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IMPLEMENTATION OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT – CROATIAN EXPERIENCE
IMPLEMENTATION OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

1. Armed conflicts and the protection of cultural property

"From the times of the Bible and the shedding of Abel's innocent blood, history has been written in blood, most of its pages inscribed with a sword and only a smaller part under candle light with the pen of a humanist"¹

The part of human history written in blood can, without doubt, open to question our belief in man and his capacity to learn from the experience of others. Therefore, before embarking on this and similar topics, one should take on a realistic approach and be completely aware of the fact that one more negative or instructive experience, this time written in Croatian blood, will neither bring about a radical change in human behaviour, nor have an impact on future international relations. In spite of that, however, we the truth to history because someone will study it someday.

One of the oldest documents testifying to man's desire to preserve cultural heritage in times of war is the decision brought by the Delphi amphictyony² about 1100 BC which prohibited, in case of the attack on a city that is a member of the association, its total destruction and leaving it without water during the siege. By the same document the Amphictyonic Council prescribed not only the protection of the Delphi shrine but also stipulated very strict sanctions for violators of this decision which is one of the first known international agreements containing laws on warfare and rules on the protection of cultural heritage.

The second written trace from ancient history is found in the legal complaint and Cicero's³ speech before the court at the trial of Gaius Verres⁴, the notorious governor of Sicily convicted for theft and shrine plunder. In his fourth speech Cicero mentions as an example the Roman commander

¹ Josip Depolo, "Croatian Los Desastes, On the margins of Ivan Lacković Croatia's new (anti) war cycle of drawings", from the collection "The Eyes of Truth", a series of exhibitions prompted by the war in Croatia and held in Zagreb and abroad.
² A religious and political association of neighboring states in ancient Greece with common religious festivities.
³ Marcus Tullius Cicero, Roman orator, philosopher and statesman (106-43 BC)
⁴ Gaius Verres was the governor of Sicily from 73-71 BC, known as a thief, swindler and despot.
Marcellus\(^5\), who did not permit the destruction and plundering of cultural heritage during the siege of Syracuse.

Even after the Vandals appeared in 445 and in fact gave the present meaning to the word "vandalism" because they conquer and plundered Rome and destroyed Roman cultural heritage, we find no written traces by Roman legislators on regulations aimed at preventing such behaviour in the future.

Not until the 18th century did the humanistic worldview take hold resulting among other things in the attempt to humanise war. This is the period in which Napoleon\(^6\), owing to his military campaigns, actually created Louvre\(^7\), which is to this day one of the richest museums in the world. The same period saw the spreading of opinions such as Vattel's\(^8\), who claimed that "the intentional destruction of public monuments, shrines, graves, sculptures, paintings, etc, was absolutely condemnable even by natural, human law, as unnecessary in the legitimate course of warfare" although their seizure as spoils of war was not considered an illegal act.

Not until the mid-nineteenth century, were there any serious attempts to legally regulate the protection of cultural property in the event of war. The development of legislation in this field can be traced through the following documents:

- **Instructions for military land troops of the United States of America** of 1863, Articles 34 and 35 of which prescribed the protection of cultural property in times of war, particularly in respect to private and church property, namely, collections in museums and scientific institutions;

- **Project concerning the international declaration on the laws and customs of war**, as the outcome of the Brussels Conference held in 1874, and in its time one of the most serious attempts to codify rules on warfare;

- **Oxford Manual concerning the Law on Land Warfare** of 1880, drafted after the "Brussels Project" by the Oxford Institute for International Law, but never translated into an international law act;

- **Conclusions of the I Hague Peace Conference and Convention on the Laws and Customs of War on Land with Regulations of 1899** which prohibited the destruction or misappropriation of enemy property "except in circumstances in which such destruction or misappropriation are absolutely required by war necessity". The provisions of this Convention for the protection of cultural property represent the first international codification of such rules;

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\(^5\) Marcelus, Roman commander, the conqueror of Syracuse in 212 BC an example of humanness, honesty and educated lover of culture.

\(^6\) Napoleon I Bonaparte (1769-1821) French general and emperor.

\(^7\) The Louvre Museum acquired its most valuable collections during Napoleon's campaigns. The director of the Museum at that time, Vivant-Denon accompanied the emperor's troops in these campaigns, choosing along the way works of art "worthy" of his Museum.

\(^8\) Vattel Emmerich (1714-1767) Swiss lawyer who devoted himself to studying the theory of international law.
- **II Hague Conference and Convention on the laws and customs of war on land** of 1907 in the provisions of Articles 27, 28 and 58 of the Regulations on the laws and customs of war on land;

- **IX Hague Convention on naval bombardment in times of war** of 1907 which stipulated in the provisions of articles 5, 6, and 7 the protection of cultural property during armed conflicts;

- **Draft War regulations in the event of air bombardment** prepared by the Commission of lawyers at the Hague session in 1923 proposed, as a novelty, the more detailed regulation of the protection, particularly of valuable cultural property;

- **Treaty on the protection of artistic and scientific institutions and historic monuments** (Washington or Reerich's Pact) of 1935 represented the first international treaty that was exclusively devoted to the protection of cultural property against threats of war;

- **Draft of the international convention for the protection of monuments and works of art during armed conflicts** prepared according to the instructions of the International Museum Organisation and submitted in September 1938 to the General Assembly of the League of Nations. Its adoption was, however, interrupted by the Second World War.

In the course of the Second World War, once again an enormous quantity of cultural property was destroyed in spite of the fact that in the majority of cases their destruction or damage was not dictated by immediate military necessity, but rather was the result of implementation in practice the principle of total warfare. Accordingly, immediately after the establishment of UNESCO, in the course of the first four sessions of its General Assembly, a widespread initiative was launched for establishing an international system for the protection of cultural property in the event of armed conflict. After numerous resolutions and long standing preparations which lasted from 1952 to 1954, the text of the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention was drafted. These documents were adopted at the Conference in The Hague in 1954. Forty-five out of 56 participants at the Conference signed the Final Act of the Conference. The Convention for the Protection of Cultural Property in the Event of War with the Regulations for the Execution of the Convention was signed by 37 member states, and the Protocol by 22 member states. Three additional resolutions were adopted at the Conference.

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2. Convention for the Protection of Cultural Property in the Event of Armed Conflict

"Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection, The Hague Convention was adopted."10

The principles concerning the protection of cultural property in the event of armed conflict as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact were taken as the point of departure for drafting the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

The Convention has forty articles divided into eight chapters. Their provisions establish the regime of protection for cultural property and stipulate the following:

- the definition of cultural property to which protection shall apply according to the provisions of the Convention (Article 1 of the Convention);
- principles of general protection of cultural property which include their safeguarding and respect in the event of armed conflict as well as the prohibition and refrain from any act of hostility that would inflict damage to cultural property (Article 2-4);
- the obligation of occupational forces to enable and assist in the protection of cultural property on occupied territories (Article 5 of the Convention);
- the manner of distinctively marking cultural property so as to facilitate its recognition (Article 6 of the Convention);
- the obligation of introducing in military regulations or instructions provisions as may ensure observance of the present Convention and of establishing specialist personnel for the implementation of military measures in the event of armed conflict (Article 7 of the Convention);
- granting of special protection for cultural property, the marking of cultural property under special protection with distinctive emblems, as

10 Part of the text from the Preamble of the Convention for the Protection of Cultural Property in the Event of Armed Conflict.
well as ensuring the immunity of cultural property under special protection (Article 8-11 of the Convention);

- the manner of transporting cultural property and granting of immunity from seizure, capture and prize (Articles 12-14 of the Convention);

- the obligation of respecting personnel engaged in the protection of cultural property by the opposing Party (Article 15 of the Convention);

- the distinctive emblem of the Convention and manner and conditions of its use (Article 16 and 17 of the Convention);

- the application of the Convention in time of peace and in conflicts not of an international character (Article 18 and 19 of the Convention);

- regulations for the execution of the Convention and sanctions in cases of the breach of the Convention;

- Final provisions which stipulate the legal implementation of the Convention (Article 29 to 40).

The most sensitive part of the Convention is contained in the provisions of Article 11, which enables the withdrawal of immunity from cultural property in exceptional cases of "unavoidable military necessity". This provision was drafted at the time of the bloc division and cold war climate in the 1950s. Nevertheless, even today after crucial changes have taken place on the political arena and as far as world security is concerned, and after the disappearance of bipolarity, numerous barriers still exist, especially in military circles, for deleting this provision from the Convention. On the other hand, experience has unequivocally shown that "military necessity" can in fact invalidate any serious attempt of protecting cultural property in times of war and that it serves as a justification for the destruction or damage of cultural property. The data on the number of cultural monuments damaged in Croatia's War of Independence clearly testifies to this.


By September 30, 1995, eighty-seven member states had ratified the Convention, and 74 member states had acceded to the Protocol. The Republic of Croatia acceded to the Convention on July 6, 1992.
It is important to mention that by notifying the Director-General of UNESCO, Serbia and Montenegro acceded to the Convention on April 27, 1992, invoking the accession of the SFR of Yugoslavia to the Convention.

Dubrovnik, Palace Dordic-Mayneri, 1991 (This imposing Baroque Palace was erected after the earthquake of 1667) The half of the Palace that was not destroyed in the fire contains a hallway and a staircase with a structure of Ionic columns.
3. The Protection of Cultural Property during the Croatian War of Independence

"The bombing of hospitals and other civilian buildings, the disregard of any war and humanitarian laws, the brutal abuse of the population by the Chetniks and other Serbian militants, evidence of which was given by refugees, are absolutely scandalous. On the other hand, we cannot but admire the serene courage and good organisation of the Croatian people."\(^{11}\)

3.1. Measures of protection taken prior to and during the aggression on the Republic of Croatia

The protection of cultural property in the Republic of Croatia prior to the aggression was regulated by special laws which included: the Law on the protection of cultural monuments\(^{12}\), Law on museum activities\(^{13}\), Law on the protection of archival materials and archives\(^{14}\), as well as by other regulations. Within the framework of the legal system for the protection of cultural property, criminal legal protection was codified by the criminal law valid at that time which prescribed that damages to, destruction or pillage of cultural property in times of war, were criminal offences in accordance with Article 28 of the Convention.

In the implementation of Article 3 of the Convention, the then institutes for the protection of cultural monuments carried out activities geared at acquainting and educating the owners and holders of cultural property with measures they should undertake in order to protect cultural property in case of armed conflict or in other extraordinary circumstances. Special guidelines were prepared for the holders of cultural property with specific instructions on the procedures that should be taken for safeguarding cultural property from the consequences of the armed conflict. Activities on introducing security and technical conditions in the buildings and institutions holding valuable cultural property or collections (museums, archives, galleries, private and sacral collections) were systematically implemented. At the same time measures were taken for the systematic protection of the documentation on cultural property, by micro-filming and storing them for safekeeping on three different locations.

We can therefore note that even before the aggression on the Republic of Croatia, appropriate preparations were undertaken by competent state bodies and professional institutions of the Republic of Croatia, in compliance with the Convention.

\(^{12}\) Official Gazette, no. 7/67, 13/67, 25/77, 31/86, 47/89,19/91,26/93,52/94
\(^{13}\) Official Gazette, nos. 12/77,47/86,96/93,50/95
\(^{14}\) Official Gazette, no. 25/78
In mid 1991, when armed conflicts on Croatian soil became increasingly frequent, the then Ministry of Culture and Education, within the framework of which the Service for the protection of cultural monument was active, undertook a number of measures aimed at protecting and safeguarding cultural heritage from the aggression. The bestiality of the aggression against Croatia's cultural heritage was clearly evident from the very first attacks. For example, in the night of 25/26 July 1991, in the artillery attack on the Croatian town of Erdut, the medieval fortress, an immovable cultural monument of the greatest importance was heavily damaged.

In line with the then instructions and orders of the Minister of culture and education\(^5\), the following measures were undertaken:

- transition of the Service for the protection of cultural monuments and other similar institutions to work in extraordinary circumstances;
- the removal of permanent exhibits in museums and galleries and their storing for safekeeping;
- selection of the most significant cultural property according to the level of possible threat from the consequences of armed conflicts;
- packing of movable cultural property and their evacuation to safe places;
- distinctive marking of the most significant immovable cultural property and institutions housing cultural property with emblems stipulated in Article 16 of the Convention;
- the marking of vehicles and personnel engaged in the protection of cultural property in the event of armed conflict with emblems prescribed in Article 16 of the Convention;
- technical protection of the most important immovable cultural property.

\(^{15}\) Instructions on the undertaking of measures for the protection of cultural property in states of emergency (class: 612-08/91-01-43, Reg. no. 532-03-3/2-91-02) of July 8, 1991; Decree on measures of direct protection and salvage of cultural property in the Republic of Croatia (Cat. 612-08/91-01-91-60, Reg. no. 532-03-3/2-91-01) of August 22, 1991; Guidelines on the distinctive marking of cultural property (Cat. 612-08/91-01-43, Reg. no. 532-03-3/2-91-06) of July 29, 1991; Supplement to the Instructions on the undertaking of measures for the protection of cultural property in states of emergency (Cat. 612-08/91-01-43, Reg. no. 532-03-3/2-91-12) of September 19, 1991 and Decree on intensified measures of protection (Cat. 612-08/91-01-43, Reg. no. 532-03-3/2-91-14 of September 20, 1991.
Accordingly, in only ten days, from July 27, 1991, onwards, 794 immovable cultural monuments had been distinctly marked in the Republic of Croatia with the emblems stipulated by the Convention.

Considering that the Serbian aggression on the Republic of Croatia continued with undiminished intensity, the Service for the protection of cultural monuments carried out the organised evacuation of movable cultural property and collections, so that by the end of 1991, 149 evacuations were executed in which over 6,000 packages were transported from the war threatened regions to places of safety.

With a view to protecting the most important immovable cultural monuments, technical protective measures were implemented, such as the placing of wooden structures or wooden boarding on buildings, sandbags, including other technical measures in order to increase their resistance to damages from artillery and air attacks. In 1991, technical measures of protection were carried out on 143 cultural property items.

During the entire course of Croatia's War of Independence activities on the salvage of cultural property from the war-inflicted regions were continued, and especially in the regions liberated by police and military operations "Bljesak" (Flash) and "Oluja" (Storm).

The government authorities of the Republic of Croatia, by undertaking the above mentioned measures aimed at protecting and preserving cultural property from war devastation, attempted to implement in full the provisions of the Hague Convention. In view of the fact that prior to the aggression, the Republic of Croatia did not have its own armed forces, no possibility whatsoever existed that the Croatian military forces destructed or damaged cultural property. On the other hand the armed forces of the then SFRY (the so-called Yugoslav People's Army - JNA), deployed its troops in a large number of buildings categorised as immobile cultural property. The Fortress in Slavonski Brod can be mentioned as an example, then the summer house Garaganin-Fanfoga, the Gripe Fortress in Split, buildings within the Osijek Fortress, the Erdody Palace in Varaždin, the Citadel in Benkovac as well as many other cultural monuments the enumeration of which is impossible here.

As already mentioned, during the aggression on the Republic of Croatia, a large number of immovable cultural goods has been damaged or destructed regardless of the fact that the majority was marked with the distinctive emblem of the Hague Convention and that special technical measures had been taken regarding them. The disrespect of cultural property by the aggressor was the result of a premeditated strategy, the so called "scorched-earth tactics", and which implied not only the goal of conquering but also the execution of ethnic cleansing of the entire non-Serbian population, including the destruction of the material evidence of Croatian national identity. Evidence of this is the large number of plundered and destructed cultural monuments on the occupied territories, the unscrupulous bombing of the historic centre of Dubrovnik even after UNESCO's flag began to flutter on its walls, as well as numerous misappropriations of movable cultural property, the best known examples of which are the museum and sacral cc

The aggressor did not refrain from acts of razing cultural property to the ground, evident from the groundless destruction of cultural property on the occupied territories. We can, mention as an example the Catholic church in the village Aljmaš, which the aggressor not only destroyed but removed its foundations and cleared the terrain in order to erase any trace of the church's existence. There are a large number of such examples. We cannot but mention the church of the Sacred Virgin Mary in Voćin, a unique example of medieval sacral architecture and which the aggressor filled with explosives and blew up when withdrawing from the village.
As can be concluded from the above, the behaviour of the aggressor on the territory of the Republic of Croatia did not comply with the provisions of Article 5 of the Convention since assessment of the status of cultural property in those regions was not permitted, and even less so the undertaking of measures for their preservation and protection by competent national authorities.

The Monitoring Mission of the European Community (ECMM) had as part of its mandate the task of assessing the status of cultural property, and jointly with the Croatian Conservation Service it monitored its status on the territory of the Republic of Croatia, with the exception of those in the occupied regions. The conclusion that can be drawn from the report of the European Community's Monitoring Mission is that during the whole duration of Croatia's War of Independence the Mission did not have full insight into the status of cultural property in the temporarily occupied regions. Just how the EC's Monitoring Missions kept a check on and assessed the status of cultural property can be depicted from the official forms used for that purpose.

After the arrival of UNPROFOR to the war inflicted regions the representatives of the Republic of Croatia requested on a number of occasions that UNPROFOR's mandate extend to establishing the status and salvaging the cultural property located on the occupied territories. This initiative gave certain results in the course of 1994.

As regards the implementation of Article 15 of the Convention, which stipulates that the opposing party respects the personnel engaged in the protection of cultural property, it should be noted that, as a rule, the personnel was expelled from the occupied territories, let alone had immunity or protection envisaged by the mentioned Article of the Convention granted.

Co-operation with UNESCO existed during the entire duration of the aggression against the Republic of Croatia. UNESCO actively participated in the protection of the historic centre of Dubrovnik included in the World Heritage List in 1979, and due to the war, in the Register of Cultural Property Under Special Protection. UNESCO's delegations visited occupied Vukovar and Plitvice Lakes in order to gain insight into the status of cultural property and assess the level of damages caused by the war.

As far as the implementation of Articles 18 and 19 of the Convention is concerned, in the case of the Republic of Croatia the provisions of the Regulations on the Execution of the Convention were not applied. This can in part be explained by the fact that at the very beginning of the war it did not formally have the character of an international armed conflict. However, after the proclamation of the sovereignty and independence of the Republic of Croatia as well as its international recognition in 1992, the aggression on Croatia became an international issue. However, not even then were the mechanisms of protecting cultural property stipulated in the Regulations on the Execution of the Convention activated.

4. The Croatian Experience as an additional impetus for amending the Hague Convention
Immediately after the first demolition of protected cultural property, which the Serbian aggressor began systematically implementing, the Croatian Service for the protection of cultural monuments was faced with limited possibilities of action. The cultural heritage that remained in the temporarily occupied regions became completely inaccessible. On the other hand, from the very beginning of the armed resistance of the Croatian people (considering that there were still no military formations at that time), exceptional co-operation was established between these resistance units and the Service for the protection of cultural monuments. Precisely this co-operation, which later continued with the formal units of the Croatian police and the military, enabled the salvage of a large number of movable cultural property items and taking of technical protection measures on immovable cultural property. Experience has therefore shown that the protection of cultural property in war is impossible without an educated army that is ready to co-operate with competent services for the protection of cultural monuments.

Having this experience, Croatia supported the initiative for the establishment of "Blue Shields", conceived as specialised units for protecting cultural heritage threatened by armed conflict or the consequences of certain natural disasters. According to the basic idea behind this initiative, these units would be established on three levels: international, national and local. The "Blue Shields" as a "first aid" system operate for the time being, only at the international level through the International Committee of the Blue Shield under UNESCO, while there are no visible developments on the national level in regard to establishing such units. It is important to note here that the Draft provisions for revising the Hague Convention recognise this new form of their activity, stipulating the inclusion of a representative of the International Committee of the Blue Shield as a member of the body that would monitor the execution of the Convention.

The Croatian service for the protection of cultural monuments, recognising that the fact that it faced an aggressor whose aim was to destroy Croatian national cultural heritage, systematically informed the international community of this intention, particularly all international specialised organisation such as UNESCO, ICOMOS, ICOM, Department for Cultural Heritage of the Council of Europe, and other bodies. Each report that was sent stirred the hope that Croatia would receive assistance at least in saving its cultural heritage. Accordingly, Patrick J. Boylan in a study on the Execution of the Hague Convention, commissioned by UNESCO and prepared in 1993, noted that during the war in Croatia serious damage was inflicted on the cultural heritage of mankind.

16 "The example of others should serve as a warning", Latin legal saying, A. Romac "Latin legal sayings", p. 191, Globus Zagreb, 1982
17 Draft provisions for amending the Hague Convention established at the third meeting of states parties to the Convention held in Paris on November 13, 1997 and Resolution calling all member states to submit their comments on the Draft.
The aggressor justified every act of destruction by "military necessity", even the destruction of Catholic churches and other monuments deep within the occupied territory where no war operations were lead (for example, the church of the Blessed Virgin Mary in Aljmaš, in Voćin, etc.). Although it was clear to everyone that conditions for applying the institute of "military necessity" stipulated by Article 4 and 11 of the Convention did not exist, the systematic destructive behaviour of the aggressor and the violation of the Convention did not result in criminal prosecution.

It is interesting to note that almost at the same time the Croatian side was reprimanded for deploying in the defence of its cities and villages its troops along the front lines, and thereby in the immediate vicinity of cultural property. Disputing the right of a people to defend itself was really absurd, particularly because at the same time the aggressor's violation of the fundamental provisions of international laws of war, and among other things, the Hague Convention were tolerated.

Proceeding from the experience attained in the War of Independence, in the discussions on the future amendments to the Hague Convention, the representatives of Croatia opted for all changes that would increase the levels of effectiveness in the protection of cultural property in the event of armed conflict, and particularly for:

1. re-examining Article 1 of the Hague Convention which contains the definition of cultural property in view of the fact that from the adoption of the Convention to the present a large number of countries have in their national legislation expanded the definition of cultural property, including in it new types of cultural property such as, for example, cultivated landscapes;

2. establishing special protection in line with the Hague Convention for all cultural property included in UNESCO's List of World Heritage. UNESCO should submit the proposal for including that property in the International Register of Cultural Property Under Special Protection;

3. extending the definition of the grave violation of the Convention provisions to include the systematic, planned, and intentional destruction of protected cultural property, regardless of whether they are under special protection according to the provisions of the Hague Convention, and particularly in respect to the systematic, planned and intentional destruction of the same kind of cultural property, such as, for example, sacral buildings, museums, graveyard structures and etc.;
4. making responsible those individuals who have ordered such activities, including the responsibility for omitting to take measures and thereby seriously violating the provisions of the Hague Convention.

Croatia presented its experience by actively participating in all international gatherings and meetings on this topic, initiating processes geared at amending the Hague Convention. Accordingly, the representatives of Croatia took part at the NATO Partnership for Peace Conference\(^\text{19}\) held in Krakow on the topic: "The Protection of Cultural Heritage in Times of War and States of Emergency".

The invasion of the Vandals enriched the vocabulary of mankind with the term vandalism, whereas the recent aggression on the Republic of Croatia has introduced the world to the term "culturocide.

\(^{19}\) The Conference was held in Krakow from June 17-22 1996, and the representatives of Croatia were the only participants from a non-member country of NATO's Partnership for Peace.