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ARMINE TIGRANYAN

**THE ARMENIAN CULTURAL
HERITAGE OF ARTSAKH**

**Mechanisms for Protection in the International
System for Preservation of Heritage**



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THE ARMENIAN CULTURAL HERITAGE OF ARTSAKH

Mechanisms for Protection in the International System for Preservation of Heritage

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The international system for protecting cultural values during armed conflicts, the cases of illegal targeting of the Armenian cultural heritage of Artsakh by Azerbaijan during and after the 44-day war from the perspective of international principles, and certain mechanisms of its destruction and appropriation are examined in the Monograph. The international regulations, as well as legal and humanitarian instruments (international conventions, declarations, resolutions, statutes, customary norms) for the protection of cultural values during armed conflicts, are presented as a defence for the Armenian cultural heritage of Artsakh that has been vandalized by Azerbaijan.

Intended for specialists, state institutions, scientific groups, and students engaged in conservation of cultural heritage and a wide audience of readers concerned with protecting and preserving the cultural heritage of Armenians of Artsakh.

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Author's Note

The Monograph entitled "The Armenian Cultural Heritage of Artsakh: Mechanisms for Protection in the International System for Preservation of Heritage" has been written after the multiple cases of targeting the cultural values of Artsakh by Azerbaijan during and after the 44-day war of 2020, proposing possible mechanisms for international protection of heritage based on the threat of continuous destruction of unique values of cultural heritage in the occupied territories of Artsakh.

Dedicated and patriotic individuals and various local and international organizations concerned with preserving the cultural heritage of Artsakh supported the compilation of the Monograph, from its conception to implementation.

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President of the "Future Generations Foundation", Doctor of Geological and Mineralogical Sciences, Professor Grigor Gabrielyants, a foreign member and honorary doctor of the National Academy of Sciences of the Republic of Armenia, a member of the Russian Academy of Natural Sciences, and a great philanthropist of Artsakh, also supported the publication of the scientific Monograph.

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Introduction

In the 21st century, numerous challenges are threatening the cultural heritage, the most looming of which are regional conflicts, wars, intolerance, globalization, demographic changes, and the harmful consequences of climate effects. The most hazardous of these are wars, which threaten both its existence and the preservation of the integrity of the challenged territory¹.

Whereas the practice of destroying cultural heritage during wars has existed for centuries, and yet, only starting from the 19th century, certain international laws for the protection of cultural values during armed conflicts started to be envisaged. However, despite their implementation, the damage caused to the cultural heritage as a result of the most diverse ethnic conflicts occurred during and after the two world wars was numerous². Over the course of the 20th century, they were more mounting in terms of regular bombings, evacuation of cultural values from the occupied territories, and the geographic coverage and duration of the conflict.³ And although the problem of protecting cultural heritage in the historical context has always concerned humanity, pushing to search for possible means of protection at different times, only in the 20th century the international community embarked on ensuring the protection of cultural heritage by adopting a number of regulations⁴. Accordingly, the main documents enshrining the protection of cultural values during the war are The Hague Convention for "The Protection of Cultural

¹ See Chadha N., Protection of Cultural Property During Armed Conflict: Recent Developments, ISIL Year Book of International Humanitarian and Refugee Law 12, 2001.

<http://www.worldlii.org/int/journals/ISIL.YBIHRL/2001/12html4-037.pdf> (accessed: 15.12.2020).

² See Kastenber E. J., The Legal Regime for Protecting Cultural Property during Armed Conflict, "The Air Force Law Review", Vol. 42, 1997, p. 283.

³ See "Protect cultural property in the event of armed conflict", The 1954 Hague Convention and Its Two Protocols, UNESCO, 2005, https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tliBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY (accessed: 16.12.2020).

⁴ See Techera E., Protection of Cultural Heritage in Times of Armed Conflict: The International Legal Framework Revisited, 2007, University of Western Australia, p. 1 (1-21).

https://www.researchgatenet/publication/228260427_Protection_of_Cultural_Heritage_in_Times_of_Armed_Conflict_The_International_Legal_Framework_Revisited (accessed: 15.12.2020).

Property in the Event of Armed Conflict" of 1954⁵ with its two protocols (1954, 1999), the Geneva Conventions of 1949 and the relevant protocols, the Rome Statute, a number of UNESCO and Council of Europe conventions, resolutions, declarations, many international documents and agreements, which, along with international humanitarian law, provide a wide scope of legal protection.

This study aims to present the international regulations, legal and humanitarian instruments (international conventions, declarations, resolutions, statutes, customary norms) for the protection of cultural values during wars as a defence of the cultural heritage of Artsakh subjected to vandalism by Azerbaijan. The basic idea that we have tried to be guided by is revealing the key factors of protection proposed by the protection systems envisaged by the main and intermediate international documents for the protection of cultural heritage, which will enable us to give an overview of the protection of the cultural heritage of the Armenians of Artsakh.

Indeed, the solution to the problem of the protection of cultural heritage depends not only on ensuring the protection of cultural values during the actual military operations but also on taking and implementing protective actions in peacetime at the national and international levels. Hence, this examination attaches particular importance to the UN (a body stipulating the protection of cultural heritage in peacetime), UNESCO (having a special mandate granted by the UN for the protection of cultural heritage), and the Council of Europe conventions, declarations and regulations, which, along with resolutions condemning cultural vandalism and offering means of protection, and along with international humanitarian law and customary norms, can provide a broad legal framework for the protection of the cultural heritage of Armenians of Artsakh, considering the human (Armenians of Artsakh) and the respect of their cultural rights as the core of cultural heritage.

Despite numerous international regulations existing, the protection of cultural heritage in wartime is still incomplete. With centuries-old history, the problem is currently highly essential as well, since in recent times particularly, along with the formation of the comprehensive concept of heritage, and leaving its previous, merely aesthetic, historical, "museum" context, it has become a

⁵ The Convention entered into force on 7 August 1956.

reality and a tool of progress. In other words, cultural heritage should be preserved not only for aesthetic enjoyment or history but also for the future, progress, and enrichment of life experience.

The Armenian heritage and the war. It is an obvious and well-reasoned truth that the Artsakh wars unleashed by Azerbaijan have also been aimed at destroying the Armenian cultural identity and history.

It is not a secret that Azerbaijan has been pursuing an antiarmenian state policy since its formation (1918)⁶. The right of the Armenians of Artsakh to live true to their identity has been constantly violated by both the Soviet and the independent Republics of Azerbaijan, and the numerous manifestations of ethnic cleansing and cultural genocide, the unveiled intolerance towards the cultural heritage of the Armenians of Artsakh, the elimination of traces of the Armenian nature, the denial of the facts of nativeness of the Armenians, declaring the entire cultural heritage of the Armenians of Artsakh as Albanian and Azerbaijani have been an integral part of Azerbaijan's practice.

Being acutely aware of the fact that cultural heritage has a great impact on collective responsibility, formation and preservation of memory, social structure, relationships, ethnic perceptions, and character of the community⁷, Azerbaijan has continuously sought to undermine the social unity of the people of Artsakh. Moreover, if cultural heritage is a source for the formation of national identity and collective memory of an ethnic group⁸, as noted by the English theorist R. Bevan, then its destruction is aimed at the destruction of the history and memory of a nation.

⁶ Antiarmenian handling by Azerbaijan got started with the influence of Turkey's extreme nationalist policy, starting from the formation of Azerbaijan as a state in 1918 and from the introduction of the concept of "Azerbaijani people" in the 1930s. It developed rapidly during the Soviet period (especially since the 1960s) and continues to be evident up to day (See Zhamakochnyan A., Atanesyan A., Harutyunyan G. and others, "Antiarmenian Information System of Azerbaijan", "Noravank" Scientific Educational Foundation, Yerevan, 2009, p. 21, <http://www.noravank.am/upload/pdf/book.pdf> (accessed: 01.02.2021)).

⁷ See Buckland M., Cultural Heritage (Patrimony): An Introduction Zadar, Croatia, 2013, p. 11-25, <https://people.ischool.berkeley.edu/~buckland/culturalheritage.pdf> (accessed: 01.02.2021).

⁸ See Bevan R., The Destruction of Memory: Architecture at War, London: Reaktion Books, 2006, Galaty M., Blood of Our Ancestors: Cultural Heritage Management in the Balkans, in "Contested Cultural Heritage: Religion, Nationalism, Erasure, and Exclusion in a Global World", Edited by H. Silverman, New York: Springer Publisher, 2011.

Guided by the ambition to destroy the evidence of the Armenian presence in the region, Azerbaijan — from the very first day of the autumn war of 2020 — chose, as before, a "unique way" to overcome the "obstacle". The Armenian cultural heritage of Artsakh was consistently shelled and bombed with heavy military equipment⁹. And after the military occupation, when a significant part of the Republic of Artsakh was the target of antiarmenian operations, both the Christian values of Artsakh (churches, chapels, khachkars (cross-stones), monuments with Armenian inscriptions) and the monuments dedicated to the heroic battle of Artsakh and its heroes during the last 30 years, the Armenian Genocide, the modern values and intangible heritage as well, were considered subject to destruction.

The attacks and expropriation attempts made by Azerbaijan against Armenian cultural heritage continue to this day. After the implementation of the program policy of complete depopulation of Armenians of Artsakh as a result of the military operations of 19-20 September 2023, Azerbaijan embarked on launching the policy of appropriating the exclusive values of the Armenian cultural heritage, including Gandzasar, Amaras, Dadivank and other structures, and declaring them Albanian. In current life processes, the above-mentioned cases of destruction of Armenian cultural values call for the urgency of their protection, which is primarily due to the uniqueness of these values as structural elements of the identity of the community of Artsakh Armenians, and the guarantees of its vitality and continuity in the future. In addition, when viewed on a global scale, the destruction of these values tends to the impoverishment of the cultural diversity of the world. It is not superfluous to remind that, as stated in the Preamble to The Hague Convention for "The Protection of Cultural Property in the Event of Armed Conflict" of 1954¹⁰ and reaffirmed in the "Military Manual for the Protection of Cultural Property" of

⁹ During the war, museums and a number of collections, many khachkars, monuments and cultural structures of Artsakh were damaged, Holy Ghazanchetsots church of Shushi, the archaeological camp of Tigranakert, the cultural centre and other structures of Shushi were shelled.

¹⁰ See "Protect cultural property in the event of armed conflict", The 1954 Hague Convention and Its Two Protocols,

https://unesdoc.unesco.org/ark:/48223/ptf0000138645?fbclid=IwAR3tliBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY.

UNESCO in 2016¹¹, the heritage of each nation is a part of the identity of the entire humanity, hence, by destroying the heritage of any nation, humanity itself is deprived of its irreplaceable values¹².

By the same token, referring to the issue of protection of cultural heritage in the modern international legal system, we can confirm that, going beyond the scope of the protection of cultural rights of an ethnic community, it has become a regional and geopolitical problem worthy of comprehensive attention, with the imperative need to search for possible solution mechanisms. Accordingly, emphasizing the main characteristics of the concept of heritage, we have tried to consider in a broader context the policy conducted by Azerbaijan towards the cultural heritage of Artsakh after the 44-day war¹³, referring to the definitions of cultural heritage, the new general and comprehensive concept of heritage, tangible and intangible elements, its peculiarities, the international principles and problems of preservation, which have been in use for a long time both theoretically and by the policies developed by the international community and are very relevant nowadays.

It should be noted that since independence (1991), Armenia has also joined the international policy of protection of cultural values during armed conflicts, ratifying a number of conventions and treaties¹⁴. Azerbaijan has also

¹¹ See O'Keefe R., Péron C., Musayev T., Ferrari G., Protection of Cultural Property Military Manual, UNESCO, France, and the International Institute of Humanitarian Law, Sanremo, Italy, 2016, p. 1-91, <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/MilitaryManual-En.pdf> (accessed: 15.12.2020).

¹² See Preamble to The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954, <https://en.unesco.org/protecting-heritage/convention-and-protocols/1954convention?fbclid=IwAR0mzRVnicN6I05XFasBDKNp9q9KDnPD0Hr0u2c2HvGJuOZ3O6oonsl3JqA> (accessed: 15.12.2020).

¹³ The website www.monumentwatch.org has been created for closely following the policy conducted by Azerbaijan after the war towards the cultural heritage of Artsakh, and with the aim to inform the scientific community and international organizations about the state of cultural values. On the website, the monuments of Artsakh and the policy conducted by Azerbaijan towards them are presented at an academic level. In the present study, most of the examples will be taken from that website.

¹⁴ On 5 September 1993, the Republic of Armenia joined The Hague Convention of 1954 and its First Protocol, which were joined by 110 states, including Azerbaijan (on 20 September of the same year), and on 18 May 2006, the Republic of Armenia joined the Second Hague Protocol, which entered into force on 9 March 2004. 84 member states are party to the Protocol, including Azerbaijan (since 4

joined the international agreements and conventions in the field. As for the Republic of Artsakh, it is clear that it cannot be a member of conventions and treaties for the protection of cultural heritage in force during armed conflicts (because of not recognized as an independent national state by the UN and the international community). But in this case, it is necessary to give particular emphasis to the fact that customary norms and international humanitarian law apply to the protection of cultural values without preconditions¹⁵, creating grounds for the legal protection of cultural heritage and the right to claim to already destroyed cultural values in the occupied territories of Artsakh.

Nature and Structure of the Monograph. This study is a modest attempt to demonstrate the importance of preserving cultural heritage, to present comprehensively the international system for the protection of cultural values during wars, to record — from the perspective of international principles — the cases of illegal targeting of heritage as a result of the planned policy (highlighted by the state) of Azerbaijan aimed at the destruction of the Armenian cultural heritage of Artsakh during and after the 44-day war, to examine the certain mechanisms of destruction and misappropriation and to search for the mechanisms of international protection of heritage. In the Monograph, we have made an attempt to introduce it as a supplementary source of knowledge for scientific societies, specialists and students engaged in the study of the field, and in general local and foreign citizens concerned with the protection and preservation of the cultural heritage of Armenians of Artsakh, maintaining the scientific integrity, narrating the discussed events accurately and presenting the details known to us. It should be particularly emphasized

April 2001)(See <https://paxunesco.org/la/convention.asp?KO=15207&language=E&order=alpha> (accessed: 15.12.2020)). On 7 June 1993, the Republic of Armenia joined the Geneva Convention of 12 August 1949 and its two Additional Protocols "On the Protection of Victims of International Armed Conflicts" and "On the Protection of Victims of Non-International Armed Conflicts" of 1977, which entered into force on 7 December 1978 (See https://ihl-databasesicrc.org/applic/ihl/ihlnsf/vwTreatiesByCountrySelected.aspx?xp_countrySelected=AM&nv=46 (accessed: 15.12.2020)). The Republic of Armenia has joined other treaties as well. In particular, from 23 June 1993, it joined the Convention "On the Prevention and Punishment of the Crime of Genocide" of 1948.

¹⁵ Humanitarian law is a part of international law, the primary purpose whereof is to protect the lives of individuals, and therefore the expression of human creative thought, i.e. cultural heritage, as well. (See Toman J., The Protection of Cultural Property in the Event of Armed Conflict, Aldershot/Paris: Dartmouth/UNESCO, 1996).

that our task is not to consider the already known manifestations of the Armenophobe policy of Azerbaijan, or facts and certain actions or the realities discussed repeatedly during and after the war, but to present the international principles of protection of the cultural heritage of Artsakh and to examine the vandalism carried out with respect to Armenian values with a new heritage-related renewed concept having special nature. Therefore, guided by the imperative to shed light on the above-mentioned problems, this research work, along with other existing academic works¹⁶ and processes¹⁷, is another attempt to present the losses of the cultural heritage of Artsakh as completely as possible, examining the issue from the perspective of international prohibitions on the destruction of cultural heritage.

In our opinion, nowadays' manifestations of the destruction of heritage and the current policy of Azerbaijan can be comprehensible only in case of drawing certain parallels with history and considering the current phenomena in the context of Azerbaijani Armenophobia. The repeatedly proven organic connection and correlation of current military operations, the genocidal operations of the first Artsakh war, and even those of the beginning of the 20th century serve as a basis for this approach. Therefore, the manifestations of the Azerbaijani 100-year-old policy of rejecting Armenian values in Nagorno-Karabakh and surrounding areas are also presented in the Monograph. We have examined the real and constant Azerbaijani motive for the destruction of unique Armenian cultural values as well, which stems, on one hand, from the intention of Azerbaijanis to legitimize their presence in the region, to form their newly created identity, to alienate Armenians from their homeland, and on the other hand, from the ambition for new territorial appropriations. In addition, with a brief historical overview, we have made a reference to the past manifestations of Azerbaijani vandalism (Nakhijevan), which, along with current facts, point to the contemporary expressions of the similar character of that policy, the reasons for its decisive implementation and the reprehensible perspective.

¹⁶ See for example, Petrosyan H., Yeranyan N., "Monumental culture of Artsakh", Yerevan, 2022.

¹⁷ Creation of a website (www.monumentwatch.org) for monitoring the cultural heritage of Artsakh on the initiative of H. Petrosyan and A. Leylyan.

It should be noted that the presentation of the internationally established principles of prohibition of targeting cultural values both during wars, in occupied territories¹⁸, and, of course, in peacetime, prevails among the issues considered within the scope of our examination. The mentioned three dimensions are different from each other and require special approaches and solutions. For this purpose, the cases of targeting Armenian cultural values during the actual military operations of the 44-day war have been examined from the perspective of internationally established customary principles of military necessity, proportion, differentiation and warning. And the protection of tangible cultural values after the war has been presented with a possibly complete examination of protection mechanisms offered by the international system, from its formation to the latest developments, including the related conventions, laws and treaties fitting into the general framework of the heritage protection system as well.

The directions of destruction of the Armenian tangible cultural heritage in the occupied territories of Artsakh during and after the 44-day war are also examined with certain examples, based on a number of conventional provisions adopted by The Hague, Geneva, UNESCO, and the Council of Europe for the protection of cultural heritage in the occupied territories during and after war, documents protecting cultural rights of a person, norms of international humanitarian law and customary laws for the protection of cultural values in occupied territories. In addition to the main documents, particular importance has been attached to the additional documents complementing the primary principles of the defence system as well. Afterwards, the system for effective protection of cultural values in peacetime, as a set of primary actions for the protection thereof in wartime, is presented.

The threats and challenges to the still-standing Armenian heritage passed under the control of Azerbaijan by the tripartite declaration of 9 November

¹⁸ The term "occupied territory" is used to mean any area in which military government is exercised by an armed force. It does not include territory in which an armed force is located but has not assumed supreme authority (See Law of belligerent occupation, The Judge Advocate General's School ANN Arbor, Michigan, https://www.loc.gov/collections/military-legal-resources/?q=pdf%2Flaw-of-belligerent-occupation_11.pdf&fbclid=IwAR2sad23cOoPR1CJZxqxgJh_V4Nl0eZ9XJynp_Va1yg8Cl4QuaiZBAxAMVo (accessed: 20.05.2021), p. 1).

2020, and the concerns of the international scientific community in relation thereto have not escaped our attention.

The 44-day war was marked by the obvious targeting of both tangible and intangible cultural heritage¹⁹, and it is beyond doubt that the local population suffered as a result of all that. Hence, the protection of intangible heritage is at the core of our observation as well²⁰. The problem is that the elements of tangible and intangible cultural heritage are a closely interrelated integrity composed of sites, structures, and artefacts of archaeological, historical, religious, cultural and aesthetic value, as well as of traditions, customs, practices, aesthetic and spiritual beliefs, indigenous or other languages, artistic expressions, folklore (intangible). Hence, they should be perceived and protected collectively, giving priority to the principles of preservation of the authenticity, integrity and cultural importance of the heritage, the heritage-related details, conceptions, ideas, historical facts, cultural landscape, community, people and certainly the area where the culture of the given people developed as a result of a certain interaction with nature.

In addition to presenting the connection between tangible and intangible elements of cultural heritage, we have highlighted the main phenomenon of heritage - the human being, who is at the core of heritage protection; it enables to consider the problems of heritage loss within the framework of humanitarian rights of a human being. One of the bases of such an approach can also be the fact that it is the people who carry the values of heritage, attach value and impart vitality thereto, make them a part of their life process, they are the ones who carry out their daily routines in compliance with their cultural rights in their homeland. Therefore, in this case, the destruction of heritage is an attack on their cultural rights (which have long been identified as fundamental rights). And since by speaking about heritage, we can perceive the human being itself

¹⁹ See the Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, 2003, Article 2 <https://www.arlis.am/DocumentView.aspx?DocID=31391> (accessed: 15.08.2022). The "intangible cultural heritage" includes the language, customs, rituals, celebrations, performances, traditions and expressions, knowledge, skills, performing arts, traditional crafts, as well as the instruments, objects, artefacts and cultural spaces associated therewith, that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.

²⁰ The protection of intangible cultural heritage implies the implementation of initiatives aimed at ensuring its viability.

in synergistic unity with what it has created on its own, having in mind its ideas, the reasons for targeting also civilian population during the war become clear.

As has already been mentioned, the primary goal of this work is to reveal mechanisms for the international protection of heritage as integrity, but when we tried to reveal the mechanisms for the protection of intangible heritage, it turned out that the international legal system creates certain difficulties on the path to the search for necessary mechanisms for the protection of these values. The problem is that the main laws for the protection of cultural heritage during wars, i.e. The Hague and Geneva Conventions with their respective protocols²¹, provide protection mainly to tangible objects²², and in many cases, the protection of intangible heritage becomes problematic, since the legal systems only partially and indirectly provide protection for intangible cultural heritage. The mindset that it is necessary to identify the intersection where the intangible heritage, becoming a cultural right of community members, finds its affinity for protection in the international human rights system, becomes prevailing. Therefore, we have tried to present the loss of special intangible elements and specific examples of the living culture of the lost communities of Artsakh, which are deprived of their vitality due to the alienation of the community and reach the verge of destruction.

In the Monograph, the policy of appropriation of Armenian cultural values conducted by Azerbaijan in the occupied territories is examined as well, in the light of the analysis of the principles (authenticity, integrity, outstanding universal value, cultural significance) proposed by UNESCO, a supranational organization with an international mandate for heritage protection, and its advisory bodies (ICOMOS, ICOM, Europa Nostra, etc.). Over and over again, leaving the external appearance of the monument intact, they alienate the Armenian identity therefrom, attribute it to the Albanians, Turkify,

²¹The Republic of Armenia is a member of The Hague Convention of 1954 and its First Protocol from 5 September 1993 (Azerbaijan became a member of the Convention on September 20 of the same year), and it is a member of the Second Hague Protocol of 1999 from 18 May 2006 (and Azerbaijan - from 4 April 2001).

²² See Chainoglou K., The Protection of Intangible Cultural Heritage in Armed Conflict: Dissolving the Boundaries Between the Existing Legal Regimes? "Santander Art and Culture Law Review", 2017, № 2, pp. 109-134.

Azerbaijanize or Russify it, change its function, disrupt the possibility of passing it on to generations with its main function. The problem boils down to the fact that in the event of expropriation, it is the intangible domain of value, i.e. the history, the possibility of its applicability and preservation in the current life, and therefore the future, that is damaged.

In the end, we have tried to present the response of the international community (national, supranational and non-governmental organizations, UN, UNESCO, PACE, Hague Court, etc.) towards the policy of destruction of the cultural heritage of Artsakh conducted by Azerbaijan both during the 44 days of the war and after it. The Monograph ends with the record of a positive and adequate change in the response of the international community after the war. We have studied the PACE resolutions and the unprecedented decisions of The Hague International Court of Justice herein, which, as a unique precedent, can break the course of history, becoming a real international instrument condemning and prohibiting the culture-killing actions of Azerbaijan.

CHAPTER 1. THE INTERNATIONAL SYSTEM FOR PROTECTION OF CULTURAL HERITAGE DURING ARMED CONFLICTS AND IN PEACETIME

1.1. Motives for Targeting Cultural Heritage

Significance of Cultural Heritage. The preservation of cultural heritage is of primary importance for all humanity both at the national and international levels. It has a great role not only from the perspective of the aesthetic significance, outstanding universal value, and cultural significance of historical monuments of the past but also with respect to their considerable potential, which can give vitality to the current life, becoming a pledge of progress.

Acknowledging the dominant role of heritage in the lives of people and communities, the international community has — for nearly two centuries — been affirming the need to preserve it on an international level, both during peacetime and during wars, through numerous conventions and declarations, as well as at conferences. This focus of attention of the international community is generated by a number of justified reasons, among which the heritage, as a primary factor in enriching the cultural diversity of the world²³, the fundamental function of overcoming poverty, sustainable development of communities²⁴, strengthening social capital²⁵ and national identity, can be listed²⁶.

Over the last few years, the role of cultural heritage has increased so much that it has become — in accordance with the UN report published in 2019 — one of the main factors contributing to the implementation of 17

²³ See Convention Concerning the Protection of the World Cultural and Natural Heritage, Adopted by the General Conference at its seventeenth session Paris, 16 November 1972, <https://whcunesco.org/archive/convention-enpdf> (accessed: 09.02.2022).

²⁴ See "Culture: a driver and an enabler of sustainable development" Thematic think piece, UNESCO, 2012, http://www.un.org/millenniumgoals/pdf/Think%20Pieces/2_culturepdf (accessed: 20.05.2018).

²⁵ See Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17 October 2003, <https://ichunesco.org/doc/src/01852-ENpdf> (accessed: 09.02.2022).

²⁶ See Johannot-Gradis Ch., Protecting the past for the future: How does law protect tangible and intangible cultural heritage in armed conflict? "International Review of the Red Cross", 2015, № 97 (900), pp. 1253-1275.

prerequisites for sustainable development of the planet (*promotion of well-being, ensuring quality education, ending hunger, sustainable economic growth, sustainable development of cities and communities, establishing peace, etc.*)²⁷. These justified arguments further increase the international interest in cultural heritage and reaffirm the need to preserve it. On the other hand, it is an obvious reality that recently, despite the global measures defined by various international regulations to preserve it, due to the continuous influence of both human and natural factors, the planet is deprived of unique examples of cultural heritage²⁸.

Why the heritage is to be preserved? Is it past or future?. This well-grounded presentation of a problem, which has preoccupied the specialists in the field for years, has urged them to reflect on the relationship between heritage, a human, the past and the future. Having explored the indicated problem, R. Jafar stated in his doctoral thesis conducted in Italy in 2017: "Understanding the history is possible by knowing the human thoughts. One possible way to know human thoughts is the objective manifestation of subjective structures. In other words, the objective manifestation of the human mind is specifically evident in the values of cultural heritage"²⁹. In the same context, in 2006, John Feather pointed out in his research work "Managing the documentary heritage: issues for the present and future" that "The driving force of cultural heritage is the human"³⁰.

However, there arises a fundamental question regarding what is the dependency between people and the past, why do we need the past while we

²⁷ See The 2030 agenda for sustainable development, UN, A/RES/70/1, <https://sustainabledevelopmentun.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20webpdf> (accessed: 09.02.2022).

²⁸ See "Protect cultural property in the event of armed conflict", The 1954 Hague Convention and Its Two Protocols, https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tliBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY.

²⁹ Rouhi J., Definition of Cultural Heritage Properties and Their Values by the Past, "Asian Journal of Science and Technology", Italy, 2017, https://www.researchgatenet/publication/322224022_DEFINITION_OF_CULTURAL_HERITAGE_PROPERTIES_AND_THEIR_VALUES_BY_THE_PAST (accessed: 09.02.2022).

³⁰ See Feather J., Managing the documentary heritage: issues for the present and future, In: Gorman G. E. and Sydney J. Shep (eds.), Preservation management for libraries, archives and museums, London: Facet, 1-18 August 2006, pp. 1-18.

are facing the future? The answer to the question is perhaps hidden in the realm of dependency that exists between cultural heritage properties and the three dependent tenses of past, present and future. As E. H. Carr notes in this regard, the present has no more than a notional existence "as an imaginary dividing line between the past and future: these three dependent tenses (past, present and future) are intertwined, and people cannot evaluate the present without the experiences of the past"³¹. With this perception, the author comes to another important conclusion: "...through heritage, the past becomes the driving force of the present, which pushes us to the future"³².

Expanding the scope of the problem of the trinity of the phenomena discussed in the concept of heritage - the past, present and future - R. Jafar tried to consider them even as an assembly of events that took place at a certain stage of continuous space and time³³, that is, to see the three dimensions of time in one system, which can have justified parallels to Albert Einstein's theory of relativity. Einstein once stated that space and time are interwoven into a single continuum known as space-time. This means, events that occur at some time for one observer could occur at different times for another³⁴. In this way, the present tense in its turn is associated with the past or the continuation of the future. Therefore, the present and future cannot be understood without fully understanding the experiences acquired from the past. By the same logic, as emphasized by R. Hewison in 1987, "Ignorance of the past can lead to ignorance of the future: [...] you do not know where you are unless you know where you have been"³⁵. Otherwise stated, with this perception, we can affirm that the denial of the past (the heritage) is also the denial of the future, and a person without the past is alienated even from the present.

Facing the question regarding why we should care about cultural heritage, the Irish political theorist Edmund Burke (in 1790) in his work "Reflections on the Revolution in France" considered the state as "a partnership

³¹ Carr E. H., What is history? London: Cambridge University Press, 1961, p. 126.

³² Ibid.

³³ See Rouhi J., op. cit.

³⁴ See Redd N. T., Einstein's Theory of General Relativity, "Space", 2016, <http://www.space.com/17661-theory-general-relativity.html> (accessed: 09.02.2022).

³⁵ Hewison R., The Heritage Industry, London: Methuen Publishing Ltd, 1987, p. 47.

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between those who are living, those who are dead, and those who are to be born, and the cultural environment as one of the most important manifestations of that partnership, since it was created by the ancestors and enjoyed by the present generations and are to pass it on to their children”³⁶. The spotlight of attention is that heritage is actually considered a guarantee of the future since it is stated that currently, the ultimate goal of people is the indefeasible right of those who are to be born to heritage and the possibility of realizing that right. Therefore, proceeding from the author's examination, we can conclude that those who damage the heritage, deprive those who are to be born of the right to communicate it.

In his work “The Heritage Crusade and the Spoils of History”, American historian and geographer David Lowenthal has thoroughly examined the relationship between history and cultural heritage, noting that “History is in the past, including passive “truths” about ancestors, while cultural heritage is directly in the present and works for individual and community identity based on enduring values that shape the future”³⁷. Otherwise stated, cultural heritage is valuable, since it may turn the history into a factor for understanding current problems and needs, and does not end up only to the latter's historical significance. Therefore, heritage is “alive” and active, as, including sensory phenomena, it creates an opportunity to gain experience, rather than being passively taught³⁸. In her work “Uses of Heritage”, L. Smith expressed a more comprehensive point of view, stating that heritage is not just about material “phenomena”, but a “process” of negotiation with the past about how we can use it to significantly improve the future³⁹. Similarly, in the book “Geography of Heritage” B. Graham and others define heritage as “the use of the past in the

³⁶ Burke Ed., *Reflections on the Revolution in France*, London, 1970, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://socialsciences.mcmaster.ca/econ/ugcm/3il3/burke/revfrance.pdf?fbclid=IwAR3tliBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY](https://socialsciences.mcmaster.ca/econ/ugcm/3il3/burke/revfrance.pdf?fbclid=IwAR3tliBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY) (accessed: 09.02.2022).

³⁷ Lowenthal D., *The Heritage Crusade and the Spoils of History*, Cambridge: Cambridge University Press, 1998, pp. 119, 122, 124-128, 141-142.

³⁸ Ibid.

³⁹ Smith L., *Uses of Heritage* Routledge, London, 2006, p. 11.

present” and thus claim that “heritage is a vision (viewpoint) from the present to the future”⁴⁰.

Wars as a basic challenge threatening the existence of cultural heritage. While in the past the main reason for wars was to conquer new territories, now ethno-cultural and religious discrimination prevails among these reasons⁴¹, and in this case, it is the communities that are attacked at first, becoming vulnerable both physically and in collective identity⁴². Heritage is continuously targeted also with the intention to undermine the social structure of the community⁴³. Such wars are even more destructive since they are directly in furtherance of destroying the physical evidence of the past, history and present of the enemy⁴⁴. In such cases, the heritage becomes the most vulnerable due to deliberate attack, robbery, destruction and vandalism⁴⁵. It should be added that there are many external factors as well that contribute to the merciless destruction of heritage. On the one hand, they are the new trends in the development of military equipment, and on the other hand, the escalating intolerance and indifference towards other cultures.

⁴⁰ Graham B., Ashworth G., Tunbridge J., *A Geography of Heritage: Power, Culture and Economy*, London: Hodder Arnold Publication, 2000, p. 2.

⁴¹ See Brosché J., Legné M., Kreutz J. and Ijla A., *Heritage under Attack Motives for Targeting Cultural Property during Armed Conflict*, “International Journal of Heritage Studies”, 2016, № 23, pp. 1-26.

⁴² See Johannot-Gradis Ch., op. cit., pp. 1253-1275.

⁴³ For details see Bevan R., op. cit., Galaty M., op. cit.

⁴⁴ See “Protect cultural property in the event of armed conflict”, The 1954 Hague Convention and Its Two Protocols,

https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tliBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY.

⁴⁵ See Suter K., *We Must do More to Protect Cultural Property in Wartime*, <https://www.onlineopinion.com.au/view.asp?article=2407> (accessed: 15.12.2020).

1.2. Formation of International Legal System for Protection of Cultural Values During Armed Conflicts

In ancient times, the destruction of cultural heritage was an accepted practice for the winning leader to oppress the party defeated in the war and deprive the given ethnic group of its territory⁴⁶, but even so, just as long ago, progressive philosophers urged the belligerents to refrain from such practices. Being conscious of protecting cultural values, a good deal of examples of prohibition of their destruction are given in the various works of philosophers of the ancient civilizations and the ancient period and the progressive philosophers of later centuries.

Starting from Sun Tzu (6th century BC, China)⁴⁷ to Von Clausewitz (19th century)⁴⁸, it was argued that the destruction of heritage by enemies was a punishable practice⁴⁹.

Examples of prohibition of the destruction of cultural heritage in the course of wars can be found in ancient Greece, where Greek philosophers urged the protection of cultural sites and values from retaliation⁵⁰. It should be added that in Roman times it was also unacceptable to target cultural values during conflicts. Cicero emphasized that "During the war, the destruction of sacred places cannot become a military necessity"⁵¹.

It is important to consider the Islamic cultural dimension of examples of the ban on the destruction of cultural heritage as well since sometimes it is the Azerbaijani intolerance towards the Christian religious culture that gives rise to the

⁴⁶ See Rothfield L., *Antiquities under Siege: Cultural Heritage Protection After the Iraq War*, Lanham: Altamira Press, 2008.

⁴⁷ See Sun Tzu, *The Art of War*, translated by T. Cleary, Boston and London: Shambhala, 1998.

⁴⁸ See Von Clausewitz C., *On War*, Wordsworth Editions Ltd, 15 July 1997.

⁴⁹ See O'Keefe R., Péron C., Musayev T., Ferrari G., op. cit., pp. 1-91.

⁵⁰ In ancient Greece, lots of places were deemed to be sacred and inviolable during conflicts, for example, Delphi, Delos and Mount Olympus. During military operations, any manifestation of hostility in these places was impermissible, and they could not become a shelter as well. (See Ducrey P., *Guerres et guerriers dans la Grèce antique*, Paris: Payot, 1969, p. 243).

⁵¹ Tulli M., *Ciceronis, Actionis in C Verrem secundae liber quartus (De signis): De officiis ad Marcum filium*, cited in Stanislaw Edward Nahlik, "Des crimes contre les biens culturels", *Annuaire de l'Association des auditeurs et anciens auditeurs de l'Académie de droit international de La Haye*, Vol. 9, 1959, p. 14.

obsession to destroy the masterpieces of this culture. The historical testimonies aimed at revealing this reality are numerous, but we will single out the famous decrees of Abu Bakr al-Siddiq, the first Caliph, which, having great significance, form common civilizational approaches with regard to the mentality of not targeting the heritage. According to one of them (632-634), during the wars, the soldiers of the Islamic army were not supposed to destroy religious places, kill women and children, it was also forbidden to misappropriate and embezzle spoils of war, and approach inhabited (civilian) areas⁵². In addition to what has been said, it should also be noted that in his orders to the warriors, the Caliph emphasized: "During your marches through the territory of the enemy, do not cut down date palms or other fruitful trees, do not destroy the heritage of the country, do not destroy any area, do not burn houses..."⁵³. "Attacks should be strictly confined to military targets," we can read in the texts that have reached us⁵⁴.

The testimony of an international law specialist Kanina Bennoune is also credible with regard to the aforementioned reality, according whereto, "More than a millennium before the codification of the Geneva Conventions, most of the fundamental categories of protection which the Conventions offer could be found, in a basic form, in Islamic teachings"⁵⁵. Attention should also be paid to the fact that one of the main ideas of Islamic law is the religion-based, or, which is the same, sacredly respect by the warriors of the treaties signed by the state. Some scholars argue that the reason for this is that combatants are religiously bound by the provisions of the treaties signed by their governments⁵⁶.

Going back to the historical facts, we would like to note that yet in the Middle Ages, the obligation to protect the cultural heritage during wars was more specified through the regulations developed by the Christian Church: attacks on sacred places were prohibited⁵⁷. We could come across references regarding the

⁵² See Heba A., *Islamic law and the rules of war*, "The new humanitarian", 2014, www.thenewhumanitarian.org/2014/04/24/islamic-law-and-rules-war (accessed: 12.04.2022).

⁵³ *Ibid.*

⁵⁴ See Teijgeler R., *Preserving cultural heritage in times of conflict*, In book: *Preservation management for libraries, archives and museums*, pp. 133-165.

⁵⁵ Heba A., op. cit.

⁵⁶ *Ibid.*

⁵⁷ "The Peace of God" and "the Truce of God" are among these regulations, by which the obligation of belligerents to obey lots of rules were enshrined. Some of these rules were provided also for

non-destruction of cultural values in the oaths of the knights and the documents signed by the military leaders as well⁵⁸.

During the Renaissance era, the Catholic Church in the West continued its admonitions to keep sacred places from robbery and vandalism during wars. It was in this era that the range of objects protected during and after wars was significantly expanded to include also non-sacred values, i.e. secular art collections, which were declared as "special objects" and had a legal status different from others⁵⁹. In this regard, in the 16th and 17th centuries, Jacob Przulski put forward the idea that "everyone should show regard for a work of art, but not solely because of its religious nature..."⁶⁰. Therefore, along with the formation of national states, the heritage symbolizing the state's values and history were added to the values protected from the dangers of war as well⁶¹.

Starting from the 16th-17th centuries, the mentioned historical developments of the idea of protecting cultural values in warlike situations focused the attention of the international community on these problems. The treaties of peace demonstrated the slow but undeniable progress of international law in this matter: beginning with the Peace of Westphalia of 1648, more treaties of peace began to include specific clauses related to the prohibition of destruction, pillage, and expropriation of cultural values after the conflicts, the restitution thereof and other issues⁶².

protection of cultural heritage, both tangible and intangible. (See Balard M., Genet Jean-Ph. and Rouche M., *Le Moyen Âge en Occident*, Paris: Hachette Superieur, 2003, pp. 104-105).

⁵⁸ See Johannot-Gradis Ch., op. cit., pp. 1253-1275.

⁵⁹ This idea was developed by various legal specialists and philosophers of the time, in particular, Alberico Gentili, who marked the need of protection of cultural values among the elements of private property to be protected during armed conflicts. (See Alberico G., *De Jure Belli Libr Tres*, In: O'Keefe R., Péron C., Musayev T., Ferrari G., op. cit., p. 6).

⁶⁰ Toman J., op. cit., pp. 4-5.

⁶¹ In France in 1830, upon the initiative of Abbé Grégoire, a commission dealing with the issues of preservation of historical monuments was established, which aimed to counter the "vandalism" that was raging in 1789 - during and after the French Revolution (See *Rapport sur les destructions opérées par le vandalisme, et sur les moyens de le réprimer*, In: *Cœuvres de l'Abbé Grégoire*, Vol. 2: Grégoire, député à la Convention nationale, Nendeln and Paris: KTO Press and EDHIS, 1977, p. 257).

⁶² See Papaioannou K., *The international law on the protection of cultural heritage*, "International E-Journal of Advances in Social Sciences", Vol. III, Issue 7, April 2017, p. 262, <http://ijasos.ocerintjournals.org/en/download/article-file/298438> (accessed: 16.12.2020).

In the 19th century, the United States became the first state to coordinate the protection of cultural heritage in warlike situations⁶³ and to prohibit deliberate damage to it⁶⁴. "Instructions for the Government of Armies of the United States in the Field" prepared by Francis Lieber (a German immigrant and professor at the Columbia Law School⁶⁵) and President Lincoln became the first written regulations for the standing army of the United States of America. It was promulgated as "General Orders No 100" on 24 April 1863; in legal and scientific circles it is better known as the "Lieber Code"⁶⁶. Some of the articles of the Code provided for the protection of cultural values during wars⁶⁷. Article 35 is particularly important, pursuant to which, "Classical works of art, libraries, scientific collections, or precious instruments must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded"⁶⁸. And a conquering State's duties not to steal, destroy or injury the heritage in the occupied territories were stipulated by Article 36: "If such works of art [...] belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation"⁶⁹. Pursuant to the Code, the issues of ownership of the heritage were to be settled at the end of the war, by the ensuing treaties of peace and the primacy of the cultural affiliation of the real "owners" of the heritage. And with regard to works of art, there were provisions which envisaged the following: "In no case shall they be sold or given away (even if captured), nor shall they ever be privately appropriated, or wantonly destroyed or injured"⁷⁰.

⁶³ See Hannah G. He, *Protecting Ancient Heritage in Armed Conflict: New Rules for Targeting Cultural Property During Conflict with ISIS*, "30 Md. J. Int'l L.", 2015, N° 168, <http://digitalcommonsmaryland.edu/mjil/vol30/iss1/12> (accessed: 16.12.2020).

⁶⁴ See Miles M., *Still in the aftermath of Waterloo: a brief history of decisions about restitution*, In: Stone P. G. (ed.), *Cultural heritage, ethics and the military*, Woodbridge: Boydell, 2011, pp. 29-42.

⁶⁵ See Techera E., op. cit., p. 2.

⁶⁶ Although it was mandatory only for US military forces, it largely conformed to existing laws and customs of war.

⁶⁷ See *Instructions for the Government of Armies of the United States in the Field (Lieber Code)*, 24 April 1863, Article 31, <https://ihl-databasesicrcorg/ihl/INTRO/110> (accessed: 16.12.2020).

⁶⁸ Techera E., op. cit., pp. 2-3.

⁶⁹ *Instructions for the Government of Armies of the United States in the Field (Lieber Code)*, 24 April 1863, <https://ihl-databasesicrcorg/applic/ihl/ihlnsf/ART/110-20036?OpenDocument> (accessed: 16.03.2022).

⁷⁰ Ibid.

Although these rules were often stipulated in treaties of peace concluded between belligerent countries, by the end of the 19th century they had not formed the perspective of universal mandatory regulation yet⁷¹.

In the second half of the 19th century, comparing the fundamental results of a series of discussions on the issue of inviolability of heritage during and after the war, and meanwhile organizing a number of international meetings, such as the conferences in St. Petersburg in 1868 and in Brussels in 1874, drafts of conventions defining norms for the protection of cultural heritage in warlike situations were drawn up, and the first declarations of the field were adopted. Among them, it is worth mentioning the "Project of an International Declaration concerning the Laws and Customs of War"⁷² presented at the Brussels conference in 1874, which carried out the first international coordination of the field⁷³. Article 8 thereof provided for making the issue of seizure or destruction of, or willful damage to the cultural values in the occupied territories the subject of legal proceedings by the competent authorities, and seizure of privately owned institutions dedicated to religion, charity and education was also considered impermissible, regardless of ownership⁷⁴. And Article 17, continuing the logical course of the previous one, stipulated that "All necessary steps should be taken during sieges and bombardments to spare, as far as possible, edifices devoted to religion, art, science, and charity, provided they are not being used at the time for military purposes. The besieged was to indicate these buildings or places by some particular and visible signs, which should also be notified to the assailants prior to the commencement of bombardment"⁷⁵.

At the end of the 19th century and the beginning of the 20th century, the legal system of consistent protection of cultural heritage during and after the war

⁷¹ See Johannot-Gradis Ch., *op. cit.*, pp. 1253-1275.

⁷² Despite the response of Great Britain, the declaration was never formally adopted (See Techera E., *op. cit.*, pp. 2-4).

⁷³ See Papaioannou K., *op. cit.*, pp. 257-262.

⁷⁴ See Project of an International Declaration Concerning the Laws and Customs of War. Brussels, 27 August 1874, Article 8. On military authority over hostile territory, <https://ihl-databasesicrc.org/applic/ihl/ihlnsf/Articlexsp?action=openDocument&documentId=BAB3FB2725F684E6C12563CD00515509> (accessed: 16.03.2022).

⁷⁵ *Ibid.*, Article 17.

<https://ihldatabasesicrc.org/applic/ihl/ihlnsf/Articlexsp?action=openDocument&documentId=C0F8D113444B0916C12563CD0051557D> (accessed: 12.04.2022).

entered a new stage of development, which was marked by the development and adoption of the first official agreements during the two international conferences in Hague, i.e. The Hague Conventions of 1899⁷⁶ and 1907⁷⁷.

Although the Convention "With respect to the laws and customs of war on land" of 1899 and the Regulations thereof mainly refer to prisoners of war and civilians, they contain some articles on the protection of cultural property in occupied territories as well. It is worth mentioning particularly Article 27, which, almost completely duplicating Article 17 of the Brussels Declaration, reiterates the need to protect cultural property from the dangers of war⁷⁸. And Article 28 urges the belligerents to refrain from the pillage of a town or place, even when taken by assault⁷⁹. Pillage is formally forbidden by Article 47 of the Convention⁸⁰. And all seizure of, destruction, or wilful damage done to institutions dedicated to religion, charity and education, is forbidden by Article 56. In the same way, the aforementioned provision considers the fact of cultural values being private property and emphasizes the need to record such cases and define them as a criminal offence⁸¹.

The next convention of Hague adopted in 1907 almost completely reiterates the previous one⁸², further strengthening the legal grounds for the protection of cultural heritage with several articles. The destruction of heritage not used for military purposes is prohibited by it, emphasizing "the need to mark institutions of

⁷⁶ See Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899, <https://ihl-databasesicrc.org/ihl/INTRO/150> (accessed: 16.03.2022).

⁷⁷ See Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Regulations: Article 27, <https://ihl-databasesicrc.org/ihl/INTRO/195> (accessed: 16.03.2022).

⁷⁸ See Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899, Regulations: Article 27, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899/regulations-art-27?activeTab=undefined> (accessed: 16.03.2022).

⁷⁹ *Ibid.*, Article 28.

⁸⁰ *Ibid.*, Article 47.

⁸¹ *Ibid.*, Article 56.

⁸² See Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Regulations: Article 47,

<https://ihldatabasesicrc.org/applic/ihl/ihlnsf/Articlexsp?documentId=FA13E789FD4EAFF0C12563CD005168CC&action=OpenDocument> (accessed: 16.03.2022).

cultural and important significance with a particular and visible sign⁸³. Pillage is prohibited by Article 47 of the International Regulations as well⁸⁴; and Article 56 related to occupied territories restricts all seizure of, destruction, or wilful damage done to institutions dedicated to civil property, religion, charity, education, the arts and sciences, historic monuments, works of art and science, considering them as private property and their destruction subject of legal proceedings⁸⁵.

Summing up, we can affirm that The Hague Convention of 1907 and the regulations attached thereto introduced into the international law a positive practice of protection of cultural heritage in war situations, which was later to be established as customary law by international bodies in various documents.

The Hague Conventions were followed by the "Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact)"⁸⁶ signed by the USA on 15 April 1935 in Washington, the first Article whereof defined "The historic monuments, museums, scientific, artistic, educational and cultural institutions shall be considered as neutral and as such respected and protected by belligerents. The same respect and protection shall be due to the personnel of the institutions mentioned above. The same respect and protection shall be accorded to the historic monuments, museums, scientific, artistic, educational, and cultural institutions in time of peace as well as in war"⁸⁷.

The next international document containing provisions for the protection of cultural heritage in occupied territories was the international declaration adopted in London in 1943⁸⁸, which, in its Clause 4, declared invalid any transfer of property rights, including those of cultural property. The Declaration covered all

⁸³ Ibid., Article 27.

<https://ihl-databases.icrc.org/applic/ihl/ihlinsf/Article.asp?action=openDocument&documentId=3C43C56CFC87D4E3C12563CD005167AA> (accessed: 16.12.2022).

⁸⁴ Ibid., Article 47.

⁸⁵ Ibid., Article 56.

⁸⁶ See Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact), Washington, 15 April 1935, <https://ihl-databases.icrc.org/ihl/INTRO/325?OpenDocument> (accessed: 16.12.2022).

⁸⁷ Protect cultural property in the event of armed conflict, The 1954 Hague Convention And Its Two Protocols, https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tliBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY.

⁸⁸ It was otherwise known as "Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control".

forms of looting, stealing, or forced purchase of works of art during the period of enemy occupation or control of the territories⁸⁹.

Despite the existing laws, the mass destruction of cultural values continued as a result of world wars, and the created situation should definitely have forced the international community to give even more concentration, the result of which was the activity of the Nuremberg International Tribunal in the middle of the 20th century (1946), by which the actions against cultural property were considered serious crimes against humanity, the protection of cultural heritage during wars became a customary norm and an applicable practice for the entire international community⁹⁰. A number of decisions of the Tribunal contributed to the restitution of — by the armistice agreements and peace treaties following the Second World War — cultural property to their rightful owners and compensation for damages, as well as the drafting of The Hague Conventions and other protocols dedicated to the protection of cultural property in occupied territories. In accordance with the report (1952) of UNESCO, which has a mandate for the protection of cultural heritage given by the United Nations, "the Nuremberg Tribunal had introduced the principle of punishing attacks on the cultural heritage of a nation into positive international law"⁹¹.

⁸⁹ See Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control, Article 4, <https://www.lootedartcommission.com/inter-allied-declaration> (accessed: 16.03.2020).

⁹⁰ See Vrdoljak A. F., *The Criminalisation of the Illicit Trade in Cultural Property*, University of Technology, Sydney, 2016, p. 7.

https://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/APVrdoljak_text2pdf (accessed: 12.04.2022).

⁹¹ See Report to the Programme Commission of the working party dealing with a draft international convention for the protection of cultural property in the event of armed conflict (document 7 C/PRG/7) and the possibility of establishing an international fund for the maintenance of museums, monuments and collections of universal interest (document 7 C/PRG/6), UNESCO, 1952, <https://unesdoc.unesco.org/ark:/48223/pf0000224631?posInSet=1&queryId=5575a3e9-142f-4bc0-a3aa-19b6a3f4d37f> (accessed: 12.04.2022).

1.3. Main Documents on Protection of Cultural Property in the Event of Armed Conflict and in Occupied Territories

The Hague Convention for “The Protection of Cultural Property in the Event of Armed Conflict” of 1954. Numerous cases of incompatibility of the laws in force during the Second World War and military operations created a different view of reality when the world again became a witness to many cases of massive destruction and looting of cultural values⁹². In the context of new realities, the gaps⁹³ in previous conventions, declarations, and regulations were revealed, inducing the international community to create a more efficient system of protection of cultural heritage⁹⁴. In pursuance of this, the Convention for “The Protection of Cultural Property in the Event of Armed Conflict” of 14 May 1954⁹⁵, the regulations for implementation thereof, the Protocol regarding the protection of cultural heritage in the occupied territories, and three resolutions were adopted at the initiative of the Netherlands⁹⁶. The Hague Convention of 1954 was actually the first systematic regulation in the aftermath of the war, the first international multilateral treaty with universal jurisdiction, which established a comprehensive legal framework for the protection of cultural values⁹⁷. It should be emphasized that the Convention provided for the protection of cultural heritage during both international and non-international conflicts, including occupation. It tried to build up a new ambit of respect for

⁹² See Kastenberg E. J., *op. cit.*, p. 283.

⁹³ See Pasikowska-Schnass M., Protection of cultural heritage in armed conflicts, Briefing European Parliamentary Research Service, March 2016, pp. 1-10, Briefing European Parliamentary Research Service (europa.eu) (accessed: 16.12.2020).

⁹⁴ See Papaioannou K., *op. cit.*, pp. 257-262.

⁹⁵ See Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954.

⁹⁶ See “Protect cultural property in the event of armed conflict”, The 1954 Hague Convention and Its Two Protocols,

https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tIiBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY.

⁹⁷ See Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague, 14 May 1954, reprinted in Dietrich Schindler and Jiri Toman (Eds.), *The laws of armed conflicts: A collection of conventions, resolutions and other documents*, 3rd ed., Martinus Nijhoff/Henry Dunant Institute, Dordrecht/Geneva, 1988, pp. 745-759.

cultural values, considering any cultural value as a part of the common heritage of humanity⁹⁸. This was a big step taken in the legal development of the problem since no regulation had associated the loss of cultural value with the impoverishment of the entire humanity. The first Article of the Convention outlines the above-stated, and the cultural value is considered as a supranational, i.e. universal value. “Cultural property – irrespective of origin or ownership — is the movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular...”⁹⁹. On this point, the Convention endeavours to establish a supranational approach to the appreciation and respect of cultural heritage, pursuant to which heritage should be preserved, wherever it is situated, and whenever it is created.

It is essential to record that although having ratified The Hague Convention of 1954, the regulations of implementation thereof¹⁰⁰, as well as having approved “The First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict” (attached to the said Convention) with regard to the protection of cultural values in the occupied territories¹⁰¹, Azerbaijan has continuously violated it since 20 September 1993, allowing a number of crimes not only against Artsakh but against the whole humanity. Additional attention should be paid to the fact that, pursuant to Article 4 of the Convention, Azerbaijan is obliged to respect cultural property situated within its own territory, as well as within the territory of other state (including that of ethnic groups), thus undertaking not to destroy the heritage situated within the territory of the Republic of Artsakh, which belongs to the nation having created it and is under its protection¹⁰². With regard to the fact

⁹⁸ See Teijgeler R., *Preserving cultural heritage in times of conflict*, pp. 133-165.

⁹⁹ Protect cultural property in the event of armed conflict, The 1954 Hague Convention And Its Two Protocols,

https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tIiBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY.

¹⁰⁰ See Conventions – Azerbaijan, <https://en.unesco.org/countries/azerbaijan/conventions> (accessed: 18.02.2022).

¹⁰¹ *Ibid.*

¹⁰² See “Convention for the Protection of Cultural Property in the Event of Armed Conflict” signed at The Hague, 14 May 1954, Article 4.

that the authorities of Azerbaijan try to present the reality of not respecting the heritage of Artsakh by the reasoning that the Republic of Artsakh is not recognized by the United Nations, we feel the need to mention that international law, including this Convention, makes it possible for the obligation of respecting heritage to be released from the restraint of territorial belonging and the declaration and recognition of a nation state, stipulating it as a fundamental right of the people, which derives from the right to self-determination as well.

Based on the logic of the Convention, the nations themselves will decide what is their heritage of "great significance"¹⁰³.

The main provision for the protection of cultural values is formulated in Article 4 of the Convention of 1954, which prohibits any act of vandalism, any form of theft, pillage, or misappropriation and places an absolute ban on any act directed by way of reprisals against cultural property: "States undertake to respect cultural property situated within their own territory as well as within the territory of other Parties by refraining from any act directed by way of hostility or reprisals against cultural property"¹⁰⁴. However, the cases where the "military necessity" imperatively requires such a decision is also an exception here¹⁰⁵: "...cultural heritage and cultural institutions must be protected during armed conflicts as long as they do not pursue a military goal"¹⁰⁶. But we should state that the most serious failure in this document is the lack of explanation of the term "military necessity".

Expanding the ambit of protection of cultural values, the Convention proposes to create "general" and "special" systems, establishing that in general all values are under "general" protection, and those that meet certain rules are

¹⁰³Where the Azerbaijani forces try to look to the heritage of the Armenians of Artsakh in line with the concepts of the value system of the Azerbaijani people, yet this does not provide grounds to damage this heritage, since every nation establishes the framework of values of great importance for itself, the creator whereof is the very nation itself.

¹⁰⁴Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954, Article 4.

¹⁰⁵Ibid., Article 4.2.

¹⁰⁶Ibid., Article 4.

under "special" protection¹⁰⁷. The Convention proposes that cultural property may bear a distinctive emblem in the form of blue and white shields so as to facilitate its recognition during conflicts¹⁰⁸. Although with the placement of a blue shield, cultural objects can be separated from other civil structures, however, it is not mandatory, and practically it is even rare, and the permission of the competent national authority is required for installation¹⁰⁹. On the other hand, the absence of an emblem does not imply that just because the cultural property is not marked, it is not under the protection of the Convention¹¹⁰, moreover, it is under the protection of customary international law, whereby the abuse of the use of emblems is forbidden¹¹¹. During the armed conflict, an emblem can also be used to mark the transport that transports exclusively cultural values¹¹². Personnel engaged in the protection of cultural values during the war may also wear an armband with an emblem issued by the competent authorities of the relevant state and confirmed with a seal¹¹³.

Additional attention should be paid to the fact that the principles laid down in The Hague Convention of 1954 and approved at the UNESCO General Conference were recognized as customary international law¹¹⁴, which enables

¹⁰⁷The latter implies listing in the "International Register of Cultural Property under Special Protection" and a certain procedure (the cultural property must be situated at an equivalent distance from a large industrial centre or a structure pursuing a military purpose, the property and its surrounding area must not be used for military purposes).

¹⁰⁸Ibid., Articles 16 and 17.

¹⁰⁹Ibid., Article 17.4.

¹¹⁰It is not unlawful for a state not party to the Convention to mark cultural property with the emblem (See O'Keefe R., Péron C., Musayev T., Ferrari G., op. cit., §§ 213-224).

¹¹¹Abuse of emblems can result in devaluation thereof and that of the heritage, and also in situation when they will not be accepted by the enemy any more, jeopardizing the heritage. In some cases, such an act may even deem to be a war crime (see *ibid.*).

¹¹²See Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954, Article 12.2.

¹¹³Ibid., Articles 12-14.

¹¹⁴The international customary law is established among civilized nations and is legally binding (See Sandholtz W., *The Iraqi National Museum and International Law: A Duty to Protect*, 44 *Colum. J. Transnat'l L.*, 185, 228, 2005 (summarizing recent scholarship accepting the basic tenets of cultural property protection as customary international law)). Based on the historical perception with regard to the issue that sites of cultural property should be protected during wartime, the 27th session of the UNESCO General Conference (Paris, November-October 1993) adopted Resolution No 3.5 regarding The Hague Convention of 1954, which confirmed that the fundamental principles of protection and preservation of cultural values during armed conflicts can be deemed to be a part of customary

making the provision of inviolability of cultural heritage mandatory during war even for non-member states of the Convention¹¹⁵. Therefore, Artsakh doesn't need to be a member of the Convention for the protection of the cultural heritage thereof, since, as stated above, the obligation to respect the heritage is a customary norm during wars and applies to all states.

The First Protocol to The Hague Convention for "The Protection of Cultural Property in the Event of Armed Conflict" of 1954 of the same year. The 1954 Convention mainly addressed the protection of cultural heritage during conflicts, and a number of issues remained unregulated in post-conflict situations. Therefore, in the same year, i.e. in 1954, The Hague Council adopted a supplementary document¹¹⁶ - the First Protocol¹¹⁷, wherein the mechanisms for the protection of cultural heritage in the occupied territories and the terms for illegal exportation and return of heritage were presented.

The undertaking to prevent the exportation of cultural values from the occupied territory is prescribed in point 1 of the First Protocol to the 1954 Hague Convention: "Each High Contracting Party undertakes to prevent the exportation or transfer to a third country, from a territory occupied by it during an armed conflict, of cultural property"¹¹⁸. Point 3 of the Protocol provides for the prohibition of retention of cultural property as war reparations, obliging the state — which has occupied the territory — to return the cultural property, at the close of hostilities, to the competent authorities of that territory¹¹⁹.

The Second Protocol (1999) to The Hague Convention for "The Protection of Cultural Property in the Event of Armed Conflict" of 1954. After the Second

international law (See Protect cultural property in the event of armed conflict, The 1954 Hague Convention And Its Two Protocols, https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tliBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY).

¹¹⁵ See UNESCO General Conference Res. 3.5, United States, Annotated Supplement to the Naval Handbook.

¹¹⁶ See Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954, <https://www.unesco.org/en/legal-affairs/protocol-convention-protection-cultural-property-event-armed-conflict> (accessed: 15.12.2020).

¹¹⁷ Currently, 110 countries, including Armenia, Azerbaijan and Turkey, are members of the first protocol.

¹¹⁸ Ibid.

¹¹⁹ Ibid., Article 3.

World War, the increasing ethnic conflicts and the problems of protecting cultural values in the occupied territories made the effectiveness of the 1954 Convention and the First Protocol a subject of general concern, and in 1991, the Government of the Netherlands decided to include a review of the 1954 Convention as part of its contribution to the United Nations Decade of International Law (UN's Decade of International Law)¹²⁰. Based on the results of the intergovernmental conferences held after that, the report of Professor Patrick Boylan was published in 1993¹²¹. In the following years and especially in March 1997, the Lauswolt document (The Lauswolt document - the draft treaty elaborated based on P. Boylan's report) was widely discussed and studied during the expert meetings held at UNESCO headquarters in Paris, and during the diplomatic conference convened on the initiative of the Netherlands, it was transformed into an international treaty¹²². The outcome of the discussions was the drafting of the Second Protocol to The Hague Convention¹²³, which was adopted on 26 March 1999 without a vote¹²⁴.

The Protocol made the system of enforcement and management of the Convention stricter, included provisions on non-international armed conflicts¹²⁵, clarified the concept of "military necessity", established a new system of "enhanced protection" of cultural property (simplified and modified the procedure for granting special protection), introduced the necessity for

¹²⁰ See Henckaerts J.-M., New rules for the protection of cultural property in armed conflict: The significance of the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, "International Review of the Red Cross", 1999, № 835, <https://www.icrc.org/en/doc/resources/documents/article/other/57jq37.htm> (accessed: 15.12.2020).

¹²¹ See Boylan P. J., Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954), UNESCO, Paris, 1993, p. 19.

¹²² See Henckaerts J.-M., op. cit.,

<https://www.icrc.org/en/doc/resources/documents/article/other/57jq37.htm>.

¹²³ See Draft Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, UNESCO, Doc. HC/1999/1/rev.1, February 1999.

¹²⁴ See Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, http://portal.unesco.org/en/ev.php-URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed: 21.04.2022).

¹²⁵ See Cunliffe E., Fox P., Stone P., The Protection of Cultural Property in the Event of armed Conflict: Unnecessary Distraction or Mission Relevant Priority? NATO OPEN Publications, July 2018, pp. 1-19, <https://www.act.nato.int/images/stories/media/doclibrary/open201804-cultural-property.pdf> (accessed: 21.04.2022).

applying precautionary measures in case of an attack on cultural property, reformed judicial co-operation by directly imposing sanctions for “serious violations” with respect to cultural property, and defined the conditions under which individual criminal liability applies. It should also be noted that since 17 April 2001, Azerbaijan is a party to the Second Additional Protocol (1999) to The Hague Convention as well, which relates to the protection of cultural values¹²⁶, but, in point of fact, it is the state which has violated the Protocol for many times.

The main provision for the protection of cultural values is summarized in Article 6 of the Second Protocol (1999) to The Hague Convention, and with reference to Article 4 of the previous 1954 Convention, besides the obligation which relates to the respect for cultural values, additional obligations are introduced thereby, clarifying that a waiver of respect for cultural property may only be invoked to direct an act of hostility against a cultural property when and for as long as that cultural property has, by its function, been made into a military objective, and when and for as long as there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective¹²⁷. Moreover, pursuant to point “c” of Article 6, the decision to invoke imperative military necessity shall only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise¹²⁸.

Article 9 of the 1999 Protocol defines the main provisions for the preservation of cultural heritage in the occupied territories. In particular: “Without prejudice to the provisions of Articles 4 and 5 of the Convention of 1954, a Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory any illicit export, other removal or transfer of ownership of cultural property; any

¹²⁶ See Conventions – Azerbaijan, <https://en.unesco.org/countries/azerbaijan/conventions>.

¹²⁷ See Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 6 – Respect For Cultural Property, a, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-prot-1999/article-6> (accessed: 12.02.2022).

¹²⁸ Ibid., b, c.

alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence”¹²⁹.

Definitely, all international treaties attach importance to the fact that the best way of safeguarding cultural values from the dangers of war is the operations carried out during peacetime. This point could not be omitted either in the 1954 Convention or in the Protocol adopted later on. Article 5 of the Protocol serves as a basis for such an assertion, pursuant to which the best way of safeguarding cultural property against the foreseeable effects of an armed conflict is taking preparatory measures¹³⁰ in time of peace (this article is included in Article 3 of the 1954 Convention as well)¹³¹. Pursuant to part 2 of Article 21 of the same document (this provision exists in Article 28 of the 1954 Convention as well), states undertake to prevent these violations¹³² and adopt such measures as may be necessary to establish them as criminal offences under their domestic law and to make such offences punishable¹³³ by imposing legislative, administrative or disciplinary sanctions¹³⁴.

¹²⁹ Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 9 – Protection of cultural property in occupied territory, http://portal.unesco.org/en/ev.php-URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html (access 12.02.2022).

¹³⁰ Under the Protocol, the measures to be taken in time of peace include the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property (See Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 5 – Safeguarding of cultural property, IHL Treaties - Second Hague Protocol for the Protection of Cultural Property, 1999 - Article 5 (icrc.org) (accessed: 12.02.2022)).

¹³¹ See Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954, Article 3 - Safeguarding of Cultural Property, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/51b22df69e39d9d3c12563cd00587b41/627ad81d0917b0b9c12563cd0051ca43> (accessed: 12.04.2022).

¹³² “Without prejudice to Article 28 of the Convention, each Party shall adopt such legislative, administrative or disciplinary measures as may be necessary to suppress the following acts when committed intentionally: a. any use of cultural property in violation of the Convention or this Protocol; b. any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or this Protocol” (Second Protocol to The Hague Convention for the Protection of Cultural Property, Article 9 (1) and Article 21).

¹³³ Within the meaning of the Protocol, any of the following acts shall be qualified as a criminal offence: (a) making cultural property under enhanced protection the object of attack; (b) using cultural property under enhanced protection or its immediate surroundings in support of military action; (c)

Geneva Conventions. With regard to the system of protection of cultural heritage during wars, special attention should be attached to the 1949 Geneva Convention with its two protocols adopted after the Vietnam War¹³⁵. The two additional protocols to the 1949 Geneva Convention were adopted in 1977, the first whereof relates to international armed conflicts and the second one to non-international (civilian or terrorist) armed conflicts. In accordance with these protocols, cultural property is a “civilian object” and “it is prohibited to use such objects in support of the military effort or to attack them intentionally.” These two protocols contain several provisions with respect to the protection of cultural heritage. Thus, Article 53 of the Additional Protocol to the Geneva Convention of 12 August 1949 establishes: “Without prejudice to the provisions of The Hague Convention adopted on 14 May 1954, it is prohibited to commit any acts of hostility directed against the cultural property, to use it in support of the military effort or to make it the object of reprisals”¹³⁶. Under Article 85, intentional attacks on historic monuments, works of art, or places of worship which constitute the cultural or spiritual heritage of peoples are regarded as grave breaches of the Protocol¹³⁷. It should be noted that Azerbaijan has been a member of the 1949 Geneva Convention and the protocols thereof since 1993, with which it also undertakes to refrain from any act of hostility against the cultural heritage of Armenians of Artsakh¹³⁸.

extensive destruction or appropriation of cultural property protected under the Convention and the Protocol; (d) making cultural property protected under the Convention and the Protocol the object of attack; (e) theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention (See Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 15 – Serious violations of this Protocol, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=48083752D709C74F412567BB00560E35> (accessed: 12.04.2022)).

¹³⁴ Ibid., Article 21.

¹³⁵ See Nada Al-Duaij, *Environmental Law of Armed Conflict*, S.J.D. Thesis, Pace University School of Law, 2002, <http://digitalcommons.pace.edu/lawdissertations/1/> (accessed: 12.04.2022).

¹³⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 53, <https://ihl-databases.icrc.org/ihl/INTRO/470> (accessed: 12.04.2022).

¹³⁷ Ibid., Article 85.

¹³⁸ See Azerbaijan,

https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=A_Z (accessed: 12.04.2022).

The term “Occupied Territories”. The provisions of protection of cultural values stipulated in the main documents of the sphere were presented in detail above, but we need to throw light on the term “occupied territories” in a more detailed manner, around which the discussion regarding the principles of protection of cultural values was held.

What does occupation mean and how is it defined? Occupation is regarded as a species of international armed conflict and treated as such, particularly by The Hague Regulations of 1907 and the Geneva Conventions of 1949¹³⁹.

Article 42 of the Regulations annexed to The Hague Convention “Respecting the Laws and Customs of War on Land of 18 August 1907” adopted in the early twentieth century, is currently applicable to the occupied territories. According to it, “Territory is considered occupied when it is actually placed under the authority of the hostile army”¹⁴⁰. As for the spatial scope of occupation, according to the law, it extends only to the territory where such authority has been established and can be exercised, or, which is the same, an opportunity has been created to exercise the power of the hostile army¹⁴¹. In addition to all this, it should be noted that the most important principles related to the occupation and the obligations of the occupant state are touched upon also in the next 43-56 Articles of the aforementioned Regulations.

A specialist in international law Eyal Benvenisti states in his article “The International Law of Occupation” published in the Oxford Journal that the territory is considered occupied when it is actually under the authority of the hostile army and the power of the enemy is established there. There is no need for any organization or structure (including the United Nations) to declare or recognize the territory as occupied for using the term “occupation” or considering the territory as such¹⁴². The author adds that one side may consider it as occupied and the other side - not, but in both cases the norms of

¹³⁹ See Expert meeting: Occupation and Other Forms of Administration of Foreign Territory, Report prepared and edited by Tristan Ferraro, ICRC, March 2012, p. 4, <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf> (accessed: 12.04.2022).

¹⁴⁰ Convention Respecting the Laws and Customs of War on Land, Article 42,

https://avalon.law.yale.edu/20th_century/hague04.asp#art42 (accessed: 12.04.2022).

¹⁴¹ Ibid.

¹⁴² See Benvenisti E., *The International Law of Occupation*, 2nd edition, Oxford: Oxford University Press, 2012, p. 416, <http://www.ejil.org/pdfs/24/1/2392.pdf> (accessed: 12.04.2022).

international humanitarian law apply, which received the status of customary law in the early 21st century. This provision was also confirmed by Marco Longobardo in his book "The Occupation of Maritime Territory under International Humanitarian Law", stating that considering the territory as occupied may be discretionary for states, but it is not a reason to disregard the humanitarian law¹⁴³. And the cultural right is also of fundamental importance among humanitarian rights.

It should be added to the above-stated that the legal developments with regard to various issues related to the occupied territories in the following years were expressed also in the 4 Geneva Conventions adopted later and applied during international military operations (Articles 27-34, 47-78¹⁴⁴) and in the Additional Protocols to the 1954 Hague Convention. Moreover, the issues related to the lawfulness of any occupation are regulated also by the United Nations Charter and the principle "jus ad bellum" (principle of permissibility of the use of force)¹⁴⁵.

In accordance with the United Nations Charter¹⁴⁶, when occupation or any situation equivalent thereto ("invasion", "liberation", "occupation") occurs, the aforementioned law on occupation (Article 42 of the 1907 Hague Convention) applies, and, as stated above, confirming — by the United Nations

¹⁴³ See Longobardo M., *The Occupation of Maritime Territory under International Humanitarian Law*, "International Law Studies", Vol. 95, 2019, pp. 325-327, <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2910&context=ils> (accessed: 12.12.2022).

¹⁴⁴ See Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949, IV, Article 27-37, 47-78, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf (accessed: 12.12.2022).

¹⁴⁵ "Jus ad bellum" refers to the conditions under which States may resort to war or the use of armed force in general. The prohibition against the use of force amongst States and the exceptions to it (self-defence and UN authorization for the use of force), set out in the United Nations Charter of 1945, are the core ingredients of the term. And "Jus in bello" regulates the conduct of parties engaged in an armed conflict. In this context, international humanitarian law is synonymous with "jus in bello": it seeks to minimize suffering in armed conflicts, notably by protecting and assisting all victims of armed conflict to the greatest extent possible (see United Nations Charter, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Articles 39-51, <https://www.un.org/en/about-us/un-charter/full-text> (accessed: 12.12.2022)).

¹⁴⁶ Article 51 of the United Nations Charter acknowledges self-defence as an exception to the prohibition of the use of force. Under this provision, a state is apparently allowed to use force in response to an armed attack by another state. Measures taken by UN Members in the exercise of this right of self-defence shall be reported to the UN Security Council (see *ibid.*, Article 51).

Security Council — the lawfulness of the occupation and the fact whether it is admissible or not, as well as clarifications with regard to the purpose of military operations, are not an essential condition for applicability thereof.

The fact that the various relations and processes in any occupied territory or during the occupation of the territory are regulated by international humanitarian law and constitute its important sphere should also be highlighted¹⁴⁷. The provisions of humanitarian law are applicable starting from the moment of commencement of hostilities or invasion by the hostile army¹⁴⁸.

As for the explanation of the term "occupied territories", in humanitarian international law, a territory is considered "occupied" when it is actually placed under the authority of the hostile army¹⁴⁹. With respect to this, it is important to emphasize that international humanitarian law applies to all the belligerent parties irrespective of the reasons for the conflict or the justness of the causes for which they are fighting. In this case, the rules of humanitarian law regarding the occupied territories become applicable when the territory comes under the control of foreign hostile armed forces, even if the occupation is not met with armed resistance and there is no fighting. If it were otherwise, implementing the law would be impossible, since every party would claim to be a victim of aggression¹⁵⁰.

Establishing a number of prohibitions, the basic rules of the law applicable in the case of occupation (they will be presented in more detail in the following sections) also state that:

- the occupying state does not acquire sovereignty over the territory;
- occupation is temporary;

¹⁴⁷ See Occupation and international humanitarian law: questions and answers, A series of questions and answers by the ICRC's legal team on what defines occupation, the laws that apply, how people are protected, and the ICRC's role, 04.08.2004,

<https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm> (accessed: 12.12.2022).

¹⁴⁸ See ICRC's Commentary to the Fourth Geneva Convention (1949), <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions> (accessed: 12.12.2022).

¹⁴⁹ See Occupied Territory, The Practical Guide to Humanitarian Law, <https://guide-humanitarian-law.org/content/article/3/occupied-territory/> (accessed: 12.12.2022).

¹⁵⁰ See What are jus ad bellum and jus in bello? ICRC, 22 January 2015, <https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0> (accessed: 12.12.2022).

- the occupying power must respect the laws applicable to the occupied territories;
- in case of occupation, the collective (or individual) forced and even voluntary displacement of the population from the occupied territory and within it is prohibited,
- respect for cultural values is mandatory in the occupied territory, and reprisals and confiscation of heritage and property are prohibited (except in cases of military necessity).

With regard to the commencement and the end of the occupation, we can confirm that the occupation is considered to have started from the moment of invasion of the hostile army and ends when the state having occupied the territory leaves or is removed from the occupied territory¹⁵¹, restoring the possibility of full and free exercise of local authority.

International Criminal Court confirmed the legal definition of occupation in 2005: "In accordance with customary international law, as reflected in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907, the territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised"¹⁵².

According to the International Criminal Court of Justice, in order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State, is an "occupying Power" or not, it must be found out at first whether there is sufficient evidence to demonstrate that the armed forces of the said State have been stationed in particular locations and have substituted their own authority for that of the government being occupied.

¹⁵¹ The continued presence of foreign army does not imply that the occupation continues: for that, it is necessary to establish local authority.

¹⁵² International Court of Justice, Reports of Judgments, Advisory Opinions and Orders: Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo V. Uganda), Judgment of 19 December 2005, para. 172, <https://www.icj-cij.org/public/files/case-related/116/116-20051219-JUD-01-00-EN.pdf> (accessed: 12.12.2022).

It is very important to highlight the fact that the International Court of Justice has confirmed that the laws in force in the occupied territories, including the provisions for the protection of cultural values, have acquired the status of international customary law (infra jurisprudence), that is, they apply as a universal and inevitable rule and are binding for all states, even if the occupied state has not ratified the 1907 Regulations. "The Court considers that the provisions of The Hague Regulations have become part of customary law,"¹⁵³ the court declared in 2005.

The International Criminal Court has also confirmed that in the occupied territories, the occupying power must respect fundamental human rights, including cultural rights.

Despite the existing numerous regulations, the occupation law, or what is the same, the international humanitarian law, continues to face complex challenges, as evidenced by recent events, since many states, including Azerbaijan, very often deny and do not fulfil their obligations, including the obligations with regard to the respect for cultural values and refraining from destruction thereof. Under occupation law, the sovereign title relating to the occupied territory does not pass to the occupant, who has, therefore, to preserve as far as possible the status quo ante. In other words, the occupying power must respect, as far as possible, the existing laws and institutions of the occupied territory¹⁵⁴.

¹⁵³ ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory, para. 89, <https://casebook.icrc.org/case-study/icjisrael-separation-wallsecurity-fence-occupied-palestinian-territory> (accessed: 12.12.2022).

¹⁵⁴ See Expert meeting: Occupation and Other Forms of Administration of Foreign Territory, p. 4.

1.4. Interim (Additional) Mechanisms for Protection of Cultural Values in Occupied Territories

Rome Statute. Operating since 24 October 1945 as an intergovernmental organization maintaining international peace and security, the United Nations Organization¹⁵⁵ considers the destruction of cultural values during wars as the most compelling threat to the unity of all peoples of the world united by common bonds and their cultures pieced together in a shared heritage, characterizing it as a grave crime against humanity. In accordance with the Purposes and Principles of the Charter of the United Nations, all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State. The United Nations also determines that, for the sake of present and future generations, it will not interfere in the internal affairs of establishing an independent state¹⁵⁶.

With the aim to determine the aforementioned principles, the United Nations has adopted a number of declarations and regulations for the protection of cultural values from the dangers of war. One of them is the Rome Statute of 17 July 1998 (entered into force on 1 July 2002) adopted by the United Nations Diplomatic Conference of Plenipotentiaries¹⁵⁷. Pursuant to Article 8 thereof, the destruction of cultural heritage is an international war crime: "It is prohibited to intentionally direct attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, provided they are not military objectives"¹⁵⁸. Additional attention should be paid to the fact that the jurisdiction of the Court in respect of crimes extends to acts of

¹⁵⁵ See United Nations, About us, <https://www.un.org/en/about-us> (accessed: 12.04.2022).

¹⁵⁶ See Rome Statute of the International Criminal Court, The Netherlands, ICC, 2011, p. 1, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf> (accessed: 12.04.2022).

¹⁵⁷ The Rome Statute is a 21st-century instrument, established in 1998, and investigates the cases of individuals charged with the most serious international crimes, such as genocide, grave crimes against humanity, and war crimes. (See United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June - 17 July 1998: Official Records, Vol. I, United Nations · New York, 2002, https://legal.un.org/icc/rome/proceedings/E/Rome%20Proceedings_v1_e.pdf (accessed: 12.04.2022)).

¹⁵⁸ Rome Statute of the International Criminal Court, Article 8(2)(b)(ix), p. 5, Article 8(2)(e)(iv), p. 6, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed: 12.04.2022).

destruction of cultural values in particular when committed by a state or a private person as part of a plan or policy or as part of a large-scale commission of such crimes. In respect of this, we should confirm that the policy of Azerbaijan with regard to destroying the Armenian cultural identity is qualified by numerous scientists — supported by a number of factual evidence — as a planned, state, clearly organized special policy, which has a hundred-year history and continues to this day.

The scope of the term "crime" is clarified by the Statute as well, and it is stated that a crime is not only the destruction of this or that element of cultural heritage but also the planning, preparation, initiation, or execution of an act of aggression¹⁵⁹ which, by its character, gravity, and scale constitutes a manifest violation of the Charter of the United Nations. The Statute considers attacks on cultural property as a war crime, presenting them as acts of unlawful, arbitrary large-scale destruction or appropriation of cultural property not justified by military necessity which¹⁶⁰, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression¹⁶¹. The Court considers such crimes as grave breaches of international and customary law. It is noteworthy that the Rome Statute, within the framework of qualifying the "war crime", includes also attacking or bombarding towns, villages, dwellings, or buildings which are not military objectives¹⁶², the transfer or deportation of all or parts of the indigenous population of the occupied territory¹⁶³, as well as intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, and other places¹⁶⁴, destroying or

¹⁵⁹ In accordance with the Rome Statute, an "act of aggression" means the use of armed force by a State against

the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

¹⁶⁰ Ibid., Article 8(1), p. 4.

¹⁶¹ Ibid., Article 8(2), p. 7.

¹⁶² Ibid., Article 8(2)(b)(v), p. 5.

¹⁶³ Ibid., Article 8(2)(b)(viii), p. 5.

¹⁶⁴ Ibid., Article 8(2)(b)(ix), p. 5.

seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war¹⁶⁵, etc.¹⁶⁶.

Protection of cultural heritage in peacetime. As already mentioned, the most efficient means of protecting cultural heritage from war dangers are the operations aimed at it in peacetime and the comprehensive programs aimed at the general preservation of heritage. In this context, we can also study the conventions and international regulations adopted by UNESCO and the Council of Europe, aimed at the preservation of cultural heritage, which offer additional protection mechanisms both during war and peacetime.

UNESCO as a guarantor of protection of cultural heritage. The great role of UNESCO in the international system of protection of cultural values is based on the mission for maintenance, enrichment, and dissemination, as well as the protection and preservation of world culture, works of art, monuments, history, and science, entrusted thereto by Clause I(2)(c) of the UN Constitution, for the implementation of which the institution offers a number of international conventions to the nations interested. The purpose of all UNESCO conventions, declarations, and statutes is the protection of cultural heritage as the wealth of all humanity, the intentional destruction whereof has an adverse impact also on human dignity and rights.

Principles of protection of cultural heritage in the occupied territories in the event of armed conflicts and after that are proposed in the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage adopted at the General Conference of the 33rd Session held in Paris in 2003¹⁶⁷. In this document, both tangible and intangible cultural heritage, including cultural heritage linked to a natural site is addressed, connecting the range of problems arising as a result of the destruction thereof with the violation of

¹⁶⁵ Ibid., Article 8(2)(b)(xiii), p. 5.

¹⁶⁶ The transfer, deportation of Armenians of Artsakh from their indigenous territory and deprivation of fundamental rights thereof by Azerbaijan is a war crime.

¹⁶⁷ The Convention was intended to reaffirm the concern of the international community about the increase in acts of intentional destruction of cultural heritage, and especially the well-known case of destruction of the Buddha statues of Bamiyan (See UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, Paris, 17 October 2003, https://international-review.icrc.org/sites/default/files/irrc_854_unesco_eng.pdf (accessed: 12.04.2022)).

human rights¹⁶⁸. Article 1 thereof recognizes the importance of the protection of cultural heritage, reaffirming its commitment to fight against its intentional destruction in any form so that such cultural heritage may be transmitted to the succeeding generations¹⁶⁹. For the purposes of the document, intentional destruction of heritage means an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner that constitutes a violation of international law or an unjustifiable offence to the principles of humanity¹⁷⁰. Article 5 of the "Declaration Concerning the Intentional Destruction of Cultural Heritage" confirms the arguments for the prohibition of intentional destruction of cultural heritage during hostilities or wars, be it of an international or non-international character, including the case of occupation, and emphasizes the obligation of States to take all appropriate measures to conduct their activities in such a manner as to protect cultural heritage and prevent its destruction, in conformity with customary international law and the principles and objectives of international agreements and UNESCO recommendations concerning the protection of such heritage during hostilities¹⁷¹. It is emphasized by the Convention that the scope of protection of cultural heritage is further expanded by the fact of bypassing its location since it must be respected regardless of its national origin and being situated in a specific area¹⁷².

Under the mentioned standpoint, importance is attached also to the "Declaration on the Rights of Indigenous Peoples" adopted by the United Nations on 13 September 2007, the main provisions whereof revolve around the non-discriminatory treatment of exercise of the rights of indigenous peoples¹⁷³. The scope of rights of indigenous peoples is expanded with many statements of

¹⁶⁸ Ibid., Article 9, p. 451.

¹⁶⁹ Ibid., Article 1, p. 448.

¹⁷⁰ Ibid., Article 2, p. 448.

¹⁷¹ Ibid., Article 5, pp. 449- 450.

¹⁷² Considering the protection of cultural heritage of Artsakh in this context, it becomes evident that the protection of the heritage created by the Armenians of Artsakh in compliance with their principles and beliefs is determined by its nature, and not by the criterion of territorial belonging.

¹⁷³ See United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, https://www.ohchr.org/sites/default/files/Documents/Publications/Declaration_indigenous_en.pdf (accessed: 12.04.2022).

the Declaration, and the importance of their main right to self-determination is affirmed, a right by virtue whereof they freely determine their political status and freely pursue their cultural, social, and economic development¹⁷⁴. Though no declaration has mandatory legal force, it should be highlighted that Azerbaijan abstained from voting on the adoption of the above-mentioned Declaration, actually expressing its denying attitude towards self-determination and respect for other rights of indigenous peoples¹⁷⁵. It should also be noted that this Declaration stipulates the principle of the unequivocal right of self-determination of all peoples, containing the rule of not denying it under any circumstances¹⁷⁶. This Declaration, which reflects the fundamental principles of the United Nations, adds that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to themselves, including cultural heritage and the exercise of cultural rights¹⁷⁷, which is ensured by the opportunity to participate in cultural life¹⁷⁸.

Coming back to the protection of the cultural heritage of the Armenians of Artsakh, it should be noted that the UNESCO Convention "Concerning the Protection of the World Cultural and Natural Heritage" of 1972 also provides for protection levers when the heritage is endangered during or after the war. In Article 11 of the Convention, the outbreak or the threat of an armed conflict is considered as one of the most serious and specific dangers to heritage. It considers the destruction of the heritage of any people¹⁷⁹ as a harmful

¹⁷⁴ Ibid., Article 3, p. 8.

¹⁷⁵ See <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (accessed: 16.04.2022).

¹⁷⁶ See United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, Preamble.

¹⁷⁷ Ibid., Article 4, p. 8.

¹⁷⁸ Ibid., Article 5, p. 9.

¹⁷⁹ In accordance with the UNESCO Convention of 1972, cultural heritage includes the monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

impoverishment of the heritage of all the nations of the world and emphasizes the need for the preservation of its unique and irreplaceable property, to whatever people it may belong. Under Article 4, each State Party recognizes the duty of transmission to future generations of the cultural and natural heritage¹⁸⁰ in an undamaged state.

This approach, in point of fact, expands the range of exceptional values included in the relevant lists under the Convention on the world heritage, including the whole heritage. Article 12 of the International Regulation serves as a basis for such a statement, wherein it is specifically stated that the fact of not being included in the lists of cultural or natural heritage does not, in any case, mean that the object is not an exceptional universal value and is not subject to necessary protection.

The UNESCO Convention "On the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property" of 1970 contains provisions on preventing the export of cultural values, in particular museum collections, from the occupied territories.

Large-scale looting and illicit trade of cultural collections in post-conflict situations can be partially stopped also by UNIDROIT Convention "On Stolen or Illegally Exported Cultural Objects" of 1995¹⁸¹.

A range of international, regional, and local NGOs are involved in one way or another in the protection of cultural property in armed conflict¹⁸². For instance, subject to the consent of the parties to the conflict, UNESCO or the Red Cross may undertake humanitarian activities aimed at the protection of the

¹⁸⁰ In Article 6 of the Convention on the world heritage, it is emphasized that the protection of world heritage is the duty of the entire international community (See Convention Concerning the Protection of the World Cultural and Natural Heritage, Article 6).

¹⁸¹ See Unidroit Convention on Stolen or Illegally Exported Cultural Objects (Rome, 24 June 1995), Microsoft Word - 1995 UNIDROIT CONVENTION - GB website.doc (accessed: 21.05.2021).

¹⁸² These include the International Committee of the Blue Shield (ICBS), the International Council on Monuments and Sites (ICOMOS), the International Federation of Library Associations and Institutions, the International Committee of the Red Cross, the World Customs Organization (WCO), the International Criminal Police Organization (INTERPOL), the International Criminal Court, the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Council of Museums (ICOM), and others, all of which enjoy advisory status before the Committee for the Protection of Cultural Property in the Event of Armed Conflict.

victims and captives of armed conflict, as well as the objects, structures, and sites of cultural significance in the occupied territories¹⁸³.

To be able to bring together the legislative and other norms for the protection of cultural values in war situations in a single document, in 2005, the “Protection of cultural property: military manual” was adopted at the initiative of UNESCO. Pursuant to that manual, destruction of cultural property in the occupied territory not justified by military necessity constitutes a war crime, the perpetrators whereof can be convicted by both international and national criminal courts and tribunals¹⁸⁴. The same manual also states that any use of cultural property or its immediate surroundings during belligerent occupation that is likely to lead to a deterioration in its state of preservation or that presents a risk of vandalism or pillage is prohibited, except in rare cases where this use is imperatively required by the exigencies of the military situation¹⁸⁵. All forms of theft, pillage, or other misappropriation and vandalism of cultural property by military forces are absolutely prohibited during belligerent occupation, as they are during hostilities. All intentional acts of this sort constitute war crimes.

“The Bonn Declaration on World Heritage” adopted in 2015 by the members of the World Heritage Committee also refers to the physical damages and illegal trafficking of cultural heritage in areas exposed to armed conflict¹⁸⁶. It denounces vandalism and looting of cultural property as revenue sources for belligerent parties and terrorist groups¹⁸⁷.

¹⁸³Article 1(vi) of the memorandum of understanding agreed between UNESCO and the ICRC in 2016 recognizes a particular role for the ICRC in the provision of assistance for the protection of cultural property from the dangers arising from military operations. (See O’Keefe R., Péron C., Musayev T., Ferrari G., op. cit., para. 234-235, p. 73).

¹⁸⁴Ibid.

¹⁸⁵Ibid., para. 185, pp. 49- 64.

¹⁸⁶See Bonn Declaration on World Heritage, On the occasion of its 39th session in Bonn/Germany, 2015, https://www.iucn.org/sites/dev/files/import/downloads/bonn_declaration_on_world_heritage.pdf (accessed: 15.12.2020).

¹⁸⁷See Analeigh Willett and Salima B. Mahamoudou, United Nations Educational, Scientific and Cultural Organization Background Guide 2019, New York City, NY, USA, 24-28 March (Conf. A) / 14-18 April (Conf. B), pp. 2-50, <https://www.nmun.org/assets/documents/conference-archives/new-york/2019/ny19-bgg-unesco.pdf> (accessed: 15.12.2020).

UN Conventions. The “International Convention on the Elimination of All Forms of Racial Discrimination” adopted by the UN on 21 December 1965, to which Azerbaijan has joined since 1996, offers additional protection of cultural values and human rights during wartime¹⁸⁸. The fundamental idea that it tries to be guided by, is the exclusion of any distinction based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life¹⁸⁹. The Convention affirms that discrimination between human beings on the grounds of race, colour, or ethnic origin is an obstacle to peaceful relations among nations and is capable of disturbing security among peoples¹⁹⁰. In accordance with the ideology of the Convention, the State Party must condemn racial discrimination and undertake to pursue a policy of eliminating it, undertaking to engage in no act or practice of racial discrimination against persons, groups of persons, or institutions¹⁹¹. The logic of the Convention states that special attention should be paid also to the denunciation of propaganda promoting racial discrimination: all dissemination of ideas based on racial hatred, incitement to racial discrimination, as well as all acts of violence, including financing of such acts are qualified as an offence punishable by law¹⁹².

Article 5 of the Convention addresses the importance of enjoying cultural rights and the right to inherit and the obligations of States Parties in this regard, denouncing any act of violation of the right to equal participation in cultural activities¹⁹³.

¹⁸⁸See UN Treaty Body Database,

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=11&Lang=EN (accessed: 15.12.2022).

¹⁸⁹See International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, PART I, Article 1, p. 2, <https://www.ohchr.org/sites/default/files/cedr.pdf> (accessed: 12.04.2022).

¹⁹⁰Ibid., Introduction, p. 1.

¹⁹¹Ibid., Article 2, p. 2.

¹⁹²Ibid., Article 3, p. 3.

¹⁹³Ibid., Article 5, p. 3.

Council of Europe Conventions. In addition to UNESCO, a number of conventions adopted by the Council of Europe also provide additional protection to cultural values during and after the war. First of all, it should be noted that Azerbaijan has been a member of the Council of Europe since 2001¹⁹⁴, and together with the 46 member states of the Council, it accepts its main values and ideology, undertaking to respect the heritage subject to special protection defined by the Council, which is a part of human rights summarized in the European Convention on Human Rights (1950)¹⁹⁵. The Convention "On Offences relating to Cultural Property" adopted by the Council of Europe in Delphi, on 23 June 1985 is particularly remarkable¹⁹⁶, which, like the previous ones, recognizes the idea that cultural property is unique and important evidence of the identity of peoples, considering the increase in offences relating to cultural property (which may arise during and after hostilities) as a reason for the destruction of world cultural heritage. Remarkably, Azerbaijan is not a member to the Convention¹⁹⁷. In accordance with the terminology of the mentioned international regulation, cultural heritage is the property defined as being of importance for archaeology, history, ethnology, literature, art, or science¹⁹⁸. The purpose of the instrument

¹⁹⁴ See Council of Europe, Azerbaijan // 46 States, one Europe,

<https://www.coe.int/en/web/portal/azerbaijan> (accessed: 07.07.2022).

¹⁹⁵ See Council of Europe, A Convention to protect your rights and liberties,

<https://www.coe.int/en/web/human-rights-convention> (accessed: 07.07.2022).

¹⁹⁶ See Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221),

<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=221> (accessed: 12.04.2022).

¹⁹⁷ See Chart of signatures and ratifications of Treaty 221, Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221), <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=221> (accessed: 07.07.2022).

¹⁹⁸ In accordance with the Convention "On Offences relating to Cultural Property", cultural property shall include: a. in respect of movable property: (a) rare collections and specimens of fauna and flora; (b) property relating to history, including the history of science and technology and military and social history; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) property of artistic interest; (h) rare manuscripts and incunabula, old books, documents; (i) archives, including sound, photographic and cinematographic archives; (j) articles of furniture more than one hundred years old and old musical instruments; b. in respect of immovable property, any monument, group of buildings, site or structure of any other kind, whether situated on land or underwater, which is, on religious or secular

is to prevent and combat the destruction of, damage to, and trafficking of cultural property by providing for the criminalization of such acts (including theft, unlawful excavation and trade, illegal importation and exportation of cultural property, illegal acquisition, falsification of documents, intentional destruction and damaging of cultural values)¹⁹⁹. Expanding the perception of the destruction of property, Article 10 qualifies the unlawful removal, in whole or in part, of any elements from movable or immovable cultural property as a criminal offence²⁰⁰.

Provisions providing for the comprehensive concept of cultural heritage and the protection of heritage during and after military operations are contained also in the "European Landscape Convention"²⁰¹ adopted by the Council of Europe in 2000, and Azerbaijan became a party thereto in 2004²⁰². The inclusion of this Convention in the ambit of the issue under consideration, i.e. cultural heritage, is related to the enhanced concept of heritage, according where to, any damage caused to heritage disrupts also the natural landscape, its special aspects, which, in accordance with the Convention, contribute to the formation of local culture, constitute consolidation of the identity thereof and are defined by the Convention as a basic component of the habitat of the population, an expression of cultural heritage and are protected at international level. Thus, the attribution of such importance to the landscape is not only declared abstractly but also recognized by law²⁰³. The document attaches importance to the preservation of all types of landscapes, drawing our attention to the fact that there are no

grounds (See Council of Europe Convention on Offences relating to Cultural Property, Nicosia, 19.V.2017, Council of Europe Treaty Series - No. 221, pp. 3-4, <https://rm.coe.int/1680710435> (accessed: 07.07.2022)).

¹⁹⁹ Ibid., Article 1, p. 2.

²⁰⁰ Ibid., Article 10, p. 5.

²⁰¹ See European Landscape Convention, Florence, 20.X.2000, European Treaty Series - No. 176, <https://rm.coe.int/1680080621> (accessed: 12.04.2022).

²⁰² See Council of Europe, Treaty list for a specific State, State or International Organisation: Azerbaijan, www.coe.int/en/web/conventions/by-member-states-of-the-council-of-europe?module=treaties-full-list-signature&CodePays=AZE&CodeSignatureEnum=&DateStatus=&CodeMatiere= (accessed: 12.04.2022).

²⁰³ See European Landscape Convention, Article 1.

areas that lack identity and are subject to destruction, otherwise stated, there are no areas where the destruction of this or that cultural value is isolated and will not affect the landscape and its essential components. It is very important to highlight the fact that in the Convention the landscape is characterized as an area perceived by people, whose character is the result of the action and interaction of natural and human factors²⁰⁴. And the preservation of heritage is also the actions aimed at the conservation and maintenance of the significant or characteristic features of a landscape, justified by its heritage value derived from its natural configuration and/or from human activity²⁰⁵. Emphasizing the preservation of the landscape later on, the Council of Europe adopted the first additional protocol to the Convention in Strasbourg in 2016, and Azerbaijan is a member thereto since 2021²⁰⁶.

The Convention "On the Value of Cultural Heritage for Society"²⁰⁷ adopted by the Council of Europe in Faro in 2005, offers protection, during peacetime and wartime, to cultural heritage and those to whom it belongs. The Convention is based on the respect for human rights, democracy, and the rule of law, which puts people and human values at the core of the enhanced concept of cultural heritage, emphasizes the huge potential of cultural heritage wisely used as a resource for sustainable development and quality of life in a constantly evolving society. The Convention recognizes that every person has a right to engage with the cultural heritage of their choice while respecting the rights and freedoms of others, as an aspect of the right to freely participate in cultural life enshrined in the "United Nations Universal Declaration of Human Rights" (1948) and guaranteed by the "International Covenant on Economic, Social and Cultural Rights". The role of heritage in peace-building and conflict settlement is emphasized by the Convention²⁰⁸.

Another instrument adopted by the Council of Europe and providing protection for cultural heritage is the Convention for the Protection of the

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ See Council of Europe, Treaty list for a specific State, State or International Organisation: Azerbaijan.

²⁰⁷ See Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Faro, 27.X.2005, <https://rm.coe.int/1680083746> (accessed: 12.04.2022).

²⁰⁸ Ibid., Article 9, p. 4.

Architectural Heritage of Europe, which considers the promotion of the preservation of heritage a priority²⁰⁹. In Article 1 thereof, among other objectives, the preservation of architectural heritage is specified, considering it as a source of the collective memory of nations and a subject of historical and scientific studies²¹⁰.

Additional provisions for the protection of cultural heritage in peacetime are contained in the "Cultural Convention" adopted by the Council of Europe, the purpose whereof is to develop mutual understanding between peoples through cultural heritage, the protection of heritage, and to promote national contribution to the common cultural heritage. Pursuant to Article 5 of the Convention, each Contracting Party shall regard the objects of cultural value placed under its control as integral parts of the common cultural heritage, taking appropriate measures to safeguard them.

The Convention "On Architectural Heritage" adopted by the Council of Europe offers protection for tangible heritage in all situations, defining architectural heritage in the same way as UNESCO defines cultural heritage²¹¹. Since 2010, Azerbaijan is a member of the Convention, too, undertaking to protect and preserve the world's architectural heritage²¹².

For efficient preservation of the heritage, it is suggested under the Convention to maintain inventories of cultural values²¹³, which is an important action for the protection of cultural values during wartime and the most important action - during peacetime.

Under Article 4 of the document, each Party undertakes to prevent the disfigurement, dilapidation, or demolition of architectural heritage, and under Article 5 - to prohibit the removal, in whole or in part, of any protected

²⁰⁹ See "Convention for the Protection of the Architectural Heritage of Europe", Granada, 3.X.1985, <https://rm.coe.int/168007a087> (accessed: 12.04.2022).

²¹⁰ The architectural heritage comprises structures, architectural complexes, built-up areas, movable values, monuments, as well as their surroundings, be they on land or under water (see op. cit., Article 1).

²¹¹ The architectural heritage comprises: 1. the monuments; 2. the architectural complexes; 3. the sites (see op. cit.).

²¹² See Chart of signatures and ratifications of Treaty 121, Convention for the Protection of the Architectural Heritage of Europe (ETS No. 121), Full list - Treaty Office (coe.int) (accessed: 07.07.2022).

²¹³ See Convention for the Protection of the Architectural Heritage of Europe, Article 2, p. 2.

monument²¹⁴. The provision on minimizing the dangers of destruction of architectural heritage is enshrined in Article 8²¹⁵. Under Article 9, the competent authorities are called to focus on any case of infringement of the obligation to protect the architectural heritage²¹⁶. Under Article 10, each Party undertakes to adopt integrated conservation policies which include the protection of the architectural heritage as an essential town and country planning objective and ensure that this requirement is taken into account at all stages both in the drawing up of development plans and in the procedures for authorizing work²¹⁷.

UN Security Council Resolutions. For the protection of cultural heritage during and after the war, the UN Security Council also developed additional mechanisms by adopting a number of resolutions. With regard to the observance of international humanitarian law, it is prohibited under the UN Secretary-General's Bulletin of 6 August 1999 "to attack cultural property, and theft, pillage, misappropriation and any act of vandalism is strictly prohibited as well"²¹⁸. In 2014, the UN developed "Guidelines for Crime Prevention and Criminal Justice Responses" with respect to the sale of cultural values. Such guidelines encourage member states to criminalize the trade or looting of cultural values and to better prepare customs authorities, prosecutors, as well as police forces to combat the trafficking of cultural values²¹⁹.

Furthermore, the UN also adopted a number of resolutions with regard to the protection of cultural values in the occupied territories, which can be grouped into 3 packages. The first package (2199, 2322, 2347, 661) refers to the

²¹⁴ Ibid., Article 4, 5, pp. 2-3.

²¹⁵ Ibid., Article 8, p. 3.

²¹⁶ Ibid., Article 9, p. 3.

²¹⁷ Ibid., Article 10, p. 4.

²¹⁸ Secretary-General's Bulletin: Observance by United Nations forces of international humanitarian law, UN Secretary-General (UNSG), 6 August 1999, <https://www.refworld.org/docid/451bb5724.html> (accessed: 15.12.2020).

²¹⁹ See The legal and illegal trade in cultural property to and throughout Europe: facts, findings and legal analysis, The Art-Law Centre, University of Geneva, 2018, p. 14, https://www.art-law.org/files/1915/9342/2620/UNESCO_Report_-_SUBMITTED_27.02.2018.pdf (accessed: 15.12.2020), Strategy for Reinforcing UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict, https://en.unesco.org/system/files/unesco_clt_strategy_en.pdf (accessed: 15.12.2020).

prevention of trafficking of cultural values in the areas affected by armed conflicts²²⁰, the second one (2056, 2100) refers to the protection of cultural heritage after the war²²¹, and the third one - to UN peacekeeping forces and the protection of the very cultural heritage²²².

²²⁰ Resolution No 2199 of 12 February 2015 condemns the destruction of cultural heritage in Iraq and Syria and anywhere, whether such destruction is incidental or deliberate, including targeted destruction of religious sites and objects. Notes with concern that individuals, groups and entities associated with Al-Qaida and ISIL, are generating income from engaging in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives. Under point 17, it calls upon the states to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance. (See United Nations Security Council Resolution 2199, 2015, Cultural heritage 15, <https://unesdoc.unesco.org/ark:/48223/pf0000232934> (accessed: 12.04.2022)).

Resolution No 1483 of 22 May 2003 refers to the prohibition on trade of cultural property illegally removed from there since Iraq invaded Kuwait and the facilitation of their safe return (see Pasikowska-Schnass M., op. cit., pp. 1-10).

On 12 December 2016, Resolution No 2322 was adopted, which urges States to develop, in close cooperation with UNESCO and INTERPOL, broad law enforcement and judicial cooperation in preventing and combating all forms of trafficking in cultural property, in accordance with article 2 of the UN Convention against Transnational Organized Crime (See Security Council resolution 2322 (2016)/adopted by the Security Council at its 7831st meeting on 12 December 2016, <https://digitallibrary.un.org/record/851384> (accessed: 12.04.2022)). And Resolution No 2347 condemns the illegal destruction of cultural heritage by "terrorist groups" and calls upon Member States to adopt a number of operational measures (including domestic legislative measures) to prevent trafficking of cultural property (See Culture Under Fire: Armed Non-State Actors And Cultural Heritage In Wartime, Geneva Call, October 2018, pp. 1-62, https://genevacall.org/wp-content/uploads/2017/10/Cultural_Heritage_Study_Final.pdf (accessed: 21.03.2022)). Resolution No 661 of 6 August 1990 refers to the prohibition on trafficking or removal of Iraqi cultural heritage. It was targeted at prevention, by member States, of the import into their territories and imposition of a ban on trafficking of all cultural values illegally exported from Iraq, as well as their safe return to cultural institutions of Iraq. (See O'Keefe R., Péron C., Musayev T., Ferrari G., op. cit., pp. 1-91).

²²¹ On 5 July 2012, after the Mali War, the UN Security Council adopted Resolution No 2056 which urges "all parties to immediately take appropriate steps to ensure the protection of Mali's World Heritage sites". (Security Council resolution 2056 (2012) [on the situation in Mali], UN Security Council, 5 July 2012, <https://www.refworld.org/docid/505089412.html> (accessed: 10.08.2021)). And under Resolution No 2100 of 25 April 2013, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) was established to protect the cultural and historical sites in Mali (See Security Council resolution 2100 (2013) [on establishment of the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)], UN Security Council, 25 April 2013, <https://www.refworld.org/docid/519dffbe4.html> (accessed: 10.08.2021)).

²²² In 2014, the Security Council included the protection of cultural heritage in the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali. In March 2017, the Security Council adopted its first resolution which was targeted to the cultural heritage. It affirms the protection of cultural heritage as the main means for maintenance of international peace and

Special attention should be attached to Resolution No 2347 adopted on 24 March 2017 by the UN²²³, which emphasizes the perspective of establishing peace for humanity through the preservation of cultural heritage and condemns the unlawful destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed conflicts, notably by terrorist groups, and considers that the attempt to deny historical roots and cultural diversity in this context can fuel and exacerbate conflict and hamper post-conflict national reconciliation. The destruction of cultural heritage undermines not only the security but also the stability, governance, social, economic, and cultural development of affected States. With regard to the preservation of cultural heritage, the Resolution refers also to the serious threat posed to cultural heritage by landmines and unexploded ordnance. It affirms that directing unlawful attacks against sites and buildings dedicated to religious, educational, art, science, or charitable purposes, or historic monuments may constitute a war crime and that perpetrators of such attacks must be brought to justice²²⁴.

The Council of Europe Resolutions. It is important to consider also Resolution No 2057 “On Cultural Heritage in Crisis and post-crisis situations” adopted by the Standing Committee of the Parliamentary Assembly of the Council of Europe (PACE) on 22 May 2015²²⁵. In the Resolution, the Parliamentary Assembly notes with great concern that the deliberate eradication of culture, identity, and existence of the “other” has become a central component of modern conflicts. And as in a number of important international instruments, in this Resolution as well, the protection of cultural heritage during and immediately after a conflict is considered a human rights issue and should involve international responsibility²²⁶. Referring to the

security. The Security Council also enshrined the protection of cultural heritage not only as a means of combating terrorism, but also as a means to protect “the invaluable heritage for future generations”. (See Security Council resolution 2347 (2017), Adopted by the Security Council at its 7907th meeting, on 24 March 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/079/04/PDF/N1707904.pdf?OpenElement> (accessed: 10.08.2021)).

²²³ Ibid.

²²⁴ Ibid.

²²⁵ See Parliamentary Assembly resolution 2057 (2015). Cultural heritage in crisis and post-crisis situations, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21784&lang=en> (accessed: 16.04.2022).

²²⁶ Ibid., Clause 1.

restoration and reconstruction of tangible cultural heritage in the occupied territories, the Assembly underlines the importance of preserving the intrinsic value of the heritage and all the details in such cases, which implies also the preservation of the identity of the territories. The Assembly recommends depoliticizing the process of reconstruction of cultural heritage in order to avoid imposing heritage reconstruction policies based on ethnicity and religion²²⁷. The Council of Europe urges the States to preserve the authenticity of heritage in urban development works and respect all layers of history in the restoration and reconstruction process to maintain the atmosphere and character of original heritage sites²²⁸. Referring also to the main conventions ensuring the protection of cultural heritage during the war, i.e. The Hague and the Geneva Conventions, the Resolutions urge the international community to develop more robust pre-emptive protective mechanisms including also provisions on the issue that destruction of heritage is an assault on the community that it serves as well,²²⁹ qualifying the assaults on heritage as serious crimes against humanity²³⁰.

²²⁷ Ibid., Clause 4.2.

²²⁸ Ibid., Clause 4.4.6.

²²⁹ Ibid., Clause 7.1.

²³⁰ Ibid.

1.5. Protection of Tangible Cultural Heritage in Occupied Territories Within the Framework of International Humanitarian Law

In the occupied territories, cultural heritage is protected also by international humanitarian law. The latter is a system of legal principles and norms applied in both international and non-international conflicts, which defines the rights and obligations of international legal entities in terms of the observance of humanitarian norms during and after an armed conflict and provides for mechanisms of responsibility for cases of violations²³¹. International humanitarian law is often called also right to wage war ("jus in bello"). This is the area of international law that seeks to limit the impact of armed conflict by protecting those who do not take part in hostilities but suffer from the point of view of violations of the rights thereof. It covers two branches of law, those provided for under The Hague and Geneva Conventions, based on the already discussed conventions and relevant protocols, as well as the customary norms. International humanitarian law is aimed at placing the use of violence between states under certain mutually agreed norms²³², and the right to culture as a fundamental human right is inherent therewith as well. The most significant point here is that, regardless of whether the movable or immovable heritage or the civilian population is protected under this right, it does not entitle states to act to the detriment of an individual or a community. In international law, the personality of a human and the rights thereof (including the right to culture) are protected in this way, otherwise stated, an era of supremacy of humanitarian principles is launched²³³. Within the framework of international humanitarian law, cultural heritage is deemed to be an exclusive expression of human creative thinking, the destruction or damage whereof directly violates the cultural rights of human and community members both during and after wars²³⁴. It is important to underline as well, that international humanitarian law does not depend on whether the state is recognized

²³¹ See Protection of Human Rights during Armed Conflicts, <http://geopolitics.am/archives/12231> (accessed: 15.12.2020).

²³² Ibid.

²³³ See Kocharyan V., "International Law". Training Manual, Yerevan, Publication of Yerevan State University, 2002, pp. 262-263.

²³⁴ Ibid.

or not, non-discrimination is a core principle of it and it refers to the opportunities of exercising human cultural rights. As we know, both Armenia and Azerbaijan are, but Artsakh is not a party to conventions and treaties in force, providing for protection of cultural heritage in armed conflicts, though in this case, the customary norms of protection of cultural heritage and international humanitarian law apply, which can legally protect the cultural heritage of Artsakh.

Rule 40 of International Humanitarian Law defines that all seizure of or destruction or wilful damage done to cultural heritage is prohibited which is applicable in both international and non-international armed conflicts²³⁵. And Rule 41 defines that, "The occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory"²³⁶. Within the framework of Rule 52 of International Humanitarian Law, the prohibition of pillage of cultural property is a specific application of the general prohibition of pillage, the violation whereof is condemned by national states, the UN, and other international organizations. It should be noted that the right to access to and enjoyment of tangible and intangible cultural heritage, and the right to participate in cultural life is part of international human rights legislation²³⁷, and there is an inseparable connection between protection instruments of human rights and cultural heritage approved by UNESCO²³⁸ and the Human Rights Council of the United Nations²³⁹. Respect for the right to culture is an obligation²⁴⁰, applicable as a "lex specialis"²⁴¹ that applies as customary law²⁴².

²³⁵ See Henckaerts J.-M. and Doswald-Beck L., Customary International Humanitarian Law, Volume I: Rules, Cambridge: Cambridge University Press, 2005, Rule 40, pp. 132-135, <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf> (accessed: 21.05.2021).

²³⁶ Ibid., Rule 41, p. 135.

²³⁷ See Shaheed F., Report of the Independent Expert in the Field of Cultural Rights, UN General Assembly, 21 March 2011, A/HRC/17/38, para. 58-76, <https://digitallibrary.un.org/record/706502#record-files-collapse-header> (accessed: 21.05.2021).

²³⁸ See Blake J., Development of 2003 UNESCO's Convention: Creating a New Heritage Protection Paradigm? in: Stefano M. L., Davis P., The Routledge Companion to Intangible Cultural Heritage, London: Routledge, 2017, pp. 11-21.

²³⁹ See United Nations Human Rights Council Resolution No 33, 2016, 27 September, A/HRC/33/L.21, https://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_33_L21.pdf (accessed: 21.05.2021).

²⁴⁰ See Stone P. G., The Challenge of Protecting Heritage in Times of Armed Conflict, "Museum International", Vol. 67, 2015, pp. 40-54.

1.6. The International System for Protection of Cultural Values During Hostilities

As we stated above, both Armenia and Azerbaijan are, but Artsakh is not a party to conventions and treaties in force, providing for protection of cultural heritage in armed conflicts²⁴³. But since in such cases, the customary norms of protection of cultural heritage apply, hence, cultural values in Artsakh must be legally protected in all situations. It is undeniable that even if a state is not a party to any treaty regulating the protection of cultural values during an armed conflict, it remains bound by the “unwritten” rules of international law, i.e. with liabilities defined by customary international law on armed conflict. These rules, in fact, have been developed over time as basic principles and have been enshrined in customary international humanitarian law, the applicability whereof cannot be disputed by any state²⁴⁴. Customary international law in most cases reflects the rules defined in the 1954 Hague Convention and the two protocols thereto, as well as those defined in the 1949 Geneva Convention and the two protocols thereto. This implies that the paramount provisions of the specified conventions, as a general truth based on legal supremacy, are included

²⁴¹ See United Nations Human Rights Office of the High Commissioner, *International Legal Protection of Human Rights in Armed Conflict*, New York and Geneva, 2011, p. 11.

²⁴² See Henckaerts J.-M., Doswald-Beck L., op. cit., Rules 38-39, pp. 127-132.

²⁴³ Pursuant to Article 2 of the 4th Geneva Convention “For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field” (12 August 1949), “This Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations” (1949 Geneva Convention “For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field”, <http://www.irtek.am/views/act.aspx?aid=50336> (accessed: 12.03.2022)). In this context, the customary norms apply based on the Geneva and Hague Conventions, too, therefore, the conventional provisions apply to customary principles as well. Otherwise stated, even if Artsakh is not a party to the Convention, Azerbaijan is obliged to observe its norms.

²⁴⁴ See Roethlisberger E., *The importance of respect for international humanitarian law and the activities of the ICRC*, “Protection of Cultural Property in the Event of Armed Conflict: Report on the Meeting of Experts (Geneva, 5-6 October 2000)”, ICRC, Geneva, February 2002, pp. 15-19. <https://www.icrc.org/en/document/protection-cultural-property-event-armed-conflict-report> (accessed: 12.03.2022).

in customary laws and are generally presented to all international legal entities. The comprehensive consideration of customary international laws reveals that the international protection of cultural heritage from the dangers of war implies not only the protection of cultural values in the occupied territories after armed conflicts or in peacetime but also their non-targeting during the actual military operations, establishing, meanwhile, “permissible” special rules for “targeting”. It is strange but though cultural monuments are deemed to be inviolable, and their destruction and even targeting by the enemy is inadmissible, international legislation puts forward certain counter-arguments. Acknowledging the accepted rules of running a war and the bellicose aspirations of belligerent parties, the international community has developed some “permissible” norms to “legalize” attacks on heritage during the war. By invoking these laws, the enemy “justifies” the attack on heritage through hostilities, bombings, or other manifestations of barbarism and vandalism.

There are 4 customary principles of international humanitarian law applicable in wartime: they are the principles of military necessity, distinction, precautions, and proportionality. In fact, they apply to all parties to an armed conflict, both the states (parties to international conflicts) and parties to non-international conflicts (ethnic groups). It must be stressed that the instruments of international humanitarian law impose the responsibility to protect cultural property on both parties to the conflict, i.e. both the party which controls the cultural property and the opposing party²⁴⁵. We should add that the violation of any of the specified principles is yet a grave international crime. Hence, thinking over the presentation of war crimes, we believe that it is necessary to examine the customary rules of international humanitarian law regarding cultural values and then to present several points of the 1954 Hague Convention and the relevant protocols thereto, as well as those of the Geneva Convention and its protocols, which constitute the primary basis wherefrom customary norms derive. It is worth reminding in this regard that in its Article 1, the 1954 Hague Convention, which is also the basis for the other

²⁴⁵ See *Practical Advice for the Protection of Cultural Property in the Event of Armed Conflict - Guidelines*, Advisory Service On International Humanitarian Law, ICRC, 2002, <https://www.icrc.org/en/document/practical-advice-protection-cultural-property-event-armed-conflict-guidelines> (accessed: 03.02.2022).

international treaties, defines cultural property as “movable or immovable property of great importance for every people, irrespective of its origin or ownership”²⁴⁶.

The principle of military necessity for targeting cultural heritage during war. Unfortunately, in the international system, the protection of cultural values is not absolute and in some points it is problematic. Rule 38 of International Humanitarian Law claims that, “Each party to the conflict must respect the cultural property and special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives”²⁴⁷. The Rule also states that, “Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity”²⁴⁸. By the same logic, Rule 39 of the same Law states that the use of the cultural property of every people for purposes that are likely to expose it to destruction or damage is prohibited unless imperatively required by military necessity²⁴⁹. Finally, Rule 40 completes the aforementioned, stating that each party to the conflict must protect cultural property: “Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited”²⁵⁰.

As we have seen, the term “military necessity” exists in all the clauses related to customary laws, which, in fact, undermines the general legal system of protection of cultural heritage during war. In addition to the above-stated, we should also note that the principle of military necessity has entered the

²⁴⁶ Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention. The Hague, 14 May 1954, Chapter I. General provisions regarding protection, Article 1 – Definition of cultural property, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/1954_Convention_EN_2020.pdf (accessed: 21.06.2021).

²⁴⁷ Practice Relating to Rule 38. Attacks against Cultural Property, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_be_rule38 (accessed: 03.02.2022).

²⁴⁸ Henckaerts J.-M., Doswald-Beck L., op. cit., p. 127.

²⁴⁹ See Practice Relating to Rule 39. Use of Cultural Property for Military Purposes, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule39 (accessed: 03.02.2022).

²⁵⁰ Rule 40. Respect for Cultural Property, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule40 (accessed: 03.02.2022).

ambit of international customary laws, based on conventional provisions of The Hague Convention of 1954 and the Geneva Convention of 1949²⁵¹. One of the most important of them is stipulated in Article 4 of The Hague Convention, which prohibits any act of vandalism, any form of theft, pillage, or misappropriation and places an absolute ban on any act directed by way of reprisals against cultural property. But here as well, the exception which underlies all the problems is made: “The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any act of hostility, except for cases where military necessity imperatively requires such a waiver”²⁵². Thus, pursuant to part 2 of Article 4 of the Convention, the obligation for protection of cultural heritage may be waived in cases where “military necessity imperatively requires such a waiver”. The analysis of the factual context makes it evident that cultural heritage, so far as it is not related to a military objective, should be protected during armed conflicts. The most serious failure in this document is the lack of interpretation of the term “military necessity”, which, as we have seen, has been reflected in customary norms as well.

We shall try to give a reasonable explanation of the term with this perception. Military necessity is established by a customary norm, the purpose whereof is to limit unrestricted warfare. It is the key concept of international humanitarian law since it rejects the norms that restrict the freedom of states during armed conflicts and raises the question of the legality of achieving the military goal. Therefore, very often this term is interpreted as an excuse for unjustifiable behaviour²⁵³. It is a principle that was enshrined in the St. Petersburg Declaration of 1868 and the Liber Code²⁵⁴, pursuant to which, only

²⁵¹ See Henckaerts J.-M., op. cit.,

<https://www.icrc.org/en/doc/resources/documents/article/other/57jq37.htm>.

²⁵² Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954, Article 4.

²⁵³ See Craig J. S. Forrest, The Doctrine of Military Necessity and the Protection of Cultural Property During Armed Conflicts, “California Western International Law Journal”, Vol. 37, Spring 2007, pp. 177-219.

²⁵⁴ See Carnahan B. M., Lincoln. Lieber and the laws of war: The origins and limits of the principle of military necessity, “American Journal of International Law”, Vol. 92, 1998, p. 213, Robertson H. B.,

such military force used against cultural heritage is lawful that is necessary for the belligerent parties to achieve their objectives.

It should be mentioned that in international legislation, the restriction for imperative military necessity was first introduced in the 1907 Hague Regulations "On Respecting the Laws and Customs of War on Land", pursuant to which, it is especially forbidden to destroy or seize the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war²⁵⁵. Under point 7 of Article 23 of the Convention, military necessity is defined as anything necessary for the war or defence during the battle or in preparation for it²⁵⁶. Though it must be admitted that here the wording of the term is very vague and creates great difficulty even for lawyers in military cases to teach their troops how to interpret and work according to this concept²⁵⁷. Here, attention should be attached to the issue of the function of cultural value, which refers to its use at a given moment. In this regard, Article 27 of the above-stated Regulation establishes that "...it is forbidden to target cultural values provided they are not being used at the time for military purposes"²⁵⁸. The logical approval of what has been said is that it is the "use" of cultural values that makes it possible for them to lose their additional protection and turn into a target for military purposes. In fact, emerging as a limiting force, military necessity then became a permissible exception²⁵⁹. Therefore, the efforts of the international community aimed at specification of the mentioned provision during the 20th century were very imperative under the new realities. For the interpretation of the characteristics of the principle to be more

Jr., The principle of military objective in the law of armed conflict, "International Law Studies", Vol. 72, Newport, Rhode Island, 1998, p. 197.

²⁵⁵ See Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Regulations: Article 27.

²⁵⁶ Ibid., Article 23 (g), IHL Treaties - Hague Convention (IV) on War on Land and its Annexed Regulations, 1907 - Regulations: Article 23 (icrc.org) (accessed: 06.03.2022).

²⁵⁷ See Henckaerts J.-M., op. cit., <https://www.icrc.org/en/doc/resources/documents/article/other/57jq37.htm>.

²⁵⁸ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Regulations: Article 27.

²⁵⁹ See Johannot-Gradis Ch., op. cit., pp. 1253-1275.

comprehensible, it is necessary to cite the words of a British judge regarding one of the decisions with respect to cultural heritage adopted after the Second World War: "...the requirement of military necessity includes military "necessity", not military "advantage"²⁶⁰. The application of this legal concept was mainly left to the discretion of the belligerents under both the 1907 Hague Regulations and the Convention of 1954. However, we should not forget that the Convention of 1954 was drawn up after World War II, at a time when attacks on cities were still considered acceptable, and in fact, the Convention sought to mitigate the attacks on cultural values in case of such destruction. The First Protocol to the Geneva Convention of 12 August 1949, adopted in 1977, brought the protection of cultural values closer to the protection of civilian objects, and it stated that, as such, they should not be subjected to attacks, except in cases of military necessity as well²⁶¹. The military objective defined in part 2 of Article 52 of the Protocol contains two essential criteria that must be fully complied with before heritage objects are destroyed, damaged, or captured²⁶². The first one is that the attacks shall be limited strictly to military objectives, and in so far as objects are concerned, military objectives shall be limited to those objects which by their nature, location, purpose, or use "make an effective contribution to military action"²⁶³. And the second one is that the military advantage should be clear and definite²⁶⁴.

It should be stressed that military necessity can never be invoked to justify the attack on cultural values, since, according to experts, it is always possible to find ways to bypass the heritage.

It is clear from the factual context that the use of cultural heritage for military purposes can already be a problematic decision by the armed forces or the state, but the study of the concept revealed that even then the attack still

²⁶⁰ United Kingdom, Military Court at Hamburg, A. D. Case, 19 December 1949, p. 522, cited in Éric David, *Principes du droit des conflits armés*, Bruylant, Brussels, 2002, p. 270.

²⁶¹ See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).

²⁶² See Henckaerts J.-M., op. cit., <https://www.icrc.org/en/doc/resources/documents/article/other/57jq37.htm>.

²⁶³ Ibid., p. 34.

²⁶⁴ See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).

cannot be a legal justification: "It is prohibited to destroy a cultural object, the use whereof does not contribute to military operations, nor a cultural object that has temporarily served as a shelter for fighters, but is no longer used as such"²⁶⁵. Hence, it is only the use of a cultural structure at a given moment²⁶⁶ that can "turn" it into a military objective. Similarly, since the vast majority of cultural values, due to their nature, cannot contribute effectively to military operations, only their "further dedicated use" can make them targets of the enemy. Otherwise stated, the use of heritage in support of military operations is the main argument that a party to an armed conflict can invoke to justify an attack on cultural values²⁶⁷.

The international community faced these complex issues as a challenge, and in 1999, it "had to" adopt the Second Protocol to the 1954 Hague Convention. The task of the Protocol was to provide the most complete explanation of military objective, that is: "'military objective' means an object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture neutralization, in the circumstances ruling at the time, offers a definite military advantage"²⁶⁸. The definition underlines that the military advantage ensured by targeting the heritage must be accurate, and definite when it is clear that there is no feasible alternative.

Despite some clarifications, however, the question of the use and deployment of cultural values for military purposes still remains controversial in this document due to the interpretation of some provisions²⁶⁹. It is already

²⁶⁵ Bothe M., Partsch K. J., Waldemar A. S., *New Rules for Victims of Armed Conflicts, Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, The Hague/Boston/London, Martinus Nijhoff Publishers, 1982, p. 334, para. 2.6.

²⁶⁶ There are various ways that an adversary can use cultural values during military operations. The most obvious is taking up a position in immovable cultural heritage, for instance, using a historic fortress located on a hilltop as a defensive bastion or placing a sniper in a medieval bell tower or minaret to search the battlefield. In another case, military equipment or ammunition may be stored in a museum, art gallery, or in a house of historic significance.

²⁶⁷ See O'Keefe R., Péron C., Musayev T., Ferrari G., *op. cit.*, pp. 1-91.

²⁶⁸ Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 1(f).

²⁶⁹ See Henckaerts J.-M., *op. cit.*,

<https://www.icrc.org/en/doc/resources/documents/article/other/57jq37.htm>.

clear that the cultural value can become a military objective only in the case if it has started to be used for military purposes, but in the definition, the issue of location is also available, which is controversial as well. If location alone could turn cultural value into a military objective, the protection of cultural values would be greatly weakened. It is clear that the nature and significance of cultural value can never turn it into a military objective. The whole problem is the location.

Some of the above-mentioned observations make evident the fact that "military necessity" cannot entitle to use unlimited force to damage or destroy cultural heritage²⁷⁰. Since the Second Protocol expands the scope of imperative military necessity, providing that an act of hostility against cultural values is legal if two requirements are complied with: 1. "cultural property has, by its function, been made into a military objective"; 2. "there is no feasible alternative available to obtain a similar military advantage"²⁷¹.

The second principle of customary international humanitarian law is distinction. The parties to the conflict are required at all times to distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives, drawing attention to the fact that cultural structures are civilian objects according to the Geneva principles. For further clarification of the principle of distinction, the Second Protocol of 1999 to the 1954 Hague Convention "For the Protection of Cultural Property in the Event of Armed Conflict" sets also additional conditions²⁷²: in the conduct of military operations it is necessary to fulfil obligations of verifying, assessing and taking precautions, the requirements whereof increase depending on the significance of the heritage²⁷³.

Rule 8 of customary international law states that the principle of distinction imposes obligations not only on the attacking party but also on the defending party, whereby it prohibits the defending party to "use" the

²⁷⁰ See Techera E., *op. cit.*, p. 1.

²⁷¹ Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 6.

²⁷² The Protocol of 1999 defines the conditions under which the cultural value may be turned into a military object, which implies the direct use of cultural value for military purposes.

²⁷³ *Ibid.*, Articles 7, 8.

components of the cultural heritage for military purposes, which can become a further precondition and main motive for an attack²⁷⁴. This prohibition, which was absent in the 1907 Hague Regulations, was included in Article 4 of the 1954 Convention and further strengthened in the Protocol of 1999.

In order not to cause damage to the cultural property during the attack, each Party to the conflict shall: (a) do everything feasible to verify that the objectives to be attacked are not cultural property protected under Article 4 of the Convention of 1954; (b) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under Article 4 of the Convention; (c) refrain from deciding to launch any attack which may be expected to cause incidental damage to cultural property (...); (d) cancel or suspend an attack if it becomes apparent: i. that the objective is cultural property protected under Article 4 of the Convention; ii. that the attack may be expected to cause incidental damage to cultural property protected under Article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated²⁷⁵.

Indeed, the protection of cultural heritage from an attack depends on the fact of verification. Even when an initial decision to launch an attack is taken under severe constraints of time, with insufficient opportunity for the fullest gathering of information, and it becomes apparent that the objective is cultural property, the attacking party is obliged to cancel or suspend the attack²⁷⁶.

The third principle of customary international law is the principle of proportionality. It implies reconciling military desires and fundamental values. It is aimed at bringing military necessity together with the demands of humanism²⁷⁷. In the legislation, this principle has been clearly stipulated only by the relevant articles of the first and second Protocols to the 1951 Hague

²⁷⁴ See Practice Relating to Rule 8. Definition of Military Objectives, Section A. General, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule8 (accessed: 10.05.2022).

²⁷⁵ See Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 7.

²⁷⁶ See O'Keefe R., Péron C., Musayev T., Ferrari G., op. cit., para. 100-101.

²⁷⁷ See Johannot-Gradis Ch., op. cit., p. 1253-1275.

Convention²⁷⁸. It establishes that “[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects should be considered under the principle of proportionality: is the military advantage to be acquired by eliminating them worth their loss?”²⁷⁹.

For identifying whether the anticipated military action is legal or not, the belligerent party must assess the proportionality of values, i.e. the “direct and concrete advantage” that would result from an attack on that heritage and the “excessive damage” that can be expected from the loss of the heritage, compared to the military advantage a side would have by destroying the cultural value. In this case, this proportionality calculus involves qualitative as much as quantitative considerations, since “incidental loss, which may be caused by damage or destruction of heritage, is a question not just of square or cubic meters, but also, crucially, of the cultural value of the object, building or site, ideological and other values”²⁸⁰. And since elements of cultural heritage are often irreplaceable, only the “promise” of very considerable concrete and direct military advantage will in practice be enough to justify an attack²⁸¹. Furthermore, if a decision to attack the cultural heritage has been made, for minimizing the damage to be caused, it is necessary to choose other means, for example, instead of bombardment, which will enable at least making the process manageable²⁸².

Indeed, assessing the gravity of the damage caused to the cultural value is difficult, as it requires accurate knowledge of not only the external but also the internal value of the given cultural value²⁸³. In general, assessing cultural value has never been easy, given the fact that decision-makers do not have the necessary knowledge of the cultural heritage of the enemy.

²⁷⁸ See Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict. The Hague, 14 May 1954, Article 57 (2a, b) and Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 7c, d.

²⁷⁹ Culture Under Fire: Armed Non-State Actors and Cultural Heritage in Wartime, p. 20.

²⁸⁰ O'Keefe R., Péron C., Musayev T., Ferrari G., op. cit., p. 89.

²⁸¹ Ibid., para. 120.

²⁸² Ibid., para. 123.

²⁸³ See Johannot-Gradis Ch., op. cit., p. 1253-1275.

The principle of precautions is the last principle of customary international law that reinforces the relevance of the principles of distinction and proportionality by clarifying the aspects of their application; they are aimed at restricting and minimizing the damage caused by military operations. This principle was initially established in the First Protocol (adopted in the same year)²⁸⁴ annexed to the 1954 Hague Convention "For the Protection of Cultural Property in the Event of Armed Conflict", and underwent legal development in the Protocol of 1999²⁸⁵. They force belligerents to pay special attention to the choice of means and methods of warfare, as well as the need for decision-making by senior officers, and at least to apply the principle of precautions when targeting cultural heritage.

The ground for the principle of precautions is the Second Protocol to The Hague Convention again, which added some other points with respect to the attack on the cultural value, which further increase the protection of the cultural heritage during the attack. The decision to invoke imperative military necessity for an attack on the cultural heritage shall only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise²⁸⁶, and an advance warning should be given prior to the attack, whenever circumstances permit²⁸⁷. The logic of the rule is that the higher the level of decision-making, the greater not only the accessibility of relevant information but also the experience of the decision-maker. There was no such obligation under the 1954 Convention. By the way, the obligation to give an advance warning also applies when attacking the civilian population²⁸⁸. Thus, this shows that the protection of cultural values gets closer to the protection of the civilian population in some ways and goes beyond the protection of other civilian objects.

²⁸⁴ Ibid.

²⁸⁵ See Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict. The Hague, 14 May 1954 and Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999.

²⁸⁶ See Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 6 (c).

²⁸⁷ Ibid., Article 6 (d).

²⁸⁸ See Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict. The Hague, 14 May 1954, Article 57(2)(c).

In fact, the 1999 Second Protocol to The Hague Convention seeks to make the conditions stricter and adds that the attack must be ordered at the highest operational level of command, and the vague wording "unless circumstances do not permit" is significantly narrowed and the phrase "due to the requirements of immediate self-defence" is added²⁸⁹. Moreover, a reasonable time should be given to the opposing forces to redress the situation which adds an extra layer of protection²⁹⁰. The logic of the rules is twofold. First, where the cultural property is being used in support of military action, advance warning grants the adversary an opportunity to cease such use. Secondly, advance warning grants the adversary an opportunity to take practical measures to minimize damage to the cultural property or to any movable cultural property housed in it, including by removing the latter to a place of safety²⁹¹.

Thus, compliance of military operations of armed forces with the above-stated four principles is an essential barrier against damage to the heritage²⁹².

²⁸⁹ Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 13(2)(c).

²⁹⁰ See Henckaerts J.-M., op. cit.,

<https://www.icrc.org/en/doc/resources/documents/article/other/57jq37.htm>.

²⁹¹ See O'Keefe R., Péron C., Musayev T., Ferrari G., op. cit., para. 102-105.

²⁹² See Johannot-Gradis Ch., op. cit., p. 1253-1275.

CHAPTER 2.

THE SYSTEM FOR PROTECTION OF INTANGIBLE CULTURAL HERITAGE DURING WARS

2.1. Destruction of Intangible Cultural Heritage During wars

During wars, intolerance is shown towards both tangible and intangible cultural heritage, which is accompanied by the destruction thereof.

First, it is necessary to define what intangible cultural heritage is.

In the international system, UNESCO is the body that defines intangible heritage through its declarations and conventions. One of them, the “Proclamation of the Masterpieces of the Oral and Intangible Heritage of Humanity”²⁹³, which preceded the main document of the field – the Convention “On the Protection of Intangible Cultural Heritage” defines the term as follows: “Intangible cultural heritage is the process of learning by people, as well as the knowledge and skills formed and developed thanks to people, the values they create, as well as the resources, social and other natural aspects necessary for their sustainability: these processes give living communities a sense of commonness with their ancestors, the continuity of generations and are essential for the formation of identity”²⁹⁴. Actually, the important role of intangible cultural heritage in the life of communities and its function of being a building block of identity have been outlined even at the preliminary definition stage. It should also be noted that the main function of cultural heritage is social cohesion as a factor of the development of a community and establishment of identity, and intangible heritage is mainly responsible for it²⁹⁵. Article 3 of the Law of the Republic of Armenia “On intangible cultural

²⁹³ See Proclamation of the Masterpieces of the Oral and Intangible Heritage of Humanity (2001-2005), <https://ich.unesco.org/en/proclamation-of-masterpieces-00103> (accessed: 21.04.2022).

²⁹⁴ Recommendation on the Safeguarding of Traditional Culture and Folklore, Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Resolutions, <https://unesdoc.unesco.org/ark:/48223/pf0000084696.page=242> (accessed: 21.04.2022).

²⁹⁵ See Bélaval Ph., The benefits of cultural heritage for society and its main challenges in a European context, In: Cultural Heritage: A Resource for Europe. The benefits of interaction, 2011, p. 23, <https://www.culturaydeporte.gob.es/dam/jcr:a9dcb61b-0a69-40b5-bb9b-da19dd55fb62/rwo-worldheritage-2011.pdf> (accessed: 21.04.2022).

heritage” provides the most concise definition of the term, defining it as the customs, traditions, rites, representations and expressions, knowledge and skills, as well as the instruments, objects, artefacts and cultural spaces associated therewith — as materialized carriers of intangible cultural heritage — that the public, groups and, in some cases, individuals recognize as part of their cultural heritage and which have taken a sound stance in practice²⁹⁶.

For assessing the loss of intangible cultural heritage during wars, it is necessary to address the ambit thereof, in particular, folklore, language, dialects and sub-dialects, place names, the content of the coat of arms and other national symbols, traditional craftsmanship, national customs, traditions, holidays, rites, social practices, ways and rules of conduct, folk art, economic activities, sustenance culture, popular beliefs, worship, etc.²⁹⁷. In case of such a perception, the alarm of safeguarding heritage becomes even more intense, forcing to look for it both in the mentioned areas and the spheres related to human rights as well.

The UNESCO Convention of 2003, being the main document regulating the field of intangible cultural heritage at the international level, outlines the scope thereof, that is, the intangible cultural heritage is manifested in the following domains: practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals, recognize as part of their cultural heritage. It is obvious here that the intangible cultural heritage is created, recreated, and preserved by communities and groups, ensuring their originality. It is manifested through oral traditions, performing arts, social practices, rituals, festive events, and traditional craftsmanship²⁹⁸. Based on the statement of experts that any practice of intangible cultural heritage can be eliminated if such socio-cultural values are separated from the lives and practices of the communities and groups engaged therein, we should emphasize – now, more than ever — the search for possible mechanisms of

²⁹⁶ See the Law of the Republic of Armenia “On Intangible Cultural Heritage”, adopted on 7 October 2009, Article 3.1, <https://www.arlis.am/DocumentView.aspx?docID=54526> (accessed: 21.04.2022).

²⁹⁷ Ibid., Article 3.2.

²⁹⁸ See The Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17 October 2003, Article 2, para. 1, 2, <https://ich.unesco.org/doc/src/01852-EN.pdf> (accessed: 21.04.2022).

safeguarding the intangible cultural heritage of people displaced as a result of war. It should be stressed that safeguarding the intangible cultural heritage means measures aimed at ensuring the viability thereof, including the identification, documentation, research, preservation, protection, promotion, enhancement, and transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage²⁹⁹.

It is also noteworthy that the UNESCO Convention does not aim to safeguard the intangible cultural heritage of every nation in the world, and the rationale is that communities and groups, as the only legitimate bearers of their heritage practices, ought to accept the need to safeguard their heritage for future generations. In this context, for example, the Armenians of Artsakh are the only ones to bear and exercise their intangible cultural values, they are the ones to define and pass it on to generations. Combining the temporal and spatial dimensions of intangible cultural heritage, the Convention outlines two important circumstances: first, the heritage must be “transmitted from generation to generation and constantly recreated”, then this process must take place “through the interaction of communities with nature and history”³⁰⁰. In fact, the displacement of peoples from their places of residence or their transfer to other places disrupts the possibility of recreating intangible elements, since there is no such community, set of resources, and the environment, as a result of the interaction whereof this or that new practice of intangible cultural heritage could come into being, or the already existing one could be preserved. In this context, communities, groups, and individuals become the owners of intangible cultural heritage (as opposed to the “exceptional universal value” of tangible heritage) since they are the ones to define it and ensure its preservation³⁰¹. Even when it is necessary to define it at the state level and submit it to the international listing, it is the community³⁰² (and not the state)

²⁹⁹ Ibid., Article 2, para. 3.

³⁰⁰ Ibid.

³⁰¹ See Chainoglou K., op. cit., pp. 109-134.

³⁰² In accordance with the Faro Convention, “a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations” (Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Article 2b).

that defines it, according to the requirements³⁰³. The baseline is that intangible cultural heritage should provide communities with a sense of identity and continuity³⁰⁴.

The fact that the importance of intangible cultural heritage is not the cultural manifestation itself but rather the wealth of knowledge and skills that is transmitted through it from one generation to the next, is noteworthy³⁰⁵. We would also like to emphasize that the sense of collective identity and continuity of the community is preserved by the influence of intangible cultural heritage³⁰⁶.

Thus, it can be concluded that the safeguarding of intangible cultural heritage has essential significance for the preservation of both the heritage element itself and the cultural identity of communities and groups using it. It turns out that even the physical presence of the community members in another place is not enough to ensure the continuity of the identity of the community since the vitality of intangible heritage requires interaction with natural resources as well. In this respect, it is necessary to cite the 2016 report of the UN Special Rapporteur in the field of cultural rights, Karima Bennouna, wherein the scope of attacks on cultural heritage during wars is presented in detail: “Experts have emphasized that there is a significant overlap between tangible and intangible heritage, and attacks on tangible and intangible cultural heritage are interconnected”³⁰⁷. Hence, it is not difficult to conclude that during

³⁰³ See Vrdoljak A. F., *Cultural Heritage in Human Rights and Humanitarian Law*, “International human rights and humanitarian law”, Oxford University Press, 2011, p. 281.

³⁰⁴ See UNESCO Executive Board, Report on the preliminary study on the advisability of regulating internationally, through a new standard-setting instrument, the protection of traditional culture and folklore, Paris, 16 May 2001, UNESCO Doc. 161 EX/15, p. 3, <https://unesdoc.unesco.org/ark:/48223/pf0000122585> (accessed: 21.04.2022); Decision of the Intergovernmental Committee: 11.COM 15, para. 6, <https://ich.unesco.org/en/decisions/11.COM/15> (accessed: 21.04.2022).

³⁰⁵ See “What is Intangible Cultural Heritage?” <https://ich.unesco.org/en/what-is-intangible-heritage-00003> (accessed: 21.04.2022).

³⁰⁶ See UNESCO Executive Board, Report on the preliminary study on the advisability of regulating internationally, through a new standard-setting instrument, the protection of traditional culture and folklore, p. 3; Decision of the Intergovernmental Committee: 11.COM 15, para. 6.

³⁰⁷ See United Nations General Assembly, Report of the Special Rapporteur in the Field of Cultural Rights, Geneva: UN, 3 February 2016, A/HRC/31/59, p. 17, para. 77,

wars, along with monuments, other elements of cultural practices are attacked, too, including religious customs, rituals, history, memory, and, the future as well. Meanwhile, when communities are displaced, not only structures face the threat of destruction, but also ancient languages, customs, and practices associated with one or another community, area, nature, and cultural landscape.

It should be added that the Convention provides protection not only to intangible values as a human practice but also to tangible heritage materialized as a result of activities of communities³⁰⁸. Thus, by integrating the two forms of heritage, protection is brought in line with the broad and holistic definition of cultural heritage recently promoted by the United Nations³⁰⁹. Furthermore, addressing the concept of human cultural rights, it does not purport to be solely a legal instrument for heritage preservation or management, but guarantees the exercise of the right to participate in cultural life; the right to access and enjoy cultural heritage; the right to freedom from discrimination; the right to freedom of thought, conscience, and religion; and the right to freedom of artistic expression and creativity, etc.³¹⁰.

The international community has only recently begun to attach importance to the full preservation of cultural heritage as the preservation of the environment, where socio-cultural factors play a certain role, and their role is great in the formation of this heritage as well. This refutes the fact that the preservation of cultural heritage is only the preservation of monuments, which constitute samples of the past; the preservation of heritage has many elements related to the present³¹¹. Furthermore, when considering the historical context, we'll see that in the initial stage of its concept formation, the cultural heritage was mainly associated only with material objects. That perception was strengthened also due to the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972, which defines heritage as a

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.59_E.docx (accessed: 21.04.2022).

³⁰⁸ See Stefano M. L., Davis P., Corsane G., *Safeguarding Intangible Cultural Heritage*, NY: The Boydell Press, 2012, p. 187.

³⁰⁹ See United Nations General Assembly, Report of the Special Rapporteur in the Field of Cultural Rights, p.12, para.49.

³¹⁰ See Chainoglou K., *op. cit.*, pp. 109-134.

³¹¹ See "Managing Cultural World Heritage", "Master Print", Yerevan, 2018, p. 16.

set of monuments, group of buildings, and sites, which are of outstanding universal value from the point of view of history, art or science³¹².

The broad concept of cultural heritage. In the late 20th century and early 21st century, there was the perception that the protection of heritage should be considered in the domain of a combination of material and non-material, including the human and natural environment³¹³. In particular, the following was specified in the Deschambault Declaration³¹⁴ of 1982: "Cultural heritage is the combined creations and products of nature and man, in their entirety, that make up the environment in which we live in space and time."³¹⁵ It is also noteworthy that the 1972 Convention on World Heritage pointed to the need for the protection of tangible values, while at the same time emphasizing the need to inseparably preserve both forms of cultural heritage. And the Convention for the Safeguarding of the Intangible Cultural Heritage of UNESCO³¹⁶, recognizing it as a concept of cultural heritage, underlined the correlation of tangible, intangible, and natural heritage³¹⁷. Otherwise stated, the main documents on both tangible and intangible heritage highlight the need for integrated protection of both forms of heritage.

More advanced studies of heritage also testify that it comprises more than the material structures created in the distant past; it comprises also the cultural landscape as the result of the interaction between human society and nature, and for protection thereof, it is necessary to assess all the elements of both heritage and the surrounding landscape and their relations, including people as well. Thus, it is an open system and can be understood only within an integral

³¹² See Convention Concerning the Protection of the World Cultural and Natural Heritage, Article 1.

³¹³ See Jokilehto J., *Definition of cultural heritage: References to documents in history (Originally for ICCROM, 1990), Revised for CIF: 15 January 2005*, p. 5, http://cif.icomos.org/pdf_docs/Documents%20on%20line/Heritage%20definitions.pdf (accessed: 21.04.2022).

³¹⁴ See Charter for the Preservation of Quebec's Heritage: Deschambault Declaration, Conference Proceedings, 1892, Committee, ICOMOS. Canada Fre, https://ocpm.qc.ca/sites/ocpm.qc.ca/files/document_consultation/3men_1.pdf (accessed: 21.04.2022).

³¹⁵ Quebec Association for the Interpretation of the National Heritage, Committee on Terminology, July 1980.

³¹⁶ 174 states have ratified the Convention hitherto (See <https://ich.unesco.org/en/states-parties-00024> (accessed: 21.04.2022)).

³¹⁷ See Convention for the Safeguarding of the Intangible Cultural Heritage, Preamble.

vision where context is important, too. With its tangible and intangible dimensions, that is, skills, knowledge, ideas, attitudes, and other expressions, cultural heritage is inextricably bound up with its context, and the natural and cultural environment wherein it was established, and its "main sense is the people carrying it"³¹⁸. In the context of advanced theoretical observations of the concept of heritage, the interest of some authors had shifted from "objects" to "subjects", due to the perception that the sense of the object depends on and derives from the subject³¹⁹. The enhancement of the concept of heritage and the importance of the co-relation of heritage sites and their environments claim that heritage sites cannot be preserved in isolation, like museum values, since they cannot be separated from social changes or community issues in place. The human being is the one who creates the heritage, carries, and values it, as it is established when subjective thoughts of people get objective manifestations and are expressed in the form of monuments³²⁰. As John Feather has rightfully mentioned, "the driving force of heritage is the human"³²¹. And, thus, the source of heritage is not physical the objects, but the people themselves, who practice the customs and traditions of their nation. Hence, the preservation of heritage should be observed within the framework of an enhanced approach, which is not limited only to monuments or even only to intangible elements, but, goes beyond the scope thereof, including the protection of both the natural and the human environment³²². It is clear from the factual context that the protection of cultural heritage during wars should include its main components (territory, community, people, artistic works), and should also come from the idea of protecting people, referring to civilians³²³.

The heritage belongs to the community carrying it, and the existence thereof, in its turn, is conditioned by this heritage, and many belligerents

³¹⁸ Tigranyan A., "The new concept of cultural heritage, the international principles of the right to heritage and the legislative framework of the Republic of Armenia", "Region and the World", Public Institute of Political and Social Research of the Black Sea-Caspian Region, № 4, p. 86, Yerevan, 2020.

³¹⁹ See Muñoz Viñas S., *Contemporary Theory of Conservation*, Elsevier, Oxford, 2005, p. 147.

³²⁰ See Rouhi J., *Definition of cultural heritage properties and their values by the past*, "Asian Journal of Science and Technology", Italy, 2017, pp. 7110-7114.

³²¹ Feather J., *op. cit.*, p. 7.

³²² See Jokilehto J., *op. cit.*, p. 5.

³²³ See Cunliffe E., Fox P., Stone P., *op. cit.*, p. 6.

exploit this cultural connection to suppress particular communities³²⁴. But it is to be stated that such destruction of heritage as an expression of the vitality of communities having a unique culture can be disastrous in terms of the irreversible loss of identity and the impossibility of exercising cultural rights. And the forced displacement of communities and alienation of elements of identity can affect the collective memory of the past³²⁵. Putting together the above-mentioned citations, we can state that for the protection of the intangible cultural heritage during wars, first of all, it is necessary to consider the heritage within the framework of its broad concept, to ensure the possibility of its creation, use, transfer, as well as that of enjoying cultural rights.

³²⁴ See Parker K., *The Impact of Armed Conflict on Cultural Heritage*, Boston, MA: Brandeis University Press, 2015, pp. 1-2.

³²⁵ See Teijgeler R., "So Yesterday was the Burning of Books" - Wartime in Iraq. Lecture Held at Responsible Stewardship Towards Cultural Heritage Materials, Preconference of the IFLA Rare Book and Manuscript Section, Copenhagen, The Royal Library, 11 August 2005, <https://bit.ly/3y3F01S> (accessed: 21.04.2022).

2.2 Protection of Intangible Cultural Heritage During Wars under International Law

The Hague and Geneva Conventions, together with their corresponding protocols, are the primary legislation for the protection of cultural heritage in times of war. However, it should be underlined that these legal instruments primarily provide protection to tangible objects³²⁶, and the protection of intangible heritage is questionable in many cases. In the case of tangible heritage cultural structures and monuments are targeted, and in the case of intangible heritage, the individuals and communities carrying or interpreting that heritage are targeted. In fact, intangible cultural heritage is most at risk in times of war since it is damaged whenever tangible and intangible elements are damaged, and members of the community (people) carrying that heritage are targeted or displaced. Therefore, the solutions that the legal system provides for the comprehensive protection of cultural heritage in times of war should — in addition to tangible elements — incorporate other elements as well³²⁷.

The Hague Convention for “The Protection of Cultural Property in the Event of Armed Conflict” contains some provisions on the protection of intangible cultural heritage. In particular, the Convention with Respect to the Laws and Customs of War on Land adopted at The Hague Peace Conference in 1899 addressed the protection of intangible cultural heritage, perhaps only calling upon the international community to prevent acts of vandalism or theft of heritage related to intangible heritage artefacts or tools³²⁸. Additionally, in Article 27 of the Regulation attached to The Hague Convention of 18 October 1907, the intangible element is present only from the perspective of the alleged unity with the tangible: “In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, provided they are not being used at

³²⁶ See Chainoglou K., *op. cit.*, pp. 109-134.

³²⁷ See Johannot-Gradis Ch., *op. cit.*, pp. 1253-1275.

³²⁸ See Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899, pp. 1-3.

the time for military purposes”³²⁹. The logic of this rule holds that in addition to protecting buildings, the activities carried out thereby and the knowledge transmitted through them are protected as well. Under Article 56 of the Regulation, educational institutions are added to the list of protected values and all seizure of these institutions is forbidden³³⁰. And it is defined under Article 46: “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected”³³¹. This appears to be the first and full interpretation, which highlighted the actions and beliefs of civilians in the ambit of their protection, and it can undoubtedly apply to individuals and groups carrying intangible cultural heritage.

The international community initiated the adoption of several new regulations in the second half of the 20th century in response to the increase in the destruction of cultural values brought on by the world wars, taking the idea that cultural heritage belongs to all humanity as the basis of the protection thereof.

In 1954 the Convention “For the Protection of Cultural Property in the Event of Armed Conflict” and its First Protocol, and in 1999, the Second Protocol of the same Convention were adopted. However, it must be noted that only those values are protected by the new conventions and protocols that adhere to the following definition of “cultural value”: “Cultural property – irrespective of its origin — is the movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or reproductions of the property defined above; Buildings whose main and effective purpose is to preserve or exhibit the

³²⁹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Regulations: Article 27.

³³⁰ *Ibid.*, Article 56, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907/regulations-art-56?activeTab=undefined> (accessed: 01.02.2021).

³³¹ *Ibid.*, Article 46, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907/regulations-art-46?activeTab=undefined> (accessed: 01.02.2021).

movable cultural property, such as museums, large libraries and depositories of archives, as well as refuges intended to shelter, in the event of armed conflict, the movable cultural property³³². In point of fact, only the values deemed to be of national importance defined by the state are protected under this Convention. And the intangible values are defined by an individual or a community³³³. In this context, intangible cultural heritage is identified by determining its value for the relevant holders, i.e. communities, groups, and individuals, as opposed to the tangible heritage which is an “outstanding universal value³³⁴. Therefore, intangible heritage cannot adhere to the definition of “cultural value” defined in the 1954 Hague Convention “For the Protection of Cultural Property in the Event of Armed Conflict”. And the prevailing position of analysts on this issue is that The Hague Conventions cannot provide full protection of intangible cultural heritage³³⁵ or can protect only to the extent that the protection of tangible heritage extends to the intangible³³⁶.

The Geneva Convention and the Protocols annexed thereto also contain clauses relating to the protection of cultural heritage in times of war, which once more make oblique references to the protection of communal heritage or heritage communities, considering it only as an area of protection of civilians³³⁷. It should be emphasized that under parts 2 and 4 of Article 51 of the First Protocol to the 1949 Geneva Convention “On the Protection of Civilian Persons in Time of War”, the civilian population shall not be the object of attack³³⁸. In addition, it is specified in Article 75 of the First Protocol that, “Civilians shall

³³² Protect cultural property in the event of armed conflict, The 1954 Hague Convention And Its Two Protocols, https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tIiBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY.

³³³ See Convention for the Safeguarding of the Intangible Cultural Heritage, Article 2 – Definitions, <https://ich.unesco.org/en/convention> (accessed: 01.02.2021).

³³⁴ See Chainoglou K., op. cit., pp. 109-134.

³³⁵ See Johannot-Gradis Ch., op. cit., p. 1256.

³³⁶ See Blake J., Developing a New Standard-setting Instrument for Safeguarding Intangible Cultural Heritage – Elements for Consideration, UNESCO, Paris, 2001, p. 83.

³³⁷ See “Convention on the Value of Cultural Heritage for Society”, Articles 1a, 2a, 4c, 5a.

³³⁸ See “Offences committed by the Republic of Azerbaijan in NKR and Opportunities to apply to the International Organizations”. Report, Yerevan, May 2016, p.13.

not be discriminated against in times of war based upon race, colour, sex, language, religion or belief, convictions, national or social origin, birth, or other status. Each Party shall respect the person, honour, convictions, and religious practices of all such persons³³⁹. Additionally, it is stated in Article 27 of the Geneva Convention that in addition to respect for the honour of a person, the family law, religious convictions, and practices, each Party shall respect also the life experience and customs³⁴⁰, which can cover the entire range of intangible heritage, including knowledge and skills.

“Making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack” is forbidden under clause 4 of Article 85 of the First Protocol³⁴¹. Even though this clause also refers to tangible heritage, according to many scholars³⁴² the inclusion of intangible cultural heritage in the lists established by the 2003 Convention complies with these requirements, while also providing special protection for the intangible elements that are listed by UNESCO³⁴³.

³³⁹ Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977, Article 75.

³⁴⁰ See the Geneva Convention of 12 August 1949 “On the Protection of Civilian Persons in Time of War”, Article 27, <https://www.arlis.am/DocumentView.aspx?docID=20872> (accessed: 19.06.2021).

³⁴¹ Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977, Article 85, Clause 4d.

³⁴² See Vrdoljak A. F., Cultural Heritage in Human Rights and Humanitarian Law, p. 259.

³⁴³ This group can encompass a number of values of intangible cultural heritage presented by Armenia (Artsakh is not a party to the Convention and cannot propose values), which are the following: “Duduk and its music”, “Performance of the Armenian epic of “Daredevils of Sassoun” or “David of Sassoun””, “Lavash, the preparation, meaning, and appearance of traditional bread as an expression of culture in Armenia”, “Kochari, traditional group dance”, “Armenian letter art and its cultural expressions”, “Pilgrimage to the St. Thaddeus Apostle Monastery”. And Azerbaijan, waging war in this area as well and appropriating the intangible heritage of the Republic of Armenia, presented mostly Armenian values to UNESCO: “Yalli (Kochari, Tenzere), traditional group dances of Nakhchivan”, “Dolma making and sharing tradition, a marker of cultural identity”, “Art of crafting and playing with Kamantcheh/Kamancha, a bowed string musical instrument”, “Flatbread making and sharing culture: Lavash, Katyrma, Jupka, Yufka”, “Chovqan, a traditional Karabakh horse-riding game in the Republic of Azerbaijan”, and others(See <https://ich.unesco.org/en/state/azerbaijan-AZ?info=elements-on-the-lists> (accessed: 01.02.2021)). This list testifies to the fact that the

As stated above, intangible cultural heritage is brought to life through the realization by those who bear it³⁴⁴. Furthermore, it is important to note that both Article 15³⁴⁵ of the First Protocol and Article 9³⁴⁶ of the Second Protocol to the Geneva Convention contain provisions for the protection of religious personnel who carry on such heritage³⁴⁷. Experts claim that these regulations do not provide the necessary legitimate grounds for all representatives of cultural heritage, which are: musicians, dancers, writers, artists, puppeteers, and poets (even though they are protected as civilians), hence, for additional sources of protection it is necessary to refer to the provisions of the Convention for the Safeguarding of the Intangible Cultural Heritage of UNESCO in conjunction with other norms of human rights.

In the Operational Directives for the Implementation of the UNESCO Convention of 2003, very little is mentioned about the protection of intangible cultural heritage during armed conflicts³⁴⁸. It is restricted to financial assistance when intangible heritage or communities are in emergency situations³⁴⁹. However, the operation of the Convention "On the Protection of World Cultural and Natural Heritage" of 1972 does not cease during armed conflicts, by analogy with which it can be assumed that the Convention on intangible cultural heritage applies during conflicts as well. Additionally, it was highlighted at the 2005 UNESCO intergovernmental meeting that the nature of intangible cultural heritage should be respected and the continuity of its preservation and transmission should be ensured at any time, including in

Azerbaijani struggle against Armenian intangible cultural values, as an effort to distort the Armenian identity, has had a permanent character.

³⁴⁴ See Johannot-Gradis Ch., *op. cit.*, p. 1253-1275.

³⁴⁵ See the First Protocol to the Geneva Convention of 12 August 1949, Article 15.

³⁴⁶ See the Second Protocol to the Geneva Convention of 1977, Article 9.

³⁴⁷ During the war, Azerbaijan grossly violated this provision, since when the Holy Saviour Ghazanchetsots Church of Shushi was bombed twice, the clergy were in the church, while as the carriers of that heritage, they should have received additional protection. Therefore, there are grounds to hold Azerbaijan responsible not only for targeting tangible heritage illegally, but also for committing an international crime without taking into consideration the special protection of its carriers.

³⁴⁸ See Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, 2022 Edition, https://ich.unesco.org/doc/src/2003_Convention_Basic_Texts-2022_version-EN_.pdf (accessed: 04.12.2022).

³⁴⁹ *Ibid.*, I.14, para. 50.

situations of armed conflict³⁵⁰. However, unlike the protection of tangible heritage, that of the intangible one should be sought within the given state, since Article 11 of the Convention "On the Protection of the Intangible Cultural Heritage" obliges the States Parties to take all necessary measures to ensure the protection of intangible cultural heritage in their territory, including in situations of armed conflicts³⁵¹. Furthermore, the fact that both individual and collective-community human rights underlie the intangible cultural heritage, and given that the Convention "On Protection of Intangible Cultural Heritage" of 2003 was established within the framework of human rights legislation³⁵², it is reasonable to assume that the protection of intangible cultural heritage during armed conflicts also falls under the purview of the obligations pertaining to human rights³⁵³. Therefore, for the protection of intangible cultural heritage during the conflict, there is a possibility of gradual interconnection between various legal norms which should be achieved in the context of acknowledgement of indisputable human rights to cultural heritage.

Solid arguments for the protection of intangible cultural heritage are provided in the 2007 UN Declaration "On the Rights of Indigenous Peoples". The need to respect the fundamental rights and freedoms of indigenous peoples underlies the core thereof since both physical annihilation and expulsion from their native territory inevitably disrupt the opportunities for these peoples to flourish in a way that serves their needs and interests. It is stated in the UN Declaration that the recognition of the rights of indigenous peoples is essential in the political, economic, social, and cultural realms, so that, in addition to

³⁵⁰ See Decision of the Intergovernmental Committee: 10.COM 15.a, Annex, Principle 9, <https://ich.unesco.org/en/Decisions/10.COM/15.a> (accessed: 04.12.2022).

³⁵¹ *Ibid.*, Principle 9.

³⁵² See ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, para. 105, <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf> (accessed: 04.12.2022) and ICJ, Case Concerning Armed Activities in the Territory of the Congo (Congo v. Uganda), 19 December 2005, Judgment, para. 216.

³⁵³ See United Nations Committee on Economic, Social and Cultural Rights, Forty-third session, 2-20 November 2009, General Comment No. 21. Right of everyone to take part in cultural life (Article 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, para. 55,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F21&Lang=en (accessed: 04.12.2022).

other rights, they can ensure their growth while upholding their traditions. Any action of assimilation and destruction of cultural heritage is prohibited under Article 8 thereof, condemning any attempt to deprive peoples of their cultural values or ethnic identities and any ethnic discrimination, which Azerbaijan does at a high state level³⁵⁴. Highlighting the cultural problems, the Declaration establishes the right of indigenous peoples to practise and revitalize their cultural traditions and customs, protecting, particularly, their cultural past, archaeological and historical sites, crafts, ceremonies, etc.³⁵⁵. Indigenous peoples have the right to maintain and protect their religious and cultural sites³⁵⁶, to revitalize, use, develop, and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems, and literatures, and to designate and retain their own names for communities, places, and persons³⁵⁷.

Emphasizing the protection of the intangible dimension of heritage, the Declaration "On the Rights of Indigenous Peoples" establishes the right of peoples to maintain their traditional knowledge, traditional cultural expressions, as well as the manifestations thereof, technologies, including human and genetic resources, and oral traditions³⁵⁸. Any state that disregards that right should be held responsible³⁵⁹. The logic of the aforementioned statement leads to the conclusion that the UN, which establishes and guarantees the Declaration, should be the international authority that will prevent the aggressor state from going against its principles. But in contrast to all of this, the reality is where the main paradox is revealed: Following the 44-day war, the Baku representation and the official representatives of practically all of the United Nations specialized agencies commemorated 30 years of productive

³⁵⁴ See United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, Article 8.

³⁵⁵ *Ibid.*, Article 11a.

³⁵⁶ *Ibid.*, Article 12a.

³⁵⁷ *Ibid.*, Article 13a.

³⁵⁸ *Ibid.*, Article 31a.

³⁵⁹ *Ibid.*, Article 11b.

cooperation between Azerbaijan and the UN in the occupied Shushi, issuing a stamp and raising the UN flag³⁶⁰.

The UN Convention "On the Protection and Promotion of the Diversity of Cultural Expressions" adopted in Paris in 2005 also contains provisions for the protection of intangible cultural heritage from the dangers of war³⁶¹. It emphasizes cultural diversity³⁶² as a mainspring for sustainable development for communities, peoples, and nations, considers that it increases the range of choices, and nurtures human capacities and values, and highlighting the fact that cultural diversity forms a common heritage of humanity, emphasizes that it should be preserved for the benefit of all.

In accordance with the Convention, heritage is a necessity for democracy, tolerance, and social justice, the violation whereof could undermine peace and security at the international level. The Convention emphasizes the role of culture as a strategic element for the implementation of the goals set by the UN Millennium Declaration and recognizes the importance of traditional knowledge.

Taking measures aimed at protecting the diversity of cultural expressions, especially in times of war, is of special importance. Under Article 2 of the UN Convention, cultural diversity can be protected only if human rights and fundamental freedoms are guaranteed. Similarly, when human rights and fundamental freedoms are infringed, the protection of heritage expression is also undermined.

It can be assumed from the factual context that the protection of the diversity of cultural expressions presupposes respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples³⁶³.

³⁶⁰ See "A note of protest was transmitted to the Acting United Nations Resident Coordinator", Ministry of Foreign Affairs of the Republic of Armenia, 19 March 2022, https://www.mfa.am/hy/interviews-articles-and-comments/2022/03/19/mfa_statement_un/11359 (accessed: 16.04.2022).

³⁶¹ See Convention on the Protection and Promotion of the Diversity of Cultural Expressions, <https://en.unesco.org/about-us/legal-affairs/convention-protection-and-promotion-diversity-cultural-expressions> (accessed: 21.04.2022).

³⁶² "Cultural diversity" refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies.

³⁶³ *Ibid.*, Article 2/2.

In accordance with the Convention "On the Protection and Promotion of the Diversity of Cultural Expressions", culture is one of the mainsprings of development, moreover, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy³⁶⁴. It is noteworthy that, in accordance with the Convention, "protection" means the adoption of measures aimed at the preservation, safeguarding, and enhancement of the diversity of cultural expressions³⁶⁵. Article 8 of the Convention provides for the protection of cultural expressions where they are under serious threat, or otherwise in need of urgent safeguarding.

The Convention "On the Elimination of All Forms of Racial Discrimination" adopted by the UN in 1965 also contains defence mechanisms when the intangible cultural heritage is endangered as a result of wars³⁶⁶. In the Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms³⁶⁷.

³⁶⁴ Ibid., Article 4/3.

³⁶⁵ Ibid.

³⁶⁶ Azerbaijan ratified the specified Convention in 2001, committing to condemn such practice (see Ratification Status For Azerbaijan, United Nations Human Rights Treaty Bodies, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=11&Lang=EN (accessed: 21.04.2022)).

³⁶⁷ See International Convention on the Elimination of All Forms of Racial Discrimination, Article 1, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial> (accessed: 21.04.2022).

2.3. Protection of Intangible Cultural Heritage During Wars from a Human Rights Standpoint

We can confirm, based on the information at hand, that neither the main laws in the area nor the UNESCO conventions fully implemented the protection of intangible cultural heritage. Therefore, the protection of the intangible cultural heritage of Artsakh both in times of war and after it should be derived from the human rights norms, for which it is perhaps necessary to comprehend the relationship between cultural heritage and cultural rights.

There is a perception that culture, cultural heritage, and rights are intertwined. Interdependence encompasses both the protection of cultural heritage and the broader exercise of cultural rights, which allow for the freedom of expression, the transmission of languages and customs, and eventually, participation in cultural life. As an integral component of human rights, intangible heritage should be protected in its own right³⁶⁸. Thus, the right to access tangible and intangible cultural heritage and participate in cultural life is a part of international human rights legislation³⁶⁹. From all of this, we might conclude that human rights and mechanisms for protecting cultural assets are inextricably linked. UNESCO³⁷⁰ and the UN Human Rights Council both endorsed this³⁷¹.

Human cultural rights, which, according to V.Vadi, are fundamental rights, are violated in times of war³⁷². The right to cultural activity is established under Article 27 of the Declaration "On Human Rights and Fundamental Freedoms", according to which, everyone has the right freely to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits. The "Fribourg Declaration of Cultural Rights" of

³⁶⁸ This interdependence is referred to in other normative texts of UNESCO as well (see Blake J., Developing a New Standard-Setting Instrument for Safeguarding Intangible Cultural Heritage – Elements for Consideration, pp. 88-93).

³⁶⁹ See Shaheed F., Report of the Independent Expert in the Field of Cultural Rights, para. 58-76.

³⁷⁰ See Blake J., Development of 2003 UNESCO's Convention: Creating a New Heritage Protection Paradigm? pp. 11-21.

³⁷¹ See United Nations Human Rights Council Resolution No 33, 2016, 27 September, A/HRC/33/L.21.

³⁷² See Vadi V., Cultural Heritage in International Investment Law and Arbitration, Cambridge: Cambridge University Press, 2014, p. 39.

2007 also establishes such a right, considering cultural rights as an opportunity to express identity, and to enjoy various cultural resources and knowledge. In addition to these, the Faro Convention "On the Value of Cultural Heritage for Society" of 2005 also contains provisions on the right to cultural heritage, presenting it as an opportunity to connect to the heritage, which will help to enrich the given heritage by adding own experience to it.

The provision for freely participating in cultural life is enshrined also in the Faro Convention adopted by the Council of Europe in 2005, which, in its Article 1, recognizes that rights relating to cultural heritage as inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights and establishes individual and collective responsibility towards cultural heritage. Considering this approach, by targeting any material object of the Armenians of Artsakh both during the war and after it, distorting any aspect of the intangible heritage - ritual, oral tradition, etc., Azerbaijan directly attacks the rights of the Armenians of Artsakh, among which the cultural rights play a significant role as well. In Article 2, the Faro Convention provides a revolutionary definition of the enhanced concept of cultural heritage, as a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge, and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time³⁷³. The Convention refers also to the formation of the heritage community considering it as a group of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations. It follows from the definition of the heritage community that when a community is displaced or alienated from its native territory, not only does it lose its place of residence, but also the heritage community, which could transmit its heritage to future generations, collapses. It is crucial to emphasize the fact that the heritage community is formed when the members of the community value specific aspects of cultural heritage which they wish, and such an aspect can be

³⁷³ See Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Article 2.

anything, ranging from the mind to any type of tangible structure. If we consider the already discussed issues in terms of Artsakh, we can say that as a result of the war, the Armenians of Artsakh lost their heritage communities, which, due to their uniqueness, are a part of the cultural diversity of the world.

Article 4 establishes the rights and responsibilities relating to cultural heritage, according whereto, everyone, alone or collectively, has the right to benefit from the cultural heritage and to contribute towards its enrichment, meanwhile undertaking to respect the cultural heritage of others as much as their own heritage.

Since the exercise of the right to cultural heritage is considered to be of fundamental importance, it may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others³⁷⁴. And Article 9 lays out the provisions necessary for the protection of heritage, the most important of which is respect for the integrity of the cultural heritage, stating that decisions about any change of the heritage include an understanding of the cultural values involved and ensuring specific conservation requirements of cultural heritage³⁷⁵.

However, it should be noted that only the proclamation of rights is not enough to apply them; at first, it is necessary to create the conditions for exercising these rights, which calls for both access to the "heritage area" and participation in the "construction" processes³⁷⁶, both of which were and are essentially impossible during this war. British theorist of cultural law K. Hausler states that in such cases the prospects for cultural identity, the use of one's own language, the opportunity to be educated with it, to develop in accordance with one's own customs and traditions are disrupted³⁷⁷.

As mentioned above, in addition to intangible values, the protection of intangible cultural heritage in times of war encompasses also the protection of

³⁷⁴ Ibid., Articles 2, 4, 6.

³⁷⁵ Ibid., Article 9.

³⁷⁶ See Tigranyan A., *op. cit.*, pp. 84-103.

³⁷⁷ See Hausler K., *The Protection of Cultural Heritage in Armed Conflict*, In: Casey-Maslen S. (ed.), *The War Report*, Oxford: Oxford University Press, 2014.

individuals, groups, or communities that participate in the exercise of their own heritage³⁷⁸. This protection includes both individual and community rights³⁷⁹. If we consider the harm caused to the individuals or communities, i.e. the civilian population, bearing intangible cultural heritage during the actual war, we will reveal that civilians were targeted by Azerbaijan, and entire communities were displaced. What else is this except an assault on the values they uphold as well? Numerous attacks on the communities, i.e., the civilian population, violated their fundamental rights, particularly those related to culture³⁸⁰. In such cases the international humanitarian law is the one that can protect the lives of individuals, and therefore the expression of their creative thought, i.e. cultural heritage, as well³⁸¹. Azerbaijan does not respect the right to protection of both the heritage and the people bearing it, despite the fact that under international law³⁸², respect for the right to culture is also an obligation, and the International Court of Justice has acknowledged that the humanitarian rights of people are applicable as a "lex specialis"³⁸³ and apply as customary international law³⁸⁴ (there is a justification that the protection of intangible cultural heritage can also be considered as such)³⁸⁵.

UNESCO Special Rapporteur Karima Bennouna states: "When cultural heritage is under attack, it is also the people and their fundamental human rights that are under attack"³⁸⁶. In this sense, the hostile behaviour towards the

³⁷⁸ See Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949, Articles 33-37, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf) (accessed: 01.02.2021).

³⁷⁹ See Vrdoljak A. F., *Cultural Heritage in Human Rights and Humanitarian Law*, p. 259.

³⁸⁰ In particular, the rule against targeting the civilian population has the character of customary law (*jus cogens*) and must be enforced under any conditions. (See Vienna Convention on the Law of Treaties, 1969, Article 53, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed: 01.02.2021)).

³⁸¹ See Toman J., *op. cit.*, p. 5.

³⁸² See Stone P. G., *The Challenge of Protecting Heritage in Times of Armed Conflict*, pp. 40-54.

³⁸³ See United Nations Human Rights Office of the High Commissioner, *International Legal Protection of Human Rights in Armed Conflict*, p. 11.

³⁸⁴ See Henckaerts J.-M., Doswald-Beck L., *op. cit.*, Rules 38-39, pp. 127-132.

³⁸⁵ See Lostal M., *International Cultural Heritage Law in Armed Conflict*, Cambridge: Cambridge University Press, 2017, p. 103.

³⁸⁶ Larsen P. B., *Modern Conflict, Emergencies and Cultural Heritage: Exploring the Relevance of Cultural Rights: International Conference on the 20th Anniversary of the 1999 Second Protocol of*

cultural heritage of Artsakh is not just an attack on the heritage, but a demonstration of the denial of identity and the rights of both individuals and groups. The former head of UNESCO, Irina Bokova, has argued: "There is no need to choose between saving lives and preserving cultural heritage: the two are inseparable"³⁸⁷. She also argues that the destruction of heritage means "killing the people for the second time"³⁸⁸.

the 1954 Hague Convention Protecting Cultural Property Conference Proceedings, UNESCO, Paris, 2020, p. 89-90.

³⁸⁷ Bokova I., *Culture on the Front Line of New Wars*, "Brown Journal of World Affairs", Vol. 22, no. 1 (2015), p. 294.

³⁸⁸ UNESCO reports on extensive damage in first emergency assessment mission to Aleppo, 19 January 2017, <https://whc.unesco.org/en/news/1619/> (accessed: 10.08.2021).

2.4. International Principles for Preservation of Cultural Heritage (Authenticity, Cultural Significance, Integrity, and Outstanding Universal Value)

International principles for preservation of cultural heritage. Several primary criteria for heritage are distinguished in the international system for the preservation of cultural heritage (UNESCO, its advisory bodies: ICOMOS, ICCROM, etc.): authenticity, cultural significance, integrity, and outstanding universal value.

1. **Criterion for authenticity.** The authenticity of cultural heritage has essential significance in its preservation and is determined by the "Nara Document on Authenticity" adopted by UNESCO in Japan in 1994. It relates to the principles of the naturalness of cultural heritage, which are founded on the notion of heritage being the result of the collective creative work of a person or community, the outcome of an actual cultural tradition³⁸⁹. The aspects of authenticity may include the form and design of the heritage, materials, and substance, use and function, traditions and techniques, location and setting, spirit and feeling, and other internal and external factors³⁹⁰. And if we add to the above-mentioned the interpretation of the Nara document of 1994 about the concept of "preservation of cultural heritage", the essence of preservation of heritage will become clear: "Conservation of cultural heritage in all its forms and historical periods is rooted in the values attributed to the heritage³⁹¹. Our ability to understand these values depends, in part, on the degree to which information sources about these values may be understood as credible or truthful. Knowledge and understanding of these sources of information, in relation to original and subsequent characteristics of the cultural heritage, and

³⁸⁹ See United Nations Educational, Cultural and Scientific Organization, Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Eighteenth session, Phuket, Thailand, 12-17 December 1994, <https://whc.unesco.org/archive/nara94.htm> (accessed: 10.08.2021).

³⁹⁰ Ibid., Values and authenticity, Clause 9.

³⁹¹ Cultural heritage includes monuments, groups of buildings and sites of cultural value, as defined in Article 1 of the Convention "On the Protection of the World Cultural and Natural Heritage". (See Convention Concerning the Protection of the World Cultural and Natural Heritage, Article 1).

their meaning, is a requisite basis for assessing all aspects of authenticity"³⁹². This demonstrates that credible information sources are a requisite basis for understanding the type, peculiarities, meaning, and history of cultural heritage. This means that the perception of authenticity acquires a key role in all the procedures related to the preservation of cultural heritage. And when it comes to the fact that the heritage is affected during the conflicts, without undermining the fact of authenticity, the Nara document highlights the issue of acknowledgement of the legitimacy of the cultural values³⁹³. Furthermore, the document also recommends examining and assessing the heritage based on the cultural context of its ownership. Attaching importance to the preservation of the heritage in an undistorted way, it is stated in the document that the fact of authenticity may be endangered in the case of restoration processes³⁹⁴.

2. **Criteria for cultural significance.** It has been established under the 1999 Burra Charter (Austria, ICOMOS)³⁹⁵. It implies "aesthetic, historic, scientific, social or spiritual value for past, present or future generations"³⁹⁶, which complement rather than exclude each other³⁹⁷. In this case, cultural significance is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places, and related objects³⁹⁸. In addition to what has already been said, we would like to add that the cultural significance of heritage can be hidden both in its tangible and intangible elements³⁹⁹. In 2013, Australia ICOMOS proposed a comprehensive definition of the cultural significance of heritage with the mentioned elements, according to which, cultural significance

³⁹² Nara Document on Authenticity, Article 9. Values and authenticity.

³⁹³ Ibid.

³⁹⁴ See "Managing World Cultural Heritage", p.42.

³⁹⁵ The Burra Charter was adopted by the Australian National Committee of ICOMOS (International Council on Monuments and Sites, an Advisory Body of UNESCO) on 14 April 1984 and was revised on 23 April 1988 and 26 November 1999 (See The Burra Charter (The Australia ICOMOS Charter for Places of Cultural Significance), 1999,

http://www.icomosubih.ba/pdf/medjunarodni_dokumenti/1999%20Povelja%20iz%20Burre%20o%20mjestima%20od%20kulturnog%20znacenja.pdf (accessed: 14.07.2022)).

³⁹⁶ Ibid., Article 1.2.

³⁹⁷ For example, the architectural style has both historic and aesthetic values (see *ibid.*, Article 2.1).

³⁹⁸ Ibid., Article 1.2.

³⁹⁹ Ibid., Article 1.

is the sum of the qualities or values that a heritage has, including the above-mentioned five values — aesthetic, historic, scientific, social, and spiritual⁴⁰⁰.

Each value included in this notion definitely requires an additional interpretation, which will be provided below.

Aesthetic significance, that is the aesthetic value of the heritage refers to the sensory and perceptual experience of the heritage that has a strong impact on human thoughts, feelings, and attitudes. Such criteria may include consideration of the form, scale, colour, texture, and material of the heritage; the surroundings, the smells, and sounds associated with the heritage and its use⁴⁰¹. Here, the unique setting of the heritage, and the possibility of evoking strong feelings with one or another quality are equally significant⁴⁰².

Historic value is intended to encompass all aspects of history — for example, the history of aesthetics, art and architecture, science, spirituality, and society⁴⁰³, being associated with both a historical figure and a historic event, phase, or activity of a person or group of people⁴⁰⁴. Furthermore, the Charter states that the historic aspect of the cultural significance of heritage depends also on what extent the evidence of the association or event survives at the place⁴⁰⁵. In addition, the document proposes a revolutionary idea: "...sometimes even some historic events or associations related to heritage may be more important than the heritage itself"⁴⁰⁶.

The scientific value of cultural significance refers to the information content of the heritage and its ability to reveal more about an aspect of the past.

⁴⁰⁰ See Understanding and assessing cultural significance, Australia ICOMOS Burra Charter, 2013, p. 1, https://australia.icomos.org/wp-content/uploads/Practice-Note_Understanding-and-assessing-cultural-significance.pdf (accessed: 14.07.2022).

⁴⁰¹ See Australia ICOMOS, Guidelines to the Burra charter: cultural significance, 1988, Article 2.2, <https://www.marquis-kyle.com.au/bcsignificance.htm> (accessed: 14.07.2022).

⁴⁰² See Understanding and assessing cultural significance, p. 3.

⁴⁰³ See The Burra Charter (Australia ICOMOS Charter for Places of Cultural Significance), Article 2.3.

⁴⁰⁴ See Understanding and assessing cultural significance, p. 3.

The historic value of the heritage may also show patterns in the development of history locally, in a region, on a state-wide, or national or global basis, a high degree of creative or technical achievements for a particular period, etc.

⁴⁰⁵ See The Burra Charter (Australia ICOMOS Charter for Places of Cultural Significance), Article 2.3.

⁴⁰⁶ Ibid.

It is likely to depend on the importance of the information or data involved, on its rarity, quality or representativeness, and its potential⁴⁰⁷.

The social value of cultural significance refers to the associations that a place has for a particular community or cultural group and the social or cultural meanings that it holds for this community or cultural group⁴⁰⁸.

The spiritual value of cultural significance refers to the spiritual identity or belief system, and it can be a repository of knowledge, traditional art, or lore, inspiring a spontaneous emotional or metaphysical response⁴⁰⁹. It may also be reflected in the intensity of aesthetic and emotional responses or community associations, and be expressed through cultural practices and related places.

It should be underlined that both the authenticity and cultural significance is largely dependent upon intangible heritage as well, including traditions, practices, performance, use, knowledge, and language, reserving the responsibility of assessment thereof to those for whom it has this value⁴¹⁰.

When discussing the issue of preservation of heritage from the perspective of the criterion of cultural significance, it is necessary to define the term "preservation of heritage": "Preservation of heritage means ensuring all the processes of continuous care thereof with the aesthetic, historic, scientific, social, and spiritual aspects of cultural significance"⁴¹¹. Afterwards, the Charter provides us with one more revolutionary definition: "Conservation of heritage is first of all retention of associations and meanings..."⁴¹². We shall add to this statement the idea of clause 1.3 of the Operational Directives, according to which preservation of heritage according to the mentioned principles is the most essential factor for its future⁴¹³. Furthermore, shedding light on the issue of restoration of heritage and unnecessary alterations thereto, the Document adopted in 2013 adds that, "any alteration to the heritage that results in the loss of one or more components of cultural significance in terms of the historic,

⁴⁰⁷ See Understanding and assessing cultural significance, p. 4.

⁴⁰⁸ See Australia ICOMOS, Guidelines to the Burra charter: cultural significance, Article 2.5, Understanding and assessing cultural significance, p. 4.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

⁴¹¹ The Burra Charter (Australia ICOMOS Charter for Places of Cultural Significance), Article 1.4.

⁴¹² Ibid., Article 14.

⁴¹³ Ibid., Article 1.3.

aesthetic, spiritual, or social aspects, deprives the heritage of its significance by destroying it"⁴¹⁴. It is noteworthy to state one more observation: "The heritage can be culturally significant regardless of its age, notions of conventional beauty, or the presence or absence of built form, or the number of people for whom it is significant"⁴¹⁵. One more revolutionary idea is highlighted in the Document, namely, the heritage may be destroyed, but its cultural significance may be preserved, and it may be preserved externally, but without internal value and ideology⁴¹⁶. Naturally, the Document highlights the destructiveness of the second approach while respecting both aspects.

3. Criterion of integrity. The concept of this criterion started its formation with the Convention "On the Protection of the World Cultural and Natural Heritage" of 1972 and further developed until the 36th expert meeting of UNESCO in Al Ain in 2012⁴¹⁷. In particular, as defined in Paragraph 88 of the Operational Guidelines adopted in 2005, cultural integrity is a measure of the wholeness and intactness of the natural and/or cultural heritage and its attributes⁴¹⁸. Therefore, speaking about the preservation of integrity we refer to ensuring the integrity of features and processes which convey the property's significance. Then, one more crucial provision is defined by the Operational Guidelines: for preserving the integrity of heritage, it is crucial that the heritage refrains from suffering from either adverse effects of development and/or neglect⁴¹⁹. Adverse effects include any display of human intervention as well as the natural effects of natural phenomena. Otherwise stated, integrity is the wholeness of the monument and is primarily concerned with the complete

⁴¹⁴ Understanding and assessing cultural significance, p. 4.

⁴¹⁵ Ibid., p. 7.

⁴¹⁶ See Burra Charter, The Australia ICOMOS Charter for Places of Cultural Significance, 2013, Article 1.4, <chrome-extension://efaidnbmnnnibpcjpcglclefindmkaj/https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf> (accessed: 14.07.2022).

⁴¹⁷ See Background Document on the Notion of Integrity Prepared by The World Heritage Centre, ICOMOS, ICCROM and IUCN, Version of 7 march 2012, International World Heritage Expert Meeting on Integrity for Cultural Heritage 12 to 15 March 2012, Al Ain, United Arab Emirates, <https://whc.unesco.org/uploads/events/documents/event-833-7.pdf> (accessed: 14.07.2022).

⁴¹⁸ Ibid., p. 2.

⁴¹⁹ See Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, WHC, 11/01 November 2011, para. 88, <https://whc.unesco.org/archive/opguide11-en.pdf> (accessed: 14.07.2022).

representation of the processes related to the monument and the features conveying its significance, where the extent to which the elements are preserved plays a crucial role⁴²⁰. There are two aspects of arguments worth highlighting here: the first refers to the availability of elements to present the information about the heritage fully and the second refers to the natural state and integrity of the given elements⁴²¹. Based on the definition proposed by Herb Stovel, it was recorded at the 36th expert meeting of UNESCO that authenticity may be understood as the ability of a property to convey its significance over time, and integrity may be understood as the ability of a property to secure or sustain its significance over time⁴²².

The continuous development of the concept of integrity provided an opportunity to separate the terms of structural, operational, and perceptual integrity of heritage at the expert meetings of UNESCO to emphasize the significance of maintaining the integrity of heritage functions, various processes, and perceptual and sensory elements in the domain of the latter, aside from material elements⁴²³. Similar to the concepts of authenticity and cultural significance, the concept of integrity also encompasses the social and cultural practices and values of heritage, economic processes, and the intangible values associated with diversity and identity.

Referring to the issue of the preservation of heritage, we can state that preservation of heritage in accordance with the principle of its integrity implies, first and foremost, the preservation of the elements conveying heritage values, while also taking into account the relations of both the individual elements and their relations with the whole⁴²⁴. Referring to adverse human impact, paragraph

⁴²⁰ Ibid.

⁴²¹ See Stovel H., Effective use of authenticity and integrity as world heritage qualifying conditions, *City & Time* 2 (3), 2007, pp. 24-25, <http://www.ceci-br.org/novo/revista/docs2007/CT-2007-71.pdf> (accessed: 14.07.2022).

⁴²² Ibid.

⁴²³ See Rapport de la Réunion d'experts sur l'Évaluation des Principes généraux et des critères pour les propositions s'inscription de biens naturels du patrimoine mondial (Parc national de la Vanoise, France, 22-24 mars 1996).

⁴²⁴ See Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, WHC, 11/01 November 2011, para. 119.

90 of the Operational Guidelines provides additional clarification that for maintaining integrity, all the properties of heritage must be intact⁴²⁵.

It is specified in the "Operational Guidelines for the Implementation of the World Heritage Convention" developed by UNESCO in 2005 that the attributes may be tangible and intangible, and they influence the form, design, materials and substance, use, function, traditions, techniques, management systems, location, and setting, language of the tangible value and other forms of intangible heritage as well as spirit and feeling⁴²⁶. In accordance with the Guidelines, integrity is directly related to the wholeness of the monument⁴²⁷ and means the availability of all its features and attributes, and preservation of heritage in that case is the preservation of all the features⁴²⁸. In this case, every feature and attribute of any cultural value is just as significant as the heritage itself, with its basic structure. Additionally, attributes in this sense are not only certain tangible values, but can also encompass the heritage in its entirety. Furthermore, the attributes of cultural heritage frequently give it a crucial quality of significance⁴²⁹.

In 2018, UNESCO, possessing a primary mandate for the protection of the world cultural heritage provided by the United Nations, along with a number of other international non-governmental organizations active in the field, i.e. ICCROM, ICOMOS, and IUCN, published the Resource Manual "Managing Cultural World Heritage". The issue of the elements and features of monuments was particularly addressed in the Manual. It specifically states: "Having considered what the potential outstanding universal value of a natural or cultural property might be, it is essential to consider the attributes, more commonly called features for natural properties, which convey that value and allow an understanding of it. Attributes might be physical qualities or fabric but can also be processes associated with a property that impact on physical

⁴²⁵ Ibid., para. 90.

⁴²⁶ Ibid., para. 88.

⁴²⁷ Ibid.

⁴²⁸ See "Managing World Cultural Heritage", p.39.

⁴²⁹ Ibid.

qualities, such as natural or agricultural processes, social arrangements or cultural practices that have shaped distinctive landscapes"⁴³⁰.

4. Criterion of outstanding universal value. This criterion holds that every cultural value is a masterpiece of human creative genius, and that the destruction of heritage deprives the world of such genius masterpieces. Moreover, within the ambit of outstanding universal value, a unique or at least exceptional testimony to a cultural tradition or history of the heritage, its aesthetic significance, a type of building, architectural or technological ensemble, or landscape which illustrates significant stages in human history, tangible association with historic events or living traditions, with ideas, or with beliefs, with artistic and literary works, can be observed⁴³¹. The most crucial aspect here is that the creative genius or, what is the same, the cultural significance of the heritage is documented and certified by the community that creates it, and it is the community that decides whether that heritage is genius or not.

⁴³⁰ Ibid.

⁴³¹ Ibid.

CHAPTER 3.

DESTRUCTION OF THE ARMENIAN CULTURAL HERITAGE OF ARTSAKH BY AZERBAIJAN

3.1. Destruction of Cultural Heritage as a State Policy of Azerbaijan

Since its establishment in 1918, the artificially created state of Azerbaijan has adopted a pronounced antiarmenian policy on the way to forging its “own” identity and the false search for the “substantiation” of the claim that the historical Armenian territories belong thereto⁴³². The main idea that Azerbaijan is attempting to follow is primarily related to the complete eradication of the Armenian identity from the territory of Artsakh. This is mainly accomplished at a high state level, through the president, ministers, other officials, and the “scientists” working under state patronage. Moreover, the Aliyev administration (former president Heydar Aliyev and his son Ilham) is constantly present in this perspective of cultural genocide, which on the one hand wants to exterminate the Armenians, and on the other hand, to take advantage of this fact to legitimize and strengthen its power among the domestic populace.

The policy of falsifying historical facts and altering the ethnic makeup of the desirable territory was naturally carried out by the ongoing destruction of the rich cultural heritage of those territories, both in times of purported “peace” and bloody wars. Actually, cultural destruction practices have apparently almost always been displayed. This is evidenced by the numerous factual data demonstrating the destruction of Armenian cultural values by Azerbaijan, confirming a harsh truth, that is, Artsakh has always been and is engaged in a “cultural war” regardless of the presence or absence of military operations, since the destruction of the cultural heritage, which is deemed to be a symbol of the identity of a group, is a form of “cultural” war⁴³³. The official speeches of the President of Azerbaijan were replete

⁴³² The antiarmenian policy of Azerbaijan has risen under the influence of the genocidal policy of Turkey, as a result of the formation of Azerbaijan as a state unit in 1918 and the formation of the Azerbaijani people in the n 1930s. It evolved quickly throughout the Soviet era (particularly since the 1960s) and continues to be enforced today (see Zhamkoshyan A., Atanesyan A., Harutyunyan G. and others, *op. cit.*, p. 21).

⁴³³ See Chainoglou K., *op. cit.*, pp. 109-134.

with clear threats and calls for war with regard to Armenian values. Ilham Aliyev has announced on numerous occasions, “The Azerbaijani state will restore its territorial integrity using its military”⁴³⁴. And within the ambit of such a line of argument, the cultural heritage of Artsakh — a symbol of the historical, cultural, and religious identity of Armenians of Artsakh — became the most vulnerable during both the first and second Artsakh wars, endangering both the preservation of the integrity of the cultural community and even the existence of Artsakh.

For presenting the Azerbaijani policy towards the Armenian heritage more systematically, we shall break down the topic into distinct points:

- territorial claims against the Republic of Armenia and the Nagorno-Karabakh Republic;
- disseminating the myth of the Armenians being newcomers and of the nativeness of Turks;
- destruction of Armenian identity and cultural cleansing;
- destruction or misappropriation of heritage.

Territorial claims against the Republic of Armenia and the Nagorno-Karabakh Republic. Permanent territorial claims and mechanisms for enforcing them through force form the cornerstone of Azerbaijani policy. During his official speech on 7 July 2014 (and many times to this day), the President of Azerbaijan referred to Nakhichevan and Zangezur as historic Azerbaijani lands. Furthermore, there is a thesis that the current Republic of Armenia is located in the Azerbaijani territory, and efforts are being made to place the historical and current Armenia within the concept of “Western Azerbaijan”. More specifically, Ilham Aliyev publicly states that in 1918 the Armenian Republic was established on the Azerbaijani lands and one of the most important cultural centres of Azerbaijan, the city of Irevan was ceded to them as capital⁴³⁵. In addition, according to official pronouncements of

⁴³⁴ See the Expert Group of the Chamber of Advocates of the Republic of Armenia on Examining the International Legal Aspects of the Issue of the Republic of Artsakh, “Professional Opinion on Artsakh Conflict and Violations of the International Law by the Republic of Azerbaijan”, Yerevan, 27 June 2017, p.15, chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://advocates.am/images/haytararutyunneri_fayler/2017/Masnagitakan_kartsiq.pdf (accessed: 15.12.2020).

⁴³⁵ *Ibid.*, p. 16.

Azerbaijan, "Azerbaijan has ceded the Armenians the territories of Irevan Khanate, as well as the territories of Karabakh and other parts of the country"⁴³⁶.

Disseminating the myth of the Armenians being newcomers and of the nativeness of Turks. According to the information that is now accessible, it is an indisputable fact that Artsakh and Utik have been a part of the history of the Armenians at least since the 6th century BC, when they were the border states of the Kingdom of Armenia of the Orontid dynasty⁴³⁷.

Azerbaijan has also imitated the old methodology of justifying the "arrival" of Armenians and the "nativeness" of Turks by trying to appropriate the history of the ancient peoples, the Hittites and the Urartians⁴³⁸, in order to deny the fact⁴³⁹ that Armenians have historically resided in the territories of Armenia and Artsakh as well as the existence of their own culture and history. In the face of the absolute indifference of the international community, historians of the Bunyatov school of Azerbaijan, a country newly formed in the Soviet period, assigned the role of the latter to the peoples of Albania, who have left the arena of history long ago, repeatedly stating that Armenians have never lived on the territory of Artsakh and that the exceptional examples of the Armenian heritage within the borders of the Republic of Armenia and the Nagorno-Karabakh Republic belong to the people of Caucasian Albania⁴⁴⁰. Through this entire process, they attempted to "move" Artsakh to Albania with the aim to recognize it as historically being a province of Albania and to substantiate its further Azerbaijanization⁴⁴¹. According to H. Petrosyan, the overarching goal of this policy was to present Armenians as an apolitical and uncultured mass with no cultural heritage and history, and therefore

⁴³⁶ Sargsyan A., "Armenophobia in Azerbaijan: at the intersection of resentment and authoritativeness", Yerevan, 2013, p. 13.

⁴³⁷ See Petrosyan H., Muradyan H., "Cultural heritage of Artsakh in the target of attacks", Yerevan, 2022, p. 6.

⁴³⁸ See Hakobyan L., "Components of Azerbaijani Antiarmenian Infopolitical System", Noravank Foundation, 03.06.2015. http://www.noravank.am/arm/articles/detail.php?ELEMENT_ID=13518 (accessed: 15.12.2020).

⁴³⁹ See the Expert Group of the Chamber of Advocates of the Republic of Armenia on Examining the International Legal Aspects of the Issue of the Republic of Artsakh, op. cit., p. 19.

⁴⁴⁰ The information provided by historical sources, including lapidary inscriptions, is disregarded, and they are presented as Albanian-Azerbaijani cultural values.

⁴⁴¹ The Armenian cultural heritage is not only being dearmenianized, but it is being albanized, with the prospect of further Azerbaijanization.

having no homeland, no historical right to the homeland in this region, people that have come or have been brought from here and there"⁴⁴². H. Petrosyan adds that the thesis that Armenians first appeared in Eastern Armenia (specifically, in Artsakh and the surrounding areas) in the recent past is a clearly developed policy by Azerbaijan, to which hundreds of "scientific" exercises are devoted, and which are supported by academies and scientific centres, including those abroad. And "while in the 1960s of the previous century, the time of the "arrival" of the Armenians was linked to Arab rule, afterward to the 12th–13th centuries, in 1990s, it was extended to the 19th century"⁴⁴³.

The destruction of historical facts, the material evidence whereof are cultural values, should logically follow the justification of such an unreasonable approach. And, naturally, the cultural heritage having been created before the 19th century was considered non-Armenian, but Albanian or Udi or Russian. And the Christian structures, which are of no interest to the Muslim Azerbaijanis in terms of cult and rituals, are exactly what the Udis, the only historical Christian community of Azerbaijan, need⁴⁴⁴. Therefore, to accomplish its purpose, Azerbaijan adopted the strategy of expropriating the Armenian heritage, altering its name, purging it of any elements of Armenianness, and finally eradicating it. This was done both before and especially after the 44-day war.

Destruction of Armenian identity and cultural cleansing. In broad terms, the specialists who have studied the motivations for wars identify 4 motives thereof, which are the following: political, military, economic and cultural, around which one or another war is waged⁴⁴⁵. However, it is obvious that all the military operations of Azerbaijan against Artsakh were not limited to military objectives only; they served also political, military, economic, and cultural objectives. According to an American expert on terrorism and international crimes M. Abrahams, heritage is a "soft target", and while its destruction cannot provide a specific tactical advantage for the enemy, it can be a very strong signal and cause a

⁴⁴² See Petrosyan H., "Brief about Azerbaijani politics", Աղբրեցանական-քաղաքականության-մասին.pdf (monumentwatch.org) (accessed: 15.12.2020).

⁴⁴³ Ibid.

⁴⁴⁴ Ibid.

⁴⁴⁵ See Brosché J., Legnér M., Kreuz J. and Ijla A., Heritage under attack: motives for targeting cultural property during armed conflict, "International Journal of Heritage Studies", November 2016, pp. 1-26.

significant psychological shock to the given community⁴⁴⁶. According to D. Viejo-Rose, one of the experts on heritage issues, an attack on heritage aims to disrupt the “thread of continuity” of the enemy by eradicating their sense of belonging to a certain area, in the expectation that it will be easier to control such a society⁴⁴⁷. In this context, it is clear that the antiarmenian policy of Azerbaijan is motivated by a propensity to disrupt the continuity of the Armenian identity. The aforementioned also outlines the reality that the policy of desecration and destruction of the Armenian identity and cultural heritage was not only a consequence of the war, but also a well-developed plan, which, having been put into place in the previous century, has continued to this day and, depending on the circumstances, can flexibly adopt new directions.

As noted by Eric Roethlisberger, vice president of the International Committee of the Red Cross, the goal of many wars is not just the victory of the armed forces anymore, but the alteration of the ethnic makeup of the desired territory⁴⁴⁸. And as it was established in the court of Yugoslavia, cultural destruction is part of ethnic cleansing, and crimes against cultural property are directly linked to crimes against persons⁴⁴⁹. In this context, we can claim for sure that the destruction of cultural property was a weapon of war for Azerbaijan to support ethnic cleansing with the aim to erase Armenian cultural identity. Thus, we can conclude that the policy of Azerbaijan of deliberate and consistent destruction of Armenian cultural values corresponds to the terms “cultural cleansing”⁴⁵⁰ or even “cultural genocide”⁴⁵¹ in full since the destruction of cultural

⁴⁴⁶ See Abrahms M., Why terrorism does not work, “International Security”, Vol. 31, No. 2, 2006, pp. 42-78.

⁴⁴⁷ See Viejo-Rose D., Destruction and Reconstruction of Heritage: Impacts on Memory and Identity, In: “Heritage, Memory, and Identity”. Edited by H. K. Anheier and R. I. Yudhishtir, London: SAGE Books, 2011, p. 4.

⁴⁴⁸ See Roethlisberger E., op. cit., pp. 15-19.

⁴⁴⁹ See Brammertz S., Criminal Prosecutions of the Destruction of Cultural Property in Armed Conflict, International Conference on the 20th Anniversary of the 1999 Second Protocol of the 1954 Hague Convention Protecting Cultural Property Conference Proceedings, pp. 97-100.

⁴⁵⁰ The deliberate and repeated eradication of a nation's history, memory, and cultural heritage, along with the denial of cultural identity, traditional practices, and education, has been defined as cultural cleansing. The term was put forth by Director-General of UNESCO Irina Bokova in 2014, in relation to the destruction of the cultural heritage of Iraq and Syria. It is not a legal term.

⁴⁵¹ According to legal expert Raphael Lemkin, genocide is not only the extermination of a national or religious group, but also the destruction of its national-spiritual culture.

heritage has established links with the genocide, serving as both a precursor to and a crucial element of it⁴⁵². In accordance with the Convention “On the Prevention and Punishment of the Crime of Genocide” of 1948, the destruction of cultural heritage is defined as cultural genocide and a crime against all humanity⁴⁵³. This idea is supported by numerous theories, which claim that attacks on cultural heritage typically precede at least an attempt at genocide⁴⁵⁴. Furthermore, Thomas G. Weiss and Nina Connelly state that preventing the destruction of cultural heritage is a means to prevent genocide⁴⁵⁵. Even more, according to Helen Frowe and Derek Matravers, even the use of force to defend cultural heritage is justified. “Protecting cultural heritage can sometimes conflict with protecting people since the intrinsic value of heritage in people's lives is too great”⁴⁵⁶. And although the most recent Artsakh war was also a physical extermination, nevertheless, any action intended to destroy the common legacy and the collective historical memory, and to disrupt daily life of the given community is enough to consider that action as genocide. From this perspective, we can assert that the policy of ethnic cleansing by Azerbaijan can be prevented if cultural values are respected. By the same reasoning, intolerance towards cultural values might lead to other disasters. It is also noteworthy to recall the 3 red flag alerts issued by the Lemkin Institute for Genocide Prevention for the international community, according to which, the hateful actions of Azerbaijan (including any act of degradation and

⁴⁵² See Bevan R., op. cit., p. 1.

⁴⁵³ See Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf (accessed: 15.12.2020). See also United Nations General Assembly, Report of the Special Rapporteur in the Field of Cultural Rights, para. 64, Hausler K., op. cit., p. 379.

⁴⁵⁴ See Frowe H. and Matravers D., Conflict and Cultural Heritage, A Moral Analysis of the Challenges of Heritage Protection, J. Paul Getty Trust Occasional Papers In Cultural Heritage Policy, Number 3, 2019, pp. 4-32, <https://www.getty.edu/publications/occasional-papers-3/> (accessed: 15.12.2020).

⁴⁵⁵ See Weiss T. G. and Connelly N., Cultural Cleansing and Mass Atrocities: Protecting Cultural Heritage in Armed Conflict Zones, J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy, Number 1, 2017, p. 13, https://www.getty.edu/publications/pdfs/CulturalCleansing_Weiss_Connelly.pdf (accessed: 15.12.2020).

⁴⁵⁶ Frowe H. and Matravers D., op. cit., p. 6.

destruction of cultural values), which have been carried out since 1915 as part of the common Turkish-Azerbaijani policy, are considered to be an act of genocide⁴⁵⁷.

Numerous specialists in the field have referred to the policy conducted by Azerbaijan as ethnic genocide. Thus, Professor Hamlet Petrosyan, an archaeologist, Doctor of Historical Sciences, and Haykuhi Muradyan, an expert in cultural policy, Candidate of Historical Sciences, specifically mention the following in their co-authored book "Cultural Heritage of Artsakh in the Target of Attacks": "The ethnic-cultural genocide in Turkey and Azerbaijan have the same objective: to destruct and appropriate — along with massacres of the Armenian populace — the cultural values created by Armenians and the tangible expressions of the existence of the Armenian civilization so that the historical evidence of the Armenian people in those territories are erased. This policy is a component of the genocidal plan: there is no ethnic group, nor is there any cultural trace in those areas"⁴⁵⁸.

Destruction of cultural heritage. The historical truth of the thousand-year presence of Armenians in the region and the reality irreconcilable with the Azerbaijani rhetoric with many expressions of its denial deepen the unadjusted Armenian-Azerbaijani conflict due to the neutrality of the international community. The destruction of Armenian monuments in Artsakh has had a constant nature, as has been highlighted numerous times, but it got much worse during the war from 1988 to 1994 when many Armenian Christian structures were shelled by long-range artillery, the 19th century Church of the Holy Saviour Ghazanchetsots of Shushi, the monasteries of Gandzasar, Amaras, Dadivank (Dadivank was used as a cattle barn⁴⁵⁹), Tsitsernavank and Vankasar churches,

⁴⁵⁷ See Lemkin Institute for Genocide Prevention, Red Flag Alert for Genocide - Azerbaijan Update 1, <https://www.lemkininstitute.com/red-flag-alerts-1/red-flag-alert-for-genocide---azerbaijan-update-1> (accessed: 15.12.2020), Red Flag Alert for Genocide - Azerbaijan Update 2, <https://www.lemkininstitute.com/red-flag-alerts-1/red-flag-alert--for-genocide---azerbaijan-update-2> (accessed: 15.12.2020), Red Flag Alert for Genocide - Azerbaijan - Update 3, <https://www.lemkininstitute.com/red-flag-alerts-1/red-flag-alert-for-genocide---azerbaijan---update-3> (accessed: 15.12.2020).

⁴⁵⁸ Petrosyan H., Muradyan H., op. cit., p. 2.

⁴⁵⁹ It should be highlighted that altering the purpose of the cultural heritage structure is akin to destroying it since it can also obliterate the knowledge and history of the heritage (See Johannot-Gradis Ch., op. cit., p. 1253-1275).

Yeghnasar monastery and dozens of other monuments were set on fire⁴⁶⁰. During the following years, from 1998 to 2006, when there were "peaceful times"⁴⁶¹, the Azerbaijani army, using heavy construction equipment, demolished and pulled down thousands of carved khachkars and tombstones of the medieval Armenian cemetery of Old Jugha in Nakhichevan, turning the area freed from the unique historical and cultural samples of the cemetery into a shooting area. Specifically, in his article "The Iconography of Jugha Khachkars", H. Petrosyan states: "In the 17th century, there were nearly 10,000 khachkars in Jugha. At the turn of the 20th century, only about 3,000 khachkars of Jugha were left, and by the end of 2002, the last ones had been eliminated as a result of the barbarism organized by the government of Azerbaijan"⁴⁶².

Azerbaijani atrocities gained new momentum nearly 20 years after the Artsakh war, during the four-day war of 2-5 April 2016, when Azerbaijan caused considerable damage to the chapel of Talish village by bombarding it, breaking the rules of international humanitarian law⁴⁶³. It is noteworthy to cite the Prosecutor of the International Criminal Court, Fatou Bensouda, in this regard: "Attacking religious and historical monuments destructs the roots of an entire people, which irremediably affects its social attitudes, practices, and structures"⁴⁶⁴.

There is numerous factual evidence that Azerbaijan targeted the cultural heritage of Artsakh both during and after the 44-day war by gross violations of international laws, which will be covered in more detail in the corresponding section.

⁴⁶⁰ See Kirakosyan L., Cultural Genocide (by the example of the architectural monuments of Artsakh), "Issues of Armenian Studies", Yerevan, 2014, No 1, pp. 107-118.

⁴⁶¹ Intentional destruction of cultural values in peacetime is also prohibited by a number of conventions of UNESCO, that has received a cultural mandate from the UN, including the Convention "On the intentional destruction of cultural heritage" adopted in 1970 and the Convention "On the protection of the world cultural and natural heritage", adopted in 1972.

⁴⁶² Petrosyan H., "Iconography of Jugha khachkars", "PBH", Yerevan, 2004, No 1, p. 1.

⁴⁶³ See the Expert Group of the Chamber of Advocates of the Republic of Armenia on Examining the International Legal Aspects of the Issue of the Republic of Artsakh, op. cit., p. 15.

⁴⁶⁴ International Criminal Court, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Opening of Trial in the Case Against Mr Ahmad Al-Faqi Al Mahdi, 22 August 2016, <https://www.icc-cpi.int/legalAidConsultations?name=otp-stat-al-mahdi-160822> (accessed: 15.12.2020).

Appropriation of cultural heritage as part of Azerbaijani policy. Appropriation of cultural heritage is also a part of the cultural genocide program of Azerbaijan, which began in the latter half of the 20th century and especially increased after the 44-day war. According to H. Petrosyan and H. Muradyan, the ultimate purpose of expropriation policy is the legitimization of territorial belonging and creating a myth that Azerbaijanis or their numerous fictive “ancestors” have lived in this region for centuries⁴⁶⁵. The study of the policy of Azerbaijan with regard to the appropriation of Armenian cultural values revealed that it is also multi-layered and has its own execution directions, so we will examine them next.

The outbreak of the Armenian-Azerbaijani conflict. Although the International Court of Justice of the United Nations qualified the Armenian-Azerbaijani conflict only as a territorial dispute that started after independence, it must be acknowledged that it has deep-seated origins⁴⁶⁶. Actually, the Armenian-Azerbaijani ethno-territorial dispute dates back to the early 20th century which arose in the context of the establishment of a new political regime in Transcaucasia, emerging as a problem as a result of the fall of the Russian Empire in 1917, during the early period of the formation of Armenia and Azerbaijan. Particularly, declaring their independence in May 1918, Armenia and Azerbaijan — during both their short-lived independence and in the years that followed — encountered ethno-territorial problems over the disputed territories of Nakhichevan, Zangezur, and Artsakh.

The situation of the disputed territories was even more challenging to resolve after the Sovietization of Azerbaijan (28 April 1920), when Baku embarked on the consistent Azerbaijanization of the Republic, the principal barrier whereof was the Armenians. Later on, the Azerbaijani plan of cultural genocide was supported by the treaties of Kars and Moscow.

In Nakhichevan, Artsakh, and other territories that were annexed to Azerbaijan, Armenians and the Armenian legacy have been continuously

⁴⁶⁵ See Petrosyan H., Muradyan H., op. cit., p. 3.

⁴⁶⁶ See International Court of Justice, Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Armenia v. Azerbaijan), 7 December 2021, General List No. 180, <https://www.icj-cij.org/public/files/case-related/180/180-20211207-ORD-01-00-EN.pdf> (accessed: 06.07.2022).

persecuted on both an ethnic and cultural level⁴⁶⁷, and the process of depopulation of Armenians has had permanent nature⁴⁶⁸. According to Professor H. Petrosyan, “...the primary cause of cruel impunity was and still is the Armenophobe policy of the newly established Azerbaijan aimed at the extermination of Armenians, it was the complete Azerbaijanization of Karabakh, the rejection of armenianness in all spheres of life in Karabakh: education, economy, governance, culture, language, heritage, tradition”⁴⁶⁹.

Artsakh has been an integral part of the history of Armenians at least since the 6th century BC⁴⁷⁰. “Nagorno-Karabakh (historically called “Artsakh” in Armenian) is home to one of the world’s oldest surviving indigenous Christian populations, though their history predates Christianity by centuries”⁴⁷¹. Trustworthy historical sources consider it an indisputable truth that Artsakh is an integral part of historical Armenia⁴⁷². There are many references to the presence of Armenians in the region with a homogeneous self-identity for more than two millennia⁴⁷³. Numerous specialists claim that the identity of the people originally called “Caucasian Tatars” or simply “Tatars” or, which is the same, Azerbaijani identity, was formed only recently, in the early 20th century, upon the formation of the short-lived Azerbaijan Democratic Republic in 1918, when the first references to the Turkic-speaking population as “Azerbaijani” and “Azeri” have

⁴⁶⁷ The expressions of the policy of expelling the Armenian population from their homelands were the persecutions of the 1950s, which led to a significant depopulation of Armenians of Astapat, Yernjak and Leninabad villages, the cities of Nakhichevan and Julfa (Jugha).

⁴⁶⁸ See Aghababyan A., “Some examples of territorial appropriation of Nagorno-Karabakh in 1920-1930s”, Yerevan, YSU publishing house, 2014, pp. 193-201, <http://ysu.am/files/hayery-nakhijevan.pdf> (accessed: 19.02.2022).

⁴⁶⁹ <https://www.facebook.com/Hamlet.L.Petrosyan/posts/pfbid09LVwLqTpUYiTxrPzSfj25EwvY5eqqRevndHJk33RgogskQPD3HwWFQWYyYsRuu6ARI> (accessed: 18.02.2022).

⁴⁷⁰ See Petrosyan H., Muradyan H., op. cit., p. 6.

⁴⁷¹ Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan’s Claims to Nagorno-Karabakh, “Hyperallergic”, February 28, 2021, <https://hyperallergic.com/614619/why-armenian-cultural-heritage-threatens-azerbajians-claims-to-nagorno-karabakh/> (accessed: 18.02.2022).

⁴⁷² Artsakh (Karabakh) has been an integral part of historic Armenia. During the Urartian era (9th-6th centuries B.C.) it was known as Urtekhe-Urtekini. As a part of Armenia Artsakh is mentioned in the works of Strabo, Pliny the Elder, Claudius Ptolemaeus, Plutarch, Dio Cassius, and other ancient authors.(see “Nagorno-Karabakh Issue”, RA MFA, <https://www.mfa.am/hy/nagorno-karabakh-issue/> (accessed: 18.02.2022)).

⁴⁷³ See Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan’s Claims to Nagorno-Karabakh.

appeared⁴⁷⁴. There is even no need to conduct a thorough analysis to comprehend that for the people with a newly created identity and the newly formed statehood, the masterpieces of Armenian art and culture created several centuries before the presence of the Caucasian Tatars were the primary obstacle to the localization of the newly formed Azerbaijani identity in the territory of Nagorno-Karabakh⁴⁷⁵.

Establishment of the Autonomous Region of Nagorno-Karabakh. Although on 30 November 1920, Azerbaijan announced that it recognized Nagorno-Karabakh, Zangezur, and Nakhichevan as an integral part of Armenia, and later Nagorno-Karabakh was declared an integral part of Soviet Armenia⁴⁷⁶ by the agreement signed between the governments of Armenian and Azerbaijani SSR, as well as with the declaration of 12 June 1921, however, a different course was planned. On the night of July 5, the decision to annex Nagorno-Karabakh to Soviet Azerbaijan was made at the behest of Moscow and through Stalin's direct intervention⁴⁷⁷, and two years later, by the decree dated 7 July 1923, appropriating a number of Armenian territories, the leadership of Soviet Azerbaijan establishes Autonomous Region of Nagorno-Karabakh⁴⁷⁸. After all this, the government of Azerbaijan embarks on the explicit implementation of the policy of national discrimination and ethnic cleansing⁴⁷⁹. The problem increased due to the decision of formal autonomy and intensified especially since the 60s of the previous century, when the legal term "autonomy" lost its meaning and significance and remained as a form, being alienated from the content. With this regard, H. Petrosyan states: "Armenians were directly pushed out of the so-called autonomous region, autonomous according to

⁴⁷⁴ While no one would deny that numerous ethnic groups lived in Transcaucasia and contributed to its multifaceted cultural landscape, it is hard to believe that the Caucasian Tatars, whose identity was shaped by their adoption of Islam, can be the inheritors of Christian religious sites (Ibid.).

⁴⁷⁵ Ibid.

⁴⁷⁶ On 4 July 1921, at the plenary session convened by the Caucasus Bureau of the Communist Party of Russia in Tbilisi.

⁴⁷⁷ "This decision is an unprecedented legal act in the history of international law, when the party organ of a third country (RK(b)P) without any legal basis or authority determines the status of Nagorno-Karabakh" ("Nagorno-Karabakh Issue", RA MFA, <https://www.mfa.am/hy/nagorno-karabakh-issue/>).

⁴⁷⁸ See Aghababyan A., op. cit., p. 194.

⁴⁷⁹ Ibid.

the Soviet Constitution, which assumed the autonomy of the Armenians themselves"⁴⁸⁰.

Separation of Nagorno-Karabakh from Soviet Azerbaijan. In 1987, Nagorno-Karabakh started making efforts to separate from Soviet Azerbaijan and unite with Armenia⁴⁸¹. In response to these and the attempts of Armenians to struggle to preserve their existence and the Christian past of the region, the Azerbaijani authorities organized massacres and ethnic cleansing of the Armenian population across the territory of Azerbaijan, particularly in 1988 in Sumgait and Kirovabad (now Ganja) and in 1990, which was followed by "Koltso" (Ring) operation in 1991. But once again, the genocidal actions carried out by Azerbaijan were presented as "Armenian provocations"⁴⁸².

Declaration of Independence of the Republic of Artsakh. It appeared that the document "On Declaration of the Nagorno-Karabakh Republic" adopted on 2 September 1991 in Stepanakert, and the independence approved in a referendum in December, to be a way out of the situation. However, in practice, it did not actually ensure the seemingly inalienable right of the ethnic nation to exist. And despite the fact that the declaration of independence of Artsakh complied with both the international legal standards and the laws of the USSR at the time, it was not accepted by the international community, and the small state that wished to be saved remained a focal point in the conflict of interests of the great powers. In an article published in an international journal, S. Tatikyan states that the NKR seceded from Soviet Azerbaijan in 1991 in line with the Soviet Constitution⁴⁸³, as

⁴⁸⁰ Petrosyan H., "On the nature of the Armenian-Azerbaijani conflict", Հայ-ադրբեյջանական հակամարտության փնտյթի-մասին Համլէտ-Պէտրոսյանս.pdf (monumentwatch.org) (accessed: 06.07.2022).

⁴⁸¹ See The Human Rights Ombudsman of the Republic of Artsakh, Ad Hoc Public Report. The Armenian Cultural Heritage in Artsakh (Nagorno-Karabakh): Cases of Vandalism and at Risk of Destruction by Azerbaijan, Stepanakert, 26 January, 2021, https://artsakhombuds.am/sites/default/files/2021-01/6.%20Final%20Report%20on%20Armenian%20cultural%20heritage%20-%202026.01.2021_0.pdf (accessed: 06.07.2022).

⁴⁸² See Zhamkochyan A., Atanesyan A., Harutyunyan G. and others, op. cit., p. 29.

⁴⁸³ See Tatikyan S., The Fragile Situation in Artsakh in Light of the 2020 War and the Crisis in Ukraine, "EVN Report", Mar 11, 2022, <https://evnreport.com/politics/the-fragile-situation-in-artsakh-in-light-of-the-2020-war-and-the-crisis-in-ukraine/> (accessed: 06.07.2022).

the Soviet Union was dissolving. Therefore, Azerbaijan's claim that Artsakh's independence violates its territorial integrity is not valid⁴⁸⁴.

First Artsakh War and the Destruction of Cultural Values. When the Soviet Union started to fall off and dissolve, the existential threat of extermination and the danger of efforts to deny Armenians the right to life prompted the coming war. Amid Soviet leader Mikhail Gorbachev's perestroika, the ethnic cleansing policy pursued by the Azerbaijani government during 1992-1994 in Nagorno-Karabakh and adjacent Armenian-populated territories intensified, leading to open aggression and extensive military operations by Azerbaijan against Nagorno-Karabakh, when Azerbaijan was defeated, causing significant losses for both sides⁴⁸⁵.

In 1994, a ceasefire was established through the mediation of Russia⁴⁸⁶. The negotiations on the right to self-determination of the Armenians of Artsakh which were held under the co-chairmanship of Russia, the USA, and France within the scope of the OSCE Minsk Group⁴⁸⁷ did not result in the signing of the final peace accord.

The discrepancy between the principles of territorial integrity and self-determination, which is also reflected in the UN Charter and the OSCE Helsinki Final Document, is one of the most complex dilemmas of international law, which has largely resulted in a dead end, giving primacy to territorial integrity and including the fact of declaring Nagorno-Karabakh as a part of Azerbaijan by the international community. American reporter Erin Blakemore states that although the international community has officially recognized Nagorno-Karabakh as part of Azerbaijan, since 1994, as a result of an agreed "ceasefire" between the warring

⁴⁸⁴ Ibid.

⁴⁸⁵ See Maghakyan S. and Pickman S., A Regime Conceals Its Erasure of Indigenous Armenian Culture, "Hyperallergic", February 18, 2019, <https://hyperallergic.com/482353/a-regime-conceals-its-erasure-of-indigenous-armenian-culture/> (accessed: 18.02.2022).

⁴⁸⁶ Ibid.

⁴⁸⁷ Starting from 1992, the Security and Cooperation Council of Europe has been interceding with the OSCE to hold negotiations on the matter under the auspices of the Minsk Group, which has been led by France, Russia, and the United States since 1997 (see The Human Rights Ombudsman of the Republic of Artsakh, Ad Hoc Public Report. The Armenian Cultural Heritage in Artsakh (Nagorno-Karabakh): Cases of Vandalism and at Risk of Destruction by Azerbaijan, Stepanakert, 26 January, 2021).

countries, it has been ruled by ethnic Armenians⁴⁸⁸. It is stated in the Ad Hoc Public Report of the Human Rights Ombudsman of the Republic of Artsakh that the new subject established after the war, the "de facto" Nagorno-Karabakh Republic, has not been officially recognized by any state, including Armenia⁴⁸⁹. And "BBC News" commented on the issue as follows: "After the war was stopped, the ethnic Armenians established a "separatist, self-declared (not recognized) republic... backed by the Armenian government"⁴⁹⁰.

It should be recorded, though, that the independence of Artsakh never turned into a "de facto" assurance of the ability of Armenians of Artsakh to express their free will. And even though there have been several precedents of unilaterally accepting independence declarations based on human rights in international reality⁴⁹¹, the inalienable right defined by the UN, for whatever reason, did not apply in the case of Artsakh. And the further issues arose as a result of the persistent Azerbaijani pressures, and the disregard for the right to life, and even the right to self-determination of the Armenians of Artsakh.

And after the losses of 1994, the next war unleashed by Azerbaijan with cases of explicit targeting of cultural values was in April 2016, and the most full-scale and terrible in terms of cultural values and human losses was the 44-day war of 2020.

⁴⁸⁸ See Blakemore E., How the Nagorno-Karabakh conflict has been shaped by past empires, "National Geographic Society", October 16, 2020, <https://www.nationalgeographic.com/history/article/how-nagorno-karabakh-conflict-shaped-by-past-empires> (accessed: 18.02.2022).

⁴⁸⁹ See The Human Rights Ombudsman of the Republic of Artsakh, Ad Hoc Public Report. The Armenian Cultural Heritage in Artsakh (Nagorno-Karabakh): Cases of Vandalism and at Risk of Destruction by Azerbaijan, Stepanakert, 26 January, 2021.

⁴⁹⁰ Armenia-Azerbaijan: Why did Nagorno-Karabakh spark a conflict? "BBC News", 12 November 2020, <https://www.bbc.com/news/world-europe-54324772> (accessed: 18.02.2022).

⁴⁹¹ There have been several such precedents in history when the approaches based on human rights have prevailed in both international relations and law. Specifically, regarding the independence of Kosovo, in 2010, the International Court of Justice (ICJ) issued such a conclusion to the international advisory opinion on compliance with international law. And Timor-Leste gained complete independence from Indonesia in 2002. South Sudan gained independence from Sudan in 2011. Kosovo is the only one of the three, the independence whereof has not been acknowledged by the United Nations yet, which partially acknowledged the independence of Serbia in 2008 by a unilateral declaration.

3.2. Destruction of the Cultural Heritage of Artsakh by Azerbaijan During the Hostilities of the 44-day War

The start of the 44-day war. Having ignored the call of Antonio Guterres, the Secretary General of the 75th session of the UN General Assembly, on 23 March 2020, for declaring a global ceasefire to fight against “Covid-19”⁴⁹², as well as the resolution adopted in June with a similar ideology⁴⁹³, on September 27, Azerbaijan unleashed long-planned and full-scale hostilities against Artsakh. Declaring the war was also an obvious violation of Article 33 of the UN Charter adopted in 1945 in San Francisco⁴⁹⁴. Despite all of this, as stated in the article “Why Armenian Cultural Heritage Threatens Azerbaijan’s Claims to Nagorno-Karabakh” published on the international website “Hyperallergic”, in reality, the 44-day war of 2020 started exactly 100 years ago, in 1920, when Azerbaijanis (or rather, Caucasian Tatars) with the help of their ethnic allies the Ottoman Turks — fresh from their genocide of Armenians — started new pressures⁴⁹⁵. For justifying the illegal policy of the war, Azerbaijan attempted to portray it as a legal action aimed at restoring its territorial integrity, misrepresenting Resolutions 822 (30 April 1993), 853 (29 June 1993), 874 (14 October 1993), and 884 (12 November 1993) of the UN Security Council regarding the Nagorno-Karabakh conflict, adjudicating the OSCE Minsk Group for

⁴⁹² On 23 March 2020, Secretary-General António Guterres issued an urgent appeal for a global ceasefire in all corners of the world to focus together on the true fight – defeating COVID-19. (see Now is the time for a collective new push for peace and reconciliation, <https://www.un.org/en/globalceasefire> (accessed: 06.07.2022)).

⁴⁹³ This instrument supports the appeal of the Secretary-General for a global ceasefire and expresses concern about the impact of the pandemic on the states affected by the conflict, peace, and security. (see Omnibus Resolution Comprehensive and Coordinated Response to the COVID-19 Pandemic, <https://www.un.org/pga/74/wp-content/uploads/sites/99/2020/06/COVID-19-OMNIBUS-RESOLUTION-1.pdf> (accessed: 06.07.2022)).

⁴⁹⁴ See United Nations Charter, Chapter 6. Pacific Settlement of Disputes, Article 33. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. (see Peaceful solution in the dispute (Article 33, Chapter VI, Charter of the United Nations), <https://www.lewik.org/term/12100/peaceful-solution-in-the-dispute-article-33-charter-of-the-united-nations/> (accessed: 06.07.2022)).

⁴⁹⁵ See Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan’s Claims to Nagorno-Karabakh.

the lack of progress in the negotiations. Approximately 5,300 Armenians were killed in just 44 days; 174 people among the civilian population were also killed⁴⁹⁶. And with significant support provided by Turkey, Azerbaijan regained control over most of the territories it lost in the early 1990s, including about one-third of the initially disputed territory in Nagorno-Karabakh⁴⁹⁷.

After the war, the President of Azerbaijan Ilham Aliyev publicly admitted for numerous times that he had started the war to “settle the conflict”. And the “logical” continuation of the aforementioned assertion immediately followed the war, when the denials of the existence of Nagorno-Karabakh as a region were to follow the “settlement” phase of the conflict. Thus, after the war stopped, starting from 2021, the fact of denying the existence of “Nagorno-Karabakh” as a subject, as well as that of the conflict, always underlie the official speeches of the President of Azerbaijan.

Regarding the actual conduct of the war unleashed as a result of the Azerbaijani aggression, the Azerbaijani armed forces have targeted the Armenian cultural heritage of Artsakh from the outset, breaking numerous international norms that forbid the targeting of cultural property during hostilities. Attacking the symbols of the identity of Artsakh, the aggressor demonstrated its obvious intolerance towards not only historical-Christian but also folk and contemporary cultural heritage. During 44 days, using internationally prohibited cluster munitions, bombs, rockets, and other weapons⁴⁹⁸, Azerbaijan shelled residential areas and civil infrastructures in the cities and villages of Shushi, Martakert, Martuni, and Hadrut, targeting the kindergartens, schools, monasteries, and

⁴⁹⁶ See The Human Rights Ombudsman of the Republic of Artsakh, Ad Hoc Public Report. The Armenian Cultural Heritage in Artsakh (Nagorno-Karabakh): Cases of Vandalism and at Risk of Destruction by Azerbaijan, Stepanakert, 26 January, 2021.

⁴⁹⁷ Ibid.

⁴⁹⁸ There is overwhelming evidence that Turkey (the army whereof is the second largest in NATO, and there are also thousands of jihadist mercenaries in the ranks whereof, recruited and transferred to Turkey from Syria and Libya) has provided Azerbaijan with both political and immediate military assistance. Azerbaijan has also used Israeli drones, Belarusian and Russian missiles, cluster munitions, and heavy artillery, many of which are forbidden by international humanitarian and customary law, since they target civilians and civilian infrastructure in an indiscriminate way, causing harm to people. Azerbaijan also used white phosphorus in the forests of Nagorno-Karabakh, where, at the end of the war, both civilians and military personnel had sought refuge, thus harming both people and the environment.

churches, in an effort to discourage the Armenian people from fighting and to put an end to its physical and cultural existence⁴⁹⁹. Museums and a number of valuable collections, many khachkars, monuments, and cultural institutions were damaged, Holy Saviour Ghazanchetsots Church of Shushi, the archaeological camp of Tigranakert, the cultural centre of Shushi, Stepanakert Music School, and other cultural institutions were shelled. With such acts of vandalism, Azerbaijan violated not only the international commitments assumed thereby under different conventions but also the international customary norms of the preservation of cultural heritage mandatory during wartime⁵⁰⁰.

Targeting the Holy Saviour Ghazanchetsots Church of Shushi as a violation of international customary norms. We can definitely state that one of the most evident cases — possibly the most full-scaled one — of intentional destruction of cultural heritage by the military forces of Azerbaijan during the 44-day war was the double point-blank strike of the Holy Saviour Ghazanchetsots Church on 8 October 2020⁵⁰¹, causing damage to the dome and a number of external and internal components of the 19th-century church⁵⁰² (Image 1a,b).

The targeting of the Holy Saviour Ghazanchetsots Church has already been condemned — in addition to the customary laws — by the Resolution of the International Court of Justice of 7 December 2021, being declared illegal on the grounds of intolerance and racial hatred⁵⁰³. The PACE Resolution No 2391⁵⁰⁴ of 27

⁴⁹⁹ See Maranci Ch., *Cultural Heritage in the Crosshairs Once More: The resolution to the conflict between Armenia and Azerbaijan leaves irreplaceable treasures in harm's way*, Nov. 18, 2020, <https://www.wsj.com/articles/cultural-heritage-in-the-crosshairs-once-more-11605731198> (accessed: 18.02.2022).

⁵⁰⁰ See *Culture Under Fire: Armed Non-State Actors And Cultural Heritage In Wartime*, pp. 1-62.

⁵⁰¹ During the second missile strike, some reporters were conducting their professional work in the church, covering the consequences of the first strike. The double strike revealed not only the fact that there was an intention in this act, but it also demonstrated intolerance towards Christian values.

⁵⁰² It should be highlighted that while we have used the case of targeting the Holy Saviour Ghazanchetsots Church of Shushi during hostilities, it is possible to show — by examining customary laws — that any attack is unlawful.

⁵⁰³ See International Court of Justice, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, 7 December 2021, No. 2021/34, <https://www.icj-cij.org/public/files/case-related/180/180-20211207-PRE-01-00-EN.pdf> (accessed: 03.02.2022).

⁵⁰⁴ See Parliamentary Assembly of the Council of Europe, *Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict*, Resolution 2391 (2021), <https://pace.coe.int/en/files/29483/html> (accessed: 03.02.2022).

September 2021 “On humanitarian consequences of the Nagorno-Karabakh conflict” and Resolution No 2582⁵⁰⁵ of 10 March 2020 “On the destruction of cultural heritage in Nagorno-Karabakh” also described the attack as part of continuous state policy implemented by Azerbaijan on the grounds of intentional, illegal, ethnic cleansing.

The examination of customary rules in the previous section of the monograph enabled us to reveal the degree of criminality of Azerbaijan's attack on the Holy Saviour Ghazanchetsots Church. The examination showed that for “legalization” of targeting the church had to be used by the armed forces of Artsakh for military objectives at the time of the attack, yet it is well known that there were civilians and reporters inside the church at the time. Additionally, the location of the Holy Saviour Ghazanchetsots Church of Shushi could not be a military objective due to its remote location and lack of proximity to military facilities. It is a place of worship and could not be used for military purposes. On the other hand, from a military perspective, the adversary could not clearly and definitively benefit from the destruction of the church. Accordingly, the Holy Saviour Ghazanchetsots Church could not be targeted due to its location, and in the end, only its use could turn it into a military objective. However, there was no evidence for that ground as well. Furthermore, in the circumstances at the time, attacking the church might not have been the only feasible alternative available to obtain a military advantage. The sole purpose of the action was to assault the Christian symbol of Artsakh and the entire Armenian people, to assault the self-identity of the people of Artsakh, and to inflict psychological pain on an already fragile community. By the way, during the war, when asked about the double strike on the Holy Saviour Ghazanchetsots Church, Aliyev responded: “We have doubts that that could have been done by Armenians in order to blame us”⁵⁰⁶. Moreover, the President labeled the attack on the Holy Saviour Ghazanchetsots Church as an “accusation”, calling it

⁵⁰⁵ See European Parliament resolution on the destruction of cultural heritage in Nagorno-Karabakh (2022/2582(RSP)), https://www.europarl.europa.eu/doceo/document/RC-9-2022-0146_EN.pdf (accessed: 03.02.2022).

⁵⁰⁶ Nazaretyan H., *Artsakh's Cultural Heritage Under Threat*, “EVN Report”, May 8, 2021, <https://evnreport.com/spotlight-karabakh/artsakh-s-cultural-heritage-under-threat/> (accessed: 18.02.2022).

“fake news” and “black propaganda”⁵⁰⁷. In another interview, he simply downplayed it as “very minor damage”⁵⁰⁸.

The clarification on these complex issues regarding the “military objective” for targeting the Holy Saviour Ghazanchetsots church was provided in order to refute the statement of the President of Azerbaijan spread in the Azerbaijani press and elsewhere following the attack, about the allegation that at the time of the attack Armenian soldiers were inside the church and weapons and ammunition were stored there. Considering the statement, it would seem that during the attack the church had been used as a shelter, giving the adversary the chance to target it as a military object (since when a cultural value is used as a shelter, it loses its enhanced protection and turns from a cultural monument into a “military object”). Azerbaijani state bodies are well aware of such manoeuvres with regard to international laws and seize every chance to turn the law to their advantage. It is vital to stress in this instance that even if the church were used for military objectives, that would not give them the authority to target it. The attack of Azerbaijan on the Holy Saviour Ghazanchetsots Church of Shushi was illegal in all respects, since:

1. Using the cultural heritage for military objectives does not justify the attack on it by the adversary: the cultural heritage with such use may become a military objective if its destruction would make an effective contribution to military actions;
2. The cultural heritage may become a military objective only in the case if its total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage;
3. Even if cultural heritage is a military objective, an attack on it is permitted only in the case if there is no feasible alternative available to obtain a similar military advantage⁵⁰⁹.

Therefore, the analysis of the four customary principles of protecting cultural values during the war reveals that the Azerbaijani armed forces were required to

⁵⁰⁷ See Ambartsumian Ye., *Why Armenian Cultural Heritage Threatens Azerbaijan's Claims to Nagorno-Karabakh*.

⁵⁰⁸ Nazaretyan H., *Artsakh's Cultural Heritage Under Threat*.

⁵⁰⁹ See Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 6a.

assure that the object under attack was not a cultural value, and in case of finding out that it was a cultural value, they should have refrained from attacking it.

Azerbaijan must respect any cultural value, irrespective of its origin and significance, since, in accordance with the UNESCO principles, the cultural heritage of each nation is a part of the cultural diversity of the world. Furthermore, before attacking the Holy Saviour Ghazanchetsots church, the Azerbaijani armed forces were required to take necessary precautions which would have allowed them to remove movable cultural property and to transfer people to a safe location. They were required to estimate even the potential inadvertent damage, which might outweigh the anticipated military advantage. It is obvious that Azerbaijan did not issue an effective advance warning and did not give a reasonable time, as required by customary international law.

The double point-blank strikes on the dome of the church by the Azerbaijani armed forces proved that the action was an intentional and planned attack. We can state with certainty that such an attack constitutes a war crime under the Second Protocol to the 1954 Hague Convention for “The Protection of Cultural Property in the Event of Armed Conflict”, for which both the commander and the executors, as well as those who do not prevent the attack, are subject to criminal liability and can be condemned both at the international and national levels.

The attack on the Holy Saviour Ghazanchetsots Church was an attack on the Armenian identity since the damage caused to the cultural institution cannot be measured solely in terms of material damage; the internal ideological value is significant as well. With this action, Azerbaijan proved its intolerance towards the cultural values of fundamental significance of Armenians of Artsakh, and this has the potential to result in cultural genocide.

3.3. The End of the 44-Day War and the Armenian Tangible Heritage that Fell Under the Control of Azerbaijan

The six-week active hostilities unleashed on 27 September 2020 in the mountainous region of the South Caucasus, in Nagorno-Karabakh, ended on November 9, when a trilateral declaration, brokered by Russia, was signed by Armenia, Azerbaijan, and Russia, which ceded over two-thirds of the ethnically Armenian territory of Nagorno-Karabakh to Azerbaijan⁵¹⁰. The agreement welcomes a revocable Russian peacekeeping presence into the territories under the control of the Armenian side for a period of 5 years, with the possibility of extension⁵¹¹, which is in charge of ensuring both the security of Armenians of Artsakh and the preservation of Armenian cultural values.

In accordance with the agreement, besides the subject matter of negotiations, i.e. the territories adjacent to the former Nagorno-Karabakh Autonomous Oblast (NKAO), but also some parts of the NKAO itself, including Shushi and Hadrut, came under the control of Azerbaijan⁵¹². In the article "The Fragile Situation in Artsakh in Light of the 2020 War and the Crisis in Ukraine" published in the international journal "EVN Reports", Armenian international researcher Sossi Tatikyan states that the tripartite agreement, in light of the threats of the President of Azerbaijan of the further use of force, the further invasion of the Azerbaijani armed forces into the Armenian border regions, and other means of political-military pressure, under the circumstances of numerous concessions, does not represent the interests of Armenia and

⁵¹⁰ See Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan's Claims to Nagorno-Karabakh.

⁵¹¹ See Maranci Ch., Armenians displaced from Nagorno-Karabakh fear their medieval churches will be destroyed, "The Conversation", December 15, 2020, <https://theconversation.com/armenians-displaced-from-nagorno-karabakh-fear-their-medieval-churches-will-be-destroyed-149141> (accessed: 18.02.2022).

⁵¹² See Maranci Ch., The medieval Armenian monuments in Nagorno-Karabakh must be protected, "Apollo", 9 December 2020, <https://www.apollo-magazine.com/medieval-armenian-monuments-nagorno-karabakh/> (accessed: 18.02.2022).

complicates the issues related both to the security and rights of Armenians of Artsakh and the protection of cultural values⁵¹³.

It goes without saying that the fate of the monuments fallen under the control of Azerbaijan poses a greater challenge than the humanitarian crisis caused by the displacement of Armenians. With regard to this, we shall cite the information provided in the Ad Hoc Public Report of the Human Rights Ombudsman of the Republic of Artsakh (January 2021), in accordance whereunto, there are around 4000 historical and cultural monuments in the territory of Artsakh, including 241 chapels, churches, and monastic complexes. In the article "Cultural Heritage in the Crosshairs Once More"⁵¹⁴, American-Armenian researcher Christina Maranci states that along with the territories, at least 1456⁵¹⁵ Armenian historical and cultural immovable monuments have come under the control of Azerbaijan, and the Azerbaijani aggression against which has got new impetus in the aftermath of the war.

In accordance with the Ad Hoc Public Report of the Human Rights Ombudsman of the Republic of Artsakh, the endangered heritage includes 161 Armenian churches and monasteries, 56 out of which in Hadrut, 42 – Karvachar (Kelbajar), 26 – Kashatagh, 13 – Askeran, 9 – Martakert, 9 – Martuni, and 6 – in Shushi district, 591 Khachkars, and 345 inscribed stones and tombstones, 43 fortresses, castles and palaces, as well as cultural monuments and sights⁵¹⁶. In accordance with the information provided by the Ministry of Education, Science, Culture and Sport of Artsakh, after the signing of the tripartite agreement on November 9, the following fell under Azerbaijani control: 12 museums (with 19485 exhibits) – "Tigranakert" archaeological site, State Archaeological Museum of Kashatagh, Hadrut Local Lore Museum After Arthur Mkrtchyan, Mets Tagher Museum after A. Khanperiyants, Tumi Museum after Tevan Stepanyan, Shushi Museum of History, State Museum of Geology after

⁵¹³ See Tatikyan S., The Fragile Situation in Artsakh in Light of the 2020 War and the Crisis in Ukraine.

⁵¹⁴ See Maranci Ch., Cultural Heritage in the Crosshairs Once More: The resolution to the conflict between Armenia and Azerbaijan leaves irreplaceable treasures in harm's way.

⁵¹⁵ The international institutions, particularly the resolutions on the subject matter adopted by the Council of Europe point to this figure as well.

⁵¹⁶ See The Human Rights Ombudsman of the Republic of Artsakh, Ad Hoc Public Report. The Armenian Cultural Heritage in Artsakh (Nagorno-Karabakh): Cases of Vandalism and at Risk of Destruction by Azerbaijan, Stepanakert, 26 January, 2021.

Professor G. Gabrielyants, Shushi Gallery, Togh Meilks' Palace, "Shushi Carpet Museum", "Shushi Armenian Money Museum", and State Museum of Fine Arts, about 2000 monuments, including monasteries and churches, khachkars, tombstones, mausoleums, cemeteries, sanctuaries, fortresses, castles, palaces, etc., about 230 educational institutions, including schools, houses of culture and clubs⁵¹⁷. The facts demonstrate that Artsakh not only suffered immovable monuments and human losses but also lost a significant portion of its original heritage, which is still under the threat of vandalism and destruction.

Concerns shared by the international scientific community. The international community, represented by leading scientists, is also warning about the dangers threatening the Armenian heritage and is voicing its concern on various scientific platforms. Specifically, Professor Lori Khatchadourian and Adam Smith point out that the Armenian monuments in the territories fallen under the control of Azerbaijan are at genuine risk of state-sponsored destruction⁵¹⁸. Their joint statement read, "Appropriating heritage is as dangerous in terms of understanding the past of humanity as the silent destruction thereof"⁵¹⁹. According to certain scholars, Azerbaijan is capable of eradicating Armenian culture and even rejecting its ties to Armenian history⁵²⁰. And some of them claim that the cultural heritage of the Armenian Republic of Artsakh not recognized by any other country, is vulnerable since it faces the principle of territorial integrity of states rather than the rule of law⁵²¹. In another article of Ch. Maranci, "Armenians displaced from Nagorno-Karabakh fear their medieval churches will be destroyed", the policy pursued by Azerbaijan with regard to falsifying the past is viewed as a "subtle" tactic for

⁵¹⁷ See Petrosyan H., Muradyan H., op. cit., p. 35.

⁵¹⁸ See Khatchadourian L., Smith A., The US can help prevent the destruction of cultural heritage in Nagorno-Karabakh. Here's how, Cornell University, Dec. 15, 2020, <https://medium.com/cornell-university/the-us-can-help-prevent-the-destruction-of-cultural-heritage-in-nagorno-karabakh-heres-how-b809b87a5e79> (accessed: 18.02.2022).

⁵¹⁹ Ibid.

⁵²⁰ See Fears for Armenian Cultural Heritage in Karabakh: Officials warn that historic sites in areas under Baku's control risk damage, Institute For War & Peace Reporting, 18 January, 2021, <https://iwpr.net/global-voices/fears-armenian-cultural-heritage-karabakh> (accessed: 18.02.2022).

⁵²¹ See Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan's Claims to Nagorno-Karabakh.

eradicating heritage⁵²². Later, it is noted that irreplaceable treasures have been placed in jeopardy due to the resolution of the dispute between Armenia and Azerbaijan⁵²³. Ye. Hambardzumyan states: "Nowadays, when the most part of the Armenian cultural heritage is under the de facto control of Azerbaijan, there is little hope that Azerbaijan will not destroy them, notwithstanding the presence of Russian peacekeepers in some regions"⁵²⁴.

International organizations are concerned as well. One of them, the website "Caucasus Heritage Watch" (CHW) composed of archaeologists from Azerbaijan and Armenia, founded on 30 June 2021, monitors more than 2,000 monuments inventoried on a state level in the Soviet and post-Soviet regions, which are spread over an area of nearly 12,000 square meters and are under satellite surveillance⁵²⁵. According to the website, they are currently in grave danger since history has witnessed the events of Nakhichevan and now we hear threats from the President of Azerbaijan and other officials to destroy them.

The website "Monitoring the Cultural Heritage of Artsakh", created and launched on the initiative of H. Petrosyan and A. Leyloyan in the aftermath of the war, offers an academically based complete mapping and description of endangered heritage. On the website, a detailed account of the monuments in the occupied territories of Artsakh, including their current condition, is provided⁵²⁶.

International researchers speak up about certain examples of endangered heritage. They note the threat specifically to Dadivank dating back to the 12th century, Tsitsernavank dating back to the 5th-6th centuries, Amaras Monastery in Martuni region (Image 2) and Gandzasar (Image 3a,b). Specifically, international researcher De Waal mentions especially Amaras among the endangered values. He points out that this church with a tomb, situated on the

⁵²² See Maranci Ch., Armenians displaced from Nagorno-Karabakh fear their medieval churches will be destroyed.

⁵²³ See Maranci Ch., Cultural Heritage in the Crosshairs Once More: The resolution to the conflict between Armenia and Azerbaijan leaves irreplaceable treasures in harm's way.

⁵²⁴ Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan's Claims to Nagorno-Karabakh.

⁵²⁵ See https://caucasusheritage.cornell.edu/?page_id=1117 (accessed: 18.02.2022).

⁵²⁶ See "Monitoring of Cultural Heritage of Artsakh", Archeological Sites and Monuments, www.monumentwatch.org (accessed: 18.02.2022).

border between Armenia and Azerbaijan, which dates back to the 4-5th centuries, is in danger⁵²⁷.

Among the endangered monuments, the experts specify the city of Tigranakert founded by Tigran the Great in the 1st century B.C. in the Armenian Kingdom. According to Hamlet Petrosyan, the Head of the Archaeological Expedition, it is under threat of appropriation as well⁵²⁸. Azokh Paleolithic cave, the Nor Karmiravan tombs, palaces, bridges, historic quarters, and many other architectural monuments are under threat of destruction as well. Gtchavank (Image 4) and Kataro monastery (Image 5), as well as the palace of Melik Yegan (built in the 18th century in Togh village), are also under threat. Saint Yeghishe Church situated near Mataghis (Martakert), Vankasar, Kusanats Church (Image 6), and others are among the important monuments in other areas of Artsakh that are under the control of Azerbaijan. Many khachkars have fallen under the control of Azerbaijan, and the book "Monumental Culture of Artsakh", published after the war, gives detailed information about them⁵²⁹. The two churches of Shushi, i.e. Holy Saviour Ghazanchetsots (Image 7) and Kanach Zham⁵³⁰, are also at risk since illegal restorations undermine the integrity and authenticity of the churches. In response to reports of "false restorations," Azerbaijan's MFA claimed that the restoration of "Gazanchi Church" is "carried out in compliance with the original architectural style in order to restore the historical image of Shusha"⁵³¹. However, Azerbaijan is actually distorting the church under the guise of restoration, promoting the baseless claim that the church is, in reality, Russian

⁵²⁷ See De Waal T., Perspectives | Now comes a Karabakh war over cultural heritage: Fears are growing in particular for Armenian monuments being handed over, "Eurasianet", Nov 16, 2020, <https://eurasianet.org/perspectives-now-comes-a-karabakh-war-over-cultural-heritage> (accessed: 18.02.2022).

⁵²⁸ See Petrosyan H., "Tigranakert is in danger. Azerbaijan has not found the mechanism to Azerbaijanize it", <https://www.aravot.am/2021/09/10/1214867/> (accessed: 18.02.2022).

⁵²⁹ See Petrosyan H., Yeranyan N., op. cit.

⁵³⁰ See McGreevy N., Why Scholars, Cultural Institutions Are Calling to Protect Armenian Heritage, "Smithsonian Magazine", November 24, 2020, https://www.smithsonianmag.com/smart-news/metropolitan-museum-scholars-call-protection-cultural-heritage-nagorno-karabakh-180976364/?utm_source=twitter.com&utm_medium=socialmedia&fbclid=IwAR0-EuT9Yk0suAwiwwm398j9LQwX4AwubhcG0IJEJEnTN9S1M6NDaP4uptSs (accessed: 18.02.2022).

⁵³¹ Nazaretyan H., Artsakh's Cultural Heritage Under Threat.

Orthodox. This absurd claim has been more widely applied to the Kanach Zham church. A few days after the capture of Shushi, Azerbaijani social media users posted a video showing the 1847 church of St John the Baptist being vandalized⁵³² (Image 8a,b). An Azerbaijani government source told Caucasian Knot that they aim to "restore" the "original appearance" of the church, namely removing the pointed dome, which he claimed did not exist before. Historical photographs from over a century ago, however, clearly show its typical Armenian-style conical dome.

The role of Russian peacekeepers in the protection of Armenian cultural values in Artsakh. Under the tripartite statement of 9 November 2020, Russian peacekeepers became the "protectors of a number of Armenian monuments" in Artsakh, since the Armenians of Artsakh were not permitted to enter the territories of the heritage created by them. However, a barrier stands in the way of heritage protection again, since the status of Russian peacekeeping troops, and security assurances in Artsakh are uncertain⁵³³ due to the absence of a legal mandate from the UN, OSCE, or even the CSTO (thus from the international community)⁵³⁴. This indicates that they don't have mechanisms for accountability to the aforementioned international bodies⁵³⁵. Their presence in Artsakh is based exclusively on the Statement of November 9⁵³⁶. It may be inferred from all of this that the protection of the Armenian cultural heritage of

⁵³² See Fears for Armenian Cultural Heritage in Karabakh: Officials warn that historic sites in areas under Baku's control risk damage.

⁵³³ See Tatikyan S., The Fragile Situation in Artsakh in Light of the 2020 War and the Crisis in Ukraine.

⁵³⁴ The UN has established three basic principles for its peacekeeping operations: consent of the parties, impartiality and non-use of force except in self-defence, and defence of the mandate. A peacekeeping operation can be deployed without the consent of a party to the conflict upon the decision of the UN Security Council under Chapter VII on the Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression. The defence of the mandate includes, first, the protection of the civilian population, and the non-violation of the ceasefire arrangements or peace agreements. (see Charter of the United Nations and Statute of the International Court of Justice, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>; Tatikyan S., International Community Must Prevent Azerbaijan's Creeping Ethnic Cleansing in Nagorno-Karabakh, "EVN Report", Mar 28, 2022, <https://evnreport.com/spotlight-karabakh/international-community-must-prevent-azerbaijans-creeping-ethnic-cleansing-in-nagorno-karabakh/> (accessed: 18.02.2022)).

⁵³⁵ Ibid.

⁵³⁶ See Tatikyan S., The Fragile Situation in Artsakh in Light of the 2020 War and the Crisis in Ukraine.

Artsakh by the peacekeepers is controversial. In addition to the aforementioned issues, the fact that Russian peacekeepers do not have a mandate from the UN creates additional obstacles to monitoring the violations of the ceasefire, recording violations of international humanitarian law, or providing humanitarian assistance. Naturally, given the current geopolitical situation, Azerbaijan has intensified its efforts to discredit the Russian peacekeeping presence in Artsakh, and based on challenging the legitimacy of its presence in the region before the end of its mandate in 2025, it will try to do its best to leave both the Armenians and the heritage they created helpless. However, it should be noted with concern that even in large UN-mandated peacekeeping missions, extreme caution is taken not to fully dissolve self-defence forces or groups⁵³⁷.

3.4. Destruction of Intangible Cultural Heritage Both During and After the 44-day War of 2020

Intangible cultural heritage may suffer various damages in different stages of armed conflict. Military operations may have a transformative impact on communities, halting their cultural practices, and dismantling the cultural underpinnings of their very existence as a group, a community, or a nation⁵³⁸. And enforced displacement of communities and the alienation of elements of identity can cause an obscuring of the social memory of the past⁵³⁹. Since if communities stop practicing their intangible cultural heritage, or if communities and groups become extinct, then their intangible cultural heritage is doomed to disappear⁵⁴⁰. Due to the forcible displacement, about 20,000 residents of a number of communities of the Republic of Artsakh, that fell under the control of Azerbaijan as a result of the last war (Askeran - 8, Hadrut - 28, Martakert - 8, Martuni - 7, Shahumyan - 14, Shushi - 3, Kashatagh - 50)⁵⁴¹, were separated from their socio-cultural values. The cultural identity of these communities is on the verge of destruction, and their intangible cultural heritage is doomed to disappear.

For example, Azerbaijan took control of Togh village of Hadrut region, where the "Kataro" winery and vineyard are located⁵⁴². Grapes of Khndoghni type were used as a primary product for the wine, and barrels made of Artsakh oak wood were used for storage. Moreover, wine festivals were held in the same Togh village, which is considered to be a cradle of winemaking, to emphasize the significance of wine in the social life of Artsakh (Image 9). Therefore, it is important to note that the experience and knowledge that were characteristic of

⁵³⁸ See Chainoglou K., op. cit., pp. 109-134.

⁵³⁹ See Teiggeler R., "So Yesterday was the Burning of Books" - Wartime in Iraq.

⁵⁴⁰ See Pier M., Duvelle C. and UNESCO, Intangible Cultural Heritage, Best Cultural Destinations-2017.

⁵⁴¹ See List of communities and settlements of the Republic of Artsakh having passed under the control of Azerbaijan, <https://drive.google.com/file/d/1ipkvWkKgiePtBVhrWepUuDqWPBcCQDKS/view?fbclid=IwAR1FH07ZMUr9vj8WGTXEVDY6G7uZrWyo5e4axbA9HGsu8o5qPUwDEIgLgSik8> (accessed: 01.02.2021).

⁵⁴² See "The village of "Kataro" winery came under the control of the enemy", <https://gastrovino.mediamax.am/am/news/drink/40955> (accessed: 18.11.2020).

the Artsakh winemaking cultural landscape and gave rise to the intangible practice of winemaking seem to be on the verge of extinction.

German anthropologist B. Bräuchler asserts that while the material damage caused during wars is frequently evident, the non-material one is largely at risk of extinction and it is impossible to assess it⁵⁴³. In this sense, the loss is greater: it is related to identity since there is also a risk of continuity being impossible, which would not have happened if the community continued its regular daily activities.

Another example is the festival of pickles held in Drakhtik village of Hadrut region⁵⁴⁴, where the rich culture of traditional pickles of that and 16 other communities was presented. And this tradition is on the verge of extinction with all its practice (Image 10). This intangible practice can no longer have the same cultural ground (local primary products, nature, community knowledge) that it had in Artsakh, and in this sense, the cultural space where the residents of Hadrut were intended to establish the intangible practice of making pickles and transmit it to future generations, is not accessible to them anymore.

Furthermore, a festival of pomegranate was held in the city of Martuni of Artsakh, and participants from a number of other communities of the Martuni region took part in it, too. But currently, they do not have this opportunity since the enemy has taken over their settlements⁵⁴⁵ (Image 11). This is especially significant given that “Nar Bayrami, traditional pomegranate festivity and culture” of Azerbaijan was inscribed on the UNESCO Representative List of the Intangible Cultural Heritage of Humanity of 2020 as an Azerbaijani practice⁵⁴⁶.

⁵⁴³ See Bräuchler B., *Intangible Cultural Heritage and Peace Building in Indonesia and East Timor*, Routledge, 2012, pp. 153-167.

⁵⁴⁴ See “The first Artsakh pickles festival held in Drakhtik village”, “Artsakhpress” 25 October 2014, <https://artsakhpress.am/arm/news/6935/> (accessed: 01.02.2021).

⁵⁴⁵ See “The third festival of pomegranate in Artsakh”, “Arcakh24.info”, 20 October 2019, <https://arcakh24.info/hy/nran-error-paratony-arcakhum/> (accessed: 28.01.2021).

⁵⁴⁶ See Nar Bayrami, traditional pomegranate festivity and culture, UNESCO, <https://ich.unesco.org/en/RL/nar-bayrami-traditional-pomegranate-festivity-and-culture-01511> (accessed: 28.01.2021).

Besides, every year on September 2, Shushi hosted visitors from many countries of the world to celebrate the Independence Day of Artsakh. People from Artsakh, however, are deprived of the opportunity to celebrate their holidays as they wish and imagine since Shushi is under the control of the adversary. Another example is the festival of herb-stuffed flatbread (zhingyalov hats) held in Haterk village of Martakert region⁵⁴⁷ (Image 12), in which residents of Talish, Hovtashen, Nor Aygestan, and other villages of Martakert region also participated. But currently, they are deprived of this opportunity.

In his book “The Heritage Crusade and the Spoils of History”, David Lowenthal, a famous American historian and Professor of Heritage Studies, states that cultural heritage is valued since it is able to transform history into an impulse to understand contemporary problems and needs. Therefore, heritage is living and dynamic, since it includes phenomena that should be actively perceived and experienced⁵⁴⁸. And in this sense, we cannot be certain that in another place the representatives of Artsakh can receive the same knowledge that they could have gained due to being directly connected to their heritage, nor that the significance and worth of what they learn will be the same. Additionally, for example, the representatives of the community state that herb-stuffed flatbread (zhingyalov hats) is made of 24 types of herbs, which ensure the distinctive flavour of the dish, and currently only a few of them are available in the capital of the Republic of Armenia, which, of course, cannot “ensure” the traditional and already known taste of this intangible practice.

Among the injurious repercussions of termination of the practice of intangible cultural heritage is, as stated above, the impossibility of or an “obstacle” to handing it on to future generations. As stated by the British cultural historian R. Hewison, heritage is the “key for generations”, a set of values has been preserved by the ancestors and is to be handed on to future generations⁵⁴⁹. This interpretation is necessarily related to the role that heritage is to assume. Hence, heritage ought to be viewed as a phenomenon worthy of

⁵⁴⁷ See “The third festival of herb-stuffed flatbread (zhingyalov hats) was organized in Haterk”, “Artsakhpress”, 11 May 2019, <https://artsakhpress.am/arm/news/106502/> (accessed: 28.01.2021).

⁵⁴⁸ See Lowenthal D., op. cit., p. 122.

⁵⁴⁹ See Hewison R., *Heritage: An Interpretation*, In: Uzzell D. (ed.), *Heritage Interpretation*, Vol. 1, London: Belhaven Press, 1989, pp. 15-23.

reinterpretation by future generations rather than as a source of consumption. Heritage becomes sensible only when the values are handed on to future generations, and only these generations can reveal its full potential. However, the process of transmitting the intangible cultural heritage was hampered during the Artsakh War, which caused the heritage to lose its main value. The settlements of Artsakh, which fell under the control of the adversary, and the residents whereof were displaced, lost both the heritage of their past and also that of the future, as it should be based on the experience of the past. In light of the aforementioned claims, we can argue that the loss of the cultural heritage of Artsakh challenges, first of all, the future of the cultural identity of the Armenians of Artsakh, and consequently, the potential for the community's cultural life.

Hence, protecting intangible cultural heritage is crucial, particularly during wartime. But it's also important to remember that preserving the heritage requires not only physical efforts but also mental activity, during which future generations should also be considered. In connection with this, American theorist on heritage issues J. Tunbridge and Dutch theorist on heritage management issues G. Ashworth consider the preservation of heritage and "the production of heritage" as the same and claim that through the intentional process of preservation, "the events and artefacts from the past turn into products in the form of heritage envisaged to meet contemporary needs, and by preserving we create or reproduce"⁵⁵⁰.

Many scholars claim that the means to preserve the heritage are different, but we should focus on two of them: continuity and ethnic memory⁵⁵¹. Some specialists claim that heritage is the memory itself, and once again, the intangible is most at risk⁵⁵². And continuity, as the primary functional component of culture, and being in charge of its preservation, is the basis for the transmission of knowledge and encoded information. In the case of Artsakh,

⁵⁵⁰ Tunbridge J. E., Ashworth G. J., *Dissonant Heritage. The Management of the Past as a Resource in Conflict*, Chichester: John Wiley & Sons, 1996, pp. 6-7.

⁵⁵¹ See Khazbulatov A. R., Nurpeiis M., *The Preservation of Cultural Heritage: Continuity and Memory*, "World Academy of Science, Engineering and Technology", Vol. 6, 2012, p. 1028.

⁵⁵² See Каган М., *Избранные труды в VII томах, Том I. Проблемы методологии*, Санкт-Петербург: ИД "Петрополис", 2006, pp. 33-45.

there is a risk that the memory cannot be preserved and the continuity may be disrupted, since the representatives of the same community are linked not only by blood, but also by knowledge and experience, and by responsibility towards their ancestors and future generations. German expert Yan Assman claims that it is through cultural memory that a community gains the possibility to survive⁵⁵³. Living cultural heritage is expressed through people, and the process of transmission is made possible only due to the people or communities bearing this knowledge. Therefore, Azerbaijan disrupted the process of preservation and passing down intangible practices by infringing — during the hostilities — the rights of the people of Artsakh to freedom of movement, access to their cultural heritage, their right to create and display the heritage, and other rights as well.

Damage caused to intangible cultural heritage can also be a consequence of material damage. So there are good reasons why renowned Australian theorist L. Smith states in her book "Uses of Heritage" that "heritage, actually, is not just about material things"⁵⁵⁴. In addition, according to Swiss theorist J. Gradis, who is engaged in the issues of the protection of cultural heritage during armed conflicts, it is the intangible heritage that vitalizes the tangible one and ensures the transmission of the elements of the knowledge and cultural identity of the community. As a result, in addition to the tangible damage caused to the monument during the conflict, the entire community sharing certain rituals and traditions thereof suffers as well⁵⁵⁵. According to Karima Bennoune, UN Special Rapporteur in the field of cultural rights, "Each category of cultural heritage contains some elements of the other, and the loss of any of these two categories during armed conflicts results in the destruction of the identity of communities"⁵⁵⁶.

⁵⁵³ See Ассман Ян, *Культурная память: Письмо, память о прошлом и политическая идентичность в высоких культурах древности*, Пер. с нем. М. М. Сокольской, М.: Языки славянской культуры, 2004, p. 90.

⁵⁵⁴ Smith L., *op. cit.*, p. 1.

⁵⁵⁵ See Johannot-Gradis Ch., *op. cit.*, p. 1256.

⁵⁵⁶ United Nations General Assembly, *Report of the Special Rapporteur in the Field of Cultural Rights*, p. 12, para. 48.

3.5. Mechanisms Used by Azerbaijan to Destroy the Armenian Cultural Values in Artsakh Following the 44-Day War

Urgent measures should be taken to preserve the Armenian cultural heritage in the territories fallen under the control of Azerbaijan as a result of the 44-day war. In this regard, it is unavoidable to raise significant issues regarding the methods, guiding concepts, patterns, and mechanisms of cultural genocide.

Currently, intolerance of Azerbaijan towards the cultural heritage of Artsakh is displayed in numerous ways, but we will break them down into several categories and present them as separate mechanisms. The objective of this part is to examine the most obvious mechanisms of destruction, while also providing specific examples of manifestation so as to have the required grounds to concentrate on the international legal protection of those values.

Four basic mechanisms have been considered, and each of them has its own sub-types:

- destruction of heritage,
- appropriation/changing of the function of cultural heritage (Albanization, Islamization, Azerbaijanization, Turkification, Russification, alteration),
- pillage of and vandalism to cultural heritage,
- using cultural heritage for military objectives.

Destruction of cultural heritage. It is common knowledge that the destruction of Armenian cultural values is one of the primary mechanisms that Azerbaijan has always carried out ever since it was established. Furthermore, we can also certify that this is the most apparent and extensive way to erase Armenian heritage, which is still being carried out even today, despite the fact that numerous international conventions forbid doing so. As proof of what has been stated, we can cite other instances where Azerbaijan started eradicating numerous distinctive Armenian cultural monuments over its 100-year existence, first in Nakhichevan and then in Artsakh. And after the 44-day war, in breach of the fundamental principles of The Hague and Geneva Conventions, as well as the customary norms of international law with regard to respecting (not destroying) — in the aftermath of the war — the cultural heritage in the occupied territories, he openly displayed an intolerance toward the religious, historical, and contemporary monuments of

Artsakh. The reason seems to be self-evident: the cultural environment of Nagorno-Karabakh is the most serious impediment to an aggressor state's territorial claims⁵⁵⁷. Such an approach reveals that Azerbaijan launched the war not only to legitimize its presence in the region, but also, as previously said, to complete the strategy of denial of Armenianness, ethnic cleansing, and eradicating the Armenian trace from the region, which has been in place since its establishment. As a consequence thereof, due to forced displacement following the war, a number of cultural communities of Artsakh were completely lost, which resulted in endangering both their identity and the preservation of tangible and intangible cultural heritage. This claim is supported by the fact that Azerbaijan — even after the tripartite statement of November 9⁵⁵⁸ — continued to destroy, desecrate, rename, Turkify, Azerbaijanize, and Albanize Armenian cultural values in the occupied territories, as well as forced the communities (located in the border regions that were under Armenian control) completely inhabited by Armenians to displacement.

Under the statement, a significant part of the territory of Artsakh (about 8500 km² in total) came under the control of Azerbaijan⁵⁵⁹. In accordance with Decision of the Government of the Republic of Armenia No 1820 of 21 November 2020, Kashatagh, Martakert, Shahumyan, Shushi, Hadrut, Askeran, and Martuni regions (121 cultural communities) are among the territories lost⁵⁶⁰.

It should be highlighted that for the destruction of Armenian cultural heritage, the Azerbaijani propagandist machine employs all available techniques and mechanisms that have been developed over time and operate as appropriate. Specifically, the triumph euphoria that followed the war intensified the

⁵⁵⁷ See Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan's Claims to Nagorno-Karabakh.

⁵⁵⁸ See "Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation", <https://www.primeminister.am/hy/press-release/item/2020/11/10/Announcement/> (accessed: 18.02.2022).

⁵⁵⁹ See "Annex to Decision of the Government of the Republic of Armenia No 1820-L of 21 November 2020". Support program envisaged for citizens record-registered in communities passed under the control of the Republic of Azerbaijan as a result of the military operations launched by the Republic of Azerbaijan against the Republic of Artsakh starting from 27 September 2020, https://www.e-gov.am/u_files/file/decrees/kar/2020/11/1820_1.pdf?fbclid=IwAR11-gDAkpn-QATorJ91pizalyeqPzhWWq4hMD9yumVLCfAa8lG_k_Jwhw, pp. 2-5 (accessed: 18.02.2022).

⁵⁶⁰ Ibid.

Armenophobia among the Azerbaijani society, driving it to openly destroy Armenian churches, cultural monuments, historical cemeteries, memorials, and khachkars. The Azerbaijani military and civilians enthusiastically posted vandalism scenes on social media and elsewhere, presenting Armenian values as those of an occupant country, that is, “values that are to be destroyed”.

To present the destruction (complete and partial) of cultural heritage more comprehensively, we have selected four primary directions:

- Destruction of the spiritual and Christian heritage of Artsakh;
- Destruction of monuments or memorials to the Artsakh Liberation War, the Armenian Genocide, and the Great Patriotic War;
- Destruction of historical cemeteries and entire districts;
- Destruction of contemporary cultural values.

Destruction of the spiritual and Christian heritage of Artsakh. Taking into account the policy conducted by Azerbaijan with regard to the destruction of the spiritual heritage of Artsakh, it is especially noteworthy that Azerbaijan destroys specifically the Christian monuments, transformation, alteration or, which is the same, Albanization whereof has been impossible to realize in the past and present. Specifically, the most apparent case of destruction of cultural heritage in the territories seized by Azerbaijan (it was also covered by “BBC World News”) is the complete destruction of the Zoravar St. Astvatsatsin Christian Church in Jabrayil (Mekhakan) settlement⁵⁶¹ (Image 13a,b). It should be added that prior to destructing the church, the Azerbaijanis had knocked down the cross on the roof and said a Muslim prayer, thus infringing the ritual practice of the Christian building and causing harm to the intangible values of the building as well. Another illustration is the destruction of the dome and the bell tower of Kanach Zham St. Hovhannes the Baptist Church in occupied Shushi⁵⁶² (Image 14).

The destruction of a monument made of tufa stone with a cruciform construction in Shukyurbeili village of Jabrayil region, which had the inscription

⁵⁶¹ See Nagorno-Karabakh: The mystery of the missing church, “BBC News”, 26 March 2021, <https://www.bbc.com/news/av/world-europe-56530604> (accessed: 21.06.2021).

⁵⁶² See “Azerbaijanis destroyed the dome and bell tower of the Kanach Zham church”, “Monument Watch”, 4 June 2021, <https://monumentwatch.org/en/alerts/azerbaijanis-destroyed-the-dome-and-bell-tower-of-the-kanach-zham-church/> (accessed: 21.06.2021).

“Let the Cross of Yours Protect Us”, is an instance of the destruction of the Christian heritage of Artsakh⁵⁶³.

As previously stated, any alteration of cultural value that directly compromises the internal and exterior integrity of the specific structure qualifies as an act of destruction of heritage. This particularly relates to the Church of the Holy Saviour Ghazanchetsots Church of Shushi, inside whereof large-scale construction works of “restoration” are being carried out: the dome is demolished⁵⁶⁴, crosses are removed from the gates overlooking the courtyard of Ghazanchetsots, and the sculptures of angels (Image 15 a,b) are removed from the stone pillars on both sides of the gates.

The destruction of a khachkar located in Arakel village of Hadrut region is another instance of targeting the spiritual heritage of Artsakh⁵⁶⁵ (Image 16 a,b). On 8 May 2022, the chapel built by the “Union of Veterans of the Karabakh War” and the surrounding khachkars in Mataghis village of Artsakh, were vandalized⁵⁶⁶. Among the latest apparent cases of destruction of the spiritual heritage of Artsakh is the complete destruction of Saint Sargis Church in Mokhrenev village of Hadrut region on 11 October 2022⁵⁶⁷ (Image 17 a,b). Among the most recent acts of vandalism is the destruction of the signboard on the chapel located a little far from

⁵⁶³ See İşğaldan azad olunan Cəbrayıl rayonunun Şükürbəyli kəndi, Azərbaycan Respublikası Müdafiə Nazirliyi, <https://www.youtube.com/watch?v=uuJ0-bxibvU> (accessed: 21.08.2021).

⁵⁶⁴ See “Illegal reconstruction of the Holy Ghazanchetsots church in Shushi”, “Monument Watch”, 15 May 2021, <https://monumentwatch.org/en/alerts/illegal-reconstruction-of-the-surb-ghazanchetsots-church-in-shushi/> (accessed: 21.06.2021).

⁵⁶⁵ See the publication of Anna Naghdalyan, Spokesperson of the RA MFA, on Twitter page, https://twitter.com/naghdalyan/status/1348922661318103040?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1348922661318103040%7Ctwgr%5E%7Ctwcon%5E%5E1_&ref_url=http%3A%2F%2Fyerkirmedia.am%2Fhy%2Farticle%2F2021%2F01%2F12%2F31680 (accessed: 20.08.2021).

⁵⁶⁶ See “Destruction of khachkars caused by Azerbaijan in the occupied territories of Artsakh”, “Monument Watch”, 15 May 2022, <https://monumentwatch.org/en/alerts/destruction-of-khachkars-caused-by-azerbaijan-in-the-occupied-territories-of-artsakh/> (accessed: 18.05.2022).

⁵⁶⁷ See “Azerbaijan destroyed the church of Saint Sargis in Mokhrenev village”, “Monument Watch”, 25 October 2022, <https://monumentwatch.org/en/alerts/azerbaijan-destroyed-the-church-of-surb-sargis-in-mokhrenev-village/> (accessed: 01.11.2022).

the main complex of Dadivank, which had the inscription “The chapel was restored by Mister Ralph Yirikyan, 2017”⁵⁶⁸.

Destruction of monuments or memorials to the Artsakh Liberation War, the Armenian Genocide, and the Great Patriotic War. Azerbaijanis execute unique atrocities against Armenian monuments related to the Artsakh Liberation War and its heroes in the occupied lands of Artsakh, the goal of which seems to be apparent: to wipe the fact of victory from the memory of the Armenians of Artsakh. This is a deliberate state policy conducted by Azerbaijan to erase the memory of history and victories of Artsakh. Azerbaijan actually destroys the complexes related to the Great Patriotic War as well since the most part of the cultural complexes related to the Artsakh Liberation War are built adjacent to the monuments of the Great Patriotic War, or they constitute one entire complex. The Azerbaijani justification for destroying such artefacts is that Armenians have occupied Azerbaijan's territory for the last 30 years, and the cultural values created during those years are those of an occupant country, that is, they are “values that are to be destructed”. This definitely violates all international conventions and regulations and clearly expresses the socio-cultural approach to heritage perception, in which heritage is viewed not in terms of its significance, outstanding universal value, and authenticity, but with a nationally discriminatory approach that excludes the values created by Armenians.

Striving to implement this policy, the monument erected in Shushi in remembrance of the victims of the Armenian Genocide was demolished. The monument was placed following the First War of Artsakh and was dedicated also to the memory of the victims of the Great Patriotic War⁵⁶⁹ (Image 18 a,b). An Azerbaijani soldier attacked the memorial honouring the freedom fighters of Hadrut, opening fire also in the direction of the khachkar located near the

⁵⁶⁸ See “On the destruction of the information board of the chapel in Dadivank”, “Monument Watch”, 6 September 2022, <https://monumentwatch.org/en/alerts/on-the-destruction-of-the-information-board-of-the-chapel-in-dadivank/> (accessed: 11.10.2022).

⁵⁶⁹ See “Destruction of the Memorial Devoted to the Genocide victims in Shushi”, “Monument Watch”, 16 May 2021, <https://monumentwatch.org/en/alerts/destruction-of-the-memorial-devoted-to-the-genocide-victims-in-shushi/> (accessed: 21.06.2021).

memorial⁵⁷⁰ (Image 19 a,b). Azerbaijanis also demolished three other memorials honouring the victims of the Great Patriotic War, the First Artsakh War, and the Armenian Genocide in Azokh village of Hadrut which is currently under occupation⁵⁷¹. And a member of the armed forces of Azerbaijan broke to pieces the khachkar honouring the First Artsakh Liberation War in the city of Vorotan (Kubatlu)⁵⁷². The monuments honouring the Artsakh Liberation War in the villages of Zardanashen and Avetaranots were desecrated, those in the villages of Talish, Karintak, and Mokhrenes, as well as distinct khachkars in different villages⁵⁷³, the monument with a cross in Zangilan, and the new memorials in Mataghis and Talish, were destroyed⁵⁷⁴. We should also point out that following the 44-day war, the Azerbaijanis also destroyed the monument “Reborn Talish” located in Talish village of Martakert region⁵⁷⁵ (Image 20 a,b). After the war, the armed forces of Azerbaijan also demolished the school and the cultural centre of Madatashen village of Askeran region⁵⁷⁶ and reached the wall of St. Astvatsatsin Church built in 1904 (it is located near the school), which is currently in danger. The monument honouring the victims of the Artsakh Liberation War located near the church, has likewise suffered from enemy vandalism⁵⁷⁷.

⁵⁷⁰ See “Destruction of the memorial to the soldiers in Hadrut”, “Monument Watch”, 24 June 2021, <https://monumentwatch.org/en/alerts/destruction-of-the-memorial-to-the-soldiers-in-hadrut/> (accessed: 02.08.2021).

⁵⁷¹ See Азербайджан разрушил мемориальный комплекс ВОВ и Первой Арцахской войны в Азохе, “Военные Преступления Азербайджана”, 18 августа, 2021, <https://war.karabakhrecords.info/ru/2021/08/18/azerbaijan-destroyed-the-memorial-complex-of-the-second-world-war-and-the-first-artsakh-war-in-azokh/> (accessed: 20.08.2021).

⁵⁷² See Church and memorial desecration in post-ceasefire Nagorno-Karabakh, <https://medium.com/dfirlab/church-and-memorial-desecration-in-post-ceasefire-nagorno-karabakh-87ece968af3f> (accessed: 20.08.2021).

⁵⁷³ See publication of “Artsakh Monuments”, <https://m.facebook.com/artsakh.monuments/posts/1573895339473203> (accessed: 15.06.2021).

⁵⁷⁴ See the publication of Rena Huseynzade, <https://www.facebook.com/rena.quseynzade/posts/3443529142348890> (accessed: 15.06.2021).

⁵⁷⁵ See the publication of Kiril Krivosheev, dated 3 December 2020, <https://archive.is/PkeTz> (accessed: 21.08.2021).

⁵⁷⁶ See the interview of Inga Baghdasaryan, Head of Madatashen club (from 8 minutes 11 seconds), <https://youtu.be/QUyEuoXq07s> (accessed: 02.03.2022).

⁵⁷⁷ See “The Enemy destructed the Madatashen School, the Culture House, the Monument, damaged St. Astvatsatsin Church”, “A1+”, 6 November 2021, <https://a1plus.am/hy/article/417244> (accessed: 02.03.2022).

It is significant that Azerbaijan deliberately targets and destroys also the memorials and complexes honouring the heroes and victims of the Great Patriotic War. As an illustration, we can point to the destruction of the bust of Armenak Khanperiyants (Sergey Khudyakov), Aviation Marshal of the USSR (who was from Artsakh by origin), placed in Mets Tagher village of Hadrut region of Artsakh, and the MiG-17 fighter aircraft located in the area of his house-museum⁵⁷⁸ (Image 21 a,b). In Shushi, which is currently under occupation, Azerbaijanis vandalized also the bust of Hovhannes (Ivan) Tevosyan, a USSR state politician, Hero of Socialist Labor, and a native of Shushi: the Azerbaijani military servicemen desecrated, demolished, and knocked it to the ground⁵⁷⁹ (Image 22 a,b). And after the statement on the ceasefire of 9 November 2020, the Azerbaijani military servicemen also vandalized the statue of the national hero of Armenia and Artsakh, Sparapet Vazgen Sargsyan, located in the city of Shushi, Artsakh⁵⁸⁰, which was later beheaded and destroyed⁵⁸¹ (Image 23 a,b).

Destruction of historical cemeteries and entire districts. Following the war, Azerbaijan's cultural ethnocide actions targeted also the historical cemeteries of Artsakh. Perhaps nothing can serve as more obvious evidence of the long-standing presence of Armenians in the region than cemeteries, thus a clear strategy with a specific scenario was chosen for the destruction thereof. This assertion is supported by the fact that the cemeteries were destroyed with the motive of building new

⁵⁷⁸ See "In Artsakh, Azerbaijanis destroyed the monument to the Marshal of the USSR, Khanperiyants, and smashed and moved his MiG-17", <https://war.karabakhrecords.info/2021/08/20/in-artsakh-azerbaijanis-destroyed-the-statue-of-marshal-khudyakov/> (accessed: 21.08.2021).

⁵⁷⁹ See "Azerbaijani vandals desecrated the bust of Hovhannes Tevosyan in Shushi", "Sputnik Armenia", 04.03.2021, <https://armeniasputnik.am/20210304/shushi-vandalizm-xshm-gorcich-hovhannes-tevosyan-26685429.html> (accessed: 04.03.2021).

⁵⁸⁰ See "The monument to Sparapet was desecrated in Shushi", "Yerkir Media", 18.11.2020, <https://yerkirmedia.am/hy/article/2020/11/18/27728> (accessed: 18.11.2020); "The Azerbaijani Armed Forces continue the "war" against Armenian historical and cultural heritage", the MFA states, "Azatutyun" radio station, 19 November 2020, <https://www.azatutyun.am/a/30959075.html> (accessed: 19.11.2020).

⁵⁸¹ See "Azerbaijanis desecrated and beheaded the statue of Sparapet Vazgen Sargsyan in Shushi", "Aysor", 28.12.2020, <https://www.aysor.am/am/news/2020/12/28/2n12h-1uuqqku-upduu/1789198> (accessed: 21.06.2021).

infrastructure in Azerbaijan under the pretext of global road construction works⁵⁸², and along with that, a number of Armenian historical settlements located near the roadways were completely destroyed as well. And this process actually led to the devastation of the historical cemetery of Shushi⁵⁸³ and the destruction of the 18th-century Armenian cemetery in Sghnakh in the Shosh community of the Askeran region⁵⁸⁴ (Image 24). And this is not all since other cemeteries are being devastated as well. In this regard, it is important to note that the Azerbaijanis smashed and demolished the graves of outstanding persons having participated in the Artsakh Liberation War which were located around the Memorial in honour of the Second World War in Togh village.

The destruction of the Yere Bazar historical district in the city of Hadrut, Artsakh, which, as an original cultural district⁵⁸⁵ - with its historical houses from the 18th and 19th centuries, furniture, and the integrity of the cultural landscape - was being prepared to receive the status of a cultural reserve, must be emphasized as another example of the widespread destruction of history and culture⁵⁸⁶.

Destruction of contemporary cultural values. Prior to referring to the issue of the destruction of contemporary cultural values by Azerbaijan, it is important to emphasize that cultural heritage encompasses more than only historical and spiritual values; heritage is a compilation of everything that people continue to develop today as well, in compliance with their values, knowledge, and skills. It is worth reminding in this regard that in its Article 1, the 1954 Hague Convention, which is also the basis for the other international treaties, defines cultural property as "movable or immovable property of great importance for every people,

⁵⁸² See Началось строительство автомобильной дороги Ахмедбейли-Физули-Шуша, <https://www.youtube.com/watch?v=fMzbdUOgfNs> (accessed: 02.03.2022); Физулинский район и город Шушу свяжет новая автомобильная дорога, <https://www.youtube.com/watch?v=SOObxEIU0VU> (accessed: 02.03.2022); Construction of "Victory road", <http://azvirt.com/en/node/174> (accessed: 02.03.2022).

⁵⁸³ The satellite images captured by "Caucasus Heritage Watch" prove this act of vandalism.

⁵⁸⁴ See "Destruction of Sghnakh cemetery", "Monument Watch", 9 July 2021, <https://monumentwatch.org/en/alerts/destruction-of-the-cemetery-of-syghnakh/> (accessed: 21.07.2021).

⁵⁸⁵ See on Twitter page of Бакинский Норд, https://t.me/bakinskiy_nord/15674?single (accessed: 02.03.2022).

⁵⁸⁶ In 2018–2019, Hadrut Municipality took certain actions in this direction. They carried out some work with regard to rectifying the boundary lines of the reserve, the study of building plans, and the preparation of preliminary materials.

irrespective of its origin"⁵⁸⁷. It is clearly stated here that the "cultural value" is independent of its origin, time, or age, and it is certain that the given people — in this case, the Armenians of Artsakh — determine the worth of this heritage. And it needs to be kept intact, regardless of what it looks like or how it makes the adversary feel. In the 20th century, cultural heritage needed to have historical significance, but in the international system of the 21st century, all the cultural values created both in the past and the present, and the values which are to be created by people in the future as well, are regarded as heritage, highlighting the potential for a person to be a part of a cultural community and transmit the culture of that community to future generations intact. There is currently a widespread belief that the entire environment can be recognized as a heritage since people have influenced it⁵⁸⁸. It was also apparent that, after jeopardizing both the spiritual identity of Armenians of Artsakh and their history and future, Azerbaijan should dispute the fact that they are creative today as well. The result of this approach was that 51 sculptures⁵⁸⁹ placed in the "Sculpture Park" adjacent to the Shushi State Museum of Fine Arts vanished⁵⁹⁰ (Image 25 a,b). The Shushi State Geological Museum after Grigory Gabrielyants also sustained significant damage⁵⁹¹ (Image 26 a,b). On 18 August 2021, a video posted on the Internet depicts the Azerbaijani soldiers having entered the museum causing damage to the exhibits, museum artifacts and miniatures left in the museum. The video also demonstrates that the roof of the museum has been collapsed due to hostile bombardment, the showcases

⁵⁸⁷ Protect cultural property in the event of armed conflict, The 1954 Hague Convention And Its Two Protocols,

https://unesdoc.unesco.org/ark:/48223/pf0000138645?fbclid=IwAR3tIiBiy25x1Xcnjv6F8qPBpQxqO5nrRbtejD8Y1xl-eKw88NM6aK_2zvY.

⁵⁸⁸ See "Managing Cultural World Heritage", p.15.

⁵⁸⁹ 62 sculptures by 37 sculptors from different countries of the world - Italy, Belgium, Belarus, Egypt, Russian Federation, India, China, Poland, Serbia, USA, Croatia, Japan, Armenia, and Artsakh (51 of which were placed in the Park, and the rest in other regions of Artsakh) were made in Artsakh and dedicated to the people of Artsakh(see "The opening of the Sculptures Park in Shushi", "Azat Artsakh", 22 July 2019, <https://www.artsakhtert.com/arm/index.php/culture-and-education/item/27159-2019-07-22-16-02-03> (accessed: 20.08.2021)).

⁵⁹⁰ See "Destruction of the "Park of Sculptures" of the State Museum of Fine Arts in Shushi", "Monument Watch", 15 August 2021, <https://monumentwatch.org/en/alerts/destruction-of-the-park-of-sculptures-of-the-state-museum-of-fine-arts-in-shushi/> (accessed: 18.08.2021).

⁵⁹¹ See the video posted by the user "Ararathau" on telegram, <https://t.me/ararathau/9676> (accessed: 20.08.2021).

and the museum artifacts left in the area of the museum have been damaged. The collection of the museum included more than 400 rocks and minerals on show and about 60 of them stored in funds which have been brought from different countries of the world and surrounding mountainous areas⁵⁹².

Appropriation of the cultural heritage. The first one of the directions of appropriation of Armenian values is the Albanization thereof, and the other one — is the alteration of the function (identity) thereof (Islamization, Azerbaijanization, Turkification, and Russification). The fact that even the Order of the International Court of Justice (The Hague, Netherlands) of 7 December 2021⁵⁹³ did not stop this process demonstrates the explicit intolerance of Azerbaijan towards the norms adopted by the international community and reaffirms its intention to implement the policy of eradicating the Armenian heritage by all possible means.

Albanization of Armenian cultural heritage. The theory developed in the middle of the 20th century,⁵⁹⁴ according whereto the Christian Albanians, who left the arena of history, were declared the ancestors of the Azerbaijanis, has its clear place in the state policy of Azerbaijan. Its purpose was to destroy the historical roots of Armenians and restrict their right to live and create in the region, making space for the presence of Azerbaijan. The aforementioned theory was applied by

⁵⁹² "State Geological Museum after Grigory Gabrielyants" was founded in May 2014, and the official opening took place on 1 September of the same year. The museum was founded at the initiative of famous Soviet Geologist, Doctor of Geological and Mineralogical Sciences, Professor Grigory Gabrielyants, who donated for this purpose his personal collection of ores, mountain rocks and organic fossil remains to Artsakh. It comprises 403 samples from 40 countries of the world and 20 regions of the Russian Federation.

⁵⁹³ The Court Order refers to the partial granting of the Application filed by Armenia against Azerbaijan with regard to violations of the "International Convention on the Elimination of All Forms of Racial Discrimination" adopted by the UN in 1965. In accordance with the Order, Azerbaijan was obliged to take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts (see International Court of Justice, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), 7 December 2021, No. 2021/34).

⁵⁹⁴ The theory of Albanization in Azerbaijan has a long history and dates back to the 1950s, when Azerbaijani historian and academician Ziya Bunyadov made an attempt to argue that the ancient churches in Nagorno-Karabakh were built not by Armenians, but rather by a now-extinct Albanians, and, moreover, the area where they lived did not include the regions of Nakhichevan and Nagorno-Karabakh. (see The Human Rights Ombudsman of the Republic of Artsakh, Ad Hoc Public Report. The Armenian Cultural Heritage in Artsakh (Nagorno-Karabakh): Cases of Vandalism and at Risk of Destruction by Azerbaijan, Stepanakert, 26 January, 2021).

rejecting the Armenianness of Armenian cultural values and the narrative of their belonging to the Albanians (this was recognized as an “Azerbaijani narrative” by PACE Resolution No 2391⁵⁹⁵). H. Petrosyan notes that in parallel with the atheistic propaganda, the mechanisms used by Azerbaijan to expropriate the Armenian cultural heritage resulted in the destruction and transformation of the Armenian heritage values. Moreover, only the Azerbaijani scientific community was entitled to conduct research on heritage, and its main thesis was to declare the entire Armenian heritage to be Azerbaijani-Albanian⁵⁹⁶.

It is remarkable that numerous international scholars have repeatedly condemned the theory of Albanization. An Armenian international researcher Ye. Hambardzumyan points out with this regard that the purpose of the discredited theory of Albanization or, what is the same, the continuous erasure of Armenianness, was, on the one hand, the elimination of any relations between the now-extinct Caucasian Albanians and living Armenians, and, on the other hand, the relation with the now-extinct Christian civilization, which would create an ancient and indigenous identity for Azerbaijanis in the South Caucasus⁵⁹⁷. And according to Adam Smith, Armenian churches, and specifically Dadivank, could not have been created by “Caucasian Albania,” a kingdom that fell in roughly the 8th century⁵⁹⁸.

After the war, the President of Azerbaijan got down to involving about 2-3 thousand Christian Udis⁵⁹⁹ residing in the territory of present-day Azerbaijan in the

⁵⁹⁵ See Parliamentary Assembly of the Council of Europe, Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict, Resolution 2391 (2021), Article 18.4.

⁵⁹⁶ See Petrosyan H., “Cultural ethnocide in Artsakh (the mechanism of cultural heritage expropriation),” “State terrorism and ethnic cleansing policy of Azerbaijan against Nagorno Karabakh”, pp. 137-148, Shushi, 2010.

⁵⁹⁷ See Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan’s Claims to Nagorno-Karabakh.

⁵⁹⁸ See Khatchadourian L., Smith A., The US can help prevent the destruction of cultural heritage in Nagorno-Karabakh. Here’s how.

⁵⁹⁹ This practice was based on the fact that the Udis are the only Christian descendants of the Caucasian Albanians, which makes them a “political tool” to give Azerbaijanis, as the bearers of the Albanian culture, the “right” to claim the Christian heritage of Artsakh. Azerbaijan destroys the Armenian heritage as a wite for the cultural rights of the Albanian-Udi community.

policy of denying the fact that the religious buildings and structures in the occupied territories of Artsakh belong to Armenians. Ignoring the historic evidence⁶⁰⁰, he took certain actions continuously organizing visits of representatives of the Udi community to the churches of the occupied territories (Dadivank⁶⁰¹ (Image 27), Saint Khach Monastery of Vank village of Hadrut⁶⁰² (Image 28), Saint Astsvatsatsin church of Tsakuri village⁶⁰³ (Image 29), etc.), not refraining from outraging the real ritual traditions of the Armenian Apostolic Church⁶⁰⁴. Another example of appropriation of cultural heritage is the Albanization of the Holy Yeghishe Church in Mataghis village⁶⁰⁵ (Image 30 a,b), which was carried out as a result of hostility, and denial of Armenian traditions. St. Astvatsatsin Church in Tsakuri village and St. Hovhannes Church in Togh village of Hadrut region (Image 31) were also subjected to attempts of Albanization⁶⁰⁶.

⁶⁰⁰ See Statement of NAS RA on the Armenian Cultural Genocide Program implemented by Azerbaijan in Artsakh, 23.02.2022, <https://www.sci.am/m/newsview.php?id=477&langid=1> (accessed: 02.03.2022).

⁶⁰¹ See “Azerbaijan Claims that Dadivank Monastery Belongs to Udi Cultural Heritage”, “Monument Watch”, 15 May 2021, <https://monumentwatch.org/en/alerts/azerbaijan-claims-that-dadivank-monastery-belongs-to-udi-cultural-heritage/> (accessed: 21.06.2021).

⁶⁰² See “On a new attempt of Azerbaijan to declare the monastery of Saint Khach in Vank village of Hadrut as Albanian-Udi”, “Monument Watch”, 11 August 2022, <https://monumentwatch.org/en/alerts/on-a-new-attempt-of-azerbaijan-to-declare-the-monastery-of-surb-khach-in-vank-village-of-hadrut-as-albanian-udi/> (accessed: 02.09.2022). It is important to note that these visits signal the destruction of the identity of Armenian churches, and it appears that the visit of the representatives of the Albanian-Udi community is the impetus for the destruction of the authenticity and history of the Armenian churches.

⁶⁰³ With the statements of the president of Azerbaijan, an attempt is made to deny the Armenianness of the church of Tsakuri village of Hadrut region, by claiming that it is Albanian, that the khachkars were built or placed during the years of occupation, and that the inscriptions were added later. Furthermore, it is confirmed by the next statement contravening the fundamental principles related to the preservation of heritage that Azerbaijan must restore or reconstruct that church, with the obviously sinister aim of eradicating the Armenian trace, destroying the historical truth.

⁶⁰⁴ See Xudavəng və Ağoğlan məbədləri, <https://www.facebook.com/watch/?v=344815654057444>, Kəlbəcər rayonunda yerləşən “Xudavəng” məbədi, <https://www.facebook.com/watch/?v=374191911160460>, Laçın rayonu, “Ağoğlan” məbədi, <https://www.facebook.com/watch/?v=1051504228724280> (accessed: 02.03.2022).

⁶⁰⁵ See “Udi propaganda at the Church of Saint Yeghishe in Mataghis village”, “Monument Watch”, 17 July 2022, <https://monumentwatch.org/en/alerts/udi-propaganda-at-the-church-of-surb-yeghishe-in-mataghis-village/> (accessed: 21.07.2022).

⁶⁰⁶ See “Another manifestation of Azerbaijani religious and national “tolerance” in the churches of Tsakuri and Togh”, “Monument Watch”, 20 April 2022,

Changing the function of cultural heritage (Islamization, Azerbaijanization, Turkification, Russification, alteration). Changing the function of cultural heritage or, more accurately, alienating the identity, is part of Azerbaijani politics, which undermines the intangible elements of heritage (rituals, stories, traditions, etc.), since the function of cultural value is determined from the very moment of its creation by the community having created it and becomes an integral component of the way of life of that community. An illustration of changing the function of cultural value is the fact that the Azerbaijani armed forces turned the Kataro Church into a gathering place and a site for saying Muslim prayers, and Saint Astvatsatsin Church of Jraghatsner village of Askeran region of Artsakh - into a Muslim prayer hall⁶⁰⁷ (Image 32). Prayings were performed also in St. Yeghishe Church of Mataghis and in the courtyard of St. Astvatsatsin Church in Tsakuri. The Kanach Zham Church and the Holy Saviour Ghazanchetsots Church both suffered substantial damage as a result of unlawful restoration works carried out by the Azerbaijanis. Through the unlawful ceremonies, the true Christian ceremonial function of the Kanach Zham Church was desecrated, considering it to be Russian Orthodox. The Azerbaijanis have also transformed the function of the clergy house adjacent to the Kanach Zham Church, turning it into a cafe⁶⁰⁸. The Holy All-Saviour Armenian Apostolic Christian Church of Talish has been Russified⁶⁰⁹. Besides changing the function of the spiritual heritage, Azerbaijanis have also changed the function of the royal fountains park of the city of Tigranakert in the Askeran region, once rich in cultural values, and turned it into a barbecue house⁶¹⁰.

<https://monumentwatch.org/en/alerts/another-manifestation-of-azerbaijani-religious-and-national-tolerance-in-the-churches-of-tsakuri-and-togh/> (accessed: 21.06.2022).

⁶⁰⁷ See <https://t.me/aranathau/8515> (accessed: 19.06.2021).

⁶⁰⁸ See "The Transept of Kanach Zham Church in Shushi turned into a cafe", "Monument Watch", 23 January 2022, <https://monumentwatch.org/en/alerts/the-transept-of-kanach-zham-church-in-shushi-turned-into-a-cafe/> (accessed: 02.03.2022).

⁶⁰⁹ See "The Church of the Holy Saviour in Talish", "Monument Watch", <https://monumentwatch.org/en/monument/the-church-of-the-holy-savior-in-talish/> (accessed: 02.03.2022). See also Президент Ильхам Алиев поднял флаг Азербайджана в селе Тальш Тергерского района, Президент Ильхам Алиев поднял флаг Азербайджана в селе Тальш Тергерского района - YouTube (accessed: 02.03.2022).

⁶¹⁰ See "Azerbaijanis turned the Park of Royal Springs of Tigranakert into a barbecue restaurant", "Monument Watch", 11 November 2021, <https://monumentwatch.org/en/alerts/azerbaijanis-turned-the-park-of-royal-springs-of-tigranakert-into-a-barbeque-restaurant/> (accessed: 02.03.2022). See also Ağdam, Şahbulaqdan ən təzə görüntülər (31.10.2021),

Renaming cultural values and alienating ownership from their native communities are both clear examples of cultural heritage appropriation. In pursuit of this practice, Azerbaijan, guided by the global anti-Armenian program, has ordered that the names of villages, regions, and cities in Nagorno-Karabakh be changed from their Armenian names to Azerbaijani names on the global "Google" map system⁶¹¹.

Regarding the Turkification, Azerbaijanization, and Islamization of the Armenian heritage, it is important to note that, in accordance with the press service of the Ministry of Culture of Azerbaijan, Azerbaijan submitted documents to the UNESCO Secretariat to enter the historically Armenian city of Shushi — which, following the 44-day war, was declared as the cultural capital of Azerbaijan— in the list of UNESCO Creative Cities Network⁶¹². And on 17 September 2021, at the 38th International Meeting of Turkish Ministers held in Khiva (Uzbekistan), Minister Anar Kerimov confirmed that Baku is going to declare Shushi the "Cultural Capital of the Turkic World 2023", fostering relations with the international organization "TURKSOY" engaged in promoting the growth of the common culture of the Turkic peoples⁶¹³. In 2021-2022, a number of conferences were held in Shushi, currently occupied by Azerbaijan, the main goal whereof was to wangle the historical and cultural image of the city and to stipulate the process on an international level, to present the city to the international community and organizations as merely Azerbaijani and to legitimize all of that. All the programs and speeches, which present Shushi exclusively as an Azerbaijani and Turkic

https://www.youtube.com/watch?app=desktop&v=0E6mp5Z_jUI&feature=youtu.be (accessed: 02.03.2022).

⁶¹¹ See "Азеркосмос": Google может удалить азербайджанские топонимы на армянском языке со своих карт, "Вестник Кавказа", 11 January 2022, https://vestikavkaza.ru/news/azerkosmos-google-mozet-udalit-azerbajdzanskie-toponimy-na-armanskom-azyke-so-svoih-kart.html?utm_source=cp# (accessed: 02.03.2022).

⁶¹² See "Azerbaijan suggests including Shushi in the UNESCO Creative Cities Network", "Monument Watch", 18 November 2021, <https://monumentwatch.org/en/alerts/azerbaijan-proposes-to-include-shushi-in-the-creative-cities-network/> (accessed: 02.03.2022); Азербайджан предлагает включить город Шуша в "Сеть творческих городов ЮНЕСКО", "1News", 10.11.2021, <https://1news.az/news/20211110031514293-Azerbaidzhan-predlagaet-vklyuchit-gorod-SHusha-v-Set-tvorcheskikh-gorodov-YUNESKO> (accessed: 02.03.2022).

⁶¹³ See "Azerbaijan is planning to declare Shushi "cultural center of the Turkic world"", "Monument Watch", 20 October 2021, <https://monumentwatch.org/en/alerts/azerbaijan-is-planning-to-declare-shushi-cultural-center-of-the-turkic-world/> (accessed: 02.03.2022).

settlement, clearly encompass these intentions. There is absolutely no mention in these programs and speeches about the rich Armenian cultural heritage, historical past, and the numerous monuments of the city of Shushi. Specifically, on 21 October 2022, the third conference of religious leaders of the Organization of Turkic States on the topic “The wealth of the Turkish-Islamic heritage and its significance in the context of addressing the topical issues” was held in Baku, and on October 20, a document on establishing the Council of Heads of Muslim Religious Boards of the Organization of Turkic States was signed in Shushi. The spiritual leaders of the Turkish organization adopted a joint declaration and signed a regulation in Shushi, which is declared the cultural capital of the Turkic world. According to them, this is not only an event of symbolic and historical significance but it also has crucial importance in the overall system of the unity of the Turkic states. It is significant that the agreement specifies an arrangement with the Turkish partners for the restoration of cultural values. It also states that they should support each other in restoration programs for the Muslim heritage damaged during the Armenian occupation⁶¹⁴.

The use of cultural heritage for military purposes. Cultural heritage may sustain significant damage if used for military purposes (as a bunker or an armoury). Following the war, the Azerbaijani armed forces turned the Kataro Church of Togh village of the occupied Hadrut region into a military bunker where they keep weapons and ammunition⁶¹⁵.

Pillage and vandalism of cultural heritage. Along with the destruction and appropriation of the cultural values of Artsakh, Azerbaijan conducts an equally heinous policy of looting and vandalism. St. Yeghishe Church located in the north-western part of the occupied Mataghis region of Artsakh, which was built in 1892-1898, was vandalized by the Azerbaijani military servicemen. The servicemen

⁶¹⁴ See “New attempts of Azerbaijan to present Shushi as the cultural and spiritual centre of the Muslim world and the charges brought by Baku and Shushi against the Armenian Church”, “Monument Watch”, 31 October 2022, <https://bit.ly/3mYdr7X> (accessed: 11.11.2022).

⁶¹⁵ See “The Usage of the Church of Kataro Monastery for Military Purposes”, “Monument Watch”, 13 April 2021, <https://monumentwatch.org/en/alerts/the-usage-of-the-church-of-kataro-monastery-for-military-purposes/> (accessed: 21.06.2021).

smashed the icons and performed Namaz in the Christian structure⁶¹⁶. The monument of Aknaghbyur village⁶¹⁷, and St. Astvatsatsin Church of Karintak⁶¹⁸ – which passed under the control of Azerbaijan following the 44-day war — were also vandalized by the Azerbaijani military servicemen, who painted the above-mentioned monument red. The vandals smashed the holy table of the Church. The holy table has turned into a site of desecration and Muslim prayer. The adversary has also desecrated Kusanats Anapat Church in Avetaranots village of Hadrut region, turning it into a place of disorder. The monument honouring the victims of the Great Patriotic War and the First Artsakh War was vandalized in Azokh village⁶¹⁹.

⁶¹⁶ See “Cultural vandalism in St. Yeghishe Church of Mataghis”, “Monument Watch”, 4 May 2021, <https://monumentwatch.org/en/alerts/cultural-vandalism-in-st-yeghishe-church-of-mataghis/> (accessed: 21.06.2021).

⁶¹⁷ See “Aknaghbyur. Desecration of the Memorial to the Victims of the First Artsakh War”, “Monument Watch”, 13 April 2021, <https://monumentwatch.org/en/alerts/destruction-alteration-modification-of-cultural-heritage-of-aknaghbyur/> (accessed: 21.06.2021).

⁶¹⁸ See Şuşada kilsədə əhli sünne qardaşımla vohdət azanı verərkən, <https://www.youtube.com/shorts/IRHHnTHlRwg> (accessed: 02.03.2022).

⁶¹⁹ See “Memorial dedicated to the victims of World War II and the First Artsakh War was desecrated in Azokh village”, “Monument Watch”, 11 May 2022, <https://monumentwatch.org/en/alerts/memorial-dedicated-to-the-victims-of-world-war-ii-and-the-first-artsakh-war-was-desecrated-in-azokh-village/> (accessed: 12.06.2022).

3.6. Breaches of Azerbaijan of the Norms of Protection of Armenian Cultural Values Under International Law

Any act of destruction and appropriation of Armenian cultural values by Azerbaijan is prohibited by numerous conventions adopted by UNESCO and the Council of Europe, as well as by provisions of the International Court of Justice and other documents. The following list outlines the violations of certain provisions on the protection of cultural values that Azerbaijan has violated:

- prohibitions of destruction of cultural values available in international provisions;
- prohibitions of general policy of appropriation of Armenian cultural values by Azerbaijan within the framework of theoretical and legal systems of heritage protection;
- prohibitions of using cultural heritage for military purposes on an international level;
- prohibitions of vandalism and desecration in international laws.

International provisions prohibiting the destruction of cultural values. With the actions of the destruction of cultural heritage, Azerbaijan violates Article 4 of the 1954 Hague Convention, pursuant to which, the High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property. Furthermore, Azerbaijan violates the provisions of the First Protocol to the 1954 Hague Convention, specifically the clause that requires the conquering state to forbid, prevent and, if necessary, disrupt any form of theft, pillage, or misappropriation of, as well as any act of vandalism against cultural values in the occupied territories⁶²⁰. The Second Protocol (1999) to The Hague Convention reiterates this requirement

⁶²⁰ See Protocol "On the Protection of Cultural Property in the Event of Armed Conflict", <http://www.irtek.am/views/act.aspx?aid=37365> (accessed: 02.03.2022).

and outlines such an act as an international crime in Article 15 thereof. The actions directed at the destruction of cultural values are prohibited also by the Geneva Convention "On the Protection of Victims of War" of 12 August 1949, four international conventions and protocols regarding the laws and customs of war, as well as the relevant UN resolutions and treaties on human rights protection.

Provisions prohibiting the destruction of spiritual heritage of Armenians of Artsakh. By targeting the spiritual heritage of Artsakh, Azerbaijan violates both the above-mentioned Convention and the Convention for the Safeguarding of the Intangible Cultural Heritage of UNESCO (2003). It should be noted that intangible cultural values are protected by other UNESCO documents as well, i.e. the UNESCO Declaration on Protection of Cultural Diversity (2001), the Convention "On the Protection and Promotion of the Diversity of Cultural Expressions" (2005), as well as the Convention "On the Elimination of All Forms of Racial Discrimination" adopted by the UN in 1965, since they are the product of cultural diversity and were created by a unique community (Armenians of Artsakh). However, it is important to remember that the humanitarian rights of human beings provide the most significant protection for the values of intangible cultural heritage. Furthermore, the "Convention on the Value of Cultural Heritage for Society" adopted by the Committee of Ministers of the Council of Europe on 13 October 2005 in Faro, Portugal, specifies that the given community attaches value to cultural heritage, and any value that is an expression of the collective thought of the given people must be preserved.

Targeting of khachkars is prohibited at an international level, as in 2010, "Armenian cross-stones art. Symbolism and craftsmanship of Khachkars" has been inscribed on the Representative List of the Intangible Cultural Heritage of Humanity adopted by UNESCO in 2003⁶²¹. This means that cross-stone art has an exceptional universal value and needs enhanced international protection; furthermore, it is of considerable relevance to the global cultural treasury.

⁶²¹ See Armenian cross-stones art. Symbolism and craftsmanship of Khachkars, UNESCO, <https://ich.unesco.org/en/RL/armenian-cross-stones-art-symbolism-and-craftsmanship-of-khachkars-00434> (accessed: 18.02.2022).

Moreover, cross-stone art is recognized as Armenian art, and it must be preserved despite the desire of one state or another.

The culture of khachkars is further safeguarded both during and after the war. Specifically, in accordance with the principles of the Second Additional Protocol (adopted in 1999) to the 1954 Hague Convention for "The Protection of Cultural Property in the Event of Armed Conflict", the entire culture of khachkars is placed under enhanced protection, and any damage caused thereto, in compliance with point "a" of Article 15 of the Protocol, is deemed to be a serious violation, which can be prosecuted in international courts as a war crime⁶²². Article 10 of the above-mentioned Protocol on the enhanced protection of cultural values, which states that cultural property may be placed under enhanced protection if it is of the greatest importance to humanity, serves as evidence of this⁶²³. And in fact, UNESCO has recognized the entire cross-stone art as such since 2010. Under Article 12 of the Protocol, in occupied territories, the Parties to the Protocol, in this case, Azerbaijan, shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property in support of military action⁶²⁴.

The instances of Azerbaijani vandalism and destruction of Armenian cultural heritage obviously violate the right of Armenians of Artsakh to participate in cultural life, as confirmed by UNESCO and the UN Human Rights Council. From a legal perspective, Azerbaijan has violated Article 15 of the International Covenant "On Economic, Social and Cultural Rights" (1966), under which the right of everyone to freely participate in cultural life is guaranteed, and Article 27 of the Universal Declaration of Human Rights. It should be stated again that international human rights law does not cease to be applied during armed conflicts⁶²⁵.

⁶²² See Second Protocol to the 1954 Hague Convention "For the Protection of Cultural Property in the Event of Armed Conflict" (Hague, 26 March 1999), Article 15a, <https://www.arlis.am/DocumentView.aspx?DocID=31415> (accessed: 18.02.2022).

⁶²³ Ibid., Article 10.

⁶²⁴ Ibid., Article 12.

⁶²⁵ See O'Keefe R., Péron C., Musayev T., Ferrari G., op. cit., para. 52-62.

Prohibitions of general policy of appropriation of Armenian values by Azerbaijan from the perspective of theoretical and legal systems of heritage protection. With regard to this, it is evident that by destroying and appropriating the cultural heritage of an entire community, depriving it of the right to live and carry out an activity in compliance with its self-identity, Azerbaijan wants to enshrine the act of appropriation on an international level, violating the fundamental cultural rights of the Armenian community.

The cases of appropriating Armenian cultural heritage plainly contravene the "European Landscape Convention" adopted in Florence in 2000, which urges to conserve and maintain both urban and rural settlements in their entirety, including the natural landscape, its significance or characteristic features, to value the heritage derived from its natural configuration and/or from human activity.

From a legal perspective, the policy of appropriation violates Article 15 of the International Covenant "On Economic, Social and Cultural Rights" (1966) as well, under which the right of everyone to freely participate in cultural life is guaranteed. The "Fribourg Declaration of Cultural Rights" of 2007 also establishes such a right, considering cultural rights as an opportunity to express identity, and to enjoy various cultural resources and knowledge. Moreover, the Faro Convention "On the Value of Cultural Heritage for Society" of 2005 also contains provisions on the right to cultural heritage. Azerbaijan also violates the provisions of the Declaration "On Protection of Cultural Diversity" (2001) and the Convention "On the Protection and Promotion of the Diversity of Cultural Expressions" (2005), to which it is a member.

Changes in the function of heritage imply substantial damage to the intangible elements of heritage, such as the knowledge and history of the given heritage, which attach significance and value thereto. The international legal system has definitely envisaged prohibitions of such damage to heritage, the most prominent of which we are going to present underneath. The change in the function of churches undermines the fundamental cultural right of the Armenian community to preserve and practice religious beliefs and rituals in their original form. With the act of changing the function of cultural heritage, the provisions of the Convention for the Safeguarding of the Intangible Cultural

Heritage of UNESCO (2003) are violated as well, under Article 11 whereof, States Parties are obliged to respect the intangible values of heritage, regardless of their origin and purpose. Article 75 of the First Protocol to the Geneva Convention states that during the war and after it, persons shall enjoy the protection without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, birth or on any other similar criteria, and each party shall respect the person, honour, convictions and religious practices of all such persons⁶²⁶. Additionally, it is stated in Article 27 of the Geneva Convention that in addition to respect for the honour of a person, the family law, religious convictions, and practices, each Party shall respect also the life experience and customs, which can cover the entire range of intangible heritage, including knowledge and skills⁶²⁷.

The analysis of the principles of authenticity, integrity, cultural significance, and outstanding universal value of cultural heritage with respect to the misappropriation policy conducted by Azerbaijan. We can record through complex arguments that the destructive policy of Azerbaijan against the cultural heritage of Artsakh extends beyond just its destruction, ravage, and violence; there is a much more perilous, broadly practised policy, by which, while outwardly preserving the essential structure of cultural heritage, the most crucial aspect thereof — its very identity — is alienated from it. It was possible to explain — to some extent — the loss thereof by covering the international standards of authenticity, integrity, cultural significance, and the outstanding universal value of the heritage.

Examination of the principle of authenticity of heritage led us to the conclusion that by falsifying historical facts, Azerbaijan refutes the actual tradition of heritage, depriving it of its authenticity. Furthermore, by imputing the Armenian values to Albanians or Turks, or by Azerbaijanizing them, Azerbaijan “takes away” those values from their true owners, the community of Armenians of Artsakh, as they were created in compliance with their life

⁶²⁶ See the Geneva Protocol Additional (Protocol 1) (1977) to the Geneva Conventions of 12 August 1949 “On Protection of Victims of International Armed Conflicts”, Article 75, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977> (accessed: 19.06.2021).

⁶²⁷ See the Geneva Convention of 12 August 1949 “On the Protection of Civilian Persons in Time of War”, Article 27.

experience, knowledge, and skills. The examination of the principle of authenticity revealed that the knowledge that serves as the foundation of heritage must be truthful and credible. And in this case, preservation has to do with more than just the physical preservation of the value; reaching the wide realm of the intangible system, it is first and primarily related to its perception, understanding of its significance, and the fact that the value is to be preserved with trustworthy information. It is crucial to stress within this context that, the authenticity of heritage refers to the reliability or truthfulness of its attributes (*form, structure, material, composition, function, tradition, environment, language, intangible elements, spirit, and feelings*), as well as to the complex protection of those attributes. Moreover, for evaluating one or another value of cultural heritage, it is necessary to consider it within its context rather than separated from it, attaching importance to the dominant role of history, nature, and community in the perception and evaluation of heritage. Indeed, these values reflect the collective identity of communities and are viable under the conditions of their communal cultural practices. In respect of this, there can be no two opinions as to the fact that Azerbaijan can perceive the Armenian cultural heritage correctly and preserve its aesthetic, historical, scientific, social, and spiritual significance, regardless even of its physical preservation. And it is obvious that despite Azerbaijan's efforts to portray itself to the international community as a multicultural nation where the cultural values of various ethnic groups are preserved, this “preservation” refers to the alteration and distortion of the actual historical and scientific evidence rather than the preservation of the authenticity of the heritage. Furthermore, since each cultural trait is valuable for its own community, the acknowledgement of peculiarities of heritage values in respect of each unique culture (in this case, the culture of Armenians of Artsakh) assumes enormous relevance and urgency. In this instance, it is clear that the Azerbaijani hypotheses regarding the Armenian heritage of Artsakh are based on inaccurate and unreliable arguments.

The study on the principle of integrity revealed that it entails the provision of the wholeness and intactness of the natural and/or cultural heritage and its attributes. At this point, it was greatly emphasized that safeguarding the heritage from adverse effects of human factors is highly important, which,

however, cannot be accomplished in the case of many sites located in occupied territory. The wholeness of Armenian monuments is under threat as a result of the policy conducted by Azerbaijan. Upon the examination of the principle of integrity, it can also be confirmed that Azerbaijan — eliminating the possibility of transmitting the heritage with its main functions, details, elements, and attributes to future generations — distorts this principle of heritage protection as well. We should highlight once again that the heritage will retain its integrity if it is safeguarded by a community that perceives its value. And when Azerbaijan's President and Ministers declare the Armenian heritage located in the territories under their control to be Azerbaijani and subject to state protection, a serious concern arises: how can a heritage — the historical and other aspects of which are being completely destroyed through Albanization, Russification, and Turkification by the Azerbaijani propaganda machine — be considered to be preserved? If there is no community, its cultural identity is subjected to genocide, and the historical facts are distorted, the preservation of the heritage of that community is out of the question.

Having studied the aesthetic, historical, scientific, social, and spiritual aspects of cultural significance, we revealed that the idea, the feelings it evokes, the potential, and the information it bears — that underlie the heritage of Armenians of Artsakh — can often be more than the structure itself. Referring to the restoration works of the Holy Saviour Ghazanchetsots and Kanach Zham churches in Shushi and other illegal actions carried out by Azerbaijan, we would like to state that these are attempts to usurp heritage as well. No change made during restoration should undermine the cultural significance of the value, which primarily relates to ideological and related values, since, from the perspective of cultural heritage significance, not only its outward appearance but also its nature, the interrelation between its various components, the cultural influence on its form and structure, the significance of the site to the people and their descendants who use or have used it, its historical relevance, the scientific potential, and any other element important to comprehending the heritage, are important. Indeed, these values, which Azerbaijan is passionately eliminating, determine the uniqueness of heritage. And if we consider cultural heritage as merely the material structure without its features, it cannot have the

significance and outstanding universal value by which it is recognized as a cultural value. Following the examination of all these details, we can state that any act of appropriating Armenian cultural values by Azerbaijan results in the violation or distortion of one or another attribute of the heritage, and as a result, it can be impossible to preserve the cultural significance of the heritage.

And with regard to the exceptional universal value of heritage, we discovered that any value is unique in its own way, and the given community attaches value to its heritage, and no other system may declare that the given value does not have cultural significance, or may determine the extent of its value. And even if the heritage of Armenians of Artsakh is of no value to Azerbaijan, it means that the state/individual/community does not have the will and ability to appreciate the heritage in its genuine character rather than it is of no value. Both the Christian and secular monuments of Artsakh, which are currently appropriated by Azerbaijan, are the expression of the creative genius of the community of Armenians of Artsakh; they provide valuable information about the history of Artsakh, the spiritual ideas of Armenians of Artsakh and about other aspects as well. And they were alienated not only from the people of Artsakh but from the entire “civilized” world as well. And, despite the fact that it is established that outstanding universal value means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity⁶²⁸, Azerbaijan sees it only through the lens of national enmity.

International prohibitions on using cultural heritage for military objectives. It should be noted that in accordance with the 1954 Hague Convention “For the Protection of Cultural Property in the Event of Armed Conflict” and its Additional Protocols of 1954 and 1999, using the cultural value defined by the Convention for military objectives is prohibited. Article 6 of the Second Protocol (1999) to The Hague Convention prohibits making cultural property into a military objective or using it for purposes that are likely to

⁶²⁸ See Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, WHC. 05/2, 2 February 2005, para. 49, <https://whc.unesco.org/archive/opguide05-en.pdf> (accessed: 03.02.2022).

expose it to destruction or damage. And in accordance with points “c” and “d” of Article 15 of the Second Protocol, such an act is qualified as a war crime. When cultural heritage is used for military purposes, it loses the additional protection the above-mentioned convention provides and becomes a civilian object⁶²⁹.

The cultural heritage may also sustain significant damage if combat positions are placed in the areas close to it. Following the occupation of a significant part of the territory of the Republic of Artsakh by Azerbaijan as a result of the 44-day war, certain changes in the combat positions of both the Azerbaijani and Armenian armed forces took place, resulting in deployment of some positions in or near the areas of cultural values (churches, chapels, monuments). This reality entails substantial risks from the perspective of the protection of cultural heritage since deployment combat positions near them is already a serious concern to the protection of both the certain value and the cultural landscape of the heritage.

In accordance with international standards for the protection of cultural values during wartime, the deployment of combat positions in areas close to cultural values or using them for military objectives (as a bunker, or armoury) is forbidden since they may jeopardize the integrity of the heritage.

Prohibitions of vandalism and desecration in international laws. The acts of vandalism committed by Azerbaijan against the cultural heritage of Artsakh are forbidden by several provisions of The Hague and Geneva Conventions on the protection of cultural values in the event of armed conflicts and relevant protocols.

⁶²⁹ See the 1954 (Hague) Convention “For the Protection of Cultural Property in the Event of Armed Conflict”, Article 4, <https://www.arlis.am/DocumentView.aspx?DocID=75856> (accessed: 02.03.2022).

3.7. The Cultural Right of Armenians of Artsakh as an Overriding Principle of Protection of Heritage, Regardless of Political Status

The people of Artsakh are a community with a unique and distinct cultural identity, and regardless of their political status, they have rights of fundamental significance that should never be violated. We shall refer to the Declaration “On the Rights of Indigenous Peoples” adopted by the UN on 13 September 2007 — which defines the possibilities for the protection of the self-identity of indigenous peoples and the full exercise of their cultural rights, regardless of political status — to refute all assertions which imply that the fact that the Republic of Artsakh is not recognized internationally, and is not a party to international conventions on the protection of cultural values during the war and other treaties, can be an obstacle to the effective protection of and the right to claim the cultural heritage of the Armenians of Artsakh.

Prior to referring to the provisions of the Declaration, it is necessary to present the term “indigenous peoples”. Considering the diversity of indigenous peoples, an official definition of “indigenous” has not been adopted by any UN system body. Instead, some essential characteristics of such peoples are distinguished. Specifically, indigenous peoples are those who have a historical origin, a special relation to and use of their traditional land, possess distinct social, economic, or political systems, language, culture, and beliefs, and have decided to preserve the culture of their ancestors⁶³⁰, etc. The people of Artsakh have historically lived in their homeland, and have a unique culture, based on which they can be considered an ethnic community, and the provisions of the aforementioned Declaration apply thereon.

It is affirmed in the Preamble of the Declaration that indigenous peoples (in this case – the Armenians of Artsakh) are equal to all other peoples. Meanwhile, the UN recognizes the right of these peoples to be different, to

⁶³⁰ See Who are indigenous peoples? Understanding the term “indigenous”, https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf (accessed: 12.04.2022).

consider themselves different, and to be respected as such⁶³¹. The Declaration reaffirms that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind⁶³². Article 1 of the document establishes that indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law. Article 2 establishes that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular those that are based on their indigenous origin or identity⁶³³.

Perhaps the most important point of the instrument adopted by the UN is summarized in Article 3, which states the right of indigenous peoples to self-determination. "Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development"⁶³⁴. Article 4 also contains a provision on the right to self-determination, pursuant to which, "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government"⁶³⁵.

It should be underlined that the UN Charter, the international agreements on socio-economic and cultural, political and civil rights, the Vienna Declaration, and the Action Plan thereof affirm the significance of the fundamental right of all peoples to self-determination, a right, by virtue of which "they freely determine their political status and freely pursue their economic, social and cultural development". Moreover, the document establishes that nothing in the Declaration may be used to deny any peoples their right to self-determination⁶³⁶. Otherwise stated, the UN affirms with this

⁶³¹ See United Nations Declaration on the Rights of Indigenous Peoples, 2007, Preamble, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (accessed: 12.04.2022).

⁶³²Ibid.

⁶³³ Ibid., Article 2.

⁶³⁴ Ibid., Article 3.

⁶³⁵ Ibid., Article 4.

⁶³⁶Ibid., Introduction.

Declaration that the people of Artsakh have the right to self-determination, which, being related to the cultural right, can act as a protective impetus for the values of cultural heritage as well.

Addressing especially the violation of the rights of the people of Artsakh as a result of the 44-day war and the condemnation of genocidal acts, it should be noted that Article 7 of the Declaration states the right of indigenous peoples to live in freedom, peace, and security and not be subjected to any act of genocide or any other act of violence⁶³⁷.

Assimilation and destruction of culture are prohibited under Article 8 of the Declaration, condemning any attempt to deprive peoples of their cultural values or ethnic identities and any ethnic discrimination, which Azerbaijan actually does at a high state level⁶³⁸. Highlighting the cultural problems, the Declaration establishes the right of indigenous peoples to practise and revitalize their cultural traditions and customs, protecting and preserving, particularly, their cultural past, archaeological and historical sites, crafts, ceremonies, etc.⁶³⁹.

Indigenous peoples have the right to maintain and protect their religious and cultural sites⁶⁴⁰, to revitalize, use, develop, and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems, and literatures, and to designate and retain their names for communities, places, and persons⁶⁴¹. Any state that disregards all of this should be held responsible⁶⁴².

Article 31 of the Declaration makes a special reference to the preservation of heritage, stating, "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as the manifestations of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions,

⁶³⁷ Ibid., Article 7.

⁶³⁸ Ibid., Article 8.

⁶³⁹ Ibid., Article 11.1.

⁶⁴⁰ Ibid., Article 12.1.

⁶⁴¹ Ibid., Articles 13.1.

⁶⁴² Ibid., Article 11.2.

literatures...⁶⁴³. And as conclusion, the Declaration affirms that nothing in the Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future⁶⁴⁴. Moreover, it enhances the relationship with human rights, which also are supported by the UN Charter, and among which the right to culture is of critical importance. The cultural right is established under Article 27 of the Declaration "On Human Rights and Fundamental Freedoms", under which, everyone has the right freely to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits. The "Fribourg Declaration of Cultural Rights" of 2007 also establishes such a right, considering cultural rights as an opportunity to express identity, and to enjoy various cultural resources and knowledge. The provision for freely participating in cultural life is enshrined also in the Faro Convention adopted by the Council of Europe in 2005, which, in its Article 1, recognizes that rights relating to cultural heritage as inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights and establishes individual and collective responsibility towards cultural heritage. Considering this approach, it appears that, by targeting any material object of the Armenians of Artsakh both during the war and after it, distorting any aspect of the intangible heritage - ritual, oral tradition, etc., Azerbaijan directly attacks the rights of the Armenians of Artsakh, among which the cultural rights play a significant role as well.

The Convention "On Protection and Promotion of the Diversity of Cultural Expressions" adopted by the UN in Paris in 2005, also contains provisions on protecting the cultural rights of Armenians of Artsakh⁶⁴⁵. Under Article 2 of this Convention, cultural diversity can be protected and promoted only if human rights and fundamental freedoms are guaranteed. In the same sense, when human rights and fundamental freedoms are infringed, the protection of heritage expression is also undermined⁶⁴⁶.

⁶⁴³ Ibid., Article 31.1.

⁶⁴⁴ Ibid., Article 45.

⁶⁴⁵ See Convention on the Protection and Promotion of the Diversity of Cultural Expressions, <https://en.unesco.org/about-us/legal-affairs/convention-protection-and-promotion-diversity-cultural-expressions>.

⁶⁴⁶ Ibid., Article 2.1.

The Convention "On Elimination of All Forms of Racial Discrimination" adopted by the UN in 1965 also contains protection mechanisms regarding the violation of cultural rights of a community or any people. At this point, it should be specially noted that under international law⁶⁴⁷, respect for the right to culture is also an obligation, and according to the International Court of Justice, the humanitarian rights of people are applicable as a "lex specialis"⁶⁴⁸ and apply as customary international law⁶⁴⁹ (cannot be challenged by any state or person).

⁶⁴⁷ See Stone P. G., *The Challenge of Protecting Heritage in Times of Armed Conflict*, pp. 40-54.

⁶⁴⁸ See United Nations Human Rights Office of the High Commissioner, *International Legal Protection of Human Rights in Armed Conflict*, p. 11.

⁶⁴⁹ See Henckaerts J.-M., Doswald-Beck L., op. cit., Rules 38-39, pp. 127-132.

3.8. International “Rewards” Instead of Condemning the Erasure of Armenian Cultural Values

With its silence and occasionally dubious response, the international community has very frequently “encouraged” Azerbaijan’s strategy of ongoing cultural vandalism.

Thus, during the 16th meeting of the member states of the UNESCO Committee for Protection of Cultural Property in the Event of Armed Conflict held in Paris on 2-3 December 2021, Azerbaijan was elected a member of the mentioned Committee for a four-year term⁶⁵⁰. However, this is not all. Azerbaijan was a member of that Committee from 2011 to 2019 when the khachkars of Jugha had already been erased. There is no question that at least since the adoption of the Second Protocol of the 1954 Hague Convention (in 1999), Azerbaijan is perhaps one of the few states that have violated a number of provisions of the same Protocol the most. However, it was not held liable for the committed violations; rather, it was appointed as an authorized representative responsible for the implementation of the Convention. The same reasoning governed the international structures in past years as well. Let’s give one example in this context.

On the sidelines of the 68th session of the UN General Assembly, the UN Alliance of Civilizations (UNAOC) together with the State Committee on Religious Associations of the Republic of Azerbaijan (SCWRA) inaugurated a photo-exhibition entitled “Azerbaijan – Land of Tolerance” in the UN Headquarters in New York in 2013⁶⁵¹. It bears mentioning the statement made by Vice Chair of the US Commission on International Religious Freedom (USCIRF) Nadine Maenza in March 2020, according to which Azerbaijan has

⁶⁵⁰ See 16th Meeting of the Committee for Protection of Cultural Property in the Event of Armed Conflict, UNESCO, Paris, 2-3 December 2021, <https://en.unesco.org/16th-Meeting-of-the-Committee-for-Protection-of-Cultural-Property-in-the-Event-of-Armed-Conflict-Working-Documents> (accessed: 15.02.2022).

⁶⁵¹ See From Land of Fire to Land of Tolerance Azerbaijan – UN Alliance of Civilizations Inaugurate a Photo Exhibition in New York, Statement Attributable to the Spokesperson for the High-Representative for the United Nations Alliance of Civilizations, UNAOC, 2013, <https://www.unaoc.org/2013/09/from-land-of-fire-to-land-of-tolerance/> (accessed: 15.02.2022).

taken great pride in its history of multiculturalism and religious tolerance and should bolster those deserving values by ensuring that religious freedom is truly a reality for all⁶⁵². S. Maghakyan states that having made its courting of UNESCO a top foreign policy priority, Azerbaijan provides a significant amount of finances to UNESCO, which apparently results in ensuring international silence⁶⁵³. Furthermore, high-ranking officials of UNESCO are colleagues and partners of Azerbaijan; after completing his service in 2009, Koïchiro Matsuura, Director-General of UNESCO, joined the state-administered International Multicultural Centre of Baku as a member of the board of trustees. Later, opened with Mrs Mehriban Aliyeva, First Lady of Azerbaijan, an event organized to commemorate the 100th anniversary of the birth of the illustrious Azerbaijani author and scholar Mir Jalal Pashayev⁶⁵⁴. In 2017, the next UNESCO Director-General Irina Bokova participated and delivered a speech at the 4th World Forum on Intercultural Dialogue held in Baku, which was attended by over 800 participants from over 120 countries⁶⁵⁵. Additionally, when speaking about the importance of protecting cultural values, he mentioned only the dangers of the Holocaust, without referring to the fact of blatant vandalism, ignoring the destruction of Jugha and the numerous cases of vandalism against Armenian cultural heritage. And though UNESCO acknowledged “Armenian cross-stones art. Symbolism and craftsmanship of Khachkars” as a distinctive expression of Armenian culture and in 2010, inscribed it on the UNESCO Representative List of the Intangible Cultural Heritage of Humanity, it was unable to bring back the already lost heritage. Nevertheless, the 44-day war resulted in a substantial change in the international response, becoming more sensible, which we will discuss below.

⁶⁵² See USCIRF Delegation Travels to Azerbaijan to Assess Religious Freedom Conditions, United States Commission on International Religious Freedom, Washington, D.C., March 9, 2020, <https://www.uscirf.gov/news-room/releases-statements/uscirf-delegation-travels-azerbaijan-assess-religious-freedom> (accessed: 15.02.2022).

⁶⁵³ See Maghakyan S., This Year’s UNESCO Session Was an Insult to World Heritage, “Hyperallergic”, July 9, 2019, <https://hyperallergic.com/508663/2019-unesco/> (accessed: 15.02.2022).

⁶⁵⁴ See Mr Koïchiro Matsuura, Director-General of UNESCO opened with Mrs Mehriban Aliyeva, UNESCO, <https://en.unesco.org/mediabank/21275/> (accessed: 15.02.2022).

⁶⁵⁵ See Baku Forum on Intercultural Dialogue calls for enhanced cooperation, UNESCO, 10 May 2017, <https://en.unesco.org/news/baku-forum-intercultural-dialogue-calls-enhanced-cooperation> (accessed: 15.02.2022).

CHAPTER 4.

THE RESPONSE OF THE INTERNATIONAL COMMUNITY TO THE AZERBAIJANI POLICY OF DESTRUCTING THE CULTURAL HERITAGE OF ARTSAKH AS A RESULT OF THE 44-DAY WAR

4.1. The Response of the International Community to the Protection of Cultural Values of Artsakh During the War

In the 21st century, a time when the advanced world supports tolerance towards diversity and encourages the existence of various religious and cultural identities, many Armenian values of universal significance are still being erased from the world, eliminating a unique and original culture from cultural diversity. The Turkish-Azerbaijani elite continues the “tradition” of the eradication of Armenian values, despite calls from the international community in written texts for states to respect the heritage of any people. The Azerbaijani policy of ethnic cleansing with continuous attempts of appropriation of heritage has persisted to the present day⁶⁵⁶, going back to the physical and cultural genocide of Armenians that took place in Turkey at the turn of the 20th century⁶⁵⁷, infringing the rights of the indigenous people of the region to knowledge, history, religion, and culture.

While on 27 September 2020, the defenders of the Artsakh-Azerbaijani border and the Armenians of Artsakh learnt about the war due to the heavy blows and the shelling directed at the Armenian border by the aggressor Azerbaijan, the international community learnt about the war through the statement of Stephane Dujarric, the spokesperson for the UN Secretary-General, about the fresh resumption of hostilities along the line of contact in the Nagorno-Karabakh conflict

⁶⁵⁶ See Avagyan A., A Brief Review of Cultural Heritage Violations in Nagorno-Karabakh (Artsakh) in September-November of 2020, November 30, 2020, <https://icom-armenia.mini.icom.museum/a-brief-review-of-cultural-heritage-violations-in-nagorno-kharabagh-artsakh-in-september-november-of-2020> (accessed: 07.07.2022).

⁶⁵⁷ “Cultural genocide” or “cultural cleansing” is a concept that was identified as a component of genocide by jurist Raphael Lemkin in 1944. The Armenian Genocide Museum refers to the actions taken to destroy the culture of nations or ethnic groups as cultural genocide (See Genocide Museum | The Armenian Genocide Museum-institute (genocide-museum.am) (accessed: 07.07.2022)).

zone in violation of Article 33 of the UN Charter and with the use of force⁶⁵⁸. Apart from calls to immediately stop fighting, the aforementioned statement also contained messages for the sides to resume dialogue without preconditions with the full support of the Secretary-General and under the guidance of the OSCE Minsk Group Co-Chairs⁶⁵⁹.

The war was unleashed by Azerbaijan — in blatant violation of international norms, including international humanitarian law — with bombardment and shelling by heavy weapons of the territory of the Republic of Artsakh established based on the principle of self-determination — internationally recognized by the UN — of Armenians of Artsakh. Civilian settlements, infrastructures, educational establishments, and movable and immovable Armenian cultural values came under attack in Stepanakert, Hadrut, Berdadzor, and other places.

In response to all of this, the intergovernmental and non-governmental “independent” organizations empowered to protect the cultural heritage⁶⁶⁰ — despite that they have declared the principles of impartial preservation and protection of the heritage — maintained neutrality and confined themselves to only a few calls for both sides to exercise restraint and to preserve the cultural values of the territory of Nagorno-Karabakh. And despite the fact that the Armenians of Artsakh expected the international community’s support since the outset of hostilities, it mostly continued to keep silent given the pressures from Turkey and Azerbaijan. Nevertheless, the initial response was mainly at the level of international non-governmental rather than supranational organizations.

In general, it can be stated that during the period from 27 September to 9 November 2020, the international community confined itself to calls for both sides to exercise restraint, abstain from using force, and to generally condemn vandalism rather than providing an adequate assessment of the obvious actions of Azerbaijan’s

⁶⁵⁸ See Dujarric S., Statement attributable to the Spokesman for the Secretary-General on the Nagorno-Karabakh conflict, UN, 27 September 2020, <https://www.un.org/sg/en/content/sg/statement/2020-09-27/statement-attributable-the-spokesman-for-the-secretary-general-the-nagorno-karabakh-conflict> (accessed: 07.07.2022).

⁶⁵⁹ Ibid.

⁶⁶⁰ The International Council of Museums (ICOM), the ICOM Armenia, the “Blue Shield” - an international advisory body of UNESCO, UNESCO, the Metropolitan Museum, ICOMOS, “Europa Nostra”, and other organizations delivered statements regarding the protection of the cultural heritage of the Nagorno-Karabakh region during the war.

clearly defined policy aimed at the destruction of culture. In particular, the response of the international supranational organizations - UN, EU, CoE, OSCE, NATO, CSTO, and individual member states did not even contain information to define which side was the aggressor and which side - the defending one.

As for the common position of Western countries, we should underline that it was primarily and mainly motivated by their geopolitical interests and was based on the "equality" of much more democratic Armenia and authoritarian Azerbaijan rich in oil and gas. Regarding the position of the UN Security Council in particular, it should be noted that on 8 and 19 October 2020, the mentioned organization convened two sessions, during which it discussed the armed conflict between Armenia and Azerbaijan, but it did not adopt any resolution or statement at the level of the chairperson, instead, confining itself only to press releases about the meetings.

The first statement on the international platform — entitled "On the Recent Aggression of Azerbaijan against Nagorno-Karabakh" — was delivered by the Armenian office of the international non-governmental organization "ICOM" on October 2, just five days after the start of the war⁶⁶¹. In addition to the serious concerns expressed thereby, the Organization, from the very first days, was speaking up about the serious violations of international laws and customs applicable in armed conflicts, the decision of Azerbaijan to resolve the Nagorno-Karabakh conflict with the involvement of foreign terrorist fighters from Turkey and Syria, by ethnic cleansing, and by using force, and particularly about the huge risk of destruction posed to museums and collections located in the zone of fire⁶⁶².

Notably, the statements of the ICOM Azerbaijan delivered subsequently maintained the line of falsification⁶⁶³, and the statements of the International Council of Museums (ICOM) - the line of neutrality. The statements refer to the 4

⁶⁶¹ See ICOM Armenia, Statement on the recent aggression of Azerbaijan against Nagorno-Karabakh, 02.10.2020, Yerevan/Armenia, https://icom-armenia.mini.icom.museum/wp-content/uploads/sites/28/2020/10/STATEMENT-ON-THE-RECENT-AGRESSION-OF-AZERBAIJAN-OF-ICOM-ARMENIA_EN.pdf (accessed: 07.07.2022).

⁶⁶² Ibid.

⁶⁶³ See ICOM Azerbaijan, Statement on the protection of historical and cultural heritage in the territories of Azerbaijan occupied by Armenia, 01.10.2020, <http://icomaz.az/en/news10123> (accessed: 07.07.2022).

UN Security Council resolutions (No 822 (30 April 1993)⁶⁶⁴, No 853 (29 July 1993)⁶⁶⁵, No 874 (14 October 1993)⁶⁶⁶, and No 884 (12 November 1993)⁶⁶⁷, invoking the views reflected therein, according to which a number of regions of the Republic of Artsakh are considered territories "occupied by Armenia".

For covering the motivations behind the stressed international neutrality, we think it necessary to briefly address the resolutions concerning the conflict adopted by the UN. These resolutions introduced into the international system a terminology that is disconnected from reality and to a certain extent infringes on the rights of Armenians of Artsakh, particularly the right to live freely in their homeland. Although on the one hand, they contained calls to resume the peace process, condemnation of violating the ceasefire having endangered the cultural heritage of the region, as well as calls for states in the region to refrain — with the assistance of the Government of the Russian Federation in support of the Minsk Group — from any hostile acts and from any interference or intervention which would lead to the widening of the conflict and undermine peace and security in the region⁶⁶⁸, on the other hand, however, the term "Armenian occupation forces" used therein has become a real challenge for Armenians of Artsakh and the region. The main demands of the resolutions were the immediate withdrawal of all occupying forces from Karvachar⁶⁶⁹, Aghdam, and other occupied areas of the Republic of Azerbaijan⁶⁷⁰, the cessation of all hostilities and hostile acts and attacks on civilians, and bombardments of populated areas⁶⁷¹. The UN resolutions of the 1990s also demanded the removal of all obstacles to communications and transportation for the purpose of arriving at a negotiated settlement to the conflict within the

⁶⁶⁴ See UN Security Council resolution 822 (1993) / adopted by the Security Council at its 3205th meeting, on 30 April 1993, <http://unscr.com/files/1993/00822.pdf> (accessed: 07.07.2022).

⁶⁶⁵ See UN Security Council resolution 853 (1993) / adopted by the Security Council at its 3259th meeting, on 29 July 1993, <https://digitallibrary.un.org/record/170257#:~:text=Condemns%20the%20seizure%20of%20the,and%20complete%20withdrawal%20of%20the> (accessed: 07.07.2022).

⁶⁶⁶ See UN Security Council resolution 874 (1993) / adopted by the Security Council at its 3292nd meeting, on 14 October 1993, <https://digitallibrary.un.org/record/174420> (accessed: 07.07.2022).

⁶⁶⁷ See UN Security Council resolution 884 (1993) / adopted by the Security Council at its 3313th meeting, on 12 November 1993, <https://digitallibrary.un.org/record/176731> (accessed: 07.07.2022).

⁶⁶⁸ Ibid.

⁶⁶⁹ See UN Security Council resolution 822 (1993).

⁶⁷⁰ See UN Security Council resolution 853 (1993).

⁶⁷¹ Ibid.

framework of the Minsk Group⁶⁷². Specifically, under Resolutions No 822 (30 April 1993) and No 853 (29 July 1993), all parties were called on to refrain from all violations of international humanitarian law for unimpeded access to international humanitarian relief efforts in all areas affected by the conflict⁶⁷³. However, it is clear that under the resolutions, both Armenia and Azerbaijan are treated **equally**, and the accusations are on the Armenian side rather than the aggressor side.

Later, on 5 October, based on the publications of the national committees of the two nations involved, ICOM Azerbaijan and ICOM Armenia, the ICOM international organization, as an International Council of Museums, representing the museum community in the world, made a statement, by which it — in addition to condemning the deliberate targeting of cultural heritage in the Nagorno-Karabakh region — once again urged both sides to respect the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which establishes that the deliberate destruction of cultural heritage is an unlawful attack on the past and present of humanity⁶⁷⁴.

10 days after the war - on 7 October, the Blue Shield⁶⁷⁵, which is an international advisory body to UNESCO on the protection of cultural property in the event of armed conflict, made a statement, urging the parties to recognize the need to not only prevent avoidable or unnecessary damage to the cultural sites of the region but also to proactively strive to safeguard and respect all cultural property within the area where fighting is taking place, taking as a basis the idea of respect for all cultural values, according to The Hague conventions and the

⁶⁷² See UN Security Council resolution 874 (1993).

⁶⁷³ Ibid.

⁶⁷⁴ See ICOM strongly condemns the targeting of cultural heritage as a weapon of war in the Nagorno-Karabakh region, and urge parties to find a peaceful solution, ICOM, October 5, 2020, <https://icom.museum/en/news/icom-nagorno-karabakh/> (accessed: 07.07.2022).

⁶⁷⁵ The international organization "Blue Shield" has 27 national committees and an international board, which are composed of elected members and representatives of ICA (International Council on Archives), IFLA (International Federation of Library Associations and Institutions), ICOM (International Council of Museums), and ICOMOS (International Council on Monuments and Sites), the major international organizations responsible for cultural heritage. It is concerned with the protection of cultural and natural heritage, tangible and intangible, in the event of armed conflict, natural or human-made disaster.

protocols thereof, to which both Armenia and Azerbaijan are parties⁶⁷⁶. And only on 10 October 2020, in line with the statement of the United Nations Secretary-General on 5 October 2020⁶⁷⁷, UNESCO delivered a rather neutral statement regarding the continuing escalation of violence in the Nagorno-Karabakh conflict zone, which is inflicting damage to civilian infrastructure, including on schools, cultural and religious sites⁶⁷⁸. This body, as an international organization possessing a primary mandate for the protection of the world cultural heritage provided by the United Nations and as a body that certainly expresses the position of the United Nations, decided once more to connive the correct direction of the Azerbaijani bullets and urged both sides to ensure the prevention of damage to cultural heritage in all its forms. We should add that with regard to the last phrase - "cultural heritage in all its forms", UNESCO considers the range of tangible and intangible values of heritage, the joint protection whereof becomes increasingly crucial during conflicts.

Definitely, the statement could not have missed out on the calls upon complying with the obligations under the 1954 Hague Convention and its two (1954 and 1999) Protocols, which Azerbaijan has repeatedly and obviously violated (and to which no relevant response was given). It is significant to note that in the conditions of stressed neutrality, UNESCO stands ready to render necessary assistance within its mandate, to support the protection of the heritage of the region, which has not been implemented yet.

On October 13, 2020, as the fighting in Nagorno-Karabakh raged, Biden released a strongly-worded statement bemoaning America's lack of engagement, and calling on the Trump Administration to "tell Azerbaijan that it will not tolerate its efforts to impose a military solution to this conflict"⁶⁷⁹.

⁶⁷⁶ See Blue Shield Statement on fighting in Nagorno-Karabakh, "BS International News", October 7, 2020, <https://theblueshield.org/blue-shield-statement-on-fighting-in-nagorno-karabakh/> (accessed: 07.07.2022).

⁶⁷⁷ See Dujarric S., Statement attributable to the Spokesman for the Secretary-General on the Nagorno-Karabakh conflict.

⁶⁷⁸ See Situation in the Nagorno-Karabakh conflict zone UNESCO statement, UNESCO, 09.10.2020, <https://en.unesco.org/news/situation-nagorno-karabakh-conflict-zone-unesco-statement> (accessed: 07.07.2022).

⁶⁷⁹ See Khatchadourian L., Smith A., The US can help prevent the destruction of cultural heritage in Nagorno-Karabakh. Here's how.

Joining the statements delivered by ICOM, ICOMOS, the “Blue Shield” and UNESCO aimed at condemning the ongoing military operations in the region of Nagorno-Karabakh and its surroundings with the related dangers for cultural heritage, the civil organization “Europa Nostra”⁶⁸⁰ which deals with the protection of cultural heritage, made a statement on October 29⁶⁸¹. It should also be mentioned that “Europa Nostra” is one of the few international organizations that has always insisted that defending cultural heritage is more than a cultural issue: it is also a peace and security issue. It was also one of the first organizations to clearly emphasize the need to protect the intangible cultural heritage of the region⁶⁸². Also among the first ones, “Europa Nostra” — while underlining the crucial significance of cultural heritage — suggested particular measures for the protection of cultural heritage during conflicts⁶⁸³. These included, among others, the inventory of heritage, bringing together heritage experts at local, national, and international levels to jointly ensure adequate safeguarding and enhancement (including research, interpretation, conservation, and management) of the rich cultural heritage in the region, stressing the vital importance of due involvement of civil society organizations in this process, and the crucial role of heritage education, including history education.

Thus, a closer look at the aforementioned statements enables us to affirm that during the war, the position of the international community was out of touch with the real facts and was clouded by the perspective of Azerbaijani oil and the newly emerging global “influence”.

⁶⁸⁰ “Europa Nostra” is the European Voice of civil society committed to the preservation of cultural and natural heritage.

⁶⁸¹ See Europa Nostra Statement related to the armed conflict in and around the Nagorno-Karabakh region, The Hague/Brussels, 29 October 2020, <https://www.europanostra.org/europa-nostra-statement-related-to-the-armed-conflict-in-and-around-the-nagorno-karabakh-region/> (accessed: 18.02.2022).

⁶⁸² Ibid.

⁶⁸³ Ibid.

4.2. The Response of the International Community to the Issues of Protection of the Cultural Values of Artsakh Following the Tripartite Statement of November 9

The end of the 44-day war was enshrined by the tripartite statement of November 9 and the signing of the ceasefire agreement between the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia, and the President of the Russian Federation; however, the destruction of Armenian cultural values in the occupied territories of Artsakh continued and even accelerated (see Subsection 5 of Chapter 1). Even though many international organizations gradually moved away from unilateral and neutral statements after the ceasefire and started to openly condemn the actions of Azerbaijan aimed at cultural genocide, they were unable to prevent the annihilation of an entire heritage.

Having examined the response of the international community to the point at issue, we have made an attempt to sum up the content of the statements delivered after the war, laying emphasis on several points that appear practically in all texts. Practically all the statements stress:

- the universality of cultural heritage;
- the significance of preserving the cultural heritage of the Nagorno-Karabakh region;
- putting both sides on a footing of equality;
- observing the provisions of the 1954 Hague Convention and its two Protocols.

Thus, a few days after the agreement was signed, on 15 November 2020, the World Monuments Fund, an organization committed to safeguarding the shared global heritage, delivered a similar statement about the protection of the cultural heritage of Nagorno-Karabakh, based on the idea of neutrality. It was reaching out to both sides “to stress the importance of safeguarding humanity’s cultural achievements”⁶⁸⁴. With this statement, the organization also offered its support for

⁶⁸⁴ WMF Statement on Safeguarding Cultural Heritage in Nagorno-Karabakh, November 15, 2020, <https://www.wmf.org/blog/wmf-statement-safeguarding-cultural-heritage-nagorno-karabakh> (accessed: 18.02.2022).

the documentation and preservation of the many distinct, rich layers of history within Nagorno-Karabakh, reminding at the same time about the need to comply with the provisions of international conventions (the 1954 Hague Convention, the UNESCO Convention of 1970).

On 16 November, ICOM Armenia and ICOMOS Armenia forwarded a joint letter to Mr. Ernesto Ottone Ramirez, Assistant Director-General for Culture of UNESCO about the protection of the Armenian cultural heritage under the jurisdiction of Azerbaijan due to the ceasefire Agreement signed on the 10th of November⁶⁸⁵. The Letter stated that in the past, the right to the cultural heritage of Armenians of Artsakh has not been denied by any organization, presenting specifically the resolution adopted at the 16th General Assembly of the International Council on Monuments and Sites (ICOMOS) in October 2008, wherein a grave concern was expressed about these acts of vandalism⁶⁸⁶. It was stressed in the Letter that nowadays, the destruction of Armenian cultural values stems from a context of deep Armenophobia, which is prevalent in Azerbaijan at all levels of society. Hate speech and statements demonstrating intolerance against Armenians are encouraged at the highest political level in Azerbaijan, creating a conducive ground for unprecedented hate crimes. As a result, Armenian cultural heritage becomes a victim of revenge through a policy of cultural genocide, which has been practiced by Turkey and Azerbaijan for over a century⁶⁸⁷.

On 17 November, Dan Weiss, President and CEO of the USA Metropolitan Museum of Art, and Max Hollein, Director, delivered another statement wherein, referring to the exhibition of 2018 which demonstrated the cultural achievements

⁶⁸⁵ See Joint letter of ICOM Armenia and ICOMOS Armenia to UNESCO about the protection of the Armenian cultural heritage under the jurisdiction of Azerbaijan due to the ceasefire agreement signed on the 10th of November. Letter to Mr. Ernesto Ottone Ramirez, Assistant Director-General for Culture, 16.11.2020, <https://icom-armenia.mini.icom.museum/about-the-protection-of-the-armenian-cultural-heritage-under-the-jurisdiction-of-azerbaijan-due-to-the-ceasefire-agreement-signed-on-the-10th-of-november/> (accessed: 06.07.2022).

⁶⁸⁶ See Resolutions of the General Assembly, 16th General Assembly of ICOMOS Quebec, Canada, 30 September – 4 October 2008, https://www.icomos.org/quebec2008/resolutions/pdf/GA16_Resolutions_final_EN.pdf (accessed: 06.07.2022).

⁶⁸⁷ See Joint letter of ICOM Armenia and ICOMOS Armenia to UNESCO about the protection of the Armenian cultural heritage under the jurisdiction of Azerbaijan due to the ceasefire agreement signed on the 10th of November. Letter to Mr. Ernesto Ottone Ramirez.

of Armenians, they implored all the parties involved in the Nagorno-Karabakh conflict to respect the cultural heritage sites of Nagorno-Karabakh, which enrich the world and have survived for thousands of years. "We implore all those involved to respect these international cultural heritage sites, which enrich our world and have survived for thousands of years. The loss of cultural heritage sites is permanent and is a grievous theft from future generations"⁶⁸⁸. Under such an approach, this was the first international statement to emphasize the protection of the cultural values of the Armenian nation.

On 20 November 2020, the President of France Emmanuel Macron tweeted "France is ready to provide, within the framework of UNESCO, with the Alliance for the Protection of Heritage in Conflicts, its expertise and full support for the protection of the cultural and religious heritage of Nagorno-Karabakh and its surroundings"⁶⁸⁹.

Concerned about the future of Armenian cultural values in the territories passed under the control of Azerbaijan under the Agreement of November 9, "J. Paul Getty Trust", Los Angeles, USA, delivered a statement on the need to protect Armenian cultural heritage in Nagorno-Karabakh⁶⁹⁰. It was not a surprise that the statement of "J. Paul Getty Trust" was different in nature, since being a civil society organization, it takes the protection of history much more seriously. The statement reflected the enhanced concept of heritage that attached importance to the role of people and considered the deliberate physical attacks on cultural heritage as assaults on the people⁶⁹¹.

On the same day, almost 10 days following the ceasefire, on 20 November, with a photo "Heritage in Danger", UNESCO reaffirmed the obligation to protect the cultural goods of Nagorno-Karabakh, proposing sending a mission to the region

⁶⁸⁸ See Weiss D., Hollein M., Statement from The Met on Armenian Cultural Heritage Sites, <https://www.metmuseum.org/press/news/2020/statement-about-armenian-cultural-heritage> (accessed: 06.07.2022).

⁶⁸⁹ See "France ready to support protection of cultural, religious heritage in Nagorno Karabakh – Macron", "ARMENPRESS", 20 November 2020, <https://armenpress.am/eng/news/1035424.html> (accessed: 06.07.2022).

⁶⁹⁰ See Getty Trust Statement on the Need to Protect Armenian Cultural Heritage, November 19, 2020, <https://blogs.getty.edu/iris/getty-trust-statement-on-the-need-to-protect-armenian-cultural-heritage> (accessed: 05.05.2022).

⁶⁹¹ Ibid.

of Nagorno-Karabakh for drawing up an inventory of the most significant cultural assets⁶⁹². At this point, it is crucial to stress that, in accordance with the UNESCO Charter, the mission can be carried out only with the consent of two parties—Armenia and Azerbaijan (the Republic of Artsakh cannot be recognized as a party due to the fact that it is not recognized by the United Nations), and through consultation with the Minsk Group Co-Chairs, which has perhaps taken place recently but did not produce any tangible results.

It should be noted that the meeting of the representatives of Armenia and Azerbaijan with the Director-General of UNESCO Audrey Azoulay, which took place on November 18 and during which the international community's commitment to protecting the cultural heritage of Nagorno-Karabakh was emphasized on a neutral and purely textual level, preceded the aforementioned statement,

The essence of the UNESCO statement of November 20 is the call to adhere to the commitments assumed under The Hague Convention and its Protocols, which are based on the States Parties' conviction that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind".

In its statement UNESCO recalled UN Security Council resolution 2347 (2017), which stresses that "the unlawful destruction of cultural heritage, looting and smuggling of cultural property in the event of armed conflict, including by terrorist groups, and attempts to deny historical roots and cultural diversity in this context, can fuel and exacerbate conflicts and impede post-conflict national reconciliation, thus undermining the security, stability, governance and social, economic and cultural development of affected States"⁶⁹³. Despite the Director-General of UNESCO emphasizing in his statement the absolute necessity to protect the heritage and prevent further damage in the region, Azerbaijan continued its policy of cultural vandalism, which results in the destruction of a number of new

⁶⁹² See Nagorno-Karabakh: Reaffirming the obligation to protect cultural goods, UNESCO proposes sending a mission to the field to all parties, UNESCO, 20.11.2020, <https://en.unesco.org/news/nagorno-karabakh-reaffirming-obligation-protect-cultural-goods-unesco-proposes-sending-mission> (accessed: 05.05.2022).

⁶⁹³ Ibid.

values. Nevertheless, it should be emphasized that almost nothing has changed thus far, and even two years after the war, the mission has not been sent yet.

The risk of losing the irreplaceable heritage values of the region prompted the issue to be discussed during the remote meeting between the Prime Minister of the Republic of Armenia Nikol Pashinyan, the President of the Republic of Azerbaijan Ilham Aliyev, and the President of the European Council Charles Michel held on 4 February 2022, which took place with the mediation of the President of France, a Minsk Group Co-Chair country, Emmanuel Macron. Despite the fact that the primary issue on the agenda of the meeting was the solution to humanitarian problems, it included other issues as well⁶⁹⁴. It was determined during the discussion to send a UNESCO mission to both countries to monitor the situation of cultural heritage and study the destruction of Armenian heritage in Azerbaijan and Nagorno-Karabakh, and the Azerbaijani heritage in Armenia⁶⁹⁵. But we are actually witnessing a reality when Azerbaijan is obstructing even the smallest and initial efforts to preserve the cultural heritage of Artsakh and continues to ban independent experts from visiting the region who seek to document and evaluate the state of the heritage of Nagorno-Karabakh.

A month after the UNESCO statement, Ernesto Ottone, Assistant Director-General for Culture, stated that the organization is still waiting for Azerbaijan's response. "The authorities of Azerbaijan have been approached several times without success so far. [...] The window of opportunity that was opened by the cease fire must not be closed again,"⁶⁹⁶ read the statement. Azerbaijan's MFA responded that "Azerbaijan is [still] considering the proposal" and blamed UNESCO for ignoring their own pleas, for 30 years, to investigate "war crimes such as destruction, misappropriation of our cultural heritage" by Armenians.

⁶⁹⁴ See "Nikol Pashinyan, Emmanuel Macron, Charles Michel and Ilham Aliyev hold remote meeting", 04.02.2022, <https://www.primeminister.am/en/press-release/item/2022/02/04/Nikol-Pashinyan-video-conference/> (accessed: 05.05.2022).

⁶⁹⁵ Ibid.

⁶⁹⁶ Nazaretyan H., Artsakh's Cultural Heritage Under Threat.

And on December 21, 2020, UNESCO issued a press release lamenting Azerbaijan's lack of cooperation with UNESCO's request to send an independent, technical mission of experts to Nagorno-Karabakh⁶⁹⁷.

The list of particularly important international documents was supplemented by the Declaration "On cultural property protection in and around Nagorno-Karabakh"⁶⁹⁸ adopted on 11 December 2020 by the members of the 1954 Convention Intergovernmental Committee, as well as the Committee for the Protection of Cultural Property in the Event of Armed Conflict and its Second Protocol (1999). It is stated in the preamble of the declaration that it is highly difficult to assess the problems threatening the cultural values that emerged as a result of the conflict, so the statement of the UNESCO Director-General of 20 November 2020 to set up a mission is welcomed under the Declaration. The assessment of heritage values was to be carried out based on the special mandate given to UNESCO under the 1954 Hague Convention and in particular Article 23. Furthermore, the parties to the Declaration requested the parties to the conflict to make the conduct of the mission possible acknowledging that this is the most effective solution at the moment. The Declaration attached importance also to the issue of putting cultural heritage beyond the conflict and condemned the attempts to deny historical roots and cultural diversity which can fuel and exacerbate conflicts and impede post-conflict national reconciliation, thus undermining the social, economic, and cultural development of affected States⁶⁹⁹.

Along with the aforementioned, November 20 stood out in terms of the activity of other international responses and was marked by the joint statement of the public sector for the international protection of cultural heritage, i.e. ICA, IFLA, ICOM, and ICOMOS, whereby all parties involved in implementing the complete ceasefire agreement that came into force on 10 November in Nagorno-

⁶⁹⁷ See Ambartsumian Ye., Why Armenian Cultural Heritage Threatens Azerbaijan's Claims to Nagorno-Karabakh.

⁶⁹⁸ See Declaration of the Committee for the Protection of Cultural Property in the Event of Armed Conflict of the Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict – ensuring cultural property protection in and around Nagorno-Karabakh and setting-up an independent technical mission, 11 December 2020, https://en.unesco.org/sites/default/files/en_15_com_declaration_haut-karabakh_final_1.pdf (accessed: 07.07.2022).

⁶⁹⁹ Ibid., Article 3.

Karabakh were called upon to proactively ensure full respect and protection of all the cultural heritage in the concerned areas, reminding them of their obligations under international law provisions protecting cultural heritage in the event of armed conflict, in particular the 1954 Hague Convention and its two protocols⁷⁰⁰.

On 30 November 2020, ICOM Armenia presented in its statement factual data on the destruction of Armenian movable and immovable cultural heritage both during and after the war. ICOM reminded that the majority of the occupied museums have been created after the ceasefire in 1994, some of the collections are donations from private collectors to the state of Artsakh and belong to the nation of Artsakh⁷⁰¹. These collections are about the history, religion, and people of Artsakh having created them, calling on INTERPOL to keep the cases of possible circulation of these values in the centre of attention.

On November 21, Sergey Lavrov, Minister of Foreign Affairs of the Russian Federation, made a statement on the need to preserve the cultural monuments and civilizational religious heritage in and around Nagorno-Karabakh. In this statement, Lavrov stressed also the willingness of Russia to assist in that process, including the commitment to negotiate with the Director-General of UNESCO with regard to sending a mission to the region for the purpose of establishing peace⁷⁰². Lavrov added that the preservation of both Armenian churches and mosques will be at the core of the peace accord⁷⁰³.

In this regard, it is important to emphasize the general position of the Russian Federation on the preservation of the cultural heritage of Armenians of Artsakh as well, which goes beyond the preservation of historical monuments and

⁷⁰⁰ See ICOMOS, ICA, IFLA & ICOM – Statement on Nagorno Karabakh /Déclaration sur le Haut-Karabakh, 20 November/novembre 2020, https://www.icomos.org/images/DOCUMENTS/Secretariat/2020/ICOMOS-IFLA-ICA-ICOM_StatementNagornoKarabakh_20201120.pdf (accessed: 16.05.2022).

⁷⁰¹ See Avagyan A., A Brief Review of Cultural Heritage Violations in Nagorno-Karabakh (Artsakh) in September-November of 2020, November 30, 2020.

⁷⁰² See "Lavrov expects UNESCO will be active in preserving cultural monuments in Nagorno Karabakh", "ARMENPRESS", 21 November 2020, <https://armenpress.am/eng/news/1035561.html> (accessed: 07.07.2022).

⁷⁰³ See Лавров сообщил, что статус Карабаха определят после прояснения прав жителей региона, "ТАСС", 12 November 2020, https://tass.ru/politika/9984801?utm_source=smithsonianmag.com&utm_referrer=smithsonianmag.com (accessed: 07.07.2022).

becomes a prerequisite for the establishment of peace in the region. Ten days after the armistice agreement, Russia, and President Vladimir Putin personally, have emphasized the importance of the preservation of historical sites in the war zone. According to the President of the Russian Federation, the need to protect historical and religious landmarks, both in Azerbaijan and Armenia, is of great moral and human importance. Dadivank - one of the oldest Christian monasteries, should be accessible for both Armenians and Azerbaijanis⁷⁰⁴. Several days later, Putin told Turkish President Erdogan that “problems linked with ... [the] preservation of religious and cultural sites must be resolved without delay”⁷⁰⁵.

During his January 2021 speech at the World Economic Forum, Putin again mentioned “protecting and restoring historical, religious, and cultural landmarks” as one of the challenges of the Karabakh conflict⁷⁰⁶.

The leading scientific community of the world, specifically Lori Khachaturyan and Adam Smith, is also concerned about the fate of Armenian cultural heritage. They urged the US State Department to grant American archaeologists who specialize in this region access to high-resolution satellite imagery which will allow them to mount the first program of long-term, systematic satellite-based monitoring⁷⁰⁷.

As the aforementioned statements show, the issue of protecting the cultural values of Artsakh (except for a few general statements) has mainly been portrayed indistinctly, and due to the lack of actual efforts taken, the loss of distinctive values continues.

⁷⁰⁴ See Nazaretyan H., Artsakh's Cultural Heritage Under Threat.

⁷⁰⁵ Ibid.

⁷⁰⁶ Ibid.

⁷⁰⁷ See Khatchadourian L., Smith A., The US can help prevent the destruction of cultural heritage in Nagorno-Karabakh. Here's how.

4.3. The Improvement in the Response of the International Community Related to the Policy Conducted by Azerbaijan with Regard to the Cultural Values of Nagorno-Karabakh

Over a year after the war, under the conditions of international instability, the international community started to react to Azerbaijan's activities of destroying the cultural values of Nagorno-Karabakh and the region with unprecedented adequacy, in the context of international instability. During this period, the European Parliament passed a number of resolutions one after another, The Hague International Court of Justice rendered its renowned decision, and there was a deluge of articles from the international scientific community that called everything by their proper names, condemned the Azerbaijani vandalism and reacted harshly to the genocidal acts. At this point, we encountered for the first time estimates of phenomena close to the truth, the increase of concerns about the protection of the cultural rights of Armenians of Artsakh, and we called this a new period of improvement in the response of the international community. However, even if it is just a formality again and will not create effective mechanisms for the protection of distinct values of Artsakh, it was the first instance in which an effort was made to link the destruction of cultural values during the 44-day war with the policy conducted by Azerbaijan in Nakhichevan and formed at the early 20th century, for the first time considering Armenophobia as a policy that has a 100-year history.

Resolution of the European Parliament of 20 May 2021 “On prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan” (No 2693). On 20 May 2021, following the longstanding silence of the international community with regard to condemning the actions of intentional destruction of Armenian values, the European Union Parliament — a supranational body elected directly and representing the world's second largest democratic electorate, i.e. about 490 million people — with 607 votes in favour, 27 against and 54 abstentions, guided by the UN Charter and the Convention “Against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment” adopted by the latter in 1984, the European and Geneva Conventions on Human Rights, as well as the report of the Human Rights Watch of 19 March 2021, adopted the Resolution on Armenian prisoners of war (No 2693)⁷⁰⁸.

It should be recalled that the issue of the Nagorno-Karabakh conflict has been a topic of discussion in the CoE since 2001 when Armenia and Azerbaijan, upon their accession to the Council of Europe, committed themselves to use only peaceful means for settling the conflict. However, this common commitment has been violated many times, especially during the six-week war, and the negotiations over the past three decades have yielded no tangible results⁷⁰⁹.

Among other points referring to the responsibility of the belligerents to respect international humanitarian law, the mentioned resolution⁷¹⁰, under point 16, strongly condemns any act of destruction of the Armenian heritage in Azerbaijan and calls upon Azerbaijan and Armenia to fully restore demolished sites as well as to ensure greater involvement of the international community in protecting world heritage in the region. Along with the foregoing, the European Parliament urges both parties to refrain from destroying the heritage in any way. Furthermore, referring to the maintenance of peace in the region and respect for human rights, it states that human rights are immediately related to the heritage (tangible and intangible) created thereby. In light of this, ensuring the safety of people is immediately related to the preservation of intangible heritage since people are the live carriers of that heritage, those who keep it viable, and ensure its transmission to future generations. Taking into account the long-lasting international non-involvement, this was undoubtedly a crucial tool for preserving the Armenian heritage, but like the previous calls and statements, it also treated both sides equally.

⁷⁰⁸ See European Parliament resolution on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan (2021/2693(RSP)), https://www.europarl.europa.eu/doceo/document/RC-9-2021-0277_EN.html (accessed: 07.07.2022).

⁷⁰⁹ See Parliamentary Assembly of the Council of Europe, Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict, Resolution 2391 (2021), Article 3.

⁷¹⁰ It forbids torture and any form of inhuman or degrading treatment.

PACE Resolution “On humanitarian consequences of the Nagorno-Karabakh conflict” (No 2391). Nearly 4 months following the previous resolution of the European Parliament was the PACE Resolution “On humanitarian consequences of the Nagorno-Karabakh conflict” adopted in Strasbourg on 27 September 2021, which, for the first time, did not treat the parties equally, demonstrated a certain adequacy and appropriate approach to the policy of cultural vandalism conducted by Azerbaijan, clearly documenting the intentional destruction of several Armenian values as a result of the war⁷¹¹. Although this is not the first resolution adopted by the CoE addressing various aspects of the consequences of the conflict⁷¹², it is one of the most appropriate and positive decisions made by the international body, which condemns the damage deliberately caused to the Armenian cultural heritage by Azerbaijan.

Despite the fact that point 18 of the Resolution states that the long-running conflict has had a catastrophic impact on the cultural heritage and property of the region, for which both Armenia and Azerbaijan⁷¹³ have a responsibility⁷¹⁴, the Assembly composed of 705 members condemned, with that document, not only the policy of vandalism of culture implemented by Azerbaijan during and after the 44-day war but in general, the destruction the damage caused to the churches and cemeteries over the last 30 years (notably in Nakhchivan Autonomous Republic)⁷¹⁵.

⁷¹¹ Ibid.

⁷¹² Previously, the Council of Europe adopted the following resolutions: Parliamentary Assembly of the Council of Europe, Resolution 1047 (1994). Conflict in Nagorno-Karabakh, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16458&lang=en> (accessed: 18.02.2022), Parliamentary Assembly of the Council of Europe, Recommendation 1251 (1994). Conflict in Nagorno-Karabakh, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15285&lang=en> (accessed: 18.02.2022), Parliamentary Assembly of the Council of Europe, Resolution 1416 (2005). The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17289&lang=en> (accessed: 18.02.2022).

⁷¹³ Under point 18.1 of Resolution 2391, the Parliamentary Assembly of the Council of Europe condemns the damage and destruction for which Armenia is responsible in the former conflict areas returned to Azerbaijan, and in particular the almost total destruction and looting of Aghdam, Fuzuli and other areas over the last 30 years, as well as the transfer of cultural heritage (see Parliamentary Assembly of the Council of Europe, Humanitarian consequences of the conflict between Armenia and Azerbaijan/Nagorno-Karabakh conflict, Resolution 2391 (2021), Article 18.1).

⁷¹⁴ Ibid., Article 18.

⁷¹⁵ Ibid., Article 18.2.

For the first time, the CoE expresses concern about a developing narrative in Azerbaijan promoting a “Caucasian Albanian” heritage to replace what is seen as an “Armenian” cultural heritage⁷¹⁶ and invites UNESCO to look into the history of “Caucasian Albanian” heritage, to ensure it is not being manipulated by either side. It also calls for ensuring unlimited access for UNESCO to all cultural heritage sites in both countries to assess the damage and the steps necessary to safeguard what remains⁷¹⁷.

As an international instrument of key importance, Resolution No 2391 was the first documentation of expressly denouncing the Albanian narrative. Later, in the light of past destruction, the Resolution remains concerned about the future of the many Armenian churches, and monasteries, including the monastery in Dadivank, khachkars, and other forms of cultural heritage which have been returned under Azerbaijan control⁷¹⁸. It is specifically noteworthy that although the call to take steps to tackle hate speech is addressed to both parties, this international document also mentions the Azerbaijani false propaganda of multiculturalism which is accompanied with statements made at the highest level portraying Armenians in an intolerant fashion, and expresses its serious concerns about humiliating scenes and mockery of Armenian caricatured and stereotyped military mannequins in the Baku “Military Trophy Park”⁷¹⁹.

Order of the International Court of Justice (The Hague) of 7 December 2021. The mentioned Resolution adopted by the European Parliament was followed by the Order of the UN International Court of Justice (The Hague) made on 7 December 2021 based on the request of Armenia against Azerbaijan for the indication of provisional measures for violations of the International Convention “On the Elimination of All Forms of Racial Discrimination” adopted by the UN in 1965.

In accordance with the commitments assumed under the international Convention “On the Elimination of All Forms of Racial Discrimination”, both Armenia and Azerbaijan must acknowledge the right of all human beings to be

⁷¹⁶ Ibid., Article 18.4.

⁷¹⁷ Ibid., Articles 18.5, 18.6.

⁷¹⁸ Ibid., Article 18.3.

⁷¹⁹ Ibid., Article 19.3.

born free and equal in dignity and rights, without distinction of any kind, enshrined in the “Universal Declaration of Human Rights”⁷²⁰. But the truth is that Azerbaijan not only violates the convention by failing to uphold its commitments thereunder but also, as confirmed in the final judgment, destroys — based on racial hatred — the cultural heritage created by the Armenian community. In the judgment, the Court notes Azerbaijan's commitments provided for by Articles 2–7 of the Convention, which form the basis of the claim filed by Armenia, as well as the violation of the rights of prisoners of war and civilian detainees of Armenian national or ethnic origin, kept under custody due to its ethnic cleansing policy. As a manifestation of racial hatred, the Court once again mentions the fact of mannequins depicting Armenian soldiers in a degrading way at the “Military Trophies Park” which opened in Baku in the aftermath of the 2020 Conflict, as well as the continuous conduct of the policy of systematically destroying and falsifying Armenian cultural sites and heritage by Azerbaijan.

Having examined the request of Armenia, the Court considered the factual information on the destruction of monuments as evidence of racial discrimination⁷²¹, thus significantly expanding the scope of the binding order, since the highest international court not only recorded the fact of the destruction of the monument but also demonstrated that the Azerbaijani actions were carried out based on racial discrimination.

It should be stressed that the International Court of Justice should have to examine the destruction of Armenian cultural heritage within the scope of the Convention “On the Elimination of All Forms of Racial Discrimination” rather than the issue of the destruction of these values in general, and that's why it was restricted to Articles 11 and 22 of the Convention and could order

⁷²⁰ See International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, By UN General Assembly resolution 2106 (XX), Introduction, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial> (accessed: 18.02.2022).

⁷²¹ See Maghakyan S., Cultural Desecration Is Racial Discrimination, A recent International Court of Justice decision regarding Azerbaijan's actions in Nagorno-Karabakh could offer protection to threatened cultural heritage sites around the world, FP, January 13, 2022, <https://foreignpolicy.com/2022/01/13/armenia-azerbaijan-nagorno-karabakh-cultural-desecration-is-racial-discrimination/> (accessed: 06.07.2022).

provisional measures only if the provisions substantiated by the applicant were “prima facie”. At this point, two of the rights Armenia claimed from Azerbaijan — the rights to repatriation and protection against the inhuman and degrading treatment of Armenians, as well as the evidence of acts of vandalism and desecration of Armenian cultural heritage — were deemed to be “prima facie”. The evidence that high-ranking officials of Azerbaijan allegedly violated certain rights by inciting and promoting racial hatred and discriminating against people of Armenian origin was also deemed trustworthy by the Court.

In accordance with the Order on indicating provisional measures, which was adopted by the judges, with 14 votes in favour, and 1 against⁷²², Azerbaijan shall take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin, and take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts⁷²³. This was the first time that an international instance of such significance included such a point in its decision; under this decision an attempt was made to consider the issue of cultural heritage within the scope of an enhanced concept, stating that the notion of desecration of the heritage cannot relate merely to material structures. Despite the fact that the third point of the Order of the Court did not specifically address cultural monuments, it was significant, too, because Azerbaijan had undertaken to guarantee the safety and equality before the law of all individuals captured as a result of the conflict, protecting

⁷²² Only the President of the International Court of Justice, Ad Hoc Judge Keith voted against forbidding Azerbaijan from committing acts of vandalism and desecration against the Armenian cultural heritage and applying other provisional measures. She is from Somalia and was appointed for 2018-2021. She has reasoned her negative vote with the statement that the Convention does not provide protection for cultural property. Furthermore, in case of a wish to enter the area of cultural heritage, the landmines and military danger, rather than national or ethnic origin make it difficult to have access to the sites containing Armenian cultural values, to the extent that they are protected by the Convention “On the Elimination of All Forms of Racial Discrimination”. And finally, Judge Keith concludes that there is no proof of an actual and imminent risk that would seriously impair the relevant right.

⁷²³ See International Court of Justice, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), 7 December 2021, No. 2021/34.

them from violence and physical harm⁷²⁴. This is an order having no precedent in the entire world, a one-of-a-kind precedent of international reality, and a significant step towards the preservation of the cultural heritage of Artsakh. According to S. Maghakyan, until now, this is the most effective international mechanism adopted by a court against Azerbaijan with regard to the protection of Armenian cultural heritage in the disputed territory of Nagorno-Karabakh (during the war of 2020)⁷²⁵.

It is specifically unprecedented that the Court does not consider the erasure of the Armenian cultural heritage as separate actions, but acknowledges that it is part of a wider pattern of a systematic, state-level policy of Armenophobia, historical revisionism, and hatred towards Armenians promoted by the Azerbaijani authorities, including dehumanization, the glorification of violence and territorial claims against the Republic of Armenia⁷²⁶.

The court decision against Azerbaijan has global significance for several reasons.

First, we can state that with this decision, the Court sidestepped UNESCO (having a mandate granted by the UN for the protection of cultural heritage), and the effectiveness of activities whereof with regard to the given issue is quite disputable.

Second, this decision is unprecedented as it links deliberate cultural destruction with racial discrimination under the International Convention “On the Elimination of All Forms of Racial Discrimination”. Notably, tying cultural destruction to racial discrimination expands opportunities for protecting threatened heritage.

⁷²⁴ Even though, in the Court's opinion, Armenia has not provided evidence that the people detained in Azerbaijan continue to be in custody there because of their national or ethnic origin, as Azerbaijan has brought counter-arguments, stating that they are held there as alleged criminals of the military conflict, the Court nevertheless considers the right of such people not to be subjected to inhuman or degrading treatment on grounds of national or ethnic origin reasonable.

⁷²⁵ See Maghakyan S., Cultural Desecration Is Racial Discrimination, A recent International Court of Justice decision regarding Azerbaijan's actions in Nagorno-Karabakh could offer protection to threatened cultural heritage sites around the world.

⁷²⁶ See European Parliament resolution on the destruction of cultural heritage in Nagorno Karabakh (2022/2582(RSP)), Article 2.2.

Third, the decision sends a message to nation-states that sovereignty does not license a government to erase cultural heritage sites, therefore, creating a new, yet narrow, pathway for fighting cultural destruction⁷²⁷.

Documentation and monitoring of cultural destruction is definitely a big problem, and this may explain why the court's provisional decision against Azerbaijan does not specify mechanisms for protecting monuments⁷²⁸. Experts claim that despite the fact that the Court ordered Azerbaijan to prevent the destruction of Armenian cultural heritage, it remains unclear how or by what mechanisms the decision will apply in case Armenian values are appropriated. For instance, whether Azerbaijan will be reprimanded if it fulfils the vow of the President and the Minister of Culture to polish over the Armenian inscriptions or whether it will comply with the Court decision if it rebrands Armenian sacred sites as "Caucasian Albanian" but ensures the safe "access" of Armenians to the heritage area. These questions raise severe concerns and necessitate further, in-depth research for the clarification of the issue.

The European Parliament Resolution of 2022 "On the destruction of cultural heritage in Nagorno-Karabakh" (No 2582). On 10 March 2022, the decision of The Hague Court of Justice was followed by the Resolution "On the destruction of cultural heritage in Nagorno-Karabakh" adopted at the plenary session of the European Parliament by the majority of votes. Prior to that, from March 7 to 10, it had been discussed as one of the urgent issues on the agenda of the plenary session. Why is it urgent? Because, as stated earlier in the decision of The Hague Court of Justice, the damage caused to cultural values may have irreparable consequences for the entire region, so their protection requires increased attention.

The Resolution "On the destruction of cultural heritage in Nagorno-Karabakh"⁷²⁹ was adopted with 635 votes in favour, 2 against and 42 abstentions, which was unprecedented for such a body. In the main text of the Resolution, a

⁷²⁷ See Maghakyan S., Cultural Desecration Is Racial Discrimination, A recent International Court of Justice decision regarding Azerbaijan's actions in Nagorno-Karabakh could offer protection to threatened cultural heritage sites around the world.

⁷²⁸ Ibid.

⁷²⁹ The Resolution was drafted by Peter van Dalen, a representative of the "European People's Party" in the European Parliament and a member of the Dutch "Christian Union" party; it was later supported by deputies representing different factions of the European Parliament.

reference is made both to the facts of shelling Armenian churches during hostilities, and the reprehensible policy aimed at eradicating Armenian traces and transforming historical and cultural monuments in the territories passed under the control of Azerbaijan after the end of hostilities. The Resolution calls for Azerbaijan to take all necessary measures to prevent the cases of desecration and vandalism of Armenian cultural heritage and punish the perpetrators of such acts. A reference is also made to the decision of the Azerbaijani side to establish a working group for "Albanization" of Armenian cultural monuments.

Here, it is crucial to stress that the European Parliament resolution on cultural heritage in Azerbaijan of 16 February 2006⁷³⁰, Statement by the Co-Chairs of the Organization for Security and Co-operation in Europe (OSCE) Minsk Group of 11 November 2021 on the protection of historic and cultural sites in the region⁷³¹, the Resolution of the International Court of Justice of 7 December 2021, as well as a number of other important instruments underlie Resolution No 2582 "On the destruction of cultural heritage in Nagorno-Karabakh"⁷³². The fact of including the ideas of the broader concept of cultural heritage, which link the destruction of heritage with human rights, and emphasizes the protection of both tangible and intangible values, is of particular importance in the Resolution.

⁷³⁰ See European Parliament resolution on cultural heritage in Azerbaijan, https://www.europarl.europa.eu/doceo/document/TA-6-2006-0069_EN.html (accessed: 06.07.2022).

⁷³¹ See Statement by the Co-Chairs of the OSCE Minsk Group, 11 November 2021, <https://reliefweb.int/report/armenia/statement-co-chairs-osce-minsk-group-11-november-2021> (accessed: 06.07.2022).

⁷³² Among these instruments are the following: Resolution of 17 February 2022 on the implementation of the common foreign and security policy - annual report 2021 (see https://www.europarl.europa.eu/doceo/document/ta-9-2022-0039_en.html), reports of EC European Commission on racism and intolerance (see <https://rm.coe.int/leaflet-ecri-2019/168094b101>), Economic and Investment Plan of the Eastern Partnership countries (see <https://data.consilium.europa.eu/doc/document/st-9837-2021-init/en/pdf>), the UNESCO Convention "On the protection of the world cultural and natural heritage" of 16 November 1972, the Universal Declaration of Human Rights of 10 December 1948, the International Convention "On the Elimination of All Forms of Racial Discrimination" of 21 December 1965, Rules 144 (5) and 132 (4) of the Rules of Procedure of the European Parliament, the UNESCO "Declaration Concerning the Intentional Destruction of Cultural Heritage" of 17 October 2003, the International Covenant "On Civil and Political Rights" of 16 December 1966, the European Cultural Convention, the Convention for the Protection of the Archeological Heritage of Europe (revised), and the Framework Convention for the Protection of National Minorities, to which both Armenia and Azerbaijan are parties.

It should be stressed that the following are specified here as a priority: The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, to which Armenia and Azerbaijan are parties, and its Protocol, as applicable to occupied territories, and the Second Protocol of 1999 on enhanced protection of cultural property, which prohibits any alteration to, or change of use of, a cultural property which is intended to conceal or destroy cultural, historical or scientific evidence⁷³³.

The Resolution specifies the exact number of monuments - 1456, which came under Azerbaijan's control after the ceasefire of 9 November 2020⁷³⁴. It is especially noteworthy that the Resolution considers the damage caused by Azerbaijan to Armenian cultural heritage during the 2020 war as deliberate and considerable, emphasizing particularly the fact of the shelling of the Holy Saviour Ghazanchetsots Cathedral in Shushi, as well as the destruction, changing of the function of, or damage to other churches and cemeteries during and after the conflict, such as Saint Zoravor Astvatsatsin Church near the town of Mekhakavan and St Yeghishe in Mataghis village in Nagorno-Karabakh. This paper serves as an extraordinary precedent by placing the change in the function of cultural heritage on an equal footing with other instances of shelling and destruction of cultural heritage, in the given case - the Holy Saviour Ghazanchetsots Church. The Resolution considers the "vow" of Aliyev, the President of Azerbaijan, made during his visit to the 12th-century Armenian Church in Tsakuri with regard to removing its Armenian inscriptions, as a destruction of heritage. It is crucial to note that, in the opinion of the authors of the Resolution, not only the conflict results in irreversible loss of heritage but intolerance towards heritage can also lead to conflict⁷³⁵.

Under Article 9 of the Resolution, carrying out an independent expert mission by UNESCO, including drawing up a preliminary inventory of significant cultural properties, is considered a first step towards the effective

⁷³³ See Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999, Article 9.

⁷³⁴ See European Parliament resolution on the destruction of cultural heritage in Nagorno Karabakh (2022/2582(RSP)), Article 2.

⁷³⁵ Ibid., Article 4.

safeguarding of the region's heritage⁷³⁶. It links the protection of cultural heritage with sustainable peace⁷³⁷, stresses the universal dimension of heritage⁷³⁸, and emphasizes the catastrophic fact of the destruction of cultural heritage over the last 30 years⁷³⁹.

The European Parliament Resolution clearly records that the elimination of the traces of Armenian cultural heritage in the Nagorno-Karabakh region is being achieved not only by damaging and destroying it but also through the falsification of history and attempts to present it as so-called Caucasian Albanian, recalling the establishment of a working group responsible for removing 'the fictitious traces written by Armenians on Albanian religious temples', proposed by the Minister of Culture of Azerbaijan, Anar Karimov, on 3 February 2022⁷⁴⁰. Additionally, it considers the issues related to the displacement of Armenians of Artsakh during these days and the global policy conducted by Azerbaijan to be a violation of international law, as well as the recent decision of The Hague International Court of Justice⁷⁴¹.

Expanding the scope of protection of heritage, the Resolution mentions the protection of intangible cultural heritage, stating that cultural heritage constitutes a unique and important testimony of the culture and identities of peoples and that the degradation and destruction of cultural heritage, whether tangible or intangible, constitutes a loss to the affected communities, as well as to the international community as a whole. It is especially important to mention that for the purpose of maintaining the principles of authenticity of the heritage and carrying out the restoration works exclusively in compliance

⁷³⁶ Ibid., Article 9.

⁷³⁷ Ibid., Article 10.

⁷³⁸ Ibid., Article 11.

⁷³⁹ Ibid., Article 14.

In Nakhchivan Autonomous Republic, 89 Armenian churches, 20 000 graves and more than 5 000 khachkars have been destroyed. The European Parliament states also that such destructions have also occurred in the former conflict areas returned by Armenia to Azerbaijan, in particular in Aghdam and Fuzuli. Here, Azerbaijanis have also been displaced, and their heritage has been damaged, too.

⁷⁴⁰ See European Parliament resolution on the destruction of cultural heritage in Nagorno Karabakh (2022/2582(RSP)).

⁷⁴¹ Ibid.

with these principles, the Resolution has urged Azerbaijan to ensure that no interventions on Armenian heritage sites occur⁷⁴².

With the view of more practical considerations of defence, the Resolution, under point 9, suggests the EU use the Satellite Centre (SatCen) to provide satellite images in order to help determine the external condition of the endangered heritage in the region. And what is more important, it emphasizes the need to approach the protection of the heritage within the final definition of the status of Nagorno-Karabakh. In this context, calls upon Azerbaijan to discard its maximalist aims, militaristic approach, and territorial claims on Armenia and engage in good faith in negotiations under the auspices of the OSCE Minsk Group on the final status of Nagorno-Karabakh. Under point 12 thereof, it calls upon Azerbaijan to fully implement the provisional decision of the ICJ, in particular by 'refraining from suppressing the Armenian language, destroying Armenian cultural heritage or otherwise eliminating the existence of the historical Armenian cultural presence or inhibiting Armenians' access and enjoyment thereof' and by 'restoring or returning any Armenian cultural and religious buildings and sites, artefacts or objects'⁷⁴³.

Under point 15, the Resolution calls upon the Governments of Azerbaijan and Armenia, with the support of the international community, to ensure effective investigations into all allegations of violations of international law, including the protection of cultural heritage⁷⁴⁴. Under point 22 thereof, instructs its President to forward this resolution to the Vice-President of the European Commission /High Representative of the European Union for Foreign Affairs and Security Policy/, the Council, the Commission, the Government and President of Armenia, the Government and President of Azerbaijan, the Secretary-General of the Organization for Security and Co-operation in Europe, the Secretary-General of the Council of Europe, the Director-General of UNESCO, and the Secretary-General of the United Nations⁷⁴⁵.

After the Resolution had been adopted, Peter van Dalen, one of the authors of the Resolution, discussed in one of his interviews the critical

⁷⁴² Ibid.

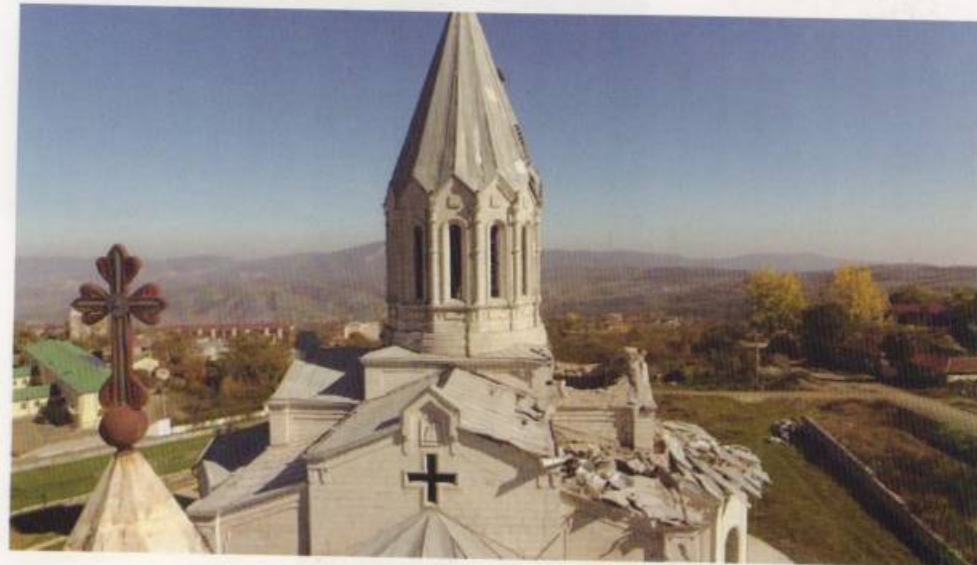
⁷⁴³ Ibid., Article 12.

⁷⁴⁴ Ibid., Article 15.

⁷⁴⁵ Ibid., Article 22.



Image 1a. Standing Holy Saviour Ghazanchetsots Church of Shushi before the 44-day war, Republic of Artsakh. Image by Hamlet Petrosyan.

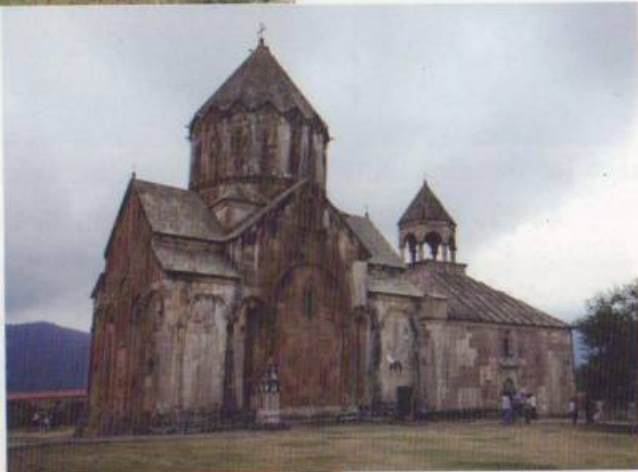


1b. Holy Saviour Ghazanchetsots Church of Shushi after the point-blank strike by the armed forces of Azerbaijan on 8 October 2020



Image 2. Armenian Monastery of Amaras, Martuni Region, Artsakh (4th century)

Image 3a. Gandzasar Monastery, Artsakh



3b. Inscriptions of Gandzasar Monastery. Image from the website www.monumentwatch.org.

Image 4. Gtchavank Medieval Monastery, Togh village, Hadrut region, Artsakh

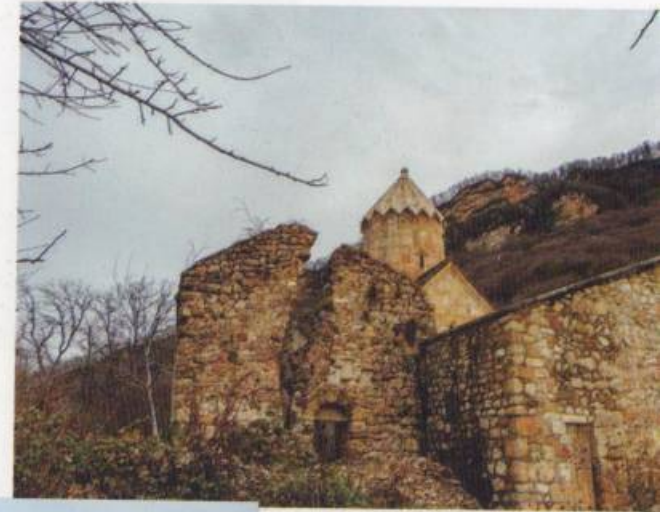


Image 5. Kataro Monastery, Dizapayt, Artsakh Image from the website www.monumentwatch.org

Image 6. Khachkars Built Into the Southern Wall of Kusanats Anapat Church, Avetaranots, Artsakh. Image from the website www.monumentwatch.org; Author: L.Kirakosyan.

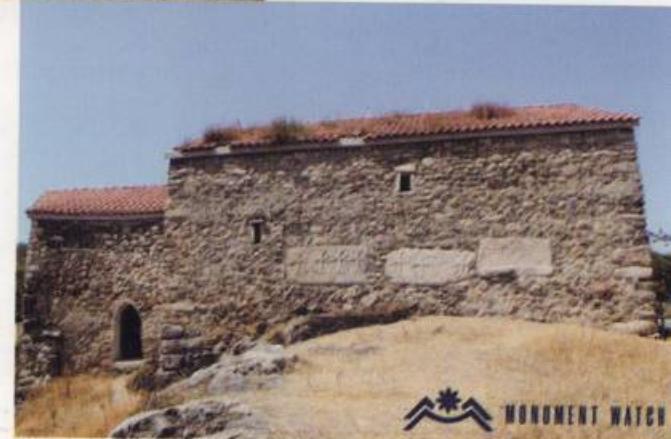




Image 7. Illegal "reconstruction" of Holy Saviour Ghazanchetsots Church of Shushi.

Image 8a. Standing Kanach Zham Church of Shushi before the 44-day war, Artsakh. Image from the website www.monumentwatch.org.



Image 8b. View of Kanach Zham Church from north-west (1960s); Image from "Shushi: City of Tragic Fate", Mkrtychyan Sh., Davtyan Sh., "Amaras", Yerevan, 1997, page 140.



Image 9. Artsakh Wine Festival in Togh Village, Artsakh, 2015

Image 10. Artsakh Pickles Festival in Drakhtik village, Hadrut Region, 2014



Image 11. Pomegranate Festival in Martuni Region, Artsakh, 2018



Image 12. Herb-Stuffed Flatbread (Zhingyalov Hats) Festival in Haterk Village, Martakert Region, Artsakh



Image 15a. Angles of Holy Saviour Ghazanchetsots Church of Shushi before the 44-day war Image by Hamlet Petrosyan.



Image 15b. Angles of Holy Saviour Ghazanchetsots Church of Shushi after the 44-day war. Image by Hamlet Petrosyan.

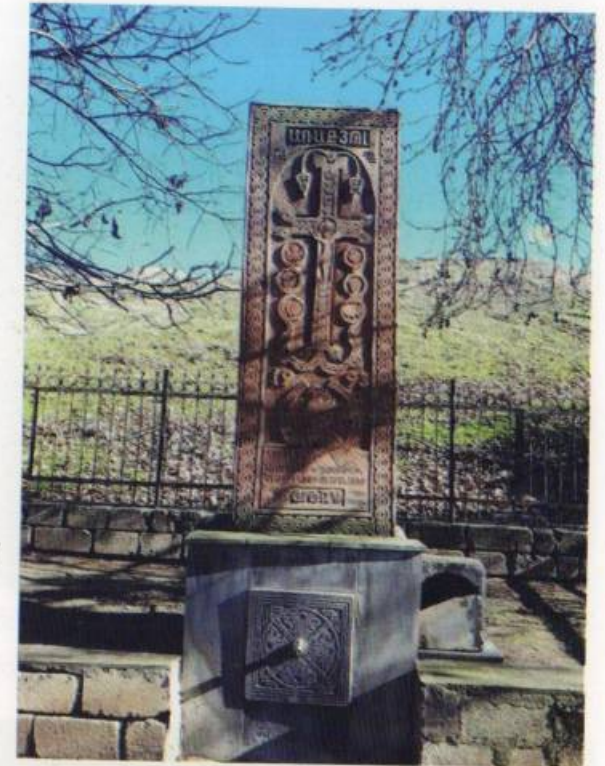


Image 16a. Standing "Renaissance" Khachkar of Arakel Village before the 44-day war, Hadrut Region, Artsakh



16b. Destruction of "Renaissance" Khachkar by the Azerbaijani Armed Forces Using Special Equipment



Image 17a. Standing St. Sargis Church of Mokhrenes Village before the 44-day war, Hadrut Region, Artsakh. Image from the website



17b. Complete Destruction of St. Sargis Church After the Occupation by Azerbaijan



Image 18a. Standing Monument Honouring the Victims of the Armenian Genocide, the Great Patriotic War and the First Artsakh War before the 44-day war, Shushi, Artsakh



18b. Ruined Monument Honouring the Victims of the Armenian Genocide, the Great Patriotic War and the First Artsakh War After the Occupation by Azerbaijan, Shushi

Image 19a. Standing Memorial to the Artsakh Liberation War, before the 44-day war, Hadrut Region, Artsakh



19b. Ruined Memorial to the Artsakh Liberation War After the Occupation by Azerbaijan, Hadrut Region



Image 20a. Standing Monument "Reborn Talish" in Talish village before the 44-day war, Martakert region, Artsakh



20b. Ruined Monument "Reborn Talish" After the Occupation by Azerbaijan. Image from the website www.monumentwatch.org.



Image 21a. Standing Bust of Aviation Marshal of the USSR Armenak Khanperyants (Sergey Khudyakov) in Mets Tagher Village before the 44-day war, and MiG-17 Fighter Aircraft Located in the Area of His House-Museum, Hadrut Region, Artsakh



21b. Ruined Bust of Armenak Khanperyants (Sergey Khudyakov) and MiG-17 Fighter Aircraft Located in the Area of His House-Museum After the Occupation by Azerbaijan



Image 22a. Standing Bust of USSR State Politician Hovhannes (Ivan) Tevosyan in Shushi before the 44-day war



Image 23a. Standing Statue of Sparapet Vazgen Sargsyan in Shushi before the 44-day war



22b. Bust of Hovhannes (Ivan) Tevosyan, desecrated, demolished and knocked to the ground by the Azerbaijani Military Servicemen



23b. Destroyed Statue of Sparapet Vazgen Sargsyan After the Occupation by Azerbaijan

Image 27. Armenian Monastery of Dadivank, Artsakh



Image 28. St. Khach Monastery in Vank Village, Hadrut Region, Artsakh



Image 29. St. Astvatsatsin Church in Tsakuri Village, Artsakh

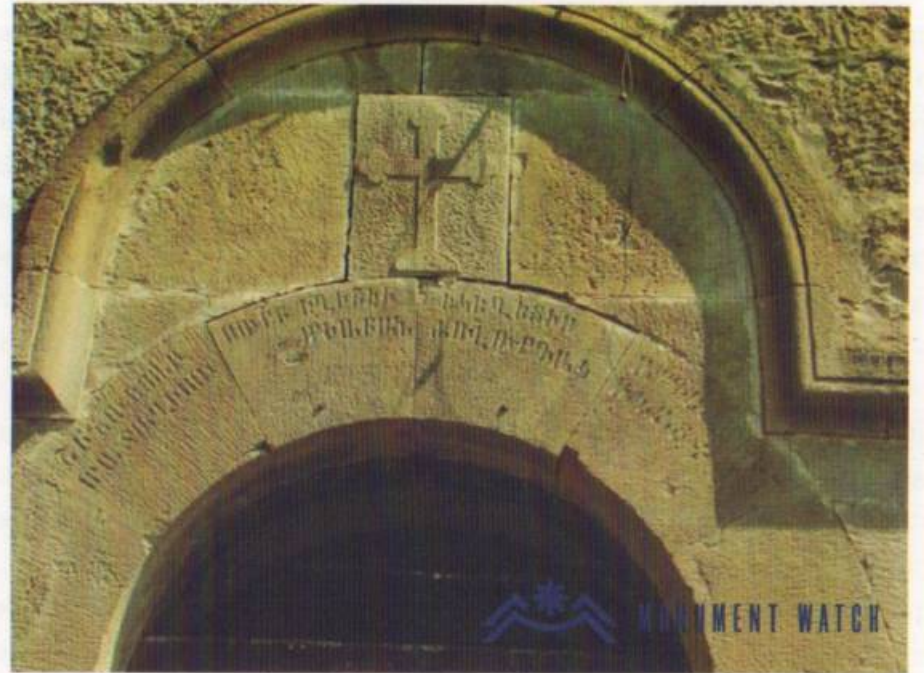


Image 30a. St. Yeghishe Church of Mataghis Village before the 44-day War, Artsakh. The construction inscription of the entrance lintel of the church; Image from the Certificate of the Ministry of Education, Science, Culture and Sport of Artsakh.

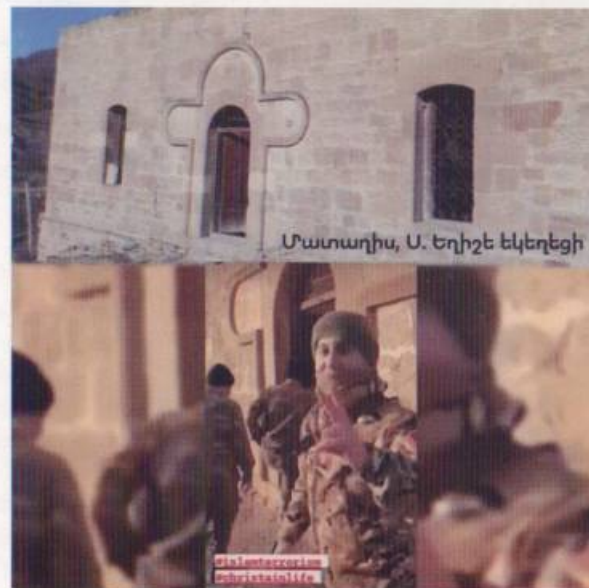


Image 30b. St. Yeghishe Church of Mataghis Village after the 44-day War, Artsakh



Image 31. St. Hovhannes Church in Togh Village, Artsakh



Image 32. Interior appearance of St. Astvatsatsin Church in Jraghatsner Village, Askeran Region, Artsakh

importance thereof: “This Resolution is to be considered as a strong political message to Azerbaijan having no precedent this far, which strongly denounces all of Azerbaijan's actions in Nagorno-Karabakh”⁷⁴⁶. The deputy claims that the Resolution includes also a clear request to the European External Action Service and UNESCO to take appropriate measures to get familiarized with the situation on-site, understand the severity of the damage sustained, and submit a report. He asserts that if Azerbaijan provides UNESCO with access to the territory, it will be possible to impose penalties against it under the further influence of the Resolution.

By passing this Resolution, the European Parliament demonstrated its support for Nagorno-Karabakh and its negative attitude towards the destructive policy pursued by the administration of Aliyev and urged the European Parliament to change its attitude towards Nagorno-Karabakh.

It is important to present the concerns expressed at the European high court - in the speeches of the members of the European Parliament during the debates preceding the voting of the Resolution regarding the destruction of the Armenian cultural heritage in Nagorno-Karabakh and those in the territories passed under the control of Azerbaijan. We were able — through the analysis of speeches of the members of the European Parliament and the overall text of the Resolution — to identify several aspects of the supportive response of the international community throughout the last year and show it as a new level of fairness of the international community. And for that phase, we've highlighted a few ideas that, like a common thread, run across the arguments brought by the European Parliament and a number of officials. The range of concerns includes:

- Condemnation of the policy of Albanization of Armenian cultural heritage⁷⁴⁷ and falsification of history, which Nathalie Loiseau⁷⁴⁸, Viola Von

⁷⁴⁶ On 18 March 2022, Peter van Dalen, a member of the European Parliament, gave an interview to the “Or Lratvakan” channel of Artsakh with regard to the Resolution “On the destruction of cultural heritage in Nagorno-Karabakh” adopted recently by the European Parliament. For the interview, see <https://www.youtube.com/watch?v=E2o9Rh12MeI> (accessed: 06.07.2022).

⁷⁴⁷ As an example with regard to this issue, members of the European Parliament mainly cite the formal statement of the Minister of Culture of Azerbaijan of February 2022 on establishing a working group for distorting the identity of Armenian historical and cultural heritage and the public “promise” made by Aliyev on erasing the Armenian traces from churches during his visit to Hadrut.

Cramon-Taubadel⁷⁴⁹, and Charlie Weimers, deputies of the Council of Europe, addressed in their speeches.

• **Considering the policy of Azerbaijan aimed at culture destruction and hatred towards Armenians as “genocide”⁷⁵⁰.** Member of the European Parliament Martina Michels viewed Azerbaijan's destruction of cultural heritage and the propagation of mono-ethnic ideology on racial discrimination basis as a form of genocide⁷⁵¹. Costas Mavrides stated that the international community should recognize Azerbaijan's destruction of the cultural values of Nagorno-Karabakh as a form of cultural genocide⁷⁵². Susanna Ceccardi reiterated that the state actions carried out in Artsakh represent a continuation of the crime of 1915⁷⁵³. Pernando Barrena Arza, too, linked the 44-day war unleashed by the Turkish-Azerbaijani forces to the genocide committed by Turkey in 1915⁷⁵⁴. Joachim Stanisław Brudziński believed that the 1,400 Armenian monuments in the areas currently occupied by Azerbaijan faced the same threat of genocide in light of the cultural genocide of Nakhichevan, during which 28,000 monuments, 80 churches, and 5,000 khachkars were destroyed⁷⁵⁵. Nathalie Loiseau noted that culture is the memory and identity of people, and qualified any attempt

⁷⁴⁸ See the speech of a French member of the European Parliament Nathalie Loiseau (“Renew Europe”, France) at the debate preceding the voting of Resolution N 2582. She emphasized the fact that following the war, about 1,500 monuments and 61 churches came under the control of Azerbaijan. On 15 March 2021, Ilham Aliyev visited Hadrut, where he declared his intention to remove the Armenian inscriptions from the 12th-century church. Many churches have already been destroyed. In this manner, Ilham Aliyev “restores” “justice” for Caucasian Albanians.

⁷⁴⁹ See the speech of a member of the European Parliament Viola von Cramon-Taubadel (Political Party “The Greens”, Germany), at the debate preceding the voting of Resolution N 2582.

⁷⁵⁰ See the speech of a member of the European Parliament Viola von Cramon-Taubadel (European People's Party, the Netherlands), at the debate preceding the voting of Resolution N 2582.

⁷⁵¹ See the speech of a member of the European Parliament Martina Michels (the Left Party, Germany), at the debate preceding the voting of Resolution N 2582.

⁷⁵² See the speech of a member of the European Parliament Costas Mavrides (Social-Democratic, Cyprus), at the debate preceding the voting of Resolution N 2582.

⁷⁵³ See the speech of a member of the European Parliament Susanna Ceccardi (Party “Identity and Democracy”, Italy), at the debate preceding the voting of Resolution N 2582.

⁷⁵⁴ See the speech of a member of the European Parliament Pernando Barrena Arza (the Left Party, Spain), at the debate preceding the voting of Resolution N 2582.

⁷⁵⁵ See the speech of a member of the European Parliament Joachim Stanisław Brudziński (“Conservatives and Reformists” Party, Poland), at the debate preceding the voting of Resolution N 2582.

of destruction thereof as an attempt of genocide against humanity, considering it also as a murder of people, i.e. genocide⁷⁵⁶. Viola Von Cramon-Taubadel stated that, in the light of the destruction of Armenian heritage in Nakhichevan and during the second Artsakh war, the international community has fears that this precedent of destruction of the cultural heritage of Artsakh may reoccur⁷⁵⁷. Additionally, Krzysztof Hetman said that in his opinion cultural heritage refers to people rather than structures since it is an essential component of people's identity and that Azerbaijan should stop such barbarism⁷⁵⁸.

• **Linking an attack on a heritage to destruction of identity and history.** Charlie Weimers stated, “to destroy cultural heritage is to erase an identity, a history, a nation”⁷⁵⁹. Evin Incir, a member of the Parliament of Kurdish origin, underlined that Azerbaijan's attack on the Armenian cultural heritage is an attack on its people, considering the destruction of cultural heritage as an attempt made by Azerbaijan to rewrite history⁷⁶⁰. Martina Michels also mentioned that the falsification of history and sowing the seeds of hatred by Azerbaijan are unacceptable⁷⁶¹.

• **Highlighting the universal nature of the cultural heritage of Artsakh, qualifying the attacks thereon as attacks on the cultural diversity of humanity**⁷⁶². We should note that this issue is thought to be of vital importance and is repeatedly emphasized in practically all international statements and documents.

⁷⁵⁶ See the speech of a member of the European Parliament Nathalie Loiseau at the debate preceding the voting of Resolution N 2582.

⁷⁵⁷ See the speech of a member of the European Parliament Viola von Cramon-Taubadel at the debate preceding the voting of Resolution N 2582.

⁷⁵⁸ See the speech of a member of the European Parliament Krzysztof Hetman (European People's Party, Poland), at the debate preceding the voting of Resolution N 2582.

⁷⁵⁹ See the speech of a member of the European Parliament Charlie Weimers (“Conservatives and Reformists” Party, Sweden), at the debate preceding the voting of Resolution N 2582.

⁷⁶⁰ See the speech of a member of the European Parliament Evin Incir (Social-Democratic Party, Sweden), at the debate preceding the voting of Resolution N 2582.

⁷⁶¹ See the speech of a member of the European Parliament Martina Michels at the debate preceding the voting of Resolution N 2582.

⁷⁶² See the speech of a member of the European Parliament Evin Incir at the debate preceding the voting of Resolution N 2582.

- Recording the violation of the Order of the International Court of Justice, which was cited by Marina Kaljurand, a member of the Parliament of Kurdish origin⁷⁶³.

- Linking destruction of heritage with international law. Κώστας Μουρίδης (Costas Mavrides), a member of the Parliament, made an observation in this regard that the destruction of cultural heritage is deemed to be a gross violation of international law⁷⁶⁴.

- The significance of ensuring by Azerbaijan unimpeded access to the independent and impartial fact-finding mission of UNESCO to the territories passed under the control of Azerbaijan. Andrey Kovatchev⁷⁶⁵, Martina Michels⁷⁶⁶, and the President of the CoE addressed this issue.

- Linking the destruction of heritage with peace. Carles Puigdemont i Casamajó, Andrey Kovatchev, and Věra Jourová emphasized in their speeches that for having a peaceful and secure future, a cultural component is required, and the destruction of cultural heritage in the Republic of Artsakh is a glaring indication that peace is still far⁷⁶⁷.

During the debate on the Resolution held within the scope of the plenary session, Peter van Dalen, the member of the Parliament having initiated the Resolution, expressed the view with regard to the President of Azerbaijan Ilham Aliyev and his family to be corrupt, who constantly put the lives of the people of Artsakh in danger and make life in Nagorno-Karabakh impossible by systematically destroying the cultural heritage⁷⁶⁸.

Statement of Europa Nostra. Following the adoption of the Resolution, on 11 March 2022, Europa Nostra issued one more statement endorsing and

⁷⁶³ See the speech of a member of the European Parliament Marina Kaljurand (Social-Democratic Party, Estonia), at the debate preceding the voting of Resolution N 2582.

⁷⁶⁴ See the speech of a member of the European Parliament Costas Mavrides at the debate preceding the voting of Resolution N 2582.

⁷⁶⁵ See the speech of a member of the European Parliament Andrey Kovatchev (European People's Party, Bulgaria), at the debate preceding the voting of Resolution N 2582.

⁷⁶⁶ See the speech of a member of the European Parliament Martina Michels at the debate preceding the voting of Resolution N 2582.

⁷⁶⁷ See the speeches of Carles Puigdemont i Casamajó (non-attached Member, Spain), Andrey Kovatchev and Vera Yurova at the debate preceding the voting of Resolution N 2582.

⁷⁶⁸ See the speech of a member of the European Parliament Peter van Dalen at the debate preceding the voting of Resolution N 2582.

supporting the Resolution adopted by the European Parliament during its plenary meeting on 10 March, welcoming, in particular, UNESCO's proposal to send an independent expert mission and calling for it to be sent without delay, and stressing the universal dimension of heritage, calling for the international community and all the states to take the necessary measures to ensure the safeguarding of the intangible cultural heritage sites present in territory under their control⁷⁶⁹. Moreover, on 6 July 2021, Europa Nostra and the European Association of Archaeologists made an urgent call for the holistic preservation of the integrity, authenticity, and diversity of the rich multicultural heritage which is located in and around the territory of Nagorno-Karabakh⁷⁷⁰.

Brussels Declaration of the Parliamentary Assembly of La Francophonie. On 27-28 June 2021, the Committee on Education, Communication and Cultural Affairs of the Parliamentary Assembly of Francophonie⁷⁷¹, chaired by Christian Levrant from Switzerland, on behalf of the Walloon-Brussels Federal Parliament, adopted a declaration "On protection of Armenian cultural and religious heritage in Nagorno-Karabakh" in Brussels⁷⁷². The Declaration contains a proposal to the Francophonie offices on organizing the activities of an independent expert mission in the region of Nagorno-Karabakh with the aim to improve the situation and preserve cultural diversity, based on the best interests of Armenia, Azerbaijan, and all of Europe. The Declaration is based on the principles of the sovereignty, equality, and territorial integrity of the UN states, the UNESCO Convention "On the protection of the world cultural and natural heritage" of 1972, and The 1954 Hague Convention "For the Protection

⁷⁶⁹ See Europa Nostra endorses EP Resolution against the destruction of cultural heritage in Nagorno-Karabakh, March 11, 2022, <https://www.europanostra.org/europa-nostra-endorses-ep-resolution-against-the-destruction-of-cultural-heritage-in-nagorno-karabakh/> (accessed: 06.07.2022).

⁷⁷⁰ See Urgent call for a holistic protection of the integrity, authenticity, and diversity of the rich multicultural heritage in and around the area of Nagorno-Karabakh. Joint Statement by Europa Nostra and the European Association of Archaeologists, July 06, 2021, <https://www.europanostra.org/urgent-call-for-a-holistic-protection-of-the-integrity-authenticity-and-diversity-of-the-rich-multicultural-heritage-in-and-around-the-area-of-nagorno-karabakh/> (accessed: 06.07.2022).

⁷⁷¹ It was established in 1967.

⁷⁷² See Assemblée parlementaire de la Francophonie, La Commission de l'éducation, de la communication et des affaires culturelles de l'APF s'engage en faveur de la protection du patrimoine culturel et religieux arménien dans le Haut-Karabagh, Bruxelles, le 2 juillet 2021, 2021_07_02_protection_patrimoine_culturel.pdf (francophonie.org) (accessed: 18.02.2022).

of Cultural Property in the Event of Armed Conflict”. The Declaration gives an estimate of the number of cultural values⁷⁷³ that have come under the control of Azerbaijan following the war. As a primary message, it validates the past and contemporary atrocities committed by Azerbaijan, particularly the attack on the Holy Saviour Ghazanchetsots Church and the destruction of the Church of St. Hovhannes the Baptist⁷⁷⁴. The Declaration urged all the countries of the region and those of Francophonie to provide assistance to Armenia, Azerbaijan, and UNESCO for the respect of international law and human rights⁷⁷⁵. It encourages the initiative of UNESCO to conduct an independent technical mission together with all relevant parties as a requirement for the efficient protection of heritage.

Another important precedent: On 2 July 2021, in Brussels, the Committee on Education, Communication and Cultural Affairs of the Parliamentary Assembly of the Francophonie, which unites around 90 parliaments and inter-parliamentary organizations worldwide, expressed its commitment to protecting the Armenian cultural and religious heritage in Nagorno-Karabakh, reminding both the Azerbaijani and Armenian sides of their obligations to preserve it. The Committee urged all the countries of the region and those of Francophonie to provide assistance — in accordance with international law — to Armenia, Azerbaijan, and UNESCO⁷⁷⁶.

On 16 January 2021, the Anti-Corruption Centre “Transparency International”, jointly with other organizations, submitted a complaint to the UN Special Rapporteur in the field of cultural rights, Karima Bennouna⁷⁷⁷. The

⁷⁷³ 1456 Armenian historical and cultural objects, including 161 Armenian churches, 591 khachkars, the ancient site of Tigranakert, Azokh Paleolithic cave, as well as several private and public museums.

⁷⁷⁴ Ibid.

⁷⁷⁵ See Déclaration sur la protection du patrimoine culturel et religieux arménien dans le Haut-Karabagh, Bruxelles, 27-28 juin 2021, La Commission de l'éducation, de la communication et des affaires culturelles de l'Assemblée parlementaire de la Francophonie, réunie par visioconférence le 27-28 juin 2021.

⁷⁷⁶ See Assemblée parlementaire de la Francophonie, La Commission de l'éducation, de la communication et des affaires culturelles de l'APF s'engage en faveur de la protection du patrimoine culturel et religieux arménien dans le Haut-Karabagh, Bruxelles, le 2 juillet 2021.

⁷⁷⁷ See Complaint to the UN Special Rapporteur in the Field of Cultural Rights, To: Karima Bennouna, UN Special Rapporteur in the field of cultural rights, Submitted by: Transparency International Anticorruption Center, “Helsinki Assembly of Armenia - Vanadzor” NGO, “Protection of Rights

complaint was based on the well-known statement of the Minister of Azerbaijan about establishing a working group with the task to remove “fake Armenian traces” from Afghan architectural monuments⁷⁷⁸.

With regard to the international reaction, it is specifically noteworthy that the Lemkin Institute for Genocide Prevention issued three red flag alerts (for genocide) (15 August 2022⁷⁷⁹, 19 September 2022⁷⁸⁰, and 7 October 2022⁷⁸¹) for all international and state bodies stating that Azerbaijan continues its hateful ideology, employs threats, conducts atrocities against Armenians and Armenian identity at the state level, which, as integral parts of the common Turkish-Azerbaijani policy adopted since 1915, are classified as genocidal acts. It is noteworthy that the Lemkin Institute called the expropriation and destruction of Armenian cultural heritage a genocidal act as well, mentioning also the desecration of graveyards and other burial sites, the aim of which is to destroy the Armenian identity and humiliate the dignity of the target group, even after death⁷⁸².

With the second alert, the Lemkin Institute called on all international and state bodies to monitor Turkey and Azerbaijan for genocidal ideology and practices, to place pressure on Turkey and Azerbaijan to cease their genocidal threats against the Armenian people and to reinforce the security of Armenians and the Armenian identity in the Republic of Armenia, the Republic of Artsakh, and in Diaspora communities worldwide⁷⁸³.

without Borders” NGO, Law Development and Protection Center Foundation, 16 January 2021, <https://transparency.am/assets/documents/news-1611041367-0-578687.pdf> (accessed: 06.07.2022).

⁷⁷⁸ See On the destruction of the Armenian cultural heritage in Artsakh, On the destruction of the Armenian cultural heritage in Artsakh | OSF (accessed: 06.07.2022).

⁷⁷⁹ See Lemkin Institute for Genocide Prevention, Red Flag Alert for Genocide - Azerbaijan Update 1, <https://www.lemkininstitute.com/red-flag-alerts-1/red-flag-alert-for-genocide---azerbaijan-update-1> (accessed: 12.04.2022).

⁷⁸⁰ See Lemkin Institute for Genocide Prevention, Red Flag Alert for Genocide - Azerbaijan Update 2, <https://www.lemkininstitute.com/red-flag-alerts-1/red-flag-alert--for-genocide---azerbaijan-update-2> (accessed: 12.04.2022).

⁷⁸¹ See Lemkin Institute for Genocide Prevention, Red Flag Alert for Genocide - Azerbaijan - Update 3, <https://www.lemkininstitute.com/red-flag-alerts-1/red-flag-alert-for-genocide---azerbaijan---update-3> (accessed: 12.04.2022).

⁷⁸² Ibid.

⁷⁸³ See Lemkin Institute for Genocide Prevention, Red Flag Alert for Genocide - Azerbaijan Update 2.

In terms of international response, the Report presented in the European Parliament - "New European Agenda for Culture and of the EU Strategy for International Cultural Relations (2023-2026)"⁷⁸⁴ - was significant, too. Among other urgent issues, it emphasized the protection of the cultural values of Nagorno-Karabakh for the strategy of effective implementation of the global cultural policy⁷⁸⁵.

Nevertheless, despite the initiations of the international community condemning Azerbaijan's policy aimed at hatred towards Armenians and the destruction of Armenian cultural values, Azerbaijan still uses anti-Armenian language on a number of international platforms⁷⁸⁶.

⁷⁸⁴ See European Parliament, Implementation of the European agenda for culture and of the EU strategy for international cultural relations, European Implementation Assessment, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734663/EPRS_STU\(2022\)734663_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734663/EPRS_STU(2022)734663_EN.pdf) (accessed: 12.12.2022).

⁷⁸⁵ See European Parliament, Statement by the Chair of the Delegation for relations with the South Caucasus, MEP Marina Kaljurand, on the military aggression of Azerbaijan against the Republic of Armenia, Strasbourg, 13 September 2022, https://www.europarl.europa.eu/cmsdata/253919/20220913_Azerbaijani%20military%20aggression_statement.pdf (accessed: 12.11.2022).

⁷⁸⁶ See "Azerbaijan continues making anti-Armenian eloquent speeches on international platforms", "Monument Watch", 14 October 2022, Աղբյուրներ վիճաբանության հարթակներում շարունակում է հսկանայի հեռուստաբանությունը - Monument Watch (accessed: 21.10.2022).

SUMMARY

The main objective of the Monograph is to present the reasons behind Azerbaijan's century-long policy of eradicating the Armenian cultural heritage, the identification and analysis of distinct mechanisms for vandalism against and misappropriation of the Armenian heritage in Artsakh during the 44-day war and in the territories occupied by Azerbaijan after the war, to record the cases of destruction, appropriation and desecration of tangible and intangible cultural heritage during the war, as well as the violations of international standards of preservation thereof, and to identify the international opportunities for the protection of the cultural heritage of Artsakh, attaching importance to the necessity of urgent application thereof.

It is evident from the factual information presented in the monograph that the right of the Armenians of Artsakh to live true to their identity has been constantly violated both by the Soviet and the independent Republics of Azerbaijan and continues to be violated nowadays as well. Azerbaijan has implemented the processes of falsification of the evidence of Armenianness and the alteration of the ethnic makeup of the desired territory both during the apparent "peace" and murderous wars, always displaying cultural destruction practices. Definitely, for Azerbaijan, the driving factor of the 44-day war was more than just territorial appropriations and the purpose was more than just fulfilling its wish to legitimize its presence in the region. The principal objective of the war was the infliction of harm on Armenians of Artsakh based on ethno-cultural and religious discrimination, ethnic cleansing, and the accomplishment of the 100-year plan to entirely eradicate the traces of Armenianness.

The analysis of the facts referred to in the monograph revealed that the numerous manifestations of cultural genocide conducted by Azerbaijan, the unveiled intolerance towards the heritage of the Armenians of Artsakh, the denial of the facts of nativeness of the Armenians, and declaring the entire cultural heritage of the Armenians of Artsakh as non-Armenian are a real risk both for the preservation of historical and contemporary monuments and the communities that uphold these values.

Highlighting the significance of cultural heritage in the social unity of communities, strengthening the identity, and ensuring the continuity thereof, we have demonstrated that by targeting the Armenian cultural heritage, Azerbaijan — aside from subjecting the Armenian community in Artsakh to psychological trauma — also pursues a primary goal of destroying its identity.

Having recorded various facts of manifestations of the Azerbaijani policy of Armenophobia and having combined the actions directed against Armenians, we saw the Azerbaijani elite — while advocating "tolerance" and "cultural and religious diversity" in various international forums — to leave, from the very first day of the war of 2020, under the fire of military attacks both the Christian spiritual heritage (churches, cemeteries, khachkars, fortresses, bridges, memorials, monuments with Armenian inscriptions) and the Armenian cultural heritage dedicated to the Artsakh heroic battle, the heroes thereof, the Great Patriotic War, and the Armenian Genocide created during recent 30 years, as well as the contemporary cultural values. At this point, there was no doubt that the entire Armenian heritage of Artsakh was being destroyed both during and after the war.

It should be underlined that intolerance towards any cultural value actually undermines the main functions of heritage preservation, ensuring its vitality and transmission to future generations in an undamaged state, and specifically in the case of Armenians of Artsakh, it also jeopardizes the chances to enjoy their own heritage, live and grow with it.

Considering the loss of the Armenian heritage of Artsakh in the light of the enhanced concept of cultural heritage, we emphasized that the source of heritage is not the physical objects, but the people practising the customs and traditions of their nation. Having taken this concept into consideration, we made an attempt to observe the preservation of heritage during wars in the light of the internationally recognized enhanced concept of heritage, which is not limited only to monuments or even only to intangible elements, but goes beyond the scope thereof, including the protection of both the natural and the human environment. In this perspective, the preservation of heritage — aside from physical objects, stone-made values, and tangible elements — includes also the protection of everything associated with heritage, its surroundings, the

natural environment, and the rights of Armenians of Artsakh, as well as ensuring the integrity of communities. In the same way, the concept of heritage preservation refers to not only museum preservation of the values of the past but also preservation for the sake of the future, and continuation of identity. Taking into consideration what has been discussed, we can state that cultural heritage is not something referring only to the past, but it is "alive" and active since it exists directly in the present and contributes to the strengthening of individual and community identity. Furthermore, heritage, as well as its preservation and guidance thereby, are a guarantee of a sustainable future. Such an approach highlights not only the necessity for current society to enjoy the benefits of heritage and to take advantage of opportunities provided by the heritage but also the significance of having an inalienable right to heritage and exercising this right for those who are to be born. The fact that through heritage, the past may become the driving force of the present, and which may — through the recreation of identity — drive the Armenians of Artsakh into the future, is of key significance as well. Otherwise stated, the generations of Armenians of Artsakh to be born in the future, have the fundamental right to see the heritage of their nation of the past intact and to develop alongside it. But due to Azerbaijan's deliberate targeting, pillage, destruction, and vandalism of the Armenian heritage of Artsakh, the Armenians of Artsakh are deprived of a secure future and the opportunity to transmit their values to future generations intact.

The study of the international system of heritage preservation and the enhanced concept of cultural heritage revealed that the preservation of the heritage of the Armenians of Artsakh should have the Armenians of Artsakh at its core, and for sustainable development of the society and improvement of the quality of life, people should focus on and be guided by the enormous potential of cultural heritage.

It is also crucial to underline that the policy of intolerance conducted by Azerbaijan towards the cultural heritage of Artsakh had (and still has) distinct and specifically developed directions, including the destruction, appropriation, and change in function of the cultural heritage (Albanization, Azerbaijanization, and Turkification), as well as desecration, pillage, vandalism,

and use for military purposes, which were used as appropriate and pursued specific objectives.

Specifically, right after the tripartite agreement signed on 9 November 2020, under which about one-third of the territory of Artsakh came under Azerbaijani control (about 1,500 monuments), we witnessed the conduct of Azerbaijan's policy aimed at destroying the unique values of Armenian heritage, and after some period, we saw this policy to change and take on a new tactic, i.e. the Azerbaijani rhetoric changed taking on the risky direction of heritage misappropriation and alteration (Albanization, Azerbaijanization, and Turkification). This implied the following: when it was impossible to destroy one or another value, the Azerbaijani propaganda machine — with the intention to avoid the response of international justice — would simply declare that there was no Armenian heritage in Artsakh, and whatever was available there belonged to other ethnic groups rather than Armenians. So, Azerbaijan promoted the bewildering theses — having nothing to do with reality — contributing to the Turkification, Albanization, and Azerbaijanization of Armenian heritage, as well as international speeches, forums, and scientific conferences using the mentioned rhetoric. However, as described in the work, the international system, under the provisions of various treaties and conventions, truly provides regulations — mandatory for all states — to protect the heritage in practically all circumstances. Referring to the provisions of international regulations aimed at cultural preservation, we have stated in this context that Azerbaijan was and is required to respect any cultural value, irrespective of its origin and significance, since, in accordance with the UNESCO principles, the cultural heritage of each nation is a part of the cultural diversity of the world, and the heritage created by each nation is the product of the particular experience of the given community, a set of unique values, the loss whereof impoverishes not only the given region but the entire planet.

A thorough analysis of the key documents on the protection of cultural values in times of war revealed that the solution to the principle problem of protection of cultural heritage in the event of conflicts depends — in addition to ensuring the protection of cultural values during actual military operations or prohibition of targeting thereof — on initiation and implementation of effective

actions in peacetime provided therefor at the national and international levels. Hence, in this study, we have attached importance not only to the conventions and declarations on the protection of cultural values in times of war and in the occupied territories, adopted by the UN and UNESCO (possessing a special mandate granted by the UN for the protection of heritage), its advisory bodies, and the Council of Europe, but also to other provisions proposed by the mentioned organizations aimed at enhancing the protection of cultural heritage during peacetime, starting with special education provided to the military personnel, creation of facilities for transportation, evacuation, and storage of cultural values in special conditions during military operations, construction of shelters required for the heritage and ending with the provision of internationally approved enhanced or special protection of heritage. We have specifically examined the following documents: The 1954 Hague Convention for "The Protection of Cultural Property in the Event of Armed Conflict" and the two protocols thereto (1954, 1999) (adopted by UNESCO), the 1949 Geneva Convention "On the Protection of Civilian Persons in Time of War" and the protocols thereto adopted in 1977, the Declaration "On the Rights of Indigenous Peoples" adopted by the UN in 2007, the Declaration "Concerning the Intentional Destruction of Cultural Heritage" adopted by UNESCO in 2003, the Convention "On Offences relating to Cultural Property" adopted by the Council of Europe in Delphi in 1985, the Convention "On Elimination of All Forms of Racial Discrimination" adopted by the UN in 1965, the "European Landscape Convention" adopted in 2000, the Faro Convention "On the Value of Cultural Heritage for Society" adopted in 2005 and other documents.

For the preservation of cultural heritage, we have highlighted — aside from these international instruments — the resolutions adopted by the UN and the Council of Europe, and customary norms of international humanitarian law condemning cultural vandalism and proposing principles of protection therefor, which can provide a comprehensive legal framework for the protection of the cultural heritage of Armenians of Artsakh, considering the concept of respecting the human rights in general and the cultural rights thereof in particular as the core of the cultural heritage.

It is out of the question that each of the aforementioned treaties contains instructions on the necessity to preserve the heritage and a toolkit to prevent its destruction, and the identification thereof will make it possible to condemn Azerbaijan's illegal actions, which are frequently qualified as military crimes or serious crimes against humanity. Specifically, it is crucial to underline that, operating since 24 October 1945 as an intergovernmental organization maintaining international peace and security, the United Nations Organization considers the destruction of cultural values during wars as the most compelling threat to the unity of all peoples of the world united by common bonds and their cultures pieced together in a shared heritage, characterizing it as a grave crime against humanity. In accordance with the Purposes and Principles of the Charter of the United Nations, all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State. The United Nations has also determined that, for the sake of present and future generations, it will not interfere in the internal affairs of establishing an independent state. However, as we have indicated, neither many international organizations nor Azerbaijan adhere to these obligations.

Therefore, many international regulations, including Article 8 of the International Criminal Court, pursuant whereto the destruction of cultural heritage is an international war crime and is to be punished, forbid and condemn Azerbaijan's actions aimed at destruction, appropriation, and desecration of cultural values. Additionally, many other international instruments — with various provisions thereof — confirm the necessity of preserving the cultural heritage, and the prohibitions of even the least alteration and damage thereof, and identify the grave consequences caused thereby.

Our analysis of the aforementioned conventions led us to the conclusion that intentional destruction of heritage means an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity and that heritage should be respected under the right of self-determination of the community having created it rather than because of its belonging to a certain nation or its location. The provisions of the examined conventions have confirmed that Azerbaijan is truly obliged to ensure the possibility of

transmitting the heritage of Armenians of Artsakh to their generations intact. Furthermore, the rights and fundamental freedoms of Armenians of Artsakh in political, economic, social, or cultural fields should also be protected from any form of discrimination based on race, colour, descent, national, or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise thereof. On the other hand, it has been demonstrated that no place is devoid of identity and is subject to destruction and there is no place where the destruction of one or another cultural value is not associated with anything and will not affect the landscape, its fundamental components, and the community.

Emphasizing the identification of protection mechanisms provided for the intangible heritage of the Armenians of Artsakh, we have made an effort to cover, through the examination, their significance in terms of cultural self-expression, and transmission of knowledge and skills from generation to generation. Hence, we have examined the necessity for legal protection of the intangible cultural heritage of Artsakh during the war, revealing a number of structural issues. Among those issues, we have set apart the poor system of protection of intangible cultural values during the armed conflict, since, as stated in the work, the international conventions and other legal systems concerned protect the intangible cultural heritage only partially and indirectly. However, in the course of the research, we have also found the point at which intangible heritage, which is intimately linked to human cultural rights, can develop into a matter of cultural rights of community members, strongly seeking protection in the international human rights system. And where in the case of tangible heritage, cultural structures, and monuments are targeted, in the case of intangible heritage, the individuals and communities carrying or interpreting that heritage, as well as the components of the intangible cultural heritage are targeted, too.

The protection of intangible cultural heritage during armed conflicts should be viewed not only in the realm of protection of the aspects of the heritage itself but also in the context of preservation of the ethno-cultural identity of the communities and groups carrying them, and practising their own community life in compliance with their ideas. And if we consider the harm

caused to the individuals or communities, i.e. the civilian population, bearing intangible cultural heritage during the actual war, we will reveal that civilians were targeted by Azerbaijan, and entire communities were displaced. What else is this except an assault on the values they uphold as well? Thus, numerous attacks on the civilian population violated their fundamental rights, particularly those related to culture.

Eventually, our basic ideological tenet, which is as follows: Azerbaijan's disrespect for the protection of the cultural heritage of Artsakh violates the fundamental cultural rights of the Armenians of Artsakh as well, emerges in this very context. To put it another way, by violating the principle of the inviolability of cultural values, Azerbaijan attacks not only material values but also threatens the present and future of citizens of Artsakh, who consider this heritage to be a part of their life and live and develop with it; Azerbaijan infringes on their right to enjoy the advantages offered by this heritage as well. Having cited — in the course of the research — the findings of numerous authors and the formulations of international instruments essential for the field, we have expanded the scope of perception of heritage and come to the conclusion that various cultural practices, including religious customs and rituals, the history and memory were also attacked during the destruction of Armenian churches, historical cemeteries, and khachkars in Artsakh by the Azerbaijani armed forces.

The rights related to cultural heritage are an integral part of the right to participate in cultural life established under the "Universal Declaration of Human Rights". Hence it follows that, by targeting any material object of the Armenians of Artsakh both during the war and after it, distorting any aspect of the intangible heritage - ritual, oral tradition, etc., Azerbaijan has directly attacked the rights of the Armenians of Artsakh, among which the cultural rights are of key significance. We can claim that when the nation of Artsakh is displaced or alienated from its native territory, not only does it lose its place of residence, but also the heritage community, which could transmit its heritage to future generations, collapses. Furthermore, it is crucial to emphasize the fact that the heritage community is formed when the members of the community value specific aspects of cultural heritage which they wish,

and such an aspect can be anything, ranging from the mind to any type of tangible structure. As a result of the war, the Armenians of Artsakh have lost their heritage communities, which, due to their uniqueness, are a part of the cultural diversity of the world. Displacement inevitably disrupts the opportunities for peoples to flourish in a way that serves their needs and interests, but Azerbaijan — with a discriminatory approach at a high state level — continues to deprive the Armenians of Artsakh of their ethnic identity.

For a more complete explanation of this issue, we have also referred to the international humanitarian law offering effective protection of cultural values in the occupied territories since the right to access to and enjoyment of tangible and intangible cultural heritage, and the right to participate in cultural life is part of international human rights legislation, and there is an inseparable connection between protection instruments of human rights and cultural heritage approved by UNESCO and the Human Rights Council of the United Nations. It is important to emphasize that international humanitarian law, under its customary provisions, applies to all the belligerent parties irrespective of the reasons for the conflict or the justness of the causes for which they are fighting.

Despite the fact that under international law, respect for the right to culture is an obligation, and the International Court of Justice and the Nuremberg International Tribunal have adopted a number of resolutions in accordance where to the humanitarian rights of people and the rules on protection and inviolability of cultural heritage during armed conflicts have a status of customary law, and thus they are applicable and mandatory for all the parties of the international community, Azerbaijan continues to violate the international commitments assumed thereby, the principles of international humanitarian law and does not respect the right to protection of both the heritage and the people who carry it.

Among the questions covered in the monograph, we have focused on the issue that the fact that the United Nations Organization has not recognized the Republic of Artsakh as an independent state and therefore the Republic of Artsakh has not acceded to the relevant conventions of the field, cannot be an

obstacle in the protection of cultural values, since the international customary law, which is based also on the main instruments of the field, i.e. The 1954 Hague Convention and the 1949 Geneva Convention and the protocols thereto, makes it possible for the obligation of respecting heritage to be released from the restraint of territorial belonging and the declaration of a nation state, stipulating the rule for the inviolability of cultural heritage as a fundamental right deriving from the right to self-determination of the people. Thus, customary international law enables making the provision of inviolability of cultural heritage mandatory during war even for non-member states of the Convention. Hence, the fact of being a member of the Convention is not mandatory for the protection of the cultural heritage of Artsakh since the provisions for the protection of cultural values in the occupied territories have a status of international customary law, that is, they apply as a universal and inevitable rule and are binding for all states and groups.

Thus, Azerbaijan was and is required by international law to guarantee the exercise of the right of the Armenians of Artsakh to freely participate in cultural life, the right to enter and enjoy places of cultural heritage, freedom of thought, conscience, religion, and creativity. In accordance with international regulations, the Armenians of Artsakh have the right to practise and revitalize their cultural traditions and customs, protect their cultural past, preserve archaeological and historical sites, preserve and practise their crafts, ceremonies, etc.

We firmly believe that the protection of the cultural heritage of Artsakh is not only crucial for the Armenians of Artsakh, but it is also a necessity for democracy and social justice; besides, it is a threat to international peace and security.

The examination of the position and approaches of the international community led us to the conclusion that during the period from 27 September to 9 November 2020 (as well as before the war), the international community confined itself to calls for both sides to exercise restraint, abstain from using force, and to generally condemn vandalism rather than providing an adequate assessment of the obvious actions of Azerbaijan's clearly defined policy aimed at the destruction of culture. But following the war, under the conditions of

international instability, a number of resolutions of the European Parliament and orders adopted by The Hague International Court of Justice provided a new perspective on condemning Azerbaijan's actions and giving proper assessments thereto. More specifically, over a year after the war, the statements made by international high courts were denouncing Azerbaijan's policy aimed at hatred towards Armenians, considering the actions of destruction of Armenian cultural heritage taken during the 44-day war not as separate cases, but as constituent parts of a unified policy and chain launched in the previous century and "successfully" implemented in Nakhichevan in 1997-2006 and various regions of the Nagorno-Karabakh Republic during the recent 30 years. At this point, we encountered for the first time estimates of phenomena close to the truth, the increase of concerns about the protection of the cultural rights of the Armenians of Artsakh, and called this a new phase of improvement in the response of the international community. And even if this response is just a formality again and is not able to create effective mechanisms for the protection of distinct values of Artsakh, it was the first instance when an effort was made to link the destruction of Armenian cultural values during the 44-day war with the policy conducted by Azerbaijan in Nakhichevan and formed at the early 20th century, for the first time considering Armenophobia — at an international level — as a policy with a 100-year history.

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