

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict: Some observations on the implementation at the national level¹

By Jan Hladik

Jan Hladik is programme specialist at the International Standards Section in UNESCO's Division of Cultural Heritage (Paris). A jurist, he is in charge of the implementation of the 1954 Hague Convention for the Protection of Cultural property in the Event of Armed Conflict and its two 1954 and 1999 protocols. He has published several articles on the Hague Convention and other related issues in professional journals.

This presentation is devoted to one of the most important aspects of the protection of cultural property in the event of armed conflict - the implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (“the Convention”) at the national level². The domestic implementation of any international agreement, be it of bilateral or multilateral character, is the primary responsibility of its States Parties as embodied in the fundamental principle of international law *Pacta sunt servanda*³. This premise is key to international humanitarian law when applied in the event of armed conflict – a period of worsening social and economic conditions and weakening or even disappearance of societal structures. Thus, the measures aimed at protecting specific categories of persons (essentially those not participating or no longer participating in hostilities) or objects (e. g. objects indispensable to the survival of the civilian

¹Jan Hladík, Programme Specialist, International Standards Section, Division of Cultural Heritage, UNESCO. This presentation contains elements of my previous presentations made on different occasions.

² For an overview of measures on the implementation of international humanitarian law in general, see Yves Sandoz, “Implementing International Humanitarian Law”, updated reprint from *International Dimensions of Humanitarian Law*, Henry Dunant Institute, UNESCO, Martinus Nijhoff, Paris/Geneva/Dordrecht/Boston/London, 1995, pp. 1 – 26.

³ cf. Article 26 of the Vienna Convention on the Law of Treaties, in “The Work of the International Law Commission”, Fifth edition, New York, 1996, p. 365.

population, works and installations containing dangerous forces or, last but not least, cultural property) during hostilities must be taken in **peacetime** in order to best favour their proper implementation in the event of armed conflict.⁴

National measures for the implementation of the Hague Convention may be roughly divided into five categories: administrative, military, penal, technical and promotional⁵. However, these distinctions are conditional and not fixed. For example, the promotion of the Hague Convention within armed forces falls within both military and promotional measures, likewise the military penal legislation punishing serious and other breaches of the Convention falls within both military and penal measures. I will now briefly summarize the most important measures in the first four categories.

I. Administrative measures

First, in my view, although not provided for by the Convention, nor by the Regulations for its Execution, nor the 1954 Protocol, the most important measure is the designation of the relevant administrative body responsible for the protection of cultural property in general (in other words, not only for the purpose of the Hague Convention and/or its Second Protocol) and the provision of adequate financial and staff resources for its functioning.⁶ This body should be complemented by a national advisory committee on the implementation of the Hague Convention as recommended by the non-legally binding Resolution II of the 1954 Hague Intergovernmental Conference.

The main purpose of a national advisory committee is threefold: (i) to advise the government on measures for the implementation of the Convention in its legislative,

4 For more detailed information on the national implementation of international humanitarian law, see Dieter Fleck, "Implementing International Humanitarian Law: Problems and Priorities", extract from the *International Review of the Red Cross (ICRC)*, No. 281, March-April 1991, pp. 140 – 153. For three cases of national implementation (Georgia, the United States of America and Zimbabwe), see María Teresa Dutli, "National Implementation Measures of International Humanitarian Law: Some Practical Aspects" in the *Yearbook of International Humanitarian Law*, Volume 1, 1998, T. M. C. Asser Press, The Hague, The Netherlands, pp. 245 - 261

5 This obligation is set forth in Article 25 of the Convention and complemented by Article 30 of the Second Protocol.

6 The Second Protocol partially bridges this gap by providing, among other things, in Article 5 on the *Safeguarding of cultural property* for the obligation to designate competent authorities responsible for the safeguarding of cultural property.

technical or military aspects, both in peacetime and during an armed conflict; (ii) to approach its government in the event of armed conflict or when such a conflict appears imminent in order to ensure that cultural property situated within its own territory or within that of other countries is known to, and respected and protected by, the armed forces of the country, in accordance with the provisions of the Convention; and (iii) to arrange, in agreement with its government, for liaison and co-operation with other similar national committees and with any competent international authority.

An excellent example of a national advisory committee is the Iranian Committee, established in 1990. It is divided into four sub-committees – educational, technical/engineering, legal and military – which carry out the relevant tasks, within their fields of competence, on the dissemination and implementation of the Convention.⁷

To avoid the duplication of efforts and waste of resources, the national advisory committee may be a part of the national commission for the implementation of international humanitarian law in view of a very close relationship between the Hague Convention and its Second Protocol on one hand, and other instruments of international humanitarian law, such as the 1977 Additional Protocols to the four 1949 Geneva Conventions on the other hand. Alternatively, the national commission for the implementation of international humanitarian law may comprise in its mandate the protection of cultural property in the event of armed conflict. Two examples are illustrative - the Argentinean and the Belgian. The Argentinean Commission on the Application of International Humanitarian Law, established in June 1994, is, among other things, responsible for the dissemination and implementation of the Convention. The Belgian Inter-ministerial Commission for Humanitarian Law (CIDH), acting as an advisory body of the Federal Government in the general field of international humanitarian law, currently acts as the national advisory committee.

A second administrative measure is the marking of cultural property with the distinctive emblem of the Convention (cf. Arts. 6, 16 and 17). A State party to the Convention may consider such marking with regard to cultural property under general

⁷ This example is taken from the 1995 – 2003 Secretariat’s report on the implementation of the Hague Convention and its two Protocols, currently in preparation (hereafter “the draft report”).

protection, while it is compulsory for: immovable cultural property under special protection; cultural property when it is being transported under special protection and in urgent cases; and finally for improvised refuges. All these cases relate to wartime, but from the practical point of view it is preferable to prepare the marking in peacetime.

I wish to point out that the practice of marking cultural property with the emblem of the Convention is not consistent because some States Parties are concerned that it provides a potential adversary with possible targets. Unfortunately, the experience of the war in the former Yugoslavia confirmed this cautionary approach. The Croatian national report on the implementation of the Convention, published in the 1995 Secretariat's report, contains information concerning the intentional targeting of cultural property marked with the emblem of the Convention.⁸

When preparing the 1995 – 2003 periodic report on the implementation of the Convention and its two Protocols, some States Parties such as Bosnia and Herzegovina, Germany, Slovenia and Switzerland reported that the marking has been performed, while others such as Finland, Liechtenstein or Spain stated that the marking had not taken place.

A third administrative measure is to remove movable cultural property from the vicinity of military objectives or avoid locating military objectives near cultural property. Such obligation, reflected in Article 8⁹ of the Second Protocol, is not absolute. It is subject to the requirement of military necessity which is expressed by the words “to the maximum extent feasible”. The Slovenian national report on the implementation of the Hague Convention, contained in the 1995 Secretariat's report, refers to the decision and its subsequent implementation to “withdraw military property from city centres to the outskirts”.¹⁰

8 cf. UNESCO document *Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, The Hague 1954, 1995 Reports, UNESCO document Ref. CLT-95/WS/13, Paris, December 1995, p. 23

9 This Article closely mirrors Article 58 on the *Precautions against the effects of attacks* of Additional Protocol I.

10 *Supra* footnote 8, p. 42

II. Military measures

As in case of other instruments of international humanitarian law, the primary responsibility for the implementation of the Hague Convention and its Second Protocol lies with the military. This premise concerns not only wartime but peacetime as well. For this reason, each member of the military must be aware of his/her obligations under those agreements.

There are two principal ways of reinforcing compliance with the Convention and the 1999 Protocol – first, dissemination of their provisions within the military (Arts. 7(1) and 25 of the Convention complemented by provisions of Article 30(3) of the Second Protocol) and training; and, secondly, prosecution of military personnel having committed breaches of the Convention and/or the Second Protocol.

An excellent example of dissemination and promotion of the Convention and its Second Protocol within the military is represented by seminars of the Austrian Society for the Protection of Cultural Property because they bring together the military as well as reserve officers, thus ensuring the co-ordination between all major players. The last one, held in Bregenz in September 2001, was devoted to a particularly important subject – protection of cultural property during peacekeeping operations.¹¹

Finally, I wish to mention the last military measure – the creation, in peacetime, within the armed forces of services or specialist personnel responsible for securing respect for cultural property and co-operation with the civilian authorities responsible for safeguarding it (Art. 7(2) of the Hague Convention). For a concrete example of the implementation of this provision, I refer you to the Netherlands national report on the implementation of the Convention¹², published in the 1995 Secretariat's report on the implementation of the Convention.

11 The UN Secretary-General's Bulletin on the *Observance by United Nations forces of international humanitarian law* of 6 August 1999 provides, among other things, in Section 6 for the prohibition of attacks against cultural property and reprisals directed against it.

12 *Supra* footnote 8, p. 39

III. Penal measures

In accordance with Article 28 of the Hague Convention, States Parties are required “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 present Convention”. This obligation has a very general character and gives the States Parties a certain leeway in implementing it. Its implementation depends on several aspects – legal tradition of each particular country, its constitutional system, the relationship between international and national law, as well as the character of national legislation implementing penal provisions of the 1949 Geneva Conventions, Additional Protocol I (1977), and other instruments of international humanitarian law.

Chapter IV of the Second Protocol complements this obligation by establishing a detailed system of penal provisions both of material and procedural nature. In particular, Chapter IV establishes a five-category notion of serious violations and a two-category notion of other violations.¹³

The draft 1995 – 2003 report on the implementation of the Convention and its two Protocols contains detailed information on different penal provisions sanctioning the destruction of cultural property. In some national legislations there are separate, specific provisions to this end (e. g. Articles 77 and 78 of the Spanish Military Penal Code) while in others (e. g. Liechtenstein) violations against the Convention are sanctioned on the basis of general legislation.

13 To facilitate the national implementation of Chapter IV of the Second Protocol, the Secretariat commissioned a study undertaken by Dr Roger O’Keefe, an outside consultant. The study includes twelve case studies: six Common Law countries (Australia, Canada, India, Nigeria, UK and USA) and six Civil Law countries (Argentina, France, Japan, the Netherlands, the Russian Federation and Switzerland) and provides recommendations. It is available, upon request, from the Secretariat.

When implementing provisions of Chapter IV, the States concerned should make sure that their domestic implementation is compatible with their obligations under other instruments of international humanitarian law to which they are Parties or which they consider joining. In particular, this recommendation concerns penal provisions of Additional Protocol I (1977) or the 1998 Rome Statute of the International Criminal Court.

IV. Technical measures

Technical measures consist mainly in the preparation, in time of peace, for the safeguarding of cultural property against the foreseeable effects of an armed conflict (cf. Art. 3 of the Hague Convention). This provision, which is of a very general character, is complemented by Article 5 of the Second Protocol which provides an example of technical measures such as the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate *in situ* protection of such property.

May I mention on this occasion that those measures may prove helpful not only in case of armed conflict but also in the event of natural disaster or as a highly effective weapon against art theft.

An excellent example of technical measures is contained in the Swiss national report on the implementation of the Convention reprinted in the 1995 Secretariat's report. The Swiss report provides information about the creation of refuges of cultural property, the practice of having back-up documentation and other relevant issues.¹⁴

To conclude, the proper national implementation of the Hague Convention is a *condicio sine qua non* for the effective respect for cultural property in the event of armed conflict by States Parties. There are examples and good practices to be followed, lessons to be learned and mistakes to be avoided. An international exchange of experience is a key element in the improvement of the compliance with the Convention by each State Party.

14 Supra footnote 8, pp. 44 - 45