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Protection of  
Cultural Property in  
the Event of Armed Conflict

**Four-year cycle  
2017-2020**

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

## GENERAL INFORMATION

1. Region:

State Party:

**MALAYSIA**

### 2. Submission of previous national reports

2.1. 2013-2016 cycle

Yes

No

### 3. Actors involved in the preparation of the national report

3.1. Government institutions responsible for the protection of cultural property

3.2. National Commission for UNESCO

3.3. Military expert

3.4. Independent experts

If other actors have been involved, please indicate them

### 4. National Focal Point

According to paragraph 120 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 consider the Permanent Delegation as a focal point, you are invited to provide the Secretariat with the name and address of a national focal point who will receive all official documents and correspondence related to the national periodic reporting.

Institution:

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# I. The Hague Convention of 1954

## 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.

- *Has your State undertaken such measures?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

The National Heritage Act 2005 (Act 645) which has been enforced since 1 March 2006, repealed the Antiquities Act 1976 (Act 168) and the Treasures Act 1957 (Act 542). The scope of Act 645 is wider and all encompassing compared to Act 168 and Act 542. It covers natural heritage, tangible and intangible, cultural heritage, underwater cultural heritage, treasure-trove and other related matters". The Act provide regulations and provisions on heritage management as a whole with the formation of a National Heritage Council, Heritage Fund, National Heritage Register, Designation of Heritage Sites, Declaration of Heritage Objects, Underwater Cultural Heritage, Declaration and Protection of National Heritage, Treasure Trove, Licensing, Appeal, Enforcement Powers and Offences. In essence, the current practice of identifying and marking of sites with Heritage and National Heritage plaques would be able to minimize disturbance to buildings or sites of historical and cultural significance.

## 2. Article 6 - Use of the distinctive emblem for the marking of cultural property

The 1954 Hague Convention creates a distinctive emblem for the exclusive marking of cultural property, with a view to ensure its recognition, particularly in the event of armed conflict. The marking of cultural property is one of the preparatory measures that can be undertaken in time of peace.

- *Has your State **marked cultural property** by using the distinctive emblem of the Convention?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

The Department of National Heritage is of the view that the current plaques to mark the Heritage and National Heritage property are considered sufficient. However, the distinctive emblem of the Convention will be considered depending further consultation with relevant experts.

## 3. Article 7 - Military measures

This Article provides for the obligations of the High Contracting Parties with regard to the introduction in their regulations or instructions for the use of their armed forces of provisions to

ensure compliance with the Convention, as well as to plan or establish within their armed forces, 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 such property. These are obligations to be implemented in time of peace.

- *Has your State introduced provisions in the **regulations and instructions for your armed forces** to ensure compliance with the Convention?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Malaysian Armed Forces Joint Doctrine

- *Has your State established **services** or designated specialist personnel *within your armed forces* to ensure respect for cultural property?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

#### 4. Article 25 - Dissemination of the Convention

Regulations relating to the protection of cultural property in time of armed conflict must be included into the programmes of military and, if possible, civilian training. The objective is to ensure that the principles of the Convention are known by the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

- *Has your State **disseminated the provisions of the Convention** within the armed forces as well as among target groups and the general public?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Dissemination of the provisions of the Convention has been made by relevant authorities to the military personnel during military courses, seminars and exercises.

#### 5. Article 26(1) - Official translations

This Article requires that the High Contracting Parties communicate to one another, through the Director-General of the United Nations Educational, Scientific and Cultural Organization, the official translations of the present Convention and of the Regulations for its execution:

**Please submit a copy / copies of such translation(s), in electronic format, if possible, to the Secretariat"**

Please annex an electronic copy of your translation(s) to this report:

Attach the document

## 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, regardless of their nationality, who commit or order a breach of the Convention.

- *Has your State **introduced in your domestic legislation** all necessary steps to prosecute and impose penal or disciplinary sanctions against a conduct contrary to the obligations set out in the Convention?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Offenses involving heritage sites, buildings or objects in Malaysia have been clearly stated under the National Heritage Act 2005 (Act 645) namely in Section 112 - Offenses regarding heritage sites; Section 113- Offenses relating to heritage objects; Offenses regarding National Heritage; Section 118 - General penalty; Section 119 - Compounding of offenses etc. Apart from that, cultural property is also protected under other acts, especially the Town and Country Planning Act 1976 [Act 172].

## II. Resolution II of the 1954 Conference

- *Has your State established a **National Advisory Committee** in accordance with the wish expressed by the Intergovernmental Conference (1954) in [Resolution II](#)?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

- *In the event that you have established a National Advisory Committee, has it been incorporated into a national commission for the implementation of international humanitarian law?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Although no National Advisory Committee has been purposely created to fulfill the requirements in Resolution II, a committee known as the National Heritage Council was established since 2006 under the national Heritage Act (Act 645). The functions of the Council is to advice the Minister and the Heritage Commissioner on all matters relating to heritage and the due administration and enforcement of laws [Article 9(1)]. Being represented by many different agencies and experts, the Council, generally is rightly represented and should be able to advice both the Commissioner and the Minister accordingly.

### III. 1954 (First) Protocol

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

The main purpose of the 1954 Protocol is the protection of cultural property in **or stemming from** occupied territory.

- *Has your State undertaken **measures to implement** these international obligations, including the adoption of relevant legislation?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Essentially, the spirit of the 1954 Convention has been fulfilled through implementation under other Conventions supported by the relevant Acts and by laws in Malaysia. In this regard, the relevant and the most prominent Acts in Malaysia to implement the spirit of the Convention includes the National Heritage Act 2005 (Act 645); the Town and Country Planning Act 1976 (Act 172); National Archive Act 2003. The spirit of the Convention will be further enhanced in the future by harmonizing existing national and local laws.

## IV. The 1999 Second Protocol

[To be filled in only by the Parties to the 1999 Second Protocol]

The 1999 Second Protocol supplements the 1954 Hague Convention in many respects. In case the information has already been presented in the context of questions relating to the 1954 Hague Convention, you can directly refer to it.

### 1. Article 5 - Safeguarding of cultural property

Article 5 of the Second Protocol supplements Article 3 of the Hague Convention by providing concrete examples of preparatory measures to be undertaken in time of peace, such as the preparation of inventories of cultural property or the designation of competent authorities responsible for the safeguarding of cultural property.

- *Has your State undertaken such measures?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

### 2. Article 9 - Protection of cultural property in occupied territory

Article 9 of the Second Protocol complements Article 5 of the 1954 Hague Convention by imposing specific obligations on the occupying power. Paragraph 119 of the Guidelines for the Implementation of the 1999 Second Protocol requires Parties that are occupying powers to provide information in their national reports on how the provisions relating to the protection of cultural property in occupied territory are being respected.

- *Do you ensure compliance with the provisions relating to the **protection of cultural property in the context of military occupation**?*

YES:  NO:  Not applicable:

You can complete your answer below, taking into account the guidelines in the model report.

### 3. Article 10 - Enhanced protection

The 1999 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).

- *Do you **intend to request the granting** of enhanced protection for cultural property within the next four years or, if appropriate, to submit a **national tentative list** under Article 11 (1) of the 1999 Second Protocol?*

YES:  NO:



You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

### **MONITORING OF CULTURAL PROPERTY UNDER ENHANCED PROTECTION**

*[If some cultural property in your State benefits from enhanced protection, please also fill in this part of the questionnaire].*

The benefit of enhanced protection implies the continued fulfilment of the conditions provided for in Article 10 of the 1999 Second Protocol.

- *Is a **specific mechanism for monitoring cultural property under enhanced protection** in place? For example, are the measures undertaken to ensure the highest level of protection periodically reviewed to ensure their full adequacy in all circumstances?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

Pursuant to paragraph 94 of the Guidelines, a distinctive emblem is created for the exclusive marking of cultural property under enhanced protection.

- *Has your State **marked with the distinctive emblem** cultural property under enhanced protection?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

### **4. Article 15 - Serious violations of the 1999 Second Protocol**

“Article 15 obliges Parties to **establish as criminal** offences in their domestic law offences constituting serious breaches of the Second Protocol, **and to make such offences punishable by** appropriate penalties”.

- *Has your State **implemented this obligation**? If yes, what measures have been undertaken?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

### **5. Article 16 - Jurisdiction**

Pursuant to Article 16 of the Second Protocol, the Parties shall take the necessary legislative measures to establish their jurisdiction over offences set forth in Article 15 of the 1999 Second Protocol in certain cases.

- *Has your State implemented this obligation?* If yes, what measures have been undertaken **to grant jurisdiction to your courts** over serious offences under the 1999 Second Protocol?

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

## 6. Article 21 - Measures regarding other violations

The 1999 Second Protocol obliges Parties to adopt legislative, administrative or disciplinary measures as may be necessary to **suppress certain other violations of the Second Protocol**:

a. any use of cultural property in violation of the 1954 Hague Convention or the 1999 Second Protocol;

b. any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the 1954 Hague Convention or the 1999 Second Protocol.

- *Has your State implemented such measures?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

## 7. Article 30 - Dissemination

Article 30 of the Second Protocol complements Articles 7 and 25 of the 1954 Hague Convention. In this regard, Article 30 it asks the Parties, to endeavour by appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect for cultural property by their entire population, to ensure the dissemination of the 1999 Second Protocol, and to incorporate in their military regulations' guidelines and instructions for the protection of cultural property.

- *Has your State disseminated the provisions of the Convention and the Second Protocol within the armed forces as well as to target groups and the general public?*

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

## 8. Article 33 – Assistance of UNESCO

Pursuant to paragraph 151 of the Guidelines for the Implementation of the 1999 Second Protocol, the Parties having activities at bilateral or multilateral level are invited to inform the Committee, in their periodic reports, of their activities in order to share their experiences or good practices.

- ***Has your State shared, in particular through the Secretariat of UNESCO, your experiences and good practices in implementation of the 1954 Hague Convention and / or its Protocols?***

YES:  NO:

You can complete your answer below, taking into account the guidelines in the model report.

Not applicable

## 9. Article 37 - Official translation of the 1999 Second Protocol to the 1954 Hague Convention

Pursuant to Article 37 of the Second Protocol, the Parties shall translate the 1999 Second Protocol into their official language(s) of their countries and shall communicate these official translations to the Director-General.

**Please submit a copy / copies of such translation(s), in electronic format, if possible, to the Secretariat.**

Please annex an *electronic copy of your translation(s) to this report.*

## V. Other questions relating to the 1954 Hague Convention and its two Protocols

### 1. Ratification of / accession to other international treaties having provisions of the protection of cultural property

- Can you indicate the other international instruments to which your State is a party?

International instruments	Ratification/Accession
1970 UNESCO Convention on the means on Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property	.....
1972 UNESCO Convention on the Protection of the World, Cultural and Natural Heritage	Ratification
2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage	.....
2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage	Ratification
2005 UNESCO Convention for the Protection and Promotion of Diversity of Cultural Expressions	.....
Additional Protocol (I) to the Geneva Conventions, 1977	.....
Additional Protocol (II) to the Geneva Conventions, 1977	.....
Additional Protocol (III) to the Geneva Conventions, 2005	.....

### 2. National practice relating to the implementation of the Hague Convention and its two Protocols

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

- Relevant **civil and military administrative regulations**:

PDF Document

Website

- **National laws** relating to the protection of cultural property, as well as criminal provisions adopted in the context of the implementation of Article 28 of the Hague Convention and Articles 15, 16 and 21 of the Second Protocol, and case law relating to the protection of cultural property.

PDF Document

Website

- Documents relating to awareness-raising activities (seminar programme, brochures, etc.), as well as any other document (legislative, judicial or administrative) relevant to the dissemination of the 1954 Hague Convention and its 1999 Second Protocol.

PDF Document

Website

### 3. Effectiveness of cooperation mechanisms at the national level

- The implementation of the Hague Convention and its two Protocols requires cooperation at the national level between the various authorities (civil, military, etc.). Can you assess the degree of cooperation, at the national level, in your State?

There is no cooperation between the different authorities

There is limited cooperation between the different authorities

There is cooperation between the various authorities, but there are still improvements to be made

There is a perfectly functional cooperation between the different authorities

Other (specify)

## VI. Self-assessment forms

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

### 1. Assessment of the degree of implementation

*[To do this, please use the following rating scale]*

1. Not at all implemented;
2. Partially implemented and the process is at standstill;
3. Partially implemented, the process following its course; and
4. Fully implemented.

Implementation of the safeguarding obligation through the adoption of preparatory measures	3
Military training on regulations for the protection of cultural property	2
Use of the distinctive emblem to mark cultural property	3
Implementation of the obligation to disseminate, through the implementation of awareness-raising activities for target audiences	3
Adoption of relevant criminal legislation	3
<i>For Parties with cultural property under enhanced protection only.</i>	.....
Establishment of a monitoring system for cultural property under enhanced protection at the national level	

### 2. Assessment of the difficulties encountered

*[To do this, please use the following rating scale]*

1. Difficulties are encountered, but there are no plans to seek technical assistance from the UNESCO Secretariat;
2. Difficulties are encountered, nevertheless, it is planned to make use of the technical assistance of the UNESCO Secretariat;
3. Difficulties were encountered, but thanks to the technical assistance of the Secretariat they could be resolved;
4. Difficulties were encountered at first, but they turned into challenges that were overcome; and
5. No difficulties were encountered.

Implementation of the safeguarding obligation through the adoption of preparatory measures	5
Military training on regulations for the protection of cultural property	5
Use of the distinctive emblem to mark cultural property	2
Implementation of the obligation to disseminate, through the implementation of awareness-raising activities for target audiences	5
Adoption of relevant criminal legislation	2
<i>For Parties with cultural property under enhanced protection only.</i>	.....
Establishment of a monitoring system for cultural property under enhanced protection at the national level	

## VII. Enhanced protection mechanism – 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 criteria are cumulatively met:

- ✓ Cultural property is of the greatest importance to humanity;
- ✓ Cultural property is protected by adequate domestic, legal and administrative measures recognising its exceptional cultural and historical value and ensuring the highest level of protection; and
- ✓ Cultural property must not be used for military purposes or to shield military sites. And the Party which has control over the cultural property has to make a declaration confirming that it will not be used for military purposes or to shield military sites.

As these conditions are set out in an international treaty, their interpretation cannot be made independently of State practice, which is of fundamental importance under international treaty law. Therefore, 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 consideration the relevant paragraphs of the Guidelines for the Implementation of the Second Protocol.*

- Article 10, paragraph (a) - "The greatest importance for humanity"

Please list the main factors to be undertaken into consideration in determining whether a cultural property is of the greatest importance for humanity?

1. It needs to be recognized by an international body or under certain conventions.
2. It must meet the criteria set under the body or convention and there have been scientific studies to prove it.
3. Comparative analysis has been conducted and verified by independent body.

- Article 10, paragraph (b) - "The highest level of protection"

Please mention the national authorities to be consulted in determining the choice of measures to be adopted to ensure the highest level of protection for a cultural property for which enhanced protection is requested. What measures can ensure the highest level of protection?

1. Department of National Heritage, Ministry of Tourism, Arts and Culture Malaysia
2. Department of Museums Malaysia, Ministry of Tourism, Arts and Culture Malaysia
3. National Archives Malaysia, Ministry of Tourism, Arts and Culture Malaysia
4. National Visual Arts Development Board, Ministry of Tourism, Arts and Culture Malaysia

The measures could be considered for protection:

1. To gazette all the important cultural property under legal instruments.
2. To formulate Management Plan for each cultural property.
3. To disseminate relevant knowledge and information.
4. To conduct awareness program and activities.

- Article 10, paragraph (c) - "Not-used for military purposes"

Please mention the national authorities to be consulted in order to take the decision not to use the proposed cultural property for granting enhanced protection for military purposes or to shield military sites?

The Department of National Heritage, Ministry of Tourism, Arts and Culture Malaysia