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**SUBMISSION TO STUDY ON INTENTIONAL DESTRUCTION OF  
CULTURAL HERITAGE**

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**Submitted to the Office of the United Nations Special Rapporteur in the  
field of cultural rights by:**

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## 1. The impact of intentional destruction of cultural heritage on enjoyment of human rights

World's cultural heritage is often referred to as "the pride of humanity."<sup>2</sup> It is acknowledged that art is a universal language uniting people of different eras, continents, races and religions.<sup>3</sup> At the international level for a long period of time cultural heritage has been primarily dealt with by rules of international humanitarian<sup>4</sup> and international criminal law,<sup>5</sup> as well as instruments of UNESCO.<sup>6</sup> Nevertheless, since acts of intentional destruction of cultural property directly affect individual human rights, such acts also bring into play international human rights law. In fact, there are always people behind attacks on cultural property.

Depending on particular circumstances of every case, deliberate destruction of cultural property may have a negative impact on different human rights. In this regard, it should be noted that both tangible and intangible cultural heritage present, first and foremost, a spiritual value for individuals, communities and humanity. In most cases objects of cultural property have been ruined and profaned by perpetrators in order to deprive others of moral foundations and made them more vulnerable. Accordingly, destruction of cultural heritage impinges on those human rights which are closely tied with spiritual well-being.

In the first place, such rights comprise cultural rights, in particular the right of access to and enjoyment of cultural heritage.<sup>7</sup> Intentional destruction of cultural property equally undermines the right to maintain, control, protect and develop cultural heritage<sup>8</sup> and the right

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<sup>2</sup> François Bugnion, *The Origins and Development of the Legal Protection of Cultural Property in the Event of Armed Conflict*, INT'L COMM. OF THE RED CROSS (Nov. 14, 2004), <https://www.icrc.org/eng/resources/documents/article/other/65shtj.htm>.

<sup>3</sup> *Id.*

<sup>4</sup> In the realm of international humanitarian law protection of cultural property was incorporated in the Declaration of Brussels of 1874 (Art. 8) and subsequently was included in all its major instruments, including the Convention with Respect to the Laws and Customs of War on Land of 1899 (Arts. 27, 47, 56) and Convention respecting the Laws and Customs of War on Land of 1907 (Arts. 27, 56), Additional Protocols I (Art. 53) and II (Art. 16) to the Geneva Conventions of 1949 and others.

<sup>5</sup> *See, e.g.*, Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, Convention for the Protection of the World Cultural and Natural Heritage of 1972 and others.

<sup>6</sup> Statute of the International Criminal Tribunal for the Former Yugoslavia of 1993 (Art. 3(d)), Rome Statute of the International Criminal Court (Arts. 8(2)(b)(ix) and 8(2)(e)(iv)).

<sup>7</sup> *See generally* Rep. of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed, U.N. Doc. A/HRC/17/38 (21 Mar. 2011), ¶¶ 58-76.

<sup>8</sup> Convention (No. 169) concerning indigenous and tribal peoples in independent countries of 1989 (Arts. 5, 6); United Nations Declaration on the Rights of Indigenous Peoples of 2007 (Arts. 31, 34).

to enjoy one's own culture.<sup>9</sup> Tangible and intangible cultural heritage is a key element ensuring full exercise of the right to take part in cultural life<sup>10</sup> and the freedom of artistic expression.<sup>11</sup> Deliberate attacks against cultural property obstruct their due implementation, since such acts destroy objects of inspiration and spread fear among individuals and communities.

Nonetheless, intentional destruction of tangible and intangible heritage goes beyond encroaching exclusively upon cultural rights. Other human rights associated with spiritual life of individuals and communities, like the right to education and self-development, also may be adversely affected.<sup>12</sup> Since objects of cultural property often carry a transcendent and religious meaning, deliberate attacks against cultural heritage impinge on the right to freedom of thought, conscience and religion.<sup>13</sup>

Conversely, in recent times the international community has encountered with that perpetrators destroy objects of cultural heritage in the name of freedom of religion or belief. Such acts, however, have no justifications under international human rights law and were expressly condemned by the United Nations Security Council,<sup>14</sup> Human Rights Council<sup>15</sup> and Special Rapporteur on freedom of religion or belief.<sup>16</sup> It should be borne in mind that freedom of religion as a human right is intended to protect human beings, not the extreme versions of religions and beliefs.<sup>17</sup> The very idea of human rights is to ensure peaceful and sustained coexistence and development of people having different races, colours, sex, and religions, rather than to legitimize violence directed at human beings and their cultural heritage. Accordingly, intentional attacks against cultural heritage must be regarded as an abuse of rights: under international human rights law no individual, group or state may interpret human rights as providing *carte blanche* to engage in destruction of rights and freedoms of others, including cultural rights.<sup>18</sup>

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<sup>9</sup> International Covenant on Civil and Political Rights of 1966 (Art. 27) [hereinafter ICCPR]; Convention on the Rights of the Child of 1989 (Art. 30) [hereinafter CRC].

<sup>10</sup> Universal Declaration of Human Rights (art. 27(1)) [hereinafter UDHR]; International Covenant on Economic, Social and Cultural Rights of 1966 (Art. 15(1)(a)) [hereinafter ICESCR].

<sup>11</sup> ICCPR (Art. 19(2)); ICESCR (Art. 15(3)).

<sup>12</sup> UDHR (Art. 26); ICESCR (Art. 13); CRC (Arts. 28, 29).

<sup>13</sup> UDHR (Art. 18); ICCPR (Art. 18); United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981.

<sup>14</sup> S.C. Res. 2199, ¶ 15 (12 Feb. 2015).

<sup>15</sup> Human Rights Council Res. 25/12, U.N. Doc. A/HRC/RES/25/12, ¶ 4 (14 Apr. 2014).

<sup>16</sup> Rep. of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, U.N. Doc. A/HRC/28/66 (29 Dec. 2014).

<sup>17</sup> *Id.* ¶ 8.

<sup>18</sup> UDHR (Art. 30); ICCPR (Arts. 5(1), 20(2)).

## 2. Examples of different situations illustrating the above

Intentional destruction of cultural heritage has taken place during wars and in time of peace, involved attacks committed by State and non-State actors, and occurred in various parts of the world. The only feature that unites most of these situations is the purpose of destruction – to extinct manifestations of alien cultures. As a rule, such extinction has been sought in order to undermine morale of an adverse party (Nazi’s destructions during the World War II in the Soviet Union<sup>19</sup>), to annihilate cultures considered as primitive by official ideology (destruction of cultural heritage of indigenous peoples by Brazil and other Latin American countries in the 20<sup>th</sup> century<sup>20</sup>) or to demonstrate the supremacy of one’s own culture and ideology (attacks recently committed by ISIS in Iraq and Syria<sup>21</sup>). Currently, the increase in financial well-being in some parts of the world resulted in the increase in demand for objects of cultural property. That is why at present cultural heritage is also ruined because of monetary incentives (plundering of sites rich in pre-Columbian art in Mexico and Latin America,<sup>22</sup> looting of cultural heritage in Syria<sup>23</sup>).

Historically, intentional destruction of cultural heritage has primarily occurred in time of war. In this regard, one might recall the looting of cultural property by the Romans or the Napoléon army.<sup>24</sup> More recent examples include the destruction of cultural heritage occurred in the Yugoslav Wars,<sup>25</sup> razing of nine mausoleums and the 15<sup>th</sup> century Sidi Yahia mosque in Mali by “Hisbah”<sup>26</sup> and infamous attacks committed by ISIS against cultural property in Iraq and Syria.<sup>27</sup> Nevertheless, a considerable amount of destruction of cultural heritage has also taken place during peace. To give a few examples, communists blew up the Cathedral of

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<sup>19</sup> See 22 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 469-588 (Nuremberg, 1948) [hereinafter NUREMBERG TRIBUNAL’S TRIAL].

<sup>20</sup> See, e.g., CLAUDE LÉVI-STRAUSS, *TRISTES TROPICQUES* (translated from French by Jogh Weightman and Doreen Weightman, 2012).

<sup>21</sup> Louise Arimatsu & Mohbuba Choudhuy, *Protecting Cultural Property in Non-International Armed Conflicts: Syria and Iraq*, 91 INT’L L. STUD. 641, 642 (2015).

<sup>22</sup> Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275 (1982).

<sup>23</sup> Franklin Lamb, *Looting Is the Greatest Threat to Our Cultural Heritage in Syria*, FOREIGN POLICY JOURNAL, 29 Dec. 2014, <http://www.foreignpolicyjournal.com/2014/12/29/looting-is-the-greatest-threat-to-our-cultural-heritage-in-syria/>.

<sup>24</sup> See, e.g., JOHN HENRY MERRYMAN ET AL., *LAW, ETHICS AND THE VISUAL ARTS* 1-2 (5th ed. 2007)

<sup>25</sup> See, e.g., Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment (Int’l Crim. Trib. for the Former Yugoslavia), 31 Jan. 2005).

<sup>26</sup> Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15, Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi (Int’l Crim. Court, 24 Mar. 2016).

<sup>27</sup> Arimatsu & Choudhuy, *supra* note 21, at 642.

Christ the Saviour in Soviet Russia,<sup>28</sup> supporters of the Cultural Revolution in China desecrated the burial place of Confucius<sup>29</sup> and the authorities of Saudi Arabia demolished a number of historical and religious sites in Mecca.<sup>30</sup> In the meantime, Claude Lévi-Strauss documented in details how the Brazilian government was intentionally destroying intangible heritage of indigenous tribes in South America in the 20<sup>th</sup> century.<sup>31</sup>

For many years most of damage to cultural heritage was inflicted either directly by states or with their acquiescence. These instances involved activities of Einsatzstab Rosenberg in Nazi Germany,<sup>32</sup> the Chinese Cultural Revolution,<sup>33</sup> destructions caused by the Yugoslav Army<sup>34</sup> and many others. At the same time, according to the latest developments in the area non-State actors has increasingly engaged in destruction of cultural heritage. In particular, the Taliban blew up the Bamiyan Buddha Statues in Afghanistan,<sup>35</sup> Hesbah ruined nine mausoleums and a mosque in Mali,<sup>36</sup> whereas ISIS is responsible for unprecedented attacks against cultural property in Iraq and Syria, including the destructions of the mosque of the Prophet Younis,<sup>37</sup> the Green Church in Tikrit<sup>38</sup> and ruining of the site of Palmyra.<sup>39</sup> Moreover, for a number of years cultural property has been systematically looted by private groups and even individuals for monetary benefits (in Peru, Central American states, Mexico, Syria and other countries<sup>40</sup>).

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<sup>28</sup> Steven Erlanger, *Moscow Resurrecting Icon of Its Past Glory*, N.Y. TIMES, 26 Sep. 1995, <http://www.nytimes.com/1995/09/26/world/moscow-resurrecting-icon-of-its-past-glory.html?pagewanted=all>.

<sup>29</sup> See DOROTHY PERKINS, *ENCYCLOPEDIA OF CHINA: HISTORY AND CULTURE* 102 (2013).

<sup>30</sup> Jerome Taylor, *The photos Saudi Arabia doesn't want seen – and proof Islam's most holy relics are being demolished in Mecca*, INDEPENDENT, 15 Mar. 2013, <http://www.independent.co.uk/news/world/middle-east/the-photos-saudi-arabia-doesnt-want-seen-and-proof-islams-most-holy-relics-are-being-demolished-in-8536968.html>.

<sup>31</sup> LÉVI-STRAUSS, *supra* note 20.

<sup>32</sup> See NUREMBERG TRIBUNAL'S TRIAL, *supra* note 19, at 469-588.

<sup>33</sup> PERKINS, *supra* note 29, at 108-111.

<sup>34</sup> Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia, 31 Jan. 2005).

<sup>35</sup> Luke Harding, *Taliban blow apart 2,000 years of Buddhist history*, THE GUARDIAN, 3 Mar. 2001, <http://www.theguardian.com/world/2001/mar/03/afghanistan.lukeharding>.

<sup>36</sup> Anny Shaw, *First cultural destruction trial opens at The Hague's International Criminal Court*, THE ART NEWSPAPER, 29 Feb. 2016, <http://theartnewspaper.com/news/news/first-cultural-destruction-trial-opens-at-the-hague-s-international-criminal-court/#>.

<sup>37</sup> Arimatsu & Choudhuy, *supra* note 21, at 642.

<sup>38</sup> David D. Kirkpatrick, *Iraq: Militants Destroy Historic Church*, N.Y. TIMES, 24 Sep. 2014, [http://www.nytimes.com/2014/09/25/world/middleeast/iraq-militants-destroy-historic-church.html?\\_r=0](http://www.nytimes.com/2014/09/25/world/middleeast/iraq-militants-destroy-historic-church.html?_r=0).

<sup>39</sup> Anne Barnard, *ISIS Destroys Historic Arches in Palmyra, Syria*, N.Y. TIMES, 5 Oct. 2015, <http://www.nytimes.com/2015/10/06/world/middleeast/isis-syria-arch-triumph-palmyra.html>.

<sup>40</sup> Bator, *supra* note 22; Franklin Lamb, *Looting Is the Greatest Threat to Our Cultural Heritage in Syria*, FOREIGN POLICY JOURNAL, 29 Dec. 2014, <http://www.foreignpolicyjournal.com/2014/12/29/looting-is-the-greatest-threat-to-our-cultural-heritage-in-syria/>.

In a similar vein, it may not be maintained that intentional destruction of cultural heritage is a problem of a particular region. On the contrary, this type of crime undermining cultural rights of millions of people is characteristic to all parts of the world and may not be associated with a single religion, political ideology or culture. During the last century deliberate attacks against cultural property have taken place in South and North America,<sup>41</sup> Europe,<sup>42</sup> Middle East,<sup>43</sup> Africa,<sup>44</sup> Central<sup>45</sup> and South Asia,<sup>46</sup> and Oceania.<sup>47</sup> Unfortunately, the list of destroyed and plundered cultural sites has expanded over the years underscoring the global nature of this issue.

### 3. Examples of good practices

Arguably, humanity would have prevented and avoided many instances of intentional destruction of cultural heritage, if this subject had received necessary attention in higher education. In fact, the issue of deliberate attacks against cultural property is still situated on the margins of international humanitarian and international criminal law. It has entered the area of international human rights law only recently, and many efforts still need to be made in order to raise public awareness about the importance of cultural rights for spiritual well-being and potential adverse legal consequences, which may follow in case of their violation.

At the same time, during last few decades many objects of cultural heritage have been successfully repatriated due to different legal procedures, including those established under the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970. In particular, it may be mentioned that the rare fragments to the Autocephalous Greek Orthodox Church were

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<sup>41</sup> Bator, *supra* note 22.

<sup>42</sup> See, e.g., Prosecutor v. Prlić et al., Case No. IT-04-74-T, Judgment (Vol. 1) (Int'l Crim. Trib. for the Former Yugoslavia, 29 May 2013) (as regards the destruction of the Old Bridge in Mostar).

<sup>43</sup> Anne Barnard, *ISIS Destroys Historic Arches in Palmyra, Syria*, N.Y. TIMES, 5 Oct. 2015, <http://www.nytimes.com/2015/10/06/world/middleeast/isis-syria-arch-triumph-palmyra.html>.

<sup>44</sup> Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15, Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi (Int'l Crim. Court, 24 Mar. 2016).

<sup>45</sup> PERKINS, *supra* note 29, at 108-111.

<sup>46</sup> MASHA LAFONT, *PILLAGING CAMBODIA: THE ILLICIT TRAFFIC IN KHMER ART* (2007).

<sup>47</sup> Calla Wahlquist, *Aboriginal sacred site up to 8,000 years old destroyed by 'cultural vandals'*, THE GUARDIAN, 2 June 2016, <http://www.theguardian.com/australia-news/2016/jun/03/aboriginal-sacred-site-up-to-8000-years-old-destroyed-by-cultural-vandals>.

returned to Cyprus,<sup>48</sup> a number of artifacts were recovered by Peru from Argentina<sup>49</sup> and thousands of valuable pieces of ancient art were repatriated by Afghanistan.<sup>50</sup>

After the end of an internal or international conflict various parties attempt to restore lost cultural heritage, which presents an indispensable means for subsequent peaceful and progressive development in the future. As an example, the Warsaw Historic Center was reconstructed in Poland in 1960s,<sup>51</sup> the Mostar Old Bridge was rebuilt in Bosnia and Herzegovina in 2004<sup>52</sup> and recently the Syrian authorities announced their plans to restore cultural objects in Palmyra.<sup>53</sup> It also should be noted that almost in all cases of repatriation or reconstruction of cultural heritage there has been a significant positive involvement of international agencies or third countries, which demonstrates the common human concern about the issue of intentional destruction of cultural heritage.

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<sup>48</sup> William H. Honan, *Judge Orders Art Dealer to Return Rare Mosaics to Church of Cyprus*, N.Y. TIMES, 4 Aug. 1989, <http://www.nytimes.com/1989/08/04/arts/judge-orders-art-dealer-to-return-rare-mosaics-to-church-of-cyprus.html?pagewanted=all>.

<sup>49</sup> Hillary Ojeda, *Argentina returns 4,150 cultural heritage artifacts to Peru*, N.Y. TIMES, 3 Feb. 2016, <http://www.peruthisweek.com/news-argentina-returns-4150-cultural-heritage-artifacts-to-peru-108746>.

<sup>50</sup> Emma Graham-Harrison, *Treasures returned to Afghan museum*, THE GUARDIAN, 5 Aug. 2012, <http://www.theguardian.com/world/2012/aug/05/artefacts-returned-afghan-museum>.

<sup>51</sup> *Historic Centre of Warsaw*, The UNESCO WORLD HERITAGE LIST, <http://whc.unesco.org/en/list/30>.

<sup>52</sup> *Old Bridge Area of the Old City of Mostar*, The UNESCO WORLD HERITAGE LIST, <http://whc.unesco.org/en/list/946>.

<sup>53</sup> Karen Leigh, *Hope for Palmyra's Future*, THE WALL STREET JOURNAL, 4 Apr. 2016, <http://www.wsj.com/articles/hope-for-palmyras-future-1459807486>.