

INTERNATIONAL LAW ASSOCIATION

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SAFEGUARDING OF CULTURAL HERITAGE IN ARMED CONFLICT

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INTERIM REPORT

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PREFACE

1. Established in 2023, the Committee on Safeguarding Cultural Heritage in Armed Conflict ('Committee') commenced its work at the Eighty-First (2024) Biennial Conference of the International Law Association ('ILA') in Athens, Greece. The Committee's mandate builds on the work of its predecessors in the field of cultural heritage: the Committee on Cultural Heritage Law, and the Committee on Participation in Global Cultural Heritage Governance.¹ The Committee seeks to identify normative, institutional, and operational gaps and develop policy-oriented and *de lege ferenda* recommendations to strengthen the protection of cultural heritage before, during, and following the conclusion of armed conflicts.
2. The Committee's first meeting in 2024 coincided with the seventieth anniversary of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict ('the 1954 Hague Convention').² At the meeting, past achievements, including the *UNESCO Manual*,³ were noted, as well as current limitations and future challenges associated with the regime established by the 1954 Hague Convention and its Protocols.⁴ The Committee agreed that its work would focus on a gap analysis of law and practice, with an Interim Report presented at the ILA Biennial Conference in Vienna in 2026.
3. The Committee pursued its work during a hybrid inter-sessional meeting in Seoul, Republic of Korea, on 26–30 May 2025. It brought together Committee members and invited experts to examine the implementation of the 1954 Hague Convention and its Protocols, and identify normative, institutional, and operational lacunae. The meeting included information-sharing with the Korean Heritage Service ('KHS') and contributions from Korean experts who offered insights into domestic approaches to recovering Korea's cultural heritage from abroad ('overseas cultural heritage') and its possible accession to the 1954 Hague Convention. It also entailed thematic working sessions during which Committee members addressed topics presented in this Interim Report.

¹ For an overview of the ILA's work on cultural heritage law, see JAR Nafziger, *Frontiers of Cultural Heritage Law* (Brill 2021); M Cornu and M Frigo, 'L'influence du travail de l'ADI sur le développement du droit international dans les domaines de la protection des biens culturels' in C Kessedjian, O Descamps and T Fabrizio (eds), *Au service du droit international Les 150 ans de l'Association de droit international / To the Service of International Law 150 Years of the International Law Association* (Éditions Panthéon-Assas 2023) 481-98; C Bories and others, *Cultural Heritage: White Paper 19* (International Law Association 2023).

² (Adopted 14 May 1955, entered into force 7 August 1956) 249 UNTS 240.

³ R O'Keefe and others, *Protection of Cultural Property: Military Manual* (UNESCO 2016).

⁴ Protocol for the Protection of Cultural Property in the Event of Armed Conflict ('First Protocol to the 1954 Hague Convention') (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 358; Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict ('Second Protocol to the 1954 Hague Convention') (opened for signature 26 March 1999, entered into force 9 March 2004) 2253 UNTS 21.

4. The Committee wishes to acknowledge the substantial support provided by ILA Korea, the Korean Heritage Service ('KHS'), and the Inha University K Academic Diffusion Research Centre. These institutions were instrumental in the organisation of the inter-sessional meeting in Seoul. Acting in close cooperation with KHS, ILA Korea facilitated the hosting of the sessions in Seoul, supporting active engagement between Committee members and Korean experts. In addition, the Committee was afforded the opportunity to deepen its understanding of Korean heritage through visits to sites such as the Korean Demilitarized Zone ('DMZ') and the War Memorial of Korea. The Committee is particularly indebted to Professor Seokwoo Lee, President of ILA Korea; Professor Gyoocho Lee, President-Elect of the Branch; Professor Choi Eung-chon, Head of KHS; and Professor Jin-young Lee, Director of the Inha University K Academic Diffusion Research Centre, for their outstanding organisational support, generous hospitality, and their contribution to fostering a constructive environment for advancing the Committee's ongoing work within the framework of the ILA.
5. The Committee is also indebted to Ms Xinyi Li for her research assistance, and to the reporters of the Committee's meetings: Ms Liliia Kruglova, Ms Sophia Kontos, Ms Efpraxia Anagnostopoulou, Ms Doyeon Ko, and Ms May Thu Kha.

1. INTRODUCTION

6. Despite the existence of a dense normative framework—centred on the 1954 Hague Convention and its Protocols⁵—cultural heritage in armed conflict continues to be destroyed, damaged, and misappropriated.⁶ This Interim Report, prepared for the ILA's Eighty-Second Biennial Conference in Vienna (2026), undertakes a preliminary gap analysis of the international legal framework governing the safeguarding of cultural heritage during all stages of armed conflict.
7. In line with its mandate, the Committee extends its work beyond 'cultural property' as defined by the 1954 Hague Convention, as this notion is limited to tangible forms of cultural heritage. It therefore adopts a broad and inclusive understanding of cultural heritage,⁷ encompassing tangible and intangible heritage, including their relationship with the environment, movable and immovable cultural property, digital cultural heritage⁸ (both

⁵ For a comprehensive analysis of the applicable legal regime, see R O'Keefe, *The Protection of Cultural Property in Armed Conflict* (CUP 2006); and K Chamberlain, *War and Cultural Heritage. A Commentary on the Hague 1954 Convention and its Two Protocols* (IAL 2013).

⁶ See, inter alia, M Lostal, *International Cultural Heritage Law in Armed Conflict Case-Studies of Syria, Libya, Mali, the Invasion of Iraq, and the Buddhas of Bamiyan* (CUP 2017).

⁷ See A F Vrdoljak and F Francioni, 'Introduction' in F Francioni and A F Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law* (OUP 2020) 2-9.

⁸ The term 'digital heritage' refers to 'cultural, educational, scientific and administrative resources, as well as technical, legal, medical and other kinds of information created digitally, or converted into digital form from existing analogue resources'; see Charter on the Preservation of the Digital Heritage (16 January 2009) CL/3865, art 1.

digitised and digitally born⁹), documentary heritage (including in digital form),¹⁰ underwater cultural heritage, and other forms of heritage beyond traditional territorial delimitations, including in outer space. Furthermore, the Committee's mandate employs the term 'safeguarding', rather than 'protection', to reflect a proactive, holistic approach applicable to both tangible and intangible (living) heritage, consistent with the Committee's mandate. It is thus different from the use of 'safeguarding' in the 1954 Hague Convention, which is limited to peacetime protective measures. However when used in relation to the Convention, 'safeguarding' refers to peacetime protective measures, in line with its provisions.

8. The Committee recognises that international law operates on a binary basis: either a situation qualifies as an armed conflict, or it does not. However, in practice, transitions from peace to armed conflict, and vice-versa, are not always clearly delineated. Moreover, the period following the cessation of an armed conflict is frequently characterised by heightened vulnerability, necessitating specific measures to prevent conflict relapse. In examining all stages of the conflict cycle, beyond the traditional peace/war dichotomy, the Committee notes that the safeguarding of cultural heritage requires a continuous approach. This shall encompass pre-conflict preparedness, protection during hostilities, and post-conflict recovery, and consider specific contextual challenges, such as those associated with situations of prolonged occupation or *de facto* territorial control.
9. In addressing the conflict cycle, the Committee underscores that prevention and preparedness in the pre-conflict phase are key to effective safeguarding, yet remain unevenly implemented and under-resourced. Although international law imposes peacetime obligations—such as inventories, emergency planning, risk assessment, and training—these are often treated as discretionary and subordinated to other priorities. During active hostilities, respect for cultural heritage faces specific challenges, such as urban warfare, where dual-use infrastructure increases risks of damage. General restrictions to access and breakdown in governance further hinder monitoring and emergency response, while cyber operations and disinformation introduce yet additional risks. In the post-conflict phase, accountability and reparation may be constrained by evidentiary gaps or competing claims. These dynamics demonstrate that safeguarding cultural heritage across the conflict cycle constitutes a continuous legal and operational challenge requiring sustained engagement before, during, and after hostilities.
10. This Interim Report identifies limitations with regard to: (i) the safeguarding of specific categories of cultural heritage; (ii) the safeguarding of specific groups of cultural heritage stakeholders; (iii) the categorisation of armed conflicts; (iv) the pre- and post-conflict

⁹ Other terms include 'digital surrogate' and 'digital native'.

¹⁰ Documentary heritage comprises single documents – or groups of documents – whether analogue or digital, of significant and enduring value to a community, culture, country or to humanity generally, and whose deterioration or loss would be a harmful impoverishment. See UNESCO, Recommendation concerning the Preservation of, and Access to, Documentary Heritage Including in Digital Form (17 November 2015) CL/4155.

phases; (v) accountability; and (vi) implementation, as well as structural deficiencies. Across these thematic areas, the Report identifies recurring challenges and outstanding gaps, concluding with preliminary findings. Where appropriate, reference is made to illustrative examples to demonstrate the application—or failure of application—of legal norms. This Report provides a foundation for the Committee’s next phase (2026–2028), which will examine the post-conflict context in greater detail.

2. CATEGORIES OF CULTURAL HERITAGE

11. A clear typology of cultural heritage underpins effective safeguarding in armed conflict, as different categories entail distinct risks calling for tailored responses. International law recognises a wide diversity of cultural manifestations; yet, legal regimes remain largely focused on tangible, territorially bounded property. The Committee thus concentrates on five categories that present unaddressed challenges regarding armed conflicts: archaeological, underwater, intangible, digital, and extra-terrestrial heritage.

2.1. Archaeological Heritage

12. During armed conflicts, archaeological heritage is often damaged or destroyed, both intentionally and unintentionally, including where there may be undiscovered archaeological heritage. Archaeological sites have also been used for military purposes,¹¹ while a general breakdown in the rule of law often leads to looting and trafficking. The cumulative effect of such damage is severe for archaeology, as the loss of context also undermines scientific knowledge, even when artefacts themselves survive. However, such harm is often overlooked, with the focus being on the damage to the tangible elements of archaeological heritage.¹²
13. Beyond physical destruction and loss of knowledge, armed conflicts create conditions conducive to the manipulation of archaeology for military and territorial gains.¹³ The construction of the so-called ‘New Chersonese’ museum complex in Crimea, on the UNESCO World Heritage Site ‘Ancient City of Tauric Chersonese and its Chora’, exemplifies how the occupying power may use an archaeological site to ascertain territorial claims. In response, the European Union (‘EU’) sanctioned the new Russia’s backed

¹¹ For instance, this happened following the invasion of Iraq in 2003, when the archaeological site of Babylon served as a military base to the US and Polish troops; see M Bailey, ‘US base has caused ‘shocking’ damage to Babylon’ (1 February 2005) *The Art Newspaper*; also see Crimean Institute for Strategic Studies, *Militarization of Cultural Landscape: Archaeological Sites of Southwestern Crimea as Spaces of Military Use* (2026) <https://ciiss.org.ua/files/site/page_file/20260325/v959az1v9mi_mi298qnegv.pdf>URL accessed 20 April 2026.

¹² P Gerstenblith, ‘From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century’ (2006) 37 *Geo J Int’l L* 245, 248; see also K Hausler, ‘The Security Council Resolutions Addressing the IDCHH’ in A Fabbricotti (ed), *Intentional Destruction of Cultural Heritage and the Law* (Routledge 2025) 106.

¹³ See S Al Shallah, ‘Cultural Heritage Destruction and Construction in Border Disputes: A Case Study of South Lebanon’ (2025) 11 *SAACLR* 83.

institution (the State Museum-Preserve ‘Tauric Chersonese’) and its director,¹⁴ for their role in destroying the protected archaeological site on the occupied territory.¹⁵ Comparable dynamics can also be observed in Palestine. In this context, archaeological excavations, site management, and heritage preservation undertaken by Israel’s occupying authorities have affected not only the material remains themselves but also the ability of local communities to maintain cultural connections to the landscape. Such practices have been repeatedly condemned by international bodies,¹⁶ as grave violations of international humanitarian law (‘IHL’) rules concerned with the respect of cultural property on the occupied territory, particularly when conducted without the consent of the population and in ways that alter the cultural, historical, or physical character of the site. Excavations carried out by Israeli authorities—especially in and around East Jerusalem and disputed heritage sites—risk damaging or selectively interpreting archaeological layers, while also facilitating settlement expansion and consolidating control over occupied land.¹⁷

14. These examples where heritage practices are intertwined with territorial claims show that safeguarding archaeological heritage in armed conflict—particularly under occupation—extends beyond preventing physical damage. While existing frameworks address misappropriation and vandalism, they are ill equipped to address the deliberate misuse of heritage under occupation and in protracted conflict.¹⁸ This highlights the need for greater attention to the integrity and governance of archaeological heritage, as well as additional guidance on the responsibilities of occupying powers and *de facto* authorities.

2.2. Intangible Cultural Heritage

15. The Committee notes that the 1954 Hague Convention and customary IHL focus almost exclusively on tangible heritage.¹⁹ While states can include cultural property under the protection of the 1954 Hague Convention because of its intangible heritage value, such as its necessity for the practice of a tradition, there is a lack of synergies between IHL and the

¹⁴ See Council Implementing Regulation (EU) 2025/933 of 20 May 2025 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2025] OJ L 2025/933; see Elena Morozova – no 1937, the State Museum-Preserve ‘Tauric Chersonese’ – no 569.

¹⁵ Further read D Jurkiewicz-Eckert, ‘Navigating Policy and Practice: EU Cultural Sanctions in Response to Russia’s War against Ukraine’ (2025) 11 SAACLR 23, 37-38.

¹⁶ UN HRC, ‘Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel’ (6 May 2025) A/HRC/59/26, paras 59-70; UNESCO, ‘Impact and consequences of the current situation in the Gaza Strip/Palestine in all aspects of UNESCO’s mandate’ (6 April 2025) 221EX/5.II.

¹⁷ Emek Shaveh, ‘Israeli Activities in Archaeological Sites in East Jerusalem and the West Bank: Five Case Studies’ (2020)

<<https://www.ohchr.org/sites/default/files/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/EmekShaveh.pdf>> accessed 18 February 2026.

¹⁸ Also see UNESCO, Declaration concerning the Intentional Destruction of Cultural Heritage (17 October 2003) 32 C/Resolutions.

¹⁹ K Chainoglou, ‘The Protection of Intangible Cultural Heritage in Armed Conflict: Dissolving the Boundaries Between the Existing Legal Regimes?’ (2017) 3 SAACLR 109.

intangible cultural heritage ('ICH') regime to guide such consideration.²⁰ While, the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage ('ICH Convention')²¹ was not specifically designed to address armed conflicts, it established a List of ICH in Need of Urgent Safeguarding, which can be tied to a request for international assistance,²² and thus be relevant to address warfare-related risks.²³ While the Operational Directives for the implementation of the Convention for the Safeguarding of the Intangible Heritage ('ICH Operational Directives') encourage States Parties to adopt measures to reduce the vulnerability of ICH during conflicts,²⁴ they do not suggest mechanisms to mitigate disruptions in the transmission or practice of ICH. However, in this regard, UNESCO has developed specific operational frameworks for responding to emergencies arising from natural and human-induced hazards.²⁵ Moreover, in 2019, UNESCO adopted Operational Principles and Modalities for Safeguarding Intangible Cultural Heritage in Emergencies ('ICH Operational Principles')²⁶ to address this gap and place communities and bearers at the heart of preparedness, response and recovery measures, while acknowledging that each phase can vary in duration and overlap with other phases. The Committee notes that further work is required to integrate the ICH Operational Principles into Disaster Risk Reduction (DRR) and Disaster Risk Management (DRM).

16. Armed conflicts affect ICH not only through the destruction of associated material heritage, such as objects and utensils, cultural spaces, or the natural environment, but also through the displacement of its bearers, interrupting transmission, and through the targeting or suppression of their cultural practices. Existing legal regimes inadequately address these dynamics, particularly where communities are displaced across borders or prevented from accessing their heritage sites. IHL provides indirect safeguarding to ICH through the protection of civilians, who are the bearers and transmitters of ICH, and civilian objects, as well as through the protection of certain aspects of cultural life, i.e. religious practices, and the environment.²⁷ International human rights law likewise protects the right to participate

²⁰ See C54/21/9.SP/6 (8 November 2021).

²¹ (Adopted 7 October 2003, entered into force 20 April 2006) 2368 UNTS 3.

²² See 2003 Intangible Heritage Convention Art 17, and Operational Directives (2024) I.7.

²³ A Rai, 'The 2003 Intangible Cultural Heritage Convention in Armed Conflict: An integrated reading of obligations towards culture in conflict' (2024) 37 LJIL 167.

²⁴ Latest version of 2024 available at <https://ich.unesco.org/doc/src/ICH-Operational_Directives-10.GA_EN.pdf> accessed 21 January 2026, para 195(b)(iii).

²⁵ See Reinforcement of UNESCO's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict (2 November 2015) 38 C/49; Strategy for the reinforcement of UNESCO's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict (24 October 2017) 39 C/57.

²⁶ See LHE/19/14.COM/13 Rev (December 2019) and LHE/20/8.GA/9 (September 2020).

²⁷ Additional Protocol I to the Geneva Conventions prohibits methods and means of warfare which could cause widespread, long-term and severe damage to the natural environment. Also see J Blake and A Goodarzi, 'Protection of Intangible Cultural Heritage in Armed Conflicts through the International Humanitarian Law' (2004) 3 Interdiscip Stud Soc L Pol 18; L Lixinski, 'Environment and War: Lessons from International Cultural Heritage Law' in R Rayfuse (ed), *War and the Environment: New Approaches to Protecting the Environment in Relation to Armed Conflict*, (Brill-Nijhoff 2023); Ch Johannot-Gradis, 'Protecting the Past for the Future: How Does Law Protect Tangible and Intangible Heritage in Armed Conflict?' (2015) 97 IRRC 1253, 1272; also see Sh Saini, 'The Two-Way Protective Regime of Intangible Cultural Heritage in Armed Conflict: Application of Modern Laws in Amalgamation with Earlier Vedic Traditions' (2023) 13 ILREV 1.

in cultural life and minority rights to culture. However, its normative framework remains fragmented and could be more coherently articulated with regard to the safeguarding of ICH in armed conflict. The gap is compounded at the institutional level, as UNESCO's treaty bodies, like other UN treaty bodies, largely operate within the confines of their respective conventions, limiting holistic approaches and synergies, such as between the ICH Convention and the 1954 Hague Convention, although efforts have been made to increase synergies.²⁸

17. Furthermore, while the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage emphasises community-based approaches, resilience and emergency safeguarding measures,²⁹ armed conflict is seldom recognised as a threat in nominations, and the Urgent Safeguarding List has been used sparingly in ongoing conflicts, with the notable exception of the Culture of Ukrainian Borscht Cooking (2022). Inventories, required under the 1954 Hague framework and the ICH Convention, are insufficient in themselves to ensure the viability of living heritage. Effective safeguarding requires the protection of cultural bearers and their capacity to practise and transmit traditions (see *supra*).
18. This Interim Report thus points to a gap in the safeguarding of ICH in armed conflict. Addressing this requires its fuller integration into existing legal frameworks, including by interpreting cultural, religious and minority rights as entailing positive obligations to safeguard and transmit such heritage, and by strengthening synergies between the 1954 Hague Convention and the ICH Convention through coordinated inventorying, enhanced community participation, and targeted safeguarding measures.

2.3. Underwater Cultural Heritage

19. The safeguarding of underwater cultural heritage ('UCH') in armed conflict presents distinct legal and practical challenges due to its inaccessibility, jurisdictional complexity, legal plurality, and limited visibility to both military and civilian authorities. When submerged heritage is located in contested maritime zones or beyond national jurisdiction, monitoring, protection and enforcement are particularly difficult and existing legal regimes offer only fragmented protection.³⁰ Armed conflicts at sea pose risks through naval combat, mining, sonar operations, unexploded ordnance, pollution, and military construction, while indirect threats arise from looting, unauthorised salvage, and the use of wrecks for military or training purposes. Naval warfare also endangers marine ecosystems, the integrity of

²⁸ For example, see Progress report on synergies between the 1954 Hague Convention and its two Protocols and the other UNESCO Cultural Conventions (2 November 2021) C54/21/16.COM/5; also see S von Schorlemer, 'Synergies with Enhanced Protection System of the Second Protocol' (2026) *Archiv des Völkerrechts* (forthcoming).

²⁹ Decision 14.COM 13 (5 December 2019) LHE/19/14.COM/13 Rev.

³⁰ See C Forrest and J Corrin, 'Legal pluralism in the Pacific: Solomon Island's World War II heritage' (2013) 20 *IJCP* 1.

which may be indispensable to the heritage practices of coastal communities, including Indigenous communities.³¹ Furthermore, UCH can become a point of contention during armed conflicts, as illustrated by the registration of the wreck of the Russian missile cruiser *Moskva* as UCH under Ukrainian law following its sinking in 2022.³²

20. The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage ('UCH Convention')³³ specifically addresses the safeguarding of submerged heritage, defined as traces of human existence that have been underwater for at least one hundred years.³⁴ Designed to counter illicit underwater excavations, its core principles include preservation *in situ*, the prohibition of commercial exploitation, and closer international cooperation. While this treaty was developed to fill gaps left by the UN Convention on the Law of the Sea ('UNCLOS'),³⁵ it does not address the risks posed by naval warfare, military construction, unexploded ordnance, pollution, or the use of wrecks for military purposes.³⁶ However, although guidance in the 1954 Hague Convention and its Protocols regarding underwater sites is limited, the broad definition of cultural property in its Article 1 is sufficiently expansive to include UCH.³⁷ As a result, obligations to safeguard and respect cultural property during armed conflict may apply to UCH, notwithstanding the absence of explicit provision.
21. At the normative level, there is a need for greater integration between cultural heritage law, law of the sea and IHL. The 1954 Hague framework does not provide a basis for the protection or management of UCH beyond national maritime delimitation, and the UCH Convention lacks provisions addressing armed conflict. However, the latter's Annex and Operational Guidelines³⁸ could be interpreted or developed to incorporate concerns arising under IHL. The Committee also emphasises the importance of preventive measures—such as advance identification and documentation of UCH sites, incorporation into military and navy planning, and capacity-building for monitoring and enforcement—as well as alternative pathways for cooperation where formal treaty mechanisms are unavailable.

³¹ J Arato, A Jaeckel and L Lixinski, 'On the Cultural Stakes of Deep Seabed Mining' (2024) 118 AJIL Unbound 67; also see Further read Ch Jarvis, M Pena Ermida, O Varmer, 'Threats to Underwater Cultural Heritage from Existing and Future Human Activities' (2023) 2 Blue Papers 76.

³² See E Perez-Alvaro, 'Underwater Cultural Heritage and Armed Conflict: An Analysis under the 1954 Hague Convention' (2024) 10 SAACLR 135, 137-40.

³³ (Adopted 2 November 2001, entered into force 2 January 2009) 2562 UNTS 3.

³⁴ This requirement varies greatly from one jurisdiction to another, with some states using a 75-year restriction (eg Australia), or a 50-year restriction (eg Suriname), and others not including any time limitation (eg the UK or the Netherlands).

³⁵ (Adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

³⁶ Compare V Cogliati-Bantz and C Forrest, 'Consistent: the Convention on the Protection of the Underwater Cultural Heritage and the United Nations Convention on the Law of the Sea' (2013) 2 CILJ 536.

³⁷ On the question whether the 1954 Hague Convention covers UCH situated outside territorial jurisdiction of High Contracting Parties, see *UNESCO Manual* paras 134, 187, 190.

³⁸ Operational Guidelines for the Convention on the Protection of the Underwater Cultural Heritage (last updated August 2023) CLT/CEM/UCH/2023/OG.

2.4. Digital Heritage

22. Existing international legal frameworks reveal gaps in addressing risks to digital heritage, including uncertainty as to its status under international law, a lack of adequate cybersecurity protocols within cultural institutions; and limited international coordination in responding to digital threats. While tools such as three-dimensional scanning, cloud storage and distributed ledgers can mitigate loss,³⁹ they may themselves be targeted, as illustrated by cyber-attacks on the British Library (2023) and the National Museum of the Royal Navy (2024). Moreover, the protection of digital heritage—including digitised collections, inventories and born-digital resources—lacks specific provision in situations of armed conflict.⁴⁰
23. The application of international law to cyberspace, including IHL principles to cyber operations,⁴¹ and the recognition of digital heritage within UNESCO instruments,⁴² provide relevant reference points. However, digital heritage and threats thereto from intentional cyber harm and disinformation campaigns, remain underdefined. Domestic and regional practices, including ethical digital infrastructures developed in collaboration with Indigenous communities and the use of redundant storage systems, illustrate promising approaches but remain insufficient.⁴³

2.5. Extraterrestrial Cultural Heritage

24. Extra-terrestrial cultural heritage remains a largely unregulated category of heritage.⁴⁴ Increasing human activity beyond Earth generates material traces of historical, scientific, and symbolic significance, ranging from spacecraft to landing sites and surface alterations on celestial bodies.⁴⁵ Despite growing recognition of these assets—reflected, for example, in their inclusion in the 2025 World Monuments Watch list⁴⁶—international law provides no coherent framework for their safeguarding, including in situations of armed conflict.

³⁹ See also the proposal from Tuvalu to create a ‘digital twin’ in response to climate change; see L Evans, ‘The Digital Twinning of Tuvalu: Deep Ecology in the Age of Virtual Reproduction’ (2025) 27 New Media & Society 4499.

⁴⁰ See R Alcalá, ‘Cultural evolution: Protecting ‘digital cultural property’ in armed conflict’ (2022) 104 IRRC 1083.

⁴¹ See *Tallinn Manual on the International Law Applicable to Cyber Warfare* (CUP 2013).

⁴² S von Schorlemer, ‘UNESCO and the Challenge of Preserving the Digital Cultural Heritage’ (2020) 6 SAACLR 33.

⁴³ SR Carroll and others, ‘The CARE Principles for Indigenous Data Governance’ (2020) 19 Data Science Journal 1.

⁴⁴ See S Ripol Carulla and E Prado Alegre, *Los derechos culturales y el espacio ultraterrestre. Una mirada al patrimonio espacial* (Kinnamon 2022) 72-94; L Lixinski, M M Losier and H Schreiber, ‘Envisioning a Legal Framework for Outer Space Cultural Heritage’ (2022) 45 Journal of Space Law 1.

⁴⁵ See <<https://moonregistry.forallmoonkind.org>> accessed 15 December 2025.

⁴⁶ See <<https://www.wmf.org/monuments/moon>> accessed 15 December 2025.

25. Existing space law instruments, including the 1967 Outer Space Treaty,⁴⁷ are largely silent on cultural heritage and address armed conflict only indirectly, primarily through the prohibition of weapons of mass destruction and the principle of peaceful use. The Artemis Accords⁴⁸ are the first international instrument referring expressly to ‘outer space heritage’, yet they do not address armed conflict or safeguarding obligations. The absence of clear definitions, jurisdictional rules, and protective duties results in a normative gap. Existing cultural heritage law, grounded in territorial sovereignty, is ill-suited to a domain that lies beyond national jurisdiction, and IHL has not developed specific rules governing hostilities in outer space.⁴⁹ Calls have been made for a specialised treaty, but with no specific reference to the safeguarding of cultural heritage in armed conflict.⁵⁰ The current initiatives before UN bodies, particularly the Committee on the Peaceful Uses of Outer Space (‘COPUOS’), are focused on the use and enjoyment of extraterrestrial resources against threats of commercialisation and uncontrolled exploitation rather than military hazards.⁵¹ Additionally, comparisons with UCH offer limited guidance in addressing commons-based governance but differences in jurisdiction, ownership, and the applicability of state immunities complicate any direct transposition. Accordingly, the safeguarding of cultural heritage in outer space presently relies on fragmented and indirect legal provisions, such as environmental protection norms and general principles of international law, which appear insufficient.

3. CULTURAL HERITAGE STAKEHOLDERS

3.1. Women and Gendered Approaches to Safeguarding

26. Women play a central role in the transmission and continuity of cultural heritage, particularly where ICH is sustained through gendered social structures. As custodians of oral traditions, rituals, knowledge systems, artisanal skills, and community memory, they

⁴⁷ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (signed 27 January 1967, entered into force 10 October 1967) 610 UNTS 205.

⁴⁸ National Aeronautics and Space Administration, ‘The Artemis Accords: Principles for Cooperation in the Civil Exploration and Use of the Moon, Mars, Comets, and Asteroids for Peaceful Purposes’ (13 October 2020) <<https://www.nasa.gov/specials/artemis-accords/img/Artemis-Accords-signed-13Oct2020.pdf>> accessed 20 November 2025.

⁴⁹ This refers to the 1954 Hague Conventions and its Protocols, as well as other IHL instruments such as Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (adopted 10 December 1976, entered into force 5 October 1978) 1108 UNTS 151. This latter treaty prevents space environment from being unbalanced and weakened by the consequences ‘widespread’, ‘long-lasting’ and ‘severe’ effects of an armed conflict on the environment, but cultural heritage is not expressly mentioned.

⁵⁰ See E Sandler, ‘Governing Outer Space: A Conference of the Parties for the Outer Space Treaty’ (December 2025) <<https://www.belfercenter.org/research-analysis/space-cop-governance#in-this-section-nav-5>> accessed 19 February 2026.

⁵¹ For instance, see A/AC.105/2025/CRP.23 (25 June 2025).

facilitate intergenerational cultural continuity.⁵² Armed conflict disrupts these roles,⁵³ including through heightened risks of gender-based violence, yet the applicable international legal framework contains no gender-specific provisions. While cultural heritage law extends to heritage borne by women, the differentiated impact of conflict on their access to, enjoyment of, and role in safeguarding heritage necessitates gender-sensitive implementation.

27. Furthermore, the crucial role of women in the safeguarding of cultural heritage during armed conflicts should be further considered. During the Second World War, Rose Valland, a French art curator, famously recorded details of the Nazi plundering of art collections, which enabled the post-war recovery of a vast number of cultural objects.⁵⁴ More recently, in Mali, women played an important role in the smuggling of manuscripts to safety during the conflict.⁵⁵ In Syria, the Women's Protection Units (YPJ), an all-female Kurdish militia, embedded the protection of cultural heritage in its operations, contributing to the safeguarding of cultural objects and sites, including Yazidi heritage, during the war.⁵⁶
28. Operational safeguarding measures—such as evacuation, documentation, and digitisation—may be ineffective or exclusionary if gender considerations are not explicitly integrated. Women may be excluded from decision-making processes in heritage protection and recovery unless participation is actively ensured. Practice demonstrates that gender-inclusive approaches enhance the legitimacy, effectiveness, and resilience of heritage protection, particularly in crisis and post-conflict settings.⁵⁷ In addition, gender-sensitive approaches may contribute to improved safety and agency for women in contexts where sexual violence and exploitation are prevalent.
29. There is a substantial normative and institutional foundation within UNESCO for gender-specific approaches and gender equality has been integrated into heritage policies.⁵⁸ Moreover, training programmes on cultural heritage protection have been offered for female military personnel and peacekeepers.⁵⁹ While the recognition of the relationship

⁵² J Blake, 'Human rights dimensions of gender and intangible cultural heritage' (2015) 24(2) Human Rights Defender 5; H Assou-Dodji and J Serwah Boateng, 'Voices of empowerment: women's role in safeguarding cultural heritage and advancing human rights in Africa' in MM Sadowski, GM Bonaviri and F Ceccotti (eds), *Heritage in War and Peace IV: Selected Strathclyde Papers* (University of Strathclyde Publishing 2025) 5-6.

⁵³ I Pretelli, 'The Consequences of Violence Against Women and Children in Armed Conflicts for their Intangible Cultural Heritage: A Diachronic Perspective on the Universality of Women's Rights' in G Mastandrea Bonaviri and MM Sadowski (eds), *Heritage in War and Peace. Law and Visual Jurisprudence* (Springer 2024) 471-90.

⁵⁴ See C Schwartz, 'Saving a Bit of Beauty for the World: Retelling the Story of Rose Valland' (2016) 22 Confluence 12.

⁵⁵ H Assou-Dodji and J Serwah Boateng (n 52) 8-9.

⁵⁶ Geneva Call, 'Culture under Fire: Armed Non-State Actors and Cultural Heritage in Wartime' (October 2018) <https://www.biicl.org/documents/39_cultural_heritage_study_final_highres.pdf> accessed 7 March 2026, 34.

⁵⁷ For instance see JE Burnet, 'Gender Balance and the Meanings of Women in Governance in Post-Genocide Rwanda' (2008) 107 African Affairs 361.

⁵⁸ UNESCO Information Sheet, Intangible Cultural Heritage and Gender Equality Policy <https://ich.unesco.org/doc/src/Gender_equality_policy_EN.pdf> accessed 31 March 2026.

⁵⁹ Female military personnel have been trained in Lebanon and the DRC, see for example: <<https://whc.unesco.org/en/news/2047>> accessed 31 March 2026.

between gender and cultural heritage safeguarding is increasing,⁶⁰ sustained global engagement, including research, capacity-building, and the development of additional interpretative guidance, in line with the principle of non-discrimination, appear needed to fully address the gender dimension of heritage safeguarding in wartime.

30. The integration of gender perspectives in cultural heritage safeguarding measures may be further strengthened through engagement with the Women, Peace and Security ('WPS') Agenda and the national action plans adopted by states since 2000.⁶¹ These instruments recognise women's roles in participation, protection, prevention, and relief and recovery. The WPS Agenda provides an established platform that can accommodate the operationalisation of gender-sensitive heritage safeguarding. Formal inclusion is not yet mainstreamed in national action plans; yet, several National Action Plans (NAPs) already recognise the importance of women's participation in safeguarding community memory and cultural identity as a means of social cohesion in conflict-affected settings. A few NAPs also acknowledge the broader social and cultural dimensions of human security.⁶² These references may allow linking gender-sensitive cultural heritage safeguarding with WPS strategies, especially in conflict and post-conflict environments where safeguarding cultural heritage contributes to community resilience and sustainable peace. Synergies between UNESCO and other international organisations that have already adopted regional actions plans could enhance operational clarity towards this end.

3.2. Displaced Persons

31. Armed conflicts undermine the safeguarding of displaced communities' heritage by disrupting its territorial, social, and institutional foundations. Cultural heritage law, being territorial and state-centred, offers limited guidance where communities cross borders. ICH is particularly vulnerable to displacement, as its transmission depends on continuity, access to cultural spaces, and the freedom to practise. Existing frameworks provide limited coverage: the 1954 Hague Convention focuses on tangible heritage, while the ICH Convention does not address conflict-induced displacement and imposes no binding obligations for preventive or emergency safeguarding in such contexts. Although its mechanisms (e.g. inventorying and emergency listing), ICH Operational Directives and the ICH Operational Principles acknowledge the participation of refugees, internally displaced persons, and migrants, they do so in limited terms.⁶³ Together, these gaps risk cultural erosion, loss of identity, and the long-term marginalisation of displaced communities' heritage.

⁶⁰ J Dzerowicz (Special Rapporteur), NATO Parliamentary Assembly Committee on Democracy and Security (CDS), *History and Identity Under Attack: Protecting Cultural Heritage in Conflict* (24 November 2024) para 8.

⁶¹ See S/RES/1325 (2000) and subsequent resolutions.

⁶² See <<https://1325naps.peacewomen.org/>> accessed 7 March 2026.

⁶³ ICH Operational Principles para 4.

32. International human rights law requires states to respect, protect and fulfil the cultural rights of those under their jurisdictions, including non-nationals.⁶⁴ The exercise of cultural rights has been affirmed as a tool of resilience for displaced communities,⁶⁵ such as Syrian communities which have benefited from digital tools to maintain their cultural practices.⁶⁶ The UN Special Rapporteur in the field of cultural rights recommended the full inclusion and participation of migrants in domestic cultural policy frameworks.⁶⁷ The application of international norms would benefit from further research into good practices. Thus far, research concentrates on post-displacement cultural adaptation rather than preventive or protective measures during conflict-induced displacement.⁶⁸

3.3. Indigenous Peoples

33. Beyond issues regarding ICH, the Committee notes that, although the 1954 Hague Convention and its Protocols apply to Indigenous cultural heritage, the regime is state-led and does not require consultation with Indigenous peoples in identifying or inventorying such property.⁶⁹ Its emphasis on tangible heritage and reliance on national authorities create gaps where Indigenous participation is limited or their heritage not prioritised. While Article 53 of Additional Protocol I to the Geneva Conventions⁷⁰ refers to places of worship forming part of the cultural or spiritual heritage of peoples, its interpretation has remained narrow and site-based, failing to capture Indigenous sacred landscapes, culturally embedded territories, and movable or intangible heritage. Consequently, Indigenous heritage is often marginalised, with legal and institutional frameworks insufficiently reflecting their cultural traditions.
34. Notwithstanding these limitations, domestic practice demonstrates potential for more inclusive, community-centred interpretations. For example, in its decision concerning the

⁶⁴ In particular, see International Covenant of Economic, Social and Cultural Rights ('ICESCR') (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 15; International Covenant on Civil and Political Rights ('ICCPR') (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 27; also see Global Compact for Safe, Orderly and Regular Migration (19 December 2018) A/RES/73/195.

⁶⁵ See 'Cultural rights and migration' Report of the Special Rapporteur in the field of cultural rights (2 February 2023) A/HRC/52/35.

⁶⁶ UNESCO, Intangible Cultural Heritage of Displaced Syrians, Survey Report (2017) available at <<https://ich.unesco.org/doc/src/38275-EN.pdf>> accessed 20 January 2026.

⁶⁷ 'Cultural rights and migration' (n 65) paras 69-70.

⁶⁸ For instance, see R Wrobel, *Culture in Post-Crisis Situations: Opportunities for Peacebuilding and Sustainable Recovery* (The International Bank for Reconstruction and Development / The World Bank 2018).

⁶⁹ See also the Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict; latest version of 2023 available at <https://www.unesco.org/sites/default/files/medias/fichiers/2024/05/1999-SecondProtocol_Guidelines_2023_Eng.pdf> accessed 20 January 2026; also see C54/25/20.COM/6 INF I (December 2025) para 13; T Wooden, 'The 1954 Hague Convention: Aboriginal and Torres Strait Islander Sacred Sites as Cultural Property' (2016) 34 Aust YBIL 127.

⁷⁰ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

Sierra Nevada de Santa Marta case (Case 09),⁷¹ Colombia’s Special Jurisdiction for Peace (‘JEP’) acknowledged the collective, ancestral, and sacred character of Indigenous territory and heritage, affirming that their destruction constitutes an attack on Indigenous identity, cultural continuity, and collective survival, beyond a material loss. This approach foregrounds Indigenous communities as rights-holders and cultural custodians, rather than treating their heritage as detached objects of protection. In rejecting a restrictive, building-centred understanding of protected objects, the JEP recognised that Indigenous spiritual sites, cultural landscapes, and territorially embedded practices fall within the protective scope of IHL. This approach is consistent with international criminal jurisprudence, particularly with the caselaw of the International Criminal Tribunal for the Former Yugoslavia (‘ICTY’), which emphasised that the destruction of cultural property may constitute an attempt to erase the cultural identity of a people and recognised the targeted destruction of heritage as a possible indicator of the discriminatory motive required for persecution, or the intent to commit to genocide.⁷²

35. In addition, environmental damage during armed conflict may threaten Indigenous sacred landscapes and culturally embedded territories. Warfare-related pollution, infrastructure destruction and resource exploitation can contaminate land and water, render ancestral territories uninhabitable and disrupt traditional livelihoods, including hunting, fishing and agriculture. As Indigenous identity, spirituality and knowledge systems are intrinsically linked to such territories, these impacts may constitute cultural erosion as well as environmental degradation. The Committee notes that such damage has increasingly been recognised, notably in the Draft Principles on the Protection of the Environment in Relation to Armed Conflicts (‘PERAC’) adopted by the International Law Commission (‘ILC’).⁷³ The PERAC adopt a holistic approach to environmental protection before, during and after armed conflict, clarifying that environmental harm entails long-term humanitarian, ecological and socio-economic consequences. They reinforce obligations under IHL to take all feasible precautions, address gaps in treaty law—including in non-international armed conflicts—and recognise the complementary application of environmental and human rights law, including norms protecting Indigenous peoples. They further emphasise environmental protection as a continuous obligation, underscoring the need for accountability, remediation and cooperation, particularly considering intergenerational harm.
36. Applying IHL in a more inclusive and community-oriented manner, Indigenous peoples should be recognised as central stakeholders in the safeguarding of their cultural heritage, along with the inseparability of heritage from land, identity, and collective life.

⁷¹ Judgment of 25 June 2024, available at <https://relatoria.jep.gov.co/searchproviapi/Auto_SRVBIT-XCBM-NNHC-JJCP-ACHP-01_25-junio-2024> accessed 15 October 2025.

⁷² In particular, see *Prosecutor v Krstić* (Trial Judgment) Case No IT-98-33-T (2 August 2001); *Prosecutor v Blagojević and Jokić* (Appeals Judgment) IT-02-60-A (9 May 2007); *Prosecutor v Kordić and Čerkez* (Trial Judgment) IT-95-14/2-T (26 February 2001).

⁷³ A/77/10 (2022).

Strengthening this people-centred approach would contribute not only to more effective heritage safeguarding, but also to broader humanitarian objectives of dignity, cultural survival, and sustainable peace.

3.4.Cultural Creators

37. The Committee notes that international legal frameworks applicable in armed conflict do not provide cultural creators with a specific status or tailored protection. While IHL affords them civilian protection, it does not recognise their role as bearers and transmitters of cultural heritage or the heightened risks they face due to the symbolic and political significance of their work. International human rights law offers complementary safeguards—particularly through rights to participate in cultural life, freedom of expression; while they continue to apply during armed conflicts, they are often neglected and even violated. Cultural heritage instruments, moreover, focus primarily on the protection of objects and sites, largely overlooking those who create and sustain cultural heritage. As a result, cultural creators remain especially vulnerable to targeting, censorship, displacement, and silencing, underscoring the need for clearer recognition, enhanced protection, and stronger accountability mechanisms.⁷⁴
38. The threats of armed conflicts on cultural expressions are recognised by the ICH safeguarding regime, including ‘Shadow Play’ in Syria and the ‘Traditional Vallenato music of the Greater Magdalena region’ in Colombia, both inscribed on the UNESCO List of Intangible Cultural Heritage in Need of Urgent Safeguarding due to armed conflicts. While some traditions endure through oral transmission or reproduction, many have been irretrievably lost. Armed conflict has resulted not only in the destruction of manuscripts, libraries, and archives, but also in the suppression of languages, disruption of transmission, and the silencing of artistic expression through censorship and persecution—often deliberately, given the capacity of the arts to express dissent, preserve memory, and sustain cultural identity. Despite the central role of such expressions in shaping collective memory, identity, and social imagination, the risks faced by their creators in armed conflict remain insufficiently recognised in international legal and institutional frameworks. Beyond the destruction of works, artists themselves are targeted through killing,⁷⁵ imprisonment, exile, and intimidation,⁷⁶ resulting in the loss of unrealised cultural contributions and the weakening of living traditions—harms that cannot be remedied through restitution or

⁷⁴ In this regard the recent report by the Swedish Defence Research Agency—P Baard and others, ‘Artistic freedom in crisis and war – Securing artistic freedom and access to culture in Sweden during crisis and war’ (4 February 2026) FOI-R—5813-SE—indicates that artistic freedom is likely to be affected by hybrid warfare, armed conflict, and related security challenges. See <<https://www.foi.se/en/foi/reports/report-summary.html?reportNo=FOI-R--5813--SE>> accessed 22 February 2026.

⁷⁵ See the killing of the renowned Palestinian poet Refaat Alareer in an Israeli airstrike in northern Gaza in 2023; see Y Serhan, ‘The Voice Notes Poet Refaat Alareer Sent Before His Death’ Time (14 December 2023).

⁷⁶ See UNGA, ‘Global threats to freedom of expression arising from the conflict in Gaza’ (23 August 2024) A/79/319; UNESCO, R Soraide, *Defending Creative Voices: Artists in Emergencies, Learning from the Safety of Journalists* (UNESCO 2023).

reconstruction.⁷⁷ This reflects a structural safeguarding gap, as cultural heritage law continues to prioritise objects, sites, and collections over the individuals who create and sustain them. Addressing this gap requires approaches that extend beyond preventing physical destruction to strengthening the implementation of human rights, including cultural rights.

3.5. Heritage Professionals

39. Heritage professionals do not enjoy a status, privileges, or protections comparable to those afforded to humanitarian or medical personnel under IHL. While the 1954 Hague Convention requires respect for personnel engaged in the protection of cultural property and permits use of a distinctive emblem, these provisions are not sufficiently implemented in practice.⁷⁸ The absence of explicit protections, weak enforcement, and reliance on state discretion significantly limit the effectiveness of the existing regime. Consequently, those responsible for safeguarding cultural heritage frequently operate without immunity, emergency support, or access to international assistance, evacuation, or resettlement. Like cultural creators, heritage professionals face acute risks in contemporary conflicts, including targeted violence, intimidation, detention, persecution, and killing, often due to the symbolic association of heritage with identity.⁷⁹ A stark illustration is the killing of Khaled Mohamad al-Asaad by the Islamic State ('IS') in 2015. A Syrian archaeologist and Head of Antiquities in Palmyra, a UNESCO World Heritage Site, he assisted in evacuating museum collections prior to IS's takeover of the site; he was later captured, tortured for information, and executed.⁸⁰ This case underscores the vulnerability of heritage personnel.
40. Empirical research conducted for this Committee, including interviews and surveys with practitioners working in conflict-affected contexts (including Ukraine, Gaza, Syria, Afghanistan, Mexico, and Jammu and Kashmir), confirms the scale of these risks. Respondents reported persistent threats to personal safety and human rights; inadequate training, resources, and evacuation procedures; difficulties coordinating with military, governmental, and humanitarian actors; and limited access to reliable information on the condition of heritage sites during hostilities. These challenges arise in both international and non-international armed conflicts.

3.6. Future Generations

⁷⁷ Compare AF Vrdoljak, 'Genocide and Restitution: Ensuring Each Group's Contribution to Humanity' (2011) 22 EJIL 17.

⁷⁸ For instance, see J Hladik, 'Marking of cultural property with the distinctive emblem of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict' (2010) 86 IRRC 379.

⁷⁹ See I Olevska-Kairisa, 'Archaeological Crimes and Their Impact on Heritage Professionals: Recognizing the Scientific Community as a Victim in Criminal Proceedings' (2025) 26 *Archaeologia Lituana* 231, 235-40.

⁸⁰ See ICOMOS, 'The martyr of Palmyra KHALED AL ASAAD' (2016) <https://www.icomos.org/images/DOCUMENTS/Secretariat/2016/Memoire_Khaled_al_Asaad_18082016/Khaled_al_Asaad_Booklet_DGAM_2016.pdf> 20 April 2026.

41. The premise for the protection of future generations' rights is that present generations bear an intergenerational responsibility to ensure their conduct does not undermine the ability of future generations to enjoy their human rights, including the right to enjoy and access cultural heritage.⁸¹ Although future generations are not explicitly recognised as autonomous rights-holders under existing international law, intergenerational equity functions as an interpretive principle that informs the scope and application of the Culture Conventions and human rights obligations. It thus provides the normative basis for understanding the safeguarding of cultural heritage as a custodial obligation owed to future beneficiaries.
42. Although the 1954 Hague Convention does not explicitly refer to future generations, its preambular language reflects an implicit intergenerational custodial paradigm: by recognising that damage to cultural property harms the cultural heritage of all humankind, it frames heritage as a shared, non-renewable resource the destruction of which entails irreversible loss for present and future generations. This rationale is reflected in practice, including by military actors, who have invoked the need to preserve heritage for future generations.⁸² This intergenerational dimension is made explicit in the ICH Convention, which emphasises transmission, viability, and re-creation through explicitly future-oriented safeguarding measures. In this respect, a safeguarding model—rather than a static protective approach—is better aligned with the evolving nature of cultural heritage,⁸³ including in the context of armed conflict.

4. OCCUPATION

43. Although lacking formal legal (*de jure*) status, *de facto* authorities may bear functional obligations under IHL and international human rights law, including with respect to the protection of civilians and cultural heritage. Article 5 of the 1954 Hague Convention requires an occupying power to support national authorities in preserving cultural property and, where necessary, to act directly; the First Protocol further prohibits export and mandates restitution. However, this framework inadequately addresses long-term conservation, rehabilitation, community access, and the safeguarding of ICH under prolonged occupation. Rules designed for temporary control are ill-suited to cumulative cultural harm arising from administrative measures, demographic policies, restrictions on language and education, unauthorised excavations, and large-scale development or reconstruction.⁸⁴

⁸¹ See the Declaration on Future Generations, adopted at the UN Summit of the Future in September 2024, according to which this intergenerational responsibility extends to the promotion and preservation of cultural diversity and cultural heritage (see Commitments, para 15) <https://www.un.org/sites/un2.un.org/files/sotfpact_for_the_future_adopted.pdf> accessed 7 March 2026.

⁸² During a training session organised by Geneva Call in 2017, a commander of the Free Syrian Army mentioned that protecting heritage is important to them so that they leave something to their children.

⁸³ A Giorgallis, 'The idea of protecting cultural heritage for the benefit of future generations in international cultural heritage law' (2025) 32 IJCP 76.

⁸⁴ See 'destructive reconstruction' of the sixteenth-century Bakhchysarai Palace in occupied Crimea <<https://www.chathamhouse.org/2020/02/crimeas-occupation-exemplifies-threat-attacks-cultural-heritage>> accessed 14 January 2026.

44. The Committee further observes that accountability and monitoring remain weak, sanctions limited, and enforcement uneven, as illustrated by the instances of plunder, illicit export of cultural property from Northern Cyprus following the 1974 Turkish invasion.⁸⁵ Uncertainty as to when occupation ends—generally linked to the cessation of effective control⁸⁶—further hinders heritage governance. In practice, occupations may persist for decades, as in Crimea, Palestine, Northern Cyprus or Western Sahara. Such ‘prolonged occupations’, though not a distinct legal category, challenge the temporariness assumption underlying IHL, exposing heritage to incremental, structural harm, including restricted access, selective conservation, and alteration of sites to advance territorial claims.
45. Cultural property under occupation is addressed in the First Protocol to the 1954 Hague Convention. Situations of occupation, which are meant to be temporary, are particularly problematic where an occupying power seeks to annex territory or entrench long-term control, as such contexts often entail systematic efforts to suppress local culture, language, religion, and historical narratives. This may include the destruction or repurposing of cultural institutions and the erosion of linguistic and educational rights in occupied territories, such as in Crimea,⁸⁷ where the ICJ found that Russia violated the Convention on the Elimination of All Forms of Racial Discrimination (‘CERD’)⁸⁸ by failing to maintain adequate education in the Ukrainian language in Crimea post-2014.⁸⁹ In its 2024 advisory opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, the ICJ held that ‘[r]estitution includes Israel’s obligation to return the land and other immovable property, as well as all assets seized from any natural or legal person since its occupation started in 1967, and all cultural property and assets taken from Palestinians and Palestinian institutions, including archives and documents’.⁹⁰
46. In prolonged occupation, human rights law is therefore essential: restrictions on language, education, religion, and cultural practice may impair cultural rights, minority rights, and self-determination. International jurisprudence and practice increasingly recognise that

⁸⁵ See *Autocephalous Greek Orthodox Church of Cyprus v Lans* (District Court of Rotterdam, Case No 44053/HA ZA 95-2403, 4 February 1999); *Autocephalous Greek Orthodox Church of Cyprus v Goldberg & Feldman Fine Arts Inc* 717 F Supp 1374 (SD Ind 1989), aff’d 917 F 2d 278 (7th Cir 1990).

⁸⁶ See E Lieblich and E Benvenisti, *Occupation in International Law* (OUP 2022) 36–78; N Kalandarishvili-Mueller, *Occupation and Control in International Humanitarian Law* (Routledge 2020) 90-104; T Ferraro, ‘Determining the beginning and end of an occupation under international humanitarian law’ (2012) 94 IRRC 133, 157-58.

⁸⁷ See 220 EX/5.I.F (9 September 2024); also see N Kalandarishvili-Mueller, *Protection of Cultural Property in Prolonged Military Occupation, Articles of War* (24 June 2025) <<https://lieber.westpoint.edu/protection-cultural-property-prolonged-military-occupation/>> accessed 6 March 2026; also see OHCHR, ‘The impact of the armed conflict and occupation on children’s rights in Ukraine (24 February 2022 – 31 December 2024)’ (21 March 2025) <<https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2025/03/report/auto-draft/2025-03-21-ohchr-report-children-s-rights-in-ukraine.pdf>> accessed 30 March 2026.

⁸⁸ (Opened for signature 7 March 1966, entered into force 4 January 1969) 660 UNTS 195.

⁸⁹ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation)* (Judgment) [2024] ICJ Rep (31 January 2024).

⁹⁰ [2024] ICJ Rep (19 July 2024) para 270.

cultural destruction and erasure may constitute violations beyond IHL,⁹¹ underscoring the need for an integrated IHL–human rights approach to safeguarding cultural heritage.

5. CONFLICT CLASSIFICATION

47. Some contexts are difficult to classify as armed conflict, which gives rise to uncertainty as to the application of IHL, such as when active hostilities have ceased following a ceasefire or armistice, without a comprehensive political or territorial settlement. Such situations are typically marked by *de facto* separation, continued military presence, and episodic escalation of violence.⁹² Additional challenges arise from the limited applicability of occupation law to self-declared autonomous entities within a state’s borders, even where effective control resembles occupation. These *de facto* regimes are often unrecognised, while the territorial state lacks effective authority. This legal ambiguity heightens risks to cultural heritage, both during periods of non-state control absent active hostilities and following population displacement, when tangible heritage may be subject to competing claims.
48. Non-international armed conflicts are also difficult to categorise as such, due to the absence of clear criteria for their onset, duration, and termination.⁹³ Moreover, as occupation law presupposes an international armed conflict, the First Protocol to the 1954 Hague Convention does not apply to *de facto* territorial control by non-state armed groups in such contexts. While the Convention and its Second Protocol apply to non-state armed groups, these actors often lack the capacity, expertise, and resources necessary to safeguard cultural property effectively.⁹⁴ They may also be unable to identify protected objects or implement required precautions,⁹⁵ and—unlike States Parties—cannot access technical assistance from UNESCO.

6. SPECIFIC FORMS OF WARFARE: HYBRID THREATS AND DISINFORMATION

49. Contemporary armed conflicts are increasingly shaped by hybrid threats, including cyber operations, information manipulation, economic pressure, and legal or administrative

⁹¹ For instance, see *Sargsyan v Azerbaijan* App no 40167/06 (ECtHR, 16 June 2015).

⁹² For example an analysis of the situation in Transnistria, Abkhazia, and South Ossetia, see L Enzler, *Frozen Conflicts in International Law: Challenging Legal Categories in the Post-Soviet Space* (sui generis Verlag, 2025).

⁹³ Therefore, in the absence of a foreign external actor as occupying authority, rules exclusive to occupation have limited application to non-international armed conflicts, even though the law of armed conflict increasingly applies to such conflicts and to non-state armed actors; see E Benvenisti, *The International Law of Occupation* (2nd edn, OUP 2012) 61.

⁹⁴ Geneva Call, ‘Culture under fire: armed non-State actors and cultural heritage in wartime’ (2018); see also K Hausler and P Bongard, ‘The Role of Armed Non-State Actors in Safeguarding Cultural Heritage: Beyond Legal Obligations?’ in E Cunliffe and P Fox (eds), *Safeguarding Cultural Property and the 1954 Hague Convention: All Possible Steps* (Boydell & Brewer 2022) 113-124.

⁹⁵ According to the interviews conducted by Geneva Call, there is a lack of knowledge of the Hague system: none of the groups interviewed, whether operating in Iraq, Syria or Mali, were aware of the 1954 Hague Convention or the emblem of the Blue Shield; however, they all expressed interest in receiving training about those rules.

measures.⁹⁶ Hybrid means of warfare may target cultural heritage both directly and indirectly, including through vandalism, symbolic desecration, manipulation of historical narratives, digital erasure, and the administrative consolidation of control over cultural property without overt force. For instance, the destruction of cultural heritage by the IS was often filmed for propaganda, framing such acts as ‘religious purification’ and exploiting their shock value to recruit supporters and intimidate audiences.⁹⁷

50. Even where such acts fall below the threshold of attacks under IHL, they can provoke intercommunal tensions, erode social cohesion, undermine trust in institutions, and disrupt cultural continuity, particularly in border or disputed regions. The classification of non-kinetic operations as armed conflict is factually complex, and existing legal frameworks—such as the 1954 Hague Convention—do not specifically address most of these practices, revealing a potential gap in protection. More broadly, the rise of hybrid threats challenges the binary distinction between peace and armed conflict and calls for clearer guidance on safeguarding cultural heritage against non-kinetic means of warfare.
51. In the digital era, cultural heritage increasingly depends on intangible infrastructures—databases, servers, networks, and platforms—that enable its preservation and dissemination. While digitisation has expanded access through tools such as virtual museums and digital reconstructions, it has also introduced new vulnerabilities. Digital cultural property, including digitised and born-digital materials, is susceptible to cyberattacks, data manipulation, and deliberate erasure. Digital warfare, including disinformation, can distort or weaponise cultural memory by altering records, deleting archives, or manipulating narratives. Such practices may undermine institutional credibility, contest the legitimacy or origin of cultural sites, incite hostility, and obstruct safeguarding and restitution efforts. Effective safeguarding of cultural heritage therefore requires not only the technical protection of digital assets but also strategies to counter disinformation and preserve the integrity, interpretation, and accessibility of cultural heritage.

7. PRE- AND POST- STAGES OF ARMED CONFLICTS

7.1.A Sustained Climate of Military Threat, Risk Mitigation, and Emergency Preparedness

52. A sustained climate of military threat, both before and after armed conflict, can generate cultural harm comparable to that caused by active hostilities. Prolonged military alert, the militarisation of public space, and chronic insecurity may restrict access to cultural sites, disrupt cultural practices, and weaken institutional capacity for preservation and

⁹⁶ See A McWilliams and M Legnér, ‘Threat Assessments and Heritage in the Age of Hybrid Warfare’ (2024) 30 *IJHS* 1379.

⁹⁷ GJ Stein, ‘Performative Destruction: Da’esh (ISIS) Ideology and the War on Heritage in Iraq’ in J Cuno and TG Weiss (eds), *Cultural Heritage and Mass Atrocities* (Getty Publications 2022) 230-51.

management. Over time, such conditions contribute to resource depletion, institutional fatigue, and the diversion of funding from culture to security. This underscores the need for a broader understanding of ‘risk’ in cultural heritage protection, requiring risk assessments and safeguarding strategies to account for protracted periods of heightened tension and to incorporate budgetary and institutional safeguards ensuring continuity of protection.⁹⁸

53. Significant progress has been made in emergency response, particularly for tangible cultural heritage. Initiatives such as the First Aid and Resilience for Cultural Heritage in Times of Crisis (‘FAR’) programme of the International Centre for the Study of the Preservation and Restoration of Cultural Property (‘ICCROM’) provide training, field-tested methodologies, and a global network of experts supporting on-site damage assessment and risk management. However, the growing number of heritage first responders requires stronger coordination to ensure efficient use of resources.
54. Planning for heritage safeguarding, especially across borders, remains fragmented and ad hoc. This can be exemplified by the lack of arrangements for refuges for movable cultural property, which are primarily established at the national level⁹⁹ despite the need for cross-border arrangements in some situations of armed conflict.¹⁰⁰ Further discussions should explore whether risk mitigation should continue to rely on decentralised initiatives or evolve towards a more structured and coordinated international approach. In that regard, the role of bodies like UNESCO could be further defined, beyond UNESCO’s Unit for Emergency Preparedness and Response (‘CLT/EPR’), the development of ‘first aid’ and people-centred approaches, and the growing role of mechanisms such as the Heritage Emergency Fund (‘HEF’), established in 2015. The Committee notes in particular a need to systemic coordination and adequately resourced international response architecture that would cover all forms of cultural heritage, including ICH.

7.2.Cooperation, Exchanges, and Synergies between Regimes

55. Obligations to safeguard cultural heritage do not cease in armed conflict. The six UNESCO Cultural Conventions— the 1954 Hague Convention and its two Protocols, World Heritage Convention,¹⁰¹ Convention on the Means of Prohibiting and Preventing the Illicit Import,

⁹⁸ See B Chebbi, ‘Integrating disaster risk reduction into cultural heritage management: case studies from the Islamic world’ (2025) JCHMSD vol ahead-of-print <<https://doi.org/10.1108/JCHMSD-04-2025-0104>> accessed 20 February 2026.

⁹⁹ Only four refuges have been listed on UNESCO’s International Register of Cultural Property under Special Protection, see Report of the Secretariat of the 1954 Hague Convention, Practices in the establishment of refuges intended to shelter movable cultural property in the event of armed conflict (1 December 2025) 16 HCP 5 INF III, para 12; see also para 17, which notes that Switzerland has set up refuges for safeguarding cultural property threatened by armed conflicts in foreign jurisdictions.

¹⁰⁰ See A Jakubowski, ‘International Protection of Cultural Heritage in Armed Conflict: Revisiting the Role of Safe Havens’ (2019) 16 IJIL 169.

¹⁰¹ Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted 16 November 1972, entered into force 17 December 1975) 1037 UNTS 151.

Export and Transfer of Ownership of Cultural Property (‘1970 UNESCO Convention’);¹⁰² the UCH and ICH Conventions, and Convention on the Protection and Promotion of the Diversity of Cultural Expressions¹⁰³—form a complementary normative framework, which operates along general rules of IHL, international human rights law, criminal law instruments (including the Council of Europe Convention on Offences relating to Cultural Property (‘Nicosia Convention’)),¹⁰⁴ and relevant UN Security Council resolutions, collectively regulating prevention, emergency response, the conduct of hostilities, as well as accountability and reparation, across the conflict cycle.

56. This dense normative framework gives rise to fragmentation. The Cultural Conventions operate through distinct committees, reporting cycles, and monitoring mechanisms, often with limited coordination, which may create issues among civilian and military actors regarding the scope, interaction, and operational implications of their obligations, including their relationship with IHL. Cooperation among the relevant bodies remains largely *ad hoc*, revealing a structural gap and creating risks of duplication, particularly in monitoring, reporting, and emergency response. Efforts to enhance coordination are under way, including the establishment of the UNESCO Cultural Conventions Liaison Group, alignment recommendations by oversight bodies, joint meetings of convention Chairs, and thematic initiatives such as ‘Heritage for Peace’.¹⁰⁵ While promising, these initiatives have yet to produce a sustained and fully integrated framework for cross-convention cooperation.

7.3. Respect for Cultural Property: Enhanced Protection

57. Despite gradual growth—by December 2025, 121 properties were inscribed or provisionally listed under the enhanced protection regime (33 under enhanced protection and 88 under *provisional* enhanced protection)¹⁰⁶—its overall use remains limited. The underutilisation and uneven geographical distribution of inscriptions point to a small number of states accounting for a disproportionate number of inscriptions, while many conflict-affected regions remain unrepresented. Procedural complexity, strict interpretations of eligibility criteria, limited technical capacity, and gaps in inventories may deter applications. Some states may also perceive inscription as a potential security risk or as imposing undue military constraints. Technical assistance, capacity-building and knowledge sharing about the system may increase the use of this regime.¹⁰⁷

¹⁰² (Adopted 14 November 1970, entered in force 24 April 1972) 823 UNTS 231.

¹⁰³ (Adopted 20 October 2005, entered into force 18 March 2007) 2440 UNTS 311.

¹⁰⁴ (Opened for signature 19 May 2017, entered into force 1 April 2022) CETS No 221.

¹⁰⁵ See <<https://www.heritageforpeace.org>> accessed 20 February 2026.

¹⁰⁶ See the International List of Property under Enhanced Protection (updated 4 December 2025) <https://www.unesco.org/sites/default/files/medias/fichiers/2026/01/Enhanced-Protection-List-2025_Eng_compressed.pdf?hub=18014> accessed 20 February 2026.

¹⁰⁷ See Committee for the Protection of Cultural Property in the Event of Armed Conflict, ‘Study on the legal consequences for violation of the immunity of cultural property under enhanced protection’ (8 September 2025) C54/25/20.COM/INF.6.II.

58. The criteria set out in Article 11 of the Second Protocol could be revisited, clarified, or interpreted more flexibly in order to facilitate broader use of enhanced protection.¹⁰⁸ Current reform discussions point to the need to simplify and revitalise the inscription process, strengthen the monitoring and proactive role of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, expand technical assistance, and develop a more coherent implementation strategy, including consideration of protective measures for improvised shelters.
59. In addition, increased alignment—through interpretative guidance or coordinated procedures—between the World Heritage Convention and the enhanced protection regime under the Second Protocol could strengthen protection and reduce duplication. At present, while inscription on the World Heritage List may enhance visibility and mobilise assistance, it does not automatically trigger enhanced protection, which could be considered.

7.4. Responsibility to Protect and the Safeguarding of Cultural Heritage

60. The limited application of the Responsibility to Protect ('R2P') doctrine to cultural heritage reveals a gap in international law and practice.¹⁰⁹ While its Pillar I obliges states to protect populations from atrocity crimes, it does not explicitly extend to cultural heritage.¹¹⁰ Indeed, R2P has rarely been invoked to justify or encourage the safeguarding of cultural heritage due to doctrinal and practical constraints: R2P focuses on the protection of persons rather than heritage, and existing instruments—such as Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention')¹¹¹—offer only limited coverage of cultural destruction. Moreover, R2P has faced inconsistent implementation even within its core humanitarian domain.
61. These limitations were acknowledged in UNESCO 2015 Meeting of Experts on R2P and Cultural Heritage, which emphasised existing obligations and identified structural gaps.¹¹² While its recommendations focused on Pillars I and II (which calls upon the international community to assist states in building the capacity necessary to discharge their Pillar I responsibilities), including measures such as safe havens and protected zones, they have not developed into a coherent or sustained operational framework. In practice, attention has concentrated on Pillars I and III (which enables collective action where states fail), even though states may lack the capacity to fulfil primary obligations and that collective action under Pillar III is often hindered by political constraints. By contrast, Pillar II—central to

¹⁰⁸ S von Schorlemer, 'Synergies' (n 28).

¹⁰⁹ Note that R2P does not create new legal obligations but reallocates political responsibility, making inaction more difficult; see G Zyberi (ed), *An Institutional Approach to the Responsibility to Protect* (CUP 2013).

¹¹⁰ See A/78/901-S/2024/434 (3 June 2024), paras 13, 40; A/79/875-S/2025/248 (22 April 2025), para 33.

¹¹¹ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

¹¹² S von Schorlemer, 'The Usefulness of the Responsibility to Protect' as Applied to the Protection of Cultural Heritage in Armed Conflict' in A Chechi and M-A Renold (eds), *Cultural Heritage Law and Ethics: Mapping Recent Developments* (Schulthess 2017) 69-90.

prevention and resilience through capacity-building—remains underdeveloped. Initiatives by UNESCO, International Committee of the Red Cross, and funding mechanisms such as the International Alliance for the Protection of Heritage in Conflict Areas (‘ALIPH’) are valuable but fragmented and largely reactive. The absence of coordinated, sustained assistance underscores a Pillar II deficit. The Committee thus observes that R2P could be better utilised for cultural heritage protection, based on its emphasis on shared responsibility and its capacity to structure collective responses beyond consent-based or unilateral approaches.

8. ACCOUNTABILITY

8.1.State Responsibility

62. While every internationally wrongful act of a state entails the international responsibility of that state,¹¹³ such responsibility is rarely invoked in cases involving breaches of cultural heritage obligations. This is due to difficulties in attributing a course of conduct to a given state, as well as political constraints. There are only few examples of international courts or other dispute settlement bodies (such as arbitration commissions) having established state responsibility for violations of international law rules on the protection of cultural heritage in armed conflicts. One example is the Eritrea-Ethiopia Claims Commission holding Ethiopia responsible for the damage incurred by the Stela of Matara (or Metera), an ancient archaeological site in Eritrea, when it was in control of the area.¹¹⁴ With regard to alleged vandalism, destruction and alteration of Armenian historic, cultural and religious heritage in Nagorno-Karabakh,¹¹⁵ the ICJ has so far decided that could *plausibly* constitute a violation of the CERD, ordering provisional measures.¹¹⁶

8.2.Individual Criminal Responsibility and Structural Gaps in International Criminal Law

63. At the international level, individual criminal accountability for attacks on cultural heritage is constrained by narrow offence definitions, high evidentiary thresholds (especially proof of intent and protected status), and limits with regard to jurisdiction and enforcement. These challenges are compounded by difficulties in attributing responsibility in chains of command and practical barriers to investigation, cooperation, and prosecution. Furthermore, criminal accountability is hampered by the relatively low number of

¹¹³ See Articles on Responsibility of States for Internationally Wrongful Acts (‘ARSIWA’) (12 December 2001) A/RES/56/83; Second Protocol to the 1954 Hague Convention (1999), art 38, reads: ‘No provision in this Protocol (...) shall affect the responsibility of States under international law, including the duty to provide reparation’.

¹¹⁴ See <https://legal.un.org/riaa/cases/vol_XXVI/115-153.pdf> accessed 5 March 2026.

¹¹⁵ See similar claims are pending before the European Court of Human Rights: *Armenia v Azerbaijan* App no 42521/20 and *Azerbaijan v Armenia* App no 47319/20.

¹¹⁶ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v Azerbaijan*) (Provisional Measures, Order of 7 December 2021) [2021] ICJ Rep 361, para 61.

ratifications of the Rome Statute of the International Criminal Court ('Rome Statute'), as well as its scope. While it prohibits attacks against cultural property and places of worship,¹¹⁷ this formulation is narrower than the obligations under the 1954 Hague Convention:¹¹⁸ it excludes movable cultural property, does not fully capture the prohibition of unlawful use, and relies on the concept of 'attack' rather than the broader notion of 'acts of hostility'. This results in asymmetrical enforceability: while States Parties to the 1954 Hague Convention are bound by comprehensive obligations, the jurisdiction of the International Criminal Court ('ICC') is limited to a narrower category of conduct, which may undermine coherence in accountability.

64. Another divergence appears in the ICC Office of the Prosecutor 2025 Policy on Environmental Crimes,¹¹⁹ which adopts an expansive interpretative approach: recalling that Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Rome Statute protect 'the cultural and spiritual heritage of peoples', it affirms that this protection may extend to natural sites with a cultural value, including cultural landscapes, as well as geological or biological formations of particular significance to human communities, such as Indigenous peoples.¹²⁰ It further signals reliance on UNESCO World Heritage criteria in identifying protected sites. While this approach reflects a shift beyond built heritage-centred and Eurocentric conceptions of heritage, it does not alter the Rome Statute's structural focus on immovable property or its textual limits, which would otherwise require a formal amendment. Hence, the compatibility of this interpretation with the principle of legality is unclear. Accordingly, these policy developments introduce nuance but do not resolve the underlying normative asymmetry between the language of the 1954 Hague Convention and the narrower formulation embedded in the Rome Statute.
65. Beyond broader ratification of the Second Protocol to the 1954 Hague Convention, states must establish clear criminal offences and adequate sanctions, consistent with the ICC's complementarity regime. They should also enable prosecution of the most serious offences based on universal jurisdiction and victim participation in criminal processes, as well as provide specialised training for judges, prosecutors, and investigators to address the evidentiary and contextual complexities of such crimes.¹²¹

¹¹⁷ (Adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 8(2)(e)(iv).

¹¹⁸ See *Prosecutor v Ahmad Al Faqi Al Mahdi* (Judgment and Sentence) ICC-01/12-01/15-171 (27 September 2016); ICC OTP, 'Policy on Cultural Heritage' (June 2021) <<https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>> accessed 26 February 2026; see K Wierczyńska and A Jakubowski, 'The 2021 Policy on Cultural Heritage of the ICC: New Perspectives and Uncertainties of Criminal Justice' in A Fabbricotti (ed), *Intentional Destruction of Cultural Heritage and the Law. A Research Companion* (Routledge 2024) 371-88.

¹¹⁹ ICC OTP, 'Policy on Addressing Environmental Damage Through the Rome Statute' (December 2025) <<https://www.icc-cpi.int/sites/default/files/2025-12/2025-env-eng.pdf>> accessed 6 March 2026.

¹²⁰ Ibid para 44.

¹²¹ N van Woudenberg, 'Attacks against Cultural Property in Armed Conflict – How to Reduce the Risk of Impunity?' (2024) 10 SAACLR 105, 127-129.

8.3.Cultural Heritage Destruction as an Atrocity Crime

66. Attacks on cultural heritage can amount to war crimes, crimes against humanity (particularly the crime of persecution), and may serve as evidence of genocidal intent. Often used beyond the legal sphere, the term ‘cultural genocide’ is not considered a form of genocide under international law.¹²² Although Raphael Lemkin, who coined the term genocide, conceived it to include cultural destruction,¹²³ this was excluded from the Genocide Convention due to concerns over state sovereignty and reliance on human rights protection mechanisms.¹²⁴ Consequently, the legal definition of genocide requires physical and biological destruction, an approach reaffirmed by the ICTY and the ICJ which have both held that the destruction of cultural heritage does not in itself amount to genocide, notwithstanding its evidentiary value for intent. Cultural destruction thus occupies an anomalous position: excluded as an *actus reus* of genocide, yet probative of genocidal intent.¹²⁵
67. This approach is akin to settler colonialism and policies of forced assimilation, through which cultural continuity—particularly of Indigenous peoples—has been systematically undermined via education, language suppression, and child removal. While Article 8 of the UN Declaration on the Rights of Indigenous Peoples (‘UNDRIP’)¹²⁶ prohibits forced assimilation and cultural destruction, its non-binding nature limits its effect. In those contexts, cultural destruction may similarly support findings of intent but is difficult to prosecute as an autonomous wrong, enabling a lack of criminal accountability for assimilationist practices.
68. While related concepts—such as cultural erasure,¹²⁷ ethnocide, linguicide, and forced assimilation—capture elements of what is generally understood as ‘cultural genocide’ but remain normatively fragmented.¹²⁸ Addressing this gap may thus involve strengthening the

¹²² WA Schabas, *Genocide in International Law: The Crime of Crimes* (3rd edn, CUP 2025) 325-362; see also H Abtahi, *Adjudicating Attacks Targeting Culture: Revisiting the Approach under State Responsibility and Individual Criminal Responsibility* (Brill 2023).

¹²³ R Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government Proposals for Redress* (Publications of the Carnegie Endowment for International Peace, Division of International Law 1944) 79; Lemkin uses sometimes interchangeably with genocide the notion of ‘ethnocide’, to describe the destruction of a people’s cultural identity (the systematic destruction of an ethnic group’s culture and identity without necessarily killing its members). Thus, ‘ethnocide’ was essentially one dimension of the genocidal process.

¹²⁴ E Novic, *The Concept of Cultural Genocide: An International Law Perspective* (OUP 2016); see also A-M Carstens, ‘Cultural Genocide’s Surrogates’ (2026) 97 *University of Colorado Law Review* (forthcoming).

¹²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* [2007] ICJ Rep 43 para 344 (quoting *Prosecutor v Krstić* (Trial Judgement) ICTY-98-33-T (2 August 2001) para 580); See ICC OTP, ‘Policy on Cultural Heritage’ (n 118) paras 79-80.

¹²⁶ (13 September 2007) A/RES/61/295.

¹²⁷ For the Report and Resolution of the Parliamentary Assembly of the Council of Europe on Countering the erasure of cultural identity in war and peace (Soc 16003 and Res 2558 of 2024); see: <<https://pace.coe.int/en/files/30159>> accessed 8 March 2026.

¹²⁸ See Framework Convention for the Protection of National Minorities (adopted 1 February 1995, entered into force 1 February 1998) ETS No 157, art 5; UNDRIP, art 31; as of May 2025, the Committee on Economic, Social and Cultural Rights is developing a general comment on states’ obligations in situations of armed conflict.

normative force of UNDRIP, utilising treaty bodies such as the Committee on the Elimination of Racial Discrimination, clarifying the scope of genocide through advisory proceedings before the ICJ, or by adopting a new treaty.¹²⁹ At present, while attacks on cultural heritage cannot constitute genocide, they may amount to persecution, as affirmed by the ICTY and more recently by the ICC in *Al Hassan*.¹³⁰ The proposed Convention on Crimes against Humanity could further enable state responsibility and recourse to the ICJ.¹³¹ Furthermore, systematic attacks on cultural heritage could inform the crime of aggression under Article 8 bis of the Rome Statute, particularly in light of the Prosecutor's indication that such conduct may be considered as an element or aggravating factor.¹³²

8.4. Trafficking, Due Diligence and Transnational Crimes

69. Movable cultural heritage is vulnerable during armed conflict due to its susceptibility to looting and cross-border trafficking. Such practices not only accelerate the destruction of archaeological sites and collections but are increasingly linked to organised crime, money laundering, and, in some contexts, terrorist financing. Yet the international legal framework remains fragmented.¹³³ The 1954 Hague Convention and its First Protocol prohibit the removal of cultural property from occupied territory and require its return, while the 1970 UNESCO Convention provides a restitution framework; however, their effectiveness is constrained by divergent national property laws, inconsistent implementation, and reliance on private-law mechanisms. This has enabled the existence of 'lawfully owned looted objects', which continues to incentivise trafficking.
70. Efforts to curb trafficking include the adoption of the Nicosia Convention, which criminalises a broad range of conduct and introduces due diligence obligations. At the EU level, Regulation (EU) 2019/880 on the import of cultural goods,¹³⁴ strengthens import controls through mandatory provenance documentation and a partial reversal of the burden of proof. Complementary tools, including anti-money laundering frameworks and the establishment of the European Public Prosecutor's Office ('EPPO'), further enhance

¹²⁹ See the current works on the new convention on prevention and punishment of crimes against humanity: Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries A/74/10 (2019), paras 44-45.

¹³⁰ Rome Statute, art 7(1)(h); *Prosecutor v Al Hassan*, Sentencing Judgment, ICC-01/12-01/18 (20 November 2024) (public redacted version); *Prosecutor v Al Hassan*, Trial Judgment, ICC-01/12-01/18 (26 June 2024) (public redacted version).

¹³¹ The first Preparatory Committee (PrepCom) session aimed at negotiating a Convention on the Prevention and Punishment of Crimes against Humanity took place in January 2026. It is the result of the work of the UN International Law Commission, which sent its Draft Articles on Crimes against Humanity to the General Assembly in 2019, and recommended the treaty to be negotiated. See also Y Gottlieb, 'Attacks Against Cultural Heritage as a Crime Against Humanity' (2020) 52(1) Case Western Research Journal of International Law 287.

¹³² ICC OTP, 'Policy on Cultural Heritage' (n 118) para 89.

¹³³ See L Lixinski, 'Global Public Goods and Private International Legal Governance: Lessons from International Cultural Heritage Law', in G Zyberi (ed), *Protecting Community Interests through International Law* (Intersentia 2021) 31-58.

¹³⁴ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods [2019] OJ L 151/1.

enforcement capacity. Collectively, these developments reflect a growing recognition of cultural property trafficking as a form of transnational organised crime.¹³⁵

71. Addressing the trade in unprovenanced objects may further require the adoption of mandatory due diligence standards, the criminalisation of negligent acquisition, and enhanced cooperation among law enforcement authorities. In this regard, the UNSC Resolution 2347 (2017)¹³⁶ has played a catalytic role by explicitly linking cultural heritage protection to international peace and security,¹³⁷ and by calling for prohibitions on trade in objects lacking documented provenance from conflict zones.¹³⁸ Shifting the burden of proof to buyers represents a critical step towards ensuring that unlawfulness ‘sticks’ to the object, rather than dissipating as it moves across jurisdictions. This approach also aligns cultural heritage protection with broader anti-money laundering and organised crime frameworks.

8.5. Post-conflict Justice and Reparations

72. Reparation—encompassing restitution, compensation, rehabilitation (reconstruction), satisfaction and guarantees of non-repetition—is central to safeguarding cultural heritage after conflict.¹³⁹ Yet international jurisprudence on reparations for cultural destruction remains limited. While the Eritrea–Ethiopia Claims Commission and the ICC’s order in the *Al Mahdi* case¹⁴⁰ recognised both material and moral harm, their decisions expose a lack of consistent and transparent methodologies for assessing damage to heritage.¹⁴¹
73. In the context of Ukraine, the Register of Damage for Ukraine (‘RD4U’), established by the Council of Europe (‘CoE’),¹⁴² includes a dedicated category for damage to tangible cultural heritage (‘damage, destruction, or loss of objects or buildings of cultural value’),¹⁴³ though it is not yet operational. Given that, as of January 2026, the Register has received over

¹³⁵ See UNGA Res, ‘Return or restitution of cultural property to the countries of origin’ (6 December 2021) A/RES/76/16.

¹³⁶ (24 March 2017) S/RES/2347 (2017).

¹³⁷ For instance, see S von Schorlemer, ‘Cultural Heritage Protection as a Security Issue in the 21st Century: Recent Developments’ (2018) 16 IJIL28.

¹³⁸ See K Hausler and A Jakubowski, ‘Combatting Illicit Trade in Cultural Objects to Defend Peace and Security’ in C Finkelstein, D Gillman and F Rosén (eds), *Culture and Value: The Preservation of Heritage in Times of War* (OUP 2022) 161–85.

¹³⁹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UNGA Resolution 60/147 (2005).

¹⁴⁰ *Prosecutor v Ahmad Al Faqi Al Mahdi* (Judgment and Sentence) ICC-01/12-01/15-171, International Criminal Court [Trial Chamber VIII], 27 September 2016.

¹⁴¹ See the work of the International Law Commission on compensation: M Paparinskis, ‘Compensation for the damage caused by internationally wrongful acts’ (2019) A/79/10 Annex I.

¹⁴² After the Convention establishing an International Claims Commission for Ukraine (opened for signature 16 December 2025; CETS No 229) enters into force, the International Claims Commission for Ukraine will take over responsibility for the register;

¹⁴³ See <<https://rd4u.coe.int/documents/358068/558503/RD4U-Board%282024%2955-EN+-+Claim+Form+B2+and+C2+Damage%2C+destruction+or+loss+of+objects+or+buildings+of+cultural+value.pdf/565b0d09-e3b9-a661-fb41-ee25e411ea5?i=1743593372587>> accessed 20 January 2026.

100,000 claims, significant processing challenges are foreseeable, which could be alleviated with the use of AI.

74. The Committee further underscores the requirement to exhaust domestic remedies where available. Domestic and regional mechanisms must adequately recognise and remedy cultural harm through the full range of reparations, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. In Colombia, the Victims and Land Restitution Law (Law 1448 of 2011)¹⁴⁴ adopts an integrated approach acknowledging cultural harm and supporting the restoration of dignity and cultural life among displaced communities.
75. Post-conflict governance must integrate heritage in reconciliation, memory, and peacebuilding through inclusive and participatory reconstruction and commemoration.¹⁴⁵ Moreover, while criminal proceedings primarily aim to punish perpetrators, the ICC allows victims to participate and seek reparations,¹⁴⁶ implemented through the Trust Fund for Victims. Such rights are often absent at the domestic level. Accordingly, alongside prosecuting international crimes—including under universal jurisdiction—domestic systems should ensure victims have effective access to comparable reparative avenues, including civil claims.

9. IMPLEMENTATION

76. The effectiveness of the international legal framework for the protection of cultural heritage in armed conflict is tied to its universality. Despite the near-global recognition of the importance of safeguarding cultural heritage, participation in the 1954 Hague Convention and its Protocols lags behind: as of December 2025, 138 states are party to the Convention, 115 to the First Protocol, and 92 to the Second Protocol. The table below, organised according to UNESCO's regions and electoral groups, highlights regional differences:¹⁴⁷ Europe and North America show the strongest commitment, with high rates of ratification of both the Convention and its Protocols, while Latin America and the Caribbean also demonstrate consistent engagement. In contrast, Asia and the Pacific and Africa show markedly lower levels of ratification with regard to all three instruments.

Ratification of the 1954 Hague Convention and Its Protocols by UNESCO Region and Electoral Group

¹⁴⁴ English translation available at <<https://www.amnesty.org/ar/wp-content/uploads/2021/06/amr230182012en.pdf>> accessed 20 January 2026.

¹⁴⁵ See N Augustinos, 'The Role of Non-State Actors in the Cultural Heritage Field – The Case of the Orthodox Church and Its Heritage in Turkey' (2018) 4 SAACLR 277.

¹⁴⁶ See M Lostal, 'Reparations for Cultural Heritage Destruction at the ICC and the Limits of Human Rights' in N Guibert, F Gantheret and S Stolk (eds), *Arts and Human Rights A Multidisciplinary Approach to Contemporary Issues* (Edward Elgar 2023).

¹⁴⁷ Note that global totals exceed regional subtotals because some States Parties are not UNESCO voting members.

UNESCO Region	UNESCO Electoral Group	1954 Convention	1954 First Protocol	1999 Second Protocol
Africa	Group V(a) – Africa	27	16	13
	Group V(b) – Arab States (Africa)	17	14	13
Africa (subtotal)	Groups V(a) + V(b)	44	30	26
Asia & Pacific	Group IV – Asia and the Pacific	19	16	6
Europe & North America	Group I – Western Europe & North America	25	22	20
	Group II – Eastern Europe	25	24	20
Europe & North America (subtotal)	Groups I + II	50	46	40
Latin America & Caribbean	Group III – Latin America and the Caribbean	20	18	17
Global total	All UNESCO Electoral Groups and non-UNESCO States Parties	138	115	93

Source: <<https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention#item-3>> accessed 21 January 2025; AI-formatted.

77. The absence of major military powers, including the People’s Republic of China (‘PRC’), Russian Federation, and USA, from the 1999 Second Protocol weakens the preventive and deterrent effect of the Hague system, particularly in conflicts involving multinational coalitions, peacekeeping operations, and extraterritorial military engagements. It also complicates interoperability, as armed forces operating under different legal frameworks may apply divergent standards of cultural property protection. From an institutional perspective, incomplete participation undermines the authority of the Committee for the Protection of Cultural Property in the Event of Armed Conflict and circumscribes the reach of its monitoring and advisory functions. More broadly, low levels of ratification directly constrain UNESCO’s capacity: as many of UNESCO’s operational tools, monitoring mandates, and compliance mechanisms are treaty-based, limited participation narrows the geographic scope within which the Organisation may formally intervene, provide technical assistance, or invoke the enhanced protection regime. This fragmentation further weakens norm diffusion: uneven ratification reduces peer pressure among states, complicates coordination with military and peacekeeping actors, and limits the integration of cultural property protection into national defence and emergency frameworks.
78. Limited ratification also undermines both assessed and voluntary funding. A smaller pool of States Parties reduces the number of contributors eligible or willing to finance treaty-specific activities, while donors are often reluctant to allocate extrabudgetary resources to

instruments with limited uptake or political salience. Consequently, UNESCO is increasingly reliant on short-term, project-based funding rather than sustained preventive action, thereby constraining long-term planning, institutional capacity, and rapid-response mechanisms in regions where cultural heritage is most at risk.

79. The Committee also notes that the pursuit of new binding instruments would be unlikely to remedy these shortcomings. Treaty proliferation risks further fragmenting an already complex legal landscape, diverting limited institutional resources, and reopening politically sensitive issues—such as the scope of military necessity—that were carefully balanced in the Second Protocol to the 1954 Hague Convention. The priority should therefore remain the promotion of ratification and accession to the existing framework, coupled with targeted support to states facing legal, institutional, or capacity-related obstacles.

10. PRELIMINARY CONCLUSIONS AND FURTHER WORK

80. To date, the Committee has focused on the pre-conflict and conflict phases, including situations of occupation and prolonged occupation, recognising that prevention and compliance at these stages are decisive in mitigating long-term cultural harm. Its preliminary conclusions indicate that enhancing protection requires consolidation rather than expansion of the existing legal framework, with priority given to clarifying obligations, strengthening implementation, capacity-building, and institutional coherence, particularly within the 1954 Hague Convention system. The Committee's work confirms that the international legal framework for the protection of cultural heritage in armed conflict—centred on the 1954 Hague Convention and its Protocols—is extensive and normatively developed, yet unevenly implemented. Persistent gaps in ratification, monitoring, coordination, and accountability continue to undermine its effectiveness.
81. The Committee notes that the most serious forms of cultural harm in contemporary conflicts appear often cumulative and structural, arising already before the outbreak of kinetic hostilities, and lasting beyond the conclusion of active fighting. Such harm—ranging from restricted access and disrupted transmission to looting, narrative manipulation, displacement of cultural bearers, digital erasure, and the marginalisation of affected communities—exposes the limitations of a legal framework focused predominantly on harm to tangible heritage. This creates blind spots in legal analysis and operational practice, and contributes to an accountability gap where indirect or incremental forms of harm fall outside clearly defined prohibitions or enforcement mechanisms.
82. The Committee further identifies a structural bias within existing frameworks towards territorially bounded, tangible heritage and event-based conceptions of armed conflict. While essential, these approaches are insufficient to address the diversity of cultural heritage and the evolving nature of contemporary conflict, including in digital and extra-territorial contexts. In this regard, the Committee emphasises the need for consolidation,

coherent interpretation—consistent with Article 31(3)(c) of the Vienna Convention on the Law of Treaties¹⁴⁸—and more effective implementation of existing law, rather than the elaboration of new instruments.

83. Future work should examine the interaction of applicable legal regimes, reinforce preventive obligations, and enhance protection for under-represented forms of heritage, while promoting more people-centred approaches involving affected communities, including Indigenous peoples and displaced groups. In its next phase of work, the Committee will strengthen its analysis and extend it to post-conflict phases, including recovery, restitution, accountability, and the revitalisation of cultural life, with a view to supporting reconciliation, peacebuilding, and sustainable recovery. In this regard, it will also undertake comparative research on domestic and regional strategies and models for safeguarding cultural heritage across all stages of the conflict cycle in order to identify best practices and achievements.

¹⁴⁸ (Adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.