

The Intentional Destruction of Cultural Heritage between International Conventions and Direct Intervention

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Abstract Through the analysis of the evolution of the most important juridical instruments, this study aims to analyse the peculiarity of the intentional destruction of CH in the terrorist case. In fact, the Taliban and the IS actions against CH have some similarities that make terrorist's behaviour different from other cases in history. The international reactions to this brutality, however, have not been strong enough and there is a high risk that other historical monuments will be destroyed. For this reason, in this study the possibility of a responsibility to protect for CH is investigated.

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Keywords Intentional destruction. Terrorism. Responsibility to protect.

1 Introduction

This work analyses the deliberate destruction of CH in Iraq and Syria. We start from the most important International instruments concerning the protection of CH; then, we focus on the nowadays terrorist actions. In particular, I will compare the Taliban action in 2001 with that of the IS in 2015. We will also analyse the international reactions to these terrorist actions. Finally, we will face the possibility of a direct international intervention for the protection of CH.

2 The International Protection of Cultural Heritage

Since the end of the WWII, the interest in CH has gradually increased. Before, there were only few instruments that protected marginally cultural property. In particular, there was not a definition of CH but a list of goods, part of the category (Francioni 2007, 9-10).

2.1 The 1954 UNESCO Convention

The first international instrument concerning exclusively the protection of cultural property is the 1954 Hague Convention. In this Convention, there is no reference to CH, yet, but there is still a reference to cultural property. Moreover, differently from previous instruments, the cultural property is not limited to a list of goods (Greppi 2007, 81), but, on the contrary, it is underlined the importance of these goods for humanity. For cultural property, the Convention means “movable or immovable property of great importance to the CH of every people” (art. 1(a)), “buildings whose main and effective purpose is to preserve or exhibit the movable cultural property” (art. 1(b)) and “centers containing a large amount of cultural property” (art. 1(c)).

Cultural property is not limited to archaeological sites or works of art, but the notion also includes buildings, such as museums, that contain movable properties, as described in art. 1(a), and to centres that contain movable and immovable properties.

The Convention classifies two kinds of cultural property that benefits of two different kinds of protection: the general protection for cultural property (Chapter 1) and the special protection for a *limited number* of cultural property only (Chapter 2).

General protection has to be guaranteed already in peace time (art. 3) and States have to take measures, not better specified (Greppi 2007, 82), before the beginning of any conflict (art. 3). Moreover, the High Contracting Parties undertake to respect cultural property wherever it is located, avoiding its use for purposes that could bring to its destruction or damage, included acts of hostility against it (art. 4(1)). However, this obligation is not absolute and there are some waivers in case the military necessity imperatively requires them (art. 4(2)). This means that the imperative necessity goes beyond the obligation of avoiding the use of cultural property for military scopes. States Party have to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property (art. 4(3)) and have to avoid reprisals against cultural property (art. 4(4)). In case a Contracting Party does not respect these obligations, the other Contracting Party has anyway to respect CH (art. 5.1). In case of occupation, the State Party has to support the local authorities in safeguarding CH (art. 5.1).

The special protection, instead, is possible only for a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance (art. 8(1)).

Refuges, centres and immovable cultural property of great importance can entry in the “International Register of Cultural Property under Special Protection” (art. 8(6)). To achieve the special protection, some other con-

ditions must be respected. In particular, cultural property has to be “situated at an adequate distance from any large industrial center or from any important military objective constituting a vulnerable point” (art. 8(1b)) and have “not [to be] used for military purposes”. However, there are some waivers to these obligations too. A refuge can be placed under special protection “whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs” (art. 8(2)). At the same way, it is possible to place a cultural heritage under special protection, even if it is located near an important military objective, “if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective” (art. 8(5)). A center is used for ‘military purposes’ if it is “used for the movement of military personnel or material, even in transit” or any other activities “directly connected with military operations” (art. 8(3)). At the contrary, the presence of police forces in the nearby of the cultural property, is not to be considered as ‘military purpose’.

States Party have to guarantee the immunity of cultural property under special protection (art. 10) but, also in this case there are some waivers (art. 11). If the State Party violates this obligation, the other Party does not have the obligation to ensure immunity of the cultural property in question, as long as the violation persists (art. 11(1)). The other Party, whenever it is possible, has first to require the cessation of the violation. In case of *unavoidable military necessity* and until the necessity continues, the special protection is not more guaranteed (art. 11(2)). The *unavoidable military necessity* can be established only “by the officer commanding a force the equivalent of a division in size or larger” (art. 11(2)).

The limits of the 1954 Hague Convention have made necessary the development of new international instruments. In fact, the goods can be added to the Register only if the State that has the cultural property on its own territory requires it.¹ At the same way, the State is the only subject that can erase the inscription of the good from the Register (Regulations, art. 16(1)).

Cultural properties under special protection have to be signaled by a symbol, a white and blue shield (1954 Hague Convention, art. 16), repeated three times (art. 17(1)); the symbol, repeated only once, can be used to signal cultural properties under general protection (art. 17(2)). It is also hard to satisfy all the elements required for the special protection (Boylan 1993, 76); in fact, the Register includes only five cultural properties: four refuges and a monumental center, the Vatican State.² Moreover, the last

1 Regulations for the Execution of the 1954 Hague Convention, art. 13(1).

2 <http://unesdoc.UNESCO.org/images/0015/001585/158587EB.pdf>.

one cultural property inscribed in the Register had been added in 1978.³ Finally the Convention does not distinguish properly the general and the special protection (Gioia 2007, 109-11) and it does not include buildings for worship, art, science, education, and charity (Boylan 1993, 49-51). However, it is undeniable the importance of this Convention since it has identified obligations for cultural property category (Greppi 2007, 86).

2.2 The 1972 UNESCO Convention

Compared with the 1954 Hague, the 1972 UNESCO Convention concerns both CH, an amplified and more complete notion of cultural property (Abdulqawi, Caraccioli 2007, 65-66) and natural heritage. We are going to analyse only the world CH. Moreover, the Convention protects CH both in an armed conflict and in a peacetime context.

The first important aspect of this Convention is the use of the notion of 'world CH', which underlines the relevance of cultural property for the whole mankind. In fact, para. 4 of the introduction of the WHC Operational Guidelines underlines that

the cultural [...] heritage is among the priceless and irreplaceable assets, not only of each nation, but of humanity as a whole. [This] loss, [...] constitutes an impoverishment of the heritage of all the peoples of the world.

For CH the Convention intends "monuments" (art. 1(1)), "groups of buildings" (art. 1(2)) and "sites" (art. 1(3)) "of outstanding universal value".⁴ Differently from the 1954 The Hague Convention, there is not reference to movable cultural property.

States Party have to ensure that

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. (WHC, art. 4)

even if it is possible an "international assistance and co-operation". Each State, however, shall take measures in order to make them effective (art. 5).

³ <http://unesdoc.UNESCO.org/images/0015/001585/158587EB.pdf>; Abdulqawi, Caraccioli (2007, 64).

⁴ However, as it has been noticed, there is not a definition of the expression. The outstanding universal value is due to the interest that States and different generations have in these goods: see Scovazzi (2014, 4-5).

The Convention distinguishes two Lists in which the world CH can be classified: the *WHL* for CH with outstanding universal value (art. 11(2)) and the *List of WH in Danger* for the CH that needs assistance (art. 11(4)). In the former, it is possible to enlist only the CH of outstanding universal value in terms of the criteria established (art. 11(2)); in particular the criteria are:

1. to represent a masterpiece of human creative genius;
2. to exhibit an important interchange of human values [...];
3. to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;
4. to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;
5. to be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment [...];
6. to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (Operational Guidelines for the Implementation of the WHC, para. 77)

To be included among the *WHL*, a cultural property that respects the last one criterion has to respect also at least one of the others. Moreover, States have to submit an inventory of CH located in their own territory (art. 11(1)) to the Committee that decides which of these cultural properties have an outstanding universal value (art. 11(2)). In any case the consent of the State concerned is necessary (art. 11(3)).

In the *List of WH in Danger* (art. 11(4)), instead, the consent of the State is not more a *conditio sine qua non* since it is possible that the State itself is endangering the cultural property. For that reason the Committee “shall [only] consult the State Party in whose territory the cultural or natural property in question is situated” (art. 11(6)). The threats to CH are due mainly to urban or tourists’ development projects, natural disasters and armed conflicts (art. 11(4)). This can be explained by the fact that the 1954 Hague Convention concerns only the protection of cultural property in case of armed conflicts.

Most of the terrorist focused targets are included in the *WHL* or in the Tentative List. Since then, some of these cultural properties of outstanding value are included also in the *List of WH in Danger*.

2.3 The 1999 Hague Protocol

The 1999 Hague Protocol⁵ tries to overcome the problematic aspects of the previous Conventions.

It reaffirms that the measures to safeguard cultural property have to be taken in a peacetime context, adding, however, how each State has to act (art. 5). The II Protocol includes waivers in the respect of cultural property, that are based on *imperative military necessity* (art. 6) as long as the cultural property is used as a military objective (art. 6(a.i)) and there is not alternative available to obtain such an advantage (art. 6(a.ii)). Moreover, the imperative military necessity can be decided only “by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise” (art. 6(c)) and can be evoked only when and for as long as no other choice is possible for obtaining a similar military advantage (art. 6(b)).

During the conflict, States have also to “verify that the objectives to be attacked are not cultural property protected under Article 4 of the Convention” (art. 7(a)), to take precautions “with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under Article 4 of the Convention” (art. 7(b)), to refrain attacks “which may be expected to cause incidental damage to cultural property protected” that exceed the military advantage (art. 7(c)), to suspend the attack (art. 7(d)) when the cultural property is protected by the Convention (art. 7(d.i)) or may cause damaged not proportioned to the military advantage (art. 7(d.ii)).

Moreover, States Party have both to “remove movable cultural property from the vicinity of military objectives or provide for adequate *in situ* protection” (art. 8(a)) and “avoid locating military objectives near cultural property” (art. 8(b)).

The most important change, however, concerns the introduction of a new kind of protection: the *enhanced protection*, much more innovative than the special protection of the 1954 Hague Convention (Abdulqawi, Caraccioli 2007, 63). The enhanced protection can be provided if three conditions subsist; in particular cultural property has to be:

1. considered of the greatest importance for humanity (art. 10(a));
2. protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection (art. 10(b));
3. not be used for military purposes (art. 10).

⁵ More about the 1999 Hague Protocol is in Abdulqawi, Caraccioli (2007, 58-71); Greppi (2007, 88-96).

States Party have to submit the list of cultural property they wish to have enhanced protection (art. 11(1)), but some organisations “with relevant expertise” can invite the State to submit to the List a specific cultural property (art. 11(3)). The request can be submitted by the State Party also during the hostilities, in case of emergency (art. 11(9)). Once the cultural property is under enhanced protection States Party have to avoid attacking it, using it and its immediate surroundings (art. 12). However, the enhanced protection can be lost or suspended (art. 13(a)), when the cultural property does not meet anymore the criteria of art. 10, or it is used in support of military action, or its use made it a military objective (art. 13(b)).

Finally, Chapter 4 of the 1999 Protocol concerns the criminal responsibility. In particular, a person violates the Convention if he:

- a. attacks directly cultural property under enhanced protection (art. 15(1a));
- b. uses the surroundings of a CH under enhanced protection in support of military action (art. 15(1b));
- c. destructs extensively cultural property (art. 15(1c));
- d. makes cultural property object of attack (art. 15(1d));
- e. is responsible of acts of theft, pillage, misappropriation or vandalism (art. 15(1e)).

3 Terrorism

The action of terrorism has some important features that distinguish it from all the other examples in history. As Francioni and Lenzerini underlined in their work (2003, 619-651) there are some peculiar aspects of Taliban’s action against the two huge Buddha statues in the Bamiyan Valley that makes this terrorist technique “a very dangerous precedent” (619). In the light of the recent IS behaviour toward CH, it is possible to affirm that this worry was well-founded. In fact, there are some features that work also in IS nowadays intentional destruction of WCH in Iraq and Syria. First, it is important to remember shortly some of the most important aspects in both Taliban and IS behaviour.

In 2001, the Taliban decided to destroy the two Buddhas of the Bamiyan Valley in Afghanistan. This action was very well planned and in March 2001 the explosion of the two statues was justified by the decision, taken in February 2001 by Afghan scholars and the Afghan Supreme Court, to destroy the idols, present in the whole country, mostly controlled by Taliban, because of the risk idols could be idolised, also in the future (Francioni, Lenzerini 2003, 622).

In 2015, IS has promoted a true media campaign. IS wants to build Year Zero, erasing the past, that they refuse to recognise, and wants to find consensus among the population, exhausted for the terrible situation in

which it has to live. The first attack was in the Museum of Mosul where the instigators destroyed carefully with drills and picks important testimonies of the past. Other attacks followed: on 5 March the destruction of the archaeological site of Nimrud; on 7 March the destruction of Hatra (registered in the WHL) continued on 12 and 13 April with the complete destruction of the Ashurmasirpal II Palace.

These terrorist behaviours are very peculiar because different from other cases in history. This shows that the analysis made by Francioni and Lenzerini is applicable also to IS. In fact, in the Buddhas of Bamiyan Valley case the Taliban were destroying part of the Afghan CH and not of the enemy one (2003, 620), in the same way in which IS destroys Iraqi and Syrian CH. This means that they are not destroying a culture different from their own: in fact, they destroy their pre-Islamic past, considered as an enemy.

Moreover, the destructions both of Taliban and IS, were not due to military necessity nor the goods were near a military objective but they were focused targets. This can be confirmed by the tools used by terrorists, in particular of picks and drills, that makes this action different from the previous wanton bombardments in history. The purpose is, in fact, the deliberate destruction of cultures that are in contrast with terrorist conception (Francioni, Lenzerini 2003, 620). In fact, the destruction was planned with attention and was very well documented in all phases. Finally, the opinion of the two authors that links the destruction of the two Buddhas statues with the sanctions imposed by UN in 1999 and 2000 seems to be confirmed; in fact, IS destructions have followed the imposition of a UN sanction (Francioni, Lenzerini 2003, 620 ff.).

3.1 UN Resolutions and Sanctions against Terrorist Actions toward Cultural Heritage.

In the Res. 1267 of 1999⁶ there is a first reference to CH: the *second recital* of the preamble states “its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan’s cultural and historical heritage”.

The Res. 1483 of 2003 concerning the situation in Iraq⁷ is particularly important in our study because it underlines the responsibility for all States to

facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific,

⁶ UN Doc. S/RES/1267, 15 October 1999.

⁷ UN Doc. S/RES/1483 (2003), 22 May, SC.

and religious importance illegally removed. (para. 7)
and to prohibit the trade of these items. (para. 7 and para. 10)

With the Res. 2199 of 2015⁸ there is a reinforcement of the protection of CH because there is an entire part of the resolution dedicated to CH (paras. 15, 16, 17). It condemns the destruction of, among other things, archaeological sites, museums, libraries, archives trade. Moreover, Member States have to collaborate with other IOs to prevent illegal trade of goods from Iraq and Syria. Part of the resolution is exclusively for CH: in particular, the destruction of CH in Iraq and Syria is condemned both in case of accidentally destruction and in case of deliberate destruction “including targeted destruction of religious sites and objects”. Moreover, all Member States have to take all the necessary measures to prevent the illegal trade of goods of archaeological, historical, cultural, scientific and religious importance, coming from Iraq and Syria. These deliberate destructions of CH have moved the public opinion but, at the end, the international reaction has not born its fruits and terrorists have continued their attacks.

After the destruction of the two Buddhas statues, the Res. 55/243 of the UN GA concerning “the destruction of relics and monuments in Afghanistan”,⁹ underlines that this destruction “would be an irreparable loss for humanity as a whole” (Preamble, last recital). Moreover, it demands to the Talibans themselves to prevent the destruction of CH of Afghanistan (para. 3) and to protect it “from all acts of vandalism, damage and theft” (para. 1). Finally, the Member States are demanded to take appropriate measures to safeguard the sculptures (para. 4).

The UN GA Res. 55/254 of 31 May 2001, concerning the “protection of religious sites”,¹⁰ condemns “all acts or threats of violence, destruction, damage or endangerment, directed against religious sites as such” (para. 1). States have also to ensure the respect and protection of religious sites in conformity with international law and to prevent acts or threats of violence (para. 2). NGOs and IGOs have also to promote, together with media, “a culture of tolerance and respect for the diversity of religions and for religious sites, [...] an important aspect of the collective heritage of humankind” (para. 3).

However, the most important international reaction was the Declaration concerning the intentional destruction of CH.¹¹ It was preceded by a study

8 UN Doc. S/RES/2199 (2015), 12 February, SC.

9 UN Doc. A/RES/55/243, GA, 1 May 2001.

10 UN Doc. A/RES/55/254, GA, 31 May 2001.

11 The 2003 UNESCO Declaration.

commissioned by UNESCO General Director (Lenzerini 2003, 131-132). The Draft, subject to negotiation from a Member State group, reached a compromise, submitted in October 2003 to the General Conference. One of the most important differences between the Draft and the final Declaration is the replacement of 'shall' of the former with the softer 'should' of the latter. As a consequence of the destruction of the two Buddha statues (Preamble, first recital), the Declaration underlines that

CH is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights. (Declaration, fifth recital)

This means that there is a strong link between CH and human rights.

However, compromises have weakened this instrument. Art. 1, for example, does not give contributes to the development of the protection of CH because it recognises the importance of the protection of cultural heritage and reaffirms its commitment to fight against its intentional destruction in any form so that such cultural heritage may be transmitted to the succeeding generations.

In fact, the 2003 UNESCO Declaration should have condemned the destruction of CH in the territory of the State that acts (Lenzerini 2003, 151) rather than recognises the importance of CH in general, already present in the previous international instruments.

The Declaration is applied for CH, independently from its outstanding value. For 'intentional destruction' the Declaration means

an act intended to destroy in whole or in part CH, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience, in the latter case in so far as such acts are not already governed by fundamental principles of international law. (art. 2(1))

Moreover, art. 3 is weakened by the use of 'should' (Scovazzi 2007, 173-174) that, in a declaration of principle, is even more unnecessary (Lenzerini 2003, 141): in that way, a fundamental obligation such as the prevention of the intentional destruction of CH looks less incisive than before (Scovazzi 2007, 171-174). In fact,

States should take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of CH, wherever such heritage is located. (2003 UNESCO Declaration, art. 3(1))

The prevention of intentional destruction of CH is independent from the

place it is located, even in the acting State's territory; however, this case is not explicitly mentioned (Lenzerini 2003, 141). States are also invited (art. 16(3)(4)) to become part of some of the most important international conventions, to promote higher standard of protection of CH in legal instruments and to apply these instruments.

Art. 5 underlines that States, in case of armed conflict, should take all necessary measures to protect CH, as crystallised in general international law (Lenzerini 2003, 141-142).¹²

States are responsible for the destruction of CH "of great importance for humanity whether or not it is inscribed on a list maintained by UNESCO or another IO" (art. 6) or for the lack of appropriate measures taken to avoid it. In the same way, States should also take measures and provide sanctions

against those persons who commit, or order to be committed, acts of intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization. (art. 7)

A difference between the Declaration and the Draft is that, in the latter, it was also included all goods that are of special relevance for the community, that built and maintained it (Lenzerini 2003, 142). However, the Declaration is an opportunity loss and the result is not sufficiently advanced (Lenzerini 2003, 143).

A first reaction to the Mosul Museum destruction is the Baghdad Museum reopening. In the numerous condemnations of UNESCO General Director it is always underlined that the destruction of CH is a war crime. Decision 196 EX/29 *Culture in conflict areas: a humanitarian concern and a safety issue. UNESCO's role and responsibilities* wants to reinforce the capacity of the Organisation to protect CH during armed conflicts. The idea is to *create protected cultural zones* around sites with recognised historical meaning (para. 3). Moreover, the Executive Council condemns the intentional destruction of CH in Iraq, Syria and Libya (para. 9), calls the UN Members to take all necessary measures to prevent the trafficking of CH (para. 10) and asks the UNESCO General Director to reinforce the intercultural dialogue and to use its role of coordinator to prevent the illicit traffic of CH and to reinforce the UNESCO action (paras. 11-15).

The UE Res. P8 TA(2015)0179 of the 30 April 2015¹³ concerns the intentional destruction of cultural heritage by IS. This resolution is important not only because there is awareness that these actions are to be consid-

12 However, as underlined by Scovazzi (2007, 172), this evolution is not clear.

13 EP Res. of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Da'esh (2015/2649(RSP)), P8_TA.

ered as part of the cultural cleansing (paras. A-B) and that “artistic and cultural goods are becoming ‘war weapons’” (para. D) but also because it is the third most important illegal traffic after drug and arms (para. H), and even if it is not UE competence, it comes under several EU field of competence (para. I). Moreover, differently from the UNESCO Secretariat declarations, the resolution condemns this behaviour as a crime against humanity and not as a war crime (para. C). It condemns the destruction in Syria and Iraq (para. I) and invites States to avoid the import of goods illegally traded (para. 4).

On 28 May 2015 the Res. A/69/281 *Saving the CH of Iraq*¹⁴ concerns “the destruction and looting carried out by the IS in Iraq [...] [of goods] which are irreparable losses for Iraq and the whole humanity” (fifth recital). The resolution shows concern for the number of attacks and threats to CH and for the looting and trafficking of CH “which occurs on an unprecedented scale today”. Moreover, the resolution underlines that the destruction of CH “erases the collective memories of a nation, destabilises communities and their cultural identity” (ninth recital). Reaffirming that the attack to the CH of a country is an attack against the common heritage of humanity as a whole (eleventh recital), and, for these reasons, it is necessary to safeguard and protect CH (twelfth recital). The resolution condemns the barbaric destruction and looting of CH (para. 1), used as a tactic of war. The resolution asks also for the protection of CH through international humanitarian law underlining that the attack directed against CH may be considered as a war crime.

3.2 The International Intervention. Is it Possible a RtoP for CH?

The destruction of CH of great importance has underlined the necessity of protecting it from terrorist’s attacks. One possibility concerns an international intervention through the creation of an international group with the purpose of protecting CH. Article 31 of the 1999 II Protocol to The Hague Convention affirms that

in situations of serious violations¹⁵ of this Protocol, the Parties undertake to act, jointly through the Committee, or individually, in cooperation with UNESCO and the UN and in conformity with the Charter of the UN.

This means that in case of serious violations, it is possible to start an ac-

¹⁴ GA, Resolution 69/281, *Saving the cultural heritage of Iraq*, 28 May 2015.

¹⁵ As Mainetti (2007, 285) underlines, the notion serious violation is already used in art. 15. This raises some problems in the interpretation.

tion both at individual level and in cooperation with UNESCO (Mainetti 2007, 286-287). States, in case of serious violations, undertake to act. Since only few States are part of the 1999 Hague Protocol, this limits the value of art. 31.¹⁶

However, with the SC Res. 1483 of 2003, UN can intervene directly, in case of crisis, also for the protection of CH. In particular, the Res. underlines that the SC:

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 [...], and calls upon the UNESCO [...] to assist in the implementation of this para.¹⁷

UN have to respect international law rules,¹⁸ and among them it is forbidden the attack to monuments that are part of the cultural and spiritual heritage of peoples (Mucci 2007, 326-327). For that reason, the destruction of cultural property is forbidden.¹⁹ The UN SG's Bulletin, *Observance by UN forces of international humanitarian law* underlines that

the UN force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. [...] the UN force shall not use such cultural property or their immediate surroundings for purposes which might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited. (section 6.6)

Since there are only a limited number of States that are part of the international Conventions and of the additional Protocols, the resolution has the purpose to solve that problem, making the contrast to illicit cultural trade an international obligation (Mucci 2007, 325). The resolution concerns the restitution of movable property illicitly smuggled in Iraq and sold in the whole world. Moreover, it has a universal value: in fact, it has value both for the States acting in Iraq and for all the States Party of the UN (Mucci

16 <http://www.unesco.org/eri/la/convention.asp?K0=15207&language=E&order=alpha>.

17 UN Doc. S/RES/1483 (2003), 22 May 2003, para. 7.

18 UN Secretariat, UN Doc. ST/SGB/1999/13, Secretary-General's Bulletin, *Observance by UN forces of international humanitarian law*, 6 August 1999.

19 UN Secretariat, UN Doc. ST/SGB/1999/13, Secretary-General's Bulletin, *Observance by UN forces of international humanitarian law*, 6 August 1999, section 6.6.

2007, 330). The resolution has given the possibility to make some duties, already present in the international Conventions, international obligations, since the UN includes almost the totality of the countries in the World. The obliged intervention in the illicit traffic of cultural property shows the common nature of the protected interest, defended as *erga omnes* obligation. Base of this resolution is Chapter 7 of the UN Charter, concerning peacekeeping and international security (Mucci 2007, 332). The importance of the protection of CH is underlined by the Preamble that states

the need for respect for the archaeological, historical, cultural, and religious heritage of Iraq, and for the continued protection of archaeological, historical, cultural, and religious sites, museums, libraries, and monuments.²⁰

The maintenance of peace, the international security and the protection of human rights are defended by UN. These tasks are linked to the protection of cultural heritage because the protection of cultural goods is to be considered as a human right of third generation (Mucci 2007, 333-336). Moreover, the link between peace and human rights has made the protection of CH fundamental to maintain peace. Since peacekeeping, international security and the protection of international law are defended by UN and since the protection of CH is a human right of third generation that can be considered as fundamental for the maintenance of peace (peacekeeping), the protection of CH has reached a very high level of importance. Moreover, the protection of CH is connected with human dignity. Through this resolution the SC has given the possibility to give application to principles already affirmed in important international Conventions. However, this intervention has been possible because it did not interfere with the sovereignty of the State (Mucci 2007, 340). In the Bamiyan Valley case, the direct intervention could not be possible because the announcement of the will to destroy CH could not bring the SC to the action (Mucci 2007, 341).

The mere announcement of the will to destroy CH does not allow the SC intervention. It can be added that the will of destroying CH shows the disregard for human rights, and a UN action could be possible but only when it is not connected exclusively to the destruction of cultural property, since the violation of human rights of third generation can put into risk also human rights of first and second generation. Moreover, in the last years two customary laws have been formed: the first one considers the CH part of the general interest of international community; the second one, instead, forbids all kinds of violence against CH in case of armed conflict. In the light of these, in case of destruction of cultural property, the RtoP could

20 UN Doc. S/RES/1483 (2003), 22 May, Preamble (twelfth recital).

be possible because some rules concerning CH has become customs rules and are considered *erga omnes* rules (Francioni, Lenzerini 2003, 633-638).

In the same sense, the Res. 2199,²¹ inspired by Res. 1483, strongly condemns the destruction of CH. There is, in fact, a specific part concerning exclusively the destruction of CH. In particular, Res. 2199 strongly condemns the destruction of CH. In fact, it:

Condemns the destruction of cultural heritage in Iraq and Syria [...] incidental or deliberate, including targeted destruction of religious sites and objects;

notes with concern that ISIL, Al Nusra Front [...] are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria;

[...] decides 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 [...] allowing for their eventual safe return to the Iraqi and Syrian people and calls upon the United Nations Educational, Scientific, and Cultural Organization. (Resolution 2199, paras. 15-17)

States have to act, in order to take appropriate steps to prevent the illicit trade. It is not a mere suggestion but it is an obligation (Negri 2015, 6): in that way, States have duties that they did not have before. This resolution goes in the same direction of the previous one and, in that sense, “brings the international protection of CH into the SC’s normative sphere” (Negri 2015, 5) so that it is not more a UNESCO exclusive domain, but the protection of CH becomes a fundamental element for the maintenance of international peace and security.

This resolution goes also beyond the previous one because, at para. 15, condemns the destruction, intentionally or not, of CH.

After these considerations and underlining that the destruction of cultural property has been defined as a war crime and in the past has also been classified as a crime against humanity, an international direct intervention, such as the RtoP, looks to be possible.

4 Conclusion

In conclusion, we concentrated on the possible intervention to protect CH. The limits of the 1954 Hague Convention have been partially overcome

21 UN Doc. S/RES/2199 (2015), 12 February.

by the 1999 Protocol. The international reaction has brought to important 'speeches' but it has not been able to stop terrorist action. A possible solution to stop the intentional destruction of CH, taking into account the fact that terrorists carefully act with drills, picks and bulldozer and do not launch bombs, is an international intervention, such as the RtoP. The RtoP²² seems to be applicable since there are some rules that have reached the level of customary laws and are considered as bases of *erga omnes* obligations. Since the protection of CH is considered as an obligation and since the destruction of CH is considered both as a war crime and as a crime against humanity, it is possible a RtoP. The idea of creating UN peacekeepers for CH seems to be possible since it has been recently presented by Italian delegation and has been positively studied by the UN.

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22 For the limits of the RtoP, cf. Focarelli 2008; Mainetti 2004; Stahn 2007; Zorzi Gustiniani 2009.

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