

# Protection of cultural property in Belgium:

Which legal regime(s) should apply?



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Kingdom of Belgium

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# Foreword

The purpose of this brochure is to recall the importance of protecting the international and national cultural heritage, via a presentation in general terms of the various legal protection regimes applicable to cultural and religious property situated in Belgium, both in peace-time and in the event of armed conflict. In providing this explanation, this document seeks to underline the different categories of cultural property which exist, each benefiting from their own distinct protection. At the same time, it identifies the competent authorities in charge of this area, as well as the actual implementation measures.

First and foremost, this document constitutes an information tool for the Belgian authorities, both at federal level and at the level of the federated entities, to help them reinforce the protection of property which is of value for the global, regional and national heritage. In this connection, it mentions the measures that remain to be taken and how they should be implemented.

This brochure has been drawn up on the basis of the international conventions ratified by Belgium, as well as the federal, regional and community legislations in force. It was also broadly inspired by the working document of the Interministerial Commission on Humanitarian Law relating to the protection of cultural property and places of worship, the drafting of which is coordinated by the Chancellery of the Prime Minister.

I would particularly like to thank the members of the Editorial Committee of this brochure, without whom it could not have come into being, namely: Arianne Acke (Belgian Red Cross – Flanders), Frédéric Casier (Belgian Red Cross – French-speaking Community), Guy Genot (FPS Foreign Affairs, Trade and Development Cooperation), Benjamin Goes (FPS Chancellery of the Prime Minister), Stijn Houben (FPS Foreign Affairs, Trade and Development Cooperation), Marc Offermans (Ministry of Defence), Robert Remacle (Belgian Red Cross – French-speaking Community), Suzanne Van Haeverbeeck (Ministry of the Flemish Community), Marien Faure (French Community of Belgium and Walloon Region) and Bernard Vinois (FPS Interior).

Pierre MORLET  
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on Humanitarian Law

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## List of abbreviations

ICHL: Interministerial Commission on Humanitarian Law.

CPND: Commission for National Defence Problems.

IHL: International humanitarian law.

G. I: Geneva Convention (I), for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949.

G. II: Geneva Convention (II), for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949.

G. III: Geneva Convention (III), relative to the Treatment of Prisoners of War, 12 August 1949.

G. IV: Geneva Convention (IV), relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

G. P. I: First Protocol Additional to the Geneva Conventions of 12 August 1949, relative to the Protection of Victims of International Armed Conflicts (I), adopted in Geneva on 8 June 1977.

G. P. II: Second Protocol Additional to the Geneva Conventions of 12 August 1949, relative to the Protection of Victims of Non-International Armed Conflicts (II), adopted in Geneva on 8 June 1977.

H. CP: The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.

H. CP. P. I: First Protocol to the Hague Convention of 14 May 1954, for the Protection of Cultural Property in the Event of Armed Conflict (Protocol I), adopted at The Hague on 14 May 1954.

H. CP. P. II: Second Protocol relative to the Hague Convention of 14 May 1954, for the Protection of Cultural Property in the Event of Armed Conflict (Protocol II), adopted at The Hague on 26 March 1999.

H. CP. R: Regulations for execution of the Hague Convention of 14 May 1954, for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14 May 1954.

M.B.: *Moniteur belge* (official Belgian publication for laws, decrees and other official acts).

FPS.: Federal Public Service (formerly the “Ministry”).

UNESCO: United Nations Educational, Scientific and Cultural Organization.

# General introduction

«... the preservation of the cultural heritage is of great importance for all peoples of the world and [...] it is important that this heritage should receive international protection.»<sup>1</sup>

The protection of cultural property, both in peace-time and in times of armed conflict, constitutes an essential duty for States. Cultural heritage is the manifestation of the identity of an entire people. This is why, throughout history, both during international conflicts and internal conflicts, certain belligerent parties have intentionally attacked monuments and places of worship with a view to eradicating the identity, culture and history of the entire civilisation of their adversaries.<sup>2</sup> As evidence of the existence of peoples and a symbol of humanity, cultural heritage must therefore be protected.

## History

Francis Lieber's 1863 Code drawn up at the time of the American Civil War (1861-1865), was the first modern codification setting forth the principle of protection of "classical works of art, libraries, scientific collections or precious instruments (...) against an attack that may be avoided" in the event of armed conflict.<sup>3</sup>

The Brussels Declaration of 27 August 1874 on the Laws and Customs of War, and later the Regulations annexed to the Fourth Hague Convention of 1907, subsequently provided for an obligation to take all necessary measures to ensure the protection of cultural property in the event of bombardments.<sup>4</sup>

After the Second World War, the Hague Convention of 14 May 1954 (H. CP) and its two additional protocols (H. CP. P. I and H. CP. P. II)<sup>5</sup> reinforced the protection of this property in the event of armed conflict, both from an international and a

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1. Extracts from the Preamble of the Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict?

2. F. BUGNION, "The origins and development of the legal protection of cultural property in the event of armed conflict", *International Review of the Red Cross*, 2004, pp. 313-324. The author cites among other examples: the bombardment of Warsaw at the end of the Second World War.

3. 1863 instructions for the armies in the field of the United States of America, Para. 35-36.

4. Regulations concerning the Laws and Customs of War on Land, Art. 27, annexed to the Concerning the Laws and Customs of War on Land, 18 October 1907.

5. First Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Protocol I), 14 May 1954; Second Protocol relative to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Protocol II), 26 March 1999.

national point of view. Protocols I (G. P. I) and II (G. P. II) of 8 June 1977 additional to the 1949 Geneva Conventions also contain provisions protecting such property.<sup>6</sup>

In parallel with the protection of cultural property in the event of armed conflict, preservation measures are to be taken in peace-time for property of a unique value for the world heritage of humanity. Such measures are taken in particular within the framework of the United Nations Educational, Scientific and Cultural Organization (UNESCO), which was created on 16 November 1945.<sup>7</sup> This organisation is based on the principle that peace represents not merely the absence of conflicts, but is also an act of construction accomplished through education, science, culture and communication.<sup>8</sup>

To this end, UNESCO helps to maintain, increase and disseminate knowledge, by assuring the conservation and protection of the world's inheritance of books, works of art and other monuments of historic or scientific interest.<sup>9</sup> This function has manifested itself via the elaboration, *inter alia*, of a Convention Concerning the Protection of the World Cultural and Natural Heritage adopted on 16 November 1972. The aim of this text is to provide specific protection for cultural and natural property of outstanding universal value.

States are also expected to elaborate legal instruments seeking to adopt the above-mentioned international conventions into domestic law, and also to provide specific protection for other property deemed to have a certain importance for their national heritage. In Belgium, the Communities and Regions have drawn up decrees and orders to this effect.

## Categories of cultural property in Belgium

In Belgium, there are three kinds of cultural property:

- property which is protected by the 1972 UNESCO Convention and is on the World Heritage Humanity List;
- property listed under the provisions enacted by the federated entities (see below, Part I);

6. First Protocol Additional to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of International Armed Conflicts (I), 8 June 1977; Second Protocol Additional to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of Non-International Armed Conflicts (II), 8 June 1977.

7. The predecessors of this organisation are: the International Commission on Intellectual Cooperation (ICIC), based in Geneva (1922-1946), and the International Bureau of Education (IBE), also based in Geneva (1925-1968). Since 1969, this body has formed an integral part of the Secretariat of UNESCO, while retaining its own status.

8. Constitution of UNESCO signed in London on 16 November 1945, see its Preamble in particular.

9. Constitution of UNESCO, Art. 1, Para. 2, c).

- cultural property covered by the scope of application of the 1954 Hague Convention and its protocols, and of the 1977 Additional Protocols I (Art. 53) and II (Art. 16) to the Geneva Conventions, which should benefit from specific protection in the event of armed conflict, on account of its inestimable value. (see below, Part II).

It is important to maintain the abovementioned distinction between different categories of cultural property, as it involves several consequences:

- The differentiated application of legal instruments *ratione temporis*.

The purpose of the UNESCO Convention and the regulations of the federated entities is primarily to protect cultural property in peace-time, whereas the 1954 Hague Convention and the 1977 Additional Protocols I and II to the Geneva Conventions govern the protection of such property solely in the event of armed conflict.

- The plurality of definitions of cultural property

There is no general definition of “cultural property”. Each convention and each decree or order defines the notion based on its own criteria according to the property they seek to cover. In general terms and from the viewpoint of legal instruments, we may however attempt to define cultural property as “*movable or immovable property constituting the cultural heritage of all humanity and to the formation of which each people contributes*”.<sup>10</sup>

- Different protection regimes

These different types of cultural property meeting different criteria will consequently benefit from distinct protection regimes.

This remark is also valid for different categories of property protected in peace-time. Property protected by the UNESCO Convention may be distinguished from that covered by the regulations of the Belgian federated entities insofar as it should be of outstanding universal value and meet one or more of the criteria for property representing the heritage of humanity as well as authenticity conditions.

- The importance of a unique marking for each protection regime

An identification emblem should be placed on property requiring protection, which should be different according to the various protection regimes applicable, on account of their nature and particular consequences.

10. Pietro VERRI, *Dictionnaire du Droit international des conflits armés*, Geneva, ICRC, 1988, p. 29.

Use of the same emblem for all categories of cultural property should therefore be avoided, as it calls into question the fundamental specificity of the existing protection regimes. In Belgium, an identical emblem is placed both on property listed by the Communities and Regions and on that protected by the Hague Convention in the event of armed conflict.

## The role of the Interministerial Commission on Humanitarian Law in the protection of cultural property

Created by virtue of a decision of the Council of Ministers of 20 February 1987, the Interministerial Commission on Humanitarian Law (ICHL), whose mandate was confirmed and extended by the royal decree of 6 December 2000,<sup>11</sup> is mainly responsible for overseeing the implementation of international humanitarian law (IHL) in Belgium.

The ICHL, a consultative body of the government, is made up of representatives of the federal departments most involved in IHL implementation,<sup>12</sup> of experts and of representatives of the Belgian Red Cross. On account of their competences in this area, the Communities and Regions are invited to participate in its work.

This body acts as a national consultative committee within the meaning of Resolution II of the 1954 Hague Convention. Its role, in examining the implementation measures of the provisions of IHL relative to the protection of cultural property in the event of armed conflict, was confirmed by the Prime Minister in 1998.<sup>13</sup>

A working party has been created within the ICHL to examine in particular the question of protection of cultural property in Belgium in the event of armed conflict. An ICHL working document deals with the protection of cultural property and places of worship in the event of armed conflict. This document explains the international provisions to be implemented, the departments concerned, the budgetary implications, the status of the question in Belgium and proposed decisions.

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11. Decision of the Council of Ministers of 20 February 1987, supplemented by that of 23 December 1994; Royal decree of 6 December 2000 reorganising the Interministerial Commission on Humanitarian Law, M.B., 12 December 2000.

12. These are the following representatives of the Federal Public Services (FPS): Chancellery of the Prime Minister, Justice, Foreign Affairs and Development Cooperation, Interior, Public Health, and the Ministry of Defence.

13. UNESCO, *Report on 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 – Report on the Activities from 1995 to 2004*, published in 2005, p. 32.

## Content of this brochure

This brochure presents a review of the question of protection of cultural property situated in Belgium, setting out the general principles applicable.

To this end, the distinction between the regimes applicable in peace-time (Part I) and those applicable during periods of armed conflict (Part II) will be maintained, as they each involve different consequences. In each of these parts, the various legal rules applicable, the property they cover and the protection granted to it, will be explained.

Lastly, the brochure will present an analysis of the measures to be implemented by the authorities responsible for protection of cultural property in Belgium (Part III).

# PART I: Preservation of cultural property in peace-time

In peace-time, property situated on Belgian territory which represents outstanding value in terms of the cultural and natural heritage, at national and/or international level, in the view of the state authorities, benefits from a listing providing it with protection.

The following types of property are concerned:

- property featuring on the World Heritage List by virtue of the 1972 UNESCO Convention;
- property listed under the legislation in force within federated entities.

Among this property, historic buildings and places of historic interest (monuments and sites) which “constitute the cultural or spiritual heritage of peoples”<sup>14</sup>, in view of their inestimable value, will also enjoy special protection in the event of armed conflict, in order to safeguard them as far as possible from the effects of war (see below, Part II).

The aim of this part is to set out firstly at international level (A) and secondly at national level (B), the legal instruments applicable and the protection regime they contain for property listed in peace-time.

## A. At international level: the 1972 UNESCO Convention<sup>15</sup>

In peace-time, the UNESCO Convention provides for a system of preservation of cultural and natural property. This covers a number of specific items of property (1) benefiting from an elaborate protection mechanism involving collaboration between UNESCO and Member States (2).

It should be emphasised that this convention is not merely limited to peace-time; it is also intended to apply during an armed conflict.

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14. G. P. I, Art. 53.

15. Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted in Paris, on 16 November 1972. On 13 September 2007, 185 States ratified this text (Belgium did so on 24 July 1996); see on this subject the UNESCO website:  
<http://erc.unesco.org/cp/convention.asp?KO=13055&language=F>

## 1. Property covered

This applies to property forming part of the world's "cultural and natural" heritage of "outstanding universal value" within the meaning of the UNESCO Convention.<sup>16</sup>

According to the document drawn up by the World Heritage Committee and entitled: "Operational Guidelines for the Implementation of the World Heritage Convention", property may be regarded as being of outstanding universal value if it:

- represents a masterpiece of creative human genius, or
- bears witness to a significant exchange of influences during a given period or in a specific cultural area, regarding the development of architecture or technology, monumental arts, town planning or landscape creation, or
- provides unique or at least exceptional evidence of a cultural tradition or a living or disappeared civilisation, or
- constitutes an eminent example of a type of construction or architectural or technological grouping or landscape illustrating a significant period or periods in human history, or
- constitutes an eminent example of a traditional human establishment, traditional use of territory or the sea, which is representative of a culture (or cultures), or of human interaction with the environment, especially where this has become vulnerable under the impact of irreversible change, or
- is directly or materially associated with events or living traditions, ideas, beliefs or artistic and literary works of outstanding universal significance, or
- represents remarkable natural phenomena or areas of natural beauty and outstanding aesthetic importance, or
- constitutes eminently representative examples of the main stages of the earth's history, including evidence of life, geological processes under way in the development of land forms or geomorphic or physiographic elements of great significance, or
- constitutes eminently representative examples of the ecological and biological processes under way in the evolution and development of ecosystems and communities of terrestrial, aquatic, coastal and marine plants and animals, or
- contains the natural habitats most representative and most important for the conservation *in situ* of biological diversity, including those in which threatened species of outstanding universal value from the point of view of science or conservation, survive.<sup>17</sup>

16. See the Preamble of the Convention.

This property also has to meet integrity and/or authenticity conditions and should benefit from a suitable system of protection and management in order to safeguard it.<sup>18</sup>

The Convention therefore protects three types of property:

- Property forming part of the cultural heritage<sup>19</sup>: This refers to man-made constructions (monuments, sites, etc.) of outstanding universal value from the historic, artistic, scientific, aesthetic, ethnological or anthropological point of view.
- Property forming part of the natural heritage<sup>20</sup>: These are formations or sites erected without man's intervention, which are of outstanding universal value from the aesthetic, scientific, conservation or natural beauty point of view.
- Combined property forming part of both the cultural heritage and natural heritage.

## 2. Protection

States parties to the UNESCO Convention have a duty to ensure "the identification, protection, conservation, presentation and transmission of the cultural and natural heritage to future generations".<sup>21</sup>

To this end, several measures are incumbent on them:

- incorporating protection of the heritage into their domestic policies;
- putting in place one or more services for the protection, conservation and presentation of the cultural and natural heritage, with appropriate personnel, and sufficient resources;
- developing scientific research to deal with any threat to the cultural or natural heritage;
- taking appropriate legal, scientific, technical, administrative and financial measures to ensure the identification, protection, conservation and presentation of the heritage;
- promoting training in the field of protection, conservation and presentation of the cultural and natural heritage.

17. World Heritage Committee, "Operational Guidelines for the Implementation of the World Heritage Convention", WHC.05/2, 2 February 2005, Para. 77, document available at: <http://whc.unesco.org/archive/opguide05-fr.pdf>

18. *Ibid.*, Para. 78

19. For a comprehensive definition and list, see the UNESCO Convention, Art. 1.

20. For a comprehensive definition and list, see the UNESCO Convention, Art. 2.

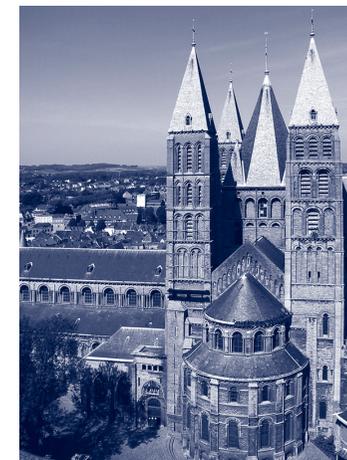
21. UNESCO Convention, Art. 4.

States parties must also establish an inventory grouping together property situated within their own territory which is likely to form part of the world cultural or natural heritage within the meaning of the Convention. Based on these different inventories, the “World Heritage Committee” (made up of representatives of 21 States parties) establishes a list of property that it considers to be of outstanding universal value based on its own criteria (see above). This is the “World Heritage List”, which is updated every two years.<sup>22</sup> Several items of property situated on Belgian territory have been included on this list.<sup>23</sup>

## Examples of property situated in Belgium and appearing on the UNESCO World Heritage List



Grand-Place - Brussels.



Notre-Dame Cathedral, Tournai.



Ypres belfry.

22. UNESCO Convention, Art. 11.

23. These are: the Flemish Beguine convents (1998), the four lifts of the Canal du Centre and their site, La Louvière and Le Roeulx (Hainaut) (1998), the Brussels Grand-Place (1998), the belfries of Belgium and France (1999, 2005), the historic centre of Bruges (2000), the townhouses designed by architect Victor Horta in Brussels (2000), the Neolithic flint mines at Spiennes near Mons (2000), Notre-Dame Cathedral in Tournai (2000) and the Plantin-Moretus House-Workshops-Museum complex in Antwerp (2005). In 2005, the belfries include 32 monuments in Belgium and 23 across the border in Northern France. On the World Heritage List, they are mentioned together as “the Belfries of Belgium and France”. For further details, please consult the list at the following address: <http://whc.unesco.org/fr/list/>

## B. At national level: decrees and orders

At national level, there is also an abundant body of legal regulations drawn up by the Communities and Regions (1). This covers a large number of items of property of public interest due to the general nature of the criteria (2) and provides a conservation regime for them (3), as well as a marking to be applied to them (4).

### 1. Legal instruments

A body of legislation relative to the protection of historic buildings and places of historic interest (monuments and sites) is already widely developed in Belgium in the form of decrees or orders drawn up by the Communities and Regions.

Under Articles 127 and 134 of the Constitution and the special law of 8 August 1980 enacting institutional reforms:

- the Communities are responsible for cultural matters: the fine arts, cultural heritage, museums and other cultural and scientific institutions with the exception of monuments and sites;<sup>24</sup>
- the Regions are responsible for monuments and sites.<sup>25</sup>

Thus the Regions are responsible for immovable property, and the Communities for movable property.

Two kinds of legislation feature in the community and regional legal arsenal, concerning listed property: one which specifically governs the protection of the movable and immovable heritage and one relative to affixing the distinctive emblem (see bibliography below: II, B).

### 2. Property covered

This refers to any item of movable or immovable property which, on account of its historic, archaeological, scientific, artistic, social or technical interest, calls for measures of safeguard in the opinion of the Regional or Community Government, which will then list it.<sup>26</sup>

24. Special law enacting institutional reforms, 8 August 1980, Art. 4, 3°-5°.

25. Special law enacting institutional reforms, 8 August 1980, Art. 6, Para. 1, 1, 7°.

26. For further details, see in the bibliography, the regulations concerning the protection of listed monuments and sites at community and regional levels (II, B).

From the viewpoint of these criteria, such property may be proposed for inclusion on the UNESCO World Heritage List, provided that it is of outstanding universal value, or is entitled to benefit from the protection provided for by the 1954 Hague Convention (see below, Part II).

### 3. Protection

Listing is the legal act that enables a monument or site to be deemed of public interest, and seeks to maintain the historic, archaeological, scientific, artistic, social or technical interest of the protected property.

Restrictions on property law with a view to conservation may be applied (e.g. a ban on developing or constructing a building). The owner must carry out upkeep, consolidation and restoration works with a view to maintaining the property in good condition.<sup>27</sup>

The property referred to above is listed by a decree of the Regional or Community Government. Inventories are then established to this effect.

### 4. Marking

A distinctive emblem has been prepared with a view to identifying listed property which therefore benefits from the protection regime described above.

The distinctive emblem usually adopted by the federated entities, is a “shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal blue triangle above the square, the space on either side being taken up by a white triangle)”<sup>28</sup> with the name and/or logo of the Region or Community, and the mention “Protected Monument” or “Protected Site”. In Flanders, there is a special emblem with the mention “Protected Site”.<sup>29</sup>

27. See also in the bibliography, the regulations concerning the protection of listed monuments and sites at community and regional levels (II, B) detailing the owner's obligations.

28. Decree of the Walloon Regional Executive of 7 June 1990 relative to placing a distinctive emblem on protected monuments and sites, Art. 2. Similarly: Decree of the Government of the Brussels-Capital Region of 16 March 1995 relative to placing a distinctive emblem on protected monuments and sites, Art. 2; Ministerial decree (Minister of Dutch Culture and Flemish Affairs) of 1 April 1977 establishing the design of the distinctive emblem that may be applied to monuments protected by royal decree, Art. 1; Decree of the Government of the German-speaking Community of 13 March 1995 relative to placing a distinctive emblem on protected monuments and sites.

29. Decree of the Flemish Government of 3 June 1997, enacting the general protection prescriptions, the opinion and authorisation procedure, the introduction of a register and the fixing of a distinctive emblem for protected sites, *Moniteur belge*, 1 October 1997, amended by the decree of the Flemish Government of 4 June 2004.

This distinctive emblem is identical, except for the logos and mentions affixed, to that provided for by Article 16 of the 1954 Hague Convention, and which is applicable in the event of armed conflict. In point of fact, not all listed property meets the criteria of cultural property requiring protection in the event of armed conflict as provided for by the Convention. Consequently this may give rise to a measure of confusion, which might be harmful (see below, Part III, B, 2, f).



### Brussels-Capital Region

Distinctive emblem usually placed on protected monuments and sites. This is the same emblem as that provided for by the 1954 Hague Convention, although listed property does not necessarily meet the characteristics of cultural property as provided for by the Hague Convention.



### Walloon Region

Distinctive emblem usually placed on protected monuments and sites. As in the Brussels-Capital Region, this is the same emblem as that provided for by the 1954 Hague Convention.



### Flemish Region

The distinctive emblem placed on protected monuments and sites in Flanders too is identical to that provided for by the 1954 Hague Convention. This emblem, accompanied by the mention "Protected Monument", is placed on listed property that does not always meet the characteristics of cultural property as provided for by the Hague Convention..

## PART II: Protection of cultural property in the event of armed conflict

Part I demonstrated the existence of legal protection arrangements both for property forming part of the World Cultural Heritage or of the Belgian cultural heritage in peace-time. The same applies in the event of armed conflict for the most important cultural property.

During an armed conflict, special rules will apply to protect cultural property of great value against the foreseeable effects of hostilities. They are contained in international law applicable in armed conflicts.<sup>30</sup> These rules seek to govern the conduct of hostilities and to ensure a minimum level of protection for civil property in general and more particularly cultural property and certain religious property constituting the cultural or spiritual heritage of peoples.

The aim of this part is to set out the legal instruments applicable to cultural property in the event of armed conflict (A) and the protection regimes for cultural property arising from the international conventions to which Belgium is party (B).

### A. Legal instruments

There are significant legal developments at international level in terms of protection of cultural property in the event of armed conflict. Many of the international conventions have subsequently been incorporated into Belgian law.

A full list of these legal instruments, existing under international law and under Belgian law on this subject, appears in items I and II of the bibliography.

### B. The various protection regimes

Different protection regimes are provided for by international conventions, according to the degree of importance of the cultural property.

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30. Also known as international humanitarian law (IHL).

## 1. Cultural property under general protection

### a. Property covered

Article 1 of the 1954 Hague Convention stipulates that cultural property under general protection shall be:

- a) “movable or immovable property of *great importance* to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or reproductions of the property defined above”;<sup>31</sup>
- b) “buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph a), such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph a)”;<sup>32</sup>
- c) “centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’”.<sup>33</sup>

### b. Protection

The general protection regime applicable to cultural property is provided for in the 1954 Hague Convention, which contains provisions concerning the safeguarding of and respect for such property.

States must prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking appropriate measures (see below, III, B, 2).<sup>34</sup>

As for measures seeking to ensure respect for this property in the event of armed conflict, the provisions of the 1954 Hague Convention list the following principles:

- refraining from using this property by exposing it “to destruction or damage in the event of armed conflict”;
- refraining from any act of hostility directed against such property;<sup>35</sup>
- refraining from acts of reprisals.<sup>36</sup>

31. H. CP, Art. 1, a).

32. H. CP, Art. 1, b).

33. H. CP, Art. 1, c).

34. H. CP, Art. 3

35. H. CP, Art. 4, Para. 1.

36. H. CP, Art. 4, Para. 4.

### c. Withdrawal of immunity

The abovementioned protection obligations may be waived if “military necessity imperatively requires such a waiver”.<sup>37</sup>

The Second Protocol of 26 March 1999 to the 1954 Hague Convention, provides certain conditions under which this waiver is permitted. One of these conditions specifies that imperative military necessity may only be invoked:

- to *attack* cultural property when and for as long as the latter has, by its function, been made into a military objective and there is no feasible alternative available to obtain a similar military advantage. An effective advance warning shall be given whenever circumstances permit;
- to *use* cultural property for purposes which are likely to expose it to destruction or damage, only if there is no feasible alternative available to obtain a similar military advantage.<sup>38</sup>

### d. Marking

Cultural property under general protection “may bear a distinctive emblem” so as to facilitate its recognition, according to the 1954 Hague Convention.<sup>39</sup> Consequently this is not an obligation.

This consists of “a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).”<sup>40</sup>



Distinctive emblem for cultural property under general protection

37. H. CP, Art. 4, Para. 2.

38. H. CP, P. II, Art. 6 and 7.

39. H. CP, Art. 6.

40. H. CP, Art. 16, Para. 1..

## 2. Cultural property under special protection

The 1954 Hague Convention provides for a “special protection” regime for certain types of property. Since the scope of application of this regime is only very limited, a less complex system of “enhanced protection” (see point 3 below) was introduced by the 1999 Second Protocol.

In theory, special protection and enhanced protection may therefore co-exist for the same cultural property. In practice, the implementation of enhanced protection tends to be preferred.<sup>41</sup>

### a. Property covered

At the request of States parties to the 1954 Hague Convention, cultural property deemed to be *of very great importance* may be entered in the “International Register of Cultural Property under Special Protection” kept by the Director-General of UNESCO.<sup>42</sup>

These are mainly refuges intended to shelter movable cultural property in the event of armed conflict, centres containing monuments and other immovable cultural property of very great importance.

Two conditions must be met:

- they are to be situated at an adequate distance from any military objective;
- they are not to be used for military purposes.<sup>43</sup>

Few States have made use of this option of applying to the Director-General of UNESCO for entry in the International Register of Cultural Property under Special Protection.

By way of example, we may cite the case of Cambodia, whose application formulated in 1972 in respect of certain property ultimately did not succeed for political reasons, even though the property in question met the criteria warranting special protection.<sup>44</sup>

41. H. CP, P. II, Art. 4, b.

42. H. CP, Art. 8, Para. 6 and H. CP, R, Art. 13.

43. H. CP, Art. 8, Para. 1.

44. As the country witnessed the Vietnam War spilling over onto its own territory, on 31 March 1972, the Khmer Republic of General Lon Nol submitted an application to the Director-General of UNESCO, seeking to register the following as cultural property under special protection: the two centres of Angkor and Roluos containing monuments, the Angkor Conservation Centre and the monuments of Phnom Bok and Phnom Krom. Four States parties to the Hague Convention (Cuba, Egypt, Romania and Yugoslavia) opposed this application as it emanated from an authority which, in their view, did not represent the Cambodian State. For further details, see: E. CLEMENT and F. QUINIO, “The protection of cultural property in Cambodia during the period of armed conflicts, via the application of the 1954 Hague Convention”, *R.I.C.R.*, 2004, no.854, pp. 389-397, especially pp. 392-394.

### b. Protection

This specific regime involves two consequences:<sup>45</sup>

- refraining from any act of hostility directed against such property;
- refraining from using this property for military purposes.

### c. Withdrawal of immunity

The immunity bestowed on property under special protection may however be withdrawn in the event of “unavoidable military necessity, and only for such time as that necessity continues.”<sup>46</sup>

The additional information on military necessity provided by the Second Protocol of 26 March 1999 to the 1954 Hague Convention, also applies here (see above 1, c): military necessity may only be invoked:

- to *attack* cultural property when and for as long as the latter has, by its function, been made into a military objective and there is no feasible alternative available to obtain a similar military advantage. An effective advance warning shall be given whenever circumstances permit;
- to *use* cultural property for purposes which are likely to expose it to destruction or damage, only if there is no feasible alternative available to obtain a similar military advantage.<sup>47</sup>

### d. Marking

Immovable cultural property under special protection “*shall be marked with the distinctive emblem described in Article 16*” of the Hague Convention.<sup>48</sup> This emblem must be repeated three times.<sup>49</sup> Affixing the distinctive emblem is an obligation in the case of property under special protection, whereas it is an option left to the discretion of the Parties in the case of cultural property under general protection.

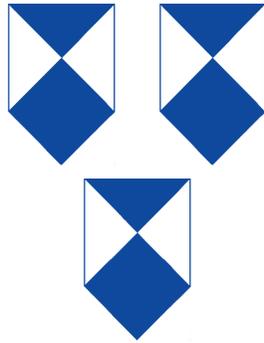
45. H. CP, Art. 9.

46. H. CP, Art. 11, Para. 2.

47. H. CP, P. II, Art. 6 and 7..

48. H. CP, Art. 10.

49. H. CP, Art. 17, Para. 1, a.).



Distinctive emblem for cultural property under special protection

### 3. Cultural property under enhanced protection

To offer States a more appropriate means of participating more closely in the protection of cultural property in the event of armed conflict, a Second Protocol to the 1954 Convention was adopted in 1999 (H. CP. P. II).<sup>50</sup>

#### a. Property covered

Cultural property may benefit from enhanced protection under certain conditions provided for by the 1999 Second Protocol to the 1954 Hague Convention:<sup>51</sup>

- the property is of the *greatest importance* for humanity;
- its cultural and historic value is recognised by domestic protective measures;
- it is not used for military purposes. A declaration by the State which controls such property must then confirm this.

50. This text was signed by Belgium on 17 May 1999 but has not yet been ratified. The Protocol was adopted by: the French Community on 12 May 2004, the Walloon Region on 27 May 2004, the federal State on 30 September 2005 and the Brussels-Capital Region on 30 March 2006. The ratification procedure for the German-speaking and Flemish authorities is currently under way.

51. H. CP. P. II, Art. 10.

#### b. Protection

This protection is granted by entering the property on the “List of Cultural Property under Enhanced Protection” (not to be confused with the UNESCO World Heritage List) at the request of the Party which has control or jurisdiction over the property concerned, at its own initiative or at the invitation of the Committee for the Protection of Cultural Property in the Event of Armed Conflict.<sup>52</sup>

The consequences of this are that:<sup>53</sup>

- the property cannot be attacked;
- it cannot be used for military purposes.

#### c. Withdrawal of immunity

Immunity may be withdrawn:<sup>54</sup>

- if protection is suspended or cancelled by the Committee by removing the property from the list on the grounds of failing to meet the criteria of Art. 10 of the H. CP. P. II;
- or if the property is used for military purposes.

However, this withdrawal of immunity is governed by specific conditions.<sup>55</sup>

Here are some examples:

- withdrawal of immunity may last only for as long as the property has become a military objective;
- the attack is the only feasible means of terminating its military use;
- all precautions have been taken with a view to avoiding, or in any event minimising, damage to the property.

#### d. Absence of marking

No specific marking is provided for by the 1999 Protocol II for property under the enhanced protection regime.

52. H. CP. P. II, Art. 11, Para. 2.  
53. H. CP. P. II, Art. 12.  
54. H. CP. P. II, Art. 13, Para. 1, a) and 14, Para. 1-2.  
55. H. CP. P. II, Art. 13, Para. 1 and 2.

## 4. Cultural property constituting the cultural or spiritual heritage of peoples

Article 53 of the 1977 Additional Protocol I to the 1949 Geneva Conventions, which applies to international armed conflicts, also provides protection for cultural property. Its principles are also set out in Article 16 of the 1977 Additional Protocol II to the Geneva Conventions, which applies to internal armed conflicts.

It is important to specify that the protection granted by this provision is “without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments”.<sup>56</sup>

### a. Property covered

Article 53 of the 1977 Additional Protocol I of the 1949 Geneva Conventions (G. P. I) protects cultural property comprising “historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples”. The material scope of application of this provision is therefore wider than the 1954 Hague Convention as it incorporates the notion of the spiritual heritage of peoples.

We should emphasise here that not all religious property is covered. Only the most important places of worship representing the “spiritual heritage of peoples” are covered.<sup>57</sup>

### b. Protection

Article 53 of G. P. I (like Article 16 of G. P. II) forbids:

- committing any act of hostility against such property;
- using this property in support of the military effort;
- reprisals against it.

### c. Absence of waivers

It should be specified that the 1977 Additional Protocol I does not mention the possibility of waiving the above prohibitions for reasons linked to military necessity.

56. GG. P. I, Art. 53. Similarly: G. P. II, Art. 16.

57. G. P. I, Art. 53. See comments relative to this article: Y. SANDOZ, Ch. SWINARSKI, and B. ZIMMERMANN (Ed.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva, ICRC, 1986, p. 658, Para. 2042-2044..

Nevertheless, the waiver provided for by the 1954 Hague Convention (see above) will apply in the relations binding two States that are parties both to the 1977 Additional Protocols I and II and to the 1954 Hague Convention, given that the 1977 Protocols do not prejudice the provisions of the latter convention.<sup>58</sup>

### d. Absence of marking

Given their importance, the cultural property and places of worship referred to in Articles 53 of G. P. I. and 16 of G. P. II, are protected without it being necessary to place a specific marking on them.

### In summary

In addition to the general protection granted to property of a civil nature,<sup>59</sup> cultural property is subject to four other specific protection regimes:

- Protection granted to cultural property constituting the cultural or spiritual heritage of peoples,
- General protection,
- Special protection,
- Enhanced protection.

A State party both to the 1977 Additional Protocols to the 1949 Geneva Conventions, and to the 1954 Hague Convention and its Protocols, will first of all apply the protection and marking regime provided for by the latter instruments. Only if it has not ratified these texts or in cases not provided for by the Hague Convention and its Protocols, will it apply Article 53 of the 1977 Protocol I (and Article 16 of the 1977 Protocol II).

By stipulating that protection is granted “without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments”,<sup>60</sup> the diplomatic Conference recognised via the drafting of Article 53 of the 1977 Protocol I, “that it was not a matter of revising the rules already existing in this area, but confirming protection and respect for cultural property”.<sup>61</sup> The Diplomatic Conference therefore deemed it “necessary to state at the beginning of the Article 53, that it was not changing the already existing pertinent instruments. This means that in the event of a contradiction between the present article and a rule of the

58. G. P. I, Art. 53; G. P. II, Art. 16.

59. G. P. I, Art. 52.

60. G. P. I, Art. 53..

61. See comments relative to Article 53 of the G.P.I: Y. SANDOZ, Ch. SWINARSKI, and B. ZIMMERMANN (Ed.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva, ICRC, 1986, p. 659, Para. 2046.

1954 Convention, the latter rule shall be applicable...”.<sup>62</sup>

In seeking to insert Article 53 into the 1977 Additional Protocol I, the diplomatic Conference wished to recall at the time “its interest in the cultural heritage of humanity”, particularly since the 1954 Hague Convention was far from being universally in force.<sup>63</sup>

The Belgian State should therefore apply the protection regimes provided for by the 1954 Hague Convention and its additional protocols, namely:

- General protection,
- Special protection,
- Enhanced protection.

The 1977 Additional Protocol I will apply to any property of great importance which the adversary may have forgotten to submit to one of these regimes.

Bear in mind that cultural property may be placed both under special protection and under enhanced protection. In this case, the provisions relative to enhanced protection would apply (see the introduction to point 2 above).

Effective protection of cultural property in the event of armed conflict therefore requires that a list first be prepared for each type of protection. In view of the characteristics of the special regime protection, care should be taken at the very least to compile a list of property under enhanced protection.

Belgium appears to be moving in this direction, as special protection has never been used thus far, on account of the imprecisions and shortcomings of the 1954 Hague Convention. A study of the implementation of the provisions relative to enhanced protection in the 1999 Protocol II is currently in progress.<sup>64</sup>

62. *Ibid.*

63. *Ibid.*, Para. 2039-2040.

64. UNESCO, *Report on 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 – Report on the Activities from 1995 to 2004*, p. 16.

## Examples of Belgian monuments which might be deemed to be cultural property under enhanced protection



“Butte du Lion”, Waterloo.



“Het Steen”, Antwerp.



Atomium, Brussels.

## PART III: Prevention measures to be implemented by the authorities

The conservation and protection regimes applicable to cultural property presented in Parts I and II, cannot be effective without the intervention of the Belgian federal and federated authorities responsible for taking the necessary measures.

The aim of this final part will therefore first be to identify the competent authorities in charge of this area (A), before examining the measures they are invited to take (B).

### A. The authorities concerned

It is important to emphasise that the bodies responsible for preservation and protection of cultural property are not always the same; they may be different in peace-time (1) and in the event of armed conflict (2).

#### 1. Authorities responsible for the protection of cultural property in peace-time

In view of the communitisation and regionalisation of this area (see Part I: B, 1 above), the federated entities are the first ones involved in the implementation of the provisions relative to conservation of cultural property. Nevertheless, the federal State also intervenes in this field.

##### a. The Communities and Regions

Both the Communities and the Regions of Belgium are involved in the legal preservation of listed cultural property. They are:

- the French Community, the Flemish Community and the German-speaking Community;
- the Walloon Region, the Flemish Region and the Brussels-Capital Region.

In addition to legislative and executive bodies, the Communities and Regions are endowed with institutions whose main mission is the conservation and protection of monuments and sites. The following may be mentioned:

Within the Regions:

- the Directorate for Monuments and Sites and the Royal Commission for Monuments and Sites of the Brussels-Capital Region,<sup>65</sup>
- Agency for Town and Country Planning – Immovable Heritage Flanders in the Flemish Region,<sup>66</sup>
- the Directorate General for Town Planning, Housing and Heritage and the Royal Commission for Monuments, Sites and Excavations of the Walloon Region.<sup>67</sup>

Within the Communities:

- the General Authority for Culture and Information Technology – Directorate-General for Culture, in the French Community;
- Department for Culture, Youth, Sports and Media. Arts and Heritage, in the Flemish Community;
- Department for Cultural Affairs, in the German-speaking Community.

These (regional and community) institutions seek to protect immovable and movable heritage, to ensure the successful execution of restoration and upkeep works relating thereto, to manage archaeological heritage, and to raise public awareness of the conservation of the movable and immovable heritage.

## b. The owner

It is incumbent on the owner of property listed by the Communities and Regions to take measures and undertake any restoration and upkeep works that may prove necessary.

65. For the composition and mandate of the Royal Commission for Monuments and Sites, see Article 11 of the Brussels Town Planning Code (COBAT), approved by the decree of the Brussels Government of 9 April 2004, *M.B.*, 26 May 2004, ratified by the order of 13 May 2004, *M.B.*, 26 May 2004.

66. For the composition and mandate, see the decree of the Flemish Government of 20 April 1994, relative to the composition, organisation, competences and functioning of the Royal Commission for Monuments and Sites of the Flemish Region, *M.B.*, 14 July 1994.

67. For the composition and mandate, see: Walloon Code for Spatial and Town Planning and Heritage (CWATUP) of 14 May 1984, *M.B.*, 25 May 1984, Art. 187 *et seq.*; decree by the Walloon Government of 2 May 1996, relative to the structure, missions and functioning of the Royal Commission for Monuments, Sites and Excavations of the Walloon Region, *M.B.*, 25 May 1996.

Both private (individuals) and public (provinces, municipalities, etc.) owners are concerned.

## c. The federal State

The federal State is also responsible for the management and conservation of property that is neither communitised nor regionalised, such as federal scientific and cultural establishments (the Royal Library of Belgium, the Royal Institute of Artistic Heritage, the Royal Museum for Central Africa, the Royal Museums of Art and History, the Royal Museums of Fine Arts of Belgium, etc.).<sup>68</sup>

The point should also be made that the Ministry of Foreign Affairs used to accommodate the Belgian National Commission for UNESCO, whose mandate was to co-ordinate governmental and non-governmental activities undertaken with UNESCO. This national Commission is no longer in existence.<sup>69</sup>

Since May 2004, there is however a Flemish UNESCO Commission. It operates under the control of the Flemish Ministry of Foreign Policy, Media and Tourism, and is made up of representatives of the authorities concerned and related sectors.

A similar Commission is in the process of being established for the French Community, the German-speaking Community and the Walloon Region.

## 2. Authorities responsible for the protection of cultural property in the event of armed conflict

In the same way as in peace-time, several partners, both at the level of the federal State and of the federated entities, are involved in the implementation of the provisions relative to the protection of cultural property in the event of armed conflict. It should be emphasised that the unleashing of an armed conflict does not suspend the intervention of the abovementioned authorities responsible in peace-time.

68. Special law enacting institutional reforms, 08 August 1980, Art. 6a), Para. 2, 4°. In the case of federal scientific establishments for example, the Minister of Scientific Policy supports them with their administrative, financial and material management (see the royal decree creating the Federal Public Service for Scientific Policy Planning, 12 December 2002, *M. B.*, 25 December 2002, Art. 1 and 2.).

69. For further information on the nature and functions of the national commissions, see Art. VII of the Constitution of UNESCO signed in London on 16 November 1945 and the Charter of the National Commissions for UNESCO adopted by the General Conference on 27 November 1978, Art. 1.

## a. The Communities and Regions

In view of the communitisation and regionalisation of cultural property, the following are concerned:

- the three Communities: the French Community, the Flemish Community and the German-speaking Community;
- the three Regions: the Walloon Region, the Flemish Region and the Brussels-Capital Region.

## b. The federal State

The following authorities are involved in this case in the protection of cultural property:

- the government member(s) responsible for property that is neither communitised nor regionalised (e.g. federal scientific establishments)
- In view of their involvement in the implementation of international humanitarian law:
  - FPS Interior (Civil Defence)
  - FPS Justice
  - FPS Finance (Budget)
  - Ministry of Defence
  - FPS Chancellery of the Prime Minister

We should emphasise that in 2000, a working group which met at the initiative of FPS Foreign Affairs, but was mainly made up of ICHL members, prepared a Belgian draft report for UNESCO, covering the period 1995-2000. This text was drafted in order to set forth the implementing measures taken by Belgium within the framework of implementation of the Hague Convention of 14 May 1954, under its Article 26, Para. 2.<sup>70</sup>

The final Belgian report was submitted to UNESCO by FPS Foreign Affairs, Trade and Development Cooperation in 2001.

In 2005, UNESCO published a report on the activities from 1995 to 2004, including the measures taken by Belgium between 1995 and 2000.<sup>71</sup>

70. H. CP, Art. 26, Para. 2: "Furthermore, at least once every four years, [the High Contracting Parties] shall forward to the Director-General [of UNESCO] a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present Convention and of the Regulations for its execution."

71. UNESCO, *Report on 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 – Report on the Activities from 1995 to 2004*.

## B. Measures of safeguard

The prevention measures covering listed property are detailed in the decrees and orders of the federated entities. They are implemented by decisions enacted by the Governments of these entities (1).

Several prevention measures must also be implemented in time of peace to face up to the risks consequent upon an armed conflict under international conventions (2).

### 1. Implementation measures in peace-time

In their decrees and orders,<sup>72</sup> the Communities and Regions specify the principles governing the safeguarding of property of great interest for the heritage of the federated entity concerned.

Several measures are provided for to this end, notably:

- the inventory of property forming part of the movable and immovable heritage;
- listing: listing and delisting procedure;
- conservation works covering listed property and the granting of subsidies for this purpose.

These different measures are implemented by various decisions enacted by the Government of the Region or Community, according to directives pre-defined in decrees and orders.

For example :

- preparation, updating and publication of the inventory of property forming part of immovable heritage;
- initiation of the procedure for and preparation of the listing of immovable property;
- establishing the conditions for granting subsidies to finance conservation and restoration works, composition of the subsidy application file, the procedure and proportionate interventions of the Region, the province and the municipality.

72. See point II, B, of the bibliography for the entire body of legislation detailing the measures to be taken in terms of conservation of listed property.

## 2. Implementation measures in the event of armed conflict

The 1954 Hague Convention stipulates that the Parties undertake to take prevention measures in the event of armed conflict, which will “prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation (...) and any acts of vandalism...”<sup>73</sup>

Measures must also be implemented by States parties in time of peace in order to ensure effective protection of cultural property at the time of an armed conflict. This is affirmed in the 1954 Hague Convention<sup>74</sup> which leaves States full discretion regarding the choice of measures considered most appropriate.

The 1999 Second Protocol to this convention does however list a number of examples:

- 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;
- the designation of competent authorities responsible for the general safeguarding of cultural property.<sup>75</sup>

This list is not exhaustive. The marking of cultural property, dissemination of the rules relative to protection of this property and punitive action in the event of a violation of these rules may also be deemed to contribute to the safeguarding of cultural property.

### a. Dissemination

States have undertaken to disseminate the texts of the conventions applicable in terms of protection of cultural property, within the framework of military instruction programmes for the armed forces, and among the civilian population, especially for personnel employed in the protection of cultural property.<sup>76</sup>

In practice, the text of the Hague Convention of 14 May 1954 has been widely disseminated within the armed forces by way of a general order and military instruction manuals, and using an *aide-mémoire* explaining the distinctive protective emblems.

73. H. CP, Art. 4, Para. 3.

74. H. CP, Art. 3.

75. H. CP P. II, Art. 5.

76. H. CP, Art. 25; H. CP P. II, Art. 30.

The protection of cultural property has been incorporated into courses on the law of armed conflict, both within the framework of basic training and into continuing training courses for servicemen of all ranks.<sup>77</sup> In the future, training will also take into account the 1999 Second Protocol relative to the Hague Convention.

With a view to raising its awareness of the protection of cultural property in the event of armed conflict, States have also undertaken to incorporate such teaching into civil programmes aimed at the general public, so as to familiarise them with its main principles.<sup>78</sup> This training also forms part of the broader framework of IHL dissemination.<sup>79</sup>

In Belgium, the 1954 Hague Convention has been disseminated via a number of specific training courses at higher-education level. Within the framework of its IHL dissemination mission, the Belgian Red Cross has also contributed to raising awareness of the rules governing the protection of civil property, including cultural property.<sup>80</sup>

### b. Specialised services or personnel within the armed forces

States must establish, in time of peace, specialised services or personnel within their armed forces, whose specific mission is to ensure respect for cultural property and to collaborate with the civilian authorities responsible for safeguarding this property.<sup>81</sup>

This is the case in Belgium for:

- adviser officers specialising in the law of armed conflicts based within units, and (civil and military) legal advisers working for the Chiefs of the Defence Staff, whose mission is to advise the command on matters concerning respect for the principles and rules of the law of armed conflicts, especially in terms of respect for cultural property;
- CIMIC (Civil-Military Co-operation) officers based within units, whose mandate is to oversee collaboration with the civilian authorities.

77. UNESCO, *Report on 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 – Report on the Activities from 1995 to 2004*, p. 14.

78. H. CP, Art. 25; H. CP P. II, Art. 30.

79. This is an obligation incumbent on States by virtue of common Article 47/48/127/144 in the Geneva Conventions of 12 August 1949, Article 83 of Additional Protocol I and Article 19 of Additional Protocol II to these Conventions, of 8 June 1977.

80. UNESCO, *Report on 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 – Report on the Activities from 1995 to 2004*, p. 22.

81. H. CP, Art. 7, Para. 2.

### c. Other services responsible for the protection of cultural property

At the present time, there is no civil service specifically responsible for the protection of cultural property in the event of armed conflict in Belgium.

Nevertheless, the main mission of civil defence is the protection and survival of the population, as well as safeguarding the national heritage in the event of war.<sup>82</sup> It might therefore be concerned by this issue.

Secondly, the Hague Convention (1954) mentions that personnel usually engaged in the protection of cultural property should continue to carry out their duties in the event of armed conflict. In this capacity, members of such personnel (e.g. museum security guards and curators) should benefit from guarantee measures (to be determined) seeking to ensure respect for their person and the pursuit of their duties in the event of armed conflict where the cultural property for which they are responsible falls into the hands of the opposing party.<sup>83</sup> Nevertheless, it is not established that such personnel in Belgium are fully informed regarding these possibilities of guarantee measures.

Finally, we should mention the existence of the Belgian Blue Shield Committee, created in 2000. Like other national committees, the objective of this non-profit organisation is to support the action of the International Committee of the Blue Shield (ICBS). The latter is recognised by the Second Protocol to the Hague Convention, for its role in providing assistance to the Committee for the Protection of Cultural Property in the Event of Armed Conflict.<sup>84</sup> This international institution is engaged in the protection of the cultural heritage in the event of armed conflicts, natural disasters and man-made disasters. The Belgian Blue Shield Committee therefore provides assistance in cases where national cultural property, both immovable and movable, might be threatened by a catastrophe or an armed conflict. It also seeks to ensure that a good legal arsenal of protective measures is in place, together with plans to prevent risks faced by the heritage.<sup>85</sup>

### d. Preparation of inventories of protected property

Inventories of property are essential for the purpose of identifying heritage eligible to be covered by instruments providing protection for cultural property, i.e.:

- property under general protection;<sup>86</sup>

82. See Art. 1 of the Law of 31 December 1963, regarding civil defence, *M.B.*, 16 January 1964.

83. H. CP, Art. 15.

84. H. CP P II, Art. 27, Para. 3.

85. For further details, please consult the Belgian Blue Shield's website: <http://www.blauweschild.be/francais/fr/index.htm>

86. H. CP, Art. 1 *et seq.*

- property under special protection.<sup>87</sup> An inventory will enable recorded property to be entered on the “International Register of Cultural Property under Special Protection”;
- property under enhanced protection.<sup>88</sup> An inventory will also enable property mentioned on this inventory to be entered on the “List of Cultural Property under Enhanced Protection”.

Thus far, the ICHL has not been made aware of any of these inventories.

### e. Construction of shelters for movable property

Construction of special shelters means that movable cultural property can be better protected against any attack in the event of armed conflict.

A number of shelters already exist in Belgium to protect works of art (notably within the Royal Museums of Fine Arts of Belgium, the Royal Museums of Art and History, the Mariemont Royal Museum, etc.).<sup>89</sup>



Objects on display in the house of the Baroque painter Peter Paul Rubens in Antwerp

Measures must be taken in time of peace with a view to protecting movable cultural property in the event of armed conflict.

87. H. CP, Art. 8.

88. H. CP P II, Art. 10 and 11, Para. 2.

89. Working document reviewed in 2004 by the ICHL Working Party on the protection of cultural property and places of worship, IV, B, 3,

## f. Marking

### • *The distinctive emblem provided for by the 1954 Hague Convention*

Cultural property *under general protection* “may bear a distinctive emblem”<sup>90</sup> which consists of “a shield, pointed below, persaltire blue and white”.<sup>91</sup>

Immovable cultural property *under special protection* “shall be marked with the distinctive emblem described in Article 16 of the Hague Convention”.<sup>92</sup> This emblem must be repeated three times.<sup>93</sup>

In both cases, “the distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorisation duly dated and signed by the competent authority of the High Contracting Party.”<sup>94</sup>

While marking is not obligatory for cultural property under general protection, it should nevertheless be emphasised that an emblem of this kind enables the combatant to identify the cultural nature of the property in the event of armed conflict, and thus allows it to benefit from the protection regime provided for to this effect. Consequently, by virtue of its protective function, marking is of fundamental importance, and therefore cannot merely be regarded as an option for States.

### • *Use of the distinctive emblem on listed property in Belgium*

The protective function of the distinctive emblem provided for by the Hague Convention is to be placed solely on property that meets the criteria set out in this text, which would make it inappropriate for the national, regional or community authorities to use it to identify any other property listed in peace-time.

Furthermore, as a matter of principle, the Hague Convention expressly condemns such abusive use of the emblem in its Article 17, Para. 3: “During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the preceding paragraphs of the present Article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.”

The emblem usually adopted to identify listed property in Belgium is identical to that provided for by the Hague Convention. It is also accompanied by the symbol representing the federated entity and the entry “Listed site (or monument)”. In the

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90. H. CP, Art. 6.

91. H. CP, Art. 16, Para. 1.

92. H. CP, Art. 10.

93. H. CP, Art. 17, Para. 1, a).

94. H. CP, Art. 17, Para. 4.

case of listed property that does not meet all of the criteria for cultural property requiring protection in the event of armed conflict,<sup>95</sup> the emblem currently placed on it is therefore likely to give rise to a measure of confusion, as it detracts from:

- the value of the distinctive emblem provided for by the Hague Convention;
- the fundamental distinction between property listed in peace-time and property protected in the event of armed conflict.

Thus, the consequence of using the emblem provided for in the event of armed conflict too widely might be to substantially reduce the degree of protection for cultural property.

Faced with a multitude of listed property benefiting from the distinctive emblem of the Hague Convention, the adversary in the event of armed conflict might therefore no longer take account of this marking, deeming it abusive, and might destroy monuments and sites which, in spite of everything, met the criteria of a “cultural property”.

### • *The proposal for a distinctive sui generis emblem for listed property*

In the light of the issue raised above, the ICHL proposes to the authorities concerned that they take legislative measures (decrees, orders) creating a specific or *sui generis* emblem for property listed in peace-time.

The proposal is as follows:

- the creation of an emblem in the shape and distinct colours of that provided for by the 1954 Convention;
- the emblem would be marked with a regional or community symbol;
- the name of the Region or Community would be mentioned;
- a “Listed monument” or “Listed site” entry would also be placed on the emblem. (in Flanders, there is already a special emblem for protected sites – see above )

The creation of a new emblem would thus enable the distinctive emblem of the 1954 Convention to retain its full protective value in the event of armed conflict with regard to cultural property of inestimable value. This new emblem would identify listed monuments and sites that enjoy a certain degree of protection on account of their considerable value in the eyes of the Community or the Region, as part of their cultural heritage.

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95. It will however be protected as civil property. See Art. 48 and 52 of G. P. I.

### g. Sanctions covering a violation of the rules protecting cultural property in the event of armed conflict

Any violation of the rules protecting cultural property as set out in point B of Part II of this brochure, constitutes a breach obliging States parties to the international conventions to provide, in their domestic legislation, for appropriate penal or disciplinary sanctions against any persons guilty of such a violation. These are provided for in the following conventions:

- the 1954 Hague Convention, Art. 28, in respect of cultural property under general and special protection;
- the 1999 Protocol to the Hague Convention, Art. 15, in respect of cultural property under enhanced protection;
- the 1977 Additional Protocol I to the 1949 Geneva Conventions, Art. 85, Para. 4, d), in respect of property constituting the cultural or spiritual heritage of peoples as referred to in Article 53 of the 1977 Protocol I;
- the Statute of the International Criminal Court adopted in Rome on 17 July 1998, Art. 8, Para. 2, b), ix, and e), iv.

Under the current status of Belgian law, the law of 5 August 2003 relative to repression of serious violations of international humanitarian law<sup>96</sup> makes any violation of the abovementioned international conventions a specific offence and punishes them. It inserts several provisions dealing with this subject into the Penal Code:

- Article 136<sup>quater</sup>, Para. 1, which makes any serious violations of the 1949 Geneva Conventions and of the 1977 Additional Protocols I and II a specific offence, including: “directing attacks against clearly recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples...” (34°) or “launching deliberate attacks against buildings devoted to religion, education, art, science or to charitable works, historic monuments, hospitals, etc.” (35°). This provision therefore covers the prescriptions contained both in Article 53 of the 1977 Protocol I and in Article 16 of the 1977 Protocol II;<sup>97</sup>

96. Law of 5 August 2003 relative to repression of serious violations of international humanitarian law (M.B., 7 August 2003), replacing the law of 16 June 1993 (M.B., 5 August 1993) as amended by the law of 10 February 1999 (M.B., 23 March 1999) and by the law of 23 April 2003 (M.B., 15 March 2003)

97. Law of 5 August 2003, Art. 8.

- Article 136<sup>quater</sup>, Para. 3, which makes “the serious violations described in Article 15 of the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 26 March 1999” a specific offence, i.e. attacking cultural property under enhanced protection, or using such property in support of military action.<sup>98</sup> Article 136<sup>quater</sup>, Para. 3, of the Penal Code will only enter into force once ratification of the 1999 Protocol II is completed in Belgium.

Furthermore, Chapter III of Part IX of Book II of the Belgian Penal Code (Art. 510 *et seq.*), punishes any destruction, degradation and damage caused to property. It may therefore cover the prescriptions contained in Art. 28 of the 1954 Hague Convention, which is not covered by any specific legislative measures under Belgian law.

Articles 510 and 521 make *inter alia* setting fire to and destroying “works of art” specific offences respectively. Article 526, for its part, specifically establishes the destruction or degradation of “any monuments, statues, pictures or works of art, placed in churches, temples or other public buildings” as a breach.

98. See also Article 8 of the Law of 5 August 2003.

## General conclusion

This brochure has described in broad outlines, firstly the legal instruments relative to the protection of cultural property applicable in peace-time, and secondly in the event of armed conflict, both under international law and under Belgian law. These regulations have revealed the full extent of the importance that cultural property represents in the eyes of the international community.

In presenting the various protection regimes applicable in different circumstances, this brochure seeks to specify the prevention measures which still remain to be implemented under international conventions, as well as the Belgian authorities responsible for this area. It has also emphasised the need to clearly distinguish the protection of cultural property in peace-time from that provided for in the event of armed conflict, on account of the specific characteristics of each regime.

As a Party to international conventions on IHL, including the 1954 Hague Convention, Belgium has a duty to comply with the obligations arising from these laws. Moreover, our country has always shown itself to be at the forefront of IHL implementation notably in terms of taking punitive action against serious breaches of such rules.<sup>99</sup> This is why the prevention measures provided for by international conventions must be implemented.

Although numerous provisions have been taken at Belgian level thus far, certain shortcomings still remain.

In order to contribute to the implementation of the international conventions covering the protection of cultural property, the ICHL submits the following recommendations:

- The preparation of inventories of protected property in the event of armed conflict. In order to identify the various legal protection regimes applicable to such types of cultural property, it is imperative that the Belgian authorities concerned prepare lists to this effect, especially for property under general protection and for property under enhanced protection.

It would also be advisable to identify an authority to centralise all the lists and submit them to the competent international authorities.

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99. See to this effect, the various legislations adopted since 1993 on repression of serious breaches of IHL: the law of 16 June 1993, relative to repression of serious violations of international humanitarian law (*M.B.*, 5 August 1993) as amended by the law of 10 February 1999 (*M.B.*, 23 March 1999) and by the law of 23 April 2003 (*M.B.*, 15 March 2003); The law of 5 August 2003 relative to repression of serious violations of international humanitarian law (*M.B.*, 7 August 2003), finally replacing the law of 16 June 1993.

- Construction of additional shelters for movable cultural property in order to protect it against an attack in the event of armed conflict.
- The adoption of a *sui generis* emblem for listed property, which is distinct from that protecting cultural property in the event of armed conflict, namely: an emblem with its own specific colours and shape, with a community or regional symbol, the mention “Listed monument / site”, and the name of the federated entity which controls this property.

As illustrated by Parts I and II of this document, the multiplicity of the existing regimes involves the creation of a specific marking system for each type of protection. In the absence of such a measure, the distinction between the various types of protection is lessened, which might create a measure of confusion. In Belgium, many items of listed property do not meet the criteria of the 1954 Hague Convention, but still benefit from its emblem.

Given that cultural property protected by the 1954 Hague Convention usually features among the most important listed property under decrees and orders, it will in principle have two emblems: the emblem provided for by the Hague Convention in the event of armed conflict, and that to be provided for in peace-time, which is yet to be designed.

Such measures can only strengthen the protection of our cultural wealth in the future.

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## Tables summarising the Protection of Cultural Property

Protection of cultural property in peace-time (I)							
International protection			National protection				
Legal instrument	Property covered	Protection	Marking	Legal instruments	Property covered	Protection	Marking
1972 UNESCO Convention	Property mentioned on the UNESCO World Heritage List: property forming part of the world's "cultural and natural" heritage of "outstanding universal value"	Measures aimed at identification, protection, conservation, presentation and transmission of the heritage to future generations + Entry on the World Heritage List	UNESCO indication	Belgian law: Decrees and orders issued by the Communities and Regions	Property of historic, archaeological, scientific, artistic, social or technical interest	Listing	Emblem currently used: a blue and white shield similar to that provided for by the 1954 Hague Convention  Suggested emblem: <i>Sui generis</i> emblem with a regional / community symbol

Protection of cultural property in the event of armed conflict (II)							
Protection provided for by the 1977 Additional Protocols			General protection				
Legal instruments	Property covered	Immunity	Marking	Legal instruments	Property covered	Immunity	Marking
International armed conflict: G.P.I (1977), Article 52  Non-international armed conflict: G.P.II (1977), Article 16	Property constituting the cultural or spiritual heritage of peoples	Principle: Refraining from any act of hostility, use for the military effort and reprisals  Exception? No waiver provided for by the texts	No marking necessary	H. CP (1954) H. CP. P. II (1999)	Property of <i>great importance</i> to the cultural heritage of every people	Principle: Refraining from any act of hostility and reprisals  Exception? Waiver possible if so required by an imperative military necessity and for as long as the property has been made into a military objective (H.C.P.II, 1999)	Possibility of affixing a distinctive emblem: a blue and white shield

Protection of cultural property in the event of armed conflict - Continued (III)							
Special protection			Enhanced protection				
Legal instruments	Property covered	Immunity	Marking	Legal instruments	Property covered	Immunity	Marking
H. CP (1954) H. CP.P. II (1999)	Property deemed to be of <i>very great importance</i> Entry in the International Register of Cultural Property under Special Protection	<u>Principle:</u> Refraining from any act of hostility and use for military purposes  <u>Exception?</u> Waiver possible in the event of unavoidable military necessity, for as long as this necessity lasts and the property has been made into a military objective (H.CP.P.II, 1999)	<i>Obligation</i> to affix the blue and white shield, which must be repeated three times	H. CP. P. II (1999)	Property of the <i>greatest importance</i> for humanity Entry on the List of Cultural Property under Enhanced Protection	<u>Principle:</u> Refraining from any act of hostility and use for military purposes  <u>Exception?</u> Waiver possible if: use for military purposes, for as long as the property is a military objective, the attack is the only means of terminating military use / Minimising damage.	No specific marking provided for on this type of property

Prevention measures (IV)				
Conservation of property listed in peace-time		Actual implementation measures in the event of armed conflict		
Legal instruments	Authorities concerned	Conservation measures	Legal instruments	Actual implementation measures
Belgian law: Decrees and orders issued by the Communities and Regions	The Communities and Regions of Belgium The owner (private individual or public authority) The federal State (for property neither communitised nor regionalised)	Inventory, listing, conservation works and granting of subsidies, marking	International humanitarian law: G.P.I (1977), G.P.II (1977), H. CP (1954), H. CP. P. II (1999) Belgian law: Law of 5 August 2003 relative to serious breaches of international humanitarian law	Dissemination of the provisions relative to the protection of cultural property in the event of armed conflict Specialised services or personnel within the armed forces and other services responsible Inventories of protected property Shelters for movable property Marking Sanctions covering a violation of the rules of protection

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