



1954 CONVENTION ON THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT AND ITS PROTOCOLS



Military operations have often resulted in the destruction of irreplaceable cultural property, a loss not only to the country of origin but also to the cultural heritage of all people. Recognizing the significance of this loss, the international community adopted the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (CCP). A Protocol dealing with cultural property during times of occupation (P1) was adopted at the same time as the 1954 Convention. Although the 1954 Convention strengthens protection for cultural property, its provisions have not always been adequately implemented. To address this problem, a second Protocol to the 1954 Convention (P2) was adopted on 26 March 1999. The two Protocols of 8 June 1977 additional to the Geneva Conventions also contain provisions protecting cultural property (Additional Protocol I, Arts 38, 53 and 85, and Additional Protocol II, Art. 16). Adherence to each of the foregoing instruments is essential to preserving objects precious to all humanity. Finally, it should be stressed that cultural property is also protected as a civilian object (Additional Protocol I, Art. 52(2)).

CULTURAL PROPERTY

Cultural property is any movable or immovable property of great importance to the cultural heritage of a people, such as monuments of architecture or history, archaeological sites, works of art, books or any building whose main and effective purpose is to contain cultural property (CCP, Art. 1).

IDENTIFICATION

Cultural property should be identified with the emblem defined in the 1954 Convention, pictured above (CCP, Arts 16 and 17).

SYSTEMS OF PROTECTION

Parties to the Convention must protect all cultural property, whether their own or that situated in the territory of other States Parties. The various systems that provide protection for cultural property are described below:

General protection

All cultural property must be afforded, at minimum, “general protection,” as described in the Convention.

Protection

Parties to the Convention must safeguard their own cultural property against foreseeable effects of armed conflict (CCP, Art. 3).

States Parties must also respect all cultural property by:

1. not using cultural property for any purpose likely to expose it to destruction or damage in the event of armed conflict;
2. not directing any act of hostility against cultural property;
3. prohibiting, preventing and, if necessary, putting a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property; and,
4. refraining from requisitioning movable cultural property situated in the territory of another State Party (CCP, Art. 4).

Parties to the Convention must protect all cultural property, whether their own or that situated in the territory of other States Parties.

Exception

The obligation to respect all cultural property, described above, may be waived on the basis of imperative military necessity (CCP, Art. 4).

This waiver may be invoked:

1. to use cultural property for purposes likely to endanger it, only if there is no feasible alternative available to obtain a similar military advantage (P2, Art. 6);
2. to attack cultural property, only when that property has, by its function, been made into a military objective and there is no feasible alternative available to obtain a similar military advantage. Effective advance warning must be given, circumstances permitting (P2, Art. 6).

Precautions

Parties to the Convention must, to the maximum extent feasible, either move cultural property away from military objectives or avoid placing military objectives near such property (P2, Art. 8).

In addition, parties to a conflict must do everything feasible to protect cultural property, including refraining from an attack that may cause incidental damage (P2, Art. 7).

Occupied territory

Under the Convention, States Parties occupying the territory of another State Party are required to preserve, as far as possible, cultural property in that territory (CCP, Art. 5).

In particular, the 1954 Protocol requires States Parties occupying territory during an armed conflict to prevent the exportation of cultural property from that territory (P1, Para. 1). However, if cultural property is exported, States Parties must return it at the close of the hostilities (P1, Para 3).

Under the Second Protocol of 1999, States Parties occupying foreign territory must prohibit and prevent, in relation to the occupied territory, the following:

1. “any illicit export, other removal or transfer of ownership of cultural property”;
2. “any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property”;
3. “any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence” (P2, Art. 9(1)).

In addition “any archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close co-operation with the competent national authorities of the occupied territory” (P2, Art. 9(2)).

Special protection

The 1954 Convention provides a system of ‘special protection’. The placing of cultural property under special protection grants that property immunity from any act of hostility, and from any use, including that of its surroundings, for military purposes (CCP, Art. 9). To be placed under special protection, the cultural property must not be used for military purposes and must be situated at an adequate distance from military objectives.

Under the CCP, the obligation to respect all cultural property may be waived on the basis of imperative military necessity.

Because the system of special protection resulted in only limited success, the Second Protocol introduced a new system of ‘enhanced protection’ (see below).

If property has been granted both special and enhanced protection, only the provisions on enhanced protection apply (P2, Art. 4).

Enhanced protection

The Second Protocol, as has already been noted, provides a system of ‘enhanced protection’ for certain cultural objects (P2, Art. 11). This enhanced protection is granted by the Committee for the Protection of Cultural Property in the Event of Armed Conflict (Committee), on the request or the recommendation of States Parties, the International Committee of the Blue Shield or other non-governmental organizations with relevant expertise. Cultural property under enhanced protection is placed on the “List of Cultural Property under Enhanced Protection” (List), established, maintained and promoted by the Committee (P2, Art. 27).

Criteria for protection

To be granted enhanced protection, cultural property must meet the following three criteria (P2, Art. 10):

1. it is cultural heritage of the greatest importance to humanity;
2. it is protected by domestic measures that recognize its cultural and historical value and ensure the highest level of protection;
3. it is not used for military purposes or to shield military sites, and the Party that has control over the property has formally declared that it will not be so used.

The Second Protocol to the CCP provides a system of ‘enhanced protection’ for certain cultural objects.

Protection

Parties holding property included on the List must not use such property or its immediate surroundings in support of military action (P2, Art. 12). There is no exception to this obligation.

Parties to the Convention must also refrain from attack against property on the List (P2, Art. 12).

Exception

The obligation not to attack property on the List does not apply if such property has, by virtue of its use, become a military objective. Attack is permitted only if it is the only feasible means of terminating such use and if precautions are taken to minimize damage to the property. Effective advance warning must be given, circumstances permitting (P2, Art. 13).

MEASURES AND MECHANISMS TO PROMOTE IMPLEMENTATION AND ENSURE COMPLIANCE

The Convention and the Second Protocol include some measures and mechanisms for promoting their implementation and for ensuring that their provisions are respected. Some of these may necessitate the adoption of domestic legislation.

Reporting obligations

States Parties must produce, at least once every four years, a report giving information on the measures they have taken, prepared or contemplated in fulfilment of the Convention (CCP, Art. 26(2)).

States Parties must produce, at least once every four years, a report giving information on the measures they have taken, prepared or contemplated in fulfilment of the Convention submitted to the Director-General of UNESCO.

The reports must be submitted to the Director-General of UNESCO. This reporting obligation was reasserted in Article 37(2) of the Second Protocol, which requires the Parties to submit to the Committee, every four years, a report on the implementation of the Protocol. This submission is done through the UNESCO Secretariat. In practice, States party to the Second Protocol combine their reports on the Convention and this Protocol and submit one overall report to the Committee; however, the implementation of this reporting obligation has been very sporadic.

Criminal responsibility and jurisdiction

Parties to the Convention must take all necessary steps to prosecute and impose sanctions on all persons who violate its provisions (CCP, Art. 28).

States party to the Second Protocol must ensure that the following are offences under domestic law (P2, Art. 15):

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 protected cultural property;
4. making protected cultural property the object of attack;
5. theft, pillage or misappropriation of, or acts of vandalism directed against, protected cultural property.

Each State Party must ensure that its legislation establishes jurisdiction when the offence is committed in its territory, when the alleged offender is a national of that State, and — in relation to the first three offences — when the alleged offender is present in its territory (P2, Art. 16).

Dissemination

Parties to the 1954 Convention and its Protocols must disseminate the treaty provisions as widely as possible, seeking to strengthen appreciation and respect for cultural property among the general population (CCP, Art. 25; P2, Art. 30). Particular effort should be made to disseminate information among the armed forces and among personnel engaged in the protection of cultural property.

Parties to the Convention must take all necessary steps to prosecute and impose sanctions on all persons who violate its provisions.

More information on the protection of cultural property in the event of armed conflict can be found on the UNESCO website: <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/>

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 armed conflict and other situations of violence and to provide them with assistance. The ICRC 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 Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

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