural heritage, I will primarily refer to the tangible form of heritage, though I maintain that the gravity of physical devastation is a result of the direct and inseparable link between tangible and intangible cultural heritage.

Identity and Ethnicity

Crucial to the understanding of both cultural heritage and ethnoicide (see below) are the concepts of identity and ethnicity; yet, defining identity and ethnicity with adequate clarity and specificity is perhaps one of the most difficult tasks of this thesis. Across all times and geographies, there exists a general concept of what these terms mean because each person has an identity – likely multiple identities – as well as an ethnicity. Even still, there are few fully comprehensive definitions. James Fearon, with the Department of Political Science at Stanford University, describes identity as a type of social construct with a dual meaning, often unsatisfactorily defined in contemporary dictionaries. Since his paper, other theorists, such as Jolle Demmers, have also taken up this concept of duality in ethnicity.12 Fearon conducted an analysis of both social and academic uses of the word identity, concluding that “‘identity’ means either (a) a social category, defined by membership rules and allegedly characteristic attributes or expected behaviors, or (b) a socially distinguishing feature that a person takes a special pride in or views as unchangeable but socially consequential.”13 The first half, social categorization, refers to a type of group membership that delineates certain acceptable behaviors or traits. Examples include ‘Jewish,’ ‘upper class,’ and ‘female.’ This social aspect of identity affects how one behaves and views the world.14 The latter half, personal identity, comes from how one distinguishes themselves from everyone and usually includes social categorization. Examples range from ‘Jewish’ to ‘tall.’ Generally speaking, losing a part of one’s social or personal identity would be a special type of loss as it is the basis of one’s self-understanding and self-esteem.15 Whether social or personal, identity is composed of those traits which are perceived as essential to the individual.

The crucial role that identity plays in one’s life has led conflict theorist John W. Burton to suggest that identity is one of several fundamental human needs.16 Typically, physical needs such as food and water are considered of primary importance, followed by needs categories of safety,
belongingness, esteem, and self-actualization. Burton expanded this list of needs and suggested that secure identity and recognition needs may actually be stronger than basic physiological needs. Today, the essential list presented by most needs theorists is as follows: safety/security, belongingness/love, self-esteem, personal fulfillment, identity, cultural security, freedom, distributive justice, and participation. These needs – including that of identity – are so important to the individual that the individual will knowingly, and even purposefully, generate violent conflict in an effort to ensure the fulfillment of any unmet needs.

Fearon further distinguishes between role and type identities. Role identities are those labels which obligate certain actions and functions. For example, the role of mother, taxi driver, and student all come with certain behavioral expectations. Type identities describe certain characteristics such as appearance, attitudes, values, skills, knowledge, experiences, or histories. Fearon gives the examples of nationality and party affiliation. Ethnic identity is a type identity with specific content and rules of membership that range from behavioral practices such as prayer to physical appearance.

At its core, ethnicity is a method of telling each other apart. The primordial view of ethnicity adheres to the belief that ethnicity is an inherent characteristic determined by blood; thus, being born into a particular ethnic community immediately ascribes one to that ethnicity. This definition, however, is insufficient because it presumes that ethnic divisions already exist. Conversely, constructivist theories present ethnicity as a social process of identification, rather than an objectively-defined trait. For our purposes, this thesis will refer to ethnic groups as “culturally ascribed identity groups, which are based on the expression of a real or assumed shared culture and common descent (usually through the objectification of cultural, linguistic, religious, historical, and/or physical characteristics” which aligns with Fearon’s definition of identity as either social or personal.

Oftentimes, ethnic identity is constrained by particular beliefs and practices which can, in turn, be used to identify one’s ethnicity. One such element is material culture, which is “frequently implicated in both the recognition and expression of ethnicity.” Thus, specific objects and buildings can be central to one’s ethnic identification. For instance, Jewish identity is closely tied to synagogues and the holy sites of Jerusalem. Similarly, American identity is heavily vested in documents like the Declaration of Independence and monuments like the White House and Lincoln Memorial.

Ethnicity is a form of identity and, as such, it is deeply linked to one’s sense of self and feeling of belonging. An attack on ethnicity is often felt as a direct attack because of the significance identity holds for individuals. In fact, ethnicity is frequently cited by conflict theorists as a source of conflict due to its strong connection with identity and emotion. Jolle Demmers describes a variety of ways in which ethnicity can contribute to the incidence of violence, used either as a tool or a justification. John Burton, using the Needs Theory of conflict, has similarly suggested that unmet identity needs

20 Fearon, 17.
21 Ibid.
22 Ibid.
23 Demmers, 26.
24 Ibid., 27.
26 Ibid., 120.
27 Demmers, 30-34.
can trigger violence. Therefore, as a specialty identity, ethnicity is an extremely powerful sense of identity because it is strong enough and meaningful enough to incite violence or rally defensive action.

A strong understanding of both identity and ethnicity, a sub-section within identity, will be necessary for the argument that follows below. Identity is a very powerful aspect of people’s lives and any action related to identity will inevitably impact those who share that trait. Given the importance of this concept, this thesis will also conduct a more in-depth analysis of identity, exploring its development and relationship with cultural heritage.

**Intentional Destruction**

This thesis argues that the intentional destruction of cultural heritage causes unique and permanent injury to the affected community; thus, it is important to differentiate intentional destruction from other forms of attack and damage. Intentional destruction occurs when significant damage, and sometimes thorough demolition, is committed with the clear purpose to annihilate the target. The greatest difficulty in many conflict situations, however, is determining intent, separating deliberate destruction from collateral damage. Despite the additional hurdle, there have been successful attempts by the United Nations to make this distinction. For example, in examining the ruins of the Bosnian War, UN investigators were able to determine that many mosques, churches, archives, and libraries were specifically targeted. These sites were not combatant strongholds nor were they of special military value – or in close proximity to either of those types of sites. Indeed, it was discovered that some bombs originated within the cultural buildings, placed to maximize damage to the foundation. Not every instance will have such clear signs of purposefulness, but it is often possible to distinguish intent from accident. Furthermore, given the gravity of intentional destruction, legal standards have developed as such that intentional destruction with discriminatory purpose can be now prosecuted as a crime against humanity under the Genocide Convention. When targeting cultural heritage, intentional destruction has a particularly grave impact.

**War Crime**

I propose that, under certain circumstances, intentional destruction qualifies as a unique form of a war crime. War crimes have been most clearly delineated in the United Nations Rome Statute that established the International Criminal Court (ICC). Article 8 explicitly defines a list of crimes that, committed during times of conflict, are prosecutable at the international level. These acts include any grave breaches of the Geneva Conventions, crimes prohibited under international law (such as willful killing, pillage, rape, and the use of poison), and criminal exploits against non-combatants. Thus, there is a wide-range of actions which fall under the definition of war crime if they occur as part of a conflict. During the creation of the International Criminal Tribunal for the Former Republic of Yugoslavia, which preceded the Rome Statute by a decade, the tribunal was the first international instrument to consider war crimes in a non-international armed conflict. Following suit, the Rome

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Statute explicitly addressed conflict as both international and non-international in character, allowing the ICC to prosecute war crimes during civil wars and internal armed events as well.

**Genocide and Ethnocide**

The argument of this thesis is predicated upon the idea that the destruction of cultural heritage is a strategy used to destroy a group and their identity. Cultural destruction goes beyond the threshold of a general war crime; thus, this group destruction is akin to an act of genocide. Raphael Lemkin first coined the term ‘genocide’ in 1944 in response to the atrocities of World War II. He defines genocide as

> the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.\(^{33}\)

In 1948, much of Lemkin’s definition was absorbed into the UN Convention on the Prevention and Punishment of Genocide. Article II defined genocide as

> any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group.\(^{34}\)

Each listed element of the above definition explicitly refers to a form of physical violence, even though Lemkin’s original definition was broader and included cultural genocide. Consequently, the purpose of this thesis is to further explore if non-physical violence, such as targeted property damage, can be considered an aspect of genocide according to international law. In 2016, Nicole Rafter proposed a new definition which returns to a more widely encompassing understanding: “[g]enocide is the destruction of a culture leading to ruin of its language, rhythms of life, customs regarding courtship and marriage, architecture, crafts, livelihoods, politics, religions, and relationship to the land and to nature.”\(^{35}\) In this explication, Rafter suggests that genocide includes acts targeting the annihilation of either or both tangible and intangible heritage. Furthermore, intending complete group elimination, genocide is not only threatening to the group but to its individual members. Group formation is extremely important to humans\(^{36}\) and Howard Bloom writes that the group can be “life-sustaining”

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\(^{34}\) UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, [http://www.refworld.org/docid/3ae6b3ae0.html](http://www.refworld.org/docid/3ae6b3ae0.html), Article II.


for its members. Thus, genocide is an especially devastating type of war crime, attacking life and sense of belonging.

Ethnocide is a sub-category of genocide, though it is not explicitly mentioned in the UN Genocide Convention. The Encyclopedia of Genocide and Crimes Against Humanity defines ethnocide as an action which “concerns policies and processes designed to destroy the separate identity of a group, with or without the physical destruction of its members.” Unlike genocide understood more broadly, ethnocide targets social, racial, religious, ethnic, or linguistic groups specifically. The intense group-threat still applies to cases of ethnocide with the primary difference being its explicit focus on the group’s cultural identity. For examples of ethnocide, refer to Khmer cultural destruction by Tibetan and Burmese forces (13th century), ethnically-inspired violence in Yugoslavia (1990s), and the discrimination against and forced assimilation of Australia’s Aboriginals (20th century).

IDENTITY CONSTRUCTION AND CULTURAL HERITAGE

The literature clearly acknowledges the importance not only of identity, but of cultural heritage as well. UN Special Rapporteur Karima Bennoune has written that “acts of intentional destruction [of cultural heritage] harm all...they contribute to intolerance, and deprive all humanity of the rich diversity of cultural heritage.” To explore this claim, this section will examine the process of identity construction and its relationship to cultural heritage. In conclusion, I will also discuss the effect of collective trauma on identity.

Identity is an extremely important and invaluable aspect of the life of an individual. In fact, many authors describe social categorization as essential based on the demands of human nature. Social Identity Theory (SIT), promulgated by Henri Tajfel and John C. Turner, explains escalatory dynamics of conflicts due to intense in-group/out-group comparison and hostility. SIT is grounded in the social categorization principle which assumes standard human organization into “us” and “them” or in- and out-groups. From this postulation, there is overwhelming evidence of a strong in-group bias, leading to out-group comparison and, likely, out-group hostility and conflict.

Identity, including ethnicity, represents one of many possible groupings that give such strong direction and meaning to one’s life that the individual may even be driven to violence.

As a result, identity is important to have and the loss of identity will have detrimental impacts on the individual. Considering the definition of identity as either a social categorization or distinguishing characteristic, identity is inherently divisive because it separates individuals.

37 Baum, 32.
39 Ibid., 311.
40 Ibid.
42 Demmers, 43.
43 Ibid.
45 Demmers, 20.
Distinctiveness is a key quality of identity because, without distinctiveness, there is no difference between one identity and the next.\textsuperscript{46} It is this level of distinction that leads to ostracism and targeted violence in response to out-group bias.

Identity, particularly ethnic identity, is closely linked to one’s lifestyle; identity describes certain attitudes and beliefs about the world while also often prescribing certain behaviors. Lawrence Davidson explains that, despite globalization, the world operates according to a principle called ‘natural localness.’ Essentially, communities receive their cultural cues and their information about outsiders from what is around them, viewing the rest of the world exclusively through that lens.\textsuperscript{47} Similarly, Janet Blake suggests that ethnic identifications have become strengthened in response to globalization in order to maintain distinctiveness.\textsuperscript{48} As such, children are encultured into lasting identities from an early age.\textsuperscript{49} Of social identity, Steven Baum writes that “[w]hen we were young, it was so essential to developing a sense of ourselves, of who we came from and where we go…We repaid the group by staying faithful and never straying too far away.”\textsuperscript{50} Identity can certainly change and people often obtain new identities (such a mother or doctor) over time; however, ethnic labels are often lasting. Whether determined by blood or socially constructed, ethnic identity is so critical that it is one of the first identities an individual will develop and one of the hardest from which to walk away.

In addition to the role of identity in lifestyle, one’s sense of belonging and self-esteem are deeply tied to identity. Social psychologist Maykel Verkuyten explains that being able to proclaim membership in a specific group contributes to one’s feeling of belonging, an imperative condition of personal fulfillment and security.\textsuperscript{51} Furthermore, “cultural heritage…is central to a sense of purpose and place in the world.”\textsuperscript{52} Identity locates an individual within the mass of people and groups; without it, individuals often feel lost. Identity also provides enhanced self-esteem. With social categorization as a fundamental desire, stigmatization can be a very threatening and dangerous position in which to find oneself. In order to counteract the risk of isolation from the group, acceptance and in-group membership are important.\textsuperscript{53} The same need exists at the group level. Similar to John Burton’s Needs Theory argument, Verkuyten describes recognition as a “vital human need.”\textsuperscript{54} Thus, the marginalization or ostracism of a specific group according to their identity attacks this human need, damaging the self-worth of both the group and its individual members. Combining the above assertions that identity dictates lifestyle decisions, provides a sense of belonging, and bolsters self-esteem, it becomes obvious that identity has the unique ability to give meaning to life. Importantly, Nielsen writes that “if we lose [our distinctive cultural identities] we lose ourselves.”\textsuperscript{55} The consequences of the loss of identity further demonstrates the enormous significance of identity in everyday life.

Cultural heritage almost always plays an integral role in the process of identity construction. In many cases, tangible heritage is a direct manifestation of the group’s traditions or that which is important to the group. Federico Lenzerini expounds on this claim, writing that there is a “spiritual

\textsuperscript{47} Davidson, 2-6.
\textsuperscript{48} Blake, 19.
\textsuperscript{49} Baum, 51.
\textsuperscript{50} Baum, 221.
\textsuperscript{51} Verkuyten, 62.
\textsuperscript{53} Demmers, 43.
\textsuperscript{54} Verkuyten, 64.
significance of cultural properties” as they are “an essential element of the identity of the human communities which reflect themselves on such heritage.” Thus, the very lifeblood of a group’s identity is expressed within these sites and objects.

Many existing legal mechanisms, such as the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, rationalize the protection of heritage properties because of their value for all peoples of the world. Yet, former UN Special Rapporteur in the Field of Cultural Rights Farida Shaheed reminds us that heritage has individual community value as well. From a legal perspective, Janet Blake furthers this argument when she writes that “[c]ultural heritage is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes.”

Furthermore, as a distinguishing feature that characterizes identity construction, cultural heritage can serve to either include or exclude individuals and groups. For instance, shared heritage and communal worship at meaningful sites will increase feelings of inclusion, while the destruction of property or prohibition of worship by outsiders will functionally ostracize the relevant group. Demonstrating this principle, the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage warns that because cultural heritage is a crucial component of identity and social cohesion, “its intentional destruction may have adverse consequences on human dignity and human rights.”

Given the important link between culture, dignity, and identity, the destruction of cultural elements, such as heritage, will have the same effect as losing a piece of that identity. Additionally, current UN Special Rapporteur in the Field of Cultural Rights Karima Bennoune highlights that cultural heritage includes those properties which communities wish to pass on to future generations as part of their group identity. As such, protecting cultural property is actually aimed at protecting the relationship that people have to these sites and objects both in the present and through future transmissions, indicating that identity protection is the ultimate goal of preserving tangible cultural heritage.

Given the demonstrated importance of identity, any sort of attack directed at group identity has serious implications. In Identity and Cultural Diversity, Maykel Verkuyten uses the term ‘grip’ to refer to one’s sense of belonging and stability within a community. One way to obtain grip is social categorization, knowing where you stand and how to act. Consequently, having grip breeds security while losing grip is extremely unsettling. An attack on identity has the potential to cause a loss of grip and uproot one’s feeling of security. In addition, Sigrid Van der Auwera describes identity attacks as a form of psychological warfare. The use of such an extreme term highlights the grave effects of targeting a fundamental human characteristics like identity. In fact, Verkuyten asserts that this type of collective trauma will cause irrevocable changes to group identity. In the case of tangible cultural heritage, these are non-renewable resources. Once destroyed, these objects are forever lost.

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56 UNESCO, *Convention Concerning the Protection of the World Cultural and Natural Heritage*.
57 Blake, 273.
58 Smith and Akagawa, 7.
61 Lixinski, 7.
62 Verkuyten, 60.
64 Verkuyten, 44.
65 Blake, 9.
course, restoring cultural heritage post-conflict is still integral to rebuilding attacked communities; and yet, remaking can never fully reverse the damage that was done.

This thesis argues that cultural heritage is so deeply connected to identity that its destruction qualifies as an attack on one’s identity. Based on this assumption, I show that cultural heritage attacks are more than just instances of property damage because of the significance they hold for communities. The international community has begun to accept this claim, demonstrated by the growing number of international treaties which address the issue. Furthermore, international judiciaries have taken on a handful of cases in the last two decades which are predicated upon the idea that cultural heritage is intimately and inseparably linked to group identity.

**LEGAL PRECEDENT**

International law is a relatively young field of study but it has begun to address the importance of cultural heritage through various treaties and agreements, as well as a handful of criminal cases. Previous cases produce a body of case law on which the parties in future cases can rely to further their own arguments. Lawyers can use the decisions in past cases to demonstrate why conviction should – or should not – result. Furthermore, judges will use past cases to inform their decisions in order to ensure laws are applied consistently. Past precedent becomes especially important as a new area of law develops, providing arguments and counter-arguments. For this very reason, international law relies extensively on past cases.

This thesis will summarize the developments within international law as they relate to the intentional destruction of cultural heritage, beginning with the history of existing legal mechanisms and then reviewing the response to atrocities committed during the conflicts in Yugoslavia and Mali.

**International Legal Instruments**

International law relating to conduct during war and human rights is a relatively young field of jurisprudence. Written treaties and conventions make up a large portion of international law, but bind only those states which are Parties to the document. In addition, given the developing nature of international law, many of the norms we consider to be governing our actions are still unwritten. *Opinio juris* is the term which legal scholars use to describe the belief that a norm is legally binding. Coupled with consistent state practice, *opinio juris* transforms a norm into customary international law that applies to all states equally. These are the unwritten rules of the international arena that still have the gravitas to not only determine behavior but punish violation. Considering the legal developments of the past half century, I will argue that intentional destruction of cultural heritage has entered customary international law as a tool for ethnocide.

The Geneva Conventions of 1949 and their Additional Protocols represented an important step forward in establishing humanitarian protections during times of armed conflict. The first Convention protects wounded and sick soldiers on land while the second Convention protects the wounded and sick at sea. The third Convention protects prisoners of war and the fourth Convention

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protects civilians. Together, the Geneva Conventions represent a pivotal change in international law, especially Common Article 3. Included within all four Conventions, Common Article 3 was groundbreaking because it extended the definition of war to include noninternational armed conflicts. Many of the most intractable conflicts of today’s world are happening within the borders of a single country. Consequently, it is important that international law is able to adapt to the changing nature of armed conflict.

In response to the atrocities of the Holocaust, the United Nations drafted and enacted the Convention on the Prevention and Punishment of the Crime of Genocide. In 1948, this was the first legal document to define genocide and establish the need for a strong international response. The Convention’s definition is rather limited, though, only listing acts of physical violence. Originally, the drafted Convention included cultural genocide, defined as the “systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.” Amidst controversy, however, the language was removed from the final draft.

In the time since the Genocide Convention, nevertheless, the international community has begun to expect expanded cultural protections. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, also known as the Hague Convention, was established to protect cultural heritage from unnecessary destruction during the course of armed conflict. After the outbreak of multiple conflicts in the 1990s and widespread destruction, the international community called for a review of the 1954 Convention in which it was determined that the Convention was still a valid tool, but required further improvements. Thus, the Second Optional Protocol entered into effect in March of 2004 after the international community agreed on the importance of expanding cultural protections. Considering this development as well as simultaneous expansions made by the UN Educational, Scientific, and Cultural Organization, many elements of the 1954 Convention have risen to the level of customary international law, meaning these principles apply to nonparties to the treaty as well as signed treaty members.

In 1998, the International Criminal Court (ICC) was established by the Rome Statute, which officially entered into effect in 2002. The Rome Statute not only created the Court and its general procedures but outlined its jurisdiction and listed the general principles of criminal law which apply to all cases that come before the Court. Of particular note in this study is Article 6, which demands prosecution for the crime of genocide, and Article 8, which outlines war crimes eligible for prosecution by the ICC. Article 8(2) provides a lengthy list of war crimes, including grave breaches of the 1949 Geneva Conventions, such as the “[e]xtensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” Furthermore, Article 8(2)(e)(ix) specifically includes intentional attacks against “buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are

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69 Prott, 310.
73 Rome Statute, Article 8.
collected, provided that they are not military objectives,” committed during non-international armed conflict.75

Despite the infancy of this field compared to other areas of international law, there is a strong body of legal norms condemning acts of cultural destruction given the detrimental impact they have on populations. To see the effect of these principles in the courtroom, I will examine the decisions made by the International Criminal Tribunal for the Former Yugoslavia on the actions committed by Serbian leaders as well as the trial of Ahmad al-Faqi al-Mahdi, prosecuted by the International Criminal Court in 2015-2016.

Yugoslavia and the Trials of the International Criminal Tribunal for the Former Republic of Yugoslavia

During the 1990s, ethnic conflict raged in the Balkan region. Serbs, Croats, and Bosnians struggled to reconcile their differences and carve out secure territories for their peoples. Serbian President Slobodan Milosevic called upon the Serbian national identity to create a pure republic, free of all non-Serbs.76 In doing so, the Serbian military perpetrated a genocide against many ethnic groups, primarily Bosnian Muslims. In addition to defined acts of physical genocide, Bosnian buildings, churches, mosques, and other important sites were targeted.77 Author Helen Walasek writes that the cultural damage done in Bosnia-Herzegovina, Croatia, and Kosovo was “the greatest destruction of cultural heritage in Europe since World War Two.”78 The gravity of the action, while compounded by its wide-reaching extent, was most significant because of the negative interpersonal effect it created. Little of the destruction was the result of collateral damage necessitated by military strategy, rather the attacks on sites of identity were deliberate for the purpose of “mortifying the local people’s sense of belonging to the Muslim community.”79 Thus, it was particularly vital that the international response to the war in the region address the assaults on religious and educational institutions specifically in addition to the physical violence perpetrated by both sides.

Two years following the violence, the International Criminal Tribunal for the Former Republic of Yugoslavia (ICTY) was created with the mandate to prosecute war crimes and crimes against humanity. Article 3 of the ICTY Statute discusses the jurisdiction of the Tribunal, giving it the authority to prosecute wanton destruction as well as the “seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science.”80 In practice, the ICTY used the Article 3 provision to address damage to and destruction of cultural heritage sites.81

Many Serbian leaders were charged with war crimes according to their participation in targeted, non-military destruction. In fact, Serbian President Slobodan Milosevic was indicted for the “intentional and wanton destruction and plunder [which] included the plunder and destruction of homes and religious and cultural buildings.”82 In addition, Milosevic was charged with multiple counts

75 Rome Statute, Article 8.
76 Sandholtz, 196.
77 Ibid., 197.
79 Lenzerini, 50.
81 Lenzerini, 47.
82 Sandholtz, 206.
of crimes against humanity, murder, torture, and other grave breaches of the Geneva Conventions.\textsuperscript{83} A decision was never reached in Milosevic’s case because he died before his trial could be seen to its completion.\textsuperscript{84} His comrades and military officers were, however, charged and convicted of many of the same offenses. For instance, it was concluded in the case of Radoslav Brdanin that “during the period covered in the Indictment, Bosnian Serb forces deliberately targeted the Muslim and Roman Catholic religious institutions.”\textsuperscript{85} At least six other Serbs were handed similar convictions.\textsuperscript{86} While, in the end, the ICTY suggested that genocide is limited to the “physical or biological destruction of all or part of the group,” it did admit that the destruction of cultural heritage may be a warning sign of intent to commit genocide and should be taken seriously.\textsuperscript{87} Since this ruling, legal scholars have argued that destruction of cultural heritage has entered the corpus of customary international law as an independent war crime.\textsuperscript{88}

The ICTY looked not only at the destruction of cultural heritage on its own, but also examined the significant repercussions it had on identity. In the Kordic & Cerkez ruling, the Tribunal wrote that destruction of cultural heritage, “when perpetrated with the requisite discriminatory intent, amounts to an attack on the very religious identity of a people,”\textsuperscript{89} as was the case in Bosnia. In fact, legal scholar Federico Lenzerini explains that these identity sites were attacked specifically because of their meaningfulness to the community, providing a sense of worth and belonging.\textsuperscript{90}

The cases which came before the International Criminal Tribunal for the Former Republic of Yugoslavia as well as the decisions which were issued in these cases helped to develop the way in which the international community approaches the intentional destruction of cultural heritage. Since the devastation in Bosnia was substantial, it caused legal practitioners to look more closely at the gravity of such actions. Thus, by prosecuting the destruction of religious and educational institutions as a violation of the laws and customs of war, the ICTY paved the way for further attention to paid not only to protecting cultural heritage, but to prosecuting its ruin as well.

This groundbreaking step in international law has opened the door to future prosecutions for the destruction of cultural heritage, and it is this initial breakthrough in the ICTY that underpins the legal aspect of my argument. The international community has already come together to recognize the criminality of these actions through its reaction to the Balkan Wars. The next step required is for the international community to recognize the enhanced nature of the destruction of cultural heritage. It is more than a war crime; it is an act of ethnocide. This thesis will make that argument using theoretical research and the legal basis of cases like those prosecuted by the ICTY. The next section will further strengthen this claim in examining the International Criminal Court’s acceptance of the criminal nature of destroying a community’s heritage.

\textsuperscript{84} Sandholtz, 207.
\textsuperscript{85} Judgement, Radoslav Brdanin, (IT-99-36-T), Trial Chamber II, 1 September 2004, para. 238.
\textsuperscript{87} Judgement, Radislav Krstic, (IT-98-33-T), Trial Chamber, 2 August 2001, para. 203.
\textsuperscript{89} Judgement, Dario Kordic & Mario Cerkez, (IT-95-14/2-T), Trial Chamber, 26 February 2001, para. 58.
\textsuperscript{90} Lenzerini, 58.
Mali and the Trial of Ahmad al-Faqi al-Mahdi

Two decades following the Balkan Wars, a new case was introduced to a new judicial body: the International Criminal Court. This case would expand the determinations made by the ICTY and would continue to set new precedent for the prosecution of destruction of cultural heritage.

In January of 2012, Mali was plagued by multiple armed groups, all vying for control of the region. After the retreat of the Malian armed forces, two Islamic terrorist groups – the Ansar Dine and al-Qaeda in the Islamic Maghreb – took joint control of the capital city and imposed numerous religious and political edicts. These efforts included a morality brigade – Hesbah – established to uphold virtue and ensure a strict following of core Islamic principles. Ahmad al-Faqi al-Mahdi was selected as the leader of Hesbah because of his background as a well-known Islamic scholar. Using his religious knowledge, al-Mahdi determined that numerous Sufi mausoleums and mosques in the city, acting as shrines to Muslim saints, were idolatrous and contravened Islamic beliefs. Under orders from Ag Ghlay, leader of Ansar Dine, one mosque and nine mausoleums were destroyed by al-Mahdi’s Hesbah in June and July of 2012. The targeted sites were Sidi Mahamoud Ben Omar Mohamed Acquit Mausoleum (30 June), Sheikh Mohamed Mahmoud al-Arawani Mausoleum (30 June), Sheikh Sidi El Mokhtar Ben Sidi Mouhammad al-Kabir al-Kounti Mausoleum (30 June), Alpha Moya Mausoleum (30 June), Sheikh Mouhamad El Mikki Mausoleum (1 July), Sheikh Abdoul Kassim Attouaty Mausoleum (1 July), Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum (1 July), Sidi Yahia Mosque (2 July), Ahmed Fulane Mausoleum (10-11 July), and Bahaber Babadi Mausoleum (10-11 July). These sites were all visited frequently, viewed as places of prayer and pilgrimage, and thus represented an “integral part of the religious life” of the residents of Timbuktu. Consequently, their destruction came as a devastating blow to the community.

Widespread outrage immediately followed the attacks and the international community spoke out strongly condemning the act. The International Criminal Court’s Chief Prosecutor Fatou Bensouda acted quickly. On July 18, she announced that she had been closely tracking the situation since Ansar Dine took control in January and, at the outset of the attacks, she stressed “that the deliberate destruction of the shrines of Muslim saints in the city of Timbuktu may constitute a war crime under Article 8 of the Rome Statute.” Upon receiving a referral from the Malian state, the ICC Chief Prosecutor’s Office began investigating and compiling evidence. A warrant for al-Mahdi’s arrest was issued on the 18th of September in 2015.

After investigating the evidence, it was determined that al-Mahdi supervised and planned all attacks, was present during all attacks, and actively participated in the destruction of at least five of the ten sites. The Court further concluded that, though the crimes were all property-related and did not

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91 Judgement and Sentence, Ahmad Al Faqi Al Mahdi, (ICC-01/12-01-15), Trial Chamber VIII, 27 September 2016, 16.
92 “ICC Trial Chamber VIII declares Mr Al Mahdi guilty of the war crime of attacking historic and religious buildings in Timbuktu and sentences hum to nine years’ imprisonment,” International Criminal Court, 27 September 2016, https://www.icc-cpi.int/Pages/item.aspx?name=pr1242.
94 Judgement and Sentence, 20.
95 Judgement and Sentence, 20-23.
96 Ibid., 18.
97 Lenzerini, 61.
99 Case Information Sheet, Ahmad Al Faqi Al Mahdi, (ICC-01/12-01-15), Trial Chamber VIII, 7 October 2016, 1.
100 Judgement and Sentence, 23.
include physical violence, they were of significant gravity because of the extent of the damage and the importance of the sites to religion and community.\footnote{Judgement and Sentence, 39.} The Court’s decision even states that Hesbah’s religiously discriminatory crusade was “a war activity aimed at breaking the soul of the people of Timbuktu.”\footnote{Ibid., 38.} Since al-Mahdi confessed to his crimes and expressed deep felt remorse for his behavior, the Court offered him the lower minimum sentence required for multiple war crimes. On September 27, 2016, the Court sentenced al-Mahdi to nine years’ imprisonment with time served to be deducted.

The al-Mahdi case is considered to be precedent-setting in the field of international law as it was the first instance in which an individual was charged and convicted of war crimes without concurrent charges of physical violence. Conversely, the ICTY convictions for cultural destruction came in connection with crimes of genocide, torture, inhumane treatment, etc. As a very recent case, it will be interesting to see how jurisprudence in this area continues to develop given this new standard established by the ICC. This thesis will argue for the enhancement of criminal charges brought against those who seek to demolish cultural sites and objects, and with the model established by the ICTY and the ICC, the international legal community should be poised to accept such developments.

**DISCUSSION**

Given the above analysis of current literature and my review of past criminal proceedings, I propose that the intentional destruction of cultural heritage is an act of ethnocide, punishable under existing international law. The protection of cultural heritage is directly related to the enjoyment of cultural rights, as defined by the United Nations Special Rapporteur. Therefore, an attack on cultural heritage is an insidious form of cultural warfare with damaging effects for the targeted group. Considering this extreme impact, the destruction of cultural heritage is an attempt to destroy the group and, thus, an act of ethnocide. This section first explores each step of this argument and then applies my findings to the case of Kuwait in 1990.

Cultural rights contribute to the overall wellbeing of a person and a community. The UN Special Rapporteur in the Field of Cultural Rights has said that:

> cultural rights protect the rights for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they give to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life.

\footnote{UN Human Rights Council, *Report of the Special Rapporteur in the field of cultural rights.*}

Though rarely acknowledged explicitly, cultural rights play an integral role in the lives of every individual, and underpin many other rights, such as freedom of expression and freedom of religion.\footnote{Bennoune.} Access to heritage is a foundation of cultural rights and, thus, its protection is necessary for the enjoyment of these rights. Both the FARO Convention of 2005 and Resolution 33/20 of 2016 have also explicated this principle, insisting that grave injury is caused by damaging tangible cultural
heritage. Special Rapporteur Farida Shaheed even stated that “cultural heritage is linked to human dignity and identity.”

Due to the immense importance of cultural rights to individual and group identity, the destruction of cultural heritage should be considered an act of cultural and psychological warfare. UN human rights expert Karima Bennoune has argued that “when cultural heritage is under attack, it is also the people and their fundamental human rights that are under attack.” In this thesis, I suggest that targeted attacks on heritage are meant to erase the culture – and therefore the existence – of the group because identity is reflected in the cultural products of a group. By removing tangible proof of the group, which includes sites of worship as well as other objects and locations of significance, the attacker has essentially erased physical evidence of the group’s identity. And as authors such as Fearon, Burton, and Verkuyten have all claimed, humans are nothing without their identities. Thus, to eliminate not only the group’s ability to express their identity through pilgrimage and practice, but also to prevent any future existence of said identity, is akin to taking a life. For obvious reasons, such an attack can be highly detrimental to the group identity and self-worth. Director of the National Museum of Iraq, Haider Oraibi, describes the demolition of the museum as a personal offense. The objects contained within the museum were like living relatives of the cultural group. Their destruction, thus, created a deep wound within the community; Oraibi expresses that “[i]t was like someone wanted to kill you, like murder.” Understandably, the impact of a trauma like this can have long-lasting and devastating effects. “Destruction of cultural property can, in this vein, even be considered as an essential step in the process of ethnic cleansing, which aims at erasing entire communities.”

The impact of the destruction of cultural heritage is intense for affected groups, and using the above definitions of genocide and ethnocide, the effect of cultural destruction qualifies as a tool for committing either genocide or, more specifically, ethnocide. Genocide has been described by scholars as both the social and physical death of a people. Intentional ruin caused to cultural heritage satisfies the social death of a community by erasing the physical representations of their group and subsequently eliminating the group’s ability to express their identity. This is done through the destruction of natural localness, or the concept that identity is created and defined by what is around us. For instance, the assaults on the mausoleums in Timbuktu ravage an important element of Malian life. Destroying natural localness deeply impacts culture and identity with irreparable effects for the group. These effects were outlined more thoroughly in Section 4 above, “Identity Construction and Cultural Heritage.”

Considering the effects on identity, destroying cultural heritage is undoubtedly an egregious crime against a group of people. Identity is considered by many scholars to be an essential human need without which life loses meaning and structure. It prescribes certain behaviors, connects them to other individuals, and reinforces personal self-esteem. As a tangible representation of identity, cultural heritage similarly represents a person or group’s life and meaning. Therefore, by extinguishing a group’s identity in whole or in part, the perpetrators cause the non-physical death of that community.

108 Ibid.
109 Van der Auwera, 4.
110 Rafter, 24.
111 Davidson, 117.
As the Genocide Convention is currently written, the act of committing genocide requires the physical death of all or part of the group. Scholars today like Nicole Rafter have begun to expand this understanding to include non-physical methods of elimination, like cultural genocide. Until the Convention is re-written or a new case is brought to the courts, we must continue to rely on the concept of ethnocide, or the targeted attack of an ethnic, social, racial, or religious group, to describe these acts. While not yet officially codified within international treaties, most recognized understandings of ethnocide do not require the physical destruction of a people. Instead, the definition stipulates that ethnocide requires only the intent to destroy group identity. It is clear both from the literature and earlier examinations of the reaction to the Balkan Wars and attacks of Malian mosques that the destruction of cultural heritage meets this established threshold.

Hence, the destruction of cultural heritage must be equated with ethnocide. International legal precedent and customary law have implied the connection between cultural destruction and ethnocide, but given the gravity of the act, it must be made explicitly criminal either through official treaty or a precedent-setting prosecution. In fact, UNESCO Director-General Irina Bokova has urged that “[t]he destruction of heritage is a war crime, and it has become a tactic of war and propaganda to weaken resolve, to incite hatred and revenge.”

Existing definitions of genocide in international law are outdated; the Genocide Convention was adopted in 1948 and its definition of genocide has not changed in over half of a decade. The Convention as well as generally accepted definitions should be updated to reflect the changing nature of conflicts. Today, conflicts are primarily fueled by identity and the intentional destruction of cultural heritage constitutes a direct attack on identity. Thus, Genocide Convention should be expanded to include non-physical group death, or social death, in addition to a well-accepted explication of ethnocide.

A further insufficiency exists within Article 8 of the Rome Statute, which prohibits willful and malicious property damage as a war crime. This legal determination is inadequate because it does not fully encompass the grave consequences of the act. Given both the consensus within the literature regarding the significance of cultural heritage and identity, as well as the legal precedent established in recent decades, the intentional destruction of an ethnic group’s cultural property represents a more specific and more heinous type of war crime: ethnocide. As an attempt to destroy a particular ethnic group, the elimination of important cultural sites and artifacts is uniquely malevolent and must be recognized and penalized accordingly. Codified international law is now faced with the challenge of catching up to conceptual interpretation of genocide and ethnocide and their relationship to cultural heritage.

The next section will explore the Iraqi invasion of Kuwait to demonstrate a recent example in which the destruction of cultural heritage was used to eliminate not only a group’s identity, but their entire existence. In essence, the invasion and annexation was an attempted ethnocide.

The Invasion of Kuwait

On August 2, 1990, Iraq escalated a decades-old conflict with the small country of Kuwait. This act of aggression involved numerous human rights violations – including the intentional destruction of Kuwaiti heritage. Based on the irreversible damage done and the above argument, I propose that perpetrators of the invasion as well as the subsequent cultural destruction should have been prosecuted for the crime of ethnocide.

Iraq and Kuwait have shared a rich and complex history. From the moment Saddam Hussein assumed the presidency of Iraq, he revived the historical claim that Kuwait was a part of Iraq, unfairly removed by Western colonial powers. Through World War I, Iraq and Kuwait were part of the Ottoman Empire. In 1913, Britain and Turkey signed an agreement which recognized Kuwait as an autonomous region of the Ottoman realm, then called Basra. One year later, under the protection of the British, Kuwait broke from the Ottomans. At the collapse of the Ottoman Empire in 1922, Kuwait came under British rule. A period of controversy came after colonizers’ attempt to clarify the Iraq-Kuwait border, particularly the Rumailia oilfield. Once Iraq gained independence in 1932, they demanded the return of Kuwait islands, followed a few short years later by an official Iraqi claim over the entirety of Kuwait. After the British gave Kuwait official independence in 1961, Iraq’s General Abdul al-Karim Qasim attempted – and failed – to annex Kuwait. When Lieutenant-General Abdul al-Salam Arif took over Iraq in a military coup, he formally recognized Kuwait independence in exchange for interest-free loans from Iraq’s small but rich neighbor. During his own presidency, beginning just five years later in 1968, Saddam Hussein claimed the Arif agreement to be invalid. After a debilitating war with Iran, Saddam Hussein launched a new effort to retake Kuwait sending over 100,000 Iraqi troops and conquering the capital, Kuwait City, by the end of the day. Six days later, on August 8th, Iraq claimed Kuwait to be Iraq’s 19th province, attempting to redraw the modern map of the Middle East, much like Serbia did in the Balkans. In an interview with the Federal Bureau of Investigation after his capture in 2003, former Iraqi President Saddam Hussein admitted that he had hoped to rebuild post-war Iraq by conquering Kuwait and growing the Arab empire. Hussein further cited the lasting feud over regional oil fields and Iraq’s supposed historical claim to the territory of Kuwait as justification for the invasion.

Intent is always difficult to prove beyond a reasonable doubt because genuine objectives are often obscured by misleading rationales, especially when the true aims would not be palatable to the public. Thus, leaders typically present a more tolerable version of their goals, as was the case with Saddam Hussein’s actions in Kuwait. Official motivations for the invasion included reviving Iraq’s pre-war status in the Middle East and defending Iraq’s claims to Kuwaiti oil. In addition, Hussein often mentioned the claim that Kuwait belongs to Iraq and to the larger Arab nation. In fact, in his speech announcing the withdrawal of troops from Iraq, he still maintained the contention: “O valiant Iraqi men, O glorious Iraqi women. Kuwait is part of your country and was carved from it in the past.” Despite these numerous proclamations, one can easily suspect that there may have been more to this invasion.

Reading between the lines of speeches and articles suggests that Iraq’s intent was to not just take back Kuwait, but to make it indistinguishable from Iraq. For instance, when Hussein addressed the National Assembly following the annexation, he spoke of unity and loyalty, emphasizing the

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singular existence of the two countries after merging back into one. Upon annexing Kuwait, Hussein began to establish a new provisional government of Kuwait, led by Colonel ‘Ala’ Husayn Ali, who held dual nationality in both Iraq and Kuwait. This puppet government spoke and acted independently but always reiterated the Iraqi message of unity. In a call to Iraq, thanking the government for freeing Kuwait, the provisional government explained that “the objective of this uprising was not simply to remove a regime, although it was a corrupt agent regime, and to replace it with a new national system.” The appeal further stated that “the crystal-clear historic fact is that Kuwait is a part of Iraq. Its people are Iraqis, and throughout their history they drank the waters of the Tigris and Euphrates Rivers; they grew up on the shores of Shatt al-‘Arab.” This pronouncement is the most unambiguous statement in which Iraqi representatives – though disguised as official leaders of Kuwait – explain that Kuwait was invaded and annexed in order to deny the existence of separate Kuwaiti identity and impose Iraqi identity. I will return again to this argument later in the section.

During the invasion of Kuwait, Iraqi soldiers were instructed to clear out many important cultural hubs, including the Kuwait National Museum, National Archives, and Kuwait University. The Museum was looted of Kuwaiti and Islamic artifacts worth millions; government documents and citizenship records were removed from the Archives; and University laboratory equipment was either stolen or destroyed. Nearly everything of value was sent to Baghdad or went up in flames. Unfortunately, the items in the Kuwaiti National Museum were not well-catalogued prior to the invasion. We do know, however, that the museum held two major collections: the Kuwaiti State collection and the Dar al-Athar al-Islamiyyah (DAI, “House of Islamic Antiquities”). Most of the items in the DAI were taken to Iraq while remaining artifacts were demolished when the building was set on fire. Presumably then, Islamic heritage was saved for Iraqi enjoyment while Kuwaiti heritage was turned to ash. In addition to the museum losses, extensive damage was wrought to other national landmarks, including Dasman Palace, Seif Palace, the Old City Wall, and the National Zoo.

After Iraq was defeated in 1991, the United Nations demanded the return of plundered artifacts to their proper home in Kuwait; however, it took over a decade for Iraq to finally begin the process of returning Kuwait’s cultural property. Even still, hundreds – of the several thousand items looted – remain missing. A large amount of Kuwaiti history and culture was lost during the invasion and, regrettably, many of these artifacts can never be recovered.

Destruction has long been an accepted fact of war. It has happened for centuries; and yet, there is a clear difference between collateral damage which is necessary for the goal of achieving military victory and intentional and excessive damage committed for the purpose of eliminating a

125 Montgomery.
culture and breaking its spirit. The distinction was highlighted by the United Nations in inventorying the devastation of the Yugoslavia conflict, concluding that targeting cultural sites of no military value is unnecessary and criminal. In the case of Kuwait, there was no military benefit gained by looting the Museum or any other centers of Kuwaiti lifestyle. Instead, the damage was purposefully intended to injure the core of Kuwaiti national identity. United States Army Major Bill Fellows explained that what occurred in Kuwait was “wanton destruction, with no reason except to destroy the economy and the culture. It’s not only tragic, it’s criminal…To set fire to museums, to break into hospitals, to ransack schools, it’s an attempt to steal the very soul of the country.” Without a valid military explanation, the excessive damage caused to Kuwaiti sites can be assumed to be an act of cultural and psychological warfare, targeting the identity of Kuwait to more easily conquer a now broken country.

The cultural destruction was devastating to the Kuwaiti community, especially given the immense importance of these landmarks and artifacts to the history and identity of the country’s people. Cultural sites represent the heritage of value to a group, preserved and passed down by previous generations. The state of Kuwait may have only gained independence four decades prior but for centuries the Kuwaiti people had built a unique cultural identity separate from the larger Arab and Islamic identity in the region. In 1968 the state had already begun to issue tourist guides which highlighted the distinct clothing, currency, and sites of interest of Kuwait. Despite alternative claims, the Kuwaiti people held a strong sense of national pride and distinguished themselves from neighbors like Iraq. This national pride was even reflected in resistance movements such as al-Maqwama and the resistance radio station named “This is Kuwait,” both of which developed in response to the invasion. It is also this pride and dignity in Kuwaiti identity that caused the invasion and destruction to be so deeply felt. Referring to the demolished Seif Palace, Kuwaiti businessman Mohammed Hajari said that “[i]n every brick I see my great-grandparents, I see my soul, I see my pride and dignity.”

Two decades later, the trauma is still felt by Kuwaitis. The emir’s daughter-in-law Sheikha Hussa Salem al-Sabah, who maintains the Palace’s heirlooms and co-runs the Dar al-Athar al-Islamiyyah exhibition of the Kuwait National Museum, vented her frustration regarding the looting to a reporter from The Guardian. She said that “[t]he Iraqis still don’t understand the damage they did to us, not just financially, but for our souls…It was emotionally wrenching and still is.” As the literature demonstrates, the obliteration of cultural property is a type of personal affront. In attacking the Museum, the Archives, and Palaces, the intent was to “eradicate the national identity of the Kuwaiti people by destroying archaeological landmarks, plundering libraries and historical documents and destroying Kuwait’s achievements.” The attitude of the public confirms the academic opinion; “[the Iraqis] tried to wipe out the identity of Kuwait” explains a young electrical engineer living in Kuwait.

In essence, the invasion was an effort to erase the existence of Kuwait, similar to the damage to mausoleums in Mali and mosques in Bosnia. Without their representational landmarks, Kuwaitis, Malian Sufis, and Bosnian Muslims were all barred at one time from expressing their identities.

Historically, plunder has been used as a tool for ethnic cleansing. The United Nations even lists plunder as a preparatory measure that often precedes atrocity crimes. Although lacking the

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127 Sandholtz, 199.
128 Drogin.
129 Kuwait Tourist Guide (Division of Tourism: 1968).
129 “Iraqi invasion of Kuwait-International Response,” in Kessing’s Record of World Events 36, August 1990, 37634.
130 Branigin.
131 Branigin.
132 Chulov.
134 Branigin.
manifestation of physical violence, the effect of mass destruction and looting still runs deep within the attacked community. Author Milan Kundera insightfully notes that

[y]ou begin to liquidate a people by taking away its memory. You destroy its books, its culture, its history. And then others write books for it, give another culture to it, invent another history for it, give another culture to it, invent another history for it. Then the people slowly begin to forget what it is and what it was.¹³⁶

Such was the strategy in Kuwait: extinguish Kuwaiti identity and re-establish the region as Iraqi. After invading, Iraq furthered their claim over the small neighboring country by annexing Kuwait and imposing new citizenship requirements and laws affecting daily life. On the day of the invasion, Hussein gave a speech in which he described the annexation as reuniting “the branch with its root, the part with the whole.”¹³⁷ In the eyes of the Iraqis, Kuwait never existed – and no future claims could ever be made given the erasure of Kuwait’s unique identity. In fact, one article refers to the invasion and eventual annexation as the “Iraqization” of Kuwait.¹³⁸ Just a few years later Serbian President Milosevic would employ a similar tactic. His forces would destroy all non-Serb references within countries like Bosnia in order to eliminate resistance and remake the region in the Serbian image to create a new, pure republic. Hussein’s actions were a perfect example of how to begin to strip a people of their identity.

Following the August 8th annexation of Kuwait, Iraq immediately began to redraw maps and rename streets and districts to better represent the new Iraqi identity. Iraq’s southernmost province, Basra, absorbed the northern strip of Kuwait and was named Saddamiyat al-Mitlaa, in honor of Saddam Hussein. The rest of Kuwait became Province 19 and the capital city was renamed Kadhimah to reflect its name prior to Kuwait’s independence.¹³⁹ After the move, Iraq’s Information Minister announced that “‘Kuwait is Iraqi – past, present and future – and not an inch of it will be given up.’”¹⁴⁰ The imposition of a new identity was not limited to renamed districts, however. Iraqi soldiers confiscated identification documents and government records from the Archives and enforced new requirements from the registration of vehicles with Iraqi license plates, to resetting clocks to reflect local time in Baghdad, to the mandated use of only Iraqi currency.¹⁴¹ By the 23rd of November, all Kuwaitis were required to exchange their identity papers for Iraqi papers, claiming new national identity.¹⁴² Anything distinctly Kuwaiti was either removed or destroyed.

Years later, Iraq slowly began to return limited archive files, but “[t]here ‘was nothing at all from the Amiri Diwan…Everything you might call the memory of the state was gone.”¹⁴³ Even after the annexation and war had ended, Iraq was intent on disavowing the existence of Kuwait as a country separate from Iraq. In a letter assessing the humanitarian needs in Kuwait post-invasion, the UN Secretary-General writes that “[t]here can be no doubt that a deliberate attempt was made to extinguish

¹³⁸ Montgomery.
¹⁴¹ Montgomery.
¹⁴³ Nb. The Amiri Diwan is the official governing emirate of Kuwait.
¹⁴⁴ Montgomery.
Kuwait, its national identity, the pride of its people in their history and achievements.”

Described as the “most sinister” aspect of Iraq’s aggression, buildings, artifacts, infrastructure, and citizenship, all representing a unique Kuwaiti identity, were brutally taken from the people in an effort to remove vestiges of Kuwaiti culture and identity and replace them with Iraqi identity. In effect, without their heritage and citizenship rights, Kuwaitis could no longer be Kuwaiti.

Given the reality of the events in 1990, perpetrators should have been prosecuted for their roles in the destruction of Kuwait’s cultural heritage. Genocide, or any attempt at ethnic cleansing, including ethnocide, often has two phases: 1) destruction of existing identity and 2) imposition of new identity. This pattern corresponds to the very clear progression of the Iraqi invasion. First, the soldiers stole or destroyed everything of cultural value, later annexing the country and imposing new “Iraqization” laws. According to the decisions of the ICTY and the ICC’s prosecution of al-Mahdi, this series of events should have at least been considered a war crime. However, given the extensive destruction which occurred during the invasion, the invasion and subsequent actions constitute an act of ethnocide because of the cruel attempt to wipe out Kuwaiti identity entirely, as if it never existed. Despite the numerous international conventions underlining the importance of protecting cultural heritage and legal precedent establishing individual criminal responsibility for intentional cultural destruction, there was little hesitation in looting the history of Kuwait. In the International Journal of Cultural Property, Bruce Montgomery described the unmitigated devastation in Kuwait as a failure of humanitarian law to prevent. But it was more than that.

The intentional destruction of cultural heritage has become a thoroughly prohibited act under customary international law and has been previously prosecuted as a war crime, and yet no criminal charges followed the attack in Kuwait. Moreover, given developments of international law and the grave effects, the act can actually be classified as a particularly heinous war crime: ethnocide. Iraqi leaders intended to eliminate Kuwaiti identity, destroying an entire group of people by destroying their cultural expressions and everything that made them unique. Effectively, they tried to exterminate the entire group by making the group identity non-existent. There have been no prosecutions regarding the destruction of cultural heritage in Kuwait; however, this thesis asserts that the international justice community should have recognized the Iraqi actions as attempted ethnocide and should have prosecuted accordingly. It is a travesty that this grave crime was largely unacknowledged.

CONCLUSION

This thesis has conducted an in-depth analysis of what it means to destroy cultural heritage. Commonly misunderstood as mere property damage, the effects are far more devastating and more enduring than one may assume. Cultural heritage, whether tangible or intangible, is representative of the group to which the item or practice is attributed. Thus, to destroy even a piece of that heritage is a direct attack on the group members. The motto of the National Museum of Afghanistan embodies this concept quite succinctly: “A nation stays alive when its culture stays alive.” By obliterating the record of a group of people, you also obliterate the group. The consequences are monstrous when this occurs; it becomes the equivalent of group extermination, or genocide, because people lose a

146 Branigin.
147 Prott, 309.
148 Montgomery.
sense of who they fundamentally are in the process. Being an essential human need, identity loss is not something from which it is easy to recover. To this day, the Kuwaiti community struggles with the scars of their lost heritage.

Thus, the label ‘war crime’ is insufficient since it does not fully encompass the significance of intentionally attacking sites with cultural value. The deliberateness of the act is in and of itself hard to accept because it is a direct and complete denial of the importance and value of the group. And the actual loss is even more difficult to endure because, once destroyed, the sites and items can never be replaced. While buildings can be rebuilt, they stand only as replicas and reminders. It is for this reason that so many international conventions aim to protect cultural heritage sites. Even still, these places are regularly attacked for the immediate and lasting effects which inherently follow. In Bosnia, anything which suggested a non-Serb identity was eliminated. In Mali, Sufi mausoleums which contradicted the Ansar Dine’s interpretation of Islam were turned to rubble. And in Kuwait, all objects that proved Kuwait was a separate and independent nation were damaged beyond repair. Despite numerous conventions condemning such actions, they continue to occur.

Thus, codified international law must be made stronger in order to punish – and hopefully deter – the destruction of cultural heritage. When the International Criminal Tribunal for the Former Republic of Yugoslavia tried Serbian officials for the demolition of mosques, schools, and libraries, the international community began to accept the destruction of cultural heritage as more than instances of property damage. Rather, they were seen as attacks on the soul of a people. For two decades, legal scholars continued to discuss and develop these principles but no intervening actions were similarly punished, including the Iraqi invasion of Kuwait. In 2015, however, the International Criminal Court undertook a groundbreaking case by prosecuting Ahmad al-Faqi al-Mahdi for war crimes under Article 8 of the Rome Statute. The gravity attributed to his actions indicates that the legal community is beginning to recognize that the destruction of cultural heritage is more than a basic war crime. Rather, targeting cultural property constitutes a distinctly insidious tactic for annihilating a group, and therefore must be considered for what it truly is: ethnocide.

According to the writing of legal scholars and horrified reactions of the international community to these occurrences, it is clear that customary international law has come to adopt an important principle: ethnocide is a specialized form of genocide which does not require the physical destruction of a group, but more broadly includes any action which seeks to, in effect, destroy the group. In order to permanently embed within written international law this expanded definition of genocide, conventions such as the Genocide Convention and Rome Statute must be amended to reflect this changing legal norm. Consequently, with destruction of cultural heritage clearly and officially included as a tool for committing ethnocide, international judicial bodies like the International Criminal Court will have increased capacity to address these criminal actions. The assault of a group through any manner should be a prosecutable offense. In this case, the act of destruction itself matters very little, but the significance of eliminating cultural heritage leaves an unhealable wound.


“ICC Trial Chamber VIII declares Mr Al Mahdi guilty of the war crime of attacking historic and religious buildings in Timbuktu and sentences him to nine years’ imprisonment.” *International Criminal Court*. 27 September 2016. [https://www.icc-cpi.int/Pages/item.aspx?name=pr1242](https://www.icc-cpi.int/Pages/item.aspx?name=pr1242).


