

## **Destruction of Cultural Heritage in Yemen**

Statement made by Kristin Hausler at UNOG

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I would first like to congratulate the Human Rights Council for having established the Group of Experts and rightfully put the conflict in Yemen high on its agenda, as this is one of the most significant humanitarian crisis at present.

The Report of the Group of Experts, which is under the Council's consideration, is particularly concerning. It reports numerous attacks on civilians and civilian buildings, in violation of the principle of distinction, a pillar of international humanitarian law. The Group of Experts states that it received information about at least 32 incidents concerned with damage or destruction by coalition air strikes of "medical facilities and educational, cultural and religious sites", which benefit from special protection under international humanitarian law (para 35). The Group of Experts also believes that "the no-strike list of protected objects was not being adequately shared within the coalition command chain." No-strike lists are a valuable tool in modern warfare which benefits from precision aerial bombing techniques and thus of an ability to avoid bombing objects that are on the list such as cultural sites. These lists can be taken into account by a criminal court as it assesses whether an alleged perpetrator ought to know of the special value of an object.

In addition to attacks against cultural properties, the Group of Experts also states that it has "reasonable grounds to believe that the Governments of Yemen, the United Arab Emirates and Saudi Arabia are responsible for a large number of human rights violations, including cultural rights". (G. Conclusions and recommendations)

While attacks against cultural properties and violations of cultural rights are mentioned in the Group of Experts' Report, there is only a limited amount of information about those violations of international law, this presentation is thus focused on the destruction of Yemeni cultural heritage, as this is an issue that has received very little attention so far.

The destruction of cultural heritage has made headlines news over the past decade, with one particular focus on attacks against the rich heritage of Mesopotamia, where now lie most of the territory of Iraq and parts of Syria.

Like Mesopotamia, Yemen could be considered as a "cradle of civilization", as its cultural heritage can be traced back to tens of thousands of years. The first waves of Homo sapiens migrated out of Africa across the Bab al-Mandab strait, about 60,000 years. Sitting at a crossroad of civilisations, Yemen has long been a point of connection for its neighbours in the Horn of Africa, but also for India, Egypt, the Ancient Greece and Rome, as well as the Middle East. It is also considered as one of the most ancient cradles of Judaism, Christianity, and Islam. As a result, its cultural heritage is not only particularly rich but also a testament of our common history, the history of mankind.

The importance of its heritage has been recognised through the listing of four of its sites on the UNESCO World Heritage List for their 'outstanding universal value'. The cultural sites listed of World Heritage are:

- (1) the Historic Town of Zabib, which was the capital of Yemen from the 13<sup>th</sup> to the 15<sup>th</sup> century;

- (2) the Old City of Sana'a, which is not only the site of the current capital of Yemen but also a city that has been continuously inhabited for more than 2,500 years and which houses over one hundred mosques; and
- (3) the Old Walled City of Shibam, built in the 16<sup>th</sup> century, which is one of the oldest and best examples of vertical urban planning with its distinctive towers made of mud bricks – it has been nicknamed as the 'Manhattan of the desert'. A writer has described its fourteen stories buildings as looking like they have been "baked of iced gingerbread", adding that the Yemeni landscape "looks like nowhere else on Earth".

Because of the conflict, all of these sites have been placed on the list of World Heritage sites in danger. These three sites have nevertheless all been damaged by the conflict, as well as other sites which are on the tentative list of UNESCO World Heritage sites, such as the Marib dam which was the largest dam built in the Antiquity and has been repeatedly bombarded by the coalition.

The cultural heritage of Yemen goes of course well beyond these three listed sites. For example, there are over 50,000 archaeological sites. A curator at the British Museum has called the Arabian Peninsula an "archaeological jewel". Several archaeological sites have been bombarded by the coalition such as the site of Sirwah, for example. In situations of conflicts and even more so immediately after a conflict ends, archaeological sites are at risk of looting. So far, it is the trafficking of objects from Iraq and Syria that have led to country-specific import bans. Little attention has been paid at the international level to the risk of trafficking associated with the Yemen conflict. Nevertheless, in order to counter trafficking in objects originating from Yemen, ICOM, the International Council of Museums, has published a Red List of objects, which includes the types of precious objects that are at risk of looting and trafficking outside Yemen. All States must ensure that their customs and law enforcement officials are familiar with this list. This is not only important for states that have a vibrant art market but also for all States through which those objects may transit before emerging on the market.

Finally, it is worth noting that museums have also been damaged from coalition bombardment, including the National Museum in Sanaa but also the Dhamar Archaeological Museum which housed over 12,000 objects and which has been completely destroyed.

There is photographic evidence, including satellite images of the numerous cultural sites which have been destroyed. In addition, the Yemeni General Organization of Antiquities and Museums (GOAM) has maintained a list of the cultural sites that have been damaged or destroyed. It has been working with UNESCO and EAMENA (Endangered Archaeology in the Middle East & North Africa Project in Oxford) to build a database to monitor Yemen's heritage.

While some buildings may be restored, some antiquities will be lost for ever as a result of trafficking. In addition, once an object has been looted from an archaeological site, any contextual information attached to the object is lost as well, which means that it may be impossible to understand the historical significance of a particular object. This is a loss for the population of Yemen and an attack on its cultural identity, an identity which is necessary for its survival. It also a loss for us all.

Under international humanitarian law, cultural properties, including objects such as antiquities but also buildings such as monuments as well as buildings containing cultural property, such as museums, benefit from special protection.<sup>1</sup> The law is very clear as it prohibits all parties to

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<sup>1</sup> Yemen is a party to the 1954 Hague Convention but not to the 1999 Second Protocol.

an armed conflict, including non-state armed groups, to conduct direct attacks against cultural properties. It also prohibits the military use of cultural properties. When conducting an attack, the parties to the conflict must also take measures of precaution in order to avoid any damage to cultural objects. That includes suspending an attack if it may cause incidental damage that would be excessive in relation to the concrete and direct military advantage anticipated. In its Report, the Group of Experts notes that it believes that attacks were conducted, not only in violation of the principles of distinction, but also in violation of the principles of proportionality and precaution.

Educational facilities benefit from special protection if they also qualify as ‘cultural property’ under international law. Therefore schools, in general, do not benefit from special protection under international humanitarian law but they are protected as civilian properties. In addition, in 2017, Yemen has signed the Safe Schools Declaration to protect education in conflict. Therefore the Government made a public commitment to protect students, teachers and schools from direct attacks and from being used for military purposes. It thus also means that the Government ensures that the *human right* to education is effectively realised.

With regard to accountability, the Group of Experts believe that “individuals in the Government of Yemen and the coalition, including Saudi Arabia and the United Arab Emirates, and in the de facto authorities have committed acts that may, subject to determination by an independent and competent court, amount to international crimes”. Those crimes may include crimes against cultural sites, a type of crime that has already been the object of proceedings before the ICC and the ICTY, for example.

Intentionally directing attacks against cultural properties is a war crime in both international and non-international armed conflicts.<sup>2</sup> In addition, attacks against cultural properties may also amount to persecution, which is a crime against humanity in case attacks against cultural properties are part of a widespread or systematic attack against a particular group.<sup>3</sup>

But the destruction of cultural objects and cultural sites is not only a violation of international humanitarian law; it is also a human rights’ violation. Cultural heritage is indeed now deemed an important tenet of the right to take part in cultural life.<sup>4</sup> The link between cultural heritage and human rights has been affirmed on numerous occasions. The UNESCO Declaration on the Intentional Destruction of Cultural Heritage, adopted in 2003, stressed that “cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights”.

In her 2011 Report, the former Special Rapporteur in the field of cultural rights affirmed that the right to access to and enjoyment of cultural heritage forms part of international human rights law. She also noted that “the destruction of cultural heritage can be used as a strategy to destroy the morale of the enemy”, adding that “The destruction of cultural heritage in the context of war or conflict has important human rights implications.”

In her first report to the Human Rights Council in 2016, the current Special Rapporteur in the field of cultural rights focused on the intentional destruction of cultural heritage and stated that “Cultural heritage is significant in the present, both as a message from the past and as a pathway

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<sup>2</sup> According to Article 8(2)(e)(iv) of the Rome Statute, which applies in non-international armed conflict, it is a war crime to intentionally direct: “attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.”

<sup>3</sup> Art 7(2)(g) Rome Statute.

<sup>4</sup> As enshrined under Art 15 ICESCR.

to the future.[...] When cultural heritage is destroyed, this bears important consequences for a wide range of human rights for current generations and those to come.”

The Human Rights Council has itself recognised the importance of safeguarding cultural heritage within its mandate. In a 2016 Resolution, the Human Rights Council also noted that “the violation or abuse of the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage, may threaten stability, social cohesion and cultural identity, and constitutes an aggravating factor in conflict and a major obstacle to dialogue, peace and reconciliation.”<sup>5</sup> This is of course the case with regard to the conflict in Yemen; it is thus necessary to stress that the destruction of cultural heritage in Yemen is in violation of both international humanitarian law and international human rights law, and an aggravating factor in the conflict, as well as an obstacle to its peaceful resolution.

## **Recommendations**

The Human Rights Council should adopt the Group of Experts recommendations, including by renewing the Group’s mandate in order to ensure that the situation of human rights in Yemen remains on the Council’s agenda.

In addition, it should specifically require that the Group of Experts looks in more details into attacks on cultural heritage in Yemen.

The Human Rights Council should also call on all parties to the conflict to respect all cultural properties and not conduct any direct attacks against cultural properties (including through the use of the no-strike list), nor use cultural properties for military purposes. It should thus also continue to call on all states to ratify the treaties that protect cultural property in armed conflict and provide training to their armed forces on the norms they contain, as well as on the importance of respecting cultural heritage more in general. States must also ensure that their domestic law criminalises attacks against cultural heritage. Finally, States must consider putting in place import bans with regard to Yemeni artefacts and ensure that their customs and law enforcement officials are familiar with the ICOM Red List.

The Human Rights Council should also urge the Security Council to emphasize the human rights dimensions of the conflict in Yemen and the need to ensure that there will be no impunity for the most serious crimes, which include attacks against cultural objects.

All tangible forms of cultural expression that one can find in Yemen, such as a piece of antiquity, a monument or a religious building, are not just specially protected civilian objects; they are also expressions of Yemeni’s identity and a part of the heritage of mankind as a whole. The protection of cultural heritage in Yemen is thus essential not only to safeguard history but to support the resolution of the conflict and the survival of a population, which largely consists of civilians who not only deserve to live in peace but also be able to transmit their heritage to future generations.

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<sup>5</sup> HRC Resolution 33/20 (2016) on cultural rights and the protection of cultural heritage