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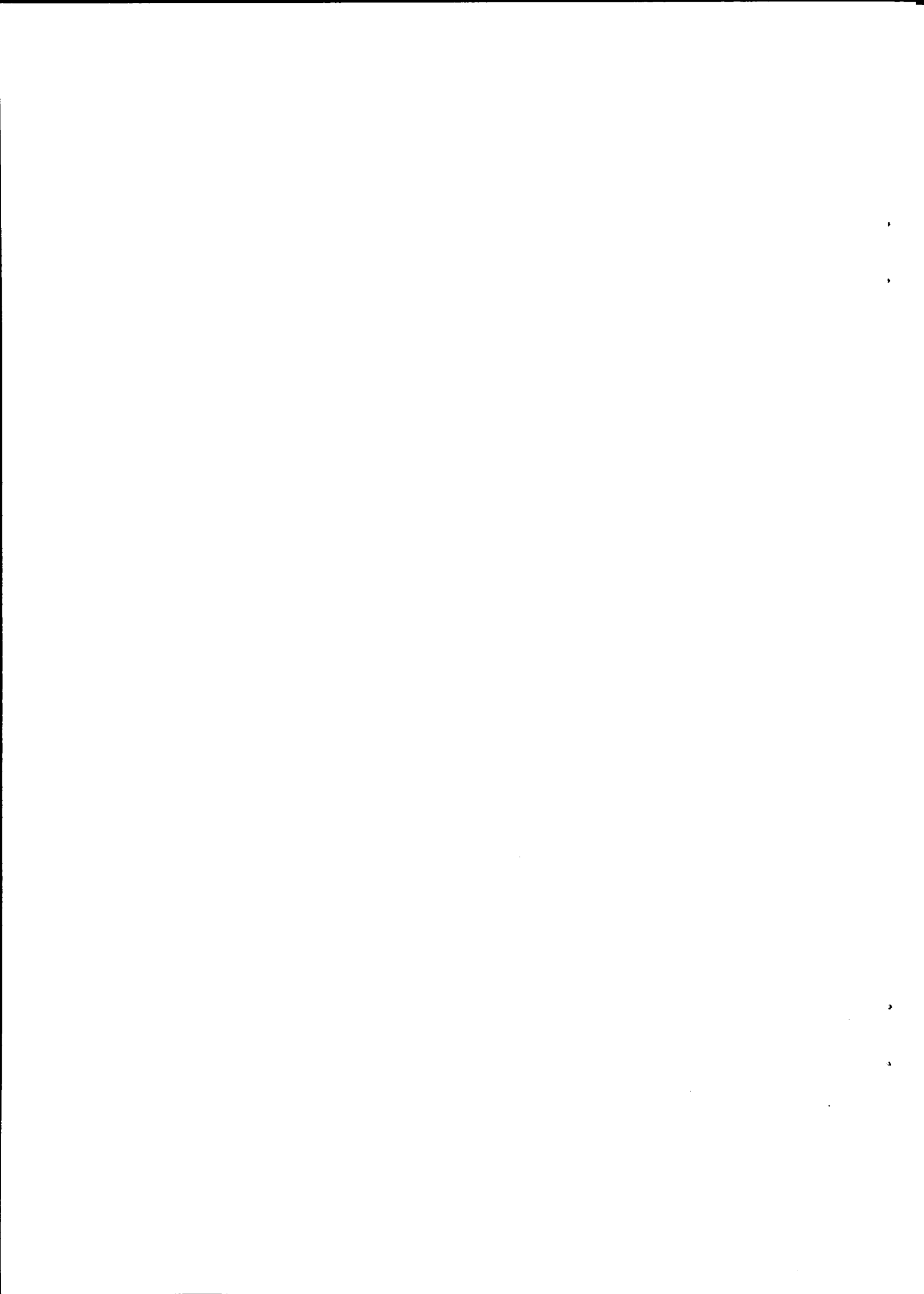
THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

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Document prepared by

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in consultation with
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Executive Summary

The destruction of cultural property continues to be a significant problem during armed conflicts. Irreplaceable cultural objects, such as historic monuments, books and works of art, have been destroyed, resulting in a loss not only to the community or country concerned, but also to the cultural heritage of all people.

International humanitarian law (IHL) provides for the protection of cultural property during armed conflict. The specific treaties on cultural property are the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999. These treaties are not as well-known or as widely ratified as they might be. Implementation of their rules also requires improvement.

The ICRC has been working increasingly, in co-operation with UNESCO, to promote participation in these treaties and their effective implementation. National Red Cross and Red Crescent Societies, with their special role in IHL dissemination and implementation, could also help in promoting and implementing the 1954 Hague Convention and its Protocols.

It is recommended that components of the Movement recognise the role of the ICRC and of National Societies with respect to the protection of cultural property in the event of armed conflict. It is also recommended that the ICRC and National Societies should be encouraged to continue their activities in this sometimes neglected area of IHL, and where appropriate, to develop them.

The Protection of Cultural Property in the Event of Armed Conflict

1. THE ISSUE

The destruction of cultural property continues to be a serious problem in many armed conflicts. Monuments, places of worship and other sites are targeted as a way to destroy the identity and morale of the adversary and in particular, of its civilian population. Elimination of libraries and museums is a means of imposing a regime's will and view of history. The deliberate destruction of artefacts precious to the heritage of all humankind may also occur during peacetime, but such objects are particularly at risk during wartime. Components of the International Red Cross and Red Crescent Movement, with their recognised roles in international humanitarian law (IHL), may be said to have a special interest in such issues, both on their own behalf and on behalf of the international community.

2. THE GENERAL PRINCIPLES OF THE RELEVANT INTERNATIONAL HUMANITARIAN LAW

International humanitarian law (IHL) provides protection to cultural property. This is found both in customary law (binding on all) and in treaty law (binding only on those parties to the treaty in question). The most important rules form part of the law on the methods and means of combat (the branch of IHL known as 'Hague Law'). A central provision of that law is that civilian objects are generally not to be attacked: cultural property is a sub-category of civilian objects, to which these general rules apply.

In addition there are special rules on cultural property, which apply for those States which have ratified the relevant treaties, notably, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999.

Protection of cultural property is not absolute: there are different levels of protection but all of them can be lost, essentially if cultural objects are used for military purposes.

There are three main groups of rules: on precautionary measures before an armed conflict; on protection during an armed conflict and on punishment of breaches after an armed conflict.

Protection starts in peacetime, e.g. with identification and marking of protected objects and instruction of soldiers and civilians in how they are to be protected.

The obligation to protect cultural property falls on all parties to the conflict: not just on attackers but also on defenders.

Serious breaches of IHL protecting cultural property may result in prosecution for war crimes whether in a domestic or international tribunal, according to the nature of the breach and the obligation accepted by the State(s) concerned.

Most of the rules are in treaties which bind only those States which are party to them. General treaty rules protecting cultural property are found in both 1977 Additional Protocols to the 1949 Geneva Conventions.

3. PRACTICE

In many military actions the 1954 Hague Convention has been violated by parties to it. The implementation machinery provided for in the Convention, such as the appointment of Protecting Powers and Commissioners-General, has more often than not been absent. Few States have marked their buildings with the emblem for the protection of cultural property, consisting of a blue and white shield. Similarly, relatively few States have complied with the obligation in the Hague Convention to submit regular reports on their implementation of the Convention. The 1954 Convention itself was revealed to have certain deficiencies, such as the undefined concept of military necessity, which have been addressed by the adoption of the Second Protocol in 1999.

There are also positive instances where States which were not party to the relevant treaties, nevertheless respected the rules protecting cultural property in practice, making genuine efforts to identify and protect from attack the cultural sites of the opposing party.

4. PROMOTING PARTICIPATION IN THE RELEVANT IHL TREATIES

The relevant IHL treaties – namely, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999, are not as well-known or as widely ratified as they might be.

In contrast with the almost universal participation in the four Geneva Conventions of 1949, there are only 100 States party to the 1954 Convention and 83 States party to the First Protocol of 1954. Only six States are parties to the Second Protocol of 1999 (these figures reflect the position as at August 2001).

Further, the geographical breakdown of States party to the 1954 Convention is unequal, with 43% from the European region, and the remainder about evenly split between the other regions. Moreover, significantly fewer States with a common law tradition are parties to the 1954 Convention, than those with a legal system based on the civil law.

The Plan of Action of the 27th International Conference of the Red Cross and Red Crescent (1999) calls upon States to consider or reconsider, in order to enhance the universal character of IHL, becoming party to the relevant treaties concluded since the adoption of the 1949 Geneva Conventions (Final goal 1.3, paragraph 12). The Final Declaration of the International Conference for the Protection of War Victims (1993), endorsed by the 26th International Conference of the Red Cross and Red Crescent (1995), contained similar wording, and specifically refers to the 1954 Hague Convention as one of the relevant treaties.

Consequently, the ICRC has recently taken an increasing role, in co-operation with UNESCO, in promoting participation in these treaties and their effective implementation. The ICRC also participated as an expert in the negotiations which led to these treaties. In October 2000, the ICRC Advisory Service on IHL organised an experts' meeting on the implementation of the treaties, and practical guidelines are being produced consequent upon that meeting.

5. ROLE FOR NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

National Red Cross and Red Crescent Societies, with their special role in IHL dissemination and implementation, could also help in promoting the 1954 Hague Convention and its Protocols. It would be a natural part of their IHL functions, e.g. for them to help protect the emblem for the protection of cultural property and perhaps take on other roles in assisting with the implementation of the 1954 Hague Convention and its Protocols, either on their own or in co-operation with others. Possible partners at national level include, where such bodies exist, the National IHL Commissions and the national Blue Shield Committees being established in certain countries.

Consideration might also be given to extending components' experience in response and recovery actions following disasters to include assistance in relation to damaged cultural property, or in facilitating such assistance by others.

6. RECOMMENDATIONS TO THE COMPONENTS OF THE MOVEMENT

The long-standing role of the Movement in IHL has been to work for the implementation and improvement of protection of victims of armed conflicts. Traditionally, and for valid reasons, the focus has been on the protection of human beings, their health and general welfare, rather than on the protection of their property. Past and more recent events have shown, however, that the cultural heritage of a people is central to the life of their community, its history and its identity, and such cultural property is also often of value to the international community generally. The speed of reconstruction and reconciliation following a conflict may be enhanced if the cultural property has been respected and preserved during hostilities.

The Council of Delegates is the body where the representatives of all of the components of the Movement meet to discuss and resolve matters of common concern. It is well-established that one such matter is IHL, including the special roles of the ICRC and of National Societies in contributing to respect for existing law and in contributing to its development.

It is recommended that components of the Movement support the ICRC in its increasing role, in co-operation with UNESCO, in encouraging ratification and implementation of the 1954 Hague Convention and its Protocols of 1954 and 1999.

It is further recommended that National Red Cross and Red Crescent Societies should be encouraged to include the Hague Convention and its Protocols in their activities to promote, disseminate and implement international humanitarian law, either on their own initiative or in co-operation with their governments.