

**International approaches to classification of the objects
of the world cultural and natural heritage protection**

Abstract: It is considered some aspects of a system of international legal acts concerning the cultural heritage protection. Role and significance of the Convention Concerning the Protection of the World Cultural and Natural Heritage adopted on 16 November 1972 are analyzed. It is examined the particularities of the objects' classification of the protection of the world cultural and natural heritage in the international documents and some national legislation systems (Russian Federation, Ukraine, Belarus, Azerbaijan). Peculiarities of this effective mechanism of the protection of cultural and natural heritage of regulating of “the List of World Heritage” are considered.

Keywords: culture; cultural heritage; natural heritage; List of the World Heritage.

Awareness of the international community the critical importance of the protection of cultural values and the preservation of the natural environment contributes to the fact that this sphere of human activity is becoming a subject of international legal regulation [6]. The report [7] noted that at the of the 20th century in international law, there were more than 100 international instruments of universal and regional character, regulating the identification, conservation, preservation, study and promotion of cultural values. Some aspects of the problem of international legal regulation of the world's tangible cultural and natural heritage considered in the Russian Federation (RF) [1-3, 7, 8, etc.], the Republic of

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Belarus [5] and Ukraine [6, 9, etc.] as well as in the Republic of Azerbaijan [4]. Thus, in the review carried out by the Ministry of Culture and Tourism of Azerbaijan Republic [4] pointed out that the national lawmaking preceded by searching and finding relevant laws of other countries, a thorough study of the situation, the existing problems and deficiencies in the sphere in the country, which is to be adjusted preparing law. In preparation of every law necessarily also take into account the relevant international conventions... in the preparation of each is in the discussion of the law put such basic tasks as compliance with these laws, standards and practices of developed countries, compulsory reflected in their cultural priorities of the Council of Europe, as well as the realities and specific features Azerbaijan, which pursued the main goal – to achieve efficiency and effectiveness of the laws of harmony spirit of the times, to ensure the rights and interests of all subjects of cultural activities closer to the contemporary domestic and international requirements.

Thus, the study of international legal experience in the area of the material world cultural and natural heritage is important.

One of the key and universal international legal instruments in this area is Convention Concerning the Protection of the World Cultural and Natural Heritage on 16.11.1972. Wherein for the purposes of this Convention, the following shall be considered as “cultural heritage”:

- 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.

It should be noted that the official (legitimate) definition “cultural heritage” in the legislation of the Russian Federation, Belarus, Ukraine and Azerbaijan have a certain originality compared with conventional definition. Thus, according to article 3 Federal Law of the Russian Federation from June 25, 2002 of No. 73-FZ “About objects of the cultural heritage (monuments of history and culture) people of the Russian Federation”¹, objects of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation (hereinafter – the objects of cultural heritage) in order hereof include real estate objects (including objects of archaeological heritage) with associated works of painting, sculpture, arts and crafts, objects of science and technology and other artefacts resulting from historical events, which are valuable from the point of view of history, archeology, architecture, urban planning, art, science and technology, aesthetic, ethnological or anthropological, social, cultural, and are evidence of epochs and civilizations, genuine sources of information about the origin and development of culture.

Cultural heritage, in accordance with this Federal Law are divided into the following types: monuments - separate buildings and buildings with historically developed areas (including the sites of religious significance: churches, bell towers, chapels, cathedrals, churches, mosques, Buddhist temples, pagodas , synagogues, prayer houses and other facilities built for worship); memorial apartment; mausoleums, individual burial; works of monumental art; objects of science and technology, including the military; objects of archaeological heritage; Ensembles – clearly localized to the historical areas groups of separate or connected monuments, buildings and structures of fortification, palace, residential, public, administrative, commercial, industrial, scientific and educational purposes, as well as monuments and religious buildings (temple complexes, datsans monasteries, monastery), including fragments of historical developments and planning of settlements, which may be attributed to the urban ensemble; works of landscape architecture and garden art (gardens, parks, squares, boulevards), cemeteries; objects of archaeological heritage; attractions – creation by man or the

¹ quoted: <http://cis-legislation.com/document.fwx?rgn=3103>

combined works of man and nature, including the place of folk arts and crafts; centers historical settlements or fragments of urban development planning and development; memorial sites, and cultural landscapes associated with the history of the formation of peoples and other ethnic communities in the Russian Federation, historical (including the military) events, life of outstanding historical figures; objects of archaeological heritage; the place of the religious rites.

According to article 1 of the Law of Ukraine “On Protection of Cultural Heritage”², “an object of cultural heritage” is a prominent place, a construction (creation), a complex (ensemble), their parts, related movable items, and also territories or water objects, other natural, natural-and-anthropological or created by people objects, irrespectively of safe keeping condition, that preserved until our time its values from archaeological, aesthetic, ethnological, historical, architectural, creative, scientific or art point of views and have saved their authenticity.

According to article 2 of the Law of Ukraine, constructions (works) – works of architectural and engineering art, works of monumental sculpture and monumental painting, archaeological objects, caves with existing evidence of human vital activity, buildings or their inside, that have preserved authentic evidence of remarkable historical events, life and activity of known persons; complexes (ensembles) – to pographically defined aggregates of separate or joint objects of cultural heritage; remarkable places – zones or landscapes, natural-anthropogenic creations, that have brought to our time value from archaeological, aesthetic, ethnological, historical, architectural, creative, scientific or art views.

However, in the general definition of “cultural heritage” in the 1972 Convention on the one hand, and the legislation of the Russian Federation and Ukraine, on the other hand, it is that by “cultural heritage” means tangible immovable objects of cultural value . In this sense, the concept of “cultural

² quoted:

http://www.unesco.org/culture/natlaws/media/pdf/ukraine/ua_law_protection_cultural_heritage_engtof.pdf

heritage” originally defined in the Act of 09.01.2006, № 98-Z “On protection of historical and cultural heritage of the Republic of Belarus”³. According to article 12-14 of this law, historical and cultural values are divided into the following types: material historical and cultural values, which is the material embodiment of their contents; non-material historical and cultural values, which materializes has no significant influence on their contents. Tangible historical and cultural treasures include documentary monuments – acts of state bodies, other written and graphic documents, sound recordings and film and photo, and other ancient manuscripts, archival documents, rare prints; recreational areas – topographically delineated areas or landscapes created by man, or man and nature; archaeological monuments – the remnants of the fortified settlements (ancient cities, settlements, castles), unfortified settlements (ancient sites, settlements and individual housing); buildings, structures, and other objects (shrines, places of worship, monasteries, churches); crosses, cult stones, statues, obelisks; burial and burial ground, the individual graves, cemeteries, mausoleums and other burials; infrastructure of land, water and Volokovaya water-ways; monetary and real treasures along with other fixed and (or) mobile artifacts preserved in the cultural layer, as well as in natural and artificial reservoirs; monuments – buildings, structures and other objects of commercial, industrial, military, or religious purpose, the individual or combined into complexes and ensembles (including the environment), the objects of folk architecture, as well as associated with these objects works of fine art, crafts, garden-park art; historical monuments – buildings, constructions and other objects (including the territories), associated with important historical events, the development of society and the state, international relations, the development of science and technology, culture and way of life, the life of political, governmental, military leaders, scientists, literature and art; monuments to urban planning – development, planning structure or fragments of settlements (with the environment, including cultural layer). Monuments of urban development, as a rule, are complex historical and cultural values; works of art – a

³ quoted: <http://www.pravo.by/main.aspx?guid=3871&p0=H10600098&p2={NRPA}>

work of fine art, crafts and other art forms. Tangible historical-cultural values are divided into: tangible immovable historical and cultural values, the movement of which in the space requires the implementation of engineering measures, leading to partial or complete loss of their distinctive spiritual, artistic and (or) documentary merits; movable material historical and cultural values, the movement of which in space is not associated with a change in their distinctive spiritual, artistic and (or) documentary merits. The intangible historical and cultural values include the customs, traditions, rituals, folklore (folklore), language, its dialects, heraldic content, toponymic objects and works of folk art (folk arts and crafts), other intangible manifestations of human creativity.

Thus, the Belarusian legislation, unlike the 1972 Convention, the term “cultural heritage” encompasses a wide range of cultural property, including movable tangible assets, intangible cultural heritage. In this sense, the law is adjacent to the Belarusian Law of Azerbaijan Republic “On protection of historical and cultural monuments”⁴. In article 2 of this law the concept of historical and cultural monuments to be protected, covered archaeological and architectural objects, ethnographic, numismatic, epigraphic, anthropological materials related to historical events and personalities of the building, memorable places and objects related to the religious beliefs of the people of value. It is pointed out that the monuments can be movable (sliding) and immovable (stationary). Movable monuments are kept in museums, archives, collections, exhibitions and other related places, immovable monuments, being in most cases, archaeological and architectural monuments, are stored in the location and creation.

Thus, as in the Law of the Republic of Belarus cultural heritage in the broadest sense it is covered by a wide range of cultural values, including immovable monuments, movable tangible assets, intangible cultural heritage.

Types of monuments mentioned in the article 2 of the Law of the Republic of Azerbaijan “On Preservation of Historical and Cultural Monuments” are defined as follows: a) archaeological sites – under the earth and associated with human

⁴quoted on: mct.gov.az/dc/id/14/langf/ru/

activity patterns of material culture, including a parking lot and the home of primitive man, ancient tombs, defense systems and fortifications, places of pilgrimage, a variety of antiquities, monuments, religion and memorials, rock carvings and inscriptions on the surface stones, traces of ancient mines, hand tools, industrial furnaces, the ancient road, the remains of bridges, canals, ponds and kyarizes, water, sewerage, etc.; b) architectural monuments – enough preserved in its space-planning decisions of construction, architectural and construction buildings for various purposes, auxiliary facilities, engineering services; monuments settlements (settlements); settlements, most of whose territory is occupied by the monuments and buildings of architectural, historical and cultural crafts, divided into traditional neighborhoods, and sometimes surrounded by walls, with partially preserved network of streets and utilities, gardens-parks, alleys, examples of art; newly created architectural monuments; durable due to its space-planning, artistic and aesthetic, functional and operational and technical and constructive solution; architectural building and construction of small architectural forms; monuments, obelisks, fountains, waterfalls, springs, pools, gazebos and other objects of art that occupy a special position in the territory; c) historical monuments – the values associated with the history of society and the state, the war and the national liberation movement, with the scientific and technical development, with important historical events in the life of the people, buildings, apartments, memorial sites, documents and objects related to the life government and military officials, Heroes of the Soviet Union, National Heroes, prominent figures of science and art; ethnographic monuments – facilities and tools, items reflecting material, spiritual, ideological, artistic and economic life of the people; epigraphic monuments – with the inscription different patterns of stone, clay, wood and metal; d) document monuments – the official acts of state bodies, ancient manuscripts and rare printed works, archives, including sound, photographic and cinematographic archives; e) works of art – with historical and aesthetic value of art, graphic designs, samples of arts and crafts; f) reserves – the state protected territory or the settlements that are important for the history and culture; g) the

zone of protection of monuments – additional control zones established depending on the nature of the monument around the site of their location, to do no harm appearance of the monument.

It should be noted that the comprehensive coverage of tangible cultural heritage is provided by the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 (The Hague, 14.05.1954). For the purposes of the present Convention, the term “cultural property” shall cover, irrespective of origin or ownership:

(a) 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 of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as “centers containing monuments”.

However, this Convention provides for the protection of cultural heritage in the extreme case of military action and describes the ways to protect cultural heritage in times of peace (except aspects of the preparation in peacetime to protect them in the event of hostilities).

The protection of movable cultural heritage are discussed in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (Paris, 14.11.1970). The main threat in this Convention shall be considered illicit trafficking in movable cultural property. In this respect, protection of cultural values is apparent

specificity compared to the protection of immovable cultural property, although it may interfere with the latter, particularly when it comes to the destruction of immovable cultural property and their inclusion in the “black” turnover in parts.

In addition, at the level of the United Nations (UNESCO) 17.10.2003 was adopted a separate “Convention for the Safeguarding of the Intangible Cultural Heritage”. In particular, according to paragraph 1, of the article 2 of the Convention, the concept of “intangible cultural heritage” means the 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.

There is also seen a specificity of protection compared with the immovable cultural property.

However, this article discusses the features of the protection of material objects of immovable cultural heritage sites, protected under the 1972 Convention.

To solve the conventional problems concerning the protection of the listed objects, participants of the 1972 Convention have undertaken certain obligations. In particular, each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Thus, with respect to the cultural and natural heritage of the state - parties to the Convention recognized the need to restrict its sovereignty on the action with respect to said legacy, putting it under the control of the international community.

The Convention proposed international practice to protect the cultural heritage of such an effective mechanism, as the compilation of so-called “World Heritage List” (para. 2, Art. 11 of the Convention). It is noted not only the great spiritual significance of the inclusion of certain objects in the specified list, and its

economic importance in terms of attracting tourists to the country. The list includes the value of cultural and natural heritage sites which are of outstanding universal value in accordance with the criteria established by the World Heritage Committee, referred to in article 8 of the Convention.

The procedure for drawing up the World Heritage List, as well as the obligations of States on the protection of this heritage is established Operational Guidelines⁵ for the Implementation of the World Heritage Convention. The document states that the proposals for the inclusion of properties in the “World Heritage List” serve the State in which these objects are (Art. 7). When a series of cultural or natural properties consists of properties situated in the territory of more than one State Party to the Convention, the States Parties concerned are encouraged to jointly submit a single nomination. (Art. 20). It emphasizes the importance of local participation in the nomination process, to make them feel a shared responsibility with the State Party in the maintenance of the site (Art. 14).

A monument, group of buildings or site – as defined above – which is nominated for inclusion in the World Heritage List, will be considered to be of outstanding universal value for the purpose of the Convention when the Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore (Art. 24):

- (i) represent a masterpiece of human creative genius; or
- (ii) exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design; or
- (iii) bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared; or
- (iv) be an outstanding example of a type of building or architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history; or

⁵ quoted: <http://whc.unesco.org/archive/opguide02.pdf>

(v) be an outstanding example of a traditional human settlement or land-use which is representative of a culture (or cultures), especially when it has become vulnerable under the impact of irreversible change; or

(vi) be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance (the Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances and in conjunction with other criteria cultural or natural).

With respect to groups of urban buildings, the Committee has furthermore adopted the following Guidelines concerning their inclusion in the World Heritage List (Art. 26, 27). Groups of urban buildings eligible for inclusion in the World Heritage List fall into three main categories, namely:

(i) towns, which are no longer inhabited but which provide unchanged archaeological evidence of the past; these generally satisfy the criterion of authenticity and their state of conservation can be relatively easily controlled;

(ii) historic towns which are still inhabited and which, by their very nature, have developed and will continue to develop under the influence of socio-economic and cultural change, a situation that renders the assessment of their authenticity more difficult and any conservation policy more problematical;

(iii) new towns of the twentieth century which paradoxically have something in common with both the aforementioned categories: while their original urban organization is clearly recognizable and their authenticity is undeniable, their future is unclear because their development is largely uncontrollable.

It is important to note that Art. 14 of the 1972 Convention provides that the Director-General of the United Nations Educational, Scientific and Cultural Organization, utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the

Committee's documentation and the agenda of its meetings and shall have the responsibility for the implementation of its decisions. Accordingly, “Operational Guidelines” provide assessment of the state of World Heritage by such non-governmental international organizations such as ICOMOS, IUCN or ICCROM (Art. 49).

Thus, “Operational Guidelines” recognize the position of these non-governmental organizations as legitimate interpretation of the Convention from 16.11.1972. In particular, ICOMOS adopted a number of governing charters that emanate from the principles of the founding document of the sphere of cultural heritage protection – the International Charter for the Conservation and Restoration of Monuments and Sites (the Venice Charter, May 1964). ICOMOS Charter contains the fundamental provisions regarding the protection and preservation of cultural and archaeological heritage, in particular [9]:

- the conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed (the Venice Charter, Art. 6)⁶;

- new functions and activities should be compatible with the character of the historic town or urban area (the Washington Charter 1987, Art. 8)⁷;

- if legislation affords protection only to those elements of the archaeological heritage which are registered in a selective statutory inventory, provision should be made for the temporary protection of unprotected or newly discovered sites and monuments until an archaeological evaluation can be carried out (the Lausanne Charter, 1990, Art. 3)⁸;

- the overall objective of archaeological heritage management should be the preservation of monuments and sites in situ, including proper long-term conservation and curation of all related records and collections etc. Any transfer of

⁶ quoted: http://www.icomos.org/charters/venice_e.pdf

⁷ quoted: http://www.icomos.org/charters/towns_e.pdf

⁸ quoted: http://www.icomos.org/charters/arch_e.pdf

elements of the heritage to new locations represents a violation of the principle of preserving the heritage in its original context. This principle stresses the need for proper maintenance, conservation and management. It also asserts the principle that the archaeological heritage should not be exposed by excavation or left exposed after excavation if provision for its proper maintenance and management after excavation cannot be guaranteed (the Lausanne Charter, 1990, Art. 6);

– it is the task of the responsible authorities to adopt, on the advice of qualified experts, the appropriate legal and administrative measures for the identification, listing and protection of historic gardens. The preservation of such gardens must be provided for within the framework of land-use plans and such provision must be duly mentioned in documents relating to regional and local planning. It is also the task of the responsible authorities to adopt, with the advice of qualified experts, the financial measures which will facilitate the maintenance, conservation and restoration, and, where necessary, the reconstruction of historic gardens (the Florence Charter, 1981, Art. 23)⁹.

Thus, these documents not being interstate, create, however, the regulatory framework for expert assessment of the implementation by States of their obligations under the Convention on 16.11.1972.

The How correctly noted in the review carried out by the Ministry of Culture and Tourism of Azerbaijan Republic [4], the legal regulation of these matters must comply developments and recommendations of UNESCO and the international organizations operating in the UNESCO (ICOMOS, IUCN, ICCROM) and engaged in a wide range of issues on the protection of cultural property.

Issues of cultural heritage and international focus on regional instruments. So, 03.10.1985, Member States of the Council of Europe signed the Convention for the Protection of the Architectural Heritage of Europe (Granada). For the purposes of this Convention, the expression “architectural heritage” shall be considered to comprise the following permanent properties:

⁹ quoted: http://www.icomos.org/charters/gardens_e.pdf

1) monuments: all buildings and structures of conspicuous historical, archaeological, artistic, scientific, social or technical interest, including their fixtures and fittings;

2) groups of buildings: homogeneous groups of urban or rural buildings conspicuous for their historical, archaeological, artistic, scientific, social or technical interest which are sufficiently coherent to form topographically definable units;

3) sites: the combined works of man and nature, being areas which are partially built upon and sufficiently distinctive and homogeneous to be topographically definable and are of conspicuous historical, archaeological, artistic, scientific, social or technical interest.

In order to protect the architectural heritage, each Party undertakes (Art. 3, 4 Convention):

1) to take statutory measures to protect the architectural heritage;

2) within the framework of such measures and by means specific to each State or region, to make provision for the protection of monuments, groups of buildings and sites;

3) to implement appropriate supervision and authorisation procedures as required by the legal protection of the properties in question;

4) to prevent the disfigurement, dilapidation or demolition of protected properties.

To this end, each Party undertakes to introduce, if it has not already done so, legislation which:

a) requires the submission to a competent authority of any scheme for the demolition or alteration of monuments which are already protected, or in respect of which protection proceedings have been instituted, as well as any scheme affecting their surroundings;

b) requires the submission to a competent authority of any scheme affecting a group of buildings or a part thereof or a site which involves:

(i) demolition of buildings,

- (ii) the erection of new buildings,
- (iii) substantial alterations which impair the character of the buildings or the site;
- (iv) permits public authorities to require the owner of a protected property to carry out work or to carry out such work itself if the owner fails to do so;
- (v) allows compulsory purchase of a protected property.

Each Party undertakes to prohibit the removal, in whole or in part, of any protected monument, except where the material safeguarding of such monuments makes removal imperative. In these circumstances the competent authority shall take the necessary precautions for its dismantling, transfer and reinstatement at a suitable location (Art. 5). For example, in the Resolution of the Supreme Economic Court of Ukraine from 03.11.2005 in case number 35/262-04¹⁰ the dispute resolved on the basis of the Convention for the Protection of the Architectural Heritage of Europe, referring to that, the court dismissed the case on the coerced privatization body privatization of the property, which is recognized as a cultural monument. Convention for the Protection of the Architectural Heritage of Europe

Conclusions:

1. In a world and regional level there was a system of regulatory support of an international organization of cultural heritage protection. The basic international instrument in this regard is Convention Concerning the Protection of the World Cultural and Natural Heritage on 16.11.1972. In its development of a number of regional conventions, for example, Convention for the Protection of the Architectural Heritage of Europe (Granada, 03.10.1985).

2. The importance of international legal instruments on the protection of cultural heritage lies in the fact that States are bound by the protection of the cultural heritage of the world community and can not operate in this area at its discretion masterful.

3. All the more important for business protection of the monuments acquire documents of non-governmental international organizations, in particular,

¹⁰ http://vgsu.arbitr.gov.ua/docs/28_1089033.html

ICOMOS, UICN, ICCROM. Acting as authoritative expert organizations, the international non-governmental organizations play an increasingly important role in the protection of cultural heritage.

4. The requirements of international instruments in the field of cultural heritage protection even more effectively implemented in the public administration of the country, the harder the courts apply the requirements of these international operating directly in solving disputes with the authorities.

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