



ICRC

ADVISORY SERVICE
ON INTERNATIONAL HUMANITARIAN LAW

Practical Advice
for the
Protection of Cultural Property
in the Event of Armed Conflict

CONTENTS

- I. **Definition of cultural property protected in the event of armed conflict**
- II. **Instruments of international humanitarian law which protect cultural property in the event of armed conflict**
- III. **Overview of the protection provided by these instruments**
- IV. **The Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols**
 1. General protection
 2. Special protection
 3. National measures of implementation
 - 3.1 Identification and inventories
 - 3.2 Distinctive emblems
 - 3.3 Identity cards
 - 3.4 International Register of Cultural Property under Special Protection
 - 3.5 Dissemination
 - 3.6 Penal sanctions
 4. During hostilities
 5. Monitoring the application of the Convention
- V. **The Hague Protocol of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict**
 1. During hostilities
 2. After hostilities
- VI. **Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999**
 1. Enhanced protection
 2. National measures of implementation

- 2.1 Identification and safeguarding
- 2.2 The granting of enhanced protection
- 2.3 Dissemination
- 2.4 Penal and administrative sanctions
- 3. During hostilities
- 4. After hostilities
- 5. New institutions established by the 1999 Protocol
 - 5.1. Committee for the Protection of Cultural Property in the Event of Armed Conflict
 - 5.2. Fund for the Protection of Cultural Property in the Event of Armed Conflict

VII. Other treaties of international humanitarian law which protect cultural property

- 1. 1977 Protocols additional to the 1949 Geneva Conventions
 - 1.1 National measures of implementation
 - 1.1.1 Identification
 - 1.1.2 Dissemination
 - 1.1.3 Penal sanctions
 - 1.2 During hostilities
 - 1.3 After hostilities
- 2. Statute of the International Criminal Court (ICC)

VIII. Advantages deriving from participation in the treaties

IX. Financial consequences of participation in the treaties

X. Use of existing bodies and structures

XI. How to ratify these treaties and the role of the ICRC Advisory Service on International Humanitarian Law

- 1. How to ratify these treaties
- 2. ICRC Advisory Service on International Humanitarian Law

I. Definition of cultural property protected in the event of armed conflict

The 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* defines cultural property as:

- ♦ movable or immovable property of great importance to the cultural heritage of every people, such as:
 - > monuments of architecture, art or history, whether religious or secular;
 - > archaeological sites, groups of buildings which are, as a whole, of historical or artistic interest;
 - > works of art;
 - > manuscripts, books, and other objects of artistic, historical or archaeological interest;
 - > scientific collections and important collections of books or archives;
 - > reproductions of the above property;
- ♦ buildings whose main and effective purpose is to preserve or exhibit movable cultural property, such as:
 - > museums;
 - > large libraries;
 - > depositories of archives;
 - > refuges intended to shelter other cultural property in the event of armed conflict;
- ♦ centres containing a large amount of cultural property, known as "centres containing monuments".

This property is considered to be cultural property irrespective of its origin or ownership.

Although the States Parties do not necessarily have to adopt it at the national level, this definition should nevertheless help promote understanding of the scope of the concept of cultural property, since it lists typical examples of cultural property worthy of protection. Historical and contemporary audio-visual documents of the past thirty years, for example, could also be covered by a definition along those lines.

Other treaties of international law which are applicable in peacetime and in armed conflict situations also protect cultural property and the world heritage. They contain broader definitions of cultural property, namely:

- ♦ property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science (*Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in Paris on 14 November 1970 and entering into force on 24 April 1972*);
- ♦ monuments (architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science), groups of buildings (groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science), and sites (works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view) (*Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted by UNESCO on 16 November 1972*).

Cultural property must be protected at all times. For this purpose governments call on means of identification and preservation and on specialized staff in charge of classifying and safeguarding that property. They must take all the required preparatory measures, in time of peace, so as to be in a position to protect cultural property in the event of armed conflict. There are also various organizations, institutions and centres whose task is to support the efforts made by national authorities to preserve the national heritage. The protection of cultural property in the event of armed conflict is primarily a matter of establishing the necessary links between the civil and military protection systems and the various bodies concerned, in order to ensure that the specific rules intended to be applied during armed conflict are known and observed.

II. Instruments of international humanitarian law which protect cultural property in the event of armed conflict

The main treaty of international humanitarian law on the protection of cultural property is:

- ♦ the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, including the Regulations for the Execution of that Convention, and its 1954 and 1999 Protocols (*hereinafter referred to as the 1954 Hague Convention and Protocols*).

Other instruments also contain provisions relating to the protection of cultural property during armed conflict, in particular:

- ♦ 1977 Protocol I (international armed conflicts) and 1977 Protocol II (non-international armed conflicts) additional to the Geneva Conventions of 1949 for the protection of war victims (*hereinafter referred to as the Additional Protocols*); and
- ♦ the 1998 Rome Statute of the International Criminal Court (*hereinafter referred to as the Rome Statute*).

The provisions in these instruments supplement those in the Regulations respecting the Laws and Customs of War on Land, which are annexed to the Hague Convention of 18 October 1907 (Convention No. IV). They contain fundamental principles which are recognized as being principles of customary law. Article 27 of the Regulations, in particular, stipulates that “*all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, (...) provided they are not being used at the time for military purposes. (...) It is the duty of the besieged to indicate the presence of such buildings (...) by distinctive and visible signs, which shall be notified (...) beforehand*”.

III. Overview of the protection provided by these instruments

The 1954 Hague Convention is the first universal instrument establishing a system for the protection of cultural property in the event of armed conflict. It remains the cornerstone of the law in this field to this day. The other treaties listed above confirm the principles it lays down, extend its scope or enhance the protection system it establishes.

The 1954 Protocol thus provides for a system of protection specifically adapted to situations in which the territory of one State is occupied by another State.

Two decades later it was considered advisable to include in the Additional Protocols a provision relating to the protection of cultural property in periods of international and non-international armed conflict; this protection complements the immunity to which all civilian property is entitled. The relevant article in each Protocol is short and limited to the essential points, i.e. it prohibits the parties from making military objectives of cultural property and from committing hostile acts against it. Under Additional Protocol I, applicable in international armed conflicts, the latter offence can constitute a war crime. The purpose of these provisions is not to revise the existing instruments but to confirm that the rules for the protection of cultural property in situations of armed conflict are an integral part of the law governing the conduct of hostilities. These new provisions make it clear that should there be any contradiction with the rules of the 1954 Hague Convention, the latter rules apply, provided of course that the parties concerned are bound by that Convention.

The Rome Statute is connected with our subject, since it stipulates that the future International Criminal Court will have jurisdiction over persons presumed to have intentionally directed attacks, in an international or non-international armed conflict, against civilian objects or *"buildings dedicated to religion, education, art, science or charitable purposes, historic monuments [...] provided they are not military objectives"*.

Finally, the 1999 Protocol to the 1954 Hague Convention enables the States party to that Convention to supplement and reinforce the protection system established in 1954. The Second Protocol thus clarifies the concepts of safeguarding and respect for cultural property which form the core of the Convention, lays down new precautions in attack and against the effects of attack, institutes a system of enhanced protection for property of the greatest importance for humanity, makes provision for individual criminal responsibility and establishes new institutions better able to monitor and supervise application of the rules protecting cultural property.

IV. The Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols

The 1954 Hague Convention provides for a system of general and special protection of cultural property. It is supplemented by Regulations for its execution (*hereinafter referred to as the Regulations*), which form an integral part of the Convention and whose purpose is to determine the practical measures through which observance of the protection recognized by the Convention can be ensured. These instruments apply in situations of international armed conflict (Art. 18). In the event of non-international armed conflict within the territory of a State Party to the Convention, “... *each Party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property*”; the other provisions can be brought into force by means of special agreements (Art. 19).

1. General protection

The general principle of the protection of cultural property in armed conflicts is based on the obligation to safeguard and respect that property (Art. 2).

The safeguarding of cultural property comprises all preparatory measures to be taken in time of peace in order to provide the best possible material conditions for its protection (Art. 3).

Respect for cultural property implies refraining from committing any hostile act against it, and prohibiting, preventing and if necessary stopping any form of theft, pillage or misappropriation and any acts of vandalism. It also means that use of that property, of the appliances in use for its protection, or of its immediate surroundings for military purposes or to support military action is prohibited (Art. 4).

“Imperative military necessity” is the only grounds on which the obligation to respect cultural property can be waived. Indeed, a party to the conflict is bound by that obligation even when the cultural property is being used for military purposes by the opposing party,

except as imperatively required by military necessity. This follows from the fundamental postulate of humanitarian law that a balance must be struck between military necessity and the principle of humanity.

Acts of reprisal directed against cultural property are also prohibited; this prohibition does not allow of any exception whatsoever (Art. 4, para. 4) and is reiterated in Article 53(c) of Additional Protocol I.

It must be stressed that the instruments of international humanitarian law impose the responsibility to protect cultural property on both parties to the conflict, i.e. both the party which controls the cultural property and the opposing party.

2. Special protection

The categories of property placed under special protection are more limited and the conditions for benefiting from that status more difficult to meet. The protection granted is therefore greater and no exception is made for military necessity.

The placing of cultural property under special protection grants that property immunity against any act of hostility and any use, including that of its surroundings, for military purposes (Art. 9). Only a “*limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance*” may be placed under special protection, provided that they fulfil the following conditions (Art. 8):

- ♦ they must be situated at an adequate distance from any large industrial centre or from any important military objective, and
- ♦ they must not be used for military purposes.

Should any of this property be situated near a military objective, it could nevertheless be placed under special protection if the State Party “*undertakes to make no use of the objective in the event of armed conflict...*” (Art. 8, para. 5), for example by diverting all traffic from a port, a railway station or an airport. In that event, any such diversion must be prepared in time of peace.

When a party to a conflict uses property under special protection for unauthorized purposes, the opposing party is released from the obligation to ensure the immunity of the property concerned so long as this violation persists, after requesting, where possible, its cessation (Art. 11, para. 1). Apart from this situation, immunity can be withdrawn only in “*exceptional cases of unavoidable military necessity and only for such time as that necessity continues*” (Art. 11, para. 2).

Special protection is granted only to property which is entered in the International Register of Cultural Property under Special Protection (*Section 3.4* below).

3. National measures of implementation

The measures which must be taken on ratification of the Convention to ensure that cultural property is safeguarded and respected include those relating to identification and inventories (*Section 3.1* below), the emblems (*Section 3.2*), identity cards (*Section 3.3*), entry in the International Register of Property under Special Protection (*Section 3.4*), dissemination (*Section 3.5*) and penal sanctions (*Section 3.6*).

3.1 Identification and inventories

Cultural property should be identified and listed. The following measures may be taken to do so:

- ♦ **identification:** consists in deciding to consider an object, building or site to be cultural property worthy of protection. This protection may come within the responsibility of various national authorities, for example the federal or central authorities in the case of cultural property of international and national interest; the responsibility for cultural property of regional or local interest may be delegated to local authorities. The competent authority or authorities must be determined in each case;
- ♦ **inventory:** listing all protected property and placing these lists at the disposal of the bodies concerned by the protection of cultural property, i.e. civilian or military authorities, specialized organizations or other interested institutions.

These inventories can contain the following **information**:

- ♦ general details of the property;
- ♦ legal information concerning its registration in State registers;
- ♦ details of the owner;
- ♦ the use for which the property is intended (public, educational, religious, etc.);
- ♦ nature of the property's value (archaeological, historical, artistic, etc.);
- ♦ details of its origin (construction, year, period, style, etc.);
- ♦ measurements, materials and techniques used;
- ♦ description of the property;
- ♦ details of archivally stored graphic data on the property: documents, photographs, model(s), audio-visual information, etc.

It would be advisable to have back-up documentation in order to ensure that, in the event of damage, the property can be restored or rebuilt. Depending on the type of property concerned, various methods can be used to compile reference documentation:

- ♦ descriptions in writing, drawings, photographs, plans and diagrams, copies, reproductions, casts or digital images;
- ♦ microfilms or photogrammetrical survey records, particularly for storing the above information.

Inventories of cultural property are useful not only in armed conflict situations but also in natural disasters; they are one of the most effective means of protecting works of art from theft.

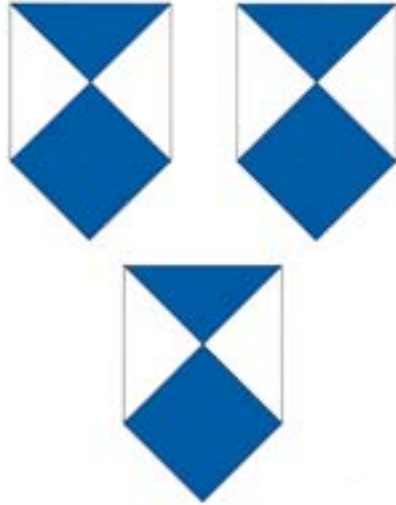
Furthermore, places which may be used as refuges must be identified or, where necessary, constructed.

3.2 Distinctive emblems

Cultural property may (in the case of property under general protection, Art. 6) or must (cultural property under special protection, Art. 10) be marked by an emblem. The distinctive emblems of cultural property are as follows:



GENERAL PROTECTION



SPECIAL PROTECTION

The distinctive emblem may not be placed on any immovable cultural property unless an authorization duly dated and signed by the competent national authority is displayed at the same time (Art. 17).

Although the 1954 Hague Convention stipulates that the emblem shall be royal blue (Art. 16, para. 1), a lighter shade of blue ensures greater visibility for the purposes of protection in armed conflicts.

3.3 Identity cards

Persons responsible for protecting cultural property carry a special identity card bearing the distinctive emblem. This card mentions the surname and first names, date of birth, title or rank, and function of the person concerned. It bears the photograph of the holder as well as his/her signature or fingerprints or both. It also bears the stamp of the competent authorities. A specimen of the card chosen must be transmitted to the other High Contracting Parties for their information (Regulations, Art. 21, para. 2).

The model identity card proposed in the Annex to the Regulations is as follows:

IDENTITY CARD
for personnel engaged in the
protection of cultural property

Surname

First names

Date of birth

Title or rank

Function

is the bearer of this card under the terms
of the Convention of The Hague, dated
14 May 1954, for the Protection of Cultural
Property in the event of Armed Conflict.

Date of issue Number of card
.....

Front

Photo of bearer

Signature of bearer or
finger-prints or both

Embossed
stamp
of authority
issuing
card

Height	Eyes	Hair
--------	------	------

Other distinguishing marks

.....

.....

.....

.....

.....

.....

Reverse side

3.4 International Register of Cultural Property under Special Protection

Refuges, centres containing monuments and other immovable property under special protection must be entered in the International Register of Cultural Property under Special Protection, which is maintained by the Director-General of UNESCO.

In order to obtain special protection, the national authorities must send UNESCO's Secretariat descriptions of its location and certify that it complies with the established criteria for enjoying special protection (Regulations, Art. 13).

The request for registration must be accompanied by a precise geographical description of the site in question, containing, for example:

- ♦ details of the boundaries of the centres containing monuments, and of the principal cultural property preserved in each centre;

- ♦ the approximate distance of the site from the head office of the nearest administrative unit;
- ♦ a topographical map indicating the location, preferably on a scale of 1:25,000 or 1:50,000.

States requesting special protection are advised to consult with the UNESCO Secretariat on the conditions for inclusion on the Register before filing the request, so as to ensure that it contains all the information required.

3.5 Dissemination

In order to spread knowledge of these instruments, it is essential that the text of the Convention and the Regulations for its execution be **translated** into the national language(s). The official languages of the Convention and the 1954 Protocol are English, French, Spanish and Russian. Official translations into other languages must be sent to the Director-General of UNESCO for communication to the other States Parties (Art. 26). The Second Protocol exists in English, French, Spanish, Russian, Chinese and Arabic (Art. 40).

The obligations deriving from the Convention and its Regulations must be made known as widely as possible. To do so:

- ♦ the international rules and national obligations deriving from these instruments must be incorporated in **military regulations or instructions**, and a spirit of respect for the culture and cultural property of all peoples must be fostered among the members of the armed forces in time of peace (Arts. 7 and 25 of the Convention);
- ♦ the study of these rules and obligations must be extended so that the principles contained in these instruments are made known to the **whole population** and especially to personnel engaged in the protection of cultural property (Art. 25 of the Convention).

3.6 Penal sanctions

For these rules to be respected, it is essential that violations thereof be penalized. To that end, national **penal legislation** must provide means of prosecuting and imposing sanctions on persons who have committed breaches of the 1954 Hague Convention or have ordered such breaches to be committed, no matter what their nationality (Art. 28).

