

Lieber Code and the protection of cultural property in times of war

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Abstract

Cultural goods, movable and immovable, are testimonies to the historical memory, and the need to protect them in times of war and hostilities has occupied all the nations around the world, which have been active in establishing a strong legal framework for protection.

The Lieber's code, which was written and published during the American Civil War, in 1863, is the first codification of rules of war and among other things includes provisions concerning the protection of cultural property in wartime. Despite the fact that the code was not binding, has a huge legal value, as it was one of the earliest texts of modern humanitarian law, and also served as a model for subsequent coding and contributed to the development of laws concerning the protection of cultural heritage.

This paper examines the contents of the Code, regarding protection of cultural property in wartime while aiming to highlight the need for statutory protection requiring the treasures of the past are keepers of memory and bridges that connect the present with the past.

Keywords: cultural property, cultural goods, protection of cultural property, Lieber's code.

1. Introduction

The term cultural heritage is interwoven with all the cultural assets of a place and include tangible¹ and intangible heritage. The tangible heritage includes movable and immovable cultural property, which refers to monuments, buildings and areas with special historical, archaeological, scientific, ethnological and aesthetic value. Given that the term "monument" is a derivative of term memory, monuments (both movable and immovable) are testimonies to the historical memory of people. In the category of intangible heritage belong the folk traditions, language, manners and customs, dance and many other vibrant cultural expressions, which pass from generation to generation.

The inseparable relationship between cultural heritage and the place which was produced is unquestionable as well cultural goods are directly related to the identity of the peoples who created them. This fact makes imperative the need of protection of cultural goods and at extension of preservation of testimonies of past, as precious sources of historical memory.

Nowadays, the protection of cultural wealth is included in the main axis of cultural policy that they follow most states all over the world. At international level, the effort of protection of cultural heritage, is extended, beyond the re-establishment and preservation of cultural goods in time of peace, in their protection in time of war and periods of hostilities and conflicts.

In all continents of ground and in all historical periods, from the antiquity up to the modern era, have been recorded innumerable incidents of pillage of cultural goods in martial conflicts between states. The destruction, the theft and the consecutive sale of cultural goods, as well as their transport out of the country's borders in which they were produced, attributed to the ideology of war and more specifically to the right of victors in the loot. This ideology at the duration of conduct of wars, pushed the involved parts to exercise the "right of" victors in the loot and as a result has been destroyed a big number of cultural goods. Hundreds monuments, important national symbols, were war booty, and then destroyed or were part of the winner's property.

¹ This study focuses on material cultural heritage, ie movable and immovable cultural property.

Despite the fact of destruction of big part of humanity's cultural treasures over the centuries, the first expression of interest concerning the protection of cultural goods in time of war, became hardly the 17th century², while in the beginning of 19th century they began to be included in the postwar conditions, provisions that concerned the return of cultural goods, which had been removed from their country of origin at the duration of war.

In 1863, during the American Civil War, Francis Lieber wrote one of the earliest texts of contemporary humanitarian law. This Code, known as Lieber Code, included a set of instructions, concerning the behavior of soldiers in the battlefield of the American Civil War. Inter alia, the Code forecasted the protection the protection of cultural heritage at the duration of martial conflicts.

This paper examines the content of Code, regarding the protection of cultural goods in time of war and the influence that it practised in later codings and laws that were developed in order to ensure the protection of cultural heritage when it is found under the threat of hostilities in periods of martial conflicts. Moreover, it aims to highlight the need for obligatory protection protection of treasures from the past, as they are keepers of memory and bridges that connect the present with the past.

2. The Lieber Code

2.1 Introduction

In 1863, during the American Civil War, at the urging of the U.S. President Abraham Lincoln, Francis Lieber produced with the form of a Code a set of behavior instructions, that was addressed to the commanders of U.S. troops on the battlefield. The Code published by the War Department of U.S. and was the first codification of rules of war. Despite the fact that the text of the Code was not binding, however it has great legal value as it is one of the earliest texts of modern humanitarian law, which thanks to his plenitude became model for the later decades, affected the development of laws of war and contributed to the adoption of similar legal manuals and other states.

² Sweden 1666: passage of a law to protect the national cultural heritage of the country.

During the drafting of the Code Lieber's goal was the prevention or limitation of inhuman behaviors, during the war. One of the basic rules that established the Code was the prohibition of destruction and possession of property, except and if they constituted imperative need of war. Himself Francis Lieber in a letter to a colleague says:

“[Y]ou, well-read in the literature of this branch of international law, know that nothing of the kind exists in any language. I had no guide, no groundwork, no text-book Usage, history, reason, and conscientiousness, a sincere love of truth, justice and civilization have been my guides”³.

2.2 Francis Lieber

Francis Lieber (1798-1872) was born in Berlin on March 18, 1798. He was lawyer, political philosopher, political scientist and scholar. His life is divided in two major phases, which are deliberately reported, in order to understand his life and his work. The first phase of his life includes the years of childhood, adolescence and adulthood in Prussia and Europe during the Napoleonic era. His youth influenced by the cruelty of war and the deprivals that it involved in personal and collective level, the possession and as from his participation in the war as a soldier. He was a defender of freedom and his personal experience of taking part in the war was the main reason why he set a life goal the humanization of laws of war.

The second phase of his life includes the transition in North America, in 1827. This phase of his life is characterized by a remarkable productivity, the outcome of which will be an outstanding academic career with. Professor of political economy, history and political science at Columbia College, Francis Lieber, was in addition, during the American Civil War, and legal adviser of United States, especially in matters of the laws of war.

In conclusion, it should be noted that Francis Lieber, was not only one of the leading U.S. lawyers, but also an influential personality, which is appreciated even today, due to its key role in the development of international law and particularly in the humanization of laws war.

³ Francis Lieber, Tommas Sargeant Perry, *The Life and the letters of Francis Lieber*, James R. Osgood and Co., 1882, pp.333.

2.3 The content of the Code

The Lieber Code contains 157 articles which are categorized by their thematic content into eight sections. Substantial interest for the purposes of this paper presents the section II, which inter alia foresee the protection of cultural heritage during the conduct of warfare.

2.3.1 Lieber Code-The protection of cultural heritage

The provision of Lieber's Code that concerns the protection of cultural heritage in times of war included in Section II⁴ (Public and private property of the enemy – Protection of persons, and especially of women; of religion, of the arts and sciences – Punishment of crimes against the inhabitants of hostile countries) and concretely in the following articles⁵:

Article 34

As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character-such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it.

Article 35

Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

Article 36

If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation.

⁴ Instructions for the Government of armies of the United States in the field, Francis Lieber, Washington, Government Printing Office, 1898, pp 12.

⁵ Instructions for the Government of armies of the United States in the field, Francis Lieber, Washington, Government Printing Office, 1898, pp 13-14.

The ultimate ownership is to be settled by the ensuing treaty of peace. In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.

According to the above articles that are reported in the protection of cultural heritage, the Code forecasts that the works of art, scientific collections, libraries and hospitals must be protected during any siege or bombardment, and if needed, for movable cultural property, be transported or removed for security reasons, prohibited to be destroyed, sold or donated. Moreover, the Code condemns as criminal energy the destruction or deterioration of the immovable and movable cultural goods, which is punished with the imposition of strict sentence, even death.

In Article 34 is provided the protection of immovable and movable cultural objects that are accommodated in buildings. Specifically it is pointed out that the buildings that are connected with the culture or have charitable/humanitarian character should not be faced as public fortune and consequently be destroyed as fortune of hostile state. Article 35 provides the protection of buildings with cultural value (e.g. libraries) but also monuments and other cultural goods, prohibiting their wear and requiring their protection, even if those buildings and other cultural items are in adverse, for the occasion of the war, positions.

Particular interest presents Article 36, as it provides the right of enemy forces on the movable cultural property, which belong in the opponents. The right consists in the attachment and transport of mobile cultural objects (e.g. monuments, books etc), as long as they can be transported safely and without damage in the ground of conquering state, for the benefit of. Moreover, according to the content of the article prohibited any action of economic exploitation of these objects and in no case shall be subject to private property and noted that the ownership of seized cultural property shall be governed by the peace treaties after the end of the war. Based on its content, this article aims primarily to protect cultural property from possible damage on the battlefield in order to safeguard the cultural and informational value. Secondly allows the seizure, removal and transfer them to preserve their integrity and in favor of conquering state. This last point of the article, despite the fact that it not works protective in terms of cultural objects, supplemented and balanced by reference to the ownership arrangements in the post-war peace treaties. This means that cultural

goods, which during the war were transferred to an opponent's territory may be transferred in the environment that were created in frame of postwar regulations of peace treaties between the rival countries.

The Code provides the protection of cultural goods and specifically works of art, libraries and scientific collections. Despite the fact that in many cases not prevented effectively the destruction or looting of cultural property, due to the recognition of the principle of imperative military necessity, however, was the basis for developing subsequent codifications pertinent to the protection of cultural property⁶.

2.4 Lieber Code: evaluation and impact

The Lieber Code was a military manual, so it can be considered a likely source of international law. However, it contains significant elements of state policy and practice in the U.S. regarding the legal framework applicable during armed conflict and hostilities. The rules set by the code and its use as a military manual from the armed forces, has demonstrated the intent of the U.S. to put these rules in force and to implement them.

It is important that the Lieber Code incorporates the modern, civilized and humanitarian laws of war and managed to consolidate the legal restrictions of the right to commit harmful acts against the enemy during the war. According to Francis Lieber, a war between states is a public war, therefore, based on this premise, the code adopted the rule that the destruction and possession of property of the opponent state was forbidden unless such actions were imperative of conducting the war. This limitation principle, operated protectively against the risk of destruction and looting of cultural property.

From the nature Code's content and the articles referred to the protection of cultural heritage reflected the desire to preserve the historical memory and the understanding of the need to safeguard cultural property in any way, in bad times, such a war.

⁶ Pietro Verri, "The Condition of Cultural Property in Armed Conflicts: From Antiquity to World War II", *International Review of the Red Cross*, 246, 1985, pp.128-129.

In a general evaluation, the Lieber Code was able to contribute significantly to the humane rules of war while systematized a set of applicable rules during the conduct of war. Therefore the code was the basis for the development of modern humanitarian law.

Given the acceptance received, the Lieber Code had a positive impact and influenced subsequent encodings, laws that developed in conducting warfare and the adoption of similar manuals from other countries. More specifically, the Lieber Code, affected the legal work, such as J.B. Bluntschli, the texts that make up the Brussels Declaration on the Law of War (1874) and the Oxford⁷ Code. All these efforts to codify the law of war, formed the basis for the first major international meeting in The Hague (1899 and 1907), whose outcome was a series of texts known as the Hague Conventions. These contracts were limited to a theoretical framework for the protection of cultural property in wartime, and have no substantial practical application, as evidenced by the damage caused dozens of cultural objects during the First World War. The first coherent effort to protect cultural property in wartime, is made after the Second World War, who left behind enormous destruction and looting of cultural objects. This is the Hague Convention⁸.

3. Conclusions

The conclusions arising from the study and analysis of the key points of the Lieber Code concerning the protection of cultural heritage, are diverse. The code was developed and implemented during the American Civil War, which means that directly was influenced by the same events of the war, was happening at that time.

In the relevant articles relating to the protection of cultural heritage, becomes important for the preservation effort of cultural property from the destructive acts that accompany a war. The Code establishes a framework for the protection of cultural property, forcing the soldiers involved in armed conflict to respect and protect cultural treasures. The objective of compulsory protection associated with the preservation of historical, archaeological, scientific, ethnological and aesthetic value of cultural

⁷ Oxford Code was adopted by Institute of International Law, in 1880, and referred to the Rules and Customs of War.

⁸ Convention for the Protection of Cultural Property in the Event of Armed Conflict: 1954.

property, so that they continue to be testimonies for the historical memory after the war.

The need of protection of material cultural heritage is intensified in period of martial conflicts, as is increased their danger of destruction, from the conduct of military operations. Consequently, is essential the existence of powerful legal frame of protection, which will prevent the deterioration or their destruction at the duration of conduct of war and will ensure the continuation of their precious existence in the environment where they were created.

4. Bibliography

Carnahan M. Burrus, *The "Lieber Code" and the Law of War in the Civil War*, Essential Civil War Curriculum, 2011.

Francis Lieber 1898, *Instructions for the Government of armies of the United States in the field*, Government Printing Office, Washington.

Consolà N. Dora 1995, *International protection of world cultural heritage*, Papazisis, Athens.

Mathew D. Thurlow 2005, *Protecting Cultural Property in Iraq: How American Policy Comports with International Law*, YHRDLJ, 8, pp. 156-157.

Merryman John Henry, 2005, *Cultural Property Internationalism*, *International journal of cultural property*, International Cultural Property Society, 12, pp. 11-39, USA.

Merryman John Henry 1990, "Protection" of the Cultural "Heritage"?, *The American Journal of Comparative Law*, American Society of Comparative Law, Vol. 38, pp. 513-522.

Merryman John Henry 1986, *The ways of thinking about Cultural Property*, *The American Journal of International Law*, Vol. 80, No. 4, pp. 831-853.

Perrakis S., Marouda M N-2001, *Armed Conflict and International Humanitarian Law*, Sakkoulas, Athens.

Pietro Verri 1985, *The Condition of Cultural Property in Armed Conflicts: From Antiquity to World War II*, *International Review of the Red Cross*, 246, pp. 128-129.

Reigne April 2010, *The Civil War With No Ending: Exposure of Martial Law, Executive Orders, Why The Constitution Seems To Have No Bearing...and a Viable Solution To Obtain "Liberty and Justice for All"*, viewed 20 March 2012, <http://archive.org/details/TheCivilWarWithNoEnding_232>

Schindler D., Toman J. 1988, *The Laws of Armed Conflicts*, Martinus Nijhoff Publisher, pp. 3-23, viewed 15 March 2012, <<http://www.icrc.org/ihl.nsf/INTRO/110?OpenDocument>>.

Singer Priscilla 2010, *The new American approach to cultural heritage protection: grating foreign aid for Iraqi cultural heritage*, *Topics in cultural Heritage Law*.

Vöneky Silja 2011, *Francis Lieber and the Lieber code –against the inhumanities of war*, *Freiburger Informationspapiere zum Völkerrecht und Öffentlichem Recht*, Freiburg im Breisgau, Institut für Öffentliches Recht Völkerrecht und Rechtsvergleichung, Germany.