Humanity's cultural heritage is threatened by war, internal conflicts, looting and natural disasters. In order to protect this fragile non-renewable resource, an international community of archaeologists, lawyers and statesmen strive to draft international conventions, declarations and recommendations to govern the protection of cultural heritage. The 2001 Convention on the Protection of the Underwater Cultural Heritage (CPUCH) is the most recent development in the international criminalisation of cultural heritage.
Abstract—Humanity’s cultural heritage is threatened by war, internal conflicts, looting and natural disasters. In order to protect this fragile non-renewable resource, an international community of archaeologists, lawyers and statesmen strive to draft international conventions, declarations and recommendations to govern the protection of cultural heritage. The 2001 Convention on the Protection of the Underwater Cultural Heritage (CPUCH) is the most recent development in the international criminalisation of offences against cultural heritage. This paper outlines the evolution of International Cultural Heritage Law and examines International Law’s two prongs approach towards the protection of cultural heritage. As will be shown, the growth of International Cultural Heritage Law and its twin aims of protecting objects of significant cultural value during times of war and conflict and in times of peace are a social and legal development of contemporary times and one that demarcates present governance policies from past State initiatives. Furthermore, prior to the 2001 CPUCH, the majority of international treaties focused on preserving and protecting historic sites and cultural material located on land. Today, underwater archaeological sites, including sunken shipwrecks and their cargo are afforded the same legal protection from looting, theft and vandalism. The UNESCO 2001 Convention on the Protection of the Underwater Heritage is a significant milestone in the evolution of the idea to preserve the past for future generations. Its provisions refer to in-situ management of underwater cultural heritage, cooperation between States, and the banning of commercial exploitation of underwater cultural heritage.

Cultural heritage must be protected from theft and the deliberate destruction during times of war as well as in times of peace. The importance given to cultural heritage by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in recent years should not be construed as placing the destruction of heritage above human suffering during times of war and conflict. The effort by the UNESCO in protecting cultural relics and sites is by no means saying that human beings are less important. It is not a question of whether the loss of heritage is more or less important than human suffering during times of war and conflict. Rather the protection of cultural symbols, monuments and buildings complements the protection of human rights [7]. The inter-relationship between human rights and cultural heritage is explained in the following quotation by Lyndel Prott:

2 See for example: UNESCO 2003 Declaration concerning the Intentional Destruction of Cultural Heritage, Article IX – Human rights and International Humanitarian Law: ‘In applying this Declaration, States recognize the need to respect international rules related to the criminalisation of gross violations of human rights and international humanitarian law, in particular, when intentional destruction of cultural heritage is linked to those violations’; The 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society (the Faro Convention). In its Preamble it states that every person has the right to engage with the cultural heritage. Also, article 1 (c) states ‘that the conservation of cultural heritage and its sustainable use have human development and quality of life as their goal’. Article 2 defines cultural heritage as ‘a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time’. In regards to literature, see generally J. Jokilehto ‘Human rights and cultural heritage: observations on the recognition of human rights in the international doctrine’. International Journal of Heritage Studies 2012, 18 (3) 226-230; B. Boer & G. Wiffen Heritage Law in Australia, Oxford Press: South Melbourne, 2006, p. 27; A. F. Vrdoljak ‘Cultural heritage in human rights and humanitarian law’, in (O. Ben-Naftali, edition) International Humanitarian Law and International Human Rights Law Oxford University Press, 2011, 250-302, pp.250-251.
It is understandable that the view is sometimes expressed that “things” are not as important as human beings. And that consideration of the fate of objects should always be secondary to that of the alleviation of suffering. Yet we at UNESCO are constantly confronted by the pleas of people who are physically suffering to help them save their cultural heritage, for their suffering is greatly increased by the destruction of what is dear to them. Their cultural heritage represents their history, their community, and their own identity. Preservation is sought, not for the sake of the objects, but for the sake of the people for whom they have a meaningful life.

The basic theory underlying cultural property is that being an important aspect of culture, it is imperative for States to protect cultural heritage from deliberate destruction, theft and unlawful export and trade. In the words of one commentator:

[Cultural property] gives each person his intellectual identity, irrespective of whether he is a creator or simply a user. Cultural property in its entirety constitutes a huge heritage which determines our awareness and inspires new bursts of creativity. Any reduction in this heritage, built up over the centuries and constantly added to, means a loss. The protection of cultural property is rightly considered everybody’s duty.

As cultural property creates inspiration for new creation and gives each person his or her cultural and intellectual identity and is a medium for communication between the various peoples it influences, extends beyond national borders and contributes towards a distinct cultural identity for each nation. Given that the world today is becoming increasingly globalised by the world’s financial markets, global communication systems, and technology, cultural heritage for some people is a stabilising force in an ever changing technological environment. As cultural heritage is important to individuals, States, communities, and humanity itself, there is today a global effort led by the United Nations to define what cultural heritage is, and to devise effective and efficient mechanisms to protect cultural heritage. Despite increasing public awareness of the need to protect objects and sites of cultural significance, cultural heritage is still lost due to its deliberate looting and destruction during times of war and internal conflict as well as from unlawful commercialisation, export and trade in times of peace.

Ancient texts, writings of leading seventeenth and eighteenth century European jurists, military campaigns of generals, such as Alexander the Great and Napoleon, together with nineteenth century European customary war practices, all indicate a recognition, albeit limited, of the need to protect certain types of public property during armed conflict. Kastenberg (1997) explains that there are at various times in history been a basic awareness among peoples, especially among theorists and philosophers, of a customary practice of protecting sacred sites and political centres during times of conflict. For example, Polybius of Athens, argues for the protection of property. He writes:

One may perhaps have some reason for amassing gold and silver; in fact, it would be impossible to attain universal dominion without appropriating these resources from other peoples, in order to weaken them. In the case of every other form of wealth, however, it is more glorious to leave it where it was, together with the envy it inspired, and to base our nation’s glory, not on the abundance and beauty of its paintings and statues, but on its sober customs and noble sentiments. Moreover, I hope that future conquerors will learn from these thoughts not to plunder the cities subjugated by them, and not to make the misfortunes of other peoples the adornment of their own country.

The ancient historian, Polybius, is arguing that artwork and statues should be left in their original context and not removed for the purpose of glorification. This is similar to arguments advanced today by various heritage treaties that advocate in situ preservation of cultural relics.


The European renaissance of the sixteenth and seventeenth centuries provides a further glimpse of early developments in the idea of States, together with individuals, desiring to preserve historic buildings and sacred and religious sites. For instance, Renaissance jurists and philosophers, such as Huigh de Groot (Hugo Grotius) (1583-1648), Emmerich de Vattel (1714-1767), Jean-Jacques Rousseau (1712-1778) and Alberico Gentili (1552-1608) wrote lengthy treatises on State warfare and publicly condemned deliberate attacks on sacred places and the looting of cultural relics. Writers and jurists such as Hugo Grotius often used the ancient sources as support for their advocacy of moderation in warfare. For example, Grotius, a lawyer by profession, cited Polybius when arguing for the sparing of religious works. Grotius writes:

Polybius says it is a sign of an infuriated mind to destroy those things which, if destroyed, do not weaken nor bring gain to the one who destroys them: such things are temples, colonades, statues and the like. Marcellus, whom Cicero praises, spared all the buildings of Syracuse, public and private, sacred and profane, just as if he come with his army to defend them, not to capture them.

Writing during the Enlightenment, the Swiss jurist Emmerich de Vattel (1714-1767) argued that certain cultural material ‘of remarkable beauty’ which were ‘an honour to the human race and which do not add to the strength of the enemy’ should be spared. In other words, Vattel is arguing that cultural property should be regarded as a separate category from other property in time of war. Like Grotius, Vattel accepts military necessity may require the destruction of a cultural monument or building but military convenience is not sufficient. Vattel wrote:

For whatever cause a country is ravaged, we ought to spare those edifices which do honor to human society, and do not contribute to increase the enemy's strength—such as temples, tombs, public buildings, and all works of remarkable beauty. It is declaring one's self an enemy to mankind, thus wantonly to deprive them of these monuments of art and models of taste; and in that light Belisarius represented the matter to Tottila, King of the Goths. We still detest those barbarians who destroyed so many wonders of art, when they overran the Roman Empire.

However, despite the basic recognition of items of cultural significance, a tragic loss of cultural heritage through deliberate looting and ransacking has occurred throughout history.

Infamous examples of the deliberate destruction of another’s cultural relics include the systematic destruction of the Mayan codices by the Spanish conquistadors in the sixteenth century, the shelling of the Louvain Library in Belgium and Rheims Cathedral in France during World War I; and the controversial aerial bombing of various German towns during World War II such as Dresden and Wurzburg in 1945. Indeed, even in contemporary times there are numerous examples where nations and their rulers have failed to protect a city’s religious sites and civilian property. For instance, typical examples of contemporary non-compliance with International Law is evident in the two Gulf Wars as well as during civil conflicts, such as in Cambodia during the 1970s, the former republic of Yugoslavia and Libya.

The idea to protect civilian private property was originally confined to international wars (for instance, interstate conflicts). In comparison, today, the law of warfare has evolved to catch civil uprisings and internal conflicts, such as that occurring in Mali. The idea to protect certain forms of religious and historical property during times of war and conflict emerged in the seventeenth century, especially after the horrors of the Thirty Years War (1608 – 1648). The Peace of Westphalia in 1648 marked the end of the Thirty Years War, however, prior to the truce, the fierce fighting between Catholic and Protestant European States reached an unimaginable scale, eventually involving most of the great powers of Europe. There was not only the loss of numerous lives on both sides as the war progressed but there was the deliberate destruction of private and public property, livestock and historically significant material on a level never before seen. A further
prompt to protect specific categories of property occurred in the eighteenth century in the form of scholarly debates between leading jurists pertaining to issues of a 'just war'\footnote{L.M. Kay, ‘Laws in Force at the dawn of World War II: international conventions and national laws, (in E. Simpsons edition) The Spoils of War. H.N. Abrams, Inc. Publishers, New York, 1997, p. 101.}]. The seventeenth and eighteenth centuries produced important scholarly works that defined the duties of European States during times of conflict and, in so doing, engaged popular discourse on issues of warfare, including the deliberate destruction of State owned and civilian property in contrast to property found on the battle field\footnote{\[24\] J. L. Sax, ‘Heritage preservation as a public duty: The Abbe Gregoire and the origins of an idea’. Michigan Law Review 1990, 88, 1142-1169, p. 1148; S. Eagen, ‘Preserving cultural property: our public duty: A look at how and why we must create international law that support international action’. Pace International Law Review 2001, 13, 407-448, p.417.}. The eighteenth century also was a time of great political and social upheaval. For instance, there was the French Revolution followed by the American Revolution. Through violent political upheaval and changes in the social and intellectual fabric of States, in particular, like that which occurred during the French Revolution, the change in the social fabric often forced a State’s new government to consider what to do with the riches and cultural treasures confiscated from its ‘wealthy citizens’. Should it, for instance, melt it down, sell it abroad or hold it on behalf of the people? If the latter was selected, the next question would be where would the relics be stored for the people (for instance, in a State owned museum)? Thus, by the end of the eighteenth century, there were at least three factors influencing the public’s growing awareness of the need to protect its hospitals, libraries, historic buildings, town centres, ancient ruins, and places of worship: namely, the massive amount of European property that was lost during the Thirty Years War, the scholarly debates of the renaissance pertaining to a ‘just war’, and the emergence of State sovereignty itself as shaped by the spirit of revolution and patriotic nationalism. All three distinct socio-historical factors, helped create overtone an idea that States should preserve objects of cultural significance for future generations.

Credit must also go to a number of forward thinking individuals who helped to prompt a social and political awareness and desire among the wider community and the nation State itself to protect its churches, historic buildings and educational institutions, including the need to separate cultural objects from other forms of private and public (State) property. Apart from important renaissance scholars and jurists, such as Hugo Grotius, Vattel\footnote{\[22\] See for example the works of Emheric de Vattel (1714-67) and his treatise The Law of Nations (1758). For a general overview of important events, treaties and scholarly debates regarding State rights and obligations, see A. S. Hershey, ‘History of international law since the Peace of Westphalia’. 1912, 6 (1) The American Journal of International Law 30-69.}, and Abbe Gregoire\footnote{\[23\] Abbe Gregoire (1750-1831) was commissioned by the French revolutionary government to look into the question of what to do with objects removed from the homes of wealthy aristocrats along with developing a response to the proposal to destroy all monuments containing Latin inscriptions. Abbe Gregoire’s rational for the protection of cultural works are contained in his three Reports on Vandalism. These Reports paved the way for the cultural preservationist movement in France.}, there are a number of prominent individuals and Statesmen who campaigned for greater State involvement in the preservation of cultural resources. For instance, Raphael, who is often credited as the instigator of the heritage preservationist movement, during the Italian Renaissance, wrote a letter to Pope Leo X around 1519\footnote{\[20\] L.M. Kay, ‘Laws in Force at the dawn of World War II: international conventions and national laws, (in E. Simpsons edition) The Spoils of War. H.N. Abrams, Inc. Publishers, New York, 1997, p. 101.} informing his Holiness of the intolerable situation existing in Rome regarding the demolition of historic monuments to feed the increasing demand for building material brought about by the increase in the city’s population. The Vatican responded with a number of Papal decrees that were reiterated over the next several centuries in order to preserve Italian heritage. Another prominent leader in heritage law reform is the British parliamentarian, Sir John Lubbock (later Lord of Avery), who from 1873 through to 1880, introduced into the British Parliament on a number of occasions an Ancient Monuments Bill intended to protect historic monuments, such as Avebury stone circles \[\[25\].\] Lubbock’s Bill addressed the deliberate destruction of ancient ruins by their owners. Often English land owners would elect to cultivate their fields with little consideration of Roman and Prehistoric remains located on their property. Often these cultural remains would be dismantled for building material or ploughed under the soil\footnote{\[25\] S. Eagen, ‘Preserving cultural property: our public duty: A look at how and why we must create international law that support international action’. Pace International Law Review 2001, 13, 407-448, p.417.}. In 1882, Lubbock’s persistence paid off with the House of Commons creating the Ancient Monuments Protection Act albeit a number of its provisions truncated.\footnote{\[27\] J. L. Sax, ‘Heritage preservation as a public duty: The Abbe Gregoire and the origins of an idea’. Michigan Law Review 1990, 88, 1142-1169, p. 1148; S. Eagen, ‘Preserving cultural property: our public duty: A look at how and why we must create international law that support international action’. Pace International Law Review 2001, 13, 407-448, p.419.}. As Joseph Saxs (1990) points out, his bill marked a radical turn in the development of property law. His was the first piece of legislation in the Anglo-American world to embrace two related principles: that the protection of cultural property was a governmental duty, and that public ownership and control should be brought to bear on unwilling proprietors.\footnote{\[28\] J. L. Sax, ‘Heritage preservation as a public duty: The Abbe Gregoire and the origins of an idea’. Michigan Law Review 1990, 88, 1142-1169, p.1545.}.

In 1905 Professor Gerald Baldwin Brown argued that there could be no action to preserve monuments ‘unless there be in the mind of the people a certain force of intelligent belief’ in the need for it. But public opinion, he suggested, ‘is in its very nature an unorganised force, acting spasmodically upon stimulus provided by some striking event or by the initiative of individuals who can magnetise their fellows’. Thus, Brown concluded that ‘what is needed is some permanent agency representing the public mind at its best and kept in working
order [29]. Today, that specialised agency relating to the guardianship of cultural heritage and the organisation responsible for representing the ‘public mind’ is the United Nations and its various organisations and institutions including UNESCO and the International Council for monuments and Sites (ICOMOS) [30]. Through the United Nation’s role in drafting international legal instruments and its power to call for penal sanctions for offences against cultural heritage, the United Nations is able to govern the stewardship of cultural heritage and ‘keep the public mind in working order’. As International Law can regulate diverse fields of public concern and respond to potential threats to cultural heritage, International Law assists to help organise the mind of the people to preserve their icons rather than destroy them. In theory, if the United Nations is kept in working order, it is a force that can be used to muster public opinion in an organised manner rather than spasmodically. The juridical mechanism employed for this task by the United Nations is international treaties which target human activities that directly or indirectly impact upon cultural heritage.

II. THE UNITED NATIONS

The United Nations, together with its cultural agency, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) both approach the protection of cultural heritage on a two pronged juridical basis. That is, the United Nations protects cultural heritage during times of warfare, conflict and civil unrest, while also regulating the protection of cultural heritage in times of peace [31]. The protection of cultural heritage in times of peace is undertaken through the regulation of the international antiquity and art market and the World Heritage List. The international regulation of the sale of antiquities, art and other cultural material is achieved in part through export and import regulations and licences [32]. In targeting the transfer of cultural objects across borders during times of peace, International Law attempts to prohibit the illegal removal of cultural objects from source nations [33]. In comparison, the protection of cultural heritage during times of war and conflict is achieved through the regulation of the conduct of military combatants. Prior to the creation of the United Nations in 1945, important humanitarian laws protecting objects of cultural significance included: the 1865 Lieber Code [34], the Hague Conventions of 1899 and 1907 [35] and the Roerich Pact [36]. However, with the creation of the UNESCO [37] there existed for the first time in history a single international organisation specialised in the protection of cultural heritage. The advantage of UNESCO is that it allows a global approach and response to the protection of cultural heritage, along with enabling a uniform definition of cultural heritage to be agreed upon among member States. Accordingly, in the management of cultural property there is no longer a need to deal with cultural heritage in a fragmented manner such as identifying specific categories of cultural icons, like monuments, religious structures and buildings, and historic ruins[38]. Furthermore, the regulation of cultural heritage is no longer confined to the realm of International Humanitarian Law (the laws and codes of war).

The two legal instruments drafted by UNESCO that are most responsible for the shift in public perception of the need to protect cultural heritage are the UNESCO 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict [39] and the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property [40]. Other important multilateral treaties developed by the United Nations or UNESCO include: (i) 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage; (ii) 2000 United Nations Convention Against Transnational Crime [41] (iii) the 1995 UNIDROIT Convention on Stolen or

The United Nations, through the use of international legal instruments, such as those listed above, regulates not only the definition of cultural heritage but also the ownership of cultural property itself. In other words, from the mid-twentieth century and onwards, private rights attached to ownership of cultural heritage became more stringently regulated and common law property rights, including sale, trade and salvage substantially restricted. The following section examines the most recent trend in the on-going progression of the globalisation of the preservationist movement, including the international criminalisation of offences against cultural heritage. It examines efforts by UNESCO to protect underwater archaeological sites from theft, looting and vandalism.

III. 2001 Convention on the Protection of the Underwater Cultural Heritage

[41] Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed, adopted 26th March 1999 (entered into force 9th March 2004). See Articles 15-18 dealing with individual criminal liability. A state party must either prosecute or extradite any person found in its territory who is deemed to have committed serious violations of the Hague/Protocol II rules. The Protocol specifically defines five serious violations for which it establishes individual criminal responsibility. The first three of these are subject to universal jurisdiction (Article 16), and prosecution (Article 17), as well as being extraditable (Articles 18 - 20), paralleling international crimes such as piracy under customary international law, or for example, “grave breaches” of the Geneva Conventions or the crime of genocide. The remaining two categories are to be prosecuted domestically. This includes the category of theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention (Article 15). In accordance with the Protocol, States undertake to adopt appropriate legislation to make these violations criminal offences under their domestic law and to provide appropriate penalties. It is important to note the limitation in the second Protocol: The property covered by the Second Protocols must be of such importance that it will be recognised by everyone, even without being marked with a blue cross. It is narrow in interpretation and definition in comparison to the broader definition contained in the 1954 Hague Convention. In other words, the Protocol has created a ‘enhanced protection’ category. To qualify for enhanced protection, cultural property must meet three conditions: (1) it is of the greatest importance to humanity, such as designated World Heritage sites; (2) it is protected by adequate domestic legal and administrative measures, including existing UNESCO protections, recognizing its exceptional cultural and historic value; and (3) it is not used for military purposes to shield military sites, and a declaration has been made by the state that has control over the property that it will not be so used.


The 2001 Convention on the Protection of the Underwater Cultural Heritage [46] (CPUCH) reflects UNESCO’s long-term concern with cultural remains, including relics located in the marine environment. Drafting began in 1993 and on the 2 November 2001, the General Assembly of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) adopted the Convention on the Protection of Underwater Cultural Heritage. The Convention came into force on 2nd January 2009. The CPUCH’s primary purpose is to control treasure-hunting activities in international waters [47]. In other words, historic shipwrecks should not be exploited by treasure hunters (or salvagers) for commercial gain [48].

Article 1 of the 2001 Convention on the Protection of the Underwater Cultural Heritage [49] (UCH) defines UCH as “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years” [50]. This is taken to include submerged buildings, aircraft, structures such as wharfs, objects of a “prehistoric character” as well as shipwrecks. The CPUCH contains several articles concerning the prevention of the illicit trafficking of cultural property recovered from the world’s oceans. The operative sections of the CPUCH are articles 14 through to 18 [51]. Article 14 builds upon Article 2’s stipulation that UCH shall not be traded, sold, bought, or bartered as commercial goods. In accordance with Article 14, ‘States Parties shall take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage illicitly exported and/or recovered, where recovery was contrary to this Convention [52].’ An article based on similar logic to Article 14 is Article 18. ‘Each State Party shall take measures providing for the seizure of underwater cultural heritage in its territory that has been recovered in a manner not in conformity with this Convention [53].’ Once seized, UCH must be recorded, protected and all reasonable measures taken to stabilize it, preferably in situ wherever possible [54]. In addition, the seizing State must advise the Director-General of the United Nations Education, Scientific and Cultural Organisation (UNESCO) and any other State with a verifiable link, especially a cultural, historical or archaeological link, to the seized underwater cultural heritage [55]. The Underwater

[54] Article 1, 2001 CPUCH.
[56] Article 14, 2001 CPUCH.
[57] Article 18, 2001 CPUCH.
[58] Article 18 (2), 2001 CPUCH.
[59] Article 18 (3)
Cultural Heritage Convention also requires countries to prohibit the use of their territory and maritime ports for activities that cause harm to underwater cultural heritage[^58]. Article 16 stipulates that States Parties should take measures to ensure that their citizens and vessels flying their flag do not undertake any activities directed at UCH that would be inconsistent with the aims of the CPUCH. Article 17 imposes criminal sanctions for dealing with UCH contrary to the CPUCH[^57].

Sunken ships meeting the legal definition of UCH must be protected in situ wherever possible and not commercially exploited or salvaged[^58]. The benefit of the CPUCH is that it allows States to protect their sunken ships located in international waters. Under the 1982 Law of the Sea[^59] (and the doctrine of freedom of the High Seas) only the country to which treasure hunters belong are able to prohibit their nationals diving to a wreck in international waters. If a State was reluctant to prevent its nationals diving on another flag State’s sunken wreck, located in international waters, there is little that can be done. The 2001 CPUCH overcomes this problem by relying on State Cooperation in the protection of UCH. That is, through international cooperation between contracting States, wrecks in international waters can be protected and preserved in situ[^60]. By joining the Convention, States agree to prohibit their nationals and vessels from looting UCH regardless of location. The CPUCH also provides detailed rules for the reporting and the coordinating of activities directed at UCH depending on the maritime zone that the UCH site is located within.

The UNESCO 2001 Convention on the Protection of the Underwater Heritage is a significant addition to the growing collection of international heritage agreements. All in all, these treaties represent a distinct and vibrant category of International Law, that is, International Cultural Heritage Law. In addition, the 2001 CPUCH is an important milestone in the evolution of humankind’s awareness for the need to protect objects of cultural significance for future generations.

IV. CONCLUSION

As was shown, early efforts to protect cultural property were State based and often confined to historic buildings and monuments. This meant that often State policies pertaining to heritage protection operated in isolation, and there was little uniformity in the definition of cultural heritage, while offences against cultural heritage varied between States. Although intergovernmental agreements arose by the mid-nineteenth century they usually confined themselves to codes of conduct during warfare and sought to protect a limited range of tangible public and historical buildings and structures. In contrast, today there is a global effort towards the protection of cultural heritage plus an increasing diversity within the categories of property that can be protected by International Law, including both cultural and natural landscapes. The global approach to heritage management is evident in the increasing number of public and private organisations and institutions associated with heritage protection as well as the volume of international laws, regulations and guidelines addressing the protection of religious icons, monuments, archaeological sites and objects (the most recent being the 2001 UNESCO Convention of the Protection of the Underwater Cultural Heritage).

Arguably, what separates contemporary times from previous centuries is the use of International law to criminalise former lawful behaviour, such as salvaging historic wrecks and the looting and collecting of another’s cultural icons. A further significant change is the criminalising of specific activities such as the deliberate shelling of historical sites during times of war and conflict, especially creating international offences against cultural heritage such as war crimes and crimes against humanity[^61]. A further distinguishing attribute from previous centuries is the use of International Law to regulate the entry of cultural heritage into the global market[^62]. It is this shift not only in the definition of cultural heritage overtime to incorporate a wider array of culturally significant material but also the strict controls surrounding the right to own another’s cultural heritage along with severe penal provisions targeting the destruction of cultural heritage that sets the modern age from previous centuries. In other words, International Law no longer considers matters such as art fraud, theft and other offences against cultural heritage as internal State matters. Rather, International Public Law deems that such activities are not only criminal but warrant an international platform, including an international response. The internationalisation of cultural heritage protection is evident in the wording of the 2000 Convention Against Transnational Organised Crime (CATOC). The Convention declares that illicit trafficking in cultural heritage is an international concern and a criminal offence. In addition, it identifies the link between illicit trafficking in cultural heritage and transnational organised crime[^63]. The 2000 CATOC testifies to the international community of States’ commitment to foster and enhance close international cooperation in order to tackle the problems listed in the Preamble (including trafficking in cultural heritage). The 2001 CPUCH also adopts the mechanism of State cooperation in its operational and regulatory framework in order to overcome jurisdictional limitations arising under the 1982 Convention of the Law of the Sea. In contrast to previous

[^56]: Article 15.
[^57]: Article 17.
[^60]: See Article 2(2) of the 2001 CPUCH
[^61]: See example Second Protocol to the 1954 Hague Convention in respect to grave breaches of humanitarian law (i.e. war crimes); Prosecutor v. Kordic and Cerkez, Case No. IT-95-14, Trial Judgement, 26th Feb. 2001.
centuries there is an increasing trend and demand for State cooperation in all matters pertaining to cultural heritage.

As was shown, an awareness of the need to preserve the past can be found in all historical eras, such as in ancient Greece and Rome, the European renaissance and reformation and during the era of the French and American Revolutions. Important literary sources include the writings of ancient historians; medieval letters, including those of Raphael written to the Pope; government sponsored reports similar to the official directories composed by the French Statesmen, Abbe Gregoire, along with well-known books and treatises written by Grotius, and Vattel. A further important source recording the evolution of the preservationist movement include the Bills and legislation drafted by major nineteenth century reformers and politicians such as the British Parliamentarian, John Lubbock. In addition, evidence testifying to State efforts to protect limited categories of public property during armed conflict can be found in the provisions of the nineteenth century codes of war, in particular the 1861 Lieber Code and the 1899 Hague Conventions. However, with the creation of the United Nations in 1945 there emerged the process of the internationalisation of cultural heritage protection which, in turn, led to the international criminalisation of offences against cultural heritage. Since the 1950s and 1960s cultural heritage’s definition has evolved to include classical artworks, antique books, furniture, monuments, and archaeological sites. Today cultural heritage encompasses both tangible (physical) and intangible heritage (non-physical, such as oral traditions, customs and dance) as well cultural landscapes such as the beautiful Wachau Valley located in Austria. Also, it includes submerged or partially submerged harbours, sunken cities, human remains and sunken shipwrecks.

In conclusion, contemporary policies of heritage protection have shifted from a State centred approach of ownership and responsibility of cultural heritage to an international emphasis in which cultural heritage is deemed to be owned by humanity (or even sub-national groups within States, such as Indigenous communities). Today, cultural heritage is more uniformly defined among States, while being broad in its composition, including covering cultural landscapes and underwater archaeological sites. At a global level the protection of cultural property whether located on land or in the marine environment is recognised as promoting the United Nation’s platform of human rights. In particular, the linking of cultural heritage with twentieth-century human rights discourse has had the positive result of allowing the international community to punish deliberate wartime violations as international war-crimes. Also, as was shown, cultural heritage regulation is no longer viewed as a sub-category of Humanitarian Law. Through the numerous UNESCO’s Conventions and its efforts to define and protect cultural heritage there has emerged a distinct category of International Law, known as International Cultural Heritage Law. The UNESCO 2001 CPUCH represents the latest effort by the international community of archaeologists, lawyers and statesmen to draft an international legal instrument that affords protection to the world’s unique underwater archaeological wonders.

Figure 1. Melk Abbey is located in Austria on the bank of the Danube River between Salzburg and Vienna (located within the Heritage listed Wachu Valley). Especially noteworthy is the church with magnificent frescoes by Johann Michael Rottmayr and the library containing countless medieval manuscripts. The region around the Abbey has been declared a Cultural Landscape by UNESCO (Photo: Kim Browne, Dec. 2011).

Figure 2. Heritage listing of the Wachau Valley in accordance with the Convention Concerning the Protection of the World Cultural and Natural Heritage. The document can be viewed in Melk Abbey (photo: Kim Browne, Dec. 2011).

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