

International Accountability for the Destruction of Cultural and Religious Heritage in the Bangladesh Liberation War

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The mural presents the historic events from the Language Movement of 1952 to the Victory of Bangladesh in the Independence war against Pakistan in 1972.

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ABSTRACT

The destruction of significant cultural or religious heritage properties, either physical or spiritual, has become a common method of warfare in armed conflicts. In the Liberation War in 1971, the Pakistan Army attacked several cultural and religious heritage properties such as historical Hindu temples and memorial monuments of the Bangla Language Movement, a strategic move said to be used to further its genocidal campaign and suppress the distinctive identity of protected groups. However, these incidents were improperly recorded, and as a result, accountability under international and domestic law has not been comprehensively analysed. Therefore, this report aims to outline the available mechanisms in international criminal law, humanitarian law and human rights law that engage in the accountability for the destruction of cultural and religious heritage in the 1971 Liberation War. Through its analysis of legal instruments such as the Hague Convention and the Rome Statute, as well as international jurisprudence emanating from the International Criminal Court (ICC), the ad hoc tribunals and the International Crimes Tribunal (Bangladesh) (ICT-BD), this report will examine the constituent element of each international crime in the case of the destruction of cultural and religious heritage, and analyse the issues which have emerged from its vague definition and ambiguous application in practice and in theory. Hence, the report will refer to international jurisprudence and specifically concentrate on how the destruction of cultural and religious heritage could commit or facilitate international crimes targeting the distinct identity of specific groups in the 1971 Bangladesh Genocide and the Liberation War.

1. INTRODUCTION

They attack culturally significant properties as they believe that their enemies are culturally superior or inferior. With the destruction of cultural property, they wish to establish and exhibit unilateral political authority over “the others” by destroying their rich cultural heritage. (Rahim, 2018)

An estimated 1.5 to three million people were killed between March 26th and December 16th, 1971 in occupied Bangladesh (Beachler, 2007). The loss of human life, the targeting of intellectuals, the suppression of Bengali identity, and the displacement of populations profoundly damaged the cultural heritage of Bangladesh during the 1971 Liberation War (Nishant & Hossain, 2022).

The systematic destruction of cultural and religious sites, languages, and intellectual institutions was not incidental, but rather a strategy employed to erase the Bengali identity and resistance. Despite extensive documentation of such destruction, international mechanisms have so far been unable to deliver meaningful accountability. Moreover, the destruction of cultural and religious heritage is not always avoidable in armed conflicts, meaning that sometimes attacks will not constitute international crimes giving rise to international criminal responsibility. Therefore, this report will outline the protection of cultural and religious heritage under international criminal law in line with international humanitarian law and human rights law and analyse international criminal accountability for the destruction of cultural and religious heritages in the 1971 Liberation War.

2. HISTORICAL CONTEXT: THE 1971 BANGLADESH LIBERATION WAR

Cultural heritage destruction is increasingly recognised as a human rights violation under international law. Article 27 of the Universal Declaration of Human Rights (UDHR), while non-binding and mainly declaratory in nature, asserts the right to access and engage with cultural heritage. If destroyed, it not only threatens the identity and dignity of communities, but also their autonomy, which defines their history and future. The destruction of cultural heritage during armed conflict is prohibited through various conventions and customary norms. However, applying these legal frameworks to the Bangladesh Liberation War of 1971 presents a complex task. While some legal instruments were already in force at the time, others were developed in subsequent decades.

The cultural oppression of East Bengal (later East Pakistan) began immediately after the 1947 Partition when the West Pakistani elite imposed a homogenised national identity centred on Urdu and Islamic ideology, deliberately marginalising Bengal’s distinct ethnolinguistic heritage (Uddin, 2006). This policy reflected the State’s perception of Bengali culture as “contaminated” by Hindu influences, a strategy which was weaponised to justify the eventual eradication (Mohaiemen, 2016).

Historically, monumental architecture in Bengal has its roots primarily in Buddhist traditions, encompassing stupas, temples, and monasteries. As Guha (2017) observes, the architecture of Bengali temples represents an exemplary social encounter with the dialectic, blending the classical and the common. Architectural structures of mosques, mazars, and madrasas, such as arches and domes, all had Sultani architecture. Muslim culture in Bengal entered into a dynamic and creative relationship with the folk culture. From the moment of Pakistan's creation in 1947, the West Pakistani army pursued what historian Yasmin Saikia (2011) terms "identity sterilization" - a process of systematically negating East Bengal's distinct cultural character.

The deliberate targeting of cultural heritage as an instrument of political domination has deep historical roots. Looking back as early as the 19th century, Napoleon Bonaparte (1796-1815) looted and destroyed art as a way of achieving his political aims until the Congress of Vienna in 1815 ordered the restitution of the stolen works, which marked the first major international effort to address wartime cultural theft (Nicholas, 1995). This pattern continued during the Third Reich (1933-1945) when the Nazi regime institutionalised cultural destruction as a policy. Their genocidal campaign destroyed over 1,400 synagogues and Jewish cultural sites during Kristallnacht alone (November 1938), while also demolishing mosques in occupied Eastern Europe to eliminate Muslim communities (United States Holocaust Memorial Museum, 2021).

Yet, as the Bangladeshi case demonstrates, legal accountability often lags decades behind violations, leaving survivors to deal with the irreparable cultural losses (Novic, 2014). The 1971 Bangladesh Liberation War witnessed parallel tactics of cultural annihilation. As Bass (2013) documents, Pakistani forces and local collaborators specifically targeted over 1,000 Hindu temples (Mookherjee, 2011), Sufi shrines central to Bengali syncretic traditions (Saikia, 2011) and the monuments commemorating the 1952 Language Movement (Selim, 2011).

2.1 The Language Movement and Emergence of a Cultural Identity

The 1952 Language Movement marked a critical beginning in Bengali people's cultural resistance. When the Pakistani forces killed student protestors, who were demanding official status for Bengali, it catalysed a secular, inclusive nationalism that directly challenged the occupying State's ideological framework. As Selim (2011) argues, this repression established a pattern of marginalisation that would intensify acts of humiliation and tyranny over the coming years. Intellectuals were assassinated, and libraries, temples, and universities were deliberately destroyed, erasing significant elements of Bengali cultural identity. This campaign of violence was an attempt to either forcibly assimilate or erase the Bengali people. The destruction of Bengali cultural institutions occurred alongside and in conjunction with acts of mass violence. Cultural heritage, both tangible and intangible, is a foundation of national consciousness. Language, literature and collective memory were central to the emergence of the Bangladesh Liberation Movement.

Legal scholars and historians have recognised that genocide is not confined to the physical destruction of groups. Raphael Lemkin (1944), who coined the term genocide, defined it as the destruction of a group, including killing, serious bodily or mental harm, and the deliberate infliction of conditions to exert economic control, leading to the group's physical destruction. Jacques Semelin (2007) further analysed that the destruction of libraries, religious sites, schools, and artistic institutions represent a broader strategy of genocide (Heinze, 2008).

By 1970, the systemic disparities between East and West Pakistan had become unsustainable. The Awami League's electoral victory on a platform of regional autonomy exposed what economist Rehman Sobhan (2015) calculates as structural exploitation - despite generating 70 percent of Pakistan's export earnings, East Pakistan received less than 30 percent of development funds and only 15 percent of military posts. The military junta's refusal to transfer power set the stage for the final campaign of genocide. The loss of human life, the targeting of intellectuals, the suppression of Bengali identity, and the displacement of populations constituted profound damage to the cultural heritage of Bangladesh during the 1971 Liberation War (Sarwar, 2024).

Several instances of cultural heritage destruction remain unrecorded. The pattern observed was a direct outcome of the genocidal campaign launched by the West Pakistani Army against civilians. Destruction targeting cultural or religious heritage, whether physical or spiritual, is a common tactic in armed conflict, aimed at erasing the collective identity of persecuted groups (Novic, 2014).

During the nine month war of liberation in 1971, the West Pakistani army and its local collaborators systematically targeted cultural sites, including Hindu temples, Sufi shrines, and monuments commemorating the Bengali Language Movement, as part of a broader campaign of cultural genocide (Saikia, 2011). This tactic is consistent with broader patterns of cultural erasure identified in conflicts where colonial powers aim to dismantle the historical memory of the colonised nations (Bevan, 2007). These attacks are designed to erase the identity of a group and, by extension, its culture, traditions, heritage, and history.

Beyond physical destruction, archival evidence indicates that traders from West Pakistan were heavily involved in the large-scale looting of religious artefacts. Several hundreds of sacred Hindu and Buddhist icons were smuggled out of Dhaka (Islam, 1987). The magnitude of this looting not only deprived Bangladesh of its material heritage but also disrupted intergenerational consequences like oral histories, knowledge systems and social cohesion. This was later recognised at the international level in 1979 by the International Council of Museums (ICOM) which designated Bangladesh as one of the three priority case studies for its "Ad Hoc Committee on the Return and Restitution of Cultural Property" (Selim, 2011). This initiative aimed to foster necessary research and build up national collections in countries that lost a substantial part of their cultural heritage. These were not collateral damages of war, but deliberate attempts to exterminate cultural identities, a practice

which was later codified in the 1948 Genocide Convention's Article II against "deliberately inflicting conditions calculated to bring about the group's physical destruction".

2.2 Cultural Destruction During the 1971 Liberation War

On March 27th, 1971 the Pakistan Army attacked and destroyed the historic temple dedicated to the Hindu goddess *Kali* in Ramna, Dhaka. This 500-year-old temple stood as a significant symbol of Hinduism in Bangladesh. As part of Operation Searchlight 1971, the Pakistani military also demolished the first *Shaheed Minar*, a memorial built to honour the martyrs of the 1952 Bangla Language Movement and located near Dhaka Medical College. This monument is deeply associated with Bengali nationalism. When the military crackdown briefly eased, civilians emerged from their homes to find the *Shaheed Minar* completely destroyed. Adding to the desecration, imperial forces later affixed a poster labelled *Masjid* (mosque) onto the remains of the demolished structure (Sarma, 2009).



The first Shaheed Minar. This photograph was taken by Dr Abdul Hafiz on February 24, 1952
Source © Daily Star.net <https://www.thedailystar.net/star-youth/news/the-heady-days-history-2047553>

Another significant cultural loss during the Liberation War was the *Dhamrai Rath* (chariot), a 400-year-old religious monument that stood as the largest of its kind in South Asia. This sacred structure, central to the Hindu community's annual *Jagannath Rath Yatra* festival, has attracted pilgrims across religious faiths for generations. On April 9th, 1971 Pakistani military officers and local collaborators systematically burnt the chariot, leaving only ashes where this historical and religious artefact once stood (Bangladesh Liberation War Museum, 2015).



Pulling the tallest chariot of Bangladesh, Hindu devotees celebrate the annual festival Rath Yatra, Chariot festival related to Lord Jagannath as per Hindu Mythology, in Dhamrai, Dhaka, Bangladesh.
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The destruction went beyond religious sites. Academic institutions were set on fire, erasing invaluable collections of books and knowledge. The burning of Dhaka University's libraries destroyed irreplaceable collections, including 18th CE Bengali manuscripts and colonial-era records (Hossain, 2020). Similarly, the British-era landmark *Lalkuthi* (Northbrook Hall) in Old Dhaka, housing rare 19th CE texts, saw its extensive book collection ransacked by the occupation forces (Fincham, 2017). As cultural historian Dina Siddiqi (2018) writes, these acts represented “not collateral damage, but surgical strikes on the repositories of Bengali collective memory” (p.34).

The international community has gradually recognised cultural destruction as more than mere property damage. From the Nuremberg Trials to more recent cases before the ICC, there is a growing jurisprudence treating attacks on cultural heritage as crimes against humanity. For example, the ICC's 2016 conviction of *Ahmad al-Faqi al-Mahdi* for destroying Timbuktu's cultural sites established a precedent that heritage attacks constitute war crimes.

This recurring pattern of cultural destruction raises a critical question: why are cultural and historical sites so often the targets of occupying forces during armed conflict? Addressing this issue, genocide scholar Dr. Adam Jones (2007) argues that such acts are rooted in ideological perceptions that either perceive inferiority or superiority of the cultural identity of the targeted group. The destruction of symbolic sites is not incidental but intentional, designed to assert political and ideological supremacy over the colonised population. It creates a power imbalance and “the othering” which asserts their authority. The demolition of *Shaheed Minar* and the 1952 Language Movement are examples of this

strategy. These structures held immense cultural and political significance for Bengalis, and their destruction was a calculated act to suppress that identity.

Declassified Pakistani military army reports reveal orders to “cleanse the intellectual infection” (Cordera, 2014). From a moral and legal standpoint, recognising these actions as crimes against cultural integrity, and to some extent, crimes against humanity, is essential for the accountability for these actions. Ensuring that such violations are met with appropriate international accountability remains an obligation under customary international law and various human rights treaties.

As scholars Nishat and Hossain (2022) discuss, the elimination of intellectuals has been a recurring feature of genocidal campaigns, from Nazi Germany to Cambodia, with the Pakistani military and its local collaborators executing a similar operation in Bangladesh. The deliberate targeting of cultural and religious landmarks constitutes a core element of genocidal violence under Article II(e) of the 1948 Genocide Convention. The Pakistani military’s systematic destruction of historic and cultural sites, the *Shaheed Minar*, the *Ramna Kali Temple*, and the sacred *Dhamrai Rath*, demonstrates this genocidal campaign. These weren’t merely attacks on physical structures, but calculated attempts to dismantle the Bengali people’s collective memory. Since the Krstić case (ICTY, 2001), international tribunals have recognised that cultural erasure, like mass killings, destroys a group’s cultural identity.

Hence, from genocide to war crimes and crimes against humanity, the intentional destruction of cultural and religious heritage entails a complex approach to the determination and imposition of international accountability for such conduct. In the following three sections, this report will dissect the elements, conditions, and obstacles of international crimes in relation to cultural destruction based on the aforementioned context and narratives of the Bangladesh Genocide and the Liberation War in 1971.

3. WAR CRIMES

While there is a range of customary and treaty-based regulations concerning the protection of cultural and religious heritage and property, war crimes is the only core international crime that explicitly makes reference to (cultural and religious) property crimes. These provisions set out why and how cultural and religious heritage should be protected and to what degree these protections can be derogated from during an armed conflict. The criminalisation of attacks or destructions against cultural and religious property and heritage during an armed conflict can be divided into two categories: (1) a civilian-use rationale, which entails a predominant international humanitarian law (IHL) orientation of protecting cultural and religious heritage and property through general and traditional protection of civilian objects, and (2) a cultural-value approach, which provides direct protection for cultural and religious objects and criminalises acts against these objects “with a view to specifically protect the property for its intrinsic and universal value” (Frulli, 2020).

3.1 Indirect Protection of Cultural and Religious Objects: A Civilian-Use Rationale

Indirect protection of cultural and religious objects can be traced back to the Hague Conferences of 1899 and 1907 which revealed a traditional idea of IHL to separate the civilian population and objects from military targets in the hostilities. Article 25 of the 1907 Hague Convention IV prohibits “the attack or bombardment” of undefended “towns, villages, dwellings, or buildings”, capturing the tangible culture, whether movable or immovable, secular or religious, either as part of towns, villages or dwellings, or as buildings (Abtahi, 2023c). However, the Hague regulations, at this moment, have not addressed the protection of cultural and religious objects out of all civilian objects nor established specific individual criminal responsibility in this regard (Frulli, 2020). The attempt to criminalise the destruction of cultural heritages emerged later in the two World Wars. The political disagreement prevented the enforcement of the drafted list of war crimes after WWI, including the “wanton destruction of religious, charitable, educational and historical buildings and monuments” (Vrdoljak, 2015). In addition, although the list of war crimes in the Nuremberg Charter after WWII included property crimes such as “plunder of public and private property, wanton destruction of cities, towns or villages, and devastation not justified by military necessity”, it reinforced a civilian-use rationale (O’Keefe, 2010).

The civilian-use rationale is maintained in the subsequent IHL and International Criminal Law (ICL) instruments, such as the Geneva Conventions and the Additional Protocols, and allows general but basic protection of all cultural and religious heritages and property unless they are used for military necessity. Article 52 of the 1977 Additional Protocol (the API) sets out the definition of civilian objects, which includes places of worship as well as other objects such as houses and dwellings. The protection of cultural and religious property and heritage does not exceed their material dimension (Frulli, 2020). Although the civilian-use rationale has been criticised for its failure to address the cultural value of those properties and heritage for local and international communities, one can never deny that the civilian characteristics of cultural and religious heritage and property allow them to be covered by fundamental IHL principles. For example, the principle of distinction requires the attacking party to distinguish civilian objects and military objectives and attack cultural and religious property and heritage only when they become military objectives. The principle of necessity and the principle of proportionality require that even if cultural and religious heritage and property are used for military purposes and thus lose their civilian status, the attack against them should also be necessary and proportionate to achieve military advantages.

However, the international community gradually realised the cultural and spiritual importance of cultural and religious heritage and property. This scenario gives rise to the necessity to reflect the inestimable value of cultural and religious objects in the following international conventions, leading to the adoption of a cultural-value approach.

3.2 Direct Protection of Cultural and Religious Objects: A Cultural-Value Approach

The most representative instrument adopting the cultural-value approach is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Hague Convention). The 1954 Hague Convention provides general, special, and enhanced protections of cultural property that have not been distinctively addressed by the 1949 Geneva Conventions and the 1899 and 1907 Hague Conventions (Frulli, 2020). Article 1 of the 1954 Hague Convention explains the definition of cultural property, which established a reference for subsequent humanitarian and criminal instruments, stating that cultural property covers,

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) [...];

(c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as “centres containing monuments. [emphasis added] (UNESCO, 1954)

The definition indicates the scope of protection and outlines the core difference between the cultural-value approach and the civilian-use rationale. Under the civilian-use rationale, all cultural and religious objects are naturally presumed to be civilian objects and protected unless they are used for military purposes. Yet, the special protection provided by the 1954 Hague Convention leads to a relatively stricter scope that only includes properties “of great importance to the cultural heritage of every people” in the Convention (ICRC Database, n.d.-d). Committee III adopted the opinion that only some important places of worship were covered by the special protection of the 1954 Hague Convention, leaving the rest of cultural and religious property and heritage to provisions sticking to the civilian-use rationale (ICRC Database, n.d.-d). In this regard, Articles Two-Four stipulate state parties’ obligations to protect, safeguard, and respect cultural properties listed in Article One (UNESCO, 1954). To be more specific, state parties are required to regulate both acts actively targeting the property and heritage and negatively causing substantial detrimental effects (ICRC Database, n.d.-d). The obligations even exceed the temporal restriction of wartime under IHL and extend to peacetime, asking the state parties to take all appropriate measures to safeguard property and heritage from the foreseeable effects of an armed conflict (UNESCO, 1954).

Furthermore, Article 53 of the API complements the protection of cultural and religious property and heritage. “Without prejudice to the provisions of the Hague Convention [...] and of other relevant international instruments”, Article 53 does not aim to

revise or modify the existing provisions but follows the general definition of cultural property and the obligations in the 1954 Hague Convention despite different terminologies (ICRC Database, n.d.-d). Moreover, based on the definition and the prohibitions in Article 53, the commentary on the API further clarifies certain practical and contextual points.

First, the terminology “the cultural or spiritual heritage of people” implies the tolerance of religions which do not belong to the country in question and the requirement to respect the cultural or spiritual places where the worship actually takes place. The value of cultural or spiritual heritage may transcend geographical boundaries, which are unique in character and are intimately associated with the history and culture of a people (ICRC Database, n.d.-d). This is particularly true in the case of the destruction of cultural and religious heritage in the 1971 Liberation War, in which the heritage and property of religious minorities such as Hinduism and Buddhism were heavily destroyed (Rahim, 2018). Second, subparagraph (b) in conjunction with Article 4(2) of the 1954 Hague Convention set forth the limited waiver of protection of cultural and religious heritage and property in cases of imperative military necessity (UNESCO, 1954). Article 53(b) establishes a broad determination of “military effort”, encompassing all military activities connected with the conduct of a war. It prohibits the state parties from using or benefiting from the protected heritage and objects, either in active or passive support (ICRC Database, n.d.-d). These two provisions increase the threshold of utilising cultural property and heritage for military advantage with the requirement of “imperative military necessity”. Otherwise, state parties using cultural property for military advantage may violate their obligation to respect cultural property and heritage and confront state responsibility. Even if they are used for military effort, such use does not naturally justify the attacks targeting cultural and religious heritage and property unless they have been made into a military objective and there is no feasible alternative to obtain a similar military advantage to that offered by attacking that objective (ICRC Database, n.d.-a; ICRC Database, n.d.-c). In this case, the attacks are also required to follow fundamental IHL principles mentioned in the civilian-use rationale.

Before examining specific accountability for the destruction of cultural and religious heritage, the contextual element of war crimes should be clarified. The destruction can only constitute war crimes when it is in the context of an armed conflict and has a certain nexus or close relation to the conflict (O’Keefe, 2010). Moving to individual criminal responsibility under ICL, Articles 8(2)(b)(ix) and 8(2)(e)(ix) of the Rome Statute are in line with the 1954 Hague Convention, revealing a cultural-value approach and criminalising the destruction of cultural and religious property and heritage independently. Meanwhile, other provisions such as Article 8(2)(b)(v) further indicate the civilian-use rationale. The Rome Statute is a reflection of a combination of the cultural-value approach and the civilian-use rationale in the practices of ICL. The Trial Chamber in *Prosecutor v. Jokić* underlined the importance of cultural heritage and addressed its special protection due to the cultural value for both the local and entire community (ICTY, 2006b). Similarly, in the judgment of *Prosecutor v. Hadzihasanovic and Kubura*, the Trial Chamber also noted that

[...] while civilian property is afforded general protection under customary international law, special attention is paid to certain property, namely religious

buildings, owing to their spiritual value. Because those values go beyond the scope of a single individual and have a communal dimension, the victim here must not be considered as an individual but as a social group or community. [...] The Chamber considers that the seriousness of the crime of destruction of or damage to institutions dedicated to religion must [...] take much greater account of the spiritual value of the damaged or destroyed property than the material extent of the damage or destruction. (ICTY, 2006a)

In the jurisprudence of the ICC, the Pre-Trial Chamber in the *Al Mahdi* case followed the *Jovic* case and recognised the universal and spiritual importance of cultural and religious heritage listed in the UNESCO World Heritage Convention (International Criminal Court, 2018). Compared with the vague description of the “heritage of people”, the Chamber took a more obvious approach to assess the gravity of each heritage or property, applying for the World Heritage status as “a proxy for gravity in the commission of the war crime of internationally directing attacks against cultural heritage” (Casaly, 2016). However, the text does not state that this is the only approach. Scholarship concluded the ICC’s approach is a combination of a human-dimension approach, entailing a more comprehensive assessment of factors (Frulli, 2020). The Trial Chamber in the *Al Mahdi* case took the relationship between the collective (of Timbuktu) and its cultural tangibles of a religious and spiritual character into account for the evaluation of the gravity (Abtahi, 2023c).

These practices catalysed a more flexible standard for the specific protection of cultural property and heritage and provided a systematic criminalisation of the destruction against them under the provisions of war crimes. In the context of the Liberation War, Article 3(d) of the International Crimes (Tribunal) Act (ICTA) still sticks to a very basic civilian-use rationale through the mimicry of the Nuremberg Charter. The limited provision led to a dissatisfying result as the destruction of cultural and religious heritage in 1971 was dramatically ignored in the decisions, and the legal characterisation of such acts remained inappropriate without addressing the educational and spiritual significance of cultural and religious heritage. Indeed, at the time of the Liberation War, Bangladesh was not a contracting party to the Geneva Conventions, the API, or the 1954 Hague Convention, and the Rome Statute had not yet been created. However, the protection of cultural property in the 1954 Hague Convention is widely regarded as reflecting customary international law (ICRC Database, n.d.-b). In the 1998/70 Resolution on the Question of Human Rights in Afghanistan issued by the United Nations Commission on Human Rights, based on reports of the destruction and looting of the cultural and historical heritage, Afghanistan, a non-party to the 1954 Hague Convention, was urged to protect and safeguard its heritage (Hossain, 1999). Hence, the evaluation of international standards and constant events of devastating cultural and religious heritage destruction since 1971 in Bangladesh requires the state to refer to international practices mentioned above, ask for a more cultural-inclined approach in the ICTA, and reconsider the legal determination of the destruction of cultural and religious heritage in the armed conflict in 1971.

4. CRIMES AGAINST HUMANITY: PERSECUTION

The contextual element of war crimes determines the background of armed conflicts and the relation of destructive acts to the conflict. Not all destruction of cultural and religious heritage can be considered a war crime. However, this does not mean that such destruction can be free from international accountability. Converted from a by-product of war crimes to a human rights crime, crimes against humanity provide another approach to dealing with the destruction of cultural and religious property. The 1991 International Law Commission (ILC) Report and the 1996 ILC Report explicitly stated that persecution, a form of crime against humanity, can be multifold, consisting of “systematic destruction of monuments or buildings representative of a particular social, religious, cultural or other group” (ILC, 1991; ILC, 1996). This section will analyse how destruction constitutes persecution, a crime applicable in both wartime and peacetime.

4.1 Vague Actus Reus: Violations of Fundamental Human Rights

One of the most controversial arguments about the crime of persecution is that the provisions in the Rome Statute and the previous statutes of two *ad hoc* tribunals do not have a specific definition for the *actus reus* requirement of persecution. The definition and interpretation have been left to the practices of specific criminal tribunals and courts. In *Prosecutor v Kupreškić et al*, the Trial Chamber provided a definition, consisting of,

(1) a gross or blatant denial [...] (3) of a fundamental right, laid down in international customary or treaty law, (4) reaching the same level of gravity as the other crimes against humanity enumerated in Article 5 of the Statute. (ICTY, 2000)

Reading in line with Article 7(2)(g) of the Rome Statute, in which persecution is defined as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”, the two main factors of *actus reus* of persecution can be summarised as: the violation of fundamental human rights and the gravity or seriousness of the crime (International Criminal Court, 1998).

First, which fundamental human rights are violated by the destruction of cultural and religious heritage? International jurisprudence concerning the destruction of cultural and religious heritage is limited and remains vague in clarifying the specific content of fundamental human rights involved in the destruction. In the *Prlić* case, the Trial Chamber attempted to clarify the nexus between the violation of human rights and the destruction of mosques and of the Old Bridge of Mostar, holding that,

*The destruction of the Old Bridge had a serious effect on the morale of the population in Mostar, particularly on the Muslims residing in East Mostar. [...] [all these crimes were committed] with the intention of discriminating against the Muslims of the Municipality of Mostar and violating **their basic rights to life, human dignity, freedom and property** between May 1993 and April 1994, and that these crimes constitute the crime of persecution. [emphasis added] (ICTY, 2013)*

As most destruction targeting cultural and religious objects was often accompanied by other attacks against the physical existence of (collective) victims, the destruction of tangible

heritage or property was less focused and generally analysed as a by-product of attacks against human beings *per se*. Although most cases were based on an anthropocentric approach, they can also provide a reference for the violation of human rights caused by the destruction of cultural and religious heritage.

For example, the 1991 and 1996 ILC Reports stated that persecution is related to violations of human rights established in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) through the prohibition of religious worship, prolonged and systematic detention on the grounds of representing a political, religious, or cultural group, and the prohibition of using national language (ILC, 1991; ILC, 1996). These attacks were often achieved through the destruction of corresponding tangible cultural or religious heritage. *Prosecutor v. KHIEU Samphân and NUON Chea* confirmed this point. The Trial Chamber recognised that the Cham are “an ethnic and religious distinct group” who were targeted through restrictions on their religious and cultural practices, including burning of Korans and dismantling mosques or else using them for non-religious property, which constituted a violation of fundamental rights to the movement, personal dignity, liberty, and equality of the Cham (ECCC, 2018). Similarly, based on the destructive facts in 1971 mentioned above, the mass killings of intellectuals proficient in Bengali and Hindu studies and the destruction of libraries and university halls reveal a clear violation of fundamental human rights through these restrictive approaches targeting both the people and heritage (Rahim, 2018; Nishat & Hossain, 2022).

Additionally, even if a tangible-centred approach is applied to solely concentrate on the destructive act itself, international human rights law can also provide guidance for international jurisprudence. Apart from the right to property based on the general material value of cultural and religious heritage, the most directly affected human right is the right to participate in cultural life stipulated in Article 15 of the ICESCR. In its 2009 General Comment, the Committee on Economic, Social, and Cultural Rights specifically addressed the customary nature of this right and explicitly added cultural heritage to the right to participate in cultural life (CESCR, 2009). The Comment clarified that this right allows an individual to choose “whether or not to take part in cultural life as part of a cultural choice [that] should be recognised, respected, and protected on the basis of equality” (CESCR, 2009). As mentioned above, in the context of the Bangladesh Liberation War, the Pakistan Army attacked and destroyed the historic *Kali* temple and destroyed the first *Shaheed Minar*, which prevented people from participating in, accessing, and contributing to cultural life concerning Hinduism and Bengali nationalism (Nishat & Hossain, 2022; Lixinski, 2023). With the constant discrimination against religious and indigenous minorities in Bangladesh, the equality requirement in the right to participate in cultural life, the right to equality, and the right to non-discrimination are also seriously violated.

Second, what is the gravity requirement of the persecution, and how can it be assessed in the case of the destruction of cultural and religious property? The terminology “the same level of gravity as the other crimes against humanity” is not clear enough. Since crimes against humanity apart from persecution (and other inhumane acts, which is a catch-all provision) entail physical or mental harm against human bodies and/or minds to different

degrees, it is hard to compare the destruction of cultural and religious heritage with the attacks targeting human flesh and mental health. Therefore, this question again becomes a case-by-case assessment based on different contexts and circumstances (Abtahi, 2023a; ICTY, 2004b). The Trial Chamber in the *Kordic & Cerkez* case emphasised “the gravity of the acts by considering them, at a minimum, as a national-international diptych, as they injured humanity as a whole” (Abtahi, 2023a). In the judgement of the *Blaskic* case, the Chamber reaffirmed that since cultural and religious heritage may represent the identity of a particular group and even reflect the culture of all humankind, it reaches a higher degree of gravity (ICTY, 2004b). On the contrary, another representative case is the *Deronjic* case, in which the accused was found guilty of persecution for acts in terms of tangible cultural objects, including the destruction of one mosque (ICTY, 2004a). However, the judgment was later criticised for its unclear reasoning of whether the act of destruction was of sufficient gravity or whether it should be considered together with the other acts as part of the wider persecution (Abtahi, 2023a).

4.2 Special Mens Rea: the Discriminatory Grounds

Article 7(1)(h) of the Rome Statute demonstrates that crimes against humanity means,

Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court. (International Criminal Court, 1998)

The provision not only provides an open-ended scope of *actus reus*, leaving an interpretative space for the destruction of cultural and religious heritage but also characterises a special *mens rea* of persecution: the commission on discriminatory grounds, which differentiates persecution from other forms of crimes against humanity (Abtahi, 2023a). This definition requires victims or objects to be targeted by reason of a group, or collective identity or characterisation. In the *Kupreskic* case, the Trial Chamber described persecution as a lower-genocide crime without the requirement of *dolus specialis*, both of which focus on the group or collective identity rather than individuals or the mere material value of tangible objects (Fournet & Pégrier, 2010). The Chamber concluded that

*The mens rea requirement for persecution is higher than for ordinary crimes against humanity, although lower than for genocide. [...] [P]ersecution as a crime against humanity is an offence belonging to the same genus as genocide. Both persecution and genocide are crimes perpetrated against persons that belong to a **particular group and who are targeted because of such belonging**. In both categories what matters is **the intent to discriminate** [...] Thus, [...] from the viewpoint of mens rea, genocide is an extreme and most inhuman form of persecution. To put it differently, when persecution escalates to the extreme form of wilful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide. [emphasis added] (ICTY, 2000)*

Although this report does not intend to discuss the nexus between genocide and

persecution, the special intent and the collectiveness of genocide can facilitate understanding under which circumstances the destruction of cultural and religious heritage (whether it constitutes a war crime or not) can constitute persecution. Although cultural and religious heritage was not specifically mentioned, the Trial Chamber of the *Kordic & Cerkez* case adopted the standard of “discriminatory grounds” to determine whether an indiscriminate attack on cities, towns, and villages constitutes a war crime targeting private properties or persecution. It indicated that

If the ultimate aim of persecution is the “removal of those persons from the society in which they live alongside the perpetrators, or eventually even from humanity itself”, the widespread or systematic, discriminatory, destruction of individuals’ homes and means of livelihood would surely result in such a removal from society. (ICTY, 2001a)

Reading in line with the gravity requirement of persecution, which repeatedly addressed the identity value of cultural heritage, it is clear that the discriminatory intent is in conjunction with the desire to annihilate a community’s cultural or distinct identity through the destruction of the representative cultural and religious heritage (Frulli, 2020).

According to the practice of the International Crimes Tribunal, Bangladesh (ICT-BD), the derogatory and discriminatory statement referring to Bengali nationalists as ‘miscreants’ and ‘anti-state elements’ and the genocidal context to annihilate the targeted groups mainly consisting of Bengalis and Hindus have become common knowledge in the Liberation War (ICT-BD-2b, 2013). This not only indirectly proved the genocidal intent of the crime of genocide by proving the existence of a discriminatory background and genocidal context but also provided evidence of a widespread discriminatory ground of persecution. When most attacks against cultural and religious property in this context concentrate on a representative heritage of Buddhism, Hinduism, and Bengali nationalism, it is natural to deduce that the perpetrator shared the discriminatory intent when he/she conducted the destruction and thus satisfied the subjective element of persecution. In this regard, the destruction conducted by the Pakistan military precisely reflected what the Trial Chamber in the *Kupreskić* case emphasised: the attacks against religious or cultural sites or buildings aiming at destroying the very identity of the group manifested “a nearly pure expression of the notion of crimes against humanity, for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects” (ICTY, 2000).

4.3 In Connection with Acts Referred to Other International Crimes

Except for subjective and objective elements, Article 7(1)(h) of the Rome Statute mentions an interesting element, requiring persecution to be “in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court”. This terminology raises further questions about the nexus between persecution and other international crimes, particularly war crimes and another crime against humanity – other inhumane acts.

4.3.1 The Nexus and Independence with War Crimes

Although persecution, a crime against humanity, is applicable in both wartime and peacetime, the destruction of cultural and religious heritage convicted of persecution generally embraced a background of armed conflicts. Therefore, the destruction in armed conflict has been constantly connected to or even blurrily overlapped with general attacks against civilian objects under war crimes.

In both the *Blaskic* case and the *Kordic & Cerkez* case, the Chamber confirmed this overlap in the discussion about the discriminatory intent of persecution that it is normal to cumulatively charge both war crimes and crimes against humanity, and the Chamber first established the former and then moved to the latter (Abtahi, 2023a). As mentioned in the last section, although the Trial Chamber in the *Prlic* case found the constitution of persecution based on the facts of the discriminatory destruction of the Old Bridge and the Municipality of Mostar, the decision was overturned by the Appeal Chamber, arguing that the bridge was used for military necessity, which justified the attack against it (ICTY, 2013; ICTY, 2017). This argument was then criticised since it failed to recognise that persecution does not require the act in question to be a crime under international criminal law (Frulli, 2020). However, the debate did not give rise to much attention. Moving to cases of the ICC, the practice remained similar. In the *Al Hassan* case, the Pre-Trial Chamber still adopted war crimes under Article Eight of the Rome Statute to facilitate the characterisation of the *actus reus* of persecution (Abtahi, 2023a). The conceptual relationship between persecution and war crimes gives rise to an interesting question of whether in the situation of non-armed conflict, the Court will still seek to characterise the destruction of cultural and religious property as persecution by referring to provisions other than war crimes (Abtahi, 2023a).

This discussion is not a big dilemma in the case of the Liberation War, and this conceptual relationship is sufficient to resolve most destruction at that time, as the background of armed conflicts was obvious. However, moving one step further, there have been destructive events of cultural and religious heritage in Bangladesh without the condition of armed conflicts. For example, reports during and after the July Revolution of 2024 indicated that cultural and religious objects and sites, including but not limited to the Bangabandhu Sheikh Mujibur Rahman Mural and Bangabandhu Memorial Museum, the structure of Themis at the Supreme Court premises, Shadhinata Sangram Bhashkarjo at Fuller Road, the sculpture of Shilpacharya Zainul Abedin in Mymensingh, and the Mujibnagar Liberation War Memorial Complex in Meherpur, were vandalised (The Daily Star, 2024). In this case, the nexus between war crimes and persecution is no longer enough to deal with the destruction during peacetime. To this effect, Article 7(1)(k) of the Rome Statute, other inhumane acts come into sight.

4.3.2 The Lack of Definition and Practice: Persecution and Other Inhumane Acts

As a catch-all provision, other inhumane acts create much space for the destruction of cultural and religious heritage. However, the practices and clear definitions established in international jurisprudence were limited. Therefore, the open-ended nature of this article and the vague practice in reality require a more cautious application. The *ad hoc* tribunals

provided a definition of other inhumane acts, defining that the conduct in question must

cause serious mental or physical suffering to the victim or constitute a serious attack upon human dignity; and [...] be of equal gravity to the conduct enumerated in the ICTY Statute article 5 and the ICTR Statute article 3.1. (ICTR, 1999)

This definition also only established a flexible standard largely overlapping with persecution. Some scholars thus specifically focused on the mental harm caused by other inhumane acts and referred to the practices of the Inter-American Court of Human Rights and the Extraordinary Chambers in the Courts of Cambodia (ECCC), considering that the provision “does not exclude characterising the destruction of tangible culture as persecution in the form of other inhumane acts” (Abtahi, 2023a). In this case, one should look into the fundamental principle of international law: *lex specialis derogat legi generali*. When crimes against humanity are no longer a by-product of war crimes and get rid of the requirement of armed conflict, several practices have proved that persecution can cover the destruction in discussion, which eliminates the necessity of applying other inhumane acts. Indeed, there can be some new forms of destruction of cultural and religious heritage or even attacks against intangible culture such as worship events, habits, and customs, which can hardly be interpreted under persecution and require the flexibility of other inhumane acts. Nevertheless, the discussion about the destruction of tangible cultural and religious heritage remains in the scope of persecution and waits for the future case law of the ICC to compare these two crimes against humanity and clarify their nexus.

5. GENOCIDE

In the definition of genocide stated by Lemkin,

Genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves... Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group. (Lemkin, 1944)

This observation reveals an obvious cultural dimension of genocide. Since most destruction in 1971 was conducted in the condition of a genocidal campaign, it brings about a more controversial question of whether the destruction of cultural and religious heritage can also constitute the crime of genocide, in other words, whether the present provisions of genocide leave a space for the destruction of cultural and religious heritage.

5.1 Cultural Genocide v. Genocide

In the negotiation of the drafted Genocide Convention, the Secretariat of the Ad Hoc Committee raised the question of whether the Convention should include cultural genocide, consisting “in the destruction by brutal means of the specific characteristics of a human

group, that is to say, its moral and sociological characteristics” (Schabas, 2009). This proposal was then rejected by several states who insisted on limiting the scope of this convention to physical and biological genocide (Schabas, 2009).

This issue was then raised again in the 1996 ILC Report. The Report reaffirmed the terminology “cultural genocide” in a more detailed perspective, which covers

*any deliberate act committed with the intent to destroy the language, religion or culture of a group, such as prohibiting the use of the language of the group in daily intercourse or in schools or the printing and circulation of publications in the language of the group or **destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.*** [emphasis added] (ILC, 1996)

This statement explicitly includes the destruction of cultural and religious heritage under the scope of genocide. However, the Report also followed the discussion and argument during the preparatory work of the Ad Hoc Committee and pointed out that

The destruction in question is the destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group. The national or religious element and the racial or ethnic element are not taken into consideration in the definition of the word “destruction”, which must be taken only in its material sense, its physical or biological sense. (ILC, 1996)

Looking into Article Two of the Genocide Convention, it is clear that the present provision does keep cultural genocide. Subparagraphs (a) to (c) entail the acts of physical destruction, and (d) and (e) involve the acts of biological destruction (ILC, 1996). Although some states such as Greece argued that the deportation of children should belong to a form of cultural genocide, as it does not necessarily lead to physical or biological destruction in the end, such arguments about cultural genocide were restricted within the scope of the anthropo-centred discussion (Abtahi, 2023b). The heritage-centred approach has been excluded from this provision from the beginning.

Subsequent case law confirmed this idea. In the arrest warrant case of *Prosecutor v. Karadžić & Mladić*, the Trial Chamber pointed out that the systematic destruction of cultural tangible of the targeted group was better regarded as “part of a ‘memory-cide’, a policy of ‘cultural cleansing’ which aimed at ‘eradicating memory’, which constitutes ethnic cleansing under the scope of crimes against humanity rather than genocide (ICTY, 1996). Out of the international jurisprudence of the *ad hoc* tribunals, the definition of genocide was challenged. In the situation of Cambodia under the Khmer Rouge Regime, the Decree Law took a broader definition of genocide, including

*[...] the forced evacuation of the inhabitants of towns and villages, the rounding up of the population and forcing them to labour in physically exhausting conditions, **the banning of religious practices, the destruction of economic and cultural institutions and social relations.*** [emphasis added] (United Nations General Assembly, 1979)

This definition is intended to demonstrate the intertwined physical and cultural dimensions of a genocidal campaign. However, it was seriously criticised and questioned that this was an isolated practice rather than a widely accepted reintroduction of cultural genocide in the provisions (Schabas, 2001). Indeed, the ECCC only referred to the traditional definition of genocide and prosecuted the Khmer Rouge's destructive acts against cultural property as war crimes and crimes against humanity (Frulli, 2020).

5.2 The Evident Role of the Destruction of Cultural and Religious Heritage in the Crime of Genocide

Despite the rejection of cultural genocide, the practices of international criminal courts and tribunals indicate another direction of the role of the destruction of cultural and religious heritage in the prosecution of genocide. Article Two of the Genocide Convention defines 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: ...” (United Nations General Assembly, 1948). The provision is thus generally interpreted to stipulate a two-fold *mens rea* consisting of a general intent to commit the specific act based on the forms of charges, such as killings and causing serious harm, and a specific or special “intent to destroy, in whole or in part, a national, racial or religious group as such”, namely genocidal intent or *dolus specialis*. To this effect, the destruction of cultural and religious heritage can become circumstantial evidence to prove the existence of genocidal intent (Abtahi, 2023b).

In the *Karadžić* case, the Trial Chamber specifically cited three acts as circumstantial acts that can be applied to evaluate whether the pattern of conduct in its totality reveals a genocidal intent (ICTY, 1996). One of the three acts was

the destruction of mosques or Catholic churches [which] is designed to annihilate the centuries-long presence of the group or groups; the destruction of the libraries [which] is intended to annihilate a culture which was enriched through the participation of the various national components of the population. (ICTY, 1996)

This opinion was then followed by the *Krstić* case, in which the Trial Chamber directly pointed out that

*Where there is physical or biological destruction there are often **simultaneous attacks on the cultural and religious property and symbols** of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group. In this case, the Trial Chamber will thus take into account **as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group.** [emphasis added] (ICTY, 2001b)*

Although most destruction of cultural and religious heritage in the Liberation War was not properly recorded and impacted its function to prove the genocidal intent, a similar rationale could also be observed when reading in line with other attacks against culture, such as the mass killing of intellectuals and forceful conversion. During the nine-month war, members of the Hindu Community were forced to convert to Muslims under the terror spread by the Partistani Army through attacks such as killing unarmed civilians, raping, torturing,

and looting their (cultural) property and architecture (ICT-BD-1, 2013). In the *Delowar Hossain Sayeedi* case, the ICT-BD provided that

It is found on solid evidence that during the War of Liberation, the accused under coercion and threat compelled a good number of Hindu Community people to convert religious belief which is considered as inhuman act, torture and mental persecution which fall within the purview of crimes against humanity. (ICT-BD-1, 2013)

Additionally, the *Ali Ahsan Muhammad Mujahid* case cited the observation from the practices of the ICTY and clearly mentioned the commission of persecution through

the comprehensive destruction of homes and property that constitutes a destruction of the livelihood of a certain population and may have the same inhumane consequences as a forced transfer, [which] could constitute a blatant denial of fundamental rights [...] committed on discriminatory grounds [...] (ICT-BD-2a, 2013)

Indeed, both judgments did not specifically mention the destruction of cultural and religious property. But one should mind that such destruction of cultural tangibles has been constantly ignored in practices. According to the judgments, it is not hard to discover that although the above cases rejected the direct commission of genocide through attacks against culture, it still acknowledged these attacks, either targeting persons (killings of intellectuals), spiritual activities (forceful conversion), or tangibles (destruction of cultural and religious property), were to destroy the distinct identity of the group or collective. With other genocidal *actus reus* and a common plan widely known by the perpetrators, the attacks against culture mentioned above were sufficient to indicate that the accused did not only discriminate against the targeted groups but also had the intent to destroy the groups from both physical and cultural senses.

CONCLUSION

In conclusion, international accountability for the destruction of cultural tangibles can be revealed in three international crimes. War crimes provide both direct and indirect protection of cultural and religious property, including heritage, in armed conflicts. Based on the instruction of the 1954 Hague Convention, such protection under international law adopts a combination of the cultural-value approach and the civilian-use rationale. The Convention addressed the material value of cultural and religious heritage and emphasised the cultural significance of heritage “of people”. Moving to peacetime, persecution, a crime against humanity, was applied to address the discriminatory grounds and the violation of fundamental human rights in the case of the destruction of cultural and religious heritage. However, the gravity and its nexus with other international crimes are not always clear, requiring further instructions of case law. Additionally, the general rejection of cultural heritage prevented the commission of genocide by destroying cultural and religious heritage. Practices indicated that such destruction was regarded as circumstantial evidence to prove genocidal intent rather than the crime *per se*.

The destruction of cultural and religious heritage in the Bangladesh Liberation War has always been a serious dilemma, which not only caused the dramatic loss of cultural tangibles and the memory represented by such objects but also constantly impacted the further protection of cultural and religious landscapes in this state. The deliberate targeting of cultural symbols, religious monuments, and heritage sites was a violation of not only the rights of the targeted groups but also the collective interests of all human civilisations. While the international community and practices of criminal courts and tribunals have widely recognised the criminality of such cultural destruction and called for accountability in this regard, the enforcement of international law in the context of Bangladesh has not been satisfying. The lack of records, the unresolved discriminatory grounds, and the negligence of the cultural value of these heritages thus become the core issue before, during and after the enforcement of international accountability for the destruction of cultural and religious heritage.

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