



Four-year cycle 2005-2010

Spain

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

I. The 1954 Hague Convention

1. With reference to Article 3 of the Convention and Article 5 of the Second Protocol, which commit the Parties to taking appropriate **PREPARATORY MEASURES** in time of peace **FOR THE SAFEGUARDING OF CULTURAL PROPERTY AGAINST THE FORESEEABLE EFFECTS OF AN ARMED CONFLICT**, the measures taken in Spain will now be discussed with reference to those set out in the Guidelines for the Implementation of the Second Protocol.

The first measure concerns the **PREPARATION OF INVENTORIES**. First, it should be noted that Act No. 16/1985 of 25 June, the Spanish Historical Heritage Act, contains a number of provisions relating to administrative supervision of cultural property, in particular the following:

Article 12.1: *“Property declared of cultural interest shall be recorded in a General Register kept by the State Administration ...”*,¹ specifically the Ministry of Culture. Property of cultural interest includes State-owned archives, libraries and museums and all the cultural objects they contain.

Article 13.1: *“An official title shall be issued by the General Register for property declared to be of cultural interest, to identify it and record all legal or artistic actions on it. Any conveyance or transfer of such property shall be entered in the Register ...”*

Article 26.1: *“The State Administration, in collaboration with other appropriate Administrations, shall draw up a general inventory of the movable property of the Spanish Historical Heritage not declared to be of cultural interest that is of special importance.”* This general inventory of movable property shall also fall within the purview of, and be managed by, the Ministry of Culture

Furthermore, the Ministry of Defence is developing a computerized management system for the movable historical heritage artefacts held for safekeeping (*Miles* system), which will enable it to exercise more effective and meticulous supervision over its collections.

With regard to **museum collections**, in particular Chapter IV of Title I of Royal Decree No. 620/1987 of 10 April approving the Regulations on National Museums and the Spanish Museum System deals with the administrative management of collections, with Article 10.1 establishing that institutions within the purview of the Ministry of Culture shall keep the following registers: a register of the museum’s standing collection, in which objects that form part of the collection shall be recorded; a register of stored objects owned by the State Administration and autonomous bodies; and a register of other objects that covers objects owned by all other proprietors and received by the museum.

In addition, the Ministry of Culture has developed a museum management computer program called DOMUS, which is used for the supervision of museum and documentary collections by all national museums run exclusively by the Ministry of Culture, and by an increasing number of museums whose operation has been transferred to regional governments.

The administrative management of the **library collections** of State public libraries, meanwhile, is regulated by Chapter II of Title I of the Regulations on State Public Libraries and the Spanish Library System, approved through Royal Decree No.582/1989 of 19 May. In particular, Article 5.1 provides that State public libraries shall keep a register of the State Administration’s holdings and, where appropriate, of holdings received from the library’s administrative managers, and another register of items received from third parties.

Moreover, Article 7 provides that they shall carry out and document a full inventory of their holdings at periodic intervals not exceeding five years. The inventory shall be annual for the following: collections and works owned by the State or the administrative management of the library where they are kept, manuscripts, incunabula and works of which fewer than three copies have been inventoried in libraries or public services, and works which, in view of their importance, have been declared property of cultural interest or are included in the general

¹ It should be pointed out that Article 9.1 of the Act provides that *“Property forming part of the Spanish Historical Heritage and declared of cultural interest under this Act or individually by Royal Decree shall enjoy special protection and safeguarding”*.

inventory of the movable property of the Spanish Historical Heritage, and which shall also be included in a special inventory of the library.

National Archives, in particular, are governed by a Decree of 22 November 1901 approving their Regulations, which are still in force. Chapter IV deals with optional arrangements and catalogues. Thus, Article 49 provides that, to ensure optimum technical operations, the archives shall comprise a classification table of holdings; a general inventory (comprising the partial inventories of holdings received by the Archives); a topographical inventory; a catalogue indicating each file's contents, its corresponding serial number and identification code; an index listing each document and file, specifying their subject; a provenance catalogue, in the event of multiple prior ownership; and a catalogue of manuscripts in each section.

Furthermore, Article 57 provides that for archives containing collections of stamps, individual etchings, original sketches, facsimile documents, individual maps or drawings, photographs and similar objects, these objects must be indexed in special catalogues.

Chapter V of the Regulations on the National Archives governs the use of registers in their administrative operations, with Article 67 providing, in particular, that all archives shall keep, *inter alia*, a register of holdings received, a register of permanent disposals, a register of circulating holdings and a register of inventory records. Article 95 establishes that all National Archives shall conduct periodically and with the utmost accuracy an inventory of all books and files preserved therein. Special and regional archives shall conduct a full inventory each year. As to general archives, an inventory shall be conducted by section every three years. Article 96 provides that notable manuscripts, codices and valuable books shall be inventoried annually.

With regard to museums, libraries and archives within the purview of other administrations, the different regional governments have their own regulations on the subject, but these are practically the same as the State regulations, usually containing provisions on the administrative supervision of collections similar to those discussed above.

Secondly, the Convention refers to the designation of **COMPETENT AUTHORITIES RESPONSIBLE FOR THE SAFEGUARDING OF CULTURAL PROPERTY**. In Spain, this duty belongs to the State and the autonomous governments in their respective areas of jurisdiction, and is exercised by all officers working directly in the area of cultural property – mainly the directors of the centres where such property is located – and, in the case of immovable property owned by the State, the Ministry of Culture, which has a special unit responsible for protecting the historical heritage. Notwithstanding the above, the Ministry of Defence also has a unit specializing in the historical and artistic heritage.

Thirdly, the Guidelines refer to the **PLANNING OF EMERGENCY MEASURES** for protection against fire or structural collapse. Spanish historical heritage laws do not make direct provision for specific emergencies that may arise in cultural institutions, as the matter is essentially covered by legislation governing public agencies other than the Ministry of Culture, such as police forces, fire brigades or, in the event of armed conflict, the armed forces themselves.

Notwithstanding this, the Ministry of Culture has a *Planning Commission for the Protection of Collections in Emergencies*, which was set up in 2003 at the initiative of a group of professionals in response to growing international interest in the early planning of solutions to risk situations in museums. The Commission is divided into three groups: museums; archives and libraries; and historic and archaeological sites and monuments. Its scope of action has been confined initially to State institutions exclusively within the purview of the Minister of Culture, with a view to subsequently sharing the results with other institutions. In the light of the Commission's work, and particularly taking into consideration the Museums Emergency Programme promoted by the International Council of Museums (ICOM), in 2008, the Ministry of Culture published its "*Guía para un plan de protección de colecciones ante emergencias*" (Handbook for a plan to protect collections in emergencies). This handbook presents the plan, which is aimed at designing and implementing a set of measures to both prevent and minimize damage to museum collections. This document is an initial tool enabling museums to start working on these issues. Nonetheless, it is important not to lose sight of the differences between museums in terms of size, type of collections, storage facilities, opening hours,

staffing, and so on, as well as other factors such as the prioritization of the various collections in the event of an emergency.

Lastly, on this subject, it should be noted that some institutions have already developed their own independent emergency plans for their collections. Examples include the Thyssen-Bornemisza Museum and the Guggenheim Museum in Bilbao. By way of example, the latter museum's Protection Plan for Collections in Emergencies is fully integrated into the self-protection manual of the museum's General Emergency Plan, which is provided to any person who may be involved in an emergency situation through the provision of training and the conduct of drills. These individual initiatives are being taken into consideration by the public authorities in preparing the above-mentioned plans, as are other initiatives such as those sponsored by ICOM, the Getty Foundation and professional associations and forums in the security industry, among others.

It should be added that, in the particular case of national museums, the Ministry of Culture has published a comprehensive book on its Museum Plan, describing the programmes that need to be developed by museums, including one programme specifically devoted to the security of collections, buildings, staff and the public. This programme requires compliance with public and private safety regulations and it is suggested that an institutional cooperation plan be drawn up in relation to public security, involving the fire brigade, national police station, Civil Guard station, local police station, hospital and accident and emergency facility closest to the museum.

2. The next point refers to **EXISTING REGULATIONS IN THE ARMED FORCES TO ENSURE RESPECT FOR CULTURAL PROPERTY.**

Royal Decree No. 96/2009 of 6 February approving the Royal Orders on the Armed Forces was published in 2009.

As stipulated in Article 1, *"The royal orders on the armed forces, which constitute the military code of conduct, set out ethical principles and rules of conduct consistent with the Constitution and the legal system as a whole. They shall provide guidance to all military officers with a view to promoting and demanding strict fulfilment of their duty, sustained by love of Spain, honour, discipline and courage"*.

Some of its provisions are directly related to the protection of cultural property, particularly in Chapter VI (*Operational ethics*) Article 113 (entitled *Protection of cultural property*), which stipulates:

"No military officer may launch attacks, commit hostile acts or carry out reprisals against cultural property or places of worship that are clearly recognized as such, constitute the cultural and spiritual heritage of peoples and are protected under special agreements. All military officers shall prevent the above-mentioned cultural property or nearby facilities from being used for purposes that may expose the property to destruction or damage."

Article 106, which is more general, also sets out the duties of military officers in relation to international humanitarian law:

"Military officers shall know, promote knowledge of and, in the event of armed conflict or military operations, shall implement the international conventions that Spain has ratified on the amelioration of the condition of wounded, sick and shipwrecked members of armed forces, the treatment of prisoners and protection of civilians, and the international conventions on the protection of cultural property and on prohibitions or restrictions on the use of certain weapons, ratified by Spain."

3. Regarding use of the **DISTINCTIVE EMBLEM TO FACILITATE RECOGNITION OF CULTURAL PROPERTY**, this is still not used in Spain because no clear view has yet been taken on its deployment. Nonetheless, considering that the intention is to appropriately and widely disseminate the Convention and its two Protocols now that the Guidelines have been

approved, progress may be expected in this connection, as the emblem is considered a useful tool for protection, discouraging any action against the property identified.

4. Regarding the **DISSEMINATION OF THE CONVENTION AND ITS TWO PROTOCOLS IN SPAIN**, it has already been noted in reports from previous years that in Spain, international law (including the UNESCO conventions ratified by Spain) forms part of the syllabus of military colleges and academies and of the training provision for State employees in bodies specializing in cultural institutions and the historical heritage. In addition, the Ministry of Defence actively participates in the dissemination of international agreements signed by Spain in the area of defence, through seminars and conferences held at the Institute of Strategic Studies, the Higher Centre for Defence Studies and the Gutiérrez Mellado University Institute.

The Ministry of Culture, for its part, is implementing an in-service training plan for Ministry staff, which includes modules on the protection of the historical heritage, although the conduct of these courses is voluntary.

There are now plans to work with the Ministry of Education to promote knowledge of the cultural heritage, particularly among children, so that they may appreciate and respect it. References to international legislation are expected to be included in these plans, particularly aspects such as the Convention emblem, with which greater familiarization is sought. The State Administration shall work with regional governments to develop specific training plans in this area.

5. Regarding **OFFICIAL TRANSLATIONS OF THE CONVENTION AND ITS TWO PROTOCOLS**, the Secretariat now has the official Spanish version. Nevertheless, paragraph 1 of Article 37 of the Second Protocol provides that the Parties shall translate it into their official languages and communicate these official translations to the Director-General. Spain has three official languages other than Spanish: Galician, Catalan and Basque. Translations are therefore planned for these languages and shall be submitted to the Director-General of UNESCO when available.

6. In accordance with Article 28 of the Convention and in the context of the **SYSTEM OF SPANISH CRIMINAL LAW**, all necessary measures have been adopted to ensure that people committing or giving orders to commit a breach of the Convention are prosecuted and punished with penal or disciplinary sanctions and, in particular, to incorporate the five categories of offence provided for in paragraph 1 of Article 15, and also referred to in Article 16 of the Second Protocol, into domestic law.

More specifically, Chapter II of Title XVI of the Spanish Penal Code, approved by Enabling Act No. 10/1995 of 23 November, is devoted to offences against the historical heritage (*Offences relating to land-use planning and to the protection of the historical heritage and the environment*). The following articles, in particular, should be noted:

“Article 321:

Any person responsible for the demolition or serious degradation of buildings afforded special protection on account of their historical, artistic, cultural or monumental value, shall be liable to imprisonment for a term of six months to three years, a fine of 12 to 24 months’ salary and, in all cases, specific disqualification from a profession or trade for a period of one to five years.

In all cases, judges or courts may, in a reasoned judgment, order the reconstruction or restoration of the work of the perpetrator of the act, without prejudice to the compensation of bona fide third parties.

Article 322:

1. *Any authority or State official approving projects to demolish or damage specially protected buildings, while being aware that such an act is unlawful, shall be liable, in addition to the sentence established in Article 404 of this Code, to imprisonment for a term of six months to two years or a fine of 12 to 24 months’ salary.*

2. Any authority or State official taking decisions that lead to the offence or voting in favour of the act, on their own initiative or as a member of a collegiate body, while being aware that such an act is unlawful, shall be liable to similar penalties.

Article 323:

Any person responsible for damaging archives, a register, a museum, a library, an educational institution, scientific body or similar institution, or property of historical, artistic, scientific, cultural or monumental value or archaeological excavations shall be liable to imprisonment for a term of one to three years and a fine of 12 to 24 months' salary.

In these cases, the judges or courts may order measures to be taken in order to restore the damaged property, to the extent, possible, at the expense of the person responsible for the damage.

Article 324

Any person responsible, owing to grave negligence, for damage estimated at more than 400 euros to archives, a register, a museum, a library, an educational institution, a scientific body or similar institution, or to property of historical, artistic, cultural, scientific or monumental value or archaeological excavations shall be liable to a fine of three to eighteen months salary, according to the extent of the damage."

Title XXIV of the Penal Code deals with offences against the international community, and Chapter III specifically covers **offences against persons and protected property in the event of armed conflict."**

"Article 613:

1.² Any person who commits or orders any of the following acts in the event of armed conflict shall be liable to imprisonment for four to six years:

(a) Any attack, act of reprisal or any other hostile act causing significant destruction, against cultural property or places of worship that are clearly recognized as such, constitute the cultural and spiritual heritage of peoples and are protected under special agreements, or against cultural property afforded enhanced protection, unless such property is located in the immediate vicinity of military targets or is used to support the opponent's military operations.

(...)

(f) Destruction and appropriation of property belonging to another or any act causing damage to such property, without military justification, the appropriation of property through coercion or the commission of any other acts of looting.

2. If the cultural property in question is afforded special protection and if the case is one of extreme gravity, the penalty for the aggravated charge may be imposed.

Article 614:

In the event of armed conflict, any person who commits or orders the commission of any other offence or act contrary to the provisions of the international treaties to which Spain is a Party, in relation to the conduct of hostilities, the protection of the wounded, sick and shipwrecked, the treatment of prisoners of war and the protection of civilians and cultural property in the event of armed conflict, shall be liable to imprisonment for six months to two years.

² In accordance with Enabling Act No. 15/2003 of 25 November.

Article 614 bis:³

If the acts referred to in this chapter form part of a plan or policy or are committed on a large scale, the length of the sentence imposed shall be in the higher range of penalties provided for such offences.”

With regard to the Military Criminal Code, governed by Enabling Act No. 13/1985 of 9 December, its Title II (*Violation of the laws and customs of war*) contains two articles imposing prison sentences for military officers in the following cultural property-related cases:

“Article 77: *Any military officer who commits the following acts shall be liable to two to eight years of imprisonment:*

... Destruction or damage, not justified by the constraints of war of the documentary and bibliographical and heritage, architectural monuments and groups of property of historical or environmental interest, movable property of historical, artistic, scientific or technical value, archaeological excavations, property of ethnographic interest, natural sites, gardens and parks of historical, artistic importance or anthropological interest and, in general, any property forming part of the historical heritage.

Any act of looting or appropriation of the above-mentioned cultural property, any act of vandalism on such property and the seizure of property located in territory under military occupation, shall be punishable by a similar penalty.

Article 78: *Any military officer who commits or orders the commission of any other act contrary to the provisions of the international treaties that Spain has ratified on the conduct of hostilities, protection of the wounded, sick and shipwrecked, the treatment of prisoners of war and the protection for civilians and cultural property in the event of armed conflict shall be liable to a term of imprisonment of three months and one day to two years.”*

7. Regarding **IMPLEMENTATION OF THE PROVISIONS OF THE 1954 PROTOCOL**, there is no record of Spain having been involved so far in cases of exportation of cultural property in a territory occupied by it. In addition, there are legal measures to prevent cultural property from territories occupied by other States from entering Spain. The State security forces have specialist units monitoring illicit trafficking in cultural property (the Historical Heritage Investigation Brigade of the National Police and the Historical Heritage Group of the Civil Guard).

8. Regarding Resolution II of the 1954 Hague Conference, Spain has not set up a **NATIONAL ADVISORY COMMITTEE**. Nonetheless, the Ministry of Culture and the Ministry of Defence established an interministerial working group to prepare this report and to follow up the implementation and dissemination of the Convention and its Protocols on Spanish territory, taking into account that progress is expected in this area now that the Guidelines have been approved. This working group shall deal with issues such as enhanced protection and preparation of a “tentative list”, consideration of the use of the Convention emblem in Spain and activities to publicize the Convention and its two Protocols among the population. Cooperation is planned with regional governments over some of these aspects.

9. With regard to **ENHANCED PROTECTION**, Spain is interested in compiling a tentative list of property of its cultural heritage for which it would like to receive such protection. Accordingly, consideration is being given to including in this list not only property declared World Heritage, but also items declared to be of cultural interest, in accordance with Act No. 6/1985 of 25 June on the Spanish Historical H

³ Added by Enabling Act No. 15/2003 of 25 November.