

**Report**  
**by the**  
**Federal Republic of Germany**  
**on the implementation of the 1954 Hague Convention for the Protection of**  
**Cultural Property in the Event of Armed Conflict**

The Federal Republic of Germany ratified the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 as well as the (First) Protocol to this Convention with the Act of 11 April 1967. The Convention and the (First) Protocol entered into force in the Federal Republic of Germany on 11 November 1967 after the instrument of ratification was deposited with the Director-General of UNESCO on 11 August 1967.

On 17 May 1999 Germany signed the Second Protocol of 26 March 1999 to the Hague Convention of 1954, thereby becoming one of the first signatories. Germany ratified the Second Protocol on 25 November 2009.

Pursuant to the first sentence of Article 2 paragraph 1 of the law approving the Convention, the Länder (federal states) are responsible for executing this law on behalf of the Federal Government as long as the law does not specify otherwise.

Pursuant to the Convention the Federal Republic of Germany is currently undertaking the following measures to protect cultural property:

**Art. 3 - Safeguarding of cultural property**

Peacetime safeguarding measures:

Microfilming and special storage

Since 1961 certain content in state archives as well as in selected church, business and municipal archives deemed important to German history has been recorded onto microfilm. By mid-2009 around 850 million recordings on microfilm stretching 28,000 kilometres had been finished. The recordings are stored in some 1350 stainless steel containers in the special protective climate offered by the Oberrieder tunnels near Freiburg, the Federal Republic of Germany's Central Storage Site. This storage site has been registered in the UNESCO International Register of Cultural Property under Special Protection (No.611.101 Pr.512/1) since 22 April 1978. The microfilmed cultural property includes documents issued by medieval German emperors and kings and government and administrative writings from the 10<sup>th</sup> century up to modern times.

The microfilming and special storage of the material is intended to guarantee the protection of valuable and unique national cultural property of major historical significance.

The Federal Government is currently supporting the digitalization and microfilming of the Wossidlo archive (a collection that encompasses roughly two million handwritten notes and

60,000 pages of correspondence documenting the culture and language of the people of Mecklenburg and is viewed as pioneering field research in European ethnology) so that it can be stored at a later date.

Since 3 October 1990, when the accession of the German Democratic Republic to the Federal Republic of Germany took effect, archive content from the former GDR deemed worthy of protection has been included in the government's recording plans. Microfilming practices in the former GDR did not meet the required standards, making it necessary to re-copy this material. After it was duplicated, it was also stored at the Federal Republic of Germany's Central Storage Site. Except for a few remaining items, the duplication and storage process has been completed. The remaining items are expected to be duplicated by the end of this year and stored at the Central Storage Site by 2010 at the latest.

That makes a total of approximately 272 million recordings from the former GDR archives on 8100 kilometres of film at the storage site.

The recording of digitalized colour material onto longlife colour microfilm is currently being tested. The development of the device was promoted within the framework of a research project by the Federal Ministry of Economics and Technology. It uses colour lasers and produces images with outstanding definition and colour quality on colour microfilm that is usually very difficult to handle with other recording methods. Experts estimate that images produced with this method will last at least 500 years. If the exposure device passes the test, the method will become a regular part of the Federal Government's microfilming process. The test phase was concluded in autumn 2009.

#### Training of the administrative staff

Since 1997 the Academy for Crisis Management, Emergency Planning and Civil Protection in Bad Neuenahr-Ahrweiler, part of the Federal Civil Defence Agency, has hosted multi-day seminars on topics such as "Administrative Measures in Cultural Property Protection" and "Practical Implementation of Cultural Property Protection" for managers and employees of museums, archives, libraries, palaces, etc.

#### Registration of regional cultural property

Lists of regional cultural property are prepared in cooperation with civilian agencies responsible for safeguarding cultural property within the framework of civil-military cooperation at home and abroad. Cultural property in Germany is registered in military maps (1:50,000). These maps contain several thousand objects. The maps are kept up to date and are made available to all units upon request.

### **Art. 7 Military Measures**

#### Ensuring the protection of cultural property during operations

Specific measures to ensure the protection of cultural property and to comply with the regulations of the Convention during Bundeswehr operations are taken by integrating aspects of cultural property protection in the conduct of military operations, gathering current information on cultural property in the theatre of operations and by imposing penal or

disciplinary sanctions. In peacetime, appropriate preparations and regulations are already provided for.

#### Integration of aspects of cultural property protection in the conduct of military operations

In peacetime and during operations, military leaders are assigned legal advisers whose task, as specialist personnel according to Article 7 (2) of the Convention, is to give advice on all issues related to international law, to include the protection of cultural property under international law. Their task includes examining the legal basis of orders, instructions and rules of procedure of the armed forces and ensuring that all aspects of international humanitarian law are taken into account. This means that legal advisers are also involved in the implementation of military procedures, e.g. military targeting.

### **Chapter V - The distinctive emblem**

#### Labelling of immovable cultural property

So far around 8200 historical buildings and sites as well as over 1200 museums, archives, libraries and archaeological sites on the territory of the Federal Republic of Germany (before 1990) have been registered to be distinctively marked pursuant to Article 16 of the Convention and some have already been marked.

In the GDR, immovable cultural property was marked with an emblem similar to the one laid down in Articles 16 and 17 of the Hague Convention but had an additional mark and the label "historical building".

It is envisaged that a total of 2200 historical buildings and sites will be marked in the new federal states Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia. The central registration of these sites is being prepared.

### **Art.25 - Dissemination of the Convention**

#### Dissemination of the Convention and implementation in Service Regulations

The Bundeswehr contributes to disseminating the text of the Convention according to Article 25 of the Convention due to the fact that the Federal Ministry of Defence, in cooperation with the Federal Foreign Office and the German Red Cross, publishes and distributes the publication "Documents on International Humanitarian Law". This publication includes, among other things, the text of the Convention, the regulations for its execution and the two related protocols in the German and English languages. Furthermore, the text, the regulations for execution and the First Protocol to the Convention are rendered available to military personnel from all command levels as well as to civilian Bundeswehr personnel through Joint Service Regulation ZDv 15/3 "*International Humanitarian Law in Armed Conflicts – Anthology*".

It is via Joint Service Regulation ZDv 15/2 "*International Humanitarian Law in Armed Conflicts – Manual*" that the Convention's contents and its provisions according to its Articles 7 (1) and 25 are disseminated and implemented. This summary presents the provisions on international humanitarian law and the protection of cultural property as a

regulation to be observed by all military personnel. It also serves as a foundation for initial and extension training of military personnel in the field of international law. The Joint Service Regulation was prepared with international cooperation. Government experts from eighteen states and representatives of the International Committee of the Red Cross and the International Institute of Humanitarian Law of San Remo, Italy, contributed to the draft. The Joint Service Regulation was published in the German and English languages and has been widely distributed, also beyond the Bundeswehr. This Regulation is supplemented by Joint Service Regulation 15/1 "*International Humanitarian Law in Armed Conflicts – Principles*" which provides, in brief statements, a concise overview of the principles of international humanitarian law. In addition, the pocket card "*International Humanitarian Law in Armed Conflicts – Principles*" summarises the principles of international humanitarian law in a compact and comprehensible style for military personnel to study on their own and in preparation for operations.

### Instruction and training

Section 33 of the Legal Status of Military Personnel Act stipulates that all military personnel have to be instructed in their duties under international law. Such instruction in international humanitarian law includes, in compliance with the stipulations of Article 25 of the Convention, the provisions on the protection of cultural property under international law according to the Convention.

Within the annual training programme for military personnel, instruction in duties under international law is one element of the curriculum and is intended to consolidate existing knowledge. Instruction is given by the responsible superiors or, where appropriate, by legal instructors and legal advisers.

Altogether, a large number of courses and seminars on international humanitarian law, covering amongst other things the duties under the Convention, are offered at several Bundeswehr training facilities.

In addition, military personnel earmarked for operations abroad receive detailed instruction and training in applicable international and national regulations during predeployment training. As part of initial and extension training of legal advisers, and in future also of military legal instructors, the "Central Training Facility of the Bundeswehr Military Legal System" offers, among other things, a course on international humanitarian law which will train personnel to act as multipliers. The courses and seminars held at this facility, e.g. seminars on legal aspects of effects-based targeting, the seminar on international humanitarian law in armed conflicts or the course on the law of air and naval warfare, deal in depth with legal aspects of cultural property protection in the event of armed conflict. The didactic principle guiding those courses is the principle of congruity between the conduct of operations and law.

### **Art. 28 – Sanctions**

#### Penal and disciplinary sanctions in the case of violations

Disciplinary and penal law serves to ensure that respect for the protection of cultural property under international law is obligatory for military personnel. Violating international humanitarian law is considered to be a breach of duty for military personnel. Obligations

under international law as stated in the Convention are defined as official duties in Joint Service Regulation ZDv 15/2. According to disciplinary law, breaches of duty may be punished with measures up to disciplinary discharge.

In addition, violations of the protection of cultural property under international law may constitute criminal offences according to general criminal law, international criminal law and military penal law. According to the Military Penal Code, German criminal law also applies to German military personnel serving abroad. In addition, the Military Penal Code provides that the offences of “abuse of command authority for improper purposes”, “incitement to commit an illegal act” and “inadequate command supervision” may result in penal sanctions on the responsible superior for conduct that may be relevant in the case of violations of the protection of cultural property under international law.

German criminal law contains various provisions which penalize breaches of the Convention, in particular damaging, destroying or stealing cultural property, which are prohibited by Article 4(3) of the Convention. In addition, German soldiers are subject to disciplinary measures if they act in breach of the Convention. The text of the relevant provisions in English is annexed.

## **1. Criminal Law**

### a) Protection against Damage or Destruction

Protection against damage to or destruction of moveable cultural property is guaranteed for ecclesiastical cultural property and cultural property which is on public display by section 304 subsection (1) of the Criminal Code (*Strafgesetzbuch – StGB*) (Damaging Property Which Is Harmful to the Public) and for other cultural property, in particular in private collections, by section 303 subsection (1) of the Criminal Code (Damaging Property).

In connection with an international or non-international armed conflict, section 11 subsection (1) sentence 1 No.2 of the Code of Crimes against International Criminal Law (*Völkerstrafgesetzbuch*) penalises an attack with military means against civil objects as long as the latter are protected by humanitarian international law, in particular “buildings devoted to religious service, ...art [or] science..., [as well as] historical monuments.” Whoever in contravention of international law destroys substantial items belonging to the opposing party which are under the power of their own party without this being necessitated by the requirements of the armed conflict is punishable in accordance with section 9 subsection (1) of the Code of Crimes against International Criminal Law.

Section 20 subsection (1) No.2 of the Act of 18 May 2007 Implementing the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (*Gesetz zur Ausführung des UNESCO-Übereinkommens vom 14. November 1970 über Maßnahmen zum Verbot und zur Verhütung der rechtswidrigen Einfuhr, Ausfuhr und Übereignung von Kulturgut*) (Return of Cultural Property Act [*Kulturgüterückgabegesetz*], Federal Law Gazette [*BGBl.*] Part I p.757) prohibits damage to or destruction of cultural property which was stopped by the competent authorities because it is to be returned to another state.

Depending on the individual case, other criminal offences such as destruction of structures (section 305 of the Criminal Code) or arson (section 306 et seqq. of the Criminal Code) may be relevant.

### b) Protection against Theft

Section 242 of the Criminal Code prohibits theft in general. Section 243 subsection (1) Nos.4 and 5 of the Criminal Code defines as a form of aggravated theft – with an increased sentencing range – stealing objects dedicated to religious worship or objects of significance for science, art or history or for technical development which are located in a generally accessible collection or are publicly exhibited, e.g. in a museum.

The purchase and sale of stolen cultural property is criminalized by section 259 of the Criminal Code (Receiving Stolen Property).

In accordance with section 9 subsection (1) of the Code of Crimes against International Criminal Law, punishment is imposed on anyone who in connection with an international or non-international armed conflict plunders or, without this being necessitated by the requirements of the armed conflict, otherwise appropriates or seizes substantial articles of the opposing party which are under the power of their own party.

### c) Command Responsibility

In accordance with section 33 of the Military Criminal Code (*Wehrstrafgesetz – WStG*), punishment is imposed on anyone who by abusing their command responsibility or official position has ordered a subordinate to commit an unlawful act committed by the latter giving rise to a criminal offence. Unsuccessful enticement to commit an unlawful act is also punishable in accordance with section 34 of the Military Criminal Code.

As regards the punishability of offences in accordance with the Code of Crimes against International Criminal Law, section 4 subsection (1) of the Code of Crimes against International Criminal Law stipulates that a military commander who omits to prevent his/her subordinate committing an offence in accordance with this Code is punished as an offender of the offence committed by the subordinate. A person who exercises de facto command or leadership responsibility and supervision in a unit is deemed equivalent to a military commander here in accordance with section 4 subsection (2) of the Code of Crimes against International Criminal Law. Over and above this, in respect of violation of the obligation of supervision in accordance with section 13 subsection (1) of the Code of Crimes against International Criminal Law a military commander is punished who intentionally or negligently omits to properly supervise a subordinate who is subject to his/her command responsibility or de facto supervision if the subordinate commits an offence in accordance with this Code the immanence of which was recognisable to the commander and which he/she could have prevented.

## **2. Disciplinary Measures**

According to section 23 of the Soldiers Act (*Soldatengesetz – SG*), a soldier commits a disciplinary offence if he violates his duties.

Section 10 subsection (4) of the Soldiers Act proscribes giving an order that violates rules of international law, which includes the Convention. Section 11 subsection (2) of the Soldiers Act forbids soldiers to follow orders which constitute a crime under domestic law, such as the abovementioned offences.

An order given in violation of international law or an order followed although it constitutes a crime is therefore a breach of duty. Such a breach can be punished with simple disciplinary measures ordered by the superior, e.g. reprimand, fine or arrest service (section 22 of the Military Disciplinary Code - MDC), or disciplinary measures ordered by a court, e.g. a cut in salary, demotion or discharge from service (section 58 of the Military Disciplinary Code).

### **3. Conclusion**

Cultural property is protected comprehensively by German criminal law against damage, destruction or theft in the context of an armed conflict, as well as in peacetime. In addition, soldiers can be subjected to disciplinary measures if they act in breach of the Convention.

Consequently, Germany has fully implemented Article 28 of the Convention.

## **Annex: Relevant Provisions**

A complete official translation of the Criminal Code is accessible online at [http://bundesrecht.juris.de/englisch\\_stgb/index.html](http://bundesrecht.juris.de/englisch_stgb/index.html).

### 1) Criminal Code (*Strafgesetzbuch – StGB*)

#### **Section 303**

##### **Criminal damage**

- (1) Whosoever unlawfully damages or destroys an object belonging to another shall be liable to imprisonment of not more than two years or a fine.
- (2) Whosoever unlawfully alters the appearance of an object belonging to another substantially and permanently shall incur the same penalty.
- (3) The attempt shall be punishable.

#### **Section 304**

##### **Damage to objects of public interest**

- (1) Whosoever unlawfully damages or destroys objects of veneration of a religious association existing within Germany or property dedicated to religious worship, or tombstones, public monuments, natural monuments, objects of art, science or craft which are kept in public collections or publicly exhibited, or objects which serve a public need or add to the ambience of public paths, squares or parks, shall be liable to imprisonment of not more than three years or a fine.
- (2) Whosoever unlawfully alters the appearance of an object listed under subsection (1) above substantially and permanently shall incur the same penalty.
- (3) The attempt shall be punishable.

#### **Section 305**

##### **Destruction of buildings, etc**

- (1) Whosoever unlawfully destroys, in whole or in part, a building, ship, bridge, dam, a constructed road, a railroad or another edifice belonging to another shall be liable to imprisonment of not more than five years or a fine.
- (2) The attempt shall be punishable.



## **Theft**

(1) Whosoever takes chattels belonging to another away from another with the intention of unlawfully appropriating them for himself or a third person shall be liable to imprisonment of not more than five years or a fine.

(2) The attempt shall be punishable.

### **Section 243**

#### **Aggravated theft**

(1) In especially serious cases of theft the penalty shall be imprisonment from three months to ten years. An especially serious case typically occurs if the offender

1. for the purpose of the commission of the offence breaks into or enters a building, official or business premises or another enclosed space or intrudes by using a false key or other tool not typically used for gaining access or hides in the room;
2. steals property which is especially protected by a sealed container or other protective equipment;
3. steals on a commercial basis;
4. steals property which is dedicated to religious worship or used for religious veneration from a church or other building or space used for the practice of religion;
5. steals property of significance for science, art or history or for technical development which is located in a generally accessible collection or is publicly exhibited;
6. steals by exploiting the helplessness of another person, an accident or a common danger; or
7. steals a firearm for the acquisition of which a licence is required under the Weapons Act, a machine gun, a submachine gun, a fully or semi-automatic rifle or a military weapon containing an explosive within the meaning of the Weapons of War (Control) Act or an explosive.

(2) In cases under subsection (1) sentence 2 Nos. 1 to 6 above an especially serious case shall be excluded if the property is of minor value.

### **Section 306**

#### **Arson**

(1) Whosoever sets fire to or by setting fire to them destroys in whole or in part

1. buildings or huts;
2. plants or technical facilities, in particular machines;
3. warehouses or stored goods;
4. motor-vehicles, rail vehicles, aircraft or watercraft;
5. forests, heaths or moors;
6. agricultural, nutrition or forestry facilities or products

belonging to another shall be liable to imprisonment from one to ten years.

(2) In less serious cases the penalty shall be imprisonment from six months to

five years.

## 2) Code of Crimes against International Criminal Law (*Völkerstrafgesetzbuch*)

### **§ 4 Responsibility of military commanders and other superiors**

(1) A military commander or civilian superior who omits to prevent his/her subordinate committing an offence in accordance with the present Code shall be punished as an offender of the offence committed by the subordinate. Section 13 subsection (2) of the Criminal Code shall not apply in this case.

(2) A person who exercises de facto command or leadership power and supervision in a unit shall be equivalent to a military commander. A person who exercises de facto leadership responsibility and supervision in a civilian organisation or an enterprise shall be equivalent to a civilian superior.

### **§ 9 War crimes against property and other rights**

(1) Whoever in connection with an international or non-international armed conflict plunders or, without it being necessitated by the requirements of the armed conflict, otherwise destroys, appropriates or seizes, in contravention of international law, substantial items belonging to the opposing party which are under the power of their own party, shall be punished with between one year's and ten years' imprisonment.

### **§ 11 War crimes of the deployment of prohibited methods of warfare**

(1) Whoever in connection with an international or non-international armed conflict

2.

with military means targets an attack on civilian objects as long as they are protected by humanitarian international law as such, namely buildings devoted to religious service, education, art, science or charity, historical monuments, hospitals and collection facilities for the ill and injured, undefended towns, villages, places of residence or buildings or demilitarised zones, as well as premises and facilities containing dangerous powers

shall be punished with not less than three years' imprisonment. In less serious cases falling under No.2, the punishment shall be not less than one year's imprisonment.

### **§ 13 Breach of duty of supervision**

(1) A military commander who intentionally or negligently omits to properly supervise a subordinate who is under his/her command or de facto supervision shall be punished for breach of duty of supervision if the subordinate commits an offence in accordance with the present Code the immanence of which was recognisable to the commander and which he/she could have prevented

3) Military Criminal Code (*Wehrstrafgesetz – WStG*)

**§ 33 Enticement to commit an unlawful act**

Whoever by misusing his/her power to command or official position has ordered a subordinate to commit an unlawful act committed by the latter constituting a criminal offence shall be punished in accordance with the provisions applicable to commission of the offence. Punishment may be increased to twice the maximum punishment otherwise permissible, but not over the statutory maximum of the threatened punishment.

**§ 34 Unsuccessful enticement to commit an unlawful act**

(1) Whoever by misusing his/her power to command or official position attempts to order a subordinate to commit or incite to commit an unlawful act constituting a criminal offence shall be punished in accordance with the provisions applicable to commission of the offence. However, the punishment may be mitigated in accordance with section 49 subsection (1) of the Criminal Code.

(2) Punishment shall not be imposed in accordance with subsection (1) on whoever voluntarily abandons the attempt to order the subordinate and averts any existing danger of the subordinate committing the offence. If the offence does not take place without contribution from the party abandoning, or if it is committed regardless of his/her previous conduct, his/her voluntary, serious efforts to prevent the offence shall be sufficient for him/her to remain unpunished.

4) Soldiers Act (*Soldatengesetz – SG*)

**§ 23 Disciplinary offence**

(1) A soldier shall be deemed to have committed a disciplinary offence if he/she culpably breaches his/her duties.

**§ 10 Obligations of the superior**

(4) He/she may only issue orders for official purposes and only in compliance with the rules of international law, the laws and disciplinary regulations.

**§ 11 Obedience**

(2) An order may not be complied with if it would entail committing a criminal offence. If the subordinate nonetheless complies with the order, he/she shall only be deemed culpable if

he/she recognises or it is evident in accordance with the circumstances known to him/her that a criminal offence is committed thereby.

5) Military Disciplinary Code (*Wehrdisziplinarordnung – WDO*)

**§ 22 Types of simple disciplinary measures**

(1) The disciplinary measures which may be imposed by the disciplinary superior (simple disciplinary measures) are as follows:

1. reprimand,
2. strong reprimand,
3. disciplinary fine,
4. restriction of leave,
5. disciplinary arrest.

(2) The following may be imposed conjunctively:

1. disciplinary arrest and restriction of leave,
2. in the event of the absence of the soldier without leave for more than one day, restriction of leave and disciplinary fine or disciplinary arrest and disciplinary fine.

In other cases, only one disciplinary measure is permissible in respect of the same disciplinary offence.

(3) A simple disciplinary measure shall not prevent the promotion of a soldier who has proven him/herself in other respects.

**§ 58 Types of court disciplinary measures**

(1) Court disciplinary measures against professional soldiers and voluntary regular soldiers shall be as follows:

1. cut in salary,
2. prohibition of promotion,
3. demotion within the salary grade,
4. demotion in service rank, and

5. discharge from service.

(2) Court disciplinary measures against retired soldiers, as well as against former soldiers regarded as being retired (section 1 subsection (3)), shall be as follows:

1. cut in pension,
2. demotion within the salary grade,
3. demotion in service rank, and
4. cancellation of pension.

If they are at the same time members of the reserve or former soldiers not subject to obligatory military service who can still be called to provide services, only the disciplinary measures named in sentence 1 may be imposed.

(3) Court disciplinary measures against members of the reserve or former soldiers not subject to obligatory military service who can still be called to provide services shall be as follows:

1. demotion in service rank, and
2. discharge from service.

(4) Only a cut in salary and prohibition of promotion may be imposed conjunctly for the same disciplinary offence. They should in particular be imposed conjunctly if it is recognisable that prohibition of promotion will not have an impact on the future service career of the soldier; section 16 subsection (1) shall not apply. In addition to or in place of a reduction in pension, reduction of equalisation may be imposed (section 38 of the Soldiers' Pensions Act (*Soldaten-versorgungsgesetz*)). Moreover, only one court disciplinary measure may be imposed for the same disciplinary offence.

(5) Only demotion in service rank or cancellation of pension may be imposed as court disciplinary measures because of conduct which is deemed to be a disciplinary offence in accordance with section 17 subsection (3) and section 23 subsection (2) No.2 second alternative of the Soldiers Act, with retired soldiers, as well as with former soldiers deemed to be retired soldiers,.

(6) The military courts may also impose simple disciplinary measures.

6

