Chapter 4

Enhanced Protection: A new form of protection under the 1999 Second Protocol

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1. Introduction

The 1999 Second Protocol supplements the ‘special protection’ offered by the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (‘the 1954 Hague Convention’) with a system of ‘enhanced protection’. The reason was that virtually no country was able to meet the conditions for eligibility for special protection in the 1954 Hague Convention, mainly because of the practical requirements listed in Article 8. And as there was a need for a system to provide extra protection for cultural property of exceptional importance, it was necessary to set up a new system: that of enhanced protection. But what is enhanced protection? In the following I will address the nature and scope of enhanced protection.

2. From special protection to enhanced protection

The 1954 Hague Convention established a system of special protection. As Jean-Marie Henckaerts explains, this system was designed to cover a limited number of refuges intended to shelter movable cultural property, centres containing monuments and other immovable cultural property of very great importance. Special protection is granted by entry of the property in the International Register of Cultural Property under Special Protection.

The distinctive emblem of the 1954 Hague Convention, a blue shield, repeated three times may be used to identify immovable cultural property under special pro-

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1 It should be noted that this enhanced protection also applies to non-international armed conflicts (see article 22 of the Protocol).

2 Article 8 of the 1954 Hague Convention: Granting of special protection.


4 Article 16 (i) of the 1954 Hague Convention describes the distinctive emblem of the Convention.
tection.\(^5\) This should be done in a triangular formation (one shield below).\(^6\) If used alone, the distinctive emblem can be used as a means of identification for cultural property not under special protection.

Both Henckaerts and Toman\(^7\) explained that the system of special protection was a weak point in the 1954 Hague Convention. Only a few States applied for special protection,\(^8\) while others announced that a request for registration was being considered, without ever actually making such a request.

Both authors explained that there were practical difficulties to be met in the application of Article 8 of the 1954 Hague Convention, in particular with regard to cultural property in the heart of large cities close to large urban, political, and industrial centres. States did not always seem to be committed to diverting transportation routes, or to not using ports close to cultural property in need of special protection in the event of conflict. Besides, entry in the list is conditional on the property being situated at an adequate distance from any large industrial centre or important military objective.

It is almost impossible to meet this condition, as much valuable cultural property is located in city centres and surrounded by potential military objectives. In addition, there is no agreement on what constitutes an adequate distance and, as a result, it is difficult to prepare an application for registration or to assess a request. Finally, both Henckaerts and Toman point out that political motives have also stood in the way of registration. States can object to the entry in the Register and have done so on grounds such as the fact that the requesting authority was not the legitimate representative of the country in question.\(^9\) The increased politicisation resulting from the Cold War and the tensions in relations between the States were further obstacles to success. Many States feared that the registration of refuges would reveal their location, making them an easy target.

Both the community of States and UNESCO learnt their lesson, and since it seemed that there was a need for a system of extra protection for cultural property of exceptional importance, a new system was set up in the 1999 Second Protocol, without a distance criterion, and without a broad scope for lodging objections. In fact, a whole new system was necessary as the 1999 Second Protocol does not set the 1954 Hague Convention aside but is additional to it.\(^10\) The system of special protection had therefore to be left untouched. This means that the 1954 Hague Convention and the 1999 Second Protocol provide for a total of three forms of protection: general protection, as provided for under the Convention and Protocol, special protection as provided for under the Convention, and the enhanced protection set up under the Protocol.

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5 Article 17(i)(a) of the 1954 Hague Convention.
6 Article 16 (2) of the 1954 Hague Convention.
8 Austria, the Federal Republic of Germany, the Khmer Republic, the Netherlands and the Holy See.
10 See Article 2: Relation to the Convention.