



La destrucción de bienes culturales en conflicto armado: el caso del Daesh en Siria

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BOOK REVIEW

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Joan-Marc Ferrando Hernández's book is the most comprehensive and up-to-date study of the protection of cultural property in wartime available in Spanish. Combining the author's training as a historian and a lawyer, the book offers a thorough historical and normative account of the subject: from ancient warfare to the most recent armed conflicts (Part I), through the legal configuration of the destruction of cultural property as an international crime and the *lacunae* in the current protection regime (Part II), to a detailed scrutiny of accountability mechanisms for the crimes committed by Da'esh in Syria between 2013 and 2017 (Part III). Throughout, Ferrando Hernández draws on diverse legal traditions, thereby moving beyond the Eurocentric approach that characterizes much of the existing academic literature. The result is a critical work that constitutes a rigorous doctrinal contribution and an impassioned plea for the development of international law and institutions capable of preventing the destruction of cultural property in wartime.

1. THE PARADOXES OF THE EARLY PROTECTION OF CULTURAL PROPERTY IN WARTIME AND ITS DEVELOPMENT

Part I opens with an in-depth study of the protection of material cultural heritage in wartime, drawing on sources and narratives largely absent from other legal works. From the Punic Wars, Crusades, doctrine of *just war*, pre-colonial customs in Africa, and Islamic jurisprudence, the reader encounters diverse perspectives on the spoils of war and the early protection of religious sites. During the Renaissance, monuments and works of art began to be valued beyond mere civil property, as attested by the writings of Przyluski, Gentili, and Grotius, though these authors' work would have little impact on the conduct of wars in the sixteenth and seventeenth centuries. It fell to de Vattel, in his seminal work, *The Law of Nations* (1758), to give new *impetus* to the idea of protecting 'works of remarkable beauty' during wartime, subject to the exception of military necessity.

Ferrando Hernández identifies two key historical turning points: the construction of national identities in the wake of the French Revolution and the spread of Romantic ideas elevating the value of ruins and historic buildings. By the end of the nineteenth century, most European and Latin American republics had enacted legislation protecting their cultural heritage. Yet this development was accompanied by an appalling cynicism: the same (European) powers that codified these norms at home simultaneously plundered their

colonial territories to fill the collections of institutions such as the Louvre, the British Museum, and the Neues Museum.

Codifying the Protection of Cultural Heritage in Wartime

The author identifies the Lieber Code as the foundational instrument shaping subsequent international humanitarian law ('IHL') treaties. He further joins the critical view that the military necessity exception in the 1899 and 1907 Hague Conventions served primarily to justify evading applicable rules rather than to restrict belligerent conduct. The Conventions' narrow scope, the requirement that cultural property may not be used for military purposes, and the absence of peacetime provisions undermined their effectiveness, even as their core principles became international customary law. Indeed, the two world wars exposed the mismatch between such a normative framework and actual practice. Germany's destruction of cathedrals and historic monuments in Louvain, Reims, Antwerp, and Lille during the First World War provoked international outrage, yet the German army justified these acts on grounds of military necessity. The peace treaties following the war introduced the restitution of artworks as reparation, consolidating the principle of the unity of a state's cultural heritage.¹

One of the book's most valuable contributions is its detailed attention to the often-overlooked influence of the Spanish Civil War in the development of IHL.² From the iconoclast campaign of the anti-clerical movement and the irregular seizure and looting of artworks by both sides, to the evacuation of Spain's treasures to Geneva — culminating in the 1939 Agreement of Figueres — the Spanish case was a source of inspiration for the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The examination of the 1939 Agreement is particularly insightful: concluded between the International Committee for the Safeguard of Spanish Art Treasures (an entity which was not a subject of international law) and a government under extreme duress, with the Secretary-General of the League of Nations acting in a personal yet officially acknowledged capacity — *de facto* committing the League as a party — the episode raised enduring questions about the legal capacity of international actors and the improvised architectures of cultural property protection in wartime.

Yet, the Second World War further exposed the shortcomings of existing IHL. In Eastern Europe, the obliteration of cultural sites was part of the Nazi campaign of racial extermination; on the Western Front, destruction was concentrated in the first months of the invasion. At the same time, the Allies were guided, at least nominally, by Eisenhower's General Order No. 68 (1943), which called for the respect

of historic monuments insofar as war permitted. Post-1945 developments —the adoption of the 1954 Hague Convention and its Second Protocol, the Rome Statute, and the 2003 UNESCO Declaration on the Intentional Destruction of Cultural Heritage— are addressed alongside subsequent conflicts in the former Yugoslavia, Ukraine, the Occupied Palestinian Territories, and Sudan, all of which have tested the limits of these instruments.

The International Legal Framework: Primary and Secondary Rules

The second chapter shifts to a normative analysis of the substantive obligations of respect and safeguard of cultural property and the legal consequences of their breach. Ferrando Hernández offers a critical assessment of the 1954 Hague Convention, noting that Article 28's delegation of criminal liability to state parties has generated divergent approaches to the same criminal conduct. The Second Protocol of 1999 is assessed more favourably: it extends the Convention's scope to non-international armed conflicts ('NIAC'); establishes a clear sanctions regime; and introduces a more workable system of enhanced protection by suppressing the 'sufficient distance' requirement. The chapter also examines the interaction between the 1977 Additional Protocols and the 1954 Hague Convention, an interplay that produces unreasonable outcomes where the Convention's military necessity exception displaces the higher threshold set by the Protocols. The chapter closes with the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage and the 2003 UNESCO Declaration as complementary sources for identifying applicable primary and secondary rules.

2. THE DESTRUCTION OF CULTURAL PROPERTY AS AN INTERNATIONAL CRIME

Part II maps the genealogy of individual criminal liability for the destruction of cultural property from the post-World War I Commission on Responsibilities, through the Leipzig trials and *in absentia* proceedings before French and Belgian courts, to the 1945 London Agreement and the International Military Tribunal at Nuremberg. The convictions of Göring, Keitel, and Rosenberg for the organized plunder of cultural property across occupied Europe are considered in detail, alongside parallel proceedings before national military tribunals. The ICTY jurisprudence receives thorough treatment: the author underscores its significance for the definition of armed conflict,³ the applicability of war crimes in NIACs under customary international law,⁴ and the interpretation of intentional destruction of cultural property as a war crime under Article 3(d) of the ICTY Statute, a crime against humanity of persecution, and evidence of genocidal intent.⁵ Through its case law, the Tribunal established that Article 3(d) requires no result beyond directing an attack against cultural property; that inscription in an international list indicates sufficient gravity; and that proximity to a military objective does not justify destruction — only the actual use of cultural property for military purposes does.⁶

The analysis of Article 8 of the Rome Statute, enriched by the OTP's 2021 Policy on Cultural Heritage and the cases of *Al Mahdi*, *Ntaganda*, and *Al-Hassan*, unpacks the material and subjective elements of the war crime of wanton destruction of cultural property. The author draws attention to a significant gap in the Elements of Crimes, which leave movable cultural property unprotected and thus reliant on more generic provisions. The section on the destruction of cultural property as the crime against humanity of persecution emphasizes the human dimension of such acts: the destruction of cultural property is aimed at severing the links between objects and communities. Part II concludes with a nuanced discussion of cultural genocide, tracing its deliberate exclusion from the 1948 Genocide Convention and its re-emergence in ICTY jurisprudence, where the 'conservative' trend established in *Krstić* holds that the destruction of cultural property may evidence genocidal intent, though the underlying acts must otherwise be redirected to war crimes or crimes against humanity.

3. ACCOUNTABILITY FOR THE DESTRUCTION OF CULTURAL PROPERTY BY DA'ESH IN SYRIA

Part III applies the preceding framework to the destruction of cultural property by Da'esh in Syria. The author maps the layered armed conflicts that took place in Syria between 2013 and 2017. He then focuses on the NIAC between the Syrian government and Da'esh, given that Da'esh meets all the criteria for being considered a non-state armed group under IHL. The wilful destruction of cultural property is examined in its full scope: Christian churches in Raqqa, Yazidi places of worship, mosques, sanctuaries, cemeteries, and pre-Islamic monuments, including Palmyra, were attacked under the guise of iconoclasm and filmed for widespread online dissemination. Ferrando Hernández nevertheless argues that Da'esh Salafist-Wahhabi iconoclasm served as ideological cover for a strategy with manifold dimensions: financing military operations through illegal excavation and trafficking of archaeological objects; projecting an image of power and invincibility; and clearing the ground for a 'pure' Caliphate. These acts amounted to severe IHL violations, and there is sufficient evidence to characterize them as war crimes, crimes against humanity or evidence of genocidal intent, the latter at least against the Yazidi people.

The final chapter sharply considers various accountability strategies. The ICC's potential competence over nationals of states parties who joined Da'esh was foreclosed by the OTP's 2015 communiqué — a decision the author criticizes for conflating jurisdiction and admissibility and forgoing lower-level prosecutions that could have enabled future cases against high-ranked officials.⁷ The proposed Syrian Special Tribunal and the *ad hoc* treaty-based tribunal are also scrutinized and found wanting on grounds of political viability, legitimacy, access to evidence, human rights guarantees, and financial cost. Ferrando Hernández ultimately submits that the most effective strategy lies in national courts and tribunals exercising universal jurisdiction and supported by the International, Impartial and Independent Mechanism for Syria ('IIM').⁸ Conceived as a quasi-prosecutorial subsidiary organ of the UN General Assembly, the IIM has proved its worth as an evidentiary archive and a cooperative partner for national courts across Europe and beyond. Given its mandate to prioritize cases that hinder reconciliation, the destruction of cultural property falls within its purview, and it is only a matter of time before its role in the reconstruction of Syria's cultural landscape can be assessed.

CONCLUSION

This book is a landmark contribution to the study of international cultural heritage law. Its depth of legal historical scholarship, rigour of normative analysis, and engagement with the full breadth of international and non-Western legal traditions set it apart from comparable works. The book's particular strengths, including the recovery of the Spanish Civil War's foundational role, the meticulous mapping of normative gaps, and the sober assessment of accountability mechanisms for Da'esh, make it essential reading for scholars and practitioners of IHL, international criminal law, and cultural heritage law alike. Its relevance extends well beyond the Syrian context, as the frameworks it explores are directly applicable, *inter alia*, to the ongoing destruction of cultural properties in Sudan, Ukraine, and Gaza. For this reason, this book is from beginning to end a beautifully crafted ode to international peace.

NOTES

1. Article 245 of the Treaty of Versailles (28 June 1919), and Articles 191-196 of the Treaty of Saint-Germain (10 September 1919).
2. See the few works written at the time: James W. Garner, 'Questions of International Law in the Spanish Civil War' (1937) 31 AJIL 1, 66-73; Norman J. Padelford 'International Law and the Spanish Civil War' (1937) 31 AJIL 2, 226-243; Arnold D. McNair, 'The Law Relating to the Civil War in Spain' (1937) 53 Law Quarterly Review 4, 471-500.
3. *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction in the case the Prosecutor v. Duško Tadić* IT-94-1-AR72 (Appeals Chamber, 2 October 1995), para. 70.
4. *Ibid.*, paras. 97-98.
5. *Judgement in the case the Prosecutor v. Radislav Krstić* IT-98-33-T (Trial Chamber, 2 August 2001), para. 580.
6. See *Judgement in the case the Prosecutor v. Pavle Strugar* IT-01-42-T-A (Appeals Chamber, 17 July 2008); *Judgement in the case the Prosecutor v. Radoslav Brđanin* IT-99-36-T (Trial Chamber II, 1 September 2004); *Judgement in the case the Prosecutor v. Dario Kordić and Mario Čerkez* IT-95-14/2-A, (Appeals Chamber 17 December 2004); *Sentencing Judgement in the case the Prosecutor v. Miodrag Jokić* IT-01-42/1-S (Trial Chamber I, 18 March 2004); *Judgement in the case the Prosecutor v. Enver Hadžihasanović and Amir Kubura* IT-01-47-T (Trial Chamber, 15

March 2006); and *Judgement in the case the Prosecutor v. Mladen Naletilić aka "Tuta" and Vinko Martinović aka "Štela"* IT-98-34-T (Trial Chamber, 31 March 2003).

7. Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS (ICC, 8 April 2015) <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1> accessed 23 April 2026.
8. See UNGA Res. 71/248, 21 December 2016.

COMPETING INTERESTS

The author has no competing interests to declare.

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