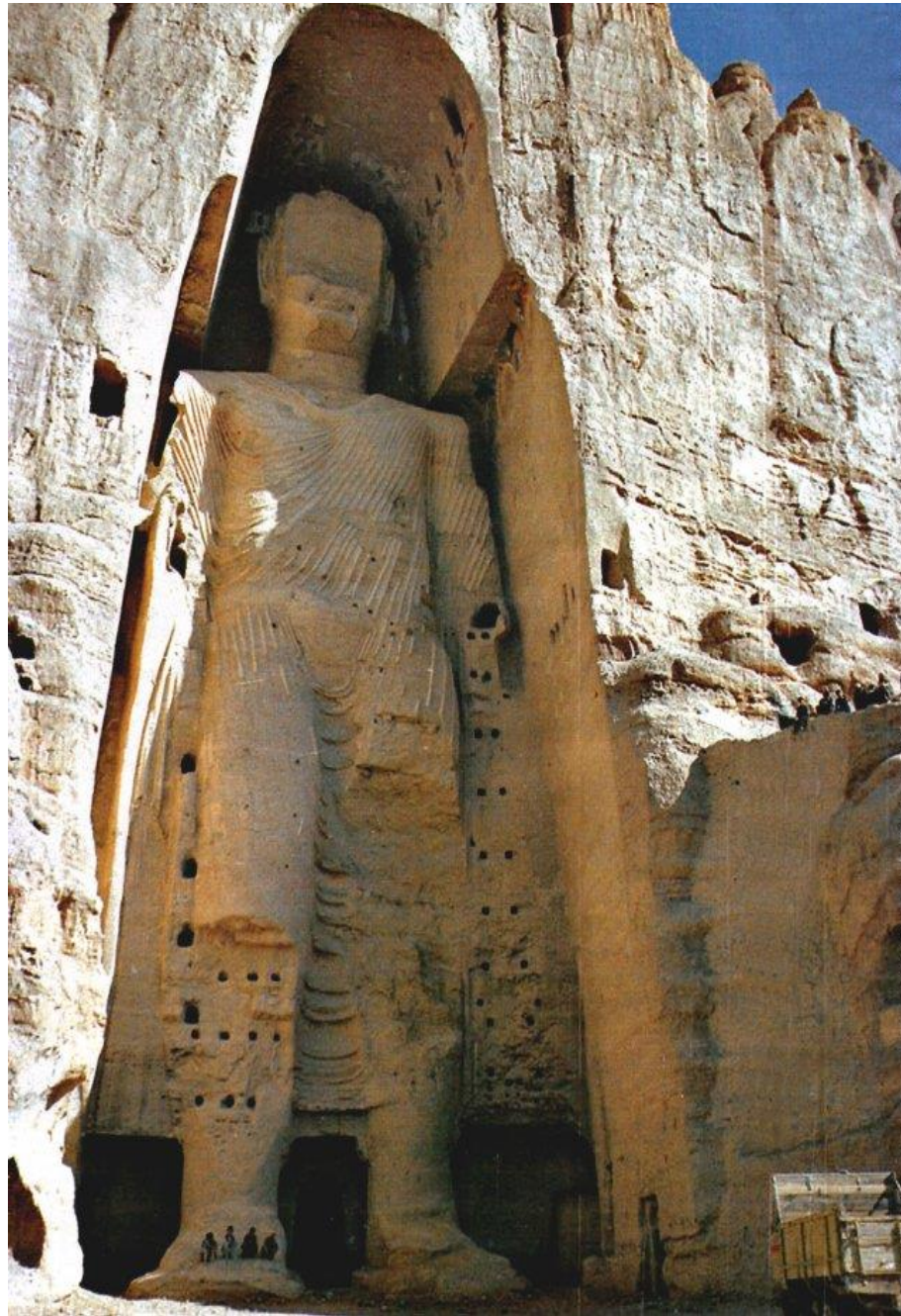


# **THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT**

**Cambodia's cultural heritage—and in particular Angkor – was not spared the suffering that country endured from 1970 onwards. Monuments and archeological sites suffered the consequence of abandonment, vandalism, looting and lack of maintenance, together with the effects of military use.**

- **When Iraq invaded Kuwait, it removed about 20,000 artifacts and the objects of art in the ensuing Gulf War (1991), used cultural property to shield military objectives from attack.**
- **In April 2003, the world witnessed the horror of what appeared to be extensive looting of museums, libraries and other institutions in Iraq. The looting sparked controversy about the adequacy of international law to protect cultural property during and after military conflict.**

- **In March 2001, the great Buddhist statues, the tallest standing in the world (55 meters and 38 meters) were demolished in Afghanistan.**
- **Afghanistan ' s cultural heritage and treasure consisting of Friday Mosque, Minaret of Jam and Gawahar Shad mausoleum were destroyed by the Taliban regime.**





# **PROTECTION OF CULTURAL PROPERTY**

- The three sets of treaties form the framework for protecting cultural heritage in time of war and its aftermath. These are:
- **The Hague Conventions of 1899 and 1907.**
- **The Geneva Convention IV of 1949 and its Protocol I.**
- **The Hague Convention of 1954 and its two Protocols.**
- Together, they respond to four threats to cultural heritage: deliberate attack, incidental damage, pillage, and outright theft.

# **ICC STATUTE**

- **The June 1998 Rome Statute of the ICC establishes in Articles 8(2)(b)(ix) and 8(2)(e)(iv) its jurisdiction over intentional attack “against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives”, occurring both in international and non-international armed conflicts.**

# **The Hague Conventions of 1899 and 1907**

- **The Hague Conventions of 1899 and 1907 with Respect to the Laws and Customs of War on Land, together with Annexed Regulations, generally prohibit pillage and destruction or seizure of enemy property unless imperatively demanded by the necessity of war.**
- **Private property cannot be confiscated.**
- **Attack or bombardment of undefended buildings, including cultural targets, is also prohibited.**

- **Signatory states must take steps to spare buildings dedicated to art, science, and religion from attack, and, with respect to their own cultural objects, give notice to the enemy by marking such objects.**
- **An occupying power must act responsibly in administering all public institutions, including museums.**
- **All seizure or destruction with an intention to damage institutions and historic monuments of art, religion, science and charity, or works of art or science is forbidden and subject to legal proceedings.**

- The Convention of 1907 Concerning Bombardment by Naval Forces in Time of War (Hague Convention IX) requires that all necessary precautions be taken to spare historic monuments and edifices devoted to worship, art, science, and charity.
- Although never formally adopted, the Hague Rules of Air Warfare reiterate that historic monuments and cultural institutions be spared from aerial bombing during hostilities.

- Unfortunately, the Hague Conventions of 1899 and 1907 failed to prevent widespread damage and destruction to cultural property during WW I.
- There were no prosecutions for destruction of cultural property.
- Similarly, World War II witnessed the plunder by the Nazis of cultural property throughout Europe.
- In the ensuing Nuremberg Trials, however, the prosecutions of major Nazi war criminals firmly established confiscation, destruction, and damage to cultural property as a war crime subject to prosecution and punishment, and provided the first true international enforcement of cultural property law.

# **THE GC IV of 1949, and** **PROTOCOL I**

- **GC IV Prohibits destruction of property.**
- **Art 53: Any destruction by the Occupying Power of real or personal property or belonging to the State or public authorities is prohibited, except where such destruction is rendered absolutely necessary by military operations.**

# **Additional Protocol I to GC**

- **Art 52: General protection of civilian objects—not to be the object of attack or reprisals.**
- **Attacks shall be limited strictly to military objectives---which offer definite military advantage.**

# Additional Protocol I to GC

## Article 53.-Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:

- (a) To commit 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;**
- (b) To use such objects in support of the military effort;**
- (c) To make such objects the object of reprisals.**

**Geneva Convention IV and its Protocol I make it a "grave breach" to destroy clearly recognized and specially protected historic monuments, works of art, or places of worship. As a "grave breach" the offence constitutes a war crime, and thus an international crime subject to universal jurisdiction.**

- **THE 1954 HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT AND ITS PROTOCOL.**
- **SECOND PROTOCOL OF 1999.**

# **Adoption of the Convention**

**1. The Convention and the Protocol for the Protection of Cultural Property in the Event of Armed Conflict were adopted by an intergovernmental conference convened by the Executive Board of UNESCO in pursuance of a resolution of the General Conference.**

**2. At the invitation of the Netherlands Government, this Conference met at The Hague from 21 April to 14 May 1954.**

**3. In accordance with the provisions of Article 33, the Convention entered into force on 7 August 1956, that is, three months after five instruments of ratification had been deposited.**

**4. As at 31 December 2006, 113 States are party to the Convention and 89 of them are party to the Protocol.**

- **The 1954 Convention provides an effective and comprehensive agreement on the protection of cultural property during hostilities, whether international or non-international (civil war). The Convention covers both movable and immovable property, which may bear a distinctive emblem. Parties must undertake preparations in time of peace against the foreseeable effects of armed conflict.**

## **The 1954 Convention prohibits:**

- any use of the cultural property in a manner that will likely expose it to destruction or damage in the event of an armed conflict;
- the commission of any acts of hostility or reprisal against cultural property except for reasons of military necessity; and
- any form of theft, pillage, or misappropriation of cultural property.

- **The 1954 Hague Convention outlines procedures for the special protection of specific items of cultural property.**
- To qualify for special protection, cultural property must be either immovable property of "**very great importance**" or a refuge to shelter movable property, it must be situated at an "**adequate distance**" from an industrial center or important military objective, and **it may not be used for a military purpose**, such as stationing military personnel or storing weapons.

- **Once cultural property is placed under special protection, state parties must ensure the immunity of the property by refraining from directing any hostilities against it.**
- **Special protection is ensured through the use of distinctive markings and the property's subsequent entry into an international registry at UNESCO.**
- **To date, however, only a handful of states have registered property for special protection, and such property is limited to just a few works.**

# Protocol I to the 1954 Hague Convention

- It imposes additional obligations on a state party that is occupying the territory of another state.
- It requires an occupying state to: (1) prevent the export of cultural property from the occupied territory; (2) seize all cultural property imported into its territory from any occupied territory; (3) return the seized property to the formerly occupied territory at the close of hostilities; and (4) pay an indemnity to the holders in good faith of any cultural property which has to be returned.

# Protocol II to the 1954 Hague Convention

- Protocol II contains a greater number of penal elements than any previous cultural property instrument, with specific articles on criminal jurisdiction, a duty to prosecute and extradite, and mutual legal assistance.
- In addition, going beyond the idea of *special* protection annunciated in the underlying 1954 Hague Convention, Protocol II includes a provision to define property under *enhanced* protection.

**To qualify for enhanced protection, cultural property must meet three conditions:**

- 1. It is of the *greatest* importance to humanity, such as designated World Heritage sites.**
- 2. It is protected by adequate domestic legal and administrative measures, including existing UNESCO protections, recognizing its exceptional cultural and historic value.**
- 3. It is not used for military purposes to shield military sites, and a declaration has been made by the state that has control over the property that it will not be so used.**

- Protocol II expands upon the provisions in the 1954 Hague Convention for preparatory actions in time of peace to safeguard cultural property against the "foreseeable effects" of an armed conflict.
- States parties must: (1) prepare a national inventory; (2) plan emergency measures for protection against fire and structural collapse; (3) remove all movable cultural property from areas that are likely to be damaged during military action or prepare adequate *in situ* protections of such property; and (4) designate competent authorities responsible for the safeguarding of cultural property.
- The instrument also includes precautionary measures that must be taken by states parties to prepare for and conduct military operations.

- All feasible measures must be taken to verify that the objects likely to be used for military purposes or likely to be attacked are not protected cultural property.
- All feasible precautions must be made in the choice of targets and methods of attack with a view to protect and avoid losses and damage to cultural property.
- A State must refrain from attack when either the objective is the destruction of protected cultural property or the attack might create incidental damage to cultural property that is excessive in relation to the anticipated military advantage.
- **The underlying principle is one of military necessity.**

- **Protocol II also establishes individual criminal responsibility for violations.**
- **A state party must either prosecute or extradite any person found in its territory who is deemed to have committed serious violations of the Hague/Protocol II rules.**
- **It also contains provisions for mutual legal assistance and the establishment of a committee to help implement the protocol and protect the specifically identified cultural property.**

# **International Register of Cultural Property under Special Protection**

**A limited number of refuges intended to shelter movable cultural property in the event of armed conflict ( containing monuments and other immovable cultural property of very great importance) may be placed under special protection.**

**The such property is entered in the “International Register of Cultural Property under Special Protection”. (Article 8, 1954 Convention)**

**The UNESCO, jointly with the ICRC, organized a Regional Seminar on the Implementation of International Humanitarian and Cultural Heritage Law in Kathmandu (Nepal) from 19 to 23 May 1997.**

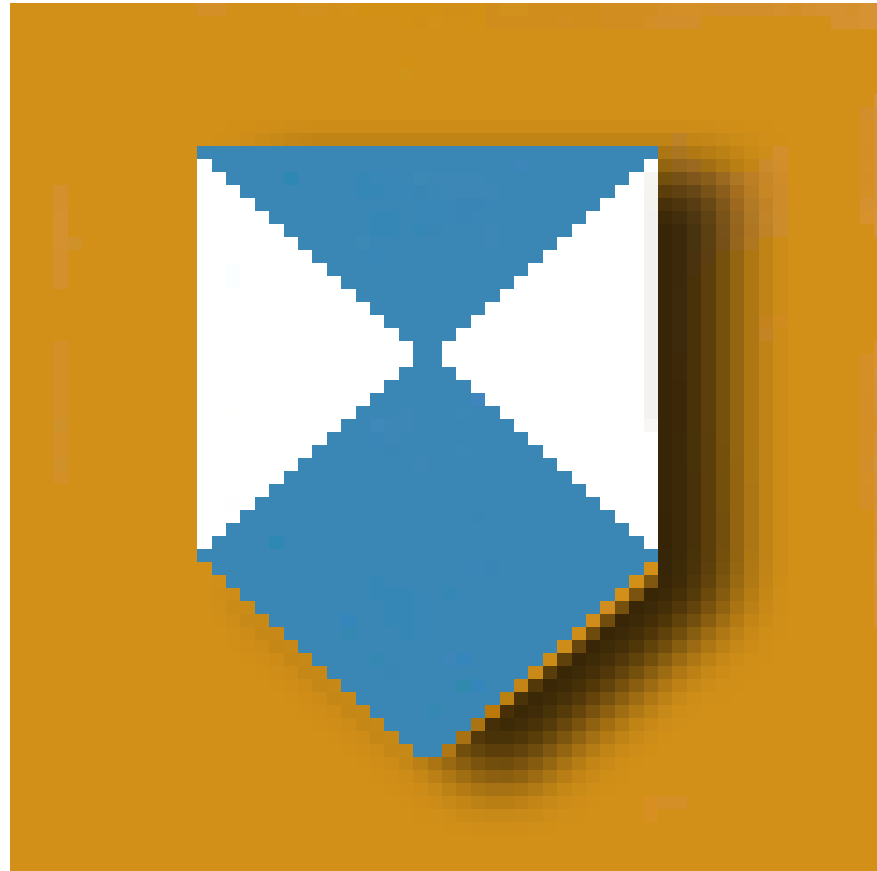
**This Seminar was attended by the representatives of South Asian countries (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) and contributed to raising awareness of the need to implement basic agreements of international humanitarian and cultural heritage law.**

**The 27th session of the General Conference of UNESCO (October-November 1993) adopted 27 C/Resolution 3.5.**

**It stated that “the fundamental principles of protecting and preserving cultural property in the event of armed conflict could also be considered part of international customary law”.**

# **THE DISTINCTIVE EMBLEM**

**Chapter 5 of the 1954 Convention prescribes the form of the distinctive emblem and the circumstances in which it may be utilized.**



# **MILITARY MEASURES**

**Article 7: The High Contracting Parties' obligations, during times of peace, to include in their military instructions provisions which ensure the observance of the Convention and foster the spirit of respect for the cultural property of all peoples.**

**This Article also requires that the High Contracting Parties establish within their armed forces, services or specialist personnel to secure respect for cultural property and to cooperate with the civilian authorities responsible for safeguarding it.**

In **Spain**, *Law 85/1978* prescribes moral standards for the military. It stipulates that during combat the military shall show respect for buildings of religious, cultural or artistic character, provided that they are not being used for military purposes.

In **Poland**, provisions ensuring the observance of the rules of international law in relation to the protection of cultural property have been included in the *Regulations of Tactical Actions of the Ground Forces* issued by the Polish Army General Staff in 1994. The Defence Ministry has also established a Cultural Property Protection Department.

# Provisions under the Army Act

| <b>BREACHES OF IHL</b>                                           | <b>OFFENCES UNDER THE ARMY ACT (AA)</b>                            | <b>MAXIMUM PUNISHMENT</b>                   |
|------------------------------------------------------------------|--------------------------------------------------------------------|---------------------------------------------|
| <b>Appropriation of property</b>                                 | <b>Breaking into house in search of plunder, Section 36 (b) AA</b> | <b>14 years of RI</b>                       |
| <b>Disobedience</b>                                              | <b>Disobedience of lawful command, Section 41 AA</b>               | <b>14 years RI</b>                          |
| <b>Making perfidious use of protective emblem</b>                | <b>Unbecoming conduct, Section 45 AA</b>                           | <b>Dishonourable dismissal (cashiering)</b> |
| <b>Destruction of historic monuments, works of art, property</b> | <b>Offences against property, Section 64 AA</b>                    | <b>7 years RI</b>                           |