

MFC



JOINT STAKEHOLDER SUBMISSION TO THE UN HUMAN RIGHTS COUNCIL, 44TH SESSION

UNIVERSAL PERIODIC REVIEW OF RUSSIA

Submitted by:

- (1) Museum for Change
- (2) Hogan Lovells International LLP
- (3) LLC Law Firm Robinson Patman

April 2023

Museum for Change is an Odesa-based non-governmental organisation co-founded in 2017 by Oleksandra Kovalchuk. Ms Kovalchuk is currently the acting director of the Odesa Fine Arts Museum. Initially, Museum for Change was created to modernise Odesa-area museums and help them develop, building cooperation between museums, donors, and the local community. As a result of the Russian invasion its mission has changed. Its primary task is now the safeguarding of museum collections. It also supports museum workers. Museum for Change has reached out beyond its Odesa base, particularly to museums in cities, such as Sumy and Chernihiv, subjected to especially high levels of risk from Russian attacks. It is also building bridges to cultural institutes outside Ukraine as well as to international organizations such as UNESCO. Since the invasion began, Museum for Change has supported more than 60 cultural institutions, raising over €1.2 million in funds.

Museum for Change has been profiled internationally in the film *Dreams and Hopes: The Battle for Ukraine's Cultural Heritage* (streamable on YouTube at https://www.youtube.com/watch?v=hshc4X3_Geo) as well as in the article "After fleeing to Salem, a Ukrainian museum director leads a global effort to preserve her country's heritage" in the *Boston Globe* (May 7, 2022; <https://www.bostonglobe.com/2022/05/07/arts/fleeing-russian-aggression-ukrainian-museum-director-lands-salem/>).

Hogan Lovells is an international law firm with offices around the world, including in the United Kingdom, the United States and Germany. Its lawyers contribute more than 150,000 hours each year to pro bono work, including conducting litigation, advising on human rights breaches and international humanitarian law, and undertaking research projects and writing reports in collaboration with partner institutions.

Robinson Patman is a full-service consultancy and law firm in Ukraine with more than 20 dedicated experts from eleven practice areas and fourteen industry groups. The firm has a strong commitment to pro bono service, including the provision of pro bono advice and fundraising support to cultural institutions in Ukraine that have been impacted by Russian military aggression.

I Introduction

1. The third cycle of the 39th session of the UN Human Rights Council's universal periodic review of the Russian Federation took place in 2018. Although a number of issues relating to Russia's occupation of Ukrainian territory were discussed in that cycle, the review predated Russia's February 2022 full-scale invasion of Ukraine.
2. Although Russian occupation forces have been attacking Ukrainian property, including cultural property, for approximately ten years, attacks on Ukrainian property have increased dramatically since the 2022 invasion.
3. The pattern of attacks on cultural property – with an overwhelming focus on objects of no military significance – compel the conclusion that Russia is engaged in a deliberate campaign to erase Ukrainian culture.

II Applicable Law

a. Hague Convention

1. The international law relating to the protection of cultural property during wartime is codified in the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention of 14 May 1954 (the "**Hague Convention**"). Both Russia and Ukraine are parties to the Convention.
2. Of particular relevance to the current situation in Ukraine, the Convention obligates parties to respect cultural property ... 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.¹
3. The Convention further obligates parties to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.²

b. Rome Statute

1. The Rome Statute of the International Criminal Court of 1998 (as amended, the "**Rome Statute**") established the International Criminal Court (the "**ICC**"). The Statute also defines four core

categories of international crime, including war crimes.

2. The ICC has jurisdiction only over individuals. Unless the UN Security Council refers a matter to the ICC, the ICC generally has jurisdiction only over crimes committed by a national of a state party to the statute or on the territory of a state party. A non-party state may, however, accept ICC jurisdiction with respect to specific crimes.³
3. Neither Russia nor Ukraine is currently a state party to the Rome Statute.
4. Russia was a signatory to the Statute but withdrew its signature in November 2016 following publication of a preliminary ICC report finding that “the situation within the territory of Crimea and Sevastopol factually amounts to an on-going state of occupation”.⁴
5. Ukraine is a signatory but has not yet ratified the Statute. It is obligated to do so under the terms of its Association Agreement with the European Union⁵ In 2016, Ukraine’s parliament, the Verkhovna Rada, amended the constitution to make ratification of Rome Statute possible; the changes became effective in 2019. In that year the office of the President of Ukraine announced that ratification was a priority.⁶
6. The ICC generally has jurisdiction with respect to a given state only over crimes committed after the state has ratified the Statute. This limitation does not apply, however, when a state that is not a party declares its acceptance of ICC jurisdiction in a specific matter.⁷
7. The Rome Statute confers on the ICC jurisdiction over war crimes “in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes”.⁸ The statutory definition of war crimes includes the following acts of relevance to this submission:⁹
 - intentional attacks against civilian objects, i.e., objects which are not military objectives;
 - attacking or bombarding towns, villages, dwellings or buildings which are undefended and are not military objectives;
 - intentional attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - destroying or seizing property unless such destruction or seizure be imperatively demanded by the necessities of war; and
 - pillaging a town or place, even when taken by assault.

III Facts

a. *Previous Cycle of UPR*

1. Although Russia's full-scale invasion of Ukraine began in February 2022, the acts of the Russian state on Ukrainian territory were already a topic of concern in the 2018 third cycle of UPR of the Russian Federation. While the National Report of 1 March 2018 and the Working Group Report of 12 June 2018 (the "**Working Group Report**") focused primarily on breaches of the rule of law, violations of human rights and discrimination against women and minorities within Russia itself, they also recorded recommendations by various member states relating to Russia's conduct in the illegally occupied regions of Ukraine.¹⁰
2. In particular, Ukraine recommended that Russia uphold its obligations under international law as an occupying power. Russia refused to consider this recommendation on the grounds that it was, in Russia's view, "not factually correct... and [did] not comply with the basis of the review stipulated by the Human Rights Council".¹¹

b. *Attacks During the Current War*

i. *Destruction and Damage of Cultural Property*

1. Russian shelling, drone attacks and missile strikes have targeted and partly or completely destroyed numerous sites, institutions and objects of cultural, historical and religious importance in Ukraine. These objects include memorials, monuments and statues; historic buildings; museums; theatres; churches and other places of worship; cemeteries; libraries; archives; and schools and universities.
2. It is impossible in this submission to list all Russian attacks on Ukrainian cultural property since the invasion. We may, however, cite an illustrative selection:¹²
 - On 26 February 2022, the Ivankiv Historical and Local History Museum in Kyiv Oblast was shelled, destroying many items in the museum's collection, including some 25 paintings by Maria Prymachenko, a Ukrainian artist from Ivankiv.¹³
 - The Izyum Historical and Local History Museum in Kharkiv Oblast was struck in late February - early March 2022.
 - In March 2022, Russian shelling damaged the Dobritsky Yar Holocaust Memorial on the outskirts of Kharkiv. The memorial commemorates the site where Nazis killed an estimated 16,000 Jews during World War II.

- On 16 March 2022, Russian aircraft dropped two 500 kg bombs on the Donetsk Regional Academic Mariupol Drama Theatre, where hundreds of residents were sheltering.
 - On 6 May 2022, a missile strike hit the National Literary and Memorial Museum of H.S. Skovoroda, causing a fire and significant damage to the museum's collections.
 - Russian attacks have damaged the Monument to V.G. Korolenko and the A. Kuindzhi Centre for Contemporary Art and Culture in Mariupol; the National Academic Opera and Ballet Theatre and the Memorial Complex of Glory in Kharkiv; and the Memorial monument to villagers who died in the Second World War in Kyiv.
 - A fire resulting from constant and heavy bombing destroyed the 16th century All Saints' Hermitage, one of Ukraine's holiest Orthodox Christian sites, in Sviatohirsk (Donetsk Oblast).
3. According to Ministry of Culture data as of April 4, 2023, at least 1,373 objects of cultural infrastructure in Ukraine have been damaged in Russian attacks. These include 653 local cultural hubs; 528 libraries; 69 museums and galleries; 22 theatres, cinemas and concert halls; and 101 institutes of art education. Nearly a third of these objects (514) were completely destroyed.¹⁴ Twenty one libraries have lost their entire collections. This destruction is in addition to the damage to or destruction of some 266 architectural objects, 19 archaeological objects, 43 historical objects and 14 monumental art objects reported to the Office of the UN's High Commissioner for Human Rights in late December 2022.¹⁵
4. Russian occupation forces have also been seizing and destroying books. For example:¹⁶
- In March 2022, occupation authorities seized or destroyed Ukrainian books of history and literature deemed to be "extremist" from public libraries in the occupied territory of Luhansk, Donetsk, Chernihiv, and Sumy Oblasts.
 - Also in March 2022, separatist authorities in Donetsk announced the seizure in 70 libraries of books related to history, politics, Ukrainian national movements and state symbols, and religion from 70 libraries. In May, occupation forces reportedly seized the remaining books from the city's damaged main library.
 - In July 2022, occupation forces in Mariupol burned the book collection of the Church of Petro Mohyla, which contained unique copies of Ukrainian-language works.
 - In August 2022, occupation authorities in two villages in Kharkiv Oblast issued decrees "On the Removal of Literature". These decrees ordered the removal of school textbooks and

books of Ukrainian literature, as well as posters, signs, and school documentation.

- In July 2002, Ukrainian state symbols and Ukrainian textbooks were reported destroyed in the town of Borivsk in the northern Luhansk Oblast.
5. Under the Hague Convention, the obligations of parties to respect cultural property may be waived only if military necessity imperatively requires.¹⁷ In reviewing the individually documented acts of destruction of Ukrainian cultural property it is difficult to see when, if ever, the high bar of imperative military necessity could justify the destructive act. As only one example of many, on 7 March 2002, Russian bombs partially destroyed the Church of the Intercession (protected monument № 108) near Vyazivka village in the Zhytomyr region. The church, built in 1862, stands isolated in an empty field, remote from any structures of military significance, or indeed any other structures at all.
 6. We note that the Office of the Prosecutor General of Ukraine has submitted a report on the war crimes it believes have been committed against cultural heritage sites in Russian-occupied Crimea to the ICC. The ICC, in turn, has issued an Office of the Prosecutor note on Eastern Ukraine describing the destruction of civilian objects.

ii. Seizure of Property and Pillaging

1. The ICC's 2020 report on preliminary examination activities in Eastern Ukraine found a reasonable basis to believe that the crime of "seizing the enemy's property that is not imperatively demanded by the necessities of war, with regard to private and cultural property, pursuant to article 8(2)(b)(xiii) of the Statute" had been committed in Ukraine.
2. Russian looting of Ukrainian artworks appears widespread in regions of the country currently under control of Russian forces. As reported by *Human Rights Watch*:

Russian military forces and civilians operating under their orders pillaged thousands of valuable artifacts and artworks ... before withdrawing after an 8-month occupation of the city, *Human Rights Watch* said today. Since Russia's full-scale invasion of Ukraine in February, its forces have reportedly looted at least five other cultural institutions in southern Ukraine – cases that amount to war crimes.¹⁸

Russians have also seized cultural treasures in other parts of Ukraine under occupation, including Mariupol, Melitopol and Zaporizhzhia; looted objects have since been photographed being transported into and displayed in a museum in Simferopol in Russian-occupied Crimea.¹⁹

3. Looting of Ukrainian cultural goods for, e.g., public display in Russia or Russian-occupied regions of Ukraine violates the prohibition on seizure of property²⁰. Destruction or seizure of property can be justified by compelling military necessity. It is, however, difficult to detect the military necessity of looting museums in Kherson to display the seized items in a museum in Russian-occupied Simferopol.
4. Russian forces or civilian personnel seizing property for their own private use or personal gain commit the war crime of pillage.²¹ Pillage is not limited to cultural property. The OTP, however, has stated that it will “take particular account of circumstances such as ... the value and unique meaning of the stolen property, including its cultural value” in deciding whether to pursue pillaging cases.²² The OTP has also noted that pillage “can never be justified by military necessity”.²³

c. Attacks on Cultural Property as a Targeted Attack on Ukraine’s Cultural Identity

1. There are significant and justified concerns that the destruction of Ukraine's cultural assets is part of a deliberate strategy by Russia to erase Ukrainian cultural identity and reinforce Russian's irredentist territorial claims. This strategy is demonstrated, for example, by Russia's seizure and destruction of Ukrainian schoolbooks, or the attack on the Ivankiv Museum (no other target in the town was hit).
2. Occupying forces have replaced seized books with textbooks imported from Russia Federation, some of which teach students that Russia is their homeland and that there is no Ukrainian cultural identity.
3. The ongoing attacks on Ukrainian cultural property may be seen as the continuation of a Russian campaign to deny and destroy an independent Ukrainian people and culture stretching from the enforced Russification following Peter the Great’s victory at the Battle of Poltava in 1709, through Alexander II’s 1876 ban on Ukrainian-language publications, plays and songs, through the Holodomor, the famine deliberately engineered in Ukraine in the early 1930s under Stalin,²⁴ to Vladimir Putin’s own 2021 essay, “On the Historical Unity of Russians and Ukrainians”.²⁵
4. In a February 2023 release by the UN’s Special Rapporteurs for cultural rights, for the right to education and for freedom of religion or belief, the Special Rapporteurs stated:

We are also concerned by the severe targeting of Ukrainian cultural symbols. Cultural resources – such as repositories of Ukrainian literature, museums, and historical archives – are being destroyed, and there is a widespread narrative of demonisation and denigration of Ukrainian culture and identity promoted by Russian officials, along with calls for

ideological repression and strict censorship in the political, cultural and educational spheres....

This is particularly true in occupied parts of Ukraine, including Crimea and eastern Ukraine, where efforts are being made to erase local culture, history, and language in cultural and educational institutions and to forcibly replace them with Russian language and with Russian and Soviet history and culture. Ukrainian history books and literature deemed to be “extremist” have been seized from public libraries ... and destroyed by the occupying power.²⁶

5. The conclusions of the Special Rapporteurs are supported by statements from Russian leadership itself, including Vladimir Putin’s 2021 essay.

IV Conclusion

1. Russia’s war on Ukraine targets not only Ukrainian military forces and the civilian population. It also targets Ukraine’s cultural property, and in doing so attacks the cultural identity of the nation itself.
2. We propose the following recommendations be presented to the Government of Russia:
 - Cease and desist from attacks on Ukrainian cultural property in violation of international law.
 - Cease and desist from the seizure and pillage of Ukrainian cultural property.
 - Repatriate all seized and pillaged Ukraine culturally property.
 - Pay reparations for the reconstruction of damaged cultural property.
 - Pay reparations for destroyed cultural property.
 - Cooperate with the ICC to ensure that individuals responsible for the intentional destruction of cultural heritage are appropriately charged by the ICC.

¹ Hague Convention Article 4(1).

² Hague Convention Article 4(3)

³ Rome Statute, Art. 11(3).

⁴ International Criminal Court, "Report on Preliminary Examination Activities 2016" (14 November 2016).

⁵ Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part, Art. 8.

- ⁶ Balkan Insight, “Ukraine Urged to Get Ready for Post-Conflict Justice”, *Justice Report*, 30 August 2019 (<https://balkaninsight.com/2019/08/30/ukraine-urged-to-get-ready-for-post-conflict-justice/>).
- ⁷ Rome Statute, Art. 11(2), Art. 12(3).
- ⁸ Rome Statute, Art. 8(1).
- ⁹ Rome Statute, Art. 8(2)(b)(ii), (v), (ix), (xiii) and (xvi).
- ¹⁰ See, e.g., recommendations of Ukraine, Australia and Lithuania (Working Group Report II. 147.28, 147.39, 147.52, 147.131, 147.307-309, 148.3, 148.6-8).
- ¹¹ Universal Periodic Review, Russian Federation, *Working Group Report II*. 148, 12 June 2018
- ¹² UN Office of the High Commissioner for Human Rights, *Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to education and the Special Rapporteur on freedom of religion or belief* AL RUS 18/2022, 20 December 2022 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27760>).
- ¹³ Residents of Ivankiv ran into the burning museum to rescue what they could. Although 25 of Prymachenko’s paintings were destroyed, the residents were able to save 14, which were later exhibited publicly in Kyiv. Krechetova, Diana, “Exhibition of Rescued Maria Prymachenko Paintings Premieres in Kyiv” (У Києві вперше відкрилася виставка врятованих картин Марії Примаченко), *Ukrains’ka Pravda*, 22 September 2022 (<https://life.pravda.com.ua/culture/2022/09/22/250542/>).
- ¹⁴ Ministry of Culture and Information Policy of Ukraine release, 4 April 2023 (<https://mkip.gov.ua/news/8917.html>).
- ¹⁵ AL RUS 18/2022.
- ¹⁶ AL RUS 18/2022.
- ¹⁷ Hague Convention Art. 4(2).
- ¹⁸ “Ukraine: Russians Pillage Kherson Cultural Institutions”, *Human Rights Watch*, 20 December 2022 (<https://www.hrw.org/news/2022/12/20/ukraine-russians-pillage-kherson-cultural-institutions>).
- ¹⁹ *Ibid.*
- ²⁰ Rome Statute, Arts. 8(2)(a)(iv), 8(2)(b)(xiii) and 8(2)(e)(xii); Office of the Prosecutor, International Criminal Court, *Policy on Cultural Heritage II(a)(i)* (June 2021).
- ²¹ Rome Statute, Articles 8(2)(b)(xvi) and 8(2)(e)(v); Office of the Prosecutor, International Criminal Court, *Policy on Cultural Heritage II(a)(iv)* (June 2021).
- ²² *Ibid.*
- ²³ *Ibid.*
- ²⁴ Schama, Simon, “When history is weaponised for war”, *Financial Times*, 6 May 2022.
- ²⁵ Putin, V.V., “On the Historical Unity of Russians and Ukrainian” (Об историческом единстве русских и украинцев), Office of the President of Russia, 12 July 2021 (English version <http://en.kremlin.ru/events/president/news/66181>).
- ²⁶ Office of the UN High Commissioner for Human Rights, “Targeted destruction of Ukraine’s culture must stop: UN experts”, 22 February 2023 (<https://www.ohchr.org/en/statements/2023/02/targeted-destruction-ukraines-culture-must-stop-un-experts>). The Russian occupiers’ attempts to erase Ukrainian culture can at times descend into grim farce: “The futility of imagining that you can shoot Ukrainian culture into non-existence has been most fatuously exemplified by Russian troops who recently ‘executed’ a statue of the great 19th-century Ukrainian poet Taras Shevchenko in Borodyanka, with a bullet to its skull, as though the life of literature was made of metal.” Schama, S., *op. cit.*

Annex

Museum for Change

<https://museumforchange.org.ua/>

Contact: Oleksandra Kovalchuk
Co-Founder, Museum for Change
Acting Director, Odesa Fine Arts Museum

Hogan Lovells International LLP

Atlantic House
Holborn Viaduct
London EC1A 2FG
United Kingdom

Contact: Yasmin Waljee
Partner, International Pro Bono

LLC Law Firm Robinson Patman

General Almazov Street 1
Kyiv 01015
Ukraine

Contact: Nadiia Dmytrenko
Partner