Frequently Asked Questions regarding the Hague Convention and its two Protocols

1. Why is it necessary to protect cultural property in the event of armed conflict and/or occupation?

Cultural property is particularly threatened by armed conflicts and, in some cases, by a resulting occupation. As such property reflects the life of the community, its history and its identity, its preservation helps to rebuild a broken community, re-establish its identity, and link its past with its present and future. In addition, the cultural property of any people contributes to the cultural heritage of humankind. Thus, loss or damage to such property impoverishes humankind.

2. Which categories of cultural property are protected under the Hague Convention and its two Protocols?
First of all, there is no universal definition of cultural property. Each UNESCO Convention, Recommendation or Declaration defines cultural property in accordance with its purpose and scope of application.

Article 1 of the Hague Convention provides the following definition of cultural property:

- 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 of reproductions of the property defined above;
- Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined above, such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property; and,
- Centers containing a large amount of cultural property. These are known as “centers containing monuments”.

The protection granted to cultural property defined under Article 1 of the Convention does not depend on its origin or ownership.

3. **Why is it necessary to adopt safeguarding measures?**

As cultural property may be damaged or destroyed in the event of armed conflict, it is necessary to undertake all appropriate measures against the foreseeable measures of armed
conflict in peacetime by the State where such property is situated. Such measures are helpful not only during armed conflict, but also in case of a natural disaster such as an earthquake or a flood.

4. Why is it important to respect cultural property?

Cultural property must be respected in view of its character and role in society. In practice, it means that such property, its immediate surroundings or appliances in use for its protection, are not to be used for purposes likely to expose it to destruction or damage in the event of an armed conflict. In addition, it is necessary to refrain from any act of hostility against cultural property. However, these obligations may be waived in case of imperative military necessity.

It is also necessary to prohibit, prevent and, if necessary, put a stop to any form of theft, misappropriation and vandalism against cultural property; to prohibit reprisal; and to not requisition movable cultural property situated in the territory of another State party to the Convention.

The obligations mentioned in the previous paragraph are not subject to any waiver of military necessity.

5. What are the obligations of the military with regard to cultural property?

As the military is primarily responsible for the protection of cultural property in the event of armed conflict, it must be aware of the need to protect cultural property and be familiar with the provisions of the Convention. For this reason, States Parties must foster in peacetime the spirit of respect for cultural property and designate in peacetime military services or
specialized personnel responsible for securing respect and cooperation with the civilian authorities responsible for safeguarding cultural property.

6. **Is there any distinctive emblem to mark cultural property? If so, is it obligatory to mark such property?**

Yes, there is such distinctive emblem in the form of 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. This emblem is displayed on our website.

The marking of cultural property under general protection, which falls within the scope of Article 1 of the Convention, is not obligatory. In other words, it is left to the discretion of each State Party. However, such marking is compulsory for immovable cultural property under special protection; cultural property being transported under special protection; and, in other urgent cases, and, finally, for improvised refuges.

The practice of marking cultural property is not uniform. A number of States Parties refrain from doing so for different reasons.

7. **What is special protection and what are the conditions for its application?**

Special protection represents a higher level of protection which may be granted to a limited number of:

- 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.

The granting of special protection is subject to essentially two conditions: the cultural property in question must be situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point; and, secondly, such property may not be used for military purposes.

The granting of special protection is not automatic, but depends on the request of a State Party where the property is situated. To obtain special protection, no other State Party may object to it. The cultural property is granted special protection by its entry in the “International Register of Cultural Property under Special Protection”, a special register maintained by the Director-General of UNESCO.

8. What are the sanctions for violation of the Convention?

The Convention provides for the obligation of the States Parties to sanction breaches of its provisions. They are required, within the framework of their ordinary criminal jurisdiction, to prosecute and punish persons who breach or order to breach the Convention. However, the Convention does not contain list of punishable offences. Thus, the elaboration and adoption of concrete sanctions is left to the discretion of each State Party.

9. Why is it important to protect cultural property in occupied territory?

It well may be that cultural property situated in occupied territory is damaged or otherwise affected by military operations. For this reason, the Occupying Power must, as much as possible, support the competent national authorities of the occupied country in safeguarding and preserving its cultural property. The Occupying Power must also, to the extent possible,
take the most necessary measures of preservation if the competent national authorities of the occupied State are unable to do so.

10. Why was it necessary to adopt the 1954 Protocol?

The 1954 Protocol deals with the protection of movable cultural property in occupied territory (the Convention itself does not cover this point). In particular, it prohibits the export of cultural property from occupied territory and requires the return of such property to the authorities of the territory from which it was removed. The Protocol also expressly prohibits the appropriation of cultural property as war reparations.

11. Why was it necessary to adopt the 1999 Second Protocol?

Barbaric acts committed against cultural property during many armed conflicts in the 1980s and 1990s highlighted a number of deficiencies in the implementation of the Convention. For this reason, in 1991 the UNESCO Secretariat undertook, together with a number of UNESCO Member States, a review of the Convention in order to elaborate a new supplementary legal instrument to fill in existing gaps, such as the lack of clarity in the interpretation of the clause of “military necessity”, the application of special protection and of the control system of the Convention, and the reinforcement of penal provisions, as well as the lack of an institutional body to monitor the implementation of the Convention. The review of the Convention resulted in the adoption of the Second Protocol to the Hague Convention in March 1999 at The Hague.
12. What is the contribution of the Second Protocol to the safeguarding of cultural property?

The Second Protocol clarifies what concrete safeguarding measures are to be taken. In particular, it is necessary to: prepare inventories, plan emergency measures for protection against fire or structural collapse, prepare for the removal of movable cultural property or the provision for adequate *in situ* protection of such property, and to designate competent authorities responsible for the safeguarding of cultural property.

13. How does the Second Protocol improve the respect for cultural property?

First, it specifies when the waiver of military necessity, both for the attacker and the defender, can be applied. Secondly, it provides precautionary measures to be taken in an attack as well as those against the effects of attacks.

The Occupying Party must prohibit and prevent in relation to the occupied territory any illicit export, other removal or transfer of ownership of cultural property, any archaeological excavation (except where this is strictly required to safeguard, record or preserve cultural property), any alteration to, or change of use of, cultural property that is intended to conceal or destroy cultural, historical or scientific evidence. Furthermore, no archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory is allowed, unless not permitted by the circumstances, to be carried out without close cooperation with the competent national authorities of the occupied territory.
14. What is enhanced protection? What are criteria for its granting?

As special protection has met with limited success, the Second Protocol elaborated a new concept of enhanced protection combining aspects of special protection and the criteria for the listing of outstanding cultural property on the World Heritage List under the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage.

There are three conditions for the granting of enhanced protection:

- 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.

Enhanced protection is accorded by the Committee for the Protection of Cultural Property in the Event of Armed Conflict and granted by the entry of the cultural property in question on the List of Cultural Property under Enhanced Protection. To date, no cultural property has been granted enhanced protection.

Unlike the granting of special protection, which requires unanimity, generally speaking, enhanced protection may be granted by a two-third majority of the Committee.

15. What constitute serious breaches of the Second Protocol?

The Second Protocol provides for the following five serious breaches:

- Making cultural property under enhanced protection the object of an attack;
- Using cultural property under enhanced protection or its immediate surroundings in support of military action;
• Extensive destruction or appropriation of cultural property protected under the
  Convention and this Protocol;
• Making cultural property protected under the Convention and this Protocol the
  object of an attack; and,
• Theft, pillage, misappropriation of, or acts of vandalism directed against,
  cultural property protected under the Convention.

Such breaches must be committed intentionally and in violation of the Convention or the
Second Protocol. In the case of any of the first three breaches, any Party may have jurisdiction
over the offences even if they have been committed by a foreigner abroad.

16. What are other violations of the Second Protocol?

Other violations include any use of cultural property in violation of the Convention or the
Second Protocol, and any illicit export or other removal or transfer of ownership of cultural
property from an occupied territory in violation of the Convention or the Second Protocol.

17. What is the Committee for the Protection of Cultural Property in the Event of
   Armed Conflict? What does it do?

The Committee for the Protection of Cultural Property in the Event of Armed Conflict is
an executive intergovernmental body established by the Second Protocol. It is composed of
twelve Parties which are periodically elected by the Meeting of the Parties. Its functions are
described in Article 27 of the Second Protocol, the essential of which may be summarized as
follows:
• Granting, suspending or cancelling enhanced protection;
• Promoting the identification of cultural property under enhanced protection;
• Supervising the implementation of the Second Protocol;
• Granting international assistance; and,
• Overseeing the use of the Fund for the Protection of Cultural Property in the Event of Armed Conflict

The Committee also co-operates with international and national governmental and non-governmental organizations that have objectives similar to those of the Convention, its 1954 Protocol and the Second Protocol.

18. What is the Fund for the Protection of Cultural Property in the Event of Armed Conflict?

The Fund for the Protection of Cultural Property in the Event of Armed Conflict is a fund in trust. It is established to provide financial or other assistance for preparatory or other measures to be taken in peacetime. It also provides financial or other assistance in relation to emergency, provisional or other measures to protect cultural property during periods of armed conflict, or for immediate recovery after the end of hostilities. Contributions to the Fund are entirely voluntary, and, to date, no contributions have been made.

19. What is the role of UNESCO in the implementation of the Hague Convention and its two Protocols?

The Secretariat of UNESCO assists in the promotion and implementation of the Hague Convention and its two Protocols. It provides technical assistance in organizing the protection
of cultural property upon the request of the High Contracting Parties or States Party to the Second Protocol. UNESCO may, on its own initiative, make proposals in relation to any problem arising from the application of the Convention and its Second Protocol.

The Secretariat also acts as the secretariat of the Committee for the Protection of Cultural Property in the Event of Armed Conflict. It prepares the Committee’s documentation and the meeting agendas, and has the responsibility of implementing its decisions.