

Security Council

Distr.
GENERAL

S/1994/674/Add.2 (Vol. V)
28 December 1994

ORIGINAL: ENGLISH

FINAL REPORT OF THE UNITED NATIONS COMMISSION OF EXPERTS
ESTABLISHED PURSUANT TO
SECURITY COUNCIL RESOLUTION 780 (1992)

ANNEX XI
DESTRUCTION OF CULTURAL PROPERTY REPORT

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Established Pursuant to Security Council
Resolution 780 (1992)

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I. INTRODUCTION

A. Sources of Information

1. In determining the extent of the destruction of cultural property in the former Yugoslavia, the Commission proceeded under its overall plan of work and made use more particularly of its database and on-the-spot inquiries or reports by international organizations, including UNESCO and the Parliamentary Assembly of the Council of Europe.

2. The information from the database and the on-the-spot inquiries is itemized in the documents annexed to the Commission's final report (see Annex VI, Study of the Battle and Siege of Sarajevo).

3. With reference to UNESCO and the Council of Europe, the documents include:

(a) "Report on the state of the cultural heritage in the Old Town of Dubrovnik following the shelling in October, November and December 1991" (Report of the UNESCO mission to Dubrovnik, 27 October to 22 December 1991);

(b) "Information report on the destruction by war of the cultural heritage in Croatia and Bosnia and Herzegovina", Doc. 6756 of 25 February 1993, with annexes A, B and C;

(c) "Second information report on the destruction by war of the cultural heritage in Croatia and Bosnia and Herzegovina", Doc. 6869 of 17 June 1993;

(d) "Third information report on the destruction by war of the cultural heritage in Croatia and Bosnia and Herzegovina", Doc. 6904 of 20 September 1993;

(e) "Fourth information report on the destruction by war of the cultural heritage in Croatia and Bosnia and Herzegovina", Doc. 6999 of 19 January 1994;

(f) "Report on the situation in the former Yugoslavia at the cultural level", doc. 6989 of 14 January 1994;

(g) "Application of international legal systems of cultural property, protection against destruction of monuments in the war in Croatia" (report prepared by Professor Miroslav Gašparović).

4. Again, to underpin its information about the extent of the destruction of cultural property in the former Yugoslavia, the Commission also heard, for a period of 33 minutes, one of two officials sent to Dubrovnik by UNESCO in November and December 1991, who was there on 6 December (during the shelling of Dubrovnik). The video cassette of this hearing forms part of the information gathered by the Commission and is deposited with the Secretariat.

Similarly, at its headquarters in Geneva, the Commission met a delegation of two persons sent by UNESCO's Division of Physical Heritage, consisting of a jurist, Mr. Etienne Clément, and an art expert, Ms. Giselle Hyvert (the summary of the meeting of 15 February 1994, entitled "Cultural Property in the Former Yugoslavia", is attached to this annex). Lastly, it sent three missions to UNESCO headquarters in Paris to collect information from UNESCO departments.

5. In addition to the above sources, many complaints have been received from national authorities, governmental or non-governmental agencies,

international organizations, NGOs and individuals.

B. Applicable law

6. It should be remembered that part of the armed conflict in the former Yugoslavia is non-international in character. Admittedly, the essential applicable instruments prohibit the destruction of cultural property in non-international armed conflicts (1954 Hague Convention, art. 19; Protocol II to the 1949 Geneva Conventions, art. 16), but do not establish any penalties in such an instance.

7. For this reason, in regard to destruction of cultural property the Commission has confined itself to property destroyed after the independence of Bosnia and Herzegovina and of Croatia (subject to the comments to be made in connection with the Yugoslav Declaration of 20 November 1954).

8. The applicable law includes:

(a) The 1899 Convention on the Laws of War, the 1907 Convention on the same subject, and the 1923 Hague Regulations relative to Aerial Warfare (rules that were not ratified), which may be invoked as only part of customary law or general principles;

(b) The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, of 14 May 1954 (ratified by Yugoslavia on 29 December 1955);

(c) The Convention for the Protection of the World Cultural and Natural Heritage, of 16 November 1972 (ratified by Yugoslavia on 31 October 1974);

(d) The Yugoslav Declaration in connection with the protection of cultural property in cases of armed conflict, of 20 November 1954 (Official Gazette of the SFRY, Contrats internationaux No. 1/1955), a unilateral commitment but creating a legal obligation on the former Yugoslavia (see Mavrommatis Case, PCIJ, merits, series A/B, No. 14, p. 37, and judgment of 1 October 1946 of the Nürnberg International Military Tribunal in the "Prosecution of Major War Criminals", pp. 11, 15, 23 and 26 of the official French text);

(e) The 1949 Geneva Conventions;

(f) The 1977 Additional Protocols to the Geneva Conventions, particularly Protocol I, relating to the Protection of Victims of International Armed Conflicts (both the Protocols and the Conventions were ratified by Yugoslavia).

9. All of the applicable law concerns the former Yugoslavia, Bosnia and Herzegovina and Croatia, the two latter States having declared that they accept it. It therefore applies to the conflicts between those countries.

C. Cases cited as examples

10. The Commission has not deemed it advisable, particularly because not all of its programme could be carried out (its mission ended on 30 April 1994), to cite all the grave breaches of the Geneva Conventions and of international humanitarian law, especially as far as cultural property is concerned. It has preferred to take two examples typical of such breaches, to underscore them

and possibly enable the International Criminal Tribunal to use them for other situations. In this regard, it should be recalled that the Tribunal, established under Security Council resolution 808 (1993) of 22 February 1993 for war crimes "committed in the territory of the former Yugoslavia since 1991," is able to take cognizance of offences committed in connection with all cultural property, as provided for in the applicable instruments and, more particularly, in those mentioned above.

11. The two examples chosen by the Commission are:

- (a) The Battle of Dubrovnik; and
- (b) The destruction of the Mostar Bridge.

12. However, all the cases of destruction of cultural property brought to the Commission's notice are, none the less, listed in the database at IHRLI, Chicago.

II. BATTLE OF DUBROVNIK

A. The facts

13. In the autumn of 1991, the region of Dubrovnik was surrounded and besieged by the Yugoslav national army. After a few weeks, Dubrovnik itself was cut off by land and sea by the forces of the former Yugoslavia. This situation continued up to the autumn of 1992, when the District of Dubrovnik was recognized as forming part of the Republic of Croatia.

14. The military occupation of Dubrovnik captured international attention because of the cultural and historical significance of the region and the town. In 1979, the Old Town had been included in UNESCO's list of the world's cultural heritage. Dubrovnik is now known as an old town which has suffered great damage as a result of the Serbian attacks.

15. In May 1993, the Commission sent a team of four people to Dubrovnik to take a closer look at the effects of the battle of Dubrovnik, more particularly the effects on cultural property. The team, consisting of experts in the law on armed conflicts and an art historian, was in Dubrovnik from 19 October to 4 November 1993.

16. Dubrovnik is said to have been founded in the year 667, with the name of Ragusium. Later, the town was given the Croatian name of Dubrovnik, which apparently means "oak grove". The Old Town is not very large and is in the present State of Croatia. Croatia, which was made a province of Yugoslavia after the Second World War, declared itself independent on 26 June 1991, following a referendum held in May 1991.

17. The attacks on Dubrovnik started with the Serbian paramilitary forces, supported by Yugoslavia's regular army, in June and August 1992. On 1 October the Yugoslav Army invaded the District of Dubrovnik and laid siege to the town. It may be affirmed that there was virtually no defence of Dubrovnik and the surrounding area against the Yugoslav forces. This means that the destruction could on no account be justified as a military necessity. There is still less justification for the looting of some monuments, such as the Franciscan Monastery of St. Jerome in Slano or the destruction of the old Arboretum of Tresteno.

18. The siege of Dubrovnik lasted from October to December. The first shelling began on 1 October and continued sporadically until 24 October 1991.

After a short lull, the shelling started again on 30 October and continued into December.

19. The shelling of the Old Town has been described not only by the Institute for the Protection of the Cultural Monuments and Cultural Environment of Dubrovnik, but also by UNESCO observers (paragraph 4 above). The Commission heard one of these observers at length and he gave the Commission written documents, video cassettes and slides. The evidence collected by the experts and the findings from their inquiries, as well as the account of the facts given by the UNESCO expert present at the time of the shelling on 6 December 1991, all concur that 82-milimeter rockets were used. The Commission's list of the monuments hit by the shelling, to give an idea of the extent of the damage, includes the Sponza Palace, the Jesuit Church, the Franciscan Bell Tower, the Clock Tower, and the St. Clair Convent.

20. According to the UNESCO observers, the shelling was certainly from the south-east. Negotiations were subsequently held between the parties (negotiations which produced no effect). Accordingly, although a specific agreement on Dubrovnik was signed on 5 December 1991, intensive shelling of Dubrovnik started the next day and has become known as the "St. Nicholas Day Shelling of 6 December 1991". According to witnesses, it began at precisely 5:48 a.m. To begin with, 82 milimeter rockets were fired at the Old Town. In this connection, there are marks of 48 hits. The firing then continued with 82 milimeter mortar shells, which left 232 hits, and 120 milimeter shells, which left 364 hits. According to the UNESCO observers, the shelling lasted until 11:30 a.m. Larger-calibre shells also seem to have been used, since one hit, in the Cathedral at least, has been found to backup such an assertion.

21. It is apparent from the inquiries conducted by the experts, dispatched by the Commission, that the UNESCO observers' assumption is indeed true, namely that the shelling was from the south-east. In the light of the photographs of the damage to the rooftops and the trajectory of the shells, this conclusion is inevitable. The projectiles came from the direction of Bosanka, Prgat or Uskopje and Žarkovica. Most of them hit the north-western part of the Old Town. Ships also fired from the harbour.

22. The experts' conclusion on the part of the experts is suggested by the fact that there are red traces on the surfaces where the shells exploded. Moreover, the shelling was concentrated on the area affected by the 1979 earthquake. This does not appear to be mere coincidence. In all likelihood, those doing the firing were aiming at this part of the town, where any shell damage would be greater because the ground is unstable.

23. In any event, according to the experts, the shelling was selective and deliberately aimed at the buildings in the Old Town. According to the report by Professor Miroslav Gašparović, there is no doubt that the destruction of cultural property was intentional. The Commission has also acquired this conviction. However, the people doing the firing hit not only the Old Town, but also the New Town. It is difficult for the Yugoslav army to deny responsibility for this shelling.

24. On 7 December, a delegation of the Yugoslav army visited the Old Town in order to assess the damage. An investigation was conducted by UNCOE in Zagreb with the Belgrade authorities.

25. There are several documents which describe and evaluate the destruction inflicted upon Dubrovnik and in particular the Old Town. The documents are from several sources, including the Institute for the Protection of the Cultural Monuments and Cultural Environment of Dubrovnik, and UNESCO. The Institute possesses a document, in seven volumes entitled "Preliminary report

on the destruction to the Old Town of Dubrovnik" (October-November-December 1991), completed on 6 January 1992. These documents, which are particularly informative, contain maps and photographs together with individual records for each monument and house. UNESCO, for its part, drew up a report on the basis of documents transmitted to the Director-General before and after the shelling on 6, 7 and 8 December 1992. Entitled "Report on the state of the cultural heritage in the town of Dubrovnik following the shelling in October, November and December 1991," it is very helpful in establishing the reality of any charges against the perpetrators of these shellings.

26. UNESCO observers have in their possession hundreds of slides on the damage inflicted in October and December 1991. They also have photographs, remains of mortar shells and rockets.

27. The Institute completed its work with eight volumes concerning the New Town. Worth noting among the documents used by the Commission is the "Information report on the destruction by war of the cultural heritage in Croatia and Bosnia and Herzegovina", dated 2 February 1992. This document was submitted to the Parliamentary Assembly of the Council of Europe and, in particular, to the Committee on Culture and Education. It includes a section containing an inventory of the destruction which took place in Dubrovnik. While the purpose of the document was purely informative, it has the advantage of having been compiled not long before the withdrawal of Yugoslav forces from Konavle in October 1992. A comparison of the overall damage to the Old Town of Dubrovnik reveals that the damage inflicted in October and November 1991 was considerably less than the damage from the shelling on 6 December 1991.

28. Indeed, the shelling on 6 December was far more serious in terms of hits and the force of impact, the fires caused and the overall duration of the shelling. According to the Institute, 55.9 per cent of the buildings were affected, either by fires or by damage to the structures and special elements or to the façades and roofs. The roofs of several palaces were either destroyed or burned, including the Festival Palace, whose archives were completely destroyed, and a the roofs of a number of monuments caved in.

29. Other examples are St. Blaise's Church, the Franciscan Cathedral and Convent, the Dominican Convent, St. Clair's Convent and the Fountain of Onofrio; and, of course, there is the destruction of the roofs of the Old Town. In this respect, the Institute lists 336 direct hits and 254 cases of partial destruction of roofs by shell fragments.

30. From the Institute's assessment, together with that of UNESCO, the total damaged roof areas can be estimated at 56,747 meters. To this visible damage, the experts on the Commission have added damage resulting from vibrations which may appear later, as well as the damage which simply could not be detected at the time the experts were carrying out their work.

B. Characterization of the battle of Dubrovnik

31. There is some question as to the nature of the battle of Dubrovnik. The Commission has taken the view that it was an international armed conflict, and the justification for this position is discussed in paragraph 8 and 9 of this report. The Geneva Conventions, the 1907 Hague Convention, and the 1945 Regulations of the International Military Tribunal are applicable in this respect, as well as Protocol I to the Geneva Conventions.

32. Thus, with respect to the Statute of the International Tribunal, the offences in Dubrovnik can be said to concern extensive destruction and appropriation of property not justified by military necessity and seizure, and

destruction of and damage to religious institutions dedicated to charity education, the arts and sciences, as well as historic monuments and artistic and scientific works.

33. The concept of military objective should also be considered in this connection in order to shed light on the crimes committed. Indeed, it appears quite clearly that this destruction of cultural property did not in any way contribute to the military action and could in no way be considered necessary in terms of the military objectives pursued. Nor is there any way that the perpetrators of these crimes can claim to have been utilizing the monuments for military purposes.

34. In the Commission's view, other concepts in addition to military objectives should be applied: the concept of undefended place or object, of proportionality and of neutrality.

C. Imputability

35. While it is difficult to determine with any precision who was actually responsible for the crimes committed during the Battle of Dubrovnik, it would seem that sufficient charges can be made against some persons. This applies, for example, to an identified person in connection with the destruction of the Old Town and the New Town of Dubrovnik, which was ordered or permitted by him on 6 December 1991.

36. However, in the Commission's view this attribution of responsibility should not overshadow the responsibility of an identified officer whose name is not disclosed for confidentiality and prosecutorial reasons. Similarly, responsibility must be attributed to supervising and commanding officers whose names are not disclosed for confidentiality and prosecutorial reasons.

37. Moreover, the Commission has more complete information on the command structure of the Yugoslav army on the occasion of the battle of Dubrovnik.

D. Recommendations

38. By way of recommendation, the Commission can only reiterate the viewpoint expressed by the committee of experts it sent to Dubrovnik, according to which:

"With respect to the wanton destruction inflicted upon the Old and New Towns of Dubrovnik, immediate attention should be given to the further development of cases against certain known officers whose names are not disclosed for confidentiality and prosecutorial reasons. The cases against all of these JNA officers are close to completion, and they have already been the subject of considerable attention by the Croatian authorities. Of the essential elements of these cases, the identities, the command structure and the damage to both moveable and immoveable cultural property, both religious and historic, are close to being provable, and they should be followed up.

"As discussed in Chapters 8 and 9, wanton destruction of cultural property was not limited to the Old and New Towns of Dubrovnik. The District of Dubrovnik suffered greatly, and as it was occupied for a considerable period, it experienced plunder as well as wanton destruction. The entire District of Dubrovnik should be the subject of further investigation. Starting points in the Primorje region should be the village of Slano and the old Arboretum of Trsteno which suffered

both wanton destruction and plunder. It also appears that the village cemetery of Osojnik was subject to desecration. In the Konavle region, the village of Čilipi and the Franciscan Convent of Pridvorje would be good starting points. These matters should also be the subject of early attention by any future UNCOE investigative teams."

III. MOSTAR BRIDGE

A. The facts

39. On 9 November 1993 at 10:16 a.m., Mostar Bridge was destroyed. In this connection, the Institute for the Protection of the Historic and Natural Cultural Heritage of Bosnia and Herzegovina has accused the Croatian Defence Council and the Croatian Army (see letter dated 10 November 1993 sent to UNESCO).

40. This letter and other documents attached to this report describe the history of the bridge, which was built between 1557 and 1566, according to the plans of the Turkish architect Aerudin. It is a monument which, unfortunately, did not appear in the UNESCO list.

41. However, this bridge was well known to all of the population in the region, whether Serbian, Croatian or Muslim. Moreover, it was a symbol in two respects. First, it was a symbol of Bosnia and Herzegovina: spanning the gap between the Muslim and Croat communities, it embodied the links which united these peoples in spite of their religious differences and the circumstances of the present war. Second, there can be no doubt that it was of greater value to the Muslims. An article in a French newspaper reports claims by some people that the bridge was of greater value to them than their own parents or ancestors.

42. Admittedly, before it was destroyed the bridge had already suffered a certain amount of damage. Indeed, damage had already been done to its northern parapets. But all things considered, the damage had been minor. The initial objective, it would seem, had been to discourage people from using it. Thus, prior to November 1993, the primary target had been the parapet, forcing anyone who might be tempted to cross the bridge to refrain from doing so. However, the shelling on 8 November 1993 clearly aimed to destroy the bridge.

43. This destruction was carried out by tanks belonging, it seems, to the Croatian forces. On 9 November the shelling continued and it was then that the supporting arch of the southern end of the bridge was hit and collapsed. It would seem that this incident was filmed by Folio Productions (a British production company).

B. Characterization of the destruction of Mostar Bridge

44. The same criminal characterization which applies to the Battle of Dubrovnik also applies to the destruction of Mostar Bridge, which was also devoid of any military significance.

C. Imputability

45. It would seem that the Croats were at the origin of the destruction of Mostar Bridge. A Mostar District military tribunal reportedly interrogated three HVO soldiers who allegedly acted, according to a statement by the tribunal, "on their own initiative, without orders from their superiors" (see Communique dated 22 September 1993 from the Zagreb Foreign Press Bureau). The Commission considers that the Croatian Army bears some responsibility in this matter.

D. Recommendations

46. The same recommendations made with respect to the battle of Dubrovnik apply here as well.

IV. CONCLUSION

47. The findings of the Commission's investigation reveal that war crimes (serious infringements of the relevant instruments) were committed either by subordinates or by commanders.

48. Indeed, attacks took place that were deliberately directed against cultural property. In addition, movable property of a cultural character was transferred under false pretenses and without justification. Although in many cases imputability has not been established, in other cases it can be proved beyond doubt.

Appendix I

RECORD: CULTURAL PROPERTY IN THE FORMER YUGOSLAVIA

Meeting of 15 February 1994

I. INTRODUCTION

49. On 15 February 1994, a meeting was held at Geneva with two representatives of the Division of Physical Heritage of UNESCO, within the framework of the destruction of the cultural heritage in the armed conflict in the territory of the former Yugoslavia.

50. The working meeting was chaired by Mr. Kéba M'Baye, and the Secretariat was represented by Ms. Molina-Abram, with the assistance of Veronique Ivanovsky, Administrative Secretary.

II. PARTICIPANTS

51. Statements were heard from Mr. Etienne Clément, Jurist in the International Norms Section of the Division of Physical Heritage, headed by Ms. Prott, and from Ms. Giselle Hyvert, Expert Consultant for technical and operational questions relating to the town of Dubrovnik and for collection of information on destruction of cultural property.

52. After recalling briefly the activities and objectives of the Commission of Experts and points of convergence with the activities of UNESCO, Mr. Kéba M'baye invited representatives to give an account of the legal and operational aspects of their mission.

III. JURIDICAL FRAMEWORK

53. Mr. Etienne Clément referred to the basic legal instruments for UNESCO measures vis-à-vis States in a situation of armed conflict:

(a) The Hague Convention of 1954 was ratified by the former Yugoslavia, and subsequently accepted by Slovenia, Croatia and Bosnia. Article 4 of this Convention constitutes the basis for UNESCO's work for the protection of cultural property. Paragraph 1 states: "The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property." These provisions are clearly binding on the two parties. On the other hand, under article 4, paragraph 2, "The obligations mentioned in paragraph 1 of the present article may be waived only in cases where military necessity imperatively requires such a waiver."

The scope of this Convention relates both to international conflicts and non-international conflicts.

(b) The 1972 Convention for the Protection of the World Cultural and Natural Heritage, which stipulates that no State Party shall take any deliberate measures against the property protected under this Convention, is applicable to the towns of Dubrovnik and Split. Moreover, this Convention (arts. 16-26) establishes the conditions and modalities of international assistance for property forming part of the cultural heritage.

(c) The Protocols Additional to the 1949 Geneva Conventions prohibit any acts of hostility directed against the cultural heritage or the use thereof for military purposes.

54. Special reference was made to article 53 of Protocol I and to article 16 of Protocol II.

55. Furthermore, article 85, paragraph 4, of Protocol I, which refers to "making the clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given...the object of attack," was evoked. With regard to Protocol II, article 16 was cited.

56. Mr. Clément emphasized, firstly, that part of the protected property must be special and, secondly, that they must be recognizable. States bear the responsibility for indicating this cultural property by affixing to it the appropriate distinctive blue and white sign.

57. Mr. Clément also emphasized that the 1972 International Convention (arts. 19 and 23) enabled UNESCO to offer its services to States without, however, being able to impose the prerogatives of protection of the heritage according to international norms.

IV. OPERATIONAL FRAMEWORK

58. Ms. Giselle Hyvert presented a synthesis of the findings made in Croatia and the documents received by the Division of Physical Heritage. These examples illustrated the difficulties and the need to develop the legal provisions on the subject.

59. a.) Dubrovnik - The attacks sustained by this town, especially on insignia and flags, indicate intentional systematic destruction. Moreover, two orthodox churches in Dubrovnik were damaged.

60. b.) Vukovar - Considerable cultural property was transferred to Belgrade. More than 35,000 objets d'art were inventoried.

61. c.) Mostar - The bridge was not adequately protected.

62. In Bosnia, UNESCO is constantly receiving appeals regarding the destruction of historic sites. An impressive list on the subject has been published by the Council of Europe. The destruction of the Pocitelj mosque should also be noted.

63. Lastly, Ms. Hyvert referred to the UNESCO General Conference, in the course of which an analogy had been drawn with regard to the conflict between Kuwait and Iraq, in connection with the subject of the looting of cultural property.