

Strategy Research Project International Fellow

The Protection of Cultural Heritage during Armed Conflicts

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The Protection of Cultural Heritage during Armed Conflicts

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Abstract

The protection of cultural heritage presents a dilemma for every commander. The identification of historic buildings with military objectives has often led to the destruction of works of art, robbing humanity of pieces of its history. Over the last decades, culture has moved to the frontline of war, both as collateral damage and a direct target for belligerents who use the destruction of culture as a means to foster more violence, hatred, and revenge. This destruction strikes at societies over the long term, weakening the foundations for peace, hindering reconciliation when hostilities end. Recent conflicts in Mali, in Libya, Yemen, Iraq or Syria have demonstrated that the protection of heritage is inseparable from the protection of human lives, since the destruction of an artifact has become an integral part of a global strategy of ethnical cleansing, which seeks to eliminate all forms of diversity. In this context, military forces need to adapt and strengthen their tools, behaviors and skills to take into account the protection of heritage as an integral part of sustainable strategies to build peace and security.

The Protection of Cultural Heritage during Armed Conflicts

Ye were not form'd to live the life of brutes But virtue to pursue and
knowledge high.

—Dante Alighieri¹

The protection of cultural heritage presents a dilemma for every commander. The identification of historic buildings with military objectives has often led to the destruction of works of art, robbing humanity of pieces of its history. International humanitarian law has sought to stop such indiscriminate behavior and increase sensitivity, but such an instrument of justice has often shown its weaknesses, especially when those who commit such crimes are non-state actors, driven by ideological motivations.

Cultural heritage reflects the life of the community, its history and its identity. Its preservation helps to rebuild broken communities, re-establish their identities, and link their past with their present and future.² Increasingly, cultural heritage is seen as an instrument for peace and reconciliation, since its protection and conservation can play a key role in overcoming the sense of loss and displacement caused by conflict.³ It reveals the highest intellectual effort of a society, directed to realize a symbolic representation to pass to future generations over time, with its beliefs, customs, languages, and arts, around which the values of a people can be summarized.

Over the last decades, culture has moved to the frontline of war, both as collateral damage and a direct target for belligerents who use the destruction of culture as a means to foster more violence, hatred, and revenge. This destruction strikes at societies over the long term, weakening the foundations for peace, hindering reconciliation when hostilities end. Recent conflicts in Mali, in Libya, Yemen, Iraq or Syria have demonstrated that the protection of heritage is inseparable from the

protection of human lives, since the destruction of an artifact has become an integral part of a global strategy of ethnical cleansing, which seeks to eliminate all forms of diversity. In this context, military forces need to adapt and strengthen their tools, behaviors and skills to take into account the protection of heritage as an integral part of sustainable strategies to build peace and security.⁴

Furthermore, when the role of antiquities in a conflict becomes part of a broader war fighting strategy, the behavior of insurgents and states will not be irrational. It may not be driven by hatred, but it can be calculated and political. It provides a means to demonstrate territorial dominance, by showing that the former regime, the former occupants, cannot protect their sites. Forcing people to escape from their territories to create a homogenous population is an instrument of state-making.⁵

Conventional armed forces should protect cultural heritage to comply with international laws, but this protection may be also a tactical and strategic objective in order to ensure mission success. In such a context, an attitude of protection, put in place during a conflict or an occupation by a military unit, can be a force multiplier. In fact, a lack of protection of cultural sites during war or peacekeeping operations could cause a decline in the acceptance of military force by the host nation, as well as criticism from the Western press, and consequently an attenuation of the domestic consensus.⁶

This strategic research project, after providing a legal framework and a digression of motivational aspects underlying the phenomenon of the destruction of World Heritage, will examine the unresolved issue of the partial ineffectiveness of international law, despite the mass of legislation on the matter, highlighting some

current and potential mitigation strategies, where the role of commanders and armed forces play a fundamental part.

Legal Framework

In the late nineteenth century, the United States became the first nation to codify the protection of cultural heritage. The primary goal of the Civil War was to reestablish authority over separated states, therefore preserving such sites was considered crucial to maintaining the national identity. The Instruction for the Government of Armies of the United States in the Field, better known as the Lieber Code,⁷ was the first written regulation for a standing army that created explicit protection for churches, hospitals, and museums of the fine arts and of a scientific character.⁸ An important humanitarian effort, although blurred by attempts to eliminate Native American Culture, the Lieber Code established a balance between military necessity and human dignity in several provisions. Most notably it proclaimed that military necessity does not admit cruelty, becoming the basis for certain international treaties and similar national military codes in other countries.⁹ A new sensibility that can be identified in the same words of Abraham Lincoln:

With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan, to do all which may achieve and cherish a just, and a lasting peace, among ourselves, and with all nations.¹⁰

Since then, international agreements have been promulgated to regulate the conduct of war. Today, three sets of treaties form the framework for protecting cultural heritage in time of war: The Hague Conventions of 1899 and 1907; the Geneva Convention of 1949 and its three Protocols; and the Hague Convention of 1954 and its

two Protocols.¹¹ These international treaties are part of wide overview of the *jus in bello*¹² (whether a war is conducted justly), known also as International Humanitarian Law (IHL), the branch of international law that disciplines behaviors during armed conflicts. The complementary branch of international law that concerns the use of force among states is the *jus ad bellum*, a set of criteria to be consulted before engaging in war in order to determine whether entering into war is just and permissible.

As the first international agreement with a universal scope exclusively focused on the protection of cultural property in times of armed conflict, the 1954 Hague Convention has made a tremendous contribution, becoming the main tool for the protection of cultural heritage. Specifically, it goes beyond the limitations imposed by the “*si omnes*” clause, which was usual in many classical international law treaties. This clause provided that the obligations of a treaty would only be applied to a situation when all states involved in an issue had been states parties to the subject treaty. It created a mutual, reciprocal legal relationship with all other states parties, limiting strongly the real effectiveness of international norms.¹³ Moreover, it may be applied not only in case of armed conflict *tout court*, but also in case of not-declared war, or mere occupation.

In particular, in its preamble the Convention states that 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.¹⁴ The conservation of cultural heritage has, consequently, a great importance for all people of the world. This concept represented a big step in the development of this legal issue, since the previous legislation had not linked the loss of historic sites to the impoverishment of the culture for all mankind.

The Convention comprises two concepts, the safeguard and the respect of the cultural property.¹⁵ By safeguard it means that “The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict.”¹⁶ Furthermore, actors must respect property situated within their own territory, as well as in the territories of other countries, and to “prohibit, prevent and put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property.”¹⁷ Moreover, this Convention includes a distinction between cultural artifacts deserving generic protection, and other historic sites susceptible of special protection. Those included on the UNESCO World Heritage List are indicated by a distinctive mark (figure 1).¹⁸

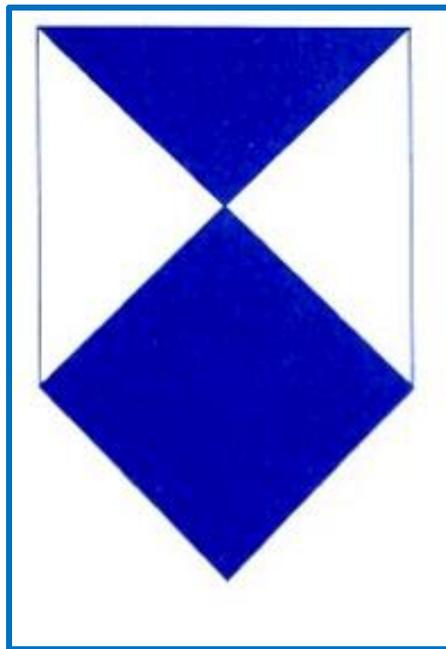


Figure 1. Distinctive Mark for the Protection of Cultural Property¹⁹

Following challenging conflicts in the 1990s in Iraq and the Balkans, the Hague Convention was strengthened and adapted with the adoption of the Second Protocol in March 1999, which enhanced the level of protection of cultural property, and presented

new operational mechanisms for its implementation on the ground.²⁰ In detail, the Second Protocol included a waiver on the basis of military necessity. Such a waiver may only be invoked to direct an act of hostility against cultural property when and for as long as: (1) that cultural property has, by its function, been made into a military objective; and (2) there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective.²¹

Furthermore, such norms include immunity for cultural property placed under “enhanced protection”, when it meets the following three conditions: (1) it is cultural heritage of the greatest importance for humanity; (2) it is protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection; (3) it is not used for military purposes or to shield military sites.²² To this end the Second Protocol provides criminal sanctions in case of violation of this immunity or other serious violation of its provisions.²³

Conventions and legal instruments are necessary, but they are not enough to hinder increasingly complex situations, inducing International Community to enlarge and rethink traditional approaches about this issue. In particular, military forces require special attention and must possess the capacity to ensure the protection of heritage in difficult circumstances, because most actors in the global arena do not follow these principles. They ignore limitations imposed by international law, acting as war criminals beyond any ethical rules. This special attention should concern every moment of a military operation, from the operational planning process until the end of the execution, by adopting specific measures of prevention, which could include the development of a

targeting list devoid of cultural sites, or measure of deterrence through a more direct safeguard of the cultural heritage from illegitimate attacks.

Motivational Framework

There is something emotional in the encounter (or clash) of civilization. Every culture plunges its roots in our limbic system, where people's emotions, behaviors, motivations and long-term memory have their origin. Hence, like a tree without roots, people cannot survive deprived of their emotional nourishment, not being able even to communicate, to feel emotions, and to share feelings, without a cultural heritage. In such a context, an encounter of civilizations should raise knowledge, not threaten the identity of peoples. However, precisely these cultural differences have led to the destruction of entire civilizations, to genocides, to holocausts, to the systematic elimination not only of peoples, but also of their artifacts, symbols, and buildings.

Reasons of the Destruction of Cultural Property

History is full of these events, in Egypt, during the Amarna period, the monotheist Pharaoh Akhenaten instituted a campaign of intolerance towards traditional gods. Therefore, many ancient temples and monuments were demolished. In the same way, when the Ramessids (19th dynasty) later became regent, they restored the previous faiths, by trying meticulously to erase from the history all traces of their “heretic” ancestors and purging the same memory of Akhenaten.²⁴ Ironically, the destruction of Amarna culture preserved it, as happened to Pompeii after the eruption, expanding the story of this mysterious dynasty in the dimension of myth. More recently, revolutions and changes of regime, whether through uprising of the local population, foreign invasion, or a combination of both, are often accompanied by the public destruction of statues and monuments. Also known as *damnatio memoriae*,²⁵ this ancient Roman

practice of official obliteration of the memory of a specific individual, was adopted throughout the radical phase of the French Revolution. This practice, supported by members of the government as well as the citizenry, tried to eradicate any memory of the Old Regime, destroying numerous historically significant works of art.

Even in normal conditions, without revolutions or wars, such works of art are often considered the heritage of a previous power, used by different groups of people over time. However, the history is not over, and often, this heritage, far from being the simple trace of a resolved conflict, is perceived as the sign of the current power. A sign that requires for its interpretation a common culture, able to share the same ethical and aesthetic values. Expression of an art that using a universal language, therefore, should not only contribute to the conservation and transmission of material goods, but also of interpretative codes essential for its survival.

Sometimes, due to the elapsed time between previous and current custodians of the cultural heritage of a place, the interpretation of the signs is affected by a lack of homogeneity of hermeneutic codes. In this case the building process of a community might imply the exclusion of the previous one, in which new actors may no longer identify themselves. The previous culture will be evaluated negatively, as an old power deprived of its humanity, then the “sign” will become a threat and the work of art a target of deliberate destruction. During the Middle Ages, for example, the significant importance of the Roman Empire was not recognized, and many monuments, such as the Colosseum, were plundered of their marbles as a sort of quarry. Successively, when the interpretative codes related to the importance of such heritage for the identity of the

Italian culture were recovered, even the related respect and protection to these artifacts were restored.

Several motivations characterize the destruction of an historic site, but the most frequent components of such causes may have a military, economic, and symbolic nature. Although the boundaries among these three types of justifications may be fluid, and each of them may be linked to the other two, as a mixed phenomenon, nevertheless, they may serve as heuristic devices. In particular, the military motivation of the destruction is related to an overlap between a military target and a historic or religious building, according to the above-mentioned concept of military necessity. By contrast, the economic motivation arises when an appreciated masterpiece is not considered for its artistic and ideal value, but only through the raw material in which it has done. Consequently, it may be sacrificed for the realization of an item in a different form, of less value, but more saleable, as it happened in the past through the melting of a high number of sacred works of Egyptian or Pre-Columbian art to obtaining the gold with which they were made. Similarly, experts suggest that the Islamic State may have melted jewels from museums of Iraq and Syria to get gold for their trafficking and to finance their military campaign.

Symbolic Motivations

The motivation for the destruction of cultural property, finally, may be exclusively symbolic, driven by ideological, social, religious, and political beliefs of groups of individuals, who have used their power to humiliate the cultural identity of other people over centuries. When the Romans razed Carthage (II century B.C.), no temple or tomb survived their ferocity; even salt was scattered on its ruins in order to prevent even a blade of grass from growing again. This kind of motivation may also explain the

demolition of the Jewish Holy Temple by the Babylonian king Nebuchadnezzar in 586 B.C., the destruction of icons in Byzantium by the Emperor Lion III called The Isaurico, or more recently the obliteration of two majestic Buddha statues by Taliban in 2001 (figure 2).²⁶

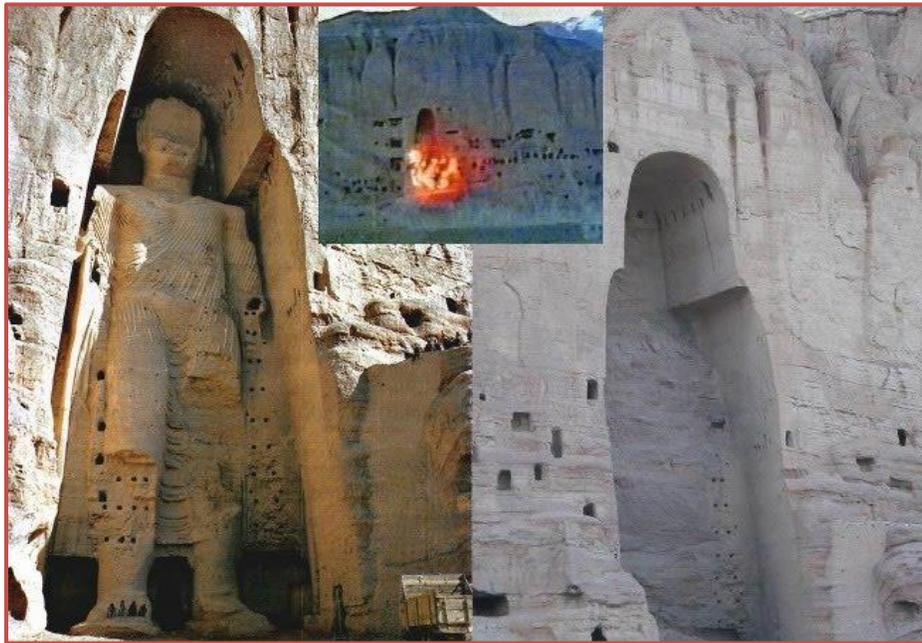


Figure 2. Destruction of Buddha Statues by Taliban in 2001²⁷

Demolition work at Bamiyan started at the beginning of March 2001 and lasted several weeks, because these two huge statues, destinations of pilgrimage for Buddhists traveling the Silk Road even after Islam became the predominant religion in the region, proved remarkably solid.²⁸ On the basis of idolatry²⁹ and according to the Salafist view of shirk (complete rejection of polytheism),³⁰ Taliban placed anti-tank mines between the Buddha statues' feet, bored holes into their heads and packed them with dynamite. The world watched this symbolic violence in impotent horror.

Actually, the statues had become an allegory for unhappy love, a foreshadow of Romeo and Juliet set in Hindu Kush.³¹ He was Salsal, prince of Bamiyan; she was

Shamana, a princess from another kingdom. Their love affair was impossible so, rather than live apart, they turned into stone, beside each other for all eternity.³² Local people had completely forgotten they were figures of the Buddha, but the Taliban and their explosive reminded them of the original story, affecting the strategic advantage the Taliban wanted to obtain in targeting a cultural symbol around which a different social identity could have developed.³³ In 2003, this event encouraged the UNESCO to adopt the Declaration concerning the Intentional Destruction of Cultural Heritage, which reiterated the same concept expressed in 1954, which asserts states should take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located.³⁴

In addition to this example of modern barbarism, other terrorist organizations have continued to destroy historic sites throughout Africa and the Middle East. In 2010, two suicide bombers carried out a deadly attack on a Sufi shrine in the eastern Pakistani city of Lahore.³⁵ In 2012, a shrine in the Libyan capital Tripoli venerating a Sufi Muslim saint was partly destroyed after a series of attacks blamed on ultra-conservative Salafi Islamists.³⁶ Even Timbuktu, known as the city of 333 Saints and a UNESCO Heritage Site, was the victim of several attacks by Islamic rebels, who claimed such shrines were forbidden.³⁷ In 2013, over 40 sacred sites in Tunisia were attacked by militant Islamists, and in 2015, the Bardo's collection of priceless historical cultural gems, was damaged in a terrorist attack, during which also 23 people lost their lives and other 47 were wounded.³⁸ UNESCO labelled the acts as war crimes and asked the International Criminal Court (ICC) to investigate.³⁹

These acts of brutality committed against cultural heritage presented new challenges to the international community, because of their ideological nature and, although the Second Protocol of 1999 gave to these sites the same protection during internal conflicts as well as during international conflicts, it can do very little against groups that refuse to abide by international law.⁴⁰

Military Necessity

Oftentimes the exigencies of war necessarily take primacy over the preservation of cultural property, but emerging norms and sentiments within the international community have signaled an increased desire on the part of states to preserve, for posterity, the cultural heritage of mankind. Thus, the critical question becomes: how do states balance these seemingly irreconcilable ends, and to what extent is the current state of the international legal regime able to facilitate an adequate response to the protection of cultural property during an armed conflict?⁴¹

During the Italian campaign, the commander of the 5th Army, Lieutenant General Mark Clark, chose to strike for Rome from the Anzio beachhead, after the fall of Monte Cassino, rather than chase after the retreating German forces as he had been ordered by the British officer in overall charge, General Sir Harold Alexander. This decision has since been described by eminent American military historians “as militarily stupid as it was insubordinate”.⁴² In fact, after the fall of Rome German forces fell back to the so-called Gothic Line of defense, running across Italy just north of Florence. The Allied did not breach this line until September 1944. The Allied front then stalled again until a breakthrough in April 1945 when their final assault broke German resistance and led to capitulation on 2 May. Clark’s command of the Fifth Army and his decisions concerning the liberation of Rome have been the focus of contemporary and historical criticism.

Many of his peers, including Eisenhower and Patton, frequently doubted his ability and judgement because of his seemingly selfish actions in Italy.⁴³ Beyond any strategic and tactical reasons and despite the high cost in human lives descending from this choice, marching into Rome saved an incredible amount of unique treasures that still can be admired, safeguarding the same Italian identity.

War and conflict have always involved the depredation or destruction of cultural goods, either because a building or an artifact is an ideological and economic object, or more often, because it may coincide with a military target. The latter is better understood in international law; the Hague Conventions of 1899 and 1907 forbid “as far as possible” looting and destruction of enemy properties, except in case of “military necessity”.⁴⁴ Discretion in the use of the force, related to the principle of military necessity, implies the acknowledgement of the eventuality that cultural property may coincide with a military target; in such a case the limitation is not binding.⁴⁵

This means that cultural property can be targeted as a legitimate military objective when one party to the conflict deliberately operates from within or closely situated to a building or site that is designated as having cultural or historical significance.⁴⁶ In accordance with the Hague Convention, it is a violation of international law for combatants to use cultural property for such military purposes unless it is of absolute necessity, and that the military objectives sought cannot be achieved by any other means.⁴⁷ However, once this has occurred, the item of cultural property loses its special status and can become a legitimate target for an opposing military.⁴⁸ For sites registered under the regime of mentioned enhanced protection as provided by the

Second Protocol of 1999, such objects cannot be used for military purposes under any circumstance.⁴⁹

In the past, the reason for the war prevailed on the law of war. For example, during the World War I, the Cathedral of Reims in France was considered tactically dangerous for the aim of the German Army advance, because its height could be used by French soldiers as an observatory around the city. Therefore, it became a target of German artillery, which completely destroyed its roof, while a fire spread for the entire structure.⁵⁰ Nevertheless, while the German obtained their aim removing an insidious observation point, strategically this monument became known as one of the strongest means of the Allied anti-German propaganda. Its destruction led to a strong wave of emotion across France, and it was helpful to re-launch the counter-offensive, strengthen the hearts and win the war. This lesson teaches that a commander in his decisions has to take in consideration 2nd and 3rd order effects, by assessing carefully all the consequences of actions against a symbol of national identity, beyond any historical value at stake and despite limitations imposed by international law.

Motivations behind a military action could waive to the limits imposed by international law of armed conflict, thus making humanitarian norms ineffective. As it happened during the First World War, when relying on the imperious principle of military necessity, belligerents requisitioned or destroyed neutral goods, although there were rules for their specific protection.⁵¹ A first downsizing of military necessity came from the verdict of the Nuremberg Tribunal,⁵² which applied some limits to this principle. In particular, according to this well-known sentence, military necessity could have never justified the killing of civilians and the destruction of villages and towns, as well as the

ruin of cultural property. But the dilemma still exists for the following reasons: first, military necessity generates imperatives; second, the imperatives emanating from military necessity inevitably conflict with those emanating from humanity; and third, all IHL rules embody the military necessity-humanity interplay in the process of their norm-creation.⁵³ This means that today, under this renewed sensibility, military necessity justifies an action normally forbidden only if it is explicitly included in a legal norm.⁵⁴ A prohibitive function, which may be more or less wide, depending on the authorization provided by the law. In this regard, for example military necessity must take into account the proportionality principle, according which the choice of ways and means of warfare is not unlimited.

Military necessity is a central concept of the international humanitarian law, since it waives the norms that limit the freedom of states during armed conflict and defines whether a military objective is legitimate and, consequently, whether a war crime has been committed. In 1999, in order to resolve the interpretation between the legitimate and illegitimate objective, the International Community provided a definition of such military objective by the second Additional Protocol, which stated: "military objective" means an object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁵⁵ The definition emphasizes, through the words effective and definite, that the contribution made to military action by the cultural property, as military objective, and the military advantage offered by its targeting must both be concrete, not just theoretical or speculative.⁵⁶

A historical example related to this dilemma can be identified in the destruction of the Stari Most Bridge in Mostar (Bosnia and Herzegovina).⁵⁷ On 9 November 1993, during the Croat-Bosniak war, a spokesman admitted that the Croatian Army deliberately destroyed the Mostar's bridge, claiming that it was of strategic importance. The bridge was the only access to a source of drinking water which people retrieved by scurrying across at night under threat of sniper fire. It was also the main route to the places where the front line crossed into west Croatian Mostar.⁵⁸ Academics have argued that the bridges held little strategic value and that its shelling was a deliberate cultural property destruction. They term the destruction an act of "killing memory", in which evidence of a shared cultural heritage and peaceful co-existence were deliberately destroyed. This event teaches that there is always a different narrative provided by one side and the other in explaining and justifying an action against international law and that it is not easy to identify the real concrete advantage in targeting a historic site for military purposes.

Therefore, the difficulties of balancing the interests of the military in an armed conflict with the protection of cultural property has been permanent throughout history.⁵⁹ No belligerent, even with good will and love for art, could enforce a rule that paralyzed militarily its unit. No belligerent has in fact done so in the past, despite the Conventions and the rise of a new conservationist sensibility. The balance of the European artistic and cultural heritage, after the end of the two world wars, was certainly not encouraging. The Reims Cathedral, the cities of Cologne, Dresden, and Warsaw were all victims of the discretion of military commanders. In 1944, General Dwight D. Eisenhower issued orders requiring a showing of military necessity, not just military convenience, when targeting a historical site. In the aftermath of the Allies destroying the *Montecassino* abbey in Italy

(figure 3), he wrote that in some circumstances the success of the military operation may be prejudiced in the reluctance to destroy these revered objects, and even if Italy had contributed greatly to U.S. cultural inheritance, he warned his commanders that the lives of soldiers would always be worth more than an historic building.

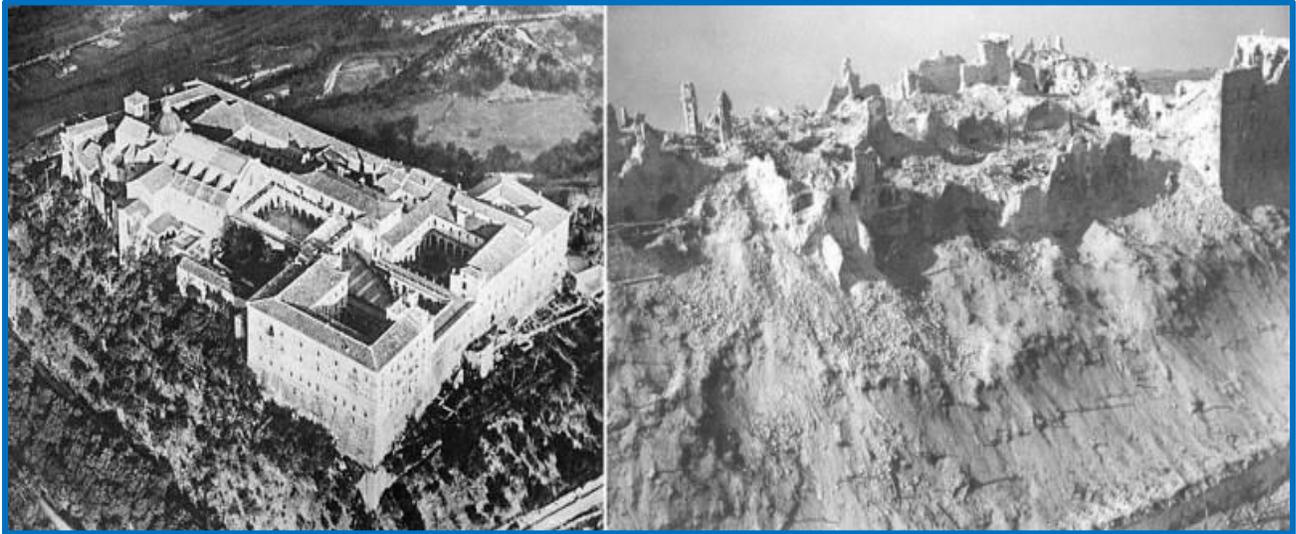


Figure 3. Montecassino Abbey Before and After Bombing⁶⁰

However, there are circumstances in which damage and destruction are not necessary and cannot be justified.⁶¹ In fact, before D-Day, Eisenhower had issued another memorandum in which he instructed his commanders about the importance of whatever historic monuments they came across in Europe, since such sites epitomized the very heritage they were fighting for.⁶² The United States also created the Monuments, Fine Arts, and Archives Division (MFAA), also known as Monuments Men, in the Civil Affairs branch of the Army, with the purpose of advising land commanders about the current status of historic sites. They developed lists of protected monuments and historic buildings, by providing pilots with specific maps of no strike zones, enabling military commanders to limit the destruction of valued sites throughout Europe.⁶³

Effectiveness of International Law

The Rome Statute is an innovative legal design, a twenty-first century institution modeled to address the current threats and challenges. Its goal is to end the impunity for the most serious crimes of international concern and to contribute to the prevention of such crimes.⁶⁴ The International Criminal Court has no police and no army, but it is able to address international crimes with the strength of its legitimacy.

Case Study: International Criminal Court. The Al-Mahdi Case⁶⁵

The Al-Mahdi case of the International Criminal Court in The Hague, concluded a historical short trial under Article 8(2)(e)(iv)⁶⁶ of the Rome Statute.⁶⁷ This case is related to Ahmad Al-Faqi Al-Mahdi, a member of Ansar Dine, a mainly Tuareg movement that in early April 2012, following the retreat of Malian armed forces, took control of Timbuktu (Mali), along with al-Qaida in the Islamic Maghreb (AQIM). In June 2012, Al-Mahdi, serving as the leader of the “Hisbah” (morality brigade),⁶⁸ led a campaign to destroy nine of the sacred mausoleums, and a symbolic mosque door located within Timbuktu. The demolished mausoleums contained the human remains of highly revered Islamic intellectuals, while the mosque door, which was violently split from its frame, was meant to stay closed until the final days of the world.⁶⁹

During the trial, ICC chief prosecutor Bensouda, after enunciating the accusations, highlighted that at stake were not just walls and stones, but the “dignity and identity of entire populations, and their religious and historical roots, while the magnitude of loss was felt by the whole humanity.”⁷⁰ The trial of Al-Mahdi took place on 22-24 August 2016, during which he made an admission of guilt. On 27 September 2016, Trial Chamber VIII unanimously found Al-Mahdi guilty beyond reasonable doubt as a co-perpetrator of the war crime against sites of historical, religious and cultural

significance in Timbuktu. The Chamber sentenced him to nine years' imprisonment, in consideration of mitigating circumstances.⁷¹

The Al-Mahdi trial marks a number of firsts for the international justice and the ICC. Al-Mahdi was the first Islamic radical to be put on trial at an international criminal tribunal, and it was the first time that anyone charged by the ICC has pleaded guilty.⁷² For the first time in the history of the Court, someone has been prosecuted for destroying cultural sites as a standalone war crime. Earlier international tribunals have charged individuals with criminal destruction of cultural heritage, but only as an accompanying crime to more recognized offences such as murder and torture. Typically the International Criminal Court seeks to bring justice to those who have suffered from crimes against humanity, genocide, and violations of the law of war. Why did the Court allocate precious resources to Al-Mahdi's prosecution for the destruction of cultural heritage?

Having prosecuted Al-Mahdi crimes, the International Criminal Court has sent a significant message to the people of Timbuktu, explaining them that their culture and their history are important and have a significant value for International community. In doing so, the court hoped to help to address the impact of Ansar Dine's attack on the identity and cultural legacy of the significant Muslim population in Mali.⁷³ Seeking accountability for crimes of this nature also makes Ansar Dine and other similar groups understand that the destruction of cultural heritage as a means of targeting a specific population will not be tolerated anymore.⁷⁴ The sites that Al-Mahdi is accused of destroying were, in many ways, central to the integrity of Timbuktu. This irreversibly lost pieces of Malian heritage were central points of unity and collective identity in the city.

The fact that Al-Mahdi has expressed public remorse for his crimes in the course of his trial could perhaps facilitate post-conflict reconciliation in Mali. Indeed it was one of the explicit goals of the Chief Prosecutor in pursuing this case through a process that she called “truth and catharsis”.⁷⁵

Can this trial be considered a victory for ICC? Certainly, the sentence has been innovative and important for international justice. The trial has been short and efficient, unusual for a court criticized in the past for its unjustifiably long proceedings.

Furthermore, the rapidity in the process enabled the court to save also precious financial resources. Surely, the guilty plea by the accused facilitated such efficiency, while its ostensible cooperation with ICC might help in bringing other perpetrators of such crime to justice.⁷⁶

Unfortunately, the International Community is not able to stop most acts of violence, and apply the law. This happens because (1) under the Rome Statute, the ICC can only investigate and prosecute the four core international crimes in situations where states are “unable” or “unwilling” to do so themselves; (2) the court has jurisdiction over crimes only if they are committed in the territory of a state party or if they are committed by a national of a state party. Nevertheless, an exception to this rule is that the ICC may also have jurisdiction over crimes if its jurisdiction is authorized by the United Nations Security Council. Generally, enforcing international law is not as easy, due to the nature of actors involved (Countries and State) or because the subjects at stake do not recognize such limitations imposed by International Conventions, especially in a context of not-state actors and asymmetric warfare. The trial at stake is a special case, a case against a single individual who confessed to be guilty without any significant evidence.

New Threats

When war becomes the absolute manifestation of enmity, every wicked behavior may be possible. Even if, in *Von Kriege*, Clausewitz describes “Absolute War” as a philosophical abstraction, a logical fantasy, that is impossible in practice, because it is not directed by political motives or concerns, the actors involved in a conflicts may exercise a great influence on their methods of fighting, which can become a pure and deliberate act of violence, without any moral and ethical moderations.



Figure 4. Destruction of Palmyra⁷⁷

This is what usually happens in relations to the Islamic State and all forms of terrorism. The systematic destruction of Palmyra by the Islamic State (figure 4), in addition to the incalculable human cost of the conflict in Syria, requires some considerations on the abnormal ratio, underlying that conduct, which can also help in identifying the restrictions that international community must constantly face in applying the IHL. These terrorists cannot be associated with any forms of national freedom movement or self-determination of peoples; instead they can be linked to radical movements, the distinctive feature of which lies in the will to achieve a “cultural

cleansing”. According to international law, they are criminals of war and, thus, they do not deserve special protection. The Islamic State is not a “State” in classical term, to which international rules refer for their applicability, but a group of individuals who claim a territory as their own, without any state authority in charge of preserving historic sites within such borders. Therefore, this ambiguous situation creates difficulties in the application of sanctions as well as huge complications in identifying the perpetrators of such criminal behaviors.

While modern nations need the consensus of the people to engage in a military action, carefully explaining the reasons of a conflict, establishes the political objectives defined by Governments; in the same way the Islamic State uses pervasively media and social networks to elevate the importance of its narrative. By providing misleading values content to their actions, their strategy, a mix of propaganda and sincerity, distorts the same principles of Islam, trying to get consensus from a well-defined audience, highlighting also the clash of values through the destruction of archaeological sites, in order to recruit supporters and achieve their long-term objectives. The demolitions are, in fact, meticulously planned, carefully announced to the media around the world and cynically documented in all their phases as an act of defiance against the United Nations and the International Community.

International rules are a legacy of the past, a transposition of shared principles of the Middle Ages, when under the common Christian religion, it was - with some exceptions - natural to protect churches and monasteries during a conflict; a fundamental principle respected by people who had the same culture and honored the same God.⁷⁸ In that time, enemies were “righteous enemies” and works of art and

culture had an implicit “military neutrality”, as did every religious building belonging to the same Christian culture. However, the same respect was not applied during the crusades, when the respective enemy was seen as a demonic manifestation, which has to be eradicated with every means available.

As the evolution of chivalry code of the Middle Ages, the International Community has introduced norms deriving from the Enlightenment and humanitarian principles. Nevertheless, due to the absolute enmity typical of asymmetric conflicts, humanitarian criterion seems to face a crisis. In such a context, despite the legislative activity carry out by the International Community reveals all its limits, paradoxically the list of protected artifacts both tangible and intangible becomes wider, trying to include almost everything: cultural property, traditions, and knowledge.

Hence, the problem is not related to the formation and definition of new norms, but it concerns the legal certainty of the application of already existing norms. In fact, the first gap is the reference of international humanitarian law to the internal legal system of the State where the illegal activity happened, in order to provide concrete sanctions. Therefore, if the related penal system of that State is soft, or not able to impose appropriate punishments for the destruction of cultural property, such procedures will not succeed.

To sum up, there is a further asymmetry between the behavior of the terrorists, who move outside of rules, and the international community, represented by the Criminal Court, which should protect property but has limited resources. The Al-Mahdi’s case has been the exception, a successful trial due to the availability to collaborate shown by the offender, conduct that has enabled the Court to make a step towards legal

certainty, although balanced on the other hand by a light punishment, if compared to the damage suffered by the world culture.

Mitigation Strategies and Recommendations

The variety of factors that can motivate actors to target cultural property are countless. Cultural heritage should be preserved by the international community both from the actions of conventional armed forces during symmetric conflict, as well as from propaganda activities of terrorist organizations. Future efforts to prevent the destruction of cultural heritage of shared value for all of humanity will necessarily depend on the political will and foresight of the international community to prioritize and insist on its protection.

International community (IC) should rely on its own power's instruments (Diplomatic, Informational, Military, and Economic) to face these common threats. In such a case, the effectiveness of these instruments depends on the willingness of states to give them efficiency. Today, the elements mainly used by international community are the diplomatic and informational ones (soft power), since the IC works by trying to get the widest possible consensus. Nevertheless, implementation of international law can be achieved only through suitable financial and military resources (hard power).

The effectiveness of international norms, therefore, can be obtained either through the employment of resources provided by individual states over time, as in fact it is currently the case, or through the establishment of a permanent structure adequately supported and able to act on behalf of international community. Concerning the protection of cultural heritage, this structure should provide suitable, feasible and

acceptable strategies both during the preventive phase and the coercive phase, namely before and after the destruction of a work of art.

Prevention Phase

A chance to preserve artifacts and monuments from criminal behaviors may arise from prevention, which should be implemented in the early stages of strategic planning. The prevention phase may include: (1) awareness of states and (2) education measures.⁷⁹

Awareness of States

States should ratify the UNESCO Conventions and their related Protocols, as well as the Rome Statute or accept its jurisdiction for crimes against cultural heritage in order to fight perpetrators of such destruction. A complete worldwide recognition and inventory of cultural property should be developed, while the use of satellite systems could be promoted to evaluate the extent of potential damage to historic sites during conflict. Bilateral and multilateral agreements should be concluded and strengthened in order to provide legal measures of mutual assistance in investigations, prosecutions and judicial proceedings. Furthermore, in line with relevant UN General Assembly and Security Council resolutions, information, deriving from intelligence sources, should be shared on preventing individuals or groups to commit intentional destruction of the cultural heritage.

Furthermore, the International Community should create both a communication strategy and a wide risk assessment for World Heritage, in order to consider measures that can be taken before a conflict breaks out. Developing a risk management strategy (figure 6) involves: (1) consideration of potential threats; (2) developing strategies to prevent foreseeable problems arising; (3) mitigating threats where possible; (4) training staff to deal with emergencies; (5) developing contingency plans if threats occurs.



Figure 6. Risk Management Process⁸⁰

Education Measures

As part of the education measures, it will be necessary to define the role of decision-makers during military operations, namely the commanders. Their excellent strategic military capabilities are not usually accompanied by an adequate historical knowledge, since the planning process is influenced by a lack of sensitivity regarding collateral cultural damage. The study of history educates the mind of commanders, or, more accurately, guides them in their self-education just as a wise teacher guides and stimulates young men’s intellectual development.⁸¹ Even the father of the Army War College, former Secretary of War Elihu Root in 1901 declared that to cope with the complexity of war, military leaders, “above all other, should be familiar with history.”⁸² Therefore, only a specific education may help the commander make choices characterized by discretionary actions. During the planning process, on the basis of this historic knowledge as well as specific circumstances, the commander will be able to conduct assessments in order to define if a target is legitimate and whether the sacrifice of that objective will yield an effective military benefit. In fact, the art of war is not an exact science, but as art, it may be declined in several alternative courses of action, all

in the same way able to achieve the target, but with different level of risk and mitigation measures concerning the attenuation of collateral damage.

The emergence of historical sensibility will humanize military intervention, by giving the perception that deliberate attack on the cultural heritage could be classified as persecution. This term may be used not just in relation to people, but also to monuments and artifacts, since they are capable of ensuring the well-being of peoples for their supra-value, as well as help humanity to define its genesis and its dignity.

Education, training and specialization of military personnel, according to their role and rank, may become a multiplier of efficiency. This preparation may assist appropriate assessments during operations, and it should give soldiers tools to work closely with international, national and local authorities in charge of the protection of World Heritage. In such a context, the regulatory instruments of UNESCO on cultural heritage highlight the need for all states, through specific education and training programs, to strengthen respect and admiration also of military on their own cultural assets. Therefore, once employed abroad to carry out any kind of activity included in the spectrum of military operations, combat units must be previously instructed on the historical and archaeological sites in their area of responsibility.

Some efforts have been made to achieve these results. In 2013 UNESCO conducted the first training course on the protection of Mali cultural property, providing such principles to military and police officers, and civilian staff of Benin, Côte d'Ivoire, Egypt, France, Romania, Rwanda, Togo and the United Kingdom, as units that were taking part of the UN mission (MINUSMA).⁸³ Furthermore, in 2006 in collaboration with the Combatant Command Cultural Heritage Action Group (CCHAG), the Center for

Environmental Management of Military Lands (CEMML) developed a deck of playing cards that feature information and photos (figure 7) about culturally rich sites and historic artifacts in combat zones. These cards have been distributed to deployed U.S. soldiers over the last years, to provide both entertainment and subtle education about the significance of protecting cultural heritage.



Figure 7. A Cultural Playing Card⁸⁴

Coercive Phase

The coercive phase concerns mainly the constitution of transnational military organizations as well as the reinforcement of the ICC and other international institutions.

Currently, international relations are often governed by anarchy, the idea that the world lacks any supreme authority, while the U.S. tries to compensate this deficiency with its presence. Although a superpower, it is also a nation with its own interests, and therefore not in charge of solving all the problems of humankind. In such a context, international community should create a permanent military and police organization, a coercive power under the United Nation to resolve international disputes, enforce law and in this case help states in the protection of cultural heritage. Moreover, this organization should convey the evidence from the historic site, where the damage

occurred to the International Criminal Court or provide assistance to the host nation in facing threats against its cultural heritage.

This strategic option related to the creation of a transnational armed force able to face global threats, could be evaluated in terms of feasibility, acceptability, suitability and related risk.

- **Feasibility:** the option requires significant financial resources, but such economic efforts would be completely offset by favorable outcomes deriving from specific deterrence activities related to the protection of cultural heritage. Furthermore, the amount of money should be guaranteed by the United Nations through a special charging of all member states.
- **Acceptability:** the option could find broad consensus in the world population, due to the efforts of protecting the identity of weakest states by international community as a whole; on the other hand superpower nations could feel themselves downsized internationally in their leverage and therefore they might hinder the initiative.
- **Suitability:** the option is suitable since it focuses its attention on the implementation of one of the most powerful instrument of power, namely the military. Nevertheless, such option should be integrated with efforts provided by other international institutions as well as by host nations in order to become truly effective.

The **risk** related to this option concerns the perception of superpower nations in losing their influence. Therefore, it should be implemented through a wide media campaign and a huge diplomatic effort, able to reassure these nations that the

realization of such military tool does not mean changing the current status quo.

Conversely, it means to add, to the economic national interest, that ethical, of which international community should feel compelled to deal with.

Furthermore, it would be recommended to continue also to strengthen judicial and police organs designated to contrast this destructive phenomenon. In particular, the World Customs Organization and Interpol to combat illegal trafficking of works of art, the International Criminal Court for the judicial and investigative activities about this issue, and GOs / NGOs (such as ICCROM, ICOMOS, ICOM, IFLA, and ICA),⁸⁵ which have the aim to protect the world's cultural heritage threatened by wars and natural disasters.

In order to mitigate the effects of these asymmetric threats, recently UNESCO adopted a specific Resolution (197 EX/10)⁸⁶ with the aim to extend its reach, by integrating the protection of cultural heritage in the context of international security strategies and peacebuilding processes. Specifically, among the descending measures, UNESCO has created a specialized unit, with Italy as lead nation, which is called the blue helmets of the culture.⁸⁷ An initial core of 60 members included officers from Italy's specialist police force (*carabinieri*) for art crime, as well as art historians, scholars and restorers from four of the country's top conservation institutions.⁸⁸

The process of raising awareness is ongoing, although in its early stages, however, it represents a concrete attempt to stem the project of the Islamic State, oriented to amputate parts of the culture considered dangerous and potentially contagious from territories under its control.⁸⁹ Its aim is represented by the desire to create a tidy and well-kept garden, in which there are not margins for places that bear witness to the possible bond between the Arabic world and the Western culture.⁹⁰ In

such a context, the destruction of an historic site means not only remove its archaeological value, but erase the very idea of a peaceful fusion of two seemingly distant cultures. Therefore, the protection of such property becomes essential to achieve a peaceful future of shared values, and a tool to restore stability, as well as economic and social cohesion.

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investigate and prosecute the four core international crimes in situations where states are "unable" or "unwilling" to do so themselves. The court has jurisdiction over crimes only if they are committed in the territory of a state party or if they are committed by a national of a state party; an exception to this rule is that the ICC may also have jurisdiction over crimes if its jurisdiction is authorized by the United Nations Security Council.

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