

Protection of Cultural Property in the Event of Armed Conflict

Report
on the Meeting of Experts

Advisory Service

on International Humanitarian Law



ICRC

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Meeting of Experts**
(Geneva, 5-6 October 2000)

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TABLE OF CONTENTS

Acknowledgements	7
Introduction	9
PART ONE Meeting of experts on national implementation of the rules for the protection of cultural property in the event of armed conflict	13
Chapter I Presentation of topics	15
■ The importance of respect for international humanitarian law and the activities of the ICRC <i>Eric Roethlisberger, Member of the Committee, ICRC</i>	15
■ Competing priorities: placing cultural property on the humanitarian law agenda <i>Yves Sandoz, Special Adviser to the ICRC</i>	21
■ New rules for the protection of cultural property in armed conflict: the significance of the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict <i>Jean-Marie Henckaerts, Legal Adviser, ICRC</i>	27
■ UNESCO's activities for the implementation and promotion of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols <i>Jan Hladík, Programme Specialist, International Standards Section, Division of Cultural Heritage, UNESCO</i>	57
■ National implementation of international humanitarian law, the work of the ICRC Advisory Service and the protection of cultural property, including strategies for the ratification of the relevant humanitarian law treaties <i>María Teresa Dutli, Head, Advisory Service on International Humanitarian Law, ICRC</i>	69

Chapter II	National implementation activities	79
■	National measures for the implementation of the rules governing the protection of cultural property in the event of armed conflict in Switzerland <i>Rino Büchel, Protection of Cultural Property, Federal Office for Civil Protection, Switzerland</i>	79
■	The identification and registration of cultural property in Lebanon <i>Dr Hassan Jouni, Professor, Law Faculty, University of Lebanon, Lebanon</i>	85
■	The criteria used to identify and register protected cultural property in Guatemala <i>Eduardo Andrade Abularach, Architect, Guatemala</i>	93
■	The procedure for marking cultural property in Slovenia <i>Dr Savin Jogan, Ministry of Culture, Slovenia</i>	97
■	The role of the Interinstitutional Committee on International Humanitarian Law in the implementation of the protection of cultural property in El Salvador <i>Claudia Herrera Nosthas, Legal Adviser, Ministry of Foreign Affairs, El Salvador</i>	103
■	Training and dissemination in the Austrian armed forces <i>Major Franz Schuller, Secretary-General, Austrian Society for the Protection of Cultural Property, Austria</i>	107
■	Training and dissemination activities in the Italian armed forces <i>Brigadier General Leonardo Prizzi, School of Application, Italian Armed Forces, Italy</i>	113
Chapter III	Working groups	119
■	Introduction to the themes discussed	121
■	Report from Group I	125

■	Report from Group II.....	129
■	Report from Group III.....	133
Chapter IV	Conclusions of the meeting	137
	<i>Yves Sandoz, Special Adviser to the ICRC</i>	
PART TWO	Practical advice for the protection of cultural property in the event of armed conflict	143
 ANNEXES		
I.	Programme	187
II.	List of participants	191
III.	Questionnaire on national measures of implementation concerning the protection of cultural property in the event of armed conflict.....	195
IV.	Comparative tables of the replies to the questionnaire on national measures of implementation concerning the protection of cultural property in the event of armed conflict	199

Acknowledgements

This report was drawn up by the Advisory Service on International Humanitarian Law of the International Committee of the Red Cross following the *Meeting of experts on national implementation of the rules for the protection of cultural property in the event of armed conflict*, held in Geneva on 5 and 6 October 2000.

The meeting was attended by about forty participants from around the world who discussed the various topics on the programme, in plenary and in working groups. As experts in museology, legal advisers, military specialists and specialists on monuments and archives, they made a substantial contribution to the preparation of this report, either in the form of the presentations they made in plenary, of their active participation in the working groups, or of the invaluable suggestions and comments they made during and after the meeting with a view to the establishment of the *Practical advice for the protection of cultural property in the event of armed conflict*, which aims to help national authorities adopt and implement measures for the effective protection of such property. Our gratitude to them knows no bounds.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) plays a special role in the protection of cultural property. It is the driving force behind the promotion and implementation of the international instruments governing the protection of cultural property in the event of armed conflict, of which it is the depositary. UNESCO, and in particular Mr Jan Hladík, Programme Specialist, International Standards Section, Division of Cultural Heritage, played an active part in the meeting and were associated in the preparation of the *Practical advice*.

We would also like to thank those who made more specific contributions to the preparation of the *Practical advice*, namely Mr Rino Büchel, Head, Protection of Cultural Property, Federal Office for Civil Protection (Switzerland), Mr Ariel Walter Gonzalez, First Secretary, Permanent Mission of Argentina to UNESCO, Colonel Charles Garraway, Directorate of Army Legal Services, Ministry of Defence (United Kingdom), Mr Michael Meyer, Head of International Law, British Red Cross (United Kingdom), Mr Steven Solomon, Deputy Legal Adviser, Permanent Mission of the United States to the United Nations in Geneva, and Mr Michael Turner, President of the Israel World Heritage Committee.

Introduction

The rules governing the protection of cultural property in the event of armed conflict are well established in both treaty and customary international humanitarian law. They are far, however, from being systematically applied and indeed are often flouted.

The growing number of interreligious and interethnic conflicts has implied not only attacks against civilians but also, in many cases, the destruction of civilian objects, in particular cultural property. Acts of vandalism directed against such objects or their destruction are particularly common in such conflicts, as cultural property can be considered to symbolize the cultural identity and history of the adverse party.

Of course, in any armed conflict, the priority remains to protect the civilian population and persons not participating directly in the hostilities, and we should not forget that the protection of civilian objects is also a basic rule of humanitarian law. We should nevertheless not underestimate the need to establish an effective system for the protection of cultural property in the event of armed conflict. Not only is the protection of such property, part of the world historical and cultural heritage, intrinsically important, its destruction could act as a catalyst, sparking more widespread hostilities and further blurring the distinction between military targets and civilian objects. Efforts to strengthen the protection of cultural property must therefore continue to be made alongside those undertaken to heighten the protection of civilians and civilian goods.

Measures to protect cultural property in the event of armed conflict must be adopted in time of peace. Steps must be taken to promote the adoption of adequate legislation, to attribute institutional responsibilities, to draw up plans of action for the protection of cultural property, and to establish appropriate education and training programmes for armed forces and emergency service members, the personnel of cultural institutions and the general public. The action taken to heighten the public's awareness of the need to protect and respect cultural property is an essential component of the measures that can be taken in peacetime. Educational campaigns play a key role

by arousing interest in a shared cultural heritage that the public can thus better understand.

These issues were the subject of discussion and debate at the *Meeting of experts on national implementation of the rules for the protection of cultural property in the event of armed conflict*. The aims of the meeting were to heighten awareness of the need to apply the provisions of humanitarian law relative to the protection of cultural property in the event of armed conflict, to examine and assess the techniques already used to ensure application of those provisions, to identify existing problems in that application, to propose practical remedies thereto, and to encourage the establishment of adequate legislative and administrative mechanisms to ensure respect for the law.

This report constitutes the final record of the meeting. **Part one** contains the presentations made in plenary on the first day of the meeting. Chapter 1 comprises the presentations made by ICRC and UNESCO speakers on general matters related to the protection of cultural property in the event of armed conflict. Chapter 2 presents a series of statements giving national points of view on implementation of the rules of humanitarian law pertaining to the protection of cultural property. Chapter 3 contains the conclusions of the working groups that deliberated on one of three major topics each (competencies and responsibilities; legal protection of cultural property; dissemination, information and awareness) during the second and final day of the meeting. The meeting's conclusions are laid out in Chapter 4.

Part two contains the *Practical advice for the protection of cultural property in the event of armed conflict*. Drawn up by the Advisory Service on International Humanitarian Law preparatory to the meeting, the *Practical Advice* was revised after the meeting within the framework of a process of reflection to which several experts who attended the meeting made substantial contributions. It lays out the issues to be considered by States in the process of ratifying the instruments relative to the protection of cultural property in the event of armed conflict and in the implementation of the rules they contain. It constitutes an essential aid aimed at motivating and assisting the national authorities and national committees for the implementation of humanitarian law in this field.

The programme of the meeting and the list of participants are included as annexes to the report, as are the questionnaire on national measures of implementation of the rules protecting cultural property in the event of armed conflict, which was distributed to all the participants before the meeting, and a series of charts summing up the replies thereto.

PART ONE

**Meeting of experts
on national implementation
of the rules
for the protection
of cultural property
in the event of armed conflict**

CHAPTER I

Presentation of topics

The importance of respect for international humanitarian law and the activities of the ICRC

Eric Roethlisberger

Member of the Committee, ICRC

*“Even the best law has to be supported actively
if it is not to go unheeded.”*

These words are just as true and relevant today as when Thomas Masaryk first said them, over 70 years ago. All of us present here today are the joint beneficiaries of a priceless heritage, namely the cultural property that many of you actively defend. International humanitarian law is part of that heritage. It embodies the noblest aspirations of mankind, and was forged by men and women from around the world, together.

But that law has to be defended. It must be actively promoted and effectively applied if its objectives are to be met: to alleviate the horror of war, and to protect the victims and their property.

The international community has given the International Committee of the Red Cross a mandate to protect the victims of war and their property and to provide them with assistance. As the founding body of the International Red Cross and Red Crescent Movement, the ICRC works in close cooperation with all the National Societies and their International Federation. It has a permanent presence today in over 50 countries of Africa, the Americas, Asia, Europe and the Middle East. Over 1,200 people are presently on mission in the field, seconded by about 9,000 local staff. A further 800 people work to support and coordinate field activities at ICRC headquarters in Geneva.

In carrying out its protection activities, the ICRC benefits from a treaty-based right of initiative that entitles it to visit all prisoners of war

and civilian internees held captive during international armed conflicts. Its right of initiative also enables it to have access to most people detained in situations of non-international armed conflict or internal violence for reasons related thereto. People deprived of their liberty must be able to benefit from effective and coherent protection.

With regard to assistance, extensive relief operations must be based on needs assessments. In this respect, prior information is invaluable, in particular on the quality and scope of the health and medical system in the country in which fighting has broken out. Needs for assistance are assessed on the basis of a survey of the population's general state of health, how the local economy functions or fails to function, the destruction and disruption brought about by the conflict, food reserves and the outlook for their reconstitution.

Let me give you a few figures. In 1999, ICRC delegates visited about 225,000 prisoners in over 1,700 places of detention. Out of that total, over 32,000 were registered and visited for the first time. In 1999, more than 14,000 tonnes of relief supplies (food, blankets, tents, and so on) were distributed in over 50 countries. Basic medicines, medical material and supplies were delivered to 14 hospitals in Asia and Africa, and substantial assistance provided to 193 other hospitals throughout the world.

The ICRC works in increasingly complex and at times dangerous situations. On several occasions, security considerations have prompted it temporarily to repatriate its staff. This was the case last year in Sierra Leone, Kosovo, Timor and Chechnya. Activities were stepped up, however, in Angola, the Congo and Sudan, the northern Caucasus and East Timor, where thousands of people were forced to move or were deprived of the goods essential to their survival.

The nature of conflicts has changed. All too often, civilians are deliberately targeted. The aim of war is no longer just the victory of the armed forces. The fighting is directed at civilians for the purpose of modifying the ethnic composition of a coveted territory. Civilians are deliberately attacked, either to oblige them to flee or to eliminate them. Recent events in Bosnia-Herzegovina, Rwanda, Kosovo and Timor are fresh in our minds.

But there is much more at stake, for policies of ethnic purification or genocide shake the very foundations on which cohabitation is based. The international community had to react. And it did. With varying degrees of success, it is true, and all too often mixing politics with humanitarian considerations.

The best weapon the ICRC has to protect the victims of armed conflicts is respect for international humanitarian law. For over 130 years, the ICRC has been working to develop and ensure application of the law. Contained essentially in the 1949 Geneva Conventions for the protection of the victims of armed conflicts and their Additional Protocols of 1977, the law protects the wounded, the sick, civilians and their property. Those treaties are supplemented by others that develop the rules and principles they contain, either with regard to weapons (such as, for example, the Ottawa treaty prohibiting anti-personnel landmines) or to the protection of cultural property. I refer here to the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols, the subject of this meeting. All of these treaties must be universal and must be applied.

To mark the 50th anniversary of the Geneva Conventions, which are the cornerstone of this legal corpus, the ICRC launched a survey entitled “People on War”, interviewing over 20,000 civilians and combatants from 17 countries between October 1998 and September 1999. Those people were asked which fundamental rules should be observed in conflict situations and why they were often violated. The results were compiled in country reports and in a summary document. This unprecedented survey covered twelve countries with recent experience of war, four countries that play an important role in peace and security policy at international and regional level as permanent members of the United Nations Security Council, and Switzerland, the depositary State of the Geneva Conventions. All the documents are now available. The ICRC hopes thus to help enhance knowledge and application of the international rules protecting the victims of armed conflict.

I think it important to underscore that this document contains significant conclusions with regard to the protection of cultural property. One paragraph is particularly relevant. I quote:

“The one area in which people everywhere are clear on the limits in war is the destruction of religious, cultural and historical sites to weaken the enemy. More than 80 per cent of the people who have lived through conflict reject combatants targeting such sites. In focus groups and in-depth interviews, participants acknowledge that these buildings were hit, but no one discussed it as a deliberate strategy for demoralization or ethnic cleansing.”

International humanitarian law is not, as we know, a static body of law. It is constantly evolving to reflect new realities and new needs. Take, for example, the adoption of the Second Protocol to the 1954 Hague Convention. That instrument is the reaction to the attacks committed against cultural property in recent conflicts such as those fought in the former Yugoslavia. Towns like Dubrovnik, part of humanity’s shared heritage, were the object of ill-considered attack. Attacks against objects such as the Mostar bridge are surely prohibited during armed conflicts. The Second Protocol remedies certain shortcomings in the existing system, and you will no doubt have occasion to discuss it during this meeting.

Other aspects of international humanitarian law are also evolving, although they do not concern the protection of cultural property. A current source of concern is the signs identifying and protecting the sick and wounded. The Swiss Confederation, with the support of the ICRC and the International Federation of Red Cross and Red Crescent Societies, has convened a diplomatic conference, to be held on 25 and 26 October here in Geneva, with a view to the adoption of a third Additional Protocol to the Geneva Conventions dealing with the emblems. A new version of Protocol III is at this very moment being sent to the States party to the Geneva Conventions. It takes account of the outcome of consultation meetings held in recent months. Our greatest desire is that a broad consensus will lead to fulfilment of the objectives of the process and ultimately to the adoption of the third Protocol.

The development of international humanitarian law and its implementation are long-term endeavours that will never be completed.

I trust that your deliberations in the next two days will enable you to draw up guidelines for the protection of cultural property in the event

of armed conflict, an area to which the ICRC attaches great importance, for that property constitutes the heritage of peoples and cultures.

Competing priorities: placing cultural property on the humanitarian law agenda

Yves Sandoz

Special Adviser to the ICRC

I think it advisable, at the opening of this meeting, briefly to recall its significance for the International Committee of the Red Cross. The ICRC is constantly obliged, by the numerous conflicts being waged throughout the world and the countless victims they cause, to make choices and set priorities. It finds it especially difficult to strike a proper balance between the energy spent encouraging the States to adapt, develop and adopt international rules, and then to take appropriate measures at national level, and that spent directly assisting the victims in the field.

The wounded, prisoners, and those who are suffering obviously need help urgently. But a moment's thought suffices to bring home the usefulness of normative measures and the complementarity of the two types of action. Getting the combatants to respect the rules is just as essential to the victims' fate as is providing them with aid, especially since the very work of humanitarian organizations depends on acceptance and hence understanding of the law by the combatants.

It nevertheless remains difficult to sacrifice emergency action to the long term and it is not easy to give each type of activity the right weight. Of the activities aimed at implementing or developing the law, those concerning cultural property give rise more easily than others to ironic or cynical remarks in the light of what is happening in the field, where people are being massacred, tortured, raped or forcibly displaced. Such remarks must be taken seriously and prompt more in-depth reflection on the meaning of emergency humanitarian action.

In recent years, discussions have tended to focus not only on the short-term survival of the people buffeted by the winds of conflict, but also on respect for their dignity. This is reflected in the action taken to

return those people to self-sufficiency as soon as possible, to enable them to meet their needs on their own.

Respect for a population's dignity is the same as respect for its culture. Deliberate attacks on cultural property are marks of contempt, and contempt can serve as an excuse or a pretext for the worst outrages, of which it is often the precursor. The struggle to defend the cultural property of a population, and hence respect for its dignity, is therefore an integral part of the humanitarian operation aimed at protecting that population.

The defense of individual cultures, of cultural property, is another dimension of the globalized world in which we now live. Conflicts can no longer be managed individually. We can no longer consider each conflict in isolation, in particular when it comes to environmental problems. We must also consider the planet's capacity to absorb the damage caused by an accumulation of conflicts.

This global dimension also applies to culture. Not in the name of defending a vague universal culture, but because the preservation of the cultural values of every man and woman, respect for what we do not understand, for our fellow men, for the right to be different, is a mark of tolerance without which our world, with its steadily growing population, could not survive. Allowing a people's culture to be attacked is to refuse everyone's equal right to dignity, to start down the road to conflicts and violence that place our planet's very survival at risk. To defend all cultures is to defend all of humanity.

We have all observed that the rules of international humanitarian law are insufficiently respected, and the rules concerning cultural property are no exception. The main idea of this meeting is that we examine together the possibilities for enhancing respect for those rules. The rules concerning the protection of cultural property in the event of armed conflict are part and parcel of international humanitarian law, hence our concern not to forget them. This is true even though cultural property, which was first mentioned in the 1899 and 1907 Hague Conventions, is the object of specific treaties, notably the 1935 Washington Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments and the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict.

Indeed, the protection of cultural property in the event of armed conflict must not be set apart from the more general issues affecting that protection. At the same time, however, the issue of the protection of cultural property in the event of armed conflict must not be considered separately from other protection problems in such situations. Hence the importance of the provision on cultural property introduced in the 1977 Protocols additional to the Geneva Conventions. The intent was not to short-circuit the 1954 Hague Convention — indeed, the provision in the 1977 Protocol even includes a safety clause referring thereto — but to avoid the risk of a shortfall in protection in certain circumstances: at the time, the 1954 Hague Convention was far from being universally ratified, and steps had to be taken to avert a situation in which a State party to the 1977 Additional Protocols was not specifically covered by any provision covering cultural property.

The incorporation of questions concerning the protection of cultural property in the event of armed conflict into international humanitarian law is justified, moreover, by the fact that other issues of humanitarian law currently being debated also concern that property. I think in particular of discussions relating to the prohibition or restriction of certain means and methods used in the conduct of hostilities, especially the definition of military targets, incidental damages and the principle of proportionality between collateral damage and the military interest of a target. These issues are raised when cultural property is used for military purposes or is located near military targets. Recent conflicts and the creation of international criminal courts have reopened debate on them and demonstrated the need for a more accurate definition of the limit to what is permitted.

The overlap of subjects — comprehension of the global nature of the questions related to the protection of cultural property, on the one hand, and questions related to the protection of that property in the event of armed conflict, on the other — also reflects an overlap of institutional competencies, UNESCO's mandate being to follow up the former and the ICRC's mandate concerning the latter. Far from creating a rivalry, these overlapping competencies have produced positive momentum. The proof lies in the very fruitful cooperation that has developed in recent years, notably the joint organization of regional seminars. The indispensable presence of UNESCO repre-

sentatives at this meeting is another demonstration thereof, and we are very pleased to have been able to rely on their friendly and constructive support in preparing the meeting.

In fact, our aim in the course of the next two days is not so much to think about developing the existing rules: awareness of the importance of enhanced protection for culture property, painfully renewed by recent conflicts such as those that took place in the former Yugoslavia, has already prompted discussions that led to the adoption in 1999 of the Second Protocol to the 1954 Hague Convention.

We shall therefore focus on consideration of the means of effectively implementing existing norms. To that end, we shall study the measures listed in the catalogue we suggest you discuss during the meeting.

The first measure is the ratification of treaties. Although obtaining this formal link requires the expenditure of huge amounts of energy for varying and often disappointing results, we should not forget that it constitutes the indispensable foundation for all the more tangible steps that can subsequently be taken at national and regional level.

Indeed, UNESCO's work takes on its true significance in the light of certain measures to be taken in time of peace, such as the identification of cultural property, the keeping of protection registers and other preventive measures.

We also know that combatants can hardly be expected to respect cultural property, or other rules of international humanitarian law, if they have not been trained in time of peace. The necessary incorporation of humanitarian rules in military instruction brings us to the more general question of education, for it is true that the foundations on which humanitarian rules are based must be laid at an early age. This brings us back to one of UNESCO's generic competencies: education. Here, too, we must emphasize the positive complementarity between UNESCO's general tasks and the ICRC's well-defined one, to heighten, with the help of the National Red Cross and Red Crescent Societies, awareness of international humanitarian law in schools and universities.

I am well aware that you do not need to be convinced of the importance of the protection of cultural property. I apologize for having tried your patience, but in introducing the meeting I wished to underscore what prompted the ICRC to organize it and the context in which we wish to place it.

I am grateful to those who organized the meeting for having managed to convince so many experts on protection of cultural property and on international humanitarian law to join us here and above all to you for having accepted the invitation, and in many cases for having travelled so far. I am sure that the meeting will take place in a constructive and open spirit and look forward to hearing what you have to say in the coming two days.

**New rules for the protection of cultural property
in armed conflict:
the significance of the Second Protocol
to the 1954 Hague Convention
for the Protection of Cultural Property
in the Event of Armed Conflict**

Jean-Marie Henckaerts
Legal Adviser, ICRC

“Alles van waarde is weerloos.”¹

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereafter: the 1954 Convention) is the paramount international instrument for the protection of cultural property during armed conflicts.² Cultural property includes museums, libraries, archives, archaeological sites and monuments of architecture, art or history, whether religious or secular. The 1954 Convention has to date been ratified by 95 States, but the basic principles concerning respect for cultural property enshrined in it have become part of customary international law. A Protocol dealing mainly with the protection of cultural property in occupied territory was adopted at the same time as the Convention, and 79 States are party thereto.³ The specific content of the Convention will be explained in brief under each of the substantive sections of this article.

The effectiveness of the 1954 Convention became a subject of general concern in the early nineties, during the second Gulf War and the war in the former Yugoslavia. As this article goes to press, that effectiveness is sadly still being tested in the continued war in the Balkans.

¹ “All things of value are defenceless.” A famous line by the Dutch poet Lucebert (author’s translation).

² Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague, 14 May 1954, reprinted in Dietrich Schindler and Jiri Toman (Eds.), *The laws of armed conflicts: A collection of conventions, resolutions and other documents*, 3rd ed., Martinus Nijhoff/Henry Dunant Institute, Dordrecht/ Geneva, 1988, pp. 745-759.

³ Protocol for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague, 14 May 1954, *ibid.*, pp. 777-782.

In 1991, the Government of the Netherlands decided to include a review of the 1954 Convention as part of its contribution to the United Nations Decade of International Law. As a result, The Netherlands and the United Nations Educational, Scientific and Cultural Organization (UNESCO) jointly commissioned and funded “a review of the objectives and operation of the Convention and Protocol with a view to identifying measures for improving its application and effectiveness and to see whether some revision of the Convention itself might be needed, perhaps by means of an Additional Protocol”.⁴ That review was published in 1993 by Professor Patrick Boylan.

In the following years, the Government of the Netherlands continued to be the driving force behind the review process, and three expert meetings were organized which resulted in the “Lauswolt document”, named after the Dutch town where it was drafted. The Lauswolt document was a new draft treaty based on the findings of the Boylan review.

In March 1997, twenty government experts met at UNESCO headquarters in Paris to review the Lauswolt document. On the basis of their discussions, the UNESCO Secretariat drew up a revised Lauswolt document which it submitted to all States party to the 1954 Convention at a meeting in Paris on 13 November 1997. It was decided that a final preparatory meeting would be convened to discuss certain legal questions further, and the proposal by the Netherlands to convene a diplomatic conference in 1999 to transform the Lauswolt document into an international treaty was welcomed.

The final preparatory meeting was hosted in Vienna in May 1998 by the Austrian Government. The meeting identified five main areas that needed to be addressed in the Second Protocol:

- ♦ the exception of military,
- ♦ precautionary measures,
- ♦ the system of special protection,

⁴ Patrick J. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954)*, UNESCO, Paris, 1993, p. 19.

- ♦ individual criminal responsibility,
- ♦ institutional aspects.

After the meeting, a Preliminary Draft Second Protocol to the 1954 Convention was drawn up.⁵ States and relevant organizations were invited to submit comments on the draft, in particular with respect to the five areas mentioned above.⁶ On the basis of those comments, the UNESCO Secretariat and the Government of the Netherlands together drew up the final draft Second Protocol.⁷

The Diplomatic Conference on the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict took place in The Hague from 15 to 26 March 1999. On 26 March 1999, the Conference adopted the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (hereafter: the Second Protocol) without a vote.⁸ It was opened for signature in The Hague on 17 May 1999 in the framework of the Centennial celebrations of the First International Peace Conference and signed by 27 States on that date. It remained open for signature at the Hague until 31 December 1999.

The Second Protocol is additional to the 1954 Convention, which remains the basic text. A State can only become a party to the Second Protocol if it has ratified the 1954 Convention. During the entire review process, four options were kept open regarding the treaty technique to be used for improving the 1954 Convention. The first consisted in amending the 1954 Hague Convention; however, any amendments would have required unanimous adoption by all States party to the

⁵ UNESCO Doc. HC/1999/1, 9 October 1998.

⁶ See Synoptic report with its Addendum and Corrigendum of comments on the Preliminary Draft Second Protocol to the 1954 Hague Convention received from High Contracting Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, other UNESCO Member States and international organizations, UNESCO Docs. HC/1999/4, 15 January 1999, HC/1999/4/Add.1, March 1999, and HC/1999/4/Add.1/Corr.1, 18 March 1999. Military and legal aspects of the preliminary draft were further discussed in the light of modern humanitarian law at an Expert Meeting on the Improvement of the 1954 Hague Convention, Leiden (Netherlands), 17-18 December 1998.

⁷ Draft Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, UNESCO Doc. HC/1999/1/rev.1, February 1999.

⁸ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague, 17 May 1999, UNESCO Doc. HC/1999/7, 26 March 1999.

Convention.⁹ Since this was virtually impossible, this option was discarded even though some States had supported it. The second option consisted in the adoption of a new, separate convention. This would have required substantial negotiations and would have had the disadvantage of creating two separate systems. As a result, this option was never really considered.

The third option consisted in the adoption of a Protocol aimed at revising the 1954 Convention. Several delegations strongly advocated this option, but because unanimity would again have been required, it was rejected by the majority of delegations. In the end, the fourth option prevailed, namely that the new treaty would be an additional protocol which would in no way amend the 1954 Convention but would supplement it and would only apply to the States who ratified it. The 1977 Protocols additional to the 1949 Geneva Conventions served as a useful precedent. As a result, every effort was made to make sure that each provision of the Second Protocol was indeed additional to the 1954 Convention.

The purpose of this article is to highlight the major developments embodied in the Second Protocol and to mention certain points of common understanding that were acknowledged at the Diplomatic Conference but not reflected as such in the text of the Protocol itself nor in the Conference's Final Act.

Peacetime measures

Pursuant to Article 3 of the 1954 Convention, States undertake to prepare in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict "by taking such measures as they consider appropriate". But the Convention does not provide any further details on measures States should take.

The Second Protocol aims to provide more guidance in this respect, as it provides specific examples of concrete measures to be taken in time of peace:¹⁰

⁹ 1954 Convention, Article 39(5).

¹⁰ Second Protocol, Article 5.

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

These measures are of great practical importance for the protection of cultural property in the event of armed conflict.

Clearly, they also require financial resources and know-how. With these requirements in mind, the Second Protocol provides for the setting up of a Fund for the protection of cultural property in the event of armed conflict.¹¹ The Fund was specifically established to provide financial or other assistance in support of preparatory or other measures to be taken in peacetime. It will be managed by the Committee for the Protection of Cultural Property in the Event of Armed Conflict, which is to be set up pursuant to the Second Protocol.¹² The resources of the Fund shall consist inter alia of voluntary contributions made by States party to the Second Protocol.¹³ Some States had sought the inclusion of compulsory contributions, but in the end that proposal was rejected.

In addition, the Second Protocol expands on the rather general provision concerning dissemination contained in the 1954 Convention.¹⁴ Again, specific examples of concrete dissemination measures are listed, especially for the military and civilian authorities who assume responsibilities with respect to the application of the Second Protocol. They are to be fully acquainted with the Protocol, and to that end States party shall, as appropriate:¹⁵

¹¹ *Ibid.*, Article 29.

¹² *Ibid.*, Article 24.

¹³ *Ibid.*, Article 29(4).

¹⁴ 1954 Convention, Article 25.

¹⁵ Second Protocol, Article 30.

- ♦ incorporate guidelines and instructions on 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 laws, administrative provisions and measures taken under the preceding paragraphs,
- ♦ communicate to one another, as soon as possible, through the Director-General, the laws and administrative provisions which they may adopt to ensure the application of the Protocol.

The experience of the International Committee of the Red Cross provides ample evidence of the essential role of dissemination when it comes to ensuring respect for international humanitarian law.

Respect for cultural property

A. All cultural property

Article 4 of the 1954 Convention provides that cultural property shall not be subject to any act of hostility nor used for purposes which are likely to expose it to destruction or damage in the event of armed conflict. It immediately adds, however, that both obligations may be waived in case of “imperative military necessity”. Professor Boylan’s review identified the lack of a clear definition of this exception as a serious weakness with respect to the basic principle of protection contained in the 1954 Convention.¹⁶

Although the origins of the principle of military necessity can be traced back to the Lieber Code,¹⁷ the restriction of imperative military necessity was first codified in international law in the 1907 Hague

¹⁶ Boylan, op. cit. (note 4), pp. 54-57.

¹⁷ See Burrus M. Carnahan, “Lincoln, Lieber and the laws of war: The origins and limits of the principle of military necessity”, *American Journal of International Law*, Vol. 92, 1998, 213, and Horace B. Robertson, Jr., “The principle of military objective in the law of armed conflict”, in Michael N. Schmitt (Ed.), *The Law of Military Operations — Liber Amicorum Professor Jack Grunawalt*, International Law Studies, Vol. 72, Naval War College Press, Newport, Rhode Island, 1998, p. 197.

Regulations limiting the destruction or seizure of the enemy's property to that which was imperatively demanded by the necessities of war.¹⁸ The 1954 Convention borrowed this notion as there were few other established limits applicable to the conduct of hostilities.¹⁹

As history shows, however, the concept of military necessity has not limited warfare in any significant way. The Second World War, for example, was fought under the restriction that no property could be destroyed unless there was an imperative military necessity to do so. Yet entire cities were destroyed.

It appears that the notion of imperative military necessity is too vague to constitute an effective limitation on warfare. Even military lawyers at the Diplomatic Conference admitted that it was difficult to teach their troops how to interpret and work with the concept. In general, matters left to discretionary clauses based on military necessity are those which could not be regulated; and matters which are not regulated provide a field for the law to develop. In order to do so, the military philosophy behind the maxim: "Have confidence in the wisdom of the generals",²⁰ had to be replaced with objective criteria that were binding on the military. The goal of the Diplomatic Conference was to give a content to the notion of imperative military necessity with a view to enhancing its meaning and effect.

Imperative military necessity to commit acts of hostility

Limiting attacks to military objectives would in large part achieve that goal. One should not forget that the 1954 Convention was adopted well before the 1977 Protocols additional to the 1949 Geneva

¹⁸ Regulations Respecting the Laws and Customs of War on Land, signed at The Hague, 18 October 1907, Article 23(g), in Schindler/ Toman, *op. cit.* (note 2), p. 83.

¹⁹ This was in part because some documents which had identified such limits had failed to become binding treaty law. See, e.g., Article 24(1) of the Hague Rules of Air Warfare, drafted by a Commission of Jurists at The Hague, Dec. 1922 — Feb. 1923, in Schindler/Toman, *op. cit.* (note 2), p. 210: "Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent".

²⁰ Yves Sandoz, Christophe Swinarski and Bruno Zimmerman (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff, Dordrecht/Geneva, 1987, p. 395, quoting Éric David, *La protection des populations civiles pendant les conflits armés*, International Institute for Human Rights, VIIIth Teaching Session, July 1977, Strasbourg, p. 52.

Conventions. It was drafted against the background of the Second World War, at a time when it was still considered acceptable that entire cities would be attacked. In the midst of such a war, the 1954 Convention sought to protect valuable cultural property.

In 1977, the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) did away with this approach.²¹ Henceforth, only military objectives — more clearly defined and more carefully selected — were to be made the object of attack. Civilians and civilian objects were not to be made the object of a direct attack. This approach is a clear example of how international humanitarian law balances military necessity and humanitarian needs: it allows attacks that are necessary but establishes strict humanitarian limits.

It was therefore obvious that any improvement of the 1954 Convention should reflect this modern approach: cultural property is generally civilian property and as such should not be attacked; it may be attacked only if and when it becomes a military objective. This approach also has the advantage of providing a clearer answer to the question of when cultural property may be attacked.

The definition of military objective in Article 52(2) of Additional Protocol I was one of the major achievements of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH), which was convened by the Swiss Government in 1974 and adopted Additional Protocol I on 8 June 1977. States not party to Additional Protocol I, such as the United States, Turkey and India, confirmed the customary law nature of this provision during the 1999 Diplomatic Conference that adopted the Second Protocol. This illustrates how the Diplomatic Conference also sought to reaffirm certain rules of humanitarian law while developing others.

The definition of military objective contains two criteria which have to be fulfilled cumulatively before objects can be destroyed,

²¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), in Schindler/Toman, *op. cit.* (note 2), pp. 621-688.

captured or neutralized. They deal with the nature, location, purpose or use of objects and with the military advantage to be gained by destroying, capturing or neutralizing them. The nature, location, purpose or use of the object has to be such that it makes an “effective contribution to military action”. The military advantage has to be “definite, in the circumstances ruling at the time”. These criteria were as clear as it was possible to negotiate during the CDDH and they are fairly strict.

As such, the notion of military objective incorporates the idea of military necessity. Once an object has become a military objective it can be destroyed, captured or neutralized, subject to certain exceptions. This simple rule recognizes the military necessity of attacking certain objects during war. By limiting those objects to those which are military objectives it incorporates the notion that war has limits. As a result, the concept of military objective embodies the balance that humanitarian law establishes between military interests and humanitarian concerns.

The requirement of the 1954 Convention that the military necessity has to be “imperative” is made sufficiently clear in Article 4 of the Second Protocol by the second condition, namely that no other alternative is available. Military necessity could therefore virtually never be invoked to justify an attack on cultural property standing in the way of an advancing army, as there are almost always alternatives to circumvent the property. This means that when there is a choice between several military objectives and one of them is a cultural property, the latter shall not be attacked. In fact, this provision adds cultural property to the military objectives which, under Article 57(3) of Protocol I, should not be attacked.²²

The protection of cultural property is enhanced in that the concept of military objective — so widely recognized and used that it has become part of customary international law — is used to define the exception of military necessity. The rule that only military objectives

²² *Ibid.*, Article 57(3) which provides that “when a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack of which may be expected to cause the least danger to civilian lives and to civilian objects [and which is not cultural property].” The text in brackets shows how Article 57(3) would read for States having adopted both Additional Protocol I and the Second Protocol.

can be targeted is now part and parcel of military manuals and military training worldwide. As many delegates stated at the Diplomatic Conference, it is important to have a simple text which is easy to use and to teach. The concept of military objective fulfils these requirements far better than the vague notion of military necessity.

The final text of Article 4 of the Second Protocol is based on proposals submitted by Austria and the ICRC. The Austrian proposal read: "Imperative military necessity under Article 4, paragraph 2 of the Convention may only be invoked when there is no other feasible alternative for fulfilling the mission and for as long as the reasons for its invocation prevail". The ICRC proposal read: "Objects constituting cultural property lose their general protection from the moment they become military objectives, i.e. when they are used to make an effective contribution to military action and when their total or partial destruction, capture or neutralization offers a definite military advantage in the circumstances ruling at the time".

A Working Group on Chapter 2 was set up under the chairmanship of Austria. Its task was to combine both proposals as the delegates felt both had merit and were in fact complementary. The Austrian proposal sought to define the "imperative" character of military necessity whereas the ICRC proposal sought to use the concept of military objective to give content to the principle of military necessity. A criticism of the ICRC proposal was that it singled out the use of cultural property that could make an effective contribution to military action, whereas Article 52(2) of Additional Protocol I specifies that the nature, location, purpose or use of objects can make an effective contribution to military action. Many delegates, mostly from NATO countries, observed that any definition of military objective had to correspond exactly to the definition given in Article 52(2) of Protocol I.

As a result, the Working Group decided to provide a definition of military objective at the beginning of the Protocol, while Article 4 would limit acts of hostility against cultural property to property "which, by its use, has become a military objective". But even in the Working Group several delegations expressed concern about the restriction "by its use", whereby cultural property could become a

military objective by its use only and not by its location, for example. When the draft prepared by the Working Group on Chapter 2 came back to the plenary, the issue of use and location was clearly too controversial and the text was not acceptable to a significant number of delegations.

The Egyptian and Greek delegations were the most active in supporting the restriction whereby cultural property could become a military objective by its use only. The argument was that cultural property which was not used in any way for military action should never be the object of attack. If mere location could turn a cultural property into a military objective, the protection of cultural property would be greatly diminished. Some positive action should be required from the holder of the property before it could become a military objective. The ICRC supported this approach.

Since it was agreed that the nature and purpose of cultural property could never turn it into a military objective, the entire debate centered around the issue of location. The ICRC Commentary to 1977 Protocol I notes that the Working Group of Committee III introduced the location criterion without giving reasons.²³ The same thing could be said of the Second Protocol. No real reasons were given why location had to be included.

One example commonly cited at the Diplomatic Conference was that of historic bridges. This example is misleading, however, because it is really the use of such bridges that can make an effective contribution to military action.

The Canadian delegation offered another specific example: the retreat of troops could be blocked by a historic wall and there might be no way around the wall if it was located in a valley or a mountain pass. To go around the wall would take too much time, and the commander would therefore either have to take casualties or break through the wall. In such case, the historic wall would not be used for military action and would become a military objective merely because of its location. This example does not seem realistic as such walls are not usually built in valleys or mountain passes. The need for the criterion

²³ ICRC Commentary, *op. cit.* (note 20), p. 636, para. 2021.

of location was not well explained, yet several delegations, mostly from NATO countries, strongly insisted on it.

The ICRC Commentary on Additional Protocol I gives the following examples of objects which by virtue of their location make an effective contribution to military action: a bridge or other construction or a site which is of special importance for military operations in view of its location, either because it is a site that must be seized or because it is important to prevent the enemy from seizing it, or otherwise because it is a matter of forcing the enemy to retreat from it.²⁴

As mentioned above with respect to historic bridges, it is really the use of a construction or site that turns it into a military objective. With regard to sites that must be seized because of their location, the question arose at the CDDH what the situation would be if a belligerent in a combat area wished to prevent the enemy army from establishing itself in a particular area or from passing through that area, for example, by means of barrage fire.²⁵ There can be little doubt, according to the Commentary, that in such a case the area must be considered as a military objective and treated as such.²⁶ Of course, such a situation could only concern limited areas and not vast stretches of territory. It applies primarily to narrow passages, bridgeheads or strategic points such as hills or mountain passes.²⁷

None of these examples constitute convincing evidence of the need to target cultural property because of its location. There is convincing legal evidence, on the other hand, to say that what turns cultural property into a military objective is ultimately its use. In 1907, Article 27 of the Regulations Respecting the Laws and Customs of War on Land already stipulated that “in sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military

²⁴ *Ibid.*, p. 636, para. 2021.

²⁵ *Ibid.*, p. 621, para. 1955.

²⁶ *Ibid.*

²⁷ *Ibid.*

purposes” (emphasis added). This text confirms that it is their use which makes these objects lose their protection.

The ICRC Commentary on Article 53 of Additional Protocol I confirms this view. Article 53 prohibits the use of cultural property in support of the military effort.²⁸ The Commentary notes that “if protected objects were used in support of the military effort, this would obviously constitute a violation of Article 53 of the Protocol, though it would not necessarily justify attacking them. To the extent that it is admitted that the right to do so does exist with regard to objects of exceptional value, such a right would depend on their being a military objective, or not, as defined in Article 52, paragraph 2”.²⁹ For example, “it is not permitted to destroy a cultural object whose use does not make any contribution to military action, nor a cultural object which has temporarily served as a refuge for combatants, but is no longer used as such”.³⁰

As a compromise, the sentence “which, by their use, have become military objects” was changed to “which, by their function, have been made into military objects” in the Second Protocol. This represents a twofold change. First, the word “use” was replaced by “function”, which does not appear in the definition of a military objective. Secondly, “become” was replaced by the words “been made into”.

With regard to the new text, there was a clear understanding that the word “function” referred at the same time to something that was in fact functioning. For example, an old fortification which was not functioning as a fortification could not be considered a military objective. In addition, the new text sought to convey the requirement of an active role on the part of the holder of the cultural property in that the holder made the property into a military objective. This could only happen through use.

²⁸ Even though Article 53 deals with the use of very special cultural property only, for example cultural property on the International Register of Cultural Property under Special Protection or the new List of Cultural Property under Enhanced Protection, the author will argue below that there is no need to differentiate between the ways in which special or enhanced protection, on the one hand, and general protection, on the other, is lost.

²⁹ ICRC Commentary, *op. cit.* (note 20), p. 648, para. 2079.

³⁰ *Ibid.* (emphasis added). — See also Michael Bothe, Karl Josef Partsch, Waldemar A. Solf, *New Rules for Victims of Armed Conflicts, Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, Martinus Nijhoff, The Hague/Boston/London, 1982, p. 334, para. 2.6.

It is only by a stretch of imagination that function could cover location: the example of the historic wall blocking retreating soldiers could fall under the new text in that the circumstances make the wall, which functions to block a retreat, into a military objective. But in real life this is not the problem faced by cultural property on the battlefield. In real life the problem is that cultural property is attacked even when it is not used for any military action or is attacked indiscriminately. In real life the rule should be simple: cultural property which is not used to make an effective contribution to military action and whose destruction, seizure or neutralization does not offer a definite military advantage cannot be attacked. It is difficult to imagine how military commanders could teach their soldiers anything else.

It is remarkable that military lawyers who call for texts that are simple to teach and apply argue at such length about a minor difference that will be difficult to apply and teach. The reason why some delegates strongly argued for use only was clear. The mere location of pyramids in Egypt or temples on Greek islands should never serve as a pretext to attack those objects. The insistence on changing use to function is difficult to understand if the only example that could be given was that of an ancient wall blocking a pass. This example could easily have been dealt with under the exception of the prohibition on use of cultural property, thus leaving the overall system consistent, clear and simple. It is to be hoped that it will be taught and applied in that way.

Imperative military necessity to use cultural property

The 1954 Convention also allows the use of cultural property for military action if such use is required for reasons of imperative military necessity. The same problem as explained above applies to the exception with respect to use of cultural property: the content of the exception is not very clear and the protection of cultural property would be enhanced by greater precision.

An absolute prohibition of the use of cultural property for military action is difficult to imagine, as there may indeed be situations in which the military need to avail themselves of cultural property for good reason. A classic example is the case of retreating troops who need to take shelter in a cultural property for defence purposes. Because the exception is limited to cases of “imperative” military

necessity, such use can only be made when there is no alternative available. Hence, the Second Protocol provides that a waiver on the basis of imperative military necessity may only be invoked to use cultural property for military action “when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage”.³¹

Finally, it should be noted that the decision to attack or use cultural property on the basis of the exceptions explained above shall only be taken by an officer commanding a force equivalent to a battalion or a smaller force where circumstances do not permit otherwise.³²

B. Cultural property under enhanced protection

The 1954 Convention establishes a system of special protection. This system was designed for a limited number of refuges intended to shelter movable cultural property, centres containing monuments and other immovable cultural property of very great importance.³³ Special protection is granted by entry in the International Register of Cultural Property under Special Protection.³⁴ The system is intended to safeguard cultural property like the Versailles Palace in France or the Taj Mahal in India.

Unfortunately, the system of special protection has had very limited success. Only one centre containing monuments and eight refuges have been listed in the Register.³⁵ As three refuges were withdrawn from the list in 1994, only one centre containing monuments and five refuges remain. There are a number of reasons why so few objects have been listed. The first is that entry in the list is conditional on the

³¹ Second Protocol, Article 6(b). It is noteworthy that the Protocol speaks of “a waiver on the basis of imperative military necessity”, because that is the language used in Article 4(2) of the 1954 Convention. The Second Protocol is additional to the 1954 Convention.

³² *Ibid.*, Article 6(c).

³³ 1954 Convention, Article 8(1).

³⁴ *Ibid.*, Article 8(6).

³⁵ These are: Vatican City (18 January 1960), a refuge at Alt-Aussee in Austria (17 November 1967), six refuges in the Netherlands, Zandvoort (2), Heemskerk (2), (cancelled on 22 September 1994), Steenwijkerwold (cancelled on 22 September 1994), Maastricht (12 May 1969)) and the central Oberrieder Stollen refuge in Germany (22 April 1978). See International Register of Cultural Property under Special Protection, UNESCO Doc. CLT-97/WS/12, August 1997.

property being situated at an adequate distance from any large industrial centre or from any important military objective.³⁶ In many cases it is almost impossible to fulfil this condition as so much valuable cultural property is located in the heart of cities surrounded by potential military objectives. In addition, there is no agreement on what constitutes an adequate distance and, as a result, it is difficult to prepare an application for entry or to judge a request. This is yet another indication that the 1954 Convention was adopted well before the developments in humanitarian law reflected in the 1977 Additional Protocols and well before the technological evolution that has led to means and methods of warfare that allow for more accurate targeting.

Political motivations have also stood in the way of registration. States can object to the entry in the Register and have done so on grounds such as the fact that the requesting authority was not the legitimate representative of the country in question.³⁷

As a result, the Second Protocol has done away with the distance criterion and has strictly limited the possibility of lodging objections. Under the new system, three criteria have to be met in order for an object to be listed in the newly established List of Cultural Property under Enhanced Protection (the List):³⁸

- (a) the object must be a cultural heritage of the greatest importance for humanity;
- (b) it must be protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection;
- (c) it must not be used for military purposes or to shield military sites and a declaration must have been made by the Party which has control over the cultural property, confirming that it will not be so used.

³⁶ 1954 Convention, Article 8(1)(a).

³⁷ Jiri Toman, *The Protection of Cultural Property in the Event of Armed Conflict*, Dartmouth/Unesco, Aldershot/Paris, 1996, pp. 108-109.

³⁸ Second Protocol, Article 10.

A decision to grant or deny enhanced protection may only be made on the basis of those criteria. In addition, objections against such grant shall be specific and related to facts.³⁹ This is a clear response to the shortcomings of the previous system.

The fact that the World Heritage List established under the 1972 Paris Convention concerning the protection of the world cultural and natural heritage is widely used — 582 sites are listed — constituted an incentive to try and make the International Register of Cultural Property under Special Protection work. But past efforts showed that this could only happen if the conditions and procedures were adjusted to redress previous shortcomings.⁴⁰ The usefulness of such a list lies in its world-wide renown: its mere existence should constitute an effective tool of prevention and protection. UNESCO would remind warring parties of the list and point out that any military use of or attack against any property on the list would constitute a serious war crime (see below). The commission of such acts would also have severe negative political implications. When no wartime list was available, as in the case of the attacks on Dubrovnik, UNESCO availed itself of the World Heritage List, which had not necessarily been established for wartime purposes. As a result, Dubrovnik was more or less spared. This example has strengthened the conviction that it would be useful to have a list of exceptionally valuable cultural property to be protected in time of armed conflict. This conviction was clearly articulated by the States represented at the Preparatory Meeting in Vienna in May 1998.

As the Second Protocol is additional to the 1954 Convention, and does not amend it, the existing system of special protection could not be touched and an entirely new system had to be established. As the existing system has had only very limited success, the intention is clearly to start using the new system. States wanting to register any property should start using the new List of Cultural Property under Enhanced Protection established by the Second Protocol, and States that have registered property in the previous list should request a transfer to the new list.

³⁹ *Ibid.*, Articles 11(5) and 11(7).

⁴⁰ See Toman, *op. cit.* (note 37), pp. 108-111, for examples of important cultural property that, for one reason or another, has not been included in the International Register of Cultural Property under Special Protection.

The fact that a new system had to be set up also explains why a new name had to be used. Continued use of the designation “special protection” would have implied an amendment of the existing special protection system. As the Protocol was clearly supplementary, a new name had to be used and a separate and new system had to be set up.

Under the 1954 Convention special protection consists of the fact that the immunity of such property can only be withdrawn “in exceptional cases of unavoidable military necessity”.⁴¹ The wording implied a stricter standard than for other cultural property, where a waiver on the basis of “imperative military necessity” was in place. In practice, however, it was not clear what “exceptional cases of unavoidable military necessity” were.

The Second Protocol has clarified the law by establishing more clearly when cultural property under enhanced protection loses its protection, namely “if, and for as long as, the property has, *by its use*, become a military objective”, and an “attack is the only feasible means of terminating the use of the property” that made it a military objective.⁴²

Loss of enhanced protection is conditional on use of the cultural property so that it becomes a military objective. “Use” was not replaced by “function” as was the case for the general protection system for all cultural property, on the strength of the argument that the *quid pro quo* of enhanced protection was non-use in exchange for enhanced protection. As indicated above, one of the conditions for registration of cultural property for enhanced protection is abstention from its use for military purposes and a declaration confirming that it will not be so used. The argument was that since there is a promise not to use, enhanced protection can only be lost through use. It was further argued that limiting loss of protection for cultural property under enhanced protection to instances of use only was an essential part of the “enhanced” level of protection offered by enhanced protection system. This argument is, however, mistaken.

⁴¹ 1954 Convention, Article 11(2).

⁴² Second Protocol, Article 13 (emphasis added).

A common misunderstanding is that there is a difference in the levels of protection afforded cultural property under general and enhanced protection — and the names indeed do suggest that such a difference exists. But there is, in fact, no lower or higher level of protection. The basic protection is the same: the object cannot be destroyed, captured or neutralized. Once protection is lost, it is lost for good: “you use, you lose”. There are minor differences in the level of command at which an attack has to be ordered, the warning to be given and the requirement that a reasonable time be given to the opposing forces to redress the situation (see below), but these differences do not change the basic loss of protection.

There is no difference in the level of protection and there is no need to differentiate between two different ways in which cultural property can become a military objective. What is the difference then between enhanced protection and general protection? The main difference lies not in the obligations of the attacker but in the obligations of the holder of the cultural property. In the case of general protection, the holder of the property has the right, if need be, to convert the property into a military objective, by using it for military action. In the case of enhanced protection, the holder of the property has absolutely no right ever to convert the property into a military objective by using it for military action. Registration on the List therefore requires the State party seriously to study whether it would ever be in need of that property for military purposes and to answer in the negative.

Using property on the List for military purposes would amount to a serious violation of the Second Protocol, and the offender would be liable to criminal sanction as a war criminal (see below). The term “enhanced protection” is therefore misleading. The essence of the system is that it concerns some form of “registered” or “certified protection”. The holder of the property registers or certifies his promise that the property will never be used for military purposes. As a result, the property can never become the object of an attack. The advantage of putting property on the List is that an adversary will be particularly aware of it and any attack on the property will have serious consequences for the perpetrator (see below).

The registration of an object on the List of Cultural Property under Enhanced Protection can be compared to an internationally

recognized declaration establishing a non-defended locality.⁴³ It is best to make such declaration in peacetime as it guarantees that everything is in place if and when an armed conflict breaks out.

Conditions for attack

A. All cultural property

Once cultural property has, by its function, become a military objective and there is no feasible alternative, it has lost its protection against attack. Yet the Second Protocol adds a further condition for attack, providing for an extra level of protection for cultural property which has thus become a military objective, beyond the protection enjoyed by all civilian objects. In case of attack, an effective advance warning shall be given whenever circumstances permit.⁴⁴ This duty did not exist under the 1954 Convention. The duty to issue an effective advance warning also exists for attacks which may affect the civilian population.⁴⁵ This demonstrates how the protection of cultural property in some respects approximates the protection of the civilian population as such and goes beyond the protection of other civilian objects.

In addition, an attack can only be ordered by an officer commanding a force equivalent to a battalion or a smaller force where circumstances do not permit otherwise.⁴⁶

B. Cultural property under enhanced protection

Under the 1954 Convention, an attack on cultural property under special protection can only be ordered by “an officer commanding a force the equivalent of a division in size or larger and whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to attack”.⁴⁷

⁴³ See Additional Protocol I, Article 59.

⁴⁴ Second Protocol, Article 6(d).

⁴⁵ Additional Protocol I, Article 57(2)(c).

⁴⁶ *Supra*, note 32.

⁴⁷ 1954 Convention, Article 11(2).

The Second Protocol seeks to tighten these conditions, but an effort to change the relative duty of notice into an absolute duty and a concomitant effort, supported by the ICRC, to have the decision to attack taken at the highest level of government failed. It would indeed make sense to have the decision taken at the highest level of government because of the political implications thereof. Several delegates, however, argued against this proposal. While they recognized that in some countries such a decision would probably be taken at the highest level of government, for example if the Head of State is the Commander-in-Chief of the armed forces, they felt that the political structures of countries around the world were too diverse to impose such an obligation. Hence, the Second Protocol requires that an attack be ordered at the highest operational level of command.

In addition, a proposal to make it an absolute obligation to order the attack at such level, to give effective advance warning and to give reasonable time to the opposing forces to redress the situation, was rejected. Several delegates argued that if their troops came under fire from cultural property under enhanced protection they would deem it excessive to have to comply with those conditions without being able to return fire immediately. Hence, the three obligations are waived if circumstances do not permit “due to requirements of immediate self-defence”.⁴⁸ This still represents progress over the 1954 Convention, as the level at which the attack has to be ordered is much higher and as the vague “whenever circumstances permit” has been narrowed considerably. In addition, the requirement that a reasonable time be given to the opposing forces to redress the situation is new and adds an extra layer of protection.

An earlier ICRC proposal to approximate the protection of cultural property under enhanced protection to that given to medical units was not considered. Under Article 21 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the protection to which medical units are entitled shall not cease “unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all

⁴⁸ Second Protocol, Article 13(2)(c).

appropriate cases, a reasonable time limit and after such warning has remained unheeded”. It was felt that hospitals deserved an exceptional level of protection, beyond that enjoyed by other civilian objects.

Precautions in attack

By introducing the notion of military objective, other rules on the conduct of hostilities contained in Additional Protocol I of 1977 could also be included. The Second Protocol therefore incorporates the rules contained in Article 57 of Protocol I and applies them specifically to cultural property. In fact, Article 57 already covers cultural property, as it applies to civilian objects and all cultural property is, in principle, civilian in nature. Nevertheless, it was deemed useful to reaffirm those rules and to spell them out more clearly with respect to cultural property in particular.

Precautions against the effect of hostilities

The same can be said of Article 58 of Additional Protocol I dealing with precautions against the effects of attacks, the so-called passive precautions to be taken by the defender (in parallel with the active precautions to be taken by the attacker). Article 8 of the Second Protocol applies the rules contained in Article 58 of Protocol I in a way appropriate for cultural property.

Individual criminal responsibility

Article 28 of the 1954 Convention requires States “to take, within the framework of their ordinary jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the [...] Convention”.⁴⁹

This provision has largely remained a dead letter, mainly because it does not list the violations which require a criminal sanction. The

⁴⁹ 1954 Convention, Article 28.

experience of the ICRC Advisory Service on International Humanitarian Law proves that such a list is essential if a coherent and complete system of criminal repression of war crimes is to be instituted worldwide.

This is one of the main areas in which the Second Protocol clarifies and develops humanitarian law with respect to cultural property. Building on Additional Protocol I and the Rome Statute of the International Criminal Court, Article 15 defines five acts which constitute serious violations requiring a criminal sanction if committed intentionally and in violation of the 1954 Convention or the Second Protocol:

- 1) making cultural property under enhanced protection the object of attack,
- 2) using cultural property under enhanced protection or its immediate surroundings in support of military action,
- 3) extensive destruction or appropriation of cultural property protected under the Convention and the Second Protocol,
- 4) making cultural property protected under the Convention and the Second Protocol the object of attack,
- 5) theft, pillage or misappropriation of, or acts of vandalism directed against, cultural property protected under the Convention.

But the definition of serious violations is not in itself sufficient to ensure that persons committing such violations are actually punished. To achieve this would still require effective enforcement at the national level. In order to arrive at effective national enforcement, implementing legislation has to be adopted covering two aspects: (a) criminalizing violations, and (b) establishing jurisdiction to try or extradite.

Criminalizing violations

As far as the need to criminalize violations under domestic law is concerned, States have the specific duty, under the Second Protocol, to adopt whatever measures are necessary to establish the above-

mentioned five serious violations as criminal offences under their domestic law and to make the offences punishable by appropriate penalties. Such legislation would ensure that the prohibition to commit any of the serious violations of the Second Protocol is, in practice, enforced.

With regard to the issues of auxiliary crimes (e.g. aiding and abetting), command responsibility and defences, the original proposal to set out these rules was discarded in favor of an obligation to comply with general principles of law and international law in this respect.⁵⁰ These rules have been authoritatively restated in the Rome Statute of the International Criminal Court, and many delegates felt there was no need to repeat them in a “mini criminal code”.

Jurisdiction

The list of serious violations is based on proposals submitted by Austria and the ICRC to the Working Group on Chapter 4. This explains why it contains two types of violations.

- (a) The first three violations correspond to what are called “grave breaches” under the Geneva Conventions and Additional Protocol I, and are based on a proposal by Austria. States have a duty to try or extradite anyone charged with having committed any of these violations on the basis of universal jurisdiction. Specific and detailed provisions regulate the prosecution and extradition of offenders.⁵¹ According to the Chairman of the Working Group, from the point of view of international criminal law, these provisions are a major achievement as all elements to form a coherent system of prosecution and extradition are included.⁵²

With respect to the specific violations included in this category, it is interesting to note that the first two violations concern cultural property under enhanced protection, and that both an attack on and

⁵⁰ Second Protocol, Article 18(2)

⁵¹ *Ibid.*, Articles 17.20.

⁵² Horst Fischer, *Presentation of the Results of the Working Group on Chapter 4*, UNESCO Doc. HC/1999/INF.5, 25 March 1999, p. 2.

the use of such property are established as serious violations. Under Protocol I of 1977, only an attack on such property is defined as a grave breach and only in so far as it causes extensive destruction.⁵³ The Second Protocol establishes a balance between the criminal responsibility of both the attacker and the defender.

A proposal by the delegate from China to prohibit collateral damage to cultural property under enhanced protection was not acted upon. This would have been a significant improvement of the existing system. Since the Second Protocol requires parties to a conflict to refrain from any use of such property or its immediate surroundings in support of military action, such a rule could have fitted into the Second Protocol.

The third serious violation concerns the destruction or appropriation of all cultural property, but the extensive nature of such acts make them serious violations on a par with grave breaches.

States have to establish universal jurisdiction over such violations. This means they have to establish jurisdiction not only when the offence is committed in the territory of the State or when the alleged offender is a national of the State, but also when the offence is committed abroad by a non-national.⁵⁴ This reflects the principle of mandatory universal jurisdiction for grave breaches, which implies that all States have to establish jurisdiction to try or extradite non-nationals for war crimes committed abroad who are present in their territory.

At the request of the United States, a provision was included that excludes nationals of States not party to the Second Protocol from the regime of mandatory universal jurisdiction.⁵⁵ This would mean that States have no obligation to try or extradite such persons. The extent of this exception is greatly diminished, however, by the acknowledgement that States may establish jurisdiction over such persons under applicable national or international law, including customary international law,⁵⁶ by the statement of the Chairman of the Working

⁵³ Additional Protocol I, Article 85(4)(d).

⁵⁴ Second Protocol, Article 16(1).

⁵⁵ *Ibid.*, Article 16(2)(b).

⁵⁶ *Ibid.*, Article 16(2)(a).

Group on Chapter 4 that nothing in the Second Protocol in any way limits the ability of States to legislate, criminalize or otherwise deal with any offence under the Protocol,⁵⁷ and by the fact that the entire jurisdictional regime is without prejudice to Article 28 of the 1954 Convention.⁵⁸

Article 28 of the 1954 Convention was in fact already intended to provide for mandatory universal jurisdiction. According to Toman, “the representative of one government raised the question of whether a Party to the Convention was obliged to prosecute and impose penal sanctions upon persons having committed breaches outside the territory subject to the criminal jurisdiction of the State in question. The answer is yes, because that is the aim of this provision. It may reasonably be assumed that the country has at its disposal general legislation concerning the protection of its own cultural property and that the criminal act directed against that property would, in any event, be covered by those provisions. What remains to be done — according to Article 28 of the Convention — *is to prosecute those who have committed criminal acts outside the territorial jurisdiction of the State*”.⁵⁹

- (b) The last two serious violations were added to the list at the suggestion of the ICRC. The reason for this was that these acts had been recognized as war crimes subject to criminal sanction in the Rome Statute of the International Criminal Court. As such, they could not be included in a general provision on “other violations” which would only require States to suppress such acts without specifying the means of doing so. As indicated above, the experience of the ICRC has shown that the vagueness of the category of “other violations” makes it very difficult to convince States that certain of those other violations are indeed war crimes which have to be penalized with a criminal sanction under domestic law.

These two serious violations amount to war crimes, but States only have the obligation to repress them by criminal sanctions using the

⁵⁷ Fischer, *op. cit.* (note 52), p. 3.

⁵⁸ Second Protocol, Article 16(2)(chapeau).

⁵⁹ Toman, *op. cit.* (note 37), p. 294 (emphasis in original).

most common grounds for jurisdiction, namely when the offence is committed in the territory of the State or when the alleged offender is a national of the State. There is no obligation to establish jurisdiction over cases where the alleged offence was committed abroad by a non-national, although States may exercise such jurisdiction.⁶⁰ This reflects the principle of permissive universal jurisdiction for war crimes, according to which all States have jurisdiction to try non-nationals for war crimes committed abroad but are under no obligation to do so if the crimes do not amount to grave breaches. This also follows clearly from the acknowledgement that States may establish jurisdiction over such persons under applicable national or international law, including customary international law,⁶¹ and from the statement by the Chairman of the Working Group on Chapter 4, referred to above, that nothing in the Protocol limits in any way the ability of the State to legislate, criminalize or otherwise deal with any of the serious violations of the Protocol.⁶²

The scope of application

The Second Protocol applies equally to international and non-international armed conflicts.⁶³ The extension of the application of the Second Protocol to non-international armed conflicts is essential. Most modern armed conflicts are non-international, and history has shown that the protection of cultural property in such conflicts can be problematic.

Furthermore, developments since the adoption of the Hague Convention in 1954 should not be forgotten. Additional Protocol I establishes a coherent system of criminal repression but only as far as international armed conflicts are concerned. It is of particular importance, as a result, that the entire Second Protocol, including the section on criminal repression, apply to non-international armed conflicts. This reflects the modern tendency of legislation, for example, no longer to distinguish between international and non-

⁶⁰ Second Protocol, Article 16(2)(a).

⁶¹ *Ibid.*, Article 16(2)(a).

⁶² Fischer, *op. cit.* (note 52), p. 3.

⁶³ Second Protocol, Articles 3 and 22.

international armed conflict when it comes to repression of violations of international humanitarian law. In addition, under its Statute, the International Criminal Court has jurisdiction over war crimes committed against cultural property in both international and non-international armed conflict.

At the request of China and India, a phrase was added to the effect that nothing in the Protocol shall prejudice “the primary jurisdiction” of a State in whose territory a non-international armed conflict occurs over the serious violations of the Protocol. This means, in reality, that the territorial State has the primary responsibility to exercise jurisdiction over such violations: to investigate, prosecute and punish the offenders. It clearly implies, however, that if such jurisdiction is not exercised, jurisdiction may be exercised by other States or by international criminal tribunals with the competence to do so.

Although Article 22 of the Second Protocol does not spell it out as clearly as it could have, the Protocol applies to all parties to a non-international armed conflict, whether governmental or insurgent forces. This was clearly acknowledged at the final plenary session. A certain confusion arose because Article 1 of the Protocol defines the word “Party” as a State Party to the Second Protocol. However, the understanding was that throughout the text the word “Party” in the phrase “Party to the conflict” includes rebel groups of States party to the Second Protocol but not third States which have not ratified the Second Protocol.⁶⁴ The reasoning was that non-governmental forces involved in a non-international armed conflict within a State party to the Protocol are bound by the Protocol through the ratification of the State concerned.⁶⁵

⁶⁴ Third States which have not ratified the Second Protocol are generally referred to as “party” (in lower case).

⁶⁵ It is unfortunate that recognition of the potential confusion of the definition of “Party” and the use of the term “Party to the conflict” came only in the last hours of the Diplomatic Conference. As a result, there was no discussion on whether the general understanding that the Second Protocol applies to governmental forces and rebel groups in a non-international armed conflict is also valid for Article 11 (g). It is difficult to say whether this was indeed the intention of States, as the Working Group on Chapter 3 (Enhanced Protection) did not discuss the issue.

Conclusion

The adoption of the Second Protocol is an important step forward in the legal protection of cultural property in armed conflict. The Protocol addresses the weaknesses of the 1954 Convention and offers adequate solutions. Its main achievements are that it:

- ♦ clarifies the obligations to take precautionary measures and disseminate the Convention and the Second Protocol;
- ♦ updates the 1954 Convention by introducing concepts contained in Additional Protocol I of 1977;
- ♦ offers the opportunity to make the regime of “special protection” effective by replacing it with a new and improved system of “enhanced protection”;
- ♦ improves the enforcement mechanism by defining serious violations which have to be punished with a criminal sanction and by imposing a duty upon States to establish jurisdiction over those violations;
- ♦ develops humanitarian law by defining those serious violations and by extending the scope of application to non-international armed conflicts.

Another beneficial effect of the Second Protocol is that more attention has been given to the 1954 Convention itself. As a result, a considerable number of States have ratified the 1954 Convention since the review process started and more are in the process of ratification. Much remains to be done, especially as far as marking of cultural property and dissemination are concerned, but at least awareness of the problems has been heightened.

While human life is still more important than objects, it is nevertheless essential to have rules protecting cultural property, as such objects constitute the collective memory of humanity, examples of its greatest achievements, and symbolize human life itself. If cultural property is destroyed, civilian life suffers greatly as well.

UNESCO's activities for the implementation and promotion of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols

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First, I should like to thank the International Committee of the Red Cross for having invited UNESCO to participate in the Meeting of experts on national implementation of the rules for the protection of cultural property in the event of armed conflict, thus allowing me to make a presentation on the promotion of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereafter the 1954 Hague Convention) and its two Protocols. The first part of my presentation consists of a brief introduction of UNESCO's International Standards Section, while the second focuses on the role of UNESCO's Director-General and its Secretariat under the 1954 Hague Convention and its Second Protocol. In the third part I will speak about the activities to implement and promote the Convention and its two Protocols, and in the fourth part I will examine some of the problems encountered in the Convention's implementation.

The International Standards Section is staffed by six professionals and is the only unit within UNESCO dealing with the international legal protection of cultural heritage. In addition to the 1954 Hague Convention and its two Protocols, it administers the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and eleven UNESCO recommendations for the protection of cultural heritage. We also provide the secretariat for the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, a 22-member intergovernmental body dealing with claims which cannot be settled under the 1970 Illicit Traffic Convention.

To fight the theft of works of art, we issue notices of stolen cultural property at the request of any State party to the 1970 Convention. We also send expert missions, at the request of Member States, to consult with national authorities on the preparation or amendment of national legislation for the protection of cultural property. Finally, we are currently preparing a new draft convention on the protection of the underwater heritage.

Let me now turn to the second part of my presentation: the role of UNESCO's Director-General and Secretariat under the 1954 Hague Convention and its Second Protocol.

In addition to having a general mandate to protect the world's cultural heritage under the UNESCO Constitution, the Director-General has the following specific functions under the 1954 Hague Convention:

- ♦ to manage special protection, in particular by entering new cultural sites on the International Register of Cultural Property under Special Protection, maintaining the Register and cancelling entries therein (Art. 8 and Chapter II of the Regulations for the Execution of the Convention);
- ♦ to offer UNESCO's services to the parties to a conflict not of an international character (Art. 19);
- ♦ to participate in the conciliation procedure involving the Protecting Powers (Art. 22 of the Convention and Chapter I of the Regulations for its execution);
- ♦ to provide technical assistance to States party to the Convention, at their request, with regard to the organization of the protection of their cultural property or in connection with any other problem arising from the application of the Convention or the Regulations for its execution (Art. 23(1)); he may also make, on his own initiative, proposals for the provision of technical assistance to States party to the Convention (Art. 23(2));
- ♦ to act as an intermediary in communicating official translations of the Convention and the Regulations for its execution between States party to the Convention (Art. 26(1));
- ♦ to request States party to the Convention to furnish, at least every four years, their national reports on the implementation of the

Convention and the Regulations for its execution and to arrange for the preparation and circulation of the Secretariat's report on the implementation of the Convention and the Regulations (Art. 26(2));

- ♦ to convene, with the approval of the Executive Board, a meeting of States party to the Convention with a view to discussing problems related to the application of the Convention and the Regulations for its execution (Art. 27);
- ♦ to perform depositary functions related to the ratification of the Convention (Art. 31), accession to the Convention (Art. 32), denunciation of the Convention (Art. 37) and notifications (Art. 38); such functions are also carried out with regard to the 1954 Protocol;
- ♦ to assist, at their request, States party to the Convention wishing to propose amendments thereto (Art. 39).

The Convention as a whole is administered by the Secretariat.

Before speaking about the functions of the Director-General under the Second Protocol, I wish to stress the importance of the Director-General's general mandate for the protection of the world's cultural heritage under the UNESCO Constitution. This mandate has enabled him in the past to ensure the protection of cultural property in conflicts where it was not possible to appoint a commissioner-general (e.g. the Middle East conflict and the conflict in the former Yugoslavia). The practice of dispatching personal representatives of the Director-General has proven successful because it allows for flexibility, political considerations and, last but not least, rapid action.

Let me now turn to the functions of the Director-General under the Second Protocol. In addition to his depositary functions and those related to Protecting Powers (Chapters 9 and 8), the Director-General's main role is to offer UNESCO's services to parties to a conflict not of an international character (Art. 22(7) of the Second Protocol), to convene the Meeting of States party to the Second Protocol under Article 23(1), to disseminate guidelines and instructions on the protection of cultural property to the armed forces, to provide peacetime training and educational programmes, and to

provide technical assistance, either at the request of a State party to the Second Protocol or on his own initiative (Art. 33).

It should be stressed, however, that the Director-General maintains his general mandate for the protection of the world's cultural heritage under the UNESCO Constitution.

As in the case of the original Convention, the Second Protocol is administered by the Secretariat.

The third part of my presentation concerns the implementation and promotion of the Convention.

First, whenever a State joins UNESCO, the Secretariat contacts its national authorities in order to encourage it also to become a party to the Convention and its 1954 Protocol. This practice has not always met with success, however, because only some States inform the Secretariat of their willingness to become parties or, at least, of their intention to study the compatibility of the treaties' provisions with their national legislation.

To help national authorities reach a decision, we have issued a fact sheet listing the arguments for becoming a party to the 1954 Hague Convention and its Protocols, which we regularly send to States that are not party to the Convention or the 1954 Protocol with a view to encouraging them to become members. Copies of the fact sheet are available in the meeting room for your information.

Secondly, the Secretariat spreads knowledge of the Convention by organizing, together with the ICRC, training seminars on international humanitarian law and cultural heritage protection law. The first such seminar, for the five Central Asian countries, took place in Tashkent (Uzbekistan) in September 1995. The second was held in the capitals of the three trans-Caucasian countries in May 1996 and the third in Kathmandu (Nepal) for the seven South Asian countries in May 1997. The seminars are particularly effective because, as the Convention is closely linked to other issues of international humanitarian law, they allow us to bring together the people in charge of implementing the most important instruments of international humanitarian law. This usually includes military and law-enforcement officers, civil servants from cultural and foreign affairs ministries, lawmakers, NGO representatives and scholars.

In conformity with the conclusions of the 1998 UNESCO-ICRC Dialogue, we now plan to organize a similar seminar for African countries with a view to addressing their specific needs.

Thirdly, the Secretariat issues reports in five languages on the Convention's implementation. The most recent, published in 1995, included 29 country reports and a contribution by the Secretariat on incidents that had taken place during the same five-year period and that had to be taken into consideration. These reports are a very useful source of information because their wide distribution allows the States Parties to share practical information on various national measures related to the application of the Convention, including military measures. Such information would otherwise be known only to a small group of government officials and scholars.

Readers wishing to know more about the protection of cultural property during the recent conflicts in the former Yugoslavia should peruse the country reports of three of the protagonists — Croatia, Slovenia and the Federal Republic of Yugoslavia — and the corresponding part in the Secretariat's introduction in order to understand what happened in those countries and how UNESCO reacted to the destruction of cultural heritage in the region. A copy of the 1995 report is available for your information in the meeting room.

The Secretariat is now preparing the next periodic report on implementation of the Convention, scheduled to be published next year. In preparing the circular letter requesting the States Parties to provide the Secretariat with their country reports, we mentioned certain key issues to be reflected in the Secretariat's report. For this reason, we attached an annex with the eight topics we wished to receive reports on, namely: Article 7 (Military measures), Article 8 (Special protection), Chapter V (The distinctive emblem), Article 25 (Dissemination of the Convention), Article 26(1) (Official translations), Article 28 (Sanctions), the 1954 Protocol and Resolution II of the 1954 Hague Conference on national advisory committees.

I am pleased to inform you that of the 23 States Parties which have provided their country reports so far,¹ a majority drew up their reports

¹ Argentina, Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Finland, Holy See, Islamic Republic of Iran, Italy, Kuwait, Liechtenstein, the former Yugoslav Republic of Macedonia, Mexico, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Tunisia and Turkey.

in conformity with our list of topics. Copies of this annex are available for your information in the meeting room.

Fourth, in 1993 the Secretariat published a study on the review of the Convention written by Professor Patrick Boylan. It has also published an article-by-article commentary on the Convention. The French version appeared in 1994, the English edition was issued in 1996. Other language versions are planned. This commentary is intended mainly for administrators, specialists and students. To make the Convention better known among the general public, we distribute a four-language leaflet explaining its fundamental principles. Copies of the leaflet are also available in the meeting room.

Fifth, when providing expert advice on drafting national legislation on the protection of cultural property to UNESCO Member States, the Secretariat comments *inter alia* on the compatibility of the draft national legislation with UNESCO's conventions and recommendations for the protection of cultural property, including the 1954 Hague Convention and its two Protocols.

Sixth, in order to ensure that cultural property is protected during United Nations peace-keeping operations, the Secretariat has issued a handy pocket card summarizing the Convention's main principles for members of peace-keeping forces. It is also preparing a training manual on the Convention for instructors.

Seventh, in response to the atrocities committed against cultural property in Kosovo, the Secretariat has prepared, in cooperation with the ICRC, a one-page handout on the basic principles for the protection of cultural property in Albanian, English and Serbian. It is hoped that this handout will raise awareness of the paramount need to protect the cultural property of all ethnic groups, thus contributing to the establishment of a civic society in Kosovo. Copies of the handout are available for your information in the meeting room.

Until now, I have only spoken about implementation of the Convention. Now I would like to mention two examples of the application of the 1954 Protocol: the Secretariat's appeal to the Iraqi authorities at the outbreak of the Gulf War to respect the provisions of the 1954 Protocol, and the publication and dissemination of a notice

of missing cultural property related to Iraqi cultural objects that disappeared in the wake of the Gulf War, dated 1 August 1995.

Finally, our most significant achievement in the past few years has been the review of the Convention, which resulted in the drafting and adoption of the Second Protocol thereto. As one of our previous speakers has made a presentation on the negotiations on the Second Protocol, I am not going to go over that aspect again; instead, I will simply present the reasons leading to the review of the Convention and the main achievements of the Second Protocol.

The scope of the destruction of cultural property in the last decade, both in international and non-international armed conflicts, revealed certain shortcomings in the implementation of the 1954 Hague Convention. In 1991, therefore, the Secretariat undertook to review the Convention in order to draw up a supplementary legal instrument that would close existing loopholes, such as the lack of clarity in the interpretation of the clause of “military necessity”, the application of special protection and of the Convention’s control system, the reinforcement of penal provisions and the absence of an institutional body to monitor implementation of the Convention.

The eight-year effort aimed at reviewing the efficiency of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict resulted in the adoption of the Second Protocol thereto by the Diplomatic Conference which took place at The Hague from 15 to 26 March 1999.

The Second Protocol represents substantial progress in terms of the level of protection:

- ♦ it provides a clear definition of the notion of “military necessity”, thus preventing possible abusive or ambiguous interpretation;
- ♦ it introduces a new category of enhanced protection for cultural heritage of the greatest importance for humanity, which is protected by relevant national legislation and must not be used for military purposes;
- ♦ it lays down sanctions for serious violations that harm cultural property and defines the conditions in which individual criminal responsibility is incurred.

Finally, a most important step forward is the establishment of a twelve-member intergovernmental committee that will have authority with regard to the implementation of the Convention and the Second Protocol by States that are party to both instruments. The Convention itself made no provision for such a body. It should be noted that the Second Protocol is supplementary to, and in no way replaces, the Convention.

To enter into force, 20 instruments of ratification, acceptance, approval or accession must be deposited with the Director-General of UNESCO. UNESCO, which will provide the secretariat for the Intergovernmental Committee, will actively promote participation in the Convention and both Protocols. It will also consult with States on the appropriate measures for their implementation.

By 31 December 1999, the Second Protocol had been signed by 39 States. To date, only two States (Bulgaria and Qatar) have deposited their instruments of ratification.

The texts of the Convention and its Protocols, together with the list of States party to the Convention and the 1954 Protocol, the list of States signatories and other information on our activities are all available on the UNESCO web site at:

<http://www.unesco.org/general/eng/legal/convent.html> or
<http://www.unesco.org/culture/legalprotection/index.html>.

I am now coming to the last part of my presentation, on the main problems encountered in the implementation of the Convention.

First, although almost all States are party to the four 1949 Geneva Conventions, only 98 States are party to the 1954 Hague Convention and 82 States to the 1954 Protocol. The majority of States which have joined the Convention since 1991 were successors to the former Czechoslovakia, the Soviet Union and the former Yugoslavia. Furthermore, the geographical breakdown of States party to the Convention is uneven: while 42 States party to the Convention, representing almost 43% of the total, are European, only 14 are African, 14 are Arab, 15 are Asian or Pacific States and 13 are located in Latin America.

Why are there such big discrepancies? There are several reasons. Some States do not consider the Convention a priority because they

believe their involvement in armed conflict unlikely. Others are concerned that rapid ratification or accession may be perceived as preparation for armed conflict. A number of developing countries lack the administrative and financial means properly to implement the Convention, to establish the civilian and military services for the protection of cultural property, for example, or even to translate the Convention into their own language. Some States may even need to adopt amendments to their Constitution in order to bring their national legislation in line with the Convention.

Then there is the qualitative aspect. Certain global and regional powers, such as the United States of America, the United Kingdom, Japan and South Africa, are not among the States Parties, thus undermining the Convention's universality and giving other States a pretext not to join. For this reason, we strive to encourage States that are not party to the Convention to join or at least to incorporate its basic principles into their national legislation.

Secondly, although almost 100 States are party to the Convention and 82 are party to the 1954 Protocol, there are wide variations in the national implementation of both treaties. One striking example of the gap between information on national implementation and reality is the 1989 Yugoslav periodic report. The report is a textbook example of how the Convention should be implemented,² yet events in Yugoslavia since 1989 have shown how different the reality is. The Secretariat has also been informed of a pending case in one of the States party to the Convention: the national authorities discovered that the provisions of the 1954 Protocol had not been incorporated into its national legislation and that they could therefore not be applied.

Thirdly, the concept of special protection merits fresh consideration. For those of you who are not familiar with it, I will briefly describe it. The Convention provides for two categories of protection: general and special. General protection is accorded to all categories of cultural property listed in Article 1 of the Convention. Special

² UNESCO: *Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 1954, 1989 Report*, Ref. CC/MD — 11, Paris, December 1989, pp. 39.

protection is granted to three categories of cultural property under Article 8(1) of the Convention:

- (a) refuges intended to shelter movable cultural property in the event of armed conflict;
- (b) centres containing monuments;
- (c) other immovable cultural property of very great importance.

Special protection is granted essentially on two conditions: the cultural property in question must be situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, and it may not be used for military purposes. However, if the cultural property is close to an important military objective, it may be placed under special protection if the State concerned undertakes not to use the military objective.

The concept of special protection has never fully developed its potential. To date, only three States (Germany, the Holy See and the Netherlands) have placed five sites under special protection; the entry of the Austrian site in the Register is being cancelled and the last entry in the Register took place in 1978.

To revive the interest of States Parties in special protection, UNESCO's Executive Board adopted Decision 5.5.1 in May 1993, inviting the States party both to the 1954 Hague Convention and the 1972 World Heritage Convention and which have cultural sites entered on the World Heritage List to consider nominating them for entry in the Register. However, this effort has not led to any new entries in the Register.

Why are the States party to the Convention reticent to place their cultural sites under special protection? There may be several reasons, in particular the impossibility of complying with the condition of "adequate distance from a large industrial centre or military objective" for densely-populated countries, technical difficulties in submitting nominations or reluctance to designate cultural property for special protection for fear of possible terrorist attacks or even of providing a potential adversary with a "hit-list".

The March 1999 Diplomatic Conference established a new concept, enhanced protection, which combines aspects of special protection

and of the criteria for listing outstanding cultural property on the World Heritage List under the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage. To benefit from enhanced protection, the property must meet three conditions: it must be cultural property of the greatest importance for humanity; it must be protected by adequate domestic legal and administrative measures, and it may not be used for military purposes or to shield military sites. The party which has control of the property must have made a declaration to that effect. Enhanced protection is granted when the cultural property in question is entered on the List of Cultural Property under Enhanced Protection. In comparison with the system of special protection under the Convention, enhanced protection is accorded by the twelve-member intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict. As in the case of special protection, objections to the granting of enhanced protection may be made but only on the basis of the three conditions which I have just mentioned. This provision aims to prevent States party to the Second Protocol from making objections on the grounds purely of political animosity or mutual non-recognition, thus avoiding stalemates. For example, in 1972 Cambodia requested the entry of several sites in the Register, but those entries were never made because four States party to the Convention which did not recognize the Government of Cambodia at that time opposed them.

The Convention's control system also needs re-evaluation. It was based on the existence of Protecting Powers and Commissioners-General, and was thus a child of its time, an outcome of events during the Second World War. In other words, although perfectly suitable for classical conflicts between States lasting several months or even years, it was very difficult to apply in contemporary armed conflicts, in particular those of mixed character. In the most recent conflicts the Director-General has preferred to use, as I mentioned at the beginning of my presentation, the services of his personal representatives.

Following intense deliberations, the Diplomatic Conference held in The Hague in March 1999 decided to establish a new twelve-member intergovernmental organ: the Committee for the Protection of Cultural Property in the Event of Armed Conflict, which is vested

with broad authority with regard to implementation of the Second Protocol. Its functions are chiefly administrative and technical, and include monitoring implementation of the Second Protocol, managing enhanced protection and granting technical assistance.

In conclusion, I wish to stress the importance we attach to our cooperation with the International Committee of the Red Cross, because of its professional reputation, efficiency and long-standing commitment to the implementation and promotion of international humanitarian law. We sincerely hope that UNESCO, in close cooperation with the ICRC, will be able to help enhance knowledge and implementation of the 1954 Hague Convention and its two Protocols, the Magna Carta of the protection of cultural property. We count on the ICRC because without its active participation, the Convention and its Protocols are likely to fail and we will be helpless to prevent another Dubrovnik or another Sarajevo.

National implementation of international humanitarian law, the work of the ICRC Advisory Service and the protection of cultural property, including strategies for the ratification of the relevant humanitarian law treaties

María Teresa Dutli

Head, Advisory Service on International Humanitarian Law, ICRC

The ICRC's Advisory Service on International Humanitarian Law: objectives and method

The ICRC established the Advisory Service on International Humanitarian Law in 1996 in order to strengthen its support for States engaged in the national implementation of humanitarian law. The decision was made pursuant to the recommendations of the 26th International Conference of the Red Cross and Red Crescent, which was held in Geneva in November 1995.

The Advisory Service's objective is to promote the national implementation of humanitarian law. Its main tasks are to make sure as many States as possible become members of humanitarian law treaties and, above all, to help the national authorities set up the legal bodies required by those treaties in order to facilitate their effective application. The Advisory Service backs representations to the national authorities and provides technical assistance with a view to meeting those objectives. In all cases, it works in close cooperation with the national authorities, taking account of both the specific needs of States and their political and legal systems.

In order to promote humanitarian law treaties and their implementation at national level, the Advisory Service also works in close cooperation with the National Red Cross or Red Crescent Society of the country concerned and, as appropriate, in coordination with the International Federation of Red Cross and Red Crescent Societies. It also cooperates with the regional organizations and academic

institutions working in related fields, for the purpose of coordination and to avoid overlap.

The Advisory Service is part of the ICRC's Legal Division. It consists of a unit at headquarters staffed by four legal advisers, two civil law specialists, one common law expert and one person in charge of administrating the Service's database. The unit also has staff members in charge of collecting and collating national legislation. A team of legal advisers in the field, present on every continent and stationed at an ICRC regional delegation, completes the structure. The legal advisers have been posted to the following capital cities: Budapest and Moscow in Europe, Guatemala in Latin America, New Delhi for the Indian subcontinent, Abidjan for French-speaking Africa, Harare for English-speaking Africa and Cairo for the Middle East. They are thoroughly conversant with the language, culture and legal systems of the regions concerned.

The activities and accomplishments of the Advisory Service

To meet the above objectives, the Advisory Service conducts a variety of activities: it establishes bilateral contacts with the national authorities, organizes national and regional seminars and meetings of experts, provides technical assistance on draft legislation, draws up draft legislation and other national documents, exchanges information and produces publications.

When it was first established, the Advisory Service set the following short and medium-term priorities:

- ♦ *universality of humanitarian law treaties* — promote universal participation in all humanitarian law treaties;
- ♦ *repression of war crimes and other violations of the law* — promote the adoption by all States of national legislation allowing for effective punishment of such crimes;
- ♦ *protection of the red cross and red crescent emblems and of other protected signs* — promote the adoption of national legislation governing the use of the emblems and punishing any misuse;
- ♦ *national humanitarian law bodies or committees* — encourage the establishment of national bodies whose task is to work for effective implementation of humanitarian law.

In the light of the results obtained in a number of countries and after four years of activity, those priorities have been expanded to cover other fields related to national implementation, namely:

- ♦ *the protection of cultural property in the event of armed conflict* — I will come back to this point, which is the purpose of this meeting of experts; and
- ♦ *the protection of children in armed conflicts*. Children are extremely vulnerable, and a special effort must be made to protect those caught up in war. Children are protected in armed conflicts by humanitarian law and by the 1989 United Nations Convention on the Rights of the Child. An Optional Protocol to the Convention was adopted in May 2000, on the involvement of children in armed conflict. This instrument enhances the protection afforded to children in armed conflicts, raising the age of recruitment and participation in the hostilities to 18. It is now important to promote its ratification and to ensure its effective implementation.

According to the information available to us, the results obtained with regard to national implementation can be summed up as follows:

- ♦ *membership in treaties* — to date, the following numbers of States are party to the main treaties of humanitarian law:
 - 189 States are party to the Geneva Conventions; 157 are also party to Additional Protocol I, applicable in international armed conflicts, and 150 to Additional Protocol II, applicable in non-international armed conflicts;
 - 21 States are party to the Statute of the International Criminal Court;
 - 83 States are party to the 1980 Convention on Conventional Weapons and 107 to the Ottawa treaty prohibiting anti-personnel landmines;
 - lastly, 89 States are party to the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict, 82 are party to its 1954 Protocol, and 37 have signed the 1999 Protocol, which Qatar and Bulgaria have already ratified.

- ♦ *penal legislation to criminalize and punish war crimes*

Numerous States have amended their national legislation to introduce the repression of war crimes in their criminal codes. The new legislation makes no distinction between crimes committed in international conflicts and those committed in non-international conflicts, and the crimes are punished on the basis of the principle of universal competence, i.e. the authors thereof are prosecuted no matter what their nationality or the place where the crime was committed.

- ♦ *protection of the red cross and red crescent emblems*

Many States have also modified or adopted national legislation introducing protection of the emblems and other signs protected by humanitarian law. To date, about 140 States have made relatively complete provision in this respect or are on the verge of adopting the pertinent draft legislation.

Every year the Advisory Service publishes a report on national implementation of international humanitarian law. The report recounts the progress made by the States in this regard. In addition, information on implementation by country can be found in the ICRC database on international humanitarian law.

The role of national committees for the implementation of humanitarian law and their cooperation with the Advisory Service

The national authorities are responsible for the national implementation of international humanitarian law. To support their endeavours in this regard, certain States have established advisory bodies, called national committees for the implementation of humanitarian law. The committees can be interministerial or consist in a working group. Their task is to advise the national authorities and to support their efforts to adhere to the treaties of humanitarian law, to incorporate them into domestic law and to spread knowledge of the rules they contain.

To date, 61 States from around the world have set up a national committee. Twenty-three are located in Europe, two in Central Asia,

eight in Asia and the Pacific, fourteen in the Americas, eleven in Africa and five in the Middle East.

The Advisory Service supports the work of the national committees, in particular by taking part in their meetings, providing documentation, commenting on draft documents and, when necessary, instructing their members in international humanitarian law and presenting new issues relative to the development of the law.

The ICRC also helps organize regional meetings of these bodies, with a view to facilitating the exchange of information on their main concerns and ongoing work. Regional meetings have been held on a number of continents. In Europe, the 1999 meeting was followed by sub-regional meetings in Moscow. A second European meeting will take place in early 2001. Other meetings have been held in Africa, in Abidjan in 1997 and in Mali in 1999, and Latin America, in 1998. A regional meeting is also planned for March 2001, in cooperation with the Organization of American States (OAS).

I believe it is important for this meeting to discuss the national committees because, where they exist, they should take steps to promote the ratification and national implementation of humanitarian law treaties. Indeed, some committees also act as the UNESCO national committee with regard to national implementation of protection of cultural property, such as the Belgian Interdepartmental Commission for Humanitarian Law. If such is not the case, or if other national committees exist to deal with matters concerning cultural property, it is vital that there be appropriate coordination in order to protect that property in all circumstances.

The protection of cultural property in the event of armed conflict: strategies to promote treaties and their national implementation

As I said earlier, the protection of cultural property is a new objective for the Advisory Service, one to which we wish to devote greater effort.

This does not mean that we have not done anything to date with regard to the protection of cultural property. As Mr Hadlík pointed out

earlier, the Advisory Service has in the past organized joint seminars with UNESCO. A regional seminar took place in Tashkent in 1996, for all the countries of Central Asia; national seminars were held in 1997 in Azerbaijan, Armenia and Georgia. In 1998, a regional seminar was held in Nepal for the countries of the Indian subcontinent. The ICRC is pleased with its cooperation with UNESCO, thanks to which new doors have been opened for national implementation activities. These positive experiences have prompted us to plan a seminar in 2001 for the countries of southern Africa.

The ICRC also participated, as an expert, in the negotiations that resulted in the 1999 adoption of the Second Protocol to the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict. In order to ensure that this recent addition to the corpus of humanitarian law will receive the follow-up it requires, priority will be given to ratification of the relative instruments, the aim being to obtain their universality, and to their national implementation, the *raison d'être* of this meeting.

Certain steps have already been taken. In particular, the following documents have been drawn up:

- ♦ *fact sheet*

This document, which you will find in your files, is a succinct summary of all the instruments relative to the protection of cultural property during armed conflicts, namely the 1954 Hague Convention and its two Protocols. It exists in English, French, Spanish, Arabic and Russian, and can be translated into other languages. It aims to give the government officials in charge of humanitarian law an overview of the main obligations in respect of cultural property. It also constitutes a means of facilitating dissemination of the relevant instruments to a variety of target groups.

- ♦ *model instruments of ratification*

Your files also contain model instruments of ratification that cover the various options open, depending on which instrument is to be ratified. Certain model instruments concern the ratification, acceptance, approval of or accession to the 1954 Convention; another is for States that are members of the Convention and wish to become party

to the 1954 Protocol, and yet another is for States wishing to be bound by the 1999 Protocol.

In addition to providing information and support documents, the Advisory Service has started collecting information on the national implementation of these instruments, in particular the 1954 Convention and Protocol.

♦ *collection of national legislation and database*

This collection has been put together on the basis of studies of compatibility between international humanitarian law and domestic legislation. Over 50 such studies have been carried out to date, in order to determine what has been done and what remains to be done in a given State. The studies are carried out by the national authorities and the national humanitarian law committees, when there is one, or with their support, and in cooperation with the Advisory Service; they identify the measures already taken by certain States. They form the basic documents for the preparation of a plan of action on national implementation, on the basis of which tangible action is then taken.

The information thus collected on national legislation has been collated by the Advisory Service by country and can be consulted by anyone interested. Examples of national laws can be made available to the national authorities of other countries working on implementation, so as to share the solutions found by countries with a similar legal system and by different systems of administrative organization.

In order to facilitate and encourage the exchange of information on the measures adopted by the States, the Advisory Service has created a database on national implementation of humanitarian law, as mentioned above. This database supplements the ICRC general database on the instruments of international humanitarian law. It contains acts of law, regulations and all other texts relative to national implementation, including the case history of the national courts and a general commentary on the legal system of each country.

The documents are reproduced in English, French or Spanish where that is the original language. An English translation is provided in all other cases. A summary index has been put together using 20 key words. To date, data has been included on 30 countries, from both the civil and the common law systems. The data are updated regularly and

States are added when we have received sufficient documents and analyses from our network of contacts.

A demonstration of the database will be made during this meeting. We are sure that the information collected during the meeting, in the answers to the questionnaires and other documents made available, will enable us to increase the amount of data we have on the protection of cultural property.

Finally, these support mechanisms would be incomplete if the Advisory Service did not have the required expertise adequately to advise the national authorities with regard to implementation. The ICRC's field of expertise is international humanitarian law. When it comes to providing advice on national implementation, account must be taken of differing legal systems, systems of administrative organization, actual national experience and many other factors.

♦ *meetings of experts*

It is for the reasons mentioned above that the Advisory Service, before it counsels the national authorities in a given field, organizes meetings of national experts on the subjects concerned. Those meetings enable us to amass the basic information needed to provide the national authorities with proper assistance, to weave and coordinate a network of contacts with experience of the subject matter who will be consulted as experts, and to prepare guidelines or a list of criteria to be examined when a State decides to undertake or pursue steps in a specific field of national implementation.

Meetings of experts have in the past been organized on the following topics: national mechanisms for the implementation of humanitarian law (1996), and the repression of war crimes in civil law systems (1997) and in the common law system (1998). After each meeting, the Advisory Service has drawn up public reports and guidelines or documents of substance on the factors to be taken into account. These documents have proven extremely useful in broaching the issues with the national authorities and in bringing about, on the basis of the conclusions and recommendations adopted by the experts, the adoption of concrete measures.

The objective of this meeting is to acquire and share such expertise. Our wish is to highlight the need to apply the provisions of

humanitarian law relative to the protection of cultural property at national level, to examine and cast a critical eye on the techniques already used by a number of countries, emphasizing the problems they have encountered in order not to run into them again and perhaps even to solve them.

We also wish to conclude the meeting with the information needed to prepare guidelines or a list of elements to consider when a State wishes to launch activities relative to national implementation of the protection of cultural property during armed conflicts. Those guidelines will subsequently be used as a working document by the Advisory Service and as the driving force to motivate and help the national authorities and the national committees in this specific endeavour.

We also plan to pursue our efforts in this connection by putting national implementation of the protection of cultural property on the agenda of the regional meetings we organize, either with the national committees — the subject is on the agenda of the second meeting of European national committees to take place in March 2001 — or in the framework of other seminars and meetings. This follow-up will allow us to ensure that the outcome of the deliberations that take place at this meeting of experts will indeed be transmitted and made available to regional and national decision-makers.

In conclusion, we wish to establish, thanks to this meeting of experts, a coherent strategy to follow up the recent developments in international humanitarian law in this field, so as to ensure that the law becomes a reality in each nation.

CHAPTER II

National implementation activities

National measures for the implementation of the rules governing the protection of cultural property in the event of armed conflict in Switzerland

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Ratification

Switzerland ratified the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict in 1962. On 6 October 1966, it enacted the Federal Law on the Protection of Cultural Assets and Property in case of armed conflicts, with a view to the Convention's implementation. On 17 May 1999, it signed the Second Protocol to the 1954 Hague Convention, which is presently being ratified.

Competent authorities

The Confederation (the central State) protects its own cultural property and supports the cantons by coordinating implementation of the measures prescribed (1966 law). To that end, it issues orders and directives with regard to training, trains the senior officials in charge of the protection of cultural property and helps finance the measures of protection relating to movable and immovable cultural property of national and regional interest. The responsibility for these tasks falls to the Section for the Protection of Cultural Property at the Federal Office for Civil Protection.

Except where the Confederation is competent, the practical implementation of the protection of cultural property is the responsibility of the cantons, which adopt legislation on the methods to use. The cantons bear part of the costs. Each canton appoints an

official who is in charge of the protection of cultural property and who heads the relevant cantonal service. As a rule, the protection of cultural property is handled by the cantonal office for the protection of cultural monuments or of historical heritage. Sometimes this task is entrusted to the cantonal civil protection service. The cantons' main tasks in terms of protection of cultural property are to establish the inventory of cultural property, to produce documents for back-up, to set up the organizational structure in the municipalities, to train the personnel required for the protection of cultural property and to assess the need for shelters for cultural property.

At municipal level, the protection of cultural property is a service of the civil protection organization. That service can be called on to establish and update lists of cultural property or to establish inventories of movable cultural property. The municipality has to recruit the necessary personnel and enable it to benefit from the instruction provided by the canton and the Confederation. The municipal service for the protection of cultural property must first draw up plans for action, define the measures of protection and, if required, propose that shelters be constructed for cultural property or that existing shelters be used to that end. Local plans to be implemented in the event of natural and man-made disasters are discussed with partner agencies, in particular the fire department.

In Switzerland, there are no officers whose chief task is the protection of cultural property. Within the armed forces, the protection of cultural property falls within the mandate of the officers in charge of law and international treaties. In the territorial divisions and territorial brigades, the heads of the international legal service also deal with the protection of cultural property.

The Section for the Protection of Cultural Property works in close cooperation with ICOM-Switzerland.* It has had countless opportunities, within the framework of training sessions, to present museum officials with the steps to take in the event of a disaster. Cooperation between it and ICOM-Switzerland is to be stepped up with a view to coming to the aid of certain countries that have fallen behind in terms of the protection of cultural property.

* ICOM: International Council of Museums.

Cataloguing and registration of protected property

Swiss legislation contains the same definition of cultural property as the first article of the 1954 Hague Convention. The cantons draw up an inventory of the cultural property of national and regional significance located on their territory and periodically update it. On the proposal of the Swiss Committee for the Protection of Cultural Property (a national government consultative body), the cultural property selected by the cantons is listed on a general inventory approved by the Federal Council (Swiss Government): the Inventory on Cultural Assets of National and Regional Importance. The Committee members are representatives of the federal departments (ministries) dealing with the protection of cultural property, the country's main cultural institutions and the competent organizations, and its secretariat is provided by the Section for the Protection of Cultural Property. The cantons submit their proposals to the Committee in the form of lists. A minimum amount of information is required for each object: the municipality, its classification in a category (A = national, B = regional), the object's designation, its address. The proposals, each of which is accompanied by a photograph of the object and academic references, are then assessed. If necessary, the Committee organizes an interview with experts on the spot. It also draws the attention of the cantons to cultural property that does not figure on the agreed lists. Indeed, the next time the cantons update the lists they will have to take into consideration new areas, such as historical gardens, modern architecture and industrial archaeology. The list is updated every ten years, and the revised and corrected edition will appear in 2005.

Practical measures for the protection of cultural property

In Switzerland, cultural property is not permanently marked with the distinctive emblem provided for in the 1954 Hague Convention. The shields intended to identify cultural property are placed on immovable cultural property of national importance and on the shelters to be used to protect cultural property only on the order of the Federal Council. This measure is taken in the event of an armed conflict. The cantonal services for the protection of cultural property and specialized firms make back-up documents and microfilms that

must correspond to the specifications of the Federal Office for Civil Protection. The Confederation supports the production of those documents and microfilms by providing a federal subsidy of 20 to 30%, depending on the financial health of the canton concerned. The original film stays in the canton, where it is stored, and a positive copy is purchased by the Federal Office for Civil Protection. To date, 44,000 positive copies have been stored in a Confederation cave.

Personnel for the protection of cultural property from the municipality's civil protection service is in charge of planning evacuations and operations. At present, over 270 shelters for cultural property of different sizes have been set up throughout Switzerland. They usually hold a significant portion of the national heritage, collections, archives, etc. Cultural institutions are consulted by the municipalities, and the cantons are in charge of building the shelters for the protection of cultural property. The Federal Office for Civil Protection helps finance the building and refurbishing of the shelters, on condition that official standards are met.

Measures to repress violations of the laws on the protection of cultural property

The Military Penal Code prohibits the army from inflicting any damage on cultural property, in particular theft, requisitioning, and acts of vandalism and pillage. It is up to officers of all ranks to ensure that the troops respect those rules, about which the troops are informed during their military instruction and in the form of a memorandum. It is prohibited to establish military positions on sites set aside for the protection of cultural property. The cantons can oblige the owners and possessors of movable or immovable cultural property to take or to tolerate construction measures to protect the property. The law provides for the punishment of violations.

Financial matters

The costs of publishing the Inventory on Cultural Assets of National and Regional Importance, of the positive copies of microfilms and of the training for personnel protecting cultural property dispensed by

the Confederation are entirely borne by the central State. With regard to back-up documents and microfilming, the Confederation grants, depending on the expense involved, a subsidy to cover 20 to 45% of the costs, on condition that the outstanding amount is covered by the cantons, the municipalities and in some cases the owners.

Dissemination, information and public awareness

In certain cantons, the cantonal official in charge of the protection of cultural property provides information on the protection of cultural property in the schools. Courses and practical exercises (the establishment of inventories, evacuation of cultural property) and other on-site events (open houses, etc.) are used to alert the public to the issue. The local electronic media are invited to press conferences and to visit the sites of ongoing work. In the future, even more complete information will be provided in order further to heighten the public's awareness of the protection of cultural property. To this must be added the conferences and colloquia organized for specialists from cultural circles and technical publications. The publication of the updated Swiss Inventory on Cultural Assets of National and Regional Importance, major disasters that cause notable losses of cultural property, presentations made at academic colloquia specialized on such specific subjects as, for example, the microfilming of newspapers, all provide opportunities to draw media attention to cultural property.

Plans and projects

Information highways and the Internet will be put to greater use to spread knowledge of the protection of cultural property more widely. The updated Swiss Inventory on Cultural Assets of National and Regional Importance will be made available on the Internet in 2005, for example. Moreover, all significant information on the application of practical measures for the protection of cultural property will in the future be available on-line, both for specialists and laymen. A video is being made on planning evacuations; it is to include scenes on theft prevention and evacuation in the event of disaster (fires, etc.). Those in charge of the protection of cultural property now have a form they can use to draw up a minimum standardized inventory.

A team of experts will be formed to provide information on the protection of cultural property to military personnel. In 2002, Switzerland will organize an international conference on the protection of cultural property. The conference will focus on the implementation of measures for the protection of cultural property in other countries signatory to the 1954 Hague Convention.

The identification and registration of cultural property in Lebanon

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Lebanon is home to a wealth of protected historical and natural sites; indeed, almost one thousand sites have been classified and protected. Five have been entered on the World Heritage List.

The dramatic consequences of the international (the invasion and occupation of Lebanese territory by Israel) and internal (1975-1990) conflicts affecting Lebanon show that international humanitarian law was not respected, in particular with regard to cultural property.¹ An estimated 200 sites, or almost one quarter of the sites registered and protected, were damaged, and the number of places of worship that suffered harm is estimated to be about 500.²

It is this situation that prompted the President of the ICRC, Alexandre Hay, to state that the aim of humanitarian law was to avoid what had happened in Lebanon.³

Lebanon is party to the 1949 Geneva Conventions, their Additional Protocols of 1977 and the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

It is important to note that the term “cultural property” is unknown in Lebanon, but several laws and regulations protect certain objects that can be considered cultural property:

- ♦ the 1933 Law on Antiquities;

¹ See the author's paper, *Le DIH dans les conflits contemporains au Liban*, law dissertation, Montpellier, 1996.

² See Labaki Boutrous, Abou Regily Khalil, *Bilan des guerres du Liban 1975-1999*, L'Harmatan, Paris, 1993, pp. 154-158.

³ Statement by Alexandre Hay at the opening of a seminar on the dissemination of international humanitarian law held in Amman, Jordan, *Press release No. 1412*, ICRC, Geneva, 5 April 1981.

- ♦ the 1939 Law on Protected Natural Sites;
- ♦ the 1996 Law on Protected Forests;
- ♦ the Penal Code (Articles 730 and 731);
- ♦ military handbooks;
- ♦ the 1977 Municipal Law.

Before we define the criteria on the basis of which protected cultural property is identified and registered in Lebanon, it would be useful to specify which authority has competence in this field.

The authority competent to identify and register cultural property

Antiquities

Article 3 of the 1933 law provides that in the event of a dispute as to whether or not an object is an antiquity and whether that antiquity is immovable or movable property, the Director of the Antiquities Service has the final word.

Article 7 of the law gives the State the right to list an antiquity on the General Inventory of Historical Monuments.

Article 15 stipulates that: “The State reserves the right at all times to continue to classify a movable antique fortuitously”.

Article 22 confers on the Ministry of Education the right to place antiquities on the Inventory, at the behest or on the advice of the Director of the General Directorate for Antiquities, and to notify the owner concerned through administrative channels.

Article 26 provides that movable and immovable antiquities are classified as historical monuments by decree issued by the head of State at the behest or on the advice of the Director of the General Directorate for Antiquities.

Article 74 of the 1977 Municipal Law gives the President of the Municipal Council responsibility for all activities concerning the protection of historical, natural and archaeological sites.

Protected natural sites

Under Article 2 of the 1939 Law on Protected Natural Sites, the Ministry of Economic Affairs is responsible for registering protected natural sites. However, according to Article 7 of the 1996 Law on Protected Forests, the registration is the responsibility of a team made up of officials from the Ministries of Finance and Agriculture.

In a petition to the Lebanese Council of State,⁴ a citizen requested that a decision by the Lebanese State to register his building on the General Inventory of Historical Monuments be rescinded, for the following chief reasons:

- ♦ the registration was incompatible with Article 15 of the Lebanese Constitution, which prohibits the violation of private property;
- ♦ the State had not requested the prior agreement of the competent municipality and had thus violated the Municipal Law (118/1877), in particular Articles 47, 49, 51 and 74.

The Lebanese State argued that the registration of a building on the General Inventory of Historical Monuments did not constitute a violation of private property, and that indeed the Regulations on Antiquities were one of the laws protecting private property.⁵ The State's most compelling argument was that neither the Regulations on Antiquities nor the Municipal Law contained an obligation to ask for the prior agreement of the municipality and that the Minister for Culture had discretionary authority in this field.⁶

The Council of State considered that, according to the Municipal Law⁷ and the Regulations on Antiquities,⁸ the municipality can make recommendations to the Ministry of Culture concerning historical

⁴ Petition No. 629/95.

⁵ Council of State, *Decision No. 189/99-2000*, 16 February 2000, p. 4.

⁶ *Ibid.*, p. 5.

⁷ Articles 47 and 74, *Ibid.*, p. 10.

⁸ The regulations confer a major role on the municipalities concerned and oblige them to protect historical sites. See Articles 31 and 32 of the Regulations. See also the decision of the Council of State, *Ibid.*, p. 16.

monuments located on its territory and that the State should consult the municipality in this regard.⁹

However, the Council of State found that the Ministry of Culture was not obliged to request the prior agreement of the municipality for the registration of an object on the General Inventory of Historical Monuments.¹⁰

In another petition to the Council of State,¹¹ an owner asked that the Ministry of Culture's decision to register his building on the General Inventory of Historical Monuments be rescinded.

In that case, the Council of State appointed a committee of experts made up of architects and archaeologists to give their opinion on the matter. The General Directorate for Antiquities contested the establishment of the committee, however, considering that it was not competent to give an opinion on the criteria for the identification of historical sites or to assess the archaeological quality of the site in question. According to the General Directorate for Antiquities, it alone was competent to do so under Article 3 of the 1933 law.

The Council of State did not share this view. It based its decision on that of the French Council of State in a similar case,¹² where it was considered that "the judge must appreciate the historical or picturesque character of the site", and on another case in which the French Council of State had reaffirmed the judge's authority to assess whether or not, from the scenic, historical or scientific point of view, the land registered in the inventory of sites whose preservation is in the general interest were indeed of general interest.¹³

⁹ *Ibid.*, p. 11.

¹⁰ *Ibid.*, p. 13.

¹¹ Council of State, *Decision No. 193/97-98*, 7 January 1998

¹² S. 13 March 1970, Ministry of Cultural Affairs, p. 182. RDP 1971, p. 224, cited by the Lebanese Council of State, *Ibid.* S. 29 January 1971, *Société civile immobilière*, p. 87. A.J. 1971, p. 234, cited by the Lebanese Council of State.

¹³ Council of State, June 1995. *Société des usines Renault*. D. 1955.620, 10 March 1961, p. 176.

Criteria for identification

The laws and regulations identify cultural property according to the criteria summed up below.

The 1933 Law on Antiquities

The first article of this law defines antiquities as all “products of human activity, no matter what civilization, prior to 1700”; it also defines as antiquities “immovable objects later than 1700 whose preservation is in the public interest from the historical or artistic point of view and which shall be registered on the General Inventory of Historical Monuments”.

Article 2 distinguishes between movable and immovable antiquities. Immovable antiquities are:

- 1) any contribution by human industry covering the ground of a geological formation (tells);
- 2) any ancient works or buildings, the remains or vestiges of ancient buildings, with or without a visible structure above the ground;
- 3) all movable objects that are permanently attached to the property or the building;
- 4) any natural sites used or appropriated by human industry, such as underground shelters, caves, rocks bearing paintings, sculptures, casts or inscriptions.

Movable antiquities are all objects or remains of objects made, worked or modified by the hand of man and not included in the above categories.

Article 20 of the 1933 law provides for the opening of a register for the General Inventory of Historical Monuments. Article 21 lists the sites and objects to be recorded on the Inventory.

Article 27 stipulates that any immovable antiquity listed on the General Inventory of Historical Monuments and any land or building whose classification is required in order to isolate or clear the area around a classified building may be registered as a historical monument.

Article 42 provides that any movable antiquity whose preservation is in the public interest from the artistic or historical point of view can be classified as a historical monument.

The 1939 Law on Protected Natural Sites

The first article of this law provides that natural sites are protected when they are of public utility and certain categories of trees because of their beauty, age and historical significance.

The 1996 Law on Protected Forests

Under Article 2, protected forests are all cedar forests and other forests of natural and historical significance.

In Lebanon, certain sites are protected as both natural and archaeological sites. The Qadisha Valley, for example, has been placed on the World Heritage List because the trees in the Cedar Forest are survivors of a sacred forest and the valley is one of the most important early Christian monastic settlements in the world.¹⁴

Sites can therefore be classified and protected by both the General Directorate of Antiquities and the Ministry of Agriculture and the Environment.

The Penal Code

Articles 730 and 731 of the Lebanese Penal Code protect historical monuments, buildings, movable objects of historical value and registered monuments and natural sites.

Military handbooks

Although the Military Penal Code does not provide special protection for cultural property, certain Lebanese army military handbooks prohibit any attack on cultural property.¹⁵

¹⁴ See the brief description of the sites on the World Heritage List. UNESCO World Heritage Centre, January 1999.

¹⁵ See, for example, the Lebanese army military instruction manual, Article 59.

Neither the Military Penal Code nor the military handbooks contain precise criteria for the identification of cultural property. The only criteria for identification are therefore those contained in Articles 1 and 2 of the 1933 law, the first article of the 1939 law and Article 2 of the 1996 law.

There is no problem with the first criteria set down in Article 1 of the 1933 law; suffice it to know whether or not the objects or property predate 1700. Problems do arise, however, with the identification of objects after that date, for it must be decided whether or not their preservation is in the public from the historical or artistic point of view.¹⁶

In general, the Director of the General Directorate of Antiquities must, when he considers that an object or property constitutes an antiquity, give the grounds for his decision, referring to studies, scale drawings, maps and expert opinion.

The grounds for the decision are not, however, always given. In the above-mentioned petition,¹⁷ the owner asked the Council of State to remove his building from the General Inventory of Historical Monuments on the grounds that the State had not explained its reasons for registering it. He also considered that his building had no connection with Lebanon's history and that its preservation was not in the public interest from the historical or artistic point of view.

Contrary to this point of view, the Directorate General of Antiquities considered that the 1933 law entitled it to classify an object without having to list the criteria on which its decision was based.

The Council of State decided that the administrative authority was not obliged to give the reasons for its decision,¹⁸ but that it was sufficient for the preservation of the building to be in the general interest from the historical or artistic point of view.¹⁹

¹⁶ The Lebanese Council of State has received more than one hundred petitions in this regard.

¹⁷ Council of State, *Decision No. 193/97-98*, 7 January 1998.

¹⁸ *Ibid.*, p. 12.

¹⁹ *Ibid.*, p. 13.

The Council of State also considered that several means could be used to assess whether or not it was in the public interest to preserve a site:

- ♦ the opinions of scientists, archaeologists and historians;
- ♦ maps and scale drawings;
- ♦ photographs.

On the advice of the committee of experts, which shared the viewpoint of the owners, the Council of State annulled the Lebanese State's decision, considering that the preservation of the object in question was not in the public interest from the historical or artistic point of view under the terms of Article 1 of the 1933 Law.²⁰

The 1933 Law on Antiquities is based on a 1913 French law. While the French law has been amended over 15 times, the Lebanese law has never been changed.²¹

This goes a long way towards explaining the problems presented by the appraisal of the criteria for the identification and registration of cultural property.

In 1967, Lebanon was designated a commissioner for cultural property under the procedure set forth in Article 3 of the Regulations for the Execution of the 1954 Hague Convention,²² and the General Directorate of Antiquities does cooperate with UNESCO; Lebanon must nevertheless make an effort to implement the international treaties for the protection of cultural property.²³

²⁰ *Ibid.*

²¹ See Elie Abou-Khalil, "Les lois et les règlements libanais concernant le patrimoine culturel", in *Notre patrimoine national: comment le préserver?*, papers of the colloquium organized by the National Heritage Institute in Bet-Meri, 1997, p. 143.

²² Jiri Toman, "La protection des biens culturels dans les conflits armés internationaux: cadre juridique et international", in *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, ICRC/Martinus Nijhoff, Geneva/The Hague, 1984, p. 577.

²³ For example, Lebanon has not, to our knowledge, deposited the list of protected cultural sites with UNESCO, contrary to Article 11 of the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage, Article 8 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and Article 13 of the Regulations of Execution of the 1954 Convention.

The criteria used to identify and register protected cultural property in Guatemala

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The first steps to preserve Guatemala's cultural heritage were taken in 1946, when the Ministry of Culture's *Instituto de Antropología e Historia (IDEAH)*, was founded. The inventory of cultural assets has been the responsibility of the *Registro de la propiedad arqueológica, histórica y artística* (Register of Cultural Assets) since 1947. A public agency of the Cultural and Natural Heritage Office, the Register is in charge of:

- ♦ registration;
- ♦ annotation;
- ♦ cancellation;
- ♦ issuing deeds and entering into contracts with regard to the ownership and possession of cultural assets.

The Register was established by Congressional Decree 26-97 and modified by Decree 81-98. The law seeks to regulate the protection, defence, search for, preservation and recovery of objects that are part of the country's cultural heritage. It is the responsibility of the State to carry out this task, through the Ministry of Culture. Three points relating to the law gave rise to further discussion, namely the definition of cultural heritage, the notions of ownership and property, and the definition of intangible cultural heritage. With regard to ownership and property, it was decided that objects are either national or personal property.

Guatemala's cultural heritage is divided into two groups:

- 1) tangible cultural heritage, which is divided into (a) immovable cultural property and (b) personal cultural property;
- 2) intangible cultural heritage.

The latter category gave rise to debate because its definition differs from UNESCO's general criteria.

Immovable cultural property consists of:

- ♦ architecture and its constituent components;
- ♦ the constituent components of popular architecture;
- ♦ historical centres and complexes, including their surrounding areas and their natural landscape;
- ♦ the urban layout of towns and villages;
- ♦ historic sites;
- ♦ prehistoric and pre-Hispanic inscriptions and representations.

Personal cultural property consists of:

- ♦ collections and objects;
- ♦ objects discovered at digs or in the course of underwater exploration;
- ♦ objects discovered when artistic and historic monuments or archaeological sites are taken apart;
- ♦ artistic and cultural objects such as original paintings, drawings, sculptures, photographs, unique sacred art, original manuscripts, old books, maps and documents, periodicals, magazines, archives, musical instruments and antique furniture.

The notion of intangible cultural heritage has generated a great deal of debate. It comprises heritage in the form of oral, musical, medicinal and culinary traditions and customs, craftsmanship, religion, and traditional dance and theatre.

From the historical point of view, Guatemala's cultural heritage can be divided into three main periods:

- 1) the pre-Hispanic period, which includes the Mayan heritage;
- 2) the Hispanic period;
- 3) the period since independence in 1821.

The Register of Cultural Assets maintains an up-to-date national inventory of the objects that make up Guatemala's cultural heritage, with a view to its preservation. Its official files contain general, legal

and graphical data, and indications on the ownership, use, value, previous location, dimensions, and description of the cultural property. The Ministry of Culture can delegate the duty to register cultural assets to properly registered non-profit cultural entities, the Alternate Cultural Asset Registers, whose activities are supervised and monitored by the Cultural and Natural Heritage Office.

One example is the ADESCA project (*Aporte para la Descentralización Cultural*), a community initiative that drew up an inventory of the cultural assets of San Antonio Sacatepequez San Marcos. Such projects work with the members of the community and are a source of motivation. Another example is the inventory, drawn up over the past ten years by students of Rafael Landivar University's architecture department, of the architectural monuments of Guatemala City. The inventory was subsequently confirmed by the official register. A special case is the 16th century town of Antigua, which was declared a World Heritage site by UNESCO and has its own office, the National Council for the Protection and Conservation of Antigua Guatemala (CNPAG). One of the CNPAG's responsibilities is to register Antigua's cultural assets and establish an inventory thereof.

In conclusion, Guatemala's achievements regarding the identification and registration of protected cultural property can be summed up as follows:

- ♦ the most significant cultural heritage has been inventoried;
- ♦ that inventory proved useful after the 1976 earthquake;
- ♦ it has helped recover stolen cultural property;
- ♦ it has made it possible to assess damage and take action for restoration;
- ♦ it has been used to promote the country's cultural heritage.

Guatemala's objectives in terms of the protection of cultural property should now be:

- ♦ to provide feedback on achievements and update data;
- ♦ to expand the area covered;

- ♦ to use state-of-the-art technology for registration;
- ♦ to provide further training for personnel;
- ♦ to find new sources of funding;
- ♦ to provide greater support to local communities.

The procedure for marking cultural property in Slovenia

Dr Savin Jogan

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A clear presentation of this topic requires an explanation of two preliminary points:

- ♦ the identification of cultural property under the Slovenian legal system;
- ♦ the distinction between cultural property under general protection and that under special protection as defined in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

Cultural property is identified in accordance with international norms, in particular the definition of cultural property set forth in the 1954 Hague Convention and in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Generally speaking, several legal instruments serve to identify cultural property: the 1981 Natural and Cultural Heritage Act, the 1999 Protection of Cultural Property Act, and the official list of the types of property constituting cultural heritage, established in 2000 by the Ministry of Culture. The main difference between the criteria for identification they contain and those set down in the international instruments mentioned above is the omission of Article 1 (b) of the 1954 Hague Convention (buildings whose purpose is to preserve or exhibit cultural property).

Although the 1981 statute refers only to monuments and other property, that of 1999 mentions two categories of cultural monuments: those of State importance and those of local importance. A comparison with the definitions of cultural property under general or special protection shows that cultural monuments of State importance correspond more or less to the definition in the 1954 Hague Convention of cultural property under special protection,

while cultural monuments of local importance and other objects listed on the Register of Cultural Property correspond to the Convention's definition of cultural property benefiting from general protection.

The difference between cultural property under general protection and that under special protection, as spelled out in the 1954 Hague Convention, is more clearly expressed in Slovenia's Penal Code (1994), which stipulates that the destruction of cultural or historical monuments (and buildings or institutions used for scientific, artistic or educational purposes, etc.) during an armed conflict shall be subject to less severe punishment than the destruction of clearly marked objects placed under the special protection of international law "as the cultural and spiritual heritage of the nation". The difference between cultural property under general protection and cultural property under special protection is thus evident.

The procedure for marking cultural property is set forth in the Regulations on the design and positioning of the blue shield on protected cultural monuments (or natural tourist sites). The Regulations were issued by the Ministry of Culture in 1986 but apply only to cultural property under general protection.

The Regulations stipulate that three different tablets are to be used to mark cultural property: one in bronze bearing the words "cultural monument" and the name of the Republic, and two in enamel bearing the distinctive emblem of the 1954 Hague Convention on its own, the words "cultural property" in four languages (Slovenian, English, French and Russian), and information on the importance and characteristics of the monument.

The frame and text are usually in white on a dark brown ground (with the exception of the blue shield). The tablets are usually 30 cm across, and their height depends on the length of the text. Those dimensions can vary depending on the nature and size of the monument.

The complete distinctive sign is fixed on the monument so as to form a visual whole. It should be clearly visible, in a place frequented by the public, and must not detract from the overall impression given by the monument. The sign is placed by the organization in charge of the protection of cultural property (at the time, the Regional Agency for

Natural and Cultural Property), which is also responsible for formulating the specific information required for the monument to be given official recognition as cultural property. The local communities and the republic which agreed to the monument's official recognition undertake to finance the production and positioning of the distinctive signs.

This procedure is very elaborate but also very complicated, which is why the guidelines contained in the Regulations have all too often not been applied. By the end of 1999, 389 of the 7,110 officially recognized cultural monuments bore the distinctive emblem of the 1954 Hague Convention designating cultural property under general protection.

This is partly because of the technical and financial difficulties encountered, but above all the situation prevailing during the brief ten-day war that broke out in Slovenia following the attack by the Yugoslav army in June and July 1991, when simple solutions had to be found to mark cultural monuments. The formal procedure and specific marking were replaced in certain cases by the distinctive emblem and the words "cultural property" in five languages (Slovenian, English, German, French and Italian) drawn on walls or enamel tablets.

Besides this on-the-spot marking, an urgent need also arose for identity cards for personnel engaged in the protection of cultural property, in accordance with Article 17, para. 2 (d) of the 1954 Hague Convention and Article 21, paras. 2 and 3 of the Regulations for the Execution of the Convention. Slovenia's identity card conforms to the provisions of the Regulations and also indicates the bearer's place of birth. It gives no indication, however, of the bearer's height, eye or hair colour, as provided in the model identity card annexed to the Regulations.

For the time being we have no rules on the armlets bearing the distinctive emblem for persons responsible for the duties of control or engaged in the protection of cultural property. In fact, a new, simplified law on the marking of cultural property is being drawn up; it will take account of the two kinds of monuments listed in the 1999 statute and of other comments on previous regulations.

In situations of armed conflict, the marking of cultural property can give rise to specific or general problems.

Indeed, **the use of the distinctive emblem can have negative consequences.** During the wars that were waged on our borders, in Croatia and Bosnia-Herzegovina (1992-1994), marked cultural property was targeted in attacks that seriously damaged national cultural identity. This gave rise in our country to a degree of scepticism as to the well-foundedness of such marking in contemporary armed conflicts, which was deemed to be superfluous or even directly harmful. The process of marking cultural property in Slovenia thus slowed down.

In this respect, the general question one must ask is: is marking necessary, meaningful and effective? Distinctive signs, as we know, not only help to protect cultural property, they are also important in affirming and promoting cultural identity. Moreover, in our information-dominated society, any party to an armed conflict can obtain information on the cultural property of greatest importance to the adverse party, even if they are not publicly marked as such. The situation is even more transparent if one compares the property marked in accordance with the 1954 Hague Convention with the monuments listed on the World Heritage List, which must be spared and benefit from adequate protection in all armed conflicts or other disasters. This is also the case of the monuments covered by the Roerich Pact. Seen in this light, whether or not to mark monuments is a moot point. **Marking is important and useful to protect cultural property in all circumstances.** The real problem is to know what rules and principles apply in armed conflicts and whether or not the international community has effective means of obliging the parties to a conflict to respect the rules of international humanitarian law in general, not just those relative to the protection of cultural property.

The second question concerns the relationship between “civilian” marking of cultural property and the extent to which it is taken into account by the armed forces. In other words, if the property marked with the blue shield does not figure on military maps, the marks will be pointless during a genuine armed conflict or peacetime military exercise.

Lastly, some thought should be given to the relationship between cultural property under **special protection** and that under the **enhanced protection** afforded by the Second Protocol to the 1954

Hague Convention. As we know, special protection, even when the property was marked as such, had no effect during the period that followed the entry into force of the 1954 Hague Convention. On the other hand, would we be justified in marking cultural monuments placed under enhanced protection, if we had the means to do so? The official answer can only be negative. However, in a more distant future, it might be interesting to consider special marking for cultural property of universal importance benefiting from enhanced protection.

The role of the Interinstitutional Committee on International Humanitarian Law in the implementation of the protection of cultural property in El Salvador

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El Salvador is a tiny Central American country with a surface area of 20,935 sq. km and a population of 5.7 million. A civil war that raged from 1981 to 1992 caused many deaths, much suffering and severe damage to infrastructure, including cultural property. The negotiations started between the Government and the Farabundo Martí National Liberation Front (FMLN) in 1989 resulted in January 1992 in the peace accords signed in Chapultepec, Mexico. Since then, El Salvador has embarked on a process of national reconstruction and consolidation of peace.

One of the Government's highest priorities in that process has been El Salvador's commitments as a party to the treaties of international humanitarian law. To that end, it decided to create the Interinstitutional Committee on International Humanitarian Law (CIDIH-ES), established in January 1997. The Committee's main objective is to provide assistance and advice to the Government of El Salvador for the adoption, implementation and promotion of humanitarian law. Its activities are coordinated by the Ministry of Foreign Affairs, and its members comprise representatives of the Ministries of National Defence, Internal Affairs, Public Security and Justice, Health and Social Assistance and Education, of the offices of the Attorney General, the National Counsel and the Ombudsman, and of the National Council for Art and Culture (CONCULTURA) and the Salvadorean Red Cross Society.

The Committee meets once a month, and more often when it needs to discuss special issues. Its functions are to:

- ♦ recommend the adoption of humanitarian law treaties;

- ♦ promote and spread knowledge of the rules and procedures of humanitarian law among different sectors of society;
- ♦ propose amendments to domestic legislation in order to enable the country to meet its obligations under humanitarian law;
- ♦ organize study groups for the discussion of major humanitarian law issues.

The CIDIH-ES has three sub-committees:

- ♦ the **Sub-Committee for Legal Issues**, which conducts studies of the law and prepares draft legislation for the implementation of humanitarian law;
- ♦ the **Sub-Committee for Training and Promotion**, which promotes knowledge of humanitarian law;
- ♦ the **Sub-Committee for Fund-raising**, which is in charge of negotiating and managing the funds used to finance the Committee's activities.

This year, the Committee started analysing the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols, with a view to recommending their ratification. It examined the Convention in order to ensure that it was coherent with national legislation and to indicate the obligations El Salvador would have to honour and the activities it would have to carry out to do so.

The Committee has also been disseminating the rules for the protection of cultural property, in cooperation with CONCULTURA and its agencies — called “houses” or “agencies of culture” — throughout El Salvador. It is essential that dissemination of the 1954 Hague Convention start with the houses of culture, as they appear best qualified to ensure implementation. Next year the CIDIH-ES plans to spread knowledge of the Convention to the armed forces and the national civilian police force.

The Committee has also been drafting a teaching version of the 1954 Hague Convention and its two Protocols, to take the form of a small booklet on their basic aspects. The booklet will be illustrated to make it more attractive and user-friendly. The Committee has also visited

the main cultural sites in order to determine the needs and difficulties that implementation of the Convention could entail. It has designed a poster on the blue shield emblem for the protection of cultural property, unknown to most Salvadorans.

It is also important to mention that a few years ago CONCULTURA began to identify and register cultural property in El Salvador. The process is a slow one, since the Government is short of both funds and personnel. El Salvador is therefore obliged to count on international assistance.

I believe El Salvador will face many challenges in the coming year, chiefly the ratification of the 1954 Hague Convention and its two Protocols and the launch of the process of marking cultural property, especially the archaeological site of Joya de Cerén. This jewel in the national cultural heritage was discovered five years ago under the ashes of a volcano; it consists of 57 cottages made of wood, hay and mud, which makes them very fragile.

Another challenge will be to heighten awareness in El Salvador of the need to protect cultural property, not only because it is part of our national identity but also because our country is exposed to civil war and natural disasters, notably earthquakes and heavy rainfall.

In addition, the funds needed to implement some of the measures mentioned in the international instruments, in particular concerning the registration, marking and preservation of cultural property, will have to be found. As I said earlier, international assistance will be crucial.

Another challenge is geological and demographic in nature. El Salvador is a tiny country with a high population density. The site of Joya de Cerén, for example, is near two military bases, a train station and an electrical power station. The CIDIH-ES will require a great deal of imagination if the site is to be protected.

In conclusion, allow me to underscore the outstanding work done by the CIDIH-ES to implement not just the rules for the protection of cultural property but many other norms of humanitarian law. It could not have done this without the work and enthusiasm of all its members and the support of the ICRC regional delegation in Guatemala City.

Training and dissemination in the Austrian armed forces

Major Franz Schuller

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the Protection of Cultural Property, Austria*

Allow me to begin by quoting from a presentation made by Colonel Winkelmayr (general staff headquarters) at the first NATO-Partnership for Peace-UNESCO workshop, held in Vienna and Göttweig in September 1997, and by showing a few evocative slides:

“In observing the provisions of the Hague Convention, military commanders are always under special pressure. On the one hand, they have the duty to perform their military mission in defence or attack in the best way and to keep their personnel and material losses as low as possible. To reach this aim, a military commander will always try to use all the advantages of the terrain and his own weapon systems. On the other hand, he has to obey the rules of the humanitarian law of war, for example the protection of civilians but also the protection of cultural property in the battle area.”

Nearly four years later, we have two new fundamental legal instruments:

- ♦ the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict;
- ♦ the Bulletin of the United Nations Secretary-General (ST/SGB/1999/13) of 6 August 1999, entitled *Observance by United Nations forces of international humanitarian law*, section 6.6 of which refers to the protection of cultural property:

“The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. In its area of operation, the United Nations force shall not use such cultural property or their immediate surroundings for purposes which

might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited.”

Both instruments place additional responsibility on military commanders.

The conflicts that took place in the 1990s prompted fresh debate on the application and effectiveness of the protection of cultural property during armed conflicts, in particular with regard to the 1954 Hague Convention.

International organizations such as UNESCO were the focus of media and public attention during the conflict in Croatia and the fighting in Dubrovnik. The problem was that while UNESCO acts as the guardian of the 1954 Hague Convention, it has no operational structures and no means of protecting cultural property; in addition, it needs a special authorization from the political authorities to act.

It soon emerged from the discussions that many States, including those that are party to the 1954 Hague Convention, had not really implemented that instrument or incorporated it into their internal law and regulations.

Generally speaking, many member States had disseminated the Convention’s principles “horizontally”, at government level, but had ensured no deeper, “vertical” implementation.

In my country, too, a great deal of time elapsed between ratification of the 1954 Hague Convention in 1964, and the start of its implementation and dissemination to the members of the armed forces in 1981 (first issue of the *Special instructions concerning the 1954 Hague Convention for the army*).

The main reason most of us have not more thoroughly integrated the protection of cultural property at military level is the difficulty encountered in selecting and classifying the cultural property to be protected under the 1954 Hague Convention.

This is more a social or public issue than it is a military problem. However, because of the interests and opinions (both public and private) and multiple authorities and organizations (such as other

ministries and bodies and commercial firms) concerned, the procedure is not an easy one.

The application of the 1954 Hague Convention usually follows one of two scenarios.

1) National defence

Regardless of our functions and tasks, as human beings we share the desire to protect, maintain and secure our cultural heritage. Is that not one of the main reasons we organize a national defence?

When defending the national territory in an armed conflict, we have the huge advantage in terms of protection of cultural property that we can act and conduct operations on our own, familiar territory. We know the inventory (if there is one) and how it is organized. We are also familiar with the civil and public responsibilities.

2) International operations: an entirely different situation

A quick look at the fate of cultural property in the armed conflicts of the past fifty years reveals a recent tendency for such property to be directly and increasingly implicated. In the definitions of the tasks and mission in Kosovo, the protection of persons is closely followed by that of cultural property.

The nature of the attacks against cultural property has also radically changed. During the Second World War, cultural property was destroyed mainly by accident. Even the bombardment of Dresden and Monte Casino was not directly aimed at cultural property and was not motivated by the intent to destroy and annihilate it. That was the motivation, however, in recent conflicts and ethnic confrontations, the main object of which was apparently to drive out a people and destroy its cultural heritage.

For international peace-keeping forces, this development presents an entirely new challenge.

We must remember that many people have strong roots and very close ties with their cultural heritage, in particular with regard to religion and religious symbols. Any attack against cultural property strikes directly at the heart and the emotions.

In such a situation, military leaders are forced to act more as social workers than as military commanders.

In international operations, it is very difficult, indeed even impossible, to plan in advance.

We all know the rule that measures for the protection and safeguarding of cultural property are to be taken essentially in peacetime. There is no point in starting when crisis strikes, since other things then have priority. But in this case that rule does not work.

So what can or should be done?

Following the 1964 ratification of the 1954 Hague Convention, and in compliance with Article 7 (Military measures), the Austrian armed forces started in the early 1970s to appoint “specialized personnel”, called Cultural Property Protection Officers.

The Ministry of Defence assigned two Cultural Property Protection Officers (reserve officers) to each territorial/provincial command (one from an academic background) and one special consultant to the Ministry. The officers were chosen on the basis of qualifications such as their knowledge of history, art and folklore and their experience of teaching and the law, especially international law.

In 1981, the Ministry of Defence issued special instructions on the 1954 Hague Convention, the *Richtlinien für den Kulturgüterschutz* (Guidelines for the protection of cultural property), for the armed forces. A revised edition appeared in 1993.

In the past 15 years, considerable work has been done under the leadership of some very humanistic and devoted members of the general staff, in cooperation with the Cultural Property Protection Officers, to prepare and compile special instructions and a manual for the latter.

A standing meeting is held annually to train all Cultural Property Protection Officers, parallel to the training schedule of the different forces.

In conclusion, I would like to encourage all those who have just started their adoption and dissemination programmes, and reassure

them that they have not lost too much time. Indeed, the Second Protocol and its new terms of “enhanced protection” and “criminal responsibility and jurisdiction” bring us all back to square one and open a whole series of issues for debate.

We need a common language and common standards, such as common maps.

This is a job not for one State or a few individuals, but for all of us working together.

Training and dissemination activities in the Italian armed forces

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Italy has ratified the following conventions and is therefore bound by the provisions relative to their dissemination: the Fourth Geneva Convention of 12 August 1949 (Article 144), the Hague Convention of 14 May 1954 (Article 25), Protocol I additional to the Geneva Conventions (Articles 82 and 83), the Second Protocol of 26 March 1999 to the 1954 Hague Convention (Article 30), and the Rome Statute of the International Criminal Court, of 17 July 1998. In time of peace, therefore, all active military personnel of the Italian armed forces take courses on international humanitarian law and the rules relating to the protection of cultural property. Units that are to be part of multinational forces undergo pre-mission training on the enforcement of international conventions. Italian armed forces units are all provided with manuals containing the texts of the international conventions applicable in the event of armed conflict and ratified by Italy. Defence staff is responsible for disseminating those rules.

The Italian armed forces provide training in international humanitarian law, *inter alia* on the protection of cultural property. The training is given to all volunteers during their training at volunteer training regiments, to all sergeants during their basic course at NCO school, to all warrant officers during their three-year course at NCO school, to all cadets during their two-year course at the military academy, to all second lieutenants during their three-year course at the Service Branch School, to all captains during their one-year staff course at the War College, and to majors and lieutenant-colonels during their one year at the Higher Joint Staff Institute. Many of the latter undergo further training at the Higher Joint Staff Institute to become armed forces legal advisers. Those courses are also open to members of the Italian Red Cross and civilian staff from the Ministries of Defence and Foreign Affairs. In addition, the Italian Red Cross and the International Institute of Humanitarian Law organize courses on

international humanitarian law for Italian and foreign military and civilian armed forces personnel.

The Italian army has acquired practical field experience of the protection of cultural property during peace-keeping operations in Bosnia (since 20 December 1995), Albania (15 April to 12 August 1997) and Kosovo (since 12 June 1999). In spite of the absence of specific instructions from the international organizations or the commands of the multinational forces, the following activities were always carried out as a priority and on the Italian units' own initiative: the cultural property to be protected was identified and any damages assessed, an inventory was drawn up of moveable cultural property, mines and booby-traps were cleared in and around cultural property, and direct and indirect surveillance was organized of cultural property in order to ensure that it was not destroyed or pillaged.

In the light of the experience acquired by the Italian armed forces during peace-keeping operations, I will make proposals tomorrow, at the working group meeting, for effective and sustainable protection. Those proposals focus on the establishment of teams responsible for the protection of cultural property whose task would be to cooperate with the relevant military units to that end. The teams would be made up of qualified personnel from the International Red Cross and from international governmental and non-governmental organizations, and would be sent to particularly vulnerable regions following the outbreak of a crisis. They would reinforce the commanders and units conducting peace-keeping operations. The liaison teams and the operational teams would work hand-in-hand with the multinational forces.

The Italian armed forces have always endeavoured to protect cultural property, and they intend to continue doing so.

The protection of cultural property is most influenced by the following factors *inter alia*:

- ♦ the widespread presence on the territory on which the conflict is taking place of cultural property of differing natures, artistic value, size, etc.;
- ♦ the existence of cultural property that does not figure on the registers and lists provided for in conventions and international treaties;

- ♦ poor cooperation between the local authorities and the multinational force, the international agencies and the non-governmental organizations with regard to the protection of cultural property;
- ♦ factions that are strongly tempted to destroy the cultural property of rival factions, cultural property being perceived as a symbol of identity, a “totem” for the enemy community or ethnic group;
- ♦ the consideration of the destruction of cultural property as a “political” rather than a “military necessity” owing both to the root causes of the conflict and the objectives of the factions;
- ♦ the intentional destruction of cultural property (either by regular or paramilitary forces or by groups from the civilian population), committed using any method, wherever possible and for the duration of the conflict;
- ♦ the use of cultural property to finance not only the armed factions but also communities, families and individuals, and its unlawful trade by transnational criminal groups formed by different gangster organizations;
- ♦ the consideration, in good or bad faith, by the military personnel of the multinational force, NGO members, journalists, etc., of cultural property as “souvenirs”;
- ♦ the fact that multinational forces must play several roles simultaneously (operational, administrative, judicial or humanitarian) for lack of resources (men, material, vehicles), while respecting the priority given to control of the territory and the security of the civilian personnel of international agencies and government and non-governmental organizations operating in the conflict area.

It is therefore necessary to:

- ♦ step up dissemination and instruction on the protection of cultural property; the civilian population must be the main target group, for it is not just a victim of the conflict but also plays an active role;
- ♦ oblige the personnel from international agencies and governmental and non-governmental organizations intending to

operate in the conflict zone (no matter in what capacity) to take training courses on the protection of cultural property;

- ♦ provide all military personnel of the multinational force with specific pre-mission training on the protection of cultural property;
- ♦ ensure that the international mandate or the United Nations Security Council resolution authorizing the peace-keeping operation clearly states several things, namely: the need to reinforce the protection of cultural property in conflict zones; the level of authority and/or responsibility entrusted to the local authorities, the local factions engaged in the conflict, the international agencies and the multinational force; the regulations and instruments applicable to the protection of cultural property;
- ♦ in the combat theatre, establish, alongside the military command and the control organization, a similar civilian organization for the protection of cultural property.

The civilian organization for the protection of cultural property and the military command and control organization could interface as follows:

- ♦ the head of the civilian organization for the protection of cultural property would work alongside the commander of the multinational force and be considered as the Special Representative in the theatre of operations of the Committee for the Protection of Cultural Property (established under the Second Protocol) and of the Director-General of UNESCO;
- ♦ a “liaison team” from the Special Representative could operate at the headquarters of the multinational force, in connection with the section for civilian and military cooperation (CIMIC) and with that section’s CIMIC centre;
- ♦ a delegate of the Special Representative could be assigned to each area commander, to be in charge of activities relating to the protection of cultural property in the area concerned;
- ♦ finally, every regiment in the area could have an “operational team” for the protection of cultural property operating in liaison with the CIMIC branch of each unit concerned.

The Special Representative should have the following general responsibilities:

- ♦ to act as an interface, in his specific field, between the commander of the multinational force, the Committee for the Protection of Cultural Property, the Director-General of UNESCO and the local authorities;
- ♦ to enter into specific agreements with the representatives of the authorities and local factions;
- ♦ to issue guidelines so that the activities relating to the protection of cultural property are uniform throughout the combat theatre.

One of the specific agreements could provide for the use of the local police or of locally-recruited temporary personnel to ensure direct surveillance of cultural property. That police force, placed under the direct command of the authority agreed on, should be used only for the protection of cultural property; it should be equipped with small arms and wear a special uniform or bear the distinctive emblem.

The guidelines should have the prior agreement of the commander of the multinational force so that the capacity of the force's units can be guaranteed in advance.

Finally, the guidelines should be disseminated to the factions and the local authorities, to the governmental and non-governmental organizations and to the delegates of the Special Representative in all areas.

Within the framework of the civil organization for the protection of cultural property, the teams' primary role should be of liaison and operational, for they characterize and give meaning to the organization as a whole. Operating with the agreement of military headquarters and units, the teams play a fundamental role in the development of activities for the protection of cultural property.

Every nation should establish such teams, to be deployed not only in the area assigned to their contingent but also in other areas. The team members should be civilians or military personnel who are no longer on active service and work on a volunteer basis. They could be drawn from:

- ♦ National Red Cross and Red Crescent Societies;
- ♦ national associations for the protection of cultural property;
- ♦ private or public bodies, foundations or institutes dealing with cultural property.

They must in any case have qualifications in fields that are not specifically linked to military activities.

The teams, deployed in different areas of operation, should:

- ♦ act as an interface between the military and the international and local authorities;
- ♦ coordinate their own activities with the operational activities of the multinational force's units, working in constant liaison with CIMIC bodies;
- ♦ use the funds allocated to activities for the protection of cultural property and avail themselves of their own material and resources and of local skilled or unskilled manpower;
- ♦ implement all the technical measures for the protection of the cultural property;
- ♦ carry out the activities within the scope of their mandate, within the security framework provided by the military units of the multinational force.

CHAPTER III

Working groups

During the second part of the meeting, three working groups met to discuss topics taken from a document prepared by the Advisory Service, namely a series of guidelines on the protection of cultural property in the event of armed conflict. The guidelines were drawn up with a view to providing States and the organizations involved in implementation with a practical aid describing the measures that should be taken to reinforce the protection of cultural property in the event of armed conflict. The discussion points were divided into three main themes, one for each working group:

- ♦ the distribution of competencies and responsibilities with regard to the implementation of the rules of international humanitarian law relative to the protection of cultural property;
- ♦ the legal protection of cultural property in the event of armed conflict;
- ♦ the dissemination and awareness of the rules protecting cultural property in armed conflicts.

Each group's aim was to discuss its theme, and any other points that arose, in order to come up with practical solutions to any problems related thereto. The groups' reports and the other expert comments were used to reshape and complete the draft guidelines into a new document entitled *Practical advice for the protection of cultural property in the event of armed conflict*, which is to be found in the last part of this report.

* * * * *

The reports that follow summarize the ideas raised by the participants. Their content does not necessarily represent common positions negotiated within the working groups or in plenary; rather, it reflects all the points of view expressed.

Introduction to the themes discussed

1. Competencies and responsibilities

This theme covered issues involving both the shared institutional and financial responsibilities of implementing protection of cultural property in the event of armed conflict, in particular in terms of activities to identify cultural property, and those related to the role to be played by the agencies implicated in the implementation process.

The national authorities who are competent and responsible for the implementation of the rules for the protection of cultural property in the event of armed conflict, and the way in which that competence and those responsibilities are exercised, must be clearly defined. It has been suggested that the distribution of tasks can vary with the State's political system: the national structure for the protection of cultural property in a unitary State may not be the same as in a federal State, where it is important to avoid overlap between the different levels of government.

The designation of the authorities in charge of activities to protect cultural property also raises the question of which authorities are responsible for financing those activities, which should include:

- ♦ the identification of cultural property;
- ♦ the preparation of lists and inventories of protected cultural property;
- ♦ the marking of protected cultural property with the distinctive emblem provided for in the 1954 Hague Convention;
- ♦ the preparation of maps showing the location of protected cultural property and their distribution to the national and international authorities concerned;
- ♦ the construction of shelters to protect moveable cultural property;
- ♦ the preparation of back-up documents on cultural property;
- ♦ the adoption of any other measure to protect cultural property in the event of armed conflict.

More specifically, identification implies the establishment of criteria for the classification of cultural property requiring protection and of a method for determining those criteria. The UNESCO system for the registration of cultural property and the method employed to grant special or enhanced protection can serve as models for that purpose.

Information on the whereabouts of protected cultural property, in particular in the form of maps showing its location, should be provided to the armed forces, the national civil authorities, UNESCO and international peace-keeping or peace-enforcement forces.

Non-State entities such as national committees for the implementation of humanitarian law, national associations for the protection of cultural property and the National Red Cross and Red Crescent Societies can also play a key role in this field, particularly in terms of mobilizing and assisting the national authorities involved in the implementation process.

2. Legal protection of cultural property

A legal framework is essential for the protection of cultural property in the event of armed conflict. The establishment of that legal framework usually starts with the process of ratification of the relevant international treaties and continues with the adoption of national legislative and regulatory measures to implement the rules they contain.

What mechanisms could be set in place, at international level, to ensure universal participation in the 1954 Hague Convention and its Protocols? What links could be forged between those instruments of humanitarian law and other international law treaties relative to the preservation of cultural heritage, such as the 1970 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and the 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage*?

At national level, the procedure for adopting legislative and regulatory measures of implementation should take account of the State's legal system (civil or common law) and the context of the measures to be adopted (ordinary or military law).

Legislative and regulatory measures may be required to give effect to the obligations of the States party to the international instruments concerned. But which measures? It has been suggested that national legislation should as a very minimum control the use of the distinctive emblem for the protection of cultural property in the event of armed conflict and provide for the prosecution of persons who have violated the rules protecting that property.

Finally, would it not be wise to take account of the principle of complementarity and the provisions of the Statute of the International Criminal Court dealing with crimes against cultural property when establishing a national system of repression?

3. Dissemination and awareness

It was suggested that this working group discuss matters related to the awareness and dissemination of the rules for the protection of cultural property in the event of armed conflict among a variety of target groups, with a special focus on training of the armed forces.

The suggested discussion points included the importance of military handbooks as a dissemination aid, the training of armed forces personnel at all hierarchical levels, and the creation of positions within the armed forces for officers specialized in the protection of cultural property.

Other topics raised included the possibility of establishing standard training courses for emergency services and civil defence staff, and the preparation of guidelines or of a training programme for the personnel of cultural institutions.

Should not the civilian and military authorities cooperate in these areas? What role could be played by the national committees for the implementation of international humanitarian law?

The importance of cooperation between the national authorities and UNESCO with regard to the transmission of information, in particular concerning translations of the relevant texts in national languages, was also mentioned as a means of facilitating communication at international level.

Finally, to what extent did the general public need to be made aware of the importance of taking measures to protect cultural property and how was that awareness to be stimulated? The National Blue Shield Committees, other non-governmental associations and the National Red Cross and Red Crescent Societies were already engaged in or could be encouraged to work on campaigns to promote the subject, in particular in schools, with a view to reaching a broader public.

Report from Group I

Competencies and responsibilities

Chair: **Michael Turner,**
*President of the Israel
World Heritage Committee*

Rapporteur: **Isabelle Küntziger,**
*Legal Adviser, Advisory Service on
International Humanitarian Law, ICRC*

Preliminary remarks

The protection of cultural property is unique under international humanitarian law and different from the protection of other civilian objects. Measures to protect cultural property in peacetime should reflect existing national administrative and legal structures.

Special attention should be paid to the protection of cultural property in non-international armed conflicts.

A distinction must be drawn between the protection of cultural property at national level and that provided for under the international rules to be implemented at national level.

Authorities in charge of the protection of cultural property

It is essential that States provide information on their national structure and on the authorities in charge of the protection of cultural property and that they communicate this information at the national and international levels. The information should include a description of the responsibilities, the authorities and their competence, and specify their role in peacetime and during armed conflicts. A clear distinction should be made between federal and unitary systems.

The link between the authorities that are competent in peacetime and those that are in charge during armed conflicts should be enhanced; when designating the competent authorities, practical solutions should be adopted to avoid overlap, as Italy had done.

In the event of armed conflict, solutions should be promoted which call on NGOs and culture professionals who are peacetime leaders in their fields.

The ICRC and UNESCO should also provide information on the means they have of protecting cultural heritage in the event of armed conflict and on the assistance they can provide in such situations. This information should be made available to all States.

Identification of cultural property

Under this point, the working group considered the criteria used to classify cultural property requiring protection and how those criteria should be determined.

Identification, it was recalled, was not a precondition for the protection of cultural property. It was a method of implementing that protection.

When identifying cultural property, States should take into account the cultural, historical, spiritual and intangible values of national significance. They should refer to the criteria for intangible values described in paragraph 24 (a) (vi) of the Operational Guidelines for the Implementation of the World Heritage Convention.

Where applicable, an indicative national list of World Heritage sites should be drawn up.

The use of the blue shield emblem for the protection of cultural property should be regulated, even in peacetime.

Academic institutions should be involved in the preparation of reference documents, which should also be drawn up for movable property.

The role of national committees for the implementation of international humanitarian law and of national associations for the protection of cultural property

NGOs played a particularly important role. With regard to the 1954 Hague Convention, the members of national committees for the implementation of international humanitarian law should include NGO representatives. They should also include representatives of ministries responsible for the protection of cultural property.

The financial aspects of protecting cultural property

The authorities in charge of the protection of cultural property should receive adequate funding. UNESCO and the ICRC should lobby for funds, to generate “added value”, from international organizations such as the World Bank, the World Monument Fund, the Getty Foundation and other national trusts, said funds to be used for peacetime preparatory measures.

Priority should be given to basic inventories to ensure that more than enough information is available on the property to be protected worldwide.

The transmission of information on protected cultural property

The way in which information can be transmitted at both national and international levels, including among multinational peace-keeping or peace-enforcement forces, is discussed under “Authorities in charge of the protection of cultural property”, above.

National institutions and academic circles should make available the information they have on cultural property.

Comment

The working group also recommended that the document be redrafted in the form of an “advisory note” rather than guidelines to be incorporated into a legal text, so as to encourage national participation and involvement on the basis of the existing legal and administrative structure for the protection of cultural heritage.

Report from Group II

Legal protection of cultural property

Chair: **Lieutenant-Colonel Auditor
Juan Manuel García Labajo,**
Spain

Rapporteur: **Cristina Pellandini,**
*Legal Adviser, Advisory Service on
International Humanitarian Law, ICRC*

General remarks

The working group considered the legal protection of cultural property. The experts regretted that they had only enough time for a cursory examination of the draft guidelines submitted by the ICRC. They nevertheless had a number of criticisms of the content and structure of the text, and indeed questioned the principle of drawing up guidelines on the topic. It was their unanimous view that parts of the draft text, as submitted, required revision at the very least.

Given that there was not enough time to study and comment on the draft's content in detail, the group limited its deliberations to a more general reflection and discussion of the following issues, based on the questions that had been suggested to it:

- ♦ How could universal participation in the treaties for the protection of cultural property in the event of armed conflict be encouraged?
- ♦ What legislative and regulatory measures should the States adopt in order to implement the rules contained in those treaties?
- ♦ In particular, what legislative measures should they adopt to ensure penal repression of violations of the rules?

Mechanisms to encourage States to ratify or accede to the treaties

The working group first considered the means of obtaining universal participation in the treaties for the protection of cultural property in armed conflicts. It concluded that the first thing to do was to find out why 91 of the 189 States party to the 1949 Geneva Conventions had not yet ratified or acceded to the 1954 Hague Convention.

The experts offered several explanations. First, some States might be unaware of the treaties' existence and content. The economic difficulties and limited resources, notably human, of some less developed States could also explain why States could not move forward on ratification or accession (for example, the need to translate the treaties into the many national languages of their country).

The experts also mentioned the negative example set by several important States that had not joined the international system for the protection of cultural property. However none of the experts could explain those States' failure to do so, especially since the end of the Cold War.

Lastly, States often had other priorities, in particular other spending priorities, which kept them from dealing with treaties for the protection of cultural property.

The experts expressed satisfaction at the list of reasons and advantages presented by UNESCO to encourage the ratification of treaties for the protection of cultural property, in particular the 1954 Hague Convention. The main arguments considered by the working group can be summed up as follows:

- ♦ in the event of hostilities, the States party were mutually bound to respect cultural property;
- ♦ certain administrative and technical measures required for the application of the 1954 Hague Convention were also useful in the event of a natural disaster or an emergency (the establishment of a body responsible for the protection of cultural property, the construction of shelters for movable cultural property, the preparation of national inventories of cultural property, and the

possibility of marking immovable cultural property with the distinctive emblem provided for in the Convention);

- ♦ the possibility afforded the States party to participate in UNESCO activities and to take advantage of UNESCO's technical assistance;
- ♦ the possibility to attend international meetings on the protection of cultural property and to be part of their decision-making process;
- ♦ the opportunity for officials, military staff and professionals dealing with the protection of cultural property to exchange experiences with specialists from other States party.

Furthermore, by adhering to these instruments, the States contributed to the globalization of the protection of the cultural heritage of humanity as a whole.

Lastly, certain experts suggested that situations in which action was taken to reconstruct destroyed property or shocking attacks were carried out against important cultural property be used to spread knowledge of the 1954 Hague Convention and its Protocols and thus to draw attention to their relevance.

Legislative measures for the implementation of the treaties

The group then considered the legislative and regulatory measures that had to be taken to implement the international instruments for the protection of cultural property in the event of armed conflict at national level.

The experts were unanimous that it was a sound idea to have a national law containing a definition of protected cultural property, said definition to correspond to that contained in the 1954 Hague Convention. One speaker suggested that the definition adopted should not be too broad. The law should also designate the authorities and institutions in charge of protection, taking care whenever possible to avoid the appointment of too many bodies. It would be best to assign competence to existing bodies and mechanisms, for example to the national committee for the implementation of international humanitarian law, if there was one.

The national legislation and rules should also stipulate the duty to adopt measures and mechanisms to heighten awareness of the need to protect cultural property and to disseminate the rules pertaining thereto. Lastly, the use of the distinctive emblem protecting cultural property should also be governed by regulations.

In particular with regard to the armed forces, the States should adopt norms and regulations making it obligatory to spread knowledge of the rules protecting cultural property and to establish specialized services within military units.

One expert stressed that the choice of legislative and regulatory measures should take due account of both national interests, in particular in terms of national security, and international concerns.

Care must be taken when drafting practical guidelines on measures for the implementation of the rules protecting cultural property not to overburden the governments.

Lastly, several experts raised the issue of how to ensure protection of cultural property in non-international armed conflicts and respect for the relevant norms by non-State armed groups.

National legislative measures for the repression of violations

The experts said that they attached great importance to the proposed measures aimed at ensuring the repression of violations of the rules for the protection of cultural property in the event of armed conflict. They nevertheless agreed that a prudent approach had to be adopted, and suggested that repression be limited to ensuring a minimum standard of penal protection, on the basis of the existing rules of customary law.

They agreed in particular that given the present state of international law, including the state of ratification of the Second Protocol of 1999 and the fact that it had not yet entered into force, it would be premature to give the States specific models of new penal provisions for the prosecution and punishment of violations of the international rules concerning “enhanced protection” of cultural property in the event of armed conflict.

Report from Group III

Dissemination and awareness

Chair: **Major Franz Schuller**,
*Secretary-General, Austrian Society
for the Protection of Cultural Property, Austria*

Rapporteur: **Anna Segall**,
*Legal Adviser, Advisory Service on
International Humanitarian Law, ICRC*

Preliminary remarks

The working group decided to base its discussion on the relevant sections of the draft guidelines for the protection of cultural property submitted for its consideration. It first made proposals to introduce new points, then suggested specific changes or additions to existing paragraphs. Lastly, the group discussed other matters to be addressed in the appropriate sections of a revised document, on the basis of the proposed discussion points.

New points

First, the group was of the opinion that a revised document should recall why it was important for all States to become party to the 1954 Hague Convention and its Protocols.

The group raised three points regarding cooperation. First, it was important to encourage regional and inter-State cooperation, mutual and technical assistance, and the development of standardized materials and information (standardized signs for maps, training modules, etc.). Secondly, existing regional and other schemes for the protection of cultural property in peacetime (such as the Commonwealth scheme) should be used to enhance understanding of the importance of protecting cultural property in armed conflicts. Thirdly, cooperation needed to be actively sought with national institutions working in the field of cultural property and relevant professional

associations at the national and international levels (for instance, the International Council of Museums).

The need should be emphasized of ensuring that the personnel of NGOs and other organizations working in conflict zones were aware of the rules of international humanitarian law, including the rules governing the protection of cultural property.

Finally, the document should mention the importance of ensuring that the relevant treaties were translated into national languages, as this enabled States to become party thereto and facilitated the establishment of dissemination programmes. The ICRC and the National Red Cross and Red Crescent Societies could provide assistance with the translations, as could UNESCO.

Changes and additions

The members of the group proposed detailed and sometimes very technical modifications aimed at improving the accuracy of the draft document. For the purpose of this report, the proposed changes or additions will be summarized and commented on in general.

The members of the group raised the general issue of education and felt it was important to take account of the fact that recent conflicts had seen deliberate targeting of cultural property. They suggested that the protection of cultural property in armed conflicts be linked with the need for general education in humanitarian law and values.

As National Societies existed in virtually all States, the group suggested that they could serve as a link with the national association for the protection of cultural property (in countries where such an association existed) and the national UNESCO committee. The National Societies could also serve as a bridge, bringing together those concerned with cultural property and the armed forces or other relevant public authorities.

The designated staff and members of professional associations should be given general information on the obligation to respect and safeguard cultural property and training in the execution of action plans for the protection of cultural property in the event of armed conflict. To foster interest, such training programmes should be

linked to others relating to natural disaster situations and other emergencies. Training should be provided not only to those acting locally but also to those serving in peace-support operations abroad.

The working group suggested that consideration be given to broadening the scope of the training provided to the armed forces, by including specialists in history, art and cultural property, to foster respect for culture.

The working group expressed interest in a greater exchange of the dissemination materials developed by UNESCO and the ICRC for use by the armed forces.

The working group noted that some States did not have designated civil defence organizations, although most States had organizations that performed civil defence tasks. The latter could also play a major role in the protection of cultural property. In situations where a training programme for civil defence personnel or other competent personnel existed, expertise in the protection of cultural property could be developed by establishing a service responsible for matters relating thereto, including the appointment of specialized cultural property protection officers. Where such training did not exist, thought could be given to devising a programme to train personnel in techniques for the protection of cultural property.

Other matters

The working group stressed the importance of incorporating training on the protection of cultural property into routine instruction on humanitarian law for armed forces personnel. The group suggested referring not only to military manuals but also, where appropriate, to rules of engagement, standard operating procedures, instructions and memoranda of understanding. Regarding the positions for specialized cultural property protection officers, the working group was strongly of the view that existing service personnel (such as legal advisers, civil-military affairs officers, and reserve officers) could take on this function and that new positions would not have to be created.

The working group suggested that CIMIC (civilian and military cooperation) liaison officers receive training on cultural property as

part of their routine training in humanitarian law. Those officers could also help train others.

It was suggested that national committees for the implementation of international humanitarian law had an important role to play in furthering the exchange of information with UNESCO, in fostering interest in the protection of cultural property during armed conflicts among the government departments concerned, and in promoting ratification and coordinating implementation of the treaties. The need for more specialists in humanitarian law was also mentioned.

While discussing the importance of cooperation between States and UNESCO, the group suggested that intergovernmental organizations, regional organizations, NGOs and others could also provide assistance for the exchange of information on cultural property to be protected and for the translation of treaties.

The members of the group agreed that national Blue Shield and other non-governmental associations for the protection of cultural property, the National Red Cross and Red Crescent Societies, schools and other educational centres could participate in broad-based public awareness campaigns. They further agreed that efforts should be made to include the protection of cultural property in national curricula such as citizenship education programmes that covered humanitarian law, in order to reach the public at large.

CHAPTER IV

Conclusions of the meeting

Yves Sandoz

Special Adviser to the ICRC

Our meeting is drawing to an end and the time has come to wind up our discussions. I will not, however, attempt to sum up a meeting so rich in the information presented, the problems raised and the issues discussed. Many questions remain to be answered, something that will require greater thought, but I think the groundwork for that reflection has been laid. We will have to take stock, unhurriedly and with a bit of distance, of our discussions and the reports presented by the working groups following their deliberations.

I will therefore limit myself at this point to a number of comments on the highlights of the meeting.

First, this meeting strengthened my impression that respect for the cultures of other peoples, of which the protection of cultural property is a vital element, is more important today than ever. The extraordinary growth in population over the past century — indeed, the world's population has tripled in the past fifty years, from 2 to 6 billion people — has made us aware of the crucial need for humanity as a whole to manage, peacefully, the phenomena engendered by that explosion, of the need to live with each other, to respect each other. Respect for each other means respect for each other's culture. We must therefore convince the general public that the protection of cultural property is not a secondary or fringe issue, but that the rules guaranteeing that protection are part and parcel of the essential rules for peaceful cohabitation by which all the world's peoples must now abide.

As we all know, much remains to be done to obtain universal respect. I was especially struck by the discussions of the first day, in which some of you emphasized that it was sometimes preferable to hide cultural property, the better to preserve it, to shelter it from terrorists or unscrupulous combatants wishing to attack it so as to demonstrate

their disrespect for the other side, to fan the flames of animosity. This is a serious matter, as is the similar situation in which the red cross, in exceptional cases, has had to be hidden from those that did not intend to respect it. Such paradoxical situations represent a defeat, and everything must be done to avoid them, to promote universal recognition and acceptance of the intangible nature of certain objects and certain symbols.

With regard to the ratification of treaties, I have noted with interest one of the points made: that governments should show that they attach importance to the protection of cultural property. In a first phase, therefore, ratification should be defended with positive arguments, without, nevertheless, ignoring the inherent responsibilities: the protection of cultural property requires certain means, and this fact cannot be hidden, even at the risk of scaring off countries studying the possibility of ratifying the treaties.

It is also clear that concern to make progress without calling into question past achievements, i.e. without amending the 1954 Hague Convention, adds to the complexity of identifying the problems posed by different systems and levels of protection, by the range of infractions and jurisdictions, which are complementary but sometimes also appear to be contradictory. We can understand the reason for each approach, but must also be aware that the level of complexity can be no higher if we want the general public to know and understand the rules, an important factor of respect. In international humanitarian law, only clear norms stand a chance of being applied. It would therefore be wise now to consider simplifying the rules.

The need for simplicity has also become apparent with regard to the emblems for cultural property, whose number must in no event increase. One wonders whether the National Red Cross and Red Crescent Societies, several of which are very active in explaining the significance of the red cross and red crescent emblems and in fighting misuse of the emblem, could not do the same for the emblems protecting cultural property? In addition to these questions, allow me to ask one more that was not raised by the meeting: would it not be a good idea to encourage even more marking of protected cultural property in peacetime? There is no obligation to do this, of course, but

marking could play a useful preventive role and heighten public awareness of cultural heritage.

We have also understood why there is no supranational authority to define each country's cultural property. The value of an object is subjective, and it is up to each people to define that property which it considers deserving of protection. We should ask, however, whether it would not be wise to develop standards for categories of property. The issue must in any case remain open, so that experience with regard to the procedure and criteria used can be exchanged with a view to finding a globally coherent approach to the matter.

This suggestion brings me quite naturally to the issue of the awareness of the public in general and the armed forces in particular. Our aim in this area must be effectiveness, and for that we need to show imagination. I will not attempt to summarize here and now everything that has been said in the reports on the subject, but I would like to mention two particularly interesting ideas: making the identification of the cultural property deserving special protection in each country a matter for public awareness, and systematic visits to protected sites by military personnel in training.

In more general terms, our meeting has reminded us that we must remain critical and vigilant with regard to any measure of implementation. We must always look beneath the surface and ask whether a measure is truly effective. Take two examples:

- ♦ The national committees that have been set up no doubt provide valuable aid and their establishment in other countries is definitely to be encouraged. But they are not an end in themselves. A committee is effective only if it meets regularly, if it has a mandate and the means of functioning, if its recommendations are followed. We must constantly ask whether this is the case.
- ♦ By the same token, the system of country reports to be submitted every four years, as stipulated in the 1954 Hague Convention, is not *a priori* effective. It is effective only if the reports are written with the required sobriety, regularity and honesty and, above all,

only if they are taken seriously by those able to overcome the shortcomings they bring to light.

In short, implementation requires not only initiative, imagination and perseverance, it also calls for a heightened sense of criticism that sees the adoption of specific measures not as an end in itself but as a means whose effectiveness requires constant evaluation.

I am aware that these few comments barely suffice to sum up the scope and depth of our debates, but, as I told you, I will not attempt to summarize them here, just before the meeting ends. We will carefully examine the content of the reports and of your statements and, on that basis, will draw up a report that we can use to pursue our dialogue, in writing or in another fashion to be determined. This meeting is therefore more a starting gate than a finishing line in a field we have just started to examine in depth and in which, I wish to emphasize yet again, we wish to work in close harmony with UNESCO.

It remains for me to thank each and every one of you most sincerely for everything you have contributed. The richness and variety of your experiences, the constructive spirit in which you attended this meeting, were invaluable in guaranteeing its success. That is, in any case, our point of view.

I also wish to underscore the importance we attach to the presence of our Advisory Service's legal advisers. We thank them for having made the trip. We consider their presence particularly useful in that it will be up to them to relay the considerations, suggestions and advice coming out of this meeting.

Thank you also to all those who agreed to make a presentation — Thursday was particularly rich in that respect — and to those who chaired the working groups or acted as rapporteurs.

I believe I speak for us all when I express gratitude to those who organized the meeting, María Teresa Dutli and her team, in particular Joanna Bourke Martignoni, who did a huge job of preparing the substance, and Véronique Ingold, who coordinated the management of countless practical problems.

Let us not forget our interpreters, who did an outstanding job in their role as the link between those who do not share a language. Their availability and the accuracy of their work were invaluable.

I thank you again and wish you a safe trip home. This meeting is now closed.

PART TWO

**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	147
II.	Instruments of international humanitarian law which protect cultural property in the event of armed conflict	149
III.	Overview of the protection provided by these instruments ..	150
IV.	The Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols	152
	1. General protection	152
	2. Special protection	153
	3. National measures of implementation	154
	3.1 Identification and inventories	154
	3.2 Distinctive emblems	155
	3.3 Identity cards	156
	3.4 International Register of Cultural Property under Special Protection	157
	3.5 Dissemination	158
	3.6 Penal sanctions	158
	4. During hostilities	159
	5. Monitoring the application of the Convention	160
V.	The Hague Protocol of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict	162
	1. During hostilities	162
	2. After hostilities	162
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	163
	1. Enhanced protection	163
	2. National measures of implementation	164

2.1	Identification and safeguarding.....	164
2.2	The granting of enhanced protection	164
2.3	Dissemination	165
2.4	Penal and administrative sanctions.....	166
3.	During hostilities	167
4.	After hostilities.....	169
5.	New institutions established by the 1999 Protocol.....	169
5.1.	Committee for the Protection of Cultural Property in the Event of Armed Conflict.....	169
5.2.	Fund for the Protection of Cultural Property in the Event of Armed Conflict.....	170
VII.	Other treaties of international humanitarian law which protect cultural property	171
1.	1977 Protocols additional to the 1949 Geneva Conventions.....	171
1.1	National measures of implementation	172
1.1.1	Identification	173
1.1.2	Dissemination.....	173
1.1.3	Penal sanctions.....	173
1.2	During hostilities.....	174
1.3	After hostilities	174
2.	Statute of the International Criminal Court (ICC)	175
VIII.	Advantages deriving from participation in the treaties.....	176
IX.	Financial consequences of participation in the treaties	178
X.	Use of existing bodies and structures.....	180
XI.	How to ratify these treaties and the role of the ICRC Advisory Service on International Humanitarian Law.....	182
1.	How to ratify these treaties.....	182
2.	ICRC Advisory Service on International Humanitarian Law	183

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.

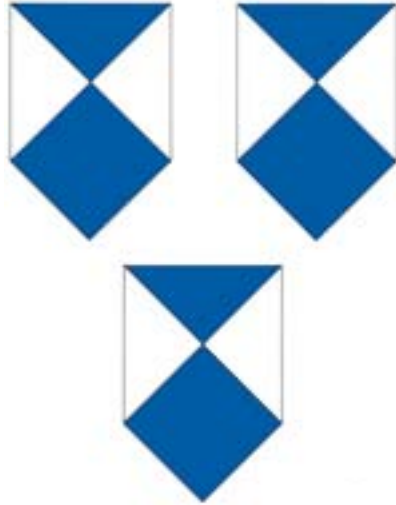
Furthermore, places which may be used as refuges must be identified or, where necessary, constructed.

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).

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*

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*

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.

ANNEXES

I.	Programme	187
II.	List of participants	191
III.	Questionnaire on national measures of implementation concerning the protection of cultural property in the event of armed conflict.....	195
IV.	Comparative tables of the replies to the questionnaire on national measures of implementation concerning the protection of cultural property in the event of armed conflict.....	199

Programme

Thursday, 5 October 2000

- 9h00–9h30 Registration
- 9h30–9h45 Opening of the meeting
Mr. Eric Roethlisberger, Member of the Committee, ICRC
- 9h45–10h15 Competing priorities: placing cultural property on the humanitarian law agenda
Mr. Yves Sandoz, Special Adviser to the ICRC
- 10h15–10h45 Negotiating the Second Protocol to the Hague Convention — the future of cultural property protection
Mr. Jean-Marie Henckaerts, Legal Adviser, Legal Division, ICRC
- 10h45–11h15 *Coffee break*
- 11h15–12h00 An overview of national implementation of the protection of cultural property and the role of UNESCO in this area
Mr. Jan Hladík, Programme Specialist, International Standards Section, Division of Cultural Heritage, UNESCO, Paris
- 12h00–12h30 Implementing IHL at the national level, the work of the ICRC’s Advisory Service and the protection of cultural property in the event of armed conflict, including strategies for the ratification of relevant IHL instruments
Ms. María Teresa Dutli, Head, Advisory Service on International Humanitarian Law, ICRC
- 12h30–14h00 *Lunch*
- 14h00–17h30 Speakers on national implementation in different contexts (*including coffee break, 15h30–16h00*)

Each of the speakers will present a short report (15–20 minutes) focusing on a specific issue of the protection of cultural property within their national system. The topics to be covered include:

1. Overlapping competencies for the protection of cultural property in the context of federal States
Mr. Rino Büchel, Section for the Protection of Cultural Property, Federal Office for Civil Protection, Switzerland
2. The criteria used for identifying and registering protected cultural property
Dr. Hassan Jouni, Faculty of Law, University of Lebanon, and Mr. Eduardo Andrade Abularach, Architect, Guatemala
3. The process of marking property under protection and the use of distinctive emblems to mark property under special or enhanced protection
Dr. Savin Jogan, Ministry of Culture, Slovenia
4. The role of national committees in the implementation of rules for the protection of cultural property
Ms Claudia Herrera Nosthas, Legal Adviser, Ministry of Foreign Affairs, El Salvador
5. Repression of violations of the law relating to the protection of cultural property
Professor Horst Fischer, University of Bochum, Germany
6. Training and dissemination activities for the armed forces concerning cultural property protection
Major Franz Schuller, Secretary-General of the Austrian Society for the Protection of Cultural Property, Austria, and Brig. General Leonardo Prizzi, Italian Armed Forces, Italy

19h00 *Dinner*

Friday, 6 October 2000

9h00 Introduction to the guidelines as a model for national implementation.
Ms María Teresa Dutli, Head, Advisory Service on International Humanitarian Law, ICRC

9h10–12h00 Working Groups — Based on “themes” related to the draft guidelines and incorporating a discussion of the relevant sections of the guidelines.
(Includes a coffee break from 10h30–11h00)

Group 1

Problems of overlapping competencies — Who is responsible for identifying, registering, marking and protecting cultural property in the event of armed conflict? How can these activities be most effectively organized and financed? How can national committees participate in or facilitate this process?

Chair: Mr. Michael Turner, President of the Israel World Heritage Committee, Israel

Group 2

Legal protection of cultural property under military and civilian legal systems. Developing a legal base for the protection of cultural property in the event of armed conflict. The issue of penal repression. Provisions of the Rome Statute relevant to the protection of cultural property during armed conflicts.

Chair: Mr. Juan García Labajo, Lieutenant-Colonel Auditor, Spain

Group 3

Dissemination, information and awareness — How are members of the Armed Forces educated in relation to the protection of cultural property? How can this training be most effectively carried out? Are members of the general public sufficiently aware of the norms of humanitarian law relating to the protection of cultural property? Cooperation with UNESCO and how it can be enhanced.

Chair: Major Franz Schuller, Secretary-General of the Austrian Society for the Protection of Cultural Property, Austria

- 12h00–14h00 *Lunch*
- 14h00–16h30 Reports from the working groups and general debate on the draft guidelines
Chair: Professor Horst Fischer, University of Bochum, Germany
- 16h30–17h00 Conclusions — strategies for implementation and follow up
Mr. Yves Sandoz, Special Adviser to the ICRC
- 17h00 *Apéritif*

List of participants

Mr Alijon Lutfulloevich Abdulloev, Head of Inspection, Historical and Cultural Monument Protection and Artistic Expertise, Ministry of Culture, *Tajikistan*

Mr Eduardo Andrade Abularach, Architect, *Guatemala*

Mr A.E. Bavykin, Ministry of Foreign Affairs, *Russia*

Lieutenant-Colonel Jean-Pierre Bayala, Ministry of Defence, *Burkina Faso*

Professor Patrick Boylan, City University, London, *United Kingdom*

Mr Rino Büchel, Head, Protection of Cultural Property, Federal Office for Civil Protection, *Switzerland*

General Ahmed El Anwar, Head of Military Tribunals, *Egypt*

Mr Nicola Erriquez, Chief Inspector, *Carabinieri, Italy*

Dr Horst Fischer, Professor, Institute for International Law of Peace and Armed Conflict, Ruhr-University Bochum, *Germany*

Ambassador González Félix, Legal Adviser, Ministry of Foreign Affairs, *Mexico*

Mr Edmond Carel Alexander Fokker van Crayestein, Lieutenant-Colonel, *The Netherlands*

Mr Bernard René Fonquernie, Inspector-General of Historic Monuments, *France*

Mr Juan Manuel García Labajo, Lieutenant-Colonel Auditor, *Spain*

Mr Pierre Lalive, Professor, Lalive & Associates, *Switzerland*

Colonel Charles Garraway, Ministry of Defence, *United Kingdom*

Mr Ariel Walter Gonzalez, First Secretary, Permanent Mission of Argentina to UNESCO, *Argentina*

Ms María Claudia Herrera Nosthas, Legal Adviser, Ministry of Foreign Affairs, *El Salvador*

- Mr Jan Hladik**, Programme Specialist, International Standards Section, Division of Cultural Heritage, *UNESCO*
- Dr Savin Jogan**, Ministry of Culture, *Slovenia*
- Professor Hassan Jouni**, Law Faculty, University of Lebanon, *Lebanon*
- Mr Krzysztof Pawel Kalinski**, Ministry of National Defence, Social and Educational Department, *Poland*
- Mr L. Kiangte**, Deputy Secretary, Department of Culture, *India*
- Mr Michael Meyer**, Head of International Law, British Red Cross, *United Kingdom*
- Ms Njeri Mwangi**, State Counsel, *Kenya*
- Mr Mihály Nagy**, Head of the Division of Monuments, Ministry of Cultural Heritage, *Hungary*
- Mr Franz Neuwirth**, Director of Monument Protection, Department of Culture, Education and Science, *Austria*
- Professor Mohammad Y. Olwan**, Professor and Dean of the University of Applied Science, *Jordan*
- Colonel Giovanni Pastore**, Vice-Commander, Carabinieri, *Italy*
- Mr Stélios Perrakis**, President of the Greek Commission for the National Implementation of International Humanitarian Law, NS Greece, *Greece*
- Ms Matilda Thomas Philip**, Principal State Attorney, Attorney-General's Chambers, *Tanzania*
- Brig. General Leonardo Prizzi**, Italian Army, Scuola di Applicazione, *Italy*
- Ms Barbara Overton Roberts**, Conservator, Frick Collection, *USA*
- Ms Michaela Schneider**, Assistant, Institute for International Law of Peace and Armed Conflict, Ruhr-University Bochum, *Germany*
- Major Franz Schuller**, Secretary-General, Austrian Society for the Protection of Cultural Property, *Austria*
- Dr Maja Sersic**, Professor, University of Zagreb, *Croatia*

Mr Steven Solomon, Attaché, Permanent Mission, *United States*

Dr Heike Spieker, International Legal Adviser, German Red Cross,
Germany

Mr Michael Turner, President of the Israel World Heritage
Committee, *Israel*

Professor Adul Wichiencharoen, Office of Environmental Policy and
Planning, *Thailand*

**Questionnaire
on national measures of implementation
concerning the protection of cultural property
in the event of armed conflict¹**

I. Ratification

Which treaties on the protection of cultural property in the event of armed conflict have been signed and/or ratified by your State? When were these instruments signed and/or ratified? Are there any plans to sign or ratify the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (not yet in force)?

II. Competent Authorities

Which authorities are competent to deal with protection of cultural property? What is their organizational structure? If there are different authorities involved in the protection of cultural property at the national, regional or provincial levels, please outline their mandates, activities and structure.

Are there designated cultural property protection officers within the armed forces?

How are personnel involved in the identification, registration and protection of cultural property trained? Is the training the same for personnel working under different authorities?

If there is a national commission or committee for international humanitarian law in existence, does it play a role in cultural property protection activities?

Is there a national Blue Shield committee in your State? Has there been any networking between relevant national authorities or

¹ This questionnaire was sent only to the experts attending the meeting.

associations and the International Committee of the Blue Shield? If so, please provide details concerning this cooperation.

III. Identification and registration of protected objects

What kinds of goods are considered to be cultural property?

How are these items identified? Who is competent to identify them? What is the procedure for identification? Is a distinction made between different categories of protected cultural property? Do some categories of cultural property have special protection?

Is there a national register containing a list of protected cultural property? If so, how is this list kept up to date? Is information concerning protected cultural property made publicly available? How?

Are lists or registers of protected cultural property made available to UNESCO?

IV. Practical measures for the protection of cultural property

Have any measures been taken regarding the distinctive marking of protected cultural property (i.e. through the use of an emblem or by other means)? Do differences exist in the markers or signs used to identify different categories of protected cultural property? Are these markers permanently affixed to protected cultural property or are they only used to designate protected cultural property during situations of armed conflict?

Is there a practice of producing “back-up documentation” (e.g. descriptions, plans, photographs, photogrammetric surveys, mouldings, etc.) in order to make it possible to restore or reconstruct cultural property in case of damage or destruction during an armed conflict? If so, who is responsible for producing, storing and financing such documentation?

Is there an evacuation plan for cultural property in the event of an armed conflict? If so, who is responsible for executing the plan?

Do permanent shelters exist in your country for the protection of moveable cultural property? If not, is provision made for the creation

of shelters in order to protect moveable cultural property? Who is responsible for building these shelters?

V. Measures for the repression of violations of the protection of cultural property

Are there any military disciplinary measures applicable for violations of the protection of cultural property? (Please attach a copy of these measures.)

Has any criminal legislation been adopted in relation to the (violation of the) protection of cultural property? Do penal or disciplinary sanctions exist under your national criminal laws for violations of the laws on the protection of cultural property? (Please attach a copy of this legislation.)

Is there a legal regime for the protection of cultural property in the event of natural disasters or other catastrophes? If so, does this law contain provisions on penal or disciplinary sanctions in respect of violations? (Please attach a copy of this legislation.)

VI. Financial issues

Who is responsible for financing the protection of cultural property? Are different authorities responsible for funding identification, marking, registration, evacuation or dissemination activities in relation to the protection of cultural property? If so, could you please specify how these financial responsibilities are allocated?

If different categories of cultural property exist in your country, who is responsible for financing the protection of each category?

VII. Dissemination, information and awareness

Do the armed forces receive education concerning the protection of cultural property? How? Does this education specifically target the protection of cultural property or is the issue addressed in the context of more general training on the rules of international humanitarian law? At which level in the military command structure is this

education provided? Is this education given to members of the civil defence?

Does a dissemination programme aimed at students or other interest groups concerning the protection of cultural property exist in your State? If so, who organizes this programme? Who are the main addressees of the dissemination programme? What are the contents of the programme?

Is there a general public awareness programme such as a poster campaign or other media promotion concerning the protection of cultural property? If so, who organizes this? Who are the main addressees of the programme (i.e. members of the general public, students, professionals engaged in work in cultural institutions, etc.)?

VIII. Plans and projects

Is your State planning to start any projects in relation to the protection of cultural property in the future? If so, what is the focus of these projects?

IX. Further information

In order to assist us in collecting information on the national implementation of measures for the protection of cultural property in armed conflict, could you please provide contact details for the person(s) responsible for this issue within your national administration.

**Comparative tables
of the replies to the questionnaire
on national measures of implementation
concerning the protection of cultural property
in the event of armed conflict¹**

**Table I Signatures (S), ratifications (R) and accessions (A) in respect
of the main instruments of international humanitarian law
protecting cultural property in the event of armed conflict²**

	1954 Hague Convention	Protocol to the 1954 Hague Convention	1977 Protocols additional to the Geneva Conventions	1998 Rome Statute of the International Criminal Court	Second Protocol to the 1954 Hague Convention (1999)
Argentina	22.03.89 (A)	—	26.11.86 (A)	18.01.99 (S)	—
Austria	25.03.64 (R)	25.03.64 (R)	13.08.82 (R)	07.10.98 (S)	17.05.99 (S)
Burkina Faso	18.12.69 (A)	04.02.87 (A)	20.10.87 (R)	30.11.98 (S)	—
Germany	11.08.67 (R)	11.08.67 (R)	14.02.91 (R)	11.12.00 (R)	17.05.99 (S)
Hungary	17.05.56 (R)	16.08.56 (A)	12.04.89 (R)	15.01.99 (S)	17.05.99 (S)
Italy	09.05.58 (A)	09.05.58 (R)	27.02.86 (R)	26.07.99 (R)	17.05.99 (S)
Jordan	02.10.57 (R)	02.10.57 (R)	01.05.79 (R)	07.10.98 (S)	—
Lebanon	01.06.60 (R)	01.06.60 (R)	23.07.97 (A)	—	—
Netherlands	14.10.58 (R)	14.10.58 (R)	26.06.87 (R)	18.07.98 (S)	17.05.99 (S)
Poland	06.08.56 (R)	06.08.56 (R)	23.10.91 (R)	09.04.99 (S)	—
Slovenia	28.10.92 (A)	05.11.92 (A)	26.03.92 (A)	07.10.98 (S)	—
Switzerland	15.05.62 (A)	15.05.62 (A)	17.02.82 (R)	18.07.98 (S)	17.05.99 (S)
Tanzania	23.09.71 (A)	—	15.02.83 (A)	—	—

¹ These tables were drawn up on the basis of the replies received to the questionnaire (Annex 3 to this report) distributed to those participating in the meeting of experts, before the meeting took place. Some of the information comes from other documents, provided within the framework of the meeting.

² As at 30 June 2001, 100 States were party to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; 159 States were party to the 1977 Protocol additional to the 1949 Geneva Conventions and relating to the protection of the victims of international armed conflicts (Protocol I); 151 States were party to the 1977 Protocol additional to the 1949 Geneva Conventions and relating to the protection of the victims of non-international armed conflicts (Protocol II); 36 States were party to the 1998 Rome Statute of the International Criminal Court; and 6 States were party to the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict..

Table II Authorities in charge of the protection of cultural property

	Government	Structure within the armed forces	Associations or committees
Argentina			
Austria	<ul style="list-style-type: none"> Besides the Ministry of Defence (armed forces), the Ministry of Education, Science and Culture's Federal Office for Historical Monuments (FOHM) is the authority with chief responsibility for the implementation of the 1954 Hague Convention (Federal Monuments Statute, 1923, amended 1999, Art. 13, para. 1). 	<ul style="list-style-type: none"> Each command has two cultural property protection officers and strategic command has a coordinating officer. 	<ul style="list-style-type: none"> The Austrian Society for the Protection of Cultural Property is a member of the International League of Societies for the Protection of Cultural Property.
Burkina Faso	<ul style="list-style-type: none"> The authorities with primary responsibility are the Ministry of Culture's Directorate of Cultural Heritage and the Ministries of Defence and of Foreign Affairs. 	<ul style="list-style-type: none"> Plans are being made to train specialized officers. 	<ul style="list-style-type: none"> Several committees are concerned, including the Burkina Committee of the International Council on Monuments and Sites (ICOMOS).
Germany	<ul style="list-style-type: none"> Legislative and executive authority is shared by the federal State and the federated states (<i>Länder</i>), with responsibility falling chiefly to the federal Ministries of Defence (armed forces) and of the Interior; the latter runs the Federal Office for Civil Protection (FOCP). The <i>Länder</i> authorities are responsible for implementing measures of protection, subject to directives issued by the Ministry of the Interior. 		

	Government	Structure within the armed forces	Associations or committees
Hungary	<ul style="list-style-type: none"> The Ministry for National Cultural Heritage, which runs the National Office for the Protection of Monuments (NOPM) (1997 Law LIV on the protection of monuments and Ordinance 14/1999) and the Department of Cultural Heritage (1997 Law CXL on the protection of cultural property), the Ministry of Defence and the National Civil Protection Command are the authorities with primary responsibility. Local governments and civil protection committees are in charge at local and regional level. 	<ul style="list-style-type: none"> For armed forces legal advisers, the protection of cultural property constitutes a priority in the planning and implementation of military operations. 	<ul style="list-style-type: none"> A national Blue Shield committee is being set up.
Italy		<ul style="list-style-type: none"> Majors and lieutenant-colonels have the possibility to receive training as legal advisers, including with regard to the protection of cultural property. 	
Jordan	<ul style="list-style-type: none"> The Ministries of Tourism and Antiquities (Department of Antiquities), of Municipal Affairs (Department for the Protection of Heritage), Public Works and Housing (Society for the Protection of Cultural Property), National Security, customs and the Royal Scientific Society are the authorities with primary responsibility. They cooperate closely with university archaeology departments and some national and international NGOs. The conference for the heads of archaeology department of the League of Arab States adopts resolutions on the protection of cultural property. 		
Lebanon	<ul style="list-style-type: none"> The General Directorate for Antiquities (Ministry of Culture), the main authority, cooperates with other ministries and with civil and military institutions. 		

	Government	Structure within the armed forces	Associations or committees
Netherlands	<ul style="list-style-type: none"> The main authorities are the Corps of Cultural Property Inspectors (Ministry of Education, Culture and Sciences) and the Cultural Property Division of the Royal Netherlands Army (Ministry of Defence). The latter establishes policy for the implementation of the 1954 Hague Convention with the Ministries of Foreign Affairs and of Education, advises the commander-in-chief and operational personnel on the historical and cultural background to conflicts, represents the State in international organizations and is in charge of drafting a handbook on the protection of cultural property. The general curator of monuments, acting in consultation with the National Civil Protection commander-in-chief, is in charge of coordinating measures to protect cultural property. The government, the other national authorities and the local autonomous authorities are in charge of carrying out the protection measures drawn up within the framework of national, provincial and local civil protection planning. 	<ul style="list-style-type: none"> Twelve reserve officers specialized in the protection of cultural property provide liaison whenever the army launches disaster operations in the Netherlands. 	
Poland	<ul style="list-style-type: none"> The competent authorities are the Service for the Protection of Cultural Heritage (Ministry of Culture) and the Cultural Heritage Inspector. A public agency for the protection of immovable cultural property, with several branches, has also been established. The municipalities and urban municipalities are in charge of locally significant cultural heritage. 	<ul style="list-style-type: none"> The Social and Education Department (Ministry of Defence) has a cultural property protection unit staffed by four specialists. 	<ul style="list-style-type: none"> Several associations and social welfare organizations are active in this field. Consideration is being given to the possibility of establishing a national Blue Shield committee.
Slovenia		<ul style="list-style-type: none"> The mandate of humanitarian law advisers to the armed forces is to include matters relating to the protection of cultural property in the event of armed conflict. 	<ul style="list-style-type: none"> Slovenian committees have been founded in connection with the International Council of Museums (ICOM), ICOMOS, the International Federation of Library Associations and Institutions (IFLA) and the International Council on Archives (ICA).

	Government	Structure within the armed forces	Associations or committees
Switzerland	<ul style="list-style-type: none"> ♦ The FOCF Section for the Protection of Cultural Property prepares federal legislation and training material for protection forces, and coordinates measures of protection nationwide. ♦ The cantonal offices for the protection of cultural property are in charge of measures of identification and protection. They report on their activities to the Federal Department of the Interior (1966 Law, Art. 4). ♦ The municipalities can set up a service for the protection of cultural property with the civil protection organization. ♦ The Swiss Committee for the Protection of Cultural Property is the federal consultative body. It is made up of representatives of the departments and cantonal and municipal authorities concerned. 	<ul style="list-style-type: none"> ♦ The officers in charge of law and international treaties and the heads of the international legal service of the territorial brigades and divisions are in charge of matters relating to the protection of cultural property. 	<ul style="list-style-type: none"> ♦ Switzerland has an ICOM Committee, an ICOMOS Committee and a Swiss Museums Association.
Tanzania	<ul style="list-style-type: none"> ♦ The Culture Commission (Ministry of Education and Culture) is in charge of tangible and intangible cultural heritage, while the Directorate of Antiquities (Ministry of Natural Resources and Tourism) is in charge of immovable property, monuments and archaeological sites. ♦ The National Museum of Tanzania and the Museum of African Liberation collect, preserve, exhibit and look for movable objects relating to cultural and national natural heritage and to liberation and the Tanzanian Peoples Defence Forces, respectively. 		<ul style="list-style-type: none"> ♦ Tanzania has an ICOM Committee.

Table III Identification of protected cultural property

	Specific legislation	Identification	Lists, registers, maps
Argentina	<ul style="list-style-type: none"> Cultural property is defined in accordance with the 1954, 1970 and 1972 conventions protecting cultural property. 	<ul style="list-style-type: none"> A project to take stock of protected cultural property (inventories, topographical maps, training of military and civilian personnel) has been submitted to UNESCO for funding. 	
Austria	<ul style="list-style-type: none"> The 1923 federal statute on the protection of monuments, amended in 1978 and 1990, protects the assets defined in the 1954 Hague Convention when they are monuments of the utmost importance for Austria (Art. 13 (1-3)). 	<ul style="list-style-type: none"> The lists are promulgated on the order of the Ministry of Education, Science and Culture (Art. 13 (8)). 	<ul style="list-style-type: none"> The directives and maps concerning marking are promulgated in the same way (Art. 13 (8)). Their revision should be finalized in 2010 (Art. 13 (7)). The documents are sent to UNESCO.
Burkina Faso	<ul style="list-style-type: none"> Ordinance 85-049 on the protection of cultural property defines historic monuments (Art. 1). 	<ul style="list-style-type: none"> Historical monuments are classified by regulatory deed (Art. 4). 	<ul style="list-style-type: none"> A list of sites has been drawn up for registration on the World Heritage List.
Germany	<ul style="list-style-type: none"> The definitions of cultural property set forth in the 1954 Hague Convention and the Additional Protocols were directly applicable in internal law once those instruments were ratified. The federal law on civil protection covers the protection of cultural property. 	<ul style="list-style-type: none"> The Ministry of the Interior has completed the identification of immovable cultural property in two <i>Länder</i> of the former Federal Republic of Germany. The federal government has started identification in the <i>Länder</i> of the former Democratic Republic of Germany. 	<ul style="list-style-type: none"> About 10,200 objects of immovable cultural property are listed in the FOCIP central databank. That information is forwarded to the federal Ministry of Defence for inclusion in operational maps. The federal law on the protection of cultural property from removal abroad provides for a list of objects of national significance.

	Specific legislation	Identification	Lists, registers, maps
Hungary	<ul style="list-style-type: none"> Cultural property is defined in Law LIV of 1997 on the protection of monuments, Law CXL of 1997 on the protection of cultural property and Law LXVI of 1995 on public documents. 	<ul style="list-style-type: none"> Identification and registration of movable and immovable cultural property are the responsibility of the Department of Cultural Heritage. A property is declared a monument on promulgation by the competent ministry and publication in the official government journal. 	<ul style="list-style-type: none"> The Department of Cultural Heritage and the NOPM keep registers of the property for which they are responsible. The NOPM is in charge of the list of proposals for the International Register of Cultural Property under Special Protection. A national consultative committee reports to UNESCO (1954 Hague Convention, Art. 26).
Italy			
Jordan	<ul style="list-style-type: none"> Law No. 31 on Antiquities (Art. 2) lists protected cultural property. 	<ul style="list-style-type: none"> Archaeological sites are identified by virtue of a decision by the Ministry of Antiquities published in the official government journal. 	<ul style="list-style-type: none"> The Department of Antiquities keeps a national register, the Jordanian Archaeological Digital Information System (JADIS).
Lebanon	<ul style="list-style-type: none"> The 1933 Law on Antiquities (Arts. 1 and 2), the 1939 Law on the Protection of Natural Sites (Art. 1) and the 1996 Law on Protected Forests (Art. 2) define protected cultural property. 	<ul style="list-style-type: none"> Historic sites are registered by presidential decree, at the behest of the Director General of Antiquities. 	<ul style="list-style-type: none"> The General Directorate for Antiquities keeps a list of protected sites (1933 law, Art. 20), which can be consulted at no charge (Art. 50).
Netherlands	<ul style="list-style-type: none"> The law on the preservation of cultural heritage (Stb. 1984, No. 49) and the decree on State art collections (Stb. 1985, No. 34) grant special legal protection to cultural historical objects of exceptional value (national symbols). 	<ul style="list-style-type: none"> The monuments are registered once they have been designated by the Director of the Netherlands Office for Preservation of Historic Monuments and Buildings (Law on Historic Monuments and Buildings). 	

	Specific legislation	Identification	Lists, registers, maps
Poland	<ul style="list-style-type: none"> The law of 15 February 1962 on the protection of cultural heritage defines protected cultural property. 	<ul style="list-style-type: none"> The general and provincial conservators are responsible for the identification of monuments, at the request of the local authorities, the owner or the owner's rights holders. 	<ul style="list-style-type: none"> The National Register of Monuments can be consulted by anyone.
Slovenia	<ul style="list-style-type: none"> The Law on the Protection of Cultural Property (OGRS No. 7/99, 1999) and the Official List of Cultural Heritage established by the Ministry of Culture define protected property (monuments of national and local significance), in accordance with the 1954 and 1970 Conventions. 	<ul style="list-style-type: none"> Identification is made by decision of the government and the municipalities, on the proposal of the agency for the protection of cultural property, museums or other cultural institutions. Private property is registered at the request of an individual, on the decision of the minister. 	<ul style="list-style-type: none"> The national register of protected cultural property can be consulted by anyone, excluding data on private owners. The lists and registers are made available to UNESCO and the other organizations concerned.
Switzerland	<ul style="list-style-type: none"> Classification is based on the 1954 Hague Convention (Art. 1) and the 1984 Ordinance (Art. 3). Cultural property is placed into one of four categories: property of international (AA), national (A), regional (B) or local (C) significance. 	<ul style="list-style-type: none"> Property in category AA is designated by the Federal Council for inclusion in the International Register of Cultural Property under Special Protection. Property in categories A and B is designated by the cantons and the Swiss Committee for the Protection of Cultural Property. 	<ul style="list-style-type: none"> Property in categories A and B is listed on the Inventory on Cultural Assets of National and Regional Importance (1995), on the proposal of the Committee and following approval by the Federal Council. Property in category A appears on a topographical map distributed to the civil and military authorities and to the States party to the 1954 Hague Convention.
Tanzania	<ul style="list-style-type: none"> Protected property is defined in the Law on Antiquities (1964, Section 550, amended by Law No. 22, 1979). 	<ul style="list-style-type: none"> Property is identified by order of the Ministry of Antiquities published in the official government journal (Art. 9). 	<ul style="list-style-type: none"> The Documents Department of the Board of Antiquities is responsible for drawing up a list of cultural property. The National Museum keeps a computer list of the moveable property for which it is responsible.

Table IV Practical measures for the protection of cultural property

	Marking	Documented records	Evacuation and permanent shelters
Argentina			
Austria	<ul style="list-style-type: none"> Property is marked in accordance with the 1954 Hague Convention, on the authorization of the FOHM (statute on monuments, Art. 13 (5)). 	<ul style="list-style-type: none"> Photogrammetric records are kept of certain facades. 	<ul style="list-style-type: none"> There is no general evacuation plan. When there is no public shelter, the owners of the property must construct one.
Burkina Faso			
Germany	<ul style="list-style-type: none"> The FOCP is responsible for marking immovable cultural property. It has finished doing so in two <i>Länder</i> in the former Federal Republic of Germany. It has finished doing so in the former Democratic Republic of Germany, using a sign that differs slightly from that provided for in the 1954 Hague Convention. 	<ul style="list-style-type: none"> The FOCP is in charge of making photogrammetric records of protected buildings. Valuable archives and books are reproduced on microfilm. 8.2 million metres of films of the archives of the former Democratic Republic of Germany have been recopied for preservation. 	<ul style="list-style-type: none"> Special protection has been granted to a shelter for microfilms of archives and books administered by the FOCP (the <i>Barbarastollen</i> in Oberried). It is listed on the International Register of Cultural Property under Special Protection. The production of documented records is considered to have priority over the preparation of evacuation plans.
Hungary	<ul style="list-style-type: none"> Marking is the responsibility of the NOPM and is carried out in accordance with the Ministry of Culture's Guidelines No. 7001/1998 (MK22) on the use of the distinctive emblems. Marking was removed from immovable property in view of the adverse effect it can have. 	<ul style="list-style-type: none"> The documents in public collections are considered sufficient. 	<ul style="list-style-type: none"> Under the supervision of the Ministry for National Cultural Heritage, evacuation plans have been drawn up for public collections. The plans are carried out by the statutory authorities acting on the Ministry's orders. A plan of action for the protection of property, identification and the preparation of shelters in and around the capital is being prepared by a regional civil protection committee. The army ensures that treasures and relics benefiting from specific protection are evacuated and defended.

	Marking	Documented records	Evacuation and permanent shelters
Italy	<ul style="list-style-type: none"> ♦ Cultural property and personnel are marked in accordance with the 1954 Hague Convention (Handbook for Combatants, No. 245). 		
Jordan			
Lebanon	<ul style="list-style-type: none"> ♦ The site at Tyre is permanently marked with the distinctive emblem. 	<ul style="list-style-type: none"> ♦ The General Directorate for Antiquities produces archives, in cooperation with academic, university and humanitarian institutions. 	<ul style="list-style-type: none"> ♦ The regional inspectors encourage the preparation of preventive emergency plans and other measures of protection. The provincial inspectors are in charge of coordination. ♦ The areas covered by the inspectors correspond to those covered by the national fire services, which bear primary responsibility in the event of a disaster.
Netherlands			
Poland	<ul style="list-style-type: none"> ♦ Cultural property is permanently marked with official plaques bearing the distinctive emblem. 	<ul style="list-style-type: none"> ♦ Owners and rights holders of cultural property are obliged to produce documented records, for which they receive government subsidies. 	<ul style="list-style-type: none"> ♦ Civil protection plans are drawn up locally, provincially and nationally. The provincial or general conservator of monuments, following consultation with the provincial inspector or the civil protection commander-in-chief, is in charge of coordinating measures of protection. ♦ The directors of cultural institutions and the owners of movable cultural property are responsible for the construction of permanent shelters. Provision is made for on-site storage, transfer to shelters and evacuation.

	Marking	Documented records	Evacuation and permanent shelters
Slovenia	<ul style="list-style-type: none"> ♦ The Ministry of Culture's Regulations (1986) stipulate the form and manner of affixing the distinctive emblem of general protection. The Regulations are so complex that they are rarely applied. ♦ Similar regulations for enhanced protection are in the process of being adopted. 	<ul style="list-style-type: none"> ♦ The agency for the protection of cultural property is in charge of producing, storing and funding documented records — descriptions, photographs, maps and photogrammetric records (1999 law). 	<ul style="list-style-type: none"> ♦ The Ministries of Culture and Defence are responsible for planning evacuations. ♦ Separate shelters have been designated, often in the basement of cultural institutions, following the experience of the Croatian and Serbian wars in which cultural property and shelters were the object of attack.
Switzerland	<ul style="list-style-type: none"> ♦ The 1984 ordinance stipulates the procedure for affixing the distinctive emblem. National and internationally significant cultural property is not permanently marked; it is marked on the order of the Federal Council, at the latest when the armed forces have been mobilized or placed on a state of alert (Art. 20). 	<ul style="list-style-type: none"> ♦ Every year the cantons spend about 2.5 million Sfr, including federal aid, to produce documented records for the purposes of restoration and reconstruction (descriptions, photos, maps, microfilms). ♦ The 1999 Manual on the Protection of Cultural Property provides instructions on the production and storage of those records. 	<ul style="list-style-type: none"> ♦ Civil protection personnel are responsible for operations and evacuations (evacuation of valuable property and <i>in situ</i> protection of immovable assets). The plans of action are sent to the region's emergency services. The 1999 Manual includes a list of procedures for packaging, transport and storage. ♦ Switzerland has 270 shelters. The 1999 Manual contains instructions on how to build shelters (under the responsibility of the service for the protection of cultural property) and store property in the shelters, and provides information on the ideal climate conditions and the allocation of subsidies by the Confederation to the cantons.
Tanzania		<ul style="list-style-type: none"> ♦ Records have been produced of fossils. 	<ul style="list-style-type: none"> ♦ Certain museums, including the National Museum, have an on-site shelter.

Table V Measures to repress violations

	In penal law	Military disciplinary measures
Argentina	<ul style="list-style-type: none"> ♦ The Argentine Penal Code stipulates a prison sentence for those causing wilful damage to archives, registers, libraries, museums, monuments, statues, paintings or other works of art located in public buildings or on public sites (Art. 184(5)) or causing a fire, an explosion or a flood that endangers public archives, a library or a museum (Art. 186(3)). ♦ The Military Code of Justice also punishes the destruction, in the absence of military necessity, of places of worship, convents, libraries, museums, archives and works of art (Art. 746(3)). 	
Austria	<ul style="list-style-type: none"> ♦ The federal statute on monuments makes provision for the offences of unlawful or inappropriate marking (Art. 13 (6)) and the wilful destruction or negligence of protected monuments (Art. 37). Other offences are covered by the Penal Code. 	<ul style="list-style-type: none"> ♦ Military regulations contain disciplinary penalties.
Burkina Faso	<ul style="list-style-type: none"> ♦ Offences are covered by the Penal Code (defacing of monuments, Art. 195), the Code of Penal Justice, the Code of Military Justice and Ordinance 85-049 (Arts. 29-34). 	<ul style="list-style-type: none"> ♦ Disciplinary penalties are set forth in the Armed Forces General Disciplinary Regulations.
Germany	<ul style="list-style-type: none"> ♦ No law makes provision for the offences specific to humanitarian law. ♦ The Military Penal Code nevertheless defines offences relating to the performance of military duties (<i>Soldatengesetz</i>) and stipulates the penalties therefor. ♦ Offences concerning the protection of cultural property provided for in the Criminal Code are applicable to soldiers when they have not been provided for in the Military Penal code (destruction, destruction of buildings or cultural property, fire, use of explosives, etc.). 	<ul style="list-style-type: none"> ♦ Failure to perform the general duties of soldiers, including respect for humanitarian rules, is punishable by disciplinary measures decided by the superior or by a disciplinary court, and by the Federal Administrative Court (<i>Soldatengesetz</i> and the Military Disciplinary Regulations).

	In penal law	Military disciplinary measures
Hungary	<ul style="list-style-type: none"> ♦ Soldiers incur criminal responsibility if they fail to observe the rules for the protection of cultural property. ♦ The Penal Code (Law VI of 1978) makes provision for certain offences against cultural property. 	<ul style="list-style-type: none"> ♦ Soldiers are liable to disciplinary measures if they fail to observe the rules for the protection of cultural property set forth in the military regulations (for example, Item 614 of the general combat rules/61).
Italy	<ul style="list-style-type: none"> ♦ The Military Penal Code makes provision for the offences of arson, the destruction or serious damaging of historical monuments and buildings used for worship, charitable purposes, education, art or science, committed in the enemy's country, and stipulates for the penalties applicable (Art. 187). 	<ul style="list-style-type: none"> ♦ Soldiers have a duty to respect protected property (Handbook for Combatants, No. 250, Rule 8). ♦ They must refuse to carry out an unlawful order and inform their superior (Law No. 382 of 11 July 1978, Art. 4).
Jordan	<ul style="list-style-type: none"> ♦ Law No. 21 on antiquities makes provision for offences such as the destruction and defacing of antiquities (Art. 9) and illicit export (Art. 24), and for the applicable penalties (Arts. 27-28). ♦ The Penal Code (Penal Law No. 16 of 1950) makes provision for offences such as the wilful destruction or damaging of public buildings, moveable and immovable property of historical importance (Art. 443), and the destruction, damaging and desecration of places of worship (Art. 276), and stipulates the applicable penalties. 	<ul style="list-style-type: none"> ♦ There are no disciplinary measures relating specifically to the protection of cultural property.
Lebanon	<ul style="list-style-type: none"> ♦ The Penal Code makes provision for offences related to the protection of cultural property and the applicable penalties (Arts. 73 and 731). ♦ A draft amended version of the Military Penal Law defines attacks against cultural property as a war crime. 	<ul style="list-style-type: none"> ♦ There are no disciplinary measures relating specifically to the protection of cultural property.
Netherlands		
Poland	<ul style="list-style-type: none"> ♦ Crimes against cultural property are punishable under the Criminal Code (Law of 6 January 1997) and the law on the protection of cultural heritage. 	<ul style="list-style-type: none"> ♦ There are no disciplinary measures relating specifically to the protection of cultural property.

	In penal law	Military disciplinary measures
Slovenia	<ul style="list-style-type: none"> The 1994 Penal Code provides that the destruction of cultural property in violation of the rules of humanitarian law is punishable by a 1-to-10-year prison sentence, minimum three years for property under enhanced protection (Art. 384). Misuse of the protective emblems is punishable by a maximum prison sentence of three years (Art. 386). 	<ul style="list-style-type: none"> The Defence Act provides that soldiers incur responsibility any time they fail to respect the principles of humanitarian law in any type of military or civilian defence operation (Art. 4) and prohibits the execution of an order contrary to humanitarian law (Art. 43 (8)). The armed forces' rules of engagement require respect for the rules of humanitarian law (1, 15).
Switzerland	<ul style="list-style-type: none"> The 1966 federal law makes provision for the criminal offences of hindering implementation of measures of protection and misusing the protective emblem, and provides for the responsibility of bodies corporate (Arts. 26 to 31). The destruction of cultural property and the misuse of the distinctive emblem are punished by the Swiss Military Penal Code (Arts. 109-111). Directing an attack against protected cultural property is described as a war crime in the Swiss military handbook, <i>Lois et coutumes de la guerre 1987</i> (Art. 193). 	<ul style="list-style-type: none"> Disciplinary offences and measures are discussed in Articles 180 to 194 of the Military Penal Code.
Tanzania	<ul style="list-style-type: none"> The 1964 Law on Antiquities, amended in 1979, makes provision for the offences of wilful obstruction of the Director of Antiquities in the discharge of his mandate (Art. 4(2)), the unauthorized search for, excavation or collection of objects and protected monuments (Art. 14), and unauthorized export and sale (Art. 15). The punishment is a fine (Art. 24). The Penal Code provides that malicious damage to property is punishable by a prison sentence of 7 years. 	<ul style="list-style-type: none"> Military law provides for disciplinary measures relating to violations of the rules on the protection of cultural property.

Table VI Training and awareness measures

	Armed forces	Cultural property protection professionals	Public awareness
Argentina	<ul style="list-style-type: none"> Armed forces and security personnel receive instruction on the obligations arising from the 1954 Hague Convention. The instruction is adapted to the operational requirements specific to each service. Humanitarian law (including the 1954 Hague Convention) is taught in military academies. 		<ul style="list-style-type: none"> In the absence of a specific programme, the competent national, provincial and local authorities make it a constant policy to heighten the public's awareness of the value of Argentine cultural property.
Austria	<ul style="list-style-type: none"> Cultural property protection officers provide instruction on the topic at different hierarchical levels of the armed forces within the framework of general training in humanitarian law. 		<ul style="list-style-type: none"> The Austrian Society for the Protection of Cultural Property has organized a travelling exhibition.
Burkina Faso	<ul style="list-style-type: none"> Training in humanitarian law (including the protection of cultural property) is dispensed to all officers by the general staff humanitarian law dissemination and follow-up unit (Ministry of Defence). 	<ul style="list-style-type: none"> This training is also open to civilians, including officials from the ministries concerned. 	
Germany	<ul style="list-style-type: none"> Rank-appropriate training in international law (including soldiers' rights and duties under humanitarian law) is obligatory for all soldiers (<i>Soldatengesetz</i>, § 33 and the memorandum on the ratification of the Additional protocols). That training considers the protection of cultural property as one aspect of the protection of civilian property. The Military Manual on Humanitarian Law contains specific sections on the protection of cultural property in the event of armed conflict. It is binding on all soldiers. 	<ul style="list-style-type: none"> The senior officials of museums, archives and libraries are trained by the FOCP. Material has been published to that end. 	<ul style="list-style-type: none"> The federal State, the <i>Länder</i> and the National Society have the obligation to promote and spread knowledge of humanitarian law. The main target groups are the federal and <i>Länder</i> governments, other public institutions, the National Society personnel concerned, Movement delegates, young lawyers, journalists and professors.

	Armed forces	Cultural property protection professionals	Public awareness
Hungary	<ul style="list-style-type: none"> All soldiers receive mandatory instruction in humanitarian law and are bound to apply its rules. The exercises given in military academies emphasize recognition, identification on maps and the steps to take in terms of the distinctive emblem. A seminar on humanitarian law lasting 3 to 5 days is organized annually for commanders and military instructors. 	<ul style="list-style-type: none"> The Ministry of Culture's Ordinance No. 27/1997 (VII 15) on civil protection tasks in terms of education and culture are binding on higher learning institutes. 	<ul style="list-style-type: none"> The brochures and home page of the Department of Cultural Heritage promote the protection of cultural property. The law faculty of the National Defence University is in charge of the dissemination and teaching of humanitarian law.
Italy	<ul style="list-style-type: none"> All members of the armed forces receive instruction in humanitarian law (including the protection of cultural property) appropriate to their rank. The handbook for Combatants contains the rules for the protection of cultural property (Rule 245). Italian units serving with multinational forces receive pre-mission training on the application of the relevant international treaties. 	<ul style="list-style-type: none"> The training provided to armed forces legal advisers is open to personnel from the National Society and the Ministries of Defence and Foreign Affairs. 	
Jordan	<ul style="list-style-type: none"> Training in humanitarian law (including the protection of cultural property) is dispensed by specialists (academics, ICRC delegates in Amman) to members of the armed forces. 	<ul style="list-style-type: none"> The Department of Archaeology provides its staff, with the help of UNESCO, with training on the protection of cultural property. 	<ul style="list-style-type: none"> Culture Days are organized and maps of archaeological sites (Tourist Board) and posters (Friends of Archaeology) distributed. Promotional activities are carried out (<i>inter alia</i> by UNESCO) in secondary schools.

	Armed forces	Cultural property protection professionals	Public awareness
Lebanon	<ul style="list-style-type: none"> Training is given at all levels in humanitarian law (programme of the military academy's teaching directorate). Conferences, seminars and practical work are organized with ICRC support. 		
Netherlands	<ul style="list-style-type: none"> Courses to heighten awareness of culture are dispensed in military institutions by reserve officers working with academic institutions. The troops taking part in NATO and UN operations are bound by the 1954 Hague Convention. 		
Poland	<ul style="list-style-type: none"> Training is dispensed at the National Defence Academy. Knowledge and practical implementation of the rules of humanitarian law (including the protection of cultural property) are incorporated into exercises at all command levels. 	<ul style="list-style-type: none"> Civil protection personnel also receive training. 	<ul style="list-style-type: none"> The rules for the protection of cultural property are taught in humanitarian law courses at university and in secondary schools.
Slovenia	<ul style="list-style-type: none"> The basic rules of the 1954 Hague Convention are taught to the members of the armed forces (manuals and brochures published by the ICRC and translated into Slovenian). Military education include awareness of national and foreign cultural heritage. 	<ul style="list-style-type: none"> Civil protection personnel receive training in humanitarian law (introduction, basic principles, an exercise to save property), including the protection of cultural property (Law on the Protection of Cultural Property in the Event of a Natural Disaster, 1994). 	<ul style="list-style-type: none"> The cultural property protection service has put together a general awareness programme for the European Heritage Days (poster campaign, publications, round table and other meetings, performances). Programmes on humanitarian law (including the protection of cultural property) have been set up, together with the Interdepartmental Committee for Humanitarian Law, for primary schools.

	Armed forces	Cultural property protection professionals	Public awareness
Switzerland	<ul style="list-style-type: none"> ♦ Army dissemination officers train armed forces members using material furnished by the FOCP. ♦ FOCP members explain the principles of the protection of cultural property during military training. ♦ Cards summarizing humanitarian law, including respect for property marked with the distinctive emblem, are distributed to soldiers. ♦ The Inventory on Cultural Assets of National and Regional Importance was distributed to commanders in 1989. 	<ul style="list-style-type: none"> ♦ The 1999 Manual is distributed to senior civil protection officials. 	<ul style="list-style-type: none"> ♦ Courses, practical exercises (inventory, evacuation) and events are organized for the general public, and conventions and colloquia for specialists. ♦ The FOCP distributes teaching material (leaflets, brochures, theme posters). Two documentaries have been produced on the protection of cultural property at national and municipal level. ♦ The cantonal official in charge of the protection of cultural property occasionally visits schools.
Tanzania	<ul style="list-style-type: none"> ♦ The protection of cultural property is studied within the framework of general training on humanitarian law, human rights and national legislation. The training is adapted to rank at all levels of command. 		<ul style="list-style-type: none"> ♦ The policy on culture (1997) comprises general awareness, including among public and private organizations, of cultural heritage. Teaching and training programmes should take account of this.

Table VII Financial responsibility for the implementation of measures to protect cultural property

Argentina	
Austria	<ul style="list-style-type: none"> ♦ The authority responsible for implementation bears the costs (FOHM, Ministries of Defence and of the Interior, Federal Chancellery).
Burkina Faso	<ul style="list-style-type: none"> ♦ The costs are essentially borne by the State.
Germany	<ul style="list-style-type: none"> ♦ The costs are borne by the authority in charge of protection. For example, armed forces activities are financed by the federal State, as are the measures of identification and marking carried out by the <i>Länder</i> for the federal State (Federal Civil Protection Act).
Hungary	<ul style="list-style-type: none"> ♦ Financial responsibility falls to the owner of the protected property. ♦ The costs of protecting public collections are covered by the national (Ministry for National Cultural Heritage), regional and local government ministries. ♦ The costs of registration are borne by the Cultural Heritage Board.
Italy	
Jordan	<ul style="list-style-type: none"> ♦ The annual State budget allocates funds to the authorities in charge of the protection of cultural property. Financial resources are also provided by donations and foreign funds (France, Italy, Canada, Germany, the United States and the European Union).
Lebanon	<ul style="list-style-type: none"> ♦ The funds come out of the budget of the General Directorate for Antiquities.
Netherlands	
Poland	<ul style="list-style-type: none"> ♦ The costs are borne by the authority in charge of protection (government and State bodies, local autonomous authorities) and, subsidiarily, by civil protection, the army and the Ministry for Culture and National Heritage.
Slovenia	<ul style="list-style-type: none"> ♦ The public protection service is financed by the State (identification, marking, registration, evacuation and dissemination activities). ♦ The costs of maintaining, reconstructing and renovating the property registered are usually borne by the owner (individuals, bodies corporate, national or local government entities).

Switzerland	<ul style="list-style-type: none"> ◆ The Confederation covers the costs for property belonging to it and grants subsidies to the cantons and the municipalities for the construction of shelters, the production of documented records and other measures of protection (1966 federal law, Arts. 22 to 25). ◆ The FOCF provides the cantons with subsidies amounting to 1,700,000 Sfr annually.
Tanzania	<ul style="list-style-type: none"> ◆ The costs are borne by the government, which mobilizes and involves individuals, organizations and the general public in fund-raising activities.

Table VIII Plans for the future

Argentina	
Austria	<ul style="list-style-type: none"> ♦ Restructure the mechanisms for implementation of the 1954 Hague Convention pursuant to the amended federal statute on monuments, in particular by reducing the number of protected assets.
Burkina Faso	<ul style="list-style-type: none"> ♦ Establish a national committee for the implementation of humanitarian law. ♦ Establish a higher Burkinabè committee for sites and monuments.
Germany	<ul style="list-style-type: none"> ♦ Ratify the Second Protocol to the 1954 Hague Convention before the autumn of 2002. ♦ Mark the 2,200 immovable cultural assets with the protective emblem in the <i>Länder</i> of the former Democratic Republic of Germany in 2000 and continue the marking process in the <i>Länder</i> of the former Federal Republic of Germany in 2001. ♦ Complete the restoration of films of archives from the former Democratic Republic of Germany by 2003. ♦ Continue to microfilm highly valuable books and increase the size of the refuge known as the <i>Barbarastollen</i> in order to store them.
Hungary	
Italy	
Jordan	<ul style="list-style-type: none"> ♦ Establish a site management unit within the Department of Antiquities. The unit's mandate and the training of its future staff are being examined by UNESCO, within the framework of a programme funded by Italy.
Lebanon	
Netherlands	<ul style="list-style-type: none"> ♦ Make activities for the protection of cultural property in the event of armed conflict part of general natural disaster relief planning. ♦ Re-evaluate and update the existing list of protected cultural property. ♦ Step up the use of cultural heritage monitors. ♦ Endeavour to standardize training in the different branches of the armed forces, to heighten soldiers' awareness of culture and to strengthen the network of contacts with colleagues abroad.
Poland	<ul style="list-style-type: none"> ♦ Pursue government participation in the OECD's natural disaster and territorial reconstruction programme, whose objective is international cooperation in the neutralization of risks, including the protection of cultural property.

Slovenia	<ul style="list-style-type: none"> ◆ Pursue bilateral and multilateral projects for the preservation of Central Europe's cultural heritage (Phare Crossborder programmes, the revitalization of the Karst region, the restoration of the Grad Chateau (Hungary), the 100th anniversary of Gorizia/Gorizia (Italy), the maintenance of war cemeteries (Austria and Italy), the Alps/Adriatic projects for historical centres and vernacular architecture (Austria, Italy, Germany, Hungary and Croatia) and the Izola training centre for the heritage of the coast region (Italy).
Switzerland	<ul style="list-style-type: none"> ◆ Step up dissemination on the Internet. ◆ Publish the revised and corrected Inventory in 2005 (new areas considered: historical gardens, contemporary architecture, industrial archaeology) and make it available on line. ◆ Produce a video on how to plan an evacuation. ◆ Set up a team of experts to provide information on the protection of cultural property to military personnel. ◆ Organize a meeting in 2002 on the practical implementation of measures for the protection of cultural property, to be attended by the States signatory to the 1954 Hague Convention.
Tanzania	<ul style="list-style-type: none"> ◆ Hold regular training courses on the protection of cultural property for the staff of the Directorate of Antiquities, the National Museum and the armed forces.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.