



United Nations
Educational, Scientific and
Cultural Organization



Convention for the Protection of
Cultural Property in the Event
of Armed Conflict

Four-year cycle 2013-2016

Bosnia and Herzegovina

National report on the implementation of the Hague Convention of 1954
and its two Protocols (1954 and 1999)

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I. Hague Convention of 1954

1. Article 3 - Safeguarding of cultural property

This article sets out the obligation for High Contracting Parties to adopt in time of peace the appropriate safeguarding measures against the foreseeable effects of an armed conflict.

Have you adopted such measures?

Yes. Please note that, while trying to submit our report via this platform, we couldn't enter the entire prepared text in this field, even though we did not exceed the 1000 words limit. We addressed this issue to the Secretariat, but have not received the reply. In order to somehow resolve this, we will attach the report form in Word format through the web platform, which will allow you to copy required information not submitted here. Thank you for your understanding.

2. Article 7 - Military measures

This article sets out the obligations of High Contracting Parties to introduce into their military regulations or instructions such provisions as may ensure observance of the Convention. As well as the preparation or establishment, within their armed forces, of services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it. These obligations must be implemented in time of peace.

*Have you introduced into your **military regulations or instructions** such provisions as may ensure observance of the Convention?*

If this information is available in a previously submitted report, you may refer to it.

Yes. In the Armed Forces of Bosnia and Herzegovina, the Operational Field Manual - Legal Assistance Operations 3-0 (OTP 3-0) is in use, which defines that military rules imply the full compliance with fundamentals of the international humanitarian law, including protection of cultural properties in the case of armed conflict, as part of the international humanitarian law. Another important document related to this topic, OTP 1-04, is in the process of being drafted. It instructs members of the Armed Forces of Bosnia and Herzegovina to implement this Convention and its Protocol as follows: a) the Second Hague Protocol on the Protection of Cultural Property is listed in the catalog of legal sources of the warfare code, Annex 1 (No. 20, page 142). b)

b) 1954 Hague Convention and its Protocols are listed in regards to international agreements related to the use of Armed Forces of BiH in military operations (ius in bello) (No. 19-21, page 144). The Armed Forces of Bosnia and Herzegovina pay special attention to the aspect of training on the law of war including the obligation of the implementation of the 1954 Hague Convention. This training is conducted institutionally through the professional development courses in training centres of the Training and Doctrine Command (TDC), where special attention is paid to informing and training the military, especially leaders about their roles in implementing the provisions of Hague Convention and the protection of cultural properties in the event of the armed conflict. These properties are clearly defined as specially protected areas and are prohibited as war aims during the conflict.

Through the TDC courses in 2012 we also had a direct assistance and support of the International Red cross representatives in the training pertaining to the implementation of the 1954 Hague Convention and its Protocols.

Have you established within your armed forces, services whose purpose will be to secure respect for cultural property?

No. The Armed Forces of Bosnia and Herzegovina do not have established special services or units whose main task would be the protection of cultural properties, instead it is the task of all command elements, from tactical to operational and strategic levels.

3. Use of the distinctive emblem to indicate cultural property (Chapter V)

The Hague Convention of 1954 created a distinctive emblem for the exclusive marking of cultural property with the aim of ensuring its recognition, particularly in the event of armed conflict. The marking of cultural property constitutes one of the preparatory measures that may be taken in time of peace.

*Have you **indicated cultural property** through the use of the distinctive emblem of the Convention?*

No. The world heritage emblem is prominently displayed on cultural properties inscribed on the UNESCO World Heritage List and the properties with National Monument status are marked in both entities in accordance with the regulations. However, the cultural properties are not marked with the 1954 Hague Convention emblem.

4. Article 25 – Dissemination of the Convention

The regulations relating to the protection of cultural property in time of war must be incorporated into programmes for military, and where possible, civil training. The aim is to ensure that the principles of the Convention are made known to the whole population, and especially the armed forces and personnel engaged in the protection of cultural property.

*Have you **disseminated the provisions of the Convention** within the armed forces as well as among target groups and the general public?*

Yes. The Ministry of Civil Affairs of Bosnia and Herzegovina has translated the Convention. The Ministry of Civil Affairs has published a publication with translations of all UNESCO Conventions in the field of culture and the publication has been distributed to all relevant institutions. Translations of the Convention in the three official languages of Bosnia and Herzegovina are attached to this report.

*Within this framework, what **awareness-raising activities** have you organized, and what awareness-raising activities do you plan to organize in the future? Please indicate the target groups for each activity.*

In Federation of Bosnia and Herzegovina as part of the event The Days of European Heritage, held every year in September, the workshops “Youth and Heritage” are organized for elementary and secondary school students, as well as roundtables and lectures for local communities and associations to get acquainted with the cultural heritage and application of the valid legal regulations. In the entity Republika Srpska the Institute for Protection of Cultural,

Historical and Natural Heritage of Republika Srpska is constantly working to spread and raise awareness of the need to preserve the heritage by following and applying the developments in the field of legislation and best practices in European countries and countries around the world.

This institution organizes a Regional Conference on Integrative Protection and marks the Days of European Heritage.

5. Article 26 (1) – Official translations

The Secretariat has received a certain number of official translations of the Convention and of the Regulations for its execution. For reference, please consult:

[Language versions of the Hague Convention and its 1954 Protocol](#)

Does your country have its national translation(s) there?

Yes.

6. Article 28 – Sanctions

This article sets out the obligations of 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 established as criminal offences under your domestic law conduct contrary to the obligations set out by the Convention?

Yes. In the Criminal Code of Bosnia and Herzegovina, the basis of the incrimination of a criminal offence "Destruction of Cultural, Historical and Religious Monuments" (Article 183 of the BiH Criminal Code) is the Convention for Protection of Cultural Property in the Event of Armed Conflict of 1954. (Hague Convention). Criminal offence in this Article has two forms; The basic form of the offence consists in that by violating the rules of international law during the war or armed conflict, cultural or historical monuments and buildings as well as institutions intended for science, art, education and humanitarian or religious purposes are destroyed. The objects of protection are cultural or historic monuments, buildings or institutions intended for science, art, education or humanitarian or religious purposes. This criminal offence foresees for a more stringent, qualified form of criminal offence of destruction of cultural and historical monuments in which the qualifying circumstance makes the circumstance that it is a case of specially protected objects of cultural and spiritual heritage. The judiciary in Bosnia and Herzegovina has reached, in the period from year 2014-2016, one convicting verdict for this criminal offence, while six cases are at the filing stage in prosecutions, involving eight people. At the level of Bosnia and Herzegovina, this issue is regulated by the Criminal Code of Bosnia and Herzegovina. Articles 8 and 9 apply to anyone who, on the territory of Bosnia and Herzegovina, at the time of validity of that legislation, commits a criminal offence, and, under certain circumstances, when criminal offence is committed outside its territory as well. At the level of the entity of the Federation of Bosnia and Herzegovina, a legal regulation dealing with this issue does not exist, the 1985 Law on the Protection of Cultural-Historical and Natural Heritage is in force, through which it is not possible to adequately determine the appropriate penalties. At the level of entity of Republika Srpska, this issue is regulated by the Criminal Code of Republika Srpska (Official Gazette of Republika Srpska, No. 49/03, 108/04, 37 / 06,70 / 06, 68/07) in Article 253 (2) a penalty is to be issued: "By the penalty referred to in paragraph 1 of this Article shall be punished who unlawfully destroys or damages a monument of culture, a protected object of nature or other object of special cultural or historical significance, or a property which is public good".

II. Resolution II of the Conference of 1954

Have you established a **National Advisory Committee** in accordance with the hope expressed by the Conference in its Resolution II?

No. At this moment it is not established.

III. 1954 First Protocol

[To be completed by the High Contracting Parties to the 1954 Protocol only]

The main objective of the 1954 Protocol is the protection of cultural property in occupied territory. As such, it organizes, among others, a system of:

- taking into custody;
- return of illegally exported cultural property; and
- finally indemnity to the holders in good faith.

Have you adopted **measures to implement** the 1954 First Protocol? In particular, have you adopted national legislation providing for the custody of cultural property imported either directly or indirectly from any occupied territory?

No. At the Entity level of Republika Srpska this issue is somewhat resolved by the Law on Cultural Property of Republika Srpska (Official Gazette of Republika Srpska, No. 11/95, 103/08), which includes the provisions of the Convention in the following Articles: Article 67 The Institute and its regional unit, in addition to the activities referred to in Article 59 of this Law: 10. Takes care of the uniform application of international conventions and other international regulations on cultural properties.

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

No.

IV. 1999 Second Protocol

[To be completed by the High Contracting Parties to the 1999 Protocol only]

The 1999 Second Protocol complements the Hague Convention of 1954 in many aspects. If this information has already been presented within the framework of the questions regarding the Hague Convention of 1954, you may refer to it directly.

1. General provisions (Chapter 2)

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 adopted such measures?

Yes. The registers of cultural properties are created at the Entity levels. At the state level, the register is kept of cultural properties that have been proclaimed the National Monuments of Culture of Bosnia and Herzegovina . Competent services for protection of heritage at Entity and cantonal levels are working on the preparation of individual plans for the protection of cultural properties.

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. Paragraph 102 of the Guidelines for the Implementation of the Second Protocol requests Parties that are an Occupying Power to provide information in their national reports on the way in which the provisions regarding the protection of cultural property in occupied territory are observed.

*Do you ensure compliance with the provisions regarding the **protection of cultural heritage under military occupation**?*

No answer.

2. Enhanced protection (Chapter 3)

The Second Protocol establishes an enhanced protection regime. Enhanced protection is granted by the Committee for the Protection of Cultural Property in the Event of Armed Conflict (composed of 12 Parties). Paragraph 102 of the Guidelines for the Implementation of the Second Protocol requests that Parties express their intention to request the inscription of cultural property on the List of Cultural Property under Enhanced Protection.

*Do you **intend to request** the granting of enhanced protection for cultural property in the next four years or, where applicable, do you have a **national tentative list** within the framework of Article 11 (1) of the Second Protocol?*

Yes. The national tentative list has not been created yet, however we are in the process of preparing enhanced protection requests for two properties.

MONITORING OF CULTURAL PROPERTY UNDER ENHANCED PROTECTION

[If certain cultural property(ies) in your State benefit from enhanced protection, please also complete this section of the questionnaire].

The benefit of enhanced protection implies continued compliance with the conditions set out in Article 10 of the Second Protocol.

*Is there a **specific mechanism in place to monitor cultural property under enhanced protection**? As an example, are the measures adopted to ensure the highest level of protection periodically reviewed so as to ensure they are fully effective in all circumstances?*

No.

Pursuant to paragraph 102 of the Guidelines, the Parties must inform on the use of the distinctive emblem for cultural property under enhanced protection.

*Have you used the new **distinctive emblem adopted by the 2015 Meeting of Parties to mark** cultural property under enhanced protection?*

No.

Pursuant to paragraph 65 of the Guidelines for the Implementation of the 1999 Second Protocol, the Parties must notify the Committee of any change affecting the cultural property concerned to meet the criteria set out in Article 10 of the Second Protocol.

*Does the Committee need to be **notified of a change** regarding cultural property in your territory benefiting from enhanced protection?*

No answer.

3. Criminal responsibility and jurisdiction (Chapter 4)

Article 15 – Serious violations of the Second Protocol

Article 15 requires the Parties to establish as criminal offences under its domestic law a series of behaviours constituting serious violations of the Second Protocol, by punishing them by appropriate penalties.

*What measures have been taken to ensure the **implementation of this obligation**?*

Article 180 of the Criminal Code of Bosnia and Herzegovina prescribes provisions on personal criminal liability as one of the fundamental principles of international Criminal Code for the commission of the most serious criminal offences against humanity and values protected by international law. In paragraph I. of said Article, different forms of co-perpetration, in the wider sense, in the execution of the mentioned category of criminal offences are foreseen. First and foremost, it is about the forms of perpetration of criminal offences, but also about a greater number of acts of co-perpetration in the perpetration of a criminal offence characterized by a significantly different manner of determination, than it is done in the so-called general criminal offences. The same paragraph provides a provision on a generally recognized standard of international Criminal Code that excludes the application of the immunity institute to certain persons, and provides that a particular official position of any person can't be the basis of the release of criminal responsibility or the basis for a more lenient punishment. Paragraph 2 provides a so-called command responsibility as a subordination of individual responsibility for various forms of omission, i.e. responsibility for criminal offences committed by superiors. Paragraph 3 prescribes responsibility also for the conduct of a person by order of the government or some of its superiors. In the territory of the Entities of the Federation of Bosnia and Herzegovina, this domain is regulated by the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of FBiH No. 36/03), which prescribes sanctions that specially serve for the protection of cultural properties: - Article 321 - Damage, destruction and inadmissible export of cultural monuments and protected nature objects, Paragraphs 3, 4 – a penalty of up to 3 years is foreseen, and - Art. 322 - Unauthorized research works and appropriation of cultural monuments, paragraph 1.2 provides for fines and imprisonment from 6 months for up to 5 years. Illegally exported cultural property is sanctioned by the Criminal Code of the Federation of BiH, (Official Gazette of FBiH No. 36/03), and the Law on Customs Offences of BiH ("Official

Gazette of BiH" No. 88/09) In the territory of the Republika Srpska Entity this area is also regulated by the Law - Based on the Criminal Code of Republika Srpska (Official Gazette of Republika Srpska, No. 49/03, 108/04, 37 / 06,70 / 06, 68/07), Article 253, Paragraph (2) a criminal provision is prescribed: - By penalty referred to in paragraph 1 of this Article shall be punished who unlawfully destroys or damages a monument of culture, a protected object of nature or other object of special cultural or historical significance, or a matter of public good. "

Article 16 – Jurisdiction

Article 16 requires the Parties to establish the jurisdiction of their courts over serious violations of the 1999 Second Protocol.

*What measures have been taken to **confer jurisdiction on your courts** over serious violations of the Second Protocol?*

The Law on the Court of Bosnia and Herzegovina prescribes the jurisdiction of this Court, including criminal jurisdiction (Article 7), so that the Court of Bosnia and Herzegovina is competent for the criminal offences established by the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina. Considering that the criminal offences against humanity and the values protected by international law are prescribed by the Criminal Code of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina has jurisdiction to deal with it. - Through the criminal and misdemeanor laws of all levels of government in Bosnia and Herzegovina, from state, entity, cantonal to municipal.

Article 21 – Measures regarding other violations

The Second Protocol also requires the Parties to adopt legislative, administrative or disciplinary measures to prevent the occurrence of behaviours that adversely affect the integrity of cultural heritage.

Have you adopted such measures?

Yes. Through the individual protection of every cultural asset with the status of a National Monument, through the protection measures prescribed for the purpose of the permanent protection of the monument. It is regulated by laws on the protection of properties designated as National Monuments of Bosnia and Herzegovina by the decision of the Commission for Protection of National Monuments. These laws are made in identical text in the Entities of Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District.

4. Dissemination of information and international assistance

Article 30 – Dissemination

Article 30 complements Articles 7 and 25 of the Hague Convention of 1954. In this regard, it requests the Parties to, among other things, strengthen appreciation and respect for cultural property by their entire population, ensure the dissemination of the Protocol, and incorporate guidelines and instructions on the protection of cultural property in their military regulations.

*Have you **disseminated the provisions of the 1999 Second Protocol** within the armed forces as well as among target groups and the general public?*

Yes. - The Ministry of Civil Affairs of Bosnia and Herzegovina has translated the Convention and its Protocols. The Ministry has published a publication with translations of all UNESCO conventions in the field of culture and the publication has been distributed to all relevant institutions. Translations of convention in the three official languages of Bosnia and Herzegovina are attached to this report and will be delivered to the Secretariat.

*Within this framework, what **awareness-raising activities** have you organized, and what awareness-raising activities do you plan to organize in the future? Please indicate the target groups for each activity.*

In Federation of Bosnia and Herzegovina as part of the event The Days of European Heritage, held every year in September, the workshops “Youth and Heritage” are organized for elementary and secondary school students, as well as roundtables and lectures for local communities and associations to get acquainted with the cultural heritage and application of the valid legal regulations. In the entity Republika Srpska the Institute for Protection of Cultural, Historical and Natural Heritage of Republika Srpska is constantly working to spread and raise awareness of the need to preserve the heritage by following and applying the developments in the field of legislation and best practices in European countries and countries around the world. This institution organizes a Regional Conference on Integrative Protection and marks the Days of European Heritage.

Articles 32 – International assistance

Pursuant to paragraph 102 of the Guidelines for the Implementation of the Second Protocol, the Parties are invited to present their activities at bi- or multilateral level, within the framework of technical assistance in order to share their experiences or best practices.

Have you shared, particularly via the Secretariat of UNESCO, your experiences in the implementation and best practices?

No.

5. Official translation of the 1999 Second Protocol to the Hague Convention of 1954

Pursuant to Article 37 of the Second Protocol, the Parties shall translate this standard-setting instrument into their official languages and shall communicate these official translations to the Director-General. To date, the Secretariat has received a certain number of official translations of the Second Protocol. For reference, please consult:

Language versions of the 1999 Second Protocol

Does your country have its national translation(s) there?

Yes

V. Miscellaneous questions regarding the Hague Convention of 1954 and its two Protocols

1. National focal point

According to paragraph 103 of the Guidelines for the Implementation of the Second Protocol: "Unless a Party requests otherwise, the presumed focal point would be its Permanent Delegation to UNESCO". If you do not wish to consider the Permanent Delegation as the focal point, please provide the Secretariat with the name and address of a national focal point that will receive all official documents and correspondence relating to the implementation of the Second Protocol.

Institution:	Email: jelena.dzomba@mcp.gov.ba
Name: Jelena Dzomba	Tel.:
Address:	Fax:

2. National practice regarding the implementation of the Hague Convention and its Two Protocols

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

- the relevant **administrative civil and military regulations**:

PDF Document  Website 

<http://www.bastina.ba/index.php/2016-02-29-10-06-54/zakon-o-zastiti-koristenju-kulturno-historijskog-i-prirodnog-naslijeda>;

<http://www.nasljedje.org/>;

- the **national laws** on the protection of cultural property, as well as the criminal provisions made within the framework of the implementation of Article 28 of the Hague Convention and Articles 15, 16 and 21 of the Second Protocol, and any case-law on the protection of cultural property in the event of armed conflict.

PDF Document  Website 

http://www.sudbih.gov.ba/app_dev.php/stranica/82/pregled ;
<http://tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=42&jezik=b> ;
<http://tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=43&jezik=b> ;
http://www.sudbih.gov.ba/app_dev.php/stranica/81/pregled

- Documents regarding **awareness-raising activities** (seminar schedule, brochures, etc.), as well as **any other relevant documents** (legislative, legal, or administrative) within the framework of the implementation of the Hague Convention of 1954 and its 1999 Second Protocol.

PDF Document  Website 

3. The Fund for the Protection of Cultural Property in the Event of Armed Conflict (Article 29 of the Second Protocol)

Have you contributed to the Fund?

No.

If no, do you plan to contribute to the Fund in the Future?

Yes.

VI. Self-assessment forms

In order to reflect the status of implementation of the Hague Convention of 1954 and its 1999 Second Protocol in key areas within the summary document of national reports, please complete the two tables below.

1. Assessment of the level of implementation

[Please use the following assessment scale]

- 1: not implemented;
- 2: partially implemented, the process has come to a standstill;
- 3: partially implemented, the process is ongoing; and,
- 4: fully implemented.

Implementation of the safeguarding obligation through the adoption of preparatory measures	3
Training of military personnel on the regulations relating to the protection of cultural heritage	3
Use of the distinctive emblem to mark cultural property	1
Implementation of the dissemination obligation, through the establishment of awareness-raising activities for target audiences	3
Adoption of relevant criminal legislation	4
<i>For Parties with cultural property under enhanced protection only.</i> Establishment of a system to monitor cultural property under enhanced protection at national level	

2. Assessment of difficulties encountered

[Please use the following assessment scale]

- 1: difficulties have been encountered, but there are no plans to request technical assistance from the Secretariat of UNESCO;
- 2: difficulties have been encountered, however there are plans to request technical assistance from the Secretariat of UNESCO;
- 3: difficulties had been encountered, but thanks to the technical assistance of the Secretariat they have been resolved;
- 4: difficulties had initially been encountered, but they turned into challenges that we have overcome; and,
- 5: No difficulties have been encountered.

Implementation of the safeguarding obligation through the adoption of preparatory measures	
Training of military personnel on the regulations relating to the protection of cultural heritage	
Use of the distinctive emblem to mark cultural property	
Implementation of the dissemination obligation, through the establishment of awareness-raising activities for target audiences	
Adoption of relevant criminal legislation	
<i>For Parties with cultural property under enhanced protection only.</i> Establishment of a system to monitor cultural property under enhanced protection at national level	

VII. Granting of enhanced protection – Opinion Survey

Pursuant to Chapter 3 of the 1999 Second Protocol, enhanced protection is granted by the Committee for the Protection of Cultural Property in the Event of Armed Conflict if three conditions are cumulatively met:

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

As these conditions are set out within the framework of an international treaty, their full understanding cannot be separated from state practice, which is of fundamental importance with regard to the International Law of treaties. As such, this national report is an opportunity for the national authorities of the Parties to express their views on the conditions under which enhanced protection is granted.

For each of the conditions set out in Article 10 of the Second Protocol, please answer the following questions, taking into account the relevant paragraphs of the Guidelines for the Implementation of the Second Protocol.

✓ Article 10, paragraph (a) – "Greatest importance for humanity"

1. If the cultural property meets one or more criteria as defined in the Operational Guidelines for the Implementation of the World Heritage Convention 2. If the cultural property meets the criteria of the Commission to Preserve National Monuments of Bosnia and Herzegovina to designate the properties as national monuments (http://kons.gov.ba/Zakonski_okvir/Kriteriji_za_don%C5%A1enje_odluke/Default.aspx?id=5540&langTag=en-US)

✓ Article 10, paragraph (b) – "Highest level of protection"

1. Ministry of Civil Affairs of Bosnia & Herzegovina
2. Commission to Preserve National Monuments of Bosnia and Herzegovina
3. Ministry of Defense of Bosnia & Herzegovina
4. Federal Ministry of Culture and Sports
5. Institute for Protection of Monuments of Federation of Bosnia and Herzegovina
6. Ministry for Education and Culture of the Republika Srpska
7. Republic Institute for Protection of Cultural, Historical and Natural Heritage of the Republika Srpska

Article 10, paragraph (c) – "Non-use for military purposes"

Please indicate the national authorities to be consulted with a view to taking the decision not to use the cultural property submitted for the granting of enhanced protection for military purposes or to shield military sites.

1. Presidency of Bosnia and Herzegovina
2. Ministry of Defence of Bosnia and Herzegovina
3. Ministry of Civil Affairs of Bosnia and Herzegovina
4. Federal Ministry of Culture and Sports
5. Institute for Protection of Monuments of Federation of Bosnia and Herzegovina
6. Ministry of Education and Culture of Republika Srpska
Republic Institute for Protection of Cultural, Historical and Natural Heritage of the Republika Srpska