



Course of

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*“La cultura, in un certo senso, è come un grande fiume:
collega e percorre varie regioni della vita e della storia
mettendole in relazione, permette di navigare nel mondo
e di abbracciare Paesi e terre lontane, disseta la mente,
irriga l’anima, fa crescere la società.”*

Papa Francesco, speech delivered at the Faculty of Information Technology and Bionics
of the Péter Pázmány Catholic University in Budapest, 30 April 2023.

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Introduction

Cultural heritage is more than just a collection of physical artifacts and monuments; it is a reflection of a society's history, values, identity, and collective memory.

Cultural heritage holds universal significance, representing a collective asset of humanity that defies the limits of time and space. It is, in essence, an enduring legacy. Beyond the mere preservation of artifacts, cultural heritage acts as a vital catalyst for dialogue, fostering connections and paving the way for a more promising future. Thus, protecting cultural heritage not only safeguards our roots, but also cultivates the insights and resources necessary to confront modern challenges, ultimately contributing to a more harmonious global coexistence.

Cultural heritage has always been a victim of conflict; it has been frequently destroyed as collateral damage in wars and also deliberately targeted. Cultural heritage's destruction has become a method of warfare; it serves as a means of domination, designed to eradicate pluralism and freedom by erasing any foundation of belonging and identity. This strategy aims to dismantle all societal pillars, which ultimately results in social disintegration. When a society is weakened across its dimensions of diversity, freedom, memory, and identity, it becomes increasingly vulnerable to homogenization. This, in turn, facilitates manipulation and control.

In light of this, Irina Bokova, the former Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) contended that the safeguarding of culture should be recognized not as a luxury, but as an essential security imperative. In 2015, she emphasized that preserving human life and protecting cultural heritage are inextricably intertwined, making it unnecessary to choose one over the other.

The destruction of cultural heritage is not only an attack on a nation's identity, but also a violation of fundamental human rights and an outrage to the global community.

International concerns over the protection of cultural heritage have grown significantly in recent decades. The deliberate targeting of cultural sites has become a worrying aspect of modern warfare.

In response, international legal frameworks have been developed to safeguard cultural heritage, emphasizing its critical role in fostering peace, cooperation, and understanding across borders. The global significance of cultural heritage protection is not only seen as an act of preservation but as a crucial element in maintaining global security and stability. How can the world remain secure if it allows the erosion of its cultural foundations?

This study seeks to explore the relationship between cultural heritage and international security, highlighting the complex and multifaceted nature of cultural destruction in the context of conflicts.

Chapter 1 will define cultural heritage and examine the international legal framework to protect it, such as the 1954 Hague Convention, its two Protocols and the 1972 UNESCO Convention. It will also explore the connection between the destruction of cultural heritage and global security, breaking down the matter as a cause of exacerbation of conflicts, as a consistent breach of fundamental human rights, and as a violation of the interest of the international community as a whole. In this context, the *Al Mahdi* case stands out as a landmark precedent.

In its decision of 27 September 2016, the International Criminal Court not only recognized the deliberate destruction of cultural heritage as a war crime, but also affirmed that the harm provoked by Ahmad Al Faqi Al Mahdi affected not only both the local Malian population and the international community as a whole, claiming that cultural heritage constitutes a universal good that demands collective protection and reparations.

The case of Al Mahdi represents the first case before an international criminal tribunal where the sole charge was the destruction of cultural property.

In Chapter 2, the focus will shift to the framing of the deliberate destruction of heritage. The intentional destruction of cultural heritage is recognized as both a war crime and a crime against humanity. As a war crime, its evolution in international law was significantly reinforced by cases under the International Criminal Tribunal of Former Yugoslavia and the International Criminal Court. However, when these acts are committed with discriminatory intent as part of a widespread and systematic attack they may also qualify as crimes against humanity, as stated under article 7 of the 1998 Rome Statute, even though this classification remains legally evolving.

Subsequently, an analysis will be provided of potential paradigms that could constitute different legal approaches to the protection of cultural heritage. Among the most significant proposals are the concepts of culture cleansing, as proposed in 2015 by Irina Bokova, the application of the Responsibility to Protect framework to the deliberate destruction of cultural heritage, and the potential framing of such destruction as an instance of cultural genocide.

The evolution of cultural heritage protection has delineated a further paradigm, namely, cultural heritage has undergone a process of securitization.

Recent attacks, especially in the Middle East and Africa, have highlighted the limitations of existing legal measures, enhancing a security approach especially promoted by the United Nations. The latter aspect raised a crucial legal question: can the deliberate destruction of cultural heritage be legitimately considered a threat to international peace and security under Article 39 of the UN Charter? The United Nations Security Council has played a pivotal role in this evolving perspective, progressively broadening the interpretation of Article 39 to encompass acts targeting cultural heritage.

A watershed moment came with Resolutions 2100 and 2347. Resolution 2100 established the UN peacekeeping mission in Mali (MINUSMA) with a mandate to protect cultural heritage. Resolution 2347, adopted in 2017, further solidified cultural heritage protection as a core element of peace and security by treating its deliberate destruction and trafficking as direct threats to international stability. This marks a milestone in the global response to the destruction of cultural heritage, since it is the first resolution focused solely on the destruction and trafficking of cultural heritage in the context of armed conflicts. By dedicating an entire Resolution to this topic, the United Nations affirms the protection of cultural heritage as a crucial key for the maintenance of international peace and security. Moreover, Resolution 2347 formally integrates cultural heritage protection into the United Nations peacekeeping missions, institutionalizing it as a fundamental component of peacekeeping's final aim, namely, maintaining peace and security.

Chapter 3 will examine a concrete case study: the tragic destruction of cultural heritage in Mali. As one of the most significant recent examples of cultural heritage being targeted in a conflict zone, the case of Mali offers a comprehensive view of the challenges faced by the international community in responding to such crimes.

After discussing the unique and irreplaceable cultural asset in Mali, along with its devastating destruction committed by the National Movement for the Liberation of Azawad (MNLA), together with jihadist groups such as Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM), the UN Security Council's Resolution 2347 will be analysed, which focuses on the protection of cultural heritage in conflict zones.

Additionally, it will be further assessed whether the integration of the cultural mandate in peacekeeping missions is both legitimate and aimed at the achievement of their vital aim of maintaining peace and security; in other words, how can the integration of cultural heritage protection in peacekeeping missions transform conflict resolution and foster long-term stability? Can the preservation of cultural heritage act as a catalyst for peacebuilding?

In particular, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) stands as an excellent and powerful example of how peacekeeping missions can successfully integrate cultural heritage protection into their core mandate. Established with a clear directive, *inter alia*, to assist Mali in safeguarding its invaluable cultural and historical sites, MINUSMA has demonstrated that protecting cultural heritage is not merely a supplementary task but a critical component for achieving long-term peace and stability.

By explicitly including cultural heritage in its mandate, MINUSMA has set a precedent for peacekeeping operations worldwide. Additionally, it has fostered close cooperation with international organizations like UNESCO.

UNESCO fully supported the integration of a cultural heritage protection mandate in peacekeeping missions, not only acknowledging the role of culture in peacebuilding processes, but also promoting and emphasizing its operational significance in the crisis in Mali.

Following the occupation of northern Mali by Tuareg and Al-Qaeda forces, and the subsequent attack on Timbuktu by Ansar Dine, UNESCO deployed an emergency mission to assess damage and develop a coordinated strategy with Malian authorities. This initiative supported the inclusion of cultural heritage protection in peacekeeping missions.

A landmark agreement in 2016, resulting in the creation of the "Blue Helmets for Culture" task force by Italy, further solidified this approach.

Overall, this progression marks a significant shift, integrating cultural preservation into broader peacekeeping and security frameworks, and reinforcing its essential role in post-conflict recovery and sustainable peacebuilding.

Through this examination, the study aims to underscore the crucial importance of cultural heritage in global peacebuilding efforts and the need for a more robust international response to its destruction. By situating the issue within the broader framework of international law and global security, the study hopes to contribute to a deeper understanding of the intricate link between cultural heritage preservation and the promotion of peace and stability worldwide.

CHAPTER 1: Definition of Cultural Heritage and Its International Relevance

Summary: 1.1 Defining Cultural Heritage. – 1.2 The legal framework protecting cultural heritage. – 1.2.1 The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. – 1.2.2 The Second Protocol of 1999. – 1.2.3 The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage. – 1.3 The Link Between Cultural Heritage and Global Security: A Complex Relationship. – a) Cause of conflicts. – b) Violation of fundamental human rights. – c) Violation of the interest of the International Community.

1.1 Defining Cultural Heritage

“Heritage is our legacy from the past, what we live with today, and what we pass on to future generations”.

UNESCO, 1972 World Heritage Convention

The above-mentioned statement encapsulates the essence of cultural heritage as a bridge that traverses the dimension of time, connecting humanity’s past, present and future.

The concept of cultural heritage has been delineated in international treaties through a long, complex and tortuous path. Over the decades, global agreements, starting with the 1954 Hague Convention and evolving through the 1972 UNESCO World Heritage Convention, have provided comprehensive definitions vividly reflecting that cultural heritage is not merely a collection of ancient relics and monuments; it is a living and evolving resource, embodying identities, values and resilience of communities across the globe. It is both a reminder of history and a foundation for progress, fostering a sense of unity and shared responsibility among nations.

Cultural heritage carries a universal value; it is humanity's common good that transcends temporal and spatial boundaries. In essence, it is a timeless legacy.

More than just preserving artifacts, cultural heritage serves as a powerful tool for cultivating dialogue, bridging divides and shaping a better future. Therefore, by safeguarding cultural heritage, we do not simply protect the remnants of our past, but also nurture the knowledge and means for addressing contemporary challenges, building a harmonious coexistence in the world.

The concept of what to protect, recognize, preserve, and safeguard in the realm of cultural heritage is evolving gradually over time, and even today, the definition and the mechanisms of protection still remain incomplete. Legal experts and the international community have encountered significant challenges in defining cultural heritage not only due to legal complexities, but also because of its multifaceted and sensitive nature.

Furthermore, the scope of cultural heritage intersects with numerous domains, such as human rights, environmental protection, security, economics. These intersections highlight the multidimensional heart of the concept, inevitably transforming the establishment of a shared international vision for cultural heritage into a challenging goal.

In order to adequately address the intersection between the protection of cultural heritage and international security, it is crucial to analyse definitions set out by various legal instruments.

The evolution of the terminology is a valid starting point, since it reflects a significant shift in the international community's understanding. The term "cultural property", first codified in Article 1¹ of the Hague Convention for the protection of Cultural Property in

¹ "For the purposes of the present Convention, the term "cultural property" shall cover, irrespective of origin or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, 10 Convention for the Protection of Cultural Property in the Event of Armed Conflict are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); (c) centres containing a large amount of cultural property as defined in subparagraphs (a) and (b),

The Event of Armed Conflicts, adopted in 1954, emphasizes the material aspect of cultural artifacts, framing them within a legal and proprietary framework.

However, with the adoption of the 1972 World Heritage Convention concerning the Protection of the World Cultural and Natural Heritage,² the concept of “cultural heritage” emerged, delineating a broader, inclusive and holistic approach. This shift stemmed from the recognition that cultural heritage has not exclusively a tangible dimension, but also an intangible one, which is the core of people’s identity.

While the latter Convention introduces a wider and less proprietary vision of cultural heritage, it is still focused on tangible elements. The Convention for the Safeguarding of the Intangible Cultural Heritage, adopted in 2003,³ embodies a remarkable turning point, as it expands the notion of heritage to embrace the intangible dimension, defined as “practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage”.⁴

Although international instruments have attempted to create a common language, it can be argued that there is no universally agreed definition of cultural heritage. The complexity of the concept, its political and cultural implications, the dynamic evolution, and differences between national and international contexts, prevent a definitive global consensus.⁵

This lack of uniformity can be both a source of notable legal gaps and an asset, since it allows cultural heritage to adapt and reflect diversity and needs of humans, in their individual and collective dimensions.

to be known as “centres containing monuments” Article 1, Hague Convention for the protection of Cultural Property in The Event of Armed Conflicts, 14 May 1954.

² Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972.

³ Convention for the Safeguarding of the Intangible Cultural Heritage, adopted at Paris, 17 October 2003.

⁴ Article 2, Convention for the Safeguarding of the Intangible Cultural Heritage, adopted at Paris, 17 October 2003.

⁵ Noele Higgins, *The Protection of Cultural Heritage During Armed Conflict. The Changing Paradigms*, Routledge Focus, 2020, p. 6.

In this context, the definition provided in the 1972 World Heritage Convention concerning the Protection of the World Cultural and Natural Heritage will be adopted. Given that this analysis seeks to explore the current legal framework for protecting cultural heritage, deepening its nexus with international security, the 1972 Convention offers a relevant and suitable definition within the framework of international security.

In light of the scope of this thesis, the definition of cultural heritage in Article 1 of the 1972 Convention will be the polar star.

Article 1 categorizes cultural heritage into three main types: a) monuments, including monumental sculptures and paintings, archaeological elements; b) groups of buildings, namely individual or interconnected buildings that are recognized for their irreplaceable value due to their architecture, composition or their unique integration into the surrounding landscape. These structures are valued not only for the historical significance, but also for their artistic and scientific contributions to our understanding of cultural heritage; c) sites, delineated as works of humans or the collaborative interaction between humans and nature; these include areas such as landscapes that reflect human creativity, or adaptation to the environment.⁶

The definition provided in article 1 of the 1972 Convention goes far beyond the traditional conception of cultural heritage, viewed as a mere property that has to be object of legal protection, but instead recognizes the invaluable and irreplaceable value belonging not to individual nations but to humanity; the latter statement is noticeable from the formulation in article 1 “outstanding universal value”,⁷ which emphasizes how the protection of cultural heritage, because of its intrinsic nature, transcends States’ borders and national sovereignties. Conceiving cultural heritage as a common good owned by humanity implies an international responsibility to ensure protection. For this purpose, the 1972 Convention establishes a system of international cooperation and assistance.⁸

⁶ Article 1, World Heritage Convention Concerning the Protection of World Cultural and Natural Heritage, adopted at Paris, 16 November 1972.

⁷ *Ibidem*.

⁸ Article 6, World Heritage Convention Concerning the Protection of World Cultural and Natural Heritage, adopted at Paris, 16 November 1972.

Moreover, unlike the 1954 Hague Convention for the protection of Cultural Property in The Event of Armed Conflicts, the 1972 Convention applies both in wartime and peacetime. This is particularly relevant, considering that deliberate destruction of cultural heritage may also occur as isolated acts, unrelated to war. Consequently, the need for a comprehensive and inclusive legal framework is granted to ensure an effective safeguarding, regardless of whether war is ongoing or not.

Therefore, the decision to adopt the definition of cultural heritage provided in the 1972 World Heritage Convention is grounded, firstly, in the broader and holistic interpretation of cultural heritage, capturing the historical, artistic, and scientific significance in terms of a universal dimension, namely, as a shared legacy. Secondly, the discussed Convention expands the scope of application to peacetime, acknowledging that cultural heritage is increasingly targeted in deliberate attacks, terrorism, and acts of cultural cleansing.

These threats, underline the direct nexus between cultural heritage and international security, as the destruction of heritage is often used as a strategic tool to erase identity, destabilize societies, and fuel conflicts.

Lastly, by establishing a system of international cooperation and assistance, a collective security response is required in order to assure the protection of unique and invaluable heritages at the core of humanity's essence.

However, while the Convention provides a robust basis for addressing tangible cultural heritage, it does not encompass intangible dimensions of cultural heritage, which remain a significant legal gap in the safeguarding of cultural heritage during armed conflicts. Nevertheless, this aspect will not be the focus of the present analysis.

1.2 The legal framework protecting cultural heritage

Attacks on cultural heritage were first prohibited in the period between the end of the 19th century and the start of the 20th. However, while condemnation of attacks on cultural heritage during armed conflicts has been expressed throughout history, such attacks became legally forbidden only during the 19th century.

The Hague Conventions on the Laws and Customs of War on Land of 1899 and 1907 did not explicitly mention the concept of “culture”. In fact, Article 27 of the Hague Convention on the Laws and Customs of War states: “in sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity [...] provided they are not used at the same time for military purposes”.⁹

This article reflects how the rationale of the protection of cultural heritage was still in its nascent stage. At that time, such protection was regarded primarily as an extension of States’ sovereignty, rather than recognizing cultural heritage for its irreplaceable value to the humanity as a whole. As it can be noticed by the use of the term “devoted” in the article, buildings of a cultural importance were safeguarded not because of their intrinsic significance but because of their functional roles in serving religious, artistic, scientific purposes.

In essence, the Hague Conventions on the Laws and Customs of War on Land of 1899 and 1907 delineate a specific approach to protect cultural heritage that can be categorized as the “civilian use” paradigm, which requires a protection’s framework based on the non-military nature of cultural heritage. In other words, this paradigm reflects the traditional concern associated with the protection of cultural heritage which is not focus on the preservation of the property per se, but rather on its role in ensuring to protect civilians.¹⁰

At the dawn of World War II, and especially in the aftermath of the Spanish Civil War, which was marked by extensive destruction of cultural heritage, the international community began to place greater emphasis on protecting cultural property. The idea of a collective responsibility to safeguard what is regarded as the shared heritage of all humankind was taking shape.

⁹ Article 27, Hague Convention II with respect to the Laws and Customs of War on Lands, 1899.

¹⁰ M. Frulli, *The Criminalization of Offences against Cultural Heritage in Times of Armed Conflict: The Quest for Consistency*, The European Journal of International Law, Vol. 22 no. 1, 2011, 203, p. 204.

The new paradigm emerging on the protection of cultural heritage was categorized in the “culture-value” paradigm, which implies protection based on the intrinsic value of cultural heritage to humanity.¹¹

The latter approach paved the way for developing better legal protection that can be appreciated in a new generation of legal instruments, including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols in 1954 and 1999; the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 1970; the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage; and the Convention on the Protection and Promotion of the Diversity of Cultural expression in 2005.

1.2.1 The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

The 1954 Convention was the first international treaty dedicated solely to the issue of protection of cultural heritage, and marked the beginning of an era in which cultural patrimony was acknowledged as an object worthy of legal protection in its own right.

The drafting of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was profoundly influenced by the widespread destruction of cultural heritage during World War II. The significant devastation of historic monuments, museums, and libraries across Europe, including the intentional targeting of cultural sites, underscored the urgent need for an international framework to safeguard cultural property.

The drafting process was initiated under the auspices of UNESCO, established in 1945, which prioritized the safeguarding of cultural heritage at the core of its mission.

¹¹ *Ibidem*, p. 206.

During UNESCO's General Conference in 1951, it was decided to establish a committee of experts to draft a new convention. From April 21 to May 14 1954, an intergovernmental conference was held in The Hague, with the participation of 56 States, during which the final version of the Convention was drafted and signed by 37 States.

The Convention came into force on the 7 August 1956 becoming the second treaty of humanitarian law, after the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

It is worth outlining the Preamble of the Convention, as it states that any damage inflicted on cultural property, regardless of the people to whom it belongs, constitutes damage to all humanity, since every people contributes to the world's culture.¹²

The recognition of the universal value of cultural heritage implies a shift toward viewing cultural patrimony as a global responsibility, setting aside a state-centric approach to allow a universalistic vision of cultural heritage.

The 1954 Convention is composed of 40 articles and is subdivided in VII chapters.

Article 1 provides the definition of "cultural property". Cultural property, irrespective of origin or ownership, is grouped in three categories: a) Movable and immovable property "of great importance to cultural heritage of every people," listed exemplarily below; b) Buildings whose primary and actual purpose is to preserve or exhibit movable cultural property; c) The so-called "monumental centres" containing a considerable number of cultural properties defined in paragraphs a) and b).¹³

Afterwards, the convention establishes two different levels of protection: general protection, regulated in Chapter I, and a special protection, defined in Chapter II.

The general protection regime is covered with Articles 3 and 4 imposing respectively a positive obligation to safeguard and a negative obligation to respect cultural heritage.

¹² Preamble, par. 2, Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague, 14 May 1954.

¹³ Article 1, Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague, 14 May 1954.

More into detail, Article 3 refers to the general obligation for States to implement all necessary measures preventively, already in peacetime.¹⁴

In Article 4 the Contracting Parties commit to respect cultural property, both within their own territory and in the territories of other Contracting Parties, refraining from using such property, and its immediate surroundings, for purposes that could expose it to destruction or damage during armed conflict, and abstaining from any hostile acts directed towards it.¹⁵ However, in Paragraph 2¹⁶ it is inserted an exemption concerning military necessity, which might allow the obligations in Paragraph 1 to be waived. The inclusion of the “military necessity” exemption was object of a long debate; what Contracting Parties lastly believed was that the inclusion of Paragraph 2 could have made the text acceptable and applicable from a military perspective. In this regard, a significant issue is the lack of a clear definition of the concept of military necessity, which implies the wide discretionary margin of States to determine which situations may justify the destruction of cultural property.

As mentioned above, Chapter II states the special protection for the shelters designed to protect movable cultural properties in the event of armed conflict. The immunity of these protected properties is also established.¹⁷

Additionally, Chapter VI is worth mentioning, as it defines the scope of application of the Convention. A remarkable innovation of the 1954 Convention consists in the extension of its application also to situations where a state of war is not recognized by one or more Contracting Parties, in cases of total or partial occupation and in non-international conflicts¹⁸. The latter approach is significant since it goes beyond the required existence

¹⁴ “*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, by taking such measures as they consider appropriate.*” Article 3, Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague, 14 May 1954.

¹⁵ “*The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property*” Article 4(1).

¹⁶ “*The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.*” Article 4(2).

¹⁷ *Ibidem*, Article 9.

¹⁸ *Ibidem*, Article 18-19.

of an ongoing war; the evolving nature of armed conflicts demonstrates how they are increasingly involving forces within a single State, instead of opposing State powers.

The Hague Convention of 1954 is supplemented by two Protocols; the First Protocol¹⁹ focuses on the restitution of cultural property unlawfully removed during or as a result of armed conflict.

1.2.2 The Second Protocol of 1999

The Second Protocol was adopted in March 1999 and came into force in 2004.²⁰ It aimed to strengthen the protection of cultural heritage and address the gaps and limitations of the original Convention.

A notable improvement introduced by the Protocol is the detailed specification of the preparatory measures that States are required to adopt during peacetime under Article 3 of the Convention; in fact, Article 5²¹ of the Protocol outlines a wide range of measures, such as the preparation of inventories, the planning of emergency measures, and the arrangement for the removal or in-situ protection of cultural properties.

Furthermore, Chapter III introduces and regulates the system of “Enhanced Protection”, which replaced the previous regime of “Special Protection”. The earlier regime failed to clearly distinguish special protection from general protection, and the decision to grant special protection was widely at the discretion of the Contracting Parties.

However, one of the most remarkable innovations of the Protocol cannot be unmentioned, namely Article 6, concerning the derogation of military necessity. The principle of

¹⁹ First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, adopted at The Hague, 14 May 1954.

²⁰ Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, adopted at The Hague, 26 March 1999.

²¹ “*Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict pursuant to Article 3 of the Convention shall include, as appropriate, the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property*” Article 5.

military necessity was and it is still an extreme fragile element of the Convention of 1954, mainly due to the lack of a definition. Article 6 of the Protocol of 1999 introduced two conditions in order to invoke the derogation on the basis of the imperative military necessity to attack cultural heritage: “(i) that cultural property has, by its function, been made into a military objective; and (ii) there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective;”²². The first condition requires that cultural property must have been reused into a military objective by its function, while the second that there must be no alternatives to achieve the military advantage intended. These provisions seek to limit the arbitrary application of the military necessity’s exemption, establishing a clearer threshold.

Lastly, the Protocol in Chapter 4 addresses the criminal responsibility and jurisdiction, identifying five serious violations in the protection of cultural heritage²³, recognizing specific instances of individual responsibility.²⁴

1.2.3 The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage

The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage is a landmark international treaty adopted by UNESCO, aiming to safeguard cultural and natural heritage of outstanding universal value to humanity, during armed conflicts as well as during peacetime. It was adopted at the General Conference of UNESCO at Paris in the 16 November 1972, and finally it came into force in 1975, after being ratified by at least 20 UNESCO’s Member States. Currently, the treaty is adopted

²² Article 6(1), Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954.

²³ Article 15(1), Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954.

²⁴ *Ibidem*, Article 16.

by 193 States²⁵, making it one of the most widely recognized instruments for the protection of cultural and natural heritage.

As addressed previously in Paragraph 1.1,²⁶ one of the most significant conceptual changes reflected in the discussed Convention is the terminological transition in definition from “cultural property” to “cultural heritage”. The 1972 Convention marked a paradigm revolution, since it emphasizes a comprehensive and holistic approach to cultural heritage, going beyond a mere perspective of it as an object of legal protection; moreover, cultural objects and sites are not considered anymore as possessions of a particular individual, State or institution, rather “among the priceless and irreplaceable assets, not only of each nation, but of humanity as a whole.”²⁷

Namely, the Convention recognizes cultural heritage as a living subject, having universal value over ownership, thus implying the global responsibility and duty to protect cultural and natural heritage.

It is worth noting the established framework for the protection at national and international level. Under Article 4 States the primary responsibility for protecting heritage remains with the individual country where the site is located;²⁸ furthermore each State “It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain ”;²⁹ this statement outlines as a State must do everything possible to ensure protection, even with international assistance and cooperation, affirming a principle of direct cultural protection by the State, which is addressed more into detail in Article 5.

²⁵ “La Convenzione del Patrimonio Mondiale di Parigi” ([Siti Patrimonio Mondiale dell'Umanità World Heritage List](#)).

²⁶ *Supra*, Paragraph 1.1, p. 2-3.

²⁷ Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/0110, July 2019, par. 4.

²⁸ “Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State” Article 4, World Heritage Convention Concerning the protection of World Cultural and Natural Heritage, adopted at Paris, 16 November 1972.

²⁹ *Ibidem*, Article 4.

Article 6 of the 1972 Convention crystallizes an extreme significant diplomatic balance between national sovereignties based on the principle of non-interference and the shared global duty to protect subjects that have an irreplaceable value to humankind. While heritage remains under national sovereignty, it also constitutes a common good without borders, implying the international duty to intervene in order to ensure protection.³⁰

For this purpose, global responsibility means the establishment of a system of international cooperation and assistance, not just financial but including technical expertise, legal support and emergency interventions as well.³¹

The latter intention is further reinforced through the World Heritage List, which identifies sites of Outstanding Universal Value, ensuring that they receive international recognition and protection.³² Moreover, as stated under Article 11, the List of World Heritage in Danger, namely those sites that form part of the natural and cultural heritage “threatened by serious and specific danger”,³³ for instance armed conflicts, environmental degradation, natural disasters, or human activities.

By including a site on the list, the international community is called upon to mobilizes resources, expertise, and strategic interventions to secure protection, conservation, presentation or rehabilitation at an international’s assistance level.³⁴

Article 8 claims the creation of the World Heritage Committee. This institution has the critical role in overseeing the implementation of the Convention, evaluating site nominations in the World Heritage List, monitoring conservation efforts, coordinating international assistance, and administrating the World Heritage Fund. The Committee is composed of 21 States Parties to the Convention, elected by States Parties to the

³⁰ “*Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.*” Article 6(1).

³¹ Article 7, World Heritage Convention Concerning the protection of World Cultural and Natural Heritage, adopted at Paris, 16 November 1972.

³² *Ibidem*, Article 11, par. 2.

³³ *Ibidem*, Article 11, par. 4.

³⁴ *Ibidem*, Article 13, par. 1.

Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization.³⁵

The 1972 Convention, in order to accomplish the financial support for preservation projects, rehabilitation initiatives, and emergency responses, creates the World Heritage Fund; financial resources come mainly from voluntarily and compulsory contributions made by States Parties, gifts or bequests from other States and public or private individuals or bodies.³⁶

However, the World Heritage Fund remains largely dependent on voluntary contributions from States, which undermines the effectiveness in addressing urgent conservation needs.

In conclusion, the 1972 Convention constitutes one of the most influential and widely ratified of cultural and natural heritage protection, setting a fundamental international framework and precedent for cooperation, solidarity, legal recognition, and ethical responsibility; nevertheless, the Convention does not have a strong and stable enforcement mechanism, relying on diplomatic pressure, international awareness and voluntarily compliance, through instruments such as warnings and recommendations not having legally binding power.

1.3 The Link Between Cultural Heritage and Global Security: A Complex Relationship

Cultural heritage has always been victim of conflicts, with several monuments and artefacts being destroyed as collateral damage in wars. In addition, throughout history works of art have been viewed as booty by victors and stolen in the aftermath of conflict. However, deliberate destruction of cultural heritage has also occurred; in more recent conflicts in the Middle East and North Africa we have seen tragic systematic attacks on culture as a strategy of war.

³⁵ *Ibidem*, Article 8.

³⁶ *Ibidem*, Article 15, par. 3.

Intentional destructions are a specific multifaceted tactic to disrupt society and people by eliminating identity, memory, sense of belonging, and pluralism. The erasure of culture destabilizes populations and weakens social defences, leading to a deep social disintegration which allows to re-set history and souls according to a specific vision of the world, namely the one of who disrupts cultural heritage. In 2014 the United States Secretary of State, John Kerry, described the destruction of cultural heritage in Syria as “a purposeful final insult which is stealing the soul of millions”³⁷

What is progressively emerging is a new paradigm of armed conflicts, increasingly defined by the concept of cultural warfare. It refers to the deliberate targeting, destruction of cultural heritage, symbols, traditions used as a strategic tool to achieve political, ideological or military objectives.

The destruction of cultural heritage conceived as an intentional target, rather than collateral damage during conflicts, presupposes the adaptation of the existent legal framework. While several legal instruments to protect cultural heritage during armed conflicts do exist, they have failed in providing an effective response to the increasing systematic attacks, so indicating that a different approach to the problem is required.

In this context, the threat to cultural heritage is emerging as a “first-tier challenge”³⁸ in the established international order, however, until now it has been faced as a second or third priority.

Historically, the protection of cultural heritage has been viewed as a secondary concern in comparison to other pressing issues such as conflicts, terrorism, or economic stability. The destruction of cultural heritage has been conceived as a consequence of wars, collateral issue, rather than an active threat to global peace and security. Therefore, traditionally the international response to the protection of cultural heritage has been reactive rather than proactive, and placed behind other concerns.

³⁷ John Kerry, *Remarks at Threats to Cultural Heritage in Iraq and Syria*, New York City, 22 September 2014.

[Remarks at Threats to Cultural Heritage in Iraq and Syria Event](#)

³⁸ Edward Luck, *Cultural Genocide and the Protection of Cultural Genocide*, J Paul Getty Trust Occasional Papers in Cultural Heritage Policy, Number 2 (2018), p. 5.

The increasing recognition of the fundamental role of the protection of cultural heritage stems from the evidence of its strategic value; the deliberate destruction of it, whether in form of cultural site, monument, or intangible, has proven to be a powerful tactic in geopolitical conflicts, as it undermines identities, social cohesion, stability, peace and security.

As such, there is an intrinsic link between cultural heritage and international security, and the protection of the former is essential for a long-term peace.

In the recent praxis of the main bodies of the United Nations, as well as in the fore of the global discourse, the securitisation of cultural heritage is becoming the current response to its destruction during armed conflicts. There is a remarkable inclination to label the protection of cultural heritage such a matter of international security.³⁹

Before deepening in which terms cultural heritage has undergone a process of securitization, it cannot be neglected what the “securitization” process is.

The concept was first elaborated in the work “Security: A New Framework For Analysis”⁴⁰, published in 1998 by Barry Buzan, Ole Waever and Jaap de Wilde. It is considered the leading work of the Copenhagen School⁴¹ of security studies. In fact, in it is first delineated the language theory applied to security, namely securitization.

They argue that security is not just about material threats, but also about how issues are framed and communicated.

³⁹ Resolution 2199 (2015) adopted by the Security Council, under Chapter VII of the UN Charter, condemned destruction of cultural heritage in Iraq and Syria as a threat to international peace and security (UN Doc S/RES/2199, par. 15).

Resolution 2347 (2017) recognizes that the destruction of cultural heritage can fuel and exacerbate conflicts, undermining the security and stability. It is defined as a threat to international peace and security. (UN SC S/RES/2347, Preamble).

Resolution 69/281 adopted by the General Assembly on 28 May 2015, affirms that the destruction of cultural heritage destabilizes communities and threatens their cultural identity, hampering the achievement of peace, stability, reconciliation and social cohesion. (UN Doc. A/RES/69/281, par.9).

⁴⁰ Barry Buzan, Ole Waever and Jaap de Wilde, *Security: A New Framework for Analysis*, Lynne Rienner Publishers, 1998.

⁴¹ The Copenhagen School of security studies is a school of academic thought with its origins in international relations theorist Barry Buzan's book “People, States and Fear: The National Security Problem in International Relations”, first published in 1983. The School places particular emphasis on the non-military aspects of security, representing a shift away from traditional security studies.

The speech act theory, as applied by Buzan, Wæver, and de Wilde, suggests that by declaring something a security issue, political actors can elevate its importance and justify extraordinary measures to address it. Essentially, when a political leader or institution labels an issue as a security threat, they are performing a speech act that transforms the issue into a matter of security, which can then mobilize resources and attention.⁴²

This is what has been progressively happened to the protection of cultural heritage during armed conflicts.

It is important to note that the relationship between cultural heritage and peace and security is not a new one.

The nexus, even if expressed differently, is already evident in the Preamble of the UNESCO Constitution that states: “Since ignorance, suspicion, and mistrust between peoples have for centuries been the principal causes of wars, and the diffusion of a culture of knowledge and mutual understanding among nations is essential to world peace, it is necessary to promote the free exchange of ideas and information”.⁴³

Since time, suspicion and mistrust, ignorance and prejudice in relation to each other's differences and peculiarities have fuelled misunderstandings between peoples, which have too often degenerated into conflicts. In this context, cultural heritage represents a shared legacy that fosters mutual understanding among peoples, facilitating intercultural dialogue, therefore, countering the exacerbation of conflicts. Thus, protecting cultural heritage is not a mere act of preservation but also a concrete measure to promote international security.

However, the unprecedented will to place the cultural protection higher in the international security agenda has been recently emphasized and made explicit in the case of the United Nations.

According to Edward Luck, an American professor of the Columbia University, author, and former United Nations Secretary-General's Special Adviser on the Responsibility to Protect, Irina Bokova, Director-General of UNESCO from 2009 to 2017, played a major

⁴² Krause, K. and Williams, *Broadening the Agenda of Security Studies: Politics and Methods*, Mershon International Studies Review, 1996, 229-254.

⁴³ Constitution of the United Nations Educational, Scientific and Cultural Organization, Preamble, par. 3 (London, 16th of January 1945).

role in the adoption of the protection of cultural heritage under security lens.⁴⁴ In 2015 she published a work “Culture on the Front Line of New Wars”, where it was coined the term “culture cleansing”, defined as a “tactic of war, used to destabilize populations and weaken social defences”.⁴⁵ The concept of “culture cleansing” represents a turning point in the evolution of the cultural heritage protection’s framework. The term, not only represents a potential paradigm which could enhance protection, as it will be discussed further, but it has been also a valuable tool in focusing the world’s attention on the concrete implications of the destruction of cultural sites and artefacts.

Irina Bokova untangles the nexus between cultural heritage and international security claiming that there is no need to choose between saving lives and preserving cultural heritage: the two are conceptually inextricable. Cultural heritage is connoted as a security imperative, conceptually tied to human security.⁴⁶

Having framed the protection of cultural heritage as a core aspect of international security, it will be analysed how in recent manifestations of international praxis it can be deduced that the intentional destruction of cultural heritage represents a) cause of conflicts, b) violation of fundamental human rights, c) violation of the interest of the International Community.

a) Cause of conflicts

As previously depicted, the protection of cultural heritage is linked to the maintenance of international security by an inescapable link. The intentional destruction of cultural heritage can be, according to the evolution of the international praxis, a source of conflicts. This statement is deducible by several documents and declarations within international organizations.

⁴⁴ Edward Luck, *Cultural Genocide and the Protection of Cultural Genocide*, J Paul Getty Trust Occasional Papers in Cultural Heritage Policy, Number 2 (2018), p. 13.

⁴⁵ Irina Bokova, *Culture on the Front Line of New Wars*, 22 Brown Journal of World Affairs, 2015, 289, p. 291.

⁴⁶ UN document, S/PV.7907, provisional verbatim records of the Security Council, 7907th meeting, 24 March 2017, p. 4.

The previous paragraph recalled the preamble of the UNESCO's Constitution, where cultural heritage is represented as the essential tool for building bridges among cultures and people, thus avoiding the exacerbation of conflicts.⁴⁷

However, the most explicit recognition of the tie between intentional destruction of cultural heritage and the rise of conflicts, can be found in the preamble of Resolution 2347 adopted by the Security Council in 2017.⁴⁸ The mentioned Resolution is noteworthy as it is the first resolution that the Security Council dedicates to the protection of cultural heritage in armed conflicts, identifying in it a pivotal role in maintaining international peace and security. As it will be analysed in greater depth, the Security Council recognizes for the first time that destruction, looting and illicit trafficking of cultural property in the event of armed conflict constitute a threat to international peace and security under Article 39 of the Charter.⁴⁹

The preamble of the Resolution states that “[...] the unlawful destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed conflicts, notably by terrorist groups, and the attempt to deny historical roots and cultural diversity in this context can fuel and exacerbate conflict and hamper post-conflict national reconciliation, thereby undermining the security, stability, governance, social, economic and cultural development of affected States”.⁵⁰ The words “*fuel*” and “*exacerbate*” underscore unequivocally the role that the unlawful destruction of cultural heritage has in triggering conflicts, hindering post-conflict reconciliation's processes as well.

In this context, the minutes of the Security Council reading at which the Resolution 2347 was passed are particularly interesting. On this occasion, the French delegation well highlighted the aspects that contribute to define the security dimension both in conflict prevention and after the conclusion: “Stolen cultural objects in a country where war is waging then serve to perpetuate and intensify said conflict. Even after conflict, when

⁴⁷ Constitution of the United Nations Educational, Scientific and Cultural Organization, Preamble, par.3. (London, 16th of January 1945).

⁴⁸ Resolution 2347 (2017), adopted by the Security Council at its 7907th meeting, on 24 March 2017.

⁴⁹ “*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*” Article 39, United Nations Charter, 24th of October 1945.

⁵⁰ S/RES/2347 (2017), p. 1.

peace is restored, heritage continues to play a major role in restoring peace as a symbol of resilience and unity for peoples whose blood has been shed”.⁵¹

Even more explicit in delineating the nexus between cultural protection and conflicts, was the United Kingdom’s delegation, which assimilated the intentional destruction discussed to any other threat to peace and security: “So let us respond to this cultural destruction with the same intensity and the same unity of purpose as we do to any other threat to international peace and security”.⁵²

A similar assertion was remarkably claimed in the Abu Dhabi Declaration adopted at the end of The International Conference on Safeguarding Cultural Heritage in Conflict Areas in 2016. As reported in the Declaration: “Heritage, in all its diversity, is a source of collective wealth that encourages dialogue. It is a vehicle for closer relations, tolerance, freedom, and respect. Its destruction is a threat to peace, as is the illicit trafficking of cultural property that often emerges in times of crisis”.⁵³

b) Violation of fundamental human rights

In recent years, there has been a significant shift in how cultural heritage is perceived and valued. Rather than focusing solely on its preservation and safeguarding for its intrinsic significance, the emphasis has moved toward recognizing its crucial role in the lives of individuals and communities.⁵⁴

The adoption of universal human rights treaties, which enshrined and underscored the importance of culture, developed the international discourse and understanding of the concepts of culture and its heritage. The shift to a progressively holistic conception of

⁵¹ UN Doc. S/PV.7907, 24th of March 2017, p. 7.

⁵² *Ibidem*, p. 21.

⁵³ Abu Dhabi Declaration on heritage at risk in the context of armed conflicts, adopted at Abu Dhabi, 3 December 2016.

⁵⁴ Report of the Special Rapporteur in the field of cultural rights, UN Doc. A/HRC/31/59.

cultural heritage, as a subject possessing its intrinsic value is correlated to the acknowledgement of cultural rights.⁵⁵

Article 27 of The Universal Declaration of Human Rights adopted in 1948, provides: “Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”.⁵⁶

Cultural rights are further recognized by Article 15 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in 1966. In the just mentioned Article is stated that States Parties have the duty to grant and implement the right of everyone to take part in cultural life.⁵⁷

Despite the lack of an official definition of “cultural rights”, a pivotal tool which needs to be interpreted to deeply understand the real nature of cultural rights is General Comment No. 21, adopted in 2009 by the Committee on Economic, Social and Cultural Rights.⁵⁸ It constitutes an authoritative interpretation of a specific provision of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in 1966.⁵⁹ General comments, according to their legal nature, have the scope of providing guidance to States Parties on their obligations under the Covenant, clarifying how they should implement its provisions effectively.

⁵⁵ “Cultural rights protect the rights for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they give to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. They may also be considered as protecting access to cultural heritage and resources that allow such identification and development processes to take place” A/HRC/14/36, para. 9, and A/67/287, par. 7.

⁵⁶ Article 27, 1(a), Universal Declaration of Human Rights, 1948.

⁵⁷ “The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” Article 15, International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in 1966.

⁵⁸ General Comment No. 21 of the International Covenant on Economic, Social and Cultural Rights), UN doc. E/C.12/GC/21, 20th of November 2009.

⁵⁹ The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly (GA) on 16 December 1966 through GA. Resolution 2200A (XXI).

General Comments No. 21 focuses on the right to take part in cultural life, as outlined in Article 15, paragraph 1(a), of the International Covenant on Economic, Social and Cultural Rights.⁶⁰

In this context, cultural rights are defined as an integral part of human rights and, like other rights, are universal, indivisible and interdependent.

Therefore, the full promotion of and respect for cultural rights, together with the right to take part in it, not only constitute a fundamental human right, but also an essential aspect of preserving human dignity and identity, that are the undeniable matrixes, as claimed both in The Preamble⁶¹ and Article 1⁶² of the Universal Declaration of Human Rights of 1948, of human rights.

Moreover, as outlined in paragraph 50 of the General Comment No. 21, States must respect, protect, and fulfil the right to take part in cultural life, which inherently involves safeguarding cultural heritage. The latter has to be respected and protected in all its forms, diversities, both in times of war and peace.⁶³

What emerges is that no proper protection of human rights may be ensured without safeguarding culture, and consequently, the cultural identity of people. Thus, assumed that fundamental human rights and cultural identity are inextricably and indissolubly intertwined, the intentional destruction of cultural heritage can be construed as an impairment of fundamental human rights. The intentional destruction of cultural heritage constitutes direct assaults in cultural life of individuals and communities, thereby impairing the exercise of cultural rights.

⁶⁰ General Comment No. 21. Right of everyone to take part in cultural life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights), UN doc. E/C.12/GC/21.

⁶¹ “*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world [...]*” Preamble of Universal Declaration of Human Rights, 1948, par. 1.

⁶² “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*” Article 1, Universal Declaration of Human Rights, 1948.

⁶³ General Comment No. 21. Right of everyone to take part in cultural life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights), UN doc. E/C.12/GC/21, 20 November 2009, par. 50.

It can be claimed that the access to and the enjoyment of cultural heritage as a human right is necessary and complementary to the preservation and protection of cultural heritage.⁶⁴ In essence, what is emerging is a tendency of ‘humanising’ the law of cultural heritage, focusing on the interests of the community and individuals.

The nexus tying intentional destructions of cultural heritage and violations of human rights is even better unfolded in the preliminary report, submitted to the Human Rights Council in 2016, of the Special Rapporteur of cultural rights, Katia Bennoune.⁶⁵ In the mentioned document, it can be found a specific section entitled “*Intentional destruction of cultural heritage*”,⁶⁶ that aims to address the intentional destruction of cultural heritage from a human rights perspective, as an urgent priority in the international security agenda. In the above nominated section, it is asserted how deliberate destruction of cultural heritage represent both a violation of cultural rights in the strict sense and of fundamental human rights, of which the former kind of rights are expression and implementing tool.⁶⁷

Namely, cultural heritage serves as a vital foundation for the realization of other human rights, including the rights to freedom of opinion and expression, freedom of thought, conscience, and religion. It also supports economic rights, as many individuals rely on heritage-related tourism for their livelihoods. Additionally, cultural heritage plays a crucial role in ensuring the right to education and fostering the right to development.⁶⁸

Therefore, the intentional destruction of cultural heritage constitutes a direct lesion of Article 18 of the Universal Declaration of Human Rights⁶⁹ stating rights to freedom of

⁶⁴ UN Doc. A/HRC/17/38, 21st of March 2011, par. 2.

⁶⁵ Report of the Special Rapporteur in the field of cultural rights, UN Doc. A/HRC/31/59, 3rd of February 2016.

⁶⁶ *Ibidem*; p. 11, par. 45 ss.

⁶⁷ Pineschi, *Tutela Internazionale del Patrimonio Culturale e Missioni di Pace delle Nazioni Unite: un binomio possibile? Il caso MINUSMA*, Rivista di diritto internazionale, 2018, 5, p. 25.

⁶⁸ Report of the Special Rapporteur in the field of cultural rights, UN Doc. A/HRC/31/59, 3rd of February 2016, par. 51.

⁶⁹ “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Article 18, Universal declaration of Human Rights, 1948.

thought, conscience and religion, and of Article 19 which grants the right of opinion and expression.⁷⁰

c) violation of the interest of the International Community

The right to take part in cultural life, referred to in Art. 15, paragraph 1(a) of the International Covenant on Economic, Social and cultural rights, implies the right of access to one's own and all other cultures and, consequently, to the cultural heritage as a whole. The *erga omnes* character of this right would, however, be deprived of its object if, at national and international level, measures were not taken to protect the cultural heritage in the interest of the international community as a whole. The protection of this right not only entails obligations of abstention for the States, consisting of not interfering with individual cultural freedoms, but also obligations to act, aimed at giving concrete protection to the exercise of this right.

A systematic survey of international practice serves to demonstrate the broad consensus that damage to or destruction of properties representing the cultural heritage of any people harms a collective interest, as it constitutes the common heritage of humanity.

In this regard, it must be recalled both the Preamble of the Hague Convention for the protection of Cultural Property in The Event of Armed Conflicts, adopted in 1954:

“[...] 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;

⁷⁰ “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 19, Universal Declaration of Human Rights, 1948.

Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection;”⁷¹

And the Paragraph 2 of the Preamble of the World Heritage Convention concerning the Protection of the World Cultural and Natural Heritage, 1972:

“[...]deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world”.⁷²

In essence, the statements emphasize that cultural heritage is a common good of humanity, any deterioration or disappearance represents a “harmful impoverishment” of a shared legacy of humankind. Thus, such losses are irreversible cultural tragedies and an irreparable regression for global human identity and development.

As far as jurisprudence is concerned, the infringement of values proper and founding of the international community is firmly affirmed in the case *The Prosecutor v. Ahmad Al Faqi Al Mahdi* of the International Criminal Court, in 2016.⁷³

Al Mahdi was the first case before the International Criminal Court that focused on the destruction of cultural property, and indeed, the first case before an international criminal tribunal which had the destruction of cultural heritage as the sole charge.

In 2012, the leadership of the armed group of Tuareg Islamic fundamentalists, Ansar Dine, along with members of AQIM (Al-Qaeda in the Islamic Maghreb), planned the destruction of mausoleums and mosques in Timbuktu, which were declared World Heritage Sites by UNESCO under the World Heritage Convention of 1972.

In particular, the mosques of Djingareyber, Sankore and Sidi Yahia are prodigious examples of architecture, built starting in the 14th century under Sultan Kankan Moussa,

⁷¹ Preamble par. 2 and 3, Hague Convention for the protection of Cultural Property in The Event of Armed Conflicts, adopted in 1954.

⁷² Preamble par.2, World Heritage Convention concerning the Protection of the World Cultural and Natural Heritage, 1972.

⁷³ International Criminal Court, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, International Criminal Court, ICC-01/12-01/15.

during whose rule the empire of Mali reached its blooming, extending from the Atlantic Ocean to the heart of the Sahara.

Some armed men guarded those carrying out the destruction, while Ahmad Al Faqi Al Mahdi, member of Hesbah, namely a brigade of the Islamic Forces, showed through and justified to media the rationale of the systematic attacks.

The demolition of the door of Sidi Yahya Mosque did not mark to the end of time, as it was believed by the people of Timbuktu, rather, it marked the beginning of legal consequences for Al Mahdi.

In July 2013, the Malian Ministry of Justice requested that the Prosecutor of the International Criminal Court, Fatou Bensouda, investigate violations of human rights and of international humanitarian law in accordance with Article 7 and 8 of the 1998 Rome Statute.

An arrest warrant was issued for Al Mahdi on 18 September 2015, and on 26 September 2015 he was delivered to international justice, thanks to the cooperation of the authorities of Niger and Mali, both States Parties of the Rome Statute.

After a precise year, on the 27 September 2016, the International Criminal Court sentenced Al Mahdi to nine years of prison for directing and participating in deliberate attacks on sites of historical, religious and cultural heritage. The International Criminal Court assessed that the aforementioned acts constitute war crimes under Article 8, paragraph 2, lett. e) (iv)⁷⁴ and Article 25, paragraph 3, lett.(a).⁷⁵ The hypothesis whether the deliberate destruction of Timbuktu could have been considered a crime against humanity was discarded already at the beginning of the investigation, in the Report of Article 53 of the International Criminal Court Statute, the Office of the Prosecutor stated

⁷⁴ “[...] Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;” Article 8, paragraph 2, lett. e) iv).

⁷⁵ “In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;” Article 25, par. 3, lett. (a)

that “information available does not provide a reasonable basis to believe that crimes against humanity under Article 7 have been committed in the situation in Mali”.⁷⁶

If the acts committed by Al Mahdi could be considered crimes against humanity under Article 7 of the ICC will be further subsequently addressed.

What is remarkable in the Decision is the way in which destructions of cultural heritage is discussed and analysed, not just a mere civilian objective but also as a symbol of the culture of Malian people and of the humanity as a whole, holding an emotional value:

“Thus, the Chamber considers that the fact that the targeted buildings were not only religious buildings but had also a symbolic and emotional value to the inhabitants of Timbuktu is relevant in assessing the gravity of the crime committed.”⁷⁷

The International Criminal Court condemned the attacks as a weapon of psychological devastation, aimed at breaking the soul of people in Timbuktu.⁷⁸

The impairment of the values of the international community, inherent in the nature of war crimes or crimes against humanity, entails concrete consequences.

In this respect, the Al Mahdi case represents a notably precedent and contribute, since The Chamber in the Decision of the 27 September 2016 concluded that the whole international community was to be considered a subject entitled to compensation, as well as the Malian community.

In the Reparation Order, issued on 17 August 2017, the Chamber judged Al Mahdi liable for (a) the damage caused by the attack on nine mosques and the Sidi Yahia Mosque door;⁷⁹ (b) the economic losses caused to individuals, whose sustenance came from the tourism and maintenance of the destroyed building, and to the community of Timbuktu;⁸⁰ (c) the moral harm resulting from the attacks, which the Chamber states is no less

⁷⁶ The Office of The Prosecutor, Situation in Mali, Article 53(1) Report, 16 January 2013, p. 27, par. 128.

⁷⁷ The Prosecutor v. Ahmad Al Mahdi, Judgment and Sentence, Trial Chamber VIII, ICC-01/12-01/15, 27 September 2016, p. 38, par. 79.

⁷⁸ *Ibidem*, par. 80.

⁷⁹ The Prosecutor v. Ahmad Al Mahdi, Reparations Order, ICC-01/12-01/15, 17 August 2017, p. 45, par. 116.

⁸⁰ *Ibidem*, par. 120.

important than the economic losses even if there is not enough information to quantify this harm at the same level as the economic ones.⁸¹

Numerically, Al Mahdi was assessed responsible for 97.000 euros for damages caused to the cultural heritage,⁸² 2.12 million euros in respect of economic losses,⁸³ and for 483.000 euros for moral harm,⁸⁴ despite the difficulty of assigning a monetary value to this category. The total liability amounted to 2.7 million euros.⁸⁵

As mentioned above, the international community, in this case represented by UNESCO, was entitled to a compensation, even if only of a symbolic nature of 1 euro,⁸⁶ since humanity as a whole had been impacted by Al Mahdi's actions.

In addition, The Chamber awarded a symbolic reparation to the Malian State for the irreversible harm due to the destruction of its cultural heritage.⁸⁷

In conclusion, the Al Mahdi verdict constitutes a remarkable precedent in the affirmation of the gravity of the deliberate destruction of cultural heritage under international law. Definitely, the broader approach used by the ICC should be followed in future international and domestic cases concerning crimes against cultural heritage in order to delineate the importance of cultural heritage to humanity.

⁸¹ *Ibidem*, par. 129-130.

⁸² *Ibidem*, par. 118 .

⁸³ *Ibidem*, par. 128.

⁸⁴ *Ibidem*, par. 133.

⁸⁵ *Ibidem*, par. 134.

⁸⁶ *Ibidem*, par. 107.

⁸⁷ *Ibidem*, par. 106.

CHAPTER 2: The Configuration of the International Crime of destruction of cultural heritage and its potential paradigms

Summary: 2.1 The intentional destruction of cultural heritage as a war crime. – 2.2 The intentional destruction of cultural heritage as a crime against humanity. – 2.3 The Overlap of War Crimes and Crimes Against Humanity. – 2.4 Potential Paradigms. – 2.4.1 Cultural Cleansing. – 2.4.2 The Responsibility to Protect. – 2.4.3 Cultural Genocide. – 2.5 The securitisation of cultural heritage. – 2.5.1 The securitisation of cultural heritage: Compatibility with Article 39 of the UN Charter. – 2.5.2 UN Resolutions on cultural heritage: the path toward Resolution 2347.

2.1 The intentional destruction of cultural heritage as a war crime

The intentional destruction of cultural heritage during armed conflicts represents not only a tragic loss of humanity's shared history, but also a deliberate assault on the identity and dignity of individuals and communities.

When cultural heritage is targeted and destroyed, the impact goes far beyond the loss of the physical structure; it attempts to erase the existence and legacy of entire communities.

The intentional destruction of cultural heritage has gradually been recognized as a war crime as international law has evolved. The Hague Convention of 1907 first established the obligation to protect cultural heritage during the war; however, given the widespread destruction during World War II, the need for a more specific and effective framework arose, leading to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

Over time, international law reinforced this protection, including framing such acts as war crimes.

The Statute of the International Criminal Tribunal for the Former Yugoslavia was the first statute of an international tribunal to classify as a war crime the seizure and deliberate

destruction of historical monuments, buildings dedicated to religion, education, arts and science.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was a United Nations court established to address war crimes committed during the Balkan conflicts of the 1990s. Operating from 1993 to 2017, it gave victims a platform to share their experiences, and demonstrate that individuals suspected of bearing the greatest responsibility for wartime atrocities could be held accountable.

It was an ad hoc tribunal established as a subsidiary organ of the Security Council and instituted through resolution 827,⁸⁸ adopted under Chapter VII of the Charter of the United Nations.

Cultural heritage was a significant victim of the Balkan Wars in the 1990s, as the destruction shifted from being collateral damage to a deliberate strategy of war targeting cultural assets.

Numerous charges were brought by the Prosecutor, accusing the defendants of carrying out attacks on religious buildings and schools, in violation of Article 3 d) of the Statute.⁸⁹

Additionally, charges were related to attacks on secular heritage, such as the bombing of Dubrovnik's Old Town, a UNESCO World Heritage site.

The initial indictment –against Strugar, Jokić and Zec and Kovacevic– was handed down on 22 February 2001; nevertheless, only the trials of the former have reached a conclusion in both the first and second instances.

⁸⁸ S/RES/827(1993).

⁸⁹ *"Violations of the laws or customs of war.*

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

(a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;

(b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;

(d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(e) plunder of public or private property." Article 3(d), Statute of the International Criminal Tribunal of the Former Yugoslavia, 1993.

Particularly significant in the ICTY's practice is the evolution in the interpretation of the rule concerning crimes against wartime attacks on religious and cultural heritage, as stated under Article 3 d).

Initially, the ICTY took a cautious approach in determining the responsibility of the defendants for such violations. Namely, judges tended not only to ascertain the general conditions for the applicability of Article 3 d), that is that the acts were committed during armed conflicts and were connected to them; but also, as claimed by the Trial Chamber in the case *Prosecutor v. Blaskić*,⁹⁰ required that the destruction or damage was intentionally directed at buildings identifiable as cultural or religious sites and that these sites were neither used for military purposes nor located near military objectives.⁹¹

Subjecting the protection of cultural property to the requirement of military necessity is a major limitation, due to the fact that the acts complained must be linked to an armed conflict in order to be considered crimes.

Subsequently, the judges adopted a narrower interpretation of military necessity. In the case *Prosecutor v. Naletilić* it was argued that the mere fact that the places of worship were located near military targets did not justify their destruction.⁹²

A more restrictive interpretation of the norm was applied in the case *Prosecutor v. Pavle Strugar*,⁹³ in which "The Chamber considers that the special protection awarded to cultural property itself may not be lost simply because of military activities or military installations in the immediate vicinity of the cultural property",⁹⁴ affirming that even damage to a cultural heritage site is not justified by proximity to a military objective.

Noteworthy is the ruling in the first instance's verdict against Jokić,⁹⁵ an ex-officer of the Yugoslav national army, convicted of the bombing of Dubrovnik. The verdict not only places an unprecedented emphasis on the seriousness of an attack intentionally launched

⁹⁰ *Prosecutor v. Blaskić*, Judgment, Trial Chamber, 3 March 2000, par. 185.

⁹¹ M. Frulli, *Distruzione dei beni culturali e crimine di genocidio: l'evoluzione della giurisprudenza del Tribunale Penale Internazionale per la Ex-Jugoslavia*, a cura di P. Benvenuti, R. Sapienza R, *La tutela internazionale dei beni culturale nei conflitti armati*, Milano, 2007, 253, p. 256.

⁹² *Prosecutor v. Naletilić*, Judgment, Trial Chamber, 31 March 2003, par. 604.

⁹³ *Prosecutor v. Strugar*, Judgment, Trial Chamber, 31 January 2005.

⁹⁴ *Ibidem*, par. 310.

⁹⁵ *Prosecutor v. Jokić*, Judgment, Trial Chamber, 18 March 2004.

against a site placed under the World Heritage List, but remarkably underlines how the destruction of Dubrovnik constitutes an attack against the cultural heritage of humankind, thereby setting a notable precedent for the Al Mahdi case.⁹⁶

The Yugoslav wars and the ICTY Statute influenced the wording of the provisions relating to the war crime against cultural property in the Rome Statute for the International Criminal Court.

A turning point in the configuration of the deliberate destruction of cultural heritage as a war crime can be found in paragraph 11 of the Al Mahdi case;⁹⁷ it represents the first case before the International Criminal Court focusing solely on the destruction of cultural property.

Summarizing the evolution of the case, the ICC's involvement in prosecuting crimes committed during the jihadist occupation of Mali formally began on July 13, 2012, when the Malian government referred the situation in Mali from January 2012 onward to ICC Prosecutor Fatou Bensouda. The referral alleged violations of both Article 7 ("Crimes Against Humanity") and Article 8 ("War Crimes") of the ICC Statute. In assessing whether an investigation should be initiated under Article 53(1) of the Rome Statute ("Initiation of an Investigation"), the Office of the Prosecutor issued a report on the Situation in Mali, concluding that the available information provided reasonable grounds to believe that only war crimes had been committed.⁹⁸

Al Mahdi was sentenced to 9 years, after having been held responsible for a war crime under Article 8 par. 2, b), ix e par. 2, e), iv of the Rome Statute. Article 8, paragraph 2, of the Rome Statute states that "For the purpose of this Statute, "war crimes" means: b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law [...] ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or

⁹⁶ *Ibidem*, par. 23.

⁹⁷ The Prosecutor v. Ahmad Al Mahdi, Trial Chamber VIII, Judgment and Sentence, ICC-01/12-01/15, 27 September 2016, p. 7, par. 11.

⁹⁸ P. Rossi, *The Al Mahdi Trial Before the International Criminal Court: Attacks on Cultural Heritage Between War Crimes and Crimes Against Humanity*, *Diritti umani e diritto internazionale*, 2017, 87, p. 89.

charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;”⁹⁹

It is essential to note that Article 8, paragraph 2, b), ix e par. 2, e), iv of the Rome Statute affords a higher degree of protection of cultural heritage than that afforded by the ICTY,¹⁰⁰ since the International Criminal Court does not require proof of actual damage once an attack has been directed at a protected object. The Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi adopts the formulation “irrespective of the fact that such attack may or may not result in the destruction, whether partial or total, of the targeted building”,¹⁰¹ suggesting a broader interpretation of protection, as it focuses on intent rather on tangible consequences, namely, regardless of whether any physical destruction or damage ultimately occurs.

A subject of debate is whether the destruction of cultural heritage should be classified exclusively as a war crime, thereby giving rise to international criminal responsibility only in times of conflict. Such acts, if committed during peacetime, would not lead to international criminal liability under the current framework, as deliberate destruction of cultural heritage is punishable only when carried out in the context of an armed conflict.

In fact, it cannot be excluded that such attacks of destruction may also take place as isolated acts, independent of war or structured terrorist activities. This raises a question: does the context, in which cultural heritage destruction occurs, affect its legal classification and, consequently, the applicable legal rules? If so, complex legal issues should be addressed, particularly in defining key concepts of “armed conflict” and “terrorism” under international law.¹⁰²

Under international law, an international armed conflict exists when armed force is used between two or more States; while a non-international armed conflict involves a

⁹⁹ Article 8, par. 2, lett. b), ix e Articolo 8, par. 2, lett. e), iv, Rome Statute.

¹⁰⁰ “*While the aforementioned provisions prohibit acts of hostility “directed” against cultural property, Article 3(d) of the Statute explicitly criminalises only those acts which result in damage to, or destruction of, such property. Therefore, a requisite element of the crime charged in the Indictment is actual damage or destruction occurring as a result of an act directed against this property.*” Prosecutor v. Pavle Strugar, Judgement, IT-01-42-T, 1 January 2005, par. 308.

¹⁰¹ The Prosecutor v. Ahmad Al Faqi Al Mahdi, Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15, 24 March 2016, par. 43.

¹⁰² F. Lenzerini, *Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage*, The International Spectator, 2016, 70.

protracted armed confrontation between governmental forces and non-state armed groups, or between such groups themselves, within a single State. Non-international armed conflicts, in order to be recognized under international law, must meet a minimum threshold of intensity and involve armed groups with a basic level of organization.¹⁰³

Therefore, when destruction of cultural heritage occurs in the above-mentioned contexts, it falls within the scope of international legal provisions concerning war crimes.

The situation becomes more legally ambiguous when the destruction of cultural heritage is linked to terrorism, since there is no universally agreed definition, due to the strong political connotation of the concept.

Under international law, terrorism remains a fluid concept, making it extremely difficult to establish a consistent legal framework for addressing acts of destruction committed outside the context of war.

In essence, the legal classification of cultural heritage destruction largely depends on the context in which it occurs; when such acts take place within an armed conflict—whether international or non-international—they are clearly governed by established legal frameworks. However, when destruction occurs outside of warfare, concerns are raised about the protection of cultural heritage, outlining the need for a broader and more encompassing legal framework to ensure effective safeguarding, regardless of wartime preconditions.¹⁰⁴

¹⁰³ ICRC, *How is 'Armed Conflict' Defined under International Humanitarian Law?* International Committee of the Red Cross Opinion Paper 2024.

¹⁰⁴ Sabrina Urbinati, *La Risoluzione 2347 (2017): Il Consiglio di Sicurezza e la difesa dei beni culturali in caso di conflitto armato. Molto rumore per nulla ?!*, *Il Diritto Internazionale e la protezione del Patrimonio Culturale*, a cura di Elisa Baroncini, 2019, 83, p. 98.

2.2 The intentional destruction of cultural heritage as a crime against humanity

While the destruction of cultural heritage has been widely recognized as a war crime under international law, its classification as a crime against humanity remains elusive; however, it is still an evolving legal issue.

Crimes against humanity, as defined under Article 7 of the Rome Statute of the International Criminal Court, refer to serious violations of human rights committed as part of “a widespread or systematic attack directed against a civilian population”;¹⁰⁵ Article 7 provides a list of eleven specific acts, including murder, enslavement, torture and persecution.

Unlike war crimes, which are inextricably linked to armed conflict, crimes against humanity can be committed in both wartime and peacetime.

The deliberate destruction of cultural heritage does not explicitly appear on the list of crimes against humanity under Article 7 of the Rome Statute, however, it can be argued that it constitutes a crime against humanity due to its intrinsic role in the persecution and destruction of communities.

To briefly revisit, the qualification of the deliberate destruction of cultural heritage as a crime against humanity was first applied by the International Military Tribunal in Nuremberg, in 1946, with respect to the actions of Alfred Rosenberg, who organized and directed the command “Einsatzstab Rosenberg”, responsible for having conducted systematic plunder of art masterworks from museums, libraries and private houses, during German Occupation.¹⁰⁶

Subsequently, the International Criminal Tribunal for Former Yugoslavia followed this precedent; in the Blaškić case’s judgment,¹⁰⁷ the Trial Chamber cites the Report of the International Law Commission on the work of its 43rd session, in 1991, reporting that

¹⁰⁵ Article 7, par. 1, Rome Statute of the International Criminal Court, 1998.

¹⁰⁶ International Military Tribunal (Nuremberg), Judgment of 1 October 1946, in *The Trial of German Major War Criminals*, p. 12.

¹⁰⁷ ICTY, Trial Chamber, Prosecutor v. Blaškić, IT-95-14-T, Judgment of 3 March 2000.

systematic destruction of monuments or buildings representative of a particular social, religious, cultural or other group, might fall within the crime of persecution.¹⁰⁸

More explicitly, in the Karadžić case,¹⁰⁹ the Trial Chamber affirms that “depending on the nature and the extent of the destruction, and if committed with discriminatory intent, the destruction of property can be of equal gravity to other crimes listed under Article 5 and, as such, may constitute persecution as a crime against humanity”¹¹⁰¹¹¹

With a more specific focus on cultural heritage, the Kordić and Čerkez trial judgment¹¹² illustrates magnificently how the deliberate destruction of cultural heritage might legitimately constitute a crime against humanity.

Paragraph 207 of the Kordić and Čerkez case by the ICTY states that when destruction, or wilful damage, done to institutions dedicated to religion is perpetrated, with the requisite discriminatory intent, it manifests a “nearly pure expression” of the notion of crimes against humanity, “for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects.” The Trial Chamber, therefore, claims that the committed acts, coupled with the requisite discriminatory intent, may amount to an act of persecution.¹¹³ Evidently, the formal affirmation of the crime against humanity prosecuted, firstly by the Nuremberg Tribunal and then by the ICTY, is the crime of persecution.

The International Criminal Court Statute defines “persecution” as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;”¹¹⁴, committed “against any identifiable group or

¹⁰⁸ Report of the International Law Commission on the work of its 43rd session, 29 April-19 July 1991, p. 268.

¹⁰⁹ ICTY, Trial Chamber, Prosecutor v. Karadžić, IT-95-5/18-T, Judgement of 24 March 2016.

¹¹⁰ *Ibidem*, p. 201, par. 531.

¹¹¹ ICTY Statute, Article 5, “Crimes against humanity”: “*The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other inhumane acts.*”

¹¹² ICTY, Trial Chamber, Prosecutor v. Kordić and Čerkez, IT-95-14/2-T, Judgement of 26 February 2001.

¹¹³ *Ibidem*, p. 59, par. 207.

¹¹⁴ Article 7, par. 2(g), Rome Statute of the International Criminal Court, 1998.

collectivity on political, racial, national, ethnic, cultural, religious, gender[...] or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court,”¹¹⁵

The ICC Statute defines in Article 7, Paragraph 1, two specific requirements of crimes against humanity, and therefore also of persecution.

Firstly, a crime against humanity occurs when it is committed as part of “a widespread and systematic attack”¹¹⁶ against a civilian population.

According to the International Law Commission, the first condition of a widespread attack means that the acts must be committed on a large scale, namely against a multiplicity of victims; the requirement excludes an isolated act committed by a perpetrator acting on his own initiative and directed against a single victim.¹¹⁷

The second element, “systematic attacks”, implies an act “pursuant to a preconceived plan or policy. The implementation of this plan or policy could result in the repeated or continuous commission of inhumane acts”.¹¹⁸ The latter definition provided by the International Law Commission underscores the structured and deliberate nature of systematic crimes. They are not random or isolated acts, but rather part of an organized effort; in other words, systematic crimes require a consistent pattern of violations, supported by a deliberate and prolonged effort, making intent behind these crimes a key element for their legal classification.

More specifically, the crime of persecution does not necessitate a physical element but a systematic discriminatory intent, namely, the *mens rea* of persecution is discrimination.¹¹⁹

This interpretation is significantly relevant when considering the destruction of cultural heritage; in fact, the deliberate targeting of cultural sites does not only concern the

¹¹⁵ *Ibidem*, Article 7, par. 1 h).

¹¹⁶ *Ibidem*, Article 7, par. 1.

¹¹⁷ International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind with commentaries, 1996, Commentary article 18, par. 4.

¹¹⁸ *Ibidem*, Commentary article 18, par. 3,

¹¹⁹ F. Pocar, *Persecution as a Crime Under International Criminal Law*, *Journal of National Security Law & Policy*, 2008, 355, p. 358.

physical destruction *per se*, but also the manifestation of a discriminatory intent aimed at erasing the identity, history and existence of a particular group.

As found in the ICTY judgment in the Kordić and Čerkez case, the destruction of cultural and religious institutions with discriminatory intent can constitute persecution, as it inflicts harm extending beyond material loss, attacking the cultural and historical fabric of communities.¹²⁰

Regarding the discriminatory grounds, the International Criminal Court's recognition of it marks a remarkable development. While the ICTY Statute focused on political, racial, and religious discrimination, the ICC expands this scope to include national, ethnic, cultural and gender-based grounds, as well as "other ground universally recognized as impermissible under international law."¹²¹

This expansion is particularly relevant to the protection of cultural heritage, as it acknowledges that persecution can be motivated also by attacks on cultural identity. Therefore, by recognizing cultural identity as a protected ground, the International Criminal Court strengthens the legal framework for prosecuting crimes where the systematic destruction of cultural heritage is used as a tool of eradicating a community's existence.

In addition, from the definition of the crime of persecution under the ICC Statute, it can be deduced that three elements are required for the discussed crime to exist: the identification of a group or collectivity, its deprivation of fundamental rights contrary to international law, and that it is committed in connection with any crime within the jurisdiction of the ICC.

Regarding the first element, there is no consensus on the definition of the identification of a group or collectivity; however, as had emerged in the Naletilić & Martinović case by the ICTY,¹²² the targeted group must be interpreted broadly and it might include those defined by the perpetrator as belonging to the victim group. In other words, a subjective

¹²⁰ ICTY, Trial Chamber, Prosecutor v. Kordić and Čerkez, IT-95-14/2-T, Judgement of 26 February 2001.

¹²¹ Article 7, par. 1 h), Rome Statute of the International Criminal Court, 1998.

¹²² ICTY, Trial Chamber, Prosecutor v. Naletilić & Martinović, IT-98-34, Judgement of 31 March 2003.

criterion emerges, meaning that the perpetrator determines the definition of the victim group, while the targeted victims have no influence over the definition of their status.¹²³

The second element is the deprivation of fundamental rights contrary to international law. The deprivation of fundamental human rights through destruction of cultural heritage appears uncontested in the light of what has been previously addressed,¹²⁴ relating to the configuration of deliberate destruction of cultural heritage as a violation of fundamental rights. To briefly recall the main concepts, cultural rights, including the right to participate in cultural life, are fundamental human rights that uphold human dignity and identity, which are foundational aspects of human rights, as outlined in the Universal Declaration of Human Rights (1948). Moreover, cultural heritage is a vital foundation for realizing the full enjoyment of other human rights, including the rights to freedom of opinion, expression, thought, conscience, and religion. It also supports economic rights, as many people depend on heritage-related tourism for their livelihoods, and it plays a crucial role in fostering education and development. Consequently, the intentional destruction of cultural heritage constitutes a direct violation of Article 18 (freedom of thought, conscience, and religion) and Article 19 (freedom of opinion and expression) of the Universal Declaration of Human Rights.

The third element identifiable in the definition of the crime of persecution, under the Rome Statute, is the connection with any crime within the jurisdiction of the International Criminal Court. An act, in order to be qualified as persecution, must be linked to another crime that falls under the ICC's jurisdiction: genocide,¹²⁵ crimes against humanity,¹²⁶ war crimes,¹²⁷ or crime of aggression.¹²⁸

This requirement ensures that persecution does not stand alone as an isolated offense but occurs in the context of other grave crimes, as part of a widespread and systematic attack.

¹²³ *Ibidem*, par. 636.

¹²⁴ *Supra*, par. 1.3 b) "Violation of fundamental human rights".

¹²⁵ Article 6, Rome Statute of the International Criminal Court, 1998.

¹²⁶ *Ibidem*, Article 7.

¹²⁷ *Ibidem*, Article 8.

¹²⁸ *Ibidem*, Article 8 bis.

2.3 The Overlap of War Crimes and Crimes Against Humanity

As evident from the international law framework, the deliberate destruction of cultural heritage falls within the scope of both war crimes and crimes against humanity. This raises the issue of the overlap between the two crimes, leading to doubt about whether it is possible to accumulate both charges, and therefore, to impose a conviction for both crimes simultaneously.

Even though there are conceptual and legal differences between war crimes and crimes against humanity, there are circumstances in which an act can constitute both. While war crimes can occur only in the context of armed conflicts, crimes against humanity require widespread and systematic attacks against the civilian population, which might or might not take place during an armed conflict.

The legal practice has recognized that certain offences may be categorized as both war crimes and crimes against humanity.

The International Tribunal for Former Yugoslavia, in the Tadic case, states that “Those who drafted the Statute deliberately included both classes of crimes, thereby illustrating their intention that those war crimes which, in addition to targeting civilians as victims, present special features such as the fact of being part of a widespread or systematic practice, must be classified as crimes against humanity and deserve to be punished accordingly.”¹²⁹

In 2008, the International Criminal Court reached the same conclusion in the Katanga case, where the Pre-Trial Chamber affirmed that the charges presented by the Prosecutor against Germain Katanga and Mathieu Ngudjolo Chui, alleged as war crimes, if committed as part of a widespread or systematic attack directed against any civilian population, would also constitute crimes against humanity.¹³⁰

With respect to the notable example in the Al Mahdi case, the defendant was convicted of the war crime of intentionally directing attacks against religious and historical

¹²⁹ ICTY, Appeals Chamber, Prosecutor v. Tadic, Judgment, IT-94-1-A, 15 July 1999, par. 286.

¹³⁰ ICC, Pre-Trial Chamber I, Decision on the Confirmation of Charges, The Prosecutor. v. Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07, 30 September 2008, par. 391.

monuments in Timbuktu, in Mali. Al Mahdi's conviction was strictly for a war crime under Article 8 of the Rome Statute.

Already at the beginning of the investigation, in the Report of Article 53 of the International Criminal Court Statute, the Office of the Prosecutor stated that "*information available does not provide a reasonable basis to believe that crimes against humanity under Article 7 have been committed in the situation in Mali*"¹³¹; the motivation provided reports that there is insufficient information to conclude that these acts were part of a widespread or systematic attack against the civilian population or that they were carried out as part of a State or organizational policy.¹³²

However, it cannot be overlooked that Al Mahdi's acts could have potentially supported a crime against humanity charge under the crime of persecution.

Concerning the "widespread and systematic attack" requirement, it should be considered that the Al Mahdi's armed group of Tuareg Islamic fundamentalists, Ansar Dine, used to control a wide geographical area, such as the desert region of Northern Mali, and the region of Kidal, Gao and Timbuktu. In these areas their strict interpretation of Sharia was enforced, leading to numerous attacks against the civilian population in order to further implement Ansar Dine's policy; killings, amputations, rapes and destruction of cultural sites have taken place.

It is estimated that more than 259.000 people fled Mali since 2012.¹³³

Therefore, it can be argued that there is a reasonable basis to consider that the attacks of the rebels against civilians were both widespread and systematic.¹³⁴

In addition, the Al Mahdi's deliberate act of destruction of cultural heritage meets the elements constituting the crime of persecution under the International Criminal Court.

Firstly, although the victims of Ansar Dine cannot be identifiable as part of a group on an objective basis, they were considered by the perpetrator as the "infidels", based on a

¹³¹ The Office of The Prosecutor, Situation in Mali, Article 53(1) Report, 16 January 2013, p. 27, par. 128.

¹³² *Ibidem*, par. 129.

¹³³ UNHCR, Mali Situation Update, NO.9, 14 August 2012.

¹³⁴ S. Green Martinez, *Destruction of Cultural Heritage in Northern Mali: A crime against humanity?* Journal of International Criminal Justice, Vol 13(5), 2015, p. 17.

religious discrimination. Secondly, the convicted acts led to the deprivation of fundamental human rights, considering the invaluable importance of the cultural heritage in Timbuktu, which has been razed to the ground. Thirdly, the destruction of Timbuktu can be connected with other crimes under the jurisdiction of the International Criminal Court, such as war crimes.¹³⁵

In conclusion, the fact that Al Mahdi was lastly charged and convicted solely for war crimes, should not be considered a precedent that excludes the possibility of prosecuting the deliberate destruction of cultural heritage as a crime against humanity.

On the contrary, a more comprehensive protection of cultural heritage would have been achieved through the application of both legal categories.

However, the decision to charge Al Mahdi with war crimes and not also with crimes against humanity, might be considered as driven by a motivation of procedural efficiency rather than a deliberate rejection of cumulative charges: introducing charges of crimes against humanity could have prolonged proceedings, significantly extending the trial's duration.¹³⁶

2.4 Potential Paradigms

The unprecedented levels of systematic destruction of cultural heritage have triggered an urgent reflection on how to ensure an effective response and protection against deliberate attacks on cultural heritage. The focus on cultural heritage as a target of conflict, rather than accidental collateral damage, requires reassessing the current legal framework, which must go beyond case-specific responses. The international community is increasingly suggesting new paradigms for the protection of cultural heritage.

Defining the nature and scope of the issue, that is framing, is of fundamental importance. Framing is not merely about choosing a specific word to describe a matter, it means to

¹³⁵ *Ibidem*, p. 21.

¹³⁶ P. Rossi, *The Al Mahdi Trial Before the International Criminal Court: Attacks on Cultural Heritage Between War Crimes and Crimes Against Humanity*, *Diritti umani e diritto internazionale*, 2017, 87, p. 98.

determine or define it in a specific way that influences how institutions and people perceive it and consider possible solutions.

In the realm of cultural heritage, the questions might concern: what needs protection? Who assigns the tasks required to enhance protection? Should cultural, legal, political, or security bodies make such determinations? How could coherence and synergies among them be obtained?

These questions need to take into account not only who is willing, but also who is capable, invoking questions of law and legitimate actors.¹³⁷

International organizations and academics have been searching for conceptualizations of the challenges involved in the protection of cultural heritage, thus providing several distinct frames. Nevertheless, each of the new approaches raises political and institutional obstacles.

Previously, the original international law response to protecting cultural heritage was divided into the “civilian use” and “culture-value” paradigms. The former requires protection for cultural heritage as a result of its non-military nature, while the latter demands protection based on its intrinsic value to humankind;¹³⁸ the “culture-value” paradigm has had a remarkable role in paving the way for developing better legal protection not only for cultural heritage itself, but also for human communities.¹³⁹

More recently, the former Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO), Irina Bokova, labelled the attacks on cultural heritage as “cultural cleansing”. Bokova’s use of this term catalysed global attention on the concrete implications of the destruction of cultural sites and artifacts, alerting the international community to take measures. The framing under “culture cleansing” ignited the discussion on the utility of applying the Responsibility to Protect framework to the

¹³⁷ Edward Luck, *Cultural Genocide and the Protection of Cultural Genocide*, J Paul Getty Trust Occasional Papers in Cultural Heritage Policy, Number 2 (2018), p. 9.

¹³⁸ M. Frulli, *The Criminalization of Offences against Cultural Heritage in Times of Armed Conflict: The Quest for Consistency*, The European Journal of International Law, Vol. 22 no. 1, 2011, 203, p. 205.

¹³⁹ F. Lenzerini, *Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage*, The International Spectator, 2016, 70, p. 71.

protection of cultural heritage. Furthermore, some academics urge addressing violence against cultural heritage as a crime of cultural genocide.

Therefore, the following chapters will discuss three potential paradigms, not mutually exclusive, that could enhance the protection of cultural heritage: culture cleansing, the Responsibility to Protect doctrine, and cultural genocide.

2.4.1. Cultural cleansing

In the aftermath of the attacks on cultural heritage in Syria, Iraq, Libya, Yemen and Mali, committed by extremist groups such as the Islamic State and Ansar Dine, the former Director of the United Nations Educational, Scientific and Cultural Organization (UNESCO), Irina Bokova, referred to the attacks with the term “cultural cleansing”. In her famous article “Culture on the Front Line of New Wars”,¹⁴⁰ published in 2015, Bokova describes the concept of cultural cleansing as “an attack on cultural diversity that combines the destruction of monuments and the persecution of people. In today’s new conflicts, those two dimensions cannot be separated”.¹⁴¹

The essence of cultural cleansing goes beyond the mere physical destruction of cultural sites, it encompasses the erasure of identity, history, and memory. In modern conflicts, culture cleansing is employed as a strategy of war, a tool of domination, aimed at eliminating pluralism and freedom, while erasing any source of belonging and identity.¹⁴² This tactic of war has the purpose of annihilating all pillars of society, leading to social disintegration.¹⁴³ A society weakened in each aspect of diversity, freedom, memory, identity, becomes vulnerable to homogenisation, and, therefore, easier to manipulate and control.

¹⁴⁰ Irina Bokova, *Culture on the Front Line of New Wars*, 22 Brown Journal of World Affairs, 2015, 289.

¹⁴¹ *Ibidem*, p. 289.

¹⁴² *Ibidem*, p. 290.

¹⁴³ *Ibidem*, p. 291.

Consequently, Bokova argues that the protection of culture should no longer be viewed as a luxury, but rather a security imperative; she asserts that there is no need to choose between saving human lives and preserving cultural heritage, as the two are inextricably linked.

In fact, she states, “Violent extremists do not choose between attacks against people and those against culture: they attack both, in order to hurt societies both in the short term and long term.”¹⁴⁴

The concept of cultural cleansing is closely related to ethnic cleansing. The latter gained international prominence during the Balkan Wars of the 1990s, particularly in the context of the Bosnian War (1992-1995). While the practise of ethnic cleansing has existed for centuries under different names, it was during this period that the term gained international recognition, becoming associated with war crimes and systematic attempts to remove or eliminate specific ethnic groups.

Acts constituting ethnic cleansing were examined in the final report of the Commission of Experts, established under Resolution 780 of the Security Council.¹⁴⁵ The Commission, tasked with investigating crimes committed on the territory of the Former Yugoslavia, provides the definition of ethnic cleansing as “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.[...] Those practices constitute crimes against humanity and can be assimilated into specific war crimes. Furthermore, such acts could also fall within the meaning of the Genocide Convention.”¹⁴⁶

Although ethnic cleansing is closely linked to crimes against humanity and war crimes, it is not explicitly recognized as a self-standing international crime under international law. The concept lacks a specific legal definition, remaining vague without precise legal

¹⁴⁴ Irina Bokova, *Culture on the Front Line of New Wars*, 22 Brown Journal of World Affairs, 2015, 289, p. 294.

¹⁴⁵ UNSC, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780, UN Doc S/1994/674, 27 May 1994.

¹⁴⁶ *Ibidem*, p. 33, par. 130.

contours.¹⁴⁷ It has, however, found a role in the international framework in the Responsibility to Protect doctrine, which will be addressed in the next paragraph.¹⁴⁸

From a legal perspective, the term cultural cleansing also remains unclear, as there is no recognized international crime under this name. The lack of solid legal foundation makes the potential paradigm of cultural cleansing an ineffective one for the protection of cultural heritage.

Despite this legal weakness, framing the deliberate destruction of cultural heritage as an act of cultural cleansing has been a powerful tool in drawing the world's attention on the full implications of such acts. It has helped to educate the international community on the crucial role of culture for the humankind, and has urged States to prioritize the safeguarding of cultural heritage in security agendas.

2.4.2 The Responsibility to Protect

The Responsibility to Protect (R2P) is a well-established international norm, conceived outside the United Nations' framework in response to the devastating conflicts in Rwanda and the Balkans in the 1990s. In 2000, the then Secretary General of the United Nations, Kofi Annan, published a book, entitled "We the Peoples. The Role of the United Nations in the 21st century",¹⁴⁹ in which he posed a question to the UN Members: "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?"¹⁵⁰

In 2001, the Canadian government established the International Commission on Intervention and State Sovereignty, an ad hoc commission tasked with developing Kofi

¹⁴⁷ Noele Higgins, *The Protection of Cultural Heritage During Armed Conflict. The Changing Paradigms*, Routledge Focus, 2020, p. 39.

¹⁴⁸ *Infra*, par. 2.4.2 "The Responsibility to Protect doctrine".

¹⁴⁹ Kofi Annan, *We the Peoples. The Role of the United Nations in the 21st century*, published by the United Nations Department of Public Information, 2000.

¹⁵⁰ *Ibidem*, p. 48.

Annan's relevant question. The commission completed its mandate with a final report in 2001, entitled "The Responsibility to Protect".¹⁵¹

The core thesis of the commission's report states that there is both an international and national responsibility to protect populations from existential threats. If a State is unable or unwilling to fulfil this responsibility, or if it is itself the perpetrator, the international community has the duty to intervene. Sovereignty, according to this doctrine, is contingent upon a State's duty and responsibility to protect its people; if this obligation is not fulfilled, the social contract between the government and its citizens is void, rendering the State's sovereignty illegitimate. In essence, sovereignty is not only a right but also a responsibility, and the international community has the non-negotiable role in protecting human rights, that cannot be obstructed by the invocation of sovereignty.

The Responsibility to Protect was formally endorsed by the United Nations General Assembly at the 2005 World Summit.¹⁵² On this occasion, the scope of the Responsibility to Protect was slightly redefined to focus on four crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. It is in this context that ethnic cleansing, despite not being explicitly recognized as an international crime, has found a place in the international legal framework.

The basic principle underlying the R2P doctrine has three pillars: first, the primary responsibility to protect its population rests with the State; second, the international community has a responsibility to assist and encourage the State in fulfilling its responsibility;¹⁵³ third, if the State is manifestly unwilling or unable to ensure its people's protection, then, the international community must intervene by using appropriate diplomatic, humanitarian and other peaceful means, to protect the population.¹⁵⁴ If peaceful measures reveal inadequate, States declare themselves "prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in

¹⁵¹ Report of the International Commission on Intervention and State sovereignty, "*The Responsibility to Protect*", 2001.

¹⁵² UN General Assembly, Res. 60/1 "Resolution on the Responsibility to Protect", 24 October 2005.

¹⁵³ *Ibidem*, p. 30, par. 138.

¹⁵⁴ *Ibidem*, p. 30, par. 139.

cooperation with relevant regional organizations as appropriate[...].¹⁵⁵ The latter provision legitimizes, in line with the UN Charter framework, the use of force, when necessary.

The Responsibility to Protect doctrine has been invoked in several international crises, nevertheless, the Security Council explicitly authorized the implementation of the doctrine in Resolution 1973 with respect to Libya in 2011.¹⁵⁶ This resolution represents the first, and to date, only application of the R2P.

In the aftermath of the United Nations' intervention in Libya, the Responsibility to Protect doctrine has been hardly criticised, questioning its credibility, due to concerns over State sovereignty, and selective enforcement, mainly based on geopolitical interests; in other words, what has emerged is the instrumentalization of the doctrine as a political tool and justification for intervention by Western States.

Contextually, with respect to protection of cultural heritage from deliberate destruction, UNESCO met in November 2015 to discuss the potential responses to the recent destruction of cultural heritage, as well as strategies for preserving it; the organisation suggested that the Responsibility to Protect could serve as a useful framework for States and the international community.¹⁵⁷

The potential application of the R2P doctrine to the destruction of cultural heritage raises two questions: first, does the scope of R2P extend to the destruction of cultural heritage? Second, if States have a duty to protect the cultural heritage within their borders, as the UN has repeatedly affirmed, what responsibility does the international community bear when a State is either unwilling or unable to fulfil this obligation?

With respect to the first question, as highlighted above, the Responsibility to Protect doctrine applies to genocide, war crimes, ethnic cleansing and crimes against humanity. Since the intentional destruction of cultural heritage amounts to a war crime and a crime against humanity, it legitimately falls within the scope of the R2P. Additionally, Irina

¹⁵⁵ *Ibidem*, par. 139.

¹⁵⁶ S/RES/1973, 17 March 2011.

¹⁵⁷ Noele Higgins, *The Protection of Cultural Heritage During Armed Conflict. The Changing Paradigms*, Routledge Focus, 2020, p. 43.

Bokova's use of the term, cultural cleansing, echoes the concept of ethnic cleansing, which is already covered by the Responsibility to Protect doctrine.¹⁵⁸

It is important to note that the Report of the International Commission on Intervention and State Sovereignty¹⁵⁹ does not explicitly elaborate on the concept of culture, rather it focuses on the protection of populations; thus, without a clear legal framework linking R2P to cultural heritage, its application remains open to interpretation and largely dependent on political will. The international community has demonstrated to expand the R2P framework to issues that do not expressly fall within the scope of its application. In 2008, the former Secretary General Ban Ki-moon warned against extending the doctrine to other issues, such as climate change or natural disasters, stating that "it would undermine the 2005 consensus and stretch the concept beyond recognition and operational utility".¹⁶⁰

As for the second question, under the third pillar of the Responsibility to Protect, the international community has the obligation to intervene when a State fails to uphold its responsibility to protect its population. Cultural heritage represents a common interest of the international community as a whole, implying an *erga omnes* obligation to take lawful measures to protect it.¹⁶¹ This principle is also reaffirmed in Article 54 of the 2001 International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts, which allows States, other than the directly injured one, to take lawful measures to ensure that a wrongful act is stopped and that appropriate reparation is made to those affected.¹⁶²

Among academics there is solid support for the implementation of the R2P doctrine in response to destruction of cultural heritage.

¹⁵⁸ J. Cuno, *The Responsibility to Protect the World's Cultural Heritage*, The Brown Journal of World Affairs, 2016, 97, p. 105.

¹⁵⁹ Report of the International Commission on Intervention and State Sovereignty, "The Responsibility to Protect", 2001.

¹⁶⁰ Secretary General's address at event on "Responsible Sovereignty: International Cooperation for a Changed World", 15 July 2008. [Address at event on "Responsible Sovereignty: International Cooperation for a Changed World" | United Nations Secretary-General](#)

¹⁶¹ F. Lenzerini, *Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage*, The international Spectator, 2016, 70, p. 80.

¹⁶² Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session (2001).

Francesco Lenzerini states that “it is indispensable that the doctrine of Responsibility to Protect (R2P) be put into practice seriously and effectively with the purpose of protecting humanity against the irreplaceable loss of its heritage.”¹⁶³

In 2017 the J Paul Getty Trust issued a report on cultural cleansing, exploring the use of the Responsibility to Protect as a method of protection of cultural heritage; the two authors of the report, Weiss and Connelly, claim that the application of the doctrine to destruction of cultural heritage makes intuitive sense since the protection of people and the protection of culture are inseparable, as one is the conceptual essence of the other, and reverse. A hierarchy between the two protections is false, as well as a choice.¹⁶⁴

However, while in academia the theoretical application of the R2P doctrine to the destruction of cultural heritage is supported as a legitimate and effective legal frame, it is unlikely to receive political support. The controversial use of the doctrine for the intervention in Libya was heavily criticised, even among the Permanent Members of the Security Council. The ambiguous and vague contours of the Responsibility to Protect principle make the doctrine susceptible to political instrumentalization, weakening its potential as a consistent and impartial legal framework for cultural heritage protection.

2.4.3 Cultural genocide

“Wherever books are burned, men in the end will also burn”

Heinric Heine, *Almansor*, 1823

As highlighted above, the Responsibility to Protect framework can apply in situations of genocide. This raises an important question: can the destruction of heritage fall under the definition of genocide in international law?

¹⁶³ F. Lenzerini, *Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage*, The international Spectator, 2016, 70, p. 70.

¹⁶⁴ T. G. Weiss and N. Connelly, *Cultural Cleansing and Mass Atrocities*, J Paul Getty Trust Occasional Papers in Cultural Heritage Policy, 2017, p. 6.

To properly address this question, it is essential to briefly analyse the notion of genocide.

The term genocide was coined by the Polish lawyer Raphael Lemkin in 1944. The etymology comes from the Greek word *genos*, meaning race or kind, and the Latin suffix *-cide*, denoting an act of killing.

Lemkin had witnessed the Armenian genocide, which led him to recognize and claim the urgent need for an international legal regime to hold individuals and governments accountable for crimes against persecuted groups.

In 1933, Lemkin submitted a set of proposals at the Fifth International Conference for the Unification of Criminal Law, convened under the League of Nations. His submission included a report and draft articles on the crime of “barbarity” conceived as oppressive and destructive actions directed against individuals as members of a national, religious, or racial group, and the crime of “vandalism”, defined as malicious destruction of works of art and culture because they represent the specific creations of the genius of such groups.¹⁶⁵

Lemkin’s proposals on barbarity and vandalism were not accepted by States.

Nevertheless, his definition of vandalism highlighted a significant connection between the destruction of culture and the destruction of a group.

Lemkin’s holistic view on the definition of genocide was further developed in 1944, when he explained that genocide does not necessarily mean the immediate destruction of a nation, rather it signifies a coordinated plan of actions aiming at annihilating the essential foundation of a specific group. These objectives might include culture, national feeling, religion, liberty and dignity.¹⁶⁶

According to Lemkin, attacks on the culture of a group have often preceded physical violence against the group. He argued that the intent to destroy a group requires the destruction of its memory and identity first. This perspective emphasizes that genocide is a systematic and strategic crime, with many dimensions and layers.

¹⁶⁵ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, and Proposals for Redress*, Carnegie Endowment for International Peace, 1944, p. 92.

¹⁶⁶ *Ibidem*, p. 79.

In the aftermath of World War II, the Holocaust, and the subsequent prosecutions at Nuremberg, the newly formed United Nations began drafting a convention to prohibit the crime of genocide. The definition of this crime was controversial from the beginning. In 1946, the General Assembly recognized genocide as an international crime in Resolution 96.¹⁶⁷

In 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide;¹⁶⁸ it was the first human rights treaty unanimously adopted by the General Assembly. Three legal experts were appointed to help draft the Convention, one of whom was Lemkin, who had been strongly advocating for the inclusion of a provision dedicated to cultural genocide.¹⁶⁹ Earlier versions of the Convention had included the concept defined as “systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value[...].”¹⁷⁰

However, in the final draft of the Convention Lemkin did not succeed in securing the inclusion of cultural genocide in the final version.

In fact, Article II of the Genocide Convention defines genocide as a crime of intentional destruction of a national, ethnic, racial and religious group, in whole or in part; subsequently, five punishable acts of genocide are listed.¹⁷¹

While no delegate denied the existence of cultural genocide, opinions diverged on whether it should have been included in the final text. Some States, including Brazil, Peru, and the Netherlands, argued that the concept was too vague. Others, such as Sweden, Denmark, Iran, and the United States, contended that cultural genocide was not as severe

¹⁶⁷ A/RES/96, 11 December 1946.

¹⁶⁸ Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.

¹⁶⁹ Noele Higgins, *The Protection of Cultural Heritage During Armed Conflict. The Changing Paradigms*, Routledge Focus, 2020, p. 50.

¹⁷⁰ Draft Convention on the Crime of Genocide, UN Doc E/447, 26 June 1947, Article I(II)(3)(e).

¹⁷¹ “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group” Article II, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.

as physical genocide, suggesting that it does not shock the conscience of mankind to the same degree.

In contrast, nine States from the Soviet bloc and the developing world argued that cultural destruction was an integral part of genocide.¹⁷²

The exclusion of cultural genocide from the Genocide Convention of 1948 significantly hindered the development of the concept within the legal framework. However, interests in cultural genocide re-emerged, especially in the 1990s in relation to the destruction of cultural heritage which took place during the Balkan Wars.

Despite proposals to reintroduce the concept of cultural genocide into the legal framework, the definition of genocide adopted in the Genocide Convention has been prevailing and replicated in statutes of international criminal tribunals. For instance, Article 4(2) of the International Criminal Tribunal for Former Yugoslavia mirrors the Convention's definition. The legal justification for the reiteration of the language of the Genocide Convention resides in the customary nature of the latter document.¹⁷³

The latter argument was reaffirmed in the case of *Prosecutor v. Krstić*, where the Tribunal stated "It therefore recognises that, despite recent developments, customary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of the group. Hence, an enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide."¹⁷⁴

Similarly, Article 17 of the Draft Code of Crimes against the Peace and Security of Mankind, adopted by the International Law Commission in 1996,¹⁷⁵ reiterates the definition of genocide of the Genocide Convention. The commentary on the Draft Code¹⁷⁶

¹⁷² Edward Luck, *Cultural Genocide and the Protection of Cultural Genocide*, J Paul Getty Trust Occasional Papers in Cultural Heritage Policy, 2018, p. 23-24.

¹⁷³ Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808, UN Doc S/25704, 1993, p. 12.

¹⁷⁴ *Prosecutor v. Krstić*, Trial Chamber, IT-98-33-T, 2 August 2001, p. 203, par. 580.

¹⁷⁵ Draft Code of Crimes against the Peace and Security of Mankind adopted by the International Law Commission at its forty-eighth session, 1996.

¹⁷⁶ Report of the International Law Commission on the work of its forty-eighth session, Official Records of the General Assembly, Fifty-first session, 6 May - 26 July 1996.

explicitly refers to cultural genocide; in paragraph 12 of the commentary on Article 17 the Commission notes that earlier drafts of the Genocide Convention initially included provisions addressing deliberate actions aimed at eradicating a group's language, religion or culture. These provisions would have covered measures such as banning the use of their language in daily life or schools, restricting the circulation of publications in their language, or destroying cultural institutions like libraries, museums, schools, historical monuments, and places of worship. However, the final text of the Convention ultimately excluded the concept of cultural genocide. Instead, it focused only on acts involving the material destruction of a group through physical or biological means. Consequently, the concept of genocide does not extend to the destruction of a group's national, linguistic, religious, or cultural identity; it has been interpreted solely "in its material sense, its physical and biological sense", without consideration of national, religious, racial, or ethnic elements from a cultural perspective.¹⁷⁷

Therefore, when assessing the possible paradigms to deal with the protection of cultural heritage, it is doubtful whether engaging the cultural genocide framework would be beneficial and effective, since it has never been defined, accepted or codified by the international community. Since Lemkin's initial proposal, cultural genocide has remained a controversial and uncertain concept under international law.

2.5 The securitisation of cultural heritage

As addressed above, the discourse of cultural heritage has evolved through multiple potential paradigms: cultural cleansing, the Responsibility to Protect doctrine, and cultural genocide. Beyond these, a fourth paradigm has emerged, namely, the security paradigm.

Even though a substantial legal framework seeking to protect cultural heritage does exist, the recent attacks, particularly in the Middle East and Africa have proven that a different approach to cultural heritage is needed in order to secure its protection.

¹⁷⁷ *Ibidem*, p. 90-91, par. 12.

Thus, a valid and robust international response to attacks on cultural heritage emerging in global discourse is the recognition of such assaults as a matter of international peace and security. In other words, it can be affirmed that the protection of cultural heritage has been progressively conceptualized within a security paradigm.

The latter approach builds, to some extent, on the “culture cleansing” term, as defined by Irina Bokova in 2015. While Bokova’s proposed framing lacks a solid legal basis, it has enhanced a process of securitization of cultural heritage; by defining the protection of cultural heritage as a security imperative, intrinsically linked to the protection of human lives,¹⁷⁸ the former Director-General of UNESCO placed the matter squarely in a security context.

The security rationale was facilitated when the United Nations convened a meeting in 2017, entitled “Protecting Cultural Heritage from Terrorism and Mass Atrocities: Links and Common Responsibilities”. The event, hosted by the European Union Delegation to the UN, the Permanent Mission of Italy to the UN, UNESCO, and the Global Centre for the Responsibility to Protect, gathered numerous national diplomats, non-governmental organisation representatives, and experts.¹⁷⁹ The final consensus of the meeting was that cultural heritage is worthy of protection, not only for its intrinsic value, but also because it is intertwined with the very survival of people.¹⁸⁰

In conclusion, as Luck has pointed out in his article “Cultural Genocide and the Protection of Cultural Heritage”, approaching cultural heritage protection through security lens offers substantive, conceptual and political advantages in countering its destruction. Namely, framing attacks on cultural heritage as a threat to international peace and security catalyses the urgency of the issue, as it enables stronger legal frameworks and enforcement mechanisms.¹⁸¹

¹⁷⁸ Irina Bokova, *Culture on the Front Line of New Wars*, 22 Brown Journal of World Affairs, 2015, 289, p. 294.

¹⁷⁹ Noele Higgins, *The Protection of Cultural Heritage During Armed Conflict. The Changing Paradigms*, Routledge Focus, 2020, p. 60.

¹⁸⁰ T. G. Weiss and N. Connelly, *Cultural Cleansing and Mass Atrocities*, J Paul Getty Trust Occasional Papers in Cultural Heritage Policy, 2017, p. 6.

¹⁸¹ Edward Luck, *Cultural Genocide and the Protection of Cultural Genocide*, J Paul Getty Trust Occasional Papers in Cultural Heritage Policy, 2018, p. 13.

2.5.1 The securitisation of cultural heritage: Compatibility with Article 39 of the UN Charter

The United Nations has progressively recognized the protection of cultural heritage as an integral part of its mandate to maintain international peace and security.

However, the Security Council's discretion in determining whether deliberate acts of destruction of cultural heritage constitute a threat or not to international peace and security are not unlimited. Indeed, the Security Council must assess the compatibility of such acts with the meaning of Article 39 of the UN Charter,¹⁸² which empowers the Security Council to decide the existence of a threat to peace, breach of peace, or act of aggression, and to take the appropriate measures in response.

The three situations indicated in Article 39 – threat to peace, breach of peace, or act of aggression – are not always easy to distinguish. The Security Council has a wide margin of discretion, especially in defining a threat to peace. For instance, a threat to peace can be ascertained in the case of an internal conflict or of a grave violation of fundamental human rights.¹⁸³

The lack of a fixed definition allows the Security Council to interpret a threat to peace flexibly, adapting it to evolving global security challenges, but also making the concept subject to power dynamics and political interests within the Security Council.

Andrew Boyd summarized this issue concisely with the following statement: “As far the UN is concerned, there is a Threat (or a Breach) when the Council decides that there is one.”¹⁸⁴

¹⁸² “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” Article 39, Chapter VII, Charter of the United Nations.

¹⁸³ F. M. Palombino, *Introduzione al diritto internazionale*, Manual Laterza, 2019, p.37.

¹⁸⁴ Andrew Boyd, *Fifteen Men on a Powder Keg: A History of the U.N. Security Council*, Methuen & Co., 1971.

Regarding the deliberate destruction of cultural heritage, in 2003, the Security Council considered that the destruction of the Buddhas of Bamiyan,¹⁸⁵ in Afghanistan, did not constitute a threat to peace, under Article 39.¹⁸⁶

Nevertheless, recent international practice suggests that the deliberate destruction of cultural heritage might be interpreted as falling within an enlarged notion of a threat to peace and security according to the Charter of the United Nations. This evolving perspective is based on the increasing recognition that such attacks can serve as both a source and a catalyst of conflicts, contributing to instability both at a national and international level; moreover, beyond the impact on conflict dynamics, attacks on cultural heritage also constitute a serious violation of fundamental human rights and international law, undermining the collective interests of the international community.¹⁸⁷

A further argument, supporting the UN's Security Council qualification of the deliberate destruction of cultural heritage as a threat to peace, is rooted in the broad purposes and values of the United Nations. Article 1 of the Charter identifies among its principal aims the maintenance of peace and security, and the promotion of international cooperation in solving cultural and humanitarian issues.¹⁸⁸ Additionally, Article 55(b) reinforces the commitment of Member States to foster international cultural cooperation as a vital condition for stable peace.¹⁸⁹

Thus, framing cultural heritage destruction within Article 39 is not only conceptually coherent, but also legally and politically justified.

Given that Member States have conferred upon the Security Council the primary responsibility for maintaining peace and security, a critical question arises regarding the

¹⁸⁵ The Buddhas of Bamiyan were two possibly 6th-century monumental Buddhist statues in the Bamiyan Valley of Afghanistan. As a UNESCO World Heritage Site of historical Afghan Buddhism, it was a holy site for Buddhists on the Silk Road. However, in March 2001, both statues were destroyed by the Taliban following an order given on February 26, 2001, by Taliban leader Mullah Muhammad Omar, to destroy all the statues in Afghanistan "so that no one can worship or respect them in the future".

¹⁸⁶ Francioni, Lenzerini, *The Destruction of the Buddhas of Bamiyan and International Law*, European Journal of International Law, 2003, 619, p. 630.

¹⁸⁷ Pineschi, *Tutela Internazionale del Patrimonio Culturale e Missioni di Pace delle Nazioni Unite: un binomio possibile? Il caso MINUSMA*, Rivista di diritto internazionale, 2018, 5, p. 20.

¹⁸⁸ Article 1(1-3), Charter of the United Nations.

¹⁸⁹ *Ibidem*, Article 55(2).

limits of its discretion in determining threats that might trigger actions. Despite the Security Council's wide discretionary power in decision-making, according to Pineschi, there seem to be two implicit constraints. First, the presence of a widespread opposition from the majority of Members, which could indicate informal lack of consensus, making it harder for the Security Council to justify its determination. Secondly, a minimum threshold of severity must be met for cultural destruction to be classified as a threat to peace warranting military intervention under Chapter VII.¹⁹⁰

The latter aspect is extremely relevant in cases where the Council authorizes "robust" peacekeeping missions, such as in the case of MINUSMA. The exceptional nature of the use of force requires that it must be used as an *extrema ratio*, adhering to the principles of necessity and proportionality.

However, how can the level of gravity be assessed in the cases of attacks on cultural heritage?

The assessment cannot depend exclusively on the material value, or on the aesthetic of the damaged cultural heritage; nor the inscription on the UNESCO World Heritage List constitutes a necessary and sufficient criterion for evaluating gravity. The World Heritage List should not be considered as the exact mirror of the most important cultural sites around the world.¹⁹¹ The World Heritage Committee is a body composed of 21 States Parties to the 1992 Convention Concerning the Protection of the World Cultural and Natural Heritage, and as such its decisions are not purely technical, but may be influenced by political considerations.

A more valid criterion for determining the severity of the attacks on cultural heritage should instead focus on the site's exceptional cultural significance and on the identity value of the cultural subject at stake for local and global communities. The Council should adopt a case-by-case approach, considering each case individually according to factors

¹⁹⁰ Pineschi, *Tutela Internazionale del Patrimonio Culturale e Missioni di Pace delle Nazioni Unite: un binomio possibile? Il caso MINUSMA*, Rivista di diritto internazionale, 2018, 5, p. 30.

¹⁹¹ S. Starrenburg, *Who is the victim of cultural heritage destruction? The Reparations Order in the case of the Prosecutor v Ahmad Al Faki Al Mahdi*, Blog of the European Journal of International Law, 25 August 2017.

such as the uniqueness and irreplaceability of the cultural site, its historical importance, and its deep and emotional connection to people.

Additionally, while widespread and systematic attacks are more likely to meet the threshold of severity needed to classify the deliberate destruction of cultural heritage as a threat to international peace and security according to Article 39, even a single act of intentional destruction may be deemed sufficiently significant to engage the concern of the international community as a whole.¹⁹²

Therefore, the assessment of the gravity of an attack on cultural heritage falls within the Security Council's discretionary power under Article 39 of the Charter. This implies that the United Nations body must determine whether the circumstances of each case constitute a threat to international peace and security. However, the discretionary power of the Security Council is constrained by the limits of its competencies under Article 24(1) of the UN Charter, as well as by the principles of necessity, proportionality, and the general consensus of the international community.¹⁹³

2.5.2 UN Resolutions on cultural heritage: the path toward Resolution 2347

Through the years, the United Nations Security Council has been a lawmaker in the field of cultural heritage protection. It has adopted a number of resolutions on the topic, framing it as an international peace and security issue. The apical manifestation of this process of securitisation is Resolution 2347, adopted by the Security Council in 2017. This resolution is noteworthy because it is the first to focus solely on the destruction and trafficking of cultural heritage in the context of armed conflict, recognizing such acts on a similar level as other threats to international peace. The Preamble of the Resolution states that “unlawful destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed conflicts [...] and the attempt to deny historical

¹⁹² Pineschi, *Tutela Internazionale del Patrimonio Culturale e Missioni di Pace delle Nazioni Unite: un binomio possibile? Il caso MINUSMA*, *Rivista di diritto internazionale*, 2018, 5, p. 31.

¹⁹³ *Ibidem*, p. 32.

roots and cultural diversity can fuel and exacerbate conflict and hamper post-conflict national reconciliation, thereby undermining the security, stability, governance, social, economic and cultural development of affected State.”¹⁹⁴

However, the path leading to the adoption of Resolution 2347, which will be further discussed in Paragraph 3, has been long and tortuous.

The first Security Council resolution linked to cultural heritage was Resolution 1267, adopted in 1999, with regard to the Taliban and the cultural heritage in Afghanistan. While Resolution 1267 did not specifically address cultural heritage, it recalls the respect for Afghanistan’s cultural and historical legacy.¹⁹⁵ Moreover, the Resolution imposed measures such as asset freezes, travel bans, and arms embargoes on entities linked to terrorism.

Over time, these mechanisms were extended to target groups engaged in the looting and trafficking of cultural artifacts, particularly ISIS and Al-Qaeda affiliates.

Subsequently, in 2003, the UN Security Council adopted Resolution 1483.¹⁹⁶

Among its key provisions, the Resolution explicitly recognized the need to protect Iraq’s cultural heritage, particularly in response to widespread looting of museums, archaeological sites, and historical artifacts following the fall of Saddam Hussein’s regime.

Paragraph 7 of Resolution 1483 called on Member States to counter crimes against Iraq’s cultural heritage, and to facilitate the return of illegally removed cultural properties to the proper Iraqi institutions.¹⁹⁷ This marked an important step, as it emphasized an *erga omnes* obligation for all Member States to ensure the safe return of cultural heritage illegally transferred from occupied territories.

¹⁹⁴ UN Doc S/RES/2347, 24 March 2017, Preamble.

¹⁹⁵ UN Doc S/RES/1267, 15 October 1999, Preamble.

¹⁹⁶ UN Doc S/RES/1483, 22 May 2002.

¹⁹⁷ “Decides that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990[...].” UN Doc S/RES/1483, 22 May 2002, par. 7.

Further strengthening this legal framework, the Security Council adopted Resolution 2199 in 2015, condemning the destruction of cultural heritage, particularly by the Islamic State and the Al-Nusra Front.¹⁹⁸ The two terroristic groups were profiting from activities directly or indirectly related to illegal excavations and the smuggling of cultural artifacts from archaeological sites, museums, libraries, archives, and other historical locations in Syria and Iraq. The illicit revenues generated from these activities were then used to finance recruitment efforts, enhance operational capabilities, and carry out terrorist attacks.¹⁹⁹

In response, the Council reaffirmed the provisions of Resolution 1483 (2003) and urged all Member States to take appropriate measures to combat the trafficking of cultural property in order to prevent its use in funding terrorism.

Resolution 2199 also enhanced cooperation among UNESCO, Interpol, the United Nations Office on Drugs and Crime, and other organizations to support this effort.

Later in the same year, the Security Council adopted Resolution 2253,²⁰⁰ further strengthening sanctions against Islamic State, Al-Qaeda, and other terroristic groups. This Resolution focused on financial sources of terrorism, including the trafficking of cultural properties, and called on Member States to take stronger actions against illegal trade of cultural heritage.²⁰¹

The trend toward securitising cultural heritage protection became significantly heightened in Resolutions 2100 and 2347. Until 2017, the Security Council had dealt with destruction, looting and trafficking only as one aspect of a broader threat to international peace and security, terrorism for instance.

¹⁹⁸ UN Doc S/RES/2199, 12 February 2015.

¹⁹⁹ *Ibidem*, par. 15-17.

²⁰⁰ UN Doc S/RES/2253, 17 December 2015.

²⁰¹ “Condemning the destruction of cultural heritage in Iraq and Syria particularly by ISIL and ANF, including targeted destruction of religious sites and objects; and recalling its decision that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting cross-border trade in such items, thereby allowing for their eventual safe return to the Iraqi and Syrian people”. UN Doc S/RES/2253, 17 December 2015, Preamble.

However, beginning with Resolution 2100, and even more explicitly in Resolution 2347, the Security Council started recognizing the deliberate destruction of cultural heritage as a notable threat to peace and security in its own right.

Resolution 2100 (2013) established the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), making it the first UN peacekeeping mission to have an explicit mandate to protect cultural heritage; precisely, one of the aims of the mission is “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;”²⁰²

The innovation of the Resolution establishing MINUSMA and the subsequent amendments lies in the fact that, for the first time, the UN Security Council authorized peacekeeping forces to assist a State in protecting historical and cultural sites from deliberate attacks.

Resolution 2347 (2017)²⁰³ builds on the foundation set by Resolution 2100, expanding cultural heritage protection beyond Mali to a global level, ensuring the protection of cultural heritage a core part of UN peacekeeping missions.

Therefore, this Resolution represents a significant shift and sets a precedent for future peacekeeping missions, underscoring the protection of cultural heritage as a primary matter of international security.

²⁰² UN Doc S/RES/2100, 25 April 2013, par. 16(f).

²⁰³ UN Doc S/RES/2347, 24 March 2017.

CHAPTER 3: The case of Mali

Summary: 3.1 The destruction of cultural heritage in Mali. – 3.2 UN Security Council Resolution 2347. – 3.2.1 Challenges and Limitations of Resolution 2347. – 3.3 Cultural Peacekeeping. – 3.4 The case of Mali and MINUSMA. – 3.4.1 Assessing the Compatibility of MINUSMA’s Robust Mandate with Core Peacekeeping Principles. – 3.4.2 Cultural Heritage Protection Within MINUSMA’s Peacekeeping Mandate. – 3.5 UNESCO’s Role in the Protection and Restoration of Cultural Heritage During the Mali Crisis.

3.1 The destruction of cultural heritage in Mali

The intentional destruction of cultural heritage in Mali, particularly in the city of Timbuktu, represents one of the most striking examples of cultural violence in recent history.

For a long time, Mali has been one of the most unstable States in West Africa,²⁰⁴ facing an uncertain political and security future, plagued by a deep structural crisis worsened by multiple factors.

In 2012 a military coup overthrew President Amadou Toumani Toure’s government due to its ineffective handling of the Tuareg rebellion in the north. The northern part of the country was rapidly seized by the National Movement for the Liberation of Azawad (MNLA), along with jihadist groups such as Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM).

²⁰⁴ With a population of approximately 22.4 million, 55 percent of whom are under 18, Mali ranks 186th of 191 countries on the Human Development Index (HDI). Country Office Annual Report 2023 Mali, UNICEF.

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In 2013 the northern regions of Timbuktu, Gao and Kidal were reconquered by the governmental forces, with the support of French military contingents.²⁰⁵

On 25 April 2013 the Security Council established, through Resolution 2100, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), namely, a United Nations peacekeeping mission aimed at stabilizing the country after the rebellion of the Tuareg and jihadist forces. However, the mission was ended on 30 June 2023, with all UN forces scheduled to leave Mali by December 2023. The end of the mission was explicitly requested by the Foreign Minister of Mali, citing the failure to stabilize the situation in the country.²⁰⁶

The primary victims of this tragic situation were civilians, particularly the most vulnerable. Numerous war crimes and crimes against humanity were committed both by armed groups and governmental forces.

Equally devastating was the damage inflicted on cultural, historical, and religious heritage. Several sites and monuments were destroyed in Timbuktu, a UNESCO World Heritage site since 1988, as well as in Gao.

The northern region preserves valuable testimonies of history, culture and identity of Mali.

In particular, Timbuktu was founded in the 5th century. The city flourished during the Mali Empire²⁰⁷ and reached its intellectual and commercial apex in the 15th and 16th centuries under the Songhai Empire.²⁰⁸ The city's significance is further underscored by

²⁰⁵ Operation Serval was a French military operation in Mali. The aim of the operation was to oust Islamic militants from the north of Mali, who had begun a push into the center of Mali. Operation Serval followed the United Nations Security Council Resolution 2085 of 20 December 2012 and an official request by the Malian interim government for French military assistance. The operation ended on 15 July 2014, and was replaced by Operation Barkhane, launched on 1 August 2014 to fight Islamist fighters in the Sahel.

²⁰⁶ Last UN peacekeepers poised for complete withdrawal from Mali, UN News, 31 December 2023.

Accessible at:

[Last UN peacekeepers poised for complete withdrawal from Mali | UN News](#)

²⁰⁷ The Mali Empire was an empire in West Africa from c. 1226 to 1670. The empire was founded by Sundiata Keita and became renowned for the wealth of its rulers, especially Mansa Musa (Musa Keita). At its peak, Mali was the largest empire in West Africa, widely influencing the culture of the region through the spread of its language, laws, and customs.

²⁰⁸ The Songhai Empire was a state located in the western part of the Sahel during the 15th and 16th centuries. At its peak, it was one of the largest African empires in history

its designation as a UNESCO World Heritage Site in 1988, due to its historic mosques, mausoleums, and unique architecture; the World Heritage Committee, in 1988, justified the inscription of Timbuktu in the World Heritage List as the following: “Located at the gateway to the Sahara desert, within the confines of the fertile zone of the Sudan and in an exceptionally propitious site near to the river, Timbuktu is one of the cities of Africa whose name is the most heavily charged with history. Founded in the 5th century, the economic and cultural apogee of Timbuktu came about during the 15th and 16th centuries. It was an important centre for the diffusion of Islamic culture with the University of Sankore, with 180 Koranic schools and 25,000 students. It was also a crossroads and an important market place where the trading of manuscripts was negotiated, and salt from Teghaza in the north, gold was sold, and cattle and grain from the south.”²⁰⁹

Among Timbuktu’s most remarkable sites, the mosques of Djinguereber, Sankore, and Sidi Yahia stand out. These mosques built in the 14th century under Sultan Kankan Moussa,²¹⁰ the wealthy ruler of the Mali Empire, symbolized the city’s prosperity during the empire’s golden age and solidified Timbuktu’s reputation as a centre of Islamic culture and scholarship.

Additionally, the city is home to 16 mausoleums dedicated to Sufi saints, some dating back to the 13th century. These sacred sites hold great significance as places of prayer for the local population and serve as pilgrimage destinations for believers from other regions of Mali and beyond.

Timbuktu also housed an extraordinary collection of manuscripts, estimated to number between 300,000 and 700,000, covering a vast range of subjects, including science, medicine, law, astronomy, and theology. Many of these invaluable texts were preserved in the Ahmed Baba Institute.

However, this deep cultural and historical legacy became a target of violent extremism during the Malian conflict that erupted in 2012. As mentioned, after the military coup, the National Movement for the Liberation of Azawad (MNLA), along with jihadist groups

²⁰⁹ UNESCO, Doc WHC-12/36.COM/8E, p. 77.

²¹⁰ Mansa Musa (reigned 1312 – c. 1337) was the ninth *Mansa* of the Mali Empire, which reached its territorial peak during his reign. Musa's reign is often regarded as the zenith of Mali's power and prestige.

such as Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM), took control of the northern Mali.

Particularly, Ansar Dine sought to impose a strict interpretation of Sharia, launching a campaign against what they considered idolatrous religious practises, including the veneration of saints and the preservation of mausoleums. As part of their efforts to reshape Malian society along fundamentalist lines, the group deliberately targeted Timbuktu's fourteen mausoleums and the mosque of Sidi Yahya. In the Ansar Dine's campaign against Timbuktu's heritage, militants also set fire to parts of the Ahmed Baba Institute, destroying thousands of manuscripts.

The tragic destruction was shown to locals and to media by Ahmad Al Faqi Al Mahdi, head of Hesbah, a command of the Islamic forces.²¹¹ Hesbah was specifically entrusted with regulating the morality of the people of Timbuktu, and with preventing, suppressing and repressing anything perceived to constitute a "visible vice".²¹² During the destruction, Al Mahdi supervised and gave instructions, he also told journalists present that "if a tomb is higher than the others, it must be levelled [...] we are going to rid the landscape of anything that is out of place".²¹³

The international community's reaction of condemnation was unanimous and a number of initiatives were promoted to restore damaged cultural assets and strengthen their protection. Among these reactions, the Security Council authorized the United Nations Multidimensional Integrated Stabilization Mission in Mali, the first peacekeeping mission to have, inter alia, the aim of protecting cultural heritage from deliberate attacks.²¹⁴

Through Resolution 2347, the Security Council has further established that, where necessary, the mandate of any peacekeeping mission may include the protection of cultural heritage, if expressly requested by the State concerned.²¹⁵

²¹¹ Pineschi, *Tutela Internazionale del Patrimonio Culturale e Missioni di Pace delle Nazioni Unite: un binomio possibile? Il caso MINUSMA*, *Rivista di diritto internazionale*, 2018, 5, p. 5.

²¹² The Prosecutor v. Ahmad Al Mahdi, Trial Chamber VIII, Judgment and Sentence, ICC-01/12-01/15, 27 September 2016, par. 33.

²¹³ *Ibidem*, par. 38(iii).

²¹⁴ UN Doc S/RES/2100, 25 April 2013.

²¹⁵ UN Doc S/RES/2347, 24 March 2017.

3.2 UN Security Council Resolution 2347

On 24 March 2017, the Security Council adopted Resolution 2347. It represents a milestone in the global response to the destruction of cultural heritage, since it is the first resolution focused solely on the destruction and trafficking of cultural heritage in the context of armed conflicts. While Resolution 2347 is not the first to address the destruction and looting of cultural heritage, the Security Council, by dedicating an entire resolution to this topic, affirms the protection of cultural heritage as a crucial key for the maintenance of international peace and security.

The acceptance of the destruction of cultural heritage as a threat to international peace, on the same level as others, is already visible.

Of particular interest is the record of the speeches delivered during the 7907th meeting of the Security Council,²¹⁶ where the French Government emphasized the security dimension of cultural heritage protection, both in the prevention and conclusion of conflicts; as stated: “However, it is also a security issue, because illicit trafficking in looted cultural property during conflicts finances terrorist networks and is a factor in the development of armed conflicts themselves.[...]Even after conflict, when peace is restored, heritage continues to play a major role in restoring peace as a symbol of resilience and unity for peoples whose blood has been shed.”²¹⁷

Even more explicitly, the delegation of the United Kingdom asserts that cultural destruction has to be managed “with the same intensity and the same unity of purpose as we do to any other threat to international peace and security.”²¹⁸

The above declarations build, to some extent, on the Abu Dhabi Declaration on Safeguarding Endangered Cultural Heritage, in 2016, which defines destruction of cultural heritage as a proper threat to peace;²¹⁹ this declaration, adopted at an international conference co-organized by UNESCO, France, and the United Arab Emirates outlined the

²¹⁶ UN Doc S/PV.7907, 24 March 2017.

²¹⁷ *Ibidem*, p. 7.

²¹⁸ *Ibidem*, p. 21.

²¹⁹ Declaration on Safeguarding Endangered Cultural Heritage, adopted in Abu Dhabi, 3 December 2016.

need for a comprehensive and coordinated global response to safeguard cultural heritage in times of war, calling both for the reinforcement of international legal framework and the establishment of an emergency response mechanism in order to prevent deliberate destructions.

The preamble of Resolution 2347 unequivocally highlights that the unlawful destruction of cultural heritage, along with the looting and trafficking of cultural property during armed conflicts, and efforts to erase historical roots and cultural diversity, can aggravate conflicts, hinder national reconciliation in post-conflict situations, and undermine the security, stability, governance, and socio-economic development of affected States.²²⁰

Additionally, the Resolution acknowledges the connection of the destruction of cultural heritage, the looting and trafficking of cultural property, with the illegal activities of terrorist groups, especially with regard to their financing. However, while the previous Resolutions of the Security Council²²¹ were primarily focused on the protection of cultural heritage as a major financial source of terroristic groups, Resolution 2347 allows broader protection, which is not necessarily connected to the involvement of terrorism. This interpretation can be deduced from the use of the textual term “notably”, when it comes to depict the tie between deliberate destruction of cultural heritage and terrorism.²²²

By stating that such acts are “notably” associated with terrorist activities, rather than exclusively, the Resolution asserts that cultural heritage destruction and illicit trafficking

²²⁰ UN Doc S/RES/2347, 24 March 2017, p. 1.

²²¹ UN Doc S/RES/1483, 22 May 2002. UN Doc S/RES/2199, 12 February 2015. UN Doc S/RES/2253, 17 December 2015.

²²² *“Emphasizing that the unlawful destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed conflicts, notably by terrorist groups [...]”* UN Doc S/RES/2347, 24 March 2017, p. 1.

“Noting with grave concern the involvement of non-state actors, notably terrorist groups [...]” Ibidem, p.1.

“Deplores and condemns the unlawful destruction of cultural heritage, inter alia destruction of religious sites and artefacts, as well as the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, in the context of armed conflicts, notably by terrorist groups;” Ibidem, p.3, par. 1.

“Notably from terrorist groups, including by prohibiting cross-border trade in such illicit items where States have a reasonable suspicion that the items originate from a context of armed conflict, notably from terrorist groups [...]” Ibidem, p. 4, par. 8.

“Calls upon Member States, in order to prevent and counter trafficking of cultural property illegally appropriated and exported in the context of armed conflicts, notably by terrorist groups [...]” Ibidem, p. 5, par. 17.

might occur independently of terrorism. This acknowledgement places the protection of cultural heritage not just as a counterterrorism measure, but as a fundamental issue of international peace and security in its own right.²²³

Resolution 2347 plays a pivotal role in strengthening the legal framework concerning the protection of cultural heritage. The Security Council recalls and encourages Member States to ratify the key international conventions on cultural heritage,²²⁴ simultaneously, it also stresses the primary responsibility of Member States in protecting cultural heritage, in conformity with the United Nations Charter, and particularly with respect to the sovereignty of all States.²²⁵

An innovative aspect of Resolution 2347 is the establishment of a multi-level cooperation framework that extends beyond States to include non-state actors. The comprehensive approach encompasses international organizations, such as UNESCO, INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Customs Organization (WCO), civil society and expert groups.²²⁶ A notable example of this broader engagement is the frequent reference in the Resolution to the Analytical Support and Sanctions Monitoring Team, a specialized body which plays a crucial role in tracking and analysing sanctions violations, including those related to the illicit trafficking of cultural property, and provides intelligence to assist international efforts in combating these crimes.²²⁷

The promotion of enhanced international collaboration and cooperation, based on a multilateral and multi-sectoral approach, is significant since it implies that cultural heritage protection requires coordinated action at all levels, in order to ensure an effective global response and governance in this realm.

²²³ Sabrina Urbinati, *La Risoluzione 2347 (2017): Il Consiglio di Sicurezza e la difesa dei beni culturali in caso di conflitto armato. Molto rumore per nulla ?!*, *Il Diritto Internazionale e la protezione del Patrimonio Culturale*, a cura di Elisa Baroncini, 2019, 83, p. 91.

²²⁴ “Recalling the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 and its Protocols of 14 May 1954 and 26 March 1999, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, the Convention concerning the protection of the World Cultural and Natural Heritage of 16 November 1972, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression”. UN Doc S/RES/2347, 24 March 2017, p. 2.

²²⁵ *Ibidem*, p. 4, par. 5.

²²⁶ *Ibidem*, p. 6, par. 20.

²²⁷ *Ibidem*, p. 3-6, par. 27(f).

Finally, one of the most relevant aspects of the Resolution can be found in paragraph 19, which, for the first time, explicitly recognizes that United Nations peacekeeping operations may be mandated to assist in the protection of cultural heritage from destruction, illicit excavation, looting and smuggling in the context of armed conflicts.²²⁸

This provision marks a critical development in the evolution of international peacekeeping mandates, as Resolution 2347 formally integrates cultural heritage protection into the United Nations peacekeeping missions. On this occasion, the Security Council institutionalized the protection of cultural heritage as a fundamental component of peacekeeping's final aim, namely, maintaining peace and security.

3.2.1 Challenges and Limitations of Resolution 2347

Despite its remarkable nature in recognizing the destruction and trafficking of cultural heritage as a threat to international peace and security, Resolution 2347 presents certain limitations, especially concerning its legal force and enforceability.

The Security Council, while acknowledging the security dimension of cultural heritage protection, did not adopt the Resolution under Chapter VII of the UN Charter, which would have provided a binding legal framework.

In theory, the adoption of binding measures could have been justified under Article 39²²⁹ of the UN Charter, thus laying the groundwork for measures under Article 41,²³⁰ which allows for non-military sanctions.

Nevertheless, the Security Council limited itself to making recommendations. The terminology used in Resolution 2347 is particularly noteworthy, as it predominantly relies

²²⁸ UN Doc S/RES/2347, 24 March 2017, p. 6, par. 19.

²²⁹ *"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."* Article 39, Chapter VII, Charter of the United Nations.

²³⁰ *"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."* Article 41, Chapter VII, Charter of the United Nations.

on soft language that suggests voluntary cooperation rather than enforceable mandates. The frequent use of terms such as “encourages”,²³¹ “deplores”,²³² “invites”,²³³ “stresses”,²³⁴ “urges”,²³⁵ “requests”,²³⁶ “recalls”,²³⁷ reflects a diplomatic approach, emphasizing a voluntary-based cooperation, rather than an enforceable obligation. This wording contrasts with the stronger language typically found in Resolutions adopted under Chapter VII of the United Nations Charter, which often include terms such as “decides” or “demands” carrying binding legal weight.

The Resolution in question fails to invoke Chapter VII of the United Nations Charter, which is the legal basis for the Security Council’s mandate and authority to determine and respond to threats to international peace and security. Resolution 2347 makes no reference to Articles 39-42 of the UN Charter that authorize the Council to recognize a situation as a proper threat to peace and, consequently, to adopt legally binding measures.

This means that while the Resolution provides a political and moral legitimacy for stronger actions, it lacks a binding legal force, failing to establish an accountable mechanism for potential non-compliance cases.²³⁸ Therefore, States remain free to interpret and implement provisions, undermining the effective protection of cultural heritage, and the establishment of a uniform and unified international response.

A reason for the absence of Chapter VII’s invocation might be the reluctance of some Permanent Members of the Security Council, namely China and Russia, to expand the scope of the United Nations interventions, in order to preserve States’ sovereignties and the principle of non-interference; broadening the scope of the United Nations intervention could set a precedent for actions that might collide with the two above-mentioned principles. The Security Council, therefore, opted for a consensus on a unified political

²³¹ UN Doc S/RES/2347, 24 March 2017, p. 6, par. 18.

²³² *Ibidem*, p. 3, par. 1.

²³³ *Ibidem*, p. 4, par. 6.

²³⁴ *Ibidem*, p. 4, par. 5.

²³⁵ *Ibidem*, p. 4, par. 9.

²³⁶ *Ibidem*, p. 4, par. 8.

²³⁷ *Ibidem*, p. 3, par. 3.

²³⁸ Sabrina Urbinati, *La Risoluzione 2347 (2017): Il Consiglio di Sicurezza e la difesa dei beni culturali in caso di conflitto armato. Molto rumore per nulla ?!*, *Il Diritto Internazionale e la protezione del Patrimonio Culturale*, a cura di Elisa Baroncini, 2019, 83, p. 95.

message over the legal enforceability, which would not have aligned with the conservative position of some members.

Additionally, the opportunity offered by Resolution 2347 could have been taken to establish that the destruction, looting and illicit trafficking of cultural heritage can be considered a war crime, as well as a crime against humanity.

Expanding the classification of cultural heritage destruction to a crime against humanity under Article 7 of the Rome Statute would have reinforced its criminalization beyond wartime, recognizing that such acts can be as devastating as physical violence against people. By not explicitly addressing peacetime destruction, Resolution 2347 leaves a legal gap where crimes committed against cultural heritage during peacetime remain beyond the clear scope of international law.²³⁹

Lastly, Resolution 2347 fails to address the intangible cultural heritage, as defined under Article 2, Paragraph 1, of the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003.²⁴⁰ This form of heritage includes traditions, performing arts, rituals, oral expressions, knowledge systems, and practices that communities transmit through generations, which are integral to cultural identity and social cohesion. Unlike tangible heritage, which consists of physical structures or artifacts, intangible cultural heritage is deeply embedded in living traditions and is particularly vulnerable to situations of deliberate destruction, as well as to armed conflicts.²⁴¹

However, Resolution 2347 focuses primarily on the protection of tangible cultural property, failing to recognize that intangible cultural heritage is equally at risk and requires international safeguarding measures. Embracing all forms of cultural heritage

²³⁹ S. Green Martinez, *Destruction of Cultural Heritage in Northern Mali: A crime against humanity?* Journal of International Criminal Justice, Vol 13(5), 2015, p. 10.

²⁴⁰ “The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. [...]” Article 2, par. 1, Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003.

²⁴¹ Sabrina Urbinati, *La Risoluzione 2347 (2017): Il Consiglio di Sicurezza e la difesa dei beni culturali in caso di conflitto armato. Molto rumore per nulla ?!*, Il Diritto Internazionale e la protezione del Patrimonio Culturale, a cura di Elisa Baroncini, 2019, 83, p. 92.

within the scope of protection would ensure a more comprehensive and enhanced safeguarding of culture and cultural diversity.

3.3 Cultural Peacekeeping

In light of the severe and profound wounds inflicted on Mali's historical, cultural, and religious heritage, as well as the associated violations of fundamental human rights and of the international law, the international community's condemnation has been unanimous.

In particular, as previously addressed, the authorization of the deployment of the United Nations Multidimensional Integrated Stabilization Mission in Mali, the first peacekeeping mission entrusted, *inter alia*, with functions aimed at protecting cultural heritage, has represented a significant turning point in international law, especially concerning the nature of peacekeeping missions.

Peacekeeping operations of the United Nations are established under the authority of the Security Council, while operational control is exercised by the United Nations Secretariat, through the Department of Peace Operations.

These missions are carried out by multinational and multi-actor coalitions, comprising troops, known as Blue Helmets, police, civilian personnel. Peacekeeping operations are a critical tool for maintaining peace and security, protecting civilians, supporting political processes, disarmaments, promoting human rights, and ensuring compliance with international law.

The integration of the safeguard of cultural heritage in peacekeeping mandates appears legitimate considering the flexibility of the legal framework ruling these operations. The lack of a rigid legal basis allows the United Nations to have a flexible and adaptable tool

for maintaining peace and security, one that can meet the specific needs that arise depending on the particularities of a given crisis.²⁴²

Over time, the protection of cultural heritage has not been recognized as a priority, nor as an important element in the context of peacekeeping. Resolution 2100 of the Security Council included, for the first time, the protection of cultural heritage in the mandate of the UN Multidimensional Integrated Stabilization Mission on Mali. However, it should be noted that the safeguard of cultural heritage is just one of the aims of the mission.

The mission is often described as one of the most “overarching”²⁴³ peacekeeping operations, tasked with a multitude of responsibilities, such as civilian protection, facilitating disarmament processes, human rights monitoring, and assisting transitional authorities in Mali. However, the broad scope has raised a question: can MINUSMA’s mandate be stretched so widely to encompass the protection of cultural heritage?

According to Petrovic, in her article *The Cultural Dimension of Peace Operations: Peacekeeping and Cultural Property* (2018), the protection of cultural heritage should be part of the mandate of every peacekeeping mission.²⁴⁴

An argument in favour of including the protection of cultural heritage within the scope of peacekeeping mandates might be its fundamental contribution to achieving the mission’s objectives. By engaging in cultural heritage preservation, peacekeeping missions can demonstrate a commitment to respect the host country’s traditions and historical legacy, fostering trust between peacekeeping forces and the local population.

A trust-based relationship is crucial in order to ensure the credibility and, therefore, the legitimacy of the mission, as it is less likely to be perceived as an external force imposing on the host State’s sovereignty.

The recognition of the peacekeeping operations at a local level significantly enhances their effectiveness, by reducing resistance and scepticism, and stimulating local

²⁴² Pineschi, *Tutela Internazionale del Patrimonio Culturale e Missioni di Pace delle Nazioni Unite: un binomio possibile? Il caso MINUSMA*, Rivista di diritto internazionale, 2018, 5, p. 9.

²⁴³ J. Petrovic, *The Cultural Dimension of Peace Operations: Peacekeeping and Cultural Property*, Global Leadership Initiatives for Conflict Resolution and Peacebuilding, IGI Global, 2018, 84, p. 98.

²⁴⁴ *Ibidem*, p. 95.

cooperation which is pivotal for a sustainable peace. Furthermore, once a conflict is over, the survival of cultural heritage can become a unifying symbol for communities, supporting the interruption of the cycle of violence and enhancing the peacebuilding process through the healing of the wounds inflicted to people by the war.²⁴⁵

Thus, integrating cultural heritage protection into peacekeeping mandates is not just a symbolic act but a remarkable element to contribute to a long-term peace and reconciliation. In this regard, the urgent need to strengthen the efforts to protect and safeguard world's cultural heritage is recognized by the UN General Assembly as one of the principles of a sustainable development in the 2030 Agenda for Sustainable Development, adopted in 2015.²⁴⁶

An empirical case supporting the positive dynamic described is the case of the tragic looting of the Baghdad Museum, occurred in 2003. According to Moayyed Saïd al-Damergi, advisor to the former Iraqi Minister of Culture, at the moment of the looting, American tanks were stationed in front of the main entrance; when it was asked to intervene, soldiers replied they did not have instructions to stop the looting taking place, as it did not fall within their competences.²⁴⁷

The widespread attacks on cultural heritage of Iraq, and the omission of protection committed by international forces provoked the rapid loss of support for the coalition forces in the 2003 Iraq War.²⁴⁸

An additional positive aspect of integrating cultural heritage protection in peacekeeping mandates is the disrupting of the financial networks that sustain armed conflicts stemming from the looting and illicit trafficking of cultural artifacts. These activities serve as an

²⁴⁵ UNESCO, Report of the International Conference “Heritage and Cultural Diversity at Risk in Iraq and Syria”, 2 December 2014, p. 14.

²⁴⁶ UNGA Res 70/1, *Transforming Our World: the 2030 Agenda for Sustainable Development*, 2015, p. 22, par. 11.4.

²⁴⁷ R.N., *Chi ha pianificato il saccheggio dei musei nazionali iracheni?* Réseau Voltaire, 17 April 2003, traduction of José F. Padova.

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[Chi ha pianificato il saccheggio dei musei nazionali iracheni?, \(traduzione dal francese di José F. Padova\).](#)

²⁴⁸ P. Foradori and P. Rosa, *Expanding the Peacekeeping Agenda. The Protection of Cultural Heritage in War-Torn Societies*, Global Change, Peace & Security, 2017, 145, p. 154.

important source of funding for armed groups and terroristic organizations. Peacekeeping forces could help to interrupt this significant revenue that fuels instability and violence.

Moreover, including cultural heritage protection in peacekeeping mandate might represent a more politically acceptable form of intervention by the global community, gathering wider and more solid international support. This is because it can be presented as an operation with the apolitical goal of safeguarding a heritage that is a common good of the international community as a whole.

However, it should be noted that the protection of cultural heritage as an aspect of a peacekeeping mission is not an easy task, and it involves numerous issues to take into consideration.

A primary concern in the context of cultural peacekeeping is the challenge of managing the different actors and expertise required for a successful mission. Cooperation and coordination between diverse working communities and professions, with very different educational backgrounds, training, sensibilities, and customs, may prove to be a delicate and demanding work.²⁴⁹

A second issue to consider is the potential creation of a “clash of civilizations”²⁵⁰ between the peacekeeping forces and local communities or armed groups. If the peacekeepers are not properly introduced to the cultural diversity of the host State, and do not consider the sensibilities of a different culture, the international force might be portrayed as neo-colonizers or invaders, aggravating the conflict. Such situations are frequently manipulated by armed groups, such as Islamic fundamentalist ones, feeding their rhetoric of Western colonialism. Therefore, peacekeeping missions with a cultural heritage protection mandate must be handled extremely carefully, encompassing sensitivity and knowledge of the host State and local communities; cultural peacekeeping requires a sensitive military exercise, since the mismanagement could backfire.²⁵¹

Moreover, cultural heritage sites have often a military and strategic value. For instance, in Iraq and Syria, many heritage sites occupy locations on high grounds, near water or

²⁴⁹ P. Foradori and P. Rosa, *Expanding the Peacekeeping Agenda. The Protection of Cultural Heritage in War-Torn Societies*, Global Change, Peace & Security, 2017, 145, p. 157.

²⁵⁰ *Ibidem*, p. 158.

²⁵¹ *Ibidem*, p. 159.

crossroads, providing military strategic advantages. Thus, peacekeeping missions with a cultural mandate must be supported by robust, well trained and substantial forces. In this context the balance between military necessity and the mandate of cultural protection is extremely delicate.²⁵²

On the flip side of the argument, the militarization of cultural sites by peacekeepers, with the aim of protection, might transform those sites into military targets for armed groups. The deployment of heavily armed peacekeeper troops might be misinterpreted, rendering the protected site even more vulnerable.

In sum, peacekeeping missions with a cultural heritage protection mandate can have potentially diverse positive outcomes, especially enhancing the achievement of a successful mission. The protection of cultural heritage is an unavoidable element for a long-term and sustainable peace. However, its implementation faces significant challenges, that demand proper and multidimensional training of the actors involved in the mission, clear mandates, adequate resources, structured and well-defined plans of cooperation.

3.4 The case of Mali and MINUSMA

On the 5th July 2012, while northern Mali was still subject to the offensive of the terroristic and armed groups, the Security Council unanimously deplored the damage and destruction of holy, historic and cultural heritage, especially, but not exclusively, those designated as UNESCO World Heritage Sites.²⁵³

Subsequently, the Security Council did not limit itself to merely expressing concern regarding the situation in Mali. After the reconquest of Gao and Timbuktu by the Malian government forces, supported by French contingents and the African-led International Support Mission in Mali (AFISMA), the Security Council adopted Resolution 2100

²⁵² P. Foradori and P. Rosa, *Expanding the Peacekeeping Agenda. The Protection of Cultural Heritage in War-Torn Societies*, Global Change, Peace & Security, 2017, 145, p. 156.

²⁵³ UN DOC S/RES/2056, 5 July 2012, p. 2, par. 14.

establishing the United Nations Multidimensional Integrated Stabilization Mission in Mali.²⁵⁴

A notable, and debated aspect of the mission in Mali is the “robust” connotation; unlike traditional peacekeeping, MINUSMA was authorized to deploy the use of force beyond the limits of legitimate defence, in order to achieve the aims of the mandate. In 2016 the mission’s robust approach was further strengthened, through Resolution 2295 the Security Council allowed “to move to a more proactive and robust posture to carry out its mandate.”²⁵⁵

MINUSMA has been one of the most important and supported peacekeeping missions.

As of July 2023, the total personnel amounted to 15.779, counting 3.384 civilians, 10.116 troops, 1.575 police, 502 staff officers, 202 volunteers.²⁵⁶

All permanent members of the Security Council contributed to the mission in terms of personnel, except the Russian Federation. However, the largest contributions came from African States, highlighting the strong regional commitment and concern for the situation in Mali.²⁵⁷

MINUSMA is tragically recognized as the second deadliest United Nations mission in terms of casualties, with fatalities amounting to 311, 263 military personnel, 15 international civilians, and 17 locals.²⁵⁸

The peacekeeping mission in Mali, due to the highly unstable and delicate political, social and humanitarian situation, was burdened with several mandates, making the mission significantly overloaded and difficult to manage. Since its establishment, the key aims of MINUSMA included the stabilization of key population centres and support for the

²⁵⁴ UN Doc S/RES/2100, 25 April 2013.

²⁵⁵ UN Doc S/RES/2295, 29 June 2016, p. 7, par. 18.

²⁵⁶ MINUSMA Fact Sheet, United Nations Peacekeeping. Accessible at: [MINUSMA | United Nations Peacekeeping](#)

²⁵⁷ Chad (1.419), Senegal (964), Niger (861), Togo (733), Guinea (667), Burkina Faso (656), Cote d’Ivoire (642). MINUSMA Fact Sheet, United Nations Peacekeeping. Accessible at:

[MINUSMA | United Nations Peacekeeping](#)

²⁵⁸ United Nations Peacekeeping, Fatalities.

Accessible at: https://peacekeeping.un.org/sites/default/files/stats_by_mission_appointment_type_3_107_january_2025.pdf

reestablishment of State authority throughout the country, including the national political dialogue and the electoral process; the promotion and protection of human rights, supporting humanitarian assistance; cultural preservation, assisting transitional authorities in protecting cultural and historical sites in Mali from attacks, in collaboration with UNESCO.²⁵⁹

Despite its comprehensive mandate and efforts to address Mali's multifaceted crisis, MINUSMA faced several challenges. The deteriorating security landscape, political instability, and operational constraints significantly limited the mission's capacity to fulfil its objectives effectively.

Furthermore, Mali's discontent with the UN peacekeeping mission in the country stemmed from the perceived inadequacy of MINUSMA's mandate. The mission often operated more offensively for counter-terrorism purposes, rather than focusing on the protection of civilians. The local population expressed dissatisfaction as well, the Stockholm International Peace Research Institute (SIPRI) published a report based on four years of research in Mali, showing that in 2022, only 32% of central Mali's population viewed MINUSMA's efforts favourably.²⁶⁰

As a result, Mali's Minister of Foreign Affairs, Abdoulaye Diop, during his speech at the UN Security Council on 16 June 2023, denounced the failure, as well as the inadequacy of MINUSMA's mandate in Mali. Diop declared that MINUSMA appeared to have become part of the problem, by fuelling communal tensions, exacerbated by allegations of extreme gravity, and that are prejudicial to peace, reconciliation, and to national cohesion in Mali. Claiming that Mali is capable of addressing the security situation on their own, Diop, on behalf of the Malian government, demanded the withdrawal of MINUSMA without delay.²⁶¹

²⁵⁹ UN Doc S/RES/2100, 25 April 2013, p. 7, par. 16.

²⁶⁰ Stockholm International Peace Research Institute (SIPRI), Central Mali Project for Security and Development, *Research on the population's perceptions of security, governance and development in Central Mali, 2019-2022*, p. 204.

²⁶¹ Address by H.E. Mr Abdoulaye Diop, Minister of Foreign Affairs and International Cooperation, on the occasion of the Security Council's consideration of the Secretary-General's quarterly report on the situation in Mali, 16 June 2023, p. 5.

Accessible also at:

[Minusma | Intégralité du discours M. Abdoulaye DIOP au conseil de sécurité 16/06/23](#)

On 30 June 2023, the United Nations Security Council unanimously adopted Resolution 2690,²⁶² terminating the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali at the request of Mali's transitional government. Following this decision, MINUSMA started the cessation of its operations in July 2023, initiating the drawdown and withdrawal of its personnel, with the objective of completing this process by 31 December 2023.²⁶³

3.4.1 Assessing the Compatibility of MINUSMA's Robust Mandate with Core Peacekeeping Principles

The Preamble of Resolution 2100 recalls the three basic principles of peacekeeping missions, namely, to be legitimate, they require the consent of the parties, the non-use of force, except in self-defence and defence of the mandate, and impartiality.²⁶⁴

In the “robust” mandate of MINUSMA it should be determined whether the mandate, authorized by the Security Council to take all necessary means in order to achieve its aims,²⁶⁵ is compatible with the three principles stated.

As for the consent of the concerned State, MINUSMA was deployed with prior consent of the government of Mali, as evident in the preamble of Resolution 2100 which reports that in 2013, the transitional authorities of Mali requested the deployment of a United Nations operation to stabilize and restore the authority and the sovereignty of the Malian State throughout its national territory.²⁶⁶

Nevertheless, the fragile and unstable political landscape in Mali has significantly weakened the legitimacy and effectiveness of the Malian government, making the host State's consensus on peacekeeping efforts precarious. Without a broad and solid base of political support, MINUSMA's ability to fulfil its mandate was severely undermined, as

²⁶² UN Doc S/RES/2690, 30 June 2023.

²⁶³ *Ibidem*, p. 2, par. 2.

²⁶⁴ *Ibidem*, p. 1, par. 3.

²⁶⁵ UN Doc S/RES/2295, 29 June 2016, p. 7, par. 18.

²⁶⁶ UN Doc S/RES/2100, 25 April 2013, p. 3, par. 18.

peacekeeping operations rely heavily on cooperation with national authorities for legitimacy and operational success.²⁶⁷ In such a context, the mission risked being perceived as an external imposition and an additional armed force in the conflict, rather than a stabilizing force, potentially fuelling tensions and instability. Moreover, the lack of strong governmental backing diminished the mission's capacity to protect cultural heritage effectively, as the safeguarding of historical sites often requires close collaboration with national institutions and local communities.

Concerning the compliance with the second principle of the prohibition on the use of force, the peacekeeping mission in Mali turns out to be a very complex case in light of its "robust" mandate. Since 2016, Resolution 2295 affirms that MINUSMA's mandate should "anticipate and deter threats and to take robust and active steps to counter asymmetric attacks"²⁶⁸, suggesting that peacekeeping forces might use force offensively rather than defensively, which could betray the legal nature of peacekeeping missions.

Moreover, the phrase "all necessary means"²⁶⁹ might convey the general and unconditional use of force; nevertheless, this unlawful interpretation of the use of force encounters the fundamental limits of the respect of human rights, international law and restrictive interpretations of force authorization. In the context of MINUSMA, statements by some UN members emphasizes the prohibition on the unconditional use of force.

In fact, during the approval of Resolution 2100 the Russian Federation affirmed that "there should be a clear boundary between peacekeeping and enforcing peace. This is why we believe that MINUSMA's mandate excludes offensive or counter-terrorism operations."²⁷⁰

On a similar line the delegation of Uruguay declared that the proactive and robust nature of a peacekeeping operation should not lead to preventive acts because that would be changing the nature and meaning of what peacekeeping conceptually and legally is.²⁷¹

²⁶⁷ Pineschi, *Tutela Internazionale del Patrimonio Culturale e Missioni di Pace delle Nazioni Unite: un binomio possibile? Il caso MINUSMA*, *Rivista di diritto internazionale*, 2018, 5, p. 36.

²⁶⁸ UN Doc S/RES/2295, 29 June 2016, p. 8, par. 19(d).

²⁶⁹ UN Doc S/RES/2100, 25 April 2013, p. 3, par. 17.

²⁷⁰ UN Doc S/PV/6952, 25 April 2013, p.2.

²⁷¹ UN Doc S/PV/7727, 29 June 2016, p. 3.

What emerges is the agreement on a fundamental point: the strengthening of peacekeeping must be a means to enhance effectiveness and achievement of its objectives, not an end in itself.

Lastly, the principle of impartiality. The lack of a clear definition of impartiality makes the assessment significantly complicated.

The Report of the Panel on United Nations Peace Operations, also called the Brahimi report, issued in 2000, distinguishes impartiality of peacekeeping operations from neutrality, since the latter implies the equal treatment of all parties, thus considering aggressors and victims as moral equals. According to the report impartiality is realized through the adherence to the principles of the Charter.²⁷²

In the guidelines elaborated by the UN Department of Peacekeeping Operations, in 2008, the emphasis is also placed on the image of impartiality that the peacekeeping mandate should convey; while it is essential for a peacekeeping operation to establish and maintain good relations with the parties involved, it must strictly avoid any actions that could compromise its perception of impartiality. Failing to do so may weaken the operation's credibility and legitimacy, potentially leading to the withdrawal of consent for its presence by one or more parties.²⁷³

In the case of MINUSMA the compliance with the principle of impartiality might appear ambiguous. The explicit objective of the mission “to support the transitional authorities of Mali to extend and reestablish State administration throughout the country;”,²⁷⁴ could be interpreted as taking a position in favour of the government, potentially undermining its perceived neutrality, making it appear an active part involved in the conflict.

²⁷² UN Doc A/55/305, S/2000/809, Identical letters dated 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council, 21 August 2000, p. 9, par. 50.

²⁷³ Department of Peacekeeping Operations, United Nations Peacekeeping Operations Principles and Guidelines, 2008, Chapter 3, p. 32.

²⁷⁴ UN Doc S/RES/2100, 25 April 2013, p. 7, par. 16(a)(ii).

3.4.2 Cultural Heritage Protection Within MINUSMA's Peacekeeping Mandate

The protection of cultural heritage is just one aspect of MINUSMA's mandate; however, each objective appears to be interconnected and complementary to the other, not mutually exclusive.

According to Leanne Smith, Chief of Policy and Best Practices for UN Peacekeeping, MINUSMA was one of the most overburdened and overstretched missions, with cultural heritage protection being just one of many other tasks specified in the mission; in this context, the protection of cultural heritage within peacekeeping required a limit on the general scope of the mission, as evident from the inclusion of the words "as necessary and feasible" in paragraph 16(f) of Resolution 2100.²⁷⁵

The Security Council also tends to limit the role of the protection of cultural heritage within the general scope of MINUSMA in Resolution 2295, by not including it among the priority tasks,²⁷⁶ and in Resolution 2347 when the Council affirms that the UN peacekeeping operation can be involved in the protection of cultural heritage only "when specifically mandated by the Security Council and in accordance with their rules of engagement, may encompass, as appropriate, assisting relevant authorities, upon their request."²⁷⁷

The protection of cultural heritage in Mali is subject to a restrictive interpretation, as noted by the authorization to provide assistance only within the limits of "existing capacities"²⁷⁸, a vague term open to restrictive interpretations.

This approach communicates that the Security Council is reluctant to authorize a peacekeeping intervention in a State for the sole aim of protecting cultural heritage, or to extend the mandate to safeguard it without the consent of that State. This limitation reflects a clear boundary imposed by the principle of State sovereignty, emphasizing that

²⁷⁵ Noele Higgins, *The Protection of Cultural Heritage During Armed Conflict. The Changing Paradigms*, Routledge Focus, 2020, p. 74.

²⁷⁶ UN Doc S/RES/2295, 29 June 2016, p. 7, par. 19.

²⁷⁷ UN Doc S/RES/2347, 24 March 2017, p. 6, par. 19.

²⁷⁸ UN Doc S/RES/2295, 29 June 2016, p. 7, par. 20.

the primary responsibility for the protection of cultural heritage remains with the respective State within its own borders.²⁷⁹

If MINUSMA were permitted to adopt a proactive and robust stance to achieve the objectives of civilian protection and political stabilization,²⁸⁰ then, by contrast, when it comes to protecting cultural heritage, given its secondary importance within the mission's objectives, the operation should adhere to the traditional limitations of peacekeeping. This means that, rather than engaging in offensive or pre-emptive actions, MINUSMA should primarily focus on monitoring, reporting, and facilitating local and international efforts to safeguard cultural sites.

In both the robust and traditional configurations of the mandate, any intervention should be conducted within the framework of consent-based operations, impartiality, and the non-use of force except in cases of self-defence or defence of the mandate.

Nevertheless, a strict separation between the cultural mandate and the broader objective assigned to the peacekeeping mission could be deleterious. If the protection of cultural heritage is functional to the realization of the key aim of the mission, namely, peace and security, then adopting a robust and proactive approach in safeguarding and protecting cultural heritage should also be considered legitimate.

Given this perspective, it becomes essential to examine how the cultural mandate can be effectively implemented within MINUSMA's operational framework. The challenge lies not only in recognizing the strategic value of cultural heritage protection, but also in integrating it within the mission's broader peacekeeping objectives. This requires a structured approach that balances the constraints of MINUSMA's mandate with the practical measures necessary to safeguard Mali's cultural sites. A key question, therefore, is how MINUSMA can translate its limited but significant cultural mandate into actionable policies and field operations that contribute to peace and security.

²⁷⁹ Noele Higgins, *The Protection of Cultural Heritage During Armed Conflict. The Changing Paradigms*, Routledge Focus, 2020, p. 75.

²⁸⁰ UN Doc S/RES/2295, 29 June 2016, p. 8, par. 19(c).

The reports of the United Nations Secretary-General to the Security Council provide information regarding the actions undertaken by MINUSMA personnel, who had been previously trained by UNESCO, to protect cultural heritage in Mali.²⁸¹

The focus initially was on surveying the sites where cultural sites had been destroyed, securing them through demining operations.²⁸²

In 2014, MINUSMA provided logistical support to facilitate the return of personnel from the Ahmed Baba Centre for Documentation and Research in Timbuktu, which is responsible for preserving and researching ancient manuscripts.²⁸³

Additionally, in coordination with UNESCO, a project was launched aimed at rehabilitating four private libraries in Timbuktu, that house ancient manuscripts.²⁸⁴

UNESCO undertook reconstruction and rehabilitation activities in Gao and Timbuktu, including the complete reconstruction of two mausoleums in the Djingareyber mosque. MINUSMA also supported the Malian Ministry of Culture in establishing an inventory of intangible cultural heritage.²⁸⁵

MINUSMA's efforts to protect Mali's cultural heritage continued in 2015, despite the increasingly unstable situation. Clashes between armed groups that were initially committed to the peace process became more frequent, along with extremist attacks targeting MINUSMA personnel and French military forces

Nevertheless, UN forces continued to assist UNESCO in safeguarding and reconstructing destroyed cultural heritage.

The reconstruction of the 14 mausoleums in Timbuktu that had been destroyed in 2012, were completed in 2015.²⁸⁶ The process adhered to ancestral practices passed down through generations and was based on detailed documentation, including archaeological excavations and architectural studies.

²⁸¹ UN Doc S/2914/1, 2 January 2014, par. 46.

²⁸² UN Doc S/2013/582, 1 October 2013, par. 31, par. 51.

²⁸³ UN Doc S/2014/229, 28 March 2014, par. 47.

²⁸⁴ UN Doc S/2014/943, 23 December 2014, par. 4 2.

²⁸⁵ UN Doc S/2014/403, 9 June 2014, par. 41.

²⁸⁶ UN Doc S/2015/732, 22 September 2015, par. 51.

By April 2017, restoration works on the Sankore and Sidi Yahia mosques had been finalized.²⁸⁷

3.5 UNESCO's Role in the Protection and Restoration of Cultural Heritage During the Mali Crisis

The operational strategy implemented in Mali serves as a valuable example of UNESCO's active role in crisis management within armed conflict contexts.

In the specific Malian context, UNESCO's involvement in the conflict began with the occupation of the northern region by Tuareg and Al-Qaeda forces. In response to the attack of Ansar Dine on Timbuktu, UNESCO deployed an emergency mission to engage in a dialogue with Malian authorities in order to assess damages and develop a common and coordinated strategy to safeguard and restore the country's cultural heritage.

The mission's findings underscored the urgency of protecting Mali's cultural heritage, leading to the development of an Action Plan for the Rehabilitation of Mali's Cultural Heritage and the Safeguarding of Ancient Manuscripts.²⁸⁸ The Action Plan outlined three priorities: restore damaged heritage with the active participation of local communities; take measures to protect the ancient manuscripts kept in Mali; provide training programs for enhancing appropriate conditions for the conservation and management of cultural heritage.²⁸⁹

The plan covered not only UNESCO-listed sites, but also those protected under Malian national legislation. Furthermore, significant efforts were dedicated to the preservation and digitation of manuscripts damaged or burned, as well as the protection of intangible cultural heritage.²⁹⁰

²⁸⁷ UN Doc S/2017/478, 6 June 2017, par. 40.

²⁸⁸ UNESCO, Final Report and Action Plan for the Rehabilitation of Mali's Cultural Heritage and the Safeguarding of Ancient Manuscripts, International Experts Meeting for the Safeguarding of Mali's Cultural Heritage, Paris, 18 February 2013.

²⁸⁹ *Ibidem*, p. 8, par. 21.

²⁹⁰ *Ibidem*, p. 8, par. 22.

Moreover, at the request of the World Heritage Committee, UNESCO listed Timbuktu and the Tomb of Askia on the List of World Heritage in Danger,²⁹¹ and established a Special Fund for Mali²⁹² to preserve and protect the World Heritage properties affected by the armed conflict.

In February 2013, UNESCO introduced two key initiatives in collaboration with the National Directorate of Cultural Heritage in Mali and the International Centre for Earthen Architecture: the creation of an extremely detailed map of cultural heritage sites of the northern regions of Mali and the creation of a “Heritage Passport” (8.000 copies), which provided essential data on geographical location, identification methods, and safeguarding measures for these sites. These passports were then distributed to peacekeeping and international forces,²⁹³ raising awareness among the military and the local community about the importance and vulnerabilities of historical and cultural sites.

Additionally, UNESCO significantly contributed to integrating culture into the crisis’s response in Mali through the creation of the Environment and Culture Unit within MINUSMA. This specialized unit ensured the implementation of the cultural mandate and highlighted the effectiveness of a multidimensional and integrated approach. The coordinated collaboration between MINUSMA and UNESCO was operationalized through the coordination of various actions, including continuous capacity building for civil, military, and police personnel to enhance their awareness of Malian cultural heritage.²⁹⁴

Therefore, UNESCO fully supported the integration of a cultural heritage protection mandate in peacekeeping missions, not only acknowledging the role of culture in peacebuilding processes, but also promoting and emphasizing its operational significance in the crisis in Mali.

²⁹¹ UNESCO, Heritage sites in northern Mali placed on List of World Heritage in Danger, 28 June 2012.

Accessible at:

[Heritage sites in northern Mali placed on List of World Heritage in Danger - UNESCO World Heritage Centre.](#)

²⁹² UNESCO, UNESCO's role and action to protect and safeguard cultural heritage and to promote cultural pluralism in crisis situations, case study: lessons learned from Mali, IOS/EVS/PI/159 REV., April 2017.

²⁹³ *Ibidem*, p. 11.

²⁹⁴ *Ibidem*, p. 14.

This experience in Mali not only reaffirmed the importance of cultural heritage protection in conflict settings, but also marked a pivotal moment for UNESCO, propelling it into a new phase of innovation.

In 2015, the adoption of the 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 was passed, aimed at protecting culture and promoting cultural diversity in the context of armed conflicts.²⁹⁵

According to Jakubowski, this strategy has two objectives: to enhance the capacity of UNESCO Member States to prevent, mitigate, and recover from the loss of cultural heritage and diversity caused by armed conflict, and to integrate cultural protection into humanitarian efforts, security strategies, and peacebuilding processes.²⁹⁶

In 2016 UNESCO's Director-General, Irina Bokova, and the Italian Minister for Foreign Affairs, Gentiloni, signed in Rome a ground-breaking agreement on the establishment of an Italian Task Force, also known as the "Blue Helmets for Culture". The Task Force, composed of experts and officers of the Italian Carabinieri Command, is purely involved in technical work and it is deployed at the request of UNESCO to assist in safeguarding cultural heritage in emergency situations.²⁹⁷

This progression from the experience in Mali to the adoption of a global strategy and the creation of specialized task forces highlights a fundamental shift in UNESCO's approach to cultural heritage protection. No longer seen as a secondary concern, cultural preservation has been integrated into broader peacekeeping and security frameworks, reinforcing its role in post-conflict recovery and sustainable peacebuilding.

²⁹⁵ Records of the General Conference, 38th session, Res 38 C/48, Paris, 3-18 November 2015.

²⁹⁶ A. Jakubowski, *Resolution 2347: Mainstreaming the Protection of Cultural Heritage and the Global Level*, Questions of International Law, 2018, 21, p. 32.

²⁹⁷ UNESCO, Address by Francesco Bandarin, Assistant Director-General for Culture of UNESCO, on the occasion of a seminar on: The Blue Helmets for Culture, the Italian role and vision, ADG/CLT/2016/03, 19 April 2016, p. 2.

Conclusion

Cultural heritage has always been a casualty of armed conflicts, and has suffered devastating attacks throughout history. However, a new paradigm of armed conflict is emerging, increasingly characterized by the concept of cultural warfare. The latter refers to the deliberate targeting and destruction of cultural heritage, symbols, and traditions, no longer as merely collateral damage of conflicts, but as a calculated strategy employed to advance political, ideological, or military objectives.

Culture stands at the frontline of modern conflicts, demanding a rethinking of cultural heritage, not merely as a cultural concern, but as an urgent security imperative.

Chapter 1 has first addressed the essential understanding of cultural heritage, its scope, and the intrinsic, irreplaceable and universal value to humanity. Second, it has outlined the principal international legal instruments concerning the protection of cultural heritage, including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its two Protocols, and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage. These Conventions significantly reflected a shift in international law from a response based on protecting cultural heritage based on the “civilian use” paradigm, which emphasized safeguarding heritage due to its non-military, civilian character, to a “culture-value” one, underscoring its protection due to its inherent significance to all of humanity.

However, beyond their cultural significance, these frameworks reveal that cultural heritage is deeply entangled with broader global concerns. As demonstrated, the deliberate destruction of cultural heritage is not only an attack on identity and history, but also a trigger for conflict, a breach of fundamental human rights, and a violation of the collective interests of the international community.

What clearly emerges is that effective protection of human rights cannot be achieved without the preservation of culture, and, therefore, of the cultural identity of people. Given that fundamental human rights and cultural identity are deeply and inseparably connected, the deliberate destruction of cultural heritage can be understood as a violation of those rights.

Moreover, the International Criminal Court in its 2016 on the Al Mahdi case marked a pivotal moment in the recognition of cultural heritage destruction as a serious crime with global implications. The Court held Al Mahdi liable for both material and moral damages, including a symbolic compensation of one euro to the international community and to the Malian State affirming that cultural heritage is a collective asset of all humankind. This case set a significant precedent in international criminal law by framing the intentional destruction of cultural heritage as a grave violation of shared values, and underscored the need for a broader legal understanding that such acts transcend national borders, harming the international community as a whole.

Chapter 2 has first analysed how international law has increasingly recognized deliberate destruction of cultural heritage as a war crime, and how there is growing support for its classification as a crime against humanity when it forms part of a widespread or systematic attack with discriminatory intent.

Secondly, it has provided a framework on the potential paradigms that can be applied for the protection of cultural heritage during armed conflicts: culture cleansing, the Responsibility to Protect doctrine, and cultural genocide.

While the label of culture cleansing, coined by the former Director-General of UNESCO, Irina Bokova, succeeded in focusing global attention on the imperative of protecting cultural heritage, it does not constitute a formally recognized international crime, and the absence of a well-established legal basis undermines its effectiveness as a viable framework for the protection of cultural heritage. Nonetheless, it has gained relevance through the concept of the Responsibility to Protect doctrine.

Although the theoretical application of the Responsibility to Protect doctrine to the destruction of cultural heritage is widely supported in the academia as a legitimate and potentially effective legal framework, it is unlikely to receive significant political support. The doctrine's vague and ambiguous parameters render it vulnerable to political manipulation, undermining its possible application as a consistent and impartial legal mechanism for the protection of cultural heritage.

Thirdly, the cultural genocide paradigm has been proposed to further the protection of cultural heritage. While Lemkin's original conception of genocide would have included

the destruction of heritage, in the final draft of the 1948 Genocide Convention, Lemkin ultimately failed to secure the inclusion of cultural genocide. The exclusion of cultural genocide from the 1948 Convention significantly limited the legal development of the concept, leading to a strict material interpretation of what is meant by genocide, focusing exclusively on physical and biological aspects. Due to its narrow legal scope, invoking the concept of cultural genocide for the protection of cultural heritage appears both ineffective and problematic. The concept remains undefined, uncodified, and, therefore, of doubtful applicability in protecting cultural heritage.

Beyond the above-mentioned potential paradigms, a fourth one has emerged. Recent attacks, especially in the Middle East and Africa, demonstrate the need for a different approach. Consequently, a strong international response involves recognizing these assaults as issues of international peace and security. In effect, the protection of cultural heritage is increasingly being conceptualized within a security framework.

Through the years, the United Nations Security Council has been a lawmaker in the field of cultural heritage protection, by adopting multiple resolutions that frame the issue as integral to international peace and security. The trend towards viewing cultural heritage protection through a security lens gained significant momentum with Resolutions 2100 and 2347. Before 2017, the Security Council had addressed the issues of destruction of cultural heritage linking it with looting, and trafficking as elements of broader threats, mainly terrorism.

Starting with Resolution 2100, and even more clearly with Resolution 2347, the Security Council began to recognize the deliberate destruction of cultural heritage as a distinct threat to peace and security of its own right. Resolution 2100 established the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), which marked the first time a UN peacekeeping mission was explicitly tasked with protecting cultural heritage.

Building on this foundation, Resolution 2347 expanded the scope of cultural heritage protection from being a specific issue in Mali to a global concern, firmly establishing the protection of cultural heritage as an essential component of UN peacekeeping missions.

Chapter 3 has focused, therefore, on the case of Mali. Starting from 2013 Mali has been the victim of one of the most striking examples of cultural violence in recent history.

The argument has unfolded by first examining Resolution 2347's limitations, highlighting its non-binding nature and soft language, which stem from political compromises and a reluctance to fully invoke Chapter VII of the UN Charter. This sets the stage for questioning whether current legal frameworks adequately protect cultural heritage. In addition, a considerable legal gap is constituted not only by not explicitly addressing the intangible cultural heritage, but also by not mentioning how the deliberate destruction of cultural heritage can be legitimately considered a crime against humanity. Consequently, crimes committed against cultural heritage, including atrocities committed outside the context of armed conflict, fall outside the scope of international law.

Building on this, the discussion has moved to cultural peacekeeping, arguing that integrating heritage protection into peacekeeping mandates can strengthen overall mission effectiveness, enhancing the building of a long-term and sustainable peace, fostering local trust.

The case of MINUSMA in Mali has then been analysed in detail: its "robust" mandate aimed at protecting cultural heritage illustrates both innovative approaches and significant operational challenges.

Finally, the argument has been enriched by UNESCO's proactive role in crisis management in Mali, which underscores a successful model for integrating cultural heritage protection within broader peacekeeping and post-conflict recovery strategies. Of extraordinary importance in this context has been the creation of Italian Task Force within UNESCO, the "Blue Helmets for Culture", composed of experts and officers of the Italian Carabinieri Command.

Attacks on cultural heritage, especially in the Middle East and North Africa reveal the inescapable, vital and urgent need for an appropriate international response to the protection of cultural heritage.

As James Cuno delineated in his article *The Responsibility to Protect the World's Cultural Heritage*, the international response to deliberate destruction of cultural heritage must include three pillars: preventing damages and destructions by promptly intervening in

conflict zones; engaging, cooperating and supporting local authorities in the protection of sites and heritage; moving beyond symbolic acts to implement real and concrete measures.²⁹⁸ However, there is a precondition for the effective implementation of the just mentioned strategy, namely, a comprehensive legal and diplomatic framework, based on a multidimensional and multilayered approach.

In the nowadays world, what were once seen as consolidated reference points are collapsing. In a world lacking what might be considered an efficient legal framework, where the indispensable and imperative human rights and values are continuously and persistently violated, it is our duty and responsibility to build Peace.

Peace is not an unreachable utopia. This belief is widespread, convenient, defeatist and irresponsible. Peace resides in the power of education, culture, tolerance, dialogue, empathy, it is not merely the absence of war. The true battleground is not on land or among nations, but as stated in the Preamble of the Constitution of UNESCO:

“Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed;”

²⁹⁸ J. Cuno, *The Responsibility to Protect the World's Cultural Heritage*, The Brown Journal of World Affairs, 2016, 97, p. 104.

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