

UNESCO

EXPERT MEETING ON THE 'RESPONSIBILITY TO PROTECT' AS APPLIED TO THE PROTECTION OF CULTURAL HERITAGE IN ARMED CONFLICT

(Paris, 26 - 27 November 2015)

FINAL REPORT

I. BACKGROUND

1. At the conclusion of the 2005 World Summit, the United Nations General Assembly adopted General Assembly resolution 60/1, the 'World Summit Outcome document', which in paragraphs 138–140 enunciated the 'responsibility to protect'.¹ As outlined in General Assembly resolution 60/1 and in the Secretary-General's follow-up report on implementing the doctrine² the three pillars of the 'responsibility to protect' comprise the responsibility of each UN Member State to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity; the commitment of the international community to assist states to exercise this responsibility, including by helping them build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and by assisting states under stress before crises and conflicts break out; and the responsibility of the international community to respond collectively, through the United Nations, where national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

2. In light of the egregious intentional destruction and misappropriation of cultural heritage in the ongoing armed conflicts in Iraq and Syria, a phenomenon described by UNESCO's Director-General Irina Bokova as 'cultural cleansing',³ a need for deeper discussion and evaluation of the 'responsibility to protect' has emerged.

3. In response to this, the Secretariat organized an expert meeting to exchange ideas on the application of the doctrine of the 'responsibility to protect' to the protection of cultural heritage in armed conflict and to draft recommendations for the Director-General.

4. The meeting took place on 26-27 November 2015 at UNESCO Headquarters. It was attended by 22 experts and representatives of governmental and non-governmental organizations, including Mr Adama Dieng, the UN Secretary-General's Special Advisor on the Prevention of Genocide. (A copy of the list of participants is attached in Annex 1.) The meeting was moderated by Professor Roger O'Keefe, Professor of Public International Law at University College London.

II. OPENING OF THE MEETING

5. Mr Francesco Bandarin, Assistant Director-General for Culture a.i., opened the meeting on behalf of the Director-General. He explained that the gathering was an opportunity to

¹ 60th Session of the United Nations General Assembly, 60/1. 2005 World Summit Outcome. 24 October 2005, paras. 138-140. <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>

² 2009 Report (A/63/677).

³ REPORT, *Heritage and Cultural Diversity at Risk in Iraq and Syria*, International Conference, UNESCO Headquarters, Paris 3 December 2014. <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/CLT/pdf/IraqSyriaReport-en.pdf>

consider whether the intentional destruction and misappropriation of cultural heritage during armed conflict could fall within the framework of the 'responsibility to protect' and to explore whether tools such as 'safe havens' and 'cultural protected zones' could be relied on to render the concept operational in the context of cultural heritage.

6. Professor O'Keefe, in his capacity as moderator, outlined the programme of work. The first day would be devoted to more general aspects of the application of the 'responsibility to protect' to the protection of cultural heritage in armed conflict. The second day would focus specifically on 'safe havens', meaning refuges for movable cultural heritage situated in a safe location, and 'protected cultural zones', meaning demilitarized zones for the *in situ* protection of cultural heritage, as ways of operationalizing the 'responsibility to protect' in the present context.

III. THE 'RESPONSIBILITY TO PROTECT' AND THE PROTECTION OF CULTURAL HERITAGE IN ARMED CONFLICT: APPLICATION IN PRINCIPLE

7. The participants agreed that, as a matter of international law, the intentional destruction and misappropriation of cultural heritage in armed conflict could constitute war crimes and crimes against humanity and could provide evidence of genocidal intent. Such acts were also frequently associated with ethnic cleansing. As such, intentional destruction and misappropriation of cultural heritage during armed conflict could fall within the existing scope of the 'responsibility to protect' as enunciated in paragraphs 138 and 139 of General Assembly resolution 60/1. It was not a question of expanding the parameters of the 'responsibility to protect' to include the protection of cultural heritage in armed conflict. It was a question merely of articulating and highlighting such protection as an aspect of the 'responsibility to protect' as already delineated.

8. Participants emphasized that the 'responsibility to protect' was not a legally binding obligation but a political concept, even if relevant obligations did exist under various bodies of international law. The legal value of the 'responsibility to protect' lay in affirming that the invocation of various provisions of the Charter of the United Nations, including those of chapter VII, was permissible when the national authorities of a UN Member State were manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

9. Participants stressed that the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity was that of the state in whose territory the populations were situated. While the international community undertook to assist this state in acquitting its responsibility and bore its own responsibility to help to protect populations within that state by means of collective action through the United Nations, the protection of those populations fell first and foremost to the state in which they were found.

10. Mr Adama Dieng reiterated that, although the 'responsibility to protect' was not devoid of legal significance, it was not itself a legal obligation but was best described as a political commitment. He emphasized that, as studies by his office had shown, the destruction of cultural heritage could be an indicator of impending genocide.

11. The ensuing discussion focused on the application in principle of the 'responsibility to protect' to the protection of cultural heritage in armed conflict. Two main issues were considered.

a) *The relative emphasis to be given to cultural heritage*

Several participants suggested the need, given the importance of cultural heritage to humanity, for the protection of cultural heritage in armed conflict to be given an emphasis

within the ‘responsibility to protect’ equal to that given to the protection of civilians. Others cautioned that states might be reluctant in times of armed conflict to focus their efforts on protecting cultural heritage when civilians were in danger. They also warned against fostering the potentially discrediting perception that international efforts to protect cultural heritage in armed conflict put monuments before people. All participants agreed, however, that the ultimate objective of protecting cultural heritage was the protection of the living culture of populations and humanity, of human rights and dignity, and of the interests of past and future generations. They agreed too that the intentional destruction and misappropriation of cultural heritage and the violation of cultural rights could aggravate armed conflict and the accompanying suffering of civilians could make peace more difficult to reach, and could hamper post-conflict reconciliation. As such, there was unanimity that every effort should be made to improve the wartime protection of cultural heritage.

b) *The risks of invoking the ‘responsibility to protect’ for the protection of cultural heritage*

A significant number of participants expressed serious reservations as to the wisdom of invoking the ‘responsibility to protect’ to promote the protection of cultural heritage in armed conflict. Their main concern was that calling in aid the loose political concept of the ‘responsibility to protect’ risked complicating and even hampering compliance with the various treaties imposing relevant binding international legal obligations, from conventions in the fields of international humanitarian law, international human rights law and international cultural heritage law to the Convention on the Prevention and Punishment of the Crime of Genocide. Other participants saw potential practical benefit in rhetorical recourse to the ‘responsibility to protect’ as a means of mobilizing political support for the wartime protection of cultural heritage.

IV. THE ‘RESPONSIBILITY TO PROTECT’ AND THE PROTECTION OF CULTURAL HERITAGE IN ARMED CONFLICT: OPERATIONALIZATION

A. GENERAL

12. General discussion of the operationalization of the ‘responsibility to protect’ for the protection of cultural heritage in armed conflict focused predominantly on assisting the state in whose territory the cultural heritage was situated. In accordance with General Assembly resolution 60/1, it was the state in whose territory populations were found that bore the responsibility to protect these populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

13. Emphasis was placed in this regard on the preventive aspects of the ‘responsibility to protect’. Reference was made in this context to the Strategy for the “Reinforcement of UNESCO’s Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict” recently adopted by the General Conference of UNESCO at its thirty-eighth session.⁴

14. Consideration was given in particular to three issues.

⁴ (Document 38 C/49)

http://unesdoc.unesco.org/images/0023/002351/235186e.pdf#xml=http://www.unesco.org/ulis/cgi-bin/ulis.pl?database=gctd&set=0056A5F53D_3_150&hits_rec=4&hits_lng=eng

a) *Strengthening capacity to prevent, mitigate and restore*

Suggestions for strengthening the capacity of UNESCO Member States to prevent the destruction and misappropriation of cultural heritage in armed conflict in their territory, as well as to mitigate damage and loss and to restore such heritage, focused on bilateral and multilateral co-operation with a diverse range of actors, state and non-state, public and private. Training of experts, dissemination of information and education all have roles to play in strengthening capacity. The desirability of UNESCO's assistance in these respects was emphasized.

b) *Mobilization in emergency situations*

There was agreement on the need to improve mobilization in emergency situations. Ways to promote this included synergies with agencies, including non-governmental organizations, in the field.

c) *Engagement with non-state armed groups*

A matter of particular interest was engagement with non-state armed groups for the purpose of promoting the protection of cultural heritage in armed conflict, especially non-international armed conflict. Examples of such groups included the various opposition forces in control of parts of the territory of Syria and the Fuerzas Armadas Revolucionarias de Colombia (FARC) in Colombia. Representatives of several organizations present stated that their organizations generally found it difficult to engage directly with non-state armed groups, on account of both governmental sensitivity and the danger posed to their personnel. The participant from Geneva Call, a non-governmental organization engaging on the ground with non-state armed groups, stressed that, contrary to the popular perception created by Da'esh, many non-state armed groups for example Kurdish forces, some groups in Sudan and others fighting for their cultural identity were particularly concerned about protecting cultural heritage in armed conflict. She encouraged NGOs to offer assistance to such groups where feasible.

15. Participants stressed the need for sensitivity to states' jealousy of their sovereignty. A perception of interference in a state's internal affairs could engender unhelpful defensiveness towards international efforts for the protection of cultural heritage in armed conflict.

B. 'SAFE HAVENS'

16. The second day of the meeting began with discussion of the concept of 'safe havens'—that is, refuges for movable cultural heritage situated in a safe location away from the conflict—as a potential means of operationalizing the 'responsibility to protect' for the protection of cultural heritage in armed conflict.

17. It was underlined at the outset that the transport of cultural property abroad for safekeeping was envisaged in Article 18 of the Regulations for the Execution of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and in paragraph 5 of the 1954 Protocol to the Convention.

(i) The Swiss Legislation

18. Mr Rino Büchel presented the newly-adopted Swiss legislation on 'safe havens', the *Loi fédérale sur la protection des biens culturels en cas de conflit armé, de catastrophe ou de situation d'urgence*.⁵ Mr Büchel described the establishment in Zurich, pursuant to the law, of

⁵ Ordinance on the Protection of Cultural Property in the Event of Armed Conflict, Disaster or Emergency Situations

a refuge for the temporary housing of movable cultural heritage removed for safekeeping to Switzerland from conflict zones abroad. He also outlined the associated training, including in the form of emergency drills, given to representatives of cultural institutions and to the military. Mr Büchel highlighted the importance of the protection of cultural heritage in armed conflict, especially movable heritage and of establishing an international network of inventories of cultural heritage.

19. During the debate, participants discussed, *inter alia*, access to and exhibitions of foreign collections temporarily housed in Switzerland, as well as the possible reluctance of states to send their cultural heritage abroad for safekeeping.

(ii) The Functioning of ‘Safe Havens’

20. The detailed functioning of ‘safe havens’ as tools for the protection of cultural heritage in armed conflict was subjected to further scrutiny. A number of participants addressed the question of access to movable cultural heritage housed in ‘safe havens’. Many shared the view that such objects should be accessible by academics and other experts for the purpose of inventory and study. Others noted that certain communities might demand access to objects of religious or other ritual significance stored abroad for safekeeping. The question of exhibitions of objects housed in ‘safe havens’ was again raised, with differing views expressed. Some participants inquired as to the possibility of ‘secret’ havens and to whom their location might be disclosed.

21. All participants agreed that the emphasis should lie in the final analysis on the protective function of ‘safe havens’, rather than on access to or the presentation of their contents.

(iii) The Role of UNESCO

22. All participants agreed that UNESCO had an important role to play in assisting states to establish and maintain ‘safe havens’ and in encouraging co-operation to this end between and among states.

23. ADG/CLT a.i. explained that the issue was a sensitive one for UNESCO and that further discussion was needed within the Organization and possibly its governing bodies before a formal decision on the matter could be adopted. The establishment of ‘safe havens’ carried with it risks, including the possible refusal to return the objects on the cessation of the conflict. The intention was to formulate a set of guidelines, but further consideration was needed.

C. ‘CULTURAL PROTECTED ZONES’

24. The meeting proceeded to discuss ‘cultural protected zones’—that is, demilitarized zones for the in situ protection of cultural heritage—as a potential means of operationalizing the ‘responsibility to protect’ for the protection of cultural heritage in armed conflict.

25. As to terminology, it was explained by the UNESCO Secretariat that, in accordance with information document 15/10.COM/CONF.203/INF.3⁶ presented to the Tenth Meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, the word ‘zones’ in the term ‘cultural protected zones’ was preferred over the word ‘areas’.

26. Turning to matters of substance, it was noted that the idea in armed conflict of mutually-agreed demilitarized zones and similar localities, whether for the benefit specifically of cultural heritage or of the civilian population and civilian objects more generally, was foreshadowed in

(PCPO) <https://www.admin.ch/opc/fr/classified-compilation/20122172/index.html>

⁶ Document may be found in the following link:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Protected_Cultural_Zones_ENG.pdf

Article 24 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and in Articles 59 and 60 of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts ('Protocol I'). Equally, practicalities aside, there was no legal reason why Chapter VII of the Charter of the United Nations could not be invoked to impose such zones on parties to an armed conflict. Also highlighted was the right of initiative granted to UNESCO by Articles 19(3) and 23(2) of the 1954 Hague Convention and Articles 22(7) and 33(3) of the 1999 Second Protocol to the Convention, as well as the mandate conferred on the Organization by Article 1(2)(c) of its Constitution to assure "the conservation and protection of the world's inheritance of books, works of art and monuments of history and science".

27. Participants stressed that 'cultural protected zones' could realistically be established only with the consent of all relevant parties to the armed conflict. It was inconceivable in practice that such zones could successfully be imposed on the belligerents. The representatives of certain organizations present recounted the limited success to date of analogous zones and areas provided for in international humanitarian law and of attempts during the conflict in Syria to broker and maintain local agreements not to engage in hostilities in the vicinity of significant immovable cultural heritage.

28. The UNESCO Secretariat emphasized that its ability to assist in the creation and maintenance of 'cultural protected zones' was dependent on the consent of the state in whose territory the conflict took place.

V. ADOPTION OF RECOMMENDATIONS

29. The meeting adopted a set of recommendations (copy attached in Annex II), among them that UNESCO Member States and the UNESCO Secretariat give due consideration to the idea of 'safe havens' for cultural property situated in states outside the conflict zone and to the idea of 'cultural protected zones'.

30. In her closing remarks, the Director of the Division for Heritage, Ms Mechtild Rössler, highlighted the need for a comprehensive approach, focusing on operational activities, in line with the Strategy for Reinforcing UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict recently adopted by the General Conference at its thirty-eighth session. She also expressed her hope that the recommendations of the expert meeting would be taken forward by UNESCO and the international community.

31. There being no further business, Professor O'Keefe declared the meeting closed.