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## Collateral Damage: Protecting Cultural Heritage in Crimea and Eastern Ukraine

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## COLLATERAL DAMAGE: PROTECTING CULTURAL HERITAGE IN CRIMEA AND EASTERN UKRAINE

*Zoe Niesel*

Since the early spring of 2014, the world has watched Russia utilize military forces to invade and annex territory belonging to Ukraine. These actions are, unsurprisingly, raising concerns in Eastern Europe over the prospect of armed conflict in the region, the political consequences of Russian annexation of Ukrainian territory, and the effect of this conflict on ordinary civilians. But there is another potential cost associated with Russia's actions that should not be overlooked – the loss of Ukrainian cultural heritage. History is replete with examples of the destruction of cultural heritage during periods of instability, from Napoleon's systematic looting of Egypt to the state-sanctioned pillage and burning of museums in Kuwait by Iraq during the Persian Gulf War.<sup>1</sup> The question now is whether that destiny is inevitable for Ukraine's unique cultural resources, or whether such collateral damage can be prevented.

The current crisis in Ukraine has its roots in a protest movement known as "EuroMaidan," which began when former Ukrainian President Viktor Yanukovich rejected a treaty with the European Union that would have significantly expanded economic ties between the EU and Ukraine.<sup>2</sup> EuroMaidan quickly became a broader movement protesting the widespread corruption of the Yanukovich regime.<sup>3</sup> The deaths of at least 82 protestors further inflamed the cause and resulted in Yanukovich fleeing the capital amid accusations of corruption and brutality.<sup>4</sup>

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1. Harvey E. Oyer III, *The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict – Is It Working? A Case Study: The Persian Gulf War Experience*, 23 COLUM.-VLA J.L. & ARTS 49, 49, 59 (1999).

2. *See EU Rejects Russia 'Veto' on Ukraine Agreement*, BBC NEWS (Nov. 29, 2013, 3:04 PM), <http://www.bbc.com/news/world-europe-25154618> (reporting on Yanukovich's refusal to sign Ukraine's trade deal).

3. Lecia Bushak, *Kiev's Minstrel of the Street Revolution*, NEWSWEEK (Feb. 18, 2014, 4:33 PM), <http://mag.newsweek.com/2014/02/21/kyiv-s-minstrel-street-revolution.html>; *see also* Shaun Walker et al., *With Viktor Yanukovich Gone, Ukraine Hunts for Secrets of Former Leader*, GUARDIAN (Feb. 23, 2014, 2:28 PM) <http://www.theguardian.com/world/2014/feb/23/viktor-vanukovych-ukraine-secret-documents> (discussing the exposure to the public of Yanukovich's luxurious compound and secret documents).

4. David M. Herszenhorn, *Ukraine Rushes to Shift Power and Mend Rifts*, N.Y. TIMES, Feb. 24, 2014, at A1.

In response to Yanukovich's ouster from power, Russian military units invaded the Crimean Peninsula in southern Ukraine and seized government buildings throughout the region.<sup>5</sup> Russian President Vladimir Putin justified the invasion of Crimea by stating that it was protecting ethnic Russians from extreme "nationalist" elements within the new Ukrainian government.<sup>6</sup> Russian military units surrounded Ukrainian military facilities in Crimea and forced the surrender of Ukrainian soldiers.<sup>7</sup> In Eastern Ukraine, pro-Russian separatists, with the help of Russian military officials, have targeted Ukrainian police and military installations. Estimates put the total number of Russian troops involved in Crimea and Eastern Ukraine at 20,000-30,000, and Ukrainian forces have withdrawn from the Crimean Peninsula following Russia's seizure of the Ukrainian naval headquarters and other military bases.<sup>8</sup> Ukraine continues to denounce Russia's invasion of Crimea and asserts that its actions in that region and in Eastern Ukraine are violative of international law.<sup>9</sup>

With Russian troops stationed on the Crimean Peninsula and Russian military officials purportedly organizing Ukrainian military defectors in Eastern Ukraine, rhetoric between the countries is becoming increasingly inflammatory, and international watchdog groups are already questioning the safety of Ukraine's archaeological and cultural resources.<sup>10</sup> Ukraine's cultural heritage spans over 30,000 years, as archaeological evidence suggests that humans displaying ascertainable cultural traditions have inhabited the region since the Upper Paleolithic.<sup>11</sup> Such a long history has,

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5. Shaun Walker et al., *Russian 'Invasion' of Crimea Fuels Fear of Ukraine Conflict*, GUARDIAN (Feb. 28, 2014), <http://www.theguardian.com/world/2014/feb/28/russia-crimea-white-house>.

6. Haroon Siddique et al., *Ukraine Crisis: Kerry Says Russia 'Hiding Hand Behind Falsehoods'*, GUARDIAN (Mar. 4, 2014 10:55 AM), <http://www.theguardian.com/world/2014/mar/04/ukraine-crisis-shots-fired-crimea-airbase>.

7. Alex Marquardt, *Russians Seize More Crimean Facilities, Demand Ukrainians Surrender*, ABC NEWS (Mar. 3, 2014), <http://abcnews.go.com/International/russians-seize-crimean-facilities-demand-ukrainians-surrender/story?id=22749979>.

8. David M. Herszenhorn & Andrew E. Kramer, *Ukraine Plans to Withdraw Troops from Russia-Occupied Crimea*, N.Y. TIMES, Mar. 19, 2014, at A14, available at <http://www.nytimes.com/2014/03/20/world/europe/crimea.html>; Ruth Pollard, *Russia Closing Door on Crimea as Troops Build Up*, SYDNEY MORNING HERALD (Mar. 13, 2014), <http://www.smh.com.au/world/russia-closing-door-on-crimea-as-troops-build-up-20140313-hvi0c.html>.

9. Walker et al., *supra* note 5.

10. Blue Shield International, *Blue Shield Statement on Ukraine*, BLUE SHIELD, <http://www.blueshield-international.org/cms/index.php/en/home/69-blue-shield-on-ukraine>.

11. Sandrine Prat et al., *The Oldest Anatomically Modern Humans from Far Southeast Europe: Direct Dating, Culture and Behavior*, 6 PLOS ONE e20834, 1-3 (2011), available at <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0020834>.

unsurprisingly, led to modern Ukraine's rich archaeological and cultural landscape. The nation is currently host to seven World Heritage sites and has submitted an additional fifteen sites for tentative consideration.<sup>12</sup> These sites range from ancient Greek colonies to 19th century Orthodox cathedrals made entirely of wood.<sup>13</sup>

Because current aggressions are centered primarily in Crimea and Eastern Ukraine, the archaeological and cultural resources of those regions seem particularly prone to damage or destruction. Unfortunately, both areas are home to some of Ukraine's most ancient, and vulnerable, archaeological and historic sites. Such examples include Tauric Chersonese, an ancient city founded in the 5th century B.C.E. on the Crimean Peninsula.<sup>14</sup> Known as the "Ukrainian Pompeii," Tauric Chersonese is the largest classical archeology site on the Black Sea. It includes the ruins of defensive fortifications, city gates, a mint, temples, and a theatre.<sup>15</sup> A museum located at the site displays thousands of objects dating from the 5th to 15th centuries A.D., including a text from the 3rd century A.D.<sup>16</sup>

Additional important cultural sites include the ancient city of Sudak, the Khan's Palace, and Kamyana Mohyla. Sudak, founded in the 6th century, contains an excellently preserved example of a Genoese fortress along the Black Sea.<sup>17</sup> The Khan's Palace, located in the city of Bakhchisaray, is a 16th century palace built with Ottoman and Italian influences that served as the main political, religious, and cultural center of the Crimean Tatar people during the reign of the Crimean Khans.<sup>18</sup> The walled complex contains gardens, mosques, harems, and a cemetery.<sup>19</sup> Finally, the archaeological park Kamyana Mohyla in the province of Zaporizhia contains Neolithic burial mounds and petroglyphs and showcases the religious practices of people in southeast Europe for a period spanning from the 20th century B.C. to the 17th century A.D.<sup>20</sup>

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12. *Ukraine*, UNESCO WORLD HERITAGE CENTER, <http://whc.unesco.org/en/statesparties/ua> (last visited May 13, 2014).

13. *Id.*

14. UNESCO World Heritage Committee, *Convention Concerning the Protection of the World Culture and National Heritage*, 37th Sess. at 210, WHC-13/37.COM/20 (June 16–27, 2013).

15. MINISTRY OF CULTURE OF UKRAINE ET AL., NOMINATION DOSSIER OF THE PROPERTY FOR INCLUSION ON THE WORLD HERITAGE LIST: THE ANCIENT CITY OF TAURIC CHERSONESE AND ITS CHORA (5TH CENTURY BC–14TH CENTURY AD), at 21–24 (2012).

16. *Id.* at 34, 55–56.

17. MINISTRY OF CONSTRUCTION, ARCHITECTURE, HOUSING AND MUNICIPAL ECONOMIES OF UKRAINE, COMPLEX OF THE SUDAK FORTRESS MONUMENTS OF THE 6TH–16TH C., at 1 (2007).

18. DELEGATION PERMANENTE D'UKRAINE AUPRÈS DE L'UNESCO, BAGÇESARAY PALACE OF THE CRIMEAN KHANS 1 (2003).

19. *Id.*

20. STATE SERVICE FOR THE CULTURAL HERITAGE PROTECTION, ARCHAEOLOGICAL SITE "STONE TOMB" 1 (2006), *available at* <http://whc.unesco.org/en/tentativelists/5075/>.

It is no surprise that hostilities between Ukraine and Russia would pose a grave threat to archaeological and cultural sites. But whether affirmative action to prevent the destruction of cultural property is required can only be answered by assessing the applicability of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (“Hague Convention”). For over sixty years, the Hague Convention has served as the world’s only multilateral treaty to prevent the destruction of archaeological sites, archives, and museums during armed conflicts.<sup>21</sup> Both Russia and the Ukraine are State Parties to the Hague Convention and are thus obligated to honor its mandated cultural property protections.

Under the Hague Convention, cultural property and archaeological sites are entitled to protection during (1) an armed conflict between two or more State Parties or (2) cases of “partial or total occupation of the territory” of a State Party by another State Party.<sup>22</sup> In these situations, State Parties to the Hague Convention are required to avoid using, requisitioning, or directing acts of hostility against cultural property and may not operate in adjacent areas if it exposes cultural property to risk.<sup>23</sup>

In applying the Hague Convention to the situation in Ukraine, Russia must begin to provide protection to Ukrainian cultural property. First, this is a situation that would qualify as an “armed conflict” under the Hague Convention. A precise definition of an “armed conflict” under the Hague Convention is not available, but international jurisprudence suggests that it will exist “whenever there is a resort to armed force between States.”<sup>24</sup> Here, Russia has utilized armed forces to neutralize the Ukrainian military in Crimea and has been involved in the capture of Ukrainian military, police, and naval facilities in Crimea and Eastern Ukraine.<sup>25</sup> Ukraine, in turn, has responded to such actions with military force. As such, the use of armed forces in Ukraine suggests that the situation has risen to the level of an armed conflict.

Additionally, regardless of an armed conflict between Russia and Ukraine, the Hague Convention should apply for another independent reason – Russian forces are currently belligerent occupants in the Crimean Peninsula, and perhaps now parts of Eastern Ukraine. Occupation sufficient to activate cultural property protections occurs when territory is placed under the actual authority

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21. *See generally* Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240 [hereinafter Hague Convention].

22. *Id.* at art. 18.

23. *Id.* at art. 4.

24. Prosecutor v. Tadic, Case No. IT-94-1, ICTY Appeal Decision, ¶ 70 (Oct. 2, 1995), <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>.

25. Herszenhorn & Kramer, *supra* note 8.

of hostile forces.<sup>26</sup> U.S. observers have commented that Russian forces have operational control in Crimea and have blockaded Ukrainian naval and military access.<sup>27</sup> Additionally, Russian forces have overseen the disarming of military installations in the area and begun issuing new naturalization documents to Ukrainian citizens in Crimea.<sup>28</sup> Such actions indicate that Russian forces have actual authority in Crimea. Accordingly, as an occupying power, Russia is obligated to provide cultural property protection.

Additionally, Russian activities in Eastern Ukraine, including the region of Donetsk, are likely to rise to the level of belligerent occupation necessitating cultural property protection. Reports indicate that pro-Russian gunmen have captured several cities and overrun police installations in Donetsk. An internet video released in April 2014 shows that Ukrainian police who defected during the hostile takeovers were being reorganized under officers from the Russian military,<sup>29</sup> and all available evidence points to Russian military officials having control over territory captured by pro-Russian separatists. As the Russian offensive continues to spread, captured areas should receive protection under the Hague Convention.

Since the Hague Convention applies during Russia's intervention in Crimea and military offensive in eastern Ukraine, Russia is faced with a variety of obligations regarding Ukrainian cultural property. First, Russia must resolve not to harm any cultural property during the length of the armed conflict or occupation.<sup>30</sup> This means that it may not use areas containing cultural property, or adjacent areas, in ways which would expose the property to damage. Such a proscription is particularly important in the case of the Tauric Chersonese in Crimea, which suffers from structural damage due to surrounding modern development.<sup>31</sup> Additionally, Russia must work to prohibit any form of theft, looting, or misappropriation of cultural property at archaeological sites or museums.<sup>32</sup> Such a task is not easy, as instability during hostilities breeds theft and destruction of cultural property. For example, the American occupation of Iraq in 2003 was marked by mass looting and destruction at the Baghdad

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26. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land, Jan. 26, 1910, 187 Consol. T.S. 227.

27. Marie-Louise Gumuchian et al., *Ukraine Mobilizes Troops after Russia's Declaration of War*, CNN (Mar. 3, 2014), <http://www.cnn.com/2014/03/02/world/europe/ukraine-politics/>.

28. Natalia Antelava, *The Creeping Annexation of Crimea*, NEW YORKER ONLINE (Mar. 5, 2014), <http://www.newyorker.com/online/blogs/newsdesk/2014/03/the-creeping-annexation-of-crimea.html>.

29. Simon Shuster, *Ukraine Powerless to Act as East Slips Under Russian Control*, TIME (Apr. 14, 2014), <http://time.com/61971/ukraine-powerless-to-act-as-east-slips-under-russian-control/>.

30. Hague Convention, *supra* note 20 at art. 4.

31. GLOBAL HERITAGE FUND, SAVING OUR VANISHING HERITAGE 15 (2010).

32. Hague Convention, *supra* note 20 at art. 4, para. 3.

Museum.<sup>33</sup> It is thus critical that Russia obey the mandates of the Hague Convention and work to prevent such actions.

Finally, Russia has additional cultural property obligations due to its status as an occupying power. As such, it must not only take steps to avoid damage to any cultural property, but must also actively work with Ukrainian officials to safeguard Ukrainian heritage.<sup>34</sup> If Ukraine's national authorities cannot safeguard their own cultural property, Russia faces an even heavier burden – it becomes responsible for taking “necessary measures of preservation.”<sup>35</sup> In essence, Russia must not only prevent the destruction of Ukraine's cultural property, but must also actively work to protect it from hostilities.

There is currently no end in sight to Russia's involvement in Ukraine.<sup>36</sup> But while the situation remains uncertain, it is hoped that Russia will abide by its obligations under the Hague Convention and protect Ukrainian cultural heritage in the areas under Russian control. Such obligations may be increasingly pressing as reports suggest that at least one Ukrainian museum has already been the victim of looting and damage.<sup>37</sup> Avoiding additional incidents will not only satisfy Russian treaty obligations, but help to preserve priceless heritage for future generations.

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33. Sasha P. Paroff, *Another Victim of the War in Iraq: The Looting of the National Museum in Baghdad and the Inadequacies of International Protection of Cultural Property*, 53 EMORY L.J. 2021, 2028 (2004).

34. Hague Convention, *supra* note 20 at art. 5.

35. *Id.*

36. Steven Lee Myers & Ellen Barry, *Putin Reclaims Crimea for Russia and Bitterly Denounces the West*, N.Y. TIMES (Mar. 18, 2014), <http://www.nytimes.com/2014/03/19/world/europe/ukraine.html? r=0>.

37. Blue Shield International, *supra* note 10.