Chapter 5

The Legal Nature of the Destruction of the Old Bridge

I An Overview

As discussed in the preceding chapters, there was an attack on the Old Bridge of Mostar. It appears that the attack was carried out by the HVO and that the HVO targeted the Old Bridge and destroyed it wilfully. Wilful destruction of cultural property is prohibited under IHL. Such destruction may be justifiable only in cases of imperative military necessity, when cultural property becomes a military objective. This chapter deals with the legal nature of the destruction of the Old Bridge, and it aims to apply the specific provisions of the relevant IHL to the destruction of the Old Bridge, with an emphasis on the question of targeting cultural property in armed conflict.

The first part of this chapter examines whether the destruction of the Old Bridge was lawful, focusing on two major questions. It first looks at the question of whether the Old Bridge was a protected object and examines whether the Bridge was a legitimate military target. In addressing the first question, three areas of protection of cultural property in armed conflict are considered: (a) the subject matter of protection under the relevant IHL instruments; (b) the measures of safeguard, i.e., physical protective measures against structural collapse; and (c) distinctive marking. The chapter argues that the Bridge was a protected object within the scope of IHL. With respect to the first of these areas relating to protection of cultural property in armed conflict, the Bridge represented an object to which IHL accords dual protection in armed conflict, namely the indirect protection attached to all civilian objects and the direct protection provided specifically for cultural property. As regards the second of these areas, some measures had been taken to protect the Old Bridge physically from damage emanating from the shelling. However, although they play an important role in the preservation of cultural property, under the existing law, safeguarding measures are not central in determining the lawfulness of the deliberate destruction of cultural property. A similar sentiment could be expressed in relation to the third area of protection. Despite its general value in making cultural property recognisable, and thereby in minimising the danger of damage to or destruction of such property, distinctive marking is not a deciding factor in the legal characterisation of an attack on cultural property, at least
with respect to cultural property under the so-called general protection, as was the case with the Old Bridge.

The second major question (as to whether the Old Bridge was a legitimate military target) concerns the prohibition of the use of cultural property for military purposes, the prohibition of direct attacks against cultural property, the exception of military necessity, the rule of distinction (in pursuance of which, attacks must be limited to military objectives during a military operation) and precautionary measures. It has been alleged that the ABH used the Old Bridge for military purposes thereby turning it into a military target. IHL prohibits the use of cultural property for military purposes in the absence of military necessity. This is so because the use of cultural property for military purposes makes such property a potential military target and thereby exposes it to the danger of damage or destruction. However, under the existing law, not every use of cultural property for military purposes automatically turns such property into a legitimate military target. The attack on cultural property must also be justified by military necessity. Attacks on cultural objects are permissible if such objects become military objectives. But even then additional, precautionary measures must be taken. The Old Bridge did not have military value and it did not constitute a military objective at the time of its destruction. The HVO’s attack on the Bridge was not justified by military necessity and it was generally carried out in disregard of the rules of IHL.

The application of IHL to the Old Bridge case exposes certain weaknesses in IHL instruments concerned with protection of cultural property in armed conflict and raises a number of issues, which are the subject of the discussion in the second part of this chapter. The discussion will focus on underlining the major problems in general terms. The discussion first focuses on the issue of the definition of a military objective. This definition is an important factor in determining what can and what cannot be targeted in armed conflict. The indeterminacy on the subject may pose a difficulty for military commanders in making decisions regarding the list of military targets. The discussion then highlights the problem of arbitrariness with respect to the obligation to issue advance warning. Thereafter, attention is drawn to the difficulties related to the rule of distinction when it comes to the urban battlefield. Fighting in such a battlefield takes place in densely populated residential areas, which may also be spatially very restricted, as in the case of East Mostar where everything is only a few minutes or few hundred metres away. This, at the same time, raises an associated problem of guarding cultural property in such areas where it may be difficult to distinguish combatants from persons empowered to guard cultural objects. In turn, the issue of guarding – specifically, the question, by whom should cultural property be guarded in times of armed conflict? – raises yet another issue, the problem of State sovereignty in matters of cultural property. The issue of sovereignty is followed by a brief discussion of the problem of indeterminacy in the battlefield.