Deilton Ribeiro Brasil
Presidente de la Dirección Científica

Prólogo
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TRATADO DE DIREITO CONSTITUCIONAL
Tessituras Contemporâneas,
Disruptivas, Pluridimensionais

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PRÓLOGO

Una vez más nos encontramos con una magnífica obra, que como ya nos tiene acostumbrados, se mantiene a la vanguardia en lo que a textos jurídicos de gran calidad se refiere.

En esta ocasión se trata de una obra colectiva publicada bajo el título de "Tratado de derecho constitucional. Tesituras contemporáneas, disruptivas, pluridimensionales". Texto que ha sido magistralmente conducido bajo la coordinación y dirección científica del Dr. Jorge Isaac Torres Manríque, quien con este nuevo tratado viene a dar continuidad a la exitosa serie de tratados jurídicos que sobre diversos temas ya ha venido dirigiendo y coordinando bajo esta misma casa editorial.

Sería muy complicado hacer un relato pormenorizado y en breves líneas, sobre todos y cada uno de los muchos artículos contenidos en este tratado, ello sería simplificar lo que ya de sí es complejo, y restaría mucho de la riqueza, variedad y profundidad que está obra tiene, razón por la cual daré solamente una somera descripción del ella, tratando de provocar e incentivar al lector para que de inmediato se adentre en su lectura.

El derecho constitucional y más aún el fenómeno constitucional propiamente dicho, han ido expandiendo sus fronteras con el correr del tiempo y hoy en día comprenden aspectos y temas que los primeros constitucionalismos de finales del siglo XVIII e incluso del siglo XIX y principios del Siglo XX nunca imaginaron.

Es por ello y en tal sintonía, que este Tratado de Derecho Constitucional como una obra propia del siglo XXI en que vivimos y como corresponde, se refiere a muy diversos y novedosos tópicos relacionados con el derecho constitucional de nuestros días, presentándonos un panorama bastante interesante y novedoso al respecto.

Así, esta obra concentra una gran variedad de textos -casi una treintena- (29 artículos) de más de medio centenar (53 en total) de destacados autores y autoras que de manera muy certera y aguda tratan los más diversos temas, todos ellos de suma actualidad y que tienen que ver con asuntos como: la justiciabilidad y efectividad de los derechos y libertades fundamentales, los derechos económicos, sociales culturales y ambientales, el constitucionalismo, la cooperación jurídica internacional, la justicia transicional, la igualdad sustantiva, el llamado constitucionalismo abusivo, el estado constitucional de derecho, los partidos políticos, la democracia, la gobernanza, el racismo, la

diversidad cultural, el pluralismo y el multiculturalismo, el derecho urbanístico, la violencia doméstica, la materia penal y procesal penal, la propiedad industrial, la propiedad cultural, el mundo del trabajo y sus desafíos contemporáneos, el refugio, el asilo, los derechos lingüísticos, el control de la constitucionalidad entre muchos otras temáticas relacionadas.

Esta obra, como su título lo indica es un verdadero tratado jurídico, con una extensión de más de 600 páginas en las cuales las autoras y autores que son verdaderas expertas y expertos en sus respectivas áreas y de distintos países, nos muestran con gran precisión y agilidad en sus textos, las diversas tesituras contemporáneas y pluridimensionales vinculadas de un modo u otro con el ámbito constitucional, llevándonos por un recorrido jurídico a través de distintas temáticas de gran relevancia actual en el mundo del derecho, en una multiplicidad de aspectos y en distintos sistemas y realidades jurídicas de varios países, dando así a los lectores un panorama bastante amplio del fenómeno jurídico constitucional contemporáneo, por demás relevante no sólo para y dentro del ámbito latinoamericano sino también a nivel mundial.

En suma, se trata de una obra amplia, multi temática y de gran actualidad que nos invita a reflexionar sobre los nuevos y viejos paradigmas del fenómeno constitucional y jurídico visto y analizado a través de distintas ópticas y que en su conjunto constituye una visión no solamente fresca, vanguardista y crítica, sino incluso podemos decir que polémica y también disruptiva, que servirá de punto de partida, discusión y desarrollo posterior de los temas tratados. Es por ello que sin duda vendrá a ser un referente obligado de estudio y de consulta no sólo para estudiantes, profesores y profesionales del derecho sino también para los de otras áreas afines y relacionadas.

Finalmente vaya una gran felicitación para el Dr. Jorge Isaac Torres Manrique por su incansable labor académica y editorial que ahora una vez más rinde fruto y también a todas las autoras y autores de esta obra, que con sus magníficos textos han hecho posible también su realización. Enhorabuena para todos y esperemos que su labor siga prosperando.

Cuauhtémoc Manuel de Dienheim Barriguete
Morelia, Michoacán, México.
Primavera 2024.

INTRODUCCIÓN

El derecho constitucional es una rama fundamental del derecho que se encarga de estudiar y analizar las normas y principios que rigen la organización y funcionamiento del Estado, así como los derechos y deberes de los ciudadanos. A lo largo del tiempo, ha experimentado diversas transformaciones y ha enfrentado nuevos desafíos en respuesta a los cambios sociales, políticos y tecnológicos.

En la actualidad, nos encontramos en una era caracterizada por la constante evolución y transformación, lo que ha llevado a la aparición de tesituras contemporáneas en el campo del derecho constitucional. Estas tesituras buscan abordar los nuevos problemas y desafíos que surgen en un mundo cada vez más globalizado y digitalizado.

Una de las tesituras contemporáneas más importantes es la disruptiva. Esta se basa en la idea de que el derecho constitucional debe adaptarse a los cambios y desafíos del mundo moderno. En este sentido, se busca romper con las estructuras tradicionales y establecer nuevas formas de interpretación y aplicación de la Constitución. La tesitura disruptiva promueve la flexibilidad y la apertura hacia nuevas ideas y enfoques, con el objetivo de garantizar la protección de los derechos fundamentales en un entorno en constante cambio.

Otra tesitura contemporánea relevante es la pluridimensional. Esta tesitura reconoce la complejidad de las sociedades modernas y busca abordarla desde diferentes perspectivas. Entiende que el derecho constitucional no puede ser analizado de manera aislada, sino que debe tener en cuenta aspectos políticos, sociales, económicos y culturales. La tesitura pluridimensional promueve la interdisciplinariedad y la colaboración entre diferentes áreas del conocimiento, con el fin de garantizar una protección integral de los derechos constitucionales.

En suma, el estudio del derecho constitucional ha evolucionado y se ha adaptado a los desafíos de la sociedad contemporánea. Las tesituras disruptivas y pluridimensionales reflejan la necesidad de abordar los problemas y desafíos actuales desde una perspectiva innovadora y holística. Estas tesituras buscan garantizar la protección de los derechos fundamentales en un mundo en constante cambio y transformación.

En la presente obra: "Tratado de derecho constitucional. Tesituras contemporáneas, disruptivas, pluridimensionales", connotados profesores de diversos países de América y Europa, fueron convocados a efectos que plasmen

y desarrollen en sus capítulos, dicha propuesta temática. Encargo que asumieron con oficio y naturaleza selecta de élite.

Agradecemos muy de sobremanera, a la vez de quedar enormemente honrados, por la muy valiosa participación del reconocido jurista y amigo, Dr. Cuauhtémoc Manuel de Dienheim Barriguete, por haber aceptado y elaborado el prólogo, de manera tan brillante como generosa.

Así también, expresamos nuestro indeleble agradecimiento a la reconocida firma Conhecimento Editora, por la confianza, pues, sin la misma la presente obra no hubiera podido ver la luz.

Finalmente, esperamos que esta entrega tenga la importante acogida, que tuvieron nuestros anteriores proyectos.

LA DIRECCIÓN CIENTÍFICA

CAPÍTULO 30

THE FORMATION AND DEVELOPMENT OF THE INTERNATIONAL LEGAL PROTECTION OF CULTURAL PROPERTY

Igor O. Anisimov[1]
Elena E. Gulyaeva[2]

SYNOPSIS

Cultural and historical monuments have been damaged or destroyed over the millennia by wars, natural disasters and vandalism.

The international community has faced the challenge of the international legal protection of religious, cultural and scientific sites because of the role played by such sites in the evolution of humankind. For the early XX century, the situation was complicated not only by the absence of a universal international treaty dedicated exclusively to the international legal protection of these sites, but also by the absence of an international organization that would elaborate appropriate norms and standards. The establishment of UNESCO, the United Nations Educational, Scientific and Cultural Organization, in 1945 was the set in motion of these problems. The UNESCO and a number of international non-governmental organizations such as the ICRC and ICOMOS have contributed to the formation of an international legal framework governing relations between states to protect cultural property not only in the case of hostilities but also in times of peace.

UNESCO's approach to the protection of cultural objects has been, and continues to be, steadily strengthened over the more than 70 years of its existence. International legal protection of cultural sites has evolved, firstly, due to the increase in the number of cultural sites; secondly, because of new threats to their preservation, and thirdly, due to the development of new methods and technologies for the study and management of cultural heritage. For this reason, an academic study of the formation and development of international legal protection of cultural property from ancient times to the present seems necessary.

The emergence of legal protection of cultural property in the Antiquity (c. 3100 B.C. - 476 A.D.)

Cultural property has been threatened for millennia by various factors, with armed conflict being the most devastating [1]. In this context, the initial stage of the codification of international legal protection of cultural property at the universal level must be seen in its historical relationship to branches of international law, such as the law of armed conflict and international humanitarian law. The authors argue, however, that the preconditions for the legal protection of cultural property[3] dates back to the period of the slave system.

Historical analysis of the development of international law shows that the legal regulation of inter-state relations had only just begun to take shape in the Ancient Ages[4] [2]. Due to the fact that the norms of international law were of religious and customary nature [2, p. 34], the rules of warfare were practically not codified. War was regarded as a lawful way of conducting foreign policy. Besides, in the law of Ancient Greece and Rome the killing of civilians and destruction of other peoples' religious buildings was considered lawful [3, p. 26], and cultural property became ownerless (*res nullis*). Such property became the property of the invader according to the military spoils law.

Still, already in the period of slave-holding system the law of some states started to define the rules of warfare, where places of worship were inviolable [2, p.36]. Suitable norms were contained, for example, in the legislation of ancient India and Islamic law.

Its authors believe that it was the norms on the inviolability of temples and other religious sites that served as the basis for the future formation of the institute of international legal protection of cultural property in the event of armed conflict.

To sum up, the respectful treatment of places of worship and other religious objects was related to their sacred rather than artistic character. Furthermore, as the researchers emphasize, the provisions on inviolability did not apply to religious sites belonging to other nations, peoples and states [3, p. 27].

Legal protection of cultural property in the Middle Ages (476 - 1648)

The Middle Ages saw greater attention paid to the protection of religious (cultural) objects. Numerous works of famous scholars of the time were devoted to the protection of cultural property (H. Grotius, J.J. Rousseau, E. de Vattel, J. Przylowski).

This is partly reflected in the concept of just war[5].

Here we will elaborate on it in more detail. The doctrinal construction of the international law was first proposed more than twenty years before the Westphalian Tractatus by the Dutchman Hugo Grotius (1583-1645). The work On the Law of War and Peace (1625), based on a combination of ideas of natural law and a study of existing positive law, formulated three basic principles: sovereignty, international cooperation and humanism.

The given work consists of three books, but Book II "On the law of war and peace", in which Chapter I "On causes of war and firstly on self-protection and protection of property", Chapter X "On obligations arising from property", Chapter XVII "On damages caused by offence and on liabilities arising from this" is particularly interesting for the authors, and deals with the protection of property and assets in times of armed conflict.

H. Grotius infers that the true purpose of war, according to natural law, is "*to preserve intact the life and limbs of the body, to preserve and acquire things useful to life...*". [4, c. 84]. He states, in other words, that the natural right presupposes the existence of a legal possibility for self-defense, **protection of one's own property**,

[5] The meaning of bellum justum was originally found in the writings of Cicero, Plato and Aristotle. The noun bellum means 'war', 'struggle' and the adjective 'justum' means 'just', 'fair'. According to Plato, wars are 'unjust' because they are based on human lust for gain and addiction to pleasure. According to him, the knowledge of justice is based on the knowledge of good and, based on the knowledge, one may speak about the establishment of universal peace by the rulers. In "The State, Plato divided into classes those who decide on the declaration of war, and those who are directly engaged in its conduct. In the context of intra-Greek conflicts, he highlights the importance of limiting armed violence. The Roman statesman and orator Cicero described as a just war the one that is waged on the basis of advance and officially declared demands on the enemy side. The understanding of a just war in the Roman tradition is associated with the intentional assumption of those legal grounds that give legitimacy to military actions. This choice of military policy benefited the Romans in the pursuit of armed expansion.

Most authors put forward three just causes for war: self-defense, recovery of property, punishment (William Mattei, On Just and Permissible War). These three reasons are found in Camille's statement to the Gauls: 'All that is permitted by right is to defend, to return, to retaliate' (Titus Livius, cn. V). In this list, if the word 'return' is not given a broader meaning, the claiming of what is owed to us is omitted. According to Plato, wars are waged in cases not only of oppression or robbing someone, but also of deception (Alcibiades). Seneca notes: "it is supremely just and in accordance with the law of nations the rule: 'Return your debt'" ("On Beneficence", Book III, Ch. 14). The same idea is expressed in the formula of the ancient Roman theses: "what is not given, not paid, not fulfilled, is to be given, fulfilled, paid" (Titus Livius, Book I), and Sallustius in "History" says: "I demand the return of things by the right of nations". Augustine, who says that "just wars are waged to avenge wrongs" ("The Book of Joshua", Book VI, question 10), applies the word "avenge" in a more general sense - instead of " retribution." This is confirmed by further text where examples are given: "Thus, the people or the state should be attacked, unless it is concerned to punish the deeds of the criminals or to return the violently stolen things.

The notion of a just war has changed over time. In the modern world, it has also evolved; it has a more humane interpretation, and from a normative point of view, it is the most well-founded. New criteria for evaluating conflicts have emerged and are being debated on the international field. International organizations such as the United Nations provide many buffers against large-scale conflicts and invasive expansions.

It should be stressed that in Antiquity and the Middle Ages, the notion of a just war was subjective and used by one side as a justification for attacking the other.

restoration of violated rights and can be expressed even in the form of war. Grotius believes that at the moment of self-defense, a person's freedom of choice is narrowed, his own life or the lives of his relatives appear to be the natural value that determines the choice of appropriate actions. Significantly, using the above-mentioned situation as an example, Grotius shows the priority of the value of life. Life, as well as **material values**, are prioritized by Grotius in relation to the value of freedom. Grotius outlines a number of situations in which a person must give up the right of retaliation against the abuser.

Therefore, the use of force in defense of one's own property would be appropriate when valuable property is involved or when one's life or the lives of others depend on the killing of a thief. In other cases, such as when the property is of little value and there is no threat to physical safety, according to G. Grotius, it is better to forfeit the property than to use violence.

H. Grotius stated the following: "*For it is immaterial to the nature of property whether it arises by virtue of the law of nations or by virtue of domestic law: it always has inherent features, which include the duty of every owner to return the property to the owner*".

Only with the advent of the Westphalian system of international relations (1648) was the protection of religious and cultural sites in the event of armed conflict reflected in international law at the universal level. Moreover, provisions for the return of seized objects to their places of origin were enshrined for the first time.

EVOLUTION OF THE INTERNATIONAL LEGAL PROTECTION OF CULTURAL PROPERTY DURING THE MEDIEVAL-NEW PERIOD (MID-SEVENTEENTH CENTURY TO 1920)

The 1863 Lieber Instructions for the Administration of the Armies (United States) were instrumental in codifying rules for the protection of cultural property in the event of armed conflict. As experts note, these Instructions "*influenced the development of wartime laws in <...> Great Britain, Germany, Spain, Italy, Russia, France and Japan*" [3, p. 29].

The first attempt to consolidate the international legal protection of cultural property on a universal level was the adoption in 1874 on the Brussels Conference of the Draft International Declaration on the Laws and Customs of War [5] (hereafter, the 1874 draft). Thus, Article 8 of the 1874 Draft stipulated that any seizure, destruction or willful damage to historical monuments, works of art and science should be prosecuted by the competent authorities.

Even though this international legal instrument was not ratified, its main provisions have been reflected in subsequent international treaties. For example,

the 1907 Hague Convention IV on the Laws and Customs of War [6] (hereafter Hague Convention IV) establishes that [6] (hereafter The Hague Convention IV) stipulated that "*All necessary measures should be taken to spare, as far as possible, temples, buildings serving the sciences, arts, and charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected; on condition that such buildings and places do not serve simultaneously for military purposes*" (Article 27). Moreover, this article defines the obligation of the besieged party to mark the specified buildings and places with special visible signs, of which the besiegers are to be informed in advance.

Article 56 of the Hague Convention IV stipulates that the property of ecclesiastical, charitable, educational, artistic and scientific institutions is equal to private property. In addition, "*Any intentional seizure, destruction or damage to such institutions, historic monuments, works of art and science is prohibited, and shall be subject to prosecution*".

DEVELOPMENT OF INTERNATIONAL LEGAL PROTECTION OF CULTURAL PROPERTY IN MODERN TIMES (1920-1945)

In 1935, the Treaty for the Protection of Art and Scientific Institutions and Historical Monuments (hereafter referred to as the Roerich Pact) was adopted [7]. The Russian artist N.K. Roerich initiated its development. This international legal act "*was the first special treaty act in the history of international relations devoted to regulating interstate cooperation on the protection of cultural objects in times of armed conflict*" [1, p.2].

Under Article I of the Roerich Pact, "*historical monuments, museums, scientific, artistic, educational and cultural institutions shall be regarded as neutral and, as such, shall be respected and protected by belligerents*". Moreover, this article stipulates that the staff of the above-mentioned institutions shall enjoy the same respect and patronage. This provision extends to institutions both in the event of armed conflict and in peacetime.

Article V of the Covenant, however, provides that "*the monuments and institutions referred to in Article I shall cease to enjoy the privileges <...> in the event of their use for military purposes*".

An important feature of the Roerich Covenant is its system of designation of sites of historical, cultural and scientific importance. This allows belligerents to identify relevant objects in the event of an armed clash and avoid accidental or deliberate damage.

THE EVOLUTION OF THE INTERNATIONAL LEGAL PROTECTION OF CULTURAL PROPERTY IN THE CONTEMPORARY PERIOD (FROM 1945 UP TO THE PRESENT)

The provisions of the Roerich Pact laid the foundation for the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereafter, the 1954 Hague Convention), as noted by specialists [1, p.3]. This international legal instrument was developed jointly by UNESCO and the ICRC. It must be said that one of the preconditions for its development was the fact that cultural property has been seriously damaged during recent armed conflicts and that due to the development of military technology, it is increasingly under threat of destruction [8, p. 2].

The Hague Convention is notable for its universal definition of "*cultural property*" (Art. 1) and the possibility of granting "*special protection*" to the relevant objects (Art. 8). Moreover, the provisions of the 1954 Hague Convention extend to the protection of cultural property in the event of non-international armed conflict (Art. 19).

In 1977, the Additional Protocol I to the 1949 Geneva Conventions was adopted. Article 53 of the Protocol forbids hostile acts against cultural property and places of worship, their use in support of military efforts and their reprisals.[9]

Adopted in 1999, the Second Protocol to the 1954 Hague Convention established the obligation of the parties to remove movable cultural property from the vicinity of military objectives or provide for adequate in situ protection and avoid locating military objectives near cultural property (Article 8) [10]. In addition, the Protocol contains criteria for granting enhanced protection to cultural property.

However, cultural heritage is also threatened by other factors - natural disasters; public works carried out in violation of standards; vandalism and other acts deliberate destruction of cultural heritage. This has made it necessary to regulate the protection of cultural property under international law not only in the event of armed conflict but also in peacetime.

Thus, between 1956 and the present day, UNESCO has adopted a number of recommendations on the protection, conservation and preservation of cultural property, such as the Recommendation on International Principles Applicable to Archaeological Excavations (5 December 1956); the Recommendation for the Best Practices concerning Accessible Museums (14 December 1960); the Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites (11 December 1962); the Recommendation concerning the Preservation of Cultural Property Endangered by Public Recommendation concerning the Preservation of Cultural Property Endangered by Public Actions (26 November 1976); Recommendation for the Safeguarding of Movable Cultural Property (28 November 1978); and Recommendation for the Protection and Preservation of Moving Images (27 October 1980) and Recommendation

concerning the Protection and Promotion of Museums, Collections, their Diversity and Role in Society (17 November 2015).

The upsurge in looting of archaeological sites and ancient monuments in the 1950s prompted the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. [11]. This international legal instrument led to significant steps being taken to develop appropriate legal norms and standards, train professionals, strengthen international cooperation and facilitate the return of stolen or illegally exported objects [12].

The protection of cultural heritage in peacetime is closely linked to the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage. This instrument was the first treaty to establish the term "*cultural heritage*" at the universal level [13]. In its preamble, the Convention states that "*cultural and natural heritage is increasingly threatened by the destruction caused not only by traditional causes of damage, but also by the evolution of social and economic life, which aggravates them with ever more dangerous, damaging and destructive phenomena*". It has also been observed that national measures by States are often insufficient to organize adequate protection of the site.

The 2001 UNESCO Universal Declaration on Cultural Diversity states in its preamble that "*the process of globalization, facilitated by the rapid development of new information and communication technologies, though representing a challenge for cultural diversity, creates the conditions for a new dialogue among cultures and civilizations*". [14].

The concept of cultural rights is further developed in the text of this international instrument. It stipulates that the protection of cultural diversity is inseparable from respect for human dignity, and implies a commitment to respect human rights and fundamental freedoms, particularly the rights of minorities and indigenous peoples (Article 4).

As technical diving equipment and so-called "*recreational diving*" have evolved the need to protect underwater archaeological and other historical sites has arisen. UNESCO therefore drafted and adopted the 2001 Convention on the Protection of the Underwater Cultural Heritage [15] (hereinafter "the 2001 Convention"). In its preamble, the Convention notes the need to "*respond appropriately to the possible negative impact on underwater cultural heritage of legitimate activities which may incidentally affect it*". The preamble notes moreover, the growing commercial exploitation of underwater cultural heritage sites as well as the "*availability of advanced technology that enhances discovery of and access to underwater cultural heritage*".

The 2001 Convention on the Protection of the Underwater Cultural Heritage is thus the first specific international legal instrument regulating the relations of States with respect to the protection of historic seabed sites.

Although a large number of international legal instruments on the protection of cultural property existed by the early twenty-first century, not all types of cultural heritage were covered. The protection of the traditional knowledge, customs and traditions of small and indigenous peoples, for example, had not been regulated under international law. For this reason, UNESCO adopted the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003. The objectives of the Convention are to protect and respect intangible cultural heritage, to raise awareness of the problems of safeguarding such heritage, to promote international cooperation and to provide assistance [16].

UNESCO's Declaration concerning the Intentional Destruction of Cultural Heritage was adopted in 2003 [17]. The Declaration was prompted by acts of vandalism against cultural heritage. One such act was the destruction of the Bamiyan Buddha statues by the Taliban in 2001. The specificity of the Declaration lies in the fact that its provisions apply in both peacetime and wartime.

The main purpose of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions [18] (hereafter, the 2005 Convention) is to protect and promote the diversity of cultural expressions embodied in *"cultural activities, goods and services"*, which become the modes of conveying of contemporary culture.

As the experts note, unlike the 2001 Declaration, which covers all aspects of cultural diversity, the 2005 Convention deals only with the specific aspects set out in Articles 8 and 11 of the 2001 Declaration. [19].

CONCLUSION

The authors have drawn the following conclusions in the course of this study.

1 The analysis of the history of international legal protection of cultural property revealed a number of preconditions for the emergence and development of the institution in question. It was found that armed conflict was the main prerequisite for the emergence of the international legal protection of cultural property. This is due to the fact that such property could not only be destroyed or damaged during an armed conflict, but also taken as trophy of war. The early periods of codification of the protection of cultural property therefore relate to the development and codification first of the customs of war at the national level, and later of The Hague and Geneva law.

2. The subsequent codification of the international legal protection of cultural property is linked to the need to protect such objects in peacetime.

The following factors have prompted the conclusion of new international instruments for the protection of cultural heritage within the framework of UNESCO

- growing numbers of illegal archaeological excavations;

- uncontrolled import and export of cultural property;

- the need to protect sites when carrying out public works and restoring and conserving valuable objects;

- natural disasters;

- an alarming increase in the intentional destruction of cultural property in peacetime.

3. In assessing the history of the codification of the international legal protection of cultural property, the authors give their own periodization of the stages of such codification:

Stage I: From the earliest times up to 632. It is characterized by the absence of international legal regulation of the protection of cultural property. The national law of individual states, however, contains rules on the protection of religious objects located on their territory.

Stage II: 632-1648. Similarly, while there is no international legal regulation of the protection of cultural property, an increasing number of scholarly works by noted thinkers of the time have focused on the protection of cultural and religious sites in the event of armed conflict.

Stage III: 1648-1874. With the advent of the Peace of Westphalia, increasing numbers of provisions in various instruments made provision for the return of objects to their States of origin. Initially this only applied to state archives and was later extended to works of art, displaced in the course of battles.

Stage IV: 1874-1954: Development of the law of the Hague, whose provisions also governed the protection of historical, scientific and cultural objects in time of armed conflict.

Stage V: 1954-1972. The period is considered by the authors to be intermediate in nature, prompted by UNESCO's work in elaborating international legal rules for the protection of cultural property. During this period a number of declarations and the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property were adopted.

Stage VI: 1972-present. Marked by the introduction of new terminology and universal conventions for the protection of cultural and natural heritage in peacetime. For the first time protection of intangible cultural heritage is enshrined at the universal level. Intensification of terrorist and other illegal acts aimed specifically at damaging and destroying cultural heritage has resulted in the need to ensure that intentional destruction of cultural property is countered.

The periodization proposed is based on specific historical developments relating to the formation of national rules of warfare, the evolution of legal scholarship in the context of the protection of cultural property, and the adoption of universal international agreements. Furthermore, the periodization of the history of international law, which has been developed by Russian international law scholars, including staff of the International Law Department of the Diplomatic Academy of the Russian Ministry of Foreign Affairs, has been taken into account.

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