



CONCLUSIONS OF THE CONFERENCE

"Protecting Cultural Heritage and Countering Cultural Erasure in Armed Conflict: New Challenges and Ukraine's Experience"

4-5.07 ——— 2024 ——— Kyiv, Ukraine

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Introduction. The international conference "Protecting Cultural Heritage and Countering Cultural Erasure in Armed Conflict: New Challenges and Ukraine's Experience" was held in Kyiv, Ukraine on July 4–5, 2024.

The conference was organized within the framework of the project "Ukraine's Cultural Heritage in Time of War: Strengthening the Voice of Ukrainian Experts." The project is implemented with the support of USAID/ENGAGE, funded by the United States Agency for International Development (USAID) and implemented by Pact Ukraine, and is executed by the Crimean Institute for Strategic Studies in partnership with the Ministry of Foreign Affairs of Ukraine, the Ministry of Culture and Information Policy of Ukraine and leading civil society organizations.

The conference was also organized with the support of the International Renaissance Foundation.

Overview. The conference was dedicated to the 70th Anniversary of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter – the 1954 Hague Convention) and its 1954 First Protocol, as well as the 25th Anniversary of its 1999 Second Protocol.

The conference brought together representatives of UNESCO and other international organizations, States Parties to the 1954 Hague Convention and its Protocols, National Commissions for UNESCO, Ukrainian government agencies, specialists from agencies responsible for implementing the said treaties, NGOs and independent experts in the field of cultural property protection.

The conference was a good opportunity to continue:

- raising awareness of the 1954 Hague Convention and its two Protocols at the national and international levels,
- discussing the effectiveness of international legal instruments in the field of protection of cultural property during armed conflicts;
- promoting the experience of Ukraine and other countries in protecting cultural property during armed conflicts;
- summarizing this experience and the possibility of its application in the future.

The participants came to the conclusion that the application of international law is determined by the dynamics of maturity and interaction of the world community and simultaneously influences its evolution. One of the factors and manifestations of the formation of the law of the world community is the institution of the common heritage of humanity. The Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972, the Hague Convention for the Protection of

Cultural Property in the Event of Armed Conflict of 1954 and its Protocols, as well as other international legal instruments, proceed from the following:

- a) the world cultural heritage is the property of humanity;
- b) its protection is a common interest of the entire international community;
- c) damage caused to such property is considered to be damage caused to all humankind, regardless of whether it is caused by the state under whose jurisdiction the cultural property is located or not.

Thus, the protection, safeguarding and preservation of cultural heritage are obligations *erga omnes*, i.e., international legal obligations of all members of the world community.

The participants also recognized that the preservation of cultural heritage is part of a wide range of extremely complex challenges caused by armed conflict. They require a rapid and effective response at the national (institutional, local, regional) and international (universal, regional, bilateral) levels. Special emphasis should be made on prevention – strategic measures in peacetime to prevent or reduce the negative impact on cultural property in the event of armed conflict.

During armed conflict, cultural heritage is always exposed to potential risks and threats. The participants of the conference emphasized that, in these circumstances, Ukraine's cultural property is in danger due to numerous threats that can affect it in different ways, despite the fact that it is protected by both international legal norms, in particular the 1954 Hague Convention, its two Protocols and customary international law, and by the national legislation of Ukraine.

During Russia's full-scale war against Ukraine, a large number of cultural heritage sites and cultural infrastructure facilities have been damaged and destroyed, movable cultural property has been stolen and relocated, and significant and sometimes irreparable damage and harm has been done to Ukraine's cultural heritage. According to the Ministry of Culture and Information Policy of Ukraine, the total number of affected cultural heritage sites currently stands at 1,147, including 120 nationally significant sites, 944 local sites, and 83 newly discovered cultural heritage sites.

Obligations of states. The 1954 Hague Convention requires States Parties that have occupied part or all of the territory of another State to support the efforts of the competent national authorities of the occupied territory to ensure the protection and preservation of its cultural property. The Russian Federation is reneging on its fundamental obligation under the Convention as an occupying power to cooperate with Ukraine to protect its cultural heritage. Concerns were also expressed about the lack of a legal basis for monitoring cultural property in the territories of Ukraine temporarily occupied by the Russian Federation and the loss of contact with museum workers, archaeologists and other specialists who remained under occupation. In addition, no measures have yet been taken to protect personnel actively involved in the protection of cultural property, as provided for in Article 21 of the Regulations for the Execution of the 1954 Hague Convention.

Monitoring. An important aspect of the preservation of movable and immovable cultural property in the context of armed conflict is monitoring its condition, assessing the damage caused by the conflict and occupation, and documenting this damage. The important role played by UNESCO's assistance to the Ukrainian Government and civil society organizations in this process was noted.

The participants emphasized the importance of monitoring the movement, return and restitution of cultural property stolen and illegally exported by Russia from the occupied territories of Ukraine. In this context, the importance of cooperation between Ukrainian law enforcement agencies and Interpol and law enforcement agencies of other countries was emphasized. The Ministry of Culture and Information Policy of Ukraine, which is yet to complete the creation of registers of cultural

property in accordance with international protocols, and the Office of the Prosecutor General of Ukraine, which investigates crimes against cultural property, play an important role in this regard.

The conference participants noted that monitoring the condition of cultural heritage sites located in the territories temporarily occupied by the Russian Federation is possible, in particular, by ensuring proper cooperation between Ukrainian government agencies and NGOs that already have long experience in monitoring and documenting cultural losses.

Cultural erasure. Targeted cultural erasure is evidence of Russia's intention to destroy the identity of the Ukrainian people. One of the many examples of this intention is the destruction of the Skovoroda Museum by a Russian missile in the territory where there is no military facility. The conference put forward proposals on the need to qualify Russia's large-scale and regular crimes against Ukraine's cultural heritage as "cultural genocide." The conference participants noted the importance of differentiating the use of terms in criminal proceedings, academic, political, cultural, journalistic and other areas. An example of the application of such terminology is Resolution 2558 (2024) of the Parliamentary Assembly of the Council of Europe "Countering the erasure of cultural identity in time of war and peace," which states that the deliberate destruction of cultural heritage and the erasure of cultural identity in Ukraine is part of the campaign of genocide being pursued by the Russian Federation against the Ukrainian people in blatant violation of treaty and customary international law and constitutes war crimes and crimes against humanity. Such actions grossly violate treaties and customary international law and indicate a specific genocidal intent.

At the same time, the conference participants recognized that the experience of modern armed conflicts has revealed the limited impact of international instruments and mechanisms on ensuring reliable protection of cultural property.

Implementation of international legal obligations concerning cultural heritage in national legislation. It was emphasized that Ukraine has not done enough to fulfill its international obligations under the 1954 Hague Convention and its two Protocols since the beginning of the Russian aggression in 2014 and since the full-scale invasion. The participants highlighted the importance of adapting Ukraine's national legislation to international norms on the protection of cultural property in the event of armed conflict.

The participants noted the responsible attitude of the military in Ukraine to the preservation of cultural property and their compliance with international humanitarian law. The proposal to create a special unit within the Armed Forces to protect cultural property in accordance with Article 7(2) of the 1954 Hague Convention was recalled.

The participants recognized that the Ukrainian experience can make a significant contribution to global efforts to protect cultural heritage around the world. Understanding the challenges faced by Ukraine and the measures taken in response may open up new approaches to the implementation of the 1954 Hague Convention and its two Protocols by the States Parties, both in peacetime and in the event of armed conflict.

Responsibility for crimes against cultural heritage at the national and international levels. A separate topic of the conference was the problem of liability for crimes against cultural property committed during armed conflicts. The issues of distinguishing crimes against cultural heritage, strengthening responsibility for them and increasing criminal liability at both the national and international levels are the issues that, according to Ukrainian experience, need to be addressed and improved.

It was noted that, according to treaties and customary international humanitarian law, the Rome Statute of the International Criminal Court, international and national case law, as well as UN

Security Council Resolution 2347 (2017), directing unlawful attacks against sites and buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments may constitute, under certain circumstances and pursuant to international law a war crime (and, if destruction is widespread or systematic, crimes against humanity) and that perpetrators of such attacks must be brought to justice;

It was stated that international law is not static, it is evolving. International criminal justice has a practice of dealing with such cases, from the Nuremberg trials and their investigation of the theft and looting of cultural property to crimes against cultural heritage considered by the International Criminal Tribunal for the former Yugoslavia, as well as the policy on cultural heritage adopted by the Office of the Prosecutor of the International Criminal Court.

In order to create a system of inevitability of punishment and bring perpetrators of war crimes against cultural property to justice, it is necessary to strengthen the national criminal justice system. An important element of this process should be the interaction of law enforcement agencies with relevant government agencies, local communities and civil society organizations to collect the appropriate evidence base.

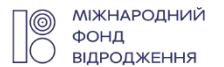
The role of UNESCO. The participants emphasized the importance of UNESCO's assistance to Ukraine in the process of protecting and preserving cultural property in times of war, as well as in strengthening the institutional capacity of state institutions.

The measures taken by UNESCO – monitoring of the condition of cultural heritage sites, damage assessment and documentation, organization of training for the military on the protection of cultural sites and others – are not only necessary support for Ukraine but also an important contribution of the creation of new international assistance strategies in the context of improving the implementation of the 1954 Hague Convention and its Protocols.

The conference participants recommend:

- Establishing a coordinating national mechanism for the protection of cultural property in Ukraine in the context of the implementation of the 1954 Hague Convention and its Protocols in order to facilitate the implementation of these treaties in Ukraine with the participation of the Ministry of Culture and Information Policy, the Ministry of Defense, the Ministry of Foreign Affairs and other relevant state bodies, non-governmental organizations dealing with cultural heritage, local communities and the media;
- Regulating at the national and international levels the system of monitoring of cultural heritage sites remaining in the territory of Ukraine temporarily occupied by the Russian Federation;
- Simplifying the procedure for registering cultural heritage sites located in Ukrainian territories near the frontline or on the frontline;
- Developing a program for the conservation of damaged archaeological sites in the de-occupied territories;
- Strengthening international efforts to counter cultural erasure in the context of armed conflict;
- Implementing domestic procedures for Ukraine's accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects;
- Completing work on creating registers of cultural property;
- Improving national legislation on the protection and preservation of cultural property in accordance with international standards, including the criminalization of crimes against cultural property in the context of war crimes.

- Developing and adopting national legislation on the restitution of cultural property;
- Strengthening the interaction of public authorities, local communities, law enforcement agencies, NGOs and experts in the wartime and post-war periods in the process of protecting and preserving cultural property and cultural heritage sites, restoring damaged cultural sites, searching for, identifying and returning stolen and illegally exported cultural property;
- Ensuring that the text of the 1954 Hague Convention is officially translated into Ukrainian and published on the official website of the Verkhovna Rada of Ukraine;
- Strengthening the cooperation of Ukrainian public authorities with UNESCO in assessing and documenting damage to Ukraine's cultural heritage;
- Paying attention to the issue of liability for crimes against cultural property, which should be on the agenda of meetings of the High Contracting Parties to the 1954 Convention and its Protocols, as well as the Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict;
- Proposing to include the conclusions and recommendations of the Conference in the agenda of the 19th meeting of the Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict.



The final conclusions and recommendations of the conference were prepared by the Crimean Institute for Strategic Studies, with the support of the Ministry of Foreign Affairs of Ukraine and the Ministry of Culture and Information Policy of Ukraine, within the framework of the project "Ukraine's Cultural Heritage in Time of War: Strengthening the Voices of Ukrainian Experts" as part of the Enhance Non-Governmental Actors and Grassroots Engagement program (USAID/ENGAGE), which is funded by the United States Agency for International Development (USAID) and implemented by Pact Ukraine. The contents of this event are the sole responsibility of Pact and its partners and do not necessarily reflect the views of USAID or the United States Government.