UNESCO SYMPOSIUM
ON THE 50TH ANNIVERSARY OF
THE 1954 CONVENTION FOR THE PROTECTION
OF CULTURAL PROPERTY
IN THE EVENT OF ARMED CONFLICT

PARIS, MAY 14, 2004

THE PROTECTION OF THE CULTURAL PROPERTY IN THE EVENT OF AN ARMED CONFLICT WITHIN THE CASE-LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Theodor Meron
President, International Criminal Tribunal
for the Former Yugoslavia

Ladies and Gentlemen:

It is an honour and a privilege to be invited to take part in this symposium, commemorating the 50th anniversary of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict. All too often the destruction of cultural property is overshadowed by other human horrors of conflicts. These cultural monuments, however, represent a common and irreplaceable heritage of all humankind. They serve as a defining link between us and our ancestry, and are essential to our identity. The 1954 Convention, by stating strongly that international law will strive to safeguard this heritage, was a milestone step towards the creation of an international order where our cultural patrimony is protected from wanton destruction.

To be effective, the protections established by the Convention need, of course, to be enforced vigorously by national and international courts. The norms enunciated by the Convention, moreover, can inform our understanding of other international legal instruments which offer protection to cultural property in the event of armed conflicts. I am therefore grateful for the invitation to speak before you about the protection of the cultural property in the jurisprudence of my own court, the International Criminal Tribunal for the Former Yugoslavia.

As most of you know, my Tribunal was established by the Security Council pursuant to its Chapter VII authority to enact measures necessary to maintain or restore international peace and stability. The Tribunal's mandate is to try individuals responsible for the violations of international humanitarian law and the international laws or customs of war committed during the conflict in the former Yugoslavia in the first half of the 1990s. The Statute under which the Tribunal operates, and which both vests us with jurisdiction and provides a substantive definition of offences we must punish, was thus enacted by the Security Council. In carrying out our judicial function, we must also ensure that the offences we try were prohibited by customary international law at the time of their commission.

In these remarks, I will first outline the normative framework provided for the protection of cultural property by the provisions of our Statute. I will then examine in detail the relevant cases decided by the Tribunal which dealt with the destruction of cultural property and the appropriate punishment under international law. Finally, I will comment briefly on the indictments confirmed by the Tribunal where destruction of cultural property was pleaded by the Prosecution. I would not be able to offer detailed comments on these cases because they have not yet been decided. But the list of issues presented in these indictments will give a sense of how the jurisprudence of the Yugoslavia Tribunal on the protection of cultural property may evolve, and of the degree of protection that may be afforded to cultural property in future cases.

The most important provision in the Statute of the Tribunal relating to the protection of cultural property is Article 3, Section D. Article 3 in general prohibits violations of the laws and customs of war. This Article requires that the acts prohibited under it be closely related to an armed conflict.[1] In elaborating this requirement, the Appeals Chamber of our Tribunal has explained that "[w]hat ultimately distinguishes a war crime from a purely domestic offence is that a war crime is

[1] *See, e.g.*, *Prosecutor* v. *Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70.

shaped by or dependent upon the environment—the armed conflict—in which it is committed. . . . The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed."[2] This requirement needs to be compared with the requirement of Article 18.1 of the Convention for the Protection of Cultural Property. Article 18.1 states, in relevant part, that the Convention "shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties." While Article 18.1 in terms applies only to international armed conflicts, Article 3 of the Tribunal's Statute has been interpreted in the Tribunal's case-law to apply to both international and national armed conflicts.[3]

This interpretation parallels Article 19.1 of the Convention, which states that, "[i]n the event of an armed conflict not on an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property." It is important to note, of course, that the Convention, from its inception, intended for some of its measures to apply in times of peace, in order to provide a more robust protection of cultural property in wartime. These measures were recently strengthened by the adoption of the 1991 Additional Protocol, which insists on the need to take preparatory measures in peacetime to protect cultural property in times of war.

Section D of Article3 of our Statute states that the offences prohibited under it as violations of the laws or customs of war shall include "seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments

---

[2] *Prosecutor* v. *Kunarac*, IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, para. 58..
[3] *Prosecutor* v. *Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 137.

and works of art and science." Section D also states that this list is not necessarily an exhaustive one.

As many of you may have recognized, this statutory provision reproduces the core of Articles 27 and 56 of the Hague Regulations annexed to the Fourth Hague Convention of 1907. The Hague Convention, of course, did not refer in terms to the notion of cultural property among the protections it established as a part of the international law of war. But that does not mean that Article 3 of our Tribunal's Statute cannot be regarded as a source of protection for cultural property in the event of an armed conflict. A comparison between the text of the article which I just quoted and Article 1 of the 1954 Convention shows that Article 3, Section D of our Statute covers a significant part of what has come to be considered as cultural property. Article 3, Section D therefore allows our Tribunal to try and punish the destruction of this property as a war crime.

Let me also draw your attention to another provision in our Statute, Article 2, which vests the Tribunal with authority to punish violations of the Geneva Conventions of 1949. Section D of that Article prohibits "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." The text of this Article would suggest that it may, in appropriate cases, serve as another statutory source of protection of cultural property. The practice of our Tribunal, to which I will turn in a moment, has been to use Article 3, Section D as the statutory provision under which to punish destruction of cultural property. None of the cases decided so far have done so under Section D of Article 2. The reason for this practice is likely two-fold. First, Article 3, Section D is a more specific provision that Article 2, Section D, because it expressly described the kind of property whose destruction is punishable under our Statute. This property is described as "institutions dedicated to religion, charity and education," and to "the arts;" the provision also punishes destruction of "historical monuments and works of art." Section D of Article 2, by contrast, refers only to "property," and provides no elaboration of the term. Second, as

I already explained, under the jurisprudence of the Tribunal, Article 3, which concerns violations of laws or customs of war, applies both to international and internal armed conflict. By contrast, Article 2, which relates only to grave breaches of the Geneva Conventions of 1949, applies only to armed conflicts of international character. Given the nature of the armed conflict in the former Yugoslavia, which had both international and internal elements, Article 3 covers a broader swath of conduct than Article 2. The preference exhibited by the Trial Chambers of our Tribunal for Article 3 may, therefore, be viewed as a welcome development from the standpoint of safeguarding cultural property, because it affords that property a higher degree of protection.

In addition, Article 5 of the Tribunal's Statute authorizes the Tribunal to punish, as crimes against humanity, a range of offences committed against civilian population in the course of an armed conflict, whether international or internal in character. The case-law of the Tribunal has explained that to be prohibited by this provision of the Statute, the proscribed act must form a part of a widespread or systematic attack on the civilian population, and the perpetrator must know about the attack as well as about the fact that his acts form a part of the attack.[4] Section (H) of Article 5 provides that these punishable offences shall include "persecutions on political, racial and religious grounds." While this provision does not mention cultural property (nor even property in general), as I will demonstrate shortly, it has been used by Trial Chambers of the Tribunal to hold individuals who committed destruction of cultural property responsible for their acts. As I will also explain, this jurisprudence of our Tribunal may offer a way of strengthening the applicability of the Convention not only in times of war but also in peacetime.

Let me now turn to the case-law of the Tribunal which has applied and elaborated these statutory norms. There are six cases decided by the Tribunal in which the destruction of cultural property was at issue. Four of these cases were decided after a trial, while two were a result of

[4] *See, e.g.*, *Prosecutor* v. *Krstić*, IT-98-33-A, Judgement, 19 April 2004, para. 223; *see also Prosecutor* v. *Kunarac*, IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, paras 85, 96, 102.

guilty pleas entered by the defendants. I will discuss these cases in the chronological order in which they were decided, in order to give you a sense of the development of the Tribunal's jurisprudence on the protection of cultural property.

I begin with the decision in the case of Tihomir Blaškić, a Croatian general convicted in March 2000, for offences which included violations of law and customs of war under Article 3 of our Statute.[5] Among these violations was a conviction for the destruction of institutions dedicated to religion or education in 12 towns and villages located in the Lašva Valley in the central part of Bosnia and Herzegovina. In rendering the conviction for this offence, the Trial Chamber specified that, to be punishable under Article 3, Section D, "[t]he damage of destruction must have been committed intentionally to institutions which may clearly be identified as dedicated to religion or education and which were not being used for military purposes at the time of the acts."[6] The Trial Chamber also stated that, to constitute violations of international laws or customs of war, "the institutions must not have been in the immediate vicinity of military objectives."[7] The Trial Chamber did not explain the rationale for this limiting requirement, but one can speculate that it might have been a concern about the difficulty of determining when the religious or educational institutions located in the immediate vicinity of military action served no military purpose, or whether the damage caused to these institutions could be seen as legitimate collateral damage.

Perhaps more interestingly, General Blaškić was also convicted for persecution as a crime against humanity. This conviction was premised, among other things, on his participation in the destruction or wilful damage of "institutions dedicated to religion or education." The Trial Chamber concluded that the destruction of such institutions can provide support for a charge that the defendant intended to persecute on the statutorily enumerated grounds, such as those of race, religion or politics. The Chamber stated that "persecution may take forms other than injury to the

[5] *The Prosecutor* v. *Blaškić*, IT-95-14-T, Judgement, 3 March 2000.
[6] *Ibid.*, para. 185.

human person, in particular those acts rendered serious not by their apparent cruelty but by the discrimination they seek to instil within humankind. [P]ersecution may thus take the form of confiscation or destruction of private dwellings or businesses, symbolic buildings or means of subsistence belonging to the Muslim population of Bosnia-Herzegovina."[8] The Trial Chamber reference, in the passage just quoted, to "symbolic buildings" makes clear that it viewed the intentional destruction of religious (and perhaps other cultural) institutions, when committed with a prohibited discriminatory intent, as an act directed, in the final analysis, at the individual to whom these objects of patrimony exemplified his own religion or culture. As such, the wanton destruction of these institutions was punishable not only by virtue of the specific prohibition in Article 3 of the Statute, but also as an indirect persecution of the individuals who associated with these institutions on the grounds of religion, race or politics. The destruction of property has been in this way equated to the injury to human beings. I must note that the judgment in this case is under appeal.

The next decision on which I would like to focus is the judgment, rendered in February 2001, against Dario Kordić and Mario Čerkez.[9] The defendants were, respectively, a political and a military leader of the Croatian Defence Council, an organization responsible for military operations in Bosnia and Herzegovina in 1993. Both defendants were convicted, among other crimes, for the war crime of destroying or wilfully damaging institutions dedicated to religion or education. This was a conviction under Article 3, Section D of the Statute. The Trial Chamber found that Kordić and Čerkez deliberately targeted Muslim mosques and other religious and cultural institutions in the course of the military campaign.

The relevant analysis of the Trial Chamber was much more detailed that that of the Trial Chamber in *Blaškić*. The Trial Chamber expressly noted that the former Yugoslavia ratified the 1954 Convention for the Protection of Cultural Property in 1956, and that the Convention continued

---

[7] *Ibid.*
[8] *Ibid.*, para. 227.

to apply to both the Republic of Croatia and Republic of Bosnia-Herzegovina after their declarations of independence.[10] The Trial Chamber then surveyed the types of cultural property protected under Article 1 of the Convention, such as "'movable or immovable property of great importance to the cultural heritage of every people,' 'buildings whose main and effective purpose is to preserve or exhibit the movable cultural property,' and 'centres containing a large amount of cultural property.'"[11] The Trial Chamber then concluded, applying this definition to the case before it, that "educational institutions are undoubtedly immovable property of great importance to the cultural heritage of peoples in that they are without exception centres of learning, arts, and sciences, with their valuable collections of books and works of arts and sciences."[12] The Trial Chamber also clarified the scope of Section D of Article 3. The Chamber noted that the offence of destroying religious or education institutions overlaps to a certain extent with the offence of unlawfully attacking civilian objects in general. In commenting on this overlap, the Trial Chamber observed that the offence with which Article 3, Section D is concerned has a more specific scope, because it is concerned solely with acts directed against "cultural heritage."[13]

Also of interest is the Trial Chamber's rejection of the argument, put forward by the Defence, that the special protection provided by the 1954 Convention applied only to property registered under the International Register of Cultural Property. The Defence argued that in the absence of such registration, religious or educational institutions receive only ordinary protection and therefore could be destroyed or damaged in cases of military necessity regardless of whether they were occupied or used for military purposes.[14] The Trial Chamber responded by observing that special protection under Article 8(1) of the 1954 Convention was a special measure provided for "'a limited number of refuges intended to shelter movable cultural property,'" and that "this

---

[9] *Prosecutor* v. *Kordić and Čerkez*, IT-95-14/2-T, Judgement, 26 February 2001.
[10] *Ibid.*, para. 359.
[11] *Ibid.* (quoting Article 1 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict).
[12] *Ibid.*, para. 360.
[13] *Ibid.*, para. 361.

special protection would be lost if the refuges were used for military purposes."[15] The Trial Chamber concluded from this that there was "little difference between the conditions for the according of general protection and those for the provision of special protection."[16] Consequently, the fundamental principle, in the Trial Chamber's view, was that "protection of whatever type will be lost if cultural property, including educational institutions, is used for military purpose," a principle which the Trial Chamber found consistent with the custom codified in Article 27 of the Hague Regulations.[17]

In addition to the conviction under Article 3, the Trial Chamber convicted both defendants for persecution as a crime against humanity. The rationale was similar to that adopted by the Trial Chamber in *Blaškić*, but considerably more developed. The *Kordić and Cerkez* Chamber noted that the case-law of the Nuremberg Tribunal and the 1991 Report of the International Law Commission have singled out the destruction of religious buildings as "a clear case of persecution as a crime against humanity."[18] The Trial Chamber commented that this destruction, "when perpetrated with the requisite discriminatory intent, amounts to an attack on the very religious identity of a people. As such, it manifests a nearly pure expression of the notion of 'crimes against humanity,' for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects."[19]

The next case where the accused was convicted for the destruction of cultural property under Article 3, Section D, is the case of the former Serbian President Biljana Plavšić, which was decided in February 2003.[20] Plavšić was convicted for persecution as a crime against humanity, and

---

[14] *See ibid.*, para. 357.
[15] *Ibid.*, para. 361.
[16] *Ibid.*
[17] *Ibid.*
[18] *Ibid.*, para. 206 (citing Nuremberg Judgement, pp. 248, 302; 1991 ILC Report, p. 268 (persecution may take the form of the "systematic destruction of monuments or buildings representative of a particular social, religious, cultural or other group")).
[19] *Ibid.*, para. 207.
[20] *Prosecutor* v. *Plavšić*, IT-00-39&40/1, Sentencing Judgement, 27 February 2003.

this conviction was based, among other things, on the destruction of several cultural monuments and religious sites in the Foca, Visegrad and Zvornik municipalities. The Trial Chamber emphasized that these monuments, some of which dated from the Middle Ages, were "culturally, historically and regionally significant sites," and described one of the them, the Alidza mosque in Foca, as a "pearl amongst the cultural heritage in th[e Balkan] part of Europe."[21] Because the conviction was based on the defendant's guilty plea, however, the Trial Chamber's judgment did not contain any extensive discussion of the applicable law, and so it is of limited use to students of the Tribunal's jurisprudence on the protection of cultural property.

The next case which raised the issue of cultural property, and which followed on the heels of *Plavšić*, was that of Mladen Naletilić and Vinko Nartinović, decided in March 2003.[22] The two defendants were convicted, under Article 3, Section D, for ordering the destruction of a mosque in the village of Dosanj in Croatia. In entering the conviction, the Trial Chamber reiterated the requirement, first announced in *Blaškić*, that, to be punishable as a violation of the laws or customs of war, the institutions of religion or education which were damaged or destroyed must not have been used for military purposes at the time at issue.[23] What is most noteworthy about the judgment in *Naletilić and Nartinović*, however, is that it expressly rejected *Blaškić*'s requirement that the institutions targeted need to be located outside of the immediate vicinity of military objectives. Relying on Article 27 of the Hague Regulations, the Trial Chamber concluded instead that the mere fact that a given institution is not in the immediate vicinity of military objective does not justify its destruction.[24]

---

[21] *Ibid.*, para. 31.
[22] *Prosecutor* v. *Naletilić and Nartinović*, IT-98-34-T, Judgement, 31 March 2003.
[23] *Ibid.*, para. 603.
[24] *Ibid.*, para. 604.

The next decision, in the case of Milomir Stakić, was issued a few months later, in July 2003.[25] The defendant was convicted for having played a leading role in the destruction or wilful damage of 7 mosques and 2 catholic churches located in the city of Prijedor, in the central part of Bosnia and Herzegovina, and in nearby villages. The Trial Chamber described these buildings as both religious and cultural institutions. Stakić was not charged under Article 3, Section D, so he was convicted only for persecution as a crime against humanity. The Trial Chamber's reasoning followed closely that of *Kordić and Čerkez*, on which it relied. The Trial Chamber cited both the case-law of the Nuremberg Tribunal and the 1991 Report of the International Law Commission in support of its conclusion that the destruction of religious buildings can amount to persecution as a crime against humanity.[26] Quoting the decision in *Kordić and Čerkez*, the Trial Chamber stated that "[t]his act, when perpetrated with the requisite discriminatory intent, amounts to an attack on the very religious identity of a people."[27]

The last decision, and the most recent one issued by our Tribunal, is perhaps the most interesting of them all. This is the decision in the case of Miodrag Jokić, issued in March of this year.[28] This case is particularly significant to the issue of the protection of cultural property because it concerned the shelling of the Old Town of Dubrovnik in Croatia. The entire Old Town was declared, in 1975, a UNESCO World Cultural Heritage site. This declaration was made, of course, pursuant to the 1972 Convention for the Protection of the World Cultural and Natural Heritage. The defendant pleaded guilty to the charge, made under Article 3, Section D of the Statute, of having destroyed or wilfully damaged institutions dedicated to religious, charity, education, and the arts in sciences, as well as historic monuments and works of art and science located in Dubrovnik. The indictment contained a detailed list of many historical buildings in the Old Town which had either been destroyed or damaged. Jokić was at the time commander of the

---

[25] *Prosecutor* v. *Stakić*, IT-97-24-T, Judgement, 31 July 2003.
[26] *Ibid.*, para. 766.
[27] *Ibid.*, para. 767 (quoting *Kordić and Cerkez*, para. 207) (internal quotation marks omitted).
[28] *Prosecutor* v. *Jokić*, IT-01-42/1-S, Sentencing Judgement, 18 March 2004.

Ninth Naval Sector of the Bosnian Serb Army, and, alongside others, he conducted the military campaign aimed at Dubrovnik.

In particular, Jokić admitted that, on December 6th, 1991, the Yugoslavian forces under his command fired hundreds of shells upon the Old Town of Dubrovnik as a part of their military campaign. Jokić also admitted that, at the time of these actions, he was aware of the protected status that the Old Town enjoyed as a UNESCO World Cultural Heritage site, and of the fact that a number of buildings in the Old Town, as well as the Old Town's walls, were marked with the symbols mandated by the 1954 Hague Convention for the Protection of Cultural Property.

In applying Section D of Article 3 to these circumstances, the Trial Chamber noted that the protection of cultural property reflected in that provision of our Statute had a long history in international law. The Chamber emphasized, in particular, Articles 27 and 56 of the Hague Regulations (annexed to the 1907 Fourth Hague Convention Respecting the Laws and Customs of War on Land) and Article 5 of the 1907 Hague Convention Concerning Bombardment by Naval Forces in Time of War.[29] The Trial Chamber stressed, however—and this emphasis is particularly apt given the purpose of this symposium—that it was the 1954 Convention for the Protection of Cultural Property which strengthened the safeguards for cultural property in times of armed conflict.[30] In particular, the Trial Chamber explained that the Convention's requirement of "general protection" (as opposed to "special protection," accorded to heritage listed in the International Register) imposed duties to safeguard and respect cultural property.

The Trial Chamber then turned to more recent international instruments concerned with protection of cultural property. The Chamber discussed the preamble to the 1972 UNESCO World Heritage Convention, which provides that the "deterioration or disappearance of any item of the

[29] *Ibid.*, para. 47.
[30] *Ibid.*, para. 48.

cultural or natural heritage *constitutes a harmful impoverishment of the heritage of all the nations of the world.*"[31] The 1972 Convention was of relevance because, as the Trial Chamber noted, the Old Town of Dubrovnik was listed as a world heritage site.[32] The *Jokić* Chamber also cited Article 53 of the 1977 Additional Protocol I and Article 16 of the Additional Protocol II to the Geneva Conventions of 1949. These articles, the Trial Chamber explained, reiterated the duty to protect cultural property, and expanded the scope of the protection by outlawing "any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples."[33] The Trial Chamber also explained that, under the Additional Protocols, direct attacks against protected heritage were prohibited irrespective of whether they resulted in actual damage.[34]

Turning to the facts of the case, the Trial Chamber emphasized that the entire Old Town of Dubrovnik was considered, at the time at issue, "an especially important part of the world cultural heritage. It was, among other things, an outstanding architectural ensemble illustrating a significant stage in human history."[35] The Chamber therefore concluded that "[t]he shelling attack on the Old Town was an attack not only against the history and heritage of the region, but also against the cultural heritage of humankind."[36] Notably, the Trial Chamber explained that the protection accorded to Dubrovnik was not limited to individual buildings identified as having particular historical value. Rather, the fact that the Old Town received protected status in its entirety reflected the concern of the international community with the preservation of Dubrovnik as a living historical and cultural artefact. As the Trial Chamber stated, "the Old Town was a 'living city' . . . and the existence of its population was intimately intertwined with its ancient heritage. Residential

---

[31] *Ibid.*, para. 49 (quoting the 1972 UNESCO World Heritage Convention) (internal quotation marks omitted) (emphasis added by the *Jokić* Trial Chamber).
[32] *Ibid.*
[33] *Ibid.*, para. 50.
[34] *Ibid.* (citing ICRC Commentary to Additional Protocol I, paras 2067, 2069-72).
[35] *Ibid.*, para. 51.
[36] *Ibid.*

buildings within the city also formed part of the World Cultural Heritage site, and were thus protected."[37]

Also of note is the Trial Chamber's apt reminder that the possibility of restoring the damaged historical buildings does not mitigate the gravity of the conduct directed at their destruction. "Restoration of buildings of this kind, when possible, can never return the buildings to their state prior to the attack because a certain amount of original, historically authentic material will have been destroyed, thus affecting the inherent value of the buildings."[38]

In its conclusion, the Trial Chamber addressed the issue of what bearing Dubronvik's status as a specially protected world heritage site had on the criminality of the defendant's conduct. The Trial Chamber concluded that "since it is a serious violation of international humanitarian law to attack civilian buildings, it is a crime of even greater seriousness to direct an attack on an especially protected site, such as the Old Town, constituted of civilian buildings and resulting in extensive destruction within the site."[39] In addition, the Trial Chamber stressed that the extent of effected destruction must be taken into account in assessing the gravity of the defendant's criminal act. As the Chamber explained, "the attack on the Old Town was particularly destructive. Damage was caused to more than 100 buildings, including various segments of the Old Town's walls, ranging from complete destruction to damage to non-structural parts."[40] For these two reasons, the Trial Chamber concluded, "[t]he unlawful attack on the Old Town must therefore be viewed as especially wrongful conduct."[41]

The question which now arises is whether this jurisprudence, which affords significant protection to cultural property at the times of both international and internal armed conflict, will

---

[37] *Ibid.*, para. 51.
[38] *Ibid.*, para. 52.
[39] *Ibid.*, para. 53.
[40] *Ibid.*

grow in the year to come, culminating in an authoritative and extensive body of law. It is in this respect that I would like to mention the variety of indictments currently pending before the Yugoslavia Tribunal which contain allegations of damage or destruction inflicted upon cultural property. Some of these cases are currently at trial, while others are only at a pre-trial stage. Among these indictments, I would single out the case of Pavel Strugar, who is currently at trial, who was one of the commanders of the Yugoslavian forces which attacked Dubrovnik. The indictment in this case charges destruction and damage of the historical buildings in the Old Town of Dubrovnik. It is possible, therefore, that the judgment which will result from this trial may provide a more detailed factual and legal analysis of the attack against the Old Town than that offered in the *Jokić* judgment, which was a result of a plea bargain. As to the other indictments, there are some which charge offences against cultural property as both violations of laws and customs of war under Article 3, Section D and persecution as a crime against humanity under Article 5. These are the indictments against Radoslav Brđanin, Milan Martić and Paško Ljubičić, as well as the indictment against Slobodan Milošević with respect to Croatia. The second group of indictments charge these offences only as persecution as a crime against humanity. These are the indictments against Slobodan Milošević with respect to Kosovo, and the indictments against Nikola Sainović, Dragoljub Ojdanić and Momcilo Krajišnik. Given the number of indictments which raise the issue of the protection of cultural property, and given that fact that many of these indictments contain detailed charges with respect to alleged offences against cultural property, I can say with some confidence that there is a real potential for a development of a rich and sophisticated jurisprudence on this issue in our Tribunal.

In conclusion, I would like to observe that, most importantly, the case-law of the Yugoslavia Tribunal with respect to the protection of cultural property shows that provisions in international legal instruments designed to safeguard our historical and cultural heritage can be effectively

---

[41] *Ibid.*

enforced by the courts. The 1954 Convention, whose anniversary we commemorate today, is of particular importance in this regard. It reaffirmed the importance of protecting cultural property in wartime, and it considerably strengthened that protection. The norms elaborated by the Convention played an important role in several of the decisions which I described to you today, and I can anticipate confidently that this trend will continue in the cases to come. By firmly placing the offences against cultural property not only among wrongs leading to state responsibility but also among crimes punishable by international law as affecting the interests of the world community, and by holding individuals responsible for them accountable, our Tribunal has made a significant contribution to the protection of cultural property in armed conflicts. The prominence which this issue has achieved in our jurisprudence should help to prevent the commission of these crimes in the future.

In terms of the doctrinal contribution which our Tribunal has made to the international law protecting cultural property during the times of military conflicts, I would single out the notion, elaborated in several cases I have discussed, that the destruction of institutions dedicated to religion or education can, if committed with the requisite discriminatory intent, amount to persecution as a crime against humanity. (Of course, where this intent is absent, the destruction can still amount to a war crime.) One may perhaps object to this crime against humanity approach on the ground that it tends to diminish the importance of protecting cultural property *per se*, viewing attacks on this property mainly as a form of a discriminatory attack directed against individuals. I would argue, however, that the characterization of such attacks against cultural or religious institutions as crimes against humanity is simply a recognition of the importance of these institutions to the identity and the development of an individual. Without the protection of our cultural or religious patrimony the link with our heritage is severed, and with it is severed our ability to define our identity. By protecting our cultural heritage, the 1954 Convention protects the autonomy of the individual and

the diversity of humankind, and the jurisprudence of our Tribunal has been faithful to these noble ideals.

It deserves mentioning that under the Statute adopted by the Security Council, our Tribunal has jurisdiction over crimes against humanity only if they were committed in the course of the armed conflict in the former Yugoslavia.[42] As our Appeals Chamber has explained, however, this is a jurisdictional limitation specific to our Tribunal, and not a requirement mandated by customary international law.[43] Crimes against humanity can be committed in times of peace as well as in times of war. The doctrinal contribution that our Tribunal made to the law protecting cultural property from wanton destruction, by characterizing this destruction as a crime against humanity and not only as a war crime, can therefore be applied by other courts to criminalize the destruction of cultural property in time of peace. This is particularly relevant in today's world where terrorist and other attacks by non-governmental armed groups are unfortunately common, and where the line between armed conflicts and discriminatory attacks against civilian population is often difficult to draw. By viewing the destruction of cultural property as a crime directed against individuals, our Tribunal has pointed to a potential new way of enhancing the reach and the thrust of the 1954 Convention.

---

[42] *See Prosecutor* v. *Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 141.
[43] *Ibid.*