Chapter 8  The Protection of the Right to Property in Occupied Territories

1. Introduction

The right to property was accorded the status of a human right as a result of its incorporation in international human rights instruments in the second part of the twentieth century. The right has acquired special importance as part of the freedom of the individual, economic autonomy in modern democratic societies and generally as a significant element for the development of the individual’s personality. Its recognition as a separate human right and its legal protection on an international level was the result of gradual efforts. It is still in the process of further legal elaboration, as regards both its scope and effect, by legal theory and jurisprudence.

About a hundred years ago, when basic norms of international law, especially those concerning human rights, were either non-existent or in an embryonic state, human rights did not generally enjoy legal protection. Even more distant from reality was the legal protection of human rights in territories under military occupation. People in such territories were in all respects at the mercy of the occupant power. In those times serious crimes against humanity such as genocide were not even shocking the conscience of mankind into some type of reaction aimed at repressing them. It was only in 1915 that Britain, France and Russia denounced the genocide of Armenians as constituting a “crime against civilization and humanity”.

However, paradoxical though it may seem, it is in the context of armed hostilities that we first find the development of principles and rules concerning protection of individuals in international law. This

---

1 See Marcus-Helmons, “Le Droit de Propriété est-il un droit fondamental au sens de la Convention européenne des Droits de l’Homme?”, in Les nouveaux Droits de L’Homme en Europe (Bruxelles European Lawyers’ Union 1999) 193 paras. 207-8; Meyer-Bisch 194 of the same article: “L’homme tire une partie de son identité de ce qu’il s’est approprié”.
may be due to the special need to protect individuals which is felt more intensively at times of excessive suffering of human beings as a result of such hostilities.

The Greeks and Romans customarily observed certain humanitarian principles which have become fundamental rules of the contemporary laws of war. In feudal times a variety of military codes were promulgated listing acts forbidden during war. A significant event in the history of our topic is the trial and execution in 1474 of Peter Hagenbach in that while administering occupied territories he had indulged in murder, rape, and confiscation of private property. This event later influenced the drafting of the Charter of London of 1945 which set up the Nuremberg Court. In the Swedish Articles of War of 1621 there are provisions for the protection of civilians such as the prohibition of assaults on women, theft, and pillage. The so called Lieber Code adopted in 1863 during the American Civil War prescribed among other things that “the unarmed citizen is to be spared in person, property and honour ... The United States acknowledge and protect in ... countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants and the sacredness of domestic relations. Offences to the contrary will be rigorously punished.”

Reference should also be made to the Project of an International Declaration concerning the Laws and Customs of War produced in 1874 at the initiative of Czar Alexander II which, inter alia, laid down that “family honour and rights, and the lives and property of persons ... must be respected.” Equally important, from the point of view of the development of humanitarian law in armed conflict, is the Oxford Manual

---

7 Green (n. 5) 440.