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GENERAL ARTICLES

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Private International Law as a Toolkit for Extraterritorial Refuge of Endangered Cultural Property

Abstract: The article begins by identifying the threats that give rise to the need for extraterritorial refuge, clarifying the core concepts underpinning this measure, and drawing a conceptual distinction between cultural refuge and the refugee status of individuals. It then examines notable cases of extraterritorial refuge involving endangered cultural property, followed by a brief review of relevant national legislation, international conventions, and soft-law instruments. Extraterritorial refuge between states involves elements governed by both public and private international law, each addressing distinct aspects of the legal relationship. This dual nature shapes not only the allocation of responsibilities between the parties, but also the applicable legal frameworks and dispute resolution mechanisms. This study primarily focusses on the aspects of such arrangements related to private international law, referring to public international

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law only when necessary to clarify the boundaries of the field and the legal sources on which this measure is based. Furthermore, this study contends that characterizing extraterritorial refuge as a contract of deposit reinforces its basis within private international law. While scholars often focus on public international aspects, this study argues that with respect to the other aspects, existing principles of private international law already offer a viable framework for resolving disputes arising from extraterritorial refuge. However, given the divergent rules on conflict of laws and jurisdiction across various fora, the study advocates for the adoption of a new international convention to harmonize these rules and facilitate the recognition and enforcement of judgments. As a final remark, this study maintains that extraterritorial refuge should be undertaken in good faith, as a genuine effort to protect and preserve cultural property, not to obtain financial or reputational gain.

Keywords: endangered cultural property, safe havens, refugee, quasi-refugee status, cultural property refugees

Introduction

Cultural property, like human beings, is vulnerable to both natural and human-made threats. In certain countries, this vulnerability has been a longstanding issue, persisting for many years. Cambodia is one such country, as its cultural property has faced systematic destruction and looting since the 1960s.[1] Looting and destruction in Cambodia reached its peak between 1970 and 1991. During this period, attacks on cultural property were carried out both by military personnel, who, during the Khmer Rouge civil war, frequently targeted stone statues and reliefs in remote temples, and by local residents and police who were complicit in the acts.[2] Along with Cambodia, Afghanistan, the former Yugoslavia, Palestine, Iraq, Libya, Mali,[3]

[1] B. Hauser-Schäublin, *Looted, Trafficked, Donated and Returned: The Twisted Tracks of Cambodian Antiquities*, in: B. Hauser-Schäublin, L.V. Prott (eds.), *Cultural Property and Contested Ownership: The Trafficking of Artefacts and the Quest for Restitution*, Routledge, London 2017, p. 64. For more information, see A.C.L. Phillpotts, *Violence and Monumental Complexes: The Fate of Cambodia's Buddhist Heritage during the Turbulent Years: 1969-79*, "International Journal of Cultural Property" 2019, Vol. 26, pp. 457-503.

[2] For more information, see K. Miura, *Destruction and Plunder of Cambodian Cultural Heritage and Their Consequences*, in: B. Hauser-Schäublin, L.V. Prott (eds.), *Cultural Property and Contested Ownership: The Trafficking of Artefacts and the Quest for Restitution*, Routledge, London 2017, pp. 23-44.

[3] The destruction of cultural property in Mali reached the level of war crimes, as stated in the International Criminal Court (ICC) ruling in *The Prosecutor v. Ahmad Al Faqi Al Mahdi* (Case No. ICC-01/12-01/15), Judgment and Sentence of 27 September 2016. For the summary and commentary on the *Al Mahdi* judgment, see *International Criminal Law – Rome Statute – International Criminal Court Imposes First Sentence for War Crime of Attacking Cultural Heritage, Prosecutor v. Ahmad Al Faqi Al Mahdi, Case No. ICC-01/12-01/15, Judgment &*

Syria, Yemen, and Ukraine are countries whose cultural property has been severely impacted by war and civil conflict in recent decades.

In addition to the aforementioned factors, urbanization also contributes to the destruction of cultural property.[4] Agricultural expansion, industrial development, and tourism further exacerbate the risks,[5] particularly to immovable heritage such as historical buildings and archaeological sites.

Cultural property gradually erodes or deteriorates over time. In addition to the unavoidable effects of ageing and wear and tear, they are also at risk from various natural events: droughts, desertification, extreme weather, floods, earthquakes, tsunamis, and volcanic eruptions, all of which can cause significant damage or destruction.[6] For instance, the earthquake that struck 11 cities in Türkiye[7] in 2023 caused significant destruction and damage to numerous sites of cultural property[8] and led to the relocation of some of them within the country. Sea levels are continually rising as a result of climate change. In the near future, many island nations will be submerged by rising waters. In fact, several islands, including five of the Solomon Islands, the Carteret Islands, a group of atolls in Papua New Guinea,

Sentence (Sept. 27, 2016), "Harvard Law Review" 2017, Vol. 130, pp. 1978-1985; N. Ekşi, *Ulusal ve Uluslararası Hukukta Kültür Varlıklarına İlişkin Uyuşmazlıkların Çözüm Mekanizmaları* [Dispute Resolution Mechanisms Regarding Cultural Property in National and International Law], Beta Publisher, Istanbul 2024, pp. 441-444. It is unfortunate that because Syria and Iraq are outside the ICC's jurisdiction, the deliberate destruction of cultural property in these countries cannot be prosecuted. However, if the perpetrators are in countries that recognize the ICC's jurisdiction, that possibility could arise. In this regard, the signing of a Letter of Intent between the ICC Office of the Prosecutor and UNESCO on 6 November 2017 marks a significant step in strengthening international efforts to protect cultural heritage from the deliberate destruction of cultural property and to hold perpetrators accountable. *The ICC Office of the Prosecutor and UNESCO Sign Letter of Intent to Strengthen Cooperation on the Protection of Cultural Heritage*, "ICC Press Release", 6 November 2017, https://www.icc-cpi.int/news/icc-office-prosecutor-and-unesco-sign-letter-intent-strengthen-cooperation-protection-cultural [accessed: 02.12.2025].

4 For the internal and external factors that posed dangers to cultural heritage by unchecked urban growth in Ramallah, see S.H. Al-Houdalieh, R.R. Sauders, *Building Destruction: The Consequences of Rising Urbanization on Cultural Heritage in the Ramallah Province*, "International Journal of Cultural Property" 2009, Vol. 16, pp. 1-23.

5 P. McAuliffe, *From the Ashes: Guarantees of Non-Recurrence for Destruction of Cultural Heritage*, "Santander Art and Culture Law Review" 2023, Vol. 9, pp. 265, 272.

6 M. Gerner, *Managing Cultural Sustainability: Safe Haven, Cultural Property, and Sustainability in Best Practice*, in: E. Lagrange, S. Oeter, R. Uerpmann-Wittzack (eds.), *Cultural Heritage and International Law: Objects, Means and Ends of International Protection*, Springer, Cham 2018, pp. 177-178.

7 On 26 May 2022, the Republic of Turkey officially changed its name to the Republic of Türkiye, following a request submitted to the Secretary-General of the United Nations. See https://www.un.org/en/about-us/member-states/turkiye [accessed: 02.12.2025].

8 For more information, see N. Başgelen, *Pazarcık ve Elbistan (Kahramanmaraş), Yayladağı (Hatay) Depremleri ve Kültürel Mirasımız* [Pazarcık and Elbistan (Kahramanmaraş), Yayladağı (Hatay) Earthquakes and Our Cultural Heritage], in: N. Ekşi, G. Dardeniz, M. Ülgen (eds.), *Protection of Cultural and Natural Heritage from the Perspective of Different Legal Disciplines: A Comparison of Turkish and Slovenian Laws on Dispute Settlement Mechanisms Related to Cultural Property, Articles Written within the Scope of the TÜBİTAK-ARIS Project (Project No. 122N328)*, 2nd ed., Beta Publisher, Istanbul 2024, pp. 233-249.

and some islands in Micronesia, have already been submerged due to this rising sea level. This loss goes beyond the disappearance of land; it particularly affects immovable and intangible cultural property. When entire countries or parts of them are submerged, immovable cultural heritage such as archaeological sites and monuments is permanently lost. If properly preserved and relocated, movable cultural property may continue to exist outside the territory of origin. Nonetheless, when communities relocate, it breaks the connection between people and place, disrupting the transmission of oral traditions, rituals, and other cultural practices. Therefore, while the use of extraterritorial safe havens may be considered a potential remedy for protecting cultural property, its applicability is limited.

It has been argued that the protection provided by safe havens is based on three key principles:[9] firstly, the universal obligation to safeguard cultural heritage at risk from natural disasters, terrorism, and armed conflict; secondly, the responsibility to protect, as outlined in national law; and thirdly, the role of organizations such as the International Council of Museums (ICOM) and the International Council on Monuments and Sites (ICOMOS), which establish guidelines to safeguard cultural property.[10]

Throughout history, various methods have been employed to safeguard cultural property, shaped by the available time and technology. For example, in times of war, many artefact owners buried their artefacts to protect them from confiscation, looting, and destruction.[11] Today, cultural property from both public and private collections are evacuated during conflicts or disasters and stored in secure locations, such as remote areas, salt mines, or neutral countries, to protect them from harm.[12]

Placing cultural property at risk of natural disasters or human-induced threats under protection in third countries is one way to safeguard them. As a rule, movable cultural property is eligible for relocation to extraterritorial safe havens. However, as with the examples of jackets belonging to Adolf Hitler and Joseph Stalin, which are associated with the Holocaust and totalitarianism,[13] certain movable property may either not be considered cultural property or may not deserve extraterritorial safeguarding. Certain types of immovable cultural property can also be relocated using highly specialized techniques and expertise. For example, during the Syrian

[9] N.T. Paumgartner, R. Zingg, *The Rise of Safe Havens for Threatened Cultural Heritage*, "International Journal of Cultural Property" 2018, Vol. 25, p. 324.

[10] Ibidem.

[11] K. Siehr, *'Safe Havens' for Endangered Cultural Objects*, in: J. van Krieken-Pieters (ed.), *Art and Archaeology of Afghanistan: Its Fall and Survival. A Multi-Disciplinary Approach*, Brill, Leiden–Boston 2006, p. 325.

[12] Ibidem.

[13] N. Ekşi, *Ulusal ve Uluslararası Hukukta Kültür Varlıklarına İlişkin…*, p. 355; M. Weller, *The Safeguarding of Foreign Cultural Objects on Loan in Germany*, "Art Antiquity and Law" 2009, Vol. 14, pp. 67-68.

Civil War, Türkiye relocated the Tomb of Suleyman Shah from Syria's territory.[14] Nonetheless, not all immovable cultural property can be relocated – e.g. sites or historical buildings spread over large areas – even with the most advanced technology, due to its inherent nature. As a result, while the safe haven practice remains a method for protecting movable cultural property, it is almost impossible to apply to immovable cultural property or intangible cultural heritage.[15] That is the reason why the United Nations Educational, Scientific and Cultural Organization (UNESCO) mentions only the "establishment of refuges for movable cultural property under enhanced protection".[16]

International law does not formally recognize cultural property as a refugee. However, the safeguarding of such property in a third country may conceptually resemble the concept of a refugee. In this study, the term "quasi-refugee" is used solely as a conceptual tool to illustrate certain parallels, and does not suggest any formal legal status under international law. Traditionally, the concept of a refugee has applied to human beings. The definition of a refugee appears in the 1951 Geneva Convention relating to the Status of Refugees[17] and has since gained uniformity among 146 States Parties. In this Convention, only human beings can be recognized as the subjects of refugee status. Since the concept of a refugee, with its long history, is firmly rooted as a human-centred concept, applying it to objects may seem unusual. However, offering quasi-refugee protection for at-risk cultural objects has become an increasingly debated issue in response to growing human-induced threats. This concept has not only gained attention, but has also led to the creation of specific domestic legislation in some countries, the addition of provisions in international treaties, and the development of guidelines by non-governmental organizations. Although I use the term "quasi-refugee", Jakubowski takes a bolder approach by using the term "cultural heritage refugees".[18] Should international law address the quasi-refugee protection of cultural property through an international convention in future, it would likely consider different aspects than those applicable to the refugee protection of individuals under existing legal frameworks.

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[14] For an in-depth analysis of this issue, see H.M. Berberer, *The Right to Use Anticipatory Self Defense Against Terror: The Tomb of Suleyman Shah and Turkey's Challenges*, "The Army Lawyer" 2015, Vol. 34, pp. 34-46.

[15] V. Shah, *Deconstructing the Dichotomy in Cultural Property Law*, "Law Review" 2019, Vol. 10, p. 130.

[16] *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*, https://www.unesco.org/sites/default/files/medias/fichiers/2024/05/1999-SecondProtocol_Guidelines_2023_Eng.pdf [accessed: 02.12.2025].

[17] 28 July 1951, 189 UNTS 137.

[18] A. Jakubowski, *International Protection of Cultural Heritage in Armed Conflict: Revisiting the Role of Safe Havens*, "Indonesian Journal of International Law" 2019, Vol. 16, p. 169. The concept of "cultural heritage refugees" should not be confused with the concept of "refugee cultural heritage". Although "cultural heritage refugees" specifically refers to endangered artefacts, "refugee cultural heritage" means the cultural heritage of refugees, especially their intangible heritage. For refugee cultural heritage, see S. Al Shallah, *Refugee Protection through Safeguarding Intangible Cultural Heritage of the Home Country and Refugee Journey*, "International Journal of Cultural Property" 2023, Vol. 30, pp. 280-297.

In fact, cultural property does not flee from its own country; rather, it is entrusted to a safe third country by the state or by private individuals who own or have legal possession of them. A refugee, on the other hand, leaves their country and seeks asylum in another, fleeing from human-induced persecution. While individuals who leave their country and seek asylum elsewhere due to natural disasters are often referred to as "climate refugees" or "environmental refugees", these terms are technically inaccurate.[19] This is because climate change, natural disasters, drought, hunger, poverty, and water scarcity are not currently recognized as valid grounds for granting refugee status under international law.

Under the 1951 Geneva Convention, a person must be at risk owing to a well-founded fear of being persecuted for reasons of "race", "religion", "nationality", "membership of a particular social group", or "political opinion". Since cultural property comprises objects, it can be argued that it does not experience true persecution. However, any attack on these artefacts constitutes persecution against all of humanity, particularly when they meet the threshold of gravity outlined in legal instruments such as the 1954 Hague Convention. As Jakubowski says, "the protection of cultural heritage is indivisible from the protection of human life".[20]

A significant amount of cultural property consists of religious symbols, which can be targeted by people of different religions for this reason alone. For example, the Taliban destroyed the Bamiyan Buddhas for religious reasons. Likewise, religio-cultural property in Cambodia was vandalized between 1960 and 1970.[21] Cultural property can be targeted for deliberate cultural cleansing, as in the case of Bosnia-Herzegovina. In this case, cultural property symbolizing the cultural values of one race may be targeted by people of a different race. In other words, cultural property may be attacked both for the cultural values it represents and for its association with a specific group. Some cultural artefacts may be attacked because they represent certain political views and individuals. Indeed, between 1933 and 1945 the Nazis destroyed culturally significant property to cleanse the territory of signs of non-Aryan culture; they also sold such items abroad to finance the war.[22] Political symbols, statues, and portraits of politicians were attacked during the Bolshevik Revolution in Russia as well as at the end of Saddam Hussein's regime in Iraq, the Assad regime in Syria, and the Shah regime in Iran. These examples demonstrate that cultural property can be persecuted due to religion, race, political ideology, or the specific group it represents, thereby supporting the application of quasi-refugee protection for endangered cultural property.

[19] For a comprehensive evaluation, see N. Ekşi, *No Way Out for Climate Refugees' Asylum Applications in Court Decisions and Conventions*, "Medicine, Law & Society" 2023, Vol. 16, pp. 287-303.

[20] A. Jakubowski, *International Protection*..., p. 185.

[21] A.C.L. Phillpotts, op. cit., p. 458.

[22] S.A. Hardy, *Conflict Antiquities' Rescue or Ransom: The Cost of Buying Back Stolen Cultural Property in Contexts of Political Violence*, "International Journal of Cultural Property" 2021, Vol. 28, p. 5.

While relocating cultural property to an extraterritorial refuge is one proposed response to potential threats, some states resist the practice due to a range of underlying concerns. Egypt considers it to be interference in internal affairs and contrary to the principle of state sovereignty, while Greece considers it a last resort and assumes that the items' return must be guaranteed.[23] The divergent positions of these two countries highlight the lack of international consensus on extraterritorial refuge.

Prior to further analysis, the fundamental concepts of extraterritorial refuge, which involve the temporary transfer of endangered cultural property to another country for safeguarding, must be clarified. The terms "cultural property in exile", "extraterritorial safe havens", or "extraterritorial refuge" are used to describe cultural property sent to another country due to some risk. The terms "source country", "source state", "source entity", or "depositor" are used to refer to the party sending cultural property abroad due to risk. The terms "depositary", "safe haven", "asylum", or "refuge" are used to refer to the party providing protection to the cultural property. For example, the International Law Association's (ILA) *Guidelines for the Establishment and Conduct of Safe Havens*,[24] adopted in 2008, use "source state" for the sending party and "safe haven" for the receiving party. Article 1(b) of the ILA Guidelines and its comments provide that "the source state is the state in which cultural material is in need of a safe haven, whether that is the state of origin of the material – that is, where it was created – or a state to which the material has been later removed from the state of origin". The concept of safe havens is broadly defined in Article 2 of the ILA Guidelines:

> [s]afe 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.

This definition comprehensively encompasses all categories of risk that may justify the relocation of cultural property to another country. The ILA Guidelines accepted the definition of cultural property made in the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.[25] The concept of "refuge" is used in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed

[23] A. Jakubowski, *International Protection*..., p. 181; N.T. Paumgartner, R. Zingg, op. cit., p. 330.

[24] *Guidelines for the Establishment and Conduct of Safe Havens as Adopted by the International Law Association at its 73rd Conference held in Rio De Janeiro, Brazil, 17-21 August 2008*, "International Journal of Cultural Property" 2009, Vol. 16, pp. 371-378.

[25] 14 November 1970, 823 UNTS 231.

Conflict[26] and its annexed Regulation, as well as the 1999 Protocol. Article 12 of Swiss Federal Law No. 520.3 on the Protection of Cultural Objects in the Event of Armed Conflict, Catastrophe and Emergency Situations (PCPA)[27] also uses the concept of a "refuge". These terms are used interchangeably in this study. Refuges may take various forms, such as museums, galleries, or specially designated facilities that host endangered cultural property from other countries. As stated in Article 8(1) of the 1954 Hague Convention, monuments – whether individually or as part of a group – may also be designated and used as refuges.

When states are parties to an extraterritorial refuge arrangement, the relationship may incorporate elements of both public and private international law. Although the primary focus of this study is the examination of extraterritorial refuge under private international law, when both parties are states, relevant international conventions are briefly reviewed for two reasons: to address the entire legal foundations of extraterritorial refuge and to delineate the boundaries between its public and private international-law aspects. Beyond the obligations arising under public international law, which are subject to its instruments and dispute settlement mechanisms, extraterritorial refuge arrangements between two states should be characterized as *acta iure gestionis*, and thus fall within the scope of private international law. Similarly, when only private individuals or entities are involved in extraterritorial refuge, national laws govern certain matters, such as import or export restrictions and customs clearance, despite its cross-border nature. This is because national regulations in these areas often take the form of *directly applicable rules* or *mandatory norms* of the *lex fori* – provisions that apply to any situation within their scope, regardless of the law otherwise applicable – thereby excluding the use of conflict of law rules.

This study focusses on the obligations of parties involved in extraterritorial shelters provided by foreign governments, institutions, and individuals for endangered cultural property. It begins by examining various forms of assistance from abroad. Some methods of safeguarding endangered cultural property carried out by foreign governments, institutions, or individuals – such as in situ protection or support for replacement within the source country – do not directly involve extraterritorial refuge. However, they are included here to give readers a broader understanding of foreign efforts to protect cultural property and to identify which approaches fall outside the scope of extraterritorial refuge. The analysis then turns to the specific form of extraterritorial refuge that lies at the centre of this study, exploring a range of approaches such as rescue-by-purchase from abroad, extraterritorial shelters established through multilateral or bilateral treaties, and

[26] 14 May 1954, 249 UNTS 240.

[27] 520.3 Loi fédérale du 20 juin 2014 sur la protection des biens culturels en cas de conflit armé, de catastrophe ou de situation d'urgence (LPBC), Recueil officiel 2014 3545.

arrangements based on loan, custody, deposit, or trust contracts. The study identifies and analyses the potential parties involved in such extraterritorial refuges and illustrates these mechanisms through selected real-world practices, thereby clarifying the complex dynamics between depositors and depositaries. It also provides a brief review of selected national laws, relevant provisions of international conventions, and the soft-law instruments that govern extraterritorial shelter arrangements.

The main focus is placed on the obligations of parties seeking and providing extraterritorial shelter. The study explores the legal sources of these obligations and discusses critical elements of extraterritorial refuge. In particular, it identifies which party is responsible for the inventorying, documentation, transportation, insurance, maintenance, and repair of endangered cultural property. Additionally, it addresses whether safeguarded cultural property may be exhibited or used for scientific research and examines issues such as immunity from seizure, the obligation to return, and the handling of proceeds from exhibitions. As noted above, although this study briefly touches on aspects of public international law to delineate the boundaries between public and private international law, the primary focus of the analysis is on private international law. Consequently, the article further addresses jurisdictional and governing law issues relevant to disputes arising from cross-border safeguarding arrangements. Ultimately, this study demonstrates how private international law mechanisms can be employed to address the challenges associated with extraterritorial refuge. That said, with the exception of EU private international-law regulations, each court applies its own (national) private international law to such cases. As a result, although private international law serves as the principal framework in this context, the rules governing jurisdiction and applicable law vary depending on the forum. For this reason, the study advocates for the adoption of a dedicated international convention on extraterritorial refuge, aimed at harmonizing conflict of laws rules and jurisdictional bases and recognizing and enforcing judgments. Moreover, this study asserts that it is essential for extraterritorial refuge to be implemented in genuine good faith, not as a means of deriving financial or reputational benefit, but as a sincere commitment to the protection and preservation of the property being safeguarded.

Methods of Safeguarding Endangered Cultural Property by Foreign Governments, Institutions, or Individuals

Safeguarding efforts offered by foreign states, individuals, or entities may take several forms, including technical assistance and expert guidance for the in situ protection of collections or support for the replacement or restoration of endangered cultural property within the affected country. Although these forms of assistance do not constitute extraterritorial protection, they are included here to provide a comprehensive overview of how foreign actors may contribute to safe-

guarding cultural heritage at risk, and to distinguish these efforts from extraterritorial refuge.

Assistance for the in situ protection of endangered cultural property

Foreign assistance for in situ protection can take the form of practical measures aimed at preventing damage to cultural property without removing it from its original location. For example, in earthquake-prone countries, technical equipment and expertise could be provided to enclose or stabilize artefacts. As an example of in situ protection, one can recall the Memorandum of Understanding between the Government of the Italian Republic and UNESCO, signed in 2016.[28] It states that a state facing a crisis or natural disaster may request the assistance of the Italian National Task Force within the framework of UNESCO's Global Coalition Unite4Heritage. The Task Force may then provide "technical supervision and training in order to assist national authorities and other local actors in implementing emergency preparedness and response measures for the protection and safeguarding of cultural and natural heritage". It is stated in the Memorandum that "assisting in transferring movable cultural heritage property at risk to safe havens" can also be requested from the Italian Task Force. The Task Force has undertaken missions to protect cultural property in crises, including training over 850 Iraqi civil servants and conducting long-term work in Baghdad and Erbil.[29]

Support for replacing endangered cultural property within the country

Displacement within the country is a measure for safeguarding cultural property from potential risks. For example, during the reinforcement of the Istanbul Archaeological Museums building against earthquake,[30] several cultural artefacts were temporarily displaced. Another practice involves storing cultural property in the central bank during internal conflicts. In such cases, a country other than the source country may provide technical assistance, equipment, and expertise for the replacement.

[28] *Memorandum of Understanding between the Government of the Italian Republic and the United Nations Educational, Scientific and Cultural Organization on the Italian National "Task Force in the Framework of UNESCO's Global Coalition Unite4Heritage" for Initiatives in Favor of Countries Facing Emergencies that May Affect the Protection and Safeguarding of Culture and the Promotion of Cultural Pluralism*, https://www.unesco.it/wp-content/uploads/pdf/UploadCKEditor/Memorandum_of_Understanding___11_II_2016_DRAFT_Finale_UNESCO_versione_Italia.pdf [accessed: 05.08.2025].

[29] Italian Embassy in Baghdad, *Iraq: The Italian Cooperation of the Safeguarding and Enhancement of the Erbil Citadel*, 21 August 2015, https://ambbaghdad.esteri.it/en/news/dall_ambasciata/2015/08/iraq-la-cooperazione-italiana-per-2/ [accessed: 03.12.2025].

[30] Oral Communication from the Director of the Museum during the *Workshop on Cultural Property from the Perspective of Different Disciplines-II*, held at the Istanbul Archaeological Museum Library, 26 April 2023.

Rescue-by-purchase

Several destination countries argue that purchasing artefacts looted from conflict zones is preferable to leaving them to face potentially uncertain fates.[31] Countries like Afghanistan and Iraq, unable to ensure the return of their cultural artefacts, also resort to rescue-by-purchase as a means of repatriating them.[32] However, because the price is below market value, the artefacts continue to be sold on the international black market. Furthermore, rescue-by-purchase has been criticized on the grounds that it benefits terrorist organizations, leads to further looting of cultural property, and stimulates the illicit market even more.[33] As Siehr rightly articulated, "safeguarding would be used as a pretence for looting".[34]

Safeguarding endangered cultural property through bilateral treaties

Before transporting endangered cultural property, the source and safe haven countries may sign a bilateral treaty to define the rights and obligations of both parties. The preparation of an international treaty takes time and involves a detailed process. To expedite this and ensure readiness in times of need, "model international treaties" have been created. Article 12 PCPA, under the title of "refuge", provides that "when cultural property is threatened by armed conflicts, disasters, or emergency situations, the Confederation may provide a refuge".[35] "The Federal Council may conclude international treaties to this effect". Article 12 outlines the matters to be regulated in an international treaty.

> These treaties regulate the terms and conditions of the transportation of cultural property; the protection, conservation and maintenance of cultural property; accessibility to cultural property; the terms and conditions of exposure and study of cultural property; the duration of the deposit; the terms and conditions for the return of cultural property to the state of origin; taking charge of the costs of transportation, insurance, deposit and conservation of cultural property; responsibility for cultural property; applicable law; the competent court.

Article 12(3) also provides immunity from seizure, stating that "third parties cannot claim any right as long as cultural property is in Switzerland".

International treaties are typically concluded between states and may apply only to state-owned cultural property, excluding cultural property owned by pri-

31 S.A. Hardy, op. cit., pp. 7-8; A. Chechi, *Rescuing Cultural Heritage from War and Terrorism: A View from Switzerland*, "Santander Art and Culture Law Review" 2015, Vol. 1, p. 97.

32 S.A. Hardy, op. cit., p. 7.

33 A. Chechi, *Rescuing Cultural Heritage…*, p. 97; S.A. Hardy, op. cit., pp. 7, 21-23; G. Vikan, *The Case for Buying Antiquities to Save Them*, "The Wall Street Journal", 19 August 2015, https://www.wsj.com/articles/the-case-for-buying-antiquities-to-save-them-1440024491 [accessed: 02.12.2025].

34 K. Siehr, op. cit., p. 332.

35 For more information about Article 12, see A. Chechi, *Rescuing Cultural Heritage…*, pp. 86-93.

vate individuals or museums. However, States Parties to an international treaty may agree to extend protection to all cultural property at risk, regardless of whether it is privately or publicly owned. Naturally, the transfer of cultural property belonging to private individuals or museums abroad for safeguarding purposes under such a treaty requires the consent of the legal owners.

Extraterritorial shelters for endangered cultural property provided by loan, custody, deposit, or trust contracts

Instead of a bilateral treaty, the source country and the safe haven country may sign a contract. Similarly, when the safe haven is a private individual or museum, a loan, fiduciary custody, deposit, or trust contract may be concluded between the depositor and the depositary. The history of trust-like relationships dates back to the 1990s. At the end of the protection period, the cultural property is returned to its country of origin.[36] The Association of Art Museum Directors (AAMD), established in 1916, prepared protocols in 2015 that outline the basic principles governing trust-like relationships between a source country and a safe haven. Leading museums in the USA, Canada, and Mexico are members of the AAMD. Additionally, the annex of the ILA Guidelines includes the "Safe Haven Model Contract". In my view, both the AAMD protocols and the ILA Guidelines could serve as valuable model instruments for the relevant parties when drafting a contract or bilateral treaty.

Potential parties involved in extraterritorial shelters for endangered cultural property

The party requesting safe haven may be a state, a government entity, or a private entity or individual, often referred to as the "depositor". Furthermore, sports federations or clubs holding artefacts[37] may seek protection if they are at risk. Article 3 of the ILA Guidelines stipulates that state authorities or non-governmental institutions shall establish safe havens. Therefore, both the entity requesting protection and the entity providing refugee-like protection can be a state, a government institution, or private entities such as museums, banks, insurance companies, corporations, individuals, or even sports federations and clubs.

Public institutions and private individuals can jointly request protection. Indeed, protection was provided in Geneva, Switzerland, for cultural property of Gaza belonging to the Palestinian State, through the joint request of Palestinian businessman Jawdat Khoudary and the State of Palestine.[38]

[36] V. Shah, op. cit., p. 130.

[37] For further information, see N. Ekşi, *Ulusal ve Uluslararası Hukukta Kültür Varlıklarına İlişkin…*, p. 215, fn 708.

[38] A. Chechi, *Rescuing Cultural Heritage…*, p. 93.

Different approaches exist regarding the destinations for cultural property rescued from internal conflicts, wars, and terrorist attacks. According to one view, UNESCO and ICOM are at the forefront of the institutions providing protection.[39] Choosing a nearby or neighbouring country as the country of refuge is one of the first options that come to mind. Especially if air travel is not possible, sending the cultural property to the nearest country by land may be a practical option. However, as stated by the AAMD, sending cultural property to neighbouring countries may carry certain risks:[40] while museums in neighbouring countries are typically the most accessible safe havens for endangered artefacts, political, environmental, and societal factors may prevent a country in crisis from seeking refuge there or may make such countries impractical. Additionally, objects at risk of damage, destruction, or looting may require specialized care that is not available in neighbouring museums.[41]

To find a safe third country, support should be sought from international, regional, and national expert organizations, primarily UNESCO, ICOMOS, and ICOM. These organizations can take steps to find safe havens for cultural property at risk of destruction or looting until they are returned. Using their expertise, they can identify the country or institution best equipped to protect the at-risk cultural property. Additionally, with the involvement of these organizations, the relationship between the depositor and the safeguarding entity can be formalized into a legal agreement.

There is a risk that a conflict may spread to the neighbouring country where cultural property has been sent. In such a case, can the safe haven country send the cultural property to a third country for safeguarding? In my view, permission should be obtained primarily from the source country. If this is not possible, and no alternative means of protection exist, the refuge country may then send the cultural property to another country for safeguarding.

Can an occupying state send cultural property from the occupied territories to another country for protection? The Regulations to the 1954 Hague Convention do not explicitly permit transfers beyond the occupied country, allowing relocation only within its boundaries. Under the title of "occupied territory", Article 19 provides that

> [w]henever a High Contracting Party occupying territory of another High Contracting Party transfers cultural property to a refuge situated elsewhere in that territory, without being able to follow the procedure provided for in Article 17 of the Regulations, the transfer in question shall not be regarded as misappropriation within the meaning

[39] V. Shah, op. cit., p. 130.

[40] AAMD Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis, 1 October 2015, https://aamd.org/document/aamd-protocols-for-safe-havens-for-works-of-cultural-significance-from-countries-in-crisis [accessed: 02.12.2025].

[41] Ibidem.

of Article 4 of the Convention, provided that the Commissioner-General for Cultural Property certifies in writing, after having consulted the usual custodians, that such transfer was rendered necessary by circumstances.

Selected practices of extraterritorial shelters for endangered cultural property

Various methods have been developed to safeguard cultural property from the destruction, looting, and illegal trade of cultural property caused by civil wars, conflicts, terrorist groups, or states pursuing their own interests in conflict zones, especially in areas with weakened state sovereignty. These methods include establishing "safe havens", "asylums", and "refuges",[42] as well as granting "cultural heritage in exile" status.

Third-country safeguarding, by offering temporary refuge for cultural property, has become increasingly common in response to acts of looting and destruction in Iraq, Syria, Mali, Egypt, and Afghanistan.[43] The practices for the removal and safeguarding of cultural property from occupied territories as part of international humanitarian efforts have a long-standing background.[44] It is the obligation of the state temporarily hosting cultural property to safeguard, preserve, and return it to the foreign state to which it rightfully belongs, in accordance with customary international law.[45]

The USA, Italy, France,[46] and Switzerland are among the leading countries offering refuge. In this regard, by adapting and updating its legislation and providing facilities for refuges, Switzerland has been described as "the perfect role model" or "a unique safe-haven option", as it has hosted cultural artefacts from various countries.[47] During the Spanish Civil War of 1936-1939, a museum in Geneva provided refuge to a large number of state-owned paintings from the Madrid museum.[48]

42 S.A. Hardy, op. cit., p. 8.

43 N.T. Paumgartner, R. Zingg, op. cit., pp. 323-324.

44 See E. Collins, *Preventing Cultural Heritage Destruction and the Responsibility to Protect*, "Intercultural Human Rights Law Review" 2018, Vol. 13, pp. 299-336.

45 N.T. Paumgartner, R. Zingg, op. cit., p. 324; A. Jakubowski, *Safeguarding Ukraine's Cultural Heritage in War: Identifying the Obligations of Non-Parties to the Conflict, with Special Focus on the European Union*, "Polish Review of International and European Law" 2023, Vol. 12, p. 146.

46 For examples of cultural properties protected by France, see A. Jakubowski, *International Protection*..., p. 176.

47 P.A. Vassilas, *Cultural Property Preservation: Legal Perspectives and Realities at the National, Regional and International Levels*, "Aberdeen Student Law Review" 2020, Vol. 10, p. 175; M. Gerner, op. cit., pp. 176, 179, 190.

48 N.T. Paumgartner, R. Zingg, op. cit., p. 325; A. Chechi, *Rescuing Cultural Heritage*..., p. 93; A. Jakubowski, *International Protection*..., p. 175; L. Albisetti, R. Büchel, *Cultural Property Shelter Systems: The Swiss Model*, in: E. Cunliffe, P. Fox (eds.), *Safeguarding Cultural Property and the 1954 Hague Convention: All Possible Steps*, Boydell & Brewer, Woodbridge 2022.

The International Commission for the Rescue of Spanish Art Treasures, formed by leaders of major democratic museums, signed an agreement with the Spanish government to evacuate artefacts, including those sent to Geneva for safekeeping abroad, with a promise to return them after the war.[49] Similarly, from 2000 to 2007, Afghan cultural artefacts were transferred for safekeeping at the privately owned Afghanistan Museum in Bubendorf, Switzerland.[50] Switzerland established the "Afghanistan Museum-in-Exile", receiving over 1,400 Afghan cultural objects. A comprehensive inventory was created by volunteer experts. Switzerland's exemplary efforts were recognized in 2006 with the successful return of these 1,400 objects to the National Museum of Afghanistan in Kabul, under the auspices of UNESCO.[51] In this case, publicly accessible sources do not provide clear evidence of a formal treaty or agreement between Afghanistan and Switzerland governing the safekeeping arrangement. Siehr stated that the initiative, led by Swiss couple Paul and Veronika Bucherer-Dietschi from Basel and supported by Swiss government authorities, Afghan politicians, and private individuals from German-speaking countries and France, with the UNESCO headquarters acting as a coordinator, resulted in the museum opening in October 2000.[52] Therefore, multiple states, as well as public and private parties, play a crucial role in safeguarding. Similarly, the city of Geneva has been storing cultural objects from Gaza in the Geneva Freeport.[53] Lebanon collects and stores cultural property smuggled from Middle Eastern countries and seized by authorities at customs or through other means.[54]

National Legislation, International Treaties, and Guidelines Providing Extraterritorial Shelter for Endangered Cultural Property

Selected national legislation providing extraterritorial shelter for endangered cultural property

Some countries, including the USA, the United Arab Emirates, France, the UK, and Switzerland, have made special legal provisions to provide refuge for at-risk cul-

[49] https://vscw.ca/en/node/380 [accessed: 02.12.2025].

[50] N.T. Paumgartner, R. Zingg, op. cit., p. 325; A. Chechi, *Rescuing Cultural Heritage…*, p. 93.

[51] P.L. Mahnad, *Protecting Cultural Property in Syria: New Opportunities for States to Enhance Compliance with International Law?* "International Review of the Red Cross" 2017, Vol. 99, p. 1064; V. Shah, op. cit., p. 130; N.T. Paumgartner, R. Zingg, op. cit., p. 325; A. Jakubowski, *International Protection…*, p. 177; L. Albisetti, R. Büchel, op. cit., pp. 211-212.

[52] K. Siehr, op. cit., p. 328.

[53] N.T. Paumgartner, R. Zingg, op. cit., p. 325; A. Chechi, *Rescuing Cultural Heritage…*, p. 93; A. Jakubowski, *International Protection…*, p. 177.

[54] A. Chechi, *Rescuing Cultural Heritage…*, p. 94.

tural property.[55] Only a brief overview of the legal regulations in Switzerland and France is provided here. The Swiss PCPA came into effect in 2015. It broadens the scope of cultural property protection to natural disasters and emergencies. It also serves to implement the Second Protocol to the 1954 Hague Convention, and it introduces the concept of a safe haven for movable cultural property, allowing Switzerland to temporarily safeguard such property when it is at risk in its country of origin. According to Article 12 PCPA Switzerland, under the auspices of UNESCO, may provide safe haven.[56]

France enacted similar legislation to provide shelter.[57] Certain provisions of the French Heritage Code were amended, and new provisions were added.[58] According to Article L111-11 of the Heritage Code, the state shall, at the request of a country in armed conflict or disaster, or pursuant to a decision of the UN Security Council, provide safe haven for cultural property and shall notify UNESCO.[59] According to Article L111-11, when the event that led to the temporary transfer of the cultural property to a safe country has ended, the cultural property shall be returned to the country of origin or its lawful owner. Cultural property cannot be seized while it is in the safe haven country. Article L111-11 also permits, with the consent of the depositary state, the lending of cultural property for national or international exhibitions designed to raise awareness about this endangered heritage during its safeguarding. The state hosting the exhibition guarantees that the cultural property will not be seized during the exhibition.

Provisions in international treaties providing extraterritorial shelter for endangered cultural property

The provision of shelter for cultural property has also been implemented in international treaties. One of the commitments made by the States Parties to the 1954 Hague Convention is to shelter movable cultural property by providing a place for eventual refuge. While the title of the 1954 Hague Convention emphasizes protection during armed conflict, Article 3 highlights the obligation of Contracting Parties to take precautionary measures in peacetime against the foreseeable effects of conflict. One such measure, particularly for movable cultural property, is the establishment of national refuges. As in the example of Switzerland, a state need not be engaged in armed conflict to do so. In line with Article 1, which refers to cultural

[55] N.T. Paumgartner, R. Zingg, op. cit., p. 324.

[56] Ibidem, p. 327.

[57] P.L. Mahnad, op. cit., p. 1064.

[58] Loi n° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine [Law no. 2016-925 of 7 July 2016 on the Freedom of Creation, Architecture and Heritage], Journal Officiel de la République Française no. 158, 8 July 2016.

[59] A. Jakubowski, *International Protection*..., p. 178.

property "irrespective of origin or ownership", Paumgartner and Zingg contend that refuges can also store cultural property from other states.[60]

The 1954 Hague Convention contains provisions regarding the removal of cultural property from danger and its return to its original location once the danger has passed. Articles 12 (transport under special protection), 13 (transport in urgent cases), and 14 (immunity from seizure, capture, and prize) provide for transport within a territory or to another territory upon request. The Convention's framework is based on the principle that cultural property should primarily be safeguarded within national refuges, with extraterritorial transfer permitted only as a measure of last resort. The obligations related to these articles are detailed in the annex of the 1954 Hague Convention, titled "Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict".

Article 11 of the Regulations, applicable exclusively during armed conflict,[61] addresses "improvised refuges". It outlines the procedure to be followed if, during an armed conflict, one of the Contracting States is forced to establish a refuge within the country due to unforeseen circumstances and requests that the refuge be placed under special protection. According to Article 12 of the Regulations, the cultural artefacts are registered in the International Register of Cultural Property under Special Protection kept by UNESCO. Articles 11 and 12 of the Regulations do not relate to extraterritorial refuge. Article 12 of the 1954 Hague Convention and Article 17 of the Regulations deal with transport either within the same territory or to another territory during armed conflict.[62] When such property is transferred under special protection to the territory of another country, the process is further governed by Article 18 of the Regulations, in addition to Articles 12 and 17.[63] The First Protocol[64] and the Second Protocol[65] also contain provisions for the same purpose.[66]

Cultural heritage at risk has also been on the agenda of the United Nations Security Council since 1998, and various resolutions have been issued related to the cultural property of Afghanistan, Iraq, Mali, and Syria.[67]

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60 N.T. Paumgartner, R. Zingg, op. cit., p. 82.

61 J. Toman, *The Protection of Cultural Property in the Event of Armed Conflict: Commentary on the Convention for the Protection of Cultural Property in the Event of Armed Conflict and Its Protocol, signed on 14 May 1954 in The Hague, and on Other Instruments of International Law Concerning Such Protection*, Routledge, London–New York 1996, pp. 113-114.

62 Ibidem, pp. 158-159.

63 Ibidem, p. 158.

64 14 May 1954, 249 UNTS 358.

65 26 March 1999, 2253 UNTS 172.

66 N.T. Paumgartner, R. Zingg, op. cit., p. 325.

67 For more information, see N. Ekşi, *Ulusal ve Uluslararası Hukukta Kültür Varlıklarına İlişkin…*, pp. 479-495.

Guidelines providing extraterritorial shelter for endangered cultural property

In 2008, the ILA developed the *Guidelines for the Establishment and Conduct of Safe Havens*, which include the Safe Haven Model Contract as an annex. In 2015, the AAMD prepared protocols on trust-like relationships. In 2016, the ICOMOS issued the Abu Dhabi Declaration on Heritage at Risk in the Context of Armed Conflicts.[68] Additionally, it has conducted various studies and published papers on this subject.[69] Following the Abu Dhabi Declaration, France, in collaboration with the United Arab Emirates, established a fund in 2017 named the International Alliance for the Protection of Cultural Heritage in Conflict Areas (ALIPH), based in Geneva. This fund is designed to respond in emergencies and aid in the evacuation and reconstruction of endangered or damaged cultural heritage. UNESCO is a non-voting member of this alliance.[70] ALIPH's intervention is threefold: (1) taking preventive measures for cultural property at risk of destruction, (2) implementing emergency measures to ensure the security of cultural property, and (3) helping local communities reunite with their cultural heritage after the conflict ends.[71] ALIPH is involved in cultural heritage rehabilitation projects in Iraq and Mali.[72]

Obligations of Parties Seeking and Providing Extraterritorial Shelter for Endangered Cultural Property

Legal sources of obligations when both parties are states

When disputes between states over the extraterritorial refuge of cultural property fall within the remit of public international law, instruments and dispute resolution mechanisms of international law come into play. As stipulated in the 1954 Hague Convention and its Second Protocol, States Parties are obligated to protect cultural property situated in third countries during armed conflicts. This includes refraining from acts that may expose the cultural property to destruction or damage and ensuring its return at the close of hostilities. Both Article 18 of the Regulations and the 1999 Protocol outline responsibilities related to the protection of cultural property, including for states that provide quasi-refugee status. Undoubtedly, the

[68] 3 December 2016, https://diplomatie-humanitaire.org/en/conference-on-safeguarding-endangered-cultural-heritage/ [accessed: 02.12.2025].

[69] https://publ.icomos.org/publicomos/jlbSai?html=Pag&page=Tek/SchLst [accessed: 02.12.2025].

[70] P.L. Mahnad, op. cit., p. 1064; N.T. Paumgartner, R. Zingg, op. cit., p. 326.

[71] P. Gerstenblith, *Toward a Human Rights-Based Approach as an Element in Post-Conflict Cultural Heritage Reconstruction*, in: A. Strecker, J. Powderly (eds.), *Heritage Destruction, Human Rights and International Law*, Brill, Leiden–Boston 2017, p. 173.

[72] Ibidem.

determination of responsibility for States Parties to the Convention and its additional protocols is governed by these provisions. Subparagraphs (a), (b), and (c) of Article 18 provide that the depositary state must care for the cultural property as it would its own, and return it within six months of the end of armed conflict. The property is exempt from confiscation and cannot be disposed of by either the depositor or depositary, though it may be moved to a third country with consent. A request for special protection must confirm that the receiving state agrees to these terms.

In addition to the above, when both parties are states, their relations and responsibilities under international law should be interpreted in light of the relevant provisions of the 1949 Geneva Conventions and its 1977 Additional Protocols,[73] as well as international customary law. History shows that many items of cultural property were sent abroad due to Nazi confiscation, looting, and the search for refuge, and their return still requires either court proceedings or special commission resolutions, despite more than half a century having passed. Therefore, in certain circumstances, rulings and provisions of the London Charter of the Nuremberg Court, the International Criminal Tribunal for the former Yugoslavia, or the International Criminal Court are also valuable tools to assess the responsibilities of the parties – as deliberate destruction of cultural property is deemed a war crime or crime against humanity in their Statutes or Charters and rulings.[74] Genocide, ethnic cleansing, war crimes, and crimes against humanity encompass deliberate attacks on cultural property.[75] The International Court of Justice does not have a direct ruling on the restitution of cultural property.[76] However, in cases related to border disputes, maritime zones, or genocide – which include countless examples of cultural cleansing throughout human history[77] – it has also addressed claims related to cultural property.[78] The threat of deliberate destruction of cultural property recognized under international law as a potential war crime often

[73] P.A. Vassilas, op. cit., pp. 151-152.

[74] For decisions of the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia regarding cultural property, see N. Ekşi, *Ulusal ve Uluslararası Hukukta Kültür Varlıklarına İlişkin…*, pp. 436-451.

[75] Ibidem, pp. 439-441.

[76] Ibidem, p. 425; F. Francioni, *The Evolving Framework for the Protection of Cultural Heritage in International Law*, in: S. Borelli, F. Lenzerini (eds.), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, Brill Nijhoff, Leiden–Boston 2012, p. 6; A. Chechi, *Multi-Level Cooperation to Safeguard the Human Dimension of Cultural Heritage and to Secure the Return of Wrongfully Removed Cultural Objects*, in: S. Borelli, F. Lenzerini (eds.), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, Brill Nijhoff, Leiden–Boston 2012, p. 354.

[77] A. Jakubowski, *The Human Dimension of State Succession to Cultural Property: The Balkan Lesson*, in: S. Borelli, F. Lenzerini (eds.), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, Brill Nijhoff, Leiden–Boston 2012, p. 370; N. Ekşi, *Ulusal ve Uluslararası Hukukta Kültür Varlıklarına İlişkin…*, p. 425.

[78] F. Francioni, op. cit., p. 6; N. Ekşi, *Ulusal ve Uluslararası Hukukta Kültür Varlıklarına İlişkin…*, p. 425.

underpins the decision of states to seek extraterritorial refuge for at-risk objects. In this light, extraterritorial shelter functions not only as a preservation strategy, but also as a preventive measure against acts that may amount to an international crime, reinforcing the shared responsibility of both sending and receiving states under international law.

Extraterritorial refuge lies at the intersection of private and public international law. While public international law becomes particularly relevant when states are involved and has been addressed in the literature, this part of the study focusses on private international law. This study characterizes extraterritorial refuge arrangements between states not as *acta jure imperii*, but rather as *acta jure gestionis*. This conclusion is further supported by Article 12 PCPA, which authorizes the Swiss Federal Council to conclude international treaties concerning the matters enumerated within, including the determination of applicable law and the court having jurisdiction. Where appropriate, and to distinguish public- from private-law issues, reference is made to public international law, particularly the 1954 Hague Convention, its protocols, and the implementing regulations. This study argues that the legal relationship between the depositor and the depositary in extraterritorial refuge should be characterized as a deposit contract, with governing law and jurisdictional issues determined accordingly. When states are involved, and except for matters covered by public international law, private international law rules on obligations, applicable law, and dispute resolution apply to extraterritorial refuge.

Determining the obligations and commitments of each party

Article 12 PCPA sets out the matters to be regulated in a bilateral international treaty, including the obligations of the parties. Additionally, the AAMD Protocols and the ILA Guidelines are particularly useful tools for determining the obligations of the parties, whether they are states, entities, or individuals. However, both texts and the other instruments cited in this study are silent on issues related to intellectual property rights and activities such as photographing, filming, and creating three-dimensional reproductions. These issues deserve further investigation, which cannot be undertaken within the scope of this study. Below, the obligations of the safe havens and the depositor are outlined, taking both instruments into account.

Inventorying and documentation

The responsibilities for documenting cultural property to be safeguarded lie with both the depositor and the depositary. Before leaving the depositor country, duly certified copies of inventory records, customs documents, and export licences of cultural artefacts should be prepared by the depositor. The import licence is prepared by the destination country. Cultural property should be recorded by the destination country in the inventory of loaned artefacts. They should be photographed

or digitized. If the cultural property needs to be repaired and maintained, a report on this matter should be written. A copy of the inventory, photographs, or digital media and the report itself should be sent to the depositor as soon as possible. If it is not possible to reach the depositor, in our opinion, these can be forwarded to the diplomatic representative of the depositor, if any.

Obligation to preserve according to the nature of the cultural property

Generally, safe havens should provide facilities that ensure protection through physical and technical conditions. Necessary precautions should be taken against risks such as theft. For example, Switzerland has designated a location, which is kept confidential, near Affoltern in the Zurich Canton as a safe haven.[79] The cultural property is maintained by the refuge. Similarly, conservation should only be conducted with the depositor's approval. In case of an emergency, however, it may be carried out without prior consent.

Notification to the source country authorities and UNESCO

In cases where the cultural property falls under the scope of any UNESCO conventions, in my view, the entity responsible for safeguarding, whether a private individual or a public institution, must inform UNESCO. If the depositor is a non-state entity or individual, the safeguarding entity should also notify the relevant country – or at a minimum, its consulate. This will ensure transparency about the location of the cultural property as well as the parties acting as depositor and refuge.

Exhibition and scientific research on safeguarded cultural property

Providing shelter for cultural property naturally incurs certain costs. To offset these expenses or to generate a source of income, safeguarded cultural property may be exhibited in the same country or another country, or used for commercial activities such as photography. The cultural property may also be used in scientific research in the country where it is protected. In these cases, there may be provisions in the contract between the parties regarding whether permission from the sender is required. The contract may take various forms. An international treaty may be made between the sending and the protecting states. Other possible agreements include a contract for deposit and fiduciary custody, which can also be made between the sender and the protector. Disputes related to the exhibition and scientific research of safeguarded cultural property arise when there are no clear provisions in the treaty or contract between the parties, or no such treaty or contract.

Paumgartner and Zingg recommend that the parties agree that any income generated from the safeguarded cultural property should be allocated to the safe haven, which would be entitled to use these funds for the maintenance and financ-

[79] N.T. Paumgartner, R. Zingg, op. cit., p. 335.

ing of the refuge facilities.[80] ILA Guideline 4(g) also provides that "[a]ny proceeds from exhibition or loans may be used only for safekeeping and preserving safe haven material". Insurance premiums should also be accounted for as part of the cost of safekeeping.

Immunity from seizure

Immunity from seizure may arise from a bilateral treaty, an international convention, national legislation, diplomatic guarantee, or a commitment in the contract.[81] Article 12(3) of the Swiss PCPA and Article L111-11 of the French Heritage Code are two examples of national laws that provide immunity from seizure.

Transportation costs

Responsibility for the costs of transporting cultural property from the depositor's country to the safeguarding country, referred to as "transport to safe havens", is determined by the agreement between the parties. Under normal circumstances, the sending party is expected to bear these costs, although this arrangement can be adjusted by mutual agreement.

The safeguarded cultural property may be transferred from one location to another within the country providing protection for various reasons, including exhibition, repair, restoration, education, or placement in another storage facility. Additionally, the cultural property may be sent from the protecting country to another country for exhibition. In these cases, the transportation costs shall be covered by the protecting state or institution.

The responsibility for transportation costs when returning safeguarded cultural property to its country of origin may be specified in the agreement between the parties. If no such agreement exists, the applicable law of the country governing the legal relationship between the depositor and the depositary determines whether the costs are to be covered by the returning party or the depositor. The transfer of cultural property from one country to another for safeguarding establishes a cross-border legal relationship. The law governing any disputes arising from this relationship shall therefore be determined by conflict of laws rules.

Insurance costs

Insurance for cultural property may cover various risks. Initially, an insurance policy could be taken out to cover the transportation of the cultural property from the depositor's country to the safeguarding country. Once the cultural property

[80] Ibidem, p. 338.

[81] N. Ekşi, *Immunity from Seizure of Cultural Objects on Loan for International Exhibitions*, in: T. Jere Jakulin, D. Munro, N. Ekşi (eds.), *Law, Humanities, and Tourism: Interdisciplinary Approaches to the Restitution of Cultural Heritage*, Cambridge Scholars Publishing, Newcastle upon Tyne 2025, pp. 117-118.

arrives in the safeguarding country, it may be insured against risks such as theft, fire, and so on. Additionally, when the cultural property is returned to the depositor state it may be insured against transportation risks. The premiums for this insurance cover may be determined by an agreement between the parties. The relationship between the depositor and the depositary is a cross-border legal relationship, as they are located in different countries. Therefore, if a dispute arises regarding who should pay the insurance premiums, the applicable law, determined by conflict of laws rules, will decide who is responsible.

Maintenance and repair costs

The entity safeguarding cultural property is obligated to provide physical, technical, and atmospheric conditions appropriate for the cultural property. It must obtain the depositor's approval for the maintenance and repair of the cultural property. However, in urgent cases, such as when deterioration in a mummy threatens the human remains inside, restoration can be carried out without prior authorization. Nonetheless, if urgent maintenance and repair are required, this must be reported. ILA Guideline 5(b) provides that the "source state or entity shall be expected to compensate the safe haven for reasonable costs of safekeeping, preserving, and returning cultural material". Whether the costs of maintenance and repair will be covered by the depositor or depositary may be specified in the agreement between the parties. If not determined, the applicable law governing the legal relationship between the parties will have the final say on this matter.

Proceeds from the exhibition of safeguarded cultural property

As a rule, the display of cultural property by the safeguarding state, individual, or institution is permitted only with the depositor's approval. Additionally, the depositor determines whether the property will be sent only to exhibitions within the refuge country or to other countries. For example, the cultural property from Gaza, protected at the Geneva Freeport, was loaned for exhibition abroad.[82]

Siehr states that the safeguarding institution is not permitted to make profits from artefacts deposited with it.[83] He also suggests that all income generated should be reinvested into the preservation of the cultural artefacts and may be used to cover the costs of storing them.[84] Whether the income generated from exhibition is shared between the depositor and the depositary, and the proportions thereof, depend on the agreement between the parties. ILA Guideline 4(e)(f) provides that "[a]ll such material on exhibit shall be identified as safe haven material. A safe haven may not lend safe haven material without the consent of the source

82 A. Chechi, *Rescuing Cultural Heritage…*, p. 93.

83 K. Siehr, op. cit., pp. 331-332.

84 Ibidem, p. 332.

state or entity". ILA Guideline 4(g) also provides that "[a]ny proceeds from exhibition or loans may be used only for safekeeping and preserving safe haven material". The parties may incorporate the ILA Guidelines into their contract or bilateral treaty by referring to them.

Since the relationship between the depositor and depositary has an international character, in the absence of an agreement, any questions related to exhibitions and income generated from them are subject to the conflict of laws rules of the forum.

Obligation to return

The refuge must return the cultural property once the risk has been eliminated. In addition to the 1954 Hague Convention, its First Protocol,[85] the attached Regulations,[86] national legal legislation,[87] and model agreements and guidelines prepared by various institutions[88] accept that return is essential.[89] The duration of the risk is irrelevant. Therefore, the refuge cannot claim a statute of limitations. Sometimes, even if the risk disappears, a new risk may emerge. For instance, the project to return cultural property from Gaza which had been protected in Geneva and to establish an archaeology museum in Gaza could not be realized due to Hamas taking control of Gaza. With the approval of the Palestinian businessman to whom the cultural property belongs and the Palestinian authorities, the cultural property has been stored at the Geneva Freeport ever since.[90]

Is it possible to continue safeguarding cultural property if a request for its return is made while the risk persists? Paumgartner and Zingg are of the opinion that cultural property should be returned once the situation that gave rise to the need for a safe haven has ended.[91] Siehr states that those endangered artefacts should not be returned until the conditions have improved, and that this decision should be taken by the safe haven.[92] According to Article 18(b) of the Regulations annexed

[85] Article 3 of the First Protocol: "Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory". Article 5: "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".

[86] Article 18(b) of the Regulations: "the depositary State shall return the property only on the cessation of the conflict; such return shall be effected within six months from the date on which it was requested".

[87] See e.g. Article L111-11 of the French Heritage Code.

[88] See e.g. ILA Guideline 4(i).

[89] ILA Guideline 4(i); Article L111-11 of the French Heritage Code.

[90] A. Chechi, *Rescuing Cultural Heritage…*, p. 93.

[91] N.T. Paumgartner, R. Zingg, op. cit., pp. 338-339.

[92] K. Siehr, op. cit., p. 330.

to the 1954 Hague Convention, "the depositary State shall return the property only on the cessation of the conflict; such return shall be effected within six months from the date on which it was requested". The use of the terms "shall" and "only return" in this paragraph indicates that the depositary state does not have an obligation to return the cultural property as long as the risk persists. ILA Guideline 5(c) stipulates that "[i]f a safe haven has valid reason to believe that in case of return the objects will not be protected properly, it may decline to return material until the safe haven is satisfied that the requesting source state is able to protect it". ILA Guideline 4(i) also states that "[a] safe haven must 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". Although Article 9 of the Swiss Federal Law on the International Transfer of Cultural Property[93] addresses repatriation actions for unlawfully imported cultural property, it might also be considered by analogy in the context of safe haven cases. This provision assigns the duty to the court to take the final decision. Article 9(2) stipulates that the court may postpone the return of cultural property until it is no longer at risk upon its return.

Jurisdiction and Governing Law for Disputes between the Party Seeking and the Party Providing Safeguards for Endangered Cultural Property

Disputes arising from the extraterritorial refuge of cultural property between the states may fall under public international law, private international law, or, in certain cases, both.[94] Public international law applies where the dispute concerns state responsibility, obligations, interpretation, and breach of a treaty, such as under the 1954 Hague Convention,[95] or immunity from jurisdiction or seizure. Even when the parties involved in extraterritorial refuge are private individuals or entities, export and import compliance and customs clearance are governed by the domestic law of the relevant countries. In such matters, conflict of law rules do not apply, as these regulations are considered *mandatory rules* or *directly applicable*

[93] 444.1 Loi fédérale du 20 juin 2003 sur le transfert international des biens culturels, Recueil officiel 2005 1869.

[94] For the intersections and boundaries of public and private international law, see V. Ruiz Abou-Nigm, K. McCall-Smith, D. French (eds.), *Linkages and Boundaries in Private and Public International Law*, Hart Publishing, Oxford 2018; P. Sooksripaisarnkit, D. Prasad (eds.), *Blurry Boundaries of Public and Private International Law: Towards Convergence or Divergence Still?* Springer, Singapore 2022; B. Hess, *The Private-Public Divide in International Dispute Resolution*, Brill Nijhoff, Leiden–Boston 2018.

[95] For a comprehensive analysis of the 1954 Hague Convention, its Protocols, and the implementing regulations, see E. Cunliffe, P. Fox (eds.), *Safeguarding Cultural Property and the 1954 Hague Convention: All Possible Steps*, Boydell & Brewer, Woodbridge 2022.

norms in private international law. Save for matters governed by public international law, contractual and civil disputes arising in the context of extraterritorial refuge between two states are governed by private international law, as the relationships in such cases are characterized as *acta iure gestionis*. This includes, for example, questions concerning responsibility for transportation costs, ownership rights, or exhibitions conducted without the owner's consent, maintenance obligations, and insurance coverage. Although this study refers to the 1954 Hague Convention, its 1999 Second Protocol, and related regulations, this is done solely to clarify the boundary between public and private international law. A detailed analysis of the responsibilities, obligations, and dispute settlement mechanisms between states under public international law arising from extraterritorial refuge falls outside the scope of this study. Nevertheless, relevant aspects of public international law are referenced where necessary to support this distinction.

Potential conflicts between depositor and depositary may include damage to the cultural artefacts, unauthorized export of artefacts for exhibition without the depositor's consent, extension of the storage period beyond the agreed terms, disagreements over the costs of storage and preservation, or disputes regarding the artefacts' return. Therefore, dispute settlement mechanisms and applicable law should be clearly identified based on the parties' position – whether they are states, state bodies, private entities, or individuals.

States in conflict may be parties to the 1954 Hague Convention and its 1954 and 1999 Protocols. The 1954 Hague Convention acknowledges extraterritorial shelters for cultural property, but does not regulate the parties' obligations in detail. However, under the title of "transport abroad", Article 18 of the Regulations annexed to the 1954 Hague Convention addresses the transfer of cultural property under special protection to the territory of another state, which is precisely what an extraterritorial shelter involves. It establishes clear obligations for both the depositor and the depositary. The latter must care for the property to the same standard as its own, ensure its return after the conflict, and refrain from confiscation or disposal. Any further transfer to a third country requires the depositor's consent. Moreover, there is no need for an additional agreement for these responsibilities to arise, as per Article 18(d), which states that "the request for special protection shall indicate that the State to whose territory the property is to be transferred accepts the provisions of the present Article". Disputes arising from the return of cultural property or the responsibilities of the depositary state shall be subject to the 1954 Hague Convention, its annexed Regulations, and the Second Protocol – providing that the conflicting states have ratified them. Furthermore, in resolving disputes between states, all instruments of international law, as well as decisions of international courts, shall serve as guidance.

Article 22 of the 1954 Hague Convention provides conciliation as a dispute settlement mechanism between Contracting States. This Article provides that parties in conflict regarding the application or interpretation of the Convention or its

Regulations shall lend their good offices in all cases. They may propose a meeting of representatives, including those responsible for cultural property protection, either at the invitation of one party, UNESCO's Director-General, or on their own initiative, ideally in neutral territory. The parties to the conflict shall be bound to give effect to the proposals for meetings presented to them. The parties in conflict may agree to have a person selected from a neutral state or recommended by the Director-General of UNESCO chair the meeting.

A bilateral treaty to provide a safe haven may also be agreed between States Parties to the 1954 Hague Convention. In this case, the issue of which treaty should take precedence will arise. Under the title of "special agreements" Article 24 of the 1954 Hague Convention allows Contracting Parties to conclude special agreements. However, no special agreement may diminish the protection afforded to cultural property by the 1954 Hague Convention.

Save as provided in Article 24 of the 1954 Hague Convention, if a special international agreement has been made between the sending state and the safeguarding state, the dispute resolution mechanism in that international agreement, if applicable, shall be followed. If the states in question are not parties to the 1954 Hague Convention, then regardless of the extent of protection provided by the bilateral agreement compared to the 1954 Hague Convention, the bilateral agreement shall be applied exclusively.

Furthermore, except for aspects governed by public international law, including obligations arising from relevant conventions, when two states assume the roles of depositor and depositary, their relationship should be characterized as a contract of deposit and therefore as *jure gestionis*, thus falling fully within the scope of private international law.

States in conflict, acting as depositor or depositary, may not be parties to relevant multilateral conventions, such as the 1954 Hague Convention, or to bilateral treaties. Since the relationship is characterized as *jure gestionis*, any resulting disputes are to be resolved under the rules of private international law. Individuals or entities may enter into a contract for safe haven. Where a contract of deposit, fiduciary arrangement, or trust relationship exists between the depositor and the extraterritorial refuge, the matter is once again governed by the mechanisms of private international law. Comprehensive, precise drafting of such a contract, encompassing all necessary provisions, is crucial to ensuring legal clarity and enforceability.

As mentioned above, the Safe Haven Model Contract is part of the annex of the ILA Guidelines. The parties may refer to this Model Contract in their agreement. The Safe Haven Model Contract contains a dispute resolution clause, stating that

> this contract is governed by the law of the state in which the Safe Haven is located. The parties will seek to resolve any dispute under the contract or related to it by

recourse to a court in the territory of the Safe Haven, UNESCO dispute resolution procedures, arbitration, or other dispute resolution procedures as the parties may so agree.

Sometimes, no contract or bilateral treaty is signed. For instance, when the Afghanistan Museum in Bubendorf was established as a safe haven for Afghan cultural artefacts, there was no contract or bilateral treaty between the Swiss and Afghan parties.[96] If no agreement is reached between the parties, the claimant may attempt to file a lawsuit in the most favourable court, a practice known as "forum shopping". The legal relationship between the depositor and the depositary should, in many respects, be treated as a contract of deposit.[97] Such a qualification is important for determining the court with jurisdiction and the applicable law. A judgment issued by a foreign court may require recognition and enforcement. To avoid the need for recognition and enforcement in the country where the safeguarded cultural property is located, the claimant may prefer to file the case in a court within the extraterritorial shelter. Of course, whether the court where the case is filed has international jurisdiction depends on the private international law of the state in which the court is located. Any dispute between the depositor and the safe haven is governed by the law, determined in accordance with the conflict of laws rules of the court handling the case.

Conclusion

Depending on the circumstances, third countries may employ various safeguarding mechanisms, such as offering technical assistance and expertise for replacement, providing in situ protection, offering refuge, or resorting to rescue-by-purchase. While not the most widely endorsed approach, extraterritorial shelters for endangered cultural property present a compelling and practical alternative. There are three ways to provide extraterritorial shelter: it may be granted through a diplomatic guarantee; through a multilateral convention, such as the 1954 Hague Convention, or a bilateral treaty; or through a loan, trust, deposit or fiduciary custody contract. In practice, bilateral treaties or contracts are written by the refuge, as the depositor often lacks the bargaining power to negotiate desired terms, which leads to asymmetry.

I maintain that, in addition to the asymmetry between the parties and the issues discussed above, extraterritorial sheltering introduces several significant challenges that are not adequately addressed by private international law, public international law, or soft-law instruments. The challenges related to the return

[96] K. Siehr, op. cit., p. 328.

[97] Ibidem, p. 329.

of cultural property are highlighted below. The first challenge is that, following a war or civil conflict, multiple states may emerge on the territory of the sending state, or parts of its territory could be occupied. In such cases, the issue of which state the cultural property should be returned to may arise.[98] The second challenge is that the regime in the sending state may change after a war or civil war. It is possible that the refuge country does not recognize the new regime, and therefore it may be unwilling to return the cultural property. The third potential challenge arises when the refuge country imposes trade sanctions on the new regime, making the return of cultural property impossible due to the ban on imports and exports. A fourth potential challenge occurs when cultural property is urgently removed from the country without proper documentation. During war or civil war, related archives may be destroyed or lost. The refuge country may be unwilling to return the cultural property if the source country cannot be clearly identified.

As can be understood from these examples, no matter what methods are used to safeguard the cultural property outside the country, full legal protection may not always be possible. The author believes that the return of cultural property – especially in cases involving mummies or human remains – should be regarded not only as a legal obligation, but also as a moral and cultural imperative, particularly when such items hold profound historical and spiritual significance. Effective monitoring by national and international authorities is essential to prevent misuse and ensure accountability throughout the safeguarding process.[99]

The parties requesting the safeguarding of cultural property at risk and those providing safeguarding can be two states. If both the depositor and refuge states are parties to the 1954 Hague Convention and its Protocols, they are bound by its procedural and substantive rules, including the dispute resolution mechanism under Article 22, under which the conciliation procedure for settling disputes shall be followed. A special international treaty may have been made between these two states, and the responsibilities of both parties may specifically be defined in this bilateral treaty. In this case legal issues, such as the obligation to return, shall be decided according to the treaty. If the States Parties to the bilateral treaty are also parties to the 1954 Hague Convention, then Article 24 of the Convention – which allows the High Contracting Parties to conclude special agreements for matters they deem suitable for separate provision – shall also be considered, provided that no such agreement diminishes the protection afforded by the 1954 Hague Convention to cultural property and the personnel engaged

[98] In 1939, artefacts were evacuated from Krakow before the Nazi army could seize them, and they eventually reached Canada in 1940. Canada faced a dilemma when it recognized the pro-Soviet Polish government, while the government-in-exile remained in London. After lengthy diplomatic negotiations, the artefacts were returned to Krakow in 1961 (A. Jakubowski, *International Protection*..., pp. 175-176).

[99] K. Siehr, op. cit., p. 334.

in its protection. In case of a special international treaty between the parties, any dispute settlement mechanism specified therein takes precedence, such as friendly consultations, mediation, arbitration, or a multi-tiered process applying these methods in sequence.

Extraterritorial sheltering may be granted through a diplomatic guarantee, without the need for a special international treaty. Additionally, extraterritorial sheltering may be provided through loan, deposit, trust, or fiduciary custody contracts. Disputes arising between parties seeking or providing extraterritorial sheltering are inherently cross-border in nature. Consequently, the international jurisdiction of the courts and the applicable law in disputes involving extraterritorial shelters shall be determined by private international law. This highlights the prominent role of private international law in the practice of extraterritorial shelters.

Although the legal framework for extraterritorial refuge is evolving by addressing issues between states under conventions and protocols, and between private parties pursuant to private international law, future research could explore additional legal mechanisms to enhance this practice. While acknowledging that new approaches, policies, or systems often give rise to unforeseen challenges, I nonetheless support the adoption of a dedicated convention to effectively address extraterritorial refuge. Given that conflict of laws rules and principles for determining court jurisdiction vary from one forum to another, such a convention would serve to harmonize these inconsistencies and provide a more coherent legal framework. Such a convention would address the issues identified in Article 12 PCPA, particularly by ensuring the return of cultural property and safeguarding it through immunity from seizure. The potential convention would aim to integrate both public- and private-law concerns surrounding extraterritorial refuge, alongside regulating the export, import, and customs clearance of endangered cultural artefacts. Additionally, it would establish a clear, consistent legal framework, particularly regarding the roles of relevant international organizations and the obligations of states in cases of extraterritorial refuge, even when the depositor and depositary are private parties.

As a final remark, it remains crucial for extraterritorial refuge to be applied with genuine intent, avoiding exploitation for financial gain or as a means to attract media attention, instead focussing on the faithful protection and preservation of the entrusted property.

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