

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Cultural Erasure in Ukraine

Wednesday, September 25, at 3:00 p.m.
Room 2247 of Rayburn House Office Building

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Thank you for inviting me to participate in this important hearing about cultural erasure in Ukraine. My name is Karima Bennouna. I am a professor of international law at the University of Michigan Law School and speak today in that capacity.¹ I am also the former UN Special Rapporteur in the field of cultural rights.²

I am gravely concerned about reports of widespread and systematic Russian attacks on culture and cultural heritage in Ukraine, including at least 438 cultural sites to which UNESCO has reported damage.³ Alongside the slaughter of Ukrainian civilians, their cultural treasures,

¹ University of Michigan Law School, Bio: Karima E. Bennouna, <https://michigan.law.umich.edu/faculty-and-scholarship/our-faculty/karima-bennouna>.

² United Nations Human Rights Office of the High Commissioner, Karima Bennouna: Former Special Rapporteur in the field of cultural rights, <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/karima-bennouna>.

³ UNESCO, 7 February 2024, Damaged cultural sites in Ukraine verified by UNESCO, Updated 8 October 2024, <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>. Note that the number of reportedly affected sites continues to grow.

including museums, paintings and libraries, have also been destroyed.⁴ Artists and cultural workers have been killed.⁵ As Ukraine's Prosecutor General notes, this is like "cutting roots from a tree."⁶ It is not incidental, but instead closely related to Vladimir Putin's attempt to justify the war by claiming Ukraine is not a distinct country.⁷ To paraphrase a line from the film "The Monuments Men," "if you destroy [a people's] achievements and their history, then it's like they never existed." So, these cultural crimes must also be strongly condemned and thoroughly investigated, alleged perpetrators must be brought to justice, and there must be international support for Ukraine's cultural workers. Such efforts are an essential component of an effective international response to Russia's illegal invasion.

I was asked to provide an overview of the relevant international legal frameworks.⁸ I begin with definitions. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict defines "cultural property" broadly to include movable or immovable property, such as monuments of architecture, art or history, artworks, archaeological sites, books, and archives, as well as institutions that house them (Article 1).⁹ Cultural heritage is a broader concept which includes tangible heritage, as described, as well as intangible heritage comprising customs

⁴ See Mercedes Sapuppo, Atlantic Council, 17 September 2024, Countering Russia's campaign to erase Ukrainian cultural identity, <https://www.atlanticcouncil.org/blogs/ukrainealert/countering-russias-campaign-to-erase-ukrainian-cultural-identity/>; Smithsonian Global, Remotely Monitoring Ukraine's Cultural Heritage with the Conflict Observatory, <https://global.si.edu/projects/remotely-monitoring-ukraine%E2%80%99s-cultural-heritage-conflict-observatory>.

⁵ PEN International, 2 May 2024, Ukraine: Over 100 cultural figures killed by Russian forces since full-scale invasion, <https://www.pen-international.org/news/ukraine-over-100-cultural-figures-killed-by-russian-forces-since-full-scale-invasion>.

⁶ Andriy Kostin, Prosecutor General of Ukraine, International Bar Association, 28 February 2024, The Russian assault on Ukraine's heritage, <https://www.ibanet.org/The-Russian-assault-on-Ukraines-heritage>.

⁷ Sapuppo, *supra* note 4.

⁸ For further discussion, see then-United Nations Special Rapporteur in the field of cultural rights, Karima Bennouna, 9 August 2016, Report to the United Nations General Assembly, Intentional Destruction of Cultural Heritage as a Violation of Human Rights, UN Doc. A/71/317, <https://documents.un.org/doc/undoc/gen/n16/254/44/pdf/n1625444.pdf>.

⁹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, Article 1, <https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention?hub=415>.

and practices, languages, forms of artistic expression and folklore.¹⁰ Both kinds of heritage are critical to preserving cultural life and education. Tangible and intangible heritage are interlinked. Attacks on one are usually accompanied by assaults on the other,¹¹ as has been the case in Ukraine.

Cultural heritage is a fundamental resource people need to enjoy a range of human rights, including freedoms of expression and of religion or belief, and the right to education.¹² The right of access to and enjoyment of cultural heritage is itself guaranteed by international human rights law, finding its legal basis in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.¹³ The UN Committee on Economic, Social and Cultural Rights in its General Comment No. 21 explained that the right to take part in cultural life, guaranteed by Article 15 of the International Covenant on Economic, Social and Cultural Rights, a treaty to which both Russia and Ukraine are parties, includes the right to access and enjoy cultural heritage.¹⁴ That Covenant continues to apply in times of conflict and military occupation alongside international humanitarian law.¹⁵

¹⁰ See UN Doc. A/71/317, *supra* note 8 at paras. 10, 53 and 61.

¹¹ *Id.*

¹² *Id.*, paras. 14-16.

¹³ *Id.*

¹⁴ U.N. Committee on Economic, Social and Cultural Rights, 21 December 2009, General Comment No. 21: Article 15(1)(a) (The Right of Everyone to Take Part in Cultural Life), ¶¶ 49(d), 50, <https://www.refworld.org/legal/general/cescr/2009/en/83710>.

¹⁵ “There is no provision on derogation in the International Covenant on Economic, Social and Cultural Rights and the Committee on Economic, Social and Cultural Rights has confirmed that the Covenant applies in times of conflict or emergency. The Committee has noted ‘that even during armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights as part of the minimum standards of human rights are guaranteed under customary international law.’ It has specifically considered that such standards apply in occupied territory, and wherever the State party exercises ‘effective control’. Additionally, the Committee has required States parties to do everything in their power to improve enjoyment of economic, social and cultural rights during armed conflict. The International Court of Justice has confirmed the applicability of international human rights law to situations of military occupation and noted that the occupying Power is bound, *inter alia*, by the provisions of the International Covenant on Economic, Social and Cultural Rights.” UN Doc. A/71/317, *supra* note 8 at para 60 (citations omitted).

Intentional destruction of cultural heritage is a violation of human rights. It bears important consequences for current and future generations. Such destruction sometimes aims at erasing memory of events, civilizations and peoples, or deliberately targeting or terrorizing individuals and groups on the basis of their cultural affiliation. These acts may be part of a wider scheme to forcibly assimilate or deliberately kill a group of people. Evidence suggests this is the case in Ukraine. Such destruction undermines numerous rights. It may be part of what I described while Special Rapporteur as “cultural engineering,”¹⁶ practised by those who seek to erase whatever does not accord with their vision, and a form of cultural warfare against populations. I shared UNESCO’s view that acts of intentional destruction also sometimes constitute “cultural cleansing.”¹⁷ They take terrorizing a population to a heightened level through an attack on its very history.

A specific legal regime enhances heritage protection in times of conflict. Core standards in international humanitarian law include the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Protocols thereto, Additional Protocol 1 to the Geneva Conventions, and the Rome Statute of the International Criminal Court, as well as customary international law.

The Hague Convention, ratified by the Russian Federation and Ukraine, requires parties to respect cultural property and refrain from any act of hostility directed against it or any use of it likely to expose it to such acts, subject only to imperative military necessity (Article 4). Any military necessity exception to the ban on targeting cultural property must be interpreted narrowly. In accordance with Article 28, parties must prosecute and impose sanctions upon those who

¹⁶ *Id.* at para 36.

¹⁷ See, e.g., UNESCO, 6 November 2017, UNESCO and Partners stand against Cultural Cleansing and Violent Extremism, <https://whc.unesco.org/en/news/1744>.

commit or order a breach of Convention provisions. Individual criminal responsibility arises under international law from serious offences against cultural heritage, which can rise to the level of war crimes or be a part of crimes against humanity, and may also be evidence of intent to destroy a group within the meaning of the Genocide Convention.¹⁸ The Office of the Prosecutor of the International Criminal Court (ICC) charged the destruction of cultural and religious sites as a stand-alone war crime for the first time in the *Al Mahdi* case, resulting in a 2016 guilty verdict.¹⁹ As an expert for the ICC at the reparations phase,²⁰ I endorsed the Court's important conclusion that the crime in question aimed at "breaking the soul of the people" and was of "significant gravity."²¹ There should be similar prosecutions in the future, including in regard to such crimes in Ukraine, and to that end States must collect and preserve evidence now.

The protection of frontline defenders of cultural heritage who are at risk is also critical to consider.²² I pay tribute to those who have fallen, including Iryna Osadcha, Director of the Local History Museum in Kupiansk, who was killed in an April 2023 attack on her museum.²³ Some cultural workers come within Article 15 of the Hague Convention which provides that personnel engaged in the protection of cultural property are to be respected and must be allowed to carry on their work if the cultural property for which they are responsible falls into the hands of an opposing

¹⁸ UN Doc. A/71/317, *supra* note 8 at paras 26-27.

¹⁹ The Prosecutor v. Ahmad Al Faqi Al Mahdi, 27 September 2016, Case no ICC-01/12-01/15, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2016_07244.PDF.

²⁰ See Karima Bennouna as Expert Appointed by the ICC in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi* (reparations phase) (concerning destruction of cultural heritage sites in Mali), 27 April 2017, Brief for the International Criminal Court, public redacted version: ICC-01/12-01/15-214-AnxI-Red3, 14-08-2017, https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2017_05022.pdf.

²¹ *Al Mahdi*, *supra* note 19 at paras. 80, 82.

²² UN Doc. A/71/317, *supra* note 8 at paras 68-75. See also then-United Nations Special Rapporteur in the field of cultural rights, Karima Bennouna, 20 January 2020, Report to the UN Human Rights Council, Cultural Rights Defenders, UN Doc. A/HRC/43/50, <https://documents.un.org/doc/undoc/gen/g20/014/98/pdf/g2001498.pdf>.

²³ Mariana Matveichuk, PEN Ukraine, 29 April 2024, Iryna Osadcha: Soft Resistance, <https://pen.org.ua/en/iryna-osadcha-m-vakyj-sprotyv>.

party. This provision must be fully implemented. Ukrainian cultural workers should also be consulted about international responses to attacks on culture in their country.²⁴

Leading cultural experts report a clear pattern of Russia targeting cultural sites such as museums, libraries and archives.²⁵ They have also documented repeated targeting of centers of Ukrainian language learning, including libraries and publishing houses.²⁶ This targeting has extended to writers and librarians who have been reportedly killed, kidnapped and threatened.²⁷ All this violates the rights of Ukrainians under Articles 22 and 27 of the Universal Declaration of Human Rights, as well as under Article 15 of the International Covenant on Economic, Social and Cultural Rights, and may constitute violations of the Hague Convention and other international humanitarian law instruments giving rise to individual criminal responsibility.²⁸

Accountability for violations of cultural rights and for cultural cleansing should be included in all accountability processes.²⁹ Accountability mechanisms must consider the impact on Ukrainian cultural workers, and on the human rights of the Ukrainian population, and not just on cultural objects themselves. I have seen firsthand in a number of contexts around the world the anguish caused to people under occupation and facing other atrocities by attacks on their most precious cultural heritage and the erasure of their histories. This represents the destruction of the

²⁴ See UN Doc. A/HRC/43/50, *supra* note 22 at paras. 75, 78(e).

²⁵ See, e.g., UNESCO, *supra* note 3; Tatiana Vorozhko & Iryna Matviichuk, VOA News, 4 June 2024, Russians target Ukrainian publishing industry, libraries, books, archives, <https://www.voanews.com/a/russians-target-ukrainian-publishing-industry-libraries-books-archives-/7643318.html>.

²⁶ *Id.*

²⁷ See, e.g., *id.*; Michael M. Naydan, World Literature Today, 16 December 2022, Signs of Ethnic and Cultural Genocide in Ukraine: The Murder of Children's Book Writer Volodymyr Vakulenko, <https://www.worldliteraturetoday.org/blog/essay/signs-ethnic-and-cultural-genocide-ukraine-murder-childrens-book-writer-volodymyr>.

²⁸ The United States could underscore the importance of such violations by becoming a State Party to the International Covenant on Economic, Social and Cultural Rights and the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Moreover, the United States can play a greater leadership role on this important issue by systematically raising concerns over the destruction of cultural heritage in armed conflict, whether carried out by adversaries or allies.

²⁹ UN Doc. A/71/317, *supra* note 8 at paras 78(e) and (f).

resources they most need to draw strength from in their darkest hour. The international community must respond.

Thank you.