

# **Comparative Analysis of UNESCO's Approach and Performance towards the Cultural Heritage of Syria and Iraq (2003-2016)**

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## **Abstract**

This article seeks to analyze and explain the UNESCO's procedures for the protection of cultural heritage in Syria and Iraq through comparative method and use of library resources. Cultural heritage in these countries has been always prone to destruction and theft due to armed conflicts. The terrorist groups in Syria and Iraq seek to eradicate the culture and identity of these two countries through destruction of cultural heritage (cultural cleansing) or illicit trade of cultural heritage. UNESCO has focused on combating cultural crimes within a special procedure, known as "Cultural Heritage Regime", in order to protect the cultural heritage. According to the analysis of the present paper, UNESCO has failed to prevent the destruction of the cultural heritage in Syria and Iraq. However, this organization has been successful in reconstructing cultural heritage of Syria and Iraq. It also has acted successfully in cooperating with relevant institutions in order to confront with cultural crimes. Having regard to the UNESCO's legal procedure, most of the rules applied to the status of cultural heritage in Syria and Iraq are related to the international rules for the protection of cultural heritage during armed conflicts, which include the

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UNESCO's 1954 Convention for the Protection of Cultural Heritage in the Event of Armed Conflict and its protocols, as well as customary international humanitarian law. Regarding the declarative procedure, UNESCO has played an important role in alerting the international public opinion in order to protect the cultural heritage in Syria and Iraq.

**Keywords:** UNESCO, Cultural Heritage Regime, Cultural Crimes, Syria, Iraq

### **Introduction:**

Considering that cultural diplomacy pursues five principles, including: respect for and recognition of cultural diversity and heritage, global intercultural dialogue, justice, equality and interdependence, protecting international human rights law, and ensuring international peace and stability, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has put some programs on its agenda for countries that are on the brink of crisis, including: the world heritage program to protect global tangible and intangible cultural heritage, fostering cultural diversity, intercultural dialogue, strengthening media and promoting the culture of peace. According to the UNESCO Constitution, UNESCO aims to contribute to peace and security in the world by promoting a partnership between nations in education, science and culture, as well as strengthening global respect for justice, rule of law, human rights and fundamental freedoms. These goals have also been endorsed by the United Nations Charter for the people of the world without distinction as to race, gender, language or religion.<sup>2</sup> UNESCO,

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<sup>2</sup> Reza MOUSAZADEH, *International Organizations*[Persian], (Tehran: Mizan Legal Foundation, 2014), at 240.

with the aim of nurturing all human beings with knowledge and promoting a culture of peace, has three main strategies: 1) developing and promoting universal principles and norms based on shared values in order to face the challenges that have arisen in education, science, culture and communication, and support and strengthening of general welfare; 2) Promoting and expanding pluralism by recognizing and safeguarding cultural diversity and observing human rights; 3) Promoting the level of participation and authority in the scientific community through equal access, capacity building and knowledge sharing. Since the 1980s, UNESCO has come to the realization that the foundation for a comprehensive and sustainable development must be based on the protection and development of cultural diversity, one of the examples of cultural diversity among nations being their tangible and intangible cultural heritage, to which UNESCO is committed to preserve. It has built in-house structures, including the World Heritage Committee, which, of course, was established by the World Heritage Committee as a symbol of culture, civilization and human identity in 1963, as well as the Intergovernmental Committee on the Protection of the Intangible Cultural Heritage and other bodies and the committees of this organization working in the field of culture.

Bearing the strategic position of Syria and Iraq in West Asia (Middle East) in mind, both states always have been facing various crises. Under such circumstances, understanding cultural diplomacy in order to preserve the cultural heritage of these countries promotes the culture of peace and protects the ancient monuments known as World Heritage Sites is considered an important objective. This paper intends to analyze UNESCO's cultural diplomacy and its capacities in preserving the cultural heritage of Syria and Iraq and to assess these two countries regarding the

similarities and differences in order to evaluate this Organization's success. Thus, the main question of this article is: What are the similarities and differences in UNESCO's cultural diplomacy towards protection of cultural heritage in Syria and Iraq? And to what extent this organization has been successful?

Cultural Heritage Regime set forth by UNESCO has legal, practical, and declarative aspects and intends to protect and preserve the cultural heritage of states during peace, crises and international and regional armed conflicts, as well as against cultural crimes, consisting cultural terrorism, organized crime for getting financial benefits through illegal trafficking of cultural properties, and war crimes during armed conflicts targeting cultural objects.

UNESCO's cultural diplomacy towards states, with the aim of achieving sustainable peace and realization of culture of peace, is carried out through cultural instruments. UNESCO has different frameworks and structures for promoting this kind of diplomacy, which have been examined in this paper. The culture of peace, which is the UNESCO's main objective in protecting and preserving the cultural heritage, is known as a symbol of a permanent peace. This article asserts that UNESCO has not been quite successful in preserving cultural heritage of Syria and Iraq during armed conflicts. However, this organization has acted successfully to reconstruct the cultural heritage within the framework of operational and declarative procedures to alert the global public opinion and also legal procedures to protect and preserve the cultural heritage of Syria and Iraq within international law. It also has been relatively successful in having constructive cooperation with international organizations in order to confront with the crimes against cultural heritage within the framework of prevention of cultural crimes.

### **Definitions**

1) Cultural diplomacy: in this paper, the UNESCO's cultural diplomacy refers to multilateral cultural diplomacy, which is a useful and flexible tool to pave the way for international peace and stability.<sup>3</sup> Cultural diplomacy is a domain of diplomacy that relates to the establishment, development and pursuit of relations with States through culture, art and education. Cultural diplomacy is an effective process in which the culture of a nation is presented to the outside world, and the unique cultural characteristics of nations are promoted bilaterally and multilaterally.<sup>4</sup>

2) Cultural heritage: this concept is categorized into two groups of tangible and intangible heritage. Article 1 of 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage defines cultural heritage as “monuments: architectural works, works of monumental sculpture and paintings, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science”. The same provision also mentions “Groups of buildings: groups of separate or connected buildings, which, because of their architecture, their homogeneity, or their place in the landscape, are of outstanding universal value from the point of view of history, art or science”, and further addresses “Sites: works of man or the combined works of nature and man, and areas including archaeological sites which

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<sup>3</sup> Reza HAGHIGHI, *Culture and Diplomacy*[Persian], (Tehran: al-Mahdi Publication, 2008), at 2.

<sup>4</sup> <http://textus.Diplomacy.Edu/textusBin/BViewers/oview/culturaldiplomacy/oview.asp>

are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view”.

Additionally, according to 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, the intangible heritage can be defined as “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”

3) Cultural Crimes: generally, any criminal acts against cultural objects, properties, places, identities and expressions are defined as cultural crimes which are perpetrated in three ways: a) Iconoclasm, which refers to historical tendency to remove or destroy identities out of religious or political reasons.<sup>5</sup> In the contemporary literature this also occurs when identities, expressions and icons of a specific group or country is dangerous for power and properties of the violent group.<sup>6</sup> These acts are also coined as cultural terrorism. The United Nations General Assembly Resolution 49/60, titled “Measures to Eliminate International Terrorism”, defines terrorism as: “Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify

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5 Sara Brooks, [http://www.metmuseum.org/toah/hd/icon/hd\\_icon.htm](http://www.metmuseum.org/toah/hd/icon/hd_icon.htm) (Accessed 18 October 2013).

6 Stacy BOLDRICK, *Striking Images, Iconoclasms Past and Present*, (London, Routledge, 2013), at 1.

them”.<sup>7</sup> Therefore, according to this Resolution, acts such as destruction of cultural heritage can be justified by political and religious reasons and can be done with the aim of demolishing identities and provoking a state of fear to facilitate power gaining for the group that commits these acts. These acts are a form of terrorism because the main victims are the culture and cultural heritage of nations. Thus, it constitutes cultural terrorism. B) Organized Crimes: the International Criminal Police Organization (INTERPOL), defines organized crimes as illegal activities by an organized and united group with the main purpose of financial gain which sustain their activities through intimidation and corruption.<sup>8</sup> Smuggle of antiques and cultural properties is one type of cultural crimes because it undermines culture of a nation and is done for financial gains so it is also considered as an organized crime. Trafficking and antiquities trade and cultural properties have been one of the methods of terrorist groups, through which they gain financial supply in Syria and Iraq. Since these acts have been done for financial purposes, they are deemed as examples of organized crimes. Another definition is provided by the United Nations Convention against Transnational Organized Crime, adopted in 2000, known as the Palermo Convention, as follows: "Organized crimes" refers to "serious crimes" or "specific crimes", as provided for in the Convention, by a group of three Or more, and for the purpose of obtaining, directly or indirectly, financial or material benefits

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<sup>7</sup> Measures to Eliminate International Terrorism, GA Res. 49/60, UN Doc. A/RES/49/60 (1995).

<sup>8</sup> Global Strategy on Organized and Emerging Crime, INTERPOL, Available at: <https://www.interpol.int/en/Crimes/Organized-crime>

for a period of time.<sup>9</sup> c) War Crimes: any serious violation of law and customs of war is a war crime. After establishment of International Criminal Court war crimes fall under the jurisdiction of this Court.<sup>10</sup> Serious violation or grave breach occurs when any intentional breach of 1949 Geneva Conventions and/or the 1977 Additional Protocols to it, which form the basics of law of armed conflicts or international humanitarian law, has been committed.<sup>11</sup>

### **Theoretical Framework**

Generally, we can refer to a combination of democratic peace and neoliberal institutionalism theories to explain the approaches and performance of UNESCO. Considering the UNESCO's emphasis on peace building in the mind of humans, the norms for peace making in a world in which states have different cultures, identities, and interests, have the duty to regulate the interstate relations, preserving values and material and moral heritage and ultimately achieving global peace.

According to democratic peace theory, States should move towards two goals to avoid any armed conflicts: first, they should create a democratic structure through limiting their domestic law-building and policy-making structures, which discourage resorting to armed conflicts. Secondly, based on the creation of this democratic structure, States should employ a

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9 United Nation Convention Against Transnational Organized Crime and The Protocols Thereto, 15 November 2000, GA Res. 55/25, UN Doc, art. 2.

10 A. P. V. ROGERS, Paul MALHERBE, *Fight it right, model manual on the law of armed conflict for armed forces*[Persian], (Tehran: Amir Kabir Publication, 2009) at 406.

11 Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, ICRC, art 85: 2.



political culture of negotiation and conciliation in their foreign relations, especially regarding to the States with similar political norms.<sup>12</sup> intends to promote this structure through its educational programs and reach sustainable peace with the expansion of this democratic structure and convergence of the political norms across the globe. But this theory, per se, will not suffice because when we are analyzing States we cannot focus only on norms and overlook interests. But which kind of tools can harmonize the measures of States which have different interests around common norms and rules? The presumption in the neoliberal institutionalism is that States are independent actors which seek to secure their own interests to a maximum extent and they want to enhance their gains and are not concerned about others' achievements. Therefore States cooperate with each other to maximize their individual gains.<sup>13</sup> But obstacles, such as self-centrism, impede cooperation; because they are only concerned about themselves. Thus, international institutions are established to remove these obstacles and international regimes will be shaped to cooperate within the framework of these institutions.<sup>14</sup> These regimes are meant to ultimately attain the culture of peace (democratic peace). Within this framework, UNESCO has created regimes for cooperation which we can name, among others, the Cultural Heritage Regime. This regime is a special, official, centralized and global regime

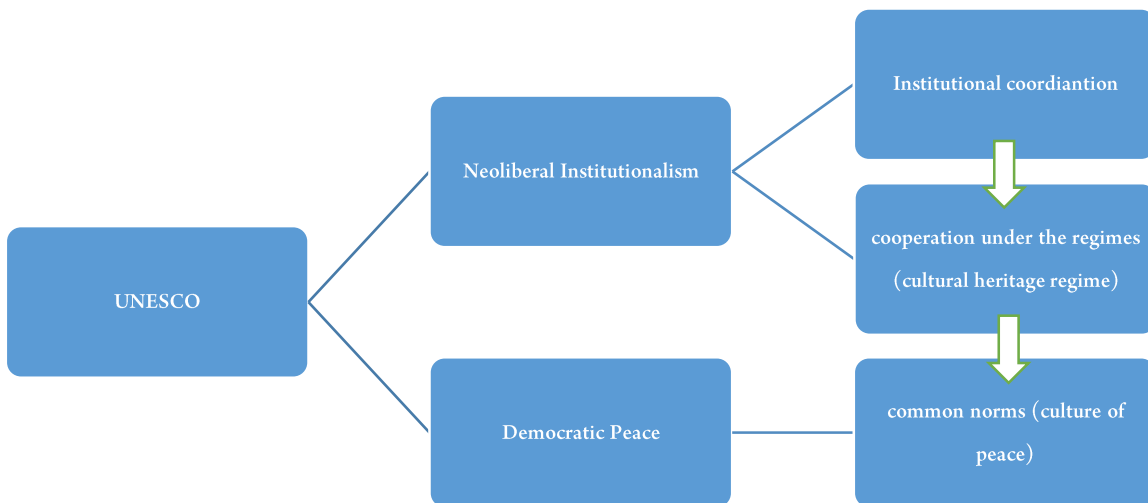
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12 J. LEPCOLD, M. NINCIC, *Beyond The Ivory Tower: International Relations Theory and the Issue of Policy Relevance*, (New York: Columbia University Press, 2001) at 113.

13 Robert O. KEOHANE, *International Institutions and State Power*, (Boulder, Colo, West View Press, 1989) at 27.

14 Joseph GRIECO, *Introduction to International Relations: Enduring Questions and Contemporary Perspectives*, 1st ed. (Red Globe Press, 2014) at 117.

to shape the common rules and norms to preserve and protect the States' moral and material cultural heritage. This regime condemns any failure to comply with these rules and norms either justified by domestic measures of States or the occurrence of armed conflicts and consider them as cultural crimes and even as organized crimes. This process can be depicted in the following chart:



### **UNESCO's Cultural Heritage Regime**

Puccala and Hopkins consider regimes as a set of principles, rules, norms, and procedures in which the expectations of the actors are intersected and

fulfilled; this set gives the system the meaning and the concept and then regulates the behavior of the participants, and finally, defines legitimate activities and how to solve conflicts.<sup>15</sup> According to Puccala and Hopkins, international regimes have the following five characteristics: 1) Regimes show mental attitudes, behaviors follow principles, norms and rules that sometimes reveal themselves in law; 2) Have the right procedures to make decisions; 3) Each regime has elites that act as actors in action, and national governments are the main members of the international regimes; 4) Each regime embodies the principles and norms that make clear what is allowed and unauthorized; 5) Regimes exist in all areas of international relations where the patterned behaviors are apparent.<sup>16</sup>

In order to protect culture and ensure its role in global strategies, UNESCO has considered a general approach as a cultural regime: world-class support for culture and its role in development and peace when it works with the international community for policy-making, activities to support governments and local stakeholders to protect the world heritage, strengthen creative industries and encourage cultural diversity.

UNESCO's cultural heritage regime involves three procedures:

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15 DJ, PUCHALA, Raymond F HOPKINS, "International Regimes: Lessons from Inductive Analysis", (1982) *International Organization*, Vol. 36, No. 2 at 61-62.

16 Farhad GHASEMI, *Introduction to International Relations*[Persian], (Tehran: Mizan Publication, 2012) at 454.

### **A) Legal Procedure of the Cultural Heritage Regime**

The famous cultural conventions of the UNESCO apply an outstanding global regime for international cooperation and create a comprehensive ruling cultural system based on human rights and common values. These international treaties seek to protect world cultural and natural heritage including ancient sites, intangible and underwater heritage, groups of museums, oral traditions and other forms of the cultural heritage and support innovation, invention and emergence of dynamic cultural sections. These conventions are as follows:

#### **A-1) Cultural Heritage and Law of Armed Conflicts**

Cultural properties and objects (including historic monuments, art works, places of worship, libraries, and scientific complexes) should not be employed for military purposes.<sup>17</sup> Attacks against these cultural properties, if they are not situated near a military target, is a grave violation of Additional Protocol I to the Geneva Convention of 1949.<sup>18</sup> Marking a building or cultural work with distinctive signs proposed by the cultural objects convention means that the mentioned properties are protected under the Additional Protocol I to the Geneva Convention (Rogers & Malherbe, at 89).<sup>19</sup>

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17 Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, ICRC, art 53.

18 Convention for The Protection of Cultural Property in The Event of Armed Conflict, 14 March 1954, Protocol 2, UNESCO, art 85: 4.

19 Rogers and Malherbe, at 89.

The 1907 Hague Conventions, especially the Hague regulations stipulate that in sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments ... provided that they are not being used at the time for military purposes. To receive protection, under the cultural property convention and Additional protocol I to the Geneva Conventions, those properties should be considered as cultural or religious heritage and to be of great value for humanity.<sup>20</sup>

**A-2) The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)**

The main subject of the convention is protection of cultural properties during the armed conflicts and its operative regulations passed in 1954. Two voluntary protocols have also complemented this convention. The first one was proposed simultaneously as convention, and then in 1954 was recognized as a protocol. The second protocol was adopted in 1999. These three treaties together constitute an international legal framework for the protection of the cultural properties during the armed conflicts and acts of hostility. Different aspects of the executive regulations of the second protocol (1999) has been amended, defined and confirmed by its contracting parties.<sup>21</sup>

The 1954 Hague Convention establishes a bilateral protection regime. Most of the provisions have the purpose of protection of all objects,

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<sup>20</sup> Ibid, at 290.

<sup>21</sup> Roger O'KEEFE, Camille PERON, Tofiq MUSAYEV, Giabuca FERRARI, Protection of Cultural Property: Military Manual, (Paris, UNESCO, 2016) at 3.

buildings and sites, which in accordance to the article 1 of this convention, are considered as “cultural properties”. A few of the regulations grants the «special protection» to a group of cultural properties, but the second protocol (1999), with the aim of introducing a more comprehensive protection system, proposes «enhanced protection» which constitutes a layer of protection laid out by article 1 of this convention and its second protocol.<sup>22</sup>

### **A-3) 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property**

The 1970 Convention obligates the States that are party to it to take measures regarding some issues:<sup>23</sup>

- 1) Preventive measures: it deals with inventories, export certificates, trade supervision, criminal and administrative sanctions, educational campaigns and etc.
- 2) compensation regulations: in article 7 (b)(ii), the convention stipulates that, States party to this convention should undertake, at the request of the State Party of origin, to take appropriate steps to recover and return any cultural property imported after the entry of this convention into force in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. All expenses incident

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<sup>22</sup> Ibid.

<sup>23</sup> <http://www.unesco.org>

to the return and delivery of the cultural property shall be borne by the requesting Party. The Article 13 of the convention also provides the regulations regarding the restitution, recovery, compensation and cooperation.

- 3) International cooperation framework: proposes the idea of enhancing the cooperation between States party to the convention. In the case of exposure of cultural heritage to risk of pillage, article 9 presents special measures such as import and export control.

#### **A-4) 1972 Convention on the Protection of Cultural and Natural Heritage**

The 1972 convention contains measures for protection of natural and cultural properties in one single instrument. This convention recognizes the method of treatment of nature by human beings and the basic need for providing a balance between these two factors. The convention also defines all the natural and cultural sites that can be recognized as global heritage. Additionally, it determines the duties of the State parties in identifying of potential sites and their roles in their protection.

#### **A-5) 2001 Convention on the Protection of the Underwater Cultural Heritage**

The main objective of this convention are as follows: guarantee and strengthen the protection and management of artefacts and sites underwater and in coastal areas in order to preserve the cultural heritage and world resources by employing all their scientific capabilities and operational abilities individually or through international cooperation, in accordance with international law while the priority is given to in situ

preservation and avoiding any detrimental access and interference (Iranian National Commission for UNESCO).

**A-6) Convention for Safeguarding the Intangible Cultural Heritage**

This convention may: first, raise awareness regarding the need for the respect and protection of the “intangible cultural heritage” of States in the land under their control, some of which are exposed to serious risk of damage and destruction. Secondly, it organizes their efforts in the right and beneficial direction.<sup>24</sup> This convention determines the definition of ‘intangible cultural heritage’ and presents its examples. It also stipulates the method of State cooperation on national, sub-regional, regional and international level.

**A-7) the Convention on Protection and Promotion of the Diversity of Cultural Expressions (2005)**

This convention was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), at its 33rd session in Paris, which was held from 3 to 21 October 2005. This convention states that cultural diversity is a defining characteristic of humanity and it forms a common heritage of humanity and should be cherished and preserved for the benefit of all. This instrument holds cultural heritage up as an example of cultural diversity expression.

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<sup>24</sup> Susan CHERAGHCHI, “Convention for the Safeguarding of the Intangible Cultural Heritage”[Persian], (2005) Asar publication, Number at 245.



## **B) Operational Procedure and Framework of Cultural Heritage Regime**

Regarding the executive and practical procedure of cultural heritage regime of UNESCO, it is noteworthy to mention that usually the executive measures of the UNESCO is undertaken through its relevant committees, as they will take all necessary measures to protect and respect cultural heritage. In other words, these committees are considered as the executive branches of the UNESCO. The activities of UNESCO in the world heritage committee is based on the legal framework created by the conventions and mostly leads to case-by-case decisions, but usually executive decisions are taken by considering the national views of the States. We can distinguish between two forms of decision making:<sup>25</sup>

The first is to register a cultural property on World Heritage List<sup>26</sup> and if needed, registration on the ‘List of World Heritage in Danger’.<sup>27</sup> On the contrary, Actus cotrarius or acts against protection by States leads to removal of the properties from the World Heritage List or its removal from the List of World Heritage in Danger.<sup>28</sup> A cultural heritage is

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25 Diana ZACHARIAS, “The UNESCO Regime for the Protection of World Heritage as Prototype of and Autonomy-Gaining International Institution”, (2008) *German Law Journal*, Vol. 9, No. 11 at 6.

26 Convention Concerning The Protection of The World Cultural and Natural Heritage, 16 November 1972, UNESCO, art 1.

27 *Ibid.*, art 4.

28 Zacharias, *supra* note 25 at 6.

usually nominated to be on the world heritage list when NGOs such as ICOMOS (International Council on Monuments and Sites) propose them to the World Heritage Committee.

The second type is the allocation of international assistance which is determined by the Global Heritage Fund.<sup>29</sup> International assistance includes urgent aids for the severely damaged sites resulting from man-made and natural calamities, preventive aids to the nomination draft to be included on the list of the world heritage, technical cooperation to meet the demands of the experts for recognition, respect, protect, introduction and reconstruction of world heritages, training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage and raise awareness.<sup>30</sup>

Also, having regard to protection of the cultural heritage in the event of armed conflicts, article 23 of 1954 Convention and article 33 of its second protocol stipulates that the parties to the conflicts should make use of the technical aids of the UNESCO for protection of the cultural properties even during the peacetime or with regard to any other problems which arise out of exiting from the Convention and its Second Protocol. Article 23 of 1954 Hague Convention and article 23 of the Second Protocol authorizes UNESCO to make, on its own initiative, proposals on this matter to the parties of armed conflicts. In the special events of the non-international armed conflicts, UNESCO is confined to the article 19 of the

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<sup>29</sup> Convention Concerning The Protection of The World Cultural and Natural Heritage, 16 November 1972, UNESCO, art 13.

<sup>30</sup> Ibid., art 22 and 23

1954 Convention and article 22 of 1999 Second Protocol. But it is noteworthy that this authorization is not limited to this Convention and its Second Protocol. According to Article 1 of the UNESCO Constitution, which renders it an inter-governmental organization, it is bestowed upon it the duty to respect and protect the world heritage including the written and art works and also the historic and scientific complexes. As measures taken by this organization and its member states, UNESCO can take other actions as well, which are outside the official boundary of this regime, to promote and facilitate the protection of the cultural properties during international and non-international armed conflicts.<sup>31</sup> For this aim, in late 2015, the General Conference of the UNESCO adopted the strategy of reinforcement for UNESCO's action for the protection of culture and promotion of cultural pluralism in the event of armed conflict.<sup>32</sup>

Article 33 of the 1999 Second Protocol refers to the preparatory measures to protect the cultural heritage during the peacetime and preventive and organizational measures for emergency situations and ultimately, compilation of national inventories of cultural property which all are the examples of the UNESCO's technical assistance to protect the cultural property in the event of armed conflicts. Also we have to add the strategy reinforcement for UNESCO's action for the protection of culture and promotion of cultural pluralism in the event of armed conflict to this, which was adopted by the General Conference of the UNSECO in 2015. In addition, UNESCO has undertaken two other executive actions within

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31 O'Keefe et al, supra note 21 at 71-72.

32 Reinforcement of UNESCO's Action for The Protection of Culture and The Promotion of Cultural Pluralism in The Event of Armed Conflict, General Conference, UNESCO doc. 38c/49 (2015).

the cultural heritage framework. The first one focuses on readiness and emergency actions in order to address the issue of destruction of cultural properties during armed conflicts, and the second one focuses on the measures taken by UNESCO during peacetime to train the military forces to protect cultural heritage.<sup>33</sup>

### C) UNESCO's Procedures to Confront Cultural Crimes

UNESCO has adopted a dual approach to address cultural crimes:

Identifying the types of cultural crimes, according to international law; this will lead to categorization of the different types of the cultural crimes which facilitate and organize the fight against them. In this regard the following typology can be presented:

- According to the 2000 Palermo Convention, theft, smuggle and trade of cultural properties constitute organized crimes.
- Based on international humanitarian law, crimes against tangible and intangible cultural heritage during international and non-international armed conflicts constitute war crimes. Also, based on the official positions taken by the UNESCO, the acts of ISIS and other terrorist groups in Syria and Iraq which is referred to it as Iconoclasm or cultural terrorism are war crimes.<sup>34</sup>

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<sup>33</sup> O'Keefe et al, supra note 21 at 72.

<sup>34</sup> <http://www.independent.co.uk/news/world/middle-east/unesco-chief-irina-bokova-accuses-islamist-groups-of-cultural-cleansing-isis-a6679761.html>

- Crimes against the cultural heritage during peacetime constitute crimes against humanity.<sup>35</sup> Also it should be mentioned that, pursuant to the Article 7 & 8 of the Rome Statute of International Criminal Court, the crimes against cultural heritage either in the event of war or during peacetime, is considered as a war crime but these two crimes because of their repercussions, are different.

## **2) Cooperation with Institutions Relative to the Crimes**

UNESCO cooperates with relative international bodies after identification of crimes and matching them up with already known crimes based on the international regulations. For instance, when cultural crimes are considered as organized crimes, UNESCO cooperates with INTERPOL. Since 1947, when the first international warning about the stolen art works was announced, INTERPOL has been engaged, especially in the fight against the illicit trafficking of cultural properties. This organization has developed a highly effective system for dissemination of information in the form of a database with the information of 35,000 objects which have been stolen since 2009. A special unit within INTERPOL is dedicated to the stolen works of art in cooperation with UNESCO. This cooperation is done through employment of modern tools and expert groups. The special unit of INTERPOL has held three important meetings on stolen cultural properties in 2009, 2010 and 2011. Providing a list of reference contacts to combat the illicit trafficking of the Iraqi and Syrian

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35 Yaron GOTTLIEB, "Criminalizing Destruction of Cultural Property: A Proposal for Defining New Crimes Under the Rome Statute of the ICC", (2005) Penn State International Law Review, Vol. 23, Article 16 at 888.

cultural heritage is another important measure taken by the UNESCO.<sup>36</sup> Also, when UNESCO recognizes the crimes against cultural heritage as crimes against humanity or war crimes, the International Criminal Court can exercise jurisdiction over that crime and UNESCO, based on its framework on international regulations, can give advice to the Court.

Additionally, the Security Council Resolution 2199 which was adopted in 2015 and falls under Chapter VII of the Charter of the United Nations, condemns the ISIS and al-Nusra for the destruction of cultural heritage in Syria and Iraq and decides that States should take all necessary steps to prevent illicit trades of cultural properties committed by ISIS and al-Nusra in Syria and Iraq and calls upon UNESCO, INTERPOL and other international organizations to help implementing the paragraph 17 of this Resolution.

#### **D) Declarative Procedures**

The declarative procedure of UNESCO includes the declarations and global advisory reports, the positions and statements of its Director General with the aim of alerting the international public opinion and raising awareness.

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<sup>36</sup><http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/partnerships/intergovernmental-organizations/international-criminal-police-organization/>

### **UNESCO's Cultural Diplomacy towards the Cultural Heritage in Syria and Iraq**

With the start of protest movements in Arab countries since March 2011, Syria has also faced political protests. What was at the beginning of the political unrest was a full-fledged armed conflict in July 2012. Although these conflicts were free of religious differences and were based solely on political demands, and the damage to cultural property was merely due to the inevitable consequences of the war, but with the entry of terrorist groups into the conflict to overthrow the legitimate government, and the establishment of the Islamic caliphate including by the Islamic State of Syria and Iraq (ISIS) was the essence of the destruction and damage to the cultural heritage, and the ideological reasons were the main focus. Studies on the Iraqi cultural heritage have also begun since 2003, since the formation of terrorist groups in Iraq and the commencement of crimes against the country's cultural heritage should be considered by the United States military occupation of Iraq. When entering Iraq, the United States entered a section of Iraq whose history was full of ignorance of independence and preservation of territorial integrity. A large proportion of the inhabitants of these areas were severely weakened in terms of social status and naturally opposed the situation, and with the formation of al-Qaeda, many jihadist groups moved to Iraq. Also in 2013, the Ba'ath Party, in collaboration with terrorist groups, including ISIS, occupied parts of Iraq by the ISIS terrorist group. As a result of these actions, caused by the US military presence in Iraq since 2003, as well as the spread of waves of extremism and terrorism, there have been widespread crimes against Iraq's culture, history and civilization, and in general the cultural heritage of Iraq.

So far, 1052 works have been recorded as UNESCO World Heritage site, which include 814 cultural works, 203 natural works, and 35 mixed cultural and natural works, of which 55 are in danger. The situation of the two countries in Syria and Iraq is as follows:

Iraq:

- HATRA (in danger from 2015);
- Ashur (Qal'at Sherqat) (in danger from 2003);
- Samarra Archaeological City (in danger from 2007);
- Erbil Citadel;
- The Ahwar of Southern Iraq: Refuge of Biodiversity and the Relict Landscape of the Mesopotamian Cities.

Syria:

- Ancient City of Damascus (in danger from 2013);
- Ancient City of Bosra (in danger from 2013);
- Site of Palmyra (in danger from 2013);
- Ancient City of Aleppo (in danger from 2013);
- Crac des Chevaliers and Qal'at Salah El-Din (in danger from 2013);
- Ancient Villages of Northern of Syria (in danger from 2013).

A map produced by the Antiquities Coalition shows the destructive impact the rise of ISIS and its followers have had on the cultural heritage

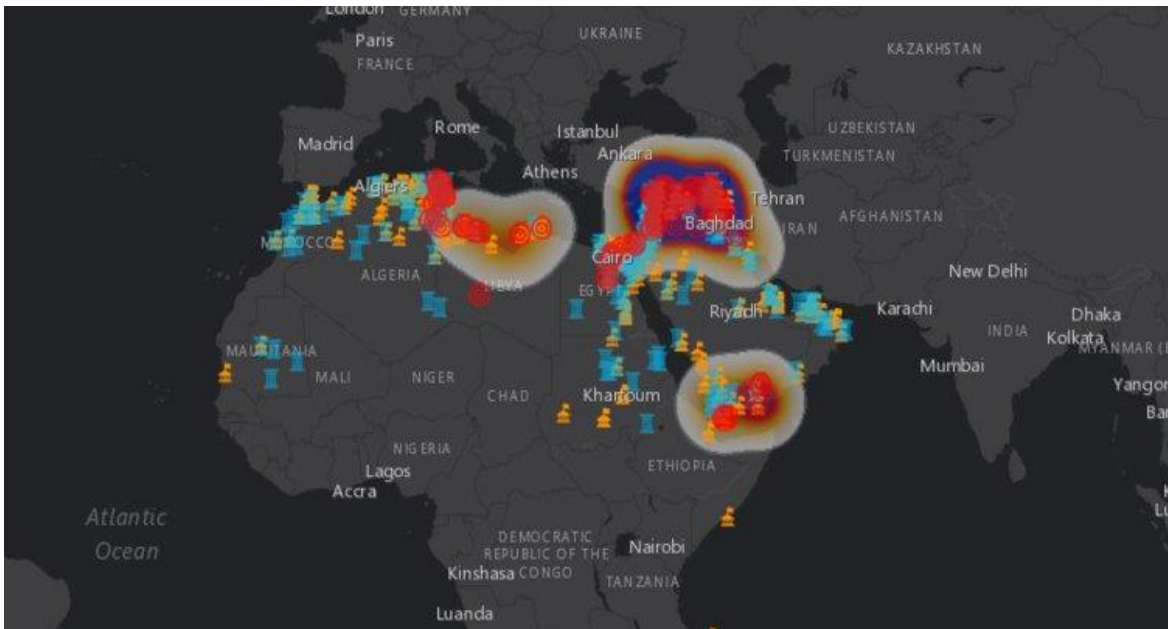


of the Middle East and North Africa up to 2016.<sup>37</sup> The map is made up of several layers. The first layer displays the areas that are under the direct control of terrorist groups. The second uses red marks to indicate cultural heritage sites that have been deliberately targeted by extremists. The third layer pin-points UNESCO World Heritage sites (in blue) and the fourth highlights museums (orange).<sup>38</sup>

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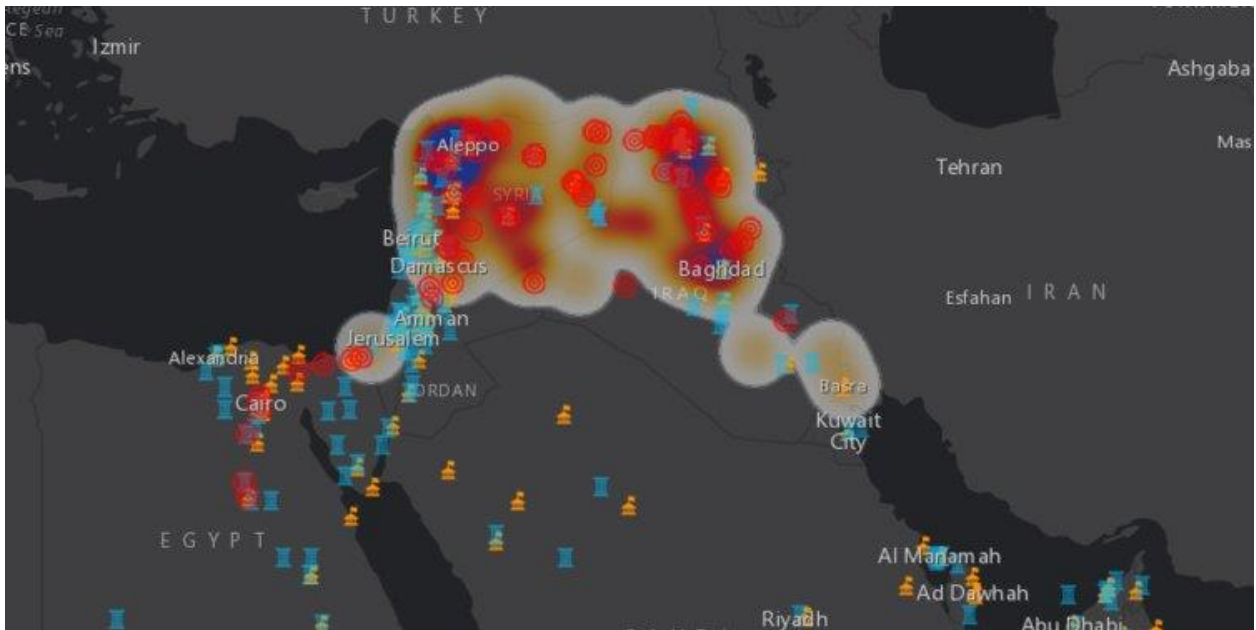
37 <https://www.businessinsider.com/map-showing-cultural-monuments-destroyed-by-isis-2016-2>

38 <https://www.weforum.org/agenda/2016/02/this-map-reveals-the-full-extent-of-isis-s-cultural-destruction/>



Antiquities Coalition

The following image also highlights the status of Syria and Iraq's cultural heritage by 2016



The impact of ISIS in Iraq and Syria. Antiquities Coalition

In the following, UNESCO cultural diplomacy to cultural heritages of Syria and Iraq will be analyzed.

**A) Syria:**

**A-1) Legal Procedure:**

Despite the overt and covert intervention of third parties in creating the international crisis in Syria through proxy war, the current armed conflict is not considered as international, because the main parties are not

governments or States, and the hostilities are confined to inside of the Syrian borders. But opinions are divided whether it is a non-international armed conflict or other situations such as domestic violence or war on terror are persistent. For a situation to be considered as an armed conflict, the parties to that conflict should be identifiable and the hostilities should reach the level of armed conflicts. Therefore, International Humanitarian Law does not apply to all situations of violence and it only applies to the situations which are defined in the Additional Protocol II and the jurisprudence of the International Criminal Tribunal for former Yugoslavia.<sup>39</sup> Despite the fact that during the first year of Syrian crisis, thousands of people were killed, the United Nations Fact Finding Commission failed to qualify it as a non-international armed conflict in February 2011. Only it was in May 2012 that the International Committee of Red Cross stated clearly that violence has led to a non-international armed conflict in some parts of the country.<sup>40</sup> However, some legal experts believe that with only a brief look at the international humanitarian law (IHL), we cannot conclude that the non-state armed groups are, as per legal parlance, the parties to the Syrian armed conflict and are accorded the protection of combatants under IHL, because these groups, especially the ISIS, trample all the rules and customs of the law of armed conflicts. However, it seems that after six years, the Syrian crisis has turned into a non-international armed conflict, as defined in the international humanitarian law which has led to demise and displacement

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39 Jamshid MOMTAZ, *International Humanitarian Law and non-international armed conflicts*[Persian], (Tehran: Mizan Publication, 2006), at 59.

40 Timan RODENHAUSER, "International Legal Obligation of Armed Opposition Group in Syria", (2015) *International Review of Law*, at 59.

of millions of Syrian citizens.<sup>41</sup> Armed conflicts in Syria are the subject of IHL due to the Additional Protocol II and the jurisprudence of the International Criminal Tribunal for former Yugoslavia (ICTY). Therefore, according to IHL, any acts against the cultural heritage of Syria constitute a war crime.

Another regulation which protects the Syrian cultural heritage is the 1954 Hague Convention for protection of cultural properties, and Syrian government is a party to it. Therefore, all the cultural properties inside Syria are protected by the general protection system; therefore, there is no doubt that all the non-state armed groups which are active inside Syria must comply with all the regulations of this Convention. Additionally, article 15 of the 1999 Second Protocol to the 1954 Hague Convention condemns acts such as making cultural properties under enhanced protection the object of an attack, using cultural property under enhanced protection or its immediate surroundings in support of military action, extensive destruction or appropriation of cultural property protected under the Convention and this Protocol and theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention. The convention stipulates that each party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in the Convention and to make such offences punishable by appropriate penalties. Syrian Government has accepted the protocol on 17 May 1999 but has not ratified it yet; therefore, it can't be directly applied in the Syrian armed conflict.

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41 Fazl-e-lah FORUGHFI, Keyvan GHANI, "War Crimes against cultural heritage in armed conflicts of Syria"[Persian], (2014) Criminal Law and Criminology Studies, number 5 & 6, at 342.

However, there is no doubt that the most of its regulations are considered as customary international humanitarian law and must be complied with by the parties to the conflict.<sup>42</sup>

In addition to international humanitarian law and the 1954 Convention, the regulations of the 1972 Convention for the protection of the World Cultural and Natural Heritage emphasize the protection and respect of the cultural heritage. Although the Syrian government has accepted the Convention, it has not ratified it yet. Another international regulation which applies to the situation going on in Syria is the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which Syrian government has accepted but has not ratified it and this has created a legal gap in the legal procedure of the cultural heritage regime in Syria. Moreover, the Syrian government has also ratified the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.

## **A-2) Operational Procedure**

Since the beginning of the Syrian crisis in 2011, UNESCO has focused on the protection of Syrian cultural heritage and has galvanized all the neighboring countries, INTERPOL and other institutional partners to confront illicit trafficking of the Syrian cultural heritage. UNESCO has also held a high level meeting in 2013. In that meeting, participants reaffirmed the UNESCO's executive program regarding the urgent actions and reconstruction efforts after the conflict. A triennial project

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<sup>42</sup> Ibid., at 345-346.

known as “Emergency Safeguarding of the Syrian Cultural Heritage Project” was launched within the executive program of UNESCO to halt the on-going loss of cultural heritage and provide post-conflict priority actions and medium-term and long-term programs as a tool for recovery of normal conditions and social cohesion in Syria. The International Observatory of Syrian Cultural Heritage was established as part of this project which monitors and assesses the situation of cultural heritage in Syria. UNESCO encouraged the United Nations Security Council to adopt Resolution 2199, which condemns the destruction of Syrian cultural heritage and calls for taking legal action to combat the illegal trafficking of cultural property in Syria and Iraq. Furthermore, a series of training activities on the fight against the illicit traffic of Syrian cultural objects and on state-of-art conservation and restoration tools of built heritage have been organized in Syria and neighboring countries (Iraq, Jordan, Lebanon and Turkey). UNESCO and UNITAR (the UN Institute for Training and Research) signed an agreement to protect cultural and natural heritage sites with the latest geo-spatial technologies. Also, a campaign known as “unite4heritage” was launched in 2015 in order to raise awareness and draw the public’s attention to the dangers threatening the Syrian cultural heritage. Promotion of countering hatred, radicalism, violence, and also unity, moderation, solidarity and support for the cultural heritage were some of the objectives of this campaign which is vehemently threatened by sectarianism and violence.<sup>43</sup>

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43 <http://www.unesco.org/new/en/syria-crisis-response/regional-response/syria-crisis-intro/>

### **A-3) Procedure for Countering Cultural Crimes:**

Regarding the fight against cultural crimes, UNESCO plays the role of an observer by comparing the status quo with the acts against cultural heritage and identifying the crimes committed against them. Subsequently, UNESCO acts as an information disseminator and serves an advisory role for the qualified judicial bodies. Generally, there are two judicial bodies that have jurisdiction over cultural crimes in Syria:

1) Special international criminal tribunal:

The new generation of criminal bodies is known as “hybrid courts” or “internationalized tribunals”. The laws invoked in these tribunals are a combination of national and international laws and its legitimacy stems from both of these sets of law. This is resulting from the confrontation of organs of United Nations, including the Security Council and the General Assembly, with the relevant government. Justice is served through simultaneous implementation of national criminal laws and international criminal law. Considering the difficulties arising out of the prospects of prosecution, trial and conviction of the perpetrators of crimes (crimes against cultural heritage) in Syrian criminal courts and also the International Criminal Court, legal experts called for a special tribunal to try the above-mentioned crimes. Ultimately, those efforts led to publish the draft of a statute for a Syrian [Extraordinary] [special] tribunal to prosecute atrocities in 27 August 2013, which is known as “The Chautauqua Blueprint”.<sup>44</sup>

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<sup>44</sup> Fazl-e-lah FORUGHI, Keyvan GHANI, *supra* note 41 at 348.



2) International Criminal Court:

According to article 8 of the Statute of the International Criminal Court or the Rome Statute, the Court shall have jurisdiction in respect of war crimes, in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes, and war crimes mean serious violations of the laws and customs applicable in international armed conflicts, within the established framework of international law, namely intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, and historic monuments.<sup>45</sup> While there is no doubt that acts of the terrorist groups constitute war crimes, the problem is that Syria has not yet ratified the Statute of the Court and therefore, is not authorized to refer this situation of crimes against its cultural heritage to the persecutor pursuant to Article 14 of the Statute. But the Syrian government can refer this dossier to the Court through 3 ways: 1) through the United Nations Security Council; 2) by accepting ad hoc jurisdiction of the Court; 3) by accepting the jurisdiction of the Court over the perpetrators of the cultural crimes in Syria. However, none of them has happened hitherto.

**A-4) Declarative Procedure**

The declarative procedure involves the advice, statements and declarations of UNESCO and its Director General for awareness raising, position taking and alerting the public's opinion of the world and international community:

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<sup>45</sup> Ibid., at 349.

- 1) The statement of the International Association of Assyriology (in partnership with UNESCO) on cultural heritage of Syria and Iraq, August 2014;
- 2) Expert recommendations of the conference on fighting the looting of Syria's cultural heritage, September 2015;
- 3) Saint Petersburg Declaration on the protection of culture in the Areas of Armed Conflict, December 2015;
- 4) Positions taken by Director General of the UNESCO.

## **B) Iraq**

### **B-1) Legal Procedure**

UNESCO has put in great efforts to safeguard the cultural and historical heritage of Iraq, and broadly, the whole culture of this country. Generally, the cultural crisis in Iraq is different from Syria, since it can be divided into two periods: a) Since 2003 and the beginning of military occupation by the US troops until their withdrawal in 2011; b) since 2014 and the beginning of ISIS occupation of extensive parts of Iraq. Therefore, the cultural heritage crisis in Iraq should be analyzed mostly under occupation and a short period after 2014, which was similar to Syria, qualifying as a civil war. UNESCO has repeatedly called on the occupier States to ratify the 1954 Hague Convention and its Protocols for the purpose of safeguarding the cultural heritage of Iraq.

UNESCO attached so much importance to the situation in Iraq that established its first mission in Iraq in 17-20 May 2003, exactly a few days after its occupation and before the adoption of Resolution 1483 which

recognized the occupying powers.<sup>46</sup> In September 2003, UNESCO and Iraqi Ministry of Culture tried to draw international cooperation in order to secure Iraq's cultural heritage.<sup>47</sup>

Article 42 of the 1907 Hague Convention IV, regarding the Laws and Customs of War on Land, stipulates that territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised. We can conclude that for the occupation to be materialized, the occupier should exercise effective control in that territory and has the power to sustain it.<sup>48</sup>

The destruction of civil properties is inevitable when an international or non-international armed conflict occurs, and there are different reasons for that. IHL bans destruction and seizure of the property of an adversary (whether moveable or immovable, private or public), unless such destruction or seizure is imperatively demanded by the necessities of war. Article 23(g) of the 1907 Hague Convention IV states that it is forbidden to destroy or seize the enemy's property, unless such destruction or seizure is imperatively demanded by the necessities of war. Considering the general letter of the mentioned Article, it also applies to the situation of occupation. According to Article 8(b)(xiii) of the Rome Statute, destroying or seizing the enemy's property, unless such destruction or

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46 John M RUSSELL, "A Personal Account of the first UNESCO Cultural Heritage Mission to Baghdad", (2003) Publication and New Media, at 4.

47 Sabine VON SCHORLEMER, Cultural Heritage Law: Recent Developments of the Laws of War and Occupation, (Paris, UNESCO, 2007) at 22.

48 Eyal BENVENISTY, The International law of occupation, (Princeton University press, 1992) at 25.

seizure is imperatively demanded by the necessities of war, is considered a war crime. The general expression of this Article enables its applicability during military occupation. The issue of destruction and seizure of properties in occupied lands is addressed explicitly in Article 53 of the 1949 Geneva Convention IV.

Another international regulation relevant to the situation in Iraq is the 1954 Hague Convention, which based on the explicit letter of its Article 5, applies to situations of military occupation. It is noteworthy, that the Convention does not protect the cultural properties in an absolute manner and according to its Article 4(2), in the case of imperative military necessity, this protections can be waived. But Article 6 of the Second Protocol of 1999, significantly limits the extent of liberty the parties can exercise in this regard.<sup>49</sup> During the military occupation of Iraq by coalition forces, cultural properties were damaged extensively, and one of the most important cultural properties, the Baghdad Museum, was looted. As a result of the chaotic situation in Iraq, a myriad of this properties were illicitly exported which later were found in famous museums of Europe and the United States.<sup>50</sup> Article 5(1) of the 1954 Hague Convention expresses that any occupying power shall, as far as possible, support the competent national authorities of the occupied country in safeguarding and preserving its cultural property. Paragraph 2 of this Article pays special attention to the issue of safeguarding cultural

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49 Seyed Hesasm al-Din LESANI, "Protection of historic and cultural heritage by international law during the military occupation with a view on the Unites States responsibilities during military occupation of Iraq", (2015), at 151.

50 Yoram, DINSTEIN, *The International Law of Belligerent Occupation*, (Cambridge University Press, 2009) at 199.

properties against military operations, expressing that if the competent national authorities are not able to take such measures, the occupying power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.<sup>51</sup> Article 9 of the Second Protocol prohibits the occupying power from any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property; but it should be carried out in close cooperation with the competent national authorities of the occupied territory.<sup>52</sup> Article 4(3) of the 1954 Hague Convention states that: “The High Contracting Parties further undertake 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”. Failing to comply with the standards of this Article caused irreparable damage to Iraq such as pillage of Iraq National Museum during the anarchic states due to entrance of the US troops into Baghdad in April 2003.<sup>53</sup> Therefore, the onus was on the US troops, as the occupying power, to take appropriate measures to secure the museum against such damages.

In addition to these conventions and protocols, the 1977 Additional Protocol I to 1949 Geneva Conventions is also one of the advanced conventions on international humanitarian law, which in its Article 3, states the binding nature of its regulations during military occupation. But it differs from other protocols, mainly on the issue of protection of

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51 Lesani, supra note 49 at 152.

52 Dinstein, supra note 50 at 201.

53 Ibid., at 199.

cultural properties, which is mentioned in its Article 53 and prohibits, with a general tone, any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; thus, the justification of military necessity to attack those properties has been removed in this Article and is considered a great development for protection of cultural and historical heritage (Lesani, at 154).<sup>54</sup>

Following the invasion of Iraq by the US and its allies, the pillage of Iraq's National Museum has raised the issue of the US responsibility. According to the Resolution 1483 (2003), only two occupying power - United States and United Kingdom- had been recognized. Also the ancient city of Babylon was occupied by the occupying powers in 21 April 2003 and converted into a military base called "Alpha Camp" which caused severe damages to the city until December 2004, when it was finally returned to the government of Iraq.<sup>55</sup> Based on UNESCO reports, this city has suffered widespread damages both before the occupation and during the active hostilities in 2003 and also after its occupation. Excavations, which were carried out by the occupying forces to create military fortifications, destroyed many underground potteries, and the passages of military tanks and carriers over this historic city has destroyed its cobbled stone streets which date back to 2,600 years ago.<sup>56</sup>

In addition to the mentioned international regulations, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import,

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<sup>54</sup> Lesani, supra note 49 at 154.

<sup>55</sup> Priscilla SINGER, "The New American Approach to Cultural Heritage Protection: Granting Foreign Aid for Iraqi Cultural Heritage", (2010) *Topic for Cultural Heritage Law*, at 21-22.

<sup>56</sup> Lesani, supra note 49 at 158.

Export and Transfer of Ownership of Cultural Property, and the 1972 Convention on the Protection of World Cultural and Natural Heritage, can be mentioned which Iraqi government, like Syrian government, has accepted, but not ratified. Moreover, similar to Syria, the Iraqi government has accepted the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, but has not ratified it yet.

On 9 June 2014, the ISIS terrorist group took the control of Mosul by attacking the northern part of Iraq, which was the beginning of the Iraq's crisis. Considering that ISIS was an organized armed group which had the structural capacity to abide by the rules of the international humanitarian law, but intentionally defied them, and also, considering the severity of the violence sparked by them in Iraq for the duration of their control over extensive parts of Iraq, perhaps we can consider that situation as a civil war by taking into account the qualifications laid out by the 1977 Additional Protocol II to Geneva Convention and the qualifications enumerated by the International Criminal Tribunal for former Yugoslavia (ICTY). But UNESCO has avoided any explicit use of that term for Iraq's crisis (since 2014), but its Director General has repeatedly named the atrocities of the ISIS as civil war.<sup>57</sup> By considering the crisis in Iraq as a civil war, the rules of IHL can be applied, as in the case of Syria. Moreover, the 1954 Hague Convention for Protection of Cultural Properties in the Event of Armed Conflict, and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage can also be applied to the situation in Iraq. But the 1970 Convention on the Means of

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<sup>57</sup>[http://www.unesco.org/new/en/social-and-human-sciences/themes/global-environmental-change/sv1/news/unesco\\_director\\_general\\_condemns\\_destruction\\_of\\_nimrud\\_in\\_ir/](http://www.unesco.org/new/en/social-and-human-sciences/themes/global-environmental-change/sv1/news/unesco_director_general_condemns_destruction_of_nimrud_in_ir/)

Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the 1972 Convention on the Protection of Cultural and Natural Heritage does not apply to case of Iraq because it has not ratified it hitherto.

### **B-2) Operational Procedure**

The UNESCO Office for Iraq was founded in Amman in 2003 in order to enable the international community to monitor and influence the evolution of Education, Culture, Science, and Media situation in the country. In 2004, facing recurrent threats from armed groups and bombings, United Nations agencies based most of their activities in Amman, Jordan. However, UNESCO maintains its offices in Baghdad and Erbil, and associated monitors elsewhere in Iraq who conduct frequent site visits throughout the country, reporting on the implementation and evaluation of projects. UNESCO supports program implementation in line with the objectives of the Iraqi National Development Plan (2010-2014) and the International Compact with Iraq, as well as the objectives of its key national partners: the Ministries of Education and Higher Education, Water Resources, Labor and Social Affairs, Culture, Tourism and Antiquities, Governorates, the Independent Higher Electoral Commission, the Communications and Media Commission and others, as well as national and international NGOs. All activities of UNESCO in Iraq aim to support peace-building and reconciliation.<sup>58</sup>

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58 <http://www.unesco.org/new/en/iraq-office/about-this-office/>



Generally, the World Heritage in its constant sessions from 2003 to 2016 regarding the cultural heritage situation has taken many decisions. The most important move was putting some of the Iraq's cultural heritage on the List of Cultural Heritage in Danger. Additionally, nominating some other Iraqi cultural heritage for inclusion in the list was among other measures to protect the Iraqi cultural heritage.

The Executive Board of UNESCO, based on the documents analyzed, has made two decisions up to now regarding the situation of Iraq, first of which was made in 28 October 2014 titled "Protection of Iraqi Heritage"; numbered 195 EX/31. This decision was adopted in the 195<sup>th</sup> session of UNESCO's Executive Board and in condemnation of destruction of cultural heritage and expressions of cultural diversity of Iraq, which is recognized as cultural heritage by the Iraqi communities and groups (Executive Board, 2014). The second decision of the Executive Board of UNESCO was adopted in 21 April 2015, titled 'Culture in Conflict Areas: a Humanitarian Concern and a Safety Issue. UNESCO's Role and Responsibilities', numbered 196 EX/29. This decision was made in the 196<sup>th</sup> session of UNESCO's Executive Board and in the condemnation of the continuing attacks against the cultural heritage of the Syrian Arab Republic, Iraq and Libya. In this session illicit trafficking of the cultural property was recognized as a financial source for terrorist groups (Executive Board, 2015).

The other set of measures taken by UNESCO for protection and preservation of cultural heritage of Iraq includes assistance to reconstruction of the Holy Shrine of the Askariyya (AS) in Samarra, renovation of Erbil Citadel, rebuilding and technical measures for Iraqi museums, reporting satellite imagery on the scale of destruction of cultural heritage in Syria, Iraq, Yemen and Nepal in 2015, and also

assisting the Iraqi Ministry of Culture to ratify the 2003 Convention on Protection and Preservation of Intangible Cultural Heritage.

### **B-3) Procedures for Combating Cultural Crimes**

There are some international legal instruments regarding the US commitments to protect the cultural property of Iraq during its occupation in 2003-2011. The first instrument is the 1907 Hague Convention IV, Article 56 of which obliges the parties to armed conflicts to avoid destruction and seizure of the cultural and historical heritage and also art and scientific works during an armed conflict. We know that the provisions of the 1907 Hague Conventions have customary nature and form international customs. But the problem is that the 1907 Hague Convention does not condemn the pillage of cultural properties and only prohibits the destruction of cultural properties by the parties to armed conflicts or military forces. Destruction was not the case regarding the Iraq's National Museum and this issue is also relevant to the Babylon city. Therefore, we have to deal with the 1954 Hague Convention for Protection of Cultural Properties in the event of armed conflict. Although this Convention, for the most part, addresses the issue of attacking the cultural heritage by parties to armed conflicts, but in Article 4(3), it obliges the parties to an armed conflict to avoid any form of theft, pillage or misappropriation of cultural property by implementing preventive measures. The US has breached this provision. Article 9 of the Second Protocol of 1999 to this Convention stipulates that without prejudice to the provisions of Articles 4 and 5 of the Convention, a party in occupation of the whole or part of the territory of another party shall prohibit and prevent in relation to the occupied territory: any illicit export, other

removal or transfer of ownership of cultural property. However, the important point is that the US had not ratified the 1954 Convention and its protocols at the time when Babylon and Iraq's National Museum incidents happened. The US ratified the Convention in 2009, but has avoided the ratification of its protocols up to now. The 1977 Additional Protocol I to Geneva Conventions has mentioned the necessity of paying attention to the issue of cultural heritage by the parties to hostilities. Also, the Article 53 of this Protocol prohibits direct attacks against or military use of cultural properties. But the US has not ratified neither of the two Protocols.<sup>59</sup>

Regarding the situation in Iraq after 2014, along with Iraq's national courts, the International Criminal Court has also jurisdiction to prosecute the crimes against the cultural heritages in this country through three ways:

1) Referral of the matter by the United Nations Security Council to the Court, 2) a member state refers the case in accordance with Article 14 of the Statute, or, 3) the prosecutor of the Court initiates investigation by his own accord based on Article 15. In case of referral by the United Nations Security Council, other pre-conditions will not be needed, that is, it is not important if the State in which crimes has happened, or the perpetrators being its nationals, has joined the Rome Statute or not. However, these preconditions should be observed in the other two options: according to Article 12(2) of the Rome Statute, the Court may exercise its jurisdiction if the State is a party to the Statute and the person accused of the crime is

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<sup>59</sup> Lesani, *supra* note 49 at 158-159.

a national of that State. Article 12(3) stipulates that: if a State is not a party to the Statute, it may, by declaration lodged with the Registrar of the Court, accept temporarily the exercise of jurisdiction by the Court with respect to the crime in question.<sup>60</sup> The situation is similar to the case of Syria, because Iraq is not a party to this Statute. The UNESCO can request the Security Council to refer the situation of Iraq to the Court by advising the Council and reporting the crimes against cultural heritage as war crimes, but this has not been the case due to political considerations. Considering the fact that the majority of the ISIS fighters are from foreign countries which are party to this Statute, the Court can also initiate investigations and trial against the committed cultural crimes. But the problem here would be that, based on Article 53(1), the Court may investigate the situation and not the case. The investigations in Iraq has not initiated yet due to political reasons and also due to the fact that the type of the armed conflict in Iraq has not been officially determined yet.

In addition, UNESCO has close cooperation with INTERPOL to protect cultural properties of Iraq. This cooperation is in the form of developing a database of stolen cultural objects of Iraq, which helps INTERPOL to detect them easily and take the necessary legal measures.

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60 Sara RASOULI, "Difficulty of determining Jurisdiction of International Criminal Tribunal regarding the foreign fighters of ISIS (Daesh)", (2017) Tahghighat-e Jadid dar Olum-e Ensani, No. 19 at 112.

**B-4) Declarative Procedures**

- 1) The statement of the International Association of Assyriology (in partnership with UNESCO) on cultural heritage of Syria and Iraq, August 2014;
- 2) Saint Petersburg Declaration on the protection of culture in the Areas of Armed Conflict, December 2015;
- 3) Cairo Declaration - May 2015;
- 4) Bonn Declaration of World heritage Committee Session, June 2015;
- 5) Positions taken by Director General of the UNESCO.

**Comparison of UNESCO’s Cultural Diplomacy in Syria and Iraq**

By comparing UNESCO’s approach and performance regarding Syria and Iraq in the framework of UNESCO’s cultural heritage regime with four factors of legal procedures, executive or operational procedures, combating cultural crimes and declarative procedures, now we can analyze the similarities and dissimilarities of UNESCO’s cultural diplomacy regarding both of the countries in the following table.

Similarities and Dissimilarities of UNESCO’s cultural diplomacy in Iraq and Syria:

Cultural Heritage Regime	Similarities	Dissimilarities
Legal Procedure	- Civil war situation and applicability of IHL, 1954 Hague convention and its protocols (customary regulations of protocols)	Military Occupation in Iraq (2003-2011) consequently the legal observance of UNESCO on cultural heritage based on international regulation such as

	<ul style="list-style-type: none"> <li>- Legal gap due to not ratifying the second protocol to 1954 Hague Convention, also the 1970 &amp; 1972 Conventions by Iraq &amp; Syria</li> <li>- Ratification of the 2003 Convention on the Safeguarding the Intangible Cultural Heritage</li> </ul>	<p>1907 Hague Convention IV, 1949 Geneva Convention IV, 1954 Hague Convention and its protocols</p>
<p>Executive/Operational Procedure</p>	<ul style="list-style-type: none"> <li>- World Heritage approach of placing cultural heritage on nominations list and also the list of world heritage in danger</li> <li>- Taking preventive, supportive, educational, investigational measures; conducting direct and satellite monitoring and evaluation</li> <li>- Supporting intangible cultural heritage by encouraging dialogue among communities and therefore consolidating social cohesion and preserving the cultural diversity index</li> </ul>	<p>UNESCO's more organized activities and orderliness in Syria</p>
<p>Combating Cultural Crimes Procedure</p>	<ul style="list-style-type: none"> <li>- Advisory and documenting forum for domestic and international judicial bodies</li> <li>- Developing a database of stolen cultural objects and sharing it with INTERPOL</li> <li>- Cooperation with the International Criminal Court by reporting and advising on war crimes or pillage of cultural heritage</li> </ul>	<p>Existence of a Special criminal tribunal for Syria and UNESCO's advisory reports to it</p>

	<ul style="list-style-type: none"> <li>- Difficulty of determining jurisdiction of International Criminal Court for Syria and Iraq because they are not State parties to Rome Statute</li> </ul>	
<p>Declarative Procedure</p>	<ul style="list-style-type: none"> <li>- Norm building, awareness raising, and alerting the international public opinion to situation in Syria and Iraq</li> <li>- Declaring the Iconoclasm and war crimes</li> <li>- Protecting the cultural heritage under a global strategy and as a security issue for peace-building</li> </ul>	<p>Official declaration of civil war situation in Syria</p>

### **Conclusion**

Analyzing the UNESCO’s cultural diplomacy under the Cultural Heritage Regime towards Syria and Iraq from 2003 to 2016 indicates that in the legal procedure pertinent to these countries, since 2011 in Syria and 2014 in Iraq, the situation has been considered a non-international armed conflict based on the regulations of the 1977 Additional Protocol to the Geneva Convention and International Criminal Tribunal for former Yugoslavia jurisprudence. Therefore, the condition of protection for cultural heritage is mandated by the International humanitarian law. Additionally, the regulations of the 1954 Hague Convention and customary rules of its 1954 Convention and 1999 Protocol and also 2003 Convention apply to the cultural heritage situation in both countries.

However, the 1970 and 1972 Conventions do not apply to their cultural heritage situations since neither State has ratified the conventions.

However, as a result of military occupation of Iraq in the period of 2003-2011, its situation differs from the situation of Syria. Thus, the regulations relevant to the situation of occupation apply to cultural heritage of Iraq in that period. Regarding the extent of UNESCO's success in protection of cultural heritage of Syria and Iraq, it should be mentioned that by considering the norm-building nature of UNESCO, maybe it is a weak point that UNESCO has not been able to convince these States to accept one of its main norms regarding the cultural heritage, that is the 1972 Convention, which determines the tangible and intangible cultural heritage and obliges the States to protect and respect them.

Considering the approach of this organization which is the cooperation of the States to maximize their interests, why Syria and Iraq have refrained from joining this convention which has resulted a legal gap in protection of their cultural heritage? However, from the legal point of view of protection of cultural heritage during armed conflicts, UNESCO has acted successfully because of its adopted regulations which Syria and Iraq are a member to, and as well as the description of cultural heritage situation under IHL, has been able to form an international consensus against breach of these conventions and war crimes committed by terrorist groups. Regarding the operational procedure, the approach of UNESCO's organs and their performances has been similar in both countries.

During these years, either in military occupation of Iraq or the armed conflicts in both countries of Syria and Iraq, cultural heritage has been the subject of recurrent attacks by terrorist groups. UNESCO has ceaselessly sought to prevent and mitigate the destruction and tried to declare them as



war crimes through its declarative procedures. It has also repeatedly condemned such violent acts.

The practical actions taken by UNESCO include educational activities, financial and technical assistance, preventive aids, evaluation of situation of cultural heritage, and documentation. But all these actions did not preclude destruction of cultural heritage and its preventive measures were not quite successful. However, UNESCO has acted successfully by building international consensus and taking supportive measures and conducting reconstruction efforts for the sites.

Regarding, combating the crimes against the cultural heritage, UNESCO has very useful cooperation with INTERPOL for developing a database of stolen cultural objects from these two countries and also with International Criminal Court for recognition of the situation and giving advisory comments. Despite the efforts of UNESCO in order to alert the international public opinion towards the cultural heritage situation and war crimes incurred, the Court has failed to take any action hitherto. In addition to its legal procedure, the most successful part of Cultural Heritage Regime of UNESCO regarding the protection of cultural heritage is its declarative procedure which has been able to alert the international community, raise awareness and launch a global campaign to safeguard the cultural heritage named 'unite4heritage'.

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