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## Conceptual and Juridical Review of the Destruction of Cultural Objects in the Ukraine - Russia War

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### *Abstract*

*The ongoing conflict between Ukraine and Russia has witnessed numerous war crimes, notably the destruction of cultural property belonging to Ukraine, despite international protections afforded to such sites. This paper undertakes a conceptual and juridical review of the protection of cultural property during armed conflict, specifically examining its application in the context of the Ukraine-Russia war. Employing a doctrinal research method, the study elucidates the significance of safeguarding cultural heritage, which is deemed a global inheritance. The analysis emphasizes the provisions outlined in the 1954 Hague Convention, which governs the protection of cultural property, and explores the respective responsibilities of Ukraine and Russia in addressing instances of cultural destruction. By evaluating these legal frameworks and their application, this research contributes to understanding the obligations and challenges related to preserving cultural heritage amidst contemporary armed conflicts, advocating for adherence to international norms and facilitating mechanisms for resolution and accountability.*

**Keywords:** *Destruction of cultural property, war, Ukraine, Russia.*

### **A. INTRODUCTION**

Since early 2022, the ongoing war between Ukraine and Russia has posed the most significant threat to peace and security in Europe since the Cold War's conclusion. The conflict was ignited by the Russian Federation's invasion of Ukrainian territory, following a speech delivered by President Vladimir Putin on February 21, 2022. This address,

characterized by its contentious and seemingly arbitrary content, served as a prelude to the declaration of a "special military operation" the following day. Putin's speech not only articulated grievances regarding NATO expansion and the post-Cold War European security framework but also fundamentally challenged the legitimacy of Ukrainian identity and statehood.

Central to Putin's discourse are historical narratives emphasizing the deep cultural and political ties among East Slavic peoples—Russians, Ukrainians, and Belarusians—dating back to the medieval Kyivan Rus' commonwealth. According to Putin's worldview, Russia, Ukraine, and Belarus share a historical and political destiny, which he argues should unite these nations in a collective future. This perspective contends that Ukraine's and Belarus's distinct identities are the result of foreign interference, perpetuated today by Western powers aligned with Russia's historical rivals, positioning Ukraine and Belarus within an "anti-Russian project" (Mankoff, 2022: 1).

The ramifications of Putin's assertions have been profound, precipitating a military conflict that continues to destabilize the region and elicit international concern. The war's impact extends beyond military engagements to include humanitarian crises, diplomatic tensions, and broader geopolitical implications, underscoring its significance as a critical flashpoint in contemporary European affairs.

Several war crimes have been committed by Russia in launching its attack on Ukraine. The Office of the High Commissioner for Human Rights (OHCHR) has also noted that from February 24 2022, which marked the start of large-scale armed attacks by the Russian Federation, until March 12 2023, there have been 21,965 civilian victims in Ukraine, consisting of 8,231 people who died and 13,734 people who were injured. If

explained in more detail, when the following areas were controlled by the Ukrainian Government there were 17,619 casualties (6,372 dead and 11,247 injured), with data stating that there were 9,051 fatalities (3,762 dead and 5,289 injured) in the Donetsk region and Luhansk, and 8,568 fatalities (2,610 dead and 5,958 injured) in the regions of Kyiv City, Cherkasy, Chernihiv, Ivano-Frankivsk, Kharkiv, Kherson, Kirovohrad, Kyiv, Mykolaiv, Odessa, Sumy, Zaporizhzhia, Dnipropetrovsk, Khmelnytskyi, Lviv , Poltava, Rivne, Ternopil, Vinnytsia, Volyn and Zhytomyr. Meanwhile, when the region was occupied by the Russian Federation, there were 4,346 fatalities (1,859 deaths and 2,487 injured), with details of 2,879 fatalities (632 deaths and 2,247 injured) in the Donetsk and Luhansk regions, and 1,467 fatalities (1,227 deaths and 240 injured) in Chernihiv, Kharkiv, Kherson, Kyiv, Mykolaiv, Sumy and Zaporizhzhia regions. The actual number of victims is believed to be higher than stated above due to delays in receiving information originating from areas currently experiencing intense fighting (OHCHR, 2023).

Apart from civil society, Russia is also targeting cultural sites in Ukrainian territory. The statement regarding the attack was announced by Putin himself that Ukrainian culture and identity were targets of war. At an informal meeting of the United Nations (UN) Security Council, Kateryna Chueva, deputy minister of Culture and Information Policy of Ukraine, said that Russian bombs and missiles that damaged and destroyed Ukrainian cities had also hit a number of important cultural sites. Lazare Eloundou Assomo, director of UNESCO's World Heritage Center, even urged Russia to take precautionary measures to protect cultural heritage sites. The representative of the United States supported the existing argument by saying that Moscow had destroyed some of Ukraine's cultural heritage in an attempt to rewrite history, since its invasion of eastern Ukraine and the annexation of Crimea in 2014, such as removing artifacts, destroying burial sites, closing

churches and houses of worship. , export of artifacts from Crimea, unauthorized archaeological expeditions, destruction of Muslim burial sites, and destruction of other cultural heritage sites. In contrast to Ukraine, the United States and UNESCO, Sergey Leonidchenko, a Russian representative, denied that Moscow was targeting attacks on cultural heritage sites and said that the coordinates of cultural heritage sites in Ukraine had been given to their military in advance to take preventive measures (Basheer, 2022).

UNESCO has verified damage to 259 cultural sites located on Ukrainian territory, including 112 religious sites, 22 museums, 93 historical buildings, 19 monuments, 12 libraries and 1 historical archive (UNESCO, 2023). UNESCO's statement is important to strengthen evidence of war violations committed by Russia. These sites were supposed to receive special protection because they were important for the preservation of the culture and history of the Ukrainian people, but were instead destroyed in armed disputes. As a UN organization authorized to create a list of the 'International Register of Cultural Property under Special Protection', UNESCO has a role in calling for and verifying which historical sites should receive protection (Asplund, et, al., 2008, p.340). With the UN statement that there are hundreds of cultural sites that are considered damaged by UNESCO, it can be judged that there are war violations that have been committed by Russia in the form of destroying historical sites in Ukrainian territory.

Various international instruments have determined standards for implementing protection mechanisms for a nation's cultural heritage sites in a state of war, including Ukraine's cultural heritage sites. As a tool that plays a role in preserving the culture and civilization of a nation, Ukraine with all its cultural heritage sites needs to be given protection. Based on the problems above, through this article the author aims to provide

an explanation of the concept of protecting cultural objects in war and efforts to protect these cultural objects when applied in the war between Ukraine and Russia.

In order to obtain material to explain the focus of the article, the research method used by the author is a doctrinal research method. This method helps the author analyze legal concepts and developments based on existing doctrine (Wignjosoebroto, 2013). Analysis is carried out by reading and examining legal products, information spread in various media, and literature that is appropriate to the discussion. The results presented are descriptive in nature to explain something at a certain place and time. This research was conducted to present data and analysis related to humans, conditions or other symptoms (Soekanto, 2007).

## **B. RESULTS AND DISCUSSION**

### **Concept of Protection of Cultural Property in War**

Cultural objects include movable and immovable objects, tangible or intangible, such as buildings and monuments, works and art collections, books and manuscripts, and other cultural relics. The destruction of cultural objects from an area in conflict is one of the most attractive tools of war (Patel, 2011). Looting and destruction of monuments, buildings and objects with cultural and religious significance during armed conflict has a long history. Cultural looting in the form of destruction has been carried out throughout history for several purposes, namely to show the might of the conqueror and the loss of power of the conquered, to eradicate the previous culture so that it is easier to assimilate the local population into the existing kingdom, to adapt the defeated culture and sometimes combine it with the victor's culture, and raise funds to pay troops, enrich military leaders and the public treasury, and finance future wars (Gerstenblith, 2009).

Cultural objects have always been victims of armed conflict, with monuments and artifacts continually destroyed throughout the history of human civilization. Apart from being intentionally destroyed, the destruction of cultural objects is also a form of collateral damage that is not actually a target in war (Higgins, 2020). The ability of armed conflict to destroy cultural objects is very clear, especially with technological developments in the 20th century, a greater ability to cause permanent and widespread destruction. The protection of cultural objects should be a concern for everyone, wherever they are located. Cultural objects have important value for every country, namely to strengthen national identity and culture-based identity. Internationally, cultural objects can help foster appreciation of cultural diversity, knowledge of people's lives and understanding of our past. War or other armed conflicts have the potential to pose one of the greatest risks to these cultural objects (Techera, 2007).

Protection of cultural objects is based on the principles of humanitarian law, namely the distinction principle, the precautionary principle and the principle of proportionality (Fristikawati, 2020). The differentiation principle is a principle that differentiates between groups that can participate directly in combat (combatants) on the one hand, and groups that do not participate and must be protected in combat (civilians). Based on this principle, only combatants and military objects may be involved in war and be targeted (Asplund, 2008: 334). With the principle of distinction, cultural objects must be protected because they are civilian objects, different from military objects which can be attacked or destroyed. The precautionary principle requires parties to a conflict to take all reasonable precautions to protect the civilian population and civilian objects under their control against the effects of attack. In relation to cultural objects, caution on the part of the state or party in conflict is necessary so that when carrying out actions or activities attacks do

not cause damage to cultural or historic buildings (Fristikawati, 2020). The principle of proportionality is applied to limit the damage caused by military operations by requiring that the consequences of the means and methods of warfare used must not be disproportionate (must be proportional) to the expected military advantage (Asplund, 2008: 334). This principle prohibits attacks that could harm civilians, including disturbing the existence of cultural objects that are important for people's lives, and attacks must be carried out proportionally (Fristikawati, 2020).

In protecting cultural objects, there is currently an approach that has been developed by the UK Ministry of Defense (UK MoD), the United States Department of Defense (the US DoD), and NATO, which is known as the '4-Tier' approach. This approach provides an outline policy and practical framework for the inclusion of the protection of cultural objects into military doctrine and long-range planning. Tier 1 requires the integration of cultural property protection training in basic training for all military personnel at the appropriate level and can be introduced for junior ranks, for example through posters, official card packs and short films. Tier 2 was introduced as soon as deployment became a possibility and militaries needed an understanding of the rich culture they would encounter in a particular location. This is the time to provide or review specific information about the culture that will be protected in a particular theater of operations. A number of countries have developed materials specifically for this level, including official country-focused card packs produced by the armed forces of the United States, the Netherlands, Norway, and most recently endorsed by the Norwegian Blue Shield. Tier 3 is activities during conflict, and Tier 4 activities are carried out post-conflict, which the military calls 'stabilization'. This approach provides a framework for

future collaboration so that the protection of cultural objects is integrated as a core element of future military planning (Stone, 2015).

International law recognizes the importance of protecting a nation's cultural objects. Although cultural objects can be considered the heritage of certain cultural groups, the main driving force behind the formation of international agreements regarding the preservation and protection of cultural objects is the idea that cultural objects are the "inheritance of all humankind" (heritage of all mankind). ". Brennan, in his account of the Bamiyan Buddha situation, explains the impulse as follows (Patel, 2011): "Cultural property is our inheritance from the past, our cultural heritage. It explains who we are and where we come from. The world values cultural property because it forms social identity and, in some instances, embodies the highest accomplishments of the human spirit. International laws that seek to protect cultural property reflect these values."

Cultural objects are considered the exclusive domain of states by international law. This is based on the idea of international arrangements regarding cultural objects which consist of recognizing the right of every state to identify, physically control and protect cultural objects from irreparable loss in the event of armed conflict, and to prevent their unlawful transfer. towards cultural objects from the territory of the country, both during war and peace. This state-oriented perspective, which aims to preserve national cultural objects against 'external' threats to their integrity, has gradually expanded and today includes a wide range of cultural manifestations and the interests attached to them. Today, cultural objects are increasingly considered as holistic concepts that are inherently linked to societal identity as well as human rights, both in individual and collective dimensions, raising questions about efficient legal mechanisms to be implemented within the cultural sphere of human existence. In fact, the regulatory basis for the protection and enjoyment



of cultural objects falls within a truly diverse and complex field of international law (Jakubowski, 2018).

### **Legal Framework for the Protection of Cultural Property in War**

After World War II, codified international law recognized that historical monuments, archaeological sites, and other works of art were considered the property of all mankind, not of one country. This recognition was codified in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and reaffirmed in Article 53 of the 1977 Additional Protocols to the Geneva Convention of 1949. Before the 1954 Hague Convention, there were already two Hague Conventions. Previous Conventions agreed in 1899 and 1907 were the foundation for the codification of international war law. Both conventions prohibited invading armies from plundering and required invaders to respect the laws of conquered territories. The convention also prohibits the confiscation of private property and protects cultural objects and buildings. Violations of these two conventions will be subject to international sanctions (Kastenberg, 1997).

The origins of the 1954 Hague Convention can be traced to Article 56 of the 1907 Hague Convention, which is the final provision in this convention (Kastenberg, 1997). The article states that "all seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings." ("all confiscation or intentional destruction or damage done to this charter institution, historical documents, works of art and science, is prohibited, and shall be subject to legal proceedings.") (Hague Convention, 1907). In the preamble to the convention, it was stated that the members of the 1954 Hague Convention recognized that cultural objects had suffered serious damage during recent armed conflicts and that due to developments in warfare techniques, these cultural objects were

in increasing danger of destruction. The members also believe that the destruction of cultural objects belonging to any nation is a form of damage to the cultural heritage of all mankind, because every nation makes its contribution to world culture. Therefore, the preservation of cultural objects is very important for all nations in the world and it is important that these cultural objects receive international recognition and protection (Hague Convention, 1954).

The 1954 Hague Convention provided further regulations that were more detailed and clear regarding how to treat and safeguard cultural objects in times of war compared to previous conventions (Wiennata, et.al., 2020). What is clearly different from previous conventions is that in the 1954 Hague Convention the term and definition of "cultural property" was introduced. In addition, there is an expansion of the protection of cultural objects in all armed conflicts and not only in full-scale wars. This provision fills the legal vacuum found in the 1899 and 1907 conventions. International symbols are also established for countries to protect cultural objects. The presence of cultural objects is indicated by a blue and white shield. This shield can be placed as a symbol on the site or flown in the form of a flag. The 1954 Hague Convention also created an International Register of Cultural Property Under Special Protection (Resister), although to date this list is still incomplete (Kastenberg, 1997).

The term "cultural property" is mentioned in Article 1 of the 1954 Hague Convention. In this article it is stipulated that "cultural property" includes movable or immovable property that is very important for the cultural heritage of any person (architectural monuments of art or history, archaeological sites, groups of buildings that as a whole have historical or artistic interest, works of art, manuscripts, books , and other objects of

artistic, historical, archaeological interest, scientific collections and important book or archive collections or reproductions of the above-mentioned objects), buildings whose primary and effective purpose is to preserve or exhibit designated movable cultural objects above (museums, large libraries and archives, and sanctuaries intended for refuge in times of armed conflict), and centers containing large amounts of cultural property are known as centers containing monuments. containing monuments"). Protection of cultural objects must consist of protection and respect for these objects (Hague Convention, 1954).

The form of expanded protection for cultural objects can be seen in Article 4 of the 1954 Hague Convention. It is stipulated that members of the convention must respect cultural objects located within their own territories as well as within the territories of other members by refraining from any use of cultural objects and their surroundings or equipment used for their protection for purposes likely to cause their destruction or damage in the event of armed conflict, and also by refraining from all acts of hostility directed against these cultural objects. These obligations may be waived only in cases where urgent military necessity requires a waiver of such obligations. Members are also required to prohibit, prevent and, if necessary, stop all forms of theft, looting or misuse, and any acts of destruction directed directly at cultural objects. Members must refrain from requisitioning movable cultural objects located in the territory of other members and from any action directed in a retaliatory manner against cultural objects.

In the 1954 Hague Convention, forms of providing special protection for cultural objects were also established. In article 8 it is stated that cultural objects can be placed under special protection in a number of shelters intended to house movable cultural objects in times of armed conflict in the form of centers containing monuments, and also

for immovable cultural objects others of particular importance provided that: (1) it is located at a sufficient distance from any major industrial center or from any important military target which is a vulnerable point, such as an airport, broadcasting station, enterprise engaged in national defense work, port or railway station ; and (2) not used for military purposes. A place can be considered used for military purposes if it is used for the movement of military personnel or material, even in transit. This also applies to any activity directly related to military operations, the deployment of military personnel, or the production of swimming equipment carried out in centers containing monuments. The guarding of cultural objects may only be carried out by armed guards who are given special authority, police forces who are usually responsible for maintaining public order are not considered to be carrying out military purposes. Shelters for movable cultural objects may also be placed under special protection, regardless of location, if they are constructed in such a way that they are unlikely to be damaged by bombs. Where cultural objects are located near a military objective, they may be placed under special protection if the member requesting protection has not used the objects in armed conflict, and in cases such as railway stations and airfields, to divert all traffic from there and diversions prepared in peacetime. Special protection is especially given to cultural objects that are included in the "International Register of Cultural Property under Special Protection".

Regarding international symbols for countries to protect cultural objects, these provisions can be found in Article 16 of the 1954 Hague Convention. It is stated that the protective emblem of the convention is in the form of a shield, pointing downwards, a blue and white persaltire (the shield consists of a dark blue square, one corner of which forms the tip of the shield, with a royal blue triangle above the square, the space on either

side of which is occupied by white triangle). The emblem must be used alone, or repeated three times in a triangular formation (one lower shield).

Apart from the 1945 Hague Convention, it has also been mentioned that there is Article 53 of the 1977 Additional Protocols to the Geneva Convention of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) which confirms the provisions in the convention. This article emphasizes the prohibition against carrying out any hostile acts directed against historical monuments, works of art or places of worship which are cultural or spiritual objects of society. These objects are prohibited from being used to support military efforts or be used as targets for retaliation. The provisions of this article may differ from Article 1 of the 1945 Hague Convention which refers to cultural objects of "particular importance for cultural heritage", and not, as in Article 53 of this additional protocol which views cultural objects with the term "constituting cultural or spiritual heritage". However, both have the same basic idea. References to places of worship and spiritual heritage clarify the qualification of protected objects by introducing the criterion of spirituality. It is stated that cultural or spiritual objects include objects whose value transcends geographical boundaries, and which are unique and closely related to the history and culture of a nation (Commentary on 1977 Additional Protocols to the Geneva Convention).

### **Efforts to Protect Cultural Property in the Ukrainian-Russian War**

Several international instruments can be used as a mechanism for protecting cultural objects in war. The war between Ukraine and Russia is also a war that is required to implement the provisions contained in the international instrument, especially the provisions contained in the 1945 Hague Convention. The reason underlying this argument is data from UNESCO which states that Ukraine and Russia are member countries of the

1945 Hague Convention. Both have ratified this convention and its first protocol in 1957 (UNESCO, 2023). Ratification status indicates that both countries agree to be bound by an agreement (Rompis, 2017). Quoting from the writings of Mochtar Kusumaatmadja, it is said that when an international agreement is agreed, it will have legal consequences for the parties (Narwati & Hatuti, 2011). This shows that all provisions in the 1945 Hague Convention are laws that apply to Ukraine and Russia.

Russia's destruction of Ukrainian cultural objects in the war was a violation of the 1945 Hague Convention. Russia clearly does not implement the provisions of the convention. Cultural objects being targeted by Russian bombs and missiles, has shown that Russia does not pay attention to Ukrainian cultural objects. Russia was proven to have deliberately targeted cultural objects as war targets, although this was denied in an international forum. If Russia is on the same understanding as this convention, then Russia will respect cultural objects as a form of protection, in accordance with the objectives of this convention (Hague Convention, 1954).

Russia has also violated Article 4 of the 1945 Hague Convention by destroying Ukrainian cultural objects. Russia has proven to have no respect for cultural objects located in other members' territories and has resulted in the destruction and damage of Ukrainian cultural objects. In the war between Ukraine and Russia there are no pressing matters related to military needs that could override Russia's obligation to respect Ukrainian cultural objects in the war. Even Putin, the Russian president, stated clearly that cultural objects were targets of war with the aim of eliminating traces of Ukrainian culture, to then be integrated with Russian culture.

In areas of Ukraine that have been occupied by Russia, the destruction of cultural objects still occurs. Referring to Article 7 of the 1945 Hague Convention, Russia, as the party that occupies Ukrainian territory, has an obligation to support the competent national authorities of the occupied country, which in this case is Ukraine, in safeguarding and preserving its cultural riches. Unfortunately, this obligation was often violated by Russia when occupying several regions of Ukraine. However, if Russia is clearly carrying out destruction, then based on the same article, Russia needs to take the most necessary preservation measures.

An effort that Ukraine can make to protect its cultural objects is by taking several preventive steps in peacetime, such as making preparations to safeguard cultural objects located in their territory that have the potential to be damaged and destroyed in war, providing special protection for cultural objects, and providing an identification symbol in the form of a shield to indicate cultural objects that must not be destroyed. With regard to the provision of identification symbols, their use can only be intended for cultural objects that are not specifically protected, persons responsible for supervisory duties in accordance with the implementing regulations of the convention, personnel involved in the protection of cultural objects, and identity cards mentioned in the regulations implementation of the convention.

In the event that various binding provisions and preventive measures are unable to prevent the destruction of cultural objects in Ukrainian territory, there are other efforts that can be taken, namely conciliation as regulated in Article 22 of the 1945 Hague Convention. Conciliation is suspected by the existence of provisions which state that if there is a dispute relating to cultural objects, the protecting countries will provide good

services for the benefit of the cultural objects. Conciliation procedures are carried out by the protecting countries, either at the invitation of one of the parties, the Director-General of the United Nations Educational, Scientific and Cultural Organization, or on their own initiative, by proposing to the parties in the dispute to hold a meeting of their representatives, especially the authorities responsible for the protection of cultural objects. Meetings are held in appropriately selected neutral territory. Even though the protecting countries are the ones who oversee the progress of the conciliation process, the parties to the dispute can still provide various kinds of proposals for the meeting they will hold. In addition to conciliation, Ukraine can also ask UNESCO for technical assistance in organizing the protection of their cultural objects, or in connection with other problems arising from the implementation of the 1945 Hague Convention (Hague Convention, 1954).

The last effort that Ukraine can take to protect cultural objects in the war with Russia is to carry out criminal prosecution. Article 28 of the 1945 Hague Convention stipulates sanctions with the provision that parties to a dispute can take all necessary juridical steps to prosecute and impose criminal or disciplinary sanctions against persons, of whatever nationality, who have committed or ordered to commit violation of the 1945 Hague Convention.

### **C. CONCLUSION**

Cultural objects always become victims in armed conflict, either deliberately as war targets or as a form of collateral damage. When protecting cultural objects, it is necessary to pay attention to the principle of distinction, the precautionary principle and the principle of proportionality. This protection is important because cultural objects are the "inheritance of all humankind", so they are important for community identity and human



rights. Recognition of cultural objects has been codified in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and reaffirmed in Article 53 of the 1977 Additional Protocols to the Geneva Convention of 1949. In this legal framework it has been regulated regarding the term and definition of "cultural property", the expansion of protection of cultural objects in all armed conflicts, international symbols for countries to protect cultural objects, and various efforts that can be made to resolve cases of destruction of cultural objects in war. Russia has been proven to have violated the 1954 Hague Convention, so that several efforts to resolve the case of Russia's destruction of Ukrainian cultural objects can be made. There are also efforts that can be made, including in the form of preventive measures, such as making preparations to safeguard cultural objects located in their territory that have the potential to be damaged or destroyed in war, providing special protection for cultural objects, and providing identification symbols in the form of shields as markers. cultural objects that must not be destroyed, and in repressive forms such as conciliation and the use of criminal sanctions.

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