

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999

The Parties,

Conscious of the need to improve the protection of cultural property in the event of armed conflict and to establish an enhanced system of protection for specifically designated cultural property; □ □ Reaffirming the importance of the provisions of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at the Hague on 14 May 1954, and emphasizing the necessity to supplement these provisions through measures to reinforce their implementation; □ □ Desiring to provide the High Contracting Parties to the Convention with a means of being more closely involved in the protection of cultural property in the event of armed conflict by establishing appropriate procedures therefor; □ □ Considering that the rules governing the protection of cultural property in the event of armed conflict should reflect developments in international law; □ □ Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of this Protocol; □ □ Have agreed as follows

Chapter 2 General provisions regarding protection

Article 5 Safeguarding of cultural property

Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict pursuant to Article 3 of the Convention shall include, as appropriate, 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, and the designation of competent authorities responsible for the safeguarding of cultural property.

Article 6 Respect for cultural property

With the goal of ensuring respect for cultural property in accordance with Article 4 of the Convention:

- a. a waiver on the basis of imperative military necessity pursuant to Article 4 paragraph 2 of the Convention may only be invoked to direct an act of hostility against cultural property when and for as long as:
 - i. that cultural property has, by its function, been made into a military objective; and

- ii. there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective;
- b. a waiver on the basis of imperative military necessity pursuant to Article 4 paragraph 2 of the Convention may only be invoked to use cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage;
- c. the decision to invoke imperative military necessity shall only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise;
- d. in case of an attack based on a decision taken in accordance with sub-paragraph (a), an effective advance warning shall be given whenever circumstances permit.

Article 7 Precautions in attack

Without prejudice to other precautions required by international humanitarian law in the conduct of military operations, each Party to the conflict shall:

- a. do everything feasible to verify that the objectives to be attacked are not cultural property protected under Article 4 of the Convention;
- b. take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under Article 4 of the Convention;
- c. refrain from deciding to launch any attack which may be expected to cause incidental damage to cultural property protected under Article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated; and
- d. cancel or suspend an attack if it becomes apparent:
 - i. that the objective is cultural property protected under Article 4 of the Convention
 - ii. that the attack may be expected to cause incidental damage to cultural property protected under Article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated.

Article 8 Precautions against the effects of hostilities

The Parties to the conflict shall, to the maximum extent feasible:

- a. remove movable cultural property from the vicinity of military objectives or provide for adequate in situ protection;
- b. avoid locating military objectives near cultural property.

Article 9 Protection of cultural property in occupied territory

1. Without prejudice to the provisions of Articles 4 and 5 of the Convention, a Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory:
 - a. any illicit export, other removal or transfer of ownership of cultural property;
 - b. any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property
 - c. any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.
2. Any archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close co-operation with the competent national authorities of the occupied territory.

Chapter 3 Enhanced Protection

Article 10 Enhanced protection

Cultural property may be placed under enhanced protection provided that it meets the following three conditions:

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

Article 11 The granting of enhanced protection

1. Each Party should submit to the Committee a list of cultural property for which it intends to request the granting of enhanced protection.

Article 12 Immunity of cultural property under enhanced protection

The Parties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack from any use of the property or its immediate surroundings in support of military action.

Article 13 Loss of enhanced protection

1. Cultural property under enhanced protection shall only lose such protection:
 - a. if such protection is suspended or cancelled in accordance with Article 14; or
 - b. if, and for as long as, the property has, by its use, become a military objective.
2. In the circumstances of sub-paragraph 1(b), such property may only be the object of attack if:
 - a. the attack is the only feasible means of terminating the use of the property referred to in sub-paragraph 1(b);
 - b. all feasible precautions are taken in the choice of means and methods of attack, with a view to terminating such use and avoiding, or in any event minimising, damage to the cultural property;
 - c. unless circumstances do not permit, due to requirements of immediate self-defence:
 - i. the attack is ordered at the highest operational level of command;
 - ii effective advance warning is issued to the opposing forces requiring the termination of the use referred to in sub-paragraph 1(b); and
 - iii. reasonable time is given to the opposing forces to redress the situation.

Chapter 4 Criminal responsibility and jurisdiction

Article 15 Serious violations of this Protocol

1. Any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts:
 - a. making cultural property under enhanced protection the object of attack;
 - b. using cultural property under enhanced protection or its immediate surroundings in support of military action;
 - c. extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;

d. making cultural property protected under the Convention and this Protocol the object of attack;

e. theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.

2. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in this Article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, including the rules extending individual criminal responsibility to persons other than those who directly commit the act.