



**ICRC**

**ADVISORY SERVICE**

ON INTERNATIONAL HUMANITARIAN LAW

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



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## **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



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).



#### 4. During hostilities

The parties to conflict must:

- ♦ refrain from using cultural property and its immediate surroundings or the appliances in use for its protection for purposes which are likely to expose it to destruction or damage, except in the event of imperative military necessity (Art. 4, paras. 1 and 2);
- ♦ refrain from any act of hostility directed against such property, except in the event of imperative military necessity (*idem*);
- ♦ prohibit, prevent and put a stop to any form of theft, pillage or misappropriation and any acts of vandalism (Art. 4, para. 3);
- ♦ refrain from requisitioning cultural property situated in the territory of another State party (*idem*);
- ♦ refrain from any act directed by way of reprisals against cultural property (Art. 4, para. 4);
- ♦ refrain from committing any act of hostility against and using cultural property under special protection or its surroundings for military purposes (Art. 9).

In the event of total or partial occupation of the territory of another State party, the Occupying Power must also:

- ♦ support the competent national authorities of the occupied territory in safeguarding and preserving cultural property (Art. 5, para. 1);
- ♦ take the most necessary measures of preservation in close cooperation with the competent national authorities whenever those authorities are unable to do so (Art. 5, para. 2);
- ♦ appoint a special representative for cultural property situated in the occupied territory (Regulations, Art. 2).

With regard to **distinctive marking**, the distinctive emblem may, whenever considered advisable, be placed on cultural property under general protection in order to facilitate its recognition (Art. 6); it is obligatory, however, for cultural property under special protection to be marked with the distinctive emblem (Art. 10). In these cases:

- ♦ it can be displayed on flags and armlets, painted on an object or represented in any other appropriate form (Regulations, Art. 20, para. 1);
- ♦ in the event of armed conflict, it must be placed on transport vehicles so as to be clearly visible in daylight from the air as well as from the ground, and in other cases so as to be visible from the ground (Regulations, Art. 20, para. 2):
  - at regular intervals sufficient to indicate clearly the perimeter of the centre containing monuments under special protection;
  - at the entrance to other immovable cultural property under special protection.

It should be remembered that in the case of immovable cultural property, the distinctive emblem must be accompanied by the authorization of the competent national authority (*Section 3.2*).

Other obligations comprise:

- ♦ the commitment to open property under special protection to international control (Art. 10);
- ♦ the possibility for cultural property under special protection to be transported by duly identified personnel and vehicles bearing the protective emblem and identity cards (Arts. 12-14; Regulations, Arts. 17-19);
- ♦ the obligation to allow personnel engaged in the protection of cultural property, if captured, to continue to carry out their duties whenever the property for which they are responsible has also fallen into the hands of the opposing party (Art. 15).

## 5. Monitoring the application of the Convention

**Qualified personnel** must be trained to ensure respect for cultural property and to cooperate with the civilian authorities in charge of its protection.

The parties in conflict must appoint **Protecting Powers** responsible for ensuring that humanitarian law is applied and for safeguarding their interests during the conflict. In order to give cultural property the

best possible protection, the Protecting Powers can appoint delegates for that purpose. These delegates can take note of and investigate violations, make representations to secure the cessation thereof and also notify the Commissioner-General of such violations (Regulations, Arts. 3 and 5).

A **Commissioner-General for Cultural Property** must also be appointed. This person is appointed by joint agreement between the parties to the conflict and is chosen from the international list of persons qualified to carry out this function (Regulations, Art. 4).

The Commissioner-General:

- ♦ can order an investigation or conduct it himself (Regulations, Art. 6, para. 3, and Art. 7);
- ♦ makes any representations he deems useful for the application of the Convention (Regulations, Art. 6, para. 4);
- ♦ reports to the parties concerned and to the Director-General of UNESCO (Regulations, Art. 6, para. 5);
- ♦ exercises certain functions of the Protecting Power (Regulations, Art. 6, para. 6).

However, in view of the difficulties encountered in the past in appointing a Commissioner-General, the Director-General's more recent practice has been to use the services of his personal representatives to conduct diplomatic negotiations between the States concerned with a view to enhancing the protection of cultural property.

The new intergovernmental committee established by the Second Protocol, whose functions are described in detail in section 6.5, will have extensive authority to administrate the Protocol. It can therefore help monitor application of the Convention by the States Parties since many of the obligations arising from the Convention and the Protocol overlap.

## **V. The Hague Protocol of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict**

The purpose of this instrument is to prevent the exportation of cultural property from a territory which is occupied partially or entirely by a State party to the Convention.

### **1. During hostilities**

**In the event of occupation** of the territory of another State Party, it is the duty of the Occupying Power (Art. I, paras. 1 and 2):

- ♦ to prevent the exportation of cultural property from the occupied territory;
- ♦ to take into its custody any such property which is imported into its territory from the occupied territory.

### **2. After hostilities**

**At the end of the occupation**, that State must (Art. I, paras. 3 and 4):

- ♦ return any cultural property illegally exported from the occupied State and refrain from retaining it as war reparations;
- ♦ pay an indemnity to the holders in good faith of any such property that must be returned.

A third State which has agreed to receive cultural property during an armed conflict must return that property to the competent authorities of the territory from which it came (Art. II).

## **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**

This Protocol, which will enter into force when twenty States have ratified it, applies to situations of international and non-international armed conflict (Arts. 3 and 22). It supplements the 1954 Hague Convention with regard to relations between the Parties, in particular those concerning respect for cultural property and the conduct of hostilities, through measures to reinforce their implementation.

The Protocol creates a new category of protection — that of **enhanced protection** (*Section 1* below), intended for cultural property which is of the greatest importance for humanity and is not used for military purposes. It furthermore defines the respective sanctions for serious violations committed against cultural property and specifies the conditions in which individual criminal responsibility is incurred (*Section 2*). Lastly, it establishes a 12-member intergovernmental committee to monitor and supervise implementation of the Convention and the Second Protocol thereto (*Section 5*).

### **1. Enhanced protection**

Cultural property may be placed under **enhanced protection** provided that it meets the following three conditions (Art. 10):

- ♦ it is cultural heritage of the greatest importance for humanity;
- ♦ it is protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection;
- ♦ it is not used for military purposes or to shield military sites, and a declaration has been made by the party which has control over the cultural property confirming that it will not be so used.

Where cultural property has been granted both special protection under the 1954 Hague Convention and enhanced protection, only the

provisions of enhanced protection apply between the States applying the Protocol (Art. 4).

## **2. National measures of implementation**

The Second Protocol contains a number of obligations which the States must consider and if necessary fulfil as soon as they ratify it; these include measures relating to identification and safeguarding of cultural property (*Section 2.1* below), the granting of enhanced protection (*Section 2.2*), dissemination (*Section 2.3*); and penal and administrative sanctions (*Section 2.4*).

### **2.1 Identification and safeguarding**

These consist of (Art. 5):

- ♦ preparing inventories of cultural property;
- ♦ planning emergency measures for protection of the property against fire or structural collapse;
- ♦ preparing for the removal of movable cultural property or the provision for adequate *in situ* protection of such property;
- ♦ designating competent authorities responsible for the safeguarding of cultural property.

### **2.2 The granting of enhanced protection**

For property to have this protection, the authorities of the State in which it is situated must submit a request for it to be included in the List of Cultural Property under Enhanced Protection (Art. 11). This request must contain all the information needed to show that the property fulfils the conditions laid down in Article 10. The decision to enter it in the List is taken by a four-fifths majority of the Committee for the Protection of Cultural Property in the Event of Armed Conflict (Art. 27), which can also suspend or cancel enhanced protection (Art. 14).

The parties must ensure the immunity of cultural property placed under enhanced protection by refraining (Art. 12):

- ♦ from making such property the object of attack;
- ♦ from using such property or its immediate surroundings in support of military action.

Enhanced protection is lost (Art. 13):

- ♦ on the Committee's decision, if the property no longer meets any one of the criteria entitling it to this protection or if a party to a conflict violates the immunity of the property under enhanced protection (Art. 14);
- ♦ if, and for as long as, the property has by its use become a military objective, but only in the limited circumstances described in the subsequent text of Article 13 (precautions to be taken in attack, requirements of immediate self-defence, etc.).

## 2.3 Dissemination

**Translation** of the text of the Second Protocol into the national language(s) is an integral part of its dissemination.

Examples of concrete measures to be adopted both in time of peace and in time of armed conflict in order to meet the obligations of the States Parties regarding dissemination are as follows (Art. 30):

- ♦ the organization of **educational and information programmes** to strengthen appreciation and respect for cultural property by their entire population;
- ♦ the requirement that the military or civilian authorities who assume responsibilities with respect to the application of the Protocol in the event of armed conflict must be **fully acquainted** with the text thereof.

In order to fulfil the latter obligation, the States Parties must, as appropriate:

- ♦ incorporate guidelines and instructions for the protection of cultural property in their military regulations;
- ♦ develop and implement, in cooperation with UNESCO and relevant governmental and non-governmental organizations, peacetime training and educational programmes;

- ♦ communicate to one another, through the Director-General of UNESCO, information on the laws, administrative provisions and measures taken under the foregoing two points;
- ♦ communicate to one another as soon as possible the laws and administrative provisions adopted to ensure the application of the Protocol.

## 2.4 Penal and administrative sanctions

The States undertake to adopt the necessary measures with regard to **the determination of criminal responsibility, jurisdiction, extradition and mutual legal assistance**.

To do so, each State must take the necessary steps to establish the following offences as **criminal offences** under its domestic law and to make such offences punishable by appropriate penalties when they are committed intentionally and in violation of the Convention or of the Protocol (Art. 15):

- ♦ making cultural property under enhanced protection the object of attack;
- ♦ using cultural property under enhanced protection or its immediate surroundings in support of military action;
- ♦ extensive destruction or appropriation of protected cultural property;
- ♦ making cultural property protected under the Convention or the Protocol the object of attack;
- ♦ theft, pillage or misappropriation of cultural property protected under the Convention or acts of vandalism directed against that property.

All offences come under the **jurisdiction** of the State in which the offence was committed or the State of which the alleged offender is a national (Art. 16, para. 1 (a) and (b)). In the case of the first three offences, the States also have jurisdiction when the alleged offender is present on their territory (Art. 16, para. 1(c)). However, the Protocol clearly indicates that the nationals of States which are not party thereto do not incur individual criminal responsibility by virtue of the



Protocol, and that the Protocol does not impose an obligation to establish jurisdiction over such persons (Art. 16, para. 2(b)).

Furthermore, the States are required to **prosecute or extradite** any person accused of committing offences against property under enhanced protection or of having caused extensive destruction of cultural property (Art. 18). Provision is also made for general obligations with regard to mutual legal assistance, including, for example, assistance in connection with investigations, extradition or the obtaining of evidence (Art. 19).

In addition to the penal sanctions for which provision is made in the Convention (Art. 28), the Parties to the Second Protocol must adopt the necessary legislative, administrative or disciplinary measures to **terminate** or to impose sanctions on the following other violations when they are committed intentionally (Art. 21):

- ♦ any use of cultural property in violation of the Convention or the Protocol;
- ♦ any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or the Protocol.

### 3. During hostilities

The Second Protocol seeks to specify the scope of the imperative military necessity upon which a waiver of the rules guaranteeing respect for cultural property (Art. 4 of the Convention) can be based (Art. 6).

Thus a waiver on the basis of “imperative military necessity” may only be invoked to direct an act of hostility against cultural property when and for as long as the following conditions are fulfilled (Art. 6(a)):

- ♦ that cultural property has, by its function, been made into a military objective; and
- ♦ there is no feasible alternative available to obtain a similar military advantage to that afforded by directing an act of hostility against that objective.

With regard to use of that property for military purposes, “imperative military necessity” can serve as a justification only when and for as long as no other method is feasible for obtaining a similar military advantage (Art. 6(b)).

The decision to invoke imperative military necessity can only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise (Art. 6(c)).

**Advance warning** must be given whenever circumstances permit (Art.6(d)).

Furthermore, the following **precautionary measures** must be taken in order to minimize any possibility of attack directed against cultural property or the effects of such attacks (Arts. 7 and 8):

- ♦ everything feasible must be done to *verify* that the objectives to be attacked are not cultural property;
- ♦ all feasible precautions must be taken in the *choice of means and methods of attack* with a view to avoiding, and in any event to minimizing, incidental damage to cultural property;
- ♦ the parties to the conflict must refrain from launching any attack which may be expected to cause *incidental* damage to cultural property which would be *excessive* in relation to the concrete and direct military advantage anticipated;
- ♦ an attack must be cancelled or suspended if it becomes apparent that the objective is protected cultural property and that the attack may be expected to cause the damage described above;
- ♦ movable cultural property must be removed from the vicinity of military objectives or *adequate in situ protection* must be provided;
- ♦ the parties to the conflict must avoid locating military objectives near cultural property.

In the event of **occupation**, the Occupying Power must prohibit and prevent any form of illicit transfer of cultural property from the occupied territory, any archaeological excavation which is not strictly required to safeguard, record or preserve cultural property, and any

alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence (Art. 9).

#### **4. After hostilities**

No provision relating to individual criminal responsibility affects the responsibility of the States under international law, including the duty to provide reparation (Art. 38).

#### **5. New institutions established by the 1999 Protocol**

The 1999 Protocol makes provision for two new institutions, the Committee for the Protection of Cultural Property in the Event of Armed Conflict (*Section 5.1* below) and the Fund for the Protection of Cultural Property in the Event of Armed Conflict (*Section 5.2*). These institutions will be constituted when the Protocol enters into force.

##### **5.1 Committee for the Protection of Cultural Property in the Event of Armed Conflict**

The Committee will be composed of twelve Parties elected by the Meeting of the Parties according to a system of equitable representation of the different regions and cultures of the world, care being taken to ensure that the Committee as a whole contains adequate expertise with regard to cultural heritage, defence and international law (Art. 24).

The functions of the Committee are *inter alia* (Art. 27):

- ♦ to grant, suspend or cancel enhanced protection for cultural property;
- ♦ to establish, maintain and promote the List of Cultural Property under Enhanced Protection;
- ♦ to monitor and supervise the implementation of the Protocol; and
- ♦ to consider and comment on the reports on the implementation of the Protocol submitted to it by the Parties every four years.

A State Party to the Protocol may request the Committee to provide (Art. 32):

- ♦ international assistance for cultural property under enhanced protection, and
- ♦ assistance with respect to the preparation, development or implementation of the laws, administrative provisions and measures for the enhanced protection of cultural property pursuant to Article 10, paragraph (b).

## 5.2 Fund for the Protection of Cultural Property in the Event of Armed Conflict

The Fund will constitute a trust fund, in conformity with the financial regulations of UNESCO (Art. 29, para. 2). Its resources will consist of (para. 4):

- ♦ voluntary contributions made by the Parties;
- ♦ contributions, gifts or bequests made by:
  - other States;
  - UNESCO or other organizations of the United Nations system;
  - other intergovernmental or non-governmental organizations; and
  - public or private bodies or individuals;
- ♦ any interest accruing on the Fund's resources;
- ♦ the funds raised by collections and receipts from events organized for the benefit of the Fund; and
- ♦ all other resources authorized by the guidelines applicable to the Fund.

Disbursements from the Fund will be used only for such purposes as the Committee decides in accordance with the guidelines provided by the Meeting of the Parties, with a view to granting financial assistance primarily in support of:

- ♦ preparatory measures to be taken in peacetime; and
- ♦ emergency, provisional or other measures to protect cultural property during armed conflicts or of recovery after the end of hostilities.

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

Other treaties of international humanitarian law contain provisions relating to the protection of cultural property in the event of armed conflict. These are 1977 Protocols I and II additional to the 1949 Geneva Conventions for the protection of war victims (*Section 1* below) and the Statute of the International Criminal Court (*Section 2*).

### 1. 1977 Protocols additional to the 1949 Geneva Conventions

Following the example of general protection of property of a civilian nature and the prohibition of attacks and reprisals against such property, **Protocol I** (which is applicable in situations of international armed conflict) stipulates in Article 53 that:

*“Without prejudice to the provisions of the Hague Convention (...) and of other relevant international instruments, it is prohibited:*

- a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;*
- b) to use such objects in support of the military effort;*
- c) to make such objects the object of reprisals”.*

Article 38 of Protocol I lays down that *“it is (...) also prohibited to misuse deliberately in an armed conflict (...) the protective emblem of cultural property”*.

As the logical corollary to these prohibitions, Article 85, paragraph 4, qualifies the following act as a grave breach and thus regards it as a war crime (Art. 85, para. 5), whenever it is committed wilfully and in violation of the Protocol:

- “d) making the clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of*

*Article 53, sub-paragraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives.”*

Thus, for an act to be considered a war crime according to this provision:

- ♦ the property must enjoy special protection by virtue of a special arrangement; for example, it must be entered in the lists provided for by the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage or by the 1999 Protocol to the Hague Convention of 1954;
- ♦ the attack must result in extensive destruction of this property;
- ♦ the property must not have been used in support of the military effort of the opposing party, as stipulated in Article 53 quoted above;
- ♦ the property must not be situated in the immediate proximity of military objectives;
- ♦ the attack must be deliberate.

It is when all of these factors are combined that the act constitutes a war crime giving rise to the obligation for all States Parties to repress it, irrespective of where it has been committed and of the nationality of its perpetrator, i.e. on the basis of the principle of universal jurisdiction.

Protocol II, applicable in situations of non-international armed conflict, protects cultural property in those situations. Article 16 stipulates that, without prejudice to other international obligations, *“it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort”*. Conversely, this instrument does not contain any provisions relating to the obligation to impose penal sanctions on the violation of this provision, nor does it qualify such an act as a war crime.

## 1.1 National measures of implementation

The measures to be taken to implement this protection also relate to identification (*Section 1.1.1*), dissemination (*Section 1.1.2*) and penal sanctions (*Section 1.1.3*).

### *1.1.1 Identification*

The Parties should conclude special arrangements in order to protect this property or should enter them in the special lists established for that purpose.

### *1.1.2 Dissemination*

It is equally indispensable to **translate** these instruments into the national language(s) in order to disseminate them. Dissemination entails mandatory instruction for the armed forces on the content of the obligations concerning cultural property (Protocol I, Arts. 82-83 and 87; Protocol II, Art. 19).

### *1.1.3 Penal sanctions*

Measures must be taken to impose sanctions on and to repress violations of the Protocol with regard to the protection of cultural property:

- ♦ regulations must prohibit misuse of the protective emblem of cultural property (Protocol I, Art. 38, para. 1, and Arts. 80 and 86);
- ♦ criminal legislation must include provisions imposing penal sanctions on attacks directed against cultural property in situations of international armed conflict when:
  - the attack is deliberate;
  - the attack causes extensive damage of that property;
  - the property is not situated in the proximity of a military objective; and
  - the property enjoys special protection and is clearly recognized as such property (Protocol I, Art. 85, para. 4).

Criminal legislation must take account of the following factors:

- ♦ the principle of universal jurisdiction, i.e. repression of the act irrespective of where it has been committed and of the nationality of its perpetrator (cross-reference in Protocol I, Art. 85, para. 1, to the Geneva Conventions, common Article 49/50/129/146);
- ♦ the responsibility of superiors (Protocol I, Art. 86, para. 2);

- ♦ the obligation to repress violations, whether actually committed or resulting from failure to act (Protocol I, Art. 86, para. 1);
- ♦ observance of judicial guarantees (Protocol I, Art. 75, para. 4).

## 1.2 During hostilities

Additional Protocol I contains a series of provisions aimed at ensuring the protection of cultural property and of its custodians, *inter alia*:

- ♦ the parties must refrain from attacking or ordering an attack on cultural property or the personnel in charge of protecting it (Arts. 53(a), 50, para. 1 and 51, para. 2);
- ♦ the parties must refrain from using or ordering the use of cultural property in support of military action (Art. 53(b));
- ♦ the parties must refrain from committing acts of reprisal against cultural property or ordering such acts to be committed (Art. 53(c));
- ♦ personnel assigned to the protection of cultural property must refrain from taking part in hostilities in order to be regarded as civilians; hence no attack must be directed against them (Art. 51, paras. 2 and 3);
- ♦ military commanders and their troops must report all acts contrary to the rules protecting cultural property or to the personnel thereof to the competent authorities (Art. 87, para. 1);
- ♦ persons accused of committing violations of the rules relating to the protection of cultural property must be prosecuted on the basis of the relevant provisions of military law or of ordinary criminal law (Art. 85).

## 1.3 After hostilities

In an international armed conflict, any State which has violated the provisions concerning the protection of cultural property will be liable to pay compensation, if the case demands. It will also be held responsible for the acts committed by its armed forces (Protocol I, Art. 91).



## 2. Statute of the International Criminal Court

The Statute of the International Criminal Court (ICC) was adopted in Rome in July 1998. It will enter into force once it has been ratified by sixty States.

The crimes within the jurisdiction of the ICC are war crimes, genocide and crimes against humanity. The Court will also have jurisdiction over the crime of aggression once a provision has been adopted defining that crime and setting out the conditions under which the Court will exercise jurisdiction with respect to it.

Article 8 of the Rome Statute establishes the jurisdiction of the Court in respect of war crimes, *“in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes”*. This provision covers, in particular, grave breaches of the laws and customs applicable to both international and non-international armed conflicts. With regard to cultural property, Article 8 states that *“intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives”*, constitutes a war crime (Art. 8, para. 2(b)(ix) and (e)(iv)).

By virtue of the principle of complementarity, the ICC exercises jurisdiction only when a State is effectively unable to prosecute alleged war criminals within its jurisdiction or does not want to do so. Consequently, in order to ensure that penal sanctions are imposed on war crimes at the national level, States should enact legislation enabling them to bring the perpetrators of such crimes to justice. The following measures, *inter alia*, are necessary to do so:

- ♦ criminal legislation must be adapted in order to include the crimes listed in the Statute;
- ♦ the jurisdiction of the courts over such crimes must be defined;
- ♦ rules on mutual legal assistance with the ICC must be drawn up;
- ♦ extradition agreements must be drawn up or other criteria must be set for the hand-over of the alleged perpetrators of the acts specified.

## **VIII. Advantages deriving from participation in the treaties**

Taken together, these international treaties contain the minimum requirements to ensure that cultural property is protected in situations of armed conflict. They impose limits as to the way in which military operations must be conducted, but they do not constitute an excessive burden for those responsible for conducting a military operation.

No matter what sequence the international treaties are adopted in, the basic instruments for the protection of cultural property are the 1977 Protocols additional to the 1949 Geneva Conventions, applicable in international and non-international armed conflicts. These treaties are binding on a large majority of States but they are not yet universal. The States should also ratify the 1954 Hague Convention, its 1954 Protocol and the 1999 Protocol, which has not yet entered into force. They should also consider ratifying the Rome Statute of the International Criminal Court; it, too, has yet to enter into force.

It is important that all the treaties be widely ratified in order to ensure:

- ♦ universal acceptance of the importance of preserving and protecting cultural property;
- ♦ universal recognition that an attack on the cultural heritage of peoples represents an attack on the identity of those peoples;
- ♦ universal recognition of the importance of fostering a spirit of respect for the cultures and cultural property of all peoples;
- ♦ the mutual commitment of all States to respect cultural property, both their own and that of other States, entities or ethnic groups;
- ♦ the mutual obligation for all States to apply the same rules for the protection of cultural property;
- ♦ identical legal protection for all cultural property and for all persons responsible for its protection;
- ♦ universal recognition and application of the protective emblems of cultural property in the event of armed conflict;

- ♦ universal sharing of the experience of each State with regard to the protection of cultural property;
- ♦ the participation of all States in efforts to combat the impunity of persons responsible for damage to and the destruction of cultural property;
- ♦ the possibility for all States to take part in the international institutions for the protection of cultural property, and in particular in identifying cultural property of the greatest importance for humanity;
- ♦ the possibility for all States to obtain the requisite financial resources and know-how for the full protection of cultural property;
- ♦ the consolidation of national systems to protect cultural property in the event of natural disasters;
- ♦ the possibility to claim compensation in the event of total or partial destruction of that property during armed conflicts.

## **IX. Financial consequences of participation in the treaties**

It is important to point out that participation in the various treaties relating to the protection of cultural property in the event of armed conflict does not entail any compulsory financial contribution relating to participation in international organizations.

However, implementation of the treaty provisions at the national level could generate costs in connection with identification, registration or marking, for example, as well as costs for the construction of refuges or other measures to protect cultural property during armed conflicts.

It should also be noted that in most States several measures already exist to protect and safeguard cultural property, in particular those to be applied in emergencies such as natural disasters. What needs to be done is to integrate the various legal provisions more effectively and make the rules and obligations which apply during armed conflicts better known to those who may have a role to play in such situations, including the civilian personnel responsible for protecting and safeguarding that property in all circumstances. Those civilian personnel must furthermore be trained and well informed in order to ensure the most effective possible protection for cultural property during armed conflicts.

The financial costs at the domestic level will thus depend on the infrastructure in place in each individual State to protect cultural property and on decisions as to the best course of action, depending on the type of property to be protected. The following examples of general measures for the protection of cultural property could be considered:

- ♦ geographical maps could be produced, indicating where the cultural property is located;

*Such maps, either topographical or for purposes of tourism, exist in most countries. The same indicators should be used to inform members of the armed forces.*

- ♦ the members of the armed forces should be trained in the protection of cultural property;

*In most countries, the members of the armed forces are given training in international humanitarian law. Steps should be taken to ensure that this training includes a course on the protection of cultural property.*

- ♦ Sites sheltering cultural property should be removed from the vicinity of military objectives;

*As a general rule, all civilian objects must be removed from the vicinity of military objectives; this is part of the preparation required in time of peace to ensure the protection of this property in the event of armed conflict.*

Exceptions to the principle of gratuity of participation in these treaties at the international level would be:

- ♦ the Fund for the Protection of Cultural Property in the Event of Armed Conflict;

*Provision is made for this Fund in the 1999 Protocol to the 1954 Hague Convention. It will be constituted by means of voluntary contributions by the States Parties (Art. 29, para. 4).*

- ♦ the International Criminal Court.

*The work of the Court should be funded by contributions from the States Parties and the United Nations.*

On the other hand, there are financial **advantages** which States will be able to derive from participation in the treaties, in particular the possibility to request support from the Fund for the Protection of Cultural Property in safeguarding or restoring such property. The terms and conditions for granting that aid will be determined once the Fund has been established.

## X. Use of existing bodies and structures

When the States Parties come to ensuring that the 1954 Hague Convention and its Protocols are properly implemented, they may find it easier to fulfil the obligations arising therefrom than they first thought. As mentioned above (*Section IX*), meeting those obligations can go hand in hand with existing measures for planning and preparing for natural disasters and other emergency situations.

Organizations such as the International Committee of the Blue Shield play a key role in promoting the protection of cultural property, including the implementation of the instruments relative thereto. The Blue Shield is an independent, professional and international organization whose aim is to prevent loss of or damage to cultural heritage in the event of disaster by improving prevention, preparedness, response and recovery measures. The Blue Shield has national organizations in various countries, and they are encouraged to promote the ratification and implementation of the 1954 Hague Convention and its Protocols.

The same holds true for other committees and organizations. In order to facilitate the implementation of international humanitarian law, certain States have established an **interministerial committee on humanitarian law** whose role is to advise and assist the government authorities to disseminate and implement the law. One priority for such a committee should be to coordinate and encourage the ministries concerned and those in charge of protecting cultural property in the event of armed conflict, for example with regard to the identification of cultural property and the drawing up of inventories by the local authorities or other relevant bodies.

The **National Red Cross and Red Crescent Societies**, which play a special role in the dissemination and implementation of humanitarian law, could also be involved in promoting the treaties relative to the protection of cultural property. In the course of their routine activities, for example, they could assist the States in terms of respect for the emblem protecting cultural property or of other activities related to the implementation of the 1954 Hague Convention and its

Protocols, either on their own initiative or in cooperation with other concerned bodies. The national committee on humanitarian law or the National Committee of the Blue Shield are potential partners at national level.

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

### **1. How to ratify these treaties**

In order to become party to a treaty, a State must send an instrument of ratification, accession or succession to the relevant organization or the depositary State.

#### **1954 Convention and its Protocols**

The Director-General of UNESCO is the depositary of the 1954 Hague Convention and its Protocols. In order to become party to the Protocols, a State must first be party to the Convention. The instrument of ratification, acceptance, accession or succession must be sent to the following address:

*Director-General of UNESCO  
7, place Fontenoy  
75352 Paris 07 SP  
France*

The 1954 Hague Convention and its Protocols are managed by UNESCO's Division of Cultural Heritage, International Standards Section. The following address can be consulted for further information: <http://www.unesco.org/culture/legalprotection>. The Division's staff can be reached at:

*International Standards Section  
Division of Cultural Heritage  
UNESCO  
1, rue Miollis  
75732 PARIS CEDEX 15  
France  
E-mail: [ins.culture@unesco.org](mailto:ins.culture@unesco.org)*

#### **1997 Additional Protocols I and II**

The Swiss Confederation is the depositary State of the 1949 Geneva Conventions and their Additional Protocols. The same instrument



may be used for both Protocols. In order to become party to the Additional Protocols, a State must first be party to the 1949 Geneva Conventions. The relevant instrument must be sent to the following address:

*Swiss Federal Council,  
Bern,  
Switzerland*

## **Statute of the International Criminal Court**

The Secretary-General of the United Nations is the depositary of this treaty. In order to become party to the Statute of the International Criminal Court, the instrument of ratification or accession must be sent to the following address:

*Secretary-General of the United Nations  
United Nations Organization  
United Nations Plaza  
10017 New York, N.Y.  
United States of America*

## **2. ICRC Advisory Service on International Humanitarian Law**

Besides the practical advice on implementation of the protection of cultural property contained in this document, the Advisory Service has prepared model texts of the above-mentioned instruments of ratification/ accession and succession. They are available in English, French and Spanish and can be obtained at the following address:

*Advisory Service on IHL  
International Committee of the Red Cross  
19 Avenue de la Paix  
1202 Geneva, Switzerland  
e-mail: [advisoryservice.gva@icrc.org](mailto:advisoryservice.gva@icrc.org)*

They can also be found on the Internet: <http://www.icrc.org>

The Advisory Service is available for any consultation relating to implementation of these treaties and becoming party to them.