

**Intentional destruction of cultural heritage by ISIS: the reaction of the  
International Community against this specific aspect  
of the aggression to peace and human rights**

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**ABSTRACT:** Massive intentional destruction of cultural heritage is a very serious attack against the core values of peace and human rights, be it associated with an armed conflict or not. Several acts of intentional destruction have recently occurred in a number of situations of general and serious violation of human rights. ISIS has used such criminal acts for its propaganda of terror, thus raising in the International Community the level of awareness of the actual aggression to fundamental values that these kind of acts constitute. Hence, devising and adopting more effective international law measures to punish and, if possible, to prevent the intentional destruction of cultural heritage is a challenge of paramount importance. At the same time, it is an extremely delicate task, strictly linked to sovereignty issues. Two interesting trends can be observed in the latest international practice: on one hand the development of mechanisms for the rapid mobilization of UNESCO “task forces”, composed of cultural heritage experts, for the protection of culture and the promotion of cultural pluralism in the event of armed conflict (the so-called “blue helmets of culture”); on the other hand, the revival of the old debate on “cultural genocide”, and, possibly, the first international criminal case completely dedicated to acts of intentional destruction of cultural heritage.

**SUMMARY:** 1. The facts, compared to other recent cases in international practice. 2. Prohibitions under humanitarian law and unacceptable uncertainty of the rules that are applicable to destructions not associated with an armed conflict. 3. General international law “filling the gap”? The 2003 UNESCO Declaration of principles and requests for more effective deterrence through specific individual criminal responsibility extending also to crimes against humanity. 4. Organizing international cooperation: the “blue helmets of culture” as a UN task force. 5. Other effective ways of combating international terrorism involving cultural heritage: the protection of movable cultural property from illicit international trade.

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1. Intentional destruction of cultural heritage by ISIS (international terrorist organisation, self-proclaimed caliphate as Islamic State of Iraq and Syria from 2014, previously self-proclaimed Islamic State of Iraq and the Levant) is only a part of its policy, which dramatically comprises various other serious violations of the core international law rules protecting peace and human rights. Every sensible person in whatsoever part of the world felt a blow in the stomach or was led to the brink of tears each time the news of such an act was broadcast (suffice it to remember the destruction of the temple of Bel in Palmyra). Nevertheless, at first underlining the extreme seriousness of the wilful destruction of cultural heritage could almost seem disrespectful, as if it were a blasphemy in the face of the human blood shed by ISIS affiliates and the other cruelties to which human beings were and are being subjected. UNESCO strongly condemned those acts from the beginning. Now, the outcries coming from the UN agency devoted to culture are developing into concrete proposals to the UN, for the creation of a specialized task force, generally referred to under the emphatic name of “blue helmets of culture”, to be employed for the preservation of cultural sites. In fact, it makes no sense at all to consider the preservation of cultural heritage separately from the protection of human rights. By definition, cultural heritage is identified because of its value, its significance for the life of people, and direct aggression to cultural heritage usually occurs in situations of general and serious violation of human rights. Combating the destruction of cultural heritage is an important contribution to the protection of human rights and must not be perceived as distracting attention from them. On the contrary, the effective protection of human rights is enhanced if this relevant feature of their aggression is properly addressed.

This is not the first time cultural heritage is intentionally destroyed. In the distant past, iconoclasm produced unspeakable losses in different periods and places, and also in modern times we suffered very serious episodes of wilful destruction<sup>1</sup>. How could cultural sites be effectively protected from direct, wilful aggression? Aiming at cultural heritage either to ideologically deny its value as carrier of significance or to hit the most precious elements of the identity of a specific human group has occurred, at the turning of the twentieth century, in two different contexts: in the 1990s, during the armed

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<sup>1</sup> See MATTHIAE, P., *“Distruzioni, saccheggi e rinascite. Gli attacchi al patrimonio artistico dall’antichità all’Isis”*, Milan, 2015.

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conflict in ex-Yugoslavia and in 2001, under the Taliban regime in Afghanistan, with different consequences at the level of the international legal order. In both cases international law could not prevent or stop the destruction, but intervened at the stage of the assessment of responsibility (jurisprudence of the International Criminal Tribunal for ex-Yugoslavia – ICTY – referring to the massive destruction of mosques, Christian churches, the old city of Dubrovnik and the old bridge of Mostar), or took the opportunity to reaffirm, thus strengthening them for the future, prohibitions under general international law that had maybe not been so clearly stated until that moment (adoption, in 2003, of the UNESCO Declaration of principles concerning the intentional destruction of cultural heritage after the destruction of the giant Buddhas of Bamiyan by the Talibans in 2001).

This time, the measure proposed by Italy is conceived as to be possibly effective also at the preventive level, though applicable only in those situations where UN forces are employed on the territory. Is this enhanced resolution of the international community due to a sort of “catastrophe effect”, such as the one that occurred in other sectors of the protection of common interests (the protection of the marine environment and, maybe, after the Paris 2015 UN Climate Change Conference, also the prevention of air pollution), meaning that the scale of the damage lately produced reaches a peak that triggers more adequate preventive measures to avoid similar losses in the future? Or is it to be ascribed to a different perception of the intentional destructions of cultural properties we are witnessing today, particularly in the Middle East, because of their frequency, extreme brutality and intimidating purpose?

It is not to be forgotten that, in more than one occasion, ISIS has concretely linked the destruction of stone architectures to the brutal killing of human beings. Not only the beheading of Khaled al-Asaad, worldwide famous Syrian archaeologist, octogenarian head of antiquities and now “martyr” for the ancient city of Palmyra, but also several other killings (“executions”) within the site of Palmyra, sometimes aiming at the same time at ancient stone and human beings through the use of explosives, clearly show the thread that joins the protection of (and the disrespect for) human life and cultural heritage, making the attacks to those two combined elements a powerful vehicle for the propaganda of terror.

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Is this “cultural cleansing” by ISIS, then, really different ‘in both scale and nature’<sup>2</sup> from the destruction of cultural properties we witnessed during the conflict in the ex-Yugoslavia? Perhaps it is: because the attacks are systematic and ‘used as a tactic of war, to intimidate populations, to disseminate hatred, to weaken the grounds for peace’<sup>3</sup>; because of the aforementioned explicit link with the aggression to fundamental human rights; because these attacks are unequivocally very serious, being directed to several sites whose outstanding universal value has been formally recognised by UNESCO; and, particularly because the recent attacks by fundamentalists are not directed to a specific (“the enemy’s”) cultural heritage, and so “cleansing” assumes an all-encompassing meaning. Perhaps, on the other hand, it might be not different, if we take into consideration that all the above elements (including the last one, that I will briefly discuss in the next paragraph) could be also referred to the Balkans’ conflict. Anyway, the new, preventive steps that the international community is planning are due to an enhanced awareness of the actual aggression to fundamental values that such kind of acts constitute.

2. The destructions perpetrated in Afghanistan by the Talibans were directed to all non-islamic cultural objects and now ISIS does not spare even islamic cultural sites. It has severely damaged the citadel of Tikrit, birthplace of Saladin, and it has been reported that it threatens to destroy the Kaaba in the Grand Mosque in Mecca.<sup>4</sup> The indiscriminate nature of the cultural object of the wilful destruction, which is chosen independently of its belonging to a specific group identity, is one of the main reasons why the contemporary acts of destruction of cultural heritage by ISIS and ISIS affiliates

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<sup>2</sup> See Address by Ms Veronique Dauge, Head of Culture Unit of the UNESCO Regional Bureau for Science and Culture in Europe (Venice, Italy), on the occasion of the second session of the Committee on Improving Quality of Life, Exchanges between Civil Societies and Cultures of the Parliamentary Assembly of the Union for the Mediterranean (PA-UfM) on the theme “Blue Helmets for Culture: a common commitment in memory of Khaled alAsaad”, Italian Chamber of Deputies, Rome, 6 November 2015.

<sup>3</sup> *Ibid.*

<sup>4</sup> See SEKULOW, J.A. and R. WESTON, R., *The Dangers Isis and its Progeny Pose to Regional and Global Peace*, Oxford Centre for the Study of Law and Public Policy, *2014 Research Papers*, study available at [oxfordpolicycentre.org/research-papers/](http://oxfordpolicycentre.org/research-papers/) (last access 17.02.2016).

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in Iraq and Syria, as well as by the homologous fundamentalists in other parts of the world (Mali, Yemen), are immediately perceived as an overall attack to culture and, at first glance, they could not be equated with what happened in ex-Yugoslavia. There, each faction targeted “the enemy’s” cultural properties.

Under humanitarian law, however, the origin of targeted cultural heritage is irrelevant. As already clearly stated in the Convention for the Protection of Cultural Property in the Event of Armed Conflict, concluded at The Hague in 1954, coherently with the principles underlying the entire international protection of cultural heritage, ‘damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world’.<sup>5</sup>

From this point of view, then, attacking cultural heritage is a war crime that entails responsibility of the State and of the individual, independently of the cultural origin of the damaged property. The non-recognition of the statehood of ISIS, just as it was for the non-recognition of the Taliban regime in Afghanistan, must not be seen as a legal obstacle precluding the international community from imposing sanctions, if there is effective sovereignty over a territory.<sup>6</sup> Nevertheless, relying on the effectiveness of the rules regulating the responsibility of States in relation to ISIS might prove quite problematic, just as it would have been for the Taliban in Afghanistan.

As for individual criminal responsibility, the Statute of the International Criminal Court (ICC), in the same way as the Statute of the ICTY, includes the wilful damaging of historic monuments among war crimes, both in international and non-international conflicts.<sup>7</sup> The damaging of cultural properties as a collateral effect, on the contrary, is not within the competence of the ICC if it occurs in non-international conflicts. During the negotiation of the ICC Statute, the inclusion of cultural genocide within the crimes against humanity has been discussed, as it had been discussed during the negotiations of

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<sup>5</sup> See Preamble of the Convention. This very advanced feature of the 1954 Convention is enhanced in its Second Additional Protocol, concluded in 1999. Iraq and Syria are Parties to the Convention but not to its Second Protocol.

<sup>6</sup> See FRANCONI, F. and LENZERINI, F. *The Destruction of the Buddhas of Bamiyan and International Law*, in *European Journal of International Law*, 2003, pp. 619-651.

<sup>7</sup> See artt. 8(b)(ix) and 8(e)(iv) of the ICC Statute.

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the Genocide Convention. However, the outcome of the negotiations was that cultural genocide was not *per se* to be included in the competence of the Court.<sup>8</sup>

It must be taken into consideration, though, that ICTY has referred, in some of its decisions, to the destruction of cultural property as ‘a nearly pure expression of the notion of “crimes against humanity” and ‘an attack not only against the history and heritage of the region, but also against the cultural heritage of humankind’.<sup>9</sup> In the first case referred to here, a link to crimes against humanity was found by ICTY on the grounds that destruction of cultural property, when perpetrated with discriminatory intent, amounts to an attack on the religious identity of a people, and the whole of humanity is injured by the destruction of a unique religious culture ‘and its concomitant cultural objects’.<sup>10</sup> The issue here is religious persecution and, just as for the proof of the specific intent (the *mens rea*) of genocide, the jurisprudence of the ICTY has stated that deliberate destruction of cultural objects is pertinent if such objects are of particular significance for a specific living community. In the second case considered here, while not referring to crimes against humanity, the ICTY stated that, as attacking civilian buildings is a serious violation of international humanitarian law, it is ‘a crime of even greater seriousness’ to direct a particularly destructive attack to an especially protected site, such as the old town of Dubrovnik.

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<sup>8</sup> See NEGRI, S., *Cultural Genocide in International Law: Is the Time Ripe for a Change?*, in *Transnational Dispute Management*, special issue on *Art and Heritage Disputes in International and Comparative Law*, Vol. 10, issue 5, October 2013, available at [www.transnational-dispute-management.com](http://www.transnational-dispute-management.com), and at [www.academia.edu](http://www.academia.edu) (last access 17.2.2016).

<sup>9</sup> See, respectively, *Prosecutor v. Kordić and Cerkez*, Case IT-95-14/2-T, Trial Chamber, judgment of 26 February 2001, para 207 and *Prosecutor v. Miodrag Jokić*, Case IT-01-42/1-S, Trial Chamber, judgment of 18 March 2004, para 51.

<sup>10</sup> Religious heritage was systematically attacked during the Balkans conflict. It has been calculated that 92% of the surveyed mosques and 57% of the surveyed Catholic churches located in Bosnia and Herzegovina were destroyed or heavily damaged from March 1992 to November 1995 (see A. Riedlmayer, *Destruction of Cultural Heritage in Bosnia-Herzegovina, 1992-1996: A Postwar Survey of Selected Municipalities*, 2002, study available at <http://archnet.org/system/publications/contents/3481/original/DPC1420.pdf?1384775281> (last access 21.01.2016); Riedlmayer’s study is one of the two experts’ reports that were prepared in 2002 for the Office of the Prosecutor of ICTY on destruction of cultural property (see H. Walasek (edited by), *Bosnia and the Destruction of Cultural Heritage*, Farnham/Burlington, 2015, a p. 152.)

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Would qualifying intentional destruction of cultural heritage as a crime against humanity concretely “upgrade” the protection granted by international law to cultural heritage, meaning that that such protection would really be more comprehensive and effective? Indeed, it would, as it would be the only way to unequivocally criminalize also wilful destructions that are not associated with an armed conflict.

The perfect example is offered by the destruction of the Buddhas of Bamiyan. This could have been deemed not to be a war crime, since the giant statues were not destroyed in the course of fighting, as at that time, the Bamiyan Valley and the rest of the country were free of hostilities and held securely under the Taliban’s government control. Their demolition was in no way facilitated or motivated by the conflict, while a legal state of belligerent occupation is not indisputably applicable to non-international armed conflicts.<sup>11</sup> At the same time, it was not very easy, in those circumstances, to clearly assess a specific violation of the obligations of the State for the protection of cultural heritage in time of peace (and which State, being the Taliban’s regime not recognised by the international community?).<sup>12</sup> While the moral condemnation of the wilful act of destruction by a shocked international community (that had fruitlessly tried to make the Taliban recede from their intent) was strong and immediate, the answer by the international legal order was not clear. This uncertainty of the rules was unacceptable, and the response of the international community has promptly come, through the adoption of a declaration of principles.

3. The adoption in 2003, by the General Conference of UNESCO, of the Declaration concerning the Intentional Destruction of Cultural Heritage, strictly linked to the topics of the 2001 UNESCO Universal Declaration on Cultural diversity, is a solemn affirmation of the *opinio juris* of the international community in this area. Explicitly triggered by the destruction of the giant statues of Buddha in Afghanistan (it opens ‘recalling the tragic destruction of the Buddhas of Bamiyan that affected the

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<sup>11</sup> See O’KEEFE, R., *Protection of Cultural Property*, in A. Clapham and P. Gaeta, *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, at p. 516. Not to mention the difficulty of categorizing contemporary conflicts under the “classic” distinction into international and non-international conflicts (see D. Akande, *Are Extraterritorial Armed Conflicts with Non-State Groups International or Non-International?*, published in *EJIL: Talk* on October 18, 2011.)

<sup>12</sup> See FRANCONI, F. and LENZERINI, F., *op. cit.*

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international community as a whole’), the Declaration is projected into the future, as a milestone on the path towards legal certainty about the accountability of both States and individuals for acts of intentional destruction of cultural heritage (‘expressing serious concern about the growing number of acts of intentional destruction of cultural heritage’).

The idea that there should be no “gaps” in the international legal system on this issue is clear, and the technical ways of ensuring the closure of such gaps are suggested among the measures to combat international destruction of cultural heritage that States are requested to take. The Declaration affirms that States should become Parties to the relevant conventions, if they have not yet done so, and that they should promote new legal instruments providing a higher standard of protection, while in any case promoting a coordinated application of existing and future instruments. This latter measure seems particularly interesting, considering that no legal instrument can be really effective if not properly interpreted and applied, while the necessity to promote new legal instruments should be assessed against the absence or inadequacy of existing instruments.

Actually, being the Declaration *per se* a non-binding act, its legal significance is to be appreciated for the possible indirect effects it produces on the interpretation and application of other international law sources and – if associated with practice – on the development of general international law. As a matter of fact, the Declaration specifically refers to general international law: the General Conference is ‘mindful of the development of the rules of customary international law as also affirmed by the relevant case-law, related to the protection of cultural heritage in peacetime as well as in the event of armed conflict’.

The Declaration could be read as a strong encouragement to interpret and apply existing instruments by fully adhering to their *ratio*, in spite of the legal challenges posed by new or evolving threats and situations, such as international terrorism and non-State actors. The Declaration’s structure (presenting two successive chapters respectively dedicated to peacetime activities and to the event of armed conflict, including the case of occupation) reveals the urgency of ensuring protection from intentional destruction both in time of peace and of war, independently of the exact legal qualification of the conflict.

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The Declaration further affirms the responsibility of both States and individuals for ‘the intentional destruction of cultural heritage of great importance for humanity’. With reference to individual criminal responsibility, it provides that ‘States should take all appropriate measures, in accordance with international law, to establish jurisdiction over, and provide effective criminal sanctions against, those persons who commit, or order to be committed, acts of intentional destruction’. In contemporary practice, we are witnessing the beginning of what could be the first international criminal case completely dedicated to acts of intentional destruction of cultural heritage. On 26 September 2015, Ahmad Al Faqi Al Mahdi was surrendered to the ICC by the authorities of Niger. On 30 September 2015, he appeared before the Pre-Trial Chamber. The confirmation of charges hearing on his case has been initially fixed for 13 January 2016 and then postponed to 1 March 2016. At the hearing, Mr. Al Mahdi declined to make submissions. There are reasonable grounds to believe that Mr. Al Mahdi is criminally responsible for having committed, individually and jointly with others, war crimes regarding intentionally directing attacks against several buildings in the cultural site of Timbuktu, inscribed in the UNESCO World Heritage List.

This could be a very interesting test-bed for existing relevant international law instruments. The whole international community was outraged by the destruction of Timbuktu’s cultural heritage, just as it was by the destruction of the Buddhas of Bamiyan. In the case of Timbuktu, the destructions can more easily be deemed to be ‘associated with the conflict’ (in the words of the Elements of Crimes of the ICC) than in the case of the Buddhas, thus it should not be necessary to resort to the category of crimes against humanity to avoid impunity for this act. Nevertheless, the appeal that ICC “learn from the lesson” of the evolutionary jurisprudence of the ICTY and consider the destruction of the ancient cultural heritage of Timbuktu as a crime against humanity, in addition to being a war crime, has been voiced among scholars.<sup>13</sup>

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<sup>13</sup> See FRANCONI, F. and GORDLEY, J., (edited by), *Enforcing International Cultural Heritage Law*, Oxford, 2013, at p. 63 and S. A. Green Martínez, *Destruction of Cultural Heritage in Northern Mali: A Crime Against Humanity?*, accepted version to be published in *Journal of International Criminal Justice*, Vol 13(5) 2015, accessible at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2616407](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2616407) (last access 21.01.2016). The legal representation of certified victims before the ICC could be a way ‘to inject cultural recognition and awareness into the trials’ (see K. Hon, *Bringing Cultural Genocide in By the Backdoor: Victim Participation at the ICC*, in *Seton Hall Law Review*, 2013, pp. 359-407, at p. 407); it should be

Perhaps the ICC, treasuring from the experience of ICTY, could to some extent push its jurisprudence that far without bumping into the principle of legality. Or maybe, on the other hand, it would be better to clearly add “cultural genocide” to the list of crimes against humanity of the ICC Statute. The latter, in substance, is the position of the European Parliament, which, in a resolution of 30 April 2015, ‘calls on the European Union to take the necessary steps, in collaboration with UNESCO and the International Criminal Court, to extend the international law category of crimes against humanity so that it encompasses acts which wilfully damage or destroy the cultural heritage of mankind on a large scale’.<sup>14</sup>

4. Introducing an amendment to the Rome Statute of the ICC to include “cultural genocide” is, thus, seen as a possible way of “upgrading” the international protection of cultural heritage from intentional destruction on a large scale. Should it be feasible today by reason of the greater awareness of the international community of this problem (while it was not so in the recent past, when the Statute was finalised), the legal relevance of such a step would be undoubtable in terms of qualification of the protected interest.

Enhanced individual responsibility could also produce an enhanced deterrence effect for the future. But, what about proper preventive measures at the international level? While extremely difficult to be devised, as they must respect State sovereignty, preventive measures are felt as necessary by the international community today.<sup>15</sup> This is probably

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noted that the contribution of victims could be precious to try to approach the very problematic, though extremely important, issue of the “forced extinction” of intangible cultural heritage.

<sup>14</sup> See *European Parliament Resolution of 30 April 2015 on the Destruction of Cultural Sites Perpetrated by ISIS/Da’esh* (2015/2649(RSP)), at para. 17.

<sup>15</sup> States that have ratified the relevant international conventions are under the obligation to take several kinds of preventive measures for the protection of cultural heritage, both in time of peace and in time of conflict. Measures that can be taken directly at the international level are very few. The most effective preventive measure taken at the international level for the protection of cultural heritage from intentional modifications of a cultural site, at the moment, could be deemed to be the “menace” of cancellation from the World Heritage List by the UNESCO World Heritage Committee – WH Committee. Its effectiveness as a preventive measure, though, depends on mixed juridical/political reasons and presupposes the good will of the interested State. For different reasons, it has failed for the Omani and the German site that have been cancelled from the List.

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the main reason why, in the Fall of 2015, the General Conference of UNESCO approved the proposal that specific mechanisms for the rapid mobilization of UNESCO “task forces”, composed of cultural heritage experts, be established for the protection of culture and the promotion of cultural pluralism in the event of armed conflict.<sup>16</sup>

However, it is important that no misunderstanding arise as to the operative meaning of such a measure. In no way, does it entail an intervention by the United Nations system in a conflict situation “just because of” large scale direct attacks to cultural heritage, as the common reference to such mechanisms under the name of “blue helmets of culture” might suggest. The idea has been concisely expressed by the World Heritage Committee in its Bonn Declaration on World Heritage. The members of the Committee ‘recommend that the Security Council analyzes the possibility of introducing a specific dimension of heritage protection in the mandates of peacekeeping missions where appropriate’.<sup>17</sup>

It is precisely with a view to timely providing for the necessary professional expertise, which must be well integrated in the UN forces when their mandate includes action for the protection of cultural heritage, that these ‘mechanisms for the rapid mobilization of national experts’ should be established. To be absolutely clear on this point, the General Conference of UNESCO has introduced an amendment to the draft resolution, to state that it adopted the strategy for reinforcing UNESCO’s action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict ‘with the understanding that its implementation will be carried out in full coordination and collaboration with concerned Member States and within the framework of United Nations bodies and their mandate’.

The UNESCO strategy, however, is not limited to the organisation of task forces of experts to contribute to UN peace-keeping missions. The two intertwined objectives of UNESCO’s response to the challenge posed by the systematic destruction of culture as a weapon of war are, on one hand, to strengthen of the ability of Member States to

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<sup>16</sup> Proposal by Italy and Spain to the Executive Council of UNESCO in March 2015 (see 196/EX Decision 169), then formulated by the Executive Council to the General Conference in April 2015 (see 197/EX Decision 170); the proposal was adopted, with small amendments, by the General Conference on the report of the Culture Commission at the 17th plenary meeting of its 38th session, on 17 November 2015 (see 38 C/Resolution 48).

<sup>17</sup> Declaration adopted on the occasion of the 39th session of the Committee, Bonn, 29 June 2015.

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prevent, mitigate and recover the loss of cultural heritage and diversity as a result of conflict, recognizing the fundamental role of local communities in acting as bearers and custodians of cultural heritage, on the other hand, UNESCO's response aims to incorporate the protection of culture into humanitarian action, security strategies and peace-building processes by engaging with relevant stakeholders outside the culture domain. With a view to preventing attacks, UNESCO will further develop its technical activities aimed at assisting Member States in identifying, mitigating and reducing potential risks. When cultural heritage is damaged, destroyed or at heightened risk, UNESCO will provide its assistance in support of first aid and mitigation measures, including consolidation of damaged monuments, enhanced security at museums and sites, as well as possible evacuation of cultural assets from sites, museums and other cultural repositories, where they are at risk. 'Depending on the needs and circumstances, this assistance may take the form of professional training, technical assistance and advice or direct interventions by UNESCO and international stakeholders, at the request of national authorities.'<sup>18</sup>

A recent case of direct intervention by UNESCO and the UN, on the basis of Security Council resolutions adopted pursuant to Chapter VII of the Charter that included the protection of cultural and historic sites within the mandate of a peacekeeping operation, is the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). Its positive results are recalled in the resolution of the General Conference adopting the UNESCO strategy. The mandate of MINUSMA included from the beginning, as detailed in Security Council Resolution 2100 of 20 April 2013, the support for cultural preservation, explicitly mandating the mission 'to assist the transitional authorities of Mali, as necessary and feasible, in protecting from attack the cultural and historical sites in Mali, in collaboration with UNESCO'.

5. The reinforcement of UNESCO's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict is adopted based on the conviction that the multi-faceted denial of culture and cultural diversity that the

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<sup>18</sup> See UNESCO General Conference, *Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict* (Doc. 38 C/49, of 2 November 2015).

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international community has been witnessing over the past decade, linked to aggressive propaganda, highlights 'how the destruction of cultural heritage is far more than a cultural tragedy and has become a security issue, and why the protection of culture cannot be delinked from humanitarian operations and must be a key component of any strategy for peace'.<sup>19</sup>

Before MINUSMA, action directed to the protection of cultural heritage had already been included in a Security Council resolution adopted on the basis of Chapter VII of the Charter. In that case, though, action was required from Member States, with the assistance of UNESCO and Interpol, to facilitate the safe return of movable cultural property that had been illegally removed from Iraq.<sup>20</sup> The widespread removal of cultural objects from Iraq, together with the inadequacy of the MultiNational Force (MNF) in tackling with cultural heritage protection issues, had painfully struck the international community, just as today's destructions. Not only diffused and massive looting of archaeological sites and of museums, including the National Museum in Baghdad, went on without MNF doing anything to stop it, but also the National Library was burned to the ground by Iraqi mobs, while MNF itself caused major damaging to the archaeological site of Babylon using it as a military base.<sup>21</sup> Such facts highlight the importance of an appropriate mandate and of adequate competences for the protection of cultural heritage.

Looting on a large scale and international trafficking of movable cultural properties is practiced by ISIS fundamentalists and other individuals, groups and entities associated with AL-Qaida as a source of funding to support recruitment efforts and to strengthen operational capability to organize and carry out terrorist attacks. The adoption by the UN Security Council of Resolution 2199, on 12 February 2015, which extends to Syria the prohibition of trade in cultural objects already in place for Iraq since 2003, is

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<sup>19</sup> *Ibid.*, para. 1.

<sup>20</sup> See Security Council Resolution 1483(2003), para. 7.

<sup>21</sup> See M.D. Thurlow, *Protecting Cultural Property in Iraq: How American Military Policy Comports with International Law*, in *Yale Human Rights and Development Journal*, 2005, pp. 153-187 and UNESCO, *Final Report on Damage Assessment in Babylon* by the International Coordination Committee for the Safeguarding of the Cultural Heritage of Iraq, 26.6.2009 (CLT/EO/CIP/2009/RP/114).

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defined by the Director-General of UNESCO as ‘a milestone in order to increase the protection of cultural heritage in Iraq and Syria’.<sup>22</sup>

A reference to Security Council Resolution 2199 has been introduced, during the debate in the Culture Commission, in the UNESCO General Conference Draft Resolution adopting the strategy for the event of armed conflict, as the Resolution is considered an important benchmark in the reinforcement of UNESCO’s activities to protect cultural heritage.<sup>23</sup> The Resolution does not only generally bind all UN Member States to take ‘all appropriate steps’ to prevent the illegal trade in Iraqi and Syrian cultural property, it also specifically binds States to prohibit cross-border trade in such items.

Differences in the normative implementation by States of the ban on the trade of cultural property can affect the effectiveness of the Resolution. It must also be taken into account that to exactly dating the exit from Iraq and Syria of the properties in order to assess if they are included in the ban is often extremely difficult. The reference to common model provisions that codify a procedure to carry out a thorough search on the origin of the property would certainly be of help.<sup>24</sup> The Director-General of UNESCO, while communicating Resolution 2199 to the Member States, reminded them of a number of existing tools to be used in the fight against the illicit trafficking of cultural property, namely: the Interpol’s Stolen Works of Art Database, the UNESCO Database of National Cultural Heritage Laws and the Emergency Red List of Cultural Objects at Risk, created by the International Council of Museums.<sup>25</sup>

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<sup>22</sup> See UNESCO Doc. CL/4100, of 6.3.2015. The inclusion of measures to be adopted by Member States for the protection of cultural heritage into Security Council resolutions adopted on the basis of Chapter VII of the Charter of the United Nations, that began with Resolution 1483(2003), is a clear evidence of the relevance of this issue for the international protection of peace and security (see F. Mucci, *La Risoluzione del Consiglio di Sicurezza delle Nazioni Unite n. 1483 del 22 maggio 2003: riflessioni sull'intervento diretto delle Nazioni Unite in materia di tutela dei beni culturali*, in P. Benvenuti and R. Sapienza (edited by), *La tutela internazionale dei beni culturali nei conflitti armati*, Milan, 2007, pp. 325-341.

<sup>23</sup> See UNESCO Doc. 38 C/INF.24, of 18 november 2015, Oral Report by the Chairperson of the Culture Commission Mr Arunas Gelunas (Lithuania) at the seventeenth plenary meeting.

<sup>24</sup> See NÉGRI, V., *Cultural Heritage through the prism of Resolution 2199* (2015) of the Security Council, Legal Study on the protection of cultural heritage through the resolutions of the Security Council of the United Nations, UNESCO, 2015.

<sup>25</sup> See UNESCO Doc. CL/4100 cit.

## INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE BY ISIS

An internationally very appreciated, specific competence in combating the illicit trade of cultural properties is that of the Department of the Italian Carabinieri for the Protection of Cultural Heritage (Comando Carabinieri Tutela Patrimonio Culturale), which will be an important component of the 'Italian National Task Force in the framework of UNESCO's Global Coalition Unite4Heritage', object of a Memorandum of Understanding concluded between Italy and UNESCO on 16 February 2016.<sup>26</sup> The Italian Task Force will be composed of highly-qualified experts in all areas pertaining to the safeguarding, rehabilitation and protection of cultural and natural heritage and of specialized officers of the Comando Carabinieri. It will be established under the coordination of the Italian Ministry of Culture and Tourism and with the participation of the Ministry of Foreign Affairs and International Cooperation, the Ministry of Defense and the Ministry of Education, University and Research. The task force will act in response to a request by a UNESCO Member State facing crisis or natural disaster; its functions and modalities of operation are conceived in the framework of the aforementioned UNESCO strategy for the reinforcement of UNESCO's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict.<sup>27</sup>

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<sup>26</sup> See *Memorandum of Understanding between the Government of the Italian Republic and the United Nations Educational, Scientific and Cultural Organization on the Italian National 'Task Force in the Framework of UNESCO's Global Coalition Unite4Heritage' for initiatives in favor of Countries facing emergencies that may affect the protection and safeguarding of culture and the promotion of cultural pluralism*, available on the official website of the Italian Ministry of Culture and Tourism at [www.beniculturali.it](http://www.beniculturali.it) (last access 19.2.2016).

<sup>27</sup> See *supra*, at para. 4.