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# Protecting Cultural Heritage in Times of Instability

Tunisia, a case study

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## **ABSTRACT**

*The illicit trade in artefacts and antiquities has increased in the last years, not only affecting the historic memory but also the identity of the people. According to the studies on the subject, it appears clear that conflicts, war and political instability are all incentives for criminal and terrorist groups to expand their business and engage in looting activities, either with their own tools or involving the local population in search for some easy money. The recent events in the MENA region, indeed, represented a threat for the national heritage of countries such as Syria, Iraq, Libya, but also Tunisia and Egypt, even though it did not correspond to an increased attention of the international community on the issue. Moreover, the plans of the governments have never been very focused on the protection of their cultural heritage and it resulted in a vacuum in the domestic legislative framework. It is especially the case of Tunisia, where archaeology was seen as a symbol of the ancient French colonialism and, later on during the dictatorship of Ben Ali, as a treasure to be exploited as desired for personal use. Despite the new legislations adopted after the revolution in 2011 and an increased effort from the authorities to protect the national heritage, the results are not very satisfying and there is an obvious need to reform the system at national, regional and international level in order to guarantee an effective protection of the identity of such countries.*

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# Introduction

The concept of heritage is given both a positive and negative meaning. In many cases it is the cause of conflicts, in other it is considered one of the most important shared values of humanity. It can unite and divide people at the same time, and lead to resistance, oppression, violence, and war. It is the instrument of minorities to establish their identity over the dominant majority. Cultural heritage can be both intangible and tangible and, even though there is an academic debate about whether the tangibility of the cultural heritage is a Western concept imposed to the rest of the world, it is undeniable that the tangible culture shapes the identity of a nation or its people. It is, in fact, over the tangible heritage that usually conflict occurs.

The right to have access to culture and to enjoy its tangible and intangible expressions is defined by law and, as stated in the recent Human Rights Council Resolution (33/20),

*“the destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights, in particular the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage.”<sup>1</sup>*

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<sup>1</sup> Human Rights Council, Resolution 33/20 - Cultural rights and the protection of cultural heritage, 30th September 2016.

As a consequence, cultural heritage is also connected to the rights of freedom of expression, freedom of thought, freedom of religion and to some extent it is also connected to the economic rights, since the citizens can enjoy the profits deriving from the exploitation of the cultural resources. It sounds therefore unreasonable not to apply to cultural rights that same approach reserved to the other human rights: the cultural heritage is part of the people and, hence, not separable from their rights.

It is hence evident how cultural heritage is strictly linked to human rights: they may overlap and be in conflict with each other. Cultural human rights are usually related to war and violence (especially as regarding indigenous rights or other identity-related issues), access and exclusion from sacred sites, the impact of economic heritage on local population and intellectual property right. Less attention is, though, given to the problem of looting and squatting, both in war and peace times. It is reasonable to think that the destruction of the culture has an impact only at local level and that is far from the rights that are globally perceived (such as the civil and political rights) as fundamental, it is exactly at local level that the violation of human rights happens. The issue of cultural property theft seem to be a side problem that involves usually art dealers and people interested in paintings, art and archaeology, but it is not. It is somehow related to security and organised crime, even though it is not apparent on the first place. Whether it is enacted by locals in search for money or external organisations, the looting practices represent the destruction of a community's heritage, and therefore the dismantlement of its culture, traditions, and very survival.<sup>2</sup>

The fight to illicit trade, hence, is not easy: not just the thought that it is not a problem, but also the difficulties in distinguishing what is illicit trade and what is not are an obstacle for the security forces and border officials. Essentially, the market in drugs is always clearly illegal, but for art and antiquities it is required a lot of experience and preparation in order to identify the issue.

This is one of the reasons, together with the skyrocketing of the value of artwork and antiquities, that made the market area very attractive not just the art investors but also to criminal and terroristic organisations looking for a vehicle for money laundering, or to finance themselves.

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<sup>2</sup> M. Udvardy, L.L. Giles, and J. B. Mitsanze, 2003, "The Transatlantic Trade in African Ancestors: Mijikenda Memorial Statues (Vigango) and the Ethics of Collecting and Curating Non-western Cultural Property", *American Anthropologist* 105(3): pp. 566–580.

Different studies, also, link the trade in cultural goods to the illegal arms trade, the trafficking of human beings and smuggling of migrants.

In the last years, the international community drew more attention on the protection of cultural heritage, both on theft and destruction, and many measures have been taken trying to tackle the issue from a legal and security point of view. Amongst them (that will be analysed in this research) there is the case of Ahmad Al Faqi Al Mahdi, member of an Al-Qaeda branch group in Mali. For the first time in history, in fact, someone has been condemned by the International Criminal Court of a war crime consisting in intentionally attacking a religious and historic building in Timbuktu in 2012.

Moreover, the recent conflict in Syria and the rise of the so-called Islamic State showed a new way to damage the local population but also the entire humanity through the destruction of its cultural heritage: one of the most known examples was the destruction of the ancient city of Palmira by ISIS, which shocked the entire world last year.

It is true that the areas of conflict are the most targeted for looting activities but, in general, any country with a weak political system or political instability might be subjected to the trafficking activities. That is why the most targeted area are located in Middle East and Africa.

In this research I will focus on the case of Tunisia. The country, situated in a strategic and flourishing area of the Mediterranean, has been controlled by various civilisations, from the Greek to the Roman to the Islamic ones, which contributed all to shape the identity of the current Tunisia but also helped building the tangible national heritage of the country. Tunisia, as a result of this diversification, represents a unique case of mixed heritage and it has 8 sites inscribed as World Heritage Centres under the protection of UNESCO.

Moreover, as a small country with a relatively non-developed industry, Tunisia focuses its economic strategy mainly on tourism, taking advantage of the richness of its heritage left by the history. This is the reason why the focus on the Tunisian case is important: it is necessary to understand how can Tunisia adopt legislation that can actually be effective to protect its precious

cultural heritage and to what extent the phenomenon has changed from before to after the revolution of 2011.

## **Methodology**

This qualitative research project required the gathering of both primary and secondary sources. As for the primary sources, it was useful for the research to include in the study the international conventions legislative texts, as well as domestic laws adopted on antiquities, excavations regulations and illicit trade in cultural objects. The aim was to find out what are the current regulations in terms of protection of the cultural heritage, how they are implemented in the domestic systems of the countries of analysis and how the countries are collaborating with each others in a comprehensive and globalised context. The legal context, studied with the help of the above mentioned documents and some reports on the issue, was sustained by a socio-political perspective on the field of the protection of the cultural heritage, including the connection between culture and identity, but also to national and international security. For this part, the sources used were mainly secondary: academic journal articles, books and internet websites (especially those of the organisations involved in the issue such as ICOM, UNIDROIT, UNESCO).

The second part of the research is a case study on Tunisia. Even though many scholars and state officials pointed out the existence of the issue of the illicit trade of cultural goods, there is a general lack of data and insufficient academic resources, and it is hard to actually understand to what extent the phenomenon of illicit trafficking of antiquities is widespread inside Tunisia and abroad. The sources used for this part of the study are hence mainly media resources, such as journal articles, news websites and statements from state officials and museum directors. Also this second part has a legal perspective, with a study on the laws that regulates the protection of the cultural heritage and how they evolved, especially after the revolution, but also a study on the known cases of illicit trade, collected through media articles and websites.

Since the problem affects the Tunisian national heritage, there is the need for scholars to start tackling the issue from an academic perspective in order to start approaching the problem of the illicit trade together with the national and international institutions.

## **Chapters**

The first chapter will focus, at first, on the importance of the cultural rights and their link to the identity of the people. After a brief analysis of the parts of the Universal Declaration of Human Rights of 1948 that mention the cultural human rights, there will be a focus on one of their violations, or better the illicit trade in cultural goods: how it developed, the reasons that pushed the criminal organisation into it, and an overview on the state of the art. One of the most important aspects is the strict connection with politics (and the above mentioned concept of identity) and, consequently, terrorism. Therefore, the second part of the first chapter will be focusing mainly on the analysis of the existing conventions on the illicit trade and the protection of the cultural heritage, considering the application of the State Parties that adhered to them, specifically the countries of the Arab Region. Reviewing some article of the Conventions, the study will take into consideration various aspects on the protection of the cultural heritage and their application from the Convention into the states' domestic legislative systems. This will include the rules on the ownership and the transfer of ownership, the issue of the inventory of cultural objects, the regulations on archaeological excavations, the trade and controls on exports and imports of cultural goods, and finally some institutional aspects such as the bilateral agreements among states, the establishment of competent organs, the general process of collecting information and the cooperation with the international police and custom administrations.

The second and last chapter will focus on the Tunisian case, starting with a general historic overview on the legislation on the cultural heritage protection and analysing also the complex relation between politics and the scientific aspect of the protection of the heritage. Furthermore, the core of the chapter will be the analysis on how the protection of the cultural heritage changed in Tunisia following the popular revolution and the fall of President Ben Ali in 2011: what were the links between the protection of the cultural heritage and the pre-revolutionary regime, what are the national agencies currently involved, which laws have been changed, the most striking cases of Tunisian cultural objects that have been stolen and retrieved.

Finally, this research will conclude the analysis with a resume of what has been seen during the previous chapter, trying to understand what are the future perspectives in the delicate matter of the protection of the cultural heritage in the Arab Region and especially in Tunisia.

## **1. Cultural Heritage and Human Rights**

As said before, human rights are strictly related to culture, especially because of the consequent conflicts that can generate from cultural issues. The link between human rights and culture traces its origins in the Universal Declaration of Human Rights of 1948, when the United Nations decided to put into words some of the basic liberties such as life, security, freedom of movement, and culture. Article 27 of the Universal Declaration of Human Rights, indeed, states that “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements its benefits”, strongly affirming that culture is an important aspect of the human rights and it is to be protected.

Despite that, though, the cultural rights are still considered of less importance compared to the civil, political or economic rights and the United Nations human rights system has been criticised for this<sup>3</sup>. The importance of the cultural component of human rights is strictly connected to that of identity, and even though the Universal Declaration does not state it, it is included in some other declarations, such as the UNESCO’s Declaration Concerning the International Destruction of Cultural Heritage, signed in 2003, that affirms: “cultural heritage is an important component of the cultural identity of communities, groups and individuals, and or social cohesion, so that its international destruction may have adverse consequences on human dignity and human rights”. The

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<sup>3</sup> N. Ghanea and L. Rahmani, 2005, “A Review of the 60th Session of the Commission on Human Rights”, *International Journal of Human Rights* 9(1), 2005, pp. 125-144

link to identity is also the reason why the conflict related to culture occurs, and this makes it necessary for any country to consider the protection of the cultural heritage as a significant aspect of its own domestic legal system.

Since the Declaration of Human Rights, including its statement on culture, has been signed, there has been a growing interest on the issue and many other transnational agreements on the protection of cultural rights have been ratified, and the cultural component was included into the national legislative system, especially in the constitutions.

In particular, it is useful for this research to mention article 42 of the Tunisian Constitution of 2014, that states:

*“The right to culture is guaranteed. The freedom of creative expression is guaranteed. The state encourages cultural creativity and supports the strengthening of national culture, its diversity and renewal, in promoting the values of tolerance, rejection of violence, openness to different cultures and dialogue between civilisations. The state shall protect cultural heritage and guarantees it for future generations”.*

Among all the aspects related to cultural human rights, we can have the protection of the cultural heritage in time of war, the rights of the indigenous people, the intellectual property rights, the access to culture and also the looting and squatting activities, which are strongly linked to the illicit trafficking in cultural goods and artefacts.

In most cases, or at least the most famous (such as the most recent historical destruction in Syria and Iraq), the destruction of heritage occurs deliberately and in war or conflict contexts. It may also occur, though, as a consequence of neglect, looting or exploitation of lands rich in cultural heritage, and it is on this aspect that this research is focusing.

### **1.1. The genesis of the illicit market**

Since the Cold War, in fact, the looting and the consequent illicit trafficking have been growing a lot, providing a lucrative system for organised criminal enterprises or terrorist groups.

Most of them took advantage of already existing drug trafficking routes to move cultural goods which are easy to acquire, disguise and sell. The advantages of this growing market are the profits, which can be used by the groups to fund their own operations, recruiting campaigns and weapons, but also it is a way to destroy part of the identity of the enemy and, consequently, apply a sort of “cultural cleansing” that undermines the stability of the local population.<sup>4</sup>

An increased globalisation, the availability of information on the value of cultural goods and the specific context in many of the archaeologically-rich countries generated the interest in the art markets for the developing nations that were rich in rare pre-Columbian, Roman, Greek, Arab and Egyptian art. Also, the relative instability of the countries such as the African Horn or the Islamic Maghreb spurred terrorist groups to enter the market in those regions.

The three main reason why the terrorist and organised crime groups are more and more being involved into this market are:

- **Ease of access:** the cultural legacy of many developing countries is something that has a great value in the market. In many economically weak nations, such as many Middle Eastern countries, the opportunity for illicit trafficking of artefacts is greater, given the political instability and the inability of the security and border authorities to provide enough controls. Moreover, corruption has a stronger impact on the economy and social life, including the art trafficking. Finally, the economic weakness is used as leverage for the groups to convince people to enter the marker in order to gain some money and secure economic stability for their families.

As for the access, the globalisation process made it easy to enter some regions of the world, and the exploitation of forest areas, oceans and deserts. Also, the technologic progress made it possible to easily extract and transport illegally artefacts and materials.

- **Lucrative market:** even though there are no clear datas about the dimension of the illicit trafficking, and the value of the licit traffic is over 50\$ billions per year, it is estimated that the illicit trade was a 4\$ billions enterprise a few years ago; according to UNESCO, in 2011 it was

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<sup>4</sup> J. Tribble, “Antiquities Trafficking and Terrorism: Where Cultural Wealth, Political Violence and Criminal Networks intersect”, Monterey Terrorism and Research Program, 2014.

estimated to be worth 6\$ billions, in a growing perspective.<sup>5</sup> Also, the antiquities are, by definition, a finite good: that is why their prices are increasing (about 10 times over the past decade<sup>6</sup>) and the demand in cultural goods and artefacts is increasing as well, making this illicit trade even more valuable. Some recent cases of recovering of stolen antiquities have noted a mark-up on the initial value of about 50 to 1000 times.

- **Difficulty of Detection:** compared to some other trade products, such as drugs (which are, in all cases, illicit), in art and antiquities trafficking the line between what is legal and what is not is very often not easily distinguishable. In many cases antiquities are a legal commodity and it is sometimes legal to own it even though there is no verifiable ownership history. The continuous and persistent lack of information about transaction, documentation, and regulation are making the controls even more difficult, because it is almost impossible to detect whether an object is illegally or legally traded. Also, it appears to be very easy to falsify the documents required and very often the border and security personnel is not well trained in order to recognise a case of illicit trafficking.

These three reason make the illicit market very attractive and successful, and any attempt of regulation appeared so far ineffective. In many countries, in fact, the rule of law is too weak and customs, law enforcement and officials sometimes even facilitate the illicit trade through corruption practices, falsification of documents and bribery. The weak legal status of these commodities, even when highly valuable, finally, makes the penalties and sanction for those who are caught in illicit trafficking rarely as punitive as, for example, those related to drug-trafficking.

## 1.2. State of art

Whether it is about looters, those who target cultural heritage underwater or underground, or thieves, who steal architecture from buildings or artworks from museums, it is not easy to estimate the current trends in this market. Interpol databases, which are the most reliable, are not sufficient to

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<sup>5</sup> UNESCO, “The Fight Against the Illicit Trafficking of Cultural Objects: Information Kit”, March 2011, p.3. <http://unesdoc.unesco.org/0019/001916/191606e.pdf> (Accessed May 2017)

<sup>6</sup> F. Van Tets, “The Art of Civil War”, *Foreign Policy*, 8th May 2013, [http://www.foreignpolicy.com/articles/2013/05/08/syrian\\_rebels\\_stolen\\_treasures\\_art\\_theft\\_guns?page=0.0](http://www.foreignpolicy.com/articles/2013/05/08/syrian_rebels_stolen_treasures_art_theft_guns?page=0.0). (Accessed June 2017)

do a proper estimation because they do not include those object that were not documented before being stolen and that have not been recovered yet.

The inability to estimate the size of the trafficking in some countries is clear from the Interpol estimation: nearly 74% of the stolen works of art are from Europe, and just 9% are from regions such as Middle East and North Africa, or Southern America (9% for each region), while it is known that the richness in artefacts and archaeological heritage is high even in those regions.

The size of the network is not easy to understand, but it is easier to identify the ways in which looters and thieves operate. There is a small component of those who are called “subsistence digging”, widespread in countries such as Jordan, Iraq, Mali, Niger, Nigeria and Bulgaria, and who apply unprofessional (and sometimes dangerous) digging practices in order to survive and access basic good with the income. Many others, then, are profit-driven looters, that operate as entrepreneurs, in groups or individually, using high-technology equipments and standards.

Also, these groups have access to state registers, academic publications, and satellite-based navigation tools to identify and target archaeological sites. Some of these groups reach, in terms of profits and organisational networks, the extent of legitimate transnational trade organisations.

It is also not very easy to identify the trafficking routes, because most of the times they do not reflect the exceptional anti-trafficking efforts of law enforcement agencies in transit countries such as Lebanon and Turkey.<sup>7</sup> The source countries and consequent routes can change due to economic, political and social circumstances: an example is the situation in North Africa, where the antiquities that have been looted during the chaos in Libya were taken out of the country very easily through Egypt when the countries experienced some political turmoil.<sup>8</sup>

The main destination countries, then, are the most economically powerful countries, such as the Western states, in particular the US (39% of the global art trade is conducted here) but also China, where is conducted around 22% of the global art trade. It appears like the illicit trade is

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<sup>7</sup> S.A. Hardy, “Illicit Trafficking, provenance research and due diligence: the state of the art”, American University of Rome and University College London, 30th March 2016.

<sup>8</sup> L. Allsop “Looting of Libyan treasure highlights illicit antiquities trade”, CNN, 11th November 2011 <http://edition.cnn.com/2011/11/11/world/europe/looted-treasure-libya/> (Accessed June 2017).

proportionally distributed in the same countries where the trade in licit good is higher, such as the above mentioned USA and China.

At the end of the routes the goods are sold through newspaper adverts, online markets (from national one to global platform such as eBay), but also antique shops and auction houses, thanks to false documents attesting the ownership. In recent times, with the diffusion of online practices, it became easier for thieves to arrange transactions directly with collectors. In some cases, moreover, there is the involvement of profit-driven gangs and politically motivated armed groups, that sometimes can be state-organised.

The falsification process is also effective because of the difficulty of detection. The verification process of the authenticity, in fact, requires experts and professionals that are usually not available in custom and border offices, and not always the objects are withdrawn for deeper studies. In 2011, a statue of Persephone from Libya was exported through UAE to the United Kingdom, and it was declared to be a 100-years-old statue from Turkey, worth around 60 thousand pounds. After it was held under bond by Connoisseur International, a company known for its logistic in delivering fine art worldwide, and in 2013 the custom official sent it to archeologist for verification. It appeared that the statue was stolen from the UNESCO World Heritage Site of Cyrenaica and it was a 2000 years old statue worth almost 2 million pounds.

### **1.3. The link to terrorism**

As said before, the high-demand of antiquities made them to be sourced in underdeveloped countries where there is availability but no controls, very often because of occurring armed conflicts or internal strife, and where it is not uncommon to find a link between terrorist groups and violence. Talking about the illicit trafficking in antiquities, most of the time the terrorist groups are involved in the illicit looting or excavation of archaeological sites or museums, but also the transfer and sale of the aforementioned goods.

The terrorist group, such as for other kinds of illicit trafficking, are the link between the local population areas who are the sources of the goods, and the traffickers who violate the laws prohibiting the exportation of some goods, and also the dealers who receive and sell them.

Basically, the mechanism for the antiquities trafficking is the same than the one for other illicit goods such as drugs, in terms of operations, exploitative effects, routes, roles, networks and corruption index. In some cases, the antiquities trafficking overlaps with other forms of illicit trade.

Looters are generally organised and funded by highly organised networks, that sometimes cooperate directly with terrorist groups in order to maximise the profit. Other looters, although, can be just impoverished locals in search for some easy money. It is the example of many farmers in Afghanistan who, aware of the possibility of selling the relics, did lots of excavations and sold what they found to local criminal or terrorist group, that put the objects into the global market giving them false provenance documents.

#### **1.4. A political issue**

The main aspect of this trafficking is its political character. Armed conflicts, political insurgency, high terrorist activity are often the catalyst of the targeting of cultural resources. Political instability increases the difficulty for the security forces to protect the cultural heritage, and leads to the exploitation of local population that are promised a little money in order to have help in establishing trafficking networks. The security personnel is very often focused into guaranteeing the stability of the country meanwhile terrorist groups and exploited locals encourage clandestine excavation and sell the treasures of their own national cultural heritage.

The recurring and continuous waves of conflicts and instability in the Middle Eastern and North African region were the main reason why in many cases the countries were not able to protect their own cultural heritage.

The most clear examples of this are the war areas of Syria and Iraq, but in general also countries where there is (or there has recently been) some political upheavals, such as Egypt, Libya, Tunisia, are vulnerable to the issue.

In this historical time, where terrorist groups are focusing on the destruction of the “Western enemy”, it becomes even more clear how the destruction of antiquities, depriving their host-lands

from a precious treasure, is a political action per se: looting and other forms of appropriation of cultural goods may be a political tool of ethnic and religious cleansing.<sup>9</sup> It is not just destroying key symbolic artefacts (such as the city of Palmyra, in Syria), but also depriving the national heritage of some of its parts can be seen a sort of cultural cleansing or “cultural genocide” with the aim of erasing the collective memory that built the identity of a nation.

It happens, especially, in some countries of the Mediterranean basin that have been in the past centuries dominated by Roman or Greek civilisations, where organisations like the so-called Islamic State took control of the countries’ most famous archaeological sites and may try to eradicate all traces of early Christian, Roman and Greek civilisations.

### **1.5. The legislative background in the Arab Region**

The importance of international cooperation in terms of illici trafficking is fundamental. There is still a significant gap in terms of legislative background between the importing countries and exporting countries of cultural goods, and there are inequalities in the measures taken to protect the cultural heritage. The international cooperation, at operational level, is very important and it includes is the effort of external governmental and nongovernmental organisations such as UNESCO, International Council on Monuments and Sites (ICOMOS), International Council of Museums (ICOM), INTERPOL, or the World Customs Organisation. Despite this, at legislative level the international community is facing a phase of stagnation since the International Institute for the Unification of Private Law (UNIDROIT) issued the Convention on Stolen or Illegally Exported Cultural Objects in 1995.

It is true that many countries developed some bilateral agreements on the issue, especially between importing and exporting countries, such as Switzerland with Italy, Greece, Peru or Mexico, but it is clear that it is the European countries which, both at national and communitarian level, developed most of the agreements and legislative papers.

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<sup>9</sup> J. Tribble, “Antiquities Trafficking and Terrorism: Where Cultural Wealth, Political Violence and Criminal Networks intersect”, Monterey Terrorism and Research Program, 2014.

At national level, they signed the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and adopted domestic legislative provisions in order to put it into practice.

It is not the case of most of the Arab countries where none or a few legislative and institutional reforms have been made on the issue, but no significant changes have been done at domestic level to solve the illegal trade or exporting cultural objects.

The Arab countries<sup>10</sup> examined in Fraoua's study, as an update of the regional workshop on prevention of trafficking held in Beirut in 2009, have enacted laws on the protection of cultural heritage, but they "merely broadened the scope of the concept of national cultural heritage or strengthen criminal penalties for theft, illegal excavations, trafficking or illegal export of cultural objects"<sup>11</sup>. Also, there was no significant change at regional level in the framework of the Arab League or other Arab multinational organisations involved in the field of culture.

### ***1.5.1. Access to international conventions***

The Arab countries, also, did not completely agreed on the convention for the prevention and combating of trafficking in cultural objects, which are:

- the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the two Protocols I and II;
- the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;
- the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

According to the report, as of April 2012, it appears that:

- 15 states<sup>12</sup> have acceded to the 1954 Convention;

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<sup>10</sup> Algeria, Saudi Arabia, Bahrain, the Comoros, Egypt, United Arab Emirates, Iraq, Jordan, Lebanon, Morocco, Mauritania, Oman, Palestine, the Syrian Arab Republic, Sudan, Tunisia and Yemen.

<sup>11</sup> R. Fraoua, "Mesures législatives et institutionnelles de lutte contre le trafic illicite de biens culturels dans les pays arabes", UNESCO, June 2012, [http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Fraoua\\_fr.pdf](http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Fraoua_fr.pdf) (Accessed April 2017)

<sup>12</sup> Palestine, Saudi Arabia, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, the Syrian Arab Republic, Sudan, Tunisia and Yemen.

- 12 states<sup>13</sup> have acceded to Protocol I;
- 7 states<sup>14</sup> have acceded to protocol II;
- 14 states<sup>15</sup> have acceded to the 1970 Convention.

As for the UNIDROIT Convention, at the time of the report none of the was a State Party. As of May 2017, the only two countries that are part of the Convention are Algeria (since 2015) and Tunisia, where the agreement is supposed to enter into force in September 2017.<sup>16</sup>

The reason behind the non-accession of the other Arab countries to the UNIDROIT Convention appears to be related to the legitimisation of past spoliation and pillages, or a rejection of the right to claim the national ownership of cultural objects that were stolen or exported illegally before the entry into force of the Convention, that although states:

*“This Convention does not in any way legitimise any illegal transaction of whatever nature which has taken place before the entry into force of this Convention or which is excluded under paragraphs (1) or (2) of this article, nor limit any right of a State or other person to make a claim under remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention”*

Moreover, since the laws of some Arab States provide explicitly for the obligation to compensate the so-called *bona fide* (good faith) purchaser of cultural objects, there is the fear that this may constitute a problem in the process of restitution of illegally exported or stolen cultural objects. It is to be considered, though, that good-faith acquisition of stolen or illegally exported cultural goods became more difficult under the Convention, which requires the burden of proof for purchased cultural objects. Also, the principle does not violate the constitutional guarantee of ownership, because derogations are allowed. Finally, states that permit restitution without compensation of

<sup>13</sup> Palestine, Saudi Arabia, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, the Syrian Arab Republic, Tunisia and Yemen.

<sup>14</sup> Palestine, Saudi Arabia, Bahrain, Egypt, Jordan, Libya, Oman and Qatar

<sup>15</sup> Palestine , Algeria, Saudi Arabia, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Oman, Qatar, the Syrian Arab Republic and Tunisia.

<sup>16</sup> UNIDROIT [website] <http://www.unidroit.org/status-cp?id=1769> (Accessed May 2017)

stolen or illegally exported cultural objects in their legal system's framework, are free to apply their most favourable rule to restitution (according to article 9 of the aforementioned Convention).

The issue related to the restitution of stolen or illegally exported cultural objects is still central in the debate in many Arab countries (considering the prominent role of Western countries during the period of colonialism and protectorates) but none of them has showed to be active in the process. The existing Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation does not involve properly any of the Arab States and the only three that are represented on the Committee (Iraq - outgoing at the end of the year - Saudi Arabia and Egypt) are not adequately promoting the role of the Committee, which is to find ways to facilitate bilateral negotiation aiming at the restitution and the return of the cultural properties to their own countries of origin. This role as facilitator, as stated in the panel, is scarcely used by the Arab States that keep claiming how useless it is in comparison with the power of the relevant states, that are those who actually impede the restitution process.

### ***1.5.2. Implementation of international conventions in the domestic legislative system***

The UNIDROIT Convention mentioned before is the only convention which is self-executing, and it is valid since the moment of entry into force. The other agreements related to the protection of cultural heritage and stolen cultural objects are to be translated into domestic law before becoming effective. Even though it appears that many countries have been having a prominent participation on the conventions, Lebanon is the only one that adapted its domestic law to the signed conventions and protocols. Therefore, the agreements are just signed but are not having any effect on the domestic regulations.

In order to prevent any sort of fraud, the law on the private ownership of cultural objects shall be regulated in detail. With the exception of *waqf* (the endowment under Islamic law for religious or charity purposes) or property that can be proven, in the Arab country is generally assumed the

public ownership of cultural objects.<sup>17</sup> The implementation of it, although, appears to be more problematic.<sup>18</sup>

It is the case of Egypt, where the legislation is complete and exhaustive: it prohibits the possession of antiquities in a private capacity, and article 10 of the Egyptian law authorises (under the decision of the President of the Republic), the exchange of antiquities with States, museums and other cultural institutions. Other legislative frameworks, such as the Comorian law, limit the transfer of ownership of some listed cultural objects held by private individuals to legal persons in public law, including the State. The same law also implicitly prohibits any commercial transaction or transfer of ownership of listed cultural objects between individuals. Some laws even provide for the possibility of the sale of some categories of cultural property owned by the State.

The laws of the Arab State are also regulating the ownership of cultural objects or archaeological findings that are located on or below the surface of the land. These objects, whether their existence is already known or they are found fortuitously, are considered a State property, as well as those which are found during (legal or illegal) archaeological excavations. In just a few cases<sup>19</sup> the entity in charge of conducting the excavations can claim the ownership of certain categories of cultural objects.

Even though it appears clear that the legal framework regarding ownership and transfer of ownership is detailed, comprehensive and exhaustive on the matter, it is not sufficient to ensure a working system of classification and tracking of the cultural goods, and it is very important to focus on other solutions such as inventories, archaeological mapping and classification procedures in order to keep track of the movements of the cultural objects and prevent frauds.

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<sup>17</sup> See as a reference: Article 6 of the Egyptian law; Article 5 para. 2 of the Lebanese law on antiquities; Article. 4 of the Syrian law; Article 1, paras. 2 and 73 of the Tunisian law No. 35 of 1994 on the protection of the archaeological and historical heritage and traditional arts.

<sup>18</sup> R. Fraoua, “Mesures législatives et institutionnelles de lutte contre le trafic illicite de biens culturels dans les pays arabes”, UNESCO, June 2012, [http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Fraoua\\_fr.pdf](http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Fraoua_fr.pdf) (Accessed April 2017)

<sup>19</sup> See as a reference Article 38 of the Comorian law; Article 21(b) of the Jordanian law; Article 68 of the Lebanese law on antiquities; Article 22(b) of the Omani law; Article 28 of the Sudanese law and Article 52, para. 2, of the Syrian law.

The Arab States generally provide regulations for inventory and some classification procedures<sup>20</sup> for the cultural objects. Despite that, once again, it is hard to put the legal system into practice because of its complexity, the need to be constantly updated and the lack of resources that characterises many of the Arab countries, in particular those that are richer in historical heritage. It is the same for the process of drawing up inventories of archaeological sites that would not just facilitate the surveillance of archaeological sites and help to combat illegal excavations, but even to ease up the work of the archeologist when finding out new objects, to better individuate its origin.

At international level, the inventory system is sufficiently developed. There is the so-called *object ID* standard, which is a procedure used both for cultural and natural object consisting in a unique identification for the object for identification, classification but also tracking in case of theft, loss, or trafficking. According to Fraoua's report, only Lebanon uses the *object ID* standard for its national inventory procedures. For the other countries, there is no official exhaustive list of national treasures that are in need for a particular form of protection.

The lack of resources constitutes a problem for the Arab countries also in the control of the archaeological sites in order to prevent not just the illegal excavations and appropriation of cultural objects, but also to avoid damages to archaeological sites. Since Article 5<sup>21</sup> of the UNESCO Convention of 1970 calls for the protection of the archaeological sites, in all the seventeen Arab Countries there is some regulation about the archaeological excavations, to different extent.

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<sup>20</sup> See as a reference Article 5, para. 1 of the Bahraini law; Articles 5, 7, 16 of the Iraqi law; Article 3 of the Mauritanian law; Article 20 of the Yemeni law; Articles 10 to 40 and 50 to 66 of the Algerian law; Articles 16 to 20 of the Saudi law; Articles 14 to 20 of the Comorian law; Articles 12 to 14 and 26 of the Egyptian law; Articles 20 to 46 of the Lebanese law on antiquities; Articles 3 to 36 of the Moroccan law and Articles 3 and 5 to 8 of the Omani law.

<sup>21</sup> «To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

- (a) contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;
- (b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;
- (c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops...) required to ensure the preservation and presentation of cultural property;
- (d) organising the supervision of archaeological excavations, ensuring the preservation in situ of certain cultural property, and protecting certain areas reserved for future archaeological research;
- (e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;
- (f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;
- (g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.»

Generally, the excavations need an authorisation that can be given to the entity or organisation just in case it is both reliable in terms of skills and expertise and in financial terms - or better, it has the sufficient resources to proceed with the excavation.

In all cases, the laws regulate: the decision of the competent authority for the excavations (that can be unilateral or in agreement with all the parties concerned), the conditions to grant the authorisation, the rights and obligations for the entity which acquires the authorisation (including monitoring of the working procedures, security measures to be implemented during the whole process, conditions for revoking an authorisation, ownership of the scientific results of the excavations and the object found during the operation). Once again, despite that, the countries are concerned with a high rate of illegal excavations. A lack of control mechanisms, but also the poverty among the local people living next to the sites, which forces them to practice illegal excavations in order to find some valuable items to sell, but also the general rise of the prices of archaeological goods making them attractive, are some of the causes for the carrying out of illegal excavation practices. Moreover, the personnel involved in the protection of the heritage, because of the lack of resources, is not skilled enough to do a proper evaluation of the different cases, in particular assessing whether the excavations are based on scientific and legal reasons, and the entire process is conducted properly and accordingly to international standards.

Article 10 of the 1970 Convention<sup>22</sup> also regulates the trade in cultural objects, to help the countries control the transfer of ownership and prevent frauds in the commercial transactions. At domestic level, the Arab Countries have different laws: in some countries<sup>23</sup>, trade in antiquities is strictly prohibited. In Lebanon, that constitutes a specific case, there is a legal framework regulating the trade in antiquities, but it was suspended<sup>24</sup> in the nineties, after the civil war. According to the preamble of the executive order, the reason behind it are “the country’s security problems, illegal

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<sup>22</sup> The States Parties to this Convention undertake:

- (a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;
- (b) to endeavour by educational means to create and develop in the public mind a realisation of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

<sup>23</sup> Egypt, Jordan, Iraq, Palestine, Syria, Yemen.

<sup>24</sup> Order No. 8 of the Ministry of Tourism of 27 February 1990. Under Article 1 of the order, the granting of authorisations by the Directorate-General of Antiquities (DGA) for trading in antiquities was suspended.

exports, pillage during the civil war and the need to protect the national cultural heritage”. This approach, that (as in the other countries) froze the trade in antiquities inside and outside the country, led to a collateral damage: the trade in antiquities did not stop, but it moved to a separate dimension, without any control from the authorities that were overlooking it. The illicit trade in Lebanon, even after the ratification of the Convention that happened the same year (1990), increased significantly and in an uncontrolled way, resulting in a damage for the national cultural heritage.

Apart from the Lebanese exception, the trade in antiquities is authorised in Algeria, Saudi Arabia, Mauritania, Tunisia and Sudan. In all cases, though, the question is very controversial: whether it is authorised or banned, such trade is a commercial activity that, de facto, is widespread and very often tolerated by the authorities that are supposed to control it.

Correspondingly, there is the online dimension of the trade that is rarely considered. Many trade operations are nowadays led on the internet, and this kind of trade is not controlled or regulated in any way, allowing traffickers to operate in a sort of *legal vacuum*. Many Western countries are adapting their legislative systems, but none of the Arab countries acted in this way so far. In October 2009, after implementing a three-months project about it, Switzerland signed a memorandum of understanding<sup>25</sup> with the online trading platform eBay to supervise the transaction regarding archaeological objects. The controls were applied to all cultural objects sell on the Swiss branch of eBay, in particular those included in the “Red List” of ICOM<sup>26</sup> and all the categories included in the bilateral agreements ratified by Switzerland and other parties of the 1970 Convention. The online platform applied a verification process which requires a certificate issued by the competent authorities (either the Swiss authorities or other foreign entities recognised) in order to complete the transaction. As a result, the Swiss Federal Office of Police and the Swiss Association of Cantonal Archaeologists declared a decline in the illegal trade of objects which origin was doubtful and not certificated.

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<sup>25</sup> “Memorandum of Understanding zwischen eBay International AG (eBay) und dem Schweizerischen Bundesamt für Kultur (BAK) im Hinblick auf einen verantwortungsvollen Umgang mit Kulturgütern im Sinne der UNESCO Konvention von 1970 über die Einfuhr und die Rückführung von Kulturgut.” UNESCO, 2009.

<sup>26</sup> The Red Lists is a database made by ICOM that “classifies the endangered categories of archaeological objects or works of art in the most vulnerable areas of the world, in order to prevent them being sold or illegally exported” Source: ICOM, <http://icom.museum/programmes/fighting-illicit-traffic/red-list/> (Accessed June 2017).

Even before the trade regulations, it is important to underline how the export and import of goods needs to be controlled. The traffickers, once obtained the objects though illegal excavations, send them using illicit networks abroad. Once they pass the national border, it is easier for them to cover their tracks, obtain better prices and avoid legal consequences for illicit trade. Article 6 of the 1970 Convention<sup>27</sup> calls for regulation of export of cultural goods, in different ways such as a system of certification to state the legal exportation and prohibit the export in absence of it. At the same time, also the import is regulated and it should be prohibited in case of cultural objects stolen from a museum or any other public or private institution (as stated in Article 7 of the aforementioned Convention<sup>28</sup>).

The laws of Algeria, Saudi Arabia, Bahrain, Comoros, Egypt, Iraq, Jordan, Morocco, Mauritania, Oman, Sudan, Tunisia and Yemen comprehend some control standard on the export, but they are limited in scope. It is not possible to export some categories of objects, but there is a mechanism that allows temporary exports in case of exhibitions or for academic purposes and that allows confiscation by the authorities in case of illegal transportation outside the borders.<sup>29</sup> As for

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<sup>27</sup> «The States Parties to this Convention undertake:

- (a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorised. The certificate should accompany all items of cultural property exported in accordance with the regulations;
- (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;
- (c) to publicise this prohibition by appropriate means, particularly among persons likely to export or import cultural property.»

<sup>28</sup> «The States Parties to this Convention undertake:

- (a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;
- (b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;
- (ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention 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. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.»

<sup>29</sup> See as a reference, Article 62, para. 1 of the Algerian law; Articles 19 to 21 of the Bahraini law; Articles 27 to 29 of the Comorian law; Articles 8 and 10 of the Egyptian law; Article 21, para. 1 and Articles 2, 22, para. 3, and Article 37 of the Iraqi law; Article 24 of the Jordanian law; Article 32, para. 3, Articles 44 and 58 of the Moroccan law; Articles 85 to 88 and Article 92 of the Mauritanian law; Articles 28, 30 and 33 of the Omani law; Articles 15 and 31, para. 1, of the Sudanese law; Articles 57, para. 1, and 91 of the Tunisian law and Articles 33 to 35 of the Yemeni law.

the import, instead, some of the above mentioned countries' system do not contain any provisions (it is the case of Algeria, Comoros, Egypt, Morocco, Sudan, Tunisia and Oman).

Article 5 of the Convention, moreover, declares the willingness of the states to set up a national service for the protection of the cultural heritage. As the article states:

*To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:*

- (a) contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;*
- (b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;*
- (c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops . . . ) required to ensure the preservation and presentation of cultural property;*
- (d) organising the supervision of archaeological excavations, ensuring the preservation in situ of certain cultural property, and protecting certain areas reserved for future archaeological research;*
- (e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;*
- (f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;*
- (g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.*

Even though in different operational ways and modes, with different degrees of administrative and financial autonomy, all of the Arab Countries established a national service for the protection of the cultural heritage after the ratification of the UNESCO Convention. Despite that, most of the

countries gave the authority to administrative structures that are not exclusively dedicated to the protection of the cultural heritage.

Tunisia, for example, established that the authority is to be given to a body that is “responsible for identifying object seized during illegal excavations or custom searches”<sup>30</sup> and a sort of “heritage squad” that has the skills to identify the illegally exported or traded objects. Both the administrative organs are coordinating their activities together with the security forces, which includes also the custom authorities. Most of the countries envisage this collaboration between the authorities and the security forces, together with the local authorities (provincial and municipal) that are reporting any fraud.

At internal level, moreover, the Convention calls upon informing the local population on the issue and raising awareness in order to avoid the participation of the citizens in this illicit trade. Article 10 of the Convention focuses on education claiming that

*The States Parties to this Convention undertake:*

*(a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;*

*(b) to endeavour by educational means to create and develop in the public mind a realisation of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.*

Even though the seriousness of this phenomenon varies from country to country, all of them are victims of the trafficking but there is a continuous lack of information that does not allow the authorities in charge of protecting the heritage to collect data properly and there is no statistic that can actually assess the degree of diffusion of the illicit trafficking. According to Fraoua’s report,

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<sup>30</sup> R. Fraoua, “Mesures législatives et institutionnelles de lutte contre le trafic illicite de biens culturels dans les pays arabes”, UNESCO, June 2012, [http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Fraoua\\_fr.pdf](http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Fraoua_fr.pdf) (Accessed April 2017)

there is no specific strategy (in any of the country analysed) to prevent the trafficking, collect or spread information about the trafficking and its effect on the national heritage.

Finally, the Convention calls on the cooperation between member states and the involvement in international operations focused on combating the illicit trafficking. As seen in the previous paragraphs, indeed, one of the major risks in the trafficking procedures is the export and import of objects that, once passed the border, become less trackable. According to the convention, the State Parties are encouraged to “call upon other State Parties who are affected”.

As article 9 of the Convention calls,

*[...] The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.*

Some countries, such as the United States of America and the already mentioned Switzerland, proceeded to sign various bilateral agreements on the issue with other countries victims of trafficking. The Arab Countries, instead, did not undertake many agreements. As of 2012, Algeria and Egypt seemed to be the only two countries involved in the ratification of bilateral agreements to protect their cultural heritage, in particular with Italy, Greece, Denmark and United States of America for Egypt, and Argentina, China and Peru for Argentina. The latter, moreover, was involved in 2013 in a controversy against Tunisia over the ancient mask of Gorgone, whose ownership was claimed by Algeria, that stated it was abducted from the site of Hippone in the east of the country. After being stolen, the mask was found in 2011 in the house of one of the relatives of the former President Zine Al-Abidine Ben Ali, and it was taken from the police to execute all the necessary legal procedures (the item was found right after the Tunisian Revolution). At the time, the Ministry of Culture Khalida Toumy stressed on the importance of the cooperation between states for the restitution of the illegally abducted cultural objects and the prevention of trafficking.

The mark finally returned to Algeria in April 2014, three years after it was found in the residence of the President's relative.<sup>31</sup>

The “international effort” mentioned in Article 9 of the Convention also includes the participation of the countries in international operations to prevent the trafficking. Regarding this, the Arab Countries closely collaborated with INTERPOL in terms of information sharing, in particular with the combined action of the cultural heritage protection authorities and the national security services which acts as a hub between the local and the international network. Of less importance is, instead, the degree of cooperation with the World Customs Organisation. This is due to the lack of information on the activities and actions of WCO in order to prevent illicit import and export of cultural properties, and a general non-institutionalisation of the relationship between the national and international bodies. Furthermore, both the security forces and custom personnel are not completely aware of the potential of collaborating with such international organisations and they refer mainly to their national heritage protection services. The reason behind the lack of awareness is mainly due to the unpreparedness of all the agents involved in this and also the unawareness about the tools offered by the international agencies, such as the UNESCO-WCO standard export certificates (a model to be adopted worldwide to certificate cultural objects, accordingly to some distinctive features that permit a rapid identification, in order to spot the illicit exports, have a comprehensive database and also facilitate the legal transfers) or seminars and training for the agents in order to strengthen and integrate the national action with those of the international security agencies.

## 1.6. Conclusion

It appears from this chapter how the illicit trafficking in cultural goods is lucrative, accessible, and therefore attractive. The rise of the prices in artefacts of the last years, together with the recent spread of movement of popular protests all across the Middle Eastern and North African region are just some of the pretext for the diffusion of the illegal practices related to the cultural heritage in the whole Arab region. The dynamics that took place in the countries after the so-called Arab Spring, moreover, led to many situations of instability where the national security forces struggled between

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<sup>31</sup> Algerian Embassy in Tunisia, “Le masque de Gorgone, exposé en Tunisie malgré la demande de sa restitution” 29th June 2013, <https://www.youtube.com/watch?v=eZzbmyLpYa0> and [http://www.ambdz.tn/Actualites/Le%20masque%20de%20Gorgone%20expose%20en%20Tunisie%20malgre%20la%20demande%20de%20sa%20restitution%20\(VIDEO\).php](http://www.ambdz.tn/Actualites/Le%20masque%20de%20Gorgone%20expose%20en%20Tunisie%20malgre%20la%20demande%20de%20sa%20restitution%20(VIDEO).php) (Accessed June 2017).

reconciliation processes, the strive of the democratic transition and the diffusion of terrorist propaganda. This was the perfect habitat for many criminal organisation and terrorist groups to enter the business of art trafficking and slowly intervening into the process of destruction of the national cultural heritage of many countries.

Due to a consistent lack of information and strategy, although, it is not possible to measure the extent of the diffusion of this phenomenon into the Arab Countries. The national government of almost all the countries that have been considered in this chapter are actively involved in fighting the illicit trafficking of cultural objects and in protecting the national cultural heritage, but it is evident that the effort of the political forces is very often challenged by a consistent lack of resources and know-how that are necessary to put into practice the measures provided for by the Hague Convention, its protocols or the UNESCO Convention.

It is also important to note that the countries of the Arab Region generally lacked of collaboration amongst them and with other countries, such as the importing countries of the cultural object exported from the region itself. Moreover, they generally did not adhere to the international standards and tools offered by the international agencies designated for combating this kind of illegal activities.

As seen at the beginning of the chapter, the protection of the cultural heritage is strictly linked to the conservation of the identity of the people and of their own history, and a consistent mismanagement of the national treasures of the countries in the Arab Region, let alone the areas of conflict, will eventually bring to the corrosion of the Arab identity together with the value of its history and the shaping process throughout the centuries.

## **2. Tunisia, heritage protection and illicit trafficking**

As a melting-pot of various cultures across the centuries, Tunisia has nowadays around 50.000 archaeological sites from different ages starting from about 3000 years ago. Given its dimension and the high density of archaeological sites, it is very often considered a “country museum”. Because of that, Tunisia is very exposed to and trafficking of its precious antiquities.

The first traces of the processes of spoliation, and consequent tentatives of protecting, the Tunisian cultural heritage, are to be found at the end of the XIX century.

### **2.1 The construction of the Tunisian heritage and its protection**

In May 1885, when France established its protectorate over Tunisia, was published a decree to found an administrative service in charge of the management of the national heritage. Called “Service des Antiquités et des Arts” (Service of Antiquities and Arts), it was composed mainly by archeologist with the aim of protecting and giving value to all heritage of the country. As a matter of facts, although, the service focused on the classification and safeguard of the ancient ruins, without considering the importance of the Islamic heritage. The latter, in fact, was at the time dependent from the secular organisation called “Djemaïa des Habous” and the Service of Antiquities and Arts worked in the direction of creating a legislation to protect essentially the pre-islamic antiquities.

In March 1886, one year before the first law about the protection of the heritage was adopted in France, Tunisia issued a first text for the safeguard of the ancient monuments and buildings that

would have last for the entire period of the Protectorate. In particular, the decree established a system of classification of all the movable and immovable properties, as well as some regulations about looting activities and the legal status of the discoveries and private collections.<sup>32</sup>

In the following five years, the Service drafted an inventory of all the Tunisian ancient monuments of the pre-islamic era. At that time, the Manouba pavilion was the only Islamic building that was classified, and the Tunisian authorities started inserting in the inventory the Islamic monuments just in 1912, twenty-seven years after the Service of Antiquities and Art was established.<sup>33</sup>

At the end of the century, the scholars of the Service of Antiquities and Arts were reconstructing a selected memory, rooted in the pre-islamic era, in which the Tunisian people did not recognise themselves. The domain of archaeology remained hence a restricted domain, not accessible to the common people and not connected with politics,. Moreover, it was not considered a tool for the economic development of the country. The French protectorate did not show any interest in the Service of Antiquities and Arts, which was finances by the Ministry of Public Instruction.

It is with the beginning of the XX century that the doctrines of archaeology and heritage were “vulgarised” and started spreading across the European but also the Tunisian society. At that moment, the French authorities started giving more importance to the cultural heritage conferring it a political meaning: seen as the direct heir of the ancient Roman society, France tried to focus on the idea that the French people had the right of legitimately claiming the Tunisian territory in the name of history and archaeology.<sup>34</sup> From that moment on, the French authorities participated in the Service’s budget and the domain of archaeology started gaining more importance on the national political arena.

Starting from 1912, the Service of Antiquities and Arts classified the Tunisian islamic monuments, not just to guarantee their protection, but also to establish a particular legislation about

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<sup>32</sup> See the Decree of March 7th, 1886, about the property and conservation of antiquities and objects of art, in *Journal Official Tunisien*, March, 11th, 1886, pp. 41-43.

<sup>33</sup> Decree of March 13th, 1912 about the conservation of various buildings as historic monuments, in *Journal Official Tunisien*, March 23rd, 1912, p. 344.

<sup>34</sup> M. Bacha, “La construction patrimoniale tunisienne à travers la législation et le journal officiel, 1881-2003: de la complexité des rapports entre la politique et le scientifique”, *L'année du Maghreb*, IV, October 2011, pp. 99-122 , <http://annemaghreb.revues.org/433> (Accessed April 2017)

them. With the decree of March 1912 were classified as historical national monuments the most remarkable products of the Islamic architecture: in Tunis, the Great Mosque Djamaa Zitouna, some mausoleums and many mosques (Sidi Youssef, Hamouda Pacha, la Casba, El Ksar, El Djedid to mention some), and other monuments. Even though it was considered an innovation in the heritage protection national system, there was still a separation between the inventory for the pre-Islamic antiquities and the Islamic ones. Moreover, there was a clause (article 2 of the decree) which states that “if one of these moments, belonging to a public *habous*, is in danger, it will be renovated by the Djebaïa des Habous after obtaining the permission from the Government”, basically giving to the government the power to control the renovation process of the islamic monuments without taking charge of the financial obligations.

Following the cultural heritage protection system applied in Morocco in the same years, in 1920 the administrator of the Service of Antiquities issued another rule establishing some non-*aedificandi* areas in seven cities of Tunisia with a significant archaeological heritage and in the medina of Kairouan.<sup>35</sup> In these areas, they prohibited any kind of construction, planting or any other renovation or modification work without obtaining a permit from the Service of Antiquities. The cultural heritage and its conservation gained more and more importance, considering the recognition of its economical value, and the budget for the Service of Antiquities and Arts, previously not highly considered, was significantly raised.<sup>36</sup>

For the first time, the protection practices envisaged a way to protect the archaeological sites from looting activities and they issued a text<sup>37</sup> that established Carthage an “area protecting historic ruins” to save it from the looter sand squatters that in the previous years were taking a considerable

<sup>35</sup> Decree of 15th September 1913 establishing in Dougga an area where it's prohibited to build anything, *Journal Officiel Tunisien* September 10th, 1913, p. 840. Decree establishing zones where it's prohibited to build in Bulla Regia, Ziane, Kairouan, Maktar and Médeïna. See the *Journal Officiel Tunisien* of March 31st 1914 and of April 11th 1914, pp. 383-384. Decree establishing a non *aedificandi* area close to Férida and Decree establishing a non *aedificandi* area in Haïdra (Fraichiche). See the *Journal Officiel Tunisien* of March 31st 1914, of April 8th 1914 and of April 18th 1914, pp. 403-404.

<sup>36</sup> « Étant donné l'importance des monuments laissés dans ce pays par les civilisations phéniciennes et romaines, on ne saurait nier que ces vestiges constituent un puissant attrait pour le touriste et forment une partie appréciable de la richesse publique ; ce serait donc faire acte de bonne administration que de relever les crédits affectés à ce service, et la Commission est unanime à émettre le vœu qu'il soit tenu compte de cette observation dans l'établissement du prochain budget.»

<sup>37</sup> « Sous peine de démolition ou d'arrachage, aucune construction, aucune plantation ne pourra être autorisée dans les limites de cette commune avant que dans les trois mois suivant la demande d'autorisation, il n'ait été procédé par les soins ou sous la surveillance du Service des antiquités et arts, à l'exploration du sol et du sous-sol par sondages, fouilles, déblaiements [...]. »

quantity of cultural objects as souvenirs. After Carthage, also the souks of Tunis<sup>38</sup> and the city of Sidi Bou Said were subjected to some particular protection rules which, in this case, concerned also some regulations in the modification of the external aspect of buildings with the aim to preserve the typical aspect of the areas and enhance the development of tourism.

The turning point in the management of the cultural heritage was represented by the decree of March 1920, which established a Consultive Committee for the Historical Monuments that was supposed to “give advice on the existence, classification, conservation and valorisation of the historical monuments of Tunisia.”<sup>39</sup>

In January 1920 was also issued a decree that marked the willingness of the state to officialise the concept of national heritage taking control of all the ancient footprints of the Tunisian state.<sup>40/41</sup>

This decree also regulated the relationship between the state and the owner of lands containing, on the surface or below, antiquities: it was prohibited to destroy, damage, sell, buy or use antique constructions (article 9), the painted or engraved figures (article 18), objects of metal, glass, ivory, bone, stone, terracotta (article 19). The Director of the Service of Antiquities was authorised (article 23) to confiscate and transport into museums or other public buildings all the antiquities that are found on a privately owned land.<sup>42</sup> From that moment, tourism and the protection of the existing sites while developing the urban spaces became a fundamental parameter of the Tunisian heritage policies. From 1920 to 1956, various decrees about the safeguard and protection of the archaeological and urban ensembles were published.

This was, hence, the legacy that the French Protectorate left to the new Tunisian state that took control of the country from 1956. Despite a slight attention that was dedicated to the Islamic

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<sup>38</sup> Statute of the Service of Antiquities and Arts, Article 1: « Considérant que les Souks de Tunis constituent un précieux ensemble qu'il convient de préserver de toute atteinte et que leur conservation est du plus grand intérêt pour l'art, que le commerce local bénéficie du passage des touristes attirés à Tunis par la réputation des dits souks, sur l'avis de la commission municipale, il est établi dans la ville arabe de Tunis, une zone où les propriétaires, locataires et détenteurs, à quelque titre que ce soit, d'immeubles sont soumis à diverses prescriptions concernant l'entretien et la réparation des immeubles»

<sup>39</sup> See *Journal Officiel Tunisien* of March 17th 1920, p. 483.

<sup>40</sup> S. Ben Achour, “La gestion du patrimoine culturel”, *Revue Tunisienne de Droit*, Tunis, Centre d'études de recherches et de publications, 1994, pp. 229-238.

<sup>41</sup> Article 1 of the decree, 8th of January, 1920: « Toutes les antiquités qu'elles soient découvertes dans un sol appartenant à des municipalités, à des particuliers, à des collectivités ou à l'État, sont la propriété de l'État tunisien. Il en est de même pour les antiquités découvertes en mer. »

<sup>42</sup> For all the articles, see the Decree of the 8th of January 1920.

buildings, the legislation regarding the protection of the cultural heritage was mainly related to the pre-Islamic construction and was perceived by the young Tunisian state as a set of policies justifying the colonial control.

In the first twenty-five years after the Tunisian independence, no decree was issued concerning the protection and classification of new buildings or construction, with the exception of the Ribat de Monastir, classified in 1956 right after the independence without any specific reason (except for, perhaps, the location of the monument in the city of birth of the President at that time Habib Bourguiba). At the same time, no significant modification was made to the administration system that had been inherited from the French protectorate. It is just in 1966 that the Service of Antiquities and Arts was replaced by a new organisation, the Institut National d'Archéologie et d'Art (National Institute of Archaeology and Art). Very similar in its function to the ancient Service of Antiquities, the National Institute was conceived as an organisation with a civil-law status and financial autonomy. Its scope was to take charge of all the study and research work related to the art and archaeology domain.<sup>43</sup>

More in practice, the work consisted in the organisation and promotion of all archaeological and historical research, to draft the inventory of all works of art and archaeological goods, studying, conserving and protecting the national heritage. Basically, this organisation included two innovative elements: first of all, it was considered the notion of “national heritage” giving importance to the unity of the state in protecting the cultural heritage of the country. Secondly, the national heritage included also “popular arts and traditions”, inserting into the protected elements also that intangible part of the culture that was not considered before and that therefore lacked of a memory building process.

Once again, although, the state did not consider the patrimonial cause as a priority in the construction of the state. After the establishment of the National Institute of Antiquities and Arts, there was no significant legislation issued on the subject for other 20 years. The Institute was given the complete autonomy, but this meant just a lack of interest of the state in the heritage field, that reminds of the situation of the Service of Art and Antiquities during the first year of Protectorate. The reason behind it is perhaps the refusal of the young Tunisian Republic to pursue some heritage

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<sup>43</sup> Decree no. 66-140 of April 2nd, 1966, establishing the National Institute of Archaeology and Art, *Journal Officiel Tunisien* of April 1st and April 5th, 1966 pp. 582-589.

Article 1: « un établissement public doté de la personnalité civile et de l'autonomie financière [...]» and Article 2: «[...] chargé d'effectuer tous travaux d'étude ou de recherche relevant du domaine de l'archéologie et des arts»

policies to take the distance from the memory that was not suitable to the new state because it was completely constructed by the colonisers. Also, the national policies of Bourguiba had as a priority the modernisation of the Tunisian state, and he focused the government's attention on the development of more "modern" disciplines such as science, engineering or medicine. Being the objective of the leader "to reach as soon as possible at any cost the cortège of civilisation"<sup>44</sup>, it was not the moment to integrate some new policies on a subject that is logically connected to the past, when the country is supposed to move forward.

Generally, the trend in Europe (as stated during the works of the International Congress on Modern Architecture) was the desegregation of the ancient heritage and monuments and the development and renovation of the urban areas, such as the city of Tunis in 1957. The change of perspective was clear at the beginning of the Eighties, when another decree (number 81-69 of August 1981) established the creation of the Urban Rehabilitation and Renovation Agency with the aim of realising a programme of renovation and construction of the urban spaces, especially those in Tunis and Sfax that were financed by the World Bank.<sup>45</sup>

In the evolution of the heritage policies, very important is the participation of UNESCO in the protection and safeguard of the Tunisian heritage. At the beginning of the Seventies (1974) Tunisia signed the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. In the same years, the newly born Association for the Safeguard of the Medina, asked for a contribution in the protection of the Medina to the UNESCO agency and called for the "valorisation of the monumental heritage of the region of Tunis and Carthage with the aim of economic development".<sup>46</sup>

After the coup d'état and the rise to power of Zine El Abidine Ben Ali in 1987 there was an opening to international aids for development. The law no. 93-120 of December 1993, which was

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<sup>44</sup> A. Ben Dhia « Discours d'inauguration », *Monuments du passé, monuments du présent*, Hammamet, 17th-18th April 1982, acts printed but not published, ICOMOS [8766B] cited in M. Bacha, "La construction patrimoniale tunisienne à travers la législation et le journal officiel, 1881-2003: de la complexité des rapports entre la politique et le scientifique", *L'année du Maghreb*, IV, October 2011, pp. 99-122 , <http://annemaghreb.revues.org/433> (Accessed April 2017)

<sup>45</sup> « procéder à des travaux de nature à améliorer les conditions d'habitabilité dans certains quartiers, [et] permettre une meilleure utilisation de certains lots urbains... de réaliser, conformément à un plan d'aménagement de détail approuvé, un programme d'équipements de base et d'équipements collectifs, un programme de restauration ou de rénovation d'immeubles ou de mise en état du sol, et un programme de constructions » see decree no. 81- 69 of August 1981.

<sup>46</sup> J. Abdelkafi, "La médina de Tunis; espace historique" Paris, Presses du CNRS, 1989, p. 132

about the incitation to investment, as well as the decree no. 94-492 of February 1994<sup>47</sup>, had been conceived to boost the foreign and domestic investments in various domains including the one of culture. The Medina of Tunis, of which the rehabilitation works were stuck because of some juridical obstacles, was the first of the various investments in the country made by some international organisations such as the World Bank, the UNESCO and the United Nations Development Programme (UNDP).

Still ignored by the government, the activities of the National Institute of Archaeology and Art were mainly based on research, and there was a lack of management and exploitation of the heritage to help the development of the country. The heritage was still seen as a secondary element and it was not integrated neither with the economic nor the urban policies.

Under this new international influence, the new President and the political class started re-thinking in a new perspective about the relationship between the State and its heritage.

The value of heritage started being perceived as a source of progress and profit for the country, in the same spirit of modernity that Bourguiba envisaged in the others scientific domains a few decades before. Many started to specialising and working, and therefore contributing to the well-being of the country, in the field of territory management and tourism, to integrate the heritage in the economic circuits of the country and in the new cultural policies.<sup>48</sup>

In this period the National Institute increased its role and created different branches of the Institute, each one in charge of a different domain, accordingly to different Tunisian historical periods: *Centre d'étude hispano-andalouse* (1973), *Centre d'étude de la civilisation classique et des antiquités romaines et byzantines* (1982), *Centre d'études de la civilisation et des arts islamiques de Kairouan*, *Centre d'études de la Civilisation phénicienne, puniques et des antiquités libyques* and a special section called “*Conservation de la Grande Mosquée Zitouna et des monuments religieux à caractère historique*” for the historic religious monuments. Each center had the scope of creating studies, elaborating solutions for the conservation, valorisation and exposition of the heritage

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<sup>47</sup> Decree no. 94-492 of February 1994 is about the lists of relevant activities in the sector included in articles 1,2,3 and 27 of the “code d’incitation aux investissements” included in the aforementioned law no. 93-120 of December 1993.

<sup>48</sup> S. Habib, « Patrimonialisation et politique touristique en Tunisie. Production et diffusion de l'image touristique dans les années 1990 », intervention during the doctoral school *Mémoires et patrimoine en Méditerranée méridionale : regards croisés à partir de l'Algérie, du Liban, du Maroc et de la Tunisie*, that took place in Jendouba, Kairouan, Tunis and Rabat from 23rd to 31th October 2007 cited in M. Bacha, “La construction patrimoniale tunisienne à travers la législation et le journal officiel, 1881-2003: de la complexité des rapports entre la politique et le scientifique”, *L'année du Maghreb*, IV, October 2011, pp. 99-122 , <http://annemaghreb.revues.org/433> (Accessed April 2017)

related to the historic period they were in charge of. A bit earlier in time (in 1977), there was the creation of the Center for the history of national movement, that became official thanks to a decree in 1983, that showed the desire for the Tunisian nation to elaborate a discourse on the memory of its own nation.<sup>49</sup>

These events marked the beginning of an opening wave for the subject of culture and heritage: the management was not just strictly under the competence of the National Institute but it became more a system of cooperation between different entities. The Ministry of Culture, the Ministry of Habitat and Tourism and the government are just some of the institutions that became involved in the decision-making process and developed in turn different agencies and organisations, such as the National Agency for the Valorisation and Use of Archaeological and Historic Heritage, that was in charge of ensuring the realisation of the programme for the cultural, touristic and commercial development of Tunisia.<sup>50</sup>

Another important change was the transformation of the National Institute of Archaeology and Arts in National Institute of Heritage (Institut National du Patrimoine - INP) that integrates into his competencies also the heritage objects that were defined and classified after the independence, so the audio-visual materials and artistic contemporary creations in order to create the roots but also perpetuate the national civilisation.<sup>51</sup> The inability of execution of the protection programmes by all the organs before the 1970 and this new conception of the heritage at international level were also a help in shaping the renovated administration and legislation concerning heritage.

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<sup>49</sup> Decree no. 83-15 of January 8th, 1983, *Journal Officiel République Tunisienne* of January 11th, 1983, p. 109-110.

<sup>50</sup> as article 2 of the Statute calls: «chargée d'assurer à des fins culturelles, touristiques et commerciales la réalisation et la gestion du programme de mise en valeur et d'exploitation du patrimoine archéologique, historique et muséographique ainsi que des sites naturels à caractère historique ; de promouvoir et développer le tourisme culturel et de favoriser la création et le développement d'industries culturelles en relation avec le patrimoine et les biens culturels » Law no. 88-11 of February 25th 1988 establishing the National Agency for the Valorisation and Use of Archaeological and Historic Heritage, *Journal Officiel République Tunisienne* of March 4th, 1988, pp. 338-339. See also: Decree no. 88-1591 of August 24th, 1988 organising the administration and finance of the National Agency for the Valorisation and Use of Archaeological and Historic Heritage, *Journal Officiel République Tunisienne* of September 13th, 1988, pp. 1749-1751.

<sup>51</sup> Decree no. 93-1609 of July 26th, 1993, *Journal Officiel République Tunisienne* of August 13th, 1993, pp. 1224-1228

The pivotal moment was the promulgation of the so-called Heritage Code (Code du Patrimoine) in February 1994. As stated in the first article,<sup>52</sup> there was an opening of the concept of heritage that included also all documents and manuscripts related to art, science, beliefs, traditions, daily life, public events and others that have a proven national or universal historic value. This progress was important for the history of Tunisia because it opened the way to the classification as cultural objects the architectural buildings of the twentieth century under the French Protectorate. Also, for the first time it was mentioned not just the national value of the cultural objects but also the universal value. There was moreover a separation between the monuments and objects that were under the protection of the State and those that, instead, were in danger and so needed a classification procedure and the financial participation of the State in the conservation works.

For the first time, the code envisaged a comprehensive plan of protection: the attention was drawn not just on the single monument or object, but to the ensemble. As Article 43 states<sup>53</sup>, all the areas in the range of 200 meters from an historical monument shall be protected, whether it includes private or public monuments, that fell under the same safeguards rules concerning historical monuments. Moreover, in order to work correspondingly with the Code of Urbanism that was promulgated in November of the same year, that included various urban planning projects, the Law included some safeguard planning projects which were supposed to replace the urban ones in case of the presence of a specific area in need of protection.<sup>54</sup>

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<sup>52</sup> see Article 1 of the law 94 - 35 of February 1994: «Est considéré patrimoine archéologique, historique ou traditionnel tout vestige légué par les civilisations ou les générations antérieures, découvert ou recherché, en terre ou en mer qu'ils soient meubles, immeubles, documents ou manuscrits en rapports avec les arts, les sciences, les croyances, les traditions, la vie quotidienne, les événements publics ou autres datant des époques préhistoriques ou historiques et dont la valeur nationale ou universelle est prouvée. Le patrimoine archéologique, historique ou traditionnel fait partie du domaine public de l'Etat, à l'exception de celui dont la propriété privée a été légalement établie.»

<sup>53</sup> see Article 43 of the law 94 - 35 of February 1994: «Les zones se trouvant dans un rayon de deux cent mètres autour des monuments historiques protégés ou classés et comprenant des biens immeubles bâties ou non, publics ou privés obéissent aux prescriptions prévues aux Art. 26 à 44 du présent code sauf autorisation express délivrée par les services compétents du ministère chargé du patrimoine.»

<sup>54</sup> see Article 1 of the law 94 - 35 of February 1994: «Les ensembles historiques et traditionnels, tels que définis à l'Art. 3 du présent code sont déterminés et leurs limites fixées pour être érigés en secteurs sauvegardés, et ce par un arrêté conjoint du ministre chargé de l'urbanisme et du ministre chargé du patrimoine pris sur proposition de celui-ci. Ledit arrêté est pris après avis des collectivités locales concernées et de la commission nationale du patrimoine. L'arrêté portant création et délimitation du secteur sauvegardé est publié au Journal Officiel de la République Tunisienne.» and Article 17 of the law 94 - 35 of February 1994: « Les services compétents du ministère chargé du patrimoine procède à l'élaboration du "plan de sauvegarde" dans un délai ne dépassant pas cinq ans à compter de la date de publication de l'arrêté portant création du secteur sauvegardé. L'élaboration du plan de sauvegarde obéit à la même procédure que celle pour le plan d'aménagement urbain. Le "plan de sauvegarde" est approuvé par décret, sur proposition des ministres chargés du patrimoine et de l'urbanisme, et après avis de la Commission Nationale du Patrimoine.»

The Nineties are considered therefore a fundamental step in the shaping of the protection policies concerning the cultural heritage not just because in this period all the cultural institutions were re-constructed, but also because the State recognised the importance of the cultural heritage and the need of integrating it into various domains such as urbanism, ecology, economy and tourism. Considered at the time of the Protectorate an exclusive competence of the scientist and archeologist, the management of heritage became soon a political issue and it allowed the State to perceive the heritage as a tool for the development of its own economy.

## **2.2. The controversial heritage management under Ben Ali**

As seen in the previous paragraph, under the regime of Zine El Abidine Ben Ali from 1987 Tunisia started changing its perspective on the conception of heritage and the role of the State became more prominent in the protection of the cultural treasures that constituted, and still constitute, an important source of richness for the nation.

It is true that, because of its abundance of heritage sites, the predation of the Tunisian patrimony started at the beginning of the 18th century together with the weakening of the beylical power. Amongst the most famous cases is the theft, during the French Protectorate, of a Libyan-punic inscription from the temple of Dougga (the ancient Thugga). The inscription was probably stolen during a bombing of the Mausoleum in 1842 by the British consul of the time. This unique piece was finally found exposed at the British Museum in London, and never returned to Tunisian despite the demand of most of the Tunisian governments for it.

It is during the Ben Ali era, though, that a change in the field of the appropriation and trafficking of cultural goods made it worse. If during the previous period the Tunisian heritage was victim of foreign predators, when Ben Ali took power he took also control of the trafficking and the illicit appropriation of cultural goods. On the public side, the legislative orders adopted and the waves of reform showed an interest of the State for its own heritage, but on the private side, it appears that Ben Ali and his family profited of the State heritage as if it was a personal property of the ruling regime members.

During the Ben Ali regime, cultural and historic objects of inestimable value were stolen. Mosaics, sculptures (such as the head of Neptune of Sidi Khlifa or the sculpture of God Mars of Chemtou), epigraphies, steles, jewels (from the Museum of Carthage in particular), ceramics, the blue Koran of Raggada, numismatic treasures and precious manuscripts disappeared to reach, through illegal trafficking routes, the private collections of the rich amateurs of art and history in Europe or in the Gulf Countries.

Before the Revolution of 2011, although, the real size of this pillage was unknown and the ruling family kept collecting unique art objects and antiques for their personal use being unnoticed - or not being condemned - by the authorities in charge of the protection of the heritage. In 2011, then, the inspections and the looting in all the properties of Ben Ali and his family, put a light on the theft of the previous years.

In the Report of the National Commission for the Investigation on Corruption and Embezzlement, Section 14 reports the abuses in the domain of archaeology and states that the commission found, in the palace of Sidi Dhrif (in Sidi Bou Said) 57 antiques that were supposed to be under the control of the competent authorities. Also, it appears from the report that the former President was aware of the state of uncontrolled pillage and of the illicit trade of archaeological goods. In particular, there are some documents witnessing the acknowledgment of Ben Ali about a case of theft in which the President's brother-in-law was involved. Moreover, some documents found at the Presidential Palace in Carthage contain the proofs of an illicit *déclassement* of some areas around the archaeological sites in Carthage that were in this way no longer under the protection of the National Institute of Heritage and were sold at a ridiculous price.<sup>55</sup>

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<sup>55</sup> See "Rapport de la Commission National d'Investigation sur la Corruption et la Malversation", Section 14, pp. 267-268. «Les notes trouvées au palais présidentiel de Carthage ont permis de constater que le ministère de la Culture et l'Institut National du Patrimoine ont manqué au devoir de protection qui leur incombe conformément aux dispositions de la loi n°35 du 24 février 1994. Ceci apparaît à travers:

- La création d'une commission spéciale pour examiner les demandes de déclassement des terrains situés autour des sites archéologiques, alors que les dispositions du code du patrimoine archéologique confient cette mission à la commission nationale du patrimoine prévue par le décret n° 1475 du 4 juillet 1994.
- Le non respect des dispositions du code du patrimoine archéologique qui exigent la réalisation des études nécessaires et des opérations de vérification sur terrain avant de décider le déclassement de biens du domaine public.
- La contradiction au niveau des décisions prises.

Les manquements invoqués ont permis à l'ex-président d'édicter 14 secrets de déclassement de terrains du domaine public. Eu égard au dommage causé au domaine public archéologique, le décret-loi n° 11 du 10 mars 2011 est intervenu pour annuler les décrets de déclassement relatifs aux terrains situés au site archéologique de Carthage à Sidi Bou Said.» [official English translation non available]

Among the 647 objects of which the family of Ben Ali, that also includes the families Materi and Trabelsi, claimed the property, they were also storing at least 93 unique objects with an inestimable value in their residences in Hammamet, Sidi Bou Said and Soukra. Amidst them, fine ceramics, jewels, steles and sculpture from the V and VI centuries before Christ, but also jars, amphoras and vases with figures from the IV, V or even III century before Christ. In the collection of ceramics, there was also a small vase-statue of an old lady of which there are just four in Tunisia and in the world. Some figures are representative of myths, such as the Hercules battles, the battle of the Nemean lion or simple scenes from the ancient Roman daily life.

Apart from the personal belongings stolen from the national heritage, after the revolution the authorities discovered an international dimension of the illicit appropriation: in the houses of Belhassen Trabelsi and Sakhr el Materi, some archaeological pieces that were found have a foreign provenance, such as the already mentioned mask of Gorgone from Algeria (that returned to its country just in 2014) or a jade horse from China. In 2015, moreover, after the death of the Tunisian terrorist leader Fathi Ben Awn Ben Jildi Murad al-Tunisi (alias Abu Sayyaf) during a US raid in Syria, some documents revealed that he was involved in an international trafficking network that originated in Tunisia in the 1980s. The system managed by Abu Sayyaf was so organised that there were some departments dedicated to research, in order to discover new archaeological sites, and also a system of licences falsification in order to obtain the permission to do excavations.<sup>56</sup> There is no information, although, about any possible connection with the former Tunisian ruling family.

It is to be noted that about 80 pieces found in the residences of Ben Ali and his relatives had the stamp of the National Institute of Heritage: the objects were classified and registered in the database. This suggests that there was the complicity of some members of the National Institute of Heritage and that the families Ben Ali, Trabelsi and Materi had actually access to the deposit of the Institute. As stated the archeologist Fathi Bahri, General Director of the National Institute's Council, “the pieces with the stamp of the Institute are pieces of which the authenticity is guaranteed and

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<sup>56</sup> F. Ben Ammar, “Tunisie: Trafic d’antiquités, une activité à réprimer ou à organiser?”, *Huffington Post Maghreb*, 22nd March 2017, [http://www.huffpostmaghreb.com/farouk-ben-ammar/tunisie-trafic-dantiquite\\_b\\_15514292.html](http://www.huffpostmaghreb.com/farouk-ben-ammar/tunisie-trafic-dantiquite_b_15514292.html) (accessed June 2017).

they have an inestimable historic value, so exceptional that we do not find anymore such a value in the most recent excavations".<sup>57</sup>

In 2012 M. Mohamed Béji Ben Mami, the former Major of Tunis and former Director of the National Institute of Heritage was sentenced to spend five years in jail, together with Sakhr El Materi, brother in law of the former President, because of his involvement in a case of illicit trafficking. This was just the tip of the iceberg of an organise crime network that was put in place with the complicity of the highest political authorities of the country, including the National Institute of Heritage and its staff.

The complicity of the National Institute of Heritage, indeed, is one of the reasons that contributed to the development of this trafficking practices and the normalisation of it inside the national system. As seen in the previously in this chapter, the National Institute of Heritage was dependent from other structures such as the Ministry of Culture and their budget was not sufficient for a correct management of the resources.

This caused, on one side, a non-attentive control of the archaeological sites, that were not surveilled every day and night. Also, some strict financial rules prohibited the hiring of more than one guardian per site, which makes it impossible to have a surveillance at night. The situation caused an uncontrolled pillage in those archaeological sites far from the urban areas that were more difficult to supervise during the night.

In addition, the risible salary perceived by the guardians and, in general, those employed in the control of the sites, together with the absence of a proper social welfare system, pushed them to accept any way to increase their income, including some fees that contributed to raise the level of corruption in the entire country during the previous regime. The delays in the payments of salaries, the impoverishment and the malfunctioning of the National Institute of Heritage, also, were not an incentive for its employee to be available, attentive and work effectively for the safeguard of the sites victims of the pillage. The employers were not chosen following criteria of transparency or

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<sup>57</sup> S. Badreddine, "Archéologie : Un patrimoine spolié, récupéré mais toujours en danger", *Nawaat*, 21st March 2013, <https://nawaat.org/portail/2013/03/21/archeologie-un-patrimoine-spolie-recupere-mais-toujours-en-danger/> (accessed May 2017)

merit, and this led to an unadapted inexperienced staff that, once again, made it impossible to effectively protect the archaeological sites.

The National Institute of Heritage is just one of the institutions that have been damaged during the regime. In 2001, under the recommendation of the International Council on Monuments and Sites (ICOMOS), the State created a sort of “heritage squad” specialised in the fight against the trafficking of archaeological objects. The unit was composed by 24 agents and offices in Tunis, la Goulette and Hammamet and it helped the State to dismantle various trafficking networks inside Tunisia and abroad. The success of the unit was undeniable until 2008, when the agents started investigating on some cases in which the ruling family was involved, so the government started the dismantlement of the agency. From 2008 to 2010, hence, the organisation started to be deprived of its logistic and financial resources, so that in this two-years period no infraction concerning the cultural heritage was officially registered. The lack of resources, also, made the squad completely ineffective. Even on the international perspective, in this period Tunisia did not mention any disappearance of cultural goods: before that, thefts were reported to INTERPOL or ICOMOS on a daily basis.

In addition, as mentioned in the Report of the National Commission for the Investigation on Corruption and Embezzlement, the ruling family managed to downgrade some important monument sites (*déclassement*) in Sidi Bou Said and Carthage, of which some had been classified not just as subjected to protection in Tunisia, but also as World Heritage Sites of UNESCO.<sup>58</sup>

With some Presidential Decrees in 2006 and 2007, several sites were downgraded systematically: some fragments of the Bir Ftouha of the archaeological site of Carthage - Sidi Bou Said, to realise some attractive building plans and create the so called “Résidences de Carthage” on terrains that were purchased at a very low price and which were rich of ancient vestiges (that could

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<sup>58</sup> Nowadays, the country counts 8 sites registered as World Heritage Centres: the Amphitheatre of El Jem, the Archaeological site of Carthage, the cities of Dougga and Kairouan, the Medina of Sousse and Medina of Tunis, the Punic town of Kerkuane and its Necropolis and the Ichkeul Natural Park. All of them were inscribed in the World Heritage List from 1979 to 1997. Other 12 properties have been submitted on the Tentative List (an inventory of those properties which each State Party intends to consider for nomination). Source: UNESCO, <http://whc.unesco.org/en/statesparties/tn> (Accessed June 2017).

be discretely abducted under coverage of the construction works).<sup>59</sup> Under the rubbles disappeared also the ruins of a Basilica from the IV century and the ruins from the Odeon hills during the construction works of the Zine El Abidine's mosque, together with many other objects hidden inside and outside Tunisia's archaeological sites.

Generally, the system put in place from the beginning of the Nineties had as its main objective to ease the illicit trafficking, under the coverage of the legislative simplification that was actually a weakening of the existing legislative structures and annihilating the repressive character in the domain of the cultural heritage protection. The “Code du Patrimoine” of 1994 is considered, according to the legal associate of the INP, “a legislative text that encourages and favours the trafficking of archaeological objects” and it is characterised by a “permissive” side.<sup>60</sup> The code, in fact, envisages sanctions for the classified objects, which are actually just a insignificant part of the total of the objects that are present in Tunisia. About 95% of the stolen objects in Tunisia, in fact, are non-classified and there is no inventory for them (which, also, makes it difficult to keep track of the size of the trafficking). The legislation appears therefore custom-made for the thieves to continue their pillage of the Tunisian heritage. Moreover, the 1994 Code establishes the sanction for a value that varies from 100 to 500 dinars, which is nothing compared to the value of the objects that are subtracted from the national heritage, usually worth million dinars on the international market.

### 2.3 After the revolution

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<sup>59</sup> See “Rapport de la Commission National d’Investigation sur la Corruption et la Malversation”, Section 14, pp. 267-268. « Il convient de signaler que l'ex-président était au courant des vols et du commerce illegal de pièces archéologiques. Une note adressée, le 10 novembre 2010, par l'ex-ministre de la Justice (L.B.) à l'ex-président, l'a informé de l'examen par le juge distraction (Z.C.) d'une affaire de vol de pièces archéologique de l'Institut National du Patrimoine. Afin de protéger le beau-frère de l'ex-président (S.M.), impliqué dans cette affaire, le juge d'instruction a décidé de libérer l'accusé (A.F.) et de ne pas mentionner les faits commis par lui. Par conséquent, seuls les accusés (S.D.M.), (N.D.M.) et (R.B.) ont été emprisonnés. [...] Par ailleurs, les services du ministère de la Culture ont soutenu que les immeubles situés dans la zone proche du site archéologique de Carthage (à Sidi Boy Said) ont été cédés, par leurs propriétaires, à (A.B.H.H.) au prix de 20 dinars le mètre carré, sous la pression de (B.T.). Les terrains ont été, par la suite, cédés à la société “Farid” de promotion immobilière, dont les actions sont détenues par (A.B.K.), (F.N.) et (S.L.). Un des membres de la commission de régularisation de la situation foncière des terrains situés dans le zones attachées au site archéologique de Carthage a invoqué le non respect, par l'ex-président, des procédures prévues par le code du patrimoine archéologique, dans la mesure où la commission nationale du patrimoine n'a pas été saisie pour demander son avis. D'un autre côté, le ministre de la Culture a soutenu que 4 immeubles ont été retirés du domaine public archéologique et du domaine public hydraulique pour être intégrés au domaine privé de l'Etat. Ces biens ont été, par la suite, cédés avec des prix dérisoires à (S.M.), (N.B.A.), et (I.Z.), fils de l'ex-ministre du Transport.» [official English translation non available]

<sup>60</sup> S. Badreddine, “Archéologie : Un patrimoine spolié, récupéré mais toujours en danger”, *Nawaat*, 21st March 2013, <https://nawaat.org/portail/2013/03/21/archeologie-un-patrimoine-spolie-recupere-mais-toujours-en-danger/> (accessed May 2017)

In 2011, right after the revolution that marked the fall of Ben Ali's regime, the "Code du Patrimoine" was amended and nowadays it contains some punitive norms which are more balanced with the value of the object stolen: imprisonment from 1 to 5 years, together with sanctions that starts from 1000 dinars but can reach up to 50.000 dinars. The amendment allowed the State to apply tougher punishments in order to better protect the heritage of the country.

The end of the dictatorship and a more conscious civil society appeared to be the key for the safeguard of the Republic's heritage and the beginning of a process of recovery of all the stolen objects during the previous decades. Despite the appearances, although, the issue of illicit trafficking did not disappear from the Tunisian scene, but it doubled, passing from the exclusive control of the families close to the ancient regime, to new international criminal networks, managed in many cases by international businessmen with connections abroad.

According to the estimation of the National Institute of Heritage, there are about 5 to 10 illicit excavation undertaken every day in Tunisia. The INTERPOL statistics show that the worsening of the situation of illicit trafficking does not concern just Tunisia but it is a worldwide trend. Whereas in the other countries there is already an organised system of prevention of trafficking, the region of Middle East and North Africa is one of the most damaged by the illicit trafficking because of a continuous instability of the government and institutions. It is the case of Tunisia, where the *vacuum* of power left by the revolution left space for the development of an uncontrolled illicit trade network.

Since the end of Ben Ali regime, the illegal trafficking did not stop but, according to the Tunisian and international media, many cases were filed:

- *July 2012*, arrest in Kairouan of two suspects for illicit trafficking, 36 objects are found;
- *December 2013*, theft from the Paleo-Christian Museum in Carthage of a Ganymede statue in white marble, dating the V century (one of the suspects of the theft was the guardian of the museum, found dead a few days after the case was filed);

- January 2014, a man is stopped at the airport of Sfax while he was trying to export illegally 920 ancient coins to sell them in Europe;
- January 2016, more than 600 works of art by Tunisian painter and from the Ottoman era, worth 4 million dinars, are confiscated;
- March 2016, three men are arrested after being caught stealing two archaeological object in Souassi;
- December 2016, dismantlement of 11 terrorist cells that had a link with some networks of illicit trafficking of antiquities;
- February 2017, two people belonging to a network trading in precious stones are arrested in Grombalia (Nabeul); in the *banlieue sud* of Tunis other three people are arrested with the charge of trafficking antiquities; four people are arrested in Sousse after being caught in possession of 663 ancient coins;
- March 2017, a network of trade in archaeological pieces is dismantled by the security units of Sbiba (Kasserine), a total of 308 counterfeit archaeological objects and 4 original pieces are confiscated; the Tunisian authorities stop a trafficking operation of a rare copy of the Torah dating the XV century, written on a roll of bovine paper, a group of suspects is arrested while they were trying to take the object out of the country through Europe.<sup>61</sup>

## 2.4 Conclusion

Despite the willingness and the cohesive intervention of several institutions (National Institute of Heritage, Ministry of Justice, police and customs) it is not easy to control all of the historic and archaeological sites of Tunisia. A lot of important steps have been done by the new governments after the revolution to take back the situation to the time before the revolution and actually improve the legislative system to ensure a better management of the fight against illicit trafficking and appropriation. Among them, the reclassification of all the sites that were downgraded during Ben Ali era, the delimitation of some areas (such as the Medina of Tunis, the Medina of Sousse, the village of Sidi Bou Said and Belvédère park) to avoid thefts, but also some international initiatives such as the signature of the UNIDROIT Convention of 1995<sup>62</sup> or an improved strategic dialogue

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<sup>61</sup> F. Ben Ammar, “Tunisie: Trafic d’antiquités, une activité à réprimer ou à organiser?”, *Huffington Post Maghreb*, 22nd March 2017, [http://www.huffpostmaghreb.com/farouk-ben-ammar/tunisie-trafic-dantiquite\\_b\\_15514292.html](http://www.huffpostmaghreb.com/farouk-ben-ammar/tunisie-trafic-dantiquite_b_15514292.html) (accessed June 2017).

<sup>62</sup> see Chapter 1 of this study.

with some countries (such as the United States of America from November 2015) and institutions (such as the prestigious Smithsonian Institute for the digitalisation of all the objects in Bardo Museum). According to the Director of the Inventory at the National Institute of Heritage, “this is considerable, envisaging the action plans to protect, safeguard and valorisation of these places”.<sup>63</sup>

Whereas the effort of the authorities is considerable, the resource of the country that are dedicated to the protection of the cultural heritage are very limited, and this is causing some issues to the already violated heritage of Tunisia. Places like Carthage or the Medina of Tunis are a real treasure for the entire humanity and they deserve an effort not just from the Tunisian authority but also from the international community to be conserved and protected from any tentative of theft or damage.

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<sup>63</sup> E. Zammit, “Patrimoine archéologique: 4 mille saisies depuis la révolution”, Business Insider, 17th January 2016, <http://www.businessnews.com.tn/patrimoine-areologique--4-mille-saisies-depuis-la-revolution-,519,61761,3> (Accessed June 2017).

## **Final Conclusions: future perspectives**

Notwithstanding the efforts of the international community in the fight against the illicit trafficking of artefacts and antiquities, the destruction of many archaeological sites is on the rise and there is the need to deepen the cooperation to prevent the ongoing destruction of the memory of humanity, in a way that is both effective and economically sustainable.

This aim of this research was to analyse the current international system regarding cultural human rights, the protection of the cultural heritage and its dynamics. It resulted that the cultural heritage is strictly related to the identity (of a nation, of the people, of a minority) and, therefore, power. The lack of bilateral agreements between countries to regulate the import and export practices for cultural goods, or the perception of the pre-islamic heritage as a legacy of the French during the Protectorate in Tunisia, are all elements that are strictly connected to power. It seemed that the creation of UNESCO, considered as the reference organisation for the heritage, set some worldwide common policies regarding the definition and protocols for management, expression and preservation of the heritage. UNESCO, although, is a governmental organisation, at is is therefore a valorisation of the national dimension inside the organisation. In the arena of cultural and human rights, therefore, there is the need to overcome the national dimension or, at least, regulate it in order to have a clear development of some relationships based on cooperation.

First of all, there is the need for a detachment from the Western perspective on the protection of the heritage, that still dictates the rules on the protection of the cultural heritage based on their

own standards, which led to a double-standard mechanism: many European countries, for example, while fighting the trafficking of their heritage, do not show any concern in receiving other countries' heritage and keeping it inside their national borders.

It is this perspective, the system that seemed to be functioning in fighting the illegal trafficking needs to be adapted: the current existing cultural property law at international level, in fact, seems to be not very in compliance with the reality of the antiquities market, that keeps acting undisturbed on illicit networks.

Among the elements, to mention one, the concept of prohibition, an easy option that is not preventing illicit trade, should be reviewed. As shown in the cases where the trade in antiquities is allowed and the people acted within the limits of the law and under the supervision of the competent authorities, it did not lead to an increase of illicit trafficking in cultural objects and there was no damage to the cultural heritage. Instead of punishing the people that are producing archaeological value through excavations, it would be a better solution to allow a controlled trade in antiquities and reward those who are acting in a legal and controlled way.

A regulated system for the management of the trade in cultural objects, including for example governmental official auctions and some proper certification practices, would lead people to report the findings instead of selling them to smugglers. Also, the certification for the artefacts sold at official auctions would raise the market value of the certified objects in spite of those that are undocumented. In this process of reform, the role of the Governments is pivotal: firstly, they have to be able to make the legal market more attractive for the archeologist or the looters, that should be persuaded to report their findings to the national authorities because it constitute an economical or general advantage for them. In reality, Governments have a tool that smugglers cannot have, which is the added value of legitimacy. Additionally, giving a financial reward to those who, with legal practices and under control, conduct excavations and find objects, would help avoiding those unregulated excavation practices that damages not just the national heritage, but also the unskilled workers involved. In this way, the national authorities would also be able to fill up a complete inventory of the cultural objects that have been found, keeping track of their movements and informing the national and international authorities about them, facilitating the investigation process in case of theft. Moreover, archaeological excavations that could lead to the discovery of large sites

of considerable historical, cultural or artistic value should not be executed unless it is ensured not just the protection and the conservation of the site in the long term, but also the possibilities to developing it.

A reform of the current legal framework would certainly bring advantages to different categories. First and foremost, to the countries of origin of the artefacts, because it would allow governments to have a control on the objects that are found in the country and decide whether to sell them or not, benefitting from the financial revenue of the selling, and of the taxes resulting from the transaction. Foreign purchasers, also, would more easily buy artefacts that are legally certified and complying with the international laws and standards. The category of archaeologist would also be benefitting: more open practices to access the excavation sites, a preferred access for professionals instead of illegal looters that could damage the sites, and the possibility to contribute to the process of information collection, accessing and providing important historical data for their future studies and researches.

Alongside with the political reforms, though, one of the most important elements is education. Potential buyers need to be informed about the current status of the cultural property law, both at national and international level (especially in case of transactions abroad), and to be aware of the potential risks of being defrauded by illicit smugglers. In some cases, the most experienced buyers are already aware of the rules of the game and they act independently applying their own regulations to the commerce practices, ignoring professional ethics and the law. With no surprise, even museums, private collectors, and in general art dealers are against more strict regulations and prefer to act in the fuzzy market of antiquities that allows them to obtain some rare pieces for their collections. This is the reason why there is the need to educate the civil society to be active in the fight against the illicit trade: through for example social media campaigns, activists should be engaged in this cause in order to raise awareness on the issue and spread the perspective that the heritage of a country it is also the heritage, and therefore the heart of the identity, of its own people.

Clearly, among the reforms that needs to be done, there is also the adaptation to the policies of Internet. The UNESCO Convention of 1970, or the UNIDROIT Convention of 1995, were conceived at a time where there was no opportunity to trade via internet. Nowadays, considering the size of the sales of cultural objects on the Internet, trade regulation should be updated and adopt

specific standards that are applicable to transaction through Internet. The possibility to circumvent the rules prohibiting trade, but also the lack of a legal framework on the commerce of cultural objects online, are potentially giving space for Internet to become the new uncontrolled platform of the illicit trade in artefacts.

The UNESCO Convention does not lack of up-to-date regulations for the Internet transactions, but also in terms of applicability. The Convention, that considers just state actors, does not take into consideration the potential threat caused by terrorist groups. Since the illicit trade, as seen in this research, is more easily engaged in a situation of conflict and instability, it is easier for terrorist groups to penetrate the market and exploit the existing routes of the trafficking of weapons, drugs and other objects. The web created between organised crime groups, terrorist groups, traders, smugglers and looters is a network that no state could be able to develop and the policing agencies, such as the governments in a united effort, should act in this sense reforming and adapting their legislative resources in order to face these new actors on the arena of the illicit trade.

The terrorist groups' access into the international networks of illegal trade of cultural objects was made easier by the waves of conflicts and disorder that took place in recent year all across the Middle Eastern and Northern Africa region. The countries of the region, whose situation was carefully analysed in this study, did not consider the cultural heritage as a prominent problem for their countries, compared to other problems such as food security or the safety of their own citizens.

In a point of fact, even though most of them adhered to the international convention, they are far away from aligning to the international standards in the field of cultural heritage protection. They do not have archaeological maps, nor a proper database of their heritage. They might have access to a considerable source of information in their archives, but their system are not organised in an up-to-date inventory and this affects the efficiency and the functioning of the entire process of classification of cultural objects and archeological sites. Moreover, their relatively limited economical resources do not allow them to have skilled and prepared personnel, which could be able to assess whether the excavation requests rest on scientifically and legally sound reasons, set specific conditions for excavation authorisation, monitor the entire process, decide on the proper measures to manage or conserve the vestiges discovered, recognise the scientific, historical and archaeological value of excavation finds, ensure surveillance of excavated archaeological sites and

many other tasks that require experience and preparation. It is therefore necessary for the Middle Eastern and Northern African region to develop a shared plan of reforms, in order to change the paradigms and elaborate new strategy for the management of the excavation practices but also to improve the system of classification of their own treasures.

It is the case, in particular, of Tunisia. This small country, with a unique history and a hulking heritage to handle, is struggling to escape the burden of pillages. After the ruling regime for more than 30 years contributed to the dismantlement of the Tunisian heritage, the new governments after the revolution have to face an important challenge: not just building the future with a transitional process to democracy, but also recovering and reconstructing its own past, which is the base of that Tunisian identity and pride that led the people to start the revolution. The existing structures that are in charge of fighting the illicit trafficking and the consequent destruction of the cultural heritage are, nowadays, still lacking of resources and experience. It is necessary in Tunisia to ensure that archaeology focuses, differently from the past, more closely on public interest subjects such as the protection of archaeological remains against real-estate speculation or inappropriate development for tourism purposes, together with the prevention of trafficking or illegal excavations and the dissemination of information to raise public awareness.

Given the proliferation of antiquities trafficking networks (in particular in the Middle Easter and Northern African region, but also in other developing and developed areas of the world) there is more than never the need to fight the illicit trade with reforms which can result from a joint effort of several actors: international organisations, national governments, security forces, custom officers, museums, collectors, but also the people. It is in fact fundamental, in Tunisia and elsewhere, to involve the civil society into this process of revision at systemic level in order to make people aware that we are strongly connected to our past, to our history, and that this is the only key to develop a better future for humanity.

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