

PROTECTION OF CULTURAL PROPERTY IN CONNECTION TO AN ARMED CONFLICT

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ABSTRACT

The main goal of protecting cultural property is to preserve cultural identity and cultural heritage. Armed conflicts pose a fundamental threat to achieving this goal. Military activity over the last decade proves this assumption. The scale of destruction and looting committed on the territory of Syria and Iraq is comparable to the losses suffered during the armed conflict in the former Yugoslavia or during World War II. A more contemporary example could be also the war between Ukraine and Russia considering the scale of destruction caused so far to cultural property.

The motivation behind the acts of destruction is particularly significant. It is often associated with the desire to destroy the cultural identity of specific groups of people. The scale of this problem is becoming increasingly recognized by the international community. This can be noticed in the introduction of the “cultural extermination” concept in 2015 by UNESCO as part of the discussion on extending international protection of cultural property. It took a considerably long time to present this postulate. This concept was introduced more than six decades after the ineffective attempt to classify serious violations of cultural heritage as the crime of genocide.

Equally important is the scale of looting committed on the territory of armed conflicts. Not only states and individuals, but also organized criminal groups are responsible for such activities. Violations committed in the area of armed conflicts are closely linked to the development of illicit trade of cultural property, that takes place outside the borders of the conflict.

The topicality of issues related to the protection of cultural property in connection with armed conflicts raises the question of whether the contemporary system fully and uniformly protects cultural property against the outcomes of armed activities, both within and outside the

territory of conflicts. Protection of cultural property is currently one of the fastest-growing areas of public international law. However, this development takes place in a heterogeneous manner, characterized by fragmentation of sources of law due to the multitude of legislative initiatives and the extensive structure of the legal system. This development is also impacted by rapidly changing characteristics of violations of cultural property, the evolution of subjects of international law and the growing role of non-international conflicts.

Protection of cultural heritage has received much attention in the literature. However, previous research focused on the analysis of elements of the system, without presenting the characteristics of contemporary violations. There is no study focused on examining the general legal system from a broader perspective of the effects of armed conflicts also beyond its borders while considering the completeness of this system and the relationship between private law norms and public international law.

The dissertation aimed to assess the system of protection of cultural property from the perspective of its uniformity and completeness. The analysis covered obligations comprising in safeguarding and protecting the cultural property, which were divided using a territorial criterion. In this respect, protection of cultural property has been distinguished within and outside the territory of armed conflict, but in relation to it. This criterion was based on the contemporary characteristics of violations, allowing for the establishment of a full perspective of the protection system.

To achieve the above goals, this dissertation was divided into three parts. The first one focuses on the analysis of the concepts of armed conflict, cultural property, and responsibility of international subjects, as well as key problems related to their application. The second part concerns the system of protection of cultural property in territories of armed conflict, with particular emphasis on characteristics of violations, the scope of international obligations and the principles of liability. The third part refers to the protection of cultural property related to an armed conflict, but outside its territory, particularly considering the counteracting the illicit trade of cultural property and the rules for their return to their place of origin. In this context, it was particularly important to present the characteristics of violations and the role of countries exporting and importing cultural property to identify areas requiring appropriate legal regulations ensuring completeness and uniformity in the system of protection of cultural property.

The study on the issue of protection of cultural property in connection with armed conflict was based on the analysis of the applicable legal status and the scope of its application. The key element of the assessment was to indicate a relationship between individual obligations

considering their coherence and completeness, and their relation to the threats related to armed activities. The research was supported by the key principles of public international law, i.e. subsidiary sources of law, evidencing the practice of application and interpretation of particular legal institutions. Analyses prepared by international and non-governmental organizations are also of particular importance for the dissertation, allowing not only to determine the method of interpreting individual obligations but also to identify legal loopholes in the current system. They provide the most up-to-date data related to the characteristics of violations and the effectiveness of existing protective measures.

The dissertation documented that the system of protection of the cultural property related to armed conflict should be considered uniform. Considering the numerous sources of law and the completely different circumstances and purposes of establishing individual international legal regulations, this conclusion may seem surprising, but one can see the consistency of the international community in introducing subsequent instruments of international law. The protection of cultural property in connection with armed conflict is characterized by consistency in terms of the legal concepts and measures on how to counteract infringements. This does not mean, however, that there is no possibility of conflicts. What is particularly significant is the raising importance of the doctrine of cultural internationalism, identifying the value of cultural property with the cultural heritage of humanity, compared to the doctrine of cultural nationalism, which links the protection of cultural property with a nation.

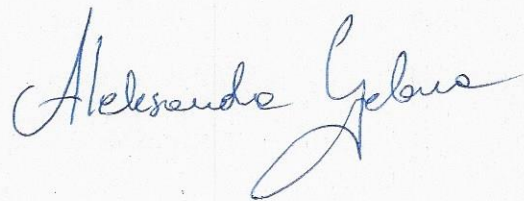
At the same time, it should be noted that this is not a complete system. Despite its extensive form, it still does not provide full protection of cultural property from the perspective of the characteristics of violations related to armed conflicts and the diversity of subjects responsible for committing them.

From the perspective of the protection of cultural property, a significant shortcoming of the system is the significant limitation of the protection of cultural property in the event of conflicts that do not have an international character and leaving too much freedom to states in the implementation of treaties within the framework of preventive and punitive measures.

The current system for the protection of cultural property is in a significantly worse condition taking into account violations related to armed conflict committed outside its territory. However, this regime is not complete, and its level of effectiveness is much lower than the protection of cultural property in the territory of armed conflict. Particularly problematic is the fact that the application of a significant part of the obligations depends on their implementation in national law. However, the key problem is the lack of reciprocity between the rules for the

export and import of cultural property, which results in an imbalance between the obligations imposed on countries that are their importers and exporters. In this respect, it should be emphasized that countries that import cultural property, in the light of the characteristics of illegal trade of art, play a fundamental role in counteracting these violations. However, the current system of international law focuses its regulations on the activities of countries that export such property.

Despite elements of criticism of the contemporary system of protection of cultural property in connection with armed conflict, it should be noted that current work on the development of international regulations in this area is aimed at further complementing and unifying the system. At this stage, we can describe it as a mature and developed system of a uniform nature. Although it cannot be considered complete, it is worth emphasizing the importance of the gradual increase in the international community's awareness of the need to protect cultural property against threats related to armed activities. This is evidenced, among others, by the precedent-setting *Al Mahdi* ruling issued by the ICC and the ongoing work of UNESCO and the EU to clarify the rules of due diligence when purchasing cultural property.

A handwritten signature in blue ink, reading "Aleksandra Gelas". The signature is written in a cursive style with a large, looping flourish at the end.