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SIGNIFICANCE AND APPLICATION OF THE HAGUE CONVENTION 1954

Abstract: This article presents the key aspects of the system of international protection of cultural property in the event of armed conflict, established by the Hague Convention of 1954. It is written in the name of the 60th anniversary of the adoption of the Convention.

Keywords: armed conflict, international protection, safeguarding, respect, immunity.

Historical context, significance and the meaning of the convention

Historical context

The convention has been adopted in the Hague, on May 14th 1954, at the Intergovernmental Conference on the Protection of Cultural Property in the event of Armed Conflict (held in the period 21 April to 14 May 1954), organized by UNESCO and the Government of the Kingdom of the Netherlands. There were 56 UNESCO Member States, among which was the then FNRY, participating at the Conference, out of 86 states invited. At the Conference 7 treaties and documents were adopted – 3 legal and 4 political, namely: Convention for the Protection of Cultural Property in the Event of Armed Conflict; Regulation for the execution of the Convention; Protocol for the Protection of Cultural Property in the Event of Armed Conflict; 3 resolutions (Resolution I, II and III) and Final Act. The Convention entered into force on 7th

August 1956, after at least 5 States had ratified it, among which was the then FNR¹.

The International Conference was organized on the eve of the 10th anniversary of the Second World War, and on occasion and in the shadow of the Korean War (1950-1953). It is a period when new rules for international armed conflicts have been established on the international scene, shaped in many conventions, protocols and other international agreements. The beginnings of this process are related to the Geneva Conventions of 12 August 1949, on the humanitarian protection of the wounded, sick, shipwrecked, prisoners of war and civilians. After this, number of international agreements on arms limitation and prohibition of production and use of certain types of weapons and other military equipment have been adopted in phases. Also, it is a period when on national level many countries already adopted relevant regulations on monuments, and the national services for protection of monuments and antiquities intensively worked on alleviating the consequences of the recent wars.

In such context, the mere holding of the International Conference on the Protection of Cultural Property and its outcome, represent an important historical step. In fact, it was the first time that the humanitarian protection of cultural property was understood and treated as a separate area on the international level. Before that, the protection of cultural property was treated within the framework of the military international agreements, as are those from 1899 and 1907², and as an exception in specific international agreements, but only at regional level, such as those of 1935³, related to the countries of the American Continent.

¹ The former FNR had ratified the Convention with special Law of 28.12.1955 ("Official gazette of FNR - International treaties" No. 4/56). After the fall of the former SFRY, this Convention entered into force in Republic of Macedonia on 30th April 1997. It followed after the submission of the notification act on 30th October 1996, in accordance with the *Conclusion of the Government of the Republic of Macedonia for succession of the conventions related to the areas under jurisdiction of UNESCO, which had been ratified by the former SFRY*, No. 23-17/26 of 15.06.1995.

² General/universal international military treaties: (a) Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899; (b) Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 - known as the Convention IV of 1907; (c) Convention concerning Bombardment by Naval Forces in Time of War. The Hague, 18 October 1907 - known as the Convention IX of 1907.

³ The Washington Pact, of 15 April 1935, known as the Roerich Pact, which actually entails two separate pacts: (a) Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (relevant for 21 States at the American Continent) and (b) Treaty for Protection of Movable Property of Historical Value (relevant for 6 American States).

In the period between the two World Wars, attempts have been repeatedly made to adopt special international instruments in the field of protection of cultural heritage, among which, of particular importance are the ones from 1918, 1923 and 1938.⁴

Significance of the Hague convention

The historical significance of the Hague Convention of 1954 is primarily in that it represents the first successful codification of specific rules for international aid to protect cultural property. In fact, it basically re-affirms, to a small extent reviews and, significantly upgrades the rules for protection of cultural property in the event of war, set up in the Hague Conventions of 1899 and 1907 and, in particular, those contained in the Covenants of 1935. The actual improvement was primarily done by accepting the ideas and commitments contained in the documents from 1918, 1923 and 1938, but also by reaching a compromise on the key elements of the model of international humanitarian protection of cultural goods.

Thus, in this case, it should be stressed that the term cultural property, as a generic term for the subject of protection, was first used and accepted at the Hague Convention of 1954. It was in function of standardization of monumental terminology, or to overcome the problem of terminology identification, given that nationally and internationally there was real variety of expressions to identify the relevant category of goods. At the same time, the first official international definition of cultural goods was styled.⁵

4 (a) Initiative for protection of artists in war, from 1918 (act of the Dutch archeological society); (b) Draft-rules on air warfare, form 1923 (act of the so-called Washington Commission of Jurists); (B) Draft-international contract for protection of monuments and artworks in the event of armed conflict, from April 1938 (according to the so called Project Witcher from 1936).

5 The definition is as follows: "For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

(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'." (article 1).

Also, an international definition of the term “protection of cultural property”, styled in the context of the purpose of the Convention, was first established then. Namely, this term was defined in its passive and limited form, understood as a special form of protection, different from the so-called standard or regular care. In that sense, the expression *protection of cultural goods* implies *safeguarding of and respect for cultural property*, but not any safeguarding nor any respect, but only the ones associated with an armed conflict. Consequently, the term *safeguarding* is limited to “preparations”, i.e. taking appropriate preparatory measures in time of peace for the safeguarding of cultural property situated within countries’ own territory against the foreseeable effects of an armed conflict. The term *respect* is limited to refraining from taking destructive actions against cultural property during armed conflict. Therefore, according to this Convention, the term *protection of cultural property* does not cover all peace-time, nor all protective actions during armed conflict. Also, the term does not cover the *post-war protective activities*. In this case, this terminology distinction is necessary, if one wants to penetrate into the spirit of the Convention and understand its meaning.

Meaning of the Convention

The meaning of the adoption of the Hague Convention of 1954 is in the creation, development and promotion of common principles that States shall follow in their bilateral and international relations, in specific circumstances in the event of armed conflict, and in relation to a specific category of material property. Hence, the Convention was created as an international legal instrument to remove the dangers of adverse consequences on cultural goods and reduce the possibilities for misunderstanding between states regarding those goods. In short, its meaning is to establish a system of international protection of cultural property in the event of armed conflict, which will ensure and guarantee their integrity and survival in such conditions.

International protection of the cultural property

Basic principles: safeguarding and respect

The system of international protection of cultural objects, established by this Convention is in fact a combination of national and international measures, profiled as a model of humanitarian protection. This model is based on two key principles:

- the principle of safeguarding the cultural property, which includes measures to be taken during peace-time and

- the principle of respect for cultural property, which includes measures taken during armed conflict and occupation.

Thereby, in the Convention the emphasis was placed not so much on safeguarding of, as on the segment of respect for cultural property. More precisely, the safeguarding segment was profiled only partially, unlike the segment of respect, which was designed to a degree to achieve the necessary compromise at the time. It can be seen from the comparison of these components on the model of protection itself.

While the Convention has been created, 10 measures were offered by the Secretariat of UNESCO related to safeguarding of cultural property⁶. However, at that time there was no consensus to accept these measures as obligations of the Member States. In fact, the Convention provides just few obligations for safeguarding of cultural property, including: 1. preparation in time of peace for the safeguarding of cultural property, by taking such measures as they consider appropriate (article 3); 2. Designation of cultural property with the emblem of the Convention (article 6); 3. introducing into their military regulations or instructions such provisions as may ensure observance of the present Convention (article 7, paragraph 1); 4. fostering in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples (article 7, paragraph 1); 5. establishing within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it (article 7, paragraph 2); 6. Determining a model of identity card and armband for the competent authorities for control and authorities for protection of cultural property (article 21 of the Regulations).

6 The following had been stated as necessary measures for safeguarding of cultural goods: 1. Establishment of a consulting body – national committee for implementation of the Hague Convention; 2. Establishment or determination of one authority or institution, which will be specifically responsible for protection of cultural property during hostilities; 3. Establishment and timely keeping of special inventory of cultural property, subject of the Convention; 4. Categorization of cultural property protected by the Convention; 5. Providing of documentation for the cultural property, its safekeeping (on 3 different locations) and obligatory microfilming; 6. Developing plans for evacuation, designating movable goods by their priority for evacuation, organization of the evacuation and provision of appropriate packaging and transportation; 7. Providing refuges for the cultural property, and each institution which has movable cultural property should have 1-2 refuges in good conditions in terms of room temperature, humidity, light, alarm systems etc.; 8. Ensuring fire protection; 9. Providing architectonic- technical protection, conservation and restoration of cultural goods; 10. Adopting laws, byelaws and other regulative for implementation of the Convention.

On the other hand, unlike safeguarding, the segment of respects of cultural property is profiled into several directions, namely:

- establishment of a special institutional framework of international humanitarian protection of cultural property;
- establishing immunity of cultural property on two levels, i.e. two levels of protection: general and special protection;
- establishment of two separate instruments of protection.

The institutional framework is flexible, comprised of several subjects: *Protecting powers*: States safeguarding the interests of the Parties in conflict, through their appointed delegates; Commissioner-General for cultural property; National representative for cultural goods of the State which territory is involved in the conflict; Special representative appointed by the State in occupation of another territory for cultural property on the occupied territory; Inspector for cultural property; Experts for cultural property. Despite this, in the Regulations for the execution of the Convention itself, two separate instruments for protection are provided: international list consisting of all persons qualified to carry out the functions of Commissioner-General for Cultural Property (compiled by the Director General of UNESCO, on the proposal of the States Parties); International Register of Cultural Property under Special Protection (maintained by the Director General of UNESCO, according to the Regulations for maintaining of the Register from 18th August 1956, proposed by himself).

General protection

The *general protection of cultural property* is given the most important place in the Convention. It is the basic form of international protection, understood as the lowest level of protection that is the absolute minimum of humanity in the event of armed conflict. It is based on 4 basic principles of international military / humanitarian law, which can also apply to international monumental law:

- principle of humanity - not to attack protected persons and objects;
- principle of military necessity - to attack only military targets;
- principle of proportionality - not to use excessive military force;
- principle of limitation - only use permissible means and methods of combat.

These principles in the Convention are summarized and expressed as a principle of respect of cultural goods, which covers:

- ensuring the immunity of cultural property under special protection by strict obligation for refraining from any act of hostility directed against such property;
- prohibitions by the State Parties;
- basic responsibilities by the occupying force towards the cultural property at the occupied territory;
- waiver of the obligations for general immunity due to imperative military necessity.

The general immunity entails few strict refraining obligations: 1. refraining from any use of the cultural property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict (article 4, par. 1); 2. refraining from any act of hostility, directed against such property (article 4, par. 1); 3. refraining from requisitioning movable cultural property situated in the territory of another High Contracting Party (article 4, par. 3); 4. refraining from any act directed by way of reprisals against cultural property (article 4, par. 4). Any evading of these obligations is unlawful act, disrespect of the general prohibition, and subsequently an international criminal act, or violation of the Convention. No High Contracting Party may evade these obligations, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard of cultural property (article 4, par. 5). The first two may be waived only in cases where military necessity imperatively requires such a waiver (article 4, par. 2).

In this case, the weak point of the Hague Convention of 1954 is that the issue of cancelation of the general immunity on the basis of imperative military necessity is not elaborated. This shortcoming, as a legal gap, is overcome with the Second Protocol to the Hague Convention of 1999⁷. More precisely, the imperative military necessity as a legal basis for a military attack on a cultural property under general protection, according to the Second Protocol, covers two different situations of waiving from the obligation to respect cultural property, namely:

1. Imperative military necessity is not just any situation provoked by use of a cultural property as a military objective, but only when there is no feasible alternative available to obtain a similar military advantage

⁷ The Second Protocol is adopted on 26 March 1999 in Hague, on the Diplomatic conference organized for that purpose. It entered into force on 9 March 2004. Republic of Macedonia has ratified this Protocol with the Law of 23 January 2002 ("Official Gazette of RM – International treaties" N. 13/2002).

(article 6, par. 1 of the Second Protocol and article 4 par. 2 of the Convention);

2. Imperative military necessity is also the need for obtaining military advantage, no matter if the cultural property under general protection can be damaged or destroyed and no matter that it is not made into a military objective (article 6, par. 2 of the Second Protocol and article 4 par. 2 of the Convention).

In both cases, the decision to invoke imperative military necessity shall only be taken by an officer commanding a force the equivalent of a battalion in size or larger, and:

- In the first case, according to the circumstances, the opposing party should be given an effective advance warning, and in the second case – the waiver is not limited by such advance warning;
- The precautions in attack have to be undertaken, particularly: (a) to verify that the objectives to be attacked are not cultural property under general protection; (b) take all feasible precautions in the choice of means and methods of attack with a view to minimize the damage to cultural property; (c) cancel the attack on cultural property if it becomes apparent that the expected damage would be excessive in relation to the military advantage anticipated (article 7. 1, 2 and 3 of the Second Protocol).

In that sense, the general protection of cultural property in the event of armed conflict is not unconditional or invulnerable. On the contrary. It is still subordinated to the imperative military necessity, as a priority public interest in military conditions, regardless of the envisaged limitations of military necessity and guaranteeing the general immunity of cultural property.

The general protection also involves the obligations of the State Parties to prohibit, prevent and put a stop to:

- any form of theft, pillage or misappropriation of cultural property in any form;
- any acts of vandalism directed against cultural property (article 4 par. 3 of the Convention).

Special protection

Special attention in the Convention and its Regulations is placed on the higher level of international protection, officially named as *special protection*, different from the *general protection*.

The special protection of cultural property covers:

- special international immunity of selected cultural property - refuges, centers containing monuments and other immovable cultural property of very great importance, recorded in the International Register of Cultural Property under Special Protection, provided that they: (a) are situated at an adequate distance from a vulnerable point, and (b) are not used for military purposes (article 8);
- special international immunity for transport under special protection (article 12);
- special international immunity for transport in urgent cases (article 13);
- special international immunity from seizure, placing in prize, or capture to cultural property and means of transport enjoying the protection provided for in article 12 or article 13 of the Convention (article 14).

The special protection, and the international immunity itself, is granted following special procedures for: immovable cultural property, special transport and urgent transport.

The special protection covers:

- obligatory marking with the emblem of the Convention, repeated 3 times;
- openness for international control by authorized personnel.

The acquired special international immunity of immovable cultural property can be withdrawn only in exceptional cases, such as:

1. If one of the Parties commits, in respect of any item of cultural property under special protection, a violation of the obligations to ensure the immunity of the property, i.e. when the property is used in military purposes, and the opposing Party has, so long as this violation persists, whenever possible, requested the cessation of immunity within a reasonable time (article 11, par. 1).
2. In exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity (article 11, par. 2).

Unavoidable military necessity is only the necessity which allows military attack on a cultural property under special protection, regardless of whether

this property or its immediate surroundings is used in military purposes by the opposing party.

Overall, even with special protection, the Hague Convention of 1954 does not provide unconditional priority to the protection of cultural property as indisputable and internationally recognized public interest. It can be exercised only to the extent that it does not endanger the higher public interest - military necessity (imperative or inevitable), understood as the interest that allows the use of armed forces to overcome the enemy or performing military task, albeit at the expense of protected cultural goods.

Instead of conclusion

The Hague Convention of 1954 is one of the relevant international instruments for the protection of cultural property in the event of armed conflict. It contains specific rules for the international protection of cultural property in such cases. These rules, however, do not exclude the possibility of an attack on cultural property, due to imperative and unavoidable military necessity.

Hence, the meaning of the principle of safeguarding of cultural property and the importance of peace-time commitments for necessary preparatory measures become proportionately more significant. Namely, it would be quite paradoxical, the enemy and his army to be expected to be more concerned for the cultural property than the competent domicile authorities, if they themselves hadn't undertaken the appropriate necessary preparatory measures for safeguarding their own cultural heritage. This paradox, as syndrome, unfortunately, remains a hallmark of our relationship to the national cultural heritage, given the example of the internal armed conflict in Macedonia in 2001. The damage and destruction of many cultural monuments during that armed conflict, among others, demonstrated the need for serious actions related to the implementation of the Hague Convention of 1954. Namely, the implementation of a significant part of the obligations undertaken with the adoption of the Convention remains an open question and presents a real problem

Bibliography:

- Vasileski, Voislav, *Megunarodno voeno pravo*, Skopje, 1988.
- Vasileski, Voislav, *Megunarodno humanitarno pravo*, Skopje, 2002.
- Konopka, Jean, *La protection des biens culturels en temps de guerre et de paix d'après les conventions internationales (multilatérales): Recueil de textes*, Genève, 1997.

- Ristov, Jovan, „Revizija na Haskata konvencija od 1954 godina”, *Kulturno nasledstvo*, Skopje, Republicki zavod za zastita na spomenicite na kulturata, 24-25 (1997-1998), 1999, 239-250.
- Ristov, Jovan, *Haskiot protokol od 1999 godina: zastita na kulturnite dobra vo slucaj na vooruzen udir*, Skopje, 2002.
- Ristov, Jovan, „Legal Aspects of Protection of Cultural Heritage in the Case of Non-international Armed Conflict”, *Heritage at Risk: ICOMOS World reports 2002/2003 on Monuments and Sites in Danger*, ICOMOS, 2003, 133-134.
- Toman, Jiri, *The protection of Cultural Property in the Event of Armed Conflict*, UNESCO, 1996.
- UNESCO, *Rules established by the Director-general of UNESCO concerning the International Register of Cultural Property under Special Protection*, CL/1136 – G, 1956.
- UNESCO, *Draft provisions for the revision of the 1954 Hague Convention and commentary from the UNESCO Secretariat*, CLT 97/CONF. 208/2.