

**Reinterpreting International Law: Is the Destruction of Cultural Properties
Considered the 'New' War Crime?**

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Introduction

Around the world we are surrounded by a vast array of historical cultural properties that sometimes date back thousands of years. They are of historical, educational and sentimental value. They provide insight into ancient civilizations and represent the values, cultures and traditions of peoples that once roamed that land. However, despite their importance to mankind, the international community only came together to form a comprehensive international legal framework governing cultural property following the horrors of World War Two. Despite this, the protection of cultural properties remained an underrated area in international law, often overlooked for more serious war crimes involving genocide and ethnic cleansing. However, with the unfortunate rise of armed conflicts in numerous continents, the international community have come together to reevaluate their priorities when it comes to adhering to their legal obligations in protecting cultural sites whilst prosecuting the perpetrators.

The first part of this article will briefly focus on the historical development of cultural heritage treaties and the international community's failure to protect cultural properties, especially in the context of ISIS and the armed conflict in Syria and Iraq. The second part will examine the recent developments in the law, focusing on the role of United Nations Security Council (UNSC) and the incorporation of the destruction of cultural properties into international criminal law. Finally, it will look at the role of cultural heritage crimes in international litigations, and whether the initiative to prosecute these crimes will become more prevalent in the future.

Historical Development of International Cultural Heritage Law

The incentive to protect cultural property dates back to the early nineteenth century when it was briefly codified in the First & Second Hague Conventions in 1899 and 1907.¹ Following World War Two, the international community under the auspices of United Nations Education Science Cultural Organization (UNESCO) created the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict & its first protocol.² The comprehensive treaty defined what constituted cultural property and placed several obligations on states to safeguard cultural property in the event of armed conflicts.³ One major difference from previous legal mechanisms is that states are required to undertake “peacetime measures” to safeguard cultural property within their territory as well as to respect cultural property situated in “other High Contracting Parties” territory.⁴ Under Article 2 of the Treaty, belligerents are also expected to adhere to the treaty by requiring them to protect cultural property by either not exposing it to “hostile fire” or “refrain[ing]” from targeting such properties.⁵ However, despite the extensive obligations imposed on states, these obligations are unfortunately not absolute.

Under Article 4(2) of the Treaty, states may target cultural property if deemed to be a “military necessity”.⁶ Once a cultural property is used for military objectives it can become a legitimate target.⁷ Many states have relied on this provision, including the US during its invasion of Iraq when Iraqi forces retreated to the Iraq Museum in

¹ Ashlyn Milligan, *Targeting Cultural Property: Role of International Law*, 2008 J. Pub. & Int’l Aff.s 92, 93.

² *Id.* at 93.

³ Eric Posner, *The International Protection of Cultural Property: Some Skeptical Observations*, 8 Chi. J. Int’l L. 213 (2007)

⁴ *Id.*

⁵ *Id.*

⁶ Milligan, *supra* note 1, at 96.

⁷ *Id.*

Baghdad. Thus, the museum became a legitimate target by the United States.⁸ Iraq had to decide whether using the museum to achieve its objectives was a “military necessity” in order not to be considered in violation of the 1954 Hague Convention.⁹ There have been disagreements as to whether such provision should be interpreted restrictively or liberally.¹⁰ The 1999 Second Protocol of the Hague Convention sought to provide a guideline to determine when states can rely on the military necessity waiver, limiting to it to the vague “no choice” argument.¹¹ Some legal analysts have interpreted “military objectives” according to Article 52(2) of the 1977 Additional Protocol 1 to the Geneva Convention, which states “objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”..¹² Despite its broad meaning, this interpretation could help states determine when cultural property may be legitimately targeted in an armed conflict.

The rise of ISIS: Testing the efficacy of the Hague Convention

The effectiveness of the 1954 Hague Convention came into the spotlight during a turbulent period in the Middle East region, particularly in Syria and Iraq. The rise of ISIS and the clashes between the Assad regime and armed rebels have led to the destruction of many historical artifacts in both countries. It’s important to note that while both Syria and Iraq were parties to the 1954 Convention during the armed

⁸ *Id.* at 97.

⁹ *Id.*

¹⁰ Louise Arimatsu & Mohbuba Choudhury, *Protecting Cultural Property in Non-International Armed Conflicts: Syria and Iraq*, 91 Stockton Ctr. for Int’l L. 641, 679 (2015)

¹¹ *Id.*

¹² *Id.* at 681.

conflict, they were not party to the 1999 Second Protocol of the 1954 Hague Convention which clarifies vague concepts in the original convention and contains additional obligations¹³. Whilst Iraq ratified the 1999 Second Protocol in 2022, Syria has not. According to the reports submitted to UNESCO, the authorities have made some attempts to protect movable items in Syria..¹⁴ However, the dangers of collecting some items particularly in ISIS-controlled areas and the immovability of many artifacts in Syria, hinders efforts by the government to safeguard cultural property.¹⁵ Similarly, the Iraqi authorities moved some artifacts from the Mosul Museum to Baghdad before the city fell to ISIS.¹⁶ Nevertheless, both states have failed to establish a “special protection” regime, which the [treaty] requires beyond the general protection it requires.¹⁷ Government forces and armed rebels have consistently used World Heritage Sites throughout Syria & Iraq, possibly violating Article 4(1) of the Convention, depending if the “military necessity” threshold was met.¹⁸

One unique feature of the Syrian civil war is that many cultural heritage sites played a military role in historical conflicts.¹⁹ These sites are often located in specific locations, such as high ground, which provide military advantage.²⁰ Therefore, history repeats itself and those cultural sites continue to play the role it once played a hundred years ago.²¹ Examples include Aleppo’s Citadel and Bosra Castle.²²

¹³ UNESCO, Making the Convention More Operational: 1999 Second Protocol, <https://www.unesco.org/en/heritage-armed-conflicts/convention-and-protocols/second-protocol> (last visited Feb. 10, 2025)

¹⁴ Arimatsu & Choudhury, *supra* note 10, at 674.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 675.

¹⁸ *Id.* at 677.

¹⁹ *Id.* at 682.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

The problem with treaties is that they bind only states that have signed them. As noted above, neither Iraq nor Syria had ratified the Second Protocol during the armed conflict in both countries, meaning they were not bound to its fundamental concepts such as the principle of proportionality.²³ Nevertheless, it is often argued that many concepts found in The 1954 Hague Convention are considered customary international law but were simply codified in a treaty.²⁴ This means that states are bound to such concepts regardless if they have signed the treaty or not.²⁵ The concept of proportionality makes it clear that once cultural property loses its “special protection” status, parties must refrain from excessive force that could damage the property.²⁶ It is often argued that the Syrian city of Palmyra was not targeted because states cannot guarantee they will adhere to this concept.²⁷ In contrast, the attacks in Aleppo using cluster bombs may have violated this customary norm because those weapons are indiscriminate.²⁸

It can be agreed that all factions involved in the Syrian and Iraqi armed conflict have violated the convention and customary international law²⁹. However, the question remained of what consequences would the groups face for their failures to adhere to their international obligations, if any. The 1954 Convention did not define specific criminal offences whilst both Iraq and Syria were not party to the Second Protocol, which contains a list of specific crimes. Therefore, the only way parties

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 683.

²⁷ *Id.*

²⁸ *Id.*

²⁹ U.S. Department of State, 2022 Country Reports on Human Rights Practices: Syria, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/syria/> (last visited Feb. 10, 2025)

could be found liable is under war crimes that violate customary international law as recognized in non-international armed conflicts.³⁰ However, for the destruction of cultural property to constitute a war crime, there must be a “nexus” to the armed conflict.³¹ Whether individual criminal liability exists depends on whether the cultural property was a “military objective”.³² With the war ravaging Syria, it would have been difficult for courts to decide whether, at that time, the cultural property constituted a legitimate military target. The purposeful destruction of cultural property by ISIS militants may be the only classic example of protected property being destroyed that is not military objectives.³³ Instead, they were destroyed because of ‘idolatry’.³⁴ Furthermore, it is still unknown whether incidental damage to cultural property in non-international armed conflicts can give rise to individual criminal responsibility since the Rome Statue explicitly prohibits such acts in international armed conflicts but doesn’t specify non-international armed conflicts.³⁵ However, there were examples of cases that suggest that such actions are prohibited regardless of the status of the armed conflict. In 2012, Security Council Resolution 2085 condemned the destruction of “cultural and religious sites” by rebels in Mali, stating that it “may” constitute a violation of the Rome Statue if the destruction could not be justified by military necessity .³⁶

A turning point: The mainstreaming of the protection of cultural heritage in armed conflict.

³⁰ Arimatsu & Choudhury, *supra* note 10, at 687.

³¹ *Id.*

³² *Id.* at 688.

³³ *Id.* at 689.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 690.

In 2017, the international community began to realize the impact that the protection of cultural heritage had on security and international order. The chaos and destruction created by militant groups in Syria, Iraq, and Mali led UNSC to adopt Resolution 2347.³⁷ This landmark resolution was the first time that the UNSC addressed the protection of cultural property under the context fighting against terrorism.³⁸ It also reiterated the State's responsibility to protect cultural heritage sites, despite the destruction likely coming from non-state armed groups.³⁹ Whilst the resolution mostly focused on illicit trafficking of cultural objects in warzones, which is often a source of finance for terrorist groups, it also addresses the main concerns of the destruction of cultural property.⁴⁰ Firstly, paragraphs 1-3 requires UN members to prevent and thwart all cultural heritage crimes committed during times of armed conflict, including trade with non-state actors responsible for the destruction.⁴¹ Secondly, it clarifies the definition of cultural heritage crimes as "unlawful attacks against sites and buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments" as such actions "may constitute under certain circumstances and pursuant to international law a war crime" ⁴² Lastly, the resolution strongly encouraged all member states to ratify all international cultural heritage treaties and support UNESCO's mandate and initiatives in safeguarding cultural heritage especially in times of armed conflict.⁴³

³⁷ Andrzej Jakubowski, *Resolution 2347: Mainstreaming the Protection of Cultural Heritage at the Global Level*, Questions of International Law (Mar. 31, 2018), <https://www.qil-qdi.org/resolution-2347-mainstreaming-protection-cultural-heritage-global-level/>

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ S.C. Res. 2347, U.N. Doc. S/RES/2347 (Mar. 24, 2017).

⁴² *Id.*

⁴³ *Id.*

Whilst the UNSC resolution sought to shed light on this grey area of international Law, some member states also wanted to ensure that the protection of cultural heritage sites is not an absolute right. Under paragraph 4, the inclusion of the wording, “may constitute, under certain circumstances and pursuant to international law a war crime,”⁴⁴ indicates an attempt by certain Security Council members to protect themselves from any future litigation. Countries such as the United States and Russia, were heavily involved in the Syrian civil war either through direct military invention or the funding of non-state actors. By limiting the bite of the resolution, both sides of the conflict sought to avoid liability for damages caused to cultural heritage sites as result of their direct or indirect actions. Therefore, the resolution merely reiterated the idea that only in some cases the destruction of cultural properties could be seen as war crime under international law.

As in international law, this could be interpreted broadly or narrowly according to the needs and intentions of the violating member state. The United States, surprisingly, has long considered these treaty obligations to be customary international norms and has incorporated many concepts of the 1954 Hague Convention into its military manuals⁴⁴, despite not officially ratifying the convention until 2009. For example, during the First Gulf War when Saddam Hussein placed Iraqi Aircrafts near the Sumerian city of Sur in violation of the convention, the US did not order its destruction despite it being a legitimate military target.⁴⁵ While some countries like the U.S. are not party to the 1999 Second Protocol, which provides a

⁴⁴ *Id.*

⁴⁴ See generally U.S. Dep't of Defense, Law of War Manual (June 2015, updated July 2023), <https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF>.

⁴⁵ Milligan, *supra* note 1, at 98.

more detailed guideline to determining “military necessity” under Article 6,⁴⁶ they could still theoretically rely on the vague waiver of “military necessity” under Article 4(2) of the 1954 Hague Convention of which they are a party of when assessing their military conduct.⁴⁷

The UNSC insistence that the protection of cultural property should “respect the sovereignty of all sovereign states” under paragraph 6⁴⁸, sought to reassure member states that they still have the right to make assessments related to the protection of cultural heritage in accordance to their own national security interests. The resolution came on the heels of the landmark International Criminal Court (ICC) case of *The Prosecutor vs. Ahmad Al Faqi Al Mahdi*.⁴⁹ For the first time in the history of the ICC, the court successfully charged Al Mahdi under Article 8(2)(e)(iv) of the Rome Statue for “intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.”⁵⁰ During his time as a member of the armed group Ansar Dine, Al Mahdi “intentionally” directed against ten buildings of a religious and historical character in Timbuktu, Mali. In determining the appropriate sentence, the courts had to consider the “gravity of the crime”⁵¹ While the court acknowledged the gravity of the situation, they did admit that crimes against property are of a “lesser gravity than crimes against persons”⁵² This seemingly confirms the notion that while international law could have

⁴⁶ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, Mar. 26, 1999, available at <https://unesdoc.unesco.org/ark:/48223/pf0000130696>.

⁴⁷ Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, available at <https://ihl-databases.icrc.org/assets/treaties/400-IHL-60-EN.pdf>.

⁴⁸ S.C. Res. 2347, U.N. Doc. S/RES/2347 (Mar. 24, 2017).

⁴⁹ Prosecutor v. Al Mahdi, Case No. ICC-01/12-01/15, (Int'l Crim. Ct. Sept. 27, 2016).

⁵⁰ *Id.* ¶ 11.

⁵¹ *Id.* ¶ 75

⁵² *Id.* ¶ 77.

a role in punishing perpetrators for cultural heritage crimes, international courts prefer to focus on more serious crimes directed against individuals. Nevertheless, the courts considered the “symbolic and emotional value” of these properties to the inhabitants of Timbuktu.⁵³ The properties provided a sense of pride and belonging to the community and their destruction was “aimed at breaking the soul of the people of Timbuktu”.⁵⁴ Furthermore, their status as UNESCO World Heritage Sites was a determining factor in the sentencing whereby Al Mahdi was sentenced to nine years of imprisonment and was required to pay reparations worth over €2.5 million.⁵⁵ Although perpetrators like Al-Mahdi will likely never be able to fulfill these reparations order, the case sought to reinforce the role of international criminal law in holding offenders accountable for heritage crimes and open the door for further litigation.⁵⁶

A shift in focus: State-sponsored aggression against cultural heritage and accountability

With the start of the new decade, there has been a radical shift from cultural heritage destruction conducted by non-state actors such as terrorist groups in the Middle East and Africa; towards a more traditional, state-sanctioned attacks against cultural heritage sites. These attacks have even spread to Europe, a continent which has not seen this level of aggression since World War Two.

⁵³ *Id.* ¶ 79.

⁵⁴ *Id.* ¶ 80.

⁵⁵ Joseph Powderly, *Prosecuting Heritage Destruction*, Cultural Heritage and Mass Atrocities, <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-4/25-powderly/> (last visited Feb. 10, 2025).

⁵⁶ *Id.*

The Russian invasion of Ukraine have reignited discussions on the conduct of states during times of war, particularly regarding the safeguarding of cultural heritage. Russia has been accused of not fulfilling their obligations under the 1954 Hague Conventions of which they are party to.⁵⁷ Whilst the exact extent of destructions is still to be determined, it is estimated that over 400 cultural sites have been damaged in Ukraine, according to a report released by UNESCO.⁵⁸ Some critics Russia of “intentionally” targeting heritage sites in attempts to undermine the culture and identity of the Ukrainian people.⁶¹ The Ukrainian people have always had a tumultuous and strained relationship with their respective neighbor and have long yearned for self-determination and autonomy.⁶² Therefore, damage to their cultural sites by Russia may be seen as an attempt to reshape the political narrative in their favor.⁶³

Although it seems easier to hold states accountable for their role in the destruction of cultural heritage given that states are parties to international treaties, this is not always the case. There are numerous geopolitical complexities including alliances that could make it difficult to prosecute individuals associated with the state.⁶⁴ Each country will make different assessments when determining whether to support charges against a specific state for violations of international law, based on

⁵⁷ Michaela Millender & Nicolette Lyubarsky, *When Protectors Become Perpetrators: The Complexity of State Destruction of Cultural Heritage*, IPI Global Observatory (Apr. 24, 2024), <https://theglobalobservatory.org/2024/04/when-protectors-become-perpetrators-the-complexity-of-state-destruction-of-cultural-heritage/#:~:text=When%20Protectors%20Become%20Perpetrators%3A%20The%20Complexity%20of%20State%20Destruction%20of%20Cultural%20Heritage,-April%202024%2C%202024&text=While%20Israel%20wages%20war%20against,under%20way%20in%20both%20contexts.>

⁵⁸ *Damaged Cultural Sites in Ukraine Verified by UNESCO*, Unesco, <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco?hub=66116> (last updated Jan. 27, 2025)

⁶¹ Millender & Lyubarsky, *supra* note 57.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

their own political agenda. For example, the Western bloc, particularly Europe, has taken a very hardline stance against Russia for its invasion of Ukraine.⁶⁵ The European Parliament Committee on Culture and Education has commissioned several reports highlighting the threats to Ukrainian cultural heritage and the role of European countries in mitigating the destruction caused by the Russian aggression.⁶⁶ The Permanent Missions of Liechtenstein and Latvia in the United Nations have even supported Ukraine's proposal to establish a special tribunal court for the crime of aggression under the definition of Art 8 *bis* of the ICC statute,⁶⁷ which may incorporate the destruction of cultural heritage under the updated policy issued by the ICC Prosecutor office.⁶⁸

Although the ICC issued arrest warrants for Vladimir Putin along with other state officials from Russia for other alleged war crimes, they will unlikely be prosecuted given the political implications such arrests could have as Putin still enjoys significant support from his respective allies.⁷³ Importantly, Russia is not a state party to the Rome Statute, which established the ICC.⁷⁴ Even state parties to the ICC might be reluctant to execute those warrants in fear of retaliation by this powerful nation and its respective allies.

⁶⁵ See generally Council of the European Union, Sanctions Against Russia Explained, <https://www.consilium.europa.eu/en/policies/sanctions-against-russia-explained/> (Dec. 16, 2024).

⁶⁶ See generally Magdalena Pasikowska-Schnass, *European Cultural Heritage Days Russia's Cultural War Against Ukraine*, European Parliament (Sept. 2022), Evelien Campfens et al., *Protecting Cultural Heritage from Armed Conflicts in Ukraine and Beyond*, European Parliament (Apr. 2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733650/EPRS_BRI\(2022\)733650_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733650/EPRS_BRI(2022)733650_EN.pdf)

⁶⁷ Millender & Lyubarsky, *supra* note 57

⁶⁸ See generally International Criminal Court, *Policy on Cultural Heritage* (June 2021), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>

⁷³ Alonso Gurmendi, *Tracking State Reactions to the Icc's Arrest Warrant Against Vladimir Putin*, *Opinio Juris* (Mar. 29, 2023), <http://opiniojuris.org/2023/03/29/tracking-state-reactions-to-the-iccs-arrest-warrant-against-vladimir-putin/>

⁷⁴ *The States Parties to the Rome Statute*, International Criminal Court, <https://asp.icc-cpi.int/states-parties> (last visited Feb. 11, 2025)

Despite these obstacles and uncertainties, not all is bleak. In June 2021, the Office of the Prosecutor of the ICC issued a policy regarding cultural heritage which extends the court's jurisdiction on crimes committed against cultural heritage.⁷⁵ This initiative followed the letter of intent signed between UNESCO and the ICC in 2017, which sought to enhance collaboration between the two separate entities.⁷⁶ The policy identified several provisions of the Rome Statute that could be relevant when prosecuting individuals for cultural heritage crimes as well as the appropriate factors to consider for sentencing.⁷⁷ The introduction of this groundbreaking policy paves the way for further prosecution of perpetrators akin to the landmark case *The Prosecutor vs. Ahmad Al Faqi Al Mahdi*.⁷⁸

On June 26th 2024, the ICC convicted Al Hassan, another member of the terrorist group Ansar Dine in Mali, for war crimes and crimes against humanity.⁷⁹ Although Al Hassan was acquitted of the war crime charge of intentionally directing attacks against protected objects, established under Articles 8(2)(e)(iv) and 25(3)(d) of the Statute⁸⁰, the court's expansive approach to cultural heritage led to the charge of crimes against humanity under Article 7(1)(h).⁸¹ In the ICC trial judgement, the court focused on Ansar Dine's role in imposing their strict version of Islam by desecrating ancient and historic monuments which they believed promoted idolatry.⁸² Whilst this is a welcoming development in international law, critics are still skeptical of the extent the ICC could have in holding preparators accountable for cultural heritage crimes given the limited scope of the court system, slow pace of proceedings as well

⁷⁵ ICC Policy, *supra* note 68.

⁷⁶ *Id.* at 42.

⁷⁷ *Id.* at 12-3.5

⁷⁸ Prosecutor v. Al Mahdi, Case No. ICC-01/12-01/15, (Int'l Crim. Ct. Sept. 27, 2016).

⁷⁹ Prosecutor v. Al Mahmoud, Case No. ICC-01/12-01/18, (Int'l Crim. Ct. Jun. 26, 2024).

⁸⁰ *Id.* ¶ 1785.

⁸¹ *Id.*

⁸² *Id.* ¶ 722.

as the reluctance of many states to support the international criminal justice system.⁸³ Instead, individual states and their domestic courts should implement the provisions of the 1954 Hague Convention and its two protocols. The international court system should be seen as a secondary avenue for accountability.⁸⁴ However, as demonstrated above, the extent of accountability depends on the political will of the states.

Conclusion: the future of 'cultural' war crimes

Whilst the 1954 Hague Convention has been universally ratified by almost all states⁸⁵, the 1999 Second Protocol which helped update and clarify numerous vague terms in the convention has been ratified by only 89 countries.⁸⁶ The Rome Statute, which founded the ICC, has still not been ratified by many powerful countries including the United States, Russia, and China.⁸⁷ It continues to face resistance and opposition from those very states, particularly the US, which has recently sanctioned the ICC for their investigation into potential war crimes committed by Israel.⁸⁸ Thus, further complicating the court's efforts to prosecute suspected violators of international law. While some developed states, especially in Europe, have adopted

⁸³ Powderly, *supra* note 5.

⁸⁴ *Id.*

⁸⁵ *Convention for the Protection of Cultural Property in the Event of Armed Conflict. the Hague, 14 May 1954.*, International Humanitarian Law Databases, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-1954/state-parties> (last visited Feb. 11, 2025)

⁸⁶ *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict the Hague, 26 March 1999*, International Humanitarian Law Databases, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-prot-1999/state-parties> (last visited Feb. 11, 2025)

⁸⁷ *The States Parties to the Rome Statute*, International Criminal Court, <https://asp.icc-cpi.int/states-parties> (last visited Feb. 11, 2025)

⁸⁸ Christian Edwards, *What Is the ICC and Why Has Trump Sanctioned It?*, CNN (Feb. 7, 2025), <https://www.cnn.com/2025/02/07/world/icc-trump-sanctions-israel-gaza-explained-intl/index.html>

initiatives to enforce the treaty obligations, others have none.⁸⁹ Some states cannot afford to protect cultural property during peace or wartime due to limited funding.⁹⁰

As is common in international law, enforcement continues to be a major issue. UNESCO powers are often limited as their recommendations are not legally binding.⁹¹ Although the ICC has expanded its mandate to address cultural property crimes by non-state actors such as Al Mahdi⁹², it remains questionable whether the ICC can prosecute official state actors due to potential political implications. The court might prefer to prosecute more serious war crimes due to limited funds. Whilst there has been a gradual development in including cultural property crimes under the general umbrella of international criminal law⁹³, it would be unrealistic to solely rely on the international legal system for enforcement given the historical unfair dynamics of international law whereby the interests of more powerful countries outweigh the interests of smaller, less powerful ones.⁹⁴ Instead, all states should comply with their treaty obligations and utilize their domestic court systems for prosecution of crimes targeted against cultural property. Wealthier countries should continue to partner with international organizations such as UNESCO to ensure all states have the financial

⁸⁹Global Heritage Fund, *Saving Our Vanishing Heritage* 6, 12 (1st ed. 2010), <https://globalheritagefund.org/images/uploads/docs/GHFSavingOurVanishingHeritagev1.0singlepageview.pdf> (last visited Feb. 11, 2025).

⁹⁰ *Id.* at 22.

⁹¹UNESCO, *UNESCO's Standard-Setting: an Overview*, <https://www.unesco.org/en/legal-affairs/standard-setting/overview#:~:text=UNESCO's%20standard%2Dsetting%20instruments,-UNESCO's%20standard%2Dsetting&text=By%20becoming%20parties%20to%20a,the%20legal%20commitment%20to%20comply>. (last updated June 19, 2024)

⁹² Prosecutor v. Al Mahdi, Case No. ICC-01/12-01/15, (Int'l Crim. Ct. Sept. 27, 2016).

⁹³See generally International Criminal Court, *Policy on Cultural Heritage* (June 2021), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>

⁹⁴ Oscar Genaro Macías Betancourt, *The Debate Around the Restitution of Cultural Property: The Limits of International Law*, *Opinio Juris* (Dec. 2, 2022), <http://opiniojuris.org/2022/12/02/the-debate-around-the-restitution-of-cultural-property-the-limits-of-international-law/>

and logistical capability to protect their own cultural property and ensure all perpetrators are dealt with accordingly.