

HERITAGE IN THE SHADOW OF CONFLICT

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International Council on
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Heritage in the Shadow of Conflicts Online Summer School

Rights:

(International) Law Related to the Protection of Cultural Heritage in Conflict

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Why to protect cultural heritage:

Did you know that Cultural heritage and cultural property is of importance to humankind as it defines who we are and represents our past. It is a basic element of civilization that must be preserved and protected during an armed conflict.

Cultural heritage has become an important role in the global tourism industry, and a major contributor of economic value to local communities, so we should be to protect our cultural heritage.

In recent times. Culture heritage, being on the front lines of conflicts, is too often a victim of hostilities.

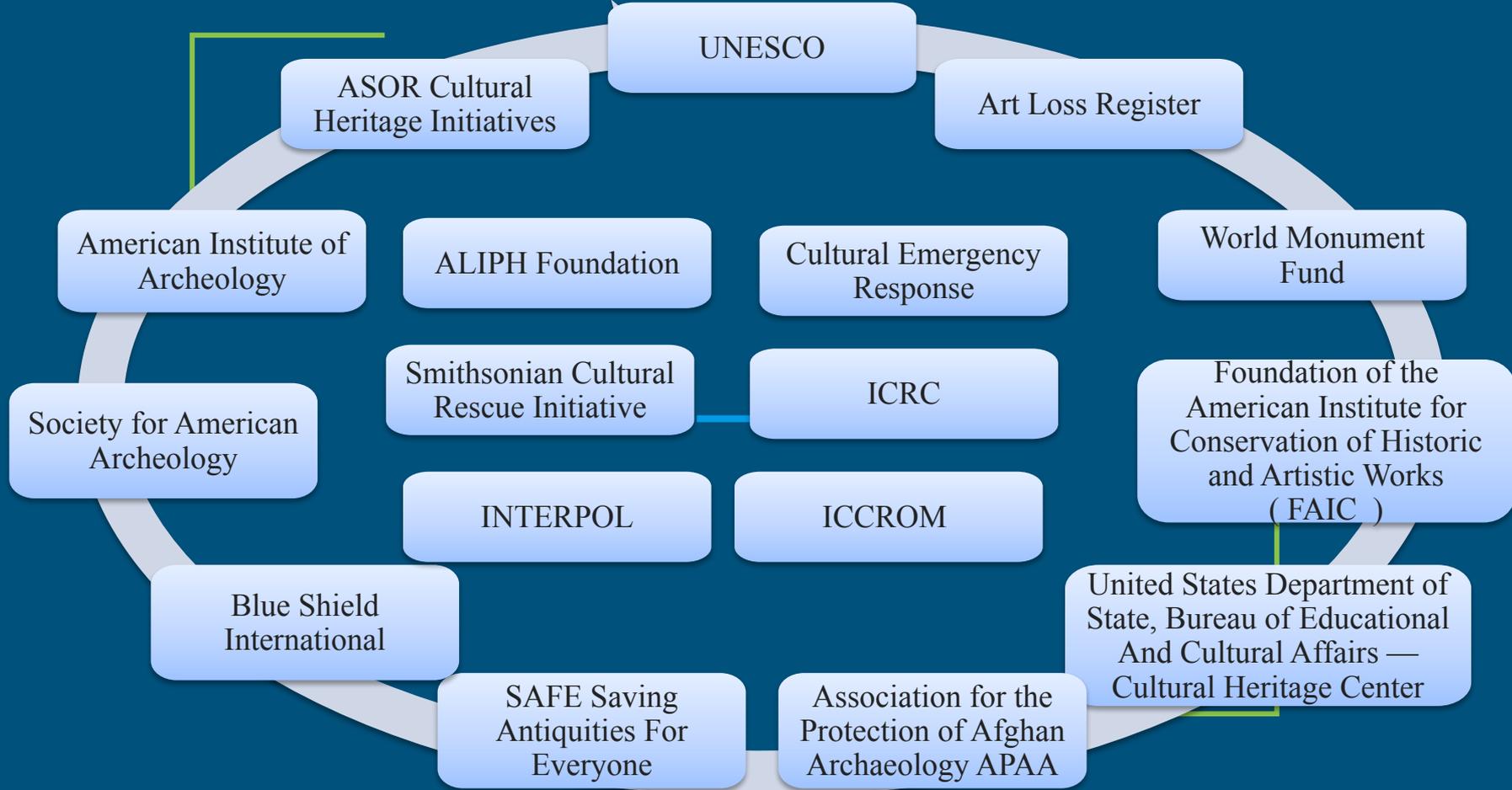
For these reasons we need a lot of protecting culture and combating the crimes against it has been at the core of UNESCO's mission since its foundation.

Definition of cultural property in Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as 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 the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

Organizations concerned with the protection of cultural heritage



Selected International Law Instruments on Protecting Cultural Heritage in Conflict

- Lieber Code (1863) → Hague Conventions of 1899 & 1907
- Universal Declaration of Human Rights (UDHR) (1948)
- The 1954 Convention for the Protection of Armed Conflict (Hague Convention)
 - 1st and the 1999 2nd Protocol to the Hague Convention
- The 1977 1st and 2nd Protocols of the 1949 Geneva Convention
- The Rome Statute: Article 8(2)(b)(ix) and 8(2)(e)(iv) (1998)
- The UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Property of 1970
- 1972 UNESCO Convention Concerning the Protection of World Heritage and Natural Heritage
- 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage
- Customary International Law

The Rome Statute

For the purpose of this Statute, "war crimes" means:

Article 8(2)(b)(ix) (international conflict) and 8(2)(e)(iv) (non-international conflict) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

Case Study: Prosecutor v. Ahmed Al Faqi Al Mahdi (ICC, 2016) (Mali)

Background:

- Events here took place amid what the ICC described as a non-international conflict in Mali that began in January 2012. In April 2012, Al-Qaeda in the Islamic Maghreb (AQIM) and the related Tuareg group, Ansar Dine, overtook Timbuktu until Jan. 2013.
- During the occupation, Mr. Al Mahdi, a native of Agoune, in the region of Timbuktu, led the “Hesbah” morality brigade, part of a set of local governance entities that exercised control.
- In Timbuktu there are several mausoleums and mosques that are an integral part of the community, including multiple World Heritage sites.

Case Study: Prosecutor v. Ahmed Al Faqi Al Mahdi (ICC, 2016) (Mali)

- Mr. Al Mahdi was found guilty, as a co-perpetrator, of the war crime of directing attacks against historic religious monuments and buildings, namely nine mausoleums and the door of a mosque in Timbuktu in June-July 2012, leading to destruction/substantial damage.
- As described by the ICC, the buildings targeted were regarded as having significant cultural heritage value and were not military objectives.
- Mr. Al Mahdi pled guilty and was sentenced to nine years imprisonment (reduced by two years in 2021), and found liable for 2.7 million euros in reparations.



Case Study: Armenia and Azerbaijan

- The conflict over the disputed region of Nagorno-Karabakh began in 1988
- In early 1990s Armenia started decades long occupation of Nagorno-Karabakh - many Azerbaijani cultural and religious sites were destroyed, inter alia: 700 historical monuments, 22 museums, 58 archaeological sites.
- At the same time Azerbaijan was responsible for destruction of 89 Armenian churches, and 20,000 grave stones in Nakhchivan Autonomous Republic
- The conflict escalated in 2016 and 2020, after 44 days of war the region was return to Azerbaijan



Case Study: Armenia and Azerbaijan ICJ

- Following the return of Nagorno-Karabakh region to Azerbaijan, the elimination of the traces of Armenian cultural heritage begun, including falsification of history and attempts to present it as “Caucasian Albanian”
- Armenia turn to the ICJ claiming that Azerbaijan is violating The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1965
- on 7th December 2021, the ICJ concluded that Azerbaijan: ***“take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin; and take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts”***

ICOMOS Comment on the Office of the Prosecutor's Policy

In welcoming the Draft Policy in detail and spirit, ICOMOS notes in particular the following:

- Through the Draft Policy the ICC commits to combatting all types of crimes in a prompt manner (paragraph 95), at all stages of its work “...*preliminary examination, investigation, prosecution, and— when so invited—reparations*” (paragraph 5), and to strengthen its ability and those of its partners to close the impunity gap (paragraph 121).
- The scope of the Draft Policy includes crimes against or affecting cultural heritage, as they all affect people and communities (paragraph 95). Paragraph 95 goes on to state that “... *the Office will engage with... international and non-governmental organisations at an early stage, in order to verify the information available to prevent the recurrence of crimes.*” It reveals the cultural heritage dimension of different crimes, including for example sexual and gender-based crimes and cultural heritage (paragraph 71).

Therefore, in recognising the potential positive influence and effect of this Draft Policy, ICOMOS would welcome the opportunity to elaborate on these in greater detail...Meanwhile ICOMOS would like to make the following preliminary suggestions:

- In addition to the examples from Syria, Iraq, and Mali (paragraph 2), a reference to the cultural heritage destruction in Yemen and Myanmar should be considered.
- The Draft Policy uses the term ‘cultural heritage’ instead of the term ‘cultural property’. This new and inclusive approach is welcomed and applauded (paragraph 14 and following).

Case Study: Ongoing Conflicts or Destruction of Cultural Heritage

- **Ukraine:** UNESCO states it has verified damage to 154 sites since 24 February 2022 (as of 27 June 2022). ICC Prosecutor Khan announced opening of investigation into potential war crimes on 2 March 2022, to include examination of events dating back to 21 November 2013 and any new potential crimes committed within Ukraine falling under ICC jurisdiction.
- **Ethiopia:** The Civil War in Ethiopia has had devastating effects. Cultural heritage has not been spared with damage to many religious and historical sites. However, Ethiopia is not a signatory of the Rome Statute
- **Democratic Republic of Congo:** Ongoing conflict in the DRC has led to attacks on cultural heritage. As a member of the ICC, there has been prosecution for war crimes including attacks on protected objects



Global Conflict Tracker,
<https://www.cfr.org/global-conflict-tracker>.

Conclusion

Cultural heritage is vulnerable to destruction in conflict but greater ways to legally protect cultural heritage are:

- Engage in documentation and preliminary investigations then follow these investigations to legal cases if necessary
- Encourage greater legal protection to cultural heritage in conflict including States signing the Rome Statute
- Expand the definition of cultural heritage in international law
- Increase awareness on the destruction of cultural heritage and its legal protection