

CHAPTER ONE

INTRODUCTION

A. Background of Research

In early March 2015, the Director General of UNESCO, Irina Bokova expressed on a press conference after Islamic State of Iraq and Syria (ISIS) destruction of Nimrud in Iraq. She believes the destruction of heritage in their strategy to destabilize and manipulate populations was used so that they can assure their own domination.¹ Cultural heritage has been the target of intentional destruction, with the aim of erasing the history of the country and thus undermining the peaceful coexistence of diverse communities.² In a UNESCO press release, she clearly condemned the destruction:³

“I condemn in the strongest possible manner the destruction of the archaeological site. This is yet another attack against the people, reminding us that nothing is safe from the cultural cleansing underway in the country: it targets human lives, minorities, and is marked by the systematic destruction of humanity’s ancient heritage. We cannot remain silent. The deliberate destruction of cultural heritage constitutes a war crime. I call on all political and religious leaders in the region to stand up and remind everyone that there is absolutely no political or religious justification for the destruction of humanity’s cultural heritage. I appeal also to all cultural institutions, museums, journalists, professors, and scientists to share and explain the importance of this heritage and the civilization. We must respond to this criminal chaos that destroys culture with more culture. I have alerted the president of the Security Council as well as the Prosecutor of the International Criminal Court.”

¹ UNESCO calls for mobilization to stop "cultural cleansing" in Iraq (no name) available at <http://whc.unesco.org/en/news/1242> accessed on March 11th, 2015 at 8.35 p.m.

² "Destruction of Hatra marks a turning point in the cultural cleansing underway in Iraq" say heads of UNESCO and ISESCO (no name) available at <http://whc.unesco.org/en/news/1245> accessed on March 11th, 2015 at 8.10 p.m.

³ UNESCO Director General condemns destruction of Nimrud in Iraq by Sue Williams available at http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_condemns_destruction_of_nimrud_in_iraq/# accessed on March 11th, 2015 at 8.00 p.m.

The Security Council by the Council President Liu Jieyi affirmed that the barbarism act cannot be tolerated. The council reminded States that they must ensure that measures are taken to combat terrorism comply with all their obligations under international law, particularly the international human rights, refugee, and humanitarian law.⁴ Then, UN Secretary-General Ban Ki-moon also spoke up and condemned the attacks as a “war crime”. The deliberate destruction of our common cultural heritage constitutes a war crime and represents an attack on humanity as a whole, Ki-moon said.⁵ The Secretary-General also called the international community to swiftly put a stop to ISIS action.⁶

As *prima facie*, ten world heritages on UNESCO list sites in Syria and Iraq.⁷ Of those 10, it says nine are currently in danger.⁸ In fact, ISIS have rampaged across parts of Iraq and Syria, destroying the entire heritage of ancient regions, demolishing historic churches, synagogues, mosques, Sufi and Shi'i shrines, and

⁴ Security Council Press Statement on ISIL’s Destruction of Religious and Cultural Artefacts in Mosul (no name) available at <http://www.un.org/press/en/2015/sc11804.doc.htm> accessed on March 11th, 2015 at 8.20 p.m.

⁵ Calling Attacks ‘a War Crime’, Secretary-General Strongly Condemns Destruction of Cultural Heritage Sites in Iraq (no name) available at: <http://www.un.org/press/en/2015/sgsm16570.doc.htm> accessed on March 11th, 2015 at 8.30 p.m.

⁶ Secretary-General Outraged by Continued Destruction of Iraqi Cultural Sites, Calls for Swift International Action to Hold Perpetrators Accountable (no name) available at <http://www.un.org/press/en/2015/sgsm16576.doc.htm> accessed on March 12th, 2015 at 8.45 a.m.

⁷ World Heritage List is a World Heritage with special protection and has been fulfilled the criteria based on the 1972 World Heritage Convention, available at <http://whc.unesco.org/en/list/> accessed on March 12th, 2015 at 8.55 a.m.

⁸ Map: There are 10 world heritage sites in Iraq and Syria. Nine are in danger by Adam Taylor available at <https://www.washingtonpost.com/news/worldviews/wp/2015/09/01/map-there-are-10-world-heritage-sites-in-iraq-and-syria-nine-are-in-danger/> accessed on March 12th, 2015 at 8.35 a.m.

major archaeological sites.⁹ All this vandalism is driven by a relentless passion to enforce religious purity on the regions they now control. The Islamic State set out on an operation of "cultural and historical cleansing" across the city.¹⁰

The militants have bulldozed ruins at the Assyrian city of Nimrud and destroyed museum artifacts in Hatra.¹¹ Moreover, ISIS militants released a video showing them smashing statues and carvings in Mosul's museum, which housed Assyrian and Hellenistic artifacts dating back 3,000 years.¹² Islamist militants in Iraq and Syria have stepped up their war on the region's cultural heritage, attacking archaeological sites, namely: Hatra, Mosul, Nineveh, Nimrud, Korsabad, and Mosque of the Prophet Yunus, Imam Dur Mausoleum, Apamea, Dura-Europos and Mari.¹³

The barbarism and brutality of war would have no bounds.¹⁴ Armed conflicts target symbols of culture to destroy identities and lead to the deliberate destruction

⁹ The Destruction of the Middle East by Dennis McEoin available at <http://www.gatestoneinstitute.org/4973/destruction-middle-east-antiquities> accessed on March 12th, 2015 7.34 p.m.

¹⁰ *Ibid*

¹¹ Islamic State 'demolishes' ancient Hatra site in Iraq (no name) available at <http://www.bbc.com/news/world-middle-east-31779484> accessed on March 12th, 2015 8.00 p.m.

¹² Isis militants destroy remains of Hatra in northern Iraq by Chris Johnston available at <http://www.theguardian.com/world/2015/mar/07/isis-militants-destroy-hatra-iraq> accessed on March 12th, 2015 8.56 p.m.

¹³ On ISIS's Path of Ruin, Many Sites of Global Importance by Andrew Curry available at http://news.nationalgeographic.com/2015/03/150312-isis-destruction-looting-ancient-sites-iraq-syria-archaeology/?rptregcta=reg_free_np&rptregcampaign=20151005_pw_int_w accessed on March 12th, 2015 8.15 p.m.

¹⁴ Abdul Ghafur Hamid, 2011, *Public International Law: a Practical Approach Third Edition*, Malaysia, Sweet & Maxwell Asia, p. 443.

of cultural heritage.¹⁵ One way to react to issues of Syrian cultural heritage is through individual criminal responsibility.¹⁶ Such accountability is chiefly provided for under the respective rubrics of war crimes and crimes against humanity.¹⁷ Hence, it has been long recognized that one of the most effective methods of enforcing the *jus in bello* is to focus upon the principle of individual responsibility.¹⁸

The international law has developed to protect cultural property sites in armed conflict.¹⁹ Especially, International Humanitarian Law has been completed by specific rules on the protection of cultural property in the event of armed conflict;²⁰ *i.e.* Hague Convention 1954 and its Second Protocol. Conversely, the conventional wisdom appears to be that the treaty regime has failed in its purpose to limit the destruction of cultural property.²¹ Instead, alongside these treaties there

¹⁵ ICCROM International Course Material, “Protecting Cultural Heritage in Times of Conflict: Contributions from the participants of the International Course on First Aid to Cultural Heritage in Times of Conflict”, 2012, p.3.

¹⁶ Marina Lostal, “Syria’s World Cultural Heritage and Individual Criminal Responsibility”, *International Review of Law*, Vol. 1.3 (April, 2015), p.5.

¹⁷ Roger O’Keefe, “Protection of Cultural Property under International Criminal Law”, *Melbourne Journal of International Law*, Volume 11 Issue 2 (November 2010), p.3.

¹⁸ John O’Brien, 2001, *International Law*, New York, Routledge Cavendish. p.785.

¹⁹ Hannah G.He, “Protecting Ancient Heritage in Armed Conflict: New Rules for Targeting Cultural Property during Conflict with ISIS”, *Maryland Journal of International Law*, Volume 30 (May, 2015), p.2.

²⁰ Francesco Francioni, “The Human Dimension of International Heritage Law: An Introduction”, *The European Journal of International Law*, Vol.22 Issue 1 (April 2011), p.2.

²¹ Eric A. Posner, 2006, “The International Protection of Cultural Property: Some Skeptical Observations”, (Public Law Working Paper, Law School of University of Chicago), p.5.

have also evolved customary international rules;²² such as Nuremberg Tribunal and International Criminal Tribunal for former Yugoslavia.

Nevertheless, the enforcement of cultural heritage protection and subsequent prosecution is too often lacking.²³ In fact, the damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.²⁴ Besides, cultural heritage may be defined as the entire corpus of material signs - either artistic or symbolic - handed on by the past to each culture and, therefore, to the whole of humankind.²⁵

Cultural heritage could be seen as an essential dimension of human rights which reflects the spiritual, religious and cultural aspects. Furthermore, it also is an evidence of community expression that passed on from generation to generation, including customs, practices, places, objects, artistic expressions and values. Finally, cultural heritage is a part of the inheritance of humankind with outstanding universal value. Therefore, it should never be deliberately attacked or even destructed whatever the reason is.

²² Roger O'Keefe, 2010, *Op. Cit.*, p.5.

²³ Guest Post: Promising Development in Protecting Cultural Heritage at the ICC by Matt Brown available at <http://opiniojuris.org/2015/09/30/guest-post-promising-development-in-protecting-cultural-heritage-at-the-icc/> accessed on March 13th, 2015 at 08.30 p.m.

²⁴ Preamble of the *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954*.

²⁵ Draft Medium Term Plan 1990-1995, UNESCO, 1989, p.57.

B. Research Problem

1. What are the reasons of ISIS's destruction on the cultural heritage in Iraq and Syria?
2. How does the International Humanitarian Law regulate ISIS's destruction on the cultural heritage?

C. Objectives of Research

1. The research proposed to deeply understand the reasons of ISIS destruction on the cultural heritage in Iraq and Syria.
2. The research aimed to analyze International Humanitarian Law related to ISIS destruction on the cultural heritage in Iraq and Syria.

D. Benefits of Research

1. Theoretically; the research would enriched the perspective of ISIS destruction on cultural heritage in Iraq and Syria, and tried to examined the legal instruments related to International Humanitarian Law on destruction of cultural heritage during the armed conflict.
2. Practically; the research would emerged the urgency of legal action against ISIS destruction of cultural heritage, and more understanding about legal guideline of destruction of cultural heritage.

E. Systematic of Writing

The research consists of five chapters, namely Chapter I: Introduction, Chapter II: Literature Review, Chapter III: Research Methods, Chapter IV: Finding and Analysis, and Chapter V: Conclusion and Recommendation.

The first Chapter consists of general matter, such as background, research question, research objective, research benefits, and overview of the chapter. The introduction chapter will describe the situation and damage of ISIS destruction. Then, it will figure out the urgency of this research.

The Chapter II is Literature Review; it will elaborate each variable on this undergraduate thesis. Firstly about the cultural heritage which explains about definition, regulation, importance and protection; the second part will describe the Islamic State of Iraq and Syria related to brief identity of it; the last part will elaborate the international law related to protection of cultural heritage, in the beginning, the distinction principle was introduced gradually regulated on treaties (*i.e* the Hague Convention 1954) and tribunal (ICTY).

The Methodology chapter discusses the research method used on this undergraduate thesis, namely: the type of research as a normative legal research, the secondary data will be divided into primary, secondary and tertiary legal material, the method of collecting data was library research, and method of data analysis will be done through juridical qualitative and descriptive method.

The fourth chapter will analyze the destruction of the cultural heritage in international humanitarian law perspective: case study of ISIS. The first part will explain about ISIS's destruction of cultural heritage namely ISIS overviews related to the history and ideology of destruction of the cultural heritage, the list of cultural heritage on ISIS's destruction which spell out the number of cultural heritage as destructed by ISIS, and the reason behind ISIS destruction of cultural heritage such as theology, cultural cleansing, or economy. The second part will elaborate the International Humanitarian Law on the destruction of cultural heritage which consist of IHL treaties that explain about several conventions in terms of prohibition of destruction of cultural heritage (*i.e.*: The Hague Convention of 1907, The Hague Convention of 1954, The Two Additional Protocol of Geneva Convention of 1949 and The Second Additional Protocol of Hague Convention of 1954), the other relevant law in order to determine the destruction for prosecution and sanction as reflected by customary international humanitarian law (*i.e.*: The 1972 World Heritage Convention, The ICTY Statute, The Rome Statute for the International Criminal Court), the last part is the application in ISIS case which means to connected the relevant issue of IHL to the ISIS case.

The closing chapter contains the conclusion as the direct answer of the research question and recommendation for both situations namely the destruction and regulations toward the result of the research analyses previously.