



**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**

Le Bureau du Procureur  
The Office of the Prosecutor

# Draft Policy on Cultural Heritage

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## I. Executive Summary:

1. The International Criminal Court ("ICC" or the "Court") was founded on the recognition "that all peoples are united by common bonds, their cultures pieced together in a shared heritage and concern" and "that this delicate mosaic may be shattered at any time".<sup>1</sup> The Rome Statute ("Statute") confers upon the Court with jurisdiction over crimes against or affecting cultural heritage,<sup>2</sup> complementing international law governing the protection of cultural heritage and associated human rights.<sup>3</sup> The protection of cultural heritage has been a long-standing concern of the international community, and established in the governing instruments of the International Military Tribunals at Nuremberg,<sup>4</sup> the International Criminal Tribunal for the Former Yugoslavia ("ICTY"),<sup>5</sup> and the Extraordinary Chambers in the Courts of Cambodia,<sup>6</sup> all of which have jurisdiction over crimes related to cultural heritage, specifically cultural property.
2. The concern for the protection of cultural heritage expressed in these and other international instruments has proven well-founded: crimes against and affecting cultural heritage are a pervasive feature of the atrocities within the Court's jurisdiction. Wilful attacks on cultural heritage constitute a centuries-old practice that remains a feature of modern conflict. Recent examples include: the targeting of historical monuments in Syria and Iraq, in particular those with strong symbolic and inter-religious meaning; attacks directed against Mausoleums of saints and Mosques of Timbuktu in Mali, and the destruction at the alleged hands of the Da'esh (ISIS) of two cultural sites on the United Nations Educational, Scientific and Cultural Organization ("UNESCO")'s tentative list (the Assyrian capital cities of Nimrud and Nineveh), drew global attention to cultural heritage crimes.<sup>7</sup> Additionally, the destruction of the ancient Roman city of Palmyra, and its surrounding areas bore all hallmarks of repugnancy to the human conscience.
3. The Office of the Prosecutor ("OTP" or the "Office") recognises cultural heritage as a broad concept which incorporates both tangible and intangible expressions of human

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<sup>1</sup> [Statute](#), Preamble, para. 1.

<sup>2</sup> [Statute](#), arts. 8(2)(b)(ix), 8(2)(e)(iv).

<sup>3</sup> [1977 Additional Protocol I](#), art. 53; [1977 Additional Protocol II](#), art. 16; [Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention](#) ("1954 Hague Convention"), art. 4; [1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict](#) ("1999 Second Protocol"), art. 15.

<sup>4</sup> [Charter of the International Military Tribunal](#) ("IMT Charter"), art. 6(b).

<sup>5</sup> [ICTY Statute](#), art. 3(d).

<sup>6</sup> [Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 \(NS/RKM/1004/006\)](#), art. 7.

<sup>7</sup> 'The intentional destruction of cultural heritage in Iraq as a violation of human rights', [Submission for the UN Special Rapporteur in the field of cultural rights, Research Assessment & Safeguarding of the Heritage of Iraq in danger](#), p. 7.

life. Crimes against or affecting cultural heritage impact our shared sense of humanity and the daily lives of local populations. The Office is committed to addressing these crimes when they come under the Court's jurisdiction.

4. The Office notes that cultural heritage belonging to peoples constitutes a unique and important testimony of the culture and identities of peoples and that the degradation and destruction of cultural heritage—whether tangible or intangible—constitutes a loss to the international community as a whole.
5. The Office seeks to address alleged crimes against or affecting cultural heritage in all stages of its work: preliminary examination, investigation, prosecution, and—when so invited—reparations. Wherever evidence permits, the Office will seek to include charges for crimes directed at cultural heritage, and will seek also to pursue and highlight evidence in situations affecting cultural heritage.
6. Recognising the importance of investigating and prosecuting crimes against or affecting cultural heritage, the Office brought charges relating to cultural property in the *Al Mahdi* case in September 2015. In September 2016, Mr Ahmad al-Faqi al Mahdi was convicted of the war crime of intentionally directing attacks against buildings dedicated to religion and historic monuments following his own admission of guilt. This case, focusing solely on crimes against cultural heritage was symbolic and sent a strong message that intentional targeting of cultural heritage is a serious crime affecting both the local as well as the international community as a whole that should be duly punished.
7. Culture touches all aspects of the Office's undertakings, and the Office is committed to respecting the many diverse cultures with which it interfaces in the course of its work. Nevertheless, the Office stresses that all practice of cultural heritage must be done in a manner that corresponds with international law, notably, including human rights law in accordance with article 21(3) of the Statute.
8. The Office recognises the particular difficulties associated with investigating crimes against or affecting cultural heritage, including issues relating to access to evidence. Consequentially, to combat the difficulties encountered in assessing the precise condition of the affected cultural heritage, the Office will look to diverse evidentiary sources. Furthermore, in its presentations of documentary evidence, the Office will look to videos and photographs, and explore the use of available technology, such as satellite imagery, 360° presentation software, and 3D imagery, to assist in the presentation of evidence.
9. The Office further recognises that it can play a central role in galvanising and supporting efforts to document and preserve cultural heritage at risk of destruction, and that it can

benefit greatly from the efforts of those who are involved in protecting and promoting cultural heritage. The Office will seek to be an active member of this network, ensuring that it learns and leads with respect to innovative practices that harness the latest technology to safeguard our shared past and in fully realising synergies across this community of practice to ensure that the foundations of best evidence have been laid should such sites be the subject of future investigations.

10. Noting that the ICC is complementary to national efforts, and in an effort to further address the impunity gap, the Office will continue to provide support and encouragement to national proceedings to hold individuals accountable for crimes against or affecting cultural heritage.
11. In order to increase the awareness of crimes against or affecting cultural heritage, the Office's public information activities will highlight the impact of these crimes. The Office will continue to develop its ability to effectively communicate with its stakeholders, with the victims and affected communities, and the general public.
12. The Office will seek to ensure that it has the necessary institutional capacity to conduct preliminary examinations, investigations and prosecutions of crimes against or affecting cultural heritage more effectively.
13. The Office will monitor the implementation of this Policy.

#### *Scope of the Policy*

14. The two provisions of the Statute that are most directly applicable to attacks on cultural heritage are the war crimes set out in articles 8(2)(b)(ix) and 8(2)(e)(iv), which apply to international and non-international armed conflicts respectively. They proscribe intentionally directing attacks in armed conflict against buildings and monuments which fall within the definition of "cultural property", among a wider class of objects which are specifically protected. However, "cultural property" only touches on the tangible aspects of human culture, and encompasses only certain types of crimes, among diverse other crimes that this Policy addresses. On the other hand, the term "cultural heritage" as used in this Policy, recognises that attacks against or affecting cultural heritage, may also constitute or relate to other crimes under the Statute, and thus more properly reflects the rich corpus of human achievement that the Statute and international law seek to protect. As such, this Policy utilises the more expansive term "cultural heritage" in order to better address the numerous ways in which attacks against or affecting cultural heritage may constitute or relate to diverse crimes within the jurisdiction of the Court, thereby enhancing the protection to such aspects of human heritage.

15. Specifically in this context, the Office broadly construes the term ‘cultural heritage’, to extend beyond cultural property and incorporate both a products and processes. It denotes a community’s sense of identity and belonging, and involves cultural resources, in both their tangible and intangible forms. Cultural heritage refers not only to physical forms of heritage, such as material objects and artefacts (including digital artefacts), but also to the practices and attributes of a group or society, that are inherited from past generations, maintained in the present, and bestowed upon future generations for benefit and continuity.
16. In particular, therefore, the Office will understand cultural heritage potentially to include monuments (such as architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings, and other combinations of features of cultural value); buildings or groups of buildings (which, because of their architecture, homogeneity or place in the landscape, are of cultural value); sites (human works), moveable objects (such as works of art, sculpture, collections, or other moveable property of cultural value), intangible cultural heritage (such as the practices, representations, expressions, knowledge, and skills that communities, groups, and in some cases individuals, recognise as part of their cultural heritage, together with the instruments, objects, artefacts, and cultural spaces associated therewith); and natural heritage (natural sites of cultural value, including certain landscapes or physical, biological, or geological formations).
17. The Office further views cultural heritage as the bedrock of cultural identity and endorses the understanding that crimes committed against cultural heritage constitute, first and foremost, an attack on a particular group’s identity and practices, but in addition, an attack on an essential interest of all humankind and the entire international community.<sup>8</sup> Crimes against or affecting cultural heritage often touch upon the very notion of what it means to be human, sometimes eroding entire swaths of human history, ingenuity, and artistic creation.
18. In its 2016 Policy Paper on Case Selection and Prioritisation, the Office committed to “pay particular attention to attacks against cultural, religious, historical and other protected objects”,<sup>9</sup> in recognition that crimes against or affecting cultural heritage may lead to the deterioration or disappearance of any item of the cultural or natural heritage or constitute harmful impoverishment of the heritage of all the nations of the world.<sup>10</sup>

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<sup>8</sup> See [1954 Hague Convention](#), Preamble; [Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property](#), 14 November 1970, Preamble; [Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972](#) (“1972 World Heritage Convention”), Preamble.

<sup>9</sup> See [Policy Paper on Case Selection and Prioritisation](#), para. 46.

<sup>10</sup> [1972 World Heritage Convention](#), Preamble. See also [Policy Paper on Case Selection and Prioritisation](#), para. 46.

The Office emphasises that it can only address harm to cultural heritage insofar as it constitutes or is relevant to crimes within the Court's jurisdiction, notwithstanding other existing international obligations related to cultural heritage.

*Objectives of the Policy*

19. This Policy is intended to enhance the protection of cultural heritage by the Office, both through its publication and implementation in the Office's activities, and, as appropriate, by raising awareness on these issues with external partners, and by fully exercising its centrality to the community of practice dedicated to the protection of cultural heritage. Furthermore, the Office stresses that the Court's activities concerning cultural heritage must be exercised in a manner that comports with international law, human rights law and which is in conformity with article 21, including paragraph (3), of the Statute specifically.
20. The main objectives of this Policy are to:
  - (i) provide clarity and guidance to OTP staff in the application and interpretation of the Statute and the Rules of Procedure and Evidence ("RPE" or "Rules"), at all stages of the Office's work, in order to effectively investigate and prosecute crimes against or affecting cultural heritage;
  - (ii) help strengthen the protection and the prevention of harm to cultural heritage;
  - (iii) promote the work of, and to support partners, including States, with the view to creating networks and synergies to coordinate efforts to protect cultural heritage, and to prevent and prosecute related crimes globally;
  - (iv) contribute, through its implementation, to the ongoing development of international jurisprudence regarding crimes against or affecting cultural heritage; and
  - (v) raise awareness regarding the importance of the protection of cultural heritage, including to support genuine national proceedings.
21. The Office stresses the importance of collaboration with external partners and experts in this field, as appropriate, to address crimes against or affecting cultural heritage. The Office has thus developed this Policy through a consultative process involving both staff and external actors, including UNESCO, independent experts and scholars in the field.<sup>11</sup> This Policy incorporates input from experts, representatives of States, international organisations and civil society.

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<sup>11</sup> On 6 November 2017, Prosecutor Bensouda and then-Director General of UNESCO Irina Bokova signed a Letter of Intent formalising the collaboration between the Office of the Prosecutor and UNESCO, recognising that "an effective strategy to address the destruction of cultural heritage requires a multi-faceted and collaborative approach": [‘The ICC Office of the Prosecutor and UNESCO sign Letter of Intent to strengthen Cooperation on the Protection of Cultural Heritage.’ 6 November 2017.](#) On 10 July 2017, an Expert Consultations meeting was held at the seat of the Court.



22. The Office publishes its policies in the interests of transparency, clarity, and predictability in the application of the legal framework.
23. This Policy focuses on strategic approaches of the Office and is subject to revision. It does not detail guidelines, procedures or standards for operations. This Policy does not give rise to legal rights.

## **II. General Policy**

24. The Office pays particular attention to the investigation and prosecution of crimes against or affecting cultural heritage. It endeavours to contribute to the prevention of these crimes, by holding persons accountable, and, in so doing, raise awareness of the importance of the preservation and protection of cultural heritage.
25. The Office respects and is sensitive to culture, in all its richness and diversity, provided that those cultural practices “are not inconsistent with this Statute and with international law and internationally recognized norms and standards”.<sup>12</sup> It recognises the impact of crimes against or affecting the cultural heritage of distinct groups, which place considerable value upon their heritage and can be deeply affected by such crimes. Equally, the international community as a whole is impacted by the destruction of cultural heritage. The Office will endeavour to examine the commission of such crimes, with a view to investigating and prosecuting their perpetrators wherever such crimes occur, provided that the jurisdictional and admissibility preconditions are met.
26. Crimes against or affecting cultural heritage may be multifaceted in nature and be motivated by various reasons; they can impact victims or groups of victims in varying ways, including spiritual, economical, or educational. The Office aims to identify these links during its analysis, investigations and prosecutions, and the impact — including any intergenerational impact, thereof.<sup>13</sup>
27. The victims of crimes against or affecting cultural heritage may include persons affected both directly and indirectly. They may also include legal entities that are direct victims of such crimes.<sup>14</sup> The impact of an attack on cultural heritage may transcend the socio-geographical space it occupies, resulting in a global impact.<sup>15</sup>
28. The Office considers that attacks on cultural heritage may violate human rights. They destroy conditions that allow people — irrespective of association with national, ethnical, racial, or religious groups, without discrimination, to access, participate in and

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<sup>12</sup> [Statute](#), arts. 21(1)(c), 21(3).

<sup>13</sup> See [ICC-01/12-01/15-214-AnxI-Red3](#) (“*Al Mahdi* Expert Report by the UN Special Rapporteur on Cultural Rights”), p. 5.

<sup>14</sup> [ICC RPE](#), rule 85. See also [ICC-01/04-01/06-1119](#) (“*Lubanga* Decision on Victims’ Participation”), para. 89.

<sup>15</sup> [ICC-01/12-01/15-236](#) (“*Al Mahdi* Reparations Order”), para. 10.

contribute to cultural life. In recent times, both during armed conflict and in peacetime, objects of cultural value have been damaged, desecrated, repurposed, or stolen, frequently with the aim of harming the people to whom they are intrinsically linked. The protection of both tangible and intangible cultural heritage therefore finds its reflection in international human rights norms and protections of human rights related to cultural heritage,<sup>16</sup> in particular, the right of access to and enjoyment of all forms of cultural heritage, including the right to take part in cultural life, the right of minorities to enjoy their own culture and the right of indigenous peoples to self-determination and cultural heritage.<sup>17</sup> The associated rights affected include freedom of expression, freedom of thought, conscience and religion, the right to education, economic rights, and the right to development.<sup>18</sup>

29. The Office will apply a gender analysis to all crimes affecting or against cultural heritage,<sup>19</sup> and a child-sensitive approach<sup>20</sup> in its work concerning crimes against or affecting cultural heritage, and appreciates that certain types or aspects of cultural heritage may be targeted specifically because it holds a special value to a specific group, such as a particular sex or gender, or children.
30. The Office applies a holistic approach to the consideration of crimes against or affecting cultural heritage at all stages of its operations. They may constitute crimes under the Statute or otherwise be relevant, for example, in the assessment of gravity, which takes into account the scale, nature, manner of commission and impact of the crimes; in the assessment of the contextual elements of the crimes; as evidence in establishing the intent or motivation of the perpetrators; and during sentencing. The Office aims at considering the broadest possible scope of criminality, taking guidance from both the specific and general provisions of the Statute while recalling the principle of legality requirements. This will enable it to present the multifaceted nature and impact of crimes against or affecting cultural heritage, both tangible and intangible.

<sup>16</sup> See also [Statute](#), art. 21(3) (the application and interpretation of law must be in accordance with internationally recognised human rights).

<sup>17</sup> See [Universal Declaration of Human Rights](#) (“UDHR”), art. 27(1). See also [International Covenant on Economic, Social and Cultural Rights](#) (“ICESCR”), art. 15(1)(a); [Report by the Special Rapporteur in the field of cultural rights, UN. Doc. A/71/317 \(2016\)](#), para. 14; [1977 Additional Protocol I](#), art. 53; [1977 Additional Protocol II](#), art. 16; [1954 Hague Convention](#), art. 4; [1999 Second Protocol](#), art. 15.

<sup>18</sup> [UDHR](#), articles 18, 26-27; [International Covenant for Civil and Political Rights](#) (“ICCPR”), arts. 18-19. See also [Convention on the Rights of the Child](#), arts. 28-29; [European Convention on Human Rights](#), arts. 9-10; and Protocol 1, arts. 1-2; [American Convention on Human Rights](#), arts. 12-13, 26; [ICESCR](#), arts. 13, 15; [Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council, A/HRC/14/36, 22 March 2010](#).

<sup>19</sup> See [Policy Paper on Sexual and Gender-Based Crimes](#).

<sup>20</sup> See [Policy on Children](#).

31. The Office promotes cooperation in relation to the prevention of crimes against or affecting cultural heritage. It also encourages complementarity efforts, including by providing support to national authorities investigating these crimes, as appropriate.<sup>21</sup>
32. The Office will provide training to its staff on the investigation and prosecution of crimes against or affecting cultural heritage and raise their awareness of the complexities of the issues and the various facets in which destruction of cultural heritage may manifest itself.

### **III. Regulatory Framework**

33. The Office's consideration of crimes against or affecting cultural heritage occurs within a prescribed regulatory framework: first, the Statute, the Elements of Crimes, and the Rules. Although none of the crimes explicitly refer to the destruction of cultural heritage or cultural property, there are several crimes that can be applied to such acts as set out herein.
34. Where appropriate, the Court may rely on applicable treaties and the principles and rules of international law, including the established principles of international law of armed conflict (article 21 of the Statute). Although the crimes set out in the Statute should be interpreted first and foremost on their own terms, a number of principles and rules of international law may assist in relation to cultural heritage, including those set out in the 1954 Hague Convention, the 1954 First Protocol, the 1972 World Heritage Convention, the 1999 Second Protocol, the 2003 UNESCO Convention, and in the core instruments of international humanitarian law (particularly the 1899 and 1907 Hague Regulations, the 1949 Geneva Conventions, and the 1977 Additional Protocols).
35. The Court may further apply general principles of law derived from national laws, or legal systems of the world including, where appropriate, the national laws of States that would normally exercise jurisdiction over the crimes, provided that those principles are not inconsistent with the Statute, international law, or internationally recognised norms and standards.<sup>22</sup> These general principles may potentially assist in multiple ways relevant to cultural heritage, including in determining what qualifies as cultural heritage and informing recommendations as to the means and modalities of reparations for victims of crimes impacting on cultural heritage.
36. Article 21(3) of the Statute is particularly relevant to the Office's work as regards crimes against or affecting cultural heritage. It mandates that both the application and interpretation of the Statute be consistent with internationally recognised human rights and without any adverse distinction founded on "grounds such as sex or gender as

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<sup>21</sup> See [Policy Paper on Case Selection and Prioritisation](#), para. 7.

<sup>22</sup> [Statute](#), art. 21(1).

defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status”.

37. The Statute confers the Court with jurisdiction over various crimes against or affecting cultural heritage, where they constitute or form part of war crimes, crimes against humanity, genocide or the crime of aggression. The Office will ensure that a robust approach is applied in the investigation and prosecution of crimes against or affecting cultural heritage to give full effect to the provisions enunciated within the Statute, the Elements of Crimes, and the Rules.
38. Consequently, the Office will:
- (i) Apply and interpret the Statute consistently with the sources of law set out in article 21, including those relating to cultural heritage and to internationally recognised human rights;
  - (ii) Consider and evaluate the impact of crimes against or affecting cultural heritage on the exercise of internationally recognised human rights;
  - (iii) Seek to gain insight into crimes against or affecting various forms of cultural heritage, including any links between them, and how they may, individually or collectively, play a role in complex forms of criminality; and
  - (iv) Undertake its work in a manner that is culturally sensitive and respects the role that cultural heritage plays for both local communities and humanity, provided that such cultural heritage is consistent with internationally recognised human rights.<sup>23</sup>
39. The following analysis highlights the crimes in the Statute which may be relevant to the protection of cultural heritage. The Policy endeavours to address various ways in which cultural heritage could be affected by the crimes within the jurisdiction of the Court. However, the Office notes that the two provisions which are most directly applicable to attacks on cultural heritage (and which have been applied in several cases before the Court for attacks on cultural heritage) are the war crimes in articles 8(2)(b)(ix) and 8(2)(e)(iv).
- a) War Crimes: Article 8*
40. Crimes against or affecting cultural heritage are often committed in the context of an international or non-international armed conflict. Indeed, some of the first international protections for cultural property developed from international humanitarian law, such as the 1899 and 1907 Hague Regulations. *Ad hoc* tribunals such as the ICTY reinforced these norms with criminal prosecutions.

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<sup>23</sup> See [Statute](#), art. 21.

41. War crimes fall under the Court's jurisdiction under article 8 of the Statute, and at present may offer the most straightforward means to address intentional harm to cultural heritage—not least since it is well established that these crimes not only address violence to the person but also to property.<sup>24</sup> In this regard, relevant war crimes under article 8 fall into five broad categories: the directing of attacks against certain protected objects; the directing of attacks against civilian objects; the destruction or seizure of property (of all kinds) belonging to certain persons; the appropriation of property for private or personal use (pillage); and, other crimes which may nonetheless indirectly relate to cultural heritage. Only the crimes in the first of these categories deal specifically with some forms of cultural property, but all are potentially relevant to the protection of cultural heritage more broadly.

*i. Directing Attacks on Protected Objects: Articles 8(2)(b)(ix) and 8(2)(e)(iv)*

42. Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute directly protect certain types of cultural heritage, in all kinds of conflict, through a specific prohibition on intentionally directing attacks against certain buildings, provided they are not military objectives. Specially protected buildings include, relevantly: buildings dedicated to religion, education, art, science, or charitable purposes, and historic monuments.<sup>25</sup> Articles 8(2)(b)(ix) and 8(2)(e)(iv) represent “a more specific crime addressing attacks against cultural property as a subset of civilian objects, reflecting the recognition that cultural property has significance additional to other civilian objects.”<sup>26</sup> Accordingly, when appropriate, these crimes may be charged in preference to other potentially applicable crimes in order to express the particular nature of the criminality.

43. In prosecuting crimes under articles 8(2)(b)(ix) and 8(2)(e)(iv), the Office will seek to build upon the rich body of practice developed by the ICTY. In particular, the Office recalls the landmark conviction of Pavle Strugar for the shelling of Dubrovnik, a UNESCO World Heritage site, in violation of the customary international law reflections of articles 27 and 56 of the 1907 Hague Regulations.<sup>27</sup> However, while naturally, attacks

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<sup>24</sup> But see [ICC-02/04-01/15-1762-Red](#) (“Ongwen TJ”), para. 2733 (noting that the underlying act of persecution as a crime against humanity may be satisfied by severe deprivation, contrary to international law, of the right to private property). The ICTY has extensively prosecuted attacks on cultural property as an underlying act of persecution, such as in *Brđanin* and *Stakić* (primarily mosques and churches), and *Šainović* and *Dorđević* (Kosovo Albanian cultural monuments and sacred sites).

<sup>25</sup> Borrowing in part the approach of the 1972 World Heritage Convention, in article 1, “monuments” may be defined broadly as “architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features”. Consistent with the other objects protected in articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute, however, there is no requirement for a monument to be “of outstanding universal value”.

<sup>26</sup> See [S. Brammertz et al., ‘Attacks against cultural heritage as a weapon of war: prosecutions at the ICTY,’ \[2016\] 14\(5\) Journal of International Criminal Justice 1143](#) (“Brammertz et al.”), pp. 1152-1153.

<sup>27</sup> See [Prosecutor v. Strugar, Trial Judgment, IT-01-42-T, 31 January 2005](#) (“Strugar TJ”), paras. 298-330. See also [Prosecutor v. Jokić, Sentencing Judgment, IT-01-42/1-S, 18 March 2004](#) (“Jokić SJ”), para.

46. See further [ICTY Statute](#), art. 3(d).

against cultural heritage of this distinction are particularly grave,<sup>28</sup> the ICTY did not “require that the cultural property be of ‘great importance’” for such attacks to be unlawful.<sup>29</sup>

44. The ICTY’s approach is consistent with the plain terms of articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute, which describe the specially protected objects by the broad terminology of articles 27 and 56 of the 1907 Hague Regulations, and do not include the more restrictive qualifications included in the 1954 Hague Convention and the 1977 Additional Protocols (heritage of a “people”). While the *Ntaganda* Trial Chamber suggested that the “special status” of a protected object may be relevant in assessing the legal framework under articles 8(2)(b)(ix) and 8(2)(e)(iv), this is subject to appeal by the Office.<sup>30</sup> However, this is not to say that the gradations in status of ‘cultural’ objects are not potentially valuable within the broader framework of international law—especially given the various obligations associated with the protection of cultural property and cultural heritage, beyond armed conflict—but merely to say that they are not relevant as such to liability under the Statute.
45. Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute also exceed the degree of protection recognised by the ICTY in that there is no requirement for proof of actual damage once an attack has been directed at a protected object contrary to articles 8(2)(b)(ix) and 8(2)(e)(iv).<sup>31</sup> The term “directing an attack” implies that it is sufficient that the act was launched against a protected building.<sup>32</sup> The occurrence of actual damage is not required. In *Al Mahdi*, it was also affirmed that “attack” in articles 8(2)(b)(ix) and 8(2)(e)(iv) has a special meaning, insofar as it includes acts of hostilities directed against protected objects under the control of a party to the conflict, and not merely those under the control of the adverse party. In this way, “attack” is defined differently than for other ‘conduct of hostilities’ offences in articles 8(2)(b) and (e), in accordance with the established framework of international law pertaining to the protection of cultural property: specifically, the 1907 Hague Regulations, and the 1954 Hague Convention and

<sup>28</sup> See e.g. *Jokić SJ*, paras. 51-53.

<sup>29</sup> *Brammertz et al.*, pp. 1153-1154 (citing *Prosecutor v. Dario Kordić and Mario Čerkez, Appeal Judgment*, IT-95-14/2-A, 17 December 2004, para. 92). In this fashion, the *Kordić* Appeal Judgment overrules any contrary dicta from Trial Chambers that the ICTY’s jurisdiction under article 3(d) of its Statute was limited to property protected by the 1954 Hague Convention and/or the 1977 Additional Protocols: *Strugar TJ*, paras. 307, 312, 327 (requiring that the property constituted the “cultural or spiritual heritage of peoples”, which it did on the facts); *Jokić SJ*, para. 67 (declining to aggravate sentence based on the protection of property under the World Heritage Convention because “this special status of the Old Town has already been taken into consideration in the definition and evaluation of the gravity of the crime”).

<sup>30</sup> *ICC-01/04-02/06-2359* (“*Ntaganda TJ*”), para. 1136 (fn. 3147).

<sup>31</sup> Compare *Strugar TJ*, paras. 308, 312.

<sup>32</sup> See *ICC-01/12-01/15-84-Red* (“*Al Mahdi* Confirmation Decision”), para. 43. See also Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford University Press, 2010), p. 237.



1977 Additional Protocols—which prohibit all “acts of hostility” and not merely “attacks” against protected objects.

46. On the other hand, both the degree of harm to the protected object and its cultural significance should be taken into account in assessing the gravity of the crime, relevant to sentencing but also potentially to the admissibility of the case under article 17(1)(d) of the Statute. In this context, the Prosecution notes that, while interruptions to the function of a protected object within the context of its society may constitute an important aspect of the harm caused, the gravity is not always *solely* limited to such anthropocentric concerns. As such, and consistent with the established framework of international law, attacks on objects which qualify as cultural property in the meaning of the 1954 Hague Convention and 1977 Additional Protocols, or even as world heritage in the sense of the World Heritage Convention, should be regarded as very serious *irrespective* of the regard in which may be held by their immediate society at the material time.
- ii. *Directing attacks against civilian objects: Articles 8(2)(b)(ii) and 8(2)(b)(iv)*
47. Articles 8(2)(b)(ix) and 8(2)(e)(iv) are *lex specialis*, because they prohibit the intentional directing of attacks against certain kinds of civilian objects, which in some cases constitute cultural property.<sup>33</sup> Yet it follows that any tangible cultural property or heritage which does not constitute a building dedicated to religion, education, art, science, or charitable purposes, or a historic monument, may still be a civilian object and consequently, it may be a crime under article 8(2)(b)(ii) of the Statute to intentionally direct an attack against it.<sup>34</sup>
48. Furthermore, even if such an object is only incidentally damaged as a consequence of an attack, this may still be a crime under article 8(2)(b)(iv) if the perpetrator knew that this damage would be clearly excessive in relation to the concrete and direct military advantage anticipated—in other words, that the damage would be disproportionate.<sup>35</sup> This will be assessed, among other considerations, in light of the cultural significance of the object in question.<sup>36</sup>

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<sup>33</sup> See [Strugar TJ](#), para. 302.

<sup>34</sup> A civilian object is any object which is “not a military objective”: [1977 Additional Protocol I](#), art. 52(1). A “military objective” is any object which, by its nature, location, purpose, or use, makes an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances at the time, offers a definite military advantage: [1977 Additional Protocol I](#), art. 52(2).

<sup>35</sup> See also [1977 Additional Protocol I](#), art. 51(5)(b).

<sup>36</sup> See e.g. [R. O’Keefe et al., Protection of Cultural Property: Military Manual \(Paris and San Remo: UNESCO and International Institute of Humanitarian Law, 2016\)](#), para. 114 (“As applied to cultural property, this proportionality calculus involves qualitative as much as quantitative considerations. The measure of incidental damage to be caused to cultural property is a question not just of cubic metres but

49. Since articles 8(2)(b)(ii) and (iv) are general ‘conduct of hostilities’ offences, they differ from articles 8(2)(b)(ix) and 8(2)(e)(iv) in that the targeted object cannot be under the control of the party to the conflict to which the perpetrator is affiliated.<sup>37</sup>
50. It is also noteworthy that articles 8(2)(b)(ii) and (iv), which apply to international armed conflicts, have no counterparts in the Statute in article 8(2)(e), which applies to non-international armed conflict. This apparent jurisdictional lacuna is unfortunate and unexplained, since it is beyond question that customary international law acknowledges these crimes.<sup>38</sup> It is not yet clear whether similar conduct in non-international armed conflict might be permissibly charged under article 8(2)(e)(i), which generally punishes intentionally directing attacks against civilians and the civilian population,<sup>39</sup> and which must be interpreted within the established framework of international law.<sup>40</sup>
- iii. *Destruction or appropriation of property as a grave breach of the Geneva Conventions, and destruction or seizure of property of the adverse party to the conflict: Articles 8(2)(a)(iv), 8(2)(b)(xiii) and 8(2)(e)(xii)*
51. Intentional harm to cultural property may also be charged through articles 8(2)(a)(iv), 8(2)(b)(xiii) or 8(2)(e)(xii) of the Statute. These crimes are not specific to cultural property, but instead reflect the general prohibition on destroying or appropriating *any* property, provided it belongs to certain specified groups.<sup>41</sup> In particular, these crimes may be relevant to the destruction of movable cultural property, which may be more difficult to charge under other crimes, as well as to appropriations which are not for private or personal use (for example, for property which is requisitioned or seized by a

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also, crucially, of the cultural value of the object, building or site [...] Since elements of this cultural heritage are very often irreplaceable, only the promise of very considerable concrete and direct military advantage, in many cases overwhelming, will in practice be enough”). This document may be regarded as reflecting customary international law: [Dissenting Opinions of Judge Pocar, Prosecutor v. Prlić et al., Appeal Judgment, Volume III, IT-04-74-A, 29 November 2017](#) (“Prlić AJ, Dissenting Opinion of Judge Pocar”), para. 16

<sup>37</sup> See [1977 Additional Protocol I](#), art. 49(1) (defining an “attack” as an “act[] of violence against the adversary, whether in offence or in defence”).

<sup>38</sup> See e.g. [ICRC, Customary International Humanitarian Law](#), rules 7 (concerning attacks on civilian objects in both international and non-international armed conflict), 14 (concerning disproportionate attacks in both international and non-international armed conflict).

<sup>39</sup> See also [1977 Additional Protocol I](#), art. 51 (treating disproportionate attacks as a subset of indiscriminate attacks, under the heading “Protection of the civilian population”).

<sup>40</sup> See [ICC-01/04-02/06-1962 OAS](#) (“Ntaganda Jurisdiction AJ”), paras. 53-54.

<sup>41</sup> The ICTY also charged the widespread destruction of religious and similar buildings, as part of campaigns of ‘ethnic cleansing’, on the basis of the same international treaties underlying articles 8(2)(a)(iv), 8(2)(b)(xiii) and 8(2)(e)(xii) of the Statute—such as the 1907 Hague Regulations, Geneva Convention IV, and Additional Protocol I—but often did so as an underlying act of persecution, a crime against humanity. In this context, it did not apply an ‘adverse party’ requirement: see e.g. [Prosecutor v. Karadžić, Public Redacted Version of Judgement Issued on 24 March 2016, IT-95-5/18-T, 24 March 2016](#), paras. 530-534.



party to the conflict and not for personal gain) and therefore are not covered by the crime of pillage.

52. In international armed conflict, article 8(2)(a)(i) applies to “protected” property under the Geneva Conventions (principally, all real or personal property in occupied territory),<sup>42</sup> and article 8(2)(b)(xiii) applies to “the enemy’s property”. Similarly, in non-international armed conflict, article 8(2)(e)(xii) applies to the property of the “adversary”. This does not only mean persons who have actively allied themselves with the adverse party to the conflict (relative to the perpetrator), such as through membership of the adverse party’s armed forces, but also those whom the perpetrator merely perceives to be affiliated to the adverse party.<sup>43</sup>
53. For the purpose of article 8(2)(a)(iv), the destruction or appropriation must have been “extensive and carried out wantonly”. This requirement is to be assessed on a case-by-case basis<sup>44</sup>—and may, in some circumstances even be satisfied by a single act<sup>45</sup>—but does not in any event apply to article 8(2)(b)(xiii), which may be residually applicable. Nor does any such requirement apply in non-international armed conflict, under article 8(2)(e)(xii).
54. For all three crimes—that is, articles 8(2)(a)(iv), 8(2)(b)(xiii), and 8(2)(e)(xii)—it is necessary for the Prosecution to prove that the destruction or appropriation was not justified by military necessity. In accordance with the established framework of international law, this standard may vary slightly, according to the particular provision charged and the circumstances, including the nature of the object which was destroyed or appropriated.<sup>46</sup> But generally it requires an “overall assessment” of the perpetrator’s

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<sup>42</sup> See [Geneva Convention IV](#), art. 53. Probably less relevantly, see also e.g. [Geneva Convention I](#), arts. 19 (fixed medical establishments and mobile medical units of the Medical Service), 20 (hospital ships), 34 (aid societies), 36 (medical aircraft); [Geneva Convention II](#), arts. 37 (medical and religious personnel), 39 (medical aircraft); [Geneva Convention III](#), art. 18 (prisoners of war); [Geneva Convention IV](#), arts. 18 (hospitals), 21-22 (hospital transport).

<sup>43</sup> See [Ongwen TJ](#), para. 2776 (“With regard to the destruction of property belonging to persons who had no stated or apparent allegiance to a party involved in the conflict, the Chamber notes that it may be established that these persons or entities were ‘adverse’, or considered as such by the perpetrators, for example by showing that they were not aligned to or supportive of the perpetrators’ party or its objectives”).

<sup>44</sup> See K. Dörmann, ‘Article 8 – para. 2(a),’ in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Criminal Court: a Commentary*, 3<sup>rd</sup> Ed. (München/Oxford/Baden Baden: C.H. Beck/Hart/Nomos, 2016), p. 341-342 (mn. 121).

<sup>45</sup> See e.g. [Prosecutor v. Blaškić, Trial Judgment, IT-95-14-T, 3 March 2000](#) (“*Blaškić TJ*”), para. 157; Pictet (ed.), *Commentary on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 1958, p. 601 and accompanying footnote (recalling that “an isolated incident would not be enough” but that the intentional “bombing of a single civilian hospital”, for example, would satisfy the requirement).

<sup>46</sup> See e.g. [1907 Hague Regulations](#), art. 23(g); [Geneva Convention IV](#), arts. 53, 147; [1954 Hague Convention](#), art. 4(2); [1999 Second Protocol](#), art. 6. See further [Prlić AJ, Dissenting Opinion of Judge Pocar](#), para. 15.

behaviour, entailing consideration of a variety of factors,<sup>47</sup> to conclude that the perpetrator had “no other option” in the circumstances than to destroy or appropriate the object.<sup>48</sup>

55. These three crimes may also serve the function of imposing limits on the destructive consequences of hostilities. Thus, on the face of the Statute, it may be “technically possible for enemy property to be lawfully targeted (*i.e.* where the property is a military objective within the meaning of article 8(2)(b)(ii) of the Statute) but, nonetheless, still potentially to result in a war crime, if it is destroyed and the destruction is not militarily necessary [in the meaning of article 8(2)(b)(xiii)].”<sup>49</sup> While the military necessity test may not be so demanding for the destruction of objects whose nature and purpose renders them a military objective (for example, weapons systems), it may be much higher at least for objects whose location or temporary use makes them susceptible to lawful targeting (for example, ‘dual use’ objects, civilian houses, etc.).<sup>50</sup> This applies *a fortiori* to cultural property.
56. For example, in *Prlić*, the majority of the ICTY Appeals Chamber declined to enter a conviction for the wanton destruction of the Old Bridge at Mostar because, in circumstances where it constituted a military objective, attacking it could not be considered as not being justified by military necessity.<sup>51</sup> But Judge Pocar, dissenting, recalled that “[t]he notion of justified by military necessity is distinct from and more stringent than that of a military objective”, and entails among other considerations, that “a disproportionate attack is *per se* unlawful and therefore cannot be justified by military necessity.”<sup>52</sup> He did not address the likelihood that he would have reached the same conclusion if the attack had complied with the principles of distinction, proportionality, and precaution. Yet he stressed that, in his view, the “remarkable cultural significance” of the Old Bridge meant that both the military necessity and military objective analyses

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<sup>47</sup> M. E. Cross, ‘Military necessity,’ in D. Djukić and N. Pons (eds.), *Companion to International Humanitarian Law* (Leiden: Brill, 2018) (“Cross”), pp. 498-499 (referring to “factors such as the relationship between the relevant conduct and the legitimate aims of party to the conflict to which the actor belongs; the actor’s knowledge and capabilities; and the existence of reasonable alternatives”).

<sup>48</sup> See e.g. [Ntaganda TJ](#), para. 1164; [ICC-01/04-01/07-3436-tENG](#) (“*Katanga TJ*”), para. 894.

<sup>49</sup> Cross, p. 499. To a certain extent—with respect to articles 8(2)(b)(xiii) and 8(2)(e)(xiii), but not to article 8(2)(a)(iv)—this depends on the interpretation of element 3 in the relevant Elements of Crimes, which requires in both cases that the property in question was “protected from that destruction or seizure under the international law of armed conflict”. In any event, this element would seem not to be properly understood to refer to the property in question not constituting a military objective: *contra* [Ongwen TJ](#), para. 2777; [Katanga TJ](#), para. 893. If this were the case, the separate requirement (in element 5) that the destruction was not justified by military necessity would be redundant.

<sup>50</sup> See also [Ntaganda TJ](#), para. 1165.

<sup>51</sup> [Prosecutor v. Prlić et al., Appeal Judgment, Volume I, IT-04-74-A, 29 November 2017](#), para. 411.

<sup>52</sup> [Prlić AJ, Dissenting Opinion of Judge Pocar](#), paras. 8-9. See further paras. 10-11 (on the circumstances which, in his view, rendered the attack disproportionate).

should have been applied more stringently than for objects which do not constitute protected cultural property.<sup>53</sup>

iv. *Pillage: Articles 8(2)(b)(xvi) and 8(2)(e)(v)*

57. The chaos of armed conflict is frequently associated with the appropriation of property for personal gain. This can have significant consequences for cultural heritage. For example, following the invasion of Iraq and the fall of Baghdad in 2003, it was estimated that thousands of irreplaceable artefacts were looted from the National Museum.<sup>54</sup> Recent years have continued to see a lively trade in ‘conflict antiquities’.<sup>55</sup> Such conduct may be organised, officially authorised and sanctioned, or sporadic and/or opportunistic. To date, no international criminal tribunal has yet prosecuted the systematic pillaging of cultural property. In deciding whether to pursue cases based principally on pillaging, the Office will take particular account of circumstances such as: the context surrounding the pillaging, the consequences for the victims, the number of persons impacted by the loss, and the value and unique meaning of the stolen property, including its cultural value.
58. The prohibition of pillage, sometimes known as plunder, is very well established.<sup>56</sup> At the ICC, under articles 8(2)(b)(xvi) and 8(2)(e)(v) of the Statute, pillage is distinguished from other crimes, such as the appropriation or seizure of property, by the requirement for the perpetrator to intend the appropriation for their “private or personal use”. This illustrates the particular harm which the crime seeks to punish—personal enrichment, with a nexus to armed conflict. As a matter of principle, such conduct can never be justified by military necessity, and consequently, this need not be disproved if the requisite specific intent is shown.<sup>57</sup> There is no requirement for appropriations to occur on a large scale,<sup>58</sup> although this may of course be relevant in the assessment of the gravity of the offence.

<sup>53</sup> *Prlić AJ, Dissenting Opinion of Judge Pocar*, paras. 12-17.

<sup>54</sup> See e.g. Human Rights Watch, ‘Liberation and looting in Iraq,’ 13 April 2003, available at <https://www.hrw.org/news/2003/04/13/liberation-and-looting-iraq-0>; C. Barker, ‘Fifteen years after looting, thousands of artefacts are still missing from Iraq’s national museum’, 9 April 2018, available at <https://theconversation.com/fifteen-years-after-looting-thousands-of-artefacts-are-still-missing-from-iraqs-national-museum-93949>.

<sup>55</sup> See e.g. F. R. Greenland, ‘Inside ISIS’ looted antiquities trade,’ *The Conversation*, 31 May 2016, available at <https://theconversation.com/inside-isis-looted-antiquities-trade-59287>.

<sup>56</sup> See e.g. *ICRC, Customary International Humanitarian Law*, rule 40; *1907 Hague Regulations*, arts. 28, 47; *IMT Charter*, art. 6(b); *Geneva Convention IV*, art. 33; *1977 Additional Protocol II*, art. 4(2)(g); *1954 Hague Convention*, art. 4(3); *ICTY Statute*, art. 3(e). See further *Prosecutor v. Blaškić, Appeal Judgment, IT-95-14-A, 29 July 2004* (“*Blaškić AJ*”), para. 148; *Prosecutor v. Delalić et al., Trial Judgment, IT-96-21-T, 16 November 1998* (“*Delalić TJ*”), para. 315.

<sup>57</sup> *Ntaganda TJ*, para. 1030. See also *ICC-01/05-01/08-3343* (“*Bemba TJ*”), para. 124; *Ongwen TJ*, para. 2767.

<sup>58</sup> *Ongwen TJ*, para. 2764; *Ntaganda TJ*, para. 1044. But see *Bemba TJ*, para. 117; *Katanga TJ*, para. 909.

v. *Other war crimes*

59. The Office recognises that many other war crimes may potentially engage with cultural heritage, either in the harm caused or by the means that they are carried out with, or both. In particular:

(i) Deportation or forcible transfer will likely affect the ability of an individual to access their cultural heritage, especially in its tangible forms. Indeed, these crimes may sometimes be carried out with precisely that ulterior motive. Correspondingly, the direct or indirect transfer of parts of an Occupying Power's civilian population into occupied territory may affect the cultural heritage of the people in that place. Whenever the facts so indicate, the Office will highlight these concerns in its submissions.

(ii) The concept of "outrages upon personal dignity" may require a particularly sensitive assessment of the victim's cultural heritage, in order to gauge the harm caused with accuracy. While outrages must objectively meet a certain threshold of gravity—that is, their effect on dignity must be "real and serious", "humiliating or degrading"<sup>59</sup>—the required harm to the victim may well be achieved by acts which are situated in a particular cultural context, or which impede the victim's future ability to access their cultural heritage.<sup>60</sup> Importantly, in the context of this crime, the affected "persons" also include dead persons.<sup>61</sup> Consequently, the desecration of a corpse in a manner that violates the deceased person's cultural burial practices may constitute an outrage upon personal dignity.

(iii) Many forms of sexual or gender-based crimes may be designed to affect the cultural heritage of a community.<sup>62</sup> For example, individuals may be targeted for sexual slavery, or subjected to the crime of forced pregnancy, because of their shared cultural heritage, or because of their personal importance for the cultural heritage of

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<sup>59</sup> See [ICC-01/04-01/07-717](#) ("Katanga Confirmation Decision"), para. 369; [Prosecutor v. Kunarac et al., Trial Judgment, IT-96-23&23-1, 22 February 2001](#) ("Kunarac TJ"), para. 501; [Prosecutor v. Aleksovski, Trial Judgment, IT-95-14/1-T, 25 June 1999](#), para. 56.

<sup>60</sup> This may include, for example, forcing victims to dance naked on a table: [Kunarac TJ](#), paras. 766-774. Forcing a person to eat in a manner inconsistent with their cultural dietary practices may also rise to this threshold: see e.g. [Case 002/02 \(Judgement\), ECCC, Case File No. 002/19-09-2007/ECCC/TC, 16 November 2018](#) ("Case 002/02 TJ") paras. 3238, 3245 (referring to members of the Cham people being forced to eat pork, although not in that case finding such action as an outrage upon personal dignity as such).

<sup>61</sup> [ICC Elements of Crimes](#), art. 8(2)(b)(xxi), fn. 49; art. 8(2)(c)(ii), fn. 57 (emphasis added).

<sup>62</sup> For example, an individual may be subjected to acts of a sexual nature with the ulterior motive of offending that individual's cultural heritage.

that group, e.g. as religious or spiritual leaders.<sup>63</sup> When supported by the facts, the Office will highlight the crime's relationship to cultural heritage in the charging instruments.<sup>64</sup>

***b) Crimes Against Humanity: Article 7***

60. Crimes against or affecting cultural heritage are often committed in the context of an attack against a civilian population. They may themselves amount to crimes against humanity, or other acts amounting to crimes against humanity may have adverse consequences for cultural heritage. The Office will seek to explore and pursue all links between cultural heritage and crimes against humanity, and charge crimes against or affecting cultural heritage as crimes against humanity whenever possible and appropriate.

*i. Contextual Elements: Article 7(1)*

61. The contextual elements of crimes against humanity require the Office to demonstrate that: (i) an attack against the civilian population was committed, (ii) the attack was pursuant to or in furtherance of a State or organisational policy, and (iii) the attack was widespread or systematic.<sup>65</sup> Acts damaging cultural heritage can play a role in establishing all three contextual elements.

*ii. Attack against a civilian population*

62. The civilian population must be the primary, as opposed to incidental, target of the attack.<sup>66</sup> Means and methods adopted to carry out the attack as well as its discriminatory nature are indicators that the attack was directed against a civilian population.<sup>67</sup>

63. Evidence of crimes against cultural heritage committed during the attack may suggest that the civilian population was the primary target of the attack, given the collective importance of cultural heritage for civilian communities as such. Further, crimes against

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<sup>63</sup> Cultural heritage may also be an integral part of a sexual and gender-based crime ("SGBC") charge under article 7(1)(g) and 7(1)(h) of the Statute, insofar as the victims are targeted for their membership in a specific group with a shared cultural heritage.

<sup>64</sup> In *Katanga*, the Pre-Trial Chamber held that "sexual slavery also encompasses situations where women and girls are forced into 'marriage', domestic servitude or other forced labour involving compulsory sexual activity, including rape, by their captors. Forms of sexual slavery can, for example, be practices such as the detention of women in 'rape camps' or 'comfort stations', forced temporary 'marriages' to soldiers and other practices involving the treatment of women as chattel, and as such, violations of the peremptory norm prohibiting slavery": [Katanga Confirmation Decision](#), para. 431. Such a situation may be similar to the facts presented in *Akayesu*, where Tutsi women were specifically targeted for sexual violence: [Prosecutor v. Akayesu, Trial Judgment, ICTR-96-4-T, 2 September 1998](#) ("Akayesu TJ"), para. 731.

<sup>65</sup> Statute, arts. 7(1), 7(2)(a).

<sup>66</sup> [Katanga TJ](#), para. 1104; [Ongwen TJ](#), para. 2675.

<sup>67</sup> [Katanga TJ](#), para. 1104; [Ntaganda TJ](#), para. 668.

cultural heritage may also suggest that the attack was of a discriminatory nature,<sup>68</sup> an indicator that it was directed against a civilian population.<sup>69</sup>

iii. *State or organisational policy*

64. The attack on a civilian population must be committed pursuant to or in furtherance of a State or organisational policy.<sup>70</sup> Such policy need not be bureaucratic or formalised, and may be implicit.<sup>71</sup> Ultimately, it may be inferred from the manner in which the relevant acts occur.<sup>72</sup> While the core of the analysis remains the manner in which acts under article 7(1) constituting the attack are carried out, evidence of destruction of cultural heritage—irrespective of its legal characterisation—may further assist. In fact, while no particular motive is required to establish a policy, evidence of an underlying motivation can reinforce a link between acts constituting the attack and thus indicate the existence of a policy.<sup>73</sup> Acts against cultural heritage committed during the attack—whether they qualify as article 7(1) acts or not—can evidence a discriminatory motive which in turn points to the existence of a policy.

iv. *Widespread or systematic*

65. An attack must be widespread or systematic. The term ‘widespread’ connotes the large-scale nature of the attack and the number of targeted persons,<sup>74</sup> while ‘systematic’ reflects its organised nature.<sup>75</sup> Where the acts constitute a pattern of acts against cultural heritage, it may indicate its systematic nature in that they may evince a certain level of organisation and rationale. Furthermore, when assessing the widespread nature of an attack, the Office will take due regard of the fact that crimes against or affecting cultural heritage often produce a multiplicity of victims, as they cause harm throughout affected communities and humanity as a whole, as such evidence of repeated acts against cultural heritage in connection with the attack may further show its widespread nature.

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<sup>68</sup> See e.g. [Prosecutor v. Stanišić and Simatović, Trial Judgment, Volume I, IT-03-69-T, 30 May 2013](#), para. 1250 (including the destruction of worship places as a discriminatory act); [Prosecutor v. Đorđević, Trial Judgment, IT-05-87/1, 23 February 2011](#), paras. 1810, 2151 (stating that the destruction of worship places as symbols of Kosovo Albanian heritage and identity was committed with persecutory intent, which manifested itself in the attack, as religious buildings were destroyed because of their religious and cultural significance).

<sup>69</sup> [Katanga TJ](#), para. 1104; [Ntaganda TJ](#), para. 668.

<sup>70</sup> [Statute](#), art. 7(2)(a).

<sup>71</sup> See e.g. [ICC-01/05-01/08-424](#) (“Bemba Confirmation Decision”), para. 81; [Katanga Confirmation Decision](#), para. 396; [ICC-02/11-01/11-656-Red](#) (“Gbagbo Confirmation Decision”), para. 215; [Katanga TJ](#), para. 1108, 1110.

<sup>72</sup> [Katanga TJ](#), para. 1109; [Bemba TJ](#), para. 160.

<sup>73</sup> [Ongwen TJ](#), para. 2679; [Katanga TJ](#), paras. 1108, 1113.

<sup>74</sup> [Ongwen TJ](#), para. 2681.

<sup>75</sup> [Ongwen TJ](#), para. 2682.



v. *Extermination: Article 7(1)(b)*

66. Extermination, the mass killing of members of the civilian population, may be committed by inflicting conditions of life calculated to bring about the destruction of part of a population.<sup>76</sup> Crimes against or affecting cultural heritage can be part of this scheme, since they can lower a group's morale, change power dynamics, and weaken resistance thereby facilitating the mass killing.

67. Further, when the cultural heritage of a group is intricately linked to their territory and related to natural formations, attacks that make the territory uninhabitable may be both acts against the cultural heritage and acts of extermination.<sup>77</sup> In fact, such actions may amount to the deprivation of access to food or – when traditional forms of health care are affected - medicine, calculated to bring about the destruction of part of the population.<sup>78</sup>

vi. *Deportation or forcible transfer of population: Article 7(1)(d)*

68. Deportation or forcible transfer may be committed by expulsion or other coercive acts.<sup>79</sup> These include physical force, but also threat of force or coercion, such as that caused by fear of violence, duress, psychological oppression or abuse of power or taking advantage of a coercive environment.<sup>80</sup>

69. Crimes against or affecting cultural heritage, when part of a wider scheme, can cause such duress or fear of violence, qualifying as coercive acts causing forced displacement.<sup>81</sup> For example, a concerted effort to suppress the culture of a community under occupation can lead to a deep sense of insecurity and repression, causing some members of the community to flee elsewhere to freely practice their culture. The destruction or appropriation of cultural heritage can not only cause persons to flee, but

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<sup>76</sup> [Statute](#), art. 7(2)(b).

<sup>77</sup> The HRC recognised that state action leading to the degradation of land, and consequently to the inability of the local population to continue its traditional forms of raising livestock, “substantively compromised the way of life and culture of the author, as a member of the community”: [Angela Poma Poma v. Peru, CCPR/C/95/D/1457/2006](#), para. 7.7. See also [HRC, General Comment 23](#), para. 7. The IACtHR found that “depriving indigenous communities of access to their ancestral territory expose(s) them to precarious and inhuman living conditions, to greater vulnerability to diseases and epidemics, and subject them to situations of extreme lack of protection”: [Case of the Afro-descendant Communities displaced from the Cacarica River Basin \(Operation Genesis\) v. Colombia](#) (“Operation Genesis Case”), para. 354. See also [Yakye Axa Indigenous Community v. Paraguay](#) (“Yakye Axa v. Paraguay”), paras. 164 ff., 203.

<sup>78</sup> The African Commission on Human and Peoples’ Rights held that severe environmental degradation, among others, severely affected the life of an indigenous community as a whole and threatened their survival: [Social and Economic Rights Action Centre & the Centre for Economic and Social Rights v. Nigeria, Comm. No. 155/96, 27 May 2002](#), para. 66 f.

<sup>79</sup> [ICC-01/19-27](#) (“Bangladesh/Myanmar Article 15(4) Decision”), para. 52

<sup>80</sup> [ICC Elements of Crimes](#), art. 7(1)(d), Element 1, fn. 12.

<sup>81</sup> See [Al Mahdi Reparations Order](#), para. 85 (holding that attacks on cultural heritage caused some persons to flee Timbuktu).

also entrench the impact of displacement crimes, by dissuading the displaced population from returning. In case cultural heritage coincides with or is closely related to natural formations, an attack on or affecting this cultural heritage might physically force people to leave, if the land becomes uninhabitable. Conversely, forced displacement often has devastating effects on a group's cultural heritage.<sup>82</sup> Lack of access to sacred sites and the impossibility to perform traditional burial rituals can make it impossible for some communities to keep their religion alive. The destruction of family and social structures, which often accompany forced displacement, can make it impossible to carry on with certain traditions and to pass them on to future generations.<sup>83</sup> The Office will thus keep in mind that the removal of certain persons from a community can have a disastrous effect on that community's cultural heritage, for example in the case of religious or spiritual leaders.<sup>84</sup> In addition, sacred or otherwise heritage sites abandoned by forcibly displaced populations may be exposed to further destruction.

vii. *Torture: Article 7(1)(f)*

70. In proving torture under article 7(1)(f) of the Statute, the Office must show that the alleged perpetrator inflicted severe physical or mental pain or suffering to a person in his or her custody or under his or her control. The Court found in *Al Mahdi*, that the damage to and destruction of cultural heritage caused severe mental suffering.<sup>85</sup> The Office considers that, if the victim is in the custody or under the control of the perpetrators, crimes against or affecting cultural heritage – whether in isolation or together with other acts – can inflict mental pain or suffering of a sufficient severity to qualify as torture. Given that crimes against or affecting cultural heritage are often discriminatory in nature, the Office will also bear in mind that a discriminatory component may aggravate the severity of the pain or suffering inflicted.<sup>86</sup> Furthermore, the severity of a treatment must be assessed *inter alia* against the religious, social and cultural contexts. Cultural heritage often provides or forms part of coping mechanisms after severe trauma. Therefore, damage to such heritage can aggravate mental suffering, for example, if victims are unable to properly bury their loved ones in accordance with their traditions.<sup>87</sup>

<sup>82</sup> [Operation Genesis Case](#), para. 354; IACtHR, [Case of the Río Negro Massacres v. Guatemala](#) (“*Río Negro Massacres v. Guatemala*”) paras. 153 ff.; [Yakye Axa v. Paraguay](#), para. 203.

<sup>83</sup> See also [Río Negro Massacres v. Guatemala](#), para. 153 ff.

<sup>84</sup> See para. 79 for a detailed explanation on related crimes.

<sup>85</sup> [Al Mahdi Reparations Order](#), paras. 84 ff.

<sup>86</sup> [R.B. v. Hungary](#), 64602/14, para. 45.

<sup>87</sup> [Massacres of El Mozote and nearby places v. El Salvador](#), paras. 172, 203 ff.



viii. *Sexual and gender-based crimes: Articles 7(1)(g) and 7(1)(h)*

71. Sexual and gender-based crimes charged under both articles 7(1)(g) and 7(1)(h) of the Statute may also be pertinent to cultural heritage in so far as the victims are targeted for their membership in a group with a shared cultural heritage or because of their personal importance for the cultural heritage of that group, e.g. as religious or spiritual leaders. It has, for instance been recognised that murder and violence specifically committed against the women of a community could produce a cultural vacuum, because these women are the oral transmitters of the community's culture, and the crimes were committed in order to ensure the loss of its oral cultural knowledge.<sup>88</sup> When this is the case, the Office will highlight the crime's relationship to cultural heritage in the charging instruments.

ix. *Persecution: Article 7(1)(h)*

72. Crimes against or affecting cultural heritage may – on their own or in combination with other actions - amount to persecution under article 7(1)(h).<sup>89</sup> For example, in *Al Hassan*, the Chamber identified “the following categories of acts infringing individual liberties: prohibition of traditional and cultural practices (such as the wearing of talismans or amulets and the practice of magic and witchcraft), prohibition of religious and cultural practices (such as prayers at mausoleums and tombs sites, as well as the manner of praying and the celebration of religious holidays), control of freedoms related to education (prohibition of co-education in the classroom, closure of secular public schools and the imposition of an education based on the vision of religion as well as the ideology of the Ansar Dine/AQIM organization), the imposition of restrictions on freedom of association and movement (prohibition of public gatherings, and prohibition for unmarried and unrelated men and women to circulate together)”.
73. Considering its importance to the identity of an entire community, crimes against or affecting cultural heritage are often committed as part of a persecutory campaign on political, religious, ethnic, or other grounds, such as gender, age, or birth.<sup>90</sup> Shared cultural heritage will usually include at least one defining feature of a persecuted group and can be used by the perpetrators to identify that group, which may include the elderly, the disabled, as well as women and children. They can therefore be considered as a strong indicator for the persecutory nature of an attack.

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<sup>88</sup> [Plan de Sánchez Massacre v. Guatemala, Reparations Judgment, 19 November 2004](#) (“*Plan de Sánchez Massacre Reparations Judgment*”), paras. 49(12), 77(e).

<sup>89</sup> See [Statute](#), art. 7(2)(g); [ICC Elements of Crimes](#), art. 7(1)(h), Element 1.

<sup>90</sup> Under articles 7(1)(h) and 21(3) of the Statute, the Office may also charge persecution on “other grounds that are universally recognized as impermissible under international law”: [Policy on Children](#), p. 24.

74. Crimes against or affecting cultural heritage can, alone or cumulatively with other acts,<sup>91</sup> deprive persons of their fundamental rights, as required by article 7(1)(h) of the Statute, for persecution. These include, but are not limited to, the right to self-determination,<sup>92</sup> which entails the right of peoples to “freely pursue their [...] cultural development”,<sup>93</sup> the prohibition of discrimination<sup>94</sup> and the right to religion in case attacks affect religious or sacred sites.<sup>95</sup> If tangible cultural heritage is in private possession, the right to property can be infringed upon.<sup>96</sup> Violations of the right to life, freedom from torture, inhumane and degrading treatment and other rights, can lead to the destruction of intangible cultural heritage, if they are committed on a large-scale or are directed against specific persons of importance for the community.<sup>97</sup>

x. *Other inhumane acts: Article 7(1)(k)*

75. Crimes against or affecting cultural heritage could also amount to other *actus rei* which are not specifically enumerated in article 7(1) of the Statute. For example, crimes against or affecting cultural heritage that cause great suffering or serious injury to the mental and physical health of the victim could constitute “other inhumane acts” under article 7(1)(k) of the Statute, if they are similar in nature and gravity to other acts listed in article 7(1) of the Statute. The Court held in *Kenyatta* that acts of forcible circumcision and penile amputation amount to such inhumane acts.<sup>98</sup> In the context of cultural heritage, for example, it might be relevant to prosecute certain property offences as ‘other inhumane acts’ if the effect of this conduct establishes that it is of similar nature and gravity as enumerated acts.<sup>99</sup> The nexus between the inhumane act and the great

<sup>91</sup> [ICC-01/12-01/18-461-Corr-Red](#) (“*Al Hassan* Confirmation Decision”), para. 672.

<sup>92</sup> For classification as a fundamental human right see [Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion](#), para. 144.

<sup>93</sup> [ICCPR](#), art. 1(1); [ICESCR](#), art. 1(1).

<sup>94</sup> The principle of non-discrimination is considered “basic”: [HRC, General Comment 18](#), paras. 1 ff.

<sup>95</sup> The right to religion is considered fundamental: [HRC, General Comment 22](#), para. 1.

<sup>96</sup> The fundamental nature of the right to property was confirmed in [ICC-01/04-02/06-309](#) (“*Ntaganda* Confirmation Decision”), para. 58; [Al Hassan Confirmation Decision](#), paras. 664, 684.

<sup>97</sup> See e.g. [Rio Negro Massacres v. Guatemala](#), paras. 153 ff. For the classification of those rights as fundamental, see [Al Hassan Confirmation Decision](#), para. 664; [Bangladesh/Myanmar Article 15\(4\) Decision](#), para. 101.

<sup>98</sup> [ICC-01/09-02/11-382-Red](#) (“*Kenyatta* Confirmation Decision”), para. 269.

<sup>99</sup> See [Kenyatta Confirmation Decision](#), para. 269 (“other inhumane acts is a residual category within the system of article 7(1) of the Statute. [...] [T]he language of the relevant statutory provision and the Elements of Crimes, as well as the fundamental principles of criminal law, make it plain that this residual category of crimes against humanity must be interpreted conservatively and must not be used to expand uncritically the scope of crimes against humanity”). At the ICTY, the Trial Chamber held that the infliction of serious injury and great suffering, both physically and mentally, to civilians constituted an “other inhumane act”: [Blaškić TJ](#), paras. 237-238. For an act to be an “other inhumane act,” it “must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity”: [Prosecutor v. Kordić and Čerkez, Trial Judgement, IT-95-14/2-T, 26 February 2001](#), para. 269 (quoting [Prosecutor v. Tadić, Trial Judgement, IT-94-1-T, 7 May 1997](#), para. 729). See also [Prosecutor v. Kayishema and Ruzindana, Trial Judgment, ICTR-95-1-T, 21 May 1999](#) (“*Kayishema TJ*”), para. 151. Article 5(i) of the

suffering or serious injury to the mental or physical health of the victim must be proven by the Prosecution.<sup>100</sup>

xi. *Additional underlying acts under article 7(1)*

76. The Office will examine other acts prohibited by article 7(1) such as murder, enslavement, deprivation of liberty, or enforced disappearance in relation to their adverse effect on cultural heritage. Such an adverse effect can be assumed if a large number of persons from a group are subject to such treatment, or the acts are committed against persons of a particular importance for that group's cultural heritage.

c) *Genocide: Article 6*

77. Crimes against or affecting cultural heritage frequently occur in connection with genocide which may be effected by killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group, when committed with the requisite intent. Article 6 encompasses acts that form part of a "manifest pattern".<sup>101</sup> Acts that are directed specifically against a group's cultural heritage may assist to demonstrate the specific intent and the manifest pattern as required under article 6. They may also, on their own, either inflict serious mental harm, and reinforce the seriousness of acts charged as genocide under article 6(b) to (d), or indeed serve as aggravating circumstances to genocide convictions. The Office will highlight these as appropriate during its submissions in court.

i. *Specific intent*

78. Crimes against cultural heritage occurring simultaneously with other acts targeting protected groups may provide evidence of specific intent (*dolus specialis*) of genocide.<sup>102</sup> While attacks on cultural heritage do not *per se* constitute underlying acts of genocide –

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ICTY Statute and article 3(i) of the ICTR Statute do not contain the Rome Statute element "of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."

<sup>100</sup> [Kayishema TJ](#), para. 151.

<sup>101</sup> See [ICC Elements of Crimes](#), art. 6(a). The "manifest pattern" requirement is not found in customary international law or the [Convention on the Prevention and Punishment of the Crime of Genocide](#) ("Genocide Convention"). See [ICC-02/05-01/09-73 OA](#) ("Bashir Arrest Warrant AJ"), paras. 32-33.

<sup>102</sup> [Prosecutor v. Krstić, Appeal Judgment, IT-98-33-A, 19 April 2004](#) ("Krstić AJ"), para. 20. See also e.g. [A-G Israel v. Eichmann, \(1968\) 36 ILR 18 \(District Court, Jerusalem\)](#), para. 25 (under the Convention a special intention is requisite for its commission, an intention that is not required for the commission of a 'crime against humanity. [Akayesu TJ](#), paras. 497, 516; [Report of the Special Rapporteur in the field of cultural rights, A/HRC/31/59, 3 February 2016](#), para. 64 ("[t]he intentional destruction of cultural and religious property and symbols can also be considered as evidence of intent to destroy a group within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide").

because acts of genocide are limited to those seeking the physical or biological destruction of a group<sup>103</sup> - the targeting of a group's cultural heritage may constitute evidence of the perpetrator's intent to destroy that group. The International Court of Justice ("ICJ") has stated that:

*"[w]here there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of intent to physically destroy the group."*<sup>104</sup> This includes, for example, attacks on buildings that hold cultural significance for the targeted group. Violence targeting prominent individuals, who are emblematic of the overall group, or are essential to its survival, such as persons holding particular cultural importance for or leadership of the group, may constitute genocide or evidence a specific intent to destroy a substantial part of the group.<sup>105</sup>

- ii. *Causing serious bodily or mental harm to members of the group: Article 6(b)*
- 79. Inhuman treatment, torture, rape, sexual abuse and deportation are among the acts that can cause serious bodily or mental harm, one of the enumerated means by which genocide can be committed.<sup>106</sup> In particular, sexual and gender-based crimes may play "an integral part of the process of destruction" and may contribute specifically to the destruction, not only of the specific victims of sexual and gender-based crimes, but also to their constituent group.<sup>107</sup> The Office also notes that a group's shared cultural heritage may specifically motivate sexual and gender-based genocide, and sexual and gender-based crimes may be motivated in part to offend the victim group's cultural heritage.<sup>108</sup> The Office will highlight these in its submissions, in particular during sentencing, as circumstances that may aggravate genocide convictions.

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<sup>103</sup> [\*Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\)\*, Judgment, 26 February 2007, ICJ Rep. 4](#) ("Bosnia v. Serbia and Montenegro (Genocide Convention) Case"), para. 344; [\*Krstić AJ\*](#), paras. 25-26; [\*Prosecutor v. Krstić, Trial Judgment, IT-98-33-T, 2 August 2001\*](#) ("Krstić TJ"), paras. 550, 580.

<sup>104</sup> [\*Bosnia v. Serbia and Montenegro \(Genocide Convention\) Case\*](#), para. 344 (endorsing the observation in [\*Krstić TJ\*](#), para. 580).

<sup>105</sup> Although there has been, as yet, no conviction for genocide on the sole basis of selective targeting of a protected group's leadership, international jurisprudence does establish that selected targeting can provide evidence of genocidal intent, or may even constitute genocide. See e.g. [\*Prosecutor v. Tolimir, Appeal Judgment, IT-05-88/2-A, 8 April 2015\*](#), para. 263; [\*Krstić AJ\*](#), para. 12; [\*Prosecutor v. Jelisić, Trial Judgment, IT-95-10-T, 14 December 1999\*](#), para. 82.

<sup>106</sup> [\*Krstić TJ\*](#), para. 513.

<sup>107</sup> [\*Akayesu TJ\*](#), para. 731.

<sup>108</sup> For example, a Trial Chamber at the International Criminal Tribunal for Rwanda ("ICTR") found that Tutsi women were specifically targeted for rape and sexual violence in a manner that rose to the level of genocide: [\*Akayesu TJ\*](#), para. 731.

80. Further, attacks on cultural heritage *per se* can cause serious mental harm to members of a group.<sup>109</sup> The Court confirmed in *Al Mahdi* that victims of crimes against or affecting cultural heritage suffer mental pain and anguish, citing examples of the victims' expression of the pain and trauma they experienced, such as: "I have never suffered so deeply in my life [...] Mentally, I was devastated. I felt humiliated by the destruction. I am still suffering [...] I am still affected mentally."<sup>110</sup> The Office will also draw on attacks against cultural heritage occurring in connection with other physical or biological acts, in proving or showing the gravity of genocide charges based on article 6(b).
- iii. *Inflicting conditions of life calculated to bring about the group's physical destruction: Article 6(c)*
81. Genocide may encompass acts that "deliberately inflict [...] on the group conditions of life calculated to bring about its physical destruction".<sup>111</sup> They include all circumstances or measures which will lead to slow death, or methods of destruction by which the perpetrator does not immediately kill the members of the group, but which ultimately seek their physical destruction.<sup>112</sup> Often, such measures may target persons or objects, such as traditional lands, that are also of significant cultural importance. The combination of, *inter alia*, violent appropriation of traditional lands and forced displacement can erode and destroy peoples' cultural heritage while also being calculated to bring about its physical destruction. In its application for an arrest warrant in the *Al Bashir* case, the Prosecution emphasised the importance of the land to the targeted group and alleged that "[t]he displacement has weakened traditional leadership structures which were based on land rights."<sup>113</sup> Usurpation of land may be considered the last blow.<sup>114</sup> In a similar vein, the Inter-American Court of Human Rights ("IACtHR") has recognised that the massacre of an indigenous community that resulted in a manifest deterioration of their living conditions, not only violated their right to life, but also their right to ethnic or cultural identity, and the right to express and disseminate

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<sup>109</sup> For example, in *Al Mahdi*, it was considered that the mental pain caused by the attacks on the sites, in particular the ancestral burial sites, was so great that it necessitated both individual and collective reparations: [Al Mahdi Reparations Order](#), paras. 89-90.

<sup>110</sup> [Al Mahdi Reparations Order](#), para. 85. See also para. 89.

<sup>111</sup> [Statute](#), art. 6(c).

<sup>112</sup> These include: subjecting a group to a subsistence diet; systematic expulsion from homes; lack of proper essential medical services, housing, clothing, hygiene below minimum requirements; and rape: see e.g. [Akayesu TJ](#), para. 506; [Kayishema TJ](#), paras. 115-116; [Prosecutor v. Brđanin, Trial Judgment, IT-99-36-T, 1 September 2004](#), para. 691. "Slow death" methods directed specifically at cultural heritage may include, but are not limited to: forcible imposition of a diet that does not conform with a group's religious practices, or the denial of medical services that comports with the practiced cultural heritage of the targeted group. For an example of this, see [Case 002/02 TJ](#), paras. 3238, 3245 (finding that the Cham had been forced to abide by the same dietary regime as the Khmer, including eating pork).

<sup>113</sup> [ICC-02/05-157-AnxA](#) ("*Darfur* Arrest Warrant Application"), para. 391 ("any new leadership in the camps is being targeted, thus actually destroying one of the basic foundations of the group").

<sup>114</sup> See [Darfur Arrest Warrant Application](#), para. 179.

culture within the framework of a genocidal policy.<sup>115</sup> These facts were recognised as having gravely affected the identity and values of the members of this community.<sup>116</sup>

82. The IACtHR has also recognised that [events impairing the physical existence of a group, and also targeting its collective integrity and identity, also lead to] the violation of cultural rights, the repression of the culture and the symbols of identity, the prohibition to perform religious rites or ceremonies, impeded the reproduction of social relations, the formation of family relationships, the facilitation of financial practices, and fragmented the sense of belonging to a group.<sup>117</sup> In these ways, acts imposing conditions of life calculated to bring about a group's physical destruction that also target or affect cultural heritage as part of a genocidal campaign, inflict ruinous conditions of life on a group.
83. The Office will highlight in its submissions, in particular concerning sentencing and reparations, such aggravating circumstances whenever any conditions of life calculated to cause a group's physical destruction also have a specific connection to the targeted group's cultural heritage.<sup>118</sup>
- iv. *Prevention of births: Article 6(d)*
84. In addition to acts which physically prevent births within a group,<sup>119</sup> the Office recognises that perpetrators may also achieve the prevention of births within a group through mass rape, where a child's membership in the group is premised on the father's identity.<sup>120</sup> Recognising that prevention of births has a physical and biological effect on a group's survival, whenever bringing this charge, and in its sentencing and reparations submissions, the Office will also emphasise this act's effect on the future cultural life of the group.
- v. *Forcibly transferring children of the group to another group: Article 6(e)*
85. The Office recognises that children are the conduit of cultural heritage to future generations. If children are forcibly removed from a group, this will constitute an

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<sup>115</sup> See e.g. [Plan de Sánchez Massacre Merits Judgment](#), para. 42(7); [Plan de Sánchez Massacre Reparations Judgment](#), para. 77(b), 87(c). See also [Plan de Sánchez Massacre Merits Judgment](#), Separate Opinion of Judge A.A. Cançado-Trindade, para. 2 (quoting the application of the IACHR), 5 (citing the Report of the Historical Clarification Commission, *Guatemala - Memoria del Silencio*, tomo III, Guatemala, CEH, 1999, pp. 316-318, 358, 375-376, 393, 410, 416-423).

<sup>116</sup> [Plan de Sánchez Massacre Merits Judgment](#), para. 51.

<sup>117</sup> [Plan de Sánchez Massacre Reparations Judgment](#), para. 82 (quoting Report of the Historical Clarification Commission, *Guatemala - Memoria del Silencio*, tomo III, Guatemala, CEH, 1999, p. 181, paras. 2887-2888).

<sup>118</sup> See e.g. [Plan de Sánchez Massacre Reparations Judgment](#), paras. 82-87.

<sup>119</sup> Such measures are not limited to the physical prevention of births, but may extend to prevention of birth through mental means: [Akayesu TJ](#), para. 508.

<sup>120</sup> [Akayesu TJ](#), para. 507. In this case, the rapes were carried out with the intent of having women "give birth to a child who will consequently not belong to its mother's group".



underlying act of genocide that will likely have a profound effect on the access to, practice of and continuation of a group's cultural heritage. In relation to the children themselves, the forcible transfer may create a severe dislocation from their cultural heritage.

86. Whenever charging genocide, the Office will ensure that its case accurately encapsulates all aspects of the crime that affect cultural heritage. The Office will also appropriately underline such aspects in its sentencing and reparations submissions.

*d) Crime of Aggression: Article 8bis*

87. The crime of aggression poses a unique threat to cultural heritage, not only due to the harm caused by the prohibited act itself, but because of the much broader potential harm which may be caused to cultural heritage by the armed conflict, which will then likely ensue. As noted by the Nuremburg Tribunal: "To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole."<sup>121</sup>
88. Article 8bis(1) explains that the "crime of aggression" is constituted by the participation<sup>122</sup> of a sufficiently high-level State official or similar person<sup>123</sup> in an "act of aggression", which is of sufficient gravity.<sup>124</sup> Attacks against or affecting cultural heritage are potentially relevant, both to the conduct which may constitute an "act of aggression", and to the assessment of the gravity threshold.
89. Conduct which might satisfy the requirement for an "act of aggression" is listed in article 8bis(2). Many, if not all, of these prohibited forms of conduct might be directed against or may affect cultural heritage. For example, the invasion, attack, occupation or annexation;<sup>125</sup> the bombardment or the use of any weapons against the territory of another State;<sup>126</sup> the use of armed forces of a State or any extension of their presence within the territory or another State in contravention or beyond the termination of their agreement;<sup>127</sup> the action of a State in allowing its territory and placing it at the disposal of another State to be used for perpetrating an act of aggression against a third State;<sup>128</sup>

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<sup>121</sup> [22 Trial of the Major War Criminals Before the International Military Tribunal](#) (1948), p. 427.

<sup>122</sup> Specifically, by "planning, preparation, initiation or execution": [Statute](#), art. 8bis(1).

<sup>123</sup> Specifically, "a person in a position effectively to exercise control over or to direct the political or military action of a State": [Statute](#), art. 8bis(1).

<sup>124</sup> Specifically, which, "by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations": [Statute](#), art. 8bis(1).

<sup>125</sup> [Statute](#), art. 8bis(2)(a).

<sup>126</sup> [Statute](#), art. 8bis(2)(b).

<sup>127</sup> [Statute](#), art. 8bis(2)(e).

<sup>128</sup> [Statute](#), art. 8bis(2)(f).

and the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries which carry on an act of aggression against another State,<sup>129</sup> might in particular be directed against, or affect, cultural heritage.

90. In assessing whether an “act of aggression” constitutes “a manifest violation of the Charter of the United Nations”,<sup>130</sup> the Office will take into account, among other considerations, the adverse effect on cultural heritage, and in this context, the potential multiplicity of victims and irreversible nature of the damage which might have been done. In particular, the Office considers that intentionally destroying or damaging cultural property or cultural heritage may be a particularly grave form of the use of force, and that such objects should not be instrumentalised in the conduct of international relations.

#### **IV. Preliminary Examinations**

91. The Office is responsible for determining whether a situation meets the legal criteria established by the Statute to proceed with an investigation.<sup>131</sup> For this purpose, the Office conducts a preliminary examination of all communications and situations that come to its attention based on the statutory criteria and the information available, in accordance with its Policy Paper on Preliminary Examinations.<sup>132</sup>
92. During a preliminary examination of a situation, the Office analyses information on alleged crimes potentially falling within the Court’s jurisdiction including, where available, with respect to conduct what may amount to crimes against or affecting cultural heritage. In doing so, the Office will pay particular attention to allegations of attacks on cultural heritage and the general context within which the alleged crimes may have occurred. To facilitate this understanding, the Office will also seek to identify local institutions and expertise, international organisations, non-governmental organisations and other relevant entities who may have relevant information. In accordance with internal protocols, the Office will seek to preserve such information, so that it may be used in the context of future investigations.
93. When assessing gravity of alleged crimes against or affecting cultural heritage, the Office will take into account the broad and severe impact that these crimes may have on individuals, communities and humanity as a whole.<sup>133</sup> Considering the unique character

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<sup>129</sup> [Statute](#), art. 8bis(2)(g).

<sup>130</sup> See also Kress, ‘State Conduct Element’, in Kress and Barriga (eds.), *Commentary on the Crime of Aggression* (CUP), pp. 513ff., 520.

<sup>131</sup> [Statute](#), art. 53(1).

<sup>132</sup> See [Policy Paper on Preliminary Examinations](#).

<sup>133</sup> See [Al Mahdi Reparations Order](#), paras. 74-76, 89-90.



and significance of cultural heritage,<sup>134</sup> the Office will consider, as necessary, relevant information from the range of sources it has identified to best capture the multi-layered harm resulting from these crimes, such as the sufferings endured by the victims and their increased vulnerability incurred as a result of the loss of and other impact on affected cultural heritage, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities.<sup>135</sup> In this regard, the Office will carefully assess the qualitative aspects of these crimes in addition to other quantitative considerations of relevance to its gravity assessment.

94. The Office must also consider, on a case by case basis, whether, taking into account all the circumstances, including the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.<sup>136</sup> Given the presumption in favour of investigation or prosecution where the statutory criteria has been met,<sup>137</sup> the Office will seek to interact with relevant stakeholders, including victims' legal representatives and civil society organisations, to gather the views of victims and other parties affected on the impact of crimes against or affecting cultural heritage on individuals and communities, and their expectations in seeing justice done to inform its assessment of interests of justice. In light of the mandate of the Office and the object and purpose of the Statute, there is a strong presumption that investigations and prosecutions of crimes against or affecting cultural heritage are in the interests of justice.
95. In accordance with its internal guidelines and statutory criteria, the Office will react promptly to allegations of crimes against or affecting cultural heritage. Where relevant, the Office will engage with States and international and non-governmental organisations at an early stage, in order to verify the information available to prevent the recurrence of crimes. Based on the information available, the Office will consider the issuance of a preventive statement in accordance with internal guidelines.

## **V. Investigations**

96. The Office is committed to paying particular attention to crimes against or affecting cultural heritage from the earliest stages of an investigation, taking into consideration possible links between such attacks and other conduct being investigated irrespective of whether they took place during an armed conflict, or in peacetime.
97. The Office will ensure that any collection of evidence is done with appropriate respect for local customs, culture and religion, including by seeking the views of, and consulting

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<sup>134</sup> See [Al Mahdi Reparations Order](#), para. 17.

<sup>135</sup> See [Policy Paper on Preliminary Examinations](#), para. 65.

<sup>136</sup> [Statute](#), art. 53(1)(c). If the Prosecutor determines that there is no reasonable basis to proceed with an investigation solely on these grounds, she will inform the Pre-Trial Chamber.

<sup>137</sup> See [Policy Paper on Preliminary Examinations](#), para. 71.

with, the affected communities where possible. In some sites, contacts with local custodians might have to be made ahead of accessing the sites in order to ensure that, not only are customs respected, but also that security issues are addressed in a timely manner.

98. In addition to general challenges the Office experiences in the collection of evidence, such as the prevalence of violence, insecurity, remoteness, and institutional failure in the affected countries, the investigation of crimes against or affecting cultural heritage presents specific challenges.
99. Often, investigations into crimes against or affecting cultural heritage are complicated by a lack of documentation of the state of (tangible) cultural heritage prior, during, and after the attack. This makes it more difficult to establish that damage or destruction occurred and to distinguish between human-caused damage or destruction and natural degradation or change over time. Therefore, the Office stresses the importance of accuracy in the identification of destroyed cultural heritage, and the availability of detailed documentation, and stresses, in this context, the crucial role that UNESCO and related organisations can play.<sup>138</sup> The Office may seek to obtain sources documenting the state of the attacked heritage as close in time as possible to before and after the damage happened (and where possible, contemporaneous documentation of the damage as it occurs). Wherever possible, the Office may liaise with local, regional and international partners, working on the preservation and documentation of cultural heritage. To combat the difficulties encountered in assessing the precise condition of the affected cultural heritage, the Office may look to diverse evidentiary sources,<sup>139</sup> including, where available, imagery displaying cultural heritage before, during and after the attacks.
100. Circumstances often surrounding crimes against or affecting cultural heritage lead to an increased risk of loss of evidence. This can happen through illicit means, such as illicit trade of cultural property, pillaging, looting or the wholesale destruction of cultural property. The transnational nature of these phenomena, often coupled with a lack of access to relevant sites and the passage of time since the attacks were committed, add to the difficulties investigations face.<sup>140</sup> To combat these difficulties, it is important to conduct the investigations in a timely and expedient manner. The Office may consider

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<sup>138</sup> See e.g. [1999 Second Protocol](#), art. 27(3) (explicitly mentioning Blue Shield as an advisory body to the Committee for the Protection of Cultural Property in the event of an Armed Conflict).

<sup>139</sup> With specific regard to the methods and tools employed in the assessment of damage caused to immovable tangible cultural heritage the Office may employ technology, including satellite imagery, 360° imagery, data obtained from aerial drones, geo-localisation of visual evidence, and documentary and video evidence.

<sup>140</sup> See INTERPOL, “Enhancing the fight against the illicit traffic of cultural property”, Lyon, 19 July 2018, available at <https://www.interpol.int/es/Noticias-y-acontecimientos/Noticias/2018/Enhancing-the-fight-against-the-illicit-traffic-of-cultural-property>.

the use of the measures provided for under article 56 of the Statute in relation to unique investigative opportunities, where the conditions are met. If evidence is at risk of being lost due to potential crimes under the Statute – such as pillaging or looting – the Office may investigate those crimes and ensure that potential synergy effects between investigations are fully utilised. In case of illicit trade – which usually does not come within the purview of crimes under the Statute – the Office may liaise with local and international partners<sup>141</sup>, and may use the powers at its disposal to prevent loss of evidence.

101. While many communities and States have the important and legitimate desire to quickly reconstruct or rehabilitate cultural heritage, important evidence can be lost in that process. The Office may liaise with competent authorities, local, regional and international partners to reconcile the need for a thorough collection and preservation of evidence with the quick reconstruction or rehabilitation of cultural heritage.
102. Another challenge pertains to the storage and preservation of evidence. It may not always be possible for the Office to physically collect identified evidence with regard to crimes against or affecting cultural property, although the preservation of such evidence is essential. Furthermore, removing cultural heritage for collection and preservation at the seat of the Court will often be impossible, as the close connection of a community with its cultural heritage might mandate that an item remains with that community. Consequentially, in addition to general methods of storing of evidence available at the seat of the Court, the Office may use the most advanced and innovative technology and preservation methods available. It may work with local, regional, and international partners as necessary to reconcile the need for collection, storage, and preservation of evidence with the views, customs, culture and religion of affected communities.
103. To overcome these challenges, the Office may establish and boost its networks of contacts in the field of documentation, preservation and protection of cultural heritage to assist in effective investigations, based, among other things, upon contacts obtained during the preliminary examination stage. The Office may further identify local, regional, and international expertise in various relevant fields, including satellite data, imagery, forensic, geolocation, architecture, history, theology, anthropology, and others, as appropriate. The Office may obtain such expertise in a timely manner. Obtaining information from diverse sources remains a primary consideration, as is the emphasis on corroboration of any evidence gathered.
104. As with the investigation of any crime before the Court, sufficient resources are needed for the analysis of the data collected, in particular as regards evidence related to attacks on immovable cultural heritage. As such, evidence will often comprise satellite imagery,

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<sup>141</sup> These can include, among others and if appropriate, NATO, Interpol and Eurojust.

geolocation data, and audio-visual material. Where the Office does not possess sufficient in-house expertise for the analysis of such evidence, external expertise will be sought.

## **VI. Prosecutions**

105. The Office policy is to investigate and prosecute those most responsible for crimes that fall under the Court's jurisdiction.<sup>142</sup> The Office also considers prosecuting lower-level perpetrators where their conduct was particularly grave and has acquired extensive notoriety.<sup>143</sup>

### ***a) Selection of Charges***

106. The Statute confers jurisdiction over crimes directed at cultural heritage,<sup>144</sup> as well as crimes in which crimes against or affecting cultural heritage can otherwise fulfil a necessary element or play a role. The Office is committed to strengthening accountability for these crimes, thus contributing to their prevention, and also to the development of international jurisprudence.
107. Wherever evidence permits, the Office may bring charges for crimes against or affecting cultural heritage as crimes *per se*. In relation to other crimes, it may highlight the role of crimes against or affecting cultural heritage, as laid out in the regulatory framework. In this respect, the Office will consider bringing cumulative charges in order to reflect the gravity, multi-faceted nature and far-reaching impact of crimes against or affecting cultural heritage.

### ***b) Presentation of evidence***

108. In line with its strategy to support expeditious court proceedings,<sup>145</sup> the Office will streamline its presentation of evidence related to crimes against or affecting cultural heritage. To that end it may, for example, seek to adduce documentary evidence, including videos and photographs, and explore the use of available technology, such as satellite imagery, 360° presentation software, 3D imagery, and geo-localisation of visual evidence.<sup>146</sup>
109. The Office recognises the benefits of strengthening of networks with partners using the latest imaging and remote sensing technologies to document, preserve, and promote

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<sup>142</sup> See [Policy Paper on Preliminary Examinations](#), para. 103.

<sup>143</sup> See e.g. [OTP Strategic Plan 2016-2018](#), paras. 35-36; [OTP Strategic Plan 2012-2015](#), para. 22.

<sup>144</sup> See e.g. [Statute](#), arts. 8(2)(b)(ix), 8(2)(e)(iv).

<sup>145</sup> [OTP Strategic Plan 2019-2021](#), para. 25.

<sup>146</sup> For example, in *Al Mahdi*, the Office combined satellite imagery with the use of 360° presentation software to create a platform of the destroyed and damaged mausoleums in Timbuktu.

cultural heritage, and to bring elements of the past to life in ways that transcend time and distance.

110. Where necessary, the Office may consult with experts and call overview and expert witnesses or victims to provide evidence related to crimes against or affecting cultural heritage. Such testimony may cover, for example: the religious or historical nature or other relevant characteristics of the impacted cultural heritage; and the physical, psychological and socio-economic impact of such crimes on individual victims, the local, national and international community.

#### *c) Sentencing*

111. In the determination of an appropriate sentence, the Court is required to take into account, among other factors, the gravity of the crime, the extent of the damage caused, in particular, the harm caused to the victims and their families, and the nature of the unlawful behaviour.<sup>147</sup>
112. The Office will advocate for sentences reflecting the particular gravity of and the severe and widespread harms caused by crimes against or affecting cultural heritage. Where appropriate, the Office will adduce evidence reflecting the impact of crimes against or affecting cultural heritage on the victims, their families, the community and humanity as a whole, by way of victim or expert testimony and written statements. To that end, the Office may explore potential partnerships with organisations and other experts able to testify on cultural heritage issues. The Office will highlight if crimes against or affecting cultural heritage are indicative of a discriminatory motive, constituting an aggravating factor for sentencing.<sup>148</sup>
113. The Office will take into consideration the particular gravity of crimes against or affecting cultural heritage in its decisions regarding appeal proceedings.

### **VII. Cooperation and External Relations**

114. Together with complementarity, cooperation is a fundamental components of the Rome Statute system. Effective cooperation is crucial to the Office's ability to conduct effective investigations and prosecutions, including in relation to crimes against or affecting cultural heritage. Accordingly, the Office actively engages with States and other

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<sup>147</sup> See [Statute](#), art. 78(1) ("In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person"). According to rule 145(1)(c) of the ICC RPE, in its determination of the sentence, the Court shall, "In addition to the factors mentioned in art. 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person".

<sup>148</sup> See [ICC RPE](#), rule 145(2)(a)(v).

relevant stakeholders in order to ensure the requisite level of assistance to its operations, to enhance diplomatic and political support for its work, and to improve the general understanding of its mandate.

115. The Office recognises that no actor is able to effectively fight impunity alone. Often, prior to the Court's engagement in a situation, early responders, such as United Nations bodies, peace-keeping and humanitarian personnel, non-governmental organisations and the media, deploy into areas where international crimes, including those against or affecting cultural heritage, have been committed. The Office may seek to cooperate and collaborate with early responders and other relevant stakeholders.
116. In the specific context of this policy, the Office will seek to build and strengthen cooperation and synergies with national and international bodies and institutions responsible for prevention and fight against destruction and illicit trafficking of cultural heritage. Collaboration will also be sought and reinforced with such organisations, including relevant academic institutions and non-governmental organisations with the mandate and programs pertinent to cultural heritage preservation in order to raise awareness and strengthen capacities at national levels in situation countries.
117. In this endeavour, the Office will develop institutional and operational collaborative mechanisms with enforcement organisations both international such as Interpol, Europol and Eurojust, as well as national polices' units and departments specialised in preventing and investigating cultural heritage related crimes.<sup>149</sup>
118. While respecting each other's respective independent mandates, and recognising the sensitivities that might be linked to the work and mandate of the Court and different actors, the Prosecutor has highlighted that "an effective strategy to address the destruction of cultural heritage requires a multi-faceted and collaborative approach". To that end, in November 2017, the Office signed a Letter of Intent with UNESCO, memorialising the organisations' intent to enhance contacts with one another, to collaborate on the development of this Policy, to engage in public information and raising awareness, and to explore synergies and other areas of cooperation.<sup>150</sup>
119. Noting the extent to which relationships with external partners have already greatly empowered and enriched the Office's work, the Office may continue to consult with

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<sup>149</sup> In addition to UNESCO, further partnerships may potentially be developed with such agencies as Interpol, Eurojust, Europol, World Customs Organization (WCO), United Nations Office on Drugs and Crime (UNODC); specialised units of national police forces such as Italy, Spain, Cyprus, Belgium, UK, Argentina, Ecuador, Peru, etc.; and international non-governmental institutions such as International Council on Monuments and Sites (ICOMOS), the International Centre for Museums (ICOM), Blue Shield International, etc.

<sup>150</sup> ['The ICC Office of the Prosecutor and UNESCO sign Letter of Intent to strengthen Cooperation on the Protection of Cultural Heritage', 6 November 2017.](#)

external partners on how best to facilitate and optimise cooperation with partners.<sup>151</sup> In doing so, the Office also stands to strengthen its cooperation with, and continue to benefit from the unique expertise of UNESCO and other specialised bodies.

120. In this regard, and recognising the United Nations Security Council Resolution 2347 of 24 March 2017,<sup>152</sup> which condemned the destruction of cultural heritage, and recognised the important roles of both UNESCO and the ICC in addressing that phenomenon; the Court and UNESCO are in the process of concluding a Court-wide cooperation agreement which will among other objectives aim at:

- drawing upon UNESCO's mandate for the protection, conservation, and promotion of cultural heritage affected by conflicts and intentional destruction and the Court's mandate under the Rome Statute, to cooperate to work towards ending impunity for the commission of crimes against cultural property, including any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property, and thus contributing to their prevention, within their respective mandates; and
- establishing close relations between the ICC and UNESCO in order to enhance cooperation and encourage the exchange of knowledge, experience and expertise; With a view to facilitating the effective discharge of their respective mandates, agree to cooperate closely and consult each other on matters of mutual interest, pursuant to the provisions of the Agreement to be concluded, and in conformity with their respective applicable legal frameworks.

121. While complementing national efforts, the work of the Office may serve as a reference for national jurisdictions and other actors addressing crimes against or affecting cultural heritage committed in all contexts, in particular during an armed conflict. Accordingly, consistent with its positive approach to complementarity, the Office will seek to strengthen its ability and that of partners to close the impunity gap. The Office will enhance its efforts to identify, support, and engage with initiatives undertaken to respond to situations where crimes against or affecting cultural heritage may occur, including by responding, where possible, to requests for assistance from States to access information pursuant to article 93(10) of the Statute, or to share its lessons learned and best practices; by participating, where appropriate, in coordinated efforts; as well as, generally, by contributing to the further development of a global network among investigative and prosecutorial bodies for sharing information and experience.

122. Beyond its operations, and in conjunction with other stakeholders, the Office seeks to contribute to, and highlight the need for, accountability for all crimes under the Court's

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<sup>151</sup> The Office will do this in accordance with its strategic goal 6: [OTP Strategic Plan 2019-2021](#).

<sup>152</sup> [United Nations Security Council Resolution 2347](#), 24 March 2017.



jurisdiction, including those against or affecting cultural heritage through missions, public statements, and participation in conferences and training. It will actively engage with States, international and local organisations as well as other stakeholders in order to continue to improve the effectiveness of actions taken as regards crimes against or affecting cultural heritage. The Office will continue to make a concerted effort to ensure meaningful cooperation with these actors in order to ensure support for the Office's work as regards cultural heritage, particularly in countries in which the Office carries out its activities.

123. In this regard, and in line with its positive complementarity approach, the Office will expand its partnership with all the stakeholders in this area – including non-governmental and academic institutions, so as to build networks for training and expertise sharing with relevant national jurisdictions.
124. The Office encourages various initiatives and actions — most notably those by States Parties — to address crimes against or affecting cultural heritage. These include efforts towards universal ratification and domestic implementation of the Statute, and cooperation with the Court; the adoption of domestic legislation which incorporates the conduct proscribed under the Statute, and procedures which would protect the interests of victims and facilitate the effective investigation and prosecution of such cases; support for domestic investigations and prosecutions for these crimes; enhancement of cooperation for the execution of ICC arrest warrants; and strengthening political support to end impunity and to prevent the recurrence of such crimes. These contributions are important to establish and reinforce the normative framework of the Statute for the accountability of all crimes within the Court's jurisdiction.
125. In order to integrate and create awareness on crimes against or affecting cultural heritage, the Office's public information activities may include seizing opportunities to highlight the impact of these crimes, and increase awareness and contribute to the prevention of future crimes. The Office will continue to develop its ability to effectively communicate with its stakeholders, with the victims and affected communities, and the general public.<sup>153</sup> It will utilise various platforms such as the Court's website,<sup>154</sup> public events, media and social-media campaigns, media programmes on high-level missions, or documentary projects, to timely and clearly communicate so as to maximise transparency and ensure that its stakeholders have an accurate and up-to-date picture of the Office's actions and decisions.

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<sup>153</sup> This will be done in accordance with the [OTP Strategic Plan 2019-2021](#).

<sup>154</sup> Apart from posting of relevant material on the Court's official website, consideration may be given to create and host on the site a repository of registered protected cultural heritage sites of States Parties to the Rome Statute. Such an initiative will be undertaken in consultation with UNESCO and other partners to ensure the aim is clearly defined and the project is implemented in the most effective manner.



126. Outreach initiatives are also very important in achieving these objectives. The Registry is responsible for, and leads in, the planning and implementation of outreach-related activities, in coordination with other Organs of the Court. The Office will support the Registry and participate in outreach activities, as appropriate.

### **VIII. Institutional Development**

127. The Office will continue to enhance its institutional capacity to investigate and prosecute crimes within its jurisdiction, including crimes against or affecting cultural heritage.
128. The Office recognises the need for in-house expertise on crimes against or affecting cultural heritage, regardless of whether the crimes were committed in situations of armed conflict or not. It will continue to recruit persons with the required expertise and experience in this field, while benefiting from external expertise where required.
129. Staff training on an ongoing basis constitutes an essential component to the effective investigation and prosecution of crimes against or affecting cultural heritage.
130. The Office will endeavour to ensure that all team members, as well as all other relevant staff members, including interpreters, have the necessary competencies and support to perform their functions effectively in relation to crimes against or affecting cultural heritage. In addition, the Office will provide ongoing technical and advanced training on methodologies in the collection and analysis of evidence of crimes against or affecting cultural heritage, the relevant legal framework, cultural issues, as well as practices related to the situation and specific communities where the investigation is being conducted.
131. The demonstration of awareness, knowledge, and best practice regarding the cultural context of the investigations by all members of the investigation team will be supported and monitored by the team leadership.
132. The Office will monitor its practices with regard to the investigation and prosecution of crimes against or affecting cultural heritage. The Office will utilise its standardised and institutionalised lessons-learned process to identify, document, and implement best practices with regards to crimes against or affecting cultural heritage. This will promote learning and the preservation of institutional knowledge gained from experience.
133. This Policy paper, together with the Operations Manual and other relevant internal rules and procedures, will be regularly reviewed in order to incorporate best practices and other relevant developments, including jurisprudence.<sup>155</sup>

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<sup>155</sup> This is in accordance with *the* third strategic goal of the Office, which emphasises a need for regular review of Office standards and practices: [OTP Strategic Plan 2019-2021](#), para. 17.

134. The Office will monitor the implementation of this Policy. | **OTR**

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