

Bienes culturales y conflictos armados: nuevas perspectivas de derecho internacional [Cultural Objects and Armed Conflicts: New Perspectives of International Law]. By **Marina SAN MARTIN CALVO** (Thompson Reuters, Madrid, 2014) 470 pp.

What happens with artworks, monuments, sculptures, historic buildings and other expressions of the man's creativity in times of conflict and occupation? This is the key question, the basis of the research of the book written by Ms Marina San Martín Calvo. Based on her Ph. D. dissertation, this work is an important contribution to the study of a yet unexplored topic. Armed conflicts leave behind important human tragedies, and they constitute their inevitable effect. International Humanitarian Law came precisely as a reply to *de facto* on going conflicts, in order to establish certain rules to achieve an impossible goal: to humanize, or, it could be even said, to "tame" war through law. In this context, it could seem that the legal regime of cultural property is not as important as other types of rules concerning the protection of civilians or of prisoners of war. However, cultural property is an essential part of our mankind, even maybe what defines us, and what will be our legacy to the world. Its effective protection is therefore of the utmost importance. The destruction of sanctuaries and historical sites and their use as a means of war is unfortunately common in the conflicts going on at present. The research developed, being one of the very few books devoted to this field of law, is therefore very welcome.

The book adopts an explanatory and descriptive rather than an analytical approach. It is divided in two parts. Part I is historical and conceptual, and contains four chapters. Chapters 1 and 2 are devoted to the historical study. The importance of certain specific conflicts and its impact for raising awareness about the need of a legal definition for cultural property is their main goal. The Spanish civil war receives special attention, followed by the Arab-Israeli conflict, the Cambodian war, the Balkans conflict, the Afghan crisis, as well as the Iraq and Mali more recent armed conflicts. However, both chapters could have benefitted of a clearer explanation concerning the selection of conflicts described. Their influence on the legal regime of cultural property is also not very clear, as the main international treaty regulating the protection of cultural property was adopted already in the fifties. The chapters explain, however, the greater attention the international community has paid towards the massive destruction of artistic pieces during conflicts, and the need to protect them. Chapters 3 and 4 present then the evolution of the legal regime, from the papal bulls of the XV century to the process culminating with the adoption of the Hague Convention on the Protection of Cultural Property in 1954, and its Protocols, the second and last one adopted in 1999.

One of the most controversial issues, as the author rightly brings up, concerns the definition of cultural property, a conundrum also for the drafters of the Hague Convention. Indeed, to agree upon the meaning of cultural property implies also an agreement on what culture is. The Hague Convention itself did not achieve a common ground concerning the term of cultural property, but enumerated a non-exhaustive list of pieces of art, books, sculptures, buildings, monuments and other

cultural properties. Other texts, such as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in Paris in 1970, and the Convention concerning the Protection of the World Cultural and Natural Heritage of 1972, signed under the auspices of UNESCO and widely ratified, use other definition criteria. The consideration given by the State itself to cultural property or the more general term “cultural heritage” are notions developed also to face the legal complexities of the definition. Anyway, its scope has become wider, as the protection of cultural property is no longer temporary, but timeless and in all circumstances.

Chapters V and VI, included in Part II, develop the legal regime applicable to cultural property during armed conflicts and, therefore, focus on the Hague Convention and its Protocols. The author explains that the 1954 system of cultural property established a dual regime: a general protection system and a special one. However, the special protection regime never worked. The Convention provides that cultural property can only be attacked in case of “imperative military necessity”, but does not define this exception. In 1977, Protocol I did away with this approach. Since then, only military objectives, more clearly defined and more carefully selected, could be made the object of attack. It appeared self-evident that any improvement of the 1954 Convention should reflect this approach: cultural property is civilian property and it should not be attacked, unless when it becomes a military objective. In addition, cultural property can only be attacked when there is no other feasible alternative. The failure of the special protection regime led to the adoption of the Second Protocol, which establishes that cultural property of the greatest importance for humanity can be placed under enhanced protection, provided it is adequately protected by domestic law and not used for military purposes or to shield military sites. Enhanced protection is granted from the moment of entry in the List of Cultural Property Under Enhanced Protection. This decision is taken by the Committee for the Protection of Cultural Property in the Event of Armed Conflict, an intergovernmental committee established under the Protocol. However, this regime has not been very successful either, as only very few sites have been registered. One of the reasons for this new failure is the possibility for the Committee to oppose registration, a possibility which has been exercised several times.

A further development in the legal regime of cultural property, reflected in the Second Protocol to the Hague Convention and in the Rome Statute, concerns the effort to fight impunity through effective criminal prosecution of war criminals. The Second Protocol specifically defines five serious violations concerning cultural property for which it establishes individual criminal responsibility. States undertake to adopt appropriate legislation to make these violations criminal offences under domestic law, to provide appropriate penalties and to establish jurisdiction over these offences, including universal jurisdiction for three of the five serious violations. The author makes a reference to the 2010 reform of the Spanish Criminal Code, which included a special category of crimes related to acts of hostility against cultural property. Finally, a bibliography, ordered by topics, completes this work. The book would have benefitted from the inclusion of some conclusions, including an evaluation of the deficiencies of the existing legal regime.

In spite of its narrative and descriptive approach, the book is an excellent piece of research, which offers a comprehensive view on the specific problems related to the protection of our cultural heritage.

It fills in a very important existing gap in the literature on International Humanitarian Law and it is a commendable reading for practitioners and legal researches on the field.

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