



ITALIAN DEFENCE GENERAL STAFF



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**DIRECTIVE ON THE PROTECTION OF CULTURAL
PROPERTY IN THE EVENT OF ARMED CONFLICT**

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REFERENCES:

- A.** The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
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Preamble

The concern of the Italian Armed Forces for the protection of cultural property in case of armed conflict has been evident since 1941 with the issuing of the military criminal law of war that expressly assigns to military commanders specific responsibilities on this subject.

Through Conventions and Protocols the international community intended to state that in the event of armed conflict *“damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world, and wanted to introduce the concepts of protection of and respect for cultural property. Protection implies that Contracting Parties must adopt all measures considered appropriate to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict; respect entails the High Contracting Parties undertaking to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties “by refraining from any use of the property [...] for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property”.*

In order to provide for an even more effective protection system, in 2009 our legal system established new sanction provisions.

Therefore, this Directive aims at outlining in general terms the crucial elements of provisions, conventions and protocols issued on this subject and at disseminating - within the Armed Forces and down to the lowest ranks, also in accordance with Article 25 of the Hague Convention - the preparatory measures and sanctions intended to respect and safeguard cultural property in time of peace as well as in the event of armed conflict.

Part One

International Protection of Cultural Property in the Event of Armed Conflict

1. The Destruction of Cultural Property as a Crime Against Humanity

Concern of the international community for the safeguarding of cultural property in the event of armed conflicts initially led to the adoption of the Conventions of the Hague of 1889 and 1907. These constituted limited-scope provisions since the obligation to guarantee the safeguarding of cultural property ceased whenever that was deemed impossible by the authorities of the State directly involved and whenever such cultural property was used for military purposes.

In the years after the Second World War, not incidentally so, and following the huge havoc caused by the recent conflict, the widespread awareness that fighting during armed conflicts would often cause the destruction of unique cultural heritage - which would entail a loss not only for the peoples on whose territories the conflict was taking place but for all mankind - spurred the international community to adopt **the Convention of the Hague of 1954** (ratified in Italy by law n° 279 of 7 February 1958), along with **the First Protocol** prohibiting the exportation of cultural property from occupied territories. The Convention specifically addressed the safeguarding of cultural property in the event of armed conflict, while the First Protocol concerned the safeguarding of cultural property in the event of military occupation.

In 1977 **two Protocols to the four Conventions of Geneva** that, as is known, constitute the foundation of international humanitarian law, were adopted. Article 53 of the First Protocol, which concerns the protection of victims of international armed conflicts, included cultural property within the objects to be protected, subsuming places of worship within the category of cultural property. In particular, Article 53, expressly in compliance with the provisions of the Convention of the Hague of 1954, prohibits any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.

It also prohibits using such objects in support of the military effort as well as making such objects the target of reprisals. Similar provisions are in Article 16 of 1977 Second Protocol, which regards the protection of victims of non-international armed conflicts.

All the above-mentioned international acts have been ratified by Italy.

Since results achieved did not always tally with the Convention of the Hague of 1954, the **Second Protocol** to the Convention of the Hague of 1954 was adopted in March 1999 and ratified by Law n° 45 of 16 April 2009.

2. The 1954 Hague Convention

The Convention is the first comprehensive international instrument that had the merit of introducing a broad system for protecting cultural property, which constitutes the *common heritage of mankind* as defined in Article 1.

The pivotal principle of the Convention of 1954 is stated in the second paragraph of the preamble, according to which damage to cultural property is not exclusively a concern of the State in which such property is situated but of all mankind, since each people makes its contribution to the culture of the world. The Preamble also clarifies that the safeguarding of cultural property should be prepared in time of peace by taking both national and international measures.

For this purpose, the High Contracting Parties undertake to adopt any appropriate measure and prepare, in time of peace, for the safeguarding of cultural property against the foreseeable effects of an armed conflict.

Safeguarding is meant as the whole of positive actions that aim to ensure the best material conditions for protecting cultural property; respect entails the Parties undertaking to respect cultural property situated both within their own territory and within the territory of other High Contracting Parties. Respect of cultural property also implies that the High Contracting Parties undertake to refrain from any use of the property for purposes which are likely to expose it to destruction or damage in the event of armed conflict and from any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. Such obligations may be waived only in cases where military necessity imperatively requires such a waiver.

The Convention provides for two separate systems of protection of cultural property: protection and special protection (Article 8).

3. The Special Protection

Under the Convention of the Hague of 1954 (Article 8), special protection is granted to a limited number of pieces of cultural property of great importance as well as to permanent refuges intended to shelter movable cultural property in the event of a conflict. Cultural property may be included into the “International Register of Cultural Property under Special Protection” under two conditions:

- a. it is to be situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point;
- b. it is not to be used for military purposes.

The above-mentioned register is to be maintained by Director-General of UNESCO and is regulated in detail by the Regulation for the Execution of the Convention attached to the Convention.

Under Article 11 of the Convention of the Hague of 1954, the immunity of cultural property placed under special protection can be withdrawn only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues.

In addition, such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger.

The entry procedure for special protection is long and complex, thus at the moment only five refuges all over the world have been included in the register (one refuge in Germany, three refuges in the Netherlands and the Vatican City).

4. The 1999 Second Protocol

Over the years, the effective application of the Convention proved difficult, owing to both the complexity of the implementation mechanism and the limited number of State parties that ratified it.

In order to solve this problem, on 26th March 1999 the Second Protocol to the Convention, which represents an autonomous international treaty on matters already regulated in the Convention it derives from, was adopted at The Hague.

The scope of application of the provisions contained in the Second Protocol is fully extended to non-international armed conflicts, while, it is worth noting, the 1954 Convention makes applicable to non-international conflicts only the provisions containing measures for the protection and respect of cultural property during armed conflicts.

The obligation for State Parties to the 1999 Protocol to take, already in time of peace, all the necessary measures for the safeguarding of cultural property against the effects of damage, destruction, etc. that a conflict may cause was confirmed. By way of example, the following are mentioned:

- planning of emergency measures for protection against collapse, structural damage and fire;
- adoption of a cultural property protection plan in the place where it is located or preserved;
- designation of the authorities responsible for the safeguarding of cultural property.

It is appropriate to mention the provision on the protection of cultural property in occupied territory, prohibiting the Party in occupation from performing archaeological excavations, not even in close cooperation with the national authorities of the occupied territory, precisely because in such territories the said national institutions have limited authority or are not operational. In addition to this provision, the prohibition to export or allow the illicit export, the removal or the transfer of ownership of cultural, historical and scientific property, as well as its destruction, is confirmed and underscored.

Considering the limited effectiveness of the Convention and the provisions concerning special protection, States decided to adopt a system of further protection of cultural property in the event of armed conflicts, namely enhanced protection.

Moreover, the 1999 Protocol contains an important innovation with reference to provisions relating to responsibility for the violation of measures on the protection of cultural property: in addition to the reference to customary international law on the topic of the responsibility of State Parties, it also sets out complex provisions for the **individual responsibility** (Article 15) of the person who commits the act. For instance, the 1999 Protocol establishes that serious violations are always considered as criminal offences and punished by appropriate penalties under the domestic laws of the State Parties.

At the domestic level, the transposition of some of the principles established by the Second Protocol has been effected through Law no. 45 of 2009 authorizing ratification, which departs considerably from the customary practice relating to international treaties, and contains as many as 14 articles devoted to provisions for the adaptation of the national system to the combined provisions established by the 1954 Convention and by the Second Protocol.

In particular, based on Article 5, the Italian Ministry of Cultural Heritage and Activities identifies the public or private property which meets the requirements for enhanced protection set out in article 10 of the Protocol, and that shall be subsequently included in the list as per the following Article 11, Paragraph 1. Thus, cultural property shall enjoy enhanced protection based on its great importance for humanity. In granting enhanced protection to cultural property, the Italian Ministry of Cultural Heritage and Activities shall consult the Ministry of Defence to exclude that the said property is used for military purposes or to shield military sites, and ascertain that a declaration has been made to the effect that the cultural property under consideration shall never be used for military purposes.

5. The Enhanced Protection

Cultural property may be placed under enhanced protection provided it meets the following three requirements (Art.10):

- it is cultural heritage of the greatest universal relevance, i.e. of the greatest importance for humanity;
- it is protected by domestic law with the highest level of legal and administrative protection, due to its exceptional cultural and historic value;
- it is not be used for military purposes, as explicitly stated by the relevant Contracting Party.

Each Country must submit a list of cultural property for which it intends to request the granting of enhanced protection to the ad hoc Committee for the Protection of Cultural Property in the Event of Armed Conflict, made up of 12 members -who stay in office four years appointed by all the Parties. The decision to grant or deny enhanced protection is taken by a majority of at least four fifths of the Members present and voting cultural property meeting the requirements shall be included in a specific “List of Cultural Property under Enhanced Protection”.

Therefore, the new enhanced protection regime shall apply to cultural property included in the above-mentioned List, whose requirements do not provide for the cultural property being located within adequate distance from all major military targets or large industrial plants. The List also provides for the possibility to offer enhanced protection to cultural property not previously safeguarded by national legislation in an adequate way, as well as grant provisional enhanced protection, if the request is submitted by a relevant State after

the outbreak of conflict. Inclusion in said List ensures that the cultural property shall not, during the conflict, ever be considered as a military objective. Cultural property can lose previously granted enhanced protection, and, in specific cases, the latter can also be suspended (Art.13 and 14).

Part II

Criminal Liability

1. Individual Liability and Serious Violations According to the Second Protocol

Art. 15 of the 1999 Second Protocol has established the principle of individual criminal liability of the offender with regard to acts -established as criminal offences- committed against cultural property, such as:

- a. making cultural property protected under the Convention and Second Protocol the object of attack;
- b. using cultural property under enhanced protection or its immediate surroundings in support of military action;
- c. destruction or appropriation of cultural property protected under the Convention and Second Protocol;
- d. theft, pillage, misappropriation or acts of vandalism against cultural property.

Said Protocol defines the above acts as serious offences, to be established by each Party as criminal offences, punished by appropriate penalties under its domestic law. Legislative regulations must, moreover, establish the jurisdiction and extradition procedures for offences committed in foreign countries. Italy complied with this obligation by Ratification Law No 45/2009.

2. Introduction of Penalties in the Italian Criminal Law

Criminal provisions introduced by Ratification Law apply to whoever damages cultural property located within the territory of a State during an armed conflict or international mission. Moreover, they apply when, during armed conflicts or international missions, the act is committed by an Italian citizen who damages cultural property located in a foreign country. Said violations and their respective penalties are listed below:

- a. *Attack and destruction of cultural property* - Art. 7, par. 1 of Law 45/2009 punishes with 4 to 12 year imprisonment whoever attacks cultural property protected by the 1954 Hague Convention. Under Par.2, if the object of such attack is cultural property under enhanced protection the act shall be punished with 5 to 15 year imprisonment. Par.3 provides for more severe punishment by establishing that penalties provided for in the

previous two paragraphs shall be stricter if the act results in damage, deterioration or destruction of such property.

- b. Illicit use of protected cultural property - Art. 8 of Law 45/2009 punishes the illicit use of protected cultural property similarly to Art.7; in fact, it establishes a 1 to 5 year penalty for cultural property protected by the Convention, a more severe penalty, 2 to 7 years, if the act is committed against cultural property under enhanced protection and, finally, a stricter penalty if the act results in damage, deterioration or destruction of such property.
- c. Destruction and pillage of protected cultural property, misappropriation and damage - Art. 9 of Law 45/2009, establishes as criminal offences the destruction and pillage of protected cultural property, and Art. 10 punishes misappropriation of and damage to such property, in this way acknowledging the indications of Art. 4 of the Hague Convention of 1954.
- d. Export and illicit transfer of protected cultural property - Law 45/2009 aims at establishing as criminal offences the export and illicit transfer of protected cultural property, acknowledges the provisions of Art.9, sub-paragraph a) of Second Protocol, aimed at obliging the Party that occupies the territory of another Party to forbid and prevent export, removal or illicit transfer by establishing 2 to 8 year imprisonment for cultural property protected by the Hague Convention of 1954, 4 to 10 years if the property is under enhanced protection and, finally, stricter punishment if the act results in destruction of the cultural property.
- e. Alteration and change of use of protected cultural property - Art. 12 of Law 45/2009 provides for 1 to 3 and 2 to 7 year imprisonment, the latter for cultural property under enhanced protection, and stricter penalties when the act results in damage or destruction of the cultural property, for whoever illegally alters or changes the use of protected cultural property is used.
- f. Cause for exclusion of punishability - as regards Criminal Law, one of the most interesting provisions is Art. 13 of Law 45/2009, aimed at excluding punishability of the offences of attack and destruction of cultural property and illegal use of protected cultural property when such acts are committed for an imperative military necessity according to Art.6 of the Protocol, details of which are illustrated in the next chapter.
- g. Jurisdiction- the above offences (Art.7 to 12) are military offences to which procedural regulations of the Military Criminal Code apply. In cases when they are committed in a

foreign country, jurisdiction is granted to the military judiciary authority and the competent forum is Rome Military Tribunal.

3. Violations Provided for in the Military Criminal Law of War

The rules on penalties provided for the Military Criminal Law of War, Chapter III, Title of Matter IV, “On Illicit War Acts” (Art. 174, 175, 178,179, 186 and 187), Art. 187, in particular, provides for no less than 15 years imprisonment for whoever, in an enemy country, without being forced to do so by military necessity, destroys or causes serious detriment to historical monuments, works of art or science and premises intended for religious celebrations, educational, artistic or scientific purposes.

Under Art. 165 of the Military Criminal Law of War, *Application of the Military Criminal Law of War during Armed Conflicts*, provisions in the above-mentioned articles apply to all military operations carried out by the Italian Armed Forces in foreign countries, even in absence of a declaration of the state of war.

Part III

Relevant Military Obligations for the Protection of Cultural Property

1. Use of Cultural Property in Time of Peace

Protected cultural property is not subject to any limitations of use by Military Authorities in time of peace : in fact, in Italy some famous buildings host military schools and units. For example, the Air Force Warrant Officers' School is located in the Royal Palace in Caserta, the Military Academy in the Ducal Palace in Modena, or the *Scuola Marescialli dei Carabinieri* in Santa Maria Novella , in Florence.

On the contrary, military use, even in time of peace, of cultural property under special protection (Art. 9 of the Convention), and especially under enhanced protection (Art. 10 of the Second Protocol) is forbidden even in time of peace. The latter are excluded for good from any military use, even if temporary and provisional, for both operational and training purposes, by a specific declaration of the Chief of Defense General Staff.

In order to finalize said declaration it will be necessary:

- to verify with the General Directorate of Military Engineering (GENIODIFE) that the cultural property is not included in the Defense-owned property;
- to exclude – tasking III Division, Defense General Staff- that the cultural property is involved in any operational plans and that said property and nearby areas will not be employed for military purposes or for protecting military facilities.

2. Precautions

The main precautions to be adopted in case of hostile acts are as follows:

- do everything feasible to verify that the objectives to be attacked are not cultural property protected under Art. 4 of the Convention;
- choose means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under Art.4 of the Convention;

- refrain from deciding to launch any attack which may be expected to cause incidental damage to cultural property protected under Art.4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated;
- cancel or suspend an attack if it becomes apparent that the objective is a cultural property protected under Art. 4 of the Convention or that the attack may be expected to cause incidental damage to protected cultural property which would be excessive in relation to the concrete and direct military advantage anticipated;
- avoid all acts of hostility directed against transport under special protection.

Moreover, the First Protocol of 1954 and the Second Protocol of 1999 provide for further obligations, aimed in particular at avoiding that the occupying nation should illegally appropriate the cultural property of a territory:

- export from an occupied territory during an armed conflict is forbidden;
- obligation to take into custody cultural property imported either directly or indirectly from any occupied territory and to return it to the competent authorities of the previously occupied territory;
- retaining such property as war reparations is forbidden;
- any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property is forbidden;
- any alteration to, or change of use of, cultural or historical property or important property for scientific reasons is forbidden.

3. Military Necessity

The principle of military necessity, in general, implies the obligation for the military commander to employ only the quality and quantity of force that is necessary to reach the target, and in some cases it is used to justify derogations to regulations that limit war violence to realize prevailing military interests.

The principle is quoted both in the Convention and the Second Protocol, and allows the use of cultural property for purposes that may expose it to destruction or damage only if such property is made into a military objective when no other solution is feasible for obtaining a similar advantage to the one offered by attack.

According to the Convention's provisions, military commanders at any level were allowed to make decisions according to their best judgment. Therefore, even rank-and-file patrol

commanders had to shoulder such responsibility. The situation changed with the Second Protocol of 1999, which still provided for derogations to imperative military necessity, but the decision to invoke imperative military necessity could only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller where circumstances do not permit otherwise .

As regards cultural property under special protection, suspension of immunity shall be endorsed by a Major General or officer of equivalent rank, while for cultural property under enhanced protection immunity can be withdrawn only at the highest Armed Forces operational level, that is by the Chief of Defense Staff.

4. Dissemination

a. Military Authorities commit themselves to respect, and ensure that others respect, the Convention and two Protocols , as well as strengthen the Armed Forces' appreciation of the content of said documents through educational and information programs.

In peacetime, they commit themselves to:

- include the subject in courses dealing specifically with legal matters (for ex., the Course for Military Legal Advisors or courses held in preparation for foreign operations);
- incorporate guidelines and instructions for military personnel in order to ensure observance of the above regulations and respect of culture and cultural property by the Armed Forces;
- develop and implement, in cooperation with UNESCO and governmental and non-governmental organizations, training and educational programs;
- establish within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it (Art.7 of the 1954 Convention).

In wartime, they commit themselves to incorporate guidelines and instructions on the protection of cultural property into military regulations, doctrine and educational material;

b. Within the framework of the Italian Defense General Staff, the General Office for Legal Affairs shall appoint a representative in charge of liaising with the Ministry of Foreign Affairs, the Ministry of Cultural Heritage and UNESCO as regards all relevant updates, as well as diffusion of regulations within the Armed Forces.

Service Staffs shall appoint a representative in charge of liaising with the General Office for Legal Affairs of Defense General Staff and with their respective General Headquarters to ensure that national and international laws are respected.

An officer with specific legal expertise shall be part of the Office for Legal Affairs of the Italian Joint Operations Headquarters, to illustrate national and international laws to the various Headquarters' Legal Advisors being deployed to operational theaters.

- c. Further contacts shall be taken with the main governmental and non-governmental organizations responsible for the handling of this matter, in particular, with the International Committee of the Red Cross (CICR) in Geneva and the International Institute of Humanitarian Law (IIHL) in Sanremo.

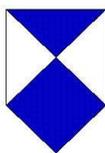
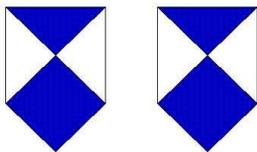
Part IV

Emblems

In order to facilitate the identification of protected cultural property even during peacetime, the Convention has provided for a distinctive emblem: a shield, pointed below, framed within a St. Andrew cross in blue and white (the so-called royal blue- Art.16). The distinctive emblem is used alone for cultural property not under special protection and personnel engaged in the protection of cultural property or in charge of the duties of control (armband and ID stamp). It is repeated three times in a triangular formation, one shield below, in case of cultural immovable property under special protection, transport of cultural property under the conditions provided for in Articles 12 and 13 and improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention (Art. 16 and 17 of the 1954 Convention).



Emblem adopted to signal cultural property under basic protection



Emblem adopted to signal cultural property under special protection

Cultural property not distinguished by an emblem must enjoy the same kind of protection. No specific emblem is provided for cultural property under enhanced protection, therefore it is identified by the single blue shield used for cultural property under basic protection.

Part V

List of Cultural Property

1. Cultural Property

There is no general list of cultural heritage, therefore, in order to determine cultural property, reference must be made to Art. 1 of the Convention, where cultural property is defined as:

- 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 of reproductions of the property defined above;*
- 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 subparagraph (a);*
- c. *centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centers containing monuments".*

2. Cultural Property under Special Protection

As already pointed out in Part I, paragraph 3, due to the complexity of relevant procedures, only three items are currently listed the International Register of Cultural Property under Special Protection of UNESCO:

- Vatican City;
- Three refuges aimed at storing cultural property in the Netherlands and one in Germany.

3. Cultural Property under Enhanced Protection

Having the Second Protocol entered into force only recently (see Part I, paragraph 5) registered cultural property under enhanced protection is:

- Castel del Monte in Italy;
- Kernavé archaeological site in Lithuania;
- Paphos, Choirokoitia and the Troodos Region churches in Cyprus.



STATO MAGGIORE DELLA DIFESA

Roma, li 28 APR. 2010

OGGETTO: Richiesta di "protezione rafforzata" in caso di conflitto armato relativa al complesso monumentale di CASTEL DEL MONTE, sito in ANDRIA (BT). Dichiarazione di non utilizzo ai fini militari.

Visto: il Secondo Protocollo relativo alla Convenzione de L'Aja del 1954 per la protezione dei beni culturali in caso di conflitto armato, fatto a L'Aja il 26 marzo 1999, ed in particolare l'art. 10, lettera c), in cui si prevede che il bene culturale posto sotto protezione rafforzata non sia utilizzato ai fini militari o per proteggere siti militari e che la Parte confermi in una dichiarazione che il bene non sarà utilizzato in tal senso;

Vista: la legge 16 aprile 2009, n. 45 recante "Ratifica del Secondo Protocollo relativo alla Convenzione de L'Aja del 1954 per la protezione dei beni culturali in caso di conflitto armato, fatto a L'Aja il 26 marzo 1999, nonché norme di adeguamento dell'ordinamento interno", ed in particolare l'art. 5, nella parte in cui prevede che il Ministero per i beni e le attività culturali individui i beni in possesso di requisiti di cui all'art. 10 del Protocollo, sentito il Ministero della Difesa in ordine al requisito di cui alla lettera c) del medesimo articolo;

Vista: la lettera n. 8/17830 in data 16 aprile 2010, di Ufficio Legislativo, con la quale si chiede di confermare il non utilizzo ai fini militari del complesso monumentale in oggetto, ai fini della candidatura del bene stesso al riconoscimento del regime di "protezione rafforzata" di cui al citato Protocollo,

DICHIARO

che il complesso monumentale di CASTEL DEL MONTE, sito in ANDRIA (BT), e relative aree di pertinenza, non è utilizzato ai fini militari o per proteggere siti militari e non sarà utilizzato in tal senso.

IL CAPO DI STATO MAGGIORE
Generale Vincenzo CAMPORINI