

Cultural Heritage as an Element of National Security: the Crimea Lens

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SUMMARY

Russia's occupation of Crimea and intervention in Donbas have transformed the role and the perception of historical and cultural heritage in Ukraine – and this is true for both the Ukrainian state and for Ukrainian society. In particular, Ukraine has increasingly realised that cultural heritage is an inherent element of national security, an element that is crucial both for preventing external aggression and for countering it.

Disinformation, the distortion of history, the appropriation of cultural heritage and the weaponization of culture and religion have been the intrinsic elements of Russia's domestic and foreign policy for years. More recently, Russia has skilfully instrumentalised such methods to whitewash its bloody role in Syria.¹

Currently, Russia is employing such methods in occupied Crimea.

Russia has appropriated Ukraine's cultural property in Crimea, including 4,095 state-protected sites of national and local importance.² However, this appropriation, a breach of international law in itself,³ is just a lever for Russia's broader and long-term strategy to increase its historical, cultural and religious dominance over Crimea's past, present and future.

Russia pursues such a policy through several cultural fronts, including the unlawful transfer of artifacts from Crimea for exhibitions in Russia pursuant to its curatorial narratives, unauthorised archaeological excavations and the erosion of the Crimean Tatar cultural presence in the peninsula along with the simultaneous weaponization of their religion, which cumulatively belittles the foundational role this Islamic indigenous people's played in Crimea's pre-Russian and non-Russian history. Through these activities, Russia aims at strengthening the ideological and historical justification of its occupation of the peninsula – in the eyes of its own citizens, in those of Ukrainian citizens residing in Crimea and before the international community.

Therefore, this policy paper argues, Ukraine and the international community



should realise that Russian violations against tangible and intangible cultural heritage are not the end in themselves. Russia uses them as a hybrid tool along other violent and political means to consolidate its dominance over Ukraine's peninsula and intangibly finalise what was begun with tangible military means in February 2014.

Accordingly, Ukraine should make sure that proceedings in domestic, regional, and international courts related to the Russia-Ukraine armed conflict include issues related to the cultural heritage of Crimea. Furthermore, Ukraine's emerging transitional justice effort⁴, especially any potential truth-seeking mechanism and institutional reforms in the fields

of security, defence, information and education, and de-occupation policies should have a strong cultural heritage focus and critically examine any distorted narratives Russia may have developed about the Ukrainian and Crimean Tatar heritage in Crimea.

More broadly, Ukraine and its international partners, including the EU and NATO, should seriously consider the role of cultural heritage in the case of Crimea and develop layered pre-emptive and reactive policies which consider cultural heritage as a matter of national security and its abuse as a powerful hybrid threat with lasting deeply ingrained reverberations.

1. Harding L. Palmyra hosts Russian concert after recapture by Syrian soldiers (The Guardian, 5 May 2016) <https://www.theguardian.com/world/2016/may/05/palmyra-amphitheatre-hosts-russian-concert-after-recapture-by-syrian-forces>

2. Mission of the President of Ukraine in the Autonomous Republic of Crimea, Informational and analytical note on the situation with cultural and archaeological heritage in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, p.1 http://www.ppu.gov.ua/wp-content/uploads/2020/11/Informatsiy-na-dovidka-shhodo-sytuatsii-z-kulturnymy-tsinnostyamy_angl.pdf

3. Geneva Convention I, art. 50; Geneva Convention II, art. 51; Geneva Convention IV, art. 147; Customary International Humanitarian Law, Rules 40, 50 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul

4. "Transitional justice" is a system of judicial and non-judicial measures implemented with the different levels of possible international involvement to address grave human rights abuses and ensure accountability, justice and reconciliation. Such measures include individual prosecutions, truth-seeking, reparations, memorialisation, institutional reforms, vetting and wider guarantees of non-repetition. For more details, please see Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies S/2004/616 (23 August 2004) <https://www.un.org/ruleoflaw/files/2004%20report.pdf>; Annual reports of thematic reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence <https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/AnnualReports.aspx>

Ukraine's transitional justice vision is being developed by the Working Group on the Reintegration of the Temporary Occupied Territories of the Law Reform Commission. The Working Group is headed by the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea, an international lawyer. The Working Group developed a draft Transitional Justice Roadmap framing the pillars of Ukraine's transitional justice policy. After the President of Ukraine has approved the Roadmap with his decree, the Parliament, the Government and other state authorities will work on the elaboration of more detailed measures implementing the Roadmap's strategic vision.

I. PHYSICAL PROTECTION VS. MANIPULATION OF THE NARRATIVES?

Cultural property encompasses movable and immovable objects, either secular or religious, including architecture, paintings, sculpture, archaeological sites, scientific and book collections as well as museums, the libraries and archives where such objects may be stored, as well as places of worship.⁵ The terms "cultural property" and "cultural heritage" are often used interchangeably.

The protection of cultural property has traditionally focused on its physical preservation with the prohibition on appropriation, unsanctioned transfers or targeting during military operations. However, **new conflict patterns, the development of the means and methods of warfare and the rise of hybrid threats have generated new dangerous (ab)uses of history and culture.** The case of occupied Crimea proves that major threats come not only from the physical destruction or modification of artifacts, but from the instrumentally manipulated narratives around them.

This, in turn, has reaffirmed the need for new, broader and subtler, heritage protection policies, both domestically and internationally. While physical preservation should be a priority, such heritage protection policies should also have a nuanced security lens and address the wider hybrid threats posed by the manipulation of narratives connected to cultural heritage.

There has been a gradual process in this direction that pre-dated Russia's annexation of Crimea. The NATO allies have committed to safeguarding the "common

heritage and civilisation of their peoples".⁶ The INTERPOL Secretary General has stated that heritage protection in contemporary armed conflicts is not "just a cultural issue; it is a security imperative."⁷ The 1999 Second Protocol to the Hague Convention protecting heritage in armed conflict prohibits manipulations using cultural property in occupied territory, which are intended "to conceal or destroy cultural, historical or scientific evidence."⁸ International courts increasingly regard

crimes against or crimes affecting cultural heritage as an important defining indication of a crime involving the persecution of a particular group.⁹

The need for such a wider, security-sensitive and narrative-sensitive approach to preserving heritage has been reaffirmed by Russia's ideologically distortive handling of Ukraine's cultural heritage in occupied Crimea.



The Bakhchysarai Palace

5. Convention for the Protection of Cultural Property in the Event of Armed Conflict, article 1 http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html; Convention concerning the Protection of the World Cultural and Natural Heritage, article 1 <https://whc.unesco.org/archive/convention-en.pdf>

6. Preamble, The North Atlantic Treaty (1949) https://www.nato.int/cps/en/natolive/official_texts_17120.htm

7. Interpol. The issues - cultural property <https://www.interpol.int/en/Crimes/Cultural-heritage-crime/The-issues-cultural-property>

8. Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, article 9.1.c http://portal.unesco.org/en/ev.php-URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html

9. Office of the Prosecutor of the International Criminal Court, Draft Policy on Cultural Heritage, paras. 72-74, <https://www.icc-cpi.int/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf>

II. OCCUPIED CRIMEA

II.1. Russia's conduct in Crimea

II.1.1. Creeping violations

"Crimea, ancient Korsun, Khersones, Sevastopol - all of them bear an enormous civilizational and sacral meaning for Russia, just as the Temple Mount of Jerusalem does for those who profess Islam and Judaism" – President Putin has declared.¹⁰ This vision of the crucial role of Crimea for Imperial, Soviet and contemporary Russia is the touchstone of Russia's policy toward the peninsula and its tangible and intangible heritage.

With the beginning of its occupation of Crimea, Russia started the widespread appropriation of state, municipal and private property in Crimea.¹¹ Crimea's cultural heritage fell victim to the same policy. The unjustified appropriation of museums and their collections, of historical sites, archives, churches and mosques are all breaches of international law.¹²

However, such appropriation has laid the foundation for a wider range of violations, many of which pose dangerous hybrid threats to Ukraine's security and the rules-based international order. In particular,

the occupying authorities instrumentalise artifacts from Crimea, archaeological excavations, and academic research to demonstrate a connection between the peninsula and Imperial, Soviet and contemporary Russia. The most striking breaches perpetrated in furtherance of such policies are examined below.

Russia has been exporting Ukraine's artifacts from Crimea to present them at exhibitions elsewhere, pursuant to its own curatorial narratives. The 2016 Aivazovsky exhibition with 38 paintings

from the Crimean city of Feodosia and the 2017 Panticapaeum and Phanagoria exhibition showcasing the artifacts from the East Crimean Historical and Cultural Museum Reserve are illustrative examples.¹³ Both exhibitions were held in Moscow at Russia's leading cultural institutions – the Tretyakov Gallery and the Pushkin Museum. The transfers of the respective artifacts were neither sanctioned by Ukraine nor necessitated by any emergency on the occupied peninsula.

The Russian authorities have unilaterally supported unlawful archaeological excavations in occupied Crimea. In 2014–2020, they issued 410 permits for such activities.¹⁴ Ukraine did not partake in verifying the context-sensitivity of the archaeological explorations, their documentation, or the presentation of their findings. Many excavations were conducted with the sole purpose of facilitating the construction of the Tavrida highway connecting the Kerch Bridge with Sevastopol, which is important in military-strategic terms as well as for President Putin's prestige. These engineering works resulted in the destruction of burial places¹⁵ and contributed to the further militarisation of the peninsula¹⁶.

Russia also instrumentalises Ukraine's Crimea to emphasise its foundational role in Orthodox Christianity. President Putin has declared that the Ancient City of Tauric Chersonese and its Chora, a Ukrainian UNESCO World Heritage site, should become a "Russian Mecca" because it is "the foundation of Russia's statehood".¹⁷ Russia put a priest with no previous experience in managing cultural heritage in charge of the Chersonese Museum. Although the unqualified religious director later resigned, the "Christianisation" of this secular, Ukrainian World Heritage site continues there, along with the growing presence of the Russian Orthodox Church.¹⁸ The occupying authorities stage different "Orthodox-patriotic" pageants on the site and plan to erect a museum of Christianity there.¹⁹ These activities, dangerously damaging both to the physical state of the site and its historical nuances, are in line with President Putin's statement.

The mentioned vision of Russia's Head of State nourishes other persecutory practices, namely forcing the Ukrainian Orthodox Church out of the peninsula and seizing its property and also by literally and symbolically eliminating the relevance of

10. Schreck C. Crimea Is A 'Sacred' Land. But for Whom? (Radio Free Europe, 4 December 2014) <https://www.rferl.org/a/putin-crimea-orthodox-vladimir-great-religion-ukraine-russia/26725761.html>

11. Mission of the President of Ukraine in the Autonomous Republic of Crimea, Informational and analytical note on the situation with cultural and archaeological heritage in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, p.1 http://www.ppu.gov.ua/wp-content/uploads/2020/11/Informatsiy-na-dovidka-shhodo-sytuatsii-z-kulturnymy-tsinnostyamy_angl.pdf

12. Geneva Convention I, art. 50; Geneva Convention II, art. 51; Geneva Convention IV, art. 147; Customary International Humanitarian Law, Rules 40, 50 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_ru

13. 38 Aivazovsky paintings taken out of Crimea (Crimean News Agency, 13 July 2016) <http://old.qha.com.ua/en/culture-art/38-paintings-by-aivazovsky-taken-out-of-crimea/137786/>; <https://www.mos.ru/en/news/item/26007073/>

14. Mission of the President of Ukraine in the Autonomous Republic of Crimea, Informational and analytical note on the situation with cultural and archaeological heritage in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, p. 6 http://www.ppu.gov.ua/wp-content/uploads/2020/11/Informatsiy-na-dovidka-shhodo-sytuatsii-z-kulturnymy-tsinnostyamy_angl.pdf

15. Stolen Heritage: How Russia Is Destroying Crimean Archaeological Sites (Hromadske International, 4 January 2018) <https://en.hromadske.ua/posts/stolen-heritage-how-russia-is-destroying-crimean-archaeological-sites>

16. UNGA, Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov, A/75/L.38/Rev.1, 3 December 2020, para. 17 <https://digitallibrary.un.org/record/3893540?ln=en>

17. Maiko E. Chersonese: the "Orthodox Mecca" with Opera and Ballet on Ancient Ruins (Херсонес: «православная Мекка» с оперой и балетом на древних руинах) (Krym. Realii, 29 July 2020) <https://ru.krymr.com/a/herones-pravoslavnaya-mekka-s-operoi-i-baletom-na-drevnih-ruinah/30755245.html>

18. The Director of Tauric Chersonese Priest Haliuta Has Resigned («Директор «Херсонеса Таврического» священник Халюта ушел с поста») (Radio Svoboda, 6 August 2015) <https://www.svoboda.org/a/27173960.html>

19. Maiko E. Chersonese: the "Orthodox Mecca" with Opera and Ballet on Ancient Ruins (Херсонес: «православная Мекка» с оперой и балетом на древних руинах) (Krym. Realii, 29 July 2020) <https://ru.krymr.com/a/herones-pravoslavnaya-mekka-s-operoi-i-baletom-na-drevnih-ruinah/30755245.html>

the Crimean Tatar heritage in Crimea and weaponizing the Crimean Tatar religion, Islam, in the course of alleged anti-terrorist activities.²⁰

The distortion of the Crimean Tatar role in Crimea peaked with Russia's destructive renovation of their Bakhchysarai Palace,²¹ which is on the UNESCO Tentative List.²² This flagrant deprivation of the indigenous Crimean Tatars of their last surviving architectural monument of this kind has deeper reverberations with the past and present. Soviet Russia profoundly victimised Crimean Tatars with the deportation, ordered by Stalin in 1944. No proper apology or compensation has occurred for this atrocity, and the aura of the unjust label "enemies of the people"

that was placed on the Crimean Tatars still lingers. Today, Russia's occupational authorities in Crimea subject this indigenous people to persecution, bogus associations of extremism and sham trials.²³ Crimean Tatars are ostracised because of their opposition to the occupation and their culture and their religion are maligned and marginalised.

Through these violations, Russia attempts to assert its foundational role in Crimea's past, present and future. It aims to accommodate Ukrainian and Crimean Tatar heritage in Crimea to its historical narratives, to justify its neo-colonial policy towards the peninsula and validate its unilateral redrawing of internationally recognised borders.

II.1.2. Applicable law

The international community does not recognise Russia's attempts to change the status of Crimea and considers it to be occupied.²⁴ The Prosecutor of the International Criminal Court has also preliminarily confirmed the occupied status of the peninsula.²⁵ An occupation indicates the existence of an international armed conflict between two states.

This triggers the applicability of respective international treaties and customary law regulating such a context, including those concerning heritage issues. A whole spectrum of general and heritage-specialised international instruments, binding upon both Ukraine and Russia, prohibits Russia from acting unilaterally concerning Ukraine's cultural property in Crimea.

The unlawful and wanton destruction and seizure of any type of property during an occupation is prohibited.²⁶ Unless justified by military necessity, such actions constitute a grave breach of the 1949 Geneva Conventions - the principal international law instruments regulating armed conflict and the treatment of protected persons and objects in warfare.²⁷

The Regulations annexed to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land equate public

religious, artistic, and academic institutions to private property. Any seizure of or damage to such institutions is forbidden and must be prosecuted.²⁸

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict obliges the occupying power to support the national authorities in their preservation activities in the occupied territories.²⁹ The occupying authorities have the freedom to undertake preservation measures themselves only with respect to the objects damaged by military operations, and only when the national authorities cannot take such measures themselves, and when it is in cooperation with such national authorities. Occupying powers must prevent any vandalism or misappropriation of cultural property.³⁰

The protection obligation is repeatedly emphasised in the 1972 UNESCO World Her-

20. OHCHR, Report on the Human Rights Situation in Ukraine (1 August 2020 - 31 January 2021), paras. 101-103 <https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf>; Savchuk A., In Occupied Crimea, Ukraine's Church is Facing Extinction, Open Democracy, 11 November 2019 <https://www.opendemocracy.net/en/odr/ukraine-orthodox-church-crimea-extinction/>

21. Coynash H. Why Are We Letting Russia Destroy a 16th Century Palace in Crimea? (Atlantic Council, 11 January 2018) <https://www.atlanticcouncil.org/blogs/ukrainealert/why-are-we-letting-russia-destroy-a-16th-century-palace-in-crimea/>

22. UNESCO World Heritage Tentative List. The historical surroundings of Crimean Khans' capital in Bakhchysarai <https://whc.unesco.org/en/tentativelists/5774/>

23. OHCHR, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2019), paras. 96-98 https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Feb-15May2019_EN.pdf; OHCHR, Report on the Human Rights Situation in Ukraine (16 May to 15 August 2019), paras. 109-110 https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16May-15Aug2019_EN.pdf

24. UNGA Resolution 68/262 "Territorial integrity of Ukraine", 27 March 2014 <https://undocs.org/en/A/RES/68/262>; PACE Resolution 2198 (2018) "Humanitarian consequences of the war in Ukraine", 23 January 2018 <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432&lang=en>; UNGA, Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov, A/75/L.38/Rev.1, 3 December 2020, para. 17 <https://digitallibrary.un.org/record/3893540?ln=en>; G7 Foreign Ministers' Statement on Ukraine <https://ua.usembassy.gov/g7-foreign-ministers-statement-on-ukraine/>

25. Office of the Prosecutor, International Criminal Court, Report on Preliminary Examination Activities 2016, para. 158 https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf

26. Geneva Convention I, art. 50; Geneva Convention II, art. 51; Geneva Convention IV, art. 147; Customary International Humanitarian Law, Rules 40, 50 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul

27. Ibid.

28. Regulations annexed to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, art. 56.

itage Convention. The provisions on the respect of, illicit export of, and return of cultural property are further contained in customary international humanitarian law, which is binding upon all states.³¹

The Second Protocol to the 1954 Hague Convention has the most express prohibition on the modification of cultural property in occupied territory which is "intended to conceal or destroy cultural, historical or scientific evidence".³² This norm is the most accurate illustration of what has been occurring with the destructive reconstruction of the Bakhchysarai Palace. However, unlike Ukraine, as of March 2021 Russia is not a party to the Protocol. Even so, Russia's treatment of the Palace is restricted by its obligation to consult Ukraine on any renovation works,³³ and by the general continued applicability of Ukraine's laws in the occupied territory³⁴ which does not allow for work on cultural sites which are not sanctioned by the Ukrainian government, and also by the further obligation to respect³⁵ cultural heritage in occupied territories.

Additionally, UNESCO's Military Manual on the Protection of Cultural Property stresses that states should abide by the typical rules in this field, in particular, they should refrain

from making any alterations to or changing the use of cultural property that are not strictly necessary. UNESCO's Manual emphasises that the occupying states that are not parties to the Second Protocol "should do the same".³⁷

Therefore, Russia's appropriation of Ukraine's cultural heritage in Crimea, let alone unilateral decisions about its transfer or renovation, are in breach of international law. Russian occupying authorities made no genuine attempts to consult Ukraine on its preservation preferences for Crimean artifacts. Importantly, there has been no military or ecological or preservation emergency in occupied Crimea to justify Russia's self-guided and self-serving actions. Such actions serve a sole purpose: to establish a one-dimensional narrative about Crimea's history, which would gradually validate Russia's occupation in the hearts and minds of the residents of Crimea, among Russian citizens and with the international community.

29. Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 5.

30. Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4.3.

31. Customary International Humanitarian Law, Rules 40–41 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul

32. Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, art. 9.1.c, 9.2.

33. Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 5.1l.

34. Regulations annexed to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, art. 43; Geneva Convention IV, art. 64.

35. Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4.1; Rule 40 of customary international humanitarian law https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule40

36. UNESCO Military Manual on the Protection of Cultural Property (2016), paras 210–212 <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/MilitaryManual-En.pdf>

37. UNESCO Military Manual on the Protection of Cultural Property (2016), p. 63 <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/MilitaryManual-En.pdf>

II.2. Ukraine's changing lens

Russia's occupation of Crimea and intervention in Donbas have transformed Ukraine's perception of its historical and cultural heritage and catalysed action concerning the mounting violations in this field. Ukraine has launched respective domestic investigations and prosecutions; it is set to implement the long-overdue reform of its domestic criminal legislation in order to have a more detailed toolkit to address war crimes and crimes against humanity that involve heritage issues, and Ukraine also submits communications about such violations to the International Criminal Court.³⁸

However important, the steps that have been taken are sometimes taken too late and are incoherent. They often fill the regulatory lacunas such as the lack of digitalised registries or the proper marking of heritage sites, problems which existed before the occupation. Also, although Ukraine is increasingly making heritage submissions in its Crimea-related proceedings before regional and international courts, so far, its arguments have been too seizure-centric and have not painted the full picture of Russia's persecutory and neo-colonial intentions behind its mistreatment of Ukrainian and Crimean Tatar cultural heritage.

Such incoherence in no way justifies the occupying authorities' actions in Crimea. However, they should be recognised and taken into account in order to enhance Ukraine's lawfare strategy and heritage protection framework, both for war and

peace. Ukraine is gradually learning this lesson. This is evidenced by its National Security Strategy, by its Crimea De-Occupation and Re-Integration Strategy and the unfolding transitional justice policy.

Although its new National Security Strategy does not fully conceptualise the security threats posed by heritage manipulation, it does stress the need to counter them and to learn from all aspects of Russia's hybrid aggression. This encompasses Russia's distortion of historical and cultural narratives. The Strategy's sensitivity to the security dimensions of heritage manipulation can further be enhanced in the Human Development Strategy, Military Security Strategy, Information Security Strategy, Cybersecurity Strategy, Foreign Policy Strategy, and the Strategy on Ensuring State Security, all of which are to be elaborated on the basis of the National Security Strategy.³⁹ The National Security

38. Draft Law Amending Certain Legislative Acts of Ukraine on the Implementation of the Rules of International Criminal and Humanitarian Law No. 2689 of 27.12.2019 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804; Ukraine Will Inform the International Criminal Court about the Violations of the Rights of Journalists in Crimea ("Україна повідомить Міжнародний кримінальний суд про порушення прав журналістів у Криму") (UkrInform, 25 February 2021) <https://www.ukrinform.ua/rubric-crimea/3197486-ukraina-povidomit-miznarodnij-kriminalnij-sud-pro-porusenna-prav-zurnalistiv-u-krimu.html>

39. National Security Strategy, para. 3 <https://www.president.gov.ua/documents/3922020-35037>

Strategy also restates Ukraine's obligation to ensure effective criminal proceedings concerning armed conflict-related violations.⁴⁰ That gives domestic investigators, prosecutors and judges additional impetus to look at Russia's encroachments against Ukraine's cultural property and define the specific violations they are investigating or prosecuting through the wider lens of Russia's neo-colonial policy.

The Crimea De-Occupation and Re-Integration Strategy contains more details on cultural heritage. It rightly restates Ukraine's obligation to act in response to Russia's abuse of its cultural property, including by running specialised registries of affected artifacts and making submissions to international courts.⁴¹ The Strategy further specifies Ukraine's obligation to introduce a comprehensive transitional justice framework. The latter includes

qualitative criminal proceedings concerning the gravest crimes and establishing truth about the sources, dynamics, and consequences of the occupation.⁴² The Strategy's closer look at heritage issues is commendable, however, it could be more comprehensive. Ukraine is already providing evidence on cultural property crimes to international courts. It should make sure that as part of its engagement with each court, it explains Russia's overarching abusive policy towards Ukrainian and Crimean Tatars heritage that is designed to further Russia's colonisation of the peninsula. Given the jurisdictional limitations of each court and the long timeline of international proceedings, the Ukrainian state and Ukrainian civil society should also be more active in expanding their outreach and utilise other mechanisms such as the UN Special Rapporteurs and individual complaints procedures.

40. National Security Strategy, para. 46 <https://www.president.gov.ua/documents/3922020-35037>

41. Crimea De-Occupation and Re-Integration Strategy, paras. 54, 60 <https://www.president.gov.ua/documents/1172021-37533>

42. Crimea De-Occupation and Re-Integration Strategy, paras. 12, 14, 38, 74 <https://www.president.gov.ua/documents/1172021-37533>

II.3. Ways forward

Ukraine and human rights organisations should consider some potentially powerful arguments on Russia's heritage manipulation and its wider reverberations, which have not been properly developed at international judicial and diplomatic platforms before, and change their course of action accordingly. In particular, Russia's encroachments on Ukrainian and Crimean Tatar cultural heritage should be connected to wider Russian persecution in Crimea, to Russian-supported Islamophobia, and to the disproportionately grave impact of Russia's policies in Crimea on Crimean Tatar women and children, and to Russian neo-colonialism.

Persecution. So far, with regards to crimes against Crimea's cultural heritage, the Prosecutor of the International Criminal Court has focused Russian misappropriation, concluding that it could amount to a war crime.⁴³ The Prosecutor has also preliminarily identified that alleged persecution on political grounds is perpetrated in the peninsula.⁴⁴ Ukraine's Muslim Crimean Tatars are one of the most persecuted groups in the peninsula because of their stance against the Russian occupying authorities. They also form a major portion of Russia's political prisoners from Crimea. In its communications to the Court, Ukraine should substantiate why Russia's mistreatment of Ukrainian and Crimean Tatar cultural heritage as well as the Russian encroachment on the cultural rights and religious freedoms of Ukrainians and Crimean Tatars is part of the larger political persecution of the representatives of these two groups who oppose Russia's occupation. Such an approach would be in line with the Court's vision of the possible underlying

"cultural components" of persecution as a crime against humanity.⁴⁵

Islamophobia. The persecution of and also the bogus charges against Crimean Tatars, who are predominantly Muslim, are often based on fabricated links with extremism. In particular – on their alleged association with Hizb ut-Tahrir, the organisation which is legal in Ukraine and most countries but that has been declared a terrorist organisation and banned in Russia. However, the majority of the unlawfully detained Crimean Tatars deny any affiliation with or approval of this organisation. Ukraine has had no Crimean Tatar or Muslim-related terrorist incidents or related concerns before Russia occupied Crimea in 2014. Ukraine should emphasise Russia's intentional use of an Islamophobic agenda to suppress its political opponents. The demonisation of Crimean Tatars by using alleged terrorist connections ostracises this indigenous people, belittles the relevance of their culture and catalyses their

43. The Office of the Prosecutor of the International Criminal Court, Report on Preliminary Examination Activities 2020, para. 278 <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>

44. The Office of the Prosecutor of the International Criminal Court, Report on Preliminary Examination Activities 2020, para. 280 <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>

45. The Office of the Prosecutor of the International Criminal Court, Draft Policy on Cultural Heritage, paras. 72-74, <https://www.icc-cpi.int/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf>

creeping invisibility in the peninsula. Such ostracisation of the Muslim Crimean Tatars is particularly potentially dangerous amid growing global Islamophobia and anti-Muslim sentiments sometimes associated with the global fight against terrorism.

Gender. Russia's persecutory policies particularly victimise Crimean Tatar women and children. The imprisonment of male Crimean Tatar activists on bogus charges of terrorism deprives their wives and large families of their principal breadwinners.⁴⁶ Women, children and the elderly are left in a highly polarised Crimean society, in which their Muslim identity is increasingly associated with extremism.⁴⁷ Crimean Tatar women struggle to provide for their families amid artificially-increased anti-Muslim sentiment and increasingly limited access to the comfort of their cultural heritage and places of worship.

Neo-colonialism. Ukraine should emphasise the revisionist, colonial nature of Russia's encroachment on Ukraine's independence, sovereignty, and territorial integrity as well as its history and cultural heritage. Ukraine and other post-Soviet republics are not part of the usual international de-colonial debate the way the countries of the Global South are. There are several reasons for this. The Soviet re-

publics' relationship with Moscow, indeed their very name - the 'republics', as enshrined in the Soviet constitutions, might imply more freedom and even equality in their dynamics with the ruling power, at least according to the letter of the law.⁴⁸ However, the persecution and extermination of the perceived opponents of the Soviet/Moscow regime throughout the republics, including the 1944 deportation of the Crimean Tatars, Bulgarians, Greeks and Armenians,⁴⁹ prove that there was no equality in practice. Furthermore, even if Ukraine wanted to develop the de-colonial narrative earlier, it could hardly do so. In the 1960s, when the decolonisation movement accelerated,⁵⁰ Ukraine was still a part of the rigid Soviet empire with little prospect that any liberal initiative would go unpunished. Later, in the 1990s and early 2000s, Ukraine was under the strong influence of Russian and pro-Russian elites. This coincided with the lack of a larger sensitivity within the Government and within the population about the seriousness of Russia's imperial aspirations and the potential for an invasion. The above factors prevented Ukraine from developing a view of Russia's current policy towards Ukraine using a framework that takes Russia's neo-colonial ambitions into account, but this should no longer be an impediment now.

46. For her project 'Born after Arrest' ("Народжені після арешту"), Ms Mumine Saliyeva has photographed the Crimean Tatar children who have never seen their fathers. The latter were arrested when their wives were pregnant for their independent journalism and political activism opposing Russia's occupying authorities and revealing their alleged crimes. Ms Saliyeva herself is an activist of Crimean Solidarity, a coordinator of the Crimean Childhood project, a mother of four and a wife of journalist Seyran Saliyev, arrested on bogus terrorism charges and sentenced to 16 years in prison in 2020 https://www.bornafterarrest.net/?fbclid=IwAR0_OKN0T_HMHNe3C_xdPx0PCDM_SuY5UZ-eq8-4e97UJNwN0puB6gm7V1g

47. Human Rights Centre Memorial. Four Crimean Tatars charged with participation in the banned Hizb ut-Tahrir are political prisoners, Memorial says (2 October 2020) https://memohrc.org/ru/news_old/memorial-schitaet-politizaklyuchyonnyim-chetveryh-krymskih-tatar-obvinyayemyh-v-uchastii-v

48. Constitution of the Ukrainian Soviet Socialist Republic (1937), art. 13 https://zakon.rada.gov.ua/laws/show/001_001#Text; Constitution of the Ukrainian Soviet Socialist Republic (1978), art. 68 <http://gska2.rada.gov.ua/site/const/istoriya/1978.html>

49. State Defence Committee. Resolution "On Crimean Tatars" No. GKO-5859cc of 11 May 1944 https://ru.wikisource.org/wiki/%D0%9F%D0%BE%D1%81%D1%82%D0%B0%D0%BD%D0%BE%D0%B2%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5_%D0%93%D0%9A%D0%9E_%E2%84%96_5859%D1%81%D1%81_%D0%BE%D1%82_11.05.44; State Defence Committee. Resolution "On the Eviction of Bulgarians, Greeks and Armenians from the Territory of the CASSR [Crimean Autonomous Soviet Socialist Republic]" No. GKO-5984cc of 2 June 1944 https://ru.wikisource.org/wiki/%D0%9F%D0%BE%D1%81%D1%82%D0%B0%D0%BD%D0%BE%D0%B2%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5_%D0%93%D0%9A%D0%9E_%E2%84%96_5984%D1%81%D1%81_%D0%BE%D1%82_02.06.44

50. The United Nations. Special Committee on Decolonisation <https://www.un.org/dppa/decolonization/en/c24/about>

CONCLUSIONS

Russia's aggression has reshaped the understanding of many issues of governance, social life, business priorities and academic research in Ukraine. The armed conflict has become a sad and bloody catalyst for some needed – and often overdue – changes, including in the realm of culture. This requires responsive and forward-looking domestic policies, the majority of which Ukraine has yet to develop.

The distortive renovation of the Crimean Tatar Bakhchysarai Palace, unlawful archaeological excavations, the destruction of early Muslim and Crimean Tatar sites and the illegal transfers of Ukraine's artifacts from the occupied peninsula to Russia, as well as the employment of the Russian Orthodox Church as a political and ideological tool of the Kremlin, prove that disinformation and the distortion of historical narratives are at the very heart of Russia's occupation policy in Crimea and are the crucial elements of its neo-imperial strategy at home and abroad. However outrageous these are in themselves, these violations are components of Russia's larger intention to validate its past, present and future presence in the peninsula by eliminating or diminishing the relevance of the Ukrainian and Crimean Tatar layers of Crimea's history.

Although Ukraine has acted upon such violations domestically and internationally, so far, its approach has largely focused on the mistreatment of Ukrainian and Crimean Tatar heritage as crimes against property. Ukraine should qualitatively expand this vision in its domestic policies, in its adjudication, and in its diplomatic efforts, as well as in its communication with its own society about the causes and dynamics of the armed conflict and about how to grapple with its consequences. Ukraine should argumentatively articulate how Russia's instrumentalised abuses of its cultural heritage bear the features of persecution, trigger Islamophobia, disproportionately victimise Crimean Tatar women and children and are part of Russia's larger neo-imperial intention to regain its former territories, encroaching on not just Ukraine's sovereignty but the multilateral rule-based order.

POLICY RECOMMENDATIONS

The Ukrainian authorities should:

Domestically:

1. Make sure that a holistic understanding of cultural heritage and the hybrid threats its abuses pose is considered within the national security policy:

- Amend the Law on the National Security of Ukraine to clearly indicate that cultural heritage policy is of national security importance.⁵¹
- It is unfortunate that the new Ukrainian National Security Strategy adopted in 2020 is quite cursory regarding heritage issues.⁵² Any further similar strategies should rectify this. As of now, a detailed strategic vision of the actions to be taken on the issue and a roadmap for its specific implementation should be included at least in the Human Development Strategy, the Military Security Strategy, the Information Security Strategy, the Cybersecurity Strategy, the Foreign Policy Strategy and in the Strategy on Ensuring State Security, all of which strategies are to be elaborated by the Government of Ukraine on the basis of the National Security Strategy of Ukraine.⁵³

2. Make the domestic discussion of and policymaking about cultural heritage issues more all-encompassing and inclusive of all key state and civil society stakeholders. At the very least, such discussion should include:

- the Ministry of Culture and Information Policy of Ukraine as a key executive authority;
- the Ministry of Foreign Affairs of Ukraine as a key foreign policy voice, a domestic UNESCO focal point and a lead actor in Ukraine's case versus Russia at the International Court of Justice that deals with cultural rights and the "cultural erasure" of ethnic Ukrainians and Crimean Tatars in the occupied peninsula;

- the Ministry of Defence, which ensures that Ukraine's Armed Forces are regularly trained on the laws and customs of warfare, including on the treatment of cultural property;⁵⁴
- investigative and prosecutorial authorities dealing with cultural property crimes, especially the Security Service of Ukraine, the Prosecutor's Office of Crimea (now in exile from Crimea), the prosecutor's offices of the Donetsk and Luhansk regions dealing with armed conflict-related proceedings and the Department of Criminal Proceedings concerning Crimes Committed during the Armed Conflict within the Office of the Prosecutor General;
- the Office of the National Security and Defence Council, which supervises the implementation of Ukraine's National Security Strategy. Heritage issues should be an indispensable component of this National Security Strategy;
- the Ministry of Education as a key authority on education policy, which should include discourses on the Russia-Ukraine armed conflict and the cultural heritage issues they raise;
- the Ukrainian Institute of National Memory or the representatives of any other truth-seeking mechanism(s), which might be established within the transitional justice framework;
- Ukrainian representatives of ICOM (International Council of Museums), ICOMOS (International Council on Monuments and Sites) and Blue Shield International;
- leading specialists in heritage studies and other relevant disciplines;
- cultural heritage lawyers.

3. While maintaining the reasoned and needed narrative about Russia's encroachment on Ukraine's history and culture in Crimea, the Ukrainian government should rectify the existing gaps in its own domestic heritage policy. At the very least, Ukraine should holistically catalogue and digitalise its collections and inventories; update emergency and evacuation plans; ensure the complete GPS-marking of heritage sights; organise regular trainings of Ukrainian armed forces on the rules and customs of international humanitarian law, including those concerning cultural property protection and proportionality assessment as required by Ukraine's domestic legislation and international law obligations.⁵⁵

4. Conduct respectful, critical and nuanced re-consideration of Ukraine's historiography, which is in many ways still influenced by Russia's imperial, Soviet and colonial narratives.

51. E.g. at the very least, include cultural heritage issue in Article 3.4, the Law of Ukraine on the National Security of Ukraine No. 2469-VIII of 21 June 2018 <https://zakon.rada.gov.ua/laws/show/2469-19#Text>

52. National Security Strategy of Ukraine, paras. 6, 46, 49, 57, 60 <https://www.president.gov.ua/documents/3922020-35037>

53. National Security Strategy of Ukraine, paras. 66, 67 <https://www.president.gov.ua/documents/3922020-35037>

54. Order of the Ministry of Defence of Ukraine Approving the Regulations on the Implementation of the Rules of International Humanitarian Law by the Armed Forces of Ukraine No. 167 of 23 March 2017, paras. 5, 8.5 <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

55. Order of the Ministry of Defence of Ukraine Approving the Regulations on the Implementation of the Rules of International Humanitarian Law by the Armed Forces of Ukraine No. 167 of 23 March 2017, para 5.1 <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>; Rules 142, 143 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul

5. Adopt Draft Law 2689, which will bring its Criminal Code in compliance with international humanitarian and criminal law and give Ukraine's domestic investigators, prosecutors and judges the toolkit to enhance their armed conflict-related proceedings, including regarding cultural heritage issues.⁵⁶

6. Ratify the Rome Statute⁵⁷ of the International Criminal Court to catalyse cooperation with the Court and its possible investigation into the Russia-Ukraine armed conflict and related alleged cultural property crimes.

7. Include strong cultural heritage aspects in all elements of Ukraine's emerging transitional justice policy.⁵⁸ In particular, Ukraine should:

- ensure proper domestic investigations and prosecutions of violations against cultural property;
- consider the victimisation of Ukraine's cultural and religious institutions by armed conflict, both in occupied/temporary uncontrolled territories and in Government-controlled areas, in any potential truth-seeking mechanism, reparation procedures, the mapping of institutional reforms and memorialisation policies;
- address Russia's instrumentalisation of Islamophobic policies in occupied Crimea;
- stress that such Islamophobic policies particularly victimise Crimean Tatar women and children;
- consider Russia's weaponization of Ukraine's cultural property in occupied Crimea as part of Russia's larger policy to persecute the opponents of its occupation and to colonise the peninsula.⁵⁹

56. Draft Law Amending Certain Legislative Acts of Ukraine on the Implementation of the Rules of International Criminal and Humanitarian Law No. 2689 of 27.12.2019 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804

57. The ratification of the Rome Statute is, among other things, Ukraine's obligation under the EU-Ukraine Association Agreement (art. 8). Numerous international governmental organisations and NGOs have called upon Ukraine to proceed with the ratification (e.g. PACE in its Resolution 2198 (2018) "Humanitarian Consequences of the War in Ukraine", para. 11.2; the Parliamentarian for Global Action (<https://www.pgaction.org/news/cap-icc-x.html>) and the Coalition for the International Criminal Court (<https://www.coalitionfortheicc.org/ukraine-ratify-now>).

58. "Transitional justice" is a system of judicial and non-judicial measures implemented with the different levels of possible international involvement to address grave human rights abuses and ensure accountability, justice and reconciliation. Such measures include individual prosecutions, truth-seeking, reparations, memorialisation, institutional reforms, vetting and wider guarantees of non-repetition. For more details, please see Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies S/2004/616 (23 August 2004) <https://www.un.org/ruleoflaw/files/2004%20report.pdf>; Annual reports of thematic reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence <https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/AnnualReports.aspx>

59. The Office of the Prosecutor of the International Criminal Court, Report on Preliminary Examination Activities 2020, para. 279 <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>

Internationally:

1. Substantiate the regional and international security threats certain alleged violations against cultural heritage pose, e.g. their connection with the militarisation of Crimea and the Black Sea and the Sea of Azov.⁶⁰

2. Maintain a permanent, illustrative in fact and argumentative in law, substantiation of Russia's alleged violations against Ukraine's cultural heritage in occupied Crimea that would be available at all times to international and regional diplomatic, judicial, think tank and academic platforms.

3. Develop a wider vision of heritage issues and amend accordingly the outreach and argumentation strategy, including at international courts. So far, Ukraine has predominantly focused on cultural heritage issues through the prism of cultural property protection and UNESCO. Without abandoning this important perspective, Ukraine should make it a part of a broader picture of Russia's attempted appropriation and Russification of the peninsula. Heritage issues should be connected with the limitation of cultural rights, the freedom of speech and assembly, access to education in the Ukrainian and Crimean Tatar languages, freedom of religion and the fuelling and instrumentalization of Islamophobia in the peninsula. Such expansion of the prism and building of an overarching perspective of alleged violations would allow Ukraine to use other platforms such as the UN Human Rights Council and its special procedures as well as the specialised committees under the relevant international treaties.

4. With due regard to jurisdictional limitations, align the strategies and tactics of presenting Russia's encroachment on Ukraine's cultural heritage in occupied Crimea and the violations connected to this encroachment in Ukraine's Crimea-related proceedings at international, regional and foreign courts.⁶¹ Where possible, Russia's overarching policy of gradually cultural erasing⁶² Ukrainians and Crimean Tatars should be emphasised.

5. Expand the substantiation of Russia's encroachment on Ukraine's cultural heritage in Crimea before the International Criminal Court. In particular, submit more evidence that such an encroachment contributes to the political persecution of ethnic Ukrainians and Crimean Tatars, which, under the Court's Rome Statute, is a crime against humanity.⁶³

60. UNGA, Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov, A/75/L.38/Rev.1, para. 17 <https://digitallibrary.un.org/record/3893540?ln=en>

61. In particular, at the International Criminal Court, the International Court of Justice, the European Court of Human Rights, the national Dutch proceedings concerning the so-called "Scythian Gold" and any possible universal jurisdiction proceedings.

62. As argued by Ukraine in its proceedings against Russia before the International Court of Justice and as recognised in the PACE motion for a resolution <https://pace.coe.int/en/files/28924>

63. Rome Statute of the International Criminal Court, article 7.1(h) <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>; The Office of the Prosecutor of the International Criminal Court, Report on Preliminary Examination Activities 2020, paras. 278-279 <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>

6. Independently and jointly, along with Ukraine's civil society, submit more evidence to foreign prosecutor's offices which might open universal jurisdiction proceedings into the Russia-Ukraine armed conflict and alleged heritage-related crimes, and also coordinate with foreign human rights NGOs, which lobby such proceedings.

7. Substantiate the renewed imperial and especially the neo-colonial dimensions of Russia's policy towards Ukraine in general and Crimea in particular more extensively.

Words and discourses matter.

Grappling with the awful consequences of colonisation is a painful yet crucially important process, which is justifiably prioritised on the international agenda. Ukraine should develop holistic, detailed, evidence-based argumentation explaining why the policies of Soviet Russia towards Ukraine were the succession of the imperial grasp of Tsarist Russia, colonial in essence, and how their attempted "reclamation" of Crimea is also a colonial continuation, in flagrant disregard of the international movement for decolonisation.

8. Utilise the Special Procedures of the UN Human Rights Council more. In particular, Ukraine should:

- Regularly submit more evidence about Russia's encroachment on Ukraine's historical and cultural heritage in Crimea and its wider persecution and post-imperial framework to the UN Special Rapporteurs with the relevant thematic mandates.⁶⁴ Ukraine should particularly prioritise the UN Special Rapporteurs focusing on cultural rights, on the rights of indigenous peoples, on the right to education, on the freedom of religion or belief, on the promotion and protection of human rights and fundamental freedoms while countering terrorism, on the promotion of truth, justice, reparation, and guarantees of non-recurrence.
- Establish the procedure for the permanent monitoring of the UN Special Rapporteurs' calls for inputs⁶⁵ and file the relevant contributions for the Crimean context, including regarding cultural heritage. Given the unparalleled cooperation between certain state authorities and civil society to map out Russia's alleged implication in violations of international law in occupied Crimea,⁶⁶ the joint state-civil society contributions or ones which are filed separately yet develop a similar line of argument, would give Ukraine's message a wider foundation and stronger credibility.

64. OHCHR, Thematic Mandates <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=™>

65. E.g. see here: Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Call for inputs – Accountability for gross violations of human rights and serious violations of international humanitarian law in transitional justice processes <https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/callAccountability.aspx>

66. Office of the Prosecutor-General. The Office of the Prosecutor-General Has Sent the Eighth Communication to the International Criminal Court on the Violations against Property in Occupied Crimea (30 July 2020) https://www.gp.gov.ua/ua/news?_m=publications&_t=rec&id=277804

- Consider requesting the appointment of a UN Special Rapporteur/Independent Expert on Ukraine or, if possible, on occupied Crimea. Such a mandate will not duplicate that of the UN Human Rights Monitoring Mission in Ukraine, instead, they would mutually reinforce each other. A potential Special Rapporteur would produce fewer reports, but these reports would be a more wide-ranging, bigger-picture look at the situation in Ukraine. A Rapporteur will also be able to consider individual cases of alleged survivors of grave human rights violations, receive contributions from governments and non-state actors and send communications to them. A Special Rapporteur will also attend the annual meeting on the special procedures of the Human Rights Council. Within such a framework and while engaging with her/his peers, a Special Rapporteur will be able to develop a more holistic view of the human rights situation in armed conflict-affected Ukraine and its occupied Crimea, including in relation to cultural heritage.⁶⁷

9. Emphasise that Russia contributes to global Islamophobia by fuelling the anti-Muslim sentiment with groundless terrorism allegations against Crimean Tatar activists opposing the Russian occupation.⁶⁸

10. Emphasise the grave gendered impact of such persecutory and Islamophobic policies in Crimea.

11. Cooperate with international governmental and non-governmental organisations, which peacefully address the issues of the weaponization of Islamophobia.

12. Discuss with foreign governments, especially those with developed art markets such as Switzerland, the UK, the EU and the US, the possibility of introducing import restrictions on cultural objects, which do or might originate in Ukraine, including from Russia-occupied Crimea.

13. Substantiate to foreign governments and international organisations the need to impose sanctions and restrictions on individuals and institutions engaged in violations against Ukraine's cultural heritage and in wider persecution policies in Crimea.

67. Certain Ukrainian officials and civil society members raised concerns about the possible pro-Russian bias of such a Rapporteur, which could make the whole endeavour counterproductive. While any concerns should be discussed and taken into account, it should be remembered that the UN Special Rapporteurs are selected on the basis of high professional and personal scrutiny, which ensures the impartiality of their office. Belarus and the Occupied Palestinian Territory could serve as comparative examples: even though those are also quite sensitive contexts, with high interest for powerful states, the selected Special Rapporteurs have demonstrated integrity in reporting on their respective country mandates.

68. Human Rights Centre Memorial. Four Crimean Tatars charged with participation in the banned Hizb ut-Tahrir are political prisoners, Memorial says (2 October 2020) https://memohrc.org/ru/news_old/memorial-schitaet-politzaklyuchyonnyimi-chetverym-krymskih-tatar-obvinyayemyh-v-uchastii-v

14. Regularly reach out to the top world museums and auction houses to update them on the alleged mistreatment of Ukraine's cultural property in the Russia-Ukraine armed conflict and prevent their engagement with Russian or other partners or initiatives which might involve objects originating in Crimea or Donbas or validate pro-Russian narratives about the occupied peninsula.

15. Liaise with INTERPOL to create special red lists on objects originating in Crimea and Donbas. Such lists should be updated regularly, including every time when Russia transfers Ukraine's artifacts from Crimea without permission or without there being an emergency, including for the purposes of exhibition.

16. Liaise with ICOM to create the ICOM Red List of Cultural Objects at Risk⁶⁹ from Ukraine.



The ruins of the ancient Greek city Chersonese near Sevastopol

69. ICOM. The ICOM Red Lists of Cultural Objects at Risk are practical tools to curb the illegal traffic of cultural objects <https://icom.museum/en/our-actions/heritage-protection/red-lists/>

Ukraine's civil society should:

1. Pay more attention to different cultural heritage aspects of the alleged human rights violations they document and submit for domestic and international proceedings. In particular, such human rights organisations should remember that the encroachment on cultural heritage and the suppression of the exercise of cultural rights and the freedoms of assembly and of religion and of belief might strengthen the substantiation of the crime of persecution and other crimes.⁷⁰

2. Maintain and expand cooperation with domestic investigative and prosecutorial authorities to enhance their capacity to address cultural heritage crimes and strengthen their evidential basis.

3. File contributions⁷¹ and submissions⁷² on heritage issues, cultural rights, and the freedoms of assembly and religion and belief in the occupied peninsula to the special procedures of the UN Human Rights Council to show the details of Russia's persecution policy against its opponents in the peninsula. Particular focus should be placed by the Special Rapporteurs on the promotion of truth, justice, reparation and guarantees of non-recurrence; on cultural rights; on the rights of indigenous peoples; on the right to education; on the freedom of religion or belief; and on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

70. The Office of the Prosecutor of the International Criminal Court Report on Preliminary Examination Activities 2020, paras. 278-279 <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>; The Office of the Prosecutor of the International Criminal Court, Draft Policy on Cultural Heritage, paras. 72-74, <https://www.icc-cpi.int/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf>

71. OHCHR. Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. Questionnaire "Accountability for gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes" <https://www.ohchr.org/Documents/Issues/Truth/Questionnaire/Questionnaire-accountabilityF-EN.pdf>

72. OHCHR. Special Procedures. What are Communications? <https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Ukraine's international partners might consider:

1. Enhancing and including into their respective policies on countering hybrid warfare and sanctions the understanding that encroachments on cultural heritage are a dangerous tool of hybrid influence and are an acute, albeit often invisibly creeping, security threat.
2. In their statements condemning Russia's conduct in Crimea, of listing specific alleged violations against Ukraine's cultural heritage in Crimea, connecting them with other human rights violations there and Russia's larger policy of the militarisation and colonisation of the occupied peninsula.
3. Providing expert and technical support to Ukraine regarding the best practices of the documentation, investigation and prosecution of violations against cultural property.
4. Supporting domestic proceedings, including those based on the principle of universal jurisdiction, concerning the Russia-Ukraine armed conflict. Where possible, such proceedings should pay particular attention to alleged violations against cultural property in Crimea and their instrumentalization by Russia to legitimise its authority over Crimea.

5. Ensuring thorough due diligence of cultural events that their officials are invited to. Making sure their officials avoid events which exhibit artifacts unlawfully transferred from Crimea, endorse Russia's occupation of the peninsula and/or its distortive interpretations of its history or involve culture figures who unequivocally support Russia's bloody policies in Ukraine, Syria or similar contexts or in any other way disregard basic human rights, including members of the Russian opposition.⁷³

6. Appealing to their domestic research and cultural institutions, especially museums, galleries and auction houses, to be particularly vigilant when dealing with Russian and other cultural institutions and ensure that they do not develop partnerships around objects that might originate in occupied Crimea or engage in projects that might endorse Russia's distortive interpretation of Crimea's history.

7. Developing policies on subjecting individuals, institutions and entities engaged in violations against Ukraine's cultural heritage and wider persecution policies in Crimea⁷⁴ to restrictions and sanctions. Particular attention should be paid to cultural and research institutions as well as construction and transportation companies and their final beneficiaries.

8. Introducing special import restrictions on cultural objects, which originate or might originate in Ukraine, including in Russia-occupied Crimea.

73. Artists Who Stand for War. The letter to the Ministry of Culture of the Russian Federation (11 March 2014) <https://russianartists4war.com/letter/>

74. A number of such persons, institutions, and entities can be found listed here: the Mission of the President of Ukraine in the Autonomous Republic of Crimea, Informational and analytical note on the situation with cultural and archaeological heritage in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol http://www.ppu.gov.ua/wp-content/uploads/2020/11/Informatsiy-na-dovidka-shhodo-sytuatsii-z-kulturnymy-tsinnostyamy_angl.pdf



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