

Turning Hagia Sophia into a mosque (again)

Has international law anything to say about that?

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The announcement by Recep Tayyip Erdoğan to change the status of Hagia Sophia and to turn it into a Mosque last Friday, 10 July 2020, has provoked a worldwide outcry. With a ruling of 2 July 2020, published also on Friday, 10 July 2020 ([No 2020/2595](#)), the Council of State, Turkey's highest administrative court, invalidated the 1934 transformation of Hagia Sophia from a Mosque into a museum. On the day the court ruling was released, the Turkish President signed [decree no 2729](#) opening the UNESCO world heritage site – once again – to Muslim worshipers. Consequently, Hagia Sophia ceases to be a public museum, becomes a Mosque again, and the inaugurating Friday [prayers will take place on 24 July 2020](#), coinciding with the 97th anniversary of the conclusion of the [Treaty of Lausanne in 1923](#).

This is yet again a historic change in the long history of Hagia Sophia, which was built in 537 AD on the orders of emperor Justinian I, constituting once the world's largest church. Following the conquest of Constantinople by Sultan Mehmed II in 1453, it was immediately converted into a Mosque. The founder of modern Turkey, Mustafa Kemal Atatürk, transformed Hagia Sophia some 500 years later on [24 November 1934](#) into a museum. As a museum, it lasted from 1 February 1935 until 10 July 2020. This status change met worldwide opposition. For instance, Pope Francis said that he is "[very saddened](#)" by this decision, Greek's Prime Minister Kyriakos Mitsotakis "[condemned](#)" it, and also [UNESCO expressed](#) its "deep regret", calling upon the Turkish authorities "to initiate dialogue without delay" and announcing that "the state of conservation [...] will be examined by the World Heritage Committee at its next session". This contribution seeks to explore whether international law has a role to play in this incident.

Indeed, the UNESCO did not only regret the decision made, but also called on Turkey to "abide by its '[legal commitments and obligations](#)'" stemming from the ratification of the World Heritage Convention in 1983 in general and the listing of Hagia Sophia as a World Heritage Site in particular. UNESCO's Director-General, [Audrey Azoulay](#) particularly highlighted Hagia Sophia's "status as a museum [which] reflects the universal nature of its heritage and makes it a powerful symbol for dialogue." It has been admitted to the World Heritage List as part of the "Historic Areas of Istanbul" [in December 1985](#). Yet, in a [2019 Report on a Joint UNESCO WHC and ICOMOS Advisory mission to the Historic Areas of Istanbul](#), the currently ongoing reconstruction of the adjacent 19th century Ottoman Madrasa (place of Islamic higher learning) was applauded and it was acknowledged as "a building in

use rather than a museum or monument”. And indeed, in an [open letter about the status of Hagia Sophia](#), scholars of Byzantine and Ottoman art state that “in a certain sense, Hagia Sophia is currently functioning as both a museum and a mosque” as “[s]ince 2016, Hagia Sophia has been served by a full-time imam, the call to prayer has sounded from the minarets, and Qur’anic readings and prayers have taken place within during the annual observation of Laylat al-Qadr [the most important festive night during Ramadan].”

This provokes to take a closer look at the selection criteria according to the [Operational Guidelines for the Implementation of the World Heritage Convention](#) which have led to the listing of the “Historic Areas of Istanbul” in general and Hagia Sophia in particular. [Criterion \(i\)](#) highlights that “[t]he Historic Areas of Istanbul include monuments recognized as unique architectural masterpieces of Byzantine and Ottoman periods” and explicitly refers to Hagia Sophia as an example, mentioning its design by Anthemius of Tralles and Isidore of Miletus in 532–537. [Criterion \(ii\)](#) emphasizes that “[t]hroughout history the monuments in Istanbul have exerted considerable influence on the development of architecture, monumental arts and the organization of space, both in Europe and the Near East.” Criterion (ii) further specifies this, again by pointing to Hagia Sophia, which “became a model for an entire family of churches and later mosques, and the mosaics of the palaces and churches of Constantinople influenced both Eastern and Western art.” The acceptance of Hagia Sophia as a World Heritage Site, thus, implicitly refers to the very specific history of Hagia Sophia, being first object of desire and pray, and then serving somehow the purpose of unification and tolerance between world religions. Yet, the listing must not be reduced to a specific function or use as for the inclusion in the World Heritage List at least one criteria must be met.

According to [UNESCO](#), however, “[a]ny modification requires prior notification by the State concerned to UNESCO and then, if necessary, examination by the World Heritage Committee.” UNESCO’s Assistant Director-General for Culture, [Ernesto Ottone](#), specified that “[i]t is important to avoid any implementing measure [...] that would affect physical access to the site, the structure of the buildings, the site’s moveable property, or the site’s management”.

The law, however, seems not to be fully supportive of such an assessment. Article 4 of the Convention Concerning the Protection of World Cultural and Natural Heritage (World Heritage Convention, WHC, 1037 UNTS 151) stipulates that each State Party “recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State.” Article 5 WHC obliges State Parties “[t]o ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory”. This includes no concrete provision on how to use a World Heritage Site, except of course any usage being detrimental to its preservation. And indeed, other inscribed sites, such as the Notre-Dame de Paris or the Cologne Cathedral like many other churches on the World Heritage List, are open to worshipers. Article 6 WHC, finally, explicitly mentions the respect of the “sovereignty of the States on whose territory” the cultural heritage is

situated. Precisely to Turkey's sovereignty, also Erdoğan has appealed when he announced his decision to inaugurate the Mosque Hagia Sophia with prayers on 24 July 2020. Thus, prima vista the announced status change of Hagia Sophia seems not to be forbidden by international heritage law.

Even if we would come to conclude that the change of status is forbidden, the legal sanctions of the World Heritage Convention seem to be rather toothless. According to Article 11 para 4 WHC, the World Heritage Committee runs a "List of World Heritage in Danger". Subject to a listing on this red list, however, is only property a) which is already listed as world heritage, b) "for the conservation of which major operations are necessary" and also c) "for which assistance has been requested under this Convention". The last criterion is actually not given in our case, as Turkey did not request any support. However, the Committee has – in a somewhat creative interpretative fashion – already disregarded c) in earlier decisions as for instance when listing the "[Historic Centre of Vienna](#)" in 2017 and arguably this little sanctioning tool has become a case of "other subsequent practice" according to Article 32 Vienna Convention on the Law of Treaties. [ILC Special Rapporteur Georg Nolte](#) has specified that other subsequent practice "as a supplementary means of interpretation under article 32 [VCLT] consists of conduct by one or more parties in the application of the treaty, after its conclusion". As the contracting parties to the WHC did not protest against prior decisions, the extension of the mandate by the decision of the WHC can arguably be attributed to them. In case of "urgent need", as the last sentence of para 4 explains, the Committee "may at any time [...] make a new entry in the List of World Heritage in Danger and publicize such entry immediately".

Besides that, what still remains as a consequence is the loss of reputation coming with a listing as an endangered site. However, isn't the turmoil that would come with such a listing precisely the aim of the Turkish President? Beyond these doubts, would the next step after the red list, the withdrawal of the world heritage status, be actually an appropriate legal sanction? Does the Hagia Sophia cease to be a world heritage, because of its envisaged use as a Mosque? Or is the architectural masterpiece – given the fact that its physical status remains intact (and Christian traces, such as *Jesus Christ Pantocrator* are not destroyed) – not still a world heritage within the listed "Historic Areas of Istanbul"? In other words, the sanction of delisting or rather excluding Hagia Sophia from the world heritage "Historic Areas of Istanbul" would be a defeat for both sites. Turkey would face a loss of reputation and UNESCO would lose its protection status concerning Hagia Sophia.



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After all, it seems that international law in the form of the World Heritage Convention does not forbid the announced change of status or holds only weak sanctions ready. Technically speaking, the change of status is – if we dare to believe the [statement by the High Board of Religious Affairs on Hagia Sophia Mosque](#) – only a mere reduction of opening hours as Hagia Sophia shall remain open for visitors when no prayers take place. It is sad, indeed, that Erdoğan has finally taken this [long impending](#) step. However, the international community is arguably better advised not to call for legal consequences as the ground for such measures is weak. Moreover, in the above mentioned [open letter about the status of Hagia Sophia](#), scholars of Byzantine and Ottoman art and culture highlight that in their opinion “the central question is not, ‘Should Hagia Sophia be a museum or a mosque?’ The central question is rather, ‘How can we best care for Hagia Sophia?’”

Despite this rather sober finding, the public concern following the decision is nevertheless understandable and also appropriate in the face of the symbolic nature of this move. The museum Hagia Sophia stood for the unity, tolerance and understanding of the European Christian world and the Muslim world of the Middle East. The change of status, so it seems at least, is precisely to the detriment of this. If the change of status, however, has also implications for the physical preservation of Hagia Sophia, legal obligations would stand against such a decline in protection. What remains to be seen is how the scheduled “conversion process” to make the future Mosque suitable for Islamic prayers unfolds. For instance, the implementation of the Islamic reservation against the depiction of living beings (especially within

places for prayer) is – despite the calming 16 July 2020 [statement by the High Board of Religious Affairs on Hagia Sophia Mosque](#) which is now in charge speaking of “curtained or blackened [pictures] during prayers by means of utilizing appropriate methods” – so far largely uncertain. More practical and monetary concerns relate to the former 100 Turkish Liras entry fee, which was due for visiting the museum. [If the fee won't be kept for tourists either](#), the free entry of 3,7 million tourists visiting Hagia Sophia in 2019 will constitute quite a detrimental financial loss, which might have an impact on expensive conservation practice.

These are speculations. What is clear, however, is that international law obligations would certainly stand against a potential reluctance of care in the preservation of one of the most important objects of our common heritage. Beyond that and despite the fact that the status change seems not to be forbidden by international law, this move nevertheless reveals a backward-looking international policy, praising national sovereignty and prioritizing it over international cooperation. In this vein, this step squares in a way with the overall image of Erdoğan's foreign policy. Among of which the deplorable illegal [invasion in Syria](#) ironically labelled “Operation Peace Spring” or his rather questionable [energy “policy” in the Eastern Mediterranean](#) stand out. In that respect, turning Hagia Sophia into a mosque again is another brick falling out of the unifying wall between Europe, Turkey, and the international community.

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