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# INTERNATIONAL PROTECTION OF CULTURAL HERITAGE IN ARMED CONFLICT: REVISITING THE ROLE OF SAFE HAVENS

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**Abstract**

*In 2017, the UN Security Council adopted Resolution 2347, lauded as "a historic milestone" in the international struggle to safeguard cultural heritage in armed conflict. Among a wide spectrum of recommended actions, this instrument encourages the UN State Members to establish a network of "safe havens" in their own territories to protect cultural property, "while taking into account the cultural, geographic, and historic specificities of the cultural heritage in need of protection." In this regard, Resolution 2347 makes explicit reference to the 2016 Abu Dhabi Declaration on heritage at risk in the context of armed conflicts, a Declaration which promotes the creation of a network of "safe havens" in the country of origin, and as a last resort in another country. This article discusses the international law framework of extraterritorial "safe havens" for cultural property. In particular, it analyses: 1) the legal notion of safe haven in international law documents; 2) the operationalisation of safe havens for endangered cultural property in the practice of states, analysing recent regulatory initiatives at the national level; and 3) safe havens in the global, multi-faceted governance of cultural heritage, examining the relevance of safe havens for peacekeeping operations and for the development of the UN doctrine of Responsibility to Protect.*

**Keywords**: *Safe havens; armed conflict; international cooperation; global governance; cultural peacekeeping, Responsibility to Protect*

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## I. INTRODUCTION

The institution of safe havens for endangered movable cultural heritage is now gaining prominence in light of the current threats to such materials caused by armed conflicts and terrorism. Yet the concept of cultural heritage refugees is by no means a new one. In fact, museums, as public institutions, have always offered *sui generis* safe havens for cultural refugee artworks. One of the first institutions of this kind, the *Musée des Monuments Français*, created to preserve the art and history of the French Middle Ages and Renaissance for future generations, was also intended to safeguard such material testimonies of the past from the threats of Revolutionary iconoclasm and destruction.[1] Hence the

[1] See Alexandra Stara, *The Museum of French Monuments 1795-1816: "Killing art*

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trauma stemming from great destruction contributed to more systemic solutions towards the protection of endangered cultural patrimony. Unsurprisingly, this is also true for the entire international law system for the protection of cultural heritage; born from the ashes of the Second World War and developed in the light of subsequent armed conflicts in Afghanistan and former Yugoslavia. Indeed, the most recent tragedy of human communities and their heritage in Syria and Iraq has again raised the question of how the international community should respond to such acts. The answers offered are referenced to the variety of problems, from enforcing international criminal responsibility to the protection of cultural material unlawfully removed from territories affected by war and terrorism. This renewed interest and the dire need for protection, together with the efforts of many institutions – museums and other entities – have resulted in a wide-spread search for novel methods to counteract the destruction of cultural heritage. At the same time, one can observe various trends aimed at reconsidering and re-conceptualising previous mechanisms and practices, including safe havens for endangered cultural property.

This article explores the international law framework for safe havens for movable cultural heritage temporarily relocated on the territories of third countries for safekeeping outside conflict zones. Both international and domestic practices manifest a number of cases in which such protective measures have been employed, with the active participation of museums and non-governmental entities.[2] Moreover, the establishment of such refuges for endangered cultural property is increasingly perceived as both a moral obligation and legal duty, aimed at rescuing, safeguarding, and returning cultural objects to the human communities which have created and/or enjoyed such heritage. This article aims at reconstructing the international law status of safe havens for cultural property at risk. First, it analyses the legal notion of a safe haven in international law documents. Next it discusses actual practices

*to make history"*, Ashgate, 2013.

[2] For an extensive analysis of the concept of safe havens for threatened cultural property, see Martin Gerner: "Managing Cultural Sustainability: Safe Haven, Cultural Property, and Sustainability in Best Practice" in Evelyne Lagrange, Stefan Oeter, and Robert Uerpmann-Wittzack, eds., Cultural Heritage and International Law: Objects, Means and Ends of International Protection, Springer, 2018.

of safe havens for endangered cultural property and their role in the protection of cultural heritage in armed conflicts. Finally, it addresses the current trends in global cultural heritage governance with respect to cultural property safe havens, analysing the relevance of safe havens for peacekeeping operations and development of the UN doctrine of Responsibility to Protect (R2P). Hence the main objective of this article is to scrutinise the current role of safe havens in international law and policy for the protection of cultural heritage in situations of armed conflict and terrorism.

## II. THE INTERNATIONAL LAW NOTION OF "SAFE HAVEN" FOR ENDANGERED CULTURAL PROPERTY

International law does not offer a uniform, formal definition of safe havens for endangered cultural property. However, the idea of such facilities situated outside conflict-ridden territories had already been discussed in late 1930s. In fact, the Preliminary Draft of the International Convention for the Protection of Historic Buildings and Works of Art in Time of War, proposed by the International Office of Museums of the League of Nations in 1938,[3] broadly referred to the issue of refuges designed to "shelter in time of war works of art or of historic interest".[4] According to Article 4 of this draft treaty such refuges were immune from acts of hostility and open to international inspection. Although the adoption of this international law instrument was prevented by the outbreak of the Second World War, the need for establishing special refuges for endangered cultural material was fully recognised. Subsequently, the notion of safe havens was substantiated in Article 18 of the Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention).[5] Accordingly, when the transfer of cultural property

[3] Preliminary Draft of the International Convention for the Protection of Historic Buildings and Works of Art in Time of War, with annexed Regulations for its execution. LNOJ. 19th Year. No. 11 (November 1938) 937.

[4] Further see Jiří Toman, Cultural Property in War: Improvement in Protection Commentary on the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, UNESCO Publishing, 2009, pp. 170-171.

[5] Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, opened for signature 14 May

abroad, outside a conflict zone, is undertaken under special protection, the depositary (host) state "shall extend to it as great a measure of care as that which it bestows upon its own cultural property of comparable importance." This article also establishes the depository's obligation to protect the depositor's property from measures of constraint and to return it upon the cessation of the conflict. The duties of the depository state are also enshrined in Paragraph 5 of Protocol (I) to the 1954 Hague Convention:[6]

> *Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came.*

The establishment of refuges for endangered cultural property is also mentioned among possible measures of international assistance listed in the UNESCO Guidelines for the Implementation of the 1999 Second Protocol to the 1954 Hague Convention.[7]

However, perhaps the most important contribution to the conceptualisation of safe havens was given by an expert-based, non-governmental body: the International Law Association (ILA). In 2008, the ILA Cultural Heritage Law Committee adopted the resolution: *Guidelines for the Establishment and Conduct of Safe Havens* (ILA Guidelines).[8] According to the definition provided by this doctrinal document:

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1954, 249 UNTS 240 (entered into force 7 August 1956).

[6] Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, opened for signature 14 May 1954, 249 UNTS 358 (entered into force 7 August 1956).

[7] UNESCO, 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, 2017, available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/1999-SecondProtocol_Guidelines_2017_Eng.pdf, accessed on 28 October 2018, Annex 3, Table 2.

[8] International Law Association, *Guidelines for the Establishment and Conduct of Safe Havens*, Resolution No. 2/2008 of 2008, available at: http://www.ila-hq.org/en/committees/index.cfm/cid/13, accessed on 28 October 2018.

> safe havens are facilities created in order to care for cultural material that has been endangered by armed conflict, natural disasters, illegal excavation, or other insecurity and has therefore been removed for safekeeping and preservation from the territory of the source state to the territory of another state or to a place of safety in the source state.[9]

Such "facilities" are bound to "return cultural material items as soon as the established owner or other established source of the material so requests, provided that the safe haven is satisfied with the conditions for safekeeping and preserving the material by the requesting state or entity."[10] The ILA Guidelines have been instrumental in the further developments in international policy. In particular, the Draft Action Plan for the Implementation of the 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 (Draft Action Plan) contains "several suggestions to facilitate" such safeguarding activities, mentions various possible scenarios and recalling the ILA Guidelines.[11] In this regard, the UNESCO Committee for the Protection of Cultural Property in the Event of Armed Conflict, while referring to the Regulations for the Execution of the 1954 Hague Convention and Protocol (I) to this Convention, defines "a safe haven for movable heritage" as "a secure location where cultural property can be stored, maintained or even restored in certain cases."[12] It also associates the concept with "a preventive 'right to asylum' for cultural property, which should be kept in what could be qualified as 'refuge storerooms'" …. established to "prevent them from suffering important damages, and partial or total destruction."[13]

Apparently, the increasing importance of safe havens for cultural

[9] *Ibid*, Point 2; the resolution also provides a model contract between a "Source State" or "Source Entity" and a "Safe Haven".

[10] *Ibid*, Point 4(j).

[11] UNESCO, Draft Action Plan for the Implementation of the 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, 2017, available at: https://en.unesco.org/sites/default/files/results_web-heritage_at_risk.pdf, accessed on 27 October 2018.

[12] UNESCO, Report commissioned by UNESCO on decision of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, 2017, UNESCO Doc. C54/17/12.COM/6, Annex 1, p. 40.

[13] *Ibid.*

property in the evolving regime of the 1954 Hague Convention can be associated with the failure of the "special protection" system under this treaty. Such a higher level of protection might be granted to refuges intended to shelter movable cultural property in the event of armed conflict, providing that the cultural property in question is situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, and such property may not be used for military purposes. The cultural property is granted special protection by its entry in the International Register of Cultural Property under Special Protection, maintained by the Director-General of UNESCO. The inscription is made upon the submission to the Director-General of UNESCO of a request of the state on whose territory the cultural property is found. In practice, there has been no much interest in this regime, seen as complicated and not very useful in providing a true safe shelter.[14] In fact, there is a very low number of inscriptions on the corresponding international register. Hence the idea of less-formalised safe havens seems to be perceived as an alternative, operational way of securing shelters to cultural material in the event of an armed conflict. Yet the UNESCO Committee for the Protection of Cultural Property in the Event of Armed Conflict also emphasises that "the implementation of safe havens for cultural property should not be regarded as a primary option but as a last resort, after all recourse to protect cultural property in situ has been exhausted," based on "mutual acceptance and assistance" between the depositor and depositary.[15] In other words, such extraterritorial facilities can only be used if the risks to movable heritage cannot otherwise be avoided. Therefore, their envisaged role needs to be limited.

In light of the above, it may be said that in international law safe havens for endangered cultural property in the event of armed conflict are considered as methods of safeguarding such materials in light of the regime of the 1954 Hague Convention. Yet there seems to be no obstacles to the operation of safe havens beyond the context of an armed conflict. They may be employed to safeguard cultural property in the event of other dangers, such as natural disasters and catastrophes.[16]

[14] Toman, see note 4, p. 22 ff.
[15] *Ibid*, p. 41.
[16] See note 6, Preamble; Gerner, see note 2, pp. 186-200.

## III. PRACTICAL OPERATIONALISATION OF SAFE HAVENS

Although the international law foundations of safe havens for endangered movable cultural heritage are rooted in the humanitarian regime of the 1954 Hague Convention, the actual practice of such refuges has a long history of contractual arrangements established between depositor and depositary states. Moreover, the operation of safe havens has gradually been regulated by national legislation.

### A. EARLY PRACTICE

There are three famous, emblematic cases involving the safeguarding of foreign cultural and national treasures from the threats of the Spanish Civil War and the Second World War in Central Europe. These examples, widely discussed in the legal scholarship, involved most of the problems usually linked to the establishment of cultural heritage safe havens: a determination of the danger/safety of a region; identification of the proper authority to accept the objects; and the legitimacy of the representatives (authorities) who are to accept back the preserved cultural material once the danger is over.

The first case refers to the evacuation of the most important paintings and drawings from the collections of the Museum of Prado in Madrid. Upon the recommendation of the League of Nations, the objects were sent to the Museum of Art and History in Geneva, and duly returned to Madrid once the Civil War ended.[17] In turn, the second case conceerns a large, priceless collection of sixteenth-century tapestries from the Royal Wawel Castle in Cracow.[18] In September 1939, these treasures had been evacuated from Cracow before the Nazi troops could seize them. In 1940 they eventually reached Canada, where they were stored and safeguarded. The problem arose in 1945, when Canada recognised the new pro-Soviet government of Poland, while the former Polish non-communist government-in-exile still operated in London. On

[17] See Wayne H. Bowen, *Spain during World War II*, University of Missouri Press, 2006, p. 142.

[18] Sharon A. Williams, "The Polish Art Treasures in Canada, 1940–1960", *Canadian Yearbook of International Law*, vol. 15, 1977; Stanisław E. Nahlik, "The Case of the Displaced Art Treasures. History and Appreciation of a Polish-Canadian Strife", *German Yearbook of International Law*, vol. 23, 1980.

the occasion of the claim issued by the new government of Poland, Canada had to decide to whom the treasure should be returned: to the newly-established Polish authorities or to the government-in-exile. After long diplomatic negotiations, the disputed tapestries were finally returned to the Royal Wawel Castle in 1961. The third case refers to the Holy Crown of St Stephen – the most venerated symbol of Hungarian national identity and statehood. In 1945, after the surrender of the German forces the Hungarian administration, which was afraid of a Soviet invasion, entrusted the crown and other coronation regalia to the US for safekeeping. After the war – similarly to the case of the Polish royal tapestries – the question arose whether the crown could be returned to a country under Soviet domination. After years of diplomatic negotiations and litigation in the US courts, the crown was handed over to the Hungarian people in 1978.[19]

## B. CURRENT DEVELOPMENTS

More recent instances of the practice of extraterritorial safe havens regard, *inter alia*, the evacuation of the collection of the National Library of Lebanon to Verdun in France (1979) during the first years of the Civil War (1975–90); and the preservation of various collections from Iraq in the US, Syria, Kuwait, and Saudi Arabia during the recent armed conflicts in that country.[20] Yet perhaps the most extensive programme of safekeeping and evacuation of cultural material was undertaken in Afghanistan. During the Taliban regime (1996–2001), the curators of the National Museum of Afghanistan of Kabul requested the Guimet Museum in Paris to take temporary charge of a number of collection pieces[21] retrieved from the market by a non-governmental body, the Society for the Preservation of Afghanistan's Cultural Heritage (SPACH).[22] Upon the consent of the French authorities, these

[19] Charles Rousseau, "États-Unis et Hongrie: remise de la couronne de Saint Etienne à la Hongrie par les Etats-Unis", *Revue générale* de *droit international public*, vol. 82, no. 3, 1978.

[20] See René Teijgeler, "Preserving Cultural Heritage in Times of Conflict" in Gary E. Gorman and Sydney J. Shep, eds., *Preservation Management for Libraries, Archives and Museums*, Facet Publishing, 2006.

[21] Pierre Cambon, "The Role of the Guimet Museum in the Study and the Preservation of Afghan Heritage", *Museum International*, vol. 55, no. 3-4, 2003.

[22] Brendan Cassar and Ana Rosa Rodríguez García, "The Society for the Preservation

arrangements were concluded. In addition, in 1999, an "Afghan Museum in Exile" was set up at the Swiss Afghanistan Institute in Bubendorf to house confiscated objects from the illicit art and antiquities trade until the situation in Afghanistan became stable. This activity was supported by UNESCO in its capacity as an intergovernmental organisation.[23] It is also important to mention that Switzerland has also recently served as a refuge for Palestinian cultural property during political unrest in Gaza.[24]

Since 2015 there have also been several important legislative developments on the national level aimed at countering the illicit trafficking of antiquities from Iraq and Syria. To date, Switzerland, France, the US and the UK have enacted internal legal instruments for the housing, in their respective territories, of movable cultural property removed for safekeeping from foreign conflict zones. Accordingly, under the Federal Law on the Protection of Cultural Objects in the Event of Armed Conflict, Catastrophe and Emergency Situations, Switzerland may, under the auspices of UNESCO, provide safe havens, i.e. "secure premises provided by the Confederation for the temporary fiduciary custody of moveable cultural property which forms part of the cultural heritage of a given state, and which is under serious threat in the territory of the state possessing or holding such property."[25] To this end, the Federal Council may conclude international treaties which would regulate technical and legal arrangements and conditions relating to the operation of safe havens for foreign cultural property under threat as the result of armed conflict, disasters, or emergency situations.[26] Similarly in 2016, France introduced new provisions to its Code of

of Afghanistan's Cultural Heritage: an Overview of Activities since 1994" in Juliette van Krieken-Pieters, ed., *Art and Archaeology of Afghanistan: Its Fall and Survival; a Multi-Disciplinary Approach*, Brill, 2006.

[23] See further Lyndell V. Prott, "The Protection of Cultural Movables from Afghanistan: Developments in International Management" in Juliette van Krieken-Pieters, see note 22.

[24] Alessandro Chechi, "Rescuing Cultural Heritage from War and Terrorism: A View from Switzerland, *Santander Art and Culture Law Review*, vol. 1, no. 2, 2015, p. 93.

[25] Switzerland. *Federal Law on the Protection of Cultural Objects in the Event of Armed Conflict, Disaster and Emergency Situation*, Ordonnance No. 520.31 of 2014, available at <https://www.admin.ch/opc/fr/classified-compilation/20132905/index.html>, Art. 12(1) and Art. 2(c).

[26] Chechi, see note 24, pp. 88-91.

Heritage[27] relating to safe havens for cultural property in cases where such property is in a state of emergency and serious danger because of an armed conflict or disaster on the territory of the state that owns or possesses it.[28] Such refuges can be granted at the request of the state that is the owner or holder of endangered properties. Arguably, the most interesting, innovative element of the French regulatory solution lies in its recognition of the value of safe havens as tools of international peace and security and global cultural cooperation. Accordingly, such refuges can be granted not only at the request of the state that is the owner or holder of endangered properties, but also when the UN Security Council (UNSC) adopts a resolution in this regard.[29] The establishment of a safe haven must be notified to UNESCO. Moreover, safeguarded cultural properties may be displayed at national or international exhibitions intended to make known that this heritage in danger. At the operative level, French authorities announced in late 2016 their plans to construct new storages in the Museum of Louvre in Liévin, about 210 kilometres north of Paris, which would also serve as a safe haven for cultural property at risk of looting and destruction in conflict zones of the Middle East.[30]

To a limited extent, the US federal legislation also provides for the possibility of establishing safe havens for endangered cultural property. Under the Protect and Preserve International Cultural Property Act, adopted to "protect and preserve international cultural property at risk due to political instability, armed conflict, or natural or other disasters,

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[27] France, *Code of Heritage*, Ordonnance No. 2004-178 of 2004, available at <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074236>.

[28] France, *Freedom of Creation, Architecture and Heritage Act*, Law No. 2016-925 of 2016, available at <https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=A8DB0923FCA860713EEACE27BF97CF23.tplgfr25s_1?cidTexte=JORFTEXT000032854341&idArticle=LEGIARTI000032855854&dateTexte=20160708>.

[29] *Ibid*, Art. L. 111-11; see UNSC, *Report of the Secretary-General on the implementation of Security Council resolution 2347 (2017)*, 17 November 2017, UN Doc. S/2017/969, Para. 84.

[30] See Claudia Barbieri, "A Shelter for Art Caught in the Crossfire", *The New York Times*, 11 March 2017, available at: https://www.nytimes.com/2017/03/11/arts/louvre-shelter-for-art-caught-in-the-crossfire.html, accessed on 26 October 2018.

and for other purposes."[31] Such a possibility can be applied to Syrian cultural property protected by specified import restrictions with respect to any archaeological or ethnological material coming from this country. The said restrictions can waived if the President certifies to Congress that: the foreign owner or custodian of the specified cultural property (depositor) has requested that the property be temporarily located in the US for protection purposes. The property shall be returned upon request to the depositor; and "the grant of a waiver will not contribute to illegal trafficking in cultural property or financing of criminal or terrorist activities."[32] The safeguarded property is immune from seizure according to federal legislation on the protection of cultural material imported for temporary exhibition.[33] Interestingly, a special form of safe havens has also been recently introduced into the legal system of the UK. On 12 September 2017 the UK, after decades of hesitation, finally ratified the 1954 Hague Convention and its two Protocols.[34] Part 5 of the Cultural Property (Armed Conflicts) Act[35] regulates the UK's obligations to safeguard cultural property transferred abroad, outside a conflict zone, undertaken under special protection pursuant Article 12 of the Convention. In this regard, the UK would act as depositary for cultural property in the circumstances established in Article 18 of the Regulations for the Execution of the 1954 Hague Convention. Accordingly, such properties could not be seized or forfeited.

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[31] United States, *Protect and Preserve International Cultural Property Act*, Public Law 114-151 of 2016, available at <https://www.congress.gov/114/plaws/publ151/PLAW-114publ151.htm>, Preamble.

[32] *Ibid*, Sec. 3(a).

[33] *Ibid.*

[34] See Agnieszka Jachec-Neale, "UK's Cultural Property (Armed Conflicts) Act 2017 – Legislation 60 Years in Making", *Santander Art and Culture Law Review*, vol. 3, no. 2, 2017.

[35] United Kingdom**,** *Cultural Property (Armed Conflicts) Act*, Chapter 6 of 2017 of 2017, available at <https://www.legislation.gov.uk/ukpga/2017/6/contents>.

## IV. GLOBAL GOVERNANCE AND SAFE HAVENS FOR ENDANGERED CULTURAL PROPERTY

Alongside the above summarised developments in domestic legislation and practice, the topic of safe havens for movable cultural heritage at risk owing to threats of terrorism and armed conflicts has entered the global agenda for international peace and security. Accordingly, in 2017 the UNSC adopted Resolution 2347[36] – the first resolution by this global governance body exclusively devoted to the protection of cultural heritage under threat from armed conflict and terrorism, addressed in the context of international peace and security. One of the key features of this instrument consists in its focus on enhanced multilevel cooperation between distinct actors operating on both the international and national forums. In addition to the strengthened collaboration between international organisations and agencies (UNESCO, World Customs Organisation (WCO), INTERPOL and the UN Office on Drugs and Crime (UNODC)), the UNSC fosters the participation of civic society, including experts and practitioners, in elaborating "standards of provenance documentation, differentiated due diligence and all measures to prevent the trade of stolen or illegally traded cultural property."[37] Remarkably, among a wide range of recommended actions Resolution 2347 encourages the members of the UN to establish a network of "safe havens" in their own territories to protect cultural property, "while taking into account the cultural, geographic, and historic specificities of the cultural heritage in need of protection".[38]

### A. STATE SOVEREIGNTY AND SAFE HAVENS

At the first glance, the solution adopted in Resolution 2347 may seem limited in scope, since the UNSC emphasises the role of states, rather than international bodies, and gives them the primary responsibility for protecting endangered cultural heritage through the creation of safe havens in their own territory.[39] Undoubtedly, this solution was

[36] UNSC, "Maintenance of International Peace and Security", Resolution 2347 of 2017, UN. Doc S/RES/2347.

[37] *Ibid*, Para. 17(g).

[38] *Ibid*, Para. 16.

[39] See Andrzej Jakubowski, "Resolution 2347: Mainstreaming the protection of cul-

designed to underscore full respect for states' sovereignty over their cultural heritage. The possibility of establishment of extraterritorial safe havens for endangered cultural heritage was vigorously opposed by some members of the UNSC. The representative of Egypt noted that "the establishment of a network of safe havens, can be undertaken only with the support of the State custodian of that cultural heritage."[40] Such refuges "should be established only on its territory", and he stressed that Egypt rejects "any interference, present or future, in the internal affairs of a State on the pretext of protecting cultural heritage." In particular, "the transfer of a State's cultural heritage out of its territory under the pretext of conserving it in safe havens" should be excluded.[41] It was also mentioned that extraterritorial safe havens might give rise to a risk that safeguarded cultural material would not be restored to its country of origin.[42] The opposite view was, instead, presented by Uruguay, whose representative in the UNSC argued that "[p]riority must be accorded to preserving cultural goods in the event of conflict in the territory of the affected country only when the option of foreign safe havens is not available."[43] The importance of various forms of safe havens was also reiterated by Audrey Azoulay, Director General of UNESCO.[44] Due to these controversies, the idea of extraterritorial safe havens (established in third countries) was not openly supported by the UNSC. However, Resolution 2347 does not fully reject such a possibility. In fact, it makes reference to the UNESCO's Draft Action Plan which – as already mentioned – opts for a broader notion of safe havens, as proposed by the ILA Guidelines. Hence it can be summarised that the UNSC encourages the UN Member States to safeguard their movable cultural heritage in the context of armed conflicts pursuant a network of safe havens in their own territories, considering various circumstances and specificities of the cultural heritage in need of protection, and thus not excluding the establishment of such refuges in third countries.

tural heritage at the global level", *Questions of International Law*, vol. 48, zoom-in, March 31, 2017, p. 37.

40 UNSC, *Proceedings of the 7907th meeting of the Security Council*, 24 March 2017, UN Doc S/PV.7907, p. 15.

41 *Ibid.*

42 *Ibid.*

43 *Ibid*, p. 14.

44 *Ibid.*

## B. PROTECTING FOREIGN CULTURAL PROPERTY AS AN HUMANITARIAN OBLIGATION

The operationalisation of safe havens in Resolution 2347 goes, however, beyond the discussion on state sovereignty over cultural heritage, and the nature of contractual arrangements between depositor and depositary states. In fact, it seems to implicitly link the issue of safe havens with compliance with the obligations vested on states by Protocol (I) to the 1954 Hague Convention: "to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory" (Paragraph 2); and to return, at the cessation of hostilities, "to the competent authorities of the territory previously occupied", the cultural property which has been illegally removed from that territory (Paragraph 3). Accordingly, it calls upon the UN Member States to take:

> *appropriate steps to inventory cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance which have been illegally removed, displaced or transferred from armed conflict areas, and coordinate with relevant UN entities and international actors in order to ensure the safe return of all listed items.*[45]

Thus, the UNSC, by obliging Member States to create inventories of unlawfully removed cultural property, implicitly recognises the value of extraterritorial refuges for cultural material unlawfully removed in connection with armed conflict and/or terrorism, thus guising them as important instruments for implementing the regime of the 1954 Hague Convention and fostering the maintenance of international peace and security.

Resolution 2347 also acknowledges and bridges various already existing cross-border initiatives on the protection of cultural heritage in armed conflict. In particular, it recalls the Abu Dhabi Declaration, adopted during the Conference on Safeguarding Endangered Cultural Heritage, held on 2-3 December 2016 under the auspices of UNESCO and attended by representatives of forty states.[46] The Abu Dhabi

[45] Resolution 2347, see note 36, Para. 17(j).

[46] *Abu Dhabi Declaration*, *2016*, available at: http://www.diplomatie.gouv.fr/en/french-foreign-policy/cultural-diplomacy/events/article/conference-on-safeguarding-endangered-cultural-heritage-abu-dhabi-declaration, accessed on 27 October 2018.

Declaration, proposed and promoted by France and United Arab Emirates, is credited as being "a critical step toward third-party States taking on responsibility for the protection of cultural heritage."[47] Alongside with launching a special international fund, based in Geneva (Switzerland), designated to protect endangered cultural heritage in armed conflict, it also calls for the creation of "an international network of safe havens" for cultural property endangered by terrorism and armed conflicts to be established *in situ*.[48] However, if the protection cannot be secured at the national level, such refuges can be established in "a neighbouring country, or as a last resort, in another country." Such facilities must be established "in accordance with international law" and only "at the request of the governments concerned, and taking into account the national and regional characteristics and contexts of cultural property to be protected."[49] The conceptual linkage between the Abu Dhabi Declaration and Resolution 2347 is evident. However, the approach taken by the UNSC is much more consistent in addressing the need for global, multi-faceted collaborative governance to safeguard cultural property in situations of armed conflict and/or terrorism. Accordingly, Resolution 2347 encourages the involvement of "museums, relevant business associations and antiquities market participants."[50] In such a context, it is necessary to mention the role of the Association of Art Museum Directors (AAMD). This organisation, with its current network of 242 directors in the US, Canada, and Mexico, issued already in 2015 a set of guidelines on providing safe havens for cultural property "in danger of being destroyed or looted as a result of war, terrorism or natural disaster."[51] These are particularly focused on issues of scientific documentation of the safeguarded cultural property, provenance research, access to and public display of such materials,

[47] Polina Levina Mahnad, "Safe Havens, Innovations in the protection of cultural property", 2017, available at: https://www.justiceinfo.net/en/justice-reconciliation/33119-innovations-in-the-protection-of-cultural-property.html, accessed on 26 October 2018.

[48] *Abu Dhabi Declaration*, see note 46.

[49] *Ibid.*

[50] Resolution 2347, see note 36, Para. 17(g).

[51] *AAMD Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis, 2015*, available at: https://aamd.org/document/aamd-protocols-for-safe-havens-for-works-of-cultural-significance-from-countries-in-crisis, accessed on 26 October 2018.

and international and inter-institutional cooperation.

## C. SAFE HAVENS AND CULTURAL PEACEKEEPING

Another important part of the global framework for the protection of cultural heritage consolidated by Resolution 2347 concerns the novel doctrine of "cultural peacekeeping" (CPK).[52] The UNSC affirms that the mandate of the UN peacekeeping operations may encompass the protection of cultural heritage, to be implemented in cooperation with UNESCO and with full respect for state sovereignty.[53] In this regard, the role of UNESCO and its strategy for "Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict"[54] is specifically recalled in the Preamble of Resolution 2347.[55] This strategy, adopted as Resolution 49 of the UNESCO 38th General Conference, defines a global CPK framework, founded on two underlying elements: the inclusion of a cultural component in the mandates of peacekeeping operations where cultural heritage is at risk; and the creation of a task force of experts for the protection of cultural heritage. The first step toward implementation of this new strategy was the Memorandum of Understanding for the establishment of the initial task force – "Task Force in the framework of UNESCO's Global Coalition. Unite4Heritage" – signed in 2016 by Italy and UNESCO.[56] The Task Force was named after UNESCO's "Unite4Heritage" initiative, designed to mobilise State Members of this organisation to more effectively respond to the destruction of cultural heritage by violent extremist groups.[57] Alongside

[52] Paolo Foradori and Paolo Rosa, "Expanding the peacekeeping agenda. The protection of cultural heritage in war-torn societies", *Global Change, Peace & Security*, vol. 29, no. 2, 2017.

[53] Resolution 2347, see note 36, Para. 19.

[54] UNESCO, *Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict*, 2015, UNESCO Doc. 38 C/49 (2015).

[55] Resolution 2347, see note 36, 2nd Recital.

[56] UNESCO, *Memorandum of Understanding between the Government of the Italian Republic and UNESCO*, 2016, available at: http://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1455616287505_2._Memorandum_of_Understanding___11_II_2016_DRAFT_Finale_UNESCO_versione_Italia.pdf, accessed on 26 October 2018..

[57] This campaign was launched by the UNESCO Director-General Ms. Irina Bokova

the military engagement, this new Task Force is to be supported by civilian personnel, including archaeologists, art historians and experts in monuments' conservation. Importantly, its functions also involve "assisting in transferring movable cultural heritage property at risk to safe havens."[58] Hence it may be argued that safe havens have become an integral element of the evolving doctrine and practice of CPK, potentially contributing to more effective methods of safeguarding cultural heritage in peacekeeping operations.

## D. RESPONSIBILITY TO PROTECT ENDANGERED CULTURAL PROPERTY

Undoubtedly, Resolution 2347 has greatly broadened the concept of global responsibility for counteracting the damage and destruction of cultural heritage caused by armed conflicts and terrorism. In this regard, it also seems necessary to recall the current theoretical discussion on the renewed scope of the UN doctrine of Responsibility to Protect (R2P). It is argued that the objective of the R2P should also encompass cultural heritage, thus going beyond its original framework, which was intended to respond to the crimes of genocide, ethnic cleansing, war crimes, and crimes against humanity.[59] This envisaged novel approach is based on the argument that the protection of cultural heritage is indivisible from the protection of human life. Moreover, cultural heritage entails a "dual accountability" of a state, i.e. vis-à-vis its own population as well as that of the international community as a whole.[60] Such a vision was formulated in the Recommendations adopted by the UNESCO experts' meeting on 27 November 2015.[61] They proposed that UNESCO Member

on March 28, 2015 at the University of Baghdad (Iraq). A key task of this was to raise awareness among a wider public about the dangers to our common heritage caused by armed conflicts and terrorists, to sensitise the public to this threat, and to spread information and to mobilise various actors for the protection of endangered heritage; see UNESCO, *Preventing violent extremism through education: a guide for policy-makers*, UNESCO Publishing, 2017, p. 62.

[58] UNESCO, *Memorandum of Understanding*, see note 56.

[59] Federico Lenzerini, "Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage", *The International Spectator*, vol. 51, no. 1, 2016.

[60] Jadranka Petrovic, "What Next for Endangered Cultural Treasures? The Timbuktu Crisis and the Responsibility to Protect", *The New Zealand Journal of Public and International Law*, vol. 11, no. 2, 2013, 414.

[61] UNESCO, "Expert meeting on the 'Responsibility to Protect' and the protection

States and the UNESCO Secretariat:

> *encourage and help States to exercise their responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity through protecting cultural heritage situated in their territory from intentional destruction and misappropriation.*[62]

Accordingly, if national authorities are unable or unwilling to protect their citizens and their cultural heritage, then the responsibility shifts to the international community to take all appropriate measures. These would include "bilateral and multilateral co-operation, and with the support of relevant intergovernmental and nongovernmental organizations" the establishment of safe havens for endangered cultural property and "cultural protected zones."[63] In other words, the R2P in relation to cultural heritage can be seen as a form of global solidarity in joint endeavours and concrete solutions to provide protection. Safe havens are thus seen as an important tool for effectively implementing the global responsibility for safeguarding cultural heritage in danger.

## VI.CONCLUSIONS

Although the practice of cultural heritage refuges has a long history, the role of safe havens in the global efforts for the protection of cultural heritage in danger has recently been emphasised. This stems from the experiences in recent decades of successful instances of safeguarding endangered cultural property by a means of safe havens. Importantly, such a form of safeguarding is seen as one of the recommended methods of compliance with international obligations set out in the 1954 Hague Convention and its Protocols. In particular, the establishment and operation of safe havens are seen as giving effect to Article 18 of the Regulations for the Execution of the 1954 Hague Convention. In practical terms, the functioning of such facilities is gradually being regulated in national legislation and substantiated in various policy

of cultural heritage: Recommendations", 2015, available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/R2P-Recommendations-EN.pdf, accessed on 26 October 2018.

[62] *Ibid,* Para. 2.

[63] *Ibid,* Para. 3.

and doctrinal instruments. On the other hand, pursuant to the UNSC Resolution 2347 safe havens have been guised as instruments to be employed for the maintenance of international peace and security. In this regard, such facilities are also perceived as useful elements of peacekeeping operations, integral to the evolving doctrine of cultural peacekeeping.

Finally, safe havens for endangered cultural property appear to be inherent to the broader concept of global governance of cultural heritage, founded on the institutional and cross-mandate dialogue between the UNSC and UNESCO, and involving the participation of various actors in a multi-level international cooperation. Accordingly, the safeguarding of movable cultural property under threat of destruction by armed conflicts and/or terrorists constitutes a global imperative and moral responsibility vested upon everyone, calling for political, legal and technical cooperation among transnational actors. Safe havens here play a key role, as they spare cultural heritage from damage and dispersal on one hand, and on the other raise awareness among a wider public about the value of heritage and current threats to its integrity.

## REFERENCES

AAMD Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis, 2015. Available at: https://aamd.org/document/aamd-protocols-for-safe-havens-for-works-of-cultural-significance-from-countries-in-crisis. Accessed on 26 October 2018.

Abu Dhabi Declaration, 2016. Available at: http://www.diplomatie.gouv.fr/en/french-foreign-policy/cultural-diplomacy/events/article/conference-on-safeguarding-endangered-cultural-heritage-abu-dhabi-declaration. Accessed on 27 October 2018.

Barbieri, Claudia. "A Shelter for Art Caught in the Crossfire". The New York Times. 11 March 2017. Available at: https://www.nytimes.com/2017/03/11/arts/louvre-shelter-for-art-caught-in-the-crossfire.html. Accessed on 27 October 2018.

Bowen, Wayne H. Spain during World War II. University of Missouri Press. 2006.

Cambon, Pierre. "The Role of the Guimet Museum in the Study and the Preservation of Afghan Heritage". Museum Internatio*nal*. Vol. 55. No. 3-4. 2003.

Cassar, Brendan and Rodríguez García, Ana Rosa. "The Society for the Preservation of Afghanistan's Cultural Heritage: an Overview of Activities since 1994" in Juliette van Krieken-Pieters. Ed. *Art and Archaeology of Afghanistan: Its Fall and Survival; a Multi-Disciplinary Approach*. Brill. 2006.

Chechi, Alessandro. "Rescuing Cultural Heritage from War and Terrorism: A View from Switzerland. *Santander Art and Culture Law Review*. Vol. 1. No. 2. 2015.

Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention. 249 UNTS 240 (opened for signature 14 May 1954, entered into force 7 August 1956).

France. *Code of Heritage.* Ordonnance No. 2004-178 of 2004. Available at <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074236>.

France. *Freedom of Creation, Architecture and Heritage Act*, Law No. 2016-925 of 2016. Available at <https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=A8DB0923FCA860713EEACE27BF97CF23.tplgfr25s_1?cidTexte=JORFTEXT000032854341&idArticle=LEGIARTI000032855854&dateTexte=20160708>.

Gerner, Martin. "Managing Cultural Sustainability: Safe Haven, Cultural Property, and Sustainability in Best Practice" in Evelyne Lagrange, Stefan Oeter, and Robert Uerpmann-Wittzack. Eds. *Cultural Heritage and International Law: Objects, Means and Ends of International Protection*. Springer. 2018.

International Law Association. *Guidelines for the Establishment and Conduct of Safe Havens*. Resolution No. 2/2008 of 2008. Available at: http://www.ila-hq.org/en/committees/index.cfm/cid/13. Accessed on 28 October 2018.

Jachec-Neale, Agnieszka. "UK's Cultural Property (Armed Conflicts) Act 2017 – Legislation 60 Years in Making". *Santander Art and Culture Law Review*. Vol. 3, No. 2. 2017.

Jakubowski, Andrzej. "Resolution 2347: Mainstreaming the protection of cultural heritage at the global level", *Questions of International Law*. Vol. 48. Zoom-in. March 31, 2017.

Lenzerini, Federico. "Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage". *The International Spectator*. Vol. 51. No. 1. 2016.

Mahnad, Polina Levina. “Safe Havens, Innovations in the protection of cultural property”. 2017. Available at: https://www.justiceinfo.net/en/justice-reconciliation/33119-innovations-in-the-protection-of-cultural-property.html. Accessed on 26 October 2018.

Nahlik, Stanisław E. “The Case of the Displaced Art Treasures. History and Appreciation of a Polish-Canadian Strife”. *German Yearbook of International Law*. Vol. 23. 1980.

Petrovic, Jadranka. “What Next for Endangered Cultural Treasures? The Timbuktu Crisis and the Responsibility to Protect”. *The New Zealand Journal of Public and International Law*. Vol. 11, No. 2. 2013.

Preliminary Draft of the International Convention for the Protection of Historic Buildings and Works of Art in Time of War, with annexed Regulations for its execution. LNOJ. 19th Year. No. 11 (November 1938) 937.

Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict. 249 UNTS 358 (opened for signature 14 May 1954, entered into force 7 August 1956).

Prott, Lyndell V. “The Protection of Cultural Movables from Afghanistan: Developments in International Management” in Juliette van Krieken-Pieters. Ed. *Art and Archaeology of Afghanistan: Its Fall and Survival; a Multi-Disciplinary Approach*. Brill. 2006.

Rousseau, Charles. “États-Unis et Hongrie: remise de la couronne de Saint Etienne à la Hongrie par les Etats-Unis”. *Revue générale* de *droit international public*. Vol. 82. No. 3. 1978.

Stara, Alexandra. *The Museum of French Monuments 1795-1816: “Killing art to make history”*. Ashgate. 2013.

Switzerland. *Federal Law on the Protection of Cultural Objects in the Event of Armed Conflict, Disaster and Emergency Situation*. Ordonnance No. 520.31 of 2014. Available at <https://www.admin.ch/opc/fr/classified-compilation/20132905/index.html>.

Teijgeler, René. “Preserving Cultural Heritage in Times of Conflict” in Gary E. Gorman and Sydney J. Shep. Eds. *Preservation Management for Libraries, Archives and Museums*. Facet Publishing. 2006.

Toman, Jiří. *Cultural Property in War: Improvement in Protection Commentary on the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*. UNESCO Publishing. 2009.

UNESCO, *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*. 2017. Available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/1999-SecondProtocol_Guidelines_2017_Eng.pdf. Accessed on 28 October 2018.

UNESCO. “Expert meeting on the ‘Responsibility to Protect’ and the protection of cultural heritage: Recommendations”. 2015. Available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/R2P-Recommendations-EN.pdf. Accessed on 26 October 2018.

UNESCO. *Draft Action Plan for the Implementation of the 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*. 2017. Available at: https://

en.unesco.org/sites/default/files/results_web-heritage_at_risk.pdf. Accessed on 27 October 2018.

UNESCO. *Memorandum of Understanding between the Government of the Italian Republic and UNESCO*. 2016. Available at: http://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1455616287505_2._Memorandum_of_Understanding___11_II_2016_DRAFT_Finale_UNESCO_versione_Italia.pdf. Accessed on 26 October 2018.

UNESCO. *Preventing violent extremism through education: a guide for policy-makers*, UNESCO Publishing. 2017.

UNESCO. *Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict*. 2015. UNESCO Doc. 38 C/49 (2015).

UNESCO. *Report commissioned by UNESCO on decision of the Committee for the Protection of Cultural Property in the Event of Armed Conflict*. 2017. UNESCO Doc. C54/17/12.COM/6.

United Kingdom. *Cultural Property (Armed Conflicts) Act*, Chapter 6 of 2017 of 2017. Available at <https://www.legislation.gov.uk/ukpga/2017/6/contents>.

United States. *Protect and Preserve International Cultural Property Act*. Public Law 114-151 of 2016. Available at <https://www.congress.gov/114/plaws/publ151/PLAW-114publ151.htm>.

UNSC. "Maintenance of International Peace and Security". Resolution 2347 of 2017. UN. Doc S/RES/2347.

UNSC. *Proceedings of the 7907th meeting of the Security Council*, *24 March 2017*. UN Doc S/PV.7907.

UNSC. *Report of the Secretary-General on the implementation of Security Council resolution 2347 (2017)*. 17 November 2017. UN Doc. S/2017/969.

Williams, Sharon A. "The Polish Art Treasures in Canada, 1940–1960", *Canadian Yearbook of International Law*. Vol. 15. 1977.