LIMITATIONS IN ENFORCEMENT OF INTERNATIONAL CONVENTIONS: IMPLICATIONS FOR PROTECTION OF MONUMENTS AND SITES

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Introduction

The international community and, in particular, the professionals working in the field of preserving world heritage, have been troubled for some time regarding the appropriate methods for determining international norms to protect world heritage; even when the country (or other entity controlling the territory) within whose boundaries the sites which have been declared world heritage sites are located are not interested in preservation or, perhaps, are interested in destroying the sites as part of an ongoing conflict in the territory.

The need to cope with the difficulties of preserving heritage was not born, as some assume, in the last century. For example, even in ancient Greece, we find in the writings of Pausanias, the well known traveler of the second century, a description of the ancient monuments which he saw on his journeys. Regarding the temple of Hera in Olympia, documented in his writings as being 800 years old, he notes that the pillars of wood in the temple which had rotted had been replaced with new pillars of marble and that only in the temple itself had one of the wooden pillars survived. Archaeological studies have, in fact, proved that the pillars were built in the style of the period in which they were replaced, a detail which can teach us of the Greek's concept of preservation. Another example may be found in the "Rise and Fall of Athens" by Plutarch. Among other things, he writes of Theseus’ ship which was preserved by the Athenians. Its’ wooden beams were replaced one by one until the last, something which made the Greek philosophers debate whether the ship remained the same or whether it had become another boat?

Whereas in the history of Greece, Rome, the Middle Ages and the Renaissance and Baroque periods we find much evidence of the attempt to confront the difficulties of preserving the heritage, including local legislation, it is only in the previous century that we find a real effort to confront these issues in the international arena, with the international community beginning to adopt a series of recommendations, charters and conventions which reached their peak in the adoption of the Convention for the Protection of World Cultural and Nature Heritage – The world Heritage convension, at the 17th General assembly of UNESCO.

Here in Madrid we see the closing of a circle, as to the best of our knowledge, the commencement of the work of the international community in this field began exactly 100 years ago with the initial preparations to phrase what later became the Recommendations of the Madrid Conference (1904), which were adopted at the 6th International Assembly of Architects. These recommendations were the first attempt to establish, at the international level, basic principles for architectural preservation. Even then, the recommendations stressed the importance of minimal intervention in the building to be preserved and the necessity of finding new functionality for historic buildings. However, they also established a number of principles which are no longer accepted in modern preservation, such as the principle of rehabilitating a building which was built in a number of styles exclusively in modern preservation, while at the same time removing or adapting the elements of different periods or styles.

Only 27 years later, within the Recommendations of the Athens Conference (1931), we can find the idea of world heritage and some recognition of the importance of certain monuments to the entire international community raised for the first time. In that same year a local Convention was adopted in Italy (the Carta del restauro Italiana) which reflects the Italian approach to preservation at the local level but its’ importance is much greater, as it established principles which 33 years later formed the foundation for the Venice Convention.

In the past few years it has become more and more clear that the international conventions relating to preservation of sites are, in their current form, a particularly problematic tool for the enforcement of norms of preservation, even for the countries that have signed the Convention. The reasons for this principally arise from the normative system of which the Convention is a part, i.e. the international legal system. The difficulty of enforcement of preservation conventions is not specifically unique to this type of convention and, in practice, it characterizes international law in general, with the exception of international criminal law.

In order to obtain a clearer picture of the problematic situation which has developed, we shall attempt to clarify what exactly is “international law” and what is the place of the conventions within it, as well as proposing to adopt an alternative approach which can more successfully ensure the enforcement of the accepted norms by the professional international community.