

**Final Report of the Round table discussion of  
the Committee for the Protection of Cultural Property in the Event of Armed Conflict  
(UNESCO Headquarters, 29 April 2011)**

1. Following the request of the fifth Meeting of the Committee (UNESCO Headquarters, 22 - 24 November 2010) for "... the Secretariat to organize in spring 2011 an expert meeting as referred to in the Report of the Bureau to the Committee CLT-10/CONF/204/7", a round table discussion was convened by the Secretariat at UNESCO Headquarters on 29 April 2011.
2. The essential purposes of the round table were:
  - to continue the talks of the last informal meeting of the Bureau on 3 September 2010 regarding the establishment of a predictable assessment practice to evaluate compliance with the condition of "greatest importance for humanity" (as set forth in Article 10(a) of the Second Protocol) for non-World Heritage sites (including moveable cultural property) submitted for the granting of enhanced protection;
  - to establish a predictable assessment practice to evaluate compliance with the condition of "adequate domestic legal and administrative measures" (as set forth in Article 10(b) of the Second Protocol), including due consideration of the property submitted for the granting of enhanced protection in military planning and military training programmes; and,
  - to collaborate in disseminating provisions of the Second Protocol, including the possible development of a military training manual and joint initiatives to raise awareness of the enhanced protection system.
3. All twelve Committee members (Argentina, Austria, Cyprus, Finland, Greece, the Islamic Republic of Iran, Italy, Japan, Lithuania, the Netherlands, Romania and Switzerland) were present at the round table discussion. Representatives of ICA, ICOM, ICOMOS, ICCROM and ICRC were in attendance as well.

**I. Introduction**

4. The Chairperson welcomed the participants to the round table and presented the programme of the meeting. He informed the participants and observers of the ICRC representative's presentation on the ICRC database on the national implementation of international humanitarian law. He then gave the floor to the Secretariat to provide an update on its activities related to the implementation of the 1954 Hague Convention and its two (1954 and 1999) Protocols with particular emphasis on the protection of Libyan cultural heritage during the recent armed conflict. The Chairperson opened the discussion on the first item - the establishment of a predictable assessment practice to evaluate compliance with the condition of "greatest importance to humanity" (as set forth in Article 10 (a) of the Second Protocol). He concluded by stressing the need to establish some kind of guidance to enable the Committee to

evaluate compliance with the condition of Article 10(a) of the Second Protocol for non-World Heritage property proposed for the granting of enhanced protection. The Chairperson provided the example of the four Azerbaijani non-World Heritage cultural properties submitted for the granting of enhanced protection. Finally, he drew attention to the Finnish paper containing proposals on procedural and substantive aspects of the granting of enhanced protection and offering suggestions regarding awareness-raising and cooperation with NGOs.

## II. Intervention of the Assistant Director-General for Culture

5. Mr Bandarin, the Assistant Director-General for Culture, addressed the meeting. He drew attention to the practical problems related to the management of a huge List of Cultural Property under Enhanced Protection, with reference to the World Heritage List as well as the Representative List of Intangible Cultural Heritage of Humanity and the List of Intangible Cultural Heritage in Need of Urgent Safeguarding established by the 2003 Convention. He then provided two examples of the applicability of the Hague Convention: (1) the recent conflict in Libya; and (2) the conflict between Cambodia and Thailand related to the Temple of Preah Vihear. After specifying the concrete measures taken with regard to Libya, including, among other things, the dispatch of the Director-General's letters to each member of the Coalition engaged in the conflict reminding them of their individual international obligations under the Convention and its two Protocols and under customary international humanitarian law, as applicable, as well as to the United Nations Secretary-General and the Secretary-General of NATO, Mr Bandarin informed the attendees that a UNESCO mission would be dispatched to Libya as soon as the situation allowed. He concluded by reiterating that the Hague Convention was one of the priorities of the Organization and stressed that the Convention carried with it a strong moral message alongside its operational provisions.
6. In responding to a comment by Austria regarding the European Union's operations and the related need for cultural awareness, Mr Bandarin underscored the important point that interventions in cases of armed conflicts are almost never undertaken by a single country; as a result, attention must be given to issues of coordination and exchanges and how they can be improved.
7. During the ensuing discussion, the ICOMOS representative underscored the need to leverage synergy between the Second Protocol Intergovernmental Committee and the World Heritage Committee. In his reply, Mr Bandarin pointed out that the Second Protocol established a new concept of the "highest importance for humanity" and referred to the notion of "outstanding universal value". He then drew attention to two drawbacks of the Second Protocol: (1) the absence of provisions on monitoring; and (2) the absence of criteria to assess the risk of armed conflict that would endanger cultural property. Finally, Mr Bandarin informed the attendees of the forthcoming meeting of the World Heritage Committee (UNESCO Headquarters, 19 – 29 June 2011) and encouraged participants to attend, as discussions will delve into issues that are also of importance for the Hague Convention. When commenting on the statement of Mr Bandarin, the Chairperson noted paragraph 36 of the Guidelines for the Implementation of the Second Protocol as indicating the relationship between the criteria for granting enhanced protection and the criteria met by sites inscribed on World Heritage List. The Chairperson noted as well the contacts between the previous Chairperson of the Committee and the Chairperson of the World Heritage Committee. He also thanked Mr Bandarin for the

Secretariat's action concerning the protection of Libyan cultural property.

8. Italy took the floor and emphasized the need for well-structured emergency plans and specially trained emergency forces, and clear guidelines relating to emergency response. Mr Bandarin agreed and reiterated the importance of disaster-preparedness measures as well as awareness-raising targeted at youths.

**III. The establishment of a predictable assessment practice of the compliance with the condition "greatest importance for humanity" (Article 10(a) of the Second Protocol).**

9. The Chairman opened the discussion on this issue by referring to Article 11(6) of the Second Protocol and invited ICOMOS to make a presentation. ICOMOS provided examples of the step-by-step assessment practices for files of non-World Heritage property, as well as detailed budgetary estimates of such assessment. The proposed assessment practice may be summarized as follows:

- desk review of the final nomination dossiers of such property by two ICOMOS experts (in the event of particularly complicated sites a third review was suggested).
- following the desk review, an ICOMOS panel would consolidate the evaluations and present its findings to the Committee along with a recommendation.

Finally, ICOMOS emphasized the importance of the tentative lists provided for by Article 11 (1) of the Second Protocol.

10. Austria stressed the need for timely distribution of Committee documents before the Committee meeting. It also proposed to hold an informal meeting of the Committee on procedural issues. This request was seconded by Romania. The Chairperson replied that it would discuss these issues with the Secretariat.
11. The ICOM representative provided examples of its activities conducted in its capacity as the Chair of the International Committee of the Blue Shield ("ICBS") in the event of armed conflict or human-made disaster (e.g., Kyrgyzstan, Ossetia and the Middle East) and offered ICOM's expertise in the evaluation requests for the granting of enhanced protection related to museums. She emphasized that museums, too, are part of cultural heritage and should be protected under enhanced protection, provided that they comply with the three conditions of Article 10. The ICOM representative also referred to the ICOM Code of Ethics for Museums. Finally, she referred to the network of the International Committee of the Blue Shield, which might be able to assist in evaluating requests and in implementing awareness-raising efforts.
12. The ICA representative referred to the specificity of evaluation of the compliance of archives with the condition of Article 10(a) of the Second Protocol. To assess such compliance, ICA would adopt a standard approach and start its analysis by evaluating the history, context and integrity of an archive collection. Subsequently, it could develop a specific system for evaluation under the Second Protocol. He went on to propose ICA's assistance in clarifying

the criteria for archives in the Guidelines (cf. paragraphs 34 and 37). Finally, he offered ICA's advice and expertise on archives and related disaster-preparedness, and informed the meeting that a panel of ICA experts has been giving advice on archives for the Memory of the World programme since the creation of the programme in 1992. Italy welcomed ICA's statements and highlighted the importance of a systematic electronic digitalization of archives.

13. The Chairperson concluded the discussion on this issue by identifying three main areas in which NGOs could provide assistance:
  - evaluation of requests for the granting of enhanced protection;
  - provision of expertise to the Committee; and,
  - assistance to States in preparing their applications for the granting of enhanced protection.
  
- IV. **Establishment of a predictable assessment practice to evaluate compliance with the condition "adequate domestic legal and administrative measures" (Article 10(b) of the Second Protocol)**
  
14. The Chairman opened the discussion by referring to the three bullet points of paragraph 39 of the Guidelines and informed the meeting that the Secretariat was preparing a "Report on the obligation of the Parties to implement Chapter 4 of the Second Protocol" for the sixth Meeting of the Committee.
  
15. The ICRC representative took the floor and stated that the ICRC could provide three categories of assistance to the Committee: (1) advocacy for ratification of the Hague Convention and its two Protocols; (2) inclusion of the issue of the protection of cultural property in training programmes for military and police forces; and (3) cooperation with States to facilitate the adoption and integration of international measures that are not self-executing in national legal systems (i.e., through the provision of model laws). In particular, the ICRC could assist in facilitating the transposition into national legislation of non-self-executing criminal provisions of international humanitarian law treaties (e.g. individual criminal responsibility).
  
16. Austria then took the floor. The Austrian representative informed the meeting of the 2010 Directive for the Military Protection of Cultural Property and the Military Safeguarding of Cultural Heritage and drew the attention of participants to the section on "Special features of the protection of cultural property and the military preservation of cultural heritage in peace support operations". He also provided examples of specific cultural protection military exercises.
  
17. The ICOM representative offered to make available their military experts who could provide advice on military manuals.

18. The ICOMOS representative expressed the willingness of ICOMOS to provide support with regard to issues falling within the scope of Article 10 (b), as well as in the field of risk-assessment, peacetime safeguarding measures, establishment of priorities and monitoring. It could also assist States in the preparation of requests for international assistance. She also pointed out that ICOMOS had a network of almost 100 national committees worldwide that could help with awareness-raising strategies. Finally, the ICOMOS representative raised the issue of verification of adequate national measures against negligence and destruction as provided for in the chapeau of paragraph 39 of the Guidelines. She stressed the practical difficulty in verifying whether such framework was actually being applied and how the Committee might verify its effectiveness. In his reply, the Chairperson emphasised that it is important for the Committee that a proper legislative framework is in place, at least on paper and then stressed the difficulties associated with the actual verification of such legislative frameworks and concluded that in this context good faith is an important guideline.
19. Switzerland informed the meeting of a map for soldiers marking important cultural sites and stated that it was in the process of preparing a request for the granting of enhanced protection.

#### **V. Presentation of the ICRC Database on the National Implementation of International Humanitarian Law**

20. The ICRC representative then gave a presentation on the ICRC National Implementation Database. This Database is an open database storing information on several international agreements, including the Hague Convention and its two Protocols, that enables the comparison between legislation implementing the Hague Convention in different countries. Information can be accessed and sorted based on country, treaty or topic; a search for legislation related to “cultural property” can also be performed to filter unrelated results; the database provides a search by key-word capability, which enables a direct cross-comparison between different legislative provisions.
21. He went on to explain that the data came from five different sources: ICRC regional legal advisors, national societies of legal advisors, courts or other adjudicative bodies of States, national websites and inter-ministerial committees on international humanitarian law. The database is maintained in English with original texts in French and Spanish. Some countries provide their legislation directly in English, otherwise official translations are taken from other databases (i.e. EU databases) and in some cases, unofficial translations by ICRC staff are used.
22. The ICRC representative then explained the practical difficulties linked to the translation of complex legal provisions into French and Spanish and indicated that this option was not retained. He also stressed the paramount importance of updating the Database to keep it a reliable and relevant tool.
23. Finally, the ICRC representative highlighted three primary considerations: (1) human resources (one full-time legal assistant in charge of maintaining and updating the ICRC Database); (2) technical aspects (creation of the software by ICRC’s IT services); and (3) the need to leverage

synergy between existing UNESCO databases, the ICRC Database, and the potential UNESCO database on the national implementation of the Second Protocol.

## **VI. Disseminating provisions of the Second Protocol and joint awareness-raising initiatives**

24. Following the update by the Secretariat on its awareness-raising activities such as the availability of the Information Kit on the Hague Convention in five languages (a version in Russian is currently being prepared) and the preparation of the French version of the article-by-article commentary on the Second Protocol, the Chairperson opened the floor.
25. The ICCROM representative informed the meeting of a six-week course on “First Aid to Cultural Heritage in Times of Conflict”, organized in cooperation with the Italian Ministry of Culture, aimed at training cultural heritage workers in on-the-ground intervention during a cultural emergency. She proposed dissemination of information about the Hague Convention and its two Protocols as part of the course and stressed the importance of dissemination and awareness-raising through social media and targeted crowd-sourcing. She concluded by referring to the development of case studies to be published on the Internet and proposed to develop a code of ethics for intervening in cultural heritage operations.
26. The ICOM representative provided examples of its activities aimed at the implementation of the 1970 Convention and offered to vigorously promote the ratification of the Hague Convention and its two Protocols, to prepare and update inventories and to encourage the wide use of the Object-ID system. The Object-ID system could provide useful guidance for the preparation and regular update of such inventories. She also emphasized the efficiency of the “Red List” of cultural objects in the fight against illicit traffic in cultural property and suggested that a similar global tool be created to promote the Hague Convention and its two Protocols. Finally, she offered to share the experience gathered with museum emergency programs by developing case studies.
27. The ICA representative stressed the role of national Blue Shield Committees in promoting ratification of the Hague Convention and its two Protocols and called for closer cooperation between the Secretariat and existing Blue Shield Committees.
28. The ICRC representative offered the ICRC’s assistance in providing legal assistance in the implementation of international humanitarian law and practical training on national implementation. He put emphasis on the training of security and other armed forces.
29. The ICOMOS representative proposed a directed focus on young people, capacity-building and the development of basic guidelines and case studies. Finally, she stressed the role of modern social networks and the importance of disseminating information through them.

30. In the ensuing discussion, Italy underscored the importance of coordinating the work of emergency-response forces in emergency situations and the need to coordinate training of different actors such as the military, fire-fighters, archaeologists, historians and archivists in order to create the necessary synergies.
  
31. The Chairperson concluded the meeting by thanking the participants and observers and invited the relevant organizations to provide written contributions summarizing and detailing the comments and proposals they had made at this round table discussion. Written contributions received from ICRC, ICA, ICOM and ICOMOS are attached in Annex.

**Research Briefing concerning the International Committee for the Red Cross**  
**“National Implementation Database”**

The International Committee for the Red Cross (hereafter “ICRC”) maintains an online database that provides documentation and commentaries concerning the implementation of international humanitarian law at the national level. The content is drawn from information available to the ICRC Advisory Service on International Humanitarian Law. It focuses on domestic measures of implementation relating to 28 treaties, including the 1954 Hague Convention and its Additional Protocols.

The database allows search by *treaty*, by *country* and by *keywords*.

The database is arranged into 42 substantive areas (“keywords”) of international humanitarian law. Under the keyword “cultural property”, the database provides information on the implementing laws and regulations of 42 countries<sup>1</sup>, the majority of which are criminal, penal, or military codes. Of the 42 countries with legislation appearing in this database, 40 are High Contracting Parties to the 1954 Hague Convention<sup>2</sup>, 35 to the 1954 (First) Protocol<sup>3</sup>. 22 are party to the Second (1999) Protocol<sup>4</sup>.

The database also contains case law related to the damage or destruction of cultural property for one State, Croatia, who is party to the 1954 Hague Convention and both its (1954 and

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<sup>1</sup> Venezuela and Venezuela (Bolivarian Republic of) are listed separately but considered as one country in this briefing.

<sup>2</sup> Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Burkina Faso, Cameroon, Chile, Colombia, Costa Rica, Czech Republic (the), Egypt, France, Georgia, Germany, Honduras, Indonesia, Italy, Japan, Kyrgyzstan, Mali, Mexico, Netherlands (the), Nigeria, Norway, Peru, Poland, Portugal, Russian Federation (the), Senegal, Spain, Sri Lanka, Sweden, Switzerland, United Republic of Tanzania (the), Venezuela (Bolivarian Republic of), and Yemen.

<sup>3</sup> Albania, Argentina, Armenia, Austria, Azerbaijan, Belarus, Belgium, Burkina Faso, Cameroon, Chile, Colombia, Costa Rica, Czech Republic (the), Egypt, France, Georgia, Germany, Honduras, Indonesia, Italy, Japan, Mali, Mexico, Netherlands (the), Nigeria, Norway, Peru, Poland, Portugal, Russian Federation (the), Senegal, Spain, Sweden, Switzerland, and Yemen.

<sup>4</sup> Argentina, Armenia, Austria, Azerbaijan, Belarus, Belgium, Chile, Colombia, Costa Rica, Czech Republic (the), Egypt, Georgia, Germany, Honduras, Italy, Japan, Mexico, Netherlands (the), Nigeria, Peru, Spain, and Switzerland.



1999) Protocols. The case, *Prosecutor v. M. P. et al.*, Zadar District Court, 24 April 1997, involved the sentencing of 19 persons in absentia for charges that included, amongst others, massive attacks on civilians, causing many casualties, and on civilian and cultural property.

**Table Ronde, Comité pour la protection des  
biens culturels**

**The ICRC Database on National  
Implementation and the adoption  
of domestic legislation**

Antoine Bouvier, ICRC Geneva

Paris, April 29, 2011



**ICRC**

## Outline of the presentation

- ▶ 1. Accessing the ICRC database on national implementation
- ▶ 2. Toward a new approach in the processing of national implementation measures
- ▶ 3. Some information about the collection of documents and the maintenance of the database



# Introduction

- ▶ Open source, part of ICRC website
- ▶ Focus on 28 treaties
- ▶ National legislation (195 States) + domestic and international cases (+/-50 states)
- ▶ Information by country/treaty/keyword
- ▶ Language: English (with original texts in French and Spanish)





# 1. Legislation and Case-law



### NOTE

This database provides documentation and commentaries concerning the implementation of international humanitarian law at the national level. The number of States included The steadily increase over time. Information available to the IJRC Advisory Service on possible approaches to incorporating IHL in national legislation but does not seek to provide a comprehensive picture of the situation. English is used throughout the database (apart from official texts in French and Spanish, which appear in the original language). Any comments on the database are welcome and should be sent to: International Committee of the Red Cross Advisory Service on IHL, CH-1202 Geneva Switzerland  
e-mail: [advisoryservice\\_rya@icrc.org](mailto:advisoryservice_rya@icrc.org)

### AVERTISSEMENT

Cette base de données contient des textes et des commentaires relatifs à la mise en œuvre nationale du droit international humanitaire. Le nombre d'États couverts augmente progressivement. L'information disponible au Service consultatif en droit international humanitaire du CICR, il est possible de le faire en œuvre nationale ou en droit d'un État des lieux qui se La langue utilisée est l'anglais (à l'exception des textes officiels en français ou en espagnol, qui figurent en version originale). Toute remarque sur la base de données et le contenu de celle-ci peut être adressée à: Comité international de la Croix-Rouge Service consultatif en DIH, CH-1202 Genève Suisse  
e-mail: [advisoryservice\\_rya@icrc.org](mailto:advisoryservice_rya@icrc.org)

### NOTA

Esta base de datos contiene textos y comentarios relativos a la aplicación del derecho internacional humanitario a nivel nacional. El número de Estados que abarca aumentará progresivamente. Información disponible al Servicio de Asesoramiento en Derecho Internacional Humanitario del CICR, es posible hacerla en la legislación nacional sin pretender así exhaustiva en la materia. El idioma empleado es el inglés (con excepción de los textos oficiales en español y francés, que figuran en versión original). Agradecemos toda observación sobre esta base de datos, que podemos enviar a: Comité Internacional de la Cruz Roja Servicio de Asesoramiento en DIH, CH-1202 Ginebra Suiza  
correo electrónico: [advisoryservice\\_rya@icrc.org](mailto:advisoryservice_rya@icrc.org)

# 1. By Country

The screenshot shows an Internet Explorer browser window with the address bar displaying <http://www.gvalyzr.cpv/fh-net/WeblAW/OpenView>. The browser's title bar reads "International Implementation Law - and Regulations - Windows Internet Explorer".

The website content includes a navigation menu on the left with the following categories:

- GENERAL COMMENT
- IMPLEMENTING LAWS & REGULATIONS
  - by State
  - by keyword
- NATIONAL CASE LAW
  - by State
  - by keyword

The main content area displays a hierarchical menu structure:

- INTERNATIONAL HUMANITARIAN LAW
  - NATIONAL IMPLEMENTATION
    - Implementing Laws & Regulations - by State

Below the menu, a list of countries is provided, each preceded by a right-pointing arrow:

- ▶ Afghanistan
- ▶ Albania
- ▶ Algeria
- ▶ Andorra
- ▶ Angola
- ▶ Antigua and Barbuda
- ▶ Argentina
- ▶ Armenia
- ▶ Australia
- ▶ Austria
- ▶ Azerbaijan
- ▶ Bahamas (the)
- ▶ Bangladesh
- ▶ Barbados
- ▶ Belarus
- ▶ Belgium
- ▶ Belize
- ▶ Benin
- ▶ Bolivia
- ▶ Bosnia and Herzegovina
- ▶ Botswana
- ▶ Brazil
- ▶ Brunei Darussalam
- ▶ Bulgaria
- ▶ Burkina Faso
- ▶ Burundi
- ▶ Cambodia
- ▶ Cameroon
- ▶ Canada
- ▶ Cape Verde
- ▶ Central African Republic (the)
- ▶ Chad
- ▶ Chile
- ▶ Colombia
- ▶ Comoros (the)

The browser's status bar at the bottom shows "Local Internet Options" and "100%".

# 1. By keyword

International Humanitarian Law - National Implementation - Laws and Regulations - Windows: Internet Explorer

File Edit View Favorites Tools Help

http://www.gva.krc.gov.pl/pl-rac/ne/Web/AWZ/OpenView

International Humanitarian Law - National Implementation

INTERNATIONAL HUMANITARIAN LAW

NATIONAL IMPLEMENTATION

Implementing Laws & Regulations - by Keyword

ALL

GENERAL COMMENT

IMPLEMENTING LAWS & REGULATIONS

by State

by keyword

NATIONAL CASE LAW

by State

by keyword

- ▶ BIOLOGICAL WEAPONS
- ▶ CHEMICAL WEAPONS
- ▶ CHILDREN IN ARMED CONFLICT
- ▶ CIVIL DEFENCE
- ▶ CLUSTER MUNITIONS
- ▶ COMMAND RESPONSIBILITY
- ▶ COMPENSATION
- ▶ CONSTITUTION
- ▶ CRIME AGAINST HUMANITY
- ▶ CULTURAL PROPERTY
- ▶ DISSEMINATION
- ▶ EMBLEM
- ▶ EXTRA-TERRITORIAL JURISDICTION
- ▶ EXTRADITION
- ▶ GENOCIDE
- ▶ GRAVE BREACH
- ▶ HI
- ▶ INTERNATIONAL CRIMINAL COURT
- ▶ INTERNATIONAL TRIBUNALS
- ▶ JUDICIAL GUARANTEES
- ▶ LANDMINES
- ▶ METHOD AND MEANS OF COMBAT
- ▶ MISSING
- ▶ NATIONAL COMMITTEE
- ▶ NATIONAL SOCIETY
- ▶ NON-INTERNATIONAL ARMED CONFLICT
- ▶ PENAL CODE
- ▶ PRISONER OF WAR
- ▶ PROTECTED PERSON
- ▶ STATUTORY LIMITATIONS
- ▶ SUPERIOR ORDER
- ▶ WAR CRIME

INTERNATIONAL HUMANITARIAN LAW

NATIONAL IMPLEMENTATION

Local Internet

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10:58



# 1. By keyword

The screenshot shows a web-based legal research interface. At the top, a search bar contains the text "National Implementation of Laws & Regulations by Keyword: Lotus Notes". Below the search bar, there are several tabs and a list of search results. The main content area displays a tree view of search results under the heading "NATIONAL CASE LAW".

**GENERAL COMMENT**

- ALL
- IMPLEMENTING LAWS & REGULATIONS
  - by States
  - by keyword
- NATIONAL CASE LAW
  - by States
  - by keyword

**SEARCH RESULTS:**

- ▶ GENOCIDE
  - ▶ GRAVE BREACH
    - ▶ Argentina
      - ▶ Code of Military Justice, 1961 (extracts)
      - ▶ Art. 7/6 (Offences against prisoners of war, parlementaires, medical and cultural objects, etc. . . )
      - ▶ Law No 26.200 on the implementation of the ICC Statute Attachment
    - ▶ Armenia
      - ▶ Geneva Conventions Act 1957
      - ▶ Part II.—Punishment of offenders against the Conventions and Protocol I (Repeated)
      - ▶ Part III.—Legal proceedings in respect of protected persons [Replication of Same Conflict]
      - ▶ Attachment
    - ▶ Australia
      - ▶ International Criminal Court (Consequential Amendments) Act 2002 Attachment [Text]
- ▶ Azerbaijan
  - ▶ Azerbaijan
- ▶ Bahrain
  - ▶ Bahrain
- ▶ Bangladesh
  - ▶ International Crimes (Tribunals) (Amendment) Act 2009
  - ▶ 1973 International Crimes Act
- ▶ Barbados
  - ▶ Barbados
- ▶ Belarus
  - ▶ Belarus
- ▶ Belgium
  - ▶ Law of 16 June 1993 relative to the repression of serious violations of international humanitarian law, as amended (abrogated)
  - ▶ Law of 16 June 1993 relative to the repression of serious violations of international humanitarian law as amended (abrogated)
  - ▶ Penal Code (extracts)
- ▶ Bosnia and Herzegovina
  - ▶ Law on Implementation of the Rome Statute of the ICC and Cooperation with the ICC Attachment
  - ▶ The Criminal Code of Bosnia and Herzegovina, 2003 Attachment
- ▶ Botswana
  - ▶ Geneva Conventions Act, 1970 [Text]
- ▶ Brazil
  - ▶ Brazil
- ▶ Burkina Faso
  - ▶ Burkina Faso
- ▶ Cameroon
  - ▶ Cameroon
- ▶ Canada
  - ▶ Crimes Against Humanity and War Crimes Act
  - ▶ Geneva Conventions Act
  - ▶ Geneva Conventions Act, 1965
  - ▶ National Defence Act
- ▶ China
  - ▶ Law No 20357 on Crimes Against Humanity, Genocide and War Crimes, 2009
  - ▶ China: China, China

# 1. Summary

Implementing Laws and Regulations Introduction Crimes Against Humanity and War Crimes Act - Windows Internet Explorer

http://www.icc.org/la-nr/1644d356c3025594125673e4d0508143169f4c563be68b27141256949003401370c9andDocument

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Implementing Laws and Regulations : Introduction - C...

## INTERNATIONAL HUMANITARIAN LAW NATIONAL IMPLEMENTATION



### IMPLEMENTING LAWS AND REGULATIONS : INTRODUCTION

Canada

Title:

Crimes Against Humanity and War Crimes Act

Adopted on:

29.06.2000

Entry into force:

23.10.2000

Source: Statutes of Canada 2000, Chapter 24

Complete title: "An Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts"

Summary:

This Act relates to the implementation of the Rome Statute of the International Criminal Court (ICC). Its twofold objective is to allow full cooperation with the ICC in matters of investigation and prosecution and to increase national capacity to prosecute and punish alleged perpetrators of genocide, crimes against humanity and war crimes, including on the basis of universal jurisdiction.

The Act consolidates the offences of genocide, crimes against humanity and war crimes in national law, and extends the liability of military and civilian superiors to cover negligence in the command and control of subordinates that resulted in failure to prevent the commission of such offences. The Act also modifies federal laws on extradition and judicial cooperation, in order to comply with the obligations laid down in the Statute of the ICC.

Date

START



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# 1. Digital copy

International Humanitarian Law - National Implementation - Laws and Regulations - Windows Internet Explorer

Address: <http://www.icrc.org/dhl-noi.nsf/Web/LAW/OpenlaweStat.e1a1Court-3006?xand=173.171.#173.17.1>

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International Humanitarian Law - National Implementation

- ▶ Tunisia
- ▶ Turkey
- ▶ Turkmenistan
- ▶ Uganda
  - ▶ Constitution of the Republic of Uganda (Consolidated version of 2005)
  - ▶ Geneva Conventions Act, 1964
  - ▶ The Penal Code (Exclusive Use of the Red Cross and Red Crescent Emblems) Order, 1993 (under section 165 of the Penal Code)
  - ▶ The Penal Code Act (exclusive use of the red cross emblem) instrument, 1988
  - ▶ Police Act, Cap 303, 1984
  - ▶ The Evidence Act (Cap 8)
  - ▶ Anti-Terrorism Act, Act 14, 2002
  - ▶ Police (Amendment) Act, Act 15, 2006
  - ▶ The Trial on Indictments Act (Cap 23)
  - ▶ National Resistance Army Statute, 1992
  - ▶ The Uganda Peoples' Defence Forces Act, Act 7, 2005
  - ▶ Firearms Act, Cap 289, 1978
  - ▶ The Uganda Peoples' Defence Forces (Arms, Ammunition And Equipment Ordinarily The Monopoly Of The Defence Forces) Regulations, No 13, 2006
  - ▶ Red Cross Act, 1964
  - ▶ Births and Deaths Registration Act 1973 (Ch 309)
  - ▶ Children Act 1997
  - ▶ The International Criminal Court Act, 2010
  - ▶ Introduction
  - ▶ Attachment
- ▶ Ukraine
- ▶ United Arab Emirates (the)
- ▶ United Kingdom of Great Britain and Northern Ireland (the)
- ▶ United Republic of Tanzania (the)
- ▶ United States of America (the)
- ▶ Uruguay
- ▶ Uzbekistan
- ▶ Vanuatu
- ▶ Venezuela (Bolivarian Republic of)
- ▶ Viet Nam
- ▶ Yemen
- ▶ Zambia
- ▶ Zimbabwe

INTERNATIONAL HUMANITARIAN LAW

NATIONAL IMPLEMENTATION

100% 17/44

# 1. Digital copy

INTERNATIONAL CRIMINAL COURT ACT 2006

State: Ireland  
Law or Regulations: International Criminal Court Act 2006

Attachment

INTERNATIONAL CRIMINAL COURT ACT 2006.pdf

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INTERNATIONAL CRIMINAL COURT ACT 2006

Number 30 of 2006

ARRANGEMENT OF SECTIONS

PART 1  
PRELIMINARY AND GENERAL

Section

1. Short title.
2. Interpretation (general).
3. Interpretation by courts of Act and Statute.
4. Requests by International Criminal Court.
5. Expenses.

# 2. Classification by Treaty

IHL - NEW Admin List Lotus Notes

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- 1 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949
- 1 Geneva Convention (IV) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949
- 10 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 10 April 1972
- 11 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively injurious or to have indiscriminate Effects, 10 October 1980
- 11 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively injurious or to have indiscriminate Effects, 10 October 1980 Amendment article 1, 21 December 2001
- 11 Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1985
- 11 Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention), 28 November 2003
- 11 Protocol on Non-Detectable Fragments (Protocol O), 10 October 1990
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- 11 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1998 (Protocol II to the 1980 Convention as amended on 3 May 1998)
- 11 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), 10 October 1980
- 12 Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, 13 January 1993
- 13 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997 (Ottawa Treaty)
- 14 Convention on Cluster Munitions, 30 May 2008
- 2 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
- 3 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
- 4 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005
- 5 The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954
- 5 The Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954
- 5 The Hague Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1989
- 6 Convention on the Rights of the Child, 20 November 1989
- 6 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000
- 7 Rome Statute of the International Criminal Court, 17 July 1998

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### 3. Some information about the collection of documents and the maintenance of the Database

- ▶ **Collection of documents:**
  - ICRC Regional Legal Advisers
  - National Societies Legal Advisers
  - Documents sent by States, Courts or via the Depositories
  - Active search on the web

**NB: no formal/systematic letters sent to States!**



3. Some information about the collection of documents and the maintenance of the database

▶ Maintenance of the database

- ▶ Human resources: 1 full time legal assistant to update and exploit the DB (28 treaties)
- ▶ Very low costs for software
- ▶ Long-term commitment: A database that is not systematically updated is irrelevant and unused!
- ▶ Policy of translation of treaties must be very carefully studied







CICR

▶ Thank You!



## **Hague Convention (1954) and the 2nd Protocol (1999) for the Protection of Cultural Property in the Event of Armed Conflict: Position of the International Council on Archives**

ICA is very grateful to have been given the opportunity to put forwards its view at the Informal Meeting of the Bureau of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, which took place at UNESCO HQ, Paris, on 29 April 2011.

### **Background**

On 9 June 1948 the International Council on Archives (ICA) was established at UNESCO as the international Non Governmental Organization which advances the cause of archives and archivists on the world stage. Today it has a worldwide network of approximately 1,400 institutional and individual members covering 195 countries and territories. It has worked closely with UNESCO on producing a wide range of publications and it has developed important professional standards that are recognized internationally. Today its main objectives are to raise awareness of the importance of effective records and archives management for democratic accountability; to harness the use of new technologies, so that archives continue to be preserved and are made available to the widest possible audiences via the Internet; and to build capacity in the profession, so that archivists can meet the challenges of globalization.

The preservation of archives lies at the heart of ICA's mission and we are currently developing a global Emergency Response Management Programme. Training workshops have already taken place in the Caribbean and Benin, and another is being planned in Vietnam later this year.

More information about ICA is available on our website: <http://www.ica.org/>

### **The Blue Shield Network**

ICA was a founder member of the International Committee of the Blue Shield (ICBS) in 1996, together with IFLA, ICOM and ICOMOS. Its members participate in National Blue Shield Committees (about 40 have been created or are under construction so far), so that coordinated measures are taken in association with other professionals, civilian administrators and military authorities, for the protection of cultural property in the event of a natural disaster or armed conflict. In those countries where a Blue Shield National Committee does not yet exist, ICA members are encouraged to play a part in setting one up.

More information about the Blue Shield is available on its website: <http://www.ancbs.org/>

### 'Enhanced Protection' under the 2<sup>nd</sup> Protocol of The Hague Convention

Archives matter enormously in the functioning of any society. People need to have access to vital records (of births, marriages and deaths) in order to prove their identity. Legal records include information about entitlements not obtainable elsewhere. Public administration and private companies cannot function without efficient record-keeping. If records of enduring historical value are not permanently preserved, then the result is a permanent loss of social memory. That is why ICA supports a wide range of initiatives to protect vulnerable archives from damage and destruction.

ICA stands ready to make its pool of expert volunteers available to help with the implementation of the provisions of 2<sup>nd</sup> Protocol relating to enhanced protection. At the outset ICA members based in a particular country could offer advice to their governments about which documents could be considered as of 'greatest importance for humanity', when requests for 'enhanced protection' are being prepared.

ICA notes that, once these requests are received by UNESCO, 'the Committee should ask the advice of governmental and non-governmental organizations, as well as of individual experts' [Art. 11.6 of the 2<sup>nd</sup> Protocol]. This point is reinforced in the Guidelines as follows: 'the Bureau may consult organizations with relevant expertise for evaluation of the request' [para.47]. ICA has a track record stretching over many years in providing authoritative and impartial advice on applications for inscriptions on the International Register of the Memory of the World, where similar judgments about the significance of documents are made. It would be capable of playing this role in relation to requests for 'enhanced protection', if it was to be asked to do so.

ICA would also be pleased to use its communications tools and global network in order to publicize the Hague Convention, the 2<sup>nd</sup> Protocol, and in particular the provisions relating to enhanced protection. This key issue could feature more prominently on its website and could also be highlighted in an extended article in the newsletter sent to all members. In addition, it could be a subject for consideration at the meetings of its regional branches (of which ICA has thirteen), its Annual Conference and four-yearly Congresses (which can attract well over 2,000 participants). It could provide the main theme for a future International Archives Day, organized every year on 9 June. It could organize other awareness-raising sessions, possibly in co-operation with its Blue Shield partners.

### Resources for the Implementation of The Hague Convention and the 2<sup>nd</sup> Protocol

ICA is willing to play its part in increasing capacity for the implementation of The Hague Convention and the 2<sup>nd</sup> Protocol. It wishes to pay tribute to the work of the Secretariat at UNESCO which has achieved a great deal on the basis of a very slender resource base. However, these resources urgently need to be increased if the provisions of the Convention are ever to become a reality. In this respect it finds the proposals for the development of a

database interesting but wonders whether external resources could be found to develop this promising idea. This project should not compromise the core work of the Secretariat.

Conclusion

ICA looks forward to the prospect of assisting further as an expert NGO in the implementation of The Hague Convention and its 2<sup>nd</sup> Protocol. It believes that it can do this in a sensitive way that respects completely the prerogatives of the Member States.

**David Leitch**  
**ICA Secretary General**

[leitch@ica.org](mailto:leitch@ica.org)

6 June 2011

## Roundtable informal meeting – ICOM's comments regarding the Second Protocol of the 1954 Convention

### ICOM's actions related to the 1954 Convention

As the leader of the international museum community and the current president of the International Committee of the Blue Shield, ICOM is already dedicated to the protection of cultural heritage in times of armed conflict and human-made disasters. ICOM is leading an integrated approach that implies several actions: monitoring, assessment, preparedness and response.

ICOM's Disaster Relief for Museums Task Force (DRTF) is made up of several experts in the field of heritage protection. Since 2005, ICOM Secretariat and DRTF have monitored 16 natural disasters and 4 wars. On many conflict situations (Kirghizstan, Ossetia, and more recently in Tunisia, Egypt and Lybia), ICOM's team has shown a great ability in investigating, monitoring, assessing and fact-checking, reporting and communicating important information on the situation of museums and other heritage sites. Its work has helped ICOM and its network enhance its expertise in terms of risk anticipation, emergency preparedness and response.

Through its Red Lists, ICOM already focused on many regions and states concerned by conflicts such as Afghanistan with the Red List of Afghanistan Antiquities at Risk published in 2006. Moreover, Emergency Red Lists were published showing the rapidity of ICOM to act in case of unexpected and dangerous events putting cultural objects at risk. Thus, an Emergency Red List of Iraqi Antiquities was launched in 2003 to face the significant lootings in the country and an Emergency Red List of Egyptian Cultural Objects at Risk is currently in preparation.

Recently and from the very beginning of the crisis in Egypt, ICOM rallied a team dedicated to the analysis of the situation. Because of its reactivity and network of experts, ICOM rapidly established a valuable list identifying the thefts in the Egyptian museum and describing the condition of the main archaeological sites of the country.

With its renowned Museum Emergency Programme, ICOM is offering its knowledge and know-how for the implementation of standards and techniques in the area of risk management, emergency plans, professional networking and public awareness-raising. The information gathered by ICOM in emergency situations has proven invaluable to assess the real dangers posed to cultural heritage in case of natural or human-made disaster.

ICOM is implementing an action programme in order to be even more active and effective in the area of the protection of cultural heritage. Through a more inclusive collaboration with ICBS and the use of its regional and international networks, ICOM is improving its ability to offer an adequate, effective and rapid response following any disaster situation.

Through its collaboration with the members of ICBS and its national committees, ICOM always used its communication tools to stress the importance of the 1954 Hague Convention as the main

international judicial tool for the protection of cultural heritage during armed conflict. ICOM is willing to further contribute to the implementation process of the 1954 Convention and its Second Protocol, notably by the promotion of the enhanced protection system.

## **ICOM's contribution to an effective assessment practice**

As one of the main international heritage NGOs, ICOM is already working with UNESCO and other partners for the promotion and the implementation of various international heritage conventions. Understanding how important the implication of the concerned NGOs is in the accomplishment of the Convention's goals, ICOM is ready to offer its expertise through informal intervention to the Committee and the States Parties.

### Advisory to the Committee

Due to its vast network of experts, ICOM could assist the Committee with the definition of the criteria that could grant enhanced protection to a cultural property.

As it is stated in the Article 1 (b) of the Hague Convention, museums are considered as part of the cultural properties that can be subjected to enhanced protection in case of armed conflict, as long as they comply with the conditions of the article 10 (a), (b) and (c) under the Second Protocol. Therefore, ICOM is willing to offer its expertise in the assessment of the compliance of a museum or any related cultural property in order to inscribe it on the "List of Cultural Property under Enhanced Protection". ICOM could notably contribute to the drafting and application of a global guidance and a predictable assessment practice guide about the compliance of museums or related properties to the enhanced protection system. For this purpose, ICOM can rely, among other things, on its *Code of Ethics for Museums* and other standard-setting tools as framework in proposing a global approach.

Given the fact that ICOM is not officially affiliated to The Hague Convention, the technical and financial modalities of its advisory services and expertise participation should be jointly determined with the Committee.

### Offering expertise to the State Parties

The success of the enhanced protection system will be assured through a real collaboration and a mutual understanding from both the Committee and the State Parties about the aims and the mechanism of the Convention system. In order to maintain an effective mechanism that is serving the true objectives of the Convention, the State Parties' proposals will have to fully comply with the conditions of article 10. In this matter, the NGOs that are in close collaboration with the Committee could work with the State Parties in the establishment of their proposal.

Considering that the quality of the assessment is linked to the quality of the dossier, ICOM would be ready to assist the States asking for enhanced protection in the preparation of their requests. Given its renowned practice and expertise, ICOM could help authorities fulfil the required documentation and checklists.

However, ICOM's mandate could hardly go far beyond the evaluation of museum related cultural properties, given that other organisations can offer specific expertise when it comes to other kinds of cultural properties.

#### Assessment practice of the compliance with article 10(b)

Due to its commitment to the preservation of the world's cultural heritage, ICOM strongly encourages any national initiative recognising the value of cultural property and enhancing its protection, as stated in article 10 (b) of the Convention.

As ICOM encourages the ratification of the 1954 Hague Convention, ICOM strongly advocates the implementation of national judicial instruments protecting the cultural assets, notably museums, in accordance with the purpose of the Convention.

ICOM acknowledges any initiative aiming at improving consciousness-raising and practices among members of the military corps regarding the protection of cultural property in case of armed conflicts. In this matter, ICOM supports all the trainings, as well as the publication of directives and manuals dedicated to the protection of cultural property in military planning. ICOM would consequently be willing to work towards the creation of a general military training manual it was formally asked to draft such a manual.

#### Improvement of the guidelines

ICOM considers the development of the guidelines as an important point of the achievement of the Second Protocol. ICOM is ready to participate in their improvement, within the limits of its terms of office. Nevertheless, ICOM underlines that these guidelines should encourage the Committee to further consider the element of risk into the granting of enhanced protection. Taking the risk as a criterion would be a way to set up the differences between The Hague and the World Heritage Convention.

### **Collaboration in disseminating provisions of the Second Protocol**

Due to its willingness to help the 1954 Hague Convention in its search of increased effectiveness and implementation within the State Parties, ICOM would be ready to help the Committee with the implementation of joint initiatives to raise awareness for the enhanced protection system.

Besides, ICOM is ready to use its resources to raise consciousness about the Convention and its framework. In all its disaster and relief related programmes, ICOM, as it is already doing through the Blue Shield Statements it issues, will continue to take great care in underlining the benefits and the usefulness of the Convention. Moreover, ICOM will try to increase the dissemination of information about the use of the Convention and guidance on its implementation through the world museum community.

However, ICOM outlines the fact that any effective awareness-raising and capacity-building programme at the regional or local level should be undertaken along with constructive consciousness-raising actions among the non-member States.

**ICOMOS comments on  
the assessment of properties for enhanced protection  
under the 2<sup>nd</sup> protocol of the Hague Convention  
Working Draft – version 15/07/2010**

There are many differences between the World Heritage (WH) Convention and the 2<sup>nd</sup> Protocol for the Hague Convention but also some similarities: in administering applications/nominations, it will be important to ensure the differentiation between these two UNESCO Conventions, in order to avoid possible confusion as to the status of properties that have been inscribed/listed under one, or the other, or both.

Below are areas where ICOMOS considers further clarification is needed on the evaluation process for the Hague Convention.

**1. Definitions:**

Article 1 of the Hague Convention and Article 1(b) of the Second Protocol define cultural heritage as

- a. *Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;*
- b. *Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);*
- c. *Centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments".*

Article 1 of the World Heritage Convention defines cultural heritage more broadly as:

- *monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;*
- *groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;*
- *sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.*

The key difference between the two conventions, in terms of definitions of cultural heritage, is that the Hague Convention is about monumental heritage, either single monuments or groups of monuments, which may include museums and other repositories of moveable cultural heritage. These are places that could readily be marked to differentiate them for an enemy in times of armed conflict. Extensive sites or cultural landscapes that can be inscribed on the WH List appear to be excluded. On the other hand museums and other repositories of movable cultural heritage are



included and they would not be eligible for WH inscription – at least on the basis of their movable collections.

Thus not all properties on the WH List appear to be immediately eligible for enhanced protection – notwithstanding para 36 of the Guidance, which states that: “It is presumed that the Committee, subject to other relevant considerations, will consider that immovable cultural property inscribed on the World Heritage List satisfies the condition of greatest importance for humanity.”

**The first point that needs clarification is whether extensive sites and cultural landscapes are excluded under the Hague Convention, and if so whether this means that WH sites inscribed as sites or landscapes are excluded under para 36.**

## 2. Evaluation Conditions and Criteria

The guidance to the 2<sup>nd</sup> Protocol sets out the following three conditions that have to be satisfied if a property is to be listed for enhanced protection:

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

ICOMOS will comment only on point (a) and only as it applies to immovable heritage.

In order to satisfy (a) the Guidance sets out three criteria, one or more of which need to be met. These are that the property is:

- Of exceptional cultural significance and/or
- Unique and/or
- Of such importance that its destruction would lead to irretrievable loss for humanity.

The following comments will deal with these criteria separately:

### - *Of exceptional cultural significance*

The Guidance sets out further supplementary criteria that have to be met to satisfy the criteria of exceptional cultural significance. These are that the property

- is an exceptional cultural property bearing testimony to one or more periods of the development of humankind at the national, regional or global level;
- represents a masterpiece of human creativity;
- bears an exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;
- exhibits an important interchange of human achievements, over a span of time or within a cultural area of the world on developments in arts and sciences;
- has a central significance to the cultural identity of societies concerned.

The wording of one of these supplementary criteria is similar to part of one of the six criteria that cultural properties have to satisfy for WH inscription. The other two are very similar as follows:

- (i) represent a masterpiece of human creative genius;
- (ii) exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;

- (iii) bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;
- (iv) be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;

The main differences are that the Hague protocol, although having similar criteria to the WH Convention excludes two of its criteria related to landscape and properties that reflect intangible ideas. These are:

- (v) be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;
- (vi) be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.

On the other hand, it includes the idea of national value for properties reflecting periods of human development and also specifically mentions an exchange of ideas related to science. It also includes the idea of properties that reflect the cultural identity of societies.

Para 36 of the Guidance, states that: "It is presumed that the Committee, subject to other relevant considerations, will consider that immovable cultural property inscribed on the World Heritage List satisfies the condition of greatest importance for humanity."

**The second point that needs clarification is whether WH sites inscribed under criterion (v) or (vi) are considered to be of exceptional cultural significance – even though the criteria under which they were inscribed do not match the Hague supplementary criteria.**

If properties are put forward for enhanced protection based on these supplementary criteria (rather than uniqueness or as a property whose loss would affect humanity), and are not already inscribed as WH sites, then unless they are being put forward as reflecting a national aspect of human development or the cultural identity of societies, their evaluation should be at least as stringent as for WH inscription if confusion is not to follow.

Under the WH Convention a property has to be scrutinized through a comparative analysis to find out whether there is room for it on the List or whether there are other properties out there that are equally good. There is no such requirement under Hague. The issue is therefore how do you judge whether a property is of the greatest importance to humanity (through satisfying one or more of the criteria) when there are no comparisons made with other similar properties?

If the evaluation is not to be as stringent as for WH inscriptions, then properties accepted under one or more of the supplementary criteria and then subsequently not recommended for WH inscription could be seen to be unfairly treated. As such a thorough evaluation is not envisaged within the Hague process, then perhaps certain criteria should be restricted to inscribed sites.

**The third point that needs clarification is whether properties not already inscribed as WHSs should only be considered under the supplementary criteria that relate to national reflection of human development, or the cultural identity of societies, rather than the criteria that mirror WH criteria.**

- **Unique**

A property is said to satisfy this criteria if there is no other comparable cultural property that is of the same cultural significance. The unique character may be deduced from a variety of indicative [supplementary] criteria including:

- a. age;

- b. history;
- c. community;
- d. representativity;
- e. location;
- f. size and dimension;
- g. shape and design;
- h. purity and authenticity in style;
- i. integrity;
- j. context;
- k. artistic craftsmanship;
- l. aesthetic value;
- m. scientific value.

These criteria and the supplementary criteria are very unclear in terms of how the property might be seen to reflect the various values set out in order for it to be considered unique. How can a property that is merely representative be unique? Can a property be considered unique merely because it reflects a certain battle for instance even if nothing is visible or the property has been developed? And how will comparability be judged when no comparative analysis is requested? How will difference in cultural significance be judged – in terms of international significance or will national or local significance suffice?

**The fourth point that needs clarification is what justification a State Party needs to put forward to demonstrate that a property is unique.**

- ***Of such importance that its destruction would lead to irretrievable loss for humanity***  
 The Guidance sets out that this criterion is met if the damage or destruction of the cultural property would result in the impoverishment of the cultural diversity or cultural heritage of humankind.

The degree of impoverishment due to loss would seem to be related to the value of the heritage asset. What is unclear is how the State Party demonstrates the degree of impoverishment without first identifying the value of the asset – and if that is the case presumably the first two criteria would be relevant. If however that is not the case then this needs to be made clear.

**The fifth point that needs clarification is how the State Party is requested to demonstrate the impoverishment of cultural diversity or cultural heritage.**

### 3. Assessment Process:

For WH sites, the evaluation includes a mission to the property to consider protection and management, while the assessment of value (Outstanding Universal Value) is undertaken through Desk Reviews. For enhanced protection, in order to consider appropriate comparisons – see above- it would appear to be necessary for some sort of panel of Advisers, supported by appropriate academics, to consider the dossiers and make recommendations, if any sort of consistency is to be achieved.

Authenticity and integrity are not conditions under the Hague Convention, although the degree to which sites are authentic will have a bearing on their value, and the degree to which the setting of a site is compromised or its proximity to a military target could also impact on its value or appropriateness as a site for enhanced protection.

Currently the forms that State Parties are asked to complete list the criteria and supplementary criteria. In the sample dossiers considered, the text provided by the State Party did not specifically address these criteria or say which of them the property was seen to justify. If a thorough evaluation is to be undertaken, then it would seem to be essential that the nomination fully addresses the relevance of the criteria and identifies which ones the property is seen to meet. Also

as stated above, it would seem desirable if the States Parties were given some guidance as to the level of justification that they need to provide.

**The sixth point that needs clarification is whether applications for enhanced protection need to interrogate all the criteria and say which of the criteria the property is considered to meet.**

## **ICOMOS assessment of Non-WH properties for enhanced protection under the 2<sup>nd</sup> protocol of the Hague Convention**

### **Costing of possible actions – 12 November 2010**

The UNESCO Culture Sector, Section of Museums and Cultural Objects, acting as Secretariat for the 1954 Hague Convention and its two Protocols, asked the ICOMOS Secretariat for indications on possible cost implications of ICOMOS undertaking the assessment of non-World Heritage properties for enhanced protection under the 2<sup>nd</sup> protocol of the Hague Convention – specifically their compliance with Article 10 a. of the Second Protocol, that is the condition of "highest importance for humanity". As set out in the letter received from UNESCO on 19 October, the first assessment could concern 4 non-World Heritage sites from Azerbaijan.

This document responds to this request. It sets out a list of possible actions that could be undertaken for such an assessment, including a study to further define agreed procedures. The document is purposefully not conceived as a detailed or even an estimated budget, but rather as a list of items that could be taken into account when building this budget, should the Committee call on ICOMOS' services and once the tasks required from ICOMOS and the working procedure have been agreed by the Committee. The figures quoted in this document are estimates based on equivalent items in the contract ICOMOS has with the World Heritage Centre for its advisory services under the World Heritage Convention.

Whilst setting out all the possible items that could be considered for such an assessment, ICOMOS is not advocating that the assessment procedure necessarily involve all the steps included and the same level of complexity as the evaluation of World Heritage nominations. At the end of section A. Assessments – ICOMOS suggests what in its view, and based on current information available, would be the minimum requirements to carry out the first round of assessments in the context of the 2<sup>nd</sup> Protocol

#### **A. Assessments**

##### **Items for consideration in establishing the Budget:**

##### **1. ICOMOS Advisor**

ICOMOS expert who on the basis of the nomination dossier, desk reviews, and if applicable, mission report, and any other supporting documentation provided produces the ICOMOS evaluation.

Honoraria: 188 €/day (all taxes and charges included)

In the WH context, depending on the complexity of a dossier (rated X, XX or XXX) Advisors are given a specific number of days to complete the evaluation:

X = 5 days x 188 € = 940 €

XX = 8 days x 188 € = 1504 €

XXX = 13 days x 188 € = 2444€

##### **2. Desk Review**

In the WH context, between one or two desk reviews per nomination are sought. These are high level academics who make their assessment on the outstanding universal value of the site on the basis of the nomination dossier and their existing knowledge of the site. Again, honoraria are based on the complexity of the dossier (rated X, XX or XXX):

X = 200 €

XX = 300 €

XXX = 600 €

##### **3. Mission**

In the WH context, a mission is systematically sent to every nominated site to assess management and conservation practices at the site. Missions, again depending on the complexity of the dossier and the geographical location and accessibility of the site, take between 3 to 7 days (arrival and departure day included). An average mission would probably be around 4 days.

An average cost for a mission for a nomination rated at X (see above) has been estimated at around 2500 €.

This includes:

- the honorarium of the expert = 150 €/day with a minimum of 500 €
- the per diem of the expert (hotel, meals etc.) = based on UNESCO DSA and depending on country of destination.
- Economy class return air ticket and any other local transport.

#### 4. Panel

In the WH context, a World Heritage panel of around 30 experts reviews the nomination dossiers, draft evaluations and recommendations made by the ICOMOS World Heritage Advisors.

In the context of the HC2nd Protocol, in order to consider appropriate comparisons – it would appear to be necessary for some sort of panel of Advisors, supported by appropriate academics, to consider the dossiers and make recommendations, if any sort of consistency is to be achieved. Considering funding available, a smaller Panel could be envisaged, that would meet in presence of the ICOMOS Advisor and the ICOMOS dedicated staff member once a year.

Costs depend in part on the geographic and linguistic composition of the Panel members and the nomination dossiers.

Costs could include:

- Air travel: average of 1100 € x number of participants
- Per diems: 150 € (= 1 day per diem in Paris) x number of participants
- Interpretation: 1 day at approximately 2500 € (interpreter and hiring of equipment)

#### 5. Presentation to the Committee of the HC2nd Protocol

The ICOMOS Advisor would be required to present the ICOMOS assessments to the Committee of the HC2nd Protocol at least once a year.

Costs involved:

- Honoraria: 1 day at 188 €
- Per diem Paris: 1 day at 150 €
- Air travel = average of 1100 € (depends on where the Advisor is located)

**Total : 1438 €**

#### 6. Working meeting of ICOMOS Advisor with dedicated ICOMOS staff

Ideally the ICOMOS Advisor should be able to interact at least once a year with the dedicated staff member at the ICOMOS Secretariat in order to prepare the presentation of final evaluations to the Committee of the HC2nd Protocol.

- Honoraria: 1 day at 188 €
- Per diem Paris: 1 day at 150 €
- Air travel = average of 1100 € (depends on where the Advisor is located)

**Total : 1438 €**

#### 7. Staff time for coordination at ICOMOS International Secretariat.

This depends on number of dossiers, timescale of the process, whether missions need to be organised or not etc. As an indication, 1 person month would represent (all social charges and taxes included) approximately: 4600 €

#### 8. Other budget items that have to be taken into account:

Exact estimates depend on number of dossiers, on whether evaluations are required in English and French, in what languages the nomination dossiers are received, the number of copies and format in which ICOMOS has to deliver the evaluations:

- Translation of evaluations into working languages (English/French ?) = 13 cts €/word
- Printing, type setting, binding etc.
- Supplies, communication costs

In addition, calculated on the overall budget for item A. Assessments, would have to be included:

- 10% Project administration costs
- 1% contingency.

#### Proposed process for the first round of assessments:

On examination of the first nomination files seen by ICOMOS, and based on the information that only 4 nomination dossiers, all from the same country will be part of the initial assessment round – the following could be envisaged.

- No on-site mission as only Article 10 a. – highest importance to humanity – is the object of the assessment
- 2 desk reviews per site at level X
- Preparation of a draft evaluations by an ICOMOS Advisor ( 3 days per site considering the relative size of dossiers submitted under the 2<sup>nd</sup> Protocol of the Hague Convention).

- Consideration of these draft evaluations by a small ICOMOS Panel (presently only meeting over skype as only 4 evaluations for consideration)
- Presentation of the evaluations to the Committee of the HC2nd Protocol by the ICOMOS Advisor

**Based on the above considerations the minimum budget would consist of :**

Desk reviews = 8 x 200 € = 1600 €

ICOMOS Advisor = 4 evaluations at 3 days each = 4 x (3 x 188) = 2256 €

ICOMOS Panel to review evaluations = 1 day honorarium for Advisor = 188 €

Presentation to HC2nd Protocol Committee: 1 day honorarium, travel and subsistence of Advisor: 1438 €

International Secretariat support staff time (2 person weeks): 2300 €

**Sub-total: 7782 €**

Project administration and contingency 11 % = 856 €

**Total : 8638 €**

### **B. Study on the items raised/clarifications needed – ref. ICOMOS position paper.**

Should UNESCO wish to consider commissioning a study to examine issues related to the assessment procedure and the implementation of the Guidelines, this would entail addressing the issues identified, and suggesting an approach and what resources might be needed.

Before the start of the study, Terms of Reference should be agreed between the Bureau of the Committee, the UNESCO Secretariat, and ICOMOS. The outcomes of the ICOMOS study should be considered by a small working group.

Outcomes are likely to be procedural and could involve guidance to the State Parties on how to submit nominations, and consideration of what experts will be needed to undertake the assessments and how they will approach the work. A working group will be needed as the procedures to avoid conflict with the WH Convention could need some discussion.

It is suggested that the working group include 3 ICOMOS experts (including the ICOMOS expert drafting the study) and 3 participants appointed by UNESCO. Exact costing of the working group meeting depends on the country of residence of the experts (ie. cost of air ticket).

Possible Costs involved:

- Expert honoraria (TOF and study): 5- 10 days at 188 €/day= max. 1880 €
- Translation of report - if applicable (13cts € per word)
- Meeting of working group to consider the study (2 days) = 5328 €
  - Honoraria: 3 experts x 2 days x 188 €/day
  - Per diem: 3 experts x 2 days x 150 €
  - Economy class return ticket: 3 x 1100 €
- 10% Project administration costs + 1% contingency = 793 €

**Total : 8000 €**