

UNIVERSITY OF SOUTHERN DENMARK
DANISH INSTITUTE FOR HUMAN RIGHTS

European Master's Degree in Human Rights and Democratisation
Academic Year 2015/2016

CULTURAL PROPERTY: HISTORY, LAW AND WAR

The protection of cultural property in the event of armed conflict

Author: Nora Leticia Setién Viota
Supervisor: Peter Vedel Kessing & Eva Maria Lassen

Abstract

This dissertation examines how the protection of cultural property in the context of armed conflict has developed throughout history. By historically analysing the evolution of the legal documents and comparing the provisions on cultural property, I present a comprehensive study that illustrates the scope of the protection and how it has evolved. From its ancient origins as customary law, cultural property protection was introduced in international law in the 19th century, at the same time IHL was being consolidated. However, cultural property did not obtain a specialised international treaty of its own until 1954 when The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict was adopted. The treaty inserted the duty to establish peacetime measures that were further complemented by peacetime conventions. Moreover, through the Additional Protocols to the Geneva Conventions, damage to historical buildings and places of worship became a war crime; and, as it was similarly instituted in the Rome Statute of the ICC, the Court has recently started the first case against an individual solely based on such charges. The Second Protocol to The Hague 1954, a very progressive document, was adopted in 1999 but was also scarcely ratified, which has left the system of protection almost unchanged in the last forty years; and considering the extensive destruction cultural property has been suffering due to contemporary wars, the historic-legal analysis has become necessary to understand the current legal protection and the vacuums it contains.

Table of Contents

| | |
|---|----|
| I. INTRODUCTION..... | 1 |
| II. HISTORICAL OVERVIEW..... | 5 |
| III. INTERNATIONAL HUMANITARIAN LAW AND CULTURAL PROPERTY PROTECTION | 18 |
| A. The Convention for the Protection of Cultural Property in the Event of Armed Conflict | 18 |
| B. Additional Protocol I and II to the 1949 Geneva Conventions | 26 |
| C. Second Protocol to the Hague Convention of 1954 | 31 |
| D. International Criminal Courts and Tribunals..... | 38 |
| IV. PROTECTION DURING PEACE-TIME | 46 |
| A. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property | 50 |
| B. Convention concerning the protection of the World Cultural and National Heritage..... | 53 |
| V. CULTURAL PROPERTY IN LAW: PERIODIZATION | 57 |
| A. From Antiquity to the 19 th century | 57 |
| B. From the 19 th century to the Second World War..... | 58 |
| C. From the Second World War to the Present | 61 |
| D. New threats to cultural property and the cultural heritage of mankind | 69 |
| 1. Terrorism and cultural property: a few considerations | 69 |
| VI. CONCLUSION | 75 |
| VII. Bibliography..... | 79 |