

Summary

The protection of cultural property in the event of armed conflict also from a civil law perspective

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1. Cultural property consists of movable and immovable tangible objects of historical, artistic or other cultural value created or modified by man. As an irretrievable testimony of the past they are of vital importance to the identity and the self-understanding of a society.
2. Cultural property becomes the target of military attacks mainly for cultural, ethnic or religious reasons. In addition, its artistic value makes it the object of state-organized pillage or of theft.
3. The core of international humanitarian law on the protection of cultural property is the "Hague Convention System". It consists of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and its two Protocols of 1954 and 1999.
4. The Hague Convention System obliges States to "safeguard" cultural property situated within their own territory in times of peace in order to guarantee its best possible protection during armed conflicts. Besides general measures like the preparation of inventories and the planning of emergency measures the Hague Convention System also provides for the assignment of cultural property to different categories of protection, and the distinctive marking of cultural property.
5. During an armed conflict the Hague Convention System obliges States to "respect" cultural property situated within their own territory as well as within the territory of other States. Any kind of "useless" destruction or damage of cultural property as well as any removal of and any reprisal against cultural property are absolutely prohibited. A "military" destruction or damage of cultural property, however, is subject to an only relative prohibition, depending on the category of protection (general, special or enhanced protection). Collateral destruction and damage shall be avoided as far as possible. In case of occupation the occupying power and third States have to fulfil a variety of obligations with regard to the protection of cultural property, such as custody, protection and support.
6. For the time after the hostilities the Hague Convention System only establishes the absolute prohibition to retain cultural property as war reparations as well as a limited number of obligations concerning the restitution of cultural property that has been illicitly removed.
7. The Hague Convention System is completed by many other particular provisions. Of utmost importance is the enhancement of the protection against destruction and damage enshrined in the First Protocol Additional to the Geneva Conventions as well as the additional restitution obligations established by customary international law. International criminal law imposes sanctions on individuals for the contravention of provisions on the protection of cultural property and establishes a responsibility towards the international community.

8. Since cultural property consists of tangible objects it is, in principle, also subject to civil law. Real rights under civil law may be a legal impediment to international cultural protection. On the other hand they also may strengthen it. Individual claims for restitution arise besides and independently from States' claims for restitution under public international law and may, therefore, contribute to attain one central aim of the protection of cultural property, namely the restitution of illicitly removed cultural property.

9. Due to the changing nature of armed conflicts three different constellations have emerged, which constitute an enormous challenge to the protection of cultural property. The difficulties encountered differ significantly and call for different solutions.

9.1. Armed conflicts of a non-international character are meanwhile extensively regulated. The remaining gaps in the protection of cultural property are to be considered rather as a problem of application and implementation than of legal regulation.

9.2. The employment of private military and security companies is now regulated by the non-binding Montreux Document of 2008, which provides for the responsibility of States. Even though the document is based on the right approach its effect would improve if it considered more extensively issues relating to the protection of cultural property and if it also referred to international organizations.

9.3. Peace-keeping missions of international organizations, however, pose the most challenging problem. Whereas the commitment to international humanitarian law is acknowledged during an armed conflict, there is a lack of provisions regulating the new types of missions which are entrusted with comprehensive territorial administration. It is high time to establish such a regulation.

10. Destruction and illicit removal of cultural property are "cultural amputations" that cause irretrievable harm to the collective memory of a society. Insults due to the loss of cultural property live as long as the nation concerned. Therefore, the protection of cultural property in the event of armed conflict is by no means a "luxury". Its aim is the preservation of the testimony of our civilisation as well as the safeguarding of the culture, identity and dignity of the enemy. To this end, it also serves the prevention of new armed conflicts.