
Is a Threat to Destroy Cultural Heritage a Violation of International Law? Tweet Diplomacy and Gaps in Cultural Property Protection

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On January 4, 2020, the official Twitter account of the former US President Trump threatens to target Iran's cultural heritage sites conditioned on any Iranian retaliation on US military forces then stationed in the Middle East. The immediate context was that the US-led drone strike had killed Iran's Major General Qasem Soleimani in Iraq (Baghdad) only two days prior. This study critically analyzes whether "Tweets" uploaded to President Trump's Twitter account could reasonably be construed as a type of harm against international law instruments and framework on the safeguarding of cultural heritage. This paper provides a brief contextual overview of President Trump's Tweets; traces the historical destruction of cultural property during conflicts and discusses the preservation of heritage; delineates international laws and assesses whether President Trump and the US might be legally bound to refrain from threats to destroy cultural property; and examines the increasing role of social media in the evolution of the idea of diplomacy.

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All the websites cited in this article were last visited on May 4, 2023.

Keywords

Tweet Diplomacy, Cultural Property, President Trump, General Qasem Soleimani, The Hague Convention for the Protection of Cultural Property

*Weapons are not enough to defeat violent extremism. Building peace requires culture also; it requires education, prevention, and the transmission of heritage.*¹

Irina Bokova (former UNESCO Director-General)

I. Introduction

In human society, armed conflict has been a marked beating to the sense of identity through the destruction of cultural property. In particular, the loss of the tangible property – buildings, sites, objects and artefacts – is visceral. As the memories of conflicts are transmitted to subsequent generations, they remain dynamic and subject to reformulation, with the losses to culture featuring prominently. Certainly, culture and tradition offer a strong bond for individuals to experience both belonging and acceptance by a community. In an increasingly connected world facilitated by the recreational benefits of the Internet, we gain valuable context to formulate new law and policy. Today, international law is colored by how cultures communicate with each other in connection with agreements, treaties, conventions as well as diplomatic dialogue.² This position is fundamental if we are to understand “how stability is constantly recreated despite divergent views and interests.”³ We are no longer confined to the *travaux préparatoires* or the official statements released by heads of State. Now, for the first time in recorded history, we are able to witness first-hand and real-time communication between heads of nation-States as they participate in dialogue over the Internet.

In this regard, a “war”⁴ of words across the microblogging social media platform

¹ UNESCO Director-General Irina Bokova address dated Mar. 24, 2017 on the UN Security Council adoption of Resolution 2347, <https://en.unesco.org/news/security-council-adopts-historic-resolution-protection-heritage>.

² For details on the importance of pragmatics as a linguistic concept in the context of international negotiations particularly involving cultural property, see Stefan Groth, *Negotiating Tradition – The Pragmatics of International Deliberations on Cultural Property*, 4 GÖTTINGEN STUDIES IN CULTURAL PROP. 17 (2012).

³ *Id.* at 31.

⁴ See generally Garrett M. Graff, *Did Twitter Help Stop War With Iran?*, WIRED SECURITY (Jan. 8, 2020), <https://www.wired.com/story/did-twitter-help-stop-war-with-iran/>.

Twitter started with the United States' killing of Maj. Gen. Qasem Soleimani, Iran's top military commander and the face of Iran's interventions across the Middle East, in a coordinated drone strike at the airport in Iraq (Baghdad).⁵ On Former US President Donald Trump's Twitter account appeared an image of the American flag sans text.⁶ By assassinating Iran's military leadership, the US risked possible Iranian retaliation against US forces and facilities in Iraq.⁷

Two days later, on January 4, 2020, the former President Donald Trump's account displayed across three Tweets addressing that very risk, wherein President Trump indicates that the US has targeted Iran's cultural heritage.⁸ The full and exact contents of these tweets are as below [all emphases in original]:

Iran is talking very boldly about targeting certain USA assets as revenge for our ridding the world of their terrorist leader who had just killed an American, & badly wounded many others, not to mention all of the people he had killed over his lifetime, including recently.... (1/3)

... hundreds of Iranian protesters. He was already attacking our Embassy, and preparing for additional hits in other locations. Iran has been nothing but problems for many years. Let this serve as a WARNING that if Iran strikes any Americans, or American assets, we have... (2/3)

... targeted 52 Iranian sites (Representing the 52 American hostages taken by Iran many years ago), some at a very high level & important to Iran & the Iranian culture, and those targets, and Iran itself, WILL BE HIT VERY FAST AND VERY HARD. The USA wants no more threats! (3/3)

Subsequently, US Government officials at the time including Defense Secretary Mark

wired.com/story/donald-trump-iran-twitter-war.

- ⁵ See Statement by the Department of Defense (Jan 2, 2020), <https://www.defense.gov/Newsroom/Releases/Release/Article/2049534/statement-by-the-department-of-defense>; Natasha Turak, 'Dangerous escalation' and 'severe revenge': The world responds to the US killing of top general, CNBC WORLD POLITICS (Jan. 3, 2020), <https://www.cnbc.com/2020/01/03/qasem-soleimani-death-world-responds-to-us-assassination-of-irans-top-general.html>. For further context on the death of Qasem Soleimani and more generally on The Quds Force, see Editors, *Backgrounder on Iran's Revolutionary Guards*, CFR.org (May 6, 2019), <https://www.cfr.org/backgrounder/irans-revolutionary-guards>.
- ⁶ Neil Vigdor, *Killing of Iranian Commander Is Criticism and Tough Talk*, N.Y. TIMES (Jan. 2, 2020), <https://www.nytimes.com/2020/01/02/world/trump-qassim-suleimani-twitter.html?login=smartlock&auth=login-smartlock>. See also Twitter Account of Donald J. Trump, Tweet dated January 2, 2020 at 9:32pm EST, <https://twitter.com/realDonaldTrump/status/1212924762827046918>.
- ⁷ Tim Arango et al., *The Iran Cables: Secret Documents Show How Tehran Wields Power in Iraq*, N.Y. TIMES (Nov. 19, 2019), <https://www.nytimes.com/interactive/2019/11/18/world/middleeast/iran-iraq-spy-cables.html>.
- ⁸ Twitter Account of Donald J. Trump (@realDonaldTrump), Tweets dated January 4, 2020 at 5:52pm EST, <https://twitter.com/realDonaldTrump/status/1213593975732527112>.

Esper⁹ and Secretary of State Mike Pompeo,¹⁰ attempted to dampen the incense and outrage the Tweets provoked. Nevertheless, Trump “doubled down on his threat” in a conversation with press reporters after Pompeo’s comments, saying:¹¹

[t]hey’re allowed to kill our people. They’re allowed to torture and maim our people. They’re allowed to use roadside bombs and blow up our people and we’re not allowed to touch their cultural sites? It doesn’t work that way.

One of the first responses was from Mohammad Javad Zarif, Iran’s foreign minister, who stated in part,

- Having committed grave breaches of int’l law in Friday’s cowardly assassinations, @realdonaldtrump threatens to commit again new breaches of JUS COGENS;

- Targeting cultural sites is a WAR CRIME; ...¹²

Two days after President Trump’s threatening Tweets, US allies issued responsive statements underscoring the seriousness of threatening cultural property.¹³ French President Emmanuel Macron, German Chancellor Angela Merkel, and the UK Prime Minister Boris Johnson, together with the EU, issued a joint statement stressing the “urgent need for de-escalation” and “call[ing] on all parties to exercise utmost restraint and responsibility.”¹⁴ The UK had warned against a conflict at the time of Soleimani’s assassination¹⁵ with Defense Secretary Ben Wallace indicating that it was

⁹ Peter Baker & Maggie Haberman, *Pentagon Rules Out Striking Iranian Cultural Sites, Contradicting Trump*, N.Y. TIMES (Jan. 6, 2020), <https://www.nytimes.com/2020/01/06/us/politics/trump-esper-iran-cultural-sites.html>. Secretary Esper “acknowledged that striking cultural sites with no military value would be a war crime, putting him at odds with the president, who insisted such places would be legitimate targets,” further adding that: “[The US] will follow the laws of armed conflict.”

¹⁰ Justine Coleman, *Pompeo on Trump threat to strike Iranian cultural targets: ‘We’ll behave lawfully,’* THE HILL (Jan. 5, 2020), <https://thehill.com/homenews/sunday-talk-shows/476816-pompeo-on-trump-threat-well-behave-lawfully>.

¹¹ Laurel Wamsley, *Trump Says He’ll Target Iran’s Cultural Sites. That’s Illegal*, NPR MIDDLE EAST (Jan. 6, 2020), <https://www.npr.org/2020/01/06/794006073/trump-says-hell-target-iran-s-cultural-sites-that-s-illegal>.

¹² Twitter Account of Javad Zarif (@JZarif), Tweets dated January 4, 2020 at 5:52pm EST, <https://twitter.com/realdonaldtrump/status/1213593975732527112>.

¹³ See generally Thomas Colson, *US allies are calling for ‘restraint and responsibility’ as Trump threatens Iranian cultural sites*, BUS. INSIDER (Jan. 6, 2020), <https://www.businessinsider.com/us-allies-call-for-restraint-after-trump-threatens-iranian-sites-2020-1?r=US&IR=T>.

¹⁴ Statement from the heads of state and government of France, Germany, and the UK dated Jan. 6, 2020, <https://www.gov.uk/government/news/joint-statement-from-president-macron-chancellor-merkel-and-prime-minister-johnson-on-the-situation-in-iraq>.

¹⁵ For a coverage of statements issued by the UK Foreign Secretary Dominic Raab and the UK Prime Minister Boris

considering “cutting back on its defense ties with the US.”¹⁶ Human Rights Watch, an international nongovernmental organization, condemned the threats and urged President Trump to clarify that he would neither authorize nor order war crimes.¹⁷

While the exchange over Twitter raises interesting and pertinent questions concerning international law and diplomacy in general and challenges contemporary understanding of decency on the Internet, this study specifically focuses on the impact of diplomacy and the lack thereof on cultural policy on the lived experiences of peoples. This study critically analyzes whether President Trump’s tweets violate international law on safeguarding cultural heritage. This paper comprises six parts, including Introduction and Conclusion. Part two reviews diplomatic fails and the casualty of cultural heritage in armed conflicts. Part three discusses international legal instruments for the preservation and protection of cultural property. We inspect international conventions and treaties, United Nations resolutions, customary international law, and court cases of international criminal law courts and tribunals. Part four investigates legal questions concerning President Trump’s Tweets on Iran’s Cultural Properties. Part five critically tackles law and policy concerns arising from Trump’s threatening tweets.

II. Diplomatic Fails and the Casualty of Cultural Heritage in Armed Conflicts

Intentional targeting and destruction of cultural heritage has been a consistent theme in history. Wierczyńska and Jakubowski maintain that

the key role of cultural heritage in building people’s identities is crucial for

Johnson, see Adam Bienkov, *The UK government warns Trump that war with Iran ‘is in none of our interests,’* BUS. INSIDER (Jan. 3, 2020), <https://www.businessinsider.com/uk-warns-donald-trump-against-launching-war-iran-qassem-soleimani-2020-1?r=US&IR=T>. For an analysis on the role played by Britain historically and specifically by British spies in the 1953 coup d’etat restoring the Shah, see Vanessa Thorpe, *MI6, the coup in Iran that changed the Middle East, and the cover-up*, GUARDIAN (Aug. 2, 2020), <https://www.theguardian.com/world/2020/aug/02/mi6-the-coup-in-iran-that-changed-the-middle-east-and-the-cover-up>.

¹⁶ Adam Bienkov, *The United States’ main allies are abandoning Trump as his threats to world leaders backfire*, BUS. INSIDER (Jan. 17, 2020), <https://www.pulse.ng/bi/politics/the-united-states-main-allies-are-abandoning-trump-as-his-threats-to-world-leaders/bjepf1h>.

¹⁷ For details on the comments by Andrea Prasow, acting Washington director at Human Rights Watch see HRW, *US: Trump Threatens War Crimes Against Iran*, Human Rights Watch News (Jan. 5, 2020), <https://www.hrw.org/news/2020/01/05/us-trump-threatens-war-crimes-against-iran>.

asserting rights and legitimacy to control determined territories, people's beliefs, conscience, and ways of life. Therefore, cultural heritage has been exposed to intentional destruction, suppression, and plunder that dramatically affects human communities.¹⁸

Yet, despite the central importance of cultural heritage, monuments and works of art remain consistently targeted in armed conflicts.¹⁹ This is reportedly often the case where the ultimate specific aim is the deprivation of cultural identities. Particularly in Afghanistan, Iraq, Iran, and Syria, deliberate and systematic targeting and destroying of cultural property is in a manner that may be reasonably described as “cultural cleansing.”²⁰ As Merryman highlights, a way of looking at cultural heritage is to constitute the memory, identity, and continuity of a people and history that resist oblivion and flattening in the present. Those values go far beyond the mere economic evaluation of the good itself. As the fury against the historical memory of the “enemy” in conflict is strong, cultural goods have become the target of terrorism as well.

Instances of wanton destruction are aplenty across human history and cultural evolution. Notably, in April 2003, US military intervention in Iraq led to the looting of the National Museum and the National Library in Baghdad and the bombing of mosques and shrines in other places.²¹ The ancient city of Babylon was used as a military base by US and Polish forces upon their invasion of Iraq,²² leading to the loss of thousands of objects from the city's collections. That US-led military forces caused “substantial damage” to the historic site of Babylon is documented.²³ Cultural artifacts and goods obtained from the destruction of cultural property end up entering the international cultural goods market to feed the illicit trade of art, a new form of “spoils of war” and an economic resource for the hungry population.²⁴ The crisis in Afghanistan is another instance demonstrating the erasure of the adversary's heritage

¹⁸ Karolina Wierczyńska & Andrzej Jakubowski, *The Al Mahdi Case. From Punishing Perpetrators to Repairing Cultural Heritage Harm*, in *INTERSECTIONS IN INTERNATIONAL CULTURAL HERITAGE LAW* 106 (Anne-Marie Carstens & Elizabeth Varner eds. 2020)

¹⁹ Gabriella Venturini, *International Law and International Destruction of Cultural Heritage*, in *CULTURAL HERITAGE SCENARIOS 2015-2017*, 108 (2017).

²⁰ See generally United Nation Security Council Press Statement on ISIL's Destruction of Religious and Cultural Artefacts in Mosul, SC/11804-IK/700 (Feb. 27, 2015), <https://www.un.org/press/en/2015/sc11804.doc.htm>.

²¹ For a personal account recalling the US invasion of Iraq in 2003, see Donny George, *The Looting of the Iraq National Museum*, in *THE DESTRUCTION OF CULTURAL HERITAGE IN IRAQ* 97-135 (Peter Stone & Joanne Bajjalily eds. 2008).

²² Rory McCarthy & Maev Kennedy, *Babylon wrecked by war*, *GUARDIAN* (Jan. 15, 2005), <https://www.theguardian.com/world/2005/jan/15/iraq.arts1>.

²³ *Id.*

²⁴ Samuel Hardy, *Curbing the spoils of war*, *UNESCO COURIER* (Oct.-Dec. 2017), <https://en.unesco.org/courier/october-december-2017/curbing-spoils-war>.

has indeed reached dramatic proportions. For instance, the Taliban destroyed the Bamiyan Buddhas in March 2001 in compliance with the orders of the Taliban's spiritual leader, who deemed the ancient works of art idolatrous.²⁵ According to reports, the Taliban were prompted to initiate destruction after a "visiting delegation of mostly European envoys and a representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) offered money to protect the giant standing Buddhas at Bamiyan, where the Taliban was engaged in fighting an opposition alliance."²⁶

III. International Law Instruments to Protect Cultural Heritage

Although attempts to protect cultural property date back to the early twentieth century,²⁷ it was not until after World War II that the international community widely agreed to safeguard cultural property under international law. The scale of devastation had escalated exponentially in the two World Wars, particularly due to "the introduction of aerial bombing and long-distance weapons."²⁸ The brutality of wars highlighted the scale at which historic buildings and cities were targeted specifically for destruction. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter 1954 Convention)²⁹ and its two subsequent Protocols in 1954 and 1999³⁰ expanded the protection of cultural property to both peace time and during armed conflicts. The definition of "cultural heritage" is largely restricted to the application of these instruments. Specifically, the 1977 Protocols to the 1949 Geneva Conventions provide for protecting cultural property

²⁵ Luke Harding, *Taliban blow apart 2,000 years of Buddhist history*, GUARDIAN (Mar. 3, 2001), <https://www.theguardian.com/world/2001/mar/03/afghanistan.lukeharding>. See also Barbara Crossette, *Taliban Explains Buddha Demolition*, N.Y. TIMES (Mar. 19, 2003), <https://www.nytimes.com/2001/03/19/world/taliban-explains-buddha-demolition.html?auth=login-email&login=email>.

²⁶ Crossette, *id.*

²⁷ The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of Law on Land, 18 Oct. 1907. Notably, the wording from Article 27 is referenced in US law under Title XVIII of the United States Code which defines "war crimes." See also Janet Blake, *On Defining the Cultural Heritage*, 49 INT'L & COMP. L. Q. 61-85 (Jan. 2000).

²⁸ UNESCO, *Protect cultural property in the event of armed conflict (The 1954 Hague Convention and its Two Protocols)*, UNESDOC CLT/CIH/MCO/2008/PI/69 REV. (2005), ¶ 3 (The facts).

²⁹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240.

³⁰ *Supra* note 28, ¶ I.C.3 (Convention response of the international community within UNESCO).

during international and non-international armed conflicts by obligating states to refrain their militaries from targeting cultural property.³¹ However, no instrument expressly state the consequences of using or targeting cultural property in military acts, rendering them somewhat toothless. Other international instruments seek to supplement the scope of the definition of “cultural heritage protection.”³²

A. Treaties

The 1954 Convention emphasizes the need to undertake measures to protect cultural property at times of peace and during armed conflicts (Preamble). Under the 1954 Convention scheme, protection of cultural property includes two aspects: safeguarding cultural property within the territory of a contracting State (Article 3) and undertaking to respect cultural property (Article 4). Article 3 further obligates contracting states to prepare for safeguarding cultural property in times of peace, while Article 4 delineates the obligations undertaken by the state parties to constitute “respect” for cultural property. Article 12 states that the application of the Convention is coordinated through the “Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict.”³³

Other international instruments supplement the understanding of the scope of cultural heritage protection. For instance, Article I of the Convention concerning the Protection of the World Cultural and Natural Heritage 1972³⁴ (hereinafter 1972 World Heritage Convention) defines the concept of “cultural heritage,”³⁵ and Article 2 of the 1972 World Heritage Convention extends the concept to nature and landscape. The 1972 World Heritage Convention is the first international agreement to embrace the idea that “humanity possesses a common heritage transcending territorial

³¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), entered into force Dec. 7, 1979, 1125 U.N.T.S. 3.

³² See, e.g., Convention concerning the Protection of the World Cultural and Natural Heritage 1972, art. 1.

³³ *Id.* art. 12(1). It provides that “transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the High Contracting Party concerned, take place under special protection in accordance with the conditions specified in the Regulations for the execution of the Convention.”

³⁴ Convention concerning the Protection of the World Cultural and Natural Heritage, <https://whc.unesco.org/en/conventiontext>.

³⁵ World Heritage Convention art. 1. It reads as follows: “For the purposes of this Convention, the following shall be considered as “cultural heritage”: *monuments*: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; *groups of buildings*: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; *sites*: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.”

boundaries.”³⁶ This common heritage is a legacy of humankind with “exceptional universal value,” which the international community has a duty to protect.³⁷

Another landmark development was the establishment of the International Criminal Court (ICC) through the Rome Statute on July 17, 1998. States party to the Rome Statute recognize the jurisdiction of the ICC over crimes enumerated under that treaty with respect to events occurring after its date of entry of force on July 1, 2002. Article 8 of the Rome Statute extends jurisdiction of the Court over “war crimes” defined as

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

[. . .]

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

[. . .]

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; [. . .]³⁸

B. UN Security Council Resolutions

The UN Security Council unanimously adopted Resolution 827 in 1993, approving the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia. Resolution 827 defines the orientation of international doctrine, which saw the protection of the “right to culture” as the right of people to their historic identity and emphasized the interest of all humanity in its preservation,

³⁶ See generally Craig Forrest, *Cultural heritage as the common heritage of humankind: a critical evaluation*, 40(1) COMP. & INT’L L. J. S. AFRICA 124-51 (2007).

³⁷ For details on the spirit of the UNESCO World Heritage Convention and its focus on “exceptional universal value,” see generally Marta del Camino Pérez Cañón, *UNESCO’s World Heritage: to be or not to be*, 18(1) GDAŃSKIE STUDIA MIĘDZYNARODOWE 35-47 (2020).

³⁸ Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, entered into force July 1, 2002, art. 27.

regardless of political differences.³⁹

Similarly, the UN Security Council unanimously adopted Resolution 2347 in 2017, specifically condemning the destruction, looting, and trafficking of cultural heritage in armed conflicts notably involving terrorist groups in Iraq and Syria.⁴⁰ The preamble to Resolution 2347 references the 1954 Convention and specifically notes the decisions of the ICC, which convicted a defendant for committing “the war crimes of intentionally directing attacks against religious buildings and historic monuments and buildings.”⁴¹ Further, Resolution 2347 specifically affirms that unlawful attacks against cultural property may constitute a war crime under international law.⁴²

C. Case Law

Contemporaneous developments in other aspects of international law - particularly international criminal law and jurisprudence - add to the corpus of law protecting cultural heritage. The International Court of Justice (ICJ) has been presented with a controversy on the issue of protection and preservation of cultural heritage and property. In the *Navigational and Related Rights* case (Costa Rica vs. Nicaragua), first, the ICJ upheld the fishing rights of the local indigenous community as these rights were part of the cultural traditions of the community that preserved their subsistence economy.⁴³ Second, the ICJ also addressed the protection of cultural heritage in cases concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina vs. Serbia and Montenegro) and the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croatia vs. Serbia).⁴⁴ These decisions, together with the substantive provisions in international legal instruments, show that attacks on cultural property that possess a

³⁹ Resolution 827 (1993) Adopted by the Security Council at its 3217th meeting, on 25 May 1993, U.N. Doc. S/RES/827 (1993). See also Janet Blake, *On Defining the Cultural Heritage*, 49 INT'L & COMP. L. Q. 61-85 (Jan. 2000).

⁴⁰ S.C.Res.2347, U.N.Doc. S/RES/2347 (2017). See generally Security Council Report, *Thematic Issues: Protection of Cultural Heritage in Armed Conflict*, NOVEMBER 2017 MONTHLY FORECAST (Oct. 31, 2017), https://www.securitycouncilreport.org/monthly-forecast/2017-11/protection_of_cultural_heritage_in_armed_conflict.php.

⁴¹ Rome Statute art. 8(2)(e)(iv).

⁴² *Supra* note 40.

⁴³ *Navigational and Related Rights* (Costa Rica v. Nicar.), Judgment, 2009 I.C.J. Rep. ¶¶ 134-144 (July 13). See Francesco Francioni, *The Human Dimension of International Cultural Heritage Law: An Introduction*, 22(1) EUR. J. INT'L L. 9-16 (2011).

⁴⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. Rep. 43 (Feb. 26); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croat. v. Serb.), Judgment, 2015 I.C.J. Rep. 3 (Feb. 3).

“military objective” are not unlawful.⁴⁵

More specifically, international criminal law jurisprudence recognizes “heritage-based” offenses.⁴⁶ Indeed, the decisions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the ICC confirm “the prevailing view that cultural heritage offenses are sufficiently serious to qualify as ‘war crimes’ on their own” and that “deliberate attacks on cultural property ... mutually reinforce or corroborate other war crimes, crimes against humanity, and even genocide.”⁴⁷ Additionally, international criminal law has recognized that war crimes may include intentional acts against protected cultural heritage.⁴⁸ Therefore, international criminal law outlaws the deliberate seizure, destruction, or damage to cultural property. For instance, the International Military Tribunal at Nuremberg found that the “plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.”⁴⁹ The Tribunal found high ranking-officers guilty of plunder⁵⁰ and destruction of cultural property.⁵¹ Similarly, the Permanent Military Tribunal of France noted that the destruction of public monuments “could amount to clear violations of the laws and customs of war and, therefore, could be punishable as war crimes.”⁵²

While the ICTY Statute does not explicitly refer to “cultural property,” the decisions of the Tribunal have discussed “fundamental tenets of individual criminal responsibility for the destruction of cultural property.”⁵³ In its decision as early as 2001, the ICTY found defendants guilty of crimes against cultural property when they

⁴⁵ Roger O’Keefe, *Protection of Cultural Property under International Criminal Law*, 11 MELB. J. INT’L L. (2010).

⁴⁶ See generally Part II: *Cultural Heritage-Based Offenses in International Criminal Law and in the International Legal Regime for Combatting Transnational Organized Crime*, in Carstens & Varner eds., *supra* note 18, at 105-7.

⁴⁷ *Id.* at 106. See also Anne-Marie Carstens, *The Swinging Pendulum of Cultural Heritage Crimes in International Criminal Law*, in Carstens & Varner eds., *supra* note 18.

⁴⁸ For details on the recognition of intentional acts against protected cultural property as war crimes, see Karolina Wierczyńska & Andrzej Jakubowski, *The Al Mahdi Case. From Punishing Perpetrators to Repairing Cultural Heritage Harm*, in Carstens & Varner eds., *supra* note 18, at 133.

⁴⁹ Count Three (War Crimes), Part E (Plunder of Public and Private Property), Indictment, in *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg*, 14 November 1945-1 October 1946, (42 vols, Nuremberg: [s.n.], 1047-1949), vol.1 at 11-30.

⁵⁰ See, e.g., *Trial of Wilhelm von Leeb and Thirteen Others*, Dec. 30, 1947-Oct. 28, 1948 (Ger. High Command Trial (United States Military Trib., Nuremberg)), <https://perma.cc/5QKG-RPHY>.

⁵¹ See, e.g., *United States v. Ernst von Weizsäcker*, Judgment of Apr. 11, 1949 (The Ministries Trial) (United States Military Trib., Nuremberg), <https://perma.cc/32C6-82HG>.

⁵² Mark Ellis, *The ICC’s Role in Combatting the Destruction of Cultural Heritage*, 49(1) CASE W. RES. J. INT’L L. 36. (2017). See also United States War Crimes Commission, *Law Reports of Trials of War Criminals Vol. IX 67* (London, 1949).

⁵³ Gabriella Venturini, *International Law and International Destruction of Cultural Heritage*, CULTURAL HERITAGE. SCENARIOS 2015-2017, 112 (2017).

deliberately attacked ancient mosques in Bosnia Herzegovina.⁵⁴ The Tribunal found that such destruction might amount to a crime against humanity, agreeing with the conclusions of the Nuremberg trials.⁵⁵ Additionally, in the Tribunal's view, targeting cultural property listed by the UNESCO as world heritage "heightened the gravity of the offense"⁵⁶ of attacks against cultural property. In its decision in *Prosecutor v. Biljana Plavšić*, the ICTY found that "wanton destruction" contributed to the gravity of the accused's crime of running "a campaign of ethnic separation."⁵⁷ The Tribunal also recognized the "great importance to the cultural heritage of people."⁵⁸

D. Customary International Law

In addition to the decisions of international courts and tribunals, interpreting international conventions, rules, and regulations compiled by the International Committee of the Red Cross (ICRC) record state practice establishing customary international law.⁵⁹ For instance, Rule 10 specifies that civilian cultural property may be attacked if it qualifies as a military objective. Similarly, Rule 38 states,

- A. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives.
- B. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity.

The jurisprudence of international tribunals on criminal and humanitarian law provides a significant basis for individual criminal responsibility for the destruction of cultural property. Article 3(d) of the ICTY Statute extends the jurisdiction of

⁵⁴ *Prosecutor v. Dario Kordic and Mario Cerkez*, Judgment of 26 Feb. 2001, ¶ 206 (stating that destruction or wilful damage to institutions dedicated to religion "has . . . already been criminalized under customary international law.")

⁵⁵ *Prosecutor v. Dario Kordic and Mario Cerkez*, Judgment of 26 Feb. 2001, ¶ 206, n. 267 (citing Nuremberg Judgment at 248, 302).

⁵⁶ Ellis, *supra* note 52, at 45 (citing *Prosecutor v. Miodrag Jokic*, Case No. IT-01/42/1-S, Judgment (Int'l Crim. Trib. for the Former Yugoslavia, Mar. 18, 2004).

⁵⁷ *Prosecutor v. Biljana Plavšić* Sentencing Judgment, Case No. IT-00-39&40/1-S (Int'l Crim. Trib. For the Former Yugoslavia Feb. 27, 2003) at ¶ 52.

⁵⁸ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia, Jan. 31, 2005) at ¶ 231.

⁵⁹ ICRC Rules 38 & 40. See also Gabriella Venturini, *International Law and International Destruction of Cultural Heritage*, CULTURAL HERITAGE, SCENARIOS 2015-2017, 103-18 (2017).

the tribunal to violations of laws and customs of war, including 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,” among other things.⁶⁰ Similarly, the 1996 Draft Code of Crimes against the Peace and Security of Mankind drafted by the International Law Commission includes the destruction of cultural sites and property within the ambit of “war crimes.”⁶¹

IV. Legal Questions concerning President Trump’s Tweets on Iran’s Cultural Properties

As former President Trump’s Tweet emphasizes, the targeted 52 Iranian sites contain “a very high level” of “Iranian cultural heritages.”⁶² In Trump’s subsequent responses to questions by journalists and reporters, he specifically used the phrase “cultural sites.”⁶³ The language of President Trump’s Tweets indicates that: (1) the US government fixed military targets in Iran that are likely constitute some form of cultural property and/or cultural heritage; and (2) the US government and Trump were fully conscious that the targeted sites are important to Iran and its culture. Therefore, it follows that the tweets issued by President Trump reasonably comprise a *de facto* threat to destroy Iranian cultural property. The following section addresses the legal issues arising from the Tweets.

A. Threshold Issues

A preliminary issue, as a matter of legal procedure, would be to identify the appropriate forum with jurisdiction to adjudicate a matter brought to it by the State with standing (*ius standi*) against an incumbent head of another State.⁶⁴ In

⁶⁰ Updated Statute of the International Criminal Tribunal for the Former Yugoslavia (Sept. 2009), https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

⁶¹ International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind with commentaries (1996), https://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf.

⁶² Twitter Account of Donald J. Trump (@realDonaldTrump), Tweets dated January 4, 2020 at 5:52pm EST, <https://twitter.com/realDonaldTrump/status/1213593975732527112>.

⁶³ Laurel Wamsley, *Trump Says He’ll Target Iran’s Cultural Sites. That’s Illegal*, NPR MIDDLE EAST (Jan. 6, 2020), <https://www.npr.org/2020/01/06/794006073/trump-says-hell-target-iran-s-cultural-sites-that-s-illegal>.

⁶⁴ For details on the discussion of the situation in Ukraine Miguel, see Lemos, *The Law of Immunity and the Prosecution of the Head of State of the Russian Federation for International Crimes in the War against Ukraine*, EJIL:Talk! (Jan. 16, 2023), <https://www.ejiltalk.org/the-law-of-immunity-and-the-prosecution-of-the-head-of-state-of-the-russian-federation->

other words, a first step is to examine whether an international court or tribunal possesses the jurisdiction to try a sitting president of a sovereign State. In the same vein, we inquire whether that forum may take cognizance of the threatening tweets *suo motu* and whether Iran possesses requisite standing to invoke the jurisdiction of the competent adjudicatory body. Additionally, one would need to consider the general applicability and obligations of the treaties and conventions - in other words, whether the US is indeed bound by the covenants and obligations set forth under the international legal instruments discussed in this study. The answers to these questions demand a closer analysis. Nevertheless, they are likely in the negative and, in any event, outside the scope of analysis undertaken in this section.

This section is therefore limited to analyzing whether the head of a State's threats to destroy cultural property in another state constitute a substantial violation of international law. We analyze the text of the 1954 Convention under the rules of treaty interpretation enshrined under the Vienna Convention on the Law of Treaties 1969 (hereinafter 1969 Vienna Convention), to determine whether threats to destroy cultural property and cultural heritage are within the scope of (1) the 1954 Convention or, in the alternative (2) other ancillary instruments of positive international law and customary international law as an "act of hostility."

B. Interpretation of Treaties

An interpretation of treaties and conventions is not a strict textual construction of those instruments. Interpretation of treaties is an "art" with specific rules.⁶⁵ The 1969 Vienna Convention has set "an essential infrastructure, although using them in particular circumstances requires skills and techniques which go well beyond their brief prescriptions."⁶⁶ Articles 31–33 of the 1969 Vienna Convention state as follows:

reflect pre-existing customary international law, and thus may be (unless there are particular indications to the contrary) applied to treaties concluded before the entering into force of the Vienna Convention in 1980. The International Court of Justice has applied customary rules of interpretation, now reflected in Articles 31 and 32 of the Vienna Convention, to a treaty concluded in 1955 ... and to a treaty concluded in 1890, bearing on rights of States that even on the day of Judgment were still not parties to the Vienna Convention ... There is no case after the adoption of the Vienna Convention in 1969 in which the International Court of

for-international-crimes-in-the-war-against-ukraine.

⁶⁵ See generally RICHARD GARDINER, TREATY INTERPRETATION (2d. 2015).

⁶⁶ *Id.* at 5.

Justice or any other leafing tribunal has failed so to act.⁶⁷

The interpretative foundations enshrined in Articles 31 and 32 are imperative in examining treaties on cultural heritage, precisely because the subjects of the instruments are entirely subjective themselves. Treaty interpretation is “not solely a matter of dictionaries and linguistics.”⁶⁸ Indeed, Article 31 (General rule of interpretation) of the 1969 Vienna Convention combines: (1) the ordinary meaning of the treaty’s terms; (2) in their context; and (3) in light of the treaty’s object and purposes. Here, it is pertinent to note that we find no textual mention of the word “threat” or any of its synonyms in the instruments discussed in Part II.A of this paper.⁶⁹ We should thus examine the ordinary meaning of the terms in 1954 Convention for safeguarding cultural property and heritage in its context and in light of objects and purpose.

C. Whether “Threats” are within the Scope of the 1954 Convention?

The 1954 Convention “function[s] as a tangible guide for behavior and a means to define deviations from certain principles,”⁷⁰ becoming “a charter for cultural internationalism.”⁷¹ Article 3 of the 1954 Convention lays down an undertaking to prepare for safeguarding cultural property during peacetime,⁷² whereas Article 4 obligates States to respect cultural property in any case including armed conflict.⁷³ Article 4(1) states:

The High Contracting Parties undertake to respect cultural property situated

⁶⁷ *Id.* at 14-56, recited from L. Crema, *Subsequent Agreements and Subsequent Practice within and outside the Vienna Convention*, in TREATIES AND SUBSEQUENT PRACTICE (G. Nolte ed. 2013).

⁶⁸ *Aguas del Tunari v. Republic of Bolivia* (ICSID ARB/02/03), Award of 21 Oct. 2005, ¶ 91.

⁶⁹ The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of Law on Land, 18 Oct. 1907, art. 27.

⁷⁰ Chip Colwell-Chantaphonh & John Piper, *War and Cultural Property: The 1954 Hague Convention and the Status of U.S. Ratification*, 10(2) INT’L J. CULTURAL PROPERTY 231 (2001).

⁷¹ John Merryman, *Two Ways of Thinking About Cultural Property*, 80(4) AM. J. INT’L L. 837 (1986).

⁷² 1954 Convention art. 3. It reads as follows: “The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.”

⁷³ *Id.* art. 4(1). It reads as follows: “1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property.”

within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property.

The central “intention of the 1954 Convention is to maximize the protection of cultural property ... during times of peace and, in particular, in the event of armed conflict.”⁷⁴ The 1954 Convention accords “a universalist view”⁷⁵ in that the preamble considers cultural objects and monuments as belonging to the “common heritage” of humankind. It “acknowledges a common duty of all States to protect and preserve the treasures falling under this category in the interests of the world community as a whole.”⁷⁶ The preamble further includes:

Being convinced that 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;

Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection ...⁷⁷

Therefore, while the scope and context of the 1954 Convention are broad and intentionally promote cultural internationalism, the text does not appear to include “threats to destroy” cultural property as a *de facto* violation. Nevertheless, it includes an undertaking to refrain from acts of hostility against cultural sites and cultural property. The “respect” referred to in Article 4(1) consists of two negative obligations: to refrain from (i) using the property and its immediate surroundings in a manner *likely to expose the property to destruction or damage*; and (ii) directing *acts of hostility* against the property [Emphases added].

Another international instrument that has focused on prohibiting acts of hostility directed against cultural property is the 1977 Protocol Additional to the 1949 Geneva

⁷⁴ Colwell-Chantaphonh & Piper, *supra* note 70, at 225.

⁷⁵ *Id.*

⁷⁶ Barbara Hoffman, *Exploring and Establishing Links for a Balanced Art and Cultural Heritage Policy*, in *HERITAGE LAW, POLICY AND PRACTICE* 17 (B. Hoffman ed., 2006).

⁷⁷ Thomas Fitschen, *Licit International Art Trade in Times of Armed Conflict?*, 5(1) *INT’L J. CULTURAL PROPERTY* 127 (1996). See also Thomas Fitschen, *Common Heritage of Mankind*, in *UNITED NATIONS: LAW, POLICIES AND PRACTICE* 149-59 (Rüdiger Wolfrum ed., 1995).

Conventions. Article 53 of the 1977 Protocol states the protection of cultural property in the events of armed conflict with reference to the 1954 Convention. It stipulates:

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of May 14, 1954, and of other relevant international instruments, it is *prohibited*:

- (a) to commit any *acts of hostility* directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
- (b) to use such objects in support of the military effort;
- (c) to make such objects the object of reprisals.⁷⁸

An examination of the treaties' texts above demonstrates that international law has likely not envisioned a binding obligation in refraining from making vocal or written *threats* to destroy cultural property.

D. “Threats” as an Act of Hostility under Customary International Law

Is a “threat to destroy cultural property” an “act of hostility” within the scope of customary international law? While the 1954 Convention establishes obligations to protect cultural property in a form of cultural internationalism, such principle was theorized by the ICJ in the *Barcelona-Traction* case.⁷⁹ The Court distinctly recognized international obligations *erga omnes* (owed to all states in public interest), which would also include the obligation to protect cultural heritage from destruction.⁸⁰ However, the definitions and discussions of “acts of hostility” are predominantly contained in decisions of international courts and tribunals where the forum examines an act of destruction of cultural property that has already taken place. It is a *post-facto* definition, demanding that “an act” of some kind has taken place before an examination of its hostility may be undertaken. This means that threatening words are likely outside the scope of international law, as envisioned in present international

⁷⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), entered into force Dec. 7, 1979, 1125 U.N.T.S. 3, art. 53. [Emphasis added]

⁷⁹ *Barcelona Traction*, Judgment, 1970 I.C.J. Rep. 33-4 (Feb. 5).

⁸⁰ For detail on international practice confirming the existence of such an *erga omnes* obligation, see Francesco Francioni & Federico Lenzerini, *The Destruction of the Buddhas of Bamiyan and International Law*, 14(4) EUR. J. INT'L L. 634 (2003).

instruments and jurisprudence, for protecting and safeguarding cultural property. Therefore, while the *destruction* of cultural property would likely be considered a war crime, *threatening to destroy* cultural property is unlikely to pass muster. [Emphases added]

Nevertheless, this critical analysis would be incomplete if one did not account for the seriousness of the threats themselves, since the tweets were issued by a sitting president of the US whose administration officially withdrew membership from the UNESCO in 2019, nearly a year prior to President Trump's Tweets.⁸¹ In October 2017, the Trump administration formally issued its notice of withdrawal to the UNESCO, citing "continuing anti-Israel bias."⁸² The then-outgoing UNESCO director Irina Bokova remarked that "it is deeply regrettable for the United States to withdraw from the United Nations agency promoting education for peace and protecting culture under attack" and that the withdrawal was a "loss to multilateralism."⁸³

A political factor in the withdrawals of the US and Israel dates back to 2011, when the UNESCO General Conference admitted Palestine as a UNESCO Member.⁸⁴ Within hours of Palestine's admission, a spokesperson from its Department of State announced that the US would withhold contributions to the UNESCO, which constituted 22% of the organization's annual budget.⁸⁵ Although admission to the UNESCO generally is restricted to member States of the UN, Palestine received the recommendation by the UNESCO Executive Board and a two-third majority vote by the members of the UNESCO General Conference.⁸⁶ The US stopped paying its dues to the organization because the "recogni[tion] of Palestinians as full members, [UNESCO] undermined an important U.S. policy goal" of peace in the Middle East.⁸⁷ After the "American disengagement from UNESCO," the financial vacuum thus created was filled by "states that don't necessarily share [UNESCO's] commitment to

⁸¹ *US and Israel formally quit UNESCO*, AL JAZEERA NEWS (Jan. 1, 2019), <https://www.aljazeera.com/news/2019/01/israel-formally-quit-unesco-190101094104787.html>.

⁸² Peter Beaumont, *UNESCO: Israel joins US in quitting UN heritage agency over 'anti-Israel bias'*, GUARDIAN (Oct. 12, 2017), <https://www.theguardian.com/world/2017/oct/12/us-withdraw-unesco-december-united-nations>.

⁸³ *US and Israel withdraw from UNESCO*, AL JAZEERA NEWS (Oct. 13, 2017), <https://www.aljazeera.com/news/2017/10/withdraws-unesco-171012133838151.html>.

⁸⁴ *UNESCO votes to admit Palestine as full member*, UNNEWS (Oct. 31, 2011), <https://news.un.org/en/story/2011/10/393562-unesco-votes-admit-palestine-full-member>.

⁸⁵ Harriet Sherwood, *US pulls UNESCO funding after Palestine is granted full membership*, GUARDIAN (Oct. 31, 2011), <https://www.theguardian.com/world/2011/oct/31/unesco-backs-palestinian-membership>.

⁸⁶ *Id.*

⁸⁷ Interview with Brett Schaefer (UN specialist at The Heritage Foundation) in Eleanor Beardsley. *See Critics Say U.S. Withdrawal from UNESCO Allows Different Agendas to Surface*, NPR NEWS (Dec. 28, 2018), <https://www.npr.org/2018/12/28/680616404/critics-say-u-s-withdrawal-from-unesco-allows-different-agendas-to-surface>.

human rights.’⁸⁸

US disengagement from the UNESCO in 2011 allowed the Trump administration sufficient grounds to effect complete withdrawal in 2019. When viewed within the greater context of past US policies, arguably, the tweets by President Trump were entirely consistent with such policy decisions and actions of the US. Yet, even in this contextualized view, the tweets by President Trump take on a character of dangerously alarming imminence, even though threats by themselves may not be a direct violation of international law. Therefore, one might argue that in their context, the tweets likely amount to an act of hostility.

V. Law and Policy Concerns Arising from Trump’s Threatening Tweets

Iran occupies a position of geographic and political strategy in the relationship between East and West. Iran has a rich history that marked the development of civilization, with many migrations influencing intercultural dialogue. The UNESCO World Heritage List includes 26 properties in Iran, of which two are natural and 24 are cultural sites.⁸⁹ Iran’s history carries a culturally rich, dense, and multidimensional ancient and contemporary history.

Under the UNESCO’s mandate, the international community has conducted missions to safeguard and promote heritage in all its forms by facilitating mutual understanding through intercultural dialogue.⁹⁰ Notably, UNESCO, ICOMOS (International Council Monuments and Sites), ICOM (International Council of Museums), and several other international organizations are trying to protect cultural heritage by emphasizing the importance intercultural dialogue. Nevertheless, these issues have found scarce support from governments, which have sometimes found it difficult to reconcile safeguarding culture with economic development.

In the aftermath of the tweets posted by President Trump, many international institutions have activated petitions and mobilized efforts to solicit public opinion on safeguarding cultural heritage in the world. In particular, UNESCO, ICOM,

⁸⁸ *Id.* See also John Irish, *UNESCO chief says U.S. funding cuts “crippling” organization*, REUTERS (Oct. 11, 2012), <https://www.reuters.com/article/us-unesco-funding/unesco-chief-says-u-s-funding-cuts-crippling-organization-idUSBRE89A0Q620121011>.

⁸⁹ UNESCO, World Heritage Center-Iran (Islamic Republic of), <https://whc.unesco.org/en/statesparties/IR>.

⁹⁰ UNESCO, *Investing in Cultural Diversity and Intercultural Dialogue Report* (2009), <https://en.unesco.org/interculturaldialogue/resources/130>.

ICOMOS, and UWTO (World Tourism Organization) have diplomatically reiterated the importance of recognizing the historical memory of humanity and the obligations undertaken by states under international conventions, including those signed by the US.⁹¹ Institutions of higher learning across the world have organized petitions and sent messages to urge a sustained respect for world heritage, maintaining that cultural heritage belongs to everyone, not to mention the country in which it is located.⁹²

States have indeed developed their own laws to protect cultural heritage within their territory. However, international dialogue on this subject has always been extraordinarily complex. Preserving cultural property with a view to honor human legacy as viewed through the lens of a greater universal value system unrestricted by territories and borders is both wholesome and sensitive to carry out on a large scale without overwhelming agreement. In fact, even the universal value system is the outcome of civilians across the world embracing cultural pluralism. For instance, it was not until 1972 that the UNESCO World Heritage Convention defined cultural heritage and property premised on the basic criterion of “outstanding universal value.” Yet, national policies appear to be less inclined to protect cultural heritage internationally, as State action based on protectionism indicates.

This discord of envisioning a universal value in cultural heritage has hindered the international community from developing law and policies to safeguard and manage cultural property as common heritage of humankind. In this regard, during armed conflicts, states have almost always considered cultural heritage as a target with a view to annul local cultures, thereby erasing peoples’ history and social identity specifically to subdue them. This is particularly evident in the many examples of destruction during colonization, where colonial powers deliberately destroy cultural heritage as an essential step in annihilating people’s identity, thereby presenting unique opportunities for the colonizer to conquer territory.

⁹¹ See generally Thomas Colson, *US allies are calling for ‘restraint and responsibility’ as Trump threatens Iranian cultural sites*, BUS. INSIDER (Jan. 6, 2020), <https://www.businessinsider.com/us-allies-call-for-restraint-after-trump-threatens-iranian-sites-2020-1?r=US&IR=T>; Statement from the heads of state and government of France, Germany and the United Kingdom dated Jan. 6, 2020, <https://www.gov.uk/government/news/joint-statement-from-president-macron-chancellor-merkel-and-prime-minister-johnson-on-the-situation-in-iraq>. For a coverage of statements issued by UK Foreign Secretary Dominic Raab and UK Prime Minister Boris Johnson, see Bienkov, *supra* note 15. For details on the role played by specifically by British spies, in the 1953 coup d’etat which restored the Shah in Iran, see Vanessa Thorpe, *MI6, the coup in Iran that changed the Middle East, and the cover-up*, GUARDIAN (Aug. 2, 2020), <https://www.theguardian.com/world/2020/aug/02/mi6-the-coup-in-iran-that-changed-the-middle-east-and-the-cover-up>.

⁹² See generally *Condemn Trump’s threat to Iran’s Cultural Heritage*, GUARDIAN (Jan 7, 2020), <https://www.theguardian.com/world/2020/jan/07/condemn-trumps-threat-to-irans-cultural-heritage>.

VI. Conclusion

Although US Secretary of Defense Mark Esper clarified to the press that the US would follow the laws of armed conflict,⁹³ President Trump's tweets implied that the US had, at the very least, considered the destruction of cultural heritage. The threat of destroying cultural heritage is, in itself, a disproportionate use of force and the patent violation of Article 2(4) of the UN Charter, which prohibits “*the threat ... of force against ... any state, or in any other manner inconsistent with the Purposes of the United Nations.*”⁹⁴ While an inspection of the text of cultural heritage treaties makes it unlikely for threatening words by themselves to amount to the direct violation of international law, President Trump's Tweets demonstrate a callous attitude toward the international legal obligations undertaken by the US and all other states. The sources of international law and practice actively stress a cohesive global effort to pointedly safeguard, protect, and respect the collective cultural history and heritage of peoples. However, President Trump's Tweets are contrary to these efforts.

The relationship between the US and Iran, dating as far back as 1953, has been sensitive.⁹⁵ While the complex historical relationship between these two nations is not direct subject of discussion in this study, President Trump's tweets cannot be analyzed without this context, either. Therefore, President Trump's tweets are to be viewed as not only part of the ongoing political, economic, and military conflict between the US and Iran, but also as attacking the very civility on which all international law regimes are premised—common decency under international comity.⁹⁶ In an age of highly advanced digital technology, where civilians and State heads alike meet in the vast expanse of the Internet, President Trump's tweets could have evolved into disastrous diplomatic outcomes.

The tweets are evidence that diplomacy (or lack thereof) is evolving through communication over social media platforms through messages, comments, and observations, which are becoming more commonplace. This is also true in the domestic roles of elected representatives, who are turning to exercising their social

⁹³ See *Pentagon rejects Trump threat to target Iranian cultural sites*, AL JAZEERA NEWS (Jan. 7, 2020), <https://www.aljazeera.com/news/2020/01/pentagon-rejects-trump-threat-target-iranian-cultural-sites-200107061647929.html>.

⁹⁴ U.N. Charter art. 2(4). [Emphasis added]

⁹⁵ *US-Iran relations: A brief history*, BBC NEWS (Jan. 6, 2020), <https://www.bbc.com/news/world-middle-east-24316661>. (It provides: when US intelligence, together with British intelligence, “orchestrate[d] a coup to oust Iran’s [then] democratically elected Prime Minister, Mohammad Mossadeq.”)

⁹⁶ F. MANN, *FOREIGN AFFAIRS IN ENGLISH COURTS*, ch. 7 (Comity) (1986). For details, see Joel Paul, *The Transformation of International Comity*, 71 L. & CONTEMP. PROBS. 19-38 (2008), <https://www.jstor.org/stable/427654661>.

media prowess to communicate with their electorate. Following these developments, we would do well to reconsider whether a strict textual reading of international instruments conceived over half a century ago does justice to their application.

Received: February 1, 2023

Modified: April 15, 2023

Accepted: May 1, 2023