

**PROTECTION OF CULTURAL PROPERTY IN THE EVENT  
OF ARMED CONFLICT –**

**A CHALLENGE IN  
PEACE SUPPORT OPERATIONS**

**Edited by  
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Vienna 2002

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Protection of Cultural Property in the Event of Armed Conflict – a Challenge in Peace Support  
Operations

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Motto:

***The Protection of Cultural Property  
must not be left to Chance!***

## ***Foreword by the Editors***

This book originates from the international Seminar “Protection of Cultural Property in the Event of Armed Conflict – a Challenge in Peace Support Operations”, which was held from 24 to 28 September 2001 in Bregenz, Austria. The seminar took place within the framework of the Partnership for Peace Initiative and constituted an effort within the cooperation field “Democratic Control Of Forces and Defense Structures”.

The broad range of topics discussed and presented during the seminar covered aims and principles of the protection of cultural property as well as current protection activities and lessons learned from recent conflicts, ethical and esthetic aspects of the subject matter and explored also future steps for cultural property protection and concerted international action.

Apart from comprehensive international participation in the seminar, the institutions of the Austrian Ministry of Defense as well as those of other government agencies demonstrated a significant amount of both organizational and intellectual “Jointness”. One result of this fruitful cooperation has to be seen in the fact that the National Defense Academy Vienna, as the institution for higher and advanced leadership education and within the Austrian military establishment, could not only contribute to the seminar itself but is also in charge of putting together this publication.

As the editors we would like to thank all the presenters for their contributions, both in the seminar and to this publication. The essays and articles contained in this book should provide valuable substance for reflection and further dialogue, leading far beyond the seminar event as well as the moment of publication of this compilation. At this point, it should be emphasized that the opinions expressed in this volume do solely represent the personal views of the authors and do not portray any official stances or policies.

Apart from the authors, however, we would like to express our gratitude to all the others who helped to make this publication possible. We truly wish to extend our thankfulness to Mrs. Eva Nemec, research assistant in the Institute for Military Sociology and Defense Pedagogy, for her help and painstaking work regarding lay-out and technical assistance, and to Dr. Benjamin Novak for his editorial support.

In the light of the new challenges to security, the demanded closer cooperation between civil and military forces in the fields of crises prevention as well as crises and conflict management, this publication will hopefully have a substantial impact on joint efforts to reach interoperability between civil and military, governmental and non-governmental experts in the ever more important arena of protecting cultural treasures in the event of armed crises, conflict and outright war.

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## ***General Introduction by the Organizers***

In November 1996, at the UNESCO Headquarters in Paris, the Conference of the signatory nations to the 1954 Hague Convention on the Protection of Cultural Goods in the Case of Armed Conflict, discussed ways of how to efficiently implement this international treaty in all member states. Criticism focused on the fact that, due to a lack of vivid evidence, intended measures were not sufficiently existent in the minds of people who were to deal with the subject – which was equally true to both the civil and military sphere.

As a result, the delegates decided to conduct international cultural protection seminars with the focal point on practical exercises. These seminars should demonstrate the practicability of all the propositions negotiated at the “green table”. Spontaneously, the Austrian delegation offered its good services and was finally entrusted with the task by the international conference.

Since then three seminars have already been carried out in Austria, under considerable international participation and acknowledgement. The attendees ranged from both civil and military experts to individuals directly affected by the subject of cultural protection such as owners of cultural property or museum directors. Organizers of the seminars were the Austrian Ministry of Defense and the Austrian Society for Protection of Cultural Goods, a private, non-governmental initiative which has ever since its foundation in 1980 also committed itself to the international dissemination of the idea to protect cultural property. Furthermore, the series of seminars has also been integrated into the Partnership for Peace Working Program which helped to establish this idea NATO-wide and assured the support of all NATO and PfP partners.

Nevertheless, in the course of the preparatory work for the third seminar which was held from 24 to 28 September 2001 in Bregenz, the capital town of Austria’s westernmost province, the world has changed. The world order got shaken, and the abominable acts of terror in New York and Washington demonstrated that the world is facing new challenges. The immediacy of the events of September 11, communicated in a hitherto unknown intensity by the electronic media, introduced a well-known threat on an unprecedented large scale. It seems as if the hardly classifiable schemes of terrorism and organized crime shall constitute the predominant threats in the future, challenging particularly the consistency of the constitutional state. Today’s global security situation proves the rightness of the comprehensive security precautions taken, all too often against harsh critique, by nations and alliances. In the face of what happened in the Gulf region, at the Balkans, and most recently in Afghanistan where, apart from cruel bloodshed, most valuable cultural goods were deported, demolished or destroyed, the armed forces are particularly called upon.

First and foremost, however, the political decision-makers are demanded to provide joint efforts with respect to security affairs. To make all the national and international instruments of security operational in a functional, international security system, seems to be the only acceptable answer to combat the new risks successfully. Although the human weal has to be in the foreground of all steps undertaken, it is at the same time a legitimate task to protect and preserve the cultural treasures of all peoples and nations as the cultural heritage of mankind.

The consciousness that all cultural goods do not simply belong to the state on whose soil they happen to be, but rather to all humanity, has prevailed generally. Consequently, new ideas of how to better protect cultural property were developed and ways to implement them are being sought within the international community. These developments signal the build-up of a new, more sensitive cultural awareness, a kind of cultural identity which is even ready to fight for its interests.

The Bregenz Seminar, titled “Protection of Cultural Property in the Event of Armed Conflict – a Challenge in Peace Support Operations”, mostly dealt with the specific task of military forces to cope with the problem of cultural protection during international Peace Support Operations or any other kind of international military mission. Quite logically, the focal point of this seminar laid upon the situation in former Yugoslavia, featuring the NATO-led missions in the Kosovo. In addition, some of the participants reported on the situation in Iran, Iraq, and Afghanistan. While the first two seminars emphasized the challenges in the field of protection of cultural heritage as they derive from the classical scenario of war, the Bregenz Seminar explored new dimensions of conflict and armed struggle. The organizers were well aware that this was not possible without encountering tensions in talks and discussions with those immediately affected by the impacts of armed struggle.

However, it has exactly been this experience which made the responsible exponents of the organizing institutions pick up on this particular topic and consequently, transform the subject at hand into a comprehensive conference program. The goal was to present a realistic picture of international missions in order to exhibit deficits and initiate more efficient future processes.

The participation of 94 representatives from 25 nations proved that the matter was interesting and worth being dealt with. The publication at hand introduces all the presentations and lectures given at the seminar which, in their entirety, reflect upon the theme from different angles. The epilogue gives a conclusive oversight, reviewing the numerous results offered by the presenters, intense plenary discussion and work in syndicate groups.

As a first feedback of the participants, especially the highlight of the seminar, an exercise in the field, was perceived as a suitable example for the significance of the Hague Convention of 1954 and its supplementary protocols once those are efficiently implemented and applied in the field.

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**Part I**

**AIMS AND PRINCIPLES OF THE PROTECTION OF CULTURAL  
PROPERTY:**

**PROBLEMS WITNESSED IN THE IMPLEMENTATION OF THE  
CONVENTION**

**Thomas DESCH, Federal Ministry of Defence, Vienna**

## ***Problems in the Implementation of the Convention from the Perspective of International Law***

The Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter: the 1954 Convention) , signed at The Hague in 1954, forms part of the core body of international humanitarian law applicable in armed conflict. Recent armed conflicts, in particular those in Cambodia, the Middle East and in the former Yugoslavia, have clearly revealed major problems in the implementation of the Convention.

In particular, the Convention lacked full application, as most of the armed conflicts since 1954 have been of a non-international character; furthermore, it lacked proper execution, as the system of execution of the Convention which is based on a functioning Protecting Power- and Commissioner General-system proved to be unworkable in practice; and, finally, it lacked adequate provisions to cope with the extensive and systematic destruction of cultural property during recent armed conflicts, as it contains no mandatory criminal sanctions regime. In particular the armed conflicts in Croatia and in Bosnia and Herzegovina, where the destruction of cultural property was part of the policy of so-called "ethnic cleansing" led to international efforts to revise the existing Convention with the goal of improving the protection of cultural property in the event of armed conflict.

The further development of international law which had taken place since the entry into force of the Convention was another reason for its revision. This development included the adoption in 1977 of two Protocols additional to the Geneva Conventions of 1949 , the creation in 1993 and 1994 of ad-hoc tribunals for the prosecution of persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia and in Rwanda , and the adoption in 1998 of the Statute of the International Criminal Court (ICC). Although this development has not been the main reason for creating a new Protocol to the Convention, it turned out to be instrumental during the negotiations where these (and other) recent treaty norms were frequently referred to while shaping the new instrument.

In 1993 a review process started, when the UNESCO considered several measures aimed at improving the functioning of the Convention. Among these was the publication of a study analysing the implementation of the Convention since 1954 and proposing steps for improving its relevance to present-day conditions. Although at the beginning of the review-process the problem was regarded to be essentially one of the failure in the application rather than of inherent defects in the Convention itself, the traditional approach of diplomats and international lawyers to solving problems by creating new law also turned out to be determining for this review process. On 26 March 1999 the "Diplomatic Conference on the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict", held at The Hague from 15 to 26 March 1999, adopted the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter: the Second Protocol).

The aim of this lecture is to address the major problems in the implementation of the Convention and to examine whether the Second Protocol contributes to their solution. The following problems are addressed: The universality or general applicability of the Convention, its scope of application, the definition of "cultural property", the balance between protection of cultural property, protection of human life and military necessity, the existing rules on "special protection" and the execution of the Convention.

### **Universality**

The most important pre-requisite for the implementation of the Convention is its universal acceptance. Achieving greater recognition, acceptance and application of the Convention is therefore of over-riding priority. Like other international law treaties, the Convention and its Protocols need to be signed and ratified by States to become legally binding upon them.

Currently, only 100 out of 193 States (including the Holy See) are Parties to the Convention. Militarily important States such as the United Kingdom or the United States as well as many States in Africa, Asia or Latin-America, where armed conflicts actually take place, have recently taken place or are likely to occur such as Afghanistan, Algeria, Angola, Burundi, El Salvador, Ethiopia, Korea (both), Philippines, or Somalia are not Parties to the Convention. Only 83 States

are Parties to the first Protocol to the Convention, and the Second Protocol has not yet entered into force.

The Second Protocol could be seen as contributing to the universality of the Convention as, since the beginning of the review-process in 1993, additional 15 States have become Parties to the Convention. Beyond that effect, the Second Protocol supplements the provisions of the Convention through measures to reinforce their implementation.

### **Scope of application**

Like the Geneva Conventions of 1949, the Convention applies to situations of declared war, to any other international armed conflict as well as to cases of partial or total occupation, even if the occupation meets with no armed resistance.

Beyond that, the Convention provides for a few minimum standards to be applied by parties to an armed conflict not of an international character. The Convention does not attempt to define "armed conflict not of an international character" and thus leaves it open whether definitions in other international treaties would apply. Furthermore, these provisions give rise to the question of the binding effect of treaty provisions on non-State actors and the practical and legal problems involved in the attempt to communicate with irregular forces.

Based on the aim to make progress and to match up to reality, the Second Protocol purports to apply as such and as a whole to situations of non-international armed conflicts. The attempt, however, to declare basically all the provisions of an international law treaty to be binding also upon actors which are neither subjects of international law nor parties to that treaty, ignores some of the most basic and still existing concepts of international law.

Unless having been treated as insurgents and accepted by other States as belligerents, non-State parties to a non-international armed conflict are not, by the mere fact of rebellion or insurgency, subjects of international law. Thus, only some of the rules and principles governing international armed conflicts have been extended to apply to non-international armed conflicts, and this extension has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts. State practice has shown that, beyond a set of minimum rules reflecting "elementary considerations of humanity" applicable under customary international law to any armed conflict, the rules of international humanitarian law governing international armed conflicts and in particular those enshrined in treaty law, need the commitment by non-State parties to an armed conflict to become binding upon them.

Beyond that, even the drafters of the Second Protocol felt the need to explicitly curtail its progressive character by adding some very traditional safeguard-clauses emphasising State sovereignty and the international rights of a State flowing there from. Article 22 of the Second Protocol must therefore be interpreted in a more restrictive way than the wording of paragraph 1 would imply, namely in a sense that only those provisions of the Second Protocol shall apply in the event of an armed conflict not of an international character, which can legally and factually be applied by the parties to the conflict.

Also the Second Protocol does not define the term "armed conflict". It merely stipulates that situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature do not come within its scope of application. The term "armed conflict" must, therefore, be interpreted in the light of the meaning it has acquired under customary international law.

Another problem, which exists in international humanitarian law in general, is the applicability of the Convention and its Protocols by multinational Forces involved in Peace Support Operations (PSO). Apart from the possibility of different legal commitments due to different treaty relationships, the States contributing Forces to PSO are normally not involved in an armed conflict. Thus, the Convention and its Protocols would not be applicable. Beyond certain fundamental principles and those rules applicable also in peace-time, the Convention and its Protocols could only be applied by way of analogy.

The Second Protocol supplements the Convention with provisions also applicable in peace-time, such as preparatory measures to be taken for the safeguarding of cultural property against the foreseeable effects of an armed conflict. Such provisions could and should be applied by Forces involved in PSO. Other provisions of the Second Protocol, such as Art. 9 on the protection of cultural property in occupied territory, could be applied in PSO by analogy only.

## **Definition of "cultural property"**

Unfortunately, from a legal point of view, the definition of cultural property in Art. 1 of the Convention differs from similar definitions in other international humanitarian law treaties. The Hague Regulations Respecting the Laws and Customs of War on Land 1907 as well as Protocol I 1977 Additional to the Geneva Conventions of 1949 work both on the basis of somewhat different categories of objects protected as "cultural property". In practice these differences are to be solved by determining in each particular situation of armed conflict which treaty is applicable and prevails over the other.

Whereas the above-mentioned UNESCO study proposes to re-consider the definition of "cultural property", which was identified to be rather out-of-date and very imprecise, the Second Protocol does not alter that definition. Already in the preparatory phase it became clear that an attempt to alter the definition of "cultural property" would risk to undermine the Convention and to never finish the review process in reasonable time, if at all.

## **The balance between protection of cultural property, protection of human life and military necessity**

Under the Convention the obligations to safeguarding and respect cultural property may be waived in cases where military necessity "imperatively" requires such a waiver. The Convention does not define what constitutes "imperative" military necessity. It is therefore up to each State Party to interpret these terms. This entails a high risk of ambiguity in State practice and even a potential for misuse of this waiver.

With the entry into force of the 1977 Protocol I, the interpretation of the Convention even became more difficult. In contrast to the Convention, where both the attacking as well as the defending side could avail itself of the waiver on the basis of imperative military necessity, the defending side under Protocol I was in a worse position in comparison with the attacking side, since it could not avail itself of any exception to the obligation not to use cultural property in support of military action. The attacking side, however, is privileged by Protocol I in comparison with the Convention insofar as it could legitimately attack cultural property which has become a military objective in the sense of Art. 52 para. 2 of Protocol I without any further prove that military necessary imperatively required it to do so. This discrepancy between Protocol I and the Convention was obviously recognised during the negotiations on Protocol I but was not satisfactorily resolved: Protocol I merely states that its prohibitions with regard to the protection of cultural property shall be "without prejudice to the provisions of" the Convention.

The most difficult issue under the Second Protocol, and probably the most controversial one throughout the whole review process, was the waiver of the obligation to respect cultural property on the basis of imperative military necessity pursuant to Art. 4 para. 2 of the Convention.

In the first phase of the review process of the 1954 Convention it seemed as if the concept of imperative military necessity would be abandoned altogether. This would, however, have lowered the standard of protection of cultural property in the event of armed conflict, and, especially for that party to the conflict which exceptionally needed to use cultural property in support of military action, have led to the primacy of the protection of objects over that of human lives - a ranking that could not reasonably be upheld. In the later phase of the review process a growing number of States defended the value of the concept of military necessity and, finally, a majority of States was in favour of retaining the concept while at the same time having its content further clarified.

As a result of extensive discussions held at the Diplomatic Conference, the Second Protocol corroborates and supplements Art. 4 of the Convention. According to Art. 6 of the Second Protocol, a waiver on the basis of imperative military necessity pursuant to Art. 4 para. 2 of the Convention may only be invoked to direct an act of hostility against cultural property when and for as long as that cultural property has, by its function, been made into a military objective, and there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective. Furthermore, Art. 6 also specifies the circumstances under which a waiver on the basis of imperative military necessity may be invoked to use cultural property for purposes which are likely to expose it to destruction or damage in the event of armed conflict. Finally, Art. 6 adds two further restraints to the invocation of the waiver pursuant to Art. 4 para. 2 of the Convention by requiring a certain level of command at which the decision should be taken, and by introducing an obligation whenever circumstances permit to give an effective advance warning before cultural property is attacked.

In addition, the Second Protocol introduces the respective provisions of Protocol I of 1977 on precautions in attack and on precautions against the effects of hostilities into the Convention.

In conclusion, the problem of striking a proper balance between the protection of cultural property, on the one hand, and the protection of human lives and military necessity on the other, has been satisfactorily resolved by the Second Protocol.

### **Current rules on "special protection"**

The Convention provides for so-called "special protection" of a limited number of immovable cultural property of "very great importance", provided that it is situated at an "adequate" distance from any large industrial centre or from any important military objective, and is not used for military purposes.

The answer to the question of what makes the protection "special", is not easily to be given. The Convention provides that special protection is granted to cultural property by its entry in the "International Register of Cultural Property under Special Protection". Through this procedure the type and the location of cultural property under "special protection" becomes widely known.

The obvious advantage of this publicity is the significant reduction of the probability of accidental damage or destruction of such cultural property duly registered. On the other hand, it increases the risk of deliberate destruction. Past experience demonstrates that attacking and occupying forces are very likely to deliberately target collections of especially important movable national treasures and collections. In light of these facts, the "special protection" of cultural property seems to offer no definitive advantage in comparison with "normal" protection.

Paradoxically, cultural property under "special protection" seems to be less protected by law than cultural property under "normal" protection. Whereas the latter must not be used or attacked unless military necessity imperatively so demands, cultural property under "special protection" may be used or attacked in each case where the immunity is violated by the opposing side, regardless of whether this is necessary or not.

As the "special protection" regime of the Convention had turned out to be more or less ineffective in practice, the Diplomatic Conference on the Second Protocol decided to establish a new (and third) category of cultural property, namely cultural property under "enhanced protection".

In order to be eligible for enhanced protection, cultural property must fulfil the following conditions: It must be cultural heritage of the greatest importance for humanity, be protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection, and it must not be used for military purposes or to shield military sites and a declaration must have been made by the Party which has control over the cultural property, confirming that it will not be so used. While the first and the third condition are indispensable, the second (adoption of adequate domestic measures) is not. In exceptional cases, where a State Party requesting inclusion of cultural property in the list of cultural property under enhanced protection cannot fulfil the criteria of adequate domestic measures, enhanced protection may nevertheless be granted, provided that the requesting State submits a request for international assistance.

The Second Protocol establishes a specific institutional framework, inter alia for the protection of cultural property under enhanced protection, namely a Committee for the Protection of Cultural Property in the Event of Armed Conflict and a List of cultural property under enhanced protection. Besides the regular procedure for granting enhanced protection, the Second Protocol also provides for an emergency procedure in case of armed conflict.

The protection afforded to cultural property under enhanced protection differs from the level of protection of cultural property under "normal" protection pursuant to Chapter 2 of the Second Protocol and to Chapter I of the Convention, as well as from the standard of protection provided for cultural property under special protection pursuant to Chapter II of the Convention mainly in three ways:

Firstly, there is no possibility of a waiver of the obligation of the Parties to an armed conflict to ensure the "immunity" of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property or its immediate surroundings in support of military action. If cultural property under enhanced protection is used in support of military action it loses its enhanced protection either by suspension or cancellation of the

enhanced protection status by the Committee, or, automatically, by, and for as long as, having become - by its use - a military objective.

Secondly, even if the cultural property concerned has, by its use, become a military objective and thereby lost its enhanced protection status, it may only be the object of attack if the attack is the only feasible means of terminating such use of the property, if all feasible precautions are taken in the choice of means and methods of attack, with a view to terminating such use and avoiding, or in any event minimising, damage to the cultural property, and if, unless circumstances do not permit, due to requirements of immediate self-defence, the attack is ordered at the highest operational level of command, effective advance warning is issued to the opposing forces requiring the termination of the use and reasonable time is given to the opposing forces to redress the situation.

Thirdly, making cultural property under enhanced protection the object of attack, or using cultural property under enhanced protection or its immediate surroundings in support of military action, constitutes, if committed intentionally and in violation of the Convention or the Second Protocol, a serious violation of the Protocol which entails individual criminal responsibility.

While putting much effort in drafting the provisions on enhanced protection and improving the implementation of the Convention in that regard, the Diplomatic Conference did not, however, decide on the marking of cultural property under enhanced protection. The question whether a distinctive emblem should be created or whether the emblem established by Art. 16 of the Convention should be used for the marking of cultural property under enhanced protection will have to be finally decided by the Committee.

### **The execution of the Convention**

The execution of the Convention rests on six pillars: The system of Protecting Powers, international assistance, dissemination, reporting, a specific institutional framework and the criminal prosecution of persons violating the Convention.

### **The system of Protecting Powers**

Firstly, the Convention draws on the system of Protecting Powers, already used in the Geneva Conventions of 1949, and combines it with a Commissioner-General for Cultural Property to be chosen by agreement. In practice, however, there has been hardly any application of this system, since also the Protecting Power System did not play a significant role in the conflicts since 1954.

The main flaw of the Second Protocol lies in the fact that it builds on the system of Protecting Powers, which has in practice turned out to be ineffective. The Second Protocol mainly copies the respective provisions of the Convention, and adds a procedure of conciliation in the absence of Protecting Powers. It is not clear from the wording of this provision whether it applies in case of disagreement about the appointment of delegates of Protecting Powers only, or whether it provides a general dispute settlement procedure for any disagreement among States Parties on the application or interpretation of the Second Protocol. As the Final Clauses of the Second Protocol do not contain a provision on the settlement of disputes, it seems as if this provision was intended to serve as a general dispute settlement clause. Its wording, however, limits its applicability to situations of armed conflict.

### **International Assistance**

Secondly, the States Parties of the Convention may call upon the UNESCO for technical assistance in organising the protection of their cultural property, or in connection with any other problem arising out of the application and execution of the Convention. The Organisation is also authorised to make, on its own initiative, proposals to the States Parties. In practice, the intervention of UNESCO, through the offices of a Special Representative of the Director-General, proved to be successful in several cases.

The Second Protocol also contains provisions devoted to the issue of international assistance. It authorises States Parties to request from the Committee for the Protection of Cultural Property in the Event of Armed Conflict international assistance for cultural property under enhanced protection as well as assistance with respect to the preparation, development or implementation of adequate domestic laws, administrative provisions and measures for the protection of such property. This right to request assistance applies in peace-time as well as in times of armed conflict. The Second Protocol further invites parties to an armed conflict, which are not Parties to the Second Protocol but which accept and apply (some of) the provisions, to request appropriate

international assistance from the Committee. While the latter shall adopt rules for the submission of requests for international assistance and shall define the forms the international assistance may take, States Parties to the Second Protocol are encouraged to give technical assistance of all kinds, through the Committee, to those States or other parties to the conflict who request it.

Finally, the Second Protocol deals with peace-time assistance for States Parties in organising the protection of their cultural property, such as preparatory action to safeguard cultural property, preventive and organisational measures for emergency situations and compilation of national inventories of cultural property. Each State Party to the Second Protocol may call upon UNESCO for technical assistance in this regard, or in connection with any other problem arising out of the application of the Second Protocol. UNESCO, which is also authorised to make, on its own initiative, proposals on these matters to the States Parties shall accord such assistance within the limits fixed by its programme and by its resources. Within as well as outside the framework of UNESCO, States Parties are "encouraged" to provide technical assistance at bilateral or multilateral level.

### **Dissemination**

Thirdly, the States Parties of the Convention are obliged to disseminate the text of the Convention as widely as possible, and to include the study thereof in their programmes of military and, if possible, civilian training.

Also the Second Protocol deals with dissemination, using mostly language of the Convention and adding some details.

### **Reporting**

Fourthly, the States Parties of the Convention shall forward to the Director-General of UNESCO, at least once every four years, a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the Convention. In practice this periodic reporting system - although a valuable means of sharing experience as the reports are distributed to all States Parties - has not functioned too well. It appears that only about 20 % of the reports that should have been prepared by States Parties according to the requirements of the Convention have actually been submitted.

The Second Protocol, using similar language from the Convention, obliges States Parties to translate the Second Protocol into their official languages and to communicate these official translations to the Director-General of UNESCO. Furthermore, States Parties shall submit to the Committee, every four years, a report on the implementation of the Protocol, which will be considered and commented on by the Committee and merged into the Committee's own report to be prepared for the Meeting of States Parties.

### **Institutional framework**

Fifthly, Meetings of the States Parties of the Convention function as a forum to study problems concerning the application of the Convention, and to formulate recommendations in respect thereof. Only recently, in the context of discussions to revise the Convention, have the Meetings of States Parties been revived after more than three decades without any such meeting.

The Second Protocol establishes a new institutional framework providing the States Parties with a means of being more closely involved in the protection of cultural property in the event of armed conflict. This institutional framework includes the Meeting of the States Parties, the Committee for the Protection of Cultural Property in the Event of Armed Conflict, and the Fund for the Protection of Cultural Property in the Event of Armed Conflict.

The Meeting of the States Parties of the Second Protocol shall be convened at the same time as the General Conference of UNESCO and in co-ordination with eventual Meetings of the States Parties to the Convention. At the request of at least one-fifth of the States Parties, an Extraordinary Meeting of the States Parties shall be convened by the Director-General of UNESCO. The Meeting of the States Parties shall elect the members of the Committee, endorse the guidelines developed by the Committee for the implementation of the Second Protocol, provide guidelines for, and supervise the use of the Fund by the Committee, consider the reports submitted by the Committee on the implementation of the Protocol, and discuss any problem related to the application of the Protocol, and make recommendations, as appropriate.

The Committee for the Protection of Cultural Property in the Event of Armed Conflict shall be composed of representatives of twelve States Parties which shall be elected by the Meeting of the States Parties for four years and shall be eligible for immediate re-election only once. The Committee shall develop guidelines for the implementation of the Protocol, grant, suspend or cancel enhanced protection for cultural property and establish, maintain and promote the List of cultural property under enhanced protection, and promote the identification of cultural property under enhanced protection. Furthermore, it shall monitor and supervise the implementation of the Protocol, consider and comment on reports of the Parties, seek clarifications as required, and prepare its own report on the implementation of the Protocol for the Meeting of the States Parties. Finally, it shall receive and consider requests for international assistance, determine the use of the Fund, and perform any other function which may be assigned to it by the Meeting of the Parties.

The Fund for the Protection of Cultural Property in the Event of Armed Conflict shall serve to provide financial or other assistance in support of preparatory or other measures to be taken in peacetime, and to provide financial or other assistance in relation to emergency, provisional or other measures to be taken in order to protect cultural property during periods of armed conflict or of immediate recovery after the end of hostilities. The resources of the Fund shall consist of voluntary contributions made by the States Parties, of contributions, gifts or bequests made by other States, UNESCO or other organisations of the United Nations system, other intergovernmental or non-governmental organisations, and public or private bodies or individuals, of any interest accruing on the Fund, of funds raised by collections and receipts from events organised for the benefit of the Fund, and of all other resources authorised by the guidelines applicable to the Fund. Disbursements from the Fund shall be used only for such purposes as the Committee shall decide.

### **Criminal prosecution**

Finally, the States Parties of the Convention are obliged to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and punish those persons, of whatever nationality, who commit or order to be committed a breach of the Convention. In practice, however, the observance of this obligation is the exception rather than the rule. Other priorities usually prevail at the end of an armed conflict, and if crimes are prosecuted at all, then primarily crimes against life or limb. During the review process, the weak enforcement mechanism of the Convention was considered to be one of its main deficiencies.

The Second Protocol supplements the Convention by establishing three categories of crimes and offences: Serious violations of the Second Protocol which entail criminal responsibility and the perpetrators of which must either be tried or extradited, other serious violations which entail criminal responsibility, and other violations of the Convention or the Protocol. It is evident that only members of the armed forces and nationals of a State which is a Party to the Second Protocol or has otherwise accepted its provisions, do incur individual criminal responsibility by virtue of this Protocol.

Serious violations of the Convention or the Second Protocol shall entail criminal responsibility under domestic law. States Parties to the Second Protocol are obliged to adopt such measures as may be necessary to establish as criminal offences under their domestic law the offences under both the above-mentioned first and second category of violations and to make them punishable by appropriate penalties. This does not preclude the incurring of individual criminal responsibility for such violations under international law, such as, for example, under the Rome Statute of the International Criminal Court. The third category of "other violations" of the Convention or the Second Protocol does not (necessarily) entail criminal responsibility. It merely obliges States Parties to adopt "such legislative, administrative or disciplinary measures as may be necessary" to suppress such violations.

As the definitions of offences contained in Article 15 paragraph 1 lack some precision, in particular in relation to the scope of application of the Second Protocol, it will be the task of the States Parties to make them strict enough when establishing these offences as criminal offences under their domestic law in order to comply with the general principles of criminal law, in particular the principle "nullum crimen sine lege".

In total, however, the provisions of the Second Protocol on criminal prosecution represent one of the major achievements in improving the implementation of the Convention.



## **Conclusions**

The aim of this lecture was to address the major problems in the implementation of the Convention and to examine whether the Second Protocol contributes to their solution. The following problems were addressed: The universality or general applicability of the Convention, its scope of application, the definition of "cultural property", the balance between protection of cultural property, protection of human life and military necessity, the existing rules on "special protection" and the execution of the Convention.

With regard to the universality or general applicability of the Convention, as well as with regard to the balance between protection of cultural property, protection of human life and military necessity, the rules on cultural property deserving special protection, and the execution of the Convention, the Second Protocol decisively contributes to improving the implementation of the Convention. In particular by creating a useful and task-oriented institutional framework and by extending the criminal prosecution of persons violating the Convention or the Second Protocol, the Second Protocol helps to increasing the chances that States get more closely involved in the protection of cultural property in the event of armed conflict.

The destruction of cultural property in situations of armed conflict can only be minimised or even be avoided by a change of human behaviour. The legal framework necessary for directing that change is there. It must only be accepted and applied.

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**Protection of Cultural Property: Reflections from a civilian and a military point of view**

**What is Cultural Property, how is it protected under international humanitarian law ?**

Protection of cultural property is a relatively old issue in international humanitarian law (IHL). The first attempt was made in the regulations respecting the laws and customs of war on land of 18 October 1907 (H IV)<sup>1</sup>, today considered as customary international law applicable during international armed conflicts. In Article 27 of those regulations we find a provision which could be regarded as a forerunner to the 1954-Hague Convention for the protection of cultural property (HCP)<sup>2</sup>. The Article states that “*in sieges and bombardments, all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes*”. The second paragraph of the said article continues: “*it is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand*”. Similar provisions were also introduced in the Hague convention concerning Bombardments by Naval Forces<sup>3</sup>. In 1935, the Roerich Museum in the United States initiated the Roerich Pact<sup>4</sup>, a treaty which has gained adherence in North and South American States. This treaty introduced a narrower definition of cultural objects, which are to be protected in times of peace as well as in times of war. “*Historic monuments, museums, scientific, artistic, educational and cultural institutions*” fall under the protection of the Roerich Pact which shall be considered as neutral and as such respected and protected by belligerents.

Neither the Hague Regulations nor the Roerich Pact succeeded in preventing widespread and systematic destruction and looting of masterpieces of art during World War II, particularly in Europe. After the war, the 1949-Geneva Conventions<sup>5</sup> did not address to the protection of cultural property, although events had revealed that the protection offered by existing treaty law was insufficient. Therefore States addressed this issue in 1954, adopting the HCP. The preamble affirms that cultural property has suffered grave damage during recent armed conflicts and that developments in the technique of warfare would increase the danger for cultural property in war even further. It also confirms that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, which justifies its special protection by IHL. The Convention provides a precise definition of objects falling under its protection<sup>6</sup>. UNESCO

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<sup>1</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

<sup>2</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954; (quoted HCP).

<sup>3</sup> Convention (IX) concerning Bombardments by Naval Forces in Time of War. The Hague, 18 October 1907, Art. 5. „*In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes. It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large, stiff rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white*“.

<sup>4</sup> Treaty on the protection of artistic and scientific institutions and historic monuments (Roerich Pact), Art. 1. The treaty has so far only been ratified by American States. It contains a distinctive sign, which should help to identify protected objects under that treaty (3 orange points arranged in form of a triangle).

<sup>5</sup> Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

<sup>6</sup> Art. 1: Definitions

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;

is assigned a special role, comparable to the ICRC's role in the Geneva Conventions, with regard to the co-ordination of efforts and keeping records of specially protected cultural property. HCP was amended by regulations for the execution of the convention and Protocol I, which contains provisions to prevent exportation of cultural property from occupied territories and regulates the safeguard of cultural property in third States during armed conflict.

The 1977 additional Protocols<sup>7</sup> of the Geneva Conventions integrated the protection of cultural property in the Geneva-law system, using a definition which is based rather on the 1907-Hague regulations than on HCP. Protocol I prohibits acts of hostility directed against "*historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples*<sup>8</sup>"; it also prohibits to use such objects in support of the military effort and to make them object of reprisals. Protocol II, applicable in non-international armed conflicts contains a similar provision<sup>9</sup>. The definition of additional Protocol I is again wider than the one used in the 1954 Hague convention, and the prohibition to use such objects for military purposes does not provide for any exception. Consequently, making the clearly-recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples object of an attack, causing as a result extensive destruction thereof, is considered as a grave breach of the Protocol, provided that no violation by the adverse Party existed and that the object was not located in immediate vicinity of a military objective<sup>10</sup>. States party to Protocol I are obliged to ensure its application and to repress grave breaches.

A most significant improvement has finally been achieved when for the first time penal provisions were introduced in the Rome Statute of the International Criminal Court (ICC):

Article 8 - *War crimes* also include a provision on cultural property, stating that

"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 " are considered as "other serious violation of the laws and customs applicable in international armed conflict, within the established framework of international law".

The penal provisions have finally been introduced in additional Protocol II to the Hague Convention of 1954<sup>11</sup>, in chapter 4. Serious violations of the Protocol are the following intentionally committed offences:

- making cultural property under enhanced protection the object of attack
- using cultural property under enhanced protection or its immediate surroundings in support of military action;
- extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;
- making cultural property protected under the Convention and this Protocol the object of attack;
- theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the convention.

For non-lawyers, the various provisions and definitions of the treaties may seem slightly confusing. However, we can distinguish three essential elements of the protection system for cultural property, anchored in customary international law, thus binding for all States during armed conflicts whether internal or international:

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- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in subparagraph (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 subparagraph (a);
  - (c) centers containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as «centers containing monuments».

<sup>7</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (AP I)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. (AP II)

<sup>8</sup> AP I, 53.

<sup>9</sup> Although Protocol II does not contain provisions on grave breaches, the International Criminal tribunal for Rwanda has affirmed that serious violations of provisions of the Protocol can be considered as grave breaches or war crimes.

<sup>10</sup> AP I, 85 (4) d.

<sup>11</sup> Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999 (HCP P II)

- the obligation of attacking forces to spare cultural property unless it is abused by the opposing party for military purposes;
- the obligation of defending forces to keep away from such objects as far as possible (allowing considerations of military necessity);
- the obligation of the authority which effectively controls such objects to mark them visibly.

We have also seen that the definitions of “cultural property” are not consistent: in the older Hague rules, the term is used in a very broad sense, including places of worship which would not be of a particular value as cultural property. This broader definition has also been used in the Geneva Protocols and the Rome-Statute. The Roerich Pact narrows the definition in comparison to the Hague regulations, but is still wider than HCP because it includes scientific, educational and cultural institutions. The definition of HCP, reiterated in Protocol II to HCP, is more precise but also more narrow in scope. The various types of objects to be protected are listed, limiting protection to cultural property, to safeguards of cultural property and to centres containing monuments.

### **How does the protection work in practice ?**

The protection of cultural property can only be achieved if civilian and military authorities work closely together. Protection starts in peace, but quality and efficiency of protective efforts are tested during armed conflicts.

To be successful in the constant endeavour to preserve cultural property, the responsible specialists of the civilian and military authorities must dispose of the necessary means.

We identify:

- Financial means, needed for preservation, maintenance and recording of cultural property
- Qualified personnel, including specialists of all kind, needed to protect the great variety of objects
- Well trained and well conducted manpower to execute protective measures such as protection in situ or evacuation in case of emergency
- Logistic support (e.g. by the civil protection or by the armed forces)
- Sufficient opportunity to conduct realistic training exercises

Many States have therefore introduced specific legislation, Switzerland e.g. adopted in 1966 the Federal Law of the Protection of Cultural Property of 6 October as well as several executing regulations. State organs may also be supported by private institutions such as Private societies for the Protection of Cultural Property, which can play a major role in training the skilled personnel and dissemination of the legal documents.

The following chart provides an example on how the provisions of HCP P II could be put into practice:

<p><u>Article 5 Safeguarding of cultural property</u></p> <p>Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict pursuant to Article 3 of the Convention shall include, as appropriate, the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.</p>	<p>Measures taken in Switzerland</p> <ul style="list-style-type: none"> <li>- National Inventory of Cultural Property drafted (inter-ministerial working group);</li> <li>- microfilms of documents or safeguard documentation of buildings, etc. are produced;</li> <li>- disaster plans (for each object) are set up;</li> <li>- evacuation plans (indicating movable objects, their precise location and priority for evacuation) are produced;</li> <li>- shelters for movable objects are built;</li> <li>- personnel (civilian and/or military) is trained.</li> </ul>
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The federal structure of Switzerland imposes a close co-operation between the Federal government, the Cantons and the Municipalities, because they share the responsibility of protecting the rich cultural heritage of the country. The Federal authorities issue guidelines and provide Cantons with advice. They are also in charge of the central database of cultural property, which needs to be accurate at all times. The decision which objects are to be considered as of national importance is taken in consultation, not only among specialists of cultural property, but also e.g. in co-operation with the Federal Department of Defence. This makes sense as the presence of military objectives in close vicinity to cultural objects is not compatible with the Convention.

The Cantons are responsible for the financing and execution of protective measures such as shelters, documentation of each object and disaster plans. Last but not least we have to mention the thousands of Swiss municipalities. They protect the objects located on their territory, in case of fire by sending the fire-brigade, which depends on essential information contained in evacuation plans. The civil defence includes a group of specialists for the protection of cultural property, which is regularly exercising to protect “their” objects. Municipalities therefore play the most important role. But we should not forget private owners of cultural objects, especially of historic buildings: they are also obliged to observe restrictions in the use or preservation of such objects.

Co-operation is further required between civilian and military authorities.

The military commander is under the obligation to respect and spare cultural objects located in his area of responsibility. But to comply with this obligation, he must be told the precise location of objects deserving special protection. In Switzerland, about 1600 objects have been identified being of national importance (cat. A). They are listed in an inventory with precise map references and visualised on the cultural property protection map (scale of 1:300'000), using specific symbols to indicate type and character of the protected object. Objects of category A may be marked in times of war with the blue shield.

The cultural property protection map also includes a booklet which provides additional information on each object and contains enlarged plans of cities containing several objects in close vicinity. Currently, the documentation is revised completely. Map and inventory have been made available to all Swiss military commanders at battalion, for fire support units even at company level. They were also sent to the other HCP States Party. Inventory and map are available for sale and can be consulted in public libraries.

In the event of disaster or armed conflict, such documents are only useful, if they are kept up-to-date and if they are made accessible in a format which fits to the needs of the user. The rapid change of military technology with a fully digitised battlefield will request further thought on the appropriate way to pass the essential data of cultural property, eventually of all objects deserving IHL-protection. The essential data should be made accessible for military users to permit that modern command systems integrate them hence preventing mistakes in targeting .

In many cases, where military necessity may impose local or temporary restrictions on the protection of cultural property, civilian specialists are needed to consult commanders and staff officers in order to safeguard as much as possible of the cultural property at stake, thus limiting potential damage to a strict minimum. Precise rules of engagement, designed to deal with the objects located in an area of responsibility, may provide guidelines for military leaders.



Information about cultural property is also vital for peace support operations. How much easier would KFOR's task in protecting Kosovo's endangered cultural property have been, if updated records had been at hands. Protection demands well trained personnel which can be called in whenever needed. Specialists are needed to prepare the inventories and emergency plans.

In case of natural or man-made disaster, the cultural property personnel should work under the guidance of civilian specialists. Experience has demonstrated on many occasions that more damage can be done, if emergency measures are improvised. Therefore we strongly recommend exercises *in situ*, which are indispensable to test emergency plans to provide the personnel with a precious opportunity to acquire the necessary know-how. These elements were already valid before the additional protocol was adopted. But it may be useful to remember them.

### **What will be the effect of HCP P II for the military commander ?**

The regulations concerning the waiving of protection have been improved in comparison to the Convention. Firstly, military commanders may note with satisfaction that the conference of 1999 resisted a tendency to leave out the criteria of military necessity.

The new regulation, which puts the authority of waiving the protection of cultural property under certain circumstances on battalion level<sup>12</sup> has, from our point of view, many advantages. A military staff will have more time to consider several elements, to check out the best possibility to successfully carry out his mission while respecting cultural objects in the area of responsibility.

A staff will also, unlike a unit commander, have personnel and will therefore be able to cooperate with civilian partners even during ongoing war operations.

<sup>12</sup> HCP PII, Art. 6 *Respect for cultural property*

*With the goal of ensuring respect for cultural property in accordance with Article 4 of the Convention:*

- a. a waiver on the basis of imperative military necessity pursuant to Article 4 paragraph 2 of the Convention may only be invoked to direct an act of hostility against cultural property when and for as long as:
  - i. that cultural property has, by its function, been made into a military objective; and
  - ii. there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective;
- b. a waiver on the basis of imperative military necessity pursuant to Article 4 paragraph 2 of the Convention may only be invoked to use cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage;
- c. the decision to invoke imperative military necessity shall only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise;
- d. in case of an attack based on a decision taken in accordance with sub-paragraph (a), an effective advance warning shall be given whenever circumstances permit.

The newly created category of enhanced protection<sup>13</sup>, which should replace the category of “special protection” introduced in the Convention has more chances to become relevant in practice. As States bind themselves not to use such objects for military purposes (a condition to record them in the UNESCO list), the authority of waiving the obligations must remain at the national command level.

HCP PII, as the Convention, is also partly applicable in non-international armed conflicts<sup>14</sup>.

The most important improvement was certainly realised through the adoption of penal provisions<sup>15</sup>. The protection of cultural property is now placed on the same level as other important regulations of IHL. No commander will further be able to ignore or neglect his responsibilities in this field.

### **Conclusion**

The rules concerning the protection of cultural property are now comprehensive and clear. However, recent events in armed conflicts show time and time again, that legal provisions cannot do the job alone. In conflicts of an ethnic or religious nature, cultural property may become a primary target of combatants in order to humiliate the opponent or to eradicate all traces of his existence. What we need most urgently is universal acceptance of the Convention and the additional Protocols and the willingness and commitment of States to uphold their provisions in war.

Compared with other IHL-instruments, the number of ratification’s of HCP and its additional protocols is still unsatisfactory. However, we have reasons to hope that the new dynamic created by Protocol II may conduce other States to become party to those important instruments. Cultural heritage is lost only once, and mankind without history is condemned to oblivion.

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<sup>13</sup> HCP PII, Chapter 3, Art. 10-14

<sup>14</sup> HCP PII, Chapter 5 The protection of cultural property in armed conflicts not of an international character, Art. 22.

<sup>15</sup> HCP PII, Chapter 4 Criminal responsibility and jurisdiction, Art. 15-21.

## **UNESCO's Ability to Intervene in Crises and Conflict**

First of all, let me thank for giving me with the opportunity to make a presentation on different aspects of our activities on the protection of cultural property in the event of armed conflict.

I would start by stressing that the Secretariat of UNESCO is the implementing agency for the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 (in short the Convention) and its two Protocols, the only instruments focused exclusively on the protection of cultural heritage during hostilities. Currently, 100 States (including Austria) are party to the Convention, 83 of which are also Parties to the 1954 Protocol. For your further information, a copy of the Convention, the list of States Parties and a leaflet on the Convention are available in the meeting room. More information can be found on the UNESCO web site, at <http://www.unesco.org/general/eng/legal/convent.html> or <http://www.unesco.org/culture/legalprotection/index.html>.

In case of conflict between one or several parties to the Convention, UNESCO's main ability to intervene for the protection of cultural property is based upon Article 23 of the Convention which states that

1. The High Contracting Parties may call upon the United Nations Educational, Scientific and Cultural Organization for technical assistance in organizing the protection of their cultural property, or in connection with any other problem arising out of the application of the present Convention or the Regulations for its execution. The Organization shall accord such assistance within the limits fixed by its program and by its resources.

2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties."

This important provision allows UNESCO to take a flexible approach to the provision of assistance according to the nature of the conflict, the territorial and temporal scope of the conflict and specific circumstances of the conflict. This approach may vary – from a letter addressed to the Permanent Delegate to UNESCO of the State(s) concerned, drawing attention to the need to protect cultural property, through the dispatch of a personal representative of the Director-General to the conflict area to assess the damage to cultural property caused by armed conflict and to propose concrete ways of restoring it, to a special appeal made by the Director-General to warring Parties to comply with the provisions of the Convention.

Another option available to UNESCO is utilization of the system of Protecting Powers, laid down in Articles 21 and 22 of the Convention and further developed in the Regulations for the Execution of the Convention (in short the Regulations), and of Commissioners-General as set forth by Chapter VII of the Convention and the Regulations. The system of Protecting Powers was mainly inspired and is closely based on the relevant provisions of the four Geneva Conventions 1949 for the protection of war victims and Additional Protocol I to those Conventions.

Before going further, let me provide those of you who are less familiar with international humanitarian law with a definition of a Protecting Power in international humanitarian law. "For purposes of the Geneva Conventions on the Protection of War Victims (75 U.N.T.S. 5 ff) and Protocol I of 8 April 1977 ((1977) 16 I.L.M. 1391) "Protecting Power" means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and Protocol." The Convention does not contain a provision on the appointment of Protecting Power, thus leaving this issue to public international law in general. "In international law, the Protecting Powers may be appointed either in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961 (Article 46) or in conformity with the provisions of the Geneva Conventions and Additional Protocol I. The Protecting Power thus appointed must act in accordance with the requirements laid down in the articles of these international conventions."

However, the system of Protecting Powers has not fulfilled expectations because it has been used only once, following the Middle East conflict in 1967, and since then has not been used. What are the reasons for the failure to apply this system? There are, in my opinion, mainly two. First, the system was originally conceived to be of assistance during classical interstate wars lasting months or even years. However, a majority of contemporary armed conflicts and, in



particular, those of both international and non-international character do not correspond to such a profile. Secondly, its successful implementation depends on the agreement of all Parties to the conflict, which is extremely difficult to reach in practice. For this reason, in recent conflicts such as the Middle East conflict, the Iran-Iraq war and during the break-up of the former Yugoslavia, the Director-General preferred to use the services of his personal representative(s) to conduct quiet diplomacy between the States concerned, with a view to improving the protection of cultural property.

Several minutes ago I mentioned the institution of Commissioners-General. For those of you who are not familiar with the Convention I am going to say a few words about it. A Commissioner-General is a person appointed from a special list of persons compiled by the Director-General, who is selected by joint agreement between the Party to which he/she will be accredited and the Protecting Power acting behalf of the opposing Parties. In accordance with Article 6(1) of the Regulations, the Commissioner-General shall deal with all the matters referred to him/her in connection with the application of the Convention, in conjunction with the representative of the Party to which he/she is accredited and with the delegates of Protecting Powers. His/her functions include carrying out investigations, making representations to the Parties to the conflict or to their Protecting Powers and drawing up reports on the implementation of the Convention. Finally, he/she exercises the function of the Protecting Power if there is no Protecting Power.

The system of Commissioners-General, which is interlinked with the system of Protecting Powers, worked only once – again following the Middle East conflict. When the mandates of the two Commissioners-General accredited in 1967, one to Israel and the other to the Arab Governments concerned (Egypt, Jordan, Lebanon and the Syrian Arab Republic), were terminated in 1977, no new Commissioner-General to be accredited to the Arab Governments concerned was appointed, thus de facto putting an end to further implementation of this institution.

For this reason, the review of the Convention which started in 1991 and resulted in the adoption of the Second Protocol by the March 1999 Hague Diplomatic Conference led to the creation of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, a twelve-member Intergovernmental Committee, which will have powers in the implementation of the Convention and the Second Protocol, in respect of those States which will be party to both instruments. The Committee has mainly administrative and technical functions, such as the supervision of the implementation of the Second Protocol, the management of enhanced protection, and consideration and distribution of technical assistance.

The Second Protocol has not yet entered into force but to date, five States (Belarus, Bulgaria, Cyprus, Qatar and Spain) have deposited their instruments of ratification and Azerbaijan, Libyan Arab Jamahiriya, Nicaragua and Panama have deposited their instruments of accession. For your further information, a copy of the Second Protocol together with the list of States signatories is available in the meeting room.

So far I have spoken about the Organization's options in cases of conflict involving two or more Parties to the Convention. But what options does the Organization have for intervention if one or more States involved in the conflict are not party to the Convention? In such a case, the Director-General may use his/her mandate for the protection of world's cultural property under the UNESCO Constitution. His/her actions may include public appeals, such as was done in case of the destruction of Afghan cultural heritage; diplomatic negotiations; or dispatch of his/her personal representatives to the conflict area to prevent damage to or destruction of cultural heritage or, if such damage or destruction has already taken place, to prevent the repetition of such acts and to restore cultural heritage which may still be restored. For your further information, a copy of one of the Press Releases on Afghanistan is available in the meeting room.

Let me now give you two examples of our most recent activities for the protection of cultural heritage in the event of armed conflict.

Firstly, as a reaction to atrocities committed on cultural property in Kosovo, the Secretariat has prepared, in co-operation with the International Committee of the Red Cross, a plastified printed slip on basic principles on the protection of cultural property. The handout, which is written in Albanian, English and Serb, gives seven basic principles, in simple language, based mainly on provisions of Article 4 of the Convention regarding respect for cultural property. It is hoped that this handout will raise awareness of the paramount need to protect cultural property of all ethnic groups. For your further information, a copy of this handout is available in the meeting room.

Secondly, the Secretariat has been working with the UN Commission of Experts established pursuant to UN Security Council Resolution 780 (1992) and the International Criminal Tribunal for the former Yugoslavia, on the investigation of grave breaches against cultural property, in particular with regard to Dubrovnik, Croatia. The Director-General of UNESCO issued on 13 March, 2001 a press release welcoming the fact that the International Criminal Tribunal for the former Yugoslavia included the destruction of historic monuments in its 16-count indictment relating to the 1991 attacks on the ancient port city of Dubrovnik. In particular, he stated: "This sets a historic precedent as it is the first time since the judgements of the Nürnberg and Tokyo tribunals that a crime against cultural property has been sanctioned by an international tribunal. This indictment concerns a breach of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, a global agreement on the protection of cultural heritage during hostilities, which is administered by UNESCO. It shows that the international community will not sit idly by and condone crimes against cultural property." For your further information, a copy of this Press Release is available in the meeting room.

To conclude my presentation, let me emphasize the importance of co-operation between your country and UNESCO in the implementation of the Hague Convention and its two Protocols. Meetings such as this, organized within the framework of the NATO Partnership for Peace program, are a very valuable example of combining military and civilian experience in the implementation of the Convention, thus leading to enhanced respect for the protection of cultural property in the event of armed conflict. Finally, let me underscore the significance of members of civil society such as the Austrian Society for the Protection of Cultural Property, one of the most active non-governmental organizations in this field, which has raised awareness, within Austria and elsewhere, of the need to comply with the letter and spirit of the Convention.

## U N E S C O

### **SECOND PROTOCOL TO THE HAGUE CONVENTION OF 1954 FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT (THE HAGUE, 26 MARCH 1999)**

as at 20 July 2001

This List is updated when a new instrument is deposited.

Note: The Second Protocol was opened for signature at The Hague from 17 May 1999 until 31 December 1999 in accordance with Article 40.

States	Date of signature	Date of ratification (R) acceptance (Ac) accession (A) approval (Ap) succession (S)
Albania	17 May 1999	
Armenia	22 October 1999	
Austria	17 May 1999	
Azerbaijan <sup>16</sup>		17 April 2001 (A)
Belarus	17 December 1999	13 December 2000 (R)
Belgium <sup>17</sup>	17 May 1999	
Bulgaria	15 September 1999	14 June 2000 (R)
Cambodia	17 May 1999	
Colombia	31 December 1999	
Côte d'Ivoire	17 May 1999	
Croatia	17 May 1999	
Cyprus	19 August 1999	16 May 2001 (R)

<sup>16</sup> The instrument contained the following reservation: "The Republic of Azerbaijan declares that under the definition of "the competent national authorities of the occupied territory" mentioned in Article 9, paragraph 2 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, it understands the central competent authority dealing with the issues on the protection of the cultural properties situated over the whole territory of the Party to the Protocol".

<sup>17</sup> With the following declarations: 'Cette signature engage également la Communauté française, la Communauté germanophone, la Région Wallone et la Région de Bruxelles-Capitale.', 'Cette signature engage également la Région flamande.'

Ecuador	29 December 1999	
Egypt	29 December 1999	
Estonia	17 May 1999	
Finland	17 May 1999	
former Yugoslav Rep. of Macedonia	17 May 1999	
Germany	17 May 1999	
Ghana	17 May 1999	
Greece	17 May 1999	
Holy See	17 May 1999	
Hungary	17 May 1999	
Indonesia	17 May 1999	
Italy	17 May 1999	
Libyan Arab Jamahiriya		20 July 2001 (A)
Luxembourg	17 May 1999	
Madagascar	17 May 1999	
Morocco	21 December 1999	
Netherlands	17 May 1999	
Nicaragua		1 June 2001 (A)
Nigeria	17 May 1999	
Oman	30 June 1999	
Pakistan	17 May 1999	
Panama		8 March 2001 (A)
Peru	13 July 1999	
Qatar	17 May 1999	4 September 2000 (R)
Romania	8 November 1999	
Slovakia	22 December 1999	
Spain	17 May 1999	6 July 2001 (R)
Sweden	17 May 1999	
Switzerland	17 May 1999	
Syrian Arab Republic	17 May 1999	
Yemen	17 May 1999	

Note: The Second Protocol has not yet entered into force.

**Jan Hladik,**  
Division of Cultural Heritage,  
UNESCO, Paris

**Isabelle KÜNTZIGER, International Committee of the Red Cross, Geneva**

## **Intervention on Behalf of the International Committee of the Red Cross**

First of all, I would like to thank the organizers of this seminar for having invited the International Committee of the Red Cross (ICRC) to participate and for giving us the opportunity to take the floor during this session. Before I begin my presentation, I would like to quote a colleague of mine, whose words explain the reason why protection of cultural property is an important issue for the ICRC.

*"While human life is still more important than objects, it is nevertheless essential to have rules protecting cultural property, as such objects constitute the collective memory of humanity, examples of its greatest achievements, and symbolize human life itself. If cultural property is destroyed, civilian life suffers greatly as well."*

As you know, the International Committee of the Red Cross is an independent humanitarian organization which has received a twofold mandate from States: to protect and assist the victims of armed conflict; and to act as the guardian of international humanitarian law.

International humanitarian law, also called the law of armed conflict or the law of war, can be defined as the law applicable in armed conflict. It sets out detailed rules aimed at protecting victims of armed conflicts and restricting the means and methods of warfare. Many of those rules are set out in the four Geneva Conventions of 1949 and their two additional Protocols of 1977, as well as others instruments prohibiting or restricting the use of weapons or protecting cultural property during armed conflict, such as the 1954 Hague Cultural Property Convention and its two Protocols.

I do not wish to tackle how the ICRC may contribute to better protection of cultural property during armed conflict, although this is obviously a matter of crucial concern to the ICRC and one which the ICRC would discuss with belligerents as it would any other aspect of respect for international humanitarian law. I would prefer to focus on practical ways to implement protection for cultural property at the national level and on the activities of the ICRC Advisory Service on international humanitarian law in this regard.

In order to achieve this, my intervention will be divided into two parts.

First, I would like to briefly recall the origins of the ICRC Advisory Service on international humanitarian law, its role, objectives, structure and activities.

Secondly, I will give an overview of the Advisory Service's work to promote protection of cultural property during armed conflict.

### **What is the role, objectives, structure and activities of the international Committee of the Red Cross Advisory Service on international humanitarian law ?**

The ICRC Advisory Service on international humanitarian law was established in 1996, following a request formulated by States at the 26th International Conference of the Red Cross and Red Crescent, in order to advise and assist States in their efforts to implement and disseminate international humanitarian law at the national level.

The objectives of the Advisory Service are to promote the ratification of international humanitarian law treaties by States and the national implementation of obligations under these treaties.

Assisting States in their efforts to implement international humanitarian law at the national level involves working closely with Governments and taking account of their specific needs, as well as their respective political and legal systems. To achieve this, we have created a team of legal advisers based in Geneva and on each continent.

In many States, the National Red Cross or Red Crescent Society is also able, and often very well-placed, to provide assistance or expertise. Where this is the case, we work in close co-operation with the National Society.

Implementation of international humanitarian law covers all those measures which must be taken to ensure that the rules of international humanitarian law are fully respected. It is not only necessary to apply these rules once fighting has begun : there are also measures which must be taken outside areas of conflict and in times of peace to ensure that :

- all people, both civilian and military, are familiar with the rules of international humanitarian law;
- the structures, administrative arrangements and personnel required for the application of international humanitarian law are in place; and that
- violations of international humanitarian law are prevented and, where necessary, punished.

This leads me to the following question :

### **What are the Advisory Service's areas of activity ?**

Since its creation, the Advisory Service has worked essentially on four priorities : promotion of universal participation to each international humanitarian law treaty, enactment or revision of criminal law to provide for punishment of war crimes, enactment of legislation on the protection and use of the emblems of the red cross and red crescent, and promotion of the establishment of national committees on international humanitarian law.

Given the considerable progress achieved in these areas, particularly in Europe and Latin America, and the adoption of the Second Protocol, we have decided to focus additional effort on the protection of cultural property in armed conflict. We have decided to adopt the same methodology used for other areas in which we work :

First, we provide advice and technical assistance on national measures such as the enactment of legislation mentioned above.

Second, the Advisory Service produces publications and materials and organizes seminars and expert's meeting.

Indeed, we have prepared a fact sheet summarizing the provisions of international humanitarian law concerning the protection of cultural property and a ratification kit for the 1954 Convention and its Protocols. Those documents are available in several languages on the web site of the ICRC. I have also brought copies with me should you be interested in taking these home with you.

In order to be able to provide technical assistance with the drafting, adoption and amendment of legislation, the ICRC works with experts from different countries and organizes expert's meetings. As a result of these meetings, the Advisory Service produces guidelines and model laws on national implementation and makes these available to national authorities as tools to be considered in the process of national implementation of humanitarian law obligations.

Last October, the Advisory Service organized an experts' meeting on the protection of cultural property during armed conflict. The meeting, which took place in Geneva on 5 and 6 October 2000, brought together experts from UNESCO and some 15 to 20 States. The objective of the meeting was to develop a set of guidelines - or practical advice - to help States implement their obligations under international humanitarian concerning the protection of cultural property in the event of armed conflict. The guidelines, which consist of both legal and practical measures, should be available towards the end of this year.

The ICRC and UNESCO have also jointly organized a number of regional conferences on implementation of international humanitarian law and cultural heritage protection law. The most recent of these took place in June of this year in Pretoria, and brought together representatives of SADC States and Mozambique.

Third, the Advisory Service, since its inception, has encouraged the creation of national committees to assist national authorities in ratification and implementation of international humanitarian law treaties. Some 60 committees exist world-wide. While establishment of such committees is not required by international humanitarian law, they may be useful, in certain cases, to further implementation of international humanitarian law. The advantage of such committees is that they bring together representatives of the various Ministries or institutions concerned with the implementation and application of international humanitarian law, such as the Ministries of Defence, Foreign Affairs and Justice. For the protection of cultural property, it would obviously be important to also associate the Ministry of Cultural Property and other bodies or institutions which have a role to play in the preservation of the national heritage, such as the Blue Shield Committee. In some States, for example, Belgium, the national international humanitarian law committee is responsible for preparing the national report submitted to UNESCO.

Fourth, we have created a Documentation Centre in our Headquarters in Geneva and a data base on national implementation measures available on the ICRC web site. This facilitates the exchange of information. The Documentation Centre is able to provide a wide range of legal material on national implementation of humanitarian law, including information on activities for dissemination and teaching of international humanitarian law.

The ICRC's database on international humanitarian law incorporates material related to national implementation, including the decisions of national courts, and a general commentary on the legal system of each country. Thus far, data has been collected for 40 States from both civil law and common law systems. The data is regularly updated and other States are to be added.

## **Conclusion**

In conclusion, one of the things which strikes me in relation to protection of cultural property, is the need to pool our efforts and draw on a wide range of expertise.

First, the legal provisions governing protection of cultural property are complex, particularly as they are to be found in a number of different treaties - treaties applicable in armed conflict and in peace time. States will need to decide whether to adopt a "unified" approach to protection of cultural property, which might, for example, involve the enactment of legislation aimed at protecting cultural property from risks arising from armed conflict and natural disasters. In light of the adoption of the Second Protocol and of the Statute of the International Criminal Court, States will also need to consider amending their national criminal law to provide for punishment of offences against cultural property.

Second, effective protection of cultural property is not simply a legal question or a question of the proper application of international humanitarian law. There is a real need to have a multidisciplinary approach, working with museum curators, architects, restorers, and the like.

**Isabelle Küntziger,**  
Advisory Service of the International Committee  
of the Red Cross, Geneva

## ***Karl HABSBURG-LOTHRINGEN, Salzburg***

### ***The Destruction of Cultural Goods as a Primary Goal During War***

If we make a general analysis of the wars and armed conflicts in the past fifty years from a political viewpoint we see that, with some exceptions, the reason usually was the expressed wish of a minority to gain more autonomy or independence. On the other side, there was the wish of a majority or a nation state to stop the minority doing this or, to put it in a positive way, to preserve or expand their national sovereignty and their territoriality. I want to mention three examples from recent years that support this theory.

1. Former Yugoslavia. An artificial state that was created after the downfall of the Austro-Hungarian Monarchy. It used to contain different people, languages and religions and the main cement that kept the country together over the last decades was the fact that it was oppressed by a very charismatic tyrant - who had no successor. So after Tito's death, the country simply imploded and split itself up into five different entities, some of which have traditional borders and others are still in a process of defining themselves, sometimes with violent means.

2. Chechenia in the northern Caucasus. Here again we have the case of a minority that has its own religion, its own language and has always fought for independence. It defended its territory against Russian invasion until the mid-fifties of the nineteenth century, which is about seventy to eighty years longer than the surrounding territory. This resulted in the fact that the whole population was two times deported in the last century as a whole and is now facing a war of extinction.

3. East-Timor that, after a comparatively good time as a Portuguese colony and an annexation in 1976, was also faced by a very strong ethnic oppression by Indonesia that they countered with the use of force.

This list could be randomly continued whether we look to the Great Lake area in Africa, if we look to Somalia, where the question is not so much a quarrel of warlords but tribal conflicts. We could look at Nagalim in India, to Indochina and sometimes even to the territory of the European Union with the conflicts in the Bask country or in Corsica.

The main problem for all these areas is the fact that it is very difficult to find a political solution for the basic problem. Solutions are usually found through law. Law is created within states or supranational structures and it is particularly those that have no interest in supporting the rights of minorities since this would infringe their *raison d'être*. On one side we have to face the fact that the creation of supra national organizations is increasing steadily. States are getting together for different reasons whether it is for an economic, cultural, security or political goal. As classical examples we can mention the European Union, ASEAN, NAFTA, CIS, MERCOSUR, the Andee's Pact etc, etc. Through the creation of those structures we can already see that the nation state has to give up certain powers, which consequently fall to those organizations. On the other side, a certain worldwide trend can be seen that also regions, many of them trans-border, are gaining influence. Within these regions, most of them grown in a natural way, minorities and ethnic groups are getting a bigger weight.

Taking this into consideration it would not only be acceptable but even necessary to create an international Charta for people's rights. It would preserve the diversity of cultures, religions and languages that actually create the wealth of our earth. It would also enrich and complement the International Charta of Human Rights. This People's Rights Charta should ensure internationally the protection and the independence of ethnic minorities, ethnic groups and their cultural heritage.

But since we have to face the fact that, in a case of conflict between a majority and a minority, the protection of the minority is not ensured on an enforceable international legal basis we see that the majority in most cases is acting according to the same pattern: In order to prevent those conflicts to spread or to be repeated it is necessary to withdraw the moral and value basis of minorities. That means: minorities have to be forced with all means to give up their feeling of identity. This happens most effective by depriving them of their right to an individual language, writing, religion, names, etc. This applies not only to the living but also the past generations. Therefore in a conflict the destruction of cemeteries, archives, libraries, katastars, marriage lists but also museums and monuments plays a vital role. I would like to mention here two examples that I was facing during my own work.

The first one and probably the most violent was the war in Indochina and its consequences. Here particularly the example of Cambodia shows to which extent the destruction of a population can lead. The Khmer Rouge did not only exterminate large parts of population according to ethnic origin but also wiped out people that could be linked to a profession reminding them of the old system like all the silversmiths, who ranked amongst the best in the world. The consequent genocide led to an extermination of more than two thirds of population, to an unrecoverable economical situation and an almost unparalleled cultural destruction. And only now after thirty years, the first small signs of recovery can be felt.

At the same time also parts of Laos were totally devastated and are until now uninhabitable. I am talking mainly about the areas formerly inhabited by the Laotian hill tribes, the Hmong. Under the French rule, these people were trained as "Maquisards" to fight off the communist threat by neighboring Vietnam. During the war most of the fighting took place in their settlement area. The Plain of Jars had to be defended against regular assaults of Vietnamese and associated Laotian troops, but then, since most of the fighting took place there, the U.S. armed forces "supported" the fight with aerial bombing. Until 1973, more than 1,5 million tons of ordnance was dropped on Laos. An estimated one third did not explode! The whole area where the rich cultural heritage of the Hmong lies is therefore up to date almost not accessible and most of the population is to date living as refugees in Thailand, Myanmar and the United States or is displaced.

The second example is Croatia. Here, when the war for independence started, the Serbian troops made a deliberate effort to destroy the rich Croatian cultural heritage. Whenever a Croatian village was occupied, the first actions were to destroy the cemeteries to burn the century old lists registering births, weddings and deaths and to abolish monuments pointing the Croatian history. The bombardment of the towns had also a specific pattern: Main target would not primarily be the centers of resistance but the churches and historic monuments. The quote from the Serb commander at the occupation of Dubrovnik became famous: "Lets destroy Dubrovnik! We can always rebuild it later: Greater, older and Serb."

In the Serb occupied territories, here specifically the Knin area and eastern Slavonia, ethnic cleansing and a program for resettlements were executed with an enormous effort. It went also hand in hand with falsifying of inhabitants lists and a great effort to proof that these territories always have been Serbian.

The European Union has a solution although it is not yet implemented. It is the principal of subsidiarity that found its first political manifestation in the Maastricht Treaty. This principal means that a greater unit should never fulfill tasks and duties that a smaller one can execute appropriately. In our case it would mean that the European Union is not allowed to do anything that can be carried out sufficiently on the national basis. Of course the principal of subsidiarity cannot work if it shows only the relationship between the union and its members. This same principal also has to work within the member countries – here it would mean that the individual nation state should not pick up any tasks that could be fulfilled adequately on a regional level and, of course, the region should not do things that could be dealt appropriately with on a local level.

This way our whole administrative structure would be built politically from the local community over the region and nation state to the supranational organization. But it is also appropriate on a social level from the individual over the family to the ethnicity and from there on to the nation state or the supranational structure. That would definitely follow much better our democratic principals than most systems do nowadays, because it would really mean that the power is coming from the people and finding its way up and not the other way round. Through this system the protection of minorities and their cultural expression would get a legal homestead that has not existed so far on an international level and it could lead to being an example on how a legal fundament could be found to prevent a huge annihilation of cultural heritage in future wars to come.

**Karl Habsburg-Lothringen,**  
Major, Salzburg



**Gerhard SLADEK, Society for the Protection on Cultural Property, Vienna**

***The Role of a Non-Governmental Organization in the Field of the Protection of Cultural Property***

The year 2001 has been proclaimed the "International Year of Volunteers" by the United Nations.

In the framework of the Council of Europe, the ministers responsible for the protection of cultural heritage, at their 5<sup>th</sup> European conference at Portoroz/Slovenia, held 5 - 7 April 2001, adopted a "Declaration on the Role of Voluntary Organizations in the Field of Cultural Heritage".

The above examples highlight the importance that is attributed to the work of NGOs, and show how important their work is, including their contribution toward the strengthening of democratic political structures in individual countries.

Activities in the following years confirmed that the initiatives of the past were right on track.

As I see it, PfP, i. e. the cultural setting of the PfP states, could be utilized to establish what one could call a "European identity" of the protection of cultural property, considering the specific local cultural aspects. In this context I should like to mention that the ÖGKGS has been investigating the possibility of integrating activities in the field of the protection of cultural heritage into the framework of PfP.

One outcome of this initiative is the fact that we are meeting here for the third time to deal with the protection of cultural property in the framework of the NATO/PfP program, and that the idea of the protection of cultural property has been accepted by the military authorities in many countries, even if the practical application of international conventions - i.e. the Hague Convention - still leaves much to be desired in some countries. Let me take this opportunity to invite you for a brainstorming how we could add the dimension of culture to the PfP program, and eventually expand it to become a "Partnership for Culture".

In this direction, too, there is a first initiative towards co-operation in the cultural area of Europe. As early as in May 1997, the League of the Societies for the Protection of Cultural Property was founded by the national societies for the protection of cultural property of Switzerland, Germany, Italy, Romania and Austria, with Portugal, France and the Netherlands as observers.

This is a good opportunity to point out the fact that the Austrian Society for the Protection of Cultural Property has a president in uniform. As you may have expected, there is a reason for this, because the Austrian Armed Forces have institutionalized the position of a CPPO, and this example of a military approach to the protection of cultural property has met with world-wide acclaim.

The relationship between military and civilian initiatives for the protection of cultural property has varied in the course of history and is being handled differently in different countries. Certainly the two great wars of the last century have created a level of urgency in this matter, which finally led to the conclusion of the Hague Convention, dated 14 May 1954, aimed at the protection of cultural property in case of armed conflict.

But, ladies and gentlemen, there is a certain danger that must not be overlooked, and that may distort the results despite the best efforts made.

The Kosovo is a prime example for the ambivalence of pluralism as exemplified in the efforts of international NGOs. On the one hand, they have the required means, both financial and material, at their disposal, but they are also used to support projects that lead to cultural alienation. The rebuilding or restoration of a cultural monument (a church or a monastery, for example) may destroy the originality and authenticity of the object in question.

The pertinent authorities for cultural and political matters in Kosovo have recognized this threat and suggested a kind of cultural joint venture, in which foreign NGOs would primarily provide material resources, whereas local experts would contribute their specific know-how. In this way, the danger of alienation that may be inherent in financially powerful NGOs from other cultures can be prevented.

Moreover, it is a great honor for us that we, as members of the Austrian delegation, could take part in the preparatory conference for the revision of the Hague Convention, and also in the closing ceremony in The Hague in March 1999.

In addition to other activities, the current workshop is the result of this excellent co-operation and proves the effectiveness of private initiatives.

Having used Kosovo as an example for the involvement of international NGOs, and having highlighted their importance, but also the danger of what I would call cultural alienation, I would not want to miss the opportunity to highlight the importance of the already existing private initiatives in Kosovo. To re-establish a normal situation in the area, a common basis for talks is the first requirement. This includes the dialogue between Kosovar and Serb institutions and intellectuals, and also between KFOR representatives and other international bodies. For the time being, this is not the case, but urgently needed. The most urgent goal of KFOR is the military pacification of the region. On top of that, much is being done in the framework of CIMIC, and we will hear more about these efforts. To reach a lasting peace, however, much more must be done in the field of human relations, and that implies the inclusion of private initiatives that have grown from the people themselves. To take up and support these initiatives could be an important task for our League. My initial idea to expand PfP with a "Partnership for Culture" may be daring or utopian, but, in the words of Alphonse Marie de Lamartine, "Utopian ideas often are nothing but the anticipation of truth". Therefore, the support of private initiatives should become a standard activity of the CIMIC programme right away. I am quite happy about the fact that leading military figures, at least in Austria, have recognized this problem.

Having opened my presentation with a thought of an important European, Richard von Weizsäcker, let me close it with a thought of an equally important man.

Jean Monet, one of the founding fathers of the European Community, under the impression of the process of European economic integration, remarked that he would start with culture and not with the economy, if he had to do it again.

He must have meant that one first ought to look for and establish a common identity on a cultural level and in the system of values as an overarching aspect of European societies. This approach of integrating Europe along the lines of its cultural and value structure has always been reflected in the goals of the Austrian Society for the Protection of Cultural Property and of the League. Our main effort, after all, targets the brains and the awareness of the people.

**Gerhard Sladek,**  
DDr., BrigGen, Seminar Chairman & President of the  
Austrian Society for the Protection of Cultural Property, Vienna

## **Part II**

### **CURRENT PROTECTION ACTIVITIES: EXPERIENCES WITHIN THE MILITARY**

**Rainer KOBE, German Armed Forces Command, Koblenz**

***CIMIC Activities Regarding the Protection of Cultural Property in the Balkans: German Experiences in KFOR***

I am pleased of having the opportunity to brief you on our CIMIC activities in the Balkans focusing on the protection of cultural property in the mission area of KFOR's Multinational Battalion (MNB).

The initial objective of operations conducted in Bosnia in 1996 and in Kosovo in 1999 was to ensure security and initiate immediate action for humanitarian assistance and relief purposes. In the meantime, the priority has shifted to public and economic reconstruction in connection with an improvement of general living conditions.

The faster those nations are successful in living together peacefully with their various ethnic groups and in managing their public and economic life independently, the earlier we will be able to bring our troops home from those costly operations.

CIMIC represents a tool available to the military leader, permitting to actively promote and encourage this process while at the same time contributing to the goal that our soldiers involved in the operations are more readily accepted by the population.

The origin of German CIMIC activities is vested in the right of refugees to return home. A right which for the people of BiH is confirmed in the Dayton Accord. It was in our national German interest to actively promote and encourage the return of those 345,000 refugees living in Germany as well as to contribute to the reconstruction of the country.

Consequently a German CIMIC Task Force was created in 97, which quickly increased to a strength of 100 soldiers. The CIMIC TF made it possible for us to use a very systematic approach in exploring and analyzing the living conditions in the country and to participate in the reconstruction effort, especially as far as housing for the refugees is concerned. The majority of refugees (300,000) have returned home in the meantime.

In Kosovo, we also helped displaced persons and refugees returning from neighboring countries to return and rebuild their destroyed houses.

For our CIMIC functions we have developed a complex but efficient command structure which permits us to coordinate the various national and international requirements and objectives. This is done at the German Army Forces Command level in cooperation with the MOD Bonn. In this process, the political guidance coordinated at the inter-ministerial level will be incorporated in the CIMIC mission.

Our CIMIC objectives during SFOR and KFOR operations are essentially as follows:

- Reporting on localities and regions to analyze and point out possibilities for the return of refugees while also covering general issues such as current economic conditions.
- Protection and improvement of living conditions, mainly for minorities in order to contribute to the reconciliation among minorities.
- Reconstruction of private and public infrastructure. The latter has meanwhile become a priority.
- Support for the establishment of commercial and business enterprises and finally
- Support and assistance for the rebuilding of administrative structures.

In addition to the aspects having been pointed out, the effects of CIMIC will continue to have a very political dimension.

This includes the following aspects in particular:

- In the theatre the acceptance of our soldiers by the population, which is a contribution to "Force Protection" as well as the indirect contribution to security and political stabilization in the whole region;

and at home here in Germany:

- a contribution to having these operations well accepted by both the soldiers and the civilian population.

Another specific aspect has been to ease the financial burden on the German budget through the return of refugees from Germany to their home countries, an effort strengthened and supported by CIMIC.

CIMIC assets operate under the command and control of the German Contingent Commander but in close coordination with the respective multinational headquarters: MND SE and HQ SFOR in Bosnia and HQ KFOR in Kosovo. Within the SFOR framework, we presently dispose of one CIMIC Company the strength of which is meanwhile down to 40 soldiers. As for the KFOR theater, this function is handled by a battalion with about 70 soldiers.

In addition to the command element and a CIMIC center as a point of contact for the civilian population, each CIMIC task force, as in this case the one with KFOR, has mainly those capabilities which are shown here on the slide.

Let me emphasize in this context that our CIMIC specialists do not perform manual and technical work themselves but provide guidance under the motto "Help people to help themselves".

Since the Bundeswehr does not have any active CIMIC units yet, the personnel required are drawn from all arms and branches and will then undergo training for their specific assignments. Our performance record provides you with the results achieved so far.

Improvement of living conditions is the platform for nearly all CIMIC operations during which we are trying to encourage and facilitate the return of refugees, to help with the establishment of enterprises and to improve and strengthen economic structures. If ever possible, we try to combine all three of those aspects.

Given the lessons learned so far, I may note that CIMIC has become an excellent instrument for the commanders in theater and for the political leaders in Germany, an instrument that has become absolutely indispensable.

In order to make our CIMIC activities more efficient in the future, we institutionalize G5 on Corps, Division and Brigade levels, so that those personnel become an integrated component of the German Army in peacetime functions already. Moreover, Germany will have about 150 soldiers participating in NATO's multinational CIMIC Group North which will be operational by Summer 2002.

Let me now turn to our specific subject which is the protection of cultural property in the AOR of KFOR's MNB (S).

One may be surprised by the fervor and dedication which were brought forward in attacking cultural and particularly religious symbols of the respective other ethnic group in the Balkans and that this happened in 20<sup>th</sup> Century's Europe.

A look at our own history, however, shows that such behavior continued even in Central Europe subsequent to the Thirty Year War. In November 1938, synagogues and partly century-old cultural assets were destroyed throughout Germany.

Besides initiating expulsion as a main objective, such action is obviously intended to revise history. No evidence must exist any longer that « other people » lived here before.

Concerning Kosovo, I would like to employ the term «Cultural Property» mainly for ecclesiastical buildings. While the early Serb-Orthodox churches, chapels and monasteries are dating from the 12<sup>th</sup> to 14<sup>th</sup> Centuries, the important testimonies of the Albanian Islamic past have primarily been built during the 15<sup>th</sup> to 18<sup>th</sup> Centuries. During the Yugoslav socialist period, old cultural assets were mainly destroyed by negligence, on the one hand, and by practical utilization, on the other hand.

Economic considerations were overriding and served, in borderline cases, for justifying the demolition of buildings with historic significance.

Since the end of the Nineties at the latest, purposeful damaging took place by which the « other culture » was to be hit deliberately. While until June 99 particularly the Albanian Islamic side was affected, the Albanians' bottled-up anger flared at the very moment of the arrival of NATO forces and immediately thereafter.

The result of the demographic change associated with the exodus and expulsion of the mainly Serb population since Summer 99 can not be overseen in the country. It is, from the viewpoint of the Serb-Orthodox church, the result of Albanian vandalism.

Using the catchword «Crucified Kosovo», the Serb-Orthodox church has exploited the damage with a great propagandistic effect by placing it onto the Internet, with the subtitle indirectly blaming UNMIK and KFOR. Indeed, there is the example of the St. Peter and St. Paul's Church in Suva Reka which was destroyed in July 99, despite of KFOR being present.

During the deployment of KFOR in June 99, protecting of cultural property was not a primary concern. Besides operational tasking resulting from the «Military Technical Agreement» and the «Undertaking», the first priority was the protection of the people, the security of the population - Albanians, Serbs and other minorities – as well as the security of own troops.

I still remember well the daily reports of Summer 99 about the burning down of abandoned Serb houses as well as the fact that the Albanian firefighters refused to act.

It was a similar picture as in Bosnia in 96/97 when the blowing-up and setting ablaze even of ruins of houses along the IEHL was a daily occurrence. It was done to prevent the return of the hated «other ethnic group» and to eliminate their memory at the same time. In the process, the purposeful destruction of ecclesiastical buildings played an important role. What did we do and are we, NATO and KFOR, doing?

We have protected and are still protecting the Serbs and other minorities by show of force in the area. The enclaves at Orahovac and Velika Hoca as well as a few Serb installations in Prizren and in the Bistrica Valley were given special protection arrangements. KFOR protected also the Serb enclave in ORAHOVAC which also provides protection to Serb cultural property.

Because of the excessive containment of military forces, KFOR endeavors to increasingly involve UNMIK Police and KPS in this actual police-type protection task.

We, as the German Army Forces Command, included the passage quoted in our first national CIMIC order of July 99, because we have been very well aware of the importance of cultural property for the respective individual ethnic group.

Therefore, the CIMIC Battalion identified more than 200 cultural objects between September 99 and Mid-2000, listing them according to the shown pattern. The whole thing was, of course, very amateurish and was conducted as a secondary job besides the then support of refugee returns which took center stage. However, we later handed our documents over to UNMIK.

In conclusion, the question remains open – also against the backdrop of renewed destruction in Macedonia – whether and how far military forces conducting Peace Support Operations could be more involved in the protection of cultural property than we were in the past missions.

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German Armed Forces Command, Koblenz

***The Protection of Cultural Property: "The Right of Stones and Monuments"***

One of the best experts of the history and politics of Yugoslavia, Holm Sundhaussen concluded recently in a very profound study on the history of the conflict of Kosova that *the belonging of this province to Serbia is based not on the right of self-determination, but on the "right of the stones and monuments"*. Mentioning the last right, he understood here of course, the "historical right" of the Serbs on this territory: Kosova was in the Middle Ages part of the Serbian Kingdom, and here stand important historical monuments of their history, culture and religion. This was the crucial argument made by Serbia for the conquest of Kosova during the Balkans wars (1912-1913); an argument, which has recurred once again in the recent Kosova war that resulted in Serbian repression of the Albanian population. But in his conclusion, Sundhaussen warned that using this concept, as a basis to solve recent conflicts in the area would require a complete alteration of half of the European map.

For the purpose of this article, it is not necessary to address the controversial question, as to whether this area in the past belonged to the Serbs or to the Albanians and who resided in the area first. "Historical rights" were mentioned for one reason: to show that the protection of cultural property in Yugoslavia and Serbia was directly under the influence of daily politics. Several historical monuments and buildings from ancient times continue to exist in Kosova (Dardanian and Roman time 7 B.C-5<sup>th</sup> Century), Middle Ages (Serbian 12<sup>th</sup> -14<sup>th</sup> Century), (Islamic-Albanian 15<sup>th</sup>-18<sup>th</sup> Century) and finally, (Islamic-Albanian and Serbian monuments 19<sup>th</sup>-20<sup>th</sup> Century). However, in reality, it was only Serbian historical, cultural and religious monuments that received protection after the Second World War. From a scientific and official point of view, the cultural heritage of Kosova was nonexistent: on one side stood the Serbian Christian monuments, and on the other, the Islamic. In actuality, the cultural heritage of Albanians and other ethnic groups has been treated as unimportant, coinciding with the group's treatment as second-class citizens.

Most activities in the field of protection and preservation of cultural heritage in Kosova coincided with the important phases of the political emancipation of Albanians after the Second World War. Its destruction also concurred with the rise of Serbian nationalism and the return of the "Greater Serbia" program. The following are the phases of Belgrade's policy to Kosova:

The first phase was basically the phase of massive repression and intimidation of the Albanian population: 1945-1966. Yugoslavia stopped at nothing to force their integration into the Federation; the ethnic rights that were promised to the Albanians only appeared on paper but were not carried out. Institutions for the study and protection of culture heritage were initially established at this time: the Museum of Kosova (1949) and the Institute for the Protection of Monuments (1954). However, little has been done for their protection and preservation, mainly due to ideological considerations. The official daily newspaper, Rilindja, published a report on May 25<sup>th</sup> 1952 that supports this claim. It presents the fact that under the protection of the Yugoslav state stood only monuments of early Serbian history (27 monuments) and not a single piece of cultural property from another historical period or another ethnic group (round 211). At the same time, in this period parts of Islamic property was replaced for the sake of building new districts in the cites. This replacement occurred in Prishtina, when the Bazaar (*Çarshija*) of the city had been destroyed, making necessary the building of new communist buildings. *Çarshija* and part of the old cities such as in Vushtrri, Mitrovica, Peja and Prizren would endure the same fate.

The second phase is the period from 1966 until 1981. It is a period, which consists of fundamental changes in the modern history of Kosova: the country was granted Autonomy and became a constituent element of the Yugoslav Federation as other republics. The Albanian population overtook power in politics, economics, society and culture. In this time the Kosovars - under this name I understand all ethnic groups of this country - took many steps and actions to promote the development of their identities and culture. Numerous measures that were taken for this purpose also included the protection of cultural heritage, which went hand and hand with identity and culture. Apart from the two mentioned institutes, other institutions have been established in Prishtina and Prizren for the protection and preservation of historical, cultural and religious heritage. A new generation of experts has been educated in the field, resulting in the start of long-term projects, which aim at the preservation, collection, study and presentation of cultural property. At the same time, this process contributes to the finding of significant archeological excavations.

The third phase was the return of Serbian repression in Kosovo and Serbian Nationalism in Yugoslavia: 1981-1990. After Tito's death in the year 1980, there was a halt in the integration process of the Albanians into Yugoslav society, personally supported by the late ruler. In the spring of 1981, Albanians began to demand the Status of Republic for Kosova, resulting in bloody demonstrations in the province. The Yugoslav authority started the process by cleansing all institutions that were owned or operated by the Albanians; basically the Kosovar intellectuals were the first victims of this policy. This process also involved the damaging of institutions that were responsible for the protection of Monuments. Every activity, which dealt with identity and culture, was viewed as "nationalistic propaganda and separatism". In this sense, there was no interest to further support the preservation, collection and study of cultural property, either politically or financially.

The fourth phase was from 1990 until 1998. In reality, at this time the policy of Apartheid was practiced in Kosova. In fact, in this period the Serbian security forces were the occupying forces in the area. Most Albanians were dismissed from Administration, Economics, Education and Culture; on 5 May 1990, the Government and the Parliament of the Province were dissolved through Serbian policy. Like in all other institutions, the Albanian experts in the field of the protection and preservation of cultural property were dismissed from the Institutes for the Protection of Monuments and Museums. Documents of cultural property have been stolen from the Department for the Protection of Culture Monuments in the municipality of Prizren, further adding to the destruction of preservation. The historical documents and other materials of Lidhja e Prizrenit, which was the crucial organization in the Albanian movement for independence in the 19th Century, has been stolen as well; her Memorial House has been devastated and adopted as a motel for Serbian refugees from Croatia.

All projects regarding the study of monuments in these institutions have been brought to a standstill. The Institute of Albanology and the Institute of History at the University of Prishtina have been officially closed. Many documents have been transported to Serbia through the Archive of Kosova in Prishtina, leaving one to assume that the material was destroyed by flames or spitefully used for recycling purposes. The National and University Library has experienced the same fate and devastation after being transformed into an Orthodox Serbian School.

Finally, the last phase of the Belgrade policy towards Kosova was the war: March 1998-June 1999. It was a war, in which the policy of the "ethnic cleansing" shocked the whole world: mass graves, mass killing and expulsion of Albanian citizens were the main methods of this policy. It must be mentioned that the destruction of cultural property during the war was considered a direct violation of international law. Today, it is impossible to give a detailed picture of the destruction of the cultural heritage during the war. More time will be needed to document war crimes committed against cultural property. Only some examples will be mentioned:

- Before the war, you could find old beautiful Islamic centers-Bazaar (*Çarshija*) in cities like Prizren, Gjakova, Peja and Vushtrri. During the war, Islamic centers in the last three cities have been totally burned down or seriously destroyed.
- In the years 1998/1999 have been destroyed in the towns and villages many typical town houses (*konak, shtëpia*) in towns and villages, including a tower resident of prominent Albanian families. About 500 *kulla*, which have been built in the 18<sup>th</sup> and 19<sup>th</sup> centuries, have been destroyed.
- Two of the most important historical buildings of Albanian history from the 19<sup>th</sup> Century have been shattered. On March 27 1999, the Memorial House of the Albanian League of Prizren, the most important movement in the building of national identity and in the establishment of the Albanian State. Some weeks later, the House of Haxhi Zeka was destroyed, where in the year 1897 the League of Peja was held, the second phase of the Albanian National Movement.
- Many religious buildings have been destroyed during the war. Around 200 mosques - some of them from the 16<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> Centuries - have been completely destroyed.
- Two of the most important institutions for the study and protection of the historical monuments have been stolen. In 1998, an exhibition under Serbian Authority at the Museum of Kosova, was sent to Belgrade, which included monuments from prehistory and up until the early middle ages; they never were returned. In 1999, the whole documentation of cultural property at the Institution for the Protection of Monuments was sent to Belgrade.

During the NATO bombing campaign against the Milosevic regime, the Yugoslav authority accused western countries of the NATO Alliance of being responsible for the destruction or serious



damage of many historical monuments and buildings due to bombardment. It was the same regime propaganda, which tried to convince world opinion that the Kosovars were forced to leave the area because of this campaign, rather than from the campaign of "ethnic cleansing". The eyewitness accounts support the fact Yugoslav forces were responsible for the destruction of cultural heritage; many witnesses reported that they saw these forces destroying historical, cultural and religious monuments and buildings. Other reports, which have been written after the war by international experts, proved the same: there is no evidence that the historical monuments and buildings had suffered during the war – either by the UCK soldiers or NATO bombs.

At the end of the war the situation entirely changed in regards to the protection of the Serbian Orthodox heritage. It resulted in attacks on Serbian churches in some villages but the big number and the most important churches and monasteries could be protected by UN peacekeeping forces (KFOR). Most of these damaged or destroyed churches have been built in the 20th century, many of them in the 1980s or 1990s. This has happened in the first months after the war as acts of revenge for what had happened in Kosova during the war. The number of such revenge attacks has dropped due to the sufficient work of KFOR in protecting the Serbian Orthodox monuments in Kosova. Political and religious leaders and civic activists have criticized attacks carried out by Albanian extremists. Although it has been two years since the end of the war, KFOR is forced to further protect these monuments.

To conclude: The protection of the cultural property in Kosova was from the beginning a very politicized matter. Institutions for the protection of the monuments were established, but they were shut down due to the Belgrade political agenda. Only in the 1970s and 1980s, has much been done in the field of the protection of the cultural property, a process, which was stopped in 1990 by the installation of an apartheid system in Kosova by Milosevic's regime. During the war, there was a systematic and large destruction of Kosovar cultural property – of the non-Serbian orthodox heritage. After the war, revenge attacks were carried out against some of the Serbian churches and other historical monuments. The destruction of the Kosovar cultural property during the war was part of the policy of "ethnic cleansing," used in order to "clean" the historical memory of Kosovars and the country, included in the non-Serbian cultural property. This destruction has been considered a serious violation of international law, which has been termed; war crimes against cultural property.

According to eyewitness accounts, Yugoslav and Serbian military and police forces were responsible for these acts. It is not a irony to mention here that according to UN Resolution 1244, hundreds of these personnel will have to return to Kosova in the future and among their four duties will be to protect the Serbian historical, cultural and religious monuments ("Maintaining a presence at Serb patrimonial sites"). That means that the protection of cultural heritage will be in the future, not a professional, but basically a political problem. I am not aware of any such cases in modern history that are included in international law; usually the cultural property is either under the protection of professional (state) agencies charged with the heritage protection or international agencies like UNESCO. Maybe, when we talk about this issue in Kosova, we should understand "the right of the stones and the monuments".

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**Wolfgang LUTTENBERGER, Austrian Air Force, Vienna/Langenlebarn**

**Protection of Cultural Property as an Element of Air Campaign Planning** When it comes to the employment of airpower in support of military objectives, the Joint Forces Command (JFC) issues direction and guidance to all components. The component commanders, in turn, state objectives and guide the execution of the mission within the Area of Operation.

The CFACC makes an apportionment recommendation to the JFC. It is the CFACC's responsibility to ensure that he meets not only the JFC's Direction and Guidance but also the requirements of his own objectives and those of the supported Component Commanders. This is an inclusive process that is iterative and flexible, it provides for a continuous dialogue between commanders at all levels to adapt to changes in the strategic or operational situation. The daily Air Tasking Cycle takes place at the Combined Air Operations Center (CAOC).

Direction, guidance and component commanders' objectives are addressed and fed into the target development stage. Rules of Engagement (ROE) are established to avoid friendly fire, minimize collateral damage and loss of civilian life and protect cultural property. This results in the CFACC Air Operations Directive (AOD), the Joint Integrated Prioritized Target List (JIPTL) and Component Commander force offerings.

During the process of reloading and recharging as well as during the stage of allocation, weapons and aircraft are matched to the targets, and the numbers of sorties for specific missions are determined. Once a game plan is constructed, it is briefed to the Air Component Commander as the Master Air Attack Plan (MAAP). The approved MAAP serves as the basis for the future Air Tasking Order (ATO).

As a next step, the ATO is built and published for distribution. During this phase the Airspace Control Order (ACO) and Special Instructions (SPINS) are modified and published as required. Execution of the ATO starts the following day, followed by combat assessment. After the conclusion of the assessment the cycle recommences.

Now I will discuss Joint Targeting, the first input to the air tasking cycle. It is the point where all respective commanders have the opportunity to influence the ATO and the protection of cultural facilities and structures comes into play.

Targeting is the process of selecting targets and matching the appropriate resources to them, taking into account JFC's strategic and operational requirements and available joint/combined force capabilities.

As in almost any operation, cultural, religious and medical areas are usually protected as long as they are not used in an aggressive or combat capacity which means that combatants cannot use those areas as a sanctuary and have them remain protected. By nature, all possible precautions are taken to avoid civilian casualties and damage to non-military buildings.

In the circumstances of an air campaign *alone* it is much more likely that legal advice will be available to a high-ranking commander and that the precautions required prior to an attack can, and should, be taken. During OAF targets had to be approved by the Supreme Allied Commander Europe (SACEUR) Gen Wesley Clark who reported to the North Atlantic Council (NAC). The target approval process passed through the White House, the British prime minister's office and the French presidential administration.

The CFACC, as the air advisor to the JFC and a member of the Joint Targeting Coordination Board (JTCCB) integrates prioritized target nominations from all components and is usually the custodian of the resulting JIPTL.

The joint target development process and the air tasking cycle are closely inter-related as both are essential for the CFACC staff to efficiently plan and execute joint air operations in concurrence with the mission.

Let me talk now about OAF, the air campaign against the Federal Republic of Yugoslavia (FRY). Planning for a possible air campaign started as early as 23 May 1998 and included four operational phases and a redeployment phase. A number of ground options were considered, but none were taken past the level of contingency planning. The decision was ultimately reached to pursue NATO's objectives exclusively through an air campaign using forces drawn from the US Air Force as well as Army, Navy, Marine Corps and Allied air forces. The primary factors driving the

air-only decision were pressures to minimize casualties among Alliance personnel and Serb people and collateral damage from targeted areas.

Two separate but related options were a quick strike, limited duration operation in response to a specific event and a phased air campaign targeting not only Serbia's integrated air defense system (IADS) and C<sup>2</sup> sites, but also its fielded forces and targets of military significance in Kosovo and, eventually, throughout the FRY.

As not all members of the 19-nation Alliance would have accepted the intensity and violence required to fight this war if military planning had followed optimum Air Force doctrine, they carried out an incremental approach in which military escalation could be held firmly under political control. NATO's political leaders retained the exclusive decision authority for any expansion of target categories.

NATO forces launched 829 aircraft and flew 38,004 sorties over a period of 78 days. Only two aircraft were lost to hostile action. NATO's first major sustained combat operation proved that airpower accomplished the military objectives and forced President Milosevic to accept the political conditions.

What lessons can we learn from OAF that are related to the protection of cultural property? Constrained by the directive that collateral damage was to be avoided as far as possible, the concept of operations for OAF envisioned targeting based on a phase-wise gradual, situation-adjusted application of NATO air forces, depending upon political and military developments.

The selection of target categories with the aim of minimizing collateral damage while hitting targets with high political and military significance represents a formidable problem for the planner of an air campaign.

The phased concept of OAF did not apply principles of military operations such as surprise and the use of overwhelming force and this cost time, effort and potentially additional casualties and damage, the net result being that the campaign was undoubtedly prolonged.

The problem in the planning and targeting process was that often the targets, which could bring about victory, probably end the war, or achieve the humanitarian aim, were targets that would provoke negative political reaction and were therefore not attacked. Also, an operation labeled "humanitarian" faced people unprepared for the fact that war requires the application of decisive violence for its quick termination.

Another lesson was that precision-guided munitions (PGM) made NATO the victim of excessive expectations about modern technology. While only 30 out of 23,688 missiles dropped did *not* hit the target, media and public opinion were shocked when missiles went wrong. Events have shown, however, that even with aircraft dropping "smart" weapons that hit their targets, bombing from the air does result in unplanned damage and loss of civilian life (I found 146 incidents with cultural facilities and structures in the open literature).

During the first 2 months of OAF persistent low cloud cover over Kosovo and the rest of Yugoslavia forced the cancellation of many planned strikes. Although NATO had the capability to operate through solid cloud cover, the commitment to ensuring strikes against only military and military-related targets was the main reason for the restrictions on operations in bad weather. As NATO aircraft had to maintain a security height of 15,000 feet above ground to avoid Serb air defense, effective attacks against these targets were even more complicated.

Military planners have to balance the efficiency of a well-planned air campaign, that takes into account effects-based targeting and air power theory, with the Law of Armed Conflict and political necessities. Attacks on military objectives may be indiscriminate if the injury or damage to civilians or civilian objects is expected to be excessive in relation to the concrete military advantage anticipated. Any other incidental injury or damage is to be collateral and one of the unavoidable consequences of aerial warfare in modern times.

Humanity is a single species less than 4,000 generations old, with what is ultimately a common, though rich and diverse, culture. Destroying the physical evidence of any part of this patrimony is not just an air attack on the enemy's culture - it is equally an attack on our own.

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## ***MILIZPOWER 2001 – Report Protection of Cultural Property***

### **General introductions**

The VIENNA Military Command conducted a field exercise with the strength of around 4.700 soldiers from March 7<sup>th</sup> to March 16<sup>th</sup>.

The terrain was located in the area of WAIDHOFEN/YBBS – AMSTETTEN in the province of NIEDERÖSTERREICH (LOWER AUSTRIA).

This field exercise was named MILIZPOWER 2001 and had around 75 % soldiers of the Militia. So it was the field exercise with the highest number of non active soldiers in AUSTRIA during this year.

The task for all the troops were to train attack and defence on a very high level.

Additional the PCP was also ordered as one of the military subjects which were to be trained.

AUSTRIA is a member of The Hague Convention. As a result it is obligate to respect it not only in a conflict even on training in peacetime.

With this report I want to show up the highlights of PCP during the field exercise.

CPPO on exercise

The PCP is being respected on every field and command post exercise. But it is uncommon to give a special order to train this exotic but important military section.

On this field exercise the CPPO had two different tasks. On one hand he was responsible in the command of the exercise and on the other hand he was engaged in the defence as the CPPO / party blue.

An other challenge was the big dimension of the exercise area with all the different CP and their responsibilities.

The exercise was located in the so called MOSTVIERTEL, the historical centre of AUSTRIA. In the city of WAIDHOFEN / YBBS there is the important OSTARRICHI memorial. It stands for an over 1000 year old history.

So many CPs are in this area, for example the monastery of SEITENSTETTEN and the pilgrim church of SONNTAGBERG.

Only seven CPs are indicated in the official lists of cultural monuments which are labelled as A, B and C

### **Task for the CPPO ( Cultural Property Protection Officer)**

The task for all the three CPPOs was to supervise The Hague Convention. Not only during the planning, also during the battle.

In the case of differences and questions we also had to control and inform the commanders

One CPPO was every time on duty at the command post. He could give answers both to military and civil personal.

The other two CPPOs were able to go on tour through the exercise area to the different command posts and Cultural Property's (CPs).

It is absolutely necessary for every CPPO to know all the CP in his area, not even on map, but in reality. Only by map, written papers and pictures it is impossible to give good information's for the military planning.

Very often you will find differences between your knowledge and the reality and you will find new CP which are not signed in the maps or even marked with the “blue convention shield”.

It is very important to have good contacts with the local civil authorities (Mayor and Officer of the Federal Office of Protection of Monuments). Only they can give you all the new information which you need.

Even a small talk with local people will give you a lot of information. The people are very proud on their historical monuments and so they like to explain them to foreigners. It is very time-consuming to visit all the CP's before starting the exercise.

During the exercise this type of reconnaissance was not done again. When the battle is going on, you only can work with the concerning reports.

### **Important situations in the field of CPP**

#### **SEITENSTETTEN : supply point logistic**

During the planning of the exercise there was an existing problem:

the monastery of SEITENSTETTEN , a very important CP which is labelled as " B" in the list of cultural monuments.

The directive of the MOD "Guidelines for the Protection of Cultural Property in the Austrian Armed Forces" says, that we have to respect a security circle of 500 meters for level B.

Near the monastery is a special building for the house-economy – the so called "Meierei" (Wirtschaftshof.)

This is the only building in this area which has the capacity to supply the economy of the majority of the soldiers.; there are all facilities to store food , beverages and kitchen

Before the exercise starts the leading VIENNA military command gave a special order to neutralize the whole monastery of SEITENSTETTEN.

The supply platoon for economy and food were stationed in this Meierei / Wirtschaftshof.

This platoon was responsible for the real supply with food for most of the troops.

In respect of the order the troops had to make sure a safety-distance of about 1000 meters around the area of the monastery of SEITENSTETTEN.

Another position for this most important "supply point of economy" could not be found in the exercise area. There would be faced a great problem for the leadership of the exercise , to move this supply point far away from this object, because all the civil-traffic would have been disturbed seriously.

That's the only reason why the order of neutralising the monastery was given.

#### **SONNTAGBERG – The Case of the Protection of Cultural Property**

In the centre of the FEBA (**F**orward **E**dge of the **B**attle **A**rea) there is a beautiful building of baroque stile . It is well known in whole AUSTRIA.

It's the church of SONNTAGBERG, a place of pilgrimage for more than the last four centuries.

Like the also important monastery of MELK it is a major building of the famous architect Jacob PRANDTAUER from AUSTRIA.

Both, the paintings of Daniel GRAN and the organ are well known in whole EUROPE.

The official list of cultural monuments ranks this church to the level B – a very important national cultural property. The organ can't be moved and ranks to level "A" - that means a most important internationally recognised cultural property.

The "Guidelines for the protection of cultural property in the Austrian Armed Forces" orders a safety-line of 1000 meters for level A.

There is a fantastic view from top of the hill ; It enables the military observer to look in all the small valleys which are around the hill, and further on deep in the battle area.

For everyone it is easy to understand, why the hill SONNTAGBERG is so important for any military action.

The FEBA of the first planning of the exercise was drawn through the area of the church .

This was done just to train the commanding officers of the Battalion and Regiment who are responsible in that area.

The commander of the Battalion asked the commander of his Regiment to cancel the protection of SONNTAGBERG due to the imperative military necessity.

For tactical reasons the movement of the FEBA forward or backward is impossible .

Observation-posts in direction of the YBBSTAL which are in the centre of the main effort are possible. The commander of the Rgt agreed . Additional he showed up the possibility for control of mortar-fire, communications-intelligence and air controlling.

The protection of this CP has no importance in respect to the task of the battalion .

Therefore the leading Vienna Military Command had to evaluate the legal questions of imperative military necessity according to the International War Law of Nations.

The Vienna Military Command gave order to cancel the protection of CP:

because of the mechanized attack by the enemy in direction of the sector of defence of the Btl and the forward movement in the rear area we order in connection with The Hague and the Order of MOD / BMLV GZ 64.530/10-5.7/93 : a) Imperative military necessity:

FEBA is not to be moved in any direction, open terrain (air landing), the only change of defence for infantry in the area YBBSTAL in centre of main attacks , no other possibility of planning. If the protection will not be cancelled , it would be dangerous for the strategic and the operative command as well as for the Rgt .

There is an entry in the war-diary, concerning the order of cancelling the protection of SONNTAGBERG .

### **Briefing of the OSCE – Delegation**

The Exercise “ MILIZPOWER 2001” was officially visited by an OSCE – Delegation.

The Commanders of the Garrisons of BRATISLAVA (SK) , BUDAPEST (HU) and LJUBLJANA (SLO) were briefed in German .

The simultaneous translation into the languages of the participants was done by special trained Austrian officers.

They got some general information about the task of a CPPO as well, as the situation in the field of CP during this exercise.

The guests have been very interested. They got some written information, both in English and German.

### Abbreviations :

Btl...Battalion	Maj...Major
CP...Cultural Property	MOD...Ministry of Defence
CPPO...Cultural Property Protection Officer	PCP...Protection of Cultural Properties
FEBA Forward Edge of the Battle Area	Rgt...Regiment

**Jürgen Frank,**  
Maj, Culture Property Protection Officer,  
Vienna

## **Hubert SPECKNER, Provincial Command Vorarlberg, Bregenz**

### **Command Post Exercise “Montfort”**

The case study “Montfort” is based upon a fact finding mission with respect to cultural property and its protection in the Kosovo, carried out from 22 to 25 May 2001. Within the framework of a delegation of Cultural Property Protection Officers (CPPO), the task of this mission was to collect information and to prepare an inventory and assessment of the present situation.

Initiated by basic deliberations and discussions among CPPOs, the Austrian Society for the Protection of Cultural Property (Österreichische Gesellschaft für Kulturgüterschutz) sponsored this mission to a country whose cultural property was particularly affected by the recent armed struggles.

#### **Asserted Historical Background**

The Serb ethnic group accused the Albanians of having started to systematically destroy originally Serbian cultural property in the Kosovo, even under the eyes of the KFOR forces. The Albanians in the Kosovo, on the other hand, charge the Serbs with the reproach of having demolished numerous religious monuments (mosques). And in fact, these mutual accusations of both estranged ethnic groups appear justified. Whereas mostly during the last 20 years, particularly under the regime of Slobodan Milosevic, mosques were destroyed and numerous new Orthodox churches were built, ever since 1999 when the Albanians had started to return to the Kosovo, Serbian cultural monuments were destroyed in turn.

According to Serb records of the time between June and November 1999, a sum total of 76 churches and abbeys were ransacked or completely demolished. The Serbs reproach KFOR whose troops were occupying the respective sectors of not have taken any steps to protect the cultural property in the region.

As the first priority was to ensure the survival of the inhabitants and to keep the different ethnic groups apart from each other, virtually nobody in the KFOR staffs thought about the protection of cultural property. The CIMIC cells of the KFOR contingents, most suitable for being tasked with the protection of cultural property in such situations, were occupied with radically different tasks and priorities at the time they were moving into their respective mission sectors.

It was only the Italian contingent which provided for a most fortunate exception. From the very beginning of their deployment, strong detachments were employed to protect the orthodox monasteries (convents) of Decane and Pec. The Austrian CPPO delegation could not quite find out what the exact reason for this behavior was, however, evidence hints to the fact that the Italians gathered precise information either from Italian military records of WW II or from direct contacts between representatives of higher echelons of the Italian Army and the regional Orthodox patriarch, dating back to the time when the aforementioned patriarch was a student.

When the CPPO delegation established contact with the local authorities responsible for the protection of cultural property and monuments such as the head of the Institute for the Protection of Monuments at Pristina, the UNIMIC Minister of Culture for Kosovo, or dean of the University of Pristina, they found out that KFOR had not established any contact with these authorities before.

This experience is not only the basis for the exercise at hand, it has also driven the deliberations and discussions during this seminar. It clearly shows that the protection of cultural property has to be effective during international deployments. If this is a basic task according to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols, the armed forces of all European countries must prepare to appropriately carry out this task in future international Peace Support Operations.

#### **Master Event I – “Mission Planning”**

On 10 September 2001, the UN Security Council passed resolution 2258, authorizing the deployment of a Peace Support Operation force to the province of MONTFORT in order to carry out a peacekeeping and disaster-relief mission.

The command cell tasked with the planning of and the preparation for the international mission is situated in XX, more than 1.000 km away from the mission area of the international brigade.

You (the seminar participant) are a member of the planning and preparation cell of the Multinational Brigade as well as an acting CPP/CIMIC officer. Your task is to analyze the situation, to take appropriate steps and to prepare your contributions for the mission orders that will be given to get the first phase of the mission started!

### **Which are the measures to be taken by the CPPO?**

1. Check the situation under international law in the area of operation of the MNB.

The CPPO should, in cooperation with a legal advisor, familiarize himself with the situation under the law of war in the area of operations. The province of Montfort, as a autonomous region of Eastland, is subject to the stipulations of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 1954, and its Protocols. The stipulations of the Second Protocol to the Hague Convention (The Hague, 26 March 1999) are currently undergoing the process of ratification. Further details on the Convention are available under [www.unesco.org/](http://www.unesco.org/).

2. Get acquainted with the cultural, historical and ethnic situation in the area of operation.

In international deployments, the CPPO rarely has access to information on the cultural history of the region concerned. More often than not, he will have to rely on secondary sources. The opportunities provided by the Internet in this respect should be mentioned.

Due to the importance of Feldkirch as a tourist region, there is a large body of information available about the area. The information contained in the TISCOVER system (Tourism Information System) – [www.tiscover.com](http://www.tiscover.com) – is quite useful as a basic resource. Tourist information centers, operated by regional authorities, often provide guidebooks that can also be useful sources of first information.

As most countries in Europe have authorities responsible for the protection of historic buildings and monuments, the CPPO will first establish contact with them and use the information available for his estimate of the situation. For Feldkirch, this is the “Bundesdenkmalamt/Landeskonservator” at Bregenz. The master list of monuments and cultural property for the province of Vorarlberg, dating from 7 November 1996, is available in the central office in Vienna. Currently, this list is being updated. This again stresses the need to analyze the actual situation on site, after having established contact with the regional office of the Bundesdenkmalamt [Federal Office of Historical Monuments] at Bregenz.

### **The preliminary fact-finding, as described above, and the planning of the activities of the CPPO is reflected in the CIMIC/ CPP concept in OPORD – Annex F.**

In the case of a CRO – in contrast to an armed conflict – special regulations for the protection of cultural property apply. These are as follows:

1. The Hague Convention of 1954 and its Protocols do not apply during a CRO or to the direct protection of cultural property, unless armed conflict breaks out.
2. The establishment of OP's and CP's billeting, as well as supply points in buildings under protection by The Hague Convention is therefore admissible.
3. Endangered cultural property must be protected through close surveillance and guarding.
4. Non-threatened cultural property is to be handled in correspondence with the Hague Convention.
5. The guarding of cultural property is performed according to the principles applicable to the protection of objects.
6. Cultural property is not to be removed or relocated, if possible. Such actions would be counterproductive to the legitimacy of a “multinational operation”.
7. Personnel of the parties to the conflict, detailed for the securing of cultural property, may, irrespective of its origin, access or categorize cultural property only in the presence of experts (CPPO) of the multinational forces.
8. The protection of cultural property remains within civil responsibility, i.e. the local authorities, however, as long as necessary this responsibility has to be carried out under the auspices and supervision of the multinational forces.



9. Subsequently, the responsibility for the protection of cultural property is to be gradually transferred back to the local authorities.
10. The protection of cultural property must follow the guidelines set by CIMIC.

### **Activities of experts for the Protection of Cultural Property**

1. Co-ordination of the protection of cultural property under CIMIC guidelines.
2. Advising the commander of the MNB and the commander of the task force on matters concerning the protection of cultural property in the respective AOR.
3. Documentation of threatened cultural property, using photos, plans, and descriptions.
4. Information of staff and forces about the importance of the cultural property and planned measures in this field.

### **Master Event II – “Reconnaissance”**

The MNB is ready to dispatch reconnaissance elements into the future area of operations.

The CPPO is a member of such a reconnaissance team, and his task is to establish contact with the local authorities and to assess the situation in the area of operations with respect to cultural property that has to be protected.

The CPPO in the reconnaissance team must

- Establish contact with the local authorities tasked with the protection of cultural property;
- Together with representatives from the local authorities, check and classify the cultural property in the area of operations;
- In cooperation with representatives from local authorities, prepare additional information about the cultural property to be protected;
- Familiarize himself with the respective infrastructure (libraries, museums, archives, etc.);
- Utilize his findings for the forces employed in the AOR (drawing of maps, etc.).

The CPPO will perform his fact-finding mission by using the initial information already available. Together with a representative of the Bundesdenkmalamt BREGENZ (the BREGENZ outpost of the Federal Office of Historical Monuments), who knows his way around, and guided by a representative of the Kulturstadtrat (Culture Office) of the City of FELDKIRCH, he will get to know the cultural property in the city and also establish contact with the city government.

To learn more about the cultural property infrastructure, he will also establish contact with the Stadtbibliothek (city library) and the Stadtarchiv (city archives) of the city of FELDKIRCH. If ethnic and religious conflicts may pose a danger to cultural property, contact must also be established with local religious leaders.

### **Master Event III – “Mission”**

The MNB occupies its AOR. The CPPO of the brigade is ordered to take up position in the AOR of TF FELDKIRCH, so that he can be briefed on the spot about the envisaged deployment of forces for the protection of cultural property by the CO of TF FELDKIRCH.

Comment: At this stage of the exercise the participants also discussed the intricate problem of the evacuation of cultural goods by the forces of the multinational brigade. However, no consensual opinion could be reached regarding this point other than this has to be decided according to the ever situational arrangements between commanding officers and cultural protection experts.

### **Results and Insights**

The experience from the current KFOR mission in KOSOVO demonstrate the importance of the protection of cultural property, which must be part and parcel of mission planning and execution, not the least because culture is an essential element to human existence. The protection of cultural property must be part of practically every military operation, except in pure humanitarian missions for disaster relief or to accommodate refugees.

## **Mission Planning**

- From the very beginning, the protection of cultural property must be part of the planning process for international missions. The respective staffs must include CPPO's.
- In contrast to the national procedures of the Austrian Armed Forces, international missions in areas of cultural importance should include CPPOs all the way down to the battalion level.
- In international missions, the CPPO is to be attached to the G5 (or if applicable to the G9) – CIMIC element, and not to the G3 as was the case before. The major reason is the need to cooperate with civilian authorities.

## **Preparation of the Mission**

- Irrespective of the location, the protection of cultural property in military operations is only possible with the cooperation of all competent civilian local authorities. Uncoordinated efforts of military and civilian experts, as was the case in Kosovo, must be avoided. The protection of cultural property as a military effort only makes sense with the cooperation of civilian authorities responsible for monuments and cultural property.
- The required contacts for such cooperation must be actively sought by the military. The training of the required specialists (CPPO's) must emphasize the need to establish such contacts.
- From the very beginning, the preparation of an international mission must include a CIMIC/CPPO concept, and be ordered in clear terms before the deployment gets underway. Later orders will be much less effective.
- Many of the current problems in Kosovo where, for example, the protection of the still existing cultural property eats away large resources, could have been avoided by clear orders at an early stage. Many of the destroyed cultural goods could have been saved. Clear orders in this department would have not only underscored the importance of the protection of cultural property, but would have, moreover, prevented cultural treasures from being demolished and thus, understandable as it is, not exclusively focused on the humanitarian emergency situation without hampering the latter.
- In addition to fact-finding about the cultural (and ethnic) situation in the future AOR, preparations should also include the first pertinent contacts with the civilian local expert authorities.

## **Execution of the Mission**

- At the beginning of this phase, the CPPO should initially serve as an advisor to the local Commanding Officer. In international missions, the working spectrum of the CPPO will go well beyond its original scope.
- Experience proves that the CPPO as a member of the CIMIC cell normally faces a much wider range of responsibilities, not the least because the CIMIC cells as such are chronically understaffed.
- The expected activities of NGO's in the AOR demand coordination by the CPPO with respect to cultural policy.

## **Personnel**

- The numbers of CPPO's necessary to cover all implications deriving from the task of cultural protection in international missions seem to make an enlargement of the already existing expert pools inevitable. This will mostly be done with reserve officers who have the required professional skills and qualifications. As an international comparison as well as the Austrian example demonstrate, the current pools of experts are not sufficient to cover all the requirements of future missions, in particular not in the long haul.
- As the CPPO will be part of the CIMIC structure, a proper CIMIC training has to be provided in addition to the CPPO training.
- Following the recommendations of the Austrian International Peace Support Command, the CPPO as a specific expert in a mission, should have international experience. For instance those we have carried out observer missions earlier on seem to be particularly valuable in this respect. But also previous experience as an observer of elections for OSCE is very desirable,

because this function, too, calls for cooperation with local authorities and provides a high level of social competence.

- Furthermore, the general experience of the CPPO team in Kosovo suggests the need to train individuals on all levels of command but also soldiers in the ranks regarding the subject matter of the protection of cultural property. Through this an appropriate sensitivity in this respect has to be developed for international deployment of troops.

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**Part III**

**ESTHETIC ASPECTS OF THE PROTECTION OF CULTURAL  
PROPERTY:**

**THEORY VERSUS PRACTICE**

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## ***Philosophical Foundation to the Esthetical Dimension of the Subject of Cultural Property Protection***

The essential nature of arts, the criterion of art as well as its possibility, has always been the subject of philosophical reflection. The Hungarian philosopher and theoretician of arts, Georg Lukacs, posed a question at the beginning of his never finished *Philosophy of Arts* that reads: "Works of art exist – but how are they possible?" In this succinct statement, Lukacs compresses many of the fundamental problems we must face in formulating an approach to the protection of art and cultural heritage. Lukacs' statement may be enlarged to illustrate these problems as follows: While nobody doubts that there are works of art out there in the world, we still do not have generally acknowledged answers to the following questions: What, exactly, is art? What is the meaning of art? What is the purpose of works of art? Who may designate himself an artist? And, finally, is there any criterion to judge art objectively? All of these questions, and probably many more, have been and still are –perhaps more than ever before– a subject of extremely controversial debate.

Stated in its simplest form, the issue of cultural protection involves protecting works of art, however they are defined, from being destroyed or demolished. In essence, it is a moral call on mankind to protect its cultural heritage – a moral call that involves our deepest understanding of aesthetics, and our deepest commitment to an ethic that may call upon us to sacrifice wealth, health, and sometime life itself, in order to preserve art. As we begin the twenty-first century, this is no longer an abstract question, but one that is increasingly forced upon us in a most practical and real sense. The protection of art is rapidly gaining acceptance as a pragmatic goal on the political agenda of the world, and one that is vastly more complicated due to a significantly altered world of security that now confronts us, as well as by a new face of armed conflict and war.

Thus, to lay a philosophical foundation to the topic of aesthetic aspects of the protection of cultural property has to answer the most crucial question of how this particular ethical task to protect and preserve cultural goods is related to the value that makes those objects worth of being protected and preserved. If this worthiness lies in the inherent aesthetic value of cultural goods, then the issue can only be solved by grasping the true nature of art – by which I mean its purpose and meaning to humanity within the entire cosmos of our existence.

It is the purpose of this paper, therefore, to shed some light on the essence of art and its relation to ethics and aesthetics, as well as to touch on certain ontological and epistemological issues inherent in the subject. My specific goal is to offer a deeper theoretical basis, arising from Western civilization's concepts of art, for practical approaches to the formation of an ethic for the protection of objects of art and cultural heritage, as well as to provide a basis for education of personnel as to why cultural productions are to be protected.

### **The Ethical Dimension**

We generally think of ethics as being concerned with the realization of the good and right in human affairs, and of war and armed conflict as being concerned with destruction. Yet, the fact is that war itself as well as almost everything that regards armed conflict and war also has an ethical dimension, because it affects others in a truly existential way. An ever more profound moral responsibility seems to unfold when it comes to matters of life and death, when human acting is about exposing one's own life and, perhaps more decisively, the life of others to the threats and dangers of a potentially violent environment. Thus, at first sight it seems not to be too difficult a task to lay an ethical foundation for the protection of cultural property in the context of armed conflict.

As we know from recent conflicts, the political rationales to dispatch troops to carry out Peace Support Operations were mostly based on ethical considerations; for example, to save lives, to stop human suffering, to bring an end to the physical suppression of ethnic or religious groups, or to prevent further atrocities from happening. In the language of political philosophy we can say that the *Jus ad bellum* criteria of the Just War theory have been applied in a modified form to today's challenges to security and world peace (*Micewski 2001, 9-14*).

During military missions, the criteria of the *Jus in bello* principle have to be observed in the actions of military formations, in the behavior between combatants, in the treatment of non-combatants, and in everything along the lines of remaining human under what are often inhuman

circumstances (*Micewski 1998, 163-180*). It is exactly in this *Jus in bello* area of armed conflict and war that the challenge of both the destruction and protection of art, cultural property and heritage gains utmost significance.

With regard to products that are result of cultural human efforts, it may come to mind that these products are, even when we admire their beauty and sublimity, after all, not living matter. In the face of war and fighting —when human lives and suffering are at stake— it may become quite hard to understand why we should not destroy any of these non-organic monuments, if it helps us to save our own or our soldier's lives. Furthermore, both combatants and non-combatants may well consider the destruction of cultural property to be justifiable as long as it is harmful to the opponent or might bring about some kind of tactical benefit .

It is precisely at this juncture, however, when the value of non-living objects entails the risk or loss of human life, that the value cultural goods enters the ethical realm and encounters a human moral orientation. What if an individual, or a social or political entity, adopts an "ends-justify-the-means"-approach in personal behavior or political and military decision-making? What if somebody finds this consequentialist principle (which is still very prominent among Realists or Neo-Realists in international relations), to be a justifiable ethical maxim, and acts accordingly? How can the seemingly practical purposelessness of works of art persist against human acting that is driven by impulses and aspirations of utilitarian and profitable nature?

### **The Aesthetic Dimension**

When we stand before a monument of extreme antiquity and think about those who have erected it, we may have difficulty believing that those who constructed it had in view only themselves, the short span of their lives, their own ephemeral existence, or only the ostensible purpose of entertaining themselves and the masses of their contemporaries. We sense that their deepest purpose must have included an intent to speak to their descendents or posterity in general. Time and again we are conquered by the sublimity by which earlier generations tried to contribute to the united consciousness of mankind.

And in fact, the obligation of arts to represent not only the beautiful, but also the true and the good, has been part of the occidental tradition from the very beginning. *KALOKAGATHIA*, the unity of the good and the beautiful, has been the ideal of the West ever since Plato. Aristotle demanded in the *Poetics* that *MIMESIS*, imitation, in art has to go beyond merely counterfeiting nature and must aim at an ideally constructed reality. It was the German nineteenth century philosopher Arthur Schopenhauer who expanded Plato's "doctrine of ideas" into a metaphysics of art and the beautiful. In his concept it became precisely the task of the artist to represent the ideal image of 'ideas'. Ideas understood as the eternal, never ceasing paradigms, the immortal patterns, for any individual manifestation in the ephemeral earthly existence. Though in the latter, everything is inevitably subject to change in time, space, and to causality, the work of art gives us a sense of a world in which those conditions of individualization have ceased to exist, a world in which all individualizations have returned to a true unity and oneness. (*Schopenhauer, World I, Book Three*).

In fact, only when we consider works of art as 'Victories of space over time', and as something that finds its worth and value outside the empirical nexus of cause and effect, do we approach the deep meaning and, indeed, the moral claim of art. It is in this sense that Western thinking has generated a moral claim for the protection of art. The profound striving that we feel today to protect and preserve works of art seems to arise from the fact that in art we find the inward necessity of all historical development at work, notably that art is a, if not the, primordial phenomenon of humanity, beyond all relations of cause and effect.

"Only the arts can bring about the unity between human beings and humanity", says Friedrich Schiller in his letters on the aesthetic formation of humanity (*Schiller, ninth letter*) . If the path to goodness leads via the beautiful, then works of art become things that help to better mankind. He goes on to argue that this ideal concept of art must never involve only impacts on the present, but rather its formative power to direct the thrusting and driving of man toward the eternal.

This is based on Immanuel Kant's notion of the "divided reality" which is characterized by the tension between sensibility and rationality (*Kant, Judgment, [429]*). The chasm between natural determination and freedom is both reconciled and united by and through the work of beautiful art. The "*beauty of nature*" (das *Naturschöne*) --by which is meant the beauty that unfolds before our eyes in nature without human intervention-- gives us our first idea of the kinship between the aesthetic and moral sentiment. The foremost precondition for morality, however, is freedom. But

freedom can only exist by way of the human touch. This, then, leads to the *beauty of art* (dem Kunstschönen), which creates an idea of reality for which there is no correspondence in nature. The cultural work of art is a sign of the morally good that evokes a unity in the human heart that can never be found outside the world of cultural arts. Thus, against the backdrop of this theory, *ethics* and *aesthetics* somehow gain interchangeability. When Arthur Schopenhauer states that "human existence, in the end, is justifiable as an ethical phenomenon only" (*Schopenhauer, Morality, 200*) he seems to arrive at the innermost core of our existence. Nietzsche, as well arrives there, when he argues that "it is only as an *aesthetic phenomenon* that existence and the world are eternally justified" (*Nietzsche, Tragedy, 32*).

As we grasp the ultimate end of human existence in this truly philosophical form, we can say in —more Romantic terms— that the creation of art is a manifestation of the Absolute in a perishable worldly existence. Hence, great artistic creations are incomparable, immortal, and irretrievable. It is the purpose of great art to represent perfection and unity in a defective worldly existence, and the harmony of works of art must include what is typically human, namely morality as an inference of freedom. The beautiful, represented by and through a work of art, is thus, 'freedom in appearance', the manifestation of the meaning and ultimate purpose of human existence in sensual representation, so to say, "molded spirituality" (*Nietzsche, Tragedy, 32*).

It is undoubtedly for this reason that the great morphologist of Western culture, Oswald Spengler, argues in his epochal work, 'The Decline of the West', that throughout the ages the sense of cosmopolitanism of superior humans has always found its symbolic expression in fine arts and, among those, primarily in both plastic and graphic arts. He also insists that "Monumental architecture has been the mother to all ensuing arts," (*Spengler, Decline, 289*), hinting to the fact that no significant art has ever repeated itself. Ancient monuments are unique and a renaissance of any antique art is a dream that will never occur again. Thus, he seems to be telling us, when a great work of art is lost or destroyed, a very real and irreplaceable part of our humanity is lost.

What all these rather ideal thoughts mean for the processes of education and formation of both military and civilian personnel, involves a host of questions some of which are: Can we destroy cultural monuments in order to preserve human lives? Can we destroy cultural monuments in order to achieve contemporary objectives? How can we possibly convey the concept of an "ethics of aesthetics" about the protection of cultural artifacts? How can we instill a sense of responsibility toward cultural treasures across all cultures and political boundaries? These issues constitute the agenda for developing an ethics of aesthetics.

### **A Contemporary Dimension**

Finally, in order to bring our topic into the context of the modern world, it is necessary to see that, in addition to ethics and aesthetics, there is also both an ontological and an epistemological dimension to this issue. This is important, because we live in a world where social and political entities are increasingly characterized by processes of technical information and communication. These features of modern societies create a phenomenon that might be designated as 'medialization'. By 'medialization' I mean the constant bombardment of our senses by (virtual) images that we take to be reality. This feature of the modern world produces something that has important significance with respect to arts and other products of cultural human efforts — a kind of 'immaterialization' of reality, i. e., the dissolution of spatial materiality into the two-dimensional form.

One result of this immaterialization is that architectonic buildings and monuments regain a material significance in a tendentially immaterial reality which leads far beyond their functional and artistic purpose. (This phenomenon also, just as a side remark, brings about an alteration in the order of priority of the arts, namely turning architecture —the weakest art among the plastic and graphic arts as it has been designated throughout the ages— into an art which finds itself now at the top of today's cultural and artistic interest.)

### **Conclusion**

The very unfortunate factual destruction of cultural, truly material and physically visible goods in recent violent conflicts puts emphasis on our perennial subject matter anew. In addition, the epochal alteration in the concept of how we experience the physical reality is perhaps also an even more profound reason inspiring us to protect cultural heritage. It should also make clear to us that the possibility of the virtual conservation of things, or the capability of technical

reproduction, cannot and will never be able to replace the importance of the physical existence of original cultural works.

In conclusion, both ethics and aesthetics, and even more so an ethical foundation to aesthetics, can and will never become subject to scientific proof, as science is incapable of penetrating to the depths of being. The aesthetic horizon, so to speak, complements the logical and scientific one, and while neither one should ever be able to replace or thrust aside the other, the former will lose out to the same degree as the education and formation of people concentrates on the latter one. To promote the subject matter of protection of cultural property we need to return to a deeply humanistic understanding of education and cultural orientation.

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**Cultural Protection – Theory versus Practice!**

Normally I live in an old monastery - built in 1082. An old Romanic abbey with a grand history. The Benedictine monks had to leave the monastery in BREGENZ in 1812 and the church - the most beautiful baroque church at the Lake of Constance has been destroyed by the Bavarians! Incredible - but they allowed only one church in BREGENZ and the citizens wanted to have the city-church, nice too - but the old Benedictine church had to be destroyed and its stones were used as the fundament of the new harbour in LINDAU. A tragedy what I have all the time in my mind when I am allowed to see the old abbeys in KOSOVO.

I like to be a guide, to explain monastic life in the monastery - to teach people to have an open mind to the problems but sometimes I have doubts concerning the people themselves living in the monasteries who don't understand why they should do anything for the future - What they cannot accept is the fact that the KFOR is present, therefore they are protected and can do their mission under the armed forces of the KFOR. An example - when I had a group in Pec for visiting the patriarch, the guide - a young S

erbian woman - declared after the question how many of KFOR soldiers would come to visit the abbey - 45 thousand too many - that's the current number of soldiers who are doing their service in KOSOVO. Are they not wanted - no because when the Italian-KFOR-commander Cappricioso wanted to reduce the number of Italian soldiers in the KOSOVO the orthodox bishops shouted and wrote letters because they considered themselves in danger. But - after some invitations - where are the members of the orthodox churches here in BREGENZ when we discuss about their problems? - In one year one soldier costs about 1 million Austrian Schillings - a battalion - which is responsible for the protection of a monastery - costs, therefore, one billion Austrian Schillings a year. Incredible, if you think that there are three monasteries to be protected and several other small churches! At the beginning of my visits I thought the monasteries were supposed to get a gift from the soldiers if we visit their house - now I have changed my mind, the military is doing enough - so we can step in without such thoughts.

One day a TV-group from the FYROM (also called Macedonia) saw my group the Austrian soldiers in Pec and asked me for an interview. I said - there is an major nearby who is allowed to explain the situation at the moment. But they insisted to interview me, because I'm an European priest. Their questions were about the situation in KOSOVO - and the poor Serbs who are oppressed by the Albaniens. Here is also time to say a normal - a daily opinion - during the war the Serbs destroyed 200 mosques - after the war the Albaniens destroyed 140 orthodox churches - also the KFOR was entering the KOSOVO.

The second opinion why it is possible that Christians fight against Christians. My answer is stereotype: First the Serbs destroyed catholic churches in Slovenia and Croatia. Second during the war - it was not a religious fight but a territorial battle - the future of old Yugoslavia was not clear. Third: In KOSOVO the opinion about life, about behaving and tolerance - not only in the families, but also in the villages, cities etc. is like at the beginning of the 19<sup>th</sup> century. It may be - that NATO soldiers were too early in the KOSOVO - but that will be clear in the history books of the future.

Here I had an important wish to the Serbs in the monastery: our task should include the education of the youth. Children should have been trained to have respect and a positive feeling about their history - this can also be done by another religious group - like the foundation of Pec, Decane or Gracanica. The monastery like a museum - but the monks should lead the education center. To learn that a common future is only possible with the hard work of both sides.

Wonderful buildings, full of pictures that show us the abilities of the art painters of the 14<sup>th</sup> and 15<sup>th</sup> centuries. Due to the respect of the Muslims - especially the pashas of the Turks, no monastery was destroyed - Decane was a breeding place for the hawks of the Pashas for example - they were really privileged places and they were under the special protection of the pashas during the oppression of the Muslims. The Albanians were Christians for a long time, they see their history in the Illyrians - who are described in the letter of St. Paul to the Romans 15.19, till at the end of the 17<sup>th</sup> century when they converted and became Muslims - because only the Christians (Albanians and Serbs) had to pay a special tax for confession to the governor.

Let me give you another example of the situation in KOSOVO. When all the KFOR chaplains had a meeting in PRIZREN (a city with 90.000 inhabitants) and a dialogue with catholic bishop

Sopi, one special question was discussed - why the Muslims renovate and build up their mosques - and the Christians don't do that with their buildings. He answered that's because the Catholics are helping the poor people and afterwards they start to build up houses, to start Christian projects like schools, Kindergartens etc.

At the same time soldiers who worked in BOSNIA told me for example that the Muslim charity organizations give their money and care-parcels to the visitors of the ceremony in the mosque at Friday afternoon - and the women get money if they wear their shari.

A catholic sister is working in Pec. She helps everybody who needs her support. One day her neighbour - an Islamic woman took her friend a Christian woman to the mufti in a mosque where they received care parcels. The mufti saw the Christian woman and denied the wish. The Muslim woman started a quarrel with the Muslim, because she had very often the help of the Austrian sister. The basic start to see the good will of the organizations - regardless what is the religion and where the people are from.

Peace will start in the country in the heart of the people - if they are educated.

**Dietmar Gopp,**  
Military Chaplain Roman Catholic Church,  
Austrian KFOR Battalion, Suva Reka

***Iraq: Its Cultural Heritage – a Post-Gulf-War Front***

Ancient Mesopotamia, nowadays Iraq, is considered to be the cradle of civilization. In addition Iraq is a cradle of the archaeology as well. It happened already in the mid 19<sup>th</sup> century that an archaeologist's spade touched the walls of Ninive for the first time. Since then generations of researchers from all over the world have worked steadily to unveil the cultures of Ancient Mesopotamia and enlighten its past. Iraq's cultural heritage ranges from the first traces of the Sumerian people, who invented the cuneiform script and founded the first cities, to the magnificent monuments of the Assyrian era, the great residential cities of their kings with their magnificent relief-decorated palaces. And even far beyond that: Prehistoric settlements on the one hand provide anthropologists with information about the emergence of farming societies and the development of agriculture and cattle breeding. On the other hand splendid Christian and Islamic monuments of central religious and architectural importance can be found all over Iraq. It is indeed a country rich in cultural treasures ranging from the beginning of the human civilization onwards until today. This is probably why numerous scientists raised their warning voices already in the dawn of the 2<sup>nd</sup> Gulf War. They feared for this unique heritage, considering it to be extremely endangered. In this situation scientists also became aware of the fact that famous and very important places such as Ur or Babylon and many others were not even entered into UNESCO's World Heritage List. Only the comparatively young, but nevertheless impressive, site of Hatra in the north of the country was protected also in this respect.

Truly, also bad dreams come true. Horrifying news were released during the course of the 2<sup>nd</sup> Gulf War and did not stop in its aftermath. These news were shocking to the scientific society and the world. They told about heaviest damages to the cultural property of Iraq, about destroyed sites and looted and burnt down museums. Destruction had been caused by the forces in the course of armed conflict and by Iraqi looting gangs in its aftermath. In the first months and even years after the war these news could neither be verified nor be disproved. Without any opportunity for a systematic inspection archaeologists all over the world stated the most diverse opinions about the situation, about the probable condition of the sites and the extent of the damages. A meanwhile famous journalistic photo which was published in the early year of 1992 demonstrated the potential danger that cultural property faced during military action. It shows two armed GIs walking up the stairs of the Zikkurat of Ur.

Today it is evident, that during the phase of armed conflict US-forces actually caused damages to the cultural property of the Iraq. Various military actions resulted in direct and indirect damages to some of the monuments. Direct damages are for example the approximately 400 bomb splinter holes scattered over the southern wall of the Zikkurat of Ur, indirect damages for instance are the cracked Lamassatu of Nimrud. (Both cases will be discussed further down.) In addition military construction activities which usually take place when pitching camps unfortunately took place on archaeological terrain as well. And furthermore some single GIs intentionally looted sites hunting for antiquities. It is hard to tell how many of these antiquities found their way into the USA. However at least some of them have been returned to Iraqi officials by the US Army which seemingly showed no tolerance for such a criminal behaviour of their own soldiers.

Facing a never ending series of bad news about severe damages in Iraq a thorough documentation was demanded by various proponents. On the one hand by the Iraqi authorities themselves, who considered it not to be an exclusively Iraqi duty and in addition stated not to have the necessary infrastructure to run such an oversize enterprise. On the other hand by the UNESCO, whose suggestions however were not acceptable to the UNSC. Until today no thorough and systematic documentation has been carried out.

The extent of the post war looting by Iraqi gangs was estimated by observing the antiquities market. One year after the war a devastating intermediate result could be published. Archaeologists calculated the losses of the first looting wave during the aftermath of the 2<sup>nd</sup> Gulf War to 3000 - 5000 high light objects. They had been stolen from different regional museums throughout the country and sold on the European and American market. Trading centers were - and are - Geneva, London and New York. Most pieces have already disappeared into private collections, only a few have found their way back to Iraq. Reports on this illegal antiquities trade have been delivered from different and very experienced colleagues. In various journals single cases were uncovered and described or the general situation has been evaluated. An outstanding

example of solid investigation is the extensive book by John M. Russel (Boston) who documented the looting of relief slabs in the palace of the Assyrian king Sanherib in Ninive.

It is generally difficult to evaluate the condition of the archaeological sites. Many of the important sites are situated far off the modern main traffic routes. Therefore it is very difficult to get to them and in consequence they are difficult to control and to protect. However, meanwhile numerous reports on single sites can be put together to an informative and reliable overview. These reports are collected above all by the Iraqi authorities. Iraq's archaeological infrastructure, which was almost dissolved in the cause of the war and the embargo has been recovering during last two or three years. Interim high light of all activities is the establishment of the new and powerful State Board of Antiquities, which recently replaced the old Department of Antiquities.

Reports of foreign archaeologists become more and more essential too. Only a very few scientists visited the Iraq already during the entire last ten years. But since the previous year the majority of researching nations returned: Germany, Austria, France, Italy, Belgium and Japan. British and US-American researchers are still absent. Not only the everywhere starting excavation activities are an evident sign of revival. With intensive foreign assistance the Iraq finally succeeded in reopening the national museum in Baghdad. In the context of all these new activities a team of the University of Vienna carried out three smaller surveys in the Iraq as well. The collected information was made available for different institutions and for the UNESCO in particular.

In a short overview I may illustrate the situation. I will deal only with some few examples:

As I already stated before the originally well developed museum infrastructure of Iraq was destroyed completely. During the last weeks prior to the war the most valuable pieces kept in the national museum in Baghdad were packed up and evacuated. The museum is very close to the Baghdad telecommunication center, a strategic target of high priority. As it turned out later, this was indeed a necessary safety precaution. The museum itself was not directly hit in the course of the bombardment of Baghdad. But the heavy vibrations caused showcases to collapse.

- The national museum in Baghdad is meanwhile reopened and has even become more attractive due to new items on display. These originate partly from new Iraqi excavations, partly from the Iraqi regional museums, partly they are voluntarily returned looted goods.
- According to Iraqi calculation about 150,000 items were evacuated during the turn from 1990 to 1991. Many pieces were moved to the depots of the regional museums. But in particular these museums were looted during the politically unstable period shortly after the war. Eleven of the thirteen regional museums witnessed those devastating incidents. Numerous looted museums were even destroyed and burned down. In the course of these criminal actions museum personnel faced terror and threatening. In Amara in the southeast of Iraq the son of the director of the museum was even brutally murdered, when he tried to resist the looting mob. Today all the regional museums are either closed or reduced to collections of copies.

The director of the museum in Mosul, the capital of northern Iraq, sadly reported on gangs breaking into his museum in the center of the large city and robbing unique pieces. Most of these actions were jobs ordered by professional antiquities dealers. Spying personnel used to stroll around in the exhibition halls and photographed the items of interest. These "wanted"-photos were then passed on to the gangs, which executed the job. The stolen goods were out of reach for the Iraqi police within shortest time. North of Mosul the Kurdish dominated region begins, where the Iraqi government has no direct power. Meanwhile almost all originals are stored in the depot of the museum, the most valuable pieces were moved to Baghdad. The few museums which are still open show more or less only copies, sometimes even just photographs. The authority can hardly fight such gangs, since the opponent works as an excellently organized and ready for violence Mafia.

Ur is an archaeological site where direct war damages definitively occur. This site is well-known as the biblical birthplace of Abraham and famous for its splendidly preserved Zikkurat. Fortunately the Zikkurat was not destroyed during the 2<sup>nd</sup> Gulf War. Nevertheless five large bomb craters can be seen in the area around the tower as well as approximately 400 small splinter holes on the southern wall of the tower. The splinters damaged only the secondary outer brick layer of the Zikkurat. This layer has been attached in the early 60's. It should protect the original material from weathering and deterioration. In this situation it served an additional purpose. I could find only one spot where this protection layer was hit through and the original brick had been damaged. How did this destruction happen?

Ur is not only an archaeological place and a historical monument of first rank. The whole area is also an Iraqi military base. Therefore fighting took place at and around Ur. The US Air Force attacked this base in the course of their first air strikes against Iraq. Unfortunately Iraqi aircraft were even parked next to the Zikkurat. However these aircraft were in the end not attacked and destroyed. This would have doubtlessly caused bigger damage to the Zikkurat. As far as it can be evaluated today the air force renounced to attack the aircraft in this case – apparently a conscience decision of the pilot. Nevertheless missiles were launched during this fight and caused the craters as well as the 400 splinter holes. Thus the antique sanctuary of Ur became a target of military aggression just because it had been turned to an Iraqi military base already before the first allied attacks on Iraq were launched. This example demonstrates the importance of preventive heritage protection. The establishment of a military institution at a site of cultural or historical importance may provoke attacks in the course of armed conflict and cause damages to the cultural property. A calculation to protect a military institution or military equipment by taking a monument as a hostage could prove fatal for the monument. The case of Ur shows clearly that it is foolish to rely on the thoughtfulness of fighting parties at least in such a context.

After a phase of heavy bombardment the allied forces started their infantry attack and moved forwards from Kuwait and Saudi Arabia. Therefore the cultural property of the southern districts in Iraq faced the most serious danger of direct war damages by infantry troops and combat fighting. Thus the area around Ur became a scene of war twice. Nearby the famous site which itself had already suffered during the earlier bombardment allied troops pitched their camps, each time on archaeological ground. Military-strategic considerations had priority and cultural property was not respected. The digging activities which usually take place during the setting up of military camps and positions resulted in the partial destruction of archaeologically valuable layers and they are therefore now lost for research. Smaller damages occurred at Tell el-Obeid which is of high importance to the earliest history of civilization of Iraq, more serious damages happened at Tell el-Lame.

Another example is the ancient city of Nimrud south of Mosul. The well-explored neo-Assyrian capital reached the world press headlines shortly before the 2<sup>nd</sup> Gulf War started. In the year 1988 archaeologists discovered a royal tomb and found an gold treasure almost beyond measure. This hoard is now stored in the central bank in Baghdad. Nimrud as such is of no military importance. However, it is situated next to an agricultural institute which unfortunately became a target of the US Air Force. No misled bomb hit Nimrud itself but nevertheless, the vibrations caused by the bombardment of the agricultural institute left traces in Nimrud as well. Noteworthy are the two Lamassatu, the mythic bull-like winged guard sculptures at the entrance to the palace complex. These sculptures were damaged badly. The hands of the right figure were broken off, the left figure cracked from top to the bottom. The latter is a damage which will be difficult to repair.

As a last example I want to present Ninive, the most famous of all the neo-Assyrian capitals. Today the site lays within the limits of modern Mosul. Here I could not find any war damages, neither direct nor indirect. Nevertheless, the condition of the site seems to be more than miserable. First it is noticeable that some of the restoration work done the 50's and 60's has been extremely neglected during the last ten years of war and embargo. This is understandable due to the difficult economic situation. Other priorities have been set by Iraqi authorities than heritage restoration. Nevertheless the archaeologist's heart is bleeding when seeing such a marvellous site in such a bad state of preservation. I like to report briefly on two spots of this fabulous site. A very prominent place in Ninive is the Nergal-gate. Decades ago after the excavation work was completed modern shelters were installed in order to protect the Lamassatu inside the gate from rain. Now they are completely rotten. Due to the winter rain the mud brick walls in this area started to wash away. Some slabs have already tipped over. Also the Lamassatu has suffered badly. Fresh cracks show that some pieces must have chipped off during the last year. Still more serious is the meanwhile well documented and detailed published looting of the palace of Sanherib. After its discovery many of the relief-decorated slabs, which originally decorated the walls of the throne room, were shipped to the British museum, yet many remained in situ. The palace was restored as a site museum and roofed. In the meantime this protection device does not exist any longer. According to the report of the local guard it was blown away by pressure waves in the course by bombardments of targets in Mosul next to the gate. However, the consequence was an increasingly severe damage of the slabs due to the winter rain. Water penetrated the surfaces of the slabs and made them porous and crack. This facilitated the looting of the slabs. Thieves broke off smaller fragments and sold them to antiquities dealers. The throne hall of king Sanherib, who once laid siege even to Jerusalem, have lost its splendour forever. In the year 612

B.C.E. the master pieces of neo-Assyrian art had survived the siege of Ninive but it did not survive the events in the aftermath of the 2<sup>nd</sup> Gulf War.

When summing up the facts we have to consider that altogether only few damages were caused by the events of the armed conflict – either direct or indirect. These damages are as regrettable, serious and irreparable as the destruction which occurred in its aftermath. But in relation to the aftermath's events the war damages are almost negligibly. The large-scale looting of museums and archaeological sites which lasted several years until now is much more serious. The main reasons for this situation are the following:

1. the destruction of the Iraqi archaeological infrastructure. – This certainly causes a missing protection of the cultural property.
2. the economic crises of the Iraqi population caused by the war and the embargo. – People try to survive this difficult situation as best as they can. Facing this problem and the urgent need for additional income they are also willing to loot sites and deal with antiquities.
3. the enormous need for antiquities in Europe and North America. – One side of the problem is the ignorance of many private collectors as well as the carelessness of some, even internationally well-known, auction houses. The other side is the missing control of the antiquities market. It is definitively necessary to establish an institution which effectively promotes the UNESCO-convention of 1970 as well as the UNIDROIT-convention of 1995.

The Iraq is on the way to renew its archaeological infrastructure and will therefore soon be able to handle the situation. The problem of the economic crises which is basically causing the willingness of individual persons to loot the heritage will automatically solve itself after the embargo against the Iraq is lifted. Thus the Iraq will soon be able to face its responsibility and take care of the cultural property again. Nevertheless the damages and losses of the last ten years can not be repaired. But still there is one important thing left to do: to establish institutions, which are able to control the European and North American antiquities market. Finally it had been this missing control and the never ending and uncaring hunger for antiquities in the west which had an devastating effect on the cultural property of the Iraq.

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### ***Cultural Heritage after Dayton - The Myth of Annex Eight***

The 1954 ICRC Convention on the protection of Cultural Property in the Event of Armed Conflict and its Protocols define cultural property as 'any movable or immovable property of great importance to the cultural heritage of all people, such as monuments of architecture of history, archaeological sites, works of art, books or any building whose main and effective purpose is to contain property'. Parties to the Convention must protect all cultural property, whether their own or that situated in the territory of other States. This can only be waived on the basis of 'imperative military necessity'. However, traditional methods for dealing with culture in war could not operate in the Balkans War (1991-95) because it was in many ways a war fought specifically against culture.

Annex 8 of the General Agreement for Peace (Dayton Agreement) provides for designing a programme for restoring/preserving the hideously shattered cultural heritage of Bosnia-Herzegovina. The existence of Annex 8 has allowed many interested parties to assume that Bosnia's wounded heritage is in caring hands. The number of destroyed or heavily damaged mosques, which had only been loosely counted at the cessation of hostilities, was well over a thousand. Destroyed churches numbered hundreds, while destroyed historic private houses were beyond count. In fact, Annex 8 has served for six years as a smoke screen to the true situation. The real situation is that Bosnia's cultural heritage was then and continued to be later in the hands of people (sometimes Bosnian themselves) who were disinclined or unable to cope with its care partly through lack of funds, but also through lack of knowledge about Bosnian culture.

The Council of Europe's very useful document, 'Specific Action Plan for Bosnia-Herzegovina' was developed in answer to Annex 8. It contained a very long list of potential projects. It was initially intended that UNESCO should manage the projects but being then without American membership and with limited operative funds, handed implementation of the plan to the Council of Europe. The Council of Europe selected a paid team to deal with this matter, which included two Bosnians and various Europeans who were experienced in deciding what should and what should not be national monuments and which were deserving to be given blue shields towards protection in case of war. Many Bosnians had hoped that this action plan which concerned monuments already shattered by war would include rebuilding and restoration of at least part of their damaged heritage structures. However, little has resulted with the exception of a few chosen monuments such as Mostar's old bridge and the St Luke Tower in Jajce. Yet the fruits of the Council of Europe's deep study of Bosnian monuments can be very constructively put into a programme for teaching Bosnians about their own architectural and cultural history, something which under communism was given scant regard. After a recent policy review, the Council of Europe has decided to utilize the expertise of BHHR in doing just this.

As a closing remark, I would say that a firm policy towards preservation of cultural heritage in war must be followed by an equally robust policy for an indefinite period after war. And policies must be backed up by concomitant action. This is a prime responsibility of warring factions, home governments and intervening IOs.

**Richard Brown,**  
LTC, Chair of Trustees,  
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**Phillipe HAMEL, French Ministry of Defense, Paris**

## ***The 1999 Protocol to the Convention on Protection of Cultural Property in Armed Conflict***

I should like to share with you a few personal thoughts about the potential impact of the second protocol additional to the 1954 convention on the international protection of cultural property.

This protocol was adopted on March 26, 1999 in the Hague at the end of very animated discussions. This is usually what you get when you put several lawyers in the same room to debate about anything. In this instance, it was also productive of a protocol which has been opened to accession since January 1, 2000.

These discussions about a new protocol started because many, in governmental and non governmental organizations had underlined certain weaknesses of the 1954 Convention. You no doubt all know that the special protection regime is complicated under the convention. Also, the consequences of a violation of the convention are not really addressed in the 1954 text.

From this perspective, the new protocol seems, in my opinion, to fall a bit short of the expectations that many had before the negotiations started. The low number of ratification so far received by UNESCO would seem to confirm this.

Several comments can be made on the protocol:

### **The form chosen for this international instrument did not follow the provisions of article 39.5 of the Hague convention.**

This article provides that amendments to the convention "shall enter into force only after they have been unanimously adopted by the high contracting parties represented at the conference and accepted by each of the high contracting parties".

It has been said that the protocol was intended only to supplement the convention, not to modify it and therefore the "protocol approach" was the right one. I beg to differ. If careful consideration is given to the provisions of the protocol, it is obvious that the substance of it relating to the strengthening of the protection regime, for example, is designed to replace the protection regime set forth in the 1954 convention, not supplement it.

Some have argued that article 41 of the Vienna convention on the Law of Treaties offered an option to free the parties from their obligation under article 39.5 of the convention. I remain skeptical about this interpretation of the Vienna convention. As a result, there are questions about the regularity of the process which led to the adoption of the protocol. This is unfortunate. In addition, the content of the protocol as far as its articulation with the convention is concerned, is complex and raises other questions.

### **The protocol has some merits. In some of its provisions, it updates and clarifies the regime of protection of cultural property, in line with the spirit of protocol I additional to the Geneva conventions.**

By including the concept of military objective, the Protocol helps solve some interpretation problems which exist in article 4 of the convention as regards reciprocity; this article provides that the use of cultural property for military purpose by a party may justify that the other party be freed of its obligation to respect the said property but only "in cases where military necessity imperatively requires such a waiver". Article 4 is silent about the case of a party not fulfilling its obligation and on the consequences of such violation.

On the contrary, article 11.1 of the convention provides that "If one of the contracting parties commits, in respect of any item of cultural property under special protection, a violation of the obligations under article 9, the opposing party shall, as long as this violation persists, be released from the obligation to ensure the immunity of the property concerned."

This is a bit of a paradox, and some writers have even said that the protection granted under the general protection regime is better than that of the cultural property under special protection. The Acts of the 1954 conference further nurtured the confusion. Nevertheless, most countries, including mine, have regarded the reciprocity provision as being implicit in the 1954 convention, in line with the earlier 1899-1907 the Hague conventions and the Washington covenant of April



1935 which all state clearly that cultural property cease to benefit from any protection when it is actually being used for military purposes.

By stating that any cultural property transformed into a military objective can become the legitimate target of an attack based on the imperative military necessity, the 1999 Protocol clarifies this important issue. The compromise which was adopted about the conditions which are attached to the notion of imperative military necessity is consistent with the spirit of protocol I additional to the Geneva conventions.

### **The protocol creates also a few limited additional obligations for the parties.**

For example, article 4 of the 1954 convention was silent about who should decide that the situation is such that imperative military necessity may be invoked. The protocol states that such decision shall be made by the commander of a battalion or above, or of a smaller unit when circumstances do not allow to do otherwise. For all practical purposes, it seems to me that this provision is of limited practical effect.

Article 4 of the convention was also silent about warnings to be given to the enemy. The protocol provides that an effective advance warning shall be given whenever circumstances permit. The other precautions, when attacking, are also very similar to the ones in Protocol I additional to the Geneva conventions. These obligations are for the most part compatible with military necessity as it is usually understood. This is the idea that "only that degree and kind of force, not otherwise prohibited by the law of armed conflict, required for the submission of the enemy with a minimum of expenditure of time, life and physical resources may be applied" (US navy commander's handbook on the law of naval operations 1987).

### **The protocol provides for a new regime of enhanced protection.**

This is the major innovation of the protocol. Because it was decided not to follow the amendment procedure under article 39.5 of the 1954 convention, the only solution to strengthen the protection of cultural property was by way of creating a new regime of protection, therefore by adding a third layer of protection next to the two existing ones under the convention.

We thus now have before us:

- the rules relating to the protection of cultural property in general to be found in both the convention and its protocol
- the rules of the convention relating to special protection
- the rules of the protocol about enhanced protection

That seems a bit complicated for a simple lawyer like me. I bet it is not going to be simple in the eyes of military commanders who already have complicated decisions to make...

Enhanced protection creates a true immunity for a designated cultural property. Such immunity can be waived, but only if the property has, by its use, become a military objective. But under such circumstances, the conditions to make an attack of such property legal are many. We believe here that the protocol is going a bit further than protocol I additional to the Geneva conventions (particularly in article 13.2.b), and inventing, so to speak, concepts that are unheard of in any other international humanitarian treaty. I refer, in particular, to this disturbing notion of "immediate self defense" in article 13.2.c.

I believe that some of these conditions could be seen as unrealistic and are a source of questioning on how to carry out one's mission while fulfilling such obligations under the protocol.

### **Last, but not least, the provisions on sanctions are complex and not easy to interpret.**

Article 28 of the 1954 convention was drafted in very general terms. Chapter four of the protocol no doubt constitutes a major development of the sanctions regime.

Formally, it follows the division between, on the one hand, serious violations of the protocol which justify criminal prosecution, and on the other hand, other minor offenses for which disciplinary punishment is deemed sufficient. That is in line with the usual approach followed by the "Geneva Law".

But the protocol imposes on States parties to establish their jurisdiction over some serious violations of the protocol as well as the convention (articles 15.1.c and 16.1.c combined) even if

the offender is not one of their nationals or the offense has not been committed in their territory. That is called "universal jurisdiction" in my country. That is also called an amendment to the convention which should have been decided unanimously. And we all know that it is a very serious decision for a State to decide to render competent its courts on these kinds of offenses wherever and whoever commits them..

In conclusion, Protocol 2 to the Hague convention is a document, in spite of some positive developments that it contains, which has created a slight discomfort on our side because of its constant but sometimes unfaithful borrowings made to protocol I additional to the Geneva conventions, the formalistic efforts to avoid implementing the rule of unanimity which was agreed in article 39.5 of the convention and the creation of the third regime of protection where two would have been largely enough, which unduly complicates the legal environment of military operations.

This is why, in my opinion, France has not been able to sign the protocol. However, careful consideration continues to be given to the implications of a possible accession but no such decision has yet been made.

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## ***Seizure and Destruction of Azerbaijani Cultural Heritage in the Occupied Territories by Armenian Forces***

I would like to stress the utmost interest of Azerbaijan in this event, especially in the light of the well known fact that as result of the armed conflict with the Republic of Armenia, 20 percent of our territory continues to be under Armenian occupation.

One of the tragic consequences of Armenian aggression towards the Republic of Azerbaijan besides the occupation of 20 percent of the territory of the country and ethnic cleansing was the destruction and seizure the monuments of Azerbaijani national and cultural heritage. In spite of many appeals by international organizations, Armenia has not made any constructive step towards providing security for the cultural wealth and historical monuments of Azerbaijan left in the occupied regions.

As a result of military actions, Kelbadjar historical museum of local lore with its unique collection of ancient coins, gold and silver wares, rare and expensive stones, carpets and other handicraft wares, the Museums of History of Shusha and Karabakh, unique Agdarn bread museum, the second museum in the world, the Stone Monuments Museum in Zangelan as well as many others were plundered and destroyed. 500 historical architectural and more than 100 archeological monuments, 22 museums, 4 art galleries, 927 libraries, 85 musical schools, 4 state theatres remain on the occupied territories of Azerbaijan. Armenians have taken away 40 thousand museum values and exhibits from 22 plundered museums. 4.6 million priceless books and manuscripts have been burnt down.

According to the information available, numerous historical and cultural monuments and pieces of arts removed and exported from the occupied Azerbaijani territories by Armenian Armed Forces and have been put on sale in the auctions and shops of Europe and America in contravention with Hague Convention. In the process of these operations they change the attributes of cultural monuments - their national and geographical origins and identity.

Double minaret Govhar-Aga mosque of 18 century in Shusha has been heavily damaged, the other mosques in the occupied regions have been destroyed and burnt down.

In defiance of the provisions of the Hague Convention, many mosques have been turned into warehouses and depositories. The occupation caused the leveling to the ground of unique monuments of the Bronze Epoch - Khojali Barrow Field that covered 50 hectares of land with more than 100 barrows. The Republic of Azerbaijan is deeply alarmed by the transformation of the Azykh Cave, a precious monument, which is one of the oldest places of human civilization, into an ammunition dump. The fate and the state of 1850 cultural organizations and affiliating buildings in the occupied regions have not been known so far.

The fate of Albanian Round Temple and 14 century Khojaly Mausoleum also remains uncertain. The number of cases of misappropriation of Azerbaijani works of art and literature by Armenians verified by the Copyright Protection Agency of the Republic of Azerbaijan cause serious concern to the Azerbaijani people. Azerbaijan has a rich and diverse cultural heritage that takes root from the ancient ages. Azerbaijan people have considerably contributed to the world civilization. More than 3.5 million items of historic, cultural, architectural monuments, works of literature and art, archeological findings belong to the whole humanity and Azerbaijan has always attached great importance to their protection.

Republic of Azerbaijan is a Contracting Party to the Hague Convention (1954). The text of the Hague Convention and its executive regulations have been translated into Azerbaijani language and circulated among the personnel of the Armed Forces and population. The Constitution of the Republic of Azerbaijan and Laws On Culture, On Protection of Monuments of History and Culture, On Architecture and On Cinema contain provisions providing preservation of cultural heritage and protection of cultural values. A new List of Movable and Immovable Monuments of History and Cultural Values is being drawn up in compliance with provisions of the Hague Convention.

Taking into account that the cultural heritage created in the course of many centuries does not belong only to a separate nation or a country but also is a constituent part of world cultural heritage, Republic of Azerbaijan appeals to the world community to take necessary steps to prevent the destruction and misappropriation of the Azerbaijani cultural values.

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***The History of the Lesok Monastery “St. Atanasia” – Perspectives for Today and Tomorrow***

The monastery complex of Leshok encompasses the monastery churches of St. Atanasia and the Holy Virgin, the old monastery lodging houses, the new church, the economic buildings and other objects of the monastery. It is on the list of cultural heritage of Republic of Macedonia.

The church of St. Atanasia had been built in the year 1335. Although not very precise the only data available about the church of St. Atanasia are dated from 19th century and they are obtained from the records of the Macedonian educator, the hieromonk Kiril Pechinovich and his disciples.

About 1698 the church of St Atanasia had been abandoned and later, in 1818 when the hieromonk Kiril Pechinovich had arrived from the Holy Mountain, he had re-activated the monastic life. He brought with him many manuscripts and books and had established and enriched the monastery library.

On the remnants of the interior wall surfaces of the church traces of fresco-paintings can be clearly noticed, while stone and bricks according to the stile of the Byzantine churches had made out its facades. The church had marble iconostases, the remnants of which are exposed in the museum in Tetovo.

Within the scope of the present-day monastery complex, on the location where the present church of the Holy Virgin was built in the 17th century, as early as in the 13th century an old church had existed there which is mentioned in the chrysobull of the king Stevan Dechanski dated 1326.

It is three-conches church with a narthex added later to its western sight. The frescoes dated 1646. In 1879 an annex to the western sight of the church had been built and its interior had been covered with paintings.

The grave of Kiril Peicinovic is located in the monastery courtyard, while the original tombstone, with a text inscribed by himself, is placed in the monastery lodging houses.

Lesoks monastery St. Atanasia, as most monasteries in Macedonia was damaged many times through history; the last one was in August this year by terrorist. Moreover, as monasteries were renewed after damages, after last demolishing there is only hope left that it will be renewed. Last renewal, regeneration was in 1818.

How it was renewed is recorded in Remember Book. A monastery was respected by pashas and begs, as remember book says, Abdurahman-pasha and his brothers Veli-beg, Hasan-beg and Geladin-beg give promotion for renovation of monastery St. Atanasia. They believed that sanctuary of Christians church would give them health luck and wealth. It says that monk Kiril Peicinovic, born in the village Tearce near by Tetovo, who with his father brother and uncle went to monastery Hilendar on mountain St. Athos, renewed it.

After he became monk he returned to his homeland and spent all his life in Lesoks monastery where he wrote many manuscripts, opened schools, collected books and contributed greatly to the Macedonian language. It is important to mention that for renovation Kiril Peicinovic sold his home property land. Also people from all Macedonian villages as Volkovija, Varvara, Belovista, Neprosteno, Raotnice, Celopek give great support with giving money, land, iron work, clouts, and etc. for building monastery. However, support came from all Macedonia as from Bitola, Blace, Strumica, Skopje, and Ohrid. From all this said above we can see that inhabitants from near by villages feel natural monastery, as it's own and helped in its renovation and maintains with that what they had. They saw importance of monastery as siding garden of religion, education, culture and general culture of Macedonian nation.

Today, as we have already passed the threshold of new millennium such act to blow up century old temple with dynamite is the top of insane filled with firing, robbing and reaped not only on church but also on habitants of Macedonian nation, who took and give part of their mouth to renew the church.

Dynamite action blowing up this temple is killing relation between ethnicums but above all it blow up architectural monument, which belongs to Earth civilization.

One of product of ethnicum dynamite is creating hate on conversely direction. And then what's happening is eruption of revolt which burn's Charshy mosque in Prilep, that doesn't have such architectural characteristic and value but it consists of historiographistic values from where we can read chronology and again some how performs universal civilization values.

What can we do and how can we work to not lost such cultural monuments of civilization values?

- Between other components, for good living on This Planet Earth, in the surroundings where exist ethnic groups there has to be hard work on gather life living and tolerance
- Creating archives with technical, photo, photogrametical and other documentation
- To look forward of technical instruments which will be able to unable or to minimize destructive action
- Although existence of many Convections, for cultural monuments more over creating sanctions, apropos; Hag court for evil actions against human and humanity in range of cultural monuments, which means to bring evel-doer of evil action on cultural monuments of universal values to world court of justices.

Than we will be less witness of examples of using cultural monuments such as archaeological site as Kale Hisar, as Muslim holly site Arabaty Baba Teke with it's interrogated building in Tetovo, as monastery Mateyche of Hally Vergan - Kumanovo, for nesting such many different kind of groups and dishonor and destroying of universal values.

We cannot relay even on marks that we put on our monuments. Such example is Colored mosque from which such group took of the mark that it is on the listed monument of Republic of Macedonia. In 1998 there were conservation work supported by Phare Program.

In this occasion I am not going to take your attention on more detailed elaboration of methods, procedure, and measures that will give good recipe how to protect cultural monuments with universal monuments in case of war, because being my self in wind of ware, which for me is product of senseless, looking in front of me originals of our area, with price that can not be paid with, that in one second could disappearance, makes me fill hopeless.

**Gurgica Lekovska,**  
Senior conservator, Ministry of Culture,  
Macedonia

**Part IV**

**THE FUTURE OF THE PROTECTION OF CULTURAL PROPERTY:  
THE NEED FOR INTERNATIONAL CO-OPERATION**

## ***Unconventional Initiatives as a Tool to Support the Peace Process***

### **Example: "Peace through Nature?" – a chance for Bosnia and Herzegovina?**

If we want to save our cultural heritage for future generations it is not sufficient just to protect it from destruction during a conflict or war, it is also necessary to work on the peace process itself. Especially after events of a war that had an ethnic or religious background, it is sometimes extremely difficult to plan and work for a common future. Cultural property is very often seen as 'ethnic' or 'religious' property belonging to separate groups of people. Because of this, cultural objects are very often considered as special targets for deliberate destruction, in spite of international efforts to protect such treasures. Consequently, cultural property in the classical sense of buildings, paintings and other objects of art also cannot be used for communal activities after conflicts.

During the last three years I had the opportunity to organize an international congress on 'Catastrophes and Catastrophe Management in Museums' that took place in Sarajevo from 17–21 April 2001. During these three years we developed an idea that may seem unconventional but may possibly be a very good way to support the peace process under the above-mentioned extremely difficult circumstances.

The idea is based on the knowledge that one of the main problems of Bosnia and Herzegovina is still a steady trend for ethnic separation. There is a Bosnian, Croatian and Serbian religion, a Bosnian, Croatian and Serbian art, and three different languages. A model for supporting the peace process could therefore be based on the common understanding and love for something that is clearly placed outside that crucial circle.

The idea is called 'Peace through Nature'. It is a bio-cultural project providing the country with possibilities for a common education that would have a balanced advantage for all ethnic groups in the future. One of the most exciting resources of Bosnia and Herzegovina is its breathtaking untouched nature. The country covers a large part of the Dinarid Mountain System and the flora and fauna is influenced by various factors. The biodiversity is high and the area is of major biogeographical importance because it functions as a bridge between the Alps and the high Balkan mountains further south. The country is rich in endemics and is still one of the most important biogenetical reserves of that part of Europe.

Such a bio-cultural project that may contribute to a better understanding between the ethnic groups of the country has to combine initiatives to alert large and important sections of all three ethnic groups and to encourage them to contribute actively to the project. As the present adult generation is still in a kind of traumatic post-war situation, the project is focusing especially on young people in the country.

The plan can be summarized briefly as follows.

1. Groups of young people (e.g. in schools) are trained by experts how to find, collect and prepare plants and selected groups of insects as a basis for a biological survey of the country.

These groups are paid for this work according to the results.

2. With the income from this work some limited local infrastructure can be established (e.g. restoration works on the buildings, furniture and computers for schools etc.).

3. The working groups receive special management training and should be able to organize their work independently under the supervision of a trainer. In this way they receive a good education in project management in addition to a biological and geographical education.

4. As limited data basing of the collected material is required, this is also a good opportunity for the group members to learn various computer techniques.

5. The collected material is forwarded to a documentation center. There the specimens are properly determined and the data basing is completed.

6. The collected biological data material is finally available for environmental planning in the country, for agriculture and forestry, for nature conservation, animal and plant protection, for the establishment of nature reserves and for new activities for the development of tourism.

Steps to reach this goal:



1. Planning and co-ordination, agreements, money raising
2. Management and supervising team
3. Documentation center (e.g. Zemaljski Muzej in Sarajevo)
4. Working groups and group managers
5. Trainers and instructors
6. Team of cooperative scientists
7. Promotion and public relations

Timing: 10 years

Estimated costs for 10 years: *ca* 7,300.000

**Gerhard Tarmann,**  
Dr., Curator of Natural Sciences,  
Tyrolian Provincial Museum Ferdinandeum, Innsbruck

**Franz SCHULLER, Provincial Military Command of Lower Austria, Vienna**

**Goals of a Project Concerning the Convention for the Protection of Cultural Property in the Event of Armed Conflict**

Experiences showed that even in Europe a number of States are not or not full members to the Hague Convention. Another number of States which are Parties to the Convention show different levels of implementation and application of the Convention.

Recent Conflicts in Europe as well as in other parts of the world and the crises management followed on urged the necessity of dealing with the topic "Protection of Cultural Property". United Nations referred directly to it (CPP in a UN - Peace Keeping or Peace Enforcement Activity) in the Secretary General's Bulletin ,August 1999.

Due to the fact that the Second Protocol to the Hague Convention gives a new opportunity to all Parties we would like to support these activities by a common European project.

That means:

- to strengthen all activities of adoption and implementation of the Convention as well in the Civil as in the Military Sector
- to support each other in efforts of implementation of the convention
- to standardize a system of selection and denomination of objects
- to standardize the level of implementation within the Armed Forces
- to standardize and to work out common training programmes
- to make sure that in the future - based on the ability of all forces to have their special well-trained personnel - national defence and international activities never will take place without CPP
- to create an example how CPP can work in the Armed Forces and in cooperation with civil authorities.

EC supports activities in the field of culture if at least 5 partners declare to participate in the project. And this has to be done by a legal and authorized declaration/obligation (signature)

The time schedule is in about:

- Declaration of participation : End of November
- Legal binding signature (rechtsverbindliche Verpflicht-ungserklärung): Depends on year of project
- Presentation at Brussels: depends on year of project

Money: After deducting the amount for coordination and administration the money should be distributed equally under all partners.

**Franz Schuller,**  
COL Dr., Cultural Protection Officer,  
Provincial Military Command Lower Austria, Vienna

## **Summary and Outlook**

As we review a host of interesting lectures and contributions at the end of the seminar "Protection of Cultural Property in the Event of Armed Conflict - a Challenge in Peace Support Operations", we are at the same time aware that we are facing new challenges and tasks regarding the subject at hand.

For the first time we have discussed the topic of cultural property protection not only as a problem in international Peace Support Operations, but have also dealt with it in a differentiated and objective analysis which should guide us for the continuation of our common work in the future.

Although not all findings of the various presentations, deliberations and discussions can be represented at this point, those aspects which will not be mentioned explicitly shall not be reduced in their importance for the protection of cultural property in international missions.

The following results of the conference should find a realistic chance for implementation in the not too distant future:

1. Making the protection of cultural property (PCP) an obligatory specification in Civil-Military Cooperation (CIMIC).
2. Compulsory incorporation of PCP officers during international military operations in the following phases:
  - Planning
  - Exploration and reconnaissance of deployment areas
  - Moving into deployment areas and
  - For the whole duration of the military operation.
3. Adoption, implementation and standardisation of the Hague Convention and the respective Hague Protocols in all Armed Forces.

The International League of National Cultural Heritage Protection Societies, which has been formed by the National Cultural Heritage Protection Societies of Austria, Germany, Italy, Romania, Spain and Switzerland (plus three observer nations: France, the Netherlands and Portugal), intends to launch a multi-national project concerning the implementation and dissemination of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and all the other relevant international conventions and protocols.

4. Bringing forth the 20 ratifications necessary to put the 2<sup>nd</sup> Protocol into legal force.

### **Ad 1.**

Protection of Cultural Property (PCP) as an integrative and constitutive element of CIMIC is directly influencing the strategic objectives behind military operations. In Crisis Response Operations (CROs) around Europe, PCP is challenged to protect the last remaining "symbols of ethnic identity" of peoples. The internal protection of cultural goods serves as a backbone for a civil populations' will to endure subversive-sub-conventional threats in the sense of denying the aggressor his strategic intention. New dimensions of threat will have to result in a steadily increasing demand for concerted and conceptually based PCP-measures which are designed to anticipate the nature of future conflicts.

Expansion of CIMIC by institutionalizing PCP as a stable component of every mandate could offer an additional opportunity to overcome the narrow military and technocratic role of the soldier, resulting in a position of the military as a humanistic representative of culture, so to speak. Viewed from this angle, it seems quite easy to imagine the positive impact this new military task of safeguarding cultural assets will have on societies in general. In this context, the "culture means hope"-principle will become evident in all its implications.

## **Ad 2.**

PCP will have to become an integral part of the principles outlined and the mandates given by security organisations such as the UN, NATO, or, to an increasing degree, the European Union. The implementation of such requirements would include the deployment of especially trained cultural property protection officers in all phases of international operations as delineated above. Parallel to the protection of human lives, the task of cultural protection liaison officers would be to ensure the protection of cultural property by drawing the attention of tactical and operational commanders to cultural treasures existent in mission areas and, if need be, secure sufficient protection.

This vision goes back to the ideas of the already deceased Austrian U.N. human rights expert Prof. Dr. Felix Ermacora, who claimed that cultural protection should be given the same consideration as human protection.

To implement these and other goals formulated in the course of this seminar, PCP officer contingents built by a maximum number of partner countries should be set up for international deployment. Due to the attention Austria has paid to this issue in recent years, it could dispatch a significant number of properly educated and trained cultural protection officers right away.

## **Ad 3.**

The purpose of this project which was discussed in great detail should be threefold:

- Firstly, an inventory of all existing international instruments concerned with the protection of cultural property during armed conflicts as well as a thorough and well-funded research basis should be drawn up. The latter is supposed to examine the contents, intentions, and vocabulary of the existing conventions and protocols which requires to give attention to the legal, military, cultural, economic and political aspects of the matter. The approach therefore does have to be not only international, but also both interdisciplinary and trans-disciplinary.
- Secondly, a minimal common understanding about the intentions and concepts of the instruments of cultural heritage protection must be elaborated.
- Thirdly, an appropriate set of tools must be identified and set up for a concrete and efficient dissemination of common understanding.

## **Ad 4.**

The 2<sup>nd</sup> Protocol to the Hague Convention was developed to make up for the major insufficiencies of the initial document of the 1954 Hague Convention which have become apparent over the years. However, as was made clear throughout the seminar, notwithstanding that this new instrument still has its deficits, it provides significant progress in several fields of the protection of cultural assets. But we are hardly using this new instrument, simply because of the fact that it has, due to the lack of ratification by most of the member states, not yet become operative. From the 39 states which have signed the 2<sup>nd</sup> Protocol in 1999, up to this day only 9 have either ratified or acceded it.

In order to establish a political body to give more weight to the convention, ratification of the 2<sup>nd</sup> Protocol in at least 20 nations will be necessary. Without having reached this necessary number of ratifications, we will not be able to establish the list of objects that need enhanced protection; furthermore, prosecution of criminal offences against the convention will not be able either. It is for this reason that this meeting expresses the recommendation that the state parties which have signed the 2<sup>nd</sup> Protocol should consider its ratification in due course.

Should we succeed in implementing the ideas emphasised in the course of the conference, we will not only have made a significant step toward further implementation of the Hague Convention, but more importantly, we will also have decisively moved towards safeguarding and preserving our common cultural heritage - which, after all, is our common goal.

**Gerhard Sladek,**

DDr., BrigGen, Seminar Chairman & President of the  
Austrian Society for Protection of Cultural Property, Vienna

### ***The Austrian Society for the Protection of Cultural Property***

The Austrian Society for the Protection of Cultural Property (Österreichische Gesellschaft für Kulturgüterschutz / ÖGKGS) was founded in 1980 on the base of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

This Convention defines not only the prohibition against confiscation, damage or deliberate destruction of historic monuments and works of artistic and scientific value during armed conflicts. With the signature of this Conventions the foundations have been also laid for a common international agreement to put the cultural property of all nations under international protection.

It is the aim of the ÖGKGS to diffuse its ideas among people and to draw their attention by various activities, publications and exhibitions including the support of private initiatives towards the protecting of cultural property. The ÖGKGS is an association of private law which has no religious, political or ideological orientation. The ÖGKGS draws its inspiration however, from the great humanist tradition, on a global scale. The risks and threats to cultural property in all their variations are increasing, especially in our modern society. As a result, protection of cultural property today includes not only aspects of private and international law, but also economic and other questions of art history and cultural politics. In this respect the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage is the legitimate and global continuation of the Convention of 1954. The ÖGKGS is aware of the rapid changes of present times and has increased its effort to challenge new “civil” threats.

In working together with similar initiatives in neighboring countries the idea of protection of cultural property should be continuously strengthened on a broad international scale.