

GENERAL ARTICLES

Giuditta Giardini*

giuditta.giardini@unicatt.it

orcid.org/0000-0003-1686-6557

Università Cattolica del Sacro Cuore

Via Largo Gemelli, 120123, Milan, Italy

The Role of Italy and UNIDROIT in the Drafting of the First Protocol to the 1954 Hague Convention

Abstract: This article explores the development of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its First Protocol, key tools for safeguarding cultural objects during wartime. It begins with a historical overview of early 20th-century legal frameworks, focusing on regulations for the transfer and restitution of cultural objects during conflicts. The study delves into the preparatory work for the Convention, highlighting the significant contributions of the Italian delegation and the involvement of UNIDROIT, particularly concerning the study of private international law issues related to good faith acquisitions of cultural objects. The article reveals the extensive yet underappreciated efforts of the Italian delegation, led by the President and Secretary General of UNIDROIT, in shaping the Convention and influencing the protection of cultural objects in the past century. The discussion extends to the aftermath of the 1954 Hague Convention, examining how unresolved issues were later addressed by the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

* **Giuditta Giardini** holds an LLM from Columbia Law School and is a PhD candidate at Università Cattolica del Sacro Cuore of Milan. She works as an attorney specializing in cultural heritage law in New York. Prior to moving to New York, she worked as an associate at the International Institute for the Unification of Private Law (UNIDROIT) in Rome, Italy. Since 2022, she has acted as the Chair of ICOM Legal Affairs Committee.

Keywords: UNIDROIT, Italy, 1954 Hague Convention, UNESCO, war, cultural objects

Introduction

Almost every European art city that survived the 19th and 20th century wars bears visible scars of past devastations.¹ Post-Second-War Italy woke up with an entirely different face. Italian people irremediably lost a significant part of their national and local identity. This was one of the reasons that led many Italian scholars from different disciplines to study solutions to prevent such events from happening again. The inter-war and post-war efforts of Italian jurists are remarkable. Following their commitment to the cause, the protection of their cultural heritage became a priority. One of the prominent texts that was drafted under their leadership and supervision was the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (“1954 Hague Convention”) and its First Protocol.²

The present article begins with a brief historical reconstruction of the legal framework from the early 20th century until the adoption of the 1954 Hague Convention, focusing particularly on regulations regarding the protection of movable objects during wartime. The following paragraphs trace the drafting of the 1954 Hague Convention, a *lex specialis* that is today a landmark treaty for the protection of cultural objects in times of war. The analysis of the preparatory work of the 1954 Hague Convention focuses on the massive and generally unpraised (until today) contribution of the Italian delegation and the involvement of UNIDROIT when dealing with issues of both humanitarian law and of private international law that concern the displacement, good faith purchase, and restitution of movable cultural objects. Their work and visions had an important impact on the protection of cultural objects across the 20th century. In fact, what found no space in the 1954 Hague Convention was later the subject of discussion and study during the preparatory work of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“1970 UNESCO Convention”);³ the 1974 UNIDROIT draft Convention providing a Uniform Law on the Acquisition in Good Faith of Corporeal Movable

¹ The reference here is to Europe, not out of mere Eurocentrism, but because the events that took place primarily in Europe during the 20th century led to reflections on the adoption of an international convention for the protection of cultural objects in times of war.

² 14 May 1954, 249 UNTS 240.

³ 14 November 1970, 823 UNTS 213.

("1974 LUAB");⁴ and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ("1995 UNIDROIT Convention").⁵

Protecting "Cultural Property" in War Time⁶

The need for special protection of cultural property during wartime can be traced back to the early 20th century.⁷ It began with two Peace Conferences held at The Hague in 1899 and 1907.⁸ These conferences led to the adoption of a series of international treaties on humanitarian law, which placed greater emphasis on safeguarding both public and private property, including both movable and immovable assets.⁹ The Hague Conventions' regime, as it stood, proved unsuccessful during the First World War.¹⁰ Consequently, in the aftermath of the war various efforts were made to prosecute violations of the Hague Conventions and their Regulations and to establish more effective protective measures through a specialized treaty regime.¹¹ In 1918, the Netherland Archaeology Society suggested a change in the

⁴ Never adopted due to lack of support. R. Goode, *The Creative Force in Transnational Commercial Law*, "TCLR" 2022, Issue 2, p. 9, <https://www.qmul.ac.uk/unidroit-itcl/media/ccls/docs/research/tclr-2-the-creative-force-in-transnational-commercial-law.pdf> [accessed: 30.09.2024].

⁵ 24 June 1995, 2421 UNTS 457.

⁶ The titles of the paragraphs, as well as the text, often refer to "cultural property", as this was the term adopted by the 1954 Hague Convention and its Protocol.

⁷ Until that point, it was common practice to grant cultural property the same level of protection as other objects and buildings during wartime. M. Frigo, *La protezione dei beni culturali nel diritto internazionale*, Pubblicazione dell'Università degli Studi di Milano, Giuffrè, Milano 1986, p. 71. See, in general, S. Manacorda, A. Visconti (eds.), *Beni culturali e sistema penale*, Vita e Pensiero, Milano 2013; A. Visconti, *The Illicit Trade in Cultural Objects: From Marginalization to the Current Surge in Attention by Transnational Criminal Policy-makers*, in: N. Boister, S. Gless, F. Jeßberger (eds.), *Histories of Transnational Criminal Law*, Oxford University Press, Oxford 2021, pp. 221 ff. For more on UNIDROIT's contribution to the preparatory work of the 1954 Hague Convention, see G. Giardini, *The Principle of International Restitution of Cultural Property in the 1954 Hague Convention: the UNIDROIT Contribution*, "Uniform Law Review" 2018, Vol. 23(1), pp. 42-80; eadem, *Squaring the Triangle of Cultural Property Law. Seventy Years of UNIDROIT's Work*, "Santander Art and Culture Law Review" 2023, Vol. 2(9), pp. 37-64.

⁸ Convention (II) with Respect to the Laws and Customs of War on Land, and Annex: Regulations concerning the Laws and Customs of War on Land, 29 July 1899, 187 CTS 429 ("Hague II"). Convention (IV) respecting the Laws and Customs of War on Land, and Annex, 18 October 1907, 205 CTS 277 ("Hague IV"). See, also, Convention (X) concerning Bombardment by Naval Forces in Time of War, 18 October 1907, 205 CTS 345 ("Hague X"). UNESCO, *Draft Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 11 July 1952, UNESCO Doc. CL/656, Annex, p. 7.

⁹ J. Toman, *The Protection of Cultural Property in the Event of Armed Conflict: Commentary on the Convention of Cultural Property in the Event of Armed Conflict and its Protocol, signed on 14 May 1954 at The Hague, and Other Instruments of International Law Concerning Such Protection*, UNESCO and Dartmouth Publishing, Aldershot 1996, p. 5.

¹⁰ UNESCO, *Report on the International Protection of Cultural Property, by Penal Measures, in the Event of Armed Conflict*, 8 March 1950, UNESCO Doc. 5 C/PRG/6/Annex I, pp. 2-3; UNESCO Doc. CL/656, Annex, p. 7.

¹¹ UNESCO Doc. 5 C/PRG/6/Annex I, p. 2.

GENERAL ARTICLES

Giuditta Giardini

protection approach, referred to as the “Hague Rules”, that although unsuccessful,¹² it did however have an influence on Paris Peace Conference of 1919.¹³

The same quest for more protection for movable and immovable cultural property during war time was taken up by the Commission of Jurists at the Washington Conference in 1922. The discussion considered rules to be followed by air forces in warfare.¹⁴ At the Conference, the Italian delegation won support for the establishment, before any conflict arose, of a “zone of protection”, or buffer zone, around monuments of historical value (Article 26(1) and (2)).¹⁵ The concept of sparing those buildings, museums, or monuments important for art, history, etc. identified in peace time and marked with a sign, was later included among the provisions of the Roerich Pact.¹⁶

In 1922, further progress was made with the creation of the International Committee on Intellectual Cooperation (ICIC). By 1926 France proposed setting up an executive branch to the ICIC, which led to the establishment of the International Institute of Intellectual Cooperation (IIIC) in Paris.¹⁷ That same year, the International Museum Office (IMO) was also founded in Paris, intended to lead the work of IIIC on cultural heritage.¹⁸ In the 1930s, the IIIC, through IMO, organized several international conferences aimed at developing standards and creating guidelines for cultural heritage preservation. In 1931, the Athens Charter for the Restoration

¹² The Hague Rules were partially incorporated into an optional provision of the 1923 draft of the Hague Rules on Aerial Warfare: Article 26 of the Draft Hague Rules of Aerial Warfare, UK Misc No. 14 (1924), Cmd 2201. R. O’Keefe, *Cultural Heritage and International Humanitarian Law*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 45.

¹³ At the Paris Peace Conference or Conference Preliminary to the Treaty of Versailles, a Commission on the Responsibility of the Authors of War and on Enforcement of Penalties was set up on 25 January 1919 to prosecute crimes against The Hague principles. Although significant evidence of crimes against cultural property was collected, the Commission failed to bring those responsible to trial, and thus no immediate results were secured. UNESCO Doc. CL/656, Annex, p. 7. Moreover, despite intense lobbying, the setting up of a specialist cultural agency was not a priority for the delegates at that conference. A.F. Vrdoljak, L. Meskell, *Intellectual Cooperation Organisation, UNESCO, and the Culture Conventions*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 15.

¹⁴ UNESCO Doc. 5 C/PRG/6/Annex I, pp. 3-4; UNESCO Doc. CL/656, Annex, p. 8.

¹⁵ UNESCO Doc. 5 C/PRG/6/Annex I, p. 4. H.M. Hanke, *The 1923 Hague Rules of Air Warfare. A Contribution to the Development of International Law Protecting Civilians from Air Attack*, “International Review of the Red Cross” 1993, Vol. 33(292), p. 16, <https://international-review.icrc.org/sites/default/files/S0020860400071370a.pdf> [accessed: 30.09.2024].

¹⁶ Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, 15 April 1935, 167 LNTS 290. The Roerich Pact applies regionally and governs the treatment of tangible cultural heritage in both peace and war. Although still technically in force among 11 American states, including the USA, it has largely fallen into disuse. R. O’Keefe, *The Protection of Cultural Property*, Cambridge University Press, Cambridge 2006, pp. 51-52.

¹⁷ The IIIC was headed by several French directors until it closed in 1939. A.F. Vrdoljak, L. Meskell, op. cit., p. 15.

¹⁸ *Ibidem*, p. 17.

of Historic Monuments was adopted, focusing on the preservation of monument sites and the promotion of a global approach to cultural heritage. It urged nations to take greater responsibility for safeguarding the artistic and archaeological treasures of humanity.¹⁹ Its core principle was that cultural property belongs to all of mankind, and its preservation is a “responsibility” shared by the international community as the guardians of civilization.²⁰ In 1932, in response to the ICIC’s request, the Assembly of the League adopted the Resolution on the Protection of Historical Monuments and Works of Art. One of its key recommendations was the adoption of a convention aimed at ensuring the protection and integrity of national collections, as proposed by the Italian Committee.²¹

The events of the Spanish Civil War proved that the measures adopted up until that time were insufficient to protect monuments and cultural sites.²² In 1933, at the request of the League of Nations, IMO established a separate organization called the International Commission on Historical Monuments (ICHM).²³ On 21-22 November 1933, IMO and ICHM re-affirmed the principle that the only effective and systematic action to protect objects in the event of armed conflicts was, *ex ante*, during peacetime (“*périod normale*”).²⁴ On 12 October 1936, Professor de Visscher submitted a preliminary report to the Governing Committee of IMO and a draft convention for the protection of historic buildings and works of art in time of war (“1936 draft convention”). The drafting process included consultations with directors and ministers of culture who had experience in safeguarding cultural objects during recent conflicts.²⁵ The draft convention and regulations for the execution of the convention set up a regime of preventive measures that would have coupled with the existing national rules.²⁶ Drawing on the Hague Conventions, it affirmed the shared responsibility of the High Contracting Parties to preserve artistic treasures and highlighted the cultural significance of these objects to the international community.

¹⁹ Ibidem, p. 18. See The Athens Charter for the Restoration of Historic Monuments, 1931.

²⁰ A.F. Vrdoljak, L. Meskell, op. cit., p. 18.

²¹ Ibidem, p. 21.

²² J. Toman, op. cit., pp. 18-19; F. Cavalli, *La Santa Sede e la Convenzione dell’Aja per la protezione dei beni culturali in caso di conflitto armato*, “Rivista di studi politici internazionali” 1960, Vol. 27(1), p. 127.

²³ Ibidem.

²⁴ C. de Visscher, *La protection des monuments et oeuvres d’art en temps de guerre*, Institut International de Coopération Intellectuelle, Office International des Musées, Paris 1934, p. 16. The idea was to protect monuments from civil wars as well (p. 17).

²⁵ The draft was inspired by the direct experience of IMO-affiliated museums, notably the Prado Museum and the Vienna’s Art Historical Museum. OIM, *Rapport de M. Sanchez Canton, exposant la situation du Musée du Prado au cours de la guerre civile*, 18 October 1937, Doc. O.I.M. 94. 1937 and OIM, *Rapport du Prof. Dr. Alfred Stix sur “La défense des musées d’art contre les attaques aériennes”*, Doc. O.I.M. 96. 1937.

²⁶ P.J. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 1993, UNESCO Doc. CLT.93/WS/12, Annex V, pp. 181-188.

The 1936 draft convention did not include provisions for returning movable cultural objects to their rightful owners at the end of hostilities. However, while drafting the said convention, IMO prepared another preliminary draft convention on the protection of national artistic and historic collections containing relevant provisions on the restitution of stolen or illegally removed cultural objects, aligned with the laws of the state where the objects were located.²⁷ The draft conventions were to be discussed in diplomatic conferences in 1939 that never took place due to the outbreak of hostilities.

Moreover, in 1935, under the auspices of IMO, Professor Charles de Visscher published a seminal study advocating for international regulations to protect national artistic and historic heritage. His work emphasized the need for cooperation, international laws, and a unified legal framework governing the export, transfer, and restitution of cultural objects. This publication analyzed the legal landscape across different national export laws for cultural objects, as well as international bilateral treaties and case law.²⁸ Most importantly, it marked the first comparative law study on laws regulating the good faith purchase of cultural objects that were stolen and illegally exported. De Visscher explained that, at that time, once an object was stolen or simply removed from the territory of the country “of origin”,²⁹ there was little to be done to claim it back. In addition, the main features of public cultural objects, such as their inalienability or the imprescriptibility of the restitution action, were not recognized in all states. The law of the country of origin “did not follow the objects” into third countries, where new laws would be applied.³⁰ Even if the object was stolen, the requesting state was at the mercy of the foreign administration’s courtesy.³¹ The situation was further complicated if the object was sold in a country that recognized the principle of *possession vaut titre*. De Visscher described the framework as “uncertain” and “ineffective”, highlighting the pressing need for a more robust international legal structure to address these issues.³²

At the same time that the focus was shifting from obligations to actual remedies, the international community began devoting attention to archaeological material, which proved very difficult to protect and return during both peacetime and wartime. In 1937, the League of Nations and the ICIC began work on the adoption

²⁷ Published by IMO in Volume I of “Recueil de législation compare”.

²⁸ C. de Visscher, *La protection des patrimoines artistiques et historiques nationaux, nécessité d'une réglementation internationale*, “Mouseion” 1938, Vol. 43-44, pp. 7-17. The study was originally published by the author in “Revue de droit international et de législation comparée” 1935, Issues (1) and (2).

²⁹ Here, the country of origin is intended as the country from which the object was removed, not the country where the object was created.

³⁰ He referred to the “territorial character” of the laws protecting cultural property as lacking any harmonized provision. C. de Visscher, *La protection des patrimoines...*, pp. 27 and 30.

³¹ Ibidem, p. 30.

³² Ibidem, p. 31.

of an internationally agreed system for antiquities and excavations, based on the recommendations contained in the Charter adopted at the International Conference on Excavations (1937 Cairo Charter), organized by IMO and hosted by Egypt. The recommendations addressed principles of national legislation, international control of excavations, the abolition of illegal excavations, the administrative organization of services, and international documentation.³³

Despite efforts made during the inter-war period, the only provisions in place to protect cultural heritage during the Second World War were still those outlined in the Hague Convention of 1907, which had been rarely enforced. At the outbreak of hostilities, some states adopted protective measures or issued declarations aimed at safeguarding civilian populations and religious or cultural sites.³⁴ In 1943, the Inter-Allied Declaration of London, signed by 18 nations, issued a formal warning against the dispossession practiced by occupying forces. It condemned looting and any contracts concluded under duress, reserving the right “to declare invalid any transfers of, or dealings with, property, rights, and interests of any kind whatsoever, situated in territories occupied or controlled, directly or indirectly, by governments at war with the Allies, or belonging to persons (including legal entities) residing in such territories”. The principle set out in the London Declaration was incorporated in subsequent armistice agreements signed at the close of the hostilities, which ordered the restitution of cultural objects displaced during the war.³⁵ In general, the burden of identifying the property and of proving ownership rested on the claimant governments, while the requested governments held the burden of proving that the objects had not been removed by force or duress. The atrocities committed during the war prompted a firm resolve to ensure that something similar would never happen again. Of the many steps forward made by the international community in the aftermath of the war, the adoption of the Geneva Conventions of 1949, particularly Convention (IV) relative to the Protection of Civilian Persons in Time of War,³⁶ significantly reinforced the existing provisions of customary international law.

UNESCO’s Resolutions

In the years 1948 and 1949, UNESCO issued two resolutions outlining measures for the protection and safeguarding of cultural heritage during armed conflicts. The first Resolution 6.43, adopted at the Third Session of the UNESCO General

³³ A.F. Vrdoljak, L. Meskill, *op. cit.*, pp. 19 ff.

³⁴ J. Toman, *op. cit.*, pp. 10 ff.

³⁵ Article 12 of the Armistice with Romania of 12 September 1944; Article 14 of the Agreement with Finland of 19 October 1944; Article 11 of the Agreement with Bulgaria of 28 October 1944; Article 6 of the Agreement with Hungary of 20 January 1945; and Article 75 of the Agreement with Italy of 10 February 1947.

³⁶ 12 August 1949, 75 UNTS 287.

GENERAL ARTICLES

Giuditta Giardini

Conference in Beirut in 1948, instructed the Director-General to “consider during 1949, in co-operation with the International Council of Museums (ICOM), the desirability of setting up, under UNESCO’s auspices, an International Committee of Experts to co-operate with the States concerned in the preservation of monuments and sites of historical value”.³⁷ The subsequent Resolution 6.42, adopted during the fourth UNESCO General Conference in Paris in September 1949, prompted by the permanent delegation of the Netherlands, led the Director-General to “report to the General Conference on measures suitable for ensuring the co-operation of interested States in the protection, preservation and restoration of antiquities, monuments and historic sites, and on the possibility of establishing an international fund to subsidize such preservation and restoration”.³⁸ This Resolution also stressed the importance of “the protection of all objects of cultural value, particularly those kept in museums, libraries and archives, against the probable consequences of armed conflict”.³⁹ In response to Resolution 6.42, the UNESCO Secretariat undertook to examine the issue internally with the collaboration of ICOM.⁴⁰ The result of the investigation was submitted to a Committee of Experts from 16 different countries, which issued a report⁴¹ echoing the principles outlined in the ICIC Resolution of 1932; in the Conference on “The Conservation of Monuments of Artistic and Historical Value” held in Athens in 1933;⁴² and in the 1937 International Conference on Excavations held in Cairo.⁴³ The ultimate goal of those conferences was not merely the exchange of information, but rather they proposed to examine draft international tools to protect cultural heritage during wartime.⁴⁴ On the occasion of the meeting of the Committee of Experts, hosted by UNESCO’s Director-General, Jaime Torres Bodet, at the UNESCO headquarters, a Permanent International Committee for Monuments and Archaeological Excavations (ICMAE) was established. The ICMAE, “small in number, technical

³⁷ UNESCO, *Records of the General Conference of UNESCO, Third Session, Beirut, 1948, Vol. 2: Resolutions, Paris 1949*, UNESCO Doc. 3 C/Resolutions, 3 C/110 (II), p. 28.

³⁸ UNESCO, *Records of the General Conference of UNESCO, Fourth Session, Paris, 1949: Resolutions, Paris 1949*, UNESCO Doc. 4 C/Resolutions, p. 27.

³⁹ UNESCO, *Measures for Ensuring the Co-Operation of Interested States in the Protection, Preservation and Restoration of Antiquities, Monuments and Historic Sites; and Possibility of Establishing an International Fund to Subsidize Such Preservation and Restoration*, 27 March 1950, UNESCO Doc. 5 C/PRG/6, p. 1.

⁴⁰ UNESCO, *Report concerning the Preparation of a Draft International Convention for the Protection, in Case of War, of Objects of Cultural Value*, 1951, UNESCO Doc. 6 C/PRG/22, p. 8.

⁴¹ The report was grounded, inter alia, in Article 1(2)(c) of the UNESCO Statute.

⁴² UNESCO Doc. 6 C/PRG/22, p. 8.

⁴³ *Ibidem*.

⁴⁴ The topics addressed by these international conferences included the export of archaeological objects; the recovery of cultural objects; and the protection of movable and immovable cultural property during wartime. *Ibidem*.

in character”, was assisted by individual experts, such as jurists, for special matters requiring supplementary consideration. The ICMAE’s mandate included various functions, such as implementing international collaboration in documenting sites and monuments of art and history; negotiating international agreements on the recovery of cultural objects;⁴⁵ and protecting private and public property of universal interest, especially during armed conflict.⁴⁶ At the meeting, the Committee of Experts recognized the severe impact of war and called for robust international cooperation in the educational, technical, and financial fields to be implemented through internal legislation, administration, and international agreements. They identified legislative and administrative gaps in the protection of monuments and suggested revisiting pre-war draft conventions before creating new ones to prevent the destruction or removal of cultural property. They also proposed a study on safeguarding cultural property in wartime in countries lacking protection; urged the UN Commission for the Codification of International Law to address war crimes against cultural objects; and recommended UNESCO Member States make declarations supporting the IMO draft conventions.⁴⁷ After an initial consultation with Member States, the report from the Committee of Experts was submitted for discussion at UNESCO’s 50th General Conference held in Florence in 1950.

During the 50th General Conference, both the Italian delegation and the Mexican delegation presented two draft International Conventions for the protection of historic monuments and art treasures.⁴⁸ The two drafts focused on different aspects of protecting cultural property, reflecting the primary challenges each country faced at that time. Mexico emphasized the preservation and restoration of cultural heritage, addressing immediate conservation needs and access to financial resources.⁴⁹ Meanwhile, Italy sought provisions to ensure

⁴⁵ The experts recommended adoption of a new international convention dealing with the recovery of objects of cultural interest, based on IMO past drafts and in the light of present laws relating to restriction of rights in property, and of freedom of trade. UNESCO, *Meeting of Experts on Sites and Monuments of Art and History: Report of the Rapporteur*, 21 November 1949, UNESCO Doc. MUS/Conf. 1/22, pp. 7–8.

⁴⁶ *Ibidem*.

⁴⁷ *Ibidem*, pp. 8–9.

⁴⁸ Pursuant to Resolution 6.42 adopted by the General Conference at its Fourth Session and draft Resolution 4.43 in the Programme for 1951. UNESCO, *Draft International Convention for the Protection of Monuments, Centres of Historic Interest, Cultural Institutions and Works of Art, in the Event of Armed Conflict: Proposal Presented by the Italian Government*, 22 May 1950, UNESCO Doc. 5 C/11, p. 1.

⁴⁹ The Mexican delegation suggested the adoption of a convention that would introduce a tourist fee payable upon arrival in the contracting states. In exchange, tourists would receive a card allowing them free entry to all national monuments in the country. Funds collected through this initiative would be earmarked for the preservation and restoration of cultural property, with a contribution equivalent to not less than 20% of the tax revenue paid weekly to UNESCO’s International Committee of Museums and Monuments. UNESCO, *Project for an International Convention for the Protection of Historic Monuments and Art Treasures: Submitted by the Delegation of Mexico*, 22 May 1950, UNESCO Doc. 5 C/22.

the protection of museums, monuments, and cultural objects in the event of future conflicts.⁵⁰

Italy (or the pre-unitarian states that formed it)⁵¹ and the Holy See had some of the oldest domestic laws for the protection of cultural property.⁵² Nevertheless they, like many other European countries, suffered immense destruction and loss of cultural heritage and displacement of movable objects during the war. National provisions posed no obligations on occupying armies to safeguard occupied countries' cultural heritage at risk, and customary law proved ineffective. Officers from the Italian Ministry of Culture, such as Rodolfo Siviero and Pasquale Rotondi, risked their lives to safeguard valuable cultural objects.⁵³ However, Italy recognized that more than individual heroism, what Europe needed was stringent regulations to protect both immovable and movable cultural objects against unlawful removal. In post-war Italy, two significant challenges arose: the reconstruction of destroyed cultural centers and monuments; and the search for plundered and displaced cultural objects. As a result, Italian legal scholars developed a strong interest in the protection of cultural heritage, both in wartime and peacetime. Legal debates began to evolve, seeking ways to claim back Italy's lost cultural property and ensure the safeguarding of heritage for the future.

⁵⁰ UNESCO Doc. 5 C/11. The Italian draft convention was accompanied by a draft resolution document (Add. 1) requesting the Director General of UNESCO to submit the draft convention to Member States. Interestingly, the draft resolution invited the Director-General of UNESCO to present to the UN Commission for the Codification of International Law proposals for the inclusion in an appropriate international code of law of provisions for the repression of offenses against objects of cultural value.

⁵¹ In the Kingdom of Naples, the first regulation for the protection of cultural heritage was issued in 1755, about 30 years after the first archaeological discoveries at Herculaneum. It consisted of two different laws that were closely connected: *Prammatica LVII* and *Prammatica LVIII*. See, in general, P. D'Alconzo, *La tutela dei beni artistici e archeologici nel Regno di Napoli dalla Repubblica alla Restaurazione: provvedimenti francesi e revanscismo borbonico*, in: I. Ascione (ed.), *Beni culturali a Napoli nell'Ottocento: atti del convegno di studi, Napoli, 5-6 novembre 1997*, Ministero per i beni e le attività culturali, Ufficio Centrale per i Beni Archivistici, Roma 2000, pp. 25-51 and eadem, *La tutela del patrimonio archeologico nel regno di Napoli tra Sette e Ottocento*, "Mélanges de l'École française de Rome" 2001, Vol. 113(2), pp. 507-537.

⁵² The first law adopted by the Holy See for the protection of cultural heritage was issued after the Avignon Papacy. Since Rome had suffered a significant degradation during the papal absence, Pope Martin V enacted the papal bull *Etsi in cunctarum* in 1425, aiming to safeguard and preserve the city's artistic and cultural heritage from destruction and theft. After Napoleon's Italian campaign, in the 19th century, the Holy See passed the Doria Pamphilj (1820) and Pacca (1822) Edicts, which played a crucial role in shaping the modern approach to cultural heritage preservation. *Ed. Dor. Pamph. (2 ottobre 1802) chir. Pio VII*, in: F. Mariotti, *La legislazione delle belle arti*, Unione Cooperativa Editrice, Roma 1892, pp. 226-233; *Editto dell'E.mo, e R.mo Sig. Cardinal Pacca Camerlengo di S. Chiesa sopra le antichità, e gli scavi pubblicato li 7 aprile 1820*, Vincenzo Poggioli Stampatore della R.C.A., Roma 1820; A.D. Manfredini, *Antichità archeologiche e tesori*, Giapichelli, Torino 2018, pp. 125 ff; C. Barbati et al., *Diritto del patrimonio culturale*, 2nd ed., Mulino, Bologna 2017, pp. 17 ff.

⁵³ See, in general, F. Bottari, *Rodolfo Siviero: avventure e recuperi del più grande agente segreto dell'arte*, Castelvecchi, Roma 2016.

Inspired by the political climate, at the 23rd meeting of the Fifth Session of the UNESCO General Conference in Florence UNIDROIT President Massimo Pilotti, serving as an advisor for the Italian delegation, presented a draft convention on behalf of Italy.⁵⁴ Pilotti clarified that the text under discussion was a collaborative effort between the Italian Fine Art Association and the National Commission.⁵⁵ This draft, based on the 1936 IMO draft and the Hague Rules,⁵⁶ aimed specifically to ensure the preservation of historic monuments during times of armed conflict. The draft garnered immediate support from Ecuador, Uruguay, France, Sweden, Switzerland, and the Netherlands. Therefore, the primary issue of the meeting was to decide which of the two drafts (the Mexican or the Italian) should be referred to the Director-General for consideration and circulated among Member States. UNESCO's Director-General suggested preparing a single combined text incorporating the best aspects of both proposals, a suggestion to which Pilotti agreed.⁵⁷ Consequently, both texts were forwarded to the UNESCO Drafting Committee.⁵⁸

The Italian-UNIDROIT Draft

The title of this section may appear misleading to the reader, however it is based on the acts of the preparatory work of the 1954 Hague Convention and confirmed by statements made by the late UNIDROIT President, Riccardo Monaco, in an article published in 1985. Monaco wrote that in 1949 "UNIDROIT was asked by UNESCO to prepare a study [on the adoption of an international convention to protect cultural property along with a preliminary draft]⁵⁹ for UNESCO's General Assembly, held that year in Florence".⁶⁰ At that time, UNIDROIT had recently resumed its

⁵⁴ Massimo Pilotti (1879-1962) was an Italian magistrate. In 1929, he started teaching a course on state unions (*Les Unions d'États*) at the Academy of International Law in The Hague, where he became a member of the Curatorium in 1946. He served as Deputy Secretary-General of the League of Nations (1932-1937); President of the International Institute for the Unification of Private Law (1944-1959); Member of the Permanent Court of Arbitration in The Hague in 1949; and First President of the European Court of Justice from 1952 to 1958. At the 23rd meeting of the Fifth Session of the UNESCO General Conference in Florence, Pilotti represented both Italy and UNIDROIT as an Observer international organization.

⁵⁵ UNESCO, *Report of the 23rd Meeting of the General Assembly, Fifth Session of the UNESCO General Conference*, UNESCO Archives, p. 413.

⁵⁶ Pilotti, on that occasion, recalled the role of the Netherlands for the preservation of cultural property after the two world wars. *Ibidem*.

⁵⁷ *Ibidem*, p. 414.

⁵⁸ *Ibidem*.

⁵⁹ The proposal designed to put into effect Resolution 6.42 was first forwarded by the Ministry of Foreign Affairs of the Italian Republic to the Director-General on 9 May 1950.

⁶⁰ R. Monaco, *La contribution d'Unidroit à la protection internationale des biens culturels*, in: P. Lalive (ed.), *International Sales of Works of Art: Geneva Workshop, 11-13 April 1985*, Institute of International Business Law and Practice and Faculté de Droit de Genève, Geneva 1988, p. 573. "The Italian delegation had the merit of presenting the first draft [...]". F. Cavalli, *op. cit.*, p. 128; L. Tosi, *L'Italia e le organizzazioni internazionali: diplomazia multilaterale nel Novecento*, CEDAM, Padova 1999, p. 246.

GENERAL ARTICLES

Giuditta Giardini

studies undertaken before the Second World War focusing on laws regulating international sales of goods.⁶¹

Among the 76 members of the Italian delegation, Pilotti appears as one of the appointed Italian advisors, while UNIDROIT Secretary-General Mario Matteucci is listed as one of the Italian experts.⁶² Additionally, Pilotti features as the representative of UNIDROIT, which was granted observer status. While Monaco emphasized Matteucci's crucial role in preparing *alone* the draft convention submitted by Italy to the General Assembly,⁶³ Matteucci, in a "Note on the 1954 Hague Convention" published in the Italian *Rivista di diritto internazionale*, expressed his gratitude to President Pilotti for guiding the development of the original project as its ultimate "*avvocato difensore*" [defense counsel].⁶⁴ From the 1950 General Assembly to the last meetings of the drafting process in 1954, the role of these two UNIDROIT representatives became increasingly central. Although the choice of the two delegates was determined by their respective roles at UNIDROIT, it was a fortunate combination of one scholar (Pilotti) with expertise in both public and private international law, and a practitioner (Matteucci), who specialized in private and comparative law.⁶⁵

The draft convention prepared by UNIDROIT on behalf of the Italian Government sapiently mixed new elements with provisions already included in the Roerich Pact, the Geneva Conventions of 1949, and the 1947 Inter-American Treaty of Reciprocal Assistance.⁶⁶ The draft convention introduced a new way of protecting cultural properties: they were no longer perceived as national, as had been the case under the Hague Convention (IV) of 1907, but as belonging to mankind. The 1950 Italian draft convention provided protection for monuments, museums, libraries, archives, "buildings designed for cultural purposes of high importance",

⁶¹ The work undertaken on the subject was fundamental for what were to become the 1964 Hague Convention relating to Uniform Laws on the Formation of Contracts for the International Sale of Goods and the 1964 Hague Convention relating to the International Sale of Goods. International Institute for the Unification of Private Law, *UNIDROIT 90 Years*, Antica Tipografia, Roma 2017, p. 29.

⁶² Mario Matteucci (1902-1994) was an Italian jurist. He gave almost his entire working life to the service of UNIDROIT, first as a staff member and later as a Secretary General (1945-1974) and President (1975-1984). *Ibidem*, pp. 35-36.

⁶³ "Investi d'un mandat par la délégation italienne à la Conférence, M. Mario Matteucci, [...] prépara un avant-projet de convention qui fut soumis par la délégation italienne pour examen à la Conférence". R. Monaco, *op. cit.*, p. 567. About Matteucci, Martin Stanford said: "He knew the pride of a father where its drafts were concerned". International Institute for the Unification of Private Law, *op. cit.*, p. 36.

⁶⁴ In particular, Matteucci wrote: "Sotto la guida sapiente di Massimo Pilotti, e del quale fu l'avvocato difensore durante tutta la procedura". M. Matteucci, *Nota sulla Convenzione per la protezione dei beni culturali in caso di conflitto armato*, "Rivista di diritto internazionale" 1958, Vol. 41, p. 671; R. Monaco, *op. cit.*, p. 567. See also UNESCO Doc. CL/561, Annex I, p. 1.

⁶⁵ International Institute for the Unification of Private Law, *op. cit.*, p. 36.

⁶⁶ The Inter-American Treaty of Reciprocal Assistance (Rio de Janeiro, 1947) is a collective security agreement among countries in the Americas, stipulating that an armed attack against any member state is considered an attack against all.

and “objects of great artistic or cultural value” (Article 1). Belligerent parties were asked to commit to protecting and respecting these monuments and properties by refraining from directly attacking movable or immovable objects; taking necessary precautions during wartime; and refraining from seizing or expropriating those objects or removing them from the territory of the contracting state, irrespective of their country of origin (Articles 2 and 8).⁶⁷ Article 3 of the Italian draft established lists of movable and immovable objects that each individual state sought to protect and notify to other parties to the convention. Article 4 outlined the conditions for the identification of cultural property, both immovable and movable. The fundamental conditions for protection included maintaining a distance from military objectives, not using the sites for military purposes, duly notifying the relevant authorities, opening the sites to inspection by the International Commission of Inspections (Article 10), and identifying the sites with a visible protective mark: a light blue triangle inscribed on a white disc (Article 5). While Article 7 granted immunity to the listed sites, Article 6 introduced the possibility of creating safe havens.

The 1951 Draft Convention

In March 1951, the Drafting Committee slightly amended the Italian draft, and the Director General of UNESCO circulated it among Member States together with an explanatory note.⁶⁸ The draft was also sent to the International Committee on Monuments and Artistic Sites and Archaeological Excavations (“International Committee”) for revision. In a document titled *Various Aspects of the Problem of Framing a Draft International Convention*, the International Committee presented the UNESCO Secretariat and Member States with a list of key issues to consider. Among these issues to be studied were the definition of cultural property; the degree of protection (a general protection applied to all cultural objects, while special protection applied to, for example, shelters), special immunity; the definition of armed conflict; the transfer of cultural treasures (as outlined in Article 6, and before by the IMO draft convention, the only transfer contemplated was into shelters or safe havens); the supervision of the implementation of the convention; the scope of the treaty; and the handling of disputes arising from the convention.⁶⁹

The revised text issued by the Committee expanded the scope of the draft convention. To give an example relevant to the present contribution, while the old Article 2 requested states to refrain from seizing or expropriating monuments and cultural objects in any form, the new Article 12 of the revised convention establish-

⁶⁷ UNESCO, *Draft Convention for the Protection, in Case of War, of Objects of Cultural Value*, March 1951, UNESCO Doc. CL/484, Article 2 (Seizure): “(c) to refrain from seizing, or totally or partially expropriating in any other way, the said monuments, works or other property, and from removing them from the country in which they are situated”.

⁶⁸ *Ibidem*.

⁶⁹ *Ibidem*, Annex, pp. 1-18.

GENERAL ARTICLES

Giuditta Giardini

es a reparative mechanism to restore the *status quo ante bellum*.⁷⁰ Article 12 marked the first time that a provision concerning the restitution of looted objects made its entrance into the text of the draft convention. UNIDROIT explained in a later study that the wording of the second paragraph of Article 12 took inspiration from the Joint Declaration of London of 1943, which declared invalid any transfers or dealings with property in territories occupied or controlled by enemies, whether such transactions appeared legal or involved open looting or plunder.⁷¹ Interestingly enough, the second paragraph contained a time limitation period of five years “from the date of the cessation of the hostilities”, and a provision concerning the good faith acquisition of movable objects that would regularize the possession of the object. The burden of proof was placed on the good faith possessor, who would have to prove that the cultural object was acquired pursuant to a “regular or normal legal transaction” and no export laws were violated. No explanation was provided however for what was meant by “regular or normal legal transaction”.⁷²

The 1952 Draft Convention

Following observations presented by a number of governments, the texts were revised again by the UNESCO Secretariat and it was in this form that the draft convention and its regulations served as the basis for the work of the Committee of Governmental Experts, which met in Paris from 2 July to 14 August 1952.⁷³ In the draft convention resulting from the revision, provisions regarding “Seizure” from the old Article 12⁷⁴ and those concerning “Measures for Preservation” from Article 14⁷⁵ were merged and relocated to a new Article 8,⁷⁶ which became the last article within Chapter I on “General Protection”.⁷⁷ The article was updated with a new Paragraph 1 titled “Occupation”, emphasizing the protection of cultural

⁷⁰ UNESCO Doc. CL/561, Annex I, pp. 7-8, Article 12 (Seizure).

⁷¹ Study XXXVIII - Protection of cultural property in case of armed conflicts (1953).

⁷² UNESCO Doc. CL/561, Annex I, pp. 7-8.

⁷³ Ibidem.

⁷⁴ Ibidem.

⁷⁵ Ibidem, p. 8.

⁷⁶ UNESCO Doc. CL/656, Annex I, pp. 5-6, Article 8 (Occupation):
“[...]

(2) The High Contracting Party shall refrain from all seizure, requisition, or removal of cultural property in occupied territory. They shall take all necessary steps to prevent and punish looting or damage.

(3) When any cultural property has changed hands during an occupation, it may be recovered from the person in whose possession it was found, by the Party whose territory was occupied, within five years from the date of the cessation of hostilities. If, however, the person in whose possession it was found can give proof that the property changed hands as the results of any legal transaction and by free consent, the claim shall not be admitted”.

⁷⁷ Ibidem.

objects during an occupation through “strictly preservative” measures. Additionally, the third paragraph of Article 8 was revised. It now indicated that only “the party whose territory was occupied” – namely the occupied state – had legal standing before any court to claim back those cultural properties that changed hands during an occupation, whether stolen and/or illegally exported. In addition, the possibility to bring a restitution claim was ruled out if the possessor could prove that “the property left the hands of its original owner” as a result of a legal transaction and by free consent, while any mention of illegal export was removed.⁷⁸ As UNIDROIT later explained in its study, the relevant transaction for the purpose of the third paragraph was not the last, but the first transaction, which could invalidate all subsequent sales in the chain.⁷⁹

In the variants suggested by some states for Article 8, it was proposed to substitute the period of five years with a longer term of ten years. Other states requested the omission of any mention of time limitations for restitution actions. Some countries even called for the complete deletion of Paragraph 3. Although criticism began to surface regarding the inclusion of an article in the convention concerning the restitution of plundered cultural objects and the return of those illegally exported from occupied territories in times of war, concerns at the time remained primarily focused on time limitations.

The Draft Convention of the Committee of Governmental Experts

Between July and August 1952, the Committee of Governmental Experts met regularly and it encompassed the presence of 23 states, representatives of the ICMAE, and three international non-governmental organizations which had appointed delegates – both civilian and military – as observers. UNIDROIT President Pilotti was appointed chair of the Committee, with General Mathon (Netherlands) and Mr. Salles (France) serving as vice-presidents, and Mr. Nyns (Belgium) acting as rapporteur.⁸⁰ Of the original 76 Italian representatives who participated in the General Assembly in Florence in 1950, Italy appointed only four delegates: Pilotti and Matteucci from UNIDROIT; the attaché to the Italian Embassy Colonel Luigi Lombardi; and the Inspector-general for antiquities and fine arts Francesco Pellati. The draft convention resulting from the Conference of the Governmental Experts still contained, in Article 5(3), provisions regarding the restitution of those cultural

⁷⁸ Ibidem, p. 6.

⁷⁹ Study XXXVIII – Protection of cultural property in case of armed conflicts (1953).

⁸⁰ UNESCO, *Historical Note concerning the Draft Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 1 March 1954, UNESCO Doc. CBC/7, p. 6.

GENERAL ARTICLES

Giuditta Giardini

properties that had “changed hands and been exported” during a hostile occupation.⁸¹ The time limitation period for restitution actions was extended to ten years or longer if the competent judicial authority was presented with evidence that the claim could not be lodged within the prescribed time. The burden of proof remained on the possessor, who was required to prove that the “property changed hands by a bona-fide legal transaction”. It was unclear from the text who was entitled to bring an action for the restitution or return of the objects.

The Draft Convention of the Working Group

In December 1952, the Programme Commission of the General Conference established another working group under the chairmanship of the Greek delegate, Alexandre Photiades, while UNIDROIT Secretary General Matteucci was elected rapporteur.⁸² The working group began its session with the revision of a draft resolution presented by the Israeli delegation.⁸³ Among the issues raised by Israeli delegates, a few focused on the provisions of Article 5. Israel sought clarification that the provisions of Articles 4 and 5 applied to both “regular armies and irregular troops under the command or supervision of a warring party”. Additionally, Israel proposed changing the *dies a quo* for restitution and return actions to be from the “signing of the treaty of peace” rather than from the “cessation of hostilities”. Israeli delegates explained their internal challenges in contacting institutions within the territory of neighboring states, despite the actual cessation of hostilities having occurred over three years earlier.⁸⁴ Following these remarks, the United States supported the Israeli positions with a statement of principle, emphasizing that “the draft would not be effective unless it could be accepted by the greatest possible number of countries”.⁸⁵ Further comments on the en-

⁸¹ UNESCO, *Draft International Convention for the Protection, in the Event of Armed Conflict, of Monuments, Collections and Other Cultural Property*, 1952, UNESCO Doc. 7 C/PRG/7, Annex I, pp. 20-34, Article 5: “[...]”

If, during occupation, cultural property has changed hands and been exported the last holder may be required to make restitution of it, such claim to be submitted within ten years of the cessation of hostilities. This period may be extended if the judge has evidence that the claim could not, for overriding reasons, be presented within the prescribed time limit. Nevertheless, if the last holder furnishes proof that the property changed hands by a bona-fide legal transaction, the suit for restitution shall be disallowed”.

⁸² UNESCO, *Report to the Programme Commission of the Working Party dealing with a Draft International Convention for the Protection of Cultural Property in the Event of Armed Conflict (Document 7 C/PRG/7) and the Possibility of Establishing an International Fund for the Maintenance of Museums, Monuments and Collections of Universal Interest (Document 7 C/PRG/6)*, 6 December 1952, UNESCO Doc. 7 C/PRG/38, p. 1.

⁸³ UNESCO, *Draft Resolution Presented by the Delegation of Israel for the Amendment of the Draft Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 22 November 1952, UNESCO Doc. 7 C/DR/93, p. 1.

⁸⁴ *Ibidem*, p. 2.

⁸⁵ At that time, delegates from the US and others had been unable to thoroughly review the draft convention and provide precise instructions to their delegates. UNESCO Doc. 7 C/PRG/38, pp. 1-2.

draft were presented by the United Kingdom, which stated that it could not accept the draft without a number of amendments, including the deletion of Article 5(3) on restitution.⁸⁶ However, the working group decided to transform it into the subject of a protocol, which was drafted during that session.⁸⁷ The United Kingdom further noted that the adoption of the protocol “would face considerable difficulties in their country”.⁸⁸ Some states considered that the recovery of property raised extremely serious legal questions, and that such provisions may infringe the basic principles of their legal systems. The new draft protocol read as follows:

The High Contracting Parties are agreed as follows:

1. If, during an occupation, a cultural property has changed hands and been exported, the restitution of that property may be required of its last holder within a period of ten years from the date on which it becomes possible to bring an action for restitution before a competent magistrate. If, however, the last holder can show proof that the property changed hands as a result of a legal transaction carried out without extortion of consent, the action for restitution shall be dismissed.

[...]

The provisions of the draft protocol continued to address the restitution of looted or stolen cultural objects and the return of those objects illegally exported, without making any distinction between the two regimes. The new wording of the text reflected the changes requested by Israel: the *dies a quo* for initiating an action became the moment when “it becomes possible to bring an action for restitution before a competent magistrate”, unless the “last holder” could prove that the initial sale was legitimate (“a legal transaction carried out without any extortion of consent”).

UNIDROIT Study XXXVIII and Appendix

Following the relocation of provisions regarding the restitution of cultural objects illegally removed and/or exported during a military occupation from the draft convention into a separate optional protocol, UNIDROIT was tasked with studying “the law on restitution of cultural property which has changed hands during a military occupation”.⁸⁹ For that purpose, in 1953 the Institute opened a new in-house project: Study XXXVIII.⁹⁰

⁸⁶ Ibidem, p. 2.

⁸⁷ Ibidem, Annex, pp. 12-13.

⁸⁸ Ibidem, p. 5.

⁸⁹ UNESCO, *Remarks of the International Institute for the Unification of Private Law on the Restitution of Cultural Property Which Has Changed Hands During a Military Occupation*, 5 March 1954, UNESCO Doc. CBC/6, p. 1.

⁹⁰ Study XXXVIII – Protection of cultural property in case of armed conflicts (1953).

GENERAL ARTICLES

Giuditta Giardini

In their research, UNIDROIT promptly identified one macro-issue stemming from the wording of the first paragraph, which posed serious difficulties and “could not be adopted as it [stood] as it confus[ed] matters entirely different in nature”.⁹¹ UNIDROIT observed that while harmonizing provisions concerning the restitution of stolen or illegally removed cultural property acquired in good faith was a matter of private law, other situations involving the return of an object that was illegally exported abroad (without the underlying offenses of larceny, robbery, plundering being proven or committed) were matters of public law only, and they could not be treated the same way.⁹² According to UNIDROIT there were two interests dealt by the paragraph: the private interest of individuals to regain possession over their property when stolen and subsequently illegally exported, and the national interest of the states to keep property located in their territory within their boundaries.

The second issue stemming from the wording of the text concerned legal standing and the right to sue. It was not clear if the power to sue for the recovery of cultural property was restricted to the state as was indicated in some previous drafts, or was open to private individuals as well.⁹³

The paragraphs below break down the crucial points in the study carried out by UNIDROIT that led to their proposal for a draft protocol. The division between private interests and public interests of the text below mimics that of the study.

Private interests

In the first example given by UNIDROIT, the ownership interest of persons in a cultural object is violated when, during a military occupation, they are illegally deprived of their property, and the object is exported or removed to another country.⁹⁴ UNIDROIT noted that “the various legal systems differ profoundly in their treatment of the recovery of movable property”.⁹⁵ According to UNIDROIT, the harmonization of the laws for the restitution of stolen or plundered objects would “necessarily involve the introduction of a new principle of law far from easy to fit into the system in force”.⁹⁶ The following part of the study delves into the analysis of different regimes applied in both civil law and common law legal systems. For that purpose, UNIDROIT prepared a *Brief Comparative Survey of the Legal Protection Afforded to the Holder under the Law concerning the Transfer of Movable Property*,⁹⁷

⁹¹ UNESCO Doc. CBC/6, p. 1.

⁹² Ibidem, pp. 1-2.

⁹³ See, above, Article 8 of the 1952 draft.

⁹⁴ Any reference to a state is to be understood as a “contracting state” of the Convention.

⁹⁵ UNESCO Doc. CBC/6, Annex, p. 7.

⁹⁶ Ibidem.

⁹⁷ Ibidem.

which analyzed and compared “Continental legal systems” (German law, French law, Spanish law, Scandinavian law) with two “Anglo Saxon legal systems” (English law and US law). The survey highlighted the differences between civil law regimes grounded in the French principle “*en fait de meubles possession vaut titre*” (possession is equivalent to title) and common law regimes anchored to the Roman principle of “*nemo dat quod non habet*” (nobody can pass a title that they do not have). UNIDROIT explained that the position that concerned them the most was that of the holder who had legally acquired title or ownership in the property when a defect in the title may result in the annulment of the transaction.

Circling back to the text of the draft, UNIDROIT noted the draft protocol concerned individual interests only when the stolen objects were actually exported to another country. In fact, the paragraph operated only in cases “where the cultural property purchased has been exported” abroad, thus if the stolen object was removed within the state boundaries the domestic law of the state would have applied. Moreover, the possibility of ruling out restitution if the possessor could prove that the property was transferred from its original owner through a legal transaction appeared problematic to UNIDROIT for two reasons.⁹⁸ First, it created a presumption of illegality; and second, it imposed a *probatio diabolica*, an excessively burdensome reversal of the *onus probandi*, on the possessor, requiring them to prove negative facts.⁹⁹ Additionally, UNIDROIT found the reference to “a legal transaction carried out without extortion of consent” too vague and inadequate. It did not specify what constitutes a legal transaction, a concept that can vary across legal systems.¹⁰⁰ Another important point was that when property changed hands, many legal systems considered previous titles unassailable, especially when the subsequent buyer had no knowledge of the property’s provenance. In civil law systems, irregularities in the seller’s acquisition typically do not affect a subsequent buyer in good faith unless those irregularities caused the annulment of the original contract prior to the resale or rendered it null and void *ab initio*.¹⁰¹ Under Germanic and Latin legal traditions, as well as Anglo-Saxon rules like Market Overt, contracts for cultural objects made under pressure sufficient to impair consent without annulling it make recovery unlikely. This departure from civil law legal principles in the proposed protocol – without a thorough

⁹⁸ UNESCO Doc. CBC/6, p. 3.

⁹⁹ *Ibidem*, pp. 3-4. The choice made in the UNIDROIT survey differs from the one that would be made years later in Articles 3-4 of the 1995 UNIDROIT Convention. The reasons lie mainly in the fact that although the protection of movable cultural objects had become a priority at that time, the protection of the market and the presumed good faith buyer-possessor still seems to prevail over that of the original owner dispossessed of the item. See, also, the preparatory work of the 1974 LUAB.

¹⁰⁰ *Ibidem*.

¹⁰¹ *Ibidem*.

GENERAL ARTICLES

Giuditta Giardini

examination – concerned UNIDROIT.¹⁰² All this considered, they recommended that if restitution provisions were to be implemented, the draft convention should have established a public registration system for cultural property and related legal transactions to verify ownership,¹⁰³ although in some legal systems registration might not override subsequent purchasers’ rights. UNIDROIT proposed shifting the burden of proof away from possessors and onto claimants to demonstrate that the initial property transfer was compromised and that subsequent purchasers knew or should have known of any inequitable terms or advantages gained. In conclusion, UNIDROIT considered that while the convention should have allowed for sales cancellation due to injury or unfairness during military occupation, it must protect subsequent innocent purchasers. In addition, to achieve uniformity in court decisions, UNIDROIT suggested introducing provisions ensuring universal recognition and enforcement of judgments among all parties to the convention.¹⁰⁴

Public interests

The study of the return of illegally exported cultural objects to the original territory proved to be a less burdensome task for UNIDROIT.¹⁰⁵ The principles behind export rules were generally the same in all countries. In UNIDROIT’s view, the issue of illegal transfers of objects across states could be addressed through two approaches: the first solution envisaged expropriations at the close of the hostilities of the displaced property with their return to the state of origin;¹⁰⁶ and the second approach consisted in a permanent prohibition of importing cultural property exported from other states without the prescribed permit, the refusal of entry by Customs, and the return to the country of origin, or the confiscation

¹⁰² Ibidem.

¹⁰³ Appendix 3 provided a template for such registration.

¹⁰⁴ UNESCO Doc. CBC/6, pp. 4-5. The proposed paragraph (A) read as follows:

“A. If, during an occupation, a cultural property has changed hands and been exported, the restitution of that property may be required of its last holder within a period of ten years from the date on which it becomes possible to bring an action for restitution before a competent magistrate.

Nevertheless the claimant to the property shall be required to prove that the transfer of the property was vitiated by lack of consent on his part or that the acquirer took advantage of the occupation and transfer was made on inequitable terms. The claimant shall in any case be required to prove that any third party to whom property shall since have passed knew or should have known of these circumstances at the time he made the purchase.
[...]

¹⁰⁵ Ibidem, p. 6.

¹⁰⁶ The expropriation envisaged could have been either at the discretion of the importing state, or at the request of the state of origin based on national categories of nationally protected objects. In both cases the possessor of the property would be compensated at the expense of the requesting country. Ibidem.

of those properties that eluded customs control. While the expropriation seemed too exceptional a measure to uphold the principle,¹⁰⁷ UNIDROIT proposed a more feasible and equitable solution: adopting international recognition of national export restrictions and controls as they existed at the outbreak of conflicts.¹⁰⁸ This approach involved each contracting state acknowledging and enforcing these limitations through a procedure known as *renvoi* to the export laws of the state of origin of the cultural object concerned.¹⁰⁹ The system would have prohibited the importation of protected cultural objects, or at least prevented such imports as much as possible using standard customs procedures.¹¹⁰ Given that export permits were typically required, UNIDROIT suggested that states should instruct their customs authorities to verify the required documentation. If irregularities were found, the cultural object would have been seized until the end of the war, after which it would be returned to its country of origin. For objects that had already entered the importing state, they would have been seized and eventually returned to the state of origin.¹¹¹

UNIDROIT's proposed system depended on effective enforcement of foreign export laws. Importing states were required to implement preventive legislation and administrative measures to invalidate irregular transactions. The lack of export legislation in some countries was not seen as a major barrier to the proposed system, as temporary control measures could have been adopted during conflicts.¹¹² Based on UNIDROIT's observations, the solution would have protected *bona fide* legal transactions by minimizing the risk of expropriation and the discretionary powers of both the exporting and importing states' administrations.¹¹³

¹⁰⁷ *Ibidem*, p. 7.

¹⁰⁸ This solution suggesting the mutual recognition of foreign export laws seemed very advanced at the time.

¹⁰⁹ UNESCO Doc. CBC/6, p. 7.

¹¹⁰ *Ibidem*.

¹¹¹ *Ibidem*.

¹¹² UNIDROIT reasoned that if a government was unwilling to implement such measures, it was unlikely they would have supported any other mechanism, including expropriation. *Ibidem*, p. 8.

¹¹³ UNIDROIT suggested to include the following paragraph to the draft protocol:

"Each High Contracting Party undertakes to accept the restrictions on the export of cultural property existing under the law of the other High Contracting Parties and, for the period to prohibit the importation of such property into their territory.

In particular, each High Contracting Party undertakes:

- (i) To the extent possible, to prevent, through Customs controls, the entry into their territory of cultural property whose export is prohibited or restricted under the law of the other Contracting Parties, unless the competent authorities have issued the permit required under its law;
- (ii) To undertake the sequestration and return to the government of the country of origin, at its request and without prejudice to the question of ownership, of cultural property introduced into their territory in contravention of the restrictions in force in the country of origin".

Ibidem.

The Protocol to the 1954 Hague Convention

UNIDROIT's revised draft protocol, their *Remarks*, and the comparative study were eventually submitted to the diplomatic Conference.¹¹⁴ The diplomatic Conference was convened on 21 April 1954 in The Hague. Matteucci attended the meeting in his dual role as a member of the Italian delegation and Secretary-General of UNIDROIT, which was granted observer status. Although Matteucci was a candidate for the role of rapporteur, Robert Brichet, a French delegate, was appointed to the position.¹¹⁵ Pilotti attended both as the Chair of the Committee of Governmental Experts and President of UNIDROIT.¹¹⁶ The diplomatic Conference immediately acknowledged the work carried out by the Committee of Governmental Experts, under the supervision of Professor Pilotti, "éminent juriste".¹¹⁷

At the diplomatic Conference, the draft convention was presented along with draft regulations and two draft protocols; one prepared by the Secretariat of UNESCO and one by UNIDROIT.¹¹⁸ There were two main questions surrounding the existence of the protocol. The first concerned whether it was appropriate to include restitution provisions as an optional tool rather than in the main body of the convention. The second question related to the content of the protocol. Insofar as concerns the first issue, the exclusion of restitution and return provisions from the body of the draft convention was again criticized by the Dutch and the Greek delegations. They argued that including restitution in a separate optional protocol would have reduced "la sécurité de droit" and proposed to move the provisions back into the main *corpus* of the Convention.¹¹⁹ After having heard the explanation provided by UNIDROIT, the Netherlands then proposed to include in the body of the convention only regulations concerning national interests.¹²⁰ In contrast, the Belgian delegate opposed the Dutch proposal, arguing that placing such provisions in a separate protocol allowed countries with differing legislations to sign the Convention.¹²¹ The United States delegation stated that they would never

¹¹⁴ J. Toman, op. cit., pp. 340-344.

¹¹⁵ *Actes de la Conférence convoquée par l'UNESCO à La Haye du 21 avril au 14 mai 1954, publiés par le Gouvernement des Pays-Bas. Procès-verbaux: séance plénières*, Staatsdrukkerij-en Uitgeverijbedrijf, La Haye 1961, pp. 90 ff. See, in general, G. Giardini, *The Principle...*, pp. 75-78.

¹¹⁶ *Actes de la Conférence...*, pp. 102, 114.

¹¹⁷ *Ibidem*.

¹¹⁸ The revised version incorporated proposals from UNIDROIT, Belgium, and the Netherlands, and it was approved by the Juridical Committee. The draft protocol presented by UNIDROIT was taken up by the Swiss delegation, which submitted another version of it containing some amendments. J. Toman, op. cit., p. 340.

¹¹⁹ *Actes de la Conférence...*, pp. 262-267.

¹²⁰ J. Toman, op. cit., p. 343.

¹²¹ *Actes de la Conférence...*, pp. 262-267. See UNESCO Docs. CBC/DR/64 and CBC/DR/153.

sign a convention containing such provisions. Consequently, France and 20 other states supported the creation of an additional Protocol, and requested that the Netherlands and Greece withdraw their amendment requests.¹²²

As regards the question of the content of the protocol, Matteucci noted that the UNESCO Secretariat's version "simplified" issues compared to their text, which addressed in detail two distinct cases: restitution actions under private law; and obligations between governments regarding the return of goods exported in violation of national laws.¹²³ The UNESCO's draft tactically avoided addressing issues concerning the good faith purchase of movable cultural objects in order to prevent delays in the ratification process or enforcement of foreign export laws. Given the significant differences between the two texts, many previously settled issues were re-examined.¹²⁴ Discussions reopened on topics such as recovering objects from a good faith purchaser in a third country; the costs of seizures; and displacement of cultural objects before the outbreak of a war. Ultimately, the protocol prepared by UNESCO, which focused solely on the illegal export of cultural property during wartime, was preferred as it was perceived as less problematic.¹²⁵

Despite choosing the simpler approach, some doubts remained about the draft protocol's contents. The Swiss delegation suggested the possibility of having two protocols: one on aspects of private law and another on those of public law, but the proposal was tabled.¹²⁶ The United Kingdom and United States delegations considered postponing the adoption of the protocol, however the Netherlands strongly opposed this, arguing that the issues had already been extensively discussed and emphasized the importance of having measures for the return of illegally exported goods during wartime. They also noted that another opportunity to bring all state representatives together might not arise anytime soon. The Belgium delegation then proposed including an article for revising the draft protocol, as the clause in the draft convention was deemed insufficient. This proposal was eventually accepted.¹²⁷

¹²² *Actes de la Conférence...*, pp. 262-267.

¹²³ UNESCO Doc. CBC/DR/7 and *Actes de la Conférence...*, p. 124.

¹²⁴ For instance, the Netherlands proposed adding to the first sentence of the first paragraph a clause stipulating that both a state and a private owner can lodge claims for the restitution of cultural objects. They also asked to change the time limitation from a period of ten years to five. J. Toman, *op. cit.*, p. 339.

¹²⁵ UNIDROIT's critique of the draft protocol was acknowledged by UNESCO in their version of the protocol. F. Cavalli, *op. cit.*, p. 131.

¹²⁶ The two protocols would have been based on the UNIDROIT and Swiss drafts. J. Toman, *op. cit.*, p. 343.

¹²⁷ Paragraph 15 of the First Protocol. *Actes de la Conférence...*, pp. 264-265. When this option was included in the protocol, the United States and the United Kingdom decided to sign it since they felt less irrevocably committed. *Ibidem*.

GENERAL ARTICLES

Giuditta Giardini

Despite these challenges, the 1954 Hague Convention and its (First) Protocol achieved their goals and are considered successful, given the large number of signatory states and their geographical distribution. Paragraphs 1 and 3 of the Protocol on the return of illegally exported cultural objects in the event of armed conflict did not adopt UNIDROIT's suggested division between private and national interests. They order the unconditional and unlimited¹²⁸ return of all cultural property, movable and immovable, irrespective of their origin or ownership. Paragraph 4 includes a provision for indemnification (or sanction) by the Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it to the good faith holder of the cultural property, without specifying the burden of proof, which is regulated by national laws.¹²⁹

Although Pilotti and Matteucci's diplomatic efforts as members of the Italian delegations and UNIDROIT representatives were significant, their final stance on the First Protocol to the 1954 Hague Convention remained unheard. However, their work for the 1954 Hague Convention highlighted the need for harmonized provisions on the restitution of stolen cultural objects and the return of those illegally exported, including cases where these objects are in the hands of good faith purchasers. Due to political disagreements, these measures were not included in either the Protocol to the 1954 Hague Convention nor in the 1970 UNESCO Convention.¹³⁰ As a result, the issues of restitution and return of illegally trans-

¹²⁸ J. Toman, op. cit., p. 345.

¹²⁹ "1. Each High Contracting Party undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article 1 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May 1954.

2. Each High Contracting Party undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory.
3. Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.
4. The High Contracting Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with the preceding paragraph.
5. Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came. [...]"

¹³⁰ In 1969, Mario Matteucci and French delegate Robert Brichet met in a UNESCO-organized Meeting of Experts. They drafted a report titled *Practical Steps to Facilitate the Possible Establishment of an Appropriate International System*, which proposed measures for protecting monuments, sites, and groups. These included creating inventories, employing technical personnel, establishing public and private sector roles, and implementing penalties and an international protection system. The principles from this report were intended to inform either a recommendation or an international convention, leading to the creation of the 1970 UNESCO Convention and the 1972 UNESCO World Heritage Convention.

ferred cultural property were later addressed in the 1995 UNIDROIT Convention. *Mutatis mutandis*, issues that were disregarded during the preparatory work of the 1954 Hague Convention, became significant innovations in the 1995 UNIDROIT Convention. These include the reversal of the burden of proof on the possessor; the definition of what constitutes a diligent transaction; the recognition of foreign judgments; the public order exception; and mutual recognition of export restrictions. These examples demonstrate a clear connection between the two texts, although, in the 1950s, the time was not ripe for such innovations.

Conclusions

Italian delegates and UNIDROIT played a crucial role in shaping the discourse on cultural property restitution in the 20th century. UNIDROIT's studies and proposals not only influenced the final text of the 1954 Hague Convention and its Protocol, but they also laid the groundwork for future conventions. The Institute's recommendations included in their *Remarks* identified and anticipated issues concerning the international circulation of cultural objects that, even 70 years later, do not seem outdated. In retrospect, we understand the decision to avoid tackling private law issues in the text of the 1954 Hague Convention or even in its Protocol; the international community was simply not ready to harmonize their laws on good faith sales. Fifteen years later, during the drafting of the 1970 UNESCO Convention, the same situation was replicated. One can wonder whether the phenomenon of illicit trafficking might have been defeated had those private law regulations been included in the 1954 Hague Convention's text and in that of the 1970 UNESCO Convention. But the past can only be speculated upon. We had to wait almost 40 years to see the same concerns addressed in what was supposed to be a protocol to the 1970 UNESCO Convention, but which became the 1995 UNIDROIT Convention.

Many concepts from the earlier drafts – such as the *summa divisio* between issues concerning private interests and public interests; the reversed burden of proof on the possessor of a cultural object; the definition of a diligent transaction; and mutual recognition of export restrictions, among other things – were revisited and further developed in later treaties. The continuity of these discussions underscores the ongoing importance of addressing cultural property restitution and return in international law. Despite progress, challenges related to their removal and claims, especially in wartime, continue to persist, and the resistance of some countries to harmonize their laws to smooth the process is still a present problem.

References

Actes de la Conférence convoquée par l'UNESCO à La Haye du 21 avril au 14 mai 1954, publiés par le Gouvernement des Pays-Bas. Procès-verbaux: séance plénière, Staatsdrukkerij-en Uitgeverijbedrijf, La Haye 1961.

GENERAL ARTICLES

Giuditta Giardini

- Barbati C. et al., *Diritto del patrimonio culturale*, 2nd ed., Mulino, Bologna 2017.
- Bottari F., *Rodolfo Siviero: avventure e recuperi del più grande agente segreto dell'arte*, Castelvecchi, Roma 2016.
- Boylan P.J., *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 1993, UNESCO Doc. CLT.93/WS/12.
- Cavalli F., *La Santa Sede e la convenzione dell'Aja per la protezione dei beni culturali in caso di conflitto armato*, "Rivista di studi politici internazionali" 1960, Vol. 27(1).
- Convention (II) with Respect to the Laws and Customs of War on Land, and Annex: Regulations concerning the Laws and Customs of War on Land, 29 July 1899, 187 CTS 429.
- Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.
- Convention (IV) respecting the Laws and Customs of War on Land, and Annex, 18 October 1907, 205 CTS 277.
- Convention (X) concerning Bombardment by Naval Forces in Time of War, 18 October 1907, 205 CTS 345.
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 240.
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 213.
- D'Alconzo P., *La tutela dei beni artistici e archeologici nel Regno di Napoli dalla Repubblica alla Restaurazione: provvedimenti francesi e revanscismo borbonico*, in: I. Ascione (ed.), *Beni culturali a Napoli nell'Ottocento: atti del convegno di studi, Napoli, 5-6 novembre 1997*, Ministero per i beni e le attività culturali, Ufficio Centrale per i Beni Archivistici, Roma 2000.
- D'Alconzo P., *La tutela del patrimonio archeologico nel regno di Napoli tra Sette e Ottocento*, "Mélanges de l'École française de Rome" 2001, Vol. 113(2).
- de Visscher C., *La protection des monuments et oeuvres d'art en temps de guerre*, Institut International de Coopération Intellectuelle, Office International des Musées, Paris 1934.
- de Visscher C., *La protection des patrimoines artistiques et historiques nationaux, nécessité d'une réglementation internationale*, "Mouseion" 1938, Vol. 43-44.
- Draft Hague Rules of Aerial Warfare, UK Misc No. 14 (1924), Cmd 2201.
- Ed. Dor. Pamph. (2 ottobre 1802) chir. Pio VII*, in: F. Mariotti, *La legislazione delle belle arti*, Unione Cooperativa Editrice, Roma 1892.
- Editto dell'E.mo, e R.mo Sig. Cardinal Pacca Camerlengo di S. Chiesa sopra le antichità, e gli scavi pubblicato li 7 aprile 1820*, Vincenzo Poggioli Stampatore della R.C.A., Roma 1820.
- Frigo M., *La protezione dei beni culturali nel diritto internazionale*, Pubblicazione dell'Università degli Studi di Milano, Giuffrè, Milano 1986.
- Giardini G., *Squaring the Triangle of Cultural Property Law. Seventy Years of UNIDROIT's Work*, "Santander Art and Culture Law Review" 2023, Vol. 2(9).
- Giardini G., *The Principle of International Restitution of Cultural Property in the 1954 Hague Convention: the UNIDROIT Contribution*, "Uniform Law Review" 2018, Vol. 23(1).
- Goode R., *The Creative Force in Transnational Commercial Law*, "TCLR" 2022, Issue 2, <https://www.qmul.ac.uk/unidroit-itcl/media/ccls/docs/research/tclr-2-the-creative-force-in-transnational-commercial-law.pdf> [accessed: 30.09.2024].

- Hanke H.M., *The 1923 Hague Rules of Air Warfare. A Contribution to the Development of International Law Protecting Civilians from Air Attack*, "International Review of the Red Cross" 1993, Vol. 33(292), <https://international-review.icrc.org/sites/default/files/S0020860400071370a.pdf> [accessed: 30.09.2024].
- International Institute for the Unification of Private Law, *UNIDROIT 90 Years*, Antica Tipografia, Roma 2017.
- Manacorda S., Visconti A. (eds.), *Beni culturali e sistema penale*, Vita e Pensiero, Milano 2013.
- Manfredini A.D., *Antichità archeologiche e tesori*, Giappichelli, Torino 2018.
- Matteucci M., *Nota sulla Convenzione per la protezione dei beni culturali in caso di conflitto armato*, "Rivista di diritto internazionale" 1958, Vol. 41.
- Matteucci M., *Su la Convenzione per la protezione dei beni culturali in caso di conflitto armato*, "Rivista di diritto internazionale" 1958, Vol. 41(4).
- Monaco R., *La contribution d'Unidroit à la protection internationale des biens culturels*, in: P. Lalive (ed.), *International Sales of Works of Art: Geneva Workshop, 11-13 April 1985*, Institute of International Business Law and Practice and Faculté de Droit de Genève, Geneva 1988.
- O'Keefe R., *Cultural Heritage and International Humanitarian Law*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020.
- O'Keefe R., *The Protection of Cultural Property*, Cambridge University Press, Cambridge 2006.
- Office international des musées, *Rapport de M. Sanchez Canton, exposant la situation du Musée du Prado au cours de la guerre civile*, 18 October 1937, Doc. O.I.M. 94. 1937.
- Office international des musées, *Rapport du Prof. Dr. Alfred Stix sur "La défense des musées d'art contre les attaques aériennes"*, Doc. O.I.M. 96. 1937.
- The Athens Charter for the Restoration of Historic Monuments, 1931.
- Toman J., *The Protection of Cultural Property in the Event of Armed Conflict: Commentary on the Convention of Cultural Property in the Event of Armed Conflict and its Protocol, signed on 14 May 1954 at The Hague, and Other Instruments of International Law Concerning Such Protection*, UNESCO and Dartmouth Publishing, Aldershot 1996.
- Tosi L., *L'Italia e le organizzazioni internazionali: diplomazia multilaterale nel Novecento*, CEDAM, Padova 1999.
- Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, 15 April 1935, 167 LNTS 290.
- UNESCO, *Draft Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 11 July 1952, UNESCO Doc. CL/656.
- UNESCO, *Draft Convention for the Protection, in Case of War, of Objects of Cultural Value*, March 1951, UNESCO Doc. CL/484.
- UNESCO, *Draft International Convention for the Protection of Monuments, Centres of Historic Interest, Cultural Institutions and Works of Art, in the Event of Armed Conflict: Proposal Presented by the Italian Government*, 22 May 1950, UNESCO Doc. 5 C/11.
- UNESCO, *Draft International Convention for the Protection, in the Event of Armed Conflict, of Monuments, Collections and Other Cultural Property*, 1952, UNESCO Doc. 7 C/PRG/7.
- UNESCO, *Draft Resolution Presented by the Delegation of Israel for the Amendment of the Draft Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 22 November 1952, UNESCO Doc. 7 C/DR/93.

GENERAL ARTICLES

Giuditta Giardini

- UNESCO, *Historical Note concerning the Draft Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 1 March 1954, UNESCO Doc. CBC/7.
- UNESCO, *Measures for Ensuring the Co-Operation of Interested States in the Protection, Preservation and Restoration of Antiquities, Monuments and Historic Sites; and Possibility of Establishing an International Fund to Subsidize Such Preservation and Restoration*, 27 March 1950, UNESCO Doc. 5 C/PRG/6.
- UNESCO, *Meeting of Experts on Sites and Monuments of Art and History: Report of the Rapporteur*, 21 November 1949, UNESCO Doc. MUS/Conf. 1/22.
- UNESCO, *Project for an International Convention for the Protection of Historic Monuments and Art Treasures: Submitted by the Delegation of Mexico*, 22 May 1950, UNESCO Doc. 5 C/22.
- UNESCO, *Records of the General Conference of UNESCO, Fourth Session, Paris, 1949: Resolutions*, Paris 1949, UNESCO Doc. 4 C/Resolutions.
- UNESCO, *Records of the General Conference of UNESCO, Third Session, Beirut, 1948, Vol. 2: Resolutions*, Paris 1949, UNESCO Doc. 3 C/Resolutions, 3 C/110 (II).
- UNESCO, *Remarks of the International Institute for the Unification of Private Law on the Restitution of Cultural Property Which Has Changed Hands During a Military Occupation*, 5 March 1954, UNESCO Doc. CBC/6.
- UNESCO, *Report concerning the Preparation of a Draft International Convention for the Protection, in Case of War, of Objects of Cultural Value*, 1951, UNESCO Doc. 6 C/PRG/22.
- UNESCO, *Report of the 23rd Meeting of the General Assembly, Fifth Session of the UNESCO General Conference*, UNESCO Archives.
- UNESCO, *Report on the International Protection of Cultural Property, by Penal Measures, in the Event of Armed Conflict*, 8 March 1950, UNESCO Doc. 5 C/PRG/6/Annex I.
- UNESCO, *Report to the Programme Commission of the Working Party dealing with a Draft International Convention for the Protection of Cultural Property in the Event of Armed Conflict (Document 7 C/PRG/7) and the Possibility of Establishing an International Fund for the Maintenance of Museums, Monuments and Collections of Universal Interest (Document 7 C/PRG/6)*, 6 December 1952, UNESCO Doc. 7 C/PRG/38.
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.
- Visconti A., *The Illicit Trade in Cultural Objects: From Marginalization to the Current Surge in Attention by Transnational Criminal Policymakers*, in: N. Boister, S. Gless, F. Jeßberger (eds.), *Histories of Transnational Criminal Law*, Oxford University Press, Oxford 2021.
- Vrdoljak A.F., Meskell L., *Intellectual Cooperation Organisation, UNESCO, and the Culture Conventions*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020.