

## **The Existence of The Blue Shield Emblem on Cultural Heritage Property in Armed Conflict**

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### **ABSTRACT**

*The intentional destruction of cultural heritage properties in armed conflict that is not used for military purposes causes the greatest losses of mankind. Lots of cultural properties have great value as the cultural heritage of mankind. Creating the distinctive emblem through the 1954 Hague Convention and its two Protocols had become a crucial way in terms of the protection of cultural properties. Based on these instruments, three categories of distinctive emblem gave for cultural properties over general, special and enhanced protection. However, in practice, there were some interpretations among the states on how the use of this distinctive emblem because there was a confusion among states in implementing the 1954 Hague Convention especially for the relevance with the national authority. It could impact cultural property under unnecessary damage when armed conflict occurred. Therefore, this research discussed a crucial basic issue on how form, function, and assignation of the distinctive emblem should be, based on the provisions of the 1954 Hague Convention and its two Protocols, as well as related International Humanitarian Law. This*

*research used the normative method with literature study and comparative approach as a tool of research. As the result of this research, it can be said that the existence of a distinctive emblem is remained unclear in terms of its size form and assignation on cultural property. This research suggested that the use of distinctive emblem shall be regulated by decisive provisions through a Convention or such a guideline of implementation so that distinctive emblem can be seen by the dispute parties to avoid unnecessary damage to cultural property.*

**Keywords: Cultural Heritage Property; Blue Shield Emblem; the 1954 Hague Convention; Armed Conflict**

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## I. INTRODUCTION

Armed conflicts had long histories arguably as a dramatic and consequential event in human civilization.<sup>1</sup> While the number of armed conflicts has decreased since Cold War era,<sup>2</sup> the armed conflict's time is getting longer.<sup>3</sup> An armed conflict raises many problems, including when wrong targets occurred, attacks can lead to civilians, public places, hospitals, schools, and objects of cultural heritage. Cultural heritage objects are one that often suffers great damage, if not destroyed, when an armed conflict occurs. Especially in the era of the 21<sup>st</sup> century, the dynamics of the international community in conflict have experienced significance,<sup>4</sup> including the updating of states weapons whose use has caused massive losses and damage<sup>5</sup> as well as states

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<sup>1</sup> Wimmer, Andreas. "War." *Annual Review of Sociology*, Vol. 40, 2014, pp. 171-197, <https://doi.org/10.1146/annurev-soc-071913-043416>.

<sup>2</sup> Håvard, Hegre, et al. "Predicting Armed Conflict, 2010–2050." *International Studies Quarterly*, Vol. 57, No. 2, 2013, pp. 250-170, <https://doi.org/10.1111/isqu.12007>.

<sup>3</sup> Pettersson, Therése and Peter Wallensteen. "Armed Conflict, 1946-2014." *Journal of Peace Research*, Vol. 52, No. 4, 2015, pp. 536-550, <https://doi.org/10.1177/0022343320913092>.

<sup>4</sup> Ray, Michael. "8 Deadliest Wars of the 21st Century." *Encyclopedia Britannica*, <https://www.britannica.com/list/8-deadliest-wars-of-the-21st-century>, accessed on 8 April 2022.

<sup>5</sup> In the 21st century, several states with strong military powers have developed weapons, namely hypersonic rockets that have great speed, accuracy, range, and destructive power. Royal Australian Air Force. "SCIFiRE Hypersonics." [airforce.gov.au](http://airforce.gov.au), 2022, <https://www.airforce.gov.au/our-mission/scifire-hypersonics>, accessed on 7 April 2022. Russia has even used hypersonic rockets in the conflict between Ukraine and Russia. Henley, Jon. "What Are Hypersonic Missiles and Why Is Russia

competition in outer space.<sup>6</sup> This certainly has an impact on the increasing number of objects of cultural heritage that are targeted or attacked in areas of armed conflicts. Whereas objects of cultural heritage are manifestations of the values of human civilization. Article 1 The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict stated that cultural heritage objects themselves include architectural monuments, works of religious or secular art, archaeological sites, manuscripts, books, scientific archives, and buildings. Cultural heritage objects is also known as resources of knowledge that can not be renewed.<sup>7</sup> The 1954 Hague Convention provided broad coverage of the category of objects of cultural heritage either they are movable or immovable objects.

The destruction of cultural heritage objects that caught the world's attention occurred during the civil war in Yugoslavia in 1991. At that time, the Old City of Dubrovnik, a World Heritage Cultural Site built in the 10-12th centuries, has experienced tremendous destruction during armed conflict by various missile weapons missile projectile.<sup>8</sup> A military commander of the Yugoslav People's Army Lieutenant General Pavle Strugar was later tried and found guilty by the ICTY of committing the crimes: "*Destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science, a violation of the laws or customs of war, under Article 3 of the Statute.*"<sup>9</sup> Article 3 Statute of the International Criminal Tribunal for the Former Yugoslavia basically as the ICTY *ratione materiae* jurisdiction, one of which states that the confiscation, destruction or intentional destruction of religious institutions, artistic education, historical monuments and works of science is a violation of the laws and customs of war. The destruction of cultural heritage objects in other situations of armed

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Using Them?" *The Guardian*, 2022, <https://www.theguardian.com/world/2022/mar/20/what-are-hypersonic-missiles-and-why-is-russia-using-them-kinzhal-ukraine>, accessed on 7 April 2022.

<sup>6</sup> Military activities in outer space had increased by states. Loon, Fabio van. "Codifying *Jus in Bello Spatialis*-the Space Law of Tomorrow." *Strategic Studies Quarterly*, Vol. 15, No. 1, 2021, pp. 1-18.

<sup>7</sup> Garcia, Bárbara Minguezí. "Resilient Cultural Heritage for A Future of Climate Change." *Journal of International Affairs*, Vol. 73, No. 1, 2020, pp. 101-120.

<sup>8</sup> The George Wright Forum. "Dubrovnik's Old City: The Destruction of a World Heritage Cultural Site." *George Wright Society*, Vol. 11, No. 1, 1994, pp. 11-15.

<sup>9</sup> ICTY.ORG. "Judgement in the Case the Prosecutor v. Pavle Strugar: Pavle Strugar Sentenced to Eight Years' Imprisonment." *International Criminal Tribunal for the former Yugoslavia*, 2005, <https://www.icty.org/en/press/judgement-case-prosecutor-v-pavle-strugar-pavle-strugar-sentenced-eight-years'-imprisonment>, accessed on 7 April 2022.

conflict occurred at the Old Bridge (Stari Most) in Bosnia & Herzegovina. The destruction was carried out by the military commander of the Croatian Defense Council, Slobodan Praljak, in 1993. Slobodan Praljak considered that the demolition of the Old Bridge was legal because it was used for military activities and there was no distinguishing symbol based on the 1954 Hague Convention. Slobodan Praljak was found guilty by the ICTY for a series of war crimes, one of which was the destruction of a cultural heritage object.<sup>10</sup> The cases of Pavle Strugar and Slobodan Praljak set a precedent for punishing individuals who committed crimes against or caused the destruction of cultural heritage during armed conflict. In other incidents, the ISIS terrorist group in the 2014-2016 period also carried out acts of destroying, looting, and attacking several cultural heritage objects including those in Iraq, namely the heritage sites of Mosul, Hatra, Nineveh, and Nimrud. In addition, the ISIS group destroyed cultural heritage sites in Syria including Palmyra, Mar Elian Monastery, Apamea, Dura-Europos, and Mari.<sup>11</sup> These actions are considered a manifestation of ethnic cleansing.<sup>12</sup>

Cultural heritage objects have been embedded in everyday life of nations. Orvar Löfgren wrote this phenomenon being described as “*All that fluid solidifies into heritage*” which means that all the pasts can be considered as cultural heritage in this modern era.<sup>13</sup> The destruction of cultural heritage objects can become an unavoidable thing and becomes a concern in situations of armed conflict. Often, the urgency of armed conflict must take precedence over the preservation of cultural property, but international norms and sentiments have indicated that it is important for every state to preserve, for posterity, its cultural and human heritage.<sup>14</sup> Numerous efforts by the

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<sup>10</sup> Walasek, Helen, et al. *Bosnia and the Destruction of Cultural Heritage*. Surrey, England, Ashgate, 2015, p. 51-52.

<sup>11</sup> RASHID International e.V, “The Intentional Destruction of Cultural Heritage in Iraq as a Violation of Human Rights,” Submission for the United Nations Special Rapporteur in the field of cultural rights. Munich, Germany, OCHR, 2017, p. 14. See also Curry, Andrew. “Here Are the Ancient Sites ISIS Has Damaged and Destroyed, National Geographic.” *National Geographic*, 2015, <https://www.nationalgeographic.com/history/article/150901-isis-destruction-looting-ancient-sites-iraq-syria-archaeology>, accessed on 7 April 2022.

<sup>12</sup> Moustafa, Laila Hussein. “Cultural Heritage and Preservation: Lessons from World War II and the Contemporary Conflict in the Middle East.” *the American Archivist*, Vol. 79, No. 2, 2016, pp. 320-338, <https://www.jstor.org/stable/26356664>.

<sup>13</sup> Löfgren, Orvar and Ewa Klekot. “Culture and Heritage.” *Ethnologie française*, Vol. 42, No. 2, 2012, pp. 391-394, <https://doi.org/10.3917/ethn.122.0347>.

<sup>14</sup> Milligan, Ashlyn. “Targeting Cultural Property: The Role of International Law.” *Journal of Public & International Affairs*, Vol. 19, 2008, pp. 91-106.

international community to prevent and protect cultural heritage objects from the risk of destruction due to armed conflict have been carried out after the World War II through multilateral agreements, such as namely the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention 1954), and its two implementation protocols namely the 1954 First Protocol to the Hague Convention of 1954 (Protocol I 1954) and the 1999 Second Protocol to the Hague Convention of 1954 (Protocol II 1999). These international legal instruments specifically and comprehensively regulate efforts to protect and enforce the law against the destruction of cultural heritage objects both in conditions of armed conflict and peace. Another international agreement which also touch on the protection of cultural property include the Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims on International Armed Conflicts<sup>15</sup> (Protocol I 1977) and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts<sup>16</sup> (Protocol II 1977).

During conditions of armed conflict, the existence of cultural property is often considered the same as other ordinary buildings or structures which at one time may be destroyed or converted to support military operations by the disputing parties. Cultural property needs to be considered a world historical heritage that has invaluable educational, historical, and civilization value. So that the intentional destruction of cultural property that is not used for military purposes is a principle in International Humanitarian Law in determining buildings or property that can be used as military targets.

The big factor is that the parties do not know that the buildings or objects they see, or use are world cultural heritage objects. For this reason, marking cultural heritage objects as historical buildings or monuments that need to be protected and of important value to human civilization with a Blue Shield Emblem is crucial. Not only as a marker,

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<sup>15</sup> Participating states are prohibited from acting directly, using, and making it the object of retaliation on cultural property. Article 53, Protocol Additional to the Geneva Convention of 1949 Relating to the Protection of Victims on International Armed Conflicts 1977.

<sup>16</sup> Participating states are prohibited from taking any action that is directly harmful and using cultural property for military purposes. Protocol Additional to the Geneva Convention of 1949 Relating to the Protection of Victims on Non-International Armed Conflicts 1977.

but the use of the Blue Shield Emblem also has legal consequences for objects of cultural heritage and conflict parties. The 1954 Hague Convention stipulates that cultural heritage objects can be attached to the Blue Shield Emblem for easy protection and recognition and to reduce the risk of unwanted destruction.

Overall, there are three Blue Shield Emblems as distinctive emblems for marking cultural heritage object with different respective categories and scope of functions. In practice, problems arise between states not only regarding the size and position of the placement of this Blue Shield Emblem, but also because of the discretionary nature of its use. Different implementation interpretations among states have the consequence that it is not uncommon for misuse, placement and ultimately to be meaningless for the existence of the Blue Shield Emblem as objects of cultural heritage because they are at risk of being exposed to attacks that should not occur in an armed conflict. Even though in principle there is no obligation to give the Blue Shield Emblem to cultural heritage objects, its existence is fundamental, namely being able to affirm legal immunity for the cultural heritage objects. Therefore, it is a crucial basic problem about the use of the Blue Shield Emblem following its form, function and placement based on the 1954 Hague Convention and its two additional protocols? so that later this Blue Shield Emblem is visible and known to the states, parties to the dispute as well as to civil society on protected cultural heritage objects.

This research used normative legal research methods,<sup>17</sup> the research methods used secondary data types or literature studies which consist of primary<sup>18</sup>, secondary and tertiary legal materials. The approaches taken are the Statute Approach, the Historical Approach and the Case Approach to assess how states have so far used distinctive emblems on the cultural heritage properties they protect. This research used the method as described in advance as well as a conceptual approach which elaborates on a statutory approach, a historical approach, with a case approach to finding a pattern of applying the use of the Blue Shield Emblem on cultural heritage objects both in practice in states and normatively. This research also used a comparative approach to

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<sup>17</sup> A scientific activity that is analyzed based on certain methods, systematics, and ideas to study one or more legal phenomena. Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta, UI-Press, 1986, p. 43.

<sup>18</sup> Primary legal materials consist of the 1954 Hague Convention, Protocol I 1954, and Protocol II 1999, as well as other international legal instruments.

assess how states based on their national law interpreting and implementing the practice to put on the Blue Shield Emblem on cultural heritage objects. The results of this study were written in a systematic descriptive analytical manner with qualitative methods. This method is used to understand the contents of legal norms and then be interpreted according to the topic of writing.<sup>19</sup>

## **II. DISCUSSION**

### **1. The Appearance of the Blue Shield Emblem as Part of Systematizing Efforts for Protecting World Cultural Heritage Objects**

The Blue Shield Emblem concept is part of the systematization of the protection of cultural heritage objects from the effects of destruction in armed conflict. ICRC, the international organization that promotes the protection of armed conflict victims and mitigating the effects of armed conflict, considers that attacks aimed at buildings of world-historical value and human civilization are attacks on identity, memory, dignity and the future of humankind.<sup>20</sup> A quite extreme opinion sees destruction of cultural heritage property is part of genocide, using terms “cultural genocide”, because it potentially leads killing ethnic.<sup>21</sup> Another term used for such acts is “cultural cleansing” which describes the destruction of cultural heritage will also destroy sustain diversity, critical thinking and freedom of opinion.<sup>22</sup> In terms of armed conflict, one concept is seeing the destruction of cultural heritage property as one element of total war.<sup>23</sup> The narrative represents the dominant view of society’s international community in the current era which began after World War II when humanity became aware of the

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<sup>19</sup> Sardjono, Agus. *Riset Hukum: Sebuah Novel Tentang Metode Penelitian Hukum*. Jakarta, Raja Grafindo, 2019, p. 24-25.

<sup>20</sup> International Committee of the Red Cross (ICRC). “Protection of Cultural Property–Questions & Answers.” *ICRC*, 2017, <https://www.icrc.org/en/document/protection-cultural-property-questions-and-answers>, accessed on 22 Mei 2022.

<sup>21</sup> Matthes, Erich Hatala. “Saving Lives or Saving Stones?: the Ethics of Cultural Heritage Protection in War.” *Public Affairs Quarterly*, Vol. 32, No. 1, 2018, pp. 67-84, <https://doi.org/10.2307/26897023>.

<sup>22</sup> Irina Bokova, a first female director general UNESCO, used term “cultural cleansing” in the context that cultural heritage belongs to humankind as a universal legacy. Bokova, Irina. “Fighting Cultural Cleansing: Harnessing the Law to Preserve Cultural Heritage.” *Harvard International Review*, Vol. 36, No. 4, 2015, pp. 40-45, <https://www.jstor.org/stable/43649318>.

<sup>23</sup> Total War is a terminology that described a war as an event in which entire objects and populations (civilians and military), technology, society and ideology are involved. Saint-Amour, Paul K. “On the Partiality of Total war.” *Critical Inquiry*, Vol. 40, No. 2, 2014, pp. 536-550, <https://doi.org/10.1177/0022343320913092>.

adverse effects of armed conflict. However, the traces of protecting world cultural heritage objects have started at least since the early 16th century which is in line with the paradigm of international law in regulating war.<sup>24</sup>

When an armed conflict occurred, it was usually that the parties cannot fully control the impact of the attacks on buildings and structures. In International Humanitarian Law, *jus in bello* principle establishing the rules of how the states conduct in armed conflict. Thus, in *jus in bello* principle framework, the combatants shall understand the distinction between civilian and military objects.<sup>25</sup> Several previous international law experts had different views on the issue of what cultural heritage objects are including objects that may be attacked like military objects in general. For instance, Vitoria and Grotius view within elements of religious values (St. Matthew) that "*lest happy while ye gather up the tares ye root up the wheat with them*". They both believed that the actions taken by human beings must have clear limitations, namely that they must be on the good side in all aspects, rather than the bad.<sup>26</sup> This is closely related to natural law, that the destruction of things that are not necessary or unwanted during the armed conflict, including objects of cultural heritage in principle is prohibited even though the enemy has the right to destroy objects, buildings, and cities under his control. This paradigm is also supported by Emer de Vattel, who believes that even if a city is destroyed for any reason, buildings such as temples, tombs, and outstanding works of art, which are valuable in society and have nothing to do with enemy forces, must be saved.<sup>27</sup> In contrast to Gentili, which stems from freedom to capture and remove, namely that the party that wins in an armed conflict has the full right to dominate, including looting property in the city it wins.<sup>28</sup> Jean-Jaque Burlamaqui was also of the view that things such as sacred buildings and public buildings could be demolished to the extent necessary and advantageous in military

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<sup>24</sup> O'Keefe, Roger. *The Protection of Cultural Property in Armed Conflict*. New York, Cambridge University Press, 2006, p. 5.

<sup>25</sup> Meier, Benjamin Mason, et al. "Monitoring Attacks on Health Care as a Basis to Facilitate Accountability for Human Rights Violations." *Health and Human Rights Journal*, Vol. 23, No. 1, 2021, pp. 55-70, <https://ssrn.com/abstract=3870350>.

<sup>26</sup> *Ibid*, p. 7.

<sup>27</sup> Vattel, Emer de. *The Law of Nations, or Principle of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*. Indianapolis, Liberty Fund, 2008, p. 571.

<sup>28</sup> O'Keefe, Roger, *Op.Cit.*, p. 8.



action.<sup>29</sup> Furthermore, Burlamaqui considers buildings affiliated with religion not much different from worldly buildings, the difference is only in the form of use but still has an intrinsic and eternal character. The views of the previous experts illustrated that when an armed conflict occurred, the actions of destroying, occupying, including looting buildings of historical, cultural and important value for human civilization could still be carried out.

The next phase in efforts to protect cultural heritage objects from the effects of armed conflict is when states accept the Principle of Distinction<sup>30</sup> which is in line with the Just War Doctrine.<sup>31</sup> This principle emphasizes that the parties to the conflict must distinguish between civilian and military objects,<sup>32</sup> so that only military objects can become targets of attack. This becomes so fundamental that the Principle of Difference makes states then begin to regulate the protection of historic buildings within their domestic sphere. France established the Commission on Monuments to inventory objects that would become national heritage in 1790. Through its national legal instrument, namely the Decree of 16 September 1792, France endeavored to preserve valuable objects as its national works of art.<sup>33</sup> In addition, in Great Britain there is *The Marquis de Somerules*, a decision of the Vice Admiral Court in Nova Scotia which requires the return of works of art belonging to Italian artists to Philadelphia during the Anglo-American war of 1812.<sup>34</sup> What is interesting about this Court's decision is that works of art are recognized as belonging to humanity which means it has universal characteristics, not considered part of a particular nation. France and England are European states that play a significant role in efforts to protect objects of important value to mankind. France formed Commissions which then succeeded in increasing the number of protected monuments from 934 to 3000 only in the period 1840 to 1849.

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<sup>29</sup> Burlamaqui, Jean Jacques. *The Principles of Natural and Politic Law*. Indianapolis, Liberty Fund, 2006, pp. 500-501.

<sup>30</sup> The Distinction Principle was introduced by Jean-Jacques Rousseau in his book *The Social Contract* in the 17th century which later became the basis of International Humanitarian Law. O'Keefe, Roger. *Op.Cit.*, p. 13.

<sup>31</sup> The traditional understanding of *the Just War doctrine* is that armed conflict between states is possible. However, nowadays there are five criteria for legitimizing war, there are: justified intention, last resort, proportionality, minimum force and a reasonable chance of success. Lango, John W. *The Ethics of Armed Conflict: A Cosmopolitan Just War Theory*. Edinburgh, Edinburgh University Press, 2014, p. 20.

<sup>32</sup> Kasher, Asa. "The Principle of Distinction." *Journal of Military Ethics*, Vol. 6, No. 2, 2007, pp. 152-167, <https://doi.org/10.1080/15027570701436841>.

<sup>33</sup> O'Keefe, Roger, *Op.Cit.*, p. 14.

<sup>34</sup> *Ibid.*

England even issued a criminal policy for acts of vandalizing public monuments or statues.<sup>35</sup> This effort was followed by the formation of a civil society movement that began to care about British national historical objects, and even voiced the protection of important objects in other states.<sup>36</sup>

This period of the 18th century became the starting point for the paradigm of protecting cultural heritage objects, works of art of high value and important monuments for human civilization. At that time another fundamental problem was how historical buildings, including monumental works of art, could be protected when an armed conflict occurred in their territory. Civil society movements made significant efforts because many buildings with important historical value were owned by individuals at that time. Even so, in terms of international humanitarian law there is an Instructions for the Government of the Armies of the United States in the Field 1863 (Lieber Code 1863), although it is only binding on the American military,<sup>37</sup> but it became the first law instrument to apply the Principle of Distinction (Art. 22) and the Principle of Military Necessity (Art. 14). The Lieber Code 1863 regulates how the parties conduct at the war should be.<sup>38</sup> The significance of the Lieber Code 1863 for the protection of cultural heritage objects The Lieber Code 1863 can be seen in Article 35, namely providing provisions for the protection of classical works of art, libraries, scientific collections or important instruments such as: astronomical telescopes, as well as hospitals, all of which must be secured from potential damage despite being in an enemy siege location (Art. 35). The existence of the Lieber Code 1863 on the one hand is also an instrument supporting the indirect protection of historic monumental buildings that are privately owned. It is not enough just to use the norms in the convention, the need to identify cultural heritage objects that need to be protected is one of the crucial concerns. This identification is carried out by using a distinctive emblem whose

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<sup>35</sup> Several British policies such as: *The Ancient Monuments Protection Act of 1882*, *the National Trust Act of 1907*, and the formation of *the Royal Commission of 1908*, *Ibid*, p. 17.

<sup>36</sup> William Morris and John Ruskin became pioneers of community movements in parts of Europe. Several community movements such as *the Society for the Protection of Ancient Buildings* and *National Trust*, and others spread across Europe, such as in Turkey, Italy, and Egypt, *Ibid*.

<sup>37</sup> At that time the President of the United States, Abraham Lincoln ordered Lieber, who was an immigrant from Germany, to establish the rules for war. Putri, Yunita Maya, et al. *Hukum Humaniter Internasional: Case and Material*, Yogyakarta, Suluh Media, 2021, p. 7.

<sup>38</sup> Schipper, Friedrich T. and Erich Frank. "A Concise Legal History of the Protection of Cultural Property in the Event of Armed Conflict and a Comparative Analysis of the 1935 Roerich Pact and the 1954 Hague Convention in the Context of the Law of War." *Archeologies: Journal of the World Archeological Congress*, 2013, pp. 13-28, <https://doi.org/10.1007/s11759-013-9230-7>.

concrete form is the blue shield emblem, attached to cultural heritage buildings, including monumental works of art.

The conception of the blue shield emblem as a distinctive emblem on objects of cultural heritage is not new in the systematization of object protection regulated under international humanitarian law. In 1864, for example, the concept of a distinctive emblem began to be recognized for use as protection for medical services, including medical soldiers, humanitarian aid workers and victims of armed conflict.<sup>39</sup> Formed stems from the proposal A Memory of Solferino owned by Henry Dunant in 1859, an idea that became the basis of international humanitarian law in efforts to protect the victims of armed conflict and unnecessary misery due to war. The distinctive form of this emblem is agreed to be cross-crossed red with a white background color (the red cross), which later this development is also used in the symbol of the ICRC. The existence of this distinctive emblem was later confirmed in the Convention with Respect to the Laws and Customs of War on Land 1899 and its Additional Rules (The Hague Convention 1899). The concept of a distinctive emblem for protection in the framework of medical services for victims of armed conflict has become a legal norm regulated in the 1949 Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I). Until now, the form of a distinctive emblem that is known apart from the red cross also has a red crescent (red crescent) and the lion and the red sun (red lion and sun). When viewed from a historical timeline, the existence of distinctive emblems in the context of protecting medical services in conditions of armed conflict existed long before the appearance of the red cross. According to Paragraph 2531 Commentary on the First Geneva Convention, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the shape is a flag with a different color depending on the states where medical services. Based on the Art. 44 Geneva Convention I, the purpose of using the distinctive emblem is either protective or indicative, which is further emphasized in the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies (1991 Red Cross and Red Crescent Regulation). The distinctive emblem for protection indicates that medical and religious goods and personnel must be protected and respected during armed conflict. Meanwhile, according

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<sup>39</sup> International Committee of the Red Cross (ICRC). *Study on the Use of the Emblems: Operational and Commercial and Other Non-Operational Issues*. Geneva, ICRC, 2011, p. 22.

to Art. 1 Regulations on the Use of the Emblem of the Red Cross or the Crescent by the National Societies 1992, distinctive emblems related to indicative purposes are intended to show that the objects and people who use them are related to the implementation of humanitarian activities based on the principles and provisions of international humanitarian law. In the context of how to distinguish between the two is seen in how the distinctive emblem is used, namely from the size, visibility, and the object it occupies. The difference of two emblems purposes is also can be seen in a larger size than the object or person who uses it, there is no insertion of any kind other than the form of a distinctive emblem and it is placed on several objects such as building roofs and armbands, so it is classified as having protective value. Furthermore, the distinctive emblem related to indicative purposes has a smaller dimension than the person or object it is attached to and may have inserts such as the name, initials, or identity of the humanitarian organization on the distinctive emblem.<sup>40</sup> The protection of objects or people in humanitarian activities in armed conflicts is guaranteed by international humanitarian law instruments, not because of the mere use of distinctive emblems.<sup>41</sup> The existence of a distinctive emblem attached to an object or person is not *mutatis mutandis* as legal protection during an armed conflict. In the same way as the blue shield emblem attached to objects of world cultural heritage, its protective nature does not come from the blue shield emblem, but from the principles of international humanitarian law.

The initial conception of the distinctive emblem before taking the form of a blue shield emblem was found in international humanitarian law instruments in 1907, through the Regulations concerning the Laws and Customs of War on Land 1907 which is an additional regulation to Convention IV respecting the Laws and Customs of War on Land (Convention IV Den Haag 1907). Convention IV Den Haag 1907 confirms an obligation to beleaguered parties to show historic buildings or places by providing distinguishing and visible signs, as written in Article 27 of the Regulations of Convention IV den Haag 1907:

“In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are

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<sup>40</sup> *Ibid*, p. 25.

<sup>41</sup> *Ibid*, p. 40.

collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.”

Based on these provisions, the obligation to take the necessary steps to protect cultural heritage objects is borne by the party being attacked. This obligation is carried out from before the armed conflict and must be notified to the enemy before the attack. Convention IV The Hague 1907 does not provide further explanation as to what kind of distinguishing and clear signs are used to identify protected buildings. It is an implementation to left back to international customs that have previously been carried out by states. Although the parties to the conflict are obliged as much as possible to take the necessary steps to protect cultural heritage objects, the 1907 Hague IV Convention has not explicitly regulated the protection of cultural heritage objects.

After World War I, there was great destruction by the Germans on historical, religious, and libraries including important manuscripts for civilization, which were in the Cloth Hall of the City of Ypres, Belgium and Flemish, a university complex in Louvin, France. This event brought about many protest movements, one of which was carried out by Nikolai Roerich, an artist from Russia who unfurled a propaganda poster that said, in English, it means "enemy of mankind".<sup>42</sup> Through the expanse of the poster, Roerich wanted to convey a paradigm shift that art, religious and cultural buildings, as well as monumental works must be protected from damage caused by war. Roerich's movement continued until the Roerich Pact 1935, an international treaty regarding the protection of cultural and historic buildings during armed conflict.<sup>43</sup> Article 1 of the Protection of Artistic and Scientific Institutions and Historic Monuments, Treaty Between the United States of America and the Other American Republics 1933 (Roerich Pact) stipulates that historical monuments, museums, scientific, artistic, educational and cultural institutions must be considered neutral, and therefore must be respected and protected by the belligerents. This provision also applies to situations of peace, not only during armed conflicts. It appears to be in line with the paradigm of protecting cultural heritage objects in situations of armed conflict between the IV 1907 Haag Convention with the Roerich Pact. However, what

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<sup>42</sup> O’Keefe, Roger, *Op.Cit.*, p. 40.

<sup>43</sup> The Roerich Pact has been adopted by 21 states known as *Pan-America Union*. Nicholas Roerich Museum. "Nicholas Roerich Museum: Roerich Pact and Banner of Peace." *Roerich.org*, <https://roerich.org/roerich-pact.php>, accessed on 13 June 2022.

distinguishes the two is that the Roerich Pact regulates the distinctive emblem more to identify objects of cultural heritage to avoid damage and destruction during armed conflict. As Article 3 of the Roerich Pact writes that “In order to identify the monuments and institutions mentioned in article I, use may be made of a distinctive flag (red circle with a triple red sphere in the circle on a white background) in accordance with the model attached to this treaty”. In the Roerich Pact, the term used is "distinctive flag " which has a function to identify monuments and institutions that are protected during armed conflict. Even though Article 3 mentions the phrase “in order to identify...” which tends to emphasize indicative objects of cultural heritage, but its protective nature still exists because Article 3 refers to Article 1. One of the most important things is that the provisions of Article 3 provide a normative basis for what a distinctive emblem that is universally used looks like, namely three red balls in a red circle with white background, as shown in Figure 1.



**Figure 1. The Banner of Peace.**<sup>44</sup>

The distinctive flag’s design on the Roerich Pact is the work of Nikolai Roerich himself. The distinctive flag is known as the symbol " the Banner of Peace", an ancient symbol that existed since the stone age.<sup>45</sup> The three red balls are triune and have a deep philosophy about the values of life’s existence. First, it can be said to refer to Religion, Art, and Science that travel around cultural circles. Second, it can also be Past, Present, and Future shrouded in Eternity. Third, it can be Love, Beauty, and Action that are shaded by Eternity.<sup>46</sup> The word "Pax Cultura" in the distinctive emblem reflects the

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<sup>44</sup> Nicholas Roerich Museum, *Loc.Cit.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Koush, Alesia. “Where There Is Peace, There Is Culture; Where There Is Culture, There Is Peace: Inside the Roerich Pact.” *17 J. Ar Crime* 103, 2017, pp. 103-104.

Roerich movement which is sometimes referred to as the "red cross of culture".<sup>47</sup> Roerich's paradigm for the protection of cultural heritage objects is full of human values, so that it is quickly accepted by the world.<sup>48</sup> An interesting point after World War I was the significance of the involvement of individual elements or individual groups rather than the state in efforts to protect cultural heritage objects in situations of armed conflict. Roerich's expense of posters meaning "enemy of mankind" and the Banner of Peace on the Roerich Pact became the forerunners of the current existence of the blue shield emblem in systematizing the protection of cultural heritage objects during armed conflicts.

Although the 1954 Hague Convention and its Protocol are treaties and usually binding only on States that have signed them,<sup>49</sup> but many parts of the 1954 Hague Convention are so widely applied that the ICRC regards them as customary international law and is therefore considered binding on all parties to the conflict at any time at the moment.<sup>50</sup>

## **2. Arrangement of the Blue Shield Emblem on the 1954 Hague Convention**

The blue shield emblem tends to be said as a substitute for the Banner of Peace, because of the implications of adopting the 1954 Hague Convention. The Roerich Pact and the 1954 Hague Convention both provide a place for the provision of distinctive emblems and explain what it looks like, as an effort to protect cultural heritage objects in times of armed conflict and times of peace. All states that have ratified the Roerich Pact have also become member states of the 1954 Hague Convention.<sup>51</sup> Previously there

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<sup>47</sup> Schipper, Friedrich T. and Erich Frank, *Op.Cit.*, p. 17.

<sup>48</sup> Wadlow, Rene. "International Museum Day: The Advancement of Learning and Culture." *World Affairs: The Journal of International Issues*, Vol. 19, No. 3, 2015, pp. 150-153, <https://www.jstor.org/stable/48505463>.

<sup>49</sup> A treaty can be binding and born as positive international law, then the state parties need to express their agreement to be strictly bound by the treaty. Parthiana, I Wayan. *Hukum Perjanjian Internasional*. Bandung, Mandar Maju, 2018, p. 109.

<sup>50</sup> The Blue Shield. "Armed Conflict Protocols." *Blue Shield International*, <https://theblueshield.org/resources/law-library/treaty-law-and-the-1954-hague-convention/armed-conflict-protocols/>, accessed on 13 June 2022.

<sup>51</sup> UNESCO. "Official List of States Parties to the 1954 First Protocol." *unesco.org*, <https://en.unesco.org/protecting-heritage/convention-and-protocols/states-parties>, accessed on 25 June 2022.

was Convention IV Den Haag 1907 which created provisions for distinctive emblems, but the matter of what form they were made was not regulated more specifically. After World War II, not long after the formation of the United Nations (UN), the United Nations Educational, Scientific and Cultural Organization (UNESCO) was also formed as a special organ of the UN to build world peace in the aspects of education, science and culture. UNESCO became not only as the pioneer international organization that discussed the draft of the 1954 Hague Convention and its Protocol I 1954, but also as the convention depository institution. Agreed for adopted on May 14, 1954 and entered into force on August 7, 1956, the 1954 Hague Convention and it is implementing regulations and Protocol I 1954 have until now become the main shield of international humanitarian law against the protection of cultural heritage objects during armed conflicts. Currently, 133 states are participating in the 1954 Hague Convention<sup>52</sup> and there were 110 states ratification in Protocol I 1954.<sup>53</sup> The 1954 Hague Convention is an instrument of international humanitarian law specifically intended to protect objects on the list of protection from the effects of armed conflict.

The legal basis for the existence of the Blue Shield Emblem was in Article 6 of the 1954 Hague Convention which “In accordance with the provisions of Article 16, cultural property may bear a distinctive emblem so as to facilitate its recognition.” Article 6 emphasizes the function of distinctive emblems as a recognition facility for cultural heritage objects and the nature of their use tends not to be mandatory.<sup>54</sup> However, the name "Blue Shield Emblem" itself is not written in the 1954 Hague Convention, but the name comes from the summary of the composition of the emblem regulated in Article 16. The 1954 Hague Convention uses the basic term, namely distinctive emblem, because its main purpose is indicative as written in Article 6. The specific form is determined in Article 16 paragraph (1) that: “The distinctive emblem of the Convention shall take the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle)”. Blue Shield Emblem is in the form of a shield with a

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<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> O’Keefe, Roger, *Op.Cit.*, p. 117.



dark blue square that tapers downwards, and a blue triangle above the square, then both sides are white.

According to Article 16 (2), The use of this Blue Shield Emblem is divided into the first two categories; Blue Shield Emblem is depicted single, second; The Blue Shield Emblem is drawn three times. Article 17 (2) stated that the use of a single Blue Shield Emblem, as shown in Figure 2, is intended, among other things, not only for objects of cultural heritage that are not under special protection (general protection), but also for those who are responsible for their supervision; personnel related to the protection of cultural heritage objects; as well as on the identity cards specified in the Regulations for implementing the Hague Convention 1954.



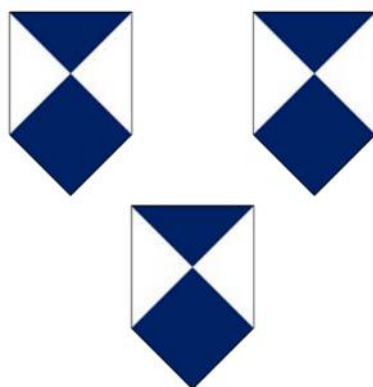
**Figure 2. Blue Shield Emblem under General Protection.<sup>55</sup>**

The capacity to protect cultural heritage objects in the general protection category can be said to be quite weak. This is because, based on Article 4 (1) the 1954 Hague Convention, even though participating states are required to respect cultural heritage objects by refraining from acts of destroying cultural heritage objects, Article 4 (2) stipulated that this can be ruled out based on the principle of military necessity. The general protection system is intended as a minimum standard of international protection by placing a single blue shield emblem on cultural heritage objects on a national scale. The categories of cultural heritage objects are left to the provisions of each state, there is no special international scale category so that cultural heritage objects receive general protection.

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<sup>55</sup> The Blue Shield. "Blue Shield Charters, Declarations and Documents." *Blue Shield International*, <https://theblueshield.org/download/blue-shield-charters-declarations-and-documents/>, accessed on 20 April 2022.

In the context of using the Blue Shield Emblem with three repetitions of the triangle in Figure 3 and by referring to Article 17 (1) the 1954 Hague Convention, it is intended for immovable cultural heritage objects under special protection; transportation of cultural heritage objects; as well as an identification shelter. The nature of the use of the Blue Shield Emblem on cultural property in the category of general protection is in principle not required by the Convention, but for the category of special protection is mandatory.<sup>56</sup> The location of cultural heritage objects placed in a special protection system is no different from cultural heritage objects placed in general protection. Based on Article 8 (1), the location of cultural heritage objects, at least, should be far away from industrial centers or important military objects of states, so the cultural heritage objects going will not be used for military purposes. Stipulated in Article 8 (2) that for movable cultural heritage shelters can also be placed under special protection, regardless of their location and its shelters are made in such a way so that it can't be destroyed by bombs. Article 8 (5) also stated that the cultural heritage that has been determined to be included in special protection, even if they are located near important military objects, protection measures must be taken by the state to divert transportation routes so that they do not pass through these cultural heritage objects.



**Figure 3. Blue Shield Emblem under Special Protection.<sup>57</sup>**

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<sup>56</sup> Hladik, Jan. "Marking of Cultural Property with the Distinctive Emblem of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict." *Revue Internationale de La Croix-Rouge/International Review of the Red Cross*, Vol. 86, No. 854, 2004, pp. 379-387, <https://doi.org/10.1017/s1560775500180873>.

<sup>57</sup> UNESCO. *Distinctive Marking of Cultural Property: Rules and Practices*. Paris, UNESCO, 2021, p. 6.

The special protection identified by the Blue Shield Emblem with three repetitions has certain requirements that not all cultural heritage objects can be placed under special protection. There is an international mechanism that needs to be fulfilled by the state so that its cultural heritage objects can be included in a special protection system, namely the state is required to register its cultural heritage objects through international registration of cultural heritage objects. Provisions for the registration of cultural heritage objects under special protection are regulated separately in the Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Regulations for the Implementation of the 1954 Hague Convention), which is also part of the 1954 Hague Convention. This registration mechanism is under the authority of UNESCO through the General Director of UNESCO, stated in Article 12 Convention IV Den Haag 1907. From the philosophical aspect of the existence of cultural heritage objects for human civilization, the existence of this registration mechanism is enough to cause debate among states that register their cultural heritage objects. This international registration mechanism has consequences, namely the existence of cultural heritage objects which are refused by UNESCO to enter the special protection system.

The placement of the Blue Shield Emblem is then regulated more specifically in the 1954 Hague Convention Implementation Regulations. States through their national authorities are given the discretion to regulate the existence of the Blue Shield Emblem on objects of cultural heritage. Provisions for the placement of the Blue Shield Emblem based on the Regulations are:

- a. Depicted on flags or armbands of personnel, drawn on objects or other appropriate forms (Article 20 (1) Convention IV Den Haag 1907);
- b. On transport vehicles, the Blue Shield Emblem must be visible from both ground and aerial views during the day;
- c. The Blue Shield Emblem must be placed on the ground at sufficient visibility so that the center of the cultural heritage object which is under special protection is visible;
- d. The Blue Shield Emblem is placed at the main entrance of the immovable building which is a cultural heritage object which is under special protection (Article 20 (2) Convention IV Den Haag 1907).

## **2.1 Protocol I 1954**

The legal instrument for systematizing the protection of cultural heritage objects during armed conflict was also complemented by Protocol I 1954. Protocol I 1954 specifically regulates the protection of cultural heritage objects located in territories occupied or controlled by the enemy. The states have an obligation to prohibit exporting cultural objects and must return them to the territory of a state that owns the cultural heritage objects. Subsequently, the states are prohibited from storing cultural heritage objects originating from enemy territory. The states also have a prohibition for selling cultural heritage objects and if they have been sold, the states that sold them are obliged to pay compensation to the holders of cultural heritage objects and return them to their original place. Protocol I 1954 does not regulate the provisions for the use or use of the blue shield emblem on cultural heritage objects. It appears that Protocol I 1954 is complementary in only one respect, namely the system of protecting cultural heritage objects where the cultural heritage objects are in the possession of the enemy.

## **2.2 Protocol II 1999**

In its development, the special protection system at the 1954 Hague Convention was considered incapable of dealing with various events of the destruction of cultural heritage objects in the 1955-1990s range. Such as the destruction of the Old City of Dubrovnik in Krosia in 1991<sup>58</sup> and Vijećnica in Sarajevo in 1992.<sup>59</sup> To continue to strive for the protection of cultural heritage objects during situations of armed conflict, the international community adopted Protocol II 1999 to complement the 1954 Hague Convention. Protocol II 1999 applies not only when armed conflicts occur, but also in enemy-occupied territories such as Protocol I 1954 and internal armed conflicts in a state.

Protocol II 1999 created a new protection system, namely enhanced protection of cultural heritage objects. Article 10 stated that cultural heritage objects that can be

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<sup>58</sup> Walasek, *Op.Cit.*, p. 88.

<sup>59</sup> *Ibid*, p. 47.

protected in this system are a) cultural heritage objects that have important values for humanity; b) protected by national law which recognizes its historical and extraordinary value and guarantees its protection at a high level; c) not used for military or military defense purposes and proven by a declaration by the states. According to Article 11, applications for cultural heritage objects to be included in the enhanced protection system can not only be made by the state of origin of the cultural heritage objects, but also by other states, the International Committee of the Blue Shield and relevant non-governmental organizations. In addition, there is confirmation in terms of institutions, namely the establishment of the Committee for the Protection of Cultural Heritage Objects in Conditions of Armed Conflict as an executive body. Stipulated in Article 27, the function of the Committee is to develop guidelines for the implementation of Protocol II 1999, regulate cultural heritage objects that will be included or have entered an enhanced protection system, as well as coordinate all activities related to the implementation of Protocol II 1999 to ensure the protection of cultural heritage objects. The existence of this Committee is quite significant, including the success in forming a forum for meetings of the Parties (Meeting of the Parties) in discussing the implementation of Protocol II 1999, the development of which resulted in the Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (Guidelines Protocol II 1999).

For this reason, there is a special form of Blue Shield Emblem intended for enhanced protection systems. Protocol II 1999 does not regulate provisions of the special form of the Blue Shield Emblem, but the provisions on how the shape and use of the Blue Shield Emblem for enhanced protection were successfully adopted at the Sixth Meeting of the Parties for Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (2015 Sixth Meeting Forum), 9 December 2015. The Blue Shield Emblem for this advanced category is added with a red ribbon that surrounds it, as shown in Figure 3.



**Figure 4. Blue Shield Emblem on Enhanced Protection System.**<sup>60</sup>

Currently, there are 17 sites of cultural heritage objects from 10 states that are protected under an enhanced protection system.<sup>61</sup> According to Article 12 Protocol II 1999, Cultural heritage objects in this protection system have immunity from direct military attacks on the use of cultural heritage objects or from military attacks that occur in the surrounding environment. Each state participating in the Protocol should refrain from attacking objects of cultural heritage that fall into this category of enhanced protection.

Protocol II 1999 does not specify how to place the blue shield emblem on objects of cultural heritage. The regulation on use of the Blue Shield Emblem is regulated in the Guidelines for Implementation of Protocol II 1999. Based on the 2015 Sixth State Meeting Forum, the use of the Blue Shield Emblem for an enhanced protection system has provisions for *ratione materiae* and *ratione temporis*. *Ratione Materiae*, relates on the form of the Blue Shield Emblem in this system is only used to mark cultural heritage objects under increased protection and not used for other than those regulated in the Guidelines for Implementation of Protocol II 1999. *Ratio temporis* relates to when the Blue Shield Emblem was used, during peacetime, the period when the conflict started and until the end of the armed conflict. If the cultural

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<sup>60</sup> UNESCO. "Second Protocol To The Hague Convention Of 1954 For The Protection Of Cultural Property In The Event Of Armed Conflict." *Sixth Meeting of the Parties, Paris, 8-9 December 2015*. UNESCO, 2016, p. 3.

<sup>61</sup> **Armenia:** 1) Monastery of Geghard; 2) the Upper Azat Valley. **Azerbaijan:** 1) Walled City of Baku-the Shirvanshah's Palace; 2) Maiden Tower. **Belgium:** 1) House & Workshop of Victor Horta; 2) Neolithic flint mines; 3) The Plantin-Moretus House-Workshops-Museum Complex and the Business Archives of the Officina Plantiniana. **Cambodia:** Angkor. **Cyprus:** 1) Choirokoitia; 2) Painted Churches in the Troodos Region; 3) Paphos. **Czech Republic:** Tugendhat Villa in Brno. **Georgia:** Historical Monuments of Mtskheta **Italy:** 1) Castel del Monte; 2) National Centre Library of Florence; 3) Villa Adriana. **Lithuania:** Kernevė Archaeological Site. UNESCO. *Cultural Property under Enhanced Protection*. Paris, UNESCO, 2022, p. 9.

heritage object is no longer included in the enhanced protection system, then the state is obliged to remove the Blue Shield Emblem from the cultural heritage object. Removing the Blue Shield Emblem from a cultural heritage object, for certain circumstances, can be done by a low-level military commander of a troop.<sup>62</sup>

Based on the 2015 Sixth Nations Meeting Forum, the placement of the Blue Shield Emblem on an enhanced protection system is given great discretion to each participating state in 1999 Protocol II. This discretion includes, firstly, the placement of the Blue Shield Emblem is carried out within the visibility range determined by the respective authorities of each state. Second, the Blue Shield Emblem is placed in a position that benefits cultural heritage objects. Third, the technological development capability factor can be used by the state to determine ways to use the Blue Shield Emblem.<sup>63</sup> These three placement principles have so far been upheld by states and are normative in international humanitarian law. Even so, the importance of adopting a distinguishing symbol for enhanced protection is to encourage wider recognition of cultural heritage objects under international humanitarian law and affirm their immunity as stated in Article 12 Protocol II 1999.<sup>64</sup>

### **3. The States Practice**

It was an obligation of a state that ratified the 1954 Hague Convention and its Additional Protocol to install the Blue Shield Emblem on every object of cultural heritage for identification and protection during armed conflict.<sup>65</sup> Thus, when the cultural heritage object is registered and has been registered, it can use the Blue Shield

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<sup>62</sup> Nugraha, Taufik Rachmat. "Urgensi Perlindungan Benda Bersejarah di Indonesia Berdasarkan Hukum Humaniter Internasional." *Mimbar Hukum*, Vol. 31, No. 3, 2019, pp. 385-401, <http://dx.doi.org/10.22146/jmh.46446>.

<sup>63</sup> UNESCO, *Op.Cit.*, p. 7.

<sup>64</sup> Papathanassiou, Artemis. "New Challenges and Recent Achievements of the Committee of the Second Protocol: A Need to Refocus on the Committee's Potential." *Conference Programme International Conference on the 20th Anniversary of the 1999 Second Protocol of the 1954 Hague Convention, Jenewa, 25-26 April 2019*. UNESCO, 2019, p. 114.

<sup>65</sup> The 1954 Hague Convention doesn't clearly provide the terms for installing Blue Shield Emblem, but that come close for it is we can look in Article 3 about Safeguarding Cultural Property. Also see Murzal, Jufrian and Sophia Listriani. "Tanggung Jawab Peserta Tempur Dalam Melindungi Benda Cagar Budaya Dalam Suatu Konflik Bersenjata." *JIM Bidang Hukum Kenegaraan*, Vol. 1, No. 2, 2017, pp. 12-21, <https://jim.usk.ac.id/kenegaraan/article/view/13085>.

Emblem to provide an international identity that the object is a national cultural heritage object that is protected under international humanitarian law. Because cultural heritage objects receive very serious protection under international humanitarian law, violations committed by certain parties can be considered war crimes so that they can be brought before the international court mechanism. Since Protocol II 1999 came into force, individuals can be criminally charged for carrying out acts of destroying cultural heritage objects during situations of armed conflict. In 2012, the International Criminal Court (ICC) tried and sentenced 9 years in prison and charged Ahmad Al Faqi Al Mahdi with compensation for being guilty of attacking the Timbuktu Cemetery complex in Mali. Direct attacks on objects of cultural heritage are categorized as war crimes by the ICC.<sup>66</sup> It is also becoming the first ICC prosecution of the destruction of cultural heritage as a war crime.<sup>67</sup> This case could be seen as an answer the criticism that the legal protection of cultural heritage property is lacking strong enforcement.<sup>68</sup>

The 1954 Hague Convention and its Additional Protocols, in principle provide the principle of placement of Blue Shield Emblem on objects of cultural heritage in both the general protection system, special protection and enhanced protection. Of the three protection systems, only the enhanced protection system has at least complete guidelines for the use, utilization and placement of the Blue Shield Emblem. The Regulations for the Implementation of the 1954 Hague Convention regulate one provision for the placement of the Blue Shield Emblem. There is no standard provision regarding the exact size of the Blue Shield Emblem, which exists in principle that the Blue Shield Emblem must be placed in a position that can be seen from both land and air. Provisions for the placement of the Blue Shield Emblem are left to the practice of states. This discretion risks confusion, because it is not impossible to find the ignorance of the authorities of states regarding the use and placement of the Blue Shield Emblem on objects of cultural heritage.

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<sup>66</sup> Ramirez, Ernesto Ottone. "Protecting Cultural Property." *International Conference on the 20th Anniversary of the 1999 Second Protocol of the 1954 Hague Convention, Jenewa, Swiss, 25-27 April 2019*. UNESCO, 2019.

<sup>67</sup> Cuno, James. "The Responsibility to Protect the World's Cultural Heritage." *The Brown Journal of World Affairs*, Vol. 23, No. 1, 2016, pp. 97-109, <https://www.jstor.org/stable/26534712>.

<sup>68</sup> Curci, Alice. "The Prosecutor v. Al Mahdi and the Destruction of Cultural Heritage: Property Crime or Crime Against Humanity?" *UCLA Journal of International Law and Foreign Affairs*, Vol. 23, No. 1, 2019, pp. 159-182, <https://www.jstor.org/stable/48610706>.



The guidelines given regarding the use and placement of the Blue Shield Emblem on cultural heritage objects, for example, there are not allowed to add any design or anything to the designated symbol, the symbol must be displayed in large format.<sup>69</sup> Unclear size certainty is a problem at the international and national levels. The existence of the Blue Shield Emblem is a minimum standard in international efforts to protect cultural heritage objects from the risk of destruction due to armed conflict. The factors that often influence this problem are first, the lack of awareness that the loss of cultural heritage objects has real implications for society. For example, the historical value of this society will disappear from human civilization. Second, the lack of knowledge and research related to the risk of destruction of cultural heritage objects during armed conflict. Third, confusion among states in implementing the 1954 Hague Convention, especially in terms of determining the relevance of their national authority.<sup>70</sup>

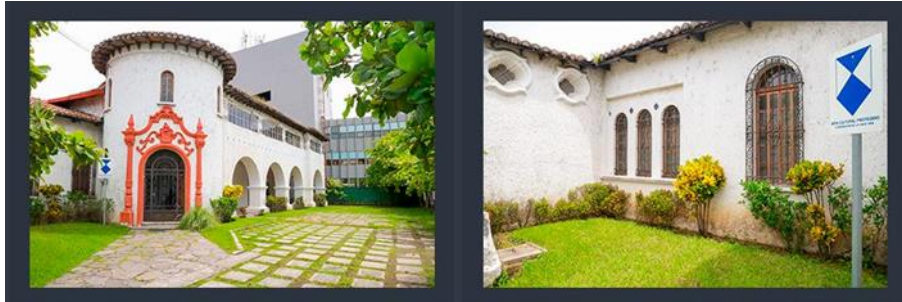
These three factors are quite relevant in the context of the implementation of international humanitarian law in efforts to protect cultural heritage objects during armed conflicts. This is also to see how the discretionary picture of these international humanitarian law instruments is carried out by the state. In addition, the debate that has arisen regarding the exact time of installation of this symbol so that this will be in line with Article 25 of the 1954 Hague Convention and Article 30 of Protocol II 1999 concerning parties in times of peace and armed conflict disseminate the text of the Convention and it is implementing regulations including having to know by the entire population, especially the armed forces and personnel involved in the protection of cultural heritage objects. This raises concerns that if it is installed during peacetime, it can cause problems related to aesthetics and state affairs. Therefore, due to the lack of clarity in the arrangements for international humanitarian law instruments regarding the placement of the Blue Shield Emblem on these cultural heritage objects, we can see the implications for existing state practices.

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<sup>69</sup> The Blue Shield. "The Blue Shield Emblem: Guidance for Use." *Blue Shield International*, <https://theblueshield.org/download/the-1954-hague-convention-blue-shield-emblems-of-protection/>, accessed on 25 January 2022.

<sup>70</sup> Rosen, Frederick. "Cultural Property and the International Protection Gap, Conference Proceedings: International Conference on the 20<sup>th</sup> Anniversary of the 1999 Second Protocol of the 1954 Hague Convention," Jenewa, Swiss, 2019, p. 76.

El Salvador, as one of the participating states in the 1954 Hague Convention, installed a single Blue Shield Emblem on 5 of its cultural buildings in the 2012-2013 period as shown sequentially in the five images below, namely 1). the Museum Forma; 2). San Miguel Arcángel Parish; 3). Corinto Cave; 4). Barrientos Family House; 5). Monument of Memory and Truth.



**Figure 5. Blue Shield Emblem in the Museum Forma, El Salvador.**<sup>71</sup>



**Figure 6. Blue Shield Emblem in San Miguel Arcángel Parish, El Salvador.**

*Source: Flickr.com*

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<sup>71</sup> Ministry of Culture's El Salvador. "La Casona Celebrates 29 Years as a Cultural Aset." *komunikasi@cultura.gob.sv*, <https://www.cultura.gob.sv/la-casona-cumple-29-anos-como-bien-cultural/>, accessed on 25 January 2023.



**Figure 7. Blue Shield Emblem in the Holy Cave (Corint Cave), El Salvador.**

*Source: Google Photos*



**Figure 8. Blue Shield Emblem in Barrientos Family House, El Salvador.**<sup>72</sup>



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<sup>72</sup> Culture in Crisis. “Conservation of the Mid 19th Century Casa Barrientos.” *Culture in Crisis*, <https://cultureincrisis.org/projects/conservation-of-the-mid-19th-century-casa-barrientos-in-izalco>, accessed 23 January 2023.

**Figure 9. Blue Shield Emblem in Monument of Memory and Truth, El Salvador.** <sup>73</sup>

Then it is made with a pole as shown in Figures 5, 6, 7 and 8. The Blue Shield Emblem is placed in a location next to the building entrance, around the cultural heritage area and in the building's yard. On the underside of the Blue Shield Emblem frame there is a statement that the cultural heritage building is protected under the provisions of the 1954 Hague Convention and El Salvador's national law as shown in Figure 8. El Salvador's efforts to mark cultural heritage objects by attaching the Blue Shield Emblem involve various international and national authorities. The marking of the Blue Shield Emblem was carried out during peacetime and was a collaborative effort with the Committee for the Protection of Cultural Heritage During Armed Conflict. The El Salvador national authorities that are at least primarily involved are the Inter-Institutional Committee of International Humanitarian Law of El Salvador (CIDH ES) dan the Ministry of Defence.<sup>74</sup>

The placement of a single Blue Shield Emblem by El Salvador is in accordance with Article 20 paragraph (1) of the 1954 Hague Convention Implementation Regulations for general protection. The Blue Shield Emblem on the five cultural heritage objects of El Salvador can be seen from the landside in hotspot areas that are easily accessible to visitors. The involvement of the Committee for the Protection of Cultural Heritage During Armed Conflict and the national authorities of El Salvador shows the seriousness of efforts to identify cultural heritage objects with the Blue Shield Emblem.

Blue Shield Emblem marking is also carried out by several other states, such as:<sup>75</sup>

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<sup>73</sup> Bruton, J. Makali. "Monument to Memory and Truth." *Hmdb.Org*, 2015, <https://www.hmdb.org/m.asp?m=80484>, accessed on 25 January 2023.

<sup>74</sup> UNESCO. "Report on the Use of the Financial Assistance Granted to El Salvador from the Fund for the Protection of Cultural Property in the Event of Armed Conflict, CLT-13/8.COM/CONF.203/4." *UNESCO Digital Library*, 2013, <https://unesdoc.unesco.org/ark:/48223/pf0000230119>, accessed on 25 January 2023.

<sup>75</sup> U.S. Committee of the Blue Shield. "The Blue Shield Emblem." *uscbs.org*, <https://uscbs.org/blue-shield-emblem.html>, accessed on 25 January 2023.



**Figure 9. Historic Buildings in Wiener Neustadt, Austria.**



The Blue Shield on a museum roof must be large enough to be seen from high altitude. This symbol was painted atop the roof of the Iraq National Museum in Baghdad prior to the 2003 invasion. Photo courtesy Dr. John Malcolm Russell.

**Figure 10. Kato Paphos Site, Cyprus.**

Placement of the Blue Shield Emblem is considered difficult to place in a suitable and visible place. The installed emblem must not be placed in any way that may pose a risk of infringement or damage to the authenticity of the cultural heritage site. Just as in Figure 10 which places the Blue Shield Emblem on a roof, the placement of the Blue Shield Emblem was also carried out at the Kato Paphos Site in Cyprus, a site that has a circumference of 5 km so that it places the symbol on the roof of the conservation laboratory. Placement in this way is intended so that the size of the Blue Shield Emblem is large enough to be seen from the air.<sup>76</sup> Uniformity regarding sizes

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<sup>76</sup> UNESCO. "Seventeenth Meeting Committee for the Protection of Cultural Property in the Event of Armed Conflict, C54/22/17.COM/INF.8.I." *UNESCO Digital Library*, 2022, <https://unesdoc.unesco.org/ark:/48223/pf0000384108>, accessed on 25 January 2023.

that have not been determined and submitted based on interpretation to each state raises the risk of the protection of cultural heritage objects.<sup>77</sup>

History records that there are many cases of intentional destruction of cultural heritage objects during situations of armed conflict even though the 1954 Hague Convention and its additional Protocols are legally valid. But that does not mean that these international humanitarian law instruments have no significant effect in the context of their implementation. When the era of armed conflict occurred in Bosnia in 1992-1995, the old cultural heritage building The Bridge (Stari Most), namely a bridge across the Neretva River built by an Ottoman architect in 1566, was destroyed during an armed conflict in 1993. The Bosnian Military Commander Slobodan Praljak admitted that he deliberately destroyed the cultural heritage building because he did not see the Blue Shield Emblem as a sign of identification of protected cultural object.<sup>78</sup> In this case the connection between the existence of the Blue Shield Emblem and the protection of cultural heritage objects is very real.

Another issue also arises when the Blue Shield Emblem is not clearly visible at night or when the lighting is poor. In armed conflict situation, armed forces using high tech equipment such as thermal or infrared cameras to see in a low light environment. Eventhough the design of Blue Shield Emblem is either in a big size or composed of bright white and blue colors; it is not always easy to recognize. In general, the States were making Blue Shield Emblem with ordinary paint. It resulted in Blue Shield Emblem dimly visible at night. There needs to be a Blue Shield Emblem-making method or technique that can be practiced uniformly by the States. In this matter, one technique is the use of thermal tapes for the purposes of identification Blue Shield Emblem at night or low light condition. This technique has been used in the installation of the Red Cross Emblem.<sup>79</sup> Thus, the use of thermal tapes could increase the

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<sup>77</sup> UNESCO to overcome differences in interpretation in applying the Blue Shield Emblem by issuing a document: "Distinctive marking of cultural property: rules and practices", the document can be accessed at <https://unesdoc.unesco.org/ark:/48223/pf0000380180>. Even so, this document is still considered unable to answer the confusion regarding the size of the application of the *Blue Shield Emblem*. *Ibid*, point 39.

<sup>78</sup> Walasek. *Loc.Cit*.

<sup>79</sup> Loye, Dominique. "Making the distinctive emblem visible to thermal imaging cameras." *International Review of the Red Cross*, Vol. 37, 2010, pp. 199-201, <https://doi.org/10.1017/S0020860400085132>.

probability of precise identification of the Blue Shield Emblem on cultural heritage property at night, as well as daytime.

### **III. CONCLUSION**

The Blue Shield Emblem was formed from the efforts of social, political, cultural, humanitarian movements and up to having its legal framework; the 1945 Hague Convention, Protocol I 1954 and Protocol II 1999. Thus, installing Blue Shield Emblem is a concrete way to support the implementation of those laws that prohibit the destruction of cultural heritage properties in armed conflict situations. Still, the implementation by the states varies, although to a certain minimum extent the Blue Shield Emblem mounted on cultural heritage properties is visible clear at the daytime only. There needs to be a rapprochement policy regarding the practical standards for implementing Blue Shield Emblem; the location; definite sizes and such a Blue Shield Emblem-making method. Apart from that, it is also necessary to increase the awareness of the states and non-state actors who are at armed conflict that destroying cultural heritage properties is somehow prohibited not only by norms but also by the international community as well.

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