

31/2019

12 April 2019

*Pablo Cortés Jiménez\**

The destruction of cultural heritage  
in case of armed conflict:  
consequences, dilemmas, tools to  
fight it, hopes

[Visit Web](#)

[Receive Newsletter](#)

## *The destruction of cultural heritage in case of armed conflict: consequences, dilemmas, tools to fight it, hopes*

### *Abstract:*

*The destruction of cultural heritage assets in case of armed conflict is a terrible fact that has awoken the conscience of the international community, especially within the last centuries. The nefarious consequences that the destruction or plunder of these assets bring in has moved, specially the United Nations, to develop some legal tool that make it possible, through international cooperation, to achieve the preservation or of assets that are, not only key elements of some people's identity, but of Humankind itself. Although it is undeniable that the transition from what is desirable to its practical application has presented (and still does) several problems, there are some cases that manage to bring some hope in looking towards the future. One example can be the Mission of the United Nations in Mali (MINUSMA), in which it has been possible to conduct a joint action between the UNESCO, the military forced on the ground and the International Criminal Court, which has allowed to carry out the restoration of cultural heritage assets that had been damaged or destroyed by jihadi groups, or establishing protection tasks to avoid attacks against these assets or plundering raids.*

### *Keywords:*

*Cultural heritage, protection, destruction, armed conflict, Mali, MINUSMA, UN, UNESCO.*

**\*NOTE:** The ideas contained in the Opinion Papers shall be responsibility of their authors, without necessarily reflecting the thinking of the IEEE or the Ministry of Defense

## Introduction

The following essay is aimed to tackle the issue on the destruction of people's (and humankind's) cultural heritage in cases of contemporary armed conflicts. For this, we will try to present, in the first instance, some definitions that determine what is cultural heritage. Then we will reflex, although not too widely, on the destruction of such heritage and the effects and consequences it implies. After this, we will present several legal tools and existing conventions in the International Law in order to protect heritage from different risks to which it is exposed, focusing on the means and dispositions that help to safeguard it in cases of armed conflicts. Finally, we will take into account the case of Mali about the destruction of cultural heritage in an armed conflict, analysing the ways of international cooperation for the protection of heritage that where achieved in the MINUSMA mission in such country, and the hopes that it has awaken for the future.

## Definition of Cultural Heritage, its importance, and the negative consequences of its destruction

According to Article 1 of the *General Conference of the United Nations Educational, Scientific and Cultural Organisation* (UNESCO) in its 17 meeting celebrated in Paris from October 17th to November 21th of 1972, they are known as cultural heritage: "monuments: architectural works, works of monumental sculpture and painting, 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; 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; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view."

Such definition results of great interest according to this issue, not only because of its breadth and clarity, but also because it makes visible (and, in fact, it is something that has been highlighted repeatedly) the universal value of this heritage, which not only is vital for many peoples to which some assets heritage assets belong to, but also for Humanity as a whole. As professor Rafaela Urueña Álvarez points out, “cultural heritage is a legacy that we have received from the past and that we have to transmit to future generations, because it is part and parcel of every people’s identity. All countries, big or small, own it whether it is in form of *material heritage* (monuments or sites) or as *immaterial heritage* or *intangible*, found in culture, language, traditions... etc.”<sup>1</sup> Inherited heritage is the very soil on which we lean on and from which we look to the future, since the human being does not dwell in void, but he exists in the world (*he is in the world*, in heideggerian terms), understanding the word ‘world’ as a plexus of cultural references in which we operate and that, in some way, conform us. This wealth that this world of inherited cultural references in constant renovation and creation involves, is vital for every people. Because of this, is it not strange that, especially due to decolonisation processes, some new rights appeared within the pale of the United Nations by the action of Third World countries. This new right are known as “Third Generation Rights” or “Solidarity Human Rights”, between which we can find the right to the protection of the environment, the right to peace, to development, to self-determination of peoples and, the one that is more interesting for us here, the right of peoples to their wealth and natural resources<sup>2</sup>. This one would settle the base for what was expressed in Articles 13 to 15 of the Universal Declaration of People’s Rights of 1976, referring to the right to the own heritage, that is, the right to its conservation and to that it is not subtracted by other States or by individuals. Likewise, the diversity of worlds results of an incalculable value for Humanity as a whole, that is why the UNESCO in the Declaration on the Guiding Principles of the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange of November 15 of 1972, recognizes in its Article VII “the right of all countries and peoples to preserve their cultures as part of the common heritage of mankind.”

---

<sup>1</sup> URUEÑA ÁLVAREZ, R., (2004). La protección del patrimonio cultural en tiempo de guerra y paz. Cuadernos de Estudios Empresariales. No. 14. 245-260. p. 245

<sup>2</sup> Vid. URUEÑA ÁLVAREZ, R., (2004). Op cit. p. 248.

In this way, taking all this into account, it is manifest that cultural heritage results of great importance, since the loss of such heritage can involve consequences of a really negative order, if not catastrophic. The disappearance of heritage assets implies the violation of a fundamental right of the peoples and, moreover, a severe blow to their identity. Thereby, the intentional destruction of cultural heritage has been used as a weapon of war within History, due to that it undermines the enemy's identity and erases its past, making him disappear in it most essential way. Not counting with assets that help them to connect with their past to, in this way, face their present and their future a people or culture runs the risk of diluting with the course of History or losing its identity under another one imposed or assimilated. As Rubén Miranda Gonçalves says:

“The destruction of cultural heritage is not a new phenomenon for humanity. Since very ancient times, we can see examples of how during wars one party was responsible for destroying and razing everything that could remind to the enemy in the future. [...] The annihilating desire of every vestige of another race, ethnicity, religion or culture has always been a very real motivator. The destruction of the culture of a part of the population is another part of the destruction of that population and the destroyed assets directly attack all of humanity.”<sup>3</sup>

However, the destruction of cultural heritage is not a matter of the past that has been overcome with the appearance of the International Humanitarian Law and the Human Rights International Law, but it is a challenge that both have to face up. This is due to the fact that a big number of cultural assets are nowadays at risk, either for abandonment (like in the case of many dictatorial or developing countries, which either don't value their own heritage for political reasons or reasons of other order, or that see themselves in a situation that forces them to prioritize between development or conservation of their heritage<sup>4</sup>) or its intended or collateral destruction in armed conflicts, that are progressively resulting more complex and harmful both for civilians and for the people's heritage.

---

<sup>3</sup> MIRANDA GONÇALVES, R. : (2017) Protección del patrimonio cultural material en caso de conflicto armado, *Revista de Presidencia* , vol. 19, no. 118. p. 9. Link: <https://revistajuridica.presidencia.gov.br/index.php/saj/article/view/1622/1210> Consulted on 19/02/2019

<sup>4</sup> Vid. KILA, J. D.: (2014) Protección de bienes culturales en conflictos armados. Falta de financiación, planteamientos burocráticos y politización del patrimonio a causa de la relación con la identidad, factores que impiden una protección básica. p. 69. Link: [http://www.iemed.org/observatori/arees-danalisi/arxiu-adjunts/afkar/afkar-ideas-43/afkar43\\_Joris\\_Kila\\_cultura\\_conflictos\\_en.pdf](http://www.iemed.org/observatori/arees-danalisi/arxiu-adjunts/afkar/afkar-ideas-43/afkar43_Joris_Kila_cultura_conflictos_en.pdf) Consulted on 19/02/2019

On the other hand, it is really relevant to underline that the loss of heritage can lead a people to suffer an identity crisis. This can generate a high rate of instability, conflict and tension in the struggle for a new identity and, moreover, it can imply a severe risk for international security. In this way, the protection of the people's and Humanity's cultural heritage not only will it help to maintain assets of an incalculable value that allow us to keep on advancing in History without forgetting who we are and where we come from but, besides, it is a matter of security. The destruction of heritage is one of the main causes of instability either for the emergence of resentments between several human groups, or the intrinsic tensions of a society that lacks of identity that shakes violently in the pursuit of a new way.

### Legal Tools

Now that we have spoken about a few reasons for which the protection of cultural heritage in cases of armed conflict is vital for everyone, it may be quite convenient to present the different established legal tools to try to tackle, not without difficulties, such a grave problem as the destruction of cultural heritage. Between these ones, one of the most important is the Hague Convention for the Protection of cultural property in the Event of Armed Conflicts of 1954, with its two Protocols (1954 and 1999, respectively). Likewise, it is also going to be of interest the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), plus the Convention on world's heritage we have already referred to before (1972). Finally, although not less important, the Statute of Rome of the International Criminal Court is going to be a really relevant tool in view of chasing and judging the guiltiness of having destroyed cultural properties.

The Convention of The Hague of May 14th of 1954 was convened by the UNESCO due to the concern of nation on the destruction of cultural heritage that had taken place during both world wars, but especially in the last one. This was done fulfilling the specific mandate that already appeared in the Agreement of London of November 16 of 1945 too. In this Convention, the High Contracting Parties compromised themselves, just like Fernando Pignatelli y Meca says, "to safeguard and respect cultural properties in the

event of armed conflict with the aim of providing protection to them from the increasing danger of the destruction of them, which is a consequence of the developments of warfare under the idea, expressed in the Preamble, ‘that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.’<sup>5</sup> At the same time, the Preamble to the Convention also pointed out that a great part of the means for the protection of heritage, which emanate from the presented obligations of safeguard (Art. 3) and respect (Art. 4), would have to be conducted in peace time (thus both in national and international spectrum) in order to achieve its objectives, although they would be enforced in events of conflict to ensure the protection to these heritage properties. On the other hand, the Convention was also of special relevance due to the definition of *cultural property* established in its Article 1, which allowed to agglutinate inside of it (thus protecting) a greater number of cultural properties, either pieces of art or properties that are a cultural manifestation of a certain people. Likewise, the two types of protection for cultural properties established by the Convention cannot be forgotten. These two are: a type of general protection, destined to properties defined by Article 1, and that provides “by a governmental internal action, that surely forces to take certain means of safeguard and that allows the government to signal the property or properties affected with the protection device that eases its identification (Article 6)”<sup>6</sup>; and another one for “cultural properties that possess special protection” that, as Article 8 says, “may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance”. This protection is restricted to assets that fulfil a series of requirements such as being of a great importance, to be at a

---

<sup>5</sup> The translation is mine: “a salvaguardar y respetar los bienes culturales en caso de conflicto armado con el fin de otorgarles protección frente a la creciente amenaza de destrucción de los mismos que es consecuencia del desarrollo de la técnica bélica, bajo la idea, también expresada en el Preámbulo, de que ‘los daños ocasionados a los bienes culturales pertenecientes a cualquier pueblo constituyen un menoscabo al patrimonio cultural de toda la humanidad, puesto que cada pueblo aporta su contribución a la cultura mundial’”. PIGNATELLI Y MECA, F. : (2008). “La protección de los bienes culturales en los conflictos armados”, en Actas del curso de La Lucha contra el tráfico ilícito de Bienes Culturales. Ministerio de Cultura. p. 131. Link: [http://www.mecd.gob.es/cultura-mecd/dms/mecd/culturamecd/areascultura/patrimonio/mc/lcti/capitulos/LCTI\\_13\\_Proteccion\\_Bienes.pdf](http://www.mecd.gob.es/cultura-mecd/dms/mecd/culturamecd/areascultura/patrimonio/mc/lcti/capitulos/LCTI_13_Proteccion_Bienes.pdf) Consulted on 19/02/2019.

<sup>6</sup> *Ibidem*. p. 135.

certain distance of military objectives, the non-use in military purposes and the inscription in the International Register of Cultural Property under Special Protection.

Nevertheless, the Convention of The Hague of 1954 presents a few lacks, reason for which, in first instance, the First Protocol (1954) was made. This Protocol prohibits the exportation of cultural properties from an occupied territory and demands its return to the State it was taken from. Moreover, in 1999 the Second Protocol was elaborated in order to establish a reinforced protection system for cultural properties designated in a special way. This was necessary due to that, however the special protection provided to certain properties, there were a few legal voids like the well-known “military need principle” that turned ambiguous the limit of until which point could that protection be truly effective. Despite the fact that the special protection provided immunity to the properties registered in the Register, a series of circumstances and conditions were determined according to which this immunity could be suspended<sup>7</sup>. Thereby, the new reinforced protection system aims to achieve a more effective protection on cultural properties considered “*of the highest importance for Humankind*”, always that those properties fulfil a series of requirements such as the one that has just been announced, being protected and recognized by the relevant State<sup>8</sup> and that it has not been used for military purposes. On the other hand, a new procedure for States Part of the Convention was signed with the aim that they could participate in a more active way in the protection of those properties in case of armed conflict. Moreover, this Protocol is interesting for “reflecting in the rules of such protection ‘the evolution of the International Law.’”<sup>9</sup> Nevertheless, it is necessary to point out that there is still a lot to do since some of the requirements still suffer from those lacks already current in the Convention of 1954.

The implementation conditions of this Convention in the event of an armed conflict, with which the dispositions intended for peace time are complementary, are regulated by articles 18 (“the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting

---

<sup>7</sup> Ibidem. p. 137.

<sup>8</sup> Since only the authorities of that State can ask for the inscription of that property in the International Register of Cultural Property under Special Protection, although the Committee can, in the face of the inaction of the State, invite it to consider its registration.

<sup>9</sup> “Reflejar en las reglas de dicha protección ‘la evolución del derecho internacional’”. PIGNATELLI y MECA, F.: Op. cit. p. 133.

Parties, even if the state of war is not recognized by, one or more of them”, besides “ to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”), 19 (“each party to the conflict shall be bound to apply, as, a minimum, the provisions of the present Convention which relate to respect for cultural property”) and 21 (“The present Convention and the Regulations for its execution shall be applied with the co-operation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict”). All this results of great interest since it allows us to see that, in order to achieve the implementation of the legal tools for the protection of heritage is as effective as possible, there are a few things that are necessary. On the one hand, it will be necessary that the dispositions aimed to cases of armed conflict have had preceded by some means in peace time that allow their implementation. On the other hand, a certain level of cooperation between Part States is needed. In this way, as Joris D. Kila expresses, “the union of forces yields as a result an efficient preparations in terms of costs, synergy of between institutions, a combined investigation and education, on-the-ground evaluations and punctual fulfilments”<sup>10</sup> This is also one of the main difficulties that we find in our way to achieve the objectives that motivate all these dispositions. If a State that possesses a series of cultural properties of great value shows itself inactive or reticent to implement the pertinent means, all the legal apparatus find itself with a series of obstacles that are hardly to avoid. An example of these dispositions is the way in which the implementation conditions of the Second Protocol of 1999 had to be proposed. This Protocol, due to the opposition of some States to an amendment that could redeem the lacks of the Convention of 1954, had to be presented as a protocol aimed to complement that Convention’s disposition. This limited their range in terms of establishing the new protection level we presented before. Nevertheless, the pursuit of cooperation between States for the protection of cultural heritage in the events of armed conflict results to be the best imaginable way. However the legal voids and the obstacles that the States that refuse to cooperate with this system of legal protection are, the international cooperation is the best way to guarantee an enduring and effective protection and care of people’s and Humanity’s heritage.

---

<sup>10</sup> KILA, J. D.: Op. cit. p. 71.



## The Mali case: a leading example

As we have already pointed out, international cooperation seems to be the best way in order to guarantee the protection of the cultural heritage of the peoples and of Humanity. There are many difficulties that are presented by the undertaking of elaborating an effective system of protection at the time of preventing the destruction of cultural heritage in the event of armed conflict. These obstacles seem to be major reasons to think that this idea is just such, an idea, but there are some recent cases that appear to bring hope of a better future in these terms.

The Mission of the United Nations in Mali (MINUSMA) seems to have settled the manners of a new paradigm at the time of leading with armed conflict situations in which the cultural heritage on the ground has been gravely damaged. This is due to the close collaboration that has taken place (and still does) during this mission between the UNESCO, the coalition armed forces and the actuation of the International Criminal Court. It is convenient to point out that, with all, the MINUSMA pursues a wide spectrum of objectives, which are, on the one hand, achieving the State's stabilisation and, on the other hand, conducting a mediation task between the different factions. Some of these established objectives by the MINUSMA mandate have been harshly criticized in terms of their effectivity.<sup>11</sup> Nevertheless, this essay is going to focus especially on the joint action between the UNESCO, the coalition troops and the ICC, which can be considered, with its ups and downs, as a triumph. In this way, in order to tackle this issue, we shall wonder: How did all happen?

---

<sup>11</sup> In order to consult this issue, I recommend: Vid. PRATS I AMORÓS, J.: (2018). La ONU debe estabilizar Estados débiles, pero no puede hacerlo sola: el caso de la MINUSMA en Mali. Documento de Opinión. IEEE. 12 de julio de 2018. 82/2018. Found in: [http://www.ieeee.es/Galerias/fichero/docs\\_opinion/2018/DIEEE082-2018\\_MINUSMAenMali\\_JoanPrats.pdf](http://www.ieeee.es/Galerias/fichero/docs_opinion/2018/DIEEE082-2018_MINUSMAenMali_JoanPrats.pdf) Consulted on 29/03/2019; GHÉHENNO, J. M. Open letter to the UN Security Council on Peacekeeping in Mali. International Crisis Group. 24 de abril de 2017. Link: <https://www.crisisgroup.org/africa/west-africa/mali/open-letter-un-security-council-peacekeeping-mali> Consulted on 29/03/2019.

### **Context**

The situation in Mali when the conflict broke down was, the least, precarious. A State undermined in its capacities like the Malian was, and that had historically experienced many tensions and internal rebellions by Tuareg groups that claimed a wider autonomy from Bamako or even independence, saw itself in the difficult situation of having to deal with many armed groups. Firstly, the Malian state had to face the NLMA (National Liberation Movement of Azawad), a Tuareg laic nationalist movement formed by experienced fighters, some of them tanned during the Libyan Revolution of 2011, in which Gaddafi had fallen, and that came back to their motherland. Other Tuareg groups that were against the Malian government joined these combatants, emerging the armed group. Right after the beginning of the Tuareg rebellion on January 17 of 2012 with an attack to a military headquarters in Gao, this armed group advanced through all the north of Mali until it unilaterally declared on April 2012 the independence of the territory of Azawad, which included Timbuktu, Kidal, a part of the region of Mopti, and Gao (Annex I<sup>12</sup>), which is also the name of its capital city. Besides of this, a few armed groups joined the rebellion during its course. One of these was the jihadi Tuareg armed group Ansar Dine, and its allies Al Qaeda Islamic Maghreb and the Movement for the Oneness and Jihad in West Africa. In this way, all this groups made it to rapidly occupy the regions of the North and Centre of Mali together. Nevertheless, after these conquests, some differences between the NLMA and the jihadi groups appeared, broke out and armed clash between them on June 2012, in which NLMA was expelled from the cities by the jihadi coalition<sup>13</sup>.

Within the presence of Ansar Dine, AQIM and MOJWA in the territories of Kidal, Timbuktu and Gao, not only a violent imposition of Sharia took place, but also an intended and programmed the destruction of the cultural heritage of these cities by these groups. The

---

<sup>12</sup> Annex I shows a political map of Mali obtained from the Area Manual that is given to the Spanish military personnel deployed in the European Union's Training Mission in Mali. (EUTM Mali). Manual de área. Mali. Estado Mayor de la Defensa. CIFAS. 2ª edición, enero 2012. p. 36. Obtained from: <http://www.emad.mde.es/MOPS/090-Mali-EUTMMALI/> on 22/03/2019.

<sup>13</sup> The Office of the Prosecutor (ICC), Situation in Mali. Article 53(1) Report, January 16th of 2013, pp. 9-11. Link: [https://www.icc-cpi.int/itemsDocuments/SASMaliArticle53\\_1PublicReportENG16Jan2013.pdf](https://www.icc-cpi.int/itemsDocuments/SASMaliArticle53_1PublicReportENG16Jan2013.pdf) Consulted on 28/03/2019.

UNESCO had declared the majority of this cultural Heritage of Mankind. Two examples of this are Timbuktu in 1988 and the Tomb of Askia in Gao in 2004. Moreover, the presence of these armed groups in the zone also affected in a really negative way to the immaterial heritage of the peoples of the zone, which ran the risk of disappearing. The situations seemed to be critical, not only in humanitarian terms, but also in heritage terms.<sup>14</sup>

In order to face this crisis situation, and before the express request of assistance from Mali president, Dioncounda Traore, to the French government on January 9th, this last one launches, with the approval of the UN, the Operation Serval on January 11th of 2013, which consisted in an armed intervention of the French Armed Forces together with other African countries. The main objective of this intervention was to stop the advance of the hostile armed groups and attack the jihadi sanctuary-territories in the north. Thereby, in a matter of months (from January to March), the French, Malian and other African countries' troops managed to push the extremist groups back. This intervention received a huge international backing, moving the European Union to set a "day" to the implementation of its solution to the crisis, which resulted in the beginning of the European Union training mission in Mali (EUTM-Mali) through which the approval of the Decision 2013/34/PESC of the Council on January 13th of 2013. The first European troops deployed within this mission arrived in Bamako on February 8th of 2013, and are still

---

<sup>14</sup> In order to be more aware of the vital importance of these settlements, we will appeal to the notes of UNESCO about the historical and cultural value of Timbuktu: "“Located at the gateway to the Sahara desert, within the confines of the fertile zone of the Sudan and in an exceptionally propitious site near to the river, Timbuktu is one of the cities of Africa whose name is the most heavily charged with history. Founded in the 5th century, the economic and cultural apogee of Timbuktu came about during the 15th and 16th centuries. It was an important centre for the diffusion of Islamic culture with the University of Sankore, with 180 Koranic schools and 25,000 students. It was also a crossroads and an important market place where the trading of manuscripts was negotiated, and salt from Toghaz in the north, gold was sold, and cattle and grain from the south. (...) The three big Mosques of Djingareyber, Sankore and Sidi Yahia, sixteen mausoleums and holy public places, still bear witness to this prestigious past. The mosques are exceptional examples of earthen architecture and of traditional maintenance techniques, which continue to the present time. Criterion (ii): The mosques and holy places of Timbuktu have played an essential role in the spread of Islam in Africa at an early period. Criterion (IV): The three great mosques of Timbuktu, restored by the Qadi Al Aqib in the 16th century, bear witness to the golden age of the intellectual and spiritual capital at the end of the Askia dynasty. Criterion (v): The three mosques and mausoleums are outstanding witnesses to the urban establishment of Timbuktu, its important role of commercial, spiritual and cultural centre on the southern trans-Saharan trading route, and its traditional characteristic construction techniques. Their environment has now become very vulnerable under the impact of irreversible change". Timbuktu. Outstanding Universal value. Consulted on <https://whc.unesco.org/en/list/119> on 27/03/2019.

accomplishing their objective of training the Malian armed forces and police for the fight against jihadi groups. As of today, Spain is the country that has deployed more personnel to this mission<sup>15</sup>, which sometimes assist MINUSMA forces in some of its mandate tasks like, for instance, disarming tasks.

### ***The launch of MINUSMA***

For its part, the Economic Community of West African States had begun its deployment of troops the previous year on its support to the government through the Resolution 2085 of the Security Council of December 20th of 2012, creating AFISMA. Nonetheless, on March 26th of 2013, by express petition of the President of the Commission of the ECOWAS to the General Secretary of the United Nations of transforming the AFISMA into a United Nations stabilisation mission<sup>16</sup>, on April 25th of the same year the Security Council established MINUSMA by Resolution 2100 (2013). This mission, in words of Félix Vacas Fernández, “has marked a beginning in the action of the International Community on the protection of cultural heritage at the time of including inside of its mandate the task of ‘Support to the preservation of cultural heritage’, together with, also by first time, the ‘Support to National and International Justice’; for which, moreover, the Security Council authorises the coercive use of force.”<sup>17</sup>

<sup>15</sup>“Particularly in Mali, Spain received the Command of the training mission EUTM Mali on 2018, and it is the main contributor in terms of personnel in the mission of advice and train the Malian forces. Mali y Sahel. Política exterior y cooperación. Ministerio de Asuntos Exteriores, Unión Europea y Cooperación. Link: <http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/Africa/Paginas/Sahel.aspx>

Consulted on 28/03/2019. On the other hand, Spain also collaborates with MINUSMA providing support with personnel and aircrafts of “Marfil” Detachment of the Spain Air Force, settled in Dakar, Senegal. “España asume por segunda vez el mando de la misión de la Unión Europea en Mali”. Sala de Prensa. Departamento de Seguridad Nacional. Gabinete de Presidencia del Gobierno.

<https://www.dsn.gob.es/es/actualidad/sala-prensa/espaa%C3%B1a-asume-por-segunda-vez-mando-misi%C3%B3n-uni%C3%B3n-europea-mali> Consulted on 28/03/2019.

<sup>16</sup> “Taking note of the letter, dated 26 March 2013, addressed to the Secretary General by the President of the ECOWAS Commission requesting the transformation of AFISMA into a United Nations stabilization mission and taking note of the communiqué, dated 7 March 2013, of the AU Peace and Security Council, as well as the attached letter dated 7 March 2013 and addressed to the Secretary-General by the AU Commissioner for Peace and Security, expressing AU support for the transformation of AFISMA into a United Nations stabilization operation in Mali. ” Resolution 2100 (2013) of April. 25th S/RES/2100 (2013). p. 4. Link: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=519dfff14>

<sup>17</sup> The translation is mine: “ha marcado una primicia en la acción de la Comunidad Internacional en la protección del patrimonio cultural en conflictos armados, al incluir en su mandato la función de ‘Apoyo a

This issue results of great interest because this mandate of the Security Council combines in an way that has never been seen before the action of heritage professionals at the time of conducting reconstruction projects for destroyed heritage, plus awareness tasks for military personnel on the importance of protecting cultural heritage. In this regard, we shall introduce a nuance. Although it is true that some United Nation interventions had conducted protection missions for cultural heritage, like in the case of Bosnia and Herzegovina (even with the cooperation between civilians and military personnel), MINUSMA is the first mission that includes inside of its first mandate these objectives. This shows a great concern on the restoration and protection of cultural heritage from the very beginning since these tasks keep a strong incidence over the stabilisation of the zone.

Likewise, as we have pointed out, by paragraph 17 of the Resolution 2100 (2013), it is “authorized MINUSMA to use all necessary means, within the limits of its capacities and areas of deployment, to carry out its mandate as set out in paragraphs 16 (a) (i) and (ii), 16 (c) (i) and (iii), 16 (e), 16 (f) and 16 (g) and requests MINUSMA’s civilian and military components to coordinate their work with the aim of supporting the tasks outlined in paragraph 16 above”. Inside of this, it is point 16 f) that stipulates the mission, within MINUSMA’s mandate, of supporting the preservation of cultural heritage. This mission authorises, in cases of need, the use of force in order to prevent attack against heritage properties. We thus see that, with this mean, a bigger room for military protection activities is being given at the time of conducting peacekeeping activities.

This resolution may seem surprising, but it is not but the natural course of International Law. This can be affirmed because the protection of cultural heritage and security and peace are closely related as we said at the beginning of this essay. The authorisation to the use of force “does not do but underline, on the one hand, the importance that the very Security Council gives to these tasks and, above all, the intimate connexion between them and the maintaining of international peace and security or, in other words -more attached to the writing and spirit of collective security designed in Chapter VII of the

---

la preservación del patrimonio cultural’, junto a la, también por primera vez, de ‘Apoyo a la justicia nacional e internacional’; para lo cual, además, el Consejo de Seguridad le autoriza el uso coercitivo de la fuerza”. VACAS FERNÁNDEZ, F. : (2016). La acción concertada de la Comunidad Internacional para la protección del patrimonio cultural en conflictos armados: Mali como paradigma. Anuario Español de Derecho Internacional. Vol. 32. 189-223. p. 200.

Charter of the United Nations-, *the threat to international peace and security that the destruction of the cultural heritage of the peoples involves*<sup>18</sup>, as Vacas Fernández indicates.

### ***The deploy of the UNESCO***

Now, what sort of tasks for the reconstruction of heritage took place? Inside of the *Action Plan for Mali's Cultural Heritage*, the deployment of UNESCO conducted heritage inspection, awareness and restoration tasks both in Timbuktu and Gao. As we can see in point 51 of the report to the General Secretary on October 1st of 2013: "The United Nations has continued its assessment of historical and cultural heritage sites in Timbuktu and Gao with a view to their rehabilitation. Priority actions have been identified to safeguard the ancient manuscripts of Timbuktu. Work currently under way includes the annual replastering of the Djingareyber mosque in Timbuktu and an architectural survey of all the destroyed mausoleum sites. Through the efforts of the United Nations Educational Scientific and Cultural Organization, the United Nations has developed training modules for military, police and civilian personnel on their responsibilities and duties with regard to the protection of the cultural heritage of Mali. The mine action service has also cooperated with United Nations partners in securing World Heritage Sites in Mali."<sup>19</sup>

Thereby, bringing another example in order to follow more or less closely the revision, evaluation and rehabilitation process, the Report of March 28th of 2014 points out that:

"On 11 February, the Ministry of Culture and the United Nations Educational, Scientific and Cultural Organization conducted a joint assessment mission to Gao. The experts found that the Tomb of Askia, a World Heritage site, would require major conservation work before the coming rainy season to prevent further deterioration. The work is to be conducted by the local community and earthen architecture conservation specialists as from May. On 14 March, during a ceremony in Timbuktu to mark the official launch of reconstruction work on the heritage of Mali, UNESCO presented its strategy for the

---

<sup>18</sup> *Ibidem*. p. 201.

<sup>19</sup> Report of the SG on the situation in Mali, S/2013/582, of October 1st of 2013, point 51. Link: [https://minusma.unmissions.org/sites/default/files/n1348635\\_eng.pdf](https://minusma.unmissions.org/sites/default/files/n1348635_eng.pdf) Consulted on 29/03/2019.

reconstruction of the mausoleums, setting out the activities to be undertaken over the coming four years to ensure the complete rehabilitation of the damaged sites. In January, MINUSMA provided logistical support for the return to Timbuktu of personnel from the Ahmed Baba Centre for Documentation and Research in charge of researching and preserving the country's ancient manuscripts."<sup>20</sup> The reconstruction of the three mosques of Timbuktu declared as Heritage of Mankind finished on April 30th of 2017, and the rehabilitation of the libraries of ancient manuscripts finished on May 17th of the same year<sup>21</sup>.

Also, inside of this UNESCO deployment, the joint tasks between that organisation and MINUSMA on awareness on protection of heritage and prevention of illegal trade are noteworthy. These are pointed out in paragraph 63 of the Report of December 26th of 2017.<sup>22</sup>

All these examples are just a few selected for this brief investigation, but more tasks on the ground have been conducted both by UNESCO itself and cooperating with MINUSMA in order to establish a perimeter to prevent pillage and illegal trade activities, between other.

### ***Action of the ICC***

On the other hand, besides tasks of reconstruction, maintenance and awareness carried out by UNESCO, the International Criminal Court could accomplish its functions, even being able to judge international crimes, by Article 8(2)(e)(iv) of the Rome Statute. This article stipulates that shall be declared as war crime "intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided

---

<sup>20</sup> Report of the SG on the situation in Mali, S/2014/229, of MARCH 28th of 2014, point 47. Link: [https://minusma.unmissions.org/sites/default/files/n1427549\\_eng.pdf](https://minusma.unmissions.org/sites/default/files/n1427549_eng.pdf) Consulted on 29/03/2019.

<sup>21</sup> Report of the SG on the situation in Mali, S/2017/478, of June 6th, point 40. Link: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1715625.pdf> Consulted on 04/10/2019.

<sup>22</sup> "With regard to cultural preservation, the United Nations Educational, Scientific and Cultural Organization and MINUSMA continued to raise awareness of the protection of cultural heritage and efforts to combat illicit trafficking in cultural goods through advocacy and capacity-building activities for civilian and military personnel." Report of the SG on the situation in Mali, S/2017/1105, of December 26th, point 63. Link: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1744691.pdf> Consulted on 10/04/2019.

they are not military objectives.” The paradigmatic case according to this is the case *Prosecutor v. Ahmad Al Faqi Al Mahdi*<sup>23</sup> who was detained in Niger after the arrest warrant communicated on September 18th of 2015. He was taken to the Court, where he was judged for war crimes for having participated, in an individual or collective way, in the totally intended destruction of cultural heritage.

Al Mahdi was a very important person of the zone, an expert on religious issues who, with the arrival of AQIM and Ansar Dine to Timbuktu, passed to be a part of the new administrative apparatus created by those groups, becoming the leader of the “Moral Brigade”, the police that was in charge of implementing the Sharia and making “heretic” costumes and monuments disappear. In this way, he became a member of the jihadi group Ansar Dine. The Prosecutor declared him, before the presented proofs, guilty of having directly carried out attacks, either individually or with others, against historical monuments and/or buildings dedicated to religion, including mausoleums and a mosque in Timbuktu, Mali, between June 30th to July 10th of 2012. As paragraph 53 says on the case *Prosecutor v. Ahmad Al Faqi Al Mahdi*, his role as an expert on religious issues was crucial in the planning and preparation of the attacks.<sup>24</sup> Later, he declared himself guilty of all charges by advice from his attorneys, thus being convicted to 9 years of prison on September 27th of 2016 and, after a warrant from the Court on August 17th of 2017, he was also convicted to pay 2.7 millions of euros in individual reparations and collective reparations to the community of Timbuktu. The entire trial was revolutionary: not only has it been the only one in which the guilty had accepted all the charges, but also because

---

<sup>23</sup> Vid. VACAS FERNÁNDEZ, F. (2016). Op. cit. p. 217.

<sup>24</sup> “The Chamber notes its findings on Mr Al Mahdi’s contributions to the crimes, including his involvement in planning and preparing the attack. Mr Al Mahdi was the head of the Hesbah, one of four primary institutions established by Ansar Dine and AQIM upon occupying Timbuktu.103 He had overall responsibility for the execution phase of the attack, determining the sequence in which the buildings would be destroyed, making the necessary logistical arrangements and justifying the attack to the broader world through media interviews. Mr Al Mahdi personally oversaw the attack itself – he was present at all of the attack sites and directly participated in the destruction of five of the protected buildings. The Chamber considers that Mr Al Mahdi’s contributions collectively qualify as an essential contribution with the resulting power to frustrate the commission of the crime.” Pre-Trial Chamber I, Situation in the Republic of Mali in the Case of the Prosecutor V. Ahmad Al Faqi Al Mahdi, Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi, doc. ICC-01/12-01/15, March 24th of 2016, par. 53. Link: [https://www.icc-cpi.int/courtrecords/cr2016\\_07244.pdf](https://www.icc-cpi.int/courtrecords/cr2016_07244.pdf) Consulted on 29/03/2019.



the very trial lasted only one year, creating a benchmark of effectiveness for the International Criminal Court.

Another example that shows the fight of the ICC against impunity and that also shows the international cooperation in Mali is the arrest of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, who was taken to the Court by the Malian authorities. This individual, who was himself a member of Ansar Dine, was accused of having participated together with the Islamic police in the destruction of saint mausoleums in Timbuktu, besides of having participated in a forced marriage policy that caused repeated cases of rape and sexual slavery of women and children. So, according to what the Criminal Chamber expresses, Al Hassan “is criminally responsible under article 25(3)(a) or 25(3)(b) of the Rome Statute for crimes against humanity (torture, rape and sexual slavery; persecution of the inhabitants of Timbuktu on religious and gender grounds; and other inhumane acts) and for war crimes (rape and sexual slavery; violence to person and outrages upon personal dignity; attacks intentionally directed against buildings dedicated to religion and historic monuments; and the passing of sentences without previous judgement pronounced by a regularly constituted court affording all judicial guarantees which are generally recognized as indispensable) committed in Timbuktu, Mali, between April 2012 and January 2013.”<sup>25</sup>

### ***A really brief conclusion***

As we have seen in this investigation on the protection of cultural heritage, the existing legal tools for such task and their possible implementation on the terrain, we have found several difficulties in that implementation of the legal tools designed to protect cultural heritage. However, it is still possible to carry out international justice joint tasks in order to guarantee the obligations of safeguard and respect of cultural heritage established in The Hague in 1954, being able to bring some hope of a future in which the heritage belonging to the peoples and Mankind will be safe in order to guarantee everyone's

---

<sup>25</sup> KOITE DOUMBIA, M. (2018). The Malian Coalition for the International Criminal Court (M-CICC), in accordance with its mandate to fight against impunity, welcomes the bold action of the Malian authorities, and congratulates them for having surrendered Mr. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud to the ICC for alleged crimes against humanity and war crimes committed in 2012 and 2013 in Timbuktu, Mali. Malian Coalition for the ICC. April 4th of 2018. Link: <http://www.coalitionfortheicc.org/es/news/20180412/mali-la-sociedad-civil-celebra-la-transferencia-del-presunto-criminal-de-tombuctu-al> Consulted on 30/03/2019.

enrichment. The case of Mali might be imperfect due to some lacks and challenges that MINUSMA has got to tackle. This is a mission that suffers a high rate of casualties and that has been displaced by Algeria in its mediating for peace role in the conflict, but it seems that this mission has been relatively successful in terms of heritage protection. The UNESCO deployments, together with MINUSMA troops, have settled perimeters or/and areas that comprise heritage properties so as to protect them from possible attacks, plunders, or just to start restoration tasks of those properties. Likewise, a certain level of international cooperation seems to have taken place in terms of fight against impunity at an international level between the authorities of several countries and the International Criminal Court. The Al Mahdi case has become a benchmark on issues relating effectiveness due to its short length (although the true thing is that not in all the cases the charged person declares himself guilty of all charges, allowing to finish the trial quickly), while the Al Hassan case is nothing but another indication of the fight against impunity of crimes against Humanity and war crimes.

Before this difficult landscape, although with some light depending of the tackled issue, we can only wait and, of course, fight for a better future.

*Pablo Cortés Jiménez\**  
Philosopher

Pablo Cortés Jiménez

