

The Regime of International Protection of Cultural Property in the Event of Armed Conflict: the role of the ICBS and cultural NGOs against UNESCO¹

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First of all, I'm very grateful to the Sanremo Institute for welcoming my proposal to organize this important Experts meeting and for inviting us; I'd like also thank the President Ambassador Moreno for giving me the very great honour to act as Coordinator, together with my former professor, colleague and friend Edoardo Greppi. We are also grateful to UNESCO and Italian Government for their prestigious support².

A short introduction

As we all know, ten years ago, thanks to the joint action of UNESCO and four principle organisations of professionals of culture, a new international NGO was created: its aim was to promote and – if possible – to apply in a concrete way, together with Governments, the Hague 1954 Convention, signed half a century ago to protect at an international level cultural property in the event of armed conflicts. Due to the UNESCO's objective difficulties and problems in these particular kinds of situations, for a long time it has been known that it was necessary to trust this responsibility to an operational organisation, present in the field, independent, prestigious as the International Red Cross. For this reason, the foundation of ICBS and its first steps were greeted in a very favourable way by the majority of people involved in this field.

However, I have already written about some big problems and many difficulties which made the Blue Shield – both at an international and a national level – ambitious but not an adequate platform. In fact it's a disorganised organisation or worst no-organisation; ICBS is still far from being operative, and most importantly, it is not fully recognised and sustained even by the same institutions that created it.

At the end of the conference of the High Contracting Parties of the 1999 Second Protocol to the Hague Convention of 1954, UNESCO was invited

“to recognise the important role of the International Committee of the Blue Shield (ICBS) and its four NGOs in the dissemination of the content of the Hague Convention and its two Protocols”.

¹ PUBBLICATO PARZIALMENTE IN :

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² Many thanks to Claudio Cimino and Dacia Viejo-Rosa for interesting discussions before and after the presentation; to Caterina Perlo and David Primett for their helpfull translations.

Sadly, this explicit formal request has yet to be met. Today ICBS and UNESCO need that professionals in the cultural field, highly qualified volunteers, technicians and experts, to make a contribution to solve the complex issues linked to the protection of buildings and collections of cultural importance in times of war and natural disasters.

I think this is an area in which the performance of UNESCO and many of its signatory states (armed forces included) has been less than stellar; however, there are a few exceptions, such as Switzerland. The ICBS can draw on the resources of an estimated 30.000 members throughout the world, specialists and cultural institutions, who themselves have many collaborators. These include hundreds of specialists working in the fields of salvage, safety and prevention, conservation and regulation, as well as training, information and dissemination.

The current tasks which were transferred to the military and civilian structures of the signatory states and UNESCO are manifold and highly complex. Often, the operational and technical capabilities, needed to ensure worldwide implementation, are lacking.

The signatory states – and perhaps UNESCO itself – should therefore recognise what the ICBS could achieve if it was entrusted with international activities and afforded greater legitimacy. Clearly, it falls to the signatory states and UNESCO to take charge of any physical intervention in a crisis situation, according to existing international Conventions, in so far as such work is not delegated.

For its part, the ICBS must be realistic, in my personal opinion, and restrict its activities (recognising its own limitations) to *safeguard* cultural property. UNESCO should consider it an obligation to demand that all signatory states, particularly those which have already ratified the Hague Convention and the Second Protocol, officially recognise the “Blue Shield” (ICBS) at international and national levels, as well as support and promote it.

This situation is reminiscent of the problems faced by the Red Cross one hundred years ago.

The new Guidelines

As everybody knows and should always remember, the Convention for the protection in the event of armed conflict highlights the necessity to act in advance to protect the cultural heritage.

(Article 3 of the Nineteen fiftyfour Hague Convention)

The High Contracting Parties undertake **to prepare in times 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.

Activity which is certainly considered to prevent the effects in prevision of an armed conflict but which is also of great interest and utility, even in a perspective of a natural disaster or in the simple management of 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, a strong and effective action to promote information, public awareness and training must be included within the preparatory measures, not only for the military staff, but also for civilians, employees and volunteers who should always be included.

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 World Heritage Convention, particularly:

(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 (...) 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.

Regarding the specific topic we are dealing with in this presentation, the WH Convention also provides in *(article 17)*:

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

For several years we have been working on the new rules of the II Protocol which are issued by the new Committee for the protection of cultural heritage in armed conflicts; this also answers the need of improving the system of the international organizations working in the cultural field. However, the Committee could and should also execute with more conviction and consistency, the provisions, acknowledging explicitly, and granting in a formal way the role and the competences of the Non governmental organizations (NGOs); among those particularly the International Committee of the Blue Shield (ICBS). As you know, five years ago when Italy held its first world meeting, which ended with the approval of the *Turin Declaration*, **“to establish and strengthen the ICBS as a visible, effective entity”**.

The new Committee, together with ICBS and other NGOs, could at least try to lay the foundations for an actual safeguard of all the cultural heritages at risk. This would be protect not only exceptional circumstances, but also day to day perspectives.

This the difference of role and approach between an intergovernmental organization, like UNESCO, and an autonomous and independent NGO – the model example is the International Committee of the Red Cross (ICRC) – able to intervene successfully and authoritatively also in time of war.

The important role of the NGOs has already been highlighted and acknowledged by Patrick Boylan in his well known essay,

(“Review of the Convention” - Paragraph 17.5 of 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.

After the approval of the Guidelines³ it is time now for the Parties involved to put them into practice. However, it is also fundamental that professionals in the field of culture are made aware and are enabled to disseminate (as ICRC usually does for International Humanitarian Law) these new international rules and the criteria set for their adoption at an international level.

This is why it is necessary to organize an efficient system for the promotion of information, public awareness and training, concerning and by the NGOs themselves. We need to do this work especially in consideration of the important and still little valued links existing between the protection of CH in time of war, its protection “in time of peace” and the management, day to day, especially in cases of risk situations.

By this time we should all know well the limited tasks that the Second Protocol gives to the ICBS and to the other NGO engaged in the field:

(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

³ From 2005 to 2009, I operated on behalf of the ICBS, as *Head of ICOMOS delegation*, within the UNESCO Committee for the protection of cultural properties, together with a very limited number of colleagues: Gaia Jungeblodt, Director of ICOMOS Secretariat, Patrick Boylan and Cristina Menegazzi (both of ICOM), are well known and recognised in the field of Hague Convention enactment.

UNESCO, including the International Committee of the Blue Shield (ICBS) and its constituent bodies. (...).

However, I believe that it's important, to highlight
(*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 (...)

This last reference is the most explicit and compulsory reference (most of all for States) to the cooperation between the armed forces and the NGOs, to study, implement and deploy protective measures for cultural heritage.

This is the reason why at, the end of the 2005, UNESCO conference of the High Parties of the Hague Convention (in Paris), the fifth final statement asked, as previously mentioned, "to recognize the important role of the International Committee of the Blue Shield": a quite explicit and formal exhortation, disappointingly a little considered and respected so far.

On the other hand, the Committee needs juridical and technical instruments to fill the gap, after fifty years of difficulties and deficiencies, in safeguarding and protecting the cultural properties, which have always suffered during armed conflicts.

Real political independence and absolute neutrality are essential - I'm convinced⁴ - to operate on the battlefield between opposing fighters: this is the characteristic distinguishing for a century and a half the International Red Cross, and this must become also a fundamental principle for the ICBS.

Unfortunately the new international NGO was not granted the same credit, in 1864, given to Henry Dunant's newborn creature. In fact, the 1999 Protocol gave to the International Blue Shield only a limited task of professional advice and proposal, to UNESCO and the Committee: this gives expert organizations such as ICOM, ICOMOS, ICCROM, and most of all ICRC itself, the role of simple observers (advisors at most).

By the way, ICOMOS and ICCROM have also, as is well known, the function of UNESCO technical advisors in evaluating the nominations of the monumental sites at the World Heritage List, based on the *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,

Such a role is also defined in articles 8.3 and 14.2.

⁴ I already said it in 1991, at the annual Round Table of the Sanremo Institute (IIHL), in a session presided by Yves Sandoz as conference Chairman.

The operational aspects of this cooperation results from the Operational Guidelines for the implementation of the WHC (Paris, 1972), *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.

This is a kind of technical and specialized work concerning the procedures; but also in all other circumstances is needed an operational, capillary and independent presence of experts and operators able to move, rapidly and efficiently, also in a war area.

In these situations, the highly qualified but rare technical missions of UNESCO are not always sufficient. 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, diplomatic or political issues, procedural complexities, crossed vetoes and distrusters, have typically paralysed or at least reduced the effect of UNESCO's actions, as it happens for the United Nations themselves.

If we review the rules contained in the Guidelines, concerning NGOs, we can identify a basic problem in the relationships established between States, UNESCO, Committee and NGOs; in fact, after an informal amendment proposal of ICOMOS delegation, highlighting this problem, the Committee decided to modify the draft text, as below:

(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".

Thus, this encouragement is directed to the Committee itself and to UNESCO, not only to the High Parties as it was initially proposed. It's only a subtle difference in wording, but it implies an NGO's involvement, not only limited at a national level: on the contrary, their more direct and convinced implication in processes and activities at an international level: something that initially was not considered and proposed at all by the Secretariat.

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; there is a need to remedy the essential failure of the similar but stricter "Special protection".

This rule therefore could really open the door to give international cover to the direct intervention of professional organizations towards the cultural properties most exposed to dangers, under the aegis of the ICBS, or not, even though it would be only an advisory and technical assistance intervention.

Following the debate, it is perceived that the UNESCO Secretariat would rather follow new procedures (maybe partners too), for this fundamental activity of technical advice on site; I mean the possibility to reply the processes conceived for the World Heritage Convention, which ruled more explicitly this delicate passage, its not taken for granted.

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

This clause, already in the draft, has not been discussed at all in the Committee Meeting. It’s necessary, therefore, to underline that **this is one of the most significant integration, compared to the literal text of the Protocol**: an aspect explicitly highlighted by ICOMOS Delegation during the following debate about the role of the UNESCO Secretariat, clearly linked to the previous one. This rule must be also linked to the one of art. 11.3 of the II Protocol.

The role of the NGOs is defined by other fundamental rules, clarifying the modalities to bring about the safeguard already in time of peace.

After some remarks by ICOMOS and USA Delegations, concerning the list of actions in article 5 of the Hague Protocol, it has been correctly specified (**point 27**) that

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

paving the way for the possible adoption of other and different methods of protection, among which - in my opinion – it is worth pointing out the implementation of annual theoretical and practical exercises, ideally delivered to both civil and military personnel together, particularly those responsible for heritage conservation and management.

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 implementation of proposed measures of protection must be valued and considered for the granting of enhanced protection. On this point it is very interesting to note that

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

once again, this safeguard measures for heritage must be **“taken in time of peace”**, as stated by article 5 of the II Protocol.

It is however disappointing that here the Committee (and the UNESCO Secretariat before) **avoided** quoting explicitly ICBS.

After a long discussion, the Committee decided the following 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 a very important passage, most of all for ICOMOS, which for years has been committed, as advisor of the World Heritage Center, especially 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”.

Finally with regard to the emblem of protection, 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”

is positive, despite the fact that still an interesting proposal hasn't been considered: the possibility of safeguarding, by the Blue Shield symbol, also the civilians in charge of monitoring on the field.

The combination of this rule with the **point 95** would show the substantial and final legitimation (though always contested by some delegations), of the use of the Blue Shield symbol also for the properties safeguarded by the second Protocol.

Some critical remarks

- It's not still sure, therefore, if ICBS itself and NGOs in general, can use it in their activities the Blue Shiled Symbol, especially on the field. The problem of the protection of the CH experts when they operate in areas of crisis, was posed for the first time in 2007⁵, starting from the use of the emblem: **the Shield alone or should it be rather associated to the Red Cross?**
- The Second Protocol acknowledged the model of the WH Committee, omitting to consider that the World Heritage system **operates usually in times of peace**, but only in very few cases in situations of risk, such as in the events of natural disasters or armed conflicts. So the excellent model provided by the Geneva Convention was not - or could not - be adopted, especially concerning the very significant role played by the ICRC.
- The “**Red Cross for Cultural Heritage**” (I mean the ICBS) that in recent cases such as Yugoslavia, Iraq and Palestine, among others, was evidently missing; in fact, the Blue Shield for the time being does not intend to get structured, nor it seems equipped to develop a relevant role on the ground at

⁵ I raised it the workshop co-organised by WATCH in Granada and Baeza, on the occasion of the V International Conference of Science and technoclogy in Archaeology and Conservation (2007)

both national and international level, as it would be required by the Second Protocol.

- In areas of crisis, where required to act immediately and independently, the deployment of an international voluntary expertise (in support of, or in absence of, national/local experts), supported and accredited by international NGOs of ICBS, must anyway be enabled.
- To train them, we need manuals and courses, which not all States are able to secure, with few exceptions. It is therefore imperative that UNESCO and the Committee begin a rapid action of dissemination, with the technical support of well experienced structures – first of all ICRC and IIHL – and through the ICBS international and national networks.

Conclusions

Every effort will be made to coordinate and launch these joint activities of dissemination, together with the main competence of technical advice for States and UNESCO.

It must be clear, however, that what is being established with this new system, is coordination and not another bureaucratic structure, duplicating the efforts of the single organisations or even trying to incorporate them.

Their competence, specific experience and unquestionable prerogative, almost all being recognised both nationally and internationally, will form the basis and be the assets of the International and the National Blue Shield Committees, and should by no means be seen as a limitation.

On the basis of my experience in recent years, it can certainly be stated that the first task facing the new organisation, apart from the institutional work in the international field, already mentioned, will be in dealing with the need for activity technically defined as “dissemination”, a term more or less synonymous with information, raising public awareness and training.

This activity will have to be spread and with steady backing throughout all sectors of society, including military and civilian personnel.

The first thing is to increase the number of supporters from schools, universities and authorities, both military and civilian, and - most importantly - with the institutions which, for at least the past fifty years, have been primarily responsible for safeguarding and protecting heritage in times of danger.

These institutions are only concerned about the more prestigious, popular and costly operations of recovery and restoration, once the damage has been done.

Restoration is a sector where, and with justifiable pride, many Nations are at the forefront internationally, but this may be because they make little effort to avoid the damage occurring in the first place.

In this respect, all international Conventions – scrupulously ratified by most of Nations, but sometime scrupulously ignored – lay down rules to make the parties

concerned aware of the problems and offering training, so the first responsibility for the National Blue Shield Committ (NBSC) is clearly to rectify this failing.

This may coincide with the first appearance of the NCBS and be the first opportunity to attract more supporters.

In Countries where Governments have already ratified the new 1999 Protocol, the NBSC will have to be ready to act and operate, autonomously or on behalf of the State, with tasks such as:

- preparing a periodic report for UNESCO on the state of the application of the Hague Convention and its Protocols at the National level;
- preparing a list of suitable names, to be proposed by their State, for the position of General Commissioner for Cultural Heritage, to be included in the international list compiled by UNESCO, and also for positions as inspectors, experts and/or collaborators or consultants;
- making submissions on property to be registered on the existing List of Property Under Special Protection (1954 Hague Convention) and, today, on the new (being introduced by the 1999 Protocol) List of Property under Enhanced Protection; both should include most of cultural heritage already on the *World Heritage List* (1972 Paris Convention);
- proposing and planning initiatives to safeguard the most important national assets, property and sites: first those already on the World Heritage List, and with special reference to surveys and security arrangements, the inclusion of sites on military maps and the possibility of marking them with the Blue Shield symbol;
- closer and more regular collaboration with universities, for the purpose of training specialists (both military and civilian) and voluntary staff, for cultural and civil protection groups;
- the study, organisation and management of international collaborative projects and missions, perhaps initially at a purely technical level, or as consultants; but in the future this could be operational;
- the organisation of structures for coordination and emergency response (obviously avoiding any conflict with official state authorities, therefore as support, joint ventures or consultancy) for future disaster or risk situations, threatening national heritage; these opportunities, unfortunately, are only too frequent.

These high-quality services must be implemented, not only because they are required under rules laid down in nationally ratified Conventions, but also because so far no one in the different organisations, either governmental or NGOs, has shown any desire to take steps in this direction.

The second field of activity for the NCBS, at a national level, could be to provide proper technical courses to train experts in safeguard, prevention and security.

This requires a very different cognitive and operational base and, instead of relying on individual initiatives, structures and knowledge of various organisations involved, it would be better to form a real partnership sharing the as yet limited and little known experience gained through contacts, at the international level, and the lessons which ICBS experts have learned through their experience in recent disasters.

This will require certain tools:

- the development (or the creation) of a “National Risk Plan/Map”, instead of waiting for data, as happened with some dramatic disasters. Qualified volunteers should collect and transmit data, because the immediate updating of the National Civil Protection Plan, with explicit provisions on regulations, procedures and measures to be adopted for the protection of real estate and personal property⁶;
- the establishment of a position for a person in charge of risk prevention for cultural heritage, working jointly with museum professionals (i.e. the curator, restorer and chief of security). It can be assumed that in most heritage sites this position would be filled by a person who is a qualified staff member of the Civil Protection Force;
- the opportunity to organise periods of practical training, during maintenance work in museums and on monuments, when filing systems are being upgraded, when collections or works in storage are being rearranged, and when exhibitions are being prepared. This would help establish good relations with those in charge, while also giving trainees first-hand knowledge of the different problems involved and of the actual premises;
- the introduction of systematic national and regional campaigns to assess and verify the specific risks, to which the different categories of cultural heritage are exposed: this could include proper maintenance of roof guttering and drainpipes to avoid water seepage and dampness, keeping a check on shops and any dangerous activities (near or within the museums, libraries and monuments); it should be also ensured that suitable containers and space for packing are available in the event of emergency evacuation of works of art, recording security measures⁷;
- involving a specialist in security measures for national heritage (professional or voluntary) in all the different civil protection commissions and structures in the municipality, local and regional administrations, and civil protection departments, etc.;
- an emergency telephone number for reporting situations where national heritage is at risk; calls could be monitored so that reports, warnings, suggestions and offers from staff available, are forwarded to the relevant authorities.

These measures could be formally adopted by National, Regional or Local administrations and then passed on first to public authorities, but with clear indications that, in the event of any organisational or logistic difficulty, the authorities concerned are **formally obliged to consult and collaborate** with the National Blue Shield Committee, which would thus take on the role of an auxiliary service to the public authorities, in a similar position to the Red Cross in the field of public health and social services.

⁶ In Italy to date such details have not been fully considered.

⁷ Especially in smaller museums, churches, villas and castles where there is a risk of looting, checking burglar alarms in museums and churches, etc.

It goes without saying that these services which are already highly important in the everyday tasks of safeguard, prevention and protection of heritage, would be essential and decisive in every situation of danger or possible damage, including (while always hoping that this will never be the case) disasters such as terrorist attacks or even war.

It's non sufficient for a Nations (Italy, for instance) to have an important (for quality and quantity) artistic and historical heritage, and very highly skilled restorers, to manage the damage to all their monuments and the theft of our works of art; we should learn to think in terms of safeguard, prevention and protection.

This should not be limited to the basic essentials of fire prevention, which has seen, in many countries, theatres, churches, buildings and libraries irreparably destroyed or damaged, but should cover all potential risks, such as a lighted candle or any flame in a small shop next to a famous museum or monument, or a blocked roof gutter on a famous cathedral.

These are risk factors which could be eliminated for a small cost, but which, can cause damage costing inestimable amounts, provided, of course, that restoration would still be possible.

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