

International Protection of Cultural Property in the Event of Armed Conflict

Elina N. Moustaira
Assistant Professor at the Faculty of Law
of the University of Athens

Contents

A. International Instruments concerning the Protection of Cultural Property in the Event of Armed Conflict

1. Hague Regulations 1907
2. 1954 Hague Convention and First Protocol
 - a. Convention
 - b. Protocol
3. Second Protocol 1999

B. Restitution of cultural property illegally removed during and following armed conflict

1. Pillaging of cultural objects as a means of predominance in armed conflicts
2. Appropriation of cultural objects as compensatory restitution
3. Possibility of cooperation between, on the one hand, the 1970 UNESCO Convention & the 1995 UNIDROIT Convention, and on the other hand, the 1954 Hague Convention and its two Protocols.

Conclusions

Cultural property was and is considered as the image of development of the historical existence of a State or a people¹. The taking away of another's people cultural property, influences the latter's cultural existence and at the same time has international consequences for the national cultural property.

A. International Instruments concerning the Protection of Cultural Property in the Event of Armed Conflict

1. Hague Regulations 1907

The confining of the right to take enemy cultural property has its origins in the writings of Hugo Grotius. It was Napoleon's defeat and the restitution of the cultural objects taken by France as a war booty that really turned the attention to the need for the protection of cultural property during and following war. The Codification of the Law of War on Land by the Hague Regulations in 1907 [International Conference of Peace, The Hague 15.6-18.10.1907] was a very successful one. The Regulations formulated humanitarian traditions, which were considered as an achievement of the community of nations at the turn of the century² and soon became universal customary international law as a result of general acceptance by the international community.

Art. 46 of the Hague Regulations, forbids confiscation of private property, art. 47 forbids pillage, art. 53 states that art objects cannot be seized, even if they are in a state-owned institution.

Art. 56, the most important article of the Hague Regulations, prohibits any unilateral seizure of cultural property and puts a clear limit to the previously permitted unlimited pillage³. It reads as following:

"The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings".

This article was formulated during the Hague Peace Conference of 1899 and was easily accepted in the final provisions of the Regulations of 1907⁴.

An important consequence of the article 56 is, that cultural property is not any more available as a part of a state's common property. Since the beginning of

¹ W. Fiedler, Safeguarding of Cultural Property During Occupation – Modifications of the Hague Convention of 1907 by World War II?, in: Legal Aspects of International Trade in Art (eds. M. Briat/J.A.Freedberg), The Hague 1996 [Legal Aspects of International Trade], 175, 179-180.

² W. Fiedler, Notes on the Development of the Protection of Cultural Property following Armed Conflicts, *Law and State* 1997, 82, 90.

³ It is based on Arts. VIII and XXXII of the Declaration of Brussels, 1874. F. de Martens is named as "father" of the Brussels Declaration, legal advisor of the Russian Department of Foreign Affairs 1869-1909. He also presided the Commissions formulating the Hague Regulations of 1899/1907. The 1874 Brussels Conference was convoked by Czar Alexander II of Russia. Russia also convoked the Hague Conference of 1899.

⁴ The two Hague Conferences, in 1899 and in 1907, were « l'apogée du processus de la valorisation de l'œuvre d'art même en temps de guerre », J. Belhumeur /A. Miatello/R. Severino, Les atteintes aux biens culturels italiens pendant les conflits armés, in: Legal Aspects of International Trade, 185, 192.

the 20th century, cultural property could not, as a general rule, constitute a subject of reparations.

At this point, it is worth mentioning that, notwithstanding the various activities and the achievements of UNESCO during the second half of the 20th century, the Hague Regulations retained their practical legal importance. In fact, together with the UNESCO Conventions, the Hague Regulations form a legal basis which allows the interpretation and the application of existing treaties in a way responding to the contemporary demands.

2.1954 Hague Convention & First Protocol

Following the World War II and due to the massive destructions of cultural property as well as the illicit removal of huge quantities of art objects, the need for a comprehensive international agreement about the protection of movable and immovable cultural property during and following war was felt. In 1954, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and a Protocol were adopted⁵.

a. Convention

The 1954 Hague Convention, a Convention of international humanitarian law⁶, defines cultural property in article 1. According to what seems as the right opinion, the term “cultural property” refers to each State party’s national cultural heritage, as defined by that party itself⁷, that is, tens of thousands of immovable cultural objects and millions of movables⁸.

It establishes two categories of protection, the “general” and the “special” protection, and it provides for the cases in which each protection may be set aside.

“Military necessity” is contained in the Convention concept, which provoked many vivid discussions, then, in view of adopting it, and afterwards, when many voices were heard, speaking about the inadequacy of the Convention to secure the protection of cultural property in the event of armed conflict.

In art. 4 par. 2, the Convention refers to “imperative military necessity”, and in art. 11 par. 2, reference is made to “unavoidable military necessity”. In the first case, the States party may use cultural property enjoying general protection and its immediate surroundings or appliances for military purposes and may proceed to hostilities against such property “where military necessity imperatively requires such a waiver”. In the second case, immunity of cultural property placed under special protection may be waived “only in exceptional

⁵ *J.Hladik*, The Review Process of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Impact on International Humanitarian Law, *Yearbook of International Humanitarian Law* 1998, 313-314.

⁶ *E. Stavraki*, La Convention pour la protection des biens culturels en cas de conflit armé. Une Convention du droit international humanitaire, Athènes – Komotini 1996, 11.

⁷ *E. Stavraki*, 47.

⁸ *R. O’Keefe*, The Meaning of “Cultural Property” and the 1954 Hague Convention, *Netherlands International Law Review* 1999, 26, 55.

cases of unavoidable military necessity” and “only for such time as that necessity continues”. Until 1999, only six cultural sites had been granted special protection under the Convention and they are, as required by the art. 8 par. 6, registered in the International Register of Cultural Property under Special Protection⁹.

It is clearly pointed out that the 1907 Hague Regulations “were in no way considered obsolete or having lost their binding character because of the massive violations during the World War II; rather, the 1954 Convention was understood to supplement and reinforce the earlier text, as is demonstrated by the explicit reference to the text of 1907 in the Preamble”¹⁰.

b. Protocol

This so called “revolutionary legal instrument”¹¹, adopted at the same time as the Convention, concerns the recovery of cultural objects after armed conflict. It establishes several duties of the States party, as for example a duty to prevent removal from the occupied territory (art. I-1), a duty to take into custody cultural property imported from an occupied territory (art. I-2), a duty to return cultural property (art. I-3), a duty to pay an indemnity to a holder in good faith, of any cultural property, which has to be returned.

These provisions were meant to be included in the Convention itself, but due to the reaction, on the one hand of UNIDROIT, which demanded that the private law provisions be excepted from the draft Convention, and on the other hand of the U.K. and of USA whose delegates declared that they would not be able to sign the Convention if it contained a section on restitution, it was decided that the said provisions be included in a Protocol. The irony is that neither U.K. nor USA ever became a party to either the Convention or the Protocol.

Of great importance is art. I-3, which reads:

“Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations”.

A proposal to place a twenty-year limitation on claims under the above article, was rejected at the Conference which adopted it¹², so one can easily support the opinion, according to which, claims under art. I-3 are not prescribed in time.

⁹ *J. Hladik*, The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the notion of military necessity, *International Review of the Red Cross* 1999, 621-635.

¹⁰ *T. Fitschen*, Licit International Art Trade in Times of Armed Conflict?, *International Journal of Cultural Property* 1996, 127, 129.

¹¹ *L. Prott*, The Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention) 1954, *in*: Legal Aspects of International Trade, 163.

¹² *J. Toman*, The Protection of Cultural Property in the Event of Armed Conflict, Commentary, Unesco 1996, 345.

According to one opinion, the Protocol creates an absolute right to restitution. According to another, though, more restrictive opinion, what the Protocol does, is to impose “a duty on the occupying Power to forbid any transactions that are contrary to the internal regulatory legislation of the occupied country”¹³.

3. Second Protocol 1999

Armed conflicts that have taken place since the entry into force of the 1954 Convention, such as in Cambodia, the Middle East or the former Yugoslavia, have revealed the deficiencies of the Convention, which deficiencies were due to several reasons: To begin with, the provisions of the Convention were covering cases of classical war between two or more states; nowadays, many armed conflicts are non-international. Furthermore, it had become obvious that it was very difficult to apply the control system of the Convention, that is, the Commissioners-General and the Protecting Powers. Finally, according to art. 28, it was up to the States Parties to adopt sanctions for the violation of the Convention’s provisions, something that perhaps never happened.

The development of international law since the entry into force of the 1954 Convention was another reason for considering an eventual revision of the Convention. This development consisted in the adoption in 1977 of two Protocols Relating to the Protection of Victims of International and Non-International Armed Conflict, respectively, additional to the Geneva Conventions of 1949, the creation in 1993 and 1994 of *ad hoc* international criminal tribunals for the prosecution of persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia and in Rwanda, and the adoption in 1998 of the Statute of the International Criminal Court (ICC)¹⁴.

Therefore, the review process started, after the publication, in 1993, of a study on the implementation of the 1954 Convention and was concluded on 26.3.1999, with the adoption by the Diplomatic Conference (15-26.3.1999), of the Second Protocol to the 1954 Hague Convention, a supplementary Protocol to the Convention, affecting only the rights and obligations between the parties to that instrument.

Unlike the 1954 Convention, it is applicable as a whole to situations of non-international armed conflict [art. 3 (1) & art. 22 (1)], and not as a minimum standard.

The Second Protocol, just like other international instruments adopted before it, uses the term “armed conflict” and not the term war, in order to cover more cases, in which it is not clear if war has been declared or not. It does not define the term “armed conflict”: It must therefore be interpreted according to customary international law, which explicitly continues to govern questions not

¹³ A. Gattini, The Fate of the Koenigs Collection: Public and Private International Law Aspects, *International Journal of Cultural Property* 1997, 81, 87-88.

¹⁴ T. Desch, The second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, *Yearbook of International Humanitarian Law* 1999, 63, 64.

regulated by the provisions of the Second Protocol, according to the 5th par. of the Preamble.

The term “armed conflict” has been defined by the International Criminal Tribunal for the Former Yugoslavia, in the case *The Prosecutor v. Dusko Tadic* (2.10.1995), as a situation of “*resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State*”.

According to the art. 4 of the 1954 Convention, the obligation to respect cultural property, that is, to refrain from any use of the property and its immediate surroundings for purposes which are likely to expose it to destruction or damage in the event of armed conflict and to refrain from any act of hostility directed against such property, may be waived, as already mentioned, “only in cases where military necessity imperatively requires such a waiver”. The problem is that it is not defined in the Convention, what constitutes “imperative” or “unavoidable” military necessity: therefore, every State Party must interpret these terms without any guidance.

Extensive discussions in the frame of the Diplomatic Conference for the Second Protocol, had as a result the art. 6 of the latter, which stipulates the following:

“.....

- a. a waiver on the basis of imperative military necessity pursuant to Art. 4 par. 2 of the Convention may only be invoked to direct an act of hostility against cultural property when and for so long as:
 - i. that cultural property has, by its function, been made into a military objective¹⁵; and
 - ii. there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective;
- b. a waiver on the basis of imperative military necessity pursuant to Art. 4 par.2 of the Convention may only be invoked to use cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage;
- c. ...
- d. ...”

The Second Protocol established a third category of protection, besides “general” and “special”, the “enhanced protection”. According to art. 10: “Cultural property may be placed under enhanced protection provided that it meets the following three conditions:

- a. it is cultural heritage of the greatest importance for the humanity;

¹⁵ Art. 52 of the Additional Protocol I 1977 introduced the term “military objective”, and it is: objects which, by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage, may be regarded as a legitimate military target and thus be attacked.

- b. it is protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection;
- c. it is not used for military purposes or to shield military sites and a declaration has been made by the Party which has control over the cultural property, confirming that it will not be so used.”

Enhanced protection, shall be granted to cultural property by the Committee [for the Protocol of Cultural Property in the Event of Armed Conflict, art. 24], from the moment of its entry in the International List of Cultural Property under Enhanced Protection. In principle, there is no possibility of a waiver of the obligation of the parties to an armed conflict to ensure the “immunity” of cultural property under enhanced protection.

Serious violations of the 1954 Hague Convention or of the Second Protocol, shall entail criminal responsibility under domestic law. This does not preclude individual responsibility under international law.

It remains to be seen whether the provisions of the Second Protocol will be more effective, in protecting cultural property in the event of armed conflict. As far as the beneficial effects of the Second Protocol are concerned, it is most interesting that more attention has been given to the 1954 Convention itself, so that many States have ratified the latter since the review process started and more are in the process of ratification¹⁶.

B. Restitution of Cultural Property illegally removed during and following armed conflict

1. Pillaging of cultural objects as a means of predominance in armed conflicts

It is rightly pointed out that the cultural monuments of states may play a significant role in the event of an armed conflict. According to recent reports, the armies of the enemy are often accompanied by bigger or smaller shadow armies, which, at the latest until the beginning of the war, have marked out the cultural objects of the enemy that should be removed or destroyed, and have set a list of them. So, it seems that the war is not anymore mainly a confronting of armies, but has been rendered a cultural struggle in a broad sense, a struggle that continues during military occupation and is led by experts of extremely high education¹⁷. The huge quantities of cultural objects which were transferred as a war booty during and after WWII, are the evidence of the fact that parts of an armed conflict used this conflict in order to

¹⁶ J.-M. Henckaerts, *New Rules for the Protection of Cultural Property in Armed Conflict*, *International Review of the Red Cross* 1999,

¹⁷ W. Fiedler, *Zwischen Kriegsbeute und internationaler Verantwortung – Kulturgüter im Internationalen Recht der Gegenwart. Plädoyer für eine zeitgemäße Praxis des Internationalen Rechts*, in: *Neues Recht zum Schutz von Kulturgut. Internationaler Kulturgüterschutz* (Hrsg. G. Reichelt) Wien 1997, 147, 151.

remove the cultural heritage of peoples and States and to transfer it in their territories¹⁸.

2. Appropriation of cultural objects as compensatory restitution

An issue of great importance is that of restitution of cultural objects illegally removed during World War II. Especially as regards two States, Germany and Russia – successor of Soviet Union – complications have arisen. The Germans, following the plans of Hitler to build a unique museum in Linz, proceeded, in the States occupied by them, to illicit removals of huge quantities of cultural objects. At the Nuremberg trials, several individuals were convicted for pillaging cultural property after the Tribunal declared that the Hague Regulations 1907 had become customary international law¹⁹.

Stalin, on the other hand, after World War II, or even before the end of it, emptied nearly all museums, collections, archives in his zone of occupation and those cultural objects remained hidden during 40 years. Germany, as well as other States too – e.g. The Netherlands, Hungary, Poland – were asking for the restitution of millions of art objects removed during or after the WWII²⁰.

At this point, it is worth mentioning that eventual disagreements about whether the applicable law to the issue of restitution of illegally removed art objects is the *lex rei sitae* or the *lex originis*, are inappropriate in the case of art objects which were rendered war booty: in that case, the *lex originis* is unanimously considered as the applicable law²¹.

On 12.9.1990, USSR and Germany signed the “2+4” Moscow treaty on the Final Settlement with Respect to Germany. This treaty has been considered by some as a definitive renouncement of all reparations claims against Germany²². On 9.11.1990 a Friendship Treaty was signed between the USSR and the Federal Republic of Germany and on 8.7.1993 a Convention on Cultural Cooperation was signed between the RF and the FRG. Art. 16.2 of the former, and art. 15 of the latter, oblige the two parties to return lost or illegally transferred cultural objects²³.

¹⁸ W. Fiedler, *in*: Legal Aspects of International Trade, 176.

¹⁹ M.L. Turner, The Innocent Buyer of Art Looted During World War II, *Vanderbilt Journal of Transnational Law* 1999, 1512, 1531.

²⁰ A. Gattini, Restitution by Russia of Works of Art Removed from German Territory at the End of the Second World War, *European Journal of International Law* 1996, 67, 75-76.

²¹ E. Jayme, Kunstwerke als Kriegsbeute: Restitution und Internationales Privatrecht im deutsch-französischen Rechtsverkehr, *IPRax* 1995, 260, *idem*, Anknüpfungsmaximen für den Kulturgüterschutz im Internationalen Privatrecht, *in*: Etudes en l'honneur P. Lalive, Basel/Frankfurt am Main 1993, 717, 724.

²² I. Seidl-Hohenveldern, Das Ende der Reparationen nach dem Zweiten Weltkrieg, *Verfassungsstaatlichkeiten*, FS K. Stern, München 1997, 92.

²³ W. Kowalski, Current Problems of Restitution and Reparation of Works of Art: The Polish Experience, *in*: Legal Aspects of International Trade, 209, 210. On the possibility of inter-State cooperation for the restitution of cultural property, illegally removed during or following armed conflict, see F. Coulee, Quelques remarques sur la restitution interétatique des biens culturels sous l'angle du droit international public, *Revue Générale de Droit International Public* 2000, 359-392.

In 1998, a Law on Cultural Valuables Transferred into the USSR as the Result of the Second World War and Remaining in the Russian Federation was adopted. The law declares federal property of the Russian Federation “all cultural values located in the territory of the Russian Federation that were brought [as a result of World War II] into the U.S.S.R. by way of exercise of its right to compensatory restitution” (art. 6), “pursuant to orders of the Soviet Army Military Command, the Soviet Military Administration in Germany or instructions of other competent bodies in the U.S.S.R. (art. 4). As “cultural values” are meant “any property of a religious or secular nature which has historic, artistic, scientific or any other cultural importance” (art. 4).

The question was, and still remains, if this law violates the 1954 Hague Convention, which had been ratified by the Soviet Union on 4.1.1957. According to one opinion, that could not happen, since Soviet Union had seized these cultural objects more than 10 years before the entry into force of the 1954 Convention, the art. 23 of which explicitly states that the Convention does not apply to events which occurred prior to its entry into force, and it is not certain that the art. 1-3 of the First Protocol, which states that cultural property “shall never be retained as war reparations”, has become customary international law. According to the same opinion, the answers depend on whether a peace treaty has been signed or not. Those who support this opinion, accept that every art object is unique and irreplaceable by another one, but believe, nevertheless, that sometimes the states have the right to “reparations by replacement”. At the same time, though, they are aware of the fact that, on the one hand the creditor is always free to accept any kind of compensation to settle its claim, but on the other hand it is doubtful whether one can impose such a compensation on the debtor, without the debtor’s consent²⁴.

According to what seems as the right attitude, international law dictates that the transferred to Russia art objects be returned to Germany. After all, the treaties condemn all pillaging, no matter what the circumstances were. What is most interesting is, that it was the Allies themselves who concluded that seizure of art as compensation was inappropriate and against international law²⁵. Furthermore, as it is pointed out, the 1954 Hague Convention itself is “a strong indication, if not a proof, that there is no principle of compensatory restitution, at least not concerning cultural objects”²⁶.

3. Possibility of cooperation between, on the one hand, the 1970 UNESCO Convention & the 1995 UNIDROIT Convention, and on the other hand, the 1954 Hague Convention and its two Protocols

²⁴ P.D’Argent, La loi russe sur les biens culturels transférés. *Beutekunst*, agression, réparations et contre-mesures, *Annuaire Français de Droit International* 1998, 114, 133-134, *ibid*, The Russian Law on Removed Cultural Property: Some International Law Remarks, *Spoils of War*, No 4.

²⁵ S.A. Stuhl, Spoils of War? A Solution to the Hermitage Trove Debate, *University of Pennsylvania Journal of International Economic Law* 409, 437 (1997).

²⁶ A. Blankenagel, Eyes Wide Shut: Displaced Cultural Objects in Russian Law and Adjudication, *East European Constitutional Review* 1999.

Considering the relationship between, on the one hand, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and on the other hand, the 1954 Hague Convention and its two Protocols, as far as the States members of these instruments are concerned, one has no doubt that the 1954 Convention and its two Protocols are the applicable *lex specialis* in case of armed conflict. However, as far as the States which are not members of the 1954 instruments, are concerned, it seems that the 1970 Convention and the 1995 Convention could be applied in case of armed conflict, although their scope is mainly the restitution of cultural property in time of peace. Art. 11 of the 1970 Convention explicitly provides that the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of the country by a foreign power shall be regarded as illicit²⁷. It is also possible that the restitution procedure is based on two international instruments, as in the case of Cambodia, in which the 1954 Protocol and the 1970 Convention were applied. According to a very interesting opinion, this concurrent application of separate instruments is very useful because, as in the above case, the two mentioned instruments, and perhaps also the 1995 Convention, are not only complementary, as far as their principles are concerned, but they also have a rather large scope of application, which may concern various categories of cultural objects. Furthermore, since the international customary law is uncertain as far as the issue of restitution is concerned, which is not the case, as far as the substantive protection of the cultural object is concerned, it is mostly valuable to be able to apply the 1970 Convention or the 1995 Convention, when the 1954 Protocol is not applicable. If the latter is applicable, we might also prefer to interpret its provisions in the light of the contemporary and detailed rules of restitution.

According to the same opinion, the fact that neither the 1954 Protocol nor the 1970 and 1995 Conventions have retroactivity force, must not be interpreted as “an approval or a legitimization of an illegal circulation, taken place before [the international instruments’] entry into force”²⁸. And that argument may also be extended to the other international instruments concerning protection of cultural property.

In the case *Autocephalus Church v. Goldberg & Feldman Arts*²⁹, a judge, in his concurrent opinion, referred explicitly to both the 1954 Hague Convention and the 1970 UNESCO Convention³⁰.

In a recent case before a first instance court in The Netherlands, *The Autocephalus Greek Orthodox Church in Cyprus v. Willem O.A. Lans*, the

²⁷ E. Clement, UNESCO : Some Specific Cases of Recovery of Cultural Property after an Armed Conflict, *in*: Legal Aspects of International Trade, 157, 158.

²⁸ G. Carducci, L'obligation de restitution des biens culturels et des objets d'art en cas de conflit armé : Droit coutumier et droit conventionnel avant et après la Convention de La Haye. L'importance du facteur temporel dans les rapports entre les traités et la coutume, *Revue Générale de Droit International Public* 2000, 289, 351-352.

²⁹ 917 F.2d 278.

³⁰ K. Siehr, Völkerrecht und Internationaler Kulturgüterschutz vor Gericht, *in*: Recht und Kunst, Heidelberg 1996, 57, 70.

Church of Cyprus claimed the restitution of four icons, which had been in the possession of the Antiphonitis Church in Northern Cyprus and after the Turkish occupation in July-August 1974 disappeared.

The court concluded that the Church was indeed the owner of the icons until July-August 1974, but afterwards it had to decide whether the provisions of the 1954 Protocol are directly applicable with regard to the export of cultural property from occupied territory. It came to the conclusion that, on the one hand, the art. I-4 of the Protocol did not grant a right to, nor did it impose obligations upon the individual legal person, and on the other hand, the provisions of the Protocol had not been implemented in Dutch law, as art. III-11 of the Protocol stipulates. Therefore, it dismissed the Church's principal argument that it had retained ownership of the icons on the basis of the 1954 Convention and Protocol.

It seems that this is the first case in which, the First Protocol has been invoked by a party to a private law suit. The Protocol does not provide for the resolution of such procedural issues, as how the indemnity of the holder in good faith could be claimed – a question of private law.

The Court examined whether the defendant had acted in good faith at the time he had acquired the icons, and it did so, "in accordance with the requirements of art. 4 (4) of the UNIDROIT Convention, although it did not expressly refer to this Convention in its considerations". This case shows clearly how difficult the international restitution of cultural property is. In a commentary on this case, a somewhat similar to the above mentioned opinion is expressed, according to which, the provisions of the two, private law Conventions on illicit traffic, should be of assistance to State's legislation for the implementation of the first Protocol to the 1954 Convention³¹.

Conclusions

It is properly stressed out that, "while human life is still more important than objects, it is nevertheless essential to have rules protecting cultural property, as such objects constitute the collective memory of humanity, examples of its greatest achievements, and symbolize human life itself. If cultural property is destroyed, civilian life suffers greatly as well"³².

As far as the facilitation of the return of cultural stolen objects after an armed conflict is concerned, it is rather obvious that the ratification of the existing Conventions would help as well as the political will of the countries concerned and of the international community to supply sufficient financial and human resources to this aim.

Last but not least, it is also mostly important, that the art market and museum professionals retain a so called "strict ethical attitude"³³, and either do not proceed in transactions concerning cultural objects of uncertain provenance or inform the States or peoples concerned, about cultural objects offered to

³¹ S. Matyk, The Restitution of Cultural Objects and the Question of Giving Direct Effect to the Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, *International Journal of Cultural Property* 2000, 341, 343.

³² J.-M. Henckaerts, *International Review of the Red Cross* 1999, 620.

³³ E. Clement, *in*: Legal Aspects of International Trade, 162.

them for sale, which objects, to their knowledge, could have been art looted in the event of armed conflict.