



**WITH THE SHIELD OR ON THE SHIELD?:  
PROTECTION OF CULTURAL PROPERTY  
IN THE EVENT OF ARMED CONFLICTS  
IN THE EAST OF UKRAINE**

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**3 59** **With the shield or on the shield? : Protection of cultural property in the Situation of armed conflict in the East of Ukraine** / O. A. Bida, A. B. Blaha, D. O. Koval, O. A. Martynenko, M. H. Statkevych; ex. Chief Editor A. P. Bushchenko / Ukrainian Helsinki Human Rights Union. – C., KIT, 2016. – 68 p. with pic.  
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The publication is devoted to the complex analysis of protection of cultural property in the in situations of armed conflict in the East of Ukraine. It provides the international legal reference of the Hague Convention of 1954 and Protocol I to it and analyzed practice of their application. Based on study of open sources and conducted own monitoring visit there were identified the problematic issues of the situation with the protection of cultural property in the East of Ukraine.

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## INTRODUCTION



Annexation of Crimea by the Russian Federation at the beginning of 2014 and the start of the armed conflict in the East of Ukraine brought up many problematic issues including the protection of civilians and civil objects from attacks, protecting children, humanitarian issues, protection of the right to peaceful enjoyment of property. However, equally important is the protection of the People's "soul", its cultural heritage, science achievements. As of now thousands of cultural heritage monuments, which reflect the history of many ethnic groups that at various times lived in the Crimea and in the East of Ukraine are under the threat.

The task of protection of cultural property is ever more relevant as there are non-repaired in case of destruction and their significance not just for one person, settlement or area, but for the whole country and mankind in general. But is the cultural property protected by international and national law in the event of armed conflict? To what extent our state is ready to preserve them?

The authors and experts who worked on this research tried to find the answers to these and other questions. This research presents to your attention the analyzes of the Hague Convention of 1954 and Protocol I to it, and the practice of their application. Study of open sources, own monitoring mission, interviews with personnel of cultural and science institutions have allowed to document the most typical cases of damage to cultural sites, to identify problematic issues of situation with the protection of cultural property in the East of Ukraine, at least primarily assess the scope of the damage and the government's ability to influence to minimization of impact of such losses

We hope that the presented analyzes of problematic issues and developed recommendations will be useful for authorities for working out strategic documents and programs in the field of human rights in the context of the ATO.

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# 1. INTERNATIONAL LEGAL REFERENCE OF THE HAGUE CONVENTION OF 1954 AND PROTOCOL I TO IT AND PRACTICE OF THEIR APPLICATION

The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 is the main international Treaty for the protection of cultural property from the hazards of armed conflicts. It is in G. Bohm, a former Assistant Secretary General of UNESCO, apt words, is the Red Cross for monuments and museums during the war<sup>1</sup>. Despite the considerable number of Convention provisions seriously and justifiably criticized, only it has a sufficient level of versatility to be a guideline of summarized will of states on ensuring the protection of cultural property in relation to the armed conflict. Relatively recent ratification of the Convention of 1954 by the United States and notice of such intention on the part of the United Kingdom<sup>2</sup> proves that fact of its perception as a recognized universal set of rules on protection of cultural property. Although according to conclusions of most researchers, the Second Protocol of 1999 is much better and more progressively regulates the protection of cultural property, but the relatively low level of its signing and ratification demonstrates the unwillingness of states to ensure the provisions of the new Treaty in comparison to enshrined in the Convention of 1954. The other IHL Treaties of the second half of XX – beginning of XXI century only indirectly relate to the protection of cultural property in the event of armed conflict. All this, according to apt remark of the Executive Director of the Henry Dunant Institute J. Toman, allows to call the Convention "A universal code of regulations on protection of cultural property"<sup>3</sup>.

The preamble of the document contains a reminder of the recent wars, which caused damage to cultural property, coherent idea of universal cultural values and their importance to the world community, as well as links to previous humanitarian treaties: the Hague Conventions of 1899 and 1907, the Washington Pact of 1935. This reference is a positive legal technique of demonstration of sequence of international humanitarian law development. It is mentioned, in particular, in the Statement adopted at the International Conference on the Protection of War Victims of 1993, where delegations from 160 countries noted the importance of strengthening the universality of international humanitarian law by confirming the continuity of international instruments regarding previously adopted<sup>4</sup>.

Final sixth paragraph of the Preamble notes the willingness of the member-states to take all possible steps to protect cultural property. In such way the objective of the treaty is defined and the prevalence of considerations on protection of cultural property against all other possible objectives is stressed out. The Preamble sticks to the "purity" of the idea of protection of cultural property – the phrase which was in the draft of UNESCO "subject to the requirements of military necessity" was removed from it. According to just view of the delegate from Greece T. Eustadiades the presence of such a formulation in the Preamble would contribute to regress of streamlining in this field of international law<sup>5</sup>.

**Protection of and respect for cultural values.** Protection of cultural property under the Convention is composed of the protection and respect to it. J. Toman points out that protection involves positive obligations of the parties, and respect – negative (i.e., abstain from actions)<sup>6</sup>. Although in most cases this division is fair,

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<sup>1</sup> I Vernon M. Common Cultural Property: The Search for Rights of Protective Intervention / M. Catherine Vernon // Case Western Reserve Journal of International Law. – 1994. – № 26. – P. 12.

<sup>2</sup> G. Carducci. Ochrona dziedzictwa kultury na wypadek konfliktu zbrojnego z perspektywy 50 lat funkcjonowania konwencji Haskiej // Dziedzictwo kultury wobec zagrożeń wojny i pokoju. – Warszawa. – 2004. – s. 23.

<sup>3</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>4</sup> International Conference on the Protection of War Victims. August 30 – September 1, 1993. Final Declaration // International Journal of Red Cross. – 1996. – No 8. – p. 82

<sup>5</sup> I Records of the Conference convened by the UNESCO, held in The Hague from 21 April to 14 May 1954. – Staatsdrukkerijen Uitgeverbedruf. – 1961.

but, K.J.C. Forrest notes, that respect commitments include also positive ones<sup>7</sup>. Part 3. Art. 4 indicates that the Contracting Parties shall, if necessary, stop any acts of theft, pillage or misappropriation of cultural property. This obligation requires from states to be active, that is, in essence, a positive commitment. N.A. Potapova, in her turn, sais that the respect as refraining from action should be considered in a broad meaning, i.e. such as includes both own refraining and actions to ensure the refraining of other actors<sup>8</sup>.

Protection, according to Art. 3 of the Treaty, is in pre-war preparation of cultural property by member-states in their own territory against possible negative effects of an armed conflict. The article leaves the choice of measures to be taken at the discretion of the contracting parties of the Convention. These examples of such measures, based on the text of the Convention and practice of States can be: *creation of shelters for movable cultural property; their registration; registration of centers of concentration of cultural property and immovable cultural property of special importance; placing of identification signs on cultural property; creating special units or positions in the army, which powers would include taking care of cultural property; taking special measures of architectural nature (for the prevention and relief of combating fires, destruction); creation of necessary reserves of materials used in the event of evacuation of cultural property and plans of such evacuation; creating civil services, which in event of armed conflict have carried out the necessary protective measures; education in the field of international humanitarian law in the ranks of military men and workers of cultural sphere.*

During the conference there was also voiced the idea of supplementing the Article with the provision on *the formation of non-governmental organizations aimed at support of the efforts of governments to protect cultural property and which would have the necessary resources for this*<sup>9</sup>. At the moment such organizations exist in Austria and Switzerland, but the idea did not become generally accepted.

There was not used the suggestion of Spain on the formulation of Art. 3, which concerned *the creation of a special fund which would subsidize governments in case of need for urgent measures for the protection*<sup>10</sup>. This fund was afterword established under the Convention of 1972 on the Protection of the World Cultural and Natural Heritage, and later in 2003 the Convention for the Protection of Intangible Cultural Heritage. Given the fact that many states (including those where the start of armed conflicts is quite likely) have no material capacity to properly take measures in peacetime to ensure an appropriate level of protection of cultural property, the creation of a special Fund, in our opinion, is not only desirable, but also urgently needed.

The obligation to respect cultural property under Art. 4 of the Convention involves: *the prohibition to use this property, structures on their protection and the area in the immediate vicinity of it for purposes that could lead to their destruction; refraining from hostile and oppressive acts against cultural property.* Part 2 of the Article contains warnings about military necessity. K.J. C. Forrest points out that the need for *jus in bello*, developing of the need for *jus ad bellum*, took the form of military necessity<sup>11</sup>. Thus countries turned the former justification for the necessity to use military actions to a tool to help maintain a balance between achieving military superiority and the protection of civilian objects. The military necessity can not serve as an excuse of any level of damage to cultural property during military operations. It is mandatory to follow the principle of proportionality<sup>12</sup>, in other words the military superiority that the side of the conflict plans to gain should be significant, necessary and otherwise unattainable.

<sup>6</sup> Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109

<sup>7</sup> IC. J. S. Forrest. The Doctrine of Military Necessity and the Protection of Cultural Property During Armed Conflicts // 37 Cal. W. Int'l L.J. 177. – 2007. – p. 13.

<sup>8</sup> Potapova N.A. International legal problems of protection of cultural property and the Russian Federation legislation : Thesis work.... PhD of Legal science: 12.00.10 : Moscow, 2001. – 171 p.

<sup>9</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>10</sup> Records of the Conference convened by the UNESCO, held in The Hague from 21 April to 14 May 1954. – Staats drukkerjen Uitgevrubedruf. – 1961.

<sup>11</sup> C. J.S. Forrest. The Doctrine of Military Necessity and the Protection of Cultural Property During Armed Conflicts // 37 Cal. W. Int'l L.J. 177. – 2007. – p. 13

<sup>12</sup> J. Gardam. Twin Terms Jus ad Bellum / Jus in Bello // 320 Int'l Rev. – RedCross. – № 553. – 1997.

Thanks to the proposal made by the representatives of Switzerland, France, the Netherlands and Belgium to the preliminary draft of the Convention, the territorial limitation of Art. 4 it was removed from it (initial draft contained the provision on respect for the property in the territory of one of the Contracting Parties – the Party of the conflict)<sup>13</sup>. In such way there was reached the necessary for the effective protection of cultural property abandonment of the principle of territoriality. It is worth to mention the Judgment of the Supreme Court of Justice of Israel in the case *Hess v. Israeli Defense Forces WestBank Military Commander*, where the court supported the orders on reconstruction of military structures in the way which makes it impossible to damage old city of Jerusalem in the event of military attack<sup>14</sup>. By the Judgment on another case – *Candu v. Minister of Defense* – the High Court of Justice in Israeli has banned the construction of new buildings on private land, on which, however, there were number of King Solomon's ancient pools (the decision canceled the permit previously issued by the Jordanian court.) The same court, in the case *Shikhrur v. Military Commander of the Judea and Samaria Region* decided that disputes concerning cultural property in territory occupied by Israel should be treated in Israeli courts, because the Jordanian courts do not take the necessary measures to prevent violations. If the territorial provision was saved in Article 4, it is likely that situations like the Israeli-Jordanian would not be resolved in favor of cultural property (given court decisions concerned the occupied territories).

Although it is difficult to imagine now an efficient use of cultural property in the strategic military operations or in the construction of military strategy, but a such cultural objects as historical fortresses, even in our time can serve as an essential basis for ground military operations. From history we know that the destruction of the fortress of Luxembourg was connected with the obtaining by the Principality under the London Treaty of 1867 of the neutral state status. The fortress was equated to the weapons, and its existence in a neutral country is impossible. A well-known example of the former capital of the Teutonic Knights Order Malbork that Hitler decided to make a symbol of resistance of the German troops. Its capture took nearly a month and in the specific section of the front slowed down the advance of the Soviet troops. Because of strong opposition the fortress was almost completely destroyed. The modern UNESCO site Malbork is a medieval castle, built in the second half of the twentieth century. Abbey of Monte-Cassino in Italy was a part of the Gustav-line – the hope of Fascist Italy to stop the allied forces. An example of Monte Cassino enables R. O'Keefe to specifically note that Article 4 provides for the prohibition of integration of cultural sites into the protective lines<sup>15</sup>.

Part 3. Art. 4 of the Convention, among other things, prohibits the appropriation of cultural property in the territory of another Contracting Party. This formulation, as the history demonstrated is not ideal in terms of coverage of all possible situations of assault on the cultural heritage of a country. Thus, during the Suez conflict in 1956 Egypt requisitioned the collection of the French Institute of Oriental Archaeology, located in Cairo. In such way Egypt formally appropriated cultural property not in the territory of another Contracting Party and did not violate p. 3. Art 4. So, a more desirable appears the use in the document a binding not to the territory but to the ownership: *prohibition of theft, robbery, misappropriation shall relate to the property not owned by a Contracting Party*.

The effectiveness of the provision of p. 3 depends on the availability of adequate national legislation on protection of and respect for cultural heritage. After moving cultural property that are not needed and are not protected by a state it is more difficult to recognize as being carried out in violation of obligations under the Convention of 1954. Reasons for this view is found particularly in the practice of American courts in some cases, such as: *The Government of Peru v. Johnston*<sup>16</sup>, *the USA v. McClain*<sup>17</sup> and etc. J. Merrimen states that if the country does not care about cultural property, so it does not recognize them as such<sup>18</sup>.

<sup>13</sup> IRecords of the Conference convened by the UNESCO, held in The Hague from 21 April to 14 May 1954. – Staatsdrukkerijen Uitgeverbedruf. – 1961.

<sup>14</sup> Yoav Hess v. IDF WestBank Military Commander, H.C.J. : Supreme Court of Israel, Judgment 4 March 2004 [Electronic resource]. – Access mode : <http://goo.gl/w0w49c>.

<sup>15</sup> O'Keefe, Roger. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 124

<sup>16</sup> Government of Peru v Benjamin Johnson and others (Peru v. Johnson) : United States District Court, C.D. California, Judgment 29 June 1989 [Electronic resource]. – Access mode:

[http://www.leagle.com/decision/19891530720FSupp810\\_11393.xml/GOVERNMENT%20OF%20PERU%20v.%20JOHNSON/](http://www.leagle.com/decision/19891530720FSupp810_11393.xml/GOVERNMENT%20OF%20PERU%20v.%20JOHNSON/)

<sup>17</sup> United States v. Patty McClain, Mike Bradshaw, Ada Eveleigh Simpson and William Clark Simpson: United States Court of Appeals, Fifth Circuit, Decision 23 April 1979 [Electronic resource]. – Access mode : <http://goo.gl/U5Mvv1>

<sup>18</sup> Merryman, J.H. The Public Interest in Cultural Property // California Law Review. – 1989. – No. 77. – p. 11.

An interesting example of the ingenious application of Art. 4 of the Convention, which allowed to strengthen the protection of cultural property in the context of respect for them, is the protection of Angkor during the conflict in Cambodia. At that time, the temple sheltered more than 3,000 wounded and sick who received medical care there. In that way, in addition to the provisions of the Hague Convention of 1954, the temple was under the provisions of the Geneva Conventions of 1949 on the protection of civilians during armed conflict<sup>19</sup>. Of course, this duplicated protection arose spontaneously, but it is interesting that the *possibility of combining the protection of property and civilians* was mentioned already at the beginning of the twentieth century by Jean Saint-Paul. His reasoning was materialized in the draft international treaty on the protection of cultural property, called "Geneva places."

**Protection of Cultural Property under occupation.** Art. 5 of the Treaty that governs the behavior of the Contracting Parties during the occupation, provides for the obligation of the Occupant State to take the measures to protect cultural property. Such activities involve cooperation with the national authorities and planned to compensate for the inability of the "government without power" to implement the necessary protection measures. However, in case of emergency and the inability of national authorities of the occupied territory to take part in the implementation of protection measures, the Occupant-State can take the most necessary of them on its own. R. O'Keefe points out that the provisions of Article authors were inspired with the example of the Office of Military Government, which existed in the territory of Germany in the area of American occupation<sup>20</sup>. The same Article 5 imposes the obligation on the national authorities a duty to inform members of resistance movements on the need to adhere to the Convention provisions in respect for cultural property. Each part of the Article contains a clause "if possible." We believe that in this case such clause has not clearly negative connotation; it seems logical in the context of limited resources, time, personnel and other factors during the armed conflict. This view is confirmed in particular by the fact that during the diplomatic Conference in Hague this wording of Art. 5 did not cause any comments<sup>21</sup>.

Adopted at the IX UNESCO Plenary Session of 1956 Recommendation defining principles of international regulation of archaeological excavations reveal another important point related to the obligations of the Occupant-state. According to the Recommendations, UNESCO Member States should refrain from archaeological excavations in the territory that they occupied<sup>22</sup>. Despite the "soft" formulation, it is difficult to imagine a situation in which Occupant-state could justify the need for excavations, violating the letter of the Recommendation and the spirit of the Convention of 1954. The illustration of the importance of the problem are the events that followed the war between Israel and a coalition of Egypt, Syria, Jordan, Iraq and Algeria in 1967. The end of the so-called Six Day War in the Middle East resulted in the occupation of the territory of East Jerusalem and Israeli interference in archaeological excavations. UNESCO has made their suspension due to the repeated appeal to Israel with the demand on the inadmissibility of changing the traditional form of cultural or historical character of cultural sites, including sites of archaeological excavations<sup>23</sup>.

The problem of archaeological excavations in the occupied territories may occur in a situation of non-recognized occupation by the state that carries it out. For example, *the Russian Federation, despite the global position calls the occupation of the Crimean peninsula the cession, so Russian scientists conducting excavations in the Crimea do not, from its point of view, violate international law.*

**Implementation of the provisions of the Hague Convention in national legislation.** Like other humanitarian conventions Hague Convention stipulates the obligations of States on the implementation of its

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<sup>19</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>20</sup> O'Keefe, Roger. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 124.

<sup>21</sup> IRecords of the Conference convened by the UNESCO, held in The Hague from 21 April to 14 May 1954. – Staats drukkerjen Uitgeverubedruif. – 1961.

<sup>22</sup> ILyndel V. Prott, P.J. O'Keefe. Law and the Cultural Heritage. Vol 1: Discovery and Escavation. – Abington: Professional Books. – 1984. – p. 232.

<sup>23</sup> Akulenko V.I. International Law On Protection of Cultural Property and its Implementation in national Law of Ukraine. – Kyiv: Us-tinian. – 2013. – p. 116.

provisions in military statutes and regulations, as well as education of respect for culture and cultural property. According to the Hungarian lawyer J. Toman, the word "culture" along with the term "cultural property" has been proposed for inclusion into the Convention by the delegation of the USSR due to the still fresh memories of the Second World War, of those efforts the Nazi troops had made for destroying not only material cultural property, but the culture in general<sup>24</sup>. This provision can be interpreted as a hint that the intangible cultural property the international legal protection which in the mid-twentieth century had not yet conceived, is also in danger due to armed conflict and should enjoy at least minimal protection.

The progressive provision, the inclusion of which was also motivated by the memory of World War II<sup>25</sup>, is published in p. 2, Art. 7 *obligation even in peacetime include into the staff of the armed forces or special services personnel responsible for the preservation of cultural property*<sup>26</sup>.

**Granting of special protection of cultural property.** Art. 8 of the Convention, according to its authors, has to become a new and effective mechanism for the protection of cultural property, as it introduced the regime of special protection which by the scope of guarantees was substantially differed from the general protection. According to the analyzed Article, a limited number of refuges intended to shelter movable cultural property (the wording, among other things, eliminates the protection of museums, where the cultural property is concentrated on a permanent, not temporary, as in refuges, basis), centers of concentration of cultural property and immovable cultural property of very great importance can enjoy special protection, and shall be entered in the International register of cultural property under special protection. As aptly notes R. O'Keefe, the phrase "limited number of refuges", which was to prevent the inclusion in the list too many sites, appeared to be ironic and de facto reflect the current situation with the use of the Registry for the protection of cultural property.

In p. 1, Art. 8 of Convention of 1954 are set the conditions under which a particular site can be entered in the List: *location at an adequate distance from any large industrial center or from any important military objective constituting a vulnerable point; not used for military purposes* If the second condition is clear and logical, the first, according to the view of most researchers of the Convention is the cause total disregard for the instrument of special protection by the Contracting Parties. Not enough clear is the issue of distance, on which the site under protection should be situated from industrial center or military objective. Judgment nature of the requirement makes its perception by countries difficult and, consequently, makes difficult inclusion of sites to the registry. J. Toman points out that an adequate distance is determined for each site individually<sup>27</sup>. S.E. Nahlik reminds about the provision that existed in the Draft convention on the protection of historic buildings and masterpieces, prepared by the International Bureau of Museums in 1938 and concerned the distance, which the refuges for cultural property had to be situated at. Such distance was proposed to be set of 20 km (distance of 500 meters was deemed for centers of concentration of property) from the most likely theater of military operations<sup>28</sup>. Saint-Paul's Project "Geneva zones" provided the protection of the most culture-concentrated cities. It was proposed to establish demilitarized radius of 10 km. The USSR in the report to UNESCO noted that the centers of concentration of cultural property are in the country in such cities as Moscow, Leningrad, Kyiv, Riga, Tallinn that are also the industrial centers, and it prevents the inclusion of sites in the Register<sup>29</sup>. Similar comments were heard from the representatives of the United Kingdom regarding the impossibility of application for registration

<sup>23</sup> Akulenko V.I. International Law On Protection of Cultural Property and its Implementation in national Law of Ukraine. – Kyiv: Us-tinian. – 2013. – p. 116.

<sup>24</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>25</sup> Nicholas L. The Rape of Europa. The Fate of Europe's Treasures in the Nazi years / Nicholas L. [tr. from En. S. A. Chervonna]. – M.: Logos, 2001. – p. 89.

<sup>26</sup> O'Keefe, Roger. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 9.

<sup>27</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109

<sup>28</sup> S. E. Nahlik. Protection of Cultural Property // International Dimensions of Humanitarian Law. – Geneva/Paris: Henry Dunant Institute/UNESCO. – 1988. – p. 207.

<sup>29</sup> Records of the Conference convened by the UNESCO, held in The Hague from 21 April to 14 May 1954. – Staats drukkerjen Uit-gevrubedruf. – 1961.

of Westminster Abbey and from representatives of other states. This position illustrates the problems associated with the formulation of the conditions for granting special protection for cultural sites. As noted by R. O'Keefe, even modern, non-verbatim interpretation of the industrial center (in the spirit of the UN IC Advisory Judgment in the case on the legality of nuclear weapons use, which recognizes customary norms of mandatory separation of civilian and military sites during the bombing) as the industrial installation does not remove the problem of efficiency of Art. 8, because there are other requirements for the sites of the Register<sup>30</sup>.

The downside of p. 1 Art. 8 is a mention of vulnerable points, which, according to US and French delegations, was a reflection of military tactics in the Treaty, instead of concern for the preservation of cultural property. Part 2 and 5 Art. 8 of the Convention establish two exceptions when the violation of p.1 does not deprive the site the opportunity to be included in the Register and enjoy special protection. So, according to p. 2, Art. 8 we the following: if a refuge is constructed in a way that most is likely bombing will not harm him, it can enjoy the special protection even when if the requirements of the previous paragraph of the article are not met. Part 5 declares the possibility to provide special protection of cultural property in case the Contracting Party undertakes not to use for military purpose sites that are nearby. In this case, an unilateral declaration of the Contracting Party, as was noted in cases on nuclear tests (Australia v. France and New Zealand v. France) and in the case on the delimitation of the border (Burkina Faso v. Mali), is an international obligation, violation of which is act against international law.

The rules of procedure for forming and maintaining the List, providing special protection of cultural property are set out in the Executive Regulations of the Hague Convention. According to Art. 12 of the Regulations, the International Register of cultural property under special protection, is maintained by the Director General of UNESCO in French. Its copies are at the UN Secretary General and at the Member States of the Convention. The Register is formed of sections, each devoted to a particular country. Within the section there are three divisions distinguished: refuges, centers of concentration of cultural property and other immovable cultural property. Statements to the Director General on provision a certain site of a special protection can be given by the State owner of the property or Occupant-State. The statement indicates the location of the site and justification of its compliance with the requirements of Article 8 of the Convention. Upon receipt of the Statement the Director General of UNESCO distributes it among the Contracting countries. On the proposal for inclusion of certain cultural property to the Registry in the manner prescribed by Art. 14 of the Regulation in four months term the Contracting Party may file the objection. The reason for this objection could be non-recognition of the site as cultural property in the meaning of Art. 1 of the Convention, as well as non-compliance with Art. 8 requirements on the location of the cultural site. However, as practice shows, States, interpreting these grounds widely may block entering property into the Register for other reasons. In such way, the statement made in 1972 by Khmer Republic concerning the entering into the Register of Angkor Wat, was rejected by Cuba, Egypt, Romania and Yugoslavia on the grounds that the statement was made not by the authority which the above-mentioned countries recognize legitimate to represent Cambodia<sup>31</sup>. With the emergence of this situation the Contracting party of the Convention as well as the Director General are entitled for a demarche, aimed at waiver of the State that expressed objections of these objections. It is assumed in addition the possibility of solving dispute on inclusion into the Register in arbitration order.

Simplified procedures for entering (without waiting for solving issues with objections) into the Register is possible when the Party which filed the Statement for entering its cultural property to the List, becomes a party of an armed conflict. The fast-track procedure of entering is set by the Regulation also for improvised refuges created due to urgent need and they are registered under the mediation of the Commissioner-General for Cultural Property.

The entry on adding cultural property in the Register shall take effect in 30 days after sending the certified copies of the Register with a new Entry to the UN Secretary General and all Parties of the Convention.

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<sup>30</sup> O'Keefe, Roger. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 148.

<sup>31</sup> J. Toman. The Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

The entering is possible under the statement of the Party that entered the cultural property to the Register, and in case of denunciation of the Convention by the corresponding State and in situations where the conditions for inclusion in a simplified manner passed and the agreement on the waiver of objections could not be achieved.

Currently, the International Register of cultural property under special protection contains only 3 refuges (refuges at Zandvoort and Maastricht (the Netherlands); Oberrider-Stollen (Germany) and one center of concentration of cultural property (the Vatican). Three more sites that for some time were on the List were subsequently withdrawn by the governments of Austria and the Netherlands.

Some scientists express an ambiguous position on the correlation of the International Register of cultural property under special protection, and the UNESCO World Heritage List, which was established by the Convention of 1972 on the Protection of the World Cultural and Natural Heritage. It is proposed by a special amendment to the Convention of 1954 relating to grant the status of special protection to the sites included in the World Heritage List<sup>32</sup>. The issue is discussed not only at the theoretical level, but also on the practical. So, the similar issue was discussed at the seventeenth session on Improvement of the Convention of 1972 in Paris. Later in the session in Cartagena (Colombia) in 1993 there were amended the Operational Guidelines to the Convention on the Protection of the World Cultural and Natural Heritage, according to which there was underlined the need for closer correlation between the activities based on the Conventions of 1972 and 1954<sup>33</sup>. The Director of the World Heritage Center at the same session stated about the need for the development of new mechanisms by which it would be possible to protect cultural heritage during armed conflicts based on the Convention of 1972<sup>34</sup>. Notwithstanding the foregoing, this idea though is rational in the sense that it draws attention to the importance of "civil" list of cultural heritage for humanitarian law, but is unlikely to be realized. As of October 3, 2015 World Heritage List consisted of 834 cultural and mixed sites (in addition, there were 197 nature sites that can not fall within the protection of the Convention of 1954.)<sup>35</sup> To provide all these sites with special protection is not only impractical, but probably not useful for maximum positive effect of protective rules. Impracticability is caused by the fact that most sites of the List do not meet the requirements established by the Convention of 1954 for the sites with special protection. Harmfulness, in our opinion, is in the scatteration of protection when such a large number of sites receives it. It seems feasible and realistic not rather conventional peg of the List to the Convention of 1954 as allocation at the national level in military statutes, doctrines, and so on the provision of special attention to the cultural property of the UNESCO World Heritage List during the armed conflict and the consideration by the officer of senior officers the issue of military and military-related operations that could harm the said property. The similar provision contained, for example, in the UNESCO Recommendation, in our view, would not be perceived openly negatively by the international community. Imposing such a proposal to the UNESCO actual practice, it should be noted that now this organization in the event of an armed conflict tries to get the UN mandate for missions to conflict areas for considering, among other things, the issue of possible inclusion following the simplified procedure the sites from the World Heritage List to the one of "military" UNESCO list<sup>36</sup>. In addition, we pay attention again to the idea of the existence of customary international law concerning special protection during the armed conflict to the objects of the World Heritage List.

Cultural property, entered into the International Register, in accordance with Art. 9 of the Convention, shall be immune from any hostile act directed against them. Contracting Parties of the Convention also undertake to refrain from using property and areas close to them for military purposes. N. A. Potapova points out that dam-

<sup>32</sup> S. E. Nahlik. Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 1954: general and special protection // *La protezione internazionale dei beni culturali*. – Rome. – Fondazione Europea Dragan. – No 35. – p. 100

<sup>33</sup> Convention concerning the Protection of the World Cultural and Natural Heritage. World Heritage Committee, Seventeenth session [Electronic resource] // UNESCO. – 1993. – Access mode : <http://whc.unesco.org/archive/1993/whc-93-conf002-14e.pdf>

<sup>34</sup> Convention concerning the Protection of the World Cultural and Natural Heritage. World Heritage Committee, Seventeenth session [Electronic resource] // UNESCO. – 1993. – Access mode : <http://whc.unesco.org/archive/1993/whc-93-conf002-14e.pdf>

<sup>35</sup> World Heritage List [Electronic resource] // UNESCO official web site. – Access mode : <http://whc.unesco.org/en/list>

<sup>36</sup> J. Toman. Cultural Property in war: Improvement in protection. Commentary on the 1999 Second Protocol to the Hague Convention 1954 for the protection of Cultural Property in the event of armed conflict. – Paris: UNESCO Publishing. – 2009. – p. 642

age of cultural property can be caused not only by hostile acts, but also quite peaceful activities that nevertheless endanger sites in the area of their implementation. An example of such activities is the rescue works<sup>37</sup>. So, the real immunity will be achieved only under condition of wide interpretation of the provision prohibiting not only hostile acts, but also "any acts that could lead to their destruction or damage"<sup>38</sup>.

One of the most controversial provisions of the Convention is Art. 11, which sets out the conditions of deprivation of guaranteed by previous articles immunity of cultural property under special protection. Because of the position of the so-called realists, at the Hague Conference the Article of the preliminary Draft prepared by UNESCO, was significantly changed. It contains not only military necessity clause (a delegate from the United Kingdom argued that the existence of a clause of military necessity for property under general protection courses inability to leave the position on sites with special protection without such clause)<sup>39</sup>, but also the mutuality clause. Military necessity in Art. 11 appears in some limited, and to the extent the idealists managed to achieve, difficult to use manner. In such way, unlike the articles that guarantee total protection this article refers to the imminent military necessity. *Cultural property loses its immunity only for the time of existence of such a necessity*. To enhance the effect of the expression "unavoidable necessity", the text also uses the phrase "exceptional cases" to minimize the situations of reference to the article. *To acknowledge occurrence of urgent military necessity can only person at the position not less than the division commander or the unit that corresponds to it*. We believe that this provision is the most effective deterrent of reference to military necessity that is not only of a linguistic nature.

The mutuality clause established by p. 1, Art. 11, release the Contracting Parties from the obligation to recognize the immunity of cultural property in the event of violation by the other Party of the conflict its obligations regarding not using the site for military purposes. When first read the article it may seem that in such way cultural property under special protection enjoy even lower level of protection, than those which are under the general protection. But the essence of the provision set out in Part. 1 is that the withdrawal of immunity in the interpretation of Article 9 of the Convention does not relieve the Parties of obligations related to the general regime of protection of cultural property. So, the special protection should be considered as add-on of additional guarantee that restrain the states from destruction and damage to the most valuable sites. The withdrawal of these guarantees does not destroy the whole system, but only removes the add-on, saving mandatory provisions contained in the base.

An additional of the implementation of special protection had to be placed in the Article 10 *guarantee of access to cultural property under special protection for UNESCO representatives to ensure international control*. R. O'Keefe criticized this guarantee, pointing out that the only international conflict in which the representative institution represented by the Commissioner for Cultural Property was used was the Six-Day War of 1967 between Israel on the one party, and Egypt, Jordan and Syria on the other. However, due to the fact that none of the cultural property of these countries enjoyed special protection, Art. 10 was not used<sup>40</sup>. In such way the Convention of 1954 attempts to strengthen the little-used institute of special protection by other little-used international institute of a neutral representative that cannot be considered effective.

**Transport of Cultural Property in the Event of Armed Conflict.** Chapter 3 of the Convention regulates the transport of cultural property. The importance of acceptable legal definition of the procedure of transport of cultural property was clearly illustrated by the events which that took place on the eve and at the very beginning of World War II. During the Spanish Civil War successfully organized evacuation of property of the Prado Museum, other museums of Pyrenees state helped to preserve the unique collection of works of art. However, that evacuation was spontaneous and more than once was on the verge of collapse due to lack both at the national and at the international level of immunity guarantees for transport of cultural property. More or-

<sup>37</sup> Potapova N.A. International legal problems of protection of cultural property and the Russian Federation legislation : Thesis work.... PhD of Legal science: 12.00.10 : Moscow, 2001. – 171 p.

<sup>38</sup> Potapova N.A. International legal problems of protection of cultural property and the Russian Federation legislation : Thesis work.... PhD of Legal science: 12.00.10 : Moscow, 2001. – 171 p.

<sup>39</sup> Records of the Conference convened by the UNESCO, held in The Hague from 21 April to 14 May 1954. – Staats drukkerijen Uitgevrubedruf. – 1961.

<sup>40</sup> O'Keefe, Roger. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 9.

ganized, but with a different kind of difficulties there was performed the evacuation in Belgium and the Netherlands, the UK and the USA, France and the Soviet Union already after the start of World War II<sup>41</sup>.

Chapter 3 of the Convention establishes and the Executive Regulations explain two types of procedures according to which the protection is provided to vehicles exclusively engaged in the transfer of cultural property: normal and emergency procedures. According to Art. 12 the concerned Party of the conflict may file a request for protection of the said property. Art. 17 of the Executive Regulations provides three-stage procedure for obtaining such protection: Applying with the Statement to the Commissioner General for Cultural Property indicating the reasons for transfer and approximate number and significance of property; consideration of the application by the Commissioner General and consultations with concerned parties; granting permit for transport following the procedure provided by Art. 12 and the appointment by the Commissioner General inspectors for certification of transport "correctness". Vehicles used for the transfer of cultural property enjoy absolute immunity.

Art. 18 of the Regulations contains a set of rules that guarantee the protection of cultural property in the territory of a third State (Depositary). It is understood that state which serves as the depositary should take care about the property that is in its custody, as of its own (in our opinion, such wording is very culturally international (relativistic) in its core). Confiscation and use of property in custody in its own interests is prohibited.

The most controversial provision on the conduct of a depositary state is placed in p. "B" Art. 18. It talks about the need for the return of cultural property after the end of armed conflict. The rule does not include any instructions on the entity to which this property should be returned and such situation is not accidental. *Travaux preparatoires* demonstrate that during the design of the wording the participants of the Hague Conference had disputes concerning whether to call directly at the article the recipient of Cultural Property (the USSR, Spain, Israel and so on.), or to leave a linguistic structure in the form in which it subsequently was adopted (Italy, the USA, the UK, etc.)<sup>42</sup> On the one hand, the lack of specific regulation in the Regulations allowed to accept the article in its present form with broad guarantees of preservation of cultural property, on the other hand, it left many questions regarding the legitimization of the right of seizure of cultural property (*ius praedae*).

Implementation of three-stage procedure for the transport of cultural property takes a lot of time and is not always possible in a rapidly changing military situation. So the Convention and the Regulations in Articles 13 and 19 respectively provided urgent transport mechanisms of transport of cultural property in special cases. According to Art. 13 when cultural property is in danger if you do not take urgent measures, the vehicles in which it is transferred, can be appropriately marked. Using of distinctive emblem is impossible in the territory of a third State. The application of Art. 13 is inadmissible when the attempt to provide transport protection following art. 12 was unsuccessful.

Part 2 of the Article sets out the obligations of High Contracting Parties to the extent possible to ensure the respect to vehicles. This wording is soft enough and evaluating for the Parties of the conflict. However, given the controversy that was between idealists and realists during the discussion of the Draft convention, p. 2, Art. 13 not dissonant with other rules of the Convention of 1954.

Art. 19 of the Regulations governs the emergency transport of cultural property by the Occupant-state. It is established that when it is impossible to perform normal procedure for obtaining permission for transport, it is not considered misappropriation within the meaning of Art. 4 of the Convention in the event that the Commissioner General for Cultural Property shall set in writing (after consultation with the normal personnel) that the circumstances made transport necessary. A bit unclear wording "normal personnel", is explained by J. Toman in his commentary to the Convention. The scientist points out that it should be understood as personnel, responsible to the authorities of the Occupant country in a particular area for the preservation of cultural property<sup>43</sup>.

The Convention regime of transport of cultural property was applied only once, during the international armed conflict in Cambodia in 1972 the property of world famous Angkor monument was moved to Phnom

<sup>41</sup> Nicholas L. *The Rape of Europa. The Fate of Europe's Treasures in the Nazi years* / Nicholas L. [tr. from En. S. A. Chervonna]. – M.: Logos, 2001. – p. 89.

<sup>42</sup> Records of the Conference convened by the UNESCO, held in The Hague from 21 April to 14 May 1954. – Staats drukkerjen Uitgevrubedruf. – 1961.

<sup>43</sup> J. Toman. *Protection of Cultural Property in the Event of Armed Conflict*. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

Penh. On the truck having carried objects of culture, there was placed the distinctive emblem of cultural property; personnel had sleeves, as required by art. 21 of the Executive Regulations<sup>44</sup>. The reason of such rare application of seemingly qualitatively regulated mechanism is in specificity of the sites that are protected by it. Transport of cultural property is a difficult and long-term and expensive procedure that is difficult even in peacetime, as ir-retrievable nature of cultural artifacts requires detailed attention and careful work for their packaging, labeling, and so on. This process is particularly difficult in the situation of armed conflict, that is why curators of collections of movable cultural property take protective measures other than transport within the meaning of Art. 12 and 13 of the Convention.

The legal regulations of transport of Cultural Property in the Hague Convention, unlike the Draft treaty contains also Art. 14 which was proposed for inclusion by the delegate from Greece for which *ius praedae* issue is urgent and of great concern (inter alia through more than a century dispute with the United Kingdom on the marble slab of the Parthenon<sup>45</sup>). The proposal was grounded on a fair question whether all types of transport, which transfer cultural property can enjoy immunity. The article text underlines the immunity for *cultural property and the vehicles transferring it, which consists of the prohibition of confiscation, taking as a prize and seizure. If the term "confiscation" – is used for land affairs, the other two are used usually in relation to maritime war.* So, despite the fact that directly the modes of transport are not listed in the Convention, it can be argued that the Article applies to all modes of transport of cultural property.

It seems problematic to accurately and clearly separate the terms of confiscation, taking as a prize and seizure. For example, J. Toman notes that the confiscation is mentioned at Article 23 (g) and 53 of the Hague Convention respecting the Laws and Customs of War<sup>46</sup>. It clarified there by keyword "seizure". At the same the term capturing the author also explains through seizure, stressing that it takes place during the war at sea<sup>47</sup>. Capturing, however, differs from confiscation. This term, in the context of an armed conflict at sea, first of all relate to maritime transport (vessels), while confiscation – only to movable property. Taking as a prize usually used in two meanings: the capture of the vessels as a result of military action to resolve the issue of its future confiscation through the courts or a seizure of property from the vessel<sup>48</sup>. The second paragraph of Article 14 indicates that Part. 1 can in any case be regarded as restricting the right of states to inspect or control.

**Distinctive emblem of the Hague Convention of 1954.** Convention of 1954 introduces a new distinctive emblem, not using any of those offered by the previous international treaties and their drafts. Both development of emblem its verbal description caused many difficulties among the Hague Conference delegates. They can be consolidated as follows:

- a lot of different emblems has been already used both at the international treaties and for traffic regulations. There was a problem of creating a new, but yet not too complicated and easily reproduced emblem;
- it was important to choose a neutral, apolitical and unrelated to any religion or philosophy emblem. Demonstrative is the emblem of the Red Cross, which was chosen to distinguish ICRC personnel. Despite its choice grounds on tribute to the memory of and gratitude to A. Dunan<sup>49</sup>, Swiss-founder, many countries refused to use it because the cross symbolizes Christianity;

<sup>44</sup> O'Keefe, Roger. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 9

<sup>45</sup> Elgin Marbles [Electronic resource] // Wikipedia. – 2014. – Access mode : <http://goo.gl/ULreQx>

<sup>46</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>47</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>48</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>49</sup> Choice of the emblem of the Red Cross is explained as a tribute to Switzerland, whose citizen had played a prominent role in forming of the ICRC. The red cross at the white background is the reverse the colors display of the flag of Switzerland. Because the cross is also the symbol of Christianity and the countries of Islam considered it impossible for themselves to use it and offered another religious symbol - a red crescent. Israel has expressed willingness to use its own symbol – the Star of David, which is also a religious symbol. Iran agreed to use the symbol of a red lion on a background of the rising sun, but later abandoned it in favor of the red crescent. Lebanon wanted to use the symbol of cedar wood. There were other distinctive signs that were used by some countries. See.: Repetskiy V. M., Lysyk V. M. International Humanitarian Law: Textbook. – B.: Znannia, 2007. – p. 78.

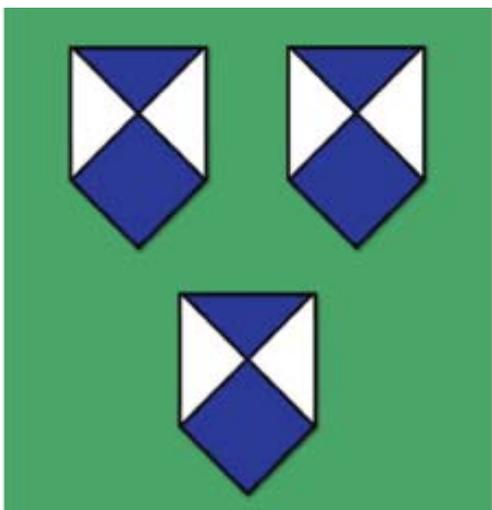
- visibility of the emblem, which at the beginning of the twentieth century was certainly pivotal to its design, lost some its importance until 1954 because of the changing of nature of armed conflict. Some delegates expressed concern that visible from long distances cultural property can serve as benchmarks for planning military operations and reconnaissance<sup>50</sup>. Nevertheless, before approval of the emblem there were conducted experiments aimed at establishing how much distinctive the emblem was under different conditions<sup>51</sup>.

So, Art. 16 of the Hague Convention describes the distinctive emblem in the following way: a shield, pointed below, persaltire 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) \*.



*Міжнародний розпізнавальний знак «Загальний захист культурних цінностей»*

The Convention contains both non-mandatory and mandatory rules on the use of the emblem which at the same time are identified with the ways of its use, triple and single use. P. 1, Art. 17 refers to cases in which the distinctive emblem is used in triple way (Art. Art. 10, 12 and 13 contain a requirement that obliges the parties to use it), to mark immovable cultural property under special protection, the vehicles with movable cultural property and improvised shelters. One copy of the emblem is used, for cultural property which does not enjoy special protection, persons in charge of control in accordance with the Regulations, personnel assigned to protect cultural properties, identity documents (the emblem is integral and necessary attribute of certificates, but the use of certificates is optional).



*Міжнародний розпізнавальний знак  
«Особливий захист культурних цінностей»*

<sup>50</sup> Records of the Conference convened by the UNESCO, held in The Hague from 21 April to 14 May 1954. – Staats drukkerjen Uitgevrubedruf. – 1961.

<sup>51</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

\* An interesting form of marking of cultural sites was used during the occupation of German territories by US forces after World War II. Such objects were marked around with white ribbon, on their door or elsewhere there were attached informational messages about responsibility for attacks on cultural property. This example is important because the United States decided to use the described form of distinguishing despite the regulations on the emblem for cultural sites in the Roerich Pact, the Party which this country was.

It is not allowed arbitrary, not provided by the Convention use of the emblem which is its violation. At the same time such use of the emblem is also a violation of Art. 37 of Additional Protocol I to the Geneva Conventions of 1949, which referred to perfidious use of protective emblems.

Unregulated and therefore left to the discretion of the Contracting Parties is a matter of time when cultural property should be marked. It seems logical and desirable that such marking was performed not directly before the armed conflict or after its start, but in peacetime. Modern armed conflicts are often characterized by their rapidity. Ten-day war in Slovenia between the latter and Yugoslavia in 1991, the Alto Cenepa War between Ecuador and Peru in 1995, Kargil War between India and Pakistan in 1999, the Indo-Bangladesh border conflict in 2001 – these are far not all examples of modern armed conflict that lasted not more than a month, so the states may not have time for marking cultural property after the explosion of a war. In addition, the beginning of the armed conflict is connected with the mobilization of human and material resources for large number of tasks. Marking of cultural property in their background risks of being executed improperly.

In our view, the constructive idea that in some way relates to the abovementioned issue is placed in the Order of the Minister of Culture of Poland of 1995, which refers to the *different phases of the protection of cultural property*. These phases vary in the amount of time that special services have for conservation, sheltering and transfer of cultural property. Any of the phases refers to marking of cultural property, as for the authors of the Order the need to place distinctive emblems before the conflict is quite evident<sup>52</sup>.

In particular, the stages of monuments protection are:

- *prevention and maintenance of preparatory work* - before the armed conflict or crisis; (Prevention phase);
- *increasing readiness* – imposed during the growth of the direct threat, by the relevant authorities of crisis management (preparation phase);
- *response* - during the breaking out and course of the armed conflict and crisis situations; (Phase of response);
- *protection and documentation* - after the end of the armed conflict and crisis situations; (Reconstruction phase)<sup>53</sup>.

We believe that this division into phases is useful experience and should be used in national guidelines for the implementation of the Convention of 1954. The Polish system can be amended also with the preparatory phase, during which cultural sites should be marked.

**Temporal, spatial and personal effect of the Hague Convention of 1954.** The issue of application of the Convention, namely its temporal, spatial and personal effect is provide at Chapter 4 of the Treaty. This chapter can be considered the most progressive achievement of the Conference. Art. 18 indicates that the Convention applies in the event declaration of war or any other armed conflict, even if a conflict was not recognized by one or more Member states. In such way, the non-recognition of the presence of armed conflict by parties does not question the application of the Convention. Part 2 of the mentioned Article in the same way governs the application of the Convention in the case of occupation, even under occupation, the establishment of which was not associated with military operations, the application of the Treaty is recognized mandatory. Part 3 of the same Article is a response to the so-called universality clause (*clausula si omnes*) and establishing the obligation for the Contracting Parties to apply in their relations provisions of the Treaty, even if the other Party of the conflict is not a Party of the Convention. Moreover, if that Party declares the acceptance of the Convention provisions and will follow them, other States are committed to act similarly in relation to it. J. Toman points out that Art. 18, and especially its p. 3, comes out of Art. 2 common for the Geneva Conventions of 1949<sup>54</sup>. During the Geneva conference that preceded the adoption of the conventions there was considered the most accurate in terms of clarity and applicability formulation for addressing *clausula si omnes* problem. Representatives of

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<sup>52</sup> W. Białek. Ochrona dóbr kultury w czasie zagrożenia bezpieczeństwa państwa I wojny. – Warszawa. – 1995. – s. 42

<sup>53</sup> Kliupsh L. Legal grounds of protection of cultural heritage in the event of armed conflict and crisis situations [Electronic resource]. – Access mode :

[http://www.nbu.gov.ua/sites/default/files/all\\_files/201411\\_artilces\\_field\\_dopmat\\_files/ukr\\_klupsh\\_podst\\_1\\_legal\\_basis.pdf](http://www.nbu.gov.ua/sites/default/files/all_files/201411_artilces_field_dopmat_files/ukr_klupsh_podst_1_legal_basis.pdf)

<sup>54</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

Canada, for example, offered to remove the need for statement on the performance of requirements of the Geneva Conventions, an indication to which still remained in the final text<sup>55</sup>. In our view, created the developed construction does not formalize in any way the introduction of the convention into effect during the conflict with the state that is not a Contracting Party. As rightly notes repeatedly mentioned Hungarian researcher J. Toman, Contracting parties at the beginning of conflict must follow the requirements of the Convention, waiting for statement from the Party not bound by the Treaty, in such way the violation of the Convention is artificially not legalized due to failure to provide or untimely provision of a formal statement on the implementation of the basic conditions<sup>56</sup>. The same logic is valid also for the Convention of 1954 concerning its application.

Interestingly, although problematic, is the issue of actors for which the Convention of 1954 is a mandatory. At a quick review seems clear that the document relates to the obligations of States on respect and protection of cultural property. However, it is impossible to ignore the fact that most of the armed conflicts of the second half of the twentieth century were internal (some of them were internationalized). Therefore, limitation of the Convention applicability only to the states would be inconsistent with the objectives and spirit of the document. Two opposing academic opinion on this issue are based on a different assessment of the significance of Art. 4 of the Additional Protocol I to the Geneva Conventions of 1977<sup>57</sup>. So, if we recognize that Art. 4 of the Protocol is codification of the customary norm in regard to the classification of national liberation movements as international armed conflicts, the obvious fact is the possibility to extend the provisions of the Convention of 1954 to national liberation movements. Otherwise, the states that have not ratified the Additional Protocol I and may only stick to application of a common to the Geneva Conventions Art. 3 to national liberation wars and, therefore, in limited way interpret the circle of entities under international humanitarian law. But it doesn't make impossible to extend the rules on the protection of cultural property (namely respect for cultural property) to national liberation wars, as Art. 19 of the Convention of 1954 provides for the possibility of its application by the parties of non-international armed conflict. In this case, the applicability of the Convention of 1954 will be little bit limited in comparison with the situation of the presumption of classification of national liberation movements as international armed conflicts. Parties of such a conflict should make every effort to enter the Convention or at least some of its parts in effect by means of special agreements. The fact of this agreement is nothing more than a manifestation of the recognition *ad hoc*, and as outlined in p. 4. Art. 19 does not affect the legal status of parties of armed conflict. UNESCO under p. 3 of the abovementioned Article may on its own initiative offer its assistance to the parties that are in conflict (the wording regarding the potential of UNESCO in non-international armed conflict is an adaptation of the provisions of the Geneva Conventions on the role of ICRC). The practice of such participation of UNESCO, and rather attempts of participation (civil war in Nigeria in 1967-1970), illustrates that in contrast to the ICRC, the Organization of the UN Committee on Culture, Science and Education is not perceived by belligerents as absolute neutral authority and assistant in the protection of cultural property and minimizing the negative effects of warfare.

In the case of armed conflicts of non-international nature (in this case this term means more widely recognized interpretation according to which national liberation wars are international conflicts) important issue is outlining possible participants of such conflict in the context of the application to them the Convention of 1954. Additional protocol II to the Geneva conventions, dedicated to internal armed conflicts, stipulates that one of its parties shall be armed forces of the State on territory of which the conflict takes place. However Statute of the International Criminal Court in The Art. 8 (2) (f) includes to non-international conflicts category also conflicts between organized armed groups without the involvement of state forces, provided that they are long-term and organized\*. The practice of the International Tribunal for the Former Yugoslavia (ITFY), which is not contrary

<sup>55</sup> Final Record of the Diplomatic Conference of Geneva of 1949.Vol II. [Electronic resource] // Federal Political Department. – p. 108. – Access mode : [http://www.loc.gov/rr/frd/Military\\_Law/RC-Fin-Rec\\_Dipl-Conf-1949.html](http://www.loc.gov/rr/frd/Military_Law/RC-Fin-Rec_Dipl-Conf-1949.html)

<sup>56</sup> J. Toman. The Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>57</sup> Toman J. The protection of cultural property in the event of armed conflict / J. Toman. – UNESCO. – 1996. – p. 202

\* This difference in definitions of what is a conflict of non-international nature is connected, of course, with difference of objectives and purpose of the Rome Statute and Additional Protocol II of 1977

to the position of the International Criminal Court, explains the components of these two dimensions of non-international conflict. Continuance can be manifested through the intensity of the conflict<sup>58</sup>. In addition, the continuance and intensity can manifest in the increasing number of armed clashes<sup>59</sup>, duration of the conflict<sup>60</sup>, number of victims<sup>61</sup>, the number of civilians who were forced to leave the territory of opposition of armed groups<sup>62</sup>, State responses to armed conflict<sup>63</sup> (e.g., sending military or police units to resolve the conflict)<sup>64</sup>. This organized nature is manifested through the presence of sustainable structure of conflicting armed groups<sup>65</sup>, presence of discipline<sup>66</sup>, organized flow of arms<sup>67</sup>, the ability to control territory<sup>68</sup>, recruit and train new members<sup>69</sup>. The presence of the abovementioned features is inherent to many warring in modern internal conflicts parties that are held without the participation of the state. So the question is, what definition of non-international armed conflict may be used in the context of art. 19 of the Convention of 1954. Although the Additional Protocol II of 1977 is much closer to the Convention temporally and is a conglomerate of Hague Law and Geneva Law that are the basis of international humanitarian law, it seems important and desirable to interpret Art. 19 in terms of the Rome Statute, but not the Protocol. At the moment it is impossible to talk about any established practice of States on this matter, but it necessary at UNESCO level to approve a new understanding of the Ar-

<sup>58</sup> Prosecutor v. Duško Tadić : International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 15 July 1999 – paras 561-568 [Electronic resource]. – Access mode : [www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf](http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf); Situation in the Democratic Republic of the Congo (Prosecutor v. Thomas Lubanga Dyilo) : International Criminal Court (ICC), Decision on Sentence 10 July 2012 – para 21 [Electronic resource]. – Access mode : <http://www.icc-cpi.int/iccdocs/doc/doc1438370.pdf>; Prosecutor v. Fatmir Limaj, Isak Musliu, Haradin Bala: International Criminal Tribunal for the Former Yugoslavia (ICTY), Judgment 30 November 2005 – para 93 [Electronic resource]. – Access mode : <http://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>; How is the Term «Armed Conflict» Defined in International Humanitarian Law? – Geneva: International Committee of the Red Cross, 2008. – p. 3 – (Opinion paper)

<sup>59</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

<sup>60</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

<sup>61</sup> Situation in the Democratic Republic of the Congo (Prosecutor v. Thomas Lubanga Dyilo) : International Criminal Court (ICC), Decision on Sentence 10 July 2012 - para 235 [Electronic resource]. – Access mode : <http://www.icc-cpi.int/iccdocs/doc/doc1438370.pdf>

<sup>62</sup> Situation in the Democratic Republic of the Congo (Prosecutor v. Thomas Lubanga Dyilo) : International Criminal Court (ICC), Decision on Sentence 10 July 2012 – para 23 [Electronic resource]. – Access mode :

<http://www.icc-cpi.int/iccdocs/doc/doc1438370.pdf>; Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 – para 177 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf); Prosecutor v. Fatmir Limaj, Isak Musliu, Haradin Bala: International Criminal Tribunal for the Former Yugoslavia (ICTY), Judgment 30 November 2005 – para 167 [Electronic resource]. – Access mode : <http://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>

<sup>63</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

<sup>64</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 para 178 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

<sup>65</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 – para 60 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

<sup>66</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

<sup>67</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 – para 199 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

<sup>68</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

<sup>69</sup> Prosecutor v. Ljube Boškosi, Johan Tarčulovski: International Criminal Tribunal for the Former Yugoslavia (ICTY), Appeals Chamber Judgment 19 May 2010 [Electronic resource]. – Access mode : [http://www.icty.org/x/cases/boskoski\\_tarculovski/acjug/en/100519\\_ajudg.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf)

articles of the Convention of 1954, which guarantees respect for cultural property in the event of a conflict of non-international nature to such an understanding would be the basis of potential practices. Of course, it is difficult to imagine a guarantee mechanism that would ensure implementation of the Convention by non-governmental parties to the armed conflict. But these parties do not act in a vacuum. Very often there is political and information communication between various armed groups and states or groups of states. The requirement to observe the fundamental rules of international humanitarian law must be the basis of communication of states and military organizations involved in non-international armed conflict. In cases where the support of non-governmental armed groups is carried out by non-state actors, so to speak, private funds or by the illegal activities of armed groups (trade in rare species of fauna and flora, cultural property, oil, drugs and so on.), it is extremely difficult to provide at least minimal effectiveness of the Convention. A bright example illustrating this is destruction in Palmyra made by ISIL.

Other "Entity related" issue connected with the ability to apply the Convention by the UN peacekeeping forces, NATO forces and other organizations of collective security. Even when discussing the text of the Treaty, the delegation of Greece proposed to enshrine in the Convention a special provision that would reflect the need of application of the Convention by Blue berets. Although this idea is not reflected in the Treaty itself, but only in the Resolution of the Hague Conference of 1954, and only in the form of recommendations to the United Nations, we believe that the need to apply the Convention by the UN armed forces during their operations is absolutely clear. The United Nations is called to be the guarantor of peace and justice in the world. Compliance with humanitarian conventions is an integral feature of its activities. The textbook example of the application of the Convention of 1954 to the conflicts in which the UN forces were actively involved is Cyprus conflict of 1960-70 years. The Regulations for UN peacekeeping forces in Cyprus, adopted in 1964, in Article 40 contains a reference to the principles and spirit of international conventions. In the explanation to this article (it was formulated by the Secretary General on the request of Canada on the specifics of service of national contingent) there is direct reference to the Convention of 1954<sup>70</sup>. Paragraph. 1.3. of Principles and guidelines on peacekeeping operations of the United Nations, revision of 2008 though the Convention is not directly mentioned, but it is indicated that peacekeepers must know and execute Treaties on the protection of cultural property and the environment. As of today there is only one specialized Treaty on the protection of cultural property during the armed conflict, it is clear that the provisions of the Guidelines should be understood in terms of mandatory application of the Convention for UN peacekeeping forces. Confirmation of regulatedness of the issue of mandatory respect for cultural property is found in the Bulletin of the Secretary General concerning observance of international humanitarian law by UN peacekeeping forces (section 6.6. of the Document)<sup>72</sup>. The UN peacekeeping multi-dimensional operations Guidelines mentions the role of the United Nations in coordinating the efforts of UNESCO in the countries with continuous armed conflict, including during the the implementation of UNTAES mission in Croatia and UNMIK in Kosovo<sup>73</sup>. In such way, by UN missions a certain coordination of protective measures is realized which shows a higher level of involvement of UN forces in the implementation of the Convention of 1954<sup>70</sup> compared to the states. L.V. Prott draws attention to the participation of UNESCO experts in areas where the UN peacekeeping missions are located<sup>74</sup>. At present, unfortunately, there is no automatic admission mechanism for UNESCO experts in the conflict zone. For this admission one must receive UN decision on each particular situation which slows provision of urgent aid.

<sup>70</sup> Yves Sandoz. The application of humanitarian law by the armed forces of the United Nations Organizations // International Review of the Red Cross (Geneva). – September – October 1978. – pp. 274-284

<sup>71</sup> United Nations Peacekeeping Operations Principles and Guidelines. Department of Peacekeeping Operations Department of Field Support. – 2008. – p. 15.

<sup>72</sup> Observance by United Nations forces of international humanitarian law 1999 [Electronic resource] // Secretary-General's Bulletin. – Access mode : <http://www1.umn.edu/humanrts/instree/unobservance1999.pdf>

<sup>73</sup> Handbook on United Nations Multidimensional Peacekeeping Operations // Peacekeeping Best Practices Unit Department of Peacekeeping Operations United Nations. – 2003. – p. 39

<sup>74</sup> L.V. Prott. Ochrona dziedzictwa – obroną pokoju // Materiały z międzynarodowej konferencji zorganizowanej w ramach programu „Partnerstwo dla pokoju”. – Kraków. – 1996. – s. 18

It is worth noting that, despite the rhetorical question of the applicability of IHL by the UN forces this question for a long time was not solved positively, there were doubts about the applicability of the Geneva or Hague Laws in situations where UN peacekeepers are involved<sup>75</sup>.

The issue regarding NATO forces is not as clear compared to the UN forces. Although the principles of the Alliance functioning do not allow violations of international law, and, consequently, damage to cultural property during the performance of their own operations. A. V. P. Rogers points out that Art. 2 of the Treaty on Forces of Contracting Parties to the North Atlantic Alliance of 1951 contains provisions obliging the representatives of the sender state to follow the laws of the host country<sup>76</sup>. So, if the host Country is the Contracting Party to the Convention of 1954, NATO forces must observe the requirements of the said Treaty. In this regard it is important to note that the procedure of "invitation" occurred only once in the Alliance's history - in 2004, Iraq sent a request for assistance to maintain security in the country (the so-called NATO Training Mission - Iraq). In other cases (anti-piracy campaign in the Gulf of Aden we take of the table) NATO forces took part in the conflict either on the basis of the relevant UN Security Council mandate, or on the ground of use of Art. 5 of the Charter of the organization, which guarantees the possibility of self-defense. In other words hardly the quoted above Treaty of 1951 regulates in a substantial way the issue of observance of international law by NATO forces in most of the conflicts of the Alliance. In connection with the issue of mandatory rules of the Convention of 1954. it is important for NATO forces to pay attention to several points which, although not directly witness in favor of the application of the Convention, but taken together, demonstrate the falsity of the opposite opinion. NATO's involvement in the Yugoslav conflict and the conflict in Libya was made possible due to broad interpretation by the UN Security Council of its authority from Chapter VII of the Charter and attraction of "relevant international organizations for establishing the international civil presence"<sup>77</sup>. UN peacekeeping forces, as illustrated above, accept binding rules of international humanitarian law regarding the protection of cultural property for missions under its own auspices. Seems logical assertion that the forces of involved organizations are liable to observe the standards that UN consider binding for its forces. Non-groundlessness of this is proved by Professor A. Lehaultom's quote from the speech of United States Deputy Secretary General S. Talborta, who claimed that NATO can work together with other organizations and in accordance with the principles of those organizations<sup>78</sup>.

Another point on which we would like to focus, is that NATO forces are multinational, i.e. they are composed of the representatives of all the members countries. These representatives should never lose political and legal relationship with the country of citizenship. To date, only the United Kingdom of all member countries is not a Contracting party to the Convention of 1954. For all other countries the Convention is binding and, therefore, should be considered and observed by their citizens. As for the UK, here we share the opinion of J. M. Zelig, who insists that for the Kingdom joining the Convention of 1954 is a matter of prestige, but not a foreign policy choice<sup>79</sup>. It is about the inadmissibility of violation of the Convention for the United Kingdom, even under circumstances where it is not a Contracting Party.

Indicative in the context of the protection of cultural property is involvement of NATO in establishing a no-fly zone over Libya. The North Atlantic Treaty Organization collaborated with UNESCO to ensure the protection of cultural property both during the conflict and *post factum*. Moreover, the negative example of Iraq has forced to think about possible new mechanisms of effective preservation of Cultural Property in Libya, in which territory there are many ancient monuments, including six sites from the UNESCO World Heritage List. A new tool used by NATO was the so-called No Strike List - the list created by K. von Habsburg (President of "Blue Shield" or-

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<sup>75</sup> Gamar V. Humanitarian intervention, UN peacekeeping operations and compliance with international humanitarian law // Ukrainian Journal of International Law. - № 2. - 2005. - p. 74

<sup>76</sup> Agreement between the Parties of the North Atlantic Treaty regarding the Status of their Forces [Electronic resource] // e-Library of the North Atlantic Treaty Organisation. - Access mode : [http://www.nato.int/cps/en/natolive/official\\_texts\\_17265.htm](http://www.nato.int/cps/en/natolive/official_texts_17265.htm)

<sup>77</sup> Security Council Resolution 1244, 1999 [Electronic resource] // NATO. - Access mode : <http://www.nato.int/kosovo/docu/u990610a.htm>

<sup>78</sup> Albert Legault. NATO Intervention in Kosovo : The Legal Context // Canadian Military Journal. - 2000. - p. 65

<sup>79</sup> J. M. Zelig. Recovering Iraq's Cultural Property: What Can Be Done to Prevent Illicit Trafficking // Brooklyn Journal of International Law. - 2005. - No. 31. - p. 13

ganization) and J. Kil (Chairperson of the *International Military Cultural Resources Work Group*). The List was a catalogue of sites of Libyan cultural heritage in need of enhanced protection. Even in the case where such sites were situated near strategic military targets, they were subject to the protection of NATO<sup>80</sup>.

The problem with the applicability of the provisions of humanitarian conventions, including the Convention of 1954, shows itself not only in the plane of already outlined doubts. NATO Member Countries as M.H. Hoffman notes, not position their activities as a war or armed conflict<sup>81</sup>. It appears from this that NATO, recognizing the applicability of international humanitarian law in armed conflicts with its participation, does not recognize their existence. This situation is primarily for political objectives and safety reasons. Protection of cultural property does not harm these objectives and therefore a violation of international legal obligations regarding cultural sites can hardly be successfully justified by non-recognition of the presence of the armed conflict. "The dictatorship of social consciousness"<sup>82</sup> leaves for the North Atlantic Treaty no possibility to observe the Convention of 1954.

The problem of the applicability of the norms of the Convention to conflicts involving NATO forces is just one of examples of more global question: how the humanitarian conventions provisions should be applied the collective security organizations? In the case of each organization can it is possible to present a similar to formulated concerning NATO arguments, it would be useful to develop the Guidelines for collective military / peacekeeping forces, similar to the existing in the framework of the UN. Even organizations that recently quite regularly participate in peacekeeping operations associated with military operations (EUMS - European Union Military Staff<sup>83</sup>, African Union<sup>84</sup> etc.), do not have special conduct standards for their troops. By virtue of the same "dictatorship of social consciousness" to the observance of basic rules of international humanitarian law in the course of the so-called crisis management the said organizations take into account, but a more effective implementation of such rules is possible for official recognition of their bindingness and, therefore, the inclusion to the Guidelines, Rules, Charters of military personnel.

Private Military Companies (PMC) as entities covered by the Hague Convention of 1954, in the same way must observe IHL rules both due to the fact that they are visiting party in an armed conflict, and through obligations under the national law of the state, where they are based. For our purpose we can determine the following gradients of PMCs responsibilities that necessitate observance of the Convention: 1) the responsibility of the host state for the implementation of the rules of IHL; 2) responsibility of PMC to the country of origin; 3) responsibility of PMC to the national law of the State of origin<sup>85</sup>.

**Control over the implementation of the provisions of the Hague Convention of 1954.** An important while ineffective institute of protection of cultural property is the institute of control over the implementation of the Convention. This institute during the discussion caused a lot of complaints regarding the feasibility in practice, and after the Convention enters into force was used only a few times. Art. 21 of the Convention, and Art. 2 of the Executive Regulations establish the following elements of said mechanism (fitted only for international armed conflicts):

1. *Protecting Powers.* Parties to the conflict may in their discretion choose the Protecting Power to ensure the observance of international humanitarian law rules and the implementation of its interests in situations of armed conflict. These Powers of the composition of their diplomatic or consular personnel (in some cases of the

<sup>80</sup> Protecting Libya's heritage [Electronic resource] // NATO Newsroom. – 2011. – Access mode : [http://www.nato.int/cps/en/natolive/news\\_82441.htm?selectedLocale=en](http://www.nato.int/cps/en/natolive/news_82441.htm?selectedLocale=en).

<sup>81</sup> Michael H. Hoffman. Peace-enforcement actions and humanitarian law: Emerging rules for "interventional armed conflict" // International Review of the Red Cross. – No. 837. – 2000. – p. 31

<sup>82</sup> Michael H. Hoffman. Peace-enforcement actions and humanitarian law: Emerging rules for "interventional armed conflict" // International Review of the Red Cross. . – No. 837. – 2000. – p. 31

<sup>83</sup> European Union Military Staff (EUMS) [Electronic resource] // EUMS Official Website – Access mode : <http://www.consilium.europa.eu/eeas/security-defence/csdp-structures-and-instruments/eu-military-staff?lang=en>.

<sup>84</sup> Report of the Chairperson of the Commission on the Situation in the Comoros since the 10th Ordinary Session of the Assembly of the African Union Held from 31 January to 2 February 2008 [Electronic resource] // Peace and Security Council Meeting. – Access mode : <http://goo.gl/ULreQx>

<sup>85</sup> D. Marchukov. Private Military Combatants: A Modern Trend in the Ancient Craft // Ukrainian Journal of International Law. – № 2. – 2005. – p. 116

personnel of other countries with their consent) elect two representatives (delegates) who are to implement the protection of the party of the conflict interests. After the Six Day War in the Middle East and the resignation of the Secretaries General for Cultural Property in 1977 on the initiative of the Director General of UNESCO the delegates from Switzerland as Protecting Power, were empowered to monitor the implementation of the Convention<sup>86</sup>.

2. *The Commissioner General for Cultural Property.* The Director-General of UNESCO prepares and maintains the International list of persons nominated by the High Contracting Parties, and able to serve as the Commissioner-General. From this list the Commissioner-General is appointed, acting at the party of the conflict. Not enough clear is the issue of number of such commissioners in the case where one of the parties to the conflict are several states. It seems reasonable if in a case of appointing of several secretaries on the one party the other party got the right to appropriate quota. Due to the fact that for implementation of functions on protection of the cultural property the Commissioner-General must receive not only the consent of the party, which he represents, but also acceptance of the Protecting Powers of the parties which are in conflict, it is important to have efficient alternative mechanisms for the appointment of the Commissioner, which would be launched in case of failure in the negotiations. There are two such alternatives proposed by the Executive Regulations: President of the International Court of Justice may appoint the Commissioner-General, who begins to perform his duties after the consent of the party, which is going to represent; assistance in appointment of CG can provide neutral states that perform the functions of the Protecting Powers. An example of the mechanism of the Commissioner-General is Middle East conflict in 1967, when after the so-called Six Day War the parties appointed two CGs - one from Jordan, Lebanon, Egypt and Syria, and the other one from Israel<sup>87</sup>. It must be admitted, this is the only example of an agreement between the parties on the appointment of the Commissioner-Generals. During the Iran-Iraq War<sup>88</sup>, the same as, in fact, after 1977, when the Commissioner-Generals in the Middle East resigned, such agreement was not ever achieved.

3. Art. 2 of the Regulations has built-in, but not detailed (this mechanism is by its essence a domestic, and therefore left at the mercy of national regulation) duty of States to appoint a *special representative for the cultural property* that would be in charge of cultural property in the territory of Contracting Parties to the Convention. In the case of occupation the special representative should be appointed also for the occupied territories. This design the Executive Regulations establishes the easiest to perform (in fact it needs no consent as to the person appointed of the parties that are in conflict) mechanism for monitoring the implementation of the Convention of 1954. In practice, it was applied several times: during the conflict in Cambodia. The Special Representative for cultural property was appointed rector of Cambodian university; After the Six Day War Director of antiquity monuments and museums Department was chosen as such representative in Israel<sup>89</sup>.

Although these three mechanisms the list of controls means ends with in the Art. 2 of the Regulation, however quite reasonably we believe is the assertion that there are other means of effective application of the Treaty by controlling its execution in-built to the Convention and the Executive Regulations. In such way, A.A. Ahmetzianov said about the practice of *personal representatives of the Director-General of UNESCO*, who in their essence perform functions similar to the Commissioner-Generals<sup>90</sup>. D. Odiran points out to the functional and territorial limitation of activities of personal representatives compared to the commissioners<sup>91</sup>. However, it is difficult to look over the fact that such a mechanism is necessary and enough quality alternative to the appointment of the

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<sup>86</sup> Ahmetzianov A. A. International legal protection of cultural property in the event of armed conflict : Thesis work.... PhD of Legal science : 12.00.10 : Kazan, 2005. – p. 10

<sup>87</sup> J. Toman. The Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». 2005. – p. 109.

<sup>88</sup> O’Keefe, Roger. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 9

<sup>89</sup> J. Toman. The Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». 2005. – p. 109.

<sup>90</sup> Ahmetzianov A. A. International legal protection of cultural property in the event of armed conflict : Thesis work.... PhD of Legal science : 12.00.10 : Kazan, 2005. – p. 10

<sup>91</sup> Oyediran J. Plunder. An Analysis of Israel’s Violations of the International Law of Cultural Property in the occupied West Bank and Gaza Strip // Al-Haq. – 1997. – p. 30

Commissioner-Generals because the procedure of its implementation is the least formalized in the context of the acceptance of consent of the parties to the conflict. An example is the conflict in Cambodia when Elisyeyeff V. and Noblkur A. were appointed as personal representatives for the cultural property of Director-General of UNESCO<sup>92</sup>. In 1983 such representative acted in Tyre during the first Lebanese war between Lebanon and Israel<sup>93</sup>. Several UNESCO missions were involved in monitoring of military campaign in Yugoslavia, but in this case they had no substantial success.

The "Hidden" control mechanism is embedded in the Resolution II adopted at the Hague Conference, the rule which obliges Member states to establish a *National Advisory Committee on the protection of cultural property during armed conflict*. The feature of this mechanism is that its mission is monitoring and assistance in implementation of the Convention not only after the armed conflict, but also in peacetime. The use of the above mechanism could be followed on the example of already mentioned conflict in Cambodia, where in 1970 there was formed the corresponding National Committee<sup>94</sup>.

Not all Contracting Parties to the Convention of 1954 required forming of a separate committee for monitoring of its implementation. As J. Hladik pointed out that in some States these issues fall under the jurisdiction of the previously existing committees for the implementation of international humanitarian law, others solved the issue through mediation of private institutions endowed with public functions<sup>95</sup>. Nevertheless, the national institutional framework of public authorities for culture and international humanitarian law of most countries do not meet the desired and required minimum, which would ensure effective monitoring of the implementation of the Convention.

An important, though not legalized in the Convention monitoring role acts UNESCO. Despite the fact that in 1983 at the conference in Vienna, experts acknowledged the impossibility of the Organization to participate in the procedure of appointment of the Secretary General<sup>96</sup>, UN Organization for Education, Culture and Science is active on their own initiative: monitor military campaigns taking place in the world; reminds the warring States of their obligations under international law. The examples are: the Iran-Iraq war of 1980-1988, India's invasion in East Pakistan in 1971, Turkey in Cyprus in 1974, El Salvador-Honduras war in 1969<sup>97</sup>. In the latter case UNESCO initiative is especially revealing because no one of the parties to the conflict was not a Contracting party to the Convention. Such appeals and monitoring are carried out also during non-international armed conflicts, as was the case with the conflict in Nigeria in 1966-1970<sup>98</sup>.

Summarizing the analysis of control mechanisms in the Convention we will point out to their cumbersome and inability to very quickly enter into force, if necessary. Diversification of methods of implementation of the Convention contributed to not so much the efficiency but to complication in perception by countries. We believe the most rational and viable non-formalized mechanisms of control are those that are enabled by UNESCO. To significantly improve the control issues is possible with active participation of non-governmental international organizations (especially the "Blue Shield") in the process of control over the implementation of the Convention during armed conflict.

**Good offices, additional agreements and dissemination of knowledge about the Convention.** The Convention also enclosed the regulation of good offices. Article 22 provides for the possibility of the Protecting Powers on their own initiative, at the invitation of one of the parties to the conflict, or at the request of the Director-General of UNESCO to assist States that are in conflict to resolve contentious issues of the Convention application.

<sup>92</sup> E. Kleman, F. Kinio. Protection of Cultural Property in Cambodia during the armed conflicts in accordance with the Hague Convention of 1954 // MZhKK: Protection of Cultural Property in the Event of Armed Conflict. – 2004. – p. 91-100

<sup>93</sup> O'Keefe, Roger. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 9.

<sup>94</sup> E. Kleman, F. Kinio. Protection of Cultural Property in Cambodia during the armed conflicts in accordance with the Hague Convention of 1954 // MZhKK: Protection of Cultural Property in the Event of Armed Conflict. – 2004. – p. 91-100

<sup>95</sup> J. Hladik. Reporting system under the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict // Review of the Red Cross. – Vol. 840. – p. 1001-1016

<sup>96</sup> Meeting of legal experts on the Convention for the Protection of Cultural Property in the Event of Armed Conflict, Vesna, October 17-19, 1983. // UNESCO: Paris. – 1984. – p. 11

<sup>97</sup> O'Keefe R. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 9

<sup>98</sup> O'Keefe R. The protection of cultural property in armed conflict. Cambridge University Press. – 2006. – p. 9.

By copying the provisions of the Geneva Conventions of 1949 Art. 23 states the opportunity for the parties to conclude special agreements on various issues. These agreements should not cover deterioration of the security level of for sites and personnel, which are under the care of the Convention. The only example of practice on the use of this article is the agreement between the Vatican and Italy for non-use of Via Aurelia road for military purposes, which allowed to add Vatican to the International Register of Cultural Property under special protection.

Art. 25 provides for the obligation to disseminate knowledge of the Convention at the national level. All humanitarian conventions contain similar provisions because since the emergence of the first documents to put in order the war at the international universal level, the idea of dissemination of knowledge about them is a key issue in terms of observance of Treaties. Not only states but also IGOs and INGOs are involved into the dissemination of knowledge about the Convention of 1954. So, UNESCO and the ICRC disseminate the document among their Members states by publishing it in different languages, developing comments, guidelines and so on. In addition to specialized organizations involved, dissemination of knowledge is open to other international organizations. CIS, for example, held a series of conferences on the implementation of the Hague Convention into national law and issues on protection of cultural property during armed conflict.

Art. 26 establishes the rule that every 4 years, Member States shall submit reports on the implementation of activities under the goals and objectives of the Treaty. This provision was intended to give UNESCO a certain soft control over the implementation of the treaty obligations, but really not much contributed to such objective. The fact that not all states submit reports (33 countries never responded to the requests of UNESCO), and the information they contain, is of little information and do not reflect the real situation on the implementation of the Convention. This is evident, for example, by the issue of criminal responsibility for war crimes against cultural property. Most states has reported that their penal codes meet the requirements of the Convention concerning the criminalization of offenses against cultural property, but as a rule implementation of this requirement is purely formal - criminal laws were not subjected to any amendments, and general articles on war crimes were just interpreted more broadly in an advantageous for report light. This situation raises the issue of the UNESCO ignorance about the real situation on the implementation of the Convention in each country, which reduces the possibility of effective assistance. During the conflicts between Iran and Iraq, Kuwait and Iraq cultural property suffered through the reluctance to properly disclose the information about it by the parties to the conflicts.

Because of the time of its adoption the Convention contains a so-called "colonial clause"<sup>99</sup>, which provides for the extension of the document to the controlled area. Correlation with the previously adopted documents was found by the formula of their supplementing and detailing, but previously set distinctive emblem was replaced with a new one proposed in the Hague Convention of 1954. In the event of denunciation (though the final text does not contain "Martens clause" on the inapplicability of denunciation to the rules that will be binding due to principles of international law and established customs) in p. 3. Art. 37 there is a delay of denunciation, which guarantees suspend of its effect in the event of armed conflict.

**Protection of cultural property under the Protocol I to the Hague Convention of 1954.** The Convention was supplemented with the Protocol I, which regulated additional issues of the protection of cultural property.

The Protocol related to prohibition to transfer and obligation to return cultural property, in other words, to their restitution. The provisions contained in it, though in a slightly truncated form, assumed to be included in Art. 5 of the Convention<sup>100</sup>. The actual need for the provisions of the Protocol have demonstrated the events of World War II with lots of illegally and half legally displaced cultural property that should have been returned to their rightful owners. The legal ground for its adoption was already existing at that time the customary law and examples of restitution settlement in international instruments and jurisprudence from the XVII century. Of

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<sup>99</sup> J. Toman. The Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

<sup>100</sup> J. Toman. The Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 109.

special weight there were Control Council acts of restitution of cultural property, Declarations of the Allies on condemnation of acts of plunder of 1943, the appeal of Supreme Allied Commander to the German people of 1945<sup>101</sup>. The term "restitution", which is commonly clear and quite common in doctrine and practice of international law, is not used in the text of the Protocol, although it was used in previous revisions<sup>102</sup>. Its counterpart was the word "return".

The Protocol is divided into three sections (this division is not only formal) containing obligations of two groups (third section is "technical" and establishes mechanisms for entry into force and implementation of the Conventions): a) the obligation to return arising from improper displacement of cultural property or cultural property evacuation and b) the obligation to return cultural property to owner state depository. Cl. 9 of the Protocol established the opportunity for its signatories to commit both either two first chapters together or separately. According to the delegate of the Netherlands (author of the idea of cl. 9) such opportunity is to promote more ratifications<sup>103</sup>.

The first two paragraphs of the Protocol establish the obligation to prevent the exportation of cultural property from occupied territory and automatic protection to them if they do get into the territory of the Contracting Party. The third paragraph is directly related to the return of cultural property by any Contracting Party to the competent authorities of previously occupied territory. In our view, the wording of the Protocol "competent authorities" is successful. This formula provides for possible political and territorial changes that are often the result of armed conflict. Although in any case it can not destroy any potential discussions (e.g. question of the unity of national heritage), but offers a clear method of resolving the issue of the counterparty in the return issue. According to J. Toman the Protocol develops the provisions of the Hague Convention of 1907, as takes into account provided by the Convention interpretation in a number of judgments<sup>104</sup> after the Second World War<sup>105</sup>.

A rule of the third paragraph contains no restrictive temporal limit, i.e. does not establish a time mark, which would have made it impossible to appeal with the demand of the restitution. Of all Contracting Parties to the Protocol only Norway did not agree with this situation, using the right for clause (it says that any requirements regarding the restitution of cultural property should not be considered in 20 years after the conflict), but because of the rejection of this position by other states refused to use clause in 1979.

The Protocol provides for compensation for bona fide holder from the Occupant-state the value of cultural property to be returned. Despite some controversy, which took place at the Hague Conference, the imposition of obligations of compensation on the Party, which was to prevent the exportation of cultural property from the territories occupied by it is historically true and practically feasible.

P. 5 of the Protocol is the only provision of the Section II. It applies to cultural property that can be deposited by the State in the territory of another country to ensure its preservation. The introduction of this provision in the final version of the document related to the Canada-Polish dispute regarding ownership of the Wawel Royal Castle in Krakow. In 1940 Canada has allowed *duty-free* import of these values in order to protect them from potential dangers of Nazi occupation. Since this practice was new for that time, the condition of transfer was the understand that the Canadian government is not responsible for the protection of the property transferred. After the World War II the communist government established in Poland applied to Canada with the request to return cultural property in connection with the termination of the circumstances that necessitated its stay in North America. A few months before the unconditional recognition of the new Polish Government by Canada most of

<sup>101</sup> Kleman E. Protection of Cultural Property in Cambodia during the armed conflicts in accordance with the Hague Convention of 1954. / Kleman E., Kinio F. // MZhKK: Protection of cultural property in times of war. – 2004

<sup>102</sup> Клеман Э. Защита культурных ценностей в Камбодже во время вооруженных конфликтов в соответствии с Гаагской конвенцией 1954 г. / Э. Клеман, Ф. Кинио // МЖКК: Защита культурных ценностей во время войны. – 2004

<sup>103</sup> Kleman E. Protection of Cultural Property in Cambodia during the armed conflicts in accordance with the Hague Convention of 1954. / Kleman E., Kinio F. // MZhKK: Protection of cultural property in times of war. – 2004. – c. 45

<sup>104</sup> Rosenberg v. Fischer: Chamber of the restitution of Assets Seized in Occupied Territories, Switzerland, Judgment 3 June 1948 [Electronic resource] // Annual Digest and Reports of Public International Law Cases, 1948. – Access mode : <http://goo.gl/98UmcU>

<sup>105</sup> J. Toman. Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». – 2005. – p. 375

the property from the place of storage (government building in Ottawa - the part that was left at the building was returned to Poland in 1948) was transferred to the Provincial Museum of Quebec. Another part was deposited to the Bank of Montreal in Ottawa. The Premier of Quebec announced his readiness to return cultural property only after the Judgment of competent court on the need for such action<sup>106</sup>. Hard and seemingly incomprehensible position of Canadian Party was explained with the political color of the new Polish government and a negative reaction on it, the position of the Roman Catholic Church in Poland and Quebec, information about that part of the property that is required for the return did not belong to the Polish state, but to individuals or religious institutions. G. Swoger in his study on the Polish-Canadian conflict based on somewhat pro-Canadian positions, points out to the one more obstacle for a quick solution of the restitution of deposited cultural property: Poland misunderstanding of the nature of the federal state in which the central government has no comprehensive effect on the authorities of individual provinces<sup>107</sup>. The position of the Canadian party was based on the lack of commitment to the protection of cultural property of Poland, and, therefore, clear instructions on their return. The Polish Party pointed to the immunity of state property abroad and to customary international law on the restitution of cultural property after armed conflict. In April 1949, at the UN General Assembly the Polish delegate performed an attempt to bring the issue of the restitution to the international level when, in his speech, he drew attention to the behavior of Canada in the "Wawel" case. The attempt failed - the head of the Canadian delegation A. Mc Newton pointed out that the official request from Poland was received a week before the Assembly and Canada studies it and makes a reasoned reply<sup>108</sup>.

Its unwillingness to defend the return of cultural property from the Royal Castle in Canadian court Poland explained with the argument that Canadian government represents the power in the state and is responsible internationally for the relations of all parts and levels of government in its own country<sup>106</sup>.

G. Swoger associates the change in the Canadian-Polish relations on cultural property with the liberalization of the political regime in Poland, increased power of W. Gomulka, the death of Stalin and the softening of the leadership of Moscow regarding the Polish-Lithuanian Commonwealth<sup>110</sup>. It would be wrong to ignore the political motives of certain legally significant actions at the international level, but at the same time, we need to pay attention to the adopted in 1954 the Additional Protocol to the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, which contained not a customary but a written rule developed to resolve potential conflicts such as described above and a more legally reasonable position of Poland J. Castel reasonably points out that the dispute regarding the cultural property of Wawel was so much ran over time that according to international law has no doubts about how it would be resolved<sup>111</sup>. Currently, although procedurally the return of cultural property from the depositary is not regulated in detail, a set of international legal regulation and practice (primarily the Canadian-Polish example) make impossible so long and conflict return of deposited property.

The practice of application of the Protocol is insignificant. J. Toman, referring to the famous report of P. J. Boylan indicates that the reports of Contracting States did not contain any specific information about the actual implementation of the Treaty and only perform a formality - informed UNESCO about so-called attention to the problem<sup>112</sup>. Toman said that the only example of the attempt to use the provisions of the Protocol for the

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<sup>106</sup> J.-G. Castel. Polish Art Treasures in Canada — 1940-1960: A Case History // Proceedings of the Annual Meeting (American Society of International Law) : American Society of International Law. — Vol. 68 (APRIL 25-27, 1974). — pp.121-127

<sup>107</sup> G. Swoger. The Strange Odyssey of Poland National Treasures, 1939-1961. — Library and Archives Canada Cataloguing and Publication. — 2004. — p. 123

<sup>108</sup> G. Swoger. The Strange Odyssey of Poland National Treasures, 1939-1961. — Library and Archives Canada Cataloguing and Publication. — 2004. — p. 124

<sup>109</sup> J.-G. Castel. Polish Art Treasures in Canada — 1940-1960: A Case History // Proceedings of the Annual Meeting (American Society of International Law) : American Society of International Law. — Vol. 68 (APRIL 25-27, 1974). — pp. 121-127

<sup>110</sup> G. Swoger. The Strange Odyssey of Poland National Treasures, 1939-1961. — Library and Archives Canada Cataloguing and Publication. — 2004. — p. 123.

<sup>111</sup> J.-G. Castel. Polish Art Treasures in Canada — 1940-1960: A Case History // Proceedings of the Annual Meeting (American Society of International Law) : American Society of International Law. — Vol. 68 (APRIL 25-27, 1974). — pp. 121-127

<sup>112</sup> J. Toman. The Protection of Cultural Property in the Event of Armed Conflict. — M.: OJSC «Publishing House «MAGISTER\_PRESS». — 2005. — p. 109.; P. J. Boylan. Review of the Convention for the protection of cultural property in the event of Armed Conflict (The Hague Convention of 1954) / P. J. Boylan // CLT-93/WS/12. — ЮНЕСКО. — 1993

protection of cultural property is a conflict in 1990 between Iraq and Kuwait<sup>113</sup>. At that time UNESCO appealed to Iraqi authorities with the request to prevent the transfer and return cultural property of Kuwait. The situation has caused enough concern to provoke later the Security Council resolution<sup>114</sup>, which also contained a reference to the rules of the Protocol. The goal of the return of cultural property was reached by the end of October 1991, most of transferred cultural property was returned to Kuwait.

Talking about rare Kuwaiti example of application of the Protocol we consider appropriate to note that measures to return and prevent export of cultural property were used also after the Iraq war, although the references to the Protocol itself was not used (it was not reasonable to expect that from the States that were not Parties thereto). In such way a number of international measures both at the Security Council and Interpol level and national level were undertaken primarily by the United Kingdom, the USA and Switzerland<sup>115</sup> (less visible but important steps were undertaken by other countries, in particular Poland<sup>116</sup>) to protect the cultural heritage of Iraq, give reasons to believe that the Protocol had much more importance for international law and practice than just creating of another contractual and of little applicability protection mechanism. It formalized customary rule, definitively and clearly affirm the rule on inadmissibility of export of cultural property during armed conflict, as well as obligation of its return.

In the case of the invasion of Iraq, the main criticism, given the applied *post factum* measures was not because of unwilling to use them, but because of ignoring of important part of preparation for military conflict. In such way, in spite of volunteer work in the US on drawing up lists of major archaeological sites and cultural property of Iraq, the personnel who would have to take care of the preservation of cultural site, was not properly trained, the strategy of protection of museums was not developed, so they were robbed in conditions of anarchy due to the absence of any protection. Three advisers of the White House on cultural issues expressed a desire to stop cooperation with the administration of G. Bush through failure to use adequate measures to protect the cultural heritage of Iraq<sup>117</sup>. The Iraqi conflict has demonstrated that any military campaign should provide strategy for the protection of national heritage.

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<sup>113</sup> J. Toman. The Protection of Cultural Property in the Event of Armed Conflict. – M.: OJSC «Publishing House «MAGISTER\_PRESS». 2005. – p. 375

<sup>114</sup> Security Council Resolution No 686, 1991 [Electronic resource] // United Nations. – Access mode : <http://www.fas.org/news/un/iraq/sres/sres0686.htm>

<sup>115</sup> J. M. Zelig. Recovering Iraq's Cultural Property: What Can Be Done to Prevent Illicit Trafficking // Brooklyn Journal of International Law. – 2005. – No. 31. – p. 14

<sup>116</sup> Sałaciński K., Lemiesz M. Realizacja przez Polskę zadań na rzecz ochrony dziedzictwa kulturowego Iraku w ramach misji stabilizacyjnej // Dziedzictwo kultury wobec zagrożeń wojny i pokoju. – Warszawa. – 2004. – s. 29

<sup>117</sup> J. Toman. Cultural Property in war: Improvement in protection. Commentary on the 1999 Second Protocol to the Hague Convention 1954 for the protection of Cultural Property in the event of armed conflict. – Paris: UNESCO Publishing. – 2009. – p. 102

## 2. LEGAL REGULATION OF PROTECTION OF CULTURAL PROPERTY IN UKRAINE IN THE EVENT OF ARMED CONFLICT

Today the Protection of Cultural Property in the Event of Armed Conflict is regulated in Ukraine by several regulatory acts (hereinafter – RA): Law of Ukraine "On Protection of Cultural Heritage", the Law of Ukraine "On Protection of the Archaeological Heritage" Guidelines on the application of international humanitarian law in Armed Forces of Ukraine approved by the Ministry of Defense of Ukraine Order of September 11, 2004 No 400. In addition, the Protection of Cultural Property in the Event of Armed Conflict is regulated by International Treaties ratified by Ukraine, which, according to Art. 9 of the Constitution of Ukraine is are the part of Ukrainian legislation, namely the Convention on the Protection of Cultural Property in the Event of Armed Conflict, the Convention for the Protection of Cultural and Natural Heritage and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property . The legal regime of protection of cultural property as detailed also in subordinate regulatory acts, before all the Orders of the Ministry of Culture of Ukraine.

Guidelines on the application of international humanitarian law in the Armed Forces of Ukraine approved by the Ministry of Defense of Ukraine Order of September 11, 2004 No 400 is the most special internal regulatory act on the protection of cultural property in the event of armed conflict<sup>118</sup>. Paragraph 1.2.52 of the Guidelines stipulates that all cultural sites and their personnel should be properly marked with appropriate distinctive emblems. In different paragraphs of the same document there are cited provisions of the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and reconstituted prohibitions to destroy, deface, steal, and so on cultural property. Paragraph 5.1.17 refers to the theoretical training of military personnel in international humanitarian law (hereinafter – IHL) and the issue of protection of cultural property is among those the answer to which the military personnel need to know. In such way there is fixed idea of compulsory training of military personnel on IHL in general and on the protection of cultural property in particular. The guidelines contain also rules of marking of sites in accordance with IHL. In the context of the cultural property these rules suggest to use the distinctive emblem introduced by the Hague Convention of 1954. However, it is mentioned that marking can be performed using the emblem of so-called Roerich Pact (although the 1954 Convention stipulates that the emblem of the Convention replaces the emblem of the Pact, and Ukraine has never been a Party to the Pact). Moreover, there is also a reference to the emblem of the Hague Convention of 1907 for the bombing of naval forces during the war for historical monuments and cultural buildings.

The Hague Convention of 1954 defines the obligations of states and non-state parties to armed conflict to protect and respect the cultural property that have been thoroughly described in another section of the report. Remember that the Convention provides for the obligation to refrain from attacks on cultural property, their use in military purposes, robbery and destroy. There is also provided obligation to mark with distinctive emblems, guaranteed protection of transport of cultural property (among Ukrainian RA the goal of regimentation of transport is provided in Resolution of the Ukrainian Parliament "On approval of the evacuation in case of threat or occurrence of man-made and natural disasters", which partly reflects the rules on transport of the Convention), the proposed control mechanisms for the protection of cultural property.

The Convention on the Protection of the World Cultural and Natural Heritage (Adopted 11.16.1972, ratified by Ukraine 04.10.1988)<sup>119</sup> and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (of 14.11.1970, ratified 10.02.1988)<sup>120</sup>, although

<sup>118</sup> Guidelines on the application of international humanitarian law in the Armed Forces of Ukraine approved by the Ministry of Defense of Ukraine Order of September 11, 2004 No 400/ Published by Ministry of Defence of Ukraine. – K. : Azimut-Ukraine, 2004. – 144 p.

<sup>119</sup> Convention on the Protection of the World Cultural and Natural Heritage of 16.11.1972 [Electronic resource]. – Access mode : [http://zakon0.rada.gov.ua/laws/show/995\\_089](http://zakon0.rada.gov.ua/laws/show/995_089)

<sup>120</sup> Конвенція про заходи, спрямовані на заборону та запобігання незаконному ввезенню, вивезенню та передачі права власності на культурні цінності від 14.11.1970 [Електрон. ресурс]. – Режим доступу : [http://zakon3.rada.gov.ua/laws/show/995\\_186](http://zakon3.rada.gov.ua/laws/show/995_186)

not directly relates to the armed conflict, but is the first requires respect for the cultural and natural heritage of other states (incl. in the event of armed conflict), and the second determines the need to ensure the return of cultural property taken from occupied territories.

The Law of Ukraine "On Protection of Cultural Heritage" contains the list and contents of measures to be implemented as a part of protection of cultural heritage, including: preventing the destruction or damage, ensuring protection, preservation, proper use, conservation, registration of cultural heritage sites<sup>121</sup>. The law also defines the authority which aims to manage cultural heritage sites, which are the Cabinet of Ministers of Ukraine, the Central executive authority (i.e., above all, the Ministry of Culture of Ukraine) and regional, district and Kyiv and Sevastopol city administrations, executive bodies of village, town or city councils. Article 27 stipulates that in the event of threat to cultural sites, the competent authority (the appointment depends on the status of the monument – national or local) should take the necessary measures, namely to change the type or manner of use, to perform works on its conservation, restoration, rehabilitation, museumification, repair and adjustment. Although the law *does not contain specific rules on the protection of cultural property in the event of armed conflict*, however such conflict is one of the hazards, and therefore in case of its occurrence it is necessary to refer to the above measures.

In case of violation of the legislation on the protection of the cultural heritage, this law provides for the legal and/or financial responsibility. In particular, for illegal archeological explorations, excavations, excavation or other land or underwater operations at the site of the archaeological heritage, as well as intentional unlawful destruction, demolishing or damage to cultural heritage sites or their parts, perpetrators are brought to criminal responsibility under the law (Art. 43).

(ст. 44). In case of violation of legislation on protection of cultural heritage the relevant authority of the protection of cultural heritage imposes financial penalties on the legal entity which is the owner or authorized body or customer of works (Art. 44).

Evasion of signing of security contracts for monuments, violations of the use of monuments, violation of Historical and Cultural Reserve regime or the Historical and Cultural protected area, the repair, restoration, rehabilitation work on a monument, a change of purpose of a monument, its parts and elements, applying inscriptions, marking on it, on its territory and its protected area without the written permission of the relevant authority of the protection of cultural heritage, evasion of transfer in the prescribed manner found during archaeological explorations, excavations moving objects related to immovable sites of cultural heritage for permanent storage to museums (state Repository) that store museum objects and museum collections that are of public property and belong to the state part of the Museum Fund of Ukraine, as well as inexecution of legitimate demands of officials of authorities for protection of cultural heritage to address violations of legislation on protection of cultural heritage or impeding their work entails administrative responsibility according to the law (Art. 46).

At the same time the Law also states that the application of financial sanctions, administrative penalties or criminal penalties does not exempt the perpetrator from the obligation to compensate the damage caused to the owner of the monument or its authorized body, a person who has acquired ownership, use or management of monument, protected archaeological territory (Art. 47).

The Law of Ukraine "On Protection of the Archaeological Heritage" in Art. 6 and 7 it is defined the responsibilities of central and local authorities to protect the archaeological heritage sites<sup>122</sup>. Similar to the Law "On Protection of Cultural Heritage" such protection should be implemented in case of threats incl. related to the armed conflict. Regarding the responsibility for violation of legislation of Ukraine on Protection of Archaeological Heritage the Law says only that "Legal and individual entities, whose acts or omissions have caused damage to archaeological heritage, are liable according to the law of Ukraine" (Art. 22).

<sup>121</sup> On protection of cultural heritage: the Law of Ukraine of 08.06.2000 № 1805-III [Electronic resource]. – Access mode : <http://zakon5.rada.gov.ua/laws/show/1805-14>

<sup>122</sup> On Protection of Archeological Heritage [Electronic Resource] : The Law of Ukraine of 18.03.2004 № 1626-IV. – Access mode : <http://zakon2.rada.gov.ua/laws/show/1626-15>

Now let's stop in more details on the features of administrative legal and criminal legal protection of cultural property during armed conflicts in Ukraine. The administrative responsibility for violation of legislation regulating the sphere of culture is a form of negative reaction of the government through its competent authorities, manifested in the application in compliance with the established procedure of administrative enforcement contained in administrative and legal sanctions to individuals for committing administrative offenses and to legal entities for violations of administrative and legal statutes in the sphere of culture<sup>123</sup>.

It should be noted that the offenses in the sphere of culture may be general in nature and be committed in any field. For example, administrative corruption offenses (Chapter 13-a of CUAO), violation of rights to object of intellectual property (art. 51-2 CUAO), violation of the right to information (art. 212-3 CUAO), the implementation of illegal access to information in information (automated) systems, illegal manufacture or distribution of copies of databases of information (automated) systems (art. 212-6 CUAO), violation of the law on state secrets (art. 212-2 CUAO), violation of the procedure for issuing the certificate of conformity (Art. 172-1 CAO), violation of the procedure of issuance of the permit (Art. 166-10 CUAO), violation of the law on state registration of legal entities and individuals – entrepreneurs (Art. 166-11 CUAO), violation of the law on licensing of certain types of business (Art. 166-12 CUAO).

At the same time CUAO defined the list of unlawful acts that are specific to the cultural sphere. The key for the cultural sphere is definitely Chapter 7, which defines administrative offences in the field of protection of cultural heritage. In such way, Art. 92 CUAO establishes *liability for violation of legislation on protection of cultural heritage*. Which states that: evasion of signing security contracts for monuments of cultural heritage; violation of the use of monuments of cultural heritage; violation of regime of the Historical and Cultural Reserve or the Historical and Cultural protected area; the repair, restoration, rehabilitation works on a monument of cultural heritage, change of purpose of monuments of cultural heritage, its parts and components, the applying of inscriptions, marks on them, on their territory and protected zone without the written permission of the relevant authority for the protection of cultural heritage; evasion of transfer in the prescribed manner found during archaeological explorations, excavations moving objects related to immovable sites of cultural heritage for permanent storage to museums (state Repository) that store museum objects and museum collections that are state property and belong to the state part of the Museum Fund of Ukraine, – invokes the a fine on citizens in the amount from fifty to one hundred non-taxable minimum incomes of citizens and on officials in the amount from one hundred to one hundred fifty non-taxable minimum incomes of citizens.

In addition to the said rule, the administrative liability is also: established for the violation of the law on the National Archive Fund and Archive Institutions (Article 92-1), failure to observe legal requirements of officials of the authorities for the protection of cultural heritage (Article 188-33). As you can see, the special rule, which would protect cultural property in the event of armed conflict, is absent as of now. But, unfortunately, we could not find statistics about how many persons were brought to administrative responsibility for encroachment of Cultural Property.

The protection of cultural property during armed conflicts by criminal law today is evidently also inadequate. The national *Criminal Code does not at all contain special rules envisaging responsibility for the illegal use of the emblem of the protection of cultural property. There is also no provided liability for the use of cultural property under special protection, to maintain military actions in the absence of military necessity.*

The only special rule which provides for the liability for plunder of national property in occupied territory is Article 438 of the Criminal Code of Ukraine. However, its effect is limited. First, it applies only in armed conflicts of an international character. This conclusion follows in particular from the Geneva Conventions for the protection of war victims of August 12, 1949 and the Additional Protocol I of 1977. Article 438 of the Criminal Code does not provide liability for violations of the laws and customs of non-international armed conflicts. Although these laws and customs in content correlate to those listed above, they are still legally treated

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<sup>123</sup> Адміністративна відповідальність у сфері культури [Електрон. ресурс]. – Access mode : [http://studopedia.su/6\\_25295\\_administrativna-vidpovidalnist-u-sferi-kulturi.html](http://studopedia.su/6_25295_administrativna-vidpovidalnist-u-sferi-kulturi.html)

as separate and have their own features. In particular, the Additional Protocol II of 1977 to the Geneva Conventions for the protection of war victims of August 12, 1949 refers to armed conflicts that take place in the territory of one state between its armed forces or other organized armed groups which, under responsible command, control the part of its territory, which allows them to carry out sustained and concerted military operations and to implement this Protocol. According to the Rome Statute of the International Criminal Court the above said types of laws and customs also mentioned separately but their violation is recognized as types of war crimes. This points to the need for appropriate changes to Article 438 of the Criminal Code Ukraine<sup>124</sup>.

Second, the subject of this actions is only property that has cultural or other national importance (that meet the requirements of the Law of Ukraine "On Protection of Cultural Heritage", the Convention on the Protection of Cultural Property in the Event of Armed Conflict of May 14, 1954). Plunder of national property in occupied territory covers arbitrary seizure by any means, combined with further inversion on benefit of another state or individuals, and also as a rule with export outside the occupied territory<sup>125</sup>.

Quite an interesting is the experience of the Republic of Moldova, which in 2013 amended the Criminal Code concerning criminalization of hard gross violation of international humanitarian law in armed conflict both international and non-international. This applies in particular to Articles 127-1 (Person protected by international humanitarian law), 130 (Mercenary) 135 (Genocide), 135-1 (Crimes against Humanity), 137 (War crimes against individuals), 137-1 (Military crimes against property rights and other rights), 137-2 (Use of prohibited means of warfare), 137-3 (Use of prohibited methods of warfare), 137-4 (Unlawful use of the distinctive emblems of international humanitarian law), 138 (Impact and performance of clearly illegal order. Failure or improper exercise of proper control)<sup>126</sup>.

The general rules of the Ukrainian criminal legislation, which provides for responsibility for violence to cultural property and which can be used also during an armed conflict of non-international nature include Article 178 (Damage to religious buildings or worship structures), 179 (Illegal retention, desecration or destruction of religious shrines), 193 (Unlawful appropriation by a person of found or somebody's property accidentally happened to him), 201 (Smuggling), 298 of the Criminal Code of Ukraine (Illegal prospecting at the site of the archaeological heritage, demolition, destruction or damage to sites of cultural heritage).

To make a comparative analysis of the number of crimes committed under these Articles due to the military conflict in the East of Ukraine currently is not possible, the current procedure of reporting does not allow to distinct information on registration of crimes in specific territories of administrative units (i.e., in the ATO zone). Therefore the Prosecutor General of Ukraine was provided with the information on the total number of offenses of investigated category registered in the territory of Donetsk and Lugansk regions<sup>127</sup>. Although the following analysis in connection with the above circumstances is not entirely reliable, it does offer an opportunity to assess major trends to response of the authorities to such offenses.

A comparison of available statistics within Ukraine in general and in Donetsk and Lugansk regions in particular, showed that the total amount of accounted violations to cultural property during 2013–2015 years was not significant (Table. 1).

<sup>124</sup> Кримінальний кодекс України: Науково-практичний коментар [Електрон. ресурс] / Ю. В. Баулін, В. І. Борисов, С. Б. Гавриш та ін.; За заг. ред. В. В. Сташиса, В. Я. Тація. – К.: Концерн "Видавничий Дім "Ін Юре", 2003. – 1196 с. – Access mode : <http://radnuk.info/komentar/kruminal/osobluva/306-rozd20/4745--438-----.html>

<sup>12</sup> The Criminal Code of Ukraine: Scientific and practical commentary [Electronic resource] / Yu. V. Baulin, V. I. Borisov, S. B. Gavrysh and oth.; ex. Chief Editor V. V. Stashysa, V. Ya. Tatsia. – С.: Concern "Publishing House "InJure", 2003. – 1196 p. – Access mode : <http://radnuk.info/komentar/kruminal/osobluva/306-rozd20/4745--438-----.html>

<sup>126</sup> The Criminal Code of the Republic of Moldova [Electronic resource]. – Access mode: <http://lex.justice.md/ru/331268/>

<sup>127</sup> Letter of the Prosecutor General of Ukraine ща 08.06.2016 № 19/4-840, Ref No. 16

Table 1

**Data on account of crimes related to offence to Cultural Property, in 2013–2015**

	Total in Ukraine	Including		Total in Ukraine	Including		Total in Ukraine	Including	
		Donetsk reg.	Luhansk reg.		Donetsk reg.	Luhansk reg.		Donetsk reg.	Luhansk reg.
art. 178	3	1	0	7	2	1	3	0	1
art. 179	5	1	0	3	1	0	2	0	0
art. 193	8	0	0	3	0	0	2	0	0
art. 201	196	9	13	129	2	15	110	0	2
art. 298	67	0	1	52	2	3	57	4	4

Further analysis of the dynamics of the period till the beginning of the armed conflict (2013) with a period of ATO (2014–2015), showed that changes in these statistics were minor. In particular, 12 months of 2013 in the Donetsk and Lugansk regions together accounted only 1 case of damage to religious buildings or worship structures (Art. 178 CC), in 2014 – 3 cases in 2015 – 1 of illegal retention, desecration or destruction of religious shrines (Art. 179 CC) – accordingly 1; 1 and 0. No fact of misappropriation by a person of found or somebody's property accidentally happened to him (Art. 193 of the Criminal Code) for 2013–2015 were not accounted at all. It is necessary to mention about a slight increase in the number of recorded in these areas crime under Art. 298 Criminal Code of Ukraine (Illegal conduct of exploration works at the site of the archaeological heritage, destruction, demolishing or damage of cultural heritage): 2013 – 1; 2014 – 5; 2015 – 8.

As can be seen from the above table, during the 2013–2015 the greatest number of accounted crimes are under Art. 201 of the Criminal Code (Smuggling). In such way, in 2013 in the Donetsk and Lugansk regions the number of these crimes was 22. In the following years their number significantly decreased (17 in 2014 and 2 in 2015). Note however, that these figures are again not fully describe the situation with the protection of cultural property in situations of armed conflict, because, first, concern only controlled by the Ukrainian government territory of the Donetsk and Lugansk regions (including those not affected by the armed conflict), and second, cover transfer across the customs border of Ukraine outside the customs control or with hiding from customs control not only the cultural property but also other items under this article (toxic, potent, explosives, radioactive materials, weapons and ammunition, as well as special technical means secret information).

A similar situation is in respect of offenses under Art. 438 of the Criminal Code (Violation of the laws and customs of war). In 2013, across Ukraine were not accounted any crime of this type, in 2014 – 1, in 2015 – 4. The composition of this crime covers a wide range of offences: cruel treatment of prisoners of war or civilians; expulsion of civilians for forced labor; looting of national property in occupied territory; the use of means of warfare prohibited by international law; other violations of laws and customs of war as stipulated by international treaties ratified by the Ukrainian Parliament, as well as the issuance of the order to commit such acts. Accordingly, it is impossible to establish whether at all among recorded crimes there were offences to cultural property, and if there were, how many of them.

The absence of any court judgments on criminal violations related to offences to cultural property during armed conflict was proved by the analysis of cases contained in the Unified State Register of court decisions in the public domain we made. Said base was investigated by us for the period from 01.07.2014 to 19.07.2016. In particular, there was found no document concerning violations of the laws and customs of war (Art. 438 CC). Two documents were found on each crime under Articles 298 (Illegal prospecting at the site of the archaeological heritage, destruction, desecration or damage of cultural heritage) and 178 of the Criminal Code of Ukraine (Damage of religious buildings or worship structures). However, they were related to other regions

of Ukraine and were not connected with offences to cultural property during the armed conflict in the East of Ukraine. The same situation is with the crimes under Article 201 of the Criminal Code (Smuggling) all 86 related documents concerned other regions of Ukraine and were not connected with offences to cultural property during armed conflict in the East of Ukraine, none of the 42 documents on crimes under article 193 of the Criminal Code (Misappropriation by a person property found or accidentally happened to possession of him) and none of the 5 documents on crimes under article 179 of the Criminal Code (Illegal retention, desecration or destruction of religious shrines).

*Summarizing the above, it should again be noted that the special protection of cultural property should be prepared already in peacetime with joint efforts of legislators and government officials. It is also necessary to improve current legislation on responsibility for offences to cultural property.*

### **3. Armed conflict and state of protection of cultural property in the east of Ukraine**

Annexation of Crimea and the armed conflict in the East of Ukraine showed gaps and ill-preparedness in the field of protection of cultural property. As the research of available public sources (publications in mass media, messages on social networks, analysis of judicial practice, interviews, results of monitoring visits) we conducted did not confirm the implementation of advance preparation of cultural sites for emergency situations or armed conflict. In particular the distinctive emblems were not placed at cultural property; special measures of architectural character (for the prevention and relief of combating fires, destruction) were not taken; there have not been created reserves of materials needed for the evacuation of cultural property; at many sites of culture, religion, art, science, education or charitable purposes there were no evacuation plans for the event of armed conflict or they were not followed; civil service that had to implement protective measures in case of armed conflict were not created; clearly showed the insufficient level of education in the field of international humanitarian law among military officers and workers of culture.

All this led to a serious loss for national culture. Head of the of the Department on Museology and Cultural Property of the Ministry of Culture Vasyl Rozhko said during the briefing of 13.06.2016, according to statistics, about 70 museums appeared to be in the temporarily occupied territories of Crimea and Donbas – about 35 per each area. "But according to our latest estimates, there are about 100 such museums, or more precisely 99, including Crimea, Sevastopol, Lugansk and Donetsk regions behind the firing line. And more than 1 million of museum objects, even according to some information 2 million, are beyond the reach of the Ukrainian authorities. There is no direct contact with museums in the occupied territories and there is no information on what happen there. People are scared, do not go to the contact, for people is a real threat. The Director of Lugansk museum spent 2 months in a dungeon just because of being denounced. We understand that after the phone call, after contacts people are visited by special services and threatened, interrogated, and so on." According to the official, the destruction most of which occurred in 2014, affected the Donetsk museum of local history most of all. Out of 29 rooms, 25 were destroyed, which led to the loss of most of the collection<sup>128</sup>.

Accordingly, we can also state that the parties to the conflict did not show proper respect for cultural property. In particular, there have been cases turning them into military sites; there was no special care to them as to civilian assets; no actual steps were made to minimize accidental damage, resulting in damage to buildings and historical monuments; there were acts of robbery sites of culture, religion, art, science, education or charity.

<sup>128</sup> Ministry of Culture counted museums left in the occupied territory [Electronic resource]. – Access mode : <http://www.ukrinform.ua/rubric-culture/2033684-minkult-porahuvav-muzei-so-zalisilisa-pid-okupantami.html>

### **3.1. Transformation sites of culture, religion, art, science, education or charity into military sites**

#### **3.1.1. Transformation of sites of culture, religion, art, science, education or charity into military sites resulting in their damage**

In the summer of 2014 there was a confrontation between Ukrainian military forces and militants of "DPR" for taking control over the Savur–Mohyla tumulus height. The strategic importance of the height was because it rises above the surrounding steppe spaces, allowing to control a large area of the border between Ukraine and Russia. From the top of the tumulus the area in a radius of 30–40 kilometers is seen<sup>129</sup>.

During the fighting in June and August 2014 memorial, which was located on the mound, was significantly damaged. The figure of the soldier fell, its debris were scattered. Pylons, bas-reliefs and obelisk itself (received a number of through holes) were heavily damaged. As known, inside of the obelisk there was a small museum dedicated to the battles for Savur– Mohyla in July–August 1943<sup>130</sup>.

Back in 1936, Savur–Mogyla received the status of the monument of old and Ukrainian epic, and according to the Resolution of the Cabinet of Ministers of Ukraine of 03.09.2009 No 928 Memorial "Savur–Mohyla" was recognized as the monument of history of national importance and is listed in the State Register of Immovable Sagnificant Sites of Ukraine<sup>131–132</sup>.



<sup>129</sup> Fighting for Savur-Mohyla 2014 [Electronic resource]. – Access mode : [https://uk.wikipedia.org/wiki/Бої\\_за\\_Савур-Могили\\_2014](https://uk.wikipedia.org/wiki/Бої_за_Савур-Могили_2014)

<sup>130</sup> Memorial atop of Saur-Mohyla destroyed. PHOTO [Electronic resource]. – Access mode: <http://www.istpravda.com.ua/short/2014/08/11/143944/>

<sup>131</sup> Oleinikov M.Ya. Saur-Mohyla. Guidebook. — Donetsk: «Donbass», 1976. — P. 7

<sup>132</sup> STATE REGISTER OF IMMOVABLE SIGNIFICANT SITES OF UKRAINE [Electronic resource]. – Access mode : [http://mincult.kmu.gov.ua/control/uk/publish/officialcategory?cat\\_id=244910406](http://mincult.kmu.gov.ua/control/uk/publish/officialcategory?cat_id=244910406)



*Screenshot from video of shelling of Savur- Mohyla.*<sup>133</sup>



*Screenshot of the video, which captured fighting for Savur-Mohyla of July 1, 2014.*<sup>134</sup>

<sup>133</sup> Massive shelling of Savur-Mohyla: video [Electronic resource] . – Access mode: <https://www.youtube.com/watch?v=xdtzLovJkz8>

<sup>134</sup> Samur-Mohyla, July 1, 8:40 - shelling : video [Electronic resource]. – Access mode: <https://www.youtube.com/watch?v=zv0VE0Lk8k>



*Videopanorama, filmed from unmanned aerial vehicle, which shows the ruins left after the memorial.* <sup>135</sup>

<sup>135</sup> Flag at Savur-Mohyla August 28. Video filmed from unmanned aerial vehicle [Electronic resource] . – Access mode: <https://www.youtube.com/watch?v=3pyO6mCalng>



Photo of the ruined soldier. Source: Dosie.su

### 3.1.2. Use of sites of culture, religion, art, science, education or charity for the purposes of combatants.

17.06.2014 informator.lg.ua citing its own sources at the university said that about a hundred of armed with automatic and sniper weapons militants gave the administration and teachers of the East Ukrainian National University named after Vladimir Dahl in Lugansk 12 hours to evacuate documents and equipment, and completely leave the university buildings. Exams and diploma works protection were canceled. Sources among the separatists confirm that the University campus had to be the place of concentration of the main forces of the "Army of the South East"<sup>136</sup>.

That same day, witnesses reported the following in social networks. "To the 2nd hostel of the EUNU named after Dahl there were settled terrorists who installed anti-aircraft guns directly near the hostel. The district is densely populated" - writes user @applecrisis at Twitter. A dozen of cars and a tractor drove to the building. The tractor was driving around the perimeter between the hostel and the university library, reported "Komsomolskaya Pravda in Ukraine." "Students of all hostels of the EUNU named after Dahl were evacuated to the nearest dispensary. But it will be incapable to house all of them" - writes @ukrbrazz.

To the building of the hostel terrorists brought their personal belongings, pillows and mattresses<sup>137</sup>.

<sup>136</sup> Separatists intend to occupy all the buildings of the Dahl University [Electron. resource]. – Access mode: <http://informator.media/archives/2661>

<sup>137</sup> Lugansk students were expelled from the hostel and militants settled [Electron. resource]. – Access mode: <http://hronika.info/ukraina/24813-luganskih-studentov-vydvorili-iz-obschezhitija-i-zaselili-boevikov.html>



Фото Twitter@ukrbrazz

In the basement of one of the buildings of the university militants of the rapid response group "Batman" staged the "prison" where they not only intimidated and killed people, but also conducted sophisticated tortures<sup>138</sup>, and in the Research Library there was placed a field hospital of pro-Russian militants. In January 2015, on the Internet network appeared photo of the library after the hospital moved out of it. Glasses of the building has been beaten out, books and magazines scattered on the floor, doors were broken down, computer system units were stolen<sup>139</sup>. The library Fund counts more than 820,000 documents<sup>140</sup>. The library was set in order by its own workers. "We were let in here only on December 29. Everything was all

upside down: books were on the floor, catalogs were turned out, a lot of litter, broken glass. We gathered a cohesive team and tidied up what is possible. We work hard to Library resumed its work", – said one of the employees of the library to EastKorr<sup>141</sup>.

10.07.2014, the chief editor of the "News of Donbass" portal Alex Matsuka on his page on the social network said that "300 terrorists of the self-proclaimed "Donetsk People's Republic" seized the building of the Palace of Culture. Named after Kirov, which is located near the Abakumov mine<sup>142</sup>.

During 2014 and the first quarter of 2015 terrorist formations captured prayer premises of Baptist churches communities in the cities of Gorhe, Anthratsit, Luhansk and Krasny Luch, reports the press service of the Luhansk Regional State Administration<sup>143</sup>. According to the information of Pastor Sergei Kosiak, which he published on his page on Facebook, during 2014 militants have repeatedly made attacks and seized the buildings of religious organizations<sup>144</sup>. For example, May 25, 2014 in Gorlovka armed men in balaclava helmets seized the building of Protestant Church of Christ and the Biblical Institute of Bear Valley, confirms fakty.ictv.ua<sup>145</sup>. According to the Kosiak, the militants seized the church building, a former kindergarten. Brought out all the property, taken away office equipment, and arranged the Headquarters of "DPR" there.

<sup>138</sup> The militants from the "Batman" gang told about the "torture-room" in the basement of the University of Lugansk [Electron. resource]. –Access mode:

<http://glavred.info/zhizn/boeviki-iz-bandy-betmena-rasskazali-o-pytochnoy-v-podvale-luganskogo-universiteta-299607.html>

<sup>139</sup> In Luhansk Russian terrorists demolished and robbed the library of the EUNU named after Dahl (photo) [Electron. resource]. – Access mode: <http://www.citynews.net.ua/news/40161-v-luganske-russkie-terroristy-razgromili-i-razgrabili-biblioteku-vnu-imeni-dalya-foto.html#>

<sup>140</sup> Information about the library [[Electron. resource]. –Access mode: <http://librarysnu.at.ua/index/0-2>

<sup>141</sup> At the Dahl University Research Library reconstruction works are conducted after the departure of the RRG "Batman" [Electron. resource]. – Access mode: <http://informator.lg.ua/archives/60005>

<sup>142</sup> In Donetsk, 300 terrorists "settled" in the Palace of Culture - journalist [Electron. resource]. – Access mode: <http://byut.kharkov.ua/news/462662/>

<sup>143</sup> Terrorists seized the Baptist churches in four cities of Lugansk region [Electron. resource]. – Access mode: <http://www.unn.com.ua/ru/news/1459108-boyoviki-zakhopili-baptistski-tserkvi-u-chotirokh-mistakh-luganschini>

<sup>144</sup> Pastor from Donetsk made a list of churches captured by militants [Electron. resource]. –Access mode: <http://www.religion.in.ua/news/vazhливо/27952-pastor-iz-donecka-sostavil-spisok-zaxvachennyx-boevikami-cerkvej.html>

<sup>145</sup> Separatists captured the church and Biblical University in Gorlovka [Electron. resource]. –Access mode: <http://fakty.ictv.ua/ru/index/read-news/id/1516365>



Photo: <http://www.citynews.net.ua/>



*Photo: <http://ngnews.org/>*

Also, according to Sergei Kosiak in Snizhne in May the ministry of the church "City of Faith" was dispersed and its building was sealed. June 19, 2014 at 8:00 there was conducted an unlawful seizure of the "Word of Life" church in Torez (Donetsk region), which is a member of the Protestant Church of Ukraine of Bishop Sergey Yakovlev. "Armed men with chevrons "Cossack Guards" broke into the church building, ordered to take out furniture and get out, giving reasons that they believe these churches are sects and will destroy them. People who were in the buildings were threatened with execution if they raise an uproar over



this incident" – wrote Sergey Kosiak on his page in the social network. Also militants of "DPR" demolished interfaith prayer tent<sup>146</sup>.

June 25, 2014 gunmen from "DPR" seized the Christian rehabilitation center for alcohol and drug addicts "Rock of salvation" in Donetsk. "... In the morning the representatives of the DPR came to the center and very politely asked to give for their needs a part of the buildings. After some negotiations, representatives of the rehabilitation center and militants of DPR reached the bilateral agreement on mutual co-existence. Center preserved household buildings and a part of the complex, and representatives of the DPR settled in a small building on full self-supporting" – wrote the Pastor.

June 16, 2014 armed representatives of the self-proclaimed "DPR" "nationalized" the "Word of Life" church building in Gorlovka. "On Monday, in the end of working day in our church there was a prayer service. Armed men came demanded to open all rooms, more then an hour we were kept, and then all were through away. We were told that from now it is the Headquarters of the DPR, and the building was nationalized. There will be no Protestant churches in Gorlovka any more," – said to the Hrehu.Net a parishioner of the church<sup>147</sup>.

July 9, 2014 gunmen invaded the territory of Donetsk Christian University and announced that under the pretext of martial law all property and equipment will be in units of the self-proclaimed "DPR" usage, wrote former rector of the university and Protestant theologian Mykhailo Cherenkov on his page on Facebook. "Yesterday armed militants invaded the territory of DCU and read out the order, due to martial law Donetsk Christian University is in possession of military units of Donetsk People's Republic – with all property and equipment," – said Cherenkov to iPress.ua. He noted that in case of disobedience terrorists threatened with court-martial. According to the information, militants expelled workers of the institution and those who lived there. "Today they

<sup>146</sup> Terrorists of DPR seized one more Protestant church — in Torez [Electron. resource]. –Access mode: <http://ngnews.org/terroristy-dnr-zahvatili-eshhe-odnu-protestantskuyu-tserkov-v-toreze/>

<sup>147</sup> In Gorlovka representatives of the DPR nationalized building of the church "Word of Life" [Electron. resource]. –Access mode: <http://www.grehu.net/news/cerkov/19314>



*Donetsk Christian University. Source: Panoramio/VanYan*

allowed to take out computers, documents and personal belongings. People are happy with this. The territory of Faith became a territory of hatred, the House of prayer a den of thieves" – wrote Cherenkov<sup>148</sup>.

June 21, 2014 armed militants seized the Protestant church "Word of Life" in Shahtarsk city of Donetsk region. Terrorists captured imprisoned the Pastor Nikolai Kalinichenko, who was later released, after depriving his car. "Terrorists also announced to the pastor that if he would continue religious activities, he would be executed." Later, the mass media reported that the building of the "Word of Life" Church in

Shahtarsk was used by the militants of "DPR" for keeping men aged 20 to 40 for the purpose of their coercive attraction to the ranks of militants<sup>149</sup>.

June 26, 2014 militants seized the Church of Jesus Christ of Latter-day Saints church-house. This was reported at the briefing by the official representative of the Information Centre of the NSDC of Ukraine Andrey Lysenko, wrote in "Ukrinform". According to him, the church will become a center of placement of militants<sup>150</sup>.

In Lugansk, September 12 "unknown persons in camouflage clothing" in the prayer house of the International Union of Churches of Evangelical Christians and Baptists arranged a base point of the "LPR" police<sup>151</sup>.

October 4, 2014 a representative of the Holy Trinity Cathedral of the Ukrainian Orthodox Church of Kiev Patriarchate in Luhansk informed the Ukrainian News about the seizure of the Cathedral by the Don Cossacks. According to him, at noon Russian Don Cossacks broke to the Cathedral and ordered during an hour to priests and ministers to clear out. Also invaders said that no Cathedral will no longer be there, now they arrange a hostel for "Cossacks" and will live there<sup>152</sup>.

### *3.2. Causing damage to the sites of culture, religion, art, science, education or charity as a result of shelling*

July 14, 2014 the Museum of History and Culture of Lugansk. The projectile hit the window of the first floor, the explosion destroyed the wall. There were caused severe damages inside the building, on the first floor the glass in windows flew out. Façade was damaged. The museum building was built in 1880. In 1980, there was created the museum of Kliment Voroshilov, and in 1990 it was converted to the History and Culture Museum of Lugansk. The museum's collection includes over 50,000 exhibits<sup>153</sup>.

<sup>148</sup> Terrorists of DPR seized the Donetsk Christian University [Electron. resource]. –Access mode: [http://ipress.ua/ru/news/v\\_toreze\\_y\\_snezhnom\\_kavkazskye\\_boevyky\\_grabyat\\_doma\\_y\\_zabyayut\\_automobily\\_73752.html](http://ipress.ua/ru/news/v_toreze_y_snezhnom_kavkazskye_boevyky_grabyat_doma_y_zabyayut_automobily_73752.html)

<sup>149</sup> Representatives of the DPR took the building of the "Word of Life" church in Donetsk [Electron. resource]. –Access mode: <http://wolua.org/ua/church-life/predstaviteli-dnr-zabrali-zdanie-tserkvi-slovo-zhizni-v-donetske.html>

<sup>150</sup> NSDC: In Donetsk, terrorists seized the Mormon Church [Electron. resource]. –Access mode: <http://gordonua.com/news/separatism/SNBO-V-Doncke-terroristy-zahvatili-cerkov-mormonov-28997.html>

<sup>151</sup> Captured House of Prayer of Evangelical Christians and Baptists in Luhansk [Electron. resource]. – Access mode: <http://www.grehu.net/news/kriminal/20300>

<sup>152</sup> In Lugansk, the Don Cossacks captured the Cathedral of the UOC KP [Electron. resource]. –Access mode: <http://ukranews.com/news/138876.V-Luganske-donskie-kazaki-zahvatili-sobor-UPTs-KP.ru>

<sup>153</sup> The Museum of History and Culture Luhansk was bombed (photo) [Electron. resource]. –Access mode: <http://informator.lg.ua/archives/11180>



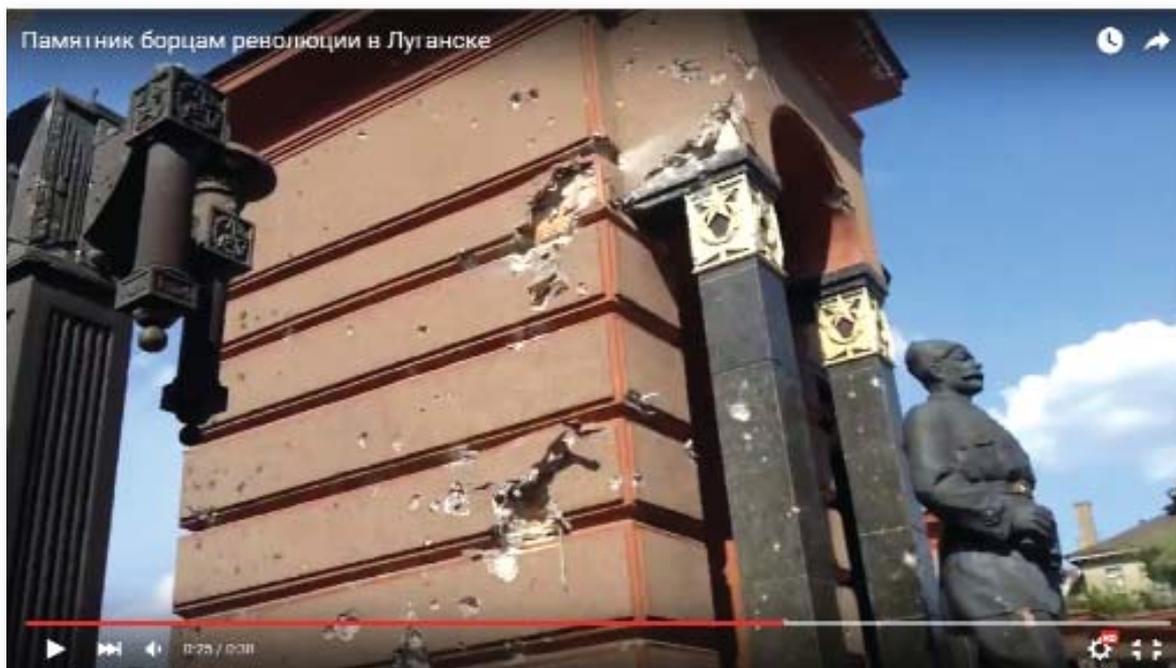
Photo: <http://informator.lg.ua/>

The monument of urban planning and architecture, protection number 140056, instruction plate is attached to the facade. A plate stated: "The building, where the 1 meeting of Luhansk City Council was convened. Protection number 140 056."<sup>154</sup> Currently in Lugansk the building is under repairs.

<sup>154</sup> Monuments of Lugansk as they are. The results of a public inventory of the cultural heritage of the city : catalogue / Britiuk A. A. and oth. – Luhansk, 2013. – 115 p.

July 2, 2014 video appeared on Youtube, showing the Memorial complex "Fighters of Revolution," one of the most important historical and cultural sites of city of Luhansk. The video shows that during the shelling there was damaged a part of the memorial, including the statue of Peter Tsupova<sup>155</sup>.

The memorial complex "Fighters of Revolution" is a site of a national value, entered into the register of monuments of history by the Resolution of the Cabinet of Ministers of Ukraine No 1761 of December 27, 2001. It was built in 1936, renovated in 1945 and 2010. It is a colonnade with full-height sculptures of Parkhomenko A. and Tsupov P. at the edges. On the tables there are names of those killed in the civil war. In front of colonnade there is the eternal fire. Across the road, opposite the colonnade on the sides of the fountain there are two British tanks Mark-5, restored in 2010. The Architect Sheremet O.S., sculptors Shilnikov M. and Rabinowitz M. Made of labradorite marble. In 2013, its condition was rated as good, and the protection plate was installed<sup>156</sup>.



*Video: Ksenia God at Youtube*

July 16, 2014 a shell hit the building of "Pas de Provence" cafe, which was located in the historic part of the city of Lugansk. The approved general plan of the city provides that the Karl Marx street is included into the historical area of the settlement<sup>157</sup>.

July 22, 2014 during the shelling the Regional Universal Scientific Library named after Gorky was damaged. The shell struck the wall of the building<sup>158</sup>. Lugansk Regional Universal Scientific Library was founded in the end of 19th century as a rural library-reading house. The total book collection of the library named after Gorky as of January 1, 2014 was 984,290 copies of publications. During 2013 the library was visited by 487

<sup>155</sup> The monument to the fighters of the revolution in Luhansk [Electron. resource]. – Access mode: <https://www.youtube.com/watch?v=b0ctuc0vdFA>

<sup>156</sup> Monuments of Lugansk as they are. The results of a public inventory of the cultural heritage of the city : catalogue / (Brytiuk A. A. and oth. – Luhansk, 2013. – 115 p.

<sup>157</sup> Monuments of Lugansk as they are. The results of a public inventory of the cultural heritage of the city : catalogue / (Brytiuk A. A. and oth. – Luhansk, 2013. – 115 p.

<sup>158</sup> Gorky Library: Life after a shell hit (Photos) [Electron. resource]. – Access mode: <http://informatior.lg.ua/archives/43385>



Photo: Informator.lg.ua

thousand readers, there were handed out 915 thousand copies of publications<sup>159</sup>. Later the hole in the wall was repaired, but the facade of the building was left damaged<sup>160</sup>.

As a result of the shelling on the night of August 20 to 21, 2014 there was destroyed by the building of the Donetsk Regional museum of local history. Out of 29 exhibition rooms survived only three, there were destroyed about a thousand of exhibits, the museum can not be restored<sup>161</sup>. As "The OstroV" informs with the reference to eyewitnesses, the building suffered very much, "The roof was destroyed, two stair cases, windows were broken. The nature exhibition room, a small exhibition room, ethnography room were damaged"<sup>162</sup>.

The Director of the Museum Evgeny Denisenko told to "Voice of Ukraine" that the museum actually no longer exists. Eight shells hit the building, about a thousand exhibits are destroyed, walls, roof and basement are destroyed, ceiling slabs sagged<sup>163</sup>. Out of 29 rooms, only three survived - said the Director. – Staff offices

<sup>159</sup> Each of us has own history. And that is the past we owe present. [Electron. resource]. – Access mode: [http://www.library.lg.ua/ukr/about\\_history.php](http://www.library.lg.ua/ukr/about_history.php)

<sup>160</sup> Gorky Library: Life after a shell hit (Photos) Electron. resource]. –Access mode: <http://informator.lg.ua/archives/43385>

<sup>161</sup> The main museum of the history of Donetsk region is destroyed. PHOTO Electron. resource]. –Access mode: <http://www.istpravda.com.ua/short/2014/08/21/144124/>

<sup>162</sup> The Donetsk Regional Museum of local history was hit by a shell. The building was badly damaged Electron. resource]. – Access mode: <http://www.ostro.org/general/society/news/452840/>

<sup>163</sup> Regional Museum of local history in Donetsk destroyed with shells. The biggest losses is in the exhibition of archeology Electron. resource]. – Access mode: <http://golosukraine.com/publication/suspilstvo/spilnota/30492-krayeznavchij-muzej-u-donecku-znisheno-snaryadami/#.VwZUX6SLTdf>



Photo: <http://informator.lg.ua/>

and my office were damaged. All 400 window glasses blew out. To be honest, I still did not perceive what happened - said Denisenko. - The museum can not be restored. All my life at one moment turned into nothing.

The Donetsk Regional Museum of local history is one of the largest and oldest museums in Ukraine, in fact, the main historical museum of the region and Donbas area. In 2014 it would have celebrated 90 years of foundation (1924). The museum collection included 180 thousand units.

Railway station in Debaltsevo is an architectural monument and one of the first station buildings. It was built in the end of XIX century. The building was constructed on an individual layout and differs with the original construction. January 19 and 27, 2015 it was shelled with multiple rocket launchers BM-21 "Grad". As a result glasses were beaten out and facades many office buildings were damaged in the territory near the station. In addition there were damaged luggage storage room and luggage storage cells, lounge, technical premises of compressor station<sup>164-165</sup>.

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<sup>164</sup> Results of shelling of railway station in Debaltsevo: Photo of destruction [Electron. resource]. – Access mode: [http://news.liga.net/photo/incident/4908429-posledstviya\\_obstrela\\_zh\\_d\\_vokzala\\_v\\_debaltsevo\\_foto\\_razrusheniy.htm#5](http://news.liga.net/photo/incident/4908429-posledstviya_obstrela_zh_d_vokzala_v_debaltsevo_foto_razrusheniy.htm#5)

<sup>165</sup> Destroyed Railway station Debaltsevo after shelling (PHOTO) [Electron. resource]. – Access mode: <http://vostok.dozor.com.ua/news/donetsk/1172453.html>



*Ruined building of the museum. Photo: Anastasia Snizhko, Facebook*



*Railway Station before the war. Photo: LenaM27 for Panoramio*



*Railway station after shelling.*



.....



Photo: Yaroslav HALAS, «FACTS» (Severodonetsk)

March 3, 2015 Gennady Moskal said on his website that in the village Troitske there was destroyed the Orthodox Church. "... Militants destroyed stone Orthodox church, built in 1840. Around the church there are a lot of craters after attacks, and some shells directly hit the building, struck the roof and exploded inside. The altar is completely broken, icons are chopped with fragments, holy books are on the ground ... This is one of the largest Orthodox churches of the Lugansk region, which survived two wars – the Civil and Second World War as well as the Soviet power" – he wrote. According to the former Head of the Luhansk regional military-civilian administration, the closest base point located 3 km from the Church<sup>166</sup>.

Overall, during the period of warfare as a result of attacks of settlements by militants in the territory of Luhansk region controlled by Ukraine there were damaged eight churches. All eight

<sup>166</sup> In Troitske militants destroyed from "Grads" Orthodox Church Electron. resource]. –Access mode: [http://www.moskal.in.ua/?category=news&news\\_id=1527](http://www.moskal.in.ua/?category=news&news_id=1527)

churches belong to the Ukrainian Orthodox Church. Most churches have broken windows, chopped with fragments facades, damaged roofs. Some suffered severe damage as a result of direct hits of artillery and rockets shells.

The press service of the Head of the Luhansk military and civil administration Gennady Moskal cited the list of damaged churches as of the beginning of March 2015:

- St. Elias church in Lisichansk – damaged roof, crack in the wall;
- The Cathedral in honor of three saints in Popasnaya – numerous shrapnel damage to the walls and dome, damaged roof in the church building;
- St. Nicholas Church in Popasnaya – burst wave blew out windows;
- St. Nicholas Church in the village Golubovske, Popasnaja district – numerous shrapnel damage of walls;
- Holy Trinity Church in Troitske, Popasnaja district – due to direct hits of rocket shells punched ceiling, altar destroyed, icons destroyed;
- St. Nicholas Church and chapel in honor of St. Seraphim of Sarov in Novotoshkiivtsi, Popasnaja district – numerous shrapnel damage to the walls of the church and the chapel;
- The chapel in honor of St. Panteleimon in Toshkiivtsi, Popasnaja district – numerous shrapnel damage to walls;
- Holy Protection Church in Trohizbentsi – broken windows, due to direct hits of rocket shells damaged wall.

"The broken churches with destroyed altars and icons is a visual proof on what" Orthodox world" the Russians and their mercenaries in Donbass are fighting", - said Gennady Moskal <sup>167</sup>.



*Church damaged with shelling in Trohizbentsi*

### *3.3. Robbery of sites of culture, religion, art, science, education and charity*

March 17, 2015 militants of "DPR" robbed the collector Vyacheslav Popov, they had stolen his unique collection of weapons from World War II from the Museum. This was informed to "OstroV" by the owner of the collection<sup>168</sup>. According to him, he in terms of charity exhibited his collection in the Museum of the Great Patriotic

<sup>167</sup> "Fighters for "Russian Peaxe and Orthodoxy" broke in Luhansk eight Orthodox churches Electron. resource]. –Access mode: <http://www.unn.com.ua/uk/news/1446353-bortsi-za-russkiy-mir-i-pravoslavie-rozbili-na-luganschini-visim-pravoslavnikh-tserkov>

<sup>168</sup> NS Farewell to Arms! "Dedyvoevali" From the "DNR" there was plundered the unique collection of weapons from World War II [Electron. resource]. –Access mode: <http://www.ostro.org/general/criminal/news/466558/>

War in Donetsk. In the spring of 2014, when the "DPR" came to power in the city, he began to save his collection and transferred it of the museum to hide in the garage. Later, in autumn 2014, he transferred uniforms and other artifacts outside Donetsk. About 300 pieces of collectible weapons were stacked in boxes and also prepared for evacuation to a safe place. But, the group of militant arrived by two cars, and using autogenous cutter opened the garage door, stole the collection and took it to an unknown destination.

Rarity automatic and machine guns, which even according to the most conservative estimates cost hundreds of thousands of euro were stolen. Among them there was a full line of German armament of 30–40s: MR–40, combat "Schmeissers". Among the most valuable was the British machine gun "Lewis", used during the World War I (the same as Sukhov used in the "White Sun of the Desert" movie). And a German machine gun "Bergman" of the same period which may be considered the most expensive exhibit, it was estimated be antiquarians even in those days in 150 000 euro. There are no other units of this type of weapon in Ukraine. "This list contains the most valuable pieces. Many units are in one copy in Ukraine. I collected this collection over 20 years, exhibits were brought from abroad, even from other continents – told to the "Komsomolskaya Pravda in Ukraine" Mr. Vyacheslav<sup>169</sup>.

September 7, 2015 two unidentified men broke into in the City Museum of Kirovsk and threatening the employee with physical harm stole the following items: the German open blade razor of World War II time, the electric shaver of 1942, three Orders of Glory of World War II and the Order of Lenin. The latter ones appeared to be models but however were for the museum of material and spiritual value. But in half an hour the robbers were detained. This was reported by the "Press Service of the Ministry of Internal Affairs if LPR."<sup>170</sup>. As the museum director Irina Bavyka said that was not the first attack on the museum. "The Historical and Art Museum just began to exhibit pieces after shelling, and criminals, perhaps knowing it, decided to commit the second robbery", – added the director. "At about 15:00 two unknown people came into the museum. At that time there was only our guide Alexander Strelnyk there. They began to threat him, beat and force to open the show-cases with the exhibits. After Strelnyk refused to open show-cases, criminals broke the glass and took exhibits" – told to the Informant the details of the event the director of the museum<sup>171</sup>.

November 2, 2015 at a press conference in Kiev the Editor of "Museums Ukraine" magazine Viktor Trygub said that the unique exhibits of weapons and Scythian gold worth tens of millions of dollars disappeared from



*Exposition at the opening of the Museum of WWII in 2012.*

*Photo: Tatiana Dubova.*

<sup>169</sup> In Donetsk, there was stolen the most valuable collection of weapons in Ukraine [Electron. resource]. –Access mode: <http://kp.ua/incidents/495125-v-donetske-ukraly-samuui-tsennuui-v-ukrayne-kollektsyui-oruzhyia>

<sup>170</sup> "Fans" of museum exhibits [Electron. resource]. –Access mode: <http://life.lg.ua/zakon-i-poryadok/lyubiteli-muzejnyx-eksponatov.html>

<sup>171</sup> In occupied Kirovsk there was robbed the Museum [Electron. resource]. –Access mode: <http://informator.lg.ua/archives/118323>

the Donetsk regional museum of local history, informs the UNIAN. "There ... was a huge crime there, and we now conduct a journalistic investigation. It turned out that the targeted shelling of the Donetsk regional museum of local history was ordered, after which its premises were broken, and then the unique collections of Scythian gold, archeology, jewelry, weapons disappeared. Cost of them is millions, tens of millions of dollars ... Where they have gone, nobody knows, nobody saw .." – said Trygub.<sup>172</sup>

November 16, 2015 it became known that "LPR" created their "LPR Air Forces" of aircrafts that belonged to Aviation and Technology Museum of Lugansk, in particular of bomber Su-25 and training aircraft Aero L-29 Delfin. The videos of this event were presented the "Russia 1» TV channel<sup>173</sup>, «Lifenews»<sup>174</sup>, in addition the video was broadcasted by the Armed Forces of the RF TV and Radio Company "ZIRKA". The video shows a pilot is in the Aero L-29 Delfin aircraft, giving an interview to journalists, and then the aircraft begins to move along the road, but did not take off. According to employees of "LPR Air Forces" exhibits have been restored for military use.

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April 6, 2015 "Podrobytsi" (Details) reported that back in 2014 in Donetsk militants tried to take to Russia rarity locomotives from the museum<sup>176</sup>. At the Russian customs locomotives were not allowed to take in, so two of them were cut up for scrap and after all were transported to Russia and the rest were returned to the museum. It was informed by the user Denis Kazanskiy on his page on Facebook, referring to the museum employee, who was for few weeks in captivity of terrorists.



**Денис Казанский**

Вчера, в 9:26 · 🌐

В Донецке есть железнодорожный музей с небольшой коллекцией старых паровозов. Оказывается еще в прошлом году он подвергся ограблению. Российские боевики под шум войны решили вывезти паровозы в Россию.

Экспонаты удалось раскопегарить и своим ходом догнать до границы. Но там российские таможенники, обалдев от такого зрелища, развернули паровозы назад и в Россию не пустили. В итоге два паровоза порезали на металлолом, а остальные вернули в стойло.

Рассказал эту историю сотрудник музея, несколько недель просидевший в подвале у террористов.

<sup>172</sup> Expert: Museum of Donetsk lost the unique exhibits [Electron. resource]. –Access mode: <http://obozrevatel.com/crime/65874-ekspert-iz-donetskogo-muzeya-propali-unikalnyie-eksponaty.htm>

<sup>173</sup> Lugansk is defending: the Army of LPR got its own aviation [Electron. resource]. –Access mode: <https://www.youtube.com/watch?v=Q-lqtuSQRyM>

<sup>174</sup> Forces of Novorossia got the support from the air. January 17, 2015. Novorossia News [Electron. resource]. –Access mode: <https://www.youtube.com/watch?v=YsiaDetF608>

<sup>176</sup> In Donetsk rare locomotives were cut into scrap metal [Electron. resource]. –Access mode: <http://podrobnosti.ua/2026853-v-donetske-porezali-na-metallolom-raritetnye-parovozy.html>



Su-25 aircraft. Photo: Occupied Lugansk

According to Pastor Sergei Kosiak in July 2014 in the village Olenivka in the Donetsk region militants dispersed ministry, took the church building and the house of the church pastor. "Militants broke into the houses, threatening frightened women and children, took ministers, and after just robbed the empty houses and apartments" – he noted<sup>177</sup>.

December 18, 2014 in the functional nunnery skete of the Holy Iviron nunnery in the village of Pisky, Yasynuvatskiy district of Donetsk region there was committed the armed looting by unknown persons, who introduced themselves as the Armed Forces of Ukraine. Metropolitan of Donetsk and Mariupol Hilarion the same day addressed to the President of Ukraine P. Poroshenko with the request to take under personal control the investigation of the crime to have been found guilty as well as object of worship and nunnery property. "A truck with armed men in uniform drove into the territory of the nunnery, they officially introduced themselves as combatants of National Guard. They said they arrived to inspect the building and demanded to open the residence building and then household buildings. Then the military took away passports and mobile phones of nuns and the keeper and locked people in one of the buildings. During the inspection of diocesan residence, it was found that after the withdrawal of Ukrainian military, she was left robbed, there were stolen valuables, icon, office equipment, kitchen sets, cutlery and many other things. ... On the fact of today's event and predatory seizure by Ukrainian military of their personal passports of citizens of Ukraine, the nuns submitted the appropriate statement to Chervonoarmiisk District police office," – he wrote in his letter<sup>178</sup>.

### *3.4. Intentional infliction of damage to the sites of culture, art, religion, science, historical monuments*

August 16, 2014 On the Internet appeared the photo burning building №6 on Karl Marx Street in Luhansk. That was a living house with a shop built in the beginning of 20th century. The protection number 140052 . The is no plate on it<sup>180</sup>. Eyewitnesses reported that the fire occurred inside the building as a result of deliberate arson. Before this building was looted by terrorists<sup>181</sup>.

June 15, 2014 armed militants ransacked the office premises of the "New Generation" Evangelical Church in Gorlivka town, Donetsk region. From the office there were taken away computers and other office equipment, as well as statutory



*Palayuchy Budinok №6 on vulitsi Karl Marx in Luhansk*

<sup>177</sup> Donetsk Pastor: The terrorists of DPR continue to conduct the "red Orthodoxy" [Electron. resource]. –Access mode: <http://www.day.kiev.ua/ru/news/250914-doneckiy-pastor-terroristy-dnr-prodolzhayut-chinit-krasnoe-pravoslavie>

<sup>178</sup> Metropolitan of Donetsk Hilarion addressed to the President of Ukraine with a request to take under personal control the investigation of looting in Nunnery Skete in the territory of Donetsk Diocese [Electron. resource]. –Access mode: <http://eparchia.patriarchia.ru/ua/db/text/3885627.html>

<sup>179</sup> Information of the Department of the Lugansk City Council for the Protection of Cultural Heritage [Electron. resource]. –Access mode: <http://gorod.lugansk.ua/pages/index/drugisporg/otkulnasl/info.html>

<sup>180</sup> Monuments of Luhansk as they are. The results of a public inventory of the cultural heritage of the city: catalogue / Brytiuk A. A. and oth. – Luhansk, 2013. – 115 p.

<sup>181</sup> In Karl Marx Street there was burned the offive of Gas-Cube Gas Company [Electron. resource]. –Access mode: <http://tribun.com.ua/21333>

documents of the Church Charity Foundations: "They appeared on Sunday. The woman-keeper opened the door, people with guns climbed up to the first floor, where our offices locate and started randomly break everything" – said the parishioner of the church to NGNews.<sup>182</sup>

June 26, 2014 militants broke into the premises of the Evangelical "Church of winners" in Druzhkivka of Donetsk region and took to their headquarters the pastor Pavlo Lesko and his wife. "Armed militants took the money, documents from the safe, office computers and together with the pastor and his wife took everything to the headquarters of militants based in the building near the Druzhkivka City Council," – said church minister.

August 13, 2014 at 22.00 militants seized the building of Ukrainian Christian Evangelical Church (UChEC) "Word of Life" in Donetsk, reported the pastor of the church Leonid Padun on the official web-page of the church.

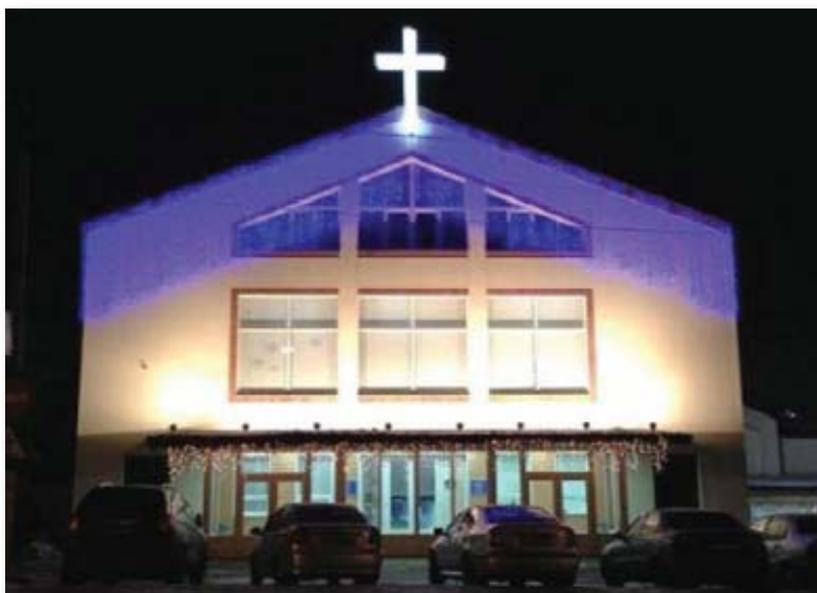
"There are no words to express the pain and sorrow! More than twenty years we have invested their hearts, our finances into the church building and now we have been deprived of the opportunity to gather for prayer and service to God. With pain in my heart I tell you that this Sunday the doors of our church for the first time will not open for people seeking God".<sup>183</sup>

According to the Protestant pastor Serhiy Kosiak, in September 2014, militants seized the building of the "Word of Life" church in Rovenky and the service was dispersed.

In Donetsk, November 12, 2014 armed men seized the Protestant "Church of Christ the Savior" and dispossessed the car of one of the church ministers – the father of 10 children.

According to Volodymir Franchuk to Hrehu.Net, the ministry was dispersed and they prohibited to gather, "These armed men seized the building, we gave the keys to all the locks, they kicked the believers who were inside the building out in the street and strictly forbidden to carry out any service in the church building. They literally said that when believers gather again – that they will be shot"<sup>184</sup>.

November 18, 2015 Andriy Bondarenko on his Facebook page reported that the previously seized church building in Krasny Luch was left by Cossacks who lived there. As Andriy wrote in the commandant's office he was not explained the reasons for the return of the building, and the impression from the arrival there were impressive: "... The impression was very depressing, completely looted all the amplifiers and part of musical equipment, chairs, furniture. Part of our vast library was destroyed, and in the yard, in the fire of the New Testament books, the Cossacks were preparing a dinner ... Most of doors and some windows were taken away. Kitchen equipment, dishes and so on was looted. Heating system was completely destroyed, including huge heating



"Word of Life". Church Source: wolua.org

<sup>182</sup> Armed men in Gorlivka ransacked the office of the "New Generation" church [Electron. resource]. –Access mode: <http://ngnews.org/vooruzhennyie-lyudi-v-gorlovke-razgromili-ofis-tserkvi-novoe-pokolenie/>

<sup>183</sup> Representatives of the DPR seized the building of the "Word of Life" church in Donetsk [Electron. resource]. –Access mode: <http://wolua.org/ua/church-life/predstaviteli-dnr-zabrali-zdanie-tserkvi-slovo-zhizni-v-donetske.html>

<sup>184</sup> "Russian armed saboteurs seized one more church building in Donetsk" - Vladimir Franchuk [Electron. resource]. –Access mode: <http://www.grehu.net/news/kriminal/20704>

boiler. Water supply system was destroyed and from toilets there were stolen water closets (!) and washstands. Ceilings, floors, walls were damaged, sockets and switches were pulled out, light bulbs were screwed out." As of now, people are busy with the restoration of the church<sup>185</sup>.



*Photo: Facebook/ AndreiBondarenko*

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<sup>185</sup> In Luhansk region "Cossacks" robbed the church and burned the Bible books, preparing dinner [Electron. resource]. –Access mode: <http://tsn.ua/ato/na-luganschini-kozachki-rozgrabuvali-cerkvu-i-spalili-bibliyi-gotuyuchi-obid-537093.html>

## 4. RESULTS OF THE MONITORING VISIT OF UKRAINIAN HELSINKI HUMAN RIGHTS UNION “PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICTS”

**Objective of the visit:** study and documenting of the state of archaeological and architectural monuments and cultural institutions that are in the Luhansk region, where there were or still are committed armed hostilities. Clarifying their location. Investigation of the circumstances of their damage. Documenting of evidence of museum workers on the facts of shelling of the museums of Lugansk city.

**Location:** Novoaydarsky, Popasnaja, Stanychno-Luhansk districts of the Luhansk region.

**Date:** April 5–12, 2016

**Participants of the research and their qualification:** development of methodological tools of the research, information gathering, processing and generalization of the results were carried out by the group of experts in this field. In particular, professionals who have degrees in the field of history and jurisprudence; professional staff of the museum sector; NGO representatives who have appropriate knowledge and experience with methods of recording the testimony of victims, establishing psychological contact and basics of information security.

### **Objects and methods of the research:**

The main objective of the monitoring mission was to establish the existence or absence of signs of destruction on sites of cultural heritage, especially archaeological.

To perform the task following the specially developed methodology (Annex A) there was carried the inspection of archaeological sites (settlements, man sites and tumuluses) located in the territory adjacent to the area of warfare, namely: Stanichno Luhansk, Popasnaja and Novoaydarsk districts as well as within the borders of Severodonetsk and Lysychansk City Councils. Special attention was paid to the sites included in the State Register of archaeological monuments of local importance. In addition, the subject of the inspection were also newly discovered archaeological sites that are not yet included in the State Register but there is information contained in numerous scientific publications, including abroad. During the monitoring there was carried out the photo fixation of the sites and damages that appeared as a result of explosions or arranging defensive structures, records in the field journal, fixation of sites using GPS-navigator and gathering of evidential material.

Following the specially developed methods (Annex B) the researchers conducted interviewing of employees of cultural sites on the state of protection of cultural property in the territory of armed conflict in the East of Ukraine. Also there were conducted oral interviews of people about known cases of damage to archaeological sites. Participation of people in interviews was voluntary. All respondents were informed about the goals and objectives of the research, confidentiality of information and their personal data.

**Situation with the Protection of Cultural Property in Novoaydarsky, Popasnaja, Stanychno Luhansk districts of Luhansk region**

During the monitoring visit there were studied 38 cultural sites, including 30 archaeological sites, 4 architectural monuments and 4 cultural institutions (Table. 2).

Table 2

**Data on the number of cultural sites studied during the monitoring visit "Protection of cultural property in the event of armed conflict"**

<b>Cultural sites studied, total</b>		<b>38</b>
including	<i>Archaeological sites</i>	30
	<i>Architectural monuments</i>	4
	<i>Cultural institutions</i>	4
<b>Damaged cultural sites, total</b>		<b>27</b>
	<i>Incl. due to armed hostilities</i>	9
	<i>Incl. due to shelling</i>	5
	<i>Incl. due to use for military purpose</i>	4

Found that 27 (or 71%) of them were damaged, including every third as a result of armed hostiles. This damage was caused as a result of shelling to 5 sites, due to the use for military purpose – 4 sites.

Based on the received results the experts who participated in the research came to the conclusion about the possibility of separation of all studied sites into two conditional groups:

- Group A – sites located in the area where hostilities are not conducted already;
- Group B – sites located in the area of active hostilities.

**Group A – sites located in the area where hostilities are not conducted already**

This group includes settlements man sites and burial sites (tumuluses) located in an the area where warfare was conducted previously, but now it is a peaceful territory. Depending on the extent and causes of damage to cultural sites that belong to this group, it is possible to separate the following subgroups.

*Cultural sites that did not suffered damage during the warfare (subgroup "a").* These group should include: the settlement in the Lenin street, 44/46 in the village Novoaydar (protection number 1036); the tumuluses located on the watershed of the right bank of the Aydar river or man site of Late Mesolithic – Early Neolithic age near the village Borivske. At the same time, some sites such as multilayered settlement Pavlograd (newly discovered site in the territory of Severodonetsk city council) is destroyed due to washout of the coastline where it is located, with water of the Seversky Donets river.

*Cultural objects which are to some extent suffered damage as a result of warfare (subgroup «b»).* These group includes tumuluses and settlements in the territories of Stanichno-Luhansk, Novoaydar and Popasnaja districts. For example, in the multilayer settlement Kapitanove (Novoaydar district) there were found, recorded and collected fragments of the engine of rocket shell MLRS "Grad" and in the settlement Zanivske-I (Severodonetsk city council) there was recorded crater from falling shell and numerous fragments were collected. Near the tumuluses located on the boundary of the villages Toshkivka and Vrubivka there were recorded numerous craters, sometimes as deep as 0.8 m and numerous evidences were collected – fragments of shells, fragments of MLRS "Grad" rockets and so on.

*Cultural objects that are damaged as a result of the installation of fire / observation points or scarps (subgroup "c").* For example, on the tumuluses located on the boundary of the village Toshkivka with scarps (special protective ground embankments) there was destroyed a significant part of these sites, which could potentially

lead to the loss of artifacts of archaeological nature and the destruction of burial constructions. When soil was excavated to build scarps it is very likely that cultural artifacts were excavated also. Inevitably was the damage of the embankment layout. Attention should be paid also on the tumuluses, where there were equipped the sites for shooting.

*Cultural sites damaged not due to warfare, but as a result of unlawful conduct of individuals or bad management (subgroup «d»).* This subgroup includes sites (burial tumuluses), where there were recorded predatory pits or nowadays technical buildings (Lisichansk, Lenin Avenue, 161, protection number 377). Of particular concern is the fact that to the destruction there were subjected tumuluses, which are included into the State Register of archaeological monuments of local importance, because such sites have to enjoy monument protective measures under which local authorities are required to monitor their integrity and survival. It also should be added with settlement and tumuluses suffering as a result of intensive plowing.

### **Group B – sites located in the area of active hostilities**

Information about the sites of this group is received primarily as a result of interviews of the local people and the military. In Stanichno Luhansk district there is the registered in State Register multilayer settlement of Neolithic-bronze age "Kybykynsk well" (the Kybykynsk settlement; protection number 4296), found in 30s of the twentieth century by S.M. Loktyushev. Currently this and several other settlements are in the so-called "gray zone", which is partially mined. In particular, the fortified settlement of XVII–XVIII centuries. Petrovo-Donetske (protection number 4506), located on the left bank of the Seversky Donets river, which is open to shelling from the right bank (under the control of pro-terrorist groups). Mined, according to local residents, there also is the territory of so-called Trohizbenske settlement, which also dates back to the XVII–XVIII centuries. To check the reliability of such information is not possible yet.

During the work of the monitoring team there was found that the listed in the State Register of archaeological monuments of local importance information is not always true. First, geographical reference to the sites are not always exact, or they have a very conventional coordinates. For example, Bronze Age settlement Kapitanove (protection number 1060) located as described "160 m to the N-W in front of rural gas station." Currently the rural gas station in this village is absent and identification of location of the settlement was made with great difficulty. In addition, given the fact that since the inclusion of some archaeological sites into the State Register passes over 20–30 years, some monuments were destroyed by agricultural or construction works.

### **Burial sites (tumuluses and tumulus groups)**

In the result of inspection of the tumuluses of Stanichno-Luhansk and Popasnaja districts of Lugansk region numerous damages, including of military nature were found. At least three groups of tumuluses, judging from left boxes for ammunition, full-height targets and trenches were used for military purposes and were affected by armed conflict.

In the vicinity of the two groups of tumuluses there were found many craters from MRL "Grad" shells (on the boundary of villages Toshkivka and Vru-



*Photo: boxes for ammunition on the tumulus, used as targets in a makeshift shooting range*



*Photo: trenches in the body of the tumulus, which were used as observation point*



*Photo: pieces of ammunition with which the tumulus territory was shelled*



*Photo: crater from shell near the tumulus group*

bivka). However, neither next to groups of tumuluses nor near other tumuluses inspected, there was any distinctive emblems, or any other signs that enable participants to armed conflict to establish cultural and scientific value of the sites. Moreover, in the State Register of cultural heritage GPS coordinates of the tumuluses, tumulus groups, settlements and man sites are not specified. Even if the state armed groups wish to avoid using for military purposes territories with the large concentrations of archaeological heritage sites, it would had been difficult to find this places following description of cultural sites location placed today in their passports which is often not true.

### ***The ancient settlements and man sites***

Among the inspected settlements and ancient man sites that are the sites of national archaeological cultural heritage, two settlements, in particular multilayered settlement "Zanivske 1" and multilayered settlement "Kapitanove", were damaged from a single shell hit, fired, most likely from gunnery or mortar launcher (Zanivske 1) and from getting hit with a shell / shells, two fragments of which were found at the settlement (Kapitanove). Also it was found that close to Pavlograd settlement there was situated a military unit, location of which at a short distance to the archaeological site may adversely affect its safety. The same as in the case of the tumuluses, next to the ancient man sites and settlements (both damaged as a result of armed conflict and undamaged) there was no identification or distinctive emblem found, which would allowed members of the armed forces to identify these sites as cultural property.

### ***Museums***

By the results of the inspection of the state of the *Local History Museum in the village Stanitsia Luhanska* and interviewing of its staff it was found that the museum suffered from direct shell hit during the shelling of the village (as evidenced by the testimony of the staff of the museum and the photo of damage. In addition, the museum staff during the interviews pointed out to the robbery of the museum collections (it was stolen about 100 cultural items). In addition to the museum other civilian sites were damaged. The museum was not marked with distinctive emblems in accordance with the Hague Convention of 1954, although the plate which proves the purpose of building for the concentration of cultural property was attached to it.



*Photo: 1st floor of the Local History museum in the village Stanitsia Luhanska*



*Photo: Main entrance of the Local History Museum in the village in the village Stanytsia Luhanska*

In the city of Lysychansk there were interviewed internally displaced persons, former employees of Luhansk regional Local History museum. They told that the museum, the same as other nearby civilian sites was damaged as a result of shelling. Direct shell hit to the museum provoked a particular significant damage to one of the show rooms of the museum. Water leaking damaged pieces of fine art kept in the museums. In addition, at least twice the museum was robbed, an unknown number of items that were there in storage or in exhibitions was taken from it. To identify the list of taken out items is almost impossible, as the person responsible for keeping the register of collections, died during the shelling, and registers themselves exist only at site and only in a non-electronic version. The museum was not marked with an distinctive emblem in accordance with the Hague Convention of 1954, the plate which proves the purpose of building for the concentration of cultural property was attached to it.

In the case of the Luhansk regional Local History museum, the Ministry of Culture of Ukraine tried to organize the evacuation of the most valuable cultural items. However, at the local level it was decided to leave the collections on site and transfer it to the museum storage premises from the exhibition rooms. The Ministry of Culture or any other state or local authorities of Ukraine did not give any resources for evacuation (required packaging materials for exhibits, specially designated transport for transfer). It should be additionally noted that in recent decades such mechanism for protection of cultural property in the event of armed conflict as transportation is almost not used.

### Monuments

During the previous monitoring visit (**January 25–29, 2016, Kramatorsk city, Donetsk region**) on the matter of destruction of cultural property there were interviewed the residents of Druzhkivka town, Donetsk region, who reported that members of illegal armed groups defamed and destroyed the monument to human rights activist Oleksa Tukhyi, which was in the school yard in Oleksievo-Druzhkivka village. There was also stolen a T-34 tank from the monument to liberators of Druzhkivka town from Nazi invaders. In the Art and History Museum of Druzhkivka town there was damaged the commemorative plate in honor of Oleksa Tukhyi.

## CONCLUSIONS AND RECOMMENDATIONS

1. Ukraine should as soon as possible after receiving information about the transfer of cultural property from the temporarily uncontrolled territories respond to such transfer with an appropriate request on taking cultural property under protection. Information about already known violations should be directed to UNESCO and the Russian Federation with the demand to stop them and compensate the cost of irreversible loss. This function based on its specificity must be charged to the Ministry of Culture of Ukraine (monitoring according to the Museum Fund of Ukraine registers and informing the Ministry of Foreign Affairs) and the Ministry of Foreign Affairs directly (in terms of communications with international organizations and international partners of Ukraine)

2. Almost unpromising, but one that is likely to have political significance, may be raising question of the return to Ukraine of cultural property and taking measures by world powers to prevent the import of illegally exported cultural property from Ukraine to the UN Security Council concern. Such was the case in situations of cultural property originating in Kuwait, Iraq and Syria.

3. The tools of the UNESCO Convention of 1970 should be used, as the obligations under the Convention for the return of illegally exported cultural property arise for the State of a location of cultural property (in this case – Russia) if there is the request from the State of origin of cultural property (Ukraine).

Forums for consideration of issues concerning the return of cultural property can be Intergovernmental Committee on Promoting the Return of Cultural Property to Countries of Origin or its Restitution in case of Illicit Appropriation and the ECHR.

4. The Russian Federation is obliged to allow representatives of Ukraine to participate in the joint management of measures for protection of cultural property. Ukraine should direct appropriate requests to the RF with the aim of getting at least a refusal of access to cultural property. This would illustrate the goodwill of Ukraine and unwillingness to follow international legal requirements on the part of Russia, which Ukraine need for reporting the issue in UNESCO and other international organizations dealing with the protection of cultural property.

The task of the Ukrainian state is to inform and bring to the attention of the international community the violation by the RF regulations of UNESCO on prohibition of archaeological excavations in the occupied territory.

5. Obligations for the protection of cultural property in non-international armed conflicts, that are actions in protection of the property arise only if the parties agreed on the extension of the relevant provisions of the Convention of 1954 to non-international conflict. At the moment such an agreement does not exist. Ukraine could initiate such negotiations and bound illegal armed groups with the obligation of non-usage of cultural sites for military purposes.

6. The main reason for violations of the integrity of cultural property in the territories of armed conflict, in addition to traditional dangers associated with ignorance or unwillingness to perform by militias of IHL rules on the protection of cultural property may be considered absence of visible marking of cultural property with special distinctive emblems. None of the examined sites was in appropriate way marked.

As noted in the comments to the Hague Convention of 1954 and confirmed by the practice of States, marking with distinctive emblems must be performed before the armed conflict. Such marking shall not be considered

as only one of the functions of the armed forces. Marking should be performed by civilian authorities at any convenient time. However, having detected unmarked sites, armed forces, based on the spirit of the Convention of 1954, should also be involved in marking of cultural property with distinctive emblems.

7. By the results of contacts of representatives of the expert group with representatives of local authorities it is concluded that they are *passive and do not understand the importance marking of cultural property for the protection of the latter from the dangers of armed conflict*. However, the Law of Ukraine "On Protection of Cultural Heritage" and "On Protection of the Archaeological Heritage" charge local authorities with significant responsibilities in taking measures to protect cultural property. Probably, this passivity of the local authorities is explained mostly with ignorance and lack of clear instructions on how and in what way and following what procedure to mark cultural property, to ensure its protection. *Development of clear and consistent instructions on such marking and protection of cultural property, we believe, would greatly help to preserve cultural sites.*

8. Regarding the marking of cultural property by armed forces, it should be additionally noted that the Guidelines on the application of international humanitarian law rules in the Armed Forces of Ukraine, as was noted in our research contain reference not to one, but to three types of emblems for cultural property. This complicates the orientation of the military is what emblem they should actually use for marking (in the event that such marking has not been done before) or orientation in what to consider cultural property.

9. It is recommended to adopt a special law on the definition of: the list of objects of cultural heritage or storage of cultural property, which should be under special protection; special distinctive sign; state authorities that have to provide training in peacetime on protection of cultural heritage during armed conflicts; compelling these authorities to prepare specific plans for the protection of cultural property during armed conflict; compelling military authorities to develop plans for traffic to bypass centers of cultural property during armed conflicts.

10. In addition, for each of the sites of culture, religion, art, science, education or charity it is recommended to develop action plans (alert schemes, instructions, evacuation plans, etc.) of civil defense and protection in case of emergencies related to technology, terrorist acts and other forms of terrorist activity during anti-terrorist operations.

11. It is recommended to develop a Draft Law of Ukraine on amendments to the Criminal Code of Ukraine concerning improvement of protection of cultural property in peacetime and during armed conflict, both of international and non-international nature. It is important not just define the responsibility for the destruction, robbery and other offences to cultural values, but also to determine the severity of different offenses, depending on their importance for humanity and their non-renewal, regime of protection

12. In our opinion, positive effect on protection of cultural property would have accession of Ukraine to the Second Protocol to the Hague Convention of 1999 and the involvement of international non-governmental organization "Blue Shield" to protect cultural property. It should also be noted that the involvement of "Blue Shield" to protect cultural property in same areas of the Donetsk and Lugansk regions and possible accession to the Second Protocol of 1999, as it has repeatedly happened in armed conflicts of the last decade.

13. To possible improvement of safety of cultural property would contribute renewal of passports of cultural property with indication of the GPS-coordinates and entering cultural property to electronic databases. Creating of mirror electronic copies of registers of cultural property of Ukrainian museums, in its turn, would allow to track and find stolen for museums cultural property.



### FORM OF STUDY

#### of religious, charitable, cultural, educational, art and scientific institutions and historical sites affected by the armed conflict in the East of Ukraine

1. **Name** \_\_\_\_\_
2. **Location** \_\_\_\_\_
3. **Type and kind of the site:** a) religious institution; b) charity; c) cultural institution; d) educational institution; e) art institution; f) scientific institution; g) anthropological site; h) archaeological site; i) aesthetic sight, j) ethnographic relic, k) historical site, l) art monument, m) scientific site; n) art site; o) \_\_\_\_\_
4. **Level of the state protection of the site:** a) included in the List of cultural heritage of national importance; b) included in the List of cultural heritage of local importance; c) \_\_\_\_\_
5. **Date of establishment** \_\_\_\_\_
6. **Intended purpose** \_\_\_\_\_
7. **Pattern of use before the armed conflict** \_\_\_\_\_
8. **Pattern of use during the armed conflict** \_\_\_\_\_
9. **Who used during the armed conflict:** a) Armed Forces of Ukraine; b) Ukraine National Guard; c) Volunteer battalions of Ukraine; d) Armed Forces of the Russian Federation; e) Ukrainian illegal armed groups; f) Russian illegal armed groups; g) \_\_\_\_\_
10. **The extent of preservation before the beginning of the military conflict** \_\_\_\_\_
11. **Type of ownership:** a) State; b) communal; c) private; e) \_\_\_\_\_
12. **A brief description of the site** (general and details about the damage due to hostilities)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. **Photo of general view** \_\_\_\_\_
14. **Photo of damages** \_\_\_\_\_
15. **Plan showing the locations of damages and reference numbers of photos**
16. **When the damage was caused** \_\_\_\_\_
17. **The reason of the damage:** a) intentional attacks; b) accidental damage due to attacks on military sites located nearby; c) inappropriate use by the parties to the conflict; d) intentional destruction; e) intentional damage; f) theft; g) robbery; h) misappropriation; i) vandalism; j) unauthorized archaeological excavations, committed by warring parties; k) \_\_\_\_\_
18. **Who caused the damage:** a) Armed Forces of Ukraine; b) Ukraine National Guard; c) Volunteer battalions of Ukraine; d) Armed Forces of the Russian Federation; e) Ukrainian illegal armed groups; f) Russian illegal armed groups; g) \_\_\_\_\_
19. **How parties of the armed conflict could identify the site as such that is not a military and requires special care to avoid causing damage to it:** a) marked with the international distinctive emblem "Protection of Cultural Property"; b) is of specific architecture type (building type has distinctive architectural features) that show that; c) the site has a large sign with the appropriate content (library, museum, etc.); d) \_\_\_\_\_

## QUESTIONNAIRE

**Questionnaire for employees of religious, charitable, cultural, educational, art and scientific institutions and historical monuments on the state of protection of cultural property in armed conflict zone in the East of Ukraine**

1. **Name of your institution** \_\_\_\_\_
2. **Location of your institution (region, city)** \_\_\_\_\_
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3. **Type of your institution:** a) religious; b) charitable; c) cultural; d) educational; e) art; e) scientific; h) historical
4. **If you represent a cultural and historical monument, indicate its type:** a) in the World Heritage sites List of UNESCO; b) monument of cultural heritage, entered into the State List of immovable sites of Ukraine; c) historical settlements, entered into the List of historical settlements of Ukraine; g) the site of cultural heritage of national importance; d) the site of cultural heritage of local importance; e) the newly discovered cultural heritage site, entered into the List of sites of cultural heritage; g) your variant \_\_\_\_\_
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5. **Cultural property which you represent is:** a) immovable; b) movable; c) in the building immovable, but the pieces of culture, which are protected in it, are movable; d) \_\_\_\_\_
6. **For how long your organization was in a combat zone:** from \_\_\_\_\_ to \_\_\_\_\_
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7. **Was your organization in close proximity to military sites, theater of war:** a) no; b) yes
8. **If cultural property is movable, was it evacuated (taken to the shelter)** a) yes; b) no
9. **Was at your site the plan of evacuation of cultural property in wartime available:** a) yes; b) no
10. **If so, did you use it:** a) yes; b) no; c) \_\_\_\_\_
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11. **Was your building (institution) used during armed conflict for military purposes:** a) no; b) yes (as barracks for the military, military stores, fire point, etc.)
12. **If yes, by whom:** a) the Armed Forces of Ukraine; b) National Guard of Ukraine; c) volunteer battalions Ukraine; d) The Armed Forces of the Russian Federation; d) Ukrainian illegal armed groups; e) s illegal armed groups; g) \_\_\_\_\_
13. **In your opinion, why your institution was chosen for that purpose** \_\_\_\_\_
- 
14. **Did the military reliably know (could and should have known) that building of your institution is used for religion, art, science, education, charity purpose or is a historical site:** a) yes; b) in all likelihood; c) very unlikely; d) no
15. **If so, by which outward features your site could be identified as a cultural property by armed conflict parties:** a) our site is marked with the international distinctive emblem "Protection of Cultural Property"; b) our site has a specific architecture (building type has a distinctive architectural signs) that indicate to it; c) it contains a large sign with the appropriate content (library, museum, etc.); d) \_\_\_\_\_
- 
16. **Was the institution (cultural property during evacuation) subjected to deliberate attacks:** a) no; b) yes
17. **If so, from what party:** a) the Armed Forces of Ukraine; b) National Guard of Ukraine; c) volunteer battalions of Ukraine (\_\_\_\_\_); d) The Armed Forces of the Russian Federation; d) Ukrainian illegal armed groups(\_\_\_\_\_); e) Russian illegal armed groups (\_\_\_\_\_)

**18. Was an accidental damage caused to your object of culture (e.g., due to direct attacks on military targets indirectly there was affected your institution):** a) yes; b) no

19. If p.p. 16 and 18 you answered "yes", please specify what kind of damage was caused

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**20. If the cultural site that you represent is of great importance to the cultural heritage of the people (is entitled to adequate protection), was it used in inappropriate purposes, which could lead to the destruction of or damage to property or to cover military operations:** a) no; b) yes

21. If so, who, what was the use in improper purposes and what damage was caused

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**22. Was the seizure of your institution, site, works of art, scientific works dictated by urgent military necessity:** a) no; b) yes (who, when, in what way, what was the damage)

**23. Was there the not dictated by urgent military necessity intentional destruction of your institution, site, works of art, scientific works which are of great importance to the cultural heritage of every people:** a) no; b) yes (who, when, in what way, what was the damage caused)

**24. Was there the not dictated by urgent military necessity intentional damage of your institution, site, works of art, scientific works which are of great importance to the cultural heritage of every people:** a) no; b) yes (who, when, in what way, what was the damage caused)

**25. Was the property that is of grate importance to the cultural heritage of every people stolen from your institution:** a) no; b) yes (who, when, in what way, what was the damage caused)

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**26. Was there the robbery of property of grate importance to the cultural heritage of every people from your institution:** a) no; b) yes (who, when, what was done, what was the damage caused)

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**27. Was there the misappropriation of property of grate importance to the cultural heritage of every people from your institution:** a) no; b) yes (who, when, what was done, what was the damage caused)

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**28. Were there the acts of vandalism against the property of grate importance to the cultural heritage of every people:** a) no; b) yes (who, when, what was done, what was the damage caused)

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**29. Were there at your site unauthorized excavations undertaken by warring parties:** a) no  
b) yes (who, when, what was done, what was the damage caused)

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**30. If you know facts of committing of the aforementioned unlawful acts in relation to other religious, charitable, cultural, educational, art and scientific institutions and historical monuments that are of great importance to the cultural heritage of every people, please tell us more about that**

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**Thank you for cooperation!**