

2011-2012 National Report of Slovenia on the Implementation of the 1954 Hague Convention and its two 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: x

NO:

The institution responsible for planning the protection of cultural heritage in wartime and in a state of emergency is the Ministry of Education, Science, Culture and Sport , in partnership with the Ministry of Defense.

In accordance with Article 3 of the Hague Convention, the envisaged preparatory measures for safeguarding movable and immovable cultural property against the foreseeable effects of an armed conflict are developed, harmonised and appropriately materialised within Defense plans for the area of protection of cultural heritage. In accordance with the Decision of the Government of the Republic of Slovenia on defining preparations for carrying out preparedness measures, the Ministry of Defense and the Ministry of Education, Science, Culture and Sport have agreed on planning and carrying out measures related to evacuation of especially important material from threatened museums, galleries and archives, as well as closing public cultural institutions to the public in the event of an imminent threat of war.

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: x

NO:

The convention has been introduced into military practice.

- Implementation of the convention and its protocols lies within the responsibility of the Legal Service and the Slovenian Armed Forces Command. Obtaining information about the convention is an integral part of the military education and training of the Slovenian Armed Forces. In carrying out their regular tasks at home and abroad, the Slovenian Armed Forces adhere to the convention. Members of the Slovenian Armed Forces deployed on a mission are familiarized with their tasks at the location. In particular, this applies to the Slovenian Armed

Forces members acting within the KFOR mission (Kosovo), who have a duty to safeguard property with specifically defined status.

- Members of the Slovenian Armed Forces are acquainted with the distinctive emblem marking cultural property under protection and the emblem marking cultural property under special protection.
- They are informed that in the event of military attack, immovable cultural property is under special protection, that no such property may be used for military purposes and that such property must not be destroyed.
- A Defense commander must mark such property distinctively, remove any military targets from its vicinity and, of course, not operate from such a property.
- If a property of this kind is used as a military point, an attacker must draw the adversary's attention to the misuse of protected property and afford them reasonable time to vacate the property so that the property does not lose protected status.

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

YES:

NO: x

Specialist services responsible for safeguarding cultural property in the event of armed conflict have not yet been established. Implementation of the Hague Convention lies within the responsibility of the Legal Service of the Ministry of Defense and the Slovenian Armed Forces Command.

3. Chapter V – The distinctive emblem

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

YES: x

NO:

Due to ambiguity as to the marking of and placement of emblems, marking with the distinctive emblem of the Hague convention has only been applied on some cultural monuments. In year 2011 the Rules on Marking Cultural Monuments were enacted and the marking with uniform emblem will now begin.

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: x

NO:

Within the Headquarters of the Slovenian Armed Forces, the bodies for civil-military co-operation are responsible for ensuring the protection of cultural property. These bodies are established at all levels of the Slovenian Armed Forces (tactical, operational, strategic) and, in accordance with documents defining staff procedures, are responsible, together with the operational body, for

coordinating operations in the vicinity of targets protected under international military law. Knowledge of the convention and its protocols is tested at the professional examination for curators and restorers in the professional service for protection of cultural heritage.

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: x

NO:

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: x

NO:

A new Penal Code of the Republic of Slovenia entered into force on 1 November 2008. Pursuant to Article 102 of the Penal Code, anyone who, in contravention of the rules of international law, orders or commits war crimes during armed conflicts or when carrying out or supporting the policy of the state as part of a large systematic attack, is subject to a penalty. Such acts include the misuse of distinctive emblems of cultural property under the Hague Convention resulting in the death or serious injury of a person, intentional attacks on buildings intended for art, cultural or historic monuments, cultural property marked with the distinctive emblem if such facilities are not military targets. A war crime is punishable by a minimum of fifteen years imprisonment. Article 104 of the Penal Code specifies the responsibility of military commanders and other superiors for the criminal offence of a war crime, while Article 105 penalizes association with or incitement to commit war crimes. A copy of the relevant provisions of the Penal Code in English has been sent to the Secretariat.

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.

PENAL CODE (KZ-1-UPB2), Official, Gasette of Republic of Slovenija, no. 50/2012, 29. 06. 2012)

War Crimes
Article 102

Whoever orders or commits war crimes, especially if they are committed as part of an integral plan or policy, or as part of an extensive implementation of such crimes, namely the following:

- 1) grave breaches of Geneva Conventions on 12 August 1949 (Act on notification of succession concerning the Council of Europe conventions, the Geneva Conventions and additional protocols regarding the protection of victims of war and international agreements in the field of arms control, the depositors of which are the three main nuclear forces (Official Gazette of the Republic of Slovenia, No 14/1992)), namely any mentioned act against persons or property, which are protected by appropriate Geneva Conventions:
 - wilful killing;
 - torture or inhumane treatment, as well as biological experiments;
 - intentional causing of great suffering or serious injury to body or health;
 - extensive unlawful wanton destruction or appropriation of property;
 - forcing a prisoner of war or other protected person to serve in the forces of a hostile power;
 - depriving a prisoner of war or other protected person of a fair trial;
 - unlawful deportation or confinement;
 - taking hostages;

- 2) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - killing or wounding a combatant who, having laid down his arms or having no longer means of Defense, has surrendered at discretion;
 - making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, or insignia or the flag of the Red Cross, or insignia that conform to them, as well as of the distinctive emblems of the Geneva Conventions or markings of **cultural property** according to the Hague Convention (The Hague Convention on the Protection of **Cultural Property** in the Event of Armed Conflict with the Rules for its implementation (Official Gazette of FPRY - International agreements, No 4/56) and the Second Protocol to the 1954 Hague Convention on the Protection of **Cultural Property** in the Event of Armed Conflict (Official Gazette of the Republic of Slovenia, No 22/2003)), resulting in death or serious personal injury;

- the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, **historic monuments**, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- killing or wounding treacherously individuals belonging to the hostile nation or army;
- illegal taking of objects from the dead or wounded in the battlefield;
- declaring that no quarter will be given;
- destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- pillaging a town or place, even when taken by assault;
- employing poison or poisoned weapons;
- employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are fully prohibited;
- committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- committing rape, sexual slavery, enforced prostitution, forced pregnancy which means illegal detention of a woman who got pregnant by duress with the intention to affect ethnical structure of any population or to perform other grave breaches of international law, enforced sterilization, or any other form of sexual violence, also constituting a grave breach of the Geneva Conventions;
- utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- use of **cultural property** under extended protection or their immediate surroundings to support military actions;
- intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions;
- intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;

- 3) in the case of an armed conflict not of an international character, which, however, does not constitute internal disturbance and tensions like riots, individual and occasional acts of violence and other similar acts, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - taking hostages;
 - the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable;
- 4) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations (Act on notification of succession concerning the Council of Europe conventions, for which the USA government is the depositary, the **Hague Conventions**, and the intellectual property conventions (Official Gazette of the Republic of Slovenia, No 24/1992)), as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, **historic monuments**, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - pillaging a town or place, even when taken by assault;
 - committing rape, sexual slavery, enforced prostitution, forced pregnancy which means illegal detention of a woman who got pregnant by duress with the intention to affect ethnical structure of any population, enforced sterilization, or any other form of sexual violence, also constituting a grave breach of Article 3, common to the four Geneva Conventions;
 - conscripting or enlisting children under the age of fifteen years into the armed forces or groups, or using them to participate actively in hostilities;
 - ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - killing or wounding treacherously a combatant adversary;
 - declaring that no quarter will be given;
 - subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

- destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

shall be sentenced to imprisonment for not less than fifteen years.

Aggression Article 103

Any person who commits the act of aggression, defined in accordance with the international law, shall be sentenced to imprisonment for not less than fifteen years.

Liability of Military Commanders and Other Superiors Article 104

(1) A military commander shall be sentenced to imprisonment between one and eight years for criminal offences referred to in Articles 100 to 103 of this Penal Code, which were committed by the units under his actual command and control, because he did not correctly perform control over these units and did not carry out all appropriate and required measures within his competences to prevent or stop these criminal offences or he failed to submit the matter to the competent authorities for investigation and persecution, even though he knew his units committed or could have committed in given circumstances such criminal offences.

(2) Any person who actually acts as a military commander or who actually performs management duties or supervision in a civilian organisation or company shall be sentenced in the same manner for the actions referred to in the previous paragraph.

(3) A military commander or person who actually acts as a military commander or who actually performs management duties or supervision in a civilian organisation or company, who should or would have to know that his units committed or would commit under the given circumstances criminal offences under Articles 100 to 103 of this Penal Code, shall be sentenced with imprisonment between six months and five years for the actions referred to in previous paragraphs.

Association and Incitement to Genocide, Crimes against Humanity or Aggression Article 105

(1) Whoever establishes a criminal organisation to commit criminal offences under Articles 100 to 103 of this Penal Code shall be sentenced with imprisonment between one and ten years.

(2) Any person who becomes a member of the organisation referred to in the previous paragraph shall be sentenced with imprisonment between six months and five years.

(3) The perpetrator of the criminal offence under paragraphs 1 or 2 of this Article, who prevents the committing of criminal offences specified in paragraph 1 or declared the offence in due time, shall be sentenced with imprisonment of up to three years, or the sentence may also be remitted.

(4) Whoever incites or instigates to directly commit the criminal offences under Articles 100 to 103 of this Penal Code shall be sentenced with imprisonment between six months and five years.

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: x

NO:

In the implementation of the convention and its protocols, a Working Group for harmonised co-operation of line ministries is active within the national group for international humanitarian law, appointed by the Government of the Republic of Slovenia.

The group functions as an Advisory Committee as envisaged in Resolution II of the Hague Convention.

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

YES: x

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: x

NO:

As an EU Member State, Slovenia has its export and/or exit from the EU as well as import arrangements laid down in accordance with EU regulations. Slovenia has also adopted the Return of Unlawfully Removed Cultural-Heritage Objects Act. Unlawful export and import of objects of special cultural-heritage importance are criminal acts.

Slovenia is also party to the UNESCO Convention related to illicit importation and exportation of cultural property.

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

YES:

NO: x

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

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: x

NO:

Slovenia has set up a register of immovable cultural heritage within the Ministry of Education, Science, Culture and Sport; it is accessible through the Internet (<http://rkd.situla.org>). The register is based on Geographic Information System (GIS) principles and, besides the main descriptive data for each unit, also includes data of geolocation (a centroid and unit area). The Ministry of Education, Science, Culture and Sport and the Ministry of Defense have concluded an agreement on transmission of digital data from the register.

- Almost 30,000 units are entered in the register.
- Museums and galleries already have systems for setting up an inventory of their materials.
- The Ministry of Education, Science, Culture and Sport in its acts has defined the tasks of public institutions in case of an imminent threat of war.
- The mentioned tasks are the following:
 - checking inventory and documentation of cultural monuments
 - marking with the Hague Convention emblem
 - protecting museum, art gallery and archival material
 - moving especially important material from threatened locations.

Tasks of public institutions (museums, galleries and archives) in wartime are the following:

- assessment of damage
- evidencing damage
- preparation of reports on damage suffered
- carrying out emergency salvage measures and prevention of secondary damage to affected cultural heritage
- carrying out urgent restoration interventions
- international activities, etc.

(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.

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: x

At present, Slovenia has no intention of requesting the granting of enhanced protection.

(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.

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: x

NO:

Pursuant to Article 102 of the Penal Code that entered into force on 1 November 2008, anyone who, in contravention of the rules of international law, orders or commits war crimes during armed conflicts or when carrying out or supporting the policy of the state as part of a large systematic attack, is subject to a penalty.

Such acts include the misuse of distinctive emblems of cultural property under the Second Protocol resulting in the death or serious injury of a person, deliberate attacks on buildings intended for art, on cultural or historic monuments, cultural property marked with the distinctive emblem if such facilities are not military targets and if cultural property under enhanced protection or its immediate vicinity is not intended for a military objective. A war crime is punishable by a minimum of fifteen years imprisonment. Article 104 of the Penal Code defines the responsibility of military commanders and other superiors for the criminal offence of a war crime, while Article 105 penalizes association with and incitement to commit war crimes.

As an EU Member State, Slovenia has its export and/or exit from the EU as well as import arrangements laid down in accordance with EU regulations. Slovenia has also adopted the Return of Unlawfully Removed Cultural-Heritage Objects Act. Unlawful export and import of objects of special cultural-heritage importance are criminal acts.

4. Article 16 – Jurisdiction

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

We are not yet in the position to provide accurate response.

YES:

NO:

If yes, please provide more specific information.

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: x

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: x

If yes, please provide more details.

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

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.

Within the Slovenian Armed Forces, a body for civil-military co-operation together with the Headquarters of the Slovenian Armed Forces and the Force Command of the Slovenian Armed Forces are responsible for dissemination of information on safeguarding cultural property in the event of armed conflict. Obtaining information about the convention is an integral part of the military education and training of the Slovenian Armed Forces. In carrying out their regular tasks at home and abroad, the Slovenian Armed Forces adhere to the convention. Knowledge of the

Second Protocol is tested at the professional examination for curators and restorers by the professional service for protection of cultural heritage within the Ministry of Education, Science, Culture and Sport .

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

Have you contributed to the Fund?

YES:

NO: x

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:

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.

Ministry of Education, Science, Culture and Sport.
Kotnikova 38
Office for Unesco
1000 Ljubljana, Slovenia

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: x

NO:

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