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## Countering the erasure of cultural identity in war and peace

### Report<sup>1</sup>

Committee on Culture, Science, Education and Media

Rapporteur: Ms Yevheniia KRAVCHUK, Ukraine, Alliance of Liberals and Democrats for Europe

### Summary

Following the occupation of Crimea and parts of the Donbas region of eastern Ukraine by the Russian Federation in 2014 and its full-scale invasion of Ukraine in February 2022, conventional military targeting has been accompanied by a systematic, state-driven policy of Russification of the occupied areas. Cultural cleansing is increasingly used as a weapon of war in Ukraine and in other conflicts to deny the existence of a different cultural identity and erase its historical roots, values, heritage, literature, traditions, and language.

Such corrosive and coercive policies of cultural erasure require in response a holistic policy action across the fields of culture, education, heritage management, mass media, criminal accountability, reparations, remembrance, transitional justice, and reconciliation.

More robust pre-emptive protective mechanisms for both tangible and intangible cultural heritage are needed at international level in addition to deterrent sanctions and reparations for military destruction and for other violations against cultural identity and cultural heritage.

The report recommends enhancing and legally consolidating the recognition of cultural cleansing or erasure, deliberate or systematic destruction of cultural heritage and looting of cultural property as human rights violations, crimes against humanity and/or war crimes for the purposes of their prosecution. Moreover, it is essential to determine the role that a policy of cultural erasure has as one of the inherent elements of the intent to destroy a national or any other protected group when committing genocide.

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1. Reference to committee: [Doc. 15564](#), Reference 4686 of 14 October 2022.



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## A. Draft resolution<sup>2</sup>

1. Following the occupation of Crimea and parts of the Donbas region of eastern Ukraine by the Russian Federation in 2014 and its full-scale invasion of Ukraine in February 2022, conventional military targeting has been accompanied by a systematic, state-driven policy of Russification of the occupied areas, historical imperialistic and neo-colonial revisionism, and denial of a distinct cultural Ukrainian identity to those under occupation. This denial is based in particular on putting into question the existence of the Ukrainian language, culture and history, and on a portrayal of Ukraine and Ukrainians as a lower cast, ethnicity and race. It is carried out through: removal of archives; confiscation or replacement of history textbooks; indoctrination, including through militarisation of education; impeded access to education in native, including indigenous, languages; de-contextualisation of artefacts through relocation or changing narratives around them; narrowing the diversity of commemorative practices; looting; destruction of cultural objects and heritage sites; intentional refusals to preserve cultural heritage in order to showcase certain layers of history and erode others; distortive and ethnically-biased restoration of cultural objects; and neo-imperial renaming of geographical sites.

2. For its part, the Belarusian Government has been implementing a consistent policy of Russification since 1994. This policy has taken on a clearly punitive character since 2020, when peaceful mass protests took place against the disputed results of the presidential election. Censorship is implemented through blacklists of politically undesirable writers, artists, photographers, actors, musicians, tour guides and museum workers. More than 200 non-governmental organisations related to the cultural sphere of Belarus have been forced to cease their activities and close.

3. The Parliamentary Assembly holds that the Russian Federation is using cultural cleansing as a weapon of war within its broader campaign of extreme violence, in order to deny the existence of a different cultural identity and erase its historical roots, values, heritage, literature, traditions and language. Such cultural erasure, and the deliberate and systematic destruction or looting of cultural property, amount to war crimes and crimes against humanity, and also reveal, together with the official rhetoric of the Russian Federation to justify its war of aggression, a specific genocidal intent to destroy the Ukrainian national group or at least part of it, notably through the destruction of Ukrainian identity and culture. It is part of the campaign of genocide being pursued by the Russian Federation against the Ukrainian people in blatant violation of treaty and customary international law.

4. The Assembly recalls that the right of access to culture and enjoyment of one's own cultural heritage forms part of international human rights law. It strongly condemns the deliberate destruction of cultural heritage occurring today in Ukraine. According to the Ukrainian Ministry of Culture and Information Policy, 1 062 cultural heritage sites have been either destroyed or damaged during the aggression. This unnecessary, unjustified and arbitrary military destruction of cultural heritage is not just an assault on built fabric, but also on what it means for the Ukrainian people and for their well-defined historical European cultural identity, in accordance with the principles of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199, "Faro Convention").

5. A legal response to these threats to cultural heritage, destruction of collective and individual identity and affront to human dignity can be found in an effective implementation of relevant treaty and customary international law, including the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) and their respective Protocols, and human rights instruments governing the enjoyment of cultural rights and expression of cultural identities. However, the international legal framework concerning cultural heritage in armed conflict remains fragmented and has significant gaps, particularly in relation to new types of warfare and to the safeguarding of cultural heritage after conflicts. The return of cultural heritage and restoration of damaged heritage objects are also matters of concern. In addition, loopholes in international law and differences in the way different legal orders recognise and implement the principle of universal jurisdiction over international crimes make it difficult to bring perpetrators to justice before international or national courts. This further leads to difficulties in providing full reparations for destroyed, looted and irreversibly damaged objects of cultural property, and in many instances restitution for such losses or the return of objects remains a difficult challenge. Practical steps are needed to remove these obstacles to judicial remedies.

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2. Draft resolution adopted unanimously by the committee on 28 May 2024.

6. While the Ukrainian situation and the tragic disrespect of Ukrainian cultural heritage and identity by the Russian Federation are an extreme example of this form of barbarianism and call for specific responses, the Assembly is also deeply concerned by the frequent severe threats to both tangible and intangible cultural heritage and to cultural identities of populations, faced in other contexts and locations and triggered by war or by tensions among communities in post-war periods.

7. Recalling its [Resolution 2057 \(2015\)](#) “Cultural heritage in crisis and post-crisis situations”, the Assembly emphasises that corrosive and coercive policies of cultural erasure require in response a holistic policy action across the fields of culture, education, heritage management, mass media, criminal accountability, reparations, remembrance, transitional justice and reconciliation. Remedial action is necessary but there is also a need to work more on prevention as a way to put an end to the ongoing destructive acts against cultural heritage. A human rights approach, with a key role for education, should be embedded in this holistic strategy. Local populations should be involved in this sensitive policy making, since local knowledge, attention to local perspectives and community participation are crucial in countering the erasure of cultural identity, restoring cultural heritage and objects as part of the collective memory, and promoting cultural resilience during and after the war.

8. On this basis, the Assembly recommends that member States of the Council of Europe:

8.1. sign and ratify the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (“Faro Convention”, 2005, CETS No. 199) and the Council of Europe Convention on Offences relating to Cultural Property (“Nicosia Convention”, 2017, CETS No. 221), if they have not yet done so;

8.2. co-operate with the United Nations, the European Union and other relevant organisations, to undertake a review of the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (1954) and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) and their protocols, in particular to:

8.2.1. establish more robust pre-emptive protective mechanisms for both tangible and intangible cultural heritage of all groups and communities, in times of war and in post-conflict situations;

8.2.2. reinforce sanctions for arbitrary military destruction which is not justified by an “imperative military necessity”, an exception which should be subject to strict interpretation and be convincingly proved by the perpetrators;

8.2.3. expand their regulatory scope to address less obvious violations against cultural heritage such as cultural cleansing and cultural erasure;

8.2.4. provide for full reparations, based on international law on State responsibility, in particular through restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition of damages to and destruction of tangible and intangible heritage

8.3. strengthen their domestic legal frameworks to prosecute war crimes, crimes against humanity, genocide, the crime of aggression and serious human rights violations and, in particular:

8.3.1. review their legislation to enable swift and effective universal jurisdiction over all international crimes;

8.3.2. strengthen existing domestic war crimes units or establish such units, and ensure that they have designated teams specialised in cultural heritage crimes;

8.3.3. ensure that cultural erasure, deliberate, indiscriminate and systematic destruction of cultural heritage, looting and unlawful transfer of cultural property are effectively prosecuted as war crimes, crimes against humanity, or human rights violations, holding perpetrators and their military and political commanders accountable before national courts;

8.3.4. provide training on heritage crimes for criminal investigators, prosecutors and specialists who collect evidence;

8.3.5. consider not only action aimed at a criminal justice response to illegal acts against cultural heritage and identity, but also more holistic approaches aimed at ensuring full effective reparations, including collective reparations aimed at communities and victim groups, as provided for in international law;

- 8.4. reinforce their ability to combat illegal trafficking of cultural property and abusive expropriation of artefacts and, in particular:
  - 8.4.1. provide for deterrent sanctions against all those who operate or facilitate the illicit transfer or trade of artefacts, conduct or organise illegal excavations, or use artefacts for their own purposes (exhibitions, auctions, academic publications), and ensure that the authorities and complicit public institutions (cultural, academic or others) of the States responsible for these acts, are also held accountable;
  - 8.4.2. develop training for military personnel, police, custom officers and criminal justice professionals, especially within domestic war crimes units, to facilitate the prevention, investigation and prosecution of violations affecting cultural heritage;
  - 8.4.3. raise awareness in the art market of the ICOM (International Council of Museums) Red Lists of Cultural Objects at Risk, and of the specific ICOM Emergency Red List of Cultural Objects at Risk for Ukraine;
- 8.5. use their political leverage at international level and develop co-operation in particular with the Committee of Ministers and the Congress of Local and Regional Authorities of the Council of Europe and with relevant international organisations, human rights groups and cultural institutions, with an aim to:
  - 8.5.1. promote human rights and peace education, and multi-perspectivity in history teaching, which should provide learners with the keys of mutual understanding and recognition, foster pluralism and overcome denials that fuel hatred;
  - 8.5.2. promote effective protection of endangered cultural identities, cultural heritage and cultural rights,
  - 8.5.3. organise international events on the preservation and restoration of cultural heritage sites damaged or threatened as a consequence of an armed conflict;
  - 8.5.4. raise awareness of how propaganda and imperial and neo-imperial practices, notably the ideology of the “Russian World” (“*Ruskiy mir*”), can lay out the basis for violations of international law, including those against cultural heritage;
  - 8.5.5. raise awareness of the Russian Federation targeted indoctrination and militarisation of Ukrainian children in occupied territories.
9. The Assembly urges member States to mutualise resources and co-ordinate their efforts, to provide Ukraine with the support it may need to implement a holistic strategy in response to the Russian Federation’s coercive policies aimed at erasing cultural identity, including the following actions in relation to:
  - 9.1. remedial strategies,
    - 9.1.1. gather, record, document and preserve evidence of crimes committed by the Russian Federation against tangible and intangible cultural heritage in Ukraine, also with a view to assessing damages and seeking reparations;
    - 9.1.2. assist in digitalising objects of cultural heritage and property, in order to transform and store them in digital formats on various on-line platforms and databases, permitting public unimpeded access to these;
    - 9.1.3. build institutional capacity to ensure the best use of funding provided by outside agencies and donors, enhance heritage management, and carry out sound reconstruction processes;
    - 9.1.4. develop adaptation programmes for Ukrainian child victims of deportation to the Russian Federation or of cultural cleansing policies in territories under Russian control, carefully considering their age, gender, regional background and the duration and level of indoctrination which they have been subjected to;
    - 9.1.5. develop transitional justice, with due consideration for truth seeking, reparation and guarantees of non-repetition;
  - 9.2. post-conflict reconstruction, recovery and peace building:
    - 9.2.1. develop specific projects for cultural heritage, support for cultural vitality and cultural exchanges by providing support and resources for artists, writers, musicians, and other cultural professionals and funding initiatives, grants, and residency programmes;

9.2.2. develop remembrance, reconciliation and educational policies that encourage democratic citizenship and civic engagement;

9.2.3. raise awareness among local populations of the importance of cultural heritage and cultural rights, create spaces of dialogue with them and associate them properly in policy implementation.

**B. Draft recommendation<sup>3</sup>**

1. The Parliamentary Assembly refers to its Resolution ... (2024) "Countering the erasure of cultural identity in war and peace" and underlines that the right to take part in cultural life and the right of access to and enjoyment of both tangible and intangible cultural heritage, are pivotal to the system of human rights and fundamental to individual and collective cultural identity.
2. The Assembly welcomes the decision to establish the Enlarged Partial Agreement on the Register of Damage caused by the aggression of the Russian Federation against Ukraine as a first step towards an international compensation mechanism. Within this framework, it is crucial to accurately record damages to cultural heritage and cultural infrastructure in Ukraine and to establish comprehensive lists of looted objects and artefacts that were taken from museums and archaeological sites, including from Crimea since 2014. The Assembly urges members States parties to the Enlarged Partial Agreement to take adequate measures in this respect.
3. The Council of Europe Action Plan for Ukraine "Resilience, Recovery and Reconstruction" (2023-2026) provides the necessary framework to accompany the process of reconstruction and recovery in Ukraine. The Assembly calls on the Committee of Ministers to consider in this context the proposals for action to counter the erasure of cultural identity that are outlined in its Resolution ... (2024), and to integrate in the Action Plan targeted actions in the area of education, promotion of democratic culture, history education and support for cultural heritage, vitality and exchanges.
4. Referring to the commitment enshrined in the Reykjavik Declaration to strengthen co-operation with Belarusian human rights defenders, democratic forces, free media and independent civil society, the Assembly underlines the importance of developing projects to assist the diaspora from Belarus to preserve their identity and language through projects supporting cultural vitality and cultural exchange. It asks that the Committee of Ministers secure appropriate resources to this aim either through the ordinary budget or via targeted extra-budgetary contributions.
5. Finally, the Assembly considers that the international legal framework concerning the protection of cultural heritage in armed conflict should be enhanced. In this respect, the Assembly recommends that the Committee of Ministers initiates a collaborative process with the United Nations, the European Union and other relevant organisations, to develop legal and policy responses to new forms of cultural erasure, taking into account existing Council of Europe conventions and other international treaties, seeking in particular to:
  - 5.1. enhance and consolidate the recognition of cultural cleansing or erasure, deliberate or systematic destruction of cultural heritage and looting of cultural property as human rights violations, crimes against humanity and/or war crimes for the purposes of their prosecution and counteracting such illegal acts, and to determine the role that a policy of cultural erasure has as one of the inherent elements of the intent to destroy a national or any other protected group when committing genocide;
  - 5.2. establish more robust pre-emptive protective mechanisms for both tangible and intangible cultural heritage;
  - 5.3. provide for deterring sanctions and reparations for military destruction which is not demonstrated to be justified by an "imperative military necessity", and for other violations against cultural heritage.

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3. Draft recommendation adopted unanimously by the committee on 28 May 2024.

## C. Explanatory memorandum by Ms Yevheniia Kravchuk, rapporteur

### 1. Introduction

1. As the motion for a resolution at the origin of this report ([Doc. 15564](#)) highlights, after Russia's occupation of Crimea and Ukraine's eastern provinces of Donbas and its full-scale invasion in February 2022, "conventional targeting is accompanied by: removal of archives; confiscation or replacement of history textbooks; indoctrination, including through militarisation, of education; impeded access to education in native, including indigenous, languages; de-contextualisation of artefacts through relocation or changing narratives around them; narrowing the diversity of commemorative practices; intentional refusals to preserve cultural heritage to showcase certain layers of history and erode others; distortive and ethnically-biased restoration of cultural objects; and neo-imperial renaming of geographical sites."

2. Though less visible, such hybrid infringements on culture, history, language, education, and heritage sites create the basis for gradual cultural erasure and denial of cultural identity. Such deeply corrosive policies require "holistic action across the fields of culture, education, heritage management, mass media, criminal accountability, and remembrance policies."

3. In the context of criminal accountability and compensation for war damage, the Summit of Heads of State and Government in Reykjavik in May 2023 decided to set up a Register of Damage Caused by the Aggression of the Russian Federation against Ukraine as a first step towards an international compensation mechanism. It will therefore be crucial to record accurately damages to cultural heritage and cultural infrastructure (including museums, archives, libraries, cultural centres, etc.) in Ukraine and to establish comprehensive lists of looted objects and artefacts that were taken from museums and archaeological sites, including in Crimea.

4. In my report, I therefore seek to contribute to this process, by building on [Resolution 2057 \(2015\)](#) "Cultural heritage in crisis and post-crisis situations",<sup>4</sup> in which the Parliamentary Assembly recommended that member States together with the United Nations, consider reviewing and strengthening the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Geneva Convention relative to the Protection of Civilian Persons in Time of War and its protocols.

5. I also pursue the idea expressed in the motion for a resolution to "envisage Council of Europe guidance to develop an international legal and policy response to such new forms of gradual cultural erasure in the context of existing Council of Europe conventions and international treaties." It would be vital to legally consolidate the notion that targeted actions to erase cultural identity are considered a crime against humanity. The human rights approach has a key role to play in transitional justice and reconciliation in terms of specific legal obligations for respecting and protecting cultural heritage in times of war and for all groups and communities, including the prohibition of discrimination based on cultural identity.

6. My report examines issues concerning the erasure of cultural identity in war and peace, with a focus on the present situation in Ukraine, while referring also to the situation in the Western Balkans, Belarus, and the South Caucasus region.

7. I wish to thank all the experts<sup>5</sup> we have heard from during the preparation of the report, for sharing information, and thoughts on required action, and in particular Dr Robert Pickard, who has assisted me in preparing a detailed and well-documented report and accompanying bibliography.<sup>6</sup>

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4. Assembly [Resolution 2057 \(2015\)](#) "Cultural heritage in crisis and post-crisis situations", and associated report [Doc.13758](#), prepared in the Committee on Culture, Science, Education and Media by Ms Ismeta Dervoz (Bosnia and Herzegovina, EPP/CD).

5. Mr Oleksandr Tkachenko, Minister for Culture and Information Policy, Ukraine; Mr Andriy Kostin, Prosecutor General, Ukraine; Ms Krista Pikkat, Director of the Culture and Emergencies Entity at UNESCO; Mr Sergii Gorbachov, Education Ombudsman; Mr Viktor Pentalchuk, Principal of Kakhovka's secondary school №1, Kherson region; Ms Tamila Tasheva, Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea; Ms Elmira Ablyalimova, project manager at the Crimean Institute for Strategic Studies (CISS); Ms Kateryna Busol, Associate Professor, National University of Kyiv-Mohyla Academy; British Academy Research Fellow, British Institute of International and Comparative Law; Dr Mirela M. Handan, responsible for managing heritage rehabilitation through the Dayton Peace Agreement; Ms Aida Bičakčić and Ms Adisa Dzino Šuta, Bosnia and Herzegovina; Ms Gjelane Hoxha, Head of the State Commission for Documentation and Evaluation of War Damages to cultural heritage and Inspector of cultural heritage, Kosovo; Mr Bujar Demjaha; Mr Sali Shoshi, Executive Director of Cultural Heritage without Borders (CHWB); Ms Nora Arapi Krasniqi, Senior Advisor to the Ministry of Culture in Kosovo; Ms Alena Makouskaya, member of the Council of Europe Contact Group on Co-operation with Representatives of Belarusian democratic forces and civil society, Co-ordinator of civic cultural campaign "Let us be Belarusians" (Budzma Belarusami); Ms Kristin Hausler, Dorset Senior Research Fellow



## 2. Damages and threats to culture and heritage

### 2.1. The situation in Ukraine

8. Russia invaded Ukraine in 2014, occupying the Crimean Peninsula and parts of Eastern Ukraine.<sup>7</sup> Numerous violations of international human rights law and international humanitarian law followed,<sup>8</sup> including those affecting cultural heritage, namely the unlawful and wanton appropriation of public, municipal and private property, unauthorised archaeological excavations, unlawful transfer of artefacts, apparent and disguised destruction of cultural sites. These violations also included the reshaping of curatorial narratives so that they do not show Ukrainian and indigenous Crimean Tatar layers of a particular site, changing education curricula to represent a Russia-centric vision of history of Ukraine's occupied territories, and persecution of those opposing these and other occupation policies.

9. Following the full-scale invasion of Ukraine on 24 February 2022, UNESCO (United Nations Educational, Scientific and Cultural Organization) has monitored the situation on the ground, regularly updating statistics on the number of journalists killed, educational institutions and cultural sites damaged.<sup>9</sup> As of 10 April 2024, UNESCO has verified damage to 351 sites – 129 religious sites, 157 buildings of historical and/or artistic interest, 31 museums, 19 monuments, 14 libraries, and 1 archive. Russia's indiscriminate targeting of Ukraine's civilian objects, including cultural property, and the suppression of manifestations of Ukraine's cultural identity have been confirmed by the United Nations – Report of the Independent International Commission of Inquiry on Ukraine to the Human Rights Council (A/HRC/55/66, 18 March 2024).

10. On 1 March 2024 in Kharkiv, Ukraine, President of Ukraine, Volodymyr Zelensky, and Prime Minister of the Netherlands, Mark Rutte, signed the Agreement on security cooperation, recognising that the armed conflict has damaged the cultural heritage of Ukraine, through negligence, disregard or even purposeful attack, motivated by malice or malign intentions.

11. Article 9 of the Second Protocol (1999) to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) prohibits the modification of cultural property in occupied territory in a way which is "intended to conceal or destroy cultural, historical or scientific evidence".<sup>10</sup> This is well illustrated by the destructive reconstruction of the 16th century Khan's Palace in Bakhchisaray, comprising a compact architectural ensemble of 17 buildings and 9 inner closed courtyards – a symbol of spiritual significance to the indigenous Crimean Tatar community and placed on UNESCO's tentative list for World Heritage status in 2003. The occupying power began works in 2017, which are expected to continue until 2024, involving dismantling of roofs with heavy equipment causing structural damage by vibration, damage to authentic appearance by removal of original roof tiles and oak beams and modern replacements, damage to frescoes and ancient stained-glass windows and loss of artefacts in the ground through the installation of modern engineering networks without proper archaeological investigation. The so-called restoration works have caused significant harm by not considering historic value and the principle of reversibility, and impact on identity by destroying layers of Crimea's history of particular significance to the Crimean Tatar community.

12. Since 2017, a Russian opera and ballet festival has been held annually on the ruins of the ancient (5th century BC) Greek city of Tauric Chersonese and its Chora (inscribed on the World Heritage List 2013). Large-scale installation work has caused damage to the site including destruction of archaeological artefacts.

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in Public International Law and Director of Centre of International Law, British Institute of International and Comparative Law and Chairperson of the Committee on Safeguarding Cultural Heritage in Armed Conflict, International Law Association (ILA); Mr Thomas de Waal, Senior Fellow at Carnegie Europe, journalist and writer on the Caucasus.

6. The report draws on many sources of information included in a [bibliography: https://rm.coe.int/bibliography-countering-the-erasure-of-cultural-identity-in-war-and-pe/1680af78b0](https://rm.coe.int/bibliography-countering-the-erasure-of-cultural-identity-in-war-and-pe/1680af78b0).

7. In 2023, the European Court of Human Rights confirmed that Russia had exercised effective control over areas of Eastern Ukraine at least from 11 May 2014, *Ukraine and The Netherlands v. Russia*, Applications nos. 8019/16, 43800/14 and 28525/20, Decision, 20 November 2022, para. 695.

8. Office of the Prosecutor of the International Criminal Court, "Reports on Preliminary Examination Activities: 2016-2020"; OHCHR, "Report on the human rights situation in Ukraine 16 November 2019 to 15 February 2020", paras. 7, 54, 62, 69.

9. UNESCO, "In the Face of War, UNESCO's action in Ukraine" (2024); "UNESCO estimates the damage to culture and tourism after 2 years of war at US\$3.5 billion". See also part 3 of this explanatory memorandum for figures relating to educational institutions.

10. Whilst Russia is not party to the Second Protocol, it remains bound by obligations imposed by customary international law of armed conflict as indicated in para.11 of the "UNESCO Protection of Cultural Property Military Manual" (2016): <https://iihl.org/protection-of-cultural-property/>. In this context, see paras. 201 (prohibition and prevention of certain acts), 202 (illicit export, other removal or transfer of ownership of cultural property), and 210-212 (alteration and change of use of cultural property).

In March 2023, the Korsun Children's Centre (a large art school building) was opened. This was the first part of a five-stage large-scale construction plan for further development around the walls of the ancient city, including a Museum of Christianity and car parking. As such, it provides evidence of further mismanagement and the impact on the site. More significantly, the development plans are aimed at transforming the site into a Russian place of pilgrimage. This is based on the false premise that the site is the cradle of Russia's Orthodox Christianity from which a unitary Russian national State and the Russian nation emerged,<sup>11</sup> and therefore further denigrating its historic value. In May 2023 it was reported that gold artefacts from the Byzantine period had been taken from Chersonese and illegally "exported" out of Crimea for the first time for a museum exhibition.

13. Unlawful archaeological investigations (including underwater) have taken place without verifying context sensitivity or the presentation of findings, such as in relation to the construction of the Tavrida highway to connect the Kerch Bridge with Crimea for Russian military occupation of the peninsula, resulting in the destruction of Muslim burial places. The UN General Assembly has stressed that the construction of the Kerch Bridge enhanced the militarisation of the occupied peninsula.<sup>12</sup> Such conclusions add nuance to the security reverberations of violations affecting cultural heritage, including cultural erasure.

14. Widespread looting has occurred in Crimea since 2014, including of objects and paintings of the Crimean Tatar people. Many Russian occupiers are allegedly leaving Crimea with cultural objects and over 1 000 such artefacts from Crimean Museums have been traced to Russia between 2014-2020. Over 500 000 Crimean museum items have been included in Russian museum catalogues. In addition, more than 12 000 monuments of Crimean history and culture have been included in the State register of objects of cultural heritage in Russia.<sup>13</sup>

15. Religious communities having or assumed to have a pro-Ukrainian position have been subjected to persecution and aggression in Crimea. Ten mosques, which are important for Muslim Crimean Tatars, are no longer operable, and the Orthodox Church of Ukraine is suffering similarly with a seven-fold decrease in functioning parishes. The occupying administration supports "loyal" public and religious organisations, but they remain under Russian control; religious communities that refuse to obey are subjected to political persecution and harassment.<sup>14</sup>

16. In a rare case, it has been reported that the Spanish police made arrests, including an Orthodox priest alleged to be the leader of a criminal network for trafficking artefacts from occupied Ukraine, namely over 11 pieces of ancient gold jewellery that had been smuggled out of Crimea after the annexation in 2014. In its import declaration, the suspect had used false documentation to claim that they belonged to the Ukrainian Orthodox Church, which can be differentiated from the Orthodox Church of Ukraine. The Ukrainian Parliament has given initial approval to a law that would ban the Moscow-linked Ukrainian Orthodox Church.

17. After 24 February 2022, Russian forces have decimated cultural infrastructure and heritage across Ukraine: destruction and damage to museums, libraries, archives, theatres, places of worship and cemeteries, historic buildings, and locations where people access culture. Four days after the invasion, Russian shelling damaged the Ivankiv Museum (Kyiv region); one day later Kyiv's Holocaust Memorial at Babyn Yar, and shortly after, the Drobitsky Yar Holocaust Memorial outside of Kharkiv, were severely damaged.

18. There is evidence of widespread looting of cultural objects from public and private collections in the occupied territories. In April 2022, Ukrainian officials from Mariupol reported that Russian forces stole and moved more than 2 000 unique items from museums across southern Ukraine, including works by the 19th-century Mariupol native Arkhip Kuindzhi, the painter Ivan Aivazovsky, a unique handwritten Torah scroll, and the Gospel of 1811 made by the Venetian printing house for the Greeks of Mariupol. Later in 2022, looting of

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11. Vladimir Putin's claim is linked to the baptism of Kyivian prince Volodymyr the Great in Chersonese in 988, bringing Christianity to the Slavic people in Kyivan Rus, which is distinct from the development of Christianity in Muscovy, the predecessor of the Russian empire.

12. UN General Assembly, "Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov", Seventy-fifth session, Agenda item 34 (a) Prevention of armed conflict: prevention of armed conflict, [A/75/L.38/Rev.1](#), 3 December 2020, para. 17.

13. The information in this paragraph was provided by Ukrainian experts from the CISS and the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea. Interviews conducted on 27 September 2023.

14. Information provided by the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea: Interview conducted on 27 September 2023.

over 1 700 objects from Melitopol Museum of Local History, including 198 Scythian gold artefacts, and of 15 000 objects from the “Oleksiy Shovkunenko” Kherson Art Museum, the Kherson Regional Museum and other cultural venues was reported.

19. Following the inscription of Odesa's historic centre on the World Heritage List in January 2023, Russian missile attacks in July 2023 caused significant damage. Parts of the Transfiguration Cathedral were reduced to rubble, 25 historic buildings were damaged, as well as Odesa's Archaeological, Maritime, and Literary Museums. While Russian forces denied responsibility, UNESCO Director-General, Audrey Azoulay, strongly condemned the brazen attack and urged Russia to comply with its international obligations.<sup>15</sup> This followed condemnation of an attack in the buffer zone of the World Heritage site of Lviv and 19 attacks recorded by October 2023 on Chernihiv, placed on the Tentative List in 1989. To spotlight the ongoing cultural damage, the historic centres of Odesa and Lviv and the inscribed sites in Kyiv were placed on UNESCO's “in Danger” list in September 2023.

20. Apart from the above examples, Russia is targeting cultural heritage for ideological reasons to force cultural assimilation and expansion of the Russian sphere of influence (often referred to as “Russian World” or “Russkiy mir”): destruction of memorial plaques written in Ukrainian, renaming of cities, villages and other administrative units, changing Ukrainian road signs of cities, villages and streets to Russian ones, and requiring cultural events and expression at schools, universities, and local history museums to reflect Russian history and narratives. Russia further expands its one-dimensional historical narratives among its own youth and the wider population in Russia itself, parallel to and intertwined with intense militarisation. This cleansing approach has been witnessed in many other conflicts, for example in the wars in the former Yugoslavia in the 1990s.<sup>16</sup>

## 2.2. The situation in Belarus<sup>17</sup>

21. The problem in Belarus is more cultural suppression than damage to cultural heritage. The government has been implementing a consistent policy of Russification since 1994, which has begun to take on a clearly-expressed punitive character for speakers of the Belarusian language and creators of Belarusian culture since 2020, when mass peaceful protests took place against the disputed results of the presidential election.

22. The repression has not ceased even after three years. Thus, even in 2023, there were no less than 1 499 violations of cultural rights and human rights against workers in Belarus' cultural sector.<sup>18</sup> Censorship in the country is being implemented through “black lists” of politically “unreliable” writers, artists, photographers, actors, musicians, tour guides, and museum workers. The State controls the number and location of cultural events, required by law to obtain permissions from the relevant authorities, as well as theatre repertoires, film distribution, museum exhibitions, musical works, etc. The Department of Ethnology and Folklore was abolished at the Belarusian State University of Culture. In 2023, another 35 non-profit organisations dealing with dance, local history, ethnic minorities, those working in the field of heritage protection and other areas of culture were forcibly liquidated. In total, since 2020, at least 218 NGOs related to the cultural sphere of Belarus have been subjected to forced liquidation.

15. See <https://whc.unesco.org/en/news/2592/>. The statement also indicated that the intentional destruction of cultural sites may amount to a war crime, as acknowledged also by the United Nations Security Council – of which the Russian Federation is a permanent member – in [Resolution 2347 \(2017\)](#). Moreover, these attacks contradict statements by the authorities of Russia concerning the precautions taken to spare World Heritage sites in Ukraine including their buffer zones.

16. See [www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2023\)733120](http://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2023)733120), p. 74-75, 84 and 99-100; [www.bbc.com/russian/international/2014/06/140624\\_crimea\\_traffic\\_signs](http://www.bbc.com/russian/international/2014/06/140624_crimea_traffic_signs).

17. This sub section draws on information provided by Ms Alena Makouskaya, member of the Council of Europe Contact Group on Co-operation with Representatives of Belarusian democratic forces and civil society, Co-ordinator of civic cultural campaign “Let us be Belarusians” (Budzma Belarusami) at the committee hearing on 24 January 2024, as well as on other references (see the Bibliography, <https://rm.coe.int/bibliography-countering-the-erasure-of-cultural-identity-in-war-and-pe/1680af78b0>).

18. These include 1 097 violations against 605 cultural figures and individuals whose cultural rights were violated; 163 violations against 147 cultural organisations and communities; 57 violations related to historical-cultural heritage objects or the Belarusian language. As of 31 December 2023, within the framework of criminal persecution, no fewer than 155 cultural figures were in prisons, colonies, pre-trial detention centres, open-type institutions (and some have died there), or under “house arrest”. According to the data of the Human Rights Centre Viasna, 114 of them are recognised as political prisoners; there were a total of 1 452 political prisoners in Belarus at the end of 2023. At least 182 culture-related materials (including social media accounts) have been declared “extremist” by the Ministry of Information, including 40 books and publications of the classics of Belarusian literature and contemporary authors. The Ministry of Internal Affairs has included 153 cultural figures in the “List of citizens involved in extremist activities”.

23. Belarusian theatres are reducing productions based on the works of Belarusian authors to a minimum. A similar situation exists in the field of exhibitions, music and concerts, where international and specifically Belarusian works and creators are being replaced by Russian actors, directors, musicians and corresponding repertoires, thus destroying Belarusian works and lives of creative artists as much as possible. Many Belarusian intellectuals, artists, musicians, journalists, philosophers, writers and public figures who spoke out against the violence in the country and the war in Ukraine have been perceived as part of the political opposition and forced to leave the country.

24. One of the main outcomes of closer integration with Russia is the erasure of Belarusian culture. Numerous “roadmaps” of co-operation in the cultural sphere have been signed between cities and regions (for example between Minsk and Murmansk, Minsk and Saint Petersburg, Mahilioŭ region and Bryansk region, Belarus and Rostov, Novosibirsk regions, Tatarstan, etc.), and co-operation agreements between museums, theatres, houses of creativity and other cultural and educational institutions (for example Days of the Union State – a supranational entity of Russia and Belarus, Days of Culture of Russia in Belarus, of Tatarstan in Belarus, of the Pskov region in Viciebsk, of Saint Petersburg in Minsk, etc.). As a result of these activities, the cultural sphere of Belarus, while continuing to suffer huge professional losses due to dismissals and banning of professionals disloyal to the regime, is increasingly being filled with Russian cultural workers. Special attention is paid to young people: for the year 2024, Belarusians have been allocated 1 300 places in Russian universities according to the quotas of the Government of the Russian Federation. In December 2023, it became known that the new integration package of Belarus and Russia for 2024-2026 would include 120 events, with an emphasis on the cultural and humanitarian sphere.

25. On 12 September 2023, the Ministry of Culture announced the timeline for a public discussion on the draft Concept of Developing the National Cultural Space in All Spheres of Social Life in 2024-2026. The document, among other things, contains the ideas of “traditional value orientations of the Belarusian people”, “traditional Belarusian-Russian bilingualism”, “revision of museum exhibitions dedicated to the period of the Grand Duchy of Lithuania and the Polish-Lithuanian Commonwealth”, “creation of works of fine art by Belarusian authors on State orders”, “protecting the domestic publishing market from foreign competition”, “forming a repertoire policy for professional and amateur creative teams”, a specific selection of content in the academic subjects of “Belarusian Language”, “Belarusian Literature”, “Russian Language”, “Russian Literature”, “World History”, “History of Belarus”, “Social Studies” and other concepts that primarily refer to the Soviet past and demonstrate the servile attitude of officials to the issue of the role of culture for society as a whole.

### **2.3. The situation in the South Caucasus<sup>19</sup>**

26. The South Caucasus is a region with immense cultural, ethnic, religious, and linguistic diversity. However, the erasure of cultural monuments was already widespread in the Soviet era. Initially in the name of modernity and anti-religious propaganda and later in the post-Stalin era, national identities were consolidated in the 15 republics of the Soviet Union which favoured the “titular” majority at the expense of minority populations. In the 1990s, the three republics in the South Caucasus became independent States and ethno-territorial conflicts broke out. In addition to threats to physical architectural heritage, there was also a trend to suppress the culture of the other side through the deliberate omission of historical facts in history coursebooks and the erasure of literature and music written by “the other side” in the conflict.

27. In the conflict between Armenia and Azerbaijan, culture is still a sphere of contestation and battle. On the Armenian side, damage was done to the few remaining mosques in the Armenian capital Yerevan. However, the destruction of Armenian monuments in Azerbaijan was on a much larger scale. The Azerbaijani Republic of Nakhchivan had a large Armenian population historically, right up until the early 20th century. In the last 30 years, almost all of its Armenian cultural heritage has been destroyed. In particular a very famous and beautiful medieval Armenian cemetery near the town of Julfa with thousands of khachkar cross-stones which were destroyed in the early 2000s. Foreign visitors were denied access.

28. Since Azerbaijani forces gained control of the Karabakh region in September 2023, almost the entire Armenian population has fled. The region is home to some of the richest surviving Armenian heritage, such as the famous Armenian medieval churches of Gandzasar and Amaras. The historical viewpoint held in the Soviet era still prevails in Azerbaijan that the monuments in Karabakh are not actually Armenian but

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19. This sub section draws on information provided at the committee hearing on 21 March 2024 by Mr Thomas de Waal, Senior Fellow at Carnegie Europe, journalist and writer on the Caucasus. See also: “[Caucasus Heritage Watch – Heritage monitoring and research in the Caucasus, Special Report #1: Silent erasure](#)”; and European Parliament, Texts adopted: “[Destruction of cultural heritage in Nagorno-Karabakh](#)”, 10 March 2022.

“Caucasian Albanian” and therefore Armenian-language inscriptions are not considered genuine and can be erased. This represents a serious threat to Armenian monuments in the region, especially since an international presence and visits of UNESCO heritage experts are denied. Caucasus Heritage Watch tries to monitor the situation through satellite photography and has recorded damage to several monuments. In March 2022, the European Parliament adopted a resolution on the destruction of cultural heritage in Nagorno-Karabakh and strongly condemned the actions of Azerbaijan as it had violated international law and had participated in the denial of the Armenian cultural heritage.

#### **2.4. Lessons from other conflicts<sup>20</sup>**

29. Deliberate attacks, resulting in damage and destruction to cultural heritage, have been recorded elsewhere, notably during the wars in the former Yugoslavia, which provide lessons for the post-conflict situation for Ukraine. The Dayton Peace Agreement for Bosnia and Herzegovina was the first such agreement to have heritage as a key aspect (Appendix 8). The establishment of an independent Commission to Preserve National Monuments of Bosnia and Herzegovina has had an important role in designating tangible heritage and protection zones, endorsing the message of a “common heritage”, and working especially with the younger generation. However, its work has been diminished through the subsequent politicising of the roles of Commissioners, lack of co-ordination between heritage protection at different levels of government, especially spatial planning (with a strong construction lobby in favour of new buildings), lack of effective criminal sanctions, lack of finance and co-ordination of funding agencies to support heritage rehabilitation, and the direct focus on tangible cultural heritage without due consideration of intangible issues and natural heritage.

30. The decision to reconstruct war-damaged sites serves the broader community, fostering mutual recognition of heritage values and reconciliation. However, it has often been fraught with difficulties, for example, in terms of gathering relevant documentation about a site’s history and how the remnants can be reused. There is also a need for guidelines and technical assessments on the approach before works begin, for monitoring during, and maintenance actions after. There is often a lack of skilled craft workers and a need for traditional skills development/training to fill gaps in knowledge (especially if there is a post-war shortage), as well as for licensed and trained contractors to ensure that the work respects the inherent heritage values. There are issues concerning how to involve the community and religious authorities in the process. There is also a need to focus on the potential of heritage resources as a factor of sustainable development and social and economic regeneration, including tourism, as well as the diversification of funding to support heritage through other sectors: tourism, development strategies, climate change, disaster management, etc.<sup>21</sup>

31. There are many examples from the wars in the former Yugoslavia where the reconstruction process has not been satisfactory. For example, the reconstruction of Prizren and Novo Brdo Fortresses in Kosovo<sup>22</sup> suffered from a lack of documentary information, poor design and inadequate implementation of works, lack of expertise and poor management, damaging the authenticity of the fabric. The reconstruction of destroyed mosques in Bosnia and Herzegovina and Kosovo through Saudi funding led to a more austere approach towards the decorated interiors which existed in the Balkans. Many donors and stakeholders had different approaches and requirements and were insufficiently co-ordinated. There was a lack of capacity to manage processes through inadequate laws and professional skills. However, there are some good examples, notably the reconstruction of the destroyed Mostar Bridge and City Hall, and Sarajevo’s National Library, as “symbols of reconciliation” and civic pride, anchoring the community by restoring a “sense of place”. The reconstruction of the Bazaars of Gjakova and Peja, Kosovo, whilst not ideal in its approach, created a sense of identity in the urban ensemble through the memory and history which they embodied.

32. The many war-damaged traditional Kullas (fortified houses) in Kosovo, posed a particular challenge necessitating specialised training in stone conservation. The actions of the NGO, ‘Cultural Heritage without Borders’ (CHWB), have been exemplary in this context: involving the community in building bridges in the reconciliation process, providing training camps for young people (“learning by doing”), using local foundations to channel funding properly, and recognising heritage as a resource for development. In addition, the RPSEE programme was significant in building a good approach to the reconstruction process: developing preliminary interventions, technical assessments, integrated rehabilitation actions and local development pilot projects, co-ordinating institutional and legislative frameworks, etc.

20. This sub-section draws on information provided by experts from Kosovo and Bosnia and Herzegovina.

21. These issues have been explored through the Council of Europe’s Regional Programme for cultural and natural heritage in South East Europe (RPSEE), for example see Bold, J. and Pickard, R. (eds.), “[An integrated approach to cultural heritage](#)”, Council of Europe (2018).

22. \* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council [Resolution 1244](#) and without prejudice to the status of Kosovo.

33. The Balkan experience also provides lessons on looting and illicit trafficking and the difficulty of establishing procedures for the return of stolen artefacts. The need for registering movable artefacts associated with particular heritage sites and maintaining that link through digital means has been emphasised as a way to stop their movement to other religious sites and elsewhere, for example in relation to icons. Inventory systems therefore need to be verified and maintained. Emergency storage procedures for movable items at risk and “Red Lists” (presenting categories of cultural objects that can be subjected to theft and traffic) can assist in the recovery process. The difficulty for police and customs officials in co-operating across borders is increased by a lack of training on recognising which items are of important heritage. Moreover, without proper procedures for criminalising and dealing with trafficking, the work to repatriate stolen goods is very difficult. Publicising evidence of the movement of cultural objects can assist in raising the profile of criminal investigations.

### **3. Erasure of cultural identity through education, use of language and history teaching**

#### **3.1. The situation in Ukraine**

34. On 12 July 2021, the Kremlin website published an article by President Putin in which he claimed there is no historic basis for the “idea of Ukrainian people as a nation separate from the Russians”, that Russians and Ukrainians are “one people”, and that no Ukrainian nation existed prior to Soviet Russia’s creation of it. In other words, in Vladimir Putin’s view, everyone and everything identified as Ukrainian is effectively fictitious. This is the false premise for attacks on the culture, education, languages, and history of Ukraine.<sup>23</sup>

35. The Russian authorities have taken various steps to eradicate Ukrainian and Crimean Tatar culture in Crimea since 2014. Apart from damaging sites, they have harassed and threatened people who produce and protect culture, and prevented the use of the Ukrainian and Crimean Tatar languages in schools and in the media. Before the occupation of Crimea, 7.2% of secondary school students studied in Ukrainian, but after one year of occupation this had fallen to 0.1% and was only on a voluntary basis. The figure for those studying in Crimean Tatar has remained at around 3%, however this is regarded by the Ukrainian authorities as an overestimate and is unconfirmed by the Crimean Human Rights Group. More critical is the situation in Sevastopol where, out of over 43 000 students, just 149 study in Crimean Tatar and only 5 in Ukrainian.

36. Russian authorities have banned access to independent media including Ukrainian and Crimean Tatar language broadcasts, replacing them with Russian programmes and a pro-Russian Crimean Tatar language station, and have blocked online media, television, and radio stations.

37. Freedom of expression has declined in Crimea since 2014; by August 2023, 186 Ukrainian citizens of Crimean origin had been imprisoned for political motives, 129 being representatives of the indigenous Crimean Tatars. Substantial fines have been imposed on people for displaying clothing or tattoos representing Ukrainian identity and 16 journalists have been imprisoned with long sentences for highlighting oppression by the occupying authorities.

38. Russian occupying authorities have not complied with the International Court of Justice’s (ICJ) 2017 Provisional Measures Order requesting that they ensure access to education in the Ukrainian language and the functioning of independent representative institutions of Crimean Tatars.<sup>24</sup>

39. Russia expanded its campaign to erase Ukrainian culture, history, and language in occupied territories through the so-called Donetsk People’s Republic (DPR) and Luhansk People’s Republic (LPR). The Russian language, curriculum and grading system have gradually replaced Ukrainian, combined with courses on Russian and Soviet history and military training preparations. While teachers in general were given the option of retraining in Russian, teachers of Ukrainian language and literature in the so-called DPR and LPR lost their jobs. At university level, rectors have been dismissed and departments of Ukrainian history eliminated. The campaign has also involved destroying Ukrainian history books and literature, deemed as “extremist”, in public libraries in the occupied territories of the Luhansk and Donetsk regions. Occupying forces have replaced seized books with books from Russia, which teach students that Russia is their homeland and deny any distinct Ukrainian cultural identity.

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23. Vladimir Putin, “On the Historical Unity of Russians and Ukrainians”, Kremlin website, 12 July 2021, [en.kremlin.ru/events/president/news/66181](https://en.kremlin.ru/events/president/news/66181).

24. ICJ, “Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all forms of Racial Discrimination (Ukraine v. Russian Federation), request for the indication of provisional measures, order of 19 April 2017”, para. 106: [www.icj-cij.org/sites/default/files/case-related/166/166-20240131-pre-01-00-en.pdf](https://www.icj-cij.org/sites/default/files/case-related/166/166-20240131-pre-01-00-en.pdf).

40. Since the invasion of other areas of Ukraine in February 2022, a similar situation can be evidenced, for example in the Chernihiv and Sumy regions. Decrees titled “On the Removal of Literature” were applied in the Kharkiv region ordering the removal of school textbooks and literature. Teachers were forced to re-register and sign new contracts in compliance with Russian law. In Melitopol the occupying authorities detained educators for their refusal to implement the Russian curriculum. Many teachers from Russia have been recruited by offering lucrative pay and cheap accommodation. The UN Commission of Inquiry on Ukraine has documented the testimony of a former detainee who said that Russian occupying authorities provided them “with Ukrainian books to use as toilet paper”.<sup>25</sup>

41. The picture is also well illustrated by Viktor Pendalchuk, a school principal in Kakhovka, Kherson region, in a speech delivered at the hearing of the committee on Culture, Science, Education and Media in June 2023. When he refused to co-operate with the Russian occupying authorities, a new head of education arrived “accompanied by two stocky men and a woman ...introduced as the new principal of my school”. Furthermore, when he refused to hand over documents, keys to offices and a description of school property, “men began to threaten me and my family (quote: “The health of your wife and daughters is not worth it ... You have been here all the time from the children of the Nazis and taught to hate the Russian people”). “After taking everything they needed, they kicked me out of school and told me not to show up there”. Subsequently, “armed men came to my house, handcuffing me, throwing a hood [over] my head and tying it with duct tape, threw me on the floor in a minibus face down, putting an assault rifle to my back”. He was imprisoned in a small cell where he was “threatened with electric shock torture” and abused mentally and physically by the military and police officers. On his last day of captivity over a period of more than five months, he was questioned before being released and recalled being asked “Why don't you want to cooperate? Why don't you recognise our authority? We are here forever. If you wait for Ukraine, you will get here again, but you will not come out again”.

42. From the start of full-scale invasion of Ukraine until 10 April 2024, UNESCO has identified 3 793 education institutions that have suffered from bombing (3 428 damaged and 365 destroyed). Russian attacks have also caused damage and destroyed many libraries including the Youth Library in Chernihiv, the Central Scientific Library of the Kharkiv National University and Korolenko Kharkiv State Scientific Library and many other libraries including in Mariupol, Rubizhne, Zaporizhzhia, Chasiv Yar and Kyiv. Archives have also been damaged such as the Security Service archives in the Chernihiv region, which included the former Soviet secret police documents related to the Soviet repression of Ukrainians, and the archives of Vyacheslav Chornovil, a defender of Ukrainian rights and freedom of expression.

43. The Education Ombudsman for Ukraine has also highlighted a number of significant issues. From the start of the full-scale invasion until 6 June 2023, 642 appeals have been received from citizens of Ukraine in the occupied territories concerning the rights of participants in the educational process. Some of the issues relate to damage to educational institutions, but also of concern are: the use of educational institutions for the needs of the Russian military (accommodation, temporary dislocation); registration of these institutions as legal entities in Russia; looting of equipment, furniture, valuables; militarisation of education and Russian propaganda; threats to teachers suspected of teaching Ukrainian programmes, including being forcibly sent to 'training courses'; pressure on parents to make their children study according to Russian programmes; use of children as a source of information about their parents and relatives; the problem of accessing help for children with special education needs; and the requirement to have a passport of the Russian Federation in order to receive medical treatment, pensions and employment. The Ombudsman further viewed Russia's actions as cultural and educational genocide by violation of students' human rights, depriving Ukrainian children from studying in their “mother tongue” and cultural identity.<sup>26</sup>

### **3.2. The situation in Belarus**

44. According to the results of the general population census in 1999, 85.6% of Belarusians considered Belarusian their native tongue, and in 2019 – only 61.2%. However, as of 2019, 28.47% of Belarusians (or 2 275 243 people) spoke Belarusian; 70.96% spoke in Russian (or 7 990 719 Belarusians). Independent researchers emphasise that such indicators do not reflect a natural process, but are a consequence of a consistent policy of Russification and discrimination against the Belarusian language and its speakers by the State.

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25. OHCHR, “Conference room paper of the Independent International Commission of Inquiry on Ukraine”, Human Rights Council Fifty-second session, A/HRC/52/CRP.4, 29 August, 2003, para. 614.

26. Report of the Education Ombudsman of Ukraine, presented to the Assembly Committee on Culture, Science, Education and Media, June 2023. See also: Human Rights Watch, “Tanks on the Playground: Attacks on Schools and Military Use of Schools in Ukraine”, 9 November 2023.

45. Over the past 5 years, the number of secondary school pupils studying in Belarusian decreased from 128 900 people (in 2016/2017) to 107 600 (in 2020/2021); and Russian, on the contrary, increased from 851 700 pupils (in 2016/2017) to 949 200 (in 2020/2021). Belarusian-language schools are mainly located in rural areas, while Russian-language schools are located in the city and therefore have an incomparably larger number of students. The number of Belarusian-language teachers in full-time general secondary education institutions decreased from 8 574 to 6 732 from 2005 to 2020. Only 9% of children receive pre-school education in Belarusian. Only about 200 out of the 254 400 high school students are being educated in Belarusian. There is not a single higher educational institution or special secondary school where all subjects are taught in Belarusian, which interrupts the full educational cycle and forces parents to send their children to Russian-language kindergartens and schools.

46. UNESCO experts have recognised that the Belarusian language is threatened: in the Atlas of the World's Languages in Danger, Belarusian is designated as vulnerable. There are numerous cases of repression against individuals for public use of the Belarusian language.

47. For the period from 2020 to 2023, in Belarus, three independent Belarusian-language publishing houses – “Januskievic”, “Knihazbor” and “Zmicier Kolas” – officially ceased to work. The government has published regulatory obstacles for the distribution of Belarusian-language books within the country and for their export abroad. In 2022, only 12.43% of books were published in Belarusian. Curricula and textbooks are being adjusted by orders of the Ministry of Education in accordance with the political situation. Works of classic Belarusian literature are being labelled as extremist and removed from educational programmes.

48. In accordance with an order from the Head of State, the authorities exclude the practice of using the Belarusian Latin script in the names of streets and topographic objects, returning to the transliteration of Belarusian names and surnames from the Russian language.

49. Until 2020, the history of Belarus was presented in a distorted way in the State-run education system, and after the revolution of 2020, there has been a complete revision of history textbooks, which now praise the Soviet period of the country's history. Under the patronage of Russian ideologues, references to wars with the Russian State are deleted from textbooks, and liberation movements are presented as being imposed by external Western forces. On 2-3 June 2023, the first Russian-Belarusian Forum of Historians was held in Minsk, and opened by Sergei Naryshkin, Director of the Russian Foreign Intelligence Service, who gave recommendations to Belarusian historians on how to write Belarusian history correctly, observing that “a tragic page in the history of the Belarusian lands is their existence as part of the Commonwealth of Nations (Rzecz Pospolita) for two centuries, when these lands were separated from Russia”. The historical ties of Belarusians with Poles and Lithuanians were depicted as “stories of the oppressors”.

50. Since 2021, secondary school pupils have already been studying the new Russian-language textbook “History of Belarus, the 19th — early 21st centuries.” In this textbook, there is not a word about the Gulag and the Holocaust, but the collapse of the USSR is called the biggest geopolitical catastrophe of the 20th century. School textbooks entitled “Genocide of the Belarusian People” – which were developed with the help of the General Prosecutor's Office – teach Belarusian children in younger grades a distorted version of historical events and directly equate current Belarusian nationalism with Nazism; similarly to Russian propaganda attempts to equate modern Ukrainian nationalism with Nazism. During 2023, a revision of Belarusian history was carried out. As a result, Belarusian historiography lost nation-building and nation-centric elements.

#### **4. Future measures for holistic action**

51. This chapter examines possible measures for holistic action across the fields of culture, education, heritage management, mass media, criminal accountability and transitional justice, including remembrance policies. Specific challenges to relevant international legal instruments are outlined in the Appendix to this report.

52. The main provisions of international law concerning armed conflict and tangible cultural heritage overlap and are not fully aligned. In response, UNESCO has launched an initiative entitled “Heritage for Peace”, to provide practical responses to the needs of States Parties to the 1954 Hague Convention and its Protocols, which is aimed at the effective protection on a global scale of movable and immovable cultural property during peacetime, armed conflict and in post-conflict situations.<sup>27</sup> However, it is unclear if much progress has been made.

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27. UNESCO, “Heritage for Peace” Thematic Programme (December 2020); see <https://en.unesco.org/node/339246>.



53. The International Law Association (ILA) has identified a number of gaps in international law and has established a committee on “Safeguarding Cultural Heritage in All Stages of Armed Conflicts” to look into three key aspects: gap analysis of the international legal regime, identification of good practices to redress harm caused to cultural heritage, and recommendations for addressing issues comprehensively, including the aspect of cultural erasure.<sup>28</sup>

54. The ILA’s initial gap analysis reflects on the Hague Convention’s focus on peace-time activities (inventories, emergency measures, removal of movable items for safeguarding, designation of competent authorities, etc. per article 5 of the Second Protocol), and the prosecution of violations. However, whilst there is some consideration as to the close of hostilities regarding the return of cultural property, the convention does not properly consider the challenges posed by post-conflict situations, beyond an obligation to prosecute or return. Furthermore, armed conflict has become more complex since the Hague Convention including the use of cyberwarfare, for which the International Committee of the Red Cross (ICRC) recently published rules of engagement for civilian hackers involved in conflicts, apart from the fact that cultural heritage can be a major contributor to the causes of armed conflict: the “Russification” which has occurred, for example by the destruction of memorial plaques and “cleansing” of signs and place names.

55. Moreover, apart from tangible cultural heritage which may have been damaged, destroyed, or displaced, intangible heritage should also be the object of measures before, during, and at the end of conflict. Both the European Parliament and the ILA have stated that international law does not address intangible heritage in armed conflict despite the fact that the impact is likely to be significant. One isolated example is the decision to fast-track the inscription of the “Culture of Ukrainian Borscht cooking” on the UNESCO List of Intangible Heritage Cultural Heritage in Need of Urgent Safeguarding.<sup>29</sup> However, this approach cannot be taken for all aspects of Ukrainian intangible heritage, and may be more political than practical.

56. The interconnectedness between tangible and intangible heritage, as demonstrated by the definition of cultural heritage and heritage communities in Article 2 of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199, “Faro Convention”, 2005) and in EU and UNESCO documents,<sup>30</sup> means that they should not be considered in isolation: impacts on tangible heritage also have impacts on individual and group identity and, therefore, are violations of cultural human rights. Large numbers of internally displaced persons and refugees from Ukraine have been separated from their communities and their ability to have access to their heritage and participate in cultural life has been impacted.

57. Article 15 of the International Covenant on Economic, Social and Cultural Rights (1966)<sup>31</sup> – which both Russia and Ukraine are Parties to – provides for the right to take part in cultural life including the right to benefit from cultural heritage. There are no exemptions in times of conflict or emergency: human rights must be respected.<sup>32</sup> Citing the Faro Convention, the first UN Special Rapporteur on cultural rights concluded that the right of access to and enjoyment of cultural heritage forms part of international human rights law.

58. A report of the second UN Special Rapporteur on cultural rights stated that the “intentional destruction of cultural heritage” during armed conflict could amount to cultural cleansing or erasure and other violations of cultural rights, including the wilful neglect of cultural heritage and letting others destroy heritage, for example by looting. Furthermore, the report indicated that “sites may be destroyed as part of a policy of removing from public spaces, symbols of past events, of preventing the expression of narratives deviating from official discourses regarding such events” and, thus, may provide evidence of a policy of cultural cleansing. The Special Rapporteur indicated that the human rights approach emphasises accountability and the combating of impunity, noting that the International Criminal Court (ICC) has made the destruction of cultural and religious sites a stand-alone war crime.<sup>33</sup> In addition, the European Court of Human Rights has found that, whilst there

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28. The Committee’s mandate is designed for a four-year research project starting at the biannual ILA Conference in 2024, in Delphi. The work of the Committee will consist of an interim report, a final report, and a set of recommendations and publications. See [www.ila-hq.org/en\\_GB/committees/safeguarding-cultural-heritage-in-armed-conflict](http://www.ila-hq.org/en_GB/committees/safeguarding-cultural-heritage-in-armed-conflict).

29. Armed conflict and displacement has threatened the viability of Borscht – important not just for nutrition but also the safeguarding of cultural traditions of communities through the shared practice of cooking and growing which are normally passed on through the generations.

30. See also EEAS, Council of the EU (2021), “Concept on Cultural heritage in conflicts and crises. A component for peace and security in European Union’s external action”. 9962/21, p. 11; and UNESCO (2015), “Reinforcement of UNESCO’s action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict”, para. 10. General Conference, 38th session, 2015 (38 C/49).

31. [www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights](http://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights).

32. See UNHCR (2015) “Protection of economic, social and cultural rights in conflict”, paras. 12-15: [www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E-2015-59.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E-2015-59.pdf). See also article 27 of the Universal Declaration of Human Rights: “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”, [www.un.org/en/about-us/universal-declaration-of-human-rights](http://www.un.org/en/about-us/universal-declaration-of-human-rights).

are no specific provisions on cultural rights and cultural heritage, there are several rights with cultural content or concerned with cultural heritage such as the right to maintain the cultural identity of minorities and their associations.<sup>34</sup>

59. The conceptualisation of heritage (in all forms), as a living intangible heritage of social and cultural practices which underpin the tangible aspects of sites, monuments and objects, should be considered in a holistic way in terms of armed conflict. This should be broader than simply legal responses, and consider heritage management issues as well. Thus, not just protection, but also encompassing safeguarding and recovery measures, including learning lessons from other conflicts where cultural heritage has been a key factor. Recalling the Assembly [Resolution 2057 \(2015\)](#), the protection of cultural heritage during and immediately after conflict is a human rights issue and should involve international responsibility. However, from an international law perspective, violations of human rights raise a number of issues in terms of who is involved in the process and how matters are to be dealt with.

60. Transitional justice can play a part in the process to deal with cultural heritage governance issues both amid, and in the aftermath of, armed conflict including through legislative, administrative, institutional, educational and technical measures. Acts of deliberate destruction of cultural heritage should be addressed through holistic strategies for promoting human rights and peacebuilding amongst other things truth and reconciliation processes, including guarantees of non-repetition. Indeed, it is arguable that the process of transitional justice should be proposed and devised prior to a transition as part of the efforts to end an ongoing conflict and to build peace and not simply be seen as justice solutions. In this respect, whilst the Government of Ukraine has initiated actions on conflict-related issues via international adjudication and arbitration platforms, and civil society has been instrumental in these justice efforts, a need for broader considerations for truth-seeking, institutional reform, reparations, memorialisation and preventative actions has been recognised. This commenced through the establishment of a working group on the reintegration of the temporarily occupied territories (established in 2019) to develop a transitional justice roadmap to identify approaches beyond the courts, which includes issues relating to damage to Ukraine's environment and cultural heritage.

61. Apart from collecting and preserving evidence of human rights violations, and other crimes, to facilitate prosecutions, transitional justice necessitates the consultation of people who have particular connections to heritage in its various forms, such as cultural heritage defenders who have recorded damage and safeguarded items during conflict, and ensuring participation in the decision-making processes of recovery and reconstruction of the communities concerned, including religious communities, and marginalised groups, such as the Crimean Tatar community. The Assembly [Resolution 2057 \(2015\)](#) calls for the depoliticisation of the process of reconstruction and for a non-discriminatory approach, to ensure confidence building through intercultural dialogue.

62. The need for guidelines for the protection and reconstruction of damaged or destroyed cultural heritage as part of a broader strategy for preserving cultural identity and diversity in crisis and post-crisis situations, for use by national and local authorities and international donor organisations, has also been advocated. Lessons learned from post-war former Yugoslavia regarding problems associated with the facilitation of the reconstruction process, such as the need for management plans and for co-ordination of external funding through official channels, including for future maintenance, should also be examined.

63. There have been some recent developments in identifying best practices in this sphere. The Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage (2018) proposes a set of principles: values, conservation and reconstruction approaches, documentation and authenticity conditions, reflection, memory and reconciliation, etc. ICCROM's PATH – Peacebuilding Assessment Tool for Heritage Recovery and Rehabilitation (2021)<sup>35</sup> centres on four stages: the conflict context, heritage in conflict, mapping

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33. See Report A/71/317, para. 54 citing the case of *Prosecutor v. Ahmad Al Faqi Al Mahdi* (2016) – having deliberately directed the attacks that led to the destruction of ten religious and historical monuments in Timbuktu (Mali), a World Heritage site since 1988: [www.icc-cpi.int/mali/al-mahdi](http://www.icc-cpi.int/mali/al-mahdi).

34. See case of *Sargsyan v. Azerbaijan* (2015). This concerned Azerbaijan's failure to take measures to secure property rights (in relation to the cultural and religious attachment to relatives' graves) of an Armenian citizen displaced in the context of the Nagorno-Karabakh conflict: The European Court of Human Rights ruled in favour of the applicant, confirming that the Azerbaijani Government had failed to assist him to have his property rights restored and/or to obtain compensation and awarded €5 000 for damages and €30 000 in costs and expenses. See <https://hudoc.echr.coe.int/fre?i=002-10620>.

35. The Warsaw Recommendation was developed at an international conference on reconstruction held in Warsaw, Poland, 6-8 May, 2018: <https://whc.unesco.org/en/news/1826>. For ICCROM's PATH tool, see [www.iccrom.org/news/path-tool-directing-heritage-recovery-sustainable-peace](http://www.iccrom.org/news/path-tool-directing-heritage-recovery-sustainable-peace).

stakeholders and peacebuilding, as well as risk management for heritage recovery. However, the ILA has found that these initiatives require additional theorising and consideration in terms of international law, particularly as, without proper safeguards, they may hinder the reconciliation process.

64. The use of remembrance policies and memorials should be an essential part of reconciliation, post-conflict reconstruction and transitional justice. It allows for a ‘multi-perspective approach’: overcoming denials that fuel hatred, providing symbols for reparation and public recognition of victims in conflict, developing reconciliation policies between opposing groups and educational policies to assist in preventing further conflict, redefining national identity through policies on pluralism to acknowledge different communities, and encouraging civic engagement and democratic citizenship.<sup>36</sup> The memorialisation dimension of recovery is important for helping people overcome the traumatic events of conflict, including the destruction of their cultural heritage, providing a shared narrative of those events that led to destruction, which can assist in fostering mutual recognition, social cohesion and reconciliation. It can take many forms, such as reconstructed heritage becoming places of commemoration. Intangible heritage can be useful in changing discourse and perceptions, using history teaching in formal and informal education, archives and oral history projects reflecting personal histories, publications and “memory walks” to address past mastering. In establishing memorialisation policy, it is useful to draw on other experiences such as the “Mapping Inclusive Memory Initiatives in the Western Balkans” (2020) and the “Kosovo Memory” (2017) projects, as well as the work of the International Coalition of Sites of Conscience worldwide network covering over 350 sites.

65. However, memorialisation can be fraught with problems, as exemplified by the situation in Bosnia and Herzegovina where competing narratives, historical accounts and antagonistic memorialisation have been used to affirm and legitimise the respective identities of different groups.<sup>37</sup> Initiatives that involve memorials and “new heritage” can carry a risk of politicisation. Dominant narratives must be balanced with the need to heal, as well as to commemorate.

66. The human rights approach should focus on education on the importance of cultural heritage and cultural rights and teaching of history that stresses its complexity, particularly in post-conflict situations and especially for young people,<sup>38</sup> but also in other circumstances such as in relation to Belarus. This has significance in the context of the coercive educational policies under Russian occupation and influence (educating Ukrainian and Belarussian youth in the Russian language, reinterpreting Ukrainian and Belarussian history as Russian, militarisation of education to eradicate Ukrainian identity through the *Yunarmia*,<sup>39</sup> etc.), which have an impact on the younger generations’ connection with its cultural heritage. Action could include the development of local networks (civil society organisations, local communities and religious associations) for awareness-raising, promoting peacebuilding efforts around cultural heritage and truth and reconciliation processes for all stakeholders, and educational programmes on cultural rights for all.

67. Digital technologies and mass media (including social media) have been used by Russian propaganda as a means of disinformation.<sup>40</sup> However, in the right context, mass media can be a positive tool for education (involving history teachers, curriculum planners, designers of teaching material and media professionals), enable critical analysis of the origin and content of images and also contribute to the assessment of damage and oppression. For example, monitoring and recording of damage done to cultural sites and educational institutions all over Ukraine are being continually updated by UNESCO,<sup>41</sup> using a cultural heritage monitoring platform to geo-reference and visualise the results, with staff on-the-ground verifying satellite and media reports. The CISS<sup>42</sup> NGO for Crimea (based in Kyiv) involving academics and heritage professionals uses

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36. Shaheed, F. (2014), “Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: memorialization processes” (UN Doc A/HRC/25/49), 23 January 2014. Available at: <https://digitallibrary.un.org/record/766862?ln=en>. See also expert report: Bivar Black, L., “The role of sites of remembrance: places of commemoration and education for democratic citizenship”, Assembly Committee on Culture, Science, Education and Media, 14 March 2023, AS/Cult/Inf(2023)02.

37. For example, the social impact of reconstructing the Mostar bridge is less convincing: the ITCY found that the ethnic importance of the bridge was part of a dominant narrative developed mostly after the conflict despite UNESCO’s view that it has been “a symbol of reconciliation”: see [www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2023\)733120](http://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2023)733120).

38. Recommendation CM/Rec(2011)6 of the Committee of Ministers to member states on intercultural dialogue and the image of the other in history teaching stresses the process of rebuilding confidence and relearning how to “live together” in post-conflict situations, as well as methods and educational approaches.

39. The “Youth Army” is regarded as the most radical aspect of Russia’s distortion of education and culture in Crimea.

40. The occupation regime in Ukrainian territories was immediately followed by capturing of Ukrainian radio and television stations, newspapers and cultural institutions and their coercion to use the Russian language instead of Ukrainian.

41. In partnership with UNOSAT, the UN satellite centre that is part of UNITAR (United Nations Institute for Training and Research). See [www.unesco.org/en/ukraine-war/damages-and-victims?hub=66116](http://www.unesco.org/en/ukraine-war/damages-and-victims?hub=66116).

satellite technology to record sites and monitors Russian databases for movable heritage that has been transferred, including by web interfaces. The SUCHO initiative<sup>43</sup> was launched in 2022 to safeguard the digital cultural heritage of Ukraine at risk of destruction (including photographs and other files stored on servers) with the assistance of local volunteers. Independent monitoring and investigation of attacks on cultural heritage, in all its forms, assist in providing accountability, as well as post-conflict reconstruction and peacebuilding efforts.

68. Ukraine is becoming a test ground for new ideas and tools. However, there are many different media and digital systems in operation, with different information from different sources. There is therefore a need for more co-ordination and commonality in terms of centralised data collection and presentation to assist with the management of this information. The Council of Europe's call for international partners to co-operate with the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine<sup>44</sup> may be a means to co-ordinate such action. However, whilst cultural and religious heritage is identified in this process, the remit is wider including the environment, civilian infrastructure and attacks against civilian objects in a wider sense. Apart from retaining a specific focus on cultural heritage, among all the vast damage, it is also important that the Register and all other similar initiatives apply to the whole scope of Russia's aggression since 2014 and not just since the full-scale invasion.

69. Finally, there is a need to raise awareness among, train, and involve military personnel regarding the issues relevant to the implementation of the Hague Convention and the requirements of its Second Protocol governing the protection of cultural heritage during armed conflict. Also, other actors must be given material and technical assistance: from heritage professionals to ordinary people, who act as defenders of cultural heritage, providing evidence of damage on the ground, securing collections and maintaining cultural memory for their communities, often in difficult and threatening circumstances. From a human rights perspective, they should be supported through the provision of safe locations and, if necessary, political asylum.

## 5. Conclusions

70. Cultural erasure and the intentional destruction of heritage can amount to war crimes, crimes against humanity and solidify evidence of genocidal intent. The ICC may prosecute encroachments on cultural heritage and, indeed, prioritises them. However, amid the persistent lack of resources, the ICC might prioritise other, even more devastating crimes, which implicate directly the high-level commanders. Establishing an international tribunal such as the International Criminal Tribunal for the former Yugoslavia (ICTY) requires consensus which may be difficult to reach. Ukraine is realistic in its demands and seeks the establishment of a special tribunal with respect to just one crime, which is not covered by the jurisdiction of existing courts – the crime of aggression. Therefore, from a criminal justice perspective, there are two main avenues to address violations affecting cultural heritage committed in Russia's aggression: in Ukraine's domestic courts and in foreign domestic courts, pursuant to the principle of universal jurisdiction.<sup>45</sup>

71. The procedure of opening investigations under the principle of universal jurisdiction differs in every State. Some States have so-called "absolute universal jurisdiction" which allows them to investigate a case against a person regardless of their nationality, the nationality of the victim, the location where the offence was committed, or the location of the suspect, because it is so egregious and poses a threat to the international rule-based order as a whole. To launch investigations into cultural heritage violations under absolute universal jurisdiction, States need to have such violations criminalised in their domestic legislation in the first place. This underscores the importance for States to ratify international conventions including the 1954 Hague Convention and its two Protocols, to implement their provisions in domestic criminal law and to have the means to undertake prosecutions domestically. However, as of February 2023, only 28 States had absolute universal jurisdiction.<sup>46</sup> Most States maintain certain requirements, such as nationality or residency of a victim and/or perpetrator, in order to prosecute. This means that prosecutions can only start when a perpetrator is present in that country and is a national or legal resident. It is important that States amend their existing domestic legislation to enable swift and effective jurisdiction over all international crimes.<sup>47</sup>

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42. CISS: <https://svidomi.in.ua/en/page/crimean-institute-for-strategic-studies-documents-534-russian-crimes-against-cultural-heritage-sites>.

43. Saving Ukrainian Cultural Heritage Online: [www.europeanheritageawards.eu/winners/saving-ukrainian-cultural-heritage-online-sucho/](http://www.europeanheritageawards.eu/winners/saving-ukrainian-cultural-heritage-online-sucho/).

44. Resolution [CM/Res\(2023\)3](#) establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, 16 May 2023.

45. [A/HRC/52/CRP.4](#), op. cit., para. 863.

46. For the country-specific conditions for launching universal jurisdiction proceedings and issues relating to "absolute universal jurisdiction", see report published by the Clooney Foundation for Justice, "[Justice Beyond Borders: A Global Mapping Tool](#)", 6 February 2023.

72. Further guidance is also needed regarding the interpretation of the term “imperative military necessity” (Article 6 of the Second Protocol). While the destruction of cultural heritage may be necessary to achieve a legitimate military purpose, the “imperative” necessity requires consideration of “proportionality” which different courts may interpret in different ways. In addition, the requirement not to alter or change the use of cultural property (such as in the case of Khan's Palace in Bakhchisaray and the ancient site at Chersonese) may need re-examination to better consider the impact such an action can have in terms of “cultural erasure”.

73. In general terms, the international legal framework concerning cultural heritage in armed conflict remains fragmented, has overlaps and gaps including in relation to new types of warfare and particularly concerning the safeguarding of cultural heritage after conflict. This includes how the reconstruction process should be conducted, the safeguarding of intangible heritage, the responsibility of State actors and the role of non-State actors. Lessons from the post-war in Western Balkans indicate that the lack of proper safeguards and accepted guidelines to shape approaches, can lead to inappropriate actions or hinder reconciliation.

74. International and European heritage conventions have a part to play, but this also requires States to ratify them and co-ordinate the means to take action including with other States, such as cross-border controls and involvement of international agencies in the case of illicit trafficking of cultural objects. Raising awareness of looted objects, standards for trade and creating safe havens for collections can mitigate risks.

75. There is a need for further ratifications of some conventions, more enhanced global co-operation and concrete measures including through continued work to develop the synergies between the Hague Convention and other conventions covering related fields in the sphere of armed conflict and cultural heritage. In the meantime, there is a need to raise awareness in the art market, for example through the Red Lists developed by ICOM, which launched an Emergency Red List of Cultural Objects at Risk for Ukraine (November 2022), in co-operation with 11 museums, to help protect Ukraine's endangered cultural objects.<sup>48</sup>

76. Independent monitoring of damage/destruction of heritage is important, but efforts by different agencies should be co-ordinated centrally. Registers of damage should focus more directly on cultural heritage at risk, as well as on the wider aspects of damage or destruction. All types of inventories and records should be digitalised to aid cultural heritage management for safeguarding immovable, movable and intangible heritage and particularly to address emergencies. Cultural heritage “defenders” must be fully supported. Additionally, monitoring is needed for accountability purposes in relation to heritage-related crimes to help prepare forms of justice, either through criminal prosecutions or other forms of transitional justice.<sup>49</sup>

77. The intentional destruction of cultural heritage and prevention of access to heritage can amount to a violation of human/cultural rights. The human rights approach goes beyond preserving and safeguarding heritage and has a key role to play in transitional justice and reconciliation in terms of specific legal obligations for respecting and protecting cultural heritage in times of war and for all groups and communities, including the prohibition of discrimination based on cultural identity.<sup>50</sup> The living connections between tangible and intangible heritage must be interrelated in this context.

78. Transitional justice requires broader considerations for truth seeking, institutional reform, memorialisation, and reparations, including guarantees of non-repetition, which can be regarded as a category independent from reparation, focusing on prevention rather than redress. Such guarantees could include relevant actions to prevent the recurrence of violations concerning the erasure of cultural identity and destruction of cultural heritage. This could include, for example, the protection of cultural heritage defenders, promoting mechanisms for preventing social conflict based on identity and reviewing and reforming laws contributing to violations of international human rights law and international humanitarian law regarding access to and protection of cultural heritage.<sup>51</sup>

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47. See, for example: Clooney Foundation for Justice and REDRESS, “Global Britain, Global Justice: Strengthening accountability for international crimes in England and Wales”, 31 October 2023.

48. Red Lists can assist individuals, organisations and authorities, such as police or customs officials, identify objects at risk and prevent them from being illegally sold or exported. See <https://icom.museum/en/news/launch-icom-red-list-ukraine/>.

49. A Joint Investigation Team into alleged core international crimes committed in Ukraine was set up in March 2022 and comprises Ukraine and six other European States, the ICC and Europol. A Core International Crimes Evidence Database (CICED) was created in February 2023, and in March 2023 a Memorandum of Understanding was signed between the Member States with the United States Department of Justice to enhance co-ordination between their respective investigations into the war in Ukraine: [www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine](http://www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine).

50. See *Committee on Economic, Social and Cultural Rights, General Comment No. 21, para. 50*.

51. *A/HRC/52/CRP.4*, op. cit., para. 955, referring to UN General Assembly Resolution “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, *A/RES/60/147*, 16 December 2005, para. 19-23.

79. Community participation is also all important in the decision-making processes of the recovery and reconstruction phase. Memorialisation has a role to play in fostering mutual recognition and reconciliation, so long as the process does not become politicised and one-sided. Education and awareness raising, including the use of media and digital technology, are essential for ensuring that the right messages are delivered, especially to the younger generation. The Council of Europe's education programme working towards trust building and reconciliation in Bosnia and Herzegovina, aimed at enhancing common understanding, capacity building and awareness raising, may provide a useful example in this respect.<sup>52</sup>

80. A revival of institutional capacity in culture, heritage and education is necessary to implement heritage management, reconstruction and post-conflict reconciliation actions including the management of reconstruction processes and funding provided by external agencies and donors. This will have to be supported by a clear strategy to promote the post-conflict recovery of cultural heritage in the framework of Ukraine's National Recovery Plan (2022), priority action 14.

81. Finally, it should be stated that the apparent main goal of the Vladimir Putin's regime in Ukraine and Belarus is the colonisation and formation of a single neo-imperialistic space. In Ukraine, this is being achieved through military operations and forced Russification in the occupied territories. In Belarus, colonisation is taking place with the support and consent of the Belarusian regime that suppresses any manifestations of civil freedom. The erasing of Ukrainian and Belarusian identities and the widening of the borders of the "Russian World", pose a constant threat to neighbours, and in turn, may threaten the stability of Europe as a whole.

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52. See [www.coe.int/en/web/sarajevo/quality-education-for-all](http://www.coe.int/en/web/sarajevo/quality-education-for-all).

## Appendix – Challenges to relevant international legal instruments

### 1. War crimes, crimes against humanity and genocide

1. The Russian Federation sought to justify the war of aggression against Ukraine with a “genocide narrative”, arguing that threats to, and the destruction of, Russian heritage and identity have been used to undermine Russian security and prosperity. Ukraine was thus allegedly committing genocide against its people with Russian identity in Ukraine. In this sense, Russia has misappropriated the genocide argument, particularly as its accusation of genocide appears to be based on notions of cultural genocide (eradication of language, culture and intangible heritage), which were excluded from Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

2. Ukraine has strongly rejected this genocide argument and instituted actions in 2022 and 2023 before the International Court of Justice (ICJ), stating that Russia’s claims were fallacious, in bad faith and contrary to the object and humanitarian purpose of the Genocide Convention. Moreover, the Russian Federation was committing genocide by the forced removal of children from the eastern oblasts to Russia since the invasion in 2022, thus destroying the heritage and identity of a group by denying them to future generations through assimilation and homogenisation.<sup>53</sup> On 20 September 2023, 32 States which intervened in support of Ukraine agreed to be bound by the ICJ’s disputes settlement clause. Connected with this is the action by Ukraine concerning cultural erasure through the racial discrimination against Crimean Tatars since 2014.

3. On 31 January 2024, the ICJ ruled that limiting school classes in the Ukrainian language in Crimea, which was illegally annexed by Russia in March 2014, was a violation of the 1969 International Convention on the Elimination of Racial Discrimination. However, the court dismissed the assertion that Russia was trying to erase the culture of the ethnic Crimean Tatar minority in Crimea, including by banning the Mejlis, a body representing Crimean Tatars. The ruling – strongly criticised for its narrow approach – said Ukraine had not proven that the ban on the Mejlis was an example of racial discrimination. Even so, the ICJ had already ordered Russia to lift the ban on the body in 2017, a ruling ignored by Russia and the court again found Russia to be in breach of this order. Despite the limited judgment, the ruling is important because it found that Russia had violated international law, in the context of the said convention.<sup>54</sup>

4. On 2 February 2024, the ICJ ruled that parts of Ukraine’s genocide case against Russia could move forward: the judges said they would allow Ukraine’s request for the court to rule that there was no “credible evidence that Ukraine is committing genocide in violation of the Genocide Convention” in eastern Ukraine. However, the ICJ stated that it did not have jurisdiction to rule on whether Russia’s invasion violated the Genocide Convention, or on whether Russia’s recognition of the Donetsk and Luhansk regions amounted to a breach of the convention. A final legal binding judgment on this matter is unlikely to be decided in the short term.<sup>55</sup>

5. Proposals have been made for Ukraine to expand its claims under the Genocide Convention, to allege the targeting of Ukrainians as a national group, including by means of child deportations and indoctrination. Adjacent arguments on the denial of Ukrainian identity could be reinforced by the evidence of attacks on the cultural heritage of Ukraine.<sup>56</sup> In relation to Bosnia and Herzegovina, the ICTY confirmed heritage destruction as a relevant indicator when establishing a *mens rea* for genocide, and that evidence of intent<sup>57</sup> to destroy “the group” included the deliberate destruction of mosques and houses belonging to members of the group. This is an important acknowledgement that protection of heritage is a humanitarian issue.<sup>58</sup>

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53. Yale Law School, “Professor Koh asks International Court of Justice to decide Ukraine’s suit against Russia”, 27 September 2023. The forced transferring of children of the group to another group is a specific factor mentioned in Article II of the Genocide Convention. The latter is also prohibited under Article 49(1) of the Geneva Convention IV of 1949 and its status as a war crime is reflected in Article 8 of the Rome Statute.

54. Application of the international convention for the suppression of the financing of terrorism and of the international convention on the elimination of all forms of racial discrimination (Ukraine v. Russian Federation), 31 January 2024 judgment: [www.icj-cij.org/sites/default/files/case-related/166/166-20240131-jud-01-00-en.pdf](http://www.icj-cij.org/sites/default/files/case-related/166/166-20240131-jud-01-00-en.pdf). See also: “Russia Ukraine war: ICJ finds Moscow violated terrorism and anti-discrimination treaties”.

55. Allegations of Genocide under the convention on the prevention and punishment of the crime of genocide (Ukraine v. Russian Federation: 32 States intervening), 2 February 2024, Judgment: [www.icj-cij.org/sites/default/files/case-related/182/182-20240202-jud-01-00-en.pdf](http://www.icj-cij.org/sites/default/files/case-related/182/182-20240202-jud-01-00-en.pdf). See also: “ICJ rules that it will hear part of Ukraine-Russia genocide case”. *Al Jazeera*, 2 February 2024.

56. Under Article III of the Genocide Convention and Article 25(3)(e) of the Rome Statute.

57. The issue of genocide, and an intent to commit genocide, must be distinguished.

6. The International Criminal Court (ICC) has jurisdiction with respect to Ukraine.<sup>59</sup> It may prosecute war crimes, crimes against humanity and genocide allegedly perpetrated amid Russia's aggression against Ukraine and analyse the cultural heritage underpinnings of such alleged crimes. The analysis of cultural heritage issues within the crime of aggression is more problematic because currently the ICC has no jurisdiction over this crime in the Russia-Ukraine situation.<sup>60</sup> Some experts and, indeed, President Zelensky, have called for the establishment of an *ad hoc* tribunal or hybrid court for Ukraine with jurisdiction to try the crimes of aggression. For this, a larger international consensus is being pursued. The Core Group on the establishment of the Special Tribunal for the Crime of Aggression against Ukraine (Core Group) was created and functions as a platform where representatives of States and international organisations discuss various legal issues related to the establishment of the special tribunal.<sup>61</sup> As of November 2023, the Core Group consisted of 40 States.<sup>62</sup> The Committee on Legal Affairs and Human Rights of the Assembly is also calling for the establishment of a special tribunal in its report adopted on 21 May 2024 entitled "Legal and human rights aspects of the Russian Federation's aggression against Ukraine" (Doc. 15998).

## 2. Limitations of existing legal mechanisms for heritage protection in armed conflict

1. Assembly [Resolution 2057 \(2015\)](#) "Cultural heritage in crisis and post-crisis situations" recommended reviewing and strengthening the provisions of the existing international legal framework concerning cultural heritage in times of armed conflict and legally consolidating the notion that targeted actions against heritage resources can be considered a crime against humanity. In this respect, progress has been slow, but has been galvanised by the current armed conflict in Ukraine. Various documents have highlighted that the protection of cultural heritage in armed conflict has a solid base in international law through international humanitarian law and also human rights law, cultural heritage law and criminal law.<sup>63</sup> However, the legal framework remains fragmented and has gaps, and there is a need for the reconceptualisation of mechanisms, tools and instruments to protect cultural heritage.

2. With the rise of non-State actors such as Daesh, the international community has become increasingly accustomed to armed conflicts between a State and armed groups. Russia's aggression against Ukraine, starting with the occupation of Crimea, is a classic inter-state armed conflict of conquest and subjugation. The international community should be aware of this return to inter-state wars and to the additional challenges they bring to heritage protection.

3. The key issues with contemporary international legal framework on cultural property can be indicated as follows:

4. A specific protection regime governs the protection of cultural heritage in times of armed conflict. Core standards include the Geneva Convention of 1949 and its 1977 Additional Protocols, the 1954 Hague Convention and its Protocols of 1954 and 1999, and the Rome Statute of the International Criminal Court (1998).

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58. It was found that where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, and such attacks may legitimately be considered as evidence of an intent to physically destroy the group under the Genocide Convention.

59. Whilst not a State Party to the ICC, Ukraine accepts the ICC's jurisdiction under Article 12(3) of the Rome Statute.

60. Rome Statute of the International Criminal Court, Rome, 17 July 1998, United Nations Treaty Series, vol. 2187, No. 38544. The ICC can bring a prosecution against political leaders for "waging aggressive war". However, to prosecute aggression at the ICC, both the victim and the aggressor States, namely both Ukraine and Russia, have to be bound not only by the Rome Statute, but also by its Kampala Amendments specifically addressing the crime of aggression. As of November 2023, this is not the case neither for Ukraine nor for Russia.

61. Ministry of Foreign Affairs of Ukraine, "Joint statement on efforts to establish a tribunal on the crime of aggression against Ukraine", 9 May 2023", <https://mfa.gov.ua/en/news/spilna-zayava-stosovno-zusil-zi-stvorennya-tribunalu-shchodo-zlochynu-agresiyi-proti-ukrayini>.

62. Data provided by Anton Korynevych, Ambassador at Large of the Ministry of Foreign Affairs of Ukraine and Ukraine's agent in the ICJ.

63. UNHCR (second Special Rapporteur: Karima Bennouna) Report A/71/317. This was preceded by the thematic report of the first Special Rapporteur on cultural rights (Farida Shaheed) in 2011 (Report A/HRC/17/38) which concluded that the right of access to and enjoyment of cultural heritage forms part of international human rights law. The Faro Convention was cited in this respect. See [www.ohchr.org/en/special-procedures/sr-cultural-rights/cultural-rights-approach-heritage](http://www.ohchr.org/en/special-procedures/sr-cultural-rights/cultural-rights-approach-heritage). See also: European Parliament study on "Protecting cultural heritage from armed conflicts in Ukraine and beyond" (March 2023), and the ILA proposal for the establishment of a committee on "Safeguarding Cultural Heritage in All Stages of Armed Conflict" (April 2023). Other key reference points are taken from: Proceedings of the UNESCO International Conference on the 20th anniversary of the 1999 Second Protocol of the 1954 Hague Convention: Protecting Cultural Property, Geneva, 2020 (the Geneva Conference) and Hauser, K. and Drazewska, B. "How does international law protect Ukrainian cultural heritage in war?" (10 March 2022).



5. The Hague Convention emphasised the protection of cultural property, preparing in times of peace for its safeguarding, undertaking to protect it from exposure to destruction or damage during armed conflict, obligations which may only be waived in the event of “military necessity” (Article 4). This term was redefined and strengthened by Article 6 of the Second Protocol (1999) requiring a waiver of “imperative military necessity” where there is no military alternative and imposes standards of proportionality to prevent or minimise collateral damage. While Ukraine is Party to PII, Russia is not. Even so, this enhanced term should be applicable to both parties since it is regarded as informing the convention, not adding to it. Thus, an act of hostility against Ukrainian cultural property would be treated as unlawful unless conducted in accordance with Article 6 of the PII. In general terms, a crime will occur where there has been deliberate or reckless action (*mens rea*) to destroy or damage protected cultural property in the full knowledge of doing so. For example, regarding the bombing of Dubrovnik, inscribed on the World Heritage List, the ICTY found that the Hague Convention emblem (“Blue Shield”) was manifestly visible at the time.<sup>64</sup>

6. Irrespective of the limited number of ratifications of the PII (now 88 States), this conclusion is warranted under customary international humanitarian law, demonstrated by the UNESCO Protection of Cultural Property Military Manual (2016) and the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage.<sup>65</sup> However, the notion of military necessity remains nebulous, is liable to competing interpretations and can be contested. It remains an elusive concept for commanders in the field of war, as well as a challenge for prosecutors and judges in the context of prosecution. This can be evidenced by a dissenting opinion in the Appeals Chamber of the ICTY in the case of the destruction of the Mostar Bridge, on the basis that the principles of proportionality and precaution concerning military necessity, required by the PII, were not sufficiently considered.<sup>66</sup>

7. The waiver of “imperative military necessity” may not be invoked for cultural property placed under enhanced protection (of greatest importance for humanity, domestically protected and declared not used for military purposes or to shield military sites) found in Article 10 of PII. Using cultural property under enhanced protection in support of military action is a “serious violation”. Since 7 September 2023, 20 cultural properties in Ukraine were granted provisional enhanced protection, affording the highest level of protection from military attack.<sup>67</sup>

8. Article 16 of PII provides for “universal jurisdiction”, (namely States can prosecute or extradite alleged perpetrators regardless of their nationality and where the offence is committed), in relation to property with enhanced protection subject to military action and in general terms for cultural property protected by PII. It obliges Parties to adopt appropriate legislation to make these serious violations criminal offences under national law. The ICC has opened an investigation into Ukraine. As a court of last resort, it will proceed with a case only if other States having jurisdiction are unable or unwilling to investigate. Despite the challenges of the ongoing aggression, Ukraine’s criminal justice system is functioning and active in documentation, investigation and prosecution of conflict-related crimes. However, the sheer amount of these crimes would be overwhelming for any country, rendering it unable to effectively prosecute them all in a timely manner.<sup>68</sup> Therefore, nothing prevents the ICC from proceeding with the investigation of crimes under its jurisdiction that are allegedly perpetrated in Ukraine, including those affecting cultural heritage.

9. The Geneva Convention of 1949 does not contain rules protecting cultural heritage specifically, apart from in Article 53 (and Article 85 concerning related breaches) of the Additional Protocol 1 (AP1) of 1977,<sup>69</sup> but also considers “grave breaches” including the “extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”, for which the matter must also be prosecuted according to universal jurisdiction. Article 85(4)(d) of AP1 was the only international criminal law

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64. Vrdoljak, A.F., “The Criminalisation of the Intentional Destruction of Cultural Heritage”, University of Sydney, 2016, p. 8-11. World Heritage status and the Blue Shield emblem can be taken into consideration in determining whether there is knowledge by a perpetrator and may prevent unintended damage and deter unlawful targeting of cultural property during an armed conflict. However, the decision to mark cultural property must be carefully assessed as it may transform it into a target.

65. See n.10 above (Military Manual) and <https://en.unesco.org/about-us/legal-affairs/unesco-declaration-concerning-intentional-destruction-cultural-heritage>.

66. Pocar, F. “Cultural property and military necessity under the 1999 Second Protocol”, Geneva Conference, op. cit., p. 101-103. The principle of proportionality means that even when a waiver of imperative military may be invoked, precautions must be taken to avoid disproportionate attack. See also interview with David Shaffer, *The Times*, 4 November 2023.

67. UNESCO press release 7 September 2023: [www.unesco.org/en/articles/ukraine-20-cultural-properties-receive-enhanced-protection-unescos-second-protocol-1954-hague](http://www.unesco.org/en/articles/ukraine-20-cultural-properties-receive-enhanced-protection-unescos-second-protocol-1954-hague).

68. As of 24 April 2024, Ukraine’s Office of the Prosecutor General had 130 722 crimes of aggression -and war crimes-related proceedings: [www.gp.gov.ua/](http://www.gp.gov.ua/).

provision- dealing with cultural property prior to the adoption of the Rome Statute in 1998 and PII in 1999, but remains limited in scope. In fact, Article 15 of PII is more extensive than Article 8 of the Rome Statute in distinguishing offences dealing with acts directed at cultural property that do not require military action and that need not occur in the course of hostilities (including theft, pillage or misappropriation of, or acts of vandalism directed against cultural property). It has been argued that Article 15 of PII provides an authoritative template for amendments to the Rome Statute in order to make the protection of cultural property during armed conflict watertight.

10. Combating looting, smuggling and illicit trafficking of cultural objects in times of war is important both from the viewpoint of violations of cultural rights, money laundering and financing of terrorism, and the need for co-operation in restoring looted or trafficked cultural properties to their place of origin. Article 1 of the First Protocol to the Hague Convention (to which Russia is a Party) prohibits exportation of cultural objects during armed conflict, while Articles 7 to 9 of the PII consider precautionary measures during armed conflict and the protection of cultural property in occupied territory including archaeological artefacts. However, there is a plethora of other international legal regimes in this field including criminal law frameworks.<sup>70</sup>

11. A related factor is the role of non-State actors (for example mercenary groups) which is considered in the context of Article 19 of the Hague Convention, Article 8 of the Rome Statute and the Geneva Convention's Additional Protocol II (APII). APII prohibits hostility against historic monuments, works of art or places of worship constituting the cultural or spiritual heritage of peoples.<sup>71</sup> However, the rules governing the involvement of non-State actors are not clear: robust use of standards or other strategies for holding them to account may be required.

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69. Both Russia (since 29 September 1989) and Ukraine (since 25 January 1990) are States Party to Additional Protocol I. Without prejudice to the Hague Convention, Article 53 refers to acts of hostility against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, the use of such objects in support of military effort (for example as barracks) and the making of such objects the object of reprisals.

70. For example, there are synergies between the Second Protocol and the UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (Paris, 1970), established in light of UN Security Council Resolutions 2199 (2015) and 2253 (2015) for raising awareness of the need to protect movable cultural property in conflict areas or deriving from armed conflict areas. Work is ongoing to develop synergies with other UNESCO conventions, see [https://unesdoc.unesco.org/ark:/48223/pf0000379955\\_eng](https://unesdoc.unesco.org/ark:/48223/pf0000379955_eng). Also relevant are the UNDRIT Convention on Stolen and Illegally Exported Cultural Objects (Rome, 1995) which has a relatively low number of ratifications, various European Commission and EU regulations and the EU Action Plan against Trafficking in Cultural Goods (adopted on 13 December 2022), and the Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221, Nicosia, 2017) which was drafted bearing in mind UN Security Council resolutions and the Hague Convention, but has only been ratified by six countries. See further: Assembly Report Doc. 14566 (2018) "Deliberate destruction and illegal trafficking of cultural heritage".

71. UNHCR Report A/71/317, op. cit., para. 25.