The Protection of Cultural Heritage by International Law in Armed Conflict

Waseem Ahmad Qureshi

Follow this and additional works at: https://lawecommons.luc.edu/lucilr

Part of the International Law Commons

Recommended Citation
Available at: https://lawecommons.luc.edu/lucilr/vol15/iss1/3

This Feature Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago International Law Review by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.
## THE PROTECTION OF CULTURAL HERITAGE BY INTERNATIONAL LAW IN ARMED CONFLICT

Waseem Ahmad Qureshi*

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>Introduction</td>
<td>64</td>
</tr>
<tr>
<td>II.</td>
<td>Armed Conflict and Its Impacts on International Cultural Heritage</td>
<td>67</td>
</tr>
<tr>
<td>A.</td>
<td>Impacts on Tangible Cultural Heritage</td>
<td>67</td>
</tr>
<tr>
<td>B.</td>
<td>Impacts on the Intangible Cultural Heritage</td>
<td>69</td>
</tr>
<tr>
<td>III.</td>
<td>Provisions of International Law for the Protection of Cultural Heritage during Armed Conflicts</td>
<td>70</td>
</tr>
<tr>
<td>B.</td>
<td>Two Additional Protocols of 1977 to the Geneva Conventions of 1949</td>
<td>75</td>
</tr>
<tr>
<td>C.</td>
<td>UNESCO Conventions</td>
<td>77</td>
</tr>
<tr>
<td>1.</td>
<td>UNESCO Convention 1970</td>
<td>77</td>
</tr>
<tr>
<td>2.</td>
<td>World Heritage Convention (UNESCO Convention 1972)</td>
<td>78</td>
</tr>
<tr>
<td>D.</td>
<td>UN Resolutions</td>
<td>80</td>
</tr>
<tr>
<td>1.</td>
<td>Resolutions for Protecting Cultural Property in Iraq and Syria</td>
<td>81</td>
</tr>
<tr>
<td>E.</td>
<td>Provisions Related to the Protection of Intangible Cultural Heritage during Armed Conflicts</td>
<td>82</td>
</tr>
<tr>
<td>1.</td>
<td>Articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR)</td>
<td>83</td>
</tr>
<tr>
<td>2.</td>
<td>Hague Conventions of 1899 and 1907</td>
<td>84</td>
</tr>
<tr>
<td>3.</td>
<td>UNESCO Convention</td>
<td>85</td>
</tr>
<tr>
<td>IV.</td>
<td>International Organizations Working for the Protection of Cultural Heritage during Armed Conflicts</td>
<td>85</td>
</tr>
<tr>
<td>A.</td>
<td>UNESCO</td>
<td>86</td>
</tr>
<tr>
<td>1.</td>
<td>World Heritage Committee and World Heritage Fund</td>
<td>87</td>
</tr>
<tr>
<td>2.</td>
<td>International Council on Monuments and Sites</td>
<td>88</td>
</tr>
<tr>
<td>3.</td>
<td>International Alliance for the Protection of Cultural Heritage in Zones of Conflict (ALIPH)</td>
<td>88</td>
</tr>
<tr>
<td>B.</td>
<td>International Council of Museums (ICOM)</td>
<td>89</td>
</tr>
<tr>
<td>C.</td>
<td>World Customs Organization (WCO)</td>
<td>89</td>
</tr>
<tr>
<td>D.</td>
<td>Committee for the Protection of Cultural Property in the Event of Armed Conflict</td>
<td>90</td>
</tr>
<tr>
<td>V.</td>
<td>Gaps and Challenges in Protecting International Cultural Heritage during Armed Conflicts</td>
<td>91</td>
</tr>
<tr>
<td>A.</td>
<td>Gaps Related to the Hague Convention 1954</td>
<td>91</td>
</tr>
</tbody>
</table>

* Advocate Supreme Court of Pakistan.

Volume 15, Issue 1  Loyola University Chicago International Law Review 63
I. Introduction

International cultural heritage is divided into two main categories: 1) tangible cultural heritage and 2) intangible cultural heritage.¹ The former represents physical artistic expressions such as historic buildings, monuments, artistic objects, paintings, sculptures, historic sites, etc.,² whereas the latter represents nonphysical artistic expressions such as songs, narrations, tales, traditional expressions such as dance, religious practices, beliefs, etc.³ Tangible cultural heritage is also regarded as "cultural property" because it is essentially the natural property of the nation that owns it.⁴ However, according to some experts, intellectual property, which is also a form of intangible cultural heritage, is also considered cultural property.⁵ This paper is focused on the discussion related to the protection of tangible and intangible cultural heritage in times of armed conflict.

Unfortunately, armed conflict, particularly in recent times, has caused massive damage to cultural heritage in conflict-hit areas.⁶ For instance, in the war-torn state of Syria, the damage recorded to cultural property sites and objects is colossal.⁷ The Islamic State of Iraq and Syria (ISIS) has destroyed a number of temples, historic Christian monasteries, artistic cultural objects, and monuments that

---

² See Boer et al., supra note 1, at 71.
³ Id.
⁵ Charlie T. McCormick & Kim Kennedy White, Folklore: An Encyclopedia of Beliefs, Customs, Tales, Music, and Art 329 (2d ed. 2011).
The Protection of Cultural Heritage by International Law in Armed Conflict

were several thousand years old and were regarded as precious cultural property and an essential part of international cultural heritage.  

Similarly, in Iraq, the 2003 war caused massive plunder of tangible as well as intangible cultural heritage in the form of destruction of historic museums, libraries, collections of old books, and numerous historic cultural objects. Afterwards, ISIS plundered cultural property in Mosul, Nimrud, and Hatra in Iraq by capturing portions of these regions and has also destroyed Christian as well as Muslim historic sites.

Libya is another region that has faced great amount of damage to its cultural property after the demise and overthrow of Moammar Qaddafi’s regime there. The rebellious civil war against the Qaddafi regime in Libya resulted in massive plunder to cultural property and now ISIS is also trying to take hold of the region to capture the precious cultural property and oil reserves in this region. Owing to their recurrent threats, the United Nations Educational, Scientific and Cultural Organization (UNESCO) regards five ancient cultural heritage sites—Cyrene, Leptis Magna, Sabratha, Tadrart Acacus, and Ghadames in Libya—as at high risk of attack from ISIS. These sites are considered among the most precious historic cultural heritage sites in the world.

With all the existing threats to tangible cultural heritage, international law also comes into play and provides certain regulations and rules for the conduct of armed conflicts to warring parties in order to ensure full protection of cultural property and heritage sites during fighting. Cultural heritage law and cultural property law have been drawn from the provisions of the 1954 Hague Convention for the Protection of the Cultural Property in the Event of Armed Conflicts, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1972 World Heritage Convention concerning the Protection of the World Cultural and Natural Heritage, and the two 1977 Additional Protocols of the Geneva Conven-

---

9 Ali A. Allawi, The Occupation of Iraq: Winning the War, Losing the Peace 94–95 (Yale University 2008).
10 See Spencer, supra note 8, at 103-27.
15 Id.
The Protection of Cultural Heritage by International Law in Armed Conflict

...tions of 1949. This paper explains the applicable provisions of these conventions in the event of armed conflicts.

Furthermore, the essential role played by certain organizations for the protection of tangible cultural heritage during armed conflicts is also set out in the latter part of this paper. UNESCO has the leading role in putting efforts for protection of cultural property during armed conflicts. It has set up several other committees and advisory bodies that work independently or semi-independently within their respective domains for the protection of cultural property in armed conflict-stricken zones. For instance, the World Heritage Committee set up by UNESCO provides technical, scientific, educational, and advisory assistance to states for protecting their cultural property during armed conflict.

The question arises here is whether, with all of the relevant legal provisions of the aforementioned conventions and with the efforts of international organizations for the protection of cultural property, international tangible cultural heritage is under complete protection in conflict-stricken areas. Unfortunately, the answer is no, because there are numerous challenges and gaps in the implementation of these international conventions. In particular, there is a lack of legislation and implementation.

The paper adopts a narrative approach in discussing and evaluating the impacts of armed conflicts on tangible and intangible cultural heritage in light of historic and recent armed conflicts. It then sets out the legal provisions related to offering protection to cultural heritage. In this regard, the first section of this paper elaborates the impacts of armed conflicts on tangible cultural heritage. It particularly addresses the plundering and looting caused by ISIS and the ongoing conflict in Syria, Iraq, and Libya. The second section of this paper evaluates the prominent legal provisions presented by international conventions such as the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts, the UNESCO Convention 1970, the World Heritage Convention, the 1949 Geneva Conventions Additional Protocols of 1977 and the prominent resolutions by the UN Security Council for the protection of cultural property in Iraq and Syria. The third section then elaborates the role of the prominent international organizations in protecting tangible cultural heritage worldwide. The fourth and last section demonstrates the existing gaps and challenges

---


19 See ANDRZEJ JAKUBOWSKI, STATE SUCCESSION IN CULTURAL PROPERTY 156 (Oxford University Press 2015).

20 ABDULQAWI A. YUSUF, STANDARD-SETTING AT UNESCO: NORMATIVE ACTION IN EDUCATION, SCIENCE, AND CULTURE 230 (Brill 2007).


22 CHRISTOPH BEAT GRABER, KAROLINA KUPRECHT, & JESSICA C. LAI, INTERNATIONAL TRADE IN INDIGENOUS CULTURAL HERITAGE: LEGAL AND POLICY ISSUES 233 (Edward Elgar Publishing 2012).
in the successful implementation of the aforementioned legal provisions in protecting cultural property during armed conflict. Inferences are drawn at the end of the paper.

II. Armed Conflict and Its Impacts on International Cultural Heritage

Armed conflict has resulted in grave damage to cultural heritage in conflict-stricken lands. This section of the paper will include an elaboration of the harmful effects of armed conflicts on cultural heritage, with an overview of some of the contemporary conflicts that are threatening international cultural heritage.

A. Impacts on Tangible Cultural Heritage

As we have seen in the historical incidents since the Second World War, victors plunder the conquered society in the name of collecting the spoils of war. Such plunder results particularly in damage to tangible cultural heritage in the conquered region. Numerous cultural and historical sites such as museums, monuments, and libraries have been destroyed or burned down by warring parties, particularly by the victorious party, during as well as at the end of the war. Such pillage causes significant and irreplaceable loss of cultural property in the war-affected regions. In particular, in the modern era of advanced weaponry systems, the likelihood of colossal loss of cultural property and heritage during armed conflict has become even higher owing to the use of harmful, long-range missiles, bombs, and weapons of mass destruction.

In the contemporary arena, armed conflicts are no longer limited to taking place between states; rather, intra-state conflicts have grown in many regions. Most intra-state conflicts are of an ethnic and religious nature. Such conflicts are threatening local cultural heritage because their parties often harm or attack

23 Stone, supra note 6, at 40; see also Casey-Maslen, supra note 6, at 386.
24 See Stamatoudi, supra note 4, at 8 (noting that the Tangible Cultural Heritage is also called 'cultural property' and is defined as cultural objects and sites that have historic, artistic, religious, monumental, and any other cultural significance).
27 Id.
28 Id.
32 Id.
The Protection of Cultural Heritage by International Law in Armed Conflict

each other’s ethnic-oriented cultural sites.\textsuperscript{33} This causes damage to the cultural heritage as a whole.\textsuperscript{34}

If the parties to an intra-state conflict are a nonstate actor and a state, then the nonstate actor is usually seen as acting as a threatening, rebellious party that causes harm not only to civilians via waging terrorist attacks but also to the cultural heritage sites in such attacks. A prominent example of such damage to cultural property can be witnessed in the ongoing conflict in Syria and the Levant region, where ISIS\textsuperscript{35} nonstate actors have caused huge damage to cultural property and have killed many civilians.\textsuperscript{36}

ISIS, also called the Islamic State of Iraq and Levant (ISIL), has caused much plundering of cultural heritage sites in Iraq and Syria.\textsuperscript{37} It has waged war on cultural sites, prominently museums containing ancient artifacts and old historic temples, by declaring such sites to be idolatrous and un-Islamic.\textsuperscript{38} However, its plundering is not limited to museums and temples; it has also destroyed ancient mosques, including Al Sultaniya Mosque, and several other religious and historic sites in the Syria, Iraq and Levant region.\textsuperscript{39} ISIS is also taking hold in Libya in order to take hold of the cultural heritage sites and oil reserves there.\textsuperscript{40} It has been reported by archaeological researchers that historical artifacts and objects looted by ISIS in Libya, Syria, and Iraq are being sold on the black market.\textsuperscript{41} Hence, ISIS is also making illegitimate earnings by selling precious cultural objects from Syria, Iraq, and Libya.\textsuperscript{42}

\textsuperscript{33} CHADWICK F. ALGER, PEACE RESEARCH AND PEACEBUILDING 83 (Springer 2013).
\textsuperscript{34} Id.

\textsuperscript{35} The Islamic State of Iraq and Syria (ISIS), also called the Islamic State of Iraq and Levant (ISIL), is a violent organization spreading terror by occupying the regions in Iraq and Levant. See Martha Crenshaw & Gary LaFree, COUNTERING TERRORISM: NO SIMPLE SOLUTIONS 12 (Brookings Institution Press 2017); see also SCOTT N. ROMANIUK, THE FUTURE OF US WARFARE 37 (Taylor & Francis 2017).

\textsuperscript{36} See Spencer, supra note 8, at 103-27 (discussing the damage done by ISIS to the tangible cultural heritage in Iraq and Syria).

\textsuperscript{37} Id.

\textsuperscript{38} Id.

\textsuperscript{39} See Alyssa Buffenstein, A Monumental Loss: Here Are the Most Significant Cultural Heritage Sites that ISIS Has Destroyed to Date, ARTNET NEWS (May 30, 2017), https://news.artnet.com/art-world/isis-cultural-heritage-sites-destroyed-950060 (discussing recent destruction of Islamic and other cultural heritage sites by ISIS).

\textsuperscript{40} MARK HITCHCOCK, ISIS, IRAN, ISRAEL: AND THE END OF DAYS 60 (Harvest House Publishers 2016).


\textsuperscript{42} Id.
The Protection of Cultural Heritage by International Law in Armed Conflict

B. Impacts on the Intangible Cultural Heritage

In addition to causing damage to tangible cultural heritage, armed conflict also results in harm to intangible cultural heritage. It damages cultural and artistic expressions, knowledge, skills, and rituals from society. It is common for armed conflict to often end up in the killing of many people, which ultimately causes a reduction in the skills and expressions of people in society. Moreover, feelings following the loss of loved ones also affect people emotionally and psychologically. Heightened stress, nightmares, horrible flashbacks, and feelings of depression are common among locals, especially among children.

Many homes are destroyed during conflict. Consequently, many children are separated from their parents, particularly if their parents have died during the conflict. For children, the depressed feelings may remain active for a long time even after the conflict has ended. Some children may face post-traumatic stress disorder at such heightened level that they may be prevented from engaging in education and participating in cultural activities.

Post-conflict depression may also terminate the celebrations of cultural events and festivals. Thus, the rituals, traditional events, celebrations, etc. considered an essential part of intangible cultural heritage, also fall out of practice by war-affected citizens.

---

43 See Janice Affleck et al., New Heritage: New Media and Cultural Heritage 186 (Routledge 2007) (defining intangible cultural heritage as “the sets of values, oral traditions, rituals, emotions, artistic visual expressions, songs, tales, etc. that are recognized as culturally significant in a society.”). See also Ken Albalà, The SAGE Encyclopedia of Food Issues 1402 (Sage 2015).

44 Dan Kuwali & Frans Viljoen, By All Means Necessary: Protecting Civilians and Preventing Mass Atrocities in Africa 209 (Pulp 2017) [hereinafter Kuwali & Viljoen].


46 Id.

47 See Charles I. Brooks & Michael A. Church, Subtle Suicide: Our Silent Epidemic of Ambivalence about Living 8 (ABC-CLIO 2009) (illustrating the impact of traumatic experiences such as loss of loved ones).

48 Janice M. Thompson, Essential Health Assessment 373 (F.A. Davis 2017).

49 Steven David Valdivia, Forces...Gangs to Riots...Why and How Some Communities Erupt...And How We May End It 121 (2005) [hereinafter, Valdivia].


52 Valdivia, supra note 49, at 121.


54 Schorlemer & Stoll, supra note 45, at 228.

55 Id.
The Protection of Cultural Heritage by International Law in Armed Conflict

Armed conflicts also result in sexual violence.\textsuperscript{56} Rape and sexual slavery of the victims of war by the aggressing party is often carried out to terrorize and humiliate the locals.\textsuperscript{57} For instance, in the conflicts in Bosnia the rape of young girls was carried out, resulting in the women carrying the enemy's child, which itself amounted to destroying the social and cultural fabric of society.\textsuperscript{58}

It is essential to evaluate here the fact that any damage caused to tangible cultural heritage such as religious sites, theaters, museums, etc. also results in harming intangible cultural heritage.\textsuperscript{59} This is because the tendency for people to participate in a particular cultural ceremonial activity can diminish after the damage of a particular cultural site where they used to practice.\textsuperscript{60} For instance, the obliteration of the Timbuktu Mausoleums in Mali in 2012 during armed conflict resulted in a significant decline in the practicing of the particular rituals that the locals used to perform at the mausoleums prior to their destruction.\textsuperscript{61}

Hence, it can be asserted that armed conflict destroys traditional festivals and cultural practices and also leaves negative impacts on the emotional, psychological, and cultural aspects of society.\textsuperscript{62} Thus, it is essential to regulate armed conflict in order to mitigate its harmful effects on intangible as well as tangible cultural heritage.\textsuperscript{63}

III. Provisions of International Law for the Protection of Cultural Heritage during Armed Conflicts

International law has provided support for protection of international cultural heritage during armed conflict.\textsuperscript{64} Within the framework of international law, international cultural heritage law and international cultural property law are the main sets of legal provisions that mandate the protection of cultural heritage and cultural property in times of peace and conflict.\textsuperscript{65} Both sets of laws are based

\textsuperscript{56} JANIE L. LEATHERMAN, SEXUAL VIOLENCE AND ARMED CONFLICT 1979 (John Wiley & Sons 2013).
\textsuperscript{57} Id.
\textsuperscript{61} Id.
\textsuperscript{62} Id.
\textsuperscript{63} A Durfina, Right of peoples to self-determination within the context of international law of armed conflict, 1, in Martin Dolinsky & Vlasta Kunova, Current Issues of Science and Research in the Global World, 55 (CRC Press, 2014) [hereinafter: Durfina].
\textsuperscript{64} CRAIG FORREST, INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE xxii (Routledge 2012).
\textsuperscript{65} See, e.g., FRANCESCO FRANCIONI & JAMES GORDLEY, ENFORCING INTERNATIONAL CULTURAL HERITAGE LAW, 42 (Oxford University Press 2013) [hereinafter Francioni & Gordley].
The Protection of Cultural Heritage by International Law in Armed Conflict

upon the rules defined in the Hague Convention 1954, the 1977 Additional Protocols to the Geneva Conventions 1949, the UNESCO Convention 1970, the World Heritage Convention, etc.\textsuperscript{66} These conventions have set rules for warring parties in an armed conflict to protect cultural heritage and cultural property.\textsuperscript{67} Detailed aspects of the protection offered by these conventions are elaborated below.

A. 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict\textsuperscript{68}

The convention, which is considered the cornerstone of protection for cultural property in times of armed conflict is the Hague Convention 1954.\textsuperscript{69} Two additional protocols of the Hague Convention have also been arranged: the First Protocol was drafted in 1954, while the Second Protocol was settled in 1999.\textsuperscript{70} The Hague Convention 1954 and its two protocols include principles for protecting cultural property during all kinds of armed conflicts, wars, and territorial occupations.\textsuperscript{71} The text of the Hague Convention applies binding instruments on contracting states.\textsuperscript{72} The Hague Convention provisions are applicable in times of peace as well as times of armed conflict.\textsuperscript{73}

The Hague Convention offers protection for all kinds of cultural property objects, including artifacts, cultural sites, buildings, ornaments, statues, etc.\textsuperscript{74} Article 1 of the Hague Convention mentions archaeological sites, artistic objects, and similar artifacts as cultural property.\textsuperscript{75} Later, Articles 2 and 3 recommend that all

\begin{footnotesize}
\begin{enumerate}
\item Francioni & Gordley, supra note 65. See also Hildegard E.G.S. Schneider, & Valentina Vadi, ART, CULTURAL HERITAGE AND THE MARKET: ETHICAL AND LEGAL ISSUES 5 (Springer 2014) [hereinafter Schneider & Vadi].
\item See Stuart Casey-Maslen, THE WAR REPORT: ARMED CONFLICT IN 2013 366 (Oxford University Press 2014) [hereinafter Maslen].
\item The complete name of the convention is the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and it was drafted in 1954 in The Hague. The Regulations for Execution of the Convention were also concluded in 1954.
\item See James A.R. Nafziger, PROTECTION OF CULTURAL PROPERTY, reprinted in M. Cherif Bassiouini, INTERNATIONAL CRIMINAL LAW 977 (Brill 2008).
\item Schneider & Vadi, supra note 66, at 5.
\item Maslen, supra note 67, at 365.
\item Id., art.1. See also Frauke Lachemann & Rudiger Wolfrum, THE LAW OF ARMED CONFLICT AND THE USE OF FORCE: THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 310 (Oxford University Press 2017).
\item Id. Article 1 of the Hague Convention 1954 defines that the term “cultural property” shall cover, irrespective of origin or ownership:
\begin{enumerate}
\item movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
\end{enumerate}
\end{enumerate}
\end{footnotesize}
contracting parties apply full protection to cultural property within their territorial limits during times of peace and conflict.\textsuperscript{76}

It is admitted in the text of the Hague Convention that cultural property has suffered damage in armed conflict.\textsuperscript{77} It is further elaborated that cultural property belongs to the whole of mankind as the cultural heritage of humanity and therefore it becomes everyone's responsibility to exert efforts to protect humanity's cultural heritage.\textsuperscript{78} This implies an international protection of cultural heritage.\textsuperscript{79} Such protection will only become effective if all states also apply the recommended protections of cultural property and heritage at the national level in accordance with the provisions of the Hague Convention as well as also collaborating at the international level for the collective protection of cultural property in times of peace and conflict.\textsuperscript{80} All necessary measures at the national and international levels should be recommended, followed, and implemented by all states to protect the cultural property and heritage of all of mankind.

Article 4 of the Hague Convention 1954 takes a further step by recommending that the contracting state parties not only protect cultural property in their own territorial limits but also respect the cultural property and heritage within the territorial limits of other states that are contracting parties to the convention.\textsuperscript{81} By respecting, it implies that the contracting state must not take any measure that could harm the cultural property of the other state.\textsuperscript{82} In particular, in times of armed conflicts, the state must not attack or damage cultural property sites.\textsuperscript{83}

Furthermore, it is also recommended that states ensure that cultural property is protected from any kind of theft, loot, or embezzlement.\textsuperscript{84} Moreover, they must also avoid seizing it from any other state.\textsuperscript{85} However, if the latter has not imple-

\textsuperscript{76} See 1954 Hague Convention, \textit{supra} note 73, arts 2-3.

\textsuperscript{77} See 1954 Hague Convention, \textit{supra} note 73 (recognizing that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction). \textit{See also} Albert Edward Elsen, John Henry Merryman, & Stephen K. Urice, \textit{Law, Ethics, and the Visual Arts} 65 (Kluwer Law International 2007) [hereinafter Elsen et al.].

\textsuperscript{78} \textit{Id.} \textit{See also} Duncan Chappell & Stefano Manacorda, \textit{Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property} 193 (Springer 2011).

\textsuperscript{79} Carlo Panara & Gary Wilson, \textit{The Arab Spring: New Patterns for Democracy and International Law} 233 (Martinus Nijhoff Publishers 2013).

\textsuperscript{80} \textit{Id.} \textit{See also} Dietrich Schindler & Jiří Tomán, \textit{The Laws of Armed Conflicts} 747 (Brill 1988). \textit{See also} Elsen et al., \textit{supra} note 77, at 65.

\textsuperscript{81} See 1954 Hague Convention, \textit{supra} note 73, art. 4.

\textsuperscript{82} \textit{Id.}

\textsuperscript{83} \textit{Id.}

\textsuperscript{84} \textit{Id.}

\textsuperscript{85} \textit{Id.}
mented safety measures for the protection of cultural property, then the former can consider taking the cultural property of the latter in order to fully protect it within its territory.86

The Hague Convention also recommends applying “special protection” to cultural property during armed conflicts,87 particularly if the cultural property is situated at location that is in danger of being damaged by armed attacks.88 For instance, if a cultural property site is located in an area that is the target of airstrikes or other attacks by any party, then special protection should be applied. For this purpose, a “refuge” can be placed on such a site, which should ensure that the property cannot be harmed by bombs.89 If the property is movable, then steps should be taken as soon as possible to move or transfer it to a safer location.90 Such transportation must take place under international supervision and under special protection in a manner that may cause no harm or danger to the transported cultural property.91 In this regard, no force must be used against the transported property and the opposing warring party must respect it.92 For this purpose, a proper notification should be sent to the opposing warring party about the transfer of the cultural property.93 Moreover, a distinctive emblem should be marked on the transporting source to identify the transported material as cultural property.94 Article 16 of the convention elaborates the shape of the emblem to be a royal blue and white colored shield.95 The use of this emblem for any other purpose is strictly prohibited by the convention.96

On the other hand, if the cultural property site is immovable, then special military or police personnel should be charged with protecting the site, and these personnel must not take part in the fighting of the ongoing armed conflict in the region.97 These personnel should wear an armband with the aforementioned emblem signed by the authorities and must carry with them an identity card with the signed emblem for the purpose of identification.98 Moreover, such personnel should not be denied by each warring party to continue their duty to protect the cultural property, even if the property site or personnel fall into the occupation of either party.99 In such an event, each party must give respect to both the cultural

86 See 1954 Hague Convention, supra note 73, art. 4(5).
87 Id., art. 8(1).
88 Id., art. 8(1)(a).
89 Id., art. 8(2).
90 Id., art. 12.
91 Id., art. 12(2).
92 See 1954 Hague Convention, supra note 73, arts. 12(3), 13(2).
93 Id., art. 13(1).
94 Id., art. 17(1).
95 Id., art. 16.
96 Id., art. 17(3).
97 Id., art. 8(4).
99 See 1954 Hague Convention, supra note 73, art. 15.
The Protection of Cultural Heritage by International Law in Armed Conflict

property and the personnel protecting that property. The cultural property that is granted special protection must be listed in the International Register of Cultural Property under Special Protection in order to ratify it as a specially protected site at the international level. This should be done to notify all warring parties to avoid harming such a site during armed conflict. The director-general of UNESCO, in coordination with the International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations, will decide whether a certain property or site can be listed in the register as a cultural heritage property. An emblem can also be marked at the site; however, this emblem should only be marked after acquiring the signed consent of a competent authority of the state for the protection of cultural property.

It is also mentioned in the text of the Hague Convention that anyone who violates the provisions of this convention in the jurisdiction of a contracting state should be penalized by the relevant laws of that state. In this regard, each contracting state has the duty to take all measures to apply the provisions of this convention within its jurisdiction. In order to discuss the problems related to applying protection to cultural property, the Hague Convention 1954 provided authority to UNESCO to call upon a meeting of the contracting states if at least one-fifth of the contracting parties send a request to UNESCO to arrange a meeting.

The Hague Convention also provides a set of regulations for the implementation of its provisions by the contracting state parties. According to these regulations, it is recommended that the contracting state appoint an official representative for its territorial cultural property in the event that that state becomes involved in an armed conflict. It is also essential that the contracting states also appoint official delegates, who will be former or on-duty diplomats, consular officials, etc. The delegates have the responsibility to notify any breaches of the Hague Convention 1954. They can also investigate the protection level applied by each contracting party to its cultural property. Upon finding any breaches, they can attempt to end the violation or inform the

100 See 1954 Hague Convention, supra note 73, art. 15.
101 Id., art. 8(6).
102 Id., art. 9.
103 See 1954 Hague Regulations, supra note 98, art. 15.
104 See 1954 Hague Convention, supra note 73, art. 17(4).
105 Id., art. 28.
106 Id., art. 34(1).
107 Id., art. 27.
109 See 1954 Hague Convention, supra note 73, art. 2.
110 Id., art. 3.
111 Id., art. 5.
112 Id.
commissioner-general of the violations if they cannot do so.113 The commissioner-general is a person of high authority who is chosen by the contracting states and is responsible for dealing with issues related to the application of the Hague Convention.114

The commissioner-general can also order the delegates—or can initiate of his/her own motion—an investigation of the breaches of any provision of the convention or any possible pillage of cultural property in times of peace or conflict.115 Upon completion of the investigation, he prepares reports and shares them with the director-general of UNESCO and the contracting states.116 The commissioner-general can also play the role of a protecting power if there is no authority applying protection to cultural property in a territory, particularly in the event of armed conflict.117 He can also appoint special inspectors and experts on special missions such as to inspect a cultural property site to evaluate its protection.118 If transportation of the cultural property is required from a dangerous site to a safer place, then the commissioner-general consults with the delegates of the contracting parties and the inspectors and then notifies the states and orders the inspectors to transport the property with the emblem to a safer location.119

In a nutshell, by offering the aforementioned legal provisions, the Hague Convention 1954 provides protection to cultural property and cultural heritage sites during armed conflicts.120 The Hague Convention 1954 is the only convention that is solely focused on the issue of protecting cultural property and cultural heritage sites during peace and armed conflicts.121 All of its provisions are focused on providing protection to cultural property and therefore it is considered an essential contribution to international law that protects international cultural heritage.122

B. Two Additional Protocols of 1977 to the Geneva Conventions of 1949

Although the four Geneva Conventions do not have any specific provisions that offer protection for cultural heritage and cultural property, the Additional Protocols I and II added such provisions in 1977.123 Articles 53 and 85, Para-

---

113 Id.
114 The president of the International Court of Justice can also appoint the commissioner-general if the consensus among the contracting states is not reached upon finalizing the name of a candidate for this role. See 1954 Hague Convention, supra note 73, art. 4(1) and 6(1).
115 1954 Hague Regulations, supra note 98, art. 6(3).
116 Id., art. 6(5).
117 Id.
118 Id.
119 Id., art. 17.
122 Id.
123 MARSHALL J. BREGER, YITZHAK REITER, & LEONARD HAMMER, SACRED SPACE IN ISRAEL AND PALESTINE: RELIGION AND POLITICS 73 (Routledge, 2013) [hereinafter Breger, et al].
The Protection of Cultural Heritage by International Law in Armed Conflict

graph 4, of the First Additional Protocol 1977 are focused on cultural property protection.\textsuperscript{124} The language of Article 53 prohibits warring parties from harming any historic site, cultural property, monument, religious place, artistic place, or object that is considered cultural heritage.\textsuperscript{125} Furthermore, it also prohibits using any cultural property site or object for military purposes.\textsuperscript{126}

Paragraph 4 of Article 85 of Additional Protocol I additionally recognizes that causing deliberate damage to historic monuments, cultural heritage sites, places of worship, and any cultural property will be considered a grave breach of Protocol I and a violation of the Geneva Conventions.\textsuperscript{127} Paragraph 5 of the same article additionally ratifies the nature of such a breach of Protocol I as a war crime.\textsuperscript{128} This ratification affirms that damaging cultural heritage or cultural property during armed conflict is a serious war crime and therefore all warring parties must avoid causing any kind of harm to cultural property objects or sites in a war region.\textsuperscript{129}

On a similar note, Article 16 of Additional Protocol II of 1977 prohibits the parties to an armed conflict from causing damage to any cultural property object or heritage site, including historic monuments, artistic objects, statues, religious places, etc.\textsuperscript{130} The language of Article 16 further proscribes the warring parties from using such objects or sites for military purposes.\textsuperscript{131} It is pertinent to mention here that Additional Protocol I of 1977 is applicable to all international armed conflicts.\textsuperscript{132} Therefore, in light of the provisions of Additional Protocol I, a state must avoid causing injury to the cultural heritage or cultural property sites of another state when it is at war with the latter state. On the other hand, Additional Protocol II of 1977 is ratified as applicable solely to all noninternational armed conflicts.\textsuperscript{133}

Hence, upon considering the armed conflict relevant provisions of both 1977 Additional Protocols of the Geneva Conventions 1949, it can be asserted that the Additional Protocols become applicable to every armed conflict, whether between states, between a state and nonstate actors, or among nonstate actors. This

\textsuperscript{124} Id.
\textsuperscript{125} Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 53(a), June 8, 1977, 1125 U.N.T.S. 27 [hereinafter Protocol I].
\textsuperscript{126} Id., art. 53(b).
\textsuperscript{127} Id., art. 85.
\textsuperscript{128} Id.
\textsuperscript{129} Breger, et al., supra note 123.
\textsuperscript{130} Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts, art. 16, June 8, 1977, 1125 U.N.T.S. 616. [hereinafter Protocol II]
\textsuperscript{131} Id.
\textsuperscript{132} Breger et al., supra note 123, at 73.
\textsuperscript{133} Id.
C. UNESCO Conventions

UNESCO contributed by organizing two conventions, the first in 1970 and the second in 1972. These two conventions are aimed at protecting cultural property and heritage. The conventions were drafted in the sixteenth and seventeenth sessions of the General Conference of UNESCO, in Oct–Nov 1970 and Oct–Nov 1972, respectively.

I. UNESCO Convention 1970

The UNESCO Convention 1970, formally the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, provides legal principles and recommendations for the protection of cultural property and heritage in times of peace and armed conflict. Iraq and Syria, where ISIS has caused severe pillage of cultural property and heritage sites, are also parties to this convention. The main focus of this convention is to prevent the loot, plunder, theft, and illegal trade of cultural property. The convention also prohibits museums and institutions in a state from accepting cultural property objects that have been stolen from another state. It recommends that authorities return any stolen objects found by them to their

134 Moreover, the language of both Article 53 of Additional Protocol I and Article 16 of Additional Protocol II of 1977 tends to agree with the provisions of the Hague Convention and even tends to give it pre-eminence. See Protocol I, supra note 125, at 27. ("Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited: a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; b) to use such objects in support of the military effort; c) to make such objects the object of reprisals"); Protocol II, supra note 130, at 616 ("Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort").

135 CHRISTINA CAMERON & MECHTILD RÖSSLER, MANY VOICES, ONE VISION: THE EARLY YEARS OF THE WORLD HERITAGE CONVENTION 17 (Routledge, 2016) [hereinafter Cameron and Rössler].


139 HELGA TURKU, THE DESTRUCTION OF CULTURAL PROPERTY AS A WEAPON OF WAR: ISIS IN SYRIA AND IRAQ 104 (Palgrave and Macmillan, 2018) [hereinafter Turkü].

140 BARBARA T. HOFFMAN, ART AND CULTURAL HERITAGE: LAW, POLICY, AND PRACTICE 3-4 (Cambridge University Press, 2006) [hereinafter Hoffman].

141 Id. at 5.
The Protection of Cultural Heritage by International Law in Armed Conflict

original owners. However, if the property in a state is in danger, then that state can also make a formal request to other states for assistance in protecting its cultural property. On the other hand, the 1970 Convention also endorses prosecuting any individual, even army personnel, involved in the theft or smuggling of cultural property objects from one region to another. In the event of any illegal transfer of a cultural property object by army personnel during armed conflicts, that object must be seized and returned to its original place. Pertinently, the convention also makes it obligatory on each state to ensure the protection of the cultural property located within its territorial limits. A unique provision of the UNESCO Convention 1970 is that it also lists the fauna and flora of a state as a part of the cultural property of the state. This was not added in the Hague Convention 1954. Furthermore, the UNESCO Convention recognizes that the illegal trade of the cultural property of a state during peace or conflict is the essential reason for the impoverishment of cultural heritage of that state.

In order to ensure the protection of cultural property and heritage from illegal trade in times of peace or conflict, the convention also recommends the formation of special services at a national level in each state, for which very experienced and trained experts should be hired. The experts should have the ability to safeguard or take the property to a safer location during times of conflict. Pertinently, the experts should also be sufficiently qualified to formulate policies, laws, and regulations for the protection of cultural property from illicit trade. Thus, in a nutshell, the UNESCO Convention of 1970 is only focused on preventing cultural property from being smuggled, whether in the times of peace or conflict, from one state to another.

2. World Heritage Convention (UNESCO Convention 1972)

The UNESCO Convention of 1972, also called the Convention Concerning the Protection of the World Cultural and Natural Heritage 1972, considers that cultural heritage is threatened by various factors of a traditional and modern nature. Armed conflict is one of these factors. The convention considers the damage of any cultural property or heritage in a region to be an impoverishment

---

142 See Article 18, UNESCO Convention, 1970.
143 Turku, supra note 139.
145 Id. at 240, 244.
146 UNESCO Convention, supra note 144.
147 Id. at 234-6.
148 UNESCO Convention, supra note 144.
149 Id.
150 Id. at 238.
151 This Convention is also named the World Heritage Convention.
The Protection of Cultural Heritage by International Law in Armed Conflict

to international cultural heritage.\textsuperscript{154} It therefore ratifies the protection of cultural property and heritage as an essential responsibility of all nations.\textsuperscript{155} Article 6 of this convention recommends that states respect the sovereignty of other states, particularly those where the cultural heritage sites are situated.\textsuperscript{156} Furthermore, it recommends that states not deliberately cause harm to the cultural property and heritage of other states in times of armed conflicts.\textsuperscript{157}

Section III of the UNESCO Convention 1972 approves the formation of an international committee, the World Heritage Committee, which will be responsible for performing several duties mentioned in the convention to protect cultural property and heritage in times of peace and armed conflict.\textsuperscript{158} The committee will work under the flag of UNESCO\textsuperscript{159} and will keep an up-to-date record of the cultural property and heritage sites of contracting states and publish it under the title of “World Heritage List.”\textsuperscript{160} It will update this list every two years;\textsuperscript{161} it can also add endangered cultural heritage sites or cultural property that is at risk of pillage, damage, etc. owing to armed conflict or any other danger such as natural disasters like earthquake or floods in its vicinities.\textsuperscript{162}

Furthermore, the World Heritage Committee can also receive and approve requests from states for assistance in protecting cultural property and heritage in times of peace and armed conflict.\textsuperscript{163} For this purpose, it can coordinate with the national agencies of the states, NGOs,\textsuperscript{164} the International Union for Conservation of Nature and Natural Resources (IUCN), the International Council of Monuments and Sites (ICOMOS), the International Center for the Study of the Preservation and Restoration of Cultural Property, and any other relevant agencies that may have the capability to protect the endangered cultural property and heritage.\textsuperscript{165} Its decisions regarding protecting a particular cultural property or heritage site are based on the approval of a two-thirds majority of its members,

\begin{itemize}
\item \textsuperscript{153} Convention Concerning the Protection of the World Culture and Natural Heritage, 6, December 15, 1975, 1037 UNTS 156 [hereinafter UNESCO 1972].
\item \textsuperscript{154} Id. at 152-3 (considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world). \textit{See also} MICHAEL A. DIGIOVINE, \textit{THE HERITAGE-SCAPE, UNESCO, WORLD HERITAGE, AND TOURISM} 76 (LEXINGTON BOOKS 2009); 2 UNESCO, \textit{STANDARD-SETTING AT UNESCO CONVENTIONS, RECOMMENDATIONS, DECLARATIONS AND CHARTERS ADOPTED BY UNESCO} (1948-2006) 135 (Brill 2007).
\item \textsuperscript{155} UNESCO 1972, supra note 153 (Article 6 of the UNESCO Convention 1972 endorses cooperation among all states and recommends that it is the duty of the entire international community to protect the world heritage).
\item \textsuperscript{156} Id., art. 6(1).
\item \textsuperscript{157} Id., art. 6(3).
\item \textsuperscript{158} Id., art. 8(1).
\item \textsuperscript{159} Id.
\item \textsuperscript{160} UNESCO 1972, supra note 153, art. 11(2).
\item \textsuperscript{161} Id.
\item \textsuperscript{162} Id., art. 11(4).
\item \textsuperscript{163} Id., art. 13(1).
\item \textsuperscript{164} Nongovernmental Organizations (NGOs).
\item \textsuperscript{165} UNESCO 1972, supra note 153, art. 13(7).
\end{itemize}
who are themselves appointed by UNESCO from the contracting states in different regions.166

In this regard, if a cultural property or heritage site is adversely affected or damaged owing to an armed conflict in the region, then the World Heritage Committee of UNESCO also provides assistance in the form of training, scientific expertise, and financial assistance for the rehabilitation of the affected cultural property.167 The financial assistance is managed by the World Heritage Fund, which was formed in accordance with the UNESCO Convention of 1972.168 This fund is managed by UNESCO and all states that are parties to the UNESCO Convention 1972 provide funding to manage the fund.169

Hence, the UNESCO Conventions of both 1970 and 1972 offer protection to cultural property and heritage while staying within their scope of operations.170 The former prohibits the illegal trade of cultural property,171 while the latter proscribes states from harming cultural property and heritage in times of peace and conflict.172 The 1972 Convention also establishes the World Heritage Committee and World Heritage Fund to protect and rehabilitate cultural property and heritage in times of danger, particularly in armed conflict.173 This aspect related to the rehabilitation of cultural property and heritage sites can be applied in the ongoing conflict situation in Syria, Iraq, and Libya for rehabilitating the cultural property and heritage there. ISIS has already destroyed cultural property and heritage sites of colossal value in these regions.174 The provisions of the UNESCO Convention 1972 should be applied there for reforming and rehabilitating the cultural property and heritage in these states.

D. UN Resolutions

The United Nations has also passed certain orders and resolutions aimed at protecting cultural property and heritage during armed conflicts.175 For instance, UN Security Council Resolution 2100 paved the way for the establishment of a separate mission to protect cultural property and heritage in Mali.176 The mission was named the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).177 The mission was also given a task to provide support, in
The Protection of Cultural Heritage by International Law in Armed Conflict

collaboration with UNESCO, to authorities in Mali for the protection of cultural heritage sites from all kinds of armed or other attacks.178

1. Resolutions for Protecting Cultural Property in Iraq and Syria

The United Nations Security Council has also presented resolutions for the protection of cultural property and heritage sites in Iraq and Syria.179 Resolution 1483 was presented in 2003 while coalition forces were making a joint operation in Iraq.180 Through this resolution, the UN Security Council recommended that coalition parties not only ensure the protection of Iraqi cultural heritage and cultural property but also return the cultural property that had been illicitly removed from Iraq’s National Library and National Museum since 1990.181 Furthermore, the resolution also ordered coalition forces to prevent the illegal trade and sale of Iraqi cultural property.182 Thus, this resolution made the belligerent coalition forces responsible for protecting and safely returning Iraqi cultural property to its original place and for causing no damage to it during the fighting.183

On a similar note, Resolution 2199 was presented by the UN Security Council in response to the growing threats of ISIS attacks on Syrian and Iraqi cultural property.184 This resolution recommended all member states of the UN Security Council to take suitable action to prevent the illegal trade of Syrian and Iraqi cultural property.185 For instance, the Security Council recommended that member states prohibit and report such trade at their own borders.186 Thus, this resolution also made the forces deployed by UN member states in Iraq and Syria prevent Iraqi and Syrian cultural property from being moved across the borders of Iraq and Syria.187 In this way, it could be ensured that no illicit trading or smuggling of Iraqi and Syrian cultural property takes place and that no property is removed from its original place.

Upon following this recommendation of UN Security Council Resolution 2199, the military forces became liable to follow the resolutions of the Security Council, and accordingly they are responsible for protecting cultural property and heritage in Iraq and Syria. However, the effectiveness of their efforts is being

179 See Hoffman, supra note 140, at 2.
182 S.C. Res. 1483, supra note 181.
183 Id.
185 Id.
186 Id.
187 Id.
The Protection of Cultural Heritage by International Law in Armed Conflict

harmed by the illicit terrorist activities of ISIS in these regions,\textsuperscript{188} as set out in the previous section. It is also essential to note that the recommendations given by the UN Security Council through its resolutions are binding upon member states as per Article 25 of the Charter of the United Nations.\textsuperscript{189} Therefore, member states have the obligation to ensure protection of their cultural property and heritage sites as well as those of other states with which they are in armed conflict.

In addition to recommending that member states’ military forces protect the cultural property of other states during armed conflict, the United Nations has also set a military manual for its own military forces to ensure the protection of cultural property and heritage during its operations in peace or armed conflict.\textsuperscript{190} The Bulletin of the United Nations Secretary-General, presented in 1999, forms the basis of the UN forces’ military manual related to protecting cultural property and heritage during armed conflict.\textsuperscript{191} The bulletin is titled \textit{Observance by United Nations Forces of International Humanitarian Law}.\textsuperscript{192} Section 6 of this bulletin strictly prohibits UN forces from attacking cultural property in a territory or using that property as a shield or for other military purposes,\textsuperscript{193} including for military advantage.\textsuperscript{194} Thus, the United Nations is also making efforts through legal provisions for the protection of cultural property and heritage in situations of armed conflict.\textsuperscript{195} UN member states must follow these provisions and ensure the protection of cultural property and heritage, both theirs and those of other states during armed conflicts.\textsuperscript{196}

E. Provisions Related to the Protection of Intangible Cultural Heritage during Armed Conflicts

As set out above in the first section of this paper, intangible cultural heritage is being threatened during armed conflict. However, there are only a few provisions found in international law related to providing protection to intangible cultural heritage during armed conflict.\textsuperscript{197} The Hague Convention 1954, which is at the

\textsuperscript{188} ISIS has already caused massive damage to cultural heritage in Iraq and Syria. This damage has appeared to be an uncontrollable factor for the military forces stationed in Iraq and Syria. For details of the damage to cultural heritage, see Spencer, supra note 174.

\textsuperscript{189} See U.N. Charter art. 25.


\textsuperscript{191} Id.


\textsuperscript{193} Id. at §6(6), (9).

\textsuperscript{194} Id. at §5.

\textsuperscript{195} See G.A. Res. 64/83, (Dec. 10, 2009).

\textsuperscript{196} U.N. Charter art. 25. See also N.D. White, Keeping the Peace 62 (1993).

The Protection of Cultural Heritage by International Law in Armed Conflict

center of providing legal recommendations for the protection of cultural property during armed conflicts, also lacks relevant provisions in this regard.\textsuperscript{198} Upon probing further into the field of international law, international humanitarian law, human rights law, certain provisions of the ICCPR\textsuperscript{199} and of the Geneva and UNESCO Conventions appear relevant in offering indirect protection for intangible cultural heritage during armed conflicts.\textsuperscript{200}

I. Articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR)

Article 18 of the ICCPR provides freedom to every person to practice religion, express their thoughts, make choices, and, ultimately, perform any cultural practice or activity as per their beliefs.\textsuperscript{201} This freedom stays valid during both peace times and armed conflicts.\textsuperscript{202} No party to an armed conflict can infringe these rights.\textsuperscript{203} Thus, this article upholds respect for human conscience, religion, culture, freedom, etc. during armed conflicts.\textsuperscript{204}

Article 19 of the ICCPR further augments the importance of human freedom of expression, including artistic, religious, cultural expressions, etc., which are essentially included in the category of intangible cultural heritage.\textsuperscript{205} Furthermore, no restrictions can be applied on such cultural expressions, particularly if such expressions do not present harm to the cultural expressions of any other person, except in the exceptional cases of national security or for the protection of the rights of other human beings.\textsuperscript{206} This indicates that freedom of expression has been assigned a superior position by Article 19 of the ICCPR. Freedom of expression constitutes a freedom of cultural and artistic expression and is in-

\textsuperscript{198} As per the definition of "cultural property" in the Hague Convention's Article 1, "old manuscripts, books, and scientific collections" are included in the list of cultural property. Providing protection to such items would also imply protecting intellectual property and knowledge, which are considered essentially important intangible cultural heritage. For details, see 1954 Hague Convention, supra note 73, art. 1. Other than the definition in Article 1, there is nothing mentioned in the text of the Hague Convention 1954 about intangible cultural property protection, which clearly implies that severe gaps exist in the Hague Convention 1954 in addressing the protection on intangible cultural heritage. See Toman, supra note 21, 678. See also Christiane Johannot-Gradis, Protecting the past for the future: how does law protect tangible and intangible cultural heritage in armed conflict? 900 Int'l Rev. Red Cross 1253, 1256 (2015).

\textsuperscript{199} See Johannot-Gradis, supra note 198, at 1259.

\textsuperscript{200} Id.


\textsuperscript{202} This is because the ICCPR applies binding obligations on all states. Therefore, its recommendation to states for respecting individual freedom stays in-tact in all kinds of situations, and remains unaffected whether in the presence of an armed conflict. Thus, states have to follow this principle during armed conflicts as well. See Peter W. Edge, Religion and Law: An Introduction 47 (2015).

\textsuperscript{203} Id.

\textsuperscript{204} See Murphy, supra note 201.


\textsuperscript{206} Id.
The Protection of Cultural Heritage by International Law in Armed Conflict

included in the category of intangible cultural heritage.\textsuperscript{207} Hence, the ICCPR provides importance to the upholding of intangible cultural expressions in times of peace and conflicts.

2. Hague Conventions of 1899 and 1907

The Hague Conventions of 1899, which were revised in 1907, include provisions offering implicit protection to intangible cultural heritage.\textsuperscript{208} Article 27 of the Hague Convention (IV) of 1907 prohibits warring parties from causing any damage to a place that has religious, artistic, historic, scientific, or medical importance.\textsuperscript{209} This implies a direct protection of tangible cultural property but also an indirect protection of intangible cultural property. This is because the protection of historic, religious, and artistic places implies a continuation of cultural, religious, and ritualistic practices of the people at such places. This will eventually lead to the preservation of such practices that are, in fact, an essential part of the intangible cultural heritage.\textsuperscript{210}

Similar implications can be drawn from Article 56 of the Hague Convention (IV) of 1907, which further includes places of education among the places that must be protected by warring parties during armed conflict, because the protection of such places will result in the preservation of education or knowledge as an intangible cultural heritage.\textsuperscript{211} It is pertinent to mention here that the provisions of the Hague Conventions of 1899 and 1907 are legally binding on states.\textsuperscript{212} Therefore, states must implement and follow these provisions during armed conflicts.\textsuperscript{213} Hence, it can be asserted that the Hague Convention (IV) of 1907 applies implicit protection to intangible cultural heritage along with tangi-

\textsuperscript{207} This is because the freedom of expression preserves an individual’s willingness and ability to participate in cultural and artistic activity. See Jack M. Balkin, Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society, in INFORMATION ETHICS: PRIVACY, PROPERTY, AND POWER 297, 299 (Adam D. Moore ed., 2005).

\textsuperscript{208} ALISON DUNDE RENTELN, JAMES A.R. NAZFIZER, & ROBERT KIRKWOOD PATERSON, CULTURAL LAW: INTERNATIONAL, COMPARATIVE, AND INDIGENOUS 347 (2010).

\textsuperscript{209} See 1954 Hague Convention, supra note 73, art. 27. See also Chantal Meloni & Gianni Tognoni, Selected Materials from the International Conference ‘Is There a Court for Gaza?’ 22 May 2009, Lelio Basso International Foundation, Rome, in IS THERE A COURT FOR GAZA? 13, 68 (Chantal Meloni & Gianni Tognoni eds., 2012).

\textsuperscript{210} For instance, the protection of education institutes and artistic places will result in the preservation of education, knowledge, artistic expression, and rituals, which are intangible cultural properties.


\textsuperscript{212} FADIA DABIES-MURAD, A NEW LEGAL FRAMEWORK FOR MANAGING THE WORLD’S SHARED GROUNDWATERS 56 (2005).

\textsuperscript{213} This is because these conventions were essentially drafted to regulate the conduct of states during armed conflict. Their legally binding attributes make it compulsory on states to follow and implement them. See Rüdiger Wolfrum, Protection of Cultural Property in Armed Conflict, in THE PROGRESSION OF INTERNATIONAL LAW 297, 299 (Fania Domb & Yoram Dinstein eds., 2011). See also BEFOR T. RRECJAI, POLITICS OF LEGAL REGIMES OF NUCLEAR ENERGY IN THE ASPECT OF INTERNATIONAL SECURITY 67 (2014).
The Protection of Cultural Heritage by International Law in Armed Conflict

ble cultural property. Thus, it considers all aspects of cultural heritage that require mandatory protection during armed conflicts.214

3. UNESCO Convention

Article 1 of the UNESCO Convention 1970 includes manuscripts, old books, and literary and artistic collections to be included in the category of cultural property.215 The convention endorses the full protection of such property during armed conflicts, which indicates an indirect protection of intangible cultural heritage. That is, the knowledge, literature, education, artistic expressions, etc. mentioned in those old books and manuscripts are the intellectual property of the local residents, and, as mentioned earlier, intellectual property is an essential intangible cultural heritage property.216 Thus, the UNESCO Convention applies protection to intangible cultural property in an indirect manner by recommending provisions for the protection of the objects containing such property, i.e. the old books and manuscripts involving knowledge and intellectual property.

This discussion establishes that international law has provided numerous provisions that affirm the principles, rules, and recommendations for the protection of cultural heritage property during times of armed conflicts. The 1954 Hague Convention and the UNESCO Conventions of 1970 and 1972 have essentially formed the basis for such provisions. However, the majority of these provisions regulate the protection level on tangible cultural property. Nonetheless, intangible cultural property can be protected by applying these provisions indirectly. That is, the preservation of educational institutes and artistic places will likely result in the preservation of intangible cultural property such as education, knowledge, arts, and cultural ritualistic practices. The need is to follow and implement these provisions by all states to ensure national- and international-level protection of international cultural heritage. In this way, the effectiveness of these provisions will become apparent and realistic.

IV. International Organizations Working for the Protection of Cultural Heritage during Armed Conflicts

In addition to the protection offered by international conventions for the protection of cultural heritage, there are several international organizations working globally to protect cultural property and heritage.217 The most prominent of these organizations are UNESCO, the International Committee of the Red Cross, ICOMOS, the International Council of Museums (ICOM), the World Customs Organization (WCO), the International Alliance for the Protection of Cultural

214 Wolfrum, supra note 213.
215 See UNESCO Convention, supra note 142, art. 1.

Volume 15, Issue 1 Loyola University Chicago International Law Review 85
The Protection of Cultural Heritage by International Law in Armed Conflict
Heritage in Zones of Conflict (ALIPH), and the Committee for the Protection of
Cultural Property in the Event of Armed Conflict.

A. UNESCO

UNESCO is the leading agency, putting substantial efforts into the protection
of international cultural heritage and property in times of peace and armed con-

Jlict.218 It has drafted two major conventions—the UNESCO Convention 1970
and the World Heritage Convention (UNESCO Convention 1972)—and has con-
tributed to provisions of the 1954 Hague Convention.219 Moreover, it has also
contributed to the drafting of the Convention on the Protection and Promoting
of the Diversity of Cultural Expressions 2005 and the Convention for the Safe-
guarding of the Intangible Cultural Heritage 2003.220 UNESCO has a key role in
the application of provisions of the 1954 Hague Convention.221 It also offers
technical and scientific support to the 1954 Hague Convention’s contracting par-
ties.222 Furthermore, UNESCO also holds meetings of the contracting parties to
the 1954 Hague Convention to discuss and resolve issues related to the applica-
tion of the Hague Convention and to providing protection to cultural property and
heritage in armed conflicts.223

The role of the director-general of UNESCO is also essential in relation to the
application of the provisions of the 1954 Hague Convention, the 1970 UNESCO
Convention, and the 1972 World Heritage Convention.224 The director-general
has the authority to decide on adding new members as contracting state parties to
these conventions.225 Furthermore, the director-general also facilitates the ap-
proval of amendments proposed by the contracting state parties to the 1954
Hague Convention.226 Furthermore, the notification of acceptance of the new
amendments by the contracting parties is also issued by the director-general.227


219 Elizabeth Lillehoj, Stolen Buddhas and Sovereignty Claims, in Art and Sovereignty in Global Politics 141, 143 (Douglas Howland, Elizabeth Lillehoj, & Maximilian Mayer eds., 2016).

220 See Grant, supra note 218.


223 See 1954 Hague Convention, supra note 73, art. 27(2). See also Toman, supra note 21, at 537.

224 See Toman, supra note 21, at 23.


227 See 1954 Hague Convention, supra note 73, art. 39(3).
The Protection of Cultural Heritage by International Law in Armed Conflict

The director-general also maintains an International Register of Cultural Property under Special Protection and regularly updates it, as well as providing it to the 1954 Hague Convention's contracting state parties and the secretary-general of the United Nations. It is the upon the sole discretion of the director-general of UNESCO to register a particular cultural property or heritage site in the category of having refuge in armed conflict or in other categories, e.g., monuments. While states can also make requests to the director-general to add or remove a particular cultural heritage property in the list of refuges or any other category, the final decision of its registration remains with the director-general.

1. World Heritage Committee and World Heritage Fund

The establishment of the World Heritage Committee and the World Heritage Fund are among the most prominent contributions made by UNESCO for the protection of cultural property and heritage. The World Heritage Committee was established within UNESCO in accordance with the provisions of the World Heritage Convention in 1972. The World Heritage Committee is responsible for providing technical, scientific, and financial assistance for cultural property and heritage protection in the contracting states. Thus, the committee provides tangible support for the protection of cultural heritage in conflict-stricken areas. Furthermore, it also makes a list of such cultural property and heritage sites at risk of harm by certain situations such as natural disasters or armed conflicts.

On the other hand, the World Heritage Fund was established in 1972 following the World Heritage Convention, organized by UNESCO. The fund, as managed by UNESCO, provides financial assistance to states for cultural property protection during armed conflicts. All the contracting states of the UNESCO Convention 1972 provide funding for it.

228 See 1954 Hague Convention, supra note 73, art. 12(2).
229 Id., art. 12(3).
230 Id., arts. 13(1), 16(1).
233 Lillehoj, supra note 219.
234 See World Heritage Convention, supra note 155, arts. 22, 23.
235 This is because the scientific assistance provided by World Heritage Committee of UNESCO in terms of knowledge and training given to the member states for protecting cultural property is considered an intangible support. On the other hand, the materialistic support will be considered tangible support.
236 It keeps this list under the "World Heritage List" title. See World Heritage Convention, supra note 155, art. 11(4).
237 See World Heritage Convention, supra note 155, art. 15(1).
238 See Toman, supra note 21, at 605.
239 See World Heritage Convention, supra note 155, arts. 16(1), 18.
The Protection of Cultural Heritage by International Law in Armed Conflict

2. International Council on Monuments and Sites

ICOMOS is an advisory body of the World Heritage Committee and it works at the global level to apply the provisions of the UNESCO Convention 1972 for the protection of cultural heritage sites. The efforts made by UNESCO to protect cultural property and heritage sites in Iraq and Syria are contributed to and augmented by ICOMOS. Furthermore, it also makes contributions to the conferences and debates organized by UNESCO on the topic of cultural property and heritage protection in regions, particularly in Iraq and Syria. ICOMOS also collaborates with the IUCN and the International Centre for the Study of the Preservation and Restoration of Cultural Property to apply the provisions of the UNESCO Convention 1972 in times of peace and conflict. ICOMOS also evaluates the nominations of cultural properties to be considered as having “outstanding universal value” as per the criterion in the UNESCO Convention 1972.

ICOMOS, the World Heritage Committee, and the World Heritage Fund have all played important roles in the protection of cultural property and cultural heritage during armed conflicts. Therefore, it can be asserted that UNESCO has made several valuable efforts for the protection of cultural property and heritage sites during armed conflicts as well as for the application of the provisions of international law specifically aimed at protecting cultural heritage in conflict zones.

3. International Alliance for the Protection of Cultural Heritage in Zones of Conflict (ALIPH)

A new organization, ALIPH, was founded by UNESCO in collaboration with the UAE and France in March 2017. The organization raised around 75 million US Dollars in its first session in March. The fund will be used to protect threatened cultural property, particularly in conflicted-affected regions in Iraq and Syria. In May this year, another six countries including Saudi Arabia, Kuwait, Switzerland, Morocco, and Luxembourg pledged support to this organization.

240 See Hoffman, supra note 140, at xxxvii.
241 Id.
242 See Hoffman, supra note 140, at xxxvii.
244 See, e.g., Labadi, supra note 137, at 38.
248 Id.
The Protection of Cultural Heritage by International Law in Armed Conflict

tion for the protection of cultural property in the conflict-affected regions.\textsuperscript{249} It is expected that more states, including China, the United Kingdom, Italy, Germany, Mexico, and South Korea will pledge their support to this organization.\textsuperscript{250} The fund of this organization is an effort to contribute to cultural heritage and property in conflict-affected zones.\textsuperscript{251} As per statistics revealed in a session of this organization, terrorist organizations, including ISIS, have caused damage of around 150 million dollars to international cultural property and heritage.\textsuperscript{252}

The establishment of ALIPH is another indication of the essential role being played by UNESCO for the protection of cultural property and cultural heritage in times of armed conflicts since the 1954 Hague Convention. UNESCO has exhibited as well as practically implemented its resolve by performing actions to protect cultural property and heritage in conflict zones as well as by making efforts toward the full application of Hague Convention of 1954 and of its two protocols, the UNESCO Convention of 1970, and the World Heritage Convention 1972.\textsuperscript{253}

B. International Council of Museums (ICOM)

ICOM is an international organization that publishes a list of cultural property objects that are in endangered or conflict zones.\textsuperscript{254} In this way, its publications facilitate the identification of stolen, damaged, and smuggled cultural property,\textsuperscript{255} thus preventing the open sale and export of such objects. ICOM has published the details of Iraqi, Syrian, and Libyan cultural objects in 2003, 2013, and 2015, respectively, when armed conflict was waged in these regions.\textsuperscript{256} It highlighted the names and details of the threatened cultural property in these regions.\textsuperscript{257}

C. World Customs Organization (WCO)

The WCO has the core objective of preventing the illegal trade of cultural property at the international level.\textsuperscript{258} It ratifies the smuggling of cultural property as an organized crime and rates it within the category of money laundering.\textsuperscript{259}

\begin{itemize}
\item \textsuperscript{249} UNESCO Media Report, supra note 247.
\item \textsuperscript{250} Id.
\item \textsuperscript{251} Id.
\item \textsuperscript{252} Buffenstein, supra note 39.
\item \textsuperscript{253} See, e.g. Gibbon, supra note 246.
\item \textsuperscript{254} Martin R. Scharer, The work of the ICOM Ethics Committee, in MUSEUMS, ETHICS AND CULTURAL HERITAGE, 17 (ICOM ed., 2016).
\item \textsuperscript{255} See Hoffman, supra note 140, at 66.
\item \textsuperscript{256} Stuart Casey-Maslen, The War Report: Armed Conflict in 2013 384 (Oxford University Press 2014).
\item \textsuperscript{257} Id.
\item \textsuperscript{258} Irini A. Stamatoudi, Cultural Property Law and Restitution: A Commentary to International Conventions and European Union Law 184 (Edward Elgar Publishing 2011) [hereinafter Stamatoudi].
\item \textsuperscript{259} Id.
\end{itemize}
The Protection of Cultural Heritage by International Law in Armed Conflict

also identifies the cultural property objects that have been stolen or are traded illicitly\(^\text{260}\) and coordinates their identification to the relevant authorities through its customs enforcement network databases.\(^\text{261}\) For those cultural property objects that are required to be traveled from one region to another for their protection or for any other legitimate reason, the WCO issues special export certificates for such objects after confirming the legitimacy and legality of their trade.\(^\text{262}\) It also collaborates with ICOM and UNESCO to exchange information related to the stolen cultural property.\(^\text{263}\)

The WCO has also implemented its operations in Syria and Iraq.\(^\text{264}\) It has discovered the illegal trading of cultural objects in both regions and has also facilitated the returning of these objects to museums in Syria and Iraq.\(^\text{265}\) However, it has also demanded the authorities in these regions increase cross-border vigilance in order to prevent the illegal trade of cultural objects.\(^\text{266}\)

D. Committee for the Protection of Cultural Property in the Event of Armed Conflict

This organization was established in 1999 in accordance with the recommendation in the 1999 Second Protocol to the Hague Convention 1954.\(^\text{267}\) It has a core objective of protecting cultural property in conflict regions, managing a list of cultural property under enhanced protection in accordance with the Hague Convention, managing the Fund for Protection of Cultural Property in the Event of Armed Conflict, and ensuring the full application of the provisions of the Second Protocol worldwide, especially in armed conflict regions.\(^\text{268}\) It has 12 states as its members, which are also contracting parties to the Second Protocol to the Hague Convention 1954.\(^\text{269}\) The members of this committee hold annual

\(^{260}\) Id.


\(^{262}\) The certificate issuing process has been started by WCO in acollaboration with UNESCO. The certificates are also called the UNESCO-WCO Model Export Certificate for Cultural Objects. See Stamatoudi, supra note 309, at 258.

\(^{263}\) Id.


\(^{266}\) Id.

\(^{267}\) Toman, supra note 223, at 528.

\(^{268}\) ANDREW CLAPHAM & PAOLA GAETA, THE OXFORD HANDBOOK OF INTERNATIONAL LAW IN ARMED CONFLICT 506 (Oxford University Press 2014) [hereinafter Clapham & Gaeta].

\(^{269}\) See Article 24, Second Protocol to the Hague Convention 1954.
The Protection of Cultural Heritage by International Law in Armed Conflict

meetings to discuss the effectiveness of the operations for the protection of cultural property in conflict-affected regions.\textsuperscript{270}

In addition to the annual meeting, the committee can also hold special sessions in the event of any risk to the cultural property of a region.\textsuperscript{271} The members of this committee provide recommendations in the special meetings for performing special steps for the protection of the endangered cultural property in a conflict-affected region.\textsuperscript{272} In this regard, the member states, the contracting parties to the Second Protocol of Hague Convention, or the director-general of UNESCO can also call special meetings of this committee.\textsuperscript{273}

These international organizations are working within their spheres of operations for the protection of cultural heritage in armed conflicts. However, it is also essential that states also collaborate with such organizations and should facilitate the smooth continuation of their operations. This can be done by listening to the recommendations that such organizations may give to states for the protection of cultural heritage in the event of armed conflicts. When it is possible to collaborate with the national authorities of the states, these organizations, including UNESCO, can work more effectively and efficiently to protect cultural heritage property from all kinds of underlying threats in times of peace and conflicts.

V. Gaps and Challenges in Protecting International Cultural Heritage during Armed Conflicts

Despite there being multiple provisions and organizations in operation for the protection of international cultural heritage during armed conflicts, there are several gaps and challenges present in their effective operation.\textsuperscript{274}

A. Gaps Related to the Hague Convention 1954

The Hague Convention of 1954 also has certain gaps related to the implementation of its provisions. These are related to setting up an effective universal jurisdiction for the prosecution of the perpetrators of its provisions.

1. Universal Jurisdiction to Prosecute Offenders

Although the Second Protocol of the Hague Convention manages to apply universal jurisdiction in defining the violations related to the protection of cultural heritage property, it does not define the procedures to prosecute the viola-


\textsuperscript{271} Id.

\textsuperscript{272} Id.

\textsuperscript{273} Id.

\textsuperscript{274} See, e.g., \textsc{Brad Jessup} \& \textsc{Kim Rubenstein}, \textit{Environmental Discourses in Public and International Law} 381 (Cambridge University Press 2012) [hereinafter Jessup \& Rubenstein].
The Protection of Cultural Heritage by International Law in Armed Conflict

tors of its provisions.\textsuperscript{275} For instance, ISIS has thousands of armed men in its group and the group is damaging cultural property in Syria and Iraq.\textsuperscript{276} However, there is nothing in the language of either the Hague Convention or its Protocols I and II that could provide a method or guideline to stop or prosecute ISIS.\textsuperscript{277} It only provides general recommendations for the protection of cultural property; it does not set out any particular penalties or punishment tools for the violators of its provisions.\textsuperscript{278} This is why the convention has not proved successful in protecting international cultural heritage in Iraq and Syria, where there appear to have been stringent violations of its provisions.\textsuperscript{279}

2. Lack of Procedural and Quantitative Assessments

A prominent drawback in the 1954 Hague Convention is that it does not set any quantitative measures or procedures to keep track of the effectiveness of the efforts for the protection of cultural property in a particular armed conflict-affected region. That is, the convention largely rests upon the functioning of national institutions for the protection of cultural heritage in armed conflict-affected states and therefore it has not set up its own tribunals to protect cultural heritage or property in conflict-affected regions.\textsuperscript{280} This creates a massive gap in the wake of a sudden armed conflict, particularly in the event of national institutions lacking proper infrastructure, expertise, or opportunities to give full protection to cultural property; for example, the Syrian government has become incapable of protecting its cultural heritage sites from ISIS attacks. The question arises here what could be the possible and most suitable action for the protection of cultural property in such conflict-affected regions where national institutions and local bodies fail to deliver protection in accordance with the Hague Convention’s provisions related to the cultural heritage sites. What if one or all of the warring parties do not accept the provisions of this convention in causing damage to the

\textsuperscript{275} The Second Protocol to the Hague Convention defined the violations to the provisions of the convention in two categories, i.e., “serious violations” and “other violations.” It urged the states to make laws or procedures to prosecute the perpetrators who appear to commit any of the two types of violations. However, it did not mention what could be the punishments or what could be the frameworks or steps that a state can take in order to prosecute such nonstate actors who desecrate the cultural property with the use of force. See M. Cherif Bassiouni, International Criminal Law: Sources, Subjects and Contents, 987 (Brill 2008) [hereinafter Bassiouni].


\textsuperscript{277} The Hague Convention and its two Protocols mostly rely on states to conduct litigations and prosecutions for the perpetrators of its provisions. It does not provide its own prosecution framework in this regard. See Articles 20 and 21, Second Protocol to the Hague Convention, 1999. See also Bassiouni, supra note 275, at 987.

\textsuperscript{278} See also Bassiouni, supra note 275, at 987.

\textsuperscript{279} See R. Spencer, supra note 276.

\textsuperscript{280} See Bassiouni, supra note 275 at 987. See also Article 21, Second Protocol to the Hague Convention, 1999.
cultural heritage during armed conflict? These questions remain unanswered by the Hague Convention, particularly in armed conflicts.

3. **Principle of Military Necessity**

Another issue related to the 1954 Hague Convention is that it does not provide any substantial answer related to the question of damage caused to cultural property by invading armies on the basis of the principle of military necessity. That is, the invading army can withdraw special protection from a cultural property site during armed conflict owing to an unavoidable application of the principle of military necessity.\(^{281}\) This creates confusion or sometimes exceptions that can be exploited by the aggressive party during the armed conflict in causing damage to cultural property and heritage sites.\(^{282}\) This exception arises from the text of Article 11(2) of the Hague Convention 1954, which withdraws special protection and immunity from cultural property in applying the principle of military necessity.\(^{283}\) The text of Article 11(2) of the Hague Convention 1954 states that:

> Apart from the case provided for in paragraph I of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger.\(^{284}\)

Thus, in accordance with the principle of military necessity, special protection is withdrawn from cultural property, which can mean direct damage to such cultural property during armed conflict, particularly when the invading army attacks cultural heritage sites in accordance with the principle of military necessity.

4. **Noninternational Armed Conflicts and Nonstate Actors**

There is another issue that appears to be present in Article 19 of the Hague Convention 1954. The text of this article is related to offering protection to cultural property in the event of a conflict of a noninternational nature.\(^{285}\) The text

---

\(^{281}\) This withdrawal is endorsed in Article 11, Paragraph 2, of the Hague Convention, 1954. See 1954 Hague Convention, supra note 74, art. 11(2).

\(^{282}\) The confusion is generated when either party commits a violation of the obligations under Article 9 of the 1954 Hague Convention. Consequently, Article 11(2) of the Hague Conventions becomes applicable and withdraws special protection from the cultural property in the events of special cases of unavoidable military necessity. Although after the withdrawal of special protection the principle of proportionality becomes applicable, this again puts cultural property at risk because it can be targeted by the invading army, which can use the rationale of “military necessity” for it. Thus, whether the principle of proportionality is followed or not, the damage to the cultural property will depend upon the extent of the force used in the name of “military necessity.” See CAROLINE EHLERT, PROSECUTING THE DESTRUCTION OF CULTURAL PROPERTY IN INTERNATIONAL CRIMINAL LAW: WITH A CASE STUDY ON THE KHMER ROUGE’S DESTRUCTION OF CAMBODIA’S HERITAGE 58 (Martinus Nijhoff Publishers 2013).

\(^{283}\) Toman, supra note 223, at 224.

\(^{284}\) See 1954 Hague Convention, supra note 74, art. 11.

\(^{285}\) See O’Keefe, supra note 221, at 325.
The Protection of Cultural Heritage by International Law in Armed Conflict

of Article 19, Paragraph 1, expects the parties to the conflict to abide by the rules of the convention; the text of Article 19, Paragraph 2, orders the parties to implement the provisions of the convention by force.286 However, in real terms, such an application of this article seems awkward. This is because most armed conflicts of a noninternational character are fought either between nonstate actors or between states and nonstate actor groups. In most cases, nonstate actors have turned out to be associated with a terrorist rebellion group who reject the rule of law and are only focused on spreading chaos, terror, and torture in the region. They work as antistate elements and enemies of peace. In such instances, we cannot expect these terrorist nonstate actors to follow the provisions of the Hague Convention. A prime example of such a reality is the terrorist attacks by ISIS, in which it has also caused heavy damage to cultural property in Syria and Iraq.287 Thus, in such cases, the applicability of the Hague Convention to noninternational armed conflicts becomes vague and elusive.

B. Gaps Related to the UNESCO Conventions

In addition to the Hague Convention 1954, there are also certain gaps and challenges related to the implementation of the UNESCO Conventions.288

1. No Universal Jurisdiction

For instance, both the 1970 and 1972 conventions give consideration to the protection of cultural property and heritage that comes under the authority of the states that are party to the conventions.289 This implies that the cultural property that lies in regions or states that are not party to the conventions is not protected under either convention, though this property is also the part of international cultural heritage.

2. No Enforcement Mechanism for Violators of UNESCO Convention

Moreover, the UNESCO Convention 1970 does not provide any framework for the implementation of its own provisions for the protection of cultural property, particularly in the event of armed conflicts. That is, the enforcement mechanism of its provisions is lacking, as it sets out no prosecution system or penalty

286 See 1954 Hague Convention, supra note 74, art. 19.
287 ISIS accepts no laws or international conventions. Therefore, it becomes challenging to apply Article 19 of the Hague Convention on such situations where nonstate actors like ISIS are parties to a noninternational armed conflict. To know about the grave damage to cultural heritage committed by ISIS. See: R. Spencer, supra note 276.
288 See CARLOS ESPÓSITO ET AL., OCEAN LAW AND POLICY: TWENTY YEARS OF DEVELOPMENT UNDER THE UNCLOS REGIME 135 (Brill 2016) [hereinafter: Espósito et al.]
standards to punish those who violate the rules in its provisions.\textsuperscript{290} There are no prosecution rules for punishing those who desecrate or damage cultural heritage property in the event of armed conflicts or in times of peace.\textsuperscript{291} This creates an enforcement gap in the application of the provisions of this convention.

3. \textit{Excessive Reliance on the Legislative Bodies of Contracting Parties}

The UNESCO Convention 1970 relies on legislation by its contracting states in order to create laws related to its provisions to protect the cultural heritage within national jurisdiction.\textsuperscript{292} This creates gaps in the form of delays in the effective implementation of the provisions of this convention,\textsuperscript{293} because not every state has a quick legislative system to enact or approve legislation and not all states that are contracting parties to the convention have the same level of pace in enacting laws based on its provisions.

C. Gaps Related to the Protection of Intangible Cultural Heritage during Armed Conflicts

Stringent gaps exist in international cultural heritage law related to providing protection to intangible cultural heritage during armed conflicts.\textsuperscript{294} Although a separate convention, the Convention for the Safeguarding of the Intangible Cultural Heritage 2003, was drafted by UNESCO for intangible heritage protection,\textsuperscript{295} this convention has no particular provision focused on the need for the protection of intangible cultural heritage during armed conflicts.\textsuperscript{296} The 1954 Hague Convention and the UNESCO Convention also lack provisions for the protection of intangible cultural heritage during armed conflict, as neither directly mentions protection for intangible cultural heritage.\textsuperscript{297} Hence, despite the fact that the armed conflicts pose severe threats to intangible cultural heritage when artistic expressions, rituals, etc. are destroyed at the hands of the aggressive party during armed conflict, the gaps in international law related to protecting intangible cultural heritage in armed conflict are daunting.\textsuperscript{298}

In order to apply full protection to cultural heritage during armed conflict, these gaps and all relevant challenges must be addressed by the international community. The gaps must be filled to eliminate any inconsistencies and ineffi-
The Protection of Cultural Heritage by International Law in Armed Conflict

ciencies in the global efforts to protect cultural heritage in the event of armed conflict. Special measures should be taken by the international community for this purpose. That is, the community can hold additional sessions or arrange additional protocols to the international conventions to fill the gaps in the provisions of these conventions.

VI. Conclusion

International cultural heritage faces threats in armed conflict.\textsuperscript{299} Today, most conflicts are of an intra-state nature.\textsuperscript{300} Such conflicts are instigated owing to ethnic, political, or cultural tensions among groups in a state or between a group and state authorities.\textsuperscript{301} Owing to their ethnic origin, such conflicts cause further damage to cultural and ethnic expressions in a state.\textsuperscript{302} This is because the parties to the conflict tend to cause injury to each other's sites of cultural expression and ethnicity in such conflicts.\textsuperscript{303} Consequently, the cultural heritage in the state suffers damage.\textsuperscript{304} Likewise, inter-state conflicts also cause severe damage to cultural heritage, particularly to tangible cultural property such as monuments, artistic locations, educational institutes, etc.\textsuperscript{305} Damage to the tangible cultural heritage also coincides with damage caused to intangible cultural heritage such as religious rituals, artistic expressions, festivals, oral traditions, knowledge, etc.\textsuperscript{306} This is because the destruction of cultural heritage sites during war, e.g., a religious site, can cause decline of certain religious practices that the local people had previously performed there.\textsuperscript{307} Hence, cultural expressions also risk dying owing to the damage of war.\textsuperscript{308}

It is essential to control the harmful inclinations of war, which has the tendency to cause damage to cultural heritage property and cultural expressions.\textsuperscript{309} The international community is fully aware of the grave threats to cultural heritage owing to armed conflicts. Therefore, it has made exceptional efforts to draft

\begin{itemize}
  \item \textsuperscript{300} Mary Hawkesworth & Maurice Kogan, \textit{Encyclopedia of Government and Politics} 981 (Routledge 2013).
  \item \textsuperscript{301} Id.
  \item \textsuperscript{302} Chadwick F. Alger, \textit{Peace Research and Peacebuilding} 83 (Springer 2013).
  \item \textsuperscript{303} Id.
  \item \textsuperscript{304} Id.
  \item \textsuperscript{307} Johannot-Gradis, supra note 198, at 1260.
  \item \textsuperscript{308} Id. \textit{See also} Schorlemer & Stoll, \textit{supra} note 45. \textit{See also} Kuwali & Viljoen, \textit{supra} note 44.
  \item \textsuperscript{309} Durfina, \textit{supra} note 63.
\end{itemize}
conventions and form international organizations to take substantial steps to protect cultural heritage. The international conventions have provided legal provisions that include rules and recommendations for states to protect cultural heritage during armed conflicts.\footnote{310}{Maslen, supra note 67.} Among them, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 and its two Additional Protocols of 1954 and 1999, the Geneva Conventions of 1949 and their two Additional Protocols of 1977, the UNESCO Convention 1970, and the World Heritage Convention 1972 are the most prominent international conventions to have provided important legal provisions for the protection of tangible cultural heritage and property in the event of armed conflicts.\footnote{311}{Id.} On the other hand, the ICCPR, the Hague Conventions of 1899 and 1907, and the UNESCO Convention 1970 provide certain provisions for the protection of intangible cultural heritage during armed conflicts.\footnote{312}{Johannot-Gradis, supra note 198, at 1259.} Several states, including Iraq and Syria, where ISIS has caused severe damage to cultural heritage property, are parties to these conventions.\footnote{313}{Turku, supra note 139.}

It is essential to note here that, although the Convention for the Safeguarding of the Intangible Cultural Heritage 2003 focuses solely on the subject of the protection of intangible cultural heritage,\footnote{314}{Ubertazzi, supra note 295.} this convention does not include any particular provision related to the conduct of war that can guide the protection of intangible cultural heritage during war.\footnote{315}{Johannot-Gradis, supra note 198.} Therefore, the provisions regarding the protection of intangible cultural heritage during armed conflicts are found to be lacking.\footnote{316}{Graber et al., supra note 294.} The UNESCO Convention 1970 and some provisions of the Hague Conventions of 1899 and 1907 provide protection to intangible cultural heritage during armed conflicts,\footnote{317}{Renteln et al., supra note 208.} but these conventions do not directly mention intangible cultural expressions.\footnote{318}{Johannot-Gradis, supra note 198, at 1256–59.} Rather, these conventions offer protection to such cultural heritage sites such as educational, religious, and artistic places, which are directly connected with the expression of intangible cultural heritage such as knowledge, religious practices, intellectual property, artistic expressions, etc. This indicates a clear gap in international law for the protection of intangible cultural heritage in the event of armed conflict.

On the other hand, international organizations have made valuable contributions by forming special committees and making operations in the conflict zones to protect cultural heritage during armed conflicts there.\footnote{319}{Kreimer et al., supra note 217.} UNESCO, ICOM, the WCO, The Committee for the Protection of Cultural Property in the Event of Armed Conflict, the World Heritage Committee, and ICOMOS are the most
The Protection of Cultural Heritage by International Law in Armed Conflict

prominent international organizations working for the protection of cultural heritage in armed conflict. Recently, a new organization, ALIPH, has also been established with the same goal of protecting cultural property in armed conflict.320

Among the international organizations, UNESCO has the leading role in providing protection to cultural heritage in times of peace as well as in the event of armed conflicts.321 UNESCO has made exceptional efforts to protect cultural heritage by organizing special committees and funds for the protection of cultural heritage in armed conflicts.322 For instance, the World Heritage Committee works under the flag of UNESCO and provides technical and scientific assistance to states in armed conflicts.323 It also maintains a list of endangered cultural properties and formulates policies for their protection.324 Furthermore, UNESCO has also established a World Heritage Fund, used to sponsor the protective measures required for the urgent protection of cultural property objects and sites in conflict zones during armed conflicts.325 In addition, UNESCO has also collaborated with the governments of some states such as France and the UAE to formulate ALIPH, as well as raising more than 100 million dollars for a new fund to protect and rehabilitate the cultural heritage property adversely affected during armed conflicts.326

In addition, UNESCO has also drafted two of the most important international conventions—the UNESCO Convention 1970 and the World Heritage Convention 1972327—which form the basis of international cultural heritage law.328 UNESCO organized these conventions to lay out policies and rules for the protection of cultural heritage property during wars.329 Moreover, UNESCO also gained an important role within the provisions of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.330

More importantly, it is the authority of the director-general of UNESCO to decide on adding amendments to the provisions of the Hague Convention, as well as adding new members to the convention.331 Moreover, the director-general can also convene special meetings of the contracting parties after receiving requests from one-fifth of the contracting parties in the event of an armed attack and

320 See UNESCO Media Services, supra note 247.
321 Logan, supra note 218. See also Grant, supra note 220.
322 See, e.g., Meskell, supra note 231.
324 See also Article 11(2), World Heritage Convention, UNESCO, 1972.
325 See Article 15(1), The World Heritage Convention, UNESCO, 1972. See also Toman, supra note 223, at 605.
326 UNESCO Media Services, supra note 247.
327 Cameron & Rössler, supra note 135.
328 Francioni & Gordley, supra note 65. See also Schneider & Vadi, supra note 66.
329 Cameron & Rössler, supra note 135. See also Labadi, supra note 137.
330 O'Keefe, supra note 221.
331 For the detailed procedure of adding amendments, see 1954 Hague Convention, supra note 74, art. 39.
The Protection of Cultural Heritage by International Law in Armed Conflict

consequent threat to particular cultural heritage sites. UNESCO also decides on adding particular cultural heritage sites into the category of "special protection" and also has authority to decide on providing technical or other material assistance for the relocation of cultural property there or for applying an international refuge at that site for its protection from armed conflict. In addition to the Hague Convention, UNESCO also plays an essential role in the application of provisions of the UNESCO Convention 1970 and the World Heritage Convention 1972 in the event of armed conflicts.

Despite the efforts of UNESCO and of other aforementioned organizations, there are several considerable challenges and gaps in applying full protection to cultural heritage property in the event of armed conflicts. The gaps are also present in the provisions of the aforementioned conventions, including the 1954 Hague Convention and UNESCO Convention 1970. For instance, there are no frameworks or quantitative assessment tools for the implementation of the provisions of these conventions and for the prosecution of violators of their provisions. In addition, the provisions also do not provide any substantial rule for situations when the warring party is a group of terrorist nonstate actors, such as ISIS, that causes damage to cultural heritage property during an intra-state armed conflict. That is, the provisions do not provide any suitable recommendation to prevent such nonstate actors from causing injury to cultural heritage property. ISIS has caused significant damage to cultural property in Syria and Iraq, but the provisions have been ineffective in providing a practical ad hoc framework to protect cultural property in the Syrian and Iraqi region from ISIS armed terrorists. This limitation and all other gaps related to the provisions of the conventions should be addressed by the international community in defining and setting up an effective mechanism to apply full protection to cultural heritage property in the event of armed conflicts.

332 See 1954 Hague Convention, supra note 74, art. 27(1).
334 Gibbon, supra note 246, at 5.
335 Jessup & Rubenstein, supra note 274.
336 Bassiouni, supra note 275. See also Espósito et al., supra note 288.
337 Bassiouni, supra note 275.
338 Id.
339 See, e.g., R. Spencer, supra note 276 (detailing the damage done by ISIS to the cultural property in Syria and Iraq).