



THE INTERNATIONAL SAFEGUARDING OF CULTURAL PROPERTY DURING ARMED CONFLICT ERA

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Received on: 03/01/2024

Accepted on: 23/03/2024

Published on: 30/03/2024

Abstract:

The objective of this study is to provide a comprehensive overview of the fundamental international legal norms established to safeguard cultural heritage. These norms have evolved in response to the profound transgressions that cultural property has endured throughout history, including acts of destruction and plunder, often exacerbated by the ravages of global conflicts, particularly during the First and Second World Wars. In response to these challenges, the international community is mobilized to forge a comprehensive framework of international conventions. These conventions encompass a spectrum of principles and regulations, aimed at safeguarding both general and specific forms of cultural heritage.

Methodology:

The legal analysis conducted herein was complemented by the identification of pivotal legal principles for the preservation of cultural heritage. Furthermore, a historical approach was employed to elucidate significant texts and events spanning antiquity, shedding light on the development of cultural heritage protection. Additionally, the descriptive method was employed to comprehensively address the realm of cultural property. This encompassed precise definitions, categorizations, and protective measures, providing a holistic view of the subject matter.

Results: To enhance the utmost safeguarding of cultural property during armed conflicts, our study has led us to the conclusion that a substantial measure of protection can be attained through the criminalization of any assault on cultural heritage. It is imperative that every individual, regardless of his rank or status, be held criminally accountable for any such transgression. Moreover, both preventive and deterrent measures should be embraced by nations in both peacetime and wartime, with a focus on assessing their efficacy in mitigating or diminishing the grave violations to which cultural property is susceptible.

Conclusion: To elevate awareness about the significance and spiritual value of cultural property, acknowledged as a shared cultural heritage of humanity, our endeavor involves elucidating the international legal frameworks encompassing general and specific protection measures. Furthermore, we aim to assess the efficacy of these mechanisms in ensuring preservation during times of armed conflict. Through this, we seek to foster a deeper appreciation for cultural property's vital role in our collective heritage and its profound spiritual importance to all.

Keywords: Civil Property, Cultural Property, Protection, Armed Conflict, Four Geneva Conventions of 1949, Additional Protocols, Hague Convention of 1954 and its Protocols.

Introduction:

The concept of protection during armed conflicts, as established by international conventions, was initially centered around individual civilian and military victims. Over time, the development of rules within international humanitarian law has expanded this concept by recognizing distinct categories of protection for both public and private entities, each tailored to their specific circumstances in such dire situations. These categories encompass individuals who do not partake in



hostilities or have ceased to do so, such as the wounded, drowned, deceased, missing persons, and prisoners of war. Additionally, protection extends to include medical and religious service personnel, journalists, women, children, and others, as well as structures commonly referred to as civil objects (non-military targets).

The evolution of the concept of protection has broadened its scope, particularly with regard to the safeguarding of cultural property. This expansion stems from the cultural heritage's intrinsic value to spiritual communities and its collective importance. The destruction and devastation wrought upon cultural property have prompted international committees and organizations, notably UNESCO, to advocate for the adoption of international and national norms aimed at fortifying protection during armed conflicts, whether they are international or non-international.

As a response to these requirements, the 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict era was established. It was further reinforced by an Executive Regulation and two additional protocols, serving to bolster the protective measures as an affirmation and elaboration of the general principles outlined in the four Hague Conventions of 1907, the four Geneva Conventions of 1949, and the two Additional Protocols of 1977. These instruments collectively encompass the comprehensive safeguarding of cultural property as civil objects, or non-military targets, during times of armed conflict.

The Research Problem:

The study encounters a fundamental issue about the regulations for safeguarding cultural property established by international conventions during armed conflicts era. Moreover, do these regulations suffice to ensure effective protection!?

Research Significance:

The study aims at spotting the importance of the cultural properties within people and nations. Since these cultural properties are a human heritage, they must be protected. However, this protection can only be realized through comprehensive identification and registration processes, coupled with the implementation of both national and international laws designed to ensure its safeguarding.

Research Objectives:

This study aims to shed light on objects, buildings, and other items which are classified as cultural property that must be protected starting from peacetime in anticipation of a state of war, by highlighting the international conventions that addressed the subject of protection during armed conflicts in order to know them and determine the extent of their effectiveness and judge if they are sufficient or It must be supported by other texts and mechanisms that are capable of achieving the greatest degree of protection.


Research Sub-Problems:

In addition to the main research questions, the following hypotheses can be explored:

- Did the Hague Conventions of 1907 and the four Geneva Conventions of 1949 and their Additional Protocols have an effective role in the field of protecting cultural property as it is classified as a civilian property that must be protected during armed conflicts or not?
- Are the 1954 Hague Convention and its Additional Protocols sufficient to guarantee protection for cultural property?
- Are there international deterrent texts to limit serious violations of cultural property during armed conflicts or not? Is it sufficient to achieve protection?

Scientific research methods:

To study the issue of protecting cultural property in international conflict era, we have adopted several scientific methods, including the descriptive approach. We have worked on describing these properties in their meaning and classifying them to facilitate their accurate identification. Then,



we have analyzed the most important international legal texts emanating from the international agreements that dealt with the issue of protection by using both legal and historical analysis approaches and presenting previous international conventions and events that addressed the issue of protecting cultural property from ancient times to our present era.

To answer the main problem and the sub-questions, we have adopted the double division, so that we will initially address the concept of cultural property in light of the rules of international humanitarian law, then move to the international legal foundations and the measures that must be adopted to protect them in times of armed conflict.

1- The concept of cultural property under the rules of international humanitarian law:

Cultural property has received great attention from the international community as a cultural heritage belonging to all human beings without exception. It is a common human heritage that cannot be affected (Ahmed Abu Al-Wafa, 2006, p. 94) Thus, everyone is called for the need to protect it, especially during times of armed conflict, by fronting The grave violations it is subjected to in such circumstances and what happened to it during the First and Second World Wars and up to our present era of plundering, destruction, sabotage and unlawful transfer is clear evidence of the necessity of classifying this property and establishing a comprehensive definition for it so that it can be distinguished from military targets and even from other civil objects.

For this reason, general and special rules have been established to its protection, as attacks on it could lead to the outbreak of armed conflicts between countries. due to its status and spiritual and religious value among some peoples, such as the incident that occurred between Cambodia and Thailand, where the latter seized a temple in Cambodia (Temple of Preah Vihear) during World War II. The dispute between the two countries was brought to the International Court of Justice, where it ruled that the temple should be returned to Cambodia to resolve the dispute and prevent the situation from developing into an armed conflict between them, in addition to other cases. (Mohamed Sameh Amr, 2005, p. 222, p. 245).

Accordingly, cultural property was not previously given a precise agreement definition, but was only explicitly described in the form of military instructions directed to the armed forces in the field through the regulations annexed to the Fourth Hague Convention of 1907 relating to the laws and customs of war on land, in accordance with the text of Article 27 thereof, which stated: “ In cases of siege or bombardment, all necessary measures must be taken to avoid attack as much as possible on buildings designated for worship, the arts, sciences, charitable works, and historical monuments... provided that they are not used in the circumstances prevailing at the time for military purposes.

The besieged must place specific visible signs on these buildings or gathering places, of which the enemy will be notified in advance” (Omar Saadallah, 2002, p. 141). It is evident that this rule is an instruction directed to the warring parties in order to avoid directing their military operations against cultural property, as it has restricted. On a basic condition, which is not to use or exploit it for military purposes, in order to avoid losing the protection assigned to it. Some jurisprudence also believes that this obligation remains relative because states are bound by an obligation to exercise care, not to achieve a result, and this is by working to preserve it only. (Mustafa Ahmed Fouad, 2005, pp. 11-13).

After World War II, cultural property received general protection in accordance with the four Geneva Conventions of 1949, which consider it a civilian property that may not be targeted or exploited for hostilities, This was due to the destruction and looting it was subjected to during this period. (For more information about the types of grave violations that occurred It happened during World War II and what cultural property was exposed to (see: Stephen R. Ratner, 2007, pp. 26-29).

As a result of the massive damage that cultural property witnessed during World War II and because of the scientific and technological development of means and methods of war, it was necessary to adopt the Hague Convention of 1954 relating to the protection of cultural property in the event of armed conflict in order to preserve the cultural heritage that is the property of all the mankind, so



Article 1 stipulated Among them is a definition of this property as: “Cultural property under this agreement, regardless of its origin or owner, means the following:

(a) - Movable or immovable property of great importance to the cultural people heritage, such as architectural, artistic, or historical buildings, whether religious or secular, archaeological sites, and groups of buildings that together acquire historical or artistic value, artistic artifacts, manuscripts, books, and other objects of historical or archaeological artistic value, as well as collections. Scientific collections, important books, archives, and copies of the aforementioned properties.

(B) - Buildings designated primarily and effectively for the protection and display of movable cultural property described in Paragraph (A), such as museums, major book houses, and archives stores, as well as bunkers designed to protect movable cultural property described in Paragraph (A) in the event of an armed conflict.

(C) - Centers that contain a large group of cultural properties described in paragraphs (A) and (B), which are called “memorial building centers.”

In addition to this, we find the UNESCO Convention held in Paris in 1970 regarding the measures that must be taken to prohibit the illegal import, export and transfer of ownership of cultural property. It defined for us the concept of cultural property in detail, and all its member states were called upon to establish national laws to protect it, as these are: Property in:

«A - Collections and rare models from the animal and plant kingdoms, from minerals or anatomy, and important pieces related to paleontology (paleontology).

B - Properties related to history, including the history of science and technology, military history, social history, national leaders, thinkers, scientists and artists, and the important events that the country has experienced.

C - The product of archaeological excavations (legal and illegal) and archaeological discoveries.

D - Pieces that were part of amputated artistic or historical antiquities or archaeological sites.

E - Antiquities that are more than a hundred years old, such as inscriptions, coins, and engraved seals.

F- Objects of ethnological importance.

G- Properties of artistic importance, including:

- Pictures, paintings, and drawings made entirely by hand, regardless of the materials on which they were drawn or used, with the exception of industrial designs and hand-decorated artifacts.

- Original statues and sculptures, whatever the materials used to make them.

- Original images engraved, drawn or printed on stone.

- The original compounds or compounds, whatever the materials from which they are made.

- Rare manuscripts and books printed in the first era of printing, and old books, documents and publications of special importance from a historical, artistic, scientific or literary standpoint, whether individually or in groups.

- Postage stamps, fiscal stamps, separately or in sets.

- Archives, including audio, photographic and cinematic archives.

- Pieces of furniture that are more than a hundred years old, and old musical instruments.

(Ali Khalil Ismail Al-Hadithi, 1999, pp. 19-21). In addition to this, cultural property was defined under the Convention for the Protection of the Cultural and Natural Heritage of 1972 in its first article as: “Cultural heritage for the purposes of this Convention:

- Antiquities: Architectural works, sculptures and paintings on buildings, elements or formations of an archaeological character, inscriptions, caves and groups of monuments, all of which have exceptional universal value from the point of view of history, art or science.

- Complexes: groups of isolated or connected buildings that, due to their architecture, symmetry or integration into a natural landscape, have exceptional universal value from the point of view of history, art or science.

- Sites: human works, or joint works between man and nature, as well as areas, including archaeological sites, that have exceptional universal value from a historical, aesthetic, ethnological or anthropological point of view. » (arabicconventiontext/fr/org.unesco.whc://http).



In addition to the aforementioned definitions, the Second Protocol of 1999 annexed to the 1954 Hague Convention relating to the Protection of Cultural Property in the Armed Conflict era confirmed the same definition that the Convention came up with through Article 1, Paragraph (b) thereof: “(b) means (cultural property) Cultural property as defined in Article 1 of the Convention. As for the two Additional Protocols of 1977 annexed to the four Geneva Conventions of 1949, we find that they have outlined the issue of cultural property, but only for the sake of protection, with reference to the most important of these properties, for which protection must be ensured in times of international and non-international armed conflicts, as we will discuss later.

2-International Legal Foundations and the Necessary Measures to adopted to protect Cultural Property in Times of Armed Conflict

The issue of protecting cultural property in times of armed conflict is not recent, but it has been established since ancient times. The evidence for this is what is stipulated in Article 27 of the regulations annexed to the Fourth Hague Convention of 1907 relating to the laws and customs of land warfare mentioned above, in addition to the set of obligations that the occupying state must abide by in application. According to the text of Article 56 of the same regulations, it states that “municipal property, property of institutions designated for worship, charitable and educational works, and artistic and scientific institutions must be treated as private property even when they are owned by the state. Any seizure, destruction, or intentional damage to such historical, artistic, and scientific institutions and monuments is prohibited, and judicial measures shall be taken against the perpetrators of these acts.” (Omar Saad Allah, 2002, p.146).

In addition to this, in implementation of what was stipulated in the four Geneva Conventions of 1949 and their two additional protocols of 1977 and the 1954 Hague Convention and its two protocols, cultural property is considered a civilian property that should not be targeted during armed conflicts or used for military purposes and, therefore, it enjoys two types of protection; general protection and specific protection:

_With regard to general protection, the four Geneva Conventions of 1949 established protection for civilian objects that must not be used in any way for military purposes; Since cultural property is considered one of them as it is of a civilian nature, it is therefore covered by this protection on the condition that it remains in this capacity so as not to be vulnerable to any armed attack under the pretext of exploiting it for military purposes (Pictet, Jean. 1956, Comment IV. Geneva Convention 1949, p. 323-3). What is stipulated in Article 53 of the Fourth Geneva Convention is evidence for this as it states that “the occupying state is prohibited from destroying any private, fixed or movable property belonging to individuals or groups, the state, public authorities, or social or cooperative organizations, unless the war operations inevitably require this destruction.” Therefore, the occupying state, considering its temporary presence and authority within the occupied territories, has the duty to preserve lives and property and organize all types of social and humanitarian services for civilians. (Mustafa Ahmed Fouad, 2005, pp.13-14).

_As for the special protection of cultural property in times of armed conflict, it was strengthened by the Hague Convention of 1954, which was the result of an initiative by UNESCO in cooperation with the International Council of Museums in 1950. These efforts culminated in the emergence of this agreement, to which an implementing regulation and a first protocol were added in the same year and a second protocol in 1999, in order to achieve the greatest degree of protection, whereby the High Contracting Parties pledged to work in peacetime to take whatever preventive measures they deem appropriate to ensure their protection in anticipation of any armed conflict that may break out, in implementation of Article 3 of the 1954 Hague Convention under the title: Prevention Cultural property: “The High Contracting Parties undertake to be prepared, from the beginning of peace, to protect cultural property located in their territories from damage that may result from an armed conflict, by taking the measures they deem appropriate.”

Moreover, in order to achieve protection, it was necessary to prepare sections and establish service departments within the ranks of the armed forces that are concerned with this issue and that are in contact with the relevant civil authorities as a preventive mechanism, in accordance with what was



stipulated in Article 07, paragraph 02 of the 1954 Hague Convention relating to the protect cultural property in the event of armed conflict in which it was stated that “The High Contracting Parties undertake to prepare, from peacetime, sections or specialists or to attach them to the ranks of their armed forces, whose mission will be to ensure respect for cultural property and to assist the civil authorities responsible for protecting this property.” Articles 08 and 09 of the same agreement stipulate, among other things, the measures and precautions (preventive) that must be taken by the contracting states, especially the parties to the conflict and the occupying state, so that cultural property is not exposed to any harm, as each of them stipulates:

_ Article 08: « 1 - A limited number of caches designed for the protection of movable cultural property, memorial building centres, and other immovable cultural property of great importance may be placed under special protection on the condition that:

a) To be at a sufficient distance from any large industrial centre or any important military target that is considered a vital point, such as an airport, a radio station, a national defence factory, a port, an important railway station, or an important transportation route.

b) Not to be used for military purposes.

2 - It is also permissible to place a cache of cultural property under a special protection system, regardless of its location, if it is built in a way that makes it unlikely that bombs will touch it.

3 - If a centre is used as a memorial building for the movement of troops or military materials, even just for passage, this is considered to be used for military purposes. This centre will be considered to have been used for the same purpose if any activity is carried out in it that is directly related to military operations, or to establishing military forces, or to the manufacture of military materials.

4 - The presence of armed guards specially placed to guard one of the cultural properties mentioned in the first paragraph is not considered use for military purposes, and this also applies to the presence of police forces whose natural mission is to maintain public security.

5 - It is permitted, if one of the cultural property stipulated in the first paragraph of this Article is located next to an important military target within the meaning of this paragraph, to place this property under a system of special protection if the High Contracting Party undertakes not to use the aforementioned target in the event of the outbreak of an armed conflict, especially if the target is a port, railway station or airport, and by diverting all traffic from it. In this case, the diversion of traffic from it must be organized in peacetime.

6 - Special protection is granted to cultural property by registering it in the international registry of cultural property subject to the special protection system. This registration shall only take place in accordance with the provisions of this agreement and the conditions stipulated in the executive regulations.

_ Article 9 of the same agreement addressed the importance of registering this cultural property, and it stated that “the High Contracting Parties undertake to guarantee the immunity of cultural property placed under the system of special protection by refraining from any hostile action towards this property once it is registered in the (International Register) and from using it or using places directly adjacent to it for military purposes, except in the cases stipulated in the fifth paragraph of Article 8”. The content of this text is a confirmation of what was stated in the sixth paragraph of Article 8 mentioned above regarding the role of the international register and the purpose of registering this property, which can be considered one of the preventive mechanisms that must be adopted in peacetime, a commitment that was reaffirmed under the Second Protocol of 1999 in Article 5 under the title of Safeguarding Cultural Property, saying that “It includes the following preparatory measures taken in peacetime to safeguard cultural property from the unforeseen effects of an armed conflict in accordance with Article (3) of the Convention as appropriate: preparing inventory lists, planning emergency measures to protect against fires or building collapse, preparing to transport movable cultural property or providing protection for such property in its location, and appointing the competent authorities responsible for preserving cultural property.”

Therefore, it is the duty of states parties to work in times of peace as a preventive measure to register all their movable and immovable cultural property in an international registry in order to

preserve them from plunder and destruction, with the possibility of identifying and finding them in the future if they are stolen during armed conflicts, as happened in previous wars (Sherif Bassiouni, 2007, p.30-32).

In addition to the obligations imposed on the occupying state under the Fourth Geneva Convention of 1949 mentioned above regarding the protection of cultural property, we find in the Hague Convention of 1954 that the occupying state is obliged to provide special protection in application of the text of Article 5 thereof, and which states “1 - The High Contracting Parties that occupy all or part of the territory of one of the other High Contracting Parties must support the efforts of the competent national authorities in the occupied areas to the extent possible in order to protect and preserve their cultural property.

2 - If circumstances require urgent measures to be taken to preserve cultural property located on occupied territory that suffers damage as a result of military operations and the competent national authorities are unable to take such measures, the occupying state must take urgent preventive measures to the extent it is able, in close cooperation with these authorities. .

3 - Every High Contracting Party whose government recognizes the members of the resistance movement as their legitimate government must, as much as possible, draw the attention of these members to the necessity of observing the provisions of the Convention regarding respect for cultural property. This is the same commitment that was reaffirmed in paragraphs (1, 2, 3, 4) of the First Protocol annexed to this Convention (1954), and Article 9 of the Second Protocol of 1999 to it under the title of Protection of Cultural Property in the Occupied Territories, which states: “1- Without prejudice to the provisions of Articles (4) and (5) of the Convention, it is forbidden and prohibited by a party occupying the territory or part of the territory of another party, with respect to the occupied territories:

a) Any illegal export of cultural property or any illegal transfer of such property or transfer of its ownership.

b) Any archaeological excavations, except where this is necessitated by the preservation, registration or preservation of cultural property.

c) Making any alteration to cultural property or its uses intended to hide or destroy any cultural, historical or scientific evidence.

2 - Any excavations for cultural property or changes to it or to its uses shall be carried out in close cooperation with the competent national authorities of the occupied territories, unless circumstances prevent this”.

In our personal opinion, despite the presence of all these international legal texts that oblige the occupying state to respect and protect cultural property from looting, vandalism, transfer, and so on, were all these obligations really implemented ? and have the occupying states been forced to return what was looted? All of these questions can only be negatively answered. The occupying states have not committed and will not implement the obligations they have to commit and implement, and this is an undeniable reality. Therefore, these texts related to the occupying state must be reconsidered so that restrictions can be imposed on it that make it obligated to return everything that was taken from the countries that it occupied before, if we truly believe that cultural property is a common human heritage. We are all bestowed with the right to demand that stolen items be returned to where they originally belong.

As for preventing attacks on cultural property in times of armed conflict, we find that attacks against it in such circumstances have been prohibited and made into grave violations for which anyone taking part in committing them directly or indirectly, is questioned since they have been classified as war crimes, in accordance with the First Additional Protocol of 1977 related to the Protection of Victims of International Armed Conflicts Annex to the Four Geneva Conventions of 1949, Article 53. This article states that “the following actions are prohibited, without prejudice to the provisions of the Hague Convention relating to the Protection of Cultural Objects in the Event of Armed Conflict of 1954 and the provisions of other international conventions relevant to the subject:



- (a) - Committing any of the hostile acts directed against historical monuments, works of art, or places of worship that constitute the cultural or spiritual heritage of peoples.
- (b) - Using such objects to support the war effort
- (c) - Taking such objects as targets for deterrence attacks.”

This rule came to confirm the protection approved by the Hague Convention of 1954 and in line with its special provisions relating to the precautions that must be taken during an attack, as it was supported by the text of Article Seven of the Second Protocol of 1999 attached to it by saying that “Precautions during an attack: without prejudice to other precautions.” International humanitarian law requires that, in carrying out military operations, each party to the conflict shall proceed to the following:

- a) make every practical effort to verify that the targets intended to be attacked are not cultural property protected under Article 4 of the Convention.
- b) taking all possible precautions when choosing means and methods of attack with the aim of avoiding accidental damage to cultural property protected under Article (4) of the Convention, and in any case limiting this to the narrowest possible scope.
- c) refrain from deciding to launch any attack that might be expected to cause excessive incidental damage to cultural property protected under Article 4 of the Convention, beyond the tangible and direct military advantage expected to be achieved by that attack.
- d) cancel or suspend any attack if it becomes clear that:

- 1- The target is cultural property protected under Article 4 of the Convention.

- 2- The attack may be expected to cause excessive incidental damage to cultural property protected under Article 4 of the Convention, beyond the tangible and direct military advantage expected to be achieved by that attack. Accordingly, the Contracting Parties must be obligated to take as much as possible the necessary precautions to protect cultural property by working to keep it away from combat zones, whether by moving it or avoiding residing near it, in application of the text of Article 8 of the same 1999 Protocol, which also states that “Precautions against the effects of hostile acts Hostility: Parties to the conflict shall, as much as possible, do the following:

- a) Removing movable cultural property from the vicinity of military objectives or providing it with adequate protection at its location.

- b) Avoid establishing military objectives near cultural property.” Considering cultural property as a human cultural heritage, it must be respected and its civil character preserved so that it is not targeted, and all these precautions must be taken in times of peace to avoid previous mistakes (Sandoz, Yves. Swinarski, Christophe Zimmermann, Bruno. 1986, p. 658-659). However, our perspective suggests that that all these rules are insufficient if national and international punitive deterrent measures are not taken for anyone who dares to violate them. The occupying state must also be committed to returning everything that is transported or stolen to its original country without condition or restriction.

In addition to this, Article 85, paragraph 4 (d), of the First Additional Protocol of 1977 annexed to the Geneva Conventions, in its second section relating to the suppression of grave violations, stipulates that “The following acts, in addition to the grave violations specified in the previous paragraphs and in the Conventions, are considered grave violations of the annex to the protocol, if intentionally commits a violation of the Conventions or the annex of the protocol”:(d) launching attacks on clearly identifiable historical monuments, places of worship and works of art that represent the cultural or spiritual heritage of peoples and for which special protection is afforded. Under certain arrangements, for example within the framework of a competent international organization, which results in the severe destruction of these objects, at a time when there is no evidence of the opponent’s violation of Paragraph (b) of Article (53) and at a time when these effects are not Historic places of worship and works of art are located in direct proximity to military objectives.



It is clear from this text that targeting cultural property is a serious violation of international conventions, which requires punishing anyone who attacks it. To avoid this, it is necessary to clearly mark it so as to identify it not as subject to any military attack. It is also not permissible to exploit it as military target and to be far from it. In addition to the possibility of seeking assistance from a specialized international organization capable of protecting it, this will certainly not happen unless there is a political will among the member states. (Sandoz, Yves. swinarski, Christophe .Zimmermann, Bruno.1986, p. 1027).

Therefore, to enhance and ensure this protection, it is necessary to mark it with distinctive signs and inform the enemy of it in various ways so that it is not vulnerable to any attack, and so that no one can use the excuse of not knowing it, because targeting it is considered a war crime, in accordance with the provisions of Articles 10, 16, and 17 of the Hague Convention of 1954 and Article 38 of the First Additional Protocol of 1977.

Article 16 of the Second Additional Protocol of 1977 relating to the Protection of Victims of Non-International Armed Conflicts adds that “It is prohibited to commit any hostile acts directed against historical monuments, works of art and places of worship that constitute the cultural or spiritual heritage of peoples and to use them in support of the war effort, without prejudice to the provisions of The Hague Convention relating to the Protection of Cultural Objects in the Event of Armed Conflict of 1954 » Accordingly, cultural property was designated for protection in the event of non-international armed conflicts by virtue of the emergence of this type of conflict after World War II in many countries, and resulted in many grave violations, such as those that occurred in Bosnia on the occasion of the non-international armed conflict in the former Yugoslavia, where Serb forces hostile to it and to Muslims in particular unlawfully destroyed places of worship. (Peter Maas, 2007, pp. 170-172).

In addition to this, the protection of cultural property in the event of non-international armed conflict was affirmed and strengthened in Chapter Five of the Second Protocol 1999 annexed to the 1954 Hague Convention in its twenty-second article entitled: Armed conflicts not characterized by an international character in the first paragraph by saying: “This Protocol applies in the event of An armed conflict that is not characterized by an international character and takes place within the territory of one of the parties. Thus, protection here expands its scope and is greatly strengthened in such circumstances. Therefore, all that remains is for both parties to the conflict to commit to implementation, and for international agencies to monitor and intervene urgently in the event of violations.

As for the criminal prosecution of those accused of committing grave violations against cultural property, whether during international or non-international armed conflicts, and which are classified as war crimes and crimes against humanity, we find the Rome Statute of 1998 relating to the Permanent International Criminal Court, in its eighth article, making every attack on property, buildings, sites or civil monuments against which attacks, looting, seizure or destruction may not be directed constitute war crimes, as these acts are considered grave violations. Anyone taking part in committing them, directly or indirectly, bears criminal responsibility, but on the condition that their targeting is not the result of their use as military targets, so that it does not lose the protection assigned to it, as stated in the second paragraph of the Rome Statute: “2 - For the purpose of this statute, war crimes mean:

-a) Serious breaches of the Geneva Conventions of August 12, 1949, any of the following acts against persons or property protected by the relevant provisions of the Geneva Convention:

4 - Widespread destruction of property and seizing it without military necessity justifying it and in violation of the law and in a frivolous manner.

-b) Other serious violations of the laws and customs applicable to international armed conflicts within the established scope of international law, any of the following acts:...

2 - Intentionally directing attacks against civilian sites, that is, sites that do not constitute military targets.



9 - Intentionally directing attacks against buildings designated for religious, educational, artistic, scientific or charitable purposes, historical monuments, hospitals and places where the sick and wounded are collected, provided that they are not military targets.

13- Destroying or seizing enemy property unless this is to destroy or seize what is necessitated by the necessities of war.

16 - Looting any town or place, even if it was seized by force.

e) Other serious violations of the laws and customs applicable to armed conflicts not of an international character, within the established scope of international law, any of the following acts:

4 - Intentionally directing attacks against buildings designated for religious, educational, artistic, scientific, or charitable purposes, historical monuments, hospitals, and places where the sick and wounded gather, provided that they are not military targets.

5 - Looting any town or place, even if it was seized by force.

12 - Destroying or seizing enemy property unless such destruction or seizure is necessitated by the necessities of war.

In addition, the criminal prosecution of those accused of committing grave violations against cultural property has been confirmed in Articles 15 to 21 of Chapter Four relating to criminal liability and jurisdiction stipulated in the Second Protocol 1999 annexed to the 1954 Hague Convention since every person who commits any of the acts criminalized under this Protocol must bear individual criminal responsibility, and that jurisdiction to try criminals rests with national courts, and all countries have to do is amend their national laws in order to have jurisdiction.

3- Conclusion:

To summarise, cultural property is a common human heritage for all peoples of the world and, therefore, it is incumbent on all of us to preserve and protect it in times of peace and war. It is also necessary for countries and governments to take the necessary preventive and deterrent measures to ensure its protection and to establish a national penal system so that whoever attacks them shall be punished, in addition to the necessity of establishing cooperative relations among government and activating the role of international conventions by committing to their optimal implementation in times of armed conflicts and in good faith. For this reason, we have finally arrived at a set of results and recommendations as follows:

3.1 :Results:

- Despite the existence of an arsenal of international conventions to protect cultural property in times of armed conflict, serious violations against it still occur, and the best example of this is the daily attacks that happened in Iraq and Palestine, especially on Al-Aqsa Mosque.

- The existence of a global organization (UNESCO), which is one of the most important specialized agencies of the United Nations concerned with the protection of cultural property in times of peace and armed conflict, but its role is relative in achieving the greatest degree of protection.

- The rule still common to everyone is that once war breaks out, all international conventions that regulate it become ineffective or unrecognized; in other words, they are ignored. Evidence of this is what happened after World War II on the occasion of non-international armed conflicts in the former Yugoslavia, Rwanda, Somalia, Iraq, Lebanon, especially Palestine and today's war between Russia and Ukraine.

- The role of the Permanent International Criminal Court is relative with regard to limiting and suppressing serious violations against cultural property, especially since it is restricted by complementary jurisdiction in exercising its powers.

- The International Committee of the Red Cross has a role in protecting cultural property, as it always seeks, in times of peace and even in times of war, to provide assistance and advice to countries and to call on them to take precautions and preventive and deterrent measures to provide the greatest amount of protection, but many countries do not cooperate with it.

3.2: Suggestions:

- Commitment must be made to establish military sites in times of peace far from civilian targets.
- Contracting States Parties must commit not to use and exploit cultural property for military purposes.
- The necessity of establishing cooperative relations between each of the countries, the International Committee of the Red Cross and UNESCO in the field of cooperation, providing advice and assistance in taking preventive and deterrent measures in times of peace first and then war, and registering all cultural property in the international registry.
- With the presence of international bodies specialized in protecting cultural property, their role in the field of protection and oversight must be activated and facilitated, especially during times of armed conflicts by the conflicting parties.
- As a precaution, the process of placing the emblem and distinctive signs on cultural property must begin with the aim of distinguishing it so that it is not vulnerable to any military attack.
- Disseminating knowledge of the provisions of international humanitarian law, especially the rules related to the protection of cultural property, among all civilian and military circles at their various levels, specializations, and ranks.
- Organizing field trips for the benefit of all constituents of society, even for members of the armed forces, to identify cultural property and understand its meaning and features so that it is known to everyone, to raise awareness of its importance and to protect it from any looting or destruction to which it may be exposed.
- It is the duty of all countries to adopt a national penal system that is consistent with the objectives of the International Criminal Court and to cooperate with it in the field of prosecuting and punishing those accused of assaulting cultural property in times of peace and armed conflict.

4- Reference list:**• Publications:**

- Ahmed Abu Al-Wafa, *International Humanitarian Law*, (Cairo: Supreme Council of Culture, 2006)
- Ali Khalil Ismail Al-Hadithi, (1999), *Protection of Cultural Property in International Law*, first edition, Dar Al-Shorouk for Publicity and Advertising, Jordan.
- Muhammad Sameh Amr, (2005), *Provisions for the Protection of Cultural Property in Periods of Armed Conflict and Occupation*, in a collective book entitled: *International Humanitarian Law - Prospects and Challenges - Part One*, Al-Halabi Legal Publications, Lebanon.
- Mustafa Ahmed Fouad, (2005), *Protection of Holy Religious Places from the Perspective of International Humanitarian Law*, in a collective book entitled: *International Humanitarian Law - Prospects and Challenges - Part Two*, Al-Halabi Legal Publications, Lebanon.
- Omar Saadallah, (2002), *International Humanitarian Law - Documents and Opinions*, first edition, Majdalawi, Jordan.
- Peter Maas, (2007), *Cultural Property and Historical Monuments*, second edition, in a collective book by: Lawrence Fashler and others, *War Crimes*, Azmana Publishing and Distribution, Jordan.
- Pictet, J. (1956), *Commentaire IV la convention de Genève 1949, relative à la protection de personnes civiles en temps de guerre*, CICR, Genève.
- Sandoz, Y. Swinarski, C. Zimmermann, B. (1986), *Commentaire des protocoles additionnels du 08 juin 1977 aux conventions de Geneve du 12 août 1949*, CICR, Martinus Nijhoff Publishers, Genève.
- Sherif Bassiouni, (2007), *Crimes against Humanity*, second edition, in a collective book by: Lawrence Fashler and others, *War Crimes*, Azmana Publishing and Distribution, Jordan.



- Stephen R. Ratner, (2007), Types of War Crimes, second edition, in a collective book by: Lawrence Fashler and others, War Crimes, Azmana Publishing and Distribution, Jordan.

• **Website:**

- UNESCO, the 1970 UNESCO Convention held in Paris, relating to the measures to be taken to prohibit the illegal import, export and transfer of ownership of cultural property. Retrieved on March 25th, 2023. From <http://conventiontext/fr/org.unesco.whc,arabic>.