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PROTECTION AND PRESERVATION  
OF CULTURAL HERITAGE DURING ARMED CONFLICT:  
UNDERSTANDING THE ACCOUNTABILITY OF A STATE  
UNDER INTERNATIONAL HUMANITARIAN LAW

1. Introduction

The year 2022 did not unfold as anticipated, as on 24 February 2022, the long-standing and well-established custom of prohibiting the use of force was transgressed when Russia declared war in a special military operation against Ukraine. This operation arose from the context of the Russian-Ukrainian conflict, which had been developing since 2014 following Russia's annexation of the Crimea, a series of naval incidents, political tensions, and the war in Donbass. The international community, as well as Ukraine itself, had long accused Russia of clandestinely supporting separatists opposed to the Ukrainian government in the Donbass region prior to 2014.<sup>1</sup> Although the conflict was not new, the world did not expect it to escalate into a full-scale war. Ostensibly, the invasion was triggered by Ukraine's aspirations to join NATO, which Putin viewed as a ploy by the United States to move NATO's borders closer to Russia.<sup>2</sup> This incursion is an ongoing affair, resulting in substantial destruction for Ukrainians as well as for the entire international community. The Ukrainian ethnic legacy is in peril. The physical remnants of times gone by are vanishing quickly, particularly in the aftermath of war and terrorism,

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<sup>1</sup> For more on this, see: A. Krishna, "Root cause of Ukraine-Russia conflict", *The Economic Times*, 4.03.2022, <https://economictimes.indiatimes.com/news/defence/view-the-root-cause-of-the-ukraine-conflict/articleshow/89807225.cms?from=mdr> (accessed: 10.03.2022).

<sup>2</sup> *Ibidem*.

robbery and pillage, and climatic disruption. Combat exacerbates the annihilation of essential heritage, as it can lead to the destruction of archaeological relics for the purpose of demoralising the general population or drawing attention from abroad. Additionally, the illegal antiques marketplace can be used to the aggressor's benefit or to finance additional warfare.

Despite war being an unpalatable reality, the international community has established a robust framework for overseeing all aspects of warfare, from the commencement of hostilities to the rehabilitation of a defeated state. However, the interplay between the established norm of respecting state sovereignty in internal affairs and the application of international law presents significant challenges. To enforce strict compliance with laws, international bodies along with nations have developed a strong and powerful regime of International Human Rights Law (IHRL) that safeguards the rights of individuals during peacetime. The International Humanitarian Laws (IHL), also known as the Laws of Armed Conflict (LOAC), serve to protect the rights of both civilians and combatants during times of war. IHL (or LOAC) is a comprehensive set of rules that aim to limit the impact of war, protect those who are participating in hostilities or are no longer involved in them, and constrain the means and methods of warfare (ICRC, 2022). Additionally, the Convention Relative to the Protection of Civilian Persons in Time of War, signed at Geneva on 12 August 1949 (hereinafter: the 1949 Geneva Conventions) are the major and essential instruments for LOAC, by which states are obligated to adhere to the rules enshrined there, either by ratification or as per the law of *Jus Cogens* or customary international law.

The distinction principle, which forms the foundation of IHL, allows attacks solely on military objects, such as an enemy's facilities, ammunition, and personnel. It also grants exhaustive protection to civilians by forbidding all attacks on civilians, civilian facilities, and civilian objects; such protection is widely accepted.

Cultural property faces various threats and are at significant risk during an armed conflict. Such property may suffer unintentional damage as collateral damage, or become intentionally targeted, or may be looted by civilians. States which are attacked can also be held responsible for neglecting their cultural properties and providing them without adequate protection during an armed conflict. Established international legal norms place the obligation to protect archaeological sites on parties to an armed conflict. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has made efforts at the international level to recognize and prevent war crimes by enacting three conventions after World War II to prosecute the perpetrators of such crimes. Unfortunately, these conventions, such as the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 14 May 1954 (hereinafter: the 1954 Hague Convention), the UNESCO Convention concerning the Means of Prohibiting and

Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by UNESCO in Paris on 16 November 1970 (hereinafter: the 1970 UNESCO Convention), and the Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted in Paris on 16 November 1972 (hereinafter: the 1972 UNESCO Convention), are not adequately implemented, rendering them inefficient as reliable deterrents or modes of prosecution.<sup>3</sup>

The deficiencies of the extant international conventions necessitated the creation of the Additional Protocol II to the 1954 Hague Convention, which entered into force in 1999 (hereinafter: AP II). The AP II was established upon earlier legal precedents, notably the Lieber Code of 1863, which mandated in art. 35 that „classical works of art, libraries, scientific collections, or precious instruments ... must be secured against all avoidable injury”. Similarly, the International Declaration concerning the Laws and Customs of War, adopted by the Conference of Brussels on 27 August 1874 stated that „all seizure or destruction of, or wilful damage to, institutions of this character...” could not be carried out without legal justification (art. 8 of the 1954 Hague Convention).

The Hague Convention (II) with respect to the Laws and Customs of War on Land (29 July 1899) and the Hague Convention (IV) respecting the Laws and Customs of War on Land (18 October 1907) expanded the responsibility to respect the laws of war to belligerents, providing that whoever damages any institution of historical significance or art work with the intent of vandalising such objects will be prosecuted (art. 56 of the 1954 Hague Convention). Furthermore, art. 27 of the 1907 Hague Convention obligated the besieged state to identify the presence of such buildings that come under its protection, while forbidding attacking states to attack cultural property.

Additionally, the International Tribunal for the Former Yugoslavia (ICTY) has successfully prosecuted multiple cases relating to cultural property crimes during armed conflicts, setting a high standard of accountability for the violating party. Following legal precedents paved the way for the 2<sup>nd</sup> Protocol and the Rome Statute of the International Criminal Court (hereinafter: ICC) to impose collaboration in enhancing the protection of cultural property on a global level.

## 2. Arguments

There are two essential principles in this regard. The first is the notion of irreversibility. Such a theory holds that safeguarding individuals and safeguarding cultural treasures are closely intertwined. The concept of Universalism indicates that every

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<sup>3</sup> J. Kastenberg, “The Legal Regime for Protecting Cultural Property during Armed Conflict”, *Air Force Law Review* 1997, vol. 42, pp. 277–288.

individual's ethnic legacy is a component of humanity's collective legacy. In today's rapidly changing world, the significance of protecting cultural heritage during armed conflict cannot be understated. However, opponents argue that when lives are at stake, it is morally repugnant, if not downright dreadful, to devote resources to maintaining crumbling monuments. This sentiment resonates widely. According to the *Guardian* art expert Jonathan Jones, the worth of a single human life surpasses the significance of even the most valuable work of art in human history.<sup>4</sup> Nonetheless, a different criticism emphasises personal priorities in moral matters and focuses on the allocation of moral and emotional involvement. The people who put the monuments' preservation above human lives, it suggests, are the real cause for concern, not the monuments themselves.

### 3. Legal framework

The vast ethnic plunder that occurred during World War II prompted the 1954 Hague Convention, but it was limited to safeguarding material culture exclusively during warfare. It neglected to tackle the theft, smuggling, and destruction of historical objects during times of peace. The illicit trading of antiques and cultural artefacts was very common before 1970. As a result, a number of sovereign governments adopted the 1970 UNESCO Convention, starting the process of preserving major historical and cultural artefacts.

The 1970 UNESCO Convention made it possible to protect cultural property during times of peace. The 1970 UNESCO Convention's definition of "cultural property" and the 1954 Hague Convention's definition are identical. The term "cultural property" has also been described as "items which are used as means of expressions, evincing human creation and evolution of nature for historical, artistic, scientific or technical value and interest" in the UNESCO Recommendation Concerning the International Exchange of Cultural Property, adopted by the General Conference on 26 November 1976. The description mentioned above provides an expanded view of cultural property, including a larger range of items.

1996 saw the establishment of the Blue Shield by the "Founding Four" organisations. Dutch legislation establishes it as a worldwide non-governmental organisation as follows: it is "Committed to safeguarding of the world's cultural property and is concerned with the protection of cultural and natural heritage, tangible and intangible, in the event of armed conflict, natural- or human-made disaster."<sup>5</sup>

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<sup>4</sup> J. Jones, "I felt like some kind of monster", *The Guardian*, 14.10.2008, <https://www.theguardian.com/artanddesign/2008/oct/14/art-social-exclusion> (accessed: 10.03.2022).

<sup>5</sup> The Blue Shield, Governance and Structure, <https://theblueshield.org/about-us/governance-and-structure/> (accessed: 24.03.2023).

Currently, the Blue Shield has about thirty national committees, and that number is constantly rising. It also has a multinational arm called Blue Shield International (BSI), that is made up of a small administration (one full-time employee and one part-time employee, currently based at and funded by Newcastle University in the United Kingdom) and a governing body appointed by the national committees and the Founding Four. The Blue Shield is a non-profit organisation dedicated to cooperative action, autonomy, impartiality, integrity, and honouring traditional uniqueness.

International humanitarian law, including the 1954 Hague Convention and its two protocols (1954 and 1999), serves as the main legal framework for the Blue Shield. Additionally, it functions broadly within the framework of the cultural conventions and broader cultural conservation strategy of the UN and UNESCO. International programmes like the Sendai Framework for Disaster Risk Reduction,<sup>6</sup> which address both natural and man-made disasters, additionally reinforce it. As stated in art. 1 of the 1954 Hague Convention, the organization's mandate has been expanded to include the recognition that all ethnic property – tangible and intangible, cultural and natural – is an essential component of human communities. Previously, the organization's primary responsibility was to safeguard tangible cultural property during armed conflict.

In light of this, the BSI establishes the structure and regulates the tasks of the national committees as well as its own operations with six focal points of activity: policy creation, cooperation with different organisations as well as within the Blue Shield, risk prevention and safeguarding, training, instruction, and capacity building, crisis management, and permanent and post-disaster restoration operations.

It makes six arguments as to why the military and aid industries value CPP. First, people are important. Protecting cultural property is about the people who live nearby and whom any uniformed deployment affects, as well as the individuals who are the primary concern of humanitarian organisations. As previously mentioned, the defence of individuals is intrinsically linked to the defence of their cultural property and is recognised as a military duty under the broader LOAC/IHL. Second, there is an ethical need to fulfil legal obligations. Any armed forces or humanitarian mission has to be completely mindful of its legal obligations regarding the preservation of historical and artistic assets according to: international humanitarian law (IHL), including the 1954 Hague Convention and the 1977 Additional Protocols to the 1949 Geneva Conventions; international human rights law (specifically, the 1998 Rome Statute of the International Criminal Court, in which the former UN special rapporteur on cultural rights suggests making accessible heritage a universal human

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<sup>6</sup> United Nations Office for Disaster Risk Reduction, Implementing the Sendai Framework, <https://www.undr.org/implementing-sendai-framework/what-sendai-framework> (accessed: 22.03.2023).

right); international customary law; and, in some cases, international criminal law. Recognising the intersections among broader „mainstream” IHL and the legislation protecting cultural property is an important, albeit comparatively recent, humanitarian requirement.

Third, army chiefs and relief organisations must be cognizant of the tactical requirement of comprehending and predicting the abuse of traditional heritage. Fourth, since stealing surely goes towards supporting military nonstate actors, cultural property security is crucial in the military and humanitarian spheres. Although looting has probably always existed since wars were first fought, it is commonly asserted that it has grown more systematic and significant in contemporary warfare. Fifth, the loss of cultural property might jeopardise a nation’s efforts to rebuild its economy. Once a military unit wins a battle, it often has to make sure the post-conflict state is stable and economically sustainable before it can leave; the victor(s) must also win the peace.

The sixth tactic is the use of cultural property preservation as soft power. When charitable funds are used to renovate sacred structures, communities may be motivated to take responsibility for what lies ahead and express appreciation. Unfortunately, there have been several current incidents where NATO troops have not been able to implement CPP successfully, which has unduly agitated the citizens of the region; in some cases this has resulted in a worsening of hostilities and increased losses. One feature common to many wars is intentional abuse of religious relics owned by the warring nations.

#### 4. Current legal regime

Following the conflicts in Iraq (2003) and Syria (2011) the protection of cultural property has once again become a pressing concern.<sup>7</sup> The international community was deeply troubled by reports of intentional destruction of cultural property with significant symbolic, traditional, and religious value. Deliberate attacks on mausoleums of saints and mosques galvanized the international community to address this issue in a practical manner.

The landmark Al Mahdi case in 2016 found the accused guilty of intentionally vandalising religious and historic buildings in Timbuktu. The ICC gave a verdict that any intentional attack on cultural property would be treated as a war crime, setting a precedent.<sup>8</sup> The Al Mahdi case sent a strong and unmistakable message to the

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<sup>7</sup> Report on Cultural Property: Protection of Iraqi and Syrian Antiquities, August 2016, The Government of United States of America.

<sup>8</sup> A. Jakubowski, “Individual Responsibility for Deliberate Destruction of Cultural Heritage: Contextualizing the ICC Judgment in the Al-Mahdi Case”, *Chinese Journal of International Law* 2017, vol. 4, no. 16, pp. 695–721.

international community that intentional attacks on cultural property of significance would be regarded as serious crimes and dealt with under the international criminal law regime. The recent Russia-Ukraine war which has seen multiple IHL violations, including destruction of numerous Ukrainian Cultural Property sites demands an understanding of the concept of cultural property and current international law relating to it.

## 5. Meaning of cultural property

In legal terms, the definition of „cultural property” was formally established and expanded upon in art. 1 of the 1954 Hague Convention. It is defined as:

- “(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’.”

## 6. International laws and statutes

The adoption of the “Convention on the Protection of Cultural Property during Armed Conflict” by UNESCO in 1954 was a ground-breaking achievement. This was succeeded by the 1972 UNESCO Convention and the 1970 UNESCO Convention, together establishing a comprehensive and robust legal framework for safeguarding cultural property during times of armed conflict.

The adoption of the Hague Convention in 1954 marked a significant milestone in the recognition and protection of cultural property during armed conflict. Article 1 of the Convention provided a comprehensive definition of cultural property, which was lacking in previous international conventions. The Convention imposed obligations on state parties to safeguard cultural property during war, as affirmed in

art. 3. This obligation extended to the respect of cultural property not only within but also outside their territories.

In addition, the 1954 Hague Convention provides a thorough and detailed explanation of the concept of cultural property. This was the first time that such comprehensive definition of cultural property was set out. The definition encompasses property that holds significant cultural value to the people and the state, and sees movable and immovable properties as qualified for protection during an armed conflict.

In accordance with the 1954 Hague Convention, art. 4 prohibits any use of cultural property that may lead to its destruction or damage during an armed conflict. This provision also shields cultural property from any form of hostile activity, including pillage, misappropriation, and theft. The 1954 Hague Convention was a significant contribution to the protection of cultural property. It was the first treaty that comprehensively addressed the need to safeguard property of cultural importance during peacetime and anticipated the potential impact of armed conflicts while calling for necessary measures to address relevant issues. Furthermore, the Convention extended the protection of cultural property beyond the territorial boundaries of a state. Interestingly, while the Convention offers a comprehensive definition of cultural property, it does not include religious buildings as cultural property. However, these buildings can still be protected when they are recognized as „monuments of architecture, art, or history.”

The 1954 Hague Convention imposes on states the duty to identify and mark cultural properties for easy recognition, along with their protection and preservation. The protective symbol, „The blue shield” emblem, which is the equivalent of the Red Cross emblem, was introduced in art. 6 of the Convention and declared mandatory for states to use in order to gain protection for the relevant property. Article 17 provides detailed guidelines on the use of the emblem, including identification and transportation of cultural property, as outlined in art. 12 and 13, respectively.

In addition, the 1954 Hague Convention stipulates that the blue shield emblem is exclusively for the identification and protection of cultural property, and any unauthorized use of it is strictly prohibited. Moreover, the use of the emblem necessitates prior authorization from the designated authority, stipulated in art. 17. The Convention also recognizes that harm to cultural property is tantamount to harm to the cultural heritage of humanity at large, highlighting the intrinsic value of cultural property beyond mere material worth.

In spite of the extensive provisions of the 1954 Hague Convention regarding the safeguarding of cultural property, art. 4(2) of the same Convention complicates the issue by allowing the targeting, damaging, or destruction of cultural property in the interest of military necessity. This provision allows states to waive their obligations in case of „imperative military necessity,” which is subject to subjective



interpretation, rendering the implementation of IHL rules more challenging and perplexing. Although the issue was later addressed in Additional Protocol II of the 1954 Hague Convention, this has left many complexities in the implementation of the rules.<sup>9</sup>

## 7. Additional Protocol II

AP II introduced the concept of „enhanced protection,” which offers some level of safeguarding for cultural property and subjects parties to scrutiny and accountability. Article 6 of AP II marks a significant step in the protection of cultural property by ensuring that the destruction of any protected property cannot be justified by the principle of military necessity. Article 6 also outlines the circumstances in which military necessity may be „imperatively required,” namely that the cultural property has been turned into a military target and when there is no viable alternative to achieve a similar military advantage without targeting it. AP II provides further measures for the protection of cultural property by establishing a committee to ensure compliance with its provisions and imposing sanctions for any violations. The Committee is made up of twelve executive members and has the authority to scrutinize proposed properties for cultural protection. Article 11 of AP II outlines the procedure for states to apply for enhanced protection of their cultural property.

This protocol has paved the way for further legal regimes, including the role of the ICC in enforcing these protections.

## 8. ICC’s role in cultural protection

The incorporation of cultural protection in International Criminal law is not a recent development and has its roots in the Hague Regulations of 1907. Article 3(d) of the Statute of the International Criminal Tribunal of Yugoslavia (ICTY) specifies the violation of the laws of war if action includes the seizure, destruction, or intentional damage of buildings used for religious, educational, or charitable purposes.<sup>10</sup> This article protects the cultural heritage of conflicting parties. The protection of cultural property in time of conflict has gained more attention in international forums, as is seen in the drafting of the Rome Statute.

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<sup>9</sup> C. Forrest, “The Doctrine of Military Necessity and The Protection of Cultural Property During Armed Conflict”, *California Western International Law Journal* 2007, vol. 37, pp. 177–219.

<sup>10</sup> D. Shraga, Z. Ralph, “The International Criminal Tribunal for the Former Yugoslavia”, *European Journal om International Law* 1994, vol. 5, pp. 360–380.

The Rome Statute, which was adopted in July 1998, grants the ICC the authority and jurisdiction to address crimes against cultural property or those that impact it (as outlined in art. 8 para. 2 subpara.b point ix, art. 8 para. 2 subpara. e point iv of the Rome Statute). The importance of culture as a means of uniting people with a „common bond” is also recognized in the preamble to the Statute.

Article 8 of the Rome Statute designates any deliberate attack on buildings of cultural or religious significance, including those dedicated to education, religion, art, history, or charity, as a war crime, since these are not military objectives. This article also grants the ICC jurisdiction over both international and non-international armed conflicts at the national level.

The ICC’s supplementary jurisdiction only applies when a state is incapable of prosecuting alleged crimes and requires states to enact laws allowing them to prosecute such crimes.<sup>11</sup> Taken together, these treaties, conventions, regulations, and statutes establish minimum standards for protecting cultural property during armed conflicts, as well as limitations on states’ actions during such conflicts. However, for these legal frameworks to be fully applicable and enforced, they must be ratified by states. Therefore, it is crucial for these treaties to be widely adopted and generally accepted to ensure effective compliance mechanisms.

## 9. Analysis

Upon examination of the current regime established for safeguarding cultural property, it is imperative to scrutinize and evaluate the efficacy of relevant treaties and regulations in addressing the challenges posed by armed conflicts. To comprehend the distinctive challenges associated with cultural protection, we give the case of the 2003 invasion of Iraq by coalition forces. Given Iraq’s rich cultural and religious history, it serves as a good illustration for the purposes of this article. The lead-up to the attack witnessed one of the most catastrophic instances of damage inflicted on cultural heritage in a matter of days. The Baghdad National Museum was assaulted on 10 April 2003, leading to the disappearance of thousands of objects. Subsequently, the National Library was set ablaze. As reported, numerous volumes and historical documents were destroyed, and several sites were looted. The collapse of the government provided a gateway for many gangs and groups to indulge in these criminal activities. The international community expressed deep worry over the conversion of archaeological sites into military bases by the US-led coalition,

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<sup>11</sup> For reference see: International Criminal Court Project’s, “The ICC and Cultural Property: Reinforced Legal Enforcement of the Protection of Cultural Property in Armed Conflict”, by S.S. Shoamanesh, 22 June 2022, <https://www.international-criminal-justice-today.org/arguendo/the-icc-and-cultural-property/> (accessed: 15.03.2023).

such as at Ur, a third-millennium BCE site in southern Iraq, and at Babylon, near Hilla, a second and first-millennium BCE site of great historical significance.<sup>12</sup>

Nonetheless, the establishment of the Iraqi Special Tribunal (IST) following the invasion failed to adequately address the issue of cultural property protection due to the IST statute's failure to explicitly link it with crimes against humanity or war crimes. Subsequently, due to rise of ISIS forces and their occupation of Iraq in 2014, numerous sites such as Hatra were declared endangered by UNESCO.<sup>13</sup> These events demonstrated to the international community that the mere drafting of legislation is insufficient, as its effectiveness is contingent upon its acceptance, recognition, and adoption by states on a broad scale.

As is suggested above, recent times have witnessed the development of more explicit, robust, and structured international law concerning the safeguarding of culturally significant property during armed conflicts. Despite the extensive legal framework relevant to this issue, its effectiveness is undermined by certain shortcomings. One of the primary issues is that cultural property is defined differently in various legal documents, which results in ambiguity and lack of clarity. The Hague Rules, for instance, protect any structures utilized for benevolent, scientific, artistic, or religious purposes, along with significant historical structures and individual artworks, during armed conflicts. In order to provide enhanced protection while considering the subjective nature of terms like „historic” and „artistic,” the drafters of the 1954 Hague Convention used the word „Cultural Property.” Additionally, UNESCO promulgated two relevant conventions in 1970 and 1972, which differ significantly in their use of terminology. The 1970 UNESCO Convention covers movable objects, including rare specimens and collections of flora, fauna, minerals, and anatomy, while the 1972 UNESCO Convention pertains to cultural heritage of an immovable nature and even embraces landscapes, thus broadening the concept further. UNESCO has also adapted its definitions of cultural property with nine recommendations between 1956 and 1980; each of them defines cultural property differently. The presence of relatively ambiguous definitions can cause omissions, and a more consistent definition is imperative.

An issue of paramount concern pertains to the concept of „imperative military necessity.” Given the ambiguous nature of this term, it appears that states may exploit it to justify their actions.<sup>14</sup> Commanders can use this uncertainty to excuse

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<sup>12</sup> G. Palumbo, “The State of Iraq’s Cultural Heritage in the Aftermath of the 2003 War”, *The Brown Journal of World Affairs* 2005, vol. 5, no. 1, pp. 225–238.

<sup>13</sup> I. Ralby, “Prosecuting cultural property crimes in Iraq”, *Georgetown Journal of International Law* 2005, vol. 37, pp. 165–192.

<sup>14</sup> P. Gerstenblith, “The Obligations Contained in International Treaties of Armed Forces to Protect Cultural Heritage in Times of Armed Conflict”, *Archaeology, Cultural Property, and the Military*, ed. L. Rush, The Boydell Press, Rochester, NY 2012.

attacks against cultural property instead of limiting their options.<sup>15</sup> While AP II provides a more precise definition of „imperative,” there are no established guidelines for rationalizing decision-making. Therefore, it is crucial to investigate and explicate this concept of military necessity in the most coherent, elaborate, and transparent manner, especially in the light of current circumstances.

The workability of these regulations faces another obstacle from the states themselves. According to the 1954 Hague Convention and Protocol II, states hold the authority to determine and designate their cultural property and assign protective emblems to the relevant sites. States must identify the sites and bring them under protection to call for enhanced protection. However, in states where cultural property is a source of conflict, few specific properties will receive protection, while others may be neglected, as in states with significant sectarian differences. The legal framework also imposes an obligation on states to register their sites as cultural property with UNESCO. Failure to register the sites for increased protection may bring legal complications for states in the future.

Furthermore, the existing two-tier system of protection is subject to controversy. Although the 1954 Hague Convention introduced a general and special protection mechanism, the process of requesting special protection is exceptionally stringent, resulting in limited success. The AP II created a new mechanism that offered better and more flexible general protection with greater clarity, yet the procedure's success cannot be guaranteed. Few scholars are of the view that identified properties reduce danger, as identification makes intentional targeting more feasible.<sup>16</sup>

There is no denying that armed conflicts inevitably lead to large-scale destruction, with cultural property being a particularly vulnerable target for damaging an enemy's pride. Thus, it becomes crucial for peacekeeping missions to include the protection of such property in their mandates. To deal with such violations, a coherent framework that can be applied to peacekeeping troops is necessary. However, in practical terms, the United Nations is not authorised to bring peacekeepers under international treaties, as they are multinational, and not all of the relevant instruments have been ratified. The United Nations has made several attempts to address this issue, but it remains unresolved to date.

In the realm of protecting culturally significant property, it is essential to take into account the expenses that come with such protection, which includes identifying and registering property, constructing shelters, and hiring professional services. However, member states of the 1954 Hague Convention and Protocol II face challenges because of a lack of infrastructure and services, which can only be resolved with the help of international organizations. The legal system has set a precedent

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<sup>15</sup> C. Forrest, “The Doctrine of Military Necessity...”, pp. 177–219.

<sup>16</sup> S. Van der Auwera, “International Law and the Protection of Cultural Property in the Event of Armed Conflict: Actual Problems and Challenges”, *The Journal of Arts Management, Law, and Society* 2013, vol. 43, no. 4, pp. 175–190.

for handling with cultural property's intentional damage through cases such as that of Al Mahdi, which established such actions as a war crime. However, investigating such crimes may be problematic, as accessing evidence and assessing the condition of the property can be difficult.

## 10. Conclusions

Despite the passage of many decades, states continue to be guilty of the destruction of cultural property during armed conflict, and the legal framework designed to prevent such destruction often goes unheeded. A good contemporary example is Russian aggression against Ukraine, which constitutes an attack on its culture. Putin's policy toward Ukraine and Belarus has consistently demonstrated Russia's rejection of the „artificial” identities attributed to these states. This policy was evident in Russia's annexation of the Crimea in 2014, and has been characterized by many as an „imperial strategy.” Russia's history of attacking Syrian hospitals and significant cultural sites indicates a disregard for international norms.

Cultural property disputes are frequently skewed, with both perspectives embodying an ideological position that has been predetermined. The question that emerges after a thorough analysis of nationalism and internationalism is: Are cultural internationalists right to seek the preservation of cultural property? Unquestionably, the concepts of accessibility, safeguarding, and maintenance are significant to some level, but never to the point where they supersede concerns about control, feelings, or ties to the past. Cultural property is essential to human identity and needs to be protected at all costs. The inhabitants of a country should not, however, be denied the privilege of viewing their prized cultural property because of the remote possibility that the cultural property may be destroyed in its homeland state.

The wanton destruction of cultural property, as discussed earlier, underscores the need for international legal instruments that would require states to ratify, implement, and enforce measures aimed at safeguarding such assets, with a view to addressing existing inconsistencies. Although discussions at the international level have often focused on the need for a new instrument, the effectiveness of any such instrument would still depend on the willingness of states to ratify and implement it.

Drawing upon the foregoing discussion, several recommendations can be formulated to offer pragmatic solutions to the intricate complications and challenges associated with the safeguarding of cultural property. Foremost among these is the urgent need for states to pursue robust measures for the protection of civilians and their objects in armed conflicts, which would concomitantly fortify the safeguarding of cultural property. Secondly, states should exercise vigilance and endeavour to secure the protection emblem while registering their properties as cultural property or heritage property. Thirdly, in view of the contemporary conflicts in Syria, Iraq,

and Afghanistan, it is imperative that donors and stakeholders support heritage professionals, incorporate local volunteers, and acknowledge new local networks capable of responding swiftly to frontline changes or emerging requirements. Given that the consequences of failing to protect cultural property are felt long after hostilities have ceased, a dynamic and comprehensive plan for safeguarding such is much needed. At present, cheaper yet influential projects offer the best opportunity to shield Ukrainian heritage from further harm. The „Prince Claus Foundation’s Cultural Emergency Response Program” and the „International Alliance for the Protection of Heritage in Conflict Areas” have already responded to the ongoing conflict. However, further donor organizations are necessary, particularly those capable of reaching a local network.

Finally, in view of the force of art. 1 of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, opened for signature at Geneva on 18 May 1977 and entered into force on 5 October 1978, which recognizes damage to cultural property as a serious breach punishable under international criminal law, the ICC can play a pivotal role in prosecuting and penalizing the perpetrators. Additionally, the ICC can address the current gap in the interpretation of the term „military necessity,” while establishing clear and concise repercussions for states that intentionally target cultural property.

To implement the existing regime with greater efficacy, it is strongly advised that states optimize the utilization of the regime presently in force by scrupulously adhering to it, evincing heightened participation, enhanced compliance, and by establishing a robust mechanism for ensuring compliance.

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- International Declaration concerning the Laws and Customs of War, adopted by the Conference of Brussels on 27 August 1874
- Laws and Customs of War on Land (29 July 1899)
- Hague Convention (IV) respecting the Laws and Customs of War on Land (18 October 1907)
- Convention Relative to the Protection of Civilian Persons in Time of War, signed at Geneva on 12 August 1949
- Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 14 May 1954
- the UNESCO Convention concerning the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by UNESCO in Paris on 16 November 1970
- Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted in Paris on 16 November 1972
- Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, opened for signature at Geneva on 18 May 1977 and entered into force on 5 October 1978
- Additional Protocol II to the 1954 Hague Convention, which entered into force in 1999

### SUMMARY

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### PROTECTION AND PRESERVATION OF CULTURAL HERITAGE DURING ARMED CONFLICT: UNDERSTANDING THE ACCOUNTABILITY OF A STATE UNDER INTERNATIONAL HUMANITARIAN LAW

In contemporary armed conflicts, the discourse surrounding regulations pertaining to the safeguarding of cultural property under International Humanitarian Law (IHL) has regained

its salience. With the latest advancements in technology and other aspects of warfare, the intricacies associated with the application of legal frameworks in the theatre of war have become increasingly convoluted. Notably, the preservation of cultural property during armed conflict has presented a significant challenge to International Humanitarian Law. Although the United Nations offers a multifaceted prototype for the protection of cultural property held by states, the implementation of these regulations is encumbered by gaps, which impede the complete compliance of the parties involved. This article analyses the legal frameworks pertinent to cultural property, with a particular focus on IHL. Furthermore, it offers several suggestions that can be implemented to preserve cultural property of significance and value, while addressing current lacunae in implementation.

Keywords: cultural property, international humanitarian law, armed conflict, Russia – Ukraine

## STRESZCZENIE

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### OCHRONA I ZACHOWANIE DZIEDZICTWA KULTUROWEGO PODCZAS KONFLIKTU ZBROJNEGO – ZROZUMIENIE ODPOWIEDZIALNOŚCI PAŃSTWA NA MOCY MIĘDZYNARODOWEGO PRAWA HUMANITARNEGO

We współczesnych konfliktach zbrojnych dyskurs dotyczący przepisów odnoszących się do ochrony dóbr kultury w ramach międzynarodowego prawa humanitarnego (MPH) zyskał na znaczeniu. Wraz z najnowszymi osiągnięciami technologicznymi i innymi aspektami działań wojennych zawilości związane ze stosowaniem ram prawnych w teatrze wojny stają się coraz bardziej skomplikowane. W szczególności ochrona dóbr kultury podczas konfliktu zbrojnego stanowi poważne wyzwanie dla międzynarodowego prawa humanitarnego. Choć Organizacja Narodów Zjednoczonych oferuje wieloaspektowy wzór ochrony dóbr kultury będących w posiadaniu państw, wdrażanie tych przepisów jest obarczone lukami, które utrudniają pełną zgodność zaangażowanych stron. W artykule poddano analizie ramy prawne odnoszące się do dóbr kultury, ze szczególnym uwzględnieniem międzynarodowego prawa humanitarnego. Ponadto przedstawiono w nim kilka sugestii, które można wdrożyć w celu ochrony dóbr kultury o istotnym znaczeniu i wartości, jednocześnie usuwając obecne luki w ich wdrażaniu.

Słowa kluczowe: dobro kultury, międzynarodowe prawo humanitarne, konflikt zbrojny, Rosja – Ukraina