

## CULTURAL HERITAGE AND THE PROGRESSIVE DEVELOPMENT OF THE INTERNATIONAL LEGAL SYSTEM

<https://doi.org/10.5281/zenodo.19418524>

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### **Annotation**

This article provides a chronological analysis of international legal instruments ratified and implemented in the late 19th and early 20th centuries for the protection of historical and cultural monuments. It also examines the role of these normative documents in the protection of movable and immovable cultural property.

### **Keywords**

cultural heritage, monuments, Athens Charter, Hague Convention, Roerich Pact, protection, ratification, international normative legal documents.

By the early 20th century, many countries had developed national-level policies for the protection of cultural heritage. However, national legal norms often conflicted with each other at the international level. As a result, the need to establish an international system for the protection of monuments and works of art grew increasingly urgent. This issue was frequently discussed at conferences, congresses, and various meetings attended by experts working in the field of heritage protection.

The "First International Congress for the Protection of Monuments and Works of Art," held in Paris in 1889 under the chairmanship of architect Charles Garnier as part of the World Exhibition, went down in history as the first meeting dedicated solely to the preservation of cultural heritage. It was organized thanks to the efforts of the "Friends of Parisian Monuments" (Amis des Monuments Parisiens), a society founded in 1885 and led by Charles Normand[1].

The members of the organization and their supporters advocated for cautious approaches to conservation, opposing the ideological stance of the French Commission for Historical Monuments, which was based on the stylistic restoration principles announced in the mid-19th century by Viollet-le-Duc. The congress was attended by representatives from Europe, Asia, Africa, Latin America, and North

America. Among the participants from the Russian Empire were the sculptor Mark Antokolsky, Vice Admiral I.F. Likhachyov, and Countess P.S. Uvarova.

In the study of cultural heritage protection (preservation), two distinct approaches – historical and theoretical-methodological – stand out clearly. The first approach encompasses the history of studying cultural heritage, while the second involves theoretical developments in the field of terminology, scientific criteria for evaluating monuments, and the characterization of heritage preservation as a type of interdisciplinary knowledge[2].

The beginning of international cooperation in the field of cultural heritage preservation is linked to the activities of the International Council of Museums (here in after referred to as ICOM). Its origins trace back to France's 1922 proposal to establish an International Committee on Intellectual Cooperation within the framework of the League of Nations.

In 1926, with financial support from France, the International Institute of Intellectual Cooperation was established in Paris. It effectively became the working body of the committee and part of the League of Nations' permanent secretariat. The committee ceased its activities in 1939, while the institute continued functioning until 1940. It was later reopened in 1945 and concluded its work in 1946, transferring its functions to the newly established UNESCO[3].

At the congress, Charles Normann for the first time proposed the idea of signing an international convention for the protection of cultural heritage during wartime and establishing a Red Cross organization for monuments.

Forty years later, the painter, philosopher, and public figure Nikolay Roerich once again brought forward the idea of establishing the Cultural Red Cross organization. The congress participants raised important issues such as the theft and illegal removal of cultural assets; preserving the original condition of monuments during restoration; creating international archives of historical plans and drawings; and the necessity to review domestic laws related to providing the wider public with drawings, models, or photographs of monuments when they are damaged.

The 1889 congress laid the foundation for the main directions in the development of cultural heritage protection in the 20th century. During the discussions, a number of ideas and reflections were expressed that later became the modern philosophy of protecting cultural and natural heritage[4].

The first Congress of Architects and Experts on the Protection of Historical Monuments, held in Athens in 1931, became one of the initial significant steps in the activities of ICOM. At the conclusion of the congress, the Athens Charter for the Restoration of Historic Monuments was adopted. The Athens Charter recognized

the artistic heritage of past eras as an absolute value and treasure. It emphasized the superiority of preserving and conserving monuments in their original state rather than restoring them, stressing that restoration should be considered a last resort.

To ensure the implementation of the program established in Athens, in 1933 an International Committee on Historic Monuments was formed as a branch of ICOM. This committee became one of the practical outcomes of the Athens Congress. The committee included representatives from national government bodies responsible for fine arts and historic monuments[5].

The act of the conference held in Cairo initiated international cooperation in the field of archaeology and had a significant impact on the formation of internal regulations in this area. Its rules were supplemented and expanded in the 1956 Recommendations on the International Regulation of Archaeological Excavations, adopted by UNESCO. The European Convention on the Protection of the Archaeological Heritage, adopted in 1969 and revised in 1992, became the next step in this field.

The issues of regulating archaeological excavations and combating the theft and illegal export of cultural assets sharply brought this problem to the forefront. Already in the 1930s, there were initial attempts to address this issue at the international level. By that time, many countries had established internal regulations related to this matter. States sought to protect their national treasures by creating lists of highly valuable items whose export was prohibited; developing internal classifications of artworks to restrict their sale abroad; and imposing criminal penalties and heavy fines for illegal export [6].

After the end of World War I, which caused economic and financial decline, the risk of mass export of artworks emerged. For this reason, many countries tightened their laws on the export of cultural assets, which caused dissatisfaction not only among collectors and art dealers but also among the owners of artworks. For example, in 1920, France passed a law, unpopular with many, prohibiting the export of all artworks and historical items representing national interests without permission from the Ministry of Public Education and Fine Arts. Objects allowed for export were subject to a fee of up to 25% of their appraised value[7].

The Austrian federal law of January 24, 1923, prohibited the export of historical, artistic, or cultural valuables, including works by living authors or those who had passed away less than 20 years prior. However, the adoption of this law proved insufficient to protect national treasures from the increasing forced sales. In the severe financial decline, the government was often compelled to permit the sale and export of these valuables.

However, despite these issues being detailed in national regulations, the legal framework of the 1930 s was unable to guarantee the return of stolen or illegally exported cultural assets. International law was also ineffective in providing adequate protection for works within national collections. It was practically impossible to resolve conflicts between national laws; it became clear that these matters could only be addressed within the framework of international agreements in this field.

Captain D. Fiorili was among the first to emphasize the need for additional international guarantees for cultural assets at the International Art Congress held in Venice in 1905. From that time, this idea began to gain support and develop among the public and academic circles. In the 1930 s, this issue became a subject of consideration by the International Council of Museums, which prepared several drafts of international conventions concerning the return of lost, stolen, and illegally exported cultural assets[8].

The first draft, consisting of 12 articles and developed in 1933, received broad support from the International Institute of Intellectual Cooperation, the League of Nations Council and Assembly, and the governments of many countries. However, the United States, Great Britain, and the Netherlands did not support the draft. As a result, in 1936, a revised and expanded version of the draft containing 25 articles was produced.

Already in the 19th century, various international regulations dedicated to war included some recommendations aimed at the preservation of historic monuments. The Brussels Declaration on the Laws of War, adopted at a conference convened at the initiative of Russia in 1874, was the first international legal document to provide for the possibility of holding parties accountable for damage caused to cultural assets. Although this declaration was never ratified, it played an important role in the development of the international convention on the laws and customs of war on land, adopted at the Hague Peace Conferences in 1899 and 1907[9].

Article 27 of the 1899 Convention stipulated rules that, during sieges and bombardments, measures should be taken, as far as possible, to avoid damaging places of worship, buildings serving scientific, artistic, and charitable purposes, historical monuments, hospitals, and places where the sick and wounded are gathered—provided that these buildings and places are not simultaneously being used for military purposes. This provision was included in the Fourth Hague Convention on the Laws and Customs of War of 1907 with the same content. However, the failure to apply these norms to monuments became evident during the First World War, when monuments in France and Belgium were seriously damaged and destroyed. Among them were a fifteenth-century Gothic church

located in Leuven, the library of the ancient University of Leuven in Western Europe was destroyed; the cathedral in Reims was seriously damaged; and the towns of Ypres and Arras were brutally bombarded.

At the end of the First World War, the public took the next step in this direction. The proposed projects stood out for their high adaptability to the new conditions of warfare. On April 15, 1915, at a public meeting held in Geneva, Professor F. Vetter of the University of Bern and Professor Paul Morio of the Faculty of Law at the University of Geneva presented proposals aimed at resolving this issue. They put forward the idea of establishing an international organization called the "Golden Cross" to oversee the implementation of measures for the protection of architectural monuments during wartime. According to them, the head of a neutral state or the president of the International Court of Justice in The Hague should have the mandate to prohibit the use of monuments for strategic purposes by the warring parties[10].

It was also proposed to mark monuments with distinctive signs. These ideas were further developed on August 15, 1915, at the Brussels Conference. Representatives from Germany, Austria-Hungary, and Switzerland analyzed the monument protection and marking program proposed in Geneva. The plan to establish an international commission for the protection of monuments during wartime was the outcome of the conference.

The projects of the Dutch Archaeological Society and the Hague Commission of Jurists stood out for their clarity and thorough consideration of all aspects. In 1918, the Dutch Archaeological Society prepared a report calling for the regulation of the protection of historical and artistic monuments during wartime through a special convention, which it submitted to the Dutch Ministry of Foreign Affairs along with a draft of such a convention. The draft linked the effectiveness of protecting cultural heritage directly to measures taken to safeguard it during peacetime. The idea was put forward that preserving certain monuments during war would be possible by protecting their surrounding environment. Based on this, it was proposed to declare cities with large collections of cultural wealth – such as Rome, Paris, Florence, and Venice – as demilitarized zones[11].

The Hague Commission of Jurists, composed of representatives from England, France, the Netherlands, Italy, Japan, and the United States, developed rules for conducting aerial warfare between 1922 and 1923, in which they proposed special protection for cultural monuments of particular value. Among other things, it was suggested to mark protected buildings with a symbol consisting of two triangles, one white and one black. A proposal was also made to establish special protected zones around famous monuments with a radius not exceeding 500 meters. Despite

this, the Hague rules on aerial warfare were never adopted[12]. However, in the second half of the 1930 s, the League of Nations took this very draft as a basis for developing a convention project on the protection of monuments during wartime.

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