
CULTURAL RIGHTS IN TIMES OF PEACE AND WAR

**The protection of cultural
heritage through the work of the
international criminal tribunals**

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Cultural heritage as a collective right

The right to culture recognized in the 1966 International covenants encompasses a collective facet: the right of humans groups to enjoy the cultural heritage, understanding such cultural heritage as a compendium of the present and future of such human group since its origins.

Such cultural heritage is part of the global heritage of international community and deserves its protection in times of peace and armed conflict.



International Covenant
on Social and Cultural



ICL as the ultima ratio

ICC Statute

- WC-art 8
- CAH-art. 7

ICTY case law-statute

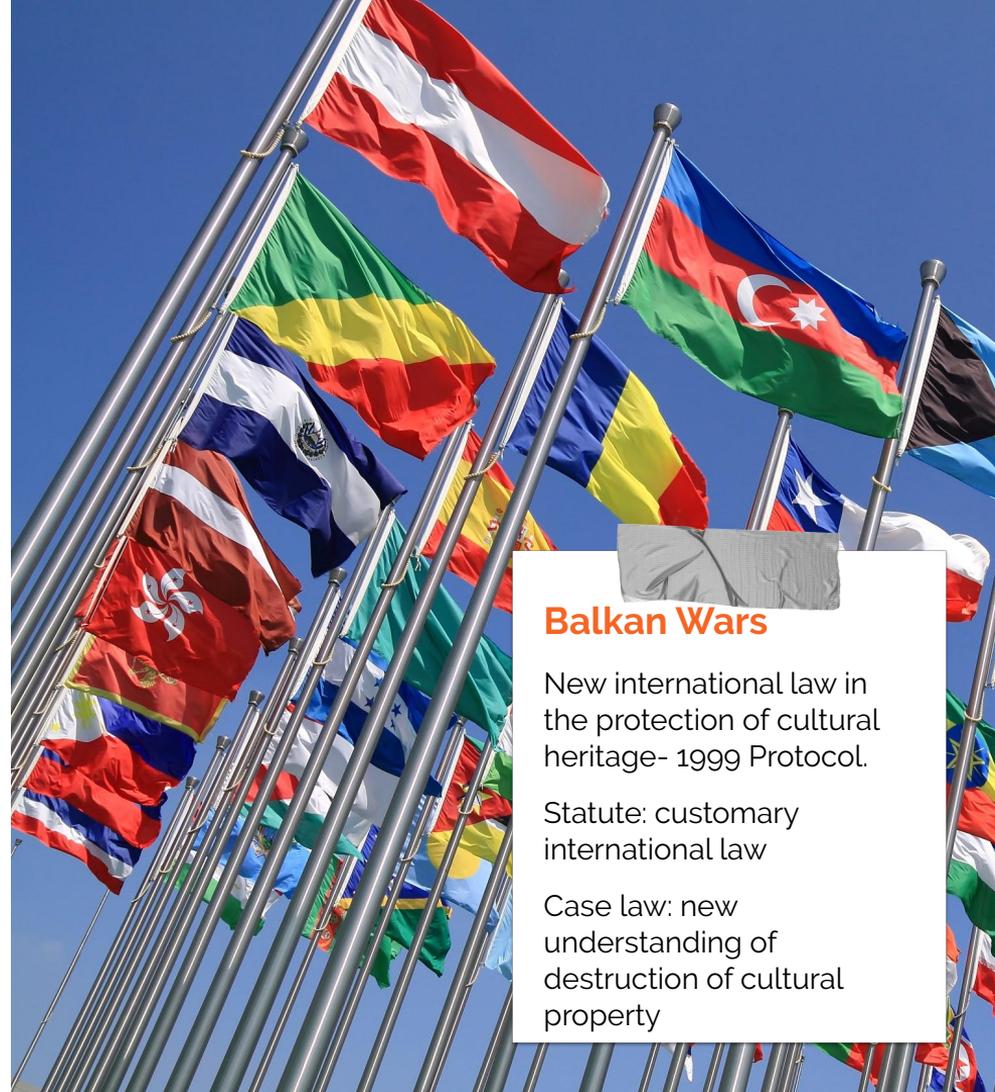
– Destruction of cultural heritage can be considered persecution?



**Security Council
Resolution
2347/2017**

**New actors not
bound by
international
customary rules of
warfare**

ICTY Statute and case law



Balkan Wars

New international law in the protection of cultural heritage- 1999 Protocol.

Statute: customary international law

Case law: new understanding of destruction of cultural property



Charges in 17 cases

Tihomir Blaškić; Radoslav Brđain;
Goran Hadžić; Enver
Hadžihasanović; Miodrag Jokić;
Dario Kordić and Mario Čerkez;
Milan Martić; Slobodan Milošević;
Jadranko Prlić, Bruno Stojić,
Slobodan Praljak, Milivoj Petković,
Valentin Ćorić and Berislav Pušić;
Pavle Strugar; and Momir Talić

Destruction of cultural heritage as a war crime.

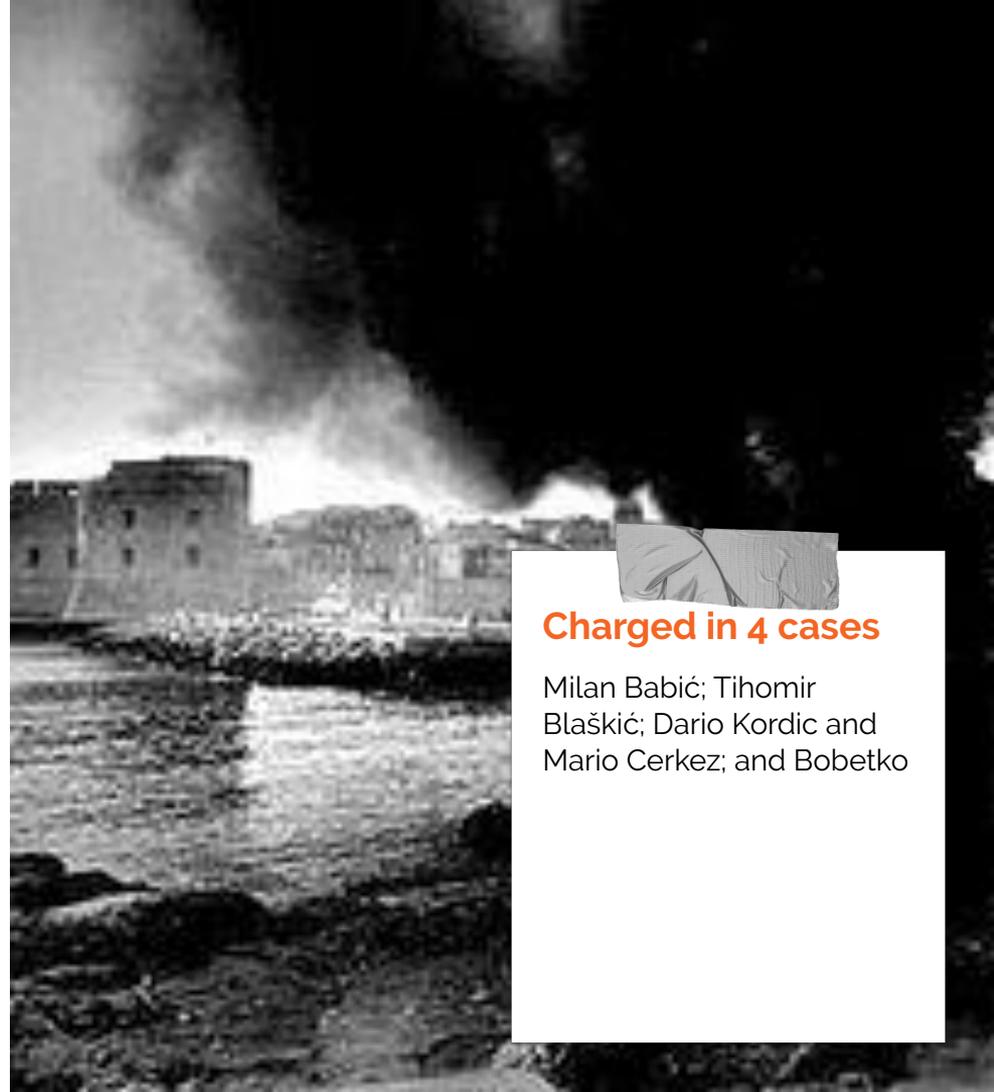
International customary law.

General requirements of war crimes (Dubrovnik case) destruction of cultural or religious heritage; the property was not used for military purposes, and the act was carried out with the specific intent to damage or destroy such property.

Destruction of cultural heritage as a CAH of persecution.

Common elements of CAH

Additional elements: Gross or blatant denial; on discriminatory grounds; of a fundamental hr, laid down under customary or conventional international law; reaching the same level of gravity of the other acts.



Charged in 4 cases

Milan Babić; Tihomir Blaškić; Dario Kordic and Mario Cerkez; and Bobetko

ICC Statute and case law.



As a war crime- the AHMAD AL FAQI AL MAHDI case

As a single charge.

Requirements regarding the author (launching the attack, existence of the armed conflict, and knowledge of its existence) and regarding the assets (classification as protected, not a military objective) which refer to customary international humanitarian law or to the international norms about protection of heritage





Destruction as CAH of persecution

Limitation of jurisdiction. Necessary connection with other crime under the jurisdiction of the Court.

Conclusions

Importance of the new codification and the new position of the IC regarding cultural heritage protection

Unfair limitation of the ICC jurisdiction regarding persecution

Obligation of states to comply with human rights as *ius cogens* and the principle of *aut dedere aut iudicare*