

# **Protection of Cultural Properties In The Event of Armed Conflict According to Islamic Religion & International Humanitarian Law**

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## **Introduction:**

Cultural property is considered as one of the victims of armed conflicts. Sometimes these victims may become the causes of armed conflicts.

According to the world history, there are even a lot of armed conflicts that happened because of cultural property, including religious places and belief. This can be seen happening nowadays in the Islamic countries as well as non - Islamic ones as in destroying the Mosques for Muslims or Churches of the Christians or temples for the Jews ..etc.

We are discussing these issues in this short research for which we need a reward from Allah(Almighty God), and the attention of the audience.

## **First: Quranic View**

According to the jurisprudence of the Islamic rules that pilgrimage three kinds which are:

- 1- Hajj Altamta: which is obligatory upon those who live away from mecca city about 80 kilometers.
- 2- Hajj Alifrad: this kind of hajj is obligatory upon those who live inside mecca city. They have to perform hajj alifrad.

There are some specific rules and details which I am not going to explain in this research.

- 3- Hajj AlQuran: which means that person who want to perform Hajj should live inside Mecca city and bring with him an animal like a sheep or cow or camel to be as part of his

pilgrimage and will slaughter it later during actions and practices of hajj and worship.

Men's jurisprudence said he should not harm this kind of animal because now the animal has become as part of pilgrimage and a symbol of God. Some of them should not be rideable anymore and not milky the milk goes to the son of that animal if it has one<sup>[2][3]</sup>.

So the person who performs hajj alquran should mark the animal by a piece of clothes or slippers .etc. to show that the animal has become as to be symbol of Allah (S.W.T.).

Allah (S.W.T.) says in the Holy Quran:

"That [is so]. And whoever honors the symbols of Allah indeed, it is from the piety of hearts"

Sura Al-hajj/verse32

What do the symbols of Allah mean?

The symbols mean the clothes which in touch to the human body or very close to the hair of the body. Almighty God puts this meaning in the holy book to show us how it is important when things belong to Him (S.W.T.) and we should be aware of these things.

There is a second verse from the holy Quran says:

"And the camels and cattle we have appointed for you as among the symbols of Allah ; for you therein is good. So mention the name of Allah upon them when lined up [for sacrifice]; and when they are [lifeless] on their sides, then eat from them and feed the needy and the beggar. Thus have We subjected them to you that you may be grateful"

Sura Al-Hajj/verse 36

When put these two verses together we will get the result that animal which (albudn) is from a symbol of God, and should be respected as much we can, as explained above.

Another verse from Holy Quran says:

"Indeed, as-Safa and al-Marwah are among the symbols of Allah . So whoever makes Hajj to the House or performs 'umrah - there is no

blame upon him for walking between them. And whoever volunteers good then indeed, Allah is appreciative and Knowing"

Sura The Cow/ verse 158

What do Alsafa and Murwa mean?

These are accumulation of rocks over one side and another grouped on other side. Usually when we do hajj step and touch them by our feet. Allah (S.W.T.) appointed them as a symbol and part of pilgrimage that we should do.

Al-Kabaa Mushrafa (Holly House) is a kind of building which has to be respected as much as we can, we ask God for forgiveness, seek our needs and get his help to solve our problems in this life and hereafter. But value of a believer is higher than the value of holy Kabaa. What about if this person is a holy person like a prophet or very closer to Allah(S.W.T.), Is this the right way to respect and protect the prophet and he is closer person or place by destroy and threw a garbage inside?<sup>[4][5]</sup>.

This is the Quranic view and deep meaning of the holy Quran if they understand it!

#### **Second-IslamicHistoryView:**

In the past, the Islamic civilization was surrounded by two big civilizations. One of them is Roma civilization and the other Persian civilization. They were respected and people took care of their famous and greatest men by building statues and give their names to their children and to the cities, towns, and streets, and so on. Why did they do that? For sure it is to remember the names and deeds of those famous and greatest men in the life and follow them as good example to solve or to show the right way to plan for future.

One of the reason, we have to repeat the saying in the calling for the prayer "Be witness that Prophet Muhammad (PBUT) is the messenger of God". Almighty God (S.W.T.) wants us to keep saying this sentence to makes us remember the name and deeds of the Prophet Muhammad (PBUT). As you know, there are so many prophets and messengers in the holy Quran, may be they are one twenty four

thousands or three hundreds thousands but we do not know them or sometimes we do not remember them, because of what eye does not see the heart forgets it. So repeating the names of the Prophet Muhammed (PBUT) and feel it deeply is good to all of us.

When the Prophet Muhammad (PBUT) came and build an Islamic government, there were a lot of cultural properties which include graves all around Islamic nations and areas. The Prophet (PBUT) did not do anything to these cultural properties.

Same thing happened during the caliphs who came after the Prophet (PBUT). The good one and worse from those caliphs did not do any harm to these cultural properties including graves of the greatest people.

There are some examples from the history:

1- ALLah(S.W.T.) says in holly Quran:

"And [mention] when We made the House a place of return for the people and [a place of] security. And take, [O believers], from the standing place of Abraham a place of prayer. And We charged Abraham and Ishmael, [saying], "Purify My House for those who perform Tawaf and those who are staying [there] for worship and those who bow and prostrate in prayer".

Sura The cow/Verse 125

What is the place of Abraham (PBUH)?

It is the place that the Prophet Abraham(PBUH) when he built the Holy House (Kabba Al-sherefa) stood over a piece of big rock. Allah (SWT) kept this rock since the time of the prophet(PBUH) until the day of

rock as part of hajj and to remember the deeds of thatgreatest Prophet Abraham(a.s.), and Allah (S.W.T) to mortilize his Prophet(a.s.) and his properties.

2- There is a kind of fence which called "Hajer Ismail". The site of Hajer Ismail is located beside the holly house (Kabba). In Hajer Ismail there are about of seventy Prophets ( a.s.) graves. The Prophet Ismail (PBUH) his grave was inside this area, and

his mother's grave "Hajer" (a.s.) is inside this area. Since the time of Prophet Muhammad (PBUT) nobody has destroyed it.

- 3- Our mother Kave(Hwaa.s.) grave is in Jeddeh city, SaudiaArabia. That was the grave and shrine that people usually visited before , but when the system changed because of some people in charge have prevented the visiting and then they destroyed the shrine.
- 4- Greatist Prophet Abraham(PBUH) grave in Palstineundersu pervision Prophet(PBUT) and the successors who came after that.
- 5- There are a lot of Prophets in Iraq, like Adam(a.s.) and Noh(a.s.)in Najef. Prophet Yonis(a.s.) in Mosul. Likewise all areas from Syria, Egypt, and Marco are filled with these cultural properties, and people respect them as much they can believe up on them.

After four or five hundreds years some people came with different thoughts and dangerous ideas saying that all Muslims were wrong even the Prophet Muhammed (PBUT)! How come? The Last Messenger and Prophet of God was wrong! The Prophet Muhammad(PBUT) who taught them and all people the Islam now according their thinking is wrong! It is a very dangerous ideology and different from Muslim thoughts since the time of the Prophet Muhmmad(PBUT).

This kind of ideology has a source and reference from the past in Islamic history. One day that Murwanibnalhkem(curse up on him).This Murwan according to the saying of the Prophet Muhmmad (PBUT) be mentioned as ((cursed son of cursed, and salamanders son of salamanders))(5), entered the Prophet's (PBUT) mosque, and saw a man was putting his head over and very close to the grave of the Prophet Muhmmad (PBUT). Murwanibnalhikm came and pulled the man from his head and shouting on him telling him" what you are doing? This is not from Islam."the same thing that we hear nowadays and even the type of language they use.

The man turned his face toward Murwan. When Murwan saw him he got shout and shutted his mouth.

The man was a great follower of the Prophet Muhammad(PBUT). He was Abu Iyoub Al-Ansari(a.s.). He looked to murwan and said to him: " I did not come to the grave, just a grave. No I came to the Prophet Muhammad (PBUT)".

Abo IyoubAlansari kept saying to murwan. I heard the Prophet Muhammad (PBUT) saying: "Do not cry up on the religion if the religious and right people be in place of charge, but you have to cry up on the religion if not religious and wrong people be in site of charge"

So when we have such people and this kind of thinking and mentality what is going to happened. In feb.22-2006 , they had destroyed two shrines of Muslims leaders which are the 10<sup>th</sup> and 11<sup>th</sup> Imams offspring Prophet Muhammad (PBUT) in Samarah city- Iraq.

Like murwan ibn alhkem or hasam ibn alhkem, and today is ISIS (Dash), what do you expect, what are they going to do?<sup>[6][7][8][9]</sup>.

### **Third: Law View**

Protection of cultural properties in the event armed conflict extends in sphere of international humanitarian law, because it was not like before includes only victims of human beings and reduces their pains, but extends to include protection of cultural properties in the event of armed conflict.

All armed conflicts either internationally or non internationally have different pictures of destroying, stealing, and raping of cultural properties, and it is very difficult to exchange the materials of cultural properties which get destroyed or raped in event armed conflicts. So for that reasons United Nations pushed hard to find a legal system for protection the cultural properties in event of armed conflict.

1- Definition of the cultural properties which include in international protection in event of armed conflict

The Hague convention in 1954 is considered the first international convention which includes the definition of cultural properties in general and detailed(10). It is defined according to the first article from this convention, as following:

stable or mobile properties have specialty in amount or an art or a cultural.

- A. The building and properties have special characteristics for protection and offer the cultural properties.
- B. The centers which include a lot of cultural properties and it has a specific name for that purpose.

2-General protection for cultural properties in event of armed conflict

All cultural properties have general protection spontaneously. Hague convention in 1954 had divided responsibility of protection among states which have an armed conflict, to be sure of protection of cultural properties which are located inside the region surrounded by armed processes.

A. Protection rules:

One side, it is obligatory up on the state in the case of armed conflict to be sure that all cultural properties out of armed processes, and it has to take them away from the regions of armed processes.

Another side, it is obligatory up on the state and other states which have armed conflict to prevent itself from stealing, raping, and destroying or take a revenge against the cultural properties.

B. Lost protection:

The Hague convention in 1954 and second protocol in 1999 were cleared about losing general protection of cultural properties, and that is happened when armed necessities.

Article six from protocol 1999 has two conditions and should come together to be these cultural properties no more as it is, but it will be an armed subject. Which are classified into:

- 1- Changing cultural properties by its function and to be used as an armed subject.
- 2- There is no substituted subject as this, because it has some characteristics and features of armed sign. So there is no chance to find another to be a goal for armed processes.

For sure it is difficult to be these two conditions together at the same time, so there is no lose of general protection from cultural properties.

### 3- Special protection for cultural protection in event of armed conflict

Hague convention in 1954 has special protection for cultural properties whether stable or mobile when they have an importance huge.

#### **A. Protection rules:**

The article number eight of Hague convention 1954 has two conditions give to the cultural property to be special protection. The first one , cultural property located away from big industrial center or any armed goal may be effected by armed conflict. While the second condition should not use this cultural property for arm purposes.

Article 8 of the Hague convention in 1954 is considered airports or TV channels or public factories for national defense or seaports or railway stations or transport ways which are very important and should not use them as an army purposes.

#### **B. Lost protection:**

Cultural properties get lost their special protection in two cases:

Firstly: if used for army purposes will lose their special protection.

Secondly: in case of army necessity, but under many conditions like the second paragraph from the article eleven request present a head of army committee to decide the situation of the necessity in this military site and they want take an army action against it. Sometimes the decision should announce to the other side to be aware of that.

#### **Fourth- History View:**

According to the Labir Law/article forty four, considered a destroying actions against cultural properties lead to hard punishment an equal to the cause. Also article eight from Broxil in 1874, any destroying or steeling properties which belong to religion places, education, centers and cultural places is a crime must who do it get punishment from the government.

London agreement in 1945, was special for prosecution and punishment of the major war criminals. And from this agreement

established naurberg courts for stealing and raping the general and special culture properties and destroying the cities and towns which is not necessity for the army processes. So it is considered as a war criminals.

Prohibited fourth Geneva Convention/1949 which was taking a special protection for civilians in event of army conflict to destroy the cultural property whether stable or mobile which belong to people or states or organizations, unless this military processes which take place has so necessity and a degree of importance.

In some cases, the destroying of cultural properties does not reflect army necessity, but it reflects political reasons to destroy moral symbols for other side while the cultural properties represent identity of the country. So destroying religious places for sure not for army necessity but for political necessity and against unity in one country like Iraq. Even Iraqi constitution 2005 considers all holy shrines and religious places in Iraq are cultural properties, and the government should protects and keep them in safety conditions so the people can practice their religion inside them freely without any disturbance. In article 53 of 1<sup>st</sup> protocol 1977 includes the protection of cultural properties and all religious places. In article 6 of 2<sup>nd</sup> protocol of the Geneva Convention of 1949 includes same protection to the cultural properties with religious places.

The states take responsibility when violent the rules of international law similar to the civil responsibility which is in the special national law. These responsibility of the states have to recover from the states themselves which made a violence against others like:

- A. Returned the culture properties cultural properties which belong to the others should returned as the same as before in case of responsibility of other state. For example, the Candian court in 1812 had decided in "Vessel Marquis de Somereules" that British should returned museum properties which belong to the Philidelphia Artist because of the British forces had took it.

Temple of PreahVihear has big religion value. Combodia has occupied this temple since war world II. So the International Justice

Court had decide that Thailand must returned the temple to the Cambodia.

**B. Pay indemnity:**

sometimes it is difficult to repair or to return the culture properties same as before. So the state who responsible for damaged the cultural properties has to pay indemnity. For example, in Iraq has to repay indemnity to Kuwait because of destroyed and steel the cultural properties in gulf war- 1991. According to the decision of Security Council which has number 666-1991, the Iraq has to returned all properties especially those which are belong to kuwait national museum which had taken from Kuwait during the war 1990, but the Iraq replied did that because of protection to those cultural properties during armed conflict applying the rules of the Hague Convention 1954. After that Iraq has to returned these cultural properties to Kuwait under supervision of United Nations<sup>[11]</sup>.

**Conclusion:**

As much as the Hague Convention 1954 and its two protocols , force the states to protect the cultural properties when place them on their areas or other states during peace because may happen an armed conflict in future, and in event of armed conflict for protection the cultural properties. So the result would be:

- 1- The national law must have a strong roles and instructions to protect the cultural properties.
- 2- The national governments must have a special forces like an army forces or policemen to protect the cultural properties.

My recommendations for protection the cultural properties should be:

- 1- Spread and teach the roles of Hague Convention and its two additional protocols to the army forces as well as to the civilian people.
- 2- Establishment of national committee for guidance and progress to protect and keep maintain for the cultural properties.

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