

RESEARCH ARTICLES

Kristin Hausler*

k.hausler@biicl.org
Public International Law at the British Institute
of International and Comparative Law
Charles Clore House
17 Russell Square
London WC1B 5JP, United Kingdom

Culture under Attack: The Destruction of Cultural Heritage by Non-State Armed Groups

Abstract: This article considers whether there are any gaps within the legal framework protecting cultural heritage from attacks conducted by non-state armed groups. It first looks at the existing obligations of states vis-à-vis non-state armed groups with regard to the protection of such heritage, in particular their obligations stemming from the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. It also examines the obligations of non-state armed groups with regard to cultural heritage, clarifying their obligations under international humanitarian law, including customary international norms, and other sources of international law. Finally, this article discusses accountability mechanisms, in particular with the application of international criminal law to prosecute the members of non-state armed groups who have conducted attacks against cultural property.

Keywords: non-state actors, armed groups, cultural heritage, cultural property, armed conflict, Hague Convention

* **Kristin Hausler** is the Dorset Senior Research Fellow in Public International Law at the British Institute of International and Comparative Law. Her expertise lies primarily in international human rights law and international humanitarian law, as well as cultural heritage law. Kristin holds a Bachelor and Master of Law from the University of Fribourg (Switzerland) and an LL.M. from the University of British Columbia (Canada). She also studied art at Christie's in New York and worked in Vancouver on a project devoted to the return of ancestral remains to Indigenous communities.

The author thanks Pascal Bongard (Geneva Call) for having directed her to some of the practice of non-State armed groups mentioned in this article, as well as Marina Lostal for her comments.

Introduction

[...] damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world

Preamble of the Hague Convention (1954)

As underlined by the preamble of the key treaty for the protection of cultural property in the event of armed conflict (Hague Convention),¹ any damage to cultural heritage is detrimental not only to a portion of interested individuals but to humanity as a whole. Cultural heritage, including its tangible form, is often representative of the core identity of peoples. This is why the destruction of material culture has long been used as a weapon to undermine an enemy's morale and affirm the will to conquer and dominate others. As Irina Bokova, Director-General of UNESCO, stated: "damage to the heritage of [a] country is damage to the soul of its people and its identity".² Cultural heritage is also at risk of direct attacks when it is turned into a military objective, such as when troops are stationed in a historic building or when weapons are stored in a museum. In addition to being the object of direct attacks during armed conflicts, either because of its cultural importance for a particular group of people or because of it being considered a legitimate military target, cultural objects are also regularly the casualties of collateral damage in armed conflicts.

Since the adoption of the Hague Convention in 1954, cultural heritage has continued to suffer from the same attacks but the nature of the armed conflicts has changed. While most armed conflicts used to have an international character, the large majority of current armed conflicts are internal, which means that they involve non-state armed groups fighting a state or non-state armed groups fighting among themselves within the territory of a state, rather than two (or more) states waging war against each other.³ Therefore, the damage incurred by cultural heritage during an armed conflict is nowadays just as likely to be the result of the actions of non-state armed groups as those of states themselves. However, the loss of cultural heritage to mankind is the same whether it is generated by the actions of states or non-state armed groups. Given the changing nature of war associated with the increase in non-international armed conflicts, it is therefore crucial to clarify whether non-state armed groups are bound by the current legal framework protecting cultural heritage in armed conflict and, if so, to what rules they are bound.

¹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 240.

² *Director-General of UNESCO appeals for protection of Syria's cultural heritage*, 30 March 2012, http://www.unesco.org/new/en/media-services/world-heritage-37th-session/whc37-details/news/director_general_of_unesco_appeals_for_protection_of_syrias_cultural_heritage/ [accessed: 10.11.2015].

³ See, for example, S. Casey-Maslen (ed.), *The War Report 2012*, Oxford University Press, Oxford 2013, p. vi, x.

Current Context: Increased Attacks by Non-State Armed Groups

Over the past few years, both moveable and immovable forms of cultural heritage have been the objects of increased targeting by non-state armed groups in situations of non-international armed conflicts, i.e. wars which include one or more armed non-state actor(s). For example, following the military coup in Mali in March 2012, rebel groups, including Ansar Dine, al-Qaeda in the Islamic Maghreb (AQIM), and possibly the Movement for Oneness and Jihad in West Africa (MUJAO), attacked Timbuktu's mosque and damaged or destroyed many of its other cultural monuments, including nine of its mausoleums inscribed on the World Heritage List.⁴

The continuing armed conflict in Syria between the national armed forces and the Free Syrian Army (FSA) and the al-Nusra Front has also led to significant damage to, or destruction of, cultural heritage.⁵ In Damascus, fighting between the rebels and the Syrian army in November 2013 damaged the mosaics of the Umayyad Mosque and the wall of the Citadel.⁶ During the siege of Homs in July 2014, the medieval castle of Krak des Chevaliers suffered extensive damage following an airstrike by the Syrian army which targeted rebels who had used it as a base.⁷ Earlier in 2014, the Umayyad Mosque in Aleppo was reportedly used as a lookout and sniper location by rebels, which led to its shelling and eventual collapse. Its minaret was used as a lookout and sniper location by the rebels, which led to its shelling and collapse in March 2013.⁸ The previous year, insurgents were reported to have es-

⁴ See *UNESCO expert mission evaluates damage to Mali's cultural heritage*, the UNESCO press release of 7 June 2013, <http://www.unesco.org/new/en/unesco/resources/unesco-expert-mission-evaluates-damage-to-malis-cultural-heritage> [accessed: 10.11.2015]. See also the UN press release, *Mali: Timbuktu's cultural heritage more damaged than first estimated, UN agency says*, 7 June 2013, <http://www.un.org/apps/news/story.asp?NewsID=45118> [accessed: 10.11.2015]. See further, D. Zwaagstra, *Crimes Against Cultural Property in Mali*, Peace Palace Library, <http://www.peacepalacelibrary.nl/2013/01/crimes-against-cultural-property-in-mali> [accessed: 10.11.2015].

⁵ For more on the impact of the Syrian conflict on cultural heritage, see M. Lostal, *Syria's World Cultural Heritage and Individual Criminal Responsibility*, "International Review of Law" 2015, Issue 1, pp. 4 ff.

⁶ D. Darke, *How Syria's ancient treasures are being smashed*, BBC, 10 July 2014, <http://www.bbc.co.uk/news/magazine-28191181> [accessed: 12.11.2015].

⁷ *Syria Crusader castle Krak des Chevaliers has war scars*, BBC, 22 March 2014, <http://www.bbc.com/news/world-middle-east-26696113> [accessed: 10.11.2015]. For the damage suffered previously by the castle, see e.g. R. Fisk, *Syria's ancient treasures pulverised*, "The Independent", 5 August 2012, <http://www.independent.co.uk/voices/commentators/fisk/robert-fisk-syrias-ancient-treasures-pulverised-8007768.html> [accessed: 15.11.2015].

⁸ See, e.g., *Syria Conflict: Mortar near Umayyad Mosque kills three*, BBC, 29 November 2013, <http://www.bbc.co.uk/news/world-middle-east-25150432> [accessed: 10.11.2015]. On the pillaging of museums, see O. Almuqdad, *Syrian heritage under extreme attack*, Morocco World News, 16 June 2013, <http://www.morocroworldnews.com/2013/06/94567/syrian-heritage-under-extreme-attack> [accessed: 14.11.2015]. On attacks on religious sites, see *Syria: Opposition Abuses During Ground Offensive*, Human Rights Watch, 19 November 2013, <http://www.hrw.org/news/2013/11/19/syria-opposition-abuses-during-ground-offensive> [accessed: 5.11.2015]. On the impact of attacks on religious sites, see *Syria: Attacks on Religious Sites Raise Tensions*, Human Rights Watch, 23 January 2013, <http://www.hrw.org/news/2013/01/23/syria-attacks-religious-sites-raise-tensions> [accessed: 10.11.2015].

tablished their headquarters near Aleppo's old souk, turning its old town into a battleground, which eventually resulted in the souk becoming the victim of a collateral fire.⁹ In Bosra, it appears that a Roman amphitheatre was used as a military base from which snipers fired at rebels located in the Old Town.¹⁰

In addition, the insecurity context resulting from the Syrian conflict has allowed the rise of ISIS (the Islamic State of Iraq and Syria, also known as ISIL, the Islamic State of Iraq and the Levant), the jihadi militant group which took control of portions of Iraqi and Syrian territory in 2015.¹¹ Since 2014, it has intentionally damaged or destroyed the cultural heritage of those two states, as well as of Libya, because it sees it as heretical to Islam. Their targets have included religious sites, as well as ancient monuments and artefacts. For example, it has destroyed Byzantine mosaics and Assyrian statues, as well as Sufi and Shia shrines in the region of Raqqa in Syria.¹² In 2014 and 2015, ISIS destroyed several mosques, churches, Sufi and Shia shrines and tombs in Mosul, Northern Iraq, the site of the ancient Assyrian capital of Nineveh.¹³ Video footages were released showing ISIS fighters destroying artefacts in the Mosul museum, in February 2015, the ancient cities of Nimrud and Hatra, in March 2015.¹⁴ Since their capture of the ancient city of Palmyra in May 2015, ISIS militants have destroyed its Temples of Bel and Baal Shamin, its Arch of Triumph, as well as the iconic Lion of al-Lāt, an ancient statue representing a pre-Islamic goddess.¹⁵

⁹ A. Barnard, H. Saad, *In Syria's Largest City, Fire Ravages Ancient Market*, "The New York Times", 29 September 2012, http://www.nytimes.com/2012/09/30/world/middleeast/fire-sweeps-through-ancient-souk-of-aleppo-citys-soul.html?_r=0 [accessed: 17.11.2015].

¹⁰ For information on the destruction in Bosra and other Syrian sites, see *Ancient history, Modern Destruction: Assessing the Current Status of Syria's World Heritage Sites Using High-Resolution Satellite Imagery*, <http://www.aaas.org/page/ancient-history-modern-destruction-assessing-current-status-syria-s-world-heritage-sites-using> [accessed: 16.11.2015].

¹¹ *ISIS 'controls 50% of Syria' after seizing historic city of Palmyra*, "The Guardian", 21 May 2015, <http://www.theguardian.com/world/2015/may/21/isis-palmyra-syria-islamic-state> [accessed: 10.11.2015].

¹² P. Cockburn, *The destruction of the idols: Syria's patrimony at risk from extremists*, "The Independent", 11 February 2014, <http://www.independent.co.uk/news/science/archaeology/news/the-destruction-of-the-idols-syrias-patrimony-at-risk-from-extremists-9122275.html> [accessed: 10.11.2015].

¹³ G. Bowley, *Antiquities Lost, Casualties of War*, "The New York Times", 3 October 2014, <http://www.nytimes.com/2014/10/05/arts/design/in-syria-and-iraq-trying-to-protect-a-heritage-at-risk.html> [accessed: 10.11.2015].

¹⁴ *ISIS fighters destroy ancient artefacts at Mosul museum*, "The Guardian", 26 February 2015, <http://www.theguardian.com/world/2015/feb/26/isis-fighters-destroy-ancient-artefacts-mosul-museum-iraq> [accessed: 14.11.2015]; *ISIS video confirms destruction at UNESCO World Heritage site in Hatra*, "The Guardian", 5 April 2015, <http://www.theguardian.com/world/2015/apr/05/isis-video-confirms-destruction-at-unesco-world-heritage-site-on-hatra> [accessed: 14.11.2015].

¹⁵ See, for example, *ISIS destruction of Palmyra's Temple of Bel revealed in satellite images*, "The Guardian", 1 September 2015, <http://www.theguardian.com/world/2015/sep/01/satellite-images-reveal-isis-destruction-of-palmyras-temple-of-bel> [accessed: 14.11.2015]. See also *ISIS militants destroy 2,000-year-old statue of lion at Palmyra*, "The Guardian", 2 July 2015, <http://www.theguardian.com/world/2015/jul/02/isis-militants-destroy-palmyra-stone-lion-al-lat> [accessed: 6.11.2015]; *ISIS blows up Arch of Triumph in*

Following the escalating number of deliberate attacks against cultural heritage by ISIS, the UNESCO Committee for the Protection of Cultural Property in the Event of Armed Conflict condemned the “repeated and deliberate attacks against cultural property [...] in particular in the Syrian Arab Republic and the Republic of Iraq” at its meeting in 2014.¹⁶ The destruction of cultural heritage in Iraq and Syria is also a violation of the United Nations Security Council Resolution No. 2199 (2015),¹⁷ and the deliberate destruction of cultural heritage has been identified as a war crime not only in international but also in non-international armed conflicts.¹⁸

Article Outline

Given the surge of attacks mentioned above, it appears not only timely but also imperative to analyse the legal norms protecting tangible cultural heritage in situations of non-international armed conflicts and clarify if (and how) they apply to non-state armed groups. In conducting this analysis, this paper seeks to identify any existing gap in the current international legal framework and its implementation. It is of course particularly important that cultural heritage benefits from the same level of respect in the event of armed conflict regardless of whether the warring parties are states or non-state armed groups. The changing nature of war should not weaken the international law norms developed so far to protect cultural objects from deliberate attacks and incidental damage in situations of armed conflicts.

The following section highlights what are the international law norms protecting cultural heritage which are applicable in the event of non-international armed conflicts, acknowledging that many key documents were developed when wars between states were the most common type of armed conflicts. Once the rules applicable to civil wars have been identified, the subsequent section reflects on their

2,000-year-old city of Palmyra, “The Guardian”, 5 October 2015, <http://www.theguardian.com/world/2015/oct/05/isis-blows-up-another-monument-in-2000-year-old-city-of-palmyra> [accessed: 6.11.2015]. Note that ISIS also beheaded Palmyra’s former head of antiquities, Khaled al-Asaad, see *Syrian archaeologist ‘killed in Palmyra’ by IS militants*, BBC News, 19 August 2015, <http://www.bbc.co.uk/news/world-middle-east-33984006> [accessed: 10.11.2015].

¹⁶ Chairperson’s Statement on behalf of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, 9th Meeting of the Committee, 19 December 2014, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/9_COM_Statement_EN.pdf [accessed: 29.10.2015].

¹⁷ United Nations Security Council Resolution No. 2199, 12 February 2015, UN Doc. S/RES/2199 (2015) on the ‘Threats to international peace and security caused by terrorists acts’ condemns the destruction of cultural heritage in Iraq and Syria, particularly by ISIS and the al-Nusra Front, para. 15-17.

¹⁸ Article 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute of the International Criminal Court (Rome Statute), 17 July 1998, 2187 UNTS 90; see also Article 3(d) Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, 7 July 2009, UN Doc. S/RES/1877 (2009). See also *UNESCO Director General condemns destruction of Nimrud in Iraq*, UNESCO Press, 6 March 2015, http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_condemns_destruction_of_nimrud_in_iraq/#.VctSefkYNNI [accessed: 11.11.2015].

applicability to non-state armed groups. The various possible grounds on which non-state armed groups are generally bound to international humanitarian norms are reviewed and applied with regard to the specific rules concerning cultural heritage. The final section looks at the existing obligations of states vis-à-vis non-state armed groups with regard to the protection of such heritage, in particular their obligations stemming from treaty law, including the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 (Hague Convention) and its Second Protocol¹⁹. The potential individual criminal responsibility of members of non-state armed groups and the role of states in prosecuting those who have committed offences against cultural objects in situations of armed conflicts is also discussed in this section. The paper concludes with a few suggestions as to avenues forward to strengthen the respect of cultural heritage by non-state armed groups during internal armed conflicts.

International Legal Framework and Non-International Armed Conflicts

While there is evidence since Antiquity of rules concerned with the respect of cultural heritage in wartime, it is a concept that only really crystallised in the 19th century, when the distinction between civilian objects and military objectives became widely recognised. Some military codes of conduct even afforded special protection to art works and buildings with a cultural purpose, such as the Lieber Code, which applied to United States’ troops during the American Civil War, a non-international armed conflict.²⁰ A number of non-binding instruments regarding the conduct of hostilities, also adopted in the 19th century, included provisions protecting buildings because of their civilian character and, more specifically, buildings dedicated to cultural pursuits.²¹ While they lacked binding force, these documents encouraged nevertheless the development of international rules protecting cultural heritage in armed conflicts, including those not of an international character.

¹⁹ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999, 2253 UNTS 212.

²⁰ Articles 35-36, Lieber Code (or Instructions for the Government of Armies of the United States in the Field, General Order No. 100), 24 April 1863, http://avalon.law.yale.edu/19th_century/lieber.asp [accessed: 8.11.2015]. This code only applied to United States’ troops and not to the secessionist Confederates.

²¹ Article 17, Brussels Declaration concerning the Laws and Customs of War (27 August 1874, 4 Martens NRG (2e série) 219) states that “if a defended town, fortress or village were to be bombarded, all necessary steps must be taken to spare, as far as possible, buildings dedicated to worship, art and science”. See also Article 34, Manual of the Laws and Customs of War (“Oxford Manual”), 9 September 1880, <https://www.icrc.org/ihl/INTRO/140?OpenDocument> [accessed: 29.10.2015], which, like Article 17 of the Brussels Declaration, calls on the besieged to indicate to the enemy the presence of cultural buildings by distinctive and visible signs. This advance warning concept was adopted by the Hague Regulations Concerning the Laws and Customs of War on Land (1899 and 1907, 187 Parry’s CTS 429, 208 Parry’s CTS 77) and, later, by the 1954 Hague Convention.

The Hague Regulations constituted a key development in the protection of cultural heritage in armed conflict as they contained the first binding international norm calling for its state parties to take all necessary steps in bombardments “to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments”.²² Although they were annexed to the Hague Conventions on the Laws and Customs of War on Land, a series of treaties adopted at two diplomatic conferences, first in 1899 and again in 1907, the Hague Regulations remain relevant to this day as they are still in force for the state parties that have not ratified subsequent treaties on those matters.²³ While they were meant to apply exclusively to international armed conflicts, i.e. wars between two states or situations of occupation, their rules concerned with the protection of cultural heritage have been described as reflecting custom and being also applicable to non-international armed conflicts.²⁴

The Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (also known as the Roerich Pact, 1935) states that Historic monuments, museums, scientific, artistic, educational and cultural institutions shall be considered as neutral and as such respected and protected by belligerents, as long as they are not used for military purposes.²⁵ This aspirational treaty has only been ratified by ten states, including the United States and some Latin American states. It is unclear whether the Roerich Pact applies to both international and non-international armed conflicts.

The Geneva Conventions, adopted in 1949, do not contain any specific provision regarding cultural heritage but their rules protecting properties because of their civilian nature, applying the customary principle of distinction, also cover cultural objects. For example, the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” constitute grave breaches of the Geneva Conventions.²⁶ In addition, the private property of protected persons, including cultural objects, cannot be the object of reprisals.²⁷ However, these provisions are only applicable to international armed

²² Article 27 Hague Regulations (1899 and 1907).

²³ The 1899 Hague Convention II has 50 State parties, while the 1907 Hague Convention IV, which largely confirmed the provisions contained in the 1899 Convention II and its annexed Regulations, has 36 State parties.

²⁴ See, for example, *Prosecutor v. Kordić and Čerkez*, ICTY Case No. IT-95-14/2-T, Judgment of the Trial Chamber, 26 February 2001, para. 362, where it clearly referred to “the custom codified in Article 27 of the Hague Regulations”.

²⁵ Articles 1 and 5, Roerich Pact (or Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments), 15 April 1935, <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=EE57F295093E44A4C12563CD002D6A3F> [accessed: 10.11.2015].

²⁶ Article 147 GC IV.

²⁷ *Ibidem*, Article 33.

conflicts. Common Article 3, the only provision within those Conventions which is applicable to non-international armed conflicts, is only concerned with civilian persons and not civilian properties.

Adopted in 1977, Additional Protocol I and II to the Geneva Conventions provide supplementary protection to the victims of international and non-international armed conflicts, respectively. While Additional Protocol I proscribes attacks against civilian objects during international armed conflicts, unless they have been turned into military objectives, this general prohibition was not reiterated in Additional Protocol II.²⁸ However the more specific prohibition contained in Article 53 of Additional Protocol I, which forbids “to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples” and “to use such objects in support of the military effort”, was enshrined under Article 16 of Additional Protocol II.²⁹ As this provision does not provide for an exception in the case of military necessity, it affords a rather high level of protection. However, as the provision refers to cultural objects and places of worship which constitute “the cultural or spiritual heritage of peoples” and not “people”, it appear to refer to those monuments or objects that transcends national borders and can thus be argued to be well known and forming part of the heritage of mankind, without requiring a specific listing.³⁰ As Additional Protocol II applies to non-international armed conflicts taking place on the territory of a state party,³¹ it is applicable to the internal armed conflicts occurring on the territory of Mali or Libya, but not on those of Iraq or Syria, for example. However, as Article 16 is generally considered as being an expression of

²⁸ Article 52 AP I. However, it can be argued that Article 13(1) is vague enough to encompass all civilian objects.

²⁹ Article 16 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II, AP II), 8 June 1977, 1125 UNTS 609. Article 53(a)(b) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I, AP I), 8 June 1977, 1125 UNTS 3. Note that AP I also prohibits to make cultural objects the object of reprisals (Article 53(c) AP I) and considers that making clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where it was not used militarily and when such cultural property was not close to military objectives, is a grave breach of the Protocol (Article 85(4)(d) AP I). However, neither of these provisions were adopted in AP II.

³⁰ Y. Sandoz, Ch. Swinarski, B. Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, International Committee of the Red Cross, Brill-Nijhoff, Geneva 1987, para. 4840 and 4844. While it is suggested that this definition is similar to the one found in Article 1 Hague Convention, its scope is arguably narrower.

³¹ It currently numbers 167 State parties, see the website of the ICRC: <http://www.redcross.org/humanityinwar/additional-protocol-ii-to-the-geneva-conventions-1977> [accessed: 10.11.2015]. See also J.-M. Henckaerts, L. Doswal-Beck, *Customary International Humanitarian Law*, Vol. I: *Rules*, Cambridge University Press, Cambridge 2005, at xxxiv.

customary law, it may thus apply to any party to a non-international armed conflict, whether or not they are bound by Additional Protocol II.³²

The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereafter the “Hague Convention”), adopted in 1954, is the key treaty in this area. Its scope includes many types of cultural “property”, including “movable or immovable property of great importance to the cultural heritage of every people.”³³ In addition, it also covers buildings which preserve or exhibit such property, as well as centres containing monuments, such as historic town centres.³⁴ Given that its definition of what constitutes “cultural property” lacks precision, the protection system established by the Hague Convention may encompass a large amount of cultural objects. However, they must be deemed “of great importance”, a term which has to be determined by each state party and which may consequently greatly limit its application. The vagueness of this definition may furthermore generate implementation challenges on the ground, i.e. when troops need to determine rapidly whether an object or site falls within the protection provided by the Convention or not.

The Hague Convention’s provisions regarding the respect of cultural property are applicable both in international armed conflicts and non-international armed conflicts, on a state party’s territory and on its enemy’s territory if that state is also a party to the Convention.³⁵ Under the Convention, respecting cultural heritage in the event of armed conflict means that it must not be exposed to possible damage or destruction. Thus, cultural objects must not be used in a way that could turn them into a legitimate military objective, for example by being used for military purpose, which could be the case if a museum houses a military command centre or if weapons or troops are stationed in a historic monument, for example. The Hague Convention thus adopts the principle of distinction between civilian objects and military objectives, where the latter can be legitimately targeted if their partial or total destruction would offer a definite military advantage as their current nature, location, purpose or use make “an effective contribution to military action”.³⁶ According to the Hague Convention, the immediate surroundings of a cultural

³² See the practice identified in the ICRC Customary IHL database, Rules 38-39.

³³ Article 1(a) Hague Convention. These may include “monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions” of such property.

³⁴ *Ibidem*, Article 1(b) and (c). These include museums, libraries, archives, as well as shelters dedicated to protecting that heritage in times of armed conflict.

³⁵ *Ibidem*, Articles 2, 4(1), 18 and 19. The Second Protocol is also clearly applicable to both international and non-international armed conflicts as it specifically excludes those situations that do not amount to a non-international armed conflict, such as civil unrest, thus making clear that it does apply to situations that have reached the threshold of non-international armed conflicts.

³⁶ Article 1(f) Second Protocol which uses the definition of military objectives as adopted by Article 52(2) Additional Protocol I; see also Article 6(a) Second Protocol.

object must not be used in a way that could expose it to damage or destruction either.³⁷ And just like Additional Protocol II, the Hague Convention also prohibits direct attacks against such an object.³⁸ Furthermore, the Second Protocol to the Hague Convention (Second Protocol), adopted in 1999, states that military operations must be conducted with all feasible precautions to avoid, or at least minimise, any possible incidental damage to cultural property (including through the choice of means and methods of warfare).³⁹ It also requires the party attacking such an object to verify that it is a military objective and cancel or suspend the attack if it becomes apparent the object is not (or no longer) a military objective.⁴⁰ The Second Protocol also refers to the customary principle of proportionality, according to which belligerents must refrain from conducting (or suspend) an attack which may lead to excessive damage in relation to the expected military advantage.⁴¹

However, despite these prohibitions, attacks against cultural objects or their use for military purpose remains allowed in cases of imperative military necessity, a concept that is difficult to apply consistently in practice.⁴² Attacking cultural objects or using them for a military purpose may be legitimate if such an attack or use offers a distinct military advantage to win the war, or at least a key battle. In the event of military necessity, the customary principle of proportionality still applies, which means that the advantage that can be gained by conducting the attack must outweigh any potential damage or destruction to the cultural object under attack and there must be no other method available for obtaining a similar military advantage.⁴³ The party conducting the hostile act must also take all precautionary measures to minimise the consequent damage to the object in question, including precautionary measures against the effects of attacks.⁴⁴ This may consist of removing cultural objects from the vicinity of military objectives, or vice versa.

While it acknowledges the principle of military necessity, the Hague Convention attempts to limit the possibility of invoking it by adding the term “imperative” to it, without clarifying how this differs from the generally accepted concept.⁴⁵ The Second Protocol to the Hague Convention has thus sought to narrow recourse to imperative military necessity when conducting an act of hostility against a cul-

³⁷ Article 4(1) Hague Convention.

³⁸ Ibidem.

³⁹ Articles 7-8 Second Protocol.

⁴⁰ Ibidem, Articles 7(a) and (d).

⁴¹ Ibidem, Article 7(c) and (d)(ii).

⁴² Article 4(2) Hague Convention.

⁴³ Article 6(a)(b) Second Protocol.

⁴⁴ Ibidem, Articles 7-8. Note that the requirement to take precautions in attack was not included in Additional Protocol II but could be inferred from its Article 13(1).

⁴⁵ For more on this doctrine, see C. Forrest, *The Doctrine of Military Necessity and the Protection of Cultural Property During Armed Conflicts*, “California Western International Law Journal” 2007, Vol. 37, pp. 177-219.

tural object: the object in question must not only have been turned into a military objective but there must also be no feasible alternative available to obtain a similar military advantage.⁴⁶ In addition, when possible, advance warning must be given before the attack.⁴⁷ With regard to military use, the Second Protocol states that a cultural object can only be used in such a way, as long as there is no other way to obtain a similar military advantage.⁴⁸ Finally, under the Second Protocol, imperative military necessity can only be invoked by higher ranked officers.⁴⁹

The core content of the above norms is now generally recognised as a matter of customary international law, which means that it must be respected by all states, even when they have not ratified the treaty that contains that particular rule.⁵⁰ To be considered customary international law, a rule requires sufficient state practice (*usus*) and a belief that such practice derives from a legal obligation (*opinio juris*).⁵¹ According to state practice, historic monuments, places of worship and other cultural objects are regarded as *prima facie* civilian objects.⁵² In addition to the protection they benefit as civilian properties, the customary international humanitarian study conducted by the International Committee of the Red Cross (ICRC)⁵³ has confirmed the customary status of the rule according to which belligerents must take special care when conducting military operations, in order to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments, unless such buildings have been turned into military objectives.⁵⁴ In addition, sufficient state practice appears to have also been

⁴⁶ Article 6(a) Second Protocol.

⁴⁷ *Ibidem*, Articles 6(d) and 13(2)(c).

⁴⁸ *Ibidem*, Article 6(b).

⁴⁹ *Ibidem*, Article 6(c).

⁵⁰ While it can be argued that only Article 27 of the Hague Regulations, which calls to “to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments” has reached the status of customary international law, the ICRC Customary IHL Study appears to have identified sufficient State practice at least with regard to the prohibition of direct attacks against, and military use of, cultural property, see the practice associated with Rules 38-39 (and below), in particular see the Annotated Supplement to the US Naval Handbook (1997) which states that “[W]hile the United States is not a Party to the 1954 Hague Convention [for the Protection of Cultural Property], it considers it to reflect customary law.” For a detailed analysis of customary international law in this area, see R. O’Keefe, *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press, Cambridge 2006, pp. 316 *et seq.*

⁵¹ *Continental Shelf Case (Libyan Arab Jamahiriya v. Malta)*, Judgment of 3 June 1985, ICJ Reports 1985, pp. 29-30, para. 27.

⁵² J.-M. Henckaerts, L. Doswal-Beck, *Customary International Humanitarian Law*, Vol. II: *Practice*, Cambridge University Press, Cambridge 2005, at 34.

⁵³ Rule 38-40 ICRC Study on customary international humanitarian law. For all the international law provisions incorporating these rules, as well as relevant practice of states, international organisations, judicial and quasi-judicial bodies, see J.-M. Henckaerts, L. Doswal-Beck, *Customary International Humanitarian Law*, Vol. II, pp. 723-813.

⁵⁴ Rule 38(a) of the ICRC Study on customary international humanitarian law, which reflect the content of Article 27 of the Hague Regulations.

gathered with regard to the rule which calls on belligerents not to attack objects “of great importance to the cultural heritage of every people”, and quite possibly with regard to the rule not to use them in a way that exposes it to destruction or damage, unless imperatively required by military necessity.⁵⁵

With regard to the types of cultural objects protected under customary international law, the ICRC adopts both the wording of the Hague Regulations with regard to the special care that must be provided to “buildings dedicated to religion, art, science, education or charitable purposes and historic monuments” and the wording of the Hague Convention with regard to the prohibition to attack, and military use, “property of great importance to the cultural heritage of every people”.⁵⁶ However, it appears that the practice of states is in this regard not homogenous. While some military manuals have adopted the understanding of protected cultural buildings as contained in the Hague Regulations,⁵⁷ many others have adopted a more encompassing definition of cultural objects, including, for example, moveable works of arts.⁵⁸ Thus, the type of cultural objects which are protected from attacks and military use under customary international law remains unclear. The international recognition of an object,⁵⁹ as well as the display of a distinctive emblem,⁶⁰ may play a role in identifying whether a particular object falls under such protection.

The ICRC has also affirmed that belligerents are not allowed to seize, destroy or wilfully damage cultural institutions and monuments, as well as works of art and science,⁶¹ and that theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited, as a matter of custom.⁶² While there exists some indication

⁵⁵ Ibidem, Rule 38(b) and 39, which include, for example, many military manuals’ provisions which specifically prohibit attacking cultural objects and using them for military purposes. Note that the term ‘imperative military necessity’ was adopted in the rules identified by the ICRC, thus reiterating the language of the Hague Convention and its endeavour to limit recourse to this justification when cultural objects are concerned.

⁵⁶ The ICRC opted for the term ‘every people’, which corresponds to the wording of the Hague Convention and which appears more encompassing than the one found in Additional Protocol II.

⁵⁷ See, for example, the military manuals of Burkina Faso, Ecuador, Greece, Mali, Morocco, Nigeria, and Senegal (as cited under the practice associated with Rule 38 of ICRC Study on customary international humanitarian law).

⁵⁸ See, for example, the military manuals of Australia, Burundi, Colombia, Germany, Hungary, the Netherlands, New Zealand, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom (as cited under the practice associated with Rule 38 of ICRC Study on customary international humanitarian law).

⁵⁹ See, for example, the consideration of the Old Town of Dubrovnik as an ‘especially protected site’ because of its inscription on the UNESCO World Heritage List in *Prosecutor v. Pavle Strugar*, ICTY Case No. IT-01-42, Judgment of the Trial Chamber, Judgment, 31 January 2005, para. 310.

⁶⁰ See, for example, the military manual of Argentina, Benin, Guinea, and the Philippines (as cited under the practice associated with Rule 38 of ICRC Study on customary international humanitarian law).

⁶¹ Rule 40(a) of the ICRC Study on customary international humanitarian law.

⁶² Ibidem, Rule 40(b).

that custom is emerging in that regard, the state practice identified is less widespread than the one pertaining to the prohibition of attacking cultural objects, thus putting into question the customary status of such a rule.

The above rules have also been considered to apply to both international and non-international armed conflicts. For example, in the *Tadić case*, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) held that “it cannot be denied that customary rules have developed to govern internal strife. These rules [...] cover such areas as [...] protection of civilian objects, in particular cultural property.”⁶³ It referred to Article 19 of the 1954 Hague Convention, which provides for the application of the provisions of the Convention relating to the respect for cultural property “as a minimum” in non-international armed conflicts occurring within the territory of a state party, adding that this treaty rule had “gradually become part of customary law”.⁶⁴ These provisions would then also include the prohibition of theft, pillage and vandalism.

The above section demonstrates that there are a number of existing rules protecting cultural heritage in non-international conflicts. They are clearly binding on states when they are contained in a treaty they have ratified or when they have become part of customary international law. The below section considers whether these norms are also binding on non-state armed groups.

Obligations of non-State Armed Groups towards Cultural Heritage

Before considering whether the rules mentioned in the above section bind non-state armed groups, one must establish that there is a situation of non-international armed conflict. While a single incident involving the armed forces of two states may constitute an international armed conflict, a non-international (or internal) conflict only qualifies as an “armed conflict” if the hostilities between the state and the non-state armed group (or between non-state armed groups) are protracted.⁶⁵ In addition, the armed group(s) involved must have a certain level of organisation.⁶⁶ Thus, situations of internal disturbances and tensions, such as the riots or isolated and sporadic acts of violence which occurred during the so-called Arab Spring, for example, do not amount to non-international armed conflicts. Although the qualifi-

⁶³ *Prosecutor v. Tadić*, ICTY Case No. IT-94-1-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 127.

⁶⁴ *Ibidem*, para. 98. See also, *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, ICTY Trial Chamber Judgment (31 January 2005), para. 229.

⁶⁵ Note that Additional Protocol II applies only to non-international armed conflicts that involve a state, to the contrary of Common Article 3 which may apply to non-international armed conflicts which involve only non-state armed groups.

⁶⁶ These conditions were established by the ICTY in the *Tadić* case.

cation of a conflict as an “armed conflict” is often challenging in practice, it is indispensable to determine the legal regime applicable thereto. For example, the situation in Afghanistan at the time the 6th century statues of Buddha were destroyed by the Taliban could be classified as an internal armed conflict in certain parts of the country. However, this was most likely not the case in the region of Bamiyan, where those monumental statues were located. In addition, their destruction was not directly connected to that conflict. Thus, rules protecting cultural heritage in situations of armed conflicts, even those that could be seen as binding on non-state armed groups, could not be applied to that situation and those who destroyed them could not be prosecuted for a war crime.⁶⁷

The norms of international law which apply to non-international armed conflicts are widely considered to be binding on all parties to that conflict, and thus to non-state armed groups as well.⁶⁸ International courts have considered non-state armed groups to be bound to international law obligations arising from their participation in internal armed conflicts.⁶⁹ It is of course coherent to expect that civilians and civilian properties benefit from the same protection no matter the type of the belligerents involved in the conflict. For example, it should not be prohibited for states to use cultural monuments to support their military effort but allowed for non-state armed groups to do so. It would provide the latter with an unfair advantage over the state’s armed forces, as well as putting the monument at risk of damage or destruction.

Most of the rules protecting cultural heritage in a non-international armed conflict as presented in the previous section are enshrined in treaties. Some of these treaties even specifically mention that they apply to *all* belligerents involved in a non-international armed conflict. This of course means that the treaty (in whole or in part) applies to at least one non-state armed group, as non-international armed conflicts involve a state and a non-state armed group or several armed groups.⁷⁰ Article 19(1) of the Hague Convention states that “[I]n the event of

⁶⁷ R. O’Keefe, *Cultural Heritage and International Law*, in: S. Jodoin, M.-C. Cordonier Segger (eds.), *Sustainable Development, International Criminal Justice and Treaty Implementation*, Cambridge University Press, Cambridge 2013, p. 123, where he adds that a ‘war crime’ must be connected to the ongoing conflict, which was not the case in the destruction of the Buddhas, which he calls an act of ‘fundamentalist religious iconoclasm’.

⁶⁸ See, for example, A. Cassese, *The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflict*, “International and Comparative Law Quarterly” 1981, Vol. 30, pp. 416, 424; G. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, Cambridge University Press, Cambridge 2010, p. 157; see also United Nations Security Council Resolution No. 1214, 8 December 1998, UN Doc. S/RES/1214 (1998), para. 12.

⁶⁹ In addition to the jurisprudence of the ICTY cited above, see, for example, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment of 27 June 1986, ICJ Reports 1986, p. 14, para. 219, where the Court stated that Common Article 3 applied to the non-state armed group (the Contras) fighting the government.

⁷⁰ See K. Chamberlain, *War and Cultural Heritage, A Commentary on the Hague Convention 1954 and its Protocols*, 2nd edn., Institute of Art and Law, 2013, pp. 53-55.

an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as, a minimum, the provisions of the present Convention which relate to respect for cultural property”,⁷¹ highlighting that this does not affect the legal status of the parties, which means that a non-state armed group remains a non-state actor even if it becomes bound by the same obligations as the state in question.⁷² It also adds that “the parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention”, thus leaving the door open for non-state armed groups to apply those regarding the safeguarding of cultural heritage, such as the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, or the preparation for the removal of movable cultural property or the provision of adequate *in situ* protection.⁷³ Article 22 of the Second Protocol to the Hague Convention simply states that it applies “in the event of an armed conflict not of an international character, occurring within the territory of one of the Parties”.⁷⁴ As it does not limit its application to the provisions associated with the respect of cultural objects, it may also bound non-state armed groups to its other provisions, including those relating to safeguarding cultural heritage.

Additional Protocol II applies in non-international armed conflicts “which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”.⁷⁵ Thus Additional Protocol II does not apply to internal armed conflicts involving only non-state armed groups; the state must be involved in the conflict in question, which is not the case for the application of the Hague Convention or its Second Protocol. The application of Additional Protocol II is also limited to those groups who exercise control over a portion of the territory of a state party. Therefore, its application is more limited than the application of the Hague Convention and its Second Protocol, as they apply to any non-state armed group taking part

⁷¹ See R. O’Keefe, *The Protection...*, p. 98, where he states that, according to the drafters, treaty obligations were imposed on non-State armed groups because each party to an armed conflict are bound by contractual arrangements undertaken by the community of which it is a part.

⁷² Article 19(4) Hague Convention.

⁷³ *Ibidem*, Article 19(2); the safeguarding of cultural heritage is provided under Article 3 Hague Convention.

⁷⁴ See R. O’Keefe, *The Protection...*, pp. 245-246, where he explains that the provisions contained in the Hague Convention and its Second Protocol which refer to non-international armed conflicts must be read with Common Article 3 of the 1949 Geneva Conventions, which means that they may apply to armed conflicts involving only non-state armed groups (and no state).

⁷⁵ Article 1(1) Additional Protocol II. Additional Protocol II did not mirror the language of Common Article 3 of the Geneva Conventions, which clearly states that “each Party to the conflict shall be bound to apply as a minimum” its provisions.

in an internal armed conflict on the territory of a state party, even if the group in question is not in control of a territory. Thus, in the case of Additional Protocol II, non-state armed groups are clearly bound to its provisions concerned with the respect of cultural heritage, as long as they are taking part in an armed conflict that involves a state and have control over a portion of the territory of a state party. In the case of the Hague Convention and its Second Protocol, armed groups are bound to some (or most, in the case of the Second Protocol) of the provisions these treaties contain, regardless of the type of internal armed conflicts they are active in or possible control of an area, as long as the armed conflict in question occurs on the territory of a state party.⁷⁶

An argument against the application of these treaty provisions to non-state armed groups lies in their non-participation in their adoption process and in their lack of avenues to formally adhere to them subsequently.⁷⁷ Underlining that consent is a key element in the formation of international legal obligations, the Vienna Convention on the Law of Treaties envisages the creation of obligation for a third state (which is not a party to the treaty in question) only if it “expressly accepts that obligation in writing”.⁷⁸ However, this provision is only applicable to states, and does not prohibit the creation of obligations for non-state actors, even if the latter have not expressly accepted them. While this may be contested by non-state armed groups, it does not change the fact that under treaty law, as adopted by states, they may be considered bound by some of those treaty provisions.

Given that the above mentioned treaty provisions only apply with regard to non-international conflicts taking place on the territory of its state parties, another legal basis must be identified to bind non-state armed groups conducting hostilities on the territory of states which are not party to a treaty containing rules protecting cultural heritage in armed conflict. In such instance, the other avenue for imposing international obligations on non-state armed groups is customary international law, which is also a source of international law. According to its Statute, the International Court of Justice recognises international custom (“a general practice accepted as law”) as a source of international law, without specifying that the practice must be state practice.⁷⁹ In its draft conclusions, the International Law Commission purports that it is primarily the practice of states (and in some cases the practice of international organisations) that “contributes to the formation, or expression,

⁷⁶ On the application of the Hague Convention to non-state armed groups, see Z. Howe, *Can the 1954 Hague Convention Apply to Non-state Actors?: A Study of Iraq and Libya*, “Texas International Law Journal” 2012, Vol. 47, pp. 403-425.

⁷⁷ As reported by the ICRC Commentary on Common Article 3, which does not contain provisions regarding cultural heritage but which applies to non-international armed conflicts and can thus assist the present analysis, doubts were emitted at the Diplomatic Conference “as to whether insurgents could be legally bound by a Convention which they had not themselves signed”, see Commentary, Vol. IV, p. 37.

⁷⁸ Article 35 Vienna Convention on the Law of Treaties, 23 March 1969, 1155 UNTS 331.

⁷⁹ Article 38(1)(b) Statute of the International Court of Justice, 24 October 1945, 33 UNTS 993.

of rules of customary international law”.⁸⁰ It adds that the conduct of other actors does not contribute to the formation of customary international law but may be relevant when assessing the practice of states or international organisations. Despite their lack of participation in its formation, non-state actors are considered bound by customary international law in the same manner as they are bound by the above mentioned treaty provisions.⁸¹ As a result, they are bound to the core content of the treaties containing rules protecting cultural heritage in armed conflict, as explained in the previous section.

Notwithstanding the above, during hostilities, whether amounting to an international or non-international armed conflict, what matters is that the warring parties respect the rules of war, the *jus in bello*. In order to respect these rules, including those pertaining to cultural heritage, parties must believe they are legally bound to do so (*opinio juris*). Therefore, it would be beneficial to consider the practice and *opinio juris* of non-state armed groups with regard to the protection of cultural heritage in armed conflict and support the development of a non-state based custom in that area. While assessing the extent of the practice and *opinio juris* of all active non-state armed groups with regard to the respect of cultural heritage in armed conflict goes beyond the scope of this paper, some relevant examples can be hastily identified. Although the ICRC study of customary international humanitarian law focuses on state practice, it does contain one document through which a non-state armed group binds itself to a rule concerned with the respect of cultural heritage. At the time it was a rebel group, the Sudan People's Liberation Movement and Army (SPLM/A) stated, in its 1983 Manifesto and a resolution on human rights and civil liberties adopted in 1991 by the Politico-Military High Command of the SPLM/A, that “cultural objects which include religious monuments, buildings such as mosques and churches and various icons are respected by the SPLM/A”.⁸² The inclusion of icons demonstrates that there is non-state practice not only with regard to the respect of cultural buildings but also of moveable cultural objects. Respect may here arguably refer to all the provisions contained in Article 4 of the Hague Convention.

In addition to the practice identified by the ICRC study mentioned above, further practice may be noted through which non-state armed groups have bound

⁸⁰ International Law Commission, Sixty-seventh session, Identification of Customary International Law (Text of the draft conclusions provisionally adopted by the Drafting Committee), 14 July 2015, UN Doc. A/CN.4/L.869, Draft conclusion 4.

⁸¹ In addition, non-state actors are also not able to persistently object to a rule of customary international law in the way states are, see the ILC draft conclusion 15.

⁸² J.-M. Henckaerts, L. Doswal-Beck, *Customary International Humanitarian Law*, Vol. II, p. 778, citing Report on SPLM/A Practice, 1998, Chapter 4.2, referring to Sudan Liberation Movement/Army, Manifesto, 31 July 1983, Article 24(C) and PMHC Resolution No. 15: Human Rights and Civil Liberties, 11 September 1991, para. 15.2.

themselves to respect cultural objects in non-international armed conflicts.⁸³ For example, in their Guidelines on the Law of Armed Conflict, the National Transitional Council/Free Libyan Army (NTC/FLA) has adopted guidelines prohibiting it to “harm cultural, educational and religious buildings and historic sites unless Qadhafi forces are using them for hostile purposes, and such harm is absolutely necessary”.⁸⁴ These context specific guidelines limit the prohibition of attack to immovable cultural objects, recognising the exception for military objectives and the principle of military necessity. In addition to the practice of the SPLM/A, other groups specifically provide for the protection of moveable cultural objects, in addition to buildings and sites. In the Philippines, the National Democratic Front of the Philippines (NDFP) agreed to be bound by the “generally accepted principles and standards of international humanitarian law”, including those regarding the protection of “historic monuments, cultural objects and places of worship”.⁸⁵ According to its Code of War, the Colombian Ejército de Liberación Nacional (ELN) shall not attack religious sites or cultural objects.⁸⁶ Some groups have adopted provisions referring to international humanitarian law in general or entire treaties. Sharing the concern of the United Nations Security Council regarding the destruction of religious or historic monuments in Mali,⁸⁷ the National Movement for the Liberation of Azawad (MNLA), adopted an action plan according to which it commits itself to instruct its troops to ensure they abide by international humanitarian law in general.⁸⁸ While the ELN considers itself to be bound by the 1949 Geneva Conventions and by Additional Protocol II,⁸⁹ the Kurdistan Workers’ Party/

⁸³ The following examples have been found on “Their Words: the Directory of Armed Non-State Actor Humanitarian Commitments” compiled by Geneva Call: <http://theirwords.org> [accessed: 10.11.2015].

⁸⁴ Libyan Opposition Forces, Guidelines on the Law of Armed Conflict, 17 May 2011, http://theirwords.org/media/transfer/doc/ly_ntc_2011_09-344f847e0eb8a2e16e10099309e91005.pdf [accessed: 14.11.2015], p. 3.

⁸⁵ Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, 14 June 1998, Part IV, Article 4, <http://www.opapp.gov.ph/sites/default/files/Comprehensive%20Agreement%20on%20Respect%20for%20Human%20Rights%20and%20International%20Law.pdf> [accessed: 29.10.2015].

⁸⁶ Ejército de Liberación Nacional (ELN), *El Código de Guerra* (15 July 1995), http://theirwords.org/media/transfer/doc/co_eln_1995_01-89ff189bf16014583e81e00a88cd03d6.pdf [accessed: 30.10.2015]; see also ELN, *Acuerdo de Puerta de Cielo* (15 July 1998), which lists cultural centres as protected objects under international humanitarian law (para. 14).

⁸⁷ United Nations Security Council Resolution No. 2056, 5 July 2012, UN Doc. S/RES/2056 (2012), which also notes that “attacks against buildings dedicated to religion or historic monuments can constitute violations of international law which may fall under Additional Protocol II to the 1949 Geneva Conventions and the Rome Statute of the International Criminal Court”, para. 16, p. 4.

⁸⁸ Mouvement National de Libération de L’Azawad (MNLA), *Action Plan: Respecting the Laws of War*, 10 October 2012, http://theirwords.org/media/transfer/doc/1_ml_mnla_2012_04-70db-343c912fd1aa11a348984c3153a0.pdf [accessed: 10.11.2015], see, in particular, actions 3-4.

⁸⁹ See the declaration of the ELN’s Commander Manuel Pérez, ‘El Ejército De Liberación Nacional Y El Derecho Humanitario’ (15 July 1995).

People's Defence Forces (PKK/HPG) states in its internal rules and regulations that it will abide by the "UN Geneva Convention".⁹⁰ In their agreements on the application of international humanitarian law between them, Croatia and the Socialist Federal Republic of Yugoslavia, as well as all parties to the conflict in Bosnia and Herzegovina, all reiterated their commitment to respect the Geneva Conventions and agreed to "promote respect for the principles and rules of international humanitarian law".⁹¹ At the other end of the spectrum, in their agreement with the government of Sri Lanka, the Liberation Tigers of Tamil Eelam (LTTE) solely agreed to vacate armed personnel from places of worship.⁹²

The above examples indicate that a number of non-state armed groups are willing to bind themselves to rules regarding the respect of cultural heritage in non-international armed conflicts. The non-state practice identified here is not sufficient to establish the existence of a uniform or widespread practice which would support the existence of a "non-State customary law" in this area.⁹³ In any case, the establishment of non-state armed groups' practice is not necessary for binding them to customary international law as it is the practice of states that contributes to its formation. While non-state armed groups are already bound to rules concerned with the respect of cultural heritage, whether through treaty or customary international law, the identification and further development of their own practice in that regard may nevertheless support the implementation of these rules in practice, by ensuring that such groups consider themselves bound by those rules (*opinio juris*). The key issue lies of course in the enforcement of those rules and the accountability mechanisms available in the case of violations. As explained below, the only efficient mechanisms in place are based on the individual criminal responsibility of the perpetrators. Thus, it is the individual members of non-state armed groups who may be prosecuted for not respecting cultural heritage in armed conflicts and not the armed groups *per se*.

⁹⁰ See the declaration of the ELN's Commander Manuel Pérez: Declaración Pública del Comandante Manuel Pérez, 'El Ejército De Liberación Nacional Y El Derecho Humanitario', 15 July 1995, <http://cedema.org/ver.php?id=3391> [accessed: 20 November 2015].

⁹¹ Memorandum of Understanding on the Application of IHL between Croatia and the Socialist Federal Republic of Yugoslavia, 27 November 1991, para. 13-14, <https://www.icrc.org/casebook/doc/case-study/yugoslavia-agreements-case-study.htm> [accessed: 10.11.2015], and Agreement on the Application of IHL between the Parties to the Conflict in Bosnia and Herzegovina, 22 May 1992, preamble and para. 4, http://theirwords.org/media/transfer/doc/yu_sda_sds_hdz_1992_01-d2d62e36891dd6a31b4727538c4ceb35.pdf [accessed: 11.11.2015].

⁹² Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam, 22 February 2002, Article 2(2), https://www.regjeringen.no/en/dokumenter/agreement_on_a_ceasefire_between/id260701 [accessed on 29.10.2015].

⁹³ A "uniform and widespread State practice" is the term used by the International Court of Justice, see *Maritime Delimitation Case (Qatar v. Bahrain)*, Judgment of 16 March 2001, ICJ Reports 2001, pp. 101-102, para. 205.

Obligations of States in Protecting Cultural Heritage from non-State Armed Groups

Unlike non-state armed groups, states have themselves assumed their obligations with regard to cultural heritage in armed conflicts with the adoption of treaties or the establishment of custom through their own practices. In addition to the obligations already mentioned in section two of this paper, according to which states must respect cultural heritage in armed conflict as a matter of both treaty law and custom, they may have additional obligations in peace time. State parties to the Hague Convention have a clear obligation to safeguard cultural heritage against the foreseeable effects of an armed conflict with non-state armed group(s) on its territory, by taking measures such as those already mentioned in the preceding section.⁹⁴ In Mali, for example, rare historic manuscripts which could have been considered idolatrous by a rebel group and thus be the object of direct targeting, were apparently evacuated from Timbuktu shortly after the conflict erupted in order to be safeguarded, although it was first reported that many had been burnt by the rebels.⁹⁵ In addition, states may seek to develop respect and understanding for cultural heritage among its population in time of peace. This may not only be pursued among members of the armed forces but also among members of the public, such as by developing school programmes that teach the historical value of cultural heritage which is common for all peoples and engaging public debates on the role cultural heritage may play in uniting, rather than dividing peoples.

In addition to the rules regarding the respect of cultural heritage, states have additional avenues to protect cultural heritage from the actions of non-state armed groups in armed conflicts. In particular, they may request to list cultural objects under the additional system of protection first established by the Hague Convention (and subsequently improved under its Second Protocol), which protects cultural property from attacks and prohibits its use to support military action.⁹⁶ Enlisting cultural property under the Second Protocol's enhanced system of protection limits the possibility to invoke military necessity to conduct an act of hostility against

⁹⁴ Articles 3 and 7 Hague Convention and Article 5 Second Protocol.

⁹⁵ V. Walt, *Mali: Timbuktu Locals Saved Some of City's Ancient Manuscripts from Islamists*, "Time", 28 January 2013, <http://world.time.com/2013/01/28/mali-timbuktu-locals-saved-some-of-their-citys-ancient-manuscripts-from-islamists> [accessed: 12.11.2015].

⁹⁶ See K. Hausler, *The Protection of Cultural Heritage in Armed Conflict*, in: S. Casey-Maslen (ed.), *The War Report 2013*, Oxford University Press, Oxford 2014, pp. 371-373. It is known as 'special' protection under The Hague Convention and 'enhanced' protection under the Second Protocol. The system established by the Hague Convention has not been very successful as only a few limited types of property are eligible under it (see Articles 8, 9, 10, 11, 16, and 17). This is why a different system of 'enhanced' protection, which applies to a larger number of properties, was adopted in the Second Protocol, according to which any movable or immovable cultural property that is part of the 'heritage of greatest importance for humanity' may fall under its enhanced system of protection.

such object.⁹⁷ However, even this form of protection is not absolute and may be lost if the object in question becomes a military objective, despite the fact that such an object can no longer be readily turned into a military objective.

States may also request that their cultural monuments, which are of outstanding value to humanity, be listed as a World Heritage building or site under the system established by the Convention Concerning the Protection of World Natural and Cultural Heritage (World Heritage Convention, 1972). While being awarded World Heritage status raises the cultural profile of a particular site, it does not offer additional protection from the actions of non-state armed groups in the event of an armed conflict, even if the object in question is placed on the List of World Heritage in Danger.⁹⁸ The fighting in Syria has damaged all of its six cultural sites inscribed on the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List, which includes the ancient cities of Aleppo, Bosra, Damascus, Crac des Chevaliers and Qal'at Salah El-Din, as well as the site of Palmyra and about 40 ancient villages situated in north-western Syria.⁹⁹ In 2013, these sites were all placed on the List of World Heritage in Danger, as the armed conflict was considered an imminent threat to their intrinsic cultural value.¹⁰⁰ Nevertheless, being listed as a World Heritage site could play a role in reconstruction efforts, as the World Heritage Fund may cover damage resulting from non-international armed conflicts involving non-state armed groups.

Finally, states have the obligation under treaty law to make any violation of the respect of cultural heritage in armed conflict a clear offence. Although the Hague Regulations already stated that seizing, damaging or destroying cultural objects were conducts that "should be made the subject of proceedings", they did not impose a clear duty on states to prosecute.¹⁰¹ Additional Protocol I provides for criminal repression but not Additional Protocol II, which is the one applicable to non-international armed conflicts and thus non-state armed groups. The Hague Convention does contain a vaguely-termed obligation on state parties to prosecute offenders of any nationality, including the members of non-State armed groups operating

⁹⁷ Articles 6 and 13 Second Protocol.

⁹⁸ Note that the World Heritage status of a site may be taken into account by a court, which may seek to identify the importance of a cultural object and the fact that an enemy may or may not have known its 'cultural' status, see for example the *Jokić case*, in which the ICTY considered the World Heritage status of Dubrovnik.

⁹⁹ See the website of the World Heritage Centre, *Syrian Arab Republic*, <http://whc.unesco.org/en/statesparties/sy/> [accessed: 10.11.2015].

¹⁰⁰ They include the ancient city of Damascus, the ancient city of Bosra, the site of Palmyra, the ancient city of Aleppo, the castles of Crac des Chevaliers and Qal-at Salah El-Din, and about 40 ancient villages situated in north-western Syria. See the website of the World Heritage Centre, *Ancient City of Aleppo*, <http://whc.unesco.org/en/list/21> [accessed: 10.11.2015]. See also Article 11(4), World Heritage Convention, 16 November 1972, 1037 UNTS 151, which explicitly mentions 'the outbreak or threat of an armed conflict' as a serious and specific danger for cultural heritage.

¹⁰¹ Article 56 Hague Regulations.

on their territories, and impose sanctions in the case of breach.¹⁰² As this obligation to prosecute was imprecise and thus difficult to implement at the domestic level, it was clarified by the Second Protocol, which contains an entire section dedicated to criminal responsibility and jurisdiction, including a list of what constitutes a serious violation of the Protocol.¹⁰³ Therefore, individuals who are members of non-state armed groups which operate on the territory of state parties to the Second Protocol, must be held criminally responsible for violating provisions respecting cultural heritage in armed conflict, including: making cultural property the object of attack (whether or not the object is under enhanced protection); using cultural property under enhanced protection in support of military action; extensive destruction of cultural property; and “theft, pillage or misappropriation of, or acts of vandalism directed against, cultural property”.¹⁰⁴

States must criminalize these violations under domestic law and assign them appropriate sanctions and, in the case of violations, must either prosecute or extradite the alleged perpetrator(s). Their jurisdiction is universal which means that they may prosecute someone no matter their nationality (or country of residence) and no matter where the offence was committed. This obligation stems from the Hague Convention and its Second Protocol, as well as from the Rome Statute for those states that are a party to it. It is only when states are unwilling or unable to prosecute war crimes against cultural property that the International Criminal Court (ICC) may prosecute such crimes.¹⁰⁵

The ICC may prosecute individual members of non-state armed groups for violating Article 8(2)(e)(iv) of the Rome Statute according to which it is a “war crime” to intentionally direct attacks against historic monuments and buildings dedicated to religion or art, unless these objects have been turned into military objectives.¹⁰⁶ The ICC Prosecutor may open an investigation following the referral of a situation by a state party, as it did following the self-referral by Mali in 2012.¹⁰⁷

¹⁰² Article 28 Hague Convention.

¹⁰³ Articles 15-21 Second Protocol.

¹⁰⁴ *Ibidem*, Article 15.

¹⁰⁵ Article 17 Rome Statute.

¹⁰⁶ See also *ibidem*, Article 8(2)(e)(v), which considers pillaging a town or place as a ‘war crime’. In addition to the ICC, *ad hoc* criminal tribunals may also have jurisdiction to prosecute leaders of non-state armed groups allegedly responsible for the destruction of cultural heritage. Although the International Criminal Tribunal for the Former Yugoslavia was particularly influential in developing the law with regard to cultural heritage in conflict, its jurisprudence will not be considered further in this article as it is beyond its scope. For more on this topic, see R. O’Keefe, *Protection of Cultural Property under International Criminal Law*, “Melbourne Journal of International Law” 2010, Vol. 11, pp. 339-392; F. Lenzerini, *The Role of International and Mixed Criminal Courts in the Enforcement of International Norms Concerning the Protection of Cultural Heritage*, in: F. Francioni, J. Gordley (eds.), *Enforcing International Cultural Heritage Law*, Oxford University Press, Oxford 2013, pp. 40-76.

¹⁰⁷ In accordance with Articles 13(1) and 14, ICC Statute. The Referral Letter to the Prosecutor is available at: <http://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLet->

In its report on the situation in Mali, the ICC affirmed that it may reasonably be believed that a violation of Article 8(2)(e)(iv) took place.¹⁰⁸ It then added that potential cases would likely be admissible as no domestic proceedings were pending (in Mali or another state) against the individuals who appeared to bear the greatest responsibility for the crimes.¹⁰⁹ Following the issuance of an arrest warrant, Ahmad Al Faqi Al Mahdi, one of the alleged perpetrators of attacks against the mausoleums in Timbuktu and a member of Ansar Dine (a Tuareg group associated with AQIM), was surrendered to the Court by Niger in September 2015.¹¹⁰

The ICC Prosecutor may also open an investigation *proprio motu*, if the Pre-Trial Chamber authorizes it.¹¹¹ In the case of situations referred by state parties or investigated *proprio motu*, the Court has both territorial and personal jurisdiction, i.e. with regard to crime(s) which appeared to have been committed on the territory of a state party or by the national of a state party.¹¹² With regard to crimes that allegedly occurred on the territory of a state that is not a party to the Rome Statute, an investigation may also be open if the situation was referred to the Prosecutor by the UN Security Council acting under Chapter VII of the UN Charter.¹¹³ Despite many reports of widespread atrocities, including the destruction of cultural heritage, that have allegedly been perpetrated in Syria and Iraq by ISIS militants, the Security Council has not referred either situation to the ICC Prosecutor, although this could be envisaged despite the fact that none of these states is a party to the Rome Statute.¹¹⁴ The Prosecutor could also investigate these situations *proprio motu*, in case the alleged perpetrators were nationals of a state party to the Rome Statute.¹¹⁵

terMali130712.pdf [accessed: 10.11.2015]. The letter mentions in particular the destruction of churches, mausolea, and mosques in the north of the country.

¹⁰⁸ *Situation in Mali*, report, International Criminal Court, 16 January 2013, § 173, https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/news%20and%20highlights/Pages/pr869.aspx [accessed: 10.11.2015].

¹⁰⁹ *Ibidem*, § 174.

¹¹⁰ See the ICC Press Release on the *Situation in Mali: Ahmad Al Faqi Al Mahdi surrendered to the ICC on charges of war crimes regarding the destruction of historical and religious monuments in Timbuktu*, 26 September 2015, http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1154.aspx [accessed: 12.11.2015].

¹¹¹ Article 15 Rome Statute.

¹¹² *Ibidem*, Article 12.

¹¹³ *Ibidem*, Article 13(b).

¹¹⁴ *Ibidem*, Article 13(b).

¹¹⁵ *Ibidem*, Articles 12(2)(b) and 15. As explained by the ICC Prosecutor, Fatou Bensouda, in her statement on the alleged crimes, including the 'wanton destruction of cultural property,' committed by ISIS of 8 April 2015, this is unlikely given that ISIS foreign fighters who are nationals of state parties do not appear to be the ones 'most responsible' for the atrocities committed, see *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS*, http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx [accessed: 12.11.2015].

Given the lack of mechanisms to hold non-State armed groups *per se* accountable when they violate international norms protecting cultural heritage in armed conflict, the establishment of individual criminal responsibility is an important route to close the accountability gap with regard to the non-respect of cultural heritage in armed conflict. While holding the leaders of non-state armed groups accountable for damaging or destroying cultural heritage does not erase the loss of the object in question, it may serve as a deterrent in the future. In addition to making those offences war crimes, states should ensure that the same acts are also prosecuted if conducted in times of peace. This would guarantee that there are no gaps in the criminal liability and that individuals that conduct attacks against cultural heritage in situations that do not amount to an armed conflict, such as those against the Buddhas of Bamiyan, are also held criminally responsible for damaging or destroying cultural heritage, intentionally or not.

Concluding Remarks

The rules protecting cultural heritage in armed conflict were first developed with international armed conflicts in mind and were thus established to bind states which were the only parties to such conflict. The changing nature of war, with the emergence of an increased number of non-international armed conflicts, has meant that the same rules have to bind non-state armed groups in the same way, in order for cultural heritage to be respected in armed conflicts.

It is now admitted that non-state armed groups are obliged to respect cultural heritage in armed conflict, in accordance with the obligations adopted either under treaty law or through the establishment of customary international law. Nevertheless, an armed group which is fighting the state may not consider itself to be bound by the rules contained in a treaty ratified by that state or to the customary international rules that were established through state practice. However, what matters on the ground is that cultural heritage is respected by *all* belligerents to a non-international armed conflict. Therefore, the formal consent of non-state armed groups to abide by the relevant rules should be sought, by supporting the establishment of their own customary law. More evidence of non-state practice regarding the respect of cultural heritage should be identified and, if there is further evidence that there is a gap in this area, non-state armed groups should be encouraged to develop practice and *opinio juris* with regard to these rules.¹¹⁶ Awareness of the rules respecting cultural heritage should also be raised within these groups, for example through training, so that they may in turn ensure that their troops know about them.

¹¹⁶ This could, for example, be done through the adoption of manifestos, agreements, and commitments with regard to the respect of cultural heritage in armed conflicts, with the possible development of a deed of commitment similar to those already developed by Geneva Call concerning the protection of children in armed conflict, the prohibition of sexual violence or the ban on anti-personnel mines.

As this article highlights, state parties to the Hague Convention and its Second Protocol have also a key role to play in this area, including through the adoption of safeguarding measures in peacetime, which may entail educating non-state actors about cultural heritage. The Cairo Declaration on the Protection of Cultural Property, adopted in 2004, calls on states not only to accede to the Hague Convention and its two Protocols, but also to implement them at the national level.¹¹⁷ More recently, the chairperson of the UNESCO Committee (UNESCO Committee) for the Protection of Cultural Property in the Event of Armed Conflict called on Syria and Iraq to ratify the Second Protocol.¹¹⁸ While the adoption of the Second Protocol has created a monitoring mechanism with states having to report regularly on implementation to the UNESCO Committee, there is no similar mechanism with regard to the Hague Convention, leaving states with the responsibility to oversee and enforce its provisions. Enforcement must include the prosecution, at the domestic level of the individuals responsible for the actions of the non-state armed group which amounted to breaches of those norms. Of course, all states should be aware that, even if they are not party to the relevant treaties, they are clearly bound to the core content of the obligations to respect cultural heritage in armed conflict, as they are considered part of customary international law given the amount of state practice and *opinio juris* in that area.

In recognising the importance of cultural heritage, the UNESCO Declaration on the Intentional Destruction of Cultural Heritage (2003) reiterates the international community's commitment "to fight against its intentional destruction in any form so that such cultural heritage may be transmitted to the succeeding generations".¹¹⁹ Safeguarding cultural heritage should thus be seen as an obligation towards future generations, with the international community acting as a steward of that heritage.¹²⁰ There is an urgent need to increase the protection of cultural heritage from the increased attacks, in particular those of a direct nature, conducted by non-state armed groups. While adopting safeguarding measures in peacetime and prosecuting the leaders of those groups in the case of violations of the rules concerned with the respect of cultural heritage are key elements of state obligations which may curb non-state attacks against cultural heritage, more effort should be devoted to establishing the formal consent of non-state armed groups to be bound to the international obligations regarding the respect of cultural heritage

¹¹⁷ See the Cairo Declaration on the Protection of Cultural Property, 16 February 2004, <https://www.icrc.org/en/download/file/4103/cairo-declaration-cultural-property.pdf> [accessed: 10.11.2015].

¹¹⁸ See, e.g. Statement of the Chairperson on behalf of the Committee to the Second Protocol to the Hague Convention of 1954, 21 May 2015, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement_FINAL_FR.pdf [accessed: 10.11.2015].

¹¹⁹ Part I of the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, 17 October 2003, UNESCO Doc. 32 C/Res. 33 (2003).

¹²⁰ This idea explains also the preference for the term cultural *heritage* over the term cultural *property*, which focuses on the idea of ownership which does not underline the transgenerational value of cultural objects.

in armed conflict and developing their practice in this area, such as through training and awareness raising, even if such consent is not necessary for them to be bound by those rules. For cultural heritage to transcend generations, what matters is that those rules are abided by on the ground and, in order for this to happen, non-state armed groups must not only be bound by the relevant rules but they must also be aware of those rules and consider themselves bound by them.

References

- Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam, 22 February 2002, https://www.regjeringen.no/en/dokumenter/agreement_on_a_ceasefire_between/id260701 [accessed on 29.10.2015].
- Agreement on the Application of IHL between the Parties to the Conflict in Bosnia and Herzegovina, 22 May 1992, http://theirwords.org/media/transfer/doc/you_sda_sds_hdz_1992_01-d2d62e36891dd6a31b4727538c4ceb35.pdf [accessed: 11.11.2015].
- Almuqdad O., *Syrian heritage under extreme attack*, Morocco World News, 16 June 2013, <http://www.moroccoworldnews.com/2013/06/94567/syrian-heritage-under-extreme-attack> [accessed: 14.11.2015].
- Ancient City of Aleppo*, World Heritage Centre, <http://whc.unesco.org/en/list/21> [accessed: 10.11.2015].
- Ancient history, Modern Destruction: Assessing the Current Status of Syria's World Heritage Sites Using High-Resolution Satellite Imagery*, AAAS, <http://www.aaas.org/page/ancient-history-modern-destruction-assessing-current-status-syria-s-world-heritage-sites-using> [accessed: 16.11.2015].
- Barnard A., Saad H., *In Syria's Largest City, Fire Ravages Ancient Market*, "The New York Times", 29 September 2012, http://www.nytimes.com/2012/09/30/world/middleeast/fire-sweeps-through-ancient-souk-of-aleppo-citys-soul.html?_r=0 [accessed: 17.11.2015].
- Bowley G., *Antiquities Lost, Casualties of War*, "The New York Times", 3 October 2014, <http://www.nytimes.com/2014/10/05/arts/design/in-syria-and-iraq-trying-to-protect-a-heritage-at-risk.html> [accessed: 10.11.2015].
- Brussels Declaration concerning the Laws and Customs of War, 27 August 1874, 4 Martens NRG (2e série) 219.
- Cairo Declaration on the Protection of Cultural Property, 16 February 2004, <https://www.icrc.org/en/download/file/4103/cairo-declaration-cultural-property.pdf> [accessed: 10.11.2015].
- Casey-Maslen S. (ed.), *The War Report 2012*, Oxford University Press, Oxford 2013.
- Cassese A., *The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflict*, "International and Comparative Law Quarterly" 1981, Vol. 30.
- Chairperson's Statement on behalf of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, 9th Meeting of the Committee, 19 December 2014, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/9_COM_Statement_EN.pdf [accessed: 29.10.2015].
- Chamberlain K., *War and Cultural Heritage, A Commentary on the Hague Convention 1954 and its Protocols*, 2nd edn., Institute of Art and Law, 2013.

- Cockburn P., *The destruction of the idols: Syria's patrimony at risk from extremists*, "The Independent", 11 February 2014, <http://www.independent.co.uk/news/science/archaeology/news/the-destruction-of-the-idols-syrias-patrimony-at-risk-from-extremists-9122275.html> [accessed: 10.11.2015].
- Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, 14 June 1998, <http://www.opapp.gov.ph/sites/default/files/Comprehensive%20Agreement%20on%20Respect%20for%20Human%20Rights%20and%20International%20Law.pdf> [accessed: 29.10.2015].
- Convention Concerning the Protection of World Natural and Cultural Heritage, 16 November 1972, 1037 UNTS 151.
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 240.
- Darke D., *How Syria's ancient treasures are being smashed*, BBC, 10 July 2014, <http://www.bbc.co.uk/news/magazine-28191181> [accessed: 12.11.2015].
- Declaración Pública del Comandante Manuel Pérez, 'El Ejército De Liberación Nacional Y El Derecho Humanitario', 15 July 1995, <http://cedema.org/ver.php?id=3391> [accessed: 20 November 2015].
- Director-General of UNESCO appeals for protection of Syria's cultural heritage, 30 March 2012, http://www.unesco.org/new/en/media-services/world-heritage-37th-session/whc37-details/news/director_general_of_unesco_appeals_for_protection_of_syrias_cultural_heritage/ [accessed: 10.11.2015].
- Ejército de Liberación Nacional (ELN), *Accuerdo de Puerta de Cielo*, 15 July 1998.
- Ejército de Liberación Nacional (ELN), *El Código de Guerra*, 15 July 1995, http://theirwords.org/media/transfer/doc/co_eln_1995_01-89ff189bf16014583e81e00a88cd03d6.pdf [accessed: 30.10.2015].
- Fisk R., *Syria's ancient treasures pulverised*, "The Independent", 5 August 2012, <http://www.independent.co.uk/voices/commentators/fisk/robert-fisk-syrias-ancient-treasures-pulverised-8007768.html> [accessed: 15.11.2015].
- Forrest C., *The Doctrine of Military Necessity and the Protection of Cultural Property During Armed Conflicts*, "California Western International Law Journal" 2007, Vol. 37.
- Geneva Conventions for the Protection of War Victims, 12 August 1949, 75 UNTS 31.
- Hague Regulations Concerning the Laws and Customs of War on Land, 1899 and 1907, 187 Parry's CTS 429, 208 Parry's CTS 77.
- Hausler K., *The Protection of Cultural Heritage in Armed Conflict*, in: S. Casey-Maslen (ed.), *The War Report 2013*, Oxford University Press, Oxford 2014.
- Henckaerts J.-M., Doswal-Beck L., *Customary International Humanitarian Law*, Vol. I: Rules, Cambridge University Press, Cambridge 2005.
- Henckaerts J.-M., Doswal-Beck L., *Customary International Humanitarian Law*, Vol. II: Practice, Cambridge University Press, Cambridge 2005.
- Howe Z., *Can the 1954 Hague Convention Apply to Non-state Actors?: A Study of Iraq and Libya*, "Texas International Law Journal" 2012, Vol. 47.
- <http://www.redcross.org/humanityinwar/additional-protocol-ii-to-the-geneva-conventions-1977> [accessed: 10.11.2015].

RESEARCH ARTICLES

Kristin Hausler

ICRC Customary International Humanitarian Law database, since 2010.

Instructions for the Government of Armies of the United States in the Field, General Order No. 100.

International Law Commission, Sixty-seventh session, Identification of Customary International Law (Text of the draft conclusions provisionally adopted by the Drafting Committee), 14 July 2015, UN Doc. A/CN.4/L.869.

ISIS blows up Arch of Triumph in 2,000-year-old city of Palmyra, "The Guardian", 5 October 2015, <http://www.theguardian.com/world/2015/oct/05/isis-blows-up-another-monument-in-2000-year-old-city-of-palmyra> [accessed: 6.11.2015].

ISIS 'controls 50% of Syria' after seizing historic city of Palmyra, "The Guardian", 21 May 2015, <http://www.theguardian.com/world/2015/may/21/isis-palmyra-syria-islamic-state> [accessed: 10.11.2015].

ISIS destruction of Palmyra's Temple of Bel revealed in satellite images, "The Guardian", 1 September 2015, <http://www.theguardian.com/world/2015/sep/01/satellite-images-reveal-isis-destruction-of-palmyras-temple-of-bel> [accessed: 14.11.2015].

ISIS fighters destroy ancient artefacts at Mosul museum, "The Guardian", 26 February 2015, <http://www.theguardian.com/world/2015/feb/26/isis-fighters-destroy-ancient-artefacts-mosul-museum-iraq> [accessed: 14.11.2015].

ISIS militants destroy 2,000-year-old statue of lion at Palmyra, "The Guardian", 2 July 2015, <http://www.theguardian.com/world/2015/jul/02/isis-militants-destroy-palmyra-stone-lion-al-lat> [accessed: 6.11.2015].

ISIS video confirms destruction at UNESCO World Heritage site in Hatra, "The Guardian", 5 April 2015, <http://www.theguardian.com/world/2015/apr/05/isis-video-confirms-destruction-at-unesco-world-heritage-site-on-hatra> [accessed: 14.11.2015].

Kurdistan Workers' Party/People's Defence Forces (PKK/HPG), *Document Concerning the Rules to Be Obeyed by HPG Forces in War*, 7 June 2010, http://theirwords.org/media/transfer/doc/ut_tr_pkk_hpg_2010_15-ee0e8142b5729731202a63103eba1a9a.pdf [accessed: 10.11.2015].

Lenzerini F., *The Role of International and Mixed Criminal Courts in the Enforcement of International Norms Concerning the Protection of Cultural Heritage*, in: F. Francioni, J. Gordley (eds.), *Enforcing International Cultural Heritage Law*, Oxford University Press, Oxford 2013.

Libyan Opposition Forces, *Guidelines on the Law of Armed Conflict*, 17 May 2011, http://theirwords.org/media/transfer/doc/ly_ntc_2011_09-344f847e0eb8a2e16e10099309e91005.pdf [accessed: 14.11.2015].

Lieber Code (or Instructions for the Government of Armies of the United States in the Field, General Order No. 100), 24 April 1863, http://avalon.law.yale.edu/19th_century/lieber.asp [accessed: 8.11.2015].

Lostal M., *Syria's World Cultural Heritage and Individual Criminal Responsibility*, "International Review of Law" 2015, Issue 1.

Mali: Timbuktu's cultural heritage more damaged than first estimated, UN agency says, 7 June 2013, <http://www.un.org/apps/news/story.asp?NewsID=45118> [accessed: 10.11.2015].

Manual of the Laws and Customs of War ("Oxford Manual"), 9 September 1880, <https://www.icrc.org/ihl/INTRO/140?OpenDocument> [accessed: 29.10.2015].

- Memorandum of Understanding on the Application of IHL between Croatia and the Socialist Federal Republic of Yugoslavia, 27 November 1991, <https://www.icrc.org/casebook/doc/case-study/yugoslavia-agreements-case-study.htm> [accessed: 10.11.2015].
- Mouvement National de Libération de L'Azawad (MNLA), *Action Plan: Respecting the Laws of War*, 10 October 2012, http://theirwords.org/media/transfer/doc/1_ml_mnla_2012_04-70db343c912fd1aa11a348984c3153a0.pdf [accessed: 10.11.2015].
- O'Keefe R., *Cultural Heritage and International Law*, in: S. Jodoin, M.-C. Cordonier Segger (eds.), *Sustainable Development, International Criminal Justice and Treaty Implementation*, Cambridge University Press, Cambridge 2013.
- O'Keefe R., *Protection of Cultural Property under International Criminal Law*, "Melbourne Journal of International Law" 2010, Vol. 11.
- O'Keefe R., *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press, Cambridge 2006.
- Political Military High Command (PMHC) Resolution No. 15: Human Rights and Civil Liberties, 11 September 1991.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609.
- Referral Letter to the Prosecutor, <http://www.icc-cpi.int/NR/rdonlyres/A245A47F-BFD1-45B6-891C-3BCB5B173F57/0/ReferralLetterMali130712.pdf> [accessed: 10.11.2015].
- Roerich Pact (or Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments), 15 April 1935, <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=EE57F295093E44A4C12563CD-002D6A3F> [accessed: 10.11.2015].
- Sandoz Y., Swinarski Ch., Zimmermann B. (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, International Committee of the Red Cross, Brill-Nijhoff, Geneva 1987.
- Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999, 2253 UNTS 212.
- Situation in Mali*, report, International Criminal Court, 16 January 2013, https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/news%20and%20highlights/Pages/pr869.aspx [accessed: 10.11.2015].
- Situation in Mali: Ahmad Al Faqi Al Mahdi surrendered to the ICC on charges of war crimes regarding the destruction of historical and religious monuments in Timbuktu*, ICC Press Release, 26 September 2015, http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1154.aspx [accessed: 12.11.2015].
- Solis G., *The Law of Armed Conflict: International Humanitarian Law in War*, Cambridge University Press, Cambridge 2010.
- Statement of the Chairperson on behalf of the Committee to the Second Protocol to the Hague Convention of 1954, 21 May 2015, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement_FINAL_FR.pdf [accessed: 10.11.2015].
- Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS*, http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx [accessed: 12.11.2015].

RESEARCH ARTICLES

Kristin Hausler

- Statute of the International Court of Justice, 24 October 1945, 33 UNTS 993.
- Statute of the International Criminal Court (Rome Statute), 17 July 1998, 2187 UNTS 90.
- Sudan Liberation Movement/Army, Manifesto, 31 July 1983.
- Syria: Attacks on Religious Sites Raise Tensions*, Human Rights Watch, 23 January 2013, <http://www.hrw.org/news/2013/01/23/syria-attacks-religious-sites-raise-tensions> [accessed: 10.11.2015].
- Syria Conflict: Mortar near Umayyad Mosque kills three*, BBC, 29 November 2013, <http://www.bbc.co.uk/news/world-middle-east-25150432> [accessed: 10.11.2015].
- Syria Crusader castle Krak des Chevaliers has war scars*, BBC, 22 March 2014, <http://www.bbc.com/news/world-middle-east-26696113> [accessed: 10.11.2015].
- Syria: Opposition Abuses During Ground Offensive*, Human Rights Watch, 19 November 2013, <http://www.hrw.org/news/2013/11/19/syria-opposition-abuses-during-ground-offensive> [accessed: 5.11.2015].
- Syrian Arab Republic*, World Heritage Centre, <http://whc.unesco.org/en/statesparties/sy/> [accessed: 10.11.2015].
- Syrian archaeologist 'killed in Palmyra' by IS militants*, BBC News, 19 August 2015, <http://www.bbc.co.uk/news/world-middle-east-33984006> [accessed: 10.11.2015].
- Their Words: the Directory of Armed Non-State Actor Humanitarian Commitments, <http://theirwords.org> [accessed: 10.11.2015].
- UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, 17 October 2003, UNESCO Doc. 32 C/Res. 33 (2003).
- UNESCO Director General condemns destruction of Nimrud in Iraq*, UNESCO Press, 6 March 2015, http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_condemns_destruction_of_nimrud_in_iraq/#.VctSefkYNNI [accessed: 11.11.2015].
- UNESCO expert mission evaluates damage to Mali's cultural heritage*, 7 June 2013, <http://www.unesco.org/new/en/unesco/resources/unesco-expert-mission-evaluates-damage-to-malis-cultural-heritage> [accessed: 10.11.2015].
- United Nations Security Council Resolution No. 1214, 8 December 1998, UN Doc. S/RES/1214 (1998).
- United Nations Security Council Resolution No. 2056, 5 July 2012, UN Doc. S/RES/2056 (2012).
- United Nations Security Council Resolution No. 2199, 12 February 2015, UN Doc. S/RES/2199 (2015).
- Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, 7 July 2009, UN Doc. S/RES/1877 (2009).
- Vienna Convention on the Law of Treaties, 23 March 1969, 1155 UNTS 331.
- Walt V., *Mali: Timbuktu Locals Saved Some of City's Ancient Manuscripts from Islamists*, "Time", 28 January 2013, <http://world.time.com/2013/01/28/mali-timbuktu-locals-saved-some-of-their-citys-ancient-manuscripts-from-islamists> [accessed: 12.11.2015].
- Zwaagstra D., *Crimes Against Cultural Property in Mali*, Peace Palace Library, <http://www.peacepalacelibrary.nl/2013/01/crimes-against-cultural-property-in-mali> [accessed: 10.11.2015].