

Safeguarding of Cultural Property: A Dual Safeguarding System in Times of War

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Abstract:

The safeguarding of cultural property during armed conflicts demonstrates the development of international humanitarian law (IHL) in keeping pace with the realities of military operations. It also reflects the growing international commitment to protecting cultural property through the significant efforts undertaken by the United Nations.

Armed conflicts are often characterized by the destruction and looting of cultural property, as well as its illicit trafficking. In response, the international community has intensified its efforts to combat these crimes, culminating in international criminal prosecutions of those responsible. Despite these developments, imposing the obligation to safeguard cultural property on belligerents remains a significant challenge for several reasons.

Keywords: Cultural property, safeguarding, armed conflicts, international humanitarian law (IHL), the 1954 Hague Convention, the UN, UNESCO.

INTRODUCTION

Armed conflicts cause widespread damage that affects humanity in every sphere and, in many cases, results in the destruction of entire civilizations. In response, international humanitarian law (IHL) seeks to humanize warfare by establishing rules that regulate the conduct of belligerents during hostilities. These rules extend to matters of fundamental importance to humanity, including the protection of cultural property.

Cultural property constitutes an integral part of the heritage of States and the history of their civilizations. However, it remains under constant threat during armed conflicts, particularly in light of rapid advances in military technology and the increasing number of conflict zones worldwide.

Belligerents often exploit the chaos created by armed conflicts to destroy and loot cultural property and engage in its illicit trafficking. This has occurred in numerous States, including Palestine, Iraq, Syria, and Mali. Consequently, the international community recognized the need to establish a legal framework for safeguarding cultural property in both peacetime and during armed conflicts.

To this end, a series of international conventions were adopted, and the safeguarding of cultural property became an established subject of international humanitarian law. Given the universal significance of cultural property, the United Nations has also played an active role through its various organs in promoting and enforcing the safeguards established under these international conventions. Against this background, this article examines the complementarity between the international legal

framework governing the safeguarding of cultural property during armed conflicts and the efforts of the United Nations to ensure its effective implementation.

First Section: Codification of the Safeguarding of Cultural Property

The codification of the safeguarding of cultural property has gained widespread international acceptance in response to the devastating consequences of armed conflicts, which have resulted in the destruction and looting of cultural property. In many cases, the recovery of looted property and the restoration of destroyed heritage have proven difficult, if not impossible.

These circumstances prompted the international community to establish an international legal framework for safeguarding cultural property during military operations. This effort culminated in the adoption of international conventions that impose a general obligation on belligerents to safeguard cultural property (First Requirement). These conventions also provide additional protection against the dangers of hostilities through special safeguarding and enhanced safeguarding (Second Requirement).

First Requirement: Codification of the General Safeguarding of Cultural Property

The international community initially focused on establishing rules to protect human life from the dangers of armed conflicts, and numerous international legal instruments were adopted for this purpose. At that stage, the safeguarding of cultural property was not regarded as a priority because of the overwhelming number of human casualties. Consequently, protecting the right to life took precedence. Only later did the international community begin to devote greater attention to the safeguarding of cultural property.

The 1954 Hague Convention¹ is regarded as one of the most important legal instruments codifying the safeguarding of cultural property. It establishes a general principle based on two complementary obligations: respect for and safeguarding of cultural property (First Branch). It also sets out the measures and procedures necessary to ensure the effective safeguarding of such property (Second Branch).

First Branch: Respect Is the Basis of General Safeguarding

The 1954 Hague Convention provides that general safeguarding requires belligerents to respect cultural property by refraining from destroying, damaging, or using it in a manner that exposes it to the effects of armed conflict. It also prohibits the launching of military operations against cultural property, whether located within their own territory or in the territory of an adversary.²

The Convention affords general safeguarding to all cultural property. It requires States Parties to adopt appropriate measures during peacetime to safeguard cultural property against the foreseeable effects of armed conflict. It also allocates protective responsibilities between the parties to an armed conflict. The State in whose territory the conflict occurs is required to take measures to ensure that its cultural property is protected from attack, while the armed forces of all States Parties must refrain from directing attacks against such property, in accordance with Article 3 of the Convention.

The Convention is founded on the principle that cultural property forms part of the common heritage of humanity. Although each people contributes its own distinct cultural heritage to the world's

1- Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954. See the full text of the Convention at: ihl-databases.icrc.org/assets/treaties/400-DIH-60-fr.pdf.

2- See Article 4 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention, 1954).

civilization, preserving that heritage benefits all humanity. For this reason, the Convention seeks to ensure the general safeguarding of cultural property in both peacetime and during armed conflict.³

Second Branch: Measures Required to Be Taken for the Safeguarding of Cultural Property

General safeguarding extends to include the prohibition of the theft, pillage, or misappropriation of cultural property, by taking the preventive measures that States consider appropriate for that in accordance with the provisions of Article 03 of the Convention. Those measures that States must take were later specified under the Second Protocol of 1999 annexed to the 1954 Hague Convention,⁴ and they are as follows⁵:

- : the authorities responsible for the safeguarding of that cultural property.

The territorial State is obliged to take the necessary measures to prevent the use of cultural property for military purposes, and to move it away from military objectives. In return, the other parties participating in the armed conflict are obliged to refrain from seizing, pillaging, and misappropriating that property, to prohibit any attack whose purpose is its destruction, and not to undertake any reprisals affecting it.⁶

It should be noted that all these measures are not limited only to cases of armed conflict, but also include cases of natural disasters, which broadens the system of safeguarding and makes it permanent, not confined to cases of armed conflict. However, those measures require huge budgets that many of the States concerned with taking safeguarding measures may not possess. For that reason, the World Heritage Fund was established so that States that are financially unable to protect their cultural property may resort to it.

In addition to that, the belligerents are obliged to incorporate provisions into the regulations and instructions of their military forces that ensure respect for the cultural property of all peoples, and to assign specialists within the ranks of their armed forces to oversee the safeguarding of that property and assist the authorities responsible for its safeguarding. Accordingly, whether the cultural property is national or foreign, it enjoys safeguarding provided that it is located within the territory of the State during the armed conflict.⁷

Second Requirement: Codification of Special Safeguarding and Enhanced Safeguarding for Cultural Property

The law continuously evolves to respond to changing realities, and international humanitarian law (IHL) is no exception. As the means and methods of warfare have advanced, IHL has developed to address new challenges and to remedy the shortcomings of earlier legal instruments.⁸

The international community gradually recognized the practical difficulties involved in safeguarding cultural property during armed conflicts. It therefore continued its efforts to establish a legal framework capable of responding more effectively to the realities of contemporary armed conflicts.

3- Khanousi Karima, *Al Himaya Al Dawliya lil Mumtalakat Al Thaqafiya*, *Majallat Al Ustadh Al Bahith lilDirasat Al Qanuniyawa Al Siyasiyya*, Vol. 4, No. 2, 2019, p. 1562. See also Article 2 of the 1954 Hague Convention.

4- Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999. See the full text of the Protocol at: ihl-databases.icrc.org/assets/treaties/hague-prot-1999.

5- See Article 5 of the Second Protocol to the 1954 Hague Convention.

6- Natouri Karim, *Al Janib Al Maddi lil Qanun Al Dawli Al Insani*, *Al Majalla Al Akadimiya lilBahth Al Qanuni*, Vol. 17, No. 1, 2018, p. 273.

7- Khanousi Karima, *op. cit.*, p. 1563.

8- François Bugnion, "The Genesis of the Legal Protection of Cultural Property in the Event of Armed Conflict," *International Review of the Red Cross*, Vol. 86, No. 854, 2004, p. 319.

Experience demonstrated that the system of general safeguarding alone was insufficient to ensure the effective safeguarding of cultural property.

Accordingly, the framework for protecting cultural property was strengthened through the introduction of two additional systems: the system of special safeguarding (First Branch) and the system of enhanced safeguarding (Second Branch).

First Branch: Codification of the Special Safeguarding System

The experience of armed conflicts demonstrated that the system of general safeguarding was insufficient to provide adequate safeguarding for cultural property that forms part of the common heritage of humanity. Given the unique nature and exceptional value of such property, the international community established an additional system of safeguarding known as special safeguarding.⁹

The 1954 Hague Convention introduced a system of special safeguarding for certain categories of cultural property. Like general safeguarding, this system prohibits the use of protected property or the means allocated for its safeguarding for military purposes. However, special safeguarding differs in that it applies to both movable and immovable cultural property.

Special safeguarding is granted to a limited number of refuges intended for the safeguarding of movable cultural property, monumental centers, and other immovable cultural property of very great importance. It protects these properties from the effects of hostilities, provided that specific conditions are satisfied. In practice, however, the system did not achieve its intended objectives because relatively few States registered their cultural property in the International Register of Cultural Property under Special Safeguarding.¹⁰

The 1954 Hague Convention establishes two conditions for granting special safeguarding. First, the cultural property must be situated at a sufficient distance from any important military objective or major industrial center considered vital, such as airports, ports, railway stations, or major lines of communication. Where necessary, traffic must be diverted away from the protected site. Second, the property must not be used for military purposes or in support of military operations.¹¹

The Convention nevertheless permits cultural property located near an important military objective to be placed under special safeguarding if the State concerned undertakes not to use either the property or the nearby objective for military purposes during an armed conflict. This exception applies particularly to objectives such as ports, railway stations, and airports, provided that traffic is diverted from them in peacetime.¹²

The presence of armed guards assigned solely to protect cultural property does not deprive that property of its special safeguarding. Similarly, the deployment of law enforcement personnel

9- Rémi Fuhrmann, *The Protection of Cultural Property in the Event of Armed Conflict and the Bipolarity of International Law*, Master's thesis submitted in partial fulfillment of the requirements for the Master's Degree in International Law, Université du Québec à Montréal, 2020, p. 34.

10- Sharif Haniya, *Al Masouliya Al Jinaiya Al Dawliya wa Al Fardiya an Al Intihakak Al Waqia ala Al Turath Al Thaqafi*, *Majallat Al Dirasat Al Qanuniya Al Mouqarana*, Vol. 6, No. 1, 2020, p. 490. See also Article 8 of the 1954 Hague Convention.

11- See Article 8(5) of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention, 1954).

12- Mohamed Ibrahim Al Anani, *Al Himaya Al QanuniyalilTurath Al Insaniwa Al Bi'aWaqta Al Nizaat Al Musallaha* (The Legal Protection of Human Heritage and the Environment During Armed Conflicts), in *International Humanitarian Law: Prospects and Challenges*, Halabi Legal Publications, Beirut, 2010, p. 38. See also Article 8(4) of the 1954 Hague Convention.

responsible for maintaining public order does not affect its protected status. The safeguarding afforded under this system applies only to cultural property entered in the International Register of Cultural Property under Special Safeguarding.

The Convention provides that cultural property entered in the International Register is entitled to special safeguarding in accordance with Article 8(6). It also establishes the International Register of Cultural Property under Special Safeguarding, which is maintained by the Director-General of the UNESCO. The Director-General is responsible for transmitting copies of the Register to the Secretary-General of the United Nations and to the States Parties.¹³

The Convention also permits the relocation of cultural property, with the consent of the parties to the conflict, when such relocation is necessary to protect it from the dangers of military operations. Cultural property under special safeguarding may be identified by the distinctive emblem of the Convention, consisting of a blue and white shield, which is reserved for property enjoying special safeguarding and for the persons responsible for its safeguarding.¹⁴

Second Branch: Codification of Enhanced Safeguarding

The Second Protocol to the 1954 Hague Convention, adopted in 1999, introduced the system of enhanced safeguarding to address the shortcomings of the original Convention. Under the Protocol, cultural property must satisfy three conditions to qualify for enhanced safeguarding.¹⁵

- First, the cultural property must be of the greatest importance to humanity.
- Second, it must be protected by adequate legal and administrative measures at the national level that recognize and preserve its exceptional cultural and historical value.
- Third, the property, or the institution responsible for its preservation, must not be used for military purposes or to shield military objectives.

The Second Protocol also established the Committee for the Safeguarding of Cultural Property in the Event of Armed Conflict. The Committee is responsible for maintaining the List of Cultural Property under Enhanced Safeguarding, monitoring the implementation of the Protocol, examining reports submitted by States Parties, and preparing its own reports on the Protocol's implementation. Because the enhanced safeguarding regime is relatively recent, only a limited number of cultural properties have been inscribed on the List.¹⁶

The Protocol further provides that enhanced safeguarding may, in exceptional circumstances, be granted even where the applicant State has not yet adopted the necessary national legal and administrative measures. This is permitted where the State requests international assistance from the Committee in developing and implementing the required legislative and administrative framework for the safeguarding of the cultural property.¹⁷

13- See Article 6 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention, 1954).

14- Sharif Haniya, *op. cit.*, p. 490. See also Article 17 of the 1954 Hague Convention.

15- Vittorio Mainetti, "New Perspectives for the Protection of Cultural Property in the Event of Armed Conflict: The Entry into Force of the Second Protocol to the 1954 Hague Convention," *International Review of the Red Cross*, Vol. 86, No. 854, 2004, p. 355.

See Article 10 of the Second Protocol to the 1954 Hague Convention.

16- Natouri Karim, *op. cit.*, p. 275. See also Article 24 of the Second Protocol to the 1954 Hague Convention.

17- Fatima Hassan Ahmed Al Fawair, *Himayat Al Mumtalakat Al Thaqafiya Athna Al Nizaat Al Musallaha (Dirasa fi Daw Al Qanun Al Dawli Al Insani)*, Master's Thesis, Middle East University, Faculty of Law, 2019, p. 79. See also Article 11 of the Second Protocol to the 1954 Hague Convention.

In addition, the Second Protocol defines a military objective as an object that, by its nature, location, purpose, or use, makes an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances prevailing at the time, offers a definite military advantage.¹⁸

To strengthen the safeguarding of cultural property, the Protocol also introduced two categories of precautionary measures. The first requires parties to an armed conflict to take precautions during attacks to avoid or minimize damage to cultural property. The second requires precautions against the effects of hostilities, including preventive measures to reduce the risks posed by military operations. These obligations reflect the customary international humanitarian law principle of precaution.¹⁹

Despite these developments, the 1954 Hague Convention permits derogation from the obligation to safeguard cultural property where imperative military necessity so requires.²⁰

This exception gives rise to a longstanding tension between the obligation to respect cultural property and the doctrine of military necessity. These principles are inherently difficult to reconcile. In practice, military necessity operates as an exception to the obligation to respect cultural property, raising concerns that the safeguarding afforded by the Convention may be significantly weakened during armed conflict.²¹

Section Two: The Contribution of the UN Organization to Enforcing the Safeguarding of Cultural Property

International organizations intervene in international relations and have become an active party in them. They are often credited with developing the rules of international law in all its branches, which also applies to IHL.

The safeguarding of cultural property during armed conflicts requires the concerted and unified efforts of the international community in order to achieve the best possible safeguarding for it. Accordingly, the UN intervened to ensure that belligerents comply with respecting that property. This is reflected in both the role of the General Assembly and the Security Council, on the one hand (First Requirement), and the role of UNESCO, affiliated with it, on the other hand (Second Requirement).

First Requirement: The Work of the General Assembly and the Security Council in Seeking the Safeguarding of Cultural Property

Both the General Assembly and the Security Council have played a pivotal role in the field of international law in general, and in the field of IHL in particular, as is demonstrated by the large number of resolutions and declarations issued by them.

The two bodies have been concerned with the issue of protecting cultural property during armed conflicts since the early years of the work of the UN. They intervened in conflicts in which the prescribed safeguarding of cultural property was violated. Accordingly, the General Assembly contributed through its declarations to achieving that safeguarding (First Branch), and the Security Council contributed through its resolutions to enforcing that safeguarding (Second Branch).

First Branch: The Role of the General Assembly in the Safeguarding of Cultural Property

18- See Article 1 of the Second Protocol to the 1954 Hague Convention.

19- Gauthier Lemelle, *The Protection of Cultural Heritage during Non-International Armed Conflicts*, Master's Thesis, Université Pierre Mendès France, Grenoble, Faculty of Law, 2014, p. 31.

20- See Article 4(2) of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention, 1954).

21- Baghdadi Linda, *Himayat Al Mumtalaakat Al ThaqafiyaAthna Al Nizaat Al Musallaha, Al Matal Al Qanuni*, Vol. 7, No. 1, 2025, p. 60.

In 1973, the General Assembly adopted Resolution No. 3187,²² in which it recognized the obligations incumbent upon States that had seized valuable works belonging to the territories they had occupied. The General Assembly also called upon the Secretary-General of the UN to submit a report on this subject.²³

The importance of the issue of cultural property for the General Assembly is reflected in its inclusion in its agenda during various sessions, as was the case in its 1975 session, which resulted in the adoption of Resolution No. 3391,²⁴ through which it called upon Member States to ratify the Convention on the Prohibition and Prevention of the Illicit Import, Export and Transfer of Cultural Property.²⁵

Through its resolutions, the General Assembly condemned attacks by belligerents against cultural property, as was the case with Resolution No. 2253 of 1967 concerning the city of Jerusalem. It called upon Israel to preserve carefully all sites, buildings, and other cultural property, particularly in the Old City of Jerusalem, and to refrain from carrying out any excavations or any transfer of such property, or altering its features or its cultural characteristics.²⁶

In the same context, the General Assembly called upon Israel, by Resolution No. 15/36,²⁷ to cease immediately all excavation activities and the alteration of landmarks at the historical, cultural, and religious sites of Jerusalem, especially those located under and around Al-Haram Al-Sharif, whose buildings are exposed to the danger of collapse²⁸

The General Assembly was keen to ensure the safeguarding of cultural property during armed conflicts as provided for in international conventions. One of the most prominent examples of this is its Resolution No. 3005, issued in 1972,²⁹ by which it expressly called upon Israel to stop the looting of archaeological and cultural property in Jerusalem.³⁰

On that basis, it can be said that the General Assembly contributed to raising awareness at the international level of the necessity of complying with the respect for and safeguarding of cultural property in accordance with what is stipulated in international conventions. However, the resolutions of the General Assembly do not go beyond being non-binding recommendations, which limited the effectiveness of its work in this field.

22- United Nations, Restitution of Works of Art to Countries Victims of Expropriation, Resolution No. 3187, adopted by the General Assembly at its 28th Session, 2206th Plenary Meeting, 18 December 1973.

23- See paragraphs 1, 2, 3, and 4 of United Nations General Assembly Resolution No. 3187.

24- United Nations, Restitution of Works of Art to Countries Victims of Expropriation, Resolution No. 3391, adopted by the General Assembly at its 30th Session, 2410th Plenary Meeting, 19 November 1975.

25- Abdelghani Houba, *Aliyat Al Himaya Al Dawliya wa Al Wataniya lil Mumtalaqat Al Thaqafiya fi Al Quds*, Majallat Al Shihab, No. 2, March 2016, p. 159.

26- United Nations, Measures Taken by Israel to Change the Status of the City of Jerusalem, Resolution No. 2253, adopted by the General Assembly at its 22nd Session, 1548th Plenary Meeting, 4 July 1967.

27- United Nations, Recent Events Concerning the Excavations in the Eastern Part of Jerusalem, Resolution No. 36/15, adopted by the General Assembly at its 36th Session, 42nd Plenary Meeting, 28 October 1981.

28- See paragraph 3 of United Nations General Assembly Resolution No. 36/15.

29- United Nations, Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, Resolution No. 3005, adopted by the General Assembly at its 27th Session, 2112th Plenary Meeting, 15 December 1972.

30- See paragraph 8 of United Nations General Assembly Resolution No. 3005.

Second Branch: The Contribution of the Security Council to the Safeguarding of Cultural Property

The Charter of the UN entrusted the Security Council with the obligation to work for the maintenance of international peace and security,³¹ and to take all necessary decisions and measures in this regard in accordance with the Charter.³²

Accordingly, the Security Council issued resolutions, under Chapter VII, in which it condemned the desecration and destruction of cultural property, and characterized those acts as a threat to international peace and security.

The Security Council began its work in the field of the safeguarding of cultural property from the first years of the beginning of its work, as illustrated by Resolution No. 54 issued in 1948,³³ in which it stressed the necessity of protecting the holy places in Jerusalem, demilitarizing them, and neutralizing them.³⁴

The Security Council issued several similar resolutions, including Resolution No. 1073 issued on 28/9/1996, in which it expressed its concern over the serious deterioration of the situation in Jerusalem as a result of Israel opening a tunnel beneath Al-Aqsa Mosque, and ordered the safeguarding of the holy sites by respecting them and refraining from infringing upon them.³⁵

The Security Council continued to make every possible effort to make the safeguarding of cultural property a priority during the conduct of hostilities, as evidenced by its Resolution No. 1483 issued in 2003,³⁶ in which it affirmed the necessity of respecting the archaeological and historical heritage of Iraq, and the need to continue the safeguarding of archaeological, historical, and religious sites. By its resolution, the Council obliged States to take the appropriate steps to facilitate the safe return to Iraqi institutions of what had been illegally removed, including cultural property and other items of rare historical, cultural, or scientific importance.³⁷

The Security Council strongly condemned the destruction of holy sites of historical and cultural importance, especially those sites listed by UNESCO as World Heritage Sites, and affirmed that attacks against buildings dedicated to religious purposes or against historic monuments may constitute violations of international law, as was expressly indicated in Resolution No. 2056.³⁸

The Council adopted another resolution of great importance on the occasion of the armed conflict in Iraq and Syria, namely Resolution No. 2199 issued in 2015, in which it condemned the destruction of cultural heritage, on the one hand, and provided for the adoption of legally binding measures to combat the illicit trafficking of antiquities and cultural property originating from Iraq and Syria, on the other hand.³⁹

31- Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 1945. See the full text of the Charter at: legal-tools.org/doc/ae11a6/pdf.

32- See Articles 39, 41, and 42 of the Charter of the United Nations.

33- United Nations, The Situation in Palestine, Security Council Resolution No. 54, adopted at the 338th meeting, 15 July 1948.

34- See paragraphs 1 and 6 of United Nations Security Council Resolution No. 54.

35- United Nations, The Situation in Palestine, Security Council Resolution No. 1073, adopted at the 3698th meeting, 28 September 1996.

36- United Nations, The Situation between Iraq and Kuwait, Security Council Resolution No. 1483, adopted at the 4761st meeting, 22 May 2003.

37- See paragraph 7 of United Nations Security Council Resolution No. 1483.

38- United Nations, The Situation in Mali, Security Council Resolution No. 2056, adopted on 5 July 2012.

39- United Nations, Security Council Resolution No. 2199, adopted at the 7379th meeting, 12 February 2015.

Resolution No. 2347, issued in 2016,⁴⁰ constitutes a turning point in the field of the safeguarding of cultural property. The Council adopted it following an appeal by UNESCO, affirming that the safeguarding of property of great importance, during armed conflicts, from destruction and trafficking by terrorists is not merely a cultural matter, but a security and humanitarian imperative.⁴¹

The Security Council also contributed, through other resolutions, to the safeguarding of cultural property during armed conflicts. However, the belligerents did not comply with its resolutions, which made such property vulnerable to destruction and looting in the various conflict zones.

Second Requirement: The Role of UNESCO in the Safeguarding of Cultural Property

UNESCO was established in 1945. It is a specialized global agency affiliated with the UN, comprising 193 parties. It seeks international cooperation in the fields of education, science, and culture. Therefore, the Organization represents the backbone for preserving the cultural diversity of States.⁴² This Organization plays a major role in the implementation of the 1954 Hague Convention, which entrusted it with working to assist States in implementing and applying the provisions contained therein during peacetime in order to achieve effective safeguarding when an armed conflict breaks out.⁴³

The work of UNESCO in the field of the safeguarding of cultural property is reflected through its interventions in armed conflicts,⁴⁴ in which the parties violate the safeguarding prescribed for such property, such as the armed conflict witnessed by Mali (First Section) and the armed conflict witnessed by Syria (Second Section).

First Branch: The Efforts of UNESCO in the Armed Conflict in Mali

Since 2012, Mali has witnessed a non-international armed conflict, which was taking place in a first stage between the government forces and various armed groups, then between these groups without the government's intervention in a second stage.

Armed jihadist groups destroyed 14 mausoleums located in the city of Timbuktu, most of which are inscribed on UNESCO's World Heritage List. In view of the seriousness of the situation, UNESCO, on 28/6/2012, placed the city of Timbuktu on the List of World Heritage in Danger in order to strengthen cooperation and provide support for these sites threatened by the armed conflict taking place in that region.⁴⁵

The Organization addressed an appeal to all military forces, requesting them to make every effort to protect cultural property in Mali, whose cultural heritage had previously suffered serious damage. The Director-General of the Organization, on the basis of the 1954 Hague Convention, sent a letter

40- United Nations, Security Council Resolution No. 2347, adopted at the 7907th meeting, 24 March 2017.

41- Hamaidi Aicha, *Himayat Al Mumtalakat Al Thaqafiya Athna Al Nizaat Al Musallaha fi Siyaq Al Hifadh Ala Al Silm wa Al Amn Al Dawliyyayn: Nahwa Takris Al Haqq fi Al Tadakhul Al Thaqafi* (The Protection of Cultural Property during Armed Conflicts in the Context of Maintaining International Peace and Security: Towards the Consolidation of the Right to Cultural Intervention), *Majallat Al Dirasat Al Qanuniya* (Journal of Legal Studies), Vol. 8, No. 2, June 2022, p. 875. See also paragraph 1 of United Nations Security Council Resolution No. 2347.

42- Véronique Guèvremont, "UNESCO and Cultural Diversity," *Quebec Journal of International Law*, Special Issue, December 2021, p. 165.

43- See Articles 23, 27, 32, 35, 38, and 39 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention, 1954).

44- Tahrou Faisal, *Dawr Munazzamat Al UNESCO fi Himayat Al Mumtalakat Al Thaqafiya Zaman Al Nizaat Al Musallaha*, *Majallat Al Huquq wa Al Uloom Al Siyasiyya*, Vol. 3, No. 2, 2016, p. 325.

45- Issam Barra, *Dawr Al Mahkama Al Jinaiya Al Dawliya fi Himayat Al Mumtalakat Al Thaqafiya: Halat Mali Namudhajan* (The Role of the International Criminal Court in the Protection of Cultural Property: The Case of Mali), *Majallat Al Uloom Al Qanuniyawa Al Ijtimaiya*, No. 10, June 2018, p. 485.

to the relevant authorities in Mali calling on them to comply with this Convention, particularly Article 4 thereof, which calls upon the parties to undertake to respect cultural property by refraining from using such property for purposes that may expose it to destruction, as well as by refraining from any hostile act directed against it.⁴⁶

UNESCO played a pivotal role in the armed conflict in Mali in seeking to preserve cultural property, as is reflected in the statement of the Director-General of the Organization, who affirmed that the act of destroying cultural heritage constitutes a war crime, which makes the International Criminal Court competent to consider it. The statement also indicates that the safeguarding of cultural heritage is part of IHL, and that its violation gives rise to criminal responsibility. Accordingly, the Organization took a number of practical measures, beginning with providing the armed forces with the topographical data necessary for the safeguarding of heritage sites, and ending with rebuilding the mausoleums that had been destroyed. It should be noted here that this was the first time in history that the issue of preserving the cultural heritage of a State was included in an official memorandum issued by a UN mission.⁴⁷

The legal basis of international criminal responsibility for violating the provisions relating to the safeguarding of cultural property during armed conflicts is the internationally wrongful act.⁴⁸

On that basis, on 18/9/2015, the International Criminal Court issued an arrest warrant against Ahmad Al Mahdi Al Faqi, one of the military leaders, after the Prosecutor of the Court charged him with committing a war crime by launching attacks against sites dedicated to religious purposes in Timbuktu, which enjoy international safeguarding as World Heritage sites, during the period between 30/6/2012 and 11/7/2012.⁴⁹

The Trial Chamber I of the International Criminal Court concluded that the crime with which Ahmad Al Mahdi Al Faqi was charged was of great gravity. Accordingly, the Court issued its judgment dated 27/9/2016, sentencing him to 9 years' imprisonment.⁵⁰

The Court held that the priority given by UNESCO to the cultural property that was destroyed in Timbuktu reflects its utmost importance to the cultural heritage of humanity as a whole, and that the responsibility for preserving it rests upon everyone.⁵¹

The role of UNESCO in protecting cultural property during the armed conflict in Mali constitutes a reinforcement of the international criminal responsibility provided for in the Second Protocol to the Hague Convention and an effective contribution to safeguarding the common heritage of humanity.⁵²

Second Branch: The Efforts of UNESCO in the Armed Conflict in Syria

46- Ezzedine Ghalia, Al Himaya Al Dawliya lil Mumtalaqat Al ThaqafiyaAthna Al Nizaat Al Musallaha, Doctoral Dissertation, Abou Bekr Belkaid University, Tlemcen, Faculty of Law and Political Science, 2016, p. 211.

47- Omar Mohamed Mami, Aliyat Tatbiq Qawaid Al Himaya Al Muazzazalil Mumtalaqat Al ThaqafiyaAthna Al Niza Al Musallah, Majallat Al Multaqa Al Akadimi, Vol. 10, No. 1, 2026, p. 1223.

48- El Sayed Mostafa Ahmed Abu Al Khair, Dawr Al Mahakim Al Jinaiya Al Dawliya fi MuhakamatMurtakibi Al JarayimDidd Al Mumtalaqat Al ThaqafiyaAthna Al Niza Al Musallah (The Role of International Criminal Courts in Prosecuting Perpetrators of Crimes against Cultural Property during Armed Conflict), Majallat Al Buhuth wa Al Dirasat Al Muasira, Vol. 1, No. 1, 2021, p. 1.

49- Issam Barra, op. cit., p. 489.

50- International Criminal Court, Trial Chamber VIII, Judgment of 27 September 2016, Situation in the Republic of Mali, The Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15.

See the full text of the judgment at: icc-cpi.int/sites/default/files/courtRecords/0902ebd1803eb164.pdf.

51- Maxime Dantzliger, The Autonomization of International Law on Heritage and Cultural Property, Doctoral Dissertation, University of Bordeaux, 2022, p. 117.

52- Omar Mohamed Mami, op. cit., p. 1223.

The disturbances that began in Syria in 2011 led to an armed conflict, leaving behind extensive destruction that included cultural property and archaeological sites, which were subjected to unprecedented destruction and looting. This prompted UNESCO, in 2014, to issue a report documenting the losses suffered by those properties and sites, describing the situation as having reached the level of cultural cleansing.⁵³

On 09/02/2013, the Organization held a meeting in Jordan that brought together the countries neighboring Syria. The Organization indicated that it was not possible to intervene in the Syrian matter in light of UNESCO's lack of a military force, but that it was not entirely powerless. Its office in Jordan therefore organized, on 27/03/2013, a regional training course to assess the situation of the illicit trafficking of Syrian cultural heritage while strengthening regional and international cooperation in this field. The Organization also inscribed six Syrian archaeological sites on UNESCO's List of World Heritage in Danger due to the theft and destruction resulting from the ongoing hostile operations, particularly in the Old City of Aleppo, which has suffered severe damage since the beginning of the conflict.⁵⁴

On 01/03/2014, the Syrian Cultural Heritage Preservation Project was launched. Within the framework of this project, UNESCO organized a large number of training courses for engineers, archaeologists, and experts, in addition to its work to combat the illicit trafficking of Syrian cultural property, and to take urgent measures to protect movable and immovable property in dangerous areas in Syria while providing technical assistance for its safeguarding.⁵⁵

In March 2015, the Organization called upon all parties to the armed conflict in Syria to protect the cultural heritage in the city of Bosra al-Sham, one of the most important archaeological cities in the world, which has been listed on UNESCO's World Heritage List since 1980, after parts of its cultural heritage had been destroyed. It called upon the parties to refrain from targeting it militarily in respect of international obligations.⁵⁶

In 2016, UNESCO concluded an agreement with the International Committee of the Red Cross providing for the exchange of information concerning cultural property threatened by armed conflict, which reflects the growing international interest in the safeguarding of cultural property, not only in Syria, but throughout the world.⁵⁷

In addition to that, the Organization issued a statement in March 2016, after the city of Palmyra came out of the control of ISIS, announcing its cooperation with Russia in protecting the city's cultural heritage by providing full support for its restoration. The Organization cooperated with a foreign actor

53- Fatima Al Dhubairi, *Himayat Al Mumtalakat Al Thaqafiya Athna Al Niza Al Musallah fi Souria* (The Protection of Cultural Property during the Armed Conflict in Syria), *Majallat Kulliyat Al Qanun Al Kuwaitiya Al Alamiya* (Kuwait International Law School Journal), Seventh Year, No. 1, March 2019, p. 56.

54- Muhja Mohamed Abdel Karim, *Al Juhud Al Dawliya lil Hifadh Ala Al Mumtalakat Al Thaqafiya Iban Al Nizaat Al Musallaha*, *Majallat Al Sharia wa Al Qanun*, Vol. 21, No. 1, 2019, pp. 808–809.

55- Marion de La Barre de Nanteuil, *International Protection of Cultural Heritage in Times of War in Light of Contemporary Armed Conflicts: How Can the Heritage of Humanity Be Safeguarded in the Face of the Weaknesses of Existing International Law?*, Master's Thesis, Université catholique de Louvain, Faculty of Law and Criminology, 2018, p. 58.

56- Omar Mohamed Mami, *op. cit.*, p. 1222.

57- Polina Levina Mahnad, "The Protection of Cultural Property in Syria: A New Opportunity to Comply with International Law," *International Review of the Red Cross*, Vol. 99, French Selection, No. 3, 2017, p. 137.

involved in the Syrian armed conflict, and, on behalf of the inhabitants of the city of Palmyra, called for the safeguarding of the city's cultural property.⁵⁸

Cultural property in Syria was subjected to looting and destruction, and thanks to the efforts made, particularly the efforts of UNESCO, investigations into cases of trafficking in that property were initiated, such as the investigation opened by the Austrian authorities concerning Syrian antiquities smuggled from the areas of armed conflict in Syria. Accordingly, reforming the art market environment is necessary for the safeguarding of the world's cultural heritage, on the one hand, and for enabling States to recover their cultural property effectively, on the other hand.⁵⁹

On the basis of all that, it appears that the role of UNESCO is not limited to performing its tasks during peacetime only, but that its role becomes more important with the outbreak of military operations in order to protect cultural property in areas where armed conflict is taking place. Reports and studies have indicated that the Organization made the necessary efforts to protect such property immediately after the outbreak of military operations in many areas, including Syria.⁶⁰

CONCLUSION

Cultural property enjoys a comprehensive system of safeguarding during armed conflicts, owing, on the one hand, to the codification of such safeguarding under international legal instruments and, on the other hand, to the efforts of the United Nations. This reflects the fundamental importance of cultural property to humanity as a whole.

Despite this well-established legal framework, the conduct of belligerents in contemporary armed conflicts has demonstrated a persistent failure to comply with their international obligations to protect cultural property. This failure can be attributed to several factors, foremost among them the doctrine of imperative military necessity, which may be invoked pursuant to Article 4(2) of the 1954 Hague Convention. This provision constitutes a regression from the level of safeguarding afforded to cultural property and therefore warrants reconsideration and amendment in a manner that better serves the interests of humanity.

Furthermore, the safeguarding of cultural property during armed conflicts faces another fundamental challenge, namely the illicit trafficking of cultural objects. Such trafficking creates significant obstacles to their recovery and further complicates the attribution of legal responsibility for their looting.

An effective system of judicial enforcement is indispensable for deterring and punishing perpetrators of international crimes involving violations of the safeguarding afforded to cultural property. This responsibility rests primarily with the International Criminal Court (ICC). Since the entry into force of the Rome Statute, numerous armed conflicts—including those in Iraq, Afghanistan, Syria, and Palestine—have resulted in the destruction and looting of cultural property. Nevertheless, those responsible for these crimes have largely remained beyond the reach of justice due to the ICC's inability to effectively exercise its jurisdiction and thereby put an end to the culture of impunity from which such perpetrators continue to benefit.

58- Hiba Al Khalaf, Al Athar Al Souriya wa Al Munazzamat Al Dawliya, Majallat Qalamoun, No. 27, April 2024, p. 114.

59- Mohamed Babiker Mohamed Malik, Himayat Al Turath Al Athari walstirdaduhu fi Al Qanun Al Dawli: Qiraa fi Waqtatbiq Al Ittifaqiyat Al Dawliya, Majallat Al Buhuth Al Fiqhiyawa Al Qanuniya, Al Azhar University, No. 51, October 2025, p. 3634.

60- Yasser Hashem Emad Al Hiyaji, Dawr Al Munazzamat Al Dawliyaw Al Iqlimiya fi Himayat Al Turath Al Thaqafi walDaratihiwaTaazizihi, Majallat Adumatu, No. 34, 2016, p. 104.