

2008 REPORT BY CANADA ON IMPLEMENTATION OF THE 1954 HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT AND ITS 1954 AND 1999 PROTOCOLS

Canada acceded to the 1954 Hague *Convention for the Protection of Cultural Property in the Event of Armed Conflict* in 1998, and to the 1954 (First) Protocol and the 1999 (Second) Protocol in 2005

Because of the relationship between certain provisions of the Convention and Second Protocol, some steps taken by the Government of Canada relate commonly to implementation of both of those instruments, and information about them is combined as appropriate in the following report.

1. Safeguarding of cultural property

In Canada, preparatory measures undertaken in peacetime for the safeguarding of cultural property in the event of armed conflict exist within a larger framework of emergency/disaster preparedness. Such efforts take place both within the heritage community, and through the inclusion of certain cultural property within national disaster preparedness efforts that are not directed exclusively at heritage.

The Canadian Conservation Institute (CCI), an agency of the Department of Canadian Heritage, is the tool through which the Government of Canada helps build emergency preparedness capacity within Canada's heritage community. It is also integral to emergency response efforts in Canada when heritage is threatened or impacted by emergencies. The Institute undertakes pro-active efforts in emergency preparedness by delivering training to individuals and institutions within Canada's heritage community. Training sessions address planning, the development of response plans, risk assessment and reduction, and salvage, treatment and long-term recovery of artifacts. CCI is also involved in emergency and disaster response, ranging from advice to direct on-site involvement by conservation staff.

Within the Government of Canada, a Memorandum of Agreement exists among a number of federal heritage agencies and institutions, including CCI, Canada's national museums, Library and Archives Canada, the Parks Canada Agency, and the National Capital Commission. This collaborative mechanism has among its functions the development, implementation and testing of contingencies for protecting cultural property (movable and immovable) for which these federal institutions and agencies are responsible, and cooperation in sharing facilities, equipment and expertise in the event of an emergency.

From a wider perspective, certain cultural property (cultural institutions, national sites and monuments) considered to be “key national symbols” fall under the broad heading of “critical national infrastructure” with respect to disaster and emergency planning and response. In Canada, critical infrastructure protection is a shared responsibility that requires the cooperation of all levels of government (federal, provincial/territorial, municipal) and the private sector. The National Critical Infrastructure Assurance Program (NCIAP) is an ongoing collaboration between private sector partners and federal, provincial and territorial governments. The goals of these partnerships are to provide a national framework for cooperative action and to build a resilient national critical infrastructure.

2. Enhanced protection under the Second Protocol

The Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict is still in the process of developing guidelines for implementation of the Second Protocol, including aspects connected with the granting of “enhanced protection”. As a result, Canada has not yet determined when, or whether, it may move forward to nominate Canadian sites for such enhanced protection.

3. Military measures and dissemination of the Convention and the Second Protocol

Basic training for all Canadian military personnel includes instruction concerning respect for cultural property, and additional education on the Law of Armed Conflict (including that concerning cultural property) is offered across the country four times annually to senior non-commissioned members and commissioned officers. Instruction in international humanitarian law (including the Hague instruments) is also mandatory for all students in officer training at Canada’s Royal Military College in Kingston, Ontario.

In addition to this general training, all mission-specific pre-deployment training for Canadian military personnel includes information about the country in question – at this point specific information about sites (particularly those that will be designated in the future for enhanced protection under the Second Protocol) could be provided as part of this training.

Beyond those efforts directed specifically at military personnel, the general public are made aware of their obligations to respect cultural property abroad, and penalties provided for under Canadian law for acts against cultural property, in the publication “Bon Voyage, But...” produced by the Department of Foreign Affairs and International Trade (DFAIT). At present, 3.5 million copies of the booklet are produced each year and provided with each new Canadian passport, as well as being available electronically to Canadians travelling internationally on the Department’s website and through a wide range of public awareness-raising activities conducted by DFAIT. Because the new offences created in Canada’s *Criminal Code* to implement Article 15(1)(e) of the Second Protocol are not limited to acts committed in other States Parties, or only to those acts

that take place during armed conflict (see below), the information contained in “Bon Voyage, But...” does not specifically mention the Hague instruments. Detailed information about the Hague Convention and Protocols, obligations, offences and penalties, is made publicly available on the Department of Canadian Heritage website.

4. Sanctions and jurisdiction

Violations of the Hague Convention and Second Protocol may be prosecuted under a range of Canadian statutes, depending on the act in question, and whether the act is committed by a member of the armed forces or a civilian.

Acts against cultural property that would be the most serious violations of the Convention and Second Protocol (specified in Article 15(1)(a)-(e) of the Second Protocol) would be liable for prosecution under either Canada’s *National Defence Act* (as a violation of the Code of Service Conduct therein) or the *Crimes Against Humanity and War Crimes Act*. The latter defines a “war crime” as “an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission” and would therefore include serious violations of the Convention and Second Protocol. Both statutes establish jurisdiction over such acts when committed within or outside Canada.

In the event that certain acts violating Article 15(1)(e) of the Second Protocol might not be considered grievous enough to be considered war crimes, Canada has amended its *Criminal Code* to extend extraterritorial jurisdiction over six existing offences in the *Code* which we interpret to cover the requirements of 15(1)(e): theft, fraudulent concealment, robbery, fraud, mischief (vandalism) and arson. As a result of these amendments, which were made in order to facilitate Canada’s accession to the Second Protocol, such acts are now considered criminal offences in Canada when committed by Canadians anywhere abroad against cultural property at any time, providing that the cultural property in question is sufficiently important to meet the definition of that term in Article 1 of the Hague Convention.

Additional legislative amendments have been made to the *Cultural Property Export and Import Act* to prohibit, and to establish extraterritorial jurisdiction over, exports 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.

The texts of the statutes referred to above may be accessed through the following links:

National Defence Act

http://laws.justice.gc.ca/en/ShowFullDoc/cs/N-5//20080229/en?command=HOME&caller=SI&search_type=all&shorttitle=defence&day

[=29&month=2&year=2008&search_domain=cs&showall=L&statuteyear=all&lengthannual=50&length=50&noCookie](#)

Crimes Against Humanity and War Crimes Act

http://laws.justice.gc.ca/en/ShowFullDoc/cs/C-45.9/20080229/en?command=HOME&caller=SI&search_type=all&shorttitle=humanity&day=29&month=2&year=2008&search_domain=cs&showall=L&statuteyear=all&lengthannual=50&length=50&noCookie

Criminal Code (see section 7.(2.01))

http://laws.justice.gc.ca/en/ShowFullDoc/cs/C-46/20080229/en?command=home&caller=SI&search_type=all&shorttitle=criminal%20code&day=29&month=2&year=2008&search_domain=cs&showall=L&statuteyear=all&lengthannual=50&length=50&noCookie

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

5. 1954 (First) Protocol

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* (see link above). 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*.