



# EXPERT'S REPORT

## CHURKIN MOSCOW INTERNATIONAL MODEL UNITED NATIONS



# UNESCO

UNITED NATIONS EDUCATIONAL, SCIENTIFIC  
AND CULTURAL ORGANIZATION



***PROTECTION OF CULTURAL HERITAGE IN  
THE EVENT OF ARMED CONFLICT***



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# GLOSSARY

<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNITAR</b>	United Nations Institute for Training and Research
<b>UNOSAT</b>	United Nations Operational Satellite Applications Program
<b>IHL</b>	International Humanitarian Law
<b>LOAC</b>	Law of Armed Conflict
<b>ILOAC</b>	International Law of Armed Conflict
<b>ROE</b>	Rules of Engagement
<b>RTL</b>	Restricted-target lists
<b>ISIS</b>	The Islamic State of Iraq and Syria
<b>MINUSMA</b>	United Nations Multidimensional Integrated Stabilization Mission in Mali
<b>ICC</b>	International Criminal Court
<b>ICRC</b>	International Committee of the Red Cross

# INTRODUCTION

The number of armed conflicts has been escalating since the end of the 20th century starting in the regions of Central Asia (Afghanistan), in the Middle East, Iraq and Syria in particular, and in West Africa, the country of Mali. Belligerents' actions have led to an increase in the destruction of historic sites and an explosion in the trafficking of cultural artifacts. As a consequence, the foundations of peace are weakened and reconciliation is hindered.

The principal goal of UNESCO is "to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity". Due to the occurrence of military conflicts, many of the UNESCO World Heritage Sites are located in the war zones, which make

it extremely hard to protect the Sites and prevent them from being used as a weapon of war.

Some of the most dramatic examples of the cultural property destruction during the armed conflict are ISIS militants taking over (and eventually causing extreme damage to) Hatra, an ancient metropolis in Iraq that dates back to the Roman era, and using it as a training camp and. ISIS has destroyed other cultural sites in Iraq and Syria due to the fact that its members deemed the sites to be blasphemous. In addition to ISIS, smaller groups have also destroyed cultural property: in 2003, Saddam Hussein loyalists destroyed 12 million books, manuscripts, and stone tablets in the Baghdad National Library. Though the latter is not considered a UNESCO Heritage Site, this

was a significant loss of Iraqi national culture.

Cultural property losses incurred in the event of an armed conflict deprive communities of the testimony of the past, which is not only the reflection of their life, but also a valuable resource for the communities' social and economic prosperity. In times of war, the cultural heritage located in war zones is particularly threatened because of its inherent vulnerability and significant symbolic value.

Cultural heritage needs high level of protection, as it reflects the life of the communities' identity. Cultural property preservation gives a chance to rebuild broken communities, re-establish their identities, and link their past with their present and future.

Although, domestic and international conflicts are sometimes inevitable, UNESCO has been tackling the topical issue of ensuring cultural sites protection in

times of such conflicts. However, even after the massive condemnation by the global community and the implementation of international regulatory mechanisms for the protection of cultural property in the event of armed conflicts, the phenomenon of using cultural heritage as a "weapon of war" has not ceased to exist.

It is crucial for the international community to maintain a continuous dialogue concerning this critical issue and take urgent measures, as the protection of cultural property in the event of armed conflict not only has an enormous cultural value, but it has become a security imperative as well.

## INTERNATIONAL REGULATORY MECHANISMS OF CULTURAL PROPERTY

A significant step forward in cultural property protection during armed conflict was taken as an aftermath of the massive destruction caused by the military actions in the Second World War. In 1948, the Netherlands proposed draft articles to UNESCO on the protection of cultural heritage in times of military conflict. UNESCO then initiated a process of drafting new international convention, which was eventually adopted at The Hague in 1954. Not only The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict became the first international treaty focusing exclusively on the protection of cultural property in armed conflict, it also inspires subsequent treaties aimed at preserving cultural heritage.

According to the 1954 Hague Convention, “damage

to cultural property belonging to any people whatsoever” is internationally recognized as “damage to the cultural heritage of all mankind”. The aforementioned Convention also ensures “the granting of special protection” to “a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centers containing monuments and other immovable cultural property of high importance”.

The 1954 Hague Convention protects movable and immovable property of importance to cultural heritage, such as buildings dedicated to religion or sites of historical interest, ancient manuscripts, archives and other objects of archaeological value. Moreover, the Convention explicitly prohibits the use of cultural property for purposes that are likely to expose it to de-

struction or damage in the event of armed conflict and require all States parties to refrain from any act of hostility directed against such property. It's worth-noting that during armed conflicts cultural property is identified and distinguished by a special emblem on it.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was strengthened by its two protocols, adopted at 1954 and 1999.

### **A. First Protocol to the 1954 Hague Convention (1954):**

- Prevents the exportation of cultural property from an occupied territory during hostilities
- Requires cultural property that has been unlawfully exported to be returned to its original territory

### **B. Second Protocol to the 1954 Hague Convention (1999):**

- Gave elaborate definitions of such terms as “military necessity”, “preparatory

measures”

- Required States Parties to criminalize the deliberate destruction of any cultural property
- Created the Fund for the Protection of Cultural Property in the Event of Armed Conflict which provides emergence assistance to States in their efforts to take measures to protect their cultural property
- Established a 12-member intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict which is responsible for monitoring the implementation of the Protocol
- Introduced a new system of heightened protection for cultural property of heightened importance, which should also be protected by adequate national legislation, with the capacity to punish serious violations (i.e. theft, pillage, attacks or acts of vandalism against cultural property) of the Convention with appropriate sentences.

UNESCO also contributes to the implementation of other conventions concerning cultural heritage protection, including:

- The UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property
- The UNESCO 1972 Convention Concerning Protection of the World Cultural and Natural Heritage
- The UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage

It's important to stress out that even when a State is not party to one or other treaty regulating the protection of cultural property in armed conflict, it still remains bound by obligations imposed by the customary international law of armed conflict (ILOAC) that has been developed over time through the maintenance among states of a general practice accepted as law.

In addition, military operations may be subject to regulations by international rules of regional application. These rules may derive from a freestanding regional treaty. For example, the Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments 1935, known as the "Roerich Pact", applicable during peacetime and armed conflict alike, remains in force among eleven American states. Such regulatory instruments may equally take their binding force from a regional security agreement, from the constituent instrument of an intergovernmental organization of a regional character or from some other regional international legal arrangement.

Non-binding normative instruments such as declarations, recommendations and guidelines adopted by international organizations and treaty bodies can provide general principles of use to military forces in the protection of cultural property in armed conflict. The most efficient exam-

ples of instruments in this regard include the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, adopted by the Organization's General Conference in 2003; the Recommendation for the Protection of Movable Cultural Property, adopted by the General Conference of UNESCO in 1978, and the Recommendation on International Principles Applicable to Archaeological Excavations, adopted by the UNESCO General Conference in 1956.

### **Definition of cultural property:**

"Cultural property", as the term is defined in article 1 of the 1954 Hague Convention, means all property of great importance to a particular state's cultural heritage. This includes both immovable cultural property, meaning buildings and other monuments of historic, artistic or architectural significance, as well as archaeological sites, and movable cultural property, by which is meant works of art (such as paintings, draw-

ings, sculptures and so on), antiquities, manuscripts and books, whether individually or in collections, as well as archives. As the definition makes clear, the cultural origin of movable or immovable property, who owns it, and whether it is religious or secular in character makes no difference to whether it can be considered cultural property. It is also irrelevant whether the cultural property is on land or under water.

*If it is movable or immovable property of great importance to the cultural heritage of a state, it is considered cultural property.*

It should be emphasized that, even where they are not "cultural property" in the formal sense, buildings such as educational institutions, libraries, archives and places of worship and objects such as artworks and books will be protected by the law of armed conflict as civilian objects, private property and so on.

The terms "cultural property under special pro-

tection” and “cultural property under enhanced protection” refer respectively to cultural property entered on the “International Register of Cultural Property under Special Protection” pursuant to the 1954 Hague Convention, and to cultural property entered on the “International List of Cultural Property under Enhanced Protection” pursuant to the 1999 Second Protocol.

### **The impact of UNESCO's actions on the situation**

UNESCO is taking actions to ensure high level of cultural property in the event of armed conflict and is determined to take its strategy forward. A significant amount of the measures undertaken by UNESCO on the matter proved success:

- Due to the cooperation with UNESCO, the UN International Criminal Tribunal for the former Yugoslavia (ICTY) was able to sentence former Yugoslav naval officer, Miodrag Jokić to seven years of imprisonment in

2004. This was the first conviction in history for the deliberate destruction of cultural heritage;

- In 2016, the International Criminal Court (ICC) found the Malian jihadist, Ahmad Al Faqi Al Mahdi, guilty of war crimes for the destruction in 2012 of ten religious sites in Timbuktu, while the city was under the control of Ansar Dine, a group suspected to have ties to al Qaeda. He was sentenced to nine years' imprisonment. This was a historic judgement, as the destruction of cultural heritage had never been considered a war crime before;

- In 2013 MINUSMA, the UN peacekeeping mission in Mali, was established by the Security Council resolution 2100, making it the first time in history when safeguarding the cultural heritage of a country was written into the mandate of the UN Mission. MINUSMA was entrusted with “protecting from attack the cultural and historical sites in Mali, in collaboration with UNESCO”;

- In February 2015, with the backing of UNESCO, 50 countries adopted UN Security Council Resolution 2199, prohibiting trade in cultural property coming from Iraq and Syria; “common determination to safeguard the endangered cultural heritage of all peoples, against its destruction and illicit trafficking”.
- On 1 September 2015, the United Nations Institute for Training and Research (UNITAR) published satellite photos showing that ISIS jihadists had destroyed completely the Temple of Bel in Palmyra. Expressing its concern, Italy proposed the idea of creating the “Blue Helmets for Culture” to the UN General Assembly. In February 2016, Italy signed an agreement with UNESCO to create the world’s first emergency task force for culture, composed of civilian experts and the Italian gendarmerie.
- In December 2016, The United Arab Emirates, together with France, held an international conference on protecting cultural heritage in times of armed conflicts, under the auspices of UNESCO. The conference was attended by over 40 countries who met to reaffirm their

# MEASURES FOR THE CULTURAL PROPERTY PROTECTION

## **Military instructions:**

According to the Article 7(1) of the 1954 Hague Convention requires States parties to introduce into their military instructions provisions designed to ensure observance of the Convention, as well as to foster in the members of their armed forces a spirit of respect for the culture and cultural property.

One of the crucial steps for the protection of cultural property in armed conflict is the promulgation within military forces and the inculcation by commanders into their subordinates of “rules of engagement” (ROE). ROE may take different forms within the military doctrine of different states, for instance, executive orders, deployment orders, operational plans or standing directives. The key factor is that ROE are issued by competent military authorities for the purpose of determining the circumstances in

which military forces may be engaged and the limitations within which they must operate in the achievement of their objectives. ROE, which must be in accordance with both LOAC and national law, provide authorization for and impose restrictions the use of armed force, the positioning and posture of forces.

## **Military training:**

Article 25 of the 1954 Hague Convention and article 30(3) (b) of its 1999 Second Protocol oblige States parties to develop and provide their armed forces with peacetime military training and implement other educational programs related to the protection of cultural property in armed conflict.

For its part, UNESCO has developed a range of training materials for military and associated personnel on the protection of cultural property in both armed con-

flict and stabilization operations. These include inserts for military manuals on the 1999 Second Protocol and a booklet for military and police personnel forming part of the MINUSMA.

UNESCO, the International Committee of the Red Cross (ICRC) and some national committees of the Blue Shield can also be addressed in case there is a need for instruction to military forces on the protection of cultural property in armed conflict. States lacking the expertise or capacity to educate or train their armed forces adequately in this respect are advised to contact UNESCO, the ICRC or, where one exists, their national committee of the Blue Shield for assistance.

**Military personnel:**

States parties to the 1954 Hague Convention must plan or establish in peacetime services or specialist personnel within their armed forces tasked with securing respect for cultural property in the event

of armed conflict and with co-operating with the competent civilian authorities in occupied territory responsible for safeguarding it.

In this respect, safeguarding means taking measures to spare cultural property from the foreseeable effects of armed conflict, such as emergency protection against fire or structural collapse and the removal or provision for adequate in situ protection of movable cultural property.

Furthermore, when deployed on mission, the military personnel should co-operate not only with the competent civilian authorities but also with other local heritage professionals and communities in order to make useful inferences and better ensure the protection of cultural property during operations.

## **Protection of cultural property during hostilities:**

The most fundamental preconditions to protecting cultural property during hostilities are:

1) ascertaining whether and precisely where there exist in given territory objects, structures and sites of historic, artistic or architectural significance.

2) identifying what is the cultural property to be protected and where it is located

3) communicating this information effectively to those engaged in the planning and execution of military operations.

One of the possible options is that a State party to the 1954 Hague Convention indicates some cultural property, immovable or movable, by affixing to it or to a building housing it the distinctive emblem of cultural property. Nevertheless, in practice no state affixes the

emblem to every item of its cultural property, and many states don't use emblems at all. Moreover, the distinctive emblem is useless where it is not visible to military forces, to the naked eye or with technological aid.

The more reasonable option is giving the military planners an access to a special register, where a State lists all items of immovable cultural property and all repositories of movable cultural property that constitutes its national cultural heritage. Thus, military forces should always check with the relevant civilian authorities whether any type of such register is available.

Pre-mission preparation also involves as wide and thorough consultation as possible—in liaison with any specialist services or personnel established within the armed forces—between, on the one hand, military planners and, on the other, civilian experts in archaeology, history, art history and architecture

and appropriate intergovernmental and non-governmental organizations.

Efficient military planning requires full use of available human intelligence, as well as available satellite imaging, such as that provided pursuant to the memorandum of understanding of 2015 between UNESCO and the United Nations Operational Satellite (UNOSAT) program of the United Nations Institute for Training and Research (UNITAR), along with any other available remote imaging, such as that offered by unmanned aerial vehicles (“drones”). The aim is to create in advance as detailed a map and dossier as possible of the “cultural terrain” to facilitate military preparation for the protection over the course of the conflict of the cultural property identified.

However, information gathering is only the first step. All the relevant information must be communicated in accessible, utilizable form to those engaged in the planning and execu-

tion of military operations. How this is done will depend largely on the military operation itself. Best practice involves the compilation and entry into any relevant military databases of official “no-strike” lists and “restricted-target” lists (RTL). In the case of planning for ground attack and subsequent belligerent occupation, this process may involve the preparation and distribution of detailed, specially marked maps. Best practice strongly suggests that the proximity to a military objective of cultural property be grounds for placing the objective on a restricted-target list, according to which any attack on the objective must be conducted under stringent conditions as to means and method. RTLs have been widely used in military operations in Iraq, Syria, Libya and Mali.

Integration of cultural property considerations into targeting decisions during military operations is both an international legal obligation and a practical necessity. In legal terms, it involves

two distinct questions. First, military decision-makers must assess whether specific cultural property may itself be attacked. The legal position (and in the vast majority of cases the endpoint) is that targeting cultural property is prohibited. Secondly, military decision-makers must assess whether any attack on a military objective, such as a military installation, may be expected to cause incidental damage to nearby cultural property that would be excessive in relation to the concrete and direct military advantage anticipated from neutralizing the objective.

The fundamental rule is that it's prohibited to attack cultural property unless it becomes a military objective and there is no feasible alternative for obtaining a similar military advantage. Intentional unlawful attacks on cultural property constitute war crimes, and perpetrators have been convicted of such crimes by both international and national criminal courts and tribunals.

Military objective is defined by the LOAC as "an object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage". It's essential to note that the posting of armed guards on or near cultural property for the purpose of its protection does not amount to its use in support of military action.

The most obvious example of using cultural property as a military objective is by taking up position within immovable cultural property, for example by placing a sniper in a medieval bell-tower. Another example is relying on immovable cultural property for access to or from an offensive or defensive position, for instance by using a historic bridge or railway station for reinforcement or resupply.

Those engaged in the military operations must remember that parties to the

conflict must do everything feasible to verify that objectives to be attacked are not cultural property, and, secondly, parties to the conflict must cancel or suspend an attack if it becomes apparent that the objective is cultural property.

## MISAPPROPRIATION, VANDALISM AND REPRISALS AGAINST CULTURAL PROPERTY

Parties to an armed conflict are absolutely prohibited during hostilities from engaging in all forms of theft, pillage or other misappropriation and of vandalism of cultural property. No pretext of military necessity can legally justify such conduct by the military forces of any party to a conflict. In addition, the parties are obliged to prohibit, to prevent and, where necessary, to put a stop to any form of misappropriation or vandalism of such property by others.

There is no excuse for a party to an armed conflict not to forbid the commission of such acts by anyone within the areas of military operations.

Commanders must inform their subordinates that preventing and, if necessary, putting a stop to all forms of theft, pillage or oth-

er misappropriation and of vandalism of cultural property by others is an essential element of military mission success. Hence, military personnel must treat suppressing such acts with the seriousness it deserves.

Passing to the issue of reprisals against cultural property, reprisals in general are justified as a matter of international law which is applied in order to induce the adversary to comply with the laws of war and if it was not disproportionate. For instance, if one state bombarded an undefended town in another state, killing thousands of civilians, the second state might execute the prisoners of war from the military forces of the first state as a means of forcing the first state to abide by the rules on bombardment. Despite this fact, reprisals have been gradually outlawed under LOAC. Hence, it's prohib-

ited to make cultural property the object of reprisals, and such an act can't be justified with considerations of supposed military necessity.

## MILITARY COMMANDERS AND PERSONNEL ENGAGED IN THE PROTECTION OF CULTURAL PROPERTY

The wartime fate of cultural property rests on the effective acquittal by commanders of their operational and legal responsibilities. Military commanders at all levels bear operational responsibility for ensuring that military forces abide by the rules of LOAC and adopt best practice for the protection of cultural property in armed conflict.

The responsibilities of military commanders are both operational and legal. They are reflected in the military law of a commander's own state, and are punishable under that law in the event of the commander's failure to fulfil his duties that are enshrined in IHL as well. Military commanders can be held criminally responsible under international law for war crimes, crimes against humanity and other international crimes committed as a result of their failure to

exercise proper control over forces under their command.

Personnel engaged in the protection of cultural property must be respected, as far as it's consistent with the security interests.

What's more, personnel engaged in the protection of cultural property may wear an armband bearing the distinctive emblem of cultural property, issued and stamped by the competent authorities of the state on whose behalf they are engaged in a conflict, and must carry a special identity card bearing the emblem and the embossed stamp of the competent authorities.

The obligation to respect and ensure security of the personnel engaged in the protection of cultural property implies three aspects. First of all, such personnel must not be made

the target of attack or any other act of hostility by the opposing party unless and for as long as they take direct part in hostilities or, as additionally regards specialist military personnel, otherwise commit acts harmful to the opposing party. Secondly, if they fall into the hands of the opposing party, they must not be detained, unless the interests of security genuinely compel this, and must under no circumstances be mistreated. Finally, they must be permitted to continue to carry out their duties if both they and the cultural property for which they are responsible fall into the hands of the opposing party to the conflict.

## DAMAGE TO CULTURAL PROPERTY IN THE COURSE OF MILITARY OPERATIONS

Damage inflicted in the course of attacks has historically posed the greatest threat to cultural property during armed conflict, particularly since the rise of modern forms of bombardment. Therefore, the best practice in the legal protection of cultural property in wartime dictates prohibiting attacks that may be expected to cause incidental damage to cultural property that would be excessive in relation to the concrete and direct military advantage anticipated. In certain cases such attacks may constitute war crimes, depending on their characteristics.

The prohibition embodies a rule of what is referred to as proportionality, meaning that any incidental damage to cultural property anticipated in the course of an attack against a military objective must not be out of proportion to the military advantage obtained by the

destruction, capture or neutralization of the objective.

When applied to cultural property, the level of proportionality involves qualitative as much as quantitative considerations. In other words, the measure of incidental damage to be caused to cultural property is a question not only of cubic meters, but also of the cultural value of the object, building or site likely to be harmed.

It's crucial that parties to the conflict take all feasible precautions in the choice of means (weapons) and method (the manner in which the attack is conducted) of attack to avoid or in any event minimize incidental damage to cultural property. In this regard, feasible precautions to avoid or minimize incidental damage to cultural property may include the deployment, where available, of preci-

sion-guided munitions, of munitions with a small blast and fragmentation radius. When it comes to anti-submarine warfare near underwater cultural property, the obligation to take feasible precautions in the choice of means of attack compels the use of torpedoes, where available, in preference to depth charges. Precautions related to the manner in which the attack is conducted might include low-altitude aerial raids by daylight, assault at close quarters instead of bombardment, the use of snipers rather than explosives. These precautions must be considered in order to ensure that the military actions won't pose an inevitable risk of casualties.

Parties to the conflict are obliged to cancel or suspend an attack if it becomes apparent that it may be expected to cause incidental damage to cultural property that would be excessive in relation to the concrete and direct military advantage anticipated.

## **Illicit trafficking of cultural property**

A key component in the international legal fight against the illicit traffic in cultural objects is the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted in 1970.

The Convention is indirectly relevant to military forces involved in armed conflict, including belligerent occupation. In this context, first of all, the Convention increases the likelihood of prosecution of personnel who, in the course or at the close of active service, smuggle certain cultural objects out of one country into another. Moreover, article 8 of the aforementioned Convention requires States parties to impose penalties or administrative sanctions on any individual responsible for the unlawful export of cultural property from their territory or for the unlawful import into their territory of documented cultural prop-

erty stolen from a museum, public monument or similar institution. On occurrence of such a situation States parties must, at the request of the State party of cultural objects origin, take appropriate steps to recover and return cultural property stolen from a museum, public monument, etc.

In accordance with the provisions of the 1970 Convention, States parties must ensure that their local cultural heritage authorities and services cooperate efficiently in order to facilitate the restitution of illicitly exported cultural property to its rightful owner.

### **Distinctive marking of cultural property**

The 1954 Hague Convention sets forth the concept of “distinctive emblem” of cultural property. The emblem, as it is referred to in the Convention, comprises a shield consisting of a royal-blue square, one of the angles of which forms the point of a shield, and of a royal-blue triangle above

the square, the space on either side being taken up by a white triangle. As for cultural property under special protection, its emblem takes form of the the distinctive emblem of cultural property repeated three times in a triangular formation (with one shield below).

It's important not to confuse these emblems with the emblem of the World Heritage Convention.

In principle, the emblem may be placed on both immovable and movable cultural property, but practice shows that the use of the distinctive emblem on movables is extremely rare. Military commanders should ensure that their subordinates understand the significance of the display of the cultural property distinctive emblem.

As provided in article 6 of the 1954 Hague Convention, states parties to the Convention are expressly permitted to affix the emblem to or otherwise depict it on cultural property so as

to facilitate the property's recognition as cultural property. Even though distinctive marking facilitates the object's recognition as cultural property, affixing or depicting emblems on cultural property is not obligatory. Thus, States parties may but are not required to indicate cultural property by means of the emblem.

On the other side, a mere fact that cultural property is not marked does not mean that it is not protected by the Convention. Even less does it mean that the property is not protected by customary international law.

If undertaken, the marking of cultural property with the distinctive emblem tends to be done by the relevant civilian authorities. It is not out of the question, however, that military forces, whether during hostilities or belligerent occupation, may wish to place the emblem on at least certain cultural property under their control or on perimeter fencing around it as a means of indicating that the property is

out of bounds to their own troops, to the local populace and others, or to both. They may equally wish to mark cultural property as a precaution against the dangers arising from military operations more broadly. Where they wish to mark cultural property with the emblem, military forces should seek the advice and assistance of any specialist service or relevant cultural heritage professionals.

It's strictly prohibited to misuse distinctive emblem of cultural property during armed conflict.

The use during armed conflict for any purpose whatsoever of a sign resembling the distinctive emblem of cultural property is prohibited as well.

A typical example of misuse of the emblem is its display on an object, structure or site that is not cultural property in an effort to shield it from attack by the adversary.

Military commanders should ensure that the val-

ue of these rules is made clear to their subordinates. Both the abuse of the emblem and the use of similar emblems undermine cultural property protection in armed conflict. Abuse risks bringing the emblem into disrepute even when it is used on genuine cultural property, while the use of similar emblems is liable to lead to confusion in the minds of military personnel.

## INTERNATIONAL RESPONSIBILITY AND INTERSTATE COOPERATION AND ASSISTANCE

In legal terms, the failure of military forces during armed conflict to undertake the necessary measures required by IHL to protect cultural property objects, first of all, incurs international legal responsibility of their State. The State may itself be compelled to make reparation to the injured State or to its citizens for destruction, damage or misappropriation of objects, buildings and sites of historic, artistic or archaeological significance.

At the end of the two World Wars, some of the defeated states were required by peace treaties to make good in material terms their unlawful destruction or plunder of cultural property. For example, article 247 of the Treaty of Versailles obliged Germany “to furnish to the University of Louvain manuscripts, incunabula, printed books, maps and objects of collection corresponding in

number and value to those destroyed in the burning by Germany of the Library of Louvain”. Also, in 1998, the United Nations Compensation Commission awarded approximately 19,000,000 USD to an individual Kuwaiti collector for the destruction and pillage by invading and occupying Iraqi forces of his collections of Islamic art and rare books, which Iraq was compelled by the United Nations Security Council to pay. In 2009, the Eritrea Ethiopia Claims Commission ordered Ethiopia to pay Eritrea USD 50,000 for willful damage caused by Ethiopian troops to an ancient Eritrean monument during the war between those two states. Furthermore, the intentional destruction, damage or misappropriation of cultural property in armed conflict can result in the prosecution of culpable individuals for war crimes and even crimes against humanity.

Several of the defendants before the International Military Tribunal at Nuremberg were convicted for their role in the systematic destruction and plunder of cultural heritage in occupied territory. The deliberate destruction of cultural property has also been the sole focus of one conviction to date before the International Criminal Court, and the Prosecutor has expressed an interest in pursuing further such cases should the opportunity arise. Prosecutions for war crimes against cultural property have taken place at the national level as well.

It's essential to stress out that criminal responsibility for war crimes extends under international law not just to the perpetrators who physically commit the crime but also to those who intentionally participate in it in some way, either by ordering it, aiding, abetting or otherwise assisting in it, or contributing to the main plan to commit it. Additionally, military commanders who fail, intentionally or negligently,

to take all necessary and reasonable measures within their authority to prevent, repress or submit such acts to the competent authorities for the purpose of investigation and prosecution, are to be held criminally responsible for the war crimes.

### **Interstate cooperation and assistance in protecting cultural property during armed conflict**

In 1998 the Treaty of Rome established the International Criminal Court (ICC) and stipulated as crimes against humanity "intentional attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments...provided they are not military objectives." In September 2016 it secured its first conviction, when Ahmad Al Faqi Al-Mahdi confessed to attacking historic and religious buildings in Timbuktu.

A year later, the UN Security Council passed Resolution 2347 condemning the

unlawful destruction of cultural heritage. It named as war crimes unlawful attacks against sites and buildings dedicated to religion, education, science, and historic monuments and strengthened the mandate of United Nations Peacekeeping operations to include the protection of cultural heritage from destruction in the context of armed conflicts.

At one of its sessions UNESCO declared the link between the destruction of cultural heritage and terrorism and mass atrocities.

The former Director-General of UNESCO Irina Bokova claimed that attacks on cultural heritage can be compared to acts of “cultural cleansing”: vicious attacks on the identity of a people for the purpose of destroying them, their heritage, their livelihoods, and the prospects for post-conflict reconciliation and peacebuilding.

A State needs no permission to offer technical or other assistance to another

state with a view to the protection of cultural property in armed conflict, nor does a State need permission to ask for such assistance. The 1999 Second Protocol encourages States parties to provide technical assistance of all kinds, through the Committee for the Protection of Cultural Property in the Event of Armed Conflict to any party to a conflict that requests it, as well as to provide technical assistance to States parties either bilaterally or multilaterally.

What types of assistance a State can offer for the protection of cultural property in armed conflict depends on the State’s willful decision.

# CONCLUSION

Enhancing protection of cultural property is essential for the communities well-being. Monuments of cultural heritage are the major sources of local communal identity, civil society and future economic development.

Protection of cultural property in the event of armed conflict remains a great concern of the global community, especially due to the fact that the number of armed conflicts has currently been escalating.

Despite the existing regulatory mechanisms, cultural property continues to suffer damage, destruction and looting in the course of military operations. It's crucial that States and international organizations, who have the key roles in tackling this grave issue, undertake decisive actions to prevent the ongoing irremediable loss of the world's cultur-

al heritage and to fulfill the obligation to respect international humanitarian and customary law provisions governing cultural property protection.

Among the points needed to be addressed by the international community are:

- establishing punishment standards for those who damage or destroy cultural property
- implementing the efficient system of monitoring Heritage Sites and cultural property
- enhancing interstate cooperation and multilateral dialogue on the cultural heritage protection
- ways to improve regulatory mechanism set forth by the existing conventions, protocols and other instruments.

Cultural heritage in many parts of the globe is currently on the frontline of war, and it's up to the international community to change it, so that the culture remains the frontline of peace as it should be. In order to succeed, it's essential to broaden and rethink traditional approaches to cultural heritage protection, taking into consideration the link between cultural, security and humanitarian aspects, while fully respecting the mandate and prerogatives of each actor in the armed conflict.

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