

# 1954 Hague Convention & Protocols



Collins Barracks Dublin

22 October 2014

Presentation by

Declan Smyth

Department of Foreign Affairs & Trade

# Dresden



# Royal Castle, Warsaw



# International Humanitarian Law



- The Hague Convention is part of International Humanitarian Law, formerly known as the Law of War, which is a branch of international law
- IHL seeks to strike a balance between military necessity and the interests of humanity by regulating the conduct of armed conflict
- IHL places limits on the means and methods of warfare in the interests of humanity
- Developed greatly since the 1<sup>st</sup> Geneva Convention in 1864

# International Humanitarian Law



- A basic rule of IHL is that only combatants and military targets can be the object of attack – civilians, prisoners of war, the sick and wounded, and civilian objects are protected
- Cultural property is a civilian object unless used for military purposes, which is generally prohibited

# Protection of Cultural Property in time of Armed Conflict in International Law



- 1938 Draft Convention
- 1949 Geneva Conventions
- 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict & Protocol
- 1977 Protocols additional to the Geneva Conventions
- 1999 Second Protocol to the 1954 Hague Convention
- Customary International Law

UNESCO Conference on the Protection of  
Cultural Property in the event of Armed Conflict  
The Hague 21 April – 14 May 1954



Ireland represented by:

Ambassador Josephine McNeill

Lt Col Harrington

Patrick Henchy, National Library

# Principal Obligations under the 1954 Convention



- Safeguard and respect Cultural Property
- In time of peace make preparations to safeguard Cultural Property against foreseeable effects of armed conflict
- Not use Cultural Property for purposes likely to expose it to destruction or damage during armed conflict and refrain from any hostile act against Cultural Property – except in cases of imperative military necessity
- Prohibit, prevent and stop theft and pillage of Cultural Property



# Special Protection



- States can nominate for Special Protection:
  - Refuges to shelter movable Cultural Property and
  - Monumental Centres and other immovable cultural property of very great importance
- Conditions apply:
  - Must be located away from any important military objective and
  - Must not be used for military purposes
- Must be registered with UNESCO
- States obliged not to direct ‘any act of hostility’ against Cultural Property under Special Protection – no exception of imperative military necessity

# Blue Shield



- Repeated 3 times may be used to identify Cultural Property under Special Protection or being transported under Special Protection
- Used alone to identify Cultural Property not under Special Protection and those responsible for its protection

# Sanctions



- Convention requires States to make violation of the Convention a criminal offence in their laws

# 1954 Convention - Adherence



- Ireland signed the Convention upon adoption in 1954
- 126 States have ratified or acceded to the Convention
- 60 States adhered between 1955 and 1970
- Renewed interest in the early 1990s and again after adoption of 1999 Protocol
- Denmark (2003) Japan (2007) New Zealand (2008) United States (2009)
- Still not parties – Ireland and the UK

# First Protocol



- Concluded on the same day as the Convention
- 103 States Parties
- Absent include Ireland, US, Australia & UK
- Protocol requires States:
  - to prevent the export of cultural property from occupied territory
  - to take into its custody cultural property exported contrary to the Protocol
  - to return cultural property at the close of hostilities
  - to indemnify holders 'in good faith' of cultural property to be returned

# Weaknesses of the 1954 Convention



- Obligations to protect Cultural Property could be waived in cases of ‘imperative military necessity’
- Special Protection requires prior registration on the International Register of Cultural Property under Special Protection to which any other State may object
- Only 5 States ever requested Special Protection
- Special Protection granted for the Vatican City and for Refuges in Austria, the Netherlands and Germany
- 4 States objected in 1972 to Special Protection for the Monumental Centres at Angkor and Roulos in Cambodia
- During Cold War growing sense that Cultural Property could not be protected from intercontinental ballistic missiles

# 1999 Protocol



- Growing sense that law needed to be updated – particularly in light of Iran-Iraq, Balkan and Afghan Wars
- Protocols Additional to the Geneva Conventions adopted in 1977
- Law moved from a concept of ‘imperative / urgent military necessity’ to defined ‘military objective’
- A military objective is by its nature, purpose, use or location making an effective contribution to military action – it may then be captured, destroyed or neutralised

# Principal Features of the 1999 Protocol



- 1999 Protocol supplements 1954 Convention
- Preparatory measures to include:
  - Inventories
  - Planning emergency measures for fire / structural collapse
  - Removal of movable cultural property
  - Designation of competent authorities
- ‘Imperative military necessity’ defined by reference to ‘military objectives’ plus additional restrictions
- 1977 law on precautions in attack reflected
- ‘Enhanced Protection’
- Individual criminal responsibility



# Enhanced Protection



- Cultural property may be placed under enhanced protection if:
  - it is cultural heritage of the greatest importance for humanity
  - it is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection
  - it is not used for military purposes or to shield military sites
- Entry on to List of Cultural Property under Enhanced Protection determined by Committee for the Protection of Cultural Property in the Event of Armed Conflict
- Committee operates by vote and scope for objections limited

# Cultural Property under Enhanced Protection



- 10 Sites
- Nominated by 5 states:
  - Azerbaijan
  - Belgium
  - Cyprus
  - Italy
  - Lithuania



# House and Studio of Victor Horta, Brussels



# Renewed Concern for Cultural Property: Syria



# Ratification by Ireland



- Irish legal system is ‘dualist’
- Legislative and administrative measures necessary
- Create specific criminal offences:
  - Attacking cultural property under EP
  - Using cultural property under EP in support of military action
  - Extensive destruction or appropriation of cultural property
  - Theft, pillage, misappropriation, vandalism
- Jurisdiction, extradition, mutual legal assistance
- Military training and doctrine
- Preparatory measures and emergency planning