Cultural Heritage Preservation and Protection in Human Rights Law

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Abstract:

The protection of cultural heritage in times of armed conflict and the enforcement thereof is a prominent topic in international law, yet peacetime protection has gained less attention. In peacetime, threats to cultural heritage typically stem from urbanization, industrialization, and the increase in international tourism as well as from climate change and pollution. While these threats may manifest themselves more subtly than an overt attack on cultural heritage in an armed conflict, they certainly contribute to its decay, degradation, destruction, and eventual loss. Similarly, intentional attacks on cultural heritage are not confined to armed conflicts and may also occur in peacetime, as deplorably evidenced by the destruction of the Buddhas of Bamiyan.

The increasing recognition that loss and destruction of cultural heritage entail detrimental repercussions for individuals has become evident in the judicial pronouncements of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court. In 2016, the ICC pronounced the population of Timbuktu “the direct victims” of the destruction of the city’s heritage in The Prosecutor v. Al Mahdi. The relationship between cultural heritage preservation / protection and human rights law has also been subject of Human Rights Council Resolutions and, most prominently, of the Committee on Economic Social and Cultural Rights’ general comment No. 21, interpreting the right to take part in cultural life to inter alia imply guaranteeing access to cultural heritage and covering the right of individuals and groups to benefit from cultural heritage.

Motivated by references to the relationship between cultural heritage and human rights law in inter alia legal jurisprudence, soft law, UN documents, and in academia, this PhD project seeks to understand to what extent cultural heritage as a concept and the preservation and protection thereof has emerged in the framework of international human rights law. The PhD project seeks to move beyond using human rights as a rhetoric and questions if human rights law offers a legal basis for preserving and protecting cultural heritage. The non-traditional focus on ‘cultural heritage’ in human rights law, amidst the absence of a ‘right to cultural heritage’, results in a prominent focus on the treaty-based bodies.