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Cultural Awareness in the Military: Developments and Implications for Future Humanitarian Cooperation

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7

Beyond the 1954 Hague Convention

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Abstract: *The United States ratified the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict in 2009. This chapter explores the background to ratification, key provisions of the Convention and its two protocols, impact of ratification on the US military, adequacy of US military compliance with the Convention, and subsequent developments, particularly the growth of the Blue Shield movement, that have aimed at providing greater protection to cultural property. These improvements are also evaluated as the proliferation of conflicts involving non-state actors and not of an international character poses ever greater threats to cultural heritage.*

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The international symbol for cultural heritage protection, both for sites, monuments and cultural repositories and for cultural heritage professionals, is the “blue shield.” The background for the Blue Shield movement is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (May 14, 1954, 249 U.N.T.S. 240).¹ Although based on earlier legal instruments, the Hague Convention was written in the wake of World War II and was influenced by the orders that General Eisenhower gave to protect cultural heritage to the Allied command as the Allies invaded Europe (Rush 2012, 37). Despite this, 55 years elapsed before the United States deposited its instrument of ratification for the Convention in March of 2009, becoming the 123rd High Contracting Party (Gerstenblith 2009, 702–705; 2010, 12–13). This discussion will present some of the provisions and requirements of the Convention and then consider how we might be able to better satisfy those requirements and other steps that the United States should take to ensure protection of cultural property during armed conflict. Finally, the current precarious situation of cultural heritage in Libya, Egypt, and Syria will be briefly considered against the backdrop of the international legal regime.

The 1954 Hague Convention and its two protocols

The Hague Convention defines cultural property as:

movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above.

Article 1(a). The Convention also includes in its definition buildings “whose main and effective purpose is to preserve or exhibit” movable cultural property (Article 1(b)) and “centers containing a large amount of cultural property” as defined in the previous paragraphs. Article 1 (c).

The two core provisions of the Convention require the safeguarding of and respect for cultural property (Article 2). Safeguarding encompasses positive actions that a nation should take during peace time to protect its cultural property in case of armed conflict (Article 3). This duty involves

such actions as disaster preparedness and listing of cultural property that fits the Hague Convention definition, although the Convention permits but does not mandate the marking of cultural property with the blue shield. This obligation to safeguard presents some interesting questions of compliance for the United States. However, this subject does not fit within the subject matter of this chapter.

The second core responsibility is respect for cultural property (Article 4). This encompasses refraining from the use of cultural property in a way that would expose it to destruction or damage during armed conflict and by refraining “from any act of hostility directed against such property” (Article 4(1)). Even before ratifying the Hague Convention, the United States largely fulfilled this last duty, because it was viewed as part of customary international law.² Identifying and providing the locations of cultural sites, monuments and repositories are already an important aspect of cooperation between the military and the cultural heritage community. Utilizing such information to develop “no strike lists” is an essential part of military planning so that direct damage to such sites can be avoided or at least minimized. However, these obligations are excused in cases where “military necessity imperatively requires...a waiver.” (Article 4 (2)).

Article 4(3) prohibits the theft, pillage or misappropriation of cultural property. This provision had received relatively little attention before the looting of the Iraq Museum in Baghdad in April 2003 during the US invasion. However, it seems most likely that this provision means that a military force must prevent its own troops from engaging in these acts rather than imposing an absolute requirement for a military to prevent others from doing so (Gerstenblith 2006, 308–311). On the other hand, that it would have been appropriate, as a matter of policy, for the United States to protect the Iraq Museum is something that subsequently became apparent, given the widespread criticism and condemnation of the United States for failing to take basic protective measures.

While these provisions of the Hague Convention receive considerable attention, it is necessary to look more closely at Article 7, which calls on the High Contracting Parties to the Convention to take particular measures within their militaries. The first measure is to introduce provisions into the regulations and instructions for the military to ensure observance of the Convention and “to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples” (Article 7(1)). This brings together two of the broader

themes of this discussion – considerations of culture and considerations of cultural property. In other words, the Convention addresses primarily the tangible aspects of culture, very often in a historical sense, but it also incorporates concern for the culture of all peoples (that is, intangible aspects) as well.

The second part of Article 7 calls on nations “to plan or establish in peacetime, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.” (Article 7(2)). The composition of today’s military contrasts significantly with that during World War II when there was a universal draft. This poses a considerable challenge to obtain within the military the necessary range of expertise needed to ensure the capacity to protect cultural property during armed conflict. This leads to the question of whether the United States is in fact providing within its military or through working with civilian authorities the expertise that is needed to ensure both respect for culture and protection of cultural property during armed conflict.

The First Protocol to the Convention was also adopted in 1954 and applies exclusively to moveable cultural objects. The Protocol prohibits the removal of such objects from occupied territory and imposes on Parties to the Protocol the obligation to return illegally removed cultural objects to their nation of origin. The United States never signed the Protocol and, at the time that the United States ratified the Convention, it failed to act on the Protocol.

As methods of warfare have evolved and our understanding of the means and necessity for protecting cultural property has also changed, the international community recognized the need to update the Convention, particularly in light of the experience during the Balkan Wars of the 1990s. To accomplish this purpose, the Second Protocol was completed in 1999 and came into force in 2004 (Toman 2009; van Woudenberg and Lijnzaad 2010). Among the key contributions of the Second Protocol is its clarification and limitation of what constitutes “military necessity” (Article 6), changing the Convention’s definition of a military objective from a static one, based on the cultural property’s location, into a dynamic one, based on its function. Thus, the military necessity waiver applies to situations in which “cultural property has, by its function, been made into a military objective” and “there is no feasible alternative available to obtain a similar military advantage

to that offered by directing an act of hostility against that objective” (Article 6a).

Article 7 introduces the concept of proportionality by imposing the obligation to avoid or minimize incidental damage to cultural property and to “refrain from deciding to launch any attack which may be expected to cause incidental damage...which would be excessive in relation to the concrete and direct military advantage anticipated.” Articles 10–14 provide for the granting of enhanced protection to more significant cultural property that meets specific criteria and replace the main Convention’s system of special protection. Article 15 requires the creation of criminal sanctions for serious violations of the Convention and the Protocols and establishes command responsibility by “extending criminal responsibility to persons other than those who directly commit the act.” Article 16 requires nations that are party to the Protocol to establish criminal offenses under their domestic law and to extend jurisdiction to non-nationals for certain offenses. Finally, Article 9 addresses in greater detail the responsibilities of an occupying power to safeguard cultural property during occupation and incorporates a principle of non-interference in the cultural heritage of occupied territory. Thus far, the United States has taken no action toward ratification of the Second Protocol and, while many provisions of the main Convention are considered to have become a part of customary international law, there is less agreement as to whether the provisions of the two protocols have achieved similar status.

The Blue Shield movement

The symbol of the Blue Shield is designated in Articles 16 and 17 of the Hague Convention as the international equivalent of the Red Cross or Red Crescent to mark cultural property to be protected and to signify cultural heritage professionals. The International Committee of the Blue Shield (ICBS, <http://icom.museum/what-we-do/programmes/museums-emergency-programme/international-committee-of-the-blue-shield.html>) is designated in Article 27(3) of the Second Protocol to the Convention as the expert organization to act in an advisory capacity to the Committee for the Protection of Cultural Property in the Event of Armed Conflict and to assist in the implementation of the Convention and both its protocols. Founded in 1996, ICBS consists of representatives

of five non-governmental organizations: the International Council on Archives (www.ica.org), the International Council of Museums (www.icom.museum), the International Council on Monuments and Sites (www.icomos.org), the International Federation of Library Associations and Institutions (www.ifla.org), and the Co-ordinating Council of Audiovisual Archives Associations (www.ccaaa.org) (Cole 2008, 66–68). The Blue Shield movement also consists of national committees formed with the consent of the national committees of the same five non-governmental organizations that comprise the ICBS. In addition, the national committees have joined together to form the Association of National Committees of the Blue Shield (www.ancbs.org). There are currently 24 national committees in existence and 23 in the process of formation. In May 2014, ICBS and ANCBS decided to merge and form a new organization to be known simply as “Blue Shield.”

Corine Wegener founded the United States Committee of the Blue Shield (USCBS, uscbs.org) in 2006. At the time, Wegener was an Associate Curator in the Department of Architecture, Design, Decorative Arts, Craft, and Sculpture at the Minneapolis Institute of Arts and also a retired major with 21 years of service in the US Army Reserve, the last 13 years of which were as a Civil Affairs officer. Wegener’s last assignment was in Baghdad, Iraq as the Arts, Monuments, and Archives Officer for the 352nd Civil Affairs Command from May 2003 to March 2004. Her primary duty was to assist the Iraq National Museum after the looting in April 2003. She is a co-author of the US Army publication *GTA 41-01-002, Civil Affairs Arts, Monuments, and Archives Guide*, a resource for soldiers on the protection of cultural property in a wartime environment (Wegener 2010, 36–39). Wegener currently serves as a cultural heritage preservation specialist at the Smithsonian Institution in Washington, D.C. and stepped down as president of the USCBS in April 2013, when she was succeeded by Dr. Nancy Wilkie of Carleton College.

The first goal of the USCBS was accomplished when the United States ratified the Hague Convention. The USCBS has been involved in many areas of cooperation and coordination with the US military in the effort to protect cultural heritage, during both armed conflict and natural disasters. In conjunction with the Archaeological Institute of America, the National Geographic Society, the American Institute for Conservation of Historic and Artistic Works (AIC), and other non-governmental organizations, USCBS has trained more than one thousand Army Reserve

Civil Affairs troops before deployment to Iraq, Afghanistan, and the Horn of Africa. Wegener has provided 1954 Hague Convention training for military officers from more than 50 nations through the National Defense University’s International Fellows program. In June 2014, the Smithsonian, the University of Pennsylvania Cultural Heritage Center and the Heritage Task Force of the Syrian Interim Government joined forces to provide training to 20 Syrian museum professionals on how to protect their collections by sheltering in place (Cascone 2014).

Looking forward, we should consider what types of actions the military is likely to undertake in the future, what cultural heritage concerns are raised by such actions, and how an organization such as Blue Shield should be involved in order to fulfill its mandate of cultural heritage preservation and providing assistance to the US military in fulfilling its obligations under the Hague Convention. One area that is likely to continue to be important is disaster relief. This is well illustrated by the experience in Haiti following the 2010 earthquake. Under the leadership of the Smithsonian Institution, but with technical assistance provided through the USCBS and the AIC, the Haiti Cultural Recovery Project was formed (<http://newsdesk.si.edu/releases/smithsonian-develops-haitian-cultural-recovery-project>). Conservators went to Haiti to work on paintings, sculpture, libraries, and historic archives that were damaged by the earthquake (Kurin 2011).

This is the kind of expertise that can be provided by non-governmental organizations. No one should expect to train people in the military to become conservators or archaeologists or art historians. The situation during World War II was different in that the military had available within it or quickly brought within it a broader array of experts, including historians, art historians, archaeologists, museum professionals, conservators and classicists, such as Lane Faison, James Rorimer, Edith Standon, Mason Hammond, and the British archaeologist Lt. Col. Sir Leonard Woolley (Rush 2012). Today, however, it is not realistic to expect that the appropriate expertise will be located within the military, but the organizations that can provide liaison with appropriate experts have to be able to coordinate with the military, and this coordination must be provided for in advance of any specific conflict.

Another area, which may be considered to fall outside the strict competency of the Hague Convention, is the issue of other types of military activity that have an impact on cultural heritage in other nations. A prominent example of this was the attempt by the United

States to relocate its naval base in Okinawa, Japan. This construction activity was thought to endanger the *dugong*, a sea mammal related to the manatee, which is listed on Japan's list of cultural properties. As part of its implementation of the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, the United States added a provision to the National Historic Preservation Act, 16 U.S.C. § 470a-2. This provision requires that when a federal undertaking may have a direct and adverse effect on a property which is on the World Heritage List or on another country's equivalent of the National Register, such effects must be taken into account for the purpose of mitigating or avoiding any adverse effects. *Okinawa Dugong (Dugon Dugon) v. Gates*, 543 F. Supp. 2d 1082 (N.D. Cal. 2008). While the *Dugong* case was inconclusive as to the appropriate standard to determine mitigation of adverse effects in foreign nations, it is clear that the US military is required to follow some process to mitigate harm to cultural heritage through its myriad construction and other activities undertaken abroad.

In looking at the types of combat actions in which the military is likely to engage in the future, one model is the NATO-led bombing campaign in Libya in the spring of 2011 to enforce a "no-fly" zone against the Qaddafi regime. The Libyan bombing campaign was perhaps the first test of the United States' commitment to cultural heritage protection following its ratification of the Hague Convention. USCBS coordinated with archaeologists who are specialists on Libya, such as Professor Susan Kane of Oberlin College, to compile a list of site coordinates for important Libyan cultural heritage sites. USCBS then passed this list on to contacts within the US Department of Defense and to Blue Shield national committees in other NATO countries that shared this information with their own military contacts. (*Mission Report* 2011). Libyan sources have credited this list for preserving cultural heritage from any significant damage during the NATO action (NATO 2012). In response to other "Arab spring" uprisings, the ANCBS and the International Military Cultural Resources Working Group sent an assessment team to Egypt and to Libya to provide the first reports on damage to cultural heritage sites and museums. Finally, while no foreign military action has been involved, ICBS and particularly ICOM, along with several national Blue Shield committees, have been active in bringing attention to the need for cultural heritage preservation in other areas of current conflict such as Syria.

Asymmetric conflict and non-state actors

The current armed conflict in Syria is causing significant damage and destruction to cultural heritage. As with many examples of armed conflict, the human cost in deaths, injuries and displacement cannot be measured and destruction of cultural heritage may be of secondary importance. Yet, we can observe that both human and cultural disasters are present in tandem and that the Syrian conflict presents us with the most widespread destruction of cultural heritage, both intentional and unintentional, since the Balkan Wars of the 1990s and possibly since World War II. However, as also with the case of the Balkan Wars, the available international legal instruments that are intended to protect cultural heritage during armed conflict leave open questions of applicability and effectiveness. Syria demonstrates again the shortcomings of international law as a means only to punish humanitarian violations after-the-fact, rather than preventing the violations.

Destruction of cultural heritage in Syria seems motivated by numerous factors – the bombing of and fighting in urban centers, attacks on religious structures as part of the ever-increasing sectarian nature of the violence, the use of archaeological sites as strategic vantage points, and the looting of sites and museums for objects to be sold on the international market to raise funds for a variety of purposes, including the purchase of arms and munitions. News reports have covered incidents of bombing of sites and structures and of looting, but the most detailed documentation publicly available is a Facebook page, *Le patrimoine archéologique syrien en danger* (<https://www.facebook.com/Archeologie.syrienne>), although it is not possible to independently verify the images and videos posted there. A study of satellite imagery conducted by the American Association for the Advancement of Science has further documented significant damage and destruction to five of the six World Heritage Sites located in Syria (AAAS 2014).

Among the sites suffering damage or destruction, the worst example is probably Aleppo, where the Ottoman souk (or bazaar) was largely destroyed by fire, while shelling destroyed the minaret of Aleppo's Great Mosque. The *New York Times* documented the looting of the site of Tell Mardikh, the ancient city of Ebla, where large numbers of ancient texts from the second millennium BCE have been excavated (Chivers 2013). Portions of the Hellenistic and Roman site of Palmyra, where Assad had located a military base, have suffered damage. Refugees inhabit abandoned villages of the Byzantine period, known as the "Dead Cities" and may be removing artifacts to sell on the international market. In June

2013, UNESCO placed all six of Syria's World Heritage sites on its List of World Heritage in Danger.

Perhaps one of the most consistent aspects of the sectarian violence in the "Arab spring" and other recent conflicts is attacks on Sufi shrines by al-Qaeda-linked elements (O'Dell 2013). Wahhabi and Salafist Muslims oppose Sufism, viewing its focus on saints and shrines as heretical. Sufi shrines have been damaged or destroyed in Mali, particularly in Timbuktu, Egypt, Tunisia, and Libya as well as in Syria. Similarly, Coptic churches have been targeted in Egypt (Kirkpatrick 2012; Anon. 2012; Alvi 2013) and Christian churches and communities, as well as mosques, in Syria and the ISIS-controlled areas of Iraq have been willfully destroyed for sectarian reasons.

The Syrian Arab Republic became a party to the Hague Convention in 1958, and all its neighboring countries of Turkey (1965), Lebanon (1960), Jordan (1957), Israel (1957), and Iraq (1967) have also joined the Convention. All these nations are also Parties to the First Protocol. Only Jordan is a State Party to the Second Protocol. Syria signed but did not ratify the Second Protocol; nonetheless, this indicates the intent to be bound by its provisions. All six regional nations are parties to the 1972 World Heritage Convention, which includes provisions in Articles 4 and 6 for protecting world heritage sites. All regional nations, with the exception of Israel, are parties to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which contains, in Article 11, provisions regarding the removal of cultural objects from occupied territory (tracking the First Protocol to the 1954 Hague Convention). As such, these nations are bound to the principles and requirements of these instruments to avoid intentional destruction of cultural property, other than when excused by military necessity, and to prevent the unlawful removal of cultural objects.

These instruments, however, leave open two questions of their applicability to the current conflict in Syria and to the type of conflict that is likely to become more common in the future. First is the question of internal conflicts. Article 18 states that the Convention applies to formal, declared war between States Parties, while Article 19 applies the Convention to armed conflicts "not of an international character." While this means that the provisions of the Convention apply to some internal conflicts, the Convention does not apply to internal disturbances that do not meet the definition of armed conflict.³ The challenge that this poses is determining when a situation of internal disturbance evolves into an

armed conflict, such as occurred in Syria. Thus, meeting the definition of armed conflict remains the prerequisite before international humanitarian legal principles, including the Hague Convention and its Protocols, become applicable (Blank and Corn 2013, 695).

In 1994, the International Criminal Tribunal for the former Yugoslavia (ICTY) offered a comprehensive definition of armed conflict as "protracted armed violence between governmental authorities and organized armed groups or between such groups within a State." (Prosecutor v. Tadic, Case No. IT-94-1, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, P 70 (Int'l Cr. Trib. for the Former Yugoslavia, Oct. 2, 1995)). Two elements for defining armed conflict were identified based on the ICTY's statement – intensity of the fighting and organization of the parties – but this test arguably became overly technical by requiring that both elements be independently satisfied, rather than being viewed as factors within an overall assessment (Blank and Corn 2013, 698). In turn, this led to unnecessary delay in recognition that the rebellion in Syria, which began in March 2011, had risen to the level of "armed conflict," thus triggering the humanitarian protections of the law of armed conflict. It was only in July 2012 that the International Committee of the Red Cross concluded that it viewed the situation in Syria as constituting a non-international armed conflict (Nebehay 2012).

The second question is whether the 1954 Convention's provisions apply to non-state actors, such as the rebels in Syria (including the Free Syrian Army and the al-Qaeda-linked forces) or the al-Qaeda forces in Mali. Article 19(1) of the 1954 Hague Convention states that "each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property." One of the important elements to note is the use of "party" with a small "p" and without the word "State". Thus, this provision applies to all the parties to a non-international conflict and not merely to the State Party (or High Contracting Party, in the terminology of the 1954 Convention) that has ratified the convention. Thus, even though these groups have not ratified, or are not a part of governments that have ratified, these international conventions, the 1954 Convention is binding on such groups. Any group, whether the *de jure* government or not, has responsibility for fulfilling international obligations within the territory over which it exercises control (Chamberlain 2013, 53–54). Furthermore, all actors are bound by customary international law, which would include those provisions

of the main Convention and both Protocols that are accepted as part of customary international law, non-state actors equally as states that have formally ratified the Convention (Howe 2012, 424–425).

However, not all the same principles of cultural property protection apply to non-international armed conflicts as to situations of inter-state conflict. Article 19(1) only requires that parties to a non-international conflict demonstrate “respect” for cultural property while not requiring adherence to the provisions for safeguarding cultural property found in Article 3. Safeguarding refers to preparing during time of peace to protect cultural property from the foreseeable effects of armed conflict and does not apply during armed conflict. It makes sense to exclude this requirement from non-international armed conflict because the State Party government will have (presumably) complied with this requirement during peacetime.

On the other hand, all parties to non-international armed conflict need to follow the requirements of respecting cultural property, which are embodied in Article 4 of the main Convention. These include obligations to refrain from directing acts of hostility against cultural sites, unless excused by military necessity, preventing looting and misappropriation of cultural objects, and refraining from any act of reprisal carried out against cultural property. As Kevin Chamberlain points out, with the goal of giving cultural property the widest protection possible, many provisions beyond those contained in Article 4 should apply in non-international conflicts. These include the voluntary marking of cultural property with the Blue Shield (Articles 6, 16–17), special treatment for those properties recognized as under special protection (Articles 9–11), maintaining military regulations to ensure protection of cultural properties (Article 7), maintenance of specialists within the military who will ensure respect for cultural property (Article 7), and protecting transports and personnel involved in cultural property protection (Articles 13–15) (Chamberlain 2013, 54).

Prognosis for US developments

This still leaves two points to consider for the future. One is the question of whether the United States is currently fulfilling its obligations under the Hague Convention to provide the kinds of expertise, training, and coordination with civilian, non-military authorities and

non-governmental organizations that can provide the necessary help to the military to ensure protection of cultural property in areas of conflict. While the example of Libya seems to be a positive one, there needs to be a greater degree of coordination and, even more important, that coordination needs to achieve a certain level of “institutionalization” within the structure of the US military. At the moment, the contacts that have been established and the passing of necessary information between civilian experts and the members of the military who are responsible for developing combat plans seem too dependent on individuals and on the fortuity of circumstances. Yet the protection of cultural heritage during armed conflict is too important to leave to the vagaries of fortune and coincidence.

The second question is that of the two protocols to the Hague Convention. The First Protocol addresses the status of movable objects. As we saw in Iraq and see today in Syria, the problem of the looting of moveable objects, whether from archaeological sites or museums or other types of collections, is significant and one with which the United States, as the world’s leading military power, needs to be concerned. Would we want to see the United States become a haven for cultural objects that are looted or illegally removed from occupied territory or are we willing to adopt the necessary legal instruments that would prevent this from happening? In the case of the looting in Iraq, it required a provision in United Nations Security Council Resolution 1483 and special legislation passed by Congress to prevent this (Emergency Protection for Iraqi Cultural Antiquities Act, §§ 3001–3003, P.L. 108–429 (2004)) – but this is not a mechanism on which we can rely in future conflicts.

The final major unfinished business is the Second Protocol. As we have seen, it strengthens and clarifies several of the provisions of the main Convention and updates it to a more contemporary time period, although there might still be some shortcomings in that regard. The United States should be taking a serious look at the Second Protocol and reconsidering its position on the First Protocol. An internal vetting process is the necessary first step leading to ratification. We can only hope that it will not take another 55 years for the United States to do so. This is the time for us to begin the process of moving forward.

While our understanding of the law of armed conflict has evolved considerably over the years, even in just the past ten years since the 2003 Gulf War, it is clear that many challenges remain. New forms of

asymmetric warfare, the use of terrorism, and growing numbers of internal conflicts and non-state actors require a continuing and rapid evolution of the international legal regime for protecting cultural heritage. Given the unique nature of cultural properties and the historical, aesthetic, religious, and cultural understandings that they embody, punishment after the fact is not sufficient to preserve those values. Yet even as we recognize the inadequacies of international law to prevent harm to cultural property, we also see the Egyptians protecting the National Museum near Tahrir Square in Cairo in January 2011 (Butler 2011) and the accusations hurled at each other by the Assad regime and the Syrian rebels that the other is responsible for the damage done to cultural sites (Luck 2013). These incidents may indicate a new consciousness that cultural heritage should be protected and, it is to be hoped, may yet lead to more effective means of ensuring protection of cultural heritage during armed conflict.

Notes

- 1 The literature on the 1954 Hague Convention and its Protocols is extensive and includes Chamberlain 2012; Toman 1996; Toman 2009; O'Keefe 2006; van Woudenberg and Lijnzaad 2010.
- 2 Customary international law is defined as "a general practice accepted as law", Article 38(1)(b), Statute of the International Court of Justice, and requires that the rule be a part of State practice (*usus*) and that there be "a belief that such practice is required, prohibited or allowed... as a matter of law (*opinio juris sive necessitates*). The first element, that of State practice, is evaluated by two criteria. The first criterion is State selection of rules, as demonstrated through methods of combat, types of weaponry used, national legislation, and training of militaries. The second criterion is an assessment of State practice in that the practice must be "virtually uniform."
- 3 The Second Protocol to the 1954 Hague Convention specifies that it does not apply to "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature." Second Protocol, Art. 22(2). (Chamberlain 2013, 52 n.7). Armed conflicts not of an international character are defined in Article 1 of Protocol II to the 1949 Geneva Conventions as conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations ...". It is also worth noting that Article 16 of Protocol II states: "Without prejudice to the provisions of the Hague Convention for the Protection

of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort."

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