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**International Conference on the 20th anniversary
of the 1999 Second Protocol of the 1954 Hague Convention**

PROTECTING CULTURAL PROPERTY

CONFERENCE PROCEEDINGS

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international conference
**PROTECTING
CULTURAL
PROPERTY**
Geneva 25-26 April 2019

conférence internationale
**PROTECTION
DES BIENS
CULTURELS**
Genève 25-26 avril 2019

 Schweizerische Eidgenossenschaft
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**International Conference on the 20th anniversary
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PROTECTING CULTURAL PROPERTY

25-26 April 2019 Geneva, Switzerland

CONFERENCE PROCEEDINGS

ACKNOWLEDGEMENTS

UNESCO and the Government of Switzerland would like to express its sincerest gratitude to the speakers, moderators, and panelists, as well as to all distinguished guests and attendees of the Conference. The dedication of the participants to the subject, notably the protection of cultural property, is a testimony of the importance and the relevance of this event.

This conference wouldn't have been possible without the invaluable support and intellectual contribution of a number of individuals steering the initiative, particularly Nicolas Mathieu, Jeanne Berthoud, Rino Büchel, Jonathan Cuénoud, Miguel Perez-La Plante, Valériane Michel, Cara Jade Washington, Laurence Boillat, Benjamin Charlier, Lazare Eloundou, Shinuna Karume-Robert, Tural Mustafayev, Erik Kleijn, Bobir Tukhtabayev, Rachel Phillips, Ala'a Otain, and Maryam Kadia Sow.

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CONTEXT

Crimes committed against cultural property during the armed conflicts of the late 1980s and early 1990s highlighted a number of shortcomings in the implementation of the 1954 Hague Convention. A review of the Convention was initiated in 1991 to develop a new agreement to improve the Convention, taking into account the experience of recent conflicts, the development of international humanitarian law and the protection of cultural property since 1954. Consequently, the Second Protocol to the Hague Convention was adopted at a Diplomatic Conference held in The Hague in March 1999 in order to further develop the provisions of the Convention relating to the safeguarding and respect of the cultural property and the conduct of hostilities, thus ensuring greater protection than before.

The Second Protocol has indeed strengthened the protection of cultural property. Since its adoption, the Protocol has proved to be one of the most frequently cited international instruments related to the protection of cultural property in times of armed conflict, both by academia and judicial bodies. The Committee for the Protection of Cultural Property in the Event of Armed Conflict, established by the Second Protocol, has become an increasingly effective international body for implementing and monitoring policies for the preservation of cultural heritage in the event of armed conflict. The International List of Cultural Property under Enhanced Protection, also created by the Second Protocol, is gradually becoming a reliable international inventory to guide States and their armed forces to prevent the damage of cultural heritage during armed conflict.

Nevertheless, the destruction of cultural property during recent armed conflicts continues to be catalogued worldwide, bringing to light the need now more than ever to galvanize this comprehensive international legal framework designed to safeguard cultural heritage from deliberate and incidental damage. The recent armed conflicts in Afghanistan, Mali, Yemen, Syria and Iraq are concrete examples.

In light of this, the 1954 Hague Convention and in particular its Second Protocol appear to be more important than ever. For this reason, a number of decisions, resolutions and reports have been adopted, both at the international and national levels, to encourage the ratification and implementation of the 1999 Second Protocol. The report prepared by the UN Special Rapporteur in the field of cultural rights submitted to the UN General Assembly in August 2016 and UN Security Council Resolution 2347 adopted in March 2017, to name but two examples, highlight the importance of ratifying the 1999 Second Protocol.

However, on the date of the publication of the present document, only 133 States have become parties to the 1954 Hague Convention, 110 States parties to the First Protocol and 82 States have ratified the 1999 Second Protocol.

In recognition of the fundamental importance of this comprehensive legal framework in the protection of cultural property, an International Conference dedicated to the 20th anniversary of the adoption of the 1999 Second Protocol was held on 25-26 April 2019 in Geneva, Switzerland.

The objectives of the Geneva Conference were the following :

- To bring together key stakeholders, including representatives of States Parties to the Second Protocol, and international experts to reflect on successes and challenges of the 1999 Second Protocol in past 20 years;
- To create a platform to share positive experiences from different regions of the world regarding the implementation of the 1999 Second Protocol, the effectiveness of its tools and mechanisms for applying measures for the protection of cultural property in the event of armed conflict as well as in peacetime;
- To encourage States, which haven't done it yet, to consider ratifying the 1954 Hague Convention and its two (1954 and 1999) Protocols;
- To encourage States Parties to express their commitment and willingness to participate in the promotion, visibility and awareness-raising efforts of the 1999 Second Protocol;
- To improve the implementation of the safeguarding measures stipulated under the 1999 Second Protocol in peacetime by formulating "operational recommendations".

Speakers provided a historical overview of the 1999 Second Protocol, reflected on successes and challenges of its implementation and discussed the role of non-governmental actors in supporting its implementation. They shared their observations on the relevance and the added-value of the 1999 Second Protocol, national practices on the implementation of this instrument.¹

1 [See the recommendations of the Conference](#)

OPENING



CEREMONY

PASCALE BAERISWYL



Ms Pascale Baeriswyl joined Switzerland's diplomatic service in 2000. After completing her diplomatic service internship in the Directorate of International Law and at the Swiss embassy in Hanoi, she worked as deputy head of the Human Rights Policy Section for the Asia-Pacific region in the Human Security Division. From 2005 to 2008, she was responsible for foreign and security policy matters at the Swiss Mission to the European Union in Brussels.

From 2008 to 2013, she headed the political affairs team of the Swiss mission to the United Nations in New York. She returned to the Directorate of International Law in 2013 as the head of the Task Force Asset Recovery and later took over the International Law and Treaties Section as an assistant director with the title of ambassador. On 30 September 2016, the Federal Council appointed Ms Pascale Baeriswyl as state secretary of the Federal Department of Foreign Affairs. She took up her post on 1 December 2016.

Opening speech

PASCALE BAERISWYL

State Secretary, Federal Department of Foreign Affairs, Switzerland

Director-General,
Assistant Director-General,
Deputy Director-General,
Ministers,
Excellencies, ladies and gentlemen,

"We all feel like we have lost a parent". That was how a young representative of the Afghan Ministry of Culture expressed his devastation on learning of the destruction of the Bamiyan Buddhas.

"Timbuktu is on the verge of losing its soul". Those were the fearful words of one resident faced with the attacks on the mausoleums in his city.

It is with these words, which demonstrate our deep, often unconscious, connection with our cultural environment, that I welcome you all on behalf of the Swiss government to this conference dedicated to the 20th anniversary of the 1999 Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

I am delighted to see you gathered here in Geneva, a city with a deep-rooted humanitarian tradition that is most certainly in keeping with our work.

Switzerland took the initiative to support the organisation of this conference with UNESCO out of a strong sense of conviction.

- Conviction that cultural heritage in all its forms – in all its many expressions of our humanity, as a source of inspiration to individuals and as a reminder of the meeting of civilisations – must be protected, including by those who face each other in times of war.
- Conviction that the annihilation of identities through the intentional destruction of this heritage is intolerable, and shows utter disregard for human dignity and the pursuit of peaceful co-existence.
- Conviction that in peacetime every possible effort should be made to prevent, impede, discourage and guard against such acts when conflict does break out.

These convictions are the same as those on which the Second Protocol was founded, which 20 years ago marked a new development in humanitarian law, as a collective and indispensable effort on behalf of the international community.

Since then, other progress has been made with the sentencing of perpetrators of crimes committed against cultural heritage in Europe and Africa. The adoption of several resolutions by the Security Council and the Human Rights Council also represents a major development. I would like to mention in particular the resolution that gave UNMISMA a mandate for the protection of cultural heritage.

Excellencies, ladies and gentlemen,

The destruction seen in recent years has been deemed to be on a scale not witnessed since the Second World War. Buildings of outstanding universal value, symbolic monuments and works of art, collections and documentary archives have all been the objects of these attacks on our cultural heritage. Some cultural practices – intangible cultural heritage – have been purely and simply forbidden, cultural rights disregarded on the grounds of ideology.

While in many conflicts cultural heritage falls victim to collateral damage, we know that it is also being targeted as a calculated tactical objective. These attacks are part of broader strategies designed, in the short term, to persecute and intimidate communities and, in the long term, to obliterate diverse identities and tear apart the existing social fabric. Albert Camus once said, “everything which degrades culture shortens the path to servitude.” Unfortunately, this is the explicit intention of the perpetrators of these crimes.

Without being defeatist, we need to admit that in many cases the damage has already been done. We must make sure that these acts do not go unpunished. We must lend unwavering support to all of the defenders of cultural rights who have taken risks to save what could be saved. More important still, we must support the communities of the affected regions, many of whom have had to flee, and risk being uprooted once again when they return to a ‘home’ they do not recognise and from which the traces of their culture have been erased.

Dealing with the past and rehabilitation are the major issues that have to be dealt with in the post-conflict period. Indeed, the cultural dimension is seen to be increasingly important in building communities' resilience to the consequences of war. The respectful rehabilitation of cultural heritage sites, the repatriation of cultural property and the revitalisation of cultural practices not only advance the preservation of collective memory, but can also help to rebuild identities and assist in the social reconciliation process.

Returning to the Second Protocol and to prevention, we must learn from what has already happened, and what is happening before our eyes. Is there anything we can do to better protect cultural heritage (and its defenders)? If so, what can be done, how, and by whom? Is there anything that can be done to improve things in future? The goal of the next two days is not to find all the answers, but rather to invite you, as actors on the international stage, to share and debate what progress has been made and the challenges we still face.

What we must bear in mind is that the problem is often not the absence or obsolescence of rules, but rather the failure to respect the existing rules of international humanitarian law. This, for Switzerland, is the greatest challenge. We hope that this conference will allow us to ground a clear and coherent vision, to encourage and support better implementation of the Second Protocol.

We need to demonstrate the relevance of this text to encourage more states to ratify it. Twenty years after its adoption, it is urgent that the Protocol gain international visibility and that the system of protection it provides for be applied globally.

Switzerland wishes to be a part of this international effort, and the *Strategy for the Protection of Endangered Cultural Heritage* that my government adopted on 8 March clearly expresses this intention.

Through this initiative, we are striving to effectively share our experiences and expertise, drawing on our policies for the conservation of cultural heritage, legislation for the protection of cultural property in the event of armed conflict, and planning in the event of a disaster or emergency. I should also mention our proposal to provide an international safe haven for cultural property, alongside a similar initiative for the protection of documentary archives. All these initiatives build on our many years of support for concrete projects to safeguard and restore cultural heritage, whether in Yemen, Afghanistan, Myanmar or Mali.

It is therefore with great enthusiasm that I welcome you to what I hope will be two highly productive and inspiring days of discussions to bolster our fight for a common cause: the protection of cultural heritage.

Thank you.

ERNESTO OTTONE RAMÍREZ

Mr Ernesto Ottone Ramírez joined UNESCO in March 2018 as Assistant Director-General for Culture. He served as Chile's first Minister of Culture, Arts and Heritage from 2015 to 2018. As Minister of Culture, he created a Department of First Peoples, a Migrants Unit and strengthened copyright laws and heritage protection. During this time, he also chaired the Regional Centre for the Promotion of Books in Latin America and the Caribbean (2016 – 2017).

From 2011 to 2015, Mr Ottone Ramírez served as Director-General of the Artistic and Cultural Extension Center of the University of Chile, which manages the National Symphony Orchestra of Chile, the Chilean National Ballet (BANACH), the Chile Symphony Choir and the Vocal Camerata. From 2001 to 2010, he held the position of Executive Director at the Matucana 100 Cultural Center in Santiago.

Opening Speech

ERNESTO OTTONE RAMIREZ

Assistant Director-General for Culture, UNESCO

Ministers,
Ladies and Gentlemen,
Dear colleagues,

It is a great honour and pleasure for me to be among you for this very important international conference on the occasion of the 20th anniversary of the 1999 Second Protocol to the 1954 Hague Convention. I would like to thank the Swiss Government most sincerely for having taken the initiative to host this event, which is proof of its profound attachment to the promotion and upholding of international law in connection with the protection of cultural heritage in the event of armed conflict.

Nine years after the creation of UNESCO, the world met to adopt the first UNESCO cultural convention, the 1954 Hague Convention for the protection of cultural property in the event of armed conflict.

This convention was created as a result of universal recognition of the scale of blind and cataclysmic destruction of cultural property during the Second World War. It also illustrates the unanimous and conscious agreement of the international community, under the auspices of UNESCO, that the commitments of the international community should be respected, and

that we should ensure that any such destruction of cultural property - irrespective of scale - never happens again.

Today all parts of the world are assembled here, reunited and united by a single mission, a conscious determination to keep and honour this promise of the past to protect our cultural heritage no matter what the consequences. It is the meaning and purpose of the 1954 Hague Convention, and especially its Second Protocol of 1999, that is the focus of this celebration.

Ladies and gentlemen,

The 20th anniversary of the Second Protocol represents an opportunity to take stock of its achievements, as well as to evaluate how we can strengthen it going forward.

Perhaps one of the greatest successes of the Second Protocol has been its use for the enhanced protection of cultural heritage sites. To date, 17 cultural properties from 10 States parties have benefited from the Second Protocol's enhanced protection mechanism, ensuring that these places will not be used for military purposes in the event of armed conflict.

The Second Protocol has also been a vital tool for ending impunity for crimes against cultural heritage. Mali's ratification of the Second Protocol in November 2012 provided a key basis for a historic ruling by the International Criminal Court when it found that the destruction of the mausoleums of Timbuktu amounted to a war crime. It sentenced Ahmad Al Faqi Al Mahdi, who directed the attacks, to 9 years in prison and ordered him to pay 2.7 million euros to the victims as compensation. This ruling represented the first time that attacks against cultural heritage were formally recognized as a war crime – a decision that might not have been possible without the Second Protocol.

The Second Protocol has also encouraged a wider shift within the United Nations system towards the recognition of the destruction of cultural heritage as a peace and security issue. A series of recent UN Security Council Resolutions have focused on culture, including Resolution 2347, the first such resolution devoted to the protection of cultural heritage in times of conflict.

Throughout today's conference, we will have the opportunity to hear from experts and practitioners about how the Second Protocol has supported other preventative measures, including through the enhanced protection of cultural property.

Ladies and Gentlemen,

In the future, the efficiency of the Second Protocol will to a large extent depend on its continued ratification. To date, 82 States have signed up to the Second Protocol, thereby taking on one of the greatest challenges faced by culture today: the intentional destruction of cultural heritage during times of conflict.

Allow me to grasp this opportunity to thank the Member States and encourage those States who have not yet ratified this instrument to do so.

In February 2017 at the International Conference on Reconstruction in Iraq, UNESCO launched its largest rebuilding effort of the past few years: an innovative initiative aimed at “Reviving the spirit of Mosul”. Faced with the devastating destruction of the ancient city of Mosul, the purpose of this initiative is to place the population at the heart of Mosul’s recovery by rebuilding the city’s cultural and educational institutions. This effort has been bolstered by the generous support of the United Arab Emirates, who have donated over 50 million dollars for the rebuilding of the Al-Nouri mosque and its minaret, Al-Hadba, some 45 metres tall. UNESCO is also leading work on the restoration of the city’s marketplace, two churches, a Yezidi temple and the central library of the University of Mosul.

In order to have a concrete impact on the ground and to make sure that destruction never happens again on such a scale we must mobilise all our available resources, including normative instruments such as the Second Protocol.

Allow me to conclude by calling on and urging all those in attendance today to spend the next two days sharing their ideas, experiences, speaking the truth and above all joining forces to uphold our shared values and the universal principles that guide us in our efforts to provide better protection to cultural heritage.

Thank you.

BALTHASAR STAEHELIN



Mr Balthasar Staehelin is Deputy Director-General at the International Committee of the Red Cross. He joined the ICRC in 1993 and has served in the Middle East, Africa, the Balkans and at headquarters. From 2002 to 2006, he was Delegate-General for the Middle East and North Africa, overseeing the ICRC's work in that region, including the operation in Iraq. He served as Deputy Director of Operations for Policy and Global Affairs from 2006 to 2008.

In 2008, he left the ICRC to join the local government in Geneva where he ran the department providing social welfare, housing, health and integration programmes for asylum-seekers and refugees. He returned to the ICRC in August 2012 to take up his current position.

Opening Speech

BALTHASAR STAEHELIN

Deputy Director-General, International Committee of the Red Cross (ICRC)

Excellencies, ladies, and gentlemen,

It is an honour and a pleasure to be here today. My thanks go to UNESCO and the Government of Switzerland for organising this conference, and for inviting me to make these opening remarks on behalf of the ICRC.

I think it's safe to say that none of us here need to be convinced of the fundamental importance of the protection of cultural property or of how it is inherently linked to the protection of human beings and their dignity. Or of the existence of a very comprehensive legal framework aimed at achieving precisely that (a topic on which there will be various technical discussions over the next two days, and on which I happily defer to the legal experts).

The bigger question may be, put rather bluntly: what good is the law - not just the law relating to the protection of cultural property but, indeed, international humanitarian law (IHL) more broadly - if it is routinely ignored or deliberately disrespected?

If we think of the catalogue of destruction of cultural heritage in recent years, well *after* the Second Protocol was adopted – the Buddhas of Bamiyan, Timbuktu's ancient manuscripts and mausoleums, the monuments and religious sites in Palmyra and Mosul, to name but a few – cynics might well argue that on this 20th anniversary there's actually nothing much to celebrate.

But, you'll be glad to know, the ICRC for one does *not* take a cynical view. For sure, there have been many voices in recent years questioning the continuing relevance and adequacy of IHL as a legal framework for the protection of people affected by armed conflict, questioning whether it remains fit for purpose in the face of modern armed conflict in all its vast complexity.

This year – which marks not only 20 years of the Second Protocol but also 70 years of the Geneva Conventions – IHL has again been subjected to particularly rigorous cross-examination by a wide range of actors, including the ICRC.

We *still* remain convinced that IHL, broadly, continues to stand the test of time; that it has managed to adapt to changing realities over the decades and will continue to adapt in the future. And that problems with compliance do not signal weakness or inadequacy of the law itself. Rather, they signal the need for better understanding and stronger support, and for powerful champions.

This is not to underestimate the formidable challenges. Take what's been happening in Syria as just one example. The desecration of the Roman monuments and other cultural treasures in Palmyra is of course just one part of a much bigger picture of what happens when protection fails; when parties to the conflict fail to follow the rules.

The parties to the Syrian conflict became a complex web of shifting alliances on many levels, fighting on multiple fronts. A proliferation of radical non-State armed groups added to the complexity. Chains of command – and of responsibility – have often been blurred, sometimes deliberately so. In this context, flagrant violations of IHL have been committed, often with impunity.

Civilians, as ever, have paid the highest price. Protracted, urbanised armed conflicts such as this will have consequences lasting for generations, not only in terms of catastrophic loss of life, livelihoods, infrastructure, and services, but also the devastating psychological effects.

Conversely, the ICRC is convinced that the single most effective way to reduce suffering in war is to uphold the fundamental principle of humanity. And the most effective way to achieve that is by upholding IHL, which is designed to respect and preserve life and dignity even in the worst circumstances. By providing a common language to allow dialogue between warring parties and their supporters, IHL can also pave the way to political solutions and future peace and stability.

Allow me to reiterate: be it in the realm of protection of cultural property, or protection in armed conflict more broadly, the applicable law *per se* is not the problem. The 1999 Second Protocol not only clarifies and strengthens the 1954 Hague Convention, it effectively crowns a wide range of international legal instruments pertaining to the protection of cultural property.

So what can be done to help ensure compliance with these laws? Clearly, the primary responsibility for respecting IHL falls on the parties to any armed conflict. They are the ones that are bound by the law and by all the fundamental humanitarian values that it encompasses. More broadly, it is also clear that States have a key role to play in ensuring that all the conditions are in place to foster a climate of compliance with the law of war.

Yet what we often see – not only in Syria of course but in many of today’s armed conflicts – is a general trend of diffusion of responsibility for IHL violations, including for State or non-State partners. States in some cases deny any responsibility for their own forces or pass responsibility to someone else down the line. This only increases the climate of impunity and ultimately causes yet more suffering.

States must not only respect IHL themselves, but they must also influence those they partner with or support, to comply with it too.

More specifically, we would suggest three essential steps towards improving compliance with the laws related to the protection of cultural property.

One, we urge States that have not already done so to accede to the Hague Convention and the Second Protocol in particular. While it is encouraging that 82 States are currently party to the Protocol, this is not enough. It is our hope that this conference will serve as a catalyst to bring more States to the table.

Two, we urge *all* States – not only those currently affected by armed conflict – to take the necessary preventive measures to safeguard cultural property in their territory from the foreseeable effects of conflict or indeed of disaster. This entails various administrative and legislative measures as outlined in the Second Protocol – such as compiling inventories, setting up appropriate emergency response agencies and procedures, and providing relevant training to the military.

And three, where there *is* an armed conflict, we would remind *all* parties – both States and non-State armed groups – that they are bound by the treaty and customary law to respect the cultural property of their enemies. Failure to apply the legal restraints provided by IHL effectively removes the safeguard against unchecked abuse on all sides. The result, simply put, is devastating consequences that can last for many years if not generations.

The ICRC stands ready to guide and support States and other stakeholders to take practical measures to achieve these goals. Through our advisory service, we assist States to become parties to The Hague Convention and the Second Protocol, and to enact the appropriate domestic legislation. We have developed a range of ratification kits, model laws, and practical guidance tools to this end.

And through our access to parties to armed conflict, we, of course, engage with States’ armed forces and armed groups on *all* relevant aspects of the rules on the conduct of hostilities to ensure that they are respected.

Excellencies, ladies, and gentlemen,

As we mark this important anniversary, I would like to end my remarks on a positive note. It would certainly be wrong – and indeed dangerous – to believe that IHL is always violated and is therefore useless. Any normalisation of violations could have a terrible impact on those

affected by armed conflict. Conversely, we believe that a more positive focus on IHL can actually strengthen compliance.

While we are rightly concerned by violations of the law, we must equally recognise the many positive examples of respect. The things we see every day in our work but that rarely, if ever, make the headlines – a wounded enemy allowed through a checkpoint, a detainee able to send a message to his or her family, and countless other examples.

To this end, the ICRC is currently undertaking the *IHL in Action* project to collect and promote evidence-based examples of respect for the law from parties to conflict around the world. This, we hope, will reaffirm and strengthen the positive impact of IHL in today's armed conflicts.

In conclusion – yes, there is clearly still a long way to go before the various normative and policy achievements regarding the protection of cultural property and protection of civilians more broadly are felt where they really matter. Not on paper, but on the ground.

But at the same time, we have the means to achieve this goal. It is up to all of us to keep the spirit as well as the letter of IHL alive – to drive forward the fundamental desire and ambition to uphold human dignity even in the midst of armed conflict. This, at least, is a cause for celebration.

MICHAEL MØLLER



Mr Michael Møller has over 38 years of experience as an international civil servant in the United Nations. He began his career in 1979 with the United Nations High Commissioner for Refugees and worked for the United Nations in different capacities in New York, Mexico, Iran, Haiti, Cyprus and Geneva.

In 1995-1997, he served as Senior Political Adviser to the Director-General of UN Geneva. Between 1997 and 2001, he was Head of the Office of the Under-Secretary-General for Political Affairs at United Nations headquarters; between 2001 and 2006 he was Director for Political, Peacekeeping and Humanitarian Affairs in the Office of the Secretary-General, while serving concurrently as Deputy Chef de Cabinet of the Secretary-General for the last two years of that period. Mr Møller also served as the Secretary-General's Special Representative for Cyprus from 2006 to 2008 and was the Executive Director of the Kofi Annan Foundation from 2008 to 2011.

Opening Speech

MICHAEL MØLLER

Director-General of the United Nations Office at Geneva

Your Excellencies, Ladies, and Gentlemen:

I am delighted to be with you today for the opening of this unprecedented conference on the protection of cultural heritage.

First of all, I would like to express my sincerest thanks to the UNESCO Liaison Office at the United Nations Office in Geneva. I would also like to thank the Swiss Federal Department of Foreign Affairs for its support in arranging this meeting.

The protection of cultural heritage plays an essential role in each of the three main pillars on which the United Nations was founded - peace and international security, human rights and development. After all, heritage, in all its diverse forms, is a source of collective wealth and helps create dialogue. Its destruction is a true threat to peace. And rebuilding it is a way of bringing people together and showing tolerance, freedom, and respect.

For the above reasons, I would now like to emphasise the essential role played by UNESCO in the protection of heritage and the promotion of cultural diversity as an instrument of peace; as a moral consciousness of humanity; it reminds us that culture connects us to our history and our territory, and weaves the fabric of our common destinies.

For the United Nations, the issue of the protection of cultural heritage is and will remain an extremely high priority - because it has an essential character and existential dimension.

The 1954 Hague Convention - adopted after the unfathomable destruction of the Second World War - and the 1999 Second Protocol represent defining moments in the way we think about the administrative, legal and military protection of world culture.

Twenty years since, the enduring importance of the Convention and Protocol are painfully obvious.

Who could fail to be outraged by the destruction of the magnificent Buddhas of Bamyan, the monuments of Palmyra, the mosques and cultural artefacts of northern Mali?

This wanton vandalism is not collateral damage. It is part of a ruthless wave of cultural and ethnic cleansing, inseparable from the persecution of the communities that created these cultural gems.

It is never only about stones, buildings and papers. It is about identity and dignity.

There is a Syrian saying: without the old, there is nothing new. Without historical context, we cannot make sense of our world or build a common future.

This is why I was touched to witness the unveiling of a replica of Palmyra's Triumphal Arch in Geneva. On display around the world, from London's Trafalgar Square to Geneva's Place des Nations, the structure is a symbol of the triumph of cooperation over conflict, of memory over obliteration, of human ingenuity over senseless destruction. A symbol that, as one human family, we cannot and will not let anyone erase from our history and identity.

Your discussions today and tomorrow are part and parcel of these noble and vital efforts.

Thank you all for your commitment, and I wish you every success.

KARIMA BENNOUNE



Ms Karima Bennoune is Professor of Law and Martin Luther King, Jr. Hall Research Scholar at the University of California-Davis School of Law. Her research and writing, including on cultural rights issues, has been widely published in leading journals and periodicals. She has received numerous awards, including the Dayton Literary Peace Prize (2014) for her recent book, "Your Fatwa Does Not Apply Here: Untold Stories from the Fight Against Muslim Fundamentalism."

The human rights based approach to the protection of cultural heritage

Transcript of the video message displayed during the Conference

KARIMA BENNOUNE

*Professor of international law at the University of California-Davis School of Law,
UN Special Rapporteur in the field of cultural rights*

Greeting to all participants at this great occasion.

My name is Karima Bennoune and I am the Special Rapporteur of Cultural Rights. It is my pleasure to address you on the auspicious occasion of the 20th anniversary of the 1999 Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

I regret my schedule does not permit me to be with you in person today. In these video remarks I will first address the importance of the Second Protocol to the struggle to protect the cultural heritage of humanity, and then make suggestions for how this instrument might be fully and widely implemented, as well as discussing briefly the broader context of your deliberations, namely a human rights approach to the protection of cultural heritage, including in armed conflict.

The recent tragic fire at the Notre Dame Cathedral in Paris and the wide-spread grief this accidental cultural loss caused in France and around the world is a reminder to us all of the importance of heritage to human beings, both to those who have a close connection to the heritage in question but also to all humankind. I hope this event can be a catalyst for a renewed international commitment to the protection of cultural heritage, including when it is intentionally targeted or harmed in armed conflict.

The intentional destruction of cultural heritage was the first theme I chose to focus on when I became the Special Rapporteur in November 2015, as I was, like so many people around the world, deeply horrified by the televised and openly proclaimed the destruction of heritage

by extremists in places like Syria. These were attempts to erase history and diversity to harm other human beings, not just the objects that were destroyed.

Human rights law is the underlying standard that applies to cultural heritage protection at all times. However, heritage is also the object of a special regime in times of conflict. The core standards include the 1954 Hague Convention and the Protocol thereto. The Hague Convention requires the States parties to respect cultural property and to refrain from any acts of hostilities directed against it, or any use of it likely to expose it to such acts, subject only to imperative military necessity.

In light of concerns about ongoing attacks on the cultural property following the entry into force of the Hague Convention and the First Protocol, the Second Protocol was developed precisely to enhance protection. For example, the Second Protocol narrows the application of the military necessity waiver to those cases where no feasible alternative is available to obtain a similar military advantage, and it imposes standards of proportionality to prevent or minimize collateral damage. The Second Protocol requires that imperative necessity applies only when the cultural property has been transformed into a military objective and when there is no feasible alternative available to obtain a similar military advantage. Experts have argued that this provision should be understood in practical terms as a complement to Article 4 of the Convention itself and that it could become customary international law. Given the threat of irreversible and grave impact on the enjoyment of cultural rights, parties to conflicts as well as national and international criminal courts should recognize any military necessity exception to the ban on targeting cultural property, as being indeed highly exceptional, and not as readily available discretionary loopholes.

A broadly interpreted exception swallows the rule. This means that it is essential for the protection of cultural rights that States ratify the Second Protocol, that even non-ratifying States consider applying the standards it contains, and that this standard itself should be interpreted narrowly. Not all military advantages and certainly not those that are not related to preserving human life should be deemed as outweighing the imperative of protecting cultural heritage. Close scrutiny of all military decisions resulting in the destruction of cultural heritage, and public accountability for those decisions, are essential. Naming and shaming with regard to all instances in which cultural heritage is destroyed in armed conflict in deliberate, indiscriminate or disproportion attacks, or in attacks that can be avoided, are essential. These are crimes against the heritage of humanity, and gross violations of the cultural rights of current and future generations, which cannot be undone.

There have been worrying reports of violations of many of these provisions of both the Convention and Protocols, including the Second Protocol, in recent conflicts. I have endeavored to raise these urgently with governments through the communication procedures, where possible. I encourage civil society to submit more such cases for my consideration.

As a professor of International law, I know that international law does not implement itself, and it regularly faces challenges in this regard which we as States, civil society, UN mechanisms and experts must come together to address. We must find concerted strategies, and set

specific goals to be achieved by the 25th anniversary of the Second Protocol and beyond. I am very pleased to note the number of States parties to the Second Protocol has increased from 68 at the time of my 2016 Report to the UN General Conference on Intentional Destruction of Cultural Heritage to 82 today, with Denmark being the latest State to accede in 2018. I am pleased that since 2017, the States parties to the Second Protocol include two Permanent Members of the Security Council: France and the United Kingdom.

This increasing adherence is an important step, and yet 82 States parties out of the more than 190 States, and two Permanent Members of the Security Council out of 5, is still far too low. Promoting the ratification of the Second Protocol must be a priority. We must keep campaigning to promote adherence to it in creative ways, including raising this issue during the Universal Periodic Review process, before the Human Rights Council, as well as through civil society advocacy and the promotion of public awareness. We should aim to reach 100 States parties at least, and full adherence by all members of the Security Council, by no later than the 25th anniversary of the Second Protocol in 2024, with perhaps the goal of universal adherence by 2030.

Here today I again call upon all States, and especially upon the remaining Permanent Members of the Security Council, which have not done so, to demonstrate collective leadership on this critical issue which is at the heart of meaningful peace and security, and ratify the Second Protocol. States which have already done so should encourage others to follow their important lead.

Our collective work to protect cultural heritage, including in armed conflict, is critical from a human rights perspective because cultural heritage is a human rights issue. The right of access to, and enjoyment of, cultural heritage forms part of international human rights law, finding its legal basis *inter alia* in the right to take part in cultural life. In its September 2016 Resolution 33/20 on Cultural Rights and Protection of Cultural Heritage, the Human Rights Council reminded us that destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights.

Cultural heritage is a fundamental resource for other human rights also, in particular, the rights to freedom of expression and freedom of religion, as well as the economic rights of the many people who earn a living related to tourism on the basis of such heritage. A human rights approach obliges one to take into account the rights of individuals and populations in relation to their heritage. It is impossible to separate a people's cultural heritage from the people themselves and their rights.

Considering cultural heritage as a human rights issue is critical, both as a matter of principle and as a practical matter: principled in the sense that it reflects the actual lived experience and the interaction with heritage around the world, and a practical issue in the sense that given all the atrocities happening in the world, we will only be able to mobilize broadly on this issue if we emphasize the deep impact that cultural heritage and its destruction has on human beings, individually and in their collectives. It is time to mainstream a human rights approach to cultural heritage, including its protection in armed conflict; to mainstream it throughout the UN system, across regional bodies; and with different bodies at the national level, including

military forces. Related efforts by the three advisory bodies mandated by the World Heritage Convention and by UNESCO, as well as a number of civil society groups in this in recent years are to be commended. However, the recent removal of the protection of cultural heritage from the Security Council resolution renewing the mandate of MINUSMA in Mali was a significant step backward. Clearly, much more systematic engagement is necessary.

Today in our collective role as custodians of the past achievements of humanity, and in the memory of those who have given their lives to defend cultural heritage and to protect it in armed conflict, we must recommit to working together in a concerted way to defend the human right to access and enjoy cultural heritage, including by promoting the wide-spread ratification and full implementation of the Second Protocol.

Our work together towards these goals must continue.

Thank you.

PANEL

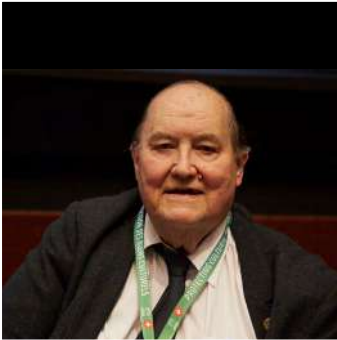


PANEL 1

HISTORICAL PERSPECTIVES: RELEVANCE AND THE ADDED-VALUE OF THE 1999 SECOND PROTOCOL

Criminal acts committed against cultural property during conflicts in the early 1980s and late 1990s revealed numerous weaknesses in the application of the Hague Convention, leading to a review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter “1954 Hague Convention”). The review was initiated in 1991, a new agreement was drawn up with the view of strengthening the treaty, taking into account not only experiences from recent conflicts but also the progress of international humanitarian and cultural property protection law since 1954. Consequently, a Second Protocol to the Hague Convention was adopted at a Diplomatic Conference held at The Hague in March 1999. The Second Protocol further elaborates on the provisions of the 1954 Hague Convention relating to the safeguarding of and respect for cultural property and the conduct of hostilities; thereby aiming to provide greater protection than before. Enhanced protection, a new category of protection for cultural property of national, regional and universal value and of particular importance to humankind was created. The Second Protocol also specifies the sanctions to be imposed for severe violations concerning cultural property and defines the conditions in which individual criminal responsibility shall apply. Finally, it establishes a twelve-member Intergovernmental Committee to oversee the implementation of the Second Protocol and de facto the Convention.

PATRICK BOYLAN



Mr Patrick Boylan was the Centenary President of the UK Museums Association, 1988-90, and held many different offices and roles in the International Council of Museums (ICOM) from 1977 to 2007. He is now an Honorary Member of ICOM. Mr Boylan directed several UK local government arts, museums, archives and environmental services for 22 years before being appointed Professor at City, University of London, responsible for postgraduate research and teaching department. Which covered all areas of national and international cultural and heritage policy and management, and he now holds the University's title of Professor Emeritus of Heritage Policy and Management. From 1992 to 2009 he took a leading role in developing and promoting the updating of the international law internationally on the protection of cultural property in time of armed conflict, particularly developing the 1999 Hague Second Protocol to the 1954 Hague Convention.

Perceived weaknesses in the implementation of the 1954 Hague Convention, triggering early 1990s proposals for its updating

By PATRICK BOYLAN

*Professor Emeritus of Heritage Policy and Management,
City University, London, United Kingdom*

Ten years ago there was a similar Conference to this one in the Peace Palace, The Hague, to mark the 10th anniversary of the 1999 Second Protocol. Those present at that event who are here again today might, if they have long memories, recall my announcement that I was retiring from the field after almost 20 years working on the many issues relating to the protection of cultural property in the event of armed conflict. I was therefore surprised, but in fact very pleased, to be asked to contribute to this first Panel of today's Conference by outlining what might be termed the pre-history of the 1999 Second Protocol.

However, on reflection, I recalled the argument of one of the leading early 20th century English advocates of the reform and promotion of science education and learning, Henry Armstrong of Imperial College. Drawing on his many years' mountaineering experience, he observed that almost invariably the route of the first successful ascent was the easiest for later amateur climbers like himself. In the same way, he argued, it is important to have a solid understanding of the historic evolution of important advances or developments, whether in the sciences, arts or other fields. On the same principle, I believe it is therefore important that new generations of military and civilian professionals, scholars and officials continue to understand not just what has been achieved today and may become possible in the future, but also how the present position has evolved over decades and indeed centuries. I am therefore very happy

to have this opportunity to explain, with my old colleague and friend Jan Hladik of UNESCO, who will speak next, how the Second Protocol came to be developed and finally adopted.

The original 1954 Hague Convention was drawn up and adopted in the light of the failure of established international humanitarian law, particularly the provisions of the 1899 and 1907 Conventions on the Laws and Customs of War on Land and at Sea, to prevent disastrous losses of important cultural property in the First and Second World Wars and other conflicts of the first half of the 20th century, notably the Spanish Civil War. The provisions of the 1954 Convention were a major advance, but by the early 1990s only a third of UN Member States had formally ratified or acceded to it, and very few of these High Contracting Parties had actually put in place the expected measures for its practical implementation. There was also growing concern about Hague 1954's effectiveness in protecting cultural property in a number of high profile post-1954 conflicts, and particularly those then current during the breakup of Yugoslavia. There was, therefore, increasing pressure on international organizations, particularly UNESCO, from both its Member States, leading international organizations, and the wider community, for further action.

At the October 1991 General Conference of UNESCO, the Director-General proposed that there should be a full study of the apparent weaknesses of the 1954 Hague Convention and proposing measures for its revision and enhancement. This challenge was taken up by the Netherlands Foreign Ministry offering funds for such a study as part of its contribution to the UN's International Decade of International Law. I think that it was assumed that such a study should be led by a specialist lawyer as on previous occasions. However, UNESCO and The Netherlands decided to try a different approach and instead looked for a professional or academic with wide professional experience of management and leadership across the four key areas covered by the 1954 Hague Convention – archives, libraries, monuments and sites, and museums and the arts, as well as within relevant national and international organizations.

At the time I had been managing services and resources across all four areas for over 18 years and had also led important national and international interdisciplinary studies and negotiations. In October 1992, I was approached about the possibility of undertaking the proposed study through my University Department, and the following month I was appointed to carry out the study, to be completed in time for the May 1993 meeting of the UNESCO Executive Board.

In addition to an extensive study of relevant documentation, particularly the UNESCO archive, I consulted widely among the diplomatic, legal, military and cultural governmental bodies of a number of countries, notably those of The Netherlands, France, USA, Canada, Switzerland, Austria and Croatia, within UNESCO. In the USA, in early 1993, I met senior figures in the UN divisions and agencies in New York, particularly military affairs and peace-keeping, and I also visited the State Department and Pentagon, and the American Association of Museums in Washington. After meeting the Getty Museum and Foundation in California and using a specialist library and archive resources at Harvard, I moved on to Ottawa and then Europe.

I was particularly pleased to see such high-level UN and International Committee of the Red Cross (ICRC) participation in this morning's proceedings. While my time in New York had

been very informative and productive when I followed this with some days here in Geneva I was received very courteously by various UN humanitarian and disaster response units based here, and then by the ICRC, but in every case, I was assured that my project was not a matter for them. Clearly, they regarded the first five letters of “humanitarian” as restricting their responsibilities and activities to the “human” part of the word.

It was therefore very welcome indeed that in her opening address to the March 1999 Diplomatic Conference Dr Louise Doswald-Beck representing the ICRC confirmed that the position of the ICRC had changed very markedly over the previous few years and it now considers the tangible and intangible manifestations or evidence of the cultural identity of peoples to be of very much part of their humanitarian work and responsibilities. Consequently the ICRC wanted to fully support the aims of the Conference and to assist in any way possible.

During my initial six months, I also worked closely with the four UNESCO-linked cultural property NGOs – the International Councils for Archives, Monuments and Sites and Museums (ICA, ICOMOS, ICOM) and the International Association of Library Associations (IFLA), and with very many national and individual legal, cultural and military authorities and experts. My findings and recommendations were submitted to UNESCO in April 1993, and was published in English and French editions on the instructions of the Executive Board in May 1993 as *Review the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, which soon became widely referred to as *The Boylan Report*.

This concluded that while there were inadequacies in the provisions of the 1954 Hague Convention itself, much more important was the failure of so many States, including High Contracting Parties to the Convention itself, to respect and apply its provisions effectively. The first priority identified was that with only a little over a third of the UN Member States have ratified the Convention, efforts were needed to increase this number substantially. Even then, only a very small proportion of those States which had ratified or acceded to the Convention had made much progress in putting it into law and practice with their own military and cultural policies and organizations. These failures and weaknesses needed to be addressed urgently by all the High Contracting Parties, both existing and the hoped for new Parties.

I had found much support during my many consultations for the view that it was desirable to clarify and strengthen the Convention and its Protocol to improve its effectiveness and implementation. Though there is a provision in the Convention text for revising the treaty this did not seem to be a practical route to follow, as this would require every existing party to go through often complicated national procedures to – in effect – re-adopt the Convention in its revised form. Therefore, a more practical course to follow would be the preparation and adoption of an additional Protocol with the new or improved provisions agreed to be desirable by the States parties.

Priorities identified and recommended included:

1. More detailed and explicit provisions on the obligations of Parties in relation to all aspects of implementing and enforcing both peacetime preparation, training and respect in relation to possible armed conflicts (including international peace-keeping operations). Knowledge and respect should be actively developed among not just the military, but also other sectors of public life affected, particularly the cultural sector. Also, there should be a commitment to actively promoting respect for and understanding of cultural property among the national population at large.
2. The institutional provisions of the Convention need to be strengthened, with regular meetings of States and sharing of reports on the implementation and application of the Convention and its Protocols by States Parties. A standing Intergovernmental Committee on the lines of the World Heritage Committee should support the work of the Secretariat of UNESCO.
3. The provisions related to the special protection, under the 1954 Hague Convention, had not worked and needed to be replaced by new measures for protecting the most outstanding cultural properties and sites.
4. The enforcement provisions and penalties under national military law in relation to what can be termed “cultural war crimes” need to be considerably strengthened, with the addition of the possibilities of international jurisdiction where necessary action was not taken at the national level.
5. The 1954 Hague Convention could in effect be almost completely over-ridden by a Party claiming to be acting according to the very imprecise possible exception for “military necessity”, as happened so often in e.g. Flanders in World War I, where any high point – even the most important medieval cathedrals or town halls – were deemed legitimate targets. This needed to be much more closely defined or restricted. Quoting General (later President) Eisenhower in 1943: “Military Necessity is not Military Convenience”.
6. However, I did not support the several submissions made to me arguing for the 1954 Convention provisions should be automatically extended to cover all World Heritage List properties, including natural sites and monuments.

THOMAS DESCH



Mr Thomas Desch is the Head of the Sub-Division on International Law in the Federal Ministry of Defence of the Republic of Austria. As an expert adviser on international humanitarian law Mr Desch is, inter alia, member of the Austrian national committee on IHL. In 1997 and 1998 he was member of the Austrian Delegation to the international conferences to prepare and negotiate the Rome Statute of the International Criminal Court.

In 1999, after having been legal adviser to the Austrian delegation in the preparatory process, he was the Chairman of the Working Group on Chapter 2, established by the Conference, on the Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict. In December 2007 Mr Desch was elected the Chairperson of the Seventh Meeting of the High Contracting Parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict.

The Second Protocol supplements the 1954 Hague Convention's general provisions regarding protection

By THOMAS DESCH

Director of International Law, Federal Ministry of Defence, Austria

The Second Protocol to the 1954 Hague Convention, adopted on 26 March 1999, represents a major step forward in the protection of cultural property under international humanitarian law. In particular, it establishes a new system of “enhanced protection”, obliges States Parties to punish and prosecute serious offences against cultural property, expands the protection of cultural property to situations of non-international armed conflicts, and establishes an institutional framework which allows for States Parties to become more closely involved in the protection of cultural property.

However, beyond creating new law, the Second Protocol also clarifies and specifies existing law. Chapter 2 of the Second Protocol supplements the Convention's general provisions regarding protection and focusses on four major issues:

The safeguarding of cultural property in times of peace (Article 5)

While the Convention left it to the discretion of the Parties to take measures they consider appropriate for the safeguarding of cultural property against the foreseeable effects of an armed conflict, Article 5 of the Second Protocol introduces a (non-exhaustive) list of measures

to be taken. Such measures shall include, as appropriate, the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate *in situ* protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.

In practice, the measures listed in Article 5 are not only valuable guidance for States on how to implement Article 5 but are regularly referred to as a yardstick by the Committee established under Article 24 of the Second Protocol when considering requests for enhanced protection. States requesting enhanced protection for cultural property must show, *inter alia*, how they fulfill any of the safeguarding measures listed in Article 5 with regard to the property concerned.

The waiver of the obligation to respect cultural property based on imperative military necessity (Article 6)

The most difficult issue under Chapter 2, and probably the most controversial one throughout the whole review process, was the exception to the obligation to respect cultural property. Pursuant to Article 4, paragraph 2 of the 1954 Convention this obligation may be waived only in cases where military necessity imperatively requires such a waiver. The Convention, however, neither defines nor describes the circumstances under which military necessity would imperatively require an exemption from the obligation to respect.

In the first phase of the review process, it seemed as if the concept of imperative military necessity would be abandoned altogether. In the second phase of the review process, beginning with the Second Meeting of the High Contracting Parties to the Convention in November 1995, a growing number of States defended the value of the concept of military necessity. Finally, at the Vienna Expert Meeting in May 1998, a majority of States were in favour of retaining the concept while at the same time further clarifying its content.

Article 6 of the Second Protocol is the result of extensive discussions held at the Diplomatic Conference, in particular in Working Group on Chapter 2, which I had the honour to chair. Article 6 combines two initially opposite approaches, namely to keep the waiver and make it more explicit, or to replace it by the concept of „military objective“ *versus* “civilian objects” as defined in the 1977 Additional Protocol I to the Geneva Conventions of 1949.

The Working Group on Chapter 2 succeeded in reaching a solution of the highly debated question of when and how cultural property could become a military objective and how to reflect the imperative character of the circumstances justifying a waiver of the obligation to refrain from any act of hostility, directed against such property (see Article 6 subparagraph (a)). Furthermore, it succeeded to specify the circumstances under which a waiver based on imperative military necessity may be invoked to use cultural property for purposes that are likely to expose it to destruction or damage in the event of armed conflict (see Article 6 subparagraph (b)). Finally, the invocation of the waiver requires a certain level of command at which the decision is taken, and, whenever circumstances permit, to give an effective advance warning before cultural property is attacked (see Article 6 sub-paragraphs (c) and (d)).

Precautionary measures during armed conflict (Articles 7 and 8)

Articles 7 and 8 of the Second Protocol introduce the main contents of the respective provisions (see Articles 57 and 58) of the 1977 Additional Protocol I to the Geneva Conventions of 1949 into the protection regime under the 1954 Convention. Article 7 (precautions in attack), *inter alia*, requires each Party to an armed conflict to verify that the objectives to be attacked are not cultural property, and to take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property.

Article 8 (precautions against the effects of hostilities) requires each Party to an armed conflict to remove movable cultural property from the vicinity of military objectives, or provide for adequate *in situ* protection, and to avoid locating military objectives near cultural property.

Protection of cultural property in occupied territory (Article 9)

Article 9 deals with the protection of cultural property in occupied territory. It supplements Articles 4 and 5 of the 1954 Convention, and partly replaces the (First) Protocol to the 1954 Convention. The wording of Article 9 pursues the aim of ensuring the highest possible standard of protection for cultural property in occupied territory while, at the same time, not losing sight of the practicability of these provisions, in particular in situations of long-term occupation. Article 9 applies between States parties to the Second Protocol only and only in relation to territory occupied by another State Party.

Article 9 paragraph 1 obliges the Occupying Power to prohibit and prevent any illicit export, other removal or transfer of ownership of cultural property, any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property, or, any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

Article 9 paragraph 2 stipulates that any archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close co-operation with the competent national authorities of the occupied territory.

In summing up, the relevance and added-value of the 1999 Second Protocol not only lies in creating new law but also in providing more clarity and specificity to existing law, in particular, by supplementing the Convention's general provisions regarding the protection of cultural property in times of peace and armed conflict.

YARON GOTTLIEB

Mr Yaron Gottlieb works as an Assistant-Director at INTERPOL's Office of Legal Affairs, which he joined in 2005. In this position, he leads the legal team in charge of advising on police programs in various crime areas such as organised crime, terrorism, and illicit trafficking in works of art. His unit is also in charge of drafting and negotiating cooperation agreements between INTERPOL and other partners. Since 2009 and in parallel to his work at INTERPOL, Mr Gottlieb has served as a Visiting Professor at the International and European Law LL.M. programme at University Jean Moulin Lyon III, Lyon, France, where he teaches a course on the protection of cultural property under international law. Prior to joining INTERPOL, Mr Gottlieb worked at the Human Rights and Genocide Prevention Clinic at Cardozo School of Law in New York and as an attorney in Israel.

Mr Gottlieb has published on a variety of topics related to public international law, including on the protection of cultural property, combating maritime piracy, and international law enforcement cooperation

The Protocol at 20: Observations on legal challenges and inter-disciplinary partnerships

By YARON GOTTLIEB

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Introduction

The 20th anniversary of the 1999 Second Protocol serves as a good opportunity to examine its contribution to protecting cultural property during armed conflicts. Of the various topics worthy of exploring, I chose two: The first concerns the notion of “military necessity”. The second, reflecting on the changing international landscape since the adoption of the Protocol, underscores the importance of creating inter-disciplinary partnerships to facilitate the implementation of the Protocol.

The notion of “military necessity”

The doctrine of “military necessity” is not unique to the legal regime governing cultural property. In fact, it is one of the most basic principles of international humanitarian law and was therefore integrated in the 1954 Hague Convention. In light of the attacks against cultural property in conflicts that ensured the adoption of the Convention, culminating with the widespread destruction of cultural property during the conflict in the former Yugoslavia, the scope and application of this doctrine were identified as one of the main areas of concern.

The 1999 Second Protocol aimed at addressing this concern. Though calls were made at the time to waive the ‘military necessity exception’ altogether, this approach was not adopted by the Protocol. Instead, the Protocol attempted to strike a balance between military interests, on the one hand, and the protection of cultural property, on the other, by providing further meaning to the notion of “military necessity” and setting out clearer criteria for its application. When the Protocol was adopted, the inclusion of a definition of the notion of “military necessity” was indeed considered one of the Protocol’s major achievements.

This doctrine, however, continues to pose difficulties and unfortunately has been often invoked for “military convenience” purposes rather than as an exception. It remains an elusive concept whose assessment by the commanders in the field as well as by prosecutors and judges in the context of prosecution is particularly challenging.

A point which is interlinked to the “military necessity” doctrine concerns the illegal use of cultural property in support of military action. Indeed, such use may transform the protected property into a legitimate military objective, which, in turn, may enable invoking “military necessity” to justify an attack.

This concern was addressed in the 1954 Hague Convention as part of the obligations to respect cultural property during armed conflicts. It was also introduced as a violation of international humanitarian law in the 1977 Protocols of the Geneva Conventions. Notwithstanding, the Rome Statute of the International Criminal Court, negotiated at the same time as the Protocol, criminalized the use of “human shields” but regrettably failed to criminalize the illegal use of cultural property as “cultural shields”.

Conversely, under the Protocol, using cultural property under enhanced protection in support of military action is listed as a serious violation (Protocol, Art. 15). It is certainly welcome that the Protocol went beyond its contemporary Rome Statute to address such conduct. However, considering the conduct as a serious violation only when the property enjoys enhanced protection, can potentially hamper exercising jurisdiction over offenders, prosecuting or extraditing them (Protocol, Art. 16-18), if the cultural property improperly used was not accorded this elevated status.

Unfortunately, since 1999 we have witnessed many examples of use that exposed cultural property to attacks and consequently destruction and damage, for instance during the battles in the town of Faluja, Iraq, or in Aleppo, Syria, where mosques and historic monuments were used in support of military action, thereby rendering them military objects. It, therefore, remains a serious concern.

In conclusion, the Protocol took an important step in addressing the difficulties posed by the “military necessity” doctrine. Yet, as challenges persist and to reduce the number of instances where “military necessity” is invoked, it would be appropriate to contemplate taking certain steps on the international level, including by enhancing cooperation.

Inter-disciplinary cooperation

The 1954 Hague Convention did not provide for a detailed regime governing international cooperation. Providing further guidance on this aspect was, therefore, another important

accomplishment of the Protocol. The Protocol facilitates cooperation on the international level between “classic” partners, namely States, for example by incorporating provisions on extradition and mutual legal assistance. Further, cooperation can be boosted through the assistance of UNESCO, explicitly mentioned in both the Convention and the Protocol. In the past twenty years, we have indeed seen the potential contribution in this field of international organizations such as UNESCO and others – notably the United Nations Security Council. In addition, the Protocol integrates civil society by establishing cooperation with NGOs.

Reflecting on the Protocol after two decades, these forms of cooperation remain crucial and need continuous support – for instance, through additional ratifications by countries. In light of the changes in the international landscape since the adoption of the Protocol, for example, the role played by terrorist organizations in the context of armed conflicts, and with it, the devastating impact on cultural property, international cooperation and information exchange is ever more important. To that end, we need to broaden the scope of cooperation and involve partners from different sectors.

Two forms of inter-disciplinary cooperation worth mentioning: First, between governmental agencies and the private sector, for example, information exchange concerning artifacts illegally removed from conflict zones and put on sale (e.g. on online platforms). Private entities such as auction houses have been correctly referred to as the last line of defence against the sale of artefacts looted by terrorist organizations in conflict zones. Social networks are in possession of large amount of data that can be of use in combating illicit traffic of artifacts. They should be viewed as partners – rather than adversaries – in reducing the risks posed to cultural property during and post armed conflicts.

Second, between the military and law enforcement (“green-blue cooperation”). For example, the militaries engaged in battle may often be in possession of information that can serve as evidence in the prosecution of perpetrators who violated the Protocol. To facilitate prosecution, such information should be communicated from the military to law enforcement authorities. It is therefore important to overcome difficulties such as the lack of military’s capacity to collect and preserve evidence, and the inherent inclination of the military to classify information.

The need for a paradigm shift – from cooperation among traditional partners (notably states and international organizations) to interdisciplinary cooperation – does not necessarily require an amendment to the Protocol; instead, it can be addressed through adoption of guidelines (for instance, by the Protocol’s Committee), best practices, training to military forces, etc.

Conclusion

The adoption of the 1999 Second Protocol undoubtedly enhanced the legal framework governing the protection of cultural property. Notwithstanding, certain challenges persist and new challenges have emerged. Such challenges make the Protocol pertinent as ever. Some modifications may be appropriate, for example in relation to the illegal use of cultural property. No less important, ensuring implementation, working towards additional ratifications by States, and broadening the scope of partnerships would be crucial for the next twenty years and beyond.

JAN HLADÍK



Mr Jan Hladík works as the Head of the Cultural Heritage Protection Treaties team, which he joined in January 1992. In this position, he leads the team in charge of advising on different aspects of the implementation of those agreements, preparing holding and following-up to meetings of statutory bodies of the 1954 Hague Convention and its Second Protocol. Prior to working in UNESCO, Mr Hladík worked in the International Law Department of the Federal Ministry of Foreign Affairs of Czechoslovakia.

Mr Hladík has published a number of articles on the Hague Convention, its Second Protocol and law of the international civil service in professional publications and journals. He participated in numerous intergovernmental and expert meetings related to the protection of cultural property including the March 1999 Hague Diplomatic Conference on the Second Protocol to the Hague Convention. His professional expertise is in the field of cultural heritage protection law, law of armed conflicts, law of the international civil service, law of international organizations and international public law in general.

Review of the 1954 Hague Convention resulting in the adoption of the Second Protocol

By JAN HLADÍK

Culture and Emergencies, UNESCO

Dear ladies and gentlemen, dear friends,

It is a pleasure and an honour to be a part of the panel I on historical perspectives related to the Second Protocol because it enables me to go back to the beginning of my work in the field of the Hague Convention which incidentally coincided with the review of this agreement. I am also pleased to be speaking after Professor Patrick Boylan, a highly distinguished expert and a friend, whose landmark study on the review of the Hague Convention published in English and French in 1993 by UNESCO greatly shaped the road to the elaboration and adoption of the Second Protocol.

To proceed further with the review of the Convention, five expert meetings (The Hague - July 1993; Lauswolt (the Netherlands) – February 1994; Paris – November, December 1994; Paris – March 1997; and Vienna – May 1998) and three meetings of States parties (Paris – November 1995, 1997 and 1999, respectively) took place. The Lauswolt meeting resulted in the drafting of detailed legal provisions for the improvement of the working of the Convention.

These were considered and redrafted at the March 1997 Paris meeting and were subject to extensive discussions and comments by States parties to the Convention as well as States not parties. The draft Second Protocol distributed before the Diplomatic Conference was substantially redrafted.

The main points of discussion during the review of the Convention were the following:

1. the form of the instrument which would incorporate the new provisions;
2. the definition of the notion of “military necessity” with regard to cultural property under general as well as special protection;
3. improvements in the regime of special protection;
4. sanctions for grave breaches and other violations against cultural property and other related issues such as individual criminal responsibility, the responsibility of States and mutual assistance in criminal matters;
5. improvement in the protection of cultural property in conflicts not of an international character; and,
6. establishment of a supervisory body which would monitor the implementation of the Convention and the new agreement.

At the meeting in Vienna in May 1998, the Netherlands authorities invited States parties as well as States, not a party to the Convention, to participate in a Diplomatic Conference on a supplementary instrument to the Convention scheduled to take place at The Hague from 15 to 26 March 1999.

Of the then-current ninety-five States parties, seventy-four participated in the work of the Conference, which was convened jointly by the Government of the Netherlands and UNESCO. Nineteen States not party to the Convention as well as Palestine were represented as Observers at the Conference. Of intergovernmental organizations, the International Committee of the Red Cross participated in the Conference. Finally, the International Committee of the Blue Shield (ICBS), at that time a four-member non-governmental organization (representing the International Council on Archives, International Council of Museums, International Council on Monuments and Sites and International Federation of Library Associations and Institutions), also participated.

The Conference, at the invitation of the Chairman, Dr Adriaan Bos of the Netherlands, negotiated the provisions of the most controversial chapters in a spirit of compromise in *ad hoc* working for groups. Following twelve days of intense work, the Conference adopted the

Second Protocol to the Convention, which was signed at The Hague on 17 May 1999 by the representatives of the twenty-seven countries.²

This Protocol was open to participation by all States parties to the Convention.

The Second Protocol represents a considerable advance on the level of protection in the Convention in the following respects:

- it provides for conditions in which the notion of “military necessity” may be applied, thus preventing possible extensive interpretations or abuses;
- it creates a new category of enhanced protection for cultural heritage of the greatest importance for humanity which is protected by relevant national legislation and is not used for military purposes; and,
- it elaborates sanctions for serious violations against cultural property and defines conditions when individual criminal responsibility is applicable.

Finally, a further important advance is the establishment of a twelve-member Intergovernmental Committee, which will have functions related to the implementation of the Second Protocol. The Convention itself made no provision for such a body. It should be noted that the Second Protocol is supplementary to, and in no way replaces the Convention.

In accordance with the terms of its Article 43(1), the Protocol entered into force three months after twenty instruments of ratification, acceptance, approval or accession had been deposited. Following the deposit of the instrument of accession by Costa Rica with the Director-General on 9 December 2003, the Costa Rican instrument being the twentieth, the Protocol entered into force three months thereafter on 9 March 2004.

Thus, the new path for the protection of cultural property has been paved and it is hoped that the Second Protocol will strengthen the protection of cultural property in armed conflicts.

² Albania, Austria, Belgium, Cambodia, Côte d'Ivoire, Croatia, Estonia, Finland, the former Yugoslav Republic of Macedonia, Germany, Ghana, Greece, Holy See, Hungary, Indonesia, Italy, Luxembourg, Madagascar, Netherlands, Nigeria, Pakistan, Qatar, Spain, Sweden, Switzerland, Syrian Arab Republic and Yemen.

ROGER O'KEEFE

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The application of the Second Protocol to Non-International Armed Conflicts

By **ROGER O'KEEFE**

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The international law of armed conflict distinguishes between international and non-international armed conflicts. An international armed conflict is any resort to armed force between two or more states. It extends to the total or partial occupation of the territory of one state by another, a situation known as 'belligerent occupation'. A non-international armed conflict exists, according to the most widely accepted definition, when there is protracted armed violence within a state between the government of the state and a non-state armed group or between such groups.

The classical laws and customs of war, as the law of armed conflict was formerly known, applied as a formal matter only to wars between states. Treaty-based inroads were first made into this position by the guarantees of treatment during non-international armed conflict in Article 3 common to the four Geneva Conventions of 1949. Building on this progressive development, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict stipulates in Article 19(1) that, in the event of an armed conflict not of an international character occurring within the territory of a State party to the Convention, each party to the conflict—whether it be the government of the State party or a non-state armed group—is bound to apply the provisions of the Convention relating to respect for cultural property, meaning the various paragraphs of Article 4, headed 'Respect for cultural property'. Article 4 embodies the Convention's core wartime obligations, namely the obligations to refrain

from any use of cultural property and its immediate surroundings for purposes likely to expose the property to destruction or damage and to refrain from any act of hostility directed against such property, save in both cases where military necessity imperatively requires otherwise; the obligation to prohibit, prevent and, if necessary, put a stop to—and, *a fortiori*, to refrain from—any form of theft, pillage or other misappropriation of, and any act of vandalism against, cultural property; and the obligation to refrain from reprisals against cultural property. In this way, the Convention goes much further than its draft predecessor, the 1938 Preliminary Draft International Convention for the Protection of Historic Buildings and Works of Art in Times of War, which had its immediate historical origins in the Spanish Civil War and included in draft Article 10 more modest but still notable provisions applicable to armed conflicts within a state. For its part, Article 19(3) of the 1954 Hague Convention provides that UNESCO may offer its services to the parties to a non-international conflict occurring in the territory of a State party to the Convention.

Although the issue was controversial during its drafting, the 1999 Second Protocol to the 1954 Hague Convention extends even more fully to non-international armed conflict. In addition to its application to international armed conflict, including belligerent occupation, and to the application of certain of its provisions during peacetime, the Protocol applies, by way of Articles 3(1) and 22(1), in the event of an armed conflict not of an international character occurring within the territory of a State party to it. Putting it another way, and leaving aside peacetime, the Protocol applies as a general rule to international and non-international armed conflicts without distinction, even if Article 9, on belligerent occupation, applies on its terms and Articles 34 to 36, on Protecting Powers and conciliation, apply by their nature only to conflicts between States parties. Concretely, not only Article 6, headed 'Respect for cultural property', which elaborates on and supplements the obligations in Article 4(1) and (2) of the Convention, but also Article 7 ('Precautions in attack'), with its rules on disproportionate incidental damage to cultural property, Article 8 ('Precautions against the effect of hostilities'), Articles 12 and 13, on the immunity of cultural property under enhanced protection, and the provisions of chapter 4 on criminal responsibility for serious violations of the Protocol apply in respect of non-international armed conflicts occurring within the territory of States parties. In doing so, these Articles, like Article 4 of the Convention, bind or otherwise apply in respect of any party to the conflict, be it the government of the State party or a non-state armed group. Article 22(7) of the Protocol, mirroring Article 19(3) of the Convention, adds that UNESCO may offer its services to the parties to a non-international armed conflict occurring in the territory of a State party.

The expansive application of the 1999 Second Protocol to non-international armed conflicts in the territory of States parties is plainly of potential practical significance. The great majority of contemporary armed conflicts are non-international; and the destruction and misappropriation of historical and artistic treasures, secular and sacred, in Mali, Iraq, Syria, and Yemen are just the most recent examples of the appalling harm to and loss of cultural property capable of being occasioned by such conflicts. For these reasons, the application to such conflicts of more extensive international legal obligations for the protection of cultural property in the course of hostilities and of penal sanctions for intentional violations of these obligations is manifestly a good thing and was obviously seen as such by the Protocol's drafters, who had in mind, *inter alia*, the widespread and deliberate devastation of cultural property by non-state armed groups during the wars in the former Yugoslavia in the early 1990s.

That said, the added value of the Protocol's application to non-international armed conflicts should not be overstated. Many of the rules embodied in Articles 6 to 8 of the Protocol probably already applied and certainly apply today during non-international armed conflicts in the territory of States parties to the 1954 Hague Convention, partly as treaty law interpreted and applied in the light of subsequent customary international law and partly as subsequent customary international law alone. In addition, subject to the ordinary international rules on national criminal jurisdiction, neither the Convention nor customary international law excludes a State party's imposition on responsible individuals of criminal sanctions for an intentional violation during non-international armed conflict of the Convention's obligations of respect for cultural property. One way or another, moreover, intentional attacks and other acts of hostility against, and intentional misappropriation of, cultural property during non-international armed conflict were possibly already and are certainly today punishable as war crimes under customary international law, including on the basis of universal jurisdiction.

The 1999 Second Protocol nonetheless has the potential to add tangible practical value in the context of non-international armed conflicts. The existence and precise content of rules of customary international law are rarely self-evident and frequently contested, the complex interplay of treaty law and subsequent customary international law even more so. In contrast, explicit, codifying treaty rules are incontrovertible. In this way, Articles 6 to 8 of the Protocol place beyond doubt the rules binding on all parties to a non-international armed conflict in the territory of a State party. Next, the Protocol provides in non-international armed conflict, as in international armed conflict, for the immunity of cultural property placed under its innovative regime of enhanced protection. When it comes to criminal sanctions, the Protocol does more than merely not prohibit the penalization and punishment of intentional acts against cultural property in non-international armed conflict. Chapter 4 of the Protocol positively obliges States parties to criminalize serious violations of the Protocol committed in the course of non-international armed conflicts and to adopt a range of other criminal-justice measures, including measures of interstate cooperation, with a view to prosecuting such violations, including on extraterritorial jurisdictional bases, among them universal jurisdiction. Most fundamentally, the very distinction between international and non-international armed conflicts is increasingly blurred. Some states characterize otherwise-internal armed conflicts in which outside states directly intervene militarily on behalf of or otherwise not against the government as non-international, while other states characterize them as international, and this is not to mention outside intervention conducted indirectly. To the extent that the Protocol applies to both types of armed conflict without distinction, it renders this complicated question irrelevant.

Whether, however, the potential added value of the 1999 Second Protocol in the context of non-international armed conflicts is realized depends on four things. First, the states in which such conflicts occur must be parties to the Protocol. Secondly, States parties must take advantage of the opportunity to request the grant of enhanced protection to cultural heritage of the greatest importance for humanity under their jurisdiction or control. Thirdly, States parties must adequately give effect to the provisions of chapter 4 of the Protocol. Finally, the military forces not only of States parties but also of willing non-state armed groups, of which there are many, must be educated and trained so as to be aware of, understand, and be capable of implementing those provisions of the Protocol applicable during non-international armed conflict. In the case of non-state armed groups, this poses an institutional dilemma. On the one hand, Article 22(7) of the Protocol expressly authorizes UNESCO to offer its services to the parties to a non-international armed conflict in the territory of a State

party. On the other hand, the diplomatic reality is that UNESCO is constrained by the acute and understandable sensitivities of States parties as regards formal engagement with non-state armed groups involved in armed conflict in their territory. This dilemma remains to be resolved. It is for this reason all the more important for relevant stakeholders to support the work of non-governmental organizations and other civil society actors in reaching out to and assisting willing non-state armed groups to implement the Protocol and the Convention it was adopted to strengthen.

PANEL



PANEL 2

NATIONAL IMPLEMENTATION: SUCCESSES AND CHALLENGES

The 1999 Second Protocol includes numerous provisions requiring States parties to put in place measures to strengthen the protection of cultural property in peacetime, as well as in the event of armed conflicts. These include, among others, preparatory measures – the preparation of inventories; the planning of emergency measures for protection against fire or structural collapse; the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property against the foreseeable effects of an armed conflict, legislative measures related to the individual criminal responsibility and jurisdiction, as well as capacity-building initiatives to improve the implementation of the 1954 Hague Convention and its Protocols.

AXEL BÉRENGIER

Mr Axel Bérengier is in charge of cultural heritage issues at the Ministry of Europe and Foreign Affairs of France, where he develops bilateral and multilateral cooperation in heritage matters, including in conflict areas and participates in the fight against illicit trafficking in cultural property. Previously, Mr Berengier was Chargé de mission at the Ministry of Culture for the implementation in France of the European Year of Cultural Heritage 2018, and worked in 2014 at the UNESCO World Heritage Centre.

The Second Protocol of 1999 and France: national implementation continued in the form of international action to protect heritage in areas of conflict

By AXEL BÉRENGIER

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France has been a State party to the 1954 Convention and its First Protocol since 1957. However, it had not acceded to the Second Protocol, which led the International Committee of the Red Cross to question the French authorities in this regard. The French authorities proceeded to compare the provisions of the Protocol with the proper operation of French military operations abroad and French criminal law. It appeared that the drastic attacks on cultural heritage that we have witnessed in the world over the past few years and the legal developments in national law have gradually made it possible to overcome the difficulties that initially stood in the way of France's accession to this Second Protocol. This work, carried out in close and efficient cooperation with the Ministries of the Armed Forces, Culture, Justice and Foreign Affairs, has made it possible to conclude that in practice France was already applying the majority of the provisions of the Second Protocol during military operations. That is how France came to deposit with UNESCO the instrument of accession to the Second Protocol on 20 March 2017. It became effective on 20 June 2017 for France.

As the first member of the UN Security Council to ratify the Second Protocol, France has shown its commitment to the protection of endangered heritage through its military presence in several regions of conflict. This presentation will address the national implementation of the Second Protocol, which is continued and supported through international initiatives to preserve culture in zones of conflict, both on a legal and operational level.

I. French law effects as regards accession to the 1999 Second Protocol

1. Making the conditions for the protection of heritage in the event of armed conflict stronger

From a legal point of view, French legislation has general provisions for the protection of cultural heritage in the Heritage Code and the Penal Code, which allows the application of all international conventions that deal with these aspects for which France is a State party. Other legal tools to protect cultural property have been added to these provisions within the context of military operations, which existed before the ratification of the Second Protocol. Indeed, the Defence Code considers it a soldier's duty to respect cultural property, and any neglecting of this duty can lead to disciplinary and penal sanctions. In this way, Article D 4122-10 specifies that "Soldiers in combat should only focus their attacks on military targets. They are therefore forbidden to destroy or seize civil property, except in cases of military necessity." In addition, in accordance with Article 15 of the Protocol, the Penal Code specifies in Article 461-13 that: "the act of launching deliberate attacks on buildings dedicated to religion, teaching, art, science or charity, historical monuments, [...], provided such buildings are not being used for military purposes at the time, shall be punishable with a criminal detention sentence of twenty years".

Ratification of the Second Protocol has made it possible to go further with the existing measures under French law, and in 2018 led to the addition of a further provision to the Criminal Procedure Code, through a law on military planning. Article 689-14 specifies: "[...] any person who usually resides on the territory of the Republic and is guilty of the offence of attacks against the cultural property specified in points a) to c) of Article 15, paragraph 1 of the aforementioned Protocol may be prosecuted and sentenced under the conditions specified in Article 689-1. The prosecution of any such offences may only be performed at the request of the public ministry". According to Article 689-1, this involves any persons who are guilty outside of the Republic of one of the offences listed in these Articles.

2. Necessary modifications to the accession process and possible improvements

Ratification of the Second Protocol has raised a few legal questions, particularly as regards the interpretation of certain terms. Indeed, the French Government wanted to proceed with interpretative reservations on accession to the Protocol so as not to create a conflict with national law. That is how the new article in the 2018 Criminal Procedure Code referred to above came to propose the application of Article 16 of the Protocol (on legal competence for the perpetrators of the offences concerned) only in those cases where the perpetrators usually reside in France, and are not simply present on the national territory. In addition, reservations are also expected with regard to the wording "immediate self-defense" in Article 13 of the Protocol, which is interpreted in such a way that it does not form any obstacle to the use of means in accordance with international law that France considers indispensable in order to respond to an immediate threat in an armed conflict situation. Lastly, it has been understood by France that any cultural property that becomes a military target in the meaning of the Protocol could be attacked subject to dispensation due to an imperative military necessity.

These interpretative reservations that were required with regard to the other international commitments and rules under French law have in no way betrayed the spirit and effectiveness of the Protocol once enshrined in French law.

Its effectiveness could, however, be reinforced by developing synergies with the other UNESCO cultural conventions. This concerns first the 1972 Convention concerning the Protection of World Cultural and Natural Heritage, of which the property on the list of World Heritage sites could be simultaneously added to the List of Cultural Property under Enhanced Protection as specified per Article 11 of the Protocol. We also envisage cooperation with the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

II. Strong awareness on the part of the French armed forces

1. Specific operational arrangements for heritage

The French armed forces are especially sensitive and vigilant with regard to the protection of cultural property during their operations and they ensure that the Convention and its Protocols are applied in the strategies that they deploy. Before launching any operation, an inventory is drawn up of the cultural property present on the sites concerned, and its exact location is determined. It represents what soldiers refer to as a *No Strike List*, listing the places that should not be subjected to targeted attacks. In this way, within the framework of Operation Serval, deployed in Mali from 2013 onwards with the goal of helping the Malian armed forces to halt the progression of terrorist groups in the country, specific cultural sites (with coordinates) - such as bridges, wells, ancient villages and mosques - were referenced on such a list so that they could be protected against military attacks. In the same way, 2014 marked the start of Operation *Chammal*, the goal of which was to fight Daesh, during which productive cooperation came about between UNESCO and the Ministry of the Armed Forces. French soldiers were able to obtain information on cultural sites in the zones in which they were deployed, including geographic coordinates, thereby making it possible to avoid irreparable destruction.

2. Publications produced by and for the armed forces

Alongside Italy, the United Kingdom and Azerbaijan, the French Ministry of the Armed Forces participated in the drafting of a military manual published by UNESCO in 2016. It is intended as a practical guide on the implementation by the armed forces of the rules under international law concerning the protection of cultural property during periods of armed conflict. Previously, a handbook on the protection of cultural property in the event of armed conflict had been produced by the Doctrine and Command Teaching Centre and regularly updated since 2015. Also available in English, this document - with a preface by Irina Bokova, former Director-General of UNESCO - is intended for French Army officers, informing them on the existing tools for the protection of cultural property and providing them with assistance in their military operations. It was updated in 2018.

III. Implementation of the 1999 Second Protocol is pursued by France's international actions to protect heritage in conflict areas

1. Awareness-raising initiative within the UN Security Council

Through the application of Articles 30 and 31 of the Second Protocol in particular, France is playing an active role in raising world awareness of the importance of protecting cultural heritage under threat from armed conflict, and has launched a number of international initiatives to this end. It is in this context that on 24 March 2017, the 15 members of the UN Security Council unanimously adopted resolution 2347 in favour of protecting endangered cultural heritage. This resolution, preceded by other resolutions aimed at protecting the heritage of Mali, Syria and Iraq, has been carried by France and Italy. It is the very first resolution that is fully dedicated to protecting heritage sites in conflict areas. Moreover, in March of this year, under the French presidency of the Security Council, resolution 2462 - which makes three references to the fight against the illicit trafficking of cultural property in the fight against terrorism - was also unanimously adopted.

2. Action to preserve heritage in countries wrought by conflict

In addition to its awareness-raising and mobilisation activities on the international stage, France is developing a number of bilateral cooperation agreements with countries in conflict. For example, in 2019 France is set to implement an ambitious archaeological project in Iraq, which will help the local authorities obtain the data and methods required to manage these sites. In addition, in December 2016, the Abu Dhabi International Conference on the protection of endangered cultural heritage organised by France and the United Arab Emirates paved the way for the creation of the International Alliance for the Protection of Heritage in Conflict Areas (ALIPH). This foundation, based in Geneva, of which France is the largest contributor (30 million dollars), works hard to preserve heritage endangered by conflict, by intervening in favour of preventive protection in the event of an imminent risk, emergency protection during the conflict, and also rehabilitation in the post-conflict phase. It has already been able to intervene for rehabilitation and restoration projects in Iraq and Mali, and is working in partnership with UNESCO on the initiative *Faire revivre l'esprit de Mossoul* ("Bring Mosul's spirit back to life"). Its first call for projects was launched in 2019 and the projects retained will be announced soon.

France, aware as it is of the wealth and significance of cultural heritage especially for local populations, and indeed for humanity in general, has made clear through its accession to the Second Protocol its attachment to the preservation of cultural heritage and its indispensable role in a sustainable process for maintaining a situation of peace.

RINO BÜCHEL

Mr Rino Büchel is responsible for implementing the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflicts and the Second Protocol of 1999 in Switzerland. As a member of the Swiss Delegation in The Hague, he was influential in drafting the Second Protocol and has been engaged in the Division for the Protection of Cultural Property in the Federal Office for Civil Protection since 1989. As Head of the Division, Mr Büchel led the revision of the Swiss Inventory in 2009. He also guided the elaboration of the new Protection of Cultural Property Act, which was adopted by the Swiss Parliament in 2015.

The implementation of the Second Protocol in Switzerland

By RINO BÜCHEL

*Head of the Division for the Protection of Cultural Property – Swiss Delegation,
Federal Office for Civil Protection, Switzerland*

The Swiss Federal Act on the Protection of Cultural Property, as amended in 2015, takes into account the developments in the protection of cultural property. This involves, in particular, expanding the scope to protective measures in the event of a disaster or an emergency.

The purpose of this new law is to reinforce preventive measures and damage management. It incorporates and further specifies the preparatory measures required to safeguard the cultural property mentioned in Article 5 of the Second Protocol. The definition of “safeguarding” and the list of preparatory measures have been included in the law. In Switzerland, the Confederation and cantons share the tasks linked to said measures.

The category of “enhanced protection” as applied to cultural property of substantial importance to humanity has also been included.

Article 5 of the Second Protocol also calls for “the preparation of inventories” of cultural property. In Switzerland, cultural property requiring protection needs to be recorded in an inventory. The Swiss Inventory of Cultural Property of National and Regional Significance (PCP Inventory) is one of the key measures for the protection of cultural property in Switzerland. The Swiss Government determines the classification of cultural property into categories and defines their criteria. Cultural property of national importance has been assessed and classified using an assessment matrix using clear and constant criteria. This makes it possible to obtain an overview of the number and importance of the cultural property sites available. The assessment process was not only used for buildings, but also for collections in museums, archive and library collections. The inventory must be approved by the federal government before it is published.

An application has been developed to represent the PCP Inventory on the Confederation's geo-information system. The geographical data of the PCP Inventory are also integrated into the military systems. This solution, based on a geo-information system, offers a large number of possibilities not just for the army but also for all other partners such as the fire brigade and civil defence. It is possible to display several types of data simultaneously that provide important additional information, for example, the combination of the PCP Inventory and the risk map. This inventory is regularly drawn up and updated. Based on past experience, the inventory is revised approximately every ten years. The fourth revision is currently in progress and will be completed by 2021.

The protection of critical infrastructure guarantees the availability of the key goods and services in Switzerland, including a few cultural property assets of national importance. We have also identified the state archives that are of vital importance for legal security. Collections of national importance and religious buildings are also a part of this critical infrastructure.

In addition, Switzerland has a legal basis to provide a "safe haven" for cultural property in accordance with Articles 32 and 33 of the Second Protocol. This safe haven is intended for the safe and temporary storage of movable cultural property, which is under serious threat in their home country. The provision of this safe haven is made by Switzerland under the auspices of UNESCO and the Swiss Government regulates its terms and conditions in an international treaty. Close cooperation between all the federal bodies involved is essential. Switzerland makes an important contribution to the protection of cultural property in accordance with the Hague Convention and its Second Protocol.

It was also a question of creating legal bases on a federal scale, for example for training, not just of PCP civil defence specialists, but also of cultural institution staff. In particular, it involves the staff of cultural institutions that look after movable cultural property of national importance. Cultural institutions are mainly museums, archives, libraries and storage sites for archaeological collections. This new possibility is all the more important because, in an emergency, cultural institutions are heavily involved and need to take measures as swiftly as possible. They occupy a key position with their committed partners in the event of an intervention. The events of past years have clearly demonstrated that those who occupy these key positions are confronted with issues regarding prevention, protection and intervention for the cultural property entrusted to them.

The planning of emergency measures in case of fire or structural collapse includes shelters for cultural property, emergency warehouses, reinforcement work on sections of the façades, installation of alarm and extinguishing systems and emergency plans in the event of disaster, as well as intervention plans for the fire brigade.

Security documents and photographic reproductions, i.e. microfilms, are amongst the most important cultural heritage conservation measures. Cantons have to safeguard cultural property using such measures. They aim to make it possible to restore or rebuild damaged cultural property.

The law also better meets the needs of the cantons. Each canton appoints a competent department for the protection of cultural property. They need to be able to guarantee the protection of cultural property using a coordinated system working alongside other partners: fire brigade, police and civil defence. It is all about regulating the collaboration between all these partner organizations. The preparation for storage of movable cultural property in the event of a disaster includes an inventory of movable cultural heritage, evacuation planning, an intervention concept and intervention planning.

Switzerland currently has approximately 300 shelters for cultural property spread over the entire territory. Apart from the introduction of the law and the national Inventory of cultural property, the construction of shelters is one of the most important and most effective measures. For some thirty years now, Switzerland has been building shelters to store movable cultural property of national importance. Thanks to the financial assistance provided by the federal government, the construction of these shelters has been promoted.

The cantons must also be able to mark their cultural property of national importance using the blue and white badge in accordance with the uniform instructions and already in times of peace.

The new Federal Act on the Protection of Cultural Property (CPPA) provides the basis for the protection of cultural property against destruction and damage. It applies not only international legal standards, but also international law treaties.

The expansion of the scope has allowed the law to become a genuine text that stands up for cultural property, one which, we all hope, will also inspire other States in the future.

SOPHIO CHIKHRADZE



Ms Sophio Chikhradze is the Legal Service Chief Specialist at the National Agency for Cultural Heritage Preservation of Georgia.

For the last five years, as a lawyer, she has been involved in granting the Monument Status to culturally valuable objects and has actively participated in protecting cultural heritage, representing the Agency in numerous court hearings. She is also a member of the Georgia Bar Association (GBA) and trainer for lawyers in administrative law. Prior to being employed by the Agency, she was covering legal as well as social and cultural issues as a journalist at the State Radio. Within the competency of the National Agency for Cultural Heritage Preservation of Georgia, she was responsible for the reporting on the implementation of the 1954 Hague Convention and its Protocols

The implementation of the Second Protocol of the 1954 Hague Convention

By SOPHIO CHIKHRADZE

*Leading Specialist, Legal Department,
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Convention in Georgia – achievements and challenges

From the outset let me express my sincere appreciation to UNESCO and to the Government of Switzerland, the hosts of the International Conference dedicated to the 20th anniversary of the 1999 Second Protocol to the 1954 Hague Convention for the excellent organization of this highly important and valuable event. I do believe that with your great efforts, the sharing of the experiences in the field of protection of cultural heritage properties, will benefit all of us to learn and make significant progress in our future actions toward implementation of the Convention and its Protocols.

Since Georgia regained its independence in 1991, very soon, in 1992, it became a member of UNESCO and ratified The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict the same year. Later, in 2009 Georgia joined its Second Protocol.

Today, Georgian regions of Abkhazia and Tskhinvali region/South Ossetia remain under illegal occupation. The Government of Georgia is deprived of the possibility to exercise its legitimate jurisdiction over these Georgian regions, thus the monuments located in the occupied territories cannot be controlled by our Government. Therefore, the monuments have been destroyed and /or put at risk of irreversible damage. Considering these circumstances and the expected threats, the implementation of 1954 Hague Convention and its Second Protocol by the parties to the conflict is vital to Georgia.

Laws regulating the cultural heritage in Georgia have been fully harmonized with international treaties, *inter alia* with the 1954 Convention and its Protocols.

Protection of cultural heritage in the occupied territories through intensification of international cooperation and strengthening of the international instruments are the most crucial priorities of the Government of Georgia.

The issue is reflected in the Cultural Strategy of Georgia - 2025 - a long-term document on the development of culture adopted by the Government of Georgia in 2016.

Georgia was a member of UNESCO Committee for the Protection of Cultural Property in the Event of Armed Conflict from 2013 to 2017.

Georgia regularly reports on the implementation of the Convention and its Protocols. In 2017, the report submitted by Georgia was highly appreciated by the international experts.

Inventory of tangible and intangible cultural heritage is systematically carrying out, on the basis of which an innovative Geo Information System for Cultural Heritage Management and the GIS Portal have been established. However, the Georgian Government is deprived of the possibility to carry out inventory in the occupied territories, which makes it impossible to establish GPS coordinates of monuments located therein. Nevertheless, it was developed an electronic map, in which the cultural heritage is identified on the level of areas/settlements and villages.

World Heritage Monuments – The Historical Monuments of Mtskheta are located almost in 50 kilometers from the occupied Tskhinvali region.

In 2016, at the 11th meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, held at UNESCO Headquarters, a decision was made to grant Enhanced Protection Status to the Historical Monuments of Mtskheta. Moreover, the Secretariat named the nomination file submitted by Georgia as the best sample for the consideration to other State Parties.

According to the obligations under Enhanced protection of Mtskheta historical monuments, Georgian State agencies have moved to a new stage of enhancing their professional knowledge and skills. Georgia carried out the tasks to be implemented at the national level in coordination with UNESCO.

In September 2018, a two-day workshop on the protection of cultural property in times of armed conflict for the military personnel was conducted by the representatives of the UNESCO Secretariat of the Convention for the Protection of Cultural Property in the Event of Armed Conflict in cooperation with Ministry of Defense of Georgia.

According to one of the provisions of the Second Protocol of the 1954 Hague Convention, implying identification and recognition of monuments with enhanced protection status, the area designated for Enhanced Protection – Mtskheta Historical Monuments – was equipped with special distinctive information signs. In accordance with UNESCO's recommendation, the event took place within the aforementioned workshop.

All actions have already been implemented by the State Party, revealed the necessity of further strengthening all efforts towards implementation of the provisions of the Second Protocol to sustain already achieved results and further develop the protective mechanisms.

In particular, to respond to the provisions of the Second Protocol of the Hague Convention, and to ensure the proper protection of cultural heritage in the country, it is crucial to activating the following tasks:

- complete the process of Inventory and documenting of Cultural Heritage;
- elaborate guidelines of the emergency measures (including Risk preparedness plans);
- incorporate guidelines and instructions on the protection of cultural property in the military regulations;
- in close cooperation with UNESCO and its advisory bodies, also with the relevant governmental and non-governmental organizations, develop and implement peacetime training courses and educational programs for the wider audience involved in the heritage sector.

The preservation and protection of cultural heritage located in the occupied territories of Georgia are constantly on the agenda of our Government with UNESCO and other international organizations.

Georgia appreciates UNESCO's contribution to the protection of the monuments of global significance in our country.

Protection of cultural values during armed conflicts can be guaranteed by ensuring strict adherence to the rules of war, increased public awareness, understanding the importance of cultural heritage for the welfare of society and for sustainable development.

Within the framework of the implementation of the Convention and its Second Protocol, appropriate guarantees can be created primarily by documenting the cultural values and forming an international network of the database, by observing the current situation of the monuments, and appropriate response measures, which can be achieved through coherent actions of the international community.

JOSEPH KING

Mr Joseph King is the Unit Director of the Sites Unit at ICCROM, responsible for capacity building programmes for the conservation of immovable cultural heritage around the world. Mr King also leads a team of professionals in all aspects of ICCROM's role as an Advisory Body to the World Heritage Committee. Previously at ICCROM, he was a Senior Project Manager working on the AFRICA 2009 programme, a long-term regional programme for the conservation of immovable cultural heritage in Sub-Saharan Africa.

He was also involved in the development of the first Integrated Territorial and Urban Conservation course and the development and implementation of courses related to the conservation of stone, wood, and modern architecture.

ICCROM's Experience in Helping Countries to Improve Capacity in Preparation for, and in Times of Emergency

By JOSEPH KING

Director of Sites Unit, International Center for the Study of the Preservation and Restoration of Cultural Property, ICCROM, Italy

By way of introduction, ICCROM was founded in 1956 by the General Conference of UNESCO. ICCROM is an intergovernmental organization currently with 137 Member States. The purpose of ICCROM at its creation was to serve as an independent technical organization, to help UNESCO and its Member States to better conserve the cultural heritage. ICCROM was, for many years known as a training institution, carrying out courses such as architectural conservation and scientific principles of conservation in Rome and elsewhere in the world. It is worth noting for our purposes that ICCROM also serves as an Advisory Body to the 1972 World Heritage Convention. Furthermore, ICCROM is also named, along with the International Committee on Blue Shield, and the Red Cross as an Advisory Body to the Second Protocol of the 1954 Convention. To be honest, there has not been as strong a relation between ICCROM and UNESCO on the Second Protocol, as there is with the World Heritage Convention, but it is my sincere hope that on the occasion of the 20th anniversary of the Second Protocol, we can work to strengthen the relationship and in particular efforts at capacity building in this important area for the protection of cultural heritage.

ICCROM has for many years, been carrying out sessions on disaster risk management as part of its courses on architectural conservation. More recently in collaboration with Ritsumeikan University, UNESCO, and ICOMOS, ICCROM has been involved in an annual course on DRM in Kyoto.

More specifically, however, ICCROM created a programme for First Aid to Cultural Heritage in Times of Conflict (FAC) in 2010. 3 international courses were carried out specifically dealing with conflict situations and in 2015, the programme was enlarged somewhat and the name changed to First Aid to Cultural Heritage in Crisis in order to deal with more complex emergency situations. The programme has expanded since its beginnings beyond the international courses that ICCROM is known for, to include a series of national capacity building activities. To date, there have been 27 such national courses and workshops in 21 countries around the world. Our strategy has been to empower course participants of our international courses to organize and implement national courses. We have also begun to work at the regional and international levels with civil protection and humanitarian affairs organizations such as the UN Office for the Coordination of Humanitarian Affairs and the European Civil Protection and Humanitarian Aid Operations.

With this experience, we have been able to draw lessons from our participants and activities :

- We need to make more convincing arguments about the importance of considering heritage in conflict and emergency situations. In many places, culture is seen as a luxury, but in many situations, it can serve as a means of bringing communities together and enhancing the recovery process. For this reason, we need to make clear arguments to militaries and civil defense organizations that heritage should be included in their planning and implementation activities in times of emergency. We also need to encourage more strategic approaches and more training of the military to ensure that they know what to do when operating in culturally sensitive areas. This extends also to regional military alliances where applicable.
- We need to deal with complex emergencies; not just conflict as defined by the 1954 Convention and its Protocols, but more complex mixes of conflict and disasters. In many cases, one can see that political instability or conflict worsens the ability of a State Party to deal with a disaster.
- We need to work with all types of heritage. The 1954 Convention and its Protocols deal only with tangible heritage, but ICCROM has been promoting a holistic approach to conservation for many years now; not just for tangible and intangible, but also for cultural and natural. Communities don't differentiate between their tangible, intangible, natural, or cultural heritage.
- There is a need to promote conflict and situation analysis amongst those who we are training to deal with emergency situations.
- There is a need to encourage more countries to become States parties to the Second Protocol. We can try to do this at the level of capacity building, but there needs to be a larger effort to bring the current 82 States parties to a higher number.
- Adhering to the Second Protocol is only one step that countries need to take. There is also a need to strengthen legal and institutional frameworks at the national level. This means not only training but working on the development of legal and policy frameworks. It also means expanding our stakeholder base to include organizations

such as UNIDROIT and INTERPOL. Our office in Sharjah UAE has been undertaking work in partnership with regional institutions in the Arab States region.

- Finally, there is a need for capacity building strategies across three levels in order to assure that State parties have the ability to implement the Second Protocol and more generally activities to plan for and respond to crisis situations. These three levels include the international level where State parties can learn from each other in a broad sense; the regional level, where there are more specific similarities and where conflict is most likely to be found; and finally at the national level. In some cases, it may even be useful to develop capacity-building strategies at a local or municipal level in cases where most decision-making will take place at that level. ICCROM would recommend that all countries have a capacity-building strategy in place that identifies the key national and local actors including the army, civil defense, first responders, communities, and heritage professionals and identifies what their capacity building needs are and the institutions that can fulfill those needs.

To conclude, I would first like to thank my colleagues Aparna Tandon, Rohit Jigyasu, and Zaki Aslan who are working most closely in this area. And I would like to offer ICCROM's assistance to States parties to the Second Protocol and to the Committee to work on the development of meaningful capacity-building strategies and activities.

GIANPIETRO ROMANO



Mr Gianpietro Romano, Lieutenant Colonel of the Italian Carabinieri Corps, serves at the Permanent Delegation of Italy to UNESCO in his capacity of expert in the protection of cultural heritage. He entered the Carabinieri Corps in 1985, at age 18. He graduated in Law in 2005 then he earned a Master's degree in Art and Historical studies and protection of cultural heritage. During his career, he has conducted many successful investigations, the last of which concerned the Girolamini's library despoliation. He was presented with some of the Carabinieri Department's most prestigious awards, including the Knighthood of the Italian Republic, the bronze medal for cultural commitment, the silver medal for a long stretch of command and the silver Cross for a long stretch of duty. From 2007 to 2015 he was in charge of the Antiques Section of the Carabinieri Department for the Protection of Cultural Heritage (TPC). In this capacity Mr Romano was in command of a team of investigators working on crimes related to cultural heritage.

The experience of the Italian Carabinieri in protecting cultural property

By GIANPIETRO ROMANO

*Lieutenant Colonel, Expert of Carabinieri
Department for the Protection of Cultural Heritage, Italy*

Excellencies,

Ladies and gentlemen good afternoon.

First of all, I would like to thank the organizers for this invitation, on behalf of myself, of the Commander of the Carabinieri Command for the Protection of Cultural Heritage, General Fabrizio Parrulli, and of the Italian Ambassador to UNESCO, Mr. Massimo Riccardo.

Ladies and gentleman,

The Carabinieri Command for the Protection of Cultural Heritage (TPC) has been on the frontline of protecting cultural property ever since 1969. It has been mainly involved in countering the illicit trafficking of cultural objects. This task is made more difficult because modern crimes against cultural heritage are carried out by increasingly organized criminals, with the support of technologies that erase geographical distances. This means that investigation techniques need to be constantly upskilled as well.

In terms of the Carabinieri, the provisions of the 1954 Hague Convention and its Protocols that clearly apply are the requirements to safeguard and respect cultural property.

In this context, the Carabinieri Command for the protection of cultural property (TPC), in its capacity of a specialized branch of the Carabinieri Corps, supports all relevant authorities by:

- cataloguing movable and immovable cultural heritage and checking catalogues and inventories in order to identify “misplaced” items;
- providing regular monitoring of archaeological sites, among others by means of helicopter patrols and drones;
- carrying out inspections in cultural sites, in order to make sure that all necessary measures have been taken for the protection of cultural property (i.e. emergency plans, alarm, fire, and microclimatic detection systems);
- recovering stolen or illegally removed and exported cultural property (since 1970 about one million one hundred archaeological objects and eight hundred thousand antiquities have been recovered).

The latter is also made possible thanks to the Leonardo Database of Stolen Works of Art, which contains information and pictures of cultural objects which have been stolen in Italy and abroad.

The commitment of the Carabinieri Command for the protection of cultural property reaches beyond national borders in order to help foreign countries affected by armed conflict protect their national cultural heritage.

In this regard, upon request by international Organizations or during Italian military missions, the Carabinieri Command takes part in several missions abroad. In Kosovo, for example, the Carabinieri TPC supported the Italian K-FOR peace mission (NATO) to identify and document cultural heritage at risk by means of photographs and videos.

The United Nations entrusted Italy to send a specialized Carabinieri TPC officer to Bagdad, in order to facilitate the monitoring and recovery of stolen artifacts belonging to the National Archaeological Museum. For three years, the Carabinieri TPC was also engaged in the Nasiriya territory within the “*Ancient Babylon*” peacekeeping mission. Its main task was to reform the DHI QAR archaeological system and structure.

As of 2016, the Carabinieri TPC is the main component of the 60 highly qualified heritage experts who compose the newly set up Italian Task Force and may be deployed in the context of three scenarios: Natural Disasters, Peace Keeping Missions, and pre/post-conflict situations.

The Task Force can support local authorities to minimize foreseeable risks for their cultural heritage in emergency situations and intervene in crisis situations after their national cultural heritage has been damaged.

The Italian Task Force has been made available for cooperation with UNESCO on February 2016, by means of an “ad hoc” agreement. Under the latter, the Italian Government disposed for the experts of the Task Force to be available for deployment for the conservation of cultural heritage in areas affected by crises.

The Task Force has been deployed for the first time in central Italy in 2016, after a strong earthquake. Its primary assignment was to recover all movable cultural items, catalogue and store them in safe havens. During these recovery activities, more than 29 thousand artifacts were secured.

Concerning the deployment of the Task Force under UNESCO’s coordination, a technical agreement has not been signed yet, therefore the Carabinieri TPC liaises on a bilateral basis with several countries. Most recently, with Iraq, where two officers are deployed since January 2018 in order to train officials from the Iraqi regional police. 24 training courses on “Cultural Heritage Protection” have been carried out so far.

Moreover, Carabinieri officers of the Task Force have been deployed to Mexico, in order to support the newly created “*Unidad de Tutela del Patrimonio Cultural*”, in planning emergency measures to be taken during natural disasters.

Furthermore, a TPC officer is about to be appointed “*Senior Strategic Adviser on Organised Crime – Protection of Cultural Heritage*” in the framework of the European Advisory Mission in support of the Iraqi security sector reform, which was launched in October 2017.

Ladies and gentlemen, let me conclude by recalling that on 3 May next, we are going to celebrate the fiftieth anniversary of the foundation of my Command.

Since 1969, the Carabinieri TPC has come a long way in protecting cultural property together with UNESCO and numerous other national police forces. I am convinced that we can further continue on this path and strengthen our cooperation because protecting the cultural heritage is our common goal. Thank you.

PANEL



3

PANEL 3

THE ROLE OF NON-GOVERNMENTAL ACTORS IN SUPPORTING THE IMPLEMENTATION OF THE 1999 SECOND PROTOCOL

Although the primary responsibility of the implementation of the 1999 Second Protocol lies with States that are a party to it, the role of non-governmental actors in supporting those States is vital. Depending on their mandate and area of expertise, this support includes activities such as advocacy and awareness-raising, capacity building, the provision of technical, military or legal expertise (including in relation to the accession to the 1999 Second Protocol and to the drafting of relevant implementing laws), monitoring and law-enforcement. NGOs have strong capacity to plan, propose and implement concrete action programmes based on a high level of expertise that represents a valuable asset for States.

BENJAMIN CHARLIER

Mr Benjamin Charlier works for the ICRC's Advisory Service on international humanitarian law. He acts as the ICRC's focal point with UNESCO on matters related with the protection of Cultural property in armed conflict as well as with international tribunals and courts on matters related to the prevention and repression of international crimes. Prior to joining the ICRC, Mr Charlier worked as a Legal Adviser in the International Cooperation Department of the Office of the Belgian federal Prosecutor, in Brussels. He joined the ICRC in 2005 as a Protection delegate and carried out field humanitarian missions in Myanmar, Darfur, Kosovo and Rwanda. He then joined ICRC's legal division in 2010 in Geneva, as the legal adviser to the operations in charge of Africa and of the follow up of international criminal justice mechanisms (ICTY, ICTR and ICC). He Joined the ICRC Advisory Service in 2016.

The ICRC and the Protection of Cultural Property

By *BENJAMIN CHARLIER*

Legal Adviser, Advisory Service, International Committee of the Red Cross, Switzerland

From entire libraries burnt to the ground during WWII to the recent calculated and publicized destruction of archeological sites in Syria or the looting of invaluable artefacts from the museums in Iraq, there is no doubt that war is one of the worst enemies of art and culture.

History has sadly long demonstrated that not only is the deliberate destruction of cultural property often being used as a tactic of warfare but also that such attacks are almost always the precursor of vast atrocities committed against individuals and entire populations.

While the impact of conflict is often measured in terms of loss of lives, it is important not to underestimate the devastating and long-standing effects of the loss of essential cultural sites and pieces for communities that rely on those as an expression of their own identity. The part of cultural heritage in the social fabric is, in fact, such that when we protect it, we also leave the door open to building future peace and better understanding between former adversaries.

This is the reason why the protection of cultural property is without a doubt a humanitarian imperative in the time of war and consequently an integral part of international humanitarian law. In other words, one can hardly dispute the fact that the protection of cultural property is inherently linked to the fundamental values of humanity and protection that form the foundation of the entire corpus of rules governing the behavior of warring parties.

The international legal framework that protects cultural property in armed conflict is very comprehensive. In fact, it is probably one of the areas of international humanitarian law where the legal arsenal is as protective as can be. From the 1907 Hague Regulations to the 1977 Additional Protocols to the Geneva Conventions, through the 1954 Hague Convention, its Protocols, the Rome Statute and more recently, several recent UNSC resolutions on the matter, cultural property is protected in time of war by a wide range of international instruments which offer, at least on paper, a very tight system of protection. The fact that this protection has now been crystallized under international customary law is not disputed.

The Second Protocol of 1999, the contribution of which to this system of protection has been extremely significant, therefore represents under international humanitarian law somehow the most advanced touch to a well-defined preexisting framework, effectively crowning a wide range of international legal instruments pertaining to the protection of cultural property.

While one can always argue that there might still remain some room for improvement, the truth is that in this area there is no real gap in the law. The applicable law is both comprehensive and realistic, finding the right balance between upholding the principle of humanity while recognizing specific military imperatives.

Consequently, as it is also the case in other areas of international humanitarian law, the real challenge lies much more in finding conducive ways to strengthen respect for the existing law rather than in attempting to further developing it.

So how does the ICRC participate in that effort?

Protecting and assisting victims of armed conflict has been at the core of the identity of the ICRC for more than a century. As the legal framework that governs armed conflict has developed, so has the work of the ICRC. Since the 1970s, the ICRC has more systematically tackled issues related to the conduct of hostilities, such as the protection of cultural property.

The 1954 Hague Convention entrusts the supervision of its implementation to the protecting powers responsible for safeguarding the interests of the parties to the conflict, and to UNESCO. But there is no doubt that the ICRC is expected to work for the faithful application of the complementary provisions of the 1977 Additional Protocols. Indeed, reminding parties of the rules governing the conduct of hostilities is an integral part of the ICRC's dialogue with warring parties, including in this area.

The ICRC Legal Advisory Service and UNESCO encourage ratification and assist with State implementation of the treaty protections of cultural property. These treaties are very specific but often require integration into States' domestic law to have effect. The ICRC is also working to empower other actors who can strengthen this legal framework, including the existing global network of national committees (and similar bodies) on IHL, which exist in more than 100 countries and are essential expert coordinating bodies in the area of IHL dissemination and implementation.

The ICRC recently signed a memorandum of understanding with UNESCO: a first of its kind, this agreement consolidates and reinforces the ongoing work by both organizations to encourage more States to become parties to the treaties protecting cultural property in armed conflict. The memorandum also opens the way for a greater exchange of information between the ICRC and UNESCO to protect cultural property at risk and for the ICRC to potentially play an operational role in the rescue and evacuation of cultural property in some conflict situations.

To put it in more general terms, the contribution of the ICRC to the protection of cultural property stems both from the way its humanitarian action is coordinated with other relevant stakeholders and from the way its specific expertise in dealing with situations of conflict is valued in this area.

The ICRC is certainly no expert in the ‘cultural’ aspects of the protection of cultural property in armed conflict. Many other organizations, institutions or independent experts in the field of culture are well qualified to make sense of the genuine value of the property that needs protection. But by way of its mandate, of more than 150 years of experience in humanitarian action across the world and of its specific working modalities and fundamental principles, the ICRC effectively contributes to the cause on many fronts. As stated above, as the guardian of IHL it does have a valuable expertise on encouraging States to adhere to relevant international treaties, including the 1954 Hague Convention and its Protocols as well as in including the protection of cultural property in its confidential and bilateral dialogue with parties to armed conflicts (States and non-State entities). Through the privileged access that the ICRC manages to secure with the parties to war-affected regions, the ICRC is also often able to reach out to communities whose cultural heritage has suffered greatly.

While coordination and appropriate cooperation between international actors are without a doubt as equally important as combining their relevant expertise to effectively address the multi-faceted challenges that the protection of cultural property entails, it is also crucial that an important role and space be given to local actors.

Local and national responders are often in the strongest position to deliver rapid, culturally appropriate and sustainable humanitarian assistance to their communities. The idea that responsible and meaningful partnerships between local actors and international organizations should be secured when appropriate makes particular sense when addressing the issue of cultural heritage, for obvious reasons.

In that sense, the International Movement of the Red Cross and Red Crescent provides an interesting model of a global humanitarian network that connects the local, national and international levels in a complementary manner.

In other words, in this field more than in any other, both the preventive and humanitarian response to the lack of protection of cultural property should be as international as necessary and as local as possible.

ALIPH (International Alliance for the Protection of Heritage in Conflict Areas)



ALIPH is a unique international cooperation initiative designed to meet the challenge of protecting cultural heritage in conflict areas. Its scope of intervention is preventive protection to limit the risks of destruction, emergency measures to ensure the security of heritage, and post-conflict actions to enable local populations to once again enjoy their cultural heritage.

Protecting heritage to build peace: How a public-private partnership such as ALIPH can help protect culture in conflict

By ALIPH

International Alliance for the Protection of Heritage in Conflict Areas

ALIPH is a Geneva-based actor in the international community of heritage protection. It was created in response to the massive destruction of cultural heritage in the Middle East and the Sahel region, with the goal of protecting heritage to build peace. The damages caused by DAESH/ISIS at the Mosul Museum had shocked the world and had led to the President of the Louvre's 50 recommendations for the protection of cultural heritage, including one on the creation of an international fund to protect heritage in situations of armed conflict, a co-funded initiative supported by private persons, institutions and countries likewise. Following the initiative by France and the United Arab Emirates, ALIPH was formed in March 2017 and has since taken a number of other countries and private partners on board. ALIPH is the only international fund exclusively dedicated to the protection of cultural heritage in conflict areas. Furthermore, its creation was founded in particular on the need to quickly deploy funds when needed. Today, ALIPH already finances 25 heritage protection projects in seven countries: Afghanistan, Cote d'Ivoire, Iraq, Libya, Mali, Syria and Yemen.

ALIPH is a private grant-making foundation under Swiss law. It is an international organization under the Headquarters Agreement with Switzerland and Resolution 2347 of the UN Security Council. It is considered an alliance of different stakeholders, including civil society, international organizations and experts, counting on the support of states, philanthropists and independent experts. UNESCO was included in the Foundation Board. ALIPH partners include seven donor countries (China, France, Kuwait, Luxembourg, Morocco, Saudi Arabia, and the United Arab Emirates), three private donors (The Andrew W. Mellon Foundation, Dr. Thomas S. Kaplan, and Fondation Gandur pour l'Art), and the host country, Switzerland.

The unique organizational and funding structure of ALIPH have allowed it to find exceptional solutions and establish unique public and private partnerships, which have provided the opportunity to react swiftly with direct in situ impact. ALIPH is also a source of scientific expertise, thanks to its Scientific Committee, scientific review panels, and Foundation Board. The organization is managed based on a startup model, with fast-paced decision-making and a medium-sized Secretariat, in order to allow for decisive action. The governance of ALIPH includes the Foundation Board; the Scientific Committee; the Committees on Ethics & Governance, Audit, and Finance & Development; and the Secretariat. The Foundation Board serves as the decision-making body and includes representatives of donor countries, philanthropists, and experts. The chair is Dr. Thomas S. Kaplan. The Scientific Committee is the Advisory Body of ALIPH. It is made up of international experts in the cultural heritage field, and it is chaired by Jean-Luc Martinez, the President-Director of the Musée du Louvre. The various committees provide support and recommendations on governance and ethics, oversight and compliance, finance, auditing, and development. The Secretariat is the implementation body based in Geneva. Its focus is to remain efficient, reactive, and not bureaucratic. Together, these four parts of ALIPH strive to act promptly, efficiently, concretely, on the ground, and in compliance with local needs.

ALIPH's work is comprehensive, and the organization is involved in the protection of all heritage—tangible and intangible, movable and immovable—before, during, and after conflict. Action is taken to organize preventative protection in the case of imminent conflict and high-risk areas. Emergency protection during conflicts is provided when possible. Funding is also provided for post-conflict rehabilitation, reconstruction, and restoration. ALIPH utilizes a responsive granting scheme, which has two main parts. Emergency relief is offered in small amounts, typically less than 75,000 USD, and requests are answered within a month to provide funding for urgent measures to protect heritage. The second part is the call for projects. In general, ALIPH holds two calls per year through an iterative process, which selects projects based on relevance, quality, feasibility, and sustainability. ALIPH is focused on protecting heritage of great importance, so applicants must demonstrate significance and value for local communities. Projects should be proposed by or in collaboration with local communities, partners and/or authorities. The fund aimed at collecting 30 million dollars in the next three years, 100 million has already been promised.³

Several projects have been undertaken by ALIPH, including the already accomplished rehabilitation of the Mar Behnam Monastery and the on-going rehabilitation of the Mosul Museum, both in Iraq. The goal of the Mar Behnam Monastery project was to restore and revive a Christian, Muslim, and Yezidi meeting place to promote fraternity in Iraq. The rehabilitation of the Askia Tomb in Mali is another priority project for ALIPH.

ALIPH is continuing to devote time and funding to projects to support the protection of heritage. The current objective is to see concrete action and benefit for local people whose heritage had suffered damage.

³ At the time of the publication, 80 million USD have been secured.

KARL VON HABSBURG-LOTHRINGEN



Mr. Karl von Habsburg-Lothringen has a long career in politics, media, and the military and cultural property protection. Since 2003, he has been a Cultural Property Protection Officer, first with the staff of the Military Command of Salzburg, later with the Armed Forces High Command, currently with IHSW at Staff College.

He has presented/contributed to, more than 500 lectures and publications as an expert in International Humanitarian Law concerning the military aspects of Cultural Property Protection.

He was Vice President of the Austrian Society for the Protection of Cultural Heritage since 2003; President of the Association of National Committees of the Blue Shield (ANCBS – 2008-2016); and currently interim President of the Blue Shield. Since 2010 he has been Chairman of the Advisory Board of the Competence Center for Cultural Heritage and Cultural Property Protection at the University of Vienna and since 2012 a member of the Editorial Board of the Series Heritage and Identity (Brill). In 2012, with Dr. Joris Kila, he presented with the annual Award of the Association for Research into Crime against Art, for Blue Shield work in Egypt and Libya.

The work of the Blue Shield

By *KARL VON HABSBURG-LOTHRINGEN*

President, Blue Shield International

Article 16.1 of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict identifies a Blue Shield as the emblem of the Convention and the emblem to be used to identify property protected under the Convention. The 1999 Second Protocol to the Convention established a 12 members Intergovernmental Committee to oversee its implementation and Article 27(3) of the Second Protocol, picking up the Emblem identified in the 1954 Convention, identifies the International Committee of the Blue Shield (ICBS) as an advisory body to the Intergovernmental Committee. The ICBS was formed in 1996 by four of the major heritage organizations (the International Council of Archives, the International Council of Museums, the International Council on Monuments and Sites, and the International Federation of Library Associations and Institutions) and comprised only of the four Chief Executive Officers of the Founding Organizations. This was an intentional decision taken to focus the power to act quickly and decisively in the hands of a small group, three of whom worked in Paris with the fourth a short distance away in The Hague (Boylan *pers. comm.* 22 November 2018). However, the ICBS essentially failed, for reasons too complex to discuss in this short piece, to make an impact on the international stage. The ICBS did allow for the creation of national committees and a number were created with various degrees of activity and success. The disregard for the protection of cultural property (hereafter CPP) shown by

the USA/UK led Coalition that invaded Iraq in 2003, underlined the weakness of the ICBS and prompted the national committees of the Blue Shield to come together to create the Association of National Committees of the Blue Shield (ANCBS). The ANCBS was founded in 2008 with the purpose of coordinating and strengthening international efforts to deliver good CPP. These two organizations amalgamated in 2016 to become simply 'The Blue Shield' and the acronyms ICBS and ANCBS, which many will know, are no longer used.

The Blue Shield is “committed to the protection of the world’s cultural property, and is concerned with the protection of cultural and natural heritage, tangible and intangible, in the event of armed conflict, natural- or human-made disaster” (2016 Statutes, Article 2.1). It is made up of some 30 national committees that elect an international Board (BSI) at the organisation’s triennial General Assembly. BSI oversees general activity and, through a small Secretariat (currently based at, and funded by, Newcastle University in the UK) coordinates and delivers work internationally. While the primary context for the Blue Shield is the 1954 Hague Convention, it works more generally within the context of the UN (e.g. Security Council Resolutions 2199, 2347, & 2368) and UNESCO’s cultural conventions and wider cultural protection strategy (e.g. the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage; the 2011 UNESCO Universal Declaration on Archives; and its 2016 Strategy for Reinforcing UNESCO’s Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict). It is also informed by international initiatives regarding environmental disasters such as the Sendai Framework for Disaster Risk Reduction. Within this context, through its Statutes and Board decisions, the BSI Board sets the framework within which national committees operate, respecting “the principles of joint action, independence, neutrality, professionalism, respect for cultural identity and diversity, and working on a not-for-profit basis” (2016 Statutes, Article 2.2). BSI has identified six areas of activity that national committees prioritise according to their particular circumstances; some examples follow that provide a flavour of our work⁴.

1] Co-ordination. BSI worked with NATO’s Civilian/Military Centre of Excellence to produce *Cultural Property Protection Makes Sense: a way to improve your mission*, a 78 page, “quick read” booklet outlining the importance of delivering high-quality CPP on military deployment (available [online](#)). More recently, BSI has been working with the UN Special Rapporteur for Cultural Rights in her attempts to make access to heritage an explicit universal human right⁵, and in 2018, European national committees, led by Austria and Belgium, supported by the UK national committee, offered support to the EU regarding the draft EU Cultural Property Import Regulations⁶.

2] Legal compliance, policy, and implementation. BSI is a legally constituted association under Dutch Law; national committees work within a variety of legal frameworks as best suits the individual national situation. BSI has developed a number of overarching policies that set the framework for the organisation’s activity. For example, the four-tier approach, outlining the four times heritage experts need to interaction with those in uniform to prepare for and deliver high-quality CPP was adopted as Blue Shield policy in 2014 and the seven risks⁷ provides a framework for our training and discussions with partners.

4 Please also see: <https://theblueshield.org/>

5 Bennoune, K, 2016. *Report of the Special Rapporteur in the field of cultural rights*.

6 UK Blue Shield, 2018. *UK Blue Shield Position Paper on UK Adoption of the EU Regulation on the Import of Cultural Goods*.

7 <https://theblueshield.org/why-we-do-it/threats-to-heritage/>

3] Proactive protection and risk preparedness. The 1954 Hague Convention unequivocally states that for effective CPP to be implemented during conflict, significant preparation needs to be completed *in peacetime*. While the major causes globally of destruction of cultural heritage are probably urban expansion, increase in land under cultivation, and the development of agricultural-related technologies, cultural property is damaged and destroyed specifically during conflict for at least seven reasons: [1] it is not regarded as important enough to include in pre-conflict planning; [2] through pillage/"spoils of war"; [3] through lack of military awareness; [4] as the result of collateral damage; [5] through looting; [6] through "enforced neglect"; and [7] as the result of specific targeting. By taking proactive action with respect to these, the overall risk to cultural property should be reduced significantly without distracting from (indeed perhaps contributing to) the overall mission objectives⁸. There is no space to unpack all seven risks here, but suffice it to say, if all seven risks were addressed prior to conflict and embedded within a normal military practice, the impact of armed conflict or environmental disaster on cultural property might be significantly reduced.

The production of lists of cultural property that we would hope would not be damaged during armed conflict is, technically, the responsibility of States parties to the Convention. However, in a number of recent situations, this has been impossible and, led by the USA national committee, the Blue Shield has stepped in to produce initial lists as necessary. To-date lists have been produced for Libya, Mali, Syria, Iraq, and Yemen. The aspiration for such lists is that they are transferred to the military's so-called "no-strike lists". Such lists are fraught with complications and much more work needs to be done before there is an effective, efficient, and acceptable process for their development and content and BSI is working closely with UNESCO, UNOSAT, NATO and others on developing better geo-spatial data.

However, as an example of their value, the Blue Shield list provided for Libya was perceived as a great success. The protection of the fortified Roman Farm at Ras Almageb, where forces loyal to the Gadhafi regime had positioned a radar and communications unit next to and inside the Roman site. Referring to the List NATO, with a careful choice of weapons, destroyed the military targets with very minimal shrapnel damage to the building. This proactive protection received significant positive media reporting which led to an internal Report on "Cultural Property Protection in the Operations Planning Process" that was published in December 2012 which recommended that NATO should develop its own CPP policy. No such policy is yet in place, but a CPP Directive, drafted with the input of BSI, has been recently approved as the first step towards one. A NATO "Centre of Excellence" for Human security is also under consideration that is planned to include CPP.

4] Education, training, and capacity building. One of the major problems regarding CPP is that the close relationship between the military and heritage community, clearly in evidence during the Second World War, has been lost. More recent events in the former Yugoslavia, Iraq, and the increase in specific targeting of cultural property by groups such as Daesh, have prompted a review of this situation and BSI and national committees have been active in supporting these developments. Over the last three years, BSI staff have presented at the military, heritage professional, academic, and general public conferences, meetings, seminars, and workshops in more than 22 countries. We have also been refining and testing generic military training materials, based around the 7 risks and introducing the concept of

⁸ Stone, P G, 2016. 'The Challenge of Protecting Heritage in Times of Armed Conflict'. *Museum International*, 67(1-4), 40-54.

a “CPP risk estimate”. Training has been carried out with numerous armed forces including those from Austria, Fiji, Germany, Georgia, Poland, The Netherlands, the UK, and the USA. Instigated by the Austrian national committee and supported by BSI, the Blue Shield trained the UN Interim Peacekeeping Force in Lebanon in 2014 and 2019. A major step forward was taken in 2018 when BSI was invited to help plan and deliver major exercises, ‘Blue Flag’ for the US Air Force and ‘Trident Jaguar’ for NATO. This built upon previous involvement with USA exercise Bright Star in Egypt led by colleagues from the USA. Discussions are ongoing with NATO about establishing BSI’s involvement across a number of key annual exercises and BSI was asked to provide a briefing document for the 2018 NATO Summit⁹. At a national level, the UK Ministry of Defence, prompted by an article written by the BSI Vice President¹⁰, recently made the decision to create a new military CPP Unit to be fully operational by 2020/21, a process being supported by the UK national committee. In 2011 the German Bundeswehr (www.innerefuhrung.bundeswehr.de) organised the first of a now annual conference called ‘Coping with Culture’. These annual meetings, held across Europe, have brought together predominantly members of the armed forces of between 10 and 15 European countries, with a smattering of cultural experts, to discuss a wide range of cultural issues facing the military – including CPP. In the UK a symposium “Culture in Conflict”, primarily attracting military staff and associated experts, has been held annually for ten years and includes CPP issues on a regular basis. BSI has led the CPP elements of both meetings over the last few years. A non-European, example is the Lebanese Armed forces who took the initiative and set-up an internal CPP unit in 2012 and the Austrian national committee and BSI have contributed to the training of this group.

5] Emergency response. BSI has carried out a number of emergency missions to countries impacted by conflict including Egypt, Libya, and Mali¹¹. While these have been extremely useful, the full value of such missions will not be achieved until there is firmer funding available to support such activity and a clearer understanding of the roles and relationships of different heritage organizations; we are too small a group to replicate activity and reinvent the wheel.

6] Post-disaster recovery. It is critically important that, once a conflict or environmental disaster is over, CPP activity continues. It is frequently at this point that much cultural property is damaged or destroyed as cleaning-up and rebuilding take place. Often this work is done by those with no training in or understanding of CPP or the importance of cultural property to post-conflict/disaster stabilisation. The frequent call on a country’s armed forces to act as first responders following environmental disasters led the Blue Shield to add training related to natural/environmental disasters to its remit. It is here that the Blue Shield’s work turns full-circle, as stabilisation flows directly into proactive protection, training and education.

The future. The Blue Shield is committed to continuing to work in this area in an attempt to make armed conflict more humane and to deploy our common heritage as an ambassador for peace, and not as a provocation or tool of war.

9 Cunliffe, E, Fox, P, & Stone, P G, 2018. ‘*The Protection of Cultural Property in the Event of Armed Conflict: Unnecessary Distraction or Mission-Relevant Priority?*’ NATO OPEN Publications

10 Stone, P G, 2013. *A four-tier approach to the Protection of Cultural Property in the Event of Armed Conflict*. *Antiquity*, 87(335),166-177.

11 Blue Shield 2014. *ANCBS Report for the Civil-Military Assessment for Malian Heritage*

LISA OTT



Dr Lisa Ott is the Head of the Dealing with the Past (DwP) program at swisspeace. She joined swisspeace in 2014 and focused on archives and DwP, enforced disappearances in the framework of the right to truth and the prevention of violent conflicts.

Before joining swisspeace, from 2011 to 2014 (partly seconded by the Swiss Expert Pool of Civilian Peacebuilding), Ms Ott worked with the UN Office of the High Commissioner for Human Rights (OHCHR) in Colombia to support its human rights monitoring, namely with view to the situation of human rights defenders at risk, reparations and land restitution in the context of the peace process. Prior to this, she worked with the field monitoring and reporting unit at OHCHR Nepal. From 2006 to 2009, she was as a research and teaching assistant with the Chair for Constitutional and Public International Law at the University of Lucerne. She has also worked with NGOs in El Salvador on indigenous rights and migration

Guiding Principles for Safe Havens for Archives at Risk: Purpose, goal and role of swisspeace in the process

By LISA OTT

Head “Dealing with the Past Program”, swisspeace, Switzerland

Good morning.

In October 2018, the Executive Board of the International Council on Archives (ICA) endorsed the so-called *Guiding Principles for Safe Havens for Archives at Risk*. The principles provide guidance to everyone concerned with the protection of archives at risk and with interest in establishing safe haven solutions - so a secure repository for an archive abroad - either as sending or as hosting institution.¹²

This ICA-endorsement is an important achievement for swisspeace, the Swiss Peace Foundation (an NGO), but also for the Swiss Government, in particular the Taskforce on Dealing with the Past and Prevention of Atrocities. In order to illustrate this example of cooperation between a Swiss NGO and the Government, I'll quickly walk you through the process that lead to this endorsement last fall. The Swiss Federal Department of Foreign Affairs' Taskforce on Dealing with the Past and Prevention of Atrocities discovered many years back that archives play a crucial role in any Dealing with the Past or Transitional Justice Process: Truth Commissions need to access archives, criminal tribunals need them, but also reparations programs, museums, etc.

¹² The term “sending institution” refers to a governmental or non-governmental organization/ institution or a person that has found or is looking for a safe haven for its archives/records. The term “hosting institution” refers to a governmental or non-governmental organization/ institution interested in or already offering a safe haven solution for archives/records at risk.

The Swiss Government – in coordination with the Swiss Federal Archives – mandated swisspeace to start working on this topic and explore gaps in practice and on the policy level in 2012 through the “[Archives and Dealing with the Past](#)”¹³ Project.¹⁴

Archives that contain relevant information for ongoing or future Dealing with the Past processes, - so essentially archives that contain information needed to assess and establish past human rights violations - are often “at risk”. The risks include:

- Destruction by those responsible for human rights violations who fear criminal prosecution.
- Destruction due to insufficient infrastructure to protect paper or digital material.
- Insufficient resources and knowledge regarding records management etc.

In order to gather lessons learned and good practices on this issue of “Archives at Risk”, swisspeace (based on the mandate by the Government) organized a big public conference in October 2015. Among many other issues that were raised during this conference, it became clear that “Safe Havens”, the provision of secure repositories in foreign countries was an area where analysis and work needed to be done. Thus, since 2016, based on the mandate by the Department, swisspeace acts as a secretariat for an ad-hoc Working Group, which includes important stakeholders, including representatives of sending institutions and hosting institutions, both governmental and non-governmental, representatives of the UNESCO, ICA and the International Committee of the Red Cross, as well as experts on the subject matter. This ad-hoc Working Group has been moving the agenda on safe havens for archives at risk forward and drafted the Guiding Principles on the subject in order to provide a framework for cooperation between sending and hosting institutions. Following a public consultation in early 2018, the Principles were submitted to the ICA, with the hope to get them endorsed.

And then, in October 2018, the Executive Board of the International Council on Archives (ICA) unanimously endorsed the *Guiding Principles for Safe Havens for Archives at Risk*. While the endorsement of the Principles by ICA’s Executive Board marked an important milestone, the process is not yet completed. The Working Group is currently finalizing “[A Commentary to the Guiding Principles](#)”, which provide guidance for their implementation, as well as a generic agreement to serve as orientation for sending and hosting institutions. In addition, we are currently jointly strategizing to obtain endorsements by other international institutions, including the UN, UNESCO and regional organizations. We are also disseminating the principles so that they are known to a wider public, particularly organizations who are in need of safe havens for their archives.

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13 Dealing with the past (also referred to as Transitional Justice) refers to the processes for addressing the rights of victims and societies as a whole as well as the obligations of States with regard to truth, justice, reparations and guarantees of non-recurrence in the aftermath of grave human rights violations, breaches of international humanitarian law and related grave forms of corruption that facilitated these crimes.

14 See more information about the [Archives & Dealing with the Past project](#) and about [swisspeace](#).

FREDERIK ROSÉN



Mr Frederik Rosén currently directs the Nordic Center for Cultural Heritage and Armed Conflict (CHAC), which assists international organizations, governments, military organizations, museums and the academic community to develop better approaches to the developing role of cultural heritage in the 21st century armed conflicts. CHAC was founded in 2017 to sustain initiatives and networks developed by the NATO SPS CPP.

*His previous positions include Senior Researcher at the Danish Institute for International Studies and Associate Professor at the Faculty of Law, University of Copenhagen. Dr. Rosén directed the NATO Science for Peace and Security Project on Best Practices for Cultural Property Protection in NATO-led Military Operations (NATO SPS CPP) (2014—2017). He has published widely on International Security and the Laws of Armed Conflict. His acclaimed 2016 monograph, *Collateral damage. A Candid History of a Peculiar Form of Death*, addresses the challenges of handling the collateral effects of military operations. Besides his wide international engagement related to military protection of cultural heritage, he has directed projects for among other the Danish Ministry of Defence on topics such as the Protection of Civilians in UN Peacekeeping, Technology and Innovation in UN Peace operations, and Capacity Development in Post-Conflict States*

Cultural Property and the International Protection Gap

By FREDERIK ROSÉN

Director, Nordic Center for Cultural Heritage and Armed Conflict, Denmark

I am honored to address you here today at this important conference and provide you with a perspective from the Nordic Center for Cultural Heritage and Armed Conflict (CHAC). We are a small organization with a big footprint. We work with stakeholders in defense and security sectors as well as UNESCO and other international organizations, with the aim of providing research-based support for building policy, doctrine and capacity to accommodate the aims and ambitions of the 1954 Hague regime. We have been running a most influential international initiative in regard to developing military approaches to cultural heritage in war and conflict, an example being the NATO Science for Peace and Security project on Cultural Property Protection in NATO-led Military Operations (2014—2017).

During my work, I often encounter defense and security professionals who assume that, with the exception of military targeting, cultural heritage is an irrelevant topic for defense organizations, because this matter is “taken care of” by UNESCO. Nevertheless, as we all know, despite the great work carried out by UNESCO, its Member States never provided UNESCO with the necessary tools and resources to work practically on the ground in order to protect cultural heritage during armed conflicts. I see the same lack of capacity in other key

international organizations. In 2018, the European Union's External Action Service started to build an approach to integrate the cultural dimension within the EU's overall security policy. United Nations Member States strongly believe that the task of cultural heritage protection should not be added to the already overburdened UN peacekeeping operations. Additionally, while NATO's recent work to build a military approach to cultural heritage protection holds many promises, I, as a partner to that process, can say that it is still in the early stages of development.

Moreover, it is not too much to say that domestic initiatives in the defense and security sectors mostly struggle to mobilize resources, define their roles in their institutional contexts, and achieve formal recognition.

Therefore, there is a paradox; on the one hand, we experience a significant and developing role of cultural heritage in war and conflict, and a growing agreement across the international community that we urgently need better protection mechanisms in place. On the other hand, after 65 years with the 1954 Hague Convention and 20 years with its Second Protocol, when it comes to handling the problems and the conventions, a striking institutional gap endures at both the domestic and the international level.

My question is: why do states remain so reluctant when it comes to investing in the most basic mechanisms and human resources to implement the 1954 Hague regime? Why do they shy away?

From my experience engaging with the cultural heritage protection agenda in the defense and security sectors, I see three major roadblocks.

Firstly, we have strong norms and a comprehensive legal framework, but we lack a clear picture of the actual implications to society that the loss of cultural heritage brings. For instance, the concept of "cultural cleansing", with its idea that cultures may be destroyed by demolishing their material expressions, appears intuitively correct and historical examples come to mind. Yet, no systematic empirical research exists to substantiate such a causal effect. Regardless of what we feel is right or true, we are left with anecdotal evidence.

In the same way, regardless of its clearly destructive impact on heritage, we lack accurate knowledge of the actual effects of looting and illicit trafficking of heritage objects on international security, including the financing of terrorism.

Now, this lack of substantiated knowledge makes it difficult for states and international organizations to set priorities. Because who wants to take the lead and use already scarce resources or taxpayer's money to develop a new thematic area without firm facts underpinning the aims and ambitions?

Another difficulty we face is that, apart from international law, the academic discussions on cultural heritage and conflict primarily take place within the humanities. The predominance of humanities researchers with weak knowledge of the inner workings and language of defense and security sectors has the effect that recommendations tend to be impractical to stakeholders.

On the other side, I see how defense and security studies hold on to a tradition of viewing culture as something immaterial and purely social. They study religion, nationalism, identity-politics, belief systems and friends and enemy formations as discourse and social constructions. This hinders the development of a defense and security studies research agenda on this material dimension of culture that we call cultural heritage. This is ironic, not least as terrorist attacks from the World Trade Center in 2001 to Sri Lanka and New Zealand in 2019 tend to target places of cultural, historical or religious significance, viz. cultural heritage.

Thirdly, there is a definite confusion among states in determining the relevant authority for implementing the 1954 Hague regime. At the domestic level, the topic continues to fall between the chairs of the ministries of defense, culture, and justice. The 1954 Convention and its Protocols are habitually put under the umbrella of “culture conventions” and are often managed by the national ministries or departments of culture, despite forming an integral part of the Laws of Armed Conflict (LOAC), and as such should instead belong to the ministries or departments of defense.

The misperception is generic also on the international level. At the first conference ever in NATO Headquarters on cultural heritage protection, held in April 2019, one of our key panelists started by saying that “it’s a bit odd to come to NATO to discuss cultural property”. Why does it feel odd to come to NATO to discuss a key instrument of international humanitarian law? Is NATO not exactly the place where these discussions are supposed to take place? Unfortunately, his comment expresses the confusion about the 1954 Hague regime -- the world in a grain of sand.

In conclusion, without better facts to underpin our agenda, without adequate expertise directly applicable to defense and security sectors, and without a clarification of responsibility across relevant authorities, I fear that the Second Protocol, alongside the 1954 Hague Convention will continue to live a troubled life, not really military, not really culture.

That said, the glass is definitely half-full. The growing political commitment and many initiatives we see today indicate a fertile ground for pushing forward the international work supporting the Second Protocol and the 1954 Hague Convention. At CHAC, we look forward to continuing our support for this movement.

PANEL



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PANEL 4

MODERN ARMED CONFLICTS: EMERGENCY RESPONSE MECHANISMS

The nature and impact of armed conflicts affecting cultural property has changed since 1999. In 2019, armed conflicts not of an international character pose a critical threat to our shared cultural heritage, impact cross-national borders and threaten international peace and security. Urban areas stand on the frontline of contemporary conflicts. As a result, heritage properties suffer from significant collateral damage. Moreover, through the deliberate targeting of minorities, schools, cultural heritage sites and property, the foundations of society are undermined in a durable manner and social fragmentation is accelerated.

These attacks are often compounded by the looting and illicit trafficking of cultural objects, which contribute to global organized crime and, in turn, to fueling armed conflict. Deterring non-state armed groups committing crimes against cultural property and bringing perpetrators of such crimes to justice is more important now than ever before. In this context, protecting cultural heritage and integrating the cultural dimension in conflict prevention and resolution constitutes more than a cultural emergency – it is a political, humanitarian and security imperative.

Developments mentioned above require a new perspective on cultural heritage protection. It requires us to rethink our existing protection mechanisms and, if necessary, to invent new tools and approaches to facilitate compliance with international rules governing the protection of cultural property.

LAZARE ELOUNDOU ASSOMO



Mr Lazare Eloundou Assomo is the Director of the Entity "Culture and Emergencies" at UNESCO, since November 2018. From October 2016 to October 2018, he was Deputy Director of the Division for Heritage and the UNESCO World Heritage Centre. The entity for which he is responsible deals with all matters regarding museums, restitution and fights against illicit traffic, protection of cultural heritage in conflict situations, and underwater cultural heritage. He is an architect conservator, and town-planner specialised in earthen architecture and cultural heritage. He is an author of the book "African World Heritage, a remarkable diversity" published by UNESCO.

UNESCO's actions to protect cultural heritage in conflict

By LAZARE ELOUNDOU ASSOMO

Director, Culture and Emergencies, UNESCO

Dear ladies and gentlemen, dear colleagues,

First of all, I would like to thank the Moderator of this panel, H.E. Mr Mounir Anastas for giving me the floor.

I will start recalling that cultural heritage has been increasingly in contemporary times affected by armed conflict and faces threats of different natures.

Perhaps the most well-known and mediatized of these threats is the one of intentional destruction of cultural heritage; but let's not forget about the threat of collateral damage, which becomes ever more acute as wars and conflict are increasingly fought within urban centers.

Indeed, cultural heritage is also affected by looting and illicit trafficking.

All these different types of threats create new challenges for UNESCO and increasing expectations vis-à-vis the organization to intervene.

In this context, the specification of sanctions for serious violations with respect to cultural property and the definition of the conditions in which individual criminal responsibility shall apply – all provided for by the 1999 Second Protocol – are invaluable additions to the legal canon for the protection of cultural property.

I would also like to bring to your attention that, in addition to the legal protection, the operational mechanisms for emergency response also need to be put in place.

Culture is critical to sustainable development and peace, but is not yet systematically considered in humanitarian, security and peace-building policies and operations.

In this way, UNESCO is ready to prevent and respond to the threats affecting cultural heritage in emergencies caused by both disasters and armed conflict.

Since 2015, this has been done through the implementation of 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*. It has also been done with its Annex on disasters, which was adopted in 2017.

The Strategy and Annex have two objectives:

To strengthen the ability of Member States to prevent, mitigate and recover the loss of cultural heritage and diversity as a result of conflict; and to incorporate the protection of culture into humanitarian action, security strategies and peace-building processes by engaging with relevant stakeholders outside the culture domain.

In practice, this is done notably through advocacy at the highest international levels, such as the Security Council, and the facilitation and technical coordination of partners and stakeholders.

The Strategy also pushes for cooperation with stakeholders that are not part of the classical culture sector, notably in order to increase the consideration of culture in their policies and programmes, but also to enhance effectiveness.

Many of these new partners are present today, including the International Committee of the Red Cross, and swisspeace; Our ongoing cooperation with the UN Peacekeeping mission in Mali, in the context of which civilian and military personnel are trained and sensitized on the importance of cultural property protection, is one example of such cooperation.

Likewise, the Passport for Heritage was created for Northern Mali and has been disseminated among armed forces active in the country in order to sensitize them on the cultural heritage and contribute to its protection, - Mr Cissé, my co-panelist, will speak more about the case of Mali. Another type of activity consists of the monitoring, including through satellite imagery in places of difficult access in cooperation with UNOSAT, and documentation of destruction.

This can support the advocacy and sensitization of actors, for example on the basis of International Humanitarian Law, as well as on the basis of Human Rights Law, which Mr Larsen will speak more about.

The UNESCO Heritage Emergency Fund, which is the first fund which allows quick response to emergencies affecting cultural heritage is another part of UNESCO's efforts to protect heritage in armed conflict. It is innovative in that it covers emergencies resulting from both conflict and disasters. It is flexible because it is non-earmarked. It can be used for response, but also for preparedness activities, in line with the UNESCO Strategy.

For all these reasons, I would like to encourage the international community to support the Heritage Emergency Fund, which since its creation in 2015, has benefitted 51 Member States of UNESCO and supported emergency response activities in the major crises affecting cultural heritage

Thank you for your attention.

LASSANA CISSÉ



Mr Lassana Cissé has been working for more than 20 years with the Ministry of Culture and is the Manager of Bandiagara Cliffs World Heritage Site. He is an expert in heritage and local development. From 2013 to 2016, he was the National Director of Cultural Heritage of Mali, and National Coordinator of the program for the reconstruction of damaged heritage in the northern regions of Mali (Timbuktu and Gao) after armed conflict in 2012. This program was implemented in close collaboration with UNESCO and other technical and financial partners.

Mr Cissé has been an independent expert since January 2017, he is part of UNESCO's network of African experts for the 1954, 1972, 2003 and 2005 Conventions. He is a Member of the Board of ISCEAH (one of the ICOMOS International Scientific Committee) and is often contracted for the provision of services to ICOMOS (expertise), UNESCO-WHC. He carried out several missions to study and evaluate the World Heritage site in West Africa and elsewhere. He attended a lot of conference and meeting on an international level and represented Mali, as an expert, at World Heritage Committee Sessions since 1998.

The ratification and implementation of the (1999) Second Protocol of the 1954 Convention in Mali during armed conflict

By LASSANA CISSÉ

Independent expert on cultural heritage protection, Mali

I. A brief summary of the context

In January 2012, an armed rebellion was triggered in the north of Mali, more specifically in the Kidal region. It was gradually infiltrated by groups of armed Islamist terrorists constituted by the AQMI¹⁵ and MUJAO¹⁶ movements. The armed conflict quickly spread to the regions of Gao and Timbuktu, eventually reaching as far as northern Mopti (Douentza) in March and April 2012.

In the Gao and Timbuktu regions, there are two sites on the UNESCO World Heritage List: the Tomb of Askia in Gao (in 2004) and the "Timbuktu" property (three monumental mosques and sixteen mausoleums in 1988).

On 22 March 2012, a coup d'état described by several people as "stupid" caused unprecedented destabilisation to the country's institutional and military establishments and huge-scale damage whilst creating residual safety in the occupied regions of the north and a part of the central region of Mali (Mopti).

15 AQMI: Al Qaida in the Islamic Maghreb

16 Movement for Unity and Jihad in West Africa

The various events that have occurred in Mali, and particularly in the north, brought about significant damage and even the destruction of tangible and intangible cultural heritage property.

In a stand of self-defense and resilience, the transitional government of Mali requested UNESCO's support and it systematically answered the call with all due determination and urgency.

Between May and July 2012, a number of huge-scale attacks were launched on world heritage sites and other property in Kidal, Gao and Timbuktu. Fourteen of the sixteen mausoleums on the World Heritage List were partly or totally destroyed. Toguna central (a human shelter) was ransacked and burned, together with highly valuable Dogon works of art.

Elements of intangible cultural heritage were affected, which consequently had an adverse effect on the social cohesion and togetherness of communities and populations in their broad range of cultural diversity.

II. Recourse to the various international conventions to bring in the support of the international community within the context of a conflict and security crisis

UNESCO, in order to be able to provide international technical assistance to Mali and its rich cultural heritage, has placed the focus on the international conventions and texts to aid the protection and recovery of Malian cultural heritage. The first actions initiated were preventive measures for the emergency salvaging of collections and other works of art and the planning of protective actions for significant sites and monuments in the event of the intervention of the Malian, African and international armed forces. Among the significant emergency measures taken and applied, the moments and dates below are worthy of a mention:

- June - July 2012: during the 36th Session of the World Heritage Committee held in St Petersburg, the property of Timbuktu and the Tomb of Askia in Gao were entered onto the List of World Heritage in Danger, at the request of the Government of Mali.
- The St Petersburg appeal: at the initiative of the Ambassador, the Permanent Delegate of France to UNESCO, Mr Daniel Rondeau, an appeal was drafted and launched on Peter the Great Square, in the presence of UNESCO's directors, the members of the World Heritage Committee and several attendees of the 36th session of the Committee.
- A special support account was created on this occasion for Mali to protect and safeguard its cultural heritage affected by the conflict and emergency funding was allocated to it.
- June - July 2012: the ancient manuscripts were discreetly extracted and evacuated from Timbuktu, in particular, thanks to the NGO SAVAMA using a range of different means (in canteens carried by donkeys, canoes, lorries etc.) as far as Mopti, Ségou and Bamako.

- A mobilisation of the international community on UNESCO's initiative with a letter addressed to the countries of the sub-region and those engaged in the military intervention to remind them of the obligations under the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, as well as by virtue of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.
- October – November 2012: emergency funding allowed the production - with assistance from CRAterre - of referenced maps and information passports on cultural heritage property located in the regions of Timbuktu, Gao and Kidal (illustrated description and geographic location) for the attention of the armed and security forces and humanitarian organizations.
- On 20 December 2012, the UN Security Council adopted resolutions 2056, 2071 and 2085 which firmly condemned the destruction of cultural and religious sites in Mali.
- A cooperation agreement was started with the International Criminal Court (ICC) regarding attacks made on heritage sites and qualified as war crimes in accordance with Article 8 (2, e, iv)) of the Rome Statute.
- On 18 February 2013, an international meeting of experts was organized to safeguard Malian cultural heritage at UNESCO's head office and an action plan was adopted to "rehabilitate cultural heritage and safeguard ancient manuscripts", in the presence of the attendees ICOMOS, ICOM, ICCROM and other international institutions.
- April 2013: the Multidimensional Integrated UN Mission for Stabilisation in Mali (MINUSMA) was created by resolution 2100 of the UN Security Council. It was assigned the historic mandate to "assist the transitional authorities of Mali, as necessary and feasible, in protecting from attack the cultural and historical sites in Mali, in collaboration with UNESCO".

III. The imperious need for recourse to the 1954 Convention and the 1999 Second Protocol

The process for Mali's accession to the 1999 Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1999 Second Protocol) was triggered while the 36th session of the World Heritage Committee was meeting in Russia, in June - July 2012. This process ended with Mali's ratification of the 1999 Second Protocol on 15 November 2012.

Ratification of the Second Protocol has been the motive behind a number of remarkable initiatives that have made it possible to involve the maximum possible number of key stakeholders in the management of cultural heritage during the security crisis, including the national defence and security forces. It was also a great opportunity to spread the word through training and skill honing sessions for Malian and foreign troops. This allowed for a better understanding of Blue Shield and other concepts such as "enhanced protection".

A number of concrete activities and initiatives were planned and implemented. These are training and skill honing activities for the Malian and international defence and security forces, in particular, those of MINUSMA. This training - for which the modules were designed and formulated to communicate the elementary and essential notions concerning the protection and conservation of cultural heritage - was also provided in Bamako, as well as in the regions of Gao and Timbuktu. Several soldiers, policemen and women, law, customs and waterways and forestry officers attended these short-term training sessions.

The most remarkable of the initiatives was the request for international assistance made by Mali and approved by the Committee for the Protection of Cultural Property in the Event of Armed Conflict in December 2016. This request for assistance was intended to achieve the following objectives, among others:

- raising awareness in local communities and customs authorities regarding the reinforced protection status enjoyed by the Tomb of Askia site;
- drafting, updating and ensuring the adoption of legislative and regulatory texts that transpose into Malian national law the provisions of Chapter 4 of the 1999 Second Protocol;
- drawing up and implementing sustainable training plans and programmes for the Malian armed and security forces with regard to the protection of cultural property in the event of armed conflict, in accordance with Articles 7 and 25 of the 1954 Hague Convention and Article 30 of the Second Protocol; and
- adopting and implementing measures to safeguard the Tomb of Askia site in accordance with Article 5 of the Second Protocol, and in particular the creation of an inventory of movable heritage and the implementation of emergency plans against structural collapse and the risk of fire.

IV. Recommendations

In the twenty years, the 1999 Second Protocol has made a lot of progress. Now it has been ratified by more than eighty countries, it has significant stature in the context of armed conflicts, security crises and undeclared wars with their associated destruction and plundering in all fields of tangible and intangible cultural heritage.

In order to guarantee permanent follow-up and effective implementation of the 1999 Second Protocol - in the African context in particular - we would like to formulate a number of recommendations:

- strengthen the Secretariat and the Committee for the Protection of Cultural Property in the Event of Armed Conflict so that its “ins and outs” are better known and understood;
- increase familiarity with the various protective regimes: general protection, special protection and enhanced protection;

- take intangible aspects into account when implementing the Second Protocol, because conflicts and wars cause damage to both tangible and intangible heritage;
- integrate languages into promotion, dissemination and awareness-raising initiatives by translating to the extent possible the symbols, emblems and other imagery relating to the protection of cultural heritage in a context of war and/or armed conflict. There is also a need to attempt to translate the notions of cultural property and enhanced protection status into the local languages, using graphical or visual grammar in regions where the spoken word dominates as a vector of communication; and
- place the emphasis on increasing community involvement in the promotion and spreading of the Second Protocol in and around sites in the event of armed conflict and in post-conflict periods.

PETER KELLER



Mr Peter Keller is the Director-General of the International Council of Museums (ICOM). Mr Keller served as ICOM Treasurer and has been Director of the Salzburg Cathedral Museum (Dommuseum), Austria, since 2002. From 2007 to 2014, he managed a merger with three other museums to form the DomQuartier Salzburg, an innovative institution whose visitor numbers multiplied those of the Dommuseum. For three years, he worked at the Staatliche Museen zu Berlin before joining the Dommuseum. In addition to his role of Treasurer at ICOM, Keller has also served as Chair and Secretary of the organisation's International Committee for Historic House Museums (DEMHIST) and as a board member of the Austrian National Committee. In Austria, he was also a member of the jury for museum accreditation and of the national advisory council for museums.

What is the International Council of Museums (ICOM) doing for the Protection of Cultural Property in the event of armed conflict?

By PETER KELLER

Director-General, International Council of Museums, France

The International Council of Museums is the only global museum association, with 44 000 members from more than 140 countries or territories around the world. This comprehensive network of museums and museum professionals issues worldwide standards such as the ICOM Code of Ethics for Museums, and organizes 200-300 conferences, seminars and workshops every year.

As the leader of the global museum community, ICOM is dedicated to the protection of cultural heritage in times of armed conflict and leads an integrated approach that implies assessment, preparedness and response. ICOM's Code of Ethics obliges museums to protect their collections during armed conflict and other human-made and natural disasters. ICOM also develops programmes and raises awareness on heritage in danger and post-disaster situations.

Defending the interests of museums and museum professionals around the globe, ICOM is strongly present on the international stage. Thus, ICOM was the only NGO officially invited to take part in the G7 meeting of the ministers of Culture in order to contribute as an observer expert on cultural property protection.

In 1996, in order to protect endangered cultural heritage, alongside with three other NGOs: ICA, ICOMOS and IFLA, ICOM created the International Committee of the Blue Shield in which ICOM is very active as a member of its Executive Board and Bureau.

Since 2000, ICOM publishes the Red Lists of Cultural Heritage at Risk which support customs and police in the fight against illicit trafficking. Illicit trafficking is one of the fatal consequences of conflicts and disasters, and the index of Red Lists is an index of the global seats of war. The Red Lists have proven to be valuable and effective tools to apply existing international legal instruments for the protection of the world's cultural heritage. ICOM also participates in trainings and in expert meetings on the instrumental role of international law in the protection of cultural heritage.

ICOM also provides expertise for UNESCO on questions pertaining to cultural property protection. At the request of UNESCO's Committee for the Protection of Cultural Property in the Event of Armed Conflict, and on behalf of the International Committee of the Blue Shield, ICOM carried out a study and an action plan on the Protection of Cultural Heritage in Conflict and Occupation. ICOM also contributed to the report on the UN Security Council Resolution 2347. The document, coordinated by UNESCO, describes ICOM's work and actions, and was submitted to the Security Council in late 2017.

With its specialized committees, such as the Disaster Risk Management Committee (DRMC), ICOM is offering its knowledge and know-how for the implementation of standards and techniques in the area of risk management, emergency plans, professional networking and public awareness-raising. The information gathered by ICOM in emergency situation has proven invaluable to assess the real dangers posed to movable cultural heritage in case of armed conflict but also natural or human-made disasters.

ICOM emphasizes the importance of implementing safeguarding measures and work at a prevention level referred both in Article 5 of the Second Protocol and the ICOM Code of Ethics for Museums. ICOM also stresses the importance of the 1954 Hague Convention and its Second Protocol as the main international judicial tool for the protection of cultural property during armed conflict, and the importance for all the stakeholders to further contribute to the implementation of this Convention and its Protocols.

PETER BILLE LARSEN



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Modern conflict, emergencies and cultural heritage: exploring the relevance of cultural rights

By PETER BILLE LARSEN

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Matters of cultural identity, heritage and practices are often at the heart of modern conflict and emergency patterns. If we recognize this, it triggers questions such as i) how threats to cultural heritage and cultural property may intensify or shift under armed conflict, ii) how to safeguard cultural property in the short-term maximizing what can be done under complex emergency contexts, but also iii) how to connect the dots between cultural property and heritage protection and the centrality of identity politics and heritage from the perspective of social cohesion, peace building and cultural rights. It is mainly the latter topic, I wish to address here.

Speaking here in my personal capacity as a researcher, I am also involved in a joint initiative by UNESCO and the OHCHR which seeks to better understand the challenges experienced by humanitarian, security and peacebuilding actors in dealing with culture and cultural rights ultimately leading to a joint capacity building tool.

Yesterday, indeed, we held powerful statements about the challenges of upholding International Humanitarian Law in times of conflict by the Red Cross. Yet, also we had a powerful statement by the Special Rapporteur on Karima Bennouna about a human rights approach to heritage. Attacks against property are also attacks against people and their rights. She stressed the importance of increasing ratifications of the 1954 Convention, as a way of ensuring this. A pragmatic approach of getting more actors to play by rules with a proposal to adopt a proposal in the short-term for more ratifications.

Yet, it is also a moment to ask questions like: Are we on track with the Convention and its instruments as an effective instrument for the challenges faced today? Could additional and complementary approaches potentially be relevant?

Yesterday, again, there were, on the one hand, strong arguments against a third Protocol. Also, there is perhaps some skepticism about aiming for more and higher requirements, if the international community is already struggling to uphold IHL. Let's try to save what can realistically be saved. Would further rules run the risk of Parties abandoning customary law, altogether?

Yet, look again. In some respects, aren't the challenges faced today with destruction of cultural property, extremist action and identity politics are different from the challenges leading to the adoption of the 1954 Convention? Whether we look to the recent tragedies in Sri Lanka, Iraq, at stake are not simply attacks on property, but deeper-running tensions, the instrumentalization of identity, extremist politicking and the denial of individual and collective rights. If property is at the heart of it, much more is clearly at stake.

For starters, if we consider the destruction of cultural property as the tip of the iceberg of a wider problem complex, what can be said about underlying cultural, political dynamics and how does a cultural rights approach fit with wider approaches to safeguard cultural heritage? Acknowledging that cultural heritage often ends up being dragged into longstanding complex conflicts, to what extent is conflict analysis equipped, on the one hand, to decrypt such dynamics and on the other hand, design culturally-sensitive responses? Given that culture is a very critical consideration in conflict today, as recognized in the very concept of identity politics, then culture must be at the heart of conflict analyses and peace strategies. Yet, what does this mean in practice?

Drawing on both literature interviews with practitioners in the field, this presentation explores implications for emergency response, in particular, addressing the relevance of a cultural rights-based framework.

In the summer of 2015, Professor Khaled al-Asaad, the head of archaeology at Palmyra, Syria for more than four decades, was brutally beheaded¹⁷ by Daesh, as he reportedly refused to tell the location of hidden artefacts¹⁸. The brutality reminds us that heritage is not simply a profession, a matter of cultural policy, signs of distant past, but symbols, practices, and means of communication and targets of the present. Think also of communities and people losing lives and presence because who they, how they relate to past or ways they are connected distinct places. While it on the on the hand, may seem as meaningless symbol politics, it from another perspective alerts us to the centrality of matters of identity in justifying and waging war, but also more profoundly what it takes to maintain peace thus potentially avoiding or rather preventing the necessity of humanitarian action in the first place.

As a starting point, the protection of cultural property is at the heart of the 2015 Strategy for reinforcing UNESCO's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict. The strategy also adopts a broader two-pronged approach. On the one hand, it is about strengthening Member States' ability to prevent, mitigate, and

17 [The martyr of Palmyra: Khaled Al Asaad](#)

18 [Beheaded Syrian scholar refused to lead Isis to hidden Palmyra antiquities](#), The Guardian, 18 Aug. 2015

recover the loss of cultural heritage and diversity as a result of conflict. On the other hand, it concerns incorporating the protection of culture into humanitarian action, security strategies and peacebuilding processes¹⁹. As the strategy clearly underlines:

“attacks on culture are characterized by the deliberate targeting of individuals and groups on the basis of their cultural, ethnic or religious affiliation. Combined with the intentional and systematic destruction of cultural heritage, the denial of cultural identity, including books and manuscripts, traditional practices, as well as places of worship, of memory and learning, such attacks have been defined as “cultural cleansing” (UNESCO 2015).

As the strategy continues:

“Similar acts, such as those recently perpetrated by ISIL/Daesh in Iraq and Syria and associated groups in other countries, are undertaken to impose a sectarian vision of the world and of societies, erase cultural diversity and pluralism and deny cultural rights and fundamental freedoms.”

At stake, in other words, is a clear attempt to connect the dots not just situating the destruction of cultural property as a rights issue, but also evoking the underlying clash of world views, attacks on cultural diversity and the denial of rights. How in essence can such rights violations be responded to and addressed in a way facilitating the implementation of the strategy? What we suggest here is exploring how the growing attention and focus on cultural property as a window of opportunity to promote a more comprehensive approach to culture, cultural pluralism and a rights-based approach to culture and heritage.

2019 is not only the 65th anniversary of the 1954 convention, the 20th anniversary of its Second Protocol, it is also the 25th anniversary of the Genocide in Rwanda²⁰ and we are just out of the 70th anniversary of the Universal Declaration of Human Rights. Why mention this? Without likening the destruction of cultural property to genocide, nor other gross human rights violations faced in times of conflict, destruction has increasingly been framed as a crime against humanity. Also, it is fruitful to take a step back and think about what heritage is more broadly, and how it is used and how it might relate to destruction, loss of human dignity faced and the international human rights architecture put in place during the 20th century.

Cultural rights have long been described as neglected²¹, the prodigal son of human rights²² and even an orphan in the wider human rights family. Today we are experiencing an awakening that culture, heritage and cultural rights do matter and are intimately connected. The last 20 years have seen growing recognition that cultural rights are not a cause of division, but rather a necessary ingredient of building social cohesion. Cultural rights, it must be added, are not just about cultural heritage protection, but concerns the right and ability to enjoy cultural

19 ROSÉN, F. 2018. NATO and cultural property: Embracing New Challenges in the Era of Identity Wars. NATO Science for Peace and Security Project “Best Practices for Cultural Property Protection in NATO-led Military Operations”. Copenhagen: Nordic Center for Cultural Heritage and Armed Conflict (CHAC).

20 MACKINTOSH, A. 1996. The International Response to Conflict and Genocide: Lessons from the Rwanda Experience edited by David Millwood*. *Journal of Refugee Studies*, 9, 334-342.

21 SYMONIDES, J. 1998. Cultural rights: a neglected category of human rights. *International Social Science Journal*, 50, 559-572.

22 MARAÑA, M. 2015. Heritage and human rights: A participation and gender-based analysis of the work carried out by the United Nations in the field of cultural heritage. Getxo: UNESCO.

rights in more general terms, including free artistic expression, transmitting one's language and participating in the cultural life of one's choice.

If the destruction of globally recognized cultural property is dramatic, it must also be seen in the context of an equally dramatic loss of everyday buildings, hospitals, schools, sacred sites and lives.

Indeed, from one perspective, heritage conservation of singular properties, may not appear essential for the scramble of saving lives, and the need for shelter, food and medical support in the immediate emergency, yet clearly matter in the long-term and reveal deeper significance. However, such divides are easily too simplistic and black-and-white about the nature of conflicts, emergency and the value of a culturally-informed approach.

Yet, in another sense, the protection of cultural property and heritage more broadly is arguably more than merely a question of isolated cases of saving material evidence of the past, but also concerns the underlying tensions, the instrumentalization of identity and the individual and collective rights denied. From the destruction of the *Stari Most* Bridge during the Bosnian War targeted as a symbol of the 'ethnically mixed' Mostar to be 'cleansed'²³ to Islamic State attacks against "sites associated with the commemoration of the dead" and buildings as signs of pre-Islamic cultures", the rights issues are profound concerning collective rights to memory, identity and survival grounded in long-standing historical and political conditions. Consider also how the rise of populism and polarized politics results in highly inflammatory grounds for sustaining conflict, antagonistic identity politics leaving heritage vulnerable to capture and instrumentalization and provoking human tragedies as we have seen in the case of the Rohingya²⁴. Heritage and cultural identity in such cases become targets or means to attack rather than spaces for social cohesion.

On the one hand, the safeguarding of cultural property is critical in the immediate term, on the other, more thinking and long-term approaches are needed to think about heritage and cultural rights as tools for recognition and reconciliation²⁵. A cultural rights-based approach arguably offers an important complementary approach allowing a stronger focus on heritage communities and stewards, their conditions and rights. It concerns everyday manifestations of connection to place, naming topographies, determining access and fundamentally how people live together – or apart. In this sense, it also offers a different bottom-up perspective on how cultural property and heritage matter, which may include but also go beyond globally recognized categories of cultural property and heritage.

It may thus allow us to think about cultural property threats and protection as the tip of the iceberg of structural dynamics of a social, cultural and political nature. Indeed, unless such underlying social tensions and identity politics are addressed head-on, the immediate safeguarding of cultural property in the short-term may easily be jeopardized in the long-term given the protracted nature of the conflict.

23 BROSCHÉ, J., LEGNÉR, M., KREUTZ, J. & IJLA, A. 2017. Heritage under attack: motives for targeting cultural property during armed conflict. *International Journal of Heritage Studies*, 23, 248-260.

24 HAUSER-SCHÄUBLIN, B. (ed.) 2011. World Heritage Angkor and Beyond: Circumstances and Implications of UNESCO Listings in Cambodia, Göttingen.

25 KALMAN, H. 2017. Destruction, mitigation, and reconciliation of cultural heritage. *International Journal of Heritage Studies*, 23, 538-555.

To put things simply: Without cultural heritage no cultural property, without a minimum of cultural rights no cultural heritage. Such a complementary perspective is arguably a foundation allowing for people to access, to practice and fundamentally live with cultural diversity and property in the first place. Interviews with practitioners on the ground from the humanitarian, peace-keeping and cultural heritage fields interestingly reveal the pragmatic importance of bringing together cultural property, heritage, and rights in a comprehensive approach from early on.

There is today growing advocacy and recognition of the rights implications of attacks against cultural heritage, which have been widely recognized such as through resolutions 2199 (2015) and 2347 (2017) by the UN Security Council, as well as Resolutions 33/20 (2016) and 37/17 (2018) by the Human Rights Council.

Yet, addressing the destruction of cultural property as a human rights violation is arguably only the tip of the iceberg in terms of recognizing the links between heritage and rights. What we suggest is a more comprehensive approach to culture, heritage and cultural rights, notably recognizing the additional dimensions and benefits deriving from this. More can be done to recognize the centrality of culture, heritage and identity matters in contemporary conflicts – and peacebuilding situations and humanitarian practice.

Moving forward on this would arguably thinking about a cultural rights approach with several pillars.

First, let us reiterate the importance of cultural rights framework is about more than cultural heritage protection and underlines the ability and conditions that enable individuals and communities to enjoy and practice cultural rights in general terms including free artistic expression, religion, language and participating in the cultural life of one's choice.

Second, let us not forget the protagonism of heritage practitioners and stewards in mobilizing local protection efforts in the first place. Discrete movements of objects and cooperation with local communities have proven successful from Mali to Syria²⁶. Even high-profile rescue operations of the globally significant at the end of the day rely on hands-on support with local stewards in the long-term.

Third, cultural rights concern how issues are framed in the first place. This concerns what is deemed worthy of protection, what is saved and whether protection efforts take into account the conditions enabling people to freely and effectively practice and transmit cultural heritage to future generations. The challenge is of course that culture is easily manipulated, identity and heritage easily fall prey to instrumentalization by political interests, warring parties or material gain for that matter. In other words, addressing cultural property destruction is also about countering the destruction, about the iconoclasm taking place²⁷, and ultimately protecting the cultural rights of vulnerable groups.

26 BURNS, R. 2019. Weaponizing monuments. *International Review of the Red Cross*, 1-21.

27 ISAKHAN, B. & GONZÁLEZ ZARANDONA, J. A. 2018. Layers of religious and political iconoclasm under the Islamic State: symbolic sectarianism and pre-monotheistic iconoclasm. *International Journal of Heritage Studies*, 24, 1-16.

Fourth, cultural property and heritage protection is at times perceived as driven by economic and political elites, notably in social contexts characterized by poverty, exclusion and the rise of extremism. In response, is cultural property protection simply a rescue mission for what matters historically for the world, or can approaches be harnessed to make the connection to lives, communities, vulnerabilities and identity politics involved? As identity politics are at the heart of conflict, a cultural rights perspective may offer a complementary framework and alternative language for linking immediate rescue action to broader efforts to ensure space and building blocks necessary for building social and cultural cohesion in the long-term.

Fifth, if we connect questions of property destruction to matters of social complexity, ethnic tensions and social inequalities, this triggers responses that are not limited to the material dimensions, but explores ways of connecting the dots. This e.g. concern deeper-lying questions of cultural rights, whether in the case of language rights, rights to the identity or wider collective rights of particular groups to practice and transmit culture. This then becomes about more than a loss of a given place or property, and in fact more about the ways questions of identity, symbols and property can be mobilized to inform peace and conflict resolution.

Consider, for example, the centrality of cultural heritage and rights in peace accords bridging long-standing divides as seen in cases such as Guatemala. In that sense, the protection of cultural property is not (only) an ends in itself, but means and entry-point for a deeper social, cultural and political dialogue to enhance cultural rights in the context of armed conflict and peace-building.

PANEL



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PANEL 5

PROTECTION OF CULTURAL PROPERTY UNDER INTERNATIONAL CRIMINAL LAW

Individual criminal responsibility for the deliberate destruction of cultural property in the event of armed conflicts has long been recognized under international law. From the 1907 Hague Regulations to the 1977 Additional Protocols to the Geneva Conventions, the 1954 Hague Convention as well as the Statutes of both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC), unjustified endangering or destruction of cultural property in time of armed conflict has been recognized as a serious violation of international humanitarian law and has now acquired the status of a customary norm.

The impact of the addition of the 1999 Second Protocol, which in many aspects represents the most comprehensive international instrument in this field, to this list of legal instruments with the goal of deterring and imposing sanctions on crimes against cultural property, has been substantial. Not only has it further clarified those acts which constitute serious violations requiring a criminal sanction if committed intentionally, but it has also strengthened the way States can arrive at effective national enforcement.

SERGE BRAMMERTZ



Dr Serge Brammertz has served for more than a decade in senior positions charged with investigating and prosecuting grave international crimes. On 28 November 2007, Dr Brammertz was appointed by the United Nations Security Council to serve as Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia. Dr Brammertz was subsequently appointed by the Security Council to serve concurrently as Chief Prosecutor of the Mechanism for International Criminal Tribunals in 2016.

From January 2006 to December 2007 he was Commissioner of the United Nations International Independent Investigation Commission into the assassination of former Lebanese Prime Minister Rafik Hariri. Previously, he was the first Deputy Prosecutor of the International Criminal Court. Prior to his international appointments, Dr Brammertz was first a national magistrate then the head of the Federal Prosecution of the Kingdom of Belgium. Dr Brammertz is currently a member of the Executive Committee of the International Association of Prosecutors and previously served as Chairman of the European Judicial Network.

From Dubrovnik to Palmyra: Criminal Prosecutions of the Destruction of Cultural Property in Armed Conflict

By SERGE BRAMMERTZ

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20 years ago, when the Second Protocol was adopted, the conflicts in the former Yugoslavia were very present in our minds.

On 6 December 1991, the old town of Dubrovnik in Croatia, a UNESCO World Heritage site, was deliberately attacked by the Yugoslav Federal Army. The city was intensively and indiscriminately shelled, without direction or targeting.

There were no military objectives in the Old Town, which had been demilitarized in accordance with its protected status, while authorities had placed protective UNESCO emblems on buildings and structures.

Rather, Dubrovnik was attacked because the perpetrators intended to target civilians and civilian objects, in contravention of all laws of war.

The result was devastating. More than 50 buildings destroyed or damaged, ruining an “outstanding architectural ensemble illustrating a significant stage in human history.”

Sadly, this was just the beginning. Between 1992 and 1995 in Bosnia and Herzegovina, 1,200 mosques, 150 churches, four synagogues and over 1,000 other cultural institutions such as museums, libraries and archives were attacked and damaged or destroyed.

In August 1992, the National Library of Bosnia and Herzegovina in Sarajevo was intensively shelled and set on fire, despite the fact that it was not a military objective. Snipers further shot at firefighters seeking to contain the flames. Ultimately, the National Library was completely destroyed, along with millions of books and manuscripts.

Then in November 1993, the mid-16th century Old Bridge of Mostar was deliberately destroyed by intense shelling. The bridge, an exceptional example of Ottoman architecture, had symbolized the common heritage of the diverse communities of the city and was a major cultural monument in the Balkans. Its destruction seemed to exemplify that the conflict was not about military aims but attacking peoples and cultures.

Attacks against cultural property in the Balkans conflicts continued. Between 1998 and 1999, one-third of the mosques in Kosovo were destroyed or damaged, as were Islamic religious schools and libraries and 75% of the Ottoman historic centers. At the same time, more than 70 Serbian Orthodox sites were vandalized or destroyed.

As the world witnessed these and other attacks against our collective cultural heritage, the Second Protocol was intended to be a response. It strengthened the rules governing the protection of cultural property in armed conflict.

And it also advanced the recognition that attacks against cultural property are serious international crimes of universal concern and elaborated a framework to promote protection by prosecution and deterrence.

When the Second Protocol was adopted, criminal prosecutions remained still an aspiration. The crimes were evident. We had seen how cultural cleansing accompanied ethnic cleansing, with the aim to wipe away symbols of cultural diversity and co-existence. But no one had yet been held accountable.

Now, twenty years later, we can be satisfied that criminal punishment for attacks against cultural property is a well-established reality. At the International Criminal Tribunal for the former Yugoslavia, we secured many important convictions, beginning with the senior military officers responsible for the attack against Dubrovnik.

Through our case law, we progressively developed and refined the law. There can be no doubt now that customary law recognizes attacks against cultural property as criminal. Senior military and political leaders can and have been held accountable for these crimes, even if they are far removed from the crime scene. This law applies to both international and non-international armed conflicts, and can be enforced even if domestic law is silent.

We also proved in the courtroom what we learned from experience. The destruction of cultural property is often not random or local. Rather, as we showed again and again in our cases at the ICTY, cultural destruction is part of ethnic cleansing.

Crimes against cultural property were directly linked to crimes against persons as part of concerted campaigns of crimes against targeted groups. The destruction of cultural property was an intentional weapon of war to support ethnic cleansing and erase the legacy of a multi-cultural, pluralistic society.

As one witness openly testified before our court, mosques had been destroyed in Bosnia and Herzegovina because there was a belief “that if there are no mosques, there are no Muslims. And by destroying the mosques, the Muslims will no longer have a reason to return to their homes.”

Reflecting on these immense developments over just two decades, it is clear that the Second Protocol was an important element. It is part of the foundation that prosecutors and judges around the world can use today.

In particular, the Second Protocol offers key tools to improve judicial cooperation and help ensure that criminal prosecutions can move forward.

Its provisions ensure that those responsible for attacks against cultural property will not find safe haven, while also promoting mutual legal assistance so that prosecutions can be successfully conducted.

From a prosecutor’s perspective, these are exactly the kind of concrete measures and tools that can make the difference between impunity and justice.

At the same time, we have learned that some gaps may still remain in the protection of cultural property during armed conflict.

One important example that arose in a number of our cases is the use of cultural property for military purposes. For example, if a sniper is using a church tower, then under the laws of war the tower becomes a legitimate military objective that can be attacked and even destroyed.

The gap here is that, except in extremely limited circumstances, it is not yet criminal under international law to use cultural property for military purposes and thereby put it at risk of attack. Ensuring that combatants can be criminally punished for using cultural property for military purposes would greatly contribute to its protection.

So today, 20 years later, we now have the law, the practices and a proven track record of successfully prosecuting senior leaders for attacks against cultural property.

Yet the reality is that we are confronting today the same crimes we saw during the conflicts in the former Yugoslavia.

Over a few months in 2015, the world watched as ISIS captured and destroyed the historic city of Palmyra. ISIS destroyed ancient monuments in the Valley of the Tombs. It dynamited and leveled the Temple of Baalshamin. It reduced the Temple of Bel, among the most important

ancient religious monuments in the Middle East, to rubble. And it desecrated the Roman Amphitheatre by murdering captured soldiers there

And this is just one example of ISIS' campaigns against cultural heritage. Its goal has been clear: to erase our memory, our culture, our history, and to destroy our diversity and richness.

What we need is the willingness to hold the perpetrators accountable and punish them for their crimes against our collective heritage. Whether in international, regional or national courts, the international community can demonstrate its revulsion at these attacks and its commitment to bringing those responsible to justice.

That would be a fitting way to mark this 20th anniversary and ensure that the objectives of the Second Protocol are achieved.

Thank you for your attention.

FAUSTO POCAR



Judge Fausto Pocar is Professor Emeritus of International Law, former Dean and Vice-Rector at the University of Milan, Italy. As of 2012, he serves as President of the International Institute of Humanitarian Law. He has more than 30 years of association with the United Nations. Judge Pocar has served as Vice-President and subsequently as a President (2005-2008) of the ICTY, and has presided over many Yugoslavian and Rwandan cases, both at The Hague and Arusha. He has served for sixteen years, including as a Rapporteur and a Chairman, in the UN Human Rights Committee under the International Covenant on Civil and Political Rights. Further, he served as a Special Representative of the UN High Commissioner for Human Rights for visits to Chechnya and the Russian Federation during the first conflict in 1995-1996. Professor Pocar has also been a Legal Adviser of the Italian delegation to the UN General Assembly and the Commission on Human Rights, and has chaired the informal working group that drafted, within the Commission on Human Rights, the Declaration on the rights of people belonging to national or ethnic, religious or linguistic minorities, adopted in 1992 by the General Assembly.

Cultural property and military necessity under the 1999 Second Protocol,

By FAUSTO POCAR

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Professor Emeritus of International Law, University of Milan, Italy*

Under both treaty and customary international humanitarian law (IHL) cultural property is not a legitimate target in military operations. This principle is clearly established in Article 4(1) of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, concluded at The Hague on 14 May 1954 (“1954 Hague Convention”), which provides for the obligation of States parties to respect cultural property situated within their own territory as well as within the territory of other contracting Parties, inter alia “by refraining from any act of hostility, directed against such property”. The principle is also enshrined in the Additional Protocols (“AP”) to the Geneva Conventions of 1949, more precisely in Articles 53 of AP I and 16 of AP II, according to which and without prejudice to the provisions of the 1954 Hague Convention, “it is prohibited to commit any act of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples”. The principle, whereby cultural property enjoys protection both in an international or in a non-international armed conflict, is also enshrined in customary international law, and its applicability has not been challenged even by States which did not ratify the Additional Protocols.

The above mentioned well established principle, however, is not an absolute one, but can be waived, as the 1954 Hague Convention sets forth in Article 4(2), “only in cases where military necessity imperatively requires such a waiver.” The availability of such a waiver is confirmed by the Additional Protocols, as they provide for the principle without prejudice to the provisions of the Convention. But how should this provision on the waiver be interpreted? In other terms, when does a situation of imperative military necessity occur?

It has to be recalled here that the principle that cultural property is not a legitimate target in military operations is parallel to the obligation, also set forth in Article 4(1) of the 1954 Hague Convention and echoed in the above-mentioned provisions of the Additional Protocols, of State parties to respect cultural property “by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict.” Like the obligation to refrain from any act of hostility, this obligation is also subjected to the waiver referred to in Article 4(2).

The question that arises is therefore whether, by adopting these parallel obligations the Convention intended to establish a strict link whereby the respect for the first one, i.e. not to use cultural property for purposes which might expose it to destruction or damage, is a prerequisite for the second one, i.e. the obligation not to commit any act of hostility against cultural property. In particular, should in a given situation the conditions for a waiver not exist to use cultural property for military purposes, and such use occurs, would automatically also a waiver be justified to commit an act of hostility against such property? The answer to such a question, if taken in general terms with respect to civilian objects, in the absence of the Convention, would appear affirmative. It is a general rule that when a civilian object is used for military purposes, it is made into a military object, and can be the object of attack or of reprisals, as confirmed by Article 52 AP I. But is such a rule also applicable to objects which constitute cultural property?

I do not believe so, and it would be a legal mistake to apply it in this latter context, as the case law has recently done, in the Prlic et al. case, finally adjudicated by the International Criminal Tribunal for the former Yugoslavia (ICTY) on 29 November 2017. With respect to the destruction of the Old Bridge of Mostar – which had been recognised by the Trial Chamber as of “undeniable cultural, historic and symbolic value” – the ICTY Appeals Chamber reasoned that because the bridge was used also for military purposes and was, therefore, a military target at the time of the attack, its destruction offered a definite military advantage and could not be considered as not justified by military necessity. As I explained in my dissenting opinion to this judgment, the Appeals Chamber conflated the notion of a military target with that of military necessity, did not discuss the possible impact of the principles of proportionality and precaution, and disregarded any impact of Article 53(a) of AP I as well as of the 1954 Hague Convention, under which a waiver from the obligation to refrain from acts of hostilities against cultural property may only be justified in cases where military necessity imperatively requires such a waiver.

The imperative nature of the military necessity required under the Convention obliges States to assess it more stringently than usually in the case of directing an act of hostility at cultural property. A strict interpretation of the military necessity, in this case, is not only suggested by the meaning of the word “imperative” employed in the Convention, but also

by its construction under international law, which refers to necessity as a situation where the necessity is overwhelming and leaves no choice of means. Without going back to the famous Caroline case (1837), where the notion of necessity was first elaborated to qualify necessity in self-defense, it may be argued that if only such a necessity may justify the use of force in self-defense, a fortiori it should apply when necessity is explicitly defined as imperative, and a justification is needed for an attack on cultural property, which enjoys enhanced protection under international humanitarian law. Therefore, it appears correct to conclude that it is legitimate to commit an act of hostility against a cultural object that has become a military objective only when there is no feasible alternative available for obtaining a similar military advantage.

This conclusion is in conformity with the Second Protocol to the 1954 Hague Convention, whose Article 6 provides for a similar strict interpretation of imperative military necessity under Article 4(2) of the Convention. However, irrespective of the limited though an increasing number of ratifications of the Second Protocol, it is a conclusion also warranted under customary international humanitarian law. As demonstrated above, and as essentially confirmed by the “Protection of Cultural Property Military Manual” published in 2016 by UNESCO in cooperation with the San Remo International Institute of Humanitarian Law (paragraph 103), customary international law has developed such that when cultural property is at issue as having become a military objective, the military necessity analysis becomes more rigorous by requiring that there is no feasible alternative for obtaining a similar military advantage to that offered by directing an act of hostility against that cultural property.

WILLIAM A. SCHABAS

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Inadequate Definitions in the Rome Statute

By WILLIAM SCHABAS

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The Prosecutor of the International Criminal Court has shown considerable interest in prosecuting crimes relating to cultural property. In September 2016 she obtained the conviction of a religious leader from northern Mali, Ahmad Al Faqi El Mahdi, who had organised the destruction of a UNESCO world heritage site in Timbuktu.²⁸ She has also announced that prosecutorial policy in selecting cases would devote “particular attention to attacks against cultural, religious, historical and other protected objects”.²⁹ The Office of the Prosecutor has held Consultations in view of issuing a policy paper devoted to the subject.

The *El Mahdi* judgment is rather summary, a consequence of the defendant’s decision not to contest the charge and to plead guilty. El Mahdi was a cooperative and compliant defendant who expressed considerable remorse for his actions. In return, he received a sentence of nine years’ detention, a rather harsh punishment by comparison with other sentences meted out by the Court.

Two provisions of the Rome Statute of the International Criminal Court deal with crimes against cultural property. One applies to international armed conflict, the other to non-international armed conflict. Otherwise, they are identical. The following definition is set out in Article 8 of the Statute: “Intentionally directing attacks against buildings dedicated to religion, education,

²⁸ Prosecutor v. *Al Mahdi* (ICC-01/12-01/15), Judgment and Sentence, 27 September 2016.

²⁹ Office of the Prosecutor, Policy Paper on Case Selection and Prioritisation, 15 September 2016, para. 46.

art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives”.³⁰

A good argument can be made that the charge in the Rome Statute did not apply to the facts that were alleged. We may never know whether El Mahdi had been properly advised by his court-appointed counsel that he actually had a good defence to the charge. When queried by the judges he answered that he had been properly advised by his lawyer, but then, how would he know whether the legal advice was really competent? All that we can say is that he pleaded guilty to a charge that does not really fit the facts. This relatively effortless conviction has been a source of much satisfaction at a Court that has been starved of successes. But perhaps the most important contribution of the *El Mahdi* case is to provoke serious scrutiny of the applicable provisions in the Statute, revealing their inadequacies, and the need for amendment.

The accused was convicted of a charge that begins with the words ‘intentionally directing attacks’. In reality, he organized the destruction of the Timbuktu monuments but he did not ‘attack’ them, at least as this term is understood in international humanitarian law. According to established case law, an ‘attack’ requires that there be ‘acts of violence against the adversary, whether in offence or in defence’. But no adversary was present when the destruction took place and there was nothing resembling an attack. The perpetrators were equipped with picks and shovels, and were in no way prepared to do battle. There were no casualties. El Mahdi’s acts simply cannot be described as an ‘attack’. Yet that is what Article 8 of the Rome Statute requires.

The distinction between attacks against cultural objects and acts directed at their destruction manifests itself as early as the Hague Conventions of 1899 and 1907. Each of these texts contains two provisions, one governing the protection of cultural objects during the conduct of hostilities (‘sieges and bombardments’) and the other applicable to cultural property that has fallen under the control of a party to the conflict (in occupied territory). See also the relevant Rules in the customary law study of the International Committee of the Red Cross, which are to the same effect.

The distinction between the two contexts, one applicable to attacks and the other to acts of destruction, can also be seen quite clearly in Article 15 of the 1999 Protocol. Article 15 of the Second Protocol defines ‘serious violations’ and obliges Parties to adopt appropriate legislation to make these violations to the Second Protocol criminal offences under their national law. It represents an important progressive development from the 1954 Convention, which does not define international crimes but only requires parties to prosecute and impose penal or disciplinary sanctions for breaches of the Convention under their ordinary criminal law. In 1977, Additional Protocol I, applicable to international armed conflict, introduced a provision on cultural property to its text on grave breaches. Additional Protocol II contained no equivalent. Article 85(4)(d) of Additional Protocol I was the only international criminal law provision dealing with cultural property prior to the adoption of the Rome Statute in 1998.

³⁰ Rome Statute of the International Criminal Court, Art. 8(2)(b)(ix) and Art. 8(2)(e)(iv).

Article 15 of the 1999 Protocol takes things a step further than the Rome Statute. It is the provision of the treaty that defines what are called 'serious violations' of the Protocol. Unlike the 1954 Convention, which only required prosecution within the framework of the ordinary national criminal justice system, the 1999 Protocol treats 'serious violations' as genuine international crimes and imposes obligations similar to those in the Geneva Conventions and international human rights treaties, such as the Genocide Convention, the Torture Convention and the Enforced Disappearance Convention.

Two of the paragraphs in Article 15 of the 1999 Protocol deal with making cultural property the object of attack while a third deals with using cultural property to support military action. These are the conduct of hostilities offences and are similar in scope to the provisions in Article 8 of the Rome Statute. Two other offences deal with acts directed at cultural property that do not require military action and that need not occur in the course of hostilities. They concern extensive destruction or appropriation of cultural property and theft, pillage or misappropriation of, or acts of vandalism directed against cultural property. The destruction of the monuments in Timbuktu is covered by the offence of the destruction of cultural property and not one of the offences concerning attacks.

Why are the Rome Statute provisions so incomplete? The drafters of the Rome Statute were aware of both dimensions of the protection of cultural property. An early version of the draft Statute contained a text dealing with the destruction of cultural property under the control of a party to the conflict but it was dropped in favour of the text requiring that there be an attack, that is, during the conduct of hostilities.³¹ In the *El Mahdi* decision, the judges of the Trial Chamber did not address this issue at all. They seem to have assumed that the word 'attack' applied to any act directed against cultural property, regardless of whether the act was military in nature and whether there were actual hostilities at the time. They did question whether another provision, governing '[d]estroying or seizing the property of an adversary' might also be relevant. But it is obviously inapplicable because the cultural property in Timbuktu cannot be described as 'the property of an adversary'.

Because of the superficial legal discussion in the *El Mahdi* Trial Chamber decision, the inadequacy of the Rome Statute legal framework received insufficient attention. There also seems to be a naïve sentiment that activist judges will cooperate with the Prosecutor and fill gaps in the definitions of crimes, in effect turning the rather narrow provisions of Article 8 of the Rome Statute dealing with cultural property into a broad all-purpose text applicable to destruction of cultural property as well as to attacks per se. But such purposive interpretation cannot be sustained in the long run, and will surely be challenged by a more combative defendant.³² Let us recall Article 22(2) of the Rome Statute, stating that '[t]he definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.'

31 For references to the *travaux préparatoires* of the relevant provisions of the Rome Statute, see William Schabas, 'El Mahdi Has Been Convicted of a Crime He Did Not Commit', (2017) 49 *Case Western Reserve Journal of International Law* 75.

32 Pending proceedings at the Court against another defendant include a charge of intentionally directing attacks against buildings dedicated to religion and historic monuments in Timbuktu: *Prosecutor v. Al Hassan* (ICC-01/12-01/18), Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, 27 March 2018.

The preparatory work of the Rome Statute does not provide any explanation for the decision to confine the protection of cultural property to the conduct of hostilities. Perhaps this can be understood with reference to the relevant provision in Additional Protocol I which applies when cultural property is made 'the object of attack, causing as a result extensive destruction thereof'.

One of the important contributions of the 1999 Protocol is to enlarge the scope of criminalization of acts directed at cultural property beyond the context of the conduct of hostilities. Article 15 of the 1999 Protocol provides an authoritative template for amendments to the Rome Statute in order to make the protection of cultural property during armed conflict watertight. Incorporation of its provisions within Article 8 of the Rome Statute will also augment the pressure upon States to ensure that they establish jurisdiction over such offences within their own criminal justice systems, as they are required to do by Article 15, and that they assume the other obligations imposed by the 1999 Protocol.

It may be beyond the scope of this conference to address the protection of cultural property in peacetime. That issue has been addressed in the 2003 UNESCO Declaration. It refers to 'the development of rules of customary international law as also affirmed by the relevant case-law, related to the protection of cultural heritage in peacetime as well as in the event of armed conflict'. This is a further hurdle in the progressive development of international law governing the protection of cultural property.

PANEL



6

PANEL 6

THE PRACTICE AND FUTURE PERSPECTIVE OF THE INSTITUTIONAL FRAMEWORK OF THE 1999 SECOND PROTOCOL

States adopted the 1999 Second Protocol to strengthen the 1954 Hague Convention and render it more effective. For the governing mechanism, as is the case with many other international treaties, a twelve member Intergovernmental Committee of the 1999 Second Protocol was established under its Article 24 with the core mandate to monitor and supervise the implementation of the Second Protocol. More specifically, the Committee is charged with reviewing the enhanced protection applications, considering requests of the granting of international assistance and determining the use of the Fund for the Protection of Cultural Property in the Event of Armed Conflict. The Committee meets once a year to discuss many other issues for the better protection of cultural property. The first meeting of the Committee was held on 26 October 2006.

NOUT VAN WOUDEBERG

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*He was also a member of the Dutch negotiation delegation on the return of cultural objects displaced during WW II and a member of the EU OMC Working Group on Mobility of Collections (2008–2012). He co-edited *Protecting Cultural Property in Armed Conflict* (Leiden-Boston: Brill, 2010) and authored *State Immunity and Cultural Objects on Loan* (Leiden-Boston: Brill, 2012).*

1999 – 2019: New Security Threats for Cultural Property

By NOUT VAN WOUDEBERG

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This year we commemorate the fact that exactly twenty years ago the 1999 Second Protocol has been adopted. The existence of this Protocol is a joyful fact, as it considerably strengthens the 1954 Hague Convention and its First Protocol, and meanwhile proved its added value, for instance in regard to standard-setting in the field of protection for cultural property.

Nevertheless, do we really have something to celebrate?

Since the end of the previous millennium, the globalization of the world took a rise. Moreover, there is a growing interlinkage between different systems, root causes, its consequences and dimensions. That is not always an advantage and it has been the provocative for numerous challenges.

Let me explain what I mean by that.

Since over a year, I am posted in Aruba, a beautiful Caribbean autonomous country of the Kingdom of the Netherlands. Venezuela is a neighboring State and the current situation in Venezuela leads to the desire of more and more Venezuelans to leave the country, in a legal or illegal way. So it happens that Venezuelans try to reach Aruba (and Curacao) illegally by boat. But where you earlier could find solely some twenty people in each vessel, now the Coast Guard of the Kingdom of the Netherlands often finds narcotics or weapons on board a

vessel as well. Thus, where earlier human trafficking was the transnational organized crime concerned, it mixes now with other crimes such as narcotics and weapon trafficking.

Besides, transnational organized crime nowadays consists of elements we hardly knew about some twenty years ago, such as terrorism and cybercrime. It may be safe to say that nowadays we live in a different world than at the end of the previous millennium.

The same can be said when you look at current armed conflicts. Armed conflicts are widespread since human existence, but especially since the last decades armed conflicts turned out to be more complex and multi-dimensional. Generally, the development and adoption of new international legal instruments is a reaction to the times we lived in. The 1954 Hague Convention and the 1949 Geneva Conventions are reactions to the tragedies that occurred during World War II. The 1999 Hague Protocol is a direct result of the Balkan wars. However, nowadays it will be more and more difficult to continue such a process of negative action and correspondent reaction, as grounds for armed conflict are increasing and have more and more interrelated root causes: ethnic background, religion, natural resources and recently: climate change.

Indeed, climate change as a ground for internal or international armed conflict. In 2015, the Kingdom of the Netherlands launched the so-called Planetary Security Initiative (PSI). PSI illustrates the nexus between climate change and security challenges. It points out that climate change leads to floods, droughts, growing salinity of water, sea-level rise, coastal erosion, etc., which each in itself comes with citizen security risks and challenges and may give rise to (armed) conflicts. After elected as a nonpermanent member, the Kingdom made the UN Security Council to take up this topic and to insert it in its agenda and deliberations. I am aware that also UNESCO has a focus on natural disasters. I would applaud the enhancement of the synergy between natural disasters, armed conflict and the protection of cultural property.

Thus, the reasons for armed conflict are growing, more and more interlinked, and therefore much more complex than before, which makes it harder to give a proper, unified, legal answer. However, what remains the same is that during (armed) conflict, one tries to hit the opponent where it is probably hit the most: its identity, and consequently its culture and cultural heritage. This resulted and results in the destruction of historic buildings, theaters, temples, museums, museum collections, and more. That makes the 1954 Hague Convention, its 1999 Protocol, the Committee for the Protection of Cultural Property during Armed Conflict and the system of enhanced protection more necessary than ever before.

Warfare and its root causes become so multi-dimensional, that the international lawyers and practitioners hardly can keep up in reacting with a legal and sufficiently sound answer.

I consider it therefore as wise that UNESCO is not primarily focusing on the development of new international legal instruments, but instead on better implementation of, and compliance with, the already existing ones by States parties, as well as efforts to increase the number of States parties to international legal instruments. I should also mention the element of awareness-raising, both among and within States, as within the military. This approach is also a multi-layered, multi-dimensional one, whereby one has to play chess on different boards at the same time and has to focus on both pre- and post-conflict times, as well as times of armed conflict itself.

The Kingdom of the Netherlands is more than willing to contribute to this, and has already been doing so for a long time, both financially as well as by means of knowledge sharing, and as a host country to international institutions and courts that address State responsibility and individual criminal responsibility such as the International Court of Justice and the International Criminal Court. Currently, the Kingdom is a candidate for the UNESCO Executive Board for 2019 – 2023. As a member of the Executive Board, the Kingdom is able to contribute to these objectives even more, working alongside UNESCO and its Member States.

As I am coming to the end of my intervention, I probably owe you an apology for my holistic approach and for not purely focusing on the topic of the protection of cultural property during armed conflict. However, maybe the changing world and the topic at stake is even served with such a holistic, inclusive approach, due to my previous sketched interlinked and multidimensional actuality.

Ending with a sincere and positive note: we are convening here with a group of fully committed States, individuals and organizations, primarily thanks to UNESCO and the Government of Switzerland. The world's cultural property needs us more than ever, and the 1999 Hague Protocol is probably more relevant than ever before.

ARTEMIS PAPATHANASSIOU



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New challenges and recent achievements of the Committee of the Second Protocol: a need to refocus on the Committee’s potential

By ARTEMIS PAPATHANASSIOU

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Introduction

The aim of this presentation is to briefly outline recent achievements of the Committee of the Second Protocol, which came in response to new challenges that emerged as a consequence of the changing nature of modern armed conflicts. In this context, the Committee of the Second Protocol (hereinafter, “the Committee”) has undertaken *new initiatives* and has accomplished *important achievements*. In this regard, the author, under her capacity as former Chair of the Committee, makes some recommendations on specific actions to be undertaken or continued by the Committee.

I. Initiatives and Achievements of the Committee

1. The introduction of a new Distinctive Emblem for Cultural Property under Enhanced Protection. Unlike the Hague Convention, which provides for the use of a Distinctive Emblem for the recognition and protection of cultural property in armed conflict, the Second Protocol does not provide for the use of a specific emblem for the marking of cultural property under

Enhanced Protection. To remedy this problem, the Committee of the Second Protocol decided that there is a need to create a specific distinctive emblem based on the Blue Shield to mark properties under enhanced protection, it introduced a model distinctive emblem and decided on a relevant amendment of the Operational Guidelines of the Second Protocol. The new distinctive emblem was introduced in December 2015 to the Meeting of the Parties to the 1999 Second Protocol, which finally approved it. The adoption of the new Distinctive Emblem represents undoubtedly an important challenge because it will encourage wider recognition of cultural properties that benefit from this special status under international humanitarian law. In addition, the new emblem will contribute to the effectiveness of Article 12 of the Second Protocol, which foresees the immunity of cultural property under enhanced protection, by raising awareness of the military for better protecting cultural property under enhanced protection in times of armed conflict, including occupation.

2. The introduction of a new practice, that of issuing Statements, as a means to address the international community, in order to strongly condemn the repeated deliberate attacks against cultural property throughout the world, in violation of the rules and principles of international humanitarian law. From December 2014 through December 2016, the Committee and its Chairperson issued seven (7) consecutive *Statements*.³³ As an indication, we recall the *Statement of March 2015*, focusing on Security Council Resolution 2199(2015)³⁴, which was a landmark in the recognition of the direct linkage between the destruction and pillage of cultural heritage and the financing of terrorism. Further, the *Statement of May 2015* invited States, parties to a conflict, not Parties to the Second Protocol, to request international assistance under the Second Protocol. In addition, the *Statement of September 2015* was issued in the aftermath of the targeted destruction by the so-called Islamic State of the ancient temples of Baal-Shamin and Bel in Palmyra and condemns, in the strongest possible terms, the deliberate destruction of the above ancient temples. Finally, the *Statement of October 2016* was issued in the aftermath of the conviction, on 27 October 2016, by the International Criminal Court of Al-Faqi Al-Mahdi for war crimes related to the destruction of protected cultural heritage in Mali under Article 8(2)(e)(iv) of the ICC Statute.³⁵

The Committee is, therefore, strongly recommended to continue this practice, as a means to address the international community on timely and important issues, falling under the scope of application of the Second Protocol and its Committee’s competences.

3. The introduction of a new forum, that of the “Meeting of the Chairpersons of the UNESCO’s Culture Conventions”,³⁶ with the aim to consult and establish cooperation, as

33 See all *Statements*.

34 The [Security Council Resolution 2199 \(2015\)](#) of 12 February 2015, states, among others, that: “The Security Council [...] 17. Reaffirms its decision in paragraph 7 of [resolution 1483 \(2003\)](#) and decides that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting cross-border trade in such items, thereby allowing for their eventual safe return to the Iraqi and Syrian people and calls upon the United Nations Educational, Scientific, and Cultural Organization (UNESCO), INTERPOL, and other international organizations, as appropriate, to assist in the implementation of this paragraph.” It has also to be noted that the direct linkage of the illicit trafficking in works of art with the financing of terrorism is equally underlined in pp. 23 of S.C. [Resolution 2253 \(2015\)](#). See also Security Council [Resolutions 2368 \(2017\)](#) and [2379 \(2017\)](#) which make specific reference to terrorism financing through illicit trafficking of cultural objects deriving from armed conflict areas.

35 Al-Faqi Al-Mahdi was sentenced to nine years of imprisonment and this was the first case related to destruction of cultural heritage handled by the ICC.

36 According to the relevant Decision of the Committee ([Decision 9.COM 7](#)), adopted at its Ninth Meeting, in December 2014, the Director-General “should organize, at least once a year, consultation meetings of the Chairpersons of the Statutory Bodies established by the UNESCO Cultural Conventions”.

appropriate, among the Conventions for the better fulfillment of their complimentary goals and the further enhancement of their implementation. Two Meetings of the Chairpersons have been convened by the Director-General of UNESCO so far, one in June 2015³⁷ and one in September 2016, emphasizing the need for a renewed political will to support UNESCO's Culture Conventions.

The continuation of this unique forum is strongly recommended because the complementary goals of the UNESCO Culture Conventions must only be accomplished through cooperative actions among their governing bodies.

4. The launching of the Military Manual on the Protection of Cultural Property in the Event of Armed Conflict. This is another important development, which should be seen as a common initiative of the Committee and the UNESCO Secretariat. The Military Manual, drafted by the Sanremo Institute of International Humanitarian Law, is the first international training tool of this kind and was officially launched by UNESCO in December 2016. It is intended to serve as a practical guide for national and regional military forces, as well as peacekeeping forces and combines a military-focused account of the relevant international legal obligations of States and individuals with suggestions as to best military practice at the different levels of command and during the different phases of military operations, whether by land, sea or air.³⁸

5. The establishment, in 2015, of synergies between the Second Protocol and the 1970 UNESCO Convention “on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property”; which constitutes another *achievement* of the Committee. The said synergies³⁹ were established in light of the Security Council Resolutions 2199(2015) and 2253(2015) for raising awareness on the need to protect movable cultural property in conflict areas or deriving from armed conflict areas. They aim at raising awareness on the need to train the military, police forces and customs officials, in particular as to the protection of cultural property against its illicit trafficking and trade, resulting as a side consequence of armed conflicts and aiming at terrorism financing.

Potential Synergies between the Second Protocol and the 2003 UNESCO Convention ‘for the Safeguarding of the Intangible Cultural Heritage’ are being under consideration, with the aim to protect intangible cultural heritage in times of armed conflict, including occupation. The said synergies should be seen in the context of international humanitarian law and international human rights law.

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37 At the conclusion of their *First meeting*, the Chairpersons released a *Joint Statement* outlining their concerns and emphasizing the need for a renewed political will to support UNESCO's Culture Conventions and encouraging the United Nations to ensure that the protection, safeguarding and understanding of cultural and natural heritage, cultural diversity and creative expression worldwide be recognized as a cross-cutting issue in the implementation of the interrelated goals of the United Nations Post-2015 Development Agenda.

38 *Military Manual* on the Protection of Cultural Property in the Event of Armed Conflict.

39 In accordance with *Decision 3.SC/4.3*, adopted at the Third Session of the Subsidiary Committee to the Meeting of States parties to the 1970 Convention (UNESCO Headquarters, 28 - 30 September 2015), a *Joint Meeting of the Bureaus* of the Committee of the 2nd Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Bureau of the Subsidiary Committee of the Meeting of States parties to the 1970 Convention took place, on 7 December 2015 at UNESCO Headquarters. In accordance with the mandate given by Decision 3.SC/4.3 of the Subsidiary Committee, regarding the specific topics for the Joint Meeting of the Bureaus, the participating member states exchanged information on the destruction of cultural heritage during armed conflict and the illicit trafficking of cultural property, specifically in Iraq and Syria. The second half of the meeting was devoted to a productive exchange on the organization of awareness-raising and training of the military, of police forces and customs officials on the protection of cultural heritage in times of armed conflict as well as on the fight against the illicit trafficking of movable heritage. The concluding document of the Joint Bureaus Meeting was a Recommendation.

The continuation of the established Synergies between the Second Protocol and the 1970 Convention, as well as the establishment of concrete Synergies between the 2003 UNESCO Convention and the Second Protocol is strongly recommended.

6. In 2015, the Committee highlighted the importance of Article 32 para.(2) of the Second Protocol, which provides that “A party to the conflict, which is not a Party to this Protocol, but which accepts and applies its provisions (...), may request appropriate international assistance from the Committee.’ This could have been the case with regard to Syria and Iraq which, although not being Contracting Parties to the Second Protocol, have the possibility to request international assistance by the Committee, at any time, subject to the above mentioned condition. In 2015 and 2016, the Committee addressed two requests to Syria and Iraq to take advantage of Article 32(2) for being granted international assistance.⁴⁰ Unfortunately, despite the appeals addressed by the Committee, no reply was received by the end of 2016 by the respective states.

II. Some observations on the non-involvement of the Committee to specific UNESCO’s initiatives and actions

The UNESCO Strategy for the reinforcement of the Organization’s actions for the protection of culture and the promotion of cultural pluralism in the event of armed conflict’,⁴¹ adopted in November 2015 and followed by the elaboration of the **Action Plan** for its implementation, surprisingly did not involve the Committee of the Second Protocol. To our view, the development and implementation by UNESCO of strategic actions, such as the said Strategy and its Action Plan, should, in any case, involve the implementation mechanisms of the relevant conventions, especially when their respective goals coincide. Arguments that were raised at the time (2015) such as, indicatively, “that the Second Protocol has a low number of ratifications”, do not provide, to our view, a sufficient and convincing justification.

The involvement of the Committee in the implementation of any future UNESCO strategic actions related to the protection of culture in armed conflict, including occupation, is recommended.

Concluding remarks

It happened that the Chairpersonship (2014-2016) of the author of this presentation coincided with an unprecedented cultural cleansing, which mainly targeted archaeological sites of the greatest importance for humanity, as well as places of worship belonging to religious minorities in Syria, Iraq, Yemen, and Libya. As a reaction, she has tried to mobilize or, somehow, “invent” possible means that the Committee could reveal out of the provisions of the Second Protocol.

Given that culture has increasingly evolved over the last few years into a key element of the modern armed conflicts, it is imperative to enlarge the mandate of the Committee of the Second Protocol, since its role is constantly increasing and it is called to face new challenges and engage into new activities.

In this connection, **the Meeting of the Parties to the Second Protocol is strongly recommended to make use of Article 27 para.(g) of the Protocol⁴² and assign to the Committee new important functions, as appropriate.**

⁴⁰ It has also to be noted that, between 2015 and 2016, the Committee made at least five specific requests to Syria and Iraq to ratify the Second Protocol.

⁴¹ See [all Statements](#).

⁴² Article 27 para. (g) of the [1999 Second Protocol](#) provides that “ *The Committee shall have the following functions...(g) to perform any other function assigned to it by the Meeting of the Parties.*”

LORENA SOL DE POOL



Ms Sol de Pool is the Ambassador, Permanent Delegate of El Salvador to UNESCO. Ambassador Sol de Pool is also Chairperson of the 1999 Second Protocol Intergovernmental Committee. Since 2015, she also serves as the Chair of the Finance and Administrative (FA) Commission and the Joint Chair of the Joint Commissions (Programme and External Relations and Finance and Administrative Commission) of UNESCO's Executive Board.

Previously, she served as Vice President of the Programme and External Relations Commission of the Executive Board (2007-2011), as well as Chairperson of the UNESCO Headquarters Committee (2012-2013). During her mandate, El Salvador has been a member of the Executive Board for two terms (2007-2011 and 2013-2017). Prior to UNESCO, Ms Sol de Pool served as a career member of El Salvador's Foreign Service. Following nearly 25 years of professional experience as a diplomat, in 2009 she was appointed Ambassador and Permanent Delegate to UNESCO.

Synergies between the 1999 Second Protocol and other UNESCO culture conventions

By LORENA SOL DE POOL

*Chairperson of the 1999 Second Protocol Intergovernmental Committee (2018-2019);
Ambassador, Permanent Delegate of El Salvador to UNESCO*

Dear ladies and gentlemen, dear colleagues,

It is a pleasure and honour to be a part of this important panel of several Chairpersons of the Second Protocol Intergovernmental Committee and to hear their perspective of the work of the Committee. In my presentation, I will dwell upon synergies between the 1999 Second Protocol and other UNESCO culture conventions and, in particular, those with the 1972, 1970 and 2001 Conventions.

I will start by looking at common features between the Second Protocol and the World Heritage Convention, then I will speak about the specific criterion of the greatest importance for humanity under the Second Protocol as compared to the criterion of the outstanding universal value under the 1972 World Heritage Convention and stress the importance of promoting the Enhanced Protection List under the Second Protocol. I will then focus on the role of the Second Protocol Intergovernmental Committee in addressing its working methods and complementarities needed to develop with statutory bodies of cultural conventions.

There are four common features between the Second Protocol and the 1972 Convention: they both protect cultural heritage; they created intergovernmental committees; they established a listing system; and, they foresee the granting of international assistance from a fund.

The Second Protocol protects all cultural property defined by Article 1 of the Hague Convention (i.e. both movable and immovable), while the World Heritage Convention protects only five categories of immovable properties including cultural values (i.e. monuments, groups of buildings, sites, mixed cultural and natural heritage and landscapes; the protection of the last one being introduced by the Operational Guidelines for the Implementation of the World Heritage Convention), which are of outstanding universal value (cf. Article 1 of the World Heritage Convention). Thus, in practice, both agreements might protect the same cultural property which is already the case. I will come to it later on.

Paragraph 36 of the Guidelines for the Implementation of the Second Protocol provides for the presumption, subject to other relevant considerations, of the compliance with the condition of the highest importance for humanity of immovable cultural property inscribed on the World Heritage List. In practice of the Committee, 16 out of 17 cultural properties inscribed on the Enhanced Protection List are World Heritage properties and the 17th one – the National Central Library of Florence – is a part of the World Heritage site. Furthermore, when analysing the nomination files for the granting of enhanced protection, the Secretariat, the Bureau and the Committee have made use of all factual, legal and technical information contained in the nomination files of those cultural properties already inscribed in the World Heritage List.

The Committee is actively promoting the Enhanced Protection List and, in particular, encourages those Parties involved in armed conflict or in post-conflict situations to submit their cultural properties for the granting of enhanced protection. However, there are still some challenges such as a low number of properties inscribed on the List or an unequal representation of properties on the List (To date, no cultural properties from the Arab region or Latin America have been entered in the list.)

To conclude this part, let me emphasize that there are not only synergies but also discrepancies between the enhanced protection system and the World Heritage system. States party to the Second Protocol, on the one hand, and those to the World Heritage Convention, on the other hand, are not the same; the conditions required for the inscription of a cultural property on the World Heritage List are different from those required for inscriptions in the Enhanced Protection List. Even if a State is party to both agreements, there is no automatic inclusion of a cultural property on one list simply because it exists on the other. Similarly, cultural property cannot be transferred between lists.

As to synergies between the Second Protocol and the 1970 Convention, they may be developed in the framework of the fight against the illicit traffic and, in particular, with regard to movable cultural property situated in occupied territory. In the past, the Committee dealt with this issue and analysed the ways how it could contribute to such protection, for example through the dispatch of an evaluation mission. The Committee may also consider any administrative or legal measures taken by a State party to the 1970 Convention when evaluating whether a condition of Article 10(b) of the Second Protocol has been fulfilled.

Finally, in December 2015 the Bureau of the Second Protocol Committee and the Bureau of the Subsidiary Committee of the Meeting of States parties to the 1970 Convention met and worked on the following issues: exchange of relevant information on the destruction of cultural heritage in armed conflict; and; exchange of relevant information on the organization of awareness-raising and training of military, police and customs forces on the protection of cultural heritage in times of armed conflict and fight against the illicit traffic of movable heritage.

With regard to synergies between the Second Protocol and the 2001 Convention, to date, no underwater cultural heritage has been submitted for the granting of enhanced protection. However, it is not to be excluded that in future the Committee will deal with such request.

In the effort to synchronize synergies, the Chairpersons of UNESCO's Culture Conventions were invited to meet and confer on how to strengthen the collaborations among them. In the first meeting held in June 2015, the Chairpersons primarily focused on ensuring that the conventions reinforced each other and acted in unity for the fulfillment of their mutual goals, reflecting a holistic vision. The second meeting held in September 2016, focused on safeguarding cultural heritage in times of conflict and the role of the UNESCO Cultural Conventions towards achieving the Sustainable Development Goals. As a result of the contingency measures related to the budgetary situation of UNESCO and implemented in 2017, the third meeting did not take place.

Let me now come to the role of the Second Protocol Intergovernmental Committee in addressing its working methods and complementarities needed to develop with statutory bodies of cultural conventions.

This Committee has been primarily inspired by the practice of the World Heritage Committee, essentially in three aspects: elaboration of the Guidelines for the Implementation of the Second Protocol; evaluation of files for the granting of enhanced protection and the granting of international assistance from the Second Protocol Fund. Furthermore, both current and past Committee members and observers have been active participants in meetings of the World Heritage Committee, those of the Intangible Cultural Heritage Committee or other committees of cultural conventions. Thus, they are fully knowledgeable of their practices and working methods.

To conclude my presentation, let me emphasize the importance of synergies for uniform implementation of UNESCO's cultural conventions which will only enhance the protection of our cultural heritage.

Thank you and I will be happy to reply to your questions.

BENJAMIN GOES

Mr Benjamin Goes is the Advisor at the Chancellery of the Prime Minister (Belgium). On a proposal from the Prime Minister, he was appointed as a permanent expert to the Inter-ministerial Commission for Humanitarian Law (CIDH/ICHL) where he chairs the working group dealing with the protection of cultural property. This inter-federal working group is responsible for ensuring the implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols and for supporting the coordination of international positioning regarding these instruments. Benjamin Goes was Chairman of the Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict (2012 - 2014). He is Member of the Legal Affairs Committee (LEAC) of the International Council of Museums (ICOM) since 2016. He is also a member of the International Law Association (ILA). He regularly speaks as a lecturer and is the author of various articles in his field of expertise.

Developing an improved relationship between the Committee and its natural partners: an opportunity not to be missed

By BENJAMIN GOES

*Chairperson of the 1999 Second Protocol Intergovernmental Committee (2012-2014);
Advisor at the Chancellery of the Prime Minister, Belgium*

Introduction

Article 27(3) of the Second Protocol explicitly states as follows: “the Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar (...)”. It also goes on to state that “eminent professional organizations” may be called upon to “assist it in the implementation of its functions” and “may recommend a specific piece of cultural property to the Committee” so that it can be granted reinforced protection (Article 11(3)).

This presentation is intended to provide a quick overview of the partnerships to be supported. Here I will focus on the principal issues and will propose a series of concrete recommendations to improve the effectiveness of these relationships.

I. UNESCO

UNESCO is responsible for several international conventions on the subject of cultural heritage. The first of these is the 1954 Hague Convention. Others were to follow:

- the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;
- the 1972 Convention concerning the Protection of World Cultural and Natural Heritage;
- the 2001 Convention on the Protection of Underwater Cultural Heritage; and
- the 2003 Convention on the Safeguarding of Intangible Cultural Heritage

All these cultural conventions are interlinked via the 1954 Convention, which is cross-disciplinary for them as it deals with both movable and immovable cultural property.

Despite this, the synergies that have been developed are still very weak.

With regard to synergies with World Heritage Convention, there has been progress within the framework of reports drafted in the assessment cycle, now including a mention on the subject of the 1954 Convention and its Protocols. However, the repeated requests by the 1999 Second Protocol Intergovernmental Committee addressed to the World Heritage Committee with a view to facilitating the granting of enhanced protection to newly listed property through the introduction of a single file for the two Committees fell on deaf ears.

Other attempted synergies, in particular in the form of the 1970 Convention, were enacted but did not give rise to any follow-up or concrete results other than simply declarations.

I therefore recommend that areas for consultation be developed between the various Conventions, both at Secretariat and policy level via the presidencies of these Committees.

While on the subject of Secretariats, the restructuring work in progress which deprives the Secretariats of the 1954 Convention and 1970 Conventions of their dedicated experts gives the impression that we are undermining the work that has already been done. Indeed, it is by no means certain that the envisaged replacements will be able to make up for the anticipated departures. After all, the Committee and Member States need to be able to count on a Secretariat that provides genuine added value and to be able to put their full trust in it considering its in-depth technical skills. The path taken is concerning and it would be a shame for the Committee's activities to suffer as a result of this.

I therefore recommend that UNESCO bolsters the work force of the Secretariats for the aforementioned Conventions, and in particular that of 1954, whose expertise has been greatly sought after in the past few years in view of recent events.

I am aware of UNESCO's financial difficulties, and I therefore recommend that UNESCO invests more in more attractive communication, and that it considers being more open to private contributions, including by the general public, following UNICEF's example.

II. International Committee of the Red Cross (ICRC)

Before the Committee was created, it was thanks to the ICRC that the issue of protecting cultural property in the event of armed conflict did not go forgotten. Additional Protocols

I and II to the 1949 Geneva Conventions for that matter explicitly refer to the 1954 Hague Convention.

The ICRC therefore has goals in common with those of the Committee, and the development of synergies is clear with the latter and with UNESCO.

I am delighted to be able to report that a number of different awareness-raising activities, including regional seminars, are organised jointly by the ICRC and UNESCO, and I hope that this relationship will be intensified further in future.

In addition, the Memorandum of Understanding (MoU) concluded between UNESCO and the ICRC in 2016 - thanks to the drive of the Blue Shield international platform which I will speak about in more detail later - is also progress well worthy of a mention.

Nevertheless, I recommend an assessment of this MoU so that we can review what has been achieved and the improvements that need to be made with a view to its implementation.

Despite these positive observations and the awareness-raising efforts that the ICRC continues to make on the ground, we need to acknowledge from an institutional perspective that during the most recent International Conference of the Red Cross and the Red Crescent in 2015, the issue of protecting cultural property was only raised within the context of a side event. The 33rd Conference in December 2019 is therefore an opportunity not to be missed, to ensure that this issue is brought back to centre stage.

I recommend that the ICRC proposes, at the very least, a commitment model concerning ratification of the 1954 Convention (and its Protocols) and its implementation.

Furthermore, I recommend that at the upcoming regional and universal meetings of the National Human Rights Implementation Commissions, the ICRC emphasizes and insists upon the fact that these national Commissions should specifically deal with these issues, in line with the Resolution II of the 1954 Hague Diplomatic Conference⁴³. A joint letter from the ICRC and myself on the Committee's behalf and addressed to these Commissions concerning this matter in 2014 was met with a positive response in several States. We need to continue to build on this initial effort.

III. The Blue Shield International (BSI)

The BSI, with the support of the international associations of experts ICOMOS, ICOM, ICA and IFLA in particular, is the Committee's associate companion. It is an indispensable partner that we need to keep on board and that could play a major role in the implementation of our future action plan.

These three bodies are the Committee's leading natural partners. In 2014 I built an international Blue Shield platform comprising representatives of the Committee, UNESCO, the ICRC and the Blue Shield International. Its existence has been officially acknowledged by the Committee.

.....
⁴³ See [Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict \(1954\)](#) and [Resolution II of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, \(The Hague, 14 May 1954\)](#).

I recommend that this platform be reactivated and that it meets more frequently so that it can continue to share ideas on the strategic issues and challenges faced on the ground when it comes to protecting cultural property.

Moreover, I recommend that in view of Article **27(3) which mentions the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) as a partner of the Committee, this platform should be extended to ICCROM, or at least that an effort be made to involve it more closely in the activities of the Committee. A similar reflection needs to be held on ALIPH, which according to its statutes pursues the implementation of the 1954 Convention.**

IV. The United Nations

Since the UNSG Circular of 6 August 1999⁴⁴ that orders UN forces to comply with international humanitarian law, the situation has changed a great deal with the crisis in Mali and the successive resolutions of the Security Council⁴⁵, including number 2347 which focuses on the protection of cultural property. We should also note at this point that, until recently, none of the members of P5 were Party to the Second Protocol⁴⁶. This is no longer the case, since the accession of France and the United Kingdom in 2017.

Despite this, the UN still needs to assign dedicated budgets for the protection of cultural property within the framework of its missions. When I was in Mali, this issue was part of the mandate, but there was no associated funding. The training for UN and Malian troops was therefore provided by UNESCO. From the information at my disposal, it seems that this is still the case, and no funding is provided for as regards the missions in progress.

I recommend that UN provide funding for the expenses linked to the mandate that it determines, and in this case the protection of cultural property.

I also recommend increasing the depth of dialogue between the Committee, UNESCO and the UN, above all with regard to international military interventions.

V. NATO

In a similar vein, when I was chairman of the Committee, I attended a NATO CIMIC (civil-military cooperation) meeting, and the needs expressed by high ranking officials in terms of effective intervention to protect cultural property were clear:

- a political mandate to intervene which includes the protection of cultural property;
- a list of sites excluded from the scope of intervention (the “no-strike list”); and
- associated budgets (training, on-site protection etc.).

44 [ST/SGB/1999/13 – art. 6.6](#)

45 Resolution 2100 (2013): MINUSMA; Resolution 1299 (2015): The fight against terrorism

46 Some of them were not even Party to the 1954 Convention, but this is no longer the case since ratification by the United Kingdom in 2017. It was the last P5 State to ratify.

I recommend the creation of a specific task force on this issue, made up of representatives of NATO, the Committee, UNESCO, the ICRC, and the Blue Shield International.

VI. The States

Last but not least, the States are the beating heart of the Committee. Without their action and investment, it would not be possible to achieve anything. Since the very early days of the Committee, we have been lucky enough to have had active and constructive members, with the majority of them determined to focus on the protection of cultural heritage rather than rekindling inappropriate political quarrels in our debates.

Despite this, the level of commitment of States elected to the Committee could be even stronger. I recommend that the Member States of the Committee integrate into their diplomatic activities the indispensable universalisation principle of the 1954 Hague Convention, particularly within their regional group.

I also recommend that the Member States of the Committee do all they can to guarantee the presence of national experts in their delegation at statutory meetings.

In addition, I recommend that the Member States of the Committee strive towards dialogue and internal coordination between their experts and the various Conventions. After all, it is highly disruptive in more than one respect when, for example, some of its Member States support and encourage synergies within the 1954 Committee, whereas the very same Member States reject them in other Committees of which they are a member! This poses a global confidence and credibility crisis.

Lastly, I recommend that the Member States of the Committee support efforts with a view to implementing the action plan that will be presented in December and look favourably on the prospect of providing logistics and financial support to the initiatives adopted.

Conclusions

Although I have merely touched upon a certain number of challenges linked to the partnerships that the Committee has put in place and must put in place in future, we can gauge the extreme appeal of partnerships, which thanks to induced consultation lead to greater complementarity and increased coherence in the actions of each of the partners, which allows us to achieve concrete gains in terms of effectiveness and substantial economies of scale.

CLOSING



CEREMONY



Ambassador Frank Grütter is currently the Head of the United Nations and International Organisations Division, Directorate of Political Affairs, Federal Department of Foreign Affairs, Berne. From 2016 to 2018, he was the Head of the Division for Security Policy in the Swiss Federal Department of Foreign Affairs.

Chair's Summary

By FRANK GRÜTTER,

Ambassador, Federal Department of Foreign Affairs, Switzerland

Excellencies,

Ladies and Gentlemen,

We are approaching the end of the conference and I am very pleased and honored to share with you the key recommendations and messages from the rich and inspiring presentations and discussions we have had during the past two days.

Please consider these key recommendations to be preliminary. A final, more comprehensive and analytical version will be shared with you at a later stage. Its aim is to help the States parties to set a road map that can serve as a base for a transversal strategy for the future of the Second Protocol.

We were extremely pleased to learn during the Ministerial Panel that the Lebanese Republic and the Republic of Iraq are committed to becoming Parties to the Second Protocol. The Federal Republic of Somalia, taking into account the armed conflict it is currently facing, is

also committed to becoming Party to The Hague Convention of 1954 and its two Protocols. The Republic of Vanuatu, in the face of reoccurring natural disasters, expressed interest to obtain more information on and a better understanding of how the Second Protocol can assist States in addressing the issue of protection of cultural property in situations of natural disasters and emergencies.

Each additional ratification will send an important and much needed signal in favor of the protection of cultural property. Let us recall that currently 82 States are Parties to the Second Protocol, while 133 States are Parties to The Hague Convention of 1954. This gap shows that there is huge potential for increasing the number of States parties to the Second Protocol!

Ms Karima Bennoune, the UN Special Rapporteur in the field of cultural rights, not only highlighted the importance of adopting a human rights-based approach and the importance of mainstreaming the cultural property issue within the UN system; she also set a very clear roadmap. She hopes to see 18 new States becoming Party to the Second Protocol in order to reach the emblematic number of 100 States parties by 2024, the year when the Second Protocol will celebrate its 25th anniversary.

PANEL 1 FOCUSED ON HISTORICAL PERSPECTIVES

It showed that The Hague Convention of 1954 and its two Protocols remain just as relevant today as at the time of their adoption.

The main recommendations identified by the panelists were:

- To increase the number of States parties to The Hague instruments and in particular the 1999 Second Protocol.
- To strengthen the protection of cultural property at the national level by adopting robust national legislation.
- To broaden the scope of engagement beyond law enforcement entities in order to also include civil society.

PANEL 2 FOCUSED ON AN EXCHANGE OF PRACTICES REGARDING THE IMPLEMENTATION AT THE NATIONAL LEVEL

The main recommendations identified by the panelists were:

- To put in place preparatory measures in times of peace.
- To establish inventories of cultural property at the national level and to regularly update them.
- To increase cooperation by sharing expertise and best practices and to increase information exchange between States within bilateral and multilateral frameworks.
- To increase the awareness of the military personnel and other actors on protecting cultural property by developing needs-based, comprehensive, and holistic capacity building and training initiatives on provisions and principles of protecting cultural property.
- To define a transversal strategy and a capacity-building strategy to the benefit of the States parties.

PANEL 3 FOCUSED PRIMARILY ON THE ROLE OF NON-GOVERNMENTAL ACTORS IN SUPPORTING THE IMPLEMENTATION OF THE 1999 SECOND PROTOCOL

The main recommendations on how to improve effective cooperation at international and national levels were:

- To increase prevention measures in time of peace as they are of utmost importance.
- To share experiences; as advocates of the instruments, States should, through their long-standing experience, convince other Member States to ratify.
- To strongly involve the military, as in many cases the Ministry of Culture is in charge of managing the overall implementation of the Convention and its two Protocols. The UNESCO military manual is therefore an important tool to disseminate.
- To engage high-level State actors and raise their awareness on issues regarding the protection of cultural heritage.
- To be as local as possible and to engage grassroots actors active in the field, particularly local communities.

PANEL 4 FOCUSED ON THE EMERGENCY RESPONSE MECHANISMS IN MODERN ARMED CONFLICTS

The main recommendations identified by the panelists were:

- To support the work of the Secretariat of the Convention and to create voluntary contributions to the 1999 Second Protocol fund.
- To increase dialogue and synergies between the different cultural conventions for the benefit of the protection of cultural property.
- To promote an inclusive approach of all stakeholders through the 2015 *UNESCO Strategy for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict*.
- To spread awareness and knowledge of the Blue Shield emblem.

PANEL 5 FOCUSED ON THE PROTECTION OF CULTURAL PROPERTY UNDER INTERNATIONAL CRIMINAL LAW

The main recommendation identified by the panelists was:

- To further support efforts to implement Chapter 4 of the Second Protocol at national level and provide judicial means to enforce Chapter 4.

PANEL 6 FOCUSED ON THE PRACTICE AND FUTURE PERSPECTIVE OF THE INSTITUTIONAL FRAMEWORK OF THE 1999 SECOND PROTOCOL

The main recommendations identified by the panelists were:

- The Committee should continue to work towards the universalization of the Second Protocol.
- The Committee should continue to work towards the transformation of the list of cultural property under enhanced protection into a comprehensive international inventory.
- The Committee should assume that the condition established by Article 10 (a), namely the greatest importance for humanity, is met when a State submits an application.
- The Committee should continue to engage its efforts to strengthen synergies between the different UNESCO conventions and engage in discussions with other Committees to this end.
- The Committee should involve even more closely its main partners.

In conclusion, I would like to underline that huge efforts and major strides have been made regarding the protection objectives underlying the Second Protocol since its adoption twenty years ago. We have heard about all the measures and actions taken in favor of the protection of cultural heritage. And we can be proud of what has thus far been achieved in a common endeavor!

However - much remains to be done in order to ensure an effective and adequate protection of cultural property in armed conflicts worldwide. I would therefore like to seize this opportunity to urge the states

- To consider ratifying or accessing the 1954 Hague Convention and/or its Protocols without delay for States that are not yet party to them.
- To adequately implement the Second Protocol at the national level, especially by adopting appropriate criminal legislation.
- To transform the list of cultural property under enhanced protection into an international inventory by submitting requests for enhanced protection to the Committee for the Protection of Cultural Property in the Event of Armed Conflict.
- And last but not least, to encourage cooperation between all levels and involving stake holders, from the firemen to the politicians, and from the cultural practitioners to the generals.

I thank all of you for your attention, active participation and contributions to the very rich discussions of the past two days. I also wish to thank UNESCO and my colleagues at the Foreign Ministry who have helped in setting up this wonderful conference. Well done – thank you – and to all of you safe travels home!



Closing remarks

By LAZARE ELOUNDOU ASSOMO

on behalf of the Assistant Director-General for Culture of UNESCO

Your Excellencies, Ladies and Gentlemen, Dear colleagues,

On behalf of Mr Ernesto Ottone Ramirez, Assistant Director-General for Culture, who is unable to be with us owing to other commitments made, I would like to close this momentous conference marking the 20th anniversary of the adoption of the 1999 Second Protocol to the Hague Convention.

First of all, I would like to single out for a special greeting the Member States of the Republics of Iraq and Lebanon, the Federal Republic of Somalia and Vanuatu, who have announced their intention to ratify the Second Protocol of 1999, thereby reaffirming their determination to reinforce the protection of cultural property and join the 82 States parties who are already members.

In her video message, Ms Karima Bennoune expressed her desire that 100 States parties ratify the Second Protocol by 2024. That sounds to me like a great reason to meet again in 5 years' time and celebrate 25 years of the 1999 Second Protocol together, in the hope that by then we will have 100 States parties.

With this strategic vision in place, I can say with certainty that the Second Protocol is on the way to becoming progressively more universal, which is thereby helping to ensure improved protection for cultural property.

Universal, we say: yes the 1954 Convention and its Second Protocol is relevant in the context of our modern societies. It is, as I have pointed out, the mother of the UNESCO cultural Conventions.

As you can see, the minister of Vanuatu, His Excellency Mr Jean Pierre Nirua is among us today: he travelled 15,000 km to attend this conference: such an example serves to show the appeal and universality of this Protocol.

I would like to warmly thank all the experts for their contributions to the works of the Conference; they have furnished us with clear information on the legal, technical and operational aspects of the implementation of the Second Protocol. I am firmly convinced that their ideas will inspire us and encourage each and every one of us in our own capacities to cooperate better and protect our cultural property.

Ladies and gentlemen, dear colleagues,

More than 270 participants attended this conference, from all parts of the world and sectors, IGOs, NGOs, academic institutions and even independent experts, from military as well as civilian entities. This is indeed a testimony of their commitment, respect and belief in this Protocol, as some have pointed out, a lot has been achieved since its adoption twenty years ago, however, more can be achieved in the years ahead.

As it has been reiterated yesterday by many of you, we are not just talking about tangible/ material cultural heritage that needs to be protected during armed conflict- it is also about safeguarding intangible heritage that inter-connects communities, and fighting illicit trafficking.

Our Conference has now come to an end. From my own observations, these past two days were not only about technical presentations and deliberations but also provided an opportunity for friends, colleagues and strangers alike ; professors and students, decision-makers and practionners to exchange ideas, network, enjoy thought-provoking discussions surrounding the 1999 Second Protocol.

Sadly, the hour has come for us to return to our homes, and let us take this exceptional energy and commitment and roll-up our sleeves to take ACTION for better protection of cultural property within our capacity. We owe it to ourselves, our communities and mostly the future generation. The future of the Second Protocol is our shared responsibility, as it has been outlined by Ambassador Frank Grütter in his Chair's summary, let us retain that this conference has called to adopt a transversal strategy for the Second Protocol.

May I conclude by thanking, from the bottom of my heart, the Swiss authorities for their strong commitment to protecting cultural property and in the spirit of cooperation thus supporting UNESCO in the organization of this Conference.

To finish, I would like to thank all the former Chairmen of the Committee – Mr Nout van Woudenberg, Mrs Artemis Papathanassiou and Mr Benjamin Goes - for their wisdom. And a special word for our Chair of the Committee, Ambassador Lorena Sol de Pool, and our Chairman of the Conference of the Parties, Ambassador Mounir Anastas, for their advice and encouragement throughout the preparation phase for this event.

I would also like to sincerely thank the Swiss Federal Department of Foreign Affairs, the Swiss UNESCO Commission, the GLO (Geneva Liaison Office), the members of the 1954 UNESCO Convention Secretariat, Geneva International Conference Centre, the interpreters, photographers, security team and all the technicians who made it possible to run this conference so smoothly and make it such a success.

Thank you everyone, and I wish you a safe journey home to your respective families!



Closing remarks

By LORENA SOL DE POOL

*Chairperson of the 1999 Second Protocol Committee (2018-2019)
Ambassador, Permanent Delegate of El Salvador to UNESCO*

On behalf of the Second Protocol, Intergovernmental Committee, I would like to start my concluding remarks by thanking wholeheartedly, the Swiss authorities for organizing this important and timely conference. It was a pleasure to participate in this unique event, which allowed us to celebrate our successes but also address the challenges we have faced in the implementation of the Second Protocol at the national level.

I also thank the Chair of this Conference, His Excellency, Ambassador Frank Grütter for his excellent summary of the panels and his hospitality as well as my friend His Excellency Mr Martin Michelet, Ambassador of Switzerland to UNESCO.

I am rejoicing over pledges of distinguished ministers of Lebanon, Vanuatu and Somalia to ratify the Second Protocol. I wish to thank them for their future participation in the Second Protocol, which will undoubtedly contribute to its universality, strengthening the protection of our precious cultural heritage both in peacetime and in wartime.

I want to take a moment to thank all representatives of intergovernmental and non-governmental organizations and distinguished experts for their important contribution to our Conference. The implementation of the Second Protocol is not a specific role of a particular group of

professionals, be them army officers, cultural heritage professionals or elected officials; this is the role of all of us.

If I paraphrase the famous statement of John Fitzgerald Kennedy, we should not ask what the Second Protocol can do for us but we should ask ourselves what we can do for the Second Protocol. Only our common efforts will prevent further deterioration and destruction of cultural heritage and on this tenure, I invite all countries that have ratified the Second Protocol to protect your cultural property in times of peace as a preventive measure as, for example, Egypt, Netherlands, El Salvador have done.

I sincerely hope that our Conference will be a new milestone in the life of the Second Protocol. Twenty years is an important occasion to stop, think, to draw conclusions and to act. Our Conference has exactly done it. We have a way forward. Let's all walk together.

Last but not least, I want to thank especially the UNESCO team who have co-organized this event:

Mr Ernesto Ottone Ramirez, Assistant Director-General for Culture, Mr Lazare Eloundou Assomo, Director of Culture and Emergencies, Mr Jan Hladik, our resident expert on the 1954 Convention and Second Protocol, Mr Tural Mustafayev, Mrs Karume-Robert, Ms Sow, Ms Otain

Thank you all for participating. I wish you safe travels.



Mr Christoph Flury, from Domat/Ems, was appointed to the position of Vice Director of the Federal Office for Civil Protection (FOCP) and Head of the Civil Protection Division in 2013. After completing his teacher training, Mr Flury obtained a degree in history from the University of Fribourg in 1994. In 1995, he joined the former FOCP as an instructor.

He was a member of project management of the Federal Department of Defence, Civil Protection and Sport (DDPS) for the reform of population protection and Head of the specialist area of strategy from 1998 to 2003. In 2007, he was appointed Head of the Design and Coordination Division and Member of the Executive Board. Since March 2012, Mr Flury has been acting as Vice Director of the FOCP.

Concluding remarks

By CHRISTOPH FLURY

Deputy Director, Federal Office for Civil Protection, Switzerland

The Director-General,
The Assistant Director-General,
The Deputy Director-General,
Ministers,
Your Excellencies,
Ladies and Gentlemen,

First of all, I would like to express my deepest gratitude for your commitment during this two-day conference dedicated to the twentieth anniversary of the 1999 Second Protocol to the Hague Convention. I would like to thank in particular the various speakers, the moderators of the panels, the local authorities for having so kindly welcomed us and the organizers for making this conference a perfect success.

The importance of the protection of cultural property will be constantly stressed. Allow me to reiterate the fundamental idea of the Hague Convention which led States to conclude this treaty. The Convention and the Second Protocol are based on the conviction that damage to cultural property, to whatever people it belongs, constitutes damage to the cultural heritage of all humanity. Thus, the conservation of cultural heritage is of great importance for all peoples of the world and it is important to ensure international protection of such heritage.

These two days at this conference have shown that we have an effective and solid international basis for the protection of cultural property. I would like to take this opportunity to remind you of our conviction that the preventive measures required by the Second Protocol are key to heritage protection.

In addition, I would like to return to the words of the State Secretary, Ms Pascale Baeriswyl, and to reaffirm that Switzerland intends to contribute to the international effort and would like to support other States Parties in putting the principles of the Second Protocol into practice, drawing on its experience. Switzerland wishes to provide support and share its best practices formulated in the *Stratégie pour la protection du patrimoine culturel en danger*⁴⁷ recently adopted by the Swiss Government. To this end, we would like to encourage other countries to ratify the Second Protocol.

Let us remember that the greatest challenge of international humanitarian law is to improve its compliance. Switzerland is also committed to contributing to the joint effort to increase the number of States Parties to the Second Protocol.

Our common concern must be to strengthen efforts to protect cultural heritage. It is crucial to give the Second Protocol greater visibility and to make its rules universally recognized. The foundations have been laid; the task now is to implement the instruments and protective measures. Implementation is a process that requires determination and commitment on the part of all States Parties. I therefore invite you to work together to improve compliance with the rules of the Second Protocol and to ensure better protection of cultural heritage.

I hope that this conference has provided a clear and coherent vision of how we intend to support the implementation of the Second Protocol and make it universal. I would like to thank you, ladies and gentlemen, for contributing to this through your presence here in Geneva.

Thank you for your attention and I wish you success and a safe journey home.

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47 Transl. *Strategy for the Protection of Cultural Heritage at Risk*

ANNEX 1: Conference Programme

THURSDAY, 25 APRIL 2019

08:30 – 10:00

Registration

10:00 – 11:00

Opening Ceremony

H.E. Ms Pascale Baeriswyl

State Secretary, Federal Department of Foreign Affairs, Switzerland

Mr Ernesto Ottone Ramírez

Assistant Director-General for Culture, UNESCO

Mr Balthasar Staehelin

Deputy Director-General, International Committee of the Red Cross

Mr Michael Møller,

Director-General, United Nations Office at Geneva

11:00 – 12:15

Ministerial Panels

Keynote speech

H.E Minister N'Diaye Ramatoulaye Diallo

Minister of Culture, Mali

Moderator:

H.E. Mr Frank Grütter

Ambassador, Federal Department of Foreign Affairs, Switzerland

Panelists:

H.E. Minister Abulfas Garayev

Minister of Culture, Republic of Azerbaijan

H.E Minister Abdulameer Al-Hamdani

Minister of Culture, Tourism and Antiquities, Iraq

H.E Minister Mohammad Daoud

Minister of Culture, Lebanon

H.E Minister Abdullahi Godah Barre

Minister of Education, Culture and Higher Education, the Federal Republic of Somalia

H.E Minister Jean Pierre Nirua

Minister of Education and Training, Vanuatu

12:15 – 13:00

Interventions by State representatives

Two minutes intervention for each State, kindly register in advance*

- 13:00 – 13:15** Group photograph at the lobby of the Conference venue
- 13:15 – 14:30** **Lunch**
- 14:30 – 15:45** **PANEL 1**
- Historical perspectives: Relevance and the added-value of the 1999 Second Protocol**
- Moderator:**
Ms Laurence Boillat
 Cantonal Prosecutor, Swiss Commission for UNESCO, Switzerland
- Panelists:**
- Mr Patrick Boylan**
 Professor Emeritus of Heritage Policy and Management, City University, London, United Kingdom
- Mr Thomas Desch**
 Director of International Law, Federal Ministry of Defence, Austria
- Mr Yaron Gottlieb**
 Visiting Professor of International and European Law, University Jean Moulin Lyon III, France
- Mr Jan Hladík**
 Culture and Emergencies, UNESCO
- Mr Roger O’Keefe**
 Professor of International Law, Bocconi University, Milan, Italy
- 15:45 – 16:15** **Coffee break**
- 16:15 – 17:30** **PANEL 2**
- National implementation: Successes and Challenges**
- Moderator:**
Ms Justine Ferland
 UNESCO Chair in the International Law of the Protection of Cultural Heritage and Art-Law Centre, University of Geneva, Switzerland
- Panelists:**
- Mr Axel Berengier**
 Focal point on cultural heritage issues, Ministry of Europe and Foreign Affairs, France
- Mr Rino Büchel**
 Head of Section for the Protection of Cultural Property, Federal Office for Civil Protection, Switzerland

Ms Sophio Chikhradze

Leading Specialist, Legal Department, National Agency for Cultural Heritage Preservation, Georgia

Mr Joseph King

Director of Sites Unit, International Center for the Study of the Preservation and Restoration of Cultural Property, ICCROM, Italy

Mr Gianpietro Romano

Lieutenant Colonel, Expert of Carabinieri Department for the Protection of Cultural Heritage, Italy

17:30 – 18:00

Closing ceremony “Protecting humanity’s fragile heritage”

In front of replica of Palmyra’s Arch of Triumph at the Place des Nations

18:00 – 20:00

Reception (Sponsored by the Government of Switzerland)

FRIDAY, 26 APRIL 2019

09:00 – 09:30

Presentation on human rights approach on the protection of cultural heritage

Video message by Ms Karima Bennoune, Special Rapporteur in the Field of Cultural Rights

09:30 – 10:45

PANEL 3

The role of non-governmental actors in supporting the implementation the 1999 Second Protocol

Moderator:

Mr Nicolas Mathieu

Secretary-General of the Swiss Commission for UNESCO and Head of UNESCO Section, Federal Department of Foreign Affairs, Switzerland

Panelists:

Mr Benjamin Charlier

Legal Adviser and Head of the Advisory Service, International Committee of the Red Cross, Geneva, Switzerland

Ms France Desmarais

Deputy Executive Director and Scientific Director, International alliance for the protection of heritage in conflict areas (ALIPH) Geneva, Switzerland

Mr Karl von Habsburg-Lothringen

President, Blue Shield International

Ms Lisa Ott

Head “Dealing with the Past Program”, swisspeace, Geneva, Switzerland

Mr Frederik Rosén

Director, Nordic Center for Cultural Heritage and Armed Conflict, Copenhagen, Denmark

10:45 – 11:15

Coffee break

11:15 – 12:30

PANEL 4

Modern Armed Conflicts: Emergency response mechanisms

Moderator:

H.E. Mr Mounir Anastas

Chairperson of the Meeting of the Parties to the Second Protocol
Ambassador of the Permanent Delegation of Palestine to UNESCO

Panelists:

Mr Maamoun Abdulkarim

Former Director-General of Antiquities and Museums, Syria

Mr Lassana Cissé

Independent expert on Cultural Heritage Protection, Mali

Mr Lazare Eloundou

Director, Culture and Emergencies, UNESCO

Mr Peter Bille Larsen

Independent expert on conservation and social justice

Mr Peter Keller

Director-General, International Council of Museums, Paris, France

12:30 – 14:00

Lunch

14:00 – 15:15

PANEL 5

Protection of Cultural Property under International Criminal Law

Moderator:

Mr Benjamin Charlier

Legal Adviser and Head of the Advisory Service, International Committee of
the Red Cross, Geneva, Switzerland

Panelists:

Mr Serge Brammertz

Prosecutor, International Criminal Tribunal for the former Yugoslavia, The
Hague, Kingdom of the Netherlands

Mr Gilles Dutertre

Prosecutor, International Criminal Court, The Hague, Kingdom of the
Netherlands

Mr Fausto Pocar

President, International Institute of Humanitarian Law
Professor Emeritus of International Law, University of Milan, Italy

Mr William Schabas

Professor of international law, Middlesex University, London, United Kingdom

15:15 – 15:45

Coffee break

15:45– 17:00

PANEL 6

The practice and future perspective of the institutional framework of the 1999 Second Protocol

Moderator:

Mr Jonathan Cuénoud

Senior Legal Advisor on International Humanitarian Law at the Swiss Federal Department of Foreign Affairs, Switzerland

Panelists:

Mr Nout van Woudenberg

Former Chairperson of the 1999 Second Protocol Committee (2010-2012)
Strategic Policy Adviser Kingdom Affairs of the Ministry of Foreign Affairs, Kingdom of the Netherlands

Ms Artemis Papathanassiou

Former Chairperson of the 1999 Second Protocol Committee (2014-2016)
Attorney at Law and Senior Legal Advisor at the Ministry for Foreign Affairs, Greece

H.E. Ms Lorena Sol de Pool

Chairperson of the 1999 Second Protocol Committee (2018-2019)
Ambassador, Permanent Delegate of El Salvador to UNESCO

Mr Benjamin Goes

Former Chairperson of the 1999 Second Protocol Committee (2012-2014)
Advisor at the Chancellery of the Prime Minister, Belgium

17:00 – 17:15

Chairs summary

H. E. Mr Frank Grütter

Ambassador, Federal Department of Foreign Affairs, Switzerland

17:15 – 17:30

Closing ceremony

Mr Ernesto Ottone Ramírez

Assistant Director-General for Culture, UNESCO

H. E. Ms Lorena Sol de Pool

Chairperson of the 1999 Second Protocol Committee
Ambassador, Permanent Delegate of El Salvador to UNESCO

Mr Christoph Flury

Deputy Director, Federal Office for Civil Protection, Switzerland

ANNEX 2: List of IGOs and NGOs

This list includes the names of IGOs and NGOs, which attended the conference.

ALIPH (International alliance for the protection of heritage in conflict areas)

Blue Shield International

CRAterre

Fedpol

Friends of Art in the Andes

Global Centre for the Responsibility to Protect

International Criminal Court (ICC)

ICCROM

ICOM

ICOMOS

ICTY

Indian Women History Museum

International Committee of the Red Cross (ICRC)

International Institute of Humanitarian Law (IIHL)

Nordic Center for Cultural Heritage and Armed Conflict

Observatoire de la diversité et des droits culturels

Office of the United Nations High Commissioner for Human Rights

Organization de Cooperation Islamique (OCI)

Schweizerische Gesellschaft für Kulturgüterschutz (SGKGS)

Swisspeace

Tayyab International Company

UK Blue Shield

UN University for Peace

United Villages

UNOG

World Medical Association

**"...damage to cultural property belonging to any people
whatsoever means damage to the cultural heritage
of all human-kind..."**

1954 Hague Convention



United Nations
Educational, Scientific and
Cultural Organization



Convention for the Protection of
Cultural Property in the Event
of Armed Conflict

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