



# NATIONAL IMPLEMENTATION OF THE 1954 HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT AND ITS TWO (1954 AND 1999) P R O T O C O L S

Reply Submitted by the Federal Republic of Germany

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National Focal Point:

Federal Foreign Office [*Auswärtiges Amt*]

Division 500 (International Law)

DE-11013 BERLIN

GERMANY

Email [500-RI@auswaertiges-amt.de](mailto:500-RI@auswaertiges-amt.de)



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## **National implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two (1954 and 1999) Protocols – Format for reporting**

The High Contracting Parties of the above-mentioned Hague Convention, according to the terms of its Article 26(2), are invited to forward to the Director-General, at least once every four years, a report on the Convention's national implementation. If they are also parties to the Convention's Second Protocol, as per Article 37 (2) of this agreement, they are also invited to report on the aforementioned Protocol's implementation, every four years, to the Committee for the Protection of Cultural Property in the Event of Armed Conflict.

To facilitate the work of the relevant national authorities, paragraph 101 of the Guidelines for the Implementation of the 1999 Second Protocol encourages the Parties to the Hague Convention to submit these two reports jointly. As a consequence, please find hereafter a list of issues in the form of a questionnaire, to be taken into account when preparing your national reports. Answering a question by ticking the box "no" means that the State concerned has never implemented the provision in question. Answering a question by ticking the box "yes" means that the provision in question has been implemented regardless of the time period covered by the report. If the information has already been provided in a previous report, it is not necessary to repeat it. A short reference to the previous report is sufficient. Additional information on the implementation of the above-mentioned agreements that you consider appropriate and relevant is highly appreciated.

Information should be as precise and specific as possible, and it would be appreciated if the reports follow the order presented in the questionnaire. State Parties are also encouraged to submit the reports in an electronic format.

**High Contracting Party:**

Federal Republic of Germany

**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.

- I.I.1 The 1954 Hague Convention and the 1954 First Protocol were incorporated into national law with the Act of April 11, 1967 on the Convention of May 14, 1954 for the Protection of Cultural Property in the Event of Armed Conflict. Under this Act, the *Länder* are responsible for implementing the Convention on behalf of the Federal Government unless other regulations are in place. The *Länder* are thus also responsible for taking measures pursuant to Article 3 of the 1954 Hague Convention on behalf of the Federal Government.
- I.I.2 Reference to the examples of safeguarding cultural property listed in Article 5 of the 1999 Second Protocol is made under §§ IV:1.1–IV:1.5 *infra*.
- I.I.3 In addition, the Federal Government and the *Länder* store archival material on microfilm as a central joint measure. This is financed and coordinated by the Federal Office of Civil Protection and Disaster Assistance.
- I.I.3.1 The archived written records of the institutions of the German *Reich* in the period from 1871 to 1918 and of its predecessors under constitutional law, its territories, the monasteries and imperial cities, the seats of government and administration of the 19<sup>th</sup> century, the German *Reich* in the period from 1919 to 1933, the German *Reich* in the period from 1933 to 1945, Germany in the period from 1945 to 1949 and the Federal Republic of Germany since 1949, like the archives of its parties, associations

and organizations, are an ongoing documentation of the history of the German people. They are complemented by the archived correspondence of people from all spheres of social activity.

- I.I.3.2 As opposed to written evidence of our culture and history that is available in multiple printed copies, archival material consists of just one single original document, *i.e.* one of a kind. The destruction of this material would be an irretrievable loss.
- I.I.3.3 For this reason Federal and *Land* archival material has been recorded on microfilm for the purposes of safekeeping since 1961. The archival material is microfilmed by experts according to federally defined and standardized selection criteria in offices at the Federal Archives, the Secret State Archives and some *Land* archives. Since the end of 2009 documents in color have been digitized and stored on longlife color microfilm in addition to conventional black and white microfilming. A special exposure device has been developed for this purpose.
- I.I.3.4 The recordings are stored in stainless steel containers in the Federal Republic of Germany's Central Refuge. This contains 965 million microfilm recordings with a total length of 30,000 kilometers (as of October 2012).
- I.I.4 The microfilming of the archival material from the former German Democratic Republic was completed in 2010 and it has been stored since this date (272 million recordings with a total length of 8100 kilometers).
- I.I.5 An ongoing project is the microfilming of the *Wossidlo* archive. The collection, which comprises approximately two million handwritten notes and 60,000 pages of correspondence documenting the culture and language of the people of Mecklenburg, provides the material for pioneering field research in European ethnology. The process of digitization and microfilming for storage purposes began in 2009 and will be completed in 2013. The plan is to store the microfilm in the Federal Republic of Germany's Central Refuge from 2014.

## **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.

I:2.1 In peacetime and during operations, military leaders are assigned legal advisers whose task, as specialist personnel according to Article 7(2) of the 1954 Hague Convention, is to give advice on all issues related to international law, including the protection of cultural property under international law. Their task involves examining the legal basis of orders, instructions and rules of procedure of the Federal Armed Forces and ensuring that all aspects of international humanitarian law are taken into account. This means that legal advisers are also involved in the implementation of military procedures, e.g. military targeting.

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

YES:

NO:

If yes, please provide more specific information.

I:2.2 *Cf* the preceding answer.

### 3. Chapter V – The distinctive emblem

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

YES:

NO:

If yes, please provide more specific information.

I:3.1 The Federal Republic of Germany's Central Refuge has special protection status and therefore bears the distinctive emblem repeated three times pursuant to Article 16(2) of the 1954 Hague Convention.

I:3.2 In Germany, responsibility for using the distinctive emblem used alone pursuant to Article 16(2) of the Convention lies with the *Länder*, on behalf of the Federal Gov-

ernment. It is used at their discretion. There is therefore no uniform marking system in use throughout the entire Federal Republic of Germany. The situation varies considerably between the *Länder*, as the following examples show:

- I:3.2.1 The emblem has been used in Hesse, Mecklenburg-Western Pomerania, Rhineland-Palatinate and Bavaria. However, even here there is wide variation in the system applied and the extent of its use. For example, in Mecklenburg-Western Pomerania the relevant monuments and archaeological sites are listed centrally and all are marked. In Rhineland-Palatinate the emblems were applied in the 1980s by the districts on the basis of a list agreed with the military administration. It must be assumed that the way the emblems have actually been applied across the region is generally un-systematic and by no means complete, as the documentation and marking process was largely abandoned after the initial efforts. The *Land* has no current overview of the emblems actually (still) in place on the objects.
- I:3.2.2 Hesse has a list of the objects currently bearing the emblem. In Brandenburg, Hamburg and Thuringia no emblems have yet been applied.

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

- I:3.3 Applying the distinctive emblem used alone pursuant to Article 16(2) is optional under the 1954 Hague Convention.
- I:3.4 From the Federal Government's perspective, use of the emblem would make the cultural property bearing it recognizable as such, thus ensuring transparency for the general public and for potential parties to an armed conflict. Furthermore, it would help foster general awareness of the value of, and the need to, protect the objects bearing the emblem (mandate from the 1999 Second Protocol).
- I:3.5 On the other hand, this recognizability could pose risks particularly in the event of an armed conflict. Use of the emblem could put cultural property at greater risk if it then becomes a deliberate target. In view of this, several *Länder*, including Hamburg and Brandenburg, have deliberately decided against using the emblem. Hesse and Rhineland-Palatinate also have reservations, not least due to recent incidents (in Mοstar, Dubrovnik, Afghanistan, Mali), which they believe justify their scepticism. The Association of Regional Monument Conservationists in the Federal Republic of Germany [*Vereinigung der Landesdenkmalpfleger*] shares this view, as it informed the Federal Government in February 2013.

- I:3.6 Another point is how to set the criteria for selecting which cultural property should be included on the list. Here, standardized criteria for the whole of Germany are lacking.
- I:3.7 From a practical perspective many *Länder* also lack the personnel required for this optional task.
- I:3.8 Against this background, the Federal Government allows the *Länder* to decide themselves whether or not to use the emblem.

#### 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.

- I:4.1 Dissemination within the Federal Armed Forces
- I:4.1.1 The Federal Ministry of Defense, in cooperation with the Federal Foreign Office and the German Red Cross, publishes and distributes the bilingual (English and German) omnibus publication “Documents on International Humanitarian Law | Dokumente zum humanitären Völkerrecht” (2<sup>nd</sup> edition; ISBN 978-3-89665-564-6). This publication includes, *inter alia*, the text of the 1954 Hague Convention, the Regulations for its execution and the two related 1954 and 1999 Protocols in the German and English languages.
- I:4.1.2 It is via Joint Service Regulation ZDv 15/2 “International Humanitarian Law in Armed Conflicts – Manual” of May 1, 2013 that the Convention’s contents and provisions are disseminated and implemented, in accordance with Articles 7(I) and 25. This Manual summarizes the provisions on international humanitarian law and the protection of cultural property and presents them as a regulation to be observed by all military personnel. It also serves as a foundation for initial and extension training of military personnel in the field of international law. ZDv 15/2 covers the latest developments in international law regarding the protection of cultural property.



- I:4.1.3 Joint Service Regulation ZDv 15/2 is available in the German language and will be available in the English language by early 2014. This Regulation is supplemented by Joint Service Regulation 15/1 “International Humanitarian Law in Armed Conflicts—Principles” which provides, in brief statements, a concise overview of the principles of international humanitarian law. In addition, the pocket card “International Humanitarian Law in Armed Conflicts—Principles” summarizes the principles of international humanitarian law in a compact and comprehensible style for military personnel to study on their own and in preparation for operations.
- I:4.2 Instruction and Training within the Federal Armed Forces
- I:4.2.1 Section 33 of the Legal Status of Military Personnel Act stipulates that all military personnel have to be instructed in their duties under international law. In compliance with the stipulations of Article 25 of the 1954 Hague Convention, such instruction in international humanitarian law also covers the provisions on the protection of cultural property.
- I:4.2.2 Instruction in obligations under international law is part of the *curriculum* of the annual training program for military personnel, and is intended to consolidate existing knowledge. Instruction is given by the responsible superiors or, where appropriate, by legal instructors and legal advisers.
- I:4.2.3 All in all, a large number of courses and seminars on international humanitarian law, covering amongst other things the obligations under the 1954 Hague Convention, are offered at several Federal Armed Forces training facilities.
- I:4.2.4 In addition, military personnel earmarked for operations abroad receive detailed instruction and training in applicable international and national regulations during predeployment training. As part of the initial and extension training of legal advisers, and in future also of military legal instructors, the “Central Training Facility of the Federal Armed Forces Military Legal System” offers, among other things, a course on international humanitarian law which will train personnel to act as multipliers. The courses and seminars held at this facility, *e.g.* seminars on legal aspects of effects-based targeting, the seminar on international humanitarian law in armed conflicts or the course on the law of air and naval warfare, deal in depth with legal aspects of cultural property protection in the event of armed conflict. The didactic principle guiding these courses is the principle of congruity between the conduct of operations and law.
- I:4.3 Dissemination to Civil Authorities and the General Public
- I:4.3.1 The Federal Office of Civil Protection and Disaster Assistance has published the leaflet “Protection of Cultural Assets in the Event of Armed Conflict” (7<sup>th</sup> edition) with

the texts of the 1954 Hague Convention, the Regulations for its execution, the 1954 First Protocol and the 1999 Second Protocol. This leaflet is available to download from the Federal Office of Civil Protection and Disaster Assistance website < [http://www.bbk.bund.de/SharedDocs/Downloads/BBK/EN/booklets\\_leaflets/Flyer\\_Protection-Cultural%20Property.pdf?\\_\\_blob=publicationFile](http://www.bbk.bund.de/SharedDocs/Downloads/BBK/EN/booklets_leaflets/Flyer_Protection-Cultural%20Property.pdf?__blob=publicationFile) > and is distributed to the competent Federal and *Land* authorities and, upon request, to universities, museums, press agencies and the general public.

- I:4.3.2 Since 1997 seminars on protecting cultural assets have been held at the Academy for Crisis Management, Emergency Planning and Civil Protection at the Federal Office of Civil Protection and Disaster Assistance in Bad Neuenahr. Seminars currently on offer are “Measures to Protect Cultural Assets” and “Protecting Cultural Assets—Special Topics.” They target managers and multipliers in the competent authorities and relief organizations.

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

Not applicable.

## 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:

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

The official translation of the 1954 Hague Convention, the Regulations for its execution and the 1954 First Protocol were published in the Federal Law Gazette 1967 II 1233

< [http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger\\_BGBI#\\_Bundesanzeiger\\_BGBI\\_%2F%2F\\*\[%40attr\\_id%3D%27bgbl267s1233.pdf%27\]\\_-1374669407059](http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger_BGBI#_Bundesanzeiger_BGBI_%2F%2F*[%40attr_id%3D%27bgbl267s1233.pdf%27]_-1374669407059) >

## 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.

### I:6.1 Introductory Remarks

I:6.1.1 Disciplinary and penal law serve to ensure that respect for the protection of cultural property under international law is obligatory for military personnel. Violating international humanitarian law is considered to be a breach of duty for military personnel. Obligations under international law as stated in the 1954 Hague Convention are defined as official duties in Joint Service Regulation ZDv 15/2 (see § I:4.1.2 *supra*). According to disciplinary law, breaches of duty may be punished with measures up to and including a disciplinary discharge.

I:6.1.2 In addition, violations of the protection of cultural property under international law may constitute criminal offences under general criminal law, international criminal law or military penal law. According to the Military Penal Code, German criminal law also applies to German military personnel serving abroad. In addition, the Military Penal Code provides that the offences of “abuse of command authority for improper purposes,” “incitement to commit an illegal act” and “inadequate command supervision” may result in penal sanctions being imposed on the responsible superior for conduct that may be relevant to violations of the protection of cultural property under international law.

I:6.1.3 German criminal law contains various provisions which penalize breaches of the Convention, in particular damaging, destroying or stealing cultural property, which

are prohibited by Article 4(3) of the 1954 Hague Convention. In addition, German soldiers are subject to disciplinary measures if they act in breach of the Convention.

## I:6.2 Criminal Law

### I:6.2.1 Protection against Damage or Destruction

I:6.2.1.1 Protection against damage to or destruction of movable cultural property is guaranteed for ecclesiastical cultural property and cultural property which is on public display by section 304(1) of the Criminal Code [*Strafgesetzbuch*] (“property damage injurious to the public”) and for other cultural property, in particular in private collections, by section 303(1) of the Criminal Code (“property damage”).

I:6.2.1.2 In connection with an international or non-international armed conflict, section 11(1)(2) of the Code of Crimes against International Law [*Völkerstrafgesetzbuch*] penalizes an attack with military means against civilian objects if the latter are protected by international humanitarian law, in particular “buildings dedicated to religion, ... art [or] science ..., [as well as] historic monuments.” Whoever in contravention of international law destroys property of the adverse party which is in the power of their own party without this being necessitated by the requirements of the armed conflict is punishable in accordance with section 9(1) of the Code of Crimes against International Criminal Law.

I:6.2.1.3 Section 20(1)(2) of the Act of May 18, 2007 Implementing the UNESCO Convention of November 14, 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property [*Gesetz zur Ausführung des UNESCO-Übereinkommens vom 14. November 1970 über Maßnahmen zum Verbot und zur Verhütung der rechtswidrigen Einfuhr, Ausfuhr und Übereignung von Kulturgut*] (short title: Return of Cultural Property Act [*Kulturgüterückgabegesetz*]; Federal Law Gazette 2007 I 757) prohibits damage to or destruction of cultural property which has been detained by the competent authorities because it is to be returned to another state.

I:6.2.1.4 Depending on the individual case, other criminal offences such as destruction of buildings and other structures (section 305 of the Criminal Code) or arson (section 306 *et seqq.* of the Criminal Code) may be relevant.

### I:6.2.2 Protection against Theft

I:6.2.2.1 Section 242 of the Criminal Code prohibits theft in general. Section 243(1)(4)–(5) of the Criminal Code defines as a form of aggravated theft—with an increased sentencing range—stealing objects dedicated to religious worship or objects of significance for science, art or history or for technical development which are located in a generally accessible collection or are publicly exhibited, *e.g.* in a museum.

- I:6.2.2.2 The purchase and sale of stolen cultural property is an offence under section 259 of the Criminal Code (“receiving stolen property”).
- I:6.2.2.3 In accordance with section 9(1) of the Code of Crimes against International Law, punishment is imposed on anyone who in connection with an international or non-international armed conflict plunders or, without this being necessitated by the requirements of the armed conflict, otherwise appropriates or seizes property of the adverse party which is in the power of their own party.
- I:6.2.3 Command Responsibility
- I:6.2.3.1 In accordance with section 33 of the Military Criminal Code [ *Wehrstrafgesetz* ], punishment is imposed on anyone who in abuse of their command responsibility or official position has ordered a subordinate to commit an unlawful act, which is then committed by the latter giving rise to a criminal offence. Unsuccessful incitement to commit an unlawful act is also punishable in accordance with section 34 of the Military Criminal Code.
- I:6.2.3.2 Section 4(1) of the Code of Crimes against International Criminal Law stipulates that a military commander who omits to prevent his/her subordinate from committing an offence under the Code is to be punished as a perpetrator of the offence committed by the subordinate. A person who exercises *de facto* command or leadership responsibility and supervision in a unit is deemed equivalent to a military commander here in accordance with section 4(2) of the Code of Crimes against International Criminal Law. Over and above this section 13(1) of the Code of Crimes against International Criminal Law stipulates that a military commander who intentionally or negligently omits to properly supervise a subordinate under his/her command or *de facto* supervision is to be punished for violation of the duty of supervision if the subordinate commits an offence under the Code, where the imminent commission of such an offence was discernible to the commander and he/she could have prevented it.
- I:6.3 Disciplinary Measures
- I:6.3.1 According to section 23 of the Soldiers Act [ *Soldatengesetz* ], a soldier commits a disciplinary offence if he breaches any of his duties.
- I:6.3.2 Section 10(4) of the Soldiers Act proscribes giving an order that violates rules of international law, including the 1954 Hague Convention. Section 11(2) of the Soldiers Act forbids soldiers to follow orders which constitute a crime under domestic law, such as the abovementioned offences.
- I:6.3.3 Giving an order in violation of international law or following an order although it constitutes a crime is therefore a breach of duty. Such a breach can be punished

with simple disciplinary measures ordered by the superior, *e.g.* reprimand, fine or disciplinary arrest (section 22 of the Military Disciplinary Code), or disciplinary measures ordered by a court, *e.g.* a cut in salary, demotion or discharge from service (section 58 of the Military Disciplinary Code).

I:6.4 Conclusion

I:6.4.1 Cultural property is comprehensively protected in times of armed conflict and in peacetime by the German criminal law regarding property damage, destruction and theft. In addition, soldiers can be subjected to disciplinary measures if they act in breach of the Convention.

I:6.4.2 Consequently, Germany has fully implemented Article 28 of the 1954 Hague Convention.

If yes, we would be grateful if you could kindly provide the Secretariat with a copy of the relevant provision(s) in English or French.

I:6.5 The following German laws cited above are available in English translation:

I:6.5.1 Act on the Return of Cultural Property:

[http://www.gesetze-im-internet.de/englisch\\_kultg\\_r\\_ckg/index.html](http://www.gesetze-im-internet.de/englisch_kultg_r_ckg/index.html)

I:6.5.2 Criminal Code:

[http://www.gesetze-im-internet.de/englisch\\_stgb/index.html](http://www.gesetze-im-internet.de/englisch_stgb/index.html)

I:6.5.3 Code of Crimes against International Law:

<http://www.iuscomp.org/gla/statutes/VoeStGB.pdf>

## 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:

If yes, please provide more specific information.

Not applicable.

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

YES:

NO:

II:1 In the Federal Republic of Germany the National Committee on International Humanitarian Law at the German Red Cross is responsible for issues concerning the application of international humanitarian law. The National Committee on International Humanitarian Law includes representatives from the Federal Foreign Office, the Federal Ministry of Defense, the Federal Ministry of Justice, the Federal Ministry of the Interior, the Federal Office of Civil Protection and Disaster Assistance and the Public Prosecutor General of the Federal Court of Justice. When necessary, this National Committee also consults on general developments in international law with respect to the 1954 Hague Convention, the 1954 First Protocol and the 1999 Second Protocol. However, issues pertaining to the protection of specific items of cultural property do not fall within its remit.

II:2 Further information on the National Committee on International Humanitarian Law is downloadable at <http://www.drk.de/ueber-uns/auftrag/humanitaeres-voelkerrecht/kurse-gremien/fachausschuss-englisch.html>.

**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:

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

YES:

NO:

If yes, please provide more specific information, including what steps you have taken to return this property at the close of a conflict.

Not applicable.

**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.

IV:I.1 Introductory Remarks

IV:I.1.1 The *Länder* are responsible for implementing Article 3 of the 1954 Hague Convention on behalf of the Federal Government. They take such steps as they consider appropriate.

IV:I.1.2 Furthermore, objects which are defined under the 1954 Hague Convention as movable or immovable cultural property are regularly classified among in *Länder* disaster prevention laws as “assets of considerable value” or “other significant legal assets” due to their importance for the world’s cultural heritage. The *Länder* are therefore responsible for undertaking technical structural measures, emergency planning and other appropriate steps to protect these assets from damage and destruction in the event of large-scale devastation in peacetime. If a military situation triggers comparable scenarios, such as fire, explosions or structural collapse, the existing *Länder* mechanisms and arrangements to safeguard and protect property also come into operation and ensure adequate protection (multiple application).



#### IV:1.2 Keeping Registers

IV:1.2.1 Central registers are kept in some of the *Länder*; and in some cases the assets are catalogued by the institutions housing the cultural assets themselves.

IV:1.2.2 Some of the centralized lists are specifically compiled for protection under the 1954 Hague Convention, others are for different purposes such as monument preservation. Here are a few examples:

IV:1.2.2.1 In Rhineland-Palatinate the Specialized Heritage Authority, on the basis of *Land* law, maintains a list of monuments which features all known immovable cultural monuments, including those which require protection under the 1954 Hague Convention. A separate Hague Convention list was compiled by district during the 1980s but has not been revised since.

IV:1.2.2.2 Thuringia keeps a register of cultural property and a register of archival material with considerable national value in accordance with the criteria of the Act to Protect German Cultural Property against Removal, which is designed to protect cultural property with significant national value from unlawful removal. In addition, 139 properties are listed in a “special safety register.” These are historical buildings of high architectural, artistic and historical quality with regional and above all transregional significance for Thuringia’s cultural landscape and in whose preservation there is a heightened public interest. They constitute valuable evidence of cultural development in Thuringia. They are assessed chiefly according to the findings and methods of comparative science, especially history (military, religious, economic, technological, art, cultural, social and intellectual history), art and anthropology. Furthermore, a heritage book is kept in line with the criteria of Thuringia’s Monuments and Historic Buildings Act as well as a separate Thuringian list of immovable cultural property as defined by the 1954 Hague Convention, which at present contains 155 objects.

IV:1.2.2.3 Brandenburg, Hamburg and Hesse have no centralized lists. In Hamburg, each institution with cultural property documents the assets it holds in inventories or catalogs according to its own criteria and, where appropriate, publishes them on the Internet. In Hesse, too, asset holders themselves, such as museums and archives, enter lists of all the cultural property in their possession into the relevant databases.

IV:1.2.2.4 In Mecklenburg-Western Pomerania the Office for Culture and Monument Conservation maintains a list of archaeological assets and a list of architectural monuments and art as defined by the 1954 Hague Convention. The Mecklenburg-Western Pomeranian state library holds and constantly updates various lists of cultural property considered particularly worthy of protection in its collections. Outstanding literary and academic documents of unique significance for cultural heritage that exist in on-

ly one copy (objects with international status) are classified as top priority (Category I). Examples include the contents of the safes (95 items), the Mecklenburg collection of architectural drawings from the 18<sup>th</sup> century (529 cards, inventory is in preparation) and the music collection from the Mecklenburg-Schwerin princely household (signature group “Mus I” to “Mus 6088”). This collection of predominantly handwritten music from the 18<sup>th</sup> and 19<sup>th</sup> centuries is considered one of the most valuable of its kind in Germany and is a rich source with regard to court music in Mecklenburg-Schwerin and its connections across Europe (printed catalog available, contiguous storage in the stacks).

IV:1.2.2.5 Especially rare documents and those with outstanding significance for the region and for national cultural heritage are classified as particularly worthy of protection (Category II). These include the library of Duke Friedrich (1717–1785), known as the Pious (currently 2540 catalogued titles), a collection of theatre playbills (contiguous storage) and a collection of individual manuscripts (special location for rarities).

#### IV:1.3 Emergency Planning

IV:1.3.1 So-called “emergency alliances” make an important contribution to emergency planning. These are regional alliances of cultural and academic institutions, some of which also include disaster protection agencies and fire services. The goal is to share staff and provide reciprocal technical assistance in emergencies and to support each other on prevention issues. Emergency alliances have been established in, for example, Berlin, Bielefeld, Dresden, Hanover, the Hochtaunuskreis, Karlsruhe, Leipzig, Münster and Weimar. The Berlin and Brandenburg archives have also formed an emergency alliance.

IV:1.3.2 The Conference of National Cultural Institutions [*Konferenz nationaler Kultureinrichtungen*; < <http://www.konferenz-kultur.de/EN/index.php?lang=en> >] also plays an important role. This institution has its roots in the so-called “Blue Book” [*Blaubuch*], which has been published three times since 2001 at the instigation of the Federal Government Commissioner for Culture and the Media. The Blue Book is designed as a guide for identifying cultural assets and seeks to underscore the importance of the East German cultural landscape for Germany’s and Europe’s cultural heritage. It lists all cultural institutions with national significance in the East German *Länder*; and currently features 23 cultural “beacons.” In 2003 the featured cultural institutions joined forces to form the Conference of National Cultural Institutions. Their shared goal is to raise and sustain political and public awareness of their museums, collections, archives and landscape gardens. The Conference offers the participating institutions a platform for communicating about common interests and objectives and, since 2005, has also spotlighted the issue of security and disaster protection for mu-

seums, archives and libraries. It has compiled a comprehensive reference document on this subject. The so-called “Safety Guide for Cultural Assets” has been online since 2010 at < <http://www.konferenz-kultur.de/SLF/index1.php> > and is still a work in progress. Eventually it will contain recommendations for action on all relevant safety topics, from damage arising from wear and tear, through human-related damage, right up to natural disasters.

- IV:1.3.3 *Land*-wide plans of action to protect cultural property specifically in the case of armed conflict do not as a rule exist. However, fire control and disaster protection measures can regularly also be used to protect cultural property under the Hague Convention (multiple application).
- IV:1.3.3.1 Brandenburg, for example, has specific plans of action for some institutions. These contain detailed risk analysis reports, are regularly updated, and could be used to safeguard the cultural assets housed there in the event of disaster. As well as fire control, the prevention and emergency measures defined in these plans primarily cover emergencies such as water damage, theft, vandalism, accidents, storms and other natural disasters. In the case of archived cultural property in particular, risks posed by use, climate, light, pests, pollutants, *etc.* can be minimized by appropriate organizational and technical procedures conducted in the course of normal maintenance.
- IV:1.3.3.2 In Hesse the regional building code contains various regulations for the protection of human health and safety which also serve to protect the cultural property in the building. For example, steps to prevent the collapse of a building or fire are outlined, and use of non-harmful fire-extinguishers is specified.
- IV:1.3.3.3 At the Hesse Kassel museum complex preparatory steps are currently being taken to establish a working group to elaborate emergency and safety measures. A pilot group is to be formed for the Wilhelmshöhe Castle [*Schloss Wilhelmshöhe*] location involving the police, the fire service and the Federal Agency for Technical Relief, taking account of the regulations developed as part of the so-called Safety Guide for Cultural Assets published by the Conference of National Cultural Institutions (*cf.* § IV:1.3.2 *supra*).
- IV:1.3.3.4 Mecklenburg-Western Pomerania has emergency plans in place for natural disasters (storms, lightning and rain) as well as for fire and flooding affecting the archives in the state library. Emergency evacuation measures are only envisaged for Category I objects kept in the safes (in the event of fire, burst pipes, explosions). Evacuating the remaining material would require prior organization due to the extent of the holdings.

IV:1.3.3.5 In Thuringia the monuments listed in the safety register are examined for potential risks at regular two-year intervals in cooperation with the Thuringian Interior Ministry and Ministry of Construction and Transport as the ministries responsible for fire control and building affairs respectively. These risk protection assessments involve the lower fire protection agencies as well as the lower building authorities, the lower monument protection authorities and the Office for Monument Conservation. Pooling expertise in this way is designed to ensure that threats to the buildings are identified in time. The monument owners also receive qualified advice so that they can undertake any necessary alterations to the building in a manner that respects its monument status.

#### IV:1.4 Preparations for Evacuation, Refuges and Protective Building Measures

IV:1.4.1 Preparations for evacuation and refuges do not exist on a *Land*-wide level.

IV:1.4.2 In Land Brandenburg the heads of cultural institutions are themselves responsible for deciding on appropriate protective measures on site and/or evacuation and rescue operations. Structural, organizational and technical measures such as full-area burglar alarms, with video surveillance in some cases, fire alarms and security checks have therefore only been implemented locally for specific institutions. Examples of preparation for evacuation of cultural property or provision of refuges can likewise only be provided for specific institutions. For archives and archaeological sites, for example, rescue plans are in place which stipulate which cultural property must be taken to which refuge in which order in the event of disaster. To ensure that this actually happens, cooperation agreements have been concluded with service providers in some cases.

IV:1.4.3 Mecklenburg-Western Pomerania has a concept involving deep-freezing and possible evacuation for damaged archival material. Refuges and protective building measures are not envisaged. The most valuable maps and architectural drawings from the regional library are stored separately. As a practical step in the case of disaster, preparations are being made to purchase emergency cases (3 cases) to give objects initial protection in the event of *e.g.* water damage (packaging, drying). In addition, suitable work clothing (helmets, gloves, torches, etc.) are to be stored in existing lockers. An existing smoke detector system provides round-the-clock fire control monitoring throughout the building. The companies responsible for safeguarding cultural property are listed, as are deep-freeze warehouses for the event of water damage.

IV:1.5 Description of the Authorities Responsible for Safeguarding Cultural Property

IV:1.5.1 In the event of armed conflict the Federal Government draws on the units and institutions involved in disaster protection under *Land* law to fulfil its duty to provide protection.

IV:1.5.2 The agencies responsible for disaster protection manage and coordinate all assistance measures in their area and hence also the cultural property protection measures, unless a specialized authority has been charged with the task, such as the Ministry of Culture in Hamburg or the Office for Culture and Monument Conservation in Mecklenburg-Western Pomerania, in the case of archived material, and the lower monument protection authorities in the case of other material.

(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:

IV:2.1 The issue is under consideration by the competent bodies of the Federal Government and the *Länder*.

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.

IV:2.2 *Cf* the preceding answer. The reservations listed above under § I:3.5 *supra* are held.

**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.

IV:3.1 See §§ I:6.1–I:6.3.3 *supra*.

IV:3.2 Supplementary Remarks

IV:3.2.1 The obligation to impose penal sanctions pursuant to Article 28 of the 1954 Hague Convention and Article 15 of the 1999 Second Protocol has been fulfilled at national level with the offence of property damage injurious to the public (section 304 of the Criminal Code), and above all through section 11(1)(2) of the Code of Crimes against International Law (“war crimes consisting in the use of prohibited methods of warfare”).

- IV:3.2.2 This offence is based on the one hand on Article 8(2)(b)(ix) and (e)(iv) of the 1998 Rome Statute of the International Criminal Court, in which war crimes are defined. According to the explanatory memorandum (*Deutscher Bundestag* Printed Paper no. 14/8524, p. 23 and p. 33), however, the regulation should also expressly implement Article 15 of the 1999 Second Protocol as applicable in essence under customary international law, which provides for the punishability of attacks on cultural property in general and cultural property under enhanced protection.
- IV:3.2.3 A condition of criminal liability is, besides perpetration of the act described, a connection with an international or non-international armed conflict. Through this connection the act acquires the nature of a war crime, whereby the perpetrator can be anyone, *i.e.* also a civilian.

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

Not applicable.

#### 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.

- IV:4.1 The war crimes specified in section 11 of the Code of Crimes Against International Law are subject to the principle of universal jurisdiction as outlined in section 1 of the Code of Crimes Against International Law. The offence therefore also applies to acts which were committed exclusively abroad and in which Germans were involved neither as criminals nor as victims; a specific relation to Germany is not required.
- IV:4.2 The responsibility for prosecution lies solely with the Public Prosecutor General of the Federal Court of Justice; section 142a in conjunction with section 120(1) of the Courts Constitution Act [*Gerichtsverfassungsgesetz*]. The principle of mandatory prosecution applies, under which offences must be prosecuted *proprio motu*. The competent first-instance courts are the State Protection Divisions of the Higher Regional Courts; section 120(1) of the Courts Constitution Act.

**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:

If yes, please provide more details.

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

The 1999 Second Protocol entered into force for the Federal Republic of Germany on February 25, 2010. The current state of implementation of the 1954 Hague Convention and the 1999 Second Protocol in the Federal Republic of Germany does not yet permit the planning and application of the above-mentioned measures.

**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.

See §§ I.4.1–I.4.3.2 *supra*.



## 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.

Not applicable.

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

YES:

NO:

## 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.

Federal Foreign Office [*Auswärtiges Amt*]  
Division 500 (International Law)  
DE-11013 BERLIN  
GERMANY

Email 500-RI@auswaertiges-amt.de

## 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.

See § I:5, §§ I:6.5–I:6.5.3 *supra* and § VI *infra*.

## 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:

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

The translation of the 1999 Second Protocol which is legally applicable in the Federal Republic of Germany was published in Federal Law Gazette 2012 II 54, 55 < [http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger\\_BGBL#\\_Bundesanzeiger\\_BGBL\\_%2F%2F\\*\[%40attr\\_id%3D%27bgbl212s0054b.pdf%27\]\\_1374669292536](http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger_BGBL#_Bundesanzeiger_BGBL_%2F%2F*[%40attr_id%3D%27bgbl212s0054b.pdf%27]_1374669292536) >.





The  
Federal Government

