Protecting humanity’s heritage
Safeguarding cultural property in war
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Front cover
Head of the guild of masons inspects the ruins of a mausoleum in Timbuktu, Mali. June 2013
Photo: MINUSMA/Sophie Ravier

Editorial photos
Aleppo: mosques damaged by the fighting. 2015 (top); 2013 (bottom)
Photo: ICRC/T. A. Voeten

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Content Abbreviations
As many of the authors in this magazine commonly refer to the same international legislation or institutions, to reduce repetitious inclusion of the full names of certain treaties, a glossary has been provided for your convenience. The reference in bold is the abbreviation adopted in text and the italics provides the full name:


Geneva Conventions of 1949:
First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
Second Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
Third Geneva Convention relative to the Treatment of Prisoners of War
Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War

1977 Additional Protocol I: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
1977 Additional Protocol II: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts

IHL: International Humanitarian Law
ICC: International Criminal Court
ICRC: International Committee of the Red Cross
UNESCO: United Nations Educational, Scientific and Cultural Organization
UNDPKO: United Nations Department of Peacekeeping Operations
Imagine a world without the Pyramids of Giza, without the Eiffel Tower, without Angkor Wat. The loss of these treasures would mean the loss of a portion of our common cultural heritage; objects which communicate across the ages who we are, what we know to be true, and what we value. The protection of art, architecture, sacred places and other treasures is ultimately the protection of the cultural identity of those who created it, and of the common heritage of humankind.

Cultural property is important in peacetime, but particularly in societies experiencing division, violence or war. Survival in war means more than merely continued existence; it means an existence with dignity and hope. Cultural property is one avenue for conflict-affected people to maintain their dignity and hope. Importantly too, it brings us together. In looking at a piece of art, a monument, an object of beauty or faith, we learn more about what unites us. When we protect cultural property, we leave the door open to building future peace and better understanding between former adversaries.

In light of the importance of cultural property, IHL requires that all parties to conflicts refrain from its deliberate destruction, and to take certain steps to protect it. Yet increasingly, cultural property is coming under attack. Australian Red Cross views this trend with the deepest of concern.

In this edition of the IHL magazine we aim to inspire conversations about why, and how to protect cultural property. We commence with an article about why we at Australian Red Cross are focused on this particular challenge. Other authors then explore the contributions that international bodies such as the International Committee of the Red Cross (ICRC), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Department of Peacekeeping Operations (UNDPKO), play in protecting and preserving art and culture. The magazine also explores how international criminal law seeks to respond to crimes involving the destruction of cultural property. Alongside these reflections are pieces that explain the international law that protects cultural property, and recommendations for Australia, to ensure that our own national protections for cultural property are strong enough to withstand the pressures of war.

We offer our sincerest thanks to all the contributors to this issue for their work, and we hope that you enjoy this edition of the magazine, and join the discussion on how we can ensure the safety of cultural property in war.

Judy Slatyer
Chief Executive Officer
Australian Red Cross
Promoting respect for cultural property

Protecting art, artefacts, libraries, historical buildings and sacred sites is not only about preserving the precious fruits of creative labour; there is also a genuine humanitarian imperative to safeguard cultural property. Culture is a crucial part of every society’s identity and history. It tells the stories of where we come from and who we are. Often it is irreplaceable. Increasingly it is under attack.

Australian Red Cross is currently focusing on the particular issue of protections of cultural property in armed conflict because we feel it is a critical moment to raise awareness about this area of the law. The world has witnessed the deliberate destruction of unique world heritage sites. Such destruction is being increasingly used as a tactic of warfare, as evidenced by the calculated, documented and publicised destruction of ancient Roman ruins in Palmyra, Syria, Assyrian statues in Ninevah, Iraq; and by non-State armed groups issuing of looting licences to allow the trafficking of antiquities. Other contributors to the magazine will highlight examples where cultural sites have been subject to violent attacks from Mostar to Mali.

Sometimes referred to as ‘cultural cleansing’, the goal is often to destroy peoples’ dignity by erasing significant symbols of their heritage.

It is because cultural property embodies the social, historical, religious and artistic components of human identity that its protection is of concern to the entire

Abdul Wahid shows a 14th century manuscript hidden at his house in Timbuktu, Mali. 4,203 manuscripts were destroyed by jihadists in 2012.

Photo: MINUSMA/M. Dormino
international community. In situations of armed conflict, cultural property is protected by IHL. Australia was one of the original signatories to the key treaty protecting cultural property, the 1954 Hague Convention which states that

“... damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”

This law defines cultural property to include both movable objects, such as works of art, antiques, manuscripts, books and archives, and immovable cultural property, such as buildings and monuments of historic, artistic or architectural significance and archaeological sites. Cultural property, being civilian property, is also protected in the 1977 Additional Protocols to the four Geneva Conventions of 1949.

As such, it is a war crime to deliberately attack or wilfully destroy cultural property unless that property has become a legitimate military objective. This would happen if, for example, a museum was being used to store weapons. The military operations manuals of the Australian Defence Force reflect this obligation.

An additional humanitarian imperative for protecting cultural heritage is that cultural heritage is known to play a vital role in reconciliation and unification of a nation in the aftermath of conflict, as well as the survival of its people. Conversely, the loss of cultural heritage makes the rehabilitation of war-affected communities more difficult and can fuel desires for retaliation.

Unsurprisingly then, armed conflict is not the only time that culture is protected; so intrinsic is it to human wellbeing, that the right to enjoy culture and the arts and the right to take part in the cultural life of a community are fundamental human rights.

Despite the many examples of destruction of cultural property we have seen in recent times, international prosecutions of these crimes are rare, as explained in the article by Professor McCormack. Prosecuting cultural heritage crimes is critical to demonstrating to would-be cultural vandals that there are criminal consequences to such conduct, and provides recognition of the loss to the local and international communities. The ICC’s September 2016 decision following the trial of Ahmad Al Faqi Al Mahdi, which found him guilty of the destruction of mausoleums and mosques in the Malian city of Timbuktu, is significant in this regard.

The Prosecutor of the ICC, Fatou Bensouda, in this case emphasised: “Let there be no mistake, the charges we have brought ...involve the most serious crimes; they are about the destruction of irreplaceable historic monuments, and they are about a callous assault on the dignity and identity of entire populations, and their religious and historical roots”.

The promotion of IHL principles and rules among the population of a nation ensures the laws of war are understood and capable of implementation during times of conflict. Sadly, the current climate demands renewed efforts to highlight the laws concerning the protection of cultural property.

Australian Red Cross sees the opportunity for Australia to exemplify best practice in this field. While Australia is a signatory to the 1954 Hague Convention, it has not as yet signed or endorsed the Convention’s two additional Protocols. Among other things, these provide enhanced protection for cultural property of the ‘greatest importance for humanity’, strengthen enforcement for violations, and prevent the export of cultural property from war zones.

To give effect to its existing obligations under the 1954 Hague Convention Australian states and territories have the responsibility to take measures to safeguard cultural property. Such measures may include monitoring schemes to audit, identify and protect our own heritage as well as cultural material that we hold. The initiatives that we are taking - to tour a photographic exhibition around Australia, hold an academic conference and engage with policymakers – aim to ensure such measures are in place and are effective; the ability to safeguard cultural property in conflict is determined by the adoption of laws, mechanisms and initiatives in peacetime.

A concerted effort to engage with recommendations within the Borders of Culture Report published earlier this year would demonstrate Australia's resolve to do all that it can to protect the world’s priceless treasures.

While we are fortunate to live in a country that is at peace, there is much we can do to establish robust safeguards locally and contribute to protection and prevention of trafficking internationally. As the home of the oldest continuous culture on earth, Australia has a particular interest in ensuring that our rich and unique works of art and culture are protected and respected.
A bridge that has connected four centuries of neighbours crumbles under sustained shelling. A five-hundred-year old garden is irreparably destroyed. Wondrous treasures are looted, lost forever. Monumental symbols of ancient civilisations are reduced to dust, while cities that have borne witness to ancient rituals host a deadly game of hide and seek between opposing forces.

The sad reality is that countless historic monuments, works of art and places of worship have suffered the consequences of armed conflict. Often deliberately targeted, cherished places and items that have united people become instruments for separating, dividing and denying. We often measure the impact of conflict in terms of lives lost and buildings destroyed. But how can we measure the effect of the destruction of a collective consciousness?

Against this backdrop, it cannot be doubted that the protection of cultural property forms part of IHL. This protection is based on the principle that damage to the cultural property of any people damages the ‘cultural heritage of all mankind’. The first attempts to protect cultural objects during war date back to the Hague Convention IV of 1907. However, the destructiveness of World War II prompted the provision of specific legal protection.

In IHL, cultural property comprises any movable or immovable property of great importance to the cultural
heritage of all people, such as monuments of architecture or history, archaeological sites, works of art, books, museums and libraries. Such property is protected during war in two ways. Firstly, the general provisions of humanitarian law protecting civilian objects apply. Secondly, the 1954 Hague Convention and its two Protocols provide specific protection. These treaties are complemented by the 1977 Additional Protocols to the four Geneva Conventions of 1949, and the Rome Statute. Specific protections also form part of customary international law.

Under the 1954 Hague Convention, each State must act to safeguard its own cultural property against armed attack, for example, by moving such property away from military action, or in the case of historical sites, by not placing military objectives near to them. Parties to an armed conflict are not allowed to direct hostilities against cultural property and incidental damage must be avoided. Using cultural property for military purposes is prohibited. These obligations can only be derogated from in cases of imperative military necessity and where there is no feasible alternative available. Occupying powers must protect cultural property under their control from theft, pillage or misappropriation. In order to facilitate its identification, cultural property should be marked with the blue square shield emblem of the 1954 Hague Convention (evocatively referred to as ‘the Red Cross for monuments’).

Protecting and assisting victims of armed conflict has been at the core of the identity of the ICRC for more than a century. As the legal framework that governs armed conflict has developed, so has the work of the ICRC. Since the 1970s, the ICRC has more systematically tackled issues related to the conduct of hostilities, such as the protection of cultural property.

The 1954 Hague Convention entrusts the supervision of its implementation to the protecting powers responsible for safeguarding the interests of the parties to the conflict, and to UNESCO. But there is no doubt that the ICRC is expected to work for the faithful application of the complementary provisions of the 1977 Additional Protocols. Indeed, reminding parties of the rules governing the conduct of hostilities is an integral part of the ICRC’s confidential and bilateral dialogue with warring parties.

The ICRC Legal Advisory Service and UNESCO encourage ratification and assist with State implementation of the treaty protections of cultural property. These treaties are very specific but often require integration into States’ domestic law to have effect. The ICRC is also working to empower other actors who can strengthen this legal framework, including the existing global network of national committees (and similar bodies) on IHL, which exist in more than 100 countries and are essential expert coordinating bodies in the area of IHL dissemination and implementation.

The ICRC recently signed a memorandum of understanding with UNESCO: a first of its kind, this agreement consolidates and reinforces the ongoing work by both organisations to encourage more States to become parties to the treaties protecting cultural property in armed conflict. The memorandum also opens the way for a greater exchange of information between the ICRC and UNESCO to protect cultural property at risk and for the ICRC to potentially play an operational role in the rescue and evacuation of cultural property in some conflict situations.

In spite of the detailed provisions designed to guarantee their protection, cultural objects continue to fall victim to warfare. This irreversible destruction constitutes a serious obstacle to the reestablishment of normal relations between former enemies, and is also emblematic of some of the most challenging contemporary IHL issues, such as the definition of military objectives and the principle of proportionality. As political solutions are sought for these intractable problems, the ICRC continues its efforts to ensure that fighting parties comply with their obligations under IHL, in order to preserve the common heritage of humanity for future generations.
Protecting culture in practice: the unique role of UNESCO

Anna Segall, Legal Adviser and Director of the Office of International Standards and Legal Affairs, UNESCO

“Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed.”
(Preamble to the Constitution of UNESCO November 1945)

UNESCO’s Constitution was signed on 16 November 1945 and came into force on 4 November 1946. The organisation’s purpose is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations. It is a specialised agency with 195 Member States.

On 27 September 2016, the ICC handed down a landmark nine-year sentence to a defendant guilty of intentionally directing attacks against religious and historic buildings in Timbuktu, Mali. It was the first case before the ICC for destruction of cultural property. UNESCO gave expert evidence before the Trial Chamber regarding the buildings, including UNESCO World Heritage mausoleums. UNESCO also contributed to the rebuilding of the mausoleums after they were destroyed in 2012. These were subsequently restored and inaugurated in 2015 and then reconsecrated in 2016, the first such ceremony since the 11th century.

The ICC noted that the buildings were not only religious buildings but also had a symbolic and emotional value.

Over the last ten years, the world has seen unprecedented attacks on culture and heritage. Cultural heritage in particular has increasingly become the direct target of systematic and deliberate attacks in armed conflict, Syria’s six World Heritage sites are all on the List of World Heritage in Danger. Libya’s five sites were placed on the list in 2015. Three Iraqi sites, three sites in Mali, and three in Yemen are also on the list.

Attacks on cultural heritage occur not only in armed conflict, but also in a context of violent extremism and intolerance for cultural diversity. Attacks on cultural property represent attacks against communities on cultural, ethnic and religious grounds. When they take place during armed conflict, they undermine peace-building efforts and post-conflict reconstruction.

Cultural property is also at risk in armed conflict from looting and illicit trafficking, which UN Security Council Resolution 2199 (2015) has explicitly linked with the financing of terrorism. This Resolution condemns the destruction of cultural heritage in Iraq and Syria, prohibits illicit trafficking in antiquities and cultural objects, requires States to take appropriate measures to prevent this trade and calls on UNESCO with Interpol and other international organisations to assist in implementing this ban.

UNESCO’s Director-General has written to museums, auction houses and art-market professionals informing them of the ban. UNESCO has established an observatory in Beirut to monitor the state of buildings and artefacts, combat illicit trafficking and collect information to restore heritage once the fighting in Syria is over. The International Council of Museums has published Emergency Red Lists of Iraqi and Syrian Cultural Objects at Risk. Interpol’s Stolen Works of Art Database is a key reference.

In November 2015, in view of increasing threats facing cultural heritage, UNESCO’s General Conference adopted a new strategy to reinforce UNESCO’s action to protect culture and promote cultural pluralism in the event of armed conflict. It builds on UNESCO’s six culture conventions, to strengthen States’ ability to prevent, mitigate and recover loss of cultural heritage and diversity as a result of conflict and to incorporate protection of culture into humanitarian action, security strategies and peace-building.

UNESCO’s six culture conventions are:

- **1954 Hague Convention and its two Protocols**;
- **1972 Convention concerning the Protection of the World Cultural and Natural Heritage**;
- **2001 Convention on the Protection of the Underwater Cultural Heritage**;
- **2003 Convention for the Safeguarding of the Intangible Cultural Heritage**; and
- **2005 Convention on the Promotion of the Diversity of Cultural Expressions**;
In October 2016, UNESCO’s Executive Board adopted an action plan to strengthen cooperation between UNESCO and other UN organisations, and other stakeholders, to give effect to the 2015 strategy. Concrete proposals to strengthen States’ ability to prevent, mitigate and recover loss of cultural heritage include a Military Manual on the Protection of Cultural Property, being developed by the San Remo Institute of IHL, ‘first aid’ training for the culture sector, rapid damage assessment tools and first aid mitigation measures for damaged artefacts and monuments, emergency plans in areas at risk, and a rapid response mechanism or roster of cultural heritage experts available for rapid deployment.

The action plan also aims to incorporate protection of culture into humanitarian action, security strategies and peace-building processes. For example, cooperation and information-exchange with the ICC, the Human Rights Council and the UN Special Rapporteur on Cultural Rights, inclusion of protection of cultural heritage in UN peacekeeping operations, and promoting protection of cultural property with non-State armed groups.

Other UNESCO initiatives to combat destruction of cultural heritage, and to promote protection of cultural heritage and diversity, include a Heritage Emergency Fund, the #Unite4Heritage campaign, and education to prevent violent extremism.

In 2016, UNESCO released a Teacher’s Guide on Prevention of Violent Extremism. This is UNESCO’s first contribution to implementation of the UN Secretary-General’s Plan of Action to Prevent Violent Extremism, announced in January 2016.

The Heritage Emergency Fund is a multi-donor fund for the protection of culture in emergencies. It is to help communities’ cultural recovery, help fight illicit trafficking and help understand what is happening on the ground, for example, by monitoring damage via satellite imagery.

The #Unite4Heritage campaign calls on everyone to celebrate and safeguard cultural heritage and diversity around the world, and to stand up against extremism and radicalization by celebrating the places, objects and cultural traditions that matter to them and that make the world a rich and vibrant place.
Prosecuting crimes against culture: lessons from the ICC in Timbuktu

As Dr Jadranka Petrovic, Australia’s leading authority on the protection of cultural property in armed conflict, so eloquently states elsewhere in this issue, the wilful destruction of cultural property is an affront not just to the immediate victims but also to the whole of humankind. The international community has agreed that, in the context of an armed conflict, deliberate attacks on movable and immovable property of profound cultural, historic and/or religious significance constitutes a war crime.

When Ahmad Al Faqi Al Mahdi and his mates took their sledgehammers and their picks and smashed up the UNESCO World Heritage-listed ancient mausoleums and shrines to Islamic saints in Timbuktu, many were affronted – including me. I have never visited Mali. In fact, throughout the first two decades of my life, I genuinely believed that Timbuktu did not actually exist – that it was a purely mythical place. But here lies the rub. I do not need to visit Timbuktu and nor do I need to adhere to the...
Islamic faith to understand that those distinctive, almost 600 year old, clay-clad structures are precious cultural treasures and that their wilful destruction diminishes the rich cultural tapestry that makes my world such a wondrous place.

UNESCO’s website listing for Timbuktu explains something of the ancient city’s centrality to the study of Islam and its spread throughout the African continent. Timbuktu was a major city of commerce and trade – particularly in the 15th and 16th centuries. Situated in the fertile zone on southern border of the vast Sahara Desert, Timbuktu was the locale of choice for trading, particularly of livestock and grain from the south and salt and precious metals from the north. Commercial vibrancy brought a colourful diversity of Islamic culture, thought and literature and the population of the city swelled to 100,000 in the 1500s. Timbuktu included a number of madrasahs - Islamic learning centres – including the prestigious Sankore University with capacity for 25,000 students and the largest library in Africa outside of Alexandria in Egypt. The compound incorporating the three great mosques of Djingareyber, Sankore and Sidi Yahia, sixteen mausoleums and a number of holy public spaces is a priceless treasure from Timbuktu’s Golden Age.

The Prosecutor of the ICC, Fatou Bensouda, had a choice about which atrocities from Mali to prioritise for investigation and subsequent prosecution. The two Al-Qaeda-linked rebel groups operating in the country, Ansar Dine and the MNLF, are reportedly responsible for atrocities in other parts of Mali and a constant refrain in any discussion about the desirability of prosecuting acts of destruction of cultural property is that any such damage pales into insignificance compared to intentional targeting of the civilian population, widespread murder, summary executions, rape and/or other acts of sexual violence and wholesale abduction of children under 15 years of age into militia groups or armed forces. Bensouda disagrees. In bringing the case against Al Mahdi, the Prosecutor has unequivocally demonstrated just how seriously she views this offence and the firmness of her resolve to deal with allegations of the war crime of destruction of cultural property.

The conviction of Al Mahdi builds upon the important precedent of several ICTY judgments particularly against Jadranko Prlic et al for the destruction of the old bridge of Mostar and against both Pavle Strugar and Miodrag Jokic for the wilful shelling of the old town of Dubrovnik. The Al Mahdi judgment is the first at the ICC for the destruction of cultural property and the first ever judgment in an international war crimes trial to focus exclusively on the war crime of destruction of cultural property. The case is unquestionably an important breakthrough in the reinforcement of the norm of protection of cultural property in armed conflict.

Despite these positive developments, however, serious challenges remain for those committed to ending impunity for deliberate attacks on cultural property in the course of war. Three examples are illustrative:

1. In the Balkans conflicts countless attacks were directed against mosques and churches, against libraries and buildings with profound cultural, historic and/or religious significance. The ICTY prosecuted the case referred to above but could not prosecute all of the incidents that constituted war crimes. To this day those responsible for many of the deliberate attacks on cultural property have not been held to account and that ongoing failure to enforce the law is one source of simmering inter-ethnic tensions.

2. At the ICC, when Al Mahdi was transferred to The Hague, ISIS forces were wreaking their havoc on the ancient cities of Palmyra and Nimrod in Syria. In acknowledging the breakthrough that the Al Mahdi judgment represents, it is simultaneously frustrating that the ICC is precluded from exercising jurisdiction over the armed conflicts in Syria. Because Syria is not a State Party to the Rome Statute, the Court can only exercise jurisdiction if the UN Security Council refers the conflict to the Prosecutor of the Court. Russia and China have both vetoed attempts to do just that.

3. A war crime, including that of destroying cultural property, can only occur in the context of an armed conflict. The Taliban destruction of the giant Buddha’s of Bamiyan in March 2001 is a telling example because it occurred in peacetime and so did not constitute a war crime. It is arguable that the attack on the Buddha’s also did not constitute a crime against humanity given that the threshold requirement for such crimes is an attack directed against a civilian population (as distinct from a building or structure). The lack of unambiguous criminalisation of destroying cultural property outside of armed conflict represents a gaping hole in international criminal law.

Professor Tim McCormack is the Special Advisor on IHL to the Prosecutor of the ICC in The Hague. The views expressed in this article are his own and cannot be attributed to the Prosecutor of the ICC or to her Office.
Culture under attack
reflections on the protection of cultural property and heritage

“Those buildings must be spared which do honour to humanity and which do not contribute to the enemy’s strength, such as temples, tombs, public buildings and all works of remarkable beauty.”

Emer de Vattel, 1758, translated from the French by Roger O’Keefe in ‘Protection of Cultural Property under International Law’

“Public awareness of the importance of cultural heritage is essential to combatting its intentional destruction.”

UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, Art III, 1

Clockwise from left:
3. Deputy Director Abdoulaye Cisse of the Ahmed Baba Institute of Higher Learning in Timbuktu, Mali shows one of the 4,000 burnt manuscripts. December 2013. Photo: UN/M. Dormino
4. Orthodox church burnt down on 19 October 2015, Donetsk, Ukraine. Photo: ICRC/Y. Orlov

“Kōichirō Matsuura, Director-General UNESCO, in a speech announcing 2002 as the UN Year of Cultural Heritage

“The cultural heritage of a people is the memory of its living culture.”
“Burning books is not the same as burning bodies but when one intervenes against the mass destruction of churches and books, one arrives just in time to prevent the burning of bodies.”

Raphael Lemkin

“... damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”


Salt comes from the north, gold from the south, and silver from the country Of the white men, but the word of God and the treasures of Wisdom are only to be found in Timbuktu.

West African proverb
Keeping the peace by protecting culture: the role of peacekeepers in prevention and response

Leanne Smith, Chief, Policy and Best Practice Service, UNDPKO

Why protecting cultural heritage matters

UN peacekeeping operations invariably encompass a wide range of responsibilities and objectives. Foremost among these, obviously, is the need to support political processes leading to sustainable peace, alongside providing security, protecting civilians and, implementing and supporting a range of what might be described as ‘early peacebuilding’ functions. In 2015 an independent high level review of peace operations, commissioned by the UN Secretary General, drew out many of the challenges facing peacekeeping today.

In the midst of these complex considerations, some might say that protecting buildings or art or historical artefacts is beyond the role of a peacekeeping mission. After all, saving lives and establishing political stability are far more urgent priorities, and the multiple elements involved in UN peacekeeping mandates make things challenging enough already.

However, with the rise of identity, religion and ethnicity as drivers of conflict, cultural heritage has been increasingly thrust into the heart of armed conflict, with precious art and artefacts either destroyed for what they represent or trafficked to fund criminal activity and in some cases terrorist actions.

UN Secretary General Ban Ki Moon earlier this year cited the destruction of the Buddhas of Bamyan in Afghanistan, the monuments of Palmyra in Syria, and the mosques and cultural artefacts of northern Mali. “This wanton vandalism is not collateral damage,” he said. “It is part of a ruthless wave of cultural and ethnic cleansing, inseparable from the persecution of the communities that created these cultural gems. It is also part of a cycle of theft and profit that finances the activities of extremists and terrorists.”

Protecting cultural heritage is increasingly becoming part of how we build peace and security and combat violent extremism. Irina Bukova, the Director-General of UNESCO has argued that “As the destruction of our shared cultural heritage moves to the forefront of modern conflicts, the protection of such heritage...must likewise move to the forefront of peacebuilding.” In the view of the UN Secretary General, it is essential to the UN’s mission of ensuring peace and security, sustainable development and human rights.

In 2003 UNESCO’s Declaration on the Intentional Destruction of Cultural Heritage established that destruction such as that in Bamyan constitutes an infringement on human dignity and human rights. The ICC, through Article 8 of the Rome Statute, also makes attacks on cultural heritage a war crime. Other articles in this series address developments in these areas of international law and practice, all of which of course impact on the work of peacekeepers.

In the peacekeeping realm, cases of destruction of cultural heritage in conflict and post conflict environments led the UN Security Council to pass UNSC resolution 2199 in 2015. The Security Council recognized the links between cultural heritage and peace and security and condemned the destruction of cultural heritage in Iraq and Syria. Further, it adopted legally binding measures to combat illicit trafficking of cultural artefacts and antiquities from these countries.

The MINUSMA peacekeeping mandate in Mali Security Council Resolution 2100 (2013) establishing the Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) represents the first time a UN peacekeeping mission has been mandated to ensure the protection of cultural and historic sites from attacks. The mission is mandated to do so in collaboration with UNESCO and in support of the Malian Government.

Devastating attacks to cultural heritage during the conflict in northern Mali between 2012 and 2013 were perpetrated particularly in Timbuktu and Gao. This
A soldier stands in front of the Great Djingareyber Mosque in Timbuktu Mali, 30 May 2013

Photo: MINUSMA/O.Salgado
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included attacks on mausoleums and shrines, mosques, musical instruments and over 4,000 ancient manuscripts. Fourteen of the country’s sixteen World Heritage listed mausoleums were destroyed.

Intangible heritage was also affected, as numerous cultural events and practices were interrupted from the outset of the conflict. This had a significant impact on the crisis, as oral expressions and traditions in Mali are a significant part of creating inter- and intra-communal cohesion, and for resolving conflicts.

As soon as Timbuktu was liberated in early 2013 by Malian and international forces, the Malian Government and UNESCO launched a restoration operation with logistical support from MINUSMA. Fourteen Mausoleums have now been completely restored. The Mission has also helped to rehabilitate some of the manuscript libraries. In March 2014 the UN began supporting the Government to develop an inventory of intangible cultural heritage to document knowledge and practices related to the environment, oral traditions, ritual and festivals, and traditional crafts and practices related to the prevention and resolution of conflict. There are currently eight Malian practices on the List of Intangible Cultural Heritage.

In addition, MINUSMA engages in several other activities through its Environment and Culture Unit with crucial support from UNESCO. These include training for civil, military and police personnel to understand the importance of Malian cultural heritage, particularly in deep field and conflict operations; and support for the resumption of cultural events in the northern regions. This is particularly important to ensure peacekeepers meet their responsibilities under the 1954 Hague Convention.

Mandate and operational challenges

There are many lessons to be learned from the peacekeeping effort in Mali – the first peacekeeping mission to be deployed in a non-permissive, asymmetric threat environment where mandate implementation has never been more challenging. Since April 2013 there have been 109 fatalities in MINUSMA (as at 31 October 2016) – the highest conflict related fatality rate faced by any mission in UN history. The mission has a multidimensional mandate which includes a diverse range of responsibilities, to mention just a few – protection of civilians, supporting elections, monitoring human rights, disarmament, demobilization and reintegration of armed forces, reconciliation and justice initiatives.

In many ways MINUSMA is one of the most overburdened and overstretched missions. Many wondered how the mission could extend its purview to the protection of cultural heritage, particularly given it is not a traditional area of peacekeeping expertise. This may be why the mandate was limited by the language ‘as necessary and feasible’.

“As the destruction of our shared cultural heritage moves to the forefront of modern conflicts, the protection of such heritage…must likewise move to the forefront of peacebuilding.”
However to date, many stakeholders consider that the successful collaboration between the State, affected communities and various UN actors in Mali to protect and restore cultural heritage creates an important precedent for the inclusion of cultural heritage protection into the mandates of all UN peacekeeping operations. UNESCO is developing a strategy which supports efforts aimed at embedding the protection of cultural heritage and cultural diversity, where appropriate, in humanitarian action and UN security and peacebuilding efforts.

UNDPKO and UNESCO are working to determine how to engage more closely, if and when the Security Council mandates other peacekeeping operations to protect cultural heritage, through mission planning, supporting rapid reaction, identifying rapidly deployable expertise and models for mandate implementation on the ground.

It will be important to learn the lessons of the Mali experience, our first so far and of course a very context specific one, where the support and engagement of the host State was crucial. Some consideration is also being given, within the parameters of very tight peacekeeping budgets, for whether a dedicated capacity in UNDPKO headquarters may become necessary, should additional mandates be issued. This capacity would potentially address legal and doctrinal questions and develop guidance and training, particularly on rules of engagement.
International legal protections for culture at risk in war

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Cultural objects have been innocent victims of warfare from time immemorial. While some destruction has been incidental, frequently objects which are today considered ‘cultural property’ have been targeted wilfully. These include immovable structures (buildings and bridges) and movable objects (artworks, books) which have architectural, historical, artistic, archaeological or scientific interest. The deliberate destruction of the world’s largest Buddha statues in Afghanistan, the looting of Iraq’s national museum and the ongoing cultural onslaught on Aleppo, Palmyra and other cultural property sites in Syria, are the recent grim reminders that cultural wrongs are not buried in the past. In fact, since the 1990s, with the changing nature of armed conflict and the escalation of terrorism and other non-conventional methods of warfare, the mistreatment of cultural property has intensified.

Cultural property - with its symbolic, identity-generating and economic dimensions - has increasingly become the target of deliberate and systematic attacks. This is often done with the aim to belittle, humiliate and shock the ‘other’, permanently scare them away from their territory, ‘erase’ the past and provoke public outrage. It has been observed – particularly in relation to ISIS (the armed group which has brutally destroyed cultural heritage in present day Iraq and Syria) and the powerful tools they use for disseminating their savage acts – that the loss of human life has become such a regular feature in the coverage of conflict that it often takes something beyond the ‘ordinary’ to draw the attention. These acts and similarly vicious approaches to cultural property are in disturbing dissonance with law.

Under existing international law, cultural property must be respected in times of armed conflict and safeguarded during peacetime. The duty to protect cultural property is premised on the idea of common heritage and enshrined in a number of international legal instruments. The 1954 Hague Convention, which was adopted on 14 May 1954, is a specialised treaty dealing with cultural property exclusively and the principal legal instrument on the protection of cultural property during armed conflict.
The 1954 Hague Convention provides for a comprehensive protection of cultural property: it applies to both movable and immovable cultural property and to both international and non-international armed conflict. Importantly, it explicitly recognises the dual nature of cultural property, that is, that such property belongs to a people most immediately concerned and that, at the same time, it also belongs to the cultural heritage of all humankind.

The annexed regulations for its execution and the 1954 Protocol concerning movable cultural property in occupied territories were adopted on the same day. The 1954 Hague Convention is further supplemented by its 1999 Second Protocol, adopted on 26 March 1999, which addresses the major weaknesses of the 1954 Hague Convention, including specific breaches of the treaty which give rise to criminal responsibility and a waiver of protection on the basis of ‘imperative military necessity’. Together with these instruments, the 1954 Hague Convention is considered by many as the ‘Red Cross Charter for cultural property’ because it aims to provide a more comprehensive protection framework than had previously been the case.

This regime envisages three main systems of protection: ‘general protection’ for all objects ‘of great importance’ that qualify as ‘cultural property’ within the meaning of Article 1 of the 1954 Hague Convention; ‘special protection’ for certain cultural property ‘of very great importance’; and ‘enhanced protection’ for cultural property ‘of the greatest importance for humanity’.

In order to reinforce the rules of the 1954 Hague Convention, provisions on cultural property were also included in Article 53 of the 1977 Additional Protocol I, applicable to international armed conflict, and in Article 16 of the 1977 Additional Protocol II, applicable to non-international armed conflict. These provisions accord direct protection to ‘historic monuments, works of art, or places of worship which constitute the cultural or spiritual heritage of peoples’. However, application of the 1954 Hague Convention is in no way prejudiced by these two articles. The 1954 Hague Convention remains the paramount instrument for the international protection of cultural property in armed conflict.

Some norms of international law concerning cultural property have become part of customary international law and are binding on all parties to armed conflict irrespective of the legal characterisation of the conflict, which amplifies cultural property protection. These norms include relevant articles of the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, according protection to certain categories of objects; the provisions of the 1954 Hague Convention governing ‘respect for cultural property’; and the above-mentioned articles of the two 1977 Additional Protocols.

Under the existing legal regime on cultural property, States are under an obligation either to try or to extradite persons responsible for violations of norms pertaining to cultural property. The most prominent recent cultural property related cases decided at the international level are the ICTY’s ‘Dubrovnik’ cases relating to the 1991 attack on the Old City of Dubrovnik, Croatia, and the Jadranko Prlic et al case, involving the 1993 destruction of the Old Bridge of Mostar, Bosnia and Herzegovina, both of which are World Heritage sites. However, of particular significance, is the ICC’s case against Ahmad Al Faqi Al Mahdi regarding the 2012 destruction of historic mausoleums in the ancient city of Timbuktu, Mali, also a World Heritage site. Al Mahdi is the ICC’s first cultural property case and the first guilty verdict delivered against a member of terrorist organisation. It reinforces the message that impunity for cultural property related crimes will not be tolerated and concomitantly represents a key element in the broader response to violent extremism.

Acknowledging the notion of common heritage reminds the participants in armed conflict that an enemy’s cultural property belongs to all humanity. It belongs both to the attacker and the defender. Thus the international community has been continuously striving to improve the protection of precious cultural treasures from the horrors of warfare. Those efforts have resulted in the comprehensive legal protection of cultural property in both international and non-international armed conflict, making it almost impossible for belligerents to justify an attack on cultural objects. International criminal tribunals play a significant role in enforcing the norms of international law concerning cultural property and ultimately honouring our duty to preserve cultural property for posterity. It has been recognised that it is imperative that this property is protected in armed conflict not only for its intrinsic value, but also because attacks on cultural property pose a major political and security issue. As observed, by UNESCO’s Director-General Irina Bokova in 2014, culture is ‘a central consideration for any strategy for peace’.
Borders of Culture: strengthening Australia’s protections for cultural property

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In December 2014, the Minister for the Arts and Attorney General commissioned me to consider the Australian laws relating to the protection of movable cultural property. The terms of reference covered local and foreign material and included questions such as:

- How can Australia improve its implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property?
- How does the scheme interact with Australia’s existing obligations under the 1954 Hague Convention?
- Whether ratification of the 1954 Protocol and the 1999 Second Protocol would better reflect Australia’s commitment to the international community?
- How to provide the procedural machinery necessary to ensure the effective implementation of UN Security Council sanctions and resolutions concerning looted cultural material?

A discussion document was publicly released in July 2015 and after a national consultation process, the final report (Borders of Culture: Review of the Protection of Movable Cultural Heritage Act 1986 (Borders of Culture)) was delivered in September 2015.

At the moment, the Protection of Movable Cultural Heritage Act 1986 (Cth) gives only piecemeal protection to cultural property looted in times of armed conflict. It focuses principally on the protection of material that has been illegally exported from its country of origin. It is paradoxical that it should provide an extensive mechanism solely for what is, in effect, the enforcement of a foreign administrative matter (activity in the absence of a permit), while being silent as to material that has been stolen (breach of criminal law), or looted from war zones (breach of criminal law and IHL).

That is not to say that Australia does not already have obligations under IHL to protect cultural property in the
event of armed conflict. It does. These obligations may arise from: the four Geneva Conventions of 1949 and the two Additional Protocols of 1977; the 1954 Hague Convention; the Rome Statute; and customary rules of IHL.

In more recent times, Australia has supported Resolution 2199 of the UN Security Council urging member States to prevent the trade in items of cultural, scientific and religious importance illegally removed from Iraq and Syria during periods of conflict.

Australia’s international obligations in relation to cultural property in wartime are implemented through the creation of specific criminal offences under the Crimes Act 1914 (Cth) and Criminal Code Act 1995 (Cth) and UN Security Council sanctions are enacted through Regulations to the Charter of the United Nations Act 1945. Some obligations are implemented through non-legislative means (such as the Australian Defence Forces Rules of Engagement and Training). In the majority of these cases the various frameworks deal with the activity but not the return or restitution of cultural property that may be discovered in Australia. In short, it does not provide a coherent range of tools to assist law enforcement officers to deliver Australia’s obligations regarding the prevention of illicit trade in stolen and looted cultural material; my report, the Borders of Culture proposes that coherent model.

The new model would make it unlawful to import into Australia foreign cultural property that has been illegally exported, stolen or looted.

Express offences are created for the possession, ownership and trade in such material. Existing offences are modernised and amended as to evidentiary burdens.

It provides a revised and modernised range of powers over suspected material, including warrants of search, holding, seizure and forfeiture as well as the power to hold cultural material for protection or safekeeping upon suspicion that it is illegally exported, stolen or looted. Such warrants would be based on a reasonable suspicion that the material was illegally exported, looted or stolen. For the first time, there would be:

• A right given to all owners to make claim for restitution – not just governments;
• An express obligation on the possessor of illegally exported, stolen or looted cultural material to return it;
• A transparent process by which possessors and claimants would be required to divulge and share information (with attendant sanctions for failure to do so); and
• A decision-making process attended by timelines, the opportunity for alternate dispute resolution, departmental decision-making and court supervision.

The model provides that there be no innocent purchaser defence and no compensation available in restitution claims for looted cultural material or stolen inventoried cultural material.

Protective custody: The model also creates rights to take into custody cultural material imported into Australia, either directly or indirectly, from an occupied territory (either automatically upon the importation of the material or, at the request of the authorities of that territory) for the purposes of safeguarding. Together with this power to safeguard would be an obligation to return such material, at the close of hostilities, to the competent authorities of the territory previously occupied.

Blue Shield emblem: Legislative protection would be given to the Blue Shield emblem to prohibit its unauthorised use and a legislative implementation framework would be provided to allow the authorised use of the emblem on movable cultural heritage material.

Offences and sanctions: Existing offences would be modernised to ensure that there is appropriate coverage of extra-territorial acts by both military and non-military personnel; their sanctions would be modernised and the penalties made appropriate. Further, a new range of offences would be introduced to include the import of cultural material that is stolen, looted, and unlawfully removed from a zone of armed conflict.

International leadership: The report strongly supports ratification of the First Protocol to the 1954 Hague Convention. While the decision is, of course, one for government, the principles it articulates are reasonable and, by today’s ethical standards, unarguable. Ratification would provide a clear demonstration of Australia’s continued commitment to appropriate ethical conduct in times of armed conflict.

As to the 1999 Second Protocol, the report also is in favour of ratification. In the course of consultations, some argued that ratification was not necessary as many of its key obligations are already dealt with in the patchwork of existing criminal laws. That is no argument against ratification: all that means is that the task of introducing domestic legislation to give effect to the 1999 Second Protocol would be greatly reduced.

Conclusion

Borders of Culture sets out to provide a model that would replace the hopelessly out-dated Protection of Movable Cultural Heritage Act 1986 (Cth) and the inadequate patchwork of laws and informal practices that presently govern the protection of cultural material. As an independent reviewer, my role ceases with the delivery of my report but I hope that the ideas and proposals expressed in the report find a longer-term resonance within government.
International Humanitarian Law (IHL) Program

Australian Red Cross is part of the International Red Cross and Red Crescent Movement (Movement), the largest humanitarian network in the world.

The International Red Cross Red Crescent Movement has a special role around the globe to promote IHL and humanitarian principles. In Australia, Australian Red Cross has an IHL Program that provides targeted training and education on IHL issues to key groups identified as having a role to play in situations of armed conflict.

Australian Red Cross has a mandate to promote understanding and respect for international humanitarian law (IHL), also known as the laws of armed conflict.

The IHL Program focuses on the following groups:
- Australian Defence Force
- Australian Federal Police
- Non-government organisations
- Commonwealth Government agencies
- Key professions (eg. legal, health, media)
- Tertiary sector and academia
- Wider community

The IHL Program offers training, courses and advice to a wide range of Australians. For example, we provide training to military medics and chaplains, in addition to being invited to participate in Australian Defence Force training exercises. More broadly, we run events and training seminars for key groups whose work is affected by the application of IHL and for members of the general community who have an interest in humanitarian issues.

For more information on the IHL Program visit: www.redcross.org.au/ihl
In all activities our volunteers and staff are guided by the 
Fundamental Principles of the Red Cross and Red 
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In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

**Independence**
The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

**Voluntary Service**
It is a voluntary relief movement not prompted in any manner by desire for gain.

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The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all people.

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