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# Heritage Under Attack: A Critical Analysis of the Reasons Behind the Destruction of Cultural Property in the Event of Armed Conflict

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## I beni culturali in tempo di guerra

# Heritage Under Attack: A Critical Analysis of the Reasons Behind the Destruction of Cultural Property in the Event of Armed Conflict

di [Alberto Frigerio](#)

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The destruction of cultural property in times of war is an alarming issue. In spite of the efforts made by the international community to fight this deplorable phenomenon, the reported cases of incidental/intentional damages against cultural property are still numerous. This article retraces some of the most dramatic cases over the last twenty-five years in order to identify the root causes of the destruction of cultural property in the event of armed conflict as well as to assess the core limits of the related international legal system.

**Keywords:** Cultural Property; Intentional Destruction; Collateral Damages; International Heritage Law; Armed Conflicts.

## 1. Introduction

The destruction of cultural property is one of the most regrettable but recurring practices in times of war. Throughout history numerous archaeological sites, historical monuments and artworks have been lost due to the violence of war. Following the events of World War II the international community has progressively developed a series of legal measures aimed to hinder this regrettable practice. In 1954 Unesco states parties adopted at The Hague the [Convention for the Protection of Cultural Property in the Event of Armed Conflict](#). This Convention introduced for the first time a comprehensive normative system specifically conceived for protecting cultural property in wartimes. This legal regime was further strengthened in 1999 through the elaboration and approval of a [Second Additional Protocol to this Convention](#). This protocol has, in particular, introduced a new regime of "enhanced protection", restricted the possibility to invoke the military necessity, set the boundaries of state responsibility and individual criminal responsibility, and developed a more dynamic institutional framework. Although characterized by some evident limits - i.e. its status of non-binding legal tool - the [Declaration on the Intentional Destruction of Cultural Heritage](#), adopted by the Unesco General Conference on 17 October 2003, has once again affirmed the states' willingness to substantially constrain the intentional destruction of cultural property. Moreover, the [Statute of the International Criminal Tribunal for the former Yugoslavia \(ICTY\)](#) and the [Rome Statute of International Criminal Court \(ICC\)](#) have consolidated the key principle of the individual penal responsibility for deliberate attacks against cultural property in times of war.

Overall, the adoption of these legislative measures has produced undeniable improvements, raising the need to protect cultural property in virtue of their significance for the human beings. Nevertheless, cases of destruction and damage of cultural property in contexts of war keep to be regularly reported. This article aims to identify and examine the main causes behind the destruction of cultural property in contexts of war. To begin with, it proposes a brief description of the different types of threats affecting cultural property during armed conflicts. After a short analysis on the risk of collateral damages, the attention is directed to the intentional attacks against cultural property. Through a comprehensive overview of several case-studies, the author identifies the most common reasons

that have led to the intentional destruction of cultural property in the last 25 years: military necessity, psychological warfare, inter-ethnic hatred, religious radicalism, and planned/opportunistic looting. In the last section, this paper explains why the current international legal framework has only partially succeed in the protection of cultural property in the event of armed conflict.

## 2. Assessing the destruction of cultural property: collateral damages and intentional attacks

One way for evaluating and classifying the cases of destruction of cultural property in times of war is to consider if they are the result of accidental or intentional actions.

On one side, during an armed conflict there are a series of rather common activities (such as shelling, gunfights and acts of terrorism) that may unintentionally cause damages to cultural property. In such cases, the destruction of cultural assets is generally considered as a collateral damage. However, as stated by Coward "of principal importance in understanding the idea of collateral damage is that it is an unintended (or incidental) consequence of military action. Even when a military action is clearly seen to risk such destruction, in order for any resultant destruction to be classified as collateral damage it must be assumed that the resultant destruction was, despite the risk, unintended" [1].

On the other side, the belligerents may also intentionally take aim at cultural property. This category refers, at first instance, to the armed interventions that are justified by circumstances of "military necessity". In this cases cultural property are indiscriminately targeted in order to pursue a considerable military advantage. At the same time, "There is a growing recognition that while destruction or damage of cultural property often occurs under the cloak of armed conflict, it is not confined to nor it is necessarily related to the hostilities" [2]. In other terms, in wartime there may also be some attacks that deliberately aim to damage and destroy those sites, buildings and monuments that have a particular cultural, historical or archaeological value.

In the course of events (and sometimes even years later), it may be difficult to establish with certainty to which of these categories a real case belongs to. Moreover, at times multiple interlinked reasons are behind the attacks against cultural property. Nevertheless, this classification is useful because it allows to gain a deeper knowledge and comprehension of the dominant logics and the patterns of action associated with these categories. This process, in turn, can contribute to the development of a more precise assessment of the present-day limits of international law as well as to the identification of more efficient strategies for preventing this deplorable phenomenon.

## 3. The unintentional damages against cultural property

Among the most common factors of risk that may occur in the event of armed conflicts, there are the collateral damages produced by shelling of military targets closely located to cultural sites or caused by shootings between opposite factions. Incidental losses of this kind has been registered in almost all those countries that have been marked by war in the last twenty-five years. The most recent case is the Syrian conflict. In her report about the damages suffered by the Syrian cultural property, Cunliffe reveals that numerous archaeological sites and religious/historic buildings have been affected by shelling and shootings [3]. Among them there are the Archaeological Villages of al-Bara, Deir Sunbel and Ain Larose, the World Heritage Sites of Bosra, Crac des Chevaliers, and Palmyra, and the mosques of al-Tawhid, Idlib Sermin, al-Tekkiyeh Ariha, al-Qusaayr, al-Herak, and Sermin. However, the same author of this report expresses an interesting clarification: "It is particularly notable in the case of Palmyra, or Deir Sunbel, as the ancient ruins are apart from the modern town, so both [factions] choosing to use them for cover and the inevitably gunfire are deliberate choice". Therefore, some of the damages produced on the sites mentioned above could effectively be more related to circumstances of (legitimate/illegitimate) "military necessity" rather than to incidental damages.

Another major factor of risk is represented by the acts of terrorism. Although the target of a terrorist attack may not belong to the cultural sphere, this act of violence may nonetheless have a negative impact on nearby cultural, historical or archaeological sites. On 24 January 2014, for example, a bomb explosion targeting the Cairo Security Directorate caused also serious damages to the close Islamic Art Museum. The Director-General of Unesco, Irina Bokova, firmly condemned this attack stating that it "raises the danger of irreversible damage to the history and identity of the Egyptian people" [4].

Other situations that, in a context of war, may accidentally cause damages to cultural property are the movement of heavy weapons and vehicles (like artillery, tanks or bulldozers) or the construction of military facilities close to fragile cultural sites. In Iraq, similar damages took place in at least two circumstances: at the ancient city of Babylon, where American forces constructed an encampment in the middle of the archaeological site and a helipad in its proximity [5]; and at the Sumerian city of Ur, where the Coalition troops used (and, actually, further developed) the former Iraqi bases located in the vicinity of the historic remains [6]. More recently, different Syrian citadels, such as Qal'at al-Mudiq, Qal Markab, Homs Qal and Qal Hama, seem to have suffered an analogous sort [7].

Overall, these examples show how a context of war is in itself a threat to cultural property because it inevitably entails the fulfillment of destructive nature activities. Moreover, the menaces to cultural property are so various and unpredictable that only a coordinated system of protection in time of peace and during war may provide significant outcomes [8]. Hence, states necessarily need to take a series of preventive measures (such as, for example, the integration of the 1954 Hague Convention principles in the military regulations and the organization of safety

depositories where movable cultural property could be transferred in case of armed conflict) in order to mitigate the countless perils associated with an armed conflict.

#### 4. The intentional destruction of cultural property: Military Necessity

In general, the concept of military necessity makes reference to "the requirement, in any given set of circumstances, for the application of armed force (in accordance with the other rules of the law of armed conflict) to achieve legitimate military objectives" [9].

This principle is particularly relevant in international law because it can be invoked to justify the intentional destruction of cultural property. Therefore, although article 4 of the 1954 Hague Convention explicitly prohibits to perform any act of hostility against cultural property and/or to make use of them for activities that are likely to expose them to destruction or damages, states may legitimately breach this obligation when the "military necessity imperatively requires such a waiver".

The great freedom to invoke the military necessity is partially balanced by the principle of proportionality. Therefore, "should a belligerent have to use cultural property in a manner which exposes the property to destruction or damage, or have to act in a hostile manner in relation to that property, the degree of danger or damage to which the cultural property is exposed must be proportionate to the nature of the imperative military objective to be achieved" [10].

Moreover, through the [1999 Second Additional Protocol to the 1954 Hague Convention](#) the possibility to resort to the military necessity has been subordinated to the respect of well-defined conditions. To be precise, an imperative military necessity "may only be invoked to direct an act of hostility against cultural property when and for long as: that cultural property has, by its function, been made into a military objective; and there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective" [11]. In addition, the imperative military necessity "may only be invoked to use cultural property for purposes which are likely to expose it to destruction or damage when and for long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage" [12].

Finally, the sentences of the ICTY have disavowed the unconditional use of the military necessity as a tool for justifying illegitimate activities during armed conflict. In the sentence against Strugar, for example, the defense tried to justify the shelling of Dubrovnik under the exception of military necessity, but the judges affirmed that "it is the use of cultural property and not its location that determines whether and when the cultural property would lose its protection. Therefore, contrary to the Defence submission, 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" [13].

In spite of these constrains, the military necessity principle can still be raised to legitimize some acts of deliberate attack against cultural property. During the last war in Iraq, the military forces that supported Saddam Hussein made at times use of cultural sites for military purposes. In a few cases the Coalition forces raised the imperative military necessity principle in order to justify their military attacks against such sites. In April 2003, for example, the mosque's minaret of Abu Hanifa was hit by a U.S. rocket apparently due to the presence of an Iraqi sniper hidden in one of its tower. In the same way, in November 2004, the U.S. forces directed an attack against the Khulafah Al Rashid mosque of Fallujah since this place was actively used by local insurgents for military aims [14].

In other cases, on the contrary, the legitimacy of the imperative military necessity invoked by the Coalition forces has been contested. From September 2004 to March 2005, for instance, U.S. army used the Malwiya Minaret at Samarra as a sniper's nest. Commenting this event, Corn states: "Assuming, *arguendo*, that the minaret used by U.S. forces in the referenced article fell within the definition of cultural property, the use was permissible based only on a determination of imperative military necessity. While use of the vantage point offered by such a structure was undoubtedly intended to enhance the effectiveness of the operation, the prohibition against the military use of cultural property absent such a justification does not allow for a general military necessity based exception. Instead, the concept of imperative necessity suggests that no other feasible alternative be available for achieving what is presumptively an important military objective" [15].

To date, the "military necessity" is still one of the main reasons (probably the most common one) invoked by army to justify the destruction/damaging of cultural property in the event of armed conflict.

##### 4.1. The intentional destruction of cultural property: Psychological Warfare

As correctly stressed by Van der Auwera, "the destruction of cultural property can be used as a weapon of psychological warfare" [16]. In several armed conflicts the clashing forces have intentionally attacked the cultural property to whom their rivals were emotionally tied in order to gain certain psychological effects.

During the conflict in ex Yugoslavia, the strategy to attack cultural property was massively used as a psychological tool for scaring the civil population. One of the objectives of the Dubrovnik's shelling, for example, was to terrify the local residents, so as to force them to abandoning the city [17]. This stratagem was also adopted in Mostar: "Cultural property, especially sacral cultural property, was targeted on the right bank of the Neretva along with the expulsion of the Muslim population to inflict psychological damage upon them - to make them wish not to return"

[18].

In the last war in Iraq, on the contrary, the toppling of the Saddam Hussein's statue at Firdos Square in Baghdad as well as the opening of a military base close to the archaeological site of Babylon were presumably performed in order to discourage the Iraqi armed forces [19]. Commenting the occupation of Babylon, Bahrani states: "It is a psychological operation of warfare because it appears to be a deliberate choice to occupy a famous and iconic site of local cultural mythology. Babylon's symbolic mythical value is not lost here; instead, it is incorporated into the process of the occupation, and its symbolic significance is subsumed in a display of power over this ancient terrain" [20].

In other circumstances, the destruction of cultural property has been used for propagandistic-mediatic purposes. Danti, for instance, proposes a thought-provoking consideration: "...going back to the destruction of the Bamiyan Buddhas in Afghanistan in May 2001, the recent rumors in Egypt about the destruction of the pyramids, or the wanton destruction in Mali, I think that a lot of insurgent groups and governments understand that the cultural heritage aspect gets play, particularly in western media, and I think that sometimes is a case of a tail wagging the dog a little bit in term of what's going on. I think that sometimes, obviously, these sites are purposefully targeted, and there is the psychological warfare dimension of destroying cultural heritage" [21].

What these case studies have in common is the exploitation of the symbolic power of cultural assets for achieving "mystifying" psychological aims. Anyway, the intentional destruction of cultural property as a mean of psychological warfare is a complex and multifaceted issue, which certainly requires further thorough studies in order to be fully understood.

#### 4.2. *The intentional destruction of cultural property: Inter-Ethnic Hatred*

The inter-ethnic hatred is another cause of deliberate attacks against cultural property. In the last twenty-five years, several cultural sites have been destroyed simply because they were identified as representative assets of a certain population or ethnic group.

Among the numerous cultural sites, historical monuments and religious buildings damaged during the former Yugoslavia conflict, two cases have caused particular uproar at international level: the shelling of the ancient city of Dubrovnik, in 1991, and the destruction of the old-bridge of Mostar (*Stari Most*) in 1993 [22]. According to Steen "Dubrovnik was targeted for no other reason than its rich cultural significance" [23]. Similarly, the Croatian paramilitary forces attacked the *Stari Most* mainly due to the fact that "The Ottoman bridge was perceived as a symbol of the Bosnian Muslims" [24]. Therefore, in the former Yugoslavia conflict the destruction of cultural property was an integral part of the "ethnic cleansing" plan pursued by the various parties to the conflict [25].

In the same way, during the 1998-1999 war in Kosovo, different Muslim mosques (e.g. the mosques of Halil Efendi and Lismir/Dobri Dub) and Albanian historic architectures (such as the Kulla of Jashar Pasha and Junik) were deliberately targeted by the Serbian military forces. As sustained by Herscher and Riedlmayer "the destruction of historic architectures has a unique significance in that it signifies the attempt to target not just the home and properties of individual members of Kosovo's Albanian population, but the entire population as culturally defined entity" [26]. The same authors sadly point out that, once the war ended, the Albanian-Kosovars took revenge attacking different Serbian cultural sites like the Orthodox monastery church of Dolac.

Cases of deliberate attacks against cultural property due to inter-ethnic disputes have also been reported in others geo-political contexts. There are, for example, clear indications that both the Azerbaijani and the Armenian armed forces have respectively damaged and, in some cases, completely destroyed cultural sites that had a particular religious or historical relevance for the other population. After the destruction of the Armenian medieval cemetery of Djulfa, in 2005, the European Union officially condemned such event and it asked to the governments of Armenia and Azerbaijan "to stop the practice of ethnic cleansing, which has led to such destruction" [27].

The damaging of the Stele of Matara and the desecration of the Tserona Patriots Cemetery during the Eritrean-Ethiopian conflict (1998-2000) are also dramatic events primarily due to inter-ethnic clashes, although "there is no evidence that the decision to damage the Stele involved anyone other than one or more low-ranking soldiers" [28].

To sum up, in all these case-studies the clashing forces have specifically targeted those artistic, historical and religious property that were perceived as evocative symbols of their opponents. As sustained by Bevan "Here architecture takes on a totemic quality: a mosque, for example, is not simple a mosque; it represents to its enemies the presence of a community marked for erasure. A library or art gallery is a cache of historical memory, evidence that a given community's presence extends into the past and legitimizing it in the present and on into the future. In these circumstances structures and places with certain meanings are selected for oblivion for deliberate intent" [29]. In other terms, the destruction of cultural assets is here part of a strategy specifically aimed to physically eradicate the cultural assets "belonging" to a certain population/ethnic group from a determined geographical place.

#### 4.3. *The intentional destruction of cultural property: Religious Radicalism*

Some attacks against cultural property are associated with the phenomenon of religious radicalism. In the last years, militants of Islamic fundamentalist groups have occasionally pursued campaigns of religious iconoclasm, destroying

those historical monuments, archaeological remains and works of art that were perceived as blasphemous.

The destruction of the Buddhas of Bamiyan is without doubt the most known event of this sort. In March 2001 the Taliban decided to break down these monumental statues because, quoting the words of the Mullah Mohammed Omar, "The real God is only Allah, and all other false gods should be removed" [30]. As a result, these immense statues were blasted despite the protests of the international community. The destruction of the Buddhas was not an isolated incident, but part of a systematic campaign of heritage devastation. In the same year, many archival documents, ancient artifacts and artworks of the Afghan National Museum and the National Contemporary Art Gallery were burned, demolished or looted because considered as "immoral objects" by the radical Islamic Sharia law adopted in this country.

Recently the cultural resources of Mali experienced a similar fate. In 2012-2013 fifteen Timbuktu's mausoleums and thousands of ancient manuscripts from the Ahmed Baba research center were destroyed by the members of Ansar Dine, a radical Islamist group that took control over the Northern territory of this country. At the origin of these attacks there was the conception that the veneration of Sufi shrines was intolerable, at least according to the radical Salafist interpretation of Islam embraced by this group. An analogous perspective was also adopted by those fundamentalist groups operating in Libya that, in the last two years, have destroyed several historical sites like, for example, the mausoleums of Murad Agha and Mahmud Landulsi in Tajoura.

Overall these case-studies testify: first, that there is an alarming growth of attacks against cultural property for reasons related to the religious fanaticism; second, that it is still very hard for the international community to find a successful way for preventing and hindering these unpleasant events.

#### *4.4. The intentional destruction of cultural property: Planned/Oppportunistic Looting*

Among the most frequent cases of damages against cultural property there are undoubtedly those associated with planned or opportunistic lootings. In those contexts characterized by uncontrolled violence and political instability, the looting of cultural sites has become an established practice.

In 2003 the Iraqi National Library and the National Museum of Iraq in Baghdad were extensively looted. Nowadays, the number of artworks that have been effectively stolen in such occasion is still unclear. This uncertainty is due both to the fact that the records of the museum were destroyed by the thieves, but also to the fact that some of the plundered antiquities were supposed to only temporarily stay in these buildings and, therefore, they were not catalogued [31]. Moreover, several cultural goods were simply smashed on the floor during the pillaging.

Unfortunately the attacks against these buildings were just the tip of the iceberg. During the entire period of war numerous ancient sites in the southern Iraq (e.g. in Dhi Qar, Qadisiya, and Wasit) were plundered [32]. These acts are particularly hideous because, on one hand, they irremediably jeopardize the scientific investigation of an archaeological site: "In a word, the context is destroyed without record, so that most of the information vital to the fullest study and reconstruction of the past is irremediably lost to the world" [33]; on the other, there is no way to know exactly what has been stolen.

Interpreting these attacks, Russell highlights a critical point: "Antiquities looting provide a ready source of cash that may be used by the insurgency, the militias, and the terrorists that destabilize the country" [34]. In other terms, the plundering of archaeological sites can be viewed as a lucrative business by the para-military forces operating in the conflict. At the same time, unscrupulous foreign dealers seem also to be involved in this trade of antiquities: most of the times the illegally removed artifacts are then exported abroad and sold in the international black-market of antiquities.

Sackings of cultural property have also been registered in the still ongoing Syrian war. In 2012-2013 different archeological sites, such as Apamea, Tell Merdikh and Palmyra, were plundered and a number of museums, like those of Hama, Deir Ez-Zor and Qala'at Jabar, experienced a similar fate [35].

The systematic looting of cultural property is not an event limited to the armed conflicts, but it also occurs quite frequently in all those places where the governmental control over its territory is weak. In Egypt, for instance, the political instability experienced in the last years has been exploited by criminals for attacking archaeological sites and museums. Events of pillaging and devastations occurred in 2011 at the Egyptian Museum in Cairo, but also in 2013 at the Mallawi National Museum, where around fifty artifacts were damaged and over one thousands of objects were stolen.

### **5. Final remarks: the limits of international law**

This article has proposed a comprehensive overview of the main reasons behind the destruction of cultural property in contexts of violence. However, a question is still pending: why, despite the significant developments made by international law, is the destruction of cultural property still a recurring element in the event of armed conflict? Several factors must be taken into consideration in order to understand the core aspects of this problem.

First of all, the unwillingness of numerous states to be bound to international legal provisions that impose particularly precise and demanding commitments.

The almost universal ratification of the 1954 Hague Convention (126 states parties) shows the states' availability toward the establishment and acceptance of common general rules in this field. However, a decisively more cautious approach tends to prevail in relation to the acceptance of more stringent binding provisions. To date, for example, the 1999 Second Additional Protocol has been ratified by only 66 states, even if its detailed provisions have overcome many of the limits of the 1954 Hague Convention. Moreover, the choice to draft an act of soft law to regulate the intentional destruction of cultural heritage [36] suggests that several states preferred the approval of a "political solution", rather than of a legally binding tool [37]. This fickle attitude inevitably compromises the possibility to establish an advanced system of protection of cultural property in the event of armed conflict.

Second, many states do not actually fulfill the legal provisions they ratify.

Despite the good consensus achieved, several provisions expressed in the 1954 Hague Convention and in its Second Additional Protocol are not effectively implemented by states parties. This breach especially occurs in relation to those preventive measures that should be enforced before the outbreak of a war (e.g. the inclusion of the dispositions concerning the protection of cultural property into the military regulations; the preparation of complete, precise and updated inventories; the organization of protective measures against the risks of fires and structural collapses; the planning of safety places where movable cultural goods could be temporarily transferred during the whole duration of the hostilities; and the inscription of the most significant sites in the List of Cultural Property under Enhanced Protection). The failure to apply these preventive measures significantly limits the capability of a state to protect its cultural assets at the outbreak of an armed conflict.

Third, the lacks of the 1954 Hague Convention.

Certainly this convention has been a turning point in the international law sphere, providing for the first time a set of detailed provisions specifically aimed to protect cultural property in the event of armed conflict. However, this legal tool has also numerous limits, such as, for example, the imposition of excessively generic preventive measures, the adoption of unreasonably murky provisions on the individual criminal responsibility, an unremarkable regime of special protection, a system of exemptions based on a too wide interpretation of the "military necessity", a procedure for reporting the presence of cultural property - through the exhibition of the blue shield emblem - that should be further integrated, the lack of an effective institutional framework. As already stated, most of these weaknesses have been overcome through the adoption of the Second Additional Protocol to the 1954 Hague Convention. However, the fact that only ten sites have so far been enrolled in the List of Cultural Property under Enhanced Protection shows that some problems have not been solved yet [38].

Fourth, the scarce equipment and few skilled personals employed in the protection of cultural property in times of war.

Often, during an armed conflict, only the most representative cultural sites are truly protected, while all the others are left to the mercy of paramilitaries and thieves. However, the considerable results achieved, in Iraq, by the Italian Carabinieri in the fight against the archaeological looting proves that, through the investment of a relatively small amount of human and material resources, is possible to gain outstanding results [39]. In this sense, the creation within the military forces of a professional group aimed to guarantee the respect of cultural property would certainly produce beneficial effects in the protection of cultural property from events of pillaging, damaging and destruction [40]. For such an aim, the four-tier approach (long-term awareness training, specific pre-development training, co-operation during conflict, and co-operation post-conflict) developed by Stone is certainly a good basis for the organization of a trustworthy relation between cultural property experts and the military forces [41].

Fifth, the tortuous legal path for reaching a judgment of conviction in the case of intentional destruction of cultural property.

The Second Additional Protocol to the 1954 Hague Convention and the Rome International Statute of the International Criminal Court have contribute to the affirmation of a penal individual responsibility for deliberate attacks against cultural property. Moreover, in different cases the ICTY has evaluated the systematic and discriminatory destruction of cultural property as an act of persecution [42]. The current normative system should, therefore, regularly lead to the prosecution and conviction of those individuals who order and/or materially execute acts of intentional destruction of cultural property. However, despite the undeniable progress achieved, it seems that for multiple reasons (that deserve to be analyzed on another occasion) a consolidated practice in this regard still has to be formed. As a result, the deterrent power of this important juridical principle has not fully come to light yet.

Sixth, the limited power of the international community to react against cases of extensive destruction of cultural property.

The destruction of Buddhas of Bamiyan and the attacks against the mausoleums of Timbuktu have revealed the enormous difficulties of international community to deal with similar events. When diplomacy fails and the economic sanctions do not produce immediate effects, few (if any) other options are available [43]. Considering the risks faced by cultural property in similar cases, the development of a more advanced and dynamic system of responsibility (which might entail the involvement of the whole international community in the protection of cultural property under particular circumstances) is certainly a topic that should be studied more thoroughly (on this issue see, for example, the idea of trusteeship in international public law suggested by Milligan [44]). In the meanwhile the more efficient long-term solution seems still the adoption of measures aimed to prevent this detrimental phenomenon. In this

sense, a key aspect is highlighted by art. 3, par. 3 of the [2003 Unesco Declaration concerning the Intentional Destruction of Cultural Heritage](#): "States should endeavor, by all appropriate means, to ensure respect of cultural heritage in society, particularly through educational, awareness-raising and information programmes". The greater is the knowledge, understanding and attention of the world's population toward the cultural heritage, the lower will be the risk to see it destroyed.

Concluding, the case studies presented in this article reveal, on one side, that the destruction of cultural property in the event of armed conflict may be related to various conditions and causes; and, on the other side, that there are still several challenges to be faced in order to completely prevent and suppress this regrettable phenomenon. In spite of the juridical weaknesses highlighted in this article, there are at least two reasons to optimistically look to the future. First of all, the progressive improvements introduced in the international normative system regulating the protection of cultural property in the event of armed conflict have led to the affirmation of a solid legal basis. Compared to 60 years ago the cultural property are nowadays protected in times of war by an *ad hoc* convention and their deliberate destruction has been included in the sphere of the international criminal offences. Therefore, as soon as states will give full enforcement to the most advanced provisions of this system significant results should be immediately achieved. Second, there are a number of international organizations, NGOs, research centers and academic experts that are directly involved in the collection of data and the conduction of studies in this field. As long as there is the will to understand and deal with the threats affecting cultural property, there are good chances to develop more and more reliable and convincing solutions.

## Note

[1] M. Coward, *Urbicide in Bosnia*, in Graham, S. (ed.), *Cities, War and Terrorism: Towards an Urban Geopolitics*, Malden (MA), Blackwell Publishing, 2008, pag. 159.

[2] A.F. Vrdoljak, "Intentional Destruction of Cultural Heritage and International Law", *Thesaurus Acroasium* 35, 2007, pag. 385.

[3] E. Cunliffe, *Damage to the Soul: Syria's Cultural Heritage in Conflict*, Global Heritage Fund, 2012, pagg. 6-8.

[4] [Unesco. Unesco Director-General Condemns the Destruction to the Museum of Islamic Art in Cairo, Egypt.](#)

[5] [J. E. Curtis. Report on Meeting at Babylon 11 - 13 2004](#), Department of the Middle East, British Museum, 2004.

[6] A. M. Al Hamdani, *The Damage Sustain to the Ancient City of Ur*, in P.G. Stone, & J. F. Bajjaly, (eds.), *The Destruction of Cultural Heritage in Iraq*, Woodbridge, Boydell Press, 2011, pag. 154. Albeit the *modus operandi* performed by the armed forces located in Babylon is questionable, the damages that they caused to the ancient city seem primarily of unintentional nature. Differently, the occupation of this site does not seem coincidental, but a strategic choice (see below the section 3.2).

[7] E. Cunliffe, *op. cit.*, pagg. 8-9.

[8] See, for example M. C. Ciciriello, *Il conflitto armato quale eccezionale fattore di rischio in un Sistema internazionale di protezione dei beni culturali isparato alla completezza*, in P. Benvenuti, and R. Sapienza, eds. *La tutela internazionale dei beni culturali nei conflitti armati*, Milano, 2007, pagg. 239-252.

[9] [D. Turns. Military Necessity.](#)

[10] C.J.S. Forrest, "The Doctrine of Military Necessity and the Protection of Cultural Property During Armed Conflict", *California Western International Law Journal*, Vol. 37, No. 2, 2007; *University of Queensland TC Beirne School of Law Research Paper*, No. 07-11, pag. 207.

[11] Second Additional Protocol, 1999, art. 6a. According to art. 1 of the Second Additional Protocol "Military objective means an object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstance ruling at the time, offers a definite military advantage".

[12] Second Additional Protocol, 1999, art. 6b.

[13] International Criminal Tribunal for the former Yugoslavia, Trial Chamber, [The Prosecutor v. P. Strugar](#), 31 January 2005, case No. IT-01-42-T.

[14] Department of Defense Legacy Resource Management Program (funded by), Fort Drum Cultural Resources Program and the Center for Environmental Management of Military Lands (CEMML) (directed by) (n.d.), [The Impact of War on Iraq's Cultural Heritage: Operation Iraqi Freedom.](#)

[15] G. S. Corn, "Sniper in the Minaret-What is the Rule? The Law of War and the Protection of Cultural Property: A Complex Equation", [The Army Lawyer](#), Department of the Army Pamphlet 27-50-386, 2005, pag. 40.

[16] S. Van der Auwera, "Contemporary Conflict, Nationalism, and the Destruction of Cultural Property During Armed Conflict: A Theoretical Framework", *Journal of Conflict Archaeology*, Vol. 7, No. 1, 2012, pag. 50.

[17] [J. Baumel. The destruction by war of the cultural heritage in Croatia and Bosnia-Herzegovina presented by the Committee on Culture and Education](#), information report, Doc. 6756, 1993.

[18] J. Petrovic, *The Old Bridge of Mostar and Increasing Respect for Cultural Property in Armed Conflict*, Leiden, Martinus Nijhof Publishers, 2012, pag. 74.



[19] The destruction of the Saddam Hussein's statue at Firdos Square has long been discussed. The main debated question was if the statue was spontaneously destroyed by Iraqi population or it was staged by U.S. forces. On this issue see, [P. Maas, "The Toppling", \*The New Yorker\*, 2011.](#)

[20] Z. Bahrani, "Babylon: A Case Study in the Military Occupation of an Archaeological Site", in Agnew, N. and Bridgland, J. (eds.), *Of the Past, for the Future: Integrating Archaeology & Conservation*, Proceeding of the Conservation Theme at the World Archaeological Congress (2003), Getty Publications, 2006, pag. 245.

[21] M. Werman, interview to [M. D. Danti, \*The Assault on Syria's Cultural Heritage\*](#), Public Radio International's *The World*, 2012.

[22] Note that, at the time of the events, the ancient town of Dubrovnik was enrolled in the World Cultural Heritage List. In the sentence against Jokić, the judges of the International Criminal Tribunal for the Former Yugoslavia highlighted that "The shelling attack on the Old Town was an attack not only against the history and the heritage of the region, but also against the cultural heritage of humankind." See International Criminal Tribunal for the former Yugoslavia, Trial Chamber, [The Prosecutor v. M. Jokić](#), 18 March 2004, case No. IT-01-42/1-S.

[23] M. K. Steen, "Collateral Damage: The Destruction and Looting of Cultural Property in Armed Conflict", *ExpressO* (Unpublished Papers), 2008, pag. 11 on line at: [http://works.bepress.com/matthew\\_steen/1](http://works.bepress.com/matthew_steen/1).

[24] S. Van der Auwera, *op. cit.*, pag. 57.

[25] M. Politi and F. Gioia, "La responsabilità penale individuale per violazione degli obblighi posti a tutela dei beni culturali in tempo di conflitto armato", in P. Benvenuti, and R. Sapienza, (eds.), *La tutela internazionale dei beni culturali nei conflitti armati*, Milano, 2007 pag. 211.

[26] Herscher, A. and Riedlmayer, A "Monument and Crime: The Destruction of Historic Architecture in Kosovo", *Grey Room*, N. 1, 2000, pagg. 112.

[27] European Parliament, ["Cultural heritage in Azerbaijan - European Parliament resolution on cultural heritage in Azerbaijan"](#), *Official Journal of the European Union*, 2006.

[28] Eritrea-Ethiopia Claims Commission (EECC) [Final Award. Eritrea's Damages Claims between The State of Eritrea and The Federal Democratic Republic of Ethiopia](#), The Hague, 2009, pagg. 53-54.

[29] R. Bevan, *The Destruction of Memory: Architecture at War*, 2007, Reaktion Books, pag. 8.

[30] Source: <http://archive.archaeology.org/online/news/afghanistan/taliban.html> (accessed 18/02/2014). To be precise, the planned destruction of the Buddhas of Bamiyan was also an act of defiance. As sustained by F. Francioni, F. and F. Lenzerini, "The Destruction of the Buddhas of Bamiyan and International Law", *European Journal of International Law*, Vol. 14, No. 4, 2003, pagg. 621: "It is no mystery that the Taliban's decision to destroy the Buddhas of Bamiyan came in the wake of sanctions adopted in 1999 and 2000 against the Afghan government due to their continued sheltering and training of terrorists and planning of terrorist acts".

[31] D. Geroge and M. Gibson, "The Looting of the Iraq Museum Complex", in G. Emberling, and K. Hanson, (eds.), *Catastrophe! The Looting and Destruction of Iraq's Past*, Oriental Institute Museum Publications, No. 28, 2004, pagg. 19-28.

[32] E. C. Stone, "Archaeological Site Looting: the Destruction of Cultural Heritage in Southern Iraq", in G. Emberling, and K. Hanson, *Catastrophe! The Looting and Destruction of Iraq's Past*, Oriental Institute Museum Publications No. 28, 2004, pagg. 65-80.

[33] Miller, A., "Archaeological Looting. A new Approach to the Problem", *Penn Museum - Expedition*, Vol. 24, No. 3, 1982, pag. 35.

[34] J. M. Russell, "Efforts to Protect Archaeological Sites and Monuments in Iraq, 2003-2004", in G. Emberling, and K. Hanson, K. (eds.), *Catastrophe! The Looting and Destruction of Iraq's Past*, Oriental Institute Museum Publications, No. 28, 2004, pagg. 42.

[35] E. Cunliffe, *op. cit.*, pagg. 12-14.

[36] Unesco, [Declaration concerning the Intentional Destruction of Cultural Heritage](#), Paris, 2003.

[37] T. Scovazzi, *La Dichiarazione sulla distruzione intenzionale del Patrimonio Culturale*, in P. Benvenuti and R. Sapienza, (eds.), *La tutela internazionale dei beni culturali nei conflitti armati*, Giuffrè, Milano, 2007, pagg. 173.

[38] With regard to this specific issue, an important result has been achieved on 6 May 2013, when the World Heritage Committee and the Committee for the Protection of Cultural Property in the Event of Armed Conflict have agreed to introduce a mechanism that substantially simplify the inclusion in the List of Cultural Property under Enhanced Protection of those cultural assets that are already enrolled in the World Heritage List. See World Heritage Committee, [Decisions adopted by the World Heritage Committee at its 37<sup>th</sup> session](#) (Phnom Penh, 2013, doc. WHC-13/37.COM/20, Paris, 2013, pagg. 234-238).

[39] See J. M. Russell, *op. cit.*, pagg. 33-37, about the activities of the Italian Carabinieri in Iraq.

[40] Actually, it is the same 1954 Hague Convention that requires the development of such a measure: "The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it" (Hague Convention, 1954, art. 7, par. 2).

[41] P. G. Stone, "A four-tier approach to the protection of cultural property in the event of armed conflict", *Antiquity*, Vol. 87, 2013, pagg. 166-177.

[42] See, for example, International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, [The Prosecutor v. Blaskić](#), 3 March 2000, case No. IT-95-14-T and International Criminal Tribunal for the Former Yugoslavia, [The Prosecutor v. Kordic and Cerkez](#), 26 February 2001, case No. IT-95-14/2-T.

[43] At present, international law seems to exclude the option of a military intervention for the sole scope to protect cultural sites from acts of intentional destruction.

[44] A. Milligan, "Targeting Cultural Property: The Role of International Law", *Journal of Public and International Affairs*, Vol. 19, 2008, pag. 104.

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