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SECOND PROTOCOL TO THE HAGUE CONVENTION OF 1954 FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

COMMITTEE FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

Eighth meeting
UNESCO Headquarters, Paris
18 to 19 December 2013

Item 10 of the Provisional Agenda:
The protection of cultural property in occupied territory

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The Committee, among other things, gives its support to its Chairperson and the Director-General of UNESCO in all possible conciliation procedures which might be undertaken, with a view to settling disagreements between the Parties to the conflict, in order to ensure better protection of cultural property in occupied territory, all while taking into account the provisions of the second protocol and the sovereignty of the Parties. The Committee also encourages the Director-General to propose to the United Nations Security Council, as appropriate, the issue of the protection of cultural property in the event of armed conflict, including occupation, in resolutions adopted under Chapter VII of the Charter of the United Nations.

Finally, the Committee asks the Secretariat to propose to it a monitoring of the cultural property threatened in situations of armed conflict, including occupation.

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INTRODUCTION

1. By Decision 7.COM 7 of its Seventh Meeting (21 - 22 December 2012) the Committee for the Protection of Cultural Property in the Event of Armed Conflict ('the Committee') requested the Secretariat to:

‘prepare a document based on discussions of its seventh meeting giving specific emphasis to the implementation of the relevant provisions and mechanisms of the 1954 Hague Convention and the 1999 Second Protocol concerning the protection of cultural property in occupied territory and to present it at its eighth meeting in 2013.’
2. Pursuant to this Decision, the Secretariat prepared the current document which is divided into four parts.
3. The first part presents the substantive provisions of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict ('the Convention') and its two (1954 and 1999) Protocols. In particular, it examines the obligations of the Occupying Power to safeguard and preserve cultural property, prevent archaeological excavations, and prevent the illicit export of cultural property, and it considers the issue of the representative for cultural property.
4. The second part focuses on the implementation mechanisms under the Hague Convention, the Regulations for its Execution and the Second Protocol. In particular, it analyses the conciliation procedure, the assistance of UNESCO, international assistance, the granting of enhanced protection and international cooperation.
5. The third part deals with key actors related to the protection of cultural property in occupied territory. It analyses the implementation of Resolution I of the 1954 Hague Intergovernmental Conference, and the issues of Protecting Powers, the Meeting of the Parties and the international cooperation of Parties.
6. Lastly, a summary of the High Contracting Parties' national reports on the implementation of those provisions contained in the Secretariat's overall 2005-2010 report on the implementation of the Convention and its two Protocols is provided in the Annex.

PART I: SPECIFIC PROVISIONS CONCERNING THE PROTECTION OF CULTURAL PROPERTY IN OCCUPIED TERRITORY

1. OBLIGATIONS OF THE OCCUPYING POWER

1.1 Obligation to safeguard and to preserve (Article 5 of the Hague Convention, Article 9 of the Second Protocol and the general prohibition on destruction of property in occupied territory (article 53 of the 1949 fourth Geneva Convention relative to the protection of civilian persons in time of war))

7. Firstly, in order to better understand the question of the protection of cultural property in occupied territory, it is necessary to provide a definition of 'occupation' because it is not defined by either the 1954 Hague Convention or by its Second Protocol. 'Occupation' is defined by Article 42 of the Regulations annexed to the fourth Hague Convention of 1907 respecting the Laws and Customs of War on Land: a 'territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised'. As stated in the 1946 Nuremberg International Military Tribunal, 'the rules laid down in the Convention [of 1907] were recognized by all civilized nations, and were regarded as being declaratory of the

laws and customs of war'.¹ Thus, it is submitted that this definition is part of customary international humanitarian law.

8. A general responsibility presented in Article 5 of the 1954 Hague Convention is an obligation to support (as far as possible) the relevant authorities of the occupied country in safeguarding and preserving its cultural property. The Occupying Power also has an obligation to take the most necessary measures to preserve cultural property situated in occupied territory and damaged by military operations if the competent national authorities of the occupied State are unable to do so. The Occupying Power shall take such measures in close cooperation with the competent national authorities. However, the scope of this obligation is narrowed to the extent that the obligation applies 'as far as possible'.
9. Article 9 of the Second Protocol goes further and is more precise regarding the obligations of the Party which occupies, totally or partially, the territory of another Party. The Occupying Party has a duty to prohibit and prevent in relation to the occupied territory any illicit export or removal or transfer of ownership of cultural property, as well as any alteration to or change in use of cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.
10. Article 2 of the Second Protocol² specifies that this Protocol supplements the Hague Convention in relations between the Parties. Furthermore, Article 9 begins by stating, 'Without prejudice to the provisions of Articles 4 and 5 of the Convention'. This indicates not only that obligation under Articles 4 and 5 of the 1954 Convention continue to exist, but also that in case of conflict between these Articles and Article 9, Articles 4 and 5 prevail.
11. Finally, it is important to draw attention to Article 53 of the 1949 Convention (IV) relative to the Protection of Civilian Persons in Time of War, which also discusses the protection of cultural property in occupied territory.³ As the overwhelming majority of UNESCO Member States are bound by the Fourth Geneva Convention, the provisions of this Article are binding upon them as well.

1.2 Obligation to prevent archaeological excavations (Article 9 of the Second Protocol)

12. Article 9 of the Second Protocol,⁴ on the 'Protection of cultural property in occupied territory', requires the Occupying Power to prohibit and prevent, in relation to the occupied territory,

¹ *Judgment of the International Military Tribunal of Nuremberg, 30 September and 1 October 1946*, p. 65, cited in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 172.

² Article 2 of the Second Protocol to the 1954 Hague Convention: This Protocol supplements the Convention in relations between the Parties.

³ Article 53 provides that "any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations".

⁴ Article 9 of the Second Protocol to the 1954 Hague Convention:

1. Without prejudice to the provisions of Articles 4 and 5 of the Convention, a Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory:

- a. any illicit export, other removal or transfer of ownership of cultural property;
- b. any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property;
- c. any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

2. 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.

any archaeological excavations (unless strictly required to safeguard, record or preserve such property). If such excavations do take place, they must be carried out in close cooperation with the competent national authorities of the occupied territory. However, this obligation is not absolute and is limited by the condition 'unless circumstances do not permit'.

13. In addition, Article 32 of the 1956 UNESCO Recommendation on International Principles Applicable to Archaeological Excavations ('the 1956 Recommendation'),⁵ a legally non-binding document, encourages an Occupying Power to refrain from carrying out archaeological excavations in the occupied territory. It also recommends to the Occupying Power to take all possible measures to protect archaeological finds and hand them over, on the termination of hostilities, to the competent authorities of the territory previously occupied, together with all relevant documentation relating thereto.

1.3 Obligation to prevent export (the 1954 (First) Protocol, Articles 9 and 21(b) of the Second Protocol and Article 19 of the Regulations for the Execution of the Hague Convention)

14. The obligation to prevent and to prohibit any export of cultural property from occupied territory is established by, among other international instruments, the 1954 (First) Protocol to the 1954 Hague Convention and the 1999 (Second) Protocol to the Convention.

1.3.1 Obligation under the 1954 (First) Protocol

15. According to the 1954 (First) Protocol, each High Contracting Party is expected to prevent the exportation of cultural property from a territory occupied by it during armed conflict.⁶ Unlike Article 9 of the Second Protocol, the 1954 (First) Protocol does not require the occupied territory to be that of another Party to the 1954 (First) Protocol. In the event such exportation occurs, the cultural property must be returned at the close of hostilities to the competent authorities of the previously occupied territory,⁷ and an indemnity must be paid to a holder in good faith of any cultural property which has to be returned.⁸ Similarly, each High Contracting Party undertakes to take into its custody cultural property imported into its territory from any occupied territory.⁹ Finally, if a High Contracting Party deposits its cultural property in the territory of another High Contracting Party for the purpose of protecting it

⁵ Paragraph 32 of the 1956 UNESCO Recommendation on International Principles Applicable to Archaeological Excavations: In the event of armed conflict, any Member State occupying the territory of another State should refrain from carrying out archaeological excavations in the occupied territory. In the event of chance finds being made, particularly during military works, the occupying Power should take all possible measures to protect these finds, which should be handed over, on the termination of hostilities, to the competent authorities of the territory previously occupied, together with all documentation relating thereto.

⁶ Paragraph 1, Section I of the 1954 (First) Protocol to the 1954 Hague Convention: Each High Contracting Party undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article I of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May, 1954.

⁷ Paragraph 3, Section I of the 1954 (First) Protocol to the 1954 Hague Convention: Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.

⁸ Paragraph 4, Section I of the 1954 (First) Protocol to the 1954 Hague Convention: The High Contracting Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with the preceding paragraph.

⁹ Paragraph 2, Section I of the 1954 (First) Protocol to the 1954 Hague Convention: Each High Contracting Party undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory.

against the dangers of an armed conflict, then the latter shall return it at the end of hostilities to the competent authorities of the territory from which it came.¹⁰

1.3.2 Obligation under the 1999 (Second) Protocol

16. Article 9 of the Second Protocol foresees the Duty of the Occupying Power to prohibit and prevent in relation to the occupied territory any illicit export or other removal or transfer of ownership of cultural property.

1.3.3 Obligation of the Occupying Power related to the transfer of Cultural Property situated in the Occupied Territory

17. Article 19 of the Regulations for the Execution of the Hague Convention deals with the transfer by the Occupying Power of cultural property to a refuge situated in the occupied territory without being able to follow procedure provided for in Article 17 of the Regulations. In this situation, the transfer of cultural property by the occupying authorities to a refuge situated on the territory of the occupied State cannot be regarded as a misappropriation prohibited by Article 4(2) of the Convention, provided that the Commissioner-General for Cultural Property ('Commissioner-General'), who was chosen 'by joint agreement between the Party to which he will be accredited and the Protecting Powers acting on behalf of the opposing parties'¹¹, certifies in writing, after having consulted the usual custodians, that such transfer was rendered necessary by circumstances.

1.3.4 Other References to International Humanitarian Law

18. It should also be noted that Article 11 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property¹² ('the 1970 Convention') also defines the export and ownership of cultural property under compulsion from an occupied territory as illicit.
19. Finally, Rule 41 of the ICRC study on customary international humanitarian law on the obligation of the occupying power reconfirms its obligation to prevent the illicit export of cultural property from occupied territory as well as to return illicitly exported property to the competent authorities of the occupied territory.¹³

2. SPECIAL REPRESENTATIVE FOR CULTURAL PROPERTY SITUATED IN OCCUPIED TERRITORY (ARTICLE 2 OF THE REGULATIONS FOR THE EXECUTION OF THE HAGUE CONVENTION)

20. Article 2(a) of the Regulations for the Execution of the Convention provides for the obligation of the Occupying Power to appoint a special representative for cultural property situated in occupied territory.

¹⁰ Paragraph 5, Section II of the 1954 (First) Protocol to the 1954 Hague Convention: Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came.

¹¹ Article 4 of the Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict.

¹² Article 11 of the 1970 Convention: The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.

¹³ Henckaerts, Jean-Marie, and Louise Doswald-Beck. *Customary International Humanitarian Law*. Vol. I. Cambridge: Cambridge UP, 2005, pp. 135-138.

PART II: IMPLEMENTATION MECHANISMS UNDER THE HAGUE CONVENTION, THE REGULATIONS FOR ITS EXECUTION AND THE SECOND PROTOCOL

1. CONCILIATION PROCEDURE (ARTICLES 22 AND 36 OF THE HAGUE CONVENTION AND ARTICLE 35 OF THE SECOND PROTOCOL)

21. Article 22 of the Convention describes the good offices functions of the Protecting Powers.¹⁴ It calls for Protecting Powers to lend their good offices in all cases where it will be deemed useful for the interests of cultural property, in particular in case of a disagreement between the Parties to the conflict with regard to the application or interpretation of the Hague Convention or the Regulations for its Execution and will not be limited to cases of disagreement between Parties to the conflict. Each of the Protecting Powers may, at the invitation of one Party or of the Director-General of UNESCO, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate on suitably chosen neutral territory.¹⁵
22. The main role of the Protecting Powers is to 'lend their good offices in all cases where they may deem it useful in the interest of cultural property, particularly if there is disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention or the Regulations for its execution' (Article 22(1) of the 1954 Convention and Article 35(1) of the Second Protocol). The system of Protecting Powers has been applied only once since the adoption of the Convention following the 1967 Middle East conflict and only for a few years.
23. Article 35 of the Second Protocol is almost identical to Article 22 of the Convention. As to its relevance to the protection of cultural property in occupied territory, it extends the availability of the conciliation procedure to Parties who may be in dispute as to the interpretation or application of Article 9 of the Second Protocol.
24. It should be mentioned that Article 36(1) of the Second Protocol provides that, in the absence of Protecting Powers, the Director-General will take on a more important role in conciliation procedures. Additionally, Article 36(2) of the Second Protocol allows for the Chairperson of the Committee, in case where no Protecting Powers are appointed, at the invitation of one Party or of the Director-General, to propose to the Parties to the conflict a meeting of their representatives and in particular of the authorities responsible for the protection of cultural property. If appropriate, such a meeting may take place on the territory of a State not party to the conflict. Thus, such a meeting may only take place if all Parties to a conflict, including when the Parties are an occupying power and a Party whose territory is under occupation, agree to such meeting.

2. ASSISTANCE OF UNESCO (ARTICLE 23 OF THE HAGUE CONVENTION AND ARTICLE 33 OF THE SECOND PROTOCOL)

25. Article 23 of the Convention, on the 'Assistance of UNESCO', provides that UNESCO's technical assistance (within the limits fixed by its programme and by its resources), in both organizing the protection of cultural property, and in connection with any other problem

¹⁴ Protecting Power means, "a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol" (Article 2.c of the 1977 Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)).

¹⁵ Jiří Toman. *The Protection of Cultural Property in the Event of Armed Conflict*. UNESCO Publishing, Paris, 1996, p. 252.

arising out of the application of the Convention or the Regulations for its Execution, may be initiated either by a call upon the Organization from the High Contracting Parties or by UNESCO itself.

26. Particular to occupied territory, UNESCO's technical assistance can come in the form of expert missions to the occupied territory. UNESCO can play a role in the protection of cultural property in occupied territory pursuant to the powers bestowed upon it by Article 23 of the Convention, when the Parties to the conflict can agree on the terms of such assistance. Without such agreement, however, there would seem to be significant limitations on any assistance that UNESCO can provide in occupied territory under Article 23.
27. Article 33 of the Second Protocol restates the provisions of Article 23 of the Convention. In addition, it offers the possibility for Parties to provide technical assistance at bilateral or multilateral level.
28. The following two paragraphs provide evidence of practice with regard to the assistance of UNESCO in an occupied territory pursuant to Article 23 of the Convention.
29. In 1982, a mission was sent to Lebanon, at its request, to visit the archaeological site of the city of Tyre. In making his appeal for the preservation of the site and in taking his decision to send a mission, the Director-General acted in conformity with the provisions of the Hague Convention (in particular Article 23) but also on the basis of a special mandate conferred by Resolution 4/13 of the General Conference, adopted at its twenty-first session in 1980. The Director-General stressed the necessity to safeguard the archaeological site of Tyre and condemned the destruction of cultural property that had occurred during occupation. Since the site was occupied by the Israeli army, the Director-General asked the Israeli authorities to cooperate and transmitted them the Lebanese request. The team sent by the Director-General carried out its mission from 11 to 15 July 1982 and submitted to the Director-General a report containing its findings and recommendations, which was transmitted to the Lebanese authorities. In pursuance of one of these recommendations, 150 signs bearing the distinctive emblem provided for in Articles 16 and 17 of the Convention were prepared at the Organization's expense and given to the Lebanese government. The mission proved to be an example of cooperation between governments, UNESCO, and the general population. Subsequently, at the request of the Lebanese government, a team of two archaeologists visited Tyre in February 1983. To give effect to resolution 4/13 adopted by the General Conference at its twenty-first session, the Director-General further appointed Professor Ernest Will (France), in agreement with the Lebanese authorities, as adviser for the cultural heritage of the archaeological site of Tyre and its surrounding area. At its twenty-second session, the General Conference adopted resolution 11/7 by which it authorized the Director-General 'to undertake, within the limits of available funds, the technical studies needed in order to draw up a detailed plan of action for [the safeguarding of Tyre and its surrounding area] and to define procedures for its promotion in the form of an international campaign. In pursuance of this resolution, the Director-General submitted to the Lebanese authorities, on 6 February 1984, a preliminary draft of the detailed plan of action concerning the safeguarding of Tyre.
30. Following the entry of Iraqi military forces into Kuwait in August 1990, the Kuwaiti authorities informed the Director-General of destruction and removal of the cultural heritage of that country. The Director-General drew the attention of the Iraqi authorities to the necessity of complying fully with the provisions of the Hague Convention and its Protocol. This item was placed on the agenda of the 135th session of the Executive Board (October 1990) which adopted decision 8.4 on this matter. As tension mounted in this area, the Director-General made three public appeals to all parties to observe the principles of the Hague Convention, two in January 1991 and the third in February 1991. When military operations took place on the basis of Resolution 678 (1990) of the Security Council, up to 30 other States were involved in one way or another. A majority of them were Parties to the Hague Convention, three were not- In January 1991 the Director-General sent a letter to the Secretary-General of the United Nations, drawing his attention to Resolution I of the 1954 Hague Conference which expressed the hope that 'the competent organs of the United Nations should decide, in

the event of military action being taken in implementation of the Charter, to ensure application of the provisions of the Convention by the armed forces taking part in such action'. UNESCO sent several missions to Kuwait to help restore the cultural heritage. The Kuwaiti authorities notified UNESCO of the removal from their territory of a vast number of cultural objects and requested UNESCO to assist in their recovery. In accordance with United Nations Security Council Resolution 686 (1991) adopted on 2 March 1991, Iraq was requested to 'immediately begin to return all Kuwaiti property seized by Iraq; the return to be completed in the shortest possible period'. Under the supervision of the United Nations Return of Property Unit (UNROP), 25,082 museum items from the Dar-Al-Athar Al-Islamiyya (DAI) and Kuwait National Museum (KNM), including objects from Failaka Island were handed over by Iraq to the Kuwaiti representatives during the period 14 September 1991 to 20 October 1991. Kuwait also notified UNESCO that a large number of items were still missing and details have been communicated to the United Nations Co-ordinator for the Return of Property from Iraq to Kuwait in order to enable further action to be taken in this respect. During and after the conflict the Iraqi authorities informed the Director-General of damage to the cultural heritage of Iraq. In October 1991 the Permanent Delegation of Iraq to UNESCO transmitted to the Secretariat four volumes of documentation of items missing from a number of Iraqi provincial museums and requested further assistance. UNESCO forwarded copies of these volumes to the Metropolitan Museum of Art (New York), the International Foundation for Art Research (IFAR), the International Criminal Police Organization (INTERPOL), the International Council of Museums (ICOM) and the auction house Sotheby's (London) (for the information of the London market). UNESCO was also prepared to send a mission to Iraq to assess the damages caused to the Iraqi cultural heritage but the dispatch of such a mission was deferred in light of United Nations Security Council Resolution 661 (1990), reaffirmed by further subsequent resolutions adopted by the United Nations Security Council on this matter. A meeting of international experts in antiquities from the region met in Baghdad in December 1994 to discuss the losses. Representatives of this group of experts paid a visit to the Director-General in February 1995 to express their concern and to solicit help from UNESCO for the recovery of the missing objects. UNESCO had been invited to send a representative to the Baghdad meeting, but received the invitation, and the necessary approval of the relevant United Nations Security Council Committee, too late to be able to attend. Further to this meeting, UNESCO issued in March 1995 a press release alerting the museum community, collectors and art dealers against any purchase of artefacts possibly stolen in Iraq. The Secretariat also published on 1 August 1995 a notice of certain representative missing pieces including their photographs and descriptions.¹⁶

3. INTERNATIONAL ASSISTANCE FOR CULTURAL PROPERTY UNDER ENHANCED PROTECTION (ARTICLE 32 OF THE SECOND PROTOCOL)

31. Parties may request from the Committee, under Article 32 of the Second Protocol, international assistance for cultural property under enhanced protection, as well as assistance with the preparation, development or implementation of laws, and administrative provisions and measures referred to in Article 10. Parties to the conflict, but not Party to the Second Protocol, which accept and apply the provisions of this Protocol are also allowed to request appropriate international assistance from the Committee. Further, Parties are encouraged to give technical assistance of all kinds, through the Committee, to those Parties or parties to the conflict who request it.

¹⁶ Protection of Cultural Property in the Event of Armed Conflict: Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1995 Reports, Paris December 1995, CLT-95/WS/13, pp. 6-7.

4. SPECIAL PROTECTION

4.1 International Register of Cultural Property under Special Protection (Articles 8 – 11 of the Hague Convention and Articles 11 – 16 of the Regulations for the Execution of the Hague Convention)

32. The Hague Convention introduces a system of special protection through the 'International Register of Cultural Property under Special Protection', maintained by the Director-General of UNESCO. However, considering the difficulties of implementation of this special protection, and with the adoption of the Second Protocol and the creation of the system of enhanced protection, the States are encouraged to use the latter. The system of special protection is therefore likely to become obsolete, and for this reason, it is unnecessary to analyse it in this document. If a cultural property has been granted both special protection and enhanced protection, under Article 4(b) of the Second Protocol, only the provisions of enhanced protection will apply.
33. It should be mentioned that the 'International Register of Cultural Property under Special Protection' currently includes four refuges and the entirety of Vatican City. This Register is available online.¹⁷
34. Additionally, it should be stressed that under Article 13(2) of the Regulations for the Execution of the Hague Convention, the Occupying Power can submit applications for the entry into the International Register of Cultural Property under Special Protection of certain refuges, centres containing monuments or other immovable cultural property.

4.2 Transport of Cultural Property under Special Protection (Articles 12 – 14 of the Hague Convention and Articles 17 – 19 of the Regulations for the Execution of the Hague Convention)

35. Transport under special protection is a mechanism which is not affected by the system of special protection; thus, transport under special protection is fully applicable. Article 12 of the Convention lays out the contours of transport under special protection: whether within a territory or to another territory, a transport exclusively of cultural property may take place at the request of the High Contracting Party concerned, taking place under international supervision and bearing the distinctive emblem described in Article 16.
36. Article 13 of the Convention provides that when urgency renders it impossible to follow the procedure laid down in Article 12, the transport of certain cultural property to safety can display the distinctive emblem described in Article 16, provided that an application for immunity referred to in Article 12 has not already been made and refused.
37. Furthermore, Article 14 of the Convention provides immunity from seizure, capture and prize to cultural property with the protection provided for in Articles 12 and 13, in addition to the means of transport exclusively engaged in the transfer of such cultural property.
38. It should be noted that Article 19 of the Regulations for the Execution of the Convention specifically applies to the situation of the transfer of cultural property by the Occupying Power within the occupied territory, provided that the Commissioner-General for Cultural Property authorizes such transfer.

5. THE GRANTING OF ENHANCED PROTECTION (ARTICLE 11(1, 2, 4, 7, 9 AND 10) OF THE SECOND PROTOCOL)

39. Article 11 of the Second Protocol deals with the procedural aspects of granting enhanced protection. Under its paragraphs 1 and 2, the granting of enhanced protection is made on the

¹⁷ Secretariat's Report 2005-2010, available at: <http://www.unesco.org/new/fr/culture/armed-conflict-and-heritage/2005-2010-secretariats-report/#c288299>.

basis of an application submitted to the Committee for the Protection of Cultural Property in the Event of Armed Conflict by each Party. Parties may submit requests to include cultural property on the List, but may also be invited by the Committee to request inclusion of cultural property on the List.

40. Paragraph 1 provides each Party with the possibility of submitting to the Committee through the Secretariat a list of cultural property for which it intends to request the granting of enhanced protection. This list, which is tentative, contains a brief description of the cultural property concerned. Parties may amend their tentative lists as appropriate. At present, only one Party has provided such a tentative list.¹⁸
41. Paragraph 2 is particularly relevant to occupied territory because it enables the Party having jurisdiction or control over the cultural property situated in occupied territory to request its inclusion in the List of Cultural Property under Enhanced Protection. Furthermore, the Committee may invite the Party which is being occupied to submit cultural property situated in occupied territory for the granting of enhanced protection. Finally, the Party which is the Occupying Power may also submit to the Committee a list of cultural property situated in occupied territory for which it intends to seek enhanced protection.
42. Paragraph 3 provides for the possibility for other Parties, i.e. Parties other than those described in paragraph 2, of the International Committee of the Blue Shield, and other non-governmental organizations with relevant expertise, to recommend to the Committee specific cultural property for the granting of enhanced protection. It will then be up to the Committee to decide whether to follow such a recommendation and invite a Party to request to include cultural property on the List.
43. Paragraph 4 allows Parties to resolve territorial disputes without taking into consideration actions which were undertaken in conformity with Article 11. Paragraph 7 stipulates that the decision and consideration of the request must be made in conformity with the three criteria of Article 10, and thus limits the scope of representation. Lastly, paragraph 9 concerns emergency requests submitted for the granting of enhanced protection upon the outbreak of hostilities by a Party to the conflict which has control or jurisdiction over cultural property in question. The Committee will then make a decision at its earliest convenience. Provisional enhanced protection may be granted by the Committee pending the outcome of the regular procedure for the granting of enhanced protection, provided that the provisions of Article 10 sub-paragraphs (a) and (c) are met.

6. INTERNATIONAL COOPERATION IN CASE OF SERIOUS VIOLATION (ARTICLE 31 OF THE SECOND PROTOCOL)

44. Article 31, mirroring Article 89 of the 1977 Additional Protocol I to the 1949 Geneva Conventions, of the Second Protocol provides for the possibility of Parties to act in case of serious violations of the Second Protocol. In the event that serious violations arise, Parties undertake to act, either jointly through the Committee, or individually, in cooperation with UNESCO and the United Nations, and in conformity with the Charter of the United Nations.
45. Thus, on the basis of this Article, States Parties may refer the matter to the United Nations Security Council to adopt a resolution to cease such serious violations.

¹⁸ Belgium deposited such a tentative list with the Secretariat in December 2012. This list contains the following eleven World Heritage cultural sites which comply with the definition of cultural property under Article 10 of the 1954 Hague Convention: Flemish Béguinages; La Grand-Place, Brussels; The Four Lifts on the Canal du Centre and their Environs, La Louvière and Le Roeulx (Hainaut); Belfries of Belgium; Historic Centre of Brugge; Major Town Houses of the Architect Victor Horta (Brussels); Neolithic Flint Mines at Spiennes (Mons); Notre-Dame Cathedral in Tournai; Plantin-Moretus House-Workshops-Museum Complex; Stoclet House; and Major Mining Sites of Wallonia.

PART III: KEY ACTORS

1. UNITED NATIONS SECURITY COUNCIL (APPLICATION OF THE HAGUE CONVENTION BY ARMED FORCES OF UN MEMBER STATES IN THE EVENT OF MILITARY ACTION BEING TAKEN IN IMPLEMENTATION OF THE UN CHARTER (RESOLUTION I OF THE 1954 HAGUE INTERGOVERNMENTAL CONFERENCE))

46. Resolution I expresses hope that in the event of military action being taken in implementation of the Charter, the competent bodies of the United Nations should ensure application of the provisions of the Convention by the armed forces taking part.
47. Formally speaking, the United Nations may not become party to the Second Protocol because it is not a State. However, certain UN missions entailed the exercise of functions and powers over a territory that could be compared to those assigned to the Occupying Power (e.g. UN operations in Cyprus, Cambodia, Eastern Slavonia, East Timor, Kosovo and the Congo, in the 1960s).
48. Moreover, the UN Secretary-General's Bulletin on Observance by United Nations Forces of International Humanitarian Law promulgated on 6 August 1999 (UN Doc.ST/SGB/1999/13) recognizes the application of fundamental principles and rules of international humanitarian law to UN forces conducting operation under UN command and control. The principles and rules set out in the Bulletin are applicable during situations of armed conflict when UN forces are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions or in peacekeeping operations when the use of force is permitted in self-defence (Section 1, 1.1). The Bulletin provides some general principles relating to the protection of cultural property that could also be applied in situations of occupation: 'The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, place 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'.¹⁹ In addition, UN forces are prohibited from engaging in reprisals against cultural property, which is included among objects and installations protected under Section 6 of the Bulletin.²⁰
49. For this reason, it is important to raise awareness of UN peace-keeping forces of the importance to protect cultural property. The sixth meeting of the High Contracting Parties to the Hague Convention in October 2005 adopted a resolution which, among other things, invited the Director-General to submit to the United Nations and NATO a proposal aiming at ensuring compliance with the 1954 Hague Convention and its two Protocols among armed forces engaged in peace-keeping operations under the respective mandate of these Organizations. On follow-up of this recommendation, the Secretariat established contracts with the UN and proposed a model card for soldiers which summarized basic principles related to cultural property.

2. PROTECTING POWERS (ARTICLES 34 AND 35 OF THE SECOND PROTOCOL)

50. The role of Protecting Powers and an example of their practical application was described in paragraphs 21 through 24 of the current document.

¹⁹ Secretary-General's Bulletin, Observance by United Nations forces of international humanitarian law, Section 6: Means and methods of combat (6.6).

²⁰ Id. at 6.9.

51. Article 34 of the Second Protocol is almost identical to Article 21 of the Convention. It provides that the Second Protocol is to be applied with the cooperation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict.

3. MEETING OF THE PARTIES (ARTICLES 23 AND 27(1)(G) OF THE SECOND PROTOCOL)

52. In accordance with Article 23(3) of the Second Protocol, the following functions are given to the Meeting of the Parties: to elect the Members of the Committee; to endorse the Guidelines for the implementation of the Second Protocol developed by the Committee; to provide for, and to supervise the use of, the Fund for the Protection of Cultural Property in the Event of Armed Conflict by the Committee; to consider the report on the implementation of the Second Protocol submitted by the Committee, and to discuss any problems related to the application of this Protocol and to make recommendations, as appropriate (Article 23 (e) of the Second Protocol).
53. Further, under Article 27(1)(g) of the Second Protocol, the Meeting of the Parties has the authority to assign to the Committee functions that are not expressly mentioned in this Article.

4. PARTIES – INTERNATIONAL COOPERATION IN CASE OF SERIOUS VIOLATIONS (ARTICLE 31 OF THE SECOND PROTOCOL) AND THE GRANTING OF ENHANCED PROTECTION (ARTICLE 11(3) OF THE SECOND PROTOCOL)

54. The possibility of Parties to act in the event of serious violations of the Second Protocol has been described in paragraphs 44 and 45 of this document.
55. The possibility of Parties to recommend to the Committee specific cultural property for the granting of enhanced protection has been described in paragraphs 39 through 43.

5. COMMISSIONER-GENERAL FOR CULTURAL PROPERTY, DELEGATES OF PROTECTING POWERS, INSPECTORS AND EXPERTS (ARTICLES 1-10 OF THE REGULATION FOR THE EXECUTION OF THE HAGUE CONVENTION)

56. A Commissioner-General for Cultural Property is a person appointed from an international list of persons nominated by the High Contracting Parties as qualified to carry out this function. Such a list is compiled by the Director-General of UNESCO. The Commissioner-General for Cultural Property is selected by joint agreement between the Party to which he/she will be accredited and the Protecting Powers acting on behalf of the opposing Parties. In accordance with Article 6.1 of the Regulations, he/she must deal with all matters referred to him/her in connection with the application of the Convention, in conjunction with the representative of the Party to which he/she is accredited and with the delegates of Protecting Powers. His/her functions include carrying out investigations, making representations to the Parties to the conflict or to their Protecting Powers and drawing up reports on the implementation of the Convention. He/she exercises the function of the Protecting Power if there is no Protecting Power. In addition, following Chapters II and III of the Regulations, the Commissioner-General plays a role in the granting of special protection for improvised refuges during an armed conflict and in the transport of cultural property under such protection.
57. The Commissioner-General, under Article 7(1) of the Regulations for the Execution of the Hague Convention, can propose to appoint an inspector of cultural property to be charged with a specific mission. Under Article 7(2) of the Regulations, 'The Commissioner-General, delegates and inspectors may have recourse to the services of experts, who will also be proposed for the approval of the Party [to which the expert is accredited]'. However, the

mandates of the Commissioners-General for Cultural Property, delegates of the Protecting Powers, inspectors and experts are limited by Article 8, which focuses on the need to comply with the requirements of the military situation.

58. Article 8 of the Regulations for the Execution of the Hague Convention provides for the obligations of Commissioners-General, delegates of the Protecting Powers, and inspectors and experts not to exceed their mandates, and to take into account the security needs of the High Contracting Party to which they are accredited. Furthermore, they are required to act in accordance with any requirements of the military situation, as they are informed by the High Contracting Party.
59. Under Article 9, if a Party to the conflict does not benefit or ceases to benefit from the activities of a Protecting Power, a neutral State may be asked to undertake those functions of a Protecting Power which concern the appointment of a Commissioner-General. Lastly, under Article 10, remuneration and expenses of the Commissioner-General, inspectors and experts will be met by the Party to which they were accredited, while those of delegates of the Protecting Powers are subject to agreements between those Powers and the States whose interests they are safeguarding.
60. Like that of the Protecting Powers, the system of Commissioners-General has been applied only once since the adoption of the Convention in the follow-up of the 1967 Middle East conflict and only for a few years.
61. The last international list of persons nominated by the High Contracting Parties as qualified to carry out actions of the Commissioner-General was published in September 1986. In view of the review of the Hague Convention resulting in the adoption of the Second Protocol, which created a new system of supervision (*viz.*, the Committee), it was decided to discontinue the practice of asking the High Contracting Parties to submit nominations for the list.
62. An example is best used to highlight the significant difficulties that arise in reaching an agreement between all Parties as to the accrediting of Commissioners-General, which affects the ability of the control system to oversee the effective implementation of the Convention, including those provisions relating to occupied territory.
63. Following the Middle East conflict in 1967, Articles 2 and 4 of the Regulations for the Execution of the Convention were put into force, and Commissioners-General for Cultural Property were appointed to the conflicting parties (Mr Karl Brunner of Switzerland was appointed for the Hashemite Kingdom of Jordan, Lebanon, the United Arab Emirates and the Syrian Arab Republic; M. J. Reinink of the Netherlands was appointed for Israel). The functions of the Commissioners-General, as set out in Article 6 of the Regulations, are to deal with all matters referred to them in connection with the application of the Convention in conjunction with the representatives of the Parties to which they are accredited; with the agreement of these Parties, they have the right to order investigations or to conduct them themselves. They communicate their reports to the Parties concerned, and send copies to the Director-General who may make use of their technical content. In October 1967, the Director-General reported to the Executive Board on the measures taken since the outbreak of hostilities, and was invited by the Board to make the necessary arrangements to facilitate their task (77 EX/Decisions, 4.4.4). The appointed Commissioners-General were later replaced, and the positions were vacated in early 1977. Switzerland was then unanimously chosen by all parties to discharge the duties of the Protecting Power, as provided for in Article 9 of the Regulations. Although extended negotiations ensued, a joint agreement could not be reached on the appointment of a Commissioner-General for Cultural Property to be accredited to the Arab governments concerned. It has not been possible to obtain the final agreement of all the Parties to the conflict.

6. DIRECTOR-GENERAL OF UNESCO (ARTICLE 22 OF THE HAGUE CONVENTION AND ARTICLES 35(2) AND 36 OF THE SECOND PROTOCOL)²¹

64. Under Article 22(2) of the Convention and Article 35(2) of the Second Protocol, the Director-General may invite the Protecting Powers to propose a meeting of their representatives to the Parties in conflict. Further, the Director General may present a person who shall be invited to participate in the meeting in the capacity of Chairperson. Naturally, this person can be the Chairperson of the Committee.
65. Article 36 of the Second Protocol concerns conciliation in the absence of Protecting Powers. Its first paragraph extends the ability of the Director-General to lend offices or act by any other form of conciliation or mediation, with a view to settling the disagreement.
66. Finally, the Director-General has a general right of initiative with regard to the protection of cultural property under Article I(2)(c) of the Constitution of UNESCO.²² This right of initiative allows the Director-General to undertake different steps to protect cultural property during an armed conflict when one or more Parties are not bound by the Hague Convention and/or its Second Protocol. Those steps may include meeting(s) with representatives of the warring Parties or dispatch of the Director-General's personal representatives with a view to reinforcing the protection of cultural property. This right may be particularly important with regard to occupied territory.

7. COMMITTEE FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT (ARTICLES 11 AND 27 OF THE SECOND PROTOCOL)

67. According to Article 11 of the Second Protocol, the Committee may play an active role in the procedure of granting enhanced protection, either by inviting the Party which has jurisdiction or control over a cultural property to request inscription of this property on the List, or by making this invitation upon the request of a Party which does not have jurisdiction or control over the cultural property, or upon the request of the International Blue Shield or of any other non-governmental organisations having the relevant competence.
68. More information on the granting of enhanced protection can be found in Part II, subpart (5), *supra* paragraphs 39 through 43.
69. Article 27(1)(c) vests the Committee with broad powers related to the implementation of the Second Protocol. In particular, the Committee is responsible for the monitoring and supervision of the implementation of the Second Protocol. Considering that Article 9 of the Second Protocol specifically deals with the issue of the protection of cultural property in occupied territory, this broad definition may provide the Committee with the protection of cultural property in occupied territory.

8. CHAIRPERSON OF THE COMMITTEE FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT (ARTICLES 27 AND 36 OF THE SECOND PROTOCOL)

70. At the request of one of the Parties or of the Director-General, pursuant to Article 36(2) of the Second Protocol, or at the request of the Committee (on the basis of Article 27(1)(c)), the Chairperson of the Committee may assist in the organization and conduct of a meeting aimed at resolving disputes between Parties revolving around provisions relating to the

²¹ See also *supra* Part II, subpart (1) Conciliation Procedure.

²² To realize the purpose of the Organization, "the Organization will . . . (c) Maintain, increase and diffuse knowledge: By assuring the conservation and protection of the world's inheritance of books, works of art and monuments of history and science, and recommending to the nations concerned the necessary international conventions . . ." UNESCO Constitution – Article I(2)(c).

protection of cultural property in occupied territory, provided that both Parties consent to participate in such a meeting.

9. NATIONAL ADVISORY COMMITTEES (RESOLUTION II OF THE 1954 HAGUE INTERGOVERNMENTAL CONFERENCE)

71. Resolution II expresses hope that the High Contracting Parties to the Convention establish national advisory committees consisting of distinguished members, such as senior officials of museums, representatives of the military general staff, specialists in international law or other members who have specialized knowledge relating to fields covered by the Convention. The chief functions of the national advisory committee would be to advise the government concerning the implementation of the Convention, approach the government in times of armed conflict so as to ensure the protection of cultural property, and to arrange for liaison and cooperation with other similar national committees and competent international authorities.

10. INTERNATIONAL AND NATIONAL GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS (ARTICLE 11(3) OF THE SECOND PROTOCOL AND 27(3) OF THE SECOND PROTOCOL)

72. The International Committee of the Blue Shield and other NGOs with relevant expertise may make a recommendation, addressed to the Committee on the granting of enhanced protection to cultural property situated in occupied territory. It will then be up to the Committee to decide whether to follow such a recommendation and invite a Party to request to include cultural property on the List.

73. According to Article 27(3) of the Second Protocol, the Committee for the Protection of Cultural Property in the Event of Armed Conflict co-operates with international and national governmental and non-governmental organisations having objectives similar to those of the Hague Convention and its two Protocols. To assist in the implementation of its functions, the Committee may invite to its meetings, in an advisory capacity, eminent professional organisations such as those which have formal relations with UNESCO. This includes the International Committee of the Blue Shield and its constituent bodies (the International Council on Monuments and Sites (ICOMOS), the International Council of Museums (ICOM), International Council of Archives (ICA), International Federation of Library Associations and Institutions (IFLA) and the Co-ordinating Council of Audiovisual Archives Associations (CCAAA)), the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre) (ICCROM) and the International Committee of the Red Cross (ICRC). Therefore, the competent organizations can assist the Committee to monitor and supervise the implementation of the Second Protocol, including the relevant provisions on the protection of cultural property in occupied territory as Article 9.

CONCLUSIONS

74. The present document restates the relevant provisions of the 1954 Hague Convention and its two Protocols (1954 and 1999) and additionally those of the 1970 Convention and the 1956 Recommendation. This restatement sheds light on not only the positive obligations of the Occupying Power, but also on two interesting mechanisms aimed at the protection of cultural property in occupied territory.

75. Firstly, the present document points out that, pursuant to Article 27 of the Second Protocol, the Committee may exercise the function of protecting cultural property in occupied territory. It can also monitor and evaluate the state of cultural property in occupied territory and, for example, decide to send to occupied territories missions similar to those already conducted by the Secretariat. The objective of such missions would be, on one level, to monitor the

progress of protection of cultural property, and on another level, to ensure that the provisions relating to the protection of cultural property in the field, particularly Article 9 of the Second Protocol, are respected.

76. Secondly, the present document explains that both the Chairperson of the Committee and the Director-General of UNESCO have a role to play within the framework of conciliation procedures. In accordance with Article 35(2) of the Second Protocol, the Director-General may invite the Protecting Powers to propose to the Parties to the conflict a meeting of their representatives, and, in particular, those responsible for the protection of cultural property. In absence of Protecting Powers, Article 36(2) of the Second Protocol gives to the Chairperson of the Committee the possibility, at the invitation of the Director-General or one Party to the conflict, of proposing to the Parties to the conflict a meeting of their representatives, particularly those responsible for protection of the cultural property. However, on the basis of Article 27(1)(c), the Chairperson could also accomplish this at the request of the Committee.

77. In view of the above, the Committee may wish to adopt the following decision:

DRAFT DECISION 8.COM 7

The Committee,

1. Recalling its Decision 7.COM 7 adopted at its seventh meeting related to the production of cultural property in occupied territory,
2. Having examined document CLT-13/8.COM/CONF.203/7,
3. Considers that the provisions and mechanisms of the 1954 Hague Convention and the 1999 Second Protocol concerning the protection of cultural property in occupied territory have been duly reflected in the document;
4. Gives its support to the Director-General and its Chairperson in all possible conciliation procedures to be undertaken, while taking into account the provisions of the Second Protocol and the sovereignty of Parties ;
5. Encourages the Director-General to undertake conciliation or mediation, with a view to settling a disagreement between the Parties to the conflict in order to ensure better protection of cultural property in occupied territory ;
6. Further encourages the Director-General to propose to the United Nations Security Council, as appropriate, to introduce the issue of the protection of cultural property in the event of armed conflict, including occupation, in resolutions adopted under Chapter VII of the Charter of the United Nations ;
7. Invites, as appropriate, the Secretariat to prepare a document for its ninth Meeting with a view to proposing concrete actions for monitoring the state of the protection of cultural property in the event of armed conflict, including occupation, while taking into account the sovereignty of UNESCO Member States.

Annex

Summary of national reports on the implementation of the 1999 (Second) Protocol, the 1954 (First) Protocol and the 1954 Hague Convention submitted by Parties

1. NATIONAL IMPLEMENTATION OF ARTICLE 9 OF THE SECOND PROTOCOL, ARTICLE 5 OF THE HAGUE CONVENTION – NATIONAL REPORTS ON THE IMPLEMENTATION OF THE SECOND PROTOCOL AND THE HAGUE CONVENTION

While national reports on the implementation of Articles 5 and 9 give examples of legislative and other measures, they do not provide concrete examples of the implementation of such provisions by an Occupying Power that is party to the Second Protocol. However, relevant excerpts from the 2005-2010 Report on the Implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two (1954 and 1999) Protocols are included below.

In **Canada**, additional legislative amendments have been made to the *Cultural Property Export and Import Act*²³ to prohibit, and to establish extraterritorial jurisdiction over, export or removal of cultural property from occupied territories of States that are party to the Second Protocol in violation of Article 21(b) of that Protocol.

In **Cyprus**, per domestic Law No. 4 (III)/2001, the acts referred to in paragraphs (a), (b) and (c) of Article 9 are offences punishable with incarceration of up to 10 years or a fine of up to 15,000 CY pounds (23,550 Euro) or both.

In the **Czech Republic**, sanctions for the unlawful exportation of cultural property have been described in the summary of the report on the 1954 Protocol in part VII(i), *supra*. Other misuses of cultural property are regulated by the legislation enumerated in that summary.

The Republic of **Hungary** promulgated the Convention and its Protocols in conjunction with the following legal instruments:

Law Decree 14 of 1957 on the promulgation of the international Convention, the Hague, dated 14 May 1954, for the Protection of Cultural Property in the Event of Armed Conflict, which was adopted together with a Protocol (prohibiting the export of cultural property from occupied territory) (The Protocol became effective on 16 November 1956, pursuant to Ill. 10., subsection (b) of the said Law Decree).

To implement Article 21 of the Second Protocol, **Lithuania** has adopted legislative, administrative and disciplinary measures necessary to suppress any use of cultural heritage in violation of the Convention and its 1954 and 1999 Protocols. Protection of cultural heritage is regulated by the Law of the Republic of Lithuania on the Protection of Immovable Cultural Heritage²⁴ and the Law of the Republic of Lithuania on the Protection of Movable Cultural Property.²⁵ In case the aforementioned laws are violated, Article 91, 'Violation of the Law on the Protection of Immovable Cultural Heritage

²³ Cultural Property Export and Import Act (see section 36.1).

(http://laws.justice.gc.ca/en/ShowFullDoc/cs/C-51//20080229/en?command=HOME&caller=SI&search_type=all&shorttitle=cultural&day=29&month=2&year=2008&search_domain=cs&showall=L&statuteyear=all&lengthannual=50&length=50&noCookie)

²⁴ The current edition of this law is available on the Seimas website (Lithuanian only): http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=320782&p_query=&p_tr2=

²⁵ The current edition of this law is available on the Seimas website (Lithuanian only): http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=325143&p_query=&p_tr2=

and Movable Cultural Property’, of the **Code of Administrative Offences**²⁶ provides for administrative liability.²⁷

All military personnel must follow rules and regulations established by the Disciplinary Statute of the Armed Forces of Lithuania (hereafter ‘Disciplinary Statute’). Article 79 of the Disciplinary Statute provides grounds for the disciplinary punishment for violations of the rules of international humanitarian law.²⁸

Sanctions concerning any illegal export or shipment of cultural property or transfer of property from occupied territory in violation of the Convention and the Second Protocol are provided in Part 2 of Article 189 ‘Purchase or Realization of Property Gained Illegally’ of the Criminal Code.²⁹ In addition, Part 1 of Article 199, ‘Smuggling’, of the Criminal Code imposes punishment.³⁰

The Criminal Code of **Lithuania** provides especially strict sanctions for violation of the provisions of the Convention and other international conventions. Article 106 of the Criminal Code (Destruction of Protected Objects) states:

‘[A person], who, by the necessity of war, gives an indefensible order to destroy or destroys historical monuments, cultural, artistic, educational, scientific objects or objects of religion, that are under the protection by international agreements or national internal law acts; who plunders national heritage in the occupied or annexed territory and makes a huge damage, shall be punished by the deprivation of liberty for a period from three to twelve years.’

This is a special norm to which a prescription penalty period does not apply, i.e., the passage of time will not prevent the prosecution of persons committing crimes under this article.

2. EXAMPLES OF IMPLEMENTATION OF THE 1954 (FIRST) PROTOCOL AND ARTICLE 9 OF THE SECOND PROTOCOL

While national reports on the implementation of the 1954 (First) Protocol give examples of legislative and other measures, they do not provide concrete examples of the implementation of such provisions by an Occupying Power. However, relevant excerpts from the 2005-2010 Report

²⁶ The current edition of this code is **available** on the Seimas website (Lithuanian only):

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=325253&p_query=&p_tr2=

²⁷ “Violation of the Law on the Protection of Immovable Cultural Heritage and Movable Cultural Property – carries a warning or a fine from five hundred to three thousand Litas to ordinary citizens, and from three to five thousand Litas – to the officers.”

²⁸ “1. For violation of international humanitarian law, servicemen of the compulsory military service are reprimanded or given additional service tasks, or are not permitted to leave their service place, or their military rank is reduced, servicemen of the professional military service are reprimanded, or their wage is diminished, or their military rank is reduced.

2. For the same acts, committed under aggravating circumstances, servicemen of professional military service are dismissed from the service, cadets are dismissed from military education institutions”.

²⁹ “Person, who gains, uses or realizes property of high monetary value, or cultural property of great scientific, historical or cultural significance, and knows that the property is gained illegally, is fined or arrested, or is punished by the deprivation of liberty for up to four years.”

³⁰ “Person, who, crossing the border of the Republic of Lithuania, carries goods, the value of which extends the sum of 250 MSL (minimal subsistence level) [The figure of 250 MSL is not applied if movable cultural property or antiquarian things are carried.], and does not declare them to the customs control or has avoided this control in another way or carries movable cultural property or antiquarian goods across the border of Lithuania without a special clearance, is fined or punished by the deprivation of liberty for up to eight years.”

on the Implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two (1954 and 1999) Protocols are included below.

Australia is not party to the 1954 (First) Protocol; it does, however, have in place legislation protecting Australia's movable cultural heritage, and provides for the return of cultural property illegally exported from the country of origin and illegally imported into Australia. The government of a foreign country may submit a formal request for the seizure or forfeiture and return of such foreign cultural property under the *Protection of Movable Cultural Heritage Act 1986*.

In **Belgium**, apart from the Federal State, the Flemish and French Communities have adopted two decrees (11 July 2002 and 24 January 2003) that establish penal sanctions for the crime of unauthorised export of protected cultural properties.

In **Canada**, a mechanism to allow return of cultural property in conformity with Canada's obligations under the First Protocol has been introduced to the *Cultural Property Export and Import Act*. The new section mirrors an existing provision that allows Canada to return illegally exported cultural property to its country of origin as part of Canada's obligations under the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The Republic of **Cyprus**, in addition to the 1954 Hague Convention, has ratified the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Law No. 61/1979). Furthermore, the export and return of cultural objects in the Republic of Cyprus is exercised in accordance with the Export of Cultural Goods Law of 2002 (Law No. 182(1) of 2002) and with the Return of Cultural Objects Law of 2002 (Law No. 183(1) of 2002). The legislation in force in the Republic of Cyprus ensures the application of the provisions of the 1954 Protocol and has been a tool in cases of illicit exportation of cultural property from the occupied area of the Republic.

The export of cultural property from the territory of the **Czech Republic** is governed by laws which do not differentiate between times of peace, war or occupation. Act 20/1987 of the Collection of Laws regulates the export of movable cultural items that have been declared cultural heritage or national cultural heritage, and provides sanctions for violations. Act 71/1994 of the Collection of Laws deals with the permanent exportation of movable cultural property that has not been declared cultural heritage or national cultural heritage, is not an inventoried museum collection or archival object from such collections, was not brought to the Czech Republic for temporary use, and is not a piece of art by a living author. This Act likewise provides sanctions for breach. The protection of museum collections was legislated by Act No. 122/2000 of the Collection of Laws on the Protection of Museum Collections, which enumerates the conditions for legal export of museum collection items and sets sanctions for its violation.

In **Estonia**, the return of cultural objects unlawfully removed from the territory of a European Union member state is regulated by the Act on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State of the European Union, passed on 11 June 2003, which was harmonized with European Council Directive 93/7/EEC.

Under the **Finnish** Act (1135/94) ratifying the Convention – which also covers the implementation of its First Protocol – cultural property, as defined in the Act, may be confiscated and returned to its original owner. The National Board of Antiquities is the expert authority on defining cultural property. Finland is also party to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

In the Criminal Code of **Former Yugoslav Republic of Macedonia**, Article 53 of the Law on Protection of Cultural Heritage defines that the cultural heritage that has been stolen from museums, religious and similar public facilities or institutions on the territory of another state must not be imported, in conformity with the 1970 Convention on the Means of Prohibiting and

Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, to which the FYROM is a party. In furtherance of this legislation, Article 266 proscribes the 'exportation abroad of objects under temporary protection or cultural heritage or natural rarities.' Article 266(a) sentences anyone who sells, gives as a present, or in any other way transfers cultural heritage of special importance in state ownership, to one to five years imprisonment. And finally, Article 266(b) sentences anyone who imports movable cultural heritage stolen from museums, religious and similar public buildings or institutions on the territory of another state, to one to ten years imprisonment.

The protection of cultural property during export has long been covered by special provisions in **France**. The European Community Regulation of 1992, codified under reference 116/2009 of 18 December 2008 (harmonizing the rules of all Member States for monitoring the export of cultural property to third-party countries), is implemented and provides for the issue of export permits.

Furthermore, as part of the monitoring of cultural property leaving national territory, France has also introduced export authorizations (certificates) under Articles L. 111-2 to L. 111-7 of the Heritage Code and decree No. 93-124 of 29 January 1993 (amended). This provision enables the relevant authorities to be more attentive to the protection of cultural property coming from other States that may have been illegally trafficked or stolen. It may also be applied to special monitoring during wartime.

In addition, Directive No. 93/7 of 15 March 1993 of the Council of the European Communities on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State implements inter-State cooperation mechanisms and imposes the creation of a central authority by States.

The Central Office for the Fight Against Trafficking in Cultural Goods (OCBC), under the oversight of the Ministry of the Interior, has been designated as the central authority for such matters. It is in charge of implementing the claims and restitution procedures as well as conservation measures for national treasures unlawfully moved from the territory of one Member State to that of another. Though confined to the Community level, this system, transposed into national law, may be considered as a translation of the restitution obligation provided for by the 1954 Convention, by enabling the institution of legal proceedings to claim full ownership before French courts.

Restitutions are part of the broader framework of the fight against the illicit trafficking of cultural property. Strong international cooperation exists, based in particular on the 1970 Convention. Specific controls are performed on the trade of cultural property to prevent the trafficking of stolen objects; all professionals are therefore checked through the use of a police register which they shall keep. Under the 2008 Act on Archives, aggravating circumstances must be recognized in cases of stolen cultural property and the penalty would accordingly be substantially increased.

In **Greece**, Law no. 3028/2002, Article 34 provides for the prohibition of exporting cultural property from Greek territory. Article 63 of this law includes penal sanctions for the illegal removal of cultural objects from the territory of another state pursuant to international conventions approved and in force in Greece or under the legislation of the European Union (Article 65).

Iran (Islamic Republic of) will restore to the country of origin all illegally imported cultural and historical property belonging to other countries. This has particularly been the case for Afghanistan and Kuwait.

The **Japanese** Constitution does not provide for Japan's occupation of the territories of other countries. Its Law for the Protection of Cultural Property in the Event of an Armed Conflict prohibits the unapproved importation of such cultural properties, and makes any person who destroys, delivers or receives such cultural properties punishable by imprisonment or fine.

The laws and regulations of **Latvia** include a requirement to return displaced cultural property to the state from which it was removed. Article 18.2 of the Culture Monument Protection Law provides for the possibility of submitting an appeal for illegal removal of arts and antiquities no later than one year from the date when the location, owner, manager or possessor of the property in question becomes known. Return of unlawfully removed items of art and antiquities is also subject to the procedures laid down in the Cabinet of Ministers Regulation 526, Recovery of Illegally Removed Arts and Antiquities, of 16 September 2003.

Lithuania has never occupied any country or part of a country's territory; the provisions of the 1954 First Protocol concerning the export of cultural heritage from occupied territories and their return to the territories of such countries is therefore not applicable.

Monaco does not maintain its own military forces and the circumstances foreseen by the First Protocol are therefore not specifically applicable. Similarly, the Principality applies European Union Customs regulations; Customs checks are carried out in Monaco by French Customs services, which consequently control the imports and exports of cultural property on the Principality of Monaco's territory.

With a view to a duty of memory, and wishing to shed full light on the spoliation of the property of persons living in Monaco during the Second World War, His Serene Highness Albert II established on 1 March 2006 an independent Commission to assist claimants in the search for their property. The purpose of this National Commission was to examine claims for compensation made by individuals on behalf of deportation victims or their successors for material or financial damages following the spoliation of their property in Monaco during the occupation of the Principality in the Second World War.

The Monegasque Government has moreover requested from France the assistance of the Commission for the Compensation of Victims of Spoliation in order to be able to extend their research where appropriate.

Any expropriation or dispossession of movable or immovable property, or of rights thereto, unduly carried out on Monegasque territory, under duress or subsequent to arrest, impoundment, confiscation or deportation, constitutes spoliation. This decision affirms the commitment to transparency and ethics desired by Prince Albert II for his country.

In 2007, the **Netherlands** adopted the Cultural Property Originating from Occupied Territory (Return) Act.³¹ With this Act, the (First) Protocol of the Hague Convention was implemented in Dutch Law. The Protocol includes obligations which necessitated the drafting of statutory rules for the return of cultural objects taken from occupied territory. In a brochure 'Import and Export of Cultural Property', published in March 2010, information has been included on the prohibition of import or of possession of cultural property from a territory occupied during an armed conflict that was taken after 1959 (the year the Netherlands became a Party to the Protocol).

The **Norwegian** Cultural Heritage Act §§ 23(a)-(f) are targeted at the situation described by the 1954 (First) Protocol, and were legislated in connection with Norway's ratification of the 1995 UNIDROIT Convention.

Poland implemented internal regulations to protect historical objects and buildings through the Act of 23 July 2003 on historical objects and buildings and the protection of historical objects and buildings (Dz.U. No 62, item 1568, as amended).

³¹ Official full title in English: Act of 8 March 2007 containing rules on the taking into custody of cultural property from an occupied territory during an armed conflict and for the initiation of proceedings for the return of such property; the title in Dutch: Wet tot teruggave cultuurogoderen afkomstig uit bezet gebied.

In **Saudi Arabia**, the Sector of Antiquities and Museums (within the Saudi Commission for Tourism and Antiquities) collaborated with Security forces to prevent entry of antiquities from countries in conflict with the Kingdom of Saudi Arabia. If the Sector receives such antiquities, it returns them to the country of origin.

In **Slovakia**, law 416/2002 was enacted to prevent the export of cultural property.

There is no record of **Spain** having been involved in cases of exportation of cultural property in a territory occupied by it. The Spanish State security forces have specialist units monitoring illicit trafficking in cultural property (the Historical Heritage Investigation Brigade of the National Police and the Historical Heritage Group of the Civil Guard).

Switzerland has no provisions in this regard.

Turkey became party to the Convention and its First Protocol at the same time, and their provisions are included in Law No. 563. The movable cultural and natural property that must be preserved inside the country cannot be removed beyond its borders, according to the National Law on Conservation of Cultural and Natural Heritage (Law No. 2863).