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Special Protection, Strategic Use: Cultural Property in the Law of Armed Conflict

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SPECIAL PROTECTION, STRATEGIC USE: CULTURAL PROPERTY IN THE LAW OF ARMED CONFLICT

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ABSTRACT

Cultural property occupies a unique place in armed conflict: it embodies identity, history, and collective memory, but it can also be drawn into the strategic calculations of war. This paper examines a structural tension at the heart of the legal regime governing cultural property in armed conflict. While the law of armed conflict (LOAC) aspires to safeguard cultural objects, its reliance on indeterminate standards and broad normative commitments renders it vulnerable to instrumentalization by adversaries. Cultural protection is not merely a matter of compliance or violation; rather, it is embedded within the operational dynamics of warfare, where legal terms are invoked, contested, and strategically deployed. As a result, concepts such as "cultural value" can be stretched to justify military advantage, whether through overdesignation of protected sites, opportunistic military use, or rhetorical framing in propaganda.

This paper argues that this tension stems from issues embedded in legal design. The LOAC frameworks that depend on good-faith assertions and open-ended balancing tests lack sufficient structure to constrain the application and assessment of cultural claims in practice. In response, this paper proposes four recommendations: clarifying criteria for determining cultural significance, recalibrating evidentiary presumptions in cases involving military use of cultural sites, disaggregating harms within proportionality analyses, and requiring substantiated claims when invoking cultural protection.

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INTRODUCTION

In armed conflict, a temple can become a frontline, a mosque a utility hub, and a monument a boundary marker of sovereignty. Cultural property does not simply sit outside war as an object to be spared. Instead, it often becomes deeply entangled in the conduct of hostilities.[1] For instance, when fighting erupted along the Cambodia-Thailand border, the Preah Vihear temple was not merely a UNESCO-recognized cultural site in need of protection.[2] It was invoked as evidence of territorial sovereignty and placed at the center of military operations.[3] In other conflicts, mosques have served not only as protected religious sites but also as critical infrastructure hubs—housing generators, water systems, or communications equipment—thereby placing them squarely within operational considerations.[4]

The law of armed conflict (LOAC) responds to these realities with a strong normative command: cultural property may not be targeted as military objectives except when demanded by imperative military necessity.[5] The 1954 Hague Convention for the Protection of Cultural Property and its 1999 Second Protocol, together with the 1977 Additional Protocols to the Geneva Conventions, establish a regime of special protection intended to shield heritage from the ravages of war.[6] These instruments establish a layered set of rules: a baseline prohibition on directing acts of hostility against cultural property and on its use for military purposes that expose it to harm; a heightened threshold of "imperative military necessity" for the loss of protection; and the application of general targeting rules,

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[1] *See generally* Laurie Rush, *Cultural Property in the Modern Battle Space*, GEO. J. INT'L AFFS. (May 23, 2022), https://gjia.georgetown.edu/2022/05/23/cultural-property-in-the-modern-battle-space/ (examining the adversaries' strategic use of cultural property as a form of information operations); Olga Demetriou, *Grand Ruins: Ledra Palace Hotel and the Rendering of "Conflict" as Heritage in Cyprus*, *in* WAR AND CULTURE 156 (Marie Louise Stig Sørensen & Dacia Viejo-Rose eds., 2015) (noting the historic correlation of "conflict" and cultural heritage in Cyprus).

[2] News, UNESCO, UNESCO urges protection of cultural heritage following armed clashes between Cambodia and Thailand (Dec. 10, 2025, 7:45 P.M.), https://whc.unesco.org/en/news/2849.

[3] Morgan Phillips, *Cambodian PM says Thai forces occupying disputed land despite Trump-brokered ceasefire*, FOX NEWS (Feb. 19, 2026, 6:27 P.M.), https://www.foxnews.com/politics/cambodian-pm-says-thai-forces-occupying-disputed-land-despite-trump-brokered-ceasefire. *See also* Temple of Preah Vihear (Cambodia v. Thailand), Judgment, 1962 I.C.J. Rep. 6 (June 15) (resolving the Preah Vihear temple dispute as a matter of territorial sovereignty by applying international law governing frontier delimitation and the legal effect of colonial-era settlements); Alessandro Chechi, *The 2013 Judgment of the ICJ in the Temple of Preah Vihear Case and the Protection of World Cultural Heritage Sites in Wartime*, 6 ASIAN J. INT'L L. 353 (2016) (noting that the judgment did not sufficiently address the applicability of rules on cultural property protection in wartime in the *Temple of Preah Vihear* case).

[4] *U.S. Accuses Iraq of Using Mosque As Military Base*, PBS (Apr. 2, 2003, 9:15 P.M.), https://www.pbs.org/newshour/nation/middle_east-jan-june03-najaf_04-02; Laurie W. Rush, *Training for Cultural Property Protection*, *in* THE PRESERVATION OF ART AND CULTURE IN TIMES OF WAR 275, 285 (Claire Finkelstein, Derek Gillman & Frederik Rosén eds., 2022). *See also* Robert Hillenbrand, *The Mosque in the Medieval Islamic World*, *in* ARCHITECTURE IN CONTINUITY 33 (Sherban Cantacuzino ed., 1985) (discussing the use of mosques as military bases in the Middle Ages).

[5] *See infra* Part II.

[6] *See infra* Part II.

including distinction, proportionality, and precautions in attack—which require verification of military objectives, the selection of means and methods that minimize collateral damage, and the cancellation or suspension of attacks expected to cause excessive harm.[7]

Scholarly attention has largely focused on strengthening this protective regime.[8] Much of the literature examines the intentional destruction of cultural property,[9] the inadequacy of enforcement mechanisms,[10] the interpretation of military necessity,[11] and the restitution of looted cultural objects.[12] Other work situates cultural property within broader debates about humanity and collective identity,[13] as well as post-conflict reconciliation.[14] These contributions share an important normative commitment: cultural property requires stronger, more effective protection against unlawful attacks. However, far less attention has been paid to how cultural status operates during hostilities—specifically, how it is asserted and strategically deployed in military decision-making.

The legal architecture remains asymmetric. While the law carefully regulates the destruction of cultural property, it says far less about its designation, its strategic military use, or the propaganda built around claims of cultural value.[15]

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[7] *See infra* Part II.

[8] *See, e.g.*, MARINA LOSTAL, INTERNATIONAL CULTURAL HERITAGE LAW IN ARMED CONFLICT: CASE-STUDIES OF SYRIA, LIBYA, MALI, THE INVASION OF IRAQ, AND THE BUDDHAS OF BAMIYAN 18–47 (2017) (highlighting two paradigms in the strengthening of the regime on protecting cultural property—revisionism and idealism); JORIS D. KILA & CHRISTOPHER V. HERNDON, MILITARY INVOLVEMENT IN CULTURAL PROPERTY PROTECTION: AN OVERVIEW, https://ndupress.ndu.edu/Portals/68/Documents/jfq/jfq-74/jfq-74_116-123_Kila-Herndon.pdf (discussing states' use of force in fulfilling their obligation to protect cultural property).

[9] KRISTIN HAUSLER, CULTURE UNDER FIRE: ARMED NON-STATE ACTORS AND CULTURAL HERITAGE IN WARTIME 31–33 (Oct. 2018), https://www.biicl.org/documents/10_cultural_heritage_study_final_highres.pdf; Francesco Francioni, *Customs, General Principles, and the Intentional Destruction of Cultural Property*, *in* CULTURAL HERITAGE AND MASS ATROCITIES 411, 415–20 (James Cuno & Thomas G. Weiss eds., 2022).

[10] *See, e.g.*, Andrea Cunning, *Safeguarding of Cultural Property in Times of War & (and) Peace*, 11 TULSA J. COMPAR. & INT'L L. 211 (2013) (claiming that the International Criminal Court is unlikely to devote significant resources to prosecuting cultural property crimes).

[11] *See, e.g.*, Ivan Ryška, *Military Necessity and Cultural Heritage Protection in Laws of War: Historical Overview*, 21 INT'L & COMPAR. L. REV. 187 (2021) (examining the concept of military necessity in relation to cultural property since the eighteenth century); Jonathan Hasson & Ariel H. Slama, *IHL's Reasonable Military Commander Standard and Culture: Applying the Lessons of ICL and IHRL*, 58 TULSA L. REV. 183 (2023) (arguing for factoring cultural value into the military advantage analysis).

[12] Elena Baylis, *Looted Cultural Objects*, 124 COLUM. L. REV. F. 183 (2024); Marc-André Renold, *Cultural Co-Ownership: Preventing and Solving Cultural Property Claims*, 22 INT'L J. CULTURAL PROP. 163 (2015).

[13] Ewelina U. Ochab, *Why We Should Be Concerned About The Destruction Of Cultural Heritage*, FORBES (July 4, 2021, 5:03 A.M.), https://www.forbes.com/sites/ewelinaochab/2021/07/03/why-we-should-to-be-concerned-about-the-destruction-of-cultural-heritage/?sh=794647cf31c5.

[14] COLIN BREEN, CONFLICT, CULTURAL HERITAGE AND PEACE: AN INTRODUCTORY GUIDE (2023); William Bülow & Joshua Lewis Thomas, *Cultural Heritage Protection and the Reconciliation Thesis*, *in* HERITAGE AND WAR: ETHICAL ISSUES (William Bülow, Helen Frowe, Derek Matravers & Joshua Lewis Thomas eds., 2023).

[15] *See infra* Part I.

The regime largely presumes that assertions of cultural significance are made in good faith.[16] In armed conflict, however, cultural value itself can become a strategic asset.[17]

This paper argues that the special protection of cultural property creates a structural tension within the LOAC. By regulating attacks but not claims of cultural heritage, the LOAC incentivizes the *instrumentalization* of cultural value—that is, the strategic invocation of cultural significance to obtain military, political, or legal advantages.[18] The principle of protection remains essential, but the absence of doctrinal criteria for evaluating how cultural value is asserted and operationalized during hostilities is problematic. By drawing clearer lines, the LOAC would better ensure that genuine heritage is honored and that the regime functions as a principled restraint rather than a legalistic tool of adversaries.[19]

Accordingly, this paper proposes four recommendations: (1) articulating identifiable criteria for assessing claims of cultural significance; (2) introducing a rebuttable presumption in cases involving military use of cultural sites; (3) requiring proportionality assessments to disaggregate and separately evaluate civilian casualties, essential infrastructure, and cultural loss; and (4) obligating parties invoking cultural protection to specify the legal and factual basis of their claims and to support them with verifiable documentation.[20]

This paper proceeds in three parts. Part I identifies and analyzes three principal modes through which cultural property is instrumentalized to advance military advantage: overdesignation, the use of cultural sites for military purposes, and propaganda. Part II examines the existing LOAC regime governing the special protection of cultural property. Part III proposes four doctrinal and evidentiary reforms.

I. MODES OF WEAPONIZING CULTURAL VALUE

Modern LOAC treats cultural property as an object of heightened protection compared with ordinary civilian property and establishes a specialized treaty regime to safeguard it and ensure respect for it during armed conflict.[21] This special protection rests on the premise that certain sites and objects embody values that transcend immediate material utility: the shared dignity of humankind.[22] However, once the law attaches heightened protection to an object, that protection itself may invite strategic appropriation. Cultural value can thereby become embedded in the

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[16] *See infra* Part II.
[17] *See infra* Part I.
[18] *See infra* Part I.
[19] *See, e.g.*, Ryška, *supra* note 11, at 200 (arguing that the lack of clarity in the standards of military necessity often renders states to disregard the special protection of cultural property).
[20] *See infra* Part III.
[21] Roger O'Keefe, *Protection of Cultural Property*, *in* THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 475 (Dieter Fleck ed., 3d ed. 2013).
[22] Patty Gerstenblith, *Protecting Cultural Heritage: The Ties between People and Places*, *in* CULTURAL HERITAGE AND MASS ATROCITIES 363, 369 (James Cuno & Thomas G. Weiss eds., 2022); John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831, 833–42 (1986).

calculus of targeting, proportionality, and military necessity, and may be invoked to shield military or political operations.

The 2025 clashes between Cambodia and Thailand along their contested border illustrate this dynamic. Beginning on July 24, 2025, exchanges of gunfire, heavy artillery, rocket fire, and airstrikes erupted across multiple disputed locations along the frontier, marking the most serious escalation in over a decade of tension and leading to the displacement of hundreds of thousands of civilians.[23] Media outlets reported sustained fighting across several border areas, including zones near long-contested temple sites.[24]

Among these sites, the Preah Vihear Temple—listed as a UNESCO World Heritage site—occupied a central strategic position.[25] Its sovereignty has been contested for decades, despite the International Court of Justice (ICJ) affirming in 1962,[26] and reaffirming in 2013,[27] that the temple lies within Cambodian territory. In the wake of the 2025 escalation, the Cambodian government issued statements emphasizing that "Preah Vihear is a national cultural heritage recognized internationally,"[28] while Thai officials continued to frame the surrounding area as "state security zones."[29]

In this context, the temple was not merely a religious or cultural site in need of protection. Its internationally recognized cultural status amplified its military and political significance, becoming intertwined with competing claims of sovereignty. During emergency meetings of the United Nations Security Council, the Cambodian government again invoked the cultural heritage status of the Preah Vihear Temple to strengthen its assertions of sovereignty and justify deploying military forces in the surrounding area, framing their presence as necessary to protect the site from potential destruction.[30]

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[23] Shoon Naing & Artorn Pookasook, *Thailand and Cambodia exchange heavy artillery fire as border battle expands*, REUTERS (July 25, 2025, 10:57 A.M.), https://www.reuters.com/world/asia-pacific/thailand-cambodia-exchange-heavy-artillery-fire-border-battle-expands-2025-07-25/.

[24] *Id.*

[25] See generally Gao Xiang (高翔), Guojifa Shijiao Xia De Paweixiasi Lingtu Zhengduan Jiqi Dui Woguo De Qishi (国际法视角下的柏威夏寺领土争端及其对我国的启示) [The Territorial Dispute over the Temple of Preah Vihear from the Perspective of International Law and Its Implications for China], Dongnanya Yanjiu (东南亚研究) [Southeast Asian Studies], no. 4, 2009 (cautioning against the instrumental use of cultural heritage claims in diplomatic discourse).

[26] Temple of Preah Vihear (Cambodia v. Thailand), Judgment, 1962 I.C.J. Rep. 6 (June 15).

[27] Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Judgment, 2013 I.C.J. Rep. 281 (Nov. 11).

[28] Sreyphos Poch, *Statement of the Ministry of Foreign Affairs and International Cooperation of the Kingdom of Cambodia*, KHMER POST ASIA (July 5, 2025, 10:15 A.M.), https://en.khmerpostasia.com/2025/07/05/statement-of-the-ministry-of-foreign-affairs-and-international-cooperation-of-the-kingdom-of-cambodia.

[29] *Summary of Press Briefing on the Thai-Cambodia Border Situation on 27 July 2025*, THAI MINISTRY OF FOREIGN AFFS. (July 27, 2025), https://www.mfa.go.th/en/content/press-briefing-27-july-2025-eng.

[30] *Cambodia-Thailand Border Clashes: Urgent Private Meeting*, SEC. COUNCIL REP. (July 25, 2025), https://www.securitycouncilreport.org/whatsinblue/2025/07/cambodia-thailand-border-clashes-urgent-private-meeting.php.

This Part introduces the concept of *instrumentalization* to describe the strategic appropriation of cultural value for military and political advantage.[31] Instrumentalization encompasses practices by which parties leverage the legal and symbolic weight of cultural property to constrain adversaries. This can be accomplished either by shaping targeting decisions and assessments of proportionality, or by rallying international public opinion. Three principal modes illustrate this dynamic: overdesignation, military use of cultural sites, and propaganda.

A. Overdesignation

The first mode of instrumentalization is overdesignation—the expansive or opportunistic classification of sites and objects as cultural property to benefit from heightened protection. Cultural property is defined broadly in treaty law and customary practice, encompassing monuments, archaeological sites, museums, places of worship, and other objects of "great importance to the cultural heritage of every people."[32] This capacious definition reflects an inclusive, internationalism-oriented ethos.[33] Yet in practice, determinations of cultural value are often made by states themselves in pursuit of sovereign interests,[34] sometimes in the shadow of ongoing hostilities.[35]

Overdesignation may occur in several forms, including the late-stage designation of sites during escalating conflict or the sweeping inclusion of dual-use infrastructure within protected cultural registers.[36] Such practices need not be facially unlawful. But they can function as a legalistic shield, increasing the expected political, reputational, and legal costs of attack. Even where imperative

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[31] The concept of instrumentalization falls within the broader framework of lawfare, which refers to "a strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective." Charles J. Dunlap, Jr., *Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts*, CARR CTR. FOR HUM. RTS., JOHN F. KENNEDY SCH. OF GOV'T, HARVARD U. (2001), http://www.ksg.harvard.edu/cchrp/Web%20Working%20Papers/Use%20of%20Force/Dunlap2001.pdf. In this context, because the LOAC confers special protection on cultural property, this paper notes that the legal status of cultural property may be used—or misused—to advance military or political objectives.

[32] The Convention for the Protection of Cultural Property in Armed Conflict art. 1, May 14, 1954, 249 U.N.T.S. 240 [hereinafter 1954 Hague Convention].

[33] Merryman, *supra* note 22, at 833–42.

[34] *See* Elif Kalaycioglu & Jelena Subotić, *Global politics of cultural heritage: Status, authority, and geopolitics*, 51 REV. INT'L STUD. 925 (2025) (discussing that nominations to UNESCO's World Heritage List are deeply tied to national interests).

[35] Friedrich Schipper, *UNESCO World Heritage and Cultural Property Protection in the Event of Armed Conflict*, *in* 50 YEARS WORLD HERITAGE CONVENTION: SHARED RESPONSIBILITY – CONFLICT & RECONCILIATION 151, 154–55 (Marie-Theres Albert et al. eds., 2022).

[36] *See* Press Release, UNESCO, Odesa inscribed on UNESCO's World Heritage List in the face of threats of destruction (Jan. 25, 2023), https://www.unesco.org/en/articles/odesa-inscribed-unescos-world-heritage-list-face-threats-destruction (pointing out that Odesa has been inscribed onto the UNESCO's World Heritage List in the face of destruction amid the Russian invasion of Ukraine); UNESCO, Sites of Japan's Meiji Industrial Revolution: Iron and Steel, Shipbuilding and Coal Mining, https://whc.unesco.org/en/list/1484/ (noting the addition of industrial sites—such as iron, steel, shipbuilding, and coal mines—to the UNESCO's World Heritage List).

military necessity could justify targeting,[37] uncertainty about cultural status may prompt hesitation, delay, or confer a strategic advantage on the defending party.[38]

The Preah Vihear Temple dispute demonstrates how the designation of cultural property can become intertwined with assertions of territorial sovereignty and military deployment. Following its inscription on the UNESCO World Heritage List in 2008,[39] the temple's international cultural status intensified its political salience. Competing claims over surrounding land were refracted through the lens of heritage protection.[40] The site's designation did not create the territorial dispute, but it elevated the stakes and introduced an additional layer of legalistic leverage.

B. Military Use of Cultural Property

A second and more direct form of instrumentalization arises when cultural sites are used for military purposes. LOAC permits the waiver of special protection for cultural property when it is used in a manner that renders it a military objective, subject to stringent conditions.[41] However, the very existence of heightened protection may encourage strategic positioning, with troops, armaments, or other military assets being placed near or within cultural sites.[42]

This practice operates along a spectrum. At one end lies clear misuse: establishing military bases on a mosque or storing weapons within a museum.[43] At the other end are more attenuated forms of operations, where military deployment near cultural sites may increase the legal and political risks of attack without overtly transforming the site itself into a military objective. This latter category becomes more plausible where cultural or religious sites simultaneously serve as infrastructure. The presence of communications equipment, energy systems, or administrative facilities may draw such sites into an expanded understanding of dual-use objects, potentially bringing them within the ambit of military objectives.[44] As the category of dual-use objects continues to broaden in contemporary operations,[45] the problem of line-drawing correspondingly becomes

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[37] 1954 Hague Convention, *supra* note 32, art. 4(2).

[38] Ryška, *supra* note 11, at 200.

[39] Decision, UNESCO, Examination of Nominations - Sacred Site of the Temple of Preah Vihear (CAMBODIA), U.N. Doc. Decision 32 COM 8B.102 (2008), https://whc.unesco.org/en/decisions/1548/#:~:text=1.,4.

[40] Associated Press in The Hague, *UN court awards Cambodia sovereignty in border dispute*, GUARDIAN (Nov. 11, 2013, 12:14 P.M.), https://www.theguardian.com/world/2013/nov/11/un-court-cambodia-thailand-border-dispute (outlining renewed disputes over surrounding areas of the Preah Vihear Temple since 2011).

[41] *See infra* Part II.

[42] For example, the Iraqi forces used to place military bases on cultural property during the 2003 U.S. occupation. *See supra* note 4 and accompanying text.

[43] ICRC, *Rule 39. Use of Cultural Property for Military Purposes*, https://ihl-databases.icrc.org/en/customary-ihl/v1/rule39.

[44] *See supra* note 4 and accompanying text.

[45] Oona A. Hathaway, Azmat Khan & Mara R. Revkin, *The Dangerous Rise of "Dual-Use" Objects in War*, 134 YALE L.J. 2645, 2653 (2025) (observing that "the range of dual-use objects targeted in recent decades has grown in both type and scale" and that "the United States has played a critical

more acute. This is particularly true for cultural property enjoying enhanced protection, where the legal threshold for loss of protection is both higher and more contested than for other civilian objects.[46]

A 2017 U.S. strike near al-Jinah, Syria, demonstrates the complexity of this issue.[47] The Pentagon initially described the target as a meeting of al-Qaeda members in a "community hall" located near a mosque.[48] Subsequent open-source investigations, however, indicated that the building struck was part of an active religious complex where civilians had gathered for a lecture and evening prayer, resulting in significant civilian casualties.[49] While the Pentagon maintained that the site was associated with al-Qaeda activity, it later admitted that it should have identified the target as part of a religious compound.[50] The Pentagon further acknowledged that some members of its intelligence team were aware of the site's association with a religious compound but did not add it to the no-strike list.[51] This episode highlights how uncertainty in classification, combined with the proximity of military objectives to cultural or religious sites, can blur the line between protected objects and lawful targets—especially where allegations of dual-use function are involved.

The 2025 Cambodia–Thailand clashes further illustrate how proximity to a culturally significant site can heighten the political and legal risks of an attack. Military forces positioned in areas surrounding the Preah Vihear Temple operated within a legal and informational environment shaped by the temple's protected status.[52] Regardless of whether either side deliberately aimed to exploit that status, the fact remains: cultural protection changed how the battlefield operated.

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role in both popularizing the idea of dual-use objects and spreading the practice of targeting such objects").

[46] *See infra* Part II.B.

[47] Hathaway et al., *supra* note 45, at 2713–16.

[48] Louisa Loveluck, Thomas Gibbons-Neff & Missy Ryan, *Mounting Claims of Civilian Deaths After U.S. Targets al-Qaeda in Syria*, WASH. POST (Mar. 17, 2017), https://www.washingtonpost.com/world/mounting-claims-of-civilian-deaths-after-us-targetsal-qaeda-in-syria/2017/03/17/350d5838-0ae9-11e7-8884-96e6a6713f4b_story.html; Hathaway et al., *supra* note 45, at 2713.

[49] Christiaan Triebert, *The Al-Jinah Mosque Complex Bombing—New Information and Timeline*, BELLINGCAT (Apr. 18, 2017), https://www.bellingcat.com/news/mena/2017/04/18/al-jinahnew-info-and-timeline; *Attack on the Omar Ibn al-Khatab Mosque*, HUM. RTS. WATCH (Apr. 18, 2017), https://www.hrw.org/report/2017/04/18/attack-omar-ibn-al-khatabmosque/us-authorities-failure-take-adequate-precautions; *Airstrikes on the Al-Jinah Mosque, Forensic Architecture* (Apr. 17, 2017), https://forensicarchitecture.org/investigation/airstrikes-on-the-al-jinah-mosque; Hathaway et al., *supra* note 45, at 2713–14.

[50] See Airwars Staff, *Transcript of Pentagon's Al Jinah Investigation Media Briefing*, AIRWARS (June 27, 2017), https://airwars.org/news/transcript-of-al-jinah-investigation-briefing; Hathaway et al., *supra* note 45, at 2713–14.

[51] *Id.*

[52] *See UNESCO warns Cambodia–Thailand clashes threaten Preah Vihear heritage*, NATION (Dec. 10, 2025), https://www.nationthailand.com/news/asean/40059591 (warning against unlawful attack against the protected Preah Vihear Temple and highlighting international concerns over this matter).

C. Propaganda

A third mode operates within the informational domains. Cultural property possesses extraordinary symbolic power.[53] Damage to a cultural site can provoke international condemnation, mobilize global institutions, and shape narratives of victimhood.[54] Parties to conflict may therefore frame sites as culturally indispensable not only to preserve them, but to structure the informational battlefield.[55]

Such propaganda does not always involve the fabrication of cultural value. Rather, it involves selective emphasis, strategic narrative construction, and the invocation of universal heritage language to heighten the perceived gravity of damage.[56] In an era of instantaneous global media, the symbolic impact of destroying cultural property can far exceed its physical damage.[57]

During the 2025 clashes, both Cambodia and Thailand invoked the Preah Vihear Temple's cultural status in diplomatic exchanges and public statements.[58] Allegations of shelling near the temple were framed as a threat to world heritage.[59] The cultural status of the site amplified the political impact of military actions in its vicinity.

The provided examples demonstrate how cultural property can be instrumentalized for strategic purposes during wartime—through overdesignation, military use, and propaganda. Taken together, they help illustrate that cultural property in wartime is not merely a passive object of protection but an active element in military strategy, politics, and informational operations. This reality complicates the LOAC regime governing the protection of cultural property.

II. CULTURAL PROPERTY PROTECTION UNDER THE LOAC

The LOAC affords cultural property enhanced protection, subject only to narrowly defined exceptions grounded in military necessity.[60] The principal treaty

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[53] *See generally* RODNEY HARRISON, HERITAGE: CRITICAL APPROACHES (2013) (noting that cultural heritage is long deemed an important resource in the process of identity-making and nation-building).

[54] Timothy Clack, *Cultural Heritage on the Frontline: the destruction of peoples and identities in war*, U. OF OXFORD (Oct. 4, 2022), https://www.ox.ac.uk/news/2022-10-04-cultural-heritage-frontline-destruction-peoples-and-identities-war.

[55] For the use of cultural heritage as propaganda, see Timothy Clack, Mark Dunkley, Toby Gane & Lee Rotherham, *Heritage as a focus in U.S.-Iran Tensions*, *in* CULTURAL HERITAGE IN MODERN CONFLICT: PAST, PROPAGANDA, PARADE (Timothy Clack & Mark Dunkley eds., 2022).

[56] *See generally* Dogachan Dagi, *Strategic culture and its (re)construction: What role for narratives and othering?*, 43 COMPAR. STRATEGY 576 (2024) (exploring the impact of narrative control in using cultural discourse to influence strategic decision-making).

[57] Paul H. Wise, *Saving Stones and Saving Lives: A Humanitarian Perspective on Protecting Cultural Heritage in War*, *in* CULTURAL HERITAGE AND MASS ATROCITIES 309, 316 (James Cuno & Thomas G. Weiss eds., 2022).

[58] *Cambodia-Thailand Border Clashes: Urgent Private Meeting*, *supra* note 30.

[59] Meng Seavmey, *Cambodia's Ministry of Culture Condemns Thailand's Shelling of Preah Vihear Temple*, CAMNESS (July 27, 2025, 4:30 P.M.), https://cambodianess.com/article/cambodias-ministry-of-culture-condemns-thailands-shelling-of-preah-vihear-temple.

[60] 1954 Hague Convention, *supra* note 32, art. 4.

sources are the 1954 Hague Convention for the Protection of Cultural Property (and its 1999 Second Protocol) and the 1977 Additional Protocols to the Geneva Conventions.[61] Together they establish a strong baseline rule: cultural property may not be made the objective of attack except within narrow limits tied to "imperative" and "unavoidable" military necessity.[62] The doctrine is designed to keep culturally significant sites and objects outside the ordinary scope of military destruction or damage.

The modern difficulty is applying this regime when cultural property is already entangled in territorial contestation and operational planning. The Cambodia–Thailand border tensions in 2025 illustrate the point, with the Preah Vihear temple being both a protected cultural site and a reference point in an unresolved territorial dispute.[63]

This Part sets out the legal framework governing the protection of cultural property under the LOAC. It begins by defining cultural property and identifying the sources and criteria through which such status is recognized. It then examines the regime of enhanced protection and the conditions under which that protection may be lost, including the role of military necessity and the transformation of cultural sites into military objectives. The Part then analyzes how the principle of proportionality applies when cultural property is affected as collateral damage. Finally, it considers the duty to take precautions during an attack, focusing on the obligations imposed on decision-makers to verify targets, select means and methods, and minimize harm to cultural heritage. Together, these doctrines establish both the scope and the limits of legal protection afforded to cultural property in contemporary armed conflict.

A. Definition of Cultural Property

The threshold question is whether a site qualifies as cultural property. The 1954 Hague Convention categorized "cultural property" into three groups: 1) "movable or immovable property of great importance to the cultural heritage of every people"; 2) buildings intended to shelter such property; and 3) centers containing monuments.[64] The U.S. *Department of Defense Law of War Manual* refines this statement by specifying that only property of "great importance to the cultural heritage of every people" qualifies, excluding ordinary property like churches or artworks that do not carry such significance.[65] Generally, the designation should be straightforward for major temples, monuments, museums, and religious sites formally designated by instruments such as the UNESCO conventions.[66]

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[61] GARY SOLIS, THE LAW OF ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW IN WAR 562–75 (3d ed. 2022).
[62] 1954 Hague Convention, *supra* note 32, arts. 4, 11.
[63] *See supra* Part I.
[64] 1954 Hague Convention, *supra* note 32, art. 1.
[65] U.S. Dep't of Def., Law of War Manual § 5.18.1 (2015).
[66] Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 1, Nov. 16, 1972, 27 U.S.T. 37 [hereinafter UNESCO World Heritage Convention]; Convention for the

Beyond these paradigmatic cases, however, the law offers limited guidance on how the "great importance" standard is to be shown or applied. Formal recognition, public notoriety, and historical recognition may aid classification in cases such as the Preah Vihear temple,[67] but the broader category remains ambiguous. Determining cultural significance often requires evaluative judgment of historical value, architectural uniqueness, symbolic meaning, and social or religious importance. All may contribute, yet the law does not rank or weigh these factors.[68] The process of officially designating or marking cultural property—such as via national registers, UNESCO recognition, or military mapping—can assist in guiding operational decisions, but it is not consistent everywhere and may not keep pace with rapid changes in conflict situations.[69]

This indeterminacy has doctrinal consequences. Because enhanced protection attaches once an object is treated as cultural property, the absence of clear criteria for establishing that status creates incentives for expansive or strategic designation. As explained above, adversaries may seek to characterize a broader range of sites and objects as cultural property to increase legal protection, raise the perceived costs of attack, or shape proportionality analysis.[70]

B. Enhanced Protection and its Loss

Once cultural status is established, the LOAC imposes enhanced protection. Article 53 of the 1977 Additional Protocol I to the Geneva Conventions prohibits "acts of hostility directed against historic monuments, works of art, or places of worship that constitute the cultural or spiritual heritage of peoples," as well as their use in support of military actions.[71] The 1954 Hague Convention likewise requires parties to respect cultural property by refraining from hostile acts directed against it and by avoiding uses that expose it to destruction or damage.[72] These special protections reflect a judgment that harm inflicted on cultural property is not merely

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Safeguarding of the Intangible Cultural Heritage, art. 2, ¶ 2, Oct. 17, 2003, 2368 U.N.T.S. 3 [hereinafter UNESCO ICH Convention].

[67] Preah Vihear Temple is a UNESCO World Heritage Site, and its inscription has been a central element in disputes and calls for its protection. *See supra* Part I.

[68] For example, in UNESCO's selection of world heritage, it requires assessment of multiple factors, including creative genius, testimony to a cultural tradition or civilization, illustration of significant stages in human history, and outstanding examples of a traditional human settlement. UNESCO, The Criteria for Selection, https://whc.unesco.org/en/criteria.

[69] *See* ICRC, *Protection of cultural property - Questions & answers* (Oct. 30, 2017), https://www.icrc.org/en/document/protection-cultural-property-questions-and-answers (acknowledging that assessing cultural property status "in many cases . . . is a difficult and sometimes even controversial process").

[70] *See supra* Part I.

[71] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts [hereinafter Additional Protocol I], art. 53, June 8, 1977, reprinted in 16 I.L.M. 1391, 1395. Article 16 of the Additional Protocol II to the Geneva Conventions uses the same wording. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts [hereinafter Additional Protocol II], art. 16, June 8, 1977, reprinted in 16 I.L.M. 1442.

[72] 1954 Hague Convention, *supra* note 32, art. 4.

a material loss, but an injury to the cultural heritage of peoples and, by extension, to humanity as a whole.[73]

The Second Protocol to the 1954 Hague Convention further develops this framework by introducing a regime of "enhanced protection" for "cultural heritage of the greatest importance for humanity."[74] Under Article 10, cultural property may be placed under enhanced protection if it meets three conditions: (1) it constitutes cultural heritage of the greatest importance for humanity; (2) it is protected by adequate domestic legal and administrative measures recognizing its exceptional value; and (3) it is not used for military purposes and is not intended to be so used.[75] Once granted, enhanced protection mandates that such property "shall not be made the object of attack" and prohibits its use or the use of its immediate surroundings in support of military action.[76] Furthermore, Article 15 classifies serious violations against protected cultural property—such as directing attacks or exploiting it for military purposes—as war crimes.[77]

This framework is reinforced at the level of international criminal law. In the context of international armed conflicts, Article 8(2)(b)(ix) of the Rome Statute of the International Criminal Court criminalizes the intentional directing of attacks against "buildings dedicated to religion, education, art, science or charitable purposes" and "historic monuments," provided they are not military objectives.[78] A parallel provision in Article 8(2)(e)(iv) extends the same protection to non-international armed conflicts.[79]

However, enhanced protection is not absolute. Under the 1954 Hague Convention, cultural property "must not be the object of attack unless imperatively required by military necessity."[80] The Second Protocol to the Convention elaborates that this exception may be invoked only when the property has become a military objective and no feasible alternative exists to achieve a similar military advantage.[81] Article 52(2) of Additional Protocol I to the Geneva Conventions defines military objective as an object which, "by [its] nature, location, purpose, or use," makes an "effective contribution to military action" and whose "destruction, capture, or neutralization" offers a "definite military advantage."[82] These rules apply equally to cultural property and other objects, including cultural property within the scope of targeting when its use changes.[83]

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[73] *Id.*, pmbl.
[74] Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, Mar. 26, 1999, 2253 U.N.T.S. 172 [hereinafter Second Protocol].
[75] *Id.*
[76] *Id.*, art. 12.
[77] *Id.*, art. 15.
[78] Rome Statute for the International Criminal Court [hereinafter Rome Statute] art. 8(2)(b)(ix), July 17, 1998, U.N. Doc. A/Conf.183/9.
[79] *Id.*, art. 8(2)(e)(iv).
[80] 1954 Hague Convention, *supra* note 32, art. 4(2).
[81] Second Protocol, art. 6.
[82] Additional Protocol I, *supra* note 71, art. 52(2).
[83] Jean-Marie Henckaerts, *New Rules For The Protection Of Cultural Property In Armed Conflict: The Significance Of The Second Protocol To The 1954 Hague Convention For The Protection Of Cultural Property In The Event Of Armed Conflict*, *in* PROTECTING CULTURAL PROPERTY IN ARMED CONFLICT: AN INSIGHT INTO THE 1999 SECOND PROTOCOL TO THE HAGUE CONVENTION OF 1954

It is difficult to conceive of cultural property qualifying as a lawful military objective under the criteria set out in Additional Protocol I. That said, it is not entirely implausible that certain categories of cultural property—such as historic fortresses, barracks, or arsenals—may, by their very nature, contribute effectively to military operations.[84] Likewise, although most cultural property would not satisfy the "purpose" criterion—understood as the object's intended future use—there may be limited cases, such as historic bridges, railway stations, or docks, where such a contribution is conceivable, though its effectiveness would depend on the specific circumstances.[85] As a general matter, one would not expect infrastructure constructed for earlier historical contexts to play a significant role in contemporary military operations.[86] With respect to location, it is also plausible that the positioning of cultural property on the battlefield could, in certain situations, obstruct lines of sight or fire.[87] But any contribution this may make to the opposing party's military action is arguably better seen as a function of the property's *de facto* use, which is outside the scope of military use regulated by this provision.[88] Therefore, it is difficult to imagine that a party would rely on the inherent nature of cultural property for this purpose, even less likely that it would invoke its intended use, and highly improbable that it would base its argument on the property's location.[89]

The legal difficulty is most salient when a cultural site is actively embedded in military operations—whether because forces are positioned around it, it provides defensible terrain, or equipment and infrastructure are located within or near it.[90] Indeed, the defending party or the holder of cultural property also bears a duty to refrain from using cultural property, or its immediate surroundings, in ways that expose it to destruction or damage. For example, placing troops or military assets in close proximity to such sites may constitute a violation of its obligation to respect and safeguard cultural property under the 1954 Hague Convention and its Second Protocol.[91] However, such a violation does not automatically render the site a lawful target. The attacking party remains bound by the rules of targeting, and may only direct attacks against the property where it has, by its use, become a military objective.[92] As the International Criminal Tribunal for the Former Yugoslavia (ICTY) noted, "the special protection awarded to cultural property itself may not be lost simply because of military activities or military installations in the immediate vicinity of the cultural property" since it is the use of cultural property, not its location, that determines the loss of protection.[93] In such circumstances, cultural value and military relevance coexist, creating a dual effect. It complicates

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FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT 21, 23 (Nout van Woudenberg & Liesbeth Lijnzaad eds., 2020).

[84] ROGER O'KEEFE, THE PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICT 128 (2009).

[85] *Id.* at 129.

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *See supra* Part I.

[91] 1954 Hague Convention, *supra* note 32, art. 4(1); Second Protocol, art. 12.

[92] Second Protocol, art. 6.

[93] Prosecutor v. Strugar, Case No. IT-01-42-T, Judgment, ¶ 310 (Jan. 31, 2005).

targeting decisions while increasing the site's strategic importance, both operationally and rhetorically.[94]

At the same time, legal analysis in this space is often shaped by an implicit deference to good-faith assertions of cultural protection.[95] In the absence of notification to opposing parties under Articles 3 and 6 of the 1954 Hague Convention—a process left largely to the parties' discretion—belligerents are often required to make a cautious and informed judgment regarding the cultural significance of a given object.[96] They must then respect cultural property by avoiding conduct that may expose it to destruction or damage, and are further obligated to safeguard it against vandalism, theft, or misappropriation.[97] Although the presumption of good faith shows a commitment to protecting cultural property, it can also obscure the extent to which such sites are actually used in military operations, allowing them to still be used as shields against attack.

The 2025 Cambodia–Thailand border conflict makes these dynamics particularly visible. Even before the escalation of hostilities, both sides framed the dispute in terms of sovereignty, military readiness, and territorial defense, while the Preah Vihear temple remained a focal point of legal claims.[98] By the time full-scale exchanges broke out in late July, clashes were occurring across several sites along the border, and both sides accused the other of unlawful conduct.[99] Cambodia alleged significant damage to Preah Vihear from Thai bombardment, while Thailand denied the allegation.[100] For doctrinal purposes, the importance of this episode is not simply whether those allegations were true. Instead, the dispute demonstrates how a culturally protected site can remain deeply bound up with military deployment, nationalist rhetoric, and the legal narration of the conflict itself. The LOAC regulates when such a site may be attacked, but it provides far less guidance on how its cultural status may be invoked or contested both operationally and rhetorically.

C. Proportionality and Collateral Damage

The proportionality rule still applies to the regulation of collateral damage, even if cultural property in the vicinity has not become a legitimate military target. Article 51(5)(b) of Additional Protocol I to the Geneva Conventions prohibits attacks expected to cause collateral damage to civilian objects excessive in relation

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[94] *See supra* Part I.
[95] O'KEEFE, *supra* note 84, at 109 (emphasizing that the determination of cultural significance and therefore legal protection must be made in good faith).
[96] *Id.* at 111.
[97] 1954 Hague Convention, *supra* note 32, art. 4.
[98] Juarawee Kittisilpa & Panu Wongchaum, *Thai military prepared for 'high-level operation' if Cambodia border row escalates*, REUTERS (June 6, 2025, 5:42 A.M.), https://www.reuters.com/world/asia-pacific/thai-military-prepared-high-level-operation-if-cambodia-border-row-escalates-2025-06-06/.
[99] Shoon Naing & Artorn Pookasook, *Thailand and Cambodia exchange heavy artillery fire as border battle expands*, REUTERS (July 25, 2025, 10:57 A.M.), https://www.reuters.com/world/asia-pacific/thailand-cambodia-exchange-heavy-artillery-fire-border-battle-expands-2025-07-25/.
[100] *Id.*

to the "concrete and direct military advantage anticipated."[101] The same proportionality requirement is specifically reiterated for cultural property in Article 7(c) of the Second Protocol to the 1954 Hague Convention, which requires parties to cancel or suspend attacks where collateral damage to cultural property would be excessive.[102] Damage to cultural property situated near legitimate military objectives falls squarely within this category of collateral harm, meaning that such sites cannot be lawfully disregarded even if they are not themselves the target.

The structure of the proportionality rule further sharpens this obligation. The anticipated military advantage must be "concrete and direct," excluding hypothetical or speculative gains,[103] while the assessment of harm encompasses all expected collateral damage arising from the attack "as a whole."[104] The rule thus requires a comparative judgment between qualitatively different values:[105] on the one hand, the immediate and definite military advantage expected from neutralizing the target; on the other, the foreseeable harm to civilians and civilian objects, including cultural property.[106] This formulation both constrains and permits: it excludes clearly disproportionate attacks while tolerating a range of harm that is not excessive relative to the anticipated advantage.[107]

Beyond the imprecise term "excessive,"[108] however, the doctrine offers no concrete method for assessing cultural loss in proportionality analysis. Civilian deaths, injuries, and physical destruction are already difficult to quantify and evaluate *ex ante*.[109] However, cultural harm adds another layer of indeterminacy because it is often collective, symbolic, and long-term.[110] A strike that damages a centuries-old temple may cause limited immediate physical destruction while also producing profound and irreversible loss of historical memory, religious practice, or social identity. Although the law recognizes the significance of such damage, it

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[101] Additional Protocol I, *supra* note 71, art. 51(5)(b).

[102] Second Protocol, art. 7(c).

[103] Robert K. Goldman, *The Legal Regime Governing the Conduct of Operation Desert Storm*, 23 U. TOLEDO L. REV. 363, 371 (1992).

[104] CHATHAM HOUSE, PROPORTIONALITY IN THE CONDUCT OF HOSTILITIES: THE INCIDENTAL HARM SIDE OF THE ASSESSMENT 9–10 (2018), https://www.chathamhouse.org/sites/default/files/publications/research/2018-12-10-proportionality-conduct-hostilities-incidental-harm-gillard-final.pdf.

[105] *See* ICTY, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia ¶ 48, https://www.icty.org/sid/10052 ("It is much easier to formulate the principle of proportionality in general terms than it is to apply it to a particular set of circumstances because the comparison is often between unlike quantities and values."). *See also* ADIL AHMAD HAQUE, LAW AND MORALITY AT WAR 180–82 (2017).

[106] Michael N. Schmitt, *Precision Attack and International Humanitarian Law*, 87 INT'L REV. RED CROSS 445, 457 (2005).

[107] YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT 177 (4th ed. 2022).

[108] SOLIS, *supra* note 61, at 228.

[109] *See* AMICHAI COHEN & DAVID ZLOTOGORSKI, PROPORTIONALITY IN INTERNATIONAL HUMANITARIAN LAW: CONSEQUENCES, PRECAUTIONS, AND PROCEDURES 92 (2021) (noting that the scope of actual and expected civilian harm is often difficult to assess in proportionality analysis).

[110] *See* Timothy William Waters, *The Persecution of Stones: War Crimes, Law's Autonomy and the Co-Optation of Cultural Heritage*, 20 CHI. J. INT'L L. 62, 87 (2019) (highlighting the challenges of factoring symbolic or collective harm into the proportionality analysis).

does not clarify how much importance should be attributed to cultural loss or how commanders and legal advisers should approach this in practice.[111]

That ambiguity is especially acute in a dispute like Cambodia–Thailand, where the Preah Vihear temple's significance is not only architectural or religious but also bound up with national identity and claims of legal entitlement.[112] In such settings, cultural value can enter proportionality analysis in two distinct ways. First, it increases the weight of the civilian harm because damage to a culturally significant site is more consequential than ordinary property loss and may implicate broader community interests. Second, it can affect how parties publicly frame the harm and military advantage in legal and political discourse. For example, one side may emphasize the site's heritage status to amplify the perceived excessiveness of collateral damage, while the other may downplay that significance or highlight nearby military use to foreground operational necessity. The law regulates the attack itself, but it says much less about these operational and argumentative uses of cultural value.

D. Duty of Precautions

The duty of precautions in attack partially mitigates this problem but does not resolve it. Article 57(2) of Additional Protocol I to the Geneva Conventions mandates that individuals planning an attack must confirm that targets are military objectives, select feasible means and methods to reduce collateral damage, and avoid attacks likely to breach the principle of proportionality.[113] In the context of cultural property, this rule is reflected in Article 7(b) of the Second Protocol to the 1954 Hague Convention.[114] In principle, precautions are intended to discipline military decision-making *ex ante*, ensuring that civilian harm—including damage to cultural property—is minimized.[115]

In practice, however, the precautionary rule operates within the same operational and informational environment that gives rise to the problem of instrumentalization. Verification of a target's status depends on available intelligence,[116] which may itself be shaped by how adversaries characterize the site. If cultural property is used in support of operations, determining whether and to

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[111] *See* YORAM DINSTEIN & ARNE WILLY DAHL, OSLO MANUAL ON SELECT TOPICS OF THE LAW OF ARMED CONFLICT: RULES AND COMMENTARY 125–31 (2020) (highlighting that proportionality rules offer little operational guidance on how to value the loss of cultural heritage relative to military necessity).

[112] *See generally* Helaine Silverman, *Border Wars: The Ongoing Temple Dispute Between Thailand and Cambodia and UNESCO's World Heritage List*, 17 INT'L J. HERITAGE STUD. 1 (2010) (tracking the history of tension over the Preah Vihear temple and highlighting its significance in the construction of national identity).

[113] Additional Protocol I, *supra* note 71, art. 57(2)(a).

[114] Second Protocol, art. 7(b).

[115] *See* Geoffrey S. Corn, *Humanitarian Regulation of Hostilities: The Decisive Element of Context*, 51 VAND. J. TRANSNAT'L L. 763, 768 (2018) (explaining the *ex-ante* reasonableness analysis in the assessment of proportionality and feasible precautions).

[116] *See* INT'L INST. OF HUMANITARIAN L., THE MANUAL ON THE LAW OF NON-INTERNATIONAL ARMED CONFLICT 27 (2006) ("Among the most evident of feasible precautions is the review of intelligence and other forms of information concerning the target and surrounding area.").

what extent it contributes to military action becomes a matter of interpretation. At the same time, assertions of cultural significance—whether grounded in formal designation or advanced in diplomatic discourse—may influence how risk is perceived and communicated, even if they do not alter the underlying legal test.

The concept of "feasible precautions" further reinforces this dynamic. Feasibility is defined in relation to what is practicable under the circumstances and with the information available at the time, considering both humanitarian and military considerations.[117] This standard does not require decision-makers to resolve contested claims of cultural status or to discount the strategic use of such claims by opposing parties.

Nor does the precautionary rule address how cultural property may function simultaneously as an operational asset and a narrative resource. Where a site's cultural status is emphasized in public statements or diplomatic exchanges, it may shape expectations about lawful conduct, increase the perceived gravity of potential harm, and frame subsequent allegations of violation. The precautionary rule, however, remains focused on the attacker's decision-making process[118] and does not engage with these broader dynamics.

Accordingly, while the duty of precaution imposes important procedural constraints on targeting decisions, it does not resolve the underlying asymmetry identified in this paper. The law requires careful verification and risk mitigation, but it does not provide criteria for assessing how cultural status itself may be instrumentalized—whether through overdesignation, military use, or argumentative framing—to shape both battlefield decisions and their subsequent legal narration.

Overall, existing LOAC is relatively well developed on the question of when cultural property may be attacked and when protection may be lost. It is far less developed on the associated questions of how cultural status is asserted, how cultural sites are operationalized on the battlefield, and how cultural significance is used in the legal and political narration of hostilities. The 2025 Cambodia–Thailand conflict shows that these are not peripheral concerns.

III. PREVENTING THE INSTRUMENTALIZATION OF CULTURAL PROPERTY IN WARFARE

The foregoing analysis has shown how indeterminacy in the definition of cultural property, deference to good-faith assertions, the aggregation of harms within proportionality, and the rhetorical invocation of cultural value together create space for its strategic instrumentalization. This Part advances four targeted doctrinal and evidentiary reforms: (1) articulating identifiable criteria for assessing claims of cultural significance; (2) introducing a rebuttable presumption of military use; (3) requiring proportionality assessments to disaggregate and separately evaluate civilian casualties, essential infrastructure, and cultural loss rather than

[117] Additional Protocol I, *supra* note 71, art. 57(2)(a).

[118] Emma J. Breeze, *Duty to Act on Knowledge: Precautions, Intelligence and the Law of Armed Conflict*, 29 J. CONFLICT & SEC. L. 311, 314 (2024) (noting that Article 57 of Additional Protocol I is most widely written on because of its focus on the attacker's obligations).

subsuming them within a single category of collateral damage; and (4) obligating parties invoking cultural protection to specify the legal and factual basis of their claims and to support them with verifiable documentation. These recommendations do not seek to diminish the protection afforded to cultural property. Rather, they aim to preserve its integrity by clarifying how claims of cultural significance should be identified, substantiated, and weighed within the existing framework of the LOAC.[119]

A. Specifying Criteria for Cultural Value

A central gap in the current LOAC lies in the absence of clear evaluative standards for determining what qualifies as cultural property, particularly for sites that have not been formally designated.[120] While the 1954 Hague Convention recognizes "cultural property" as encompassing objects of great importance to the cultural heritage of every people,[121] it offers limited guidance on how such importance should be assessed in practice.[122] This indeterminacy creates space for opportunistic or inflated claims of cultural significance.[123]

To address this gap, the law should articulate a more structured set of criteria for assessing cultural value. Relevant factors may include: (1) historical recognition, such as longstanding acknowledgment by domestic or international institutions;[124] (2) community function, including the site's role in religious, social, or cultural practices;[125] and (3) continuity of cultural use, reflecting whether the site remains actively embedded in the cultural life of a community.[126] Additional indicia—such as scholarly documentation, private archival records, or prior protective measures—may further support such assessments.

Importantly, the goal is not to impose rigid thresholds that exclude culturally significant sites lacking formal recognition, but to require that claims of cultural value be grounded in identifiable and verifiable attributes. By introducing greater specificity into the concept of cultural significance, this approach limits the ease with which cultural protection can be strategically invoked.

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[119] *See supra* note 19 and accompanying text.
[120] *See supra* Part II.A. For example, under instruments like UNESCO conventions.
[121] 1954 Hague Convention, *supra* note 32, art. 1.
[122] *See supra* Part II.A.
[123] *See supra* Part II.A.
[124] *See generally* Douglas S. Noonan & Douglas J. Krupka, *Determinants of Historic and Cultural Landmark Designation: Why We Preserve What We Preserve*, 34 J. CULTURAL ECON. 1 (2010) (explaining the political economy underlying the historical designation and preservation of cultural heritage).
[125] *See* Federico Lenzerini, *Intangible Cultural Heritage: The Living Culture of Peoples*, 22 EUR. J. INT'L L. 101, 109–13 (2011) (highlighting the connection with the cultural identity of certain communities and groups as a constitutive factor of cultural heritage).
[126] *See id.* at 108–09 (discussing "constant recreation" as a constitutive factor of cultural heritage).

B. Rebutting Good-Faith Presumptions in Cases of Military Use

A second source of concern arises from the interaction between cultural protection and military use.[127] Under the existing doctrine, assertions that property is entitled to cultural protection are generally afforded a degree of deference, grounded in a broader presumption of good faith.[128] As a result, the burden therefore falls on the opposing party to substantiate allegations that the property is being used for military purposes.[129] However, this presumption becomes problematic where cultural property is extensively embedded in military action—such as basing troops or storing equipment in its vicinity—while still being invoked as a shield against attack.[130]

In such circumstances, the evidentiary posture should be recalibrated. Where there is credible indication that a site is being used in a sustained and functionally significant manner for military purposes, the analysis should begin from a rebuttable presumption of military use. This does not negate the site's potential cultural value, but it shifts the burden to the party asserting cultural protection to substantiate that claim.

Concretely, this would require the claimant to demonstrate the site's cultural significance through the types of criteria outlined above, and to explain how such significance persists notwithstanding its embeddedness in military action. This burden-shifting mechanism reflects a basic asymmetry: the party in control of the site is best positioned to provide evidence of its cultural status and use.[131] It also discourages the strategic co-location of military assets within culturally significant spaces while continuing to invoke their protected status.[132]

C. Disaggregating Cultural Harm within Proportionality Analysis

The proportionality rule, as currently formulated, aggregates diverse forms of harm—civilian casualties, damage to infrastructure, and destruction of cultural property—into a single category of collateral damage.[133] This formulation obscures

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[127] *See supra* Part II.B.
[128] *See supra* Part II.B.
[129] *See* Michael N. Schmitt, *Ukraine Symposium – Amnesty International's Allegations of Ukrainian IHL Violations*, LIEBER INST. OF WEST POINT (Aug. 8, 2022), https://lieber.westpoint.edu/amnesty-allegations-ukrainian-ihl-violations (explaining that the party alleging a LOAC violation bears the burden of proof and persuasion).
[130] See O'KEEFE, *supra* note 84, at 124–30 (identifying the military use of the immediate surrounding of cultural property as a protracted problem).
[131] *See* Zois Koukopoulos, Dimitrios Koukopoulos, & Jason J. Jung, *A trustworthy multimedia participatory platform for cultural heritage management in smart city environments*, 76 MULTIMEDIA TOOLS & APPLICATIONS 25943, 25944 (2017) (arguing that holders of cultural property are better positioned than external observers to access and assess information beyond what is publicly available).
[132] O'KEEFE, *supra* note 84, at 124–30 (discussing the issue of military colocation in the protection of cultural property).
[133] *See supra* Part II.C.

the distinct nature of cultural loss and risks undervaluing it in the balancing process.[134]

To address this limitation, proportionality assessments should adopt a more disaggregated approach to harm. Rather than treating all forms of collateral damage as commensurable,[135] decision-makers should separately evaluate at least three categories: (1) civilian casualties, reflecting direct harm to human life and bodily integrity;[136] (2) essential infrastructure, including objects indispensable to civilian survival;[137] and (3) cultural value, encompassing the symbolic, collective, and long-term harm resulting from the destruction of culturally significant sites.[138]

This disaggregation enhances analytical clarity by requiring decision-makers to explicitly account for the different types of harm at stake. In particular, it foregrounds the irreversibility and collective dimension of cultural loss, which cannot be easily analogized to other forms of material damage.[139] By making these considerations more visible within the proportionality calculations, the law can better guard against the instrumentalization of cultural value in operational decision-making.

D. Requiring Substantiated Claims of Cultural Protection

Finally, the instrumentalization of cultural value is often facilitated at the level of legal and political rhetoric.[140] Parties to a conflict may invoke cultural protection in broad or conclusory terms, without clearly articulating the basis of their claims or providing supporting evidence.[141] Such assertions, even when weakly grounded, can shape public narratives and complicate legal assessments.[142]

To mitigate this dynamic, parties invoking cultural protection should be required to clearly articulate and substantiate their claims. At a minimum, this entails identifying the specific basis of the site's cultural significance, referencing relevant criteria (such as those proposed above), and providing supporting documentation where available. Such documentation may include official designations, historical records, expert assessments, or evidence of ongoing cultural use.

This requirement serves both epistemic and normative functions. Epistemically, it enhances the quality of information available to decision-makers, enabling more accurate legal assessments and more comprehensive protection of cultural property over time.[143] Normatively, it reinforces the idea that cultural

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[134] *See supra* Part II.C.
[135] *See supra* note 105 and accompanying text.
[136] Additional Protocol I, *supra* note 71, art. 51(5)(b).
[137] *Id.*
[138] *See supra* Part II.C.
[139] *See supra* Part II.C.
[140] *See supra* Part I.C.
[141] *See supra* Part I.C.
[142] *See supra* Part I.C.
[143] *See generally* DAVID MYERS & JANET HANSEN, *Introduction: Importance of Inventories and Surveys to Heritage Management*, *in* INVENTORIES AND SURVEYS FOR HERITAGE MANAGEMENT: LESSONS FOR THE DIGITAL AGE (2024) (highlighting the importance of information and documentation in cultural heritage management).

heritage is not a purely rhetorical device or abstract value, but a legal status that must be justified and proven.[144] By raising the evidentiary threshold for invoking cultural value, this approach reduces the likelihood that such claims will be deployed strategically without sufficient foundation.

These four recommendations—clarifying criteria for cultural significance, recalibrating evidentiary presumptions in cases of military use, disaggregating harm within proportionality, and requiring substantiated claims for cultural assertions—operate at different points within the legal framework, but share a common objective: to preserve the integrity of cultural protection by limiting its strategic manipulation. Rather than limiting the scope of protection in the abstract, they seek to discipline the ways in which cultural value is identified, invoked, and weighed in practice. In doing so, they aim to ensure that the LOAC remains responsive not only to ways of attack, but also to the genuine cultural heritage it seeks to safeguard.

CONCLUSION

This paper has argued that the contemporary law governing cultural property in armed conflict contains a structural tension: it aspires to protect objects of great importance to the cultural heritage of every people, but the very indeterminacy and normative weight of that protection render it susceptible to instrumentalization in warfare—through overdesignation, military use, and propaganda.[145] Cultural protection is embedded in the operational realities of warfare, where legal categories are invoked, contested, and stretched to serve strategic ends.[146]

The problem, therefore, is not simply one of non-compliance, but of legal design. A regime that relies on capacious standards, good-faith assertions, and aggregated balancing inevitably depends on how claims are framed, substantiated, and evaluated in practice.[147] Where those processes lack structure, cultural value risks becoming a malleable concept—capable of both genuine protection and instrumental deployment.

The recommendations advanced in this paper respond to this structural vulnerability. By specifying criteria for cultural significance, recalibrating evidentiary presumptions in cases of military use, disaggregating harms within proportionality, and requiring substantiated claims of cultural protection, the law can better discipline the ways in which cultural value enters legal and operational decision-making.[148]

At stake is not only the fate of particular monuments, sites, or objects, but the credibility of the legal regime itself. When cultural protection is invoked without clear standards or evidentiary grounding, it risks losing normative force.

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[144] *See* Paolo Davide Farah & Riccardo Tremolada, *Conflict between Intellectual Property Rights and Human Rights: A Case Study on Intangible Cultural Heritage*, 94 OR. L. REV. 125, 134 (2015) (espousing this understanding in the context of intangible cultural property).
[145] *See supra* Part I.
[146] *See supra* Part I.
[147] *See supra* Part II.
[148] *See supra* Part III.

Conversely, a more structured and transparent approach reinforces the legitimacy of cultural protection.[149]

In this sense, the cultural property regime functions not merely as a protective framework, but as a narrative and legal vocabulary through which competing claims are advanced and operational choices are contested and shaped.[150] Recognizing this dual function is essential. It underscores that the task is not only to protect cultural property from destruction, but also to safeguard the integrity of the legal concepts through which that protection is articulated. Only by addressing both dimensions can the law of armed conflict remain responsive to the enduring value of cultural heritage while resisting its strategic instrumentalization in war.

[149] *See supra* note 19 and accompanying text.

[150] *See generally* Chen Yifeng (陈一峰), Xushi, Xushu Yu Huayuquan: Yige Guojifa De Xushixue Yanjiu (叙事、叙述与话语权：一个国际法的叙事学研究) [Narrative, Narration, and Discursive Power: A Narratological Study of International Law], Yunnan Shehui Kexue (云南社会科学) [Yunnan Social Sciences], no. 3, 2024 (arguing that international law is constituted by competing narratives that states deploy to contest one another's claims).