1. **INTRODUCTION**

On 17 October 2003 the UNESCO General Conference adopted by consensus the *Declaration Concerning the Intentional Destruction of Cultural Heritage*. Such adoption came at the end of a process which began in the immediate aftermath of the wanton destruction of the Afghan Buddhas of Bamyan perpetrated by the *Taliban* regime in March 2001. Following this event, a study on the international legal implications of such destruction was commissioned by the UNESCO Director-General. A first draft of such study was completed in the beginning of 2002; it was then updated and completed in September of the same year. In December 2002 an *ad hoc* meeting of experts was organized by UNESCO, and hosted in Brussels by the Belgian Government. The Brussels meeting resulted in a preliminary draft Declaration which was submitted to UNESCO. With some...
formal revision, aimed at softening the normative character of its text, the draft Declaration was then subject to negotiations, which required the setting up of an ad hoc group composed of State representatives. This group produced a “compromise text” which was finally submitted to the General Conference in October 2003. Before analyzing the text of the Declaration, it may be useful to briefly examine the general background of international law and practice in the context of which the Declaration is to be situated.

2. THE LEGAL BACKGROUND

Traditionally, the international legal movement for the protection of cultural heritage has evolved through two parallel but separate contexts, which relate, respectively, to peacetime and armed conflicts. For this reason, it appears opportune to analyse these two contexts separately, and then to concentrate on the interactions which exist between them.

2.1. Prohibition of Intentional Destruction of Cultural Heritage in Peacetime

There are several manifestations of international practice which demonstrate the existence of an obligation of customary international law that is binding on all governmental entities which maintain control over a given territory, requiring them to refrain from performing acts of wilful destruction on cultural heritage of outstanding value located in such a territory during peacetime. Even in 1935, the Roerich Pact, a regional treaty concluded between the USA and other American States, proclaimed the principle that museums, monuments, and scientific and cultural institutions are to be protected as part of “common heritage of all people”. This principle has been incessantly reaffirmed by UNESCO since the early 1950s, in several pertinent recommendations and international binding legal instruments.

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6 International practice in the field of State responsibility clearly demonstrates that the recognition of a governmental entity as internationally responsible is mainly based on the substantive element of effective territorial sovereignty, and not on the formal recognition of statehood by the other members of the international community or in the context of international organizations; see FRANCIONI and LENZERINI, cit. supra note 2, p. 629 f.
7 See, in this sense, ibid., p. 630 ff.
9 For a detailed examination of the relevant part of these recommendations, see FRANCIONI, “Principi e criteri ispiratori per la protezione internazionale del patrimonio culturale”, in FRANCIONI, DEL VECCHIO and DE CATERINI (eds.), Protezione internazionale del patrimonio culturale: interessi nazionali e difesa del patrimonio comune della cultura, Milano, 2000, p. 14 f.; the author of this article rightly notes that the relevance of these recommendations, for the