

Introduction

Of the damage to the cultural heritage of Afghanistan that has occurred in recent times, the most notorious is the destruction of the Buddhas of Bamiyan in 2001 by the Taliban. Alongside that shocking act, large-scale looting has continued to ravage Afghanistan's cultural heritage. These acts impact on Afghan citizens' enjoyment of their human rights, particularly the rights to participate in and benefit from cultural heritage.

Legal provisions concerning human rights and cultural heritage

The link between human rights and cultural heritage was authoritatively recognized as early as 1948, in the Universal Declaration of Human Rights. Article 27(1) states "everyone has the right to freely participate in the cultural life of the community." Subsequent instruments developed this link, such as the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),¹ which recognises in article 15 that everyone has the right "to take part in cultural life", and that states parties must take the necessary steps to ensure the conservation of cultural heritage. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has explained that the right to participate in cultural life includes the right "to benefit from the cultural heritage [...] of other individuals and communities."²

Human rights and cultural heritage in Afghanistan

Commenting on the human rights situation in Afghanistan, both the United Nations General Assembly,³ and the (now defunct) United Nations Commission on Human Rights,⁴ have emphasized the need to protect cultural heritage from looting and destruction and ensure the effective participation of citizens, particularly women, in cultural life.

The destruction of the Buddhas of Bamiyan

Situated in the Hindu Kush mountains in the central highlands of Afghanistan, the Buddhas of Bamiyan were the largest standing Buddha statues in the world. Standing at 53 metres and 38 metres, the Buddhas were built in the sixth century and had survived a millennia of invasions. They were destroyed by the Taliban in March 2001, approximately six months prior to the devastating attacks on the USA on 11 September 2001. The Buddhas were destroyed pursuant to an edict issued by Mullah Omar on 26 February 2001, which stated that this was necessary to save Afghans from idolatry.⁵ In December 1997, the World Heritage Committee had forewarned of the danger, noting that the cultural and natural heritage of Afghanistan, "particularly the

¹ It came into force in 1976. Afghanistan is a state party.

² UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 21 on the Right of everyone to take part in cultural life (art. 15) (2009), para 15 (b).

³ GA res 52/145 of 12 Dec 1997 (among others); see O'Keefe, *The Protection of Cultural Heritage in Armed Conflict*, p. 305, fn 22.

⁴ Commission on Human Rights, resolution 1998/70 (21 April 1998), para 2, (among others); O'Keefe, *The Protection of Cultural Heritage in Armed Conflict*, p. 305, fn 23.

⁵ Abtahi, Hirad. "From the destruction of the Twin Buddhas to the destruction of the Twin Towers: Crimes against civilisation under the ICC Statute." 4 *International Criminal Law Review* (2004), p.10.

Buddhist statues in Bamiyan”, were of “inestimable value” and had to be protected.⁶ Following the dynamiting of the statues, then-UNESCO Director-General, Koïchiro Matsuura, spoke of “crimes against culture”, and, in 2003, UNESCO issued its Declaration Concerning the Intentional Destruction of Cultural Heritage, which reiterated the prohibitions on the destruction of cultural heritage set out in the World Heritage Convention (to which Afghanistan was a party), the 1954 Hague Convention, the 1999 Second Protocol, and under customary international law.

Looting

Looting of cultural heritage in Afghanistan has occurred on a large-scale basis. Traffickers with access to international markets smuggle artifacts out of the country in pursuit of profits. For example, the ancient urban complex of Balkh has been extensively looted and now is pockmarked with pits dug by the looters.

In response, the International Council of Museums published a Red List called “Afghanistan Antiquities at Risk”, in order to provide a tool to law enforcement authorities, and to increase awareness and international cooperation in relation to the need for protection of Afghanistan’s cultural heritage.

Even when marketed artifacts are recovered, the harm is not easily undone. UNESCO’s Sara Noshadi observed in relation to returned items as “culture out of its context. You get it back, but you don’t know where it comes from.”

⁶ UNESCO, Report of the XXI Session of the World Heritage Committee, Naples, Italy, 1 – 6 December 1997, doc. WHC-97/CONF.208/17 of 27 February 1998, par.VII.58.