

7-1-1996

The Destruction of Churches and Mosques in Bosnia-Herzegovina: Seeking a Rights-Based Approach to the Protection of Religious Cultural Property

Gregory M. Mose

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/bjil>



Part of the [Human Rights Law Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Mose, Gregory M. (1996) "The Destruction of Churches and Mosques in Bosnia-Herzegovina: Seeking a Rights-Based Approach to the Protection of Religious Cultural Property," *Buffalo Journal of International Law*: Vol. 3 : No. 1 , Article 7.

Available at: <https://digitalcommons.law.buffalo.edu/bjil/vol3/iss1/7>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Journal of International Law by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

THE DESTRUCTION OF CHURCHES AND MOSQUES IN BOSNIA-HERZEGOVINA: SEEKING A RIGHTS-BASED APPROACH TO THE PROTECTION OF RELIGIOUS CULTURAL PROPERTY

Gregory M. Mose[†]

The Persians encamped upon the hill over against the Acropolis, which is called the Areopagus by the Athenians, and began the siege of the place. . . . As soon as the Athenians saw them upon the summit, some threw themselves headlong from the wall, and so perished, while others fled for refuge to the inner part of the temple. The Persians rushed to the gates and opened them, after which they massacred the suppliants. When all were slain, they plundered the temple and fired every part of the citadel.

- Herodotus, Book VIII (52-3) (480 B.C.)

In Novo Selo, a village near Zvornik, Serb troops rounded up 150 women, children, and old people, and forced them at gunpoint into the local mosque. In front of the captives, they challenged the local community leader, Imam Memić Suljo, to desecrate the mosque They told him to make the sign of the cross, eat pork and finally to have sexual intercourse with a teenage girl. . . . Suljo refused all these demands and was beaten and cut with knives. His fate is unknown.

- Asić Akim

Zvornik police commander¹ (A.D. 1992)

† Harvard College, A.B., *Magna Cum Laude*, 1992; Duke University School of Law, J.D., 1996.

¹ Roy Gutman, *Unholy War; Serbs Target Culture, Heritage of Bosnia's Muslims*, NEWSDAY (Nassau and Suffolk Edition), Sept. 2, 1992, at 3.

I. INTRODUCTION

The savage conflict taking place in Bosnia-Herzegovina has generated an enormous volume of commentary. While the war can be seen as an unfavorable inauguration of post Cold War era ethnic strife, it seems more productive to view the conflict as a crucible for facing similar problems in the future. The West may have failed the former Yugoslavia, as some commentators have suggested, but unless we are prepared to endure future failures, we must learn the lessons that this tragedy can provide.

Cultural property in Bosnia-Herzegovina has been destroyed on a staggering scale during the recent conflict. In particular, due to the ethnic overtones of the conflict and the inescapable links between ethnicity and religion in the Balkans, religious buildings have been consistently targeted since the beginning of the war. As the above quotations demonstrate, the problem is neither new nor unique. However, the existence of international legal instruments intended to address the destruction of cultural property is quite recent. While a number of commentators have pointed out the failure of these instruments to protect cultural property, none have remarked on the fact that a large percentage of the churches and mosques destroyed in Bosnia-Herzegovina would receive no more protection under the relevant international law concerning cultural property than any other civilian building. Their special protected status as cultural property depends upon their value to the world community as cultural monuments. There is no special protection envisaged under the law of protection of cultural property during armed conflict for local religious buildings and the crucial role they play in community life.

Part II(A) of this paper will explain the history and development of the legal protection of cultural property during armed conflict, and Part II(B) will review the norms which are applicable to the conflict in Bosnia-Herzegovina. Part III will explore current theoretical justifications for the protection of cultural property. Part IV will focus upon the situation on the ground in Bosnia-Herzegovina. Part IV(A) will provide an overview of the destruction of religious property in Bosnia-Herzegovina, and Part IV(B) will examine a case study in order

to illuminate a typical pattern of destruction. Part IV(C) will discuss the phenomenon of "ethnic cleansing" and its relation to the destruction of cultural property. Finally, Part V will suggest a new theoretical approach to the destruction of religious property. Part V(A) outlines current international law that specifically addresses the right to practice one's religion, and Part V(B) discusses this right as a basis for protecting churches and mosques which normally would not be provided special protection by cultural property treaty provisions.

II. INTERNATIONAL LEGAL PROTECTION OF CULTURAL PROPERTY DURING ARMED CONFLICT

A. The Development of International Law Related to the Destruction of Cultural Property During Armed Conflict.

The Hague Conventions of 1899 and 1907 represent the first genuine binding codifications of international law as well as the first substantial international protection of cultural property. A number of articles in the Hague Conventions address the issue of destruction of property generally and of cultural property specifically. The Annex to Hague Convention IV (1907) prohibits *unnecessary* destruction of property in Article 23 (g), and more specifically protects cultural property ("buildings dedicated to religion, art, science . . . historic monuments . . . provided they are not being used at the time for military purposes") in Article 27.² Finally, Article 5 of Hague Convention IX provides that "[i]n bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, purposes, historical monuments"³ It is significant that the language of these provisions is compulsory. There remains, however, the qualification of military necessity, so that cultural property need only be spared insofar as military

² DEP'T OF DEFENSE, CONDUCT OF THE PERSIAN GULF WAR: FINAL REPORT TO CONGRESS O-9 [hereinafter FINAL REPORT].

³ SHARON A. WILLIAMS, THE INTERNATIONAL AND NATIONAL PROTECTION OF MOVABLE CULTURAL PROPERTY: A COMPARATIVE STUDY 18 (1978).

objectives allow it.

While this level of protection may seem scant (the entire subject merits only three articles), these rules nevertheless remain in force today and played an important role in protecting Iraqi cultural property during the Gulf War.⁴ After the Second World War, however, it became clear that the standards formulated in these conventions needed to be reinforced in a new convention that would address the treatment of cultural property during armed conflict. The resulting 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict has been ratified by seventy-five countries, including the former Yugoslavia.⁵ The 1954 Hague Convention expands upon the norms of the 1907 Hague Conventions, but also adds several new features to the law of cultural property. Article I of the Convention defines cultural property as "movable or immovable property of great importance to the cultural heritage of every people" and offers an illustrative but non-exclusive list of examples.⁶ While the reference to monuments "of great importance" brings up a number of obvious difficulties, this definition is nevertheless more detailed than any previously offered. The Convention requires that parties prepare during time of peace to safeguard cultural property in the event of an armed conflict.⁷ Significantly, most of the Convention applies to non-international as well as international conflicts, and thus avoids many of the problems inherent in applying the Geneva Conventions.⁸ It also establishes a universal sign, a blue and white shield, to indicate cultural property.⁹ Furthermore, the Convention creates a register on which monuments of particular importance that qualify for special protection can be listed.¹⁰ The 1977 Protocols to the 1949 Geneva Conventions

⁴ See FINAL REPORT, *supra* note 2, at O-9.

⁵ David A. Meyer, *The 1954 Hague Cultural Property Convention and Its Emergence into Customary International Law*, 11 B. U. INT'L L.J. 349, 352 (1993).

⁶ Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, art. 1, 249 U.N.T.S. 240, 242 [hereinafter 1954 Hague Convention].

⁷ *Id.*

⁸ *Id.* at 256.

⁹ *Id.* at 252, 254.

¹⁰ *Id.* at 248.

add several important provisions relating to the protection of cultural property.¹¹ Article 52 of Protocol I sets out a general scheme of protection for civilian objects. Paragraph 1 forbids targeting civilian objects for the purpose of attack or reprisal. Paragraph 2 defines civilian versus military objects, making any object which makes an effective contribution to military objectives a military object. Paragraph 3 notes that when doubt exists as to whether an object is being used for military purposes or is strictly civilian in nature, it shall be presumed to be a civilian object.

Article 53 directly addresses cultural property, and provides:

[W]ithout prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited: (a) to commit 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; (b) to use such objects in support of the military effort; (c) to make such objects the objects of reprisals.¹²

These provisions are basic, reflecting the norms of the 1907 Hague Convention and the 1954 Hague Cultural Property Convention, and are considered by some to have attained the status of customary international law.¹³ There is, however, one very significant addition to the protection of cultural property which appears in both protocols is entirely absent from the 1954 Hague Convention and seems to represent

¹¹ *Protocol Additional to the Geneva Civilian Convention, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, [1977] 1977 U.N. Jurid. Y.B. 95, reprinted in 16 I.L.M. 1391 [hereinafter *Protocol I*]; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, [1977] 1977 U.N. Jurid. Y.B. 135, reprinted in 16 I.L.M. 1442 [hereinafter *Protocol II*].

¹² *Protocol I*, *supra* note 11, art. 53, 16 I.L.M. at 1414.

¹³ Meyer, *supra* note 5, at 362.

some evolution in the law regarding religious cultural property. Paragraph (a) of Article 53 forbids acts of hostility directed at properties which constitute the "cultural or spiritual heritage" of peoples. The significance of this addition will be discussed below, but it should be noted here that it arguably extends protection to a number of churches and mosques which would not be covered by previous law on the protection of cultural property during armed conflict.¹⁴

Protocol II to the Geneva Conventions, covering situations of non-international armed conflict, also contains a rather limited provision on the protection of cultural property. Article 16 merely states that it is prohibited to "commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort."¹⁵ While the provisions of the two Protocols mostly fall short of the protection offered by the 1954 Convention, they are important as reassertions of the general principles involved, and as confirmations of their status as customary international law.

B. Applicable Law on the Protection of Cultural Property During Armed Conflict in the Former Yugoslavia

The 1907 Hague Conventions have become part of customary international law, and as such they apply to all combatants in Bosnia-Herzegovina, at least to the extent that the conflict there is considered an international armed conflict.¹⁶ According to the Vienna Convention on Succession of States in Respect of Treaties, successor

¹⁴ Jiri Toman, *La Protection des Biens Culturels dans les Conflits Armés Internationaux; Cadre Juridique et Institutionnel*, in *STUDIES AND ESSAYS ON INTERNATIONAL HUMANITARIAN LAW AND RED CROSS PRINCIPLES IN HONOUR OF JEAN PICTET* 559, 564-65 (Christophe Swinarski ed., 1984).

¹⁵ *Protocol II*, *supra* note 11, art. 16, 16 I.L.M. at 1447.

¹⁶ THEODOR MERON, *HUMAN RIGHTS IN INTERNAL STRIFE: THEIR INTERNATIONAL PROTECTION* 4 (1987). The International Criminal Tribunal for the former Yugoslavia has determined that "the conflicts in the former Yugoslavia have both internal and international aspects." See Decision on the Defense Motion for Interlocutory Appeal (2 October, 1995), *The Prosecutor v. Dusko Tadic a/k/a "Dule"*, Case No. IT-94-1-AR72, at 43.

states such as Bosnia-Herzegovina remain bound by the international treaty obligations of the predecessor state until the successor state declares that it does not intend to be bound by a particular treaty.¹⁷ Bosnia-Herzegovina has declared itself to be bound by this treaty, and has not denounced the 1907 Hague Conventions, the 1954 Hague Convention or the 1977 Protocols to the Geneva Convention.¹⁸ Moreover, the Geneva Conventions and the 1977 Protocols stipulate that a country, and thus a successor state, which wishes to denounce these treaties cannot do so while involved in an armed conflict.¹⁹

The Federal Republic of Yugoslavia has also declared that it considers itself bound by the treaty obligations of the former Socialist Federal Republic of Yugoslavia, so that any violations committed by Yugoslav National Army (Jugoslovenska Narodna Armija (JNA)) forces in Bosnia are covered.²⁰ Both Yugoslavia and Croatia have invoked the 1954 Convention and thus implicitly stated that they consider themselves bound by it. Therefore, any destruction of cultural property committed by forces under the control of Croatian or Yugoslav authorities would be a violation under the Convention.²¹

III. THE JUSTIFICATION FOR THE PROTECTION OF CULTURAL PROPERTY

The very phrase "cultural property" raises a number of issues, such as the meaning and importance of culture, the conception of culture as property, and the ownership of such property. Such issues take on great significance when attempting to determine what level of protection monuments should be afforded during armed conflict, and what measures might be appropriate to ensure their protection.

The difficulty of these questions was vividly demonstrated by one

¹⁷ Vienna Convention on Succession of States in Respect of Treaties, opened for signing Aug. 23, 1978, arts. 34 and 35, UN Doc A/Conf. 80/31 (1978), *reprinted in* 17 I.L.M. 1488 (1978).

¹⁸ Jordan Paust, *Applicability of International Criminal Laws to Events in the Former Yugoslavia*, 9 AM. U. J. INT'L L. & POL'Y 499, 501 n.8 (Winter 1994).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Meyer, *supra* note 5, at 384 n.188.

critical event at the beginning of the conflict in the former Yugoslavia: the siege of Dubrovnik. Many of the historical and cultural monuments of this medieval walled city were destroyed by artillery fire when the JNA tried to take the city in its bid to hold together the crumbling federal state of Yugoslavia. An issue of great importance was what should be considered a cultural monument in a city whose center consists mostly of centuries-old buildings. Another issue was how heavily the survival of these buildings should weigh against the arguably cultural goal of keeping intact a nation. In this respect it can be difficult to separate political and cultural goals, since ownership plays an important role in protecting cultural property. Thus arose the question of whose property was being destroyed, and if it belonged to federal Yugoslavia, whether they had the right to destroy it while fighting for the survival of the state. Moreover, how seriously could the armies involved worry about the fate of buildings when such important political interests and so many lives hung in the balance? The public reaction to the siege was illuminating. There was a great outcry around the world against the destruction of this historic tourist attraction. The response of others, however, was indignation at those who, while remaining silent over the human casualties of the war, were stirred to outcry by the destruction of physical property. Journalist Amy Schwartz phrased best the question in everyone's mind: "Is it wrong to weep for buildings?"²²

The question was answered well by a Croatian journalist, Ksenija Drakulic, who wrote in response to the destruction of Mostar Bridge:

Why do we feel more pain looking at the image of the destroyed bridge than the image of the massacred people? Perhaps because we see our own mortality in the collapse of the bridge. We expect people to die; we count on our own lives to end. The destruction of a monument to civilization is something else. The bridge, in all its beauty and grace, was built to outlive us; it was

²² Amy E. Schwartz, *Is It Wrong to Weep for Buildings?*, WASH. POST, May 10, 1994, at A17.

an attempt to grasp eternity. It transcended our individual destiny.²³

In the elegant simplicity of Latin, *vita brevis, ars longa*, life is short, art endures. Yet if cultural monuments are to outlast us all, if they somehow transcend mortality, there is then a need to examine more closely the idea of culture as property. Can one truly own something immortal, with all the property rights that unabridged ownership brings?

In determining who can own cultural property, and by what theory of ownership, it seems natural to look first to the object's creation. If the Greeks built the Parthenon, then surely the Parthenon belongs to the Greeks. This labor theory of property cannot suffice to answer the question, however, for a number of reasons. If one claims that the Parthenon belongs to the Greek state, the question of who owned it during the Ottoman period arises. The Turks arrived in Anatolia over a thousand years after the Parthenon was built, so they could not claim ownership by creation. Yet to claim that the Greeks still rightfully owned the Parthenon, by defining the Greeks ethnically, poses a whole host of problems. Without getting into the complex question of Greek ethnicity, it is clear that ethnicity in general is a vague concept at best. One might then turn to a theory of ownership by acquisition, that the Ottoman Empire acquired the Parthenon through conquest and that it rightfully became its property. Yet the culture behind the monument was one completely alien to them. If cultural expression is the basis of finding value in a monument (as it surely is--rocks are immortal, yet they do not evoke an emotional response), then it seems necessary to take account of the culture whose heritage the monument represents.

These questions have resulted in two conflicting approaches to cultural property known as cultural nationalism and cultural internationalism. Cultural nationalism looks upon cultural property as the cultural expression of a particular people or region, and therefore concludes that physical property related to a specific culture should belong exclusively to the inheritors of that culture. To destroy a cultural

²³ *Id.*

monument is to attack the identity of the people whose culture it represents, and thus the country which represents those people should have property rights over such monuments.²⁴ This view is particularly important with regard to movable cultural property, and is well exemplified by Greece's request for the return of the Elgin Marbles.²⁵ As the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property states, "cultural property constitutes one of the basic elements of civilization and national culture, and . . . its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting."²⁶ In contrast, cultural internationalism begins with the assertion that cultural property, while certainly important to the country in which it is found, is more importantly part of the cultural heritage of mankind as a whole.²⁷ At least one writer has surmised that the Brussels Convention of 1874, an early attempt at codifying the law of war which was never ratified, first expressed the doctrine of cultural internationalism.²⁸ Yet both Grotius and Vattel seemed to have had a similar approach in mind. Grotius notes in passing that the destruction of sacred objects, though legal, shows "some contempt for humanity."²⁹ Vattel is clearer on the point. He makes an argument for sparing works of art which "do honour to human society," and condemns their destruction as "declaring oneself an enemy to mankind, thus wantonly to deprive them of these wonders of art. . ."³⁰

²⁴ Karen Detling, *Eternal Silence: The Destruction of Cultural Property in Yugoslavia*, 17 *MD. J. INT'L L. & TRADE* 41, 50 (1993).

²⁵ See WILLIAMS, *supra* note 3, at 9. Lord Elgin took many of the statues of the Parthenon to England while what is now Greece was still under Ottoman rule. The Greek government has since lobbied vigorously for their return.

²⁶ UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231, 232, 9 I.L.M. 1038, 1040, pmb. [hereinafter 1970 UNESCO Convention].

²⁷ Detling, *supra* note 24, at 51.

²⁸ WILLIAMS, *supra* note 3, at 17.

²⁹ HUGO GROTIUS, *THE LAW OF WAR AND PEACE* 364 (Louise R. Loomis ed., Walter J. Black 1949) (1625).

³⁰ EMERIC DE VATTEL, *THE LAW OF NATIONS* 367 (Chitty ed., 1844).

Presumably "them" refers to mankind, thus implying that we are all adversely affected by the destruction of art, regardless of its national or cultural origin. He goes on to give the example of the barbarians who sacked Rome in 410 A.D., noting that even today we detest them for destroying such a monument to human creativity.

Unlike the 1970 UNESCO Convention, the 1954 Hague Cultural Property Convention embodies a cultural internationalist approach. The preamble to the 1954 Convention notes that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind."³¹ Thus countries serve merely as custodians of cultural property found within their borders, and they are under a duty not only to preserve it but also to make it available to the rest of the world.³² The 1972 World Heritage Convention, as is implied by its title, also takes the internationalist approach, focussing on monuments of "exceptional interest" and "universal value."³³ Even the 1970 UNESCO Convention reflects cultural internationalist ideas in that it justifies itself on the pretext of the need to appreciate cultural property in context, thus focussing on the consumption of such property by outsiders.³⁴

That these conventions take an internationalist approach does not mean, however, that they adhere entirely to the cultural internationalist perspective. The custodial ideal upon which cultural internationalism is based is just that: an ideal. State sovereignty remains paramount, and none of the discussed conventions sanction the interference in a state's sovereignty. To return to the example of the Parthenon, the Greek government might decide to tear it down to make room for parking, and while other countries would certainly complain, there would be no legal basis for another state to interfere.³⁵ The construction of the Aswan High Dam, with the subsequent destruction or displacement of many ancient

³¹ 1954 Hague Convention, *supra* note 6, pmb1, 249 U.N.T.S. at 240.

³² WILLIAMS, *supra* note 3, at 52.

³³ Convention Concerning the Protection of the World Cultural and Natural Heritage, Dec. 17, 1975, 27 U.S.T. 37, 11 I.L.M. 1358.

³⁴ 1970 UNESCO Convention, *supra* note 26, 9 I.L.M. at 1038, Annex. II.

³⁵ WILLIAMS, *supra* note 3, at 54-55.

Egyptian archaeological sites, offers a real life example of such a situation. As Williams notes, "[t]he common cultural heritage must be seen in terms of preservation and protection. This view, although adhering to the idea of a state's position as custodian, does not in fact challenge its property rights."³⁶ Thus cultural internationalism, though the dominant theory behind the international protection of cultural property, must be seen as a flexible approach to the problem which requires adjustment and revision in light of differing situations. As an examination of the systematic destruction of cultural property in Bosnia-Herzegovina will demonstrate, the case of religious property represents a situation in which the traditional cultural internationalist approach to cultural property is inadequate and in great need of revision.

IV. THE DESTRUCTION OF RELIGIOUS PROPERTY IN BOSNIA-HERZEGOVINA

A. The Scope of the Destruction of Religious Property in Bosnia-Herzegovina

It is inevitable that in a situation of armed conflict, cultural property will be damaged. Neither the technology nor the ideology of warfare has evolved sufficiently to preclude the destruction of historic and religious monuments. The scope of the destruction in Bosnia-Herzegovina, however, exceeds what one would expect to find were all or even most of the damage merely collateral to military objectives. I shall discuss the reasons for this in Section C below, but it is first necessary to examine the extent to which religious property has been damaged.

Information about almost any aspect of the conflict in Bosnia is limited, uneven, frequently inaccurate and often exploited for purposes of propaganda. Thomas Warrick notes that one newspaper article gives the following figures: about 1000 mosques, 483 Catholic churches and 470

³⁶ *Id.* at 55.

Serbian Orthodox churches damaged or destroyed.³⁷ The Council of Europe has sent an observer to Bosnia periodically to report on the state of cultural property, and has generated reports which are for the most part based upon eyewitness accounts by their consultant. This seems to be the most reliable information available so far, but even in this case reports are sometimes contradictory. Additionally, one must take into account the fact that independent observers have not been allowed into some areas, and have been prevented by wartime conditions from inspecting others. The Council of Europe was allowed into the town of Gradacac in northern Bosnia. It is useful to look at the effect of the war on this area's cultural heritage in order to understand, without relying on questionable statistics, the nature of the destruction which is taking place.

B. Gradacac - A Case Study

Before the war, the population of the Gradacac district was 56,378. The town itself contained 12,500 inhabitants, but has now been reduced to about 7,000.³⁸ Muslims comprised 60.2% of the district population; the remaining population being 19.8% Serb, 15.1% Croat, and 4.9% other (presumably mixed families).³⁹ The town had been bombarded since the beginning of the war by Bosnian Serb Army (BSA) forces since it lies at a strategic position at the end of the Posavina corridor, which links the previously Serb-held Krajina, Serb-held Bosnia, and Serbia.⁴⁰

According to the September 1993 report of the Institute for the Protection of the Cultural-Historical and Natural Heritage of the Republic of Bosnia and Herzegovina (Sarajevo), all four mosques "which

³⁷ Thomas Warrick, *Carnegie Foundation Symposium*, (May 2, 1994), <gopher://cormier.Icomos.Org:70/11/icomos/treaties/hahue/carnegie/bos5>.

³⁸ *Report on a Fact-Finding Mission on the Situation of the Cultural Heritage in Bosnia-Herzegovina and Croatia, 30 May - 22 June, 1994*, at 8, Eur. Parl. Ass. Rep. Doc. AS/Cult/AA (June 27, 1994)[hereinafter *Council of Europe Report (June 1994)*].

³⁹ Stjepko Golubic et al., *How Not to Divide the Indivisible*, in *WHY BOSNIA* 230 (Rabia Ali & Lawrence Lifschultz eds., 1993).

⁴⁰ *Council of Europe Report (June 1994)*, *supra* note 38, at 8.

have the status of cultural monuments" had been destroyed.⁴¹ The report mentions only the Husenija Mosque (built 1827), but the June 1994 Council of Europe Report remarks only that it had been "hit twice in the minaret (the cherefa is broken in one place), probably by tank cannon," and that a small library and building for ablutions had also been damaged.⁴² Reuf-Bey Gradiscevic Mosque (19th century) is also reported to be damaged by two hits on the roof.⁴³ Svirac Mosque suffered one shell impact on its porch, and Bukvara Mosque was hit in the facade by a large projectile.⁴⁴

The Council of Europe Report points to several mosques in nearby villages on the eastern Gradacac front as clear examples of deliberate targeting of mosques. In Mionica 1, a shell broke the minaret of the local mosque above the cherefa, and another tank shell pierced the outer and interior walls of the mosque.⁴⁵ In Mionica 2, another mosque also sustained a broken minaret and tank impacts on its walls. The mosque in Krcevina was severely damaged when its minaret was destroyed and fell through the roof of the mosque.⁴⁶ This mosque also suffered a number of hits on the facade and outer wall. Village mosques on the southwest front of Gradacac have also suffered damage, in particular the mosque at Zelinja Srednja which was hit on the roof, the base of the minaret, and in the yard.⁴⁷

The Catholic Church of St. Mark (1888) suffered damage by grenades, and was looted (although the report does not make clear who was responsible for this).⁴⁸ The Orthodox Church of St. Elijah (1882)

⁴¹ Information Document submitted by the Institute for the Protection of the Cultural-Historical and Natural Heritage of the Republic of Bosnia and Herzegovina, at 46, included in Fourth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina, EUR. PARL. DOC. (ADOC 6999) (1994)[hereinafter *Institute Report*].

⁴² *Council of Europe Report (June 1994)*, *supra* note 38, at 8.

⁴³ *Id.*

⁴⁴ *Id.* at 9.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

was hit by shells, seriously damaging its roof and steeple. This same church was also vandalized, apparently in retaliation for shelling by the BSA. Two fires were set in the church, frescoes were painted over, icons were vandalized, and liturgical items were thrown about.⁴⁹

This appears to be a fairly typical pattern of destruction of religious property in Bosnia-Herzegovina. Much of the damage is probably collateral damage from Serb shelling of the town. As both the Institute report and the Council of Europe (June 1994) report point out, the entire town of Gradacac has been severely damaged.⁵⁰ The historic castle has been targeted extensively, and there is much damage to the town center. The June 1994 report asserts that Gradacac is "undeniably one of the worst damaged towns seen by the consultant in Bosnia."⁵¹ Given this enormous level of general destruction, it seems reasonable to assume that some of the damage to religious property was not the result of deliberate targeting of mosques.

On the other hand, in certain cases it seems more than likely that the mosques were purposefully targeted. Of the eight mosques reported damaged in Gradacac, four minarets were hit and at least partly destroyed, while a fifth was hit with no reported damage. The Council of Europe Report (February 1993) notes that "it is highly doubtful that a minaret can be brought down with a single large caliber shell, which implies a certain amount of deliberate targeting on these structures."⁵² It also takes very good aim, since a minaret is generally quite slender and would occupy only a small percentage of the profile of a mosque. The likelihood of hitting four out of eight minarets by purely random terror shelling seems small.

The grenade damage to St. Mark's Church may or may not have been deliberate, but looting is clearly deliberate. Yet, several questions

⁴⁹ *Id.*

⁵⁰ *Institute Report*, *supra* note 41, at 41; and *Council of Europe Report (June 1994)*, *supra* note 38, at 8.

⁵¹ *Council of Europe Report (June 1994)*, *supra* note 38, at 8.

⁵² *War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, app. C, at 42, in *Information Report on the Destruction by War of the Cultural Heritage in Croatia and Bosnia-Herzegovina*, EUR. PARL. ASS., Doc. No. 6756 (Feb. 2, 1993).

remain. Who looted the church? Was it spontaneous or performed under orders? Was the action aimed at Catholicism, or was the looting carried out in search of money or valuable objects? Without more information, it is impossible to answer these questions.

The looting of the Orthodox Church of St. Elijah seems a clear case of reprisal by the local population. The looting was purely destructive in nature, and focused upon religious symbols and items used in Orthodox services. It is unclear, however, whether the action was spontaneous or sanctioned by authority. Serbian authorities list the church as destroyed.⁵³

C. "Ethnic Cleansing" and the Destruction of Cultural Property

A thorough examination of the phenomenon in the former Yugoslavia that has come to be known as "ethnic cleansing" would be beyond the scope of this paper. A general understanding of the meaning of ethnicity in relation to religion, however, is important in order to place in context the practice of targeting for destruction religious property in Bosnia-Herzegovina. Yugoslavia was the most heterogeneous country in Europe, including six "nations," (Serbs, Muslims, Croats, Macedonians, Montenegrins, and Slovenes), ten different nationalities (smaller ethnic groups, such as Albanians and Bulgarians), and a variety of other ethnic groups.⁵⁴ These "nations" are not racially distinct, but rather are distinguished by a number of cultural factors, among which religion is predominant. For historical reasons that need not detain us here, the Serbs are Orthodox Christians and the Croats are Roman Catholic. The "Muslims," recognized as a "nation" since 1971, were the indigenous Bosnians who converted to Islam during Ottoman rule.⁵⁵ They were neither Croats nor Serbs historically, but a separate Slav people who had embraced a Christian heresy known as Bogomilism until

⁵³ SLOBODAN MILEUSNIC, *SPIRITUAL GENOCIDE* 101 (1994).

⁵⁴ HUGH POULTON, *THE BALKANS: MINORITIES AND STATES IN CONFLICT* 5 (Minority Rights Group 1993).

⁵⁵ *Id.* at 39.

converting to Islam.⁵⁶

None of these three groups constitutes a majority in Bosnia. Muslims make up the largest group, comprising 43.6% of the population, the rest being 19.4% Serb, 17.3% Croat, and 7.8% other.⁵⁷ While Serbs can look to Serbia as an ethnic homeland, and Croats can look to Croatia, the Bosnian Muslims have no external source of ethnic identification. Declared a constituent national group in 1971, Bosnian Muslims cannot consider themselves the overflow of some other national group into Bosnia. They are a separate group by virtue of religion, not national origin. Since the other two ethnic groups have distinct religious affiliations of their own, religion in Bosnia has come to be inseparable from ethnic and cultural identity.

Targeting cultural property, which the Council of Europe has referred to as "cultural cleansing," has played a significant role in the general practice of ethnic cleansing in Bosnia.⁵⁸ The destruction of the old Mostar Bridge and the National Library in Sarajevo has drawn worldwide media attention as examples of deliberate destruction of cultural property which was perceived as representing the heritage of an opposing group. At times, the combatants have been extremely candid about their policy of targeting cultural property. In 1992, for example, BBC journalist Kate Adie asked a Serbian officer why Serb gunners had been shelling the Holiday Inn, which housed most foreign journalists in Sarajevo. The officer replied apologetically that they were not targeting the hotel, but rather were aiming at the National Museum just behind the hotel.⁵⁹ Similarly, a soldier serving under Bosnian Croat militia leader Mate Boban explained their reasons for targeting the Mostar Bridge, which they eventually brought down in November 1993: "[i]t is not enough to cleanse Mostar of the Muslims, the relics must also be

⁵⁶ FERDINAND SCHEVILL, *A HISTORY OF THE BALKANS FROM THE EARLIEST TIMES TO THE PRESENT DAY* 163-64 (1991).

⁵⁷ Statistics from the Official 1991 Yugoslav Population Census of Bosnia-Herzegovina, reprinted in *WHY BOSNIA* 216 (Rabia Ali & Lawrence Lifschultz eds., 1993).

⁵⁸ *Institute Report*, *supra* note 41, at 16.

⁵⁹ Andras Reidlmayer, *Carnegie Foundation Symposium*, (May 2, 1994), <gopher://cormier.Icomos.Org:70/11/.icomos/treaties/hague/carnegie/bos2>.

destroyed."⁶⁰ Armies are, in the words of one journalist, "erasing Bosnia's memory."⁶¹

"Cultural cleansing" was initiated by the BSA and, since the failure of the Vance-Owen peace plan in the spring of 1993, Bosnian government forces (BiH) and Bosnian Croat forces (HVO) have taken up the practice as well.⁶² Localized reprisals have also become a standard feature of cultural cleansing; the typical scenario being the vandalism of a Serbian Orthodox church in response to shelling by BSA forces. Serbian cultural cleansing is often accomplished by shelling, although a great deal of mining is reported to have occurred in areas under Serb control. The HVO and BiH forces typically must resort to mining and burning, however, due to their relative lack of artillery. Damage by such means tends to be more thorough than that accomplished by shelling.⁶³

Religious property has been particularly affected for a number of reasons. First, religious property must inevitably suffer from any generalized attack on cultural property, as religion is generally an integral part of culture. Second, religion in the former Yugoslavia tends to be determined along ethnic lines. The Serbian Orthodox Church is a major component of the cultural heritage and identity of Serbs, just as the Catholic Church is integrally a part of Croatian culture and Islam a part of Bosnian Muslim culture. Religion is the first and easiest identifier of these different cultures, and religious monuments hence are the most easily identifiable targets of ethnic attacks and reprisals. Churches and mosques are large, central, unmistakable targets, and their very visibility and presence render them not only easy targets, but extremely desirable ones as well. A minaret is a constant reminder of the presence of Muslims, hence a natural target for those with a hatred of this religious group. As Andras Riedelmeyer explained during a symposium hosted by the Carnegie Foundation, "a people's identity is inextricably linked with the visible symbols of its culture. Once those anchors are gone, the past,

⁶⁰ *Id.*

⁶¹ *Erasing Bosnia's Memory*, WASH. POST, Oct. 16, 1992, at A24 (editorial).

⁶² *Institute Report*, *supra* note 41, at 16.

⁶³ *Id.*

like the future, can be recreated by the victors."⁶⁴ Destroying the highly visible elements of culture has an ideological aspect as well: "The very fact of these monuments existing in close proximity is an affront to the historical myth that underlies fascist ideology. The ideology proclaims that people, in fact, cannot live together. If you have these presences next to each other, it is a daily reproach to that ideology."⁶⁵

Finally, churches and mosques are extremely intimate and thus effective targets. Bosnian President Alija Izetbegovic has accused the Serb forces of seeking "the destruction of religion as a basis of the identity and as spiritual support for the Bosnian people."⁶⁶ Since the war began, religious institutions have played a central role in the lives of many as both sources of spiritual comfort and companionship and as charitable institutions.⁶⁷ Targeting such sources of comfort to the local population is a logical extension of the terror bombing strategy which has been employed mainly by Bosnian Serbs throughout the war. Moreover, it is a logical extension of the policy of ethnic cleansing. Since ethnicity in Bosnia is directly linked with religion, ethnic cleansing is necessarily related to religious cleansing or, as Slobodan Mileusnic has called it, "spiritual genocide."⁶⁸ By destroying the religious heritage of a specific group in a region, one not only severs their historical link to the region, but one makes religious life in that region next to impossible.

That religious practice itself is being targeted in Bosnia is evidenced by a number of practices which are reported to be occurring. Shelling churches and mosques may or may not target the religion per se, as there is always the possibility that the building has only received collateral damage. Moreover, it is likely that many religious buildings are targeted simply due to their visual presence as a symbol of "the enemy." Vandalism, however, seems more clearly aimed at inhibiting religious

⁶⁴ Riedlmayer, *supra* note 59.

⁶⁵ *Id.*

⁶⁶ Roger Cohen, *Bosnia Debate: Army as Defender of Islam or Multiculturalism?*, N.Y. TIMES, Feb. 4, 1995, at 4.

⁶⁷ Paul Wilkes, *Mostar Man: 'Let My Son Be the Last Sacrifice: ' War Brings Bosnians Back to Churches 'Like an Apocalypse*, 'NAT'L CATH. REP., Jan. 29, 1993, at 7.

⁶⁸ *Id.*

worship, as destroying the inside of a building can be neither accidental nor intended to eliminate the visual provocation of the building itself. The vandalism of the Church of St. Elijah in Gradacac offers a good example. Inside the church, thus out of view of all except the practicing Orthodox community, vandals painted over frescoes, damaged icons, and scattered liturgical items around the church. None of these actions entirely prevents worship, but the acts of desecration seem to be an attempt to disrupt the religious life of those who must worship in the desecrated building. In particular, the destruction of icons, which play an important sacred role in Orthodox worship, seems intended as a deliberate affront specifically to the religious faith of the Serbs.

A similar tactic has been employed on a wide scale by BSA forces, which the Council of Europe report termed "befouling."⁶⁹ This is the deliberate desecration of a religious monument, often by putting the building to uses inconsistent with its purpose. Serbs have been accused of using mosques as slaughterhouses, prisons, and morgues.⁷⁰ One eyewitness reported being held with another 150-180 men in a mosque for four days and being forced to relieve himself in the sacred ablution basin.⁷¹ Such actions are often accompanied by or include intimidation of clergy. An eyewitness reported that he and about 150 others were forced into a mosque where the local Imam was ordered to desecrate the mosque by making the sign of the cross, eating pork, and having sex with a teenage girl.⁷² Such attacks are so focused upon the religious beliefs of their victims that it is difficult not to conclude that they are intended as attacks against a specific people's ability to practice religion.

V. CULTURAL INTERNATIONALISM, HUMAN RIGHTS, AND RELIGIOUS PROPERTY

A. *The Right to Freedom of Worship*

⁶⁹ *Institute Report*, *supra* note 41, at 17.

⁷⁰ Gutman, *supra* note 1, at 3.

⁷¹ *Id.*

⁷² *Id.*

While much of the human rights law concerning freedom of religion has focused upon prohibiting discrimination on the basis of religion, there is nevertheless a wide range of provisions which specifically address religious practice. The Universal Declaration of Human Rights asserts a person's freedom "either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."⁷³ The International Covenant on Civil and Political Rights, which differs from the Universal Declaration in that it is a binding convention, uses almost identical language in its Article 18.⁷⁴ This language has important implications for the destruction of religious property. The right to manifest religion "in community with others" would seem to be severely limited, if not entirely prevented, by an active policy of destroying buildings suitable to this purpose. Moreover, religious "practice, worship, and observance" cannot be fully enjoyed without certain articles of religious property. The importance of icons in the Orthodox faith and of Communion in the Catholic faith illustrate this point, although it is interesting to note that Islam depends less upon sacred places and articles of worship than do these Christian sects.⁷⁵ Finally, Article 27 of the Covenant requires that states with religious minorities must ensure their right "in community with other members of the group" to practice their religion.⁷⁶

Although it is not a binding instrument, the United Nations Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief contains much more explicit language bearing upon the need to protect religious property. Article VI(a) includes a right to worship and assemble, as well as "to establish

⁷³ G.A. Res. 217 A (III), U.N. Doc. A/810, at 71, art. 18 (1948).

⁷⁴ G.A. Res. 2200 A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 52, art. 18, (1967), 999 U.N.T.S. 171, 178, *reprinted in* 6 I.L.M. 368, 374 (1967), [hereinafter ICCPR].

⁷⁵ Martin Frishman, *Islam and the Form of the Mosque*, in *THE MOSQUE: HISTORY, ARCHITECTURAL DEVELOPMENT AND REGIONAL DIVERSITY* 17, 32 (Martin Frishman & Hasan-Uddin Khan eds., 1994).

⁷⁶ ICCPR, *supra* note 74, art. 27.

and maintain places for these purposes."⁷⁷ It is arguable that the right to "maintain" such places must include the right not to have such places destroyed. Article VI(C) is intended to cover the contents of religious buildings, asserting the right "to make, to acquire and to use to an adequate extent the necessary articles and materials related to the rites or customs to a religion or belief."⁷⁸ Finally, the Declaration provides for a right to teach religion "in places suitable for these purposes," which refers to and bolsters the right to maintain such places and not to have them destroyed.⁷⁹

Human rights law, however, even when binding, is to a certain extent derogable during periods of public emergency, including armed conflict.⁸⁰ Article 4(2) of the ICCPR includes a list of rights which are non-derogable even during armed conflict, and this includes the Article 18 right to freedom of thought, conscience and religion. Furthermore, Article 4(1) stipulates that a derogation must not involve discrimination based solely on religion. Human rights can also be limited by "limitation clauses," which permit permanent limitations on human rights which are necessary to protect national security, public safety, health, order, and morals.⁸¹ While freedom of thought, conscience, and religion does not fall into this category of limitable rights, the right to manifest religion can be limited so as not to interfere with the human rights of others.⁸² It could hardly be argued, however, that the destruction of churches and mosques in Bosnia-Herzegovina was necessary for the protection of national security or the human rights of others.

Humanitarian law serves an important role in the protection of

⁷⁷ *United Nations Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*, art. VI (a), G.A. Res. 55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981).

⁷⁸ *Id.*, at art. VI (c).

⁷⁹ *Id.*, at art. VI (e).

⁸⁰ *See, e.g.*, ICCPR, *supra* note 74, art. 4.

⁸¹ ROBERT B. LILICH, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* 857 (1991).

⁸² Donna J. Sullivan, *Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 AM. J. OF INT'L L. 487, 493 (1988).

human rights during armed conflict. Even were the ICCPR rights of freedom of worship derogable in the context of the war in Bosnia, the provisions of the Geneva Convention and the 1977 Protocols address to a great extent the religious rights which the destruction of religious property would violate. The Fourth Geneva Convention of 1949 provides in Article 27 that "protected persons are entitled, in all circumstances, to respect for . . . their religious convictions and practices, and their manners and customs."⁸³ Moreover, Article 58 of the same Convention requires that the "Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities," and that they "accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory."⁸⁴ Protocol I to the Geneva Conventions addresses the right of worship of those in the power of a party to the conflict who do not qualify for special treatment under another section of the Geneva Conventions or the Protocol. Paragraph 1 of Article 75, requires that as a minimum requirement all persons be accorded respect for their convictions and religious practices. The word "practices" is again important, as it specifically addresses the act of worship rather than referring to passive belief. It would be difficult to argue that the destruction of churches and mosques outside the zone of combat would be allowed under this provision. To the extent that the conflict in Bosnia may be considered a non-international conflict, identical language in Article 4 of Protocol II to the Geneva Conventions would apply.

Article 53 of Protocol I and the identical language in Article 16 of Protocol II, protecting cultural objects and places of worship, were until recently the only instances in which the right to worship and the prohibition on targeting cultural property were linked as closely related phenomena. As noted in Part II above, Article 53 forbids "acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples . .

⁸³ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 27, 6 U.S.T. 3516, 3536, 75 U.N.T.S. 287, 306.

⁸⁴ *Id.*, at art. 58.

⁸⁵ Assuming that "historic" is meant to modify only the word "monuments," it follows that artworks and places of worship which are part of the spiritual heritage of peoples are protected regardless of their cultural or historical value.⁸⁶ This proved to be a divisive issue in the drafting of the Protocols, as did initially the inclusion of the articles at all.⁸⁷

Some delegations argued that to include all places of worship regardless of cultural value would deprive culturally significant property of its special status, especially since local religious buildings are so often used for military purposes.⁸⁸ The draft article referred specifically to places of worship, but only to cultural and not spiritual heritage. As there was still disagreement as to whether any place of worship was part of the cultural heritage of peoples, the committee deleted reference to places of worship from Article 53 and placed it in Article 3 as an example of property normally committed to civilian use. Local churches would therefore receive the normal protection of other civilian property, and an understanding was reached that culturally important places of worship would not be deprived protection under the language covering cultural monuments and buildings. At the insistence of a large number of states, however, "places of worship" was returned and supplemented with the current language on "cultural or spiritual heritage."⁸⁹ It has been argued, however, that this language goes no farther than the compromise arrangement, and thus that local churches receive no more protection than other civilian property.⁹⁰ The International Committee of the Red Cross (ICRC) took this view, noting that "spiritual heritage of peoples" was meant only to cover objects "whose value transcends geographical boundaries, and which are unique in character and are intimately

⁸⁵ *Protocol I*, *supra* note 11, art. 16.

⁸⁶ Toman, *supra* note 14, at 564-65.

⁸⁷ MICHAEL BOTHE ET AL., *NEW RULES FOR VICTIMS OF ARMED CONFLICTS: COMMENTARY ON THE TWO 1977 PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949*, at 331 (1982).

⁸⁸ *Id.*

⁸⁹ *Id.* at 332. In particular, a number of Muslim states, along with the Holy See and Italy, insisted on this modification. *Id.*

⁹⁰ *Id.*

associated with the history and culture of a people."⁹¹ The ICRC noted that spiritual importance may exist even in the absence of cultural importance, and that "spiritual" was written into the Protocol to cover such situations, but not to extend protection to local churches or mosques.⁹²

The Belgian delegate described this view well, saying that the article referred to 'places of worship so intimately associated with those faiths that, more than all the other religious buildings already protected under Article 47 [Article 52 of the final version of Protocol I], they seemed to be their true embodiment on earth.'⁹³ The Saudi Arabian delegate, however, seemed to feel that the phrase 'or spiritual' extended special protection to all places of worship, presumably under the theory that any place of worship must be part of the spiritual heritage of that particular faith.⁹⁴

B. A New Approach to Religious Property

The conflict in Bosnia-Herzegovina has dramatically demonstrated the vulnerability of religious property in wartime. Moreover, it has offered an ideal case study demonstrating the value of the spiritual heritage provision of the 1977 Protocols, and supporting the position of those delegations who wished to extend protection to all religious property. Hopefully, if the world community heeds the lessons of this conflict, it will stimulate further reevaluation of how we think about the protection of cultural property during armed conflict.

Cultural property, whether religious in nature or not, derives its

⁹¹ INTERNATIONAL COMMITTEE OF THE RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, at 646 (1987).

⁹² *Id.* at 1469.

⁹³ HOWARD S. LEVIE, 3 PROTECTION OF WAR VICTIMS: PROTOCOL I TO THE 1949 GENEVA CONVENTIONS 221 (1980).

⁹⁴ *Id.* at 217.

need for protection from a certain bundle of rights implicated in its continued existence. The cultural internationalists are correct when they suggest that all of humankind has an interest in the continued existence of the Mostar Bridge, in preserving that “attempt to grasp eternity.” Such works of art help give meaning to humanity, and it seems appropriate to refer to our collective interest in creating meaning through art as a right. Similarly, the cultural nationalists are also correct in observing that the Mostar Bridge may be a stronger vehicle for giving meaning to the lives of Bosnians than to the rest of us. Their interests in the Bridge’s survival may be stronger than ours, since it is in some sense their bridge. It is not only a monument to humanity, but also a part of the history of a particular people, and therefore maintains additional importance to that people. The war in Bosnia has demonstrated that this very importance renders such property valuable as a military target to those who wish to drive people from their homes. The attack on the Mostar Bridge was an affront to humankind, but it was also an assault on the culture which built it. It was a spiritual attack on a people, and a deliberate attempt to drive them off by annihilating that which helps give meaning to their lives.

Cultural and religious property, then, deserves special protection not only because its destruction hurts humankind as a whole, but additionally because such destruction constitutes an attack on the objects through which a people defines itself. Cultural property law, in this way a statement to the effect that attacks directed at the human spirit will not be tolerated. In this light, one can see that a strict adherence to the cultural internationalist approach is clearly inadequate with respect to both religious and secular cultural property. By focusing on the heritage of all mankind, it becomes too easy to disregard the needs of the communities which the property in question was originally designed to serve. The Arc de Triomphe was obviously not built as a service to the surrounding neighborhoods of Paris. The Husenija Mosque in Gradacac, however, was built with a specific place and community in mind. While the architects certainly attempted to make the mosque beautiful, and while the residents of the town may feel a certain pride in showing the mosque to outsiders, its value to the cultural heritage of mankind is minimal at best. It is simply one of hundreds of similar mosques scattered throughout the Balkans. Even to the Islamic world, such a

mosque is unimportant from the point of view of international cultural or spiritual heritage. At least two books devoted to mosque architecture of the world have deemed Yugoslavian mosques unworthy of more than a passing mention.⁹⁵ Their importance is to their communities, and the international community should more thoroughly consider its duty to those communities to ensure the protection of locally important religious property.

Moreover, the approach to cultural property *as property* has proven insufficient to deal with cases of globally insignificant but locally important religious property. Cultural property is seen for theoretical purposes as the common property of the world. We feel that we, as human beings, have some right implicated in the continued existence of the Pyramids or St. Peter's. Such property derives its value to the world through its cultural importance. The importance of religious property, however, cannot be so easily explained, although ultimately similar interests are implicated. While the Husenija Mosque may not be of any importance to non-Muslim Americans, either as a peerless cultural work or as a spiritual monument, its role in the Gradacac Muslim community's continuing right to worship is of the utmost significance. As a fundamental human right, the right of religious freedom applies to all humanity, and its denial to any people is a legitimate subject for international concern.

As can be seen from the relevant provisions discussed above, the right to continue the practices which constitute the physical manifestation of religious belief is a crucial part of the right of religious freedom. While the law relating to the protection of cultural property during time of armed conflict focuses on the property itself, what is really at stake in the situation of religious property is the functional aspect of the property in question. Its value is derived from the role it plays in the life of the local community it serves and the activities to which its continued existence is essential. A church or mosque is more than physical property. It is part of a process through which men and women express their religious belief.

⁹⁵ See THE MOSQUE: HISTORY, ARCHITECTURAL DEVELOPMENT AND REGIONAL DIVERSITY (Martin Frishman & Hansan-Uddin Khan eds., 1994). See also JOHN D. HOAG, ISLAMIC ARCHITECTURE (1977).

Thus, the systematic destruction of religious property which has occurred in Bosnia-Herzegovina must be seen as more than the destruction of property. It is the systematic denial of the right of religious freedom through the destruction of the physical necessities of worship and the physical representations of faith so important to a community sense of identity.

In this way, the need to protect even local religious property goes hand in hand with the need to protect cultural property generally. The world community is affected in the sense that such destruction constitutes a human rights violation, and plays an important role in the process of ethnic cleansing which we all have an interest in preventing. Moreover, on the local level, the destruction of religious property plays the same role as the destruction of cultural property generally. Whether or not the Husenija Mosque is of cultural importance, its destruction constitutes a deliberate attack on the spirituality of a people in an attempt to take meaning from their lives and drive them from their homes. It is an attack on spirituality itself, just as was the destruction of the Mostar Bridge. Why, then, exclude religious property from the special protection offered cultural property simply because it is not of "cultural" value? Such property shares with cultural property the most salient attributes which make it particularly vulnerable, and its destruction particularly painful. Whether a people attempt to bring spiritual meaning to their lives through art or through religion, their right to do so needs international protection. Otherwise, cultural and religious property offers too tempting a target for anyone undertaking a campaign of ethnic cleansing. This is the case regardless of the abstract questions of ownership posited by the false opposition of cultural nationalism and cultural internationalism.

Cultural property law has advanced well beyond the general protections offered civilian property by the Hague Conventions of 1907. It has recognized that certain objects deserve extra protection because of their importance to the cultural heritage of mankind. In the Protocols of the Geneva Conventions, we see the international community fumbling toward the next step in such protection--the recognition that places of worship need similar special protections for similar reasons. The reference to the "spiritual heritage" of peoples in the Protocols is an

important step towards the realization that special protection of certain property is merited not for reasons relating to property, but rather because implicated in the continued existence of certain objects is humanity's quest for beauty and meaning. By addressing these rights, it seems clear that any place of worship is necessarily part of the spiritual heritage of peoples, and that the restrictive view of this phrase as adopted by many nations is profoundly wrong-headed. Religious property and cultural property serve similar purposes. They are both manifestations of humanity's right to attempt to grasp eternity. Once we heed the lessons of Bosnia and begin to focus on this right, rather than on the theoretical property interests of the international community, the legal protection of both cultural and religious property during armed conflict will attain a logical consistency which heretofore it has lacked.