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Revisiting Enhanced Protection: Implications from a Practical Case Study**

Abstract: The 1999 Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) created a new legal framework to improve protection for the world's most important cultural property in cases of conflict, called enhanced protection. However, it has never been tested. In representing the NGO Blue Shield International, I had the opportunity to test it on the NATO training exercise STEADFAST JACKAL 2023. The training audience, Eurocorps, was presented with a complex non-international armed conflict in which tensions escalated over a (fictional) site under enhanced protection. Multiple stakeholders, including the national owners and armed non-state groups, provoked

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conflicting legal and policy obligations. The actions taken by Eurocorps raised implications for safeguarding enhanced protection sites in real situations, which this article seeks to highlight and explore, offering a new understanding of the application of law in practice. The article argues that in certain circumstances enhanced protection may lead to competing obligations regarding human rights, justice, and cultural protection. Those registering sites and acting to protect them must consider likely scenarios carefully to establish good practices. Otherwise, enhanced protection could defend sites to the detriment of those that value them.

Keywords: enhanced protection, Second Protocol, 1954 Hague Convention, cultural property protection, armed non-state actor, international humanitarian law

Introduction

The balance between protecting cultural property in armed conflict and the exigencies of military necessity when prosecuting conflict sit in tension. Those responsible for drafting laws to protect heritage in conflict were (and remain) divided, arguing either that all heritage should be protected without exception, or accepting necessary exemptions if armed forces are to succeed (the principle of military necessity).¹ However, it is a foundational principle of International Humanitarian Law (IHL) that even war has limits, requiring a constant balance between winning the war against the cost of doing so. To protect cultural property, cultural value is linked to thresholds of acceptable military activity. The more important the cultural property, the higher the requirement of military necessity, with more restrictions placed on military action. This has caused some to question whether cultural property protection (CPP) laws will ever be respected in the chaos of conflict. This article looks specifically at the effectiveness of the most restrictive system, enhanced protection, a legal regime in the 1999 Second Protocol² to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)³ (hereafter “the Convention”), created to protect humanity’s most important cultural property, which was recently tested in a major military exercise. In addition to shedding new light on the effectiveness of enhanced protection, the exercise generated implications regarding the role of the military in protecting sites; what

¹ J. Toman, *Cultural Property in War: Improvement in Protection. Commentary on the 1999 Second Protocol to the Hague Convention of 1954*, UNESCO, Paris 2009, p. 91.

² 26 March 1999, 2253 UNTS 172.

³ 14 May 1954, 249 UNTS 240.

protection means when considering tangible fabric and symbolic values; and the challenges of applying IHL in a complex conflict situation.

The Convention⁴ is the most important IHL treaty protecting cultural property⁵ in armed conflict. It was written following widespread cultural destruction in conflicts in the first half of the 20th century. The drafters felt that much damage had been avoidable and should be preventable. Protection of cultural property “of great importance” (defined in Article 1⁶) was defined as safeguarding and respect (Article 2). Safeguarding meant measures States Parties should take in peace to protect cultural property (Article 3). Respect was the formulation by which the drafters sought to strengthen the limits on conflict, allowing military use of sites and acts of hostility against them only in cases of imperative military necessity (left undefined), as well as prohibiting looting and reprisals (Article 4). Article 7(2) obligates states to support the competent authorities responsible for safeguarding. The Convention also provides a system of special protection for certain more important cultural property, with more restrictions on military action and a nominally higher threshold for military necessity. However, special protection saw little uptake and was judged to be flawed.

Forty-five years after the adoption of the Convention, the international community agreed on a Second Protocol.⁷ It directly incorporated the military restrictions expounded in the Additional Protocols (1977)⁸ to the Geneva Conventions (1949), which have come to set the international norms regarding acceptable limits on warfare: today, most of their stipulations are considered customary. Their reiteration in the Second Protocol in 1999 established that CPP was also underpinned by the clarified military principles of distinction, necessity, and proportionality (detailed below). The new law also addressed the perceived flaws in the special protection system, creating enhanced protection for cultural property “of the greatest importance for humanity” (Article 10), which provided certain immunities from conflict. Stringent restrictions on military activity, supported by criminal sanctions, aimed to ensure that attacks on such important cultural property were a last resort, only authorizable by the Force Commander.

Yet enhanced protection has seen little state uptake and has never been tested in conflict. The situation is compounded by limited academic research, largely published within a decade of the Second Protocol’s creation and consisting of legal explorations and their overlap with other international laws, with references

⁴ Ratified by 135 States (June 2024).

⁵ This article uses the term “cultural property”, not “cultural heritage”, following the Convention.

⁶ Article 1 of the Convention defines cultural property as “movable or immovable property of great importance to the cultural heritage of every people”, “irrespective of origin or ownership”, determined by States Parties.

⁷ Ratified by 88 States Parties (June 2024).

⁸ 8 June 1977, 1125 UNTS 3, and 1125 UNTS 609.

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to the drafting to elucidate the intent.⁹ Leading lawyer Henckaerts felt that the new military stipulations represent only “minor” differences¹⁰ to the Convention’s protections. There remains a vast gap in practical knowledge. Does the system work in practice? When combatants are faced with difficult choices in prosecuting a conflict, will sites be protected? What might be the consequences of doing so? Are there circumstances under which heritage should not be prioritized?

This article presents aspects of a recent NATO exercise which provide insight into these questions. In 2023 I – representing the independent cultural property protection NGO, Blue Shield International (BSI)¹¹ – was invited by NATO SHAPE J9 and NATO’s Joint Warfare Centre to attend Exercise STEADFAST JACKAL 2023 (STJA23). Alongside other IOs and NGOs, BSI assists NATO in developing training audiences’ understanding of the civilian environment, focussing specifically on CPP under IHL and NATO policy, both of which obligate NATO to implement CPP during missions. STJA23 is a command post exercise: senior military personnel engage with detailed simulations of a conflict to be better able to react in reality. In 2023, the training audience was Eurocorps,¹² who were a key partner in both the planning and execution of the exercise. For reasons outlined below, I and my NATO partners focussed our exercise contribution on a threatened site under enhanced protection.

When supporting NATO exercises, BSI seeks to compel military decision-makers and supporting staff to address key issues. Training audience performance regarding CPP in exercises is evaluated by the Joint Warfare Centre according to NATO standards. However, BSI conducted its own post-exercise analysis, evaluating how Eurocorps negotiated the factors presented to them, observing the choices made regarding practical military necessity and obligations under IHL, as well as other motivators that presented themselves. The results, presented here, have implications for sites under enhanced protection in a real conflict situation, which this article highlights and explores, offering a new understanding of the application of the law in practice. The paper argues that in certain circumstances enhanced protection may lead to competing obligations regarding human rights, justice, and cultural protection. Those registering sites and acting to protect them must consid-

⁹ A good example of such approaches can be found in N. van Woudenberg, L. Lijnzaad (eds.), *Protecting Cultural Property in Armed Conflict: An Insight into the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, Brill Nijhoff, Leiden 2010. A more recent exception is S. Fobbe, *How to Protect Outstanding Cultural Heritage from the Ravages of War? Utilize the System of Enhanced Protection under the 1999 Second Protocol to the 1954 Hague Convention*, Policy Brief 5, Antiquities Coalition, April 2019, which draws on law to present a policy paper advocating for enhanced protection, utilizing insights from recent conflicts and broader state practice.

¹⁰ J.-M. Henckaerts, *New Rules for the Protection of Cultural Property in Armed Conflict: The Significance of the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, in: N. van Woudenberg, L. Lijnzaad (eds.), op. cit., p. 34.

¹¹ <https://www.theblueshield.org>.

¹² <https://www.eurocorps.org>.

er likely scenarios carefully in order to establish good practices; otherwise, there is a risk that enhanced protection may protect the site more than those who value it.

The article begins with an overview of the legal nuances of enhanced protection; next, it explains NATO's CPP obligations and the position of BSI (and myself) before elaborating the NATO exercise process in general and STJA23 in particular. Considering this context, it then explores the implications for international law in practice.

Understanding Enhanced Protection

Enhanced protection is a detailed legal system intended to prioritize the protection of humanity's most important cultural property over military necessity. It is underpinned by and interpreted with reference to stipulations in the (Hague) Convention, the Geneva Conventions (1949), and their Additional Protocols (1977). An overview is provided here, focussing on areas relevant to military practice.¹³

All cultural property "of great importance" (Article 1 of the Hague Convention) is eligible for protection (that is, safeguarding and respect, as described above). Special protection was intended to provide sites "of very great importance" (Article 8) with a higher threshold of protection. However, less than 20 applications have ever been submitted, and several flaws were identified,¹⁴ including ongoing concerns about military necessity. The UNESCO-sponsored Convention review found state practice in applying military necessity was highly variable,¹⁵ contributing to concerns about the effectiveness of CPP law.

By 1977 IHL, embodied in the Geneva Conventions Additional Protocols, stipulated that only military objectives could be attacked; everything else must be spared. Core concepts (that today are part of the customary Laws of Armed Conflict, and so also underpin the Hague Convention) specified:

- distinction – combatants must distinguish between combatants and military objectives, and civilians and civilian objects. Civilian objects are all objects that are not military objectives and are protected;¹⁶

¹³ For more details, see S. Fobbe, *op. cit.*; R. O'Keefe, *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press, Cambridge 2006; J. Toman, *The Protection of Cultural Property in the Event of Armed Conflict. Commentary on the Convention*, UNESCO, Aldershot 1996; *idem*, *Cultural Property in War...*

¹⁴ P. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954)*, UNESCO, Paris 1993; R. O'Keefe, *op. cit.*; J. Toman, *Cultural Property in War...* I propose elsewhere that the real problem is state apathy. UNESCO may now agree: during the 2023 Meeting of States Parties to the Convention, they advocated for states to place sites under special protection. E. Cunliffe, *The 1954 Hague Convention: Legacies and Developments*, in: A. Maget Dominicé, S. Vigneron, J. Ulph (eds.), *Elgar Research Handbook on Art, Culture and Heritage*, Edward Elgar Publishing, Gloucester (forthcoming).

¹⁵ P. Boylan, *op. cit.*

¹⁶ Articles 48, 51(2), and 52(2) of Additional Protocol I.

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- necessity – actions must be directed against a military objective, with no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective; and
- proportionality – excessive force is prohibited; attacks must be proportional to the expected advantage and take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.¹⁷

The Second Protocol sought to redress all the identified issues and reflect advances in IHL. Unlike the Convention, it is applicable to its States Parties in both international and non-international armed conflicts, even if the state is the only State Party in the conflict, requiring them to always respect enhanced protection. The principles of the Laws of Armed Conflict were explicitly stated in Articles 6, 7, and 8, forming a framework for what constitutes acceptable military action.¹⁸ It also created the enhanced protection system (Chapter 3) to supplement special protection.

Article 10 opens enhanced protection to “cultural heritage of the greatest importance to humanity” (referring to the concept of a shared common heritage which all humanity should protect). Applications are evaluated by the Committee for the Protection of Cultural Property in the Event of Armed Conflict (Article 11(7)) (hereafter “the Committee”), also created in the Second Protocol. To be eligible, cultural property must meet two other conditions: adequate domestic and legal administrative measures protecting it; and that the Party controlling it confirms that it “is not used for military purposes or to shield military sites” (Article 10(b)(c)). “Military purpose” follows the ICRC definition: “use” relates to present function, whilst “purpose” relates to intended future use. Most civilian objects can become useful to combatants; for example, schools may accommodate troops and so become a military objective, but in case of doubt places must be presumed to serve civilian purposes.^{19,20} “Shield” refers to the potential for military installations to be located close to or inside the cultural property, creating the risk that the cultural property may become a military objective and violating the purpose of the provision. Article 12 obligates States Parties to a conflict to “ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property or its immediate surroundings in support of military action”. Congruently, Article 15(1b) makes it a serious

¹⁷ Articles 51(5)(b) and 57 of Additional Protocol I.

¹⁸ For more on military necessity, proportionality, and heritage, see A. Guimarães Carrijo, T. Cardoso Squeff, *Military Necessity as an Exception in the Context of Cultural Heritage Protection: Exploring the Role Played by the Proportionality Principle*, in: G. Mastandrea Bonaviri, M.M. Sadowski (eds.), *Heritage in War and Peace*, Springer, Cham 2022, pp. 191-209.

¹⁹ ICRC Commentary in J. Toman, *Cultural Property in War...*, p. 636.

²⁰ Article 8(4) of the Convention provides that armed guardians for sites under special protection do not constitute a military purpose. The provision is not repeated in Enhanced Protection, but the “principle is a general one, applicable to all cultural property”. R. O’Keefe, op. cit., p. 28.

violation for “any person” to use “cultural property under enhanced protection or its immediate surroundings in support of military action”. Ideally, all states would ratify the Protocol, and (together with non-state actors) respect the immunity. Pragmatically however, combatants may deliberately and/or strategically attack cultural sites or use them. Sites (like castles) may provide a tactical advantage, or their use may limit an opponent’s tactical options if they intend to protect cultural property. Recognizing this, attacks on sites under enhanced protection may occur if sites are illegally taken into use, subject to strict limitations.

Article 13 indicates that the protective conditions of enhanced protection may be lost “[i]f, and for as long as, the property has, by its use, become a military objective” (i.e., if the site is taken into military use it *may* become a military objective for as long as it remains in military use). This, combined with the registration criteria of Article 10(c), was an attempt to establish more clearly when military necessity might be invoked. Article 13(2) goes on to combine this high threshold of military necessity with a requirement of proportionality and restrictions on action. Cultural property under enhanced protection may be attacked only if it is the only feasible means of terminating the opponent’s use and all feasible precautions are taken in the attack to minimize damage. Excepting self-defence, the attack must be ordered by the “highest operational level of command” (i.e., the Force Commander), a person who is doubtless overwhelmingly busy: hence the obligation reinforces the gravity of the act. Lastly, the opposing force must be warned to terminate use of the cultural property and be given time to leave. Attack is defined as per Article 49(1) of the Geneva Conventions Additional Protocol I: “acts of violence against the adversary, whether in offence or in defence”. An unjustified attack is a serious violation, irrespective of the damage caused (Article 15(a)).²¹

The Committee may suspend or cancel enhanced protection if the protected property is used in military action (Article 14). However, the Force Commander need not wait for the Committee to suspend enhanced protection if a violation occurs; they may act according to the criteria above.

A recent review found that “The combined ease of access, strong legal protection, and practical-political impact offered to cultural heritage by the system of Enhanced Protection in wartime is second to none in international law”.²² Yet, similar to the system of special protection, States Parties have remained hesitant to utilize it.²³ While in 2023 entries on the International List of Cultural Property Under Enhanced Protection jumped from 17 to 55, this remains low when compared to the World Heritage List, which numbers c. 1,200 sites. However, as more States Parties might follow the example of Ukraine, Palestine, and Burkina Faso, who all registered sites for enhanced protection in 2023, it seems likely it will become critical

²¹ It would also clearly be evidence of war crimes under the Rome Statute (1998); S. Fobbe, *op. cit.*, p. 9.

²² *Ibidem*, p. 2.

²³ For more on this, see E. Cunliffe, *op. cit.*

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in future conflicts. Its efficacy has not yet been tested in combat (although several entries are now in conflict zones), so the opportunity to utilize it on STEADFAST JACKAL 2023 provides important insight which may encourage better application.

NATO Exercise STEADFAST JACKAL 2023 (STJA23)

NATO, Blue Shield International, and cultural property protection (CPP) responsibilities and obligations

Both IHL and NATO policies commit NATO to CPP. All NATO member states have ratified the Convention; and 27 the Second Protocol (including the Eurocorps command staff nations): NATO personnel are bound by the laws their nations have ratified.²⁴ CPP is a NATO Cross-Cutting Topic, and is part of NATO's Human Security Approach, in which "NATO recognises cultural property protection as an essential consideration in the military environment and a critical indicator of community security, cohesion and identity".²⁵

In realizing its CPP obligations, NATO recognizes that:

CP [Cultural property] is always the property of the owning state party; it is never NATO's CP, even during legal military occupation. This does not mean, however, that NATO does not have any responsibilities towards CP during armed conflict. Personnel acting on behalf of NATO are first and foremost acting on behalf of their own nation state, and must therefore comply with the obligations set out above. NATO's implied CPP task is to support the host nation in their obligations of CPP. Moreover, in accordance with the Law of Armed Conflict (LOAC), NATO should protect CP to the maximum extent possible during the execution of its mission.²⁶

NATO's CPP obligations apply in all missions – stated and implied actions they should take include (amongst others):²⁷

- planning, taking into account how cultural property may impact the mission;
- taking all possible measures (following the Laws of Armed Conflict) to avoid unnecessary damage or destruction by its own forces,²⁸ and prevent looting and vandalism (Article 4 of the Convention, Articles 6-9 of the Second Protocol);

²⁴ IHL applies during multinational deployments. T. Ferraro, *The Applicability and Application of International Humanitarian Law to Multinational Forces*, "International Review of the Red Cross" 2013, Vol. 95(891/892), pp. 561-612.

²⁵ NATO, *Human Security*, 20 July 2023, https://www.nato.int/cps/en/natohq/topics_181779.htm [accessed: 01.02.2024].

²⁶ Civil-Military Cooperation Centre of Excellence, *Cultural Property Protection (CPP): Factsheet*, 2020, <https://www.cimic-coe.org/resources/fact-sheets/factsheet-cpp.pdf> [accessed: 01.02.2024].

²⁷ Ibidem.

²⁸ For more on NATO processes regarding the targeting of cultural property, see A. Jux, A. Parker, *Targeting with Due Regard to Cultural Property*, "The Journal of the JAPCC" 2023, Vol. 35, pp. 67-74.

- supporting the competent authorities of host nations in safeguarding (Article 7(2) of the Convention) and, if necessary, in evacuation (Article 8 of the Second Protocol).

Although CPP is clearly understood as a cross-branch activity, the J9 Civil-Military Coordination (CIMIC) branch is designated as the branch in charge (the “branch lead”).²⁹

NATO’s Protection of Civilians (PoC) agenda also includes CPP: the PoC Policy states: “the protection of civilians in NATO-led operations and missions can include the protection of not only persons but also objects and services”, and this is explicitly linked to CPP.³⁰ Understanding what people value, and the impact of that on identity and identity conflicts, can be critical. Cultural protection can contribute to PoC elements, including “Contributing to a Safe and Secure Civilian Environment”, and “Mitigating Harm”. Mitigating Harm is understood as avoiding NATO actions which might cause harm to civilians and their property, but it may also include active measures; including the use of military force to prevent, stop, or deter malign actors from inflicting harm to civilians and their property and services.

Since 2018, Blue Shield International (BSI) has supported national, multinational, and peacekeeping forces globally in training and exercises. BSI is an independent, impartial, neutral NGO dedicated to protecting cultural heritage in conflict and disaster, and increasing awareness and the understanding of CPP and adherence to IHL, particularly the Convention and its Protocols. BSI and NATO SHAPE J9 signed a Letter of Intent in 2020, realized through an Action Plan agreed in 2023,³¹ which includes a commitment to cooperative education and training exercises. Our exercise focus is on NATO’s senior command staff.

During my attendance at STJA23, collaborating with NATO exercise organizers, I sought to identify areas of the Convention and its Second Protocol posing the greatest challenges to armed forces seeking to respect IHL in good faith. This was based on detailed analysis of the legal intricacies of enhanced protection and previous exercise experience, in order to provide a nuanced exploration of CPP in a complex military operation across multiple branches, reflecting how it might plausibly occur in reality. In my multi-year training experience, awareness of enhanced protection and its obligations is low. Significant CPP efforts in the exercise therefore revolved around a threatened site under enhanced protection, in order to increase knowledge of the legal and moral obligations around such sites.

²⁹ Full obligations are set out in the Bi-Strategic Command Directive 086-005 Cultural Property Protection.

³⁰ Cited in NATO, *NATO Policy for the Protection of Civilians (Press Release (2016) 135*, 9 July 2016, updated 24 June 2021, https://www.nato.int/cps/en/natohq/official_texts_133945.htm [accessed: 01.02.2024].

³¹ BSI, *CPP Action Plan Agreed with NATO SHAPE J9*, 2 April 2023, <https://theblueshield.org/cpp-action-plan-agreed-with-nato-shape-j9/> [accessed: 01.09.2023].

The exercise process

NATO exercise STJA23 was a form of wargame:

a scenario-based warfare model in which the outcome and sequence of events affect, and are affected by, the decisions made by the players. Wargaming is a decision-making technique that provides structured but intellectually liberating safe-to-fail environments to help explore what works (winning/succeeding) and what does not (losing/failing), typically at relatively low cost.³²

Wargames are intended to immerse participants in an environment with simulated realism in order to improve their decision-making skills. NATO settings are fictional, populated by fictional states and non-state stakeholders, simulated via briefing documents, meetings with regional “actors”, simulated media, etc. For practicality, simulations are often modelled on real-world data. However, CPP is rarely included as a substantive topic, or a factor affecting the wider operational environment.³³

The STJA23 scenario rehearsed procedures to plan and execute a multi-domain (i.e., land, air, and sea) operation in a NATO crisis-response scenario. In crisis-response planning, NATO acts in a support capacity for a host nation facing a non-international armed conflict. In addition to training their own actions, training audiences must develop understanding of CPP (and other) obligations to a host nation. NATO and those supporting the exercise collaboratively script complex storylines composed of multiple incidents. Training audiences are exposed to them during the exercise to help them meet their training objectives. These are set and evaluated by NATO’s Joint Warfare Centre: BSI takes no part in the approval and certification of a NATO headquarters.

BSI supported NATO and its contractors in scripting storylines designed to exercise different aspects of CPP, including enhanced protection. Storylines are communicated to the training audience, in this case Eurocorps, during the exercise “execution” phase. Execution – when the training audience attends the Joint Warfare Centre to participate in the exercise and act on the pre-written storylines – lasts 10 days, although in the fictional scenario Eurocorps have been deployed for months. During execution, BSI was part of the Grey Cell – a group of highly experi-

³² UK Ministry of Defence, *Wargaming Handbook*, 2017, p. 5, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641040/doctrine_uk_wargaming_handbook.pdf [accessed: 01.02.2024].

³³ For more on military exercises and CPP, see E. Cunliffe, P. Fox, *Exercise Trident Jackal 2019 Report*, 2019, <https://theblueshield.org/download/bsi-reports/> [accessed: 01.02.2024]; S.M. Edmondson, P.L. Fogarty, E.L.B. Peifer, *Planning for Culture. Incorporating Cultural Property Protection into a Large-Scale, Multi-Domain Exercise*, “Military Review” November-December 2021, <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/November-December-2021/Fogarty-Cultural-Property/> [accessed: 01.02.2024]; P. Fox, *NATO Exercise Trident Jaguar 2018. Exercise Report*, 2018, <https://theblueshield.org/new-bsi-report-exercise-trident-jaguar-2018/> [accessed: 01.02.2024].

enced NATO contractors employed to replicate State Party stakeholders, including the ministries of defence, security, internal affairs, culture, and third-party regional actors. BSI represents itself (albeit using a fictional title³⁴), providing CPP expertise. I engaged in activities in partnership with Francesca Dell'Acqua, a Grey Cell cultural affairs expert. In this storyline, she roleplays the Councillor for Tribal and Cultural Affairs representing a fictional host nation Ministry of Culture. Grey Cell activities are coordinated under Joint Warfare Centre control in a collaborative environment involving twice-daily coordination meetings; interaction with Eurocorps; and feedback. BSI also observed the daily Situation Report the senior command staff and advisors (including the Political and Legal Advisors) provide to the Eurocorps Force Commander in order to follow the storyline engagement.

The scenario (storyline context)

Eurocorps are “deployed” as NATO West African Support Assistance Force (WASAF³⁵) under a UN Security Council Resolution (UNSCR) into two fictional African countries which are in crisis. The UNSCR Mandate is to provide support and stability to the two countries, particularly supporting the increasingly fragile Peace Agreement; to support the UN Peacekeeping Mission (UNAMAR); and to enable the delivery of humanitarian assistance. Both countries were scripted to have ratified the 1954 Hague Convention and both Protocols. The situation is a non-international armed conflict: the Second Protocol is in full effect.

The enhanced protection storyline took place in the fictional country of Malamiko. Tribal factors played a complex role in the scenario: tribes were feuding, which was one of many factors resulting in a deteriorating security situation in the area. Whilst there was a disarmament, demobilization, and reintegration process in place in Malamiko, two battalions had rejected the process and retained their armaments. These “non-compliant” battalions were scripted to be extreme in their views, retaining their arms to “protect” the rights of their tribe. Several extremist groups were operating in the area, one of which was scripted as a terrorist group according to (fictional) UN classifications. In reality, designating a group as a terrorist group is a politically complex and contentious process. Those so designated become subject to anti-terror laws, sanctions, and processes, which have significant national variability. NATO’s military concept for defence against terrorism follows the UN Global Counter-Terrorism Strategy, International Conventions and Pro-

³⁴ A single person cannot represent Blue Shield’s actual West African committees; I was the “Representative for the BSI West African Coordination Office”.

³⁵ Eurocorps is used throughout the article to refer to training audience’s engagement with the scenario and choices made. WASAF is used to indicate their role in the scenario. For example, the fictional host nation wrote to WASAF, but Eurocorps chose how to respond. However, they effectively refer to the same people.

protocols against terrorism, and relevant UN Resolutions,³⁶ reflected in the exercise with fictional UN-level classifications to ensure multi-national agreement.

Other incidents WASAF (i.e., Eurocorps) were informed of included:³⁷ a deteriorating dam; major water shortages contributing to public riots; increasing numbers of internally displaced people (IDPs); issues in delivering aid to IDP camps; workers' strikes at ports and borders, hindering logistics, and the flow of humanitarian aid and military personnel (engendering managing competing needs); explosives targeting UNAMAR and particular demographic groups; cyber-attacks on WASAF, national infrastructure, and the EU; and so on. Whilst many incidents resulted in requests for WASAF assistance, these were not all problems intended for WASAF to solve: some formed the backdrop to the situation; some were host nation problems; many were to assist Eurocorps in determining what was part of their mission and what was not. For example, humanitarian aid should be delivered by humanitarian agencies except as a last resort: however, NATO may be able to create the conditions to enable deliveries. Concurrently, cultural storylines engaged Eurocorps in CPP issues – including a threat to a site under enhanced protection which the national owners felt unable to address. These storylines fostered a deeper understanding of Eurocorps' legal and policy CPP responsibilities and obligations to develop appropriate courses of action.

The enhanced protection storyline

Within the WASAF Area of Operations, Francesca and I placed a fictional site under enhanced protection, called the Memorial to the Son of Askia. For practicality, we reused information from the Tomb of Askia, a real World Heritage site under enhanced protection (Figs. 1, 2, 3). However, the Joint Warfare Centre asked that we remove the religious aspects to make it a culturally critical, but secular, site.³⁸ Briefings advised Eurocorps of the site's emergency registration on the List of Cultural Property Under Enhanced Protection, and provided data to add into their systems and plans. They were advised that the site was of great importance to all Malamikan people, particularly two tribes: the Zakhana and the Harou. The scenario contained no indications that deliberate heritage destruction was a likely risk.

³⁶ NATO, *NATO's Military Concept for Defence against Terrorism*, updated 19 August 2016, https://www.nato.int/cps/en/natohq/topics_69482.htm [accessed: 01.02.2024].

³⁷ No cultural element was scripted in these storylines, although in reality situations could affect cultural property.

³⁸ Whilst in reality the religious connotations of cultural property may have serious implications for site protection, NATO exercises rarely include religion in order to avoid accidental offence in the re-use of real data for wargaming simulations.



Fig. 1. Aerial view of the real Tomb of Askia © Airbus, Google Earth 2024



Fig. 2. The real Tomb of Askia © Mamadou Samaké



Fig. 3. Enhanced protection symbol outside the real Tomb of Askia, with UN peacekeepers in the background © UNESCO / Modibo Bagayoko

As the exercise began, simulated news reports indicated that almost 200 Zakhana in the villages near the Memorial site had been killed, injured, or fled. No perpetrator was identified.

The Eurocorps Force Commander received a letter from the Malamikan Chief of Defence,³⁹ informing him that Harou extremists were occupying the Memorial, requesting WASAF clear and secure it as Malamiko felt unable to do so without risking it, and highlighting Convention Article 7(2)'s requirement to support the competent authorities. Intelligence reports requested by Eurocorps confirmed the Harou Rights Movement (HRM) were occupying the site, using it as a communications centre to deliver radicalizing speeches. Further intelligence reports indicated that the two non-compliant Zakhana battalions had started marching from their previous locations towards this area. The implication to be drawn was that this may be to protect the remaining Zakhana villagers and perhaps occupy the Memorial, as it was important to the Zakhana. As the storyline developed over the following days, the HRM announced on exercise social media that they were operating out of the Memorial to “protect” it. Blue Shield wrote to the WASAF Commander, reit-

³⁹ This was co-scripted by myself, Francesca, and the Grey Cell contractor responsible for Malamikan Defence.

erating WASAF's moral and legal obligations and the site's importance. Francesca and I also drafted two fictional Press Statements from UNESCO⁴⁰ which were released on the exercise social media. These highlighted the importance of the area's heritage, asked all parties to protect it, and asked those occupying the Memorial to withdraw peacefully.

Within days, Eurocorps received reports confirming that the HRM at the Memorial had killed the Zakhana, making them guilty of war crimes and atrocity crimes: they were also threatening further violence against the remaining villagers. Reports estimated that roughly 70 HRM were occupying the Memorial. The Malamikan government again requested WASAF support in securing the Memorial, and in capturing the HRM for trial. It was also increasingly probable that at least one Zakhana battalion was marching on the site, while the other sought to protect the remaining villagers from further harm. The risk of violence at the site was considered extremely high: should conflict occur, it was considered very likely by both Eurocorps and the Malamikan government that it could escalate. The storyline makes the Memorial a critical flashpoint in maintaining a "safe and secure civilian environment",⁴¹ potentially threatening the Peace Agreement itself.

The enhanced protection storyline: Eurocorps engagement

The situation was designed to be extremely complex for Eurocorps to navigate, and it is to the Joint Warfare Centre's credit they enabled us to run such a multifaceted storyline that dealt in depth with the real challenges of CPP. The Harou Rights Movement (HRM) were scripted to be initially perceived as civilians – perhaps criminals, depending on the (unspecified) laws against extremism in Malamiko, but not parties to the conflict in any legal sense. When WASAF were first asked for help by the host nation, Eurocorps asserted correctly that the HRM were a political rights movement and were neither terrorists nor combatants, but civilians subject to domestic law. To the best of their knowledge at the time, this was true. Securing the Memorial would place Eurocorps in the role of police, acting outside their Mandate to operate in a non-conflict situation to enforce Malamikan law. Support to law enforcement requires specific skills and training in order to know, for example, the legal rights of suspects, powers of arrest, and rights of detainment (which, for civilians, are governed by national law, and not by, e.g., the Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)). Whilst some NATO forces do have a stability policing function which enables them to support national police, Eurocorps do not, which was reflected in their Mandate.

⁴⁰ UNESCO was not part of this exercise. It was important that no organizations are misrepresented: the UNESCO statements we drafted were copied from real statements released in similar situations, to ensure that they accurately represent UNESCO's mandate and language.

⁴¹ This reinforces the links between CPP and Protection of Civilians.

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As the storyline progressed, Eurocorps were provided information revealing that the HRM were using the site for military activity and that they were a party to the conflict; an armed non-state actor (ANSA), guilty of crimes of atrocity and war crimes. Although ANSAs are not bound to “ensure the immunity” of the site (Article 12 of the Second Protocol), they were using it “in support of military action”. This violates Article 12, which is a serious breach under Article 15(1)(b), to say nothing of the crimes of atrocity, and allows the legal possibility of attack. (It was not within the exercise scope or a WASAF responsibility to determine whether criminal prosecutions would occur, so this is not discussed here.)

Once it was established that the HRM were clearly war criminals and combatants, they fell within WASAF’s remit to potentially deal with. However, as the situation escalated Eurocorps needed to attempt, as far as possible to: avoid escalating tribal tensions, prevent conflict, protect civilians, enable justice, support the host nation as requested, as well as respect the enhanced protection of the site. Some of these actions were deliberately contradictory: we wanted to generate engagement with the issue of what “protection” actually means in a real conflict scenario, when enhanced protection may be legally lost, but the social – and international political – importance remains. NATO is bound to minimize the effects of their own operations on sites under enhanced protection, but subordinate to a host nation who, in this case, were asking for WASAF support. Was the site better “protected” by leaving the HRM in place, or by securing it as the host nation asked?

WASAF blocked, but did not engage, the advancing battalions in order to avoid escalating tribal tensions: preventing inter-tribal conflict was seen as critical, and whilst the battalions were “non-compliant”, they were still Malamikan soldiers, not criminals. This we (i.e., Grey Cell scripters) allowed to succeed, leaving the question of the HRM in the site. In my capacity as an independent NGO there to facilitate the training audience’s engagement with CPP and IHL, I advocated for a “proactive” interpretation of protection, whereby WASAF should secure the site; as is further discussed below. In addition, the Grey Cell collectively pushed the idea that Malamiko – lacking NATO’s training, experience, and equipment – did not feel capable of retaking the site without inflicting considerable damage. However, the legal advice to Eurocorps remained that, given their mandate, WASAF could only act in a support role for Malamiko and would not directly intervene at the site.

The storyline generated intense consideration. Eurocorps used all possibilities to find a goal-orientated solution to protecting the site, and to advise the Commander accordingly in his decision-making process. Special mention must go to the extensive work of the CIMIC (J9) branch and the Cultural Advisor, who led in the response: they headed multiple consultations and negotiations with the Malamikan government (including Culture, Defence, and the Gendarmerie), as well as with UNAMAR and BSI, and held numerous internal meetings, making recommendations to the Force Commander concerning the site. Further debates spanned multiple Eurocorps branches, including Intelligence (J2), Operations (J3), and Planning

(J5), covering tactical options, targeting options, military police, extensive legal advice, and political advice. Despite the exercise's intensity, Eurocorps put considerable effort into finding alternative solutions to themselves or Malamiko attacking the site. For example, they sought mediators who might be able to encourage the HRM to leave the site. Whilst this may have succeeded in real life, and was a commendable attempt to find a peaceful protective solution, in order to force engagement with the questions of protection and the tensions of the competing agendas, we (the Grey Cell scripters) determined that such attempts failed.

The plan for the next stage of the storyline had been to then give Eurocorps information that a cyber-terrorist would be using the Memorial at a known time later in the exercise for a meeting. The (legally UN-designated) terrorist was responsible for multiple deaths and attacks on NATO and Malamiko, and wanted by both. Grey Cell and myself expected this would result in Eurocorps' engagement at the site, testing processes relating to the thresholds of necessity and proportionality concerning enhanced protection. At this point, a personal aside seems worth mentioning. Wanted criminals choosing to use a protected location to shield himself or themselves is not an unlikely occurrence in reality. However, when choosing to explore this in an exercise, there is a considerable moral tension in then discussing the capture, and possible death, of that imaginary individual, even when they are responsible for multiple other deaths. Ultimately, Blue Shield is partial to CPP and IHL, and it was this that guided my decisions: I was not present as a moral judge, and the discussions around what constituted a terrorist, a civilian, and an ANSA were extensive and defined by the legal experts advising Eurocorps.

Assuming the site had been cleared of all criminal activity, in the final stage of the exercise storyline the Malamikan authorities would then ask for WASAF assistance in securing and protecting the site going forward, to ensure that no more criminals or combatants could utilize the site again, calling on Article 7(2) of the Convention. This would explore processes and provide experience for Eurocorps relating to activity prioritization, resource management, and force protection.

Once the exercise began, the storyline's complexity meant that it played out more slowly than anticipated, and Francesca and I ran out of time. We had to choose between running the cyber-terrorist storyline and testing its related processes, or exploring the processes related to securing the site. Had the terrorist meeting occurred, the Grey Cell expected the Commander would deploy Special Forces to the site to secure the individual whilst causing minimal damage. There were no Special Forces amongst Eurocorps: Special Forces were the responsibility of the exercise delivery team in the Joint Warfare Centre. They receive the order to deploy Special Forces from the Eurocorps Commander and script an appropriate response to describe how the mission would play out (or was carried out). It would have been useful to understand more about military decision-making and thresholds of necessity and proportionality relating to CPP if the Eurocorps Commander had been given the choice of whether and how to capture the cyber-terrorist. However, the

outcome of the Commander's orders was at the discretion of the exercise team (myself included). In addition, the military processes that our storyline would have activated were tested in storylines run by other team members, albeit not involving CPP. Given that, Francesca and I felt the cyber-terrorist storyline had less value for Eurocorps than the site protection element of the storyline. (It is worth reiterating that the ultimate goal of BSI here is not to secure the maximum protection for a fictional site. Our goal is to ensure the widest awareness and understanding of potential applications of CPP IHL in practice, and to encourage in-depth consideration and application of NATO CPP processes. The experience gained can then improve decision-making in real world situations.)

The Grey Cell collectively agreed to allow a proposed resolution to the problems at the site: many HRM members, knowing that Malamikan police and WASAF were nearby, would leave under cover of night. A Malamikan Gendarmerie raid would detain the remaining HRM, whilst WASAF cordoned and secured the wider area, preventing escape. This took place with WASAF's full support. Francesca and I considered the site to be secured, and we moved to the final stage of the storyline. The Councillor for Tribal and Cultural Affairs (i.e., Francesca), supported by BSI (myself), met WASAF representatives to request support in maintaining site security. Although legally military guards do not constitute use of the site for a military purpose,⁴² Eurocorps expressed concern that they may still draw unwanted attention, deter local visitors, and risk the lives of civilians and troops; a concern I agreed with. In addition, WASAF felt they lacked enough forces to commit as site guards. They instead proposed increasing patrols in the area to deter any future hostile actions. The Councillor accepted the proposal. As the exercise ended, the Memorial was returned to national control and WASAF were assisting in maintaining its security.

Implications

The exercise generated several points worth further consideration, discussed in order of increasing complexity. Contextually, it should also be recognized that trying to apply IHL in practice generated challenges. Those applying CPP law in the field are rarely CPP experts, although all NATO activity is conducted with legal advice. Yet whether lawyers or operational staff, for some, training exercises mark the first time they have to deal with the Convention and confront the challenges of its obligations in practice. Nonetheless, Eurocorps set a high standard of good CPP practice by using all possibilities to find solutions to protect the site and advise their Commander accordingly. It is hoped this will encourage others to do likewise.

⁴² See footnote 17.

Oversight

When briefing the Eurocorps Commander during the daily situation report, each officer and advisor has 2-3 minutes *at most* to provide a concise overview of the key issues for the Commander's attention. Reflecting the gravity with which WASAF viewed the situation at the Memorial, several staff officers updated the Commander daily.

Additionally, our simulated UNESCO Press Releases mirrored real content. UNESCO has "consistently taken it upon itself to call on Parties involved in an armed conflict to adhere to their conventional obligations"⁴³ hoping to draw international attention to such situations. Significantly, the Political Advisor highlighted the UNESCO Press Releases and international attention on the Memorial in a daily briefing. This may represent the first evidence of such statements' efficacy.

Site protection

The military obligation to proactively protect cultural sites has been regularly discussed in the military-heritage literature since the 2003 Coalition invasion of Iraq resulted in extensive heritage destruction.⁴⁴ Protection is usually considered a national police responsibility.⁴⁵ There is no clear legal obligation on combatants to actively protect (i.e., guard) sites unless it is specifically mandated.⁴⁶ Furthermore, as Gerstenblith notes, "prolonged military intervention could increase risk of loss of life to save immovable cultural heritage".⁴⁷

Whilst in STJA23 Eurocorps determined that they could not protect the Memorial, similar requests in other exercises have generated different responses. In NATO exercise TRIDENT JACKAL 2019,⁴⁸ a World Heritage site was threatened. A meeting between the training audience and the fictional World Heritage Site Manager (played by myself) was devoted to discussing the site to enable them to fully evaluate protection requirements. This is not raised as a criticism of Eurocorps: the two scenarios and contexts were completely different. For example, that site was significantly larger than the Memorial to the Son of Askia;

⁴³ R. O'Keefe, *op. cit.*, pp. 178-180.

⁴⁴ For example, P. Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, "Georgetown Journal of International Law" 2006, Vol. 37(2), pp. 308-311.

⁴⁵ Occupation is not relevant here.

⁴⁶ In Kosovo, the NATO KFOR deployment protected several religious sites until they could be returned to national jurisdiction, and still are protecting one. NATO, *NATO's Role in Kosovo*, updated 20 November 2023, https://www.nato.int/cps/en/natohq/topics_48818.htm [accessed: 01.02.2024].

⁴⁷ P. Gerstenblith, *Protecting Cultural Heritage: The Ties between People and Places*, in: J. Cuno, T.G. Weiss (eds.), *Cultural Heritage and Mass Atrocities*, Getty Publications, Los Angeles 2022, p. 370.

⁴⁸ E. Cunliffe, P. Fox, *op. cit.*

and a more comprehensive assessment was required. The point is that in some circumstances armed forces may support site protection, even when not specifically mandated.

The warning requirement

Although the cyber-terrorist never actually entered the site and proposed section of the storyline did not take place, the incident nonetheless generated considerable discussion amongst the Grey Cell scripters and those responsible for targeting. Article 13(2) of the Second Protocol is clear that if an attack is to go ahead, effective advance warning requiring termination of use *must* be given (excepting situations of self-defence). When the warning clause was debated during drafting⁴⁹ only obvious military activity was considered. Site preservation was the most important consideration. Logically, if a terrorist received warning of an imminent attack, they would probably never go to the site. In this sense: the warning would achieve its purpose, but the opportunity to apprehend the terrorist would be lost. Some argued that, in such circumstances, surely the warning requirement should be waived. It must be more important to apprehend the terrorist and save lives; surely, no building could be that important? Had that aspect of the storyline gone ahead, the ultimate decision would have been the Eurocorps Commander's responsibility. However, the debate amongst the scripters was never resolved.

Armed non-state actors and the obligation to ensure immunity

The obligations of those responsible for adhering to enhanced protection with regards to ANSAs were discussed repeatedly, relating to both the cyber-terrorist and the HRM. Article 13 of the Second Protocol establishes that enhanced protection is lost "If, and for as long as, the property has, by its use, become a military objective": it then lays down conditions for attack, including that "the attack is the only feasible means of terminating the use of the property". The examples of use discussed at the drafting conference⁵⁰ all relate to obvious States Parties military activity, such as troop use or headquarters. This perception is reinforced by Article 14's terminology, which declares violations to be "use in support of military action". At what point did the Memorial "by its use, become a military objective"? A military objective is "an object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite

⁴⁹ J. Toman, *Cultural Property in War...*

⁵⁰ *Ibidem.*

military advantage”.⁵¹ Is a single terrorist at a meeting using the site for military action? This generated important legal discussion⁵² by Eurocorps Legal Advisors, guided by NATO’s military concept for defence against terrorism. They determined that the site had lost its enhanced protection and capturing the terrorist was a legitimate military objective.

The HRM were also challenging. They were not terrorists according to the exercise classifications. Indeed, they were initially presented as civilians; as Gerstenblith identifies: “Heritage preservation may also not justify the killing of those attacking heritage unless such preservation is deemed likely to avert a greater harm such as genocide, further armed conflict, or terrorism”.⁵³ The HRM were later established as war criminals threatening the safety of the civilian population. However, the obligation to protect sites under enhanced protection is not (despite the implication of the words) a positive obligation. Positive obligations are, broadly speaking, obligations “to do something” to ensure respect and protection. Negative obligations refer to the duty not to act, i.e., to refrain from actions that would cause harm. Whilst Article 12 of the Second Protocol begins that “Parties to a conflict shall ensure the immunity of cultural property under enhanced protection”, the obligations it then lays down are negative in nature – not to make such cultural property the object of attack, and not to use the property or its immediate surroundings in support of military action. If States Parties adhere, the site’s safety is ensured. In our scripted scenario however, an ANSA occupies the site. The Malakian government or WASAF, in accordance with Article 13, may then act against them. The occupier may face sanctions as a war criminal for the site’s military use – if they are removed from the site, thus presenting a contradiction.

In our scenario, there were both legal and policy arguments for WASAF to intervene. The host nation had requested their support, citing Article 7(2) of the Convention. NATO’s Protection of Civilians (PoC) Policy allows NATO to take active measures to “Mitigate Harm” to civilians, and as the HRM threatened the local villagers, securing the Memorial would “Contribute to a Safe and Secure Environment” for civilians, thus meeting another PoC objective. However, intervention would also make Eurocorps responsible for damaging the site, rather than the owning nation. The legal wording effectively either encourages States Parties to leave an ANSA there indefinitely, or makes the problem a national police responsibility. Either no charges are brought, or an “act of hostility” may still occur at the site. WASAF strongly preferred to respect the site’s protection, judging that combat would be more damaging to the site than the HRM remaining there.

⁵¹ Article 52(2) of Additional Protocol I; Articles 1(f) and 6 of the Second Protocol.

⁵² NATO, *NATO’s Military Concept...*

⁵³ P. Gerstenblith, *Protecting Cultural Heritage...*, p. 370.

In a physical sense, this is doubtless correct. Although I argued that the HRM's presence was a highly damaging desecration of the site, this argument received little consideration. The legal regime is designed to preserve the physical, authentic aspects of cultural property, rather than any symbolic values which may be equally important.

[P]reservation, integrity, and distribution of (or access to) the physical or tangible embodiments of heritage as the preeminent considerations [...] associates the tangible object or site with a universal heritage that is of importance to all people, thereby challenging the idea of a definitive connection between tangible cultural heritage and the people who identify with it, their descendants, and also the people among whom the heritage had been located [...] This approach denies a broader and more fundamental connection between living local communities and the heritage in their midst.⁵⁴

The Second Protocol's wording discourages any positive obligation to keep the site free from malicious actors: site protection is pre-eminent (an interpretation supported by the drafting discussion, which stressed the need to avoid combat⁵⁵). However, in STJA23, this enabled the criminals to avoid justice, and denied local people access to their heritage, potentially violating their human rights.⁵⁶ What it means to protect the site, for whom, and to what purpose, created a complex and sometimes contradictory set of obligations, with no clear answers.

Conclusions

Enhanced protection was created to provide a stronger and clearer legal framework to protect sites of the greatest importance. The 2023 inscriptions on the List of Cultural Property Under Enhanced Protection suggest their increasing prominence amongst States Parties; but is it effective in practice and what challenges does it pose? The criteria under which sites may lose protection and military action may occur provide strong guidelines for combatants, and emphasize the gravity with which the international community views protected sites. The complexity of a political rights movement, terrorists, and war criminals at the site generated significant discussion, but not military movement to retake it. Obviously, another training audience could have reached a different decision, but the detailed analysis underlying Eurocorps' decision-making was commendable.

⁵⁴ Ibidem, p. 366.

⁵⁵ J. Toman, *Cultural Property in War...*

⁵⁶ Article 27 of the Universal Declaration of Human Rights states "Everyone has the right freely to participate in the cultural life of the community": access to culture is an integral part. For more on cultural rights, see the work of the Special Rapporteurs in the field of cultural rights, United Nations Human Rights Council, <https://www.ohchr.org/en/special-procedures/sr-cultural-rights>.

Whilst reiterating that WASAF were deployed in a support role to the host nation, who were the actual site managers, WASAF's reluctance to engage at the Memorial nonetheless reflects the realization of the Protocol drafters' intent to "improve the protection of cultural property in the event of armed conflict" (Second Protocol Preamble). In this sense, enhanced protection must be considered a success. The drafters worked to create a regime that would allow an armed force to respond to a military situation if necessary and essential, but to emphasize in every possible way that it should be a last resort, with an exceptionally high threshold of necessity and proportionality. This was clearly seen in STJA23, and may provide hope for sites under enhanced protection in conflict zones and encourage state uptake of the system. The exercise also reflects the significant developments in NATO practice since BSI began training with them in 2018, and the value of expert-led CPP training. It is hoped that the experience gained by both the trainers and training audience in STJA23 will continue to influence military practice in operations.

Yet, in adhering to the site's enhanced protection, Eurocorps allowed the HRM, who were guilty of atrocity crimes and who threatened the safety of other civilians, to remain at the site. The discussions around enhanced protection, human rights violations, protection of civilians, justice, and access were ultimately dominated by enhanced protection. The question must be asked: did cultural protection trump human rights? WASAF's course of action was legally strong, forcing us to reflect on the legal regime. The same issue was raised in the theoretical discussions of giving warning: if the required warning was given, the terrorist war criminal would escape. The issue of justice is only touched upon in this article: as noted, it was not within the scope of the exercise. However, it is worth a final reflection. ANSAs were already a challenge to international law when the Second Protocol was drafted; today "[t]he threats posed by such groups constitute one of the most significant obstacles faced by international humanitarian law".⁵⁷ Yet the enhanced protection regime focusses entirely on the negative protective obligations of States Parties, placing limitations on their actions. There are no obligations on ANSAs, unsurprisingly given the difficulties of enforcement. However, no obligations are placed on states concerning ANSA activity. ANSAs may be prosecuted for illegal use of sites, but the reality is that such prosecutions are few in number, and the longest sentence laid down by the International Criminal Tribunal for the former Yugoslavia or by the International Criminal Court for extensive wilful heritage destruction is less than a decade. Sentences for use are thus unlikely to act as a deterrent.

⁵⁷ P. Gerstenblith, *Protecting Cultural Heritage...*, p. 374.

Furthermore, international prosecutions for heritage crimes remain contentious, situated in tension with human rights,⁵⁸ sometimes requiring those involved to balance justice for cultural crimes against other grave IHL violations. The same tensions can be seen in the allocation of resources to CPP, competing with other humanitarian needs.⁵⁹ We can no longer resort to reiterations of shared heritage without consideration of other, equally shared, responsibilities which, to date, have received too little attention. The scenario presented here was effective precisely because it is likely to occur. Deeper consideration of enhanced protection, and the competing values it raises, must take place amongst not only the Committee responsible for inscriptions, but also amongst states, armed forces, and the communities who value the sites, in order to develop understanding of the challenges before they are faced in reality. Otherwise, enhanced protection could come to defend sites to the detriment of those that value them.

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