

Marina San Martín Calvo, *Bienes culturales y conflictos armados: Nuevas perspectivas de Derecho Internacional*, Navarra, Thomson Reuters Aranzadi, 2014, 429 pp. ISBN:9788490591819, €63.65  
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In this timely, comprehensive, and pleasantly written book Dr Marina San Martín Calvo examines the evolution of the protection of cultural property in the event of armed conflict. There are few monographs in either English or Spanish that address this relevant area of public international law, which, in view of recent videos showing the deliberate destruction of ancient Middle-Eastern heritage sites by the ISIS, faces new challenges which require urgent responses. The book is relevant to academics, researchers, diplomats, and members of the military; its aim being to increase awareness on the topic and disseminate practical knowledge about the current system of protection. It contains six chapters and is divided into two parts with the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict as the articulating node. The first part provides an extensive conceptual and historical background to the existing system of rules, while the second analyses this system of rights and obligations. San Martín begins her historical account with pillage in ancient times, moving to destruction and booty under the medieval concept of just war, before reaching the end of the sixteenth century when the earliest, explicit references to the need for protecting art works can be found.

Notwithstanding the Peace of Westphalia (1648) and its introduction of limits to the conduct of war, the eighteenth century saw little improvement in the protection of heritage with the Napoleonic campaigns ravaging Europe, and elginism becoming an accepted practice of transfer of cultural goods from the colonies to the metropolises. After the First World War, the International Museums' Office was created under the auspices of the Society of Nations. San Martín devotes special attention to the Spanish Civil War in the 1930s as one of the first instances of active protection of cultural patrimony, including its transfer and storing abroad. After the Second World War, the UNESCO resumed the initiative of the now extinct IMO. Its efforts crystallized in the 1954 Hague Conference and Convention.

The second chapter provides a vivid and concise assessment of the armed conflicts with the most devastating effects on cultural heritage after the Second World War and their impact on the development of the protection of cultural property – from the Arab-Israeli Wars and the Cambodian Civil War to the Mali Civil War. For instance, as San Martín explains, in the case of the Balkan wars, destruction of cultural property became the aim of the conflict, with the UNESCO intervening for the first time in an armed conflict on the occasion of the bombing of Dubrovnik

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He was formerly Representative of Counsel on the ICC's Advisory Committee on Legal Texts (roughly the equivalent of a court Rules Committee in some national systems). He is the author of *The Principle of Legality in International and Comparative Criminal Law* (Cambridge: Cambridge University Press, 2009). He would like to acknowledge the support of a Research Grant from the Bowen School of Law to work on issues of transnational and international criminal jurisdiction [[ksgallant@ualr.edu](mailto:ksgallant@ualr.edu)].

in 1991. The Iraq wars were characterized by the ineffectiveness of the occupying forces in preventing looting and trafficking of art treasures, a situation aggravated by the international embargo and increased poverty levels among the population. The case of Mali, specifically the destruction of the Timbuktu, is particularly upsetting as by the time the world heritage site was recovered in January 2013, irreparable damage had taken place. Nonetheless, San Martín views the UNESCO's active support of the French military intervention in Mali in 2013 as a change in international organizations' approach, leading them to abandon the non-interventionist policies followed previously in similar cases.

San Martín goes back in history again in chapter three to trace the different codes envisaging some form of heritage protection over the centuries. One of the earliest bans on the destruction of historical monuments was issued by the Vatican in the fifteenth century in the form of a papal bull. The earliest modern norms took shape during the French revolution and the Romantic Movement. The 1863 Lieber Code, approved during the American Civil War, for example, envisioned reinforced protection of art works, libraries, scientific collections, etc., and even their transfer away from the war zone. Cultural property was deemed inviolable except in case of *military necessity*. The concept of military necessity, or rather its definition, is, of course, essential as it establishes a priori limits to the legal protection of cultural property, and not unexpectedly has been at the core of subsequent legal debate. Although not binding, the so-called Oxford Manuals, published by the Institute of International Law between 1880 and 1913, became the model for the Hague Conventions of 1899 and 1907. The first Hague Convention marked a breaking point, establishing, among others, penal responsibility for individuals who deliberately caused damage to historical monuments; and initiating a normative process that culminated after the First World War with a number of related conferences and the subsequent approval of resolutions (from the 1921–1922 Washington Conference to the 1949 Geneva Convention) leading ultimately to the approval of the 1954 Hague Convention under the auspices of the UNESCO.

In the fourth chapter, San Martín addresses a fundamental and controversial issue: the coexistence of different definitions and interpretations of *cultural property* and *cultural heritage* after 1954. What is protected depends on what is defined as cultural property and cultural heritage. San Martín suggests there are nowadays two approaches to the matter: a maximalist interpretation of cultural heritage, based on the enumeration of items considered as cultural property and prevalent in the common law system; and a minimalist interpretation, structured around a classification of items susceptible of being considered cultural property. As an example of the latter, San Martín points to the Spanish law which, since 1985, establishes five categories of (material) cultural property: monuments, historic gardens, historic complexes, historic sites, and archaeological zones.

The Hague Convention extends protection to all cultural property, regardless of its public or private nature. It explicitly protects architectural, artistic, and historical monuments as well as architectural complexes and, for the first time, archaeological property. Subsequent conventions, such as the Florence Convention (2000) or the Faro Convention (2005), have broadened the notion further to include natural

landscapes and significant ‘cultural environments’. San Martín concludes that cultural property ought to be seen as a sub-concept within the larger concept of cultural heritage, which includes both tangible and intangible cultural items (craftsmanship, music, religious celebrations, etc.) and combinations of both. Choosing a broad and flexible approach, she contributes her own definition of cultural heritage ‘as the combination of resources and elements that citizens inherit from the past and consider to be an expression of their values, beliefs, knowledge and traditions, and which, regardless of the property system in place, identify and differentiate them as members of a particular community’ (p. 237).

The second part of the book is more technical, and, although it makes for a less entertaining read, it shows the real challenges of cultural property protection. Chapter five examines which steps countries have taken in practice as part of their commitment to the Hague Convention to implement the three fundamental principles of cataloguing cultural property, signposting it, and disseminating the content of the Convention – all this, ideally, in times of peace. San Martín argues that both national and international cataloguing efforts have largely failed; first, because the requirement that the property is distant enough from any potential military target (such as industrial zones) excludes most sites of cultural value (especially in European cities), and second, because any of the High Contracting Parties can veto the inscription of a property in the Register. An example: the veto of Cuba, Egypt, Romania, and Yugoslavia against the inscription of the Angkor Wat site in the International Register of Cultural Property that the Khmer Republic requested in the early 1970s. The proliferation of international Registers – to date, there are seven, from the International Register of Cultural Property under Special Protection to the Memory of the World Register – does not help either, even though they offer different levels of protection. Efforts to develop synergies between the different Registers are in place, San Martín explains. Signposting of protected property through the so-called Blue Shield has not gone very far either, partly because it remains unclear whether this should take place in times of peace or only during conflict.

San Martín devotes a substantial amount of pages to explaining the procedures by which *general protection*, *special protection*, and *enhanced protection* (the latter, under the Second Protocol of the Hague Convention) are granted to cultural property, and those situations in which protection is removed or discontinued temporarily. Requests for protection can only be made by state authorities, although the Second Protocol introduces the possibility for certain relevant organizations to *recommend* that the Committee for the Protection of Cultural Property invites one of its Contracting Parties to request protection of a particular property. According to San Martín, the main difference between special and enhanced protection is that, in the first case, if needed, the attacked party has the right to use protected property for military purposes, while in the latter this is strictly prohibited, thus excluding any notion of military necessity.

San Martín goes on in chapter six to examine how countries have incorporated the 1954 Hague Convention into their legal framework. Their rights and obligations include *safeguarding* cultural property by building or identifying shelters, cataloguing and signposting protected property, and other safety measures to ensure protection

in the event of conflict, natural catastrophes, and other forms of destruction. The obligation to *respect* cultural property entails guaranteeing that cultural property within one's own territory is not used for military purposes and therefore put at risk, as well as not attacking protected cultural property in the territory of another High Contracting Party that is not being used for military purposes. San Martín discusses here the notion of military necessity, and the consequences for protection of *imperative* military necessity and *unavoidable* military necessity. Among others, she concludes from current international humanitarian law that only when cultural property is used by the enemy as the sole means of subsistence for its army and/or in direct support of military action is it legitimate to destroy it.

The most interesting section of this chapter comes at the end in the discussion of the sanctions and penal repression imposed on contracting parties in violation of the Convention. Its relative shortness in relation to the rest of the work is perhaps an accurate reflection of the gap often existing between public international law norms and their application and follow-through in practice. San Martín examines the case of the ad hoc International Criminal Tribunal (ICTY) set up in 1993 in former Yugoslavia to try the violations of human rights during this conflict, including the deliberate destruction of cultural property. The author regrets that the concept of protected property outlined in the ICTY Statute was not more comprehensive, but acknowledges that the very fact that attacks on cultural property are seen as a violation of the laws and practice of war is an enormous advancement. Of the 161 military and political leaders that were accused of war crimes in the territory of the former Yugoslavia, including attacks on cultural heritage, 124 had been tried by the time of writing. Following this, San Martín examines the way the Statute for an International Criminal Court (1998) deals with the protection of cultural property, celebrating that the notion of military necessity does not appear in the text. She closes the chapter (and the book) referring to the Extraordinary Chambers in the Courts of Cambodia, which are also in the process of condemning human rights violations under the regime of the Red Khmers, including once more attacks against cultural property. To San Martín, all this is a positive indication of the slow but steady progress towards the creation of a comprehensive system to protect cultural heritage.

A key contribution to an increasingly relevant area of public international law, San Martín's book strikes a good balance between a generalist and a technical perspective. It should be a reference work for anyone wishing to understand the role of cultural heritage and its wartime protection as well as anyone seeking information about relevant conventions and protocols. As the author acknowledges herself, some overlapping and repetition throughout the work is almost inevitable given that it focuses on a legal concept and its application from different perspectives: historical, sociological, conceptual, and legal-jurisprudential. On the critical side, it would have been helpful to provide a summarizing chapter at the end, interweaving these different perspectives, and highlighting the main challenges discussed throughout the book. It could also have been useful to include one or several graphic representations illustrating the chronology, scope of application, etc. of the different texts forming this particular legal corpus, or in other words, a graphic translation of the

comprehensive genealogy of the protection of cultural property the book offers. San Martín's work certainly deserves being known and read beyond the Spanish-speaking world.

*Olivia Muñoz-Rojas\**

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\* Visiting academic, Centre for the Study of the Production of the Built Environment, University of Westminster; independent researcher [[o.munozrojas@westminster.ac.uk](mailto:o.munozrojas@westminster.ac.uk); [olivia2001@yahoo.es](mailto:olivia2001@yahoo.es)].