

# 1. STRATEGIES FOR PRESERVING AND SAFEGUARDING WORLD HERITAGE SITES

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## One Hundred Years of Protecting the Cultural Heritage: The Lieber Code (1854) – The Hague Convention (1954)

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### **Abstract**

The international legislation referring to the protection of the cultural heritage both in times of peace and of war started initially from a few articles inserted in legislative acts on armed actions of belligerent states, which in time have become freestanding laws in time. In a century, several pacts and conventions were published which constituted the basis for other international laws. Great importance for this period is represented by the Lieber Code (1854), The Conventions of the Hague conferences (1899, 1907, and 1954) and the Roerich Pact (1935). These normative acts have helped to implement conservation, restoration and protection measures for some national and international cultural heritage values considered to belong to all humanity and which have to be saved for future generations as they are proofs of human creativity in different historical epochs.

**Keywords:** international law, protection, heritage, culture, science, art.

### **Introduction**

A man's basic instinct is the desire to leave traces of his passage on Earth to his descendants, visible either in the presence of a heap of stones on a grave or in an inscribed burial stone, a building built on behalf of a ruler, a settlement etc., that is to say, in "monuments" appreciated as symbols that have acquired more meaning from the moment when the man has valued his past and future as much as the present (Erder 1986: 21). However, before the monuments, there were the objects made in the first place to meet particular utilitarian needs, then for the satisfaction of the eye and the soul. For all eternity, man has invented the trace, the mark of his passage on Earth. Thus, he has sought to give cultural meaning to his existence and has insisted on immortalizing it in stone or various materials, hence André Chastel's observation that "Destruction and ruin through non-use is a law of nature. Culture intervenes to cancel or delay this law in the name of the highest imperatives" (Besnard 2008: 7). Perhaps this is why man's appearance and evolution throughout history has always been accompanied by



a creative component that has characterized his entire material and spiritual production. From the first tools invested initially with a utilitarian, economic or commercial function, to the most sophisticated products of the present day, the history of human products experienced, in every era, new needs that have been materialized in various objects, then invested with aesthetic attributes worthy of the miraculous ingenuity of the human being. The productive activity was permanently accompanied by a sophisticated spiritual activity materialized in aesthetic and symbolic aspects that have characterized all the products of humanity, regardless of the canons of the ages. The artistic side of man has embellished his everyday life, but also himself, even before understanding or defining the complexity of the aesthetic act and artistic beauty. The utilitarian value was followed by the sacred value, then by the aesthetic and symbolic values, in the name of which man created a huge variety of products that, in time, became standards or treasures for the descendants who attributed them a historical value to them too and which were later included in the notion of individual or collective heritage, meant to be passed on to future generations.

When we talk about heritage, whether it is cultural or natural, material or immaterial, we refer to all human achievements of exceptional value that represent the inheritance of the past that we take advantage of today and which we have to pass on to our descendants not only protected and preserved but also enriched. The universality of the heritage is given by the fact that it belongs to all peoples of the world, regardless of the territory on which they are (UNESCO). Concerns about keeping and preserving the objects we now call “heritage” have existed since the Renaissance. Then, for the first time, the Romans recognized the historical and artistic value of the ancient works of their ancestors and even if this acknowledgement was limited to them, without taking into consideration works of other nations, it was nevertheless an important first step in recognizing the existence of the works of the past, not only those of the present (Riegl 1999). The first initiatives for the protection of the cultural heritage appeared in the 15<sup>th</sup> century, among which we mention: the Edict regarding the fines (10 gold coins) for those who throw garbage around the ancient buildings of Navona Square in 1452, the Edict of Pius II of 1462 which prohibits the demolition of ancient buildings in Rome and its surroundings, the Order for the Preservation of Roman Antiquities in Nîmes, issued by Anne de Montmorency in 1548<sup>1</sup>, the decrees issued between 1624 and 1685 which prohibits the export of art objects

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<sup>1</sup> “Passing through that city, I saw great ancient buildings, which the connoisseurs are delighted with and have the feeling of benefiting from the art of architecture, ornaments of Languedoc and splendors of this kingdom, and so that no one in the above-mentioned city might hide, ruin and demolish those antiquities, we ask /.../ all the owners of the above-mentioned ancient houses that they should not demolish the antiquities and that no new building should cover or hide them /.../ without first calling you with the king’s men from the named city, to visit ... “ – Sergiu Nistor [(s.a.): 3].

and unauthorized excavations, the registration of antiquities and archaeological evidence by the Swedish law in 1666, after Gustav II of Sweden had appointed a General Director of Antiquities [Nistor (s.a.)]. The appearance of the *historical monument* category in the 17<sup>th</sup> century is another important step in shaping the future notion of heritage, followed by other important steps such as the separation of the heritage in material and immovable property, the first inventories, the establishment of the first heritage management body in 1790, The Monuments Commission, the first methodical restorations made by Raffael Stern in 1803 at the Arch of Constantine in Rome etc. Alongside restoration and preservation activities, a heritage conservation activity was carried out, less obvious in the beginning but more intense, as people understood their importance for the next generations and the cultural memory of humanity.

Humanity's war experiences of the past during which some of the world's cultural, scientific and artistic works were definitively and irretrievably destroyed or seriously damaged have led several countries to adopt legislation aimed at protecting their cultural heritage against destruction during various armed conflicts. The awareness of the universal value of the works of science, art and culture led to the need to protect such cultural property both in times of peace and of war, not only on the territory of individual states but also all over the world. The value of the cultural property has gone beyond any nationality, becoming common world property. For this reason, people of culture, scientists and artists, with the support of politicians, have decreed and implemented laws to protect such property from the destructive side of the human being and the violent tendencies of human character. Things had reached a point where humanity had to protect its creations, as humanity's creation was in danger of being destroyed by its creator. Since the mankind had suffered the irrecoverable an invaluable loss sometimes of cultural property during its history, and since the idea of a universal common heritage has been accepted by an increasing number of countries, European governments and the US decided to issue legislation on warring countries which would oblige these countries to observe the provisions of such legal acts. This was an attempt to reduce, if not to stop, the damage to national cultural heritage.

### **International Legislation**

One of the first references to the need to protect cultural property in times of war was stipulated in *the General Order No. 100: The Lieber Code*, which is in fact, a set of instructions for the US military's leadership during war. This Code was created by Francis Lieber and was promulgated by President Abraham Lincoln on July 24, 1863 (Lieber: § II, art.34).



The provisions of this document were concerned with the cultural property existing on the territory of the enemy state and referred to the possibility of using when the public service demanded it, the property of the church, hospitals, other charitable institutions, schools, foundations promoting knowledge, academies, observatories, art museums or any other scientific institutions (Lieber: § II, art. 34). It also stipulated the obligation to protect all artwork, libraries, scientific collections or valuable instruments, hospitals, even during siege or bombardment (Lieber: § II, art. 35), banning the sale, private ownership, destruction or damage without reason (Lieber: § II, art. 36), such acts being severely punished (Lieber: § II, art. 37).

On 27 July 1874, at the initiative of Tsar Alexander II of Russia, delegates from 15 European countries met in Brussels to decide on a project for an international agreement on the laws and customs of war, submitted by the Russian government, a project that was adopted with some minor modifications but was not ratified because not all governments accepted it as a binding convention (ICRC<sup>i</sup>). Articles 8 and 17 of this project included instructions referring to a cultural, religious and scientific property that should be regarded as private property, the prosecution for confiscation, destruction or intentional damage being the duty of relevant authorities, as well as the duty of the besieged to use visible, specific signs to mark all cultural, scientific, charitable buildings, as well as historic monuments that were not used for military purposes so that they could be bypassed by bombings or sieges (ICRC<sup>i</sup>: art. 8, 27). This *Declaration from Brussels* is extremely important because it was the first step in codifying the laws of war. Moreover, it led to the *Oxford Manual* on the rules of war on land, prepared by experts from the Institute of International Law and adopted in 1880, with which it formed the basis of the two Hague Conventions in 1899 and 1907 (ICRC<sup>i</sup>: art. 8, 27). It should be noted that along with the protection of other cultural property, this *Declaration* also includes historical monuments, which is particularly important for the further development of international legislation on the protection of movable and immovable cultural heritage.

On July 29, 1899, at *The Hague Peace Conference*, a *Convention* and the *Regulations* on the Laws and Customs of War on Land were adopted, which, as the previous legal documents did, referred to the obligatory character of protecting the cultural property and historical monuments in enemy territories (ICRC<sup>ii</sup>: art. 56). One reason for this conference was “to review the declaration on the laws and customs of war from 1874 by the Conference in Brussels and that has not been ratified yet”, according to a Russian circular letter dated December 30, 1898 (ICRC<sup>ii</sup>). At the second International Peace Conference in The Hague

on October 18, 1907, the documents adopted in 1899 were reviewed, and some minor changes were made, but not to the articles on cultural heritage.

A legislative initiative, this time by an individual and materialized in a treaty, later called a pact, is authored by Nicolas Roerich. Life had him face events that motivated him to fight for the protection of cultural property. As a teenager, he developed a passion for amateur archaeology, and during excavations carried out in northern Russia, he discovered a series of ancient objects of historical value and artistic significance (ROERICH). It was then that he realized for the first time what great power of creation humanity has, but also how destructive and negligent people are with their creations. Later, he visited several historical cities in northern Russia, and following his voyages he informed the authorities about the decay and destruction of many artefacts and asked for the Russian Government's help, but without much result. During World War I and the Russian Revolution of 1917, he only recorded the same situation, made worse by the war (ROERICH). Importantly, Roerich extended the notion of heritage to creative activities, theatres, concert halls, universities, libraries and hospitals. Roerich's suggestions were followed by the writing of a draft treaty to which some international law experts contributed and which was later drawn up at the request of the Roerich Museum in New York (ICRC<sup>iii</sup>). Through this pact, all cultural property and cultural activities of exceptional historical significance were declared neutral, and they would be signalled by a banner on which there was a red circle, having three red points in the middle, joined in the form of a triangle, on a white background, the circle designating the totality of cultures, but also the eternity of time that contained the past, present and future, and the three points in the middle of the circle symbolizing Art, Science and Religion (ROERICH). The Roerich Pact is also known as the Red Cross of Culture (ROERICH). This is the first treaty that covers the protection of cultural property. It includes a preamble and 8 articles (ICR).

Private conferences that recommended the adoption of this Pact by governments were held in Burge in 1931 and 1932 and then in Washington in 1933 (IRC). At the Seventh International Conference of American States held in Montevideo in 1933, a treaty drafted by the Pan-American Union Board of Governors was signed by all members in Washington, on April 15, 1935, in the presence of President Franklin Delano Roosevelt (Roerich). This Treaty was signed by 21 countries (US, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela) (IRC), later joined by other states.



Another legislative initiative regarding the protection of international cultural heritage in time of war was adopted as a convention at The Hague Conference on 14 May 1954. The provisions of this Convention were based on those of the documents adopted at previous conferences in The Hague in 1899 and 1907, as well as on those of the Washington Pact of April 15, 1935.

This Convention (UNESCO 1954) was much broader and included eight chapters: **Chapter I:** *General provisions* (definition, protection, safeguarding, respect for cultural property, occupation, distinctive marking of cultural property and military measures), articles 1–7; **Chapter II:** *Special protection* (granting of special protection; immunity of cultural property under special protection; identification and control; withdrawal of immunity), articles 8–11; **Chapter III:** *Transport of cultural property* (transport under special protection and in urgent cases, immunity from seizure, capture and prize), articles 12 to 14; **Chapter IV:** *Personnel*, article 15; **Chapter V:** *The distinctive emblem* (emblem of the Convention; the use of the emblem), articles 16–17; **Chapter VI:** *Scope of application of the Convention* (application of the Convention, conflicts not of an international character), articles 18–19; **Chapter VII:** *Execution of the Convention* (regulations for the execution, protective powers, conciliation procedure, assistance of UNESCO, special agreements, dissemination of the convention, translations reports, meetings, sanctions), articles 20–28; **Chapter VIII:** *Final provisions* (languages; signature; ratification; accession; entry into force; effective application; territorial extension of the Convention; relation to previous Conventions; denunciation; notifications; revision of the Convention and the regulation for its execution; registration), articles 29–40.

All 8 chapters contain clear provisions concerning the protection of cultural property, the concept of protection including the concepts of safeguarding and respecting cultural property by all signatory states. A visible change is the distinctive marking with which the monuments and institutions considered cultural property were to be signalled according to Article 1, Chapter I. If the emblem of the Roerich Pact was a red circle with three red dots inside on a white background, the distinctive emblem adopted by the Convention, following Article 16, Chapter V, “shall take the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle)” (UNESCO 1954).

## Conclusion

Concerning these international instruments approved in the period of 1854–1954, we can see the importance of this legislative approach, its content, as well as their aim to remove from the area of human destruction the cultural property considered to be the property of world significance – humanity’s world heritage, indeed. Awareness of the importance of this heritage for future generations, of the efforts to preserve, conserve, safeguard, respect and protect the material evidence of humanity’s common past, embodied in national and international laws, is the greatest gain for both world and national cultures

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## O sută de ani de protejare a patrimoniului cultural: Codul Lieber (1854) - Convenția de la Haga (1954)

### Rezumat

Legislația internațională referitoare la protecția moștenirii culturale atât în timp de pace, cât și în timp de război a pornit inițial de la câteva articole inserate în acte legislative privind acțiunile armate ale statelor beligerante, care între timp au devenit legi independente. Într-un secol au fost publicate mai multe tratate și convenții care au stat la baza altor legi internaționale. De o mare importanță pentru această perioadă sunt Codul Lieber (1854), Convențiile Conferinței de la Haga (1899, 1907 și 1954) și Pactul Roerich (1935). Aceste acte normative au contribuit la punerea în aplicare a măsurilor de conservare, de restaurare și de protecție pentru unele valori ale patrimoniului cultural național și internațional considerate a aparține întregii umanități și care trebuie salvate pentru generațiile viitoare, deoarece acestea sunt dovezi ale creativității umane în diferite epoci istorice.

**Cuvinte cheie:** drept internațional, protecție, moștenire, cultură, știință, artă.

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