

Afghanistan, Destruction of the Bamiyan Buddhas

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: MATSUURA Koïchiro, “Les crimes contre la culture ne doivent pas rester impunis”, in *Le Monde*, Paris, 16 March 2001. Original in French, unofficial translation.]

Crimes against culture must not go unpunished

A crime against culture has just been committed. By destroying the huge Buddha statues that had been watching over the Bamiyan Valley for 1,500 years, the Taliban have done irreparable damage. They have destroyed not only part of Afghanistan's historical legacy, but also exceptional evidence of the meeting of several civilizations and a heritage that belonged to the whole human race.

This crime was perpetrated coolly and deliberately. No military action under way in that part of Afghanistan can be invoked as an excuse. In recent years, the caves surrounding the Buddhas – with wall-paintings by the monks – were defiled and defaced by the soldiers of the various factions that had bivouacked there. Arms were stored there, at the very feet of the Buddhas, which were reduced to the level of shields. During those years, the statues were also targeted several times. That was intolerable enough but war might explain those attacks – even if it cannot justify them. The systematic destruction recently carried out cannot even find that feeble excuse.

This crime against culture was committed in the name of religion – or rather, in the name of a religious interpretation that is both questionable and controversial. Some of the leading theologians in Islam have challenged that interpretation. By ordering the destruction of masterpieces of Afghan heritage in the name of his faith, Mullah Omar claims to know more about that faith than all the generations of Muslims down the last 15 centuries, all the Muslim conquerors and leaders who spared Carthage, Abu Simb or Taxil – more even

than the prophet Mohammed himself, who chose to preserve the architecture of the Kaaba at Mecca.

[...] Apart from these Buddhas being a huge loss, what has just been done is unprecedented. For the first time, a central authority – albeit unrecognized – has usurped the right to destroy part of our common heritage. It is the first time that UNESCO, mandated by its constituent act to preserve our universal heritage, has been confronted by such a situation. [...]

UNESCO had largely contributed to it by working in three main directions: the protection of cultural assets in case of armed conflict pursuant to the Hague Convention [**See Conventions on the Protection of Cultural Property [Part A.]**]; the fight against illegal trading in those same goods pursuant to various normative measures; and since 1972, the promotion of the very concept of universal heritage. Moreover, the success of the World Heritage List aptly illustrates the extent of this awareness of and new concern for our heritage.

[...] It is not mere stones that have been destroyed. It was an attempt to wipe out a history, a culture or rather testimonies to the possibility of a meaningful encounter between two great civilizations and a lesson in intercultural dialogue.

That is why the act of madness perpetrated by the Taliban in Bamiyan or against the pre-Islamic statues in the museums in Afghanistan must be defined as a crime. A backward cultural step of this kind must not be permitted. This crime calls for a new type of sanctions. Just a few days ago, the International Criminal Tribunal for the former Yugoslavia set us an example by including the destruction of historic monuments in the 16 charges in its undertaking in respect of the 1991 attack against the historic port of Dubrovnik in Croatia [**See ICTY, The Prosecutor v. Strugar [Part B.]**].

The international community must not remain passive; it must not tolerate crimes against cultural assets any longer. What the Taliban has done was an isolated act but one replete with danger and UNESCO will respond with appropriate measures. In particular, by combating the trade in Afghan cultural assets, which is unfortunately sure to increase, and by saving the rest of that country's heritage – pre-Islamic or Islamic – as well as by considering, within the framework of the World Heritage Committee, reinforcing protection. The international community has lost the Bamiyan Buddhas; it must not lose anything else.

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Discussion

1. Given that, at the time, an armed conflict was under way between the Taliban regime and the forces of the internationally recognized government, but that the fighting was not the cause of the Buddhas' destruction, do you think that IHL is applicable? (1954 Hague Convention, Art. 19 [**See Conventions on the Protection of Cultural Property [Part A.]**]; P II, Art. 16)
2. What are the rules of IHL protecting cultural property? Is it permitted to destroy such property? If yes, in what circumstances? Can weapons be stored in cultural property? Can cultural property be used to

protect a military objective? (HR, Art. 27; 1954 Hague Convention, Arts 4, 9 and 19; P I, Art. 53; P II, Art. 16; the Second Protocol to the 1954 Hague Convention [**See** Conventions on the Protection of Cultural Property [Part C.]])

3. Are these rules applicable in the event of a non-international armed conflict? Is the protection of cultural property part of customary IHL [**See** ICRC, Customary International Humanitarian Law [Rules 38-41]]? Are these rules applicable even if Afghanistan is not party to some of the instruments of IHL prohibiting the destruction of cultural property?
4. From what additional legal protection would the Bamiyan Buddhas have benefited if they had been included on the World Heritage List established by the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (<http://whc.unesco.org/en/list>)? Or if they had been the subject of special or enhanced protection? (1954 Hague Convention, Arts 8 ff.; Second Protocol to the 1954 Hague Convention, Arts 10 ff.)
5. To what extent could destruction of this kind be considered a crime, or a war crime? Are the conditions for such offences met in this case? (1954 Hague Convention, Art. 28; P I, Art. 85(4); ICC Statute, Art. 8 (2)(b)(ix) and (e)(iv) [**See** The International Criminal Court [Part A.]])