Chapter 6

The Question of Justice for the Destruction of the Old Bridge

I An Overview

Wilful breaches of norms of IHL granting protection to cultural property in armed conflict may constitute a war crime giving rise to individual criminal responsibility. Cultural property-related crimes do not usually rank highly on the prosecution priority list, however. This is not surprising given the reluctance to prosecute war crimes generally, at least until recently. It is not rare for calls to be made, usually after the conflict and more often than not by those who might have been implicated in war crimes, to forget the crimes in order to create a precondition for peace and coexistence. The Balkans is not an exception to this. In a perverse switch of roles, those who have waged armed conflict claiming that life together was not possible, and who, in the process, destroyed monuments as evidence of shared life, have suddenly become staunch supporters of coexistence, advocating general amnesty and general amnesia. Declaring himself in favour of a specific general pardon in the name of a new beginning, Croatia’s late President Tuđman publicly advised that ‘[i]t is much more important to create conditions for coexistence of those who waged war against each other until recently than to sentence criminals’. However, without bringing those responsible to justice and punishing them adequately there can be no peace

in the long run. Justice cannot be seen to be done properly unless all crimes, including cultural property-related crimes, are treated appropriately.

The destruction of the Old Bridge has been considered a very serious event throughout the Balkans. In the city of Mostar specifically, this has been a major issue. Together with much of the Old City, the Old Bridge has been rebuilt recently. Its rebuilding was an international project, which, *inter alia*, included involvement of experts from Croatia and Bosnia and Herzegovina, in the latter cases comprising both Croat and Muslim representatives, to symbolically demonstrate that the former foes can work and live side by side again. The rebuilt bridge looks exactly as the Old Bridge; but in the final analysis, even though it is an outstanding replica, it is still a new bridge. As the Trial Chamber in *Jokić* observed,

> [r]estoration 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, thus affecting the inherent value of the buildings.

In any event, when the original is gone, it is gone forever. Someone is responsible for the loss of the original Old Bridge. Unless the culprits are identified, the whole Croat nation will be deemed a guilty party by many people in the Balkans. Bringing to justice those responsible for the destruction of the Bridge would individualise guilt and help the healing process. At the same time, this would deter the would-be destroyers of irreplaceable cultural resources that are essential for human functioning from such wrongdoings, and it would significantly contribute to ending the impunity for this kind of violation of IHL.

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7 *Prosecutor v Miodrag Jokić*, Case No. IT-01-42/1-S, Sentencing Judgement, Trial Chamber I, 18 March 2004, Case No. IT-01-42/1-S, para 52 [*Jokić Sentencing Judgement*].