Unravelling the cradle of civilization “layer by layer”: Iraq, its Peoples and Cultural Heritage

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Our history was in the building. It was the soul of Iraq. If the museum doesn’t recover the looted treasures, I will feel like a part of my own soul has been stolen. (Lemonick 2003:46)

The modern state of Iraq came into being with its demarcation by outside Powers following the First World War. This moment threw into stark relief two characteristics which have prevailed to the present day. On the one hand, there is the diversity of its constituent peoples, that is, the multifarious ethnic, religious and linguistic minorities which live within its territorial boundaries. On the other, its rich cultural heritage has been deployed consistently to imbue its populace with a unified, national sentiment. Iraq has been an often tragic testing ground for the themes of this book: cultural heritage, diversity and human rights.

In this chapter, I concentrate on the two (often contradictory) forces which have defined the state of Iraq and the antagonisms and efforts at reconciling them which have marked it since its inception. The centrifugal force of diversity was an inevitable consequence of the emergence of a nation hewed from the remnants of a collapsing empire. The mixing
of people and their cultures and religions over vast territories and existing side by side is emblematic of most empires, and the Ottoman Empire in particular. While the empire dissolved, this diversity on the ground often remained unchanged. The territorial boundaries of the new nation state made few concessions to this reality. Instead, individuals and communities which found themselves within its borders were provided with some guarantees designed to ensure their enjoyment of their languages, cultures and religious practices. These minority guarantees were a precursor to contemporary human rights. However, the reality for these groups and their individual members often fell far short of these laws.

This motion was counterbalanced by the centripetal force of the new state which strove to engender a cohesive whole within its borders. The harnessing of a rich cultural heritage was essential to fostering a national identity to unify the populace. Detailed legislation and sanctions for the protection of historic monuments and archaeological sites was a central plank of this effort. The promotion and protection of both the diversity of minority cultures and religions (and related human rights of its practitioners) and the protection of cultural heritage lay largely in the lap of the same entity, the government and officials of the state. The history of Iraq bears witness to the problematic nature of these multiple forces and responsibilities.

This chapter considers the twin forces of diversity and the pursuit of national unity as they have been played out in Iraq through the twentieth and twenty-first centuries. It is
divided into three parts which follow a chronological line: first, the period from the British mandate to the establishment of the Kingdom of Iraq and the internalization of external norms; second, the period from the Republic to the dictatorship of Saddam Hussein, and the rise of nationalism and socialism during decolonization; and finally, the invasion of Kuwait, the 1990-1991 Gulf War, 2003 coalition invasion and occupation, and post-war reconstruction and transition from occupier to occupied.

MANDATE TO KINGDOM

The first half of the twentieth century saw the emergence of the Iraqi state following the dismantling of the Ottoman Empire, its administration during the British mandate, and then its gradual transition to statehood as the Kingdom of Iraq. The period is marked by the imposition of standards and norms from above (by the international community through its interlocutor, Britain), including a constitution which guaranteed certain rights to all Iraqi citizens, and recognized the right of minorities to preserve and practise their language, cultures and religions, and antiquities legislation protecting a cultural heritage deemed the inheritance not only of a particular nation, but all humanity.

British Mandate: Defining a nation from the top down

From the mid-nineteenth century, Mesopotamia experienced the brunt of escalating Western interest in antiquities which fuelled a myriad of excavations of archaeological sites, in this ‘neglected province of a decaying empire’ (Lloyd 1980:173). This situation was tempered somewhat from 1881, when the Ottoman statesman, Hamdi Bey founded
the Archaeological Museum of Istanbul. Henceforth, in an effort to build a collection befitting an imperial capital, this museum retained unique finds and divided duplicates between itself and the excavator (Lloyd 1980:170). In addition, the Ottoman Empire had in place minority protection for particular religious communities, which protected their right to practise their faith and protected communal property.

Following the First World War, the Ottoman Empire was partitioned and a mandate, administered by Britain, was established over the newly defined and designated state of Iraq. As the mandating power, Britain undertook the responsibility encapsulated in ‘the principle that the well-being and development of such peoples form[ed] a sacred trust of civilization’. The redefinition and internationalization of the colonial relationship in the aftermath of the First World War meant that Britain held the territory on a double trust: to guide the territory to self-rule and ensure equal access to all member states of the League of Nations to Iraq’s resources, including cultural ‘resources’.

At the commencement of the British mandate, British official, Gertrude Bell was appointed the first Director of Antiquities in Iraq. She was keenly aware of the ‘Arab awakening’ of national consciousness which inextricably wove political nationalism with a cultural resurgence (Lloyd 1980: 179). She was instrumental in mapping not only the first physical borders of the new, multi-ethnic Iraqi state but also its ‘national’, cultural parameters through the establishment of the Baghdad Museum and the drafting of the first Iraqi antiquities legislation (Russell 2001: 44).
1924 Antiquities Law

Unable to maintain the costs of occupation but determined to protect its oil fields in southern Iraq, the British finally signed the Treaty of Alliance with Iraq in 10 October 1922 (‘1922 Treaty’), creating the kingdom of Iraq with the newly installed monarch, King Faisal I as its titular head. Under Article XIV of the 1922 Treaty, the relevant Iraqi authorities undertook ‘to ensure the execution of a Law of Antiquities based on the rules annexed to Article 421’ of the Treaty of Peace with Turkey (‘Treaty of Sèvres’) which had been signed but not ratified (Visscher 1937: 700). Bell drafted and lobbied for the passage of legislation to regulate the excavation and export of antiquities (Bell 1927: II, 654). The Antiquities Law No.40 of 1924 (‘1924 Antiquities Law’) was finally passed in the same year the Iraqi National Assembly ratified the 1922 treaty with Britain.

While Gertrude Bell discharged her duty under the 1924 Antiquities Act with her primary concern being Iraqi interests, her understanding of how these obligations were to be fulfilled was defined in Anglo-American terms. Like other mandated territories, the antiquities department established by the mandating power encouraged excavation by large foreign archaeological expeditions. At the end of the British mandate in 1932, there were eleven expeditions of five different nationalities working in Iraq (O’Keefe and Prott 1984: 46-47). The division of antiquities was determined by Bell, as Director of Antiquities. For Bell, ‘the interests of science’ dictated that because of the scarcity of
resources and expertise in Iraq to restore and preserve objects meant they were relinquished to museums in other states’ (Bell 1927: 725).

1925 Constitution of the Kingdom of Iraq

Bell’s letters during the 1920s detail the deep ethnic and religious fracture lines which plague Iraq to this day and which she even then saw as threatening the very existence of the state. The League of Nations’ mandate system under which Britain administered Iraq provided for a rudimentary guarantee of minority rights. The victorious Allied Powers had been aware of the need for such guarantees when drawing up territorial boundaries in Europe during the Versailles Peace Conference in 1919. The potential instability arising from newly formed multi-ethnic states applied with equal force to Iraq. Accordingly, when the Iraqi constitution was adopted on 21 March 1925 it provided various rights to its constituent peoples.4 Whilst Islam was recognized as the official religion of the new kingdom, Article 13 also guaranteed the religious freedom for all. In addition to the guarantee of non-discrimination (Article 6), Article 18 ensured equal enjoyment of civil rights by all Iraqis. The constitution also provided some measure of cultural preservation and reproduction for minorities (Article 16). However, these guarantees did little to prevent inter-ethnic violence and protect certain minorities in the new state.

Kingdom of Iraq: Self-definition and internalization of external norms

The transition of Iraq from British administration to independence was defined
unsurprisingly by its leaders’ efforts to assert their distinction from those that had preceded them. Yet, the mechanisms which they employed manifested their internalization of external norms and standards in respect of minorities and cultural heritage, some imposed from outside, others voluntarily adopted.

**Minority protection declaration and League of Nations membership**

On 30 May 1932, upon its admission to the League of Nations (and as part of its condition of entry), Iraq unilaterally declared its acceptance of the obligations arising from the organization’s minority protection regime. However, as noted above, this framework had been significantly internalized into the legal order of the Iraqi state through its 1925 constitution. The League minority guarantee had several levels. First, the nationality of members of the minority was guaranteed – this served as a starting gate issue for the remaining rights. Second, the state would have to provide equal treatment in respect of civil and political rights of nationals. Finally, special measures would be established for minority groups covering cultural reproduction. This minority guarantee became part of the fundamental law, which could not be altered by its domestic legislation, and with compliance subject to external oversight. This international guarantee proved largely ineffective in preventing growing ethnic strife in the country and the repression of minorities (Iraq 1932).
Iraq’s admission as the first independent Arab state into the League of Nations in 1932, led to significant changes within the Department of Antiquities. Briton, Sidney Smith, was recalled to the British Museum and an Arab nationalist, Sati al-Husri, replaced him as Director of Antiquities. Al-Husri’s impact was immediate. He directed his attention to protecting and preserving the Iraqi national heritage through restitution requests to reverse prior cultural loss; passage of a new antiquities law and seeking international enforcement of export controls to prevent ongoing cultural loss; and training Iraqi nationals and educating the population generally to ensure the future preservation of this cultural heritage.

During the mid-1930s, Iraqi authorities commenced investigating the holdings of Mesopotamian artefacts in Western museums. These searches uncovered that the Samarra collection of ninth century Islamic antiquities which had been excavated in 1914 was
located at the British Museum (Bernardsson 2001b: 17). In 1919, then Colonial Secretary
Winston Churchill ordered the collection which had been captured during the First World
War be ‘removed to England, in order to prevent [its] deterioration’ and before the 1922
Treaty was signed (British Museum 1933: 5004). In response to a restitution claim for the
Samarra collection, the British Museum trustees concluded the Iraqi government ‘could
have no legal claim to these antiquities …’ (ibid.). After much pressure from the British
government, the museum finally relinquished a fraction of the original collection which
was greeted with jubilation on its arrival in Baghdad in 1936.

1936 Antiquities Law

During the 1920s, there had been some legal antiquities dealing in Baghdad. However,
this trade had steadily dwindled during the 1930s (Gibson 1997). Al-Husri sought to
further inhibit it through the passage of new antiquities legislation. British Museum
officials were perturbed by the new law prior to its passage (British Museum 1933:
5004). The leader of the Museum’s Ur expedition, Charles Leonard Woolley maintained
the Iraqi antiquities bill was proceeded by a campaign which alleged that the earlier 1924
Act had ‘robbed [Iraq], by concessions made to foreign missions, of the treasures which
were legally and morally hers’ (Woolley 1935: 84).

The Iraqi Antiquities Law No.59 of 1936 (as amended in 1974 and 1975) covering the
excavation, export and importation of antiquities in Iraq remained in force until 2002.
The law vested ownership of all antiquities in the Iraqi state (Article 3). Export was prohibited. Unauthorized exportation or attempted exportation was punishable by imprisonment of up to five years and the confiscation of the antiquities (Article 60(1)). The law also regulated the excavation of antiquities (Part V). All antiquities discovered by the excavators were the property of the Iraqi state and the excavator would be given a reward (Article 49).

An *Antiquity* editorial in early 1935 concluded that whilst foreign scientists were discouraged and penalized under the reforms, Iraq had no means of undertaking such research itself nor did the law provide ‘efficient means to prevent wholesale spoliation and destruction of ancient sites’ (Anon. 1935: 1-2). Al-Husri had worked to enable the Department’s own people to conduct excavations in the country; however, it quickly became clear to him that his staff were inadequately trained in the archaeological method. To remedy this situation, Iraqi authorities attached local inspectors to ensure that they acquired the necessary scientific training (British Museum 1933: 5004).

Iraqi authorities, like other archaeologically rich nations, were aware that their national antiquities law had limited effect beyond their territorial borders. Hence, Iraq’s official response to the draft International Convention for the Protection of National Historic or Artistic Treasures prepared in 1936 by the International Museums Office, of the League of Nations’ International Committee for Intellectual Cooperation (Iraq 1936: 162). Iraq lobbied for the adoption of a restitution regime triggered by the non-possession of an
‘exportation certificate’ issued by government authorities upon leaving the country. It noted that the identification prior to the theft may be possible in other states but this did not work in countries like Iraq with innumerable archaeological sites. Its recommendation was ignored (League of Nations 1937).

**REPUBLIC TO DICTATORSHIP**

For Iraq, the decades following the Second World War bore witness to the fall of the Kingdom and its replacement by a self-styled republic based on socialist principles which necessarily reinterpreted existing constitutional principles and norms for the protection of cultural heritage in pursuit of this agenda. The role of cultural heritage and tolerance of diversity among the populace was necessarily affected by the consolidation of power in the hands of one individual by the late twentieth century. The physical reminders of past civilizations were redefined to provide legitimacy to the regime. Repression, disappearances and executions against entire religious or ethnic communities was the response to political dissent.

**Decolonization and the creation of the republic**

The proposed inclusion of the concept of trusteeship over colonial peoples into the Charter of the United Nations led to heated disputation between anti-colonial and colonial states about the role of the ‘civilizing mission’ in the new international order being
articulated at the close of the Second World War. Iraq strenuously argued: ‘[C]olonialism must give place to self-government ... People of one language, culture and thought could not submit forever to domination and division by a different culture.’

In 1958, the monarchy and parliamentary system established under the British mandate was swept away following a military coup d’État. Power was eventually consolidated in the hands of the Ba’ath Socialist Party. The Iraqi Constitution was overhauled in 1970 to centralize authority in the hands of the President, with the National Council having enumerated powers. The constitution embodied the socialist ethos contained in various constitutions overhauled during the same period in the Soviet sphere of influence. Also, it continued to recognize and notionally protect the rights of minorities. Article 5 provided that: ‘This Constitution acknowledges the national rights of the Kurdish People and the legitimate rights of all minorities within the Iraqi unity.’ Chapter III outlined the fundamental rights and duties bestowed on all Iraqis. Again, the principle of non-discrimination was affirmed (Article 19). Article 25 guaranteed freedom of religious observance as long as they did not contravene the ‘moral and public order’. These provisions were replicated in the 1990 Interim Constitution.

The international obligations in respect of minority protection made upon Iraq’s independence in 1932 remained binding (United Nations 1950: 51). In the years following the Second World War, Iraq became party to various international instruments, including the 1948 Genocide Convention and 1966 International Covenant on Civil and
Political Rights. However, in reality for many (if not most) minorities there was ongoing systematic and persistent flagrant violation of these obligations by the regime (United Nations 1992a: 96ff).

*Cultural heritage as a national resource*

Given the history of colonization, it was no coincidence that the articulation of the legal right to self-determination during the 1960s and 70s was firmly tied to development and control of resources. No longer would the rights and interests of ‘colonized’ peoples be subordinated to the interests of other states in their resources, including cultural ‘resources’. This emphasis on national cultural patrimony asserted itself through the concerted push via international fora for the return of cultural materials removed during foreign occupation, and the realization of a multilateral instrument to stem the flow of cultural objects from these states onto the international art market following independence.

The inter-war efforts to prepare a multilateral instrument regulating the transfer and restitution of cultural objects was revived by UNESCO in the late 1960s, and realized with the adoption of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property in November 1970 (‘1970 UNESCO Convention’). Iraq’s formal reply to the draft convention referred to its ‘natural interest’ in the treaty given its rich cultural patrimony and ‘more so as we have
greatly suffered in the past from … illicit practices’ concerning cultural objects
(UNESCO 1970: Annex I, 10). Its efforts to seek amendments to the draft convention
which would have entailed redress of past depredations proved largely unsuccessful.

Following a series of coups, Saddam Hussein grabbed the key leadership roles of the
party and the state in 1979. Previously, as second-in-command, he had displayed a keen
interest in the importance of antiquities for his own and the state’s self-image. It was not
until the consolidation of his power that Iraq co-sponsored the UN General Assembly
Resolutions on Restitution of Works of Art to Countries Victims of Expropriation. These
resolutions were a concerted call for the return for cultural objects during colonial
occupation.

Iraq based its successive sponsorship of these resolutions on the following grounds. First,
the return of cultural objects was articulated as an extension of Iraq’s exercise of
sovereignty over its territory and resources.9 Second, an intrinsic component of the Iraqi
people’s right to self-determination was the right to determine the course of their cultural
development which included the manner in which their cultural heritage was protected
and preserved.10 Third, Iraq rejected the argument that developing states were unable to
safeguard, preserve and protect such objects. Iraq’s Department of Antiquities and
Heritage systematically educated the general public about the ‘national’ cultural history
through a network of regional museums. This program, together with draconian penalties
meted out to offenders, meant that clandestine excavation of archaeological sites became
rare (Russell 2001). Fourth, Iraqi representatives argued that restitution was vital to ensuring ‘friendly relations between countries and strengthening international solidarity.’

**OCCUPIER TO OCCUPIED**

Since the consolidation of his power in the late 1970s, Saddam Hussein oversaw a period of near continuous armed conflict with Iraq’s neighbours, including the decade-long war with Iran during the 1980s, the invasion of Kuwait in 1990-1991, and the ensuing first Gulf War; and barbaric attacks on minority ethnic and religious groups within Iraq. All of these events adversely affected the two intrinsic features of the modern Iraqi state – its cultural and religious diversity and rich cultural heritage.

**Invasion of Kuwait**

The invasion of Kuwait by Iraq on 3 August 1990 had long-term ramifications not only for Kuwait’s cultural heritage but a devastating and recurring impact on Iraq’s archaeological sites, monuments, and museum collections, also. The international instruments to which both Iraq and Kuwait are parties, prohibits the destruction, damaging and removal or transfer of cultural heritage under compulsion during armed conflict and occupation. During the seven-month occupation, Iraqi museum officials had headed a well-organized confiscation of cultural objects from Kuwaiti museums and
libraries (Oyer 1999: 58-59). These actions clearly violated Iraq’s existing international obligations. International law permits and encourages the removal of cultural objects for safekeeping, from the places which may be exposed to hostilities. Yet, it is an obligation on the national authorities of the state whose cultural objects are being sheltered, not the occupying force. Indeed, the occupying power is required to cooperate with the relevant national authorities of the occupied territory. Iraq did not have the consent of Kuwaiti authorities for the initial removals.\(^{13}\)

Tariq Aziz, the Iraqi Foreign Minister, informed the United Nations that cultural objects removed from Kuwait would be returned pursuant to Security Council Resolution 686 of 1991 (United Nations 1992b: Part II, para.25; United Nations 1992c). Under the supervision of the United Nations Return of Property Unit, over 25,000 items from the Dar-Al-Athar Al-Islamiyya and Kuwait National Museum were handed over in Baghdad to the Kuwaiti representatives in late 1991 (UNESCO 1993: paras.11-12). Nonetheless, Kuwait continued to implore the UN and UNESCO to pressure Iraq to comply fully with Security Council resolutions relating to restitution particularly in relation to archives (United Nations 1994a).\(^{14}\)

Also, the UN Compensation Commission, established by the Security Council to assess a compensation claim arising from the invasion of Kuwait, considered (but ultimately rejected) an Iranian claim for damage to historic artefacts and sites caused by contaminants released from oil well fires (UN Compensation Commission 2005:
First Gulf War and its aftermath

The impact of civil, economic and social instability on the enjoyment of cultural rights and the protection of cultural heritage was increasingly recognized by the international community from the 1990s onwards. UNESCO and leading archaeologists acknowledged the damage sustained to Iraqi archaeological sites and museum collections following the first Gulf War which was triggered in response to the invasion of Kuwait. The repression that followed the popular uprisings in the aftermath of the war had a devastating impact on the populace, especially minorities.

Loss of cultural heritage

Three distinct phases can be identified in respect of loss or damage of cultural heritage. The first phase was during hostilities. Iraqi officials maintained that the aerial bombardment by coalition forces during the conflict and in the so-called ‘No-Fly zone’ until the invasion by coalition forces in 2003 resulted in the partial or total destruction of Iraqi cultural sites, including religious and archaeological sites (Boylan 1993).

The second phase encompassed the civil instability following the war which coincided with the looting and destruction of museum collections, and religious, cultural and
historic sites. The collections of regional museums were used to store objects from the Iraq National Museum for safekeeping during the war were badly affected. Significantly, there was an exponential increase in the number of Iraqi antiquities on sale in Europe and the United States after this period (Gibson 1997; Gibson and McMahon 1992; Baker, Matthews and Postgate 1993).

The third phase was the exacerbation of these conditions by Security Council sanctions. The Security Council embargo on Iraq prohibited UN member states from trading in Iraqi cultural objects. Ironically, this same Security Council resolution applied to all goods and services (except in respect of humanitarian needs). As a consequence, looting and clandestine excavations flourished because of the ensuing economic hardship and ongoing social upheaval (UNESCO 1995; Russell 1998).

In 2002, the 1936 Antiquities Law was superseded by the passage and entry into force of the Antiquities and Heritage Law. It stipulated that the purpose of the Act is:

*First, to protect the Iraqi Republic’s antiquities and heritage, the country’s most important national resources.*

*Second, to uncover the country’s antiquities and heritage and to make them known to citizens and to the international community, thereby highlighting the singular role played by the civilization of Iraq in advancing the civilization of mankind.*

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This law largely mirrored the provisions of the earlier law, but with more draconian sanctions including the death penalty. However, there was an additional obligation on the Antiquities Department to use all legal and diplomatic means ‘to bring back to Iraq antiquities that were stolen from Iraq and taken outside the country’ (Article 37).

**Repression of minorities and violation of cultural rights**

The uprisings by ethnic and religious groups in north and south-eastern Iraq in the wake of the first Gulf War were brutally suppressed by the regime. These and other acts against minorities were in clear violation of Iraq’s obligation under the Genocide Convention which it had acceded to in 1959 (United Nations 1992: 96); and the International Covenant on Civil and Political Rights in 1976. In addition to the mass executions, deportations, displacement, use of chemical weapons and confiscation of property, minorities suffered systematic discrimination and violation of their cultural rights. These abuses included the destruction of religious and cultural sites, monuments and movable heritage (e.g. manuscripts), targeting of community leaders, and suppression of language and schools. The UN General Assembly, the UN Special Rapporteur on the human rights situation in Iraq and various UN human rights committees repeatedly condemned the regime’s repression of and discrimination against minorities.

**2003 Iraq War**

In March 2003, the United States and United Kingdom led a military invasion and
subsequent occupation of Iraq. Despite warnings from international agencies and professional bodies and the lessons learnt following the 1990-91 Gulf War, the coalition forces failed to effectively protect Iraq’s museums, libraries, and religious, historical, cultural and archaeological sites from the looting and destruction fuelled by the civil and security void created following the fall of Saddam Hussein’s regime (Anon. 2003: 465). As occupying powers, they were bound under international law to protect cultural heritage located in Iraq. Furthermore, unless ‘absolutely prevented’, they were bound to respect existing Iraqi law vesting ownership of movable heritage in the Iraqi state which provides significant criminal penalties for exportation.20

Legal obligations arising from occupation forced the United States and United Kingdom to reassess the limitations of their existing domestic legislative frameworks regulating dealings with the cultural property of other states. Like all member states of the United Nations, they were bound by the existing Security Council Resolution 661 of 1990 which placed a general trade embargo on Iraq, following its invasion of Kuwait.21 Although the embargo was lifted by Security Council Resolution 1483 of 2003, UN member states were required to prohibit the transfer and facilitate the return of cultural property illegally removed from ‘the Iraq National Museum, the National Library and other locations in Iraq’ after 6 August 1990.22

The implementation of these obligations at the national level took place against a backdrop of escalating international and domestic concern surrounding the removal and
destruction of cultural objects from museum collections and archaeological sites in Iraq.
Archaeological and museum organizations fostered broad public and governmental awareness of these cultural losses. They argue that, to the detriment of all humanity, clandestine excavations destroy the historical and scientific record and the illicit traffic of cultural objects depleted a finite resource, best understood in situ (Brodie, Doole and Watson 2000). These efforts proved instrumental in the eventual ratification of the 1970 UNESCO Convention by many states which host the leading art market centres (UNESCO 2003a).

**Post-conflict reconstruction**

As the opening quotation highlights, the recovery and return of these cultural objects, and cultural reconstruction were important tasks facing coalition forces and the future Iraqi government as they commenced to re-construct the country and sought to reassure Iraqis and the international community.

Security Council Resolution 1483 of 2003 laid down the obligations of the occupying powers, the United States and United Kingdom, and detailed the role of the United Nations and other international organizations in the provision of humanitarian and post-war reconstruction. UNESCO, because of its specialized mandate in the UN system, was endowed with responsibility in respect of cultural matters. Its initial activities were designed to ameliorate the impact of the conflict on cultural heritage. In particular,
UNESCO strove to stem the tide of cultural loss from museum collections and archaeological sites and facilitate returns in cooperation with scientists and scholars, relevant intergovernmental and non-governmental agencies (UNESCO 2003: 9-10). This work together with the rehabilitation of conflict-damaged sites remained a significant component of the organization’s remit to date.25

However, as the situation in Iraq moved from one of occupation to reconstruction and nation-building the concerns of Iraqis and the international community in respect of priorities pertaining to cultural rights and cultural heritage similarly shifted. The United Nations’ mandate and various humanitarian and reconstruction roles were complicated by the escalating civil strife on the ground (United Nations 2003b). Security Council Resolution 1511 of 16 October 2003 provided for the termination of the occupation by the Coalition Provision Authority (‘CPA’) and its replacement by representative government chosen by the Iraqi people. The Security Council recognized that: ‘[S]overeignty of Iraq resides in the State of Iraq…’. The interim administration was charged with preparing a constitution through a process of national dialogue and consensus-building. It affirmed a commitment to ‘work[ing] towards a federal, democratic, pluralist and unified Iraq, in which there [was] full respect for political and human rights.’26 Whilst sanctioning this transfer of power, the Security Council ‘stress[ed] the need for all parties to respect and protect Iraq’s archaeological, historical, cultural, and religious heritage.’27
After the transfer of power to the Interim Government in mid-2004, UNESCO began liaising with national staff in Iraq and its own staff in neighbouring Amman to undertake reconstruction efforts in the fields of culture and education (UNESCO 2004a). The first Iraqi Cultural Forum hosted by UNESCO in May 2004 recognized the importance of ‘Iraq’s contribution to world civilization over many thousands of years’ whilst acknowledging the ‘plural ethnic and religious identity of Iraq’ (UNESCO 2004b). While the first principle no doubt guided the work of the international community in the protection and preservation of cultural heritage on Iraqi territory after the commencement of the Iraq war, it was the civil strife and inter-ethnic and religious sectarianism which dominated the post-conflict efforts to ‘reconstruct’ the Iraqi state. The appeal arising from the 2004 meeting set a number of priorities for the relevant national authorities, including: (1) respecting cultural diversity which included a constitution enshrining the religious, linguistic and cultural rights of all elements of the Iraqi people, as well as freedom of expression and academic freedom; (2) promoting the establish and participation of all in cultural life which encompasses the free flow of ideas and images, public access to information, and integrity of the artist and intellectual; and (3) the safeguarding of heritage.

The term of the Interim Government come to an end in early 2005 with the holding of national elections for a Transitional National Assembly (TNA) which led to the formation of the Transitional Government of Iraq (‘TGI’) (UNESCO 2005a: 1-2). This transition period lasted until late 2005 during which time the Iraqi people voted for a new
constitution and in parliamentary elections for the Iraqi House of Representatives. The TGI was replaced by the new government when it was sworn in, in 2006.

2005 Permanent Constitution

The Permanent Constitution of the Republic of Iraq was accepted by referendum by the Iraqi people in October 2005 and is a compromise document. In its preamble it refers to the revenge against people and their cultural heritage by the previous regime following uprisings in the North and South following the first Gulf War particularly Sha’abaniyya, Al-Dujail and others; and the subsequent massacres of Halabcha, Barzan, Anfal and the Fayli Kurds; and Turkmen in Basheer. It also embraces the striving toward a ‘pluralist’ state and the ‘spread of a culture of diversity’.

The 2005 Permanent Constitution likewise enunciates certain rights and liberties. It recognizes an individual right to religious freedom (Article 2(2)). However, Article 10 reflects a more communal right in respect of the cultural property of the related religious communities and states that:

The holy shrines and religious places in Iraq are religious and cultural entities.

The State is committed to confirming and safeguarding their sanctity, and guaranteeing the free practice of rituals in them.

It recognizes Arabic and Kurdish as the official languages of the state throughout the country, with Turkmen and Syriac also listed as official languages in those regions where
it is the predominant language of the populations (Article 4). Regions may choose another language as an additional official language if sanctioned by a referendum. As in previous constitutions since the early twentieth century, there is a general equality provision (Article 14), and a right to nationality (Article 18). In the chapter covering liberties, Article 35(4), inserted after a late revision to the draft text, provides that: ‘The State shall promote cultural activities and institutions in a way that is appropriate with Iraq’s civilizational history and culture. It will take care to depend on authentic Iraqi cultural trends.’

This period also witnessed a sharp increase in sectarian violence during which monuments and sites of significance to particular communities were targeted. The most prominent was the bombing of the Al-Askari shrine in Samarra. The bombing destroyed its golden dome and precipitated sectarian violence throughout the country. In 2007, the Samarra Archaeological City was inscribed on the UNESCO World Heritage List and List of Heritage in Danger, because of the ‘disastrous impact’ of hostilities and widespread looting of archaeological sites. Not surprisingly, UNESCO saw its role as including the enhancement of the ‘bridging role’ of culture for the fostering of ‘tolerance, mutual respect and understanding’ within the emerging state (UNESCO 2007a: 3). A second bombing of the Al-Askari shrine a year later led to the destruction of its twin minarets. The violence has also deliberately targeted educators, students, journalists, and religious figures (U.N. Assistance Mission for Iraq 2007c: paras.21ff).
The fate of minorities and their cultural heritage has worsened with the deteriorating security situation (UNESCO 2007b: paras.34-44). The Human Rights Office of the UN Assistance Mission for Iraq noted in March 2007 that: ‘Attacks against religious and ethnic minorities continued unabated in most areas … prompting sections of these communities to seek ways to leave the country’ (UN Assistance Mission for Iraq 2007a: para.39). It has called on the Iraqi Government and the Kurdish Regional Government to ensure the protection of vulnerable religious and ethnic communities (UN Assistance Mission for Iraq 2007b: para.32; and 2007c: para.13(b)).

CONCLUSION

At its inception, the twin requirements imposed by the international community on the newly independent state of Iraq guaranteed the rights of minority individuals, the enjoyment of their languages, cultures and religion (and by default the preservation of diversity); and the legal protection of a rich cultural heritage perceived to be the inheritance not only of Iraqis but all humanity. However, through its persistent, often large-scale, gross violations of its international obligations and human rights norms, the Iraqi state often belied the rhetoric which it repeatedly proclaimed.

In recent decades, the international community has increasingly become aware of the impact upon diversity and human rights of deliberate and systematic attacks on the cultural heritage of minority groups which was often designed to eradicate their identity and difference. There is a growing appreciation that cultural heritage (tangible and
intangible, movable and immovable) is vital to maintaining diversity and enjoying human rights. This concern has translated into the criminalization of genocide and the renewed emphasis on minority protection. As noted by scholars after the first Gulf War: ‘the destruction or theft of cultural markers is an important issue, for such violation of cultural markers is a conscious or unconscious negation of the people involved’ (Gibson and McMahon 1992: v). It is in effect the erasure of their memory and presence from the collective national consciousness.

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Unravelling the cradle of civilization ‘layer after layer’: Iraq, its peoples and cultural heritage

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Unravelling the cradle of civilization ‘layer after layer’: Iraq, its peoples and cultural heritage

1 Article 22 of the Treaty of Peace with Germany and the Allied and Associated Powers, Versailles, 28 June 1919, into force 10 January 1920, Parry's Consolidated Treaty Series, vol.225, p.188 (‘Versailles Treaty’).


3 League of Nations Official Journal (December 1922) 3rd Year, No.12, 1505ff.


5 UN Doc.A/C.4/257, para.11, Khalidy (Iraq) (emphasis added).


9 UN Doc.A/32/PV.65, p.1121, para.19.

10 UN Doc.A/32/PV.65, p.1120, para.16.

11 UN Doc.A/32/PV.65, p.1121, para.18.


14 UN Doc.A/52/PV.55.

15 Article 1 of the Antiquities and Heritage Law No.55 of 2002.

16 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1949,


19 GA Resolution 49/203 of 13 March 1995, paras.8 and 9; 53/157 of 25 February 1999, para.13; 54/178 of 24 February 2000, para.3(g); 55/115 of 20 December 2000, para.3(h).


22 Para.7, SC Resolution 1483 of 22 May 2003. See also Declaration of the Council of the European Union of 26 May 2003 on the tragic destruction of cultural goods, archaeological sites, monuments and
libraries in Iraq, OJ 2003/C 136/01.


24 UNESCO Doc.166 EX/Decision 3.1.1.

25 See for example, the work of the International Coordination Committee for the Safeguarding of the Cultural Heritage of Iraq, created pursuant to decision of the UNESCO Executive Board, UNESCO Doc.166 EX/Decision 9.2.

26 SC Resolution 1546 of 8 June 2004.

27 Ibid.

28 Para. 1, SC Resolution 1546 of 8 June 2004.


30 See Decision 31 COM 8B.23.