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# Ending the symbols shattering

Bringing perpetrators to justice for the destruction of immovable cultural property in armed conflict

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# Contents

# Summary

The purpose of this thesis is to examine whether cultural property is attributed 'sufficient protection' by international law in armed conflicts, with an emphasis on the legal basis for prosecuting its destruction as a war crime under international criminal law. I research how the most relevant treaties in international law have emerged since the adoption of the Convention for the Protection of Cultural Property in the Event of Armed Conflict in 1954.

The 1954 Hague Convention introduced the legal term 'cultural property' and stated that 'damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind'. This set the normative tone for later treaties in international law, of which one of the most important is the 1999 Second Protocol to the Hague Convention of 1954. The Protocol amended the major weaknesses in the Convention and provided a legal basis bridging the Convention with international criminal law.

I continue examining the major cases from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Court. Examining the cases *Jokić* and *Strugar* from the ICTY, I find that only a frail attempt was made at prosecuting the significant destruction of Dubrovnik in current Croatia. Cultural property only played a minor part of the cases, and the Tribunal did not take the opportunity of developing the jurisprudence in the legal area. However, I also find the legal strength of the treaties, and that the cases were vital for the legal development, leading to the ICC prosecuting destruction of cultural property.

Reading the *al-Mahdi* case from the ICC from the 27 September 2016, I mean that it demonstrates that 'sufficient protection' exists. The main reasons are that the case passed the gravity threshold, making it possible for the ICC to prosecute, and that the ICC makes a clear account on the basis for criminal responsibility. It is a serious take at clarifying the legal area.

However, I find that although 'sufficient protection' may be said to exist today, it is in a critical state and can just as well become a vague parenthesis, if states withdraw from the Rome Statute of the International Criminal Court. I still see many possibilities and judging from the facts presented, I mean that the development towards protecting cultural property and prosecuting its destruction is still making progress.

# Sammanfattning

Uppsatsens syfte är att undersöka huruvida kulturegendom tillmäts ’tillräckligt skydd’ av internationell rätt i väpnade konflikter, med betoning på den juridiska grunden för att åtala förstörelse av kulturarv som ett krigsbrott under internationell straffrätt. Jag undersöker hur de mest relevanta traktaterna i internationell rätt har uppstått sedan antagandet år 1954 av Haagkonventionen för skydd av kulturegendom i händelse av väpnade konflikter.

1954 års Haagkonvention introducerade den juridiska termen ’kulturegendom’ och fastslog att ’skada gentemot kulturegendom tillhörandes något folk är en skada gentemot hela mänsklighetens kulturarv’ [min översättning]. Detta fastslog den normativa tonen som sedan reproducerats i senare traktater, av vilka en av de mest betydelsefulla varit 1999 års andra Haagprotokoll om skydd för kulturell egendom i händelse av väpnad konflikt. Protokollet korrigerade betydande svagheter i Haagkonventionen och skapade en juridisk grund som utgör en brygga mellan Haagkonventionen och internationell straffrätt.

Jag fortsätter med att undersöka de största rättsfallen ifrån Internationella krigsförbrytar-tribunalen för det forna Jugoslavien samt ifrån Internationella Brottmålsdomstolen. Efter att ha undersökt rättsfallen *Jokić* och *Strugar* ifrån ICTY finner jag att Tribunalen enbart gjort ett klent försök att åtala den omfattande förstörelsen av Dubrovnik i nuvarande Kroatien. Kultur-egendom utgjorde enbart en mindre del av rättsfallen och Tribunalen omfattade inte riktigt möjligheten att utveckla rättsområdet. Däremot finner jag också att traktaterna i sig har en juridisk styrka och att rättsfallen varit nödvändiga för rättsutvecklingen.

Efter att ha läst ICC:s rättsfall *al-Mahdi* ifrån den 27 september 2016 menar jag att ett ’tillräckligt skydd’ av kulturegendom existerar idag, vilket framkommer av rättsfallet. Anledningarna är dels att fallet bedömdes vara av nog stor betydelse att passera domstolens allvarlighetströskel [min översättning] samt att domstolen tydligt förklarar grunderna för den åtalades straffansvar. Domstolen söker på ett mycket bra sätt att utveckla rättsområdet.

Däremot finner jag att även om ett ’tillräckligt skydd’ finns idag är det i ett kritiskt läge och kan mycket väl bli en bortglömd parentes i rättshistorien, ifall alltfler stater drar sig ur Romstadgan. Jag ser fortfarande många möjligheter och menar att utvecklingen mot att skydda kulturegendom och åtala förövare för dess förstörelse går framåt.

# Preface

**Ozymandias**

*I met a traveller from an antique land,*
*Who said: "two vast and trunkless legs of stone*
*Stand in the desert ... near them, on the sand,*
*Half sunk a shattered visage lies, whose frown,*
*And wrinkled lips, and sneer of cold command,*
*Tell that its sculptor well those passions read*
*Which yet survive, stamped on these lifeless things,*
*The hand that mocked them, and the heart that fed;*
*And on the pedestal these words appear:*
*My name is Ozymandias, King of Kings,*
*Look on my Works ye Mighty, and despair!*
*Nothing beside remains. Round the decay*
*Of that colossal Wreck, boundless and bare*
*The lone and level sands stretch far away."*

Ozymandias is a sonnet by Percy Bysshe Shelley originally published in 1818. The name is Greek for the Egyptian pharaoh Ramesses II. It tells the story of an ancient high culture who expected to endure and built grand monuments for its self-appraisal. When all other remnants of the civilisation are gone, the message “Look on my Works ye Mighty, and despair!” is transformed into a reminder of how a culture vanishes when its cultural property is lost.

I was first inspired to write this thesis with the sentence on the 27 September 2016 in the International Criminal Court against Ahmad al-Faqi al-Mahdi for the destruction of cultural property in Mali. It caught my interest in researching how cultural property is protected by international law and how the perpetrators responsible for its destruction can be prosecuted.

*Simon Andersson*
Lund, January 2017

# Abbreviations

| | |
|---|---|
| 1954 Hague Convention | Convention for the Protection of Cultural Property in the Event of Armed Conflict |
| 1999 Second Hague Protocol | Second Protocol to the Hague Convention of 1954 |
| GC | The Geneva Conventions of 1949 and their Additional Protocols |
| ICC | International Criminal Court |
| ICTY | International Criminal Tribunal for the former Yugoslavia |
| ICTY Statute | Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 |
| Rome Statute | Rome Statute of the International Criminal Court |
| UNESCO | UN Educational, Scientific and Cultural Organization |
| UNSC | UN Security Council |
| VCLT | Vienna Convention on the Law of Treaties |
| World Heritage Committee | Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage |
| World Heritage Convention | Convention Concerning the Protection of the World Cultural and Natural Heritage |

# 1. Introduction

## 1.1 General introduction

Just as human casualties are a necessity of armed conflict, cultural property is always at risk in hostilities and no protection against its destruction is waterproof. However, efforts have been made by the international community at protecting it as far as possible. Tremendous efforts have been made during the 20th century, with several treaties being produced on the protection of cultural property in armed conflict and the prosecution of its destruction. A milestone was reached on the 27 September 2016, when the International Criminal Court sentenced a perpetrator for the intentional destruction of cultural property.

## 1.2 Purpose

The purpose of this thesis is to research the individual criminal responsibility, attributed by international criminal law, for the deliberate destruction of immovable cultural property in an armed conflict, as a war crime constituting a breach of international humanitarian law, to find out whether cultural property in armed conflict is accorded 'sufficient protection'.

## 1.3 Question formulation

Does international law today provide an adequate legal framework for the protection of immovable cultural property, with a focus on the potential for the legal institutions to effectively prosecute persons accused of the destruction of cultural property in armed conflicts, to achieve 'sufficient protection' of cultural property?

This can be divided into the following subqueries. How does international law protect immovable cultural property in armed conflicts? What does the cases *Jokić* and *Strugar* from the ICTY and *al-Mahdi* from the ICC tell us about the criminal prosecution of destruction of cultural property in armed conflicts? Is the protection 'sufficient' today? What problematic areas can be identified either in the legal instruments or in their enforcement?

## 1.4 Limitations

The thesis is limited to the most relevant treaties of international law. Excluded from the text are, for example, international human rights law – both treaty-based and customary – and the customary law parts of international humanitarian law and international criminal law.

Customary law is mentioned in the text, but not delved into due to the text limit. A thorough examination of the Geneva Conventions, and especially their 1977 Additional Protocols, is motivated. These were also excluded due to the text limit.

## 1.5 Perspective and methodology

My perspective is based on the expression 'sufficient protection', as used in the question formulation, and whether it is accorded to immovable cultural property in an armed conflict. I research the individual criminal responsibility for the war crime of the destruction of the cultural property. My definition of the term 'sufficient protection' entails that the relevant legal instruments provide enough legal basis to constitute the intentional destruction of cultural property in armed conflict as a breach of international humanitarian law, and to successfully be able to prosecute it as a war crime under international criminal law.

The methodology is built on the law and application of treaties. The law of treaties is based on two principles: the first, that treaties need to be based on the free consent of states; the second, that once consent to be bound has been expressed and the treaty has entered into force, the treaty shall be kept by the parties in good faith – *pacta sunt servanda*, codified in Art. 26 VCLT.[1] Once a treaty enters into force, it has to be interpreted in line with the rules of interpretation to be successfully applied. In short, in Art. 31 VCLT, it is stipulated that treaties shall be interpreted in accordance with the ordinary meaning to be given to the words in their context, and in light of the treaty's object and purpose.[2]

[1] Klabbers, Jan: *International Law*, Cambridge University Press (2013), p. 43.
[2] Ibid, p. 53-54

## 1.6 Material

The main works concerning the protection of cultural property in armed conflict and its prosecution under international criminal law are *The Protection of Cultural Property in Armed Conflict* by Roger O'Keefe and *The Old Bridge of Mostar and Increasing Respect for Cultural Property in Armed Conflict* by Jadranka Petrović. I have used these to a great extent. Other legal literature has been used for clarification or for certain parts, e.g. for the part on international criminal law. I have chosen the most important treaties, centred around the 1954 Hague Convention which is the main instrument in this respect. The cases at hand are the two major cultural property cases of the ICTY and the only cultural property case of the ICC.

## 1.7 State of research

There are two main works concerning the protection of cultural property in armed conflict and its prosecution under international criminal law. Several books and articles have been written on the subject of cultural property, but examining the issue from this perspective seems to have been a neglected topic and the main works are part of the material I have used.

## 1.8 Disposition

The thesis begins with a definition chapter. Chapter 3 gives a legal historical background concerning the protection of cultural property, intended to give necessary background facts. Chapter 4 highlights the important parts of the most relevant treaties. It is intended both to give the reader an insight into the legal framework and to be used as a base in the analysis. Chapter 5 renders a presentation of the two major cultural property cases – *Jokić* and *Strugar* – of the ICTY. Chapter 6 continues with a presentation of the recent *al-Mahdi* case of the ICC. These are intended to be used in the discussion on 'sufficient protection'. This leads to an analysis in Chapter 7. I analyse whether 'sufficient protection' is accorded to cultural property by the legal framework, and if the legal institutions are able to afford 'sufficient protection' to cultural property by means of the legal framework in its criminal prosecution of destruction of cultural property as a war crime. I end with my conclusions and personal reflections on the situation today and how I think it will develop.

# 2. Definitions

The main terms around which this thesis revolves are ‘cultural heritage’ and ‘cultural property’. I will also make a legal definition of ‘armed conflict’ according to international humanitarian law. I hope that the definitions in this chapter clarifies their meaning and usage.

## 2.1 Definitions of ‘cultural heritage’ and ‘cultural property’

‘Cultural heritage’ covers tangibles and intangibles. Tangibles are material parts of culture, e.g. art, books, buildings, etc. Intangibles are immaterial parts of culture.[3] ‘Cultural property’ is a legal term covering tangibles, divided into movable and immovable tangibles. Movable tangibles include books, archives, paintings, etc. Immovable tangibles include architectural structures, e.g. buildings and monuments.

It is discussed whether cultural property only belongs to a specific culture or if it belongs to the whole of humanity. The position which I myself have accepted is that cultural property holds a dual nature, which means it is part of the local or national, but also part of the global or international, belonging to all of humanity. This is the position which Jadranka Petrović argues for in *The Old Bridge of Mostar*. She means that this dual nature doubles the importance of preserving cultural property.[4]

## 2.2 Definition of ‘armed conflict’

International humanitarian law is applicable within armed conflicts, mainly constituted by the provisions in the Geneva Conventions and their Common Arts. 2 and 3, respectively concerning international armed conflicts and non-international armed conflicts.

The term ‘armed conflict’ has been defined through international practice. The main case law providing this definition comes from the *Tadić* judgment of the ICTY. An ‘international

[3] Petrović, Jadranka: *The Old Bridge of Mostar and Increasing Respect for Cultural Property in Armed Conflict*, Martinus Nijhoff Publishers (2012), p. 1.
[4] Ibid, p. 1.

armed conflict' exists 'whenever there is a resort to armed forces between states'. It defines a 'non-international armed conflict' as 'protracted armed violence between governmental authorities and organised armed groups or between such groups within a state'.[5]

There is a required level of violence to define a 'non-international armed conflict'. This is discussed in the *Haradinaj* judgment of the ICTY. The factors include the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the amount and calibre of munitions used; the number of persons taking part in the hostilities; the amount of deaths; the quantity of material damage; and how many displaced persons there are as a result of the violence.[6]

Several factors are considered to decide whether a group can be defined as an organisation participating in a 'non-international armed conflict'. The factors include the existence of a command structure; the existence of a HQ; control over territory; access to weapons and other military equipment; ability to plan, coordinate, and carry out military operations; ability to define a military strategy and use military tactics; and ability to speak with one voice to negotiate and conclude agreements such as ceasefire or peace accords.[7]

A localised armed conflict, whether international or non-international, in one region of a state triggers the application of the Geneva Conventions in the whole of that state. However, this does not mean that all acts performed on the territory of that state for the duration of the conflict are governed by the Conventions. The acts must be closely related to the armed conflict for them to be regulated by the laws of armed conflict.[8]

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[5] *Prosecutor v. Duško Tadić (Opinion and Judgment)*. 7 May 1997, Case No IT-9491-T *(Trial Chamber II, ICTY)*, paras. 69-71.
[6] *Prosecutor v. Ramush Haradinaj, IT-04-84-T,* Judgment (Trial Chamber), 3 April 2008, para. 49.
[7] *Haradinaj*, para. 60.
[8] O'Keefe, Roger: *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press (2007), p. 99.

# 3. Legal historical background

In the early 19th century, we can see tendencies towards creating legal protection of cultural property. In a legal dispute in 1813, concerning goods on board a British war vessel returning from the Anglo-American War, cultural objects on board were assigned a 'neutral' status.[9]

During the American Civil War (1861-1865) the special protection of cultural objects was codified in the Lieber Code of 1863, which was a binding interstate legal framework to regulate the conduct of military personnel in armed conflict. It further inspired the creation of the Brussels Declaration of 1874 and the Oxford Manual of 1880, both recognising the special status of cultural heritage in wartime. None of them acquired an international legal status.[10]

The Roerich Pact was produced in 1935. It was dedicated to protection of cultural values. The Pact was only signed by 21 states in the Americas and later ratified by ten of them. However, it was approved by the Committee for Museum Affairs at the League of Nations and by the Committee of the Pan-American Union. [11]

In the Nuremberg Trials (1945-1949), persons were convicted for theft and destruction of cultural objects during belligerent occupation. This includes the organised theft of cultural objects conducted by Albert Rosenberg's Einsatzstab Rosenberg, a body established upon a decree from Adolf Hitler, and the later destruction of cultural objects by German forces.[12]

After the Second World War and the Nuremberg Trials, the international support increased for extending the protection of cultural property during armed conflict.[13] Only nine years after the Second World War, the 1954 Hague Convention was adopted. It is the first international treaty that focuses exclusively on the protection of cultural property in armed conflict.

[9] O'Keefe, p. 16.
[10] Ibid, p. 18f.
[11] Ibid, p. 51f.
[12] Ibid, p. 81f.
[13] Ibid, p. 91.

# 4. International law

## 4.1 The 1954 Hague Convention

The 1954 Hague Convention is the main instrument according protection to cultural property in armed conflict.[14] It introduced the legal term 'cultural property' and reinforces cultural property's dual nature. In the preamble is stated that 'damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind'.

### 4.1.1 Scope of application

The Convention covers movable and immovable cultural property. It applies to international and non-international armed conflicts, according to Arts. 18 and 19. [15] It provides for 'general protection'[16] for property 'of great importance to the cultural heritage of every people'.[17] The Convention also provides for 'special protection'[18] for some immovable cultural property.[19]

**International armed conflicts**

Art. 18 concerns international armed conflicts and is modelled on Common Art. 2, GC. Art. 18(3) makes it clear that 'if one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations'. Art. 18(3) also states that those Parties involved in the conflict shall be bound by the Convention in relation to any non-Party[20] involved in the conflict 'if the latter has declared that it accepts the provisions thereof and so long as it applies them'.[21]

[14] Petrović, p. 99.
[15] O'Keefe, p. 96.
[16] *1954 Hague Convention*, Chapter 1.
[17] Ibid, Art. 1.
[18] Ibid, Chapter 2.
[19] O'Keefe, p. 94.
[20] Ibid, p. 97.
[21] Ibid, p. 97.

**Non-international armed conflicts**

Art. 19 concerns non-international armed conflicts and is modelled on Common Art. 3, GC. Art. 19(2) states that the parties to the conflict 'shall endeavour to bring into force, by means of special agreements, all or part of the other provisions'.

### 4.1.2 General protection

All parties in an armed conflict are obligated to respect cultural property. This is constituted by several of the articles.[22] Art. 4(1) precludes all parties from attacking cultural property. The exception is when any such actions can be legitimised by military necessity, according to Art. 4(2). The term 'military necessity' is not defined, but can be distinguished from 'military convenience', meaning that the military objective could not be reached in any other way.[23]

### 4.1.3 Special protection

Arts. 8-11 establishes 'special protection' applicable beyond general protection. This includes immovable cultural property. However, only a few objects have received special protection, of which the most prominent is the Vatican. The difference in standards owed to cultural property in armed conflict by special protection and general protection is minor.[24]

### 4.1.4 Individual criminal responsibility

The Convention provides for individual criminal responsibility. Art. 28 provides for the prosecution of breaches in the High Contracting Parties' domestic courts.[25] However, the Convention itself does not define what breaches give rise to criminal responsibility. The implementation and enforcement of Art. 28 were left to the individual states, enabling them an excessive margin of appreciation.[26]

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[22] *1954 Hague Convention*, Arts. 2, 4, 5, 8, 9 and 11.
[23] O'Keefe, p. 123.
[24] Ibid, p. 140.
[25] Ibid, p. 165.
[26] Fleck, Dieter, et. al.: *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press (2008), p. 403.

## 4.2 The 1972 World Heritage Convention

The World Heritage Convention establishes a list of culturally and naturally significant sites which receive legal protection. Each protected site is registered in the World Heritage List by the World Heritage Committee after identification and nomination by the State Party in whose territory it is situated.[27] The Committee consider a nominated site to have 'outstanding universal value' according to established criteria[28] in its Operational Guidelines.[29]

## 4.3 The 1999 Second Hague Protocol

In 1991, after the conflicts in Yugoslavia had begun, the UNESCO General Conference noted that 'the international system of safeguards of the world cultural heritage [did] not appear to be satisfactory, as indicated by the ever-increasing dangers due to armed conflicts'.[30]

According to UNESCO's Executive Board, 'the object and purpose of the Convention' were valid and realistic, but it also identified some weaknesses.[31] This resulted in the adoption of the Second Hague Protocol in 1999.

### 4.3.1 Relationship to the Convention

Art. 2 states that the Protocol 'supplements the Convention in relations between the Parties'.

### 4.3.2 Scope of application

The Protocol applies to both international and non-international armed conflicts, without

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[27] O'Keefe, p. 312.
[28] Ibid, p. 311; *World Heritage Convention*, Art. 11(2).
[29] *The Operational Guidelines for the Implementation of the World Heritage Convention*, UNESCO World Heritage Committee (8 July 2015), para, 45. [Electronic] Available: http://whc.unesco.org/en/guidelines/
[30] O'Keefe, p. 237; UNESCO Doc. 26 C/Resolution 3.9, preamble, third recital, p. 58. [Electronic] Available: http://unesdoc.unesco.org/images/0009/000904/090448E.pdf (Visited on 2017-01-02).
[31] O'Keefe, p. 239; UNESCO Doc. 142 EX/15, Annex, para. 5.5.2, p. 20. [Electronic] Available: http://unesdoc.unesco.org/images/0009/000958/095807E.pdf (Visited on 2017-01-02).

distinction, as stated in Art. 3. Art. 22(1) provides that the Protocol shall apply in the event of a non-international armed conflict within the territory of one of the States Parties. This can be compared to Art. 19(1) of the Convention providing that only the provisions 'which relate to respect for cultural property' is applicable in a non-international armed conflict.

### 4.3.3 Enhanced protection

According to Art. 10, cultural property may be placed under enhanced protection if it meets three cumulative criteria: that it is 'cultural heritage of the greatest importance for humanity'; that it is protected by 'adequate domestic legal and administrative measures'; and that it is not used for military purposes or to shield military sites.[32] The last criteria is the most important, since the holder of the cultural property cannot use it in a way making it a military objective.

### 4.3.4 Individual criminal responsibility

In an advance on Art. 28 of the Convention, the Protocol provides for individual criminal responsibility. Art. 22(4) states that nothing in the Protocol is to prejudice 'the primary jurisdiction of a Party in whose territory an armed conflict not of an international character occurs over the violations set forth in Art. 15'.

Art. 15(1) defines five serious violations. Most relevant are 15(1)(a), (c) and (d). (a) relates to attacks on cultural property under enhanced protection and (d) relates to attacks on all cultural property under the Convention and the Second Protocol. (c) relates to destruction or appropriation of cultural property under the Convention and the Second Protocol.

Arts. 16-18 establishes the principle of *aut dedere aut judicare*, according to which the state has a main obligation to prosecute a perpetrator, but may instead extradite the perpetrator to another state which has made a request for extradition due to it exercising universal jurisdiction. It is then seen as a remedy for abstaining from prosecution.[33]

[32] O'Keefe, p. 265.
[33] Werle, Gerhard: *Principles of International Criminal Law*, TMC Asser Press (2005), p. 81.

## 4.4 The Statute of the ICTY

The ICTY is a UN body established in 1993 to prosecute serious crimes committed during the Yugoslav Wars (1991-2001).[34]

### 4.4.1 Jurisdiction

Art. 1 of the ICTY Statute states that the Tribunal has jurisdiction to prosecute persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991.

The ICTY formulated four requirements for jurisdiction over breaches of international humanitarian law: that the violation constitutes a breach of international humanitarian law; that it breaches a customary rule or, if it belongs to treaty law, that the required conditions are met; that the violation must be 'serious'; and that the violation of the rule must entail, under customary or treaty-based law, the criminal responsibility of the person breaching the rule.[35]

Art. 3(d) gave jurisdiction over the customary war crime of 'seizure of, destruction or wilful damage done to institutions dedicated to ... the arts and sciences, historic monuments and works of art and science'. In contrast, Art. 4 of the 1954 Convention prohibits '*any act* of hostility *directed against* [cultural] property', without requiring its destruction or damage. [36] The article concerns both international and non-international armed conflicts.[37] It protects cultural property in its own right and does not require any link to a particular group of people.

### 4.4.2 Elements of Crimes

International criminal law distinguishes between offences that create the basis for criminal liability and defences, which rule out liability. Offences consist of a material element (*actus reus*) and a mental element (*mens rea*).[38]

[34] Ibid, p. 15.
[35] Werle, p. 404.
[36] Ibid, p. 274.
[37] Petrović, p. 216.
[38] Werle, p. 171.

**Actus Reus**

Regarding the material element, Art. 3(d) concerns 'damage or destruction occurring as a *result* of an act directed against this property' as a necessary part of the material element.

**Mens rea**

Regarding the mental element, it must be shown that the defendant committed the act deliberately or with reckless disregard for the substantial likelihood of the destruction or damage of a protected cultural or religious property. This is derived from Art. 7 of the Statute.

### 4.4.3 Individual criminal responsibility

Individual criminal responsibility is provided by Art. 7(1), for all persons participating in the planning, instigating, ordering or execution of a crime under the Statute. According to Art. 7(4), acting pursuant to an order by a superior does not relieve the person of criminal responsibility, although it may act as a mitigating circumstance.

## 4.5 The Rome Statute of the ICC

After the establishing of the ad hoc tribunals ICTY and International Criminal Tribunal for Rwanda (ICTR), work began to establish a permanent court. The UN General Assembly held a conference in Rome on 4 July 1998.[39] It resulted in the creation of the Rome Statute, which entered into force on the 1 July 2002.[40]

Today, 124 countries are States Parties to the Rome Statute.[41] In November 2016, Russia announced that it will withdraw its intention to join the Rome Statute.[42] The United States never became a member in the first place.

[39] Petrović, p. 19
[40] Petrović, p. 21.
[41] *The States Parties to the Rome Statute*, International Criminal Court. [Electronic] Available: https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (Visited on 2017-01-02).
[42] BBC: *Russia withdraws from ICC Treaty*, 2016. Article. [Electronic] Available: http://www.bbc.com/news/world-europe-38005282 (Visited on 2017-01-02).

### 4.5.1 Jurisdiction

According to Art. 5(1), 6, 7 and 8 of the Rome Statute, the subject-matter jurisdiction encompasses genocide, crimes against humanity and war crimes. The temporal jurisdiction is restricted to crimes committed after the 1 July 2002.

The jurisdiction is restricted to crimes committed within the territory or by a national of a state party or a state that has accepted the Court's jurisdiction in a particular case. The Rome Statute adopts the territoriality and the active personality principles.[43]

The Court may also have jurisdiction, if and to the extent that the UNSC refers a situation to it under Chapter VII of the UN Charter. This encompasses crimes committed on the territory of non-member states. The UNSC has exercised this power twice.[44]

Arts. 8(2)(b)(ix) and 8(2)(e)(iv) give jurisdiction over the war crime, in international and non-international armed conflict respectively, of intentionally directing attacks against immovable cultural property, provided it is not a military objective.[45]

### 4.5.2 Admissibility test

Art. 17 concerns the admissibility of cases. Two aspects must be distinguished. The first concerns the gravity threshold. Proceedings may only be initiated if the conduct exceeds a certain level of gravity. Otherwise, the States Parties retain their exclusive jurisdiction.

The second is the complementarity-related admissibility test. It first examines whether a particular case is being or was investigated or prosecuted by a state. If this is the case, proceedings before the ICC are generally inadmissible. [46]

[43] Werle, p. 96.
[44] Ibid, p. 97.
[45] Ibid, p. 472.
[46] Ibid, p. 104.

### 4.5.3 Elements of crimes

**Actus reus**

The elements of Arts. 8(2)(b)(ix)(1)[47] and 8(2)(e)(iv)(1)[48] are relevant. They refer to 'directing attacks against' cultural property as a necessary part of the material element.

**Mens rea**

According to the elements of Arts. 8(2)(b)(ix)(5)[49] and 8(2)(e)(iv)(5)[50], the perpetrator has to be aware of the factual circumstances that established the existence of an armed conflict.

The attack in question must be committed with intent and knowledge, according to Art. 30. The accused must intentionally direct an attack against the relevant object in the knowledge that it is cultural property.[51]

### 4.5.4 Individual criminal responsibility

Individual criminal responsibility is provided by Art. 25. All persons who participate in the planning, instigating, ordering or executing of a crime, or who aid and abet in the planning, preparation or execution of a crime in the Rome Statute are individually responsible. Also, attempts to commit crimes against the Statute provide for individual criminal responsibility.

[47] International Criminal Court: *Elements of Crimes*, p. 23. [Electronic] Available: https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf (Visited on 2017-01-02).
[48] Ibid, p. 36.
[49] Ibid, p. 23.
[50] Ibid, p. 36.
[51] Ibid, p. 1, para. 2.

# 5. The *Jokić* and *Strugar* cases of the ICTY

In this chapter, I present relevant facts from the two major cultural property cases of the ICTY. Note that in both of these cases, cultural property only played a minor part.

## 5.1 Factual circumstances

The cases brought under Art. 3(d) of the ICTY Statute relate to the Siege of Dubrovnik on 6 December 1991. They involved Miodrag Jokić, commander of the Yugoslav People's Army and responsible for the attacking forces, and his superior, Pavle Strugar, who had 'legal and effective control' over the forces in the area during the relevant period. [52]

## 5.2 Reasoning and findings

In *Jokić*, the ICTY stated that destruction of cultural property 'represents a violation of values especially protected by the international community'.[53] When determining which property falls within the protection in Art. 3(d), it made references to the World Heritage Convention.

In *Strugar*, it placed significant weight on the Old Town's inscription on the World Heritage List.[54] It observed that the List includes 'cultural and natural properties deemed to be of outstanding universal value from the point of view of history, art or science', a definition which comes within the meaning of cultural property covered by Art. 3(d).[55]

In *Strugar*, it concluded that Art. 3(d), which specifically refers to the protection of cultural property, is a rule of international humanitarian law which reflects customary international law and applies to both international and non-international conflicts. [56]

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[52] Petrović, p. 185; Prosecutor v. *Miodrag Jokić*, Trial Judgment, ICTY Trial Chamber, Case IT-01-42/1-S (Mar. 18, 2004), para. 5; *Prosecutor v Pavle Strugar*, Trial Judgment, Chamber II, ICTY, No IT-01-42-T (Jan. 31 2005), para. 2.
[53] *Jokić*, para. 46.
[54] *Strugar*, para. 279.
[55] *Strugar*, para. 327.
[56] O'Keefe, p. 343; *Strugar*, para. 230.

## 5.3 Elements of the crimes

**Actus reus**

The ICTY observed in *Strugar*, that while both Art. 4 of the 1954 Convention and Art. 53 of API prohibit acts of hostility 'directed' against cultural property, the element under Art. 3(d) is 'damage or destruction occurring as a *result* of an act directed against this property'.[57]

**Mens rea**

In both *Strugar* and *Jokić* the mental element was evidenced by the fact that Dubrovnik was included on the World Heritage List and that the Hague emblem was visible on the property.[58]

In *Strugar*, the ICTY held that an act will fulfil the elements of the crime of destruction or wilful damage of cultural property, within the meaning of Art. 3(d), if:

(i) it has caused damage or destruction to property which constitutes the cultural or spiritual heritage of peoples;
(ii) the damaged or destroyed property was not used for military purposes at the time when the acts of hostility directed against these objects took place; and
(iii) the act was carried out with the intent to damage or destroy the property in question.[59]

## 5.4 Gravity of the crimes

In *Jokić*, the ICTY observed that 'since it is a serious violation of international humanitarian law to attack civilian buildings, it is a crime of even greater seriousness to direct an attack on an especially protected site, such as the Old Town, constituted of civilian buildings'.[60]

[57] *Strugar*, para. 308.
[58] *Jokić*, para. 23; *Strugar*, para. 329.
[59] *Strugar*, para. 312.
[60] *Jokić*, para. 53.

Similarly, in *Strugar*, it noted that cultural property is of 'great importance to the cultural heritage of a people', citing Art. 1(a) of the 1954 Hague Convention.[61] The presence of Dubrovnik on the World Heritage List added to the gravity of the offence in both cases.[62]

In *Jokić*, it drew attention to the statement in the preamble to the World Heritage Convention that 'deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world'.[63]

In *Jokić*, it added that 'restoration of buildings of this kind, when possible, can never return the buildings to their state prior to the attack because a certain amount of original, historically authentic, material will have been destroyed, affecting the inherent value of the buildings'.[64]

The extent of the damage weighed against both accused.[65] In *Jokić*, the ICTY noted that the attack on Dubrovnik was aggravated because it was a 'living city' and 'the existence of the population was intimately intertwined with its ancient heritage'.[66] It held that while 'it is a serious violation of international humanitarian law to attack civilian buildings, it is a crime of even greater seriousness to direct an attack on an especially protected site'.[67]

## 5.5 Jurisprudence

In the previous *Blaškić* case, the ICTY took a restrictive view finding that cultural property should not have been used for military purposes at the time of the acts nor located in the 'immediate vicinity of military objectives'.[68]

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[61] O'Keefe, p. 348; *Strugar*, para. 232.
[62] Ibid; *Jokić*, paras. 49, 66-7; *Strugar*, para. 461.
[63] Ibid; *Jokić*, para. 49.
[64] Ibid; *Jokić*, para. 52.
[65] *Jokić*, para. 53; *Strugar*, para. 461.
[66] *Jokić*, para. 51.
[67] *Jokić*, para. 53.
[68] Prosecutor v. *Tihomir Blaškić*, Trial Judgment, ICTY Trial Chamber, Case IT-95-14 (Mar. 3, 2000), para. 185.

It moved away from this view in *Strugar*, and stated 'it is the *use* of cultural property and not its location that determines whether and when cultural property would lose its protection'.[69] It made references to the *1999* Protocol. In accordance with Art. 6(a)(i) of the *Protocol*, the protection of cultural property is waived 'when and for as long as that cultural property has, by its *function*, been made into a military objective'.[70]

In *Strugar*, the ICTY held briefly[71] that Art. 3(d) is based on Art. 27 of the 1907 Hague Convention, regulating the laws of war, which states that 'in sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.'

According to Jadranka Petrović, it is regrettable that the Trial Chamber – the first ever to deal with immovable cultural property extensively – did not elaborate this finding fully.[72]

## 5.6 Sentences

Strugar was found guilty under Art. 3(d), for his role in the Siege of Dubrovnik. Jokić pleaded guilty to the same offence in respect of the same attack.[73]

For these and other war crimes, Jokić was sentenced to seven years of imprisonment, the ICTY taking his remorse into account.[74] Strugar was sentenced to eight years, later reduced to seven and a half years of imprisonment.[75]

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[69] *Strugar*, para. 310.
[70] Petrović, p. 221.
[71] *Strugar*, para. 229.
[72] Petrović, p. 213.
[73] *Strugar*, para. 464; *Jokić*, para. 46.
[74] *Jokić*, Judgment on Sentencing Appeal, No IT-01-42/1-A, Appeals Chamber, ICTY (Aug. 30 2005).
[75] *Strugar*, Appeals Judgment, and pardoned by Decision of the President on the application for pardon or commutation of sentence of Pavle Strugar, No IT-01-42-ES (Jan. 16 2009).

# 6. The *al-Mahdi* case of the ICC

In this chapter, I present the recent *al-Mahdi* case of the ICC. This is the first case in an international court focusing entirely on cultural property and resulting in a conviction.[76]

## 6.1 Factual circumstances

Mr. Ahmad al-Faqi al-Mahdi was born in Agoune in the region of Timbuktu, Mali. He had thorough knowledge of the Koran and gave lectures as an expert on Islamic theology.[77]

In January 2012, a non-international armed conflict took place in Mali. In April 2012, a coalition of Tuareg rebels and Islamic militant factions including al-Qaida in the Islamic Maghreb ('AQIM') and the Ansar Dine drove out the Malian army and seized much of the northern part of Mali, controlling it until they were expelled from the territory by a French-led military intervention in January 2013.[78]

Mr. al-Mahdi joined the Ansar Dine in April 2012.[79] He was appointed leader of the *Hesbah*, a religious morality brigade imposing religious and political edicts on the population. [80]

The case concerned whether Mr. al-Mahdi was guilty of intentionally directing attacks on ten protected objects in Timbuktu, Mali between 30 June 2012 and 11 July 2012.[81]

## 6.2 Reasoning and findings

The case contained a single charge alleging that Mr. al-Mahdi was responsible for the war crime of attacking protected objects under Art. 8(2)(e)(iv) of the Statute.[82] He made an

[76] UNESCO: *Timbuktu Trial: "A major step towards peace and reconciliation in Mali"*. Article. [Electronic] Available: http://whc.unesco.org/en/news/1559/ (Visited on 2017-01-02).
[77] *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15 ICC, para. 9.
[78] Ibid, para. 31.
[79] Ibid, para. 9.
[80] Ibid, para. 33.
[81] Ibid, para. 10.
[82] Ibid, para. 2.

admission of guilt during the hearing and accepted his individual criminal responsibility.[83] In June 2012, the leader of Ansar Dine together with a religious scholar and a chief within AQIM made the decision to destroy the sites.[84] They transmitted it to Mr. al-Mahdi as leader of the *Hesbah*. Despite his initial reservations, he accepted to conduct the attacks.[85]

On all sites, large groups razed the buildings guarded by armed men and supervised by Mr. al-Mahdi, who provided tools and instructions. He participated in the attack on at least five sites. He was also responsible for communicating with journalists.[86]

All sites were dedicated to religion and historic monuments, and were not military objectives. With the exception of one, all buildings had the status of UNESCO World Heritage sites.[87]

## 6.3 Elements of the crime

**Actus reus**

Regarding the material element of the crime of 'directing attacks against' cultural property under Art. 8(2)(e)(iv), the Court found that Mr. al-Mahdi was responsible for executing the attacks, resulting in destruction or significant damage to all of them.[88] The buildings qualify as both religious buildings and historic monuments. They were culturally significant in Timbuktu and nine of them were UNESCO World Heritage sites.[89] It was shown that the buildings clearly were the object of attack[90] and that the purpose was to destroy them.[91]

The attacks took place in the context of and were associated with a non-international armed conflict[92] and that Mr. al-Mahdi was aware of the circumstances constituting the armed conflict.[93] The Court concluded that the elements under Art. 8(2)(e)(iv) were established.[94]

[83] Ibid, para. 30.
[84] Ibid, para. 36.
[85] Ibid, para. 37.
[86] Ibid, para. 38.
[87] Ibid, para. 39.
[88] Ibid, para. 45.
[89] Ibid, para. 46.
[90] Ibid, para. 47.
[91] Ibid, para. 48
[92] Ibid, para. 49.
[93] Ibid, para. 51.
[94] Ibid, para. 52.

Regarding the material element of co-perpetration under Art. 25(3)(a), the Court found that he determined the sequence in which the buildings would be destroyed, taking care of logistics and assuming the role of media spokesperson justifying the attacks. He was present on all site and oversaw the attacks. He directly participated in the destruction of five of the buildings.

The Court considered that Mr. al-Mahdi's contributions cumulatively reached the threshold of the element.[95] His contributions were made pursuant to an agreement which led to the commission of the crimes, as shown by the evidence.[96]

The Court considered all the elements of Art. 25(3)(a) co-perpetration to be established. It found that Mr. al-Mahdi was guilty, within the meaning of Art. 25(3)(a), of the crime of attacking protected sites as a war crime under Art. 8(2)(e)(iv).

**Mens rea**

The Court noted that he committed the crime with intent and knowledge, since he directly participated in several attacks and acted as media spokesperson in justifying the attacks.[97]

## 6.4 Gravity of the crime

In the view of the Court, even if inherently grave, crimes against property are generally of lesser gravity than crimes against persons.[98] However, it considered the fact that the buildings were not only religious buildings but also culturally significant in Timbuktu.[99]

All the sites but one were UNESCO World Heritage sites. Their destruction not only affected the population of Timbuktu, but also the people in Mali and the international community.[100]

[95] Ibid, para. 53.
[96] Ibid, para. 54.
[97] Ibid, para. 55.
[98] Ibid, para. 77.
[99] Ibid, para. 78-79.
[100] Ibid, para. 80.

The Court noted that the crime was committed for religious motives. It considered that the discriminatory religious motive is relevant in its assessment of the gravity of the crime.[101]

The Court concluded that the crime ascribed to Mr. al-Mahdi is of significant gravity.[102]

## 6.5 Jurisprudence

Since this is the first cultural property case of the ICC, there is no previous case law. Also, the Statute protects persons and cultural objects differently. Persons are protected by many distinct clauses that apply during hostilities, after an armed group has taken control, and against various and specific kinds of harm. Cultural property in non-international armed conflicts are only protected by Art. 8(2)(e)(iv). The article does not distinguish between attacks made in the conduct of hostilities or afterwards.

According to the ICC, the jurisprudence of the ICTY is of limited guidance given that, in contrast to the Statute, its applicable law does not govern 'attacks' against cultural objects but rather punishes their 'destruction or wilful damage'. The legal contexts thus differ.[103]

## 6.6 Sentence

Mr. al-Mahdi was found guilty, within the meaning of Art. 25(3)(a), of the crime of attacking the protected sites mentioned earlier as a war crime under Art. 8(2)(e)(iv).

Mr. al-Mahdi was sentenced to nine years of imprisonment, which the ICC unanimously deemed proportionate to the gravity of the crime, taking his admission of guilt and other mitigating circumstances into account.

[101] Ibid, para. 81.
[102] Ibid, para. 82.
[103] Ibid, para. 16.

# 7. Analysis

Does international law today provide an adequate legal framework for the protection of immovable cultural property, with a focus on the potential for the legal institutions to effectively prosecute persons accused of the destruction of cultural property in armed conflicts, to achieve 'sufficient protection' of cultural property?

## 7.1 Analysis of the legal instruments

Regarding the legal instruments, I mean that they reach the threshold of providing 'sufficient protection'. Historically, the legal framework has grown rapidly during the course of the 20th century, with a peak in 1954 with the adoption of the Convention and the introduction of the legal term 'cultural property'. The Convention was adopted not even a decade after the Nuremberg Trials and shows the confidence of the time in the idea that 'right makes might'. From this point on, the judicialisation on the area concerning cultural property and the prosecution of its intentional destruction has increased with a steady pace.

The Convention alone does not provide 'sufficient protection'. The strength of the Convention is that it is based on the Common Articles 2 and 3 to the Geneva Conventions, and thus makes clear the criteria for determining whether it is applicable in a certain context.

The 1954 Convention's rules on special protection have been a failure, but the general protection is itself valuable in constituting when a cultural property crime has been committed. However, there are major weaknesses. The High Contracting States are responsible for the implementation and enforcement of Art. 28. Since Art. 28 does not include a list of violations giving rise to individual criminal responsibility, it weakens the Convention and provides for a too excessive margin of appreciation.

The major weaknesses have been amended by the 1999 Second Hague Protocol. It contains a second attempt at creating special protection, rebranded 'enhanced protection'. Art. 15(1) gives extensive protection to all cultural property under the Convention and the Second Protocol, both concerning attacks on and destruction of cultural property. Property under enhanced protection is protected by its own subparagraph, Art. 15(1)(a).

Most important, Articles 16-18 of the Protocol codifies the universal jurisdiction of crimes against the Convention and the Protocol. This provides a legal basis for extraditing a perpetrator, if the domestic legal system is too frail to handle the prosecution of these crimes.

## 7.2 Analysis of the cases

Usually, this kind of crime occurs in places where the legal system is on retreat. For example, in the case of Mali, the Jihadi factions taking part in the non-international armed conflict had seized a part of northern Mali equal to the size of a smaller country. It is easy to determine that in the same way as Mali needed international intervention to rid the occupied parts from militant groups, it could not handle prosecuting this kind of crime alone.

What we can see in the *Jokić* and *Strugar* cases of the ICTY is that the Tribunal was not confident enough in prosecuting the destruction of cultural property. In the cases, the Tribunal made use of both the 1954 Hague Convention, its 1999 Protocol and the 1972 World Heritage Convention. The treaties came well in hand to provide for individual criminal responsibility. However, cultural property was a minor part of the cases and was somewhat neglected by the Tribunal, who did not take the opportunity of developing the jurisprudence in the legal area.

That the cases took place is still a major success, since it is the first time since the Nuremberg Trials that perpetrators have been prosecuted for cultural property crimes on an international level. Also considering the imperative stance of the ICC in the *al-Mahdi* case, the previous ICTY cases have been important in constituting the destruction of cultural property as a crime which has actual, legal consequences, and of raising the confidence in that prosecution is possible. This is also shown in the *al-Mahdi* case by the fact that the crimes committed passed the gravity threshold. It demonstrates a change in perspective of the gravity of the crime.

Some argue that this kind of crime is not grave compared to crimes against persons, and that the prosecution of killings is what matters. This is true to some extent, and the ICC noted in the *al-Mahdi* case that crimes against property are generally of lesser gravity than crimes against persons. However, this does not necessarily imply that crimes against property are not grave enough to be prosecuted, even if they are of lesser gravity than crimes against persons.

## 7.3 Conclusions

I mean that 'sufficient protection' of cultural property exists already, since there are today several legal instruments that can be used to prosecute cultural property crimes, and the major weaknesses have been amended, for example with the 1999 Protocol. I mean that the ICTY cases themselves do not demonstrate that 'sufficient protection' existed at the time, although the fact that the treaties were used in a consistent way implies that the problem is not in the legal instruments, but rather in the perspective of the gravity of the crime, since cultural property only played a minor and also somewhat neglected part in the cases.

I mean that the cases have been essential in the legal development and laid the ground for the ICC. After reading the *al-Mahdi* case, I mean that it demonstrates that 'sufficient protection' exists, since the case passed the gravity threshold, and in it the ICC makes a clear account on the basis for criminal responsibility, making a serious take at clarifying the legal area.

However, it is necessary that the international community guards the legal institutions, in order for the protection not to become a vague parenthesis. The absence of states like the United States and Russia does not set a good precedent for countries like Syria and Iraq, neither of which are signatory to the Rome Statute. Cultural property has been wrecked in these countries, but the ICC does not have jurisdiction in non-Signatory states except for when it is given mandate by the UNSC, which is seated by the same countries that have refrained from joining the Rome Statute and have separate interests in the conflicts. It may sound like a bleak lookout, but it is not likely that the perpetrators will end up in the Hague.

There is a risk that the prosecution of these and other war crimes will end up a European project, either through the ICC or through universal jurisdiction, as, for example, Belgium attempted against the former president of Chad, Hissène Habré, in 2005 for war crimes.

This means that there is a risk that the protection will recede and no longer constitute 'sufficient protection'. However, this does not mean that work for extending the legal area on cultural property crimes is fruitless, and every effort at clarifying the legal area through treaties and case law is a step ahead in protecting the cultural heritage of mankind.

# Bibliography

## Literature

Fleck, Dieter, et. al.: *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press (2008).

Klabbers, Jan: *International Law*, Cambridge University Press (2013).

O'Keefe, Roger: *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press (2007).

Petrović, Jadranka: *The Old Bridge of Mostar and Increasing Respect for Cultural Property in Armed Conflict*, Martinus Nijhoff Publishers (2012).

Werle, Gerhard: *Principles of International Criminal Law*, TMC Asser Press (2005).

## Articles

BBC: *Russia withdraws from ICC Treaty*, 2016. Article. [Electronic] Available: http://www.bbc.com/news/world-europe-38005282 (Visited on 2017-01-02).

UNESCO: *Timbuktu Trial: "A major step towards peace and reconciliation in Mali"*. Article. [Electronic] Available: http://whc.unesco.org/en/news/1559/ (Visited on 2017-01-02).

## Legal instruments

### *Treaties*

*Convention for the Protection of Cultural Property in the Event of Armed Conflict*, opened for signature 14 May 1954, 249 UNTS 215 (entered into force 7 August 1956).

*Convention Concerning the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, UN Doc. A/CONF.48/PC/II/Add 3.15 (1972), 1037 UNTS 151 (entered into force 17 December 1975).

*Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, adopted by the UN Security Council, Resolution 827 (1993) of 25 May 1993, UN SCOR, 48th Session, 3217th Meeting, UN Doc. S/RES/827 (1993) of 25 May 1993, UN SCOR, 48th Session, 3217th Meeting, UN Doc. S/RES/827 (1993), as amended by Resolution 1166 (1998) adopted 13 May 1998 by the Security Council at its 3878th Meeting, UN Doc. S/RES/1166 (1998), Resolution 1329 (2000) adopted 30 November 2000 by the Security Council at its 4240th Meeting, UN Doc. S/RES/1329 (2000), and by Resolution 1411 (2002) adopted by the Security Council at its 4535th Meeting on 17 May 2002, UN Doc. S/RES/1411 (2002).

*Rome Statute of the International Criminal Court*, adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 17 July 1998, UN Doc. A/CONF.183/9 opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002).

*Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, opened for signature 17 May 1999, 2253 UNTS 172 (entered into force 9 March 2004).

## *Other instruments*

*The Operational Guidelines for the Implementation of the World Heritage Convention*, UNESCO World Heritage Committee (8 July 2015), para, 45. [Electronic] Available: http://whc.unesco.org/en/guidelines/ (Visited on 2017-01-02).

UNESCO Doc. 26 C/Resolution 3.9, preamble, third recital, p. 58. [Electronic] Available: http://unesdoc.unesco.org/images/0009/000904/090448E.pdf (Visited on 2017-01-02).

UNESCO Doc. 142 EX/15, Annex, para. 5.5.2, p. 20. [Electronic] Available: http://unesdoc.unesco.org/images/0009/000958/095807E.pdf (Visited on 2017-01-02).

*The States Parties to the Rome Statute*, International Criminal Court. [Electronic] Available: https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (Visited on 2017-01-02).

*Elements of Crimes*, International Criminal Court. [Electronic] Available: https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf (Visited on 2017-01-02).

# Table of cases

*Prosecutor v. Duško Tadić* (Opinion and Judgment). 7 May 1997, Case No. IT-9491-T *(Trial Chamber II, ICTY)*.

*Prosecutor v. Ramush Haradinaj* (Trial Judgment). 3 April 2008, Case No. IT-04-84-T*, (Trial Chamber, ICTY)*.

*Prosecutor v. Miodrag Jokić* (Trial Judgment). Mar. 18, 2004, Case No. IT-01-42/1-S *(Trial Chamber, ICTY)*.

*Prosecutor v. Pavle Strugar* (Trial Judgment). Jan. 31 2005, Case No. IT-01-42-T *(Trial Chamber II, ICTY)*.

*Prosecutor v. Miodrag Jokić* (Appeals Judgment). Aug. 30 2005, Case No. IT-01-42/1-A *(Appeals Chamber, ICTY)*.

*Prosecutor v. Pavle Strugar* (Appeals Judgment, and pardoned by Decision of the President on the application for pardon or commutation of sentence of Pavle Strugar). Jan. 16 2009, Case No. IT-01-42-ES *(Appeals Chamber, ICTY)*.

*Prosecutor v. Ahmad Al Faqi Al Mahdi* (Trial Judgment). Sep. 27 2016, Case No. ICC-01/12-01/15 *(Trial Chamber VIII, ICC)*.