

2011-2012 Periodic Report by Canada on Implementation of the 1954 Hague Convention and its Protocols

I. The 1954 Hague Convention

1. Article 3 – Safeguarding of cultural property

This Article provides for the obligation of the High Contracting Parties to adopt relevant peacetime safeguarding measures against the foreseeable effects of an armed conflict.

Have you undertaken such measures?

YES:

NO:

If yes, please provide more specific information.

The following is an updated version of the information contained in Canada's 2008 periodic report:

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 a resource available to assist with 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. Workshops and instructional materials address the development of response plans, risk assessment and reduction, and skill development for collections salvage and emergency response decision making. CCI is also involved in emergency and disaster response, primarily through advisory services and occasionally, when warranted, through direct on-site involvement by conservation staff or through the treatment of damaged artifacts.

Within the Government of Canada, a Memorandum of Agreement that 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 is currently being updated. 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

infrastructure” with respect to emergency management and national security. In Canada, critical infrastructure resilience is a shared responsibility that involves the cooperation of all levels of government (federal, provincial/territorial, municipal) and the private sector. Under the National Strategy and Action Plan for Critical Infrastructure, all levels of government, first responders and private sector partners are working together to address threats facing Canada’s critical infrastructure, as well as improving collective readiness to swiftly respond and recover when disruptions occur. Since the launch of this Strategy in 2010, Canada has made concrete progress to strengthen the resilience of critical infrastructure, including building public-private sector partnerships, delivering site assessments and risk management guides, and conducting exercises.

2. Article 7 – Military Measures (in peace time)

This Article provides for the obligations of the High Contracting Parties to introduce into their military regulations or instructions provisions that may ensure observance of the Convention, as well as to plan or establish within their armed forces services or specialists whose purpose will be to secure respect for cultural property.

(i) Have you introduced such provisions into your military regulations and instructions?

YES:

NO:

If yes, please provide more specific information.

The Canadian Forces Military Law Centre (CFMLC) is the military legal education and training delivery organization for the Canadian Forces (CF).

The CFMLC executes a CF wide mandate to provide legal education and training materials and services to military members in order to assist them in preparing to meet the challenges associated with current and future operations. Established as a Directorate of the Canadian Defence Academy (CDA), the CFMLC is a joint effort of the CDA and the Office of the Judge Advocate General (Office of the JAG) to provide innovative legal research, education and training to the CF. Legal education and training delivery at CFMLC is aimed at enhancing discipline across the CF and at ensuring that the CF is capable of carrying out its current and future missions in accordance with all applicable domestic and international laws.

Basic training for all Canadian military personnel includes instruction concerning respect for cultural property, and additional education on the Law of Armed Conflict (LOAC) (including that concerning cultural property) is offered across the country four to seven times annually to senior non-commissioned members and commissioned officers. Instruction in LOAC (including the Hague instruments) is also mandatory for all officers enrolling in the Canadian Armed Forces. LOAC is delivered through the “Canadian Armed Forces Junior Officer Development Program” and must be completed in the individual officer’s first three years of service.

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 designated for enhanced protection under the Second Protocol) could be provided as part of this training.

(ii) Have you created such services or appointed specialists in your country?

YES:

NO:

If yes, please provide more specific information.

Within the CF, the Operational Law Division of the Office of the Judge Advocate General is responsible for providing legal support to the CF and the Department of National Defence in relation to operational law. The legal officers in the Operations Law Division advise the CF chain of command at the tactical, operational and strategic levels on the application of international and domestic law to CF activities, including the law relating to the protection of cultural property and the necessity to ensure its respect. In addition, when elements of the CF deploy on operations, legal officers deploy with those elements to provide dedicated legal support to commanders and staff on the ground.

3. Chapter V – The distinctive emblem

Do you mark cultural property with the distinctive emblem of the Convention?

YES:

NO:

4. Article 25 – Dissemination of the Convention

Knowledge of the laws of armed conflict is of capital importance for the civilian and military personnel required to apply them. Have you disseminated the provisions of the Convention within armed forces as well as among target groups and the general public?

YES:

NO:

If yes, please provide more specific information.

See Canada's 2008 periodic report.

5. Article 26(1) – Official translations

To date, the Secretariat has received 32 official translations of the Convention and of the Regulations for its execution (Arabic, Azerbaijani, Bulgarian, Burmese, Cambodian, Chinese, Czech, Danish, Dutch, Estonian, Finnish, German, Hebrew, Hungarian, Greek, Italian, Japanese, Kyrgyz, Latvian, Lithuanian, Montenegrin, Nepali, Norwegian, Persian, Polish, Romanian, Serbo-Croatian, Slovak, Slovenian, Swedish, Thai, and Turkish).

Have you officially translated the Convention and the Regulations for its execution?

YES:

NO:

(Translation is unnecessary as the Convention and Protocols already exist in both of Canada's official languages, French and English.)

If yes, could you please provide the Secretariat with an electronic copy of the translation, if you have not already done so?

6. Article 28 – Sanctions

This Article provides for the obligations of the High Contracting Parties to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the Convention.

Have you introduced this provision into your penal code?

YES:

NO:

If yes, please provide more specific information.

See Canada's 2008 periodic report, which provides links to the following relevant statutes:

- *The National Defence Act;*
- *The Crimes Against Humanity and War Crimes Act;*
- *The Criminal Code; and*
- *The Cultural Property Export and Import Act.*

The first two statutes contain sanctions related generally to war crimes or the law of armed conflict (ie without specifically naming the 1954 Hague Convention or Protocols), and the latter two contain sanctions related to specific provisions of the Convention and/or its two Protocols.

II. Resolution II of the 1954 Conference

Have you established a national advisory committee in accordance with the wish expressed by the Conference in Resolution II?

YES:

NO:

Is such a committee a part of the national commission on the implementation of international humanitarian law?

YES:

NO:

III. 1954 (First) Protocol (to be filled in only by the High Contracting Parties party to the 1954 Protocol):

The Protocol provides for the obligation of the High Contracting Parties to prevent the exportation of cultural property from a territory occupied by it and requires the return of such property to the territory of the State from which it was removed.

Have you complied with this provision? In particular, have you implemented its provisions in your national legislation?

YES:

NO:

Please also see above response to question 6 in Section I.

Have you have taken into custody cultural property imported into your territory from an occupied territory?

YES:

NO:

IV. The 1999 Second Protocol (to be filled in only by the States party to the 1999 Protocol):

1. General provisions

(i) Article 5 - Safeguarding of cultural property

Article 5 of the Second Protocol complements Article 3 of the Hague Convention by providing concrete examples of peacetime preparatory measures, such as the preparations of inventories of cultural property or the designation of competent authorities responsible for the safeguarding of cultural property.

Have you undertaken these preparatory measures?

YES:

NO:

If yes, please provide more specific information.

See Canada's 2008 periodic report and the response to question #1 in the first section of this report: safeguarding measures are general in nature and do not distinguish between those undertaken in relation to the Convention and those undertaken in relation to the 1999 Protocol.

(ii) Article 9 – Protection of cultural property in occupied territory

Article 9 of the Second Protocol complements the provisions in Article 5 of the Hague Convention by imposing a number of prohibitive measures on the occupying power. If applicable, please describe the implementation of such measures.

(Not applicable.)

2. **Enhanced protection** (Chapter 3)

The Second Protocol establishes an enhanced protection regime for cultural property, provided that the property is cultural heritage of the greatest importance for humanity, is properly protected by administrative and legal measures, and is not and will not be used for a military purpose or to shield military sites.

(i) Do you intend to request the granting of enhanced protection for a cultural property?

YES:

NO:

It is possible that at some future time Canada could make such a request, but at present has no immediate plans to do so.

(ii) Do you intend to use the distinctive emblem to mark cultural property under enhanced protection?

YES:

NO:

If not, please state the reasons you have not done so.

Use of the distinctive emblem will be considered in the event that Canada makes a request for the granting of enhanced protection for a property.

3. **Articles 15 and 21 - Serious violations of this Protocol and measures regarding other violations, respectively**

Article 15 obligates Parties to establish certain acts listed under its first paragraph as criminal offences under domestic law and to make them punishable by appropriate penalties.

Article 21 obligates Parties to adopt relevant legislative, administrative or disciplinary measures to suppress any intentional use of cultural property, illicit export, or other removal or transfer of ownership of cultural property from occupied territory, in violation of the Hague Convention or the Second Protocol.

Have you penalized each of these offences and adopted the above-mentioned measures?

YES: ✓

NO:

If yes, please provide more specific information.

Canada implements Article 15 under three statutes.

When the acts in question are deemed by the courts to be grievous enough to be considered “war crimes” under Canada’s *Crimes Against Humanity and War Crimes Act* (CAHWCA), they could be prosecuted under that statute. In the unlikely event of acts committed by members of Canada’s armed forces, prosecution could also take place under the *National Defence Act*. Both the *Crimes Against Humanity and War Crimes Act* and the *National Defence Act* establish jurisdiction over offences committed within and outside Canada.

Canada’s *Criminal Code* has been amended to allow prosecution of (and establishes extraterritorial jurisdiction over) certain types of acts committed against cultural property where the resulting damage might not be grievous enough in every instance to fall under the CAHWCA. The *Code* does not restrict such provisions to offences committed only in other States Parties or only in times of armed conflict or occupation. It covers offences committed anywhere in the world, at any time, with the only requirements being that the cultural property that is the subject of the offence meet the definition contained in Article 1 of the Convention, and that the person committing the offence is a Canadian citizen, or is not a citizen of any state and ordinarily resides in Canada, or is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* and is, after the commission of the act or omission, present in Canada. Conspiracies, attempts and other forms of criminal liability to commit these offences are also covered.

Article 21 is implemented by s.36.1(2) of the *Cultural Property Export and Import Act*, which states that “No person shall knowingly export or otherwise remove cultural property as defined in subparagraph (a) of Article 1 of the Convention from an occupied territory of a State Party to the Second Protocol, unless the export or removal conforms with the applicable laws of that territory or is necessary for the property’s protection or preservation.”. Section 36.1(3) establishes extraterritorial jurisdiction over such acts when the person committing the offence is a Canadian citizen, or is not a citizen of any state and ordinarily resides in Canada, or is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* and is, after the commission of the act or omission, present in Canada.

4. Article 16 – Jurisdiction

Have you taken the necessary measures to establish jurisdiction over offences mentioned in Article 15?

YES:

NO:

If yes, please provide more specific information.

See answer to previous question.

5. Articles 29 (The Fund for the Protection of Cultural Property in the Event of Armed Conflict), 32 (International assistance) and 33 (Assistance of UNESCO)

Are you currently receiving international assistance from the Fund?

YES:

NO:

If yes, please describe the project for which funds were received.

Are you currently providing or planning to provide international or technical assistance on a bilateral or multilateral level?

YES:

NO:

6. Dissemination (Article 30)

Article 30 calls for, among other things, the strengthening of the appreciation and the respect for cultural property, the dissemination of the Protocol and the establishment of military instructions, training and communication facilities.

Please describe the measures taken concerning the above-mentioned obligations.

The measures taken to disseminate the 1999 Protocol and to establish military instruction and training related to it are the same as for the Convention overall. See information provided in those sections above, and in Canada's 2008 periodic report.

7. The Fund for the Protection of Cultural Property in the Event of Armed Conflict

Have you contributed to the Fund?

YES:

NO:

If yes, please provide detailed information concerning your contribution.

If not, would you consider the possibility of contributing to the Fund in the future?

YES:

NO:

It is not possible to say at this time whether Canada would consider such a possibility in the future.

8. National focal point

Please provide us with the name and address of a single national focal point for all official documents and correspondence related to the implementation of the Second Protocol.

Department of Canadian Heritage
Heritage Policy and Programs Directorate
25 Eddy Street, 9th Floor
Gatineau, Quebec

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V. Other issues related to the implementation of the Hague Convention and its two Protocols

The Secretariat would appreciate it if you could provide us with a copy of the following documents in English and/or French:

- the relevant administrative civilian and military regulations;
- national laws on the protection of cultural property as well as penal provisions not covered by Article 28 of the Hague Convention and Articles 15, 16, 21 of the Second Protocol; and, case-law on the protection of cultural property related to the implementation of the Hague Convention and its two Protocols.

VI. Official Translations of the Second Protocol to the 1954 Hague Convention

To date, the Secretariat has received 18 official translations of the Second Protocol (Armenian, Brazilian Portuguese, Burmese, Croatian, Czech, Danish, Dutch, Estonian, German, Greek, Italian, Japanese, Latvian, Nepali, Persian, Romanian, Slovak and Slovenian).

Have you officially translated the Second Protocol?

YES:

NO:

(Translation is unnecessary as the Convention and Protocols already exist in both of Canada's official languages, French and English.)