

The Protection of Cultural Heritage in International Law

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ABSTRACT

International cooperation in cultural heritage protection has developed primarily within the framework of UNESCO, whose pioneering efforts have led to the adoption of five international cultural conventions. The main areas of protection of cultural heritage in contemporary international law include safeguarding of cultural property during war, preventing the illicit trade of cultural property, and protecting the world cultural heritage, understood as tangible (material) and intangible (non-material) manifestations of culture, as well as natural sites. One of the most significant recent developments of international cultural heritage law is the recognition of the human rights dimension of heritage protection, which is closely related to the notion of cultural rights. In Europe, international efforts in the preservation of cultural heritage were initiated under the auspices of the Council of Europe. There is no binding international instrument dedicated exclusively to the protection of cultural property in Central and Eastern Europe. International protection of cultural heritage in this region faces several challenges owing to the region's turbulent history. The frequent non-coincidence of political boundaries and ethnic boundaries makes the protection of cultural heritage a highly sensitive issue, given the role of cultural heritage in shaping and maintaining national identities.

KEYWORDS

cultural heritage, cultural rights, UNESCO, national minorities, indigenous peoples, international law, Central and Eastern Europe

1. Introduction

Cultural heritage plays a powerful role in shaping the identity of every person, community, and nation, and for this reason it has received substantial international protection. International cultural heritage law is one of the oldest and at the same time one of the most complex fields of public international law. International cooperation in this area takes various forms, and during the last hundred years has been constantly evolving, defining and re-defining its scope, trying to provide a protective framework for different manifestations of culture in the face of different challenges. This chapter provides a general overview of the international cultural heritage law and presents the main pillars of international cooperation aimed at the protection of

cultural legacy in its various aspects. It discusses different approaches to safeguarding of cultural heritage in international law, including the human rights perspective, and challenges in protecting cultural heritage in the Central and Eastern European countries.

2. Definition of cultural heritage in international law

There is no uniform, unanimously agreed definition of cultural heritage, because its ever-expanding scope resists easy description or unambiguous definition. According to Francioni, the term cultural heritage represents today

“the totality of cultural objects, traditions, knowledge and skills that a given nation or community has inherited by way of learning processes from previous generations and which provides its sense of identity to be transmitted to subsequent generations.”¹

A meaningful definition of cultural heritage, which gives an accommodating expression of the constantly evolving concept of cultural heritage, can be found in the Council of Europe’s 2005 Convention on the Value of Cultural Heritage for Society.² It defines “cultural heritage” as

“a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time.”

A great number of legal definitions of cultural heritage in different legal instruments reflect the variety of approaches to the protection of culture in international law. Over the years, United Nations Educational, Scientific and Cultural Organization (UNESCO) documents relevant to the protection of culture have referred first to the notion of “cultural property,” and later also to the term “cultural heritage” and “intangible cultural heritage.” Less predominantly, also other expressions have been used, such as “cultural expressions” or “cultural goods and services.” Although the terms “cultural heritage” and “cultural property” are sometimes used interchangeably, their meaning and content are not identical. The earlier term “cultural property” is associated with the protection of material objects, while the more recent term “cultural heritage” is generally considered to be a broader, more holistic notion, embracing all forms of

1 Francioni, 2008, p. 6.

2 *Convention on the Value of Cultural Heritage for Society*, adopted in Faro on October 27, 2005, under the auspices of the Council of Europe, CETS No. 199.

manifestations of culture, including physical, as well as non-physical forms.³ Such a vast, all-encompassing understanding of cultural heritage, as opposed to the protection simply of material cultural objects, might prompt terminological difficulties, but it corresponds better to the generally accepted understanding of *culture*. Earlier regarded as an *elite* concept, culture is currently considered a broad anthropological concept embracing every aspect of contemporary society—in other words, a way of life.⁴

Definitions of cultural heritage formulated by legal scholars refer to the concept of inheritance.⁵ Cultural heritage is described as resources received from the past that should be held in trust by the current generation, and possibly passed on to the next generations unaltered. According to the UN independent expert in the field of cultural rights,

“the cultural heritage links the past, the present and the future, as it encompasses things inherited from the past, which are of such value today that individuals and communities want to transmit them to future generations.”⁶

The temporal character of cultural heritage was already emphasized in the Constitution of UNESCO (1945), in which the Organization was endowed with the duty of “assuring the conservation and protection of the world’s inheritance of books, works of art and monuments of history and science.”⁷ The duty of the current generation to safeguard resources inherited from the past underpins the international cooperation in the field of cultural heritage protection, but is also crucial to the international protection of the natural environment. The principle of sustainable development, together with the concept of inter-generational equity, is a source of the obligation to preserve the cultural and natural wealth of our planet for the future. Since cultural heritage, similarly to natural resources, is a non-renewable resource, its enjoyment shall be conducted in such a way as not to exhaust it.⁸

3 Blake, 2015, pp. 6–7. See also the explanation contained in the Report of the United Nations (UN) Special Rapporteur in the field of cultural rights, Karima Bennouna, on the intentional destruction of cultural heritage, submitted in accordance with Human Rights Council resolution 28/9, 9 August 2016, A/71/317, para. 10.

4 Donders, 2008, p. 318; Blake, 2015, p. 288. See also the definition of culture laid down in the Preamble of the UNESCO Universal Declaration on Cultural Diversity, adopted in Paris on 2 November 2001, UNESDOC CLT.2002/WS/9: ‘(...) culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.’

5 See e.g., Francioni, 2008, p. 6; Blake, 2015, pp. 7, 272; Forrest, 2010, pp. 2–3.

6 Shadeed, 2011, para. 5.

7 *The Constitution of UNESCO*, signed in London on November 16, 1945, UN Treaty Series vol. 4, No. 52, Article 1.

8 Blake, 2015, pp. 8–9.

3. Categories of cultural heritage in international law

Manifestations of cultural heritage involve almost anything, whether man-made or given value by man, embodied in material and non-material forms.⁹ Expressions of culture might include movable objects, immovable places, and sites, and natural sites and cultural landscapes, as well as intangible manifestations of cultural value. Over the years, a distinction has developed in international cultural heritage law-making, according to which cultural heritage can be divided into the following three categories:

(i) *tangible cultural heritage*—material manifestations of culture, for example artistic masterpieces, buildings, monuments, historic places, archaeological sites, books, clothes, or other artifacts¹⁰;

(ii) *intangible cultural heritage*—non-material manifestations of culture, such as language, spiritual beliefs, social traditions, customs and practices, folklore, traditional knowledge, traditional medicine, culinary traditions, music, and dance¹¹;

(iii) *natural heritage*—natural sites, such as cultural landscapes, protected natural reserves, and historic parks and gardens.¹²

Nonetheless, it is not always possible to draw a clear line between different forms of cultural manifestations. The distinction between the tangible and intangible cultural heritage does not correspond entirely to the reality, and as such is rather of a scholarly nature. In most cases, the two forms of cultural manifestations are intertwined and inseparable, as cultural heritage may be embodied at the same time in tangible and in intangible forms. Material objects or places (e.g., archaeological sites, artifacts) are often related to their intangible aspects (human context), which give them their cultural significance and value. In turn, the intangible cultural heritage (e.g., music, dance) is often perceived through its tangible elements (musical instruments, costumes).¹³ However, as Forrest points, cultural

9 Forrest, 2010, pp. 2–3. See also Shaheed, 2011, para. 4.

10 For example: the Pyramid Fields in Egypt, Taj Mahal in India, Vlkolánek in Slovakia, Wieliczka and Bochnia Royal Salt Mines in Poland, the Historic Center of Český Krumlov in Czechia, the Historic City of Trogir in Croatia, Studenica Monastery in Serbia (examples include sites listed on the UNESCO World Heritage List).

11 For example: the Saman dance in Indonesia, the Flamenco in Spain, the traditional Joumou soup in Haiti, traditional Turkish archery, the Busójárás end-of-winter carnival in Hungary, the Lacemaking in Croatia, the Klapa multipart singing of Dalmatia in Croatia, the Puppetry in Slovakia and Czechia, the Kolo traditional folk dance in Serbia, the Flower carpets tradition for Corpus Christi processions in Poland (examples include practices listed on the UNESCO Representative List of the Intangible Cultural Heritage of Humanity).

12 For example: Białowieża Forest in Poland and Belarus, Danube Delta in Romania, Galápagos Islands in Ecuador, Royal Botanic Gardens of Kew in UK, Tokaj Wine Region Historic Cultural Landscape in Hungary, Plitvice Lakes National Park in Croatia (examples include sites listed on the UNESCO World Heritage List).

13 Blake, 2015, pp. 10–11.

heritage is value, in the way that it is neither the material object nor the practice itself that is of some importance to a people, but the importance itself.¹⁴ It can be embodied in an object, a place, a dance, or all three in combination. It is the given value and cultural significance that is protected by the international legal regimes.¹⁵

4. Areas of protection

Although several examples of initiatives to preserve cultural artefacts and historical remains can already be found in ancient times,¹⁶ it was not earlier than the beginning of the 20th century when the modern international law relating to cultural heritage started to develop. The need to provide protection of cultural objects and sites grew out of the context of war and was first recognized in international humanitarian law (the Hague Conventions and Regulations of 1899 and 1907). Since then, international law has gone significantly further, and a great number of international instruments on the protection of cultural heritage in times of peace have also been adopted on both the universal and regional levels. Currently the complex international framework for protecting cultural heritage can be divided into the following three areas: (1) *protection of cultural heritage in times of armed conflict and war*, (2) *protection of cultural heritage against illicit movement*, and (3) *protection of the world cultural heritage*. A brief description of the protective framework will be presented below, focusing on the landmark international agreements adopted under the auspices of UNESCO.

4.1. Protection of cultural heritage in times of armed conflict and war

4.1.1. International humanitarian law

The first modern attempts to regulate the protection of cultural heritage were made within the international humanitarian law, with the view to alleviate the effects of war on cultural property. Since time immemorial, the unwritten rules of war have allowed belligerents to confiscate or destroy the enemy property (“right to pillage”), while the destruction of cultural heritage has been used a deliberate strategy to

14 Forrest, 2010, pp. 3–4.

15 In any tangible or non-tangible form of cultural heritage, three kinds of (usually competing) values can be attributed: expressive value (e.g., aesthetic value that expresses beauty, or divine sanctity, expressed by religious or moral attitudes), archaeological and historic value, and the economic value. Forrest, 2010, pp. 4–7.

16 For example, an early private museum of antiquities was established in Babylon by Ennigaldi-Nanna, the daughter of King Nabonidus, in the 6th century BC. According to Blake, cultural legislation *per se* appeared for the first time in Europe in the 15th century AD, with the Bull of Pope Pius II entitled *Cum aliam nostram urbem* aimed at the preservation of the ancient ruins in Rome and Campagna (1462). For more examples and a wider historical context of the cultural heritage legislation, see Blake, 2015, pp. 1–4.

destroy the morale of both the combatants and civilians. That is why the very first international documents that addressed the conduct of warfare—the Hague Conventions and Regulations of 1899 and 1907, and later on the Geneva Convention IV of 1949 and its First and Second Additional Protocols of 1977—formally prohibited pillage and deliberate destruction of property.¹⁷ The protection of the *treasures of culture* during armed conflicts was also recognized in the so called Roerich Pact, adopted in 1935 under the regional framework of the Pan-American Union.¹⁸ The milestone international agreement relating to the protection of material cultural heritage in wartime was the 1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict.¹⁹ The 1954 Convention became the first international treaty dedicated solely to the protection of cultural heritage. The adoption of the 1954 Convention was a direct reaction to the massive destruction of numerous historic monuments and cultural objects during the Second World War.

The 1954 Convention introduced in Article 1 a definition of cultural property, which included movable and immovable property of great importance to the cultural heritage of every people, buildings where movable cultural property is preserved or exhibited, as well as centers containing monuments. All cultural property within the meaning of the Article 1 of the Convention enjoys general protection, which comprise “the safeguarding of and respect for” such property (Article 2). Such regime requires from the state-parties both positive and negative duties, which include the duty to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict (Article 3), as well as the obligation to refrain from any use of the cultural property for purposes that are likely to expose it to destruction or damage in the event of armed conflict; and to refrain from any act of hostility directed against such property (Article 4 Paragraph 1). The obligation to respect cultural property includes cultural heritage situated within state-parties’ own territory, as well as within the territory of other state-parties of the Convention. The obligation to refrain is limited, however, and can be waived in cases where military necessity imperatively requires it (Article 4 Paragraph 2).

17 *The Hague Convention of 1899 (II) with respect to the Laws and Customs of War on Land*, adopted at the Hague on July 29, 1899, 32 Stat. 1803 (1899), Treaty Series, no. 403; *The Hague Convention (IV) Respecting the Laws and Customs of War on Land*, adopted at the Hague on October 18, 1907, 36 Stat. 2277 (1907), Treaty Series, no. 539; *The Geneva (IV) Convention Relative to the Protection of Civilian Persons in Time of War*, adopted in Geneva on August 12, 1949, UN Treaty Series vol. 75; *Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, adopted on June 8, 1977, United Treaty Series vol. 1125; *Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts*, adopted on 8 June 1977, UN Treaty Series vol. 1125. For further reading, see Bos, 2005; Kalshoven, 2005; Forrest, 2010, pp. 67–69.

18 *The Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments* (Roerich Pact), adopted in Washington on April 15, 1935, under the auspices of Pan-American Union.

19 *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, adopted at The Hague on May 14, 1954, under the auspices of UNESCO, UN Treaty Series vol. 249, No. 3511.

Apart from the general protection enjoyed by all cultural heritage, the 1954 Convention introduces a special protection regime for a restricted category of cultural heritage *of very great importance*.²⁰ Special protection is granted to cultural property by its entry in the “International Register of Cultural Property under Special Protection.” With regard to such cultural property, states are obliged to ensure its immunity by refraining from any act of hostility directed against it, and from any use of such property or its surroundings for military purposes (Article 9). Furthermore, under certain conditions, the 1954 Convention ensures immunity for the transport of cultural property, as well as the personnel engaged in the protection of cultural property (Articles 12–15). The 1954 Convention created a distinctive emblem, called the Blue Shield, to facilitate the recognition of cultural heritage falling under the conventional protection regime (Article 6). It can be used alone to mark a property under general protection, while repeated three times in a triangular formation, such emblem identifies cultural property under special protection regime (Articles 10, 16–17).

The provisions of 1954 Convention have been supplemented with two additional protocols. The first additional protocol²¹ was adopted in 1954, with the aim of preventing the exportation of cultural property and to provide for the restitution of illegally exported objects. The second additional protocol was adopted in the aftermath of the Second Gulf War and war in the former Yugoslavia in the early 1990s, which witnessed immense destruction to cultural heritage. The protocol was meant to remedy some of the weaknesses of the 1954 Convention that had appeared during its application (e.g., limited recourse to special protection regime, or the lack of adequate sanctions for individual perpetrators).²² The 1999 Protocol established a new mechanism, called enhanced protection regime, to ensure more effective protection of cultural property of *the greatest importance for humanity* (Article 10). It has also established individual criminal responsibility and provided for criminal sanctions for violations against cultural heritage (Article 15).

The 1954 Hague Convention, together with the Regulations for its execution,²³ which form its integral part, and the 1954 and 1999 Protocols are seen by some authors as the most valuable instruments of the protection of cultural property in contemporary international law.²⁴ Unfortunately, the adoption of the 1954 Convention has

20 According to Article 8 para. 1, a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, or centers containing monuments and other immovable cultural property can be placed under special protection if they fulfill conditions specified in the Convention.

21 *Protocol for the Protection of Cultural Property in the Event of Armed Conflict*, adopted at The Hague on May 14, 1954; *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict* adopted at The Hague on March 26, 1999.

22 Toman, 2005, p. 25. For further reading, see on the Second Additional Protocol Henckaerts, 1999; Forrest, 2010, pp. 110–121.

23 *Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*.

24 Toman, 2005, p. 15.

neither eliminated nor prevented the destruction of cultural property in all armed conflicts, and the cultural heritage continues to be another victim of war.²⁵

4.1.2. *International criminal law*

The protection of cultural heritage in wartime is envisaged also under international criminal law. According to the Rome Statute of the International Criminal Court, individual criminal responsibility can include serious offences against cultural heritage, which are considered *war crimes*.²⁶ The first individual who was prosecuted and faced charges at the International Criminal Court (ICC) solely for cultural destruction as a war crime was Ahmad Al Faqi Al Mahdi, a member of an Islamic extremist group in Mali. In 2016, he was found guilty under Article 8(2)(e)(iv) of the Rome Statute for the war crime of intentionally directing attacks against 10 buildings of a religious and historical character in Timbuktu, for which he was sentenced to nine years' imprisonment (the sentence was later reduced by two years).²⁷ The mausoleums and mosques destroyed by Al Mahdi and the militia group were part of the UNESCO's World Heritage sites. According to the ICC Chief Prosecutor, the charges brought against Ahmad Al Faqi Al Mahdi involved most serious crimes; they were about the destruction of irreplaceable historic monuments and about a callous assault on the dignity and identity of entire populations and their religion and historical roots.²⁸

Pursuant to the case law of international criminal tribunals, the destruction of cultural property with discriminatory intent against a cultural community can also be charged as a crime against humanity, and the intentional destruction of cultural and religious property and symbols can be considered evidence of an intent to destroy a group, which falls under the definition of *genocide*.²⁹ According to the ICTY,

“an enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group

25 One of the most recent examples is the destruction of cultural heritage after the Russian invasion on Ukraine in February 2022. In the period from February 24 to July 11, 2022, UNESCO verified damage to 161 pieces of cultural property in Ukraine within the meaning of the 1954 Convention (although no UNESCO World Heritage site appears to have been damaged). See UNESCO, 2022. For further reading on the international conflicts and the protection of cultural heritage, see, e.g., Forrest, 2010, pp. 56–67; Lostal, 2017; Chainoglou, 2017.

26 *Rome Statute of the International Criminal Court*, adopted in Rome on July 17, 1998, UN Treaty Series vol. 2187, No. 38544, Article 8² para. 2 (b) (ix) and Article 8² para. 2 (e) (iv). Similar criminal responsibility was envisaged in the *Statute of the International Criminal Tribunal for the former Yugoslavia* (ICTY), adopted by UN Security Council Resolution 827 (1993) of 25 May 1993, Article 3 (d).

27 ICC, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, judgement of September 27, 2016, Case no. ICC-01/12-01/15, Para. 109.

28 International Criminal Court, 2015.

29 See e.g., ICTY, *Prosecutor v. Radislav Krstic*, Case no. IT-98-33-T, Trial Chamber, August 2, 2001, para. 580, and affirmed by Appellate Chamber, April 19, 2004; ICTY, *Prosecutor v. Dario Kordic and Mario Cerkez*, Trial Judgment, Case No. IT-95-14/2-T, February 26, 2001, paras. 206–207. For further reading, see Meron, 2005; Bennoune, 2016; Vrdoljak, 2009.

its own identity distinct from the rest of the community would not fall under the definition of genocide, nonetheless, where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group.”³⁰

4.2. Protection of cultural heritage against illicit movement

Much of illicitly obtained cultural heritage, either looted as a “spoils of war” or otherwise illegally removed, find its way to the lucrative international art and antiquities market.³¹ Trafficking and illegal trade in cultural objects is a serious threat to cultural heritage all over the world. It affects to a greater extent developing countries, which are poorer in economic terms, but richest in cultural sites and artefacts.³² International concern about the growing commercial demand for cultural heritage and the resulting illicit trade led to the adoption in 1970 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.³³

The 1970 Convention is the most important international instrument dealing with the illicit movement of cultural heritage. According to its Preamble, cultural heritage constitutes one of the basic elements of civilization and national cultures, which is a recognition that cultural heritage is at the same time at the heart of international concern and of national interest. Under the 1970 Convention, cultural property of each state shall be protected; however, it is up to each state to determine what cultural property shall fall within the protection regime.³⁴

The 1970 Convention imposes on states-parties the obligation to oppose with the means at their disposal all the practices falling under the category of illicit import, export, or transfer of ownership of cultural property (Article 2). All movement or transfer of ownership of cultural property effected contrary to the conventional regulations shall be regarded as illicit (Article 3). At the same time, the 1970 Convention

30 ICTY, *Prosecutor v. Radislav Krstic*, para. 580.

31 Forrest distinguishes three different types of illicit cultural heritage: (i) cultural heritage that has been removed from monuments or archaeological sites illegally, without the permission of the source states, (ii) cultural heritage stolen from private individuals and entities or from public institutions, such as museums, and (iii) cultural heritage exported without an export permit, including illicit export of cultural objects by its lawful owners. Forrest, 2010, pp. 137–138.

32 Forrest, 2010, p. 137; Blake, 2015, p. 23. Developing states rich in cultural objects and sites include e.g., India, Somalia, Tanzania, Niger, Peru, Cambodia, Thailand, China, Kenya, and Afghanistan.

33 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, adopted in Paris on November 14, 1970 under the auspices of UNESCO, UN Treaty Series vol. 823, No. 11806.

34 According to Article 1, the term “cultural property” means property that is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art, or science, and that belongs to one or more of categories of cultural heritage specified in the 1970 Convention.

establishes a regime of lawful export and import, whose central element is the authorization of export granted by the state where the cultural property is located. States shall introduce an appropriate certificate that specifies that the export of the cultural items in question is authorized, which constitutes evidence of the legality of the export. The certificate should accompany any export, and the exportation of cultural property from their territory without an export certificate is prohibited (Article 6). Another core obligation of states-parties is the prohibition of the import of cultural property stolen from a public institution in another state-party after the entry into force of the Convention (Article 7 Paragraph a). States shall also prevent museums and similar institutions within their territories from acquiring cultural property that has been illegally exported from another state-party (Article 7 Paragraph b). The 1970 Convention provides also for the obligation of states to impose penal or administrative sanctions on persons responsible for infringing the prohibitions of illicit export and import (Article 8).

Despite the adoption of the 1970 Convention, the global illicit trade of cultural heritage increased, which revealed several weaknesses of this international instrument. One of the most significant shortcomings of the Convention has been identified as the imbalance between the onerous duties imposed on exporting states and the obligations imposed on importing countries, considered that exporting states are almost always developing countries without sufficient financial resources.³⁵ These states have not been able to fulfill the conventional duties, hindering the objectives and the application of the treaty.

To render the protection of cultural heritage more effective, UNESCO initiated the adoption of an instrument capable of addressing private law aspects of illicit traffic in cultural property. Upon this initiative, the International Institute for the Unification of Private Law (UNIDROIT) adopted in 1995 the Convention on Stolen or Illegally Exported Cultural Objects.³⁶ It was designed to complement the framework of the 1970 UNESCO Convention by dealing with the cultural heritage as private property.³⁷ The 1995 Convention allows claims for the restitution of stolen cultural objects, and the return of illegally exported cultural objects (Article 1). It establishes a system for the return of cultural heritage to the lawful owner in the case of stolen property (Articles 3 and 4), or to the state of export when the cultural property has been illegally exported (Articles 5–7). The 1995 Convention allows for direct access to court by private individuals, and lays down an individual right to compensation (Articles 4 Paragraph 1 and 6 Paragraph 1). While the 1970 UNESCO Convention forms part of public international law, the 1995 UNIDROIT Convention is essentially a private international law instrument.³⁸

35 Forrest, 2010, p. 195.

36 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, adopted in Rome on 24 June 1995, UN Treaty Series vol. 2421, No. 43718.

37 Forrest, 2010, p. 398.

38 For further reading, see on the protection of cultural heritage against illicit trade: Kowalski, 2005; Vadász, 2016; Prott, 2009; Blake, 2015, pp. 23–69.

4.3. Protection of the world cultural heritage

In the 1960s, UNESCO started to develop a protective framework for different forms of cultural heritage, understood as the *world heritage of mankind* and considered to be of universal value for the whole of humanity. UNESCO's pioneering role in this field has led to the adoption of numerous documents, including international treaties as well as non-binding (soft-law) documents. The international treaties relating to the protection of world cultural heritage adopted under the auspices of UNESCO are: the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage,³⁹ the 2001 Convention on the Protection of the Underwater Cultural Heritage,⁴⁰ the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage,⁴¹ and the 2005 Convention on the Diversity of Cultural Expressions.⁴² The most relevant soft-law documents include: Recommendation on Safeguarding the Beauty of Landscapes (1962), Recommendation on the Preservation of Cultural Property Endangered by Public Works (1968), Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it (1976), Recommendation for the Protection of Movable Cultural Property (1978), Mexico City Declaration on Cultural Policies (1982), Recommendation on the Safeguarding of Traditional Culture and Folklore (1989), and Universal Declaration on Cultural Diversity (2001).⁴³

Along with the UNESCO framework presented in this chapter, the protection of cultural heritage has also been developed on regional levels under the framework of regional international organizations.⁴⁴

39 *Convention Concerning the Protection of the World Cultural and Natural Heritage*, adopted in Paris on November 16, 1972, under the auspices of UNESCO, UN Treaty Series vol 1037, No. 15511.

40 *Convention on the Protection of the Underwater Cultural Heritage*, adopted in Paris on November 2, 2001, under the auspices of UNESCO, UN Treaty Series vol. 2562, No. 45694.

41 *Convention for the Safeguarding of the Intangible Cultural Heritage*, adopted in Paris on October 17, 2003, under the auspices of UNESCO.

42 *Convention on the Diversity of Cultural Expressions*, adopted in Paris in October 2005 under the auspices of UNESCO, UN Treaty Series, vol. 2440, No. 43977.

43 *Recommendation on Safeguarding the Beauty of Landscapes* adopted in Paris on December 11, 1962; *Recommendation on the Preservation of Cultural Property Endangered by Public Works* adopted in Paris on November 19, 1968; *Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it*, adopted in Nairobi on November 26, 1976, UNESDOC CC.88/WS/34; *Recommendation for the Protection of Movable Cultural Property* (1978), *Mexico City Declaration on Cultural Policies* adopted in Mexico City on August 6, 1982, UNESDOC CLT/MD/1; *Recommendation on the Safeguarding of Traditional Culture and Folklore*, adopted in Paris on November 15, 1989; *Universal Declaration on Cultural Diversity*, adopted in Paris on November 2, 2001, UNESDOC CLT.2002/WS/9.

44 See e.g.: *Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations*, adopted in Santiago on June 16, 1976 under the auspices of Organization of American States (Convention of San Salvador), OAS Treaty Series No. 47; international agreements adopted in Europe under the auspices of the Council of Europe: *Convention for the Protection of the Archaeological Heritage of Europe* adopted in Valletta on January 16, 1992 (Valletta Convention), CETS 143; *European Landscape Convention* adopted in Florence on October 20, 2000 (Florence Convention), CETS 176; *Convention on the Value of Cultural Heritage for Society* adopted in Faro on October 27, 2005 (Faro Convention), CETS 199.

4.3.1. *The 1972 World Heritage Convention*

The Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention) is the paramount international instrument for the protection of cultural heritage, which embodies the idea that certain exceptional examples of cultural and natural sites should be protected in the interest of the entirety of humankind.⁴⁵ It combines in a single document the concepts of nature conservation and the preservation of cultural properties. The need to protect cultural and natural sites of outstanding universal value grew out of the recognition that the cultural heritage was increasingly threatened in several ways by changing social and economic conditions (increasing urbanization, industrialization, pollution and climate change, rise in international tourism, etc.).⁴⁶

The 1972 Convention specifies the forms of cultural manifestations that are considered cultural heritage, and lays down the definition of natural heritage (Articles 1 and 2). Only physical manifestations of cultural heritage, such as monuments, buildings, or sites, fall under the scope of application of the Convention. The 1972 Convention sets out the duties of states-parties in identifying potential sites and their role in protecting and preserving them. The primary duty of each contracting state is to ensure the identification, protection, conservation, presentation, and transmission to future generations of the cultural and natural heritage situated on its territory (Article 4). Furthermore, the 1972 Convention sets out the obligation of state-parties to cooperate with each other, and to refrain from any deliberate measures that might damage the cultural and natural heritage situated on the territory of other states-parties (Article 6).

The 1972 Convention establishes a forum of international cooperation and a monitoring body called the World Heritage Committee (Article 8). On the basis of the inventories and nominations submitted by states, the Committee publishes and regularly updates the World Heritage List. The cultural and natural sites inscribed on the World Heritage List enjoy protection under the World Heritage Convention and are marked with the circular World Heritage Emblem. The Convention stipulates the obligation of States Parties to report regularly to the World Heritage Committee on the state of conservation of their World Heritage properties (Article 29). Sites inscribed on the World Heritage List might be delisted if they lose the attributes conveying their outstanding universal value for the humanity.⁴⁷ The World Heritage sites in need for the conservation, and for which assistance has been requested, might be put on the List of World Heritage in Danger (Article 11 Paragraph 4).

45 According to the Preamble to the 1972 Convention, "(...) parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole."

46 The Preamble to the 1972 Convention. See also Forrest, 2010, p. 224.

47 So far three sites have lost their World Heritage status, most recently in 2021 the site "Liverpool—Maritime Mercantile City" in UK, which was inscribed on the World Heritage List in 2004. The constructions and development were so detrimental to the site's authenticity and integrity that they led to irreversible loss of its outstanding universal value, see: UNESCO, 2007.

The establishment of the World Heritage Committee and the World Heritage Fund embodies the cooperative protective regime that stems from the universal interest in the protection of the world cultural heritage represented by the 1972 Convention. The most successful aspects of the Convention include the number of ratifications, the significant number of cultural and natural sites inscribed on the World Heritage List, which contains 1154 elements as of July 2022, and, importantly, its contribution to raising global awareness of the concept of the world cultural and natural heritage and the need for their protection.⁴⁸

4.3.2. *The 2001 Convention on the Protection of the Underwater Cultural Heritage*

The 2001 Convention on the Protection of the Underwater Cultural Heritage (UCH Convention) focuses on the protection of the underwater archaeological sites and other remains that are situated wholly or partly beneath the sea. It provides a normative framework for states parties on how to identify, research, and protect their underwater heritage while ensuring its preservation and sustainability.

The 2001 Convention lays down the obligation of states-parties to take all appropriate measures and cooperate in protecting underwater cultural heritage (Article 2 Paragraphs 1 and 2). In the view of the Preamble, the underwater cultural heritage is considered an integral part of the cultural heritage of humanity and a particularly important element in the history of peoples, nations, and their relations with each other concerning their common heritage. It is defined as all traces of human existence having a cultural, historical, or archaeological character that have been partially or totally under water, periodically or continuously, for at least 100 years, such as: (i) sites, structures, buildings, artifacts, and human remains, (ii) vessels, aircraft, other vehicles, and their cargo or other contents, and (iii) objects of prehistoric character (Article 1 Para. 1). Pipelines and installations placed on the seabed are not considered underwater cultural heritage.

The objectives of the 2001 Convention specified in Article 2 stipulate the general duties and obligations of state-parties. They include, *inter alia*: ensuring and strengthening the protection of underwater cultural heritage, cooperating with other states-parties in the protection of underwater cultural heritage, preserving underwater cultural heritage for the benefit of humanity, refraining from any commercial exploitation of the underwater cultural heritage, depositing the recovered underwater cultural heritage in a manner that ensures its long-term preservation, and ensuring that proper respect is given to all human remains located in maritime waters. It is clear that the main purpose of the 2001 Convention is the protection of the cultural heritage situated under water in order to keep it safe from damage and destruction. According to Article 2 Paragraph 5, the preservation *in situ* of the underwater cultural heritage shall be considered the first option before allowing or engaging in any activities directed at this heritage. For this reason, an obligation is placed on states-parties

48 Forrest, 2010, p. 286. For further reading on the 1972 World Heritage Convention, see, e.g., Forrest, 2010, pp. 224–286.

to prevent or mitigate any adverse effects that may arise from activities under jurisdiction incidentally affecting underwater cultural heritage (Article 5).

The 2001 Convention addresses in separate provisions the issue of the protection of underwater cultural heritage in different maritime zones, regulating the rights and responsibilities of the states concerned (Articles 7–12). Furthermore, it places upon states the obligation to cooperate and assist each other in the protection and management of underwater cultural heritage, and to share information concerning underwater cultural heritage, including discovery of heritage, its location, and information about the heritage excavated or recovered contrary to the Convention (Article 19 Paragraphs 1 and 2). Other obligations include raising public awareness regarding the value and significance of underwater cultural heritage (Article 20) and establishing competent authorities (Article 21). The need for public education, including of government officials, judges, and other officials, is stressed as a means of protection as well as a means of ensuring public access to this heritage.⁴⁹

The 2001 Convention was the first international regime to establish a protective framework for the underwater cultural heritage, which had not been sufficiently addressed under the existing law of the sea and the 1972 UNESCO World Heritage Convention.⁵⁰

4.3.3. *The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*

Since the 1980s, there was a growing awareness of the need to introduce into the international framework a more extended notion of cultural heritage that would provide protection to intangible manifestations of culture. For years, however, the safeguarding of material manifestations of cultural heritage dominated the international cultural law-making, and the first binding international document aimed at the protection of non-material forms of culture—namely, the Convention for the Safeguarding of the Intangible Cultural Heritage (ICH Convention)—was not adopted until 2003.

The 2003 ICH Convention, modelled on the 1972 World Heritage Convention, expanded the meaning and scope of the cultural heritage subjected to international protection to include non-physical forms of cultural manifestations. According to its Preamble, there is a deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage. According to Article 2 Paragraph 1, “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artifacts and cultural spaces associated therewith—that communities, groups, and, in some cases, individuals recognize as part of their cultural heritage. It can be manifested *inter alia* in oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; performing arts; social practices, rituals and festive events; knowledge and practices concerning nature and the universe; and traditional craftsmanship (Article 2 Paragraph 2).

49 Blake, 2015, p. 98.

50 Forrest, 2010, p. 361; Blake, 2015, p. 113.

The ICH Convention sets out obligations of states parties both at the domestic and at the international levels. At the national level, states are supposed to take necessary measures to ensure the identification and safeguarding of the intangible cultural heritage present on their territory (Articles 11–14). Communities, groups, and individuals that create, maintain, and transmit international cultural heritage should be involved in the process of identification of the elements of intangible cultural heritage, as well as in the safeguarding activities (Articles 11 (b) and 15). The ICH Convention provides for mechanisms of international cooperation and assistance. States-parties shall recognize that the safeguarding of intangible cultural heritage is of general interest to humanity, and they shall cooperate at the bilateral, subregional, regional, and international levels (Article 19 Paragraph 2).

The ICH Convention establishes two treaty bodies: the General Assembly of the States Parties (Article 4) and the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (Article 5). To ensure better visibility of the intangible cultural heritage and awareness of its significance, the Committee publishes and updates the Representative List of the Intangible Cultural Heritage of Humanity upon proposals from states-parties (Article 16). As Blake notes, the drafters of the 2003 ICH Convention intentionally used the term “representative” in the name of the international list to distinguish it conceptually from the World Heritage List under the 1972 UNESCO Convention. While the World Heritage List contains iconic and outstanding examples of world heritage, the elements inscribed on the ICH list are merely representative of the mass of intangible heritage in the world.⁵¹ The ICH Committee acts as a monitoring body of the ICH Convention, accepting from the states-parties periodic reports on the legislative, regulatory, and other measures taken for the implementation of the Convention (Article 29). Another form of international cooperation within the meaning of the ICH Convention is the Fund for the Safeguarding of the Intangible Cultural Heritage, the use of which is decided by the ICH Committee based on guidelines laid down by the General Assembly (Article 25).

The adoption of the ICH Convention was a milestone in the international cultural heritage law, which added a new dimension to the existing conventional framework. The new conventional regime was based on the assumption that raising the awareness of the existence of intangible heritage and its importance is the best way to ensure its viability and to inspire respect for such forms of cultural heritage.⁵² For this reason, the ICH Convention does not impose on states-parties far-reaching obligations and is rather modest in requiring state action. The 2003 ICH Convention and its “role model,” the 1972 World Heritage Convention, complement each other, allowing for the different manners in which culture is manifested to gain international recognition and normative protection.⁵³

51 Blake, 2015, p. 14.

52 Forrest, 2010, p. 386.

53 For further reading on the international protection of intangible cultural heritage, see, e.g., Blake, 2007; Petrillo, 2019.

4.3.4. *The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions*

During the first two decades of 21st century, the increasing diversity of cultures and the growing importance of local communities, indigenous peoples, and national minorities posed a new challenge for the international cultural heritage law. Ensuring adequate space and freedom of expression for all of the world's cultures became one of the new purposes of safeguarding cultural heritage.⁵⁴ A new framework was needed to create conditions for interactions between different peoples and societies on the basis of mutual understanding, respect, and the equality of all cultures. This issue was addressed in the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression.

The Preamble of the 2005 Convention recognizes that cultural diversity forms a common heritage of humanity and is indispensable for peace and stability on the international and national levels. The principle underlying the 2005 Convention is the recognition that cultural activities, goods, and services have both an economic and cultural nature. The instrument deals with culture in its broad concept, as affirmed in the Universal Declaration on Cultural Diversity adopted by UNESCO in 2001.⁵⁵

The 2005 Convention specifies several measures that shall be adopted by states-parties to protect and promote the diversity of cultural expressions. It recognizes the sovereign right of states to maintain, adopt, and implement cultural policies on their territory (Article 2.2).⁵⁶ Apart from adopting these measures, states should fulfill other conventional obligations in order to achieve its objectives (Articles 7–17). States are encouraged to support the active participation of civil society in the field of culture (Article 11), as well as the cooperation between the public sector, private sector, and non-profit organizations (Article 15). Additional efforts need to be taken to ensure the participation and contribution to cultural expression by specific social groups, including women, persons belonging to minorities, and indigenous peoples (Article 7.1.a).

A follow-up mechanism has been established, which consists of two organs monitoring the implementation of the Convention: the Conference of Parties and the Intergovernmental Committee (Articles 22–23). The financial means shall be conferred to the International Fund for Cultural Diversity (Article 18). To ensure transparency and information sharing, states are obliged to provide UNESCO with periodic reports on measures and policies taken to promote and protect the cultural diversity (Article 9.a).

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is not a classical “cultural heritage protection” instrument, in the sense of the 1972, 2001 and 2003 UNESCO Conventions. It reflects the many competing aspects of the complex notion of cultural diversity and, as a result, it can be seen as an

54 Blake, 2015, p. 194.

55 See the Preamble of the 2001 Universal Declaration.

56 The cultural policies may consist of, *inter alia*, providing opportunities for domestic cultural activities, goods and services, providing domestic independent cultural industries with effective access to the means of production, dissemination and distribution of such activities, promoting the diversity of the media, or public financial assistance (Article 6 of the 2005 Convention).

instrument with a somewhat confused character, but it definitely plays an important role in safeguarding the diversity of cultures and heritages.⁵⁷

5. Human rights dimension of cultural heritage protection

International cooperation in heritage protection was long based primarily on the principle that the cultural heritage is a common legacy of mankind, as expressed for the first time in the 1972 UNESCO World Heritage Convention. In the 2003 Intangible Cultural Heritage Convention, cultural heritage was also recognized as a source of value to local communities and individuals, as a fundamental aspect of their own unique cultural identity. Soon thereafter, the protection of cultural heritage was explicitly considered a human rights issue, because cultural heritage is closely linked to human dignity and identity.⁵⁸

Safeguarding cultural identity through the access to and enjoyment of cultural heritage is the central conception to the human rights dimension of cultural heritage protection. The individual right to access one's own cultural heritage enjoys protection primarily within the framework of the *cultural human rights*.⁵⁹ The most relevant for cultural heritage protection is the right of everyone to take part in cultural life, proclaimed in Article 27 of the Universal Declaration of Human Rights,⁶⁰ and Article 15 Paragraph 1 (a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁶¹ which refer to culture and cultural life understood very broadly, as ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter, and the arts, customs, and traditions through which individuals, groups of individuals, and communities express themselves.⁶² The right of everyone to take part in cultural life also includes the right to have access to their own cultural and linguistic heritage and to that of others.⁶³ Although Article 15 Paragraph 1(a) of ICESCR is the most evident and universal cultural right, other human rights might also have cultural components, and as such have direct or indirect relevance to the

57 Blake, 2015, pp. 194–195.

58 Shaheed, 2011, para. 2.

59 As Francioni explains, cultural rights rest on the uniqueness of legacy that binds a group or a community to a shared memory upon which the powerful sentiment of belonging and identity is built. Francioni, 2008, p. 3.

60 *Universal Declaration of Human Rights*, adopted in Paris on December 10, 1948, by the UN General Assembly, Resolution 217 A (III), A/RES/3/217 A.

61 *International Covenant on Economic, Social and Cultural Rights*, adopted in New York on December 16, 1966, UN Treaty Series vol. 993, No. 14531.

62 UN Committee on Economic, Social and Cultural Rights, *General comment No. 21 on the Right of everyone to take part in cultural life (art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights*, December 21, 2009, E/C.12/GC/21, para. 13.

63 *Ibid.*, para. 49.

preservation of cultural heritage (for example: the right to education, the right to freedom of expression, or the right to freedom of thought and religion).⁶⁴

The human rights approach to the cultural heritage protection is particularly important for *national minorities*⁶⁵ and *indigenous peoples*,⁶⁶ who struggle to preserve their own unique cultural heritage, different from the “majority” cultural heritage. Although persons belonging to national minorities or indigenous peoples fully benefit from the protection under the right of everyone to take part in cultural life, this does not ensure sufficient protection of the cultural heritage of such communities. Accordingly, international law provides for specific protection to be enjoyed only by members of cultural minorities and persons belonging to indigenous peoples, in addition to “general” cultural rights held by all people.

Since traditions and the sense of connectedness with the past are crucial for the protection of cultural heritage of minority communities, Article 27 of the International Covenant on Civil and Political Rights (ICCPR)⁶⁷ provides for the right of persons belonging to ethnic, religious, and linguistic minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language in community with the other members of their group. Over the years, the Human Rights Committee has dealt with several cases in which it has clarified the scope of protection under Article 27 ICCPR, and extended it also to members of indigenous peoples.⁶⁸ Article 27 of ICCPR has provided an inspiration for the adoption in 1992 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.⁶⁹ The protection of cultural heritage of national minorities has reached a high level in Europe with the adoption of an international treaty entirely dedicated to the protection of national minorities’ rights, the 1995 Framework Convention for the

64 Shaheed, 2011, paras. 44–48. For further reading, see Francioni and Scheinin, 2008; Symonides, 1998; Blake, 2015, pp. 271–312.

65 According to Capotorti, a “minority” is a group numerically inferior to the rest of the population of a state, in a non-dominant position, and whose members being nationals of the state, possess ethnic, religious, or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity directed toward preserving their culture, traditions, religion or language; see Capotorti, 1979, para. 568.

66 According to UN Special Rapporteur Martínez Cobo, “indigenous populations” are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them, and, by conquest, settlement, or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic, and cultural customs and traditions than with the institutions of the country of which they now form part (...), see: Martínez Cobo, 1972, para. 34.

67 *International Covenant on Civil and Political Rights* adopted in New York on December 16, 1966, UN Treaty Series vol. 999, No. 14668.

68 UN Human Rights Committee, *General Comment No. 23: Art. 27 (Rights of Minorities)*, 8 April 1994, CCPR/C/21/Rev.1/Add.5, para. 3.2. See e.g., HRC, *Sandra Lovelace v. Canada*, 30 July 1981, Communication No. 24/1977; HRC, *Lubicon Lake Band v. Canada*, 16 March 1990, Communication No. 167/1984, HRC, *Jouni E. Lämsman et al. v. Finland*, 17 March 2005, Communication No. 1023/2001.

69 *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted in New York on December 18, 1992, by General Assembly Resolution 47/135.

Protection of National Minorities,⁷⁰ and a binding instrument for the protection of linguistic heritage in Europe, the European Charter for Regional or Minority Languages, adopted in 1992.⁷¹

International protection of indigenous cultural heritage is based on the recognition that cultural identity has a collective dimension for indigenous peoples, and that their heritage needs to be protected as a collective good.⁷² Safeguarding indigenous cultural heritage is inherently connected to land rights, right to self-determination, and environmental protection, because of a special spiritual link with land, animals, and natural resources that lies in the heart of every indigenous culture. The main universal documents dedicated to the protection of indigenous peoples' rights include the UN Declaration on the Rights of Indigenous Peoples of 2007⁷³ and the Indigenous and Tribal Peoples Convention, adopted by the International Labour Organization in 1989.⁷⁴ The international protection of indigenous cultural heritage on the universal level is still underdeveloped, and requires involving indigenous peoples in the law-making process as the trustees of their own cultural heritage.⁷⁵ Some of the regional human rights systems, however, provide for further-reaching protection of indigenous peoples' cultural rights than the universal instruments, in particular the Inter-American framework of human rights. The Inter-American Court of Human Rights has long been dedicated to the protection of cultural identity and heritage of indigenous communities through the evolutionary interpretation of the American Convention on Human Rights.⁷⁶

6. The Central and Eastern European perspective in cultural heritage protection

On the European level, concerted efforts in cultural heritage protection have taken place primarily within the framework of the Council of Europe, being a forum of cooperation for more than 40 different states. Central and Eastern European (CEE) countries do not take a separate legal approach to the protection of cultural heritage, even though, as Blake notes, within regions and sub-regions countries are likely

70 *Framework Convention for the Protection of National Minorities*, adopted in Strasbourg on February 1, 1995, under the auspices of the Council of Europe, CETS No. 157.

71 *European Charter for Regional or Minority Languages*, adopted in Strasbourg on November 5, 1992, under the auspices of the Council of Europe, CETS No. 148. Further reading: Pentassuglia, 2013; Weller, 2005.

72 Blake, 2015, p. 293.

73 *The United Nations Declaration on the Rights of Indigenous Peoples* adopted in New York on September 13, 2007, by the General Assembly Resolution 61/295.

74 *Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries*, adopted in Geneva on June 27, 1989, under the auspices of the International Labour Organization, UN Treaty Series vol. 1650, No. 28383.

75 For further reading, see Thornberry, 2002; Marinkás, 2016; Wiessner, 2013.

76 *American Convention on Human Rights*, adopted in San José on November 22, 1969, under the auspices of the Organization of American States, OAS Treaty Series, No. 36.

to have shared values and similar challenges, which can result in more innovative approaches to heritage protection and policy setting.⁷⁷ In the CEE region, due to its turbulent history, the international dialogue on the heritage protection is an ever-challenging issue.

Rampley identifies several issues that distinguish the Central and Eastern Europe from the Western European countries in terms of cultural heritage protection. A basic distinction is related to the process of state formation and the construction of national identities.⁷⁸ In Western Europe, the sense and awareness of distinct national identities grew out of already existing states, or the process was simultaneous. In Central and Eastern Europe, the process was reversed, as in many cases distinct ethnic and national identities had already existed before the rise of nation-states, many of which had emerged only after the collapse of the multi-ethnic empires.⁷⁹ Different narratives of the common history and different perspectives on “shared memories” (sense of loss, sense of victory) make the protection of cultural heritage, together with the protection of national minorities, a highly sensitive issue in the CEE region.⁸⁰

Another distinguishing feature of the cultural heritage in Central and Eastern Europe is related to the location of the “cultural homeland,” understood as symbolic places which played important role in the formation of national identity.⁸¹ In Western European countries, symbolic places are usually situated within the boundaries of the modern nation-state, and historically have always been there (e.g., monuments of the French national identity, such as Notre-Dame de Paris cathedral or the Eiffel Tower). In Central and Eastern Europe, the cultural homeland is often located outside of the current borders of the respective nation-state. Wars, frequent and turbulent changes of frontiers, and displacements of population have led in many cases to a non-coincidence of the cultural homeland and political territory of the state.⁸² The sense of entitlement to the cultural homeland is capable of providing the incentive for nation-states to reclaim what they consider to be theirs, sparking armed aggression.⁸³ Generally, the issue of protection of cultural heritage situated outside the kin state can foster ethnic tensions and hinder foreign relations. Suffice it to say, the very identity of cultural heritage sites is often not unambiguous. For this reason, the protection of

77 Blake, 2015, p. 313.

78 Rampley, 2012, pp. 10–11.

79 Ibid. Much has been written about the development of CEE countries, whose specific features up to this day affect the political situation and foreign relations in this region. Further reading: Szűcs, 1985; Smith, 1986; Čepulo, 2022.

80 See, e.g., the case of the protection of cultural rights of Serbian national minority in Vukovar, Croatia, as mentioned by Čepulo (Čepulo, 2022), or the problematic issue of the protection of public monuments and the symbolic “ownership” of the public space in Cluj/Kolozsvár in Romania, as described by Stirton (Stirton, 2012, pp. 41–66).

81 Rampley, 2012, p. 11.

82 Ibid.

83 US President Woodrow Wilson in his famous address to Congress in January 1918 (“The Fourteen Points”) considered the (re)adjustment of national and ethnic borders in Central Europe as a prerequisite to establish world peace. The proposals were later taken as the basis for peace negotiations at the end of World War I. See points IX–XIII of Wilson, 1918.

national minorities and adequate policy setting is of great importance for the dialog on cultural heritage in Central and Eastern Europe, especially in regions with large minority communities like Transylvania, Transcarpathia, Vojvodina, or Kosovo, or in cities with a rich historical background, like Lviv, Vilnius, Bratislava, or Cluj.

7. Conclusions

Although the international community had already demonstrated concern for the protection of cultural heritage from the end of the 19th century, the development of modern cultural heritage law essentially began after the Second World War. The main forum of international cooperation in this field is the United Nations Educational, Scientific and Cultural Organization (UNESCO), endowed with a special mandate and the duty of assuring the protection of the world's cultural legacy. The pioneering and coordinating efforts of UNESCO have led to the adoption of five international cultural conventions, which nowadays constitute main pillars of the international cultural heritage law. The main areas of protection include: safeguarding cultural property during war, preventing the illicit trade of cultural property, and protecting the world cultural heritage. Initially only material objects and sites enjoyed international protection, but the beginning of the 21st century has seen a more holistic approach to cultural heritage, expanding the protective framework to include intangible forms of culture. Another important recent development is connected to the recognition of the human rights dimension of heritage protection, manifested in everyone's right to access to and enjoyment of cultural heritage. This development is particularly relevant to the protection of the cultural heritage of national minorities and indigenous peoples.

International protection of cultural heritage in Central and Eastern Europe faces several challenges due to the region's turbulent history and strong national sentiments. The fact that political boundaries often do not follow ethnic boundaries makes the protection of national minorities a central issue in the discourse on cultural heritage in this region of Europe. The international cooperation mechanisms, which consider cultural legacy a common concern of all humanity, lay the groundwork for the protection of the cultural heritage with a contested past and even more contested present.⁸⁴

84 See e.g., the following World Heritage sites: Historic Center of Sighișoara in Romania, Levoča and Spišský Hrad in Slovakia, Historical Town Center of Kutná Hora in Czechia, Old City of Dubrovnik in Croatia.

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