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The Protection of Cultural Property during Peacetime and in the Event of Armed Conflict: A Historical Overview and a Case Study, The Plundering of Lebanon's Cultural Heritage

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Wars, confrontations and conflicts in general, between two or more opposing factions, have always represented a serious threat to the integrity of the cultural heritage located in their territories. Unfortunately, this threat most often materializes in the form of the destruction of significant amounts of cultural property (movable and immovable): monuments, religious sites, museums, libraries, archives, etc. Humanity is thus deprived of a shared and irreplaceable cultural heritage.

Although the practice has existed since ancient times, the destruction of cultural property has proved even more devastating since the introduction of aerial bombing and long-distance weapons [1].

Traditionally, the pillaging of cultural property proclaimed as "spoils of war" has been deliberately carried out by the victor. Separate from this practice of interstate plunder, there is individual pillaging made easy by the consequences of armed conflicts, especially if they are long-lasting and/or accompanied by a military occupation. These consequences include social and economic instability, poverty, weakening or even disappearance of the administrative authorities in charge of maintaining public order unless temporarily replaced by the occupying authorities [2].

A new threat to cultural property emerged after World War II, as non-international and/or ethnic conflicts increased. Not only do these conflicts fall outside of the scope of rules applicable to traditional interstate conflicts, but their goal is often clearly to destroy the adversary's or the opposing ethnic group's cultural heritage. In addition, this destruction is facilitated by the geographical proximity and mutual knowledge of the cultural sites and property, as well as the culture of the adversary.

This is exemplified by the destruction during the war in the former Yugoslavia, where cultural property that was not a military target was deliberately attacked by the opposing ethnic group, who sought to destroy the traces or symbols of the ethnic "enemy's" culture. Particularly significant examples include the bombing of the old town of Dubrovnik in Croatia and the destruction of the Mostar Bridge in Bosnia and Herzegovina.

These new challenges clearly show the need to improve protection of cultural property, particularly in the case of internal conflicts with an ethnic dimension.

The State of International Law before the Adoption of the 1954 Hague Convention

The facts previously described remind us that the right to "spoils of war" of the victor, often associated with the destruction of cultural property remaining on the conquered site, characterizes most conflicts that have occurred since ancient times. If we look at this question from a legal standpoint, it was only from the $16^{\rm th}$ and $17^{\rm th}$ centuries onwards that the determination to protect artistic and cultural heritage appeared

in international law. There are several historical reasons for this development. First, works of art were increasingly recognized as specific objects as opposed to "ordinary objects" from the Renaissance onwards. Second, private property was increasingly recognized as legally distinct from the property of the enemy state or power. This meant that private property could enjoy a different and more enviable fate.

Peace treaties are particularly demonstrative of the slow but undeniable progress of international law on this issue. Starting with the Treaty of Westphalia (1648), more and more treaties included clauses specifically referring to cultural property in the wide sense of the term as understood at the time) removed during the conflict, and often provided for its restitution [3].

However, this protection during wartime became substantial and consistent in international law only through the recognition, consecrated during international conferences (1899 and 1907), of the specific nature of cultural property and of the need to protect it. The two Hague Conventions (II of 1899 and IV of 1907) achieved this goal through a general codification of the laws governing war on land [4].

The 1954 Hague Convention and its two Protocols (1954 and 1999)

Brief history

Following World War II and its damage to, and destruction of, cultural heritage on an unprecedented scale, the international community determined to prepare an international convention to anticipate, and, if possible, to prevent future destruction of irreplaceable historical and artistic treasures. On the initiative of the Netherlands, UNESCO, during the 4th session of its General Conference (Paris, 1949), adopted Resolution 6.42.

The Secretariat then undertook work, the results of which were presented at the 5th session of the General Conference (Florence, 1950), which adopted Resolution 4.44, authorizing the Director-General to "prepare and submit to Member States a draft for an international convention for the protection, in case of war, of monuments and other objects of cultural value....". This was transmitted to the Member

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States, and the responses of their governments were submitted to the 6th session of the General Conference (Paris, 1951). The draft was then reworked by the International Council on Monuments, Artistic and Historical Sites and Archaeological Excavations, then re-submitted to the governments and revised by the Secretariat following their comments. The final revision by a Committee of Governmental Experts produced three separate documents (a commentary, a draft Convention and draft Regulations for its Execution), which were submitted to the 7th session of the General Conference (Paris, 1952). Following the work of this session, UNESCO accepted the offer from the Government of the Netherlands to host an Intergovernmental Conference.

This Conference, held at The Hague from 21st April to 14th May 1954, led to the adoption on 14th May 1954 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Regulations for its Execution, its Protocol, and three resolutions [5].

The convention: The Convention represents the first international multilateral treaty with a universal vocation exclusively focused on the protection of cultural heritage in the event of armed conflict. The Convention covers both movable and immovable property, including architectural, artistic or historical monuments, archaeological sites, works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections of all types.

The first protocol (1954): A protocol specific to movable cultural property and the difficult issues of its restitution was adopted with the Convention. The Protocol prohibits the export of such property from an occupied territory and requires its return to the territory of the State from which the property was exported. The Protocol prohibits the retention of cultural property as war reparations in that it specifically excludes the submission of cultural property to the regime of war reparations applicable to "ordinary" property.

The second protocol (1999): The acts of barbarism committed against cultural heritage during numerous conflicts that took place at the end of the 1980s and the beginning of the 1990s presented new challenges to the international community. Such conflicts and their repercussions were only partially taken into account during the negotiations of the Convention in the 1950s. Contemporary conflicts are often internal and of an ethnic nature, thus not within the scope of the international law applicable to classic interstate warfare. In addition, this type of conflict is often particularly destructive of cultural heritage. In this type of conflict, an aggressor often directly and deliberately targets a besieged ethnic group's culture and heritage with the ostensible intent of humiliating the target group by taking away privileged existence of its past, culture, and heritage.

Starting in 1991, a process of review of the Convention began, and led to the negotiation and adoption in The Hague in March 1999 of a Second Protocol to the Convention. This Protocol strengthens several provisions of the Convention concerning the safeguarding of and the respect for cultural property and conduct during hostilities. It creates a new category, "enhanced protection", for cultural property of the greatest importance for humanity. This category of cultural property is protected by adequate legal provisions at the national level and is not used for military purposes. The Second Protocol also increases the effectiveness by directly defining the sanctions due in the event that serious violations are committed against cultural property, and the conditions under which individual criminal responsibility applies.

This Protocol also establishes an institutional element: the Committee for the Protection of Cultural Property in the Event of Armed Conflict. The Committee consists of twelve States Parties, and is in charge of ensuring the implementation of the Second Protocol.

The Committee was elected for the first time at the first meeting of the Parties to the Second Protocol (UNESCO Headquarters, 26th October 2005). Following the elections of half of the Committee at the third Meeting of the Parties (UNESCO, Headquarters, 23-24th November, 2009), the Committee is composed as follows: six members whose mandate expires in 2011 (Cyprus, Finland, Greece, Lithuania, Japan and the Netherlands) and six members whose mandate expires in 2013 (Argentina, Austria, the Islamic Republic of Iran, Italy, Romania and Switzerland).

The most important current activity of the Committee to date has been to develop the Draft Guidelines for the Implementation of the Second Protocol. In addition, the Second Protocol sets up the Fund for the Protection of Cultural Property in the Event of Armed Conflict. The guidelines concerning the use of this Fund were also approved by the third Meeting of the Parties, and this Fund is currently open to receive donations.

The Second Protocol entered into force on 9th March, 2004 for its first twenty States Parties. Another important step in the international protection of cultural heritage has thus been achieved.

The status of the ratification of the 1954 Hague Convention and its two 1954 and 1999 Protocols can be consulted via the "Legal Instruments" page of the UNESCO Web site: www.unesco.org [1].

General principles of the convention and its two protocols

The definition of cultural property: There is no universal legal definition of cultural property - it varies according to the applicable national legislation or international instrument. Each prescriptive instrument contains its own definition. The 1954 Convention (Article 1) and its two Protocols define cultural property, irrespective of origin or ownership, as follows:

- Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub paragraph (a), such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- Centres containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as "centres containing monuments".

The states parties must principally adopt the following protective measures:

Mainly during peacetime:

• Prepare for the safeguarding of cultural property situated within their own territory (Article 3 of the Convention). Article 5 of the Second Protocol also requires the preparation of inventories; the planning of emergency measures for protection against fire or structural collapse;

the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property; and the designation of competent authorities responsible for the safeguarding of cultural property. It should be stressed that these measures often prove very useful not only in the event of armed conflict, but also in the event of natural disaster or as an effective method of fighting illicit trafficking in cultural property.

- Consider the possibility of placing a limited number of refuges, monumental centers and other immovable cultural property under "special" protection (Chapter II of the Convention and Articles 11 to 14 of the Regulations for its Execution) following an entry in the "International Register of Cultural Property under Special Protection". In addition, enhanced protection is provided for in Chapter 3 of the Second Protocol.
- Consider the use of the special distinctive emblem to facilitate identification of cultural property (Articles 6, 16 and 17 of the Convention and Article 20 of the Regulations for its Execution).
- Plan or establish, in peacetime within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to cooperate with the civilian authorities thereon (Article 7 of the Convention).
- Widely disseminate the text of the Convention (Article 25) and that of the Second Protocol (Article 30).
- Remove, to the maximum extent feasible, movable cultural property from the vicinity of military objectives, and avoid locating military objectives near cultural property (Article 8 of the Second Protocol).
- Within the framework of their ordinary criminal jurisdiction, take all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the Convention (Article 28 of the Convention). This obligation is reinforced by Chapter 4 of the Second Protocol concerning serious violations and other offences, as well as provisions in terms of penal procedure and legal cooperation.

During armed conflict: Respect cultural property situated within their own territory and the respective territories of other High Contracting Parties by refraining from directing any act of hostility directed against such property (Article 4(1) of the Convention). This obligation is reinforced by the provisions of Chapter 2 of the Second Protocol, and particularly by Articles 6, 7 and 8. These Articles provide for respect for cultural property, precautions in attack and the effects of hostilities. Respect for cultural property also applies to conflicts that are not of an international character (Article 19 of the Convention). Further, all the provisions of the Second Protocol are applicable to this type of conflict (Article 22).

- Refrain from directing any act of reprisals against cultural property (Article 4(4) of the Convention).
- 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 (Article 4(3) of the Convention).
- Take all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons who commit or order to be committed a breach of the Convention (Article 28 of the Convention), and implement the penal measures laid out in Chapter 4 of the Second Protocol.

• Protect cultural property situated in occupied territory and, particularly, as far as possible, take the necessary measures for its preservation (Article 5 of the Convention). This obligation is reinforced by Article 9 of the Second Protocol which prohibits, in particular, all illicit export, removal or transfer of cultural property.

After the hostilities: At the close of hostilities, return exported cultural property which is in its territory to the competent authorities of the territory previously occupied (Article I (3) of the 1954 Protocol).

• Prohibit the retention of cultural property as war reparations (Article 1(3) of the 1954 Protocol)).

On the customary value of these principles

Like any other international treaty, the Convention and the two Protocols are legally binding on their respective States Parties only. However, the effect of these instruments is different if and to the extent that some or all of the provisions of the Convention and its Protocols have acquired value as international custom within the whole international community following repeated and constant practice by third-party States.

In 1946, the Nuremberg International Military Tribunal declared that in 1939 the rules contained in the Hague Convention (IV) respecting the Laws and Customs of War on Land were "recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war...". This concerned, among other things, the obligations set out in Articles 27 and 56 protecting cultural property.

The 27th session of the General Conference of UNESCO (Paris, October-November 1993) adopted Resolution 3.5 on the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954) which, among other things, reaffirmed that "the fundamental principles of protecting and preserving cultural property in the event of armed conflict could be considered part of international customary law". This mainly concerns the principles contained in Articles 3 and 4 of the Convention regarding the safeguarding of and respect for cultural property.

In 2005 the Cambridge University Press published in English a two-volume study on customary international humanitarian law conducted by the International Committee of the Red Cross summarizing its rules related to the conduct of hostilities. The following rules are pertinent to the protection of cultural property in the event of armed conflict: Rules 38, 39, 40 and 41. Rules 38, 39 and 40 are applicable both in the event of both international and non-international conflicts and Rule 41 is applicable only in the event of international armed conflict [1].

The Plundering of Lebanon's Cultural Heritage

Just recently a resurgence of Phoenician studies started to circulate among various archaeological societies. Themes such as "The Emergence of the Phoenicians was one of the major themes of the 1988 meetings of the American schools of oriental research in Chicago, marking the first such presentation ever given in the U.S.A [1].

Why have Phoenician studies lagged so far behind? It was part the chance of excavation, part prejudice. A people who exist in the western world's religious consciousness as worshipers of Baal and Astarte, and who practiced infant sacrifice, and were of minimal interest to our archaeological forebears of the last century.

Slowly, however the tide has turned. Excavations at the overseas colonies, particularly in Cyprus and Spain, made it impossible to ignore the Phoenicians any longer. New excavations started around

the Mediterranean following the sea trade routes of the Phoenicians, the first scholarly journal devoted to them "Rivista di studi Fenici" began in 1973. the first excavation dedicated to uncovering a homeland Phoenician port, Sarepta, got underway in 1969. Congresses have been held in Europe, and in 1988, "I Fenici", the first major exhibit devoted to Phoenician and Punic arts and crafts, was held in Venice [6].

It is therefore a great tragedy that just when there was a modern revival of the Phoenicians, the war in Lebanon began. That the antiquities are suffering pales before the other suffering there, never the less, it is evident from the quantities of looted artifacts now available on the international market that Lebanon is being robbed not only of its present but also of its past [7]. For lack of a government authority in Lebanon, there is no one to certify that particular artifacts are stolen, so they are freely imported into United States and other countries. Local attempts to stop the looters often meet the response that "these people have to feed their families somehow ", there is no answer to that. Soon scholars will have to decide whether it is more ethical to ignore those artifacts or to salvage what we can by studying and publishing material excavated under such circumstances.

Surviving on salaries made nearly worthless by war-driven inflation and working with almost no help from international archaeological community, a few courageous Lebanese and non Lebanese scholars have continued to do what they can locally. Camille Asmar, Leila Badre, Nina Jidejian, Issam khalifeh, Ibrahim Kaoukabani, Helene Sader, Hassan Salame-Sarkis, Helga Seeden, Fadie Stephan, Suzy Hakimian, and others are working under conditions few of us would tolerate for a week, let alone 15 years, their appeals to the rest of the world for funds to purchase such minor things as cement to consolidate crumbling mosaics, chemicals to treat frescoes, and wire to rebuild fences around endangered sites have for the most part fallen on deaf ears, yet these scholars continue to try to save what they can. They tried to contact U.N. forces asking to implement the Hague conventions of 1954 and other UNESCO declarations to safe-guard cultural heritage, hardly the U.N forces helped to install the signs of UNESCO to protect sites from bombing and pillaging. If scholars of the future have something left to study in Lebanon, it will be because of those local efforts [1,6] (Figure 1).

As Lebanon approaches the seventieth year of its existence as a state, its future is very uncertain. The historical and archaeological past of this land, created by a varied succession of cultures over the last million years, is being destroyed far faster than it can ever be retrieved. While the archaeological past of neighboring states is investigated by national and international scientific teams to construct a more coherent picture of their history, Lebanon lacks even a rudimentary map of its archaeological sites and remains. Building projects relentlessly remove surviving traces of the country's heritage while man-made destruction has ruined entire communities, adding haunting dead towns and villages to the landscape [8].

At the end of the twentieth century large cities are active models of site formation and transformation, where archaeological processes can be observed live and their causes and effects measured and recorded on the spot. Archaeological journalism would not be a contradiction in terms here. In Beirut, nature has reclaimed public squares and buildings, bomb rubble and subsequent dilapidation have made burial and settlement mounds out of once bustling market centers and historical architecture. Everywhere stand the horrifying man-made monuments to destruction of human life and effort [9] (Figure 1).

In this context illegal excavations thrived. Rampant inflation during the civil war has spurred clandestine digging rivaling gold rushes of the









Figure 1: The Heart of Beirut (1983) [12]: Modern weaponry ruined historical architecture

old days. Buried archaeological material is being robbed in every corner of this land in broad daylight. At no other time of its brief history have there been so many "excavations" in Lebanon. None of them is properly observed or recorded. The majority of Lebanese, though ignorant about their past, have understood that remnant bits and pieces of a broken up history have market value. While the soil of Lebanon is being plundered frantically, no museums are being built to tell the story of its people for future generations. Today there remains of Byblos only museum objects and their un-integrated catalogues, hardly anything has been published about Sidon, let alone the recent excavations in the 1990's. As for Baalbek, the world is scientifically still at the stage of knowledge reached by the German mission at the beginning of the twentieth century. Anjar, Shehim, Beit-Mery, Afqa, Faqra, and dozens of other sites of equal importance have no bibliographical record. Even Tyre is on the verge of disappearing from human memory [10]. Only efforts lately of the International Association to save Tyre attracted world's attention to Salvage the ruins of Tyre.

At Tyre, a small controlled test excavation revealed the remote part of the island and the old city. Another excavation at the Phoenician port of Sarafand brought evidence of a center for ceramic production from the second millennium B.C.

The work at Kamid el-Loz in the biqaa valley has also made a major contribution to the study of Lebanon's past. The treasures from the excavations are on a loan exhibition in Germany. The amount of information gained by the excavators from this one site is vast. However, very few Lebanese know of its existence or significance. The people of Kamid el-loz had asked that a museum be built for them in their village, but they were not heard. Today Kamid el-loz is being looted by



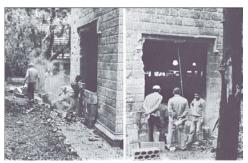


Figure 2: Rockets hit AUB Museum (1989) shattering exhibition cases, and tower of AUB Post Hall







Figure 3: Rescued objects and mosaics from clandestine excavations at Nabatiyyeh and Sidon.

people who learnt how to excavate well from the archaeologists who first uncovered the buried history of this ancient site [11].

In a recent spectacular exhibition entitled "I Fenici", luxuriously furnished, publicized and financed with Italian know-how and industry (1988), the legendary land of the Phoenicians, Lebanon, was represented by a large contribution in archaeological objects emanating entirely from Antiquities' Market! The few objects from museum collections, such as the American University of Beirut Museum pieces, did not

originate from archaeological excavations either. In spite of its popular success, judgment of the exhibition was sadly divided. A portion of Italy's and Europe's scientific community engaged in investigating near eastern archaeology was absent from the exhibition in silent protest. To what avail? The circle seems closed and Lebanon remains one of the capitals of international antiquities' traffic [12].

In 1991, Robert Fisk a well known (journalist investigates the plundering of Lebanon's Heritage, as correspondent for the London Independent, living in Beirut since 1978 deplores the fate of Lebanon's Heritage. After 15 years of war, Lebanon has fallen victim to the greatest pillage of) priceless artifacts ranging from the Bronze Ages to the Byzantine periods. Archaeological artifacts being illegally exported to Europe and U.S.A by Lebanese dealers and international middlemen while some of the most important archaeological sites in what was ancient Phoenicia have been destroyed by treasure-hunters [13].

Only now, with the prospect of peace at hand, have the Lebanese authorities started to stop such process of looting of the country's heritage. The scale of theft is staggering. For example, it has been revealed that several rooms full of excavated material from the Lebanese Department of Antiquities was stolen by militiamen from a store-house at Byblos [9] were shipped to European art dealers, some valuable treasures were discovered on public sale in Zurich. The AUB Museum was robbed in 1991 [8]. The National Museum was not saved, it was robbed and destroyed to a large extent, (Phoenician cemeteries east of Tyre are being dug up by amateur treasure-hunters, their contents of gold jewellery and pottery sold to Lebanese dealers and then shipped out of the country via Cyprus to Europe and U.S.A [8] (Figures 2-4).

Robert Fisk also laments the fate of Kamid el-loz which is one of the most important sites of Lebanon [14], the fruits of 19 years' work by German archaeologists, has been destroyed. The earth is still there, but it has been cut away with bulldozers and earth-diggers. Chunks of pottery have been thrown into a huge rubbish tip at one end of the tell, as if hurled away in frustration by the diggers, because the antiquities they were looking for were indeed largely elusive. the treasure which Kamid el-loz represented was historical rather than material [8] (Figure 5).

None of this was evident to the robbers. Nor to the two modernday armies whish briefly fought for Kamid el-loz in 1982. The site was the demarcation line between the Syrian and Israel armies [11]. Both armies fought to hold the site, and the warning sign of the UNESCO

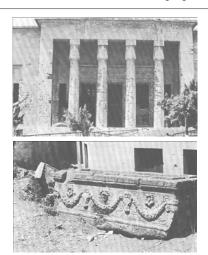


Figure 4: Beirut National Museum devastated by bullets and shells in 1991, and a broken Roman sarcophagus outside the wrecked Museum.



Figure 5: Kamid El-Loz (1991) [4] Buldozers used to look (for hidden treasures, destroying one of the country's most important archaeological sites in Beqaa).



Figure 6: Objects rescued in (1991) from a clandestine excavation in Tyre, displayed in an exhibition at a bank in Beirut, and restored to the National Museum. Funerary jars and inscribed stelae with Phoenician letters.

with the emblem comprised of white and blue triangles warning everybody including fighting armies that the premises are protected by the Hague convention of 1954 [12], and it should be safe-guarded in the event of armed conflict. Even this sign it didn't deter the fighting armies [12], such UNESCO signs were mounted on most archaeological sites in Lebanon, but it didn't deter fighting armies from bombing the sites, or stop the looters from plundering Lebanon's heritage.

Experts also blame the publicity afforded the "Sevso treasure" for the obsessive plundering. This multimillion dollar hoard of Roman period Silver plate of alleged Lebanese provenance made headlines in 1990 when it turned up in New York. The court case which followed had not been settled by mid-1992 [8]. specialists in such artifacts believe that the Sevso silver hoard did not originate in Lebanon, but was sold on the international market with illegally obtained Lebanese export papers. The "Sevso treasure "story gave people the idea that they could become millionaires by digging up the land. Bulldozers are at work all over the Biqaa ploughing through tells in the hope of finding treasures. They are destroying the archaeology of this land. It is another national tragedy [15].

Suzzy Hakimian in 1987 warned that the accumulated cultural heritage is today being rapidly destroyed and lost. She conducted a survey of illicit excavations, reported in the Lebanese press during the last decade of continued military action and break down of state control, shows the extent of these clandestine activities in Lebanon. When the sites reported are plotted anto a map, it becomes evident that no area of the country has been exempt from pillage which destroys all context information of artifacts obtained in this way. [14] (Figures 6).

What hope is there to break the cycle of ignorance which encourages the marketing of Lebanon's past? Only the careful creation of a common historical consciousness in present generations can encourage unity over opportunism in the future. Hence the importance of teaching a more comprehensive history for all Lebanese in the schools. Crediting the past is not simply collecting and selling precious artifacts made by our so-called ancestors. The past cannot survive in dismantled objects of art and trade, an endlessly broken record, a raped heritage. Lebanon's past can live only if it makes a contribution to the present, as a continuity of experience connected with life today. A people without a coherent past can only have an uncertain future [16].

Such attitude is strengthened if we expose the students at a certain level in their education to all of the UNESCO conventions on the protection of cultural heritage, in particular the 1954 convention and its protocols, which aim to ensure the survival and maintenance in situ no pillage or illicit export tolerated) of this heritage [1], The preamble of the convention reasserts that, damage to cultural property belonging to any people what so ever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world [17].

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