

Book Review

The Protection of Cultural Property in Armed Conflict. By ROGER O'KEEFE. Pp. xix, 404. Cambridge: Cambridge University Press. 2011 [2006]. £31.99 (PB). ISBN: 9780521172875

In this book, Roger O'Keefe wanted to provide a guide to historical and contemporary international law on the protection of cultural property at times of armed conflict; and he succeeded commendably. It is all too clear that armed conflict continues to directly cause and indirectly contribute to harm to cultural property — through its sacrifice in combat, its incidental damage, its targeting in political programmes, and its pillage at times of unrest and disorder — and these issues have received considerable scholarly attention. Yet O'Keefe's study is a very helpful contribution to scholarly and professional understanding of actors' obligations to preserve cultural heritage.

After tracing the history of moral thought on cultural destruction and pillage in conflict back to the sixteenth century, O'Keefe describes and explains international law on the treatment of cultural heritage in conflict, its historical development, and states' application of it. His three overarching conclusions are that: first (and contrary to popular opinion), parties to conflicts have worked (increasingly) hard to preserve cultural heritage since the nineteenth century; and second, with warring parties' sincere commitment, international law is capable of significantly protecting cultural property. Third, simply but no less importantly, he observes that the protection of cultural property does not conflict with or detract from the protection of civilians; that they are, in fact, inextricably linked.

The first chapter narrates the development of legal thinking from the classical law of necessity, under which civilians and their property received no more protection than the military enemy, to the situation on the eve of the First World War. Naturally, it addresses the first codification of the laws of war, the 1863 Lieber Code, which firmly established the need to protect civilian 'person[s and] property' (at least, in its own words, 'as much as the exigencies of war' allowed); and the first relevant international law, the 1899 and 1907 Hague Rules, which 'prohibited' the attack or bombardment of undefended towns, and required combatants 'as far as possible' not to deliberately or accidentally damage cultural property.

But here (and elsewhere), O'Keefe is particularly engaging as he explores the inter-relationships between technology, society, and law. He highlights how, in the late nineteenth century, just as the ethical codes of military practice had begun to distinguish between combatants and non-combatants, the rise of democracy made it logical to target civilians in order to make the government 'surrender [. . .] through the demoralisation of the populace' (pp. 19–20); progress in military and infrastructural technology made that targeting possible. While it does not undermine O'Keefe's third conclusion that protection of civilians and protection of cultural property are interdependent, it is notable that a 'consensus' on the impermissibility of targeting monuments to break a population's spirits was achieved at the same time as the spread of "morale" bombardment of the civilian population itself.

The second chapter reviews the conduct of the First and Second World Wars, and the immediate revisions of law — sometimes even mid-war — to better protect cultural property. Again law trailed behind strategy and technology, as in the Great War it allowed artillery and aerial bombardment of any 'defended' town — which was, technically speaking, every one on the Western Front. Moreover, the strategy of 'economic warfare' against the enemy's productive base joined morale bombardment, as did reprisals against undefended towns and 'flims[ily]' excused attacks on historic buildings (p. 37). And again, monuments were afforded more

protection than civilians — the German order to bomb London was approved so long as its monuments were avoided (p. 41).

O’Keefe once more demonstrates his eye for historical accident when he points out that a conference to draft an international convention on the protection of cultural property in armed conflict was prevented by the outbreak of the Second World War. He explains the inadequacies in the law remaining during the Second World War, perhaps most devastatingly exposed by the warring parties’ strategic area bombing of towns and cities, unrestricted by any proportionality between the military objective and cost, and the human cost (pp. 62–73). He also provides a neat review of the options available to those with command responsibility, and the potential even for junior staff within military structures to protect cultural property (e.g. pp. 74–78). However, discussing the Nazis’ destruction and plunder of cultural property, he rightly observes the ‘limitations of legal restraint in the face of moral perversity’ (p. 62).

Following those more mixed chapters, there are more straightforwardly legal ones: the third on the 1954 Hague Convention and its First Protocol (notable for O’Keefe’s dissection of the special protection regime, and the UK and US’s roles in its ineffectiveness (pp. 141–42)); the fourth on the 1977 Additional Protocols to the Geneva Conventions; the fifth on the 1999 Second Protocol to the Hague Convention; and the sixth on other relevant treaties, customary international law, and the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage. O’Keefe does not discuss the separate matter of restitution (sensibly, as it is a book in its own right).

These chapters, too, might benefit from more of O’Keefe’s eye for real-life examples. For instance, he notes that the 1954 Hague Convention prohibits the use of cultural heritage in a way that exposes it to risk of military damage, the ‘only’ exception being imperative ‘military necessity’ (p. 121); and that the Convention also requires the prevention of theft, pillage and misappropriation (p. 132). However, perhaps understandably, neither O’Keefe nor the Convention appears to identify any potential clash. Yet a report of the Parliamentary Assembly of the Council of Europe (PACE) records that the years-long presence of the occupying Turkish forces ‘protects the [Greek Cypriot] village church’ in Tymvou/Kırklar from plunder (Cormack, 1989: 31). That is an exceptional situation (even in Cyprus), but it nonetheless demonstrates that an occupying power can break cultural property law at the same time as (incidentally) protecting that property.

The reviewer appreciated the chronological presentation of international law on cultural property protection; even more so, the author’s discussion of the protection of cultural heritage afforded by the Additional Protocols to the Geneva Conventions; and the copious but consistently interesting and informative footnotes. It is striking that later international cultural property law sometimes gave states freedom to damage or destroy cultural property than earlier humanitarian law had denied (if they were parties to both laws). The author has a very readable style (unavoidably limited where the minutiae of laws are examined, and similarly worded laws compared). He excellently exploits both archives of pre-legislation debate and case law of legislation’s application; and makes good use of the equally authoritative, non-English-language texts of conventions, which others sometimes neglect.

Through its exhaustive analysis of existing legislation, this book incidentally highlights law’s idealism regarding archaeological work in occupied territories, and apparent lack of regulation of that work in secessionist territories. As an international archaeologist in northern Cyprus has noted, ‘many of the [1954 Hague Convention] procedures assume a minimal degree of cooperation’ between the occupying power and the competent national authorities (Harpster, 2008: 7). Obviously, particularly in long-term military occupations, a lack of cooperation — coupled with insufficiently proactive legislation — can paralyse the profession and thus lead to the decay of historic buildings and archaeological sites.

O’Keefe observes that, under the 1954 Convention, there is no explicit obligation on the occupying power to refrain from conducting excavations, and to prohibit, prevent, and stop excavations unauthorized by the competent national authorities (p. 133); and that there has been no clear demonstration of states’ acceptance of such an obligation (p. 134). In states where

archaeological remains belong to the state, occupying powers' unauthorized excavations would constitute misappropriation of cultural property. The occupying power must assist the occupied as much as possible (p. 135); and it is not obliged 'to take measures *proprio motu* [of its own volition]' (p. 136); and occupied powers can ask for or be offered help from UNESCO, which occupying powers must allow (pp. 136–37). Yet occupying powers can do cultural heritage work 'only in collaboration' with the occupied (p. 137). The 1999 Second Protocol explicitly permits archaeological excavation where 'strictly required to safeguard, record or preserve cultural property' (p. 262), on condition that, 'unless circumstances do not permit', it is 'carried out in close co-operation with the competent national authorities'. How does the law protect cultural property in places where the competent national authorities refuse to cooperate with the occupying power, either in on-site preservation work, or in efforts to suppress looting and smuggling of cultural property?

In Cyprus, for example, the occupying power is the Republic of Turkey; and the occupied power/competent national authority is the (Greek Cypriot-administered) Republic of Cyprus, whose Greek Cypriot citizens were almost entirely expelled from the occupied area; the community living in the occupied area is the Turkish Cypriot one. Turkey recognizes the Turkish Cypriot community's authorities as the independent Turkish Republic of Northern Cyprus (TRNC), and all archaeological work must be licensed by those authorities. But Cyprus recognizes only the occupying power, Turkey; it refuses to recognize the TRNC, and thus refuses to collaborate on any TRNC-licensed archaeological work, even backfilling of discontinued excavations (Şevketoğlu, 2000: 53). UN Security Council Resolution 541 requires 'all States not to recognize any Cypriot state other than the Republic of Cyprus'; and Resolution 550 again requires 'all States [...] not to facilitate or in any way assist the aforesaid secessionist entity' (UNSC, 1983, 1984). Yet, at the same time, the UN Secretary-General has called upon 'all States [...] to eliminate unnecessary restrictions [...] isolating the Turkish Cypriots and impeding their development' (UNSG, 2004: 2). Does the competent national authorities' refusal to cooperate with the occupying power constitute "circumstances" that do not permit cooperation, and thus allow the occupying power to conduct rescue work? If not — if Cyprus's refusal to cooperate removes the TRNC's right to carry out emergency archaeological work, and the Security Council resolutions legally validate Cyprus's refusal — who is responsible for the abandonment, decay and loss of cultural heritage? More urgently, what can be done to *prevent* plunder and destruction in an unrecognized state?

O'Keefe has managed a forensic dissection of the international law on the protection of cultural property in armed conflict. It is a valuable guide to the letter and spirit of the law, which will prove useful to cultural property lawyers, cultural protection officers, and archaeologists.

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