EVENTS AND CONFERENCES

Sophie Starrenburg*

Heritage Destruction, Human Rights and International Law
Leiden, 30 April – 2 May 2018

On 30 April – 2 May 2018 the Grotius Centre for International Legal Studies and the Leiden-Delft-Erasmus Centre for Global Heritage and Development (the Netherlands) hosted an interdisciplinary seminar on *Heritage Destruction, Human Rights and International Law*. The conference, organized by Amy Strecker and Joseph Powderly of Leiden University, aimed to initiate discussions on cultural heritage across disciplinary lines. It sought to scrutinize the phenomenon of cultural heritage destruction – during times of both war and peace – from a range of angles, in particular from the angle of international human rights law. The discussions during the conference underlined that even though scholars and practitioners increasingly call for a rights-based approach to cultural heritage protection, putting these rights into practice often remains difficult due to the absence of clear procedural and substantive guidelines. The presentations furthermore highlighted that cultural heritage destruction goes beyond the paradigmatic examples of terrorist destruction which have dominated the media in recent years, and that it also includes peacetime destruction, for example in the name of economic development or as a result of attempts by the State towards cultural homogenization.

* **Sophie Starrenburg**, LL.M. (Cantab.) is a Ph.D. candidate at the Grotius Centre for International Legal Studies of Leiden University (the Netherlands).

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The conference opened with a keynote from Francesco Francioni (European University Institute/LUISS, Rome), examining whether international law is ready for the recognition of a general obligation to prevent and avoid destruction of cultural heritage. Prof. Francioni called for a greater focus on the part of cultural heritage lawyers on general principles of international law. He noted that despite the prevalence of treaty law within cultural heritage law-making, customary international law remains crucial. He concluded that in light of state practice and jurisprudence from courts such as the International Tribunal for the Former Yugoslavia and the International Court of Justice, there has been a slow crescendo of concern within the international community regarding heritage destruction. However, the success of this movement in preventing or responding to heritage destruction will depend on the willingness of States to take their commitments towards heritage seriously.

The first day of the conference continued with a panel on heritage destruction in armed conflict, chaired by Roger O'Keefe (University College London/Bocconi University). Particular attention was devoted to the recent judgment and reparations order in the *Al Mahdi* case before the International Criminal Court. Lynn Meskell (Stanford University) initiated the discussion, noting the ambivalent position that the Timbuktu community occupied in the *Al Mahdi* trial. She urged the international community to go beyond lamenting the loss of cultural heritage and to take concrete steps to hold not only individuals accountable for cultural heritage destruction, but also States. Ana Filipa Vrdoljak (University of Technology Sydney) specifically focused on the reparations phase of *Al Mahdi*. Whereas the Court emphasized the local importance of the destroyed sites at the sentencing stage – in particular their religious importance – the reparations chamber emphasized the sites' position as part of a World Heritage Site, rather than focusing on the harm inflicted upon the local community. Janet Blake (Shahid Beheshti University Tehran) called attention to the threat posed to intangible cultural heritage during armed conflicts, exploring the meaning of "safeguarding" intangible cultural heritage in the context of humanitarian law. She emphasized the multiple ways in which intangible cultural heritage can be affected by or involved in conflicts; ranging from being a cause of the conflict to being subject to trafficking of tangible elements of intangible heritage. Joseph Powderly (Leiden University) closed the panel by examining the gender dimensions of cultural persecution during armed conflicts in light of the impending *Al Hassan* trial. He noted that only very rarely do experts on gender, international criminal law, and cultural heritage interact; there needs to be a greater appreciation of the linkages between these fields, both in practice and scholarship.

The second day of the conference switched the focus to cultural heritage destruction during peacetime, with a panel chaired by Koosje Spitz (Dutch National UNESCO Commission). Each of the panellists put forward their own vision of the integration of human rights norms in the realm of heritage protection. Patty Gerstenblith (DePaul University) examined the merits of a human-rights based approach to post-conflict cultural heritage reconstruction. She noted that the con-

sent of the territorial State is not the only thing that is needed in terms of cultural heritage reconstruction. Consultation with the affected communities is crucial as well, and human rights can play a critical role in governing reconstruction activities in this regard. Andrzej Jakubowski (Polish Academy of Sciences) continued the discussion by focusing on the pitfalls of international cultural justice. He asked whether reparations for the harm suffered by the international community as a result of the destruction of cultural heritage – such as those granted in *Al Mahdi* – actually reflect the harm that has been inflicted. Similarly, Lucas Lixinski (University of New South Wales) examined the advantages and disadvantages of viewing cultural heritage through a human rights lens. Whilst human rights create space for the participation of communities in cultural heritage governance and in addition are applicable during peacetime, it remains difficult to translate collective cultural rights into individual rights. Ben Boer (Wuhan University) concluded by stressing the relevance of international environmental law for cultural heritage protection. He argued that the conservation of heritage can form part of international environmental law and called for further reflection on how the right to a healthy environment can intersect with heritage protection.

The third panel, chaired by Cecily Rose (Leiden University), discussed the perennial debate surrounding the balance between development and conservation. Alessandro Chechi (Art & Law Centre Geneva) tackled examples of cultural heritage destruction resulting from economic development, noting that its destruction in such cases is generally seen as a lawful exercise of state sovereignty if it is part of a wider development project and an impact assessment has been carried out. However, it is the task of experts to inform States that cultural heritage can equally be a tool for development. Ian Lilley (University of Queensland) focused on the role of the World Bank in cultural heritage protection. He noted that it is important for heritage experts to be involved in the formulation of World Bank policies – in particular those relating to the Bank's safeguards for funding projects – in order to strike a balance between conservation and development. Berenika Drazewska (European University Institute) continued the debate by arguing that cultural heritage could be seen as a limiting factor on state sovereignty. She noted the dangers resulting from the "securitization" of the discourse surrounding cultural heritage destruction, as a focus on wartime destruction can obscure the manifold ways in which cultural heritage is endangered across the globe during times of peace. Mamadou Hébié and Paula Cruz (Leiden University) concluded the panel discussion by focusing on the impact of international investment on cultural heritage. They argued that the current investment law regime provides insufficient guarantees for indigenous peoples in disputes touching upon their cultural heritage, and that while human rights bodies seemingly offer a more appealing alternative, they in turn do not allow indigenous groups to act directly against investors.

The conference drew to a close with a final panel discussion challenging the existing concepts and assumptions within cultural heritage law, chaired by Yvonne

Donders (University of Amsterdam). Conor Newman (National University of Ireland, Galway) discussed his experience in the campaign to avert a motorway from crisscrossing through the Royal Landscape of Tara in Ireland, noting that local politics played an equally important, if not more important, role in the preservation of Tara as international politics. Amanda Byer (Leiden University) discussed a case study illustrating the conflict between economic development and heritage protection in the Caribbean, noting the important connections between spatial justice and community. She highlighted that local communities often become critically aware of "their" heritage precisely at the moment of its disappearance. Evelien Campfens (Leiden University) examined how a human rights law approach to claims over lost cultural objects can provide a potential resolution to the ongoing debate on colonial art. She asked whether looting can be seen as a form of cultural heritage destruction, as well as whether the refusal to return cultural objects could be seen as a continuing violation of cultural rights. Finally, Sophie Starrenburg (Leiden University) surveyed the development of the concept of universality within cultural heritage law. She noted that the paradoxes embedded within the concept create certain difficulties when employed in practice, in particular from the perspective of the human rights of individuals and local communities.

Discussions throughout the conference revealed that the contours of human rights law in the context of cultural heritage protection remain largely obscured. The participants repeatedly noted the importance of the involvement of local communities, and underlined that the current intergovernmental structure for the protection of cultural heritage remains ill-equipped for facilitating the involvement of these key stakeholders. At the same time, the participants noted that a number of fundamental questions remain unresolved: How do we define a "community" for the purposes of cultural heritage protection? Who has the power to determine membership in a community? More broadly, who can be considered a victim of cultural heritage destruction, and who gets to decide which reparations will "fit" the harm done?

A further common thread was the panellists' emphasis on the importance of establishing greater interconnections between legal scholars, practitioners, and cultural heritage experts. More broadly, it was underscored that there is an ongoing need for discussions across disciplinary lines in light of the nature of culture as an interdisciplinary object of study. At the intergovernmental level, there is room for increased communication between UNESCO and other international organizations, in particular human rights bodies. Opening up such lines of communication can be crucial to addressing the overarching concerns and providing creative solutions, for example in relation to the cultural rights of refugees. Above all, there is a need for a renewed commitment to developing substantive and procedural guidelines in the interface between heritage and human rights.

For those wishing to examine the presentations and outcomes of the conference in detail, the conference proceedings will be published in 2020 as an edited volume (A. Strecker and J. Powderly, eds.).