

ARCHAEOLOGY IN CONFLICT AND UNESCO – LEGAL ASPECTS*

The protection of cultural property in the event of armed conflict is dealt with by the 1954 [Hague Convention](#) for the Protection of Cultural Property in the Event of Armed Conflict (in short, the Hague Convention), the only international multilateral agreement with a universal vocation focused exclusively on the protection of cultural property during hostilities. The Hague Convention does not contain any explicit provision concerning archaeological excavations in an occupied territory.

However, it does contain a provision on the obligation of the occupying State in Art. 5. In the event of occupation, the occupying State is under an obligation to support (as far as possible) the relevant authorities of the occupied country in safeguarding and preserving its cultural property. The occupying State is also required (as far as possible) to take the most necessary measures to preserve cultural property situated in occupied territory and damaged by military operations if the competent national authorities of the occupied State are unable to do so. However, the scope of this obligation is narrowed to the extent that the obligation applies "as far as possible".

During the discussion of the draft Regulations for the Execution of the Convention at the 1954 Hague Intergovernmental Conference, Greece proposed an amendment prohibiting the Occupying Power from undertaking archaeological excavations save when approved by the competent national authorities and with their participation. Following the discussion, this amendment was not adopted. The Greek proposal also was raised when discussing the Protocol, and it was rejected again.

However, the French representative suggested that the Secretariat should retain this idea so that UNESCO could consider it in its Draft Recommendation on the International Control of Archaeological Excavations. This idea was reflected in Article 32 of the 1956 UNESCO Recommendation on International Principles Applicable to Archaeological Excavations, "a major formulation of international principles meant to guide states in drafting their national laws on archaeology".

This Recommendation contains the following provision on excavations in an occupied territory: "32. In the event of armed conflict, any Member State occupying the territory of another State should refrain from carrying out archaeological excavations

in the occupied territory. In the event of chance finds being made, particularly during military works, the occupying Power should take all possible measures to protect these finds, which should be handed over, on the termination of hostilities, to the competent authorities of the territory previously occupied, together with all documentation relating thereto."

However, the tense of the verb used - "should"- indicates the non-mandatory character of this provision.

Since the adoption of both the Hague Convention and the 1956 Recommendation, the Secretariat has been informed on a number of occasions of archaeological excavations taking place in an occupied territory. The most important case concerned Jerusalem, and it has been discussed on a number of occasions during the General Conference of UNESCO, the Executive Board of UNESCO and sessions of the World Heritage Committee.

The review of the Hague Convention, which resulted in the adoption of the Second Protocol to the Hague Convention, took into account the concern of UNESCO Member States with regard to archaeological excavations in occupied territories.

Article 9 of the Second Protocol on the "Protection of cultural property in occupied territory" requires the Occupying Power to prohibit and prevent in relation to the occupied territory any archaeological excavation (unless strictly required to safeguard, record or preserve such property). If such excavations do take place, then they must be carried out in close cooperation with the competent national authorities of the occupied territory. However, this obligation is not absolute and limited by the condition "unless circumstances do not permit" which we have already seen (albeit in a different form) with regard to the obligation of the Occupying Power under Article 5 of the Hague Convention. Article 9 of the Second Protocol also introduces two other important obligations which are closely related to archaeological excavations:

Duty of the Occupying Power to prohibit and prevent any alteration to, or change of use of, cultural property intended to conceal or destroy cultural, historical or scientific evidence; and, Duty of the Occupying Power to prohibit and prevent any illicit export, other removal or transfer of ownership of cultural property.

* The unabridged version of the paper is available with the author.

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