

Reporting system under the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict

by
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One of the means of monitoring the practice of States in implementing international agreements is the system of national reports: either within a time limit laid down by the agreement itself or in accordance with the Constitutive Act of the respective organization, the States Parties submit to that organization or to a special body a report for consideration and/or publication.

The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, of 14 May 1954 (“the Convention”), contains such a provision in its Article 26(2) which stipulates: “Furthermore, at least once every four years, [the High Contracting Parties] shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective

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administrations in fulfilment of the present Convention and of the Regulations for its execution.”

The main purpose for inclusion of this provision in the Convention is twofold: (i) to enable the Secretariat to learn about States Parties’ national implementing measures for the application of the Convention; and (ii) to forward this information to States Parties in the form of a widely circulated report, thus making them aware of activities undertaken by other States Parties and, in fact, enabling them to receive information which would otherwise be difficult to obtain.

By way of comparison, the other two UNESCO Conventions for the protection of cultural property – the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)¹ and the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)² – contain provisions requesting States Parties to provide reports on the implementation of those Conventions to UNESCO’s General Conference.

It should also be noted that Article 16 of the “Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution” requires UNESCO Member States to furnish to the General Conference special reports on the action they have taken for the implementation of conventions and recommendations adopted

¹ Article 16: “The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.”

² Article 29(1): “The States Parties to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.”

by the General Conference.³ Initial reports on such conventions or recommendations must be transmitted no less than two months before the first ordinary session of the General Conference following the session at which they were adopted. In addition, the General Conference is entitled to ask Member States for additional reports.

With the exception of the 1962 report, all the Secretariat's reports have been divided into three parts: an introduction outlining the Secretariat's activities for the implementation of the Convention, a copy of the updated list of States party to the Convention and its 1954 Protocol, and texts of national reports submitted by States Parties.⁴

Historical background

What was the reason for inserting the provision on national reports in the Convention? For an answer, we must go back both to the *travaux préparatoires* of the Convention and to the 1954 Hague Diplomatic Conference which elaborated and adopted it.

The 1953 draft Convention included the following Article 25(2):

“2. Furthermore, at least once every four years, they shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in implementation of the present Convention and of the Regulations for its execution.”⁵

³ Article 16 – 1. Member States shall submit to the General Conference special reports on the action they have taken to give effect to conventions or recommendations adopted by the General Conference. Initial reports relating to any convention or recommendation adopted shall be transmitted no less than two months prior to the first ordinary session of the General Conference following that at which such recommendation or convention was adopted. The General Conference may further request Member States to submit, by

prescribed dates, additional reports giving such further information as may be necessary. – Basic Texts (2000 edition), p. 115.

⁴ The 1970 report contains only a copy of the list of States party to the Convention.

⁵ Current Article 26(2) – See *Records of the Conference convened by the United Nations Educational, Scientific and Cultural Organization held at The Hague from 21 April to 14 May 1954*, published by the Government of the Netherlands, Staatsdrukkerij-en uitgeverijbedrijf, The Hague, 1961, p. 387.

The draft was accompanied by the following commentary:

“Communication of the information may take place at any time, but must be effected at least once every four years, with a view to the periodical meeting of representatives of the High Contracting Parties provided for in Article 26. It may be that some States will not wish to divulge certain information; Article 25 accordingly authorizes States to communicate only such information as they think suitable. Further, this exchange of information is to take place through the Director-General of Unesco, who will judge as to the desirability and the time of giving effect to it.”⁶

During the discussion of draft Article 25 the delegate of the United Kingdom proposed its deletion.⁷ This proposal was not accepted and the current Article 26(2) was adopted with a small change when the word “implementation” in the last sentence was replaced by the word “fulfilment”.

Reporting practice

To date, the Secretariat has published six separate reports, in 1967, 1970, 1979, 1984, 1989 and 1995. The report for the year 2000 is in preparation. In addition, the first periodic report was published in 1962 with the documents of the first meeting of States party to the Convention.

Let me now analyse the reporting practice from two points of view: the contents and the quantity of information provided.

a) Contents of information

Taking into account the fact that much of the information in the national reports between 1962 and 1989 is very likely to be outdated, the present analysis will be based solely on information contained in the last 1995 periodic report.⁸ Moreover, to facilitate the

⁶ *Ibid.*, pp. 313-314.

⁷ *Ibid.*, p. 192.

⁸ *Information on the Implementation of the Convention for the Protection of Cultural*

Property in the Event of Armed Conflict, The Hague 1954, 1995 Reports, UNESCO, Ref. CLT-95/WS/13, Paris, December 1995

reading of the analysis no specific reference will be made to the twenty-nine national reports.⁹

The most relevant substantial information contained in the national reports covers mainly the implementation of Articles 1 (Definition of cultural property), 3 (Safeguarding of cultural property), 7 (Military measures), 8 (Granting of special protection), 25 (Dissemination of the Convention), 28 (Sanctions), the whole of Chapter V (The distinctive emblem) and the implementation of Resolution II of the Hague Intergovernmental Conference on the desirability of establishing national advisory committees. In addition, seven countries (Belarus, Bulgaria, Croatia, Hungary, Poland, Slovenia and Ukraine) reported on general legislation for the protection of cultural property, thus not specifically related to protection in the event of armed conflict.

When providing information in connection with Article 1, Australia reported on its efforts to establish effective criteria for identifying cultural property in conformity with this provision and pointed out that the definition of cultural property and the concept of property as such does not reflect the dynamics of the Aboriginal and Torres Strait Islander cultures. In addition, Australia expressed its concern that there may be some significant cultural heritage belonging to the Aboriginal and Torres Strait Islander cultures which is not covered by the definition of cultural property under the Convention. I intentionally focus on this point because the definition of cultural property contained in Article 1 of the Convention reflects almost exclusively the Western concept of cultural property of the late forties without taking into account other concepts of cultural heritage such as those of indigenous peoples.

With regard to Article 3, fifteen countries (Belarus, Bulgaria, Burkina Faso, Croatia, the Federal Republic of Yugoslavia, Germany,

⁹ Reports from Argentina, Australia, Belarus, Belgium, Bulgaria, Burkina Faso, Croatia, Egypt, the Federal Republic of Germany, the Federal Republic of Yugoslavia, the Holy See, Hungary, the Islamic Republic of Iran, Italy, Liechtenstein,

Luxembourg, Madagascar, Malaysia, Mexico, the Netherlands, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland, the Syrian Arab Republic, Thailand and Ukraine. See pp. 15-48 of the 1995 Report.

the Holy See, Hungary, the Islamic Republic of Iran, Liechtenstein, the Netherlands, Poland, Slovenia, Sweden and Switzerland) reported on various measures such as the categorization and subsequent preparation of inventories of cultural property, elaboration of the relevant documentation (e.g. microfilms, plans, photographs), preparation of shelters or evacuation of military installations from city centres to suburban areas.

A record number of twenty-two countries (Argentina, Australia, Belgium, Bulgaria, Croatia, Germany, Egypt, the Federal Republic of Yugoslavia, the Holy See, Hungary, the Islamic Republic of Iran, Italy, Luxembourg, Madagascar, Mexico, the Netherlands, Romania, Slovenia, Sweden, Switzerland, Thailand and Ukraine) provided information on various national military measures such as the training of armed forces to comply with the Convention, the existence of legal advisers in armed forces, preparation of lists of cultural property and maps for members of armed forces, inclusion of the Convention in military manuals, preparation of training materials on the Convention and inclusion of the Convention in cultural education for soldiers. Belarus and Slovakia sent information about measures envisaged.

As for Article 6, nine countries (Australia, Belarus, Croatia, the Federal Republic of Yugoslavia, Hungary, Malaysia, Madagascar, Slovenia and Sweden) transmitted information about relevant measures and Egypt announced that the marking of cultural property with the distinctive emblem of the Convention was planned. However, one country opposed the marking of cultural property by stating that such marking may actually provide the enemy with a "hit-list".

Six countries (Australia, Belarus, Hungary, Liechtenstein, Sweden and Switzerland) reported on measures under Article 8. In particular, it was pointed out that the conditions for entry in the International Register of Cultural Property under Special Protection are too complex and difficult to comply with.

I would add that the complexity of conditions for entry in the Register led the drafters of the Second Protocol to the Convention to elaborate and adopt a new category of "enhanced protection" for cultural property. Cultural property in question must be of the greatest importance for humanity; it must be protected by adequate domestic legal and administrative measures; and it may not be used for military

purposes or to shield military sites – a declaration confirming that it will not be so used must be provided. Enhanced protection is granted by the entry of the cultural property in question in the List of Cultural Property under Enhanced Protection. The decision is taken by the twelve-member intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict. As in the case of special protection, objections to the granting of enhanced protection may be made, but only on the basis of the three aforesaid criteria.

Seven countries (Australia, Belgium, Germany, the Holy See, the Netherlands, Poland and Switzerland) transmitted information on the implementation of Article 25 and relating to various measures for dissemination of the Convention, the Regulations for its Execution and the 1954 Protocol within the civilian sphere.

Four countries (Belgium, Croatia, Mexico and Slovenia) reported on national penal legislation to punish breaches of the Convention. On 16 June 1993 Belgium adopted a special law “relating to the repression of grave breaches of the International Geneva Conventions of 12 August 1949 and Protocols I and II thereto of 8 June 1977”. The reader may be interested to know that Article 1(xx) of that law, based exclusively on Articles 53 and 85(4)(d) of Protocol I to the Geneva Conventions, punishes “directing attacks against clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, where there is no evidence of the adverse party having violated the prohibition of using such objects in support of the military effort, and when such objects are not located in the immediate proximity of military objectives.” In conformity with the fifth paragraph of Article 2, the penalty is ten to fifteen years’ hard labour.

Seven States (Belarus, Belgium, Bulgaria, the Islamic Republic of Iran, Malaysia, the Netherlands and Poland) provide information on the role and competence of national bodies responsible for implementation of the Convention (in reality national advisory committees within the sense of Resolution II of the Hague Intergovernmental Conference) and their institutional links to other governmental bodies. In this context, two States (Argentina and

Belgium) drew attention to the existence of national commissions on the implementation of international humanitarian law.

Finally, readers interested in the implementation of the Convention during a recent armed conflict in the former Yugoslavia should read the national reports of Croatia, the Federal Republic of Yugoslavia and Slovenia, which provide helpful information on both the safeguarding of and respect for cultural property.

b) Quantitative analysis

Reports	Number of States Parties which provided the report	Number of States not party to the Convention which provided the report
1962	9	None
1967	16	4
1970	15	4
1979	19	None
1984	24	None
1989	25	None
1995	29	None
2000 ¹⁰	23	None

It can be seen from the table that the number of national reports has never exceeded thirty. Why has the Secretariat not received more national reports? First, it must be said that this is not an unusually low response rate for replies by States Parties to requests for reports on national implementation action. But are other factors involved in the case of the 1954 Hague Convention? Could the reason be a lack of interest in the Convention, low priority attributed to it by the States Parties or insufficient financial and human resources for its implementation, or is there some other explanation?

It is very difficult to reply to this question because States party to the Hague Convention are not a homogeneous group; each of them has different foreign policy priorities as well as different financial

¹⁰ Reports for 2000 still in preparation; data as at 25 October 2000.

and institutional means. One additional factor for this Convention may be that after the initial enthusiasm of the generation which saw the horrors of the Second World War and decided to adopt an international agreement preventing the destruction of cultural property and promoting respect and tolerance for the cultural heritage of other ethnic groups, new generations have largely lost that enthusiasm and sense of urgency. States party to the Convention needed to witness a major armed conflict leading to large-scale destruction of cultural property, such as the war in the former Yugoslavia, in order to become fully aware of their obligations under the Convention.

The low reply rate has been discussed on several occasions, for instance at the October 1983 Vienna meeting of legal experts on the Convention, during the celebration of the thirtieth anniversary of the Convention (Paris, 14 May 1984), or by Professor Patrick Boylan, a UNESCO consultant, in his study on the review of the Convention.¹¹ Diverse remedies were proposed: from reminding States party to the Convention that the submission of national reports on the implementation of the Convention is a legal commitment which, if not fulfilled, would constitute a breach of Article 26(2) of the Convention,¹² through “giving more power to the Director-General of UNESCO to insist on these periodical reports and to make suggestions which the Contracting Parties would be required to implement”,¹³ to submission of reports “for their more detailed consideration, particularly by the proposed new Intergovernmental Advisory Committee on the Protection of Cultural Property in the Event of Armed Conflict (1954)”.¹⁴

¹¹ Patrick J. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954)*, Doc. UNESCO, Ref. CLT-93/WS/12, Paris, 1993, pp. 89-90.

¹² *Meeting of Legal Experts on the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954)*, UNESCO, Ref. CLT-83/CONF.641/1, Paris, p. 9.

¹³ Address by H.E. Nagendra Singh, Judge at the International Court of Justice, at the celebration of the thirtieth anniversary of the Hague Convention, in UNESCO, *Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 1954, 1984 Reports*, Ref. CLT/MD/3, Paris, December 1984, p. 15.

¹⁴ *Op. cit.* (note 10), p. 90

Evaluation of the reporting system under the Convention and possible improvements

When trying to evaluate the reporting system under the Convention, three important facts must be borne in mind:

- The information provided by States party to the Convention varies widely in quality and quantity and depends on a number of factors, such as interest in the Convention, tradition in the implementation of international humanitarian law, the State's own experience from previous armed conflicts and, last but not least, the State's economic potential and the efficiency of its national administration.
- The information received, analysed and published in periodic reports is the information selected and divulged by the States Parties themselves. The Secretariat, of course, obtains additional information from mass media, consults professional publications or reports prepared by its own experts, experts of other United Nations agencies or those of non-governmental organizations (e. g. the International Committee of the Blue Shield, an umbrella organization composed of the International Council on Archives, the International Council of Museums, the International Council on Monuments and Sites and the International Federation of Library Associations and Institutions) or is in contact with the Permanent Delegation or National Commission of the country concerned. However, there may be situations in which the information provided by a State party to the Convention clearly contradicts reality. As a striking example of the divergence between information on the national implementation of the Convention and actual fact, it is sufficient to read the 1989 Yugoslav periodic report on the implementation of the Convention. Whereas this report is a textbook example of how the Convention should be implemented,¹⁵ the events in former Yugoslavia since 1989 have shown that the real situation was different.

¹⁵ *Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict,*

The Hague 1954, 1989 Reports, UNESCO, Ref. CC/MD-11, Paris, December 1989, p. 39.

- The fundamental role of the Secretariat is to facilitate the dissemination of information on the implementation of the Convention, and to encourage more Member States not party to the Convention and its two Protocols to join those agreements and provide them (and not only them) with technical assistance. To succeed in its activities the Secretariat must use an individually tailored approach to each State party to the Convention, taking into account factors such as its administrative, economic and military potential, its geopolitical position, its role in international relations and its membership in regional military organizations.

How can the reporting system be improved? Would it not be better to abandon it completely in favour of other activities, such as the exchange of experience among States Parties during meetings of those States or the dissemination of information through regional and national training seminars?

Before replying to the first question, I will address the second one. The reporting system is necessary because (i) it raises awareness of the Convention; (ii) it periodically reminds States party thereto of their rights and obligations under the Convention;¹⁶ and (iii) it enables them to learn of the experience of other States party to the Convention, a task which would otherwise be difficult even for developed States.

Seven years ago a UNESCO consultant, in his survey, criticized the national reporting system and proposed that a transition be made from reports to technical assistance. In particular, he stated that “[n]o State – or more precisely, no civil service – is ever free of other concerns at the time when it is asked to produce a report. Given that it has to make a choice, the chances are that it will hardly be inclined to give priority to the drafting of a report for UNESCO, since the utility of the operation is far from obvious to it, and the political repercussions of inaction appear to be slight.”¹⁷

¹⁶ The resolution of the fourth meeting of States party to the Convention (Paris, 18 November 1999) invites, among other things, “States party to the Convention to provide the Secretariat with their national reports

on the implementation of the Convention under Article 26(2) within the time allowed”.

¹⁷ Appendix to *Memorandum of UNESCO's Standard-Setting Activity*, UNESCO, Ref. 27 C/INF.6, Paris, 27 September 1993, p. 4.

He went on to stress that “[a]sking a State to submit a report on its application of a standard-setting instrument assumes that the fundamental problem has been solved: i.e. that the national authorities have worked out precisely how to apply the instrument in question. We may assume that most States do not lack the will to apply the instrument in question: what they reveal indirectly is that they are unable to apply it. We therefore suggest that UNESCO reverse its order of priorities: instead of concentrating on monitoring activities it should focus on assisting the Member States to put in place the tools required for the application of conventions and recommendations, which would enable its resources to be redeployed to provide technical assistance.”¹⁸

However, it may well be inferred from the reports on recent experience in implementation of the Convention, from the high attendance at the three previous meetings of States Parties and from the latter’s active participation in the review of the Convention in general that the overwhelming majority of those States are genuinely interested in its good application. What is needed — and this is the reply to the first question — is to guide (maybe to coach would be a better expression) States Parties by providing them with a relatively simple questionnaire indicating topics to be reflected in their national reports. Such a questionnaire should help them; it should not impose an additional burden on their national administrations.¹⁹

When preparing the questionnaire for the periodic report for the year 2000, we focused on the following eight issues: Article 7 (Military measures), Article 8 (Special protection), Chapter V (The distinctive emblem), Article 25 (Dissemination of the Convention), Article 26(1) (Official translations), Article 28 (Sanctions), the 1954 Protocol, and Resolution II of the 1954 Hague Conference. It can be seen from the questionnaire²⁰ that an average national civil service

¹⁸ *Ibid.*, pp. 4–5.

¹⁹ The questionnaire system has already been used in the past. However, except for the 1962 report it has not been fully successful.

²⁰ See Annex.

should be able to cover those issues without any problem. I am pleased to say that most of the twenty-three national reports received to date are structured in conformity with the questionnaire.

The main improvement to the reporting system under the Convention lies in the functions of the future Committee for the Protection of Cultural Property in the Event of Armed Conflict, established under the Second Protocol to the Hague Convention. Article 27 (1)d. of the Second Protocol empowers the Committee “to consider and comment on reports of the Parties, to seek clarifications as required, and prepare its own report on the implementation of this Protocol for the Meeting of the Parties.” It is true that this function, strictly speaking, concerns national reports on implementation of the Second Protocol. However, there is nothing to stop the Committee from requesting information on implementation of the Convention, because in reality such information will overlap.

Finally, the obligation of States party to the Convention to provide national reports on its implementation does not exclude other activities relating to its application, such as general and technical assistance provided by the Secretariat or the elaboration of technical studies on different aspects of the Convention’s implementation; on the contrary those activities complement each other and are all equally indispensable.

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ANNEX

Questionnaire for the 2000 periodic report on the implementation of the 1954 Hague Convention

With a view to systematizing the information communicated to it by States Parties to the Convention, the Secretariat has compiled a list of issues which the national authorities may wish to take into account when preparing their national report. This list is intended purely as guidance and any information concerning other aspects of implementation will be welcome.

1. *Article 7 – Military measures*

This Article provides that States Parties to the Convention undertake to introduce into their military regulations or instructions such provisions as may ensure observance of the Convention. The States Parties also undertake thereby to establish, within their armed forces, services whose purpose will be to secure respect for cultural property. Please inform the Secretariat whether such services exist in your country.

2. *Article 8 – Special protection*

We should like to know whether you plan to place cultural property under special protection and, if not, what prevents you from doing so.

3. *Chapter V – The distinctive emblem*

Does your country mark cultural property with the distinctive emblem of the Convention? If not, for what reasons?

4. *Article 25 – Dissemination of the Convention*

Knowledge of the laws of armed conflict is of capital importance for civilian and military personnel required to apply them. Please inform us how the provisions of the Convention and the Regulations for its execution are being disseminated in your country.

5. *Article 26 (1) – Official translations*

To date, the Secretariat has received 22 official translations of the Convention and of the Regulations for its execu-

tion (Arabic, Bulgarian, Czech, Dutch, English, Farsi, Finnish, French, German, Hebrew, Hungarian, Greek, Italian, Kyrgyz, Polish, Romanian, Russian, Serbo-Croatian, Slovak, Slovenian, Spanish and Thai). If an official translation in the language of your country has not yet been received by the Secretariat, we should be grateful if you would provide us with a copy.

6. *Article 28 – Sanctions*

This Article provides that the States Parties to the Convention undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the Convention. Please inform us how this provision has been taken into account in your penal code. Would you also kindly provide us with a copy in English or French, if possible, of the relevant provision or provisions.

7. *Protocol*

The Protocol provides that each State Party undertakes to prevent the exportation of cultural property from a territory occupied by it and requires the return of such property to the territory of the State from which it was removed. Please inform us whether the provisions of the Protocol have been applied by your country.

8. *Resolution II of the 1954 Hague Conference*

Would you kindly inform us whether there is a national advisory committee in your country in accordance with the hope expressed by the Conference in this Resolution. If so, please provide us with some background information.

Résumé

Le système des rapports sous la Convention de 1954 pour la protection des biens culturels en cas de conflit armé

par JAN HLADIK

L'un des moyens de promouvoir la mise en œuvre d'un traité international consiste à obliger chaque État partie à ce traité à établir périodiquement un rapport sur les mesures qu'il a prises sur le plan interne. L'auteur décrit en détail le système introduit par la Convention de 1954. Il examine notamment le rôle que le nouveau Comité pour la protection des biens culturels en cas de conflit armé est appelé à jouer.