

INTRODUCTION

Cultural heritage sites, together with other cultural properties, form a fundamental part of the identity and dignity of people, and therefore deserve careful preservation as unique testimonies of the past. They have been protected under the International Law of Armed Conflicts, as well as other branches of the International Law System. Article 27 of the Regulations to the Fourth Convention Respecting the Laws and Customs of War on Land (Second Hague Convention, 1907) requires *the precautions, in case of siege or bombardment, to preserve buildings used for religious purposes, for the arts, sciences, charity, historical monuments so long as they are not used for military purposes.*

However, the new-born industry in the production of military hardware with far greater destructive power and the introduction of imperialism with stronger and more frequent military attacks have greatly affected the cultural heritage of mankind. The first ever attempts were made during the time between the two World Wars to improve the legal protection for cultural property.¹ Nevertheless, these sites are still always severely damaged during armed conflicts, e.g. Old City of Dubrovnik (Croatia)² in the civil war in ex-Yugoslavia in the 1990s. Their disappearance would be an irreparable loss for humankind. Therefore, the protection of these properties should be our common concern.

In order to analyze the importance of the protection of World Cultural Heritage sites in the times of armed conflict and the efforts to make practices effective, the paper has been divided into two chapters:

¹ Emil Alexandrov, *International Legal Protection of Cultural Property*, Sofia Press, 1979, p. 25–33.

² Inscribed on the World List in 1979 for Cultural Criteria of *i*, *iii* and *iv*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

Chapter I – Overview; including two parts as follows

- I. Definition of Cultural Heritage Sites*, which gives the basic idea of what the objects of International Law for the protection of Cultural Heritage are; and
- II. The importance of its protection*, listing the most significant reasons which lead to the international cooperation to protect Cultural Heritage.

Chapter II – Legal protection for the Cultural Heritage Sites in Times of Armed Conflict; discussing the effectiveness of the present legislation regarding the protection of Cultural Heritage in the event of armed conflicts in two following separate parts:

- I. Historical Background;* and
- II. Legal regime for the protection of World Cultural Heritage sites in times of armed conflict.*

* * *

This is not the first time that I have ever written a thesis, but the first time I have ever done it in a language other than my mother tongue, so I apologize for any misunderstanding committed in writing, and also thanks for your comments.

Groningen, July 2000

CHAPTER I

OVERVIEW

I. DEFINITION OF CULTURAL HERITAGE SITES

There is a distinction between Natural and Cultural Heritage in the Convention for the Protection of World Cultural and Natural Heritage, Paris, 1972 (below mentioned as Paris Convention). i.e. what considered Natural Heritage, under Article 2, is the non-human features, while human's works, defined in Article 1, cultural ones, which refers to:

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

The world is, indeed, the organic relationship between these two supposed isolating elements: human intervention has affected natural sites for years. e.g. "Sport hunting is allowed in the Selous Game Reserve³ in Tanzania. Selective logging was

³, ⁴, ⁵, ⁶, ⁷, ⁸, ⁹, ¹⁰, ¹¹, ¹² Inscribed on the List respectively in 1982 for the Natural Criteria of *ii* and *vi*; 1979, *ii* and *iii*; 1989, *ii* and *vi*; 1994, *iii*; 1981, *i*, *ii*, *iii* and *vi*; 1991, *i*, *ii*, *iii* and *vi*; 1979, *i* and *iii*; 1985, *ii* and *iii*; 1984, *ii*, *iii* and *vi*; and 1994, *iii* and *vi*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

allowed in Croatia's Plitvice Lakes⁴ before the war. Commercial fishing takes place in Mauritania's Banc D'Arguin National Park,⁵ Vietnam's Ha Long Bay⁶ and in the Great Barrier Reef⁷ and in Shark Bay,⁸ Australia. Natural gas is extracted from the sub-surface zone of Canada's Dinosaur Provincial Park.⁹ Wood, grass and medicinal plant collection is allowed in Peru's Huascarán,¹⁰ Nepal's Royal Chitwan,¹¹ and Uganda's Bwindi Impenetrable national parks.^{12,13}

As no World Natural Heritage site is purely ecological, the term “natural” implies an area that is mostly free from human influence, where nature is still relatively intact. There is thus a continuum between a feature, dominated by nature, and landscape, by human, which gives room for the new criteria of *cultural landscapes*¹⁴ in the middle. Cultural landscapes, described in Article 1 of the Paris Convention as “*the combined works of nature and man*”, illustrate human society development through the ages and form the category of “mixed properties”¹⁵ (i.e. those that match up to both natural and cultural criteria).¹⁶ The Paris Convention is, therefore, applied to protect nature and culture together and in their interactions.¹⁷

¹³ How natural are World Heritage Natural sites? The World Heritage Newsletter No. 1 (February 1993), Internet Source – <http://www.unesco.org/whc/nwhc/pages/news/main2.htm>

¹⁴ Conserving outstanding cultural landscapes, The World Heritage Newsletter No. 2 (June 1993), Internet Source – <http://www.unesco.org/whc/nwhc/pages/news/main2.htm>

The definition, officially recognized since 1992, can be classified broadly in three categories:

1. **Clearly defined landscapes** designed and created intentionally by man, such as, for example, gardens and parks.
2. **Organically evolved landscapes** resulting from successive social and economic imperatives and in response to the natural environment.
3. *In some of these landscapes the evolutionary process may have come to an end, in which case they have become **relict or fossil landscapes**. Continuing landscapes retain an active social, traditional way of life in which the evolutionary process is still in progress.*

¹⁵ For which many sites were inscribed, e.g. Pyrénées – Mount Perdu between France and Spain, added to the World Heritage List in 1997 for Natural Criteria of *i* and *iii*; Cultural Criteria of *iii*, *iv* and *v*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

¹⁶ The Integration of cultural landscapes into the World Heritage, The World Heritage Newsletter No. 1 (February 1993), Internet Source – <http://www.unesco.org/whc/nwhc/pages/news/main2.htm>

¹⁷ *Supra* note 14.

O’Keefe indicates that “cultural heritage”, for the purpose of the Paris Convention, signifies “*individual sites of cultural significance*”.¹⁸ Alexandrov, in his book, insists on the immovable property as the only cultural object of protection under the Paris Convention. However, as it protects “group of buildings” as a whole, it should be understood that the movable objects, which form inseparable part of the works, must also be protected.¹⁹ Their conclusions are supposed to have support from the World Heritage List, in which no movable property has been so far entitled the inscription by its own value; i.e. some have been inscribed as an inseparable part of the site, e.g. "The Last Supper" by Leonardo da Vinci in The Church and Dominican Convent of Santa Maria delle Grazie (Italy).²⁰

In reference to the first section of the Article, I personally do not agree with these opinions, as the word *monument* itself means *anything by which the memory of a person, thing, idea, art, science or event is preserved or perpetuated. [...] In real-property law and surveying, monuments are visible marks or indications left on natural or other objects indicating the lines and boundaries of a survey. In this sense the term includes not only posts, pillars, stone markers, cairns, and the like, [...]*.²¹ Obviously, the first section of the Article refers to *inscriptions* as one of the illustrations. At this point, O’Keefe is self-contradictory in his article, as he also agrees that “monument has long been and still is the technical term used in a wide array of national laws to refer to immovable and sometimes even movable property that is formally protected by law”.²² Although he has explained the common use of the word in his following sentences, a clearer reference should be provided in the

¹⁸ R. O’Keefe, the meaning of “Cultural Property” under the 1954 Hague Convention, *Netherlands International Law Review*, Vol. 46, Issue 1, 1999, p. 74.

¹⁹ Alexandrov, *supra* note 1, p. 65–6.

²⁰ Inscribed on the World Heritage List in 1980 for the Cultural Criteria of *i* and *ii*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/doc/main.htm>

²¹ *West’s Law and Commercial Dictionary in Five Languages*, West Publishing Company, St. Paul, Minnesota, volume 2 (K – Z), 1988, p. 146.

²² O’Keefe, *supra* note 18, p. 76.

Convention in order to avoid ambiguity. However, the protection of those accessories will be left aside in order to focus on the scope designed for the paper.

II. THE IMPORTANCE OF ITS PROTECTION

1. The characteristics of “outstanding interest”

In 1975, only 20 countries were Parties to the Paris Convention. Today, with the ratification from 158 States,²³ it has become the most popular international instrument by changing the way the world views its natural and cultural treasures.²⁴ The Paris Convention is not intended to protect all properties of great interest, importance or value, but only the most outstanding from an international viewpoint, based on two sets of criteria.²⁵ These criteria are found in the Operational Guidelines for implementing Paris Convention set up by the World Heritage Committee (below mentioned as the Committee).

What makes the concept of World Heritage exceptional is its “outstanding universal value”, such as aesthetic or symbolic uniqueness. Besides, a site would be accepted on the basis of “*outstanding universal significance [...] only in exceptional circumstances*”, regulated in criteria *vi*, which the framers intended to use only once – to add the Auschwitz Concentration Camp (Poland)²⁶ to the List in 1979. However, because of the increasing arms race between the powerful countries, more torture forms have been invented, which has resulted in more injury. The Committee therefore decided to add more war remnants to the List – The Hiroshima Peace

²³ As at 10 January 2000, Internet Source – <http://www.unesco.org/whc/wldrat.htm>

²⁴ Christina Cameron, 25 years of safeguarding World Heritage, UNESCO Sources No. 95 (November 1997), p. 7.

²⁵ In this paper, only the one for cultural sites, set up in para. 24 of the Operational Guidelines, is mentioned.

²⁶ The concentration and extermination camp where Hitlerian genocide took place during the second World War, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

Memorial (Japan), known as the Genbaku Dome,²⁷ for example. “This is not an architectural wonder, but actually in a state of ruin – and is deliberately kept that way, because what was originally a banal commercial exhibition hall built in 1910 is now one of the most poignant survivors of the atomic explosion over Hiroshima on 6 August 1945. It provides physical evidence of the tragedy of using nuclear power for the purposes of war. Most importantly, it is a memorial symbolizing the hope and need for peace.”²⁸

It can be understood that nowadays, much attention has been paid to the protection of cultural property as a common heritage of mankind, which is partly reflected in the higher number of Cultural Heritage Sites in the World Heritage List in comparison to that of natural sites.²⁹ This task therefore has been assigned to the international cooperation³⁰ for more effective *collective protection* – a principle formulated together with the adoption of the Paris Convention.

2. Increasing threat of destruction

Until now, no site has been removed from the World Heritage List. But more and more sites have been added to the list of World Heritage in Danger, presently with 27.³¹ “In danger” means that the Committee foresees an increasing threat to the outstanding values of the World Cultural Heritage:³² several sites have suffered from unpredictable natural disasters in recent years. “Torrential rains in spring 1993 affected a number of houses in the Old City of Shibam (Yemen).³³ The earthquake in

²⁷ Inscribed on the World Heritage List in 1996 for Cultural Criteria of *vi*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

²⁸ A.O., A potent symbol, UNESCO Sources No. 86 (January 1997), p. 23.

²⁹ *Supra* note 24.

³⁰ The Paris Convention, Preamble.

³¹ Updated 30 November 1999, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

³² *Supra* note 26.

^{33.} ^{34.} ³⁵ Inscribed on the World Heritage List respectively in 1982 for Cultural Criteria of *iii*, *iv* and *vi*; 1979, *i*, *v* and *vi*; 1991, *iv* and *vi*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

Egypt in 1992 had a severe impact on the structures of buildings in Islamic Cairo,³⁴ and a typhoon damaged the Island of Mozambique³⁵ in 1994.”³⁶

Besides, the World Cultural Heritage today is exposed to disasters resulting from human activities – population pressures, social and economic development, poverty, modernization, and the growing risks of serious harm from armed conflicts. Examples for the latter are not difficult to find. 25 out of 70 architectural works of My Son Sanctuary (Vietnam),³⁷ developed between the 4th and the 13th centuries with spiritual origins of Indian Hinduism,³⁸ survived in ruins after the war with the United States.³⁹ The 427-year-old bridge of Stari Most⁴⁰ in Mostar,⁴¹ well known for its symbolic value of peace and reconciliation, had collapsed due to being shelled in 1993 during the war between Bosnia and Herzegovina.⁴² In early 1997, the Taleban forces threatened to destroy the ancient Buddhist statues in central Bamyan Province (Afghanistan), which, in 1982, failed in inscription on UNESCO’s World Heritage List due to impossible enforcement of law on cultural protection (i.e. criteria *b, ii* was not fulfilled) in armed conflict situations.⁴³

Since States still have the right to use force in certain circumstances, regulated in the Charter of the United Nations – for instance, in case of self-defense,⁴⁴ which has

³⁶ Natural and human-caused disasters at World Heritage, The World Heritage Newsletter No. 7 (March 1997), Internet Source – <http://www.unesco.org/whc/nwhc/pages/news/main2.htm>

³⁷ Inscribed on the World Heritage List in 1999 for Cultural Criteria of *ii* and *iii*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

³⁸ Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

³⁹ Internet Source – http://www.vietnamtourism.com/web_viet/tourist/tourspot/monumade/index.htm

⁴⁰ The old city of which will probably be considered in the near future as a possible site for the inclusion in the World Heritage List, Internet Source – http://www.unesco.org/drg/mostar/stari_most.htm

⁴¹ The largest town in Herzegovina and the second largest in the whole country (after Sarajevo, the Bosnian capital), situated about 150 km northwest of Dubrovnik, Internet Source – http://mirror-us.unesco.org/culture/heritage/tangible/mostar/html_eng/mostar5a.htm

⁴² Internet Source – http://www.unesco.org/drg/mostar/stari_most.htm

⁴³ S.W., From Bamyan to The Hague, UNESCO Sources No. 90 (May 1997), p. 22.

⁴⁴ UN Charter, Art. 53.

resulted in the increasing number of armed conflicts in recent years. Efforts must be made to save our common heritage from the risk of disappearance.

CHAPTER II

LEGAL PROTECTION OF CULTURAL HERITAGE SITES IN TIMES OF ARMED CONFLICTS

I. HISTORICAL BACKGROUND

In Antiquity, the Law of War did not restrict any method of aggression, which led to the destruction of Carthage,⁴⁵ Corinth⁴⁶ and other centers. The moral condemnation existed at that time, e.g. Cicero's⁴⁷ against the destruction of works of art during the Roman wars, could not make any change or creation of either legal norms or customs in conservation of cultural monuments. The renaissance of art and culture⁴⁸ then helped enhance states' awareness for their protection. In the following time, the French Revolution, with a decree of the Covenant in 1791, gave historical monuments a public status and simultaneously created the Louvre Museum.⁴⁹ During the 19th century, public opinion for cultural protection emerged, but still did not lead to the creation of international legal norms. However, those factors – the Renaissance, the French Revolution, and public awareness – gradually led to the preparation of certain international customs, which were respected in most wars waged in the century, such

⁴⁵ Archaeological Site of ancient state of North Africa, lasting from about 9th century BC to 146 BC, 10 km from today's Tunis, Tunisia; Inscribed on World Heritage List in 1979 for the Cultural Criteria of *ii*, *iii* and *vi*, Internet Source – <http://i-cias.com/cgi-bin/eo-direct-frame.pl?http://i-cias.com/e.o/carthage.htm>

⁴⁶ Founded by Julius Caesar in 44 BC, situated near the Isthmus, the land bridge between the Peloponnesos and mainland Greece, Internet Source – <http://ccat.sas.upenn.edu/~dromano/basicfr.html>

⁴⁷ Marcus Tullius Cicero (106–43 BC), Roman Orator.

⁴⁸ In Renaissance (believed beginning about 1300 and ended by 1650 with the introduction of Enlightenment, Internet Source – <http://www.suite101.com/event.cfm/92>).

⁴⁹ One of the earliest European museums, now situated in Paris, French Republic.

as limitation in destruction of “open” cities, or protection of cultural monuments from destruction except for military necessity.

The last quarter of the 19th century marked a step forward in the development of international legal protection of cultural property in the event of armed conflicts by certain agreements, among which is The First Hague Convention (1899) on the laws and customs of war on land, followed by The Second Hague Convention (1907) which provides protection to all buildings used for religious and scientific purposes as well as historical monuments.⁵⁰

The violations of existing international law during World War I caused considerable damage to cultural property all over Europe, which led to the Paris Peace Conference in 1919 for settlement of the problem, the Treaties of which envisaged reparations for cultural property destroyed during the war. “Under the provisions of Articles 125 and 126 of the Treaty of Neuilly, Bulgaria undertook to return all objects of art and culture removed or requisitioned from the territories which Bulgaria had occupied in Greece, Romania and Serbia, whenever they could be identified within the territory of Bulgaria. [...]. With regard to reparations, Bulgaria undertook to make good the damage or loss of every kind, including cultural property damaged or destroyed.”⁵¹ However, no concrete measures of protection were established. Thus, in the years after that, “the famous Russian artist, poet, scientist, humanist and public figure, Nikolai Rörich (1874–1947),⁵² with the assistance of French specialists in international law, wrote a complete draft for an international accord, then known as Rörich Pact, in which a flag of peace was designed as a distinctive emblem of cultural property under international protection.”⁵³ The Rörich Pact received broad public support and then was adopted by American states in 1935, becoming the first legal agreement for the protection of cultural property, based on the principle of universal preservation of human’s cultural heritage.

⁵⁰ Art. 27, 46, 56 of the IVth Convention and Art. 5, 6 of the IXth Convention of 1907.

^{51, 52, 53} Alexandrov, *supra* note 1, respectively p. 31, p. 142, and p. 31.

The efforts to transform the Rörich Pact, now known as the Washington Pact, into an international act was halted in World War II by the vandalism of Hitler's fascism, which was included in various treaties and declarations of anti-Nazi countries claiming restitution at the end of the war. Valuable interior flourishes of the Great Catherine Palace⁵⁴ (Tsarkoye Selo, St. Petersburg, Russia) were pillaged during World War II and most of the original furnishings are still stored elsewhere, some of which have been found at auctions in Germany recently. The Palace itself, known as "an exquisite monument of Russian art and culture with a worldwide reputation",⁵⁵ was used as a German command post, and it was almost destroyed after the war. When the war ended, substantial resources, skilled craftsmen, and rare materials were required to restore the valuable site. And not until 1973 were most of the important parts inside the palace as well as its architecture restored. However, there is no record on restitution reported, and people who are in charge of restoration of the Palace are still searching for furnishings looted in the war. Although the Palace has been open for public visit, some rooms are still under reconstruction. The Palace was placed on the World Monument Watch endangered list⁵⁶ because of serious conservation problems brought about by wartime bombing and years of subsequent weathering. For the time being, an urgent restoration group is always ready for any incident. In addition, handicraftsmen have been gathered in order to restore or make the new versions of things that were totally ruined in the war.⁵⁷

The United Nations, based on the principles concluded in its Charter, provided a solution for the problem through the creation of the United Nations Educational,

⁵⁴ Built 1780–1787, one of the finest Roman-style creations of Imperial Russia, designed for Catherine II by Charles Cameron, decorated by leading artisans of the time, Charlemagne, Hofert, Rudolf, and de Pedro, Internet Source – http://www.worldmonuments.org/html/100_list/agatepa.html

⁵⁵ Internet Source – <http://www.alexanderpalace.org/catherinepalace/history.html>

⁵⁶ The World Monuments Watch List of 100 Most Endangered Sites, a global program launched in 1995, calls attention to imperiled cultural heritage sites around the world, and directs timely financial support to their preservation, Internet Source – <http://www.worldmonuments.org/html/programs/aboutwmf.html>

⁵⁷ Notes of the study tour on "International & Environmental Security" in St. Petersburg, Russia, April 2000.

Scientific and Cultural Organization (UNESCO) on November 16, 1945. Since then, UNESCO not only protects the cultural property, stated in the purpose of its Constitution, but also develops and ensures its proper presentation. One of the most important results from its activities is the adoption of some binding international agreements, among which are The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflicts (below mentioned as The Hague Convention), and the Paris Convention. These Conventions provide the legal basis for the solution of many problems in this field as well as continue helping to the international efforts to protect the cultural property.

II. LEGAL REGIME FOR THE PROTECTION OF CULTURAL HERITAGE SITES IN TIMES OF ARMED CONFLICT

1. Under International Law

1.1. Scope of application

The Hague Convention is the first international agreement focusing exclusively on the protection of *cultural property*, which is defined in Article 1 as “*property of great importance to the cultural heritage of every people*”. This ambiguous regulation can be interpreted applicable to as few or as many sites located on a state’s territory as the state itself recognizes its cultural value to its people, regardless if the sites are popular locally, regionally or internationally. The interpretation is supported by the purpose of the Convention, clearly stated in the preamble, that *damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world*.

However, the term “cultural heritage of all mankind” mentioned above should be distinguished from “cultural heritage”, defined in Article 1 of the Paris Convention. And it also differs from the reference to the “common heritage of mankind”, which actually appeared for the first time in the 1979 Moon Treaty, then is reaffirmed in Articles 136 and 137 of the 1982 United Nations Convention on the Law of the Sea

(UNCLOS).⁵⁸ The concept allows all states to share the heritage in the rewards, even if, in case of cultural value, some states may not be familiar with it, therefore will not experience its importance to the people who possess it. To balance the interest in the cultural value of a property so that its cultural significance could be perceived by all peoples, the Paris Convention replaced the term “cultural property” by “cultural heritage”, which requires higher level of selectivity. The Host State is still entitled the priority to decide which site to be included in the World Heritage List. However, UNESCO assigns an organ, namely the World Heritage Committee, to re-examine the nomination, based on the set of criteria in the Operational Guidelines for implementing the Paris Convention. The inscription of a site in the World Heritage List implies the duty of each State to respect the heritage and the responsibility of preservation to be shared by the international community as a whole.⁵⁹

Unlike the Paris Convention, the Hague Convention aims at protection of the property located totally in territory of one State Party, while in reality, there are sites extending across the borders of two or more countries, e.g. Jesuit Missions of the Guarani⁶⁰ between Argentina and Brazil. The damage of one part of the whole property may affect the other(s) situated in the territory of the state(s) not involved in the conflict. Furthermore, it has not yet taken into account the long-term consequences of war on the property, e.g. pollution,⁶¹ which until now no record has been made because no one could determine whether the site suffers from pollution caused by war, by industry or by nature.

The Hague Convention is applicable *in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting*

⁵⁸ Birnie & Boyle, *International Law and the Environment*, Clarendon Press – Oxford, 1995, p. 120.

⁵⁹ R. O’Keffe, *supra* note 18, p. 35–45.

⁶⁰ Inscribed on the World Heritage List in 1983, 1984 for the Cultural Criteria of *iv*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

⁶¹ Patrick J. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 1993, p. 143–5.

Parties,⁶² now with 82;⁶³ while the Paris Convention is binding to a higher number of states, including those without any property inscribed on the World Heritage List. It could be said that states that are not bound by the former might not be responsible for any harm caused in breach of the latter if the violation were committed in wartime. Besides, in case of armed conflict involving a non-party state, it seems that no international protection is provided. Therefore, harmonization in International Law for the Protection of Cultural Heritage should be set up in order to remove all the obstacles in implementation.

1.2. Protection principles

Under International Law for the protection of Cultural Properties in time of armed conflict, State Parties are obliged, first of all, to safeguard and respect cultural property, which is regulated respectively in Article 3 (1) and Article 4, paragraph 1 (2) of the Hague Convention, as follows:

- (1) The High Contracting Parties undertake 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, by taking such measures as they consider appropriate.*

- (2) The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.*

⁶² The Hague Convention, Art. 18, para. 1.

⁶³ As at January 5, 2000, Internet Source – http://www.unesco.org/culture/laws/hague/html_eng/page9.htm

From the texts of these two Articles, one could make a comparison between the two obligations – *Safeguarding* obliges States to do actively, while *respect* intrinsically means refraining from negative actions. In parallel, States are obliged to safeguard the property in their own territory in peacetime, and respect property in territories of all parties to armed conflicts, even in case of irresponsibility of Host States to safeguard their own heritage.⁶⁴ The protected areas *may bear a distinctive emblem as means of identification*.⁶⁵

Safeguarding is left at the discretion of States, based on its finance and technology, without reference to any special organ, which is then regulated in Resolution II to The Hague Convention – the establishment of a committee, under State’s authority, to arrange for the protection of its heritage in compliance with the Convention. So far the measures taken by states has been recorded, e.g. safeguarding policy, shared responsibility, or budgetary provisions which was then proposed by Spain to develop into international fund in order to help countries with considerable risk of conflicts or disasters. Yet, it has not been provided until the adoption of the Paris Convention.⁶⁶ Besides state responsibility to safeguard their property, UNESCO shall provide technical assistance at the states’ request to organize the protection.⁶⁷

The most obvious distinction between the two obligations is that respect may be waived in case of *imperative military necessity*.^{68,69} This provision raised much

⁶⁴ *Supra* note 62, Art. 4, para. 5.

⁶⁵ *Ibid.*, Art. 16, *the distinctive emblem of the Convention shall take the form of a shield, pointed below, per satire blue and white (a shield consisting of a royal blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).*

⁶⁶ Jiri Toman, *the Protection of Cultural Property in the Event of Armed Conflict*, Dartmouth Publishing Company, 1996, p. 61–5.

⁶⁷ *Supra* note 62, Art. 23.

⁶⁸ Yoram Dinstein, *Military Necessity*, *Encyclopedia of Public International Law*, p. 274–6: “US Military Tribunal, in the hostages case, 1948: *military necessity permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life and money.*”

⁶⁹ *Supra* note 64, para. 2.

argument about the effectiveness of the Convention; i.e. the cultural property could always be under considerable threat of destruction, which, somehow, has been witnessed during the 20th century, especially in *conflicts not of international character*.⁷⁰ This is because it is not easy to determine how imperative the military necessity should be to be equal to the risk of cultural loss.⁷¹ Nevertheless, as explained by military legal advisors, “there are areas where war is a reality”.⁷² They also take into account the Cultural Heritage functioning as a *military objective*,⁷³ e.g. the Great Wall⁷⁴ of China, which is always a direct target in any armed conflict. Therefore, the absolute protection of cultural property in times of armed conflict, which gives no feasibility for any other alternative,⁷⁵ may “prevent many states from ratifying the Convention”.⁷⁶ In order to make the instrument, to some extent, practicable; some limitation could be permitted. This, however, does not consist of *reprisals*.⁷⁷

The Operational Guidelines for implementing the Paris Convention requires *an adequate legal and/or traditional protection and management mechanisms to ensure the conservation of the nominated cultural properties or cultural landscapes*⁷⁸ as a compulsory criterion for inscription and maintenance of a site on the World Heritage List. That is to say, Host States have to show their diligence for protection of their

⁷⁰ 1999 Second Protocol to The Hague Convention, Art. 22, para. 2, excluding *situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature*.

⁷¹ Alexandrov, *supra* note 1, p. 44.

⁷² *Supra* note 43.

⁷³ *Supra* note 70, Art. 1, para. *f*, *an object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage*.

⁷⁴ Inscribed on World Heritage List in 1987 for the Cultural Criteria of *i, ii, iii, iv* and *vi*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

⁷⁵ *Supra* note 70, Art. 6, para. *a, ii*.

⁷⁶ Opinion of Israeli Delegate in The Hague Conference, Records, Staatsdrukkerij – en Uitgeverijbedrijf, The Hague, 1961, p. 117.

⁷⁷ *Supra* note 64, para. 4.

⁷⁸ Operational Guidelines for implementing Paris Convention, Para. 24, *b, ii*.

cultural property. This correlates with the regulation of *special protection* in Chapter II of The Hague Convention, which entitles *immunity* to certain non-military functioning site, decided by the Host State, of very great importance and adequately distant from any possible target of armed attack, such as airport, radio station, enterprise of military industry, etc.⁷⁹

In other words, there are three conditions a cultural site must satisfy in order to enter the *International Register of Cultural Property under Special Protection*,⁸⁰ the last of which produces difficulty in application. It is the fact that the distance between a protected site and a possible target of armed attack is what neither party to conflicts can fix.⁸¹ Moreover, with the rapid development of military technology nowadays, how distant is adequate, which is not clearly described in either The Hague Convention or its Protocols?⁸² In response to the problem, alternative for military facilities, in case of port, railway station or airport, should be prepared by the Host State in peacetime to divert all traffic therefrom.⁸³ This is, however, like solving a problem by creating another problem. i.e. even the Host State denounces the use of military objectives, “they would probably be bombed because the enemy were afraid they might be used”.⁸⁴ Therefore, the list of exceptional sites should be provided for practical application.⁸⁵ Except for the case of military objective diversion, *withdrawal of immunity* is accepted if there is violation of the obligation by either party to conflicts, or in case of *unavoidable military necessity*,⁸⁶ which brings us back to the obstacle in enforcement of the safeguarding obligation.

^{79,80} *Supra* note 62, Art. 8, respectively para. 1, and para. 6.

^{81, 82} Toman, *supra* note 69, respectively p. 111, and p. 101.

⁸³ *Supra* note 79, para. 5.

⁸⁴ *Supra* note 76, UK Delegate, p. 170.

⁸⁵ Toman, *supra* note 66, p. 106.

⁸⁶ *Supra* note 62, Art. 11.

1.3. Procedure for inscription and protection of a cultural heritage site

The procedure for registering a site for special protection is provided in the Regulations for the Execution of The Hague Convention.⁸⁷ According to the Regulations, the Host State is entitled to the initiative to request for special protection through its Commissioner-General. The list of Commissioner-Generals is compiled and periodically revised by UNESCO Director-General on States' nomination.⁸⁸ *The Commissioner-General may authorize the State to display the distinctive emblem, then communicate his decision without delay to the delegates of the Protecting Power.*⁸⁹ *Within 30 days, if no objection from any delegate, the Commissioner-General shall request the Director-General for the entry of the site.*

This provision created difficulty for implementing the Convention when in 1972, the Khmer Republic requested for special protection of Angkor Vat⁹⁰ and some sanctuaries. The request was dismissed by objections from four High Contracting Parties, namely Cuba, Egypt, Romania and Yugoslavia, not because the requested protected site lacks any of the three above-mentioned criteria, but because they did not recognize the Khmer Republic as an authority government. However, as the Khmer Republic did not request for arbitration,⁹¹ the objections were not lifted although *the Director-General had tried to make whatever representations he deemed necessary to the Contracting Parties which lodged the objection, with a view to causing the objection to be withdrawn.*⁹² This may establish a precedent that prevents

^{87, 88} Regulations for the Execution of the Convention, respectively Art. 11, and Art. 1.

⁸⁹ *Ibid.*, Art. 2, para *b* and Art. 3, *the Protecting Power acting for each of the Parties in conflict with such High Contracting Party shall appoint delegates from among the members of its diplomatic or consular staff or, with the approval of the Party to which they will be accredited, from among other persons.*

⁹⁰ Inscribed on both the World Heritage List and The World Heritage List in Danger in 1992 for the Cultural Criteria of *i*, *iii* and *iv*, Internet Source – <http://www.unesco.org/whc/nwhc/pages/sites/main.htm>

⁹¹ *Supra* note 86, Art. 14, para. 6 and 7, *if, within a period of six months from the date of receipt of the letter of objection, the Director-General has not received from the High Contracting Party lodging the objection a communication stating that it has been withdrawn, the High Contracting Party applying for registration may request arbitration, which shall not be made more than one year after the date of receipt by the Director-General of the letter of objection.*

⁹² *Ibid.*, para. 4.

States from registering for protection, which reflects in the modest number of applications for registration. Therefore, in all circumstances, States making the objection should be responsible “for the deterioration of the property, which undeniably forms part of the cultural heritage of mankind, as they should take account of the fact that short-term political interests have nothing to do with the fundamental objectives of the Convention.”⁹³

In other hands, even there might be no objection from any delegate, it is sometimes too late to protect the site. In wartime, the procedure provided in the Paris Convention would not work, either, as it also takes time for the World Heritage Committee to consider whether a site satisfies the criteria in order to be put in the World Heritage List. Therefore, UNESCO should take into account the reasonably foreseeable and significant risk of destruction to the property in time of armed conflict. That is to say, when there is uncertainty, the prevention measure would be required in the early stage. The principle is affirmed in the 1999 Protocol to the Hague Convention, which requires *each party to the conflict to refrain, or even cancel or suspend the attack if the expected damage to the cultural property would exceed the military achievement.*⁹⁴

To mention the precautionary principle in this context, we mean to accept that the protection would be provided to tens, or even hundreds of thousands of sites located in each State Party if the State itself sees it fit. If it were the case, there would be no more armed conflict, as the Host State may take advantage to declare every single building a cultural property of great importance to the cultural heritage of its people. This supposition was supported by Ikuo Hirayama, Honorary Chair – UNESCO Goodwill Ambassador, that “the safeguarding of cultural heritage needs physical and intellectual efforts, which would leads to peace as an ultimate goal.”

⁹³ Toman, *supra* note 66, p. 108–9.

⁹⁴ *Supra* note 70, Art. 7.

1.4. Legal Enforcement and Sanctions

Under International Humanitarian Law, it is generally accepted that deliberate or reckless destruction or damage of cultural property in wartime always constitutes war crimes. However, there are no explicit international criminal measures that can be resorted to enforce any breach of the Hague Convention. The general and imprecise Article 28 of the Convention, which *obliges state parties to prosecute and impose sanctions upon those who commit or are ordered to commit any crime*, does not provide any interpretation of the criminal acts or jurisdiction for offenses. This succinct provision is then interpreted in the 1999 Protocol to the Hague Convention. The list of some serious violation relating to the protection of cultural property is compiled in Article 15 of the Protocol.⁹⁵ However, the legislators of this international instrument still leave *the state party, whose Court's jurisdiction is accepted*,⁹⁶ to *decide which measures, legislative, administrative or disciplinary, to be taken to enforce the violation*.⁹⁷ The only potential source of resolution at international level would be resorted is Article 3 of the Fourth 1907 Hague Convention, which *obliges a belligerent party that violates the convention, to be liable to pay compensation. The obligation also applies to all persons, forming parts of armed forces, for all acts committed against religious and scientific buildings and historical monuments*.

⁹⁵ *Ibid.*, Art. 15 “Any person commits an offense [...] if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts:

- a. making cultural property under enhanced protection the object of attack;
- b. using cultural property under enhanced protection or its immediate surroundings in support of military action;
- c. extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;
- d. making cultural property protected under the Convention and this Protocol the object of attack;
- e. Theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.”

⁹⁶ *Ibid.*, Art. 16 “... each Party shall take the necessary legislative measures to establish its jurisdiction over offenses in the following cases:

- a. when such an offense is committed in the territory of that state;
- b. when the alleged offender is the national of that state;
- c. in the case of offences set forth in Art. 15 sub-paragraphs (a) to (c), when the alleged offender is present in its territory.”

⁹⁷ *Ibid.*, Art. 21.

“This solution has generally recognized under customary law” and echoed in the Statue of the International Tribunal “for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law”, adopted by the UN Security Council.⁹⁸ The Tribunal, instituted “to investigate and prosecute war crimes alleged to have been committed in the former Yugoslavia”, marked an important step in the implementation of The Hague Convention. The case concerns the investigation for liability of the two Yugoslav Navy vessels that conducted the heavy shelling to the historic world heritage site of the Old Town of Dubrovnik in 1991. This proves UNESCO effort to establish precedents “in relation to war crimes against cultural property in violation of the Hague Convention, in order to determine the extent of the application and the effectiveness of international law in such matters”.⁹⁹

2. In case of Vietnam War (1954–1975)

Vietnam comprises of 54 different ethnic groups that possess historically rich cultural backgrounds and interesting folk arts. The country has more than 1,000 historical, cultural and architectural sites that have been officially classified as "National Heritage".¹⁰⁰ Vietnam is well known for its history of struggle against alien invaders since the year 221 Before Christ, when it was known as Au Lac. Many sites represent the victory while the others were destroyed, especially during the latest war, which occurred during the third quarter of the 20th century, since the military was equipped with modern mass-destruction weapons.

The Vietnam War has been considered a protracted and unsuccessful effort of South Vietnam and the United States to prevent the Vietnamese communists in the

⁹⁸ Toman, *supra* note 66, p. 294–5.

⁹⁹ Boylan, *supra* note 61, p. 95.

¹⁰⁰ Statistics of the Vietnamese Ministry of Culture and Information, Internet Source – <http://www.cinet.vnnews.com/VanHoa/0005/0001/index.htm>

North from uniting two parts of the country under its leadership. Its effects were harsh for all the parties involved. In this part, we will focus on the damages caused to the 2,000-year-old cultural diversity of the country. Vietnam's architectural heritage has suffered considerably from the unnecessary and immoral war. To illustrate this, we have picked up 2 sites that have been inscribed in the World Heritage List and that were officially reported ruined during the war. UNESCO has recognized the Complex of Hue Monuments and My Son Sanctuary the Cultural Heritage of Mankind respectively in 1993 and 1999.

2.1. The Complex of Hue Monuments, Thua Thien Province

The old imperial city of Hue was the capital of Vietnam for nearly 400 years (1558–1945). During those years, many monuments of noteworthy architectural, historical and cultural value were built, the most famous of which are the Citadel of Hue, the Imperial City and the Royal tombs of seven kings of the Nguyen Dynasty, the esplanade of Nam Giao, the Ho Quyen arena and the Hon Chen Temple. In the Vietnam War, Hue was the scene of the longest and heaviest fighting of the Tet (Lunar New Year) Offensive of 1968, most of the city, including the palaces and tombs of the former Annamese kings, was destroyed. In 1994, UNESCO noted the unique features of Hue, as it is an organized complex of historical monuments closely tied to the traditional urban fabric, which led to the renewal plan of this property.¹⁰¹

Located at the latitudes 16°14' – 16°15' North, longitudes 107°02' – 108°11' East, Hue was the biggest city adjacent to the demilitarized zone,¹⁰² mentioned in the 1954 Geneva Accord on the cessation of hostilities in Vietnam. However, the cease-fire agreement, concluded between North Vietnam, led by Ho Chi Minh; the French and

¹⁰¹ Protection of the architectural heritage of Vietnam, The World Heritage Newsletter No. 6 (December 1994), Internet Source – <http://www.unesco.org/whc/nwhc/pages/news/main2.htm>

¹⁰² Articles on Vietnam War, Britannica Encyclopedia, "... the French and the Vietnamese fighting under French command would move south of the 17th parallel and the Viet Minh would go north of the 17th parallel, which was established as a military demarcation line surrounded by a demilitarized zone (DMZ)", Internet Source – <http://www.britannica.com/bcom/eb/article/0/0,5716,77300+1,00.html>

the French-backed South Vietnam, under the domination of King Bao Dai, then President Ngo Dinh Diem, was not observed by either party. Ho Chi Minh decided to unify the country through military force after Ngo Dinh Diem unilaterally denounced the Accord by refusing the scheduled elections. The location of Hue as well as its importance, both culturally and politically, made it a target for both sides in an effort to integrate the other into one's control. The most remarkable was the Tet Offensive in 1968, when the North Vietnamese and the Viet Cong launched a massive surprise attack to 36 major South Vietnamese cities and towns, especially fierce in Saigon and Hue. This offensive followed the retaliation of the US intensive bombing to North Vietnam during the early 1960s.

In his Reminiscences,¹⁰³ US General Westmoreland¹⁰⁴ mentioned that the Army of the Republic of Vietnam (ARVN) had received permission from President Nguyen Van Thieu, who began his term in 1967, to use any military means available and necessary in order to maintain the power of South Vietnam over Hue. American B52s targeted every single corner of the whole city to end the 25-day occupation by the North Vietnamese. Since the 7th day of the fighting, General Westmoreland commanded the US military to enter the city, while the navy forces attacked Thuan An Port. Until the end of the fighting, no attention from any UN Organizations, in particular the UNESCO, was paid to either protection or safeguarding of the cultural city. Hue was the lively evidence for an urban battle. However, as a solace for the consequence, the Saigon Government explained “we have to destroy the whole city in

¹⁰³ Mai Nguyen, Reading Reminiscences of the US Generals, Vietnamese version, Youth Publisher (Vietnam), 2000, p. 239–42.

¹⁰⁴ Westmoreland, William Childs (1914–), US General. He graduated from West Point in 1936 and fought with distinction in North Africa and Europe during World War II and later (1952–53) in Korea. After serving (1960–64) as superintendent of West Point, Westmoreland attained (1964) the rank of general and commanded (1964–68) U.S. military forces in Vietnam. He then assumed the position of army chief of staff, which he held until his retirement in 1972. In 1974 he was defeated in the Republican primary election for governor of South Carolina. Internet Source – <http://www.bartleby.com/cgi-bin/texis/webinator/sitesearch/?query=Westmoreland+&db=db&cmd=context&id=38d481c91d9#hit1>

order to save it” (!)¹⁰⁵ The Tet Offensive resulted in the death of around 4,000 civilians and the reconstruction of the city.¹⁰⁶

2.2. My Son Sanctuary, Quang Nam Province

My Son¹⁰⁷ was discovered in 1899 by archaeologist M. C. Paris and his colleagues. The site, built more than 1,500 years ago by King Bhadravarman I, used to be the heartland of the Hindu Kingdom of Champa that ruled parts of central and southern Vietnam for more than 14 centuries. While the kingdom, evidenced in the form of stone towers and sanctuaries built between the 7th and 13th centuries, has crumbled to dust, many of My Son’s unique monuments survived, but were bombed in the 1960s by American B52s. Consequently, only 20 of the 70 exquisite Cham temples and towers are still intact.

My Son, as described in the World Heritage List, has nothing to do with military function. It is located in a valley surrounded by Hon Den Mountain, 70 kilometers southeastern of Da Nang (the third biggest city, excluding the capital, in Vietnam, after Ho Chi Minh City and Hai Phong), which seems adequately distant from possible target of attack. Based on its convenient position, Communist Guerilla facilitated the whole sanctuary a military base; i.e. there existed the violation of the obligation of respect for cultural property in times of armed conflict by the Vietnamese party, so that the opposing party were entitled to withdraw the immunity for that site. My Son then became among the targets of bombardment during the war, especially the raid in August 1969 by the US Air Force. However, we might make reference to the situation of *imperative military necessity*, as half of the country (from Hue, 120 kilometers northern of Da Nang) was occupied by the United States. This also lays the blame of irresponsibility of the United States as *the Occupying Power to*

¹⁰⁵ Notes of the course on “International & Environmental Security”, lectured by Professor H. Tromp at the University of Groningen, the Netherlands.

¹⁰⁶ The Columbia Encyclopedia, Sixth Edition, 2000, Internet Source – <http://www.bartleby.com/cgi-bin/texis/webinator/sitesearch/?query=tet%2Boffensive&db=db&cmd=context&id=38d47ec23ef#hit1>

¹⁰⁷ *Supra* note 37.

*take the most necessary measures of preservation should the competent national authorities be unable to take such measures.*¹⁰⁸ After all, the case falls to a dangling circle, in which neither party has better reason for the deterioration of the heritage, but the fact that both the United States and Vietnam are not yet parties to The Hague Convention.¹⁰⁹

There are opinions that the United States did not, at any time, occupy Vietnam, but they were invited by South Vietnam to fight against the North. Under International Humanitarian Law, it seemed to be the case, which means they were not the so-called “occupying power”. But it happened to be an exception in the Vietnam War as in 1954, the Geneva Conference clearly stated in its Final Declaration that *“The Conference takes note of the clauses in the Agreement on the cessation of hostilities in Vietnam prohibiting the introduction into Vietnam of foreign troops and military personnel as well as all kinds of arms and munitions”*,¹¹⁰ and that *“no military base under the control of a foreign State may be established in the regrouping zones of the two parties, the latter having the obligation to see that the zones allotted to them shall not constitute part of any military alliance and shall not be utilized for the resumption of hostilities or in the service of an aggressive policy.”*¹¹¹ That is to say, South Vietnam had violated the Agreement, so the Vietnamese Communists were not unreasonable to call Americans the invaders. And it is the fact that South Vietnam at that time was just acting as a puppet Government under the control, both militarily and politically, of the United States, who was gradually becoming directly involved in the war in an effort to stop the spread of communism in the region.¹¹²

¹⁰⁸ *Supra* note 62, Art. 5, para. 2.

¹⁰⁹ Notes (in Vietnamese) of the study tour on “History of Champa Kingdom” in Da Nang, Vietnam, September 1996.

^{110, 111} The Final Declaration of the Geneva Conference, July 21, 1954, respectively para. 4 and para. 5, Internet Source – <http://students.vassar.edu/~vietnam/doc2.html>

¹¹² Articles in Vietnam War (paragraph 9), Britannica Encyclopedia, Internet Source – <http://www.britannica.com/bcom/eb/article/0/0,5716,77300+1,00.html>

After Vietnam was reunited in 1975, the youth of Duy Xuyen district, Quang Nam Province risked their lives to remove mines buried in My Son before and during the war. Restoration work did not begin until the 1980s, and after more than a decade of work under the guidance of the Polish architect, Kajimier Kwiatkowski. However, they were unable to replicate the vegetable-derived glue originally used as bricklaying mortar. My Son was handed over to the Duy Xuyen district authorities in January 1996 for further preservation and tourism development. The surviving temples of My Son stun even the most jaded viewer. Skilled carvers, who were sent to learn their craft in Java between the 8th and 10th centuries AD, returned to My Son to create some of the most detailed stonework to be seen anywhere in the world.¹¹³

* * *

The war ended more than two decades ago, yet a number of significant and important questions remain unanswered. To the extent of cultural environmental deterioration, the most controversial issue is who is liable for the cultural loss. To leave it aside means to forget our responsibility “to accommodate the needs of future generation in a balancing of interests – the principle of inter-generational equity. The principle, expounded in the Goa Guidelines on Inter-generational Equity, requires *each generation to use and develop its natural and cultural heritage in such a manner that it can be passed on to future generations in no worse condition than it was received.*”¹¹⁴

Recognizing the importance of the cultural heritage for the education of the next generations as well as for the research on the nation’s history,¹¹⁵ The Vietnam National Assembly issued the Ordinance on Protection and Usage of Historical,

¹¹³ Internet Source – <http://www.nhandan.org.vn/english/19991214/bai-cul5.html>

¹¹⁴ Birnie & Boyle, *supra* note 58, p. 211–2.

¹¹⁵ Vietnamese Ordinance on Protection and Usage of Cultural, Historical and Natural Properties, March 31 1984 (Vietnamese version), Preamble, The Collection of Legal Documents on Protection of Natural Resources and Environment, National Politics Publisher (Vietnam), 1998, p. 663–70.

Cultural and Natural Properties on March 31, 1984. The Ordinance has adapted most provisions of the 1972 Paris Convention to Vietnam's circumstances and additionally laid liability for any breach of the regulation, without retroactive application though. This lacuna, however, is generally covered in the Law on Environmental Protection, issued on December 27, 1993, Article 53 of which stipulates:

*Domestic or foreign organizations, individuals that have caused serious damage to the environment **prior to the promulgation of this Law**, with long-term adverse impacts on the environment and the health of the people shall, depending on the extent of the consequences, **be liable for the damages and the rehabilitation of the environment**, according to regulations by the Government.*

While the breach of other aspects of environmental protection are strictly enforced and regulated in the Government's Decree on Sanctions for Administrative Violations of Environmental Protection (Decree 26/CP of April 26, 1996), and even in the Amendment to the Criminal Code, no concrete liability regarding the protection of cultural properties have been laid so far. However, efforts have reportedly been made to fill the gap, which is reflected in the number of cultural sites inscribed in the World Heritage List, now with three, including the Ancient Town of Hoi An in Da Nang City. The increasing concern regarding cultural value has created heightened expectations of more effective, stringent measures for the protection of these properties.

CONCLUSION

Heritage is our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural heritage is an irreplaceable source of life and inspiration. Much attention has been paid to its protection partly because of its outstanding universal value and partly because since ancient time, it has always fallen victim to human-caused disasters, of which the most severe is attributed to armed conflicts.

The adoption of two international legal instruments, namely The Hague Convention of 1954 and the Paris Convention of 1972, marked a step forward in the attempt to protect world cultural heritage. However, the legislators have not considered the harmonization between the two instruments, which may cause “conflict of interpretation character”. Furthermore, as UNESCO leaves each State Party to decide which measure to be applied in case of violation, the sanction is not imposed strictly. This is proven in the Vietnam War, where some cultural heritages of universal interest were ruined. For many reasons, not except for the diplomatic relation that leads to economic development, Vietnam has not yet claimed for any compensation.

The question raised here is whether the polluter pays principle, endorsed and adopted by OECD (Organization for Economic Cooperation and Development),¹¹⁶ should be applied in enforcement of the international law for the protection of cultural heritage. In this context, the principle may be interpreted as the sanction imposed on those who committed or were ordered to commit any criminal act against the cultural property protected under international law.

¹¹⁶ Birnie & Boyle, *supra* note 58, p. 109–11.