Santander Art and Culture Law Review 2/2024 (10): 27-40
DOI: 10.4467/2450050XSNR.24.010.20821

INTERVIEWS

Roger O'Keefe* talks to Marta Szuniewicz-Stępień,** Frederik Rosén,*** and Andrzej Jakubowski****

Making the Hague Regime More Effective

Marta Szuniewicz-Stępień (MS), Frederik Rosén (FR), and Andrzej Jakubowski (AJ): Thank you for agreeing to meet with us to discuss the challenges of effectively safeguarding cultural heritage in armed conflict as we celebrate the anniversaries of the 1954 Hague Convention[1] and its Second Protocol (1999).[2]

Roger O'Keefe (RO): Thank you very much for your invitation.

FR: As we are talking, in many parts of the world cultural heritage is still under threat of destruction and looting, as the recent plunder of Sudanese museums has demonstrated. In your opinion,

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

2 Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999, 2253 UNTS 172.

what are the three main reasons why the 1954 Hague regime remains so underprioritized by states, including in the multilateral cooperation through international organizations? Have you observed any significant changes in the most recent years in states' attitudes towards the 1954 Hague regime?

RO: I am glad you started with this question, Fred, because I want to say something at the outset that I feel needs saying. I think it is important to stress that the fact that bad things happen, such as looting or destruction, does not necessarily mean that we need to change the law or even that such actions were unlawful. Take the situation in Sudan. A non-state armed group took control of the area in Khartoum where the important museum is located and did this really quickly. So, first of all, we are not talking about acts by the state. Secondly, we are not talking about acts in respect of which the state realistically had a time frame in which it could have taken the necessary measures for safeguarding. Then there is the fact that certain groups or even states, such as Germany during the Second World War, will just go out and destroy or plunder whatever they can, regardless of the rules. We have seen ISIS and similar groups engage in premeditated attacks against cultural heritage. Sadly, there is not a great deal that can be done in this regard. However, what states can do is to undertake the measures required under Article 3 of the 1954 Hague Convention, as elaborated on in Article 5 of the Second Protocol, to prepare in peacetime for safeguarding in armed conflict.

Turning to your question, I would like to push back on the suggestion that at least these days the 1954 Hague regime is underprioritized, in particular in multilateral contexts. This may have been the case in the past, but I do not believe it is still the case today. I want to highlight a few things that I think show that since the beginning of the 2000s, and especially since 2015, there has been prioritization within the limits of what is possible. Then we can get to what I think are three difficulties regarding the Hague regime.

In terms of prioritization, at the national level, we have more ratifications of and accessions to the 1954 Hague Convention and its Second Protocol. There are states re-establishing, or establishing for the first time, their special units within the armed forces for the protection of cultural property in armed conflict. For instance, the British, the French, and, I think, the Australians are now in the process of creating such units. We see an emphasis too on inventorying and on preparing applications for enhanced protection under the Second Protocol. In addition, states have been incorporating the protection of cultural heritage into their civil defence and museums training programmes. We see more national laws being enacted. Some states have created funds to assist other states to do these things. So individual states are taking these things seriously.

At the multilateral level, there has been even more action. In 2015, UNESCO Member States agreed to the strengthening of the Organization's mandate in relation to the protection of cultural heritage in conflict and emergency situations. States Parties are now taking more seriously the meetings of the parties to the 1954 Hague Convention and to the Second Protocol. Some of them have been generous in their funding of expert meetings with a view to amending the Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict ("Operational Guidelines"),[3] as recently happened in relation to enhanced protection, particularly as regards monitoring. There has been the sharing of best practice, as encouraged by the States Parties to the Second Protocol. Importantly, we have seen generous funding and support for the emergency measures coordinated by UNESCO in relation to Ukraine, such as training of local staff, assisting in moving heritage away from conflict zones, and so on. Where possible, some measures have been adopted in relation to Gaza, where there has been satellite monitoring of heritage sites. Finally, it should be underlined that different governments have lent their support to UNESCO in the development of certain projects, such as the Military Manual[4] and recent online courses for police forces and others. So I think there has been prioritization.

Nonetheless, there are of course challenges. Let me highlight three.

One challenge is simply insufficient capacity in human and financial terms. It is true that there is the Fund for the Protection of Cultural Property in the Event of Armed Conflict, which assists States Parties to the Second Protocol by providing financial and technical assistance in relation to emergency, provisional or other measures to protect cultural property during armed conflict, such as inventorying, or for immediate recovery at the end of hostilities. Some states, particularly the UK and France, have also helped bilaterally, directly or through the creation of their own cultural funds. But capacity will always be a problem, not just in this area but in all areas of the law of armed conflict and indeed in human rights law. There are richer and poorer states, states with greater experience and more expertise than others, and so on. So any more that can be done in this regard to help build capacity is, I think, always welcome.

Another problem is that there are competing priorities in relation to armed conflict. The protection of civilians themselves is one. There is also a pressure to bring, for example, gender awareness to bear and other issues. I am not criticizing

[3] See https://www.unesco.org/sites/default/files/medias/fichiers/2024/05/1999-SecondProtocol_Guidelines_2023_Eng.pdf?hub=415 [accessed: 30.09.2024].

[4] https://unesdoc.unesco.org/ark:/48223/pf0000246633 [accessed: 30.09.2024].

this. I am just saying that there are many, many pressures in this regard. In the end, too, the aim of a war is to win. So the protection of cultural heritage will often take second place. It has to be factored into the bigger picture. There is also a specific challenge in relation to non-state armed groups. This is not necessarily always a challenge of willingness. As the organization Geneva Call has shown, many of these groups are in fact interested in protecting cultural property and cultural heritage more broadly. But it is again a question of capacity. The particular problem in this regard is the political sensitivities. Although UNESCO has a mandate in this respect, Member States, in particular certain Member States, of the Organization do not really want it to engage with non-state armed groups. So there is a real diplomatic difficulty in engaging with such groups. This is where I think private organizations like Geneva Call have an important role to play.

The final challenge is simply that certain states do not believe that the outbreak of an armed conflict, either in their territory or involving their armed forces, which would place at risk cultural heritage is a realistic possibility. These days, more of them, including in Europe, are beginning to realize that it is. But making states appreciate that wars can come out of nowhere and that they really have to take these things seriously is not always easy.

In answer to your question regarding significant changes in recent years in states' attitudes towards the 1954 Hague regime, it seems to me there is no longer a belief that the protection of cultural heritage in armed conflict is a hopelessly impractical issue. There were two significant catalysts in this regard. First, the United States suffered a big setback in strategic communications terms as a result of its failure to protect the National Museum of Iraq in Baghdad in 2003. Secondly, when it became clear that ISIS and various other groups were to some extent funding their activities through the illicit trade in cultural artefacts taken from conflict zones, militaries began to realize that it was in their interest to take this issue seriously. It is now seen as a practical, important issue, not just as a good thing to do. I think this has been quite a change.

FR: In light of these observations, we would like to explore some practical aspects of the protection of cultural heritage in armed conflicts. Indeed, there is an increasing focus on the extent to which the armed forces should engage in protection activities beyond their existing obligations to respect cultural property during combat. These obligations, which are limited to the prohibition of attacking, destroying, damaging, using for military purposes, and looting, have been the subject of much debate. There is a growing interest in the issue whether the armed forces should also take an active part in protection activities, such as securing, evacuating, and escorting evacuated collections. The deployment of armed forces per-

sonnel in historic buildings and institutions that collect cultural assets, or in their immediate vicinity, exposes them to destruction. This is because they become a legal target in accordance with international humanitarian law. An attack on them will be considered lawful, provided that other conditions are met (e.g. the principle of proportionality of the attack). It would be beneficial to consider implementing regulations that allow the armed forces to assist civilian communities in protecting cultural assets, including evacuation efforts, provided that these actions are planned and prepared in advance and conducted at a safe distance from the combat zone. What is your take on these issues?

RO: Well, I think it depends on what we mean by "regulations". We certainly do not need new instruments, such as more additional protocols to the 1954 Hague Convention. We need to work within the confines of the existing legal regime.

If instead we are referring to recommendations, guidelines or the like, my own view is that private initiatives, such as those undertaken by non-governmental organizations, should be considered. Examples include the 2018 Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage.[5] However, we have to be careful, in practical terms, of a hyper-proliferation of such documents. The more there are, the less people pay attention to them.

I think the real scope for this sort of thing is at the national level. When states implement the 1954 Hague Convention, they may do so within the context of a wider piece of legislation relating to cultural heritage. I cannot name the state in question, but I was involved in an international scientific body that provided advice to a state in the drafting of a comprehensive cultural heritage protection law. This legislation included provisions relating to aspects of armed conflicts and disasters. Some of the most interesting elements were not at the level of the primary legislation but at the level of the implementing regulations. These sorts of national implementing regulations are particularly important in the context of civil defence, including on matters such as coordination between civil defence and the armed forces, customs, and so on. In this regard, the input of intergovernmental and non-governmental organizations can be useful in assisting with national implementation.

We can also certainly develop best practice and perhaps reflect it in the Operational Guidelines to the Second Protocol. Indeed, through the Meeting of the States Parties to the Second Protocol, there has been a strong push to collect best practice in relation to preparatory measures in peacetime for the safeguarding of cultural property in armed conflict. This is a good approach, rather than creating international regulations or the like outside the Operational Guidelines.

[5] https://whc.unesco.org/en/news/1826 [accessed: 30.09.2024].

In response to your specific question on the involvement of armed forces, it is advisable to keep them away, at least if we are talking about the ordinary armed forces. I have to confess that I am unsure who is proposing the involvement of armed forces in securing, evacuating, and escorting operations. I am unsure why this would be required. In the case of territory under the control of the government of the state, such measures would be handled by the relevant cultural heritage authorities and civil defence authorities.

AJ: So, perhaps an alternative solution could be to create a dedicated unit within the armed forces for the protection of cultural property. However, this raises the question of the legal status of such units and their members. Should these units include civilian specialists, such as archaeologists, museum workers, archivists, or art experts, on a permanent basis; or should they collaborate with the private sector for the duration of a given military operation?

RO: Indeed, Andrzej, such units have already been or are already being created. Furthermore, the 1954 Hague Convention does not stipulate the composition of such units within the armed forces. First and foremost, the unit need not comprise full-time military personnel. In the UK, for example, they are reserve officers, as I believe is the case in many national contexts. In their day-to-day lives, these reserve officers are civilian museum directors or managers, archaeologists, art historians, and so on. They all contribute a specific area of expertise to the unit. As you are aware too, in the post-occupation stabilization operation in Iraq civilian archaeologists were embedded in the Polish military contingent for the duration of the mission. There are also various models that utilize full-time personnel from the armed forces themselves. The Carabinieri Command for the Protection of Cultural Heritage in Italy and the Guardia Civil in Spain have expertise in a range of relevant areas, including the prevention of crimes relating to cultural property, as well as more general skills such as riot control and crowd management outside museums. These models offer a high degree of flexibility. Moreover, in terms of coordination, dedicated units of any variety within the armed forces can serve as liaison with other civilian individuals or entities with expertise in a given field. The objective of protecting cultural sites during occupation, for instance, can be achieved simply by engaging the usual civilian custodians of these sites, who may just be local security guards.

AJ: Could you elaborate more on the status and role of civilian personnel?

RO: The status of personnel engaged in these sorts of activities is subject to specific rules. According to the 1954 Hague Convention, personnel involved in the protection of cultural property are to be respected and, wherever possible, allowed to perform their duties without hindrance. It is not clear whether this refers solely

to civilians within the competent local authorities or whether it also encompasses military units with a dedicated role in this regard. I believe that the actual terms of the Convention do not in any way preclude including military units within the scope of the relevant provision. The only potential obstacle to this argument is that soldiers remain soldiers and therefore lawful objects of attack while they are serving in that capacity. It should be noted, however, that civilian components of such units could never be considered lawful objects of attack unless they directly participated in hostilities. Except in such cases, they would be afforded protection and respect.

In terms of the role of civilian personnel in such units, it would be beneficial to bring in as much expertise as possible. As mentioned, these units could be composed of reserve officers whose usual, civilian job is in archaeology, for example. An alternative would be to provide military personnel within such units with a mandate at the national level to liaise with civilian authorities or other civilian personnel involved in the protection or conservation of cultural heritage. This would be an optimal solution. Now, you mentioned liaising with the private sector. If we are referring to entities such as individual cultural institutions, such as individual museums, or the International Alliance for the Protection of Heritage in Conflict Areas (ALIPH), their involvement would certainly be beneficial. Ultimately, however, it will be up to each state to determine the specific responsibilities of these units. The involvement of civilian personnel may depend on the particular responsibility. To illustrate, there may be some reluctance in involving civilians in the compilation of no-strike lists. However, if we are talking about measures to prevent looting or other activities for which the military may not be ideally suited, civilian involvement could definitely be useful.

AJ: In this regard, we would like to inquire about the present status of the implementation and promotion of the UNESCO Military Manual, which you co-authored.

RO: I would prefer to avoid the word "implementation", as it may give the impression that the Manual is being foisted on states and that they are obliged to "comply" with it. The Manual is merely facilitative. It is there to be used as its users find helpful. Anyway, in answer to your question, there are currently eight official translations of the Manual, which can be accessed via the UNESCO website. The availability of funding for the translation into a given language is in practice a prerequisite. It is possible too that unofficial translations may exist in other languages. As for how it is used, I am aware that the Manual provides the basis for the training programmes delivered by UNESCO. Furthermore, it has been explicitly linked to the online training programmes recently developed by UNESCO for police forces and other relevant actors. This creates a beneficial synergy between the two in terms of training national forces. As for states, to cite one example, the UK has, I believe,

used the Manual in the education and training of their special Cultural Property Protection unit. It should be noted, however, that the Manual was never intended to replace national military manuals, where such manuals exist. It was designed in part for those states which do not have military manuals and in part for training purposes. In addition, it is encouraging to see that it is being cited by scholars and even in international jurisprudence.[6] In the end, it is of course up to states and others to choose how they use it. However, the other authors and I believe it is fulfilling its purpose.

AJ: Thank you so much for taking the time to clarify these points for us – we really appreciate it! And please accept our heartfelt congratulations on this important work.

MS: We would like to move on to another pressing issue. I would therefore be grateful if you could clarify the extent to which the 1954 Hague regime corresponds to the protection of intangible heritage. Is the recently emphasized interconnection between tangible and intangible heritage and the need for a holistic perception of the conditions, principles, methods, and means of their protection supported by the existing system of treaty obligations of states in the event of an armed conflict? Furthermore, to what extent should this be included in military training?

RO: Nice question, Marta! Obviously, the 1954 Hague Convention is about cultural property, which is to say tangible cultural heritage. It does not explicitly refer to intangible cultural heritage. Nonetheless, I am definitely of the opinion that, within the limits of the text, it offers a degree of support for the protection of intangible cultural heritage as well. The same could be said of other rules of international law applicable during armed conflict.

It is often the case that the protection in armed conflict of cultural property, say a religious object or building, also safeguards the intangible practices associated with the property. The same goes for the protection of other civilian objects under the law of armed conflict, which serves to protect all practices related to those objects. It could be a bakery, for example. Protection of the bakery from attack serves to protect the art of baking and other related practices.

Furthermore, I cannot see any legal problem in applying the definition of cultural property set out in Article 1(a) of the 1954 Hague Convention in a way favourable to the protection of cultural spaces and objects as understood in the context

[6] See Appeals Chamber, *Prosecutor v. Prlić et al.*, Appeal Judgment, Case No. IT-04-74-A, Judgment of 29 November 2017, Dissenting Opinion of Judge Pocar, para. 16.

of intangible cultural heritage – in other words, locations and items associated with cultural practices. The definition in Article 1(a) refers to movable or immovable property "of great importance to the cultural heritage" of the people, which in this context means the state, in question. While movable or immovable property may be "of great importance to the cultural heritage" of a people in that property's own right, on account of its archaeological, architectural, artistic, or historical value, it may also be "of great importance to the cultural heritage" of that people on account instead of its use in a particular cultural practice. This is not a reinterpretation of Article 1(a). It is simply an application of the provision's ordinary terms with a bit of lateral thinking.

Other applicable rules contribute as well to the protection of intangible cultural heritage during armed conflict. Take, for example, the law applicable during occupation. Article 27 of the Fourth Geneva Convention of 1949[7] provides in relation to, *inter alia*, the inhabitants of occupied territory that they "are entitled, in all circumstances, to respect for [...] their manners and customs". In addition, to the extent that an occupying power is bound extraterritorially by the International Covenant on Economic, Social and Cultural Rights (ICESCR),[8] it will be obliged by Article 15(1)(a) to respect the right to take part in cultural life. Other provisions of the law of armed conflict and international human rights law serve to protect religious practices in occupied territory. All these rules facilitate the protection of intangible cultural heritage in armed conflict. It is not necessary for the rules explicitly to mention intangible cultural heritage. In terms of training for occupation, it does not strike me as unreasonable or unfeasible to train military forces to allow people to continue with their cultural practices. I would not anticipate any significant challenges in this regard. Indeed, this is the type of issue that is already addressed in cultural awareness training and similar programmes for the armed forces. When military forces are deployed to an area, particularly in the context of stabilization operations, it is important for them in military terms to understand the local culture and to liaise with local cultural figures, whether religious or otherwise. This is where cultural awareness training comes in.

So in my view the 1954 Hague Convention, together with the other rules of international humanitarian law and the rules of international human rights law, can provide an effective level of protection for intangible cultural heritage during armed conflict. Anyway, I am not sure what other options would be viable.

[7] Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.

[8] 16 December 1966, 993 UNTS 3.

MS: I am grateful for these comments, which align with the current agendas of both UNESCO and the European Union in protecting culture and cultural diversity in the event of armed conflicts. In this context, I would like to refer to accountability for heritage crimes perpetrated during armed conflicts. While there is a considerable amount of debate surrounding the issue of the criminal liability of individual perpetrators, we would like to inquire about the responsibility of states for violations of human rights obligations related to heritage committed in such circumstances.

RO: To begin with, it is important to underline that human rights obligations remain applicable during armed conflict. This said, there are actually two distinct questions here. First, there is the question of substance. Secondly, there is the procedural question of how one might enforce state responsibility for violations of human rights obligations in respect of cultural heritage.

Beginning with the substantive aspect of the role of international human rights obligations in the protection of tangible cultural heritage in armed conflict, there are two limitations in practice on this role. (We can leave aside intangible cultural heritage for present purposes.)

One substantive limitation in practice is the vagueness, meaning the lack of specificity, of the relevant human rights protections when it comes to tangible cultural heritage. Take the right to take part in cultural life in Article 15(1)(a) of the ICESCR. It is recognized that this encompasses a right to the enjoyment of tangible cultural heritage. This in turn implies that such heritage must not, at the very least, be wantonly and systematically destroyed by a State Party. However, it is generally understood that the right to take part in cultural life does not necessarily imply a right to see a specific cultural site or object protected. This degree of specificity is lacking. So, while the wanton and systematic demolition of tangible cultural heritage by a State Party would clearly be a violation of the right, the right to take part in cultural life does not help us a great deal in relation to individual objects and sites. The same would go for freedom of religion, the rights of members of minorities, and so on, to the extent that they have implications for the protection of tangible cultural heritage.

The other substantive limitation in practice pertains to the relationship between international human rights law and international humanitarian law, the latter being another name for the law of armed conflict. It is in the context of occupation that one might expect international human rights law to play a greater role, at least in terms of positive measures to preserve tangible cultural heritage, as distinct from merely refraining from destroying or damaging it. This is because in this regard the general rules of international humanitarian law governing the conduct

of belligerent occupation, such as the rule codified in Article 43 of the Hague Regulations of 1907,[9] are themselves vague or, if you prefer, unspecific. International human rights law will therefore lend added value, if only marginally. However, if the question is instead one of targeting in the course of hostilities, international human rights law will add nothing of substance to international humanitarian law, according to the approach taken by the International Court of Justice (ICJ) to their interrelationship. Take again the right to take part in cultural life. If the question is whether this right has been violated during armed conflict through the bombardment by a State Party of various buildings of cultural significance, the test to be applied will be drawn from the applicable rules of international humanitarian law. In other words, in the context of targeting during armed conflict, the content of the right to take part in cultural life will be borrowed from the relevant rules of international humanitarian law, such as the definition of a military objective and the prohibition on disproportionate incidental damage to cultural and other civilian property. If an attack satisfies the requirements of international humanitarian law in relation to cultural property, it will not be considered a violation of the right to take part in cultural life. So, as you can see, while international human rights law will still be applicable, it will not contribute any additional substantive content.

Ultimately, however, the determining factor in relation to the role of international human rights obligations in the protection of tangible cultural heritage in armed conflict will be the procedural question of the availability of a forum for the adjudication of such obligations. It should be noted that neither the ICESCR nor the International Covenant on Civil and Political Rights (ICCPR)[10] contains a compromissory clause providing for the jurisdiction of the ICJ in respect of disputes between States Parties as to the interpretation or application of the relevant Covenant. Instead, the only available mechanisms are the system of state reports and comments on them by the relevant treaty-monitoring body and, in relation to States Parties accepting this, the system of individual communications to the relevant body. In the past, some of these treaty-monitoring bodies have commented on the conduct of States Parties towards tangible cultural heritage during armed conflict, at least in the context of non-international armed conflict. The same is true of what are now the Human Rights Council's thematic and country mandates, some of which have also commented on the conduct of a State Party in the context of belligerent occupation. There has been a consistent focus on human rights relevant to tangible cultural heritage in occupied East Jerusalem and the rest of the Occupied

[9] Convention (IV) respecting the Laws and Customs of War on Land, and Annex, 18 October 1907, 205 CTS 277.

[10] 16 December 1966, 999 UNTS 171.

Palestinian Territory. These are not formal mechanisms of state responsibility, but they are nonetheless forms of state accountability.

It is also interesting to note Paragraph 270 of the recent advisory opinion of the ICJ on Israel's policies and practices in the Occupied Palestinian Territory.[11] It states that Israel is obliged to undertake the restitution of "all cultural property and assets taken from Palestinians and Palestinian institutions, including archives and documents". Although it is not clear, this seems to relate to what the Court held to be Israel's failure to respect the right to self-determination of the Palestinian people. If this is true, it illustrates that when a forum exists in which a human right with implications for the protection of tangible cultural heritage in armed conflict can be adjudicated, there is no reason why it cannot be the subject of judicial determination.

FR: In relation to this, we would like to refer to cultural human rights violations in Ukraine. It has consistently been argued by advocacy organizations, NGOs, and representatives of states and international organizations that Russia is committing a "culturicide" towards Ukraine, and namely its minorities in Crimea. Yet in the 2024 case *Ukraine v. Russia*[12] before the ICJ on the application of the International Convention for the Suppression of the Financing of Terrorism[13] and of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),[14] the Court was not "convinced that Ukraine has sufficiently established that Crimean Tatars and ethnic Ukrainians have been discriminated against based on their ethnic origin".[15] It concluded that it has not established that the Russian Federation has violated its obligations under CERD by imposing restrictions on gatherings of cultural importance to the Crimean Tatar and the ethnic Ukrainian communities. Since it appears obvious in many ways that Russia targets Ukrainian cultural domains, how come from a legal perspective apparently it is so difficult to establish its responsibility? How has the legal community reacted on the ICJ decision and what is your impression of how the Court's finding in this case has affected states' attitude towards the cultural protection agenda, including in the 1954 Hague regime?

[11] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, https://www.icj-cij.org/index.php/case/186 [accessed: 30.09.2024].

[12] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment of 31 January 2024, https://www.icj-cij.org/case/166 [accessed: 04.10.2024].

[13] 9 December 1999, 2178 UNTS 197.

[14] 21 December 1965, 660 UNTS 195.

[15] *Ukraine v. Russian Federation*, op. cit., para. 305.

RO: This was a highly specific case. The fact that Ukraine brought it under one of the few universal human rights conventions with a compromissory clause, namely that on racial discrimination, is significant. Furthermore, Ukraine faced severe evidentiary challenges due to its lack of access to Crimea, which made it difficult to substantiate its claims. Ultimately, the ICJ determined that Ukraine had not sufficiently demonstrated that Russia's actions were driven by racial, rather than political, motivations. It is difficult to draw any conclusions from this other than as to the difficulty of obtaining evidence in situations where another state is in control of the area and as to the problems posed by relying on available compromissory clauses in conventions which perhaps do not completely fit the facts. I believe this is widely accepted in the international legal community. It is important to appreciate too that the case, which was commenced long before March 2022, focused only on Crimea, after Russia's unlawful annexation of it in 2014.

Of course, the reaction is understandable. People are naturally frustrated and wonder whether the Court tried hard enough or if there were other factors at play. However, I very much doubt that the Court's decision will have any wider implications for states' attitudes towards the protection of cultural heritage in armed conflict, including belligerent occupation.

AJ: It should be noted, however, that there is more significant case law in this regard. With regard to the conflict in Nagorno-Karabakh, the ICJ in its order concerning the request for the indication of provisional measures in the case of *Armenia vs. Azerbaijan* found that there was a plausible argument that vandalism, destruction, and alteration of Armenian historic, cultural, and religious heritage in Nagorno-Karabakh by Azerbaijani troops amounted to a violation of human rights guaranteed under CERD.[16] Furthermore, the European Court of Human Rights, in its judgment in the case *Sargsyan vs. Azerbaijan*, which concerned an alleged violation of the applicant's right to access his property, home, and family shrines located in a village near Nagorno-Karabakh, held that "the applicant's cultural and religious attachment with his late relatives' graves in Gulistan may also fall within the notion of private and family life".[17] It is thus evident that the number of human rights cases concerning the violations of heritage-related rights is on the rise.

[16] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 7 December 2021, p. 361; https://www.icj-cij.org/public/files/case-related/180/180-20211207-ORD-01-00-EN.pdf [accessed: 04.10.2024].

[17] European Court of Human Rights, *Sargsyan v. Azerbaijan*, Application No. 40167/06, Judgment of 16 June 2015, para. 257.

RO: This is a promising development if it reflects a greater awareness of the human rights dimension of the protection of cultural heritage in armed conflict and not just more instances of destruction or damage. These cases also provide an excellent illustration of the informal synergies between the different relevant international legal regimes. I say "informal" because there is no formal legal linkage between them. I am talking more about the consciousness-raising effect of the 1954 Hague Convention and its two Protocols and its arguable influence on the bringing of claims, under whatever international legal instrument and in whatever international legal forum may be available, in respect of the destruction or damage of cultural heritage in armed conflict.

MS: Given all these developments, what would be, in your opinion, the next important topics for the legal research community to embark on regarding the 1954 Hague regime? And why?

RO: I would say that a useful focus of future international legal scholarship in the field would be to analyse the practice of individual States Parties and non-state armed groups with a view to highlighting examples of best practice in, as well as obstacles to, the implementation of the 1954 Hague Convention and its Protocols. In other words, what would be good would be a more fine-grained examination of the operationalization of the regime, with the aim of providing practical guidance to States Parties and non-state armed groups in this regard. Now that we have as adequate an international legal framework as we are likely to get, we need to concentrate on its implementation by States Parties and other potential or actual parties to armed conflict. This may not be very sexy stuff, but it is commonly the case in international legal research that the less sexy the work, the greater its value. This sort of research would require real engagement with competent national authorities and, where possible, representatives of non-state armed groups. So, in sum, rather than focusing fruitlessly on changing the international legal framework, it would be more productive at this point to concentrate on optimal ways of operationalizing it.

MS, FR, and AJ: Many thanks for your comments and for the extremely helpful guidance for all researchers of international cultural heritage law. We truly appreciate your willingness to share your insights and knowledge with us so extensively. Thank you!

RO: It was a real pleasure. Thanks very much to you three for the opportunity to chat about these things!