

Syria, Destruction of Cultural Heritage

Case prepared by Leila Rharade, LL.M student at Geneva Academy, under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. The destruction of Syria's cultural heritage must stop

[**Source:** Joint Statement of UN Secretary-General Ban Ki-moon, UNESCO Director-General Irina Bokova and UN and League of Arab States Joint Special Representative for Syria Lakhdar Brahimi, "The destruction of Syria's cultural heritage must stop", 12 March 2014, available at: <http://www.un.org/sg/statements/index.asp?nid=7521>]

New York, 12 March 2014

[1] As the people of Syria continue to endure incalculable human suffering and loss, their country's rich tapestry of cultural heritage is being ripped to shreds.

[2] World Heritage sites have suffered considerable and sometimes irreversible damage. Four of them are being used for military purposes or have been transformed into battlefields: Palmyra; the Crac des Chevaliers; the Saint Simeon Church in the Ancient villages of Northern Syria; and Aleppo, including the Aleppo Citadel.

[3] Archaeological sites are being systematically looted and the illicit trafficking of cultural objects has reached unprecedented levels.

[4] There are alarming reports that Syrian heritage has been deliberately targeted for ideological reasons.

Human representations in art are being destroyed by extremist groups intent on eradicating unique testimonies of Syria's rich cultural diversity.

[5] All layers of Syrian culture are now under attack -- including pre-Christian, Christian and Muslim. [6] The destruction of such precious heritage gravely affects the identity and history of the Syrian people and all humanity, damaging the foundations of society for many years to come. The protection of cultural heritage, both tangible and intangible, is inseparable from the protection of human lives, and should be an integral part of humanitarian and peacebuilding efforts.

[7] We therefore make the following joint appeal:

[a] We call on all parties to halt immediately all destruction of Syrian heritage, and to save Syria's rich social mosaic and cultural heritage by protecting its World Heritage Sites, in line with UN Security Council Resolution 2139, adopted on 22 January 2014. [b] We condemn the use of cultural sites for military purposes and call on all parties to the conflict to uphold international obligations, notably the 1954 Hague Convention for the protection of cultural property in the event of Armed Conflict and customary international humanitarian law.

[c] We appeal to all countries and professional bodies involved in customs, trade and the art market, as well as individuals and tourists, to be on alert for stolen Syrian artifacts, to verify the origin of cultural property that might be illegally imported, exported and/or offered for sale, and to adhere to the UNESCO 1970 Convention on illicit trafficking of cultural property. [8] Our efforts to save Syria's cultural heritage must be part of wider efforts to end violence and move to peace. Destroying the inheritance of the past robs future generations of a powerful legacy, deepens hatred and despair and undermines all attempts to foster reconciliation. Now is the time to stop the destruction, build peace and protect our common heritage.

B. UNESCO Director-General Irina Bokova deplures the loss of two leading scholars of Syrian antiquity

[Source: UNESCO, "Director General Irina Bokova deplures the loss of two leading scholars of Syrian antiquity", Document not dated, available at <http://en.unesco.org/news/director-general-irina-bokova-deplures-loss-two-leading-scholars-syrian-antiquity>]

The Syrian cultural heritage community suffered two immense blows within one week with the murder of archaeologist Khaled Assad in Palmyra and the killing of the Assistant Director of laboratories at the Directorate General of Antiquities and Museums Qasem Abdullah Yehiya.

[1] "I am both saddened and outraged to learn of the brutal murder of Khaled Asaad, who oversaw antiquities at the UNESCO World Heritage site at Palmyra," UNESCO Director-General Irina Bokova said today. "In no uncertain terms I condemn this horrific act."

[2] According to news reports, the 82-year old archaeologist had been recently killed at the site, where he had worked for more than 50 years. Asaad had been held for more than a month and, according to these reports, was being questioned about the location of valuable artefacts.

[3] “They killed him because he would not betray his deep commitment to Palmyra,” the Director-General said. “Here is where he dedicated his life, revealing Palmyra’s precious history and interpreting it so that we could learn from this great city that was a crossroads of the ancient world. His work will live on far beyond the reach of these extremists. They murdered a great man, but they will never silence history.”

[4] The Director-General was also saddened to learn of the killing of Qasem Abdullah Yehiya. According to the Directorate General of Antiquities and Museums (DGAM), Yehiya, the Assistant Director of laboratories at the DGAM, died in a rocket attack on the Damascus Citadel and the National Museum last week. “The killing of Mr. Yehiya is a deplorable act, made all the more senseless that it was the result of an attack on the museum and ancient citadel,” Director-General Bokova said.

[5] “The untimely deaths of Mr. Assad and Mr. Yehiya are a terrible loss to the cultural heritage community in Syria and globally,” the Director-General added.

[6] The Damascus Citadel and museum were damaged in the attack and a number of museum employees were also injured. The Ancient City of Damascus, including the Citadel, was inscribed as a UNESCO World Heritage site in 1979. Daesh took control of Palmyra in May. It was inscribed as a UNESCO World Heritage site in 1980.

C. UNESCO Director General Irina Bokova firmly condemns the destruction of Palmyra’s ancient temple of Baalshamin, Syria

[Source: UNESCO, “Director General Irina Bokova firmly condemns the destruction of Palmyra’s ancient temple of Baalshamin, Syria,” Document not dated, available at <http://en.unesco.org/news/director-general-irina-bokova-firmly-condemns-destruction-palmyra-s-ancient-temple-baalshamin>]

The Director-General of UNESCO firmly condemns the destruction of the ancient temple of Baalshamin, an iconic part of the Syrian site of Palmyra, a UNESCO World Heritage site.

[1] “The systematic destruction of cultural symbols embodying Syrian cultural diversity reveals the true intent of such attacks, which is to deprive the Syrian people of its knowledge, its identity and history. One week after the killing of Professor Khaled al-Assaad, the archaeologist who had looked after Palmyra's ruins for four decades, this destruction is a new war crime and an immense loss for the Syrian people and for humanity,” said the Director-General.

[2] Baalshamin temple was built nearly 2,000 years ago, and bears witness to the depth of the pre-Islamic

history of the country. According to several reports, the building was blown up on Sunday 23 August. Its *cella*, or inner area, was severely damaged, and followed by the collapse of the surrounding columns.

[3] The structure of the Baalshamin temple dates to the Roman era. It was erected in the first century AD and further enlarged by Roman emperor Hadrian. The temple is one of the most important and best preserved buildings in Palmyra. It is part of the larger site of Palmyra, one of the most important cultural centres of the ancient world, famed for its Greco-Roman monumental ruins, repeatedly targeted by Daesh since May 2015.

[4] “The art and architecture of Palmyra, standing at the crossroads of several civilizations, is a symbol of the complexity and wealth of the Syrian identity and history. Extremists seek to destroy this diversity and richness, and I call on the international community to stand united against this persistent cultural cleansing. Daesh is killing people and destroying sites, but cannot silence history and will ultimately fail to erase this great culture from the memory of the world. Despite the obstacles and fanaticism, human creativity will prevail, buildings and sites will be rehabilitated, and some will be rebuilt.

[5] “Such acts are war crimes and their perpetrators must be accountable for their actions. UNESCO stands by all Syrian people in their efforts to safeguard their heritage, a heritage for all humanity,” said the Director-General.

Discussion

I. Classification of the conflict and applicable law:

1. (Documents A, para [4] ; Document C)

How would you classify the conflict in Syria between the State armed forces and “extremist groups”? What additional information would you need, if any, to assist your determination of the character of the conflict? Does the fact that Daesh refers to itself as Islamic State affect the characterization of the conflict? What is the law applicable to the instances of destruction and killing cited in the documents? Is the law binding on both States and non-state armed groups?

II. Classification of persons:

2. (Documents B and C, para. [1])

- a. What is the status of Professor Khaled al-Assaad and Qasem Abdullah Yehiya under IHL? In what way, if any, does the fact that Professor al-Assaad, as opposed to Qasem Abdullah Yehiya, was held for a month before he was killed affect the law applicable to him under IHL and the evaluation of whether his death involved a violation of IHL?
- b. Under what circumstances could Qasem Abdullah Yehiya have been a legitimate target under IHL? If he was not, did his death necessarily involve a violation of IHL?
- c. Does the fact that both were working to protect cultural heritage matter under IHL?

III. Protection of cultural heritage

3. (Documents A (paras. [2]- [4]; [6]; [9]); C; and B (paras. [4] and [6])

- a. What kinds of objects and sites constitute cultural property? Are only attacks against religious objects

prohibited? In Document A para. 6 there is a reference to “intangible” cultural heritage. Is it possible to “damage” or “destroy” something intangible? Do IHL rules apply to such forms of cultural heritage? What would such protection resemble in practice? How are persons contributing to intangible cultural heritage protected by IHL?

b. How is cultural heritage protected in war time? Which rules of conduct of hostilities are applicable regarding such property? Is the law applicable to cultural property applicable in NIACs? (1954 Hague Conventions Art 1-4, 1st Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, Art 6, P I, Art. 53, Art. 57; P II, Art. 16; CIHL, Rules 38-40)

c. What is the relationship between the protection of cultural heritage in Protocols I and II and in the 1954 Hague Convention? (P I, Art. 53; P II, Art. 16)

d. What significance does the listing of cultural property on the UNESCO World Heritage list have under IHL? Is cultural property protected even if it is not included in the UNESCO World Heritage list?

IV. Protection of cultural property: Obligations of defending and third parties

4. (Document A, paras. [2] and [7] (b) and (c))

a. Can cultural property be used for military purposes? What consequences, if any, attach to such use? (1954 Hague Convention on the protection of cultural property, Art. 4)

b. Are Protocols I and II to The Hague Convention on the Protection of Cultural Property applicable to our case?

c. In your opinion, does IHL impose an obligation on non-involved states to prevent the trafficking of cultural property that has been looted? Is another international legal regime applicable in such cases? Are those involved in trafficking of cultural property liable for prosecution under international criminal law? (See Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970, online: <http://en.unesco.org/>)