Chapter 4

International Law Protecting Cultural Property in Armed Conflict

I An Overview

Armed conflict is perhaps as old as humankind itself. Jiří Toman notes that ‘[i]n the course of 5,000 years of history, some 14,000 wars have afflicted humanity’; causing countless deaths and immeasurable human suffering and destruction. For centuries, the right to resort to war (jus ad bellum) had been deemed inseparable from the concept of sovereignty. The accompanying destruction of property had been seen as an inevitable part of warfare. From the nineteenth century onwards, much effort has been made at the international level to make warfare more humane. This effort has resulted in numerous multilateral treaties that impose certain limits on the means and methods of conducting armed conflict. The first half of the twentieth century witnessed a radical change in the area of international law governing the recourse to armed conflict. After WWI, in what is considered the most grandiose peacekeeping effort, the Treaty Providing for the Renunciation of War as an Instrument of National Policy of 27 August 1928, also called the Pact of Paris, or the Kellogg-Briand Pact, prohibited any recourse to armed conflict. Initially, this treaty was intended to be a bilateral non-aggression pact, but it eventually became a multilateral agreement, attracting nearly all the nations of the world, agreeing to renounce war as an instrument of national policy and to settle all international disputes by peaceful means.

The events of WWII proved that the Pact was ineffective. But the international community was unstoppable in its resolve ‘to save succeeding generations


3 Aristide Briand was the French foreign minister and was the first to suggest a bilateral non-aggression pact in the spring of 1927. Frank B. Kellogg, the US secretary of state, proposed that the pact be converted into a general multilateral treaty, which the French accepted.
from the scourge of war, which...has brought untold sorrow to [hu]mankind’.  

In its more recent attempt to outlaw armed conflict, the international community in 1945 adopted the UN Charter prohibiting the use of force as well as the threat of force. In its pertinent parts, Article 2 of the Charter spells out that ‘[a]ll Members [of the UN] shall refrain in their international relations from the threat or use of force’; and that they ‘shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered’. The only exception allowing States unilaterally or collectively to resort to military force is self-defence, but even then ‘[m]easures taken by [UN] Members in the exercise of this right of self-defence shall be immediately reported to the Security Council’ – the principal UN organ responsible for the maintenance of international peace and security. Today, war is deemed illegal and the very term ‘war’ has been abandoned in international instruments.

The prohibition on the use of force and the threat of force has not ruled out the necessity of regulating the means and methods of conducting warfare (jus in bello). The numerous occurrences of armed conflict in the post-WWII period is evidence that warfare is not a thing of the past. These conflicts have occurred both between and within States. But what is an armed conflict and exactly when is it said that an armed conflict exists? The generally applicable answer to this question is found in existing treaty law, specifically, the Geneva Conventions of 12 August 1949 (1949 Geneva Conventions) and the 1977 Protocols additional to these Conventions (Additional Protocol I and Additional Protocol II).