

Chapter 8

Saving the Past, Present and Future. Thoughts on Mobilising International Protection for Cultural Property During Armed Conflict

Pita J. C. Schimmelpenninck van der Oije

Abstract In this chapter, contemporary threats to cultural property during armed conflict as well as the obstacles hindering protection are discussed. Throughout the text, examples are taken from Libya where the so-called ‘Arab Spring’ revolt of 2011 developed into an armed conflict. The focus is on the control system of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict because it offers warring parties, as well as states parties to the Convention, the option of mobilising protection during armed conflict. In practice, it has mainly been UNESCO that has undertaken cultural initiatives during armed conflict but the organisation is better suited for peacetime action. The 1999 Second Protocol to the 1954 Convention raised hopes that a supplemented control system would be more effective. In the case of Libya, however, neither the states parties nor the newly set up Intergovernmental Committee opted for combined protection efforts even though Libya hosts a wealth of cultural property and is a state party to the Second Protocol. UNESCO did undertake various protection activities and was joined by other actors in the cultural heritage field, such as the Blue Shield network. It is to be hoped that the Blue Shield network can raise its profile and resources, and combine flexibility of action with humanitarian professionalism. New developments in the area of information technology can also help in strengthening international protection efforts. The fact that a ‘Red Cross for cultural property’ is still urgently needed is an important lesson from the case of Libya. Whatever form future protection efforts will take, they should be based on the current framework offered by international humanitarian law. This will enhance transparency, uniformity of action and increase security for cultural property protectors during armed conflict.

The author has worked for the International Criminal Tribunal for the former Yugoslavia, Amnesty International, the Netherlands Red Cross and the International Committee of the Red Cross at home and abroad. She is currently an academic researcher, a background journalist and an editor on a freelance basis.

P. J. C. Schimmelpenninck van der Oije (✉)
Gouderak, The Netherlands
e-mail: pitaschimmelpenninck@yahoo.com

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*We challenge the international agencies
to come with fact-finding committees.*

*It's open for them. All the doors
are open. In every place, we will
enable them to know the truth.*

Colonel Muammar Gaddafi, 2 March 2011¹

8.1 Introduction

The importance of protecting cultural property is often marginalised, especially in the heat of humanitarian disasters and violent crises.² Who cares for stones and paper when witnessing large-scale human suffering? At a time when we are hearing about the daily escalation of violence against the civilian population in Syria, it appears even obscene to worry about the country’s cultural property.³ Yet this is exactly the moment to do so. Every humanitarian tragedy has a cultural dimension. When the civilian population is in danger, so is its cultural heritage and

¹ <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8357313/Libya-Gaddafis-speech-in-quotes.html>. Accessed 3 December 2011

² In the context of this article, cultural property is meant to be tangible, movable material—such as valuable historic and cultural objects—or immovable cultural heritage—such as historical monuments, art or architecture, whether religious or secular, museums, libraries, archives, archaeological sites and cultural and human landscapes. Cultural property includes the officially designated World Heritage as well as the heritage of local communities, and religious as well as secular heritage.

³ Demonstrations against the regime started on 15 March 2011. The government of President Bashar al –Assad responded with heavy-handed force and demonstrations quickly spread across much of the country. In June 2012 a UN representative characterised the Syrian conflict as a civil war, a term that was also used in July by the International Committee of the Red Cross.

shared future. Concern for cultural property is more than a matter of loving art or history, it is of importance for us all. By ratifying the Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter the 1954 Convention),⁴ states acknowledged that the Convention covers issues extending beyond national jurisdiction. They declared themselves to be ‘convinced that the damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind’, and that ‘the preservation of the cultural heritage is of great importance for all peoples of the world and (...) should receive international protection’.⁵

What puts cultural property mostly at risk is the lack of respect for the physical evidence of cultural heritage and the refusal of fighting parties to comply with international humanitarian law.⁶ A more contemporary threat, that was not envisaged by the 1954 Hague Convention, is the organised theft of cultural property by private actors.⁷ It fuels the illegal trade in cultural artefacts on a global scale.

The states parties to the 1954 Convention can opt for non-coercive protection efforts during international armed conflict on the basis of the so-called *control system* of the 1954 Hague Convention. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) has been given a leading role in assisting states to do so, during international as well as non-international armed conflict. The 1954 control system was supplemented in 1999 through the Second Protocol to the Hague Convention (hereinafter the Second Protocol).⁸ It strengthened the protective regime of 1954, including the control system, in various ways.

In this contribution to the *liber amicorum* for our distinguished colleague and dearly missed friend Dr. Avril McDonald, the aim is to analyse this specific aspect of cultural property protection during armed conflict, namely the international mobilisation of non-coercive and non-military efforts. The situation in Libya during the so-called ‘Arab Spring’ revolt of 2011 will serve as a case study. Libya hosts internationally acclaimed and protected cultural heritage and is a party to the

⁴ Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 14 May 1954, United Nations Treaty Series, Volume Number 249, <http://treaties.un.org/doc/Publication/UNTS/Volume%20249/volume-249-I-3511-English.pdf>.

⁵ Preamble to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.

⁶ Boylan 1993, pp. 7–18. See also UNESCO 1983, p. 12, where it stated that the ineffectiveness of the Convention was due to a lack of political will to apply protective measures.

⁷ O’Keefe 2006, p. 2.

⁸ Second Protocol to the 1954 Convention, The Hague, 26 March 1999, United Nations Treaty Series, Volume Number 2253.

1954 Hague Convention, its two Protocols and the World Heritage Convention.⁹ In the first part of this chapter, several threats to cultural property that presented themselves during the conflict in Libya will be analysed. These threats are inherent in most present-day armed conflicts. In the second part of this chapter, the focus will be on what international protective action was undertaken for Libyan cultural property by UNESCO and the states parties to the 1954 Convention and Second Protocol, as well as the main weaknesses of the current system. In the third and last part, recommendations will be made in order to come to a more effective international mobilisation within the framework of international humanitarian law.

8.2 The ‘Arab Spring’ in Libya and the Threats to Cultural Property

In December 2010, anti-regime protests started in Tunisia. They soon spread over the rest of the country. Subsequently, during 2011, national protests could be witnessed in countries as diverse as Algeria, Morocco, Egypt, Libya, Syria, Saudi Arabia, Yemen, Bahrain and Oman. The media referred to this political wave as the ‘Arab Spring’. So far, events have led to a regime change in Tunisia, Egypt and Libya.

In Libya, popular protests started on 15 February 2011.¹⁰ The regime of Colonel Muammar Gaddafi reacted to the protests by using force, which meant the start of a six-month uprising. It soon developed into a fully-fledged armed conflict, with both international and non-international dimensions.¹¹ Pro-Gaddafi forces were confronted with a variety of non-state armed actors, more or less unified under the umbrella of the ‘National Transitional Council’.

⁹ Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, United Nations Treaty Series, Volume Number 1037, <http://treaties.un.org/doc/Publication/UNTS/Volume%201037/volume-1037-I-15511-English.pdf>. The five Libyan World Heritage List sites are: the Old Town of Ghadames, the Rock-Art sites of Tadrart Acacus, and the Archaeological Sites of Cyrene, Leptis Magna and Sabratha. Libya is also a party to the First Protocol to the 1954 Hague Convention (The Hague, 14 May 1954, United Nations Treaty Series Volume Number 249), as well as to the four Geneva Conventions of 1949 (Geneva, 12 August 1949, United Treaty Series Volume Number 75) and its First Additional Protocol of 1977 (Protocol (I) Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, Geneva, 8 June 1977, United Nations Treaty Series, Volume Number 1125) and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970, United Nations Treaty Series, Volume Number 823). All these international treaties contain obligations with regard to cultural property protection during armed conflict.

¹⁰ “Libya: the revolt that brought down Gaddafi” by Chris Arsenault of 27 December 2011, Chronological report Al Jazeera <http://Aljazeera.com/indepth/spotlight/aljazeeratop102011/2011/12/20111226114023696528.html>. Accessed 5 October 2012.

¹¹ ICRC 2011a, p. 6.

The UN Security Council determined that the situation in Libya constituted a threat to international peace and security, and authorised in its Resolution 1973 of 17 March 2011 *inter alia* the taking of “all necessary measures” in order to implement a No-Fly Zone and to “protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya”. The resolution would be enforced primarily by NATO, with logistical support from several Arab countries, including Qatar and the United Arab Emirates. Ten of the fifteen UN Security Council members voted in favour, while Russia, China, India, Germany and Brazil abstained. On 19 May 2011 military forces from France, the UK and the USA began attacks from air and sea, while other states offered assistance. From 31 March 2011 onwards, NATO launched ‘Operation Unified Protector’ and took command of all offensive operations while coordinating actions with Libyan fighters on the ground. Gaddafi’s military advance was halted in mid-March 2011.

On 16 September 2011, the UN Security Council decided to ease sanctions against Libya, including against its national oil company and central bank. The UN General Assembly in its turn approved a request to accredit interim government envoys as Libya’s sole representatives at the UN, thereby effectively recognising the National Transitional Council as the new authority. On 20 October, Colonel Muammar Gaddafi was killed. The National Transitional Council declared Libya to be liberated on 24 October 2011, thereby ending the 42-year long autocratic regime of Colonel Gaddafi. On 31 October NATO formally concluded its operation.

Libya’s first freely elected government faces many challenges, of which imposing law and order is a major one. Various militias gained power during the conflict and are not willing to give up their position or weapons. The government needs to hold together a country divided by regional, sectarian and clan divisions, to rebuild the economy and create functioning institutions. The security situation in Libya seems to change on a daily basis.¹² The 2011 conflict in Libya has also had a destabilising influence on the entire Sahara region including Mali, Burkina Faso, Niger, Algeria, Chad and Sudan.¹³ The area is allegedly home to bandits, drugs and human traffickers and religious extremists. All these facts make it a challenge to reactivate the pre-conflict system of cultural property protection that in most places broke down during the conflict.

¹² “Libya’s militias clash in central Tripoli” in *The Guardian* at <http://www.guardian.co.uk/world/2012/nov/04/libya-militia-fire-central-tripoli> of 4 November 2012. Accessed 5 November 2012.

¹³ “Het jaar van de Arabische Lente, deel vijf: Libië” in *NRC Handelsblad* at <http://www.nrc.nl/nieuws/2011/12/30/het-jaar-van-de-arabische-lente-deel-vijf-libie/> of 30 December 2011 and “Sahara ontwricht door oorlog Libië” in *NRC Handelsblad* at <http://www.nrc.nl/nieuws/2011/12/03/sahara-ontwricht-door-oorlog-libie/> of 3 December 2011. Both accessed 3 June 2012.

8.2.1 *Indiscriminate and Disproportionate Attacks Against Civilians*¹⁴

Asymmetric and urbanised warfare were important features of the armed conflict in Libya, posing a grave danger for civilians and cultural property. In this regard, Libya was not an exception to the rule. Since the adoption of the Hague Convention in 1954, the majority of armed conflicts worldwide have been non-international, characterised by asymmetric and urban warfare. This type of warfare has been typical for the situation in Afghanistan and Iraq during the past decade, as well as during the conflict in Libya and currently in Syria. In asymmetric conflicts, well equipped national military forces tend to face insurgent groups fighting internal, guerrilla-like wars. The latter blend back into the civilian population, using cities as their stronghold. As a reaction, government forces employ means and methods of warfare designed for use on an open battlefield, such as air power, artillery and shelling. Such indiscriminate weapons cause death and injuries among civilians and severe damage to infrastructures.

In Libya, the initially poorly trained armed opposition groups used the eastern city of Benghazi as their base to launch attacks against strongholds held by well trained pro-Gaddafi forces in the rest of the country. Gaddafi threatened to hunt down the protestors “alley by alley, house to house”.¹⁵ The city of Misrata was under siege for over three months, between March and May 2011, when Gaddafi forces fought in the centre of the town which dates back more than 700 years and the old harbour which was already present in phoenician times.¹⁶ Unlike other areas, the civilian population was not evacuated and found itself trapped inside the city. Indiscriminate shelling and sniping continued until August 2011. NATO began bombing the city in late April, while rebels began their counter-offensive and pushed their way through the city. During the 2011 Libyan war, many other cities were turned into battlefields, such as Tripoli, Sabha, Sirtre and Bani Walid.

During the conflict, indiscriminate attacks on civilians and civilian objects, including protected objects “such as mosques, buildings of cultural significance and hospitals (...)” were carried out by Government as well as anti-Gaddafi forces.¹⁷ Government forces failed to take precautionary steps to minimise damage to

¹⁴ Main sources for this paragraph ICRC 2011b, pp. 5–6 and Mancini 2011, pp. 3–4.

¹⁵ “Battle for Libya: Key moments. Timeline of decisive battles and political developments in Libya’s uprising against Muammar Gaddafi”, Al Jazeera at <http://www.aljazeera.com/indepth/spotlight/libya/2011/08/20118219127303432.html> last modified 23 August 2011. Accessed 6 July 2012. See also “Frappes aériennes ou pas, Kadhafi menace Benghazi” in L’Express of 17 March 2011 at http://www.lexpress.fr/actualite/monde/frappes-areriennes-ou-pas-kadhafi-menace-benghazi_973573.html?xtor=x. Accessed 6 October 2011.

¹⁶ UN Human Rights Council International Commission of Inquiry 2012, p. 1. This is the report of the International Commission of Inquiry that was set up by the UN Human Rights Council to investigate “all alleged violations of international human rights law in the Libyan Arab Jamahiriya”. The Commission also looked at allegations of international humanitarian law.

¹⁷ UN Human Rights Council International Commission of Inquiry 2012, pp. 14–16.

civilian and protected objects and committed many serious violations of international humanitarian law that amounted to “war crimes”. They intentionally directed attacks against protected persons and targets, such as civilian structures. In Sirte, for example, almost every building exhibited damage. Although some of the buildings were likely used by Gaddafi forces and were therefore legitimate targets for attack, damage was so widespread as to be clearly indiscriminate in nature.

The many unexploded shells, ammunition and mines—known collectively as explosive remnants of war—formed another threat to civilian life during the Libyan conflict up to the present. Many cities as well as remote farmlands are littered with them.¹⁸ These explosive remnants can also hinder economic development. Archaeological sites that are for example contaminated by unexploded ordnance obstruct cultural tourism. This was becoming the fate of the vast and world-famous site of Leptis Magna, where Gaddafi militia tried several times to take over the grounds. Through careful negotiations and with the help of the local population, the Chief Archaeologist in charge and his museum staff could avoid this from happening.¹⁹ They invited herders to stay on the site with their cattle, something which would normally be strictly prohibited. The herders reported on movements taking place and their presence prevented warring factions from laying landmines and booby traps.

NATO bombs formed another threat to Libyan cultural property. Fragile cultural sites and several of the recognised World Heritage sites found themselves in the middle of combat zones.²⁰ Pro-Gaddafi forces were allegedly hiding troops, rockets and munitions among the ruins of the World Heritage Site and in the ancient city of Leptis Magna, using it as an ‘archaeological shield’ against the NATO air attacks.²¹ Allegations of collateral damage caused by the NATO bombardments could be heard as well, such as damage to the Coptic orthodox church of Saint Mark’s in Tripoli.²²

NATO itself described its air campaign as “one of the most successful (...) in the history of the Alliance” and stated that it was a major achievement that the

¹⁸ ICRC 2012a, b.

¹⁹ ANCBS and IMCuRWG 2011b.

²⁰ “Blue Shield 2nd Statement on Libya” of 21 June 2011 at http://www.blueshield-international.org/cms/images/21-06-2011_blueshield_statement_Libya_en.pdf. Accessed 6 October 2011.

²¹ “Archaeological Institute of America (AIA) Calls on U.S. and Libya to Protect World Heritage Sites” of 16 June 2011 at <http://www.archaeological.org/news/aianews/5325>. Accessed 28 November 2011.

²² Amnesty International 2011, p. 15. See also: Human Rights Watch 2011, and “UN chief condemns ongoing use of force in western Libya” UN News Centre of 23 March 2011, and Teijgeler 2011, p. 3.

campaign was carried out without serious damage to Libya's ancient heritage.²³ It applied a standard of "zero expectation" of death or injury to civilians, undertook various precautionary measures and used precision-guided munitions on an "unprecedented scale"—thereby "dramatically" reducing collateral damage.²⁴

8.2.2 *Identity-Based Violence*

Since the Second World War, many conflicts have initially been fought along inter-tribal, religious or ethnic lines, using identity as a form of political mobilisation.²⁵ Such 'identity-based violence' has formed a major threat to cultural property. When religious or ethnic identity becomes a focal point in violent conflicts, civilians belonging to 'the other' group are seen as the enemy.²⁶ They have been attacked physically as well as through cultural property symbolising their identity. Especially during the wars in the former Yugoslavia, the targeted destruction of cultural property was taken to professional depths. It became the symbol for the total failure of the international legal protection regime.

Identity-based violence is likely to erupt where a power vacuum emerges after a period of strong state control, especially in a society that is divided along sectarian, religious or other lines. Libya was such a society. Ethnic and tribal-related violence indeed took place during 2011 and continues to form a basis for violence.²⁷ Some tribes were favoured during Gaddafi's reign while others had to suffer, forming cause for destabilisation and destruction. Overall, however, the religious-based destruction of cultural property did not take place, albeit there were sporadic incidents of ransacking and war damage. The few remaining Jewish religious sites continue to be under threat of demolition, as was already the case before the

²³ "Protecting Libya's heritage" NATO press release of 4 January 2012 at: http://www.nato.int/cps/en/natolive/news_82441.htm?selectedLocale=en, visited 29 March 2012 accessed 29 March 2012.

²⁴ UN Human Rights Council International Commission of Inquiry 2012, pp. 30 and 32 (attached letter of NATO of 23 January 2012 OLA (2012)006). See also p. 21 of the Commission report: "NATO conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. For the most part they succeeded. On some limited occasions the Commission confirmed civilian casualties and found targets that showed no evidence of military utility. The Commission was unable to draw conclusions in such instances on the basis of the information provided by NATO and recommends further investigations".

²⁵ Jacobus and Kostylo 2008; van der Auwera 2010, p. 5.

²⁶ Toman 2010, pp. 10, 11.

²⁷ War crimes and other violations were allegedly committed by the Thuwar (anti-Gadaffi forces) in particular against the Tawergha. Violations included pillaging, looting and the destruction of houses and public buildings, see UN Human Rights Council International commission of Inquiry 2012, pp. 1 and 11–13 under 'Targeted communities'.

conflict started.²⁸ Fear also exists of post-war anti-Western sentiments and the effect of the growing influence of Islamic fundamentalists.²⁹

8.2.3 *Shadow Economies and Criminal Networks*

Situations of armed conflict facilitate the commercial looting of cultural property, which nowadays forms a major threat to its preservation.³⁰ In many armed conflicts the initial ideological rationale behind the fighting becomes mixed up with economically motivated interests. This has led to the emergence of shadow economies.³¹ The traffic in ‘blood’ diamonds or other gems, as well as drugs, tropical timber, endangered animals or arms is a case in point.³² The trade in these commodities benefits the participants and prolongs conflicts. In many lasting crises situations, direct clashes between fragmented armed groups and governmental forces tend to be occasional.³³ Instead, brutal violence is targeted primarily at civilians with the aim of ensuring control or obtaining new recruits. This has allowed the development of environments where organised looting and trafficking in cultural property, extortion, corruption, money laundering and kidnapping have become profitable strategies.³⁴ In Afghanistan and Cambodia it was ascertained that the evolving erosion of state power led to an expansion in the illicit trade in cultural property as a result of the large-scale plundering of archaeological sites. The resources raised through this trade funded armed groups.³⁵ Looting and illegal trade can also be linked to the seizure, appropriation or export of cultural objects during a forced occupation.

During the crisis in Libya, the fear of looting and the destruction of archaeological sites and museums was generally felt by the international cultural heritage community.³⁶ As was already apparent in February 2011, during the very early

²⁸ Teijgeler 2011, pp. 4, 5.

²⁹ “ICOMOS Statement on Intentional Destruction of Cultural Heritage in Libya” of 25 September 2012 where the intentional destruction of Sufi shrines and libraries in Zliten, Misrata and Tripoli is condemned at <http://www.icomos.org/en/what-we-do/image-what-we-do/171-risk-management/510-icomos-statement-on-intentional-destruction-of-cultural-heritage-in-libya>. Accessed 30 September 2012.

³⁰ Gerstenblith 2008, p. 617.

³¹ van der Auwera 2010, p. 5; Chernick 2005, pp. 204–205.

³² See e.g. World Wildlife Fund 2012, pp. 13–14.

³³ ICRC 2011a, pp. 6–7.

³⁴ Brodie et al. 2000, p. 16.

³⁵ Brodie and Walker Tubb 2002, pp. 6–7; Bogdanos 2005, pp. 477–526.

³⁶ “Director-General urges measures to protect Libya’s cultural heritage through period of transition” UNESCOPRESS 25 August 2011 at http://www.unesco.org/new/en/media-services/single-view/news/director_general_urges_measures_to_protect_libyas_cultural_heritage_through_period_of_transition/. Accessed 30 September 2011.

days of the Libyan revolution when anti-Gaddafi forces took over Benghazi, a collection of some 8,000 bronze, silver and gold coins and other precious Roman and Hellenistic objects were professionally looted from a vault in the city's commercial bank. This priceless 'Benghazi treasure' is now being hunted by Interpol. Few records of the treasure survived, making it more difficult to determine the exact content. According to Paul Bennett—the head of a British mission called “The Society for Libyan Studies”—this illegal trade in cultural artefacts “ (...) remains the fourth or fifth biggest criminal industry in the world (...). It is certain that there are organized bands of antiquities thieves going across the border into Egypt”.³⁷ Bennett indicated reports of grave robbing in Libya. Due to the revolution, Egypt is not the country in the best position to help Libya with tracing lost treasure and patrolling borders, as it has to deal with similar problems. The looting of cultural property is most often fuelled by the poverty of local populations and the demand for cultural artefacts in Western Europe, the United States and Asia. Illegally obtained cultural property is widely transferred through *licit* markets, such as online auctions.

The violence is often sustained by national, regional and international interests, and has led to entire regions being beyond the reach of state security forces.³⁸ Weapons from Libya and the return of heavily armed and trained Tuareg mercenaries from Gaddafi's army, have influenced the course of events in Mali where recently a regime overthrow took place. Tuareg rebels overran and looted centres containing thousands of ancient books and documents that bear testimony to the city's extraordinary history, such as Timbuktu's Ahmed Baba Institute of Higher Islamic Studies and Research.³⁹

Summing up, the Libyan case has served to point out some of the main threats to cultural property during contemporary armed conflict. It is still difficult to determine the actual damage done to Libya's cultural heritage. Not all places can be reached and assessed, and in some areas documentation, archiving and cataloguing has never been carried out. This makes it difficult to estimate possible losses. The theft from the Benghazi bank vault was perhaps the worst case of

³⁷ The Society promotes and coordinates the activities of scholars working on the archaeology, history, linguistics and natural history of Libya. Bennett is cited in: “Looting of Libyan treasure highlights illicit antiquities trade” by Laura Allsop of 11 November 2011 <http://edition.cnn.com/2011/11/11/world/europe/looted-treasure-libya/index.html>. Accessed 29 December 2011. See also “WCO (World Customs Organization, PS) calls for increased border vigilance to protect Libya's cultural heritage” Press Release 8 September 2011 <http://www.wcoomd.org/en/media/newsroom/2011/september/wco-calls-for-increased-border-vigilance-to-protect-libyas-cultural-heritage.aspx>. Accessed 30 September 2011.

³⁸ ICRC 2011a, pp. 6, 7; O'Keefe 2006, p. 361.

³⁹ “UNESCO Director-General appeals for concerted action to prevent loss or destruction of Timbuktu's documentary heritage” UNESCOPRESS 15 April 2012. http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_appeals_for_concerted_action_to_prevent_loss_or_destruction_of_timbuktus_documentary_heritage/. Accessed 30 April 2012.

looting during the conflict, but, overall, damage seems to be limited. Most of Libya's sites emerged largely unscathed.⁴⁰ It also appears that Libya has avoided the kind of cultural looting and vandalism that occurred after the invasion of Iraq in 2003. The situation in Libya remains explosive in all respects, however, hindering cultural property protection. UNESCO has resumed its cooperation with Libya but, due to security reasons, many foreign archaeologists who are needed to help develop Libya's archaeological capacity cannot return.⁴¹

8.3 International Protection of Libyan Heritage Within the 1954 Framework

In this part attention will be paid to international efforts to protect Libyan cultural property undertaken in 2011 by UNESCO and the states parties to the 1954 Convention and Second Protocol. The focus is on the action undertaken internationally within the framework of the 1954 Hague Convention, as this instrument forms the basic, historic core of the international law protecting cultural property during war.⁴² It was adopted as a reaction to the large-scale destruction of cultural property during the Second World War (1939–1945) and to the systematic pillage by the Nazis of the occupied territories.⁴³ Together with its Regulations and First Protocol, the Convention was called the 'Red Cross Charter for cultural property'.⁴⁴

⁴⁰ UNESCO 2012a, pp. 3–4 where it is stated that according to the report of the UNESCO mission that took place from 16 to 23 December 2011 no site had been destroyed or severely damaged.

⁴¹ "Revolution offers chance for Libyan archaeology. Change of government presents opportunities for, and threats to, the country's heritage" Declan Butler, 18 November 2011 Nature News at <http://www.nature.com/news/revolution-offers-chance-for-libyan-archaeology-1.9396>. Accessed 1 December 2011. Note also the fact that the World Heritage Site of the Old Town of Ghadamès in the Sahara was allegedly attacked twice—during the conflict in 2011 but also in 2012 undergoing rocket attacks. See "The Director-General calls for the protection of the Old Town of Ghadamès" UNESCOPRESS 14 June 2011 http://www.unesco.org/new/en/media-services/single-view/news/the_director_general_calls_for_the_protection_of_the_old_town_of_ghadames and "Director-General concerned about attacks on World Heritage Site of Ghadamès UNESCOPRESS 23 May 2012 at http://www.unesco.org/new/en/media-services/single-view/news/director_general_concerned_about_attacks_on_world_heritage_site_of_ghadames_libya/. Both Accessed 1 June 2012.

⁴² Toman 2009, p. 21. These were the first international legal instruments aimed solely at protecting cultural heritage in wartime. At present, 125 states are party to the 1954 Hague Convention, including the major political powers—with the exception of Great Britain.

⁴³ Boylan 2003, p. 4.

⁴⁴ Toman 1996, p. 24. See the 'Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict' and 'Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954'.

8.3.1 The System of Control and the States Parties to the Convention

In the framework of the 1954 Convention, a system of control has been set up with which the states parties can exercise control over the implementation of the Convention by third states. It is aimed at avoiding and stopping damage to cultural property during battle.⁴⁵ The working of the control system in practice has already been extensively discussed by several authors, among whom is Roger O’Keefe.⁴⁶

The system has three distinct but complementary elements, that are all triggered upon the outbreak of hostilities. First, the result is supposed to be that each party to the conflict has its own representative for cultural property—if appropriate also in occupied territory—to deal with all matters concerning the Convention. Second, the states involved in an armed conflict can have accredited to it delegates of the Protecting Power of each opposing party. A third state can be accepted as a Protecting Power, but also an organisation such as the International Committee of the Red Cross (ICRC). During the two World Wars, Protecting Powers carried out valuable humanitarian work.⁴⁷ In the Geneva Conventions of 1949 the control system of the Protecting Powers had therefore been codified and became most obvious in the case of the protection of prisoners of war and civilian internees.⁴⁸ Under the 1954 Convention the delegates of the Protecting Powers look after the interests of the cultural property of the belligerent party to which they are appointed. They can mediate, make proposals, investigate alleged violations of the Convention with the approval of the Party to which they have been accredited and make representations locally to secure the cessation of such violations.⁴⁹ Third, a Commissioner-General for Cultural Property was intended to have supreme responsibility for control and was therefore a central feature of the control system. Any representation that he or she would deem useful, could be made, varying from ordering or conducting an investigation, appointing inspectors for cultural property with special missions, making representations, reporting to the parties to the conflict and their Protecting Powers.⁵⁰

During the conflict in Libya, no action was undertaken by the states parties to the Convention to assist in protecting Libya’s cultural heritage, and neither did this occur after the conflict had formally ended. During the regular meeting of states

⁴⁵ Embodied in Chapter VII of the 1954 Hague Convention—Articles 21 and 22—and in the Regulations Chapter I on ‘Control’: Articles 1–10. Toman 1996, pp. 224, 247.

⁴⁶ O’Keefe 2006, pp. 165–188, 288–294, and 294–301.

⁴⁷ Toman 1996, p. 223.

⁴⁸ Articles 8/8/8/9 respectively of the four Geneva Conventions of 1949. Article 21 of the 1954 Hague Convention about the Protecting Powers was based for an important part on these texts. See also Article 5 Additional Protocol I of 1977.

⁴⁹ 1954 Convention Article 22 and Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict Articles 3–6, 8, 11, 17.

⁵⁰ Toman 1996, p. 241.

parties in December 2011, the referral to the topic of cultural property protection in the Libyan conflict did not stretch further than an overview of recent actions undertaken by UNESCO.⁵¹ Libya as a state party could have invoked the elements of control during the international conflict that was fought within its territory. This did not happen, as was the case in general during practically all international armed conflicts that took place since the adoption of the Convention. The control system failed in practice because states were—and are—extremely hesitant to admit being involved in armed conflicts and opening the door to interventions in sovereign matters.⁵² What also made the control system weak was the fact that the appointment of Commissioners-General and Protecting Powers had been made dependent on the agreement and financing of the parties to the conflict. Next to that, procedures were complex and often resulted in lengthy negotiations. Moreover, the elements of control did not apply in cases of irregular internal wars which have increasingly taken place since the adoption of the Convention. The political situation of the Cold War also paralysed the control system. During the 1960s the Convention itself became politicised and created tension among groups of states. The tension related to Israel, many Arab States and the USA over Jerusalem and the Occupied Territories during and after the 1967 Israeli-Arab War. UNESCO was attempting to apply the 1954 Convention to the conflicts but was criticised for doing so. Problems also arose with socialist states in relation to Indochina. True efforts to mobilise and coordinate international help were undertaken on a few occasions, for example in the case of Cambodia, Afghanistan and Iraq.⁵³ Such efforts were however a reaction to disasters that had already taken place and generally came too late.⁵⁴

8.3.2 *The System of Control and UNESCO*

As part of a broader post-Second World War humanitarian movement, UNESCO was founded on 16 November 1945. The organisation was appointed as the sole UN agency with a specific mandate in the cultural sphere, and as the Secretariat of the world's principal cultural conventions. Contrary to the initial idea of setting up a permanent international 'Red Cross for cultural property', the power of UNESCO to take independent action for the defence of cultural property in armed

⁵¹ UNESCO 2012b.

⁵² UNESCO 1993, Annex, p. 5. See also Toman 1996, p. 227; Boylan 1993, pp. 84–88; Hladik 2001.

⁵³ Examples are the International Coordinating Committees (ICC) for Angkor in Cambodia (1993 onwards), for Afghanistan's cultural heritage (2002 onwards) and for Iraqi cultural heritage during and after the occupation of Bagdad in April 2003. Within the ICC UNESCO's most important task was to strengthen and improve the international cooperation during and shortly after armed conflict. van der Auwera 2011, pp. 12, 13.

⁵⁴ van der Auwera 2012, Bijlage III: Bespreking casussen pp. 34–37.

conflict was kept limited.⁵⁵ UNESCO is prohibited from intervening in matters which are essentially within the domestic jurisdiction of its member states.⁵⁶ As will be described hereafter, UNESCO can also take the initiative and offer its services to member states. In practice, however, authorities in most cases refused to make use of the organisation's services and left it at declarations of intent to respect their legal obligations. As a governmental organisation, there will always be the risk that UNESCO's actions are seen as political interference and preference instead of as a rescue mission for the world's cultural heritage.⁵⁷ The defensive attitude of states crippled the rest of the control system. At times, the organisation nevertheless managed to apply its mandate successfully within the institutional limits and the political minefield of armed conflict. As O'Keefe observes, UNESCO established a routine practice of communicating with the hostile parties on the outbreak of an armed conflict falling within the scope of the Convention.⁵⁸ UNESCO also provided assistance publicly or through quiet diplomacy by appealing to the warring parties and sending missions to conflict areas with observers, experts and personal representatives.

UNESCO could do so on the basis of Articles 19(3) and 23 of the 1954 Convention, and also through its Constitution. Article 19(3) of the 1954 Convention, dealing with conflicts of a non-international character, provides that UNESCO 'may offer its services to the parties to the conflict'. The provision was modelled on the ICRC's right to initiative under Article 3 common to the Geneva Conventions. UNESCO used Article 19(3) as a basis to send out appeals, offer its services and send out missions. On the basis of Article 23, a state party to the Convention can request purely non-financial, i.e. technical, assistance from UNESCO. Article 23 has also been referred to as the 'fourth element of control'.⁵⁹ It must ensure the adequate protection of cultural property and prevent its deterioration, destruction or looting. The Article has an open-textured formulation and can be invoked in peacetime as well as during international armed conflict. Action based on Article 23 often took on the form of public appeals to ensure protection, but it could also entail offering personnel, material or knowledge to cultural and humanitarian organizations.

Action was undertaken outside the context of the 1954 Convention as well, based on UNESCO's Constitution. The general mandate of UNESCO to take a cultural initiative for the protection of the world's cultural property is formulated

⁵⁵ Toman 1996, pp. 228–230; UNESCO 1961, p. 219, para 1138.

⁵⁶ Article 1(3) of the UNESCO Constitution: "With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States Members of the Organization, the Organisation is prohibited from intervening in matters which are essentially within their domestic jurisdiction".

⁵⁷ Boylan 1993, pp. 125–126.

⁵⁸ O'Keefe 2006, p. 178.

⁵⁹ 1954 Convention Articles 19 and 23—Assistance of UNESCO. Toman 1996, pp. 255–269.

in Article 1(2)(c).⁶⁰ It provides UNESCO with the opportunity to offer its services, make proposals, recommendations and give advice during armed conflict as well as political crises and natural disasters. Sometimes action has been undertaken jointly with the UN, or with the Committee of the UNESCO World Heritage Convention. Emergency assistance for example ‘may be requested to address ascertained or potential threats facing properties included on the List of World Heritage in Danger and the World Heritage List which have suffered severe damage or are in imminent danger of severe damage due to sudden, unexpected phenomena. Such phenomena may include (...) war’.⁶¹

With regard to Libya, UNESCO made use of many available options.⁶² The organisation proudly claims that it took the lead “to mobilize the international community to safeguard the cultural heritage of countries in the throes of revolutionary change”, resulting in containing the damage to cultural heritage in Egypt, Tunisia and Libya.⁶³ Among other things, in March 2011 Libyan forces as well as the Coalition members implementing the no-fly zone over the country were reminded of the fact that “UNESCO, in keeping with Article 23 of the Convention, stands ready to play its part concerning the protection of cultural property”.⁶⁴ NATO troops were reminded of individual international obligations under the Convention and two Protocols, as well as under customary international humanitarian law and were warned against illicit traffic in cultural property.⁶⁵ The Coalition forces were to keep military operations away from cultural sites and refrain from any act of hostility directed against Libya’s cultural property.

⁶⁰ Constitution of the United Nations Educational, Scientific and Cultural Organization adopted in London on 16 November 1945. See http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html. UNESCO’s Constitution gives the organisation in Article 1 (c) a general mandate to: “Maintain, increase and diffuse knowledge.” It can do so “By assuring the conservation and protection of the world’s inheritance of books, works of art and monuments of history and science and recommending to the nations concerned the necessary interventions”.

⁶¹ Operational Guidelines for the Implementation of the World Heritage Convention WHC.12/01 July 2012 UNESCO, World Heritage Centre, Paris.

⁶² Example, “Emergency actions in Libya” referring to activities undertaken by UNESCO <http://www.unesco.org/new/en/culture/themes/movable-heritage-and-museums/illicit-traffic-of-cultural-property/emergency-actions/emergency-actions-in-libya/#c353639>. Accessed 22 September 2012.

⁶³ UNESCO 2011c, pp. 10–14. See also UNESCO 2012a, pp. 3, 4; UNESCO 2012b—overview of activities: UNESCO organised two international expert meetings on Libyan cultural heritage, had contacts with the UN Secretary-General, the Secretary-General of NATO, Interpol and several non-governmental organisations such as ICOM (museums) and ICOMOS (monuments and sites) in mobilising knowledge and support to safeguard cultural sites, prevent illicit trafficking, protect museums and strengthen cultural institutions.

⁶⁴ “Director-General urges military forces engaged in Libya to refrain from endangering cultural heritage”, UNESCO press release of 23 March 2011 http://www.unesco.org/new/en/media-services/single-view/news/director_general_urges_military_forces_engaged_in_libya_to_refrain_from_endangering_cultural_heritage/. Accessed 1 April 2011.

⁶⁵ UNESCO 2011b, p. 2.

Together with a network called the Blue Shield, which will be discussed later, UNESCO provided the members of the Coalition with geographic coordinates and detailed cartographic documents to situate major collections and historic monuments, including the country's five World Heritage sites.⁶⁶ A comprehensive list of Libyan museums turned out not to be available, which is why in April 2011 the International Council of Museums (ICOM)—with which UNESCO works closely—provided a detailed museums “Watch List” containing many contact data and coordinates.⁶⁷

The direct effects of these initiatives are difficult to verify. Libyan cultural property seems to have survived the bombings well, but NATO did not officially confirm that cultural property protection or UNESCO actions played a decisive role in the process of target selection. Whether or not one agrees with the fact that NATO “rigorously implemented international humanitarian law to a standard exceeding what was required”,⁶⁸ it is a fact that cultural property benefits from a better protection of the civilian population. According to NATO, the reason for rigorously implementing the law was the essential military objective of the campaign—namely to protect civilians and civilian areas from attack or a threat of attack. The political rationale behind a military operation is however completely irrelevant when it comes to the application of international humanitarian law. The combating parties are, moreover, legally obliged to respect and protect all persons who do not take part in the fighting, including civilians.⁶⁹

UNESCO was unable to intervene directly during the conflict, “Due to the suspension of co-operation with the government of Colonel Gaddafi and the dangerous military situation in this country”.⁷⁰ Opportunities to mobilise international action were indeed strongly diminished due to the lack of security and reliable information on the ground, as was confirmed during an emergency meeting convened by UNESCO in March 2011 with stakeholders and experts in cultural preservation.⁷¹ Numerous reports of destruction, damage and theft from museums, archaeological sites and libraries had been heard. However, most information could

⁶⁶ ANCBS and IMCuRWG 2011c, pp. 3, 4; UNESCO 2011c, pp. 10–14.

⁶⁷ See Item 7.1. of ICOM's General Report on Countries, Advisory Committee Meeting 6 June 2011, Paris, 75th Session, p. 3 under ‘Libya’. http://archives.icom.museum/download/june2011/en/110518_ICOM_Actions_EmergencySituations_EN.pdf accessed 10 December 2011.

⁶⁸ “Protecting Libya's heritage” NATO Press release of 4 January 2012 at: http://www.nato.int/cps/en/natolive/news_82441.htm?selectedLocale=en. Accessed 29 March 2012.

⁶⁹ Pommier 2011, p. 1072.

⁷⁰ UNESCO 2012a, pp. 3–4. The UNESCO mission took place shortly after the meeting of the states parties to the 1954 Convention, from 16 to 23 December 2011 and was organised in partnership with the Italian authorities. The mission undertook a survey of imminent threats and opportunities related to planned heritage projects throughout the country and funded by Italy. It identified, in consultation with the Libyan Department of Antiquities, emergency security measures to prevent further illicit trafficking. According to the report, no site had been destroyed or severely damaged as had been feared.

⁷¹ “UNESCO mobilizes experts and civil society partners to safeguard heritage in Tunisia, Egypt and Libya”, UNESCOPRESS 16 March 2011 at <http://www.unesco.org/new/en/media-services/>

not be verified. Contact persons could no longer be reached, access became difficult, assessments were impossible to make, cooperation projects were halted and foreign staff called home. In addition, rapidly deteriorating and changing security conditions formed a major obstacle to access. Many (inter)national cultural heritage organisations simply do not have the experience and means to work under such circumstances. Other specialised UN agencies as well as regional bodies such as the Council of Europe were also hindered in making assessments and safely delivering assistance. Even well experienced humanitarian organisations such as the ICRC were increasingly hindered in accessing affected areas.⁷² It was only in December 2011, two months after the fighting had formally ended, that UNESCO sent an expert mission to Libya. The situation has improved during the still explosive post-war period, but the danger of further destabilisation in the region and a professionalisation of criminal activities is real.

With regard to the looting and trafficking of cultural property, UNESCO sent out international alerts to Algeria, Chad, Egypt, Niger, Sudan and Tunisia and to intergovernmental organisations and non-governmental organisations such as INTERPOL, the World Customs Organization and ICOM. UNESCO is still collaborating with the Italian authorities and INTERPOL to retrieve the ‘Benghazi Treasure’. Such initiatives have meanwhile become part of UNESCO’s routine practice of cultural property protection during armed conflict. Others shared UNESCO’s plight, calling on all parties to protect Libyan cultural heritage, stating that “looting, theft and the illicit trafficking of cultural property are manifestly in contravention of the relevant provisions of UNESCO’s 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property”.⁷³ The 1970 Convention is one of several legal instruments that strengthen the wartime protection regime. It is aimed at outlawing the widespread trafficking in both smuggled and stolen works of art and other cultural property.⁷⁴ Because of the growing problem, UNESCO is increasing cooperation so as to combat the illegal trafficking of cultural property and to repatriate and restitute stolen property.⁷⁵

(Footnote 71 continued)

single-view/news/unesco_mobilizes_experts_and_civil_society_partners_to_safeguard_heritage_in_tunisia_egypt_and_libya/. Accessed 30 April 2012.

⁷² ICRC 2011a, pp. 5–7.

⁷³ “WCO calls for increased border vigilance to protect Libya’s cultural heritage” Press Release of 8 September 2011 at <http://www.wcoomd.org/en/media/newsroom/2011/september/wco-calls-for-increased-border-vigilance-to-protect-libyas-cultural-heritage.aspx>. See also “Archaeological Institute of America (AIA) Calls on U.S. and Libya to Protect World Heritage Sites” 16 June 2011 at <http://www.archaeological.org/news/aianews/5325>. Both accessed 30 September 2012.

⁷⁴ The Convention entered into force 24 April 1972. Currently 123 states are parties to the Convention.

⁷⁵ UN Economic and Social Council 2010b, pp. 7–8 and 12 and paras 1–13 of the Note by the Secretariat—Background. See also UN Economic and Social Council 2010a as well as UN Office on Drugs and Crime 2010.

8.3.3 *The System of Control and the Second Protocol*

In addition to the 1954 Convention, Libya is also a state party to its 1999 Second Protocol.⁷⁶ The Protocol introduced new opportunities for the international mobilisation of protection efforts during armed conflict. It established an Intergovernmental Committee, to be assisted by the UNESCO Secretariat.⁷⁷ This ‘Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict’ consists of twelve rotating states with one permanent member.⁷⁸ The Committee has various tasks, of which an obvious one is to monitor and supervise the implementation of the Second Protocol and de facto of the Convention. The control element of the Protecting Powers, meant to act as a communication channel between the hostile powers, was maintained in the Second Protocol.⁷⁹ Now, also the Committee can take on that role, for example by proposing meetings with the parties to a conflict. Those parties engaged in an international armed conflict that are not willing to entrust this task to the Committee can still ask the help of third parties. As an alternative, the Director-General of UNESCO may lend his or her good offices to warring parties, similar to the 1954 system.

Importantly, the Committee may play a less formal role as a negotiating forum, facilitating background negotiations.⁸⁰ Experience shows that background negotiations and patient dialogue are more effective—at least, at the beginning of the conflict—than public accusations and finger pointing.

In addition, the Committee may grant international assistance, if necessary during armed conflict and other emergencies.⁸¹ This creates possibilities for technical, material, legal, administrative or consultative forms of help. One of the ways to grant financial assistance is through a newly established ‘Fund for the Protection of Cultural Property in the Event of Armed Conflict’.⁸² Requests may be granted without the consent of the states parties to the Second Protocol. In other words, the Intergovernmental Committee has been granted the option to initiate a dialogue between warring parties, to bring actual threats to cultural property to the attention of states

⁷⁶ The Protocol entered into force 9 March 2004. The number of states parties as per 15 November 2012 is 64, not including several important political powers such as the permanent members of the UN Security Council.

⁷⁷ Second Protocol Articles 24–27, 29, 32 and 33—Assistance of UNESCO. Complementary to Article 23 of the 1954 Convention. Guideline numbers 19, 20, 108–154. For technical assistance, see Guideline 26. See also O’Keefe 2008, pp. 290–291.

⁷⁸ Second Protocol Article 32.

⁷⁹ Second Protocol Articles 34–36.

⁸⁰ Hladik 2001, p. 430.

⁸¹ Rule 9 of the Rules of Procedure of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, UNESCO, Paris, April 2010 CLT-2010/WS/5 CLD-4625.9, pp. 126–140: “(...) the Committee shall have the following functions: (...) e) to receive and consider requests for international assistance under Article 32 of the Second Protocol”.

⁸² Chapter 6, Article 24(1) Second Protocol. Article 29 established the Fund which has been operational since 24 November 2009. See UNESCO 2009b.

parties, to assist warring parties in various other ways, and to provide financial support. The Committee can also generate support for others, such as acknowledged cultural heritage organisations, so that they can undertake swift action.

It is therefore interesting to know whether protective action was initiated with regard to Libya within this relatively new legal framework. This is not the case. The Intergovernmental Committee of the Second Protocol did not formally undertake any specific action with regard to Libya, nor was it asked to do. Libya was not on the agenda of any relevant meetings.⁸³ This is even more surprising, as the Netherlands and Belgium were members of the Committee at the time of the armed conflict in Libya, while their governments contributed to the NATO air campaign. Moreover, of the ten states that made up the NATO Coalition conducting the campaign, five were a party to the Second Protocol and eight to the Convention.⁸⁴ During the December 2011 Committee meeting that took place after the conflict had ended, the apparently successful implementation of the Hague Convention during the Libyan war was reiterated, and that was all. Through the Fund, financial support for the protection of Libyan cultural property might have been given, but has so far only been requested and received by El Salvador.

In their turn, the states parties to the Second Protocol could have played an important role in protecting Libyan cultural property. In the Protocol, they are encouraged to give assistance bilaterally or multilaterally and to mobilise international support for the protection of cultural property. This can be done through the Committee, UNESCO and also directly.⁸⁵ Assistance can be of a technical, preventive, emergency or recovery nature to those belligerent parties which have

⁸³ The last Committee meeting before the start of the Libyan uprising was the Fifth Meeting of the Committee on 22–25 November 2010. The next one was in December 2011 after the conflict had ended, see UNESCO 2012c. Between both meetings, no extraordinary meeting of the Committee was held. Since its first session on 26 October 2006, the Committee has convened only one extraordinary meeting, in September 2009. The main purpose was to finalise institutional and administrative matters, see UNESCO 2011a. Another extraordinary meeting could have been convened, but this was apparently not deemed necessary. See Article 24 (2) of the Second Protocol and Rules 2 (1) to 2 (5) of the Rules of Procedure of the Committee. A Round Table meeting did take place on 29 April 2011, more than a month after NATO began its air campaign over Libya, but the topic of discussion was the system of enhanced protection under the Second Protocol. See UNESCO 2011b.

⁸⁴ Coalition partners were Belgium, Canada, Denmark, France, Italy, Qatar, Spain, the United Arab Emirates, the United Kingdom and the United States of America. Those which are also party to the Second Protocol are: Belgium, Canada, Italy, Qatar and Spain. Party to the 1954 Convention are: Belgium, Canada, Denmark, France, Italy, Qatar, Spain and the USA.

⁸⁵ See Article 32 (1) and (4) Second Protocol: “Parties are encouraged to give technical assistance of all kinds, through the Committee, to those Parties or parties to the conflict who request it”. See also Article 33 (1): “A Party may call upon UNESCO for technical assistance in organizing the protection of its cultural property, such as preparatory action to safeguard cultural property, preventive and organizational measures for emergency situations and compilation of national inventories of cultural property, or in connection with any other problem arising out of the application of this Protocol (...) and (2): “Parties are encouraged to provide technical assistance at bilateral or multilateral level”, as well as (3): “UNESCO is authorized to make, on its own initiative, proposals on these matters to the Parties”. For the application of the provisions

requested it. The Second Protocol also provides for a Biennial Meeting of the Parties, during which states can try to initiate better conditions for cultural property in wartime, for example by discussing problems related to the application of the Protocol and to make recommendations.⁸⁶ This article seems to be relevant, as it gives states the possibility to pay attention to urgent matters and keep them on the agenda even when a general agreement cannot be reached. Libya, apparently, was not a cause for action.⁸⁷ The states parties to the Protocol did not call on the warring parties to comply with the Convention and Protocol and neither did they choose to make a public denunciation. They also did not formally ask the Intergovernmental Committee to undertake action and neither did Libya.

The same can be said with regard to options available under the system of the World Heritage Convention. Libya did not request for help even though it hosts five World Heritage properties. The recent example of Mali shows that this was a missed chance. When World Heritage properties in the northern parts of Mali were subjected to destructive attacks and occupation by armed rebel groups in April 2012 and after, Mali did request for international assistance.⁸⁸ The next month, the Director-General of UNESCO send a high level mission into study emergency measures. The World Heritage Sites of Timbuktu and the Tomb of Askia in Gao were inscribed on the List of World Heritage in Danger and an appeal was launched to the frontier States Parties to Mali (Algeria, Burkina Faso, Cote d'Ivoire, Guinea, Mauritania, Niger, Senegal)—among other things to combat the illicit traffic of cultural objects. Via a Special Fund, quickly established by the World Heritage Committee, the international community could financially support Mali's efforts to safeguard its World Heritage Sites.⁸⁹

With regard to Libya it can be said that, even though UNESCO did initiate various useful activities, the possibilities for assistance decreased drastically during the conflict. It would have been worth trying to establish contacts with the new officials in charge, as the National Transitional Council had set up a Department of

(Footnote 85 continued)

of the 1999 Protocol to all parties to a conflict of a non-international character (including non-State armed groups) see Henckaerts 2010, pp. 83–85.

⁸⁶ Second Protocol Article 23 (3) (e).

⁸⁷ UNESCO 2011a. Their previous meeting had been in November 2009. There had not been a particular reason to discuss the situation in Libya at the time, see UNESCO 2009c. Since November 2009 no meeting had been convened. During the December 2011 meeting, UNESCO underscored the continuing relevance of the Second Protocol in a world marked by a number of ongoing armed conflicts. Administrative and institutional matters were discussed. In between the 2009 and 2011 meetings, the states parties could have chosen to meet for an extraordinary meeting on Libya “to discuss any problem related to the application of this Protocol, and to make recommendations, as appropriate” (Article 23 (3) and (4) of the Second Protocol), but it did not happen.

⁸⁸ UNESCO 2012d, Decision 36 COM 7B.106.

⁸⁹ ‘Creation of a Special Fund for the Safeguarding of Mali’s World Heritage Sites’ press release by the World Heritage Committee of UNESCO of 25 July 2012 at <http://whc.unesco.org/en/news/913>. Accessed 3 September 2012.

Archaeology.⁹⁰ Analogous to the Convention, UNESCO has the mandate to offer its services to non-state actors taking part in a conflict.⁹¹ As an intergovernmental organisation UNESCO is however not in the best position to seek contact with non-state armed actors and deliver assistance in regions outside state control—even if such action is badly needed.⁹²

In practice, UNESCO's role in offering assistance during armed conflict has not been made stronger under the Second Protocol. The tasks grew, but not the capacity to deal with them. The Secretariat of UNESCO is now also responsible for implementing the decisions of the Committee, assisting the Committee administratively and it will have to act as the portal through which all assistance flows, playing a key role in monitoring, coordinating and evaluating assistance.⁹³ Especially during emergency situations, UNESCO should be able to perform this task well. One would therefore expect the Committee to have been given strong secretarial support but, contrary to original attempts, and in line with the situation under the Convention, this is not the case. The Intergovernmental Committee of the Second Protocol has indicated that one of its present tasks is to reinforce the human and financial resources of the Secretariat.⁹⁴

8.3.4 Blue Shield and the Libyan Missions

The Blue Shield network—a fairly new player in the field of cultural property protection—started in 1996 with the establishment of the International Committee of the Blue Shield (ICBS). The ICBS was founded by the four organisations that

⁹⁰ ANCBS and IMCuRWG 2011c.

⁹¹ 1954 Convention Article 19(3). Second Protocol Article 33—if offered in accordance with Article 22(7).

⁹² van der Auwera 2011, pp. 5, 7, 9.

⁹³ Second Protocol Article 28, Rules of Procedure 15 and Guideline 25.

⁹⁴ Message of the Chairperson of the Committee Mr. Nout van Woudenberg (The Netherlands) <http://www.unesco.org/new/en/culture/themes/movable-heritage-and-museums/armed-conflict-and-heritage/intergovernmental-committee/>. Accessed 1 September 2012. See also the Resolution of the Fourth Meeting of the Parties to the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict of 12 December 2011, point 9 where the Fourth Meeting “Invites Parties and other potential donors to provide extra-budgetary resources to assist the Secretariat in reinforcing its financial and human resources”. See also UNESCO 2009a, p. 3 under (v) and in the same report the Adopted Recommendations under 2 where UNESCO's Director-General is recommended to provide sufficient human and financial resources in order to ensure the assistance by the Secretariat of UNESCO in the implementation of the Convention and its 1954 Protocol, and under 5 where the High Contracting Parties are encouraged to make voluntary contributions to enhance the implementation of the Convention and its 1954 Protocol. See also UNESCO 2011b, Appendix p. 2 for the opinion of the Secretary General of ICA David Leitch in its contribution of 6 June 2011 to the Informal Meeting of the Bureau of the Committee.

represent the areas of cultural property protected by the Hague Convention—museums, archives, monuments and sites and libraries.⁹⁵ Later, an international organisation protecting audiovisual materials also joined this ‘Red Cross for cultural heritage protection’.⁹⁶ The respective organisations have been working for the protection of cultural property during man-made and natural disasters since decades and cooperate closely with UNESCO. In the Second Protocol, the Blue Shield Committee was recognised as an ‘eminent’ body and was granted an advisory role for the Intergovernmental Committee.⁹⁷ The ICBS was supposed to act as a standing emergency coordination and response committee that would support the control system more effectively and provide additional assistance to UNESCO.⁹⁸ If UNESCO’s involvement turned out to be politically difficult, this body would be in a position to actually do something, making use of a network of cultural emergency aid experts. These ambitious ideas were clearly a reaction to the lack of effective protective intervention since 1954.

Although its founding ideas sounded hopeful, the effectiveness of the ICBS remains modest due to a lack of financial resources and international visibility.⁹⁹ Cooperation and solidarity between the five professional bodies and the ICBS does not seem to take place. On paper it acts as one organization, but in practice the independent bodies mostly continue to work separately in their respective areas of expertise.¹⁰⁰

Meanwhile, National Blue Shield Committees have been set up in various countries and this process continues. To improve the efficiency of the expanding network, the International Blue Shield Association was established in 2008. So far it has ‘observed and reacted to many (...) crises, like the earthquakes in Chile,

⁹⁵ The four international cultural heritage organisations that are recognised by UNESCO and represent the four areas of cultural property protected by the Hague Convention are: Museums (International Council of Museums or ICOM) Monuments (International Council of Monuments or ICOMOS), Archives (International Council of Archives or ICA) and Libraries (International Federation of Libraries or IFLA).

⁹⁶ The Coordinating Council of Audiovisual Archives Associations (CCAAA).

⁹⁷ The Committee “shall co-operate with international and national governmental and non-governmental organizations (...). To assist in the implementation of its functions, the Committee may invite to its meetings, in an advisory capacity, eminent professional organizations such as those which have formal relations with UNESCO, including ICBS and its constituent bodies (...)”. Second Protocol Articles 11 (3) and 27 (3): An ‘eminent’ body such as the ICBS may also recommend specific cultural property to the Committee for Enhanced Protection. See also Rule 6 ‘Organisations attending in an advisory capacity’, Rule 12 (2) ‘Provisional Agenda’ and Rule 37 (2) ‘Secretariat of the Committee’ of the Rules of Procedure for the Committee for the protection of Cultural Property in the Event of Armed Conflict. See Guidelines no. 24.

⁹⁸ Boylan 1993, p. 12; Toman 1996, pp. 255–269.

⁹⁹ van der Auwera 2012, pp. 162–164, 207.

¹⁰⁰ Example, ICOM’s position at the Round table Meeting of the 1954 Convention Committee at p. 1 of the Annex to UNESCO 2011b where the ICOM representative stressed the need for a more inclusive collaboration with ICBS so that ICOM can improve its ability to offer an adequate, effective and rapid response following any disaster situation.

Italy or New Zealand, the war in Georgia and the Gaza Strip, and others'.¹⁰¹ It was with the help of the Blue Shield Association that the two missions to Libya took place. While the high number of security-related incidents in Libya had restricted the movements of UN staff and many others, a group under the auspices of the Blue Shield managed to go into the country twice during 2011—following a mission to Egypt.¹⁰² The aim of these 'civil-military assessment missions' was, *inter alia*, to raise awareness for the protection of cultural property and to demonstrate international concern and solidarity. The timing of both visits was risky. Travel warnings had been issued and most embassies and foreigners were evacuated. During the first visit to Libya an armed conflict was still taking place. During the second visit, tensions among various groups remained, resulting in armed confrontations and deaths at different locations.

The group actively used its network, was willing to act swiftly and take security risks. The information obtained through the missions was welcomed by the international community of cultural heritage experts. Overall, however, the endeavour lacked formal support and professionalism.¹⁰³ Of all the international organisations that make up the Blue Shield Committee, it was mostly ICOM that actively contributed to the mission—through its Disaster Relief Museum Task Force. It should be stressed as well that the missions took place because of the personal persistence of a few persons involved—not because they were broadly supported.

Summing up, the legal options for the mobilisation of international protection efforts were not used either by Libya, the states parties to the Convention and Second Protocol, or the newly established Intergovernmental Committee. UNESCO undertook various initiatives—the new representative of Libya considered them to be an example of future action in armed conflict and Sudan even regarded them as a pioneering act.¹⁰⁴ Nevertheless, the course of action undertaken fell within the organisation's usual range of available options and activities. All factors combined hindered speedy and effective action by UNESCO, other organisations and experts working in the field of cultural heritage protection. What did seem to

¹⁰¹ Editorial by the President of the Association of National Committees of the Blue Shield (ANCBS), Karl von Habsburg-Lothringen, of 1 January 2012 at <http://www.ancbs.org/>. Accessed 24 February 2012.

¹⁰² In September and November 2011. See ANCBS and IMCuRWG 2011b, c. The same organisations had worked together before, going on a 'Civil-Military Assessment Mission for Egyptian Heritage' that took place from 12 to 16 February 2011, see ANCBS and IMCuRWG 2011a. They describe their Egyptian mission as the first independent heritage assessment team in Egypt after the revolution began. For the travel restrictions on UN staff, see p. 5 of Annex I of UN Human Rights Council International Commission of Inquiry 2012.

¹⁰³ The International Military Cultural Resources Working Group (IMCuRWG) and ANCBS did request the Director-General for Culture of UNESCO and the Director of the UNESCO World Heritage Centre to send or support the mission to Egypt. Confirmation of the request was received on 4 February 2011. A week later, the team decided independently to go on their 'Civil-Military Assessment Mission for Egyptian Heritage'. See Kila 2012, p. 51.

¹⁰⁴ UNESCO 2012b.

make the Libyan case rather unique was the quantity, rather than the type of the action. Libya hosts a wealth of world-famous cultural property and this guided everyone's focus—as well as media attention. What also contributed to the momentum was the fact that international political support for military intervention in Libya reached a critical level. New were the assessment missions undertaken under the auspices of the Blue Shield, and, last but not least, Libyans themselves have been credited with doing much to protect their treasures during the fighting.¹⁰⁵

8.4 Obstacles and Solutions

The overall conclusion is that the same obstacles to international protection presented themselves in Libya as in other contemporary armed conflicts. These obstacles hindered the effective use of the control system, as well as protection efforts undertaken within the wider range of the Conventional system and UNESCO's competence. UNESCO's ability to send help during armed conflict and to communicate with different armed actors proves inadequate in practice.¹⁰⁶ The Second Protocol did not significantly change this situation. This is not only typical for UNESCO but for the international community in general. An 'early-warning system for cultural heritage' is still lacking. There are procedures in place, but as long as national requests stay out, the system is paralysed. International action therefore continues to be of a reactive, ad hoc nature. Other seemingly insurmountable obstacles are the lack of security and of reliable information—inherent to any conflict and crises situation.

8.4.1 Solutions

What is needed is, *inter alia*, an organisation or network that can act swiftly and autonomously during armed conflict—without being fully dependent on the willingness and cooperation of the states parties to the 1954 Convention and Protocols. At present, there are civilian organisations undertaking cultural property rescue efforts in conflict areas, but there are not many of them and they mostly have a limited focus.¹⁰⁷ No wheels need to be reinvented. Lessons can be learned from humanitarian organisations offering protection and assistance during conflict

¹⁰⁵ Paul Bennett, head of the British mission “The Society for Libyan studies” in: “Looting of Libyan treasure highlights illicit antiquities trade” by Laura Allsop of 11 November 2011 at <http://edition.cnn.com/2011/11/11/world/europe/looted-treasure-libya/index.html>. See also ANCBS and IMCuRWG 2011b.

¹⁰⁶ Example, Toman 2009, p. 499.

¹⁰⁷ See Kila 2012, p. 50 for examples from Iraq.

and crises, such as the ICRC. Throughout the entire period of air operations in Libya, the ICRC was able to conduct its activities in areas controlled by the government, as well as those in the hands of the NTC.¹⁰⁸

At present, the Blue Shield Network seems to be in the best position to take the lead as an independent cultural emergency aid provider in armed conflicts and other disasters. The Blue Shield Committee has already been called the cultural equivalent of the Red Cross, which is a powerful way of explaining, in just a few words, exactly what it stands for. Nonetheless, its legal position differs structurally from that of the ICRC.¹⁰⁹ In the Geneva Conventions, states granted the ICRC the right of humanitarian initiative in the event of international as well as non-international armed conflict. On the basis of this right, the organisation undertakes various protection-related activities.¹¹⁰ The ICRC's legal structure makes it possible to work independently in performing these (Geneva) Conventional activities. Correspondingly, the ICRC has a greater obligation to remain faithful to the principles that have governed the organisation's activities throughout its history, in particular impartiality, neutrality and independence.¹¹¹

The ICBS has not been given the right to take a cultural initiative during situations falling under the—in the case of Blue Shield—1954 Convention and Additional Protocols. It has also not been granted the right to act as a Protective Power and is not obliged to work on the basis of impartiality and humanity, the two legal requirements for humanitarian action that can be found in the Geneva Conventions of 1949 and their Additional Protocols.¹¹² At the same time, the non-governmental nature of the ICBS, as well as of its Association, gives it more freedom to act than UNESCO.

¹⁰⁸ Pommier 2011, p. 1081.

¹⁰⁹ ICRC 2009 where it is explained that the ICRC is neither an intergovernmental nor non-governmental organisation, but a private, Swiss association possessing legal personality. It is governed by Article 60 et seq. of the Swiss Civil Code, whilst having been granted an international mandate under public international law. The special nature of the ICRC was recognised by the International Conferences of the International Red Cross and Red Crescent and in the Geneva Conventions. Its role is confirmed in the Statutes of the Red Cross and the Red Crescent Movement and in resolutions adopted by the International Conference. The Statutes form the mandate for action by the ICRC in situations falling short of the threshold of a full-scale armed conflict, such as in Syria during 2011 until the early summer of 2012 (Statute Article 5). The States parties to the Geneva Conventions normally meet representatives from the components of the Movement (the ICRC, the Federation and the National Societies) once every four years within the framework of the International Conference. The latter is competent to amend the Statutes of the Movement (which define the ICRC's role) and can assign mandates to the various components, but it cannot modify the ICRC or Federation statutes or take any decisions contrary to these statutes (Article 11.6 of the Statutes of the Movement).

¹¹⁰ Example, Toman 1996, pp. 256–259; Toman 2009, p. 649. Examples of rights of the ICRC: visiting prisoners of war or civilian internees and providing them with relief supplies, and operating the Central Tracing Agency (see Articles 73, 122, 123 and 126, Geneva Convention III, and Articles 76, 109, 137, 140 and 143, Geneva Convention IV). The ICRC's right of initiative: Article 3 and Articles 9/9/10 common to the four Geneva Conventions.

¹¹¹ Sandoz 1979, p. 362.

¹¹² Pommier 2011, p. 1077.

Blue Shield could choose to work on the basis of the humanitarian approach. While staying impartial, neutral and independent, it could seek the agreement of the parties concerned. Rushing into a conflict zone without any formal agreement and support can compromise security. A member of the Blue Shield Association mission to Egypt in February 2011 explained that, due to the chaotic situation at the time, they could not decide whether to present themselves as “tourists, civil-military experts or scientists”.¹¹³ The whole point of security guarantees, however, is that they are based on the factual situation. The flexibility of action is key, but should not compromise transparency. That could seriously jeopardise the team’s safety, as well as future missions. The ICRC underlines that it enters into contact and continues a regular security dialogue with all those who have the capability of potentially disrupting humanitarian operations.¹¹⁴ In present-day conflicts, a constant adjustment of networking strategies is necessary. Keeping a close reference to international humanitarian law and a safe distance from any political or military connotation also prove to be necessary ingredients for effective humanitarian action.¹¹⁵

The humanitarian approach also has much added value when authorities prefer independent professionals instead of (inter)governmental representatives. It helps to build acceptance among the population and other parties, and increases the chances for access, improved security and protection. Another future task of Blue Shield could be to monitor (potential) crises over a longer period of time, in close cooperation with national (Blue Shield) networks. By doing so, Blue Shield could assess the probability of intentional cultural property destruction and plundering, objectively determine and arrange for emergency measures, as well as assist in regions outside state control.¹¹⁶ To be able to do so, it is adamant that more cultural heritage organisations, including UNESCO and the organisations that make up Blue Shield, actively support Blue Shield initiatives so that it can raise its profile and funding.

For the ICRC, other elements that are key to continued access and security are its widespread and often long-standing presence, as well as its proximity to populations.¹¹⁷ Acceptance is also strongly influenced by the perceived quality and relevance of ICRC activities. A more recent approach to acceptance is the enhanced commitment to emergency response, as well as building up essential partnerships with National Societies. In Libya, for example, one of the contributing factors to the ICRC’s successful intervention was the mobilisation of the National Society medical and surgical teams. Blue Shield could start with encouraging the establishment of National Committees in the ‘Arab Spring’ countries.

¹¹³ Kila 2012, p. 205. In the end, the situation in Egypt became more clear just before the team members arrived making it opportune to present themselves as cultural civil-military experts.

¹¹⁴ ICRC 2011b, p. 23.

¹¹⁵ ICRC 2011b, pp. 5, 6.

¹¹⁶ “UNESCO participation in UN post-crisis coordination mechanisms”, statement by UNESCO at <http://www.unesco.org/new/en/unesco/themes/pcpd/post-crisis-coordination-mechanisms/>. Accessed a September 2012. See also van der Auwera 2011, pp. 15, 16.

¹¹⁷ ICRC 2011a, pp. 5–7.

Libya offered more examples for future action. The care undertaken by locals for the archaeological site of Leptis Magna was already recalled above. The museum staff managed to keep the vast grounds out of the hands of the warring parties and clear of explosive remnants of war. They furthermore established contact with Gaddafi militia members whom they trusted and prepared them for site protection. When the regime fell, several of them showed up with their weapons to protect the perimeters. By doing so, they more or less rehabilitated themselves in the eyes of the local population. There are also the accounts of the guards of Cyrene who continued to work unpaid and away from their families, and of the government controller who witnessed armed robbers stealing an antique torso on the site and tried to defend it with his life. These are just some of the many examples of people who, during hopeless situations, tried to save paper and stones not even personally belonging to them.

Individual accounts of cultural property protection in war-torn countries indeed offer a much-needed opportunity to understand the complex and often dangerous circumstances under which people try to do their work. Local staff can be threatened and targeted, often because of (the status of) their profession or their perceived links with the ruling authorities. Images and personal stories can make people realise how much is at stake. They not only offer interesting news items but also have the power to explain to a broad audience the importance of cultural property and its protection. Many people still remember the images of Egyptians protecting the National Museum in Cairo and the Library of Alexandria against looting, and of locals in Cairo braving the flames to save the precious collection of the Institut d’Egypt. ¹¹⁸ Which cultural heritage organization will be the first to strategically use such powerful images and stories?

In addition, local networks can be used for setting up powerful protection systems. Especially in culturally rich countries such as Libya, Egypt and Syria where archaeologists and other international experts have often been working for many years, opportunities present themselves. Foreign experts can enlist local citizens in advance and prepare them for disaster, realising longer term protection together. ¹¹⁹ The idea is not, of course, that local citizens put their lives in danger in the heat of battle, but that the destruction and looting of cultural property can be

¹¹⁸ Blue Shield Statements on Egypt of 31 January 2011 at <http://icom.museum/press-releases/press-release/article/blue-shield-statement-on-egypt-31-january-2011/> and of 20 December 2011 at <http://www.ifla.org/news/blue-shield-2nd-statement-on-egypt>. Both accessed 1 April 2012. See also: “UNESCO mobilises experts and civil society partners to safeguard heritage in Tunisia, Egypt and Libya” UNESCOPRESS 16 March 2011 at http://www.unesco.org/new/en/media-services/single-view/news/unesco_mobilizes_experts_and_civil_society_partners_to_safeguard_heritage_in_tunesia_egypt_and_libya. Also: “Alexandria’s youth ‘protecting library from looters’”. Director of Bibliotheca Alexandria issues message of thanks to young people he says are defending building from ‘thugs’ 1 February 2011 by Benedict Page at <http://www.guardian.co.uk/books/2011/feb/01/alexandria-youth-protecting-library>. Accessed 4 March 2011.

¹¹⁹ “Protecting cultural heritage: the Burnham Plan”, blog of 3 September 2012 by L. Rothfield visited at “The Punching Bag—Thoughts on cultural heritage, cultural economics, and cultural politics” on <http://larryrothfield.blogspot.com>. Accessed 22 October 2012.

prevented or minimised when cultural property is better secured from the very outbreak of hostilities. Preparing for such direct action is a combined task of national heritage officials and foreign experts working in the respective countries. An international network such as Blue Shield could choose to contribute to such important efforts by sharing good practices, lobby for support or coordinating them.

Another way of making use of ‘national contingency networks’ is to have locally trained experts pass on data to the outside world. They could fill the current information gap during armed conflict and crises. In Egypt, for example, the need for information led to new ways of obtaining it, through the Internet. This was not a new phenomenon, but it reached new heights of intensive use during the ‘mobile revolutions’ of the Arab Spring.¹²⁰ Not because everyone had access to social networks such as Facebook and Twitter or even a computer—most people did not—but stories could reach the independent media and international press through social networks. They were important to expose abuses uncensored, such as the torture cases videoed with mobile phones at police stations. The surge of social networks, user-generated content and micro-blogging enables all Internet users to become public communicators. Traditional news media are increasingly using materials contributed by non-professional ‘citizen journalists’.

The mobile phone can also be used to spread information. Worldwide, most people do not have access to the Internet but the mobile telephone business is growing. According to UNESCO, 5.3 billion people had a mobile phone subscription in 2010, among which 3.9 billion were from developing countries.¹²¹ Mobile telephone networks can also open up possibilities for protection, as was the case in Haiti. Within three days after the earthquake of January 2010, self-made mobile phone charging stations appeared in many locations.¹²² These mobile technologies, combined with social media platforms visited by traditional media and ‘civil journalists’, turned out to be an important source of information for humanitarian organizations. Information obtained through the mobile media was used to make geographical maps that indicated the various humanitarian needs. According to the Red Cross, they could reach almost a thousand percent more people with lesser resources than before. Caution is obviously needed with regard to verifying and prioritising the vast streams of information. Still, it does not

¹²⁰ “Oren en ogen van de opstand” NRC Handelsblad Thomas Erdbrink 13 May 2011; Abu Hijleh 2011, pp. 11–12 and UNESCO and World Press Freedom Committee 2012, p. 3 where it is stated that in 2011 an estimated two billion persons were using the Internet close to real time, producing 156 million public blogs.

¹²¹ International Communication Union 2010, p. 1.

¹²² Headdowneyesopen.blogspot.com, blog of 27 January and 18 November 2011 about technology and humanitarian aid by Paul Conneally, at the time of writing Media and External Communications Manager for the International Federation of Red Cross and Red Crescent Societies. See also Conneally’s TedX Geneva presentation of 6 December 2010 about new digital tools in disaster response and the Harvard Humanitarian Initiative—a research project that also focuses on the implications of technology for the future of humanitarian aid.

mitigate the fact that “Haiti was a game changer” (...). The power of technology to empower (people) is an issue that is becoming clear in political circles, slightly better understood in the corporate world and just about gaining attention in the aid and humanitarian sectors”.¹²³ This might be the right time for a cultural emergency hotline.

Information technology already contributes to the protection of cultural property. In the field of archaeology, private spy satellites are used as early warning and threat detection systems for archaeological sites.¹²⁴ According to UNESCO, satellite imaging provides an innovative way to observe threats to World Heritage Sites and to understand their impact.¹²⁵ Satellites enable archaeologists to look out for looting, disasters and other calamities at some of the most endangered sites of human history.¹²⁶

Information that is generated from space as well as locally can help to fill the information gap that is now felt by organisations trying to deliver aid, but implications stretch much further.¹²⁷ Satellite monitoring and other new technologies have opened up the possibility of proactive, wide-area monitoring, alongside traditional after-the-fact documentation. Much media attention was given to George Clooney’s Satellite Sentinel Project that claims to monitor the border between Sudan and South Sudan to assess the human security situation, identify potential threats to civilians, and detect, deter and document war crimes and crimes against humanity.¹²⁸ Amnesty International now uses geospatial

¹²³ Paul Conneally, headdowneyesopen.blogspot.com of 27 January and 18 November 2011 at <http://headdowneyesopen.blogspot.com/>. Accessed 23 January 2012.

¹²⁴ “Spy satellites watch ancient ruins” updated 23 April 2011, Dan Vergano USA TODAY at http://usatoday30.usatoday.com/tech/science/columnist/vergano/2011-04-15-archeology-satellites_N.htm. Accessed 1 September 2012.

¹²⁵ “From Space to Place: an Image Atlas of World Heritage Sites on the ‘In Danger’ List. A joint UNESCO/USGS project” at: <http://www.unesco.org/new/en/natural-sciences/science-technology/space-activities/space-for-heritage/activities/open-initiative-projects/satellite-image-atlas-heritage-in-danger/>. Accessed 6 March 2012. In November 2011, UNESCO launched an image atlas presenting detailed satellite photos of the thirty-one sites on the World Heritage List in Danger, produced in cooperation with the US Geological Survey.

¹²⁶ According to Jeff Morgan of the Global Heritage Fund (GHF), a Californian non-profit organization dedicated to the preservation of World Heritage Sites. GHF launched the Global Heritage Network in cooperation with Google Earth and private imaging satellite firm DigitalGlobe, a Californian-based non-profit organization dedicated to the preservation of World Heritage Sites.

¹²⁷ “Protecting cultural heritage: the Burnham Plan”, blog of 3 September 2012 by L. Rothfield at “The Punching Bag—Thoughts on cultural heritage, cultural economics, and cultural politics” on <http://larryrothfield.blogspot.com>. Accessed 22 October 2012. See also Sulik and Edwards 2010, pp. 2521–2533.

¹²⁸ “George Clooney’s Satellites Build a Case Against an Alleged War Criminal”, 3 December 2011 by Mark Benjam in Time World at <http://www.time.com/time/world/article/0,8599,2101425,00.html>. See also “Clooney’s ‘Antigenocide Paparazzi’: Watching Sudan”, 28 December 2010 by Mark Benjam in Time World at <http://www.time.com/time/magazine/article/0,9171,2040211,00.html>. Both sites accessed 4 September 2012.

technologies like satellite imagery for human rights monitoring and conflict prevention. The organisation claims that it can now access previously inaccessible conflict zones, provide compelling visual evidence and present information in a new and engaging way—for example, on Syria.¹²⁹

For organisations working for the protection of cultural property during armed conflict, it is necessary to consider the relationship of such data use with the 1954 Convention and Protocols. Aid can easily be manipulated or become a political instrument—thereby jeopardising protection efforts that were undertaken on purely humanitarian grounds. It is therefore encouraging that ICOMOS (the International Council of Monuments and Sites) has proposed to develop a code of ethics for intervening in cultural heritage operations. Likewise, it should be encouraged that participants in courses offered by ICCROM (International Centre for the Study and Preservation and Restoration of Cultural Property) critically examine the applicability of international legal instruments, and of conservation ethics and principles in times of conflict. The outcomes of such efforts need to be shared and discussed within larger forums such as UNESCO and the meeting of states parties to the Convention and Protocols.

A final recommendation, often heard and badly needed, is to rapidly improve cooperation within the cultural heritage sector, as well as within larger forums such as Interpol, the UN and NATO. So far, true and effective combined efforts to cooperate have not easily taken place. Exceptional situations have sometimes caused exceptional reactions but most of the time help has come too little and too late. Cultural heritage organisations mostly work next to each other, sometimes even against each other, but rarely together.¹³⁰ When cooperation takes place, it is often because of individual initiatives. UNESCO has made it clear that it cannot reinforce the protection of cultural property during hostilities alone—it is a shared responsibility for all.¹³¹ As a very minimum states should institute effective national and international efforts to prevent trafficking in cultural material from war zones.¹³²

UNESCO is much better suited to diplomatic action. Conventional armies continue to be engaged in violations against cultural property and UNESCO is in the position to urge their governments to stop. Above all, UNESCO has added value as a coordinator and facilitator of protection activities before and after armed conflict.¹³³ The organisation has built up considerable experience in preventive,

¹²⁹ <http://www.eyesonsyria.org/> by Amnesty International USA is “an interactive platform that maps cases, presents research on human rights abuses in Syria and prompts concerned individuals to take action”. Accessed 1 November 2012.

¹³⁰ van der Auwera 2012, p. 162.

¹³¹ Hladik 2004, p. 101.

¹³² Boylan 1993, p. 101. See also Chapter 7 of Mackenzie 2005 where he recommends measures to better regulate the international market in illicit antiquities.

¹³³ van der Auwera 2011, p. 14.

early recovery and reconstruction activities, including in Libya as was pointed out earlier.¹³⁴

When one considers the potential of the combined power of the respective Blue Shield member organisations, the present situation seems a sad one. It has been argued that the heritage community has a major responsibility to engage with Blue Shield to ensure that it receives better funding and to raise its profile.¹³⁵ The key actors of the Second Protocol—the states parties, the Committee, the Meeting of the states parties and UNESCO—are all encouraged to ensure the participation of a wide variety of stakeholders such as Blue Shield.¹³⁶ The respective organisations that make up Blue Shield have their distinct areas of expertise but through the Blue Shield network they can bundle their forces and complement existing activities, such as the Disaster Relief for Museums Task Force (DRTF) of ICOM.¹³⁷ It was created to provide assistance to museums damaged by the 2004 Tsunami, but has since extended its missions worldwide. Blue Shield, UNESCO and the ICRC can cooperate and complement each other in many ways. The ICRC and UNESCO have already done so in recent years.¹³⁸ Only through better cooperation can Blue Shield become the flexible protection and action-oriented organisation that was once envisaged.

8.5 Conclusion

The purpose of this chapter was to come to recommendations for a more effective international mobilisation of cultural property protection during armed conflict within the framework of international humanitarian law. Examples of contemporary threats and obstacles to protection were taken from Libya during the armed conflict in 2011. Although in Libya irreplaceable damage to cultural property in especially urban areas took place, it was spared from the fate of the large-scale targeted destruction and looting of cultural property that is common to contemporary warfare. This was partly due to action undertaken for Libyan cultural property by UNESCO and a few other actors. Nevertheless, the control system of the 1954 Hague Convention and its 1999 Second Protocol have so far failed, also in the case of Libya. Effective, large-scale international cooperation is rare.

As an intergovernmental organisation with limited mandate and resources, UNESCO's added value mostly lies in the period before and after conflict. The two

¹³⁴ Bouchenaki 2008, pp. 210–217.

¹³⁵ Stone and Farchakh Bajjaly 2008, p. 6.

¹³⁶ Number 13 of the Guidelines to the Second Protocol.

¹³⁷ See <http://icom.museum/the-committees/technical-committees/standing-committee/disaster-relief-task-force/> and UNESCO 2011b, Annex “ICOM's position at the Round Table Meeting of the 1954 Convention Committee”, p. 3.

¹³⁸ Toman 2009, p. 161; UNESCO 2011b, pp. 4, 6.

assessment missions to Libya under the auspices of Blue Shield provided hope for more effective wartime protection activities in the future, but so far Blue Shield has failed to play the role of an independent cultural property protector. Moreover, the international community continues to react to crisis situations and lacks an ‘early-warning system for cultural heritage’.

The Intergovernmental Committee of the Second Protocol, UNESCO and the Blue Shield network must develop a more effective cooperation in practice and fill in the gaps in the current protection system. Blue Shield has the potential to undertake and coordinate protection initiatives for cultural property in crisis situations on a professional scale. Active support from its affiliated organisations is key. Examples from ‘Arab Spring’ countries such as Libya also show that new data technologies together with local networks can be used to increase possibilities for receiving information, awareness and security. It is thereby paramount that protection initiatives have a firm basis in the 1954 Convention and Protocols. Without it, cultural property protection can be easily manipulated. Although the legal mandate and position of the ICRC cannot be compared to that of UNESCO or Blue Shield, lessons can be learned from the ICRC’s humanitarian approach which is firmly based on international humanitarian law.

It is hopeful that: “During the past year, Libyans have shown their unflinching commitment to the protection of their cultural heritage, demonstrating that such heritage cannot be held hostage to local or international dissent and conflict.”¹³⁹ The Libyan initiatives serve as an example. Protecting stones and paper is so much more than protecting the past. It also helps to understand the present and preserve the future. Moreover, a better protection of cultural property inherently leads to a better protection of the civilian population. That this is much needed, can be sadly witnessed in every contemporary armed conflict. A combined effort to protect our common cultural heritage is therefore very much worth the effort—especially during armed conflict when threats and obstacles multiply.

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¹³⁹ Quote of the Director-General of UNESCO in: “Director-General concerned about attacks on World Heritage site of Ghadames (Libya)” UNESCOPRESS 23 May 2012 at http://www.unesco.org/new/en/media-services/single-view/news/director_general_concerned_about_attacks_on_world_heritage_site_of_ghadames_libya/. Accessed 1 June 2012.

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