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Food-for-thought paper

Protection of places of worship and other religious objects in “hybrid” war

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On the backdrop of the so-called “hybrid” war waged in Ukraine by the Russian Federation, albeit without formal recognition as a state of war, all distinctions between international humanitarian law (IHL) and human rights are compromised. Mixture of different types of combat operations, including conventional capabilities, irregular tactics and formations, terrorism, indiscriminate violence and intolerance as well as criminal disorder are among main features that could characterize undergoing “hybrid” war. Consequently, IHL has been raised to the top of the national and international agendas, similarly as being “hybrid”.

Fulfilment in a good faith of all obligations under international law, especially those focused on protection of cultural property, including places of worship and other religious objects, are among the basic principles stipulated in the Helsinki Final Act. The Kyiv Ministerial Council Decision 3/13 on Freedom of Thought, Conscience, Religion or Belief also calls on participating States (pS) to adopt policies to promote respect for and protection of places of worship and religious sites, religious monuments, cemeteries and shrines against vandalism and destruction. The Baku 2014 OSCE PA Resolution on Protection of Cultural Property in the OSCE Area also stresses the fact that the intentional destruction of cultural heritage violates the fundamental principles of IHL. Hence, all pS are obliged to take respective practical and legal measures, such as enacting penal legislation, raising awareness and disseminating IHL with emphasis on the protection of places of worship and other religious objects.

This food-for-thought paper is based on initial analyses of available facts and assessments related to one particular issue that is subject to IHL: the protection of places of worship and other religious objects during armed conflict (“hybrid” war) with focus on freedom of thought, conscience, religion or belief as a part of comprehensive security approach in the OSCE area. Intentional destruction of places of worship and religious objects being important component of social cohesion may have adverse consequences for human dignity and human rights.

“Hybrid” war is indiscriminant, and negatively impacts on all confessions without exception. All parties involved should fully understand this fact. This document contains a set of recommendations that offer insights for national and international institutions, NGOs, religious communities, and military and paramilitary personnel that would be do well for considering as starting point for enhancement of the protection of places of worship and other religious objects in “hybrid” war not only in Ukraine, but in other pS this may concern.

This topic also could be useful in light of furthering implementation of the Kyiv Ministerial Council Decision 3/13 on Freedom of Thought, Conscience, Religion or Belief, supporting the Swiss OSCE Chairmanship initiatives on revitalizing the role of the OSCE as regional arrangement under Chapter VIII of the United Nations Charter, as well as current initiatives on enhancing the implementation of the OSCE Code of Conduct on Politico-Military Aspects of Security, and the Document of the Cracow Symposium on the Cultural Heritage of the CSCE Participating States of 1991.

Basic normative provisions how to protect cultural objects and places of worship in armed conflict (even if the state of war is not recognized) have been already agreed and stated in the Hague Conventions of 1954, the Geneva Conventions of 1949 and the 1977 Protocol 1 additional thereto, etc. It is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort as well as to make such objects the object of reprisals. As stipulated from the OSCE Code of Conduct on Politico-Military Aspects of Security, which provisions support without prejudicing all above-mentioned obligations, pS will make widely available the IHL of war and reflect, in accordance with national practice, their commitments in this field in their military training programmes and regulations. Each participating State will ensure that its armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of international law and its respective obligations and commitments related to the use of armed forces in armed conflict. Each pS will instruct its armed forces personnel in international humanitarian law, rules, conventions and commitments governing armed conflict and will ensure that such

personnel are aware that they are individually accountable under national and international law for their actions.

Engagement of the field operations (FOPS) of the OSCE in Ukraine has led the way in the nation's crisis management in its state of "hybrid" war. Their missions have demonstrated relevance and enduring value in addressing security concerns by providing unbiased information on the ground, including information relating to the security of places of worship and religious objects. Since April 2014, continual updates by the OSCE Special Monitoring Mission to Ukraine (SMM) include:

- Repeated cases of damages to churches in the area of application, as well as violence committed toward clergy and lay people, and seizure of the church properties;
- Activities of radical paramilitary religious formations;
- Religious charity activities and humanitarian assistance as well as multi-faith events oriented on prevention of conflicts on different ideological background, etc.

At the same time, there might be critical comments on above-mentioned developments covered in the SMM reports being biased towards some religious confessions involved.

The role of non-governmental actors in planning and implementing of worship's places and religious objects protection could hardly be overestimated. Thus, the representatives of churches and religious organizations of Ukraine and Russia during common meeting held in Oslo on September 9-11th, 2014, unanimously agreed that any violence committed toward clergy and lay people, religious buildings and houses of prayer of any denomination in the conflict area were not permissible.

Recently published report of the Crimean Field Mission on Human Rights, prepared in association with Ukrainian and Russian human rights organizations during July-August 2014, also highlights evidences of freedom of religion's violation and intolerance on religious grounds executed in Crimea (attempts to annihilate Ukrainian Orthodox Church of the Kyiv Patriarchate as such, violence against clergy people and places of warship, etc.).

Many NGOs in Ukraine are dealing with IHL investigation issues related to the situation in the East of Ukraine, in particular concerning the relevance of the military officers' decisions taken on the battlefield, etc.

The leading role of the international non-governmental organizations under the auspices of the International Committee of the Blue Shield also should be mentioned. In close cooperation with Ukrainian NGOs, multi-faith religious representatives, representatives of the military and other relevant Executives, they were the first trying to establish a platform for cultural objects and worship's places protection in Ukraine, both on practical and theoretical levels. Nevertheless, the gap for active involvement of all actors in this process remains evident as of yet. The evolving "hybrid" security context requires finding ways to work together more effectively, prevent duplication of efforts and competition for resources, and to reinforce the full coherence and synergy of collective action.

The list of possible recommendations consists of the following:

To the OSCE participating States:

- Taking all appropriate measures to conduct their activities in such a manner as to protect places of worship and other religious objects in conformity with customary international law and the principles and objectives of international agreements, relevant UNESCO recommendations as well as provisions of the Kyiv Ministerial Council Decision 3/13 on Freedom of Thought, Conscience, Religion or Belief;
- Adopting appropriate domestic legislation and agree on common standards, in line with relevant international instruments that will encourage ratifying all additional Protocols to the Hague Conventions of 1954 and Geneva Conventions of 1949;
- Elaborating and establishing an OSCE mechanism on protecting places of worship and other religious objects in "hybrid" war;
- Broadening of the HDIM's agenda to include follow up issues on fulfillment of relevant provisions of IHL depending on current security situation in the OSCE area;
- Providing access to their territories by the international fact-finding missions aimed at verifying the possible destruction of worship's places and religious objects as well as violence committed toward clergy and lay people, etc.;
- Supporting creation of national monitoring system for worship's places and other religious objects protection, etc.;
- Providing relevant information on the implementation of international commitments on worship's places and religious objects protection under annual reporting on the OSCE Code of Conduct on Politico-Military Aspects of Security, including those related to the provisions of the Kyiv Ministerial Council Decision 3/13 on Freedom of Thought, Conscience, Religion or Belief;
- Organizing/updating special training programmes, elaborating national regulations on cultural objects and worship's places protection;
- Providing thorough investigation and effective criminal sanctions against perpetrators violated relevant international commitments on worship's places and religious objects protection in conflict areas.

To the ODIHR:

- Organizing in cooperation with other international institutions an expert meeting on promotion cultural objects and worship's places protection in the OSCE area based on relevant provisions of the Document of the Cracow Symposium on the Cultural Heritage of the CSCE Participating States of 1991, the OSCE Code of Conduct on Politico-Military Aspects of Security and the Kyiv Ministerial Council Decision 3/13 on Freedom of Thought, Conscience, Religion or Belief;
- Supporting the creation of the international fact-finding missions as well as network of national focal points on places of worship and religious objects protection;
- Elaborating a best practice guide on places of worship and other religious objects protection in "hybrid" war.

To the OSCE field operations (incl. OSCE SMM to Ukraine):

- Monitoring the ongoing humanitarian crisis in the East of Ukraine and in the occupied Crimea with unbiased focus on violations against worship's places and other religious objects;
- Providing practical support and advise on the ground to all non-governmental actors involved in elaboration of protective measures, establishing contacts with authorities and creation of monitoring network;
- Developing new projects in affected host countries on places of worship protection;
- Providing support and maintain contacts with civil monitoring networks and initiatives on protection of places of worship;
- Executing complementarity coordination efforts between different FOPS and fact-finding missions of other international organizations deployed in common area of responsibility.

To the OSCE Chairmanship:

- Furthering efforts on the initiative on revitalizing the role of the OSCE as regional arrangement under Chapter VIII of the United Nations Charter in order to encourage pS ratifying and fully implementing all additional Protocols to the Hague Conventions of 1954 and Geneva Conventions of 1949;
- Updating mandates of its three Personal Representatives on combating intolerance and discrimination to cover issues of worship's places and other religious objects protection;
- Initiating follow up meeting on implementation of the international commitments on worship's places and other religious objects protection in the OSCE area, incl. those relevant to the Kyiv Ministerial Council Decision 3/13 on Freedom of Thought, Conscience, Religion or Belief, the OSCE Code of Conduct on Politico-Military Aspects of Security, etc.

To the national religious communities and NGOs:

- Establishing/maintaining close cooperation with relevant OSCE institutions and FOPS as well as non-governmental international organizations such as the International Committee of the Blue Shield, etc.;
- Preparing suggestions for national regulations on cultural objects and worship's places protection;
- Creating national monitoring system for worship's places and religious objects protection with active involvement of informal military chaplains services;
- Participating in governmental bodies related to cultural objects protection and monitoring of investigation of all national violations of international commitments on worship's places and religious objects protection, etc.

Implementation of the proposed recommendations should take place in partnership with public institutions and civil society organizations, in an inclusive and transparent manner. Civil society can play a key role here, helping to build bridges and inspiring governments to act.