

Destruction of Al-Askari Mosque is a “war crime”; Statement on events in Samarra and across Iraq:

By [BRussells Tribunal](#)

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Statement on events in Samarra and across Iraq:

Occupying powers are responsible for the protection of, and imputable for the destruction of, religious shrines

Destruction of Al-Askari Mosque a “war crime” under international law

Occupying powers legally bound to protect civilian life

The BRussells Tribunal stands against all attempts to incite religious sectarian strife aimed at dividing the people of Iraq.

The United States and other parties of Multi-National Force-Iraq (MNF-I) remain belligerent occupants under international law. Given that UN Security Council Resolution 1546 only “welcomed” the interim government in Iraq formed June 2004, that it did not recognize it formally, and could not, because it has no legal basis in international law and is not recognized as legitimate by the resistance to foreign occupation, MNF-I is legally responsible for the whole of Iraq. This legal responsibility extends 31 December 2006, as set forth in UN Security Council Resolution 1637. As an occupying power, the United States and other parties to the occupation are legally, individually and severally, responsible for the protection of religious shrines, and imputable under international law, individually and severally, for the criminal destruction of shrines.

The destruction of Al-Askari Mosque in Samarra, Iraq, represents yet another breach of the obligations of occupying powers under international humanitarian law.

Applicable international law

Under the provisions of the Hague IV Conventions on Laws and Customs of War on Land, 1917, Article 56 states: “The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.” Further, Article 55 establishes that: “The occupying State shall be regarded only as administrator and usufructuary of public buildings, real

estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”

Further, an occupying power is obliged, according to Articles 43 and 46, to protect life and take all steps in its power to reestablish and ensure “public order and safety”.

In addition, The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954, (to which several members of MNF-I are State Parties) creates a clear obligation to protect “monuments of architecture, art or history, whether religious or secular”. Article 4, paragraph 1 notes: “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.”

Article 4, paragraph 5, states: “No High Contracting Party may evade the obligations incumbent upon it under the present Article (“Respect for Cultural Property”), in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3 (“Safeguarding of Cultural Property”).”

The Republic of Iraq has been a High Contracting Party to the Hague Convention on the Protection of Cultural Property since 1967, along with several parties of MNF-I.

Article 53 of the 1st Additional Protocol to the Geneva Conventions, 1977, reaffirms these obligations, expressly noting that it is prohibited to: “(a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; (b) to use such objects in support of the military effort; (c) to make such objects the object of reprisals.” The United Kingdom, along with several other members of MNF-I (excluding the US) is a State Party to the 1st Additional Protocol.

Article 5 of The Hague Convention for the Protection of Cultural Property deals explicitly with occupation. Paragraph 1 states: “Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.” Paragraph 2 states: “Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.”

Conclusion: Destruction of Al-Askari Mosque is a “war crime”; occupation must protect civilian lives

Given that there is no government in Iraq that is recognized as legitimate by the resistance to the occupation, there is no sovereign Iraq outside the resistance at this present time. In the absence of a sovereign Iraqi government, it is the occupying powers of MNF-I that are

legally responsible to protect religious and cultural sites of historic significance, like Al-Askari Mosque in Sammara. Their failure to do so — in being a violation of the laws or customs of war — is a “war crime” under the Principles of the Nuremberg Tribunal, 1950.

We remind all occupying powers in Iraq that they are legally duty-bound, under the Fourth Geneva Convention and its Additional Protocols, to protect civilian lives in Iraq.

The BRussells Tribunal stands against all attempts to incite religious sectarian strife aimed at dividing the people of Iraq.

The BRussells Tribunal, 23 February 2006.

<http://www.brusselstribunal.org/SamarraStatement.htm>

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