

STUDY

Requested by the CULT Committee



Protecting cultural heritage from armed conflicts in Ukraine and beyond



Culture and Education



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Protecting cultural heritage from armed conflicts in Ukraine and beyond

Abstract

This study examines how cultural heritage can be better protected from the effects of armed conflicts, in Ukraine and beyond. It includes an analysis of the applicable international law and policy frameworks and the practice of key international actors in Ukraine, as well as in past conflicts. It concludes with a set of specific recommendations to the EU and its Member States to strengthen the protection of cultural heritage from the effects of armed conflicts, now and in the future.

This document was requested by the European Parliament's Committee on Culture and Education.

AUTHORS

Dr. Evelien CAMPFENS (Leiden University), Dr. Andrzej JAKUBOWSKI (University of Opole), Kristin HAUSLER (British Institute of International and Comparative Law), Dr. Elke SELTER (British Institute of International and Comparative Law)

With a contribution of: Dr. Kateryna BUSOL (National University of Kyiv Mohyla Academy), Elmira ABLYALIMOVA-CHYIHOZ (Crimean Institute for Strategic Studies), Dr. Dmytro KOVAL (Truth Hounds), Dr. Denys YASHNYI (National Preserve Kyiv-Pechersk Lavra) [Annex 1]

Project leader: Dr. Evelien CAMPFENS

Research administrator: Kristiina MILT

Project, publication and communication assistance: Anna DEMBEK, Kinga OSTAŃSKA, Stéphanie DUPONT, Olivier RENARD (trainee)

Policy Department for Structural and Cohesion Policies, European Parliament

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LIST OF ABBREVIATIONS

ALIPH	International Alliance for the Protection of Heritage in Conflict Areas
BS(I)	Blue Shield (International)
CER	Cultural Emergency Response
CFREU	Charter of Fundamental Rights of the EU
CoE	Council of Europe
CULT	Committee on Culture and Education
DG ECHO	Directorate General for European Civil Protection and Humanitarian Aid Operations
DG TAXUD	Directorate-General for Taxation and Customs Union
EC	European Commission
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EEA	European Economic Area
EEAS	European External Action Service
EP	European Parliament
EPPO	European Public Prosecutor's Office
EU	European Union
EUMM	EU Monitoring Mission
FPI	Foreign Policy Instruments
GCER	Global Cluster for Early Recovery
HERI	Heritage Emergency Response Initiative
ICCROM	International Centre for the Study of the Preservation and Restoration of Cultural Property
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICOM	International Council of Museums
ICOMOS	International Council on Monuments and Sites
ICTY	International Criminal Tribunal for the former Yugoslavia
IFLA	International Federation of Library Associations and Institutions

IHL	International Humanitarian Law
MINUSMA	United Nations Multidimensional Integrated Stabilisation Mission in Mali
NDICI	Neighbourhood, Development and International Cooperation Instrument
OSCE	Organisation for Security and Co-operation in Europe
PROCULTHER	Protecting Cultural Heritage from the Consequences of Disasters
SCRI	Smithsonian Cultural Rescue Initiative
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UCPM	Union Civil Protection Mechanism
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDROIT	International Institute for the Unification of Private Law
UNISDR	United Nations Office for Disaster Risk Reduction
UNITAR	United Nations Institute for Training and Research
UNOSAT	United Nations Satellite Centre
WCO	World Customs Organisation

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EXECUTIVE SUMMARY

This study examines how cultural heritage can be better protected from the effects of armed conflicts, in Ukraine and beyond. It includes an analysis of the applicable international law and policy frameworks and the practice of key international actors in Ukraine, as well as in past conflicts. It concludes with a set of recommendations to the EU and its Member States to strengthen the protection of cultural heritage from the effects of armed conflicts, now and in the future.

Key findings

- **Cultural heritage is often targeted and may even be at the centre of armed conflicts.** Cultural heritage includes tangible cultural heritage - such as sites, monuments and cultural objects - and intangible heritage - such as traditions and customs. In armed conflicts, cultural heritage may be damaged or destroyed as collateral damage and/or because it is targeted for military reasons. As cultural heritage is an element of cultural identity, it may also be directly targeted for ideological reasons as can be witnessed in Ukraine. Breakdowns in the rule of law during armed conflicts also often lead to looting for economic gain.
- **Cultural heritage protection is key to peace, security and the sustainable development of societies.** Threats to cultural heritage endanger the key values of the EU, as well as its legal order, security and external relations, even if those threats arise from conflicts beyond EU borders. The war in Ukraine poses specific and new challenges to the EU, and thus a reconceptualisation is needed of the mechanisms, tools and instruments to protect cultural heritage.
- **The protection of cultural heritage in armed conflict has a solid basis in international law. It is covered by international humanitarian law, but also human rights law, cultural heritage law and criminal law.** The EU and its Member States are required to protect cultural heritage in armed conflict and to prosecute certain crimes against cultural heritage. This results from a complex regulatory matrix stemming from: the international obligations of the EU and its Member States; regional treaty law; instruments and measures established by the EU; and domestic law. However, the legal framework is fragmented and has gaps.
- **International initiatives to protect cultural heritage in Ukraine are numerous, and many actors are involved with overlapping mandates.** These initiatives focus on: monitoring of damages; emergency relief measures; training of heritage professionals; digitisation of inventories and archives; and support of the cultural sector. The multiplicity of actors, in combination with insufficient coordination and standards, carries the risk of duplication; whereas some needs may remain uncovered. Even at the EU level many actors are involved, which creates a challenge to a coherent EU policy.
- **Projects to safeguard or restore conflict-affected cultural heritage have major social impacts, and participation of local communities is key to their success.** Cultural heritage may be used in conflict narratives and thus can fuel conflicts. This may be the case when cultural heritage is claimed as exclusive (national) heritage by a certain party in a conflict. At present there is insufficient independent monitoring of attacks against cultural heritage at all stages of a conflict. In post-conflict recovery projects, memorialisation is of great importance; and when local communities are not fully integrated, the project is likely to have less impact on reconciliation.

Solutions

States should have measures in place before a conflict breaks out.

Such measures include: (1) the preparation of inventories; (2) the preparation of plans for the removal of collections (to refuges or safe havens); (3) the planning of emergency measures for protection against fire or structural damage. Apart from measures regarding *local* cultural heritage, measures must also be taken to safeguard *foreign* cultural heritage. These include: (4) the training of armed forces and law enforcement on cultural heritage protection; (5) regulating the possible prosecution of crimes against cultural heritage; and (6) the prevention of the trade in looted cultural objects from conflict areas.

Cultural heritage protection should be integrated within the international system for humanitarian aid and peacekeeping.

Most protocols for emergency response and humanitarian aid are based on the notion that cultural heritage should only come into play at the recovery phase. Better integration of cultural heritage into emergency coordination systems is needed for more adequate protection. Being absent from this system means that it is difficult to be part of the broader coordinated response. Similarly, protection of cultural heritage should be adequately embedded in peacekeeping missions.

Independent monitoring of the impact of armed conflicts on cultural heritage would enhance accountability for war crimes, as well as post-conflict peacebuilding efforts.

Monitoring of cultural heritage during armed conflicts mainly concerns the listing of affected monuments and sites. A more comprehensive system that includes evidence gathering and documentation would contribute to more adequate responses to crimes or injustices. This has become more relevant in the light of the work of the recently established Core International Crimes Evidence Database (CICED).

Recommendations

Based on the findings of this study, the following recommendations are proposed:

1) Address emergencies in Ukraine:

- Address outstanding gaps in emergency relief (e.g., digitisation of inventories).
- Raise awareness about unlawfully exported cultural objects that may enter the market with forged provenances.
- Support a clear strategy for the post-war recovery of cultural heritage, and promote it within the framework of the National Recovery Framework Plan for Ukraine.
- Protect and promote the cultural rights of refugees from Ukraine in EU Member States.

2) Close the accountability gap:

- Ensure the independent monitoring of attacks to cultural heritage.
- Ensure that heritage-related crimes are considered by the Joint Investigation Team (JIT) and in submissions to the CICED.
- Ensure that domestic legislation in EU Member States, and any tribunal set up specifically for Ukraine, enables the prosecution of crimes against cultural heritage.
- Consider adopting measures that prevent entities within the EU to support, directly or indirectly, the unlawful removal of cultural objects or excavations of archaeological sites, including through cooperation with institutions or persons that engage in such unlawful behaviour.

3) Coordinate measures and policies at the EU level:

- Establish a dedicated EU body to coordinate the protection of cultural heritage.
- Integrate cultural heritage protection into the broader field of emergency relief and humanitarian aid.
- Include cultural heritage in mandates for EU peacekeeping missions.
- Ensure coordination among national law enforcement and the relevant EU agencies on matters concerning the illicit trade.
- Regulate the issue of safe havens to temporarily safeguard collections from conflict zones, to avoid uncertainties about their legal status.

4) Ensure that preparatory measures are in place in EU Member States:

- Further support the setting-up of inventories and their digitisation within cultural institutions and heritage sites across the EU.
- Support the development of (emergency) preparedness policies and laws across the EU.
- Promote the setting-up and training of (sizeable) dedicated units in the military and law-enforcement, including border control.

5) Address the illicit trafficking in cultural objects from conflict zones:

- Raise awareness that looted cultural objects from conflict zones circulate on the EU market.
- Introduce mandatory due diligence standards for the trade in cultural goods, to mitigate the risks of looted cultural objects from war zones being traded.
- Create an open access database of national legislation pertaining to cultural heritage, or support an update of the existing (outdated) UNESCO database.

6) Focus on community participation and memorialisation in the recovery and reconstruction phase:

- Ensure that local communities are involved in decision-making processes of recovery and reconstruction at all stages and all levels.
- Include peacebuilding actions, such as those relating to memorialisation, in recovery projects.

Figure 1: Leonardo da Vinci's Last Supper behind scaffolding after bombing during the Second World War



Source: Civico Archivio Fotografico, Comune di Milano

1. INTRODUCTION

KEY FINDINGS

- Cultural heritage can be defined as a group of resources inherited from the past, which people consider as an expression of their evolving values, beliefs, knowledge, and traditions, which they want to sustain and transmit to future generations. This includes both tangible cultural heritage, as well as intangible heritage.
- Cultural heritage is an important vehicle for peace and sustainable development, but it may also fuel conflict.
- Cultural heritage constitutes the axiological foundation of the EU legal order, underlying its distinctiveness and identity, and underpinning public action.
- Threats to cultural heritage affect societies, communities, and individuals and endanger key values of the EU and its legal order, security, and external relations.
- The EU is one of the key global actors engaged in the protection of cultural heritage in armed conflict; it supports and coordinates the action by its Member States, and enhances cooperation with third states, governmental organisations, and other relevant stakeholders.
- War in Ukraine poses new challenges to the EU, thus the reconceptualisation of available mechanisms, tools, and instruments to address such challenges is needed.

1.1. Introduction

Since Russia's full-scale invasion of Ukraine in February 2022 the United Nations Educational, Scientific and Cultural Organization (UNESCO) verified damage to over 240 cultural sites,¹ and reports are mounting on the removal of artefacts from Ukrainian museums by Russian forces and the "Russification" of schools in occupied territories.² In combination with the questioning by Russia of Ukrainian identity and history, this illustrates that destruction and plunder of cultural heritage in war times is much more than "collateral" damage. Indeed, cultural heritage can be a means to pursue and fuel a war.³

Every war has its own dynamics, but cultural heritage is always vulnerable, and often targeted or exploited, in conflicts.⁴ This equally applies to other armed conflicts, such as those in the Balkans, Afghanistan, Ethiopia, Iraq, Libya, Mali, Nagorno-Karabakh, Syria or Yemen– with many being in the (immediate) neighborhood of the European Union (EU).

¹ As of 22 February 2023. UNESCO (2023) *Damaged cultural sites in Ukraine verified by UNESCO*. Available at: <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>

² Human Rights Watch (2022) *Ukraine: Russians Pillage Kherson Cultural Institutions*. Available at: <https://www.hrw.org/news/2022/12/20/ukraine-russians-pillage-kherson-cultural-institutions>; Dixon, R. (2022) Russia sending teachers to Ukraine to control what students learn. *Washington Post*, 18 July. Available at: <https://www.washingtonpost.com/world/2022/07/18/russia-teachers-ukraine-rewrite-history/>

³ UN News (2022) *Cultural destruction in Ukraine by Russian forces will reverberate for years, UN rights expert warns*. 25 May 2022. Available at: <https://news.un.org/en/story/2022/05/1119052>

⁴ Rosén, F. (2022) *Nato and Cultural Property: A Hybrid Threat Perspective* [pdf] The Nordic Center for Culture and Armed Conflict – CHAC Report, March. Available at: <https://www.heritageconflict.org/blog/2022/3/2/nato-and-cpp-a-hybrid-threat-perspective>; Shultz, D. and Jaspardo, C. (2022) *How Does Russia Exploit History and Cultural Heritage for Information Warfare? Recommendations for NATO*. (Antiquities Coalition Policy Brief No. 11). Available at: <https://thinktank.theantiquitiescoalition.org/how-does-russia-exploit-history-and-cultural-heritage-for-information-warfare-recommendations-for-nato/>

Cultural heritage may be under threat for ideological reasons, as sites, objects or ways of life are the symbols of a cultural identity. In Ukraine, for example, in occupied parts of Ukraine local cultural heritage is being erased by the "deliberate destruction and damage of sites, institutions, and objects of cultural, historical, and religious significance."⁵ Armed conflicts today are also renowned for plunder and looting for economic gain, such as through the illicit excavation of antiquities. These activities may be undertaken for individual financial gain, but they may also be part of organised crime and, in that way, possibly contribute to the financing of military operations and terrorism. In times of war, cultural heritage may also be unintentionally damaged. All of these types of threats and destruction can cause great harm to the people whose heritage is at stake, and they may amount to grave violations of their human rights, in addition to violations of humanitarian law. Beyond that, hostile acts against cultural heritage may also have profound regional and global impacts. Today, therefore, destruction and looting of cultural heritage are acknowledged as threats to international peace, security and the sustainable development of societies, calling for international action.

This study provides a contextual background to assess how the EU and its Member States can better protect cultural heritage in armed conflicts, specifically in Ukraine.

To identify the problems and propose recommendations in that regard, it outlines legal and policy foundations for the protection of cultural heritage in armed conflicts, and it explores international practice. This introductory chapter will begin by giving a background to this research, and proceed as follows: Section 1.2 addresses the notion and value of cultural heritage; Section 1.3 introduces various categories of cultural heritage with examples of how these are endangered, specifically in Ukraine; Section 1.4 will introduce the normative framework for the protection of cultural heritage; after which Section 1.5 defines the study's research objectives; and Sections 1.6-1.7 outline the research methodology and structure of the entire study.

1.2. The notion and value of cultural heritage

Cultural heritage is a broad concept and may cover many forms of human creativity. It can be defined as the "cultural capital" inherited from the past, which people consider as an expression of their evolving values, beliefs, knowledge and traditions.⁶ Since cultural heritage is not a static given, also multiple or conflicting meanings, interpretations and perspectives may be attached to it.⁷ In this sense, this study employs a wide inclusive definition of cultural heritage as enshrined in the Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) adopted under the Council of Europe's (CoE) auspices in 2005.⁸ This definition of cultural heritage makes a clear link between cultural heritage and the people for whom it is important, in the words of the Faro Convention, "heritage communities."⁹ It also pinpoints the value of cultural heritage, namely to "sustain and transmit [it] to future generations," highlighting the identity values involved and answering the question why protection should be considered a matter of fundamental (human) rights.

As will be further explained in Chapter 2, the legal protection of cultural heritage, at times, is limited to the narrower category of "cultural property," a term which will also be used in this study. Cultural property includes tangible forms of cultural heritage, such as artefacts or monuments that are protected under the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 (Hague Convention 1954), if a state considers a specific cultural object (or a category covering

⁵ UN Human Rights Office of the High Commissioner (OHCHR) *Targeted destruction of Ukraine's culture must stop: UN experts*, 22 February 2023. Available at <https://www.ohchr.org/en/statements/2023/02/targeted-destruction-ukraines-culture-must-stop-un-experts>.

⁶ Also see: ESPON (2022) *HERIWELL – Cultural Heritage as a Source of Societal Well-being in European Regions, Final Report* (June), p. 11. https://www.espon.eu/sites/default/files/attachments/HERIWELL_Final%20Report.pdf;

⁷ This touches upon the notion of "contested heritage".

⁸ *Council of Europe Convention on the Value of Cultural Heritage for Society (Faro Convention)* (2005) No.199. Available at: <https://rm.coe.int/1680083746>

⁹ E.g., in 2017 also the ICC in the *Al Mahdi case* (ICC-01/12-01-15) confirmed that "cultural heritage plays a central role in the way communities define themselves and bond together, and how they identify with their past and contemplate their future."

this) as being of great importance.¹⁰ “Cultural property” should not be confused with “World Heritage.” In Ukraine, for example, there are only seven cultural World Heritage sites,¹¹ including the Historic Centre of Odesa inscribed in January 2023.¹² The listings of cultural heritage may have (limited) legal implications, mostly in terms of assessing the criminal liability and sentencing of offenders who do not respect such properties.¹³ Nevertheless, although listing cultural heritage in inventories is important for several (also practical) reasons, as highlighted in Chapter 3, this certainly does not mean that cultural heritage that is *not* listed is unprotected. As will follow in Chapter 2, a wide and fragmented legal framework aims to safeguard cultural heritage, whether listed or not.

In this regard, it is important to establish that on all levels of decision-making and implementation processes a shift in focus is taking place, from (external) experts or governmental authorities, to local communities that identify with (their) cultural heritage. This tendency is highlighted, for example, by the International Law Association Committee on Participation in Global Cultural Heritage Governance. In its 2022 report it recommends that “legal regimes should be designed or reformed to convey clearly that heritage identification and safeguarding are not exclusive prerogatives of the state, or of some abstract international community, but instead primarily of affected heritage communities,” and that “participation shall be treated as a right of non-state actors, and a duty of state actors, with the aim of establishing consent or consensus as the baseline for action in heritage governance.”¹⁴ Local communities, in other words, need full attention in processes surrounding the protection of cultural heritage, and this will be a recurring theme in the next chapters. The importance of such a central role of communities in the governance of their cultural heritage will resurface in various chapters. It should be noted, however, that many of the (older) UNESCO Conventions are still based on the concept of “national cultural property,” fostering the notion that cultural heritage is the exclusive domain of states (and that one state is “owner” of such heritage). Whilst this is helpful in the fight against the illicit trafficking of antiquities, to enable restitution, it may also cause friction with a more inclusive notion of cultural heritage, where multiple “right holders” may co-exist (Campfens, 2020, pp. 274-275).

1.2.1. Cultural heritage and the EU

This study also explains that, whilst cultural heritage is covered by nearly all areas of international law and policy, it is also the cornerstone of the European integration. It constitutes an axiological foundation of the EU legal order, underlying its distinctiveness, identity and underpinning public action (Jakubowski, 2019, pp. 55-56). Yet, EU primary law deals with cultural heritage rather laconically. Under the Treaty on the European Union (TEU), it is referred to as “Europe’s cultural heritage” or common “inheritance,”¹⁵ and the Treaty on the Functioning of the European Union (TFEU) links it to cultural diversity, cultural life and cultural production.¹⁶ Although the Treaties do not offer a definition of cultural heritage, it has been conceptualised in EU secondary law. In particular, the Council conclusions

¹⁰ Article 1(a), *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention* (1954) 249 UNTS 240. Available at: https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf. These may include “monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions” of such property.

¹¹ UNESCO (n.d.) *Ukraine: Properties inscribed on the World Heritage List*. Available at: <https://whc.unesco.org/en/statesparties/ua>

¹² UNESCO (2023) *Odesa inscribed on UNESCO’s World Heritage List in the face of threats of destruction*. [press release] 25 January. Available at: <https://www.unesco.org/en/articles/odesa-inscribed-unescos-world-heritage-list-face-threats-destruction>

¹³ E.g., in the *Al Mahdi case*, the ICC observed that the destroyed Mausoleum in Mali was listed as World Heritage. Reparation Order ICC (2017), under 17. Similarly, in 2005, the International Criminal Tribunal for the former Yugoslavia (ICTY) found that a critical factor in imposing criminal liability on military leaders who ordered bombardments of the Old Town of Dubrovnik in 1991 arose from the fact that its historical substance enjoyed international protection as World Heritage; see *Prosecutor v Pavle Strugar*, Judgement (Trial Chamber) (Case No. IT-01-42), 31 January 2005, para 327-329, and 461. Available at: <https://www.icty.org/x/cases/strugar/tjug/en/str-tj050131e.pdf>

¹⁴ International Law Association, Committee on Participation in Global Cultural Heritage Governance (2022) *Final Report*, p. 44. Available at https://papers.ssrn.com/so13/papers.cfm?abstract_id=4220401

¹⁵ Preamble, 2nd recital and Article 3(3), *Consolidated Version of the Treaty on European Union* (2012) C326. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2012:326:TOC>

¹⁶ Article 167, *Consolidated version on the Functioning of the European Union* (2016) C326. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

on cultural heritage as a strategic resource for a sustainable Europe (2014),¹⁷ and the Council conclusions on the need to bring cultural heritage to the fore across policies in the EU (2018) (2018 Conclusions),¹⁸ adopt a holistic approach to cultural heritage that “consists of the resources inherited from the past in all forms and aspects - tangible, intangible and digital (born digital and digitised)” - that helps to respond to diverse challenges of the world. Cultural heritage is thus understood as an important resource, giving rise to a number of initiatives at the EU in respect of specific manifestations of heritage, deemed to be of common interest and significance.

Indeed, the role of cultural heritage for a number of objectives, including political and socio-economic ones, is well recognised today (Psychogiopoulou, 2018, p. 197). In this respect, the 2018 Conclusions explicitly affirmed the role of cultural heritage in “helping to respond to social, economic and environmental challenges at different levels — from local, national and regional to European and even global.”¹⁹ The EU also coordinates and supports initiatives in the field of cultural heritage through funding schemes, such as research and innovation programmes. In June 2022, in this regard for example the “Collaborative Cloud for Cultural Heritage” was established to foster cooperation between cultural and creative sectors and new technologies across Europe, also with the aim of digitization of inventories of cultural institutions.²⁰

Moreover, the Council Conclusions on EU Approach to Cultural Heritage in conflicts and crises (2021) (2021 Conclusions) fully recognise “the role of cultural heritage as an important vehicle for peace, democracy and sustainable development by fostering tolerance, mutual understanding, reconciliation, inter-cultural and inter-faith dialogue, mitigating social tensions and preventing renewed escalation into violent conflict.”²¹ The Council emphasised that the protection of cultural heritage is “fundamental to preventing violent extremism, to fighting against disinformation and to generating positive dialogue and inclusion,” especially in relation to peacebuilding.²² It also recognised that “cultural heritage can be instrumentalised as a trigger for and a target in conflicts and crises and can be subject to disinformation or information manipulation,”²³ whilst undermining social inclusion and the realisation of human rights, and contributing to the development of organised crime. Hence, the EU follows the development of the heritage-security nexus at different levels of international law and policymaking, and vis-à-vis the growing threats to cultural heritage caused by terrorism, organised crime and fundamentalism.

In this regard, the role of cultural heritage is intrinsically linked to the implementation of the core objectives of the European project, i.e., the promotion of peace and its values, as enshrined in Article 3(1) TEU.

1.3. Categories of cultural heritage

Cultural heritage includes both tangible heritage - such as (immovable) heritage sites, built monuments and (movable) objects of archaeological, historical, religious, cultural or aesthetic value - as well as intangible heritage - such as traditions, customs and forms of artistic expression. Although, a clear-cut distinction is not always possible, given that tangible heritage also generally reflects intangible heritage. For a better understanding of what the concept of cultural heritage may

¹⁷ Para 2, Conclusions (EU) C183 of the Council of 21 May 2014 on cultural heritage as a strategic resource for a sustainable Europe. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XG0614%2808%29>

¹⁸ Para 6, Conclusions (EU) C196 of the Council of 8 June 2018 on the Need to Bring Cultural Heritage to the fore Across Policies in the EU. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XG0608\(02\)&qid=1562836%20554513&from=IT](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XG0608(02)&qid=1562836%20554513&from=IT)

¹⁹ Ibid.

²⁰ European Commission, Directorate-General for Research and Innovation, Brunet, P., De Luca, L., Hyvönen, E., et al., Report on a European collaborative cloud for cultural heritage : ex – ante impact assessment, Publications Office of the European Union, 2022, <https://op.europa.eu/en/publication-detail/-/publication/90f1ee85-ca88-11ec-b6f4-01aa75ed71a1/language-en>

²¹ Para 2, Conclusions (EU) 9837/21 of the Council of 21 June 2021 on EU approach to cultural heritage in conflicts and crises. Available at: <https://www.consilium.europa.eu/media/50557/st09837-en21.pdf>

²² Ibid., paras 2-3. Further read (Hausler, 2021, p. 193).

²³ Ibid., para 2.

encompass, what follows is a short introduction to these categories with examples of how they are threatened in times of conflict.

1.3.1. Movable cultural heritage

Movable cultural heritage are cultural goods, such as works of art, archives and archaeological objects, under or above the ground, or even underwater. It can include objects in museums, libraries or archives, as well as in private collections. Pieces of monuments that were once immovable may be detached from monuments and become movable objects. Such objects and archaeological finds (“portable antiquities”) are particularly prone to illicit trafficking, which often occurs in situations of armed conflict as witnessed in the Near and Middle East (Iraq, Libya or Syria), but also Yemen, to name a few recent examples. This equally applies to situations of military occupation, as happened for example to icons and mosaics from churches in Northern Cyprus.²⁴

The potential serious consequences of the illicit trade and the complex matrix of the actors involved, ranging from terrorist groups and organised crime to widely respected antiquity dealers and museums, led the UN Security Council²⁵ to take on the issue and imposing (binding) sanction measures with regard to Iraqi and Syrian antiquities as a matter of peace and security.²⁶ To counter the illicit trafficking, legislation, policies and programmes have also been developed by UNESCO and the EU.²⁷

Since the beginning of Russia’s aggression against Ukraine in 2014, reports have emerged about the displacement of artefacts from museum institutions in occupied Ukraine’s Crimean peninsula to Russia. Such allegations intensified exponentially since the full-scale invasion, as highlighted in Annex 1 to this study.²⁸ In its December 2022 report on the issue,²⁹ Human Rights Watch related many instances of looting from public institutions by Russian forces, specifically of objects important to Russian history, such as historical archives or skeletal remains of Prince Grigory Aleksandrovich Potemkin, the imperial founder of Kherson, from the national archives and the Cathedral in Kherson.³⁰ According to the Russian narrative, these are “safeguarded” in territories under the control of Russia. In addition, as of October 2022, the pillaging of at least 40 museums has been reported by Ukraine’s Ministry of Culture (see Annex 1). In Ukraine, the threats to movable cultural objects thus appear (for now) to focus on the removal of cultural objects, artefacts and archives by Russian forces to Russian controlled areas. Nevertheless, in the words of experts in this field, “where there is a war there is looting,” which implies that looted or unlawfully exported cultural objects from Ukraine may well resurface on the market years later, as has happened after conflicts in other regions of the world.

1.3.2. Immovable cultural heritage

Immovable cultural heritage are built structures, such as historic monuments or religious buildings. An infamous example of destruction in this category is the blowing up by the Taliban in Afghanistan of the Bamiyan Buddhas in 2001, an act that gave rise to the 2003 UNESCO Declaration concerning the

²⁴ See, e.g., The Looting of Cultural Heritage in Occupied Cyprus (Department of Antiquities, Republic of the Republic of Cyprus), available at: http://www.mcw.gov.cy/mcw/da/da.nsf/DMLlooting_en/DMLlooting_en?OpenDocument

²⁵ UNSC Resolution 2347 (24 March 2017) UN Doc S/RES/2347: Maintenance of international peace and security. Available at: <http://unscr.com/en/resolutions/doc/2347>

²⁶ UNSC Resolution 2199 (12 February 2015) UN Doc S/RES/2199: Threats to international peace and security caused by terrorist acts. Available at: <http://unscr.com/en/resolutions/doc/2199>

²⁷ EC (2022) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Action Plan against Trafficking in Cultural Goods*. COM(2022)800. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0800&from=EN>

²⁸ See Annex 1. The Ukrainian Ministry of Culture reported already at the end of October 2022 that Russia pillaged over 40 Ukrainian museums. See: Archirova, H. (2022) “War crime:” Industrial-scale destruction of Ukraine culture. *AP News*, 9 October. Available at: <https://apnews.com/article/russia-ukraine-kyiv-travel-museums-7431f2190d917f44f76dff39b4d5df54>

²⁹ Human Rights Watch (2022) *Ukraine: Russians Pillage Kherson Cultural Institutions*. Available at: <https://www.hrw.org/news/2022/12/20/ukraine-russians-pillage-kherson-cultural-institutions>

³⁰ For an overview, see Annex 1. Various media reports testify to the scale of this looting, e.g.: Reid, A. (2022) Ukrainian heritage is under threat – and so is the truth about Soviet-era Russia. *The Guardian*. 15 March. Available at: <https://www.theguardian.com/commentisfree/2022/mar/15/ukrainian-heritage-under-threat-truth-soviet-era-russia>

Intentional Destruction of Cultural Heritage.³¹ Another emblematic example includes the destruction in 2012 of historic mosques, mausoleums and shrines in Timbuktu, Mali, the series of acts that were prosecuted and adjudicated by the International Criminal Court (ICC).³²

On the UNESCO website that monitors damage to monuments in Ukraine,³³ and on the equivalent site of the Ukrainian government, hundreds of examples can be found of damage to immovable cultural heritage in the ongoing war in Ukraine.³⁴ As addressed in Annex 1 to this study, such damages may be caused by both targeted and indiscriminate shelling. An example in line with the Ukrainian examples above concerns the removal of a monument to Potemkin from Kherson because, in the words of the Russian-sided authority, “[t]he Potemkin monument is one of the symbols of the Russian history of Kherson,” which “must be saved at any cost, even at the cost of evacuation.”³⁵ Similarly, the destruction of the museum of philosopher Hryhoriy Skovoroda, an important personage for the history of Ukraine, has also been regarded as intentional.³⁶ Another example is the damage to the Holy Dormition Svyatohiorsk Lavra monastery in the Donetsk region of Eastern Ukraine, an important monument for the Orthodox Christian community.³⁷

1.3.3. Archaeological sites

Archaeological sites are specifically vulnerable to being damaged in times of war, either as collateral damage or for financial gain. As with antiquities in general, there is still a market for *unprovenanced* objects (i.e., those without information on their ownership history). Looting and pillaging, therefore, proves to be lucrative. Over and above the loss of the objects themselves, and the loss of data about the object’s *provenience* (information about their place of origin), unauthorised and unsupervised excavations entail losses of scientific knowledge of the sites. Satellite images of widespread illicit excavation and looting of archaeological sites in Syria and Iraq testify to the consequences of armed conflicts and the breakdown of the rule of law (Cunliffe, 2014). An example of “collateral” damage that highlights the need for training of military personnel (to be addressed in Chapters 2 and 3) concerns the use of the archaeological site at Babylon in Iraq as a military base, by untrained US armed forces in 2003, which caused significant damage.³⁸

What exactly is happening in Ukraine in terms of destruction is still unclear. As explained in Annex 1, damage can be both collateral - a result of Russia’s chosen mode of combat - and as a consequence of Russia’s “one-dimensional vision of the past, present and future” that includes taking measures to either “safeguard such sites - or whitewash their legacy.” For now, as it concerns Crimea, information³⁹ points to the damage of the archaeological ruins of Chersonese, which is inscribed on the World Heritage List, due to construction aimed at facilitating recreational use.⁴⁰ This may be seen as part of President Putin’s ideal of the pan-Orthodox projection of Russia, with Chersonese as the “Russian

³¹ UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) 2368 UNTS 3. Available at: <https://ich.unesco.org/en/convention>

³² ICC (2017) *Situation in the Republic of Mali. In the case of the Prosecutor v. Ahmad Al Faqi Al Mahdi. Public judgment and sentence.* ICC-01/12-01/15, 27 September 2016. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2016_07244.PDF

³³ UNESCO (2023) *Damaged cultural sites in Ukraine verified by UNESCO.* Available at: <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>

³⁴ Ministry of Culture and Information Policy of Ukraine (n.d.) *Destroyed Cultural Heritage of Ukraine.* Available at: <https://culturecrimes.mkip.gov.ua/>

³⁵ Human Rights Watch (2022) *Ukraine: Russians Pillage Kherson Cultural Institutions.* Available at: <https://www.hrw.org/news/2022/12/20/ukraine-russians-pillage-kherson-cultural-institutions>

³⁶ Coynash, H. (2022) Russia destroys Ukraine’s National Skovoroda Museum in “ideological attack on Ukrainian identity.” *Kharkiv Human Rights Protection Group*, 10 May. Available at: <https://khpg.org/en/1608810529>

³⁷ Kramer, E. A. (2022) Shelling damages a revered monastery, and injures some seeking shelter there. *The New York Times*, 13 March. Available at: <https://www.nytimes.com/2022/03/13/world/europe/monastery-shelling-ukraine.html>

³⁸ See Para 51, UN General Assembly (2016), *Report of the Special Rapporteur in the Field of Cultural Rights*, 9 August, A/HRC/31/59. Available at: <https://digitallibrary.un.org/record/831612>

³⁹ Mission of the President of Ukraine in the Autonomous Republic of Crimea (2020) *Informational and analytical note on the situation with cultural and archaeological heritage in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol.* Available at: https://www.ppu.gov.ua/wp-content/uploads/2020/11/Informatsiy-na-dovidka-shhodo-sytuatsii-z-kulturnymy-tsinnostyamy_angl.pdf

⁴⁰ UNESCO (2013) *Ancient City of Tauric Chersonese and its Chora.* Available at: <https://whc.unesco.org/en/list/1411/>

Mecca” (Annex 1; and see Van der Laarse, 2016). Furthermore, according to the Ukrainian government that monitors the archaeological excavations in occupied Crimea since 2014, archaeological excavations that destroyed sites were conducted to facilitate military operations.⁴¹ As of 10 February 2023, Human rights NGOs have verified 114 archaeological excavations in Russia-occupied Crimea,⁴² which have been conducted without Ukraine’s authorisation (see also Annex 1).

1.3.4. Intangible cultural heritage

Intangible (living) heritage and tangible (physical) heritage are intrinsically linked. According to the definition in the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO Convention 2003) intangible heritage concerns “practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage.”⁴³ Because threats to intangible heritage are harder to “grasp,” they are often neglected. However, especially in times of conflict, intangible cultural heritage is threatened, for example, with the loss of ancient languages and practices due to the displacement of people and destruction of objects, texts and monuments⁴⁴ (See also Chainoglou, 2017). In that sense, as highlighted by the UN Special Rapporteur for cultural rights, “attacks on one form of heritage are often accompanied by assaults on the other, and it is because heritage are living resources that have meaning for people that their destruction goes deeper than the dismantling of the stones that form them.”⁴⁵

Examples of targeted threats to the intangible heritage of specific ethnic groups are numerous throughout history and, unfortunately, also today. One only needs to think of the cultural and ethnic genocide of the Holocaust. The systematic targeting of Yazidi culture and ways of life in Iraq,⁴⁶ which has been described as a concerted attempt at eradicating an entire group of people and cultural genocide, may serve as a more recent example (Stein, 2022). Another example concerns Armenian cultural heritage in Nagorno-Karabakh, the subject of a 2021 ruling by the ICJ.⁴⁷ As will be further discussed in Chapter 2, this intervention by the ICJ underscores the importance attached to safeguarding cultural heritage, also in the heat of a war, and that this should (also) be seen as a matter of human rights.

Regarding Ukrainian intangible cultural heritage, various manifestations have been targeted in the territories under Russian control, particularly the use of the Ukrainian and indigenous Crimean Tatar languages (that should be seen as the “vehicle of the intangible cultural heritage,” according to Article 2 of the UNESCO Convention 2003), cultural practices inspired by religion, and knowledge sharing via feature and educational literature (Annex 1). Russification of media and schools, for example, is a general practice in territories that have been under Russian control longer. In that vein, Russian teachers reportedly replaced Ukrainian teachers at schools (Annex 1). Furthermore, after the full-scale

⁴¹ Hromadske (2018) Stolen Heritage: How Russia is Destroying Crimean Archaeological Sites, 4 January. Available at: <https://hromadske.ua/en/posts/stolen-heritage-how-russia-is-destroying-crimean-archaeological-sites>

⁴² International Renaissance Fund (n.d.) Register of illegal archaeological excavations. The list of objects of destruction of Crimean monuments. Available at: <https://culture.crimea.ua/ua/register.html>

⁴³ Art. 2, UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) 2368 UNTS 3. Available at: <https://ich.unesco.org/en/convention>

⁴⁴ See Para. 77, UN General Assembly (2016) Report of the Special Rapporteur in the Field of Cultural Rights, 9 August, A/HRC/31/59. Available at: <https://digitallibrary.un.org/record/831612>

⁴⁵ UNESCO (2022) Dialogue with the Special Rapporteur in the field of cultural rights, Ms Alexandra Xanthaki, on the role of cultural rights for the protection of cultural property in the event of armed conflict (Proposed by Austria). C54/22/17.COM/6. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000383702>

⁴⁶ EAMENA Project, RASHID International, and Yazda (2019) Destroying the Soul of the Yazidis: Cultural Heritage Destruction During the Islamic State’s Genocide Against the Yazidis. Available at: https://irp.cdn-website.com/16670504/files/uploaded/Yazda_Publication_2019-08_CulturalHeritageDestructionDuringYazidisGenocide_28062021_Download_EN_vf.pdf

⁴⁷ ICJ (2021) Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, p. 361 Available at: <https://www.icj-cij.org/public/files/case-related/180/180-20211207-ORD-01-00-EN.pdf>

invasion in February 2022, the targeting of Ukrainian religious leaders has been reported (Annex 1).⁴⁸ Most of the attacks impacting religious practices and expressions target religious communities and clergy of the denominations considered by the Russian Federation as pro-Ukrainian, or hostile to the unique and dominant position of the Russian Orthodox Church.⁴⁹ More examples of threats to cultural heritage in Ukraine are given in Annex 1 of this study.

1.4. The legal protection of cultural heritage in armed conflict

Threats to cultural heritage in times of armed conflict are numerous and equally, as touched upon above, there are many reasons why cultural heritage should be protected. Beyond saving “the stones” and the notion that monuments and works of art benefit from special protection in times of armed conflict - something that has been acknowledged in international law since its founding (Campfens, 2021) -, threats to cultural heritage should also be seen as a matter of fundamental (human) rights. Whilst damage or destruction of cultural heritage in times of armed conflict is addressed by international norms operating on the interstate level (such as the Hague Convention 1954), it also activates human rights law that directly speaks to communities and individuals, most notably the right to take part in cultural life, as it may deny people access to, and enjoyment of their cultural heritage.⁵⁰

In addition, whilst in this study reference is made to both “protection” and “safeguarding” without clear distinction, as these are often used interchangeably, the two terms could point at different (international law) obligations in times of armed conflict (O’Keefe et al, 2017). The term “protection” reflects the traditional, more static, notion of the Hague 1954 Convention, seeking the rescuing and preservation in the status quo of tangible cultural heritage, such as artefacts and monuments. In turn, “safeguarding” reflects a more dynamic notion of cultural heritage, and thus a human rights approach, for example, where it is used for the “measures aimed at ensuring the viability of the intangible cultural heritage,” in Article 3(3) of the Convention for the Safeguarding of the Intangible Cultural Heritage.⁵¹ “Safeguarding” is also used for “measures to protect cultural property from the foreseeable effects of armed conflict.”⁵² These preparatory measures, which should be in place before a conflict occurs (but often are not), need further attention, as will be addressed in this study.

Against the international backdrop, the special focus of this study is on the EU legal and policy framework. The EU’s competences in the field of culture and cultural heritage are confined to coordinate, support and supplement the policies and measures of its Member States. The EU cannot harmonise the laws and regulations of the Member States (Article 167 TFEU), and thus it does not create a separate autonomous system of cultural heritage law. Instead, the EU enhances the role of cultural heritage in its internal functioning, as well as in its relations with the wider world. Regarding the latter, this study recalls that the EU is an important global actor engaged in international law-making and implementing processes. It is obliged to contribute “to strict observance and the development of international law, including respect for the principles of the United Nations Charter.”⁵³ This duty also concerns international cultural heritage law obligations and, in fact, the EU is party to the UNESCO

⁴⁸ Ochab, E. U. (2022) The Destruction Of Religious Sites By Russian Forces In Ukraine. 14 December. *Forbes*. Available at: <https://www.forbes.com/sites/ewelinaochab/2022/12/14/the-destruction-of-religious-sites-by-russian-forces-in-ukraine/?sh=62b35b2e9401> ; Mednick, S. (2022) Attacks on religious freedoms and human rights abuses soar in Ukraine. *Devex*, 5 April. Available at: <https://www.devex.com/news/attacks-on-religious-freedoms-and-human-rights-abuses-soar-in-ukraine-102944>

⁴⁹ Mednick, S. (2022). Attacks on religious freedoms and human rights abuses soar in Ukraine. *Devex*, 5 April. Available at: <https://www.devex.com/news/attacks-on-religious-freedoms-and-human-rights-abuses-soar-in-ukraine-102944>

⁵⁰ Preamble, UN Human Rights Council Resolution 33/20 Cultural Rights and the Protection of Cultural Heritage (6 October 2016) A/HRC/RES/33/20. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/33/20

⁵¹ UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) 2368 UNTS 3. Available at: <https://ich.unesco.org/en/convention>

⁵² Paras. 67, 142, and 197, UN Human Rights Council Resolution 33/20. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/33/20

⁵³ Article 3(5), Treaty on the European Union (TEU) of 13 December 2007 – consolidated version. *OJ C* 202, 7.6.2016 pp. 13-46. Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-european-union.html>

Convention on the Protection and Promotion of the Diversity of Cultural Expressions.⁵⁴ Moreover, the EU shall “promote an international system based on stronger multilateral cooperation and good global governance.”⁵⁵ Hence this study will also refer to the complex and comprehensive governance system established by the EU, including close cooperation with other international organisations, particularly with UNESCO and the CoE, with regard to the protection of cultural heritage in armed conflicts.⁵⁶

A last point of attention, illustrated with the above, is that the legal framework for the protection of cultural heritage is highly fragmented. That is, it is typified by seemingly self-contained areas for different types of (threats to) cultural heritage. This also causes an equally fragmented policy framework within the EU setting, and it hinders efficient protection. In light of the war in Ukraine, circumstances call for a re-evaluation and reconceptualisation of available mechanisms, tools and instruments to better protect cultural heritage in times of armed conflict.

1.5. Objectives of this study

Considering the destruction and threats to cultural heritage in Ukraine and other conflict zones, the Committee on Culture and Education (CULT Committee) of the European Parliament (EP) requested the present study on the protection of cultural heritage in conflict zones, with special focus on Ukraine. The primary aim is to provide a critical analysis and overview of actions that are (or could be) undertaken by the EU to safeguard cultural heritage in armed conflicts, considering, but not limited to, the ongoing war in Ukraine.

This study’s focus, therefore, is on how the EU and its Member States can better protect and safeguard cultural heritage in conflict zones, specifically in Ukraine.

This general question breaks into four specific sub-questions: (1) What are the threats to cultural heritage in times of armed conflict, and why is protection important?; (2) What rules apply to the protection of cultural heritage in times of armed conflict, and to what extent are they implemented?; (3) What efforts are undertaken to safeguard cultural heritage by international actors in Ukraine?; (4) What can be learnt from earlier conflicts to better protect and restore cultural heritage?; and (5) How can the protection of cultural heritage during armed conflicts be strengthened in Ukraine and beyond?

In order to concretise the key problems and propose solutions, Chapter 1 of this study identified the forms of threats to cultural heritage that can be distinguished in conflict zones, specifically in Ukraine (see also Annex 1). It also outlined the underlying reasons for the protection of cultural heritage in such circumstances. Chapter 2 will provide an overview of the relevant legal and policy frameworks for cultural heritage protection in times of conflict, whilst Chapter 3 will identify and analyse international initiatives carried out to safeguard cultural heritage in Ukraine by organisations such as UNESCO, the EU and other organisations. Chapter 4 of this study will then list and substantiate good practices in that regard in other conflicts. Chapter 5 will conclude with the main findings of this study, the conclusions and a set of recommendations on what could be done, especially at EU level, to strengthen the protection of cultural heritage in conflict zones.

Whilst the current situation of the war in Ukraine is examined, the wider legal and policy background is outlined as well. This draws on current and past experiences gained from other armed conflicts, such as in the Balkans, but also the countries of the Middle East and North Africa (MENA) region. Significantly, this study also investigates the safeguarding of intangible cultural heritage, a category that is often

⁵⁴ UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) 2440 UNTS 311. Available at: <https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>

⁵⁵ Article 21(2)(h), Treaty on the European Union (TEU)..Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-european-union.html>

⁵⁶ Paras 12, 25-26, Conclusions (EU) C196 of the Council of 8 June 2018 on the Need to Bring Cultural Heritage to the fore Across Policies in the EU. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XG0608\(02\)&qid=1562836%20554513&from=IT](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XG0608(02)&qid=1562836%20554513&from=IT)

neglected in armed conflict. This study seeks to remedy this gap by considering various threats and attacks against intangible cultural heritage including its vectors, such as language and education.

Given the wide scope of this research, with the objective to address threats to all types of cultural heritage in Ukraine, but also in other war zones, and the limited time at hand, this study does not pretend to be exhaustive. In that respect, for example, it was not possible to give more than an impression of initiatives to safeguard cultural heritage in Ukraine by international actors.

1.6. Methods

In light of the underlying objectives, this study examines the theoretical, legal, policy, procedural and cultural dimensions of the protection and safeguarding of cultural heritage in the event of an armed conflict. The research methods include: (i) traditional legal methods, such as dogmatic and comparative analysis of legal and policy instruments; and (ii) socio-legal research.

With regard to the sources consulted, this study is based on a range of legal and policy instruments and official documents of international organisations concerned with the protection and safeguarding of cultural heritage in armed conflict. Traditional legal methods are used to analyse this legal and policy framework. The nature and content of legal obligations are examined within distinct layers of law in force in the European Union (EU), as well as those binding its Member States (MSs). Hence, the nature of the interplay of international law instruments, EU law and domestic legal frameworks is outlined and analysed. This segment of the research also covers the examination of the existing reports and statements, officially issued by state and non-state bodies, concerning the protection and safeguarding of cultural heritage in armed conflicts, with special focus on Ukraine.

This study also draws extensively on primary sources about current practice that were gathered in the process of inquiries and interviews conducted with representatives of stakeholders (representing state and non-state entities), and experts engaged in protecting and safeguarding cultural heritage in Ukraine. For this reason, that is, due to fragmented knowledge of the actual practice in place, and the degree of secrecy surrounding this practice, the writing of this study has been a challenge. In this regard, the socio-legal methods are used to investigate current and past practices, which demonstrate and conceptualise the ways in which governmental and non-governmental entities respond to dangers and risks to cultural heritage in armed conflict. Moreover, semi-structured interviews and consultations with a wide number of organisations have been carried out to get a better picture of the (practical) obstacles encountered in efforts to protect and safeguard cultural heritage in times of armed conflict, specifically regarding Chapters 3. This analysis provided a basis to prepare a list of recommendations that are listed in Chapter 5.

1.7. Structure

This study contains four analytical chapters and two annexes. To identify the problems and propose solutions this study analyses: the applicable legal and policy framework for safeguarding cultural heritage in conflict zones (Chapter 2); and initiatives to safeguard cultural heritage in Ukraine (Chapter 3), and in other conflict zones (Chapter 4). The last (Chapter 5) consists of conclusions on the research question and a list of recommendations. For a better understanding of the nature of the threats to, and destruction of, cultural heritage in Ukraine, Ukrainian experts were consulted. Their contribution is attached as Annex 1 to this study. Furthermore, a list of the persons that were consulted for this study is attached as Annex 2.

Figure 2: A cello player in the partially destroyed National Library, Sarajevo, during the war in 1992



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2. APPLICABLE LEGAL AND POLICY FRAMEWORK

KEY FINDINGS

- States must ensure the cultural rights of those under their jurisdiction, no matter their citizenship status, thus including asylum seekers and refugees. This also includes those under their effective control, such as in situations of occupation; the right to participate in cultural life includes the right to access and enjoy both tangible and intangible cultural heritage.
- In a time of armed conflict parties to hostilities cannot target cultural property - the tangible (movable or immovable) expressions of cultural heritage – and cannot use it to support the military effort, except in very exceptional circumstances.
- In order to be adequately protected in a time of war, measures to safeguard cultural property against the foreseeable effects of armed conflict have to be adopted by states in a time of peace already; specialist personnel should also be established within their armed forces, and respect for the culture and cultural property of all peoples should be fostered within armed forces.
- Import restrictions and cooperation among states are necessary to curb the illicit trafficking in cultural objects; combating the illicit trafficking is part of a broader agenda to tackle organised crime and counter-terrorism.
- The EU has adopted a wide range of instruments and measures to address the threats linked to damage, plunder, and illicit trafficking of cultural heritage in armed conflict; the protection of cultural heritage constitutes an important component for peace and security in the EU's foreign and security policy.
- EU Member States all have an obligation to prosecute cultural offences; certain crimes against cultural heritage in armed conflict constitute grave breaches of humanitarian law and must therefore be prosecuted on the basis of universal jurisdiction.
- EU Member States all have an obligation to implement effective, proportionate, and dissuasive penalties applicable to the illicit import and introduction of cultural goods into the customs territory of the Union.

2.1. Introduction

Chapter 2 presents the international and European legal and policy framework applicable to the protection and safeguarding of cultural heritage in situations of armed conflict. All states are required to protect cultural heritage during armed conflict to some extent. These obligations derive either from the treaties to which they are party, or from custom, meaning that some obligations are accepted as binding as a result of practice. In addition, safeguarding measures should be adopted by states in a time of peace already, in order for cultural heritage to be protected from the foreseeable effects of armed conflicts. The protection of cultural heritage in situations of armed conflict can only be effective if it starts in a time of peace. In addition, the applicable framework contains a set of rules and guidelines for the conduct of state and non-state entities in respect of cultural heritage.

EU laws and policies shall respect the domestic laws and regulations of Member States and their international obligations relating to cultural heritage, as well as those of the EU; this also embraces the duty to protect cultural heritage in armed conflict. Furthermore, cultural heritage constitutes one of

the key values and resources underlying the EU constitutional design, and thus is today integrated within various EU policies and their respective regulatory frameworks.

Chapter 2 proceeds as follows: sections 2.2.-2.6. outlines and explains the main categories of obligations aimed at the protection of cultural heritage in armed conflicts. This review is thematically based on the different ways cultural heritage is considered, and the threats thereto. The analysis starts with the protection of cultural heritage from a human rights perspective (section 2.2.). In doing so, the chapter highlights that there are rights attached to all forms of cultural heritage, which apply at all times, including in situations of armed conflict. It is followed by the protection of cultural heritage under international humanitarian law (IHL) (section 2.3.), i.e., the rules developed specifically to deal with situations of armed conflict. Next, it moves to the frameworks adopted to protect specific manifestations of cultural heritage: cultural objects (movable cultural heritage), and the threat of illicit trafficking (section 2.4.); monuments and sites, including underwater heritage sites (section 2.5.); and intangible heritage (section 2.6.), and the threat of damage or destruction. The chapter then considers the consequences attached to the violation of the rules mentioned in the previous section and the provision of accountability, whether through state responsibility or individual criminal responsibility (sections 2.7.). It then also considers the legal regime for post-conflict recovery and reconstruction (section 2.8.). Each section highlights the relevance of the examined framework for the EU and its Member States. The chapter concludes (section 2.9.) with a summary of the main segments of the applicable legal and policy frameworks.

2.2. Cultural heritage as a human rights issue

Cultural heritage, as an expression of cultural identity, is intrinsically linked to human rights. The UN Special Rapporteur in the field of cultural rights (UN Special Rapporteur) noted that cultural heritage should be understood as “living and in an organic relationship with human beings,” a perspective which “encourages its preservation and discourages its destruction.”⁵⁷ Following the call for a human rights approach to the protection of cultural heritage,⁵⁸ a dialogue has recently been initiated between the UN Special Rapporteur and UNESCO to reinforce the human rights approach to cultural heritage protection during armed conflict.⁵⁹

The protection of cultural heritage was also recognised as a human rights issue by the UN General Assembly.⁶⁰ In fact, its human dimension has been fully endorsed in the 2030 UN Agenda for Sustainable Development.⁶¹ Whilst Sustainable Development Goals (SDGs) can only be attained with the fulfilment of all human rights,⁶² they also directly support the protection of cultural heritage. In particular, Target 11.4 acknowledges the need to “strengthen efforts to protect and safeguard the world’s cultural and natural heritage” for the realisation of SDG 11, which provides for cities and human settlements to be inclusive, safe, resilient and sustainable. And, according to UNESCO, culture can further support the implementation of at least nine other SDGs, beyond SDG 11 (Hosagrahar, 2017, pp. 12).

⁵⁷ See Para 16, UN General Assembly (2016) *Report of the Special Rapporteur in the Field of Cultural Rights*, 9 August, A/HRC/31/59. Available at: <https://digitallibrary.un.org/record/831612>

⁵⁸ UN Human Rights Council Resolution 37/17 Cultural Rights and the Protection of Cultural Heritage (22 March 2018) A/HRC/RES/37/17. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/099/81/PDF/G1809981.pdf?OpenElement>

⁵⁹ UNESCO (2022) *Dialogue with the Special Rapporteur in the field of cultural rights, Ms Alexandra Xanthaki, on the role of cultural rights for the protection of cultural property in the event of armed conflict (Proposed by Austria)*. C54/22/17.COM/6. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000383702>

⁶⁰ UN General Assembly Resolution (6 March 1998) UN Doc A/RES/52/145: Situation of human rights in Afghanistan. Available at: <http://www.worldlii.org/int/other/UNGA/1997/196.pdf>

⁶¹ UN General Assembly Resolution (21 October 2015) UN Doc A/RES/70/1: Transforming our world: the 2030 Agenda for Sustainable Development. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf

⁶² *Ibid.*, Paras. 10, 18 and 19.

The protection of cultural heritage as a human rights issue has often been addressed by the (now defunct) UN Commission on Human Rights,⁶³ and by the Human Rights Council,⁶⁴ in relation to the destruction of cultural heritage in Afghanistan, for example. Indeed, the latter body, the primary inter-governmental body entrusted to promote and protect the observation of human rights around the world, has consistently underscored that the protection of cultural heritage is an important component of the promotion and protection of all human rights.⁶⁵ The protection of cultural heritage, including during an armed conflict, is thus crucial for the realisation of human rights and achieving SDGs.

Enshrined in Article 15 of the International Covenant on Economic, Social and Cultural Rights,⁶⁶ to which Russia, Ukraine and all EU Member States are party, provides for the right to take part in cultural life, which includes the right “to benefit from the cultural heritage [...] of other individuals and communities.”⁶⁷ The access to and enjoyment of all forms of cultural heritage, both tangible and intangible, is thus protected through the human right to participate in cultural life. In addition, Article 27 of the International Covenant on Civil and Political Rights (ICCPR 1966), to which Russia, Ukraine and all EU Member States are party, provides that “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

States must respect, protect and fulfil the rights contained in the treaties to which they are party with regard to all those under their jurisdiction, no matter their citizenship, and including those under both their territorial and effective control, such as in situations of occupation. According to the Committee on Economic, Social and Cultural Rights:

the obligation to respect [the right to take part in cultural life] includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group... [T]o have access to their own cultural and linguistic heritage and to that of others.⁶⁸

This also includes the right to use one’s own language, to be educated in one’s own language and in a culturally appropriate way, and to develop in a manner consistent with customs and traditions.

The Committee on Economic, Social and Cultural Rights has also noted that during armed conflicts State Parties must “[r]espect and protect cultural heritage in all its forms [...] in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures.” Such positive states’ obligations “include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others.”⁶⁹ The obligation to respect and protect the right to take part in cultural life also includes protecting cultural heritage from vandalism and theft, and prohibits its wilful destruction (O’Keefe, 2006, p. 305).

In this regard, the ICJ, whilst deciding on the indication of provisional measures in the case of *Armenia v Azerbaijan* (2021),⁷⁰ found that “there was a plausible argument” that vandalism, destruction and

⁶³ Para 2, Resolution 1998/70 Situation on of Human Rights in Afghanistan (24 March 1998) UN Doc E/CN.4/1998/70. Available at: <https://digitallibrary.un.org/record/1488739>

⁶⁴ UN Human Rights Council Resolution 6/1 Protection of Cultural Rights and Property in Situations of Armed Conflict (27 September 2007) UN Doc A/HRC/RES/6/1. Available at: https://ap.ohchr.org/documents/sdpage_e.aspx?si=A/HRC/RES/6/1

⁶⁵ In particular, see Human Rights Council Resolution 37/17 Cultural Rights and the Protection of Cultural Heritage (22 March 2018) A/HRC/RES/37/17. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/099/81/PDF/G1809981.pdf?OpenElement>

⁶⁶ ICCPR (1966) 993 UNTS 3. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

⁶⁷ UN Committee on Economic, Social and Cultural Rights (2009) General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para 15(b) of the Covenant on Economic, Social and Cultural Rights) (22 December 2009) UN Doc. E/C.12/GC/21. Available at: <https://digitallibrary.un.org/record/679354>

⁶⁸ Ibid., Art. 15, Para 49(d).

⁶⁹ Ibid., Art. 15, Para 50(a).

⁷⁰ ICJ (2021) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021*, p. 361 Available at: <https://www.icj-cij.org/public/files/case-related/180/180-20211207-ORD-01-00-EN.pdf>

alteration of Armenian historic, cultural and religious heritage in Nagorno-Karabakh by Azerbaijani troops amounted to a violation of human rights guaranteed under the International Convention on the Elimination of All Forms of Racial Discrimination (1969) (ICERD).⁷¹ Significantly, such acts violated the rights listed under Article 5 of this treaty (economic, social and cultural rights), in particular: “the right to equal participation in cultural activities,” which may also entail a right to the protection and preservation of historic, cultural and religious heritage.⁷²

2.2.1. Implications for the EU

This international human rights framework underlies and shapes the EU cultural heritage policy. The EU’s founding treaties do not refer to rights to cultural heritage, and such explicit provisions are not in the Charter of the Fundamental Rights of the EU (CFREU) either.⁷³ Yet, all actions of the EU and its Member States, including those relating to cultural heritage, must be undertaken in full compliance with the CFREU, which guarantees the observance of cultural rights. Furthermore, the EU human rights framework is essentially based on the regime of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)⁷⁴ to which all EU and CoE Member States are party.⁷⁵ Although the ECHR does not include explicit provisions on cultural rights and cultural heritage, the European Court of Human Rights (ECtHR) has recognised, through a dynamic interpretation of various provisions of this treaty, a catalogue of rights in relation to culture and heritage.⁷⁶ Significantly, in a set of judgments it has referred to the right of access to cultural heritage (Bieczynski, 2019, pp. 118-122). In particular, in *Sargsyan v Azerbaijan* (2015), which concerned an alleged violation of the applicant’s right to access his property and home located in a village near Nagorno-Karabakh, the ECtHR explained that “the applicant’s cultural and religious attachment with his late relatives’ graves in Gulistan may also fall within the notion of private and family life.”⁷⁷ In that way the ECtHR, in its practice, has identified several substantive rights that can be labelled as rights with a cultural content, or concerned with cultural heritage. Importantly, it has made reference to the right to cultural identity of persons, and their associations, belonging to national, cultural, linguistic or ethnic minorities, recognising their right to maintain their minority identity and to lead their private and family lives in accordance with their traditions and culture.

The EU cultural heritage legal and policy framework corresponds to the one established by the CoE which reaffirms the protection and enjoyment of human rights, including “during and immediately after a conflict.”⁷⁸ Notably, the Faro Convention, underlying the action by the EU and CoE in respect of cultural heritage (“Faro Way”), fosters the idea that the knowledge and practice of cultural heritage form part of the rights vested in everyone, alone or collectively, to participate in cultural life, as provided under international human rights law.⁷⁹ The Faro Convention defines “heritage communities” as those collectivities who identify themselves with a given cultural heritage, “which they wish, within the framework of public action, to sustain and transmit to future generations” (Article 2(b)). State Parties to this treaty recognise that “everyone, alone or collectively, has the right to benefit from the cultural

⁷¹ ICERD 1965 Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

⁷² UN Committee on Economic, Social and Cultural Rights (2009) General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 61) of the Covenant on Economic, Social and Cultural Rights) (22 December 2009) UN Doc. E/C.12/GC/21. Available at: <https://digitallibrary.un.org/record/679354>

⁷³ CFRUE (2012) C326. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

⁷⁴ ECHR (1950) 213 UNTS 221. Available at: https://www.echr.coe.int/documents/convention_eng.pdf

⁷⁵ Art. 6(3), TEU of 13 December 2007 – consolidated version (OJ C 202, 7.6.2016 pp. 13-46). Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-european-union.html>

⁷⁶ See CoE / ECtHR, Research Division (2011; updated in 2017) *Cultural rights in the case-law of the European Court of Human Rights*. Available at: https://www.culturalpolicies.net/wp-content/uploads/2019/10/ECHR_Research_report_cultural_rights_ENG.pdf

⁷⁷ ECtHR (2015) *Case of Sargsyan v. Azerbaijan*. No. 40167/06. Available at: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-155662%22>

⁷⁸ Para. 1, Resolution (CoE) 2057 of the Parliamentary Assembly of 22 May 2015: Cultural Heritage in Crisis and Post-crisis Situations. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21784&lang=en>

⁷⁹ Council of Europe (n.d.) *Enhanced participation in cultural heritage: the Faro Way*. Available at: <https://www.coe.int/en/web/culture-and-heritage/the-faro-way>

heritage and to contribute towards its enrichment” (Article 4(a)). In this regard, both the EU and the CoE widely promote participatory and inclusive modalities of cultural heritage governance.⁸⁰

The universality and indivisibility of human rights and fundamental freedoms, and the respect for human dignity, also constitute driving values of the EU’s external action and its Common Foreign and Security Policy, including actions concerned with cultural heritage.⁸¹ Indeed, the European agenda for culture in a globalising world (2007),⁸² which highlighted the ways cultural heritage had so far been included in the “EU’s external relations,” emphasised support for human rights, comprising cultural rights, Indigenous rights and the rights of minority groups.⁸³ The promotion of respect for cultural diversity and respect for human rights are thus guiding principles for EU action in its international cultural relations.⁸⁴

In this respect, the EU external action “in the field of cultural heritage goes beyond the realisation of foreign policy objectives, such as supporting sustainable development or the establishment of democracy.” Whilst the EU’s external action in the field of cultural heritage fulfils the EU’s own international legal obligations, it also supports and complements the actions of its Member States (Hausler, 2019, p. 394). Hence, the peace and security agenda of the EU external action, as substantiated by the Concept on Cultural heritage in conflicts and crises. A component for peace and security in EU’s external action (2021)⁸⁵ also reaffirms that destruction and looting of cultural heritage in armed conflicts constitute serious attacks against human dignity and human rights (Hausler, 2019, p. 8). In reaction, the Council, in its Council Conclusions on EU Approach to Cultural Heritage in conflicts and crises (2021) (2021 Conclusions), confirmed the EU’s commitment to protect and safeguard cultural heritage in full respect for human rights and fundamental freedoms.⁸⁶ It also recognised “the Human Rights aspect of this issue, as per the Human Rights Council Resolution of 6 October 2016 on ‘Cultural rights and the protection of cultural heritage.’”⁸⁷ In practical terms, human rights concerns underlie the EU’s actions to protect cultural heritage in armed conflict. Also, the Regulation (EU) 2019/880 of the Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods, designed to curb the illicit trafficking in cultural objects, clearly states that, “[t]he exploitation of peoples and territories can lead to the illicit trade in cultural goods, in particular when such illicit trade originates from a context of armed conflict.”⁸⁸ Such trade, “in many cases contributes to forceful cultural homogenisation or forceful loss of cultural identity, whilst the pillage of cultural goods leads, inter alia, to the disintegration of culture.”⁸⁹ Hence, “[t]he Union should accordingly prohibit the introduction into the customs territory of the Union of cultural goods unlawfully exported from third countries, with particular emphasis on cultural goods from third countries affected by armed conflict.”⁹⁰

⁸⁰ In particular, see: Conclusions (EU) C463 of the Council of 13 December 2014 on Participatory governance of Cultural Heritage. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1223\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1223(01)&from=EN) ; and Decision 2017/864 of 20 May 2017 on a European Year of Cultural Heritage. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0864&from=EN>

⁸¹ Art. 21(1), Treaty on the European Union (TEU) of 13 December 2007 – consolidated version (OJ C 202, 7.6.2016 pp. 13-46). Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-european-union.html>

⁸² EC (2007) *European Agenda for Culture in a Globalising World*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISUM:l29019&from=EN>

⁸³ Art. 21(1), Para. 2(2), TEU

⁸⁴ EC (2016) *Joint Communication to the European Parliament and the Council: Towards an EU strategy for international cultural relations* (JOIN(2016)29). Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016JC0029&from=EN%20section%202\(a\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016JC0029&from=EN%20section%202(a))

⁸⁵ EEAS, Council of the European Union (2021) *Concept on Cultural heritage in conflicts and crises. A component for peace and security in European Union’s external action*. 9962/21. Available at: <https://data.consilium.europa.eu/doc/document/ST-9962-2021-INIT/en/pdf>

⁸⁶ Conclusions (EU) 9837/21 of the Council of 21 June 2021 on EU approach to cultural heritage in conflicts and crises. Available at: <https://www.consilium.europa.eu/media/50557/st09837-en21.pdf>

⁸⁷ UN Human Rights Council Resolution 33/20 Cultural Rights and the Protection of Cultural Heritage (6 October 2016) A/HRC/RES/33/20. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/33/20

⁸⁸ Preamble, 2nd recital, Regulation (EU) 2019/880 of the Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.151.01.0001.01.ENG

⁸⁹ Ibid., 3rd recital.

⁹⁰ Ibid.

In sum, cultural heritage is a human rights issue. It constitutes the manifestation of humanity, giving rise to a wide spectrum of human rights. The promotion and enhancement of cultural heritage objectives cannot thus be undertaken outside the human rights law context. Indeed, public action, policies and programmes concerned with cultural heritage can only be legitimate and effective if properly designed according to the needs of the individuals, communities and groups who created, enjoy and develop such cultural heritage. Human rights law should thus reinforce cultural heritage agendas and goals, and form today the basis for actions undertaken by the EU and its Member States to protect and safeguard cultural heritage in armed conflicts.

2.3. Cultural heritage as a humanitarian issue

Cultural heritage is also protected under International Humanitarian Law (IHL), the body of law that applies specifically in situations of armed conflict. IHL includes rules applicable in situations of international armed conflict (such as the war between Russia and Ukraine), and non-international armed conflict (such as the civil war in Syria). It also applies to situations of occupation (such as Russian-occupied territories of Ukraine), which are considered as international armed conflicts. IHL includes both general principles and specific rules that are relevant to the protection of certain forms of cultural heritage.

According to the **principle of distinction**, combatants *cannot* target cultural property unless a set of narrow circumstances apply: (i) if the property becomes a legitimate military objective, effectively contributing to military action; and (ii) if the capture, neutralisation or destruction of the cultural property in question offers a definite military advantage.⁹¹ Pursuant to the **principle of proportionality**, belligerents must refrain from conducting an attack that may lead to excessive damage in relation to the military advantage sought. This is applicable in all settings, including in urban areas where museums, historic monuments or religious buildings are likely to be close to legitimate targets. Finally, according to the **principle of precautions in attacks**, all feasible precautions must be taken to avoid (and minimise) incidental damage to civilian objects, which include historic monuments or religious buildings for example.

These core principles of IHL also apply in relation to the civilian population, which includes all individuals who are not actively engaged in hostilities. This is relevant because individuals and groups of individuals create, maintain and transmit cultural heritage, including intangible cultural heritage (such as traditions, social practices, rituals, etc.); they are the bearers of intangible cultural heritage.

In addition to these principles, IHL contains rules that are relevant to the protection of cultural heritage during armed conflicts. Whilst the Geneva Conventions of 1949 do not contain rules protecting cultural heritage specifically, they set out rules that are also applicable to cultural heritage.⁹² Those rules include the prohibition of pillage,⁹³ or the obligation of the occupying power to allow “ministers of religion to give spiritual assistance to members of their religious communities” (Article 58). Furthermore, the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” amounts to a grave breach of the Geneva Conventions (Article 147).

The Additional Protocols to the Geneva Conventions of 1977 contain rules dedicated to the protection of cultural objects and places of worship. They prohibit combatants: “to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;” “to use such objects in support of the military effort;” and “to make such objects the object of reprisals.”⁹⁴ All EU Member States, as well as Russia and Ukraine, are Parties

⁹¹ International Committee of the Red Cross, International Humanitarian Law Databases (n.d.) *Article 52 – General Protection of civilian objects, Geneva Conventions and their Additional Protocols* (1949). Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-52>

⁹² *Geneva Conventions and their Additional Protocols* (1949). Available at: <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

⁹³ *Ibid.*, Article 33.

⁹⁴ *Ibid.*, Article 53 Additional Protocol I. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-53> ; and Article 16 Additional Protocol II. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-16> . Additional Protocol I to the Geneva

to the Geneva Conventions and their Additional Protocols and thus are under the obligation to abide by their rules.

In addition, the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention 1954) was adopted specifically to protect “cultural property.”⁹⁵ Nearly all Member States of the EU and of the European Economic Area (EEA), except Malta, are party to this treaty. The Hague Convention 1954 is also binding on Ukraine, Russia, Switzerland and the United Kingdom. The term “cultural property” refers to any “movable or immovable property” that is deemed “of great importance to the cultural heritage of every people” by a State party.⁹⁶ It also covers buildings which preserve or exhibit such property (such as museums, libraries or archives), centres containing monuments (such as historic town centres) and refuges (to shelter cultural objects). Whilst “cultural property” is limited to tangible forms of cultural heritage, it is by no means limited to listed World Heritage sites. Therefore, the cultural properties situated in Ukraine that fall under the protection of the Hague Convention 1954 include many more monuments and sites than its seven listed World Heritage sites; it also includes works of art and other movable cultural properties.

Significantly, the Hague Convention 1954 contains provisions that are applicable in peacetime. This is because the protection of cultural property in armed conflict can only be effective if adequate measures are adopted already in peacetime.⁹⁷ These safeguarding measures against the foreseeable effect of armed conflict shall include:

the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.⁹⁸

Inventories are particularly important and should be done, when possible, in a digital format. Military measures must also be taken, including fostering “a spirit of respect for the culture and cultural property of all peoples,” and establishing specialist personnel within the armed forces, who may then ensure that all precautions are taken during the course of hostilities to protect cultural property.⁹⁹

During hostilities, parties to an armed conflict must not expose cultural property to possible damage, or destruction, and refrain from any acts of hostility directed against such property. Therefore, they must not turn it into a military objective, such as by using it for military purposes (for example, by storing weapons or troops in a museum, a historic monument or a religious building of importance). They also cannot use the immediate surroundings of cultural properties in a way that could expose it to damage or destruction,¹⁰⁰ such as by digging trenches around a historic site. State parties must prohibit, prevent and put an end to any theft, pillage, misappropriation and vandalism directed against cultural property, and refrain from reprisals against it.¹⁰¹

Like other civilian objects, cultural properties can become legitimate military objectives if they contribute effectively to military action, by their nature, location, purpose or use, and if the capture,

Conventions is applicable in situations of international armed conflicts, whilst Additional Protocol II is applicable in situations of non-international armed conflicts.

⁹⁵ *First Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954). Available at: https://en.unesco.org/sites/default/files/1954_Protocol_EN_2020.pdf

⁹⁶ As there is no age or value threshold either, many cultural objects may fall under this system of protection.

⁹⁷ Article 3, *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention* (1954) 249 UNTS 240. Available at: https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf

⁹⁸ *Ibid.*, Article 4(1).

⁹⁹ Article 5, *Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1999) 2253 UNTS 212. Available at: <https://www.unesco.org/en/legal-affairs/second-protocol-hague-convention-1954-protection-cultural-property-event-armed-conflict>

¹⁰⁰ Article 7, *Hague Convention* 1954.

¹⁰¹ *Ibid.*, Article 4(1).

¹⁰¹ *Ibid.*, Article 4(3) and (4).

neutralisation or destruction of the cultural property in question offers a definite military advantage.¹⁰² However, a waiver of “imperative military necessity” to direct an act of hostility against cultural property can be invoked only if such property has become a military objective by its function, and if there is no feasible alternative to obtain a similar military advantage.^{103 104} This means an act of hostility against Ukrainian cultural property would be unlawful unless conducted in accordance with Article 6 of the Second Protocol. Given that the clarification of imperative military necessity informs the Hague Convention 1954, rather than adds to it, it may be applicable to both parties to the conflict, even if Russia has not ratified the Second Protocol.

The Hague Convention 1954 established the Blue Shield emblem, known as the cultural equivalent of the Red Cross sign. Although affixing the Blue Shield emblem is not mandatory for an object to benefit from the general protection provided by the Convention, it assists with the identification of what constitutes cultural property under this Convention, and may be relevant in legal proceedings. However, some states prefer not to use it, fearing it may attract acts of hostilities against cultural property, rather than act as a deterrent.

In addition, the Second Protocol established the system of enhanced protection, which provides an additional level of protection to cultural property under an International List of Cultural Property under Enhanced Protection.¹⁰⁵ Cultural properties under enhanced protection cannot be used for military purposes, and the waiver of imperative military necessity cannot be invoked with regard to them. So far, only a few State Parties have sought to list cultural properties under that system;¹⁰⁶ Ukraine, for example, does not have any cultural property listed under it. In March 2022, the Committee for the Protection of Cultural Property in the Event of Armed Conflict invited Ukraine to request the inscription of its cultural properties on this List, a request that can be made as a matter of emergency even if hostilities have already begun.¹⁰⁷

With regard to situations of occupation, such as those of Ukrainian territories occupied by Russia, the First Protocol to the 1954 Hague Convention¹⁰⁸ (to which Russia is a party) prohibits all exportations from the occupied territory (Article 1).¹⁰⁹ If a cultural property was imported into the territory of a State Party, that State must take it into custody and, at the close of hostilities, State Parties must return such objects to the formerly occupied territory (Article 3).

To be bound by a treaty provision, a State must have become a party thereto, unless it has become part of customary international law, due to a practice accepted as law. The International Committee of the Red Cross has established a database of the customary IHL, which includes associated practice.¹¹⁰ These rules, which include rules concerned with cultural heritage, are binding on all states, even if they are not party to the relevant treaties.¹¹¹

¹⁰² International Committee of the Red Cross, *International Humanitarian Law Databases* (n.d.) *Article 52 – General Protection of civilian objects, Geneva Conventions and their Additional Protocols* (1949). Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-52>

¹⁰³ Article 6, *Second Protocol to the Hague Convention* (1999) Available at: <https://www.unesco.org/en/legal-affairs/second-protocol-hague-convention-1954-protection-cultural-property-event-armed-conflict>

¹⁰⁴ Except for Malta and Ireland, all EU Member States have ratified the *Second Protocol* (1999). It has also been ratified by Ukraine, but not Russia.

¹⁰⁵ UNESCO (2019) *Cultural Property under Enhanced Protection*. CLT-2019/WS/8. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000368300>

¹⁰⁶ The States that have listed cultural properties under enhanced protection include: Armenia, Azerbaijan, Belgium, Cambodia, Cyprus, Czech Republic, Georgia, Italy, Lithuania, and Mali.

¹⁰⁷ Article 11.9, *Second Protocol to the Hague Convention* (1999). Available at: <https://www.unesco.org/en/legal-affairs/second-protocol-hague-convention-1954-protection-cultural-property-event-armed-conflict> ; see also UNESCO (2022) *Declaration on the protection of cultural heritage in Ukraine*. Committee for the Protection of Cultural Property in the Event of Armed Conflict, 2 Extraordinary Meeting, Paris, 18 March. C54/22/2.EXT.COM/3 Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000380949>

¹⁰⁸ *First Protocol to the Hague Convention* (1954). Available at: https://en.unesco.org/sites/default/files/1954_Protocol_EN_2020.pdf

¹⁰⁹ Except for Malta and Latvia, all EU Member States are party to the *Second Protocol* (1999).

¹¹⁰ International Committee of the Red Cross (n.d.) *International Humanitarian Law Databases*. Available at: <https://ihl-databases.icrc.org/en/customary-ihl>

¹¹¹ See [Rule 38](#), and [related practice](#); [Rule 39](#), and [related practice](#); [Rule 40](#), and [related practice](#); and [Rule 41](#), and [related practice](#).

Finally, it is also worth noting the ongoing discussion about the possibility to establish safe havens for cultural objects away from conflict zones. These have to be distinguished from the “refuges” which should be established as a measure that States Parties to the Hague 1954 Convention must implement within their borders, before or during an armed conflict. Although the Regulations for the Execution of the Hague Convention 1954¹¹² provides that a “depository State shall return the property only on the cessation of the conflict,” and that “such return shall be effected within six months from the date on which it was requested” (Article 18), many States are reluctant to see their cultural objects being sent abroad for safekeeping. For example, at the time of the adoption of UN Security Resolution 2347,¹¹³ the first to focus exclusively on cultural heritage, the representative of Egypt expressed the view that safe havens should only be established within the territory of the State where the objects are located, conveying concern that objects sent abroad may not be returned based on the pretext of conservation.¹¹⁴ However, for examples regarding safe havens, see Chapter 4 of this study. Finally, note that safe havens may also include digital safe havens, and that any digital inventories of cultural heritage need to be included in agreements on digital safe havens.

2.3.1. Implications for the EU

The role of the EU, as a supranational organisation, is crucial in promoting full compliance with IHL obligations, including those on the protection of cultural property under Geneva Conventions and their Additional Protocols, and under Hague Convention 1954 and its Protocols. The promotion and application of IHL is, indeed, at the heart of the EU’s external action.¹¹⁵ Accordingly, Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL) (2009) are designed to set out operational tools for the EU and its institutions and bodies to promote such compliance.¹¹⁶ Moreover, they “aim to address compliance with IHL by third States, and, as appropriate, non-State actors operating in third States.”¹¹⁷ In particular, the relevant actors are required to gather detailed information on conflicts, and draw up reports, assessments and recommendations for action. This concerns European institutions, in particular, Council working parties cooperating with the international organisations concerned, including the International Committee of the Red Cross and the UN, as well as EU Heads of Mission and appropriate EU representatives, who should report cases of serious violation of IHL.¹¹⁸ This also relates to the violations of IHL rules with respect to cultural heritage.

The EU has several means of action at its disposal, including: political dialogue with non-EU countries, both in the event of conflict and in time of peace; general public statements by which the EU takes a stand in favour of compliance with IHL or condemns situations or particular acts; restrictive measures and sanctions against states or individuals involved in a conflict; cooperation with international bodies; crisis-management operations, which may include missions to collect information useful for the ICC or for investigations of war crimes; support for the prosecution of individuals responsible for violating IHL; training and education of populations, military personnel and law enforcement officials.¹¹⁹ These actions also include capacity building regarding the protection of cultural heritage in post-conflict

¹¹² UNESCO (n.d.) *Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)*. Available at: <https://en.unesco.org/protecting-heritage/convention-and-protocols/regulations-for-execution>

¹¹³ UN Security Council Resolution 2347 (24 March 2017) UN Doc S/RES/2347: Maintenance of international peace and security. Available at: <http://unscr.com/en/resolutions/doc/2347>

¹¹⁴ See the intervention of Mr Aboulatta (Egypt), UN Security Council Meeting, 7907th meeting, S/PV.7907, 24 March 2017, p. 15. Available at: https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7907.pdf

¹¹⁵ See EC (2021) *Communication from the Commission to the European Parliament and The Council: on the EU's humanitarian action: new challenges, same principles* (COM(2021)110). Available at: <https://ec.europa.eu/echo/files/aid/hacomcommunication2021.pdf>

¹¹⁶ Council of the EU (2009) *Updated European Union Guidelines on promoting compliance with international humanitarian law*. OJ, 2009/C 303). Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN)

¹¹⁷ *Ibid.*, Para 2.

¹¹⁸ *Ibid.*, Para. 15.

¹¹⁹ *Ibid.*, Para. 16.

territories. Such actions have been employed in different EU civilian and training missions, e.g. the EU Monitoring Mission in Georgia, and the EU Military Training Mission in the Central African Republic.¹²⁰

The 2021 Conclusions stressed the EU's commitment to upholding and strengthening the rules-based international order, including IHL rules, "with the United Nations (UN) at its core."¹²¹ In this respect, the Concept on Cultural heritage in conflicts and crises underlines that a "driving force of EU's engagement is promoting the respect for international law, principles and norms to protect cultural heritage," particularly those enshrined in IHL that consider "any deliberate destruction of cultural heritage as an unlawful attack on the past and present of humanity."¹²² The EU should thus "promote the respect of this international legal framework when engaging with third States."¹²³ In this regard, the Concept on Cultural heritage in conflicts and crises "provides the policy foundation for the EU to engage on cultural heritage in its external action in conflicts and crises, elaborating on principles, operational and strategic approaches in line with the humanitarian-peace-development nexus."¹²⁴ Whilst referring to the Council conclusions on operationalising the humanitarian-development nexus (2017),¹²⁵ it enhances cultural heritage within the EU's action in preserving peace, preventing conflict and strengthening international security. It also underlines that the protection of cultural heritage is enshrined in IHL, and thus that it "should be seen as a humanitarian responsibility for which measures to support compliance with International Humanitarian Law and related instruments should be used when deliberate destruction is imminent or occurs."¹²⁶ The EU should also consider, "in due circumstances and in accordance with the international legal framework and best practices, to support the establishments of *safe havens*."¹²⁷

The Report on the progress in the implementation of the "Concept on Cultural heritage in conflicts and crises" 2022 highlights the EU's engagement in the support for the protection of cultural heritage in conflicts and crises, including the war in Ukraine, through various means, including financial instruments (see Chapter 4 of this study).¹²⁸

In sum, given the importance of the IHL rules for the protection and safeguarding of cultural heritage in armed conflicts, and their binding force under both treaty and customary law, there is no doubt that they provide a solid and robust basis for concrete actions by the EU and its Member States (see Chapter 3 of this study).

2.4. Cultural objects and the threat of trafficking

Combatting the trafficking in cultural objects is important, not only because it deprives people of their heritage, but also because it may be a source of terrorism financing and thus threaten peace and security.

Whilst the First Protocol to the Hague Convention 1954 prohibits the transfer of cultural property from occupied territories (see above), another convention was specifically adopted to prevent trafficking in

¹²⁰ Council of the EU (2021) *Working Party on Public International Law (COJUR): Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law*, pp. 36-37. Available at: https://www.consilium.europa.eu/media/58615/2022_456_ihl-report_en_02.pdf

¹²¹ Para. 8, Conclusions (EU) 9837/21 of the Council of 21 June 2021 on EU approach to cultural heritage in conflicts and crises. Available at: <https://www.consilium.europa.eu/media/50557/st09837-en21.pdf>

¹²² 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. 8. Available at: <https://data.consilium.europa.eu/doc/document/ST-9962-2021-INIT/en/pdf>

¹²³ *Ibid.*, p. 9.

¹²⁴ *Ibid.*, p. 3.

¹²⁵ Conclusions (EU) No 9417/17 of Council of 19 May 2017 on Operationalising the Humanitarian-Development Nexus. Available at: <https://www.consilium.europa.eu/media/24010/nexus-st09383en17.pdf>

¹²⁶ 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. 6. Available at: <https://data.consilium.europa.eu/doc/document/ST-9962-2021-INIT/en/pdf>

¹²⁷ *Ibid.*

¹²⁸ EEAS, Council of the EU (2022) *2022 Report on the progress in the implementation of the "Concept on Cultural heritage in conflicts and crises. A component for peace and security in European Union's external action" and the dedicated Council Conclusions*, EEAS(2022)1566. Available at: <https://data.consilium.europa.eu/doc/document/ST-12398-2022-INIT/en/pdf>

cultural objects, in general: the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention 1970).¹²⁹ The UNESCO Convention 1970 covers any object belonging to one of the categories listed in its Article 1, and designated by the State “as being of importance for archaeology, prehistory, history, literature, art or science.” The UNESCO Convention 1970 requires State Parties to protect cultural objects on their territory against looting and illicit export through preventive measures (Articles 3-7). It also foresees import and export controls when the risk of pillage has accrued, such as armed conflict (Article 9); in that instance a State Party may call upon other State Parties to determine the concrete measures that need to be adopted. The UNESCO Convention 1970 also provides for a facilitated process for restitution among its Member States. As of January 2023, nearly all EU Member States (except Ireland and Malta), EEA countries (except Liechtenstein), as well as Russia, Ukraine, Switzerland and the United Kingdom are party to this treaty. In addition, the regime established by the UNESCO Convention 1970 also constitutes a basis for the EU’s system of import controls under Regulation (EU) 2019/880 (Schreiber, 2021, pp. 173-182).¹³⁰ Its principles are implemented in cultural, cooperation and association agreements concluded by EU and its Member States with third countries, including its Association Agreement with Ukraine (2014).¹³¹

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT Convention 1995) supplements the UNESCO Convention 1970.¹³² It applies also to private parties, such as collectors, museums and other non-state entities, who are under an obligation to return a stolen or illegally exported cultural object (Article 3). It also introduced a standard for due diligence for the art trade, according to which the possessor of an illicitly trafficked cultural object will only be compensated if that buyer can prove due diligence at the time of purchase (Article 4). There are 54 States Parties to the UNIDROIT Convention 1995, including 15 EU Member States and Norway.

Whilst the number of ratifications of this treaty is low, it impacts the cultural heritage legislation of the EU and its Member States. Together with Regulation (EU) 2019/880,¹³³ the two EU directives on the return of cultural objects – Directive 93/7/EEC (1993)¹³⁴ and Directive 2014/60/EU (2014)¹³⁵ – the UNIDROIT Convention 1995 has contributed to shifting the burden of proof in transactions involving cultural objects; possessors and importers of cultural objects are increasingly required to actively research the lawful provenance (the ownership history) before acquisition, and demonstrate diligent conduct in that regard. The UN Security Council, which has imposed two import bans with regard to cultural goods from Iraq¹³⁶ and Syria,¹³⁷ respectively, has also played an important role in that respect.¹³⁸ Enshrined as a binding obligation in a UN Security Council resolution, all States must implement those import restrictions. Furthermore, its landmark Resolution 2347, which is solely dedicated to cultural heritage, addresses the common interest and duty of the entire international community to cooperate

¹²⁹ *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970) 823 UNTS 231. Available at: <https://en.unesco.org/about-us/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and>

¹³⁰ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the Introduction and Import of Cultural Goods. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0880&from=EN>

¹³¹ Art. 439, *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part* (2014). Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529(01)&from=EN)

¹³² *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* (1995) 2421 UNTS 457. Available at: <https://www.unidroit.org/instruments/cultural-property/1995-convention/>

¹³³ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the Introduction and Import of Cultural Goods. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0880&from=EN>

¹³⁴ Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State. *OJ*, 74, 27.3 1993, p. 74-79. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:31993L0007>

¹³⁵ Directive 2014/60/EU of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0060&from=EN>

¹³⁶ UN Security Council Resolution 1483 (24 May 2003) UN Doc S/RES/1483: The situation between Iraq and Kuwait. Available at: <http://unscr.com/en/resolutions/doc/1483>

¹³⁷ UN Security Council Resolution 2199 (12 February 2015) UN Doc S/RES/2199: Threats to international peace and security caused by terrorist acts. Available at: <http://unscr.com/en/resolutions/doc/2199>

¹³⁸ Note that trade sanctions with regard to all Iraqi goods, including cultural goods, had already been imposed under UNSC Resolution 661 (1990), see Article 3a. Available at: <http://unscr.com/en/resolutions/661>

Figure 3: left - Crimean Tatar Fes from last quarter 19th/early 20th c. AD, right - Saint Nicholas with scenes from his life



©ICOM Emergency Red List of Cultural Objects at Risk - Ukraine

for its protection in the broader context of an armed conflict. Undoubtedly, this duty also applies to the current conflict in Ukraine. However, a gap remains given that the UN Security Council is not able to impose such sanctions with regard to all armed conflicts, notably the war in Ukraine, because of the veto power of its permanent Member States (China, France, Russia, the United Kingdom and the United States).

In addition, another practical gap includes difficulties in proving the origin and date of removal by customs authorities, since cultural objects often lack clear documentation regarding their provenance (ownership history), or even go with forged documents.¹³⁹ This underscores the importance of imposing a legal obligation on holders of cultural goods to document the (lawful) provenance of the cultural goods. And, indeed, a number of recent regulations include obligations in that respect, and they provide for criminal liability in case of non-compliance.

For example, in the wake of the aforementioned Security Council resolutions, the CoE adopted the Convention on Offences relating to Cultural Property (2017) (Nicosia Convention).¹⁴⁰ This treaty is aimed at preventing and combatting the illicit trafficking and destruction of cultural property, including acts committed in armed conflict and under occupation. Adopted in the framework of the CoE's action to fight terrorism and organised crime, it supersedes the former European Convention on Offences relating to Cultural Property (1985) (Delphi Convention) which never entered into force.¹⁴¹ The Nicosia Convention explicitly refers to the Hague Convention 1954 and its two Protocols, and the 1970 UNESCO and 1995 UNIDROIT Conventions, among other multilateral cultural conventions. It specifically deals with the criminalisation of illicit trafficking, and establishes a number of criminal offences, including: theft; unlawful excavation, importation and exportation; and illegal acquisition and placing on the market. It also criminalises the falsification of documents and the destruction or damage of cultural property when committed intentionally. Whilst this treaty provides for an extended list of measures to be employed for the purpose of preventing and fighting the destruction of, damage to

¹³⁹ EC (2016) *Communication from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing*, COM(2016) 50, p. 12. Available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52016DC0050>

¹⁴⁰ *CoE Convention on Offences relating to Cultural Property* (2017) CETS No. 221. Available at: <https://www.coe.int/en/web/culture-and-heritage/convention-on-offences-relating-to-cultural-property>

¹⁴¹ *CoE European Convention on Offences relating to Cultural Property* (1985) ETS 119. Available at: <https://rm.coe.int/168007a085>

and trafficking of cultural property, it explicitly calls on States Parties to “facilitate co-operation for the purpose of also protecting and preserving cultural property in times of instability or conflict.”¹⁴² This provision is understood very broadly, as it refers to different actors (state and private entities) and forms of cooperation, including the establishment of “safe havens” for foreign movable cultural property endangered by conflicts.¹⁴³

Although, to date only six states are party to this treaty, five of them (Cyprus, Greece, Hungary, Italy and Latvia) are EU Member States. Arguably, this low level of ratifications reflects a general reluctance of states to undertake international obligations towards cultural heritage and cultural rights, as the sphere of culture is often considered an exclusive sovereign competence. However, it also appears that more and more states are currently considering ratification of the Nicosia Convention, thus contributing further to the standardisation of the European legal framework designed to prevent and combat the illicit trafficking and destruction of cultural property on the level of criminal law.

Another important CoE instrument relevant in combatting illicit trade in cultural objects is provided by the Convention for the Protection of the Archaeological Heritage of Europe (Revised) (1992) (La Valetta Convention).¹⁴⁴ This treaty is binding on all EU Member States and Ukraine, but Russia is not a party. La Valetta Convention addresses the prevention of the illicit circulation of archaeological objects. In particular, each Party undertakes to inform the competent authorities, in the State of origin that is a Party to this Convention, of anything that may point to illicit excavations or unlawful removals from official excavations, and to provide the necessary details thereof;¹⁴⁵ and “to take such steps as are necessary to ensure that museums and similar institutions whose acquisition policy is under State control do not acquire elements of the archaeological heritage suspected of coming from uncontrolled finds or illicit excavations or unlawfully from official excavations.”¹⁴⁶ Accordingly, the term “illicit excavations” comprised all excavations which have not been authorised by the competent authorities.¹⁴⁷

Illicit excavations can often concern underwater cultural heritage, which may also be at risk of trafficking. Whilst such heritage is only to some extent protected by La Valetta Convention and the UN Convention on the Law of the Sea,¹⁴⁸ a comprehensive regime is today provided by the Convention on the Protection of the Underwater Cultural Heritage (UNESCO Underwater Heritage Convention 2001).¹⁴⁹ To date, 15 EU Member States and Ukraine are party to this treaty, but Russia is not. In cases when an object has been recovered in a manner that is contrary to the UNESCO Underwater Heritage Convention 2001, States Parties are requested to prevent the import or dealing in underwater cultural objects that have been exported or acquired illicitly. States Parties must also seize such underwater cultural heritage in their territory.

¹⁴² Article 21(c), *CoE Convention* (2017).

¹⁴³ See Para. 126, Council of Europe, *Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property* (2017) CETS No. 221. (Explanatory Report to the Nicosia Convention), Available at: <https://rm.coe.int/council-of-europe-convention-on-offences-relating-to-cultural-property/1680a5dafb>

¹⁴⁴ CoE *European Convention on the Protection of the Archaeological Heritage* (1992) (Revised) (Valetta, 16 January) ETS 143. Available at: <https://rm.coe.int/168007bd25>

¹⁴⁵ See Article 10(ii), CoE, *Explanatory Report* (Explanatory Report to the Nicosia Convention)

¹⁴⁶ *Ibid.*, Article 10(iii).

¹⁴⁷ CoE (1992). *Explanatory Report to the European Convention on the Protection of the Archaeological Heritage (Revised)*. (Valetta, 16 January) ETS 143, p. 8. Available at: <https://rm.coe.int/16800cb5e0>

¹⁴⁸ *UN Convention on the Law of the Sea* (1982) 1833 UNTS 397. Available at: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

¹⁴⁹ *UNESCO Convention on the Protection of the Underwater Cultural Heritage* (2001) 2562 UNTS 3. Available at: <https://en.unesco.org/underwater-heritage/2001>

2.4.1. Implications for the EU

In the EU, the fight against illicit trade in cultural objects is now covered by the EU Security Union Strategy,¹⁵⁰ and the EU Strategy to tackle organised Crime for 2021-2025.¹⁵¹ This aims to raise awareness, improve information exchange and cooperation (including with non-EU countries) and strengthen capacity building and expertise.

The risks relating to trafficking in cultural goods are particularly addressed in the context of illicit import into the Union customs territory. As a result of the sanction imposed by the Security Council, the EU adopted the Council Regulation (EC) No 1210/2003¹⁵² with regard to Iraqi objects, and then expanded the ban to Syrian objects with the Council Regulation (EU) No 1332/2013, before the Security Council followed suit in 2015.¹⁵³ These instruments prohibit the import, export or dealing in the cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance from Iraq and Syria, respectively. These ad hoc instruments have now been complemented by a comprehensive system of import controls under Regulation (EU) 2019/880.¹⁵⁴ It seeks to prevent the illicit trade in cultural goods, and prohibits the import into the Union customs territory of cultural goods that were illicitly exported from third countries. Together with Implementing Regulation (EU) 2021/1079,¹⁵⁵ it provides for a system of import licences for the most endangered cultural goods, and importer statements for other categories of cultural goods. It is thus designed to prevent tax evasion, money laundering and organised crime, on the one hand, and to contribute to curbing the illicit art market practices and illicit excavations, on the other. In this regard, Regulation 2019/880 refers to the UNESCO Convention 1970 and UNIDROIT Convention 1995.¹⁵⁶ The licitness of export is primarily determined on the basis of the law of the country where the object was created and/or discovered. The system of import licences and importer statements will oblige those in possession of cultural goods to document their lawful provenance upon the import onto EU territory, causing a shift in the burden of proof as mentioned above.

In the present context, it is important to note that Regulation 2019/880 explicitly refers to the illicitness of removal that originates from a context of armed conflict.¹⁵⁷

Whilst the entire import controls regime, such as the electronic system that will carry out the storage and the exchange of information between the authorities of the Member States, to be operational from 28 June 2025 at the latest, certain elements are already in function, and the general prohibition (to import “illicit” cultural goods) has applied since 28 December 2020. Member States must ensure that the regulation is properly implemented, and they must adopt and apply effective, proportionate and dissuasive penalties for infringements.¹⁵⁸

¹⁵⁰ EC (2020) *Communication from the Commission to the European Parliament, The European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy*. COM(2020) 605. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0605&from=EN>

¹⁵¹ EC (2021) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to Tackle Organised Crime 2021-2025*. COM(2021) 170, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0170&from=EN>

¹⁵² Regulation (EU) No 1210/2003 of the Council of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003R1210>

¹⁵³ Regulation (EU) No 1332/2013 of the Council of 13 December 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria. Available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32013R1332>

¹⁵⁴ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the Introduction and Import of Cultural Goods. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0880&from=EN>

¹⁵⁵ Regulation (EU) 2021/1079 of the European Parliament and of the Council of 24 June 2021: laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1079&from=EN>

¹⁵⁶ See Preamble, 7th – 9th Recitals, Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the Introduction and Import of Cultural Goods. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0880&from=EN>

¹⁵⁷ *Ibid.* See Preamble, 2nd, 3rd, 9th and 10th Recitals.

¹⁵⁸ *Ibid.*, Art. 11.

Another area where the risks relating to trafficking in cultural goods have been taken into account is within the EU anti-money laundering framework. This imposes on traders, or intermediaries in the trade of certain works of art, certain obligations under the 5th anti-money laundering directive of 2018.¹⁵⁹ These entities fall within the category of so-called “obliged entities” required to put in place anti-money laundering controls, and conduct “customer due diligence” or “know-your-customer” policies (e.g. to put in place certain processes, designate a person responsible for anti-money laundering compliance, track records and report any potential transactional misuses).

One of the elements of the EU Strategy to tackle organised Crime for 2021-2025 is the adoption of an Action Plan on tackling the illicit trade in cultural goods.¹⁶⁰ Indeed, the EU Action Plan against Trafficking in Cultural Goods (2022) (EU Action Plan 2022) was finally adopted on 13 December 2022.¹⁶¹ It identifies “three main illegal activities associated with trafficking in cultural goods”: (i) “theft and robbery;” (ii) “looting (the illicit removal of ancient relics from archaeological sites, buildings or monuments;” and (iii) “forgery of cultural goods.” Related crimes are: “fraud, disposal of stolen goods (fencing), smuggling, or corruption.” It notes that “[b]eyond trafficking, criminals can abuse even legally acquired cultural goods, for money laundering, sanctions evasion, tax evasion or terrorism financing.”¹⁶² In this respect, the EU Action Plan 2022 underlines that “[t]he identity, authenticity, provenience, provenance, and legal status of a cultural good is rarely instantly visible, and often requires specific expertise to be established.”¹⁶³

To address these problems, the EU Action Plan 2022 has four strategic objectives: (i) improving prevention and detection of crimes by market participants and cultural heritage institutions; (ii) strengthening law enforcement and judicial capabilities; (iii) boosting international cooperation, and (iv) gaining the support of other key stakeholders to protect cultural goods from crime. In other words, it provides for the coordination of actions across different EU policies, since cultural goods trafficking is not only a threat to “the safety of EU citizens, but can also cause irreparable damage to our cultural heritage and therefore, our common identity.”¹⁶⁴ It nevertheless does not include very concrete steps or measures to be undertaken at the EU level, as these need to be performed by Member States, whose actions are to be encouraged, supported and coordinated by the EU.

In sum, it is clear that the EU and its Member States have the obligation to implement measures to prevent the illicit import in cultural objects. These obligations stem from several sources, including treaty law, EU legislation and UN sanctions. As a result, EU Member States must ensure effective border controls and enforcement capacity, as well as raising the awareness of those involved in the art market, such as through the Red Lists developed by the International Council of Museums (ICOM) (see Chapter 4 of this study).

2.5. Historical monuments and heritage sites and the threat of damage or destruction

Another element of the legal framework on cultural heritage in conflict concerns the protection of monuments and heritage sites (including archaeological and underwater heritage), especially those deemed to be of the greatest importance for humanity. The World Heritage Convention, to which all EU Member States, Ukraine and Russia are party, established a listing system to identify and protect

¹⁵⁹ Directive (EU) 2018/843 of the European Parliament of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN>

¹⁶⁰ EC (2021) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to Tackle Organised Crime 2021-2025*. COM(2021) 170. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0170&from=EN>

¹⁶¹ EC (2022) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Action Plan against Trafficking in Cultural Goods* COM(2022) 800. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0800&from=EN>

¹⁶² *Ibid.*, pp. 2-3.

¹⁶³ *Ibid.*, p. 3.

¹⁶⁴ *Ibid.*, p. 16.

monuments, groups of buildings and sites considered to be of Outstanding Universal Value, which means that they possess an exceptional quality that transcends borders.¹⁶⁵ Following nomination by the state on whose territory the site is situated, the property may be inscribed on the World Heritage List. Ukraine has seven cultural properties on the World Heritage List.¹⁶⁶ The historic centre of Odesa was the last to be inscribed on this list in 2023.

State Parties to the World Heritage Convention are required to protect any listed cultural sites situated on their territory, and to not take any deliberate measures that might damage listed cultural sites situated on the territory of another State party. State Parties, as well as private individuals, non-governmental organisations or other entities, may draw to the attention of the World Heritage Committee of existing threats to listed properties, such as an armed conflict. The World Heritage Committee then considers including the site in question on the List of World Heritage in Danger (Article 11(4) World Heritage Convention). Armed conflicts in Afghanistan, Iraq, Libya, Mali and Syria, among others, have led to the listing of cultural sites on the List of World Heritage in Danger. This is also the case of the historic centre of Odesa. As Audrey Azoulay, UNESCO Director-General, explained, “[w]hile the war continues, this inscription embodies our collective determination to ensure that this city, which has always surmounted global upheavals, is preserved from further destruction.”¹⁶⁷

As already highlighted, a number of treaties have been adopted to date in the fields of culture and heritage under the CoE’s auspices. Particularly, the provisions of the La Valetta Convention, and the Convention for the Protection of Architectural Heritage of Europe (1985)¹⁶⁸ (Granada Convention), are relevant to the protection of monuments and sites. The former one provides for various measures for the protection and conservation of archaeological heritage, including the obligations of State Parties “to encourage, under the relevant national legislation or international agreements binding them, exchanges of specialists in the preservation of the archaeological heritage.”¹⁶⁹ Similarly, the Granada Convention is binding on all EU members and Ukraine, but also on Russia. The text of this treaty, as that of La Valetta Convention, does not directly refer to armed conflict. Yet, a general commitment to cooperate in the protection of the built heritage, including the exchange of specialists,¹⁷⁰ may be relevant to post-conflict reconstruction processes.

The legal regime for monuments and sites also relates to underwater cultural heritage that might be located in zones under and beyond sovereignty of coastal states. In armed conflicts, underwater cultural heritage can be used to assert sovereignty over disputed maritime boundaries, in particular in areas that are rich in archaeological remains, such as Crimea.¹⁷¹ The UNESCO Underwater Heritage Convention 2001 seeks to prioritise the preservation of underwater cultural heritage *in situ*.¹⁷² However, it defines “underwater cultural heritage” as “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years.” Hence its regime does not apply to any warships sunk less than 100 years ago, such as the Moskva, the Russian flagship of the Black Sea Fleet.

¹⁶⁵ UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) 1037 UNTS 151. Available at: <https://whc.unesco.org/en/conventiontext/>

¹⁶⁶ UNESCO (n.d.) Ukraine: Properties inscribed on the World Heritage List. Available at: <https://whc.unesco.org/en/statesparties/ua>

¹⁶⁷ UNESCO (2023) Odesa inscribed on UNESCO’s World Heritage List in the face of threats of destruction. [press release] 25 January. Available at: <https://www.unesco.org/en/articles/odesa-inscribed-unescos-world-heritage-list-face-threats-destruction>

¹⁶⁸ Convention for the Protection of the Architectural Heritage of Europe (1985) (Granada, 3 October) ETS no. 121. Available at: <https://rm.coe.int/168007a087>

¹⁶⁹ Article 12(ii), European Convention on the Protection of the Archaeological Heritage (1992) (Revised) (Valetta, 16 January) ETS 143. Available at: <https://rm.coe.int/168007bd25>

¹⁷⁰ Articles 18-19, Convention for the Protection of the Architectural Heritage of Europe (1985) (Granada, 3 October) ETS no. 121. Available at: <https://rm.coe.int/168007a087>

¹⁷¹ See for example the scientific expeditions conducted by the Institute of Oriental Studies of the Russian Academy of Sciences in Crimea: Institute of Oriental Studies Russian Academy of Sciences (n.d.) *Underwater and archaeological mission in the waters of the Crimean Peninsula*. Available at: <https://www.ivran.ru/en/underwater-and-archaeological-mission-in-the-waters-of-the-crimean-peninsula>

¹⁷² Note that the following EU Member States are not yet party to the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001): the Republic of Cyprus, the Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Latvia, Luxembourg, the Netherlands and Sweden.

Although all the treaties mentioned do not directly relate to armed conflict, they continue to apply in situations of armed conflict. Hence they have to be considered within the scope of the EU's approach to cultural heritage in conflicts and crises.¹⁷³

2.6. Intangible cultural heritage

The international legal framework specifically developed to protect cultural heritage in armed conflict has so far focused on its tangible manifestations, such as monuments, archaeological sites or works of art. In fact, the existing instruments of international law either do not address the protection of intangible heritage in armed conflict at all, or they refer to it only laconically (Chainoglou, 2017, pp. 109-134). However, armed conflicts also threaten the intangible aspects of cultural heritage. As already mentioned, the intangible manifestations of cultural heritage are protected under international human rights law, and the framework applicable to tangible forms of cultural heritage also protects the intangible heritage associated with them. In addition, there is a specific Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO ICH Convention 2003) which defines intangible cultural heritage as: “[T]he practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artefacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognise as part of their cultural heritage” (Article 2).¹⁷⁴ This definition includes oral traditions, performing arts (songs and dances), social practices, religious rituals and festive events, languages, knowledge and practices concerning nature and the universe, and craftsmanship (Article 2(2)).

All EU Member States, EEA countries (except Liechtenstein) and Ukraine are party to this treaty, whilst Russia is not. State Parties must “take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory” (Article 11). These measures may include, among others: to “adopt a general policy aimed at promoting the function of intangible cultural heritage in society, and at integrating the safeguarding of such heritage into planning programmes;” to “foster scientific, technical and artistic studies [...] with a view to effective safeguarding of the intangible cultural heritage;” and to ensure “access to the intangible cultural heritage whilst respecting customary practices governing access to specific aspects of such heritage” (Article 13).

In order to raise awareness of intangible cultural heritage, the UNESCO ICH Convention established a Representative List of the Intangible Cultural Heritage of Humanity (Article 16); for instance, in 2013, Petrykivka decorative painting as a phenomenon of the Ukrainian ornamental folk art was inscribed on this List.¹⁷⁵ On 1 July 2022, the “Culture of Ukrainian borscht cooking” was inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding.¹⁷⁶ Whilst the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage was only due to consider it for inscription on the Representative List in 2023, the ongoing war and its impact on the tradition led to the fast tracking of its listing process, with the Committee noting that:

the armed conflict has threatened the viability of the element. The displacement of people and bearers threatens the element, as people are unable not only to cook or grow local vegetables for borscht, but also to come together to practice the element, which undermines the social and cultural well-being of communities.¹⁷⁷

¹⁷³ See p. 3, 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. Available at: <https://data.consilium.europa.eu/doc/document/ST-9962-2021-INIT/en/pdf>

¹⁷⁴ UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) 2368 UNTS 3. Available at: <https://ich.unesco.org/en/convention>

¹⁷⁵ UNESCO (n.d.) *Petrykivka decorative painting as a phenomenon of the Ukrainian ornamental folk art*. Available at: <https://ich.unesco.org/en/RL/petrykivka-decorative-painting-as-a-phenomenon-of-the-ukrainian-ornamental-folk-art-00893>

¹⁷⁶ Note that the Intergovernmental Committee can also provide financial and technical assistance for safeguarding.

¹⁷⁷ UNESCO (2022) *Culture of Ukrainian Borscht Cooking Inscribed on the List of Intangible Cultural Heritage*. Available at: <https://ich.unesco.org/en/news/culture-of-ukrainian-borscht-cooking-inscribed-on-the-list-of-intangible-cultural-heritage-in-need-of-urgent-safeguarding-13412>

In situations of emergency, which include armed conflict, the Intergovernmental Committee can also provide financial and technical assistance for safeguarding intangible cultural heritage (Articles 20 and 21). Specific operational principles for safeguarding intangible cultural heritage in emergencies were established in 2019.¹⁷⁸ These principles are anchored on the link between intangible cultural heritage and the communities who practice and transmit it, thus seeking to ensure that they play a primary role in all phases of emergency.

Notably, UNESCO has already stressed that the safeguarding of intangible heritage “is a security and humanitarian imperative in conflict and transition situations, and an essential element in ensuring sustainable peace and development.”¹⁷⁹ Moreover, “[p]articipation and access to culture and its living expressions, including intangible heritage can help strengthen people’s resilience and sustain their efforts to live through and overcome crisis.”¹⁸⁰ Hence, the safeguarding of intangible heritage during conflict constitutes “an integral element of the overall United Nations response to such situations,” and should be implemented in “humanitarian action, peace-building processes and security policies.”¹⁸¹ Yet, more synergies between different institutions and legal frameworks is needed. The safeguarding of intangible cultural heritage is also highlighted in the EU’s approach to cultural heritage in conflicts and crises. Accordingly, the 2021 Conclusions recall the importance of the UNESCO ICH Convention 2003, whilst stressing “the complementarity and interlinkages that can exist between intangible and tangible heritage.”¹⁸² Moreover, they affirm “the importance of engaging on intangible heritage as a way to build common understanding, notably by enhancing inter-cultural and inter-faith dialogue and by ensuring the transmission of traditions and knowledge.”¹⁸³ In this regard, the safeguarding of intangible of cultural heritage is seen as an important component of post-conflict recovery processes,¹⁸⁴ as also enshrined in UNESCO Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage (2018) (Warsaw Recommendation).¹⁸⁵ For more details see section 2.8 below.

2.7. The accountability for violations of cultural heritage obligations in armed conflict

Whilst the legal framework for the protection and safeguarding of cultural heritage in the event of armed conflict and occupation is well-established and contains specific obligations, a number of questions arise as to the consequences of a breach of such obligations. In fact, various entities may bear responsibility for international offences against cultural heritage committed during an armed conflict. Yet, the rules governing their responsibility are regulated under distinct normative regimes of international law.

2.7.1. State responsibility

First of all, the violation of international cultural heritage obligations constitutes an internationally wrongful act, and it may thus entail international responsibility which can be invoked and implemented against sovereign states. The international law regime of state responsibility is regulated under customary international law, comprehensively codified by the UN Articles on Responsibility of

¹⁷⁸ UNESCO (2009) *Operational principles and modalities for safeguarding intangible cultural heritage in emergencies*. Available at: https://ich.unesco.org/doc/src/Operational_Principles_and_Modalities_for_Safeguarding_ICH_in_Emergencies_EN.pdf

¹⁷⁹ Para. 10, UNESCO (2015) *Reinforcement of UNESCO’s action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict*. General Conference, 38th session, 2015 (38 C/49). Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000235186>,

¹⁸⁰ Ibid.

¹⁸¹ Ibid., Para. 13.

¹⁸² Ibid., Para. 5.

¹⁸³ Ibid.

¹⁸⁴ See pp. 7 and 11, EEAS, Council of the European Union (2021) *Concept on Cultural heritage in conflicts and crises. A component for peace and security in European Union’s external action*. 9962/21. Available at: <https://data.consilium.europa.eu/doc/document/ST-9962-2021-INIT/en/pdf>

¹⁸⁵ UNESCO (2018) *Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage*. Available at: <https://whc.unesco.org/en/news/1826>

States for Internationally Wrongful Acts (2001) (ARSIWA).¹⁸⁶ Although the ARSIWA does not have the form of a treaty, many of its provisions are generally considered as reflecting customary international law.

Whilst most of the international obligations for the protection of cultural heritage are made by and for states, the objectives of such obligations, as already explained, have gone beyond exclusive interests of states towards general interests and values shared by the entire international community, with increasing focus on the protection and promotion of human rights. Hence, the breach of international cultural heritage obligations by a state, such as hostile acts in an armed conflict, may give rise to secondary obligations towards, and vested in, not only a state directly injured but also in their plurality or the international community as a whole

As regards the violations of cultural heritage obligations in the event of an armed conflict, this may be invoked, in the vast majority of cases, by a state determined to have been injured, rather than by a third state or their plurality. Accordingly, the breach of an obligation to respect cultural property involves legal consequences, as clearly established by ARSIWA, those being: to cease that act if it is continuing; to offer appropriate assurances and guarantees of non-repetition if circumstances so require; and to make full reparation for the injury caused by the internationally wrongful act. Reparations may take different forms: restitution, compensation and satisfaction (e.g., official apology).¹⁸⁷ Yet, establishing state responsibility for the breach of a cultural heritage obligation may also encounter serious practical difficulties in terms of attributing a course of conduct to a given state. In fact, to date there are few examples in which international courts and other dispute settlement bodies (such as arbitration commissions and tribunals) have established state responsibility for violations of IHL rules or international human rights law rules concerning the protection of cultural heritage in armed conflicts. It is also doubtful whether the pending proceedings before the ICJ initiated by Ukraine will cover Russia's responsibility for hostile acts against cultural heritage.¹⁸⁸ In addition, it is to be noted that political circumstances often favour the prosecution of individual perpetrators, even if they acted under the direction or control of a State, rather than invoking the responsibility of that State. Hence, in practice the implementation of obligations stemming from the breach of international law rules on the protection of cultural heritage in an armed conflict is only possible if the responsible state recognises that it has committed an internationally wrongful act and fulfils its obligation to repair it. Moreover, the current cultural heritage international law does not provide for any comprehensive dispute settlement mechanisms.

2.7.2. Individual criminal responsibility

The second dimension of addressing violations of cultural heritage obligations in armed conflict regards individual criminal liability. Since the entry into force of the Rome Statute in 2002, the ICC, as the first and only permanent international court, has been empowered to curb the impunity of the gravest international crimes threatening "the peace, security and well-being of the world."¹⁸⁹

In its Policy on Cultural Heritage, the Prosecutor Office of the ICC notes that, "[w]ilful attacks on cultural heritage constitute a centuries-old practice that remains a feature of modern conflict."¹⁹⁰ Attacks against cultural heritage can amount to war crimes and can be prosecuted before the ICC.¹⁹¹ Such attacks may also be considered a crime against humanity when they amount to persecution, if they are

¹⁸⁶ UN General Assembly (2001) *Responsibility of States for Internationally Wrongful Acts*. Available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

¹⁸⁷ *Ibid.*, Arts. 34-37.

¹⁸⁸ ICJ (2022) *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. No. 2022/75. [press release] No. 2022/75, 16 December. Available at: <https://www.icj-cij.org/public/files/case-related/182/182-20221216-PRE-01-00-EN.pdf>

¹⁸⁹ Preamble, *ICC Rome Statute* (1998) 2189 UNTS 3. Available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹⁹⁰ Para 2, ICC, Office of the Prosecutor (2021) *Policy on Cultural Heritage*. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>

¹⁹¹ See Article 8(2)(b)(ix), *ICC Rome Statute* (1998) 2187 UNTS 3. Available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

“committed as part of a widespread or systematic attack [...] against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender [...], or other grounds that are universally recognised as impermissible under international law.”¹⁹² And whilst attacks against cultural heritage can not amount to genocide, they may demonstrate the intent to commit genocide. Moreover, the Policy on Cultural Heritage emphasises that cultural heritage considerations need to be taken into account whilst prosecuting and sentencing perpetrators of other international crimes.

The Second Protocol to the Hague Convention 1999 requires State parties to either prosecute or extradite any alleged offender of an offence set forth in Article 15 who is present on its territory (Article 17). Article 15 provides for universal jurisdiction for the following crimes: (a) making cultural property under enhanced protection the object of attack; (b) using cultural property under enhanced protection or its immediate surroundings in support of military action; and (c) extensive destruction or appropriation of cultural property protected under the Hague Convention 1954 and this Protocol. This means that a State Party must prosecute or extradite an alleged offender even if it is not one of its nationals, and even if the alleged offence was committed on the territory of another State, i.e., on the basis of “universal jurisdiction.” Although the ICC has opened a formal investigation into the situation in Ukraine, and has jurisdiction over those crimes, its jurisdiction follows the complementarity principle which means that a case would be inadmissible before it if it was under investigation by a state which has jurisdiction over it, including of course Ukraine.¹⁹³ Since the start of the conflict, courts in Ukraine have continued to function, even if not at full capacity, and alleged perpetrators of war crimes are being prosecuted; there is however an issue of backlog.

Furthermore, the Geneva Conventions 1949 consider as grave breaches: the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”¹⁹⁴ A grave breach must also be prosecuted in accordance with the principle of universal jurisdiction. This means that any EU Member States must also prosecute or extradite alleged perpetrators situated on their territory, regardless of their nationality or where the offence was committed.

The inscription of a cultural heritage site on the UNESCO World Heritage List or its marking with the Blue Shield emblem may be taken into consideration during a trial to determine whether the accused had knowledge (or had reasonable grounds to know) of its special status. In addition, if a site is on the UNESCO World Heritage List, it may support the decision to be prosecuted at the international level.¹⁹⁵ Finally, if a targeted cultural site is on the UNESCO World Heritage list, it may constitute an aggravating factor at the time of sentencing.¹⁹⁶

As already mentioned, under the CoE’s cultural heritage framework, “the protection of cultural heritage during and immediately after a conflict is a human rights issue.”¹⁹⁷ Furthermore, violations of cultural

¹⁹² See Article 7(1)(h), *ICC Rome Statute* (1998) 2187 UNTS 3. Available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹⁹³ Note that, given that the ICC has no jurisdiction over the crime of aggression in the context of the war between Russia and Ukraine, there is ongoing discussion about the establishment of an international criminal tribunal which would be specifically tasked with the prosecution of this crime. See for example: Brown, G., Et al. (n.d.) *Statement: Calling for the Creation of a Special Tribunal for the Punishment of the Crime of Agression Against Ukraine*. Available at: <https://gordonandsarahbrown.com/wp-content/uploads/2022/03/Combined-Statement-and-Declaration.pdf>

Note also there is a pending case: ICJ (2022) *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. [press release] No. 2022/75, 16 December 2022. Available at: <https://www.icj-cij.org/public/files/case-related/182/182-20221216-PRE-01-00-EN.pdf>

¹⁹⁴ Article 147, *Geneva Conventions* (1949). Available at: <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

¹⁹⁵ See for example the Statement of the ICC Prosecutor at the opening of the Trial in the case against Mr Ahmad Al-Faqi Al Mahdi, 22 August 2016: ICC (2016) *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the opening of Trial in the case against Mr Ahmad Al-Faqi Al Mahdi*. Available at: <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-opening-trial-case-against-mr>

¹⁹⁶ *Prosecutor v Miodrag Jokić*, Sentencing Judgement (Trial Chamber), 18 March 2004, para 51. Available at: https://www.icty.org/x/cases/miodrag_jokic/tjug/en/jok-sj040318e.pdf; see also *Prosecutor v Pavle Strugar*, Judgement (Trial Chamber) (Case No. IT-01-42), 31 January 2005, para 232. Available at: <https://www.icty.org/x/cases/strugar/tjug/en/str-tj050131e.pdf>

¹⁹⁷ Para. 1, Resolution (CoE) 2057 of the Parliamentary Assembly of 22 May 2015: Cultural Heritage in Crisis and Post-crisis Situations. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21784&lang=en>

heritage obligations committed in such circumstances “should involve international responsibility.”¹⁹⁸ In this regard, the Nicosia Convention provides for obligations to its States Parties to establish criminal liability of natural persons and criminal, civil or administrative liability of legal persons (“Commercial companies, associations and similar legal entities”¹⁹⁹) (Articles 12-13).²⁰⁰ States Parties are also required to introduce “effective, proportionate and dissuasive sanctions, which take into account the seriousness of the offence” (Article 14(1)).

As for jurisdiction, each State Party has to establish jurisdiction over the criminal offences referred to in this treaty, when the offence is committed: (a) in its territory; (b) on board a ship flying the flag of that Party; (c) on board an aircraft registered under the laws of that Party; or (d) by one of its nationals (Article 12(1)). Moreover, it enshrines the principle of *aut dedere aut judicare* (extradite or prosecute), which means that if a Party refuses to extradite a person (the alleged offender), that Party has the legal ability to undertake investigations and proceedings domestically instead (Article 12(2)).²⁰¹ Importantly, States Parties should closely co-operate with each other in jurisdictions to counter the impunity of perpetrators (Article 19).

The EU is also concerned with prosecuting crimes against cultural heritage committed in armed conflicts. Alongside the obligations of Member States to prosecute the violations of IHL law (relating mostly to offenders in a war zone), and offences under the EU Import Regulation system (relating to importers of illicitly exported artefacts) and, where applicable, the Nicosia Convention (relating to various offences), other offences relating to the illicit trade, money laundering and organised crime should also be subject to effective proceedings.²⁰² In this regard, the cooperation at the EU level shall be set up on the basis of the existing law enforcement and judicial cooperation instruments within the Area of Freedom, Security and Justice (Title V TFEU), such as the judicial cooperation in criminal matters and police cooperation. In particular, “[t]he European Public Prosecutor’s Office (EPPO) could investigate and prosecute specific cultural goods trafficking related offenses falling within its competence.”²⁰³ Furthermore, the EU is already committed to collecting information useful for the Office of the Prosecutor of the ICC, and for other prosecutions concerning violations of IHL and international human rights law rules.²⁰⁴

The purpose of this entire legal framework is to close the impunity gap, i.e., to ensure that those perpetrators will be accountable. In particular, the ongoing investigations at the ICC,²⁰⁵ and the possible ad hoc tribunal (in addition to the new International Centre for Prosecution of the crime of Aggressions, ICPA), which would also cover occupied territories, may provide a jurisdictional platform to curb the impunity of crimes against cultural heritage. The EU and its Member States should also be ready to prosecute and/or to support the work of investigations by the Office of the Prosecutor of the ICC (or of a possible special tribunal for Ukraine). In this regard, the key role of the EU is to provide all necessary support to the work of prosecutors and judicial organs of its Member States, as well as to facilitate the cooperation with third countries (such as Ukraine) and other international organisations in matters of international criminal jurisdiction. With the creation of the Core International Crimes Evidence Databased (CICED), within the support structure for the Joint Investigation Team (JIT),

¹⁹⁸ Ibid.

¹⁹⁹ Para. 82, CoE (2017) *Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property*. Available at: <https://rm.coe.int/council-of-europe-convention-on-offences-relating-to-cultural-property/1680a5dafb>

²⁰⁰ Note that the Nicosia Convention has only been ratified by Cyprus, Greece, Hungary, Italy, Latvia, as well as Mexico; Russia and Ukraine have both only signed it.

²⁰¹ Para. 78, CoE (2017) *Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property*. Available at: <https://rm.coe.int/council-of-europe-convention-on-offences-relating-to-cultural-property/1680a5dafb>

²⁰² See p. 11, EC (2022) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Action Plan against Trafficking in Cultural Goods* (COM(2022)800 Final). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0800&from=EN>

²⁰³ Ibid, pp. 11-12.

²⁰⁴ In particular, an [International Centre for the Prosecution of the Crime of Aggression in Ukraine will be set up in The Hague](#).

²⁰⁵ Khan, K. A.A. (2022) *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation*. ICC. Available at: <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states> and <https://www.icc-cpi.int/ukraine>

Eurojust will already significantly support the preservation, storing and analysis of evidence of international crimes committed in Ukraine.²⁰⁶ In doing so, it must include any evidence of crimes concerned with cultural heritage (in all its forms).

2.8. Recovery and reconstruction

The existing legal framework for the recovery and reconstruction of cultural heritage in post-conflict situations has not yet been fully consolidated. On the one hand, the issue of restitution of cultural objects removed from an occupied territory and conflict-ridden territory comes to play. As already recalled, under the First Protocol to the 1954 Hague Convention, at the close of hostilities, all States Parties must return the exported objects to the formerly occupied territory (Article 3).²⁰⁷ The export and transfer of ownership of cultural property under compulsion, arising directly or indirectly from the occupation of a country by a foreign power, is also considered as illicit under Article 11 of the UNESCO Convention 1970, and thus subject to restitution. On the other hand, as already explained, the recovery and reparation for the lost and damaged heritage in armed conflicts may also constitute forms of reparations for an internationally wrongful act against protected cultural heritage (see section 2.7. above).

Another issue concerns the recovery and reconstruction of heritage damaged or destroyed in armed conflict. Generally speaking, such processes are essentially linked with peace-building agendas, whilst the actual practice differs from case-to-case. The most comprehensive guidelines so far, the Warsaw Recommendation on Recovery and Reconstruction of Heritage 2018, were adopted by a forum of experts representing 30 countries and several international organisations (including the Global Alliance for Urban Crises, International Council on Monuments and Sites (ICOMOS), International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the World Bank and the UN International Strategy for Disaster Reduction (UNISDR)), under the auspices of UNESCO.²⁰⁸ It acknowledges the value of cultural heritage in the processes of peacebuilding and post-conflict and post-disaster recovery and reconstruction with “the overall goal” of “the recovery of the society,” and “build back better.”²⁰⁹ It calls for the full participation of communities concerned in decision-making relating to their cultural life and heritage: “[d]ecisions on recovery and reconstruction should follow people-centred approaches and fully engage local communities and, where appropriate, indigenous peoples, as well as other relevant stakeholders.”²¹⁰ Moreover,

[i]n reconstructing heritage, consideration should be given to social justice and property titles and a rights-based approach should be applied, which would ensure full participation in cultural life, freedom of expression and access to cultural heritage for all individuals and groups, including refugees and internally displaced people, where relevant.²¹¹

This policy document also promotes the idea of the “time for reflection” necessary to address and assess the real needs of societies, considering “the evolving nature of values post-trauma, the challenges of ensuring a fully inclusive and participatory process of consultation and the complex interrelations between heritage and other societal needs in the context of post-conflict and post-disaster recovery and reconstruction.”²¹² In this regard, restorative justice is also recalled, as the commemoration of heritage destruction should be considered in cooperation with affected communities and other stakeholders.²¹³ It is recommended that such commemorative programmes

²⁰⁶ [Announcement](#) EUROJUST (23 February 2023), and [communication](#) EUDEL Kyiv (25 February 2023).

²⁰⁷ *First Protocol to the Hague Convention* (1954). Available at: https://en.unesco.org/sites/default/files/1954_Protocol_EN_2020.pdf

²⁰⁸ UNESCO (2018) *Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage*. Available at: <https://whc.unesco.org/en/news/1826>

²⁰⁹ *Ibid.*, p. 5.

²¹⁰ *Ibid.*, p. 6.

²¹¹ *Ibid.*

²¹² *Ibid.*, p. 7.

²¹³ *Ibid.*

and places “should integrate as much as possible a shared narrative of the traumatic events that led to the destruction, reflecting the views of all components of the society, so as to foster mutual recognition and social cohesion, and establish conditions for reconciliation.”²¹⁴

Significantly, the current international plans for the rehabilitation of post-conflict Syria also foresee a volume of reconstruction programmes, including the World Heritage sites of Aleppo and Palmyra, as part of the peace-building efforts of the international community.²¹⁵ These envisage a broad multilevel governance of recovery programmes, comprising participation of various stakeholders, particularly local communities and other members of civic society.²¹⁶ However, it is important that such programmes do not solely focus on World Heritage sites, but identify with local communities whose heritage is in need of such programmes. Indeed, local communities may place more importance on intangible forms of heritage, which may also benefit from rehabilitation efforts. Furthermore, it is essential that local communities are engaged meaningfully in all stages of such programmes, from development to implementation.

The latter aspect is of particular relevance for the objectives of participatory governance fostered by EU secondary legislation and wider doctrinal voices.²¹⁷ The EU’s current approach to cultural heritage in conflicts and crises seems to encourage a wide community participation in post-conflict recovery process. It refers to it in terms of “reconstructing, restoring or revitalising the state of intangible and tangible heritage, as well as its economic, physical, social, and environmental assets, systems and activities.”²¹⁸ In this respect, the EU should engage “with best practices, principles of sustainable development and principles of *build back better* with a prerequisite to consult local communities on their need and to understand the historic and cultural significance, as well as socio-economic dimensions.” Decisions for reconstruction of heritage should be carefully made with full participation of local communities and their needs.²¹⁹

2.9. Conclusions

The protection of cultural heritage in armed conflict has a solid basis in international law. Robust legal foundations have also been established in regional and domestic legal system. Hence, although the EU does not create such an autonomous system for the protection of cultural heritage in armed conflict, the EU and its Member States are under an obligation to protect and safeguard cultural heritage in armed conflict, as well as an obligation to prosecute certain crimes against cultural heritage. Their actions are indeed founded on a complex regulatory matrix stemming from: the international obligations of the EU and its Member States; regional treaty law; instruments and measures established by and at disposal of the EU; and domestic law measures. However, the existing legal framework demonstrates certain gaps. Based on the overview made in this Chapter, the following conclusions can be drawn:

First of all, the focus has so far been on the protection of the tangible manifestations of cultural heritage. Whilst the law is well developed in that regard, **it could be better implemented**. In particular, the safeguarding measures for the foreseeable effects of armed conflicts need to be implemented in a time of peace. Not only would this require more effective actions to be undertaken by domestic authorities, but also a closer international and EU cooperation and coordination of measures is necessary, including information exchange and capacity-building.

²¹⁴ Ibid.

²¹⁵ For instance, see UNESCO (2015) *Post-Conflict Reconstruction in the Middle East Context, and in the Old City of Aleppo in particular (18-19 June 2015)*. Available at: <https://whc.unesco.org/en/events/1286/>

²¹⁶ UNESCO (2015) *Post-Conflict Reconstruction in the Middle East Context and in the Old City of Aleppo in Particular. ACTION PLAN resulting from the meeting’s recommendations*. Available at: <https://whc.unesco.org/en/events/1286/>

²¹⁷ In particular, see International Law Association, Committee on Participation in Global Cultural Heritage Governance (2022) *Final Report*. Available at https://papers.ssrn.com/so13/papers.cfm?abstract_id=4220401

²¹⁸ 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. 7. Available at: <https://data.consilium.europa.eu/doc/document/ST-9962-2021-INIT/en/pdf>

²¹⁹ Ibid., pp. 7-8.

Second, EU and its Member States should apply more systemic and holistic interpretation of the existing legal frameworks for the protection of cultural heritage, considering different forms and dimensions of heritage. Importantly, **more efforts should be made to recognise the threats of armed conflict to intangible cultural heritage**. Not enough work has been done to recognise and assess the damage to intangible cultural heritage in armed conflict, which in turn has led to a lack of accountability and reparations measures.

Finally, the protection of cultural heritage in armed conflict is not just a matter of compliance with international obligations or fulfilment of policy goals but, instead, it is a true imperative, underlying various policies and frameworks. Whilst the internal and external security of the EU and its citizens are of high importance, **the protection of cultural heritage as a human rights issue plays a pivotal role**. However, this fundamental aspect has not been fully implemented across EU policies. Filling this gap will be particularly important for the post-conflict recovery and reconstruction agendas.

Figure 4: Kherson museum after occupation



Source: Ministry of Culture and Information Policy of Ukraine

3. SAFEGUARDING CULTURAL HERITAGE IN UKRAINE

KEY FINDINGS

- International initiatives to safeguard cultural heritage in Ukraine are numerous and mostly focus on: (1) monitoring of damages and risks; (2) emergency relief measures such as the delivery of protective or storage materials to cultural institutions; (3) training of heritage professionals and officials; (4) digitisation of inventories and archives; and (5) support of the cultural and educational sector, in Ukraine and abroad.
- Many actors are involved in protecting heritage in Ukraine and their mandates overlap. Consequently, coordination is complex. The multiplicity of actors, in combination with a lack of coordination and standards, carries the risk of duplications; whereas some needs may remain uncovered, and insufficient linkages between the cultural heritage sector and other sectors.
- The integration of cultural emergency response measures within the system of humanitarian aid is crucial for the efficient protection of cultural heritage in times of crisis such as armed conflict. At present this is not sufficiently the case.
- Preparatory measures are key to protection of cultural heritage in times of crises. Apart from measures aimed at safeguarding *local* cultural heritage, measures should also be taken to safeguard *foreign* cultural heritage. Few states have fully implemented such preparatory measures.

3.1. Introduction

As highlighted above, the international community attaches great importance to the protection of cultural heritage. Consequently, at many levels - both UNESCO²²⁰ and EU²²¹ - programmes were developed to better safeguard cultural heritage in times of armed conflict. An important question is *how* such policies operate in practice. This Chapter will address this question by inventorising actions that are undertaken by international actors to protect cultural heritage in Ukraine.

In that regard, after Russia's full-scale invasion of Ukraine in February 2022, and the apparent threats this posed to cultural heritage there, many international organisations issued statements. UNESCO in its statement, for example, recalled international obligations regarding cultural heritage protection during armed conflicts, referring to the Hague Convention 1954 and its two protocols.²²² Other cultural organisations condemned the threats to cultural heritage in Ukraine, drawing attention to the fact that attacks on cultural heritage may constitute a war crime.²²³ The UN Special Rapporteur for Cultural Rights, in turn, highlighted the threats to the cultural rights of all those living in Ukraine, including to

²²⁰ UNESCO (2021) *Implementation strategy of the thematic programme "Heritage for Peace."* Committee for the Protection of Cultural Property in the Event of Armed Conflict, 16th, Paris, 2021. C54/21/16.COM/INF.5.1 Available at: https://unesdoc.unesco.org/ark:/48223/pf0000379819_eng

²²¹ Conclusions (EU) 9837/21 of the Council of 21 June 2021 on EU approach to cultural heritage in conflicts and crises. Available at: <https://www.consilium.europa.eu/media/50557/st09837-en21.pdf>

²²² UNESCO (2022) *UNESCO's statement on the recent developments in Ukraine.* [press release] 24 February. Available at: <https://www.unesco.org/en/articles/unescos-statement-recent-developments-ukraine?hub=701>

²²³ Europa Nostra (2022) *Europa Nostra strongly condemns the ongoing deliberate destruction of cultural heritage in Ukraine.* Available at: <https://www.europanostra.org/europa-nostra-strongly-condemns-deliberate-destruction-of-cultural-heritage-in-ukraine/>

individuals belonging to minority groups.²²⁴ Considering the scope of the threats to cultural heritage in Ukraine, as illustrated in Chapter 1 and Annex 1 to this study, such advocacy by international organisations is important. Especially because the UN Security Council, which includes Russia as a permanent member, is unable to issue a resolution condemning the destruction of cultural heritage as it did in similar situations. In addition to such statements, however, international organisations, states and non-governmental organisations also have made efforts through various initiatives to protect and safeguard cultural heritage in Ukraine. This Chapter focuses on such practical support by non-Ukrainian actors. These generally closely collaborate with Ukrainian authorities and partner organisations.²²⁵

This Chapter begins with an overview of the initiatives undertaken by UNESCO (Section 3.2), followed by a section on the activities by several other internationally operating cultural organisations (Section 3.3), and an impression of initiatives on the European level (Section 3.4). Section 3.5 briefly summarises these actions, and Section 3.6 addresses points of attention that surfaced in the consultations that were performed during this study. Although there are many other international organisations that play a role in safeguarding Ukrainian cultural heritage (such as the World Customs Organisation (WCO) and Interpol), this study is limited to organisations with a primary focus on heritage.

3.2. UNESCO

As the only UN organisation with the mission to protect and preserve cultural heritage, UNESCO has (co)organised and supported many projects aimed at safeguarding Ukraine's cultural heritage. During a special session in March 2022 dedicated to the invasion of Ukraine, the Executive Board of UNESCO decided to actively monitor the situation in Ukraine and to prepare a programme of emergency assistance for Ukraine.²²⁶ Based on its mandate, UNESCO has started coordinating, monitoring and taking actions to protect Ukraine's heritage. These actions fit within the organisation-wide Strategy for the reinforcement of UNESCO's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict (2015), as well as the relevant frameworks of the UNESCO conventions (see Chapter 2).²²⁷

On 9 September 2022 UNESCO presented its progress report on its Actions and Emergency Assistance Programme for Ukraine.²²⁸ In December 2022 this overview was updated by a report presented at the 17th meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict of the Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (the "Second Protocol Committee").²²⁹ The list hereunder is an impression of these actions by UNESCO, grouped by type of measure.

In terms of *coordination*, UNESCO convened coordination meetings for emergency response for cultural heritage in Ukraine, bringing together international and Ukrainian actors on a regular basis.

²²⁴ UN Human Rights Office of the High Commissioner (2022) *Ukraine/Russia: Violations of cultural rights will impede post-war healing – UN expert*. [press release] 25 May. Available at: <https://www.ohchr.org/en/press-releases/2022/05/ukrainerrussia-violations-cultural-rights-will-impede-post-war-healing-un>

²²⁵ Ukrainian efforts are not included in this chapter. However, the Heritage Emergency Rescue Initiative (HERI), a Ukrainian initiative by museum experts that acts as an intermediary between Ukrainian heritage workers and international organisations, is an important partner for many organisations.

²²⁶ UNESCO (2022) *Decisions adopted by the Executive Board at its 7th special session*. 7X/EX/DECISIONS Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000380945>

²²⁷ UNESCO (2015) *Reinforcement of UNESCO's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict*. General Conference 38th session, 2015 (38 C/49). Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000235186?posInSet=1&queryId=c2aa49af-04d2-4f6f-824c-25053e1acaf5>

²²⁸ UNESCO (2022) *Follow-up to decisions and resolutions adopted by the Executive Board and the General Conference at their previous sessions, Part I: Programme issues, F. UNESCO's actions and emergency assistance programme for Ukraine*. Executive Board, 215th, 2022. 214 EX/5.I.F. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000382684?posInSet=2&queryId=N-2a330192-7713-4a30-bbd4-916d85266bcc> ("September Report").

²²⁹ UNESCO (2022) *Protection of Cultural Property in Ukraine*. Committee for the Protection of Cultural Property in the Event of Armed Conflict, 17th, Paris, 2022. C54/22/17.COM/7 Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000383885.locale=en> ("November Report"). The 1999 UNESCO Committee was established with the Second Protocol to the 1954 Hague Convention. See: Arts. 24 and 27, *Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1999) 2253 UNTS 212. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000130696>

UNESCO also carried out field missions and consultations with the Ukrainian authorities as well as civil society organisations in Ukraine. In October 2022, it also deployed a liaison officer to the United Nations Country Team in Ukraine, to complement the team of local experts and to enhance the coordination of UNESCO's response on-the-ground.

Another important activity of UNESCO is *monitoring*. Toward this, UNESCO continually inventorises the damage done to sites all over Ukraine, in partnership with UNOSAT, the UN Satellite Centre that is part of UNITAR (United Nations Institute for Training and Research).²³⁰ As part of this cooperation with UNOSAT, the Cultural Heritage Monitoring Platform was developed to “georeference and visualise the results of the monitoring and assessment of damages to cultural sites in Ukraine.” The results are presented on a special UNESCO webpage.²³¹ As of 1 February 2023, it verified damage to 238 cultural sites, including: 105 religious sites, 18 museums, 85 buildings of historical and/or artistic interest, 19 monuments and 11 libraries. UNESCO's staff on-the-ground in Ukraine also verifies these satellite and media reports. However, due to a lack of resources, this often remains limited to only checking whether a site was damaged or not (See also Annex 1 for an overview from Ukraine).

The *listing* of heritage may enhance its protected status, as discussed in Chapter 2. In this regard, UNESCO added the “Historic Centre of the Port City of Odesa” on the World Heritage List. By processing it on an emergency basis it was inscribed on the list of World Heritage on 25 January 2023.²³² UNESCO has also called for the marking of sites with the Blue Shield emblem, but so far it has not been widely affixed.²³³ And no cultural property has (so far) been placed on the “List of Cultural Property under Enhanced Protection,” under the Second Protocol to the Hague Convention 1954, even though this would implicate a strong(er) legal protection in times of armed conflict for, potentially, a much wider range of monuments and sites (See Chapter 2, Section 2.2).

As part of *emergency measures*, UNESCO has provided protection materials and equipment, namely through the project “Aid for heritage,” to the Department of Culture, Religion and Protection of the Architectural Heritage of the Odesa Regional Administration, to repair monuments and historical archives.

In terms of *training*, UNESCO, in cooperation with ICCROM and the Maidan Museum in Kyiv, has translated the UNESCO-ICCROM manual, *Endangered Heritage: Emergency Evaluation of Heritage Collections* into Ukrainian.²³⁴ This handbook, offering a field-tested workflow for the emergency evacuation of valuable objects, was widely distributed with a focus on areas with no or limited internet access. UNESCO also provided technical advice and expertise, including through: (i) the UNESCO Cultural Emergencies Expert Group, composed of experts from 10 international institutions;²³⁵ and (ii) the UNESCO Emergency Group for Museums in Ukraine, which brings together 13 directors from major museums and institutions.²³⁶ For example, it organised workshops for museums and collections on the protection of documentary heritage, as well as on practical measures to mitigate risks of illicit trafficking. In this regard, three technical sessions were dedicated to 250 professionals each on technical aspects of first-aid to the packing, storage, and inventories of collections. It also established frameworks for the provision of technical advice and expertise to the Ukrainian Ministry of Culture and Information Policy and culture professionals. With a view to increasing recognition of cultural heritage

²³⁰ UNESCO (2023) *Damaged cultural sites in Ukraine verified by UNESCO*. Available at: <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>

²³¹ Ibid.

²³² UNESCO (n.d.) *The Historic Centre of Odesa*. Available at: <https://whc.unesco.org/en/list/1703>

²³³ UNESCO (2022) *Endangered heritage in Ukraine: UNESCO reinforces protective measures*. Available at: <https://www.unesco.org/en/articles/endangered-heritage-ukraine-unesco-reinforces-protective-measures>

²³⁴ UNESCO (2022) *UNESCO and ICCROM join forces with the Maidan Museum of Kyiv to support Ukraine's museums*. Available at: <https://www.unesco.org/en/articles/unesco-and-iccrom-join-forces-maidan-museum-kyiv-support-ukraines-museums?hub=66116>

²³⁵ Blue Shield International; International Council of Archives (ICA); ICCROM; ICOM; ICOMOS; International Federation of Library Associations and Institutions (IFLA); Smithsonian Institution; UNITAR/UNOSAT; CRAterre and World Monuments Fund.

²³⁶ British Museum (UK); Lithuania National Museum of Art (Lithuania); Louvre Museum (France); National Museum Poznan (Poland); National Museum of Sweden (Sweden); Metropolitan Museum of Art (USA); Prussian Cultural Heritage Foundation (Germany); Polish Center to Safeguard Ukrainian Cultural Heritage (Poland); Rijksmuseum of Netherlands (the Netherlands); Smithsonian Institution (USA); Slovak National Gallery (Slovakia); Swiss National Museum (Switzerland) and Uffizi Gallery (Italy).

in the course of military operations, technical advice on the marking of cultural sites has also been provided by UNESCO to the Government of Ukraine. Lastly, in January 2023, UNESCO, in cooperation with a number of other organisations (e.g., WCO, Interpol and EU) and the National Institute of Cultural Heritage of Poland, has been training law enforcement in Warsaw to fight the illicit trafficking of Ukrainian cultural property abroad.²³⁷

In terms of the safeguarding of *intangible heritage*, an assessment was undertaken among displaced communities from Ukraine in five neighbouring states (Hungary, Republic of Moldova, Poland, Romania and Slovakia). It revealed that “living heritage plays a key role in the life of displaced populations, strengthening their resilience, allowing them to connect with each other, as well as with the host communities.”²³⁸ As a follow up, a resource kit in Ukrainian was developed for primary and secondary school teachers to assist Ukrainian school children, which has been piloted in several schools. UNESCO also distributed 50,000 computers to Ukrainian teachers and, in collaboration with Google, supported remote education for Ukrainian children. The ability for children to continue learning in their own language matters for the protection of intangible cultural heritage, as language is its vector.²³⁹

Furthermore, to support the capacity of cultural institutions and cultural education, UNESCO, in cooperation with - inter alia - the Ministry of Culture and Information Policy, launched “Culture for Peace and Resilience: Creation of a Culture Hub in Lviv, Ukraine.”²⁴⁰ This Culture Hub, for which 1.5 million US dollars was earmarked, was conceptualised to support the resilience of communities and the return of displaced culture professionals.

a. Future action

In addition to its short-term responses, UNESCO is already planning *recovery measures*. On 30 August 2022, UNESCO and the Government of Ukraine signed a letter of intent to cooperate in the future phase of recovery and reconstruction.²⁴¹ UNESCO’s planned actions are being drawn up within the context of the draft *UN Transitional Framework for Ukraine 2022-2023*, the overarching strategic integrated planning direction for the UN operations in Ukraine until December 2023. They comprise the following objectives:

- Monitoring, assessment and documentation of damages to cultural heritage;
- Reconstruction and recovery of cultural heritage;
- Revival of institutional capacity of cultural institutions and cultural education;
- Strengthening cultural and creative industries;
- Strengthening resilience through culture; and the
- Digital transformation of cultural heritage management.²⁴²

3.3. Other (internationally operating) cultural organisations

Besides UNESCO, many other international cultural organisations are active in Ukraine. This section includes (in Section 3.2.1) organisations that work in partnership with UNESCO and have taken an active

²³⁷ UNESCO (2021) *UNESCO trains professionals to fight against illicit trafficking of Ukrainian cultural property*. Available at: <https://www.unesco.org/en/articles/unesco-trains-professionals-fight-against-illicit-trafficking-ukrainian-cultural-property?hub=365>

²³⁸ September Report, at 23. See: UNESCO (2022) *Follow-up to decisions and resolutions adopted by the Executive Board and the General Conference at their previous sessions, Part I: Programme issues, F. UNESCO’s actions and emergency assistance programme for Ukraine*. Executive Board, 215th, 2022. 214 EX/5.I.F. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000382684?posInSet=2&queryId=N-2a330192-7713-4a30-bbd4-916d85266bcc> (“September Report”).

²³⁹ UNESCO (2022) *Ukraine: 50,000 computers provided to teachers by Google and UNESCO*. [press release] 5 October. Available at: <https://www.unesco.org/en/articles/ukraine-50000-computers-provided-teachers-google-and-unesco>

²⁴⁰ We Are Ukraine (2022) *Lviv will soon welcome a UNESCO Cultural Center*. Available at: <https://www.weareukraine.info/lviv-will-soon-welcome-a-unesco-cultural-center/>

²⁴¹ November report, at 23.

²⁴² November report, at 23. See also the Annex to the September Report.

role in Ukraine, such as the International Committee of the Blue Shield (ICBS, today named “Blue Shield”), ICOM, ICOMOS and ICCROM. Furthermore, the activities of three other major internationally operating cultural organisations that are active in Ukraine will be addressed in Section 3.2.2.

3.3.1. UNESCO partner organisations

a. The Blue Shield²⁴³

The Blue Shield (BS) (formerly known as the International Committee of the Blue Shield)²⁴⁴ was created in 1996, and envisaged as the cultural equivalent of the “Red Cross” to be a neutral organisation to protect cultural heritage in times of armed conflict.²⁴⁵ In practice, however, mainly due to a lack of funding, its capacity has not (yet) allowed it to fully fulfil this role. BS’s main activities focus on advocacy at UNESCO level – it has a consultative status in the 1999 Second Protocol Committee²⁴⁶ - and advising national authorities on implementing the preparatory measures states should take in times of peace, as foreseen in the Hague Convention 1954 and the Second Protocol.²⁴⁷ In this regard, BS cooperates with organisations, such as the Cultural Emergency Response (CER) and the Smithsonian Cultural Rescue Initiative (SCRI).

BS is also a network of (presently 30) national BS committees across the world that are, “concerned with the protection of cultural and natural heritage, tangible and intangible, in the event of armed conflict, natural- or human-made disaster.” Many national BS committees have been involved in supporting Ukrainian heritage, mostly by sending materials for the protection of movable heritage collections. An interesting initiative is the development, by Blue Shield Denmark,²⁴⁸ together with UNESCO and Vice Media Group’s Virtue Futures, of the Backup Ukraine project.²⁴⁹ This project is community based in the sense that any person in Ukraine can make 3D scans of objects, monuments, and buildings with an app on their phone and upload them to the Backup Ukraine Database. Furthermore, the Polish Blue Shield national committee, in collaboration with ICOMOS Poland and the Polish Ministry of Culture and National Heritage, has helped secure Ukrainian monuments.²⁵⁰ This project was carried out by the National Institute of Polish Cultural Heritage Abroad (POLONIKA), in consultation with Ukrainian institutions. BS itself has been advising other states in the region, including Lithuania, Estonia, Latvia, Romania and Finland, on safeguarding measures to prepare for a situation of armed conflict.

b. ICCROM²⁵¹

ICCROM was created as an intergovernmental organisation by UNESCO in the aftermath of the Second World War in response to widespread destruction and the urgent need to reconstruct cultural heritage. Its involvement in Ukraine is part of its First Aid Resilience (FAR)-programme that specialises in post-event damage and risk assessments, which are integral to emergency response for the protection of cultural heritage.²⁵² By collecting data on site-specific heritage-based damage and risk, ICCROM helps identify and prioritise actions; estimate the funds, resources and supplies needed; as well as enhance preparedness by mitigating immediate risks. In collaboration with Ukrainian partners (the Ministry of Culture and Information Policy of Ukraine, the Maidan Museum and HERI), ICCROM has trained on-the-

²⁴³ This information is (also) based on the Interview with BS representatives (Annex 2).

²⁴⁴ Amendment to the articles of association: Association of national committees of the Blue Shield. Available at: https://theblueshield.org/wp-content/uploads/2021/12/statute-Amendments_BSI_2016.pdf

²⁴⁵ Blue Shield International (n.d.) *Who we are*. Available at: <https://theblueshield.org/about-us/who-we-are/>

²⁴⁶ See Art. 27, *Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1999) 2253 UNTS 212. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000130696>

²⁴⁷ See Art. 3 of the 1954 Hague Convention, and Art. 5 of the 1999 Protocol. See also Chapter 2.

²⁴⁸ Hedegaard, M. K. (2022) *Anden forsendelse er ankommet til Kyiv*. Blue Shield Denmark. Available at: <https://blueshield.dk/hjaelp-til-ukrainsk-kultur-arv-2-2/>

²⁴⁹ Polycam (2022) *Backup Ukraine*. Polycam. Available at: <https://poly.cam/ukraine>

²⁵⁰ Cunliffe, E. (2022) *Blue Shield Poland helps Ukraine protect cultural property*. Available at: <https://theblueshield.org/blue-shield-poland-helps-ukraine-protect-cultural-property/>

²⁵¹ This report is based on information available at ICCROM’s website and an Interview with ICCROM staff member (Annex 2).

²⁵² ICCROM (n.d.) *First Aid and Resilience for Cultural Heritage in Times of Crisis (FAR) Resources*. Available at: <https://www.iccrom.org/programmes/first-aid-and-resilience-times-crisis-far/resources>

ground teams to carry out systematic on-site damage and risk assessments for all types of heritage.²⁵³ To this end, ICCROM developed a multi-lingual app that has customised forms for damage and risk assessments of movable, immovable and intangible heritage in Ukraine.

In February 2023 it published a (preliminary) Ukraine report to promote risk-informed cultural heritage first aid actions in Ukraine.²⁵⁴ It provides an analytical summary of the data collected at four heritage sites in Ukraine, with the aim of identifying priorities for action, as well as estimating costs of providing first aid to the damaged heritage.

Another ICCROM action was the organisation in April 2022 of a two-day online workshop on damage and risk assessment in collaboration with local partners.²⁵⁵ In addition, together with ICOMOS, it carried out a joint mission to Ukraine to assess risks and damages to affected sites.²⁵⁶ In addition to being involved in translating into Ukrainian the UNESCO/ICCROM publication, *Endangered Heritage: Emergency Evacuation of Heritage Collections*, ICCROM is in the process of translating into Ukrainian its 2018 publication, *First Aid to Cultural Heritage in Times of Crisis Handbook and Toolkit*.²⁵⁷

c. ICOM²⁵⁸

Created in 1946, ICOM is the global organisation of museums, currently with 118 national committees. Together with its thematic international committees, ICOM develops standards and tools for the museum field, such as a Code of Ethics for museums, a standardised procedure to describe and document collections (“Object-ID”) and “Red Lists,” which bring types of objects at high risk for being looted or unlawfully exported, often from conflict zones, to the attention of law-enforcement (police and customs), and the wider public.

It published an Emergency ICOM Red List of Cultural Heritage at Risk for Ukraine in November 2022.²⁵⁹ Created in collaboration with Ukrainian experts from diverse cultural institutions, the List contains types of Ukrainian cultural objects that span archaeology, books and manuscripts, numismatics, and folk, religious, applied and fine art at risk of theft or illicit trafficking. Furthermore, ICOM launched a programme of Special Grants to support Ukrainian museums and museum professionals, focusing on the protection of collections, digitisation of collections and education and support for museum staff.²⁶⁰ Beyond the activities of the ICOM secretariat, many national ICOM committees have been active in supporting Ukrainian museums in various ways, in particular, by distribution of donated supplies for emergency evacuations of endangered and damaged museum collections in Ukraine.

²⁵³ Maidan Museum (2022) *The Heritage Emergency Response Initiative (HERI) created in Ukraine*. Available at: <https://www.maidanmuseum.org/en/node/2121>

²⁵⁴ ICCROM (2023) *Damage and Risk Assessment: Report to promote risk-informed cultural heritage first aid actions in Ukraine*. Available at: https://www.iccrom.org/sites/default/files/publications/2023-02/iccrom_far_2023_damage_and_risk_assessment_report_ukraine.pdf

²⁵⁵ ICCROM (2022) *Protecting endangered heritage in Ukraine: Workshop on Post-Event Damage and Risk Assessment for Cultural Heritage*. Available at: <https://www.iccrom.org/news/protecting-endangered-heritage-ukraine>

²⁵⁶ ICCROM (2022) *Joint ICOMOS-ICCROM mission to Ukraine*. [news] 26 July. Available at: <https://www.iccrom.org/news/joint-icomos-iccrom-mission-ukraine>

²⁵⁷ Tandon, A. (2018) *First Aid to Cultural Heritage in Times of Crisis - Handbook*. ICCROM. Available at: <https://www.iccrom.org/publication/first-aid-cultural-heritage-times-crisis-handbook>

²⁵⁸ Information (also) based on interview with ICOM representative (see Annex 2).

²⁵⁹ ICOM (2022) *ICOM launches the Emergency Red List of Cultural Objects at Risk – Ukraine*. Available at: <https://icom.museum/en/news/launch-icom-red-list-ukraine/>

²⁶⁰ ICOM (2022) *Solidarity projects Ukraine : Funded projects*. [News] 16 December. Available at: <https://icom.museum/en/news/solidarity-projects-ukraine-funded-projects/>

d. ICOMOS

ICOMOS is a global organisation dedicated to conservation of the architectural and archaeological heritage.²⁶¹ It was established in 1965, and has 104 national committees and 30 international scientific committees. In Ukraine, ICOMOS undertook the previously mentioned joint mission to Ukraine with ICCROM to assess the situation of heritage. Furthermore, in July 2022, it partnered with the Foundation to Preserve Ukraine's Sacral Arts, and the World Monuments Fund, by sending 440 fire extinguishers for the protection of *Tserkvas*, historic wooden churches. The background to this initiative is that Ukraine is home to more than 2,500 wooden churches, 8 of which are on the UNESCO World Heritage List.

Figure 5: Emergency Red List of cultural objects at risk Ukraine



Source: ©ICOM

3.3.2. Other cultural organisations

In addition to UNESCO-partner organisations, many others are involved with initiatives to protect cultural heritage in Ukraine. Their activities range from funding specific projects or heritage professionals, to coordination, management and the execution of projects on-the-ground. What follows is an overview of the activities of some of the major organisations that operate in Ukraine, namely the International Alliance for the Protection of Heritage in Conflict Areas (ALIPH), Cultural Emergency Response (CER) and the Smithsonian Rescue Initiative CSRI).

a. ALIPH²⁶²

The International Alliance for the Protection of Heritage in Conflict Areas (ALIPH) is an alliance between several states, private partners and experts, established in 2017 with the aim, “to act in favour of cultural

²⁶¹ ICOMOS (2022) *ICOMOS, the Foundation to Preserve Ukraine's Sacral Arts and World Monuments Fund deliver fire extinguishers to protect Ukraine's wooden churches*. [press release] 11 July. Available at: <https://www.icomos.org/en/469-members/committees/ukraine/108202-the-foundation-to-preserve-ukraine-s-sacral-arts-icomos-and-world-monuments-fund-deliver-fire-extinguishers-to-protect-ukraine-s-wooden-churches>

²⁶² This section is based on information provided by ALIPH (see Annex 2).

heritage in conflict areas via an aid programme which enables it to be flexible and to react quickly.”²⁶³ It was created by several states and private benefactors out of the need for a more agile fund in the field. ALIPH funds three key areas: preventive protection to limit risks of destruction; emergency measures to ensure the security of heritage; and post-conflict actions to enable local populations to enjoy their cultural heritage. ALIPH seeks to work directly with local professionals, based on the principle that funds should be allocated for capacity-building, in association with concrete projects.²⁶⁴

In March 2022, ALIPH adopted an "Action Plan for the Protection of Heritage in Ukraine" which today has a budget of 5 million US dollars, supported by the EU with 2 million euro, the Getty Foundation with 1 million US dollars, and the Principality of Monaco with 40,000 euro.²⁶⁵ With this fund, so far, ALIPH has committed 3.88 million US dollars in grants to 261 organisations (museums, archives, libraries, conservation institutions, etc.) to purchase storage equipment, enhance fire safety, and acquire materials to secure doors and windows.²⁶⁶ ALIPH has also funded a program to provide "heritage ambulances" – vehicles carrying conservation equipment –, launched in partnership with the National Research and Restoration Centre of Ukraine for emergency restoration work. Additionally, ALIPH is financing, and sometimes organising, the transportation of in-kind supplies and equipment (wooden crates, generators, power station) to Ukraine with partners in Poland, Italy, France, Switzerland, Austria and the United Kingdom. ALIPH has financed approximately 400 cultural heritage professionals in Ukraine, through direct grants and also via an initiative launched by Europa Nostra and Global Heritage Fund.

b. Cultural Emergency Response²⁶⁷

Cultural Emergency Response (CER) was established in 2003 by the (Dutch) Prince Claus Fund for Culture and Development in response to the destruction of the Bamiyan Buddhas and the looting of the Baghdad museum.²⁶⁸ In July 2022, CER became an independent entity with the aim of coordinating and supporting locally-led projects that safeguard heritage under threat. Beyond emergency response, CER's wider purpose is to make global heritage protection more inclusive, sustainable and locally led, by training heritage experts, sharing expertise and experience, and advocating the recognition of cultural heritage rescue as a crucial aspect of humanitarian relief, recovery, development and peacebuilding.

For its Ukraine Cultural Emergency Response Action Plan, as of 13 February 2023, a budget of 971,061 euro was allocated. In these projects CER cooperates with a number of Ukrainian actors and organisations such as HERI, a local cultural emergency response organisation.²⁶⁹ CER pools funding from external contributions,²⁷⁰ and coordinates the funding of projects to support cultural workers in providing first aid to cultural heritage under threat, such as the Mykola Babak Foundation, Visual Culture Research Center (VCRC), Lviv City Council, MOSKOP, Frankivsk Gallery "Asortymentna Kimnata" and the Museum for Change in Odesa.²⁷¹ Furthermore, in collaboration with the Dutch Museum

²⁶³ Current members of the alliance are: France, United Arab Emirates, Saudi-Arabia, Kuwait, Luxembourg, China, Morocco, Dr. Thomas S. Kaplan and the Fondation Gandur pour L'Art. Public donors are Switzerland, the EU, the Principality of Monaco, Oman and Romania. Besides, there are private donors. See: ALIPH (n.d.) *Our Ambition*. Available at: <https://www.aliph-foundation.org/en/our-ambition>

²⁶⁴ Information provided by representatives of ALIPH (see Annex 2). An example of such a project in Yemen is discussed in the Chapter 4.

²⁶⁵ Information provided by ALIPH.

²⁶⁶ As per personal communication of ALIPH, 16 February 2023, on file with author.

²⁶⁷ This section is based on information provided by representatives of CER (see Annex 2).

²⁶⁸ Cultural Emergency Response (n.d) *Who we are: protecting culture in crisis*. Available at: <https://www.culturalemergency.org/programs/about-cer>; <https://princeclausfund.org/>

²⁶⁹ Project partners (local coordination collectives) are: HERI, Lviv, NGO Azov for Development, Asortymenta Kimnata and Museum for Change, as well as smaller and independent organisations.

²⁷⁰ Co-founding partners (pooled fund) of CER are: Cultural Protection Fund - British Council, Gerda Henkel Stiftung, ICOM NL, JM Kaplan Fund, Metropolitan Museum New York, SCRI, TEFAF, Teiger Foundation, Whiting Foundation, World Monuments Fund and Ministry of Foreign Affairs of the Netherlands.

²⁷¹ Coordinating partners of CER for these projects are: ICCROM, ICOM, Blue Shield International, Europa Nostra, [Global Heritage Fund](#), ALIPH, UNESCO and, locally, the Ministry of Culture and Information Policy in Ukraine.

Association and transport companies, CER also collected and delivered materials to evacuate collections at risk in Ukraine, and thus helped several museums in Ukraine.

c. Smithsonian Cultural Rescue Initiative (SCRI)²⁷²

Before Russia's full-scale invasion of Ukraine in February 2022, the SCRI had already partnered with the Cultural Heritage Monitoring Lab to monitor cultural heritage in Eastern Ukraine and Crimea. Because of its past work monitoring and documenting cultural destruction in Iraq and Syria, the U.S. Department of State's Bureau of Conflict and Stabilisation Operations invited the SCRI and its partners, the Virginia Museum of Natural History and the University of Maryland, to work as part of the Conflict Observatory (CO).²⁷³ The CO is a central hub that captures, analyses and makes widely available evidence of Russia-perpetrated war crimes and other atrocities in Ukraine. In this respect, the Smithsonian contributes to the monitoring of cultural heritage. In addition to regular reports on the CO portal, it has provided information to the Ukraine Ministry of Culture, UNESCO and other stakeholders. This work is funded by the U.S. Department of State.

On-the-ground in Ukraine, SCRI partners with CER and the Heritage Emergency Response Initiative (HERI) – whose staff received training from CSRI and CER – with the aim of providing forensic documentation and emergency response supplies and equipment to Ukrainian Museums and cultural heritage sites.²⁷⁴ Smithsonian staff have also provided numerous online trainings on emergency conservation best practices via UNESCO, as well as at the request of individual Ukrainian museums. Furthermore, SCRI partners with Uber to provide transportation and lodging for staff of the National Centre for Research and Restoration to visit collections storage locations throughout Ukraine, for monitoring and treatment of collections and to provide vital supplies and equipment. Similarly, SCRI partners with the Kosciusko Foundation (KF) in Warsaw to purchase and ship emergency supplies and equipment at the request of museums and cultural institutions in Ukraine. The funding for such on-the-ground support comes from the Rockefeller Foundation, the Mellon Foundation, Bank of America and numerous private donors.

3.4. European action

The next section will render an impression of European support actions. The first section concerns actions by the EU (3.3.1), followed by examples of actions by EU Member States bordering Ukraine (Section 3.3.2), and a third section (Section 3.3.3) on aid by the Council of Europe and Europa Nostra.

3.4.1. European Union²⁷⁵

EU actions to safeguard cultural heritage in Ukraine should be seen in the light of the EU Concept on Cultural Heritage in conflicts and crisis, and the subsequent 2021 Council Conclusions on an EU approach to cultural heritage in conflicts and crisis, as discussed in Chapter 2.²⁷⁶ Accordingly, safeguarding cultural heritage is a priority as it, "helps protect identities for individuals and communities, serving as a basis for sustainable recovery and lasting peace, and thus contributing to the overall resilience of societies." Actions by the EU, therefore, are meant to be part of a "politically and operationally coherent EU response in the context of the EU's Global Strategy."²⁷⁷ Underlining "the importance of coordination between Member States' respective instruments and initiatives to improve the ability to respond quickly in relation to the protection of cultural heritage and preventing its destruction during and after crises," the Council also highlights "the importance of integrating the protection of cultural heritage into all the relevant dimensions of the EU toolbox for conflicts and

²⁷² Information provided by SCRI representative (see Annex 2).

²⁷³ Conflict Observatory (n.d.) *Recent Reports*. Available at: <https://hub.conflictobservatory.org/portal/apps/sites/#/home>

²⁷⁴ Cultural Emergency Response (n.d.) Available at: <https://www.culturalemergency.org/>

²⁷⁵ Information in this section relies on desk research and on information provided by EU policy officers (see Annex 2)

²⁷⁶ Conclusions (EU) 9837/21 of the Council of 21 June 2021 on EU approach to cultural heritage in conflicts and crises. (Council Conclusions 2021) Available at: <https://www.consilium.europa.eu/media/50557/st09837-en21.pdf>

²⁷⁷ *Ibid.*, 10.

crisis.”²⁷⁸ As to the practical follow-up of this policy, the European External Action Service (EEAS)²⁷⁹ (the diplomatic service of the EU), the Commission and relevant EU Agencies and bodies are all expected to develop expertise and streamline their efforts, for which a dedicated task force has been set up.²⁸⁰

Hereunder follows an overview of EU action to safeguarding cultural heritage in Ukraine by various DGs and services. In such projects the EU partners with other organisations, such as UNESCO and ALIPH, as well as local institutes and museums, and with the aim of a close strategic partnership with UNESCO.

a. EEAS

The EEAS (along with other relevant services) is the responsible EU body for (internal EU) coordination of the emergency response in support of the protection of cultural heritage in Ukraine.²⁸¹ In September 2022, EEAS published the first (yearly) report assessing EU engagement in the field of cultural heritage in conflict and crisis, addressing both the situation in Ukraine and other regions.²⁸²

The EEAS also organised activities such as an online *communication campaign*, called the #ARTvsWAR campaign, to draw attention to the destruction and increase alertness towards further risks for Ukrainian cultural heritage.²⁸³ A similar action was the exhibition, between July and September 2022, of a contemporary Ukrainian collection that had been travelling around Europe before the Russian invasion and was left “homeless” after it could not be returned to Ukraine.²⁸⁴

Working alongside the EEAS, the European Commission’s (EC) service for Foreign Policy Instruments (FPI) is responsible for operational expenditures in the crucial area of EU external action.²⁸⁵ In November 2022 it announced that it would provide 2 million euro to ALIPH for the protection of cultural heritage in Ukraine.²⁸⁶ ALIPH’s choice here, according to the statement by the director of the FPI, was informed by the agility of the model whereby *materials* required in Ukraine were directly financed, mostly by small grants.

b. EUDEL KYIV

At the outset of the war, and in direct response to the request made by the Ukrainian government, the EU provided support for the protection and safeguarding of cultural heritage items and sites in Ukraine. EUDEL Kyiv repurposed the projects started before Russia’s aggression to better respond to the emergency needs. Dedicated actions under the Rapid Response pillar of NDICI-Global Europe have also contributed to the documentation of assets and provided *equipment for the protection, storage* and, where needed, evacuation of cultural heritage goods.

c. DG EAC

The Creative Europe programme, the EC’s “flagship programme to support the culture and audio-visual sectors,” aims to “safeguard, develop and promote European diversity and heritage.”²⁸⁷ In this regard,

²⁷⁸ Ibid.

²⁷⁹ EEAS. EU (2021) *About Us*. Available at: https://www.eeas.europa.eu/eeas/about-european-external-action-service_en

²⁸⁰ See p. 5., EEAS, Council of the EU (2022) *2022 Report on the progress in the implementation of the “Concept on Cultural Heritage in conflicts and crises. A Component for peace and security in European Union’s external action,” and the dedicated Council Conclusions* (EEAS (2022) 1556), Available at: <https://data.consilium.europa.eu/doc/document/ST-12398-2022-INIT/en/pdf> (Hereafter: “2022 EEAS Progress Report”).

²⁸¹ 2022 EEAS Progress Report, p. 5.

²⁸² 2022 EEAS Progress Report.

²⁸³ EEAS, EU (n.d.) #ARTvsWAR: *A campaign about cultural heritage and cultural life in Ukraine during the war*. Available at: https://www.eeas.europa.eu/eeas/artvswar_en#47578

²⁸⁴ EEAS, EU (2022) *Ukraine: The EEAS hosts an “orphaned” exhibition of contemporary art*. [press release] 15 July. Available at: https://www.eeas.europa.eu/eeas/ukraine-eeas-hosts-%E2%80%9Corphaned%E2%80%9D-exhibition-contemporary-art_en

²⁸⁵ EC (n.d.) *Service for Foreign Policy Instruments*. Available at: https://fpi.ec.europa.eu/index_en

²⁸⁶ Press and Information Team of the Delegation to Ukraine (2022) *EU and ALIPH help protecting Cultural Heritage in Ukraine*. EEAS, Delegation of the European Union to Ukraine. 11 November. Available at: https://www.eeas.europa.eu/delegations/ukraine/eu-and-aliph-help-protecting-cultural-heritage-ukraine_en

²⁸⁷ EC (n.d.) *About the Creative Europe Programme*. Available at: <https://culture.ec.europa.eu/creative-europe/about-the-creative-europe-programme>

the EC is mobilising its instruments to support Ukrainian artists and culture professionals and, with that, Ukrainian cultural heritage.²⁸⁸ Measures include, extending deadlines in calls for Ukrainian projects, and the launch of a special call under the Creative Europe programme for Ukrainian artists, worth 5 million euro.²⁸⁹ The latter was established to *support artists outside their country and cultural organisations in Ukraine* and to prepare for the post-war recovery of the Ukrainian cultural and creative sector.

Another initiative, in the category *documentation*, supports the Competence Centre for the Conservation of Cultural Heritage (4CH), “Save the Ukraine Monuments (SUM).”²⁹⁰ Ongoing since July 2022, with a budget of 3 million euro, the project aims at saving Ukrainian cultural heritage data. It does so by creating copies of documentation, digital objects, metadata, catalogues, databases, images and digitised monuments as 3D models of Ukrainian heritage, placed on safe servers in the EU with a secure procedure. The digital content is meant to be returned intact to Ukrainian heritage institutions, professionals and companies after the war. Furthermore, in August 2022 a grant agreement was announced (in partnership with ICCROM) to support Ukrainian cultural heritage professionals through *training* sessions via the Creative Europe programme.²⁹¹

d. DG ECHO

The Directorate General for European Civil Protection and Humanitarian Aid Operations (DG ECHO) oversees humanitarian aid and civil protection. It has been involved in Ukraine since the State Emergency Service of Ukraine activated the Union Civil Protection Mechanism (UCPM), resulting in massive *in-kind assistance* by Member and Participating States of humanitarian aid in general.²⁹² In March 2022, a dedicated request for assistance for the protection of cultural heritage added fire security systems, fire extinguishers, alarm security systems, dehumidifiers, boxes, sandbags, wrapping material, as well as vehicles to evacuate cultural heritage. In response, several states (notably Italy, Germany and Norway) offered cultural heritage protection items, such as kits for cultural asset protection, boxes, sandbags and special equipment.

Also relevant (if only indirectly) is the support by DG ECHO of an initiative called PROCULTHER (Protecting Cultural Heritage from the Consequences of Disasters). It was set up to identify common elements of action and approaches with the aim of including the protection of cultural heritage in disaster risk management processes at the European level within UCPM.²⁹³ Currently, this project goes by the name, PROCULTHER-NET, and “aims at consolidating a thematic community focused on the protection of cultural heritage at risk of disaster within the EU Civil Protection Knowledge Network.”²⁹⁴ Its goal is the integration of cultural heritage protection into the field of humanitarian aid, and vice versa.

e. DG TAXUD

No specific measures are planned by the EU (yet) to prevent the *illicit trade in cultural objects* from Ukraine. This topic mainly falls under the Directorate-General for Taxation and Customs Union (DG TAXUD). The idea is, it appears, that the new regime for the import of cultural objects, established by Regulation (EU) 2019/880 on the introduction and the import of cultural goods, provides Member

²⁸⁸ EC, Culture and Creativity (2022) *EU supports Ukraine through culture*. 21 April. Available at: <https://culture.ec.europa.eu/news/eu-supports-ukraine-through-culture>

²⁸⁹ EC (2022) *Creative Europe: Commission publishes special call to support Ukrainian artists*. Available at: <https://culture.ec.europa.eu/news/creative-europe-commission-publishes-special-call-to-support-ukrainian-artists>

²⁹⁰ Competence Center for the Conservation of Cultural Heritage (n.d.) *Save the Ukraine Monuments*. Available at: <https://www.4ch-project.eu/sum/>

²⁹¹ Under 1.8 of the Amendment of the Implementing Decision (EC) C(2021) 3563 of 31 August 2022 on the adoption of the work programme for the implementation of the Creative Europe programme for 2021 and 2022. Available at: https://culture.ec.europa.eu/sites/default/files/2022-08/creative-europe-work-programme-amendment-2122_C2022_6138.pdf

²⁹² DG ECHO (n.d.) *Ukraine Factsheet*. EC. Available at: https://civil-protection-humanitarian-aid.ec.europa.eu/where/europe/ukraine_en; DG ECHO (n.d.) *EU Civil Protection Mechanism Factsheet*. EC. Available at: https://civil-protection-humanitarian-aid.ec.europa.eu/what/civil-protection/eu-civil-protection-mechanism_en

²⁹³ Statement ProCultHer-NET (see Annex 2).

²⁹⁴ ProCultHer (n.d.) *Protecting Cultural Heritage from the Consequences of Disasters*. Available at: <https://www.proculther.eu/>

States with sufficient legal basis to investigate and seize unlawfully exported cultural goods, also from Ukraine.²⁹⁵ In that sense, the general prohibition rule in Article 3(1) of the Import Regulation, in force since 28 December 2020, indeed prohibits the introduction of cultural goods which were unlawfully removed from third countries. Nevertheless, this does not entail systematic controls by Member States' customs or other law enforcement and, therefore, gaps may remain in terms of its enforcement until an adequate licensing system is in place (see Chapter 2). Besides, but that may be mainly relevant for illicitly trafficked objects during earlier conflicts, this prohibition does not address the trade *within* the EU borders.

Future action

As to future actions of the EC, the EU Action Plan against Trafficking in Cultural Goods (EU Action Plan 2022), adopted in December 2022 (see also Chapter 2), announced increased support of Ukrainian cultural heritage.²⁹⁶ Actions include financial support to protect buildings and collections, as well as support to cultural heritage professionals in Ukraine in cooperation with ALIPH. Furthermore, the *House of Europe II programme*, funded by the Neighbourhood, Development and International Cooperation Instrument (NDICI), will include "support to preserve and promote Ukrainian cultural heritage." However, such support is not further specified. As to the risks of trafficking in cultural objects that may come onto the market from Ukraine, no specific measures are announced. More general actions - i.e., not focused on Ukrainian objects - concern awareness raising and training programmes, and financial support to organisations such as ICOM to develop tools for identifying looted cultural goods.

Observation on EU actions

Reviewing these EU actions, a conclusion may be that various services and DGs are involved, and on many levels measures are taken in support of the safeguarding of cultural heritage in Ukraine. However, apparently there is no focussed programme in that regard, and no *specific* institution or agency coordinates these measures. As to coordination, the 2022 EEAS Progress Report (on cultural heritage in conflict zones more generally) and the EU Action Plan 2022 (on the trafficking of artefacts more generally) mention that a dedicated task force of Commission services and the EEAS is in place "to streamline information."²⁹⁷ Notwithstanding such a dedicated task force, the multitude of actors involved in the protection of cultural heritage, even within the EU, poses a challenge to a coherent EU policy, as foreseen in the 2021 Council Conclusions mentioned at the beginning of this section.²⁹⁸ This observation will be further addressed in Chapter 5.

3.4.2. Individual EU Member States

Continuing with initiatives by individual Member States: many EU Member States have provided support by sending materials to cultural institutions in Ukraine. In many cases this resulted from direct cooperation between institutions and non-governmental organisations, or through the national committees of the organisations mentioned above. In other instances it was provided at a national level. Special public funds have also been established (e.g., Germany). Some examples of initiatives by states neighbouring Ukraine follow next.

In June 2022, representatives of Poland, the Czech Republic, Slovakia, Estonia, Lithuania, Moldova, Romania and Hungary adopted a declaration committing themselves to the protection of Ukraine's

²⁹⁵ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the Introduction and the Import of Cultural Goods OJ L 151. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0880&from=EN>.

²⁹⁶ See pp. 14 and 15, EC (2022) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Action Plan against Trafficking in Cultural Goods* (COM (2022) 800 Final). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0800&from=EN>

²⁹⁷ Making its coherence not always clear for outsiders. Cf. interviews (Annex 2).

²⁹⁸ Conclusions (EU) 9837/21 of the Council of 21 June 2021 on EU approach to cultural heritage in conflicts and crises. Available at: <https://www.consilium.europa.eu/media/50557/st09837-en21.pdf>

cultural heritage including, digital transformation of cultural heritage management and the support of assessment, restoration and reconstruction of destroyed and damaged cultural heritage sites.²⁹⁹

Sharing borders and history with Ukraine, Poland has been strongly involved in rescuing Ukraine's cultural heritage.³⁰⁰ The Polish Support Centre for Culture in Ukraine, a state-supported coordination hub for initiatives helping culture and heritage in Ukraine, most importantly through the provision of material help, was set up within the framework of the bilateral cooperation agreement between Ukraine and Poland.³⁰¹ According to the director of the Centre, intergovernmental structures are key because, "supporting culture in Ukraine, which determines Ukrainian distinctiveness and identity, is about preserving the independence of the state." Therefore, "it requires engagement and support on every level of governance."³⁰²

In addition, on 18-20 January 2023, Poland's National Heritage Institute, in cooperation with UNESCO, organised a three-day workshop entitled, "Fighting the illicit trafficking of Ukrainian cultural property: capacity-building training for law enforcement," mentioned already above (under UNESCO).³⁰³ Officials, and border and customs officers from states bordering Ukraine – i.e., Poland, Slovakia, Hungary, Romania and Moldova – took part in this event. Ukrainian specialists presented Ukraine's most distinctive cultural property, which currently is particularly at risk to looting and smuggling. The workshop was in cooperation with representatives of Interpol, UNESCO, WCO and ICOM, and its aim was to exchange experiences of border services, customs officers, representatives of state bodies and institutions and representatives of international organisations in combatting illegal export, import and transfer of ownership of cultural property in the context of the ongoing war in Ukraine.

Other initiatives by neighbouring states include, for example, the creation of a portal by the Romanian government with an extensive list of cultural initiatives for Ukrainian refugees in the country, such as providing Ukrainian dancers with living necessities and accommodation.³⁰⁴ Likewise in Hungary, a project was set up by a number of universities, among others, for financial aid and scholarships to Ukrainian refugee students of art and design.³⁰⁵ Similarly, the Czech Arts and Theatre Institute created an overview of opportunities for Ukrainian artists and creatives who have fled to the Czech Republic, ranging from individual financial support, to cultural programmes and scholarships.³⁰⁶ This includes, as an example of safeguarding intangible cultural heritage of Ukraine, the reading of interactive fairy tales and theatre lessons with Ukrainian children.

3.4.3. Other European organisations

A short impression of actions by the Council of Europe and Europa Nostra follows as a last part of this overview.

²⁹⁹ Ministry of Culture and Information Policy of Ukraine (2022) *9 European countries will help restore Ukrainian culture*. [news], 29 June. Available at: <https://www.kmu.gov.ua/en/news/9-yevropejskih-krayin-dopomagatimut-vidnovlyuvati-kulturu-ukrayini>

³⁰⁰ Ministry of Culture of Poland (2022) *Rezydencje kryzysowe dla artystów z Ukrainy*. Available at: <https://www.gov.pl/web/kultura/rezydencje-kryzysowe-dla-artystow-z-ukrainy>

³⁰¹ Agreement between the Government of the Republic of Poland and the Government of Ukraine on cooperation in the fields of culture, science and education, done at Kiev on 20 May 1997. *Journal of Laws of the Republic of Poland* (2000) no. 3, item 29. Available at: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20000030029/O/D20000029.pdf>

³⁰² Interview with Prof. Katarzyna Zalasinska, Head of the National Institute of Heritage, Poland (see Annex 2).

³⁰³ Ministry of Culture of Poland (2023) *Międzynarodowe warsztaty poświęcone zwalczaniu nielegalnego handlu ukraińskimi dobrami kultury*. Available at: <https://www.gov.pl/web/kultura/międzynarodowe-warsztaty-poswiecone-zwalczaniu-nielegalnego-handlu-ukrainskimi-dobrami-kultury>

³⁰⁴ Ministry of Culture of Romania (2022) *Ajutor refugiați*. Available at: <http://www.cultura.ro/ajutor-refugiati>

³⁰⁵ Tempus Public Foundation (2022) *Hungarian Universities Help Refugees Fleeting Ukraine with Accommodation, Health Support, and Scholarships*. Available at: <https://tka.hu/international-programmes/16330/hungarian-universities-help-refugees-fleeting-ukraine-with-accommodation-health-support-and-scholarships> ; MOME Budapest (2022) MOME Opens its Campus for Refugees from Ukraine. *Facebook*, 28 February. Available at: <https://www.facebook.com/momebudapest/photos/a.166689020046984/4874153675967138/>

³⁰⁶ *Hungary Today* (2022) Budapest Grand Circus to Help More Than 100 Ukrainian Artists, 26 March. Available at: <https://hungarytoday.hu/budapest-grand-circus-ukrainian-war-refugees-hungary-kyiv-kharkiv/>

a. Council of Europe

On 1 April 2022, the Council of Europe (CoE) Conference of Ministers of Culture adopted a Declaration on the Russian Federation's aggression against Ukraine.³⁰⁷ The declaration promotes, among others, the protection and preservation of Ukraine's cultural heritage through the humanitarian and human rights framework. In addition, the ministers of culture committed themselves in this declaration to assist Ukraine in various ways in dealing with the threats to its cultural heritage. Throughout 2022, the CoE as an organisation contributed to reconstruction efforts in Ukraine by adjusting its support in the Priority Adjustments to the Council of Europe Action Plan for Ukraine 2018-2022.³⁰⁸

Future actions

At its meeting on 14 December 2022, the CoE adopted the Council of Europe Action Plan for Ukraine - "Resilience, Recovery and Reconstruction" 2023-2026, prepared in close consultation with the Ukrainian authorities, with an overall budget estimated at 50 million euro.³⁰⁹ One of the objectives of this Action Plan, which has a broad scope and covers human rights, rule of law and democracy, is to promote cultural heritage as a starting point in reconstruction and to enhance culture and heritage throughout various actions. It aims to use the possibilities offered by the CoE's conventions and legal and technical assistance frameworks in the area of culture and cultural heritage. The proposed actions, summarised below, focus on fields similar to those of UNESCO (and to a certain extent the EU), namely:

- Assistance in evaluating damage and contributing to the elaboration of a capacity building programme for securing movable, immovable and intangible cultural heritage that is put at risk by the war.
- Support for holding a "Year of culture from Ukraine in Europe," also involving displaced people from Ukraine.
- Promoting the integration of heritage into reconstruction and development processes to respond to the needs of the population after the war.
- Providing support to cultural institutions and individual artists, as well as cultural managers in Ukraine, and to facilitate coproduction between Ukrainian and European artists and cultural institutions.

In February 2023, the CoE was in the process of exchanging information with the Ukrainian government about the needs identified in the action plan.³¹⁰

b. Europa Nostra

In 1963, Europa Nostra was founded by organisations from Italy, the UK, the Netherlands, Switzerland, France, Germany and Ireland.³¹¹ It is recognised as the largest and most representative heritage network in Europe. It maintains close relations with the EU, the CoE and UNESCO. Its mission is, among others, "to support cultural and natural heritage across Europe."

With regards to safeguarding cultural heritage in Ukraine, Europa Nostra has undertaken several initiatives. In March 2022, for example, it organised an international webinar in collaboration with the Global Heritage Fund and others, to connect Ukrainian heritage professionals with relevant organisations, as well as to shed light on the Ukrainian cultural sector's most pressing needs.³¹² That

³⁰⁷ CoE (2022) *Creating our future: Creativity and cultural heritage as strategic resources for a diverse and democratic Europe - Declaration on the Russian Federation's aggression against Ukraine*. Strasbourg, 1 April. Available at: <https://rm.coe.int/declaration-on-ukraine-en-info-gr-c/1680a60b35>

³⁰⁸ CoE (2022) *Council of Europe Action Plan for Ukraine: "Resilience, Recovery and Reconstruction" 2023-2026*. Ministers' Deputies, 1452nd Meeting, 14 December. CM(2022)187. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a96440

³⁰⁹ Ibid.

³¹⁰ Information provided by CoE (personal communication).

³¹¹ Europa Nostra (n.d.) *Organisation*. Available at: <https://www.europanostra.org/organisation/>

³¹² Europa Nostra (2022) *Civil Society in Action for Ukraine's Endangered Heritage*. Available at: <https://www.europanostra.org/civil-society-in-action-for-ukraines-endangered-heritage/>; Global Heritage Fund (2022) *Global Heritage Fund Partners with Celemeta to Support Ukrainian*

same month, Europa Nostra launched a crowdfunding campaign, again in collaboration with the Global Heritage Fund, to support heritage professionals in Ukraine.³¹³ The money collected is divided between individuals in the heritage industry, both those still present in Ukraine, as well as those who were forced to flee. Together with HERI, ALIPH and the Global Heritage fund, a 100,000-euro Heritage Solidarity Fellowship for Ukraine was created to support Ukrainian heritage professionals.³¹⁴

3.5. Summary

There are many initiatives to safeguard cultural heritage in Ukraine, and the actors providing such support are numerous and very diverse. The listing in this chapter of some of these international initiatives also demonstrates to the extent possible - based on desk-research and information provided by the various organisations within the given timeframe - that many organisations, states and institutions undertake similar actions. To summarise, these measures focus on:

- *Monitoring of damages and risks*, either by satellite imaging (e.g., UNESCO and SCRI), or on-the-ground (UNESCO; notably the specialised app by ICCROM).
- Emergency relief on-the-ground in Ukraine, a broad category that tends to focus on *providing protective or storage materials* to cultural institutions (almost all actors are involved, specifically ALIPH, CER and the EU through the Civil Protection Mechanism). Aid is also given for the *transport of collections* to safe-havens within Ukraine (e.g., ALIPH, SCRI). Besides, measures are taken to prevent (further) damage to monuments and sites (e.g., UNESCO and EU, mostly in partnerships with ICCROM, ALIPH and SCRI).
- *Training* of heritage professionals, officials and the military to avoid (further) damage to cultural institutions and sites. This mostly is in Ukraine (e.g., by UNESCO in cooperation with WCO, Interpol and the EU, ICCROM and SCRI). However, some initiatives also focus on officials in neighbouring states, for example, to detect possibly looted cultural objects from Ukraine, such as the Polish training of customs officials and judiciary, but also the ICOM Red List of Cultural Objects at Risk for Ukraine as a tool to flag possibly looted cultural objects.
- *Digitisation* of inventories and archives to later assess damages. Interesting projects in this category include, for example, the EU supported initiative, Competence Centre for the Conservation of Cultural Heritage (4CH),³¹⁵ “Save the Ukraine Monuments” (SUM), and the Backup Ukraine project, supported by BS Denmark.³¹⁶ *Support of the cultural sector* and the educational system in Ukraine (e.g., by UNESCO, the EU and Europa Nostra), as well as of Ukrainian *refugee heritage workers, artists, students* and children (e.g., EU grants and initiatives by states bordering Ukraine, plans by CoE), that aim to help in safeguarding the intangible heritage.

Moreover, UNESCO, the EU and the CoE have developed programmes aimed at the long-term recovery of the heritage sector in Ukraine, which more or less have similar objectives.

Cultural Heritage Through First-Ever NFT Auction. Available at: <https://globalheritagefund.org/2022/10/14/ghf-celemeta-ukrainian-cultural-heritage-nft-auction/>

³¹³ Europa Nostra (n.d.) *Support Ukraine's Cultural Defenders*. Available at: <https://www.europanostra.org/ukraine-crisis/>

³¹⁴ Europa Nostra (2022) *Heritage Solidarity Fellowship for Ukraine – Call for Applications*. Available at: <https://www.europanostra.org/heritage-solidarity-fellowship-for-ukraine-call-for-applications/>

³¹⁵ Competence Center for the Conservation of Cultural Heritage (n.d.) *Save the Ukraine Monuments*. Available at <https://www.4ch-project.eu/sum/>

³¹⁶ Polycam (2022) *Backup Ukraine*. Available at <https://poly.cam/ukraine>

Figure 6: Protection of monument to Petro Sahaidachny during Russian invasion of Ukraine



Source: Kyiv City State Administration, Oleksii Samsonov

3.6. Points of attention

Three topics surfaced during the interviews and consultations conducted as part of this study with representatives of organisations mentioned above as well as other experts working in this field.³¹⁷ These points of attention concern the need for: (1) preparatory measures that states should have in place before a crisis occurs; (2) more coordination and monitoring of efforts in safeguarding cultural heritage in Ukraine; and (3) better integration of cultural heritage emergency relief measures in the wider field of humanitarian aid, as well as in peacekeeping operations.

3.6.1. Preparatory measures

The initiatives taken in Ukraine overlap, at least in part, with measures that states should have already prepared in times of peace, according to the system of the 1954 UNESCO Convention. Many of the experts consulted during this study observed that the absence of such preparatory measures is a major obstacle to the efficient safeguarding of cultural heritage in times of armed conflict. In the words of the

³¹⁷ See Annex 2 for a list. These interviews focussed on: (i) their activities in Ukraine and the wider field of heritage protection; (ii) possible obstacles they encountered in their work, specifically in Ukraine; and (iii) possible thoughts on what was needed from the EU.

president of the BSI, “Protection cannot be achieved if left to when a conflict breaks out.”³¹⁸ Other experts stressed that states have to focus more on preparing inventories and training of the military, and that this is a global topic that needs attention. Since only a few states have implemented such preparatory measures in full, these deserve attention.

These include:³¹⁹

- The preparation of *inventories*, including in a digital format, and making them easily accessible to relevant authorities and agencies;
- The preparation for the removal of movable cultural objects (to refuges or *safe havens*), or the provision for adequate in situ protection;³²⁰ and
- The planning of emergency measures for protection against fire or structural collapse, and the designation of a competent civilian authority responsible for the safeguarding (*risk management plans*).

The above measures primarily aim to protect a state’s own cultural heritage. States are also expected to adopt measures to protect foreign (e.g., Ukrainian) cultural heritage. This follows from several international treaties discussed in Chapter 2, and was further articulated in the 2017 SC Resolution 2347, in reaction to the widespread looting of antiquities from conflict zones. The importance of these kinds of measures by third states was highlighted in the consultations for this study with organisations, such as ICOM, UNESCO and the WCO.³²¹ Measures of this kind are:

- *Training of armed forces* on cultural heritage protection and establishment of specialist personnel within the military.³²²
- Implementing legislation to deter and prosecute crimes against cultural property, and appointing specialised units and dedicated personnel in customs and law enforcement and providing them with effective tools and adequate training.³²³
- Adopting regulations to prevent the trade of stolen or illegally traded cultural property, and engaging museums and market participants on (differentiated) due diligence standards and provenance documentation.³²⁴ In this regard, raising awareness among the general public is also important.
- Adopting regulations that enable the taking into custody, and ensuring their safe return after the hostilities, of cultural objects (and safeguarded digital records) that have been unlawfully

³¹⁸ Comments by the president of BSI. Similar reactions came from other experts (see Annex 2).

³¹⁹ See Article 5, *Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1999) 2253 UNTS 212. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000130696> ; UN Security Council Resolution 2347 Maintenance of international peace and security (24 March 2017) UN Doc S/RES/2347. Available at: <http://unscr.com/en/resolutions/doc/2347> ; UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970) 823 UNTS 231. Available at: <https://en.unesco.org/about-us/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and> ; UNESCO (2021) *Implementation strategy of the thematic programme "Heritage for Peace"*. Committee for the Protection of Cultural Property in the Event of Armed Conflict, 16th, Paris, 2021. C54/21/16.COM/INF.5.1 Available at: https://unesdoc.unesco.org/ark:/48223/pf0000379819_eng

³²⁰ Note that in UNSC Res 2347 (2017), under 16, safe havens are understood to be within the state (“a network of ‘safe havens’ in their own territories...”). UN Security Council Resolution 2347 Maintenance of international peace and security (24 March 2017) UN Doc S/RES/2347. Available at: <http://unscr.com/en/resolutions/doc/2347>

³²¹ ICOM’s representative, e.g., drew attention to a general lack of clarity regarding the provenance of artefacts in circulation on the art market, weak legislation in that regard in some states, and a general lack of specialised law enforcement and customs personnel (Annex 2).

³²² Article 7 of the 1954 Hague Convention provides for the creation of specialised units within the armed forces, in charge of the protection of heritage. In addition, law enforcement training in the protection of movable cultural heritage is crucial in the fight against illicit trafficking in cultural property. See for this the “Heritage for Peace” programme: UNESCO (2021) *Implementation strategy of the thematic programme "Heritage for Peace"*. Committee for the Protection of Cultural Property in the Event of Armed Conflict, 16th, Paris, 2021. C54/21/16.COM/INF.5.1 Available at: https://unesdoc.unesco.org/ark:/48223/pf0000379819_eng

³²³ For the legal obligations, see Chapter 2. UN Security Council Resolution 2347 (*S/RES/2347 (2017)*), under 17, and UNESCO’s *Implementation Strategy "Heritage for Peace" (C54/21/16.COM/INF.5.1)* ; UNESCO (2017) *The Penal protection of cultural property: The fight against impunity in the Framework of the 1954 Hague Convention and its 1999 second protocol*. CLT-2017/WS/14. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000260071>

³²⁴ See UN Security Council Resolution 2347 *S/RES/2347 (2017)*, under 17.

removed, displaced or transferred from conflict areas, in coordination with relevant UN entities and international actors.³²⁵

- Adopting measures that ensure the realisation of the cultural rights of those who have fled a conflict and are now on that State's territory (that includes children within schools).

To illustrate the relevance of the interrelation of such preparatory measures: if a museum object is not adequately documented, it cannot be included in the INTERPOL database of stolen art, and tracing it becomes almost impossible. However, even if objects are well documented and listed, if customs authorities in third countries are not adequately trained, regulations are not enforced or standards for provenance are unclear, such objects will remain unnoticed. Similarly, if lines of authority are not clear, it will cause delays to assistance during emergency situations.

Another topic that surfaced is uncertainty over procedures on how cultural objects from conflict zones or occupied territories, that are intercepted in third countries, will be returned. If this is not arranged for properly, and the fate of the objects may thus be unclear, states will be hesitant to rely on safe havens abroad - as happened to a collection of archaeological finds from Crimea that were stranded in the Netherlands at the time of the occupation by Russia in 2014, and which is under litigation at the Dutch Supreme Court (Van der Laarse, 2016).³²⁶ According to the First Protocol to the 1954 Hague Convention such objects must be taken into custody by the states where these are found to be returned, at the close of hostilities, to the formerly occupied territory.³²⁷

3.6.2. Coordination and monitoring of emergency measures

In Ukraine, many actors are involved and competences are not always clearly defined. At the same time, it is not clear to what extent the Ukrainian authorities can coordinate the ongoing efforts. Consequently, coordination (internationally and on-the-ground) is complex. This concerns coordination among international cultural organisations, national actors and the Ukrainian authorities, as well as coordination among the cultural heritage sector and other actors on-the-ground (e.g., humanitarian, human rights and military).

During the consultations, many experts highlighted a gap in coordination and monitoring of emergency relief measures in Ukraine. The ICCROM representative summarised this as follows:

The lack of formal coordination mechanisms leads to a serious lack of clarity in roles and capacities. Some heritage institutions are better equipped to provide emergency assistance whilst others are better suited to train in crisis situations or provide technical assistance to support long-term recovery. Therefore, there is a need for clear articulation of roles which reflect existing capacities of the international and national organisations working to safeguard heritage in crisis situations. Such role definition will also pave [the] way for developing coordination mechanisms, as well as promote transparency and accountability within the heritage sector.

The UNESCO liaison officer for Ukraine noted in this respect a need for "a more resilient global framework for cultural heritage emergency, with more focus on strategy and a better structure for platforms." Hence, despite many ongoing efforts – notably by UNESCO – this lack of effective coordination manifests itself in: (1) a duplication of efforts, as well as gaps that may go unnoticed; (2)

³²⁵ See the First Protocol to the 1954 Hague Convention, at I (3): custody should be "automatically or at the request of the authorities," and return should be "to the competent authorities of the territory previously occupied." *First Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954). Available at: https://en.unesco.org/sites/default/files/1954_Protocol_EN_2020.pdf

³²⁶ Litigation further to a verdict of 26 October 2021 by the Amsterdam Court of Appeals (*Tavrida Central Museum et al. vs. de Staat Oekraïne* (ECLI: NL:GHAMS:2021:3201). Surprisingly, in this verdict no reference is made to the obligations under the First Protocol to the Hague Convention 1954.

³²⁷ See Chapter 2, Section 2.3

limited resources not always being used in the most efficient manner; and (3) a lack of linkages between the cultural heritage sector and other sectors active in Ukraine.

Whilst acknowledging that, in a situation of war, it is complex to coordinate effectively at all these different levels, and among all the different partners involved, it is also clear that there is room for improvement. In that sense, a re-evaluation of measures and operations would be needed to assess whether projects are effective. Otherwise, there is an acute risk of inefficient use of public means.

3.6.3. Integration of cultural emergency response within humanitarian aid system as well as within peacekeeping operations

A third point that surfaced during the consultations is that the efficient protection of cultural heritage in times of armed conflict is hindered by a lack of connection of the heritage sector with the humanitarian aid system. Consequently, protocols for humanitarian aid are still based on the notion that cultural heritage is not a priority and, rather, that its safeguarding is part of the later recovery phase. This makes it difficult, for instance, for cultural actors to access sites, and to access resources and materials. UNESCO flagged the need for a better integration of cultural heritage within the humanitarian aid system in its first strategy for emergency response in the cultural field, in 2015.³²⁸ However, it appears that this integration of these sectors remains largely absent.

Experts in this field who were consulted recommended that a better integration of cultural heritage into emergency coordination systems (like the humanitarian clusters) is urgently needed.³²⁹ One expert voiced this as follows:

Considering that the broader aims of safeguarding heritage during conflicts and disasters is to promote early recovery, overcome trauma, reinstate peace and tolerance, as well strengthen resilience, cultural emergency response should fall under the broader humanitarian assistance. At present there is little coordination in the field of cultural emergency response and recovery. This lack of coordination exists at strategic, tactical and operational levels.³³⁰

A possible way forward would be to include cultural heritage in the Global Cluster for Early Recovery (GCER).³³¹ Clusters such as the GCER are groups of humanitarian organisations, designated by the UN's Inter-Agency Standing Committee with clear responsibilities for coordination within specific thematic areas, in coordination with the government of the state concerned.³³² Being absent from this system, as a sector, means that it is difficult for cultural heritage professionals and cultural authorities to be part of the broader response and to have access to coordinated resources.

The representative of PROCULTHER-NET (see 3.3.1) highlighted the need for “a holistic and interdisciplinary approach,” and that protection of cultural heritage should be included in the overall emergency coordination structures and strategies. Within the EU system that would mean that protocols for:

coordination, response and information management among actors working at national and local levels (civil protection, cultural heritage authorities and other stakeholders), but also at European level (DG EAC, DG ECHO, EEAS, etc.), should be defined to ensure a coordinated and effective approach in the different phases of the emergency/crisis.³³³

³²⁸ Item 4.11 of the provisional agenda of 2 November 2015 (UNESCO 38/C/49), p.4. UNESCO (2015) *Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict*. General Conference 38th session, 2015 (38 C/49). Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000235186>

³²⁹ E.g., the representative of CER stated that a protocol and the acknowledgement of emergency cultural heritage protection on the level of humanitarian aid is needed.

³³⁰ Consultation ICCROM representative (see Annex 2).

³³¹ This is in line with the earlier investigations by UNESCO (2015, see above); UNDP Representation Office Geneva (n.d.) *Global Cluster for Early Recovery (GCER)*. Available at: <https://www.undp.org/geneva/global-cluster-early-recovery-gcer#:~:text=The%20Global%20Cluster%20for%20Early,cross%2Dcutting%20issue%20Focal%20Points>

³³² Inter-Agency Standing Committee (n.d.) Available at: <https://interagencystandingcommittee.org/>

³³³ Consultation Probulther-Net representative (Annex 2).

This would imply the inclusion of “protection of cultural heritage in disaster risk management processes at European level within the Union Civil Protection Mechanism (UCPM).”

This appears to be in line with a proposal by the EP in its resolution on cultural solidarity with Ukraine and a joint emergency response mechanism for cultural recovery in Europe of October 2022.³³⁴ In this resolution, the EP called on the Commission to “explore the possibility of establishing or acting as a partner in a European emergency response and recovery mechanism dedicated specifically to the cultural, cultural heritage and creative ecosystems, based on a multi-stakeholder approach.”

The second point, a better integration of cultural property protection within peacekeeping (and military) operations, was highlighted by military experts. The cultural heritage mandate of the UN peacekeeping mission in Mali, MINUSMA, that will be discussed in the next chapter, is an example. If there is a special mandate for cultural heritage, specialised personnel will be deployed and damages, such as those to archaeological site at Babylon in Iraq used as a military base in 2003, mentioned in Chapter 1, might be avoided. Specifically, after a conflict where cultural heritage plays such a key role as in Ukraine, in the event of a (EU or UN) mission to the area, this should be duly taken into account.

3.7. Conclusion

This chapter gave an overview of aid in Ukraine to safeguard cultural heritage, the actors involved and the obstacles they experience, with the caveat that the war in Ukraine is ongoing, and the context of this study neither allows for in-depth research of primary sources, nor research on location in Ukraine. For the moment, action focuses on emergency measures, not (yet) on the recovery phase. Although, plans in that regard are being made at the level of UNESCO, the EU and the CoE. A discussion of measures related to other conflicts, addressing the recovery phase, follows in the next Chapter.

In conclusion, international initiatives to safeguard cultural heritage in Ukraine are numerous and mostly focus on: the monitoring of damages and risks; emergency relief measures such as the delivery of protective or storage materials; the training of heritage professionals and officials; the digitisation of inventories and archives; and support of the cultural and educational sector. Many actors are involved in these actions and their mandates overlap, and consequently, **coordination is a challenge**. Other obstacles to that surfaced during the research and interviews for this study concern **a lack of implementation of preparatory measures** that states should have taken - key to the adequate protection of cultural heritage in times of crises; and **insufficient integration of cultural emergency response measures within the system of humanitarian aid** - crucial for emergency relief measures in the field of cultural heritage - as well as a lack of attention for cultural heritage within mandates for **peacekeeping missions**.

³³⁴ European Parliament (2022) *Resolution on Cultural solidarity with Ukraine and a joint emergency response mechanism for cultural recovery in Europe*. P9_TA(2022)0374. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0374_EN.html

4. LESSONS LEARNT FROM OTHER CONFLICTS

KEY FINDINGS

- In situations of armed conflict, cultural heritage may be used to emphasise a specific (unilateral) narrative of the conflict, which is often not conducive to sustainable peace.
- There is a gap in the independent monitoring of the impact of a conflict on cultural heritage, beyond the current compiling of just numbers of damaged sites.
- The engagement of a broad range of stakeholders, especially local ones, at all stages of post-conflict heritage recovery can be a way to avoid fuelling continued animosity. This also includes paying greater attention to post-conflict memory, in an inclusive manner.
- Thorough conflict analysis prior to engaging with cultural heritage recovery is essential to avoid that projects focus solely on the tangible aspects of cultural heritage and have (unintended) negative impact on peace- or reconciliation processes.
- Initiatives that take account of the social role of cultural heritage (“soft” (civilian) measures) are important to making heritage accepted by a broad range of stakeholders.

4.1. Introduction

In most conflicts cultural heritage is damaged, either by accident, or on purpose. When such damage occurs, this causes important psycho-social stresses on people and communities, but it also (deliberately or not) affects the diversity of an area. This chapter examines efforts to safeguard or rehabilitate cultural heritage after conflicts elsewhere in the world, as a way to reflect on what is currently being undertaken and planned for heritage in Ukraine. It highlights not only what works, and what does not work, but it also reflects on what peacetime measures or interventions during active conflict (could) have contributed to more successful post-conflict interventions. Such interventions could be looked at solely through the lens of cultural heritage preservation, namely, the extent to which they bring back or preserve valuable heritage, which, in itself, is a way to safeguard cultural diversity. However, in most cases, such projects are also inscribed in the broader field of peacebuilding, and thus aim to be a means to achieving peace and to helping affected communities deal with past events. As addressed in the introduction, the EU also recognises that cultural heritage can be such a driver for peace.³³⁵

Since the most visible and often best-funded heritage projects after a conflict concern the reconstruction or rehabilitation of built heritage, this chapter first takes a look at the situation of built heritage in Bosnia-Herzegovina, and elsewhere in the world, followed by a section on the role of memorialisation in built heritage projects (Section 4.2). The next section (4.3) then considers movable heritage and intangible heritage, followed by a final section (4.4) on digital tools that have in recent years started playing a stronger role in heritage protection.

³³⁵ EEAS, Council of the European Union (2021) *Concept on Cultural heritage in conflicts and crises. A component for peace and security in European Union's external action*. 9962/21. Available at: <https://data.consilium.europa.eu/doc/document/ST-9962-2021-INIT/en/pdf>

4.2. Built Heritage Recovery

4.2.1. Lessons from Bosnia-Herzegovina

When looking at post-conflict heritage recovery efforts, the case of Bosnia-Herzegovina is particularly relevant, not only because the large-scale heritage destruction resulted in many different types of recovery projects, but also because the events in Bosnia-Herzegovina are sufficiently far removed in time to allow for a more in-depth analysis. This is why this first section takes a closer look at some of the efforts that were undertaken there.

At a national level in Bosnia-Herzegovina, the Commission to Preserve National Monuments was in charge of heritage matters as per Annex 8 of the Dayton Accords (commonly referred to as the Annex 8 Commission). An important task for the Commission was to jointly decide on priorities for reconstruction.³³⁶ The Annex 8 Commission is a good example of how heritage can be fully integrated into peace accords and be part of a country's recovery process. It can also be considered a positive development in encouraging post-conflict authorities to also tackle the issue of heritage. At the same time, the Commission's former president, Hadzimuhamedovic, describes the politicisation of the Commission, and how the ethnically divided way of considering heritage was often detrimental to the meaning such projects could have had (Bouchenaki and Hadzimuhamedovic, 2018, pp. 20-26). The strongly ethnicised nature of the commission faced problems similar to those faced on many levels of government in Bosnia-Herzegovina, in that it "preserved the power of the three majority ethnic groups, excluded minorities and non-nationalists from politics, and have undermined the state-building project" (Gelazis et al., 2007). Heritage became part of this dynamic.

Perhaps the best known example of the reconstruction campaign in Bosnia-Herzegovina is the one centred on the old bridge "Stari Most," carried out by UNESCO and the World Bank (Bouchenaki and Hadzimuhamedovic, 2018, pp. 20-26). The project reconstructed the Ottoman-period bridge that had once connected two parts of Mostar and had been shelled in June 1993. From the perspective of heritage recovery, this project was successful. And, going further, UNESCO also calls the reconstruction "a symbol of reconciliation, international co-operation and coexistence of diverse cultural, ethnic and religious communities."³³⁷ Yet, scholars who studied the social impact of the reconstruction, however, are much more critical, arguing that the reconstruction project rebuilt the heritage, but did little for reconciling the community of Mostar (for example, Forde, S., 2016). Similarly, research has proven, and was backed by the 2017 verdict of the International Criminal Tribunal for the former Yugoslavia (ICTY), that the ethnic importance of the bridge was part of a dominant narrative developed mostly after the conflict, and that during the conflict the bridge was mainly seen as an element of (military) strategic relevance.³³⁸ Also, in situations where the conflict is not primarily ethnic in nature, the role of heritage can be complex, especially in the sense that not all heritage is targeted purely because it is the heritage of the other group (e.g., in Ukraine, the destroyed church in Lukashivka may have served as a Russian arms depot prior to its destruction).³³⁹ These situations demonstrate the importance of independent monitoring during the conflict, and on conducting a thorough conflict analysis prior to engaging in post-conflict rehabilitation (e.g., using the PATH Assessment Tool developed by ICCROM).³⁴⁰

³³⁶ United States Institute of Peace (1998) Annex 8: Agreement on Commission to Preserve National Monuments, *Peace Agreement Digital Collection, Bosnia and Herzegovina, General Framework Agreement for Peace in Bosnia and Herzegovina*. Available at: https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/dayton_annex8.pdf

³³⁷ UNESCO (2019) Mostar celebrates the 15th Anniversary of the Reconstruction of its Old Bridge. Available at: <https://www.unesco.org/en/articles/mostar-celebrates-15th-anniversary-reconstruction-its-old-bridge>

³³⁸ Hazan, P. (2017) Was the destruction of Old Mostar Bridge a war crime? *JusticeInfo.net*, 11 December. Available at: <https://www.justiceinfo.net/en/35714-was-the-destruction-of-old-mostar-bridge-a-war-crime.html>

³³⁹ RadioFreeEurope/RadioLiberty (2022) *Russia's Destruction Of Ukraine's National And Cultural Heritage*. Available at: <https://www.rferl.org/a/cultural-destruction-ukraine/31821373.html>

³⁴⁰ ICCROM (n.d.) *PATH – Peacebuilding Assessment Tool for Heritage Recovery and Rehabilitation*. Available at: <https://www.iccrom.org/publication/path-peacebuilding-assessment-tool-heritage-recovery-and-rehabilitation>

The reconstruction of the Ferhadija Mosque in Banja Luka (Bosnia-Herzegovina), inaugurated in 2016, gives a good insight into how sensitive such reconstructions can be. Destroyed in 1993, Ferhadija was one of the main mosques in Banja Luka, currently the capital of the Republika Srpska. Afterwards, and even after a decision by the Human Rights Chamber (1999), the authorities refused to approve requests for its reconstruction.³⁴¹ When it finally did go ahead, the reconstruction met with significant opposition. When the first stone was placed for the reconstruction, celebrations turned violent and the buses that had brought Bosnian Muslims to the site for the occasion were lit on fire.³⁴² Anti-Muslim protests also continued after the reconstructed mosque was inaugurated (Bayrakli and Hafez, 2017).³⁴³ This violence could be seen as an early indicator that the project might not contribute to “welcoming returnees,” but instead may have created more explicit tensions. Yet, the reconstruction is still too recent to draw firm conclusions on its social impact.³⁴⁴ For instance, the mufti of Banja Luka has said that a significant number of people visit the mosque, and that the ability to worship helps Muslims in Banja Luka to feel more at home; although, there remain numerous obstacles to their full reintegration.³⁴⁵ The mufti has also indicated that the local authorities are still not ready to financially support the working of the mosque, and that he therefore relies on other sources of funding, such as the Turkish and Iranian embassies. This, too, is an important indicator that, locally, the reconstruction of the mosque is often felt as imposed and thus not a sign of changing mindsets.

Aside from these international projects, there were numerous, often smaller-scale, projects rebuilding local monuments. In researching the importance of heritage reconstruction for sustainable return and reintegration, Helen Walasek demonstrated how many local restorations were carried out once displaced people started returning, often in “hostile” conditions where their heritage had been destroyed by the remaining community (Walasek, 2019). The reconstruction of mosques, especially, often faced violent opposition at a local level. Despite this opposition, the projects that did succeed could often show positive results. For instance, despite strong opposition, the experience in the village of Stolac (Bosnia-Herzegovina) demonstrated that it is possible to work across ethnic lines, and even to involve diaspora and displaced people.³⁴⁶ An important element in the success of such projects was the involvement of Civil Society Organisations or local heritage organisations.³⁴⁷ By working in small localities and through local actors, a broad engagement of different groups in society is often more feasible than when projects are executed by “outsiders,” such as international agencies, foreign experts and contractors that arrive from other parts of the country. Despite these positive results at a grassroots level, it remains unclear whether such approaches could be used for the larger monuments, such as the Mostar bridge, or the Ferhadija mosque. An important distinction, for instance, is that the reconstruction of major monuments tends to be seen as requiring “expert” leadership – thus external to the local community.

When working with cultural heritage to foster peace in a post-conflict setting, it is important to acknowledge that much “past mastering” takes place. In this, heritage often serves to develop a dominant narrative of the past conflict. As Amra Hadžimuhamedovic, who presided over the Commission to Preserve National Monuments in Bosnia-Herzegovina, wrote: “The hardliner nationalists

³⁴¹ The Human Rights Chamber for Bosnia and Herzegovina (1999) *Decision on the Admissibility and Merits Delivered 11 June 1999. Islamic Community in Bosnia and Herzegovina v. The Republika Srpska*, CH/96/29. Available at: <http://hrc.ustavisud.ba/database/decisions/CH96-29%20Islamic%20Community%20Admissibility%20and%20Merits%20E.pdf>

³⁴² CNN (2001) Diplomats freed after Bosnia riot, 7 May. Available at: <http://edition.cnn.com/2001/WORLD/europe/05/07/bosnia.violence.02/>

³⁴³ Bayrakli, E. and Hafez, F., eds. (2017) *European Islamophobia Report 2016*. Seta. Available at: https://setav.org/en/assets/uploads/2017/05/EIR_2016.pdf

³⁴⁴ Williams, K. (2017) *Reconstruction and Reconciliation in Post-Conflict Bosnia and Herzegovina: the example of the Ferhadija Mosque*. Available at: https://openarchive.icomos.org/id/eprint/2000/1/27_ICOA_747_Williams_SM.pdf

³⁴⁵ T., M. (2017) INTERVJU / Osman ef. Kozlić: Banja Luka je živnula nakon otvaranja Ferhadije. klix.ba. Available at: <https://www.klix.ba/vijesti/bih/osman-ef-kozlic-banja-luka-je-zivnula-nakon-otvaranja-ferhadije/170511149>

³⁴⁶ Hadžimuhamedović, A. (2011) *SUCCISA VIRESCIT: What makes a place of worship so powerful that people do not accept its destruction*. Future for Religious Heritage. Available at: <https://www.frh-europe.org/december-2011-succisa-virescit-what-makes-a-place-of-worship-so-powerful-that-people-do-not-accept-its-destruction-amra-hadzimuhamedovic/>

³⁴⁷ Kappler, S. and Mannergren Selimovic, J. (2021) *Working with the cultural heritage of conflict for peacebuilding: Lessons learned from the Western Balkans*. (Civil Society Dialogue Network Discussion Paper No. 16). Available at: <https://www.diva-portal.org/smash/get/diva2:1628210/FULLTEXT02>

did everything to prevent the return process. In addition to threats to the security of returnees, they also began plans to reconfigure the sites of the most significant destroyed monuments by imposing new exclusivist meanings to them.”³⁴⁸ In July 2021, the Office of the High Representative (OHR) tried to counter this by amending the Bosnian criminal code, introducing prison sentences for the erection of memorials, the naming of streets, schools or other public institutions after war criminals or in a way that denies the genocide.³⁴⁹ In 2016, after her first fact-finding mission to Serbia and Kosovo,³⁵⁰ the former UN Special Rapporteur on Cultural Rights also noted her concern that:

the high level of politicization of cultural heritage issues ... reduces cultural heritage to a tool, undermines the protection of cultural heritage and heightens the risks to it, produces monolithic discourses not appropriate in diverse societies, and impedes implementation of a wide range of human and cultural rights for all.³⁵¹

Similar practices have been observed elsewhere, during conflict (e.g., Isakhan’s work (2018) on Iraq and Syria), and after (e.g., Leturcq (2009) researched such framing of post-conflict heritage in Sudan and South Sudan). Hence, when engaging in heritage projects in conflict- or post-conflict areas, it is of utmost importance to be aware of the politics of heritage.

Figure 7: Mostar Bridge



Source: Photo by author

4.2.2. Experiences from Kosovo and Nagorno-Karabakh

Beyond Bosnia-Herzegovina, heritage rehabilitation projects in the aftermath of conflicts have often taken similar approaches, of either large-scale international projects, or small community-level efforts. This section highlights the protection and recovery of built heritage in post-conflict settings around

³⁴⁸ Hadzimuhamedovic, A. (2018) *Partipative [sic] reconstruction as a healing process in Bosnia*. [pdf] Available at: <https://whc.unesco.org/document/175508>

³⁴⁹ UN, Office of the High Representative (OHR) (2021) *HR's Decision on Enacting the Law on Amendment to the Crimanal Code of Bosnia and Herzegovina*. 23 July. No. 26/21. Available at: <http://www.ohr.int/hrs-decision-on-enacting-the-law-on-amendment-to-the-criminal-code-of-bosnia-and-herzegovina/>

³⁵⁰ This designation is used in this study without prejudice to positions on status, and is in line with UNSC Resolution 1244 (1999) on the situation relating to Kosovo, and the ICJ *Advisory Opinion on the Kosovo Declaration of Independence* (22 July 2010).

³⁵¹ UN, OHR (2016) Preliminary observations by the Special Rapporteur in the field of cultural rights, Karima Bennouna at the end of her visit to Serbia and Kosovo. 14 June. Available at: <https://www.ohchr.org/en/statements/2016/10/preliminary-observations-special-rapporteur-field-cultural-rights-karima?langid-e&newsid-20675>

the world, some of which were also recently highlighted in a report prepared by the EEAS.³⁵² These examples were chosen because they represent different models for recovery, and they present important lessons for future actions.

In Kosovo, there were large-scale destructions of cultural heritage in the 1990s, and again in 2004 (Herscher and Riedlmayer, 2000).³⁵³ Whilst the destruction, especially in the 1990s, disproportionately affected Kosovo-Albanian heritage, the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari Plan), adopted in 2007, created “Special Protective Zones” around a number of Serbian Orthodox heritage sites.³⁵⁴ These zones were a continuation of an earlier decision, taken during the war, by NATO’s Kosovo Force to guard certain religious sites as part of their effort to protect areas that could potentially fuel intercommunal violence. According to the Ahtisaari plan, these zones were to protect Serbian Orthodox heritage from potential retaliations after Kosovo’s declaration of independence and thus to contribute to protecting cultural diversity in Kosovo. Like with the Dayton agreement in Bosnia-Herzegovina, it is a positive development that peace negotiations consider cultural heritage, and that they try to come up with solutions for the role that it can play for the future of the country.

However, over time, Kosovo’s Special Protective Zones isolated cultural heritage from the broader community – at times through barbed-wire perimeters, and military or police check points, and at other times by creating the impression that Kosovo law does not apply there and thus preventing authorities from implementing heritage protection measures where needed (Kappler and Mannergren Selimovic, 2021).³⁵⁵ It is now clear that these measures, designed to protect diverse heritage, emphasised ethnic divisions and, according to the Organisation for Security and Co-operation in Europe (OSCE), also impeded the fulfilment of the human right to culture.³⁵⁶ Moreover, the OSCE notes that these zones have not stopped various forms of vandalism and destruction³⁵⁷ and, by giving the impression that people are not welcome in the sites, may have even increased negative sentiments towards cultural heritage. There are various reasons why the Special Protective Zones may not yield the desired results. The main one being that they were interpreted in a mono-ethnic manner, and that protecting diversity was reduced to protecting Serbian-Orthodox heritage. Moreover, the zones have been approached solely from a security angle, assuming that military, police and razor wire would keep the heritage safe, whilst “soft” measures that require working with diverse communities have been largely ignored, even though they may ultimately have more sustainable results.

More recently, in the ongoing Nagorno-Karabakh conflict, Azerbaijan’s interest in restoring damaged heritage raises concerns that this may be an attempt to further erase traces of Armenian history. According to Azerbaijan, however, this concerns “fictitious” traces of history that the Armenians have deliberately added to heritage in Azerbaijan.³⁵⁸ The debate speaks to the multi-layered nature of heritage, and to the desire to create monolayered narratives, which, as this case demonstrates, happens during the conflict and is continued in its aftermath. As already addressed before, on 7 December 2021, the ICJ ruled that Azerbaijan is obliged to, “take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches

³⁵² EEAS, Council of the EU (2022) *2022 Report on the progress in the implementation of the “Concept on Cultural Heritage in conflicts and crises. A component for peace and security in European Union’s external action” and the dedicated Council Conclusions*, (EEAS(2022)1566). Available at: <https://data.consilium.europa.eu/doc/document/ST-12398-2022-INIT/en/pdf>

³⁵³ UNESCO (2004) *Cultural Heritage in South-East Europe: KOSOVO - Protection and Conservation of a Multi-Ethnic Heritage in Danger, Mission Report, 26-30 April 2004*. Available at: http://www.unesco-paris.mfa.gov.rs/odrzavanje/uploads/Citati+sluke_unesko_final.pdf

³⁵⁴ UN Security Council (2007) *Report of the Special Envoy of the Secretary-General on Kosovo’s future status*, S/2007/168. Available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kosovo%20S2007%20168.pdf>

³⁵⁵ Kappler, S. and Mannergren Selimovic, J. (2021) *Working with the cultural heritage of conflict for peacebuilding: Lessons learned from the Western Balkans*. (Civil Society Dialogue Network Discussion Paper No. 16). Available at: <https://www.diva-portal.org/smash/get/diva2:1628210/FULLTEXT02>

³⁵⁶ OSCE (2014) *Challenges in the Protection of Immovable Tangible Cultural Heritage in Kosovo*. OSCE Mission in Kosovo. Available at: <https://www.osce.org/files/f/documents/c/8/117276.pdf>

³⁵⁷ Ibid.

³⁵⁸ Martikian, N. (2022) UNESCO mission deployment to Karabakh sparks tensions between Armenia and Azerbaijan. *JAMnews*, 17 February. Available at: <https://jam-news.net/unesco-mission-deployment-to-karabakh-sparks-tensions-between-armenia-and-azerbaijan/>

and other places of worship, monuments, landmarks, cemeteries and artefacts.”³⁵⁹ Thus far, there are no indications that such measures have been taken, and independent verification is repeatedly hindered from accessing the area.³⁶⁰

The situation highlights the importance of (independent and impartial) cultural heritage monitoring being recognised, and enabled to access conflict areas, in ways similar to how human rights monitors operate. During the war in Bosnia-Herzegovina, this role was to a certain extent taken on by the CoE.³⁶¹ Right now, and even more so with the increasing interest of the courts to prosecute crimes to heritage (for instance the ICC Policy on Cultural Heritage 2021),³⁶² monitoring is generally limited to the damage caused to certain types of heritage, without systematic collection of evidence for accountability purposes. An independent or international body should be able to coordinate such efforts. This could be as part of human rights monitoring, or done separately, by the heritage sector. Leading organisations, like UNESCO and ICCROM, are working to improve data collection, although the focus remains on damage caused to certain types of heritage. In practice, as is the case with the Mosul museum (Iraq), collecting data is also often undertaken by heritage organisations linked to a singular state, which may not be at the level of neutrality required.³⁶³ And, even though there have been increased efforts by Human Rights Watch in recent years to take on such a neutral role, cultural heritage as yet is only rarely or marginally included in human rights reporting.³⁶⁴ The added advantage of international monitoring, as part of the human rights system, would be to have a forum in which such independent reporting can be brought forward.

Figure 8: Reconstruction of mausoleums in Timbuktu



Source: MINUSMA/ Harandane

³⁵⁹ ICJ (2021) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021*, p. 361 Available at: <https://www.icj-cij.org/public/files/case-related/180/180-20211207-ORD-01-00-EN.pdf>

³⁶⁰ UNESCO (2021) *Nagorno-Karabakh: Reaffirming the obligation to protect cultural goods, UNESCO proposes sending a mission to the field to all parties*. [press release], 20 November. Available at: <https://en.unesco.org/news/nagorno-karabakh-reaffirming-obligation-protect-cultural-goods-unesco-proposes-sending-mission>

³⁶¹ CoE (1993) *War damage to the cultural heritage in Croatia and Bosnia-Herzegovina presented by the Committee on Culture and Education: Third Information Report*. Doc. 6904. Available at <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7256&lang=fr>

³⁶² ICC, Office of the Prosecutor (2021) *Policy on Cultural Heritage*. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>

³⁶³ Kurin, R. (2021) *Iraq's Cultural Museum in Mosul Is on the Road to Recovery*. *Smithsonian Magazine*. 19 February. Available at: <https://www.smithsonianmag.com/smithsonian-institution/iraqs-mosul-cultural-museum-road-recovery-180977027/>

³⁶⁴ Human Rights Watch (2022) *Ukraine: Russians Pillage Kherson Cultural Institutions*. Available at <https://www.hrw.org/news/2022/12/20/ukraine-russians-pillage-kherson-cultural-institutions>

4.2.3. Heritage rehabilitation in the Middle-East and Africa

Efforts to stimulate economic empowerment through heritage have long been part of UNESCO's approaches to post-conflict heritage rehabilitation (for instance, in Cambodia in the 1990s). Often, this is linked to the stimulation of cultural tourism and its associated industries, which can be difficult in post-conflict countries because it tends to take quite some time before tourism fully retakes. In Yemen, UNESCO, with support from the EU, rolled out a first of its kind cash-for-work project to restore heritage affected by conflict. Running since 2018, the project is currently in its second phase. The Yemen-model is particularly well adapted to the context of a protracted crisis where recovery efforts, like tourism, are not a viable option. It has also been particularly successful in urban environments, like the historic cities of Sana'a and Shibam (Yemen), where large numbers of affected heritage sites are privately-owned buildings.³⁶⁵ By engaging young people in the renovation of roofs, walls, windows and facades of private residences, the project provides them with an education, job and income, whilst also ensuring that the town's historic houses are rehabilitated and ready to be lived in again. Alongside private houses, the project also rehabilitates public spaces and a number of monuments.

Similarly, ALIPH's project, "Preservation of at-Risk Cultural Heritage in Yemen,"³⁶⁶ offers small grants to local cultural heritage operators. In addition to working on documenting and securing their most at-risk collections, the grantees are also trained on applying for funding and managing their projects. This project thus seeks to build the capacity of local heritage professionals with a concrete project, whilst also building their long-term capacity in accessing funding for future projects and managing them to successful completion.

Another project that works to rebuild historic urban fabric is UNESCO's project to "Revive the Spirit of Mosul" (Iraq), funded by the EU and the United Arab Emirates. The project is making great progress on the reconstruction of Mosul's main monuments, and efforts are underway to rebuild private residences. Yet, it is not without criticism, including on the prioritisation of certain monuments.³⁶⁷ The dominant feeling was that many local people were not pleased with the international nature of the design competition that was organised, whilst the people in Mosul were only given the role of labourers.³⁶⁸ For instance, a recent report published by Chatham House, retaking some earlier findings by a study prepared for EEAS (Kathem et al., 2020) states that:

the UNESCO-led international competition for the contract to reconstruct the mosque complex was widely criticised in Iraq for implanting designs alien to the country, for ignoring Mosul's own rich architectural history, and for not adequately involving Iraqi expertise and professional institutions ... [It] could have provided an unprecedented opportunity for Iraqi architects, designers and urban planners to lead community-informed projects to restore cultural heritage ... On the contrary, Iraq's State Board of Antiquities and Heritage and other institutions have merely been viewed as a facilitator rather than a partner ... (Kathem et al., 2022).

Many international heritage recovery projects face the challenge to find support and cooperation among a diverse group of local people, whilst approaching the project as an international expert-driven effort. Moreover, UNESCO, as an intergovernmental body, traditionally works through governments, which in post-conflict settings tends to be particularly limiting. For intangible heritage,

³⁶⁵ See Culture Solutions (2021) *Restoring livelihoods through culture in Yemen*. [events] 13 May. Available at: <https://www.culturesolutions.eu/events/yemen-unesco/>

³⁶⁶ ALIPH (2022) Preservation of at-risk cultural heritage in Yemen. Available at: <https://www.aliph-foundation.org/en/projects/preservation-of-at-risk-cultural-heritage-in-yemen>

³⁶⁷ Aqeedi, R. Al (2017) Mosul Mourns Its Minaret, Sort Of. *The American Interest*. Available at: <https://www.the-american-interest.com/2017/07/12/mosul-mourns-minaret-sort/>

³⁶⁸ Tarzi (2021) UNESCO reconstruction of Mosul's al-Nuri Mosque draws Iraqi backlash. *The New Arab*, 25 May. Available at: <https://www.newarab.com/features/unesco-reconstruction-mosuls-al-nuri-mosque-draws-iraqi-backlash>

operational principles for emergencies were developed that highlight the importance of communities, but no such thing exists for tangible heritage.³⁶⁹

Contrary to the situation in Iraq, the Assad regime in Syria is internationally sanctioned, making it more complex for international organisations and donors to engage. Those that do face difficulties to obtain funding or to access imported building materials. In view of the wide scale of damage to Syrian heritage, this is an interesting case for prioritisation. The destruction of the archaeological site of Palmyra received a lot of attention, but questions have been raised as to whether Palmyra should also be a priority for rehabilitation.³⁷⁰ After all, Palmyra is a well-documented archaeological site and, once stabilised, it could be restored anytime in the future. Considering the relevance for rebuilding people's lives and livelihoods, the historic centre of Aleppo (Syria), including the souk and the famous Umayyad mosque, calls for much more urgent attention.³⁷¹ As a consequence, there are considerably more agencies involved, despite the restrictive international sanctions. UNESCO, together with UNITAR/UNOSAT, conducted a detailed damage assessment in 2018, but the Organisation has since remained largely absent from the reconstruction efforts.³⁷² Instead, religious congregations have stepped up to rebuild individual churches and homes,³⁷³ and the Aga Khan Trust for Culture engaged in a large-scale recovery project for the historic town.³⁷⁴ Those and other local projects are also, at times, hindered by the sanctions, thus making it difficult to import construction materials, for instance. Interestingly, in the case of Aleppo, criticism to the reconstruction resounds some of that heard in the case of Mosul, even though very different actors are involved.³⁷⁵ In the case of Aleppo, critique includes that the approach is too centralised and top-down with the role of local actors being reduced to that of an implementer of decisions taken elsewhere.

Also the lead architect of UNESCO's reconstruction of mausoleums in Timbuktu (Mali), together with the head of the government's heritage authority in Timbuktu, concludes that the process too strongly prioritised heritage conservation as a (top-down) form of expertise, financed by international agencies, which has since resulted in traditional systems of maintenance collapsing (Joffroy and Essayouti, 2020). In other words, whilst the mausoleums were rebuilt, they are not being maintained, because local residents now think that this needs to be done by experts, or at least financed by UNESCO or the United Nations Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA). Again, Timbuktu's reconstruction was from a heritage perspective an excellent project that brought back valuable heritage, and that did so in a technically solid manner. At the same time, the (external) expert-driven approach and the lack of broad community engagement seems to have had longer-term implications. Also of interest is that MINUSMA became the first UN peacekeeping mission with an explicit mandate for the protection of cultural heritage.³⁷⁶ This mandate ("for support of cultural preservation") allowed for both civilian and military personnel of the mission to support efforts to protect and rebuild the heritage of Northern Mali, and is something that could be considered for future UN missions as well.

³⁶⁹ UNESCO (2009) *Operational principles and modalities for safeguarding intangible cultural heritage in emergencies*. Available at: <https://ich.unesco.org/en/operational-principles-and-modalities-in-emergencies-01143>

³⁷⁰ Moore, R. (2020) How Syria's blasted landmarks are starting to rise from the ruins. *The Guardian*, 4 June. Available at <https://www.theguardian.com/artanddesign/2020/aug/29/how-syrias-blasted-cities-are-rising-from-the-ruins>

³⁷¹ Mokayed, D. (2022) Rebuilding Aleppo as a Liveable City: The Role Of Cultural Heritage. *Urbanet*, 29 May. Available at: <https://www.urbanet.info/rebuilding-aleppo-role-of-cultural-heritage/>

³⁷² UNESCO/UNITAR (2018) *Five Years of Conflict: The State of Cultural Heritage in the Ancient City of Aleppo*. Available at: https://unitar.org/sites/default/files/media/publication/doc/UNESCO_UNITAR-5-years-conflict.pdf

³⁷³ Westcott, T. (2019) In Syria's Aleppo, a slow rebuild begins. *The New Humanitarian*, 30 January. Available at: <https://www.thenewhumanitarian.org/news-feature/2019/01/30/syria-s-aleppo-slow-rebuild-begins>

³⁷⁴ Aga Khan Development Network (2023) *Cultural Development*. Available at: <https://the.akdn/en/where-we-work/middle-east/syria/cultural-development-syria>

³⁷⁵ Ferrier, M. (2020) *Rebuilding the City of Aleppo: Do the Syrian Authorities Have a Plan?* [pdf] (European University Institute, Research Project Report, 19 March, 2020/05). Available at: https://cadmus.eui.eu/bitstream/handle/1814/66668/MED_WPCS_2020_5.pdf?sequence=1&isAllowed=y

³⁷⁶ SC Resolution 2100 (2013) (S/RES/2100 (2013)).

4.2.4. Memorialisation

As recognised by the former UN Special Rapporteur on Cultural Rights, memorialisation should be an essential part of post-conflict reconstruction, since it allows for a “multi-perspective approach.”³⁷⁷ However, many rehabilitation projects for built heritage in post-conflict settings, studied for Iraq in particular, tend to give little attention to post-conflict memory. This means that various parameters imposed by the historic structure tend to dominate – such as the desire to rebuild with authentic techniques and materials – the result as much as possible resembling the original, like we saw in Timbuktu (Mali). At the same time, the memorialisation dimension of recovery has been proven of major importance for helping people overcome traumatic events associated with the conflict, including the destruction of their cultural heritage. According to a recent study by the International Organization for Migration in Iraq, the heritage sector “suffers from a lack of awareness and engagement in post-conflict communities” and it “appears that memorialization in general has been overlooked.”³⁷⁸ Moreover, the study argues, by focusing on preserving cultural heritage, that heritage can easily become a tangible reminder of a painful past. That is:

For those living in the post-conflict community ... these buildings echo very different meanings and hold a very different set of memories; they could be feared and reviled by some or respected, welcomed and even loved by others. To leave these buildings unrecognised in ethnically diverse communities riddled with post-conflict emotional entanglements renders any reconciliation effort more fragile, and therefore more susceptible to failure and manipulation, potentially sparking further violence.³⁷⁹

The heritage sector’s difficulties in working with both heritage recovery and memorialisation have also become clear through the discussions on including so-called, “sites associated with recent conflicts and other negative and divisive memories,” onto the World Heritage List.³⁸⁰ In recent years, an effort led by Belgium and France to include sites relating to World War I, combined with an intent from countries like Rwanda and Cambodia to nominate sites associated with more recent conflicts, led UNESCO and ICOMOS to re-open the debate as to whether such sites belong on the World Heritage List.³⁸¹

This was also confirmed by the former UN Special Rapporteur on Cultural Rights, in the case of heritage reconstruction in Timbuktu (Mali), when she referred to the heritage sector – led by UNESCO in this case – as assuming that just reconstructing the damaged sites is sufficient, but that “the reconstructed heritage sites will never be the same again or have lost their power.”³⁸² She does this whilst advocating for judicial reparations, including reparation measures of satisfaction, like memorialisation, and efforts to guarantee non-repetition. In the case of Timbuktu, the ICC reparations case was a first important step in that direction. The transformative potential of reparations should be considered when addressing violations that pertain to cultural heritage, as reparations may go beyond returning a site to the condition it was in pre-conflict, by also addressing the root-causes of the conflict.

Of particular interest are also the sites and institutions that deliberately work with memory to contribute, either to transitional justice, or to helping people overcome the trauma of the conflict. A number of such sites and cultural institutions were united in the International Coalition of Sites of

³⁷⁷ 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>

³⁷⁸ Macdonald Hay, F. (2019) *Everyday Sites of Violence and Conflict: Exploring Memories in Mosul and Tal Afar, Iraq*. International Organization for Migration. Available at: <https://changingthestory.leeds.ac.uk/wp-content/uploads/sites/110/2019/07/IOM-Iraq-Everyday-sites-of-violence-and-conflict-April-2019.pdf>

³⁷⁹ Ibid.

³⁸⁰ UNESCO (2021) *Item 8 of the Provisional Agenda: Nomination process INF.8.2: Study on sites associated with recent conflicts and other negative and divisive memories* by O. Beazley and C. Cameron. World Heritage Committee, Fuzhou (China) / Online 16-31 July. WHC/21/44.COM/INF.8.2 Available at: <https://whc.unesco.org/archive/2021/whc21-44com-inf8.2-en.pdf>

³⁸¹ UNESCO (n.d.) *Reflection on Sites Associated with Memories of Recent Conflicts and other negative and divisive memories*. Available at: <https://whc.unesco.org/en/memoryreflection/>

³⁸² Bennoun, K. (2017) *ANNEX I Public: Expert Brief in the Case of The Prosecutor v. Ahmad Al Faqi Al Mahdi*. ICC-01/12-01/15. Available at: https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2017_05022.pdf

Conscience.³⁸³ The network includes sites, such as the Apartheid Museum (South Africa) and the Tuol Sleng Museum (Cambodia), but also Schindler's Factory (Poland) and the Cárcel de Carabanchel Para la Memoria (Spain). Jointly, these sites consider memorialisation as a way to work with cultural heritage to ensure that past atrocities will not reoccur. In their approach, cultural heritage is considered as a tool to be worked with in order to achieve human rights, and to actively engage citizens, which is rather different from most heritage-related projects in post-conflict settings. Typically, major events result in the creation of new heritage, new monuments or new institutions – think of Ground Zero in New York (USA). Such monuments or institutions can spread messages of unity and non-repetition, but they can also reinforce divisions. This is why it is important for the (international) heritage sector to acknowledge constructive efforts for how these monuments are conceived, the messages they spread, and the roles they play for affected societies.

4.3. Movable and intangible heritage

4.3.1. Protecting and recovering movable heritage

As discussed in the preceding chapters, movable cultural heritage - e.g., antiquities - may come under threat through illicit trafficking, or when the institutions or heritage sites are attacked. In response, the most immediate measures tend to be sanctions by the UN Security Council to ban the trade (on which see Chapters 2 and 3), in situ protection (safe storage, protection with sandbags, etc.), or their evacuation towards safe havens inside or outside of the national territory. The latter can easily be seen as the safest solution, yet it is not without its complexities for post-conflict recovery.

The case of the National Museum in Kabul (Afghanistan) demonstrates that evacuation efforts can be very complex. During the war in the 1990s and early 2000s, valuable objects were brought to safe havens in Switzerland (Afghanistan Museum-in-Exile in Bubendorf), and in France (Archaeological Museum of Henri Prades in Lattes), for their safekeeping.³⁸⁴ UNESCO was involved in negotiating the agreement for the return of the objects, to ensure that they would not remain in these safe havens forever. Since then, the museum in Kabul has been rebuilt with funding from the United States and technical assistance provided by UNESCO, and its collections from safe havens have been brought back. Other countries, including The Netherlands, Italy, Greece and France were involved in supporting training activities and the development of a database for the collection. Other collections have remained on an exhibition tour in the United States for a considerable time, in part because the situation in the country and the state of the museum were long considered too insufficient to guarantee the safekeeping of these pieces. The case of the National Museum in Kabul demonstrates that it is possible to preserve movable heritage in conflicts, if timely actions are taken, and with the correct legal provisions in place. Yet, this also demonstrates that it may be difficult to decide when a situation is safe enough for a collection to be returned.

The National archive collection (Iraq) and the Jewish Archive (Iraq) demonstrate that the removal of cultural heritage from national territory for its (temporary) safekeeping is not an easy endeavour. These were moved to the United States for safekeeping, but are yet to be returned (Kathem et al., 2022). The question “when is it safe enough for return” is one that tends to complicate measures that were intended to be temporary, such as moving heritage to safe havens. Whilst receiving states and institutions often engage with the best of intentions, national authorities are not always keen on agreeing to such arrangements outside of their national borders.³⁸⁵ Also within the national territory, the creation of temporary safe havens is a complex matter. For instance, thousands of manuscripts were saved from the libraries of Timbuktu (Mali) and housed in Bamako. To date, it is unclear when, or if, these manuscripts will return to Timbuktu, or what conditions would need to be met to guarantee

³⁸³ International Coalition of Sites of Conscience (n.d.) Available at: <https://www.sitesofconscience.org/>

³⁸⁴ Bucherer, P. (n.d.) *How Can Afghanistan's Cultural Heritage Be Preserved?* [interview] Asia Society. Available at: <https://asiasociety.org/how-can-afghanistans-cultural-heritage-be-preserved>

³⁸⁵ UN Security Council (2017) *7907th Meeting. S/PV.7907*. Available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7907.pdf

it. From a peacebuilding perspective, their return is important for the local populations. From a heritage preservation perspective, it is clear that the situation remains highly volatile and that the manuscripts are better off in Bamako. Perhaps the sector should also consider checklists for safe return, using as the example those that exist for the return of refugees.³⁸⁶

A comprehensive effort underway involves the recovery of the Mosul Museum (Iraq). The premises themselves were destroyed (most likely during the retaking of Mosul); but this is also the place where ISIS destroyed valuable cultural heritage with axes and hammers – the images of which went around the world. Here also, some objects were brought to safety in another part of town, once again demonstrating that evacuation plans and preventive actions are helpful.³⁸⁷ Since then, the museum is being rebuilt through a joint venture of the Smithsonian Institution, the Louvre museum and the Iraqi State Board of Antiquities and Heritage, funded by ALIPH.³⁸⁸ Whilst a part of the project focuses on rebuilding the heavily damaged museum, the project also recovered and subsequently restored damaged artwork. It does so through a combined approach, of providing expertise through in-house staff, and training local experts through an on-the-job model. This approach, which the SCRI also applied in the aftermath of the 2010 earthquake in Haiti, has proven effective.

It is important to specifically highlight the role of archives in post-conflict recovery. In many cases, the documentation that archives hold is of great use in post-conflict settings, because it can allow the retracing of historic events, and the development of a balanced narrative of the conflict and its root causes. Even more so, archives are often institutions that engage in further collection information – including oral histories – during and after the conflict. For example, the Dúchas archive in Belfast (UK),³⁸⁹ the South African History Archive (South Africa)³⁹⁰ or the Max Stahl Audiovisual Archive Center for Timor-Leste (Timor-Leste) that recorded experiences of the countries' independence.³⁹¹ This dual role of preserving a record of the past and collecting memories of recent events makes archives particularly interesting cultural institutions to collaborate with in the aftermath of conflicts. It is a part of the heritage sector that easily demonstrates how cultural heritage (in this case documentary heritage) can be put toward the service of peace, or toward the achievement of human rights.

4.3.2. Intangible cultural heritage

As explained in Chapter 2, the safeguarding of the intangible dimension of heritage has long been overlooked in armed conflicts, in part because it was not considered by the treaty law, but also because the impact on intangible heritage it is often difficult to assess, and the impact can become apparent more gradually than attacks on tangible heritage.³⁹² As a consequence, heritage actors intervening in post-conflict settings have also usually overlooked intangible heritage. Focusing on intangible heritage is inherently about people and, therefore, interventions tend to pay much greater attention to the impact of conflicts on people. Such people-centered approaches to heritage in post-conflict settings open doors to work with displaced communities, or to contribute to reintegration. In Mali, the MINUSMA peacekeeping mission supports the reviving of cultural festivals in areas affected by the war.³⁹³ A UNESCO project carried out with former FARC members in Conejov Village (Colombia) is a good example of how intangible heritage can help facilitate reconciliation and the reintegration of

³⁸⁶ UN Network on Migration (2021) *Checklist for Safe and Dignified Return and Sustainable Reintegration*. Available at: <https://migrationnetwork.un.org/resources/checklist-safe-and-dignified-return-and-sustainable-reintegration>

³⁸⁷ Kurin, R. (2021) Iraq's Cultural Museum in Mosul Is on the Road to Recovery. *Smithsonian Magazine*. 19 February. Available at: <https://www.smithsonianmag.com/smithsonian-institution/iraqs-mosul-cultural-museum-road-recovery-180977027/>

³⁸⁸ Gronlund, M. (2021) Mosul Cultural Museum rises from the ravages of Isis. *The Art Newspaper - International Art News and Events*, 5 April. Available at: <https://www.theartnewspaper.com/2021/04/05/mosul-cultural-museum-rises-from-the-ravages-of-isis>

³⁸⁹ Dúchas Oral History Archive (n.d.) Available at: <http://www.duchasarchive.com/>

³⁹⁰ South African History Archive (n.d.) *Oral History*. Available at: https://www.saha.org.za/collections/oral_history.htm

³⁹¹ Timor Archive (n.d.) *Centro Audiovisual Max Stahl Timor-Leste (CAMSTL)*. Available at: <https://timorarchives.wordpress.com/archives-in-timor/camstl/>

³⁹² Seddon, R. (2016) Subtle Casualties: Conflict and Intangible Cultural Heritage. *Stockholm Centre for the Ethics of War and Peace*. [blog] 18 September. Available at: <http://stockholmcentre.org/subtle-casualties-conflict-and-intangible-cultural-heritage/>

³⁹³ MINUSMA (2015) *Support for cultural preservation: For the first time, a Security Council resolution includes the protection of cultural and historic sites in the mandate of a peacekeeping operation*. Available at: <https://minusma.unmissions.org/en/cultural-heritage>

former combatants (Mouly and Gimenez, 2017, pp. 281-302). In the project, ex-FARC combatants worked together with other members of the community to identify (common) intangible heritage and how to preserve it; but they also collectively built and registered a historical memory of the territory (oral history), reinforcing the idea of common roots and belonging.

UNESCO studied the role of intangible heritage for Syrian refugees, revealing the manifold ways in which conflict affects people's intangible heritage, and how this is further aggravated in situations of displacement (Chatelard, 2017). The study demonstrates how being able to continue intangible practices allows for psychological and social comfort, and gives people the impression of continuity. Not unimportant in this, as was noted in 2014 by Mire in Somalia, is that for many cultures, the intangible dimensions matter far more than the material dimension of culture.³⁹⁴ In addition to the social and cultural capital derived from keeping intangible traditions alive in situations of displacement, UNESCO also registered how intangible heritage can help build bridges between displaced people and their host communities. A similar study conducted in North-Kivu (DR Congo) further identified the importance of considering people's intangible heritage for ensuring that humanitarian aid achieves its objectives, in particular, with regard to fostering more resilient societies.³⁹⁵

4.4. Digital solutions

In recent years, especially in the aftermath of large-scale destructions in Syria and Iraq, digital solutions for heritage monitoring, protection and "reconstruction" have gained more prominence. Digital technologies and online presence, for instance allow for the creation of digital repositories of cultural heritage affected by conflict, of which the Syrian Heritage Archive is an excellent example.³⁹⁶ Even the creation of full-scale 3D models of destroyed sites has gained prominence (for example, the work of ICONEM,³⁹⁷ CYArk,³⁹⁸ and Google Arts and Culture).³⁹⁹ Whilst this cannot replace tangible heritage, these efforts have proven important for better documenting heritage as a preparatory measure, and also contributing to continuing relations between displaced communities and their heritage during conflict.

Another form of the use of technological innovation is UNESCO's partnership with UNITAR/UNOSAT to monitor heritage sites through satellite imagery. The satellite monitoring of heritage sites started with UNITAR's efforts in Syria and Lybia, and has more recently been continued for monitoring sites in Ukraine (Cunliffe et al. 2014).⁴⁰⁰ Such distance-monitoring allows the tracking from a distance of (large-scale) damage to heritage sites within 24-48 hours after attacks. This can be a very useful, albeit expensive, tool for monitoring the state of heritage in places that are difficult to access. It also provides essential documentation of events. As mentioned earlier, it may be important to link this to more regularised monitoring, and to have a specific forum that this monitoring can serve. The EU's Copernicus programme could also be a strategic partner for these kind of initiatives.⁴⁰¹

Of particular interest may be the work of the Forensic Architecture programme at Goldsmiths University in London (UK).⁴⁰² The programme works with digital tools, especially 3D models, to study destructions and to trace the events the led to destructions. For instance, the project mapped

³⁹⁴ Mire, S. (2014) *Cultural heritage: a basic human need - Sada Mire at TEDxEuston*. [video] TEDx Talks. Available at: <https://www.youtube.com/watch?v=V4UQYem6Dvc>

³⁹⁵ Ibid.

³⁹⁶ Syrian Heritage Archive (n.d.) Available at: <https://syrian-heritage.org/>

³⁹⁷ ICONEM (n.d.) Available at: <https://iconem.com/en/>

³⁹⁸ CYArk (n.d.) Available at: <https://www.cyark.org/>

³⁹⁹ Google Arts and Culture (n.d.) *Open Heritage*. Available at: <https://artsandculture.google.com/project/openheritage>

⁴⁰⁰ UNESCO (2023) *Actions for Ukraine*. Available at: <https://www.unesco.org/en/ukraine-war/actions-timeline>

⁴⁰¹ Copernicus (2022) OBSERVER: Copernicus for the preservation of global cultural heritage sites. Available at: <https://www.copernicus.eu/en/news/news/observer-copernicus-preservation-global-cultural-heritage-sites>

⁴⁰² Forensic Architecture (n.d.) Available at: <https://forensic-architecture.org/>

destructions to Yazidi heritage in Iraq.⁴⁰³ In this way, for example, such mapping can link into the increasing demand and need for tracing the events that lead to destruction of heritage places, which is essential when trying to counter politicised narratives and when seeking justice.

4.5. Conclusion

In recent decades, considerable numbers of projects have been carried out to safeguard or restore conflict-affected cultural heritage. Many of these efforts directly counteract the deliberate attempts to erase traces of a particular cultural presence in specific areas. They preserve or bring back heritage that witnesses a people's presence, which is essential in building diverse and sustainable societies. Damage to cultural heritage often leaves major psychological trauma, and undoing that damage can be an important contributor to the well-being of communities coming out of conflict. However, based on the multitude of experiences in situations of armed conflict, the following conclusions can be drawn:

First of all, fostering diversity requires multiple narratives. Therefore, **greater attention should be paid to post-conflict memory** in recovery projects. Such memorialisation can take many forms, and adopting approaches from intangible heritage can be useful, since they approach cultural heritage as a changing discourse that is constantly being reinterpreted. Many of the hurdles that projects in post-conflict settings face could be addressed by not considering heritage as a mono-layered and unchanging reality. After all, when engaging with cultural heritage in post-conflict settings, it is essential to be aware of the ongoing narrative-building. Therefore, the archive sector should also play a stronger role. Oral history projects, as well as working with historic records, can provide meaningful ways to address "past mastering," whilst also contributing to memorialisation.

Second, efforts to introduce conflict analysis, and to think of peace indicators, in heritage projects are important first steps towards improving the link between heritage projects and peacebuilding.⁴⁰⁴ Many projects focus predominantly on the heritage itself, and fall short in terms of their social impact – whether it concerns their contribution to peace, reconciliation, social change or dealing with the past. Terms like "peacebuilding" are often part of project descriptions, but little concrete steps are taken to achieve it. This gives the impression that heritage recovery projects assume that peace is a logical outcome of projects that bring back destroyed cultural heritage. Projects for built and movable heritage, especially, tend to focus on preserving or restoring the heritage itself. A risk with this approach is that it overlooks the major impact that heritage recovery can have on social relations and (post) conflict dynamics. This changed recently by introducing conflict analysis in recovery projects. Another positive development is the increasing attention being paid to non-tangible heritage. Projects that work with intangible cultural heritage often pay greater attention to the linkages with communities, trauma and the human rights dimension of preserving that heritage. Also community-level projects often manage more easily to involve different groups in society, thereby holding stronger potential for contributing to social change. Some of these people-centered approaches could be very useful for the tangible cultural heritage field as well.

Finally, **the heritage sector could benefit from a system of (independent) monitoring of attacks on cultural heritage in all its forms**, similar to the monitoring of human rights violations, or as part of human rights monitoring, with the aim of enhancing accountability as well as post-conflict reconstruction and peacebuilding efforts. Although a lot of progress is being made, in Ukraine (see previous chapter) and elsewhere, monitoring often remains limited to listing numbers of affected sites, monuments or institutions - whether publicly available or not. A newer, more detailed type of monitoring report was recently published by ICCROM on Ukraine, providing greater detail on the

⁴⁰³ Forensic Architecture (2018) *The Destruction of Yazidi Cultural Heritage*. Available at: <https://forensic-architecture.org/investigation/the-destruction-of-yazidi-cultural-heritage>

⁴⁰⁴ ICCROM (n.d.) *PATH – Peacebuilding Assessment Tool for Heritage Recovery and Rehabilitation*. Available at: <https://www.iccrom.org/publication/path-peacebuilding-assessment-tool-heritage-recovery-and-rehabilitation> ; ICCROM (n.d.) *Community-Based Heritage Indicators for Peace: A Tool for Measuring Peace*. Available at: <https://www.iccrom.org/news/community-based-heritage-indicators-peace-tool-measuring-peace>

damage and needs, but still from a uniquely heritage perspective.⁴⁰⁵ Cultural heritage should be systematically included in human rights monitoring and in the work of investigative teams. A comprehensive system to collect, store and preserve evidence of heritage-related crimes would contribute to a better understanding of the conflict, and help to prepare projects to redress the violations that were committed. Much more than rebuilding heritage, communities coming out of conflict seek a variety of forms of justice – whether through criminal prosecutions or through other forms of transitional justice. This can only be done if the focus shifts, from quickly trying to undo the damage done, to the process, the memory of past events, the need to seek “evidence” and for multiple narratives to coexist. Practically, this also means focusing more on documentation, community participation, and participatory development of memory initiatives, without rushing into reconstruction, and allowing some time for reflection.

For the case of Ukraine, which was discussed in Chapter 3 of this study, this means that the ongoing monitoring needs to be as comprehensive as possible, and that cultural heritage should ideally be included in ongoing monitoring of the human rights situation in the country. That way, a solid evidence base can be established that can later on serve to give heritage a more constructive role in dealing with the past.

⁴⁰⁵ ICCROM (2023) *Damage and Risk Assessment: Report to promote risk-informed cultural heritage first aid actions in Ukraine*. Available at: https://www.iccrom.org/sites/default/files/publications/2023-02/iccrom_far_2023_damage_and_risk_assessment_report_ukraine.pdf

5. CONCLUSIONS AND RECOMMENDATIONS

This last chapter presents the conclusions and recommendations in response to this study's main question: how can the EU and its Member States better protect cultural heritage from armed conflicts, specifically in Ukraine?

In reply to this question, Chapter 1 (as well as Annex 1) of the study identified the forms of threats to cultural heritage that can be distinguished in conflict zones, specifically in Ukraine. It also outlined the underlying reasons for the protection of cultural heritage in such circumstances. Chapter 2 gave an overview of the legal and policy frameworks for cultural heritage protection from armed conflict. Chapter 3 identified and analysed international aid initiatives in respect of cultural heritage in Ukraine. Chapter 4 of this study furthermore listed and substantiated best practices of international efforts in other (earlier or ongoing) conflicts. The conclusions and recommendations that follow in this last chapter are based on these chapters' key findings.

5.1. Conclusions

The following conclusions are approached by addressing the five sub-questions discussed in the previous chapters.

1) *What are the threats to cultural heritage in times of armed conflict, and why is protection important?*

Whilst cultural heritage is often an integral part of an armed conflict, it is also widely acknowledged as being key to peace and the sustainable development of societies. For the EU legal order, cultural heritage constitutes its axiological foundation, underlying its distinctiveness and identity. Cultural heritage can be defined as a group of resources inherited from the past, which people consider as an expression of their evolving values, beliefs, knowledge and traditions, which they want to sustain and transmit to future generations. This includes both tangible cultural heritage - such as sites, monuments and objects of archaeological, historical, religious, cultural or aesthetic value - as well as intangible heritage - such as traditions, customs and forms of artistic expression. Yet, in practice, a clear-cut distinction between these categories is not always possible.

In times of armed conflict, cultural heritage in all its forms is often under threat, which causes directly or indirectly significant suffering to societies. Armed conflicts deeply affect people's cultural life and its diversity. Whilst cultural heritage can be damaged unintentionally and amount to "collateral" damage, which may be due to a lack of knowledge or interest in its protected status under international law, cultural heritage may also be directly targeted. In particular, cultural heritage may be targeted for ideological reasons as it often is a symbol of a cultural identity. It may thus be at the centre of a conflict, as illustrated in Chapter 1 and Annex 1 with examples of forceful cultural assimilation ("Russification") in occupied territories in Ukraine. Similar practices detrimental to cultural heritage, particularly if religion is at stake, can be witnessed in many other wars (e.g., in Nagorno-Karabakh).

Armed conflicts today are also renowned for plunder, pillage and looting for economic gain, such as through the illicit excavation of archaeological sites. This may be for individual financial gain, but it may also be part of organised crime, or to contribute to the financing of military operations or terrorism. Although in Ukraine, attention has so far focused on the looting by Russian forces of artefacts from public museums, experience shows that the illicit trafficking of antiquities from conflict zones - lacking adequate government control - is lucrative, but it often only surfaces on the market at a later stage.

Therefore, armed conflicts cause serious threats to cultural heritage and the values attached to it, and cultural heritage can play a strategic role in armed conflicts.

Threats to cultural heritage caused by armed conflicts endanger key values of the EU and its legal order, security and external relations, even if those conflicts take place beyond EU borders. As it supports and

coordinates activities in this regard by its Member States, whilst enhancing cooperation with third states, governmental organisations and other relevant stakeholders, the EU is one of the key global actors engaged in the protection of cultural heritage in armed conflict. The EU and its Member States are also (at least in financial terms) the main partner of UNESCO, the body in charge of protecting heritage at UN level. The specific nature of the war in Ukraine poses new challenges to the EU, and thus a reconceptualisation is needed of the mechanisms, tools and instruments available to protect cultural heritage.

2) *What rules apply to the protection of cultural heritage in times of armed conflict?*

The protection of cultural heritage is firmly established in international law. Whilst damage or destruction of monuments or works of art in times of armed conflict is addressed by legal rules operating on the interstate level (such as the Hague Convention 1954), it can also give rise to violations of human rights of individuals or communities and, increasingly, to individual criminal responsibility.

During an armed conflict parties to hostilities must respect cultural property, a term that covers tangible (movable or immovable) expressions of cultural heritage of great importance. This means that they cannot target cultural property, nor use it to support the military effort - unless in very exceptional circumstances – nor seize or export it under duress, for example as war reprisals. Cultural property is protected both by the general rules of IHL, and by the specific rules contained in the Hague Convention 1954. Nearly all Member States of the EU, except for Malta, are party to the Hague Convention 1954, and so are Ukraine and Russia. In addition to respecting cultural property, States Parties must also adopt adequate safeguarding preparatory measures, which are crucial for the effective protection of cultural heritage in armed conflict. Finally, states also have the obligation to prosecute certain cultural offences; and those constituting grave breaches of IHL must even be prosecuted on the basis of universal jurisdiction (i.e., even if the alleged offense was committed by a non-national abroad).

Under the First Protocol to the Hague Convention 1954, export of cultural property from an occupied territory is prohibited and, if it was imported into the territory of another State Party, that State must take it into custody and return it at the close of hostilities to the formerly occupied territory. An obligation for third states to intercept and return cultural objects from conflict zones also follows from other international instruments, notably the UNESCO Convention 1970. In addition to an obligation to cooperate to curb the illicit trade, it also makes illicit the export and transfer of ownership of cultural property from occupied territories. Both import restrictions and cooperation among states are necessary to curb the illicit trafficking in cultural objects, which is part of a broader agenda to tackle organised crime and counterterrorism. As a result, the EU also adopted legal and policy instruments.⁴⁰⁶

The legal basis for EU Member States to prosecute those in possession of looted cultural goods from conflict zones, including Ukrainian objects, is EU Import Regulation 2019/880. Article 3 of this Regulation - directly applicable in all EU Member States - prohibits the import into EU territory of illicitly exported cultural objects. Thus, EU Member States all have an obligation to implement effective, proportionate and dissuasive penalties to address the illicit import and introduction of cultural goods into the customs territory of the Union. However, this does not entail systematic controls by Member States' customs, and therefore enforcement gaps may remain. For the system to be effective, it is necessary to constantly monitor cultural losses on Ukrainian territory and other conflict zones, and to make them public. In addition, better information is needed on national (e.g., Ukrainian) legislation on

⁴⁰⁶ E.g., the Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the Introduction and Import of Cultural Goods. OJ L 151. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0880&from=EN> ; the Conclusions (EU) 9837/21 of the Council of 21 June 2021 on EU approach to cultural heritage in conflicts and crises. Available at: <https://www.consilium.europa.eu/media/50557/st09837-en21.pdf> ; and the EC (2022) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Action Plan against Trafficking in Cultural Goods* (COM(2022)800 Final). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0800&from=EN>

the protection of cultural heritage, specifically those regulating the circulation of cultural objects, their ownership and their export abroad. Since many objects - and in particular archaeological objects that were illicitly excavated - are not accounted for in inventories, losses will not be known or reported. Therefore, mandatory due diligence standards for the trade are needed to adequately address the problem of illicit trafficking.

Today's holistic approach to cultural heritage - and recognition of the importance of the intangible (identity) aspects of cultural heritage - implicates that the protection of cultural heritage is also a matter of (fundamental) human rights. Threats to or destruction of cultural heritage may amount to a violation of a number of human rights, particularly the right to participate in cultural life, which includes the right to access and enjoy both tangible and intangible cultural heritage, as well as of the right of minorities to enjoy their cultures, practice their religions or use their languages. Thus, states must ensure the protection and realisation of cultural human rights of everyone under their jurisdiction, no matter their citizenship status (including refugees and asylum seekers), as well as those under their effective control, such as in situations of occupation.

Although international law either does not, or does only very laconically, refer to intangible heritage in armed conflict, there is no doubt that it must be safeguarded. Both UNESCO and the EU stress that the safeguarding of intangible manifestations of cultural heritage constitutes an important element of humanitarian action and peacebuilding processes. Yet, there is a need for a better coordination between various legal and policy frameworks at global, regional and national levels. Moreover, the necessary tools to monitor, protect and respond to situations of armed conflict that are threatening intangible heritage are often missing. Therefore, the EU and its Member States should implement the safeguarding of intangible heritage across their policies and initiatives in the different phases of armed conflicts, as well as in post-conflict recovery and reconstruction.

3) What international initiatives are undertaken to protect cultural heritage in Ukraine?

International initiatives to safeguard cultural heritage in Ukraine are numerous and focus on: (1) Monitoring of damages and risks either by satellite imaging or on-the-ground; (2) Emergency relief on-the-ground in Ukraine, mostly providing protective or storage materials to cultural institutions; (3) Training of heritage professionals to avoid (further) damage to cultural institutions and sites. (4) Digitisation of inventories and archives, to assess later damages; and (5) Support of the cultural sector in Ukraine, as well as to Ukrainian refugee heritage workers, artists, students and children to safeguard intangible heritage. Moreover, UNESCO, the CoE and the EU have planned programmes with similar objectives aimed at the long-term recovery of the heritage sector, once the situation would allow.

Many actors are involved in protecting heritage in Ukraine and their mandates overlap. Consequently, coordination is complex. During consultations for this study, experts highlighted a gap in coordination and monitoring of emergency relief measures in Ukraine. Despite efforts to coordinate actions at an international level by UNESCO, this may lead to: duplication of efforts, as well as gaps that may go unnoticed; limited resources not always being used in the most efficient manner; and a lack of linkages between the cultural heritage sector and other sectors active in Ukraine such as the humanitarian aid sector.

This last point, a lack of integration of cultural heritage in the broader emergency relief and humanitarian aid system, was highlighted as an important obstacle and should be addressed. Whilst acknowledging that effective coordination is complex in the circumstances of an armed conflict, there also appears to be room for improvement.

At the EU level many services and DGs are involved. This poses a challenge to a coherent EU policy as foreseen in the 2021 Council Conclusions that call for a coordinated response by the EU regarding the protection of cultural heritage in conflicts and crisis.⁴⁰⁷ Given that Ukraine is an EU candidate country,

⁴⁰⁷ Conclusions (EU) 9837/21 of the Council of 21 June 2021 on EU approach to cultural heritage in conflicts and crises. Available at: <https://www.consilium.europa.eu/media/50557/st09837-en21.pdf>

the EU appears to be in a position to take on a more active role. Also in that context, the setting up of an EU coordination point should be considered.

4) *What can be learnt from earlier experiences to protect and restore cultural heritage?*

Whilst Annex 1 illustrates well the damage already incurred in Ukraine, the full impact of this conflict and other ongoing conflicts on cultural heritage cannot yet be fully grasped. It is important to realise, however, that in times of armed conflict, cultural heritage in all its forms, may be used in the conflict narratives and thus it may also fuel conflicts. This may be the case when cultural heritage is claimed as exclusive (national) heritage by a certain party in a conflict. In addition to fuelling animosities between different groups, this may also impede on the cultural rights attached to such heritage by minority sections of a population. In this regard, an independent monitoring procedure of threats or destruction of cultural heritage would be important.

In recent decades, many projects have been carried out to safeguard or restore conflict-affected cultural heritage. Based on experiences in situations of armed conflict, the following conclusions can be drawn. First, memorialisation is of great importance; it can take many forms and adopting approaches from intangible heritage can be useful. When engaging with cultural heritage in post-conflict settings, it is essential to be aware of the ongoing narrative-building. For that, the archive sector as well as oral history projects can provide meaningful ways to contribute to memorialisation.

Second, efforts to introduce conflict analysis and to think of peace indicators in heritage projects are important. Post-conflict efforts tend to focus on rehabilitating cultural heritage, based on the inherent significance of that heritage, but tend to be less mindful of the needs of a peacebuilding process. The risk with this is that it overlooks the major impact that heritage recovery can have on social relations and (post) conflict dynamics. The broader objective of peacebuilding is particularly important to helping affected communities deal with past events. A positive development is the increasing attention to intangible cultural heritage, in which different groups in society are involved, thereby holding potential for contributing to social change. In this respect, the EU also recognises that cultural heritage can be a driver for peace.

Decisions for recovery, reconstruction or safeguarding of heritage should, therefore, be carefully made with the full participation of local communities and in accordance with their needs.⁴⁰⁸ A related point of attention is the importance of integration of cultural heritage within peacekeeping operations in post-conflict situations.

5) *What is needed to better protect cultural heritage from armed conflicts?*

To better protect cultural heritage from the effects of armed conflict, adequate measures must be taken and procedures must be in place in different areas and for different phases of a conflict (before, during and after). Hereunder, what follow are three main points of attention highlighted by this study, namely: (a) having preparatory measures in place; (b) assuring a better integration with other sectors; and (c) the setting up of an independent monitoring procedure.

a) To be adequately protected, measures have to be adopted by states already in time of peace.

The absence of preparatory measures appears to be a major obstacle to the efficient protection of cultural heritage, specifically in Ukraine, but also in times of crises more generally. Given that only a few states have implemented such preparatory measures in full, these measures deserve more attention. These are highlighted in various legal instruments and include:

- The preparation of *inventories*, including in a digital format,⁴⁰⁹ and making them easily accessible to relevant authorities and agencies. This should include heritage of all different segments of a society, including minority groups.

⁴⁰⁸ Ibid, pp. 7-8.

⁴⁰⁹ See Chapter 1.2.1 and fn. 20, for EU initiatives in this regard.

- The preparation for the removal of movable cultural objects (to refuges or safe havens), or the provision for adequate in situ protection, if a crisis occurs.
- The planning of emergency measures for protection against fire or structural collapse, and the designation of a competent civilian authority responsible for the safeguarding (*risk management plans*).

Such measures primarily aim to protect a state's own cultural heritage. States are also expected to prepare measures to protect foreign cultural heritage. This follows from several international treaties and was articulated in the UNSC Resolution 2347 (2017). Measures of this kind include:

- The *Training of armed forces* on cultural heritage protection, and designation of specialist personnel. The Hague Convention 1954 in this sense specifically provides for specialist personnel to be established within armed forces, and for the fostering of respect within armed forces for the culture and cultural property of all peoples.
- The implementation of legislation to establish and prosecute crimes against cultural property, and the appointment of specialised units and dedicated personnel in customs and other law enforcement and providing them with effective tools and adequate training.
- The adoption of regulations to prevent the trafficking in stolen or illegally exported cultural objects (including archaeological objects), and the engagement of museums and market participants on (differentiated) due diligence standards and provenance documentation. In this regard, raising awareness amongst the general public is also of key importance.
- The adoption of regulations enabling the taking into custody, and ensuring their safe return after the hostilities, of cultural objects (and safeguarded digital records) that have been unlawfully removed, displaced or transferred from conflict areas, in coordination with relevant UN entities and international actors.
- The preparation of measures that ensure the realisation of the cultural rights of those who have fled a conflict and are now on that state's territory.

b) The integration of cultural emergency response measures within broader systems of emergency response, humanitarian aid and peacekeeping operations is crucial. At present, such integration is largely lacking.

Most protocols for emergency response and humanitarian aid are still based on the notion that cultural heritage should only come into play at the recovery phase. As a matter of urgency, experts in the field of emergency relief for cultural heritage consulted for this study recommended better integration of cultural heritage into emergency coordination systems (like the humanitarian clusters). Being absent from this system, as a sector, means that it is difficult for cultural heritage professionals and cultural authorities to be part of the broader response and to have access to coordinated resources.

Within the EU system, this would implicate the inclusion of heritage protection in (disaster) risk management processes at European level, in particular within the European Civil Protection and Humanitarian Aid Operations (ECHO), the EEAS Crisis Response & Operational Coordination Department, or the UCPM.⁴¹⁰

Likewise, the introduction of cultural heritage-related elements in mandates of peacekeeping missions is important to adequately safeguard conflict-affected cultural heritage in post-conflict situations. This would pave the way for the deployment of expert personnel and fostering international cooperation on this topic.

⁴¹⁰ Note that this is in line with a proposal in the European Parliament (2022) *Resolution on Cultural solidarity with Ukraine and a joint emergency response mechanism for cultural recovery in Europe* (P9_TA(2022)0374). Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0374_EN.html

c) The independent monitoring and investigating of attacks on cultural heritage, in all its forms, would enhance the accountability, as well as post-conflict reconstruction and peacebuilding efforts.

For now, monitoring is generally limited to the damage caused to certain types of heritage, without systematic collection of evidence for accountability purposes. Cultural heritage should be systematically included in human rights monitoring and in the work of investigative teams. A comprehensive system to collect, store and preserve evidence of heritage-related crimes would contribute to a better understanding of the conflict, and help to prepare projects to redress the violations that were committed. In addition to the rebuilding of their heritage, communities coming out of conflict may seek a variety of forms of justice – whether through criminal prosecutions or other forms of transitional justice. This is also relevant given that all forms of heritage destruction should be included in the work of the recently established Core International Crimes Evidence Database (CICED) within the support structure for the Joint Investigation Team (JIT).⁴¹¹

5.2. Recommendations

Based on the above findings, the following recommendations are proposed. These are grouped around several topics, starting from specific recommendations to address the emergency situation in Ukraine, to (equally for Ukraine) important measures the EU and its Member States should take to enhance the safeguarding of cultural heritage from armed conflict more generally.

1) Address emergencies in Ukraine:

- Address outstanding gaps in emergency relief (e.g., digitisation of inventories).
- Raise awareness about unlawfully exported cultural objects that may enter the market with forged provenances.
- Support a clear strategy for the post-war recovery of cultural heritage, and promote it within the framework of the National Recovery Framework Plan for Ukraine.
- Protect and promote the cultural rights of refugees from Ukraine in EU Member States.

2) Close the accountability gap:

- Ensure the independent monitoring of attacks to cultural heritage.
- Ensure that heritage-related crimes are considered by the Joint Investigation Team (JIT) and in submissions to the CICED.
- Ensure that domestic legislation in EU Member States, and any tribunal set up specifically for Ukraine, enables the prosecution of crimes against cultural heritage.
- Consider adopting measures that prevent entities within the EU to support, directly or indirectly, the unlawful removal of cultural objects or excavations of archaeological sites, including through cooperation with institutions or persons that engage in such unlawful behaviour.

3) Coordinate measures and policies at the EU level:

- Establish a dedicated EU body to coordinate the protection of cultural heritage.
- Integrate cultural heritage protection into the broader field of emergency relief and humanitarian aid.
- Include cultural heritage in mandates for EU peacekeeping missions.
- Ensure coordination among national law enforcement and the relevant EU agencies on matters concerning the illicit trade.

⁴¹¹ See Chapter 2 (section 2.7.2)

- Regulate the issue of safe havens to temporarily safeguard collections from conflict zones, to avoid uncertainties about their legal status.
- 4) Ensure that preparatory measures are in place in EU Member States:**
- Further support the setting-up of inventories and their digitisation within cultural institutions and heritage sites across the EU.
 - Support the development of (emergency) preparedness policies and laws across the EU.
 - Promote the setting-up and training of (sizeable) dedicated units in the military and law-enforcement, including border control.
- 5) Address the illicit trafficking in cultural objects from conflict zones:**
- Raise awareness that looted objects from conflict zones circulate on the EU market.
 - Introduce mandatory due diligence standards for the trade in cultural goods, to mitigate the risks of looted cultural objects from war zones being traded.
 - Create an open access database of national legislation pertaining to cultural heritage, or support an update of the existing (outdated) UNESCO database.
- 6) Focus on community participation and memorialisation in the recovery and reconstruction phase:**
- Ensure that local communities are involved in decision-making processes of recovery and reconstruction at all stages and all levels.
 - Include peacebuilding actions, such as those relating to memorialisation, in recovery projects.

5.3. Final word

The wide scope of the study posed a challenge to providing the CULT Committee with a concise overview. The objective was to provide a contextual background of laws and regulations for the protection of various categories of cultural heritage that are, however, covered by a very fragmented framework - and this particularly also applies to the EU setting. Beyond this challenge, another was of a practical nature: the fragmented knowledge of what is happening in Ukraine. In that respect the authors had to rely on constantly changing data and information, provided by those able and willing to offer it, within a limited time frame.

We wish to thank the Ukrainian team whose members, in spite of the dire situation, contributed to this study by compiling an overview of what is happening in Ukraine, in terms of threats and destruction of cultural heritage, which is included as Annex 1. Furthermore, we are indebted to the many experts and policy advisors who shared information and their thoughts on the topic.

REFERENCES

- Bieczyński, M. (2019) The “Right to Cultural Heritage” in the European Union: A Tale of Two Courts. In: A. Jakubowski, K. Hausler and F. Fiorentini, eds. *Cultural Heritage in the European Union. A Critical Inquiry into Law and Policy*. Brill, pp. 113-140. Available at: https://www.researchgate.net/publication/350284865_Cultural_Heritage_in_the_European_Union_A_Critical_Inquiry_into_Law_and_Policy
- Bouchenaki, M. and Hadzimuhamedovic, A. (2018) Reconstruction of the Old Bridge in Mostar. *World Heritage Review*, 86, pp. 20-26. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000261515>
- Campfens, E. (2021) *Cross-border claims to cultural objects. Property or heritage?* Eleven Publishers. Available at: <https://www.boomdenhaag.nl/isbn/9789462362505>
- Campfens, E. (2020) Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Property Claims. *Netherlands International Law Review*, 67(2), pp. 257-295. Available at: <https://link.springer.com/article/10.1007/s40802-020-00174-3>
- Chainoglou, K. (2017) The Protection of Intangible Cultural Heritage in Armed Conflict: Dissolving the Boundaries Between the Existing Legal Regimes? *Santander Art and Culture Law Review*, 3(2), pp. 109-134. Available at: <https://www.cceol.com/search/article-detail?id=707817>
- Chatelard, G. (2017) *Survey Report: Intangible Cultural Heritage of Displaced Syrians*. UNESCO. Available at: <https://ich.unesco.org/doc/src/38275-EN.pdf>
- Cunliffe, E. et al. (2014) *Satellite-based Damage Assessment to Cultural Heritage Sites in Syria*. UNITAR/UNOSAT. Available at: <https://unitar.org/sustainable-development-goals/satellite-analysis-and-applied-research/chs-syria>
- Forde, S. (2016) The bridge on the Neretva: Stari Most as a stage of memory in post-conflict Mostar, Bosnia–Herzegovina. *Cooperation and Conflict*, 51(4), pp. 467-483. Available at: <https://www.deepdyve.com/lp/sage/the-bridge-on-the-neretva-stari-most-as-a-stage-of-memory-in-post-MgEr0YH1xG?key=sage>
- Gelazis, N., Benjamin, R. and Lloyd, L. (2007) *Institutionalized Ethnic Division in Bosnia: A Way Forward for Iraq?* Wilson Center. Available at: <https://www.wilsoncenter.org/publication/338-institutionalized-ethnic-division-bosnia-way-forward-for-iraq>
- Hausler, K. (2019) Cultural Heritage within the European Union’s External Relations: More than a Policy Objective? In: A. Jakubowski, K. Hausler and F. Fiorentini, eds. *Cultural Heritage in the European Union. A Critical Inquiry into Law and Policy*. Brill, pp. 365-394. Available at: <https://brill.com/edcollbook/title/36548>
- Hausler, K. (2021) The EU Approach to Cultural Heritage in Conflict and Crisis: An Elephant in the Room? *Santander Art and Culture Law Review*, 7(2), pp. 193-202. Available at: <https://www.ejournals.eu/SAACLR/2021/2-2021/art/21120/>
- Herscher, A. and Riedlmayer, A. (2000) Destruction of Cultural Heritage in Kosovo: A post war Report. *Global Conservation Forum*. Available at: <https://cool.culturalheritage.org/byform/mailling-lists/cdl/2000/1124.html>
- Hosagrahar, J. (2017) Culture: at the Heart of SDGs. *UNESCO Courier*, 1(838), pp. 12-14. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000248116>
- Isakhan, B. (2018) The Islamic State Attacks on Shia Holy Sites and the “Shrine Protection Narrative:” Threats to Sacred Space as a Mobilization Frame. *Terrorism and Political Violence* 0, pp. 1–25. Available at: <https://www.tandfonline.com/doi/full/10.1080/09546553.2017.1398741>
- Jakubowski, A. (2019) Common Cultural Heritage, the European Union, and International Law. In: A. Jakubowski, K. Hausler, F. Fiorentini, eds. *Cultural Heritage in the European Union. A Critical Inquiry*

- into Law and Policy*. Brill, pp. 33-56. Available at: <https://www.worldcat.org/nl/title/cultural-heritage-in-the-european-union-a-critical-inquiry-into-law-and-policy/oclc/1084618943>
- Joffroy, T., and Essayouti, B. (2020) Lessons learnt from the reconstruction of the destroyed mausoleums of Timbuktu, Mali. In: *HERITAGE2020 (3-D Past | Risk-Terra) International Conference*. 9-12 September, Valencia, Spain. pp. 913-920. Available at: <https://hal.science/hal-02928898/document>
- Kathem, M., Antonelli, G. F., Selter, E., Helly, D. and Desmidt, S. (2020) *The role of the European Union in the protection and enhancement of cultural heritage in conflict and post-conflict contexts in the Middle East region: The example of Iraq*. ECDPM–European Union External Action. Available at: <https://www.cultureinexternalrelations.eu/downloader/download-file?file=2020/10/Report-Cultural-Heritage-1Oct2020.pdf>
- Kathem, M., Robson, E. and Tahan, L. G. (2022) *Cultural heritage predation in Iraq*. Chatham House. Available at: https://www.chathamhouse.org/sites/default/files/2022-05/2022-03-24-cultural-heritage-predation-iraq-kathem-robson-tahan_0.pdf
- Leturcq, J.-G. (2009) Heritage-making and the policies of identity in the “Post-conflict Reconstruction” of Sudan. *Égypt/Monde arabe*, pp. 295-328. Available at: <https://journals.openedition.org/ema/2904>
- Mouly, C. and Giménez, J. (2017) Opportunities and challenges of the use of intangible cultural heritage in post-conflict peacebuilding. Implications for Colombia. *Estudios Políticos*, 50, pp. 281-302. Available at: http://www.scielo.org.co/scielo.php?script=sci_abstract&pid=S0121-51672017000100281
- O’Keefe, R. (2006) *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press. *Amicus Curiae*, 71, Autumn 2007, pp. 3-7. Available at: https://sas-space.sas.ac.uk/1711/1/Amicus_Curiae_2007_Issue_71_3-7.pdf
- O’Keefe, R. et al. (2017) *Protection of cultural property: military manual*. UNESCO Publishing. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000246633>
- Psychogiopoulou, E. (2018) Cultural Heritage in European Union Law and Policies. *Legal Issues of Economic Integration*, 45(2), 2018, pp. 177-198. Available at: <https://kluwerlawonline.com/journalarticle/Legal+Issues+of+Economic+Integration/45.2/LEIE2018009>
- Schreiber, H. (2021) Regulation (EU) 2019/880 and the 1970 UNESCO Convention—A Note on the Interplay between the EU and UNESCO Import Regimes. *Santander Art and Culture Law Review*, 7(2), pp. 173-182. Available at: <https://www.ejournals.eu/SAACLR/2021/2-2021/art/21122/>
- Stein, G. J. (2022) Performative Destruction: Da’esh (ISIS) Ideology and the War on Heritage in Iraq. In: Cuno, J. and Weiss, T. G., eds. *Cultural Heritage and Mass Atrocities*. Los Angeles: Getty Publications, pp. 168-185. [pdf] Available at: https://www.getty.edu/publications/cultural-heritage-mass-atrocities/downloads/pages/CunoWeiss_CHMA_part-2-09-stein.pdf
- Van der Laarse, R. (2016) Who Owns the Crimean Past? Conflicted Heritage and Ukrainian Identities. In: D. Callebaut, ed. *A Critical Biographic Approach of Europe’s Past: Conference Ename, Oudenaarde: 28-29 November 2014*, pp. 15-52. Provincie Oost-Vlaanderen. Available at: <https://dare.uva.nl/search?identifier=0ccf6031-e842-43ed-a126-c8dc32f3c883>
- Walasek, H. (2019) Cultural heritage and memory after ethnic cleansing in post-conflict Bosnia-Herzegovina. *International Review of the Red Cross*, 101(910), pp. 273-294. Available at: https://international-review.icrc.org/sites/default/files/reviews-pdf/2019-12/irrc_101_910_14.pdf

ANNEX I - OVERVIEW OF THREATS TO CULTURAL HERITAGE IN UKRAINE

Dr. Kateryna Busol, Senior Lecturer, National University of Kyiv Mohyla Academy

Elmira Ablyalimova-Chyihoz, Expert, Crimean Institute for Strategic Studies; Member, Expert Network of the Crimean Platform

Dr. Dmytro Koval, Legal Director, Truth Hounds; Associate Professor, National University of Kyiv Mohyla Academy

Dr. Denys Yashnyi, Leading Researcher, the National Preserve "Kyiv-Pechersk Lavra;" Expert, Crimean Institute for Strategic Studies.

KEY FINDINGS

- Since its launch in 2014, Russia's aggression against Ukraine has posed various threats to Ukrainian and indigenous Crimean Tatar tangible and intangible cultural heritage. With the full-scale invasion, these threats have intensified and diversified.
- As an occupying power of parts of Ukraine's territory since 2014, Russia has not cooperated with Ukrainian authorities on the protection of Ukrainian cultural heritage in such territories.
- Russia's encroachment on Ukraine's cultural heritage has been accompanied by and connected with the physical targeting of people.
- Threats to and encroachments on cultural heritage play an important role in establishing Russia's motives and methods of warfare against Ukraine.

1. Introduction

As of 23 January 2023, Ukraine's Ministry of Culture reported 1,189 destroyed or damaged objects of cultural heritage or cultural institutions.¹ UNESCO has been assessing the damage to cultural sites in Ukraine made since the full-scale invasion. As of 11 January 2023, UNESCO has verified damage to 236 sites.² The latter include "105 religious sites, 18 museums, 83 buildings of historical and/or artistic interest, 19 monuments, 11 libraries."³ Already by the end of June 2022, UNESCO confirmed the partial or total destruction of 152 cultural sites.⁴ As of 23 January 2023, UNESCO also notes the damage of 3,045 educational institutions across Ukraine and killings of 10 journalists.⁵ These killings add up to the legacy of persecution of civil society activists in Donbas and occupied Crimea, including especially the Crimean Solidarity journalists of indigenous descent,⁶ whose heritage has been under particular threat in the occupied peninsula since the beginning of Russia's aggression in 2014.⁷

This chapter will analyse how the threats to Ukraine's cultural heritage have unfolded with the changing mode of conduct of hostilities, especially after Russia's all-out invasion of Ukraine. The

¹ Ministry of Culture and Information Policy of Ukraine (2023) *Save Ukrainian Culture*. Available at: <https://restore.mkip.gov.ua>

² UNESCO (2023) Damaged cultural sites in Ukraine verified by UNESCO. Available at: <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>

³ Ibid.

⁴ UNESCO (2022) Ukraine: over 150 cultural sites partially or totally destroyed. [press release] 23 June. Available at: <https://www.unesco.org/en/articles/ukraine-over-150-cultural-sites-partially-or-totally-destroyed>

⁵ UNESCO (2023) Available at: <https://www.unesco.org/en/ukraine-war>

⁶ See Follow-Up to Decisions, p. 7, UNESCO (2019) Decisions adopted by the Executive Board, 207 EX/DECISIONS Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000371293>

⁷ Centre for Defence Strategies (2021) *Cultural Heritage as an Element of National Security*. Available at: <https://drive.google.com/file/d/1CvOjDnEiq9CplxMNIg-oC-3kxGSYcqV/view>

subsequent sections deconstruct such threats with respect to different types of cultural property - movable, immovable, archaeological sites and intangible cultural heritage.

2. The dynamics of threats to cultural heritage in the Russia-Ukraine armed conflict since 2014

Back in 2014, Russia launched its initial aggression against Ukraine by occupying its Crimean peninsula and developing hostilities in certain areas of Ukraine's eastern Donetsk and Luhansk provinces. Certain neo-imperial assertions - such as that the people of Ukraine, Belarus and Russia are allegedly one nation, or that Crimea has allegedly always been Russian - have been inherent in Russia's policy towards Ukraine throughout the years.⁸ President Putin has declared, "Crimea, ancient Korsun, Khersones, Sevastopol - all of them bear an enormous civilisational and sacral meaning for Russia, just as the Temple Mount of Jerusalem does for those who profess Islam and Judaism."⁹ Such an attitude highlights the crucial role of cultural heritage, history, religion, education and academia as, depending on the conjuncture, tools or victims in Russia's encroachment on Ukraine's territorial and existential sovereignty.¹⁰

Given the described environment, it is unsurprising that the initial stages of the Russia-Ukraine armed conflict have already revealed numerous threats to cultural heritage.

The occupation of Crimea was followed by the Kremlin's mass appropriation of public, municipal and, often, private property.¹¹ The appropriation has also affected cultural heritage¹² and, in many ways, has created the foundation for subsequent diverse encroachments on Ukrainian and indigenous Crimean Tatar heritage in the occupied peninsula. Such encroachments included: unauthorised transfer of artefacts, unsanctioned archaeological excavations, the development of instrumentalised curatorial and academic narratives, distortive renovations, renaming and destruction.¹³ Seizing the enemy's property that is not imperatively demanded by the necessities of war has been accompanied by the persecution of Crimean Tatars and ethnic Ukrainians on allegedly political grounds.¹⁴ The connection of these two encroachments - on cultural heritage and on persons who oppose occupation, including by holding positions that are not in line with Russia's historical narrative - is important for understanding Russia's larger motives towards Ukraine, the threat dynamics and needed response

⁸ Chatham House (2021) *Myths and misconceptions in the debate on Russia: How they affect Western policy, and what can be done*. Chatham House Report, 13 May. Available at: <https://www.chathamhouse.org/2021/05/myths-and-misconceptions-debate-russia>

⁹ Schreck, C. (2014) Crimea Is a "Sacred" Land. But For Whom? *RadioFreeEuropeRadioLiberty*, 4 December. Available at: <https://www.rferl.org/a/putin-crimea-orthodox-vladimir-great-religion-ukrain-russia/26725761.html>

¹⁰ Nordic Center for Cultural Heritage & Armed Conflict (CHAC) (2022) *Nato and CPP: A Hybrid Threat Perspective*. CHAC Report (2022), pp. 4-6. Available at: <https://www.heritageconflict.org/blog/2022/3/2/nato-and-cpp-a-hybrid-threat-perspective?rq=nato%20and%20cultural%20property>

¹¹ See p. 19, Skrypnyk, O. and Pechonchuk, T., eds. (2016) *The peninsula of fear: Chronicle of occupation and violation of human rights in Crimea*. 2nd edn. revised and corrected, Kyiv: KBC. Available at: https://www.helsinki.org.ua/wp-content/uploads/2016/05/PeninsulaFear_Book_ENG-1.pdf

¹² See pp. 4-6, Mission of the President of Ukraine in the Autonomous Republic of Crimea (202) *Informational and analytical note on the situation with cultural and archaeological heritage in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol*. Available at: https://www.ppu.gov.ua/wp-content/uploads/2020/11/Informatsiy-na-dovidka-shhodo-sytuatsii-z-kulturnymy-tsinnostyamy_angl.pdf

¹³ See Ibid, p. 1; Nordic Center for Cultural Heritage & Armed Conflict (CHAC) (2022) *Nato and CPP: A Hybrid Threat Perspective*. CHAC Report (2022), pp. 16-17. Available at: <https://www.heritageconflict.org/blog/2022/3/2/nato-and-cpp-a-hybrid-threat-perspective?rq=nato%20and%20cultural%20property>

¹⁴ Paras 81-82, ICC, Office of the Prosecutor (2018) *Report on Preliminary Examination Activities 2018*. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/181205-rep-otp-ENG-PDF> ; Paras. 272-273, ICC, Office of the Prosecutor (2019) *Report on Preliminary Examination Activities (2019)*. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/191205-rep-otp-PE.pdf> ; Paras 278-279, ICC, Office of the Prosecutor (2020) *Report on Preliminary Examination Activities 2020*. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>

strategies.¹⁵ This issue is gaining growing attention and will likely be addressed by the Parliamentary Assembly of the Council of Europe in its work on cultural erasure.¹⁶

The earlier years of the Russia-Ukraine armed conflict in Eastern Ukraine of 2014-2021 were marked by different threats to cultural heritage. The main reason for this was the mode of the armed conflict in Eastern Ukraine - active hostilities - as opposed to Crimea, whose military occupation could not be opposed with strong military resistance at the time. The combination of active combat and the engagement of Russia's regular military and various, often poorly organised and managed, armed groups operating under its lead¹⁷ have created new threats to cultural heritage both in the battlefield and in Ukraine's occupied eastern territories. Such threats include targeted and indiscriminate shelling, looting and turning cultural institutions into detention centres.¹⁸

Russia's full-scale invasion on 24 February 2022 has modified the threats to Ukraine's cultural heritage in three principal aspects. First, the geographical scope of such threats has increased exponentially. Currently, there is essentially no "safe zone" in Ukraine for the people or for their heritage. Second, whilst all previously existing threats have amplified, targeted or indiscriminate shelling, looting and undisguised proactive "Russification" aimed to one-dimensionalise historical narratives and whitewash Ukrainian and indigenous Crimean Tatar, Krymchak and Karaim identities pose a particular danger. Finally, the horrific atrocities affecting cultural heritage in continental Ukraine, understandably, receive increased attention now. However, they should not leave in the shadow the threats to and encroachments on Ukrainian and Crimean Tatar heritage in occupied Crimea.

2.1 Movable cultural objects

Since the beginning of Russia's aggression in 2014, reports about the displacement of Ukraine's movable artefacts emerged. Russia has been exporting Ukraine's artefacts from Crimea to present them at exhibitions elsewhere, pursuant to its own curatorial narratives. Striking examples from the earliest years of the occupation include the 2016 Aivazovsky exhibition of 38 paintings from the Crimean city of Feodosia, and the 2017 Panticapaeum and Phanagoria exhibition showcasing the artefacts from the East Crimean Historical and Cultural Museum Reserve.¹⁹ Both exhibitions were showcased at Russia's leading cultural institutions - the Tretyakov Gallery and the Pushkin Museum in Moscow. The transfers of the respective artefacts were neither sanctioned by Ukraine, nor necessitated by any emergency on the occupied peninsula. It has also been impossible for Ukraine to verify how many of its cultural objects, transferred without its authorisation, have been returned to their original repositories, if at all.

¹⁵ Gertholtz, L. (2022) Ukrainian Culture Under Attack: Erasure of Ukrainian Culture in Russia's War Against Ukraine. *PEN America*, 2 December. Available at: <https://pen.org/report/ukrainian-culture-under-attack/>; Polish Support Centre for Culture in Ukraine (2022) *Saving Ukraine's Culture. Activity Report February 2022 December*, pp. 16-17. Available at: https://ukraina.nid.pl/wp-content/uploads/2023/01/savingukrainesculture_pscreport.pdf?fbclid=IwAR2kUilJ6EkxgiJS4l1rrtr0CrrOQ7XYraaDba0zniVCS10736Ha0h48E

¹⁶ Motion for a resolution (CoE) Doc. 15564 of the Parliamentary Assembly of 23 June 2022: Countering the erasure of culture. <https://pace.coe.int/en/files/30159>

¹⁷ Global Rights Compliance (2022) International Law and Defining Russia's Involvement in Crimea and Donbas. Available at: https://globalrightscpliance.com/wp-content/uploads/2022/05/International-Law-and-Russia-Involvement-in-Crimea-and-Donbas.pdf?fbclid=IwAR1uC0KAsEW_T_ZRT7tfCUrvjdBonx-SgC3MdeKYomxCsjr-u2zDb4wxr1s; Reuters (2022) Dutch court says Russia had "overall control" of separatists in Ukraine at time of MH17 downing. *Reuters*, 17 November. Available at: <https://www.reuters.com/world/europe/dutch-court-says-russia-had-overall-control-separatists-ukraine-time-mh17-2022-11-17/>

¹⁸ Zoria, Y. (2021) Multimedia project Izolyatsia: Must Speak sheds light on infamous Donetsk "concentration camp." *Euromaidan Press*, 18 December-21 January. Available at: <https://euromaidanpress.com/2021/12/18/multimedia-project-izolyatsia-must-speak-sheds-light-on-infamous-donetsk-concentration-camp/>; OHCHR (2021) *Arbitrary detention, Torture and Ill-Treatment in the Context of Armed Conflict in Eastern Ukraine 2014-2021*, p. 36. Available at: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineArbDetTorture_EN.pdf; IPres (2014) Terrorists Steal Weapons and Tanks from a Museum in Donetsk. *IPress*. Available at: https://ipress.ua/news/terorysty_kradut_zbroju_i_tanky_z_muzeyu_u_donetsku_73126.html; Para. 280, ICC, Office of the Prosecutor (2020) *Report on Preliminary Examination Activities 2020*. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>

¹⁹ Kishkovsky, S. (2016) Moscow's Tretyakov Gallery under fire over Crimean loans in blockbuster show. *The Art Newspaper*, 19 August. Available at: <https://www.theartnewspaper.com/2016/08/19/moscows-tretyakov-gallery-under-fire-over-crimean-loans-in-blockbuster-show>; Boris Yeltsin Presidential Library (2017) *History and Culture: The exhibition "Panticapaeum and Phanagoria. Two Capitals of the Bosphoran Kingdom" in Moscow*. The A. S. Pushkin State Museum of Fine Arts, 29 June. Available at: <https://www.prlib.ru/en/events/683641>

Acts of dispossession and unilateral transfer of Ukraine's movable cultural heritage have intensified exponentially since the full-scale invasion. According to Ukraine's Minister of Culture, as of October 2022, Russia pillaged at least 40 Ukrainian museums.²⁰ Art looting sometimes follows the shelling of cultural institutions (e.g., the Akhip Kuindzhi Museum in Mariupol), or accompanies the persecution of heritage professionals (e.g., the abductions of the director and curator of the Melitopol Museum of Local History).²¹ Some acts of looting, such as Russia's removal of the Scythian Gold in Melitopol, target the artefacts that are particularly important for Ukraine's national identity and prove Ukraine's ancient, diverse and independent history.²² Russia's removal or destruction of Ukraine's archives also plays into the Kremlin's consistent policy of whitewashing and modifying history.²³

President Putin essentially sanctioned the looting of Ukraine's cultural heritage, allowing its "evacuation" from the temporarily occupied territories in Ukraine's Kherson, Zaporizhzhia, Donetsk and Luhansk regions.²⁴ However, at no point before or after this decision has Russia negotiated the modalities of such an evacuation and safeguarding of artefacts with Ukraine, as it is obliged to do under international law. Any damage to cultural objects during the Russia-sanctioned evacuation is hard to document.

As of January 2023, the number of pillaged objects is being verified. In Mariupol, the removal of 2,000 artworks has been alleged.²⁵ The events in the Kherson region, which was occupied almost immediately after the full-scale invasion, illustrate the real scale of pillaging.²⁶ Allegedly, the Oleksii Shovkunenko Art Museum has been deprived of 15,000 exhibits, which Russia transported in an orchestrated manner with five trucks and a bus.²⁷ Whilst the real scale of the looting is yet to emerge, as Ukraine regains control over all of its territories, it will likely be horrific.

Movable cultural heritage is also under the constant threat of destruction, both in the areas of active hostilities, and upon Russia's retreat from and subsequent shelling of the formerly occupied territories, like Kherson.

2.2 Immovable cultural heritage

Depending on its role for Russia, Ukraine's immovable cultural heritage faces two types of threats in the ongoing active phase of the all-out aggression. On the one hand, cultural sites, which do not have a pivotal role for the Kremlin, are at a high risk of damage and destruction given Russia's chosen mode of combat. After the full-scale invasion, Russia has increasingly prioritised urban warfare and taking cities by sieges (e.g., Mariupol, or attempts in Chernihiv). By targeting densely populated areas, including by oftentimes imprecise or indiscriminate weapons, Russia has been trying to use - futilely, so far - the terror of civilians as a moral and political pressure on the Ukrainian government for concessions. Such a strategy has catapulted threats to Ukraine's cultural heritage through targeted shelling, or as collateral damage of indiscriminate attacks on civilians, civilian objects and critical infrastructure. On the other hand, some objects have an important symbolic role for Russia. Depending

²⁰ Arhirova, H. (2022) "War crime:" Industrial-scale destruction of Ukraine culture. *AP News*, 8 October. Available at: <https://apnews.com/article/russia-ukraine-kyiv-travel-museums-7431f2190d917f44f76dff39b4d5df54>

²¹ Mullins, C. (2022) "Ukraine's heritage is under direct attack:" why Russia is looting the country's museums. *The Guardian*, 27 May. Available at: <https://www.theguardian.com/artanddesign/2022/may/27/ukraine-russia-looting-museums>

²² Ibid.

²³ Ukrinform (2022) Army of Vandals and Looters: Russians Targeting Ukrainian Cultural Heritage, *Ukrinform*, 26 December. Available at: <https://www.ukrinform.net/rubric-ato/3641428-army-of-vandals-and-looters-russians-targeting-ukrainian-cultural-heritage.html> ; See myths 11-12, Chatham House (2021) *Myths and misconceptions in the debate on Russia: How they affect Western policy, and what can be done*. Chatham House Report, 13 May. Available at: <https://www.chathamhouse.org/2021/05/myths-and-misconceptions-debate-russia>

²⁴ Davic, A. (2022) Vladimir Putin Makes Mass Looting of Ukrainian Cultural Heritage Easier. *The Collector*, 6 November. Available at: <https://www.thecollector.com/vladimir-putin-makes-mass-looting-of-ukrainian-cultural-heritage-easier/>

²⁵ Sauer, P. (2022) Ukraine accuses Russian forces of seizing 2,000 artworks in Mariupol. *The Guardian*, 29 April. Available at: <https://www.theguardian.com/world/2022/apr/29/ukraine-accuses-russian-forces-of-seizing-2000-artworks-in-mariupol>

²⁶ Human Rights Watch (2022) Ukraine: Russians Pillage Kherson Cultural Institutions. Art and Artifacts Stolen. *Human Rights Watch*, 20 December. Available at: <https://www.hrw.org/news/2022/12/20/ukraine-russians-pillage-kherson-cultural-institutions>

²⁷ Ukrinform (2022) Army of Vandals and Looters: Russians Targeting Ukrainian Cultural Heritage. *Ukrinform*, 26 December. Available at: <https://www.ukrinform.net/rubric-ato/3641428-army-of-vandals-and-looters-russians-targeting-ukrainian-cultural-heritage.html>

on whether such an object validates (e.g. Chersonese) or, on the contrary, undermines (e.g., the Bakhchysarai Palace) the Kremlin's one-dimensional vision of the past, present and future, Russia takes extra measures to safeguard such sites - or whitewash their legacy.

As regards the first group, the intensity of shelling of a particular region has a direct correlation with the number of damaged cultural sites. The Donetsk and Luhansk eastern provinces have been under the most rigorous assault of Russia's armed forces. In these regions, UNESCO has verified 65 and 26 damaged sites, respectively. The widely covered notorious examples include the bombing of the Drama Theatre - which, at the time, was a clearly-indicated refuge for civilians with children²⁸ - during the siege of Mariupol, or the damage of the Sviatohirsk Lavra, Ukraine's largest wooden church.²⁹

The sites of the Kharkiv region have also been gravely affected. Kharkiv is the second largest city of Ukraine. It was the first capital of the Ukrainian Soviet Socialist Republic, and is a major industrial, business and cultural north-eastern powerhouse close to the Russian border. The Kremlin's failure to capture the city of such a highly symbolic value turned Kharkiv into the object of constant shelling, including by indiscriminate cluster munitions,³⁰ and the occupied areas of the region witnessed horrible war crimes.³¹ Such conduct of hostilities by Russia has damaged, in a targeted or indiscriminate manner, at least 54 churches, museums and historical buildings in the region.³² The destruction of the museum of philosopher Hryhoriy Skovoroda has become particularly notorious. Due to Skovoroda's foundational role in the formulation of Ukrainians' ideas of freedom, independent thought and education, the destruction has been regarded as a targeted encroachment on Ukrainian identity.³³

Northern Kyiv, Chernihiv and Sumy regions are other highly prioritised areas for Russia's leadership. Hostilities and partial occupation resulted in at least 35, 16 and 12 damaged sites in the Kyiv, Chernihiv and Sumy regions, respectively.³⁴ Most notably, Russia's artillery fire destroyed the Kyiv region museum of Maria Prymachenko, a Ukrainian naive artist admired by Picasso.³⁵ Only parts of the museum's collection survived.

As Russia retreats from some north-eastern and southern territories of Ukraine amid Ukraine's counteroffensive, it increases its shelling of the areas formerly under its control. Therefore, whilst such formerly occupied areas like Kherson have suffered mostly from art looting,³⁶ it is likely that the number of damaged cultural sites there, which so far has not been high,³⁷ will increase.

The other type of damage to Ukraine's immovable cultural property in occupied Crimea is defined by its relevance for Russia's reading of history. Ideologically important sites are being preserved unevenly and imposed with narratives which represent the Kremlin's worldview. For instance, Ukraine's World Heritage List site of Chersonese³⁸ is a pillar for President Putin's pan-Orthodox projection of Russia, with

²⁸ Human Rights Watch (2022) Ukraine: Mariupol theatre hit Russian attack sheltered hundreds. *Human Rights Watch*, 16 March. Available at: <https://www.hrw.org/news/2022/03/16/ukraine-mariupol-theatre-hit-russian-attack-sheltered-hundreds>

²⁹ Kurmanova, T. (2023) Ukraine War Crimes Against Cultural Heritage. *Institute for War & Peace Reporting*, 3 January. Available at: <https://iwpr.net/global-voices/ukraine-war-crimes-against-cultural-heritage>

³⁰ Human Rights Watch (2022) Ukraine: Unlawful Russian Attacks in Kharkiv. *Human Rights Watch*, 16 August. Available at: <https://www.hrw.org/news/2022/08/16/ukraine-unlawful-russian-attacks-kharkiv>

³¹ Human Rights Watch (2022) Ukraine: Apparent War Crimes in Russia-Controlled Areas. *Human Rights Watch*, 3 April. Available at: <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

³² UNESCO (2023) *Damaged cultural sites in Ukraine verified by UNESCO*. Available at: <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>

³³ Coynash, H. (2022) Russian destroys Ukraine's Skovoroda Museum in "ideological attack on Ukrainian identity." *Kharkiv Human Rights Protection Group*, 10 May. Available at: <https://khpg.org/en/1608810529>

³⁴ UNESCO (2023) *Damaged cultural sites in Ukraine verified by UNESCO*. Available at: <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>

³⁵ Holland, O. (2022) Russian forces almost destroyed this Ukrainian artist's work. Now it's becoming a global symbol of peace. *CNN*, 9 March. Available at: <https://www.cnn.com/style/article/maria-prymachenko-paintings-ukraine-peace-symbol/index.html>

³⁶ Human Rights Watch (2022) *Ukraine: Russians Pillage Kherson Cultural Institutions*. Available at: <https://www.hrw.org/news/2022/12/20/ukraine-russians-pillage-kherson-cultural-institutions>

³⁷ UNESCO (2023) *Damaged cultural sites in Ukraine verified by UNESCO*. Available at: <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>

³⁸ UNESCO (2013) *Ancient City of Tauric Chersonese and its Chora*. Available at: <https://whc.unesco.org/en/list/1411/>

Chersonese being a “Russian Mecca.”³⁹ Without an agreement with Ukraine, the occupying power appointed a priest with no experience in heritage issues to be in charge of the site. Although a new director took the post later, the growing presence of the Russian Orthodox Church in this secular Ukrainian World Heritage site continues.⁴⁰ The occupying authorities stage different “Orthodox-patriotic” performances on the site and plan to erect a museum of Christianity there.⁴¹ These activities, damaging both to the physical state of the site and its historical nuances, follow President Putin’s ideological statement. No less damaging is Russia’s annual entertainment activity “Opera in Chersonese” on Ukraine’s UNESCO World Heritage site.⁴² The installation of elaborate heavy equipment, visits by many tourists at a time and loud music distort the essence of the site and pose a danger to its preservation.

An opposite example is Russia’s gradual erasure of immovable cultural sites, whose legacies contradict the Kremlin’s reading of history. The Crimean Tatars, Ukraine’s indigenous people who have consistently opposed Russia’s imperial, Soviet and the current occupation rule, and their heritage are particularly targeted.⁴³ The Kremlin’s instrumentalised distortion of the Crimean Tatars’ role in the pre- and non-Russian history of the peninsula has peaked in Russia’s distortive renovation of their only surviving palace in Bakhchysarai,⁴⁴ which is on the UNESCO Tentative List.⁴⁵ According to cultural heritage professionals, including the former staff of the Bakhchysarai Palace who fled Crimea upon occupation, the site hardly needed restoration at the beginning of the occupation. In any case, all aspects of the restoration were to be conducted in constant consultation with Ukraine and pursuant to a strict underlying requirement to preserve the appearance of the monument and the authenticity of the object. Instead, Russia unilaterally replaced the original wooden beams, 95% of which were in good condition, with the ones of composite - an alien contemporary material, - which corroded the site’s authenticity. Apart from that, the contractors used modern building materials and technologies which are not allowed on cultural heritage sites because of the harm they cause. The so-called restoration works burdened the structure of all the components of the Bakhchysarai Khan Palace. Concrete increased the erosion of rubble masonry, stained glass windows were destroyed and the walls developed cracks.⁴⁶ The damage caused to the Palace, a religious site as well as a unique repository for Crimean Tatar history and culture, is irreversible. Such damage denudes the site of its value as a site of cultural heritage, and infringes on the ability of the Crimean Tatars, and indeed members of the world community, to enjoy the authenticity of a unique piece of this indigenous people’s cultural heritage of outstanding, unique and universal value. Ukraine’s human rights lawyers and prosecutors have argued that such encroachment by Russia on Crimean Tatar cultural heritage is indicative of the group’s persecution on political grounds, as a crime against humanity.

2.3 Archaeological sites

The Russian authorities have unilaterally supported archaeological excavations in occupied Crimea without any authorisation from Ukraine. According to the Mission of the President of Ukraine in the Autonomous Republic of Crimea, in 2014-2020, Russian occupying authorities issued 410 permits for

³⁹ The Business Gazette (2017) *Putin Proposed Creating a Russian Mecca*. Available at: <https://www.business-gazeta.ru/news/354911>

⁴⁰ Radio Svoboda (2015) *The Director of Tauric Chersonese Priest Haliuta Has Resigned (Директор "Херсонеса Таврического" священник Халюта ушел с поста)*. Radio Svoboda. Available at: <https://www.svoboda.org/a/27173960.html>

⁴¹ Маико, Е. (2020) Chersonese: the “Orthodox Mecca” with Opera and Ballet on Ancient Ruins (Херсонес: «православная Мекка» с оперой и балетом на древних руинах). Available at: <https://ru.krymr.com/a/hersones-pravoslavnaya-mekka-s-operoj-i-baletom-na-drevnih-ruinah/30755245.html>

⁴² International Renaissance Fund (n.d.) *Register of illegal archaeological excavations. The list of objects of destruction of Crimean monuments*. Available at: <https://culture.crimea.ua/ua/register.html>

⁴³ See Paras. 96-98 and 109-110, OHCHR, *Report on the Human Rights Situation in Ukraine (16 May to 15 August 2019)*. Available at: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/ReportUkraine16Feb-15May2019_EN.pdf

⁴⁴ Coynash, H. (2018) Why Are We Letting Russia Destroy a 16th Century Palace in Crimea? *Atlantic Council*, 11 January. Available at: <https://www.atlanticcouncil.org/blogs/ukrainealert/why-are-we-letting-russia-destroy-a-16th-century-palace-in-crimea/>

⁴⁵ UNESCO World Heritage Convention, Tentative Lists (n.d.) *The historical surroundings of Crimean Khans’ capital in Bakhchysarai*. Available at: <https://whc.unesco.org/en/tentativelists/5774/>

⁴⁶ Virtual Museum of Russian Aggression (2017). Available at: <https://rusaggression.gov.ua/ua/event-article.html?object=6a3cb8669d24f638f158116a6416dab9>

such activities.⁴⁷ Human rights NGOs have documented 114 unsanctioned archaeological excavations.⁴⁸ Ukraine did not partake in verifying the context-sensitivity of the archaeological explorations, their documentation nor the presentation of their findings. Many excavations were conducted with the sole purpose of facilitating the construction of big infrastructure projects. One of the most important of them was the Tavrida highway connecting the Kerch Bridge with Sevastopol. The highway is important in military-strategic terms as well as for President Putin's prestige. These engineering works resulted in the destruction of burial places⁴⁹ and contributed to the further militarisation of the peninsula.⁵⁰ Construction has further aggravated the irreversible threat of losing Ukraine's archaeological heritage as a key instrument for exploring and understanding its history. Due to the limited access to the site, it is hard to assess the real amount of archaeological material that has perished.

Russia's damage to the archaeological ruins of Chersonese, which is on the World Heritage List, is particularly striking.⁵¹ As mentioned above, without consultations with Ukraine, the occupying power developed construction on the site. The construction is aimed at facilitating the use of Chersonese for various recreational purposes, including for the opera and other music festivals. Both the construction and the mentioned activities adversely impact the ancient ruins.⁵²

The Crimean Centre for Strategic Studies that operates in continental Ukraine is monitoring archaeological excavations in the occupied peninsula and updates a respective registry.⁵³

2.4 Intangible cultural heritage

Russia's full-fledged invasion of Ukraine on 24 February 2022 has amplified the threats to the Ukrainian intangible cultural heritage resulting from the armed conflict unfolding in Ukraine since the occupation of Crimea and parts of Donetsk and Luhansk regions in 2014. The Russian Federation has tried to wipe out various manifestations of the Ukrainian intangible cultural heritage in the territories under its control at different stages of the armed conflict. The offensive on the intangible cultural heritage has been particularly rigorous in three domains: the use of the Ukrainian language, cultural practices inspired by religion and knowledge sharing via feature and educational literature.

Language is "a vehicle of the intangible cultural heritage" (Convention for the Safeguarding of the Intangible Cultural Heritage, art. 2) and a channel through which the communities and nations express and construct their identities.⁵⁴ Depriving a part of a national group of its access to language, questioning its very right to existence, forced substitution of a local language with a foreign one - all constitute an attack on the intangible heritage of the nation and humanity. The instalment of the occupation regime by the Russian Federation in Ukrainian territories was immediately followed by the capturing of the Ukrainian radio and television stations, newspapers and cultural institutions and their Russification *i.e.* coercion to use the Russian language instead of Ukrainian for the media, news and cultural products. Reports from all parts of Ukraine under the Russian occupation in 2022 document

⁴⁷ See p. 6, Mission of the President of Ukraine in the Autonomous Republic of Crimea (2021) *Informational and analytical note on the situation with cultural and archaeological heritage in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol*. Available at: https://www.ppu.gov.ua/wp-content/uploads/2020/11/Informatsiy-na-dovidka-shhodo-sytuatsii-zkulturnym-tsinnostyamy_angl.pdf

⁴⁸ International Renaissance Fund (n.d.) *Register of illegal archaeological excavations. The list of objects of destruction of Crimean monuments*. Available at: <https://culture.crimea.ua/ua/register.html>

⁴⁹ Hromadske (2018) *Stolen Heritage: How Russia is Destroying Crimean Archaeological Sites*, 4 January. Available at: <https://en.hromadske.ua/posts/stolen-heritage-how-russia-is-destroying-crimean-archaeological-sites>

⁵⁰ Revised draft resolution (UNGA) A/75/L.38/Rev.1 (2020) *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*. Available at: <https://digitallibrary.un.org/record/3893540?ln=en>

⁵¹ UNESCO (2013) *Ancient City of Tauric Chersonese and its Chora*. Available at: <https://whc.unesco.org/en/list/1411/>

⁵² See pp. 23-24, Mission of the President of Ukraine in the Autonomous Republic of Crimea (2021)

⁵³ International Renaissance Fund (n.d.) *Register of illegal archaeological excavations. The list of objects of destruction of Crimean monuments*. Available at: <https://culture.crimea.ua/ua/register.html>

⁵⁴ Fernandes del Pozo, D. (2017) *Untangling language, intangible cultural heritage and rights*. Terminology Coordination, *European Parliament, DG TRAD*, 16 May. Available at: <https://termcoord.eu/2017/05/untangling-language-intangible-cultural-heritage-and-rights/>

this tendency.⁵⁵ Russification also became apparent in the destruction of the memorial plaques written in Ukrainian, renaming of the administrative units and changing of the Ukrainian road signs of cities, villages and streets to the Russian ones.⁵⁶ The language has been an increasingly aggravating factor in the persecution of people deemed to be pro-Ukrainian. In such cases, unlawful detention, interrogation and torture have often been accompanied by questions about the use of the Ukrainian language or attitudes to the Ukrainian church, history and culture.⁵⁷

Furthermore, Ukrainian territories that have been under the Russian occupation for a longer period of time were exposed to the coercive policies of the Russification of the educational space in schools and universities.⁵⁸ Such policies have had an inevitable impact on the younger generations' feelings of connection and proactive engagement with their tangible and intangible cultural heritage. The Russian Federation went so far as to bring teachers from Russia, instead of the fired Ukrainian ones, with the aim of "educating" Ukrainian youth in the Russian language, and feeding it with the Russian interpretation of Ukraine's history (or, rather, claiming the absence of it).⁵⁹

Russia has accompanied the Russification of education in the occupied territories with its militarisation.⁶⁰ The latter encompasses the enhanced military training at schools and the engagement of children in *Yunarmia* (Youth Army). Since the full-scale invasion, Russia has amplified these policies to legitimise its aggression and the seizure of new Ukrainian territories. On 25 August 2022, the "Ministry of Education, Science and Youth" of occupied Crimea added new topics for obligatory discussions at all levels of school education. Such topics are: "Heroes of the Special Military Operation," "Friends and Enemies of the Russian Federation," "LPR, DPR, Crimea, Kherson are Russia," "There is Such an Occupation - to Defend the Motherland. The Advantages of Contract Service in the Armed Forces of the Russian Federation." Such militarisation of the upbringing of children aims to ensure "the eradication of the Ukrainian mentality and the creation of the image of the enemy from Ukraine."⁶¹

Whilst religion itself is not mentioned among the domains of intangible cultural heritage in the Convention for the Safeguarding of the Intangible Cultural Heritage or other international treaties, it is well established that cultural practices and expressions inspired by religion fall under the definition of intangible cultural heritage.⁶² Therefore, impeding a right to practice one's own religion through the closure of religious institutions or persecution of religious leaders constitutes a threat for the intangible cultural heritage. Following the all-out invasion, a number of reports have documented the targeting by the Russian Federation occupation forces of Ukrainian religious leaders who are frequently tortured and killed on a scale far worse than during 2014-2021.⁶³ Parallel to that, as reported by *Forbes* and *Devex*, religious institutions in the occupied territories are being destroyed, closed, nationalised and

⁵⁵ State Sites of Ukraine, State Language Protection Commissioner (2022) *The Russian Policy of Lingvocide in the Occupied Territories as a Method of Dismantling the Constitutional Order and an Element of Genocide against the Ukrainian Nation* (Російська політика лінгвоциду на окупованих територіях як спосіб демонтажу конституційного ладу та елемент геноциду проти українського народу). Available at: <https://mova-ombudsman.gov.ua/news/rosijska-politika-lingvocidu-na-okupovanih-teritoriyah-ukrayini-yak-sposib-demontazhu-konstitucijnogo-ladu-ukrayini-ta-element-genocidu-proti-ukrayinskogo-narodu>

⁵⁶ Ibid.

⁵⁷ UN Security Council, Meeting Coverage SC/15023 (2022) *Reports of Russian Federation Forces Putting Ukrainian Civilians in "Filtration" Camps Must Be Investigated, Senior Officials Tell Security Council*, 7 September. Available at: <https://press.un.org/en/2022/sc15023.doc.htm> ; CNN (n.d.) Lauren Said-Moorhouse, Senior Producer, *CNN International*. Available at: <https://www.cnn.com/profiles/lauren-moorhouse>

⁵⁸ State Sites of Ukraine, State Language Protection Commissioner (2022)

⁵⁹ Dixon, R. (2022) Russia sending teachers to Ukraine to control what students learn, *The Washington Post*, 18 July. Available at: <https://www.washingtonpost.com/world/2022/07/18/russian-teachers-ukraine-rewrite-history/>

⁶⁰ The Concept of Patriotic and Spiritual-Moral Education of the Population in the Republic of Crimea (2014) Available at: https://monm.rk.gov.ru/file/1_%D0%A3%D0%BA%D0%B0%D0%B7%20%D0%93%D0%BB%D0%B0%D0%B2%D1%8B%20%D0%A0%D0%9A.pdf

⁶¹ RadioFreeEurope/RadioLiberty (2022) "Loyal Soldiers of Putin:" Ukraine, Activists Call Militarization of Schools in Russian Occupied Crimea a War Crime, 1 December. Available at: <https://www.rferl.org/a/ukraine-crimea-russia-militarization-schools/32157588.html>

⁶² UNESCO, The International Training Center for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (n.d.) ICH Facts: Can religions or languages be recognized under the Convention? Available at: http://en.crihap.cn/2014-10/14/content_18734800.htm

⁶³ Ochab, E. U. (2022) The Destruction Of Religious Sites By Russian Forces In Ukraine. *Forbes*, 14 December. Available at: <https://www.forbes.com/sites/ewelinaochab/2022/12/14/the-destruction-of-religious-sites-by-russian-forces-in-ukraine/?sh=62b35b2e9401> ; Mednick, S. (2022) Attacks on religious freedoms and human rights abuses soar in Ukraine. *Devex*, 5 April. Available at: <https://www.devex.com/news/attacks-on-religious-freedoms-and-human-rights-abuses-soar-in-ukraine-102944>

pillaged. Most of the attacks impacting religious practices and expressions target religious communities and clergy of the denominations considered by the Russian Federation as pro-Ukrainian or hostile to the unique and dominant position of the Russian Orthodox Church.⁶⁴

Knowledge sharing is another endangered domain of the intangible cultural heritage in the occupied territories of Ukraine. One of the major threats to the ability of the Ukrainian people to share knowledge concerning nature and the universe, and to safeguard its world view and system of beliefs is a deliberate destruction of Ukrainian literature collections, thus preventing the use of this literature in educational processes, and its exclusion from the cultural life in such fora as literature festivals or similar events. The Russian Federation widely utilised such practices across the occupied parcels of the Ukrainian territory.⁶⁵ They impacted the very ability of Ukrainians in the occupied territories to enjoy the intangible cultural heritage, and threatened awareness building about the importance of such heritage and its safeguarding.

3. Conclusions

Threats to Ukraine's cultural heritage have emerged since the beginning of Russia's aggression in 2014. In the Russia-occupied Crimean peninsula such threats included: vast appropriation of cultural property; unsanctioned transfers of artefacts; archaeological excavations that were not authorised by Ukrainian officials, and whose findings the Russian occupying authorities did not transfer to Ukraine's cultural institutions; and the mismanagement of cultural heritage objects, including those on the UNESCO World Heritage or Tentative lists. Cultural heritage in Eastern Ukraine was mostly endangered by the effects of shelling, looting and misuse for war purposes, such as detention.

Since the all-out invasion in 2022, threats to Ukraine's cultural heritage have increased in terms of their gravity, frequency and geographical scope. Museums, libraries and archives across the country have been affected by targeted or indiscriminate shelling, and other forms of destruction and looting. Such encroachments on tangible cultural property have been accompanied by threats to related individuals, such as Christian, Jewish and Muslim religious figures, as well as teachers and heritage professionals, whose affiliation or work deals with - or appears to deal with - issues of Ukrainian identity and its independence. The post-full-scale invasion has also brought about more threats to Ukrainian and Crimean Tatar intangible cultural heritage. The dynamics of these threats should be analysed in close connection with alleged motives and patterns of other threats and violations committed in the Russia-Ukraine armed conflict.

⁶⁴ Mednick, S. (2022)

⁶⁵ Tucker, M. (2022) Russia's troops "burning school textbooks and torturing teachers" in occupied areas across Ukraine. *The Times*, 17 August. Available at: <https://www.thetimes.co.uk/article/russias-troops-burning-school-textbooks-and-torturing-teachers-in-ukraine-says-education-minister-2fjgr2bsm>

ANNEX II – CONSULTATIONS AND INTERVIEWS

For the current study, a number of organisations and experts were consulted and interviewed. Amongst those are experts and representatives of organisations involved in safeguarding cultural heritage in war zones, specifically in Ukraine, academics, and (policy) officers at UNESCO, WCO, the EU and national states. The information thus gathered is considered in this study. What follows is a list of the consulted organisations and experts that agreed to be named:

- **ALIPH**
Valéry Freland (Executive Director), Dr. Maja Kominko (Scientific and Programs Director), and Elsa Urtizverea (Project Manager)
- **Blue Shield International**
Prof. Peter Stone (President) and Dr. Emma Cunliffe (Secretariat)
- **Blue Shield Netherlands**
Angela Dellebeke (Secretary-General)
- **Center for Art Law (US)**
Irina Tarsis, Esq.
- **Council of Europe**
Ivana Hrdas Papadopoulos (Project Manager at the Culture and Cultural Heritage Division, Council of Europe Steering Committee for Culture, Heritage and Landscape)
- **Cultural Emergency Response**
Vanessa Fraga Prol (Manager) and Nimalka Passanha (Project Coordinator)
- **DG EAC**
Anna Kedziorek Ramirez, Monica Urian and Pia Sopta (Policy Officers)
- **DG ECHO**
Giulia Pizzio (EU Prevention policy Team)
- **DG GROW**
Anna Kostova-Bourgeix (Policy Officer)
- **DG TAXUD**
Elena Maidou (Policy Officer)
- **Dutch Ministry of Defence**
Captain Ankie Peterson (Staff Officer Cultural Property Protection)
- **Dutch Police**
Richard Bronswijk (Head National Expert Team Art and Antiquity Criminality)
- **EEAS**
Policy officers
- **ICCROM**
Aparna Tandon (Senior Programme Leader of the First Aid and Resilience for Cultural Heritage in Times of Crisis Programme)
- **ICOM**
Sophie Delepierre (Head of Heritage Protection Department)
- **National Institute of Heritage, Poland**
Prof. Katarzyna Zalasńska (Director)
- **ProCultHer-NET**
Giovanni de Siervo (Project Director) and Tiziana Vicario (Project Manager)
- **Smithsonian Cultural Rescue Initiative**
Corine Wegener (Director)
- **UNESCO**
Prof. Chiara Dezzi-Bardeschi (Liaison Officer of the Kyiv Desk) and Programme Specialists of the Secretariat

- **University of Amsterdam**
Prof. Rob van der Laarse (Westerbork Chair in Heritage and Memory of War and Conflict)
- **World Customs Organisation**

This study examines how cultural heritage can be better protected from the effects of armed conflicts, in Ukraine and beyond. It includes an analysis of the applicable international law and policy frameworks and the practice of key international actors in Ukraine, as well as in past conflicts. It concludes with a set of specific recommendations to the EU and its Member States to strengthen the protection of cultural heritage from the effects of armed conflicts, now and in the future.

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