

UN Human Rights Office of the High Commissioner
Submission to Study on Intentional Destruction of Cultural Heritage

THE AFTERMATH OF DESTRUCTION OF CULTURAL HERITAGE: FACTORING IN
CULTURAL RIGHTS IN POST-CONFLICT RECOVERY PROCESSES

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This submission addresses the first three questions posed by the Special Rapporteur:

- **What is the impact of the intentional destruction of cultural heritage on the enjoyment of human rights, and particularly, on cultural rights? What is the impact of destruction of tangible cultural heritage on intangible cultural heritage, on cultural practices and beliefs, and on the right of concerned persons to participate in cultural life?**
- **What are examples of different situations illustrating the above?**
- **What are examples of good practices, especially with regard to prevention and protection against destruction, as well as repatriation and reconstruction measures of cultural heritage, including through human and cultural rights education and awareness?**

It is largely extracted from an article recently published by the authors (Annex 2), which focused on Syria, but is supported here by other relevant examples.

I. Setting the Scene: Military Action and Iconoclasm

Monuments, places of worship and other significant locations have always been affected during armed conflict, but the damage and destruction was expected to result from military action.¹ For example, World War II saw the decimation of many of Europe's historic centres. Today, studies of the Syrian conflict record damage to hundreds – if not thousands – of sites and historic buildings¹. This severely impacts the long-standing evidence of plurality, cultural diversity and peaceful co-existence of the many cultures in the region.

The destruction of cultural heritage is also used to intimidate and shock and, in the words of Irina Bokova, to commit “cultural cleansing”.ⁱⁱ Examples are known from Stalin and Trotsky's establishment of power in Russia, the treatment of the Armenians (in and outside of direct conflict), and – in conflict – during World War II, the Balkans conflict, and many othersⁱⁱⁱ. However, heritage destruction as a propaganda tool may be traced back to the destruction of the Buddhas of Bamiyan, the two monumental statues in 2001.^{iv} Today, this is a method of warfare in and of itself - espoused by geographically dispersed groups (e.g. Da'esh, Ansar Dine, the Taliban) loosely connected by a fundamentalist agenda where any traces of “infidel” cultural or religious heritage will be erased. The examples are many: the incursion into the Mosul Museum, the partial demolition of the world heritage sites of Hatra and Palmyra, the shrines and manuscripts of Timbuktu, and countless places of worship in Iraq, Syria, Libya, Tunisia and elsewhere. In modern conflicts in the MENA region, the two forms of heritage

¹ This is clear, for example, in the 1907 IV Hague Regulations respecting the Laws and Customs of War on Land (the 1907 IV Hague Regulations) where belligerents were asked to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments during sieges and bombardments (Article 27); or in backbone rule of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) that prohibits directing attacks against cultural property or using it for military purposes, unless required by imperative military necessity (Article 4).

damage often occur concurrently, and the heritage loss is deeply affecting for the populations.

II. Heritage Destruction: Impacts

While “*damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind*”,² as the Chief Prosecutor of the International Criminal Court said in relation to the Al Faqi case, “[w]hat is at stake here is not just walls and stones”.^v Otherwise, one could not explain why, for example, the population in Gao (Mali) formed human chains and “sits ins” to protect the town’s monuments from suffering the same fate as the shrines in Timbuktu,³ a phenomenon seen in Cairo during the 2011 revolution to protect the National Museum from looters^{vi}, and in Iraq to protect the ‘Crooked Minaret’ from ISIS^{vii}. There are numerous accounts of the importance local Syrians place on their heritage, with stories of them risking their lives to protect it, on both a national level^{viii} and a local level.^{ix}

The disappearance and destruction of Syrian culture and history may contribute to a sense of alienation and detachment since the impacts of such detachment have already been recorded after other conflicts. Although there are currently no quantified studies, interviewed Syrians have made comments such as ‘*[o]ur hearts and minds have been burned in this fire. It’s not just a souk and shops, but it’s our soul, too*’,^x in reference to the destruction of parts of the still occupied World Heritage site of Aleppo.

It is now widely acknowledged that in many wars the destruction of cultural heritage has been paramount, as the targeting and disappearance of a country’s cultural heritage contributes to the erosion of its people’s identity. When the Ferhadija Mosque in Banja Luka, Bosnia-Herzegovina, was destroyed, one resident said ‘*[i]t is as though they have torn our heart out. They want us to understand we have no place here*’.^{xi} This can have severe consequences. In the Balkans and after the civil war in Spain, refugees and displaced people did not return to their former towns and villages until rebuilding of significant heritage sites occurred, even if this was many years later.^{xii} Conversely, Loosely^{xiii} found that, during peace, engagement with heritage could limit the emigration of disaffected communities.

The results of this loss and disaffection are clearly played out through reconstruction. Reports from the Balkans indicate that local people were often not consulted in the reconstruction projects,⁴ and felt disconnected from the protection and reconstruction of what had once been their heritage, as occurred with the iconic Stari Most bridge in

² 1954 Hague Convention, first recital.

³ Direction Nationale du Patrimoine Culturel, « *Tombeau des Askia* », 2 An isolated spontaneous attempt to halt the destruction of the shrines in Timbuktu was not successful: “One man who attempted to stop the destruction was bound and forced into a car”, see Jamestown Foundation, *North African Salafists Turn on Sufi Shrines in Mali* (18 May 2012) 10 Terrorism Monitor Volume 10.

⁴ In fact, the Commission to Preserve National Monuments (created in accordance with Annex 8 of the Dayton Peace Agreement) expected to be so overwhelmed with petitions for which monuments to preserve that it chose to forgo the consultation process when selecting national monuments for legislative protection. See, Walasek, p191.

Mostar.^{xiv} Moreover, decisions about whether or not to rebuild emblematic sites can continue for generations, prolonging the conflict on a social level.^{xv} In fact, evidence indicates that heritage retains the power to prolong not just societal tensions, but violence. In Iraq, the destruction of heritage has been linked to spikes in violence,^{xvi} and the ceremonies of laying the cornerstones to signify the start of the reconstruction of historic mosques in Banja Luka and Trebinje in Bosnia-Herzegovina in 2001 sparked planned riots.^{xvii}

It would seem axiomatic that just as cultural heritage is ‘used as a means of continuing violence on a symbolic and ideological level, particularly in the case of civil wars’,^{xviii} it should be accounted for in post-conflict recovery processes such as transitional justice, and that doing so can contribute to a human rights based approach to the treatment of the destruction of cultural heritage. This should undoubtedly be the case in the armed conflict in Syria where the unparalleled humanitarian crisis is accompanied by an equally unprecedented loss of the nation’s cultural heritage. From the major smuggling of artifacts and damage occurring to its historic and archaeological sites during the first years of the war, to the industrial-scale looting and deliberate destruction at the hands of Da’esh,^{xix} the loss of heritage will have affected Syrian society on multiple levels.

III. Heritage Destruction and Human Rights: the Legal Argument

Destroying the tangible side of cultural heritage at current the scale and intent signifies a direct infringement of the right to participate and take part in cultural life, as recognised in Article 15 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). Indeed, the Committee on Economic, Social and Cultural Rights (CESCR) has called on State parties to, in times of war,

“[r]espect and protect cultural heritage in all its forms [...] Cultural heritage must be preserved, developed, enriched and transmitted to future generations [...] Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others.”^{xx}

Destruction of libraries and places of worship can also violate the right of freedom of thought, conscience and religion enshrined in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) which encompasses “the commitment to religion or belief, whether manifested individually or in community with others”.^{xxi}

There is a methodological hiccup with cultural rights, as human rights have been traditionally thought of as “individual” entitlements, whereas the very gist of cultural heritage, tangible or intangible, is that it is associated with a community.^{xxii} This inbuilt paradox is illustrated by the case concerning the shelling of the World Heritage site of the Old City of Dubrovnik, where the International Criminal Tribunal for the former Yugoslavia was faced with the uncomfortable requirement of establishing the grave consequences the attack had ‘for the victim’. Instead, it considered that “the victim of the offence at issue [was] to be understood broadly as a ‘people’, rather than any particular individual.”^{xxiii}

This difference between the notions of “individual” and “community” or “people” should not be understood as a dichotomy, but rather as a unique opportunity to redress and reinforce the human rights on a large scale, including cultural rights, of the people affected by these atrocities.

In line with Security Council Resolution 2199 (2015) which “includes rehabilitation of cultural heritage as an important cultural dimension, which can strengthen intercultural dialogue, humanitarian action, security strategies and peacebuilding”,^{xxiv} we submit that cultural heritage reconstruction presents an opportunity to re-affirm everyone’s right to take part in cultural life, freedom of thought and religion, while also contributing to reconciliation and peacebuilding.

III. Heritage Destruction and Transitional Justice

Post-conflict reconstruction of heritage sites in countries will occur, whether centrally managed, internationally managed, or unplanned, but if such reconstruction is misused or mismanaged, it can lead to scenarios of friction and conflict. In Spain, post-conflict heritage reconstruction was used to support the construction of a new, repressive state identity,^{xxv} with repercussions that are still being dealt with today. In post-apartheid South Africa, the creation and structure of the World Heritage site of Robben Island led to some of the disenfranchisement and alienation it was meant to avoid.^{xxvi} In Iraq, heritage was destroyed in the post-conflict period to support the dismantling of the Baathist State identity.^{xxvii} Transitional justice, on the other hand, is considered a building block of peacebuilding in post-conflict scenarios.

The Special Rapporteur acknowledges that “[a]cts of deliberate destruction are often accompanied by other large-scale or grave assaults on human dignity and human rights. As such, they will have to be addressed in the context of holistic strategies for the promotion of human rights, and peacebuilding.”^{xxviii} Here, through the lens of the Syrian conflict, we propose ways to incorporate cultural heritage into peacebuilding processes: truth-seeking bodies, reparation programmes and institutional reforms. These processes can be used to acknowledge the significance of the loss, and assist in society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation^{xxix}, in line with the human rights based approach that emphasises accountability and combating impunity^{xxx}.

Truth-seeking bodies

The destruction of Syria's cultural heritage has become mired in a war of propaganda, where each side blames the other for the destruction of key sites. For example, various military forces have blamed each other for the destruction of the minaret of the Umayyad Mosque and burning of the souq (both integral parts of the World Heritage site of Aleppo), the looting of the tentative World Heritage site of Apamea, and so on. Aleppo was overpopulated^{xxxii} before the conflict: Syrians lived, worked, and prayed there, and its loss is deeply affecting to them.^{xxxiii} Writing on the destruction of the Aleppo Mosque, Syrian Amal Hanano said:

“It was a place to connect to your history, to your identity and to tell others, who were not from Aleppo: “This is where we are from. This is who we are.” This is where you come to face your roots. It was a place that existed forever, a place we thought would exist long after we were gone. But we were wrong.”^{xxxiii}

While the destruction of World Heritage sites at the hands of Da'esh has attracted most of the attention and provoked an international outcry, this should not be approached as an isolated phenomenon, but understood as a symptom of a problem with wider dimensions. Many other cultural objects not fitting in the category of world heritage but that nevertheless were relevant to the identity of the Syrians as a people have been lost during the conflict, and the destruction of some of them seems to have occurred deliberately on discriminatory grounds. For example, Human Rights Watch has recorded destruction of religious heritage associated with the persecution of minorities by military groups,^{xxxiv} who deny involvement. In situations such as this, truth-seeking commissions offer the possibility of uncovering the truth and bring closure to those affected by its loss.

In the case of Syria, it would seem logical to devise a truth-seeking commission that granted amnesty to those participating in the proceedings,⁵ partly because the chances of prosecuting the number of individuals involved for cultural heritage violations are slim^{xxxv} and mostly because, in order for the commission to establish an accurate record of the truth, people would have to incriminate themselves. The fear of prosecution could have a chilling effect on the whole process and tainted confessions could 'amount to a form of denial'.^{xxxvi} However, such a commission would offer the potential to: (1) identify abusers who remain in positions of power and make a case for their lustration;⁶ (2) address the tensions underlying the conflict; (3) prevent vigilante justice; and (4) perhaps provide a platform of repentance and forgiveness.

⁵ The South African TRC used the truth for amnesty formula.

⁶ Lustration refers to the purge of government officials and civil servants and the prohibition of holding such positions in the future.

Reparations

Reparation programmes could offer the potential for collective community reparation, perhaps through mutual reconstruction of lost heritage, especially if they incorporate and build on the findings of truth-seeking bodies. It is evident from many previous conflicts that, irrespective of why a site was destroyed, international attention will ensure sites of universal significance are restored or rebuilt, or that this is at least considered.⁷ However, whilst lauded as international triumphs of reconstruction and – in the case of Stari Most – reconciliation (resulting in a World Heritage nomination), such programmes can fail to take account of either the priorities of the local population, or their building traditions, leading to inappropriate or absent reconstruction work which is patchy and randomly constructed. This is particularly important in areas where communities have been displaced, and feel unable to return to their former residence. In fact, restoration of their heritage has been shown to be crucial in encouraging displaced populations to return, particularly in areas dominated by different ethno-nationalist groups.^{xxxvii} However, evidence from conflicts in Spain, Rwanda, Iraq and the Democratic Republic of Congo^{xxxviii} suggests that population movement towards cities did not reverse after the conflict, and any such reparation programmes must address the new population composition as well as the old.

Institutional Reforms

Institutional reforms, in the context of cultural heritage, could offer support to State mechanisms for the protection of heritage. This is important because heritage protection is likely to be at the bottom of the reconstruction agenda for many internal Ministries and external reconstruction agencies. A nation-wide approach to reform could encourage the incorporation of heritage at all levels, preventing the destruction and loss seen in post-conflict reconstruction in cities like Beirut^{xxxix}, where preserved ‘heritage’ was largely restricted to classical archaeological sites.

IV. Conclusion

According to the CESC, States are obliged to adopt “specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group... to have access to their own cultural and linguistic heritage and to that of others”.⁸ In the post conflict aftermath, we suggest that transitional justice processes, directly addressing cultural heritage loss, may form an important policy.

⁷ For example, Babylon and Ur in Iraq; Stari Most bridge in Bosnia-Herzegovina; and the shrines in Timbuktu in Mali were all rebuilt, whilst discussions about rebuilding the Buddhas in the Bamiyan Valley are still continuing

⁸ CESC, General Comment No 21, para 49 (d).

Annex 1: References

- ⁱ See E. Cunliffe. 2012. *Damage to the Soul: Syria's Cultural Heritage in Conflict*. Global Heritage Fund: Palo Alto; and <http://www.asor-syrianheritage.org/reports/>
- ⁱⁱ See, e.g., <http://en.unesco.org/news/director-general-irina-bokova-firmly-condemns-destruction-palmyra-s-ancient-temple-baalshamin>
- ⁱⁱⁱ Bevan, R. 2006. *The Destruction of Memory: Architecture at War*. Reaktion Books: London.
- ^{iv} Lostal, Marina, and Guilherme Vasconcelos Vilaça. "The Bamiyazation of Cultural Heritage and the Silk Road Economic Belt: Challenges and Opportunities for China." 3 *The Chinese Journal of Comparative Law* 2 (2015): 1-19, p. 5.
- ^v The Prosecutor v. Ahmad Al Faqi Al Mahdi, *Confirmation of Charges Hearing* (3 March 2016) ICC-01/12-01/15, p. 13
- ^{vi} http://www.salon.com/2011/01/29/egyptian_protests/
- ^{vii} <http://www.smh.com.au/world/islamic-state-defied-over-iraqs-crooked-minaret-in-mosul-20140728-zxwgz.html>
- ^{viii} See, e.g., F. Lamb, 'Risking Their Lives to Preserve Our Global Cultural Heritage', *Intifada*, 28 March 2014
- ^{ix} See, e.g., DGAM. 2013. *Residents of Deir Ez-Zor Intervene to Stop Illegal Excavations at Tell Sheikh Hamad*. DGAM. Available: <http://www.dgam.gov.sy/index.php?d=314&id=893> (Accessed 22/09/2015)
- ^x A. Barnard and H. Saad. 2012. In Syria's Largest City, Fire Ravages Ancient Market, *New York Times*, 30/09/2012.
- ^{xi} H. Walasek. 2015. *Destruction of Cultural Heritage in Bosnia-Herzegovina: An Overview*, in *Bosnia and the Destruction of Cultural Heritage*, ed. by Helen Walasek. Surrey: Ashgate, p.29.
- ^{xii} See accounts from Stolac in A. Hadzimuhamedovic. 2015. The Built Heritage in the Post-War Reconstruction of Stolac, in *Bosnia and the Destruction of Cultural Heritage*, ed. by Helen Walasek. Surrey: Ashgate, p259-284; and from Gernika in Viejo-Rose, 2013, p125-148.
- ^{xiii} E. Loosley. 2005. Archaeology and Cultural Belonging in Contemporary Syria: The Value of Archaeology to Religious Minorities, *World Archaeology* 37(4), p589-596.
- ^{xiv} See, e.g., Viejo-Rose, D. 2011. *Reconstructing Spain: Cultural Heritage and Memory after Civil War*. Brighton; Portland: Sussex Academic Press, and also Walasek, 2015.
- ^{xv} Viejo-Rose, *Reconstructing Spain*, p213.
- ^{xvi} B. Isakhan. 2013. Heritage Destruction and Spikes in Violence: The Case of Iraq, in *Cultural Heritage in the Crosshairs: Protecting Cultural Property during Conflict*, ed. by Joris D. Kila and James A. Zeidler. Leiden: Brill, p219-247.
- ^{xvii} H. Walasek. 2015. Domains of Restoration: Actors and Agendas in Post-Conflict Bosnia-Herzegovina, in *Bosnia and the Destruction of Cultural Heritage*, ed. by Helen Walasek, Surrey: Ashgate, p.238.
- ^{xviii} D. Viejo-Rose. 2013. Reconstructing Heritage in the Aftermath of Civil War: Re-Visioning the Nation and the Implications of International Involvement, *Journal of Intervention and Statebuilding*, p144.
- ^{xix} E. Cunliffe. 2012. *Damage to the Soul: Syria's Cultural Heritage in Conflict*. Global Heritage Fund: Palo Alto.
- ^{xx} CESCR, General Comment No 21, para 50 (a); see also Article 7 of the 2001 UNESCO Universal Declaration on Cultural Diversity, which adopts the same language.
- ^{xxi} Human Rights Committee, General Comment No. 22, 27 September 1993.
- ^{xxii} A/HRC/14/36, para. 9, and A/67/287, para. 7.
- ^{xxiii} Prosecutor v. Pavle Strugar, Trial Judgement (31 January 2005), para. 232 (emphasis added).
- ^{xxiv} A/HRC/31/59, para. 65.
- ^{xxv} D. Viejo Rose. 2011. Memorial functions: Intent, impact and the right to remember, *Memory Studies* 4, p469-471.
- ^{xxvi} See in general, L. Lixinski. 2015. Cultural Heritage Law and Transitional Justice: Lessons from South Africa, *International Journal of Transitional Justice* 9, p.278-296.
- ^{xxvii} B. Isakhan. 2011. Targeting the Symbolic Dimension of Baathist Iraq : Cultural Destruction, Historical Memory, and National Identity. *Middle East Journal of Culture and Communication* 4, p257-281.
- ^{xxviii} A/HRC/31/59: 82
- ^{xxix} Report of the Secretary-General of the United Nations, *The rule of law and transitional justice in conflict and post-conflict societies*. (23 August 2004) UN Doc. S/2004/616, para. 8.
- ^{xxx} A/HRC/31/59: 78
- ^{xxxi} World Heritage Centre. n.d. *Ancient City of Aleppo*, available: (Accessed 27/09/2015).
- ^{xxxii} E. Cunliffe, personal communication with Alepeans, 25/06/2015.

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- ^{xxxiii} Amal Hanano. 2013. Lessons from the Minaret:
<https://www.newsdeeply.com/syria/articles/2013/04/27/arts-culture-lessons-from-the-minaret>
- ^{xxxiv} Human Rights Watch. 2012. *They Burned my Heart': War Crimes in Northern Idlib during Peace Plan Negotiations*. 02/02/2012.
- ^{xxxv} M. Lostal. 2015. Syria's world cultural heritage and individual criminal responsibility, *International Review of Law* 1 (3), p17.
- ^{xxxvi} R Cryer et al. 2010. *An Introduction to International Criminal Law and Procedure*. New York: Cambridge University Press, p572.
- ^{xxxvii} Walasek, *Domains of Restoration*, p228.
- ^{xxxviii} Viejo-Rose, *Reconstructing Spain*, p209.
- ^{xxxix} See The Aleppo Project. 2015. *Rebuilding Downtown Beirut* Report, and the comment on the page.
<http://www.thealeppoproject.com/papers/reconstructing-downtown-beirut/>

Annex 2: See attachment

Marina Lostal and Emma Cunliffe, 'Cultural Heritage that Heals: Factoring in Cultural Heritage Discourses in the Syrian Peacebuilding Process' (2016) 7 *The Historic Environment: Policy & Practice* 151