

Abstract

The Protection of Cultural Property during Occupation

Cultural property represents an integral part of every nation, it completes the identity of the individual as well as that of humanity as a whole. Because of its specific character, it represents a unique and valuable source for the understanding of history, and creates a sense of belonging to a community, either in its national or in its worldwide sense. Cultural property has a special, irreplaceable meaning for society; its character, existence and continuity and must therefore be protected. The risks that cultural property faces are of two different kinds: either independent of human will or, on the other hand, connected with human activity. Dangers for cultural property are naturally present even during the time of peace. On the other hand, cultural property represents especially vulnerable objects during the time of armed conflict or occupation. Even though during the time of armed conflict the protection of human lives, especially of persons not involved in actual fighting, plays the paramount role, it is nevertheless important to provide protection to cultural property as well. The aim of my thesis is to provide an overview and framework of existing mechanisms for the protection of cultural property in the event of armed conflict, specifically during occupation.

The thesis is divided into two main parts: firstly it gives a general overview of the perception of cultural property, its character and meaning, and secondly it presents the legal base and definition of occupation. Both of these parts are finally connected in a central chapter about the protection of cultural property during occupation.

The structure of the thesis is organised in the following way: the first chapter identifies the notional background and different approaches to the protection of cultural property, including the concept of cultural nationalism and internationalism. The aim of the first chapter is to define the object of legal protection, as the term „cultural property“ does not come from law, but from other historical and social sciences.

In the second chapter I present a brief overview of the history of protecting cultural property in the event of armed conflict from antiquity, through the Second world war to present days.

The third chapter focuses on the legal framework for the protection of cultural property. Its subsections include wartime treaties, peacetime treaties and international customary law. As the centre of attention is the Hague Convention on the protection of cultural property in the

event of armed conflict of 1954 and its two protocols. The role and influence of the Convention is compared with other conventions, which are related to the subject. The chapter then deals with the role of the Hague and Geneva Conventions, which represent classical humanitarian law, as well as with international customary law.

The fourth chapter defines the legal basis of occupation within international humanitarian law, including the philosophical background. It focuses on the main principles of occupation, which are maintenance of the status quo with minimum intervention in the lives of local people and their protection. The chapter further describes the sources of law which govern the state of occupation, as well as their changes and present-day challenges.

The fifth chapter concentrates on the protection of cultural property during occupation - the principles are then demonstrated on the case of the minaret in the city of Samarra, Iraq. The chapter is mainly concerned with the role of the First Protocol to the Hague Convention of 1954, and further deals with specific provisions of other conventions, related to the special case of occupation.

The final chapter concerns itself with the responsibility of states and individuals for breaches of protection of cultural property. In this the Second Protocol to the Hague Convention of 1999 plays the paramount role. The concluding part is dedicated to the role of the International Criminal Court and of the Rome Statute.