



"Back to the 1990s: why a second protocol to the Hague Convention and the creation of a Blue Shield?"

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Belgian Committee of the Blue Shield,
Online conference, 18 January 2021,

Summary

- Back to the 1990s and even before
- Was there anything wrong with the **1954 Hague Convention for the Protection of Cultural Property in the event of armed conflict and its First Protocol...**
- ...to the point that a Second Protocol was needed and adopted in 1999 ?
- And what lead to the creation of the Blue Shield

The 1954 Hague Convention

- 133 States Parties
- 110 to First Protocol (1954)
- 84 to Second Protocol (1999)



1999: The Second Protocol

Supplements 1954 Convention, does not replace it

- Reflects new developments in international law
- Clarifies and strengthens “Safeguard” and “Respect”
- New category of “Enhanced protection”



1999: The Second Protocol

- Clarifies and strengthen the criminal responsibility and sanctions
- Expands the protection of cultural property in situation of non-international armed conflicts
- Establishes a **Committee for the Protection of Cultural Property in the event of Armed Conflict**, composed of States

1999: The Second Protocol

- And the introduction of the **Blue Shield**
 - The International Committee of the Blue Shield (ICBS) was created before 1999
 - It has the rare privilege for an NGO to be given a specific role by States Parties to a Convention
 - Some similarities with but not equivalent to the ICRC in the Geneva Conventions
 - Some similarities but not equivalent to ICOMOS and IUCN in the World Heritage Convention

The Blue Shield in the Second Protocol

Article 11 The granting of enhanced protection

1. (...)
2. (...)
3. Other Parties, **the International Committee of the Blue Shield** and other non-governmental organisations with relevant expertise may recommend specific cultural property to the Committee. In such cases, the Committee may decide to invite a Party to request inclusion of that cultural property in the List.

Article 11 Octroi de la protection renforcée

1. (...)
2. (...)
3. D'autres Parties, **le Comité international du Bouclier bleu** et d'autres organisations non gouvernementales ayant une expertise appropriée, peuvent recommander un bien culturel particulier au Comité. Dans de tels cas, le Comité peut décider d'inviter une Partie à demander l'inscription de ce bien culturel sur la Liste.

The Blue Shield in the Second Protocol

Article 27 Functions *(NB: of the Committee of the Second Protocol)*
(...)

3. (...)To assist in the implementation of its functions, the Committee may invite to its meetings, in an advisory capacity, eminent professional organizations such as those which have formal relations with UNESCO, **including the International Committee of the Blue Shield (ICBS) and its constituent bodies.**

Article 27 Attributions *(NB:du comité du deuxième protocole)*
(...)

3. (...) Pour l'aider dans l'exercice de ses fonctions, le Comité peut inviter à participer à ses réunions, à titre consultatif, des organisations professionnelles éminentes telles que celles qui ont des relations formelles avec l'UNESCO, notamment **le Comité international du Bouclier bleu (CIBB) et ses organes constitutifs.**

The challenges of implementing the 1954 Hague Convention

- **Safeguard** of cultural property in time of peace, namely through:
 - distinctive emblem
 - “Special Protection”: **challenging !**
 - Preventive measures: legal, administrative and military
- **Respect (Art.4)** during armed conflict and occupation, on own territory and on the territory of the enemy; also applies for conflicts not of an international character
But may be waived in case of “military necessity”: **challenging !**
- **Occupation (Art.5)**: Occupying power shall support the competent national authorities of the occupied country in safeguarding and preserving its cultural property

The challenges of implementing the 1954 Hague Convention

- **Mechanism of Control** for its execution:
including “Protecting Powers” and
“Commissioners-General” : **challenging !**
- **Responsibility and sanctions** : *States Parties are required 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 committed or ordered to commit a breach of the convention.*
challenging !

1967-1992: the International Register of Cultural Property under Special Protection

- very few entries: refuges in Germany, Netherlands and Austria + Vatican City
- Especially during pre-conflict contexts, States Parties may object to the inscription: case of Angkor (Cambodia) in 1972 (under “Lon Nol” Regime)



1967-1992: Respect

- Is a commitment taken by States
- But increased initiatives by UNESCO's DG (and his/her Secretariat)
 - remind States of obligation of respect: India and Pakistan 1971, Cyprus in 1974, Iran and Iraq 1980, Iraq-Kuwait 1990, Yugoslavia 1991
 - letters, meetings at various levels, special envoys, etc.
 - offers of services: Iraq and Iran 1980, Tyre 1982 and Yugoslavia 1991 (longer term missions)
 - meetings with military commanders: Yugoslavia 1991

Increasing role of UNESCO: Cambodia in the 70s

On safeguard:

- Marking with Emblems
- Training and equipment for personnel
- Large scale transportation of movable cultural objects to presumably safer places....namely the National Museum where they were still in 2005

Cambodia 1970-72: Angkor and Battambang





Increasing role of UNESCO: Dubrovnik in 1990

On safeguard:

- preventive measures under Hague Convention: emblems, training
- Mobilization of world professionals

NB: Dubrovnik protected under World Heritage Convention



Increasing role of UNESCO: Dubrovnik in 1990

On respect :

- Good offices missions sent to Belgrade and Zagreb
- Special envoys to Dubrovnik to work with cultural and museum staff
- Permanent observers
- UN flag
- Alerted UNESCO DG + SG UN
- Mobilization of media







Ph. A. Bouineau

Lessons learned from Dubrovnik 1990

- Mobilization of international community due to Dubrovnik's World Heritage Status...
- ...may have led to prevent further destruction

NB: condemnation in 2005, for war crimes (incl. destruction of c.h.) by International War Crime Tribunal for Former Yugoslavia, of a commander involved in bombing Dubrovnik

While in Vukovar....



And later in Mostar ...



The review of Hague 1954 Convention

- From 1992: Review by States Parties and by UNESCO on impact, successes, constraints and failures of Convention especially in Former Yugoslavia
- The review also involved ICOMOS, ICOM, ICA, ICCROM, military and UN Peace-keeping forces
- Issues:
 - Objections to Special Protection
 - Unclear definition of “military necessity” and of “conflicts not of an international character”
 - Need to clarify and strengthen the criminal responsibility and sanctions

The review of Hague 1954 Convention

- Too much reliance on States' commitments
- The control system, involving Protecting Powers and Commissioners-Generals, was too heavy when rapid reaction was needed...
- ...was gradually replaced by missions by UNESCO
- Implementation required a lot of initiatives from UNESCO

A Red Cross for Cultural Heritage ?

- UNESCO was working more and more with ICRC, especially for training in “transition countries” (ex.: Caucasus and Central Asia) where the risks of potential conflicts was higher
- UNESCO was gradually expected, by some Member States, to play a role like ICRC with the Geneva conventions
- But with:
 - limited budget and resources
 - limited flexibility because of its intergovernmental character
 - no consensus among Members States to see UNESCO playing such a role

A Red Cross for Cultural Heritage ?

- Emergence of NGO initiatives: ICOM, ICOMOS, ICA as well as of ICCROM (an intergovernmental organization)
 - With key leading personalities
 - Supported by the “Boylan report” commissioned by UNESCO
 - A context leading to the creation in 1996 of the Blue Shield

A Red Cross for Cultural Heritage ?

- A role for ICBS was gradually included into the successive drafts of the Second Protocol
 - As a provider of experts' networks
 - As an advisor to UNESCO DG
 - As an advisor to the envisaged Committee of States
 - As part of the “Bureau” of the Protocol

1999: Adoption of the Second Protocol

Supplements 1954 Convention, does not replace it

- Reflects new developments in international law
- Clarifies and strengthens “Safeguard” and “Respect” by
 - Providing with clear definitions as to when waivers on the basis of imperative military necessity may or may not be applied
- New category of “Enhanced protection”

1999: Adoption of the Second Protocol

- Clarifies and strengthen the criminal responsibility and sanctions
- Expands the protection of cultural property in situation of non-international armed conflicts
- Establishes a **Committee for the Protection of Cultural Property in the event of Armed Conflict**, composed of States
- Which **MAY** invite the International Committee of the Blue Shield (ICBS)

The Blue Shield in the Second Protocol

- The result is a compromise between States
- The ICBS was disappointed that its role, in the text of the Second Protocol, was reduced as compared to earlier drafts .
- Its role has similarities with ICRC in the Geneva Conventions but not equivalent
- But the door is open, through the text of the Second Protocol.

Thank You

