

The Prohibition on the Export, Removal and Transfer of Ownership of Cultural Property from Occupied Territories in International Law

L'interdiction de l'exportation, du déplacement et du transfert de propriété des biens culturels provenant des territoires occupés en droit international

Interzicerea în Dreptul Internațional a exportului, a sustragerii și a transferului de proprietate asupra bunurilor culturale provenind din teritorii ocupate

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Abstract

Besides armed conflict, International Humanitarian Law also governs situations of military occupation, which endanger cultural property by either threatening the physical integrity thereof or by acts of theft, vandalism or misappropriation.

It is the general obligation of the Occupying Power to maintain public order and public security throughout the occupied territory, by fully cooperating with the local competent authorities, including with regard to the protection of the endangered heritage, the relevant rules needing to be properly respected and enforced.

In addition to those obligations which are in common with those applicable during a regular armed conflict, a state of military occupation implies the duty of preventing and prohibiting any kind of unlawful export, removal and transfer of ownership of cultural property from the occupied territories. These issues are well regulated in International Law, by the 1954 First Protocol and by the 1999 Second Protocol to the Hague Convention of 1954, but also by the 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The present article explores the legal regime regulated by these instruments, by discussing the main substantial provisions of International Law and how they are or they should be applied and enforced in practice, with a critical assessment of whether the current applicable legal status is enough or whether it still leaves certain issues uncovered and the regulations lacking.

Keywords: *military occupation; cultural property; cultural heritage; export; removal; transfer; return; 1954 First Protocol; 1999 Second Protocol.*

Résumé

Outre les conflits armés, le Droit international humanitaire régit également les situations d'occupation militaire, qui mettent en danger les biens culturels, soit en menaçant leur intégrité physique, soit par des actes de vol, de vandalisme ou de détournement.

La Puissance Occupante a l'obligation générale de maintenir l'ordre public et la sécurité public dans l'ensemble du territoire occupé, en coopérant pleinement avec les autorités locales

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compétentes, y compris en ce qui concerne la protection du patrimoine menacé, les règles pertinentes devant être dûment respectées et appliquées.

Outre les obligations communes à celles applicables lors d'un conflit armé ordinaire, un état d'occupation militaire implique le devoir de prévenir et d'interdire toute forme d'exportation, de déplacement et de transfert de propriété illicites de biens culturels provenant des territoires occupés. Ces questions sont bien réglementées en Droit international, par le Premier Protocole de 1954 et par le Deuxième Protocole de 1999 à la Convention de La Haye de 1954, mais aussi par la Convention de 1970 concernant les mesures à prendre pour interdire et empêcher l'importation, l'exportation et le transfert de propriété illicites des biens culturels.

Le présent article explore le régime juridique régi par ces instruments, en examinant les principales dispositions substantielles du Droit international et la manière dont elles sont ou devraient être appliquées et mises en œuvre dans la pratique, avec une évaluation critique si le statut juridique actuellement applicable est suffisant ou s'il laisse encore certaines questions sans réponse et si la réglementation est insuffisante.

Mots-clés: *occupation militaire; biens culturels; patrimoine culturel; exportation; déplacement; transfert; remettre; Premier Protocole de 1954; Deuxième Protocole de 1999.*

Rezumat

Pe lângă conflictele armate, Dreptul Internațional Umanitar reglementează de asemenea situațiile de ocupație militară, care pun în pericol bunurile culturale fie prin amenințarea integrității fizice a acestora, fie prin acte de furt, vandalism sau însușire nelegală.

Este obligația generală a Puterii Ocupante să mențină ordinea și securitatea publice pe întregul teritoriu ocupat, prin cooperarea completă cu autoritățile locale competente, inclusiv cu privire la ocrotirea patrimoniului în pericol, fiind nevoie ca regulile relevante să fie respectate și aplicate.

Suplimentar față de acele obligații comune cu cele aplicabile pe timp de conflict armat obișnuit, starea de ocupație militară implică obligația de a preveni și a interzice orice fel de export, sustragere sau transfer de proprietate ilicite cu privire la bunurile culturale provenind din teritoriile ocupate. Aceste chestiuni sunt bine reglementate de Dreptul Internațional, de către Primul Protocol din 1954 și de Al Doilea Protocol din 1999 la Convenția de la Haga din 1954, dar și de către Convenția din 1970 asupra măsurilor ce urmează a fi luate pentru interzicerea și împiedicarea operațiunilor ilicite de import, export și transfer de proprietate al bunurilor culturale.

Prezentul articol explorează regimul juridic reglementat de aceste instrumente, prin discutarea principalelor prevederi substanțiale ale Dreptului Internațional și a felului în care sunt ori cum ar trebui să fie aplicate și puse în practică, printr-o evaluare critică a faptului dacă regimul juridic aplicabil în prezent este suficient ori dacă încă rămân anumite aspecte neacoperite, iar reglementările sunt insuficiente.

Cuvinte-cheie: *ocupație militară; bunuri culturale; patrimoniu cultural; export; sustragere; transfer; restituire; Primul Protocol din 1954; Al Doilea Protocol din 1999.*

INTRODUCTION

The systematic plunder – often followed by the illegal exportation or transfer of ownership – of cultural property items from occupied territories has always been a challenge to the idea

of preserving and conserving the history and culture of humanity. We can, in this regard, refer to the activities of Nazi Germany, which had several well-organized brigades and squads especially entrusted with unlawfully transferring items from all over the occupied countries in order to enrich the German Reich¹.

It is equally important to mention the Soviet army, which swept through the countries it had occupied in Eastern and Central Europe with several of its so-called 'trophy units', whose purpose was the same: the appropriation of valuable items of cultural heritage to be taken to Moscow ostensibly as 'war reparations' for the damages suffered by the Soviet Union during the war². Even more recently, following the occupation of Crimea by Russian forces in 2014, there have been reports of entire collections of art and other cultural items from Crimean museums being transferred to Russian territory³.

The issue, therefore, has long-standing legal and political dimensions, remaining highly relevant in contemporary contexts. We must point out from the very beginning that the protection of cultural property against the dangers and threats of armed conflict represents a broader and more extended topic, but the focus of the present article is much more specific. The legal questions explored herein are what international obligations exist governing the protection which an Occupying Power must award to cultural property throughout the occupied territories against acts of export and unlawful transfer, what consequences derive from breaches thereof, and whether and how can these obligations be enforced.

As such, the article shall cover, first, a brief legal clarification of the essential notions involved of 'cultural property' and 'military occupation', and then it will address the key legal norms and regulations in the matter of preventing and sanctioning unlawful acts of export, removal and transfer of ownership of cultural property. In the end, the article will discuss the numerous challenges identified in properly applying and respecting these issues.

I. CLARIFICATIONS ON THE MAIN LEGAL CONCEPTS

The legal concept of 'cultural property' (arguably used interchangeably with that of 'cultural heritage')⁴ finds itself defined in International Law primarily by the so-called 'Hague regime'⁵, a core framework made up of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict⁶ (now having 138 States Parties)⁷ and its two

¹ *Judgment of the Nuremberg International Military Tribunal (30 September and 1 October 1946)*, available in 41 American Journal of International Law (1947) 172.

² Konstantin Akinsha, 'Stalin's Decrees and Soviet Trophy Brigades: Compensation, Restitution in Kind, or "Trophies" of War?' (2010) 17 International Journal of Cultural Property 2, 195-216.

³ Council of Europe, Congress of Local and Regional Authorities, 47th session, 'The Destruction of Cultural Heritage in Ukraine' (25 September 2024), CG (2024) 47-12prov, 3.

⁴ Francesco Francioni and James Gordley (eds), *Enforcing International Cultural Heritage Law* (Oxford University Press 2013) 12.

⁵ Roger O'Keefe, 'Protection of Cultural Property' in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford University Press 2014) 494.

⁶ Convention for the Protection of Cultural Property in the Event of Armed Conflict, with Regulations for its Execution (done at The Hague, 14 May 1954, entered into force 7 August 1956), 249 UNTS 240 (*hereinafter referred to as the '1954 Hague Convention'*).

⁷ UNESCO, 'States Parties to the 1954 Hague Convention and its two (1954&1999) Protocols' <www.unesco.org/en/heritage-armed-conflicts/states-parties> last accessed 1 September 2025.

Protocols, the 'First' one dating also from 1954⁸ (which in fact deals exclusively with the situation of military occupation, regarding the export and import of cultural property from occupied territory and the return of such property) and the 'Second' one, a more recent instrument, from 1999 (now with 92 States Parties)⁹.

For the purpose of all these instruments and of International Law as a whole, the formal legal definition is contained in Article 1 of the Hague Convention, in accordance with which 'cultural property' refers to 'movable or immovable property of great importance to the cultural heritage of every people'¹⁰. Of direct and immediate relevance to the idea of exportation or removal of cultural property are, in our opinion, movable items. We do note that there is a distinct discussion in doctrine on whether so-called 'detached' individual pieces removed from immovable property may fall within its scope¹¹.

While there is no clear and definite enumeration or list of cultural property, doctrine and case law agree that this concept includes works of art, paintings, sculptures, manuscripts, books and numerous other objects of historical or archaeological importance, which must be of great importance to humanity¹².

The 1954 Hague Convention, by virtue of Article 18(2) thereof, becomes applicable to 'all cases of partial or total occupation of the territory of a High Contracting Party'¹³, but in order to first define and understand the notion of 'occupation', one must read Article 42 of the 1907 Hague Regulations¹⁴, which has long been deemed as reflective of Customary International Law¹⁵. As such, a territory becomes occupied when it is 'actually placed under the authority of the hostile army', in other words where a foreign authority is established and can be exercised and has jurisdiction over said territory¹⁶.

The Occupying Power is, therefore, placed under strict international legal obligations towards the people, the authorities and the property located within the occupied territory. The same customary definition of 'occupation' was also upheld by the International Criminal Tribunal for the former Yugoslavia expressly when cultural property items are concerned¹⁷.

⁸ First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (done at The Hague, 14 May 1954, entered into force 7 August 1956), 249 UNTS 358 (*hereinafter referred to as the '1954 First Protocol'*).

⁹ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (done at The Hague, 26 March 1999, entered into force 9 March 2004), 2253 UNTS 212 (*hereinafter referred to as the '1999 Second Protocol'*).

¹⁰ 1954 Hague Convention, Article 1.

¹¹ See, for example, Gloria Fernández Arribas, 'The Narrow Protection of Cultural Properties and Historical Monuments in The Rome Statute: Filling the Gap' (2019) 21 *International Community Law Review* 129; Kevin Chamberlain, *War and Cultural Heritage: A Commentary on the Hague Convention 1954 and Its Two Protocols* (2nd edition, Institute of Art and Law 2013) 103.

¹² Roger O'Keefe, *The Protection of Cultural Property in Armed Conflict* (Cambridge University Press 2010) 31; International Criminal Court, *The Prosecutor v Germain Katanga and Mathieu Ngudolo Chui* (Decision on the confirmation of charges), ICC-01/04-01/07, (30 September 2008) [310].

¹³ 1954 Hague Convention, Article 18(2).

¹⁴ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted at The Hague, 18 October 1907, entered into force 26 January 1910), Article 42.

¹⁵ Thomas Graditzky, 'The Law of Military Occupation from the 1907 Hague Peace Conference to the Outbreak of World War II: Was Further Codification Unnecessary or Impossible?' (2018) 29 *European Journal of International Law* 4, 1305-1326, 1317.

¹⁶ Marco Sassoli, *International Humanitarian Law. Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edition, Edward Elgar Publishing 2024) 329.

¹⁷ ICTY, *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case IT-98-34-T, Trial Chamber, Judgment of 31 March 2003 [222]-[223].

II. THE LEGAL REGIME OF THE 1954 FIRST PROTOCOL

Despite the obvious preoccupation of the drafters of the 1954 Hague Convention for the immense and systematic removal of art and antiquities by Nazi Germany and by the USSR – with countless items being later found on the black markets and some not found at all even up to our days¹⁸ –, they were aware that such matters implied several issues of private law, which most States were quite unwilling to interfere with by means of an international treaty¹⁹.

The agreed solution was to leave these matters out of the Convention altogether and instead to adopt, at the same time, a different instrument, the First Protocol. Despite initial reticence towards it, the First Protocol now has 115 States Parties²⁰ and, as already mentioned above, deals exclusively with the exportation and return of cultural items from and to occupied territories. However, we have to mention that the Protocol is extremely brief, as it only has five substantial paragraphs. It must be said from the beginning that the Occupying Power has a double obligation with respect to cultural property, as the prohibition covers both acts committed by third parties and those done by the Occupant's forces themselves²¹.

The Occupying Power has the duty of both prohibiting and preventing all illicit acts of export of cultural property from the occupied territory²². This obligation covers, in fact, public bodies such as authorities and military forces, as well as any private actors. The prohibition on exportation is an absolute one – no further conditions are imposed regarding the procedure or the way the export takes place²³, nor are there any time limits set in this regard. Furthermore, we note that the Occupying Power is not allowed to decide by itself, arbitrarily and without any legitimacy, whether the prohibition covers all items or not, or whether certain objects are permitted to be exported or transferred – the prohibition covers all cultural property items, without any distinction whatsoever²⁴.

Failure by the Occupying Powers to prevent the exportation of cultural items from the territories they occupy requires them to pay an 'indemnity' to the good faith (*bona fide*) holders of such objects²⁵, which have to be returned in any event. This indemnity is not developed or explained any further, leaving the matter thus to be solved and settled between the parties involved in each particular case. If we are to look towards the applicable private law principles in similar matters, we may assume that such indemnity should include the item's purchase price, all costs, expenses and fees borne by the holder, as well as any increase in the property's value²⁶.

¹⁸ Such as, for example, Raphael's *Portrait of a Young Man*.

¹⁹ O'Keefe (*supra* n 13) 196.

²⁰ UNESCO, 'States Parties to the 1954 Hague Convention and its two (1954&1999) Protocols' <www.unesco.org/en/heritage-armed-conflicts/states-parties> last accessed 1 September 2025.

²¹ O'Keefe (*supra* n 13) 198.

²² 1954 First Protocol, Paragraph I.1.

²³ Chamberlain (*supra* n 12) 104.

²⁴ ICRC – International Humanitarian Law Databases – Customary IHL Rule 41 ('Export and Return of Cultural Property in Occupied Territory') <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule41>> last accessed 1 September 2025.

²⁵ 1954 First Protocol, Paragraph I.4.

²⁶ Manlio Frigo, *La protezione dei beni culturali nel diritto internazionale [The Protection of Cultural Property in International Law]* (Giuffrè 1986) 27.

A holder's good faith may well be assessed by reference to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects²⁷ (now having 56 States Parties)²⁸, which was concluded in an attempt to unify private law provisions in the matter. According to this, 'good faith' refers to the fact that the holder was not aware and could not have been aware of the property's stolen character²⁹, though of course complete diligence in this regard is difficult to exercise and even more difficult to prove.

The First Protocol also imposes obligations with respect to States other than the Occupying Power, which are required to take into custody (therefore, a duty to preserve is implied by reference also to private law principles) cultural property imported into their jurisdictions from the occupied territory³⁰, a duty which is also absolute in nature³¹. This means, we believe, that States should comply with this obligation as a matter of International Law, regardless of the domestic regulations applicable. States should, therefore, take into custody such items either by themselves, *de jure*, as soon as a certain item is clearly identified as having been unlawfully exported from a territory under occupation, or upon request by the competent authorities.

At the end of the occupation, all Parties in such situation must return the cultural property located within their jurisdiction and which are being kept in custody to the competent authorities of the previously-occupied territory³². A relatively rare but positive example of this provision being effectively put into practice – and thus to be appreciated – was in 1994, when Israel returned to Egypt archaeological material it had excavated in the occupied Sinai Peninsula following the Six-Day War of 1967³³.

Equally important, the Protocol expressly states that such property 'shall *never* be retained as war reparations'³⁴, irrespective of what the domestic law of such States provides. The State in custody of the cultural items must return them to the previously-occupied State³⁵, which then has the follow-up obligation of determining on its domestic (national) level the individuals entitled to those items and the actual measures which must be taken to return them.

The First Protocol also addresses the issue of movable property deposited abroad for protection and preservation during hostilities (on the initiative of the local authorities). At the end of the occupation, such property shall be returned by the depositary State to the competent authorities of the formerly occupied territory³⁶. We have to draw attention to the fact that the objects in question must be returned to the relevant local authorities³⁷ and not to the former owners (as natural or legal persons) directly.

²⁷ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (done at Rome, 24 June 1995, entered into force 1 July 1998), 2421 UNTS 457 (*hereinafter referred to as the '1995 UNIDROIT Convention'*).

²⁸ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) – States Parties <www.unidroit.org/instruments/cultural-property/1995-convention/status/> last accessed 1 September 2025.

²⁹ 1995 UNIDROIT Convention, Article 4(1).

³⁰ 1954 First Protocol, Paragraph I.2.

³¹ Chamberlain (*supra* n 12) 104.

³² 1954 First Protocol, Paragraph I.3.

³³ UPI Archives, 'Israel returns antiquities to Egypt' (28 December 1994) <www.upi.com/Archives/1994/12/28/Israel-returns-antiquities-to-Egypt/9633788590800/> last accessed 1 September 2025.

³⁴ 1954 First Protocol, Paragraph I.3 (*emphasis ours*).

³⁵ O'Keefe (*supra* n 13) 199.

³⁶ 1954 First Protocol, Paragraph II.5.

³⁷ Maria Anna Iosifidou, Irini Stamatoudi, 'From Ratification to Reality: The 1954 Hague Convention Seventy-One Years Later' (2015) 8 *Heritage* 326, 333.

This was the case, for example, with Polish cultural property which had been deposited in Canada just before the Nazi occupation³⁸. Issues might arise in this regard with a very prolonged occupation, such as the Turkish occupation of Northern Cyprus, which has already lasted for half a century. In this case, perhaps the matter can be better and more effectively solved through cooperation with the authorities of the occupied zone.

The receiving State's obligation to return cultural items is an absolute one as well, unconditioned by any compensation being paid or by any other political factors. For example, the United States acted in violation of this requirement when for several decades it refused to return to Hungary the Crown of Saint Stephen, used to crown the Kings of Hungary and taken into custody immediately after World War II, simply for political reasons³⁹. However, no time limit or statute of limitations is enacted for this obligation to return cultural property, which some commentators have considered as lacking⁴⁰. In our view, speaking from the perspective of comparative law, all major legal systems award the owner the benefit of a real action (*in rem*), which is not bound by any extinctive prescription and which is able to follow the item into the hands of any owner⁴¹.

Unfortunately, we see that very few States actually take the necessary steps of implementing and enforcing the provisions of the First Protocol within their domestic legislation.

The Netherlands, perhaps unexpectedly, used to be an illustratively negative example in this regard: it proved unable to take the effective measures necessary for returning four Orthodox icons illicitly imported into its territory from Turkish-occupied Northern Cyprus, due to provisions of the Dutch Civil Code on good faith acquisition of title and due to the time limitations for restitution claims⁴², even if the Netherlands was a Party to the First Protocol at the time. As a side note, internal legislation has since been adopted in the meanwhile to fully comply with International Law⁴³.

III. COMPLEMENTARY INTERNATIONAL LEGAL INSTRUMENTS

Nevertheless, the issues of illegal exportation and unlawful transfer of ownership over cultural property from occupied territories were not fully settled or solved through the First Protocol, as there have been numerous situations of plunder of heritage and the exportation thereof, such as the Vietnamese occupation of Cambodia⁴⁴, the Iraqi occupation of Kuwait⁴⁵, or the continuing Turkish occupation of Northern Cyprus⁴⁶.

³⁸ O'Keefe (*supra* n 13) 199.

³⁹ *Ibid.*

⁴⁰ Chamberlain (*supra* n 12) 104.

⁴¹ *Ibid.*

⁴² District Court of Rotterdam (The Netherlands), *Autocephalous Greek Orthodox Church in Cyprus v. William O. A. Lans*, Civil Case number 44053, Judgment of 4 February 1999.

⁴³ UNESCO Database of National Cultural Heritage Laws – Netherlands (Kingdom of the) <<https://whc.unesco.org/en/statesparties/nl/Laws>> last accessed 1 September 2025.

⁴⁴ Gregory H Fox, 'The Vietnamese Intervention in Cambodia – 1978' in Tom Ruys and Olivier Corten (eds), *The Use of Force in International Law: A Case-Based Approach* (Oxford University Press 2018) 243.

⁴⁵ Brittany Neihardt, 'The Intentional Destruction of Cultural Heritage As a Tool for Ethnocide: The Case of Kuwait' (2017) *Independent Studies* <<http://hdl.handle.net/10822/1043707>> last accessed 1 September 2025.

⁴⁶ Stefan Talmon, 'The Cyprus Question before the European Court of Justice' (2001) 12 *European Journal of International Law* 4, 727-750, 728.

This was one of the reasons why UNESCO adopted, in 1999, the Second Protocol to the Hague Convention⁴⁷. This Protocol, designed to supplement the Convention rather than replace it⁴⁸, seeks to bring and update the regime thereof to a much modern state. It briefly restates the Parties' obligation to both prohibit and prevent any illicit export, removal or transfer of ownership of all cultural property from occupied territories⁴⁹, with the term 'illicit' referring to and being defined for the purposes of the Protocol as being done either in compulsion, or otherwise in violation of International Law or of the domestic legislation applicable within the territory in question⁵⁰.

Also according to the Protocol, States must adopt effective measures of administrative, disciplinary or legislative nature in order to suppress the intentional commission of such acts⁵¹. For those States which are also Parties to the First Protocol (the ratification of which we note that is not necessary for becoming a Party to the Second one), the basic obligation is thus restated, but the most valuable addition seems indeed to be the development and the clarification of the term 'illicit'⁵².

Besides the Hague Convention and its two Protocols, we must also mention another relevant international instrument, namely the 1970 UNESCO Convention against Illicit Import, Export and Transfer of Ownership of Cultural Property⁵³, currently with 148 States Parties⁵⁴. While the Convention deals chiefly with the restitution of trafficked cultural property and other procedural safeguards for preventing and fighting against trafficking, Article 11 specifically considers that the export and transfer of ownership of cultural property under compulsion deriving either directly or indirectly from an occupied territory shall be illicit⁵⁵. This is, in our view, an absolute presumption, with no other conditions or requirements being imposed, and even if the authorities of the occupied territory would have somehow 'consented' to the exportation voluntarily.

States must also work together in order to remove the causes of the unlawful export and to make proper reparations for any damages thus provoked⁵⁶. However, doctrine has pointed out the difficulty in interpreting and applying this in the absence of a clear, constant and relevant practice⁵⁷. An isolated example of these provisions being relied on before a court of law is represented by the 1990 decision of a US Court of Appeals which obliged an American art dealer to return Byzantine mosaics stolen from occupied Northern Cyprus to the rightful authorities, those being the Orthodox Church of Cyprus⁵⁸.

⁴⁷ Patrick J O'Keefe and Lyndel V Prott (eds), *Cultural Heritage Conventions and Other Instruments: A Compendium with Commentaries* (Institute of Art and Law 2011) 16.

⁴⁸ 1999 Second Protocol, Article 2.

⁴⁹ *Ibid.*, Article 9(1)(a).

⁵⁰ *Ibid.*, Article 1(g).

⁵¹ *Ibid.*, Article 21.

⁵² Sassòli (*supra* n 17) 14.

⁵³ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted at Paris, 14 November 1970, entered into force 24 April 1972), 823 UNTS 231 (*hereinafter referred to as the '1970 UNESCO Convention'*).

⁵⁴ UNESCO, 'Fight Illicit Trafficking (1970 Convention) – About 1970 Convention' <www.unesco.org/en/fight-illicit-trafficking/about> last accessed 1 September 2025.

⁵⁵ 1970 UNESCO Convention, Article 11.

⁵⁶ *Ibid.*, Article 2(2).

⁵⁷ O'Keefe (*supra* n 13) 315.

⁵⁸ Court of Appeals for the Seventh Circuit (United States of America), *Autocephalous Greek-Orthodox Church of Cyprus and the Republic of Cyprus v Goldberg and Feldman Fine Arts, Inc., and Peg Goldberg*, 917 F.2d 278 (7th Cir. 1990) (24 October 1990).

IV. RECENT DEVELOPMENTS

In addition to the positive law discussed above, we have to note that the International Committee of the Red Cross has affirmed that the main rules governing the prohibition on export and unlawful transfer of ownership over cultural property from occupied territories, as well as the obligation to return such items to the proper authorities, are also established in Customary International Law⁵⁹. This might very well serve as a remedy for enforcing and applying these rules even in cases where the involved States are not Parties to the relevant conventions.

Even more recently and equally interestingly, the UN Security Council has also taken up the matter – its key Resolution 2347 of 2017 expressly calls upon the Member States of the UN to cooperate in investigating, prosecuting, seizing, returning and repatriating trafficked and illegally exported cultural property⁶⁰. In fact, a large part of the budget of several designated terrorist organizations around the world derives from trafficking cultural heritage items on black markets⁶¹.

The Security Council asked States to prepare inventories, to adopt adequate and effective measures and regulations, to establish specialized agencies and units (as Italy has successfully and most effectively done so by establishing a task force specialized in cultural heritage within its *Carabinieri* structures)⁶² to cooperate with INTERPOL and police agencies etc.

This resolution, however, was not adopted under Chapter VII of the UN Charter and is therefore not mandatory. In this regard, we believe that more effort could have been undertaken, especially since only two years prior, the Security Council had adopted Resolution 2199⁶³, having as its express legal basis Chapter VII and being very imperative in its language. This Resolution, having as primary goal the fight against terrorist groups such as Daesh and Al-Qaida by mainly targeting their primary financing sources, expressly recognizes cultural heritage traffic and smuggling as an income-generating source for these groups and imperatively requires States to take active measures in order to prohibit, prevent and sanction illicit trade in cultural items illegally removed from Iraq and Syria, in close cooperation with and under supervision from UNESCO.

CONCLUSION

The main challenges which remain, therefore, are first of all a lack of a proper enforcement mechanism on the international level: there basically is no framework by which the international community can compel a State to comply with the obligation to return stolen cultural property, for example. The Occupying Power may simply not acknowledge the obligations it has under this regime, let alone comply with them.

⁵⁹ ICRC Customary IHL Rule 41 (*supra* n 25).

⁶⁰ UNSC Resolution 2347 (24 March 2017), UN Doc S/RES/2347 (2017).

⁶¹ Alice Munnely, 'Compliant or complicit? Security implications of the art market', European Union Institute for Security Studies (27 October 2021) <www.iss.europa.eu/publications/briefs/compliant-or-complicit-security-implications-art-market> last accessed 1 September 2025.

⁶² Paolo Foradori, 'Protecting Cultural Heritage during Armed Conflict: the Italian Contribution to "Cultural Peacekeeping"' (2017) 22 *Modern Italy* 1.

⁶³ UNSC Resolution 2199 (12 February 2015), UN Doc S/RES/2199 (2015).

In addition, other than the Nuremberg Trials, there have been no examples of international criminal responsibility involved for failing to abide by these key provisions and we are witnessing how International Criminal Law is seemingly becoming more and more threatened nowadays.

Furthermore, time can also be a challenge: it may initially be difficult enough to prove that a specific item was forcibly removed from occupied territories, but the inexorable passage of time only makes this more difficult.

Even in the rare cases in which such mechanisms are identified, for example through bilateral negotiations or through the specific framework of an international organization (UNESCO, for example), enforcement and compliance with these rules may be slowed down, may involve politically-sensitive matters, and in the end is reliant on cooperation and good faith between the parties involved anyway.

In conclusion, the export, removal and transfer of ownership of cultural property from occupied territories are clearly prohibited under International Law. The 1954 Hague Convention and its two Protocols, as well as the 1970 UNESCO Convention, form together a coherent framework that protects cultural heritage in situations of occupation.

However, enforcement remains inconsistent to this day. Political will, evidentiary challenges related to the applicable burden and standard of proof, conflict with domestic and private laws on restitution and the protection of good faith holders, as well as a somewhat limited jurisdictional reach, all hinder the proper application of these norms in the absence of a complete enforcement mechanism at the international level, relying instead on the good faith and the cooperation of the States involved.

We can only hope that international interest in these matters will continue to increase and will not be limited to adopting and encouraging the ratification of international treaties, but hopefully it will include strong proposals for actual proper enforcement and compliance mechanisms designated to ensure respect for International Law in this field.

Starvation as a Method of Instrumentalizing Natural Disasters in Armed Conflict

La famine comme méthode d'instrumentalisation des catastrophes naturelles dans les conflits armés

Înfometarea ca metodă de instrumentalizare a dezastrelor naturale în conflict armat

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Abstract

This paper examines starvation as a prohibited method of warfare under International Humanitarian Law, with a specific focus on its instrumentalization through natural disasters. It argues that belligerents who deliberately exploit or aggravate disaster-induced vulnerabilities by destroying food stocks, blocking access to water, or preventing relief fall within the scope of the prohibition, even where causation is shared with natural forces. The analysis highlights three core points: causation need not be exclusive, foreseeability can serve to infer intent, and the actual occurrence of starvation is irrelevant to establishing a violation. The paper concludes by stressing the need for clearer interpretative standards and stronger enforcement mechanisms to address these evolving challenges.

Keywords: *Starvation, Armed Conflict, Methods of Warfare, Causation, Foreseeability.*

Resumé

Cet article examine la famine en tant que méthode de guerre prohibée par le droit international humanitaire, en mettant l'accent sur son instrumentalisation à travers les catastrophes naturelles. Il soutient que les belligérants qui exploitent ou aggravent délibérément les vulnérabilités engendrées par un désastre, en détruisant des stocks alimentaires, en bloquant l'accès à l'eau ou en empêchant l'acheminement de l'aide, relèvent de l'interdiction, même lorsque la causalité est partagée avec des forces naturelles. L'analyse met en évidence trois points essentiels: la causalité n'a pas besoin d'être exclusive, la prévisibilité peut permettre d'inférer l'intention, et la survenance effective de la famine est sans pertinence pour constater une violation. L'article conclut en soulignant la nécessité de clarifier les standards interprétatifs et de renforcer les mécanismes d'application face à ces défis émergents.

Mots-clés: *Famine, conflit armé, méthodes de guerre, causalité, prévisibilité.*

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This article was prepared with the assistance of AI tools, solely for editing purposes. All original ideas, legal reasoning, and conclusions presented in this article are solely those of the author.