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RUBEN APRESSYAN
**PROTECTING
CULTURAL
PROPERTY
IN TIMES OF
WARFARE**
NORMATIVE
DISPOSITIONS

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Zugang zu kulturellen Gütern
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Ruben Apressyan

Protecting Cultural Property in Times of Warfare. Normative Dispositions

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Introduction

War, in all its forms, brings with it mutilation, destruction, ruin, and death. War cannot be any other way. Whatever the military-political goals and intentions of the warring parties, war is evil. First of all, this is evil for people in the territories where warfare is conducted and nearby them: people die and lose their health, wealth, home, and habitual way of life. Economic activity, communal and social structure are disrupted. The heaviest damage to the environment is inflicted. Historical and cultural property is inevitably damaged or demolished under military strikes. Sometimes, this happens by omission, as collateral damage, but often also since the defenders are forced to use cultural objects as a means of shelter or, guided by the mindset of war, place their forces near cultural objects, unwittingly exposing them to devastating blows. The attackers, in the rage of military operations, see nothing in front of them, except for the enemy whom they seek to suppress at any cost. The destruction of cultural sites causes enormous moral damage to those who consider them part of their cultural environment, as a factor of their group, local or national identity. Attacks on cultural objects are often deliberately and ruthlessly inflicted precisely for this moral and psychological damage. Military operations are frequently conducted so that cultural property can be seized for profit under their cover. The latter is aggravated by the fact that during military operations cultural property becomes the subject of illegal appropriation by the invading forces, whatever the grounds for the invasion according to the criteria of the just war theory.¹ It is bitter to realize that our time continues to multiply military conflicts,² including full-scale ones, and with them the horrors and disasters of war.

World War II was remembered not only for the colossal loss of human life, much of which was the result of a deliberate hateful policy pursued by some States, and the enormous destruction of economic and industrial infrastructure but also for the damage done, to a large extent, to cultural property—works of art, ancient manuscripts and books, museum and religious buildings, libraries, architectural monuments, etc. Many cultural treasures were permanently lost directly in warfare. During and immediately after the war years, many works of art were illegally displaced; some disappeared without a trace into private collections or were hidden in the vaults of state museums, inaccessible to the public as well as to their former proprietors. The tragic experience of World War II forced the post-war world to reconsider normative and political measures that could prevent or at least significantly limit the damage caused to cultural property in the context of new armed conflicts.

1 Michael WALZER: *Just and Unjust Wars*, 4th edition, New York: Basic Books, 2006; Bruno COPPIERTS, Carl CEULEMANS & Nicholas FOTION (eds.): *Moral Constraints on War: Principles and Cases*, 3rd edition, Lanham: Lexington Books, 2020.

2 INTERNATIONAL COMMITTEE OF THE RED CROSS: *How is the Term 'Armed Conflict' Defined in International Humanitarian Law?*, Opinion Paper, March 2008, <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf> [3 August 2026].

On the eve of World War II, the Netherlands, building on the normative experience of the time, proposed the convening of an international conference to adopt a convention for the protection of cultural property. A draft convention was prepared by a group of experts under the auspices of the International Museums Office of the League of Nations. In response to an invitation from the Dutch Government, forty countries (out of almost six dozen to which invitations were sent) expressed their willingness to participate in the conference. The outbreak of World War II prevented this plan from being realized. It was only after the end of World War II that the conditions for the realization of this idea arose again, and the Dutch government again called for a return to it. In 1954, the Convention for the Protection of Cultural Property in the Event of Armed Conflict (known by its short name, the Hague Convention of Cultural Property, or even simply the Hague Convention) was adopted in The Hague. It was part of a set of agreements constituting international humanitarian law which became the basis for a number of normative instruments developed in subsequent years to ensure the fullest possible protection of cultural property.

It is difficult to overestimate the importance of international documents related to the protection and preservation of cultural property in solving these tasks. Due to the fact that the subject of protection in them is quite well developed, these documents turn out to be an important condition both for developing the right perspective for monitoring the state of affairs, especially during armed conflicts and for determining the most appropriate measures for the protection and safeguarding of cultural property. These documents also set normative dispositions, or, in other words, attitudes, thanks to which it becomes possible to adequately, that is, according to clear normative criteria, describe and evaluate both actions leading to damage to cultural property and those actions that make it possible to protect and preserve them. Reports of damage to cultural property during armed conflicts usually cause strong emotions of annoyance, disappointment, and indignation. These emotions inevitably affect people's consciousness, arouse bias and, as a result, hinder the objectivity of assessments and judgments, which gives politicians reason to dismiss the statements and demands of civil society's representatives. On the contrary, an appeal to the principles and norms adopted in international documents, regardless of whether these documents are signed by States whose leaders pursue policies leading to actions against cultural property, demonstrates the validity of the concern expressed by civil society's representatives and their relevance to the established attitudes in the world community on the need to ensure the preservation of cultural property in all its diversity.

1 International Documents on the Protection of Cultural Property

The Hague Convention is a fundamental normative document for the protection of cultural property. As noted in its preamble, the Hague Convention was based on the documents of the First (1899) and Second (1907) peace conferences in The Hague, which laid the foundation for a set of norms of modern international law.³ They, in turn, developed ideas and attitudes, enshrined in a number of documents of the second half of the 19th century, aimed at limiting and mitigating the destructive effects of military operations, protecting prisoners of war from inappropriate treatment, as well as civilians and non-military facilities for economic, spiritual and cultural purposes.⁴ But they did not arise out of nowhere. There was a long tradition, deposited in the customary law of war, according to which objects of art and science are subject to a different treatment than objects of material property, and should be intentionally protected.⁵ The preamble to the Hague Convention also indicates the “Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments,” which was developed over several years in the first half of the 1930s, discussed at some international conferences and was adopted in 1935 by the Governing Council of the Pan-American Union. The majority of American States signed it. According to the place of adoption of the treaty, it is called the Washington Pact, but it is even more known as the Roerich Pact, after the outstanding artist, thinker and public figure Nicholas Roerich, who

3 Étienne CLÉMENT: “A Historical Perspective on the Protection of Cultural Property in the Event of Armed Conflict: From the Hague 1907 Convention and the Roerich Pact, to the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage,” in: *Historical Perspective of Heritage Legislation. Balance between Laws and Values. International Conference October 12–13, 2016*, Tallinn: ICOMOS Estonia NC / ICLAFI / Estonian Academy of Arts, 2017, 120–125.

4 This refers primarily to documents such as “Instructions for the Government of the Armies of the United States in the Field,” so called “Lieber Code,” accepted by the USA in 1863 and the Saint Petersburg Declaration of 1868 (albeit in a reduced form compared to the original version), as well as the Brussels Project of an International Declaration concerning the Laws and Customs of War 1874. See: Dietrich SCHINDLER & Jiří TOMAN (eds.): *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents*, 4th revised and completed edition, Leiden / Boston: Martinus Nijhoff, 2004; Jiří TOMAN: *The Protection of Cultural Property in the Event of Armed Conflict: Commentary on the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocol, Signed on 14 May 1954 in The Hague, and on Other Instruments of International Law Concerning Such Protection*, London / New York: Routledge / UNESCO Publishing, 1996; John Fabian WITT: *Lincoln’s Code: The Laws of War in American History*, New York: Free Press, 2012, 342–345; Willard B. COWLES: “The Dakin Index to the Proceedings of the Brussels Conference of 1874,” *The American Journal of International Law* 43/3 (1949), 547.

5 In this regard, the words in the statement of a lawyer in one of the cases considered and resolved in the court of the Vice-Admiralty in Nova Scotia, Canada in 1812 deserve attention: “The arts and sciences are admitted amongst all civilized nations, as forming an exception to the severe rights of warfare, and as entitled to favour and protection.” Knowledge and sciences should be perceived as “the property of mankind at large, and as belonging to the common interests of the whole species.” (James STEWART: *Reports of Cases, Argued and Determined in the Court of Vice-Admiralty at Halifax, in Nova Scotia, from the Commencement of the War, in 1803, to the End of the Year 1813*, London: J. Butterworth and Son, 1814, 483).

initiated the idea of such an agreement (which seemed to him to be worldwide) and did much to bring it to the stage of an official international document.⁶

Developing the ideas and provisions of these documents, the authors of the Hague Convention text sought to consider the tragic experience of armed conflicts of the twentieth century, primarily world wars, which demonstrated the enormous destructive potential for the cultural heritage of developing military equipment. The Hague Convention also clarifies the concept of cultural property and provides an ethical rationale for the protection and safeguarding of cultural property.

The Convention was accompanied by a Protocol (later, with the adoption of the Second Protocol, referred to as the First Protocol to the Hague Convention) aimed at preventing the illicit transfer of cultural property from occupied territories.⁷ The Protocol was designed to overcome the injustice of the illicit transfer of cultural property that had persisted since the end of World War II. It obliged countries that had carried out such removal to ensure their return to the rightful owners.⁸ In a broader sense, it developed Article 4.1 of the Hague Convention against such actions in armed conflicts.⁹

The key provisions of the Hague Convention were confirmed by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts¹⁰ held by the United Nations in Geneva in 1974–1977, as reflected in Article 53 of Protocol I and Article 16 of Protocol II. Article 53 of Protocol I, in addition to prohibiting any acts of hostility against historical, cultural and religious sites and the use of such sites for military purposes, stated that it was inadmissible “to make such objects the object of reprisals,” while Article 16 of Protocol II also stated that historical, artistic and religious sites “constitute the cultural or spiritual heritage of peoples.”¹¹

Since the adoption of the Hague Convention, throughout the second half of the 20th century, more than a hundred armed conflicts, international and internal, have occurred in the world, many of which had not only socio-political but also confessional and ethnic backgrounds. Cultural property was also significantly damaged during these conflicts;

6 Peter BARENBOIM & Naeem SIDIQI: *Bruges, the Bridge between Civilizations. To the 75th Anniversary of the Roerich Pact*, Moscow: Letny Sad / Grid Belgium, 2010, 34–78. The Roerich Pact remains in force to this day, and this is especially important since some countries that have not signed the Second Protocol to the Hague Convention (for example, the United States) are part of the Roerich Pact, which imposes obligations on them related to the protection of cultural property.

7 Liesbeth LIJNZAAD: “Sleeping Beauty, the Untold Story of the (First) Protocol to the 1954 Hague Convention,” in: Nout van Woudenberg & Liesbeth 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*, Leiden: Martinus Nijhoff, 2010, 147–156.

8 Although this task has been largely implemented, the return of cultural property illegally deported during World War II remains a pressing issue.

9 Article 9 of the Second Protocol to the Hague Convention also brings us back to this issue.

10 Yves SANDOZ, Christophe SWINARSKI & Bruno ZIMMERMANN (eds.): *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Leiden: Martinus Nijhoff, 1987, 641.

11 *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, Vol. I, Bern: Federal Political Department, 1978, pp. 148, 196.

many were lost forever. Awareness of the insufficient effectiveness of the Hague Convention in the protection of cultural property has prompted the international community to think about the measures that would enhance the effectiveness of this Convention. After several years of preparatory work by experts, in particular, on the basis of the conclusions and proposals presented in the Patrick Boylan report,¹² the Second Protocol to the Hague Convention was adopted in 1999.¹³ It more strictly prescribed practical measures aimed at protecting cultural property, in particular those that should be taken as a precaution in peacetime, bearing in mind the possibility of armed conflicts, and established the individual responsibility of persons for crimes against humanity in the field of culture. The Second Protocol reiterated that the effectiveness of the norms of the Convention is ensured through their implementation into national legislation so that those responsible for causing damage to cultural property could be held accountable under the provisions of the jurisdiction to which they belong.¹⁴

The Hague Convention and its Protocols are justifiably regarded as part of Customary International Law and International Humanitarian Law.¹⁵ Understanding the broader international legal context of the Hague Convention and its Protocols is all the more important given the crimes against humanity (and the crimes against culture are indeed crimes against humanity) that occurred in the 1990s,¹⁶ which were at least in part the result of the gradual erosion of the world order established after World War II and the emergence of a multitude of independent regional players who, through their activity, disavowed in practice some fundamental principles of international law. However, the first decades of the 21st century did not bring peace and quiet to the world. The international situation became particularly acute with the beginning of Russia's military aggression against Ukraine, which rather quickly developed into full-scale military operations with an extended front line, long positional battles, missile strikes, intensive use of artillery, and countless attacks with drones and guided bombs. All of this multiplies the scale of destruction, inevitably

12 Patrick J. BOYLAN: *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, Paris: UNESCO, 1993.

13 For the contribution of the Second Protocol to the conception of the protection of cultural property in the event of armed conflict, see: Jiří TOMAN: "The Road to the 1999 Second Protocol," in: Nout van Woudenberg & Liesbeth 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*, Leiden 2010, 1–19, p. 16.

14 An examination of national laws reveals significant disparities in the incorporation of international humanitarian law principles regarding the protection of and respect for cultural property. Data on the practice of enforcement of these norms are scattered, making it impossible to draw even a rough picture.

15 Jean-Marie 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: Nout van Woudenberg & Liesbeth 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*, Leiden 2010, 21–41, p. 21.

16 It is primarily about the wars in the Balkans and the Persian Gulf, but unfortunately, the horrors and disasters of the wars of that period are not limited to them.

affecting cultural property as well.¹⁷ This happens even when the strikes are aimed at purely military targets. However, as is well known from military reports, the targets of Russian strikes are often civilian infrastructure, buildings of educational, health care and cultural institutions. Retaliatory strikes by the Ukrainian army on Russian territory are sometimes indiscriminate, with tragic consequences for the civilian population, but there have been no reports so far of cultural facilities in Russia being destroyed as a result of these strikes.

As a follow-up to the fundamental principles concerning the protection of and respect for cultural property, UNESCO has adopted a number of other important documents. These are the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention); the 2001 Convention on the Protection of the Underwater Cultural Heritage, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

UNESCO documents related to the protection of cultural heritage include a number of recommendations and declarations. These are: Recommendation on International Principles Applicable to Archaeological Excavations (1956), Recommendation concerning the Most Effective Means of Rendering Museums Accessible to Everyone (1960), Recommendation concerning the Safeguarding of Beauty and Character of Landscapes and Sites (1962), Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964),¹⁸ Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (1968), Recommendation concerning the International Exchange of Cultural Property (1976), Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (1976), Recommendation for the Protection of Movable Cultural Property (1978), Recommendation for the Safeguarding and Preservation of Moving Images (1980), and Recommendation on the Safeguarding of Traditional Culture and Folklore (1989), as well as the Universal Declaration on Cultural Diversity (2001) and the Declaration concerning the Intentional Destruction of Cultural Heritage (2003).¹⁹ Only some of these documents indicate special requirements for the protection of cultural property in the event of armed conflict. But by itself, this list of documents developed to protect cultural property, or cultural heritage, deserves attention for a more complete understanding of those ideas about cultural property and cultural heritage that have been repeatedly tested in discussions by specially formed expert groups and at UNESCO general conferences.²⁰ These documents are

17 See, for example: UNESCO: “Damaged Cultural Sites in Ukraine Verified by UNESCO” [last update: 30 July 2026], <https://www.unesco.org/en/ukraine-war/damaged-cultural-sites> [3 August 2026] (the data is differentiated by Ukrainian regions).

18 Later developed into the above-mentioned 1970 UNESCO Convention.

19 UNESCO representatives also include the Universal Copyright Convention (1952, 1971) in this list.

20 For a review of the development of the concept of cultural goods, and the right of access to cultural goods, in UNESCO normative documents, see: Ruben APRESSYAN: *Access to Cultural Goods in UNESCO Normative Documents* (Access Points #4), Münster 2026, DOI: [10.17879/21928647883](https://doi.org/10.17879/21928647883).

present in international public opinion and are available to almost everyone. Their holistic consideration makes it possible to better imagine the value logic and ethics of normative thinking reflected in international humanitarian law.

Along with UNESCO documents, UN resolutions and special reports are also devoted to the problems of the protection of cultural property. The most important among these are: UN Human Rights Council Resolution A/HRC/RES/33/20 (2016) “Cultural rights and the protection of cultural heritage,” UN Security Council Resolution 2347 (2017) concerning the unlawful destruction of cultural heritage, *inter alia* destruction of religious sites and artefacts, as well as the looting and smuggling of cultural property.²¹

UN Human Rights Council Resolution A/HRC/RES/37/17 (2018) “Cultural rights and the protection of cultural heritage,”²² as well as special expert reports—more extensive documents, based on which some resolutions were prepared, such as: Report of the independent expert in the field of cultural rights “The right of access to and enjoyment of cultural heritage” (A/HRC/17/38, 2011), Report of the Special Rapporteur in the field of cultural rights “The intentional destruction of cultural heritage as a violation of human rights: preliminary considerations” (A/HRC/31/59, 2016), Report of the Special Rapporteur in the field of cultural rights “The intentional destruction of cultural heritage as a violation of human rights” (A/71/317, 2016).²³

Speaking about UNESCO documents, it should be borne in mind that conventions, recommendations and declarations differ in their normative status. Conventions are multilateral agreements or treaties governed by international law. Recommendations, like the conventions, contain principles and norms of activity aimed at regulating the activities of States in the relevant field. But, unlike conventions, they do not have binding force supported by international law. Their validity is ensured by the authority of UNESCO and by the fact that UNESCO’s General Conferences adopt them. According to the UNESCO Constitution, Member States should be guided by them in their activities and report to UNESCO on applying the recommendations in their policies. Like recommendations, declarations contain principles and norms for certain spheres of political action and are not binding. Unlike recommendations, declarations are not necessarily translated into national policies and States are not expected to report on implementing the principles and norms adopted in the declarations.

These differences in the legal status of UNESCO instruments indicate varying degrees of their imperative power and political effectiveness. However, from an ethical point of view, the essential thing is not the status of the authorizing body and not how authorization is

21 This was the first UN Security Council initiative, entirely devoted to the problem of cultural property protection.

22 See also the sequel resolution A/HRC/RES/49/7 (2022).

23 When compiling this list, I was guided by the reference reflection of the drafters of these documents, as far as it is presented in them. Documents of this kind usually contain an installation part, which states not only the motives and goals of those who accept the document but also the previous documents that are referred to. This list is based on these references. References at earlier documents make it possible to present clearly the normative and political context of the document, direct or indirect, and emphasize continuity in the ongoing normative policy.

carried out, but the very fact of the existence of the relevant normative content, its recognition and acceptance (which, however, for moral consciousness is ultimately the same) by people, all proclaimed in these documents.

UNESCO documents differ in the procedures on the basis of which they are adopted and, accordingly, in their mandatory status, but they are all the result of the work of international expert groups, usually in lengthy, multi-stage processes. As such, they represent a significant normative reality. They are at least adequate as a tool for public monitoring and control of events and related processes—in our case, for the protection of cultural property and ensuring access to it. These documents, by their named characteristics, are also crucial for the scholarly community: They reflect a great deal of work on critically understanding existing practices and identifying areas for improvement.

Some web pages presenting the UN reports highlight the methodology of their preparation separately. As a rule, it is based on collecting information from people representing different spheres and levels of activity to protect cultural property. If we take the UNESCO reports and conventions, they are prepared by expert groups, including scientists and practitioners. Draft documents are sent through UNESCO representative offices in the Member States or national UNESCO commissions for discussion in the Member States, where relevant government agencies, scientists and practitioners analyze them. Sometimes, such feedback is carried out in two or three rounds. Based on the results of these discussions, recommendations are made to improve the document. Often, at the last stages of the preparation of a document, UNESCO attracts new experts to discuss it in different formats and approbation, thereby expanding the expert base of the document being prepared and enriching its content, which increases its normative significance.

At the same time, it should be noted that sometimes documents prepared at UNESCO turn out to be “smoothed out” for the sake of some partial interests of Member States or considerations of misinterpreted political correctness, and expert groups are forced to compromise, meaning more alignment of various political interests than the substance of the case. Besides, one can see that the provisions adopted in UNESCO documents (regardless of their status) do not always become guiding principles in public policy development, especially in using armed force during military operations.

Nevertheless, UNESCO documents, as well as UN documents, provide society, civil activists, and local agents with authoritative normative guidance for monitoring political decisions and actions, evaluating them, and, based on this, influence on politicians (where general political conditions preserve the possibility of such influence).

And, of course, these documents, taking into account the procedures for their development, are essential for scholars and researchers since, with a reasonable approach, they can be useful for formulating hypotheses, developing research attitudes and planning their trajectories, at least at the initial stage of research and development.

If we read these documents produced within a political and legal context now with regard to socio-moral questions, they turn out to be attractive to civil society representatives and independent experts. In this context, there is a constant need to rethink the substantive and

normative content of these documents under the challenges of various developing public practices, particularly those that grow in connection with protecting and safeguarding cultural property in the context of specific military conflicts.

2 The Object of Attention, Care, and Concern

As noted above, the Hague Convention considers the experience of previous documents regulating the nature of actions in armed conflicts. The Convention on the Laws and Customs of War on Land, one of the thirteen conventions adopted at the Second Hague Peace Conference (1907), deserves special attention. It contained articles prohibiting strikes and attacks on “buildings dedicated to art,” “historic monuments,” as well as causing them any harm,²⁴ and a ban on looting captured cities and localities and encroachments on private property, a separate remark extended to property (ownership) “that of institutions dedicated to religion, charity, and education, the arts and sciences,” and “all seizure or destruction of, or willful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings” (article 56).²⁵ As we can see, the care of buildings dedicated to art, historical monuments, and works of art is manifested, along with temples, scientific institutions, and hospitals. This reflects a more general principle of humanitarian law—the principle of separation of *combatants* and *non-combatants*. Notably, the 1907 Convention expanded this principle beyond the separation of combatants and non-combatants and transferred it to military and non-military facilities. Protecting artistic and scientific institutions and historical monuments is highlighted as a particular task.

The importance of the first step in shifting attention to cultural property in the context of armed conflicts was confirmed by the adoption of the Roerich Pact, in which, for the first time in the world legal experience, the protection of artistic institutions (on an equal basis with scientific ones) and historical monuments was declared to take precedence over the objectives of military operations. In this sense, it is difficult to overestimate the significance of the Roerich Pact, although due to the limited geopolitical area of its recognition, it did not receive proper political and legal status.

The adoption of the Hague Convention was the turning point in the protection of cultural property as a separate and significant task in itself during the conduct of hostilities. It provides a detailed description of what “cultural property” means and what is subject to protection—what requires attention, concern and care. These are, *first*, monuments of architecture, art or history, religious or secular, archaeological sites, architectural ensembles, works of art, manuscripts, books, other objects of artistic, historical or archaeological significance, scientific collections or important collections of books, archival materials or reproductions of the property defined above, *second*, buildings where movable cultural

24 Regulations respecting the laws and customs of war on land, article 27, in: *The Proceedings of the Hague Peace Conferences: Translation of the Official Texts Prepared under the Supervision of James Brown Scott. The Conference of 1907*, Vol. 1: *Plenary Meetings of the Conference*, New York: Oxford University Press, 1920, 627. Buildings dedicated to art and historical monuments are mentioned in this article along with other buildings “dedicated to religion, science, or charitable purposes, hospitals, and places where the sick and wounded are collected”.

25 Ibid., 631.

property is stored and exhibited and shelters intended for the storage of cultural property in the event of an armed conflict, *third*, centres of concentration of cultural property (article 1).

It would seem that the question of what cultural property was meant to be subject to protection according to the norms of the convention is self-evident and does not require particular disclosure, especially since one can never be sure that the description by presenting possible categories of the described phenomenon will be exhaustive. However, definition through description is of great practical importance both for the authorities, which are responsible for providing the necessary resources to ensure the protection of cultural property, including through the prudent and early creation of appropriate conditions, and for the military leadership and military personnel, who, when planning specific military operations and setting tasks for their execution, should be informed in advance about a possible separate task of protecting cultural property and prepared to solve it under challenging conditions of hostilities.²⁶

In 1970, after several years of discussions, UNESCO adopted the Convention on the Means of Prohibiting and Preventing the Illegal Import, Export and Transfer of Ownership of Cultural Property, which largely echoes the First Protocol to the Hague Convention.²⁷ As the name of this Convention implies, it refers to movable cultural property, and in this category, also through the enumeration of their varieties, a more specific definition of cultural property is given. It is indicative that the segment of cultural property related to science and technology is significantly expanding, and the segment of antiquities, and relatively recent ones at that, is being singled out separately.

The refinement of the understanding of what requires attention in the protection of cultural property corresponds to the importance that UNESCO attaches to the diversity of cultural property as enshrined in the 2001 Universal Declaration on Cultural Diversity. The broadening of the categories of cultural property specification would make it easier to understand what it is. At the same time, however, some discrepancies in the descriptive definitions of cultural property in the various international instruments, which do not always maintain strict continuity between their formulations, create difficulties in understanding them. This could be overcome if a general theoretical definition of cultural property were established, with the descriptive classifications serving as selective illustrations.

The lack of a categorical definition of cultural property in UNESCO documents is compensated for by a much more important, from a practical point of view, prescription for each country to prepare in advance an inventory of cultural property located in specific centres containing cultural property, to make them public, primarily through inclusion

²⁶ This is given special attention in the Second Protocol.

²⁷ In 1995, the International Institute for the Unification of Private Law (known as UNIDROIT) adopted the Convention on Stolen or Illegally Exported Cultural Objects, which strengthens a number of provisions of the 1970 UNESCO Convention, in particular increasing the liability of the buyer of stolen objects. Given the many cases of theft of art objects in the “fog of war,” the importance of such additional international instruments cannot be overemphasized.

in the International List of Cultural Property compiled by UNESCO,²⁸ to establish and register a regime of enhanced protection for particularly significant cultural property,²⁹ and to designate cultural property with a distinctive sign to facilitate its identification.³⁰ The 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, certain provisions of which develop the ideas of the Hague Convention and its Protocols, calls on States to cooperate with UNESCO in the protection of cultural property through the exchange of information, consultations, and legal and administrative assistance to each other.³¹

Although a general theoretical definition may not be helpful to many for solving applied normative tasks, and even more so for decision-making in armed conflicts, it is important not only for abstract reasoning but also for understanding how the requirement to protect cultural property works at the level of attitudes, motives and self-determination of those who make decisions in practice, especially on the battlefield.

28 According to article 1.h of the Second Protocol.

29 According to article 3 of the Hague Convention and article 3 of the Second Protocol.

30 Articles 6 and 16 of the Hague Convention.

31 According to article 19 of the Second Protocol and section VIII.1 of the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage.

3 Value Foundations

The fulfilment of the requirement to protect cultural property largely depends on how clearly this requirement is regulated and operationalized. This task is generally solved by UNESCO normative documents and manuals prepared by UNESCO³² and national authorities.³³ However, on the part of the implementers, whatever their level, external regulation is not sufficient to fulfil this requirement. They must be inherently self-determined in cultural property protection and have an independent, value-motivated orientation to this task.

In the context of the topic we are discussing, the main value opposition lies in the confrontation between the principle of protecting cultural property and the principle of military necessity.³⁴ I use the term “military necessity” according to the tradition of its use in international documents and discussions around them. To avoid possible naturalistic associations, it would be more accurate to talk about military expediency. And this could give this opposition the traditional form for moral philosophy or philosophy of values: *virtue—usefulness* or *morality—pragmatism*. With this approach, ethics appears not only, and not so much as a normative component of behaviour: what principles and norms are observed by the agent, when performing a certain kind of action, which is most often interpreted as ethics (and what has its share of truth), but also a value component (“normative” in a broader sense): for what value motives the agent acts in a certain way—what motivates him/her to fulfil the principles and norms imputed to him, if not only law obedience and institutional compliance. The ethical dimension is crucial in actions not subject to external control at the level of motivation and execution, in situations where one acts as a judge of him/herself, that is—in the terms of Immanuel Kant—as an autonomous, responsible person guided by universalizable motives.

For a better theoretical clarification of the discourse of cultural property protection, we can use the notion of the ethical as presumed by Max Weber, whose social theory, while lacking explicit definitions of ethics/morality, nevertheless quite clearly clarifies the phenomenon of the ethical in relation to more general social phenomena reflected in the categories of “social action,” “social attitude,” and “order” (“legitimate order”). Following the model envisaged by Weber, a hierarchy based on genus-species distinction can be constructed, in

32 Roger O’KEEFE, Camille PERON, Tofiq MUSAYEV & Gianluca FERRARI: *Protection of Cultural Property: Military Manual*, Paris: UNESCO, 2016.

33 Laurie W. RUSH: “Training for Cultural Property Protection,” in: Claire Finkelstein, Derek Gillman & Frederik Rosén (eds.): *The Preservation of Art and Culture in Times of War*, New York: Oxford University Press, 2022, 275–305.

34 The literature also discusses such an important problem as the priority of protection and safeguarding tasks in the face of an acute alternative: cultural property—human lives. See: Frederik ROSÉN: “Mission Impossible: Weighing the Protection of Cultural Property against Human Lives,” in: Finkelstein, Gillman & Rosén (eds.): *The Preservation of Art and Culture in Times of War*, 2022, 70–96.

which *the ethical (morality)* can be specified on such grounds as social action, behavioural orientation, and social attitude. Thus, from the perspective of social action, morality appears to be a type of social action along with habit and custom. From the perspective of behavioural orientation—a type of value-rational orientation, which, being “determined by a conscious belief in the value for its own sake,” differs from instrumentally rational (pragmatic, directing to a practical result), affectual (“determined by the actor’s specific affects and feeling states”), and traditional (“determined by ingrained habituation”³⁵). From the perspective of social attitude—a type of meaningful action, performed in correlation with the actions of others (ultimately in interaction with them). Weber’s identification of the value-rational orientation of action, which is expressed in the belief in “the value for its own sake of some... form of behaviour,” that is independent of its “prospects of success,”³⁶ is of the greatest interest to us. This orientation is by no means exhausted by morality, as some narrowly specialized ethicists might suggest, but includes, according to Weber, also aesthetic and religious principles. The latter is all the more important when considering the protection of cultural property, which includes either ethical goods/values, or artistic goods/values, or goods/values of the cult.

UNESCO documents reaffirm adherence to the general principles of international humanitarian law. In particular, the principle of the separation of combatants and non-combatants, military and civilian targets. As noted above, we can discern this principle already in the articles of the Convention on the Laws and Customs of War on Land, adopted by the Second Hague Peace Conference in 1907, namely those that prohibit the destruction of historic buildings and buildings serving artistic purposes, along with other buildings for religious, humanitarian, scientific, and medical purposes. However, the UNESCO documents support the claim to protect cultural property with different humanitarian arguments. Thus, Article 2 of the Hague Convention states that “the protection of cultural property shall comprise the safeguarding of and respect for such property,” and further, Articles 3–4 explain what protection of and respect for cultural property consist of.³⁷ Safeguarding and respect are mutually mediated: the protection objectives are determined by respect for what is protected. The reference to “respect for cultural property” suggests a broader meaning than just the pragmatic sense of the endeavour to protect cultural property. It points to the ethical significance of this endeavour. After all, respect, in addition to courtesy, reverence (to people) and care (to people, animals and things), is an attitude towards someone or something in which the object of respect is recognized as significant in itself, independent of the private interests and subjective attitudes of the one who shows this respect. In other words, respect is a kind of attitude Weber labelled more generally as a value-rational orientation.

The text of the Hague Convention gives every reason to believe that the principle of respect is fundamental to the moral philosophy on which the Convention rests. As noted

35 Max WEBER: *Economy and Society: An Outline of Interpretive Sociology*, ed. by Guenther Roth & Claus Wittich, Berkeley: University of California Press, 1978, 24–25.

36 Ibid., 25.

37 CLÉMENT: “Historical Perspective,” 121.

above, the status of a normative instrument as a convention implies that its provisions should be implemented in the national laws of the Parties to the Convention. But in times of non-international armed conflict, when the conditions envisaged by the Convention are not fully present, the Parties are obliged to “as a minimum, the provisions of the present Convention which relate to respect for cultural property” (Article 19).

It should be noted that in no other UNESCO document is the basic task of protecting cultural property, given its bicomponent nature, articulated as clearly as in the Hague Convention. Take, for example, the 2003 International Convention for the Safeguarding of the Intangible Cultural Heritage, one of the most important UNESCO documents on the protection of cultural property. This Convention stands somewhat apart due to the nature of its subject matter. Intangible heritage is defined here as “the practices, representations, expressions, knowledge and skills” that exist and function indirectly through the consciousness and activities of the people who bear it. Tangible objects (“the instruments, objects, artefacts and cultural spaces”) are mentioned, but only as the means through which intangible cultural heritage can function. The Convention mentions safeguarding and respect for intangible cultural heritage as objectives. Further, the safeguarding of intangible cultural heritage is explained separately, but there is no more mention of respect for intangible cultural heritage. The protection of cultural heritage is noted as an integral part of safeguarding. In other words, according to the Hague Convention’s scheme, the protection of cultural property (as a general thing) presupposes protection and respect for it (as part of this general thing) and is disavowed. Safeguarding now appears to be general and protection particular. Of course, solving issues like what is part of what—safeguard is part of protection or protection is part of safeguard—is a matter of language convention. In many languages, “protection” and “safeguard” overlap in their meanings, and their fixation as terms denoting certain concepts requires appropriate semantic elaboration and agreement. Obviously, it would be reasonable if UNESCO documents, like any other international documents in a specific field, were semantically, conceptually and valuably homogeneous. The omission of the idea of respect in the 2003 Convention was most likely the result of an unfortunate combination of circumstances during the development of the document in the expert group and then its discussion by representatives of UNESCO Member States. However, respect is an essential motivating factor in the attitude toward cultural property attributed to UNESCO normative documents, and its omission can have negative ethical consequences. So, in this matter, however, as in some others, the Hague Convention, which asserts the fundamental nature of respect for cultural property in their protection, is of prime importance.³⁸

Notably, respect for cultural property is affirmed as a principle in the Convention. Article 4.1 of the Convention states that its participants undertake to respect cultural property: “The High Contracting Parties underline to respect cultural property ...” However, this gram-

38 It should be noted that in some UN documents related to protecting cultural property, the Hague Convention’s provision on respect is emphasized as an important component.

matically descriptive sentence in the context of the Convention has an obvious normative meaning, which also consists of the fact that respect for cultural property is attributed to High Contracting Parties. The safeguarding of cultural property is based on respect for it.

The task of protecting cultural property goes beyond wartime. But the conditions of military operations make this task more complex, and this is reflected not only in the fact that the protection of cultural property must be carried out in emergency circumstances that threaten the lives of those who provide this protection, but also in the fact that the responsibility for the protection of cultural property extends to a more significant number of people, in particular, the military. As for the military, the responsibility assigned to them implies additional duties in the conduct of military operations. They are required to show respect for cultural property and conform their tactical and operational actions to it. Article 4.1 of the Convention clarifies what respect for cultural property is required from the military: they should refrain 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 “any act of hostility, directed against such property.” In other paragraphs of article 4, the Parties to the Convention are obliged to prevent “any act of hostility, directed against such property,” “any acts of vandalism directed against, cultural property,” their requisition from the occupied territories (Article 4.3) and reprisals against it (Article 4.4). Moreover, the failure of one of the Parties to take measures to protect cultural property under its jurisdiction does not exempt the other Party from the obligation to respect it (Article 4.5). The Convention provides that these provisions are updated through the political will of the leadership of the States parties to the Convention, as well as through their implementation into national criminal legislation (Article 28).

Article 4.5 echoes Article 3 of the Convention, which states that an essential factor in the protection of cultural property in situations of armed conflict is the measures taken in advance by those in charge of cultural property aimed at preparing the protection of cultural property in peacetime. Thus, the Convention directs States, represented by their political leadership, to carry out preventive measures to ensure the protection of cultural property. This provision, rather concisely formulated in the Convention, unfolds in the Second Protocol in the list of preparatory measures, including “the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate *in situ* protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property” (Article 5).

In other words, the task of protecting cultural property is primarily for those in charge of the property, and they must be prepared to carry out all necessary protective measures in the most effective way in emergency conditions of military operations, as well as any other likely in peacetime (attempts of theft or robberies, devastating natural disasters). This is where respect for cultural property finds one of its most active manifestations.

However, there are provisions in the Convention that can reasonably be perceived as threatening to limit the normative force of the principled provision on respect for cultural property. According to Article 4.2, the obligation of respect for cultural property may be violated under the influence of an imperative of *military necessity*.³⁹ At the same time, the principle of military necessity in relation to the protection of cultural property is not explained in any way in the Convention.

It is somewhat ironic that modern international humanitarian law is also known as the “law of war” (“laws of armed conflict”), which contradicts the old traditional understanding of “law of war” by the professional military community as principles of action on the battlefield. During the preparation of the Geneva Conventions of 1949, the expression “law of war” was combined in meaning with international humanitarian law (which was initially associated with laws designed to protect civilians during armed conflicts⁴⁰).⁴¹ The hidden archaic meaning of the expression “law of war” seems to attract the principle of military necessity.⁴² Whatever may be said about the fact that the principle of military necessity maintains a balance between military interests and humanitarian considerations,⁴³ even with the modesty of the place given to it in Article 4 of the Hague Convention, it remains a priority. This made respecting cultural property a matter of responsibility for decision-makers in their personal capacity.

Over time, the vagueness of the reservation related to the assumption of military necessity in Article 4.2 of the Convention became quite evident.⁴⁴ The need to clarify this issue became one of the prerequisites for the initiation of the Second Protocol and the introduction into it of such clarifications of the obligations of the parties regarding the implementation of the principle of respect for cultural property, which were aimed precisely at limiting the principle of military necessity. This principle was introduced in a relatively narrow framework for both the attacking and defending sides. At the same time, the interpretation of the military purpose contained in Article 52.2 of the Additional Protocol I to the Geneva Conventions was taken into account:

In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose

39 An analysis of the experience of World War I shows that a significant number of destructions of religious buildings, historical monuments, museums, libraries and archives occurred as a result of actions committed, according to military leaders of various levels, precisely because of military necessity (BOYLAN: *Review*, 27). For the background of the principle of military necessity, dating back to the Lieber Code, see: HENCKAERTS: “New Rules,” 25–26.

40 It was only over time that laws restricting or even prohibiting the use of specific means and methods of warfare were included in humanitarian law.

41 See: FRITS KALSHOVEN: *Reflections on the Law of War: Collected Essays*, Leiden: Martinus Nijhoff, 2007, 421.

42 However, it should be remembered that even in the context of the archaic understanding of the “law of war,” the principle of military necessity presupposed the subordination of actions on the battlefield only to the aims and objectives of the war and did not allow actions in the “fog of war” that did not correspond to it.

43 HENCKAERTS: “New Rules,” 27.

44 BOYLAN: *Review*, pp. 17, 54–57.

total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

It could be noted that the principle of military necessity has a different value meaning depending on the ethical and political characteristics of those military objectives: whether military operations are conducted for the purpose of aggression or for the purpose of defending against aggression and liberating one's country from the aggressor, how just is the cause for which the fighting is conducted, how good are the intentions with which they are being undertaken. For obvious reasons, nuances of this kind are not taken into account when discussing the protection of cultural property in armed conflict, since the principles of just cause and good intentions are relevant when deciding whether to initiate hostilities, in the context of *jus ad bellum*, the same issue is discussed in relation to already ongoing actions on the battlefield, in particular in the context of *jus in bello*. Therefore, attacks on cultural property are considered, according to the Second Protocol, in any case justified only on condition that they are turned into a military objective, and (and here again, military expediency is given priority) "there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective" (Article 6.a). However, according to Article 6.d, when planning a military strike on cultural property, an "effective advance warning" must be sent to the party using this cultural property for military purposes. The defending party is relieved of the obligation not to use "cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage" (Article 6.b).

The Second Protocol also regulates decision-making in the spirit of the principle of military necessity. The authority for such a decision is transferred to a military commander at the battalion commander level, with the proviso that where circumstances "do not permit otherwise," a decision may be made at a lower level (article 6.c). The Second Protocol also imputes to the parties to the armed conflict *the precautionary principle*, which imposes on them the obligation to do everything necessary to prevent damage to cultural property. This principle is also enriched by the principle known from just war theory as *the principle of proportionality*: when a strike on cultural property is necessary, the scale of the strike should not be "excessive in relation to the concrete and direct military advantage anticipated" (article 7.c). By firmly pointing out that the use of cultural property as military objects is permissible "when there is no feasible alternative available," the principle of military necessity is constrained by *the principle of last resort* (continuing to use the terminology of just war theory).⁴⁵

Kevin Chamberlain notes, regarding the results of the 1999 Diplomatic Conference, which resulted in the adoption of the Second Protocol, that "in an ideal world" it would have been a significant achievement to succeed in "removing the military necessity exemption but that aim was always unrealistic," pointed out that clear limitations on the application of

45 The very terms—"the precautionary principle," "the principle of proportionality," "the principle of last resort"—are not used in this document.

the principle of military necessity have nevertheless been introduced.⁴⁶ The clear definition of a military objective in the Second Protocol, in the spirit of Additional Protocol I to the Geneva Conventions, as “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 military advantage” (Article 1.f), is considered an outstanding achievement.⁴⁷ In discussions on these issues, it is sometimes suggested that the principle of military necessity is precisely a limiting principle and thus plays in favour of the protection of cultural property since, in fact, there is always an alternative to a direct strike; there is always the possibility of circumvention, adjusting tactics, etc. Thus, the principle of military necessity is subordinated to the principle of protecting cultural property. This brings us back to Additional Protocol I to the Geneva Conventions, Article 53.b, which prohibits the use of cultural property for military purposes, thus preventing the conditions and occasions for attacks on cultural property. However, can we be sure that “cultural property under the new regime of enhanced protection has complete immunity from attack”?⁴⁸ Especially if we consider that political and military decision-makers think differently—in terms of military tactics aimed at the speedy fulfilment of military tasks, and their perceptions of expediency and effectiveness are subordinated to this military-pragmatic logic. Thus, although the additions made in the Second Protocol significantly limit the principle of military necessity, the latter’s priority over the principle of protecting cultural property has been maintained.

The international community has an understanding of this in one form or another. We find an expression of this understanding in the Rome Statute of the International Criminal Court, which criminalizes acts that damage cultural property. This is explicitly stated in article 8(2)(b)(ix), according to which “[i]ntentionally directing 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” qualifies as a war crime. The validity of this provision has been confirmed by the jurisprudence of the International Criminal Court, which has issued convictions based on it.

The UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (Article 6) also addresses the protection of cultural property in the event of armed conflict. The Declaration refers to the Hague Convention and its Protocols, as well as to the earlier documents noted above—the 1899 and 1907 Hague Conventions. It is particularly noteworthy that the Declaration defines intentional destruction and emphasizes that intentional

46 Kevin CHAMBERLAIN: “Military Necessity under the 1999 Second Protocol,” in: Nout van Woudenberg & Liesbeth 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*, Leiden: Martinus Nijhoff, 2010, 43–49, p. 48.

47 As Frits Kalshoven notes, the articles of Additional Protocol I were drafted on the assumption that all potential parties to this protocol “would have to be Parties to the 1954 Hague Convention” (KALSHOVEN: *Reflections*, 228). However, the lists of parties to the 1954 Hague Convention and Additional Protocol I, as well as Protocol II to the 1954 Hague Convention, are far from homogeneous.

48 CHAMBERLAIN: “Military Necessity,” 48.

acts leading to the total or partial destruction of cultural heritage constitute “a violation of international law or an unjustifiable attack on the principles of humanity and the dictates of public conscience” (Article II.2).

The criminalization of damage to cultural property as a war crime is, by and large, a very compelling justification for the requirement to protect it. Its practical efficacy must be ensured by all means available to justice.

However, effective legal control can be difficult to achieve in a wartime environment, especially when the scale of warfare is high. Any regulation, however institutionally supported, is most fully realised only if it is recognized by the people, freely accepted⁴⁹ and personally determined to implement it. This condition is taken into account by the Hague Convention, the parties to which undertook not only “to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention” (Article 7.1), but also, most importantly, to conduct appropriate mental and ideological training of military personnel to develop their understanding of the importance of cultural property and the need to protect and preserve it. The Convention requires “to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples” (Article 7.1).

Many armies worldwide have developed manuals for military personnel, which comprehensively and in an accessible form set out the provisions of international humanitarian law, particularly concerning the attitude to cultural property. However, the experience of conducting military operations, such as the Second Gulf War, which began with the invasion of Iraq by the United States-led coalition (2003–2011) or the war in Ukraine, which started with Russia’s invasion in February 2014, showed that manuals were hardly used in the training of military personnel, and when they were used, they had only a depressingly limited effect. Moreover, there is no need to talk about any humanitarian training of military personnel when recruiting armies according to the mobilization principle during ongoing hostilities to strengthen the front and replenish the armed forces depleted in battles.

The impossibility of full-fledged humanitarian training of military personnel both in ordinary conditions and even more so in the conditions of ongoing hostilities can be offset by the requirement for the Parties to the Hague Convention “to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it” (Article 7.2). Such personnel were in the Coalition armies, but their use was not effective enough, and the consequences of the Coalition invasion of Iraq from the point of view of protecting cultural property are recognized by all experts as highly deplorable. There is no information about the actions of such services in the Russian

49 Recognition and personal acceptance of external demands can result not only from the individual’s *ethical subjectification* (Michel Foucault) but also from mind manipulation, indoctrination, grooming, tragic delusion, or self-deception.

army during the invasion of Ukraine, except for the well-known cases of deportation of cultural property from its permanent locations and storage sites, in particular, to Crimea.

When comparing UNESCO documents, it is striking that each document justifies the principle of protecting cultural property differently.

In the Preamble to the Hague Convention, the protection of cultural property is justified by the fact that each nation's cultural property contributes to world culture, and, therefore, "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world." Compared with the Hague Convention, the 1970 Convention on Measures Aimed at Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, by the priority subject focus of the Convention, cultural property is presented differently. It does not say that the cultural property of any nation is a part of the cultural heritage of all mankind. And the words in the Preamble of the 1970 Convention that "cultural property constitutes one of the basic elements of civilization and national culture" are pronounced to emphasize the importance of national and local attribution of cultural property. Similarly, human civilization, the richness of the cultural life of all peoples and mutual respect and understanding between countries are mentioned to note the importance of "bringing human beings closer together and ensuring exchange and understanding among them."

If we turn to the 2003 International Convention for the Protection of Intangible Cultural Heritage, we can see that it sets a different value basis for protecting cultural property. Here, as in the 1970 Convention, attention is not divided on, either, the significance of world culture in general, or else on local phenomena of intangible cultural heritage. Their relevance is unambiguously expressed as a factor capable of "bringing human beings closer together and ensuring exchange and understanding among them" (Preamble), as well as in a sense of identity and continuity (Article 1).

Thus, as we can see from the above-mentioned UNESCO documents, there may be different value projections of the requirement to protect cultural property and, accordingly, different grounds for its respect. The Hague Convention focuses on the belonging of all cultural property to world culture and world cultural heritage. The 1970 Convention on Measures Aimed at Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, instead, on the importance of cultural property for the preservation of the countries' cultural heritage. The 2003 International Convention for the Protection of Intangible Cultural Heritage marks another shift of focus with its emphasis on group identity and minority rights and on the importance of cultural values as a factor of mutual understanding (no matter how to interpret this provision, especially in the context of military confrontation).

As noted above, the last two conventions have little or no connection with the circumstances of armed conflicts; they have a different focus than the Hague Convention. However, this does not make the arguments proposed in them irrelevant to protecting cultural values in conditions of armed conflict. Similarly, the appeal to the cultural heritage of all

mankind in The Hague Convention cannot be considered exceptional in justifying this task. Moreover, in some respects, the universal argument in substantiating the requirement for the protection of cultural property addressed to the soldiers of the invading army appears to be just insufficient.

The fact is that the provision on the belonging of the cultural heritage of an individual people to the world cultural heritage has two aspects—psychological and axiological. From a *psychological* point of view, it involves a cognitive procedure aimed at changing the emotional focus of the opposing sides in armed actions by indicating cultural objects as representing part of the world heritage. Thus, cultural objects are separated from the enemy, as it were, and military personnel are thereby encouraged to consider cultural property “their own”—to the extent that they themselves belong to all mankind. The extent to which this cognitive procedure is psychologically relevant needs to be tested experimentally. However, from an *axiological* point of view, we are faced with an attempt to justify the principle of respect and responsibility for cultural property by appealing to a more general respect for humanity as a whole, which, by default, is assumed to be an object deserving of everyone’s unconditional respect. This approach to affirming the significance of cultural property, in which its value is justified by its belonging to humanity as a whole, deprives it of its intrinsic value, or value in itself. But it should also be borne in mind that the argument from cultural property belonging to the whole of humanity can be meaningful only for those who think of themselves as part of humanity. For an isolationist, ethnocentric, xenophobic consciousness, and, moreover, a consciousness that has not been inseminated with culture, at least its rudiments, humanity as a whole appears as a generalised *alien* and, therefore, ultimately as an enemy that deserves neither respect nor condescension.

There is another point that echoes the 1970 Convention. The argument that cultural property belongs to the world’s cultural heritage can be demagogically used to justify the illicit appropriation of cultural property during armed conflicts in such a way that no damage is done to the world’s cultural heritage by the transfer of cultural property from one possessor to another: the relocated cultural property will continue to serve humanity.⁵⁰ The decisive statement in the 1970 Convention that cultural property is an essential component of a country’s cultural heritage is, therefore, important and should undoubtedly be echoed in all discussions on protecting cultural property in the spirit of the Hague Convention.

The 1970 Convention thus presupposes that in each country, it is for the state to decide what is regarded as its respective cultural property and therefore deserves protection. It emphasizes the need to prevent abuse, especially of a criminal nature, in the circulation of

50 There is no need to explain, even remaining within the framework of this demagogic argument, that illegally appropriated property, even if the appropriation is not for commercial reasons (see: James B. COGBILL: “Protection of Arts and Antiquities during Wartime: Examining the Past and Preparing for the Future,” *Military Review* (January–February 2008), 30–37), and out of ‘love of art’, relocated art objects find themselves routinely hidden from the eyes of the global public and, worse, concealed, falling out of international control (Jack GREEN: “Museums as Intermediaries in Repatriation,” *Journal of Eastern Mediterranean Archaeology & Heritage Studies* 5/1 (2017), 6–18).

cultural property. At the same time, however, it pays no attention to the fact that illicit circulation of cultural property is rampant in the shadow of, and as a result of, hostilities. The tasks of protecting cultural property from abusive circulation are, of course, not specific to situations of armed conflict. The Convention does not even minimally address the relevant threats posed by armed conflicts to the safety of cultural property, say, by referring to the First Protocol to the Hague Convention, which, in the context of the results of World War II, already addressed similar problems.⁵¹

Appeal to group identity (on various grounds) in the 2003 Convention, as well as to the country's patrimony in the 1970 Convention, may be arguments for the defence of cultural property by those who belong to these communities. But they are unlikely to be meaningful to members of the invading army and occupation administrations.

Thus, a comparison of different UNESCO documents shows us that the requirement to protect cultural property may have different value bases, and, accordingly, the arguments in its favour may be constructed in different ways. This should be carefully considered in theoretical discussions, especially in humanitarian training programmes for military personnel.

This also raises an interesting normative and ethical problem: a variable, locally adapted and, in this sense, partial justification of the requirement to protect cultural property, which (the requirement) is essentially universal. This requirement applies equally to all parties to an armed conflict, but to the extent that different arguments are brought to bear on the justification, it is imputed on partly different value grounds. This variability can only be eliminated if the principle of respect for cultural values is justified by the significance of the latter, not for something else (the culture of humanity as a whole, the culture of a country, national and group identity, the development of mutual understanding between peoples and cultural groups, etc.) but as values intrinsic by their nature.⁵² This is the only way to ensure its unconditional, i.e. ethical character in the above sense of the term.

51 It must be said that neither the 1993 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (which is seen as complementary to the 1970 UNESCO Convention) nor the UNESCO Decision adopted in 2003 on the experience of implementing the 1970 Convention address the issues of armed conflict and its possible adverse effects on the preservation of cultural property.

52 The principle of protecting cultural property in the event of armed conflict is closely related to another principle of international humanitarian law—the protection of civilians. On the inner connection of these principles, see: Benjamin CHARLIER & Tural MUSTAFAYEV: “International Humanitarian Law and the Protection of Cultural Property,” in: James Cuno & Thomas G. Weiss (eds.): *Cultural Heritage and Mass Atrocities*, Los Angeles: Getty Publications, 2022, <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-4/22-charlier-mustafayev/> [3 August 2026]; Erich Hatala MATTHES: “‘Saving Lives or Saving Stones?’ The Ethics of Cultural Heritage Protection in War,” *Public Affairs Quarterly* 32/1 (2018), 67–84.

References

- Ruben APRESSYAN: *Access to Cultural Goods in UNESCO Normative Documents* (Access Points #4), Münster 2026, DOI: [10.17879/21928647883](https://doi.org/10.17879/21928647883).
- Peter BARENBOIM & Naeem SIDIQI: *Bruges, the Bridge between Civilizations. To the 75th Anniversary of the Roerich Pact*, Moscow: Letny Sad / Grid Belgium, 2010, http://www.florentine-society.ru/pdf/75th_Anniversary_of_Roerich_Pact_Eng.pdf [3 August 2026].
- Patrick J. BOYLAN: *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, Paris: UNESCO, 1993.
- Kevin CHAMBERLAIN: “Military Necessity under the 1999 Second Protocol,” in: Nout van Woudenberg & Liesbeth 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*, Leiden: Martinus Nijhoff, 2010, 43–49.
- Benjamin CHARLIER & Tural MUSTAFAYEV: “International Humanitarian Law and the Protection of Cultural Property,” in: James Cuno & Thomas G. Weiss (eds.): *Cultural Heritage and Mass Atrocities*, Los Angeles: Getty Publications, 2022, <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-4/22-charlier-mustafayev/> [3 August 2026].
- Étienne CLÉMENT: “A Historical Perspective on the Protection of Cultural Property in the Event of Armed Conflict: From the Hague 1907 Convention and the Roerich Pact, to the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage,” in: *Historical Perspective of Heritage Legislation. Balance between Laws and Values. International Conference October 12–13, 2016*, Tallinn: ICOMOS Estonia NC / ICLAFI / Estonian Academy of Arts, 2017, 120–125.
- James B. COGBILL: “Protection of Arts and Antiquities during Wartime: Examining the Past and Preparing for the Future,” *Military Review* (January–February 2008), 30–37, <https://www.armyupress.army.mil/Portals/7/PDF-UA-docs/Cogbill-2008-UA.pdf>.
- Bruno COPPIERTS, Carl CEULEMANS & Nicholas FOTION (eds.): *Moral Constraints on War: Principles and Cases*, 3rd edition, Lanham: Lexington Books, 2020.
- Willard B. COWLES: “The Dakin Index to the Proceedings of the Brussels Conference of 1874,” *The American Journal of International Law* 43/3 (1949), 546–547.
- Jack GREEN: “Museums as Intermediaries in Repatriation,” *Journal of Eastern Mediterranean Archaeology & Heritage Studies* 5/1 (2017), 6–18.
- Jean-Marie 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: Nout van Woudenberg & Liesbeth 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*, Leiden: Martinus Nijhoff, 2010, 21–41.

INTERNATIONAL COMMITTEE OF THE RED CROSS: *How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?*, Opinion Paper, March 2008, <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf> [3 August 2026].

Frits KALSHOVEN: *Reflections on the Law of War: Collected Essays*, Leiden: Martinus Nijhoff, 2007.

Liesbeth LIJNZAAD: “Sleeping Beauty, the Untold Story of the (First) Protocol to the 1954 Hague Convention,” in: Nout van Woudenberg & Liesbeth 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*, Leiden: Martinus Nijhoff, 2010, 147–156.

Erich Hatala MATTHES: “‘Saving Lives or Saving Stones?’ The Ethics of Cultural Heritage Protection in War,” *Public Affairs Quarterly* 32/1 (2018), 67–84.

Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Vol. I, Bern: Federal Political Department, 1978.

Roger O’KEEFE, Camille PERON, Tofiq MUSAYEV & Gianluca FERRARI: *Protection of Cultural Property: Military Manual*, Paris: UNESCO, 2016.

Frederik ROSÉN: “Mission Impossible: Weighing the Protection of Cultural Property against Human Lives,” in: Claire Finkelstein, Derek Gillman & Frederik Rosén (eds.): *The Preservation of Art and Culture in Times of War*, New York: Oxford University Press, 2022, 70–96.

Laurie W. RUSH: “Training for Cultural Property Protection,” in: Claire Finkelstein, Derek Gillman & Frederik Rosén (eds.): *The Preservation of Art and Culture in Times of War*, New York: Oxford University Press, 2022, 275–305.

Yves SANDOZ, Christophe SWINARSKI & Bruno ZIMMERMANN (eds.): *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Leiden: Martinus Nijhoff, 1987.

Dietrich SCHINDLER & Jiří TOMAN (eds.): *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents*, 4th revised and completed edition, Leiden / Boston: Martinus Nijhoff, 2004.

James STEWART: *Reports of Cases, Argued and Determined in the Court of Vice-Admiralty at Halifax, in Nova Scotia, from the Commencement of the War, in 1803, to the End of the Year 1813*, London: J. Butterworth and Son, 1814.

The Proceedings of the Hague Peace Conferences: Translation of the Official Texts Prepared under the Supervision of James Brown Scott. The Conference of 1907, Vol. 1: Plenary Meetings of the Conference, New York: Oxford University Press, 1920.

Jiří TOMAN: *The Protection of Cultural Property in the Event of Armed Conflict: Commentary on the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocol, Signed on 14 May 1954 in The Hague, and on Other Instruments of International Law Concerning Such Protection*, London / New York: Routledge / UNESCO Publishing, 1996.

Jiří TOMAN: “The Road to the 1999 Second Protocol,” in: Nout van Woudenberg & Liesbeth 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*, Leiden: Martinus Nijhoff, 2010, 1–19.

UNESCO: “Damaged Cultural Sites in Ukraine Verified by UNESCO” [last update: 30 July 2026], <https://www.unesco.org/en/ukraine-war/damaged-cultural-sites> [3 August 2026].

Michael WALZER: *Just and Unjust Wars*, 4th edition, New York: Basic Books, 2006.

Max WEBER: *Economy and Society: An Outline of Interpretive Sociology*, ed. by Guenther Roth & Claus Wittich, Berkeley: University of California Press, 1978.

John Fabian WITT: *Lincoln’s Code: The Laws of War in American History*, New York: Free Press, 2012.

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PROTECTING CULTURAL PROPERTY IN TIMES OF WARFARE

UNESCO's international legal instruments concerning the protection of cultural property during armed conflict rest not only on generally affirmed commitments to the norms of public international law but also on shared ethical commitments. Their normative foundations assume particular significance in light of the enduring tension between the protection of cultural heritage and the requirements of military necessity. An analysis of UNESCO conventions, declarations, and recommendations demonstrates that legal regulation alone cannot ensure effective protection. Rather, the principle of respect for cultural property, enshrined in the 1954 Hague Convention, provides the essential ethical foundation for military decision-making beyond formal legal obligations. Effective protection therefore depends on embedding respect for cultural property more firmly within the humanitarian education, professional ethos, and ethical training of armed forces personnel.

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