



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW



1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict and its Protocols

Military operations have often resulted in the destruction of irreplaceable cultural property, a loss not only to the country of origin but also to the cultural heritage of all people. Recognizing the significance of this loss, the international community adopted the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (CCP). A Protocol dealing with cultural property during times of occupation (P1) was adopted at the same time as the 1954 Convention. Although the 1954 Convention strengthens protection for cultural property, its provisions have not been implemented consistently. To address this problem, a second Protocol to the 1954 Convention (P2) was adopted on 26 March 1999. In addition to these instruments, the 1977 Protocols additional to the Geneva Conventions include provisions protecting cultural property (Protocol I, Art. 38, 53 and 85, and Protocol II, Art. 16). Ratification of each of the above-mentioned instruments is essential to preserving objects precious to all humanity.

Cultural Property

Cultural property is any movable or immovable property of great importance to the cultural heritage of all people, such as monuments of architecture or history, archaeological sites, works of art, books or any building whose main and effective purpose is to contain cultural property (CCP, Art. 1).

Identification

Cultural property should be identified with the emblem of the 1954 Convention, pictured above (CCP, Art. 16, 17).

Systems of Protection

Parties to the Convention must protect all cultural property, whether their own or that situated in the territory of other States Parties. The various systems that provide protection for cultural property are described below:

General Protection

All cultural property must be afforded, at minimum, "general protection", as described in the Convention.

Protection:

- Parties to the Convention must safeguard their own cultural property against foreseeable effects of armed conflict (CCP, Art. 3).
- States Parties must also respect all cultural property by the following:
 - (1) not using cultural property for any purpose likely to expose it to destruction or damage in the event of armed conflict;
 - (2) not directing any act of hostility against cultural property (CCP, Art. 4).

Exception:

- The obligation to respect all cultural property, described above, may be waived on the basis of "imperative military necessity" (CCP, Art. 4).
- This waiver may be invoked:
 - (1) to use cultural property for purposes likely to endanger it, only if there is no feasible alternative available to obtain

a similar military advantage. (P2, Art. 6);

- (2) to *attack* cultural property, only when that property has, by its function, been made into a military objective and there is no feasible alternative available to obtain a similar military advantage. Effective advance warning must be given, circumstances permitting (P2, Art. 6).

Precautions:

- Parties to the Convention must, to the maximum extent feasible, either move cultural property away from military objectives or avoid placing military objectives near such property (P2, Art. 8).
- Parties to a conflict must do everything feasible to protect cultural property, including refraining from an attack that may cause incidental damage (P2, Art. 7).

Occupied Territory

- Under the Convention, States Parties occupying foreign territory must preserve cultural property in that territory (CCP, Art. 5).
- The 1954 Protocol requires States Parties occupying territory during armed conflict to prevent the exportation of cultural property from that territory (P1, Art. 1). However, if cultural property is exported, States Parties must return it at the close of the hostilities (P1, Art. 3).

Special protection

The 1954 Convention provides a system of "special protection", which resulted in only limited success. In response to the limitations of the 1954 system, the 1999 Protocol introduces a new system of "enhanced protection" (*see below*).

If property has been granted both special and enhanced protection, only enhanced protection applies (P2, Art. 4).

Enhanced protection

The 1999 Protocol provides "enhanced protection" of certain cultural objects.

Criteria for Protection:

- To be granted "enhanced protection", cultural property must meet the following three criteria (P2, Art. 10):
 - (1) it is cultural heritage of the greatest importance to humanity;
 - (2) it is protected by domestic measures that recognize its cultural and historical value and ensure the highest level of protection;
 - (3) it is not used for military purposes or to shield

military sites, and the Party which has control over the property has formally declared that it will not be so used.

- Cultural property granted enhanced protection by the Committee for the Protection of Cultural Property in the Event of Armed Conflict is placed on the "List of Cultural Property under Enhanced Protection" (P2, Art. 11).

Protection:

- Parties holding property included on the List must not use such property or its immediate surroundings in support of military action (P2, Art. 12). There is no exception to this obligation.
- Parties to the Convention must refrain from *attack* against property on the List (P2, Art. 12).

Exception:

- The obligation not to *attack* property on the List does not apply if such property has, by virtue of its use, become a military objective. Attack is permitted only if it is the only feasible means of terminating such use and if precautions are taken to minimize damage to the property. Effective advance warning must be given, circumstances permitting (P2, Art. 13).

Criminal Responsibility and Jurisdiction

Parties to the Convention must take all necessary steps to prosecute and impose sanctions on all persons who violate its provisions (CCP, Art. 28).

States party to the 1999 Protocol must ensure that the following are

offences under domestic law (P2, Art. 15):

- (1) making cultural property under enhanced protection the object of attack;
- (2) using cultural property under enhanced protection or its immediate surroundings in support of military action;
- (3) extensive destruction or appropriation of protected cultural property;
- (4) making protected cultural property the object of attack;
- (5) theft, pillage or misappropriation of, or acts of vandalism directed against, protected cultural property.

Each State Party must ensure that its legislation establishes jurisdiction when the offence is committed in its territory, when the alleged offender is a national of that State, and — in relation to the first three offences — when the offence is committed abroad by a non-national.

Dissemination

Parties to the 1954 Convention and its Protocols must disseminate the treaty provisions as widely as possible, seeking to strengthen appreciation and respect for cultural property among the general population (CCP, Art. 25; P2, Art. 30). Particular effort should be taken to disseminate information among the armed forces and personnel engaged in the protection of cultural property.

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