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Adjudicating attacks targeting culture: revisiting the approach under state responsibility and individual criminal responsibility

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PROPOSITIONS RELATING TO THE DISSERTATION

Adjudicating Attacks Targeting Culture Revisiting the Approach under State Responsibility and Individual Criminal Responsibility

By Hiran Abtahi

1. State responsibility and individual criminal responsibility-based jurisdictions have failed to neatly adjudicate attacks that target culture.
2. Absent a universally agreed anthropological definition of culture, international law has tended to use, without systematic distinction, a variety of terms such as cultural property, cultural heritage, tangible cultural heritage and intangible cultural heritage.
3. Placing culture, a polymorph concept, in a legal framework will help bring predictability to judicial proceeding involving attacks targeting culture.
4. Culture comprises two interrelated components. The tangible component may be movable or immovable, secular or religious, anthropological or natural. The intangible component ranges from language and religion to traditions and belief systems. This approach helps focusing on culture in substance instead of form, which may be otherwise misleading.
5. Culture should further be viewed as a metaphorical triptych, made of local, national and international panels. Each panel can be appreciated in isolation. But the full picture emerges when considering the three panels' interplay. These help reducing culture to law.
6. State responsibility and individual criminal responsibility-based jurisdictions have traditionally been timid in venturing into each other's realm. The late twentieth century's surge of international criminal law has triggered a timid rapprochement between the two modes of responsibility. The ICJ and ICTY have already referred to each other. The ICC has referred to inter-State claim mechanisms and regional human rights courts on issues such as reparations.
7. Legal scholars could play a pivotal role to synergise both modes of responsibility. They should bring to the fore the analysis of the judicial interpretation and application of treaty law, by placing a new focus on international instruments' object and purpose as well as travaux préparatoires.
8. Attacks targeting culture could serve as a basis to facilitate this rapprochement. Both modes of responsibility have often come to the same conclusions when addressing the causes, means and consequences of attacks targeting culture. However, they have failed to formally distinguish the interplay between culture's tangible and intangible components.
9. Attacks targeting culture could be tangible-centred, mainly in terms of damage, but also in terms of victims, when culture's tangible possesses legal personality. In this instance, a legal person, such as a museum, could claim material and moral damage as a result of attack against itself and/or against the cultural tangible that it owns and/or administers.
10. Attacks targeting culture could be heritage-centred, by focusing on culture's intangible and tangible, separately or in combination. Here, victims will always be natural persons belonging to the collective or the collective as the sum of natural persons. Attacking the collective's culture may alter its identity and warp world heritage.
11. Regional human rights courts' finding of attacks against the individuals as part of the collective could be analogised with the crime against humanity of persecution. Their findings of attacks against the collective as the sum of its individuals could be analogised with the crime of genocide. International criminal law's tripartite crimes, ie genocide, crimes against humanity and war crimes have all proven capable of addressing attacks targeting culture.
12. When adjudicating attacks targeting culture, the question before international law actors – legislators, adjudicators and academics – is not whether the destruction of monuments or limitations to the use of language should be equated with humans' murder. The right question is what is the intention behind the deliberate targeting of culture, its means and consequences on the collectives' identity and world heritage.