**17th session of the 1999 Committee on** **for the Protection of
Cultural Property in the Event of Armed Conflict**

**Paris, 15th December 2022**

**Agenda Item 6: Dialogue with the Special Rapporteur in the field of cultural rights, Ms Alexandra Xanthaki, on the role of cultural rights for the protection of cultural property in the event of armed conflict**

**Contribution from the Special Rapporteur
 in the field of cultural rights, Alexandra Xanthaki**

I’d like to thank the Chair of the Committee, both the outgoing and the incoming, for taking the initiative to reach out to my mandate and propose this interaction. It is an honour to be with the whole Committee today and to have an opportunity to exchange directly with you.

Although this is an important intertaction in itself, I hope this is also only the first step for sustained, continuous collaboration between the two bodies. This will be important as a means to strengthen the actions of UN bodies in the field of heritage.

The mandate of special procedure in the field of cultural rights was created in March 2009 by Human Rights Council’s resolution 19/6, and is the only human rights body exclusively looking at cultural rights and their implementation. My mandate is not based on one convention, although it relates to the ICESCR; it encompasses all human rights standards relevant to cultural rights.

Cultural rights are understood as the rights of each person, individually, in community with others, and in groups, **to have access, to participate and to benefit from cultural expressions, tangible, living or natural, deriving both from their own cultures or/ and in their interaction with other cultures. It is the right to one’s world views, ways of life, philosophies, knowledge, histories and their cultural objects deriving from these.** Cultural rights protect access and participation in processes relating to heritage and resources that allow such identification and development processes to take place.[[1]](#footnote-1)

It becomes obvious that my mandate is closely linked to the scope of this Committee. As the special procedures of the Human Rights Council are not limited in their actions to one specific treaty or convention, but act on the basis of the 1948 Universal Declaration of Human Rights and of any and all relevant human rights instruments, my predecessors and I also refer to the Hague Convention and its protocols.

At the same time, the focus of my mandate is more on *human rights*, while UNESCO’s work is more directly focused on the cultural resources themselves. And of course, the 2d Protocol and the Hague Convention are by their nature addressed to States, rather than individuals and sub-national groups.

## A cultural rights approach to the field of heritage

Since its creation, my mandate has developed the understanding of the nature and scope of cultural rights within the international human rights system and has published several reports of particular relevance for the work of the Committee.

*Cultural heritage* is of great importance for the full implementation of cultural rights. It reflects the dynamic character of something that has been developed, built or created, interpreted and re-interpreted in history, and transmitted from generation to generation. Cultural heritage links the past, the present and the future: it encompasses things inherited from the past that are considered to be of such value or significance today, that individuals and communities want to transmit them to future generations.

For my mandate, the focus is not on protecting heritage *per se*, but rather on the conditions allowing all people without discrimination to access, participate and contribute to all aspects of cultural life in a continuously developing manner.

The first report of my mandate on the topic in 2010 ([A/HRC/17/38](https://undocs.org/en/A/HRC/17/38)) focused on **the right of access to, and enjoyment of, cultural heritage. Then, in 2016 the mandate had a second report on the intentional destruction of cultural heritage** ([A/71/317](https://undocs.org/en/A/71/317)), in conflict and non-conflict situations.

My mandate has also been working on **historical narratives**, their teaching in schools and museums, and the traces of **memorialisation** in public spaces; all also parts of cultural heritage. They all play an important role in shaping our understating of who we are and what our relationships are with our neighbours and between various groups.

So please allow me to suggest some ways in which your Committee and my mandate can collaborate further:

1. **Attack the self-containment of the regimes**

I am sure that you will agree that the various actors in the field of heritage are very compartmentalised. This makes sense in some ways because the attention has to be serious and consistent. However, this leads to the weakening of standards. I am delighted that this opportunity to address you is the first step to end this. I would like to see more interaction and blurring of all UNESCO Committees of treaties on culture among themselves and between them and my mandate. We all have a similar vision and we all have to work from a common place, even with variety in foci.

1. **Human rights approach to the protection of cultural heritage**

A human rights approach in interpreting the work of this Committee is really important. I am not sure that cultural heritage is seen enough in the framework or linked to the framework of human rights standards in general and in specific, if I may, within UNESCO. There is still a lot of work to be done and we have to work together so that standards are not diluted.

First, it is important that **the right to cultural heritage** is taken into account when talking about the protection of cultures. The Human Rights Council regularly reaffirms this right through its regular resolution on “cultural rights and the protection of cultural heritage”.[[2]](#footnote-2) This resolution has been the outcome of the intense interest of States on the matter during the war in Syria and the massive intentional destruction of heritage in this context. An unprecedented coalition of 145 States made a statement at the Human Rights Council, in March 2016, condemning intentional destruction of cultural heritage and calling for best practices for its prevention, and for "raising awareness on the mutually reinforcing relation between the protection of cultural heritage and human rights”. Following this statement, a cross-regional group of States took the lead to introduce a regular resolution at the Human Rights Council on cultural rights and the protection of cultural heritage. This process is on-going and has involved also UNESCO, in particular the Emergency Preparedness and Response Unit of the Culture Sector.

However, when talking about the protection of cultural property in times of war, one has to keep in mind more widely **the human rights standards** and not restrict its lens to the right to cultural heritage. This has been overlooked in the discourse on destruction of cultural heritage.

For example, the principle of **non-discrimination**, as developed currently by UN standards,is important. This includes direct and indirect discrimination, intersectional discrimination, structural discrimination and positive measures when needed. In times of war, States often protect the cultural heritage *they* see as important. This is often the national cultural heritage, or the cultural heritage that is mainstream and fits the State’s narrative. We see this again and again in times of war.

The principle of non-discrimination is hence important in interpreting article 5 of the second protocol, which expects States to adopt preparatory measures before ethnic conflicts, including 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. These measures have to be taken for cultural objects of all those living in the State.

1. **The principle of participation**

**Related to this is the right to participation**

Cultural rights include the right to participate in the identification, interpretation and development of historical heritage, and in designing and implementing practices to safeguard it. For example, pushing States to involve in their processes of reconstruction all residents of the State; winners and losers, people who have left and people who have stayed, as well as certainly minorities, LBGT persons and persons with disabilities is the only way that the protection of cultural property will lead to the right of people post war to live in an inclusive, culturally varied, exciting place. Participation in these processes of heritage contribute to ensuring legitimacy over a territory, strengthen peace and tolerance and enhance social cohesion.

So regarding the implementation of article 10 of the second protocol: who will decide whether the criteria for enhanced protection are fulfilled? Let’s be open: will the State decide that a minority object or practice is part of **it is cultural heritage of the greatest importance for humanity? Who will recognize its exceptional cultural and historic value and ensure the highest level of protection?** And will the State Party to the second protocol do this when the cultural property stems from a minority of the same ethnic origin than those it is in conflict with? The Committee has to push the principle of participation in identifying and protecting cultural objects in times of war.

Article 11 requires State Parties to submit to the Committee a list of cultural property for which it intends to request the granting of enhanced protection. And NGOs and IGOs can be included. I believe it is important to give enhanced participation to the civil society and to push other States to do so. Such participation will not be the same for all sections of the population. For example, I hope that States understand, within the scope of your Committee’s work, that indigenous should have **Free, Prior and Informed Consent (FPIC)** as a standard**.** Minorities also have an enhanced place in participation because of their marginalised position. This is part of the human rights conundrum, and the Committee has to be sensitive to these factors; and push States to be sensitive to them, even in times of war.

A small note is to be made on **non-state actors.** I understand of course that it is difficult for UNESCO to give a place to non-state actors given its intergovernmental status and the fact many Armed Non-State Actors (ANSA) seek to gain independence or overthrow a regime. However, many ANSAs (unlike ISIS type group) are seeking legitimacy and are keen on protecting heritage, but they have no way to reach out to UNESCO for support or capacity building. While UNESCO cannot reach out directly to ANSAs, they could probably strengthen the capacity of civilian population in general in areas where they operate.

More generally, **non-elitist understandings of culture and cultural property** are important. My work so far has revealed to me that although within international bodies the inclusive meaning of cultural heritage is promoted, unfortunately many States still have a very elitist understanding of cultural heritage. In essence, several States still speak of cultural heritage as tangible resources, and as “culture” that belongs to the State.

1. **Living heritage property**

I would like the Committee’s work to emphasise more the living **elements** of your focus and I really applaud this. I know of the "Heritage for Peace" Thematic Programme that aims to contribute to the effective protection of movable and immovable cultural property in all its forms during peacetime, armed conflict and in post-conflict situations.

Of course, destruction of cultural objects is not destruction of stones. They have a meaning behind them. Destruction of heritage brings violations to access to cultural heritage sites, objects and monuments as resources on which people rely to maintain, express and develop a diversity of beliefs and cultural practices, or to memorialize past events. Attacks on the physical representations of history, memory and identity are almost always accompanied by assaults on the identity, values, language and meanings of the people related to the heritage.

* In many cases, the objects and sites destroyed have clearly been targeted not in spite of the prohibitions on attacking cultural heritage and notwithstanding the value of the objects in question, but precisely *because* of the existence of that value and those norms.
* The rationale of sustaining attacks on heritage has the objective to break the morals, hope and resilience of those who identify with these resources.

In the case of **Ukraine** for example, I have stated repeatedly that the destruction of cultural property should be seen together with the main justification for the war, that attacks the identity of Ukrainians. The destruction coincides with the continued denigration of the history and identity of Ukrainian people as a justification and hatred.

While the Hague system was adopted to protect tangible heritage, my mandate is very clear that culture and cultural heritage must be seen as a whole, tangible, living and natural. **It would therefore be good to develop training on the living elements of tangible heritage that could be protected via the Hague system, in particular for States which have authority to decide what falls under the Hague system of protection or not.**

Also the cultural diversity of the State, even in times of war, has to be protected.

**So, in actual truth, I think that**

* The **human rights approach to cultural heritage** obliges one to go beyond preserving and safeguarding an object or a manifestation in itself to take into account **the rights of individuals and groups in relation to such object or manifestation and to connect cultural heritage with its source of production.** It is impossible to separate a people’s cultural heritage from the people itself and that people’s rights.
* A human rights approach also emphasizes accountability and the combating of impunity.
* It is important that we raise awareness on the many living connections between tangible and intangible heritage and that we focus on the ways in which attacks on each are interrelated.
* It is essential that we broaden participation in the work of UNESCO, to reach and involve further beyond experts.
* It is important to integrate human rights and cultural rights standards in the teaching of those involved in the protection of heritage in the event of armed conflict. Maybe a tool kit clarifying to cultural experts, even the members of this Committee, the importance of these rights and their interaction, in a very practical manner. Maybe the cultural hub in Lviv can be one outlet for such initiative.

In concluding, I applaud the further collaboration and exchange of views on generic and specific issues of our respective mechanisms. My mandate needs more of your wisdom on ways forward in cases of destruction of cultural property in times of war. And maybe you can benefit from my mandate on the further elaboration of the human rights framework and how and which human rights standards interact with your work.

Thank you

1. For the definition developed and used by the mandate, see A/HRC/14/36, para. 9; and A/67/287, para. 7. [↑](#footnote-ref-1)
2. Human Rights Council resolutions ([33/20](https://undocs.org/en/A/HRC/RES/33/20), [37/17](https://undocs.org/en/A/HRC/RES/37/17) and [49/7](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/304/34/PDF/G2230434.pdf?OpenElement)) and related seminars. [↑](#footnote-ref-2)