

THE PROTECTION OF CULTURAL PROPERTY

In our October 1954 issue, we published the text of The Hague Convention for the Protection of Cultural Property in the event of armed conflict, and also the regulations for its execution. These texts were introduced by a study in which a member of the ICRC's staff, Mr. René Jean Wilhelm, explained the significance of the Convention for the Red Cross movement and particularly for the ICRC. The Convention was signed on 14th May 1954 and on the 20th anniversary of that event, Mr. Jean de Breucker, in Revue belge du droit international (Brussels, vol. XI) has compared it with the Geneva Conventions.

He starts, as had Mr Wilhelm, by pointing out how these two treaties are akin: ¹

Article 2 of this Convention—an offspring of the Law of War—states its purpose to be the protection of cultural property, that is to say not of man but of man's work, the product of his mind, his sentiments, his memory, his creative genius and the cultural inheritance of all the peoples of the world. Providing as it does for protection in the event of armed conflict and, especially, for the organization of such protection, the Convention is not only part and parcel of the law intended to regulate war, but of a much more far-reaching law which came into being in 1864 as a result of Henry Dunant's stirring appeal through the Red Cross, namely the law protecting living beings, the law which, five years before the cultural property Convention, fifty-nine state delegations had taken a stage further by drawing up the four Geneva Conventions of 12 August 1949. These Conventions were present in the minds of the fifty-six state delegates who met from 21 April to 14 May 1954 at the Peace Palace in The Hague.

¹ According to Mr. Wilhem: "the new Geneva Conventions considerably encouraged the authors of the Hague Convention for the protection of cultural property".

The author goes on to say:

In fact, the successful outcome to the 1949 Conference, and particularly the adoption of some provisions—such as the applicability of the Conventions in all circumstances, the possibility of their suspension only in the event of the abuse of privilege to harm an enemy, the setting up of specially protected areas, the prohibition of reprisals against protected persons and property, the specification of penal sanctions to be introduced by all parties—had appreciably bolstered the hopes of those who wished to protect works of art by an international law. It is obvious that the law of 12 August 1949 was a direct inspiration to the authors of the later texts drawn up at UNESCO, and to the negotiators in 1954: the Convention of 14 May 1954 reaffirmed and supplemented the patchwork provisions of 1907; it received the means of doing so from the 1949 Geneva Conventions which, through their terminology and the solutions they proposed, also supplied it with further provisions and a sound foundation.

Mr. de Breucker concludes his study with two regrets:

First that the cultural property Convention contains nothing in the nature of article 1 of the four 1949 Conventions which limits military necessity and the behaviour of belligerents by stating: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.” Even though that clause was included by the International Committee in its preliminary draft, it was omitted from the UNESCO draft submitted to the negotiators in 1954.

A second subject for regret is worth considering, namely the lack of zeal, compared with the Geneva Conventions, in defining breaches of these carefully worked out rules. The short general article 28 is a definite commitment which can be invoked whenever anyone is directly or indirectly guilty of a breach, but it is regrettable that, in spite of proposals made to that effect, the conference did not heed the suggestion to give a detailed list of serious breaches and did not attach greater importance to repression of breaches.

This fascinating study concludes:

“The Hague Convention for the Protection of Cultural Property came into force on 7 August 1956. So far sixty-six acts of ratification or accession to the Convention, and fifty-seven to the Protocol, have been

deposited with the UNESCO Director-General. The Convention is binding on the states parties to it and also on the United Nations Emergency Force, in accordance with a resolution passed at the Hague Conference in 1954. It was first applied during the Suez conflict in 1956.

“At that time, as requested by Egypt and Israel, UNESCO sent one of our fellow citizens, Professor Garitte of the University of Louvain, as an expert to the Saint Catherine Monastery in the Sinai to check on the good condition of the monument and its valuable collections.

“The Convention also makes provision for the meeting of state representatives to examine problems of application. Such a meeting took place from 16 to 26 July 1962 at UNESCO headquarters. It did not, however, have any substantial result.

“So far, three States have had cultural property registered for special protection, namely the Holy See, covering the State and City of the Vatican (1960); Austria, one refuge (1967); the Netherlands, six refuges. An attempt to grant special protection to the Angkor Temples (Cambodia) unfortunately failed and all UNESCO was able to do in that region of armed conflict was to send some experts to Phnom Penh.

“After the 1967 Middle-East conflict, the States concerned decided, in accordance with the regulations for the execution of the Convention, to appoint representatives for cultural property; Commissioners General were chosen by agreement from the international list of candidates by the parties in whose territories they were to discharge their mission, and, in default of protecting powers, by a neutral state, Switzerland, in the case in question. In accordance with that procedure, Mr. Karl Brunner (Switzerland) was accredited to Jordan, Lebanon, Egypt and Syria, and Mr. J. Reinik (Netherlands) to Israel. Mr. Brunner was replaced after his death by Mr. de Angelis d'Ossat (Italy); the two Commissioners General are still in office.

“During the non-international conflict which ravaged Nigeria, that country stated that it was unwilling to accept an offer of services from UNESCO as provided for in article 19(3), but it gave the Director General the assurance that the Convention would be respected.

“Article 26(2) requires contracting States to send at least once every four years a report to UNESCO on measures taken pursuant to the Convention. These reports are published and show the interest of governments in applying the Convention. This leads us to mention the extent of the obligations of States in time of peace for the safeguard of cultural property, the repression of breaches, and the dissemination of knowledge of the Convention and the obligations it entails. One resolution adopted by the Conference recommended the constitution of a

national advisory committee in each State. There is always a risk that the Convention will be eroded with the passage of time. No aphorism is more hateful than Machiavelli's: *si vis pacem, para bellum*. But, like Janus, the adage is two faced. The year of 1975, the European Architectural Heritage year, reminded us to safeguard our buildings, an idea which must be extended to include the restoration of architectural sites and to make the buildings which constitute our cultural heritage a part of the activities of contemporary society. A reminder, discreet but insistant, might not be out of place ! Let us continue to hope that even if we may never be able to banish the horrors of war, our efforts under the symbol of the blue and white shield per saltire, will henceforth fit in with the untiring enterprise of the Red Cross to preserve throughout the world the reign of humanity."
