

SAFEGUARDING OF CULTURAL PROPERTY

New guidelines for the implementation in time of peace of 1999 Hague Protocol: NGO's national and international role and activities

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The **Convention for the protection in the event of armed conflict** (The Hague, 1954) stressed the necessity to act in advance to protect the cultural heritage.

(Article 3 of the Convention)

The High Contracting Parties undertake 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, by taking such measures as they consider appropriate.

An activity which is certainly considered in prediction of an armed conflict but which is of great interest and utility even in a perspective of natural calamity or in the simple management of the ordinary safety.

(Article 5 of the 1999 second Hague Protocol),

Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict pursuant to Article 3 of the Convention shall include, as appropriate,

- the preparation of inventories,
- the planning of emergency measures for protection against fire or structural collapse,
- the preparation for the removal of movable cultural property or
- the provision for adequate in situ protection of such property, and
- the designation of competent authorities responsible for the safeguarding of cultural property.

In our opinion, to the preparatory measures must be added their relevant activities of information, sensibilization and formation, not only for the military staff but also for the civil, employees and volunteers, that should always be involved.

The protection of cultural properties in dangerous situations has its general set of rules not only in the Convention of The Hague but also in the Convention of the World Heritage, in particular:

(article 11 point 4)

the (...) List of World Heritage in Danger, a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary(...) The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the (...) outbreak or the threat of an armed conflict; (...). The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

About the specific topic we are dealing with, this Convention also provides:

(article 17)

The States Parties to this Convention shall consider or encourage the establishment of national, public and private **foundations or associations** (...).

Also to answer the need of improving the system of the international organizations working in the cultural field, we have been carrying out for some years for the implementation of the new rules of the II Protocol which are concerning the new Committee for the protection of cultural heritage in armed conflicts. But it could and should also execute, with more conviction and consistency, this provisions granting in formal way the role and the competences of the Non governmental organizations (NGO), among those particularly of the International Committee of the Blue Shield - ICBS , organization born 10 years ago from the joint work of ICOM, ICOMOS, IFLA and ICA, that hold in Italy in July 2004 their first world meeting ended with the approval of the Turin Declaration.

The new organizations could at least try to lay the foundations for the actual safeguard of all the cultural heritages in risk. So, it wouldn't be insured only for exceptional events but also daily. It is in the different position and mentality that lies the difference between an intergovernmental organization and a great, autonomous and independent NGO, able to intervene successfully and authoritatively also in time of war, such as the International Committee of the Red Cross – ICRC.

The important role of the NGO has already been highlighted by Patrick Boylan in his well known essay ***“Review of the Convention”***

(Paragraph 17.5, p.142):

Non-governmental organisations have the potential to play a most important role in providing direct assistance in terms of professional and technical labour, specialised equipment and materials for protection and emergency conservation, and for assisting with the temporary evacuation of important movable cultural property in times of actual or threatened armed conflict.

The role of the voluntary sector could be especially crucial in those cases where **international and governmental organisations are unable to offer such assistance because of the (unavoidable) political consequences**, for example where the country is under a de facto government or administration which is not recognised as legitimate by the United Nations or other international organisations.

Now, after the approval of the Guidelines it's time to put them into practice, most of all the Parties involved must do that, but it is also fundamental that the professionals of culture are able to know and let know these new international obligations and their rules of adoption on an international level.

This is the reason why it is necessary to organize an efficient system of information, diffusion and training concerning and by the NGO themselves. We've to do this work always considering the important and still little valued links among the protection in time of war, the protection “since in time of peace” and the ordinary management, even in case of natural calamity.

I'd like to explain the work that has been done since 2005 within the UNESCO Committee for the protection of cultural properties on behalf of the ICBS, with the colleagues of the other NGO, most of all the already mentioned and well known Patrick Boylan, and Cristina

Menegazzi.

By this time the tasks that the second Hague Protocol gives to the ICBS as well as to the other NGO on the field are – I hope so - well known, also because they are quite limited:

(Article 11.3)

(...) the International Committee of the Blue Shield and other non-governmental organisations with relevant expertise may recommend specific cultural property to the Committee (...).

(Article 27.3)

(...) The Committee shall co-operate with international and national governmental and non-governmental organizations (...). 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. (...).

But I think it's particularly important, finally, the

(Article 30.3.b)

Any military or civilian authorities who, in time of armed conflict, assume responsibilities with respect to the application of this Protocol, shall be fully acquainted with the text thereof. To this end the Parties shall, as appropriate: (...)

(b) develop and implement, in cooperation with UNESCO and relevant governmental and non-governmental organizations, peacetime training and educational programmes (...)

Just this last reference is the most explicit and compulsory rule (most of all for States) concerning the cooperation between the armed forces, the UNESCO and the NGO to realize the measures of safeguard.

This is the reason why at the end of the **2005 UNESCO Meeting of the Parties to the Hague convention**, held in Paris, the fifth final statement asked:

“the Director-General to recognize the important role of the International Committee of the Blue Shield (ICBS) and its constituent bodies, (...) representing civil society, in promoting and advancing the understanding of the Hague Convention and its two Protocols” :

a quite explicit and formal exhortation, but disregarded so far.

The new Committee needs juridical and technical instruments to fill the gap, after fifty years of difficulties and serious defeats of safeguard and protection that the cultural properties always suffered from during armed conflicts.

Real political independence and absolute neutrality are essential between the fighters: this is the characteristics distinguishing since a century and a half the International Red Cross. I already told it, at the 1991 Round Table of the IIHL, that they must also become fundamental principles of the ICBS; unfortunately to the new international NGO hasn't been given the same credit and a role similar to the Henry Dunant's newborn creature, thanks to the very first Geneva Convention of 1864.

The 1999 Protocol gave to the International Blue Shield only a limited task of professional advice and proposal towards UNESCO and the Committee, giving the role of simple observers (or advisors at most) to the expert organizations and world prestige such as ICOM, ICRC itself and most of all ICCROM and ICOMOS, which already play the function

of UNESCO technical advisors for the World Heritage List.

(1972 Convention of Paris - article 13.7)

The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organizations, particularly (...) the International Council of Monuments and Sites,

ICOMOS it's also explicitly quoted in articles 8.3 and 14.2 and other practical aspects of this cooperation results from the **Operational Guidelines for the implementation** of the WH Convention.

(Point 35).

The specific role of ICOMOS in relation to the Convention includes: evaluation of properties nominated for inscription on the World Heritage List, monitoring the state of conservation of World Heritage cultural properties, reviewing requests for International Assistance submitted by States Parties, and providing input and support for capacity building activities.

In this kind of work which is technical and specialized concerning the procedures, but also in all other circumstances in which an operational, capillary and independent presence of experts and operators able to move rapidly and efficiently also in a war area is needed, are not always sufficient the highly qualified but rare technical missions of UNESCO. Unfortunately this organization doesn't have (unlike the Red Cross) a network of national and local seats suitable to face in situ the emergency situations. Besides, there are several occasions in which there are diplomatic or political issues, procedural complexities and crossed veto that have always paralysed or at least slowed down the UNESCO action such as it happens for the United Nations themselves.

Concerning the rules of the Guidelines as regards NGO, we can start from the fundamental problem of the relationships among States, UNESCO, Committee and NGO; first of all, after a proposal of ICOMOS Delegation it has been decided that:

(point 13)

key actors are encouraged to ensure the participation of (...) international organisations (...).

Such participation may address (...) the national implementation, awareness-raising and dissemination (...) offering technical advice related to safeguarding of cultural property or, **in case of the constituent bodies of the ICBS, on providing advice** with regard to the granting of enhanced protection” .

So the exhortation is directed to the Committee itself and to the UNESCO, and not only to the High Parties, as it was initially proposed: certainly it is only a terminologic difference, but it implies a NGO involvement not only limited on a national level: on the contrary, a more direct and convinced implication in processes and activities on international level, something that initially wasn't considered and proposed at all.

Considering that the enhanced protection provided for by the articles 10-14 of the Protocol

is considered the most significant innovation of the new system of protection, as there is need to remedy the essential failure of the similar but stricter “Special protection”, this rule could really be the key to give international cover to the direct intervention (even if it would be only an advisory and technical assistance intervention), of the professionals organizations - under the aegis of the ICBS or not - towards the cultural heritages more exposed to dangers.

Following the debate there has been the impression that UNESCO would prefer other procedures, maybe partners too, for this fundamental activity of technical advice in situ, without taking for granted the possibility to reply almost automatically the processes conceived for the Convention of the World Heritage, which ruled more explicitly this delicate passage.

It's worth highlighting not only the prevision of the fact (already foreseen in the second Protocol on the article 27.3) that the Committee can invite to its meetings the ICBS as consultive institution and its “constituents bodies” but also that it can “**consult within the framework of granting enhanced protection**”, this is obviously something very new, different and important.

This indication, already in the draft, has not been discussed at all in the Meeting; this is the reason why it is necessary to underline that it is maybe the most significant integration compared to the literal text of the Protocol, àspect that has been highlighted by ICOMOS Delegation during the following debate about the role of the UNESCO Secretariat, that is clearly linked to the previous one. The rule must be obviously linked to the one of art. 11.3 of the II Protocol.

Other fundamental rule to define the role of the NGO is the one that clarifies the modalities to bring about the rules of protection since in time of peace: only after some remarks of ICOMOS and USA Delegations, it has been specified - concerning the Article 5 of the Protocol - that

(point 27)

“as the above list (...) is not exhaustive. Parties are also encouraged to consider other appropriate preparatory measures”,

paving the way for the possible individuation of different methods of safeguard, among whom – in our opinion - it's worth pointing out the realization of powerful training actions for the civil and military people in charge.

Again, on the following Point 39 it's provided that:

“in evaluating (...) the Committee considers in particular **national measures intended for the identification and safeguarding** of cultural property proposed for enhanced protection”.

So the effective realization of proposed measures of protection must be valued and considered to obtain the concession of the enhanced protection. On this point it is very important to underline that

“The Committee encourages the Parties to cooperate both at international and national level with the competent non governmental organisations”,

also in this case about the safeguards measures of the heritage since in time of peace; it is nevertheless revealing the fact that here the Committee avoided quoting explicitly the ICBS.

After a very long discussion, the Committee has then decided the statement of the fundamental and very controversial point 36 of the Guidelines.

“it is presumed that (...) will consider that the immovable cultural property inscribed on the World Heritage List satisfies the condition of greatest importance for humanity”.

This is another very important passage particularly for ICOMOS which has been committed for years as advisor of the World Heritage Center, if it is considered with regard to the following rule (Point 47), that has been approved without any discussion:

“The Bureau may consult organisations with relevant expertise for evaluation of the request. The Bureau will forward the request (including the evaluation) to the Committee”.

but also other rules concerning technical international assistance by UNESCO:

(Guidelines, point 136)

“The Committee will work in close cooperation as appropriate with (...) the relevant eminent (...) NGO in order to ensure the proper handling of request for different categories of assistance”

(Guidelines, point 146)

The Bureau may consult eminent (...) NGO with the professional expertise for evaluation of the request”

(Guidelines, point 115)

“International assistance (...) may be of technical or consultative character, covering in particular legal, administrative, military and practical aspects”

Finally with regard to the emblem of protection, despite the fact that it still hasn't been considered the interesting proposal about the possibility of safeguarding by the Blue Shield also the people in charge of monitoring on the field, nevertheless remains positive the new disposition of the Point 96 according to which:

“The Parties should make an effort to increase awareness and enhance respect for the Emblem at national and international level”

We must also remember the previous rule:

(Guidelines, point 95)

“Parts are entitled to mark such cultural property” (under enhanced protection)

So, the combination of these rules would show the substantial and final legitimation (always contested from some delegations), of the use of the Blue Shield also for the properties safeguarded by the second Protocol.

Nevertheless it's not still sure if ICBS itself, and NGOs in general, can use it in their activities, especially on the field.

Already presented in the:

IIHL – UNESCO High Level Experts Meeting - Sanremo (Italy)

(2009, december, the 14th)