



PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN

ASSEMBLEE PARLEMENTAIRE DE LA MEDITERRANEE

الجمعية البرلمانية للبحر الأبيض المتوسط

3rd Standing Committee on Dialogue among on Civilizations and Human Rights

“Protection of Cultural Heritage”

Rapporteur: Hon. Gabriela Canavilhas (Portugal)

Report unanimously adopted on 23 February 2017 during the 11th PAM Plenary Session in Porto

I. INTRODUCTION

1. In a great deal of the world, particularly in the Mediterranean and the Middle East, armed conflicts are raging, reaching enormous humanitarian proportions, forcing millions of people to be displaced, causing the persecution of ethnic groups, the massacre and murder of civilians, the escape of populations and the plight of millions of refugees. Conflicts in Syria, Iraq, Eritrea, Afghanistan, Nigeria and Libya are the main culprits, but in many other countries there is religious intolerance, poverty, economic interests of oligarchies, low educational rates and ignorance, which are the real enemies of solutions for peace and development.
2. We are currently witnessing a humanitarian crisis without precedent since World War II.
3. While thousands of innocent people die in wars that we would imagine to be impossible in the 21st century, we see mosques, churches, temples and cultural heritage buildings being systematically and deliberately destroyed. These offensives and the intentional destruction of humankind’s civilizational testimonies are an attack on our cultural, ancient, Mediterranean, pan-European tradition, the cradle of Western culture and the cradle of the world’s great religions. “Ours” as the inter-relational community united in diversity that we are, and always have been, for as long as we have existed as a civilization.
4. Culture has been at the forefront of war, when, on the contrary, it should have been at the forefront of peace.
5. Cultural heritage includes not only tangible heritage – made up of sites, historical and archaeological ruins, religious heritage and aesthetic value – but also immaterial and intangible heritage consisting of traditions, customs, practices, beliefs, languages, artistic expressions and folklore. Both tangible and intangible heritage must be understood in a global way and include

aspects of cultural life such as testimonies of education, scientific and artistic life, manuscripts, libraries, and knowledge in a broad sense.

6. Cultural diversity is the Enemy for those who seek to impose a unique view of the world. That is why it is so important that world governments recognize the importance of multiculturalism, thus combating undemocratic totalitarianisms.

II. THE INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE: A NEW WEAPON OF WAR

7. Between 1996 and 2001, the world awoke to a new, highly destructive weapon capable of erasing millennia of cultural, intellectual and artistic memory: the Afghan Taliban's acts of faith, which did not hesitate to blast the Bamiyan Buddhas (erected in the 6th century) and Ai-Khanoum, the legendary city founded in the 4th century B.C. by Alexander the Great. It was an unimaginable nightmare come true that made the world cultural community aware of a new threat. Taliban leader Mohammad Omar ordered the destruction of non-Islamic statues and tombs as they are considered offensive to Islam.
8. Attacks and looting ensued at the National Museum of Baghdad, along with the destruction of the Iraqi Library, where the looting of countless movable cultural assets and the destruction of immovable property of historical importance impoverished the world. And, furthermore, there were the attacks on the Cairo Museum and the Science Centre in Tahrir Square.
9. In recent years the radicals of DAESH and other similar groups have vandalized museums, libraries and ancient places in Syria and Iraq, in Mali, many of them classified by UNESCO as World Heritage Sites, all of them precious landmarks of the advances of civilization and humanity. All of them irreplaceable works of art, whose immaterial value surpasses any material value – incalculable – that could be assigned to them.
10. Nimrod, former capital of the Assyrian empire in northern Iraq, a city founded in the 3rd century B.C., was barbarously destroyed by pneumatic drills and excavators. Just as terrorists broadcast videos of beheadings, they also broadcast videos with their believers purposely destroying the pre-Islamic sculptures from the Museum of Civilization in Mosul with hammers, such as the once famous *Lamassu*, Assyrian bulls with a human head, carved 28 centuries ago and destroyed in the name of the extinction of memory. This was followed by another of ancient Mesopotamia's legendary places, Hatra, over 2,000 years old. Just as it withstood the Roman legions, it also faced the explosives of DAESH. Jorsabad, the ancient city of Dur Sharrukin, Assyrian capital during part of the reign of Sargon II in the 7th century BC, was devastated. This region, which has been the stage of cruel conflict for many months, contains almost 1,800 of the 12,000 recorded archaeological sites in all of Iraq.

11. The occupation and plight of Palmyra, a city-museum, resulted in unspeakable disaster. In Palmyra, the Arc of Triumph and the temples of Baal Shamin and Bel disappeared. The Hypogeum of the Three Brothers suffered enormous damage.
12. Much of the Syrian archaeological wealth disappeared during the war that caused massive damage in Aleppo, in the Euphrates and Palmyra valley, where risk remains present due to the action of belligerent forces still on the ground.
13. Seventy-five percent of the ancient city of Aleppo has been destroyed and looting continues in the Euphrates valley, warn international experts at UNESCO. Bombings have caused wreckage at the Maarat al-Numan Museum of Tiles, at the Roman theatre in Bosra and at the Simeon basilica.
14. The UN mentions more than 300 historic sites in Syria that have been damaged, destroyed or pillaged during the conflict that has lasted for more than four years. These actions are “a war crime”, said the United Nations’ Educational, Scientific and Cultural Organization (UNESCO). “Their perpetrators must be held accountable for their actions”, stated UNESCO Director-General Irina Bokova in a press release. According to Irina Bokova, **“Daesh is killing people and destroying sites, but cannot silence history and will ultimately fail to erase this great culture from the memory of the world. [...] Despite the obstacles and fanaticism, human creativity will prevail, buildings and sites will be rehabilitated, and some will be rebuilt”**.
15. What occurred in Syria is just the most recent case of destruction of cultural heritage. The Palestinian delegation to PAM has also brought to the attention of the rapporteur their serious concern about the case of the Al-aksa Mosque and Christian churches in the Occupied Palestinian Territories, as well as the alleged trafficking of cultural artifacts.

III. CULTURAL HERITAGE, A HUMAN RIGHT

Heritage is humanity.

16. *“Cultural heritage is significant in the present, both as a message from the past and as a pathway to the future. Viewed from a human rights perspective, it is important not only in itself, but also in relation to its human dimension,”* Karima Bennouna (UN Special Rapporteur in the field of cultural rights).
17. Cultural heritage is a question of human rights and should therefore be addressed as such. It is impossible to separate a people’s cultural heritage from its rights as a nation. Furthermore, cultural heritage is a fundamental means to achieve other enshrined human rights, including freedom of expression, thought, self-awareness and religion.
18. Cultural rights are increasingly recognized as an integral part of human rights, which are universal, indivisible, interrelated and interdependent. It is through cultural rights that we will

find the answer to most of the challenges faced by today's world, from conflicts to discrimination, from inequalities to poverty. Cultural rights are transformative and grant power and opportunity to achieve other human rights.

19. Just as the intentional destruction of cultural heritage has a devastating impact on cultural rights, so too can protecting cultural heritage have a positive impact on morale and rights in situations of conflict or repression. **“A nation stays alive when its culture stays alive”** is the motto of the National Museum of Afghanistan, where some 2,750 pieces were destroyed by the Taliban in 2001.

IV. INTERNATIONAL LEGISLATION AND CONVENTIONS

20. The history of mankind has also been made up of wars and destructive conflicts; nevertheless, in ancient Greece, there are records indicating rules for the protection of religious sites in the name of their immaterial value. In the 16th and 17th centuries, the first jurists to defend respect for works of art in the context of war emerged, but it was only at the end of the 19th century that the first legal instruments leading to the Hague Conventions of 1899 and 1907 were established. These are the basis of the international legislative body, in its various updated forms, which protects cultural heritage in the context of armed conflict.
21. Because destruction of cultural heritage often results from armed conflict, whether as so-called collateral damage or due to deliberate targeting, a special protection regime governs its protection in times of conflict. The core standards include the **Hague Conventions of 1899 and 1907 and, most importantly, the 1954 Hague Convention and the 1954 and 1999 protocols thereto.**
22. Numerous other international instruments protect cultural heritage. The member states of UNESCO have adopted, in addition to a number of declarations and recommendations, the **Convention concerning the Protection of the World Cultural and Natural Heritage (1972)**; the **Convention on the Protection of the Underwater Cultural Heritage (2001)**; and the **Convention for the Safeguarding of the Intangible Cultural Heritage (2003)**.
23. Also the UNESCO 1970 **Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property**; the UNESCO 1972 **World Heritage Convention**; and the 1995 UNIDROIT **Convention on Stolen or Illegally Exported Cultural Objects** are landmarks in this field.
24. Although these instruments do not necessarily take a human rights approach to cultural heritage, in recent years a shift has taken place from the preservation and safeguarding of cultural heritage as such to the protection of cultural heritage as being of crucial value for human beings in relation to their cultural identity.

25. The **Rome Statute of the International Criminal Court**, which has been in force since 1 July 2002 and is one of the landmark developments in international criminal law at the end of the 20th century, is a significant step towards the interrelationship between cultural rights and human rights. It is the first International Criminal Court to judge the most serious crimes “affecting the international community as a whole” (Article 5(1) of the Rome Statute). Taking into account the case law of the International Criminal Tribunal for the former Yugoslavia, considerable progress has been made in its pronouncements on the accountability of perpetrators of crimes involving cultural property.
26. The content of Article 3 of the Statute of the ICTY establishes “the power to prosecute persons violating the laws or customs of war (...) [which shall include] 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”.
27. The convictions thus obtained were based on a crime of discriminatory persecution of persons and property, such as historical monuments, works of art, education and science buildings, for political, racial, ethnic or religious reasons.
28. The Council of Europe is currently working on a new Convention on Offences relating to Cultural Property, which will supersede the previous “Delphi” Convention of 1985. The Republic of Cyprus, currently holding the Chairmanship of the Ministerial Committee of the Council, has taken initiatives, actively supporting the Council's efforts to finalize the new Convention, which aims in improving and strengthening the framework for the protection of cultural heritage. [Presented by CYPRUS]

V. CULTURAL GENOCIDE, SYSTEMATIZED CULTURAL CLEANSING "a cultural cleansing" as defined by UNESCO Director-General, Irina Bokova.

29. According to the Rome Statute of the International Criminal Court, intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals provided they are not military objectives in either international or non-international armed conflict may be tried as a war crime.
30. In addition, the destruction of cultural property with discriminatory intent can be charged as a crime against humanity and the intentional destruction of cultural and religious property and symbols can also be considered as evidence of intent to destroy a group within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide (see A/HRC/17/38 and Corr.1, para. 15).
31. In 2014, the Office on Genocide Prevention and Responsibility to Protect developed a new Framework of Analysis for Atrocity Crimes: a Tool for Prevention to assess the risk of genocide, war crimes and crimes against humanity, in which destruction of property of cultural and religious significance is considered a significant indicator in the prevention of atrocity crimes.

32. As mentioned above, attacks on tangible and intangible cultural heritage are interconnected. For example, when mausoleums and ancient Islamic manuscripts were being destroyed by armed groups in northern Mali, various forms of cultural practice were also under attack, including religious practices, singing and music. Local populations were greatly affected, in an integrated way, by assaults on both forms of cultural heritage. Meanwhile, ancient languages and religious practices, tied to sacred spaces and structures and cultural landscapes of northern Iraq and the Syrian Arab Republic, are being lost as the populations are displaced and objects, texts and historic structures are destroyed.
33. Deliberate destruction may happen for a variety of reasons, including as a strategy to destroy the morale of the enemy and terrorize local populations or as a means to eradicate other cultures, in particular of the vanquished so as to facilitate conquest. **In many recent examples, destruction is part of the “cultural engineering” sought by diverse extremists who, rather than preserving tradition, as some claim, seek to radically transform it, erasing what does not concur with their vision. They seek to end traditions and erase memory.**
34. The crime of genocide is provided for in Article 6 of the Rome Statute. In it, “genocide” is understood to mean acts “committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such”.
35. Although the term “cultural genocide” is not established in the body of the Law, in fact, since 1933, the Polish jurist Raphael Lemkin, creator of the term *genocide* – a combination of the Greek word *genos* (“race” or “ethnicity”) and the Latin word *cide* (“kill”) – suggested the inclusion of the concept.
36. The forced exile of cultural representatives, the prohibition of using their own language, the destruction of books, religious works and historical and artistic objects, were grounds for attempts to institute the concept of “**cultural genocide**” within the framework of International Criminal Law, particularly in the preparatory work of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, but has not been successful.

The Genocide Convention as originally drafted included clauses related to vandalism. Rafael Lemkin, whose conceptualization underpins the Convention, directly linked “barbarity”, conceived as “the premeditated destruction of national, racial, religious and social collectivities”, with “vandalism”, the “destruction of works of art and culture being the expression of the particular genius of these collectivities”. A group could be annihilated if its identity, its collective memory, has been erased, even if many of its individual members remain alive. “It takes centuries, sometimes thousands of years to create a ... culture,” Lemkin wrote, “but genocide can destroy a culture instantly”. However, as finalized, the Convention did not include the cultural aspects.

VI. INITIATIVES OF INTERNATIONAL INSTITUTIONS

37. Global experts on destruction and illegal trafficking of culture objects met on 27 May 2016 at the United Nations Headquarters for a meeting co-organized by UNESCO with the Permanent Missions of Jordan and Italy, INTERPOL and the United Nations Office on Drugs and Crime

(UNODC). Held in the framework of the partnership initiative “Protecting Cultural Heritage – an Imperative for Humanity: Acting together against the destruction and trafficking of cultural property by terrorist groups and organized crime,” the meeting brought together a wide array of stakeholders to discuss growing threats to cultural heritage.

38. Amjad Al-Moumani, Deputy Permanent Representative of Jordan, stressed the need to “increase the awareness of the international community around the serious issue of cultural heritage destruction as a security and humanitarian imperative.” Giovanni Boccardi, Chief of the Emergency Preparedness and Response Unit at UNESCO, highlighted the current unprecedented levels of attacks against culture, which are often combined with the persecution of groups and individuals based on their cultural background and thus Michael Danti, Academic Director of the American School of Oriental Research (ASOR) cultural heritage initiatives, presented statistics around the intentional destruction, often for ideological reasons, in Syria and northern Iraq, which he qualified as “the greatest cultural heritage crisis since the Second World War.”
39. Participants affirmed that cultural heritage provides an important foundation for national reconciliation and economic recovery, and that its protection should be included in any peacekeeping mandate and prioritized throughout the post-conflict period. Gaps in the international response were identified, including the lack of documentation and inventory of the cultural assets destroyed, of efficient planning for emergency response and capacity, and of coordination at national and global levels.
40. Luigi Marini, Legal Advisor at the Permanent Mission of Italy, pointed to practical initiatives, urging States to ratify and implement the relevant international treaties, establish national focal points and provide training on the issue of illicit trafficking of cultural property. Stefan Simon, Inaugural Director of the Institute for the Preservation of Cultural Heritage (IPCH) at Yale University further stressed the need for public-private partnerships, education and awareness-raising with civil society to accompany State action.
41. PAM has closely followed this serious problem of the destruction of cultural heritage with concern.
42. On 14-15 May 2015, the Parliament of the Kingdom of Morocco hosted the international seminar of the Parliamentary Assembly of the Mediterranean (PAM) on ‘The Protection of World Cultural Heritage Threatened with Destruction’ in Rabat, Morocco. The two day meeting, which was held under the High Patronage of His Majesty King Mohamed VI, was part of PAM’s response to the urgent call, by both the UN Secretary General and the UN Security Council (Resolution S/RES/2199 (2015) para. 15, 16 and 17) to international organizations to mobilize their constituencies and capabilities to protect the Cultural Heritage from destruction, looting, smuggling, and illegal trade by criminal and terrorist organizations, especially in light of the latest episodes of destruction of historical sites and museums across Iraq, Libya and Syria. The “Rabat Declaration”, which provided for the creation of a working group on the protection of the world cultural heritage, was read.

43. H.E. **Eric Falt**, Assistant Director General for External Relations and Public Information of UNESCO, referred to the key role played by Morocco in the field of Protection of Cultural Heritage. He concluded by asking all Mediterranean countries to ratify treaties related to the protection of cultural heritage and requested that governments, NGO's and public authorities do everything in their power to defeat the threat of terrorism.
44. H.E. **Abdulaziz Othman Altwajri**, Director General of the Islamic Organization for Education, Science and Culture (ISESCO) compared the ongoing events in Iraq and Syria with the Second World War, and recalled in particular the ongoing events in Kalkhu (Nimrud), Mosul and Aleppo. He then spoke of a war against the collective memory of the world and of a new phenomenon called 'Cultural Terrorism'. Furthermore, he reminded everyone that the conservation of the cultural heritage of the world threatened with destruction should be an integral part of the priorities of the international community, and that action was needed to put an end to these armed conflicts.
45. Mr. **Mohamed Ould Khattar**, Programme Specialist for Culture in the Maghreb division of the UNESCO Bureau He added that UNESCO had defined all of the actions as '*Cultural Cleansing*' and that the UNSC had introduced the protection of cultural heritage in the peacekeeping mandate in Mali. Furthermore, he mentioned Resolution 2199 of the UNSC, which establishes the responsibility of States within the framework of the protection of cultural heritage.

VII. ILLEGAL TRAFFICKING OF CULTURAL AND HISTORICAL GOODS

46. The linkages between the illegal trafficking of cultural property and financing of terrorist organizations is quite clear. Edouard Planche of UNESCO said "prevention is paramount in fighting illicit trafficking," and encouraged a more comprehensive use of the tools available such as inventories and model laws. In this context Emmanuel Roux of INTERPOL called on governments, auction houses, museums and private collectors to use the INTERPOL database of stolen works of art and on the source countries of stolen objects to create special police units. Nodirjon Ibragimov of UNODC highlighted that the restitution of stolen cultural property is mandated under the international law and in this framework, the effectiveness of the domestic procedures for enabling states to file a case in domestic courts is key.
47. "Illicit trafficking of cultural property is a criminal offense and it has also become a big business. Europe must get serious in the fight against this plague and our objective with this new instrument is to focus on criminal sanctions to complement existing instruments, such as the very important UNESCO 1970 Convention." said Mr. Jagland, Secretary General of the Council of Europe on the 13th January 2017, at a colloquy on offences related to Cultural Property organized jointly by the Cypriot chairmanship of the Council of Europe's Committee of Ministers and its Secretary General, Thorbjørn Jagland, in Strasbourg.
48. On this occasion, Mammoun Abdulkarim, Director-General of the Directorate General of Antiquities and Museums in Syria, and Fatou Bensouda, Prosecutor of the International Criminal

Court, gave examples of the organized crime underway and the tools and legal means available to counter this, such as the United Nations Security Council Resolution 2199 (2015) on Threats to international peace and security caused by terrorist acts. They stressed that more international cooperation is needed to prevent illicit trafficking, as well as more stringent measures to deter would-be criminals.

49. Some bodies have had positive outcomes, such as:

- a) **UNODC** fights the illegal trade and market sale of cultural artefacts, and the role of international and trans-national organizations. Based on the Resolution 2199 (2015), the Convention of the United Nations against organized crime (2000) and against corruption (2003), the Convention for the fight against financing terrorism (1999) and the UNESCO Convention describing measures to be taken to prevent the black market import, export and transfer of cultural goods (1970), UNODC has developed large work in this field.
- b) *The Leonardo Database*, the biggest database for cultural heritage artefacts in the world, created by the Carabinieri Corps division for the Protection of Cultural Heritage (Italy) and containing nearly 6 million entries. Since it began, over a million stolen objects have been recovered.
- c) **Operation PANDORA**: 18 countries have participated in the pan-European operation PANDORA against "THEFT AND ILLICIT TRAFFICKING OF CULTURAL GOODS", led by Cyprus and Spain with the support of EUROPOL, INTERPOL, UNESCO and WCO. As a consequence of this operation, 75 people have been arrested and 92 new investigations were opened. The following States participated in Operation PANDORA: Austria, Belgium, Bulgaria, Bosnia-Herzegovina, Cyprus, Croatia, Germany, Greece, Italy, Malta, Netherlands, Poland, Portugal, Romania, Serbia, Spain, Switzerland and UK. A total of 3561 works of art and cultural goods were seized; almost half of them were archaeological objects.
- d) On 5 December 2016, UNESCO and the permanent delegation of Azerbaijan introduced the "**Military Manual on Protection of Cultural Property**", which includes best practices, preparatory measures for identifying, moving, and preserving cultural objects during military operations, and legal resources for cultural property protection. The crucial involvement of military and security forces in the protection of cultural property in times of conflict was highlighted. The Director of the UNESCO Heritage Division presented this first-of-its kind training tool published by UNESCO with the support of the International Institute of Humanitarian Law (Sanremo, Italy) and funded by the Republic of Azerbaijan. Mr Fausto Pocar, President of the Institute, explained the importance of training the military in the specificities of cultural property and referenced new regulations, conduct and curricula in this field.

VIII. CONCLUSIONS

50. Culture and historical heritage have moved to the forefront of war and armed conflict, particularly in the Mediterranean area, both as victims of collateral damage and as direct and intentional targets.

51. The destruction of cultural heritage is a matter of human rights. When cultural heritage is destroyed, important consequences will result in a wide range of human rights issues enshrined in international law, both for the present generation and for future generations.
52. According to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, this common heritage of mankind should be “cherished and preserved for the benefit of all”.
53. The attacks perpetrated by ISIS/Daesh, the Afghan Taliban and other radical groups against World Heritage Sites and age-old testimonies of the cultural heritage of humankind have shown that these acts are far more than cultural tragedies and **can be considered acts of cultural cleansing**. The terrorists’ aim is to use the destruction of civil and religious buildings and archaeological sites that belong to the common heritage of humanity as a strategy to destabilize populations and **destroy their identity**.
54. The looting of archaeological sites and the illicit trafficking of cultural objects are used as “instruments of war” to finance terrorist activities.
55. The legislative body within the framework of international law, in particular the Rome Statute of the International Criminal Court, offers a legal and criminal response to these crimes, already qualified as war crimes by UNESCO Director-General Irina Bokova, and, in the light of the case law of the International Criminal Tribunal for the former Yugoslavia, as crimes against humanity.

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Resolution 2199 of the UN Security Council

United Nations, *Framework of Analysis for Atrocity Crimes: a Tool for Prevention* (2014)

Rome Statute of the International Criminal Court

UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

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