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The meaning and protection of "cultural objects and places of worship" under the 1977 additional protocols / by Marina Lostal Becerril

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Abstract:	<p>This article addresses R. O'Keefe's 1999 publication entitled 'The Meaning of "Cultural Property" under the 1954 Hague Convention'. There the author made two points regarding the protection of 'cultural objects and places of worship' in the 1977 Additional Protocols to the Four Geneva Conventions of 1949 that have been commonly shared by legal scholarship and practice. First, he claimed that despite the divergences between the definitions of cultural property in the 1954 Hague Convention and the 1977 Additional Protocols, the spectrum of cultural property they covered was exactly the same. Secondly, he held that the Additional Protocols awarded a higher regime of protection to cultural property for not being subject to imperative military necessity. This article reconsiders and qualifies these statements. It argues that while both instruments tackle objects which represent each party's national heritage, their scope of application differ since the 1954 Hague Convention cannot cover places of worship that constitute the spiritual heritage of peoples per se. This, we will see, has resulted in its own different consequences in international practice. It is erroneous to maintain tout court that the 1954 Hague Convention offers a weaker regime of protection for cultural property. From a closer look at the relationship between the concepts of 'military objectives' and 'imperative military necessity', a distinct and more nuanced conclusion follows: the 1954 Hague Convention offers stricter guarantees against the likelihood of acts of hostility aimed at cultural property. This article continues a scholarly debate initiated by O'Keefe, casts some clarity on issues that seem to trouble the ICTY, and challenges the mainstream interpretation given to the protection of cultural property under the two Additional Protocols.</p>
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