

THE EVOLUTION OF “CULTURAL HERITAGE” IN INTERNATIONAL LAW

Von Truetzschler Werner / Germany

In international law we find regulations concerning cultural heritage both in international law of war, specifically in treaties on the rules of conduct in war, in international criminal law and in international law of peace, especially in treaties aimed at fighting illegal trafficking with cultural goods and in conventions setting benchmarks for the protection and preservation of cultural heritage. Besides these legal instruments juridically binding for the signatory states non binding charters drawn up by professional experts or non-governmental organisations such as ICOMOS and ICOM contain detailed recommendations for dealing with cultural heritage.

Taking a closer look at the legal texts and the charters we discover that the term „cultural heritage“ appears for the first time after the World War II in 1954 in the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the “Hague Convention”, named after the city where it was first opened for signature)¹ and in the same year in the European Cultural Convention². The Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO) drawn up in 1945 the year World War II ended sees the importance of cultural heritage without naming it expressly. The constitution wants to realize a contribution to world peace and security “by assuring the conservation of the world’s inheritance of books, works of art and monuments of history and science.”

In the Hague Convention cultural heritage is an integral part of the description of cultural property which is defined as „movable and immovable property of great importance to the cultural heritage of every people“ In the European Cultural Convention the „common cultural heritage of Europe“ is declared a good to be safeguarded and interestingly enough to be developed. The retrospective view of cultural heritage as implied by the term heritage of the Hague Convention is widened in the European Cultural

Convention to a more active living interpretation of the term anticipating the wide concept of cultural heritage of today.

In the years before World War II only three international treaties refer to cultural heritage without using the term itself explicitly. All three belong to the category of rules of conduct in wartime. They are the Hague Conventions of 1899 and of 1907 both predecessors of the 1954 Hague Convention and the Montevideo Convention on the Protection of Artistic and Scientific Institutions and Historic Monuments (the so called Roerich Pact named after its initiator)³ signed by 21 states of the Americas. Reference to cultural heritage is made in these treaties in enumerating types of buildings dedicated to cultural and scientific purposes and historic monuments which are to be respected and spared by belligerents. The term „historic monument“ is by the way mentioned for the first time in an international convention in the Roerich Pact. These provisions reflect the understanding of monuments of the 19th century. Coming from the Latin word „monumentum“ a monument is at first „anything durable made or erected to perpetuate the memory of persons or events“⁴. The sense of the word widened with the course of time to built-up material remains of the past. Again at first mainly singular edifices connected with a memory or a vision especially of national or romantic events, deeds or persons were in the spirit of the time included in the concept of monument.

In the past centuries wars were seen as the biggest threats to cultural heritage. The displacement of and illegal trade with parts of the cultural heritage were recognised and regarded as a major problem only after World War II maybe as a consequence of war spoils and of looting during the war. Also the emancipation of former colonies looking for their national identity in cultural objects which these countries lost to richer states may have contributed to the awareness of the problems implied in removing parts of the cultural heritage from their place of origin. The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import , Export and Transfer of Ownership of Cultural Property of 1970 is the first international legal instrument to

¹ The text of the Hague convention and the UNESCO conventions can be found on the website of UNESCO at www.unesco.org

² The text of the European Cultural Convention and the other Council of Europe conventions can be found on the website of the Council of Europe at www.coe.int

³ The text of the Roerich Pact can be found at www.roerich.org

⁴ Chambers’s Encyclopedia London 1868

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fight illegal trade of cultural objects. The clear purpose of the convention is to save and preserve cultural heritage in its place of origin. The employment of the term „cultural heritage“ eleven times and the introduction in addition of the term „cultural patrimony“ shows that the idea of „cultural heritage“ as a value by itself to be protected is by that time firmly established with international lawmakers and accepted by the international community of states. As trade with cultural property can by its nature usually take place only with movable objects of the cultural heritage (although even monuments like Egyptian obelisks have been moved to other continents) the convention focuses on movable heritage which it divides into twelve categories.

Similarly other international law on regulating trade with cultural goods like the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995⁵ which in a way is a complement concerning aspects of civil law of the UNESCO Convention of 1970 and the regional international treaties namely the Convention on the Protection of the Archeological, Historical and Artistic Heritage of the American Nations (Convention of San Salvador)⁶ of 1976 as well as the pertinent law of the European Union (Council Regulation of 9 December 1992 on the Export of Cultural Goods and Council Directive of 15 March 1993 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State⁷) define cultural property or cultural goods in detailed categories. The categorisations remind us of the rules for the first inventories of cultural objects drawn up in the late 18th century in France They are of high practical value to police and custom officials who in the end have to apply these rules or their counterpart in national law.

The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (Unesco World Heritage Convention) of 1972 subsumes very clearly the archeological and architectural heritage i.e. monuments, groups of buildings and sites under the term „cultural heritage“. In obliging state parties to adopt the concept of integrated conservation the convention not only aims at including cultural heritage in planning procedures and policy making but beyond that to make it an integral part of society. Furthermore the concept of cultural heritage is opened and

thus enlarged in the direction of nature as the convention understands sites among others as, the combined works of nature and of man“ which according to the Operational Guidelines for the Implementation of the World Heritage Convention are“ cultural landscapes”.

The two UNESCO conventions of 1970 and 1972 cover and define the broad range of material (or tangible) movable and immovable cultural heritage thus going a long way from the first attempts in international law of war to protect single buildings. The ratification of the 1970 convention by 107 states and of the 1972 convention by 180 states proves that this concept is almost worldwide accepted (which unfortunately does not mean that it is enforced always and everywhere).

The Council of Europe which as we have seen already in 1954 with the European Cultural Convention recognised a common European cultural heritage followed the pace set by UNESCO and drew up several conventions on matters of cultural heritage, in particular the European Convention on the Protection of Archeological Heritage of 1969, the European Convention on Offences Relating to Cultural Property of 1985 (not yet entered into force), the European Convention for the Protection of the Architectural Heritage of Europe (Granada Convention) of 1985 , the European Convention on the Protection of the Archeological Heritage (revised) (Valetta Convention) of 1992 and the European Landscape Convention (Florence Convention) of 2000. These conventions are partly more detailed than the UNESCO Conventions and aim at a comprehensive protection of the European cultural heritage.

The growing consciousness in the international community of the importance of cultural heritage and the disastrous war in former Yugoslavia have also led to improvements in the prosecution of war crimes including crimes against cultural heritage. The Rome Statute of the International Criminal Court an international convention opened for signature in 1998⁸ which entered into force in 2002 confers to the jurisdiction of the court seated at The Hague besides the crimes of genocide, of aggression and against humanity war crimes. Defined as such are among others intentionally directed attacks against buildings dedicated to religion and art and against historic monuments. Unfortunately this clause only applies to crimes of such nature in international armed conflict although the statute to some extent also covers armed conflict not of an international character. The Statute of the International

⁵ The text of the UNIDROIT convention can be found on the website of UNIDROIT at www.unidroit.org

⁶ The text of the Convention of San Salvador can be found at the website of the Organization of American States at www.oas.org

⁷ The texts of the European Union laws can be found on the website of the European Union at www.europa.eu.int

⁸ The texts of the instruments of international criminal law can be found on the website of the United Nations at www.un.org

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Criminal Tribunal for the Former Yugoslavia adopted in 1993 by resolution (it is not a treaty) of the United Nations and amended several times covers the seizure, destruction and wilful damage of cultural institutions and historic monuments and in addition here going further than the Rome Statute of works of art as war crimes.

A further enlargement of the concept of cultural heritage is internationally recognised by the UNESCO Convention on the Protection of the Underwater Cultural Heritage of 2001 and by the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 2003. The latter defines the intangible cultural heritage as „the practices, representations, expressions, knowledge, skills - as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups, in some cases, individuals recognise as part of their cultural heritage.“ This definition describes those parts of the cultural heritage like oral traditions and expressions including language, performing arts, social practices etc. which are living and not static. Intangible heritage is therefore sometimes rightly equated with living heritage.

In the sense the European Cultural Convention had already anticipated in 1954 the UNESCO Convention for the Safeguarding of the Intangible Heritage rounds up almost 50 years later the concept of cultural heritage in a coherent way. From the relevant international treaties touched on above it can be resumed that cultural heritage includes movable and immovable tangible man made objects ranging from miniature archeological finds to whole landscapes as well as intangible living components derived from the past.

The Council of Europe has proposed yet a further enlargement of the concept of cultural heritage in a new international legal instrument. The draft of a European Framework Convention on the Value of Cultural Heritage for Society contains the following definition of cultural heritage: „Cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time.“ Thus both interaction between people and interaction between people and places which is very much what social life is made of is seen as cultural heritage. To demonstrate how all-embracing this definition is it could be asked what aspects of life do not belong to cultural heritage. As such a wide definition has an inflationary character it bears the danger that cultural heritage is in the end not treated with the respect it demands.

Conserving and preserving the cultural heritage in order hand it down to future generations which is the aim of all relevant international conventions in force is already a huge task for society keeping the wide scope of the concept of cultural heritage in mind . Let us in ICOMOS help to fulfil this task.

Abstract

The paper explores the conceptual shift from the protection of monuments as seen from a romantic and national point of view in the 19th century through the integrated conservation in the 60s and 70s of the last century to the goal of sustainable management of the cultural parts of the natural and historic landscape as a whole including material and non-material aspects.

Both international binding conventions and soft law like recommendations and declarations are examined as well the international charters for conservation and restoration.

The paper concludes whilst welcoming the improving consciousness of the cultural heritage in questioning the practicability of managing a steadily widening notion of cultural heritage.